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hatchery and other enhancement organization planning, construction and operation - but has left the details of these plans to the qualified regional associations; subject to executive approval.

It is not necessary that the legislature supply a specific formula for the guidance of an administrative agency in a field where flexibility and adoption of legislative policy to infinitely variable conditions constitute the essence of the program. The modern tendency is to permit liberal grants of discretion in order to facilitate the administration of laws dealing with involved economic and governmental conditions. Swisher v. Brown, 402 P.2d 621, 627 (Cal 1965). See also State v. Reisman, 374 P.2d 1002 (Wash. 1972); Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966).

Consequently, the determination of the adequacy of standards to guide an agency or other entity cannot be made in the abstract; consideration must be given to the nature of the subject matter regulated. Atlantic City Electric Company v. Earden, 368 A.2d 366 (N.J. 1976). In the case at bar, the variables associated with the operation and development of hatcheries are infinite and highly complex; incapable of meaningful legislative orchestration.

The statute at bar also establishes important checks on the arbitrary exercise of power by the regional association. A.S. 16.10.530(e) provides that the assessment cannot be levied until the qualified association has held two public hearings. Reasonable notice is required. Ballots are to be mailed to all limited entry permits holders actively participating in a fishery at least twenty days before the initial public hearing. After a vote is taken at the initial hearing the second meeting is required following newspaper notice and full notice to active limited entry permit holders 14 days before the second public meeting. The votes of the

second are to be counted with the votes of the first meeting. The appendix reveals voluminous examples that these safeguards were diligently followed.

VIII. THE COLLECTION OF THE ROYALTY SHARE ASSESSMENT BY A REGIONAL AQUACULTURE ASSOCIATION IS NOT IN VIOLATION OF ARTICLE IX, SECTION 7 OF THE ALASKA CONSTITUTION.

Plaintiffs contend that the collection of the royalty share assessment by the regional associations is a dedication of the proceeds of a state tax or license for a special purpose in violation of Article IV, Sec. 7 of the Alaska Constitution which provides in relevant part:

Section 7. Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose,

It is the position of defendant SSRAA that the royalty share assessments are not the proceeds of a state tax or license, are not dedicated to a special purpose and, alternatively, the savings clause of the last sentence of the present section 7, constitutionally excepts the assessments from any general prohibition.

A. State Tax or License

1. Defendant believes that a ruling by this court that the royalty share assessed is not a tax is dispositive of this issue. The critical language for the purpose of review are the first eight words of the section: "The proceeds of any state tax or license."

At the Constitutional Convention the framers had experience with a variety of dedicated funds during territorial days. 51/

At that time, however, the delegates were singularly unexperienced with revenues raised from sources other than taxes or license fees. With that in mind it is worth reviewing the progress of Sec. 7 through the convention in detail.

51/ Cigarette taxes dedicated to school construction; marine fuel taxes to water and harbor facilities; highway motor fuel taxes to the highway fund; and aviation fuel taxes to airport construction. Cf. 1960 Opinion of Attorney General No. 31.

The section first appeared in the committee minutes on November 24, 1955, as follows:

All tax revenues shall be deposited in a general fund to be established and maintained by the state. This provision shall not prohibit the continuance of any special fund for special purposes existing at the effective date of the constitution.

Minutes, Committee on Finance and Taxation, (Hereafter, Committee Minutes).

On December 9, 1955, the section was amended to read, in relevant part, as follows:

All revenues shall be deposited in the State treasury without allocation for special purposes, except where state participation in Federal programs will thereby be denied.

Committee Minutes.

The section was sent to the Convention floor with a proposed amendment to change the first clause of the section to read:

"All public revenues shall be deposited in the State treasury . . ." Constitutional Convention Proceedings, p. 2297 (Hereafter Proceedings)

The section was subsequently withdrawn from floor deliberation at the request of the chairman of the Committee on Finance and Taxation. Proceedings, 2318.

When the section was again submitted for deliberation by the delegates it was changed to read substantially the same as the form in which it passed:

"The proceeds of any state tax or license shall not be dedicated to any special purpose. . . ." Proceedings, p. 2361.

The significance of the retreat from the broad language of "all public revenues" to that of "the proceeds of any tax or license" is emphasized when reviewing another section of the constitution regarding the dedication of revenues. Article VI, Sec. 7 directs that "[T]he initiative shall not be used to dedicate revenues. . ." That section remained substantively unchanged throughout the convention. Cf. Proceedings, Vol. 6, p. 19.

The term "all public revenues" has a reasonably clear meaning as does the term "the proceeds of any state tax or license." The meanings are clearly not identical. To argue that royalty shares or assessments are included in "the proceeds of any state tax or license" is to argue that the language in the constitution does not mean what it says and that the convention went through an amendment exercise for no reason. All fundamental canons of constitutional interpretation reject such an approach.

2. Clearly the royalty shares assessed from those commercially harvesting common property resources by a regional association is not a state tax or license. It is not of a state but a regional nature.

In Black & White Taxi Co. v. Standard Oil Co., 218 P. 139 (Ariz. 1923), the governor of Arizona sought to veto a provision giving half the gas tax to the county under a constitutional provision giving him the power to veto individual line items in appropriation bills. The court held that the governor had no authority to veto this provision for this reason:

"An appropriation or items of appropriation that the Governor may decline to approve are of funds belonging to the State . . . the fifty percent of the 3 cents gasoline tax that goes to the county is not levied for a State purpose and does not become the State's money. It is collected by the gasoline dealers and by them remitted to the Secretary of State, who pays one half thereof to the State Treasurer . . . and remits the other one half to the Treasurers of the different counties from which it has been received. It is the counties' money, levied for a county purpose; it is as though the legislature had directed the county authorities to collect one and one half cents tax per gallon on gasoline and apply it to the maintenance of the county's roads and highways, or as though the legislature had directed the county authorities to make a tax levy upon the property of the county to be used in building, improving, repairing, and maintaining a public court house, or a county hospital for the indigent sick and disabled, or any other public purpose or use . . . the item or items that may be disapproved [by the Governor] are items of money, to be paid out of the State's money levied and collected for the purposes of the State and not expenditures the legislature may authorize and direct its political subdivisions to make." Supra, p. 144.

See also, Buchanan v. Town of Salina, 58 N.Y.S.2d 797 (1945); State v. Donald, 158 N.W. 317 (Wis. 1916); Opinion of the Justices, supra; Aetna Life, supra.

B. Savings Clause.

Should this court construe the royalty share to be a state tax, defendant urges the following analysis on this court for the purpose of resolving the issue.

As originally adopted the last clause of Art. IV, Sec. 7 read as follows:

This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska."

That clause was amended at the general election held in November, 1976 to read:

This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska."

A.S. 16.10.530 was adopted in 1976 by the same legislature that presented the permanent fund amendment to the voters.

The change in the savings clause by the same legislature that adopted Sec. 530 has no meaning if it is construed merely to allow valid dedication to continue since for a dedication to be valid it must either be a dedication other than the proceeds of a state tax or license or the dedication of a tax or license made prior to the date of the constitution. No change in the constitution was needed to accomplish this. A fundamental canon of constitutional construction is that no part of an enactment is to be considered meaningless if a reasonable meaning can be found.

IX. VAGUENESS.

Plaintiffs allege that the statutory framework for the assessment is unconstitutionally vague because it is not clear who should pay the assessment. It is defendant SSKAA's position that the law is not vague, any possible vagueness has been cured by executive interpretation, and finally that plaintiffs are precluded from raising this issue because they have failed to exhaust their administrative remedies.

A. The Law is Not Vague.

The previous argument in the section on equal protection and the due process of the laws clearly reveals that the levy of assessment is not over-inclusive nor under-inclusive. Plaintiffs' allegation is thus reduced to the question of whether the law is sufficiently definite to determine who the assessment is levied against. The law clearly states that the assessment "shall be levied on the sale of one or more species of salmon caught by persons" commercially harvesting salmon in the qualified region. A.S. 16.10.530(a). The law further states that the "commissioner may, by regulation, require its collection by buyers of the salmon upon the sale of which an assessment is levied" A.S. 16.10.530(c). These sections make it clear that the assessment is levied against the person harvesting the salmon. See also A.S. 16.10.540(a).

B. Any Possible Vagueness Has Been Corrected By Executive Interpretation.

It is a long established rule that administrative or executive interpretation of a statute is weighed by a court in determining whether that statute is constitutionally infirm. Cf. Kelly v. Zamarello, 486 P.2d 106 (Alaska 1971); C.J.S.2d, Statutes. A review of 3 AAC 88.040 (Collection of Assessment) leaves no room for imagination.

C. Exhaustion

It is abundantly clear that plaintiffs have not petitioned, requested action from, no objected to the

Commissioner of Commerce and Economic Development about any aspect of the assessment process. Such a failure to utilize the administrative remedies available prohibits certain allegations raised for the first time in the judicial branch. Plaintiffs' vagueness argument could have been and should have been addressed to the Commissioner. Failure to do so estopped plaintiffs from raising any argument that the statute is indefinite to the level of constitutional concerns.

X. COMMERCE CLAUSE.

Defendant SSRAA believes it appropriate to conclude the substantive analysis of plaintiffs' allegations in this memorandum with a discussion about the commerce clause. The issue could be dealt with summarily but an important contrast between economic policy by Congress subjected to commerce clause and other challenges and the challenges in this case should be considered. Plaintiffs sweeping allegation that A.S. 16.10 is in violation of the commerce clause of the Federal Constitution will be dealt with following a brief discussion of the evolution of the commerce clause in the judicial branch.

A. General Background

The evolution of judicial interpretation of the commerce clause closely parallels the evolution of social and economic affairs of the nation. The first century and a half of the republic was dominated by the doctrine of laissez-faire. The government's main task apart from defense was to keep and maintain fair-play while private interests asserted themselves freely within the market. The invasion of federal power into areas of state jurisdiction was only justified when the exercise of state power had to yield to the doctrine of laissez-faire. Thus, in Hammer v. Dagenhart, 247 U.S. 251 (1918), commonly known as the child labor case, the Supreme Court held that the federal government could not prohibit the shipment in interstate commerce of goods produced by child labor because the effect of such prohibition was to regulate manufacturing carried on within individual states. However, if the exercise of state power infringed upon private market enter-play, the Court was quick to strike down that action pursuant to the commerce clause. This led to the development of a doctrine known by scholars and jurists as dual federalism. A line had to be drawn, in cases such as those involved in the regulation of commerce, dividing the area in which the national

government could operate from that over which the state had exclusive jurisdiction. Today scholars point to the development of a new federalism. Cf. Clark, The Rise of a New Federalism, (1938). They acknowledged the expanded role of government in American life as the root of the new federalism, and point to great economic depression which began in 1929 as the turning point in executive, legislative and judicial policy.

The doctrine of laissez-faire, upon which the operation of governmental authority had been essentially based since the founding of the republic, proved wholly inadequate to meet the problems presented by the depression. Congress moved with the adoption of the legislative measures which sought to regulate most of the critical aspects of the economic system - most of which was previously considered beyond the scope of federal regulatory power. An early legislative enactment was the National Industrial Recovery Act of 1933, granting broad powers of business and industrial interaction with consumers and labor. In Schechter Poultry Corporation V. United States, 295 U.S. 495 (1935), the Court struck down the act:

Where the effect from intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have a indirect effect upon interstate commerce, federal authority would embrace practically all the activities on the people and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Supra, p. 546.

It is generally considered today that the Schechter Poultry case involved one of the last important applications by the Supreme Court of the concept of dual federalism. One commentator has noted:

The need for national regulation of the economic system, which had induced the legislative and executive branches of the federal government to discard the laissez-faire policies that had controlled their action prior to 1929, was bound also

to have its effect on the jurisprudence upon the Supreme Court. It is true that there was a certain delay before the court began to adjust its case law to the change that was demanded by the great depression. Thus, while the 'new deal' measures to deal with the economic crisis were enacted as early as 1933, it was not until 1937 - two years after the Schechter decision - that the American court began to remove the restrictions upon federal action which had been imposed by the strict adherence to dual federalism. Such a lag appears to be inherent in the functioning of any judicial tribunal which is compelled by changing external conditions to make fundamental modifications in its case law. It constitutes perhaps the prime weakness of the American system of judicial review, the basic conservatism of the judiciary often makes it difficult for its members to make the necessary accomodation before it is too late. Schwartz, American Constitutional Law, p. ____, (1963).

Within six years the court had retreated from and then expressly overruled the prior decision in the child labor case. Cf. National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937); Sunshine Anthracite Coal Co. v. Atkins, 310 U.S. 381 (1940); United States v. Darby, 312 U.S. 100 (1941).

