

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2885 SRES SJR 25 - SJR 31 8105



# Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue  
Suite 310  
Fairbanks, Alaska 99701  
(907) 456-2012

March 4, 1983



MAR 14 1983

DRAFT

Carl D. Johnson  
District Manager  
Fairbanks District Office  
Bureau of Land Management  
P.O. Box 1150  
Fairbanks, Alaska 99707

Dear Carl:

We are enclosing the Commission comments on the Draft River Management Plan for the Birch Creek National Wild River. These comments represent the issues which are of primary concern to the Commission and the different user groups which will be affected by the management plan.

On an overall basis, the draft management plan is written with an unconcealed bias against placer mining operations. There are many editorial comments contained in different sections of the plan which have no place in a document designed to establish management prescriptions.

The plan fails to take into consideration the considerable economic impacts on Fairbanks and the Central area if mining activity in the Birch Creek watershed is unduly restricted or curtailed. This information was not analyzed in the Environmental Impact Statement and appears nowhere in the draft river plan. Such an impact should be considered before the final river plan is developed.

On the attached pages we have identified five issues which we feel are extremely important and which are discussed at length. Following this discussion are specific comments relating to the plan.

To this point the people in your office have been extremely helpful in providing us with the information we needed to develop this commentary. It has been very useful for the staff to be able to meet with BLM personnel and discuss the issues face to face. We look forward to continuing this working relationship in developing the final plan for the Birch Creek Wild River.

Sincerely,

Bettye Fahrenkamp, Chairman  
Alaska State Senator

## BIRCH CREEK WILD RIVER DRAFT MANAGEMENT PLAN

### GENERAL DISCUSSION

1. BOUNDARY DETERMINATION
2. NAVIGABILITY
3. ACCESS
4. VIEWSHEDS
5. WATER QUALITY

1. Boundary determination. The draft plan states the boundary of Birch Creek Wild River will be located within Section 25, Township 7N, Range 10E, Fairbanks meridian. Section 603, paragraph 46 of ANILCA states that the segment of Birch Creek which will be designated a wild river begins on the south side of the Steese Highway, but mentions no specific section, nor does any piece of legislative history.

The Final Environmental Impact Statement for the proposed Birch Creek National Wild River prepared by the Department of the Interior in 1974, stated the proposed corridor was to begin in the vicinity of the confluence of North Fork Creek and Birch Creek. This point is located at approximately river mile 5 in the Draft River Plan. This administrative addition of five miles to the wild river segment of Birch Creek adds over 3,000 acres to the river corridor. Persons originally responsible for studying the location of the boundary state conclusively there was never any intention of extending the river corridor to Butte Creek.

To further augment this position, page 9 of the Draft River Plan states that placer mining activity has made it difficult and often impossible to float the first 3 miles of the river. This activity would indicate that most of the first 5 miles of the proposed river corridor do not meet the criteria for designation as a wild river. It further states that most float trips begin at river mile 5, the originally proposed beginning of the wild river segment.

The discretionary power which BLM has used to move the river endpoint five miles, should be used to move that boundary back to the confluence of the North Fork Creek and Birch Creek. This action would simplify management of the wild river and its corridor and help avoid any potential conflicts between recreational boaters and placer mining operations.

### 2. Navigability.

The State has asserted that all waters in Alaska are navigable while federal agencies ignore this argument. There is much available material and historical references to prove that Birch Creek is, and has been, a corridor of commerce in fact, and as such, is a corridor of commerce in

law. While it remains the responsibility of the Department of Natural Resources and the Department of Law to formally assert the navigability claim, it is essential that this fact be considered in the draft plan.

3. Access. Access to valid mining claims and along existing RS 2477 rights-of-way must be insured. ANILCA guarantees access to inholdings and valid mining claims (Sec. 1110).

In addition, the Senate Committee on Energy and Natural Resources Report 96-413, contained in the legislative history of ANILCA, states:

"In Administering wild and scenic rivers in Alaska, the Committee expects the appropriate Secretary to carefully consider access needs in terms of the special authority granted him in Title XI of the Committee amendment. Holders of mining claims, for example, may need access up and down proposed wild and scenic rivers or study rivers in connection with various mining activities. Likewise, inholders should not be denied reasonable access to their inholdings as a result of wild and scenic river designator."