Another example of the retreat from dual federalism involved the Agricultural Adjustment Act of 1933. Under the Act, a processing tax was levied upon different agricultural commodities, and the proceeds from this tax were used to compensate farmers who agreed before hand to raise less or none of such commodities. The prime purpose of this exercise power to tax was the regulation of agricultural production, rather than securing of revenue. In United States v. Butler, 297 U.S. 1 (1936), the Act was struck down as an improper exercise of the taxing powers. There was a strong dissent by Justices Stone, Brandeis and Cardoso:

The limitation now sanctioned must lead to absurd consequences. The government may give seeds to farmers, but may not condition the gift upon their being planted in places where they are most needed or even planted at all. The government may give money to the unemployed, but may not ask that those who get it shall give labor in return, or even use it to support their families. They may give monies to sufferers from earthquakes, fire, tornado, pestilence or flood, but may not impose conditions - health precautions designed to prevent the spread of disease, or induce the movement of population to safer or more sanitary areas. All that, because it is purchased regulation infringing state powers, must be left with the states, who are unable or unwilling to supply the necessary relief. Supra, p. 85.

Three years later, in Mulford v. Smith, 307 U.S. 38, 48 (1939) the dissents noted above became the law when the Court upheld the Agricultural Adjustment Act of 1938 which did not differ in substance from the act held unconstitutional in 1936. In United States of America v. Rock Royal Cooperative, Inc., et al., 307 U.S. 533 (1938), the demise of laissez-faire was plain. That case involved various parts of the Agricultural Marketing Agreement Act of 1937 as well as a scheme adopted by the Secretary of Agriculture in connection with the establishment of a plan for fixing uniform prices of milk in certain areas. The scheme created an equalization pool that required producers to pay into the common fund any surplus over a uniform price. The law provided for a vote by the producers to approve any such scheme. The law was challenged on due process grounds, vagueness grounds, delegation grounds, violation of the commerce power and delegation of legislative power to the producers. The court rejected all of these arguments.

B. Interstate Commerce is Not Impermissibly Burdened.

These cases set the foundation for the new federalism, upon which plaintiff apparently rest their allegation that A.S. 16.10 violates. Defendant SSRAA developed that short background for the purpose of pointing out the marked similarities between the constitutional challenges to the new deal legislation and the constitutional challenge resting before this court in this lawsuit. The tragedy of the great depression forced the Supreme Court to discard the shackles of past judicial interpretation of federal and state power, in order to give the Congress and the executive the flexibility necessary for economic recovery. In order to do this the court had to deal with litigious plaintiffs and multiplicitous constitutional challenges carrying over from the 19th century. The tenacity that laissez-faire capitalism displayed in the face of new and far reaching economic policy by the legislative

and executive branches is understandable. The tenacity of plaintiff fishermen in this lawsuit is equally understandable.

A.S. 16.10 et seq. places no impermissible burdens on interstate commerce. The assessment is in no sense exclusionary. Henneford v. Silas Mason Co., 300 U.S. 577 (1937). It levies a share of the common property resource reduced to capture by commercial harvest prior to the introduction of the fish into commerce. The assessment in no way discourages commerce and the purposes of the aquaculture development will in fact increase commerce between the states and effectively increase the opportunity for nonresidents to travel here and participate in the commercial harvest. General Motors Corp. v. Washington, 377 U.S. 436 (1964). Members of SSRAA are not discriminated against and, in fact, at least one member of the board lives in Seattle and actively participates in management of the corporation. The burden plaintiffs allege are burdens shared by all persons most directly benefited from the fisheries enhancement and are in no sense burdens upon the streams of commerce. However, as noted in this brief, the equal protection and commerce claims of the plaintiffs effectively put the complaint in perspective.

XI. PLAINTIFFS HAVE NOT EXHAUSTED ADMINISTRATIVE REMEDIES.

It is fundamental that plaintiffs seeking judicial review of administrative action must normally first exhaust their administrative remedies. See generally McKart v. United States, 395 U.S. 185 (1969). The doctrine of exhaustion helps delimit the respective roles of the executive and judicial branches. It gives the agency the first chance to exercise discretion or apply its special expertise, and promotes efficiency in both judicial and administrative processes. McKart, supra, 395 U.S. at 193-194. Its purpose is to allow an agency to perform functions within its special competence and to "correct its own errors so as to moot judicial controversy." Parisi v. Davidson, 405 U.S. 34, 37, 31 L.Ed.2d 17 (1972).

Plaintiffs' failure to attempt administrative resolution of their claims short-circuits the system by denying to the agency charged with administering this statute the opportunity to apply its expertise. An administrative agency often has wide latitude to construe its enabling legislation, Cf. Boehl v. Sabre Jet Room, Inc., 349 P.2d 585 (Alaska 1960); Kelly v. Zamarello, 486 P.2d 906, 908-911 (Alaska 1971) and of course would do so in such a manner as to resolve doubtful questions of constitutionality where present. Plaintiffs' resort to the court might have been obviated had the administrator been asked to consider their challenges and perhaps construe the statutes to satisfy them. This is especially true to the extent plaintiffs are claiming a vagueness problem of constitutional proportions. Defendant asserts that there is no such problem, and that the statute is quite clear on the point plaintiffs seek to obfuscate. Assuming arguendo that it were vague, proper administrative action could rectify the problem. Plaintiffs were remiss in not seeking such.

If plaintiffs were challenging reasonableness of the assessment, e.g., or the method by which the election

was conducted, exhaustion would obviously be required. Such claims are completely without merit on the facts of this litigation, however, and plaintiffs have eschewed them.

A more interesting situation is posed by the fact that plaintiffs' claims are at least in part based on allegations of unconstitutionality. The mere fact that such issues are raised, however, does not obviate exhaustion requirements. See Montana Chapter of Ass'n. of Civilian Technicians v. Young 514 F.2d 1165, 1167-1168 (9th Cir. 1975). Where relief may be granted on nonconstitutional grounds, exhaustion is still required.

Plaintiffs at bar failed to present their claims to the administrator to allow possible resolution which would avoid necessity for judicial intervention. They should therefore be estopped from asserting such claims now, and their case should be dismissed, or alternatively, the matter should be remanded to the Commissioner for appropriate consideration and action.

Defendant observes that another available remedy which plaintiffs totally ignored is provided in A.S. 44.62.220. That section grants to any "interested person" the right to "petition an agency for adoption or repeal of a regulation". By failing to avail themselves of this administrative remedy, plaintiffs are denying the Commissioner opportunity to "correct his own (alleged) errors so as to moot judicial controversy," Parisi, supra, and to apply his expertise to effectuate the intent of the legislature through appropriate construction of the statute. For this reason, also the plaintiffs should be estopped and their cause dismissed, or alternatively the court should defer to appropriate administrative procedures.

XII. PLAINTIFFS ARE BARRED BY LACHES

As a result of plaintiffs' unreasonable delay in initiating and prosecuting this action, defendant SSRAA would be unfairly prejudiced should the court grant the relief sought. Plaintiffs are therefore estopped from asserting their claims due to laches. Accordingly, defendant asks this court to exercise its discretion to dismiss the action.

Prejudice to the defendant (as well as delay by plaintiffs) is demonstrated in detail below. It consists primarily of expenditures of funds and organizational efforts in reliance upon continued unhampered operation of the salmon enhancement program. As part of their complaint plaintiffs seek to recover monies collected pursuant to the assessment election. These funds have largely been spent or committed by the regional aquaculture associations. To the extent plaintiffs seek such damages, failure to timely assert their rights seems clearly to preclude recovery. However, the question of damages is irrelevant to this motion for summary judgment, and its consideration is best deferred since it may well be moot. Defendants request that the court bifurcate these proceedings, determining the question of liability first, and then, if need be, the question of damages. Accordingly defendant's argument on laches is addressed to dismissal of the action. Issues related more specifically to damages will be briefed subsequently should that become necessary.

The traditional equitable doctrine of laches is applied and discussed extensively in two leading Alaska cases, Moore v. State, 553 P.2d 8 (Alaska 1976), and Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447 (Alaska 1974). Two criteria must be met before laches will be applied to bar a claim. "The defendant must show the plaintiff was guilty of inexcusable delay, resulting

in undue prejudice to the defendant." Moore, supra, 553 P.2d at 15. While the court refers to these as "independent" tests, they in fact appear to be inversely related. A showing of severe prejudice might justify application of laches though the causative delay is relatively short. Concerned Citizens, 527 P.2d at 457. An indefinite inexcusable delay, on the other hand, will not justify barring a claim due to laches where the defendant has suffered no resulting prejudice.

In Moore, the plaintiffs brought suit challenging the legality of the sale of certain offshore oil and gas leases in Kachemak Bay. The trial court held plaintiffs' claim were barred by laches and dismissed the action on defendants' motion for summary judgment. The Alaska Supreme Court reversed on this issue, finding that plaintiffs' three week delay in filing the action after the issuance of the first drilling permit did not cause sufficient prejudice to justify preclusion of the suit.

In Concerned Citizens, the Supreme Court upheld a trial court grant of summary judgment based on laches. In that action, the taxpayer plaintiffs sought dissolution of a hospital service district on constitutional and other grounds. The suit was not brought until four years and ten months after the voters had approved delegation of the Borough's hospital powers on April 8, 1969 - the point at which the court held plaintiffs' claims arose. Between that date and June 5, 1973 a hospital board was authorized, a long term lease was negotiated for operation of a former city hospital, and plans were laid for enlarging the facility. 527 P.2d at 447. On June 5, 1973, nine months before the complaint was filed - voters authorized issuance of bonds for construction of a new hospital. Between then and February 13, 1974, when the complaint was filed, defendants obtained federal and state grants and loans and contracted for architectural and other services. Ibid.

Before proceeding to specifics of the case at bar defendant wishes to dispose of a threshold issue raised in plaintiffs' pleadings -- the claim that laches may not be interposed as a defense where constitutional claims are made. This is without merit. In Concerned Citizens, e.g., plaintiffs claimed the organization of the service area violated constitutional provisions, 527 P.2d at 449, and the Supreme Court expressly noted that it was barring a constitutional claim for laches. Id. at 458 n. 32. See also, Neizer v. School District of the Township of Schuylkill, 121 A.2d 93 (Pa. 1956); Ciletti v. Washington, 140 A.2d 98 (Pa. 1958), app. disp'd. 358 U.S. 130, 3 L.Ed.2d 225. In Neizer plaintiff taxpayers sued on constitutional grounds to enjoin a school district from paying rent to an authority created for the purpose of building and equipping school facilities and renting the same to the district. The action was barred by laches. In Ciletti, the court barred plaintiffs' suit due to laches where they waited five months to challenge creation of a sewage treatment authority. Reference to the lower court opinion in Ciletti, 107 A.2d 871 (1954), reveals that plaintiffs raised a number of constitutional challenges to the validity of the statutes and ordinances at issue. Plaintiffs apparently conceded the constitutionality of the enabling statute at trial, but continued to press other constitutional claims including challenges to alleged unconstitutional delegations of power to private corporations hired by the authority. Id., at 872. These claims were all held barred due to laches.

Application of the doctrine of laches depends on the facts and equitable considerations of each case, Moore, supra, 553 P.2d at 16. Defendant believes the following will demonstrate to the court ample grounds for a finding of laches. SSRAA reserves the right however to supplement

matters presented herein with information requested in pending discovery motion, should the court find such further documentation necessary or desirable.

The two key determinants of laches -- delay by plaintiffs and prejudice to defendants -- must be analyzed with reference to a particular time frame. Moore provides guidance in determining the relevant period for measuring prejudice attributable to delay.

"The point in time at which plaintiffs must exercise their remedies in court or lose their right to assert their cause of action depends on the facts and equitable considerations of each case, including the knowledge of the plaintiffs, the conduct of the defendants, the interests to be vindicated, and the resulting prejudice. ... (O)ur concern is ... with when, in light of any resulting prejudice to defendants, it became reasonable to expect plaintiffs to act upon the (alleged) wrong."

The Supreme Court goes on to enumerate two specific factors to be used in evaluating plaintiffs' delay:

"(One) is when, under the circumstances, it became no longer reasonable for plaintiffs to assume that defendants would comply with the law. We will also look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer."

How do these tests apply to the facts of this case? In both instances they demonstrate that plaintiffs are guilty of laches.

With respect to the first test, plaintiffs could not reasonably have presumed defendants would comply with the law as they view it at any point after passage of the legislation. It is plaintiffs' contention that the statute itself is constitutionally infirm, so that nothing defendant might do could remedy its illegality. Thus there is a substantial argument that the point from which to measure plaintiffs' delay is June 19, 1976, when the statutory scheme became law. This would be consistent with the holding in Concerned Citizens, supra, where the Supreme Court stated, "All the claims which appellants attempted to argue before

the superior court could have been asserted in April 1969." 527 P.2d at 458. (The date voters approved an ordinance creating a hospital service area and delegating assembly powers to it). In Moore, unlike the instant case or Concerned Citizens, plaintiffs did not challenge the validity of the statutes and regulations at issue, only their application. Thus it could not be assumed until these were actually illegally applied that defendants would not comply with the law -- indeed plaintiffs were entitled to presume the officials would proceed in accordance with the law. 553 P.2d at 18. As noted, such was not the case here, and nothing short of failure to implement the statute would save state officials from violating plaintiffs' version of the constitution. Plaintiffs have shown no evidence, nor did any exist, to support a finding that state officials did not intend from the outset to fully implement the law.

Application of the second test, however, points to a somewhat different time period. Defendant is willing to concede that the most reasonable and meaningful date to use with reference to the second test is July 1977, when the mandatory assessment for the Southern Region was approved by the Commissioner of Commerce. Persuasive arguments could be made that the relevant point in time when the positive steps taken by defendants made their course of conduct irrevocable came much earlier - when the region was formed, e.g., or when the Executive Director was hired, or particularly when the assessment vote was taken. But defendant contends that there can be no reasonable dispute that approval of the mandatory assessment marked such a point in time, plaintiffs' actions bear this out, for they were in fact "galvanized into action and motivated to hire counsel" by this event. See Moore, 553 P.2d at 16. The principal plaintiff, Wayne Alex, stated that he found out in late July or early August that the assessment had actually been instituted. (Depo. of Wayne Alex, p. 37). At that point, he was galvanized. He

obtained a copy of the law and information about it (ibid.), he pulled his membership card from United Fishermen of Alaska (UFA), which had lobbied for the plan (id., 14), and went to see an attorney, Bill Buddy (id., 43), began trying to organize fishermen in opposition to the law (id., 47), and sent out letters to certain permit holders seeking financial and political support (id., 69).

Plaintiff John C. Martin likewise took action after the election results came out. As a member of the Board of Directors of PFI in Petersburg, Martin favored having the cannery refuse to collect the assessments. (Depo. of John C. Martin, at 27). The cannery (PFI) supplied a form fishermen could fill out to protest the assessment (Id. 26).

These men were and others were aware of the assessment program in varying degrees before the assessment vote, but their interest and concern crystalized into action at that point and the test is satisfied.

Given July 1977 as the time at which plaintiffs should have acted, we must assess the prejudice which defendant suffered as a result of their delay in filing the Complaint until March 15, 1978. The following activities, commitments and expenditures by SSRAA occurred between July 1977 and the time plaintiffs filed their complaint.^{52/}

(a) \$100,000 was committed to secure an engineering contract with the firm of CMH2 Hill; (b) \$260,000 in grants were received from the state, \$100,000 of which was awarded specifically on the basis of passage of the mandatory assessment, and these monies were committed; (c) thousands were spent for site selection, and helicopters and boats were employed throughout Southeast for this purpose, biologists

^{51/} Defendants contend the date it received notice of the suit by being served is the relevant time for terminating the period of laches -- the extra week, however, is of little actual significance.

were sent to various towns, and eggs were taken from numerous streams; (d) SSRAA and auxiliary personnel were employed and engaged in extensive planning and research functions premised on assessment income.

To allow this belated attack on the program after defendant made such substantial commitments during a period in which plaintiffs unreasonably delayed action would work a gross injustice on defendant. The defense of laches "is one of great public utility ... (which) induces confidence in what is, and willingness to improve property in possession." Holmstead v. Grinnan, 152 U.S. 412, 38 L.Ed 495. Plaintiffs failure to challenge the salmon enhancement program at its inception, or at least at the stage of the assessment vote approval when they demonstrably could have, estops them from asserting any right to dismantle the now growing, viable entity which is SSRAA.

As noted above, this case is similar to Concerned Citizens. There the Authority which plaintiffs sought to dismantle, though formed for several years, undertook its major actions cited by the court to prove prejudice within nine months before plaintiffs filed their complaint. These included issuance of construction bonds, securing of federal and state grants and loans, and awarding of an architectural design contract.

The prejudice to defendant SSRAA is likewise similar to that found by the court in Ciletti, supra, 107 A.2d at 872, where laches was found based on plaintiffs' five month delay in filing suit. The court noted the sewage authority which plaintiffs there sought to dismantle had sold sewage bonds, agreed to provide services, employed a consulting engineer, and contracted with private companies to receive certain services.

One final factor deserves mention with respect to plaintiffs' laches. The Moore case expressly makes the public interest an element of the laches equation.

"In determining whether laches was properly applied in the case at bar, we cannot overlook the fact that under Section I of Article VIII of our Constitution, the public also has an interest in the proper development of Alaska's resources." 533 P.2d at 19.

The Alaska legislature has made a judgment that the statutes codified in A.S. 16.10 et seq. represent the best method of development of our common property fisheries resource. This creates a strong presumption that the public interest is represented and served by this salmon enhancement program. This Court should therefore consider the public interest as a factor supporting a finding of laches here.

Considering this important public interest, and the serious prejudice to defendant resulting from plaintiffs' unnecessary delay, this court should grant summary judgment for defendants on the basis of laches.

XIII. THE CONSTITUTIONALITY OF REGIONAL AQUACULTURE ASSOCIATIONS AND THE ASSESSMENT IN A NUTSHELL.

Defendant realizes that this court is being confronted with issues of first impression. It is for that reason that this memorandum contains extensive background material in order that the issues can best be understood in the light of constitutional, executive and legislative policy as well as the judicial interpretations given those policies. This section is devoted to placing the issues in a nutshell with the positions of the opposing parties.

It is defendant SSRAA's position that the regional aquaculture program and the mandatory assessment contained in A.S. 16.10.375 - 620 is a legitimate purpose for legislative intervention, that the means chosen bears a close substantial relationship to the purposes stated, is not vague, is not the delegation of a taxing power in violation of Art. 10, § 2, Alaska Constitution, does not establish a dedicated fund in violation of Art. 9, § 7, Alaska Constitution, and in no way impermissibly interferes with interstate commerce. Further, the regulations and orders adopted by the executive pursuant to the law were lawful. Finally, it is defendant's position that plaintiffs are precluded from raising certain issues for the first time in the judicial branch when they have not sought administrative remedies, and are precluded in seeking certain relief by the doctrine of laches.

The real issues in this case are the most elusive ones to identify because of the multiplicitous allegations raised by plaintiffs. The first real issue is equal protection and fortunately there is substantial recent case law and commentaries from which the section in this memorandum was drawn and from which the court can draw its conclusions. The second real issue involves interplay between Art. 8 of

the Alaska Constitution (Natural Resources) and Art. 10 (Local Government). Plaintiffs urge a construction of Art. 10, § 2 that is narrow and rigid. They allege that a taxing power is delegated to an institution other than a borough or city. Defendant believes that the assessment is not a tax and, in any event, no power to tax or levy an assessment has been delegated.

One thing should be clear at this juncture. The legislature can delegate the power to tax or levy assessments in any manner it chooses in the unorganized borough. Art. 10, § 6. Regardless of how the assessment is interpreted, if a regional aquaculture association operates exclusively in the unorganized borough the provisions of A.S. 16.10.375 - 620 are constitutionally firm. It is defendant's position that current qualified regional aquaculture associations in Southeast Alaska may tax or levy an assessment, notwithstanding the presence of local government jurisdictions. The obligation to provide for the rehabilitation and enhancement of the common property fisheries of the state is clearly a state function and in no sense can be delegated to local government. Given that the legislature cannot delegate to local governments fisheries enhancement, it chose the only constitutionally permissible means to provide for regionally oriented fisheries enhancement while at the same time engrossing contemporary public interests such as user input and control, executive oversight for a complex subject matter, equitable distributions of the burdens, and labor and capital resource conservation.

The essence of plaintiff's position, then, is that the only permissible means for the legislature to provide for fisheries enhancement is through absolute and continuous state involvement funded by general income tax revenues. 52/

52/ It is defendant's position that funding fisheries enhancement through general tax revenues, if not unconstitutional is a graphic example of a hidden subsidy that inequitably distributes public wealth to an exclusive class harvesting a common property resource.

We believe that the constitutional framers in no sense intended the division between state and local functions to mean that the presence of a local government in or near a region of fisheries commerce precluded the legislature from establishing the means for fisheries rehabilitation and enhancement that it chose. The position plaintiffs urge has similarities to the dual federalism that for so long hamstrung the commerce and taxing powers of congress. The framers surely did not intend that the presence of local government jurisdictions was a license to balkanize rehabilitation and enhancement of common property resources. The framers also surely did not intend to cripple future legislatures dealing with resource development economics by restricting their powers to the limited scope urged.

The position plaintiffs' urge is archaic in a constitutional and a public policy sense. It would effectively limit the legislature to recreating the policies and ideas of the past through instant replays, regardless of their effectiveness and efficiency, rather than recognizing the flexibility necessary for the economic transition into the 21st century.

CONCLUSION

For all the reasons stated above, defendant SSRAA respectfully requests that this court enter judgment as a matter of law against the plaintiffs in this action.

DATED this 15th day of February, 1979.

Douglas Pope
Attorney for Defendant SSRAA

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT, AT JUNEAU

WAYNE ALEX, WILLIAM A. THOMAS,)
JR., ED MAKI, JOHN C. MARTIN,)
WARREN S. WESTROM, DICK WORKMAN,)
MARK W. WHITE, CARL SINS, BRUCE)
R. GILBERT, FRED CHAMBERS, DOUGLAS)
D. KARNS, HAROLD D. BIELESKI and)
LEO R. ALBECKER, JR.,)
Plaintiffs,)
vs.)
SOUTHERN SOUTHEAST REGIONAL)
AQUACULTURE ASSOCIATION, ET AL.,)
Defendants.)

No. 1JU-78-191 Civil

AFFIDAVIT OF JACK MILNES

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

JACK MILNES, upon oath, says:

1. My name is Jack Milnes and I am the Executive Director of Southern Southeast Aquaculture Association, Inc. I have served in that position since August 15, 1976, and my duties are set out in the by-laws. At the time I became Executive Director for the corporation the only staff was part-time secretarial help, and my early chores were to solicit directors from the various representational user groups, and to gain acceptance of the corporation as a qualified regional aquaculture association. Pursuant to my duties as set out in by-laws, I began collecting records and other physical materials in a corporation filing system relevant to all phases of my responsibility and all necessary activities of the corporation. Those materials appended to this affidavit have been selected from those files and records kept as a part of the corporation business and are attached herewith for the purposes of explaining certain points in more detail.

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2. In August of 1976 the corporation had approximately Ten Thousand Dollars (\$10,000.00) of cash on hand from contribution and donations by various users, processors, and other interested persons.

3. On August 26th, I began traveling to various towns in Southeast Alaska and informing fishermen of the purposes of the aquaculture association, and to solicit voluntary contributions in the form of direct contributions, and voluntary assessments. The first was to Wrangell on August 26 and 27, then I traveled to Juneau for the period of August 31 through September 3rd. On September 20, 21, 22, 23, 24, and 25 I traveled to Haines, Skagway, and Juneau, with Larry Dalton, President of the Southern Association. Other people present on the trip were James Beaton and several other directors who met us along the way in various towns. In this latter trip we began distributing a small brochure which contained information regarding proposed releases from hatchery sights and estimated returns, hatchery costs, estimates, approximate duration and magnitude of the proposed assessment, projected assessment return calculations, and a form for those fishermen interested in contributing to the Southern Region by agreeing to assess themselves Three Percent (3%) of their gross salmon catch in Districts One through Eight. (See Appendix) As I traveled to these various communities, meetings were organized ahead of time where various fishermen from the different areas would attend, look at the brochure, fill out the agreement for a voluntary assessment if they were so interested, and would engage with me in a dialog and discussion regarding the pros and cons of hatchery development and funding mechanisms. I had prepared some material for discussion that I tried to cover at each meeting. A standard dialog is reflected in the appendix and memorandum dated October 1976 and entitled

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"Narrative to Accompany the Pamphlet which discusses the Reasoning Behind and Request for Assessment by each Fisherman." The narrative attached to this affidavit in the appendix was actually prepared for other persons to utilize in their discussions to various user groups about the reasoning behind and the request for the assessment, but it also adequately reflects what I attempted to cover at each meeting. Preceding the above referenced "Narrative" in the appendix is a graph entitled "SSRAA's Target". That graph was used frequently during these meetings and was reproduced in different forms and distributed.

During this period we also sought support from other organizations and local governments. For example, the Alaska Trollers Aquaculture Corporation agreed to consolidate with us, and the Ketchikan Chamber of Commerce assisted us in securing donations. Local merchants petitioned the city and borough governments to give us as much support as permissible. The reaction was quite favorable.