Existing State rights-of-way within or through the corridor should be recognized. In the Final EIS the State of Alaska submitted comments which dealt with existing rights-of-way along a number of surface transportation routes and along protracted section lines. The response from BLM indicated that these rights are recognized. Recognition of these rights should be included in the appropriate section of the river plan.

In addition, BLM should work with individual miners while preparing the management plan so that they can be assured of the access which is currently only given lip service. In working with the mining and environmental communities on specific cases, some of the problems which currently exist in the plan could be resolved. From a claim owner's point of view, specific actions are more palatable than "reasonable guarantees".

4. Viewsheds. The concept of viewsheds is one which is becoming more popular in the planning field. However, we can find no statutory authority in the Wild and Scenic Rivers Act, or in the Guidelines for Evaluating Wild, Scenic, and Recreational River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System Under Section 2, PL 90-542, dated September 7, 1982 for the creation of viewsheds in the Draft River Plan. ANILCA specifically restricts the wild and scenic river corridors to "not more than" 640 acres per mile. The four to eight mile boundary as discussed in the plan certainly exceeds this statutory limit. The provision for viewsheds should be eliminated in the draft river plan. Any viewshed for the river corridor beyond the 640 acre limitation which contains federal lands should be contained in the management plan for the Steese National Conservation Area.

5. Water Quality. The issue which is most frustrating to each side of the management issue is turbidity. The miners see it as an unattainable standard which costs them hours, dollars, and perhaps at some point, their mines. The recreationists perceive turbidity as evidence that miners do not care about the environment and as an esthetic negative. The challenge will be to develop new technology which will enable the miner to continue his livelihood while the recreationists enjoy the river. It is no secret that this problem may be the most difficult to solve.

At this time, the technology which would stop turbidity is either non-existent or cost prohibitive. The Commission recommends that efforts be made by federal agencies and State agencies to coordinate efforts to develop the necessary technology. It is necessary that the Plan clearly recognizes the lack of technology, the soil conditions and the efforts of the mining community to control this problem.

#### SPECIFIC COMMENTS

##### INTRODUCTION

Descriptions contained in Part I need to be re-written to include more complete information on soils, geologic, and historic data. The information must be verified for accuracy. Several errors already exist. The section must be written in a less negative fashion. State management responsibilities must be recognized.

The section on geological and mineral resources contains only two paragraphs on the resources of the river corridor. The first paragraph deals only superficially with the mineral resources while the second paragraph is primarily a commentary on the adverse effects of placer mining on the river. This is out of place in a section which is supposed to deal with resource description. Editorial comments should be omitted or reserved for more appropriate sections. Please note, too, that Harrison Creek is not in the headwaters of Birch Creek. It enters the river at River Mile 59.

Page 10 has a statement which says the effect of turbid water on biological resources is not precisely known, but is generally believed to be having an adverse impact. Page 21 has a statement that "degraded water quality caused by vehicle use and mining operations impairs the biological productivity of the river environment, harming the fishery and other aquatic wildlife." If turbidity and water quality are conclusively demonstrated to adversely affect biological resources on the river, this should be consistently stated. If, on the other hand, there is no conclusive proof available to indicate that they do adversely affect biological resources, this fact should be consistently stated.

## Management Considerations

Item 4--Water Quality. This section contains conflicting statements. The section on minerals management states that most placer mining operations affecting the river corridor are properly located and are operating in compliance with State and federal regulations for resource protection. The section on water quality makes the statement that many placer mining operations within the watershed make little or no effort to limit effluent discharge in the tributaries of Birch Creek. Meetings with miners operating in the area indicate that most are making every effort to comply with existing water quality standards. Again, these conflicting statements should be reconciled.

The statement that implementation of water quality standards may increase costs or time to develop mining claims should be changed to state that costs will definitely increase.

Item 5--Water Rights. Water rights are not an issue. The State retains jurisdiction over water rights. This section appears to be put in just so there could be a place to say later that reservation of current water levels would be sought for the river.

Item 7--Visitor Management. What are "on-site management controls"?

Item 9--Biotic Resources. Care must be taken to identify the differences between managing endangered species which have been identified and those which are only "believed" to exist.