Also included in the appendix, is a memorandum dated December, 1976, entitled "Viewpoints from Southeast Alaska". That memorandum was prepared by me and delivered to members of Governor Hammond's staff at their request, for the purpose of providing a brief history of activities to date, capital shortfalls, and to discuss various problems and concerns then known or perceived in the aquaculture programs, and to suggest some solutions.

4. Meanwhile, in November 2, 1976, pursuant to our request, the Alaska Department of Fish and Game recognized Southern Southeast Regional Aquaculture Association, Inc. as a qualified regional association under the terms of Chapter 161 of the 1976 session laws. The region covered the same geographic boundaries as Fish and Game regulatory districts 1 through 8 in Southeastern Alaska. (See November 2 letter

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and map in appendix). By the end of October, 1976, a significant portion of the cash on hand of the corporation had been expended for preliminary hatchery site selection.

A preliminary application for a private nonprofit hatchery at Beaver Falls had been submitted to the Commissioner of Fish and Game. Submitted with the application and also to the Department of Commerce, Division of Business Loans were the signature and comments of those persons agreeing to a voluntary assessment. The assessment volunteers were considered essential to any successful financing. (See October 8, Memorandum and Application).

5. 1977 In late February of 1977, the board of directors' Executive Committee met with Phil Daniels for the purpose of discussing current legislative proposals regarding the aquaculture program pending in the legislature. Phil Daniels, a United Fishermen of Alaska representative, advised the board about the proposed legislative changes providing for a change in the funding mechanisms as well as mechanisms for mandatory assessment. Shortly thereafter, the full board resolved to proceed with a mandatory assessment election in order to meet compliance with legislation pending before the legislature. An elections committee was appointed, and a calendar of events established to conform with the election procedures in the proposed law. The committee drew up procedural rules for voting, and made substantial preparations for full and adequate notice of the proposed election to all limited entry permit holders in Southeast Alaska. In the appendix, are included numerous copies of actual notices posted in public places, newspaper notices of the pending election, affidavits of publication, and other evidence of various efforts taken by the corporation to insure the largest possible turn out for the election. Also included in the appendix are copies of the various election materials mailed to each limited entry permit holder in Southeast

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Alaska. For example, a small brochure entitled "Fisheries Permit Holders: Want More Fish?" contained information about the board of directors of the corporation, proposed hatchery facilities, projected costs, and encouraged votes. The law was precisely followed prior to and during the election. The corporation hired the Ketchikan accounting firm of Walter W. Shuham to audit and tabulate the results of the election. On June 1, 1977, the certified public accountant advised the association that of 1,052 ballots by qualified fishermen received in accordance with established voting procedures the number of votes cast for the proposal were 592 and the number of votes cast against the proposal were 446. 14 votes cast were not counted because the envelopes contained two or more ballots or the general meaning of the ballot was unclear and the result of the ballot would not affect the outcome of the election. On June 30, 1977, the corporation requested that the Department of Commerce approve the mandatory assessment vote, and establish on an emergency basis, a mandatory assessment. On July 15, 1977, the Commissioner of the Department of Commerce and Economic Division made a finding of an emergency and noticed adoption of emergency regulations. The notices of adoption of emergency regulations, which fleshed out provisions of the statute regarding requests for institution of assessment, review and approval of initial and final requests, and other related matters, were posted in every fishing village and town in Southeast Alaska. Although the Commissioner gave notice to the processors and other fish buyers, pursuant to A.S. 16.10 that they were to begin collecting the assessment, the processors collected but declined to transmit the assessment funds to the regional association without first obtaining a court order or specific authorization from fish sellers from whom the assessments were collected. Cf. State of Alaska

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and Southern Southeast Aquaculture Association, Inc. v. Annette Island Packing Company, et al., civil action number 77-10006, Juneau. However, some fish buyers did collect and forward the assessment and by November 11, 1977, Southern Southeast Regional Aquaculture Association had received some \$49,000.00 in assessments. (See appendix.) On December 28, 1977, in the above cited case, the State of Alaska, SSRAA, and the various defendant processors filed a release and indemnity agreement in Superior Court. Pursuant to that release and indemnity agreement over \$545,000 was released to SSRAA by the processors.

In 1977, another \$17,000.00 was expended on the hatchery sites selection process.

6. Meanwhile, the board was actively proceeding with plans for hatchery sites and the hatchery facility at Witman Lake on Ravila Island near Ketchikan. (See project Management Request for Proposal, appendix) On December 15, 1977, the final request for the \$100,000.00 matching grant, pursuant to A.S. 16.10.510, was sent to the director of the Division of Business Loans, Department of Commerce and Economic Development.

7. 1978. In early 1978 the corporation contracted with CH2M-Hill, an engineering consultant, for design and engineering of the Witman Lake hatchery facility. The design of the facility and its specifications were supervised by Milo Bell, Professor Emeritus, Fisheries, University of Washington, SSRAA's senior technical advisor. Pursuant to the contract, CH2M-Hill was advanced \$100,000.00. In early March, 1978, the board authorized the executive director to arrange, with the State of Alaska, for its long term hatchery construction and operation financing, as authorized by A.S. 16.10.

8. Interim financing for the construction of the

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hatchery was secured through the Spokane Bank for Cooperatives. Construction began at the Herring Cove-Witman Lake hatchery site in June. Land was cleared and graded, the lake was drained and necessary repairs were begun on the dam valves. Construction required installation of over 3,000 feet of up to 24" pipe for the purpose of feeding the hatchery. The pipeline made a fall of over three hundred feet while restrained to a narrow fifty foot corridor on national forest land, and required the expertise of a major construction company; Palmer Wright-Schugart.

9. In July, construction began on the Beaver Falls temporary hatchery. That temporary hatchery was completed in September, and was ready for eggs. The building is 40' by 50' and contains 2,560 Heath incubating trays. Each tray can handle 10,000 eggs. The total capacity at the Beaver Falls temporary hatchery is 25,600,000. The purpose for building the temporary hatchery was primarily to prevent a year delay in production.

10. During 1978, the corporation also became heavily involved in the regional planning process. The corporation's involvement in the regional planning team broke down into general areas, public involvement, and technical planning. Corporation expenses in 1978 exceeded \$112,000.00 in conjunction with this process.

11. Other significant aspects of the corporate process on which energies were focused in 1978 included board development, rehabilitation, and stream surveys. Board development involved the preparation of the board for the necessary activities to meet multi-million dollar commitments.

12. Currently there exist five recognized regional aquaculture associations in the State. They are Southern Southeast Regional Aquaculture Association, Northern Southeastern Regional Aquaculture Association, Prince William Sound Regional Aquaculture Association, Cook Inlet Regional

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Aquaculture Association, and Imaprik Regional Aquaculture Association in Dillingham. Organizational efforts are proceeding in other areas. Of the recognized aquaculture associations, three have implemented assessments pursuant to A.S. 16.10.530. Those are the Southern and Northern Regions in Southeast Alaska, and Cook Inlet Regional Aquaculture Association. The three section 530 assessment associations have specific rehabilitation and enhancement programs currently under way partially funded or guaranteed by the mandatory assessment. Prince William Sound Regional Aquaculture Association has a hatchery completed and fish returning. Imaprik Regional Aquaculture Association has been recognized by the Commissioner and has received the first \$100,000. grant for organizational purposes. In the Southern region 800,000 Coho eggs have been incubated at Beaver Falls.

13. The law requires that boards of directors of each corporation include representatives of various user groups, including sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities. The blend of representatives required by law necessitate varying sizes in the board of directors in the different regions. For example, the by-laws of the Southern regional require 21 members on the board, whereas in Prince William Sound there are approximately 70 members on the board. In Southern Southeast board members are actively involved in management of the corporation. The board is composed of five committees, and every member of the board is assigned to a committee. Those committees are the Executive Committee, the Ways and Means Committee, The Personnel Committee, the Regional Planning Team and the Nomination and Board Development Committee. The Executive Committee is established in the by-laws, the other committees are working committees established at the direction of the

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board for the purpose of providing well researched recommendations to the board. Each committee is staffed with professional advisors pursuant to budget approval by the full board. Other than these standing committees there is from time to time special committees. For example there is currently a long range planning committee developing a five year plan for the corporation. The Regional Planning Team is developing specific plans for rehabilitation and enhancement projects which reflect the collective decision of the corporation and the Alaska Department of Fish and Game with primary focus on the social and economic benefits to the people of the region. The Personnel Committee recommends an employee wage and benefit policy to the full board, suggests performance standards and plans for the long-term requirements for the corporation. The Ways and Means Committee integrates proposed annual plans with the available budget, hires the outside auditors and supervises the financial controls of the corporation. The Nominations and Board Development Committee is responsible for the annual election of the board, and skills development for directors.

14. Fishermen elect 55% of the board. Members of other user groups, including subsistence fishermen and processors, are appointed by the full board of fishermen. The representative of the local communities is a former member of the Ketchikan Gateway Borough Assembly. He has been active as a board member in the affairs of the corporation and makes recommendations to the borough assembly on behalf of the regional association. The Beaver Falls temporary facility and the Whitman Lake hatchery required agreements with Ketchikan Public Utilities, a city owned public utility, which provides power and water to both the City and the Borough. The projects also required cooperation from the Cape Fox Village Native Association and Sealaska.

15. Board meetings are primarily held in Ketchikan,

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but the board members are flown in from various communities in Southern Southeast Alaska and Seattle. The corporation publishes a newsletter (see appendix), and holds public meetings in the various communities on a periodic basis. As part of regional planning the board expects to hold twice yearly meetings in the various communities for the purpose of public input to specific project proposals.

16. A necessary part of hatchery development is securing permits from various government agencies. Federal, state and local permits are required for access, water, egg takes and other essential aspects of salmon enhancement. (See examples in appendix). These permits are required of any public or private organization seeking to use public land or water.

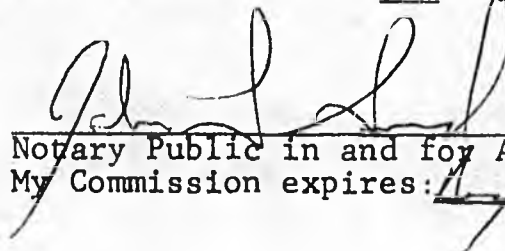
17. Representatives of the corporation travelled to Washington, D.C. in 1978 to testify in Congress on the impact of D-2 legislation on fisheries enhancement. Prior to that testimony, the federal legislation would have effectively prohibited most salmon rehabilitation and enhancement projects on federal land by excluding the necessary permanent facilities, bypasses and other structures. After the effort by representatives of the corporation and others at our urging, the legislation was amended to provide for adequate flexibility.

DATED; Feb 10, 1979



JACK MILNES

SUBSCRIBED AND SWORN to before me this 10 day of February, 1979.



Notary Public in and for Alaska
My Commission expires: Aug 12, 1982

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**CHAPTER 88.
ASSESSMENT ON SALE OF SALMON**

Section

- 10. Eligibility
- 20. Requests for institution of assessment
- 30. Review and approval of initial and final requests
- 40. Collection of assessment
- 50. Submission of initial and final requests
- 60. Prior action by a regional association
- 900. Definitions

3 AAC 88.010. ELIGIBILITY. Only a qualified regional association as defined in AS 16.10.380 is eligible to participate in the institution of an assessment under AS 16.10.530. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.380
AS 16.10.510(4)
AS 16.10.530

3 AAC 88.020. REQUESTS FOR INSTITUTION OF ASSESSMENT. (a) A qualified regional association desiring to institute an assessment under AS 16.10.530 shall submit to the commissioner an initial request and, after approval of it, a final request.

(b) An initial request must consist of

(1) a letter of intent (including certification by the board of directors of the regional association) to seek an assessment, which letter must propose and describe

(A) the area to be covered by the assessment;

(B) the species of salmon to be included;

(C) the conditions of the assessment;

(D) the period during which the assessment will be in effect;

(E) the rate(s) of the assessment;

(F) designation of categories of salmon gear within the area to be subject to the assessment;

(G) detailed procedures for collection of the assessment, including timing, means, and method of cash transfers;

(H) designation of the trust account into which assessment funds will be deposited;

(I) procedures to be used in the implementation of any approved changes in the assessment, including increases, decreases, and discontinuation;

(J) procedures to be used by the regional association to comply with the terms and conditions of AS 16.10.530(c) and (f);

(K) procedures to be used by the regional association to comply with other provisions of applicable laws and regulations;

(2) a review of historic catch levels of salmon and present processing capabilities within the area to be covered by the assessment (catch and production statistics and other data supplied by the Department of Fish and Game may be used); and

(3) a statement of the purpose of the assessment, including, but not limited to, a description of the objectives to be accomplished by the regional association.