## Management Actions

This section will require considerable revision before these management practices can be implemented. While the separate issues are outlined in each management action, there is little or no discussion or description on how they will be implemented. Reference to the statutory authorities for management are helpful, but a detailed description of the guidelines contained within the statutes is necessary in the river plan.

As a general comment, each management action should include the statement that it applies to the river corridor and not to surrounding or adjacent private, State or native lands. Many of the management actions are also stated in a very negative manner. By a simple rewording, negative reactions to them would be lessened or eliminated.

Action for Issue 1--Surface Transportation.

This management action must contain provisions which will accommodate guaranteed rights of access.

Action 1.3. Restrictions for vehicular movement should be contained in individual mining plans of operation.

Action for Issue 3-Minerals Management.

No management action affecting mineral development within the river corridor should extend beyond the boundaries of the corridor. Plans of operation for mining claims within the river corridor must not contain restrictions which are unreasonable or which will make operation of those claims economically unfeasible. Care must be taken that recreational gold-panning not take place on private lands or on valid claims.

Action for Issue 6-Facility Management.

Action 6.3: Change "may" to "shall".

Action for Issue 8-Non-Federal Land.

There is no need to acquire additional lands or interests in lands for any reason, since there are no private, native or State owned lands located within the corridor. Actions 8.1 and 8.2 should be eliminated. The Commission does not support acquisition of any lands, particularly through condemnation proceedings.

Action for Issue 9-Biotic Resources.

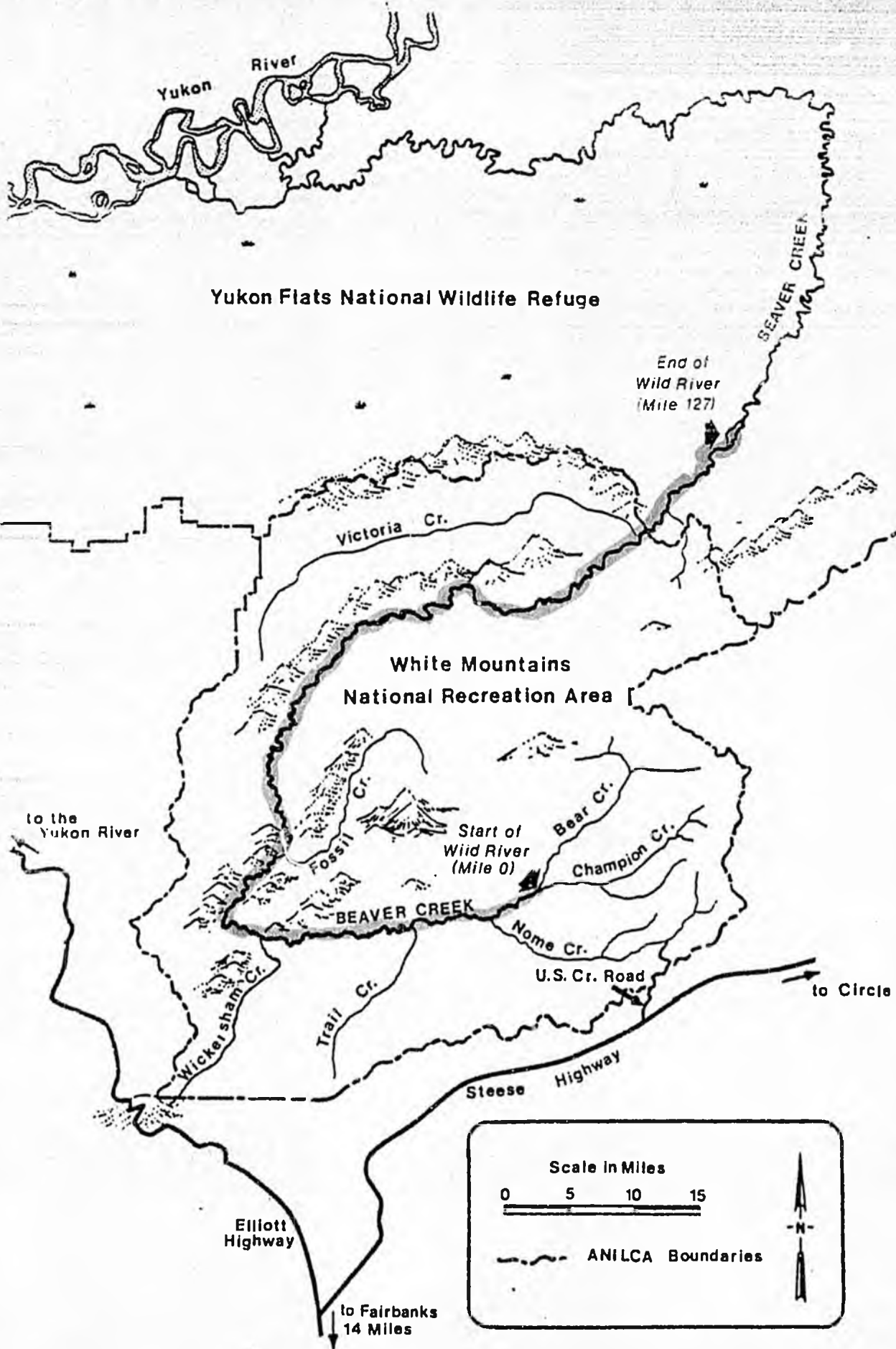
This section should not be limited to biotic resources within the river corridor. An inventory should be prepared for all natural resources within the corridor.

Action for Issue 11-Subsistence.

It has already been stated that there is no subsistence activity occurring within the corridor. There is no need to establish a management action.

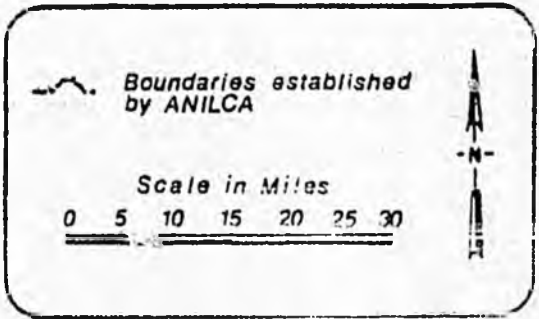
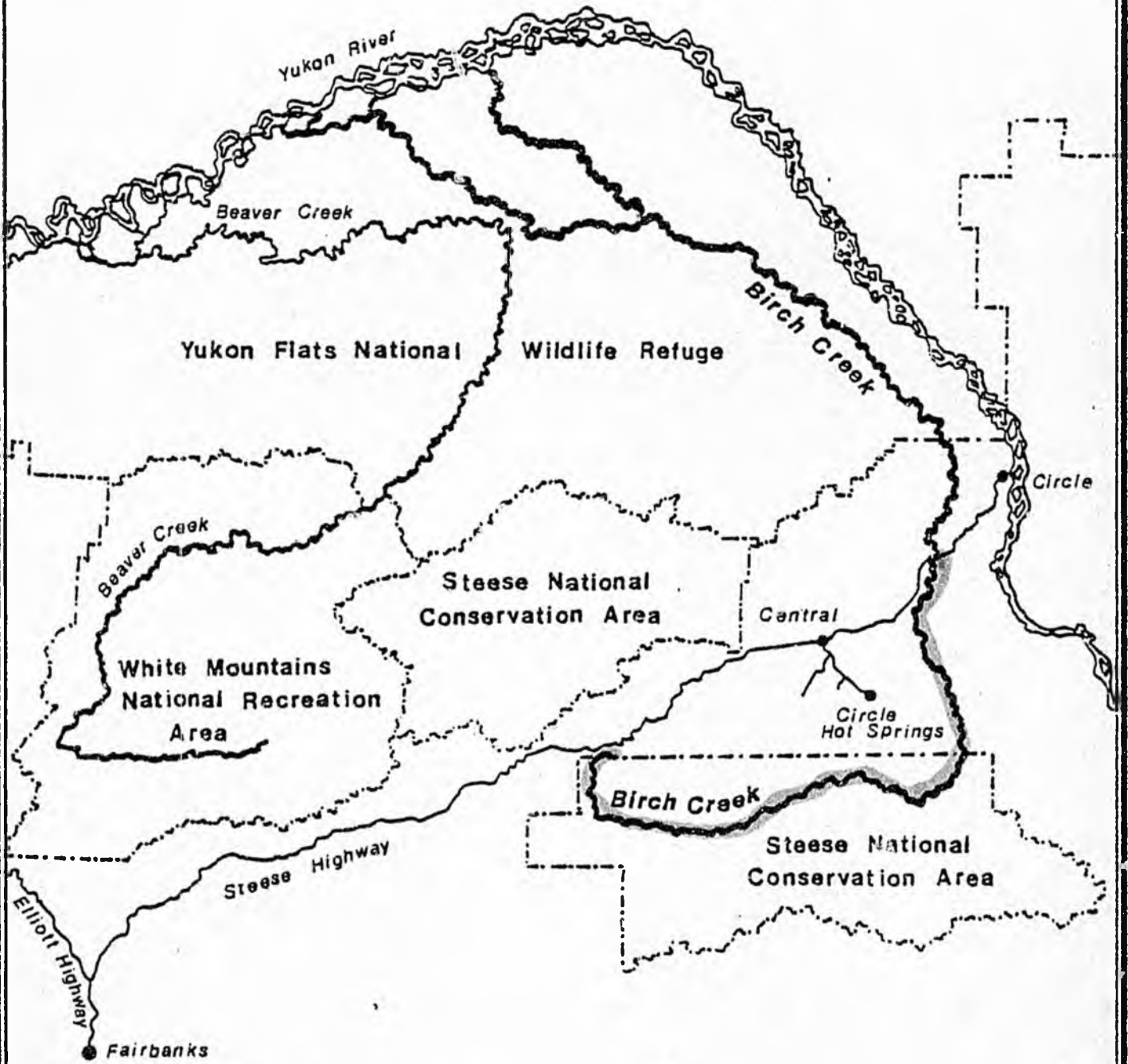
# Beaver Creek National Wild River