(c) A final request must be submitted by the regional association after approval by the commissioner of the initial request. The final request must consist of

(1) finalization of all proposals set forth in the initial request and a final description of them including the trust account agreement (which agreement must permit inspection of the account by the commissioner);

(2) evidence of compliance with AS 16.10.530(c), (e) and (f), including certification of election results. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)
AS 16.10.530(a)

3 AAC 88.030. REVIEW AND APPROVAL OF INITIAL AND FINAL REQUESTS. (a) Upon receipt of an initial request, it will be reviewed by the commissioner for consistency with the intent and provisions of applicable laws and regulations. Factors which will be considered include, but are not limited to

(1) the recommendations of the

commissioner of fish and game, who will be consulted by the commissioner with respect to the initial and final request;

(2) the reasonableness of the assessment in view of the projected activities of the regional association as described and proposed in the materials submitted under sec. 20 of this chapter; and

(3) the likelihood of promoting, through the assessment, the interest of the public in fostering salmon enhancement efforts.

(b) If an initial request is approved by the commissioner, the commissioner will notify the regional association by letter and solicit submission of a final request after the prerequisite activities and procedures have taken place.

(c) Upon receipt of a final request, will be given a final review by the commissioner for consistency with the intent and provisions of applicable laws and regulations. If the final request is approved by the commissioner, the commissioner will notify the regional association by letter and take the actions described in sec. 40(a) of this chapter.

(d) If an initial or final request is disapproved by the commissioner, he will notify the regional association of the reasons for the disapproval. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)
AS 16.10.530

3 AAC 88.040. COLLECTION OF ASSESSMENT. (a) Upon approval of a final request from a regional association, the commissioner will give notice of the implementation of an assessment. Notice will be published in advance of the effective date at least twice in a newspaper of general circulation in the area of assessment. The notice will specify the area in which the assessment will be effective, the rate(s) of the assessment, the effective date, the purpose of the assessment, persons and species subject to the assessment, collection procedures, procedures for forwarding funds collected, and other details with respect to implementation of the assessment. The commissioner will, in his discretion, use other means to inform the public of a forthcoming

assessment if he considers it necessary to reach persons who will be affected by it.

(b) Buyers of salmon shall collect, deduct, or withhold the assessment from fishermen at the time they purchase salmon or initiate a transaction to purchase salmon from a fisherman. For purposes of this section, completion of a fish ticket constitutes initiation of a transaction. Any subsequent consideration paid to fishermen for salmon taken is subject to the assessment and the appropriate amount must be collected and forwarded in accordance with the provisions of this section.

(c) Buyers of salmon shall accumulate assessment funds collected and shall forward those funds to the applicable trust account at times or intervals specified by the commissioner.

(d) Buyers of salmon shall keep records of assessment funds collected and forwarded (including the sources of those funds) in a manner recommended by the regional association and approved by the commissioner. The commissioner will, in his discretion, inspect and audit those records at any time consistent with AS 16.05.815. A regional association may request an inspection of assessment funds records by the commissioner, except that the cost of the inspection shall be borne by the association and the association shall not have access to individual financial records of fishermen and buyers of salmon.

(e) The commissioner will, in his discretion, require regional associations to include in their annual financial reports specified information relating to their participation in an assessment program. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.470(6)
AS 16.10.510(4)
AS 16.10.530

3 AAC 88.050. SUBMISSION OF INITIAL AND FINAL REQUESTS. Regional associations shall submit initial and final requests for the institution of an assessment and related documents to the Division of Business Loans, Department of Commerce and Economic Development, Pouch D, Juneau, Alaska 99811. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)

3 AAC 88.060. PRIOR ACTION BY A REGIONAL ASSOCIATION. A regional association which has taken action relating to the institution of an assessment before the effective date of this chapter, which action is determined by the commissioner to be in substantial conformity with provisions of this chapter, will, in the discretion of the commissioner, be considered to have complied with all or part of this chapter for purposes of its application. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)
Sec. 18, ch 154, SLA 1977

3 AAC 88.900. DEFINITIONS. As used in this chapter

(1) "commissioner" means the commissioner of commerce and economic development or his designee; and

(2) "buyer of salmon" means any person, company, firm, partnership, or other organization or entity which purchases unprocessed salmon from the holder of a permit issued under AS 16.43 when such salmon were taken from an area in which an assessment is in effect. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)
AS 16.10.530

PART 8. MISCELLANEOUS

Chapter

90. Emergency Rent Review

CHAPTER 90. EMERGENCY RENT REVIEW

Section

- 10. Application of chapter
- 20. Procedure for increase in rent
- 30. Rental complaints by tenants
- 40. Notice of filing a complaint
- 50. Retroactivity
- 60. Emergency Rent Review Board
- 70. Operation of the board
- 80. Hearings on rent complaints
- 85. Hearings on evictions
- 90. Objections to adverse recommendations
- 100. Orders of commissioner of commerce and economic development
- 110. Standard for review of proposed increases in rent
- 115. Procedure for eviction
- 120. (Repealed)
- 125. Eviction complaints by tenants
- 130. Retaliatory conduct prohibited
- 140. No waiver of rights
- 145. Standard of review for evictions
- 150. Definitions

3 AAC 90.010. APPLICATION OF CHAPTER.

This chapter applies to all residential housing accommodations, as defined in sec. 150 of this chapter, if the property is located in an area declared by the governor to be in a state of housing emergency, pursuant to AS 34.06.020. Except as provided in sec. 115 of this chapter, nothing in this chapter affects application of the Uniform Residential Landlord and Tenant Act (AS 34.03). The following are exempt from the provisions of this chapter:

(1) the first rent assessed and collected upon the initial occupancy of a residential housing accommodation;

(2) evictions from or rent charged for transient occupancy in hotels, motels, and motor inns, as defined in sec. 150 of this chapter;

(3) evictions from or rent charged in federal

CHAPTER 40.
PRIVATE NONPROFIT
SALMON HATCHERIES

Article

1. General
2. Special Harvest Areas

ARTICLE 1.
GENERAL

Section

5. General
10. Modifications of applicable regulations
15. Prohibitions

5 AAC 40.005. GENERAL. (a) The harvest of salmon inhabiting the water of the state, regardless of whether the salmon are naturally or artificially propagated, may be conducted only pursuant to regulations adopted by the Board of Fisheries.

(b) The harvest of salmon returning to a private nonprofit salmon hatchery will be governed by regulations adopted by the Board of Fisheries. The board will, in its discretion, develop harvesting regulations after review of the harvest plans or other materials, information and testimony (if any) presented by the regional associations, hatchery operators, the Department of Commerce and Economic Development, fishermen and other interested parties.

(c) Where hatchery returns enter a terminal location and can be harvested without significantly affecting wild stocks, a special harvest area will be designated and described by regulation adopted by the board. The board will, in its discretion, adopt additional regulations applicable to other matters necessary to accomplish the harvest in an orderly manner.

(d) A private nonprofit hatchery permit holder and his agents, contractees, and employees may harvest salmon for the hatchery only in the applicable special harvest area. This does not prevent a special harvest area from being open to commercial, sport, or subsistence fishing or any combination thereof to the extent provided in regulations adopted and orders issued under this chapter. Harvesting of salmon within the special harvest area, whether by the hatchery operator

or the common property fisheries, will be opened and closed by regulation or emergency order.

(e) Special harvest area boundaries set out in this chapter may be altered by emergency order if necessary for proper management of natural stocks and hatchery stocks.

(f) Hatchery permit holders, their agents, contractees, and employees shall comply with all terms and conditions of the hatchery permit, applicable regulations and orders, and any additional requirements imposed by the commissioner to implement this chapter.

(g) Agents, contractees, and employees of a hatchery permit holder may harvest salmon for the hatchery in the special harvest area only if in possession of a written authorization from the hatchery permit holder and pursuant to its terms. The activities of persons in a special harvest area who are not a hatchery permit holder or an agent, contractee, or employee of the holder acting under the terms of a written authorization are governed by regulations governing commercial, sport, and subsistence fishing.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)-(7) and (12)
AS 16.05.920
AS 16.10.420-440

5 AAC 40.010. MODIFICATIONS OF APPLICABLE REGULATIONS. (a) Hatchery permit holders shall, with respect to salmon harvested by them (or their agents, contractees, or employees), comply with applicable provisions of 5 AAC 39.130(a) and (b) as though they were a purchaser of fish.

(b) Hatchery permit holders harvesting salmon within a special harvest area, to the extent those salmon are used as egg sources for brood stock, will be exempted by the commissioner from the provisions of AS 16.05.831 if the permit holder so requests. The commissioner may condition the exemption on terms he considers necessary to carry out the intent of AS 16.05.831.

(c) Hatchery permit holders conducting a hatchery harvest of salmon within a special harvest area are exempt from the provisions of 5 AAC 39.290.

(d) Fishermen taking salmon in a special harvest area under authorization from the hatchery permit holder and operating under an interim-use permit are exempt from the provisions of 5 AAC 39.120.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)-(7) and (12)
AS 16.05.831
AS 16.05.920
AS 16.10.420-440

5 AAC 40.015. PROHIBITIONS. It is unlawful for any person to violate the provisions of this chapter.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)-(7) and (12)
AS 16.05.831
AS 16.05.920
AS 16.10.420-440

ARTICLE 2. SPECIAL HARVEST AREAS

Section

30. Sheldon Jackson Special Harvest Area
35. Prince William Sound Aquaculture Corporation Special Harvest Area—San Juan

5 AAC 40.030. SHELDON JACKSON SPECIAL HARVEST AREA. (a) There is established under the provisions of sec. 5 of this chapter the Sheldon Jackson Special Harvest Area, consisting of all water of Crescent Bay and Eastern Anchorage enclosed by a line beginning at the northern end of John O'Connell Bridge and proceeding to the south end of the bridge, then to the northeasternmost points of Aleutski Island, Turning Island, Kutkan Island, Morne Island and Twin Islands, then to the westernmost points of Ring Island and of Dove Island, then west to the southeastern corner of Cannon Island.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310. Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(c) Notwithstanding 5 AAC 33.330, legal gear

for hatchery permit holders is a purse seine. However, if the commissioner determines that purse seine gear is unavailable to the hatchery permit holder or if the use of purse seines only would jeopardize the financial solvency of the corporation, the commissioner may open the special harvest area for hatchery harvest with beach seine or hand purse seine.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)-(7) and (12)
AS 16.05.920
AS 16.10.420-440

5 AAC 40.035. PRINCE WILLIAM SOUND AQUACULTURE CORPORATION SPECIAL HARVEST AREA — SAN JUAN. (a) There is established the Prince William Sound Aquaculture Corporation Special Harvest Area — San Juan consisting of all water of Sawmill Bay, Evans Island, west of 148° 01' 50" W. long.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 24.310-320 and 5 AAC 24.350(15), except as may be specifically provided by emergency order. The hatchery permit holder may harvest salmon within the special harvest area by purse seines seven days per week from 6:00 a.m. July 17 through 6:00 p.m. September 15 unless closed or modified by emergency order.

(c) Notwithstanding 5 AAC 24.330, legal gear for the hatchery permit holder in the special harvest area is a purse seine. However, if the commissioner determines that purse seine gear is unavailable to the hatchery permit holder or if the use of purse seines only would jeopardize the financial solvency of the corporation, the commissioner may open the special harvest area for hatchery harvest with beach seine or hand purse seine.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)-(7) and (12)
AS 16.05.920
AS 16.10.420-440

HB

477

COMMITTEE REPORT

SENATE

5/28/77

4/19 Date

Mr. President:

The Committee on Resources has had CSHB 477 an
sale of state land
under consideration. A majority of the members of the Committee

- recommends it do pass
- recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for CS HB 477 and that
CS for CS HB 477 do pass
- (and) recommends it be referred to the _____
committee
- reports it back without recommendation
- AND attaches a report of its intent
- (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

[Signature] _____ [Signature] _____

[Signature] _____ [Signature] _____

[Signature] _____ [Signature] _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

[Signature]
Chairman

Read in 6/17

CONFERENCE COMMITTEE REPORT

5/31/78

DATE: June 9, 1978

Mr. President:
Mr. Speaker:

The FREE Conference Committee which has had _____
CSHB 477 am (sale of state land; effective date)
&
SCS CSHB 477 (same title)

*adopted
6-9*

under consideration, recommends that _____

FCCS SCS CSHB 477

"An Act relating to the sale of State land; and providing for
an effective date."

be adopted.

Senate Members:

K. Poland
Senator Poland, Chairman
Orsini
Senator Orsini
Butrovich
Senator Butrovich

House Members:

Hayes
Representative Hayes, Chairman
Bradley
Representative Bradley
Freeman
Representative Freeman

PLEASE RETURN ORIGINAL REPORT AND BILL TO THE CHIEF CLERK. COPIES MUST BE DUPLICATED FOR EACH MEMBER OF THE HOUSE AND SENATE.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 17, 1978

SUBJECT: Proposed SCS CS for HB 477

TO: Senator Kay Poland
Chairman, Senate Resources Committee

FROM: James L. Baldwin 
Legislative Counsel

I have been directed to present a memorandum discussing the constitutionality of legislation suggested by the Joint Federal - State Land Use Planning Commission for Alaska. The Commission would permit the director of the division of lands to grant a preference to local residents to purchase state land by lottery when land located near their residence is offered for sale.