Area Map



# Birch Creek National Wild River

# Regional Map



# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



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## Senate

### Committee on Resources

#### MINUTES

April 27, 1983  
3:07 p.m.

Beltz Room  
Room 211, Capitol

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#### MEMBERS PRESENT

Senator Fahrenkamp, Chair  
Senator Ziegler, Vice Chair  
Senator Eliason

Senator V. Fischer  
Senator Mulcahy  
Senator Sturgulewski

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#### CALENDAR

- SJR 25 Requesting that Birch Creek and Beaver Creek be removed from designation as wild rivers.
- SJR 5 Relating to revenue sharing from Outer Continental Shelf oil and gas development.
- HB 314 An Act making a special appropriation to the Legislative Affairs Agency for operation of the Joint Oil and Gas Committee; and providing for an effective date.

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#### SJR 25

Bill Zyback, Fairbanks North Star Borough, supported the resolution, saying it is important to the overall economic development program for Interior Alaska.

Phil Holdsworth, Alaska Miners Association, supported the resolution. He said that Department of Environmental Conservation and the Environmental Protection Agency are currently looking at reclassifying streams, so the resolution is timely.

Brian Allen, Alaska Environmental Lobby, opposed the resolution, saying the streams are close to Fairbanks and provide a great deal of recreational activity. He was concerned about water quality in the streams.

Senator Ziegler moved to report the resolution out of committee with individual recommendations. The motion passed without objection.

#### SJR 5

Senator Ferguson recommended acceptance of the proposed committee substitute. He felt the resolution would help our Congressional delegation in their work to provide revenue sharing for communities involved in coastal zone management.

Senator Fahrenkamp explained Congressional action and how funding amounts are determined. There was discussion of the bill and the program. Senator Sturgulewski proposed an amendment to clarify the intent of the bill.

Senator Eliason moved to adopt the committee substitute, to include the amendment proposed by Senator Sturgulewski. The motion passed without objection.

Kurt Fredriksson, Office of Coastal Management, supported the bill. He clarified funding formulas and the status of the Congressional bills. He said the US Departments of Interior and Commerce are recommending passage of the program, and offered to provide additional information to the committee.

Senator Eliason moved to report Resources Committee Substitute for SJR 5 out of committee with individual recommendations. The motion passed without objection.

#### HB 314

Jim Palmer, Joint Oil & Gas Committee Aide, explained what the bill would fund.

Senator Mulcahy moved that Resources Committee Substitute for HB 314 be reported out of committee with individual recommendations. The motion passed without objection.

The meeting adjourned at 3:40 p.m.

SJR

29

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *SJR 29*

BILL NAME: *variance requests by Puley Mills in Southeast*

SPONSOR(S): *Edwards; Gieger, Ruff  
Schreckhauf*

RELATED BILLS PENDING:

DATE INTRODUCED: *1-7-84*

REFERRALS: *Russell*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

~~FISCAL NOTE:~~

AGENCY RESPONSE:

*D.E.C.*

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMITTEE  
SUBSTITUTES DRAFTED:

*Jim Clark - ADP  
Dick Nune  
Alex Vitore  
Gov's Office  
Mayor Ulmer  
EPA  
Louisiana Pacific  
EPA  
U.S. Forest Service  
Environmentalist - Jay Nelson*

# Alaska State Legislature

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## Senate

### Committee on Resources

TO: Senate Resources Committee

FROM: Senate Resources Committee Staff

RE: Hearing on SJR 29, Supporting variance requests by pulp mills in Southeast Alaska.

DATE: January 13, 1984

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On Monday, January 16, 1984 at 2:30 pm in the Beltz Room, the Senate Resources Committee will hear SJR 29, Supporting variance requests by pulp mills in Southeast Alaska.

The Alaska Lumber and Pulp Company (ALP), near Sitka, and Louisiana-Pacific/Ketchikan (LP/K), near Ketchikan, both engaged in the production of dissolving sulfite pulp, have requested a waiver from the national water pollution standards. These standards are to be met by all point source dischargers pursuant to the Clean Water Act.

In 1972, standards were established to limit the effluent discharge from pulp mills nationwide. Because of the "peculiar land, energy, and logistic constraints" which the Environmental Protection Agency (EPA) associated with ALP and LP/K, in 1974 they applied for and were granted permits allowing greater effluent discharge than pulp mills nationwide. [75 lbs./ton daily average, as compared to 60 lbs./ton nationwide.] In 1977, national standards were changed to limit discharge to 46.8 lbs./ton.

When the ALP and LP/K permits expired in 1979, the pulp mills requested a continued variance from EPA to allow discharge at the level determined in 1974 (75 lbs./ton). EPA regulations provide that upon finding factors relating to a particular discharge that are "fundamentally different" from the factors considered by EPA in establishing the national standards, alternative effluent limitations may be established for that discharge. The basis of ALP and LP/K's variance request centered around four factors:

- 1) Lack of land for disposal of wastewater solids.
- 2) Non-water quality environmental impacts, particularly the unavailability of external power sources.
- 3) The cost of compliance with the standards.
- 4) The lack of effect compliance would have on water quality.

In August, 1983, EPA made a tentative decision to deny the Fundamentally Different Factors variance request, based on the following findings:

- 1) The wastewater solids can be incinerated rather than landfilled.
- 2) ALP and LP/K have the capability of generating sufficient electricity.
- 3) Costs of compliance would not be disproportionate to the costs used in the guidelines.
- 4) According to EPA regulation, water quality is not a factor on which a variance can be granted.

Public comment was accepted on the tentative decision through December; a final decision by EPA is pending.

SJR 29 urges EPA to grant the variances requested by the mills, citing the economic impact of compliance with the national standard, the air pollution problem that would be created if the wastewater solids were burned, and the finding by the Alaska Department of Environmental Conservation that continued discharge will not violate state water quality standards.

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
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## Senate

### Committee on Resources

#### MEMORANDUM

TO: Senate Resources Committee

FROM: Senate Resources Committee Staff

RE: SJR 29, Supporting variance requests by  
pulp mills in Southeast Alaska.

DATE: January 17, 1984

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Please find attached further information provided by Frank Roppel of Alaska Lumber and Pulp Company at our recent hearing on SJR 29, Supporting variance requests by pulp mills in Southeast Alaska.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

February 16, 1982

OFFICE OF THE  
ADMINISTRATOR

MEMORANDUM FOR BRUCE BARRETT

I have read the papers relating to the FDF variances for the Alaska pulp mills. I'm not persuaded by the writers' views that we should proceed by suspending the applicable regulations rather than issuing FDF variances.