A local preference right establishes a classification among state residents. The classification discriminates against non-local residents to the extent local residents do not compete for state land equally with non-local residents.

Traditionally, whenever a statute's constitutionality has been challenged, the courts test the validity of the statute under either the "rational basis standard" or the "compelling state interest standard." The United States Supreme Court announced the rational basis standard in F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415. The Court explained that for a statute to survive judicial scrutiny under the rational basis test:

[It must] be reasonable not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

While under the "compelling state interest standard," the classification will withstand constitutional scrutiny only upon a clear showing that "the burden imposed is necessary to protect a compelling and substantial state interest." Oregon v. Mitchell, 400 U.S. 112, 238 (1970). The courts determine which standard of review to apply according to the type of personal right that is being invaded by the statute under review. If the right is characterized as "fundamental", the compelling state interest standard of review is applicable, while invasions of other non-fundamental rights of citizenship are reviewed under the rational basis standard of review.

The Alaska Supreme Court has further refined the rational basis standard by demanding that the legislature create classes that logically relate to the object of the legislation. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976). This approach was presumably adopted out of frustration with the present system of characterizing the rights affected and then applying either of two standards of review - one that is nearly impossible to satisfy (compelling state interests standard) and the other that is easily satisfied (rational basis standard).

In addition to the standards judicially imposed, the Alaska State Constitution contains general requirements specifically applicable to the disposal of natural resources of the state.

These requirements are:

- (1) Article VIII, Section 2 which directs the legislature to provide for:

"... the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." (emphasis added); and

- (2) Article VIII, Section 17 which provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Senator Kay Poland
Page 3
April 17, 1978

THE COMMISSION'S PROPOSAL

The proposal presented by the Commission amends AS 38.05.055 by adding a new subsection to read:

"The director may limit qualified applicants in a sale of land by lottery to residents of the local area."

The commission urged the following justification in support of its proposal:

"This authority would be useful in cases where there was an identified need in the area for additional lands for homes and cabin sites for local people. By limiting qualified purchasers to local residents, the director could prevent the sale offering from being preempted by speculative purchasers from outside the local area."

The proposal was submitted in conjunction with another proposal to reduce the durational residency requirement contained in HB 477. After receiving advice from legislative counsel that all durational residency requirements are constitutionally suspect, the committee has indicated unwillingness to support a durational residency requirement of less than three years as presently contained in HB 477. The Commission's proposal as drafted lacks specificity since no boundaries for the local area are set, nor is there a durational residency requirement in the local area as a precondition for qualifying for a local preference. The Research Division of the Legislative Affairs Agency was requested to develop a factual survey of the distribution of state land in different localities of the state; that report is attached for your review. The purpose of this survey is to determine the extent to which residents currently residing in different regions of the state would be affected by granting preference rights for local land offerings. It was felt that the distribution of available state land may cause inequality in opportunity for the purchase of state lands for residents residing in a locality where state land is in limited supply. The survey seems to support the contention that the Commission's proposal creates a class of state residents who would always have a second priority preference right or at least have less opportunity to exercise a first priority preference right than other state residents who reside in areas of the state where there is an abundant supply of available state land.

Senator Kay Poland
Page 4
April 17, 1978

LOCAL RESIDENCY REQUIREMENTS AND THE DISPOSAL OF STATE LAND

The U.S. Supreme Court has long recognized that the freedom to travel throughout the United States "uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement" is a right of national citizenship but that right is not a fundamental right unless a right to receive a basic necessity of life is also impaired. Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974). It could be argued that there also exists a right to freedom of travel or migration within a state without undue discrimination between rights and remedies available to state residents who choose to do so. The pivotal issue which determines the standard of judicial review is whether or not the right to purchase state land by state residents is a "basic necessity of life" to justify the characterization of that right as a fundamental right of citizenship. The Alaska Supreme Court has in three out of four cases struck down durational residency requirements and has done so by analyzing the invasion of personal rights on the basis of the right to travel and has not imposed the additional stipulation that the residency requirement also cause persons a denial of the necessities of life. The necessities of life referred to by the Court in Maricopa was the right to receive welfare payments or the right to obtain medical care after changing state residence. The basic necessities of life considered by the United States Supreme Court are more closely related to personal well-being than the right to purchase state land at a lottery sale. I conclude that a court would review a local preference that is not determined by a lengthy durational requirement by applying the less stringent "rational basis standard."

SUMMARY

In summary, past cases indicate that the Alaska Supreme Court has reviewed residency requirements strictly and characterizes the right to travel as a fundamental right; while the U.S. Supreme Court has indicated that it will apply the compelling state interest standard of review to legislation which infringes the right to travel only if the legislation also infringes upon a right to receive a basic necessity of life offered by the state to others similarly situated. Whether the Alaska Supreme Court will depart from its stricter standard and embrace the United States Supreme Court's position is unclear. The position of the United States Supreme Court regarding residency requirements for the purpose

Senator Kay Poland
Page 5
April 17, 1978

of controlling utilization of natural resources is currently being considered by that court in Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977). That case involves a test of the constitutionality of the Alaska local hire law (AS 38.40).

In its brief, the state has argued that the state's right to control its land resources outweighs an individual's basic right to travel. Whether the outcome of Hicklin will cause the Alaska Supreme Court to review residency requirements under a less strict standard for review is unknown. What is readily ascertainable is that due to the unequal distribution of state land in localities of the state certain residents will be discriminated against in fact under the Commission's proposal. A local preference may not be justified under the Alaska Supreme Court's stricter rational basis standard of review. The requirement contained in Article VIII, section 17 of the Alaska State Constitution, set out above also causes me to question the legality of establishing discriminatory classifications based upon local residency for the disposal of state land.

JLB:jpd/hjd

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1978

SUBJECT: Regional Resident Preference Rights
TO: The Honorable Kay Poland
FROM: George Utermohle
Research Analyst *GU*.

In response to a request from Legislative Affairs Agency, Legal Division, we have reviewed the subject of regional resident preference rights for disposals of state land. In the following discussion, the number of persons who would receive a preference right to state land based upon residence in the region of the disposal is compared with the apparent amount of state land present in that region. The regions used in this discussion are based upon: (1) 1974 state house election districts; (2) existing state senate election districts; and (3) current state judicial districts.

The information which is necessary for a thorough analysis of the need for and subsequent impact of a regionalized resident preference system is not readily available or does not exist. In order to complete a thorough analysis of such a system we must know how much state land in each region is suitable for each type of use (residential, industrial, agricultural, etc.), what the demand is for each type, and what the state's schedule of land disposals is or might be. The cursory discussion which follows is intended as illustrative of what lands could be disposed by the state in each district and how many persons would receive a preference right to those lands.

1974 House Election Districts

There were twenty-two house election districts in 1974. If these districts were used as a basis for granting regional resident preference rights when state land is disposed, this would create 22 sub-groups within Alaska's population, each with a preference right to lands within their region.

The population and an estimate of the state land present within each house election district are listed in Table 1. For an explanation of how the amount of state land present in each district was estimated, see the section on Methodology.

The population of these districts ranges from 6,500 to 180,700 and the amount of state land present within each district varies from almost zero to 657 townships. There is no correlation between the population of a district and the amount of state land present. Many rural districts have relatively small populations but contain disproportionately large shares of state land. Likewise, the urbanized districts have little state land present relative to their population.

Senate Election Districts

There are 11 senate districts. These districts generally encompass two or more house districts and, thus, have larger populations and larger areas of state land within their boundaries. The population and the amount of state land present within each district are shown in Table II. For an explanation of how the amount of state land present within each district was determined, see the section on Methodology.

The population of the senate districts ranges from 13,300 to 180,700. The amount of land within these districts ranges from .5 to 1,092 townships. Since the senate districts are amalgamations of house districts, the relationships between population and the amount of state land present are similar for the two kinds of districts. Rural districts in Interior Alaska have much more state land present relative to their population. The urban districts, Anchorage and Fairbanks, have much less land present relative to their populations. Districts in Southeast Alaska have very little state land present.

Judicial Districts

There are four judicial districts in Alaska. These districts coincide with the major geographic regions of Alaska: Southeast, Southcentral and Southwest, Interior and Northeast, and the Northwest. The judicial districts were established for administrative purposes and are not related to population, which is the basis for election districts. The population and amount of state land present within each judicial district are listed in Table III. For an explanation of how the amount of state land present in each district was estimated, see the section on Methodology.

The population within the judicial districts ranges from 25,200 to 251,500. The amount of state land present within the districts ranges from 20 to 1,279 townships. The use of judicial districts has eliminated some of the variation that was found to exist between rural and urban election districts. However, the relative shortage of land in Southeast Alaska is unaffected by the use of judicial districts.

Methodology

The population of each district was established by using data supplied by the state revenue sharing program for fiscal year 1978 and currently available census data. The total state population is estimated to be 411,000. These figures include all civilians regardless of age residing in the state.

The amount of state land present in each district was established by counting the number of state selected, tentatively approved, and patented townships within each district as shown on the Bureau of Land Management land status map dated March, 1974. The amount of state land present within each district is all state land present without regard to suitability for settlement, present dedications as parks and refuges, existing disposals, and proposed disposals such as municipal land grants. It is important to note that the amounts of land listed as present in each district are merely indicative of the amount of state land present and does not represent a true and accurate accounting of the distribution of state land. These data are most valuable for comparative purposes.

The low amounts of land present in House Districts 1 and 2 are partly due to the methodology of this study. There is certainly some state land within House Election District 2 (Petersburg, Icy Strait), but there is not enough land in a sufficiently compact area to be represented on the land status map. Similar conditions exist in other parts of the state.

Discussion

As the size and number of districts increase, the number of persons eligible for preference rights within each district and the amount of land within each district decreases. However, it depends upon the system of establishing these districts as to whether the population and amount of state land involved decrease at the same rate. In the case of election districts, which are based upon population, the area of the district will decrease as the density of the population increases. This will result in more people exercising a preference right to a decreasing amount of state land. This is particularly true within those election districts which comprise Anchorage.

Judicial districts are established without much regard for land area or population. Also, there are only four judicial districts, which means that each district must contain more population and more area than would the more numerous election districts. The advantage of the judicial districts over the election districts as a basis for granting preference rights is that each person would be able to select from a greater variety of land types and locations. This would be a benefit to the resident of Anchorage or Kodiak who does not have large acreages of state land available due to competition for land and existing withdrawals of state land.

In all of the three districting proposals presented, there is little that can be done to increase the relative amount of state land present in Southeast Alaska. The current state tentative selections within the National Forests (400,000 acres) would, at best, increase the amount of state land in Southeast by 75 percent. This land may be suitable for settlement and may be enough to more than satisfy the demand for land

for decades, but the amount of state land present will never be comparable to other areas of the state.

There is no mechanism for determining what the demand is for land in each region of the state and how suitable the land in that region is to satisfy that demand. Without that kind of information on the demand for land and the suitability of the land, there is no way to know what effect preference rights will have on the ability of people to obtain the land that they need or want, when and where they desire.

Small districts such as the house election districts may limit the preference rights to smaller areas, but it ensures that a local resident will have the first opportunity to obtain land near his present home. For example, there may or may not be sufficient state land within the Anchorage house election districts to satisfy the demand, but limitation of the preference rights to small districts would assure that an Anchorage resident would have the first opportunity to obtain state land sold or leased within that district. Under the judicial district system, a resident of Cordova would have the same opportunity to obtain scarce land around Anchorage as would the resident of Anchorage.

However preferable it may be to limit preference rights to small districts such as house election districts in order to assure preference rights to local residents, it will do them no good if the state never disposes of land within that district. If the state seldom disposes of land within a particular house district, it would benefit the residents of that district to have preference rights to a larger area such as a senate or judicial district.

It is our hope that the brief foregoing discussion will aid you in identifying some of the factual issues inherent in the subject of regional preference rights.

GU:jm
Attachments

TABLE I. DISTRIBUTION OF STATE LAND AND POPULATION BY 1974 HOUSE ELECTION DISTRICTS

<u>District</u>	<u>Location</u>	<u>Population 1/</u>	<u>State Land 2/ (Townships)</u>
1	Ketchikan Area	14,600	.5
2	Petersburg, Icy Strait	7,600	0
3	Sitka, Yakutat	8,300	2
4	Juneau, Haines	23,300	17
5	Valdez, Cordova, Seward	15,600	79
6	Matanuska-Susitna	16,700	400
7-12	Anchorage Municipality 3/	180,700	32
13	Kenai	20,500	87
14	Kodiak, Ouzinkie	6,700	12
15	Aleutians, Kodiak Island	6,600	66
16	Dillingham, Eek, Port Heiden	6,800	387
17	Bethel, Aniak, Mekoryuk	7,900	31
18	Hooper Bay, Mt. Village, McGrath, Galena, Allakaket	8,400	657
19	Tanana, Ft. Yukon, Tok, Nenana	6,700	453
20	Fairbanks North Star Borough	60,200	81
21	North Slope Borough, Kotzebue, Kobuk	13,900	155
22	Nome, Unalakleet, Savoonga	6,500	62
	Total	411,000	2,522

1/ Estimated 1978 civilian population based upon FY 78 state revenue sharing program data.

2/ Estimated state land present (measured in townships). See text for further explanation.

3/ All districts within the city of Anchorage are combined.

Prepared by:
Legislative Affairs Agency
Research Division
17 April 1978

TABLE II. DISTRIBUTION OF STATE LAND AND POPULATION BY SENATORIAL DISTRICT

<u>District</u>	<u>Location</u>	<u>Population 1/</u>	<u>State Land 2/ (Townships)</u>
A	Ketchikan	14,600	.5
B	Sitka, Wrangell, Petersburg, Yakutat	15,900	2
C	Juneau, Haines, Skagway	23,300	17
D	Mat-Su Borough, Valdez, Cordova	32,000	479
E-J	Anchorage Borough <u>3/</u>	180,700	32
K	Kenai-Cook Inlet	20,500	87
L	Kodiak Island, Aleutian Islands	13,300	78
M	Bristol Bay, Bethel, Dillingham	14,700	418
N	Upper Yukon, Lower Yukon	14,900	1,092
O	Fairbanks, North Star Borough	60,300	99
P	North Slope, Nome, Kotzebue	<u>20,800</u>	<u>217</u>
	Total	411,000	2,522

1/ Estimated 1978 civilian population based upon FY 78 state revenue sharing program data.

2/ Estimated state land present (measured in townships). See text for further explanation.

3/ All districts within the Municipality of Anchorage are combined.

Prepared by:
 Legislative Affairs Agency
 Research Division
 17 April 1978

TABLE III. DISTRIBUTION OF STATE LAND AND POPULATION BY ALASKA JUDICIAL DISTRICT

<u>District</u>	<u>Location</u>	<u>Population</u> ^{1/}	<u>State Land</u> ^{2/} <u>(Townships)</u>
1st	Southeast Alaska	53,800	20
2nd	Northwest Alaska	25,200	160
3rd	Southcentral Alaska	251,500	1,063
4th	Interior Alaska	<u>80,500</u>	<u>1,279</u>
	Total	411,000	2,522

^{1/} Estimated 1978 civilian population based upon FY 78 state revenue sharing program data.

^{2/} Estimated state land present (measured in townships). See text for further explanation.

Prepared by:
 Legislative Affairs Agency
 Research Division
 17 April 1978

HB

5888

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/14/78

Date: 3/27

Mr. President:

The Committee on RESOURCES has had HB 538
supplemental appropriation to Dept. of Natural Resources for repurchase of
certain oil & gas leases in Kachemak Bay

under consideration and (a majority of the committee) (the committee
reports it back as follows)

() recommends it do pass () recommends it do not pass

() recommends it do pass with attached amendment(s)

() recommends it be replaced with CS for _____

and _____ () new title () same title

() AND attaches a Letter of Intent () New Fiscal Note

() reports it back without ^{independent} recommendation

() and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Sp. Tillion

Harvey

DO NOT PASS

K. Polant

Chairman

148588
January 10, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill appropriating \$7,552,198.21 to the Department of Natural Resources, to implement ch. 113 SLA 1976 (Kachemak Bay). It is similar to the appropriation made in ch. 91 SLA 1977.

The purpose of the appropriation is to fulfill obligations of the State of Alaska under contracts with Shell Oil Company, Simasko Production Company, and Texas International Petroleum Corporation to repurchase all of their leases in Kachemak Bay. Pursuant to ch. 113 SLA 1976, the administration initiated negotiations with these companies and concluded agreements with them in June of 1977. Copies of the contracts are attached along with a breakdown of the purchase prices showing amounts for bonuses, rent, etc. It should be noted that the balance owed under the Shell contract is subject to adjustment upon tabulation of recent credits taken by Shell pursuant to the contract.

Ch. 113 SLA 1976 specifically authorized the commissioner of natural resources to use credits for future taxes and royalties of the lessees as part of the purchase price. The Shell contract takes advantage of roughly \$2.4 million in credits over the next two years. Additionally, the state was able to conclude an agreement with Union Oil Company in the principal amount of \$150,423, which will be entirely paid by future credits, foreclosing entirely the need for an appropriation.

This bill, along with the credit provisions of the contracts, concludes our monetary obligations for all but two of the leases. Two inexpensive leases along the shoreline of the Bay were required to be made subject to a condemnation action, since the state was unable to reach what we considered a fair agreement on these leases. We do not anticipate the judgment awarding compensation to be a significant sum of money.

Sincerely,

S/JSH

Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. Law Log #1 HOUSE BILL NO. 588
 Title Appropriation for Kachemak Bay Repurchases
 Requested by Governor Date _____

II. FISCAL DETAIL
 Agency Affected Natural Resources
 Program Category Affected NRMEC
 Budget Request Unit(s) Affected Management & Administration (Commissioner's Office)

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	7,522.2					
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	7,552.2					

FUNDING (Thousands of Dollars)

GENERAL FUND	7m552.2					
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Shell	\$7,500,000.00
Texas International	7,938.81
SIMASKO	44,259.40
TOTAL	<u>\$7,552,198.21</u>

IV. DATE Dec 9, 1977 PREPARED BY Fred Boness
 AGENCY Natural Resources
 PHONE 465-2400
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

HB

645

COMMITTEE REPORT
SENATE

FURTHER: Finance

2/23/78

Date: _____

Mr. President:

The Committee on RESOURCES has had RB 645
supplemental appropriations to the Dept. of Natural Resources

under consideration and (a majority of the committee) (the committee reports it back as follows)

- recommends it do pass recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for _____

and _____ new title same title

- AND attaches a Letter of Intent New Fiscal Note
- reports it back without recommendation
- and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

Chairman

FY 78 SUPPLEMENTAL REQUEST ANALYSIS

	FY 76 ACTUAL	FY 77 FINAL AUTH.	FY 77 ACTUAL	FY 78 Gov. BUDGET	FY 78 INITIAL AUTH.	FY 78 CURRENT AUTH.	EXPENDITURES + ENCUMBRANCES 7/1 - 10/31	OTHER OBLIGATIONS 7/1 - 10/31	PROJECTED EXPENDITURES + ENCUMBRANCES 11/1 - 6/30	FY 78 (DEFICIT) OR EXCESS	FY MAINT REQ
PERSONAL SERVICES				310.7	310.7	250.7	168.0		253.6	(170.9)	471.4
VEHICLE				19.0	14.5	14.5	5.4		19.1	(10.0)	21.3
CONTRACTUAL SERVICES				33.5	33.5	93.5	37.9	18.9	102.7	(.66.0)	125.5
COMMODITIES				2.5	2.5	2.5	1.2		4.3	(3.0)	5.5
EQUIPMENT				1.5	.4	.4	.0		5.4	(.5.0)	3.8
LANDS, BLDGS. ...											
LOANS, CLAIMS, ...											
CELLANEOUS											
TOTAL	NA	NA	NA	367.2	361.6	361.6	212.5	18.9	385.1	(254.9)	627.5
GENERAL RECEIPTS											
OUTSTANDING GF MATCHING											
OTHER GENERAL FUND											
INTER-AGENCY RECEIPTS											

AGENCY Natural Resources

BRU Management & Administration

COMPONENT Planning & Research

REVISED _____

113645

TO: Mike Harper, Chairman
Budget Review Committee

DATE: November 23, 1977

FILE NO:

THRU: R.E. LeResche, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Donald G. Wold, Executive Director
Alaska Royalty Oil & Gas Board

SUBJECT: FY 78 Supplemental Budget
Royalty Oil and Gas Board

Forwarded herewith is a completed "FY 78 Supplemental Request Analysis" to support our request for an additional \$15,000 for Contractual Services (consultant fees) to be used by the Alaska Royalty Oil and Gas Development Advisory Board and the Commissioner of Natural Resources in the review and analysis of proposals received from industry in response to the State solicitation entitled "Offer for Negotiated Sale of Prudhoe Bay Crude Oil, 150,000 Barrels Per Day."

In response to the above solicitation the State has received four (4) final proposals from companies offering to construct refineries and petrochemical plants ranging in size from 150,000 - 250,000 Barrels per Day and ranging in investment from \$400 million to \$2,500 million.

The evaluation of these proposals will require the retaining of three consultants with special expertise in law, finance, and engineering related to those process industries to insure that the States interests are protected in this large sale of the States resources.

The FY 78 Royalty Board budget for contractual services is \$76,700 of which approximately \$60,000 is currently available for these purposes.

A law firm has been retained to assist the State in the development of the contract for this sale, approximately \$30,000 is required for these services. A technical engineering firm has been retained to assist in the technical evaluation of the projects proposed and \$20,000 is required for these services. Financial consultants will be retained to assist in all aspects of the financing of the project and a minimum of \$25,000 is required for these services.

Should you have any further questions please do not hesitate to call.

Enclosure

DGW:sw

24.9

24.8

1.3

2.4

21.1

7/1 - 10/

INCURRED

EXPENDITURE

MEMORANDUM

TO: Robert LeResche
Commissioner

DATE: September 2, 1977

FILE NO:

TELEPHONE NO:

FROM: ^{DH} Dave Hanson, Chief
Planning and Research

SUBJECT: Justification for Supplemental
funding for d-2 and land
selections work

At your direction, the Planning and Research Section has recently become heavily involved in critically important Alaskan land issues to an extent not anticipated during the formation of the fiscal year 1978 budget last August. As a direct consequence of the Section's responsibility for the resource impact analysis of the various d-2 land proposals, assessment of State concerns associated with specific d-2 unit proposals, preparation of d-2 related resource impact presentations to Federal entities such as the Department of Interior, the Office of Management and Budget, and various Congressional committees, along with the Section's responsibility for Statehood Entitlement Land Selections, the Section must augment its fiscal year 1978 budget by approximately \$255,000. This memo is a justification for the supplemental funding which is essential to support the section's continued lead in these land issues through fiscal year 1978.

This memo is divided into the following parts:

1. A description of the unanticipated but unprecedented opportunity for substantial State input into the federal and Congressional deliberations on the d-2 land issues and timely action on Statehood Entitlement land selections;
2. A summary of the supplemental budget request;
3. An accounting of Section personnel and other budget allocations for FY 78 and an explanation of why the accelerated d-2 and land selections program budget demands cannot be met with the Section's present budget allocation.

The immediacy of the demands related to statehood land entitlement selections and the d-2 decision process emphasize the need for expedient consideration of this supplemental budget request. The Section will be able to provide the State with adequate backup in order to have a substantial impact on federal and Congressional considerations of d-2 proposals, and also will be able to honor the Governor's recent commitment to indicate within ninety days approximately 60 million acres from which the State will select the remainder of its Statehood Entitlement. In considering this request, it should be recognized that the vast majority of the State's decisions concerning land selections and the national decisions concerning the allotment of d-2 lands will take place during the remainder of FY 78 and initial months of FY 79. Consequently, this is a singular and historic opportunity which will have enormous long term impact on Alaska.

Furthermore, the Governor's commitment to a publicly accountable and analytical process of land selections should be recognized. Without this supplemental these services cannot be provided.

1. Land Selections and d-2 issue tasks and opportunities:

During the past eighteen months, the Department of Natural Resources Planning and Research Section has had the lead responsibility for establishing a land selections process which was publicly accountable and based upon the best analysis available as well as a detailed land resource inventory/analysis to form a basis for land selection decisions. The inventory/analysis system has already proved to be an invaluable tool for determining relevant resource values on Alaskan lands. The assessment was used in December of 1976, and April 1977 in making land selections totaling over 3.6 million acres and was frequently used by the Department in appraising land management options. The Department's inventory/analysis is the only system available to the State or Federal Government which can provide detailed assessment of the relative values of Alaskan lands.

Recently, you requested the Planning and Research Section to apply the resource inventory and assessment to the various d-2 proposals and prepare to use it to help provide a data base for the d-2 debate and identify State areas of interest within that debate. In view of the emergence of the Udall d-2 Bill in January of 1977 and the various pressures being applied nationally to Statehood selections rights, it became extremely important to identify both the relative value of those lands which the State might wish to select in the future and also to be able to defend rationally past selection actions and statehood entitlements. The use of the resource assessment to evaluate d-2 proposals, the development, on an accelerated basis, of the land selection system, and the need to apply this system to the selection of the majority of the remaining Statehood entitlement within FY 78, had not been envisioned in planning the FY 78 budget.

The opportunities and results related to these tasks, however, are overwhelming and require immediate action. As a result of the application of the resource assessment to the various d-2 proposals, the State is developing a rational and well justified position on d-2 issues. The depth of the analysis behind the State's position is greatly aiding our effectiveness with various federal agencies and Congressional committees. We have gained additional credibility with these agencies and committees by providing them with the best data base available for their consideration of d-2 issues. In addition, the Section has prepared large scale maps to convey State concerns with respect to the various d-2 proposals. These maps were critical in the State's recently successful effort to communicate its concerns to the federal government and will be used to help influence House and Senate d-2 committee positions.

The significance of these projects in providing an objective resource information and a reputable State land selection system which is necessary to deal with both the various d-2 issues and to effectively defend the State's position can hardly be overstated. The Department of Interior, the federal Energy

Administration, the Office of Management and Budget, the State Federal Land Use Planning Commission, and both House and Senate committees dealing with the d-2 issues and overall land issues have recognized the State's efforts and complimented the system that has been developed.

In addition to the considerable effort relating directly to the d-2 issues, the Section has recently been obligated by the Governor to identify 60 million acres of land suitable for State selections on November 20. What this means is that the development of a publicly accountable land selection process will have to be greatly accelerated. This further means that most of the State land selection decisions will have to be made within the next year.

The need for accelerated determination of land selections, a greatly accelerated land selection process, and the need for detailed analyses of federal d-2 actions to protect statehood rights were neither foreseen nor expected during FY 78 budget formulation. It should also be noted that the total cost of this supplemental appropriation represents .7¢ per acre for the remaining Statehood land entitlement. We estimate the entire program to protect state interest in d-2 and select the remaining entitlement in a publicly accountable manner over the next two years will cost 1.7¢ per acre. It should be emphasized that in providing our input thus far, the Planning and Research Section has completely exhausted its budgetary options and must have supplemental funding to continue this effort into the future.

A description of the projects and budgetary requirements which the Planning and Research Section believe essential for the State's continued input into these land decisions is provided in the following pages.

2. Summary of Supplemental Budget Request

This Section sets forth a summary of the additional funding which would be required to complete the above tasks related to analysis of d-2 issues, provision for documentation and presentation of these issues to federal and State entities, completion of the establishment of a land selection process, and analyses and documentation required to identify proposed selections of an additional 60 million acres within ninety days. The summary of the budget requirements is set forth in tabular form below and is followed by a short explanation of each budget item. An appendix is attached to the supplemental request which sets forth in more detail the tasks to be covered by the supplemental funding.

Supplemental Budget Request

Personnel	Range	Budget
Research Analyst I (24 mos)	13	41,284
Associate Planner (12 mos)	17	27,630
Data Clerks (14 months)	9	18,707
Research Analyst II (4 mos)	16	7,440
Criteria document writer/analyst (3 mos)	18	7,100
Contingency hires		5,000
Cartographer (2½ mos)	13	3,750
	TOTAL	110,911

Contractual

Systems Analyst (12 mos), programming	43,005
Computer time	36,000
D-2 data assessments and addendums, documentation and distribution	30,000
Criteria document publication, distribution, statewide public participation, review, and analysis	10,000
TOTAL	<u>120,005</u>

Space	6,000
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Commodities	3,000
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Travel	10,000
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Equipment	5,000
TOTAL	<u>24,000</u>

TOTAL SUPPLEMENTAL REQUEST 254,916

The following is a brief explanation of each of the budget items listed above in the order they are presented.

Research Analyst (24 mos): The Research Analyst I positions will be used to accomplish four tasks. These include preparation and manipulation of data within the computer system to handle routine requests for d-2 analysis and land selection scenarios; analysis of resource data for presentation to State, Federal and Congressional entities regarding d-2 impacts on state lands; development and application of accountable land selections processes for immediate selection demands; and finally completion of the required refinement and updating of the resource inventory which is to take place during the next six months.

Associate Planner (12 mos): The Associate Planner position will have responsibility for the overall direction of the d-2 analysis and preparation of presentations to be given on d-2 impacts on state lands. The Section's current Associate Planner position is responsible for completing selections activities which are related to the Governor's request and the establishment of an accountable process as well as its administration. The requested Associate Planner is definitely required to provide fulltime guidance on the d-2 issues and yet enable us to continue completing our selections responsibilities with existing personnel.

Data Clerk (14 mos):

The Clerk personnel will be used for the very necessary and complicated function of continuing to check and double check resource and land status data to assure its validity before the conclusions from such computer runs and data are used in official presentations and positions. This element is central to the credibility of the entire system and the State's positions on d-2 and land selections. The credibility of our efforts are damaged if there are inaccuracies due to mechanical errors. The elimination or minimization of such errors is a prime responsibility of these data clerks. The work time needed to complete these tasks is considerable and cannot be overstated. The Data Clerks also assist in the preparation of the State's formal presentations and mechanical mapping activities.

Research Analyst II(4 mos):

The Research Analyst II position is responsible for generating and analyzing the selections scenarios which must be completed to provide a basis for our identification of 60 million acres of land suitable for selection by late November and the narrowing down of these selection recommendations during the months which follow.

Criteria Document Writer
Analyst (3 mos):

In response to the Governor's request that our selection efforts be publicly accountable, a document must be written which explains the general criteria we use in the land selection process. A person to accomplish this during the immediate future is mandatory if this system is to be credibly presented to the Alaskan public.

Contingency Hires:

The small amount of money for contingency hires is to cover unforeseen circumstances requiring clerical or mechanical work associated with putting together documents, presentations or booklets of data.

Cartographer (2½ mos):

Though the majority of cartographic efforts associated with our land selection process and the d-2 analysis presentation process will be provided by Cartographers within the Section, the unexpected number of presentations and maps variations that will be needed in providing the d-2 assessment and the selections nominations require some additional cartographic time. This minimal 2½ months of cartographic time should enable us to complete these mapping projects on schedule.

ContractualSystems Analyst (12 mos)Programming:

The focal point for our land selections efforts and our d-2 analysis rests on the ability of our computer system to be manipulated to provide information for the great variety of changing d-2 proposals and selections scenarios. Consequently, a large amount of computer programming and systems-analysts help is mandatory if any of this work is to get done. This system is still being modified to meet the new types of demands associated with d-2 and accelerated land selections which also require this manpower.

Computer Time:

During the first two months of FY 78, 150 hours of computer time has been required to complete the demanded d-2 analyses alone. In order to continue meeting the demands for d-2 analyses and manipulating this large amount of data for the accelerated land selection purposes, at least an additional 600 hours of computer time will be required. Due to the complexities of the d-2 and land selections systems, along with the large areas to be covered, require significant amounts of computer time.

d-2 Data Assessments and
Addendums, Document
Publication and Distri-
bution:

The publication and distribution of the initial d-2 proposals assessments is estimated to cost in the range of over \$20,000. It should be recognized that these are voluminous documents providing the data base for d-2 assessment work to be carried on by the State and interested parties within the State for the next year and a half. Addendums to this data for the final Department of Interior, and Congressional proposals will be necessary, and are estimated to require an additional \$10,000 for printing, publication, and distribution costs.

Criteria Document Pub-
lication, Distribution,
Statewide public Parti-
cipation, Review, and
Analysis:

In order to fulfill the Governor's mandate that our selection process be publicly accountable, we must set out criteria used in selections for public review and assure widespread awareness of these criteria and opportunities for public participation and comment. The cost provided for in this supplemental refer only to expected publication costs of

the criteria document. The Department is planning to cover the costs of public meetings from existing budgets.

Space:

In order to provide facilities for the additional personnel, additional space is necessary.

Commodities:

This small amount of commodities money is inserted for drafting materials, xeroxing, and telephone bills associated with the project including long distance calls to Washington, D. C., and other miscellaneous items.

Travel:

During FY 78, at least ten trips to Washington of Section personnel will be necessary to assist in presentations of our d-2 assessment and land selections data to various federal departments, and Congressional committees and staffs. This amount of travel to D. C. was not expected at the time the budget was formed and actual travel demands may easily be in excess of this estimate.

Equipment:

This covers the equipment necessary for the additional personnel including files, desks, and tables as well as storage facilities for the large amounts of computer data that will have to be referred to in the future which will result from the various phases of this project.

3. Present FY 78 Budget Allocations and Section Responsibilities

The Planning and Research Section of the Department of Natural Resources was allocated a budget of \$367,000 for FY 78. The vast majority of this budget, \$310,700, was allocated for personal services expenditures to support the Planning Section's ten permanent positions. These ten permanent positions include two clerical staff members, two cartographers, and six professional planner positions. The remainder of the budget was divided as follows:

Contractual Services	\$33,500
Travel	14,500
Commodities	2,500
Equipment	400

The contractual services portion of the budget was divided between computer time for land selections, \$10,000; computer time for water permits, \$4,000; space rental, \$10,000; and office equipment, drafting material, and publishing, \$9,500.

The large portion of this budget, Personal Services Expenditures, provides little if any leeway for additional expenditures in other areas, and currently supports several high priority items. Of the six professional positions budgeted, one of the Natural and Physical Sciences Planner positions is being used for a special leasing advisory position which does not relate to the Section's efforts. Four of the other five professional positions are currently filled and the one unfilled position, a Principal Planner position, will be filled by October of this year. Consequently the Personal Services portion of the budget provides a leeway of only \$9,000 due to the unfilled Principal Planner position during the first three months of Fiscal 1978.

The responsibilities being carried out by the five professional positions currently dealing with Section activities include such high priority items as coordination of the Delta Barley project; coordination and planning involvement in the recently passed homesite act; analysis of the recently authorized agricultural rights disposal and development statute; coordination of the Department's implementation of the recently passed coastal management act and administration of federal monies provided to aid coastal management programs; coordination, and direction of the newly created Departmental water planning program and establishment of a new water section; establishment of the State's land selection program and provision for analysis and strategy for that program; analysis and data preparation for the establishment of the Department's general land management policies; involvement in the revision of the Department's classification system; and coordination of Department activities with the Department of Transportation, including the haul road question.

The Section also has responsibilities involved with coordination of all Department planning, analysis, and research efforts, as well as initiation of new programs between various federal land management agencies, native land owners, and the Department. The Section is also responsible for coordination of various review functions regarding policy decisions.

Finally, the Section manages a variety of land and water use planning programs throughout the State ranging from the Susitna Valley, Kenai Peninsula, Prince William Sound, the Fairbanks area, and the North Slope, as well as managing a major petroleum development study which will input directly to oil and gas leasing considerations on the North Slope. The section is also the lead agency for developing a computerized resource inventory and analysis system for the entire state. (This program provides the basic data for the d-2 and land selection assessment.) These projects all have high priority within the Department of Natural Resources and all have previous commitments for final products under time deadlines. Elimination of these ongoing programs would severely hamper the management and administration processes of the Department. In addition approximate 33% of our budgeted professional manpower, 50% of our budgeted drafting manpower and 33% of our budgeted clerical manpower are presently involved in d-2, land selection, and selection process projects.

The largest budget unit after permanent personnel is Contractual Services which includes \$33,500. The vast majority of this budget component has already been spent or committed in the support of computer services for our land selections and resource inventory efforts, rent payments, and support of existing office equipment, drafting material, and publication of already completed documents.

It is obvious from the above, that the current budget provides very little leeway for support of an accelerated land selection program and analysis of d-2 issues. The budget demands of these new programs fall primarily in the Contractual Services category for computer time, systems analyst time, publication of documents, and preparation of mapping materials. Another large portion of the demand budget falls in the area of Personal Services money for temporary employees to help with the vast amount of clerical and data gathering duties associated with an analysis of land selection issues and d-2 proposals.

The current budget as noted above provides barely \$8-9,000 of excess money for temporary hires and absolutely no additional monies for the great amount of contractual services required. The possibility of using much additional time of the five permanent employees beyond that already allocated to the land selections process is slight and would not greatly change the need for additional monies. Most of the items being dealt with by the professionals are high priority items. As noted above, one of the professionals is already working fulltime on the land selection and d-2 issues under the present budget and at least two of the other professionals are already spending a large portion of the time on the land selections/d-2 issues.

Supplemental Request

Based upon the above description of the needs and analysis of current budget allocations and section commitments, the Planning and Research Section hereby requests a supplemental budget appropriation of \$254,916. The need for expeditious process of this request is obvious in view of the federal and Congressional deadlines regarding the d-2 issues, the Governor's ninety day commitment to provide land selection nominations, and the immediate demand upon the Section for products in these areas which cannot be provided without this supplemental.