For instance, the argument that these "fundamental differences" were taken into account in impact analyses may be correct, but the differences were not accounted for in the most important measure - effluent limits themselves. A FDF variance is the mechanism for doing this. The "resource requirement" argument is also the best argument for relying on states to handle variances. Also, I think it is disingenuous to say that these mills' problems were "dealt with" when in the next paragraph it is stated that the problems were "considered. . . in a general way." That a mill was "considered" in guidelines development should not be the sole determinative of ineligibility for a FDF variance. As for NRDC's interest in this matter, it seems to me that issuance of the "Tentative Decision" should smoke them out. Additionally, the FDF route is more judicially economical since only one court challenge would result; suspension of guidelines and issuance of BFP permits would open us to two largely duplicative lawsuits.

Unless your view is widely at variance from mine, let's ask John Spencer to publish the Tentative Decision, receive comments, and make the appropriate decision.

*John E. Daniel*  
John E. Daniel  
Chief of Staff

cc: John Spencer-RA-Seattle  
Martha Prothro  
Steve Schatzow ✓  
Bruce Diamond

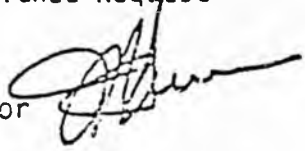
*Cathy to Smith  
Wendy  
Jan 12/15*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 10 - Seattle, Washington

DATE DEC 28 1980

SUBJECT Alaska Pulp Mill Variance Request

FROM John R. Spencer  
Regional Administrator



TO Anne M. Gorsuch A100  
Administrator

Thru: John E. Daniel A100  
Chief of Staff

Consider this a request for the Administrator's concurrence with my recommendation that Alaska Lumber and Pulp Company and Louisiana - Pacific Corporation be granted variances from wastewater effluent guideline limits (BPT) for mills located at Sitka, Alaska and Ketchikan, Alaska respectively.

Both companies have requested variances under EPA regulations pertaining to fundamentally different factors (FDF). The most basic issue raised by the companies in support of their variance requests is that the cost of compliance with national effluent guidelines would result in waste treatment and operation costs significantly greater than costs for the model mill described in EPA effluent limitations development documents. Other issues raised in support of the variance requests include the lack of land for waste treatment sludge disposal and the lack of external sources of electricity.

Background Both Alaska Lumber and Pulp (ALP) and Louisiana - Pacific (LPK) are currently operating secondary waste treatment facilities at their southeast Alaska mills. The EPA issued permits controlling their wastewater discharges, were originally issued in 1973 and later amended in 1974. In 1977, EPA promulgated BPT guidelines for the dissolving grade sulfite subcategory which the two Alaska mills fall under. ALP and LPK are requesting variances from the biochemical oxygen demand (BOD) effluent limitation and variances from the total suspended solids (TSS) limitation specified in their present permits. These are summarized below:

Variance Requests

	<u>Present Permit Limits</u>	<u>BPT</u>	<u>Variance Request</u>
1. ALP & LPK			
* BOD, Lbs/T	75	46.8	75
* TSS, Lbs/T	60	76.3	76.3
* (Lbs per ton of mill production)			

Region 10 staff have thoroughly analyzed the variance requests, and in particular, the water pollution control costs. The cost figures incorporate incurred costs for existing water pollution control facilities plus the future costs to meet BPT. They include capital and O&M costs expressed in March 1980 dollars. A comparison of the model mill costs with the two Alaskan mills is as follows:

	<u>Capital Cost</u>	<u>Total Annual Cost</u>	<u>Total Annual Cost/T</u>
A. Model mill (scaled up to 700 T/day production)	\$49.34 mm	\$15.2 mm	\$53.9 mm
LPK (700 T/day)	\$68.9 mm	\$21.9 mm	\$92.0 mm

The ratios of the costs (LPK: Model mill) are therefore: 1.40, 1.44, and 1.44.

	<u>Capital Cost</u>	<u>Total Annual Cost</u>	<u>Total Annual Cost/T</u>
B. Model mill (scaled up to 621 T/day production)	\$42.7 mm	\$14.4 mm	\$ 69.9 mm
ALP (621 T/day)	\$84.4 mm	\$26.9 mm	\$123.5 mm

The ratios of the costs (ALP: Model mill) are therefore: 2.0, 1.9, and 1.8.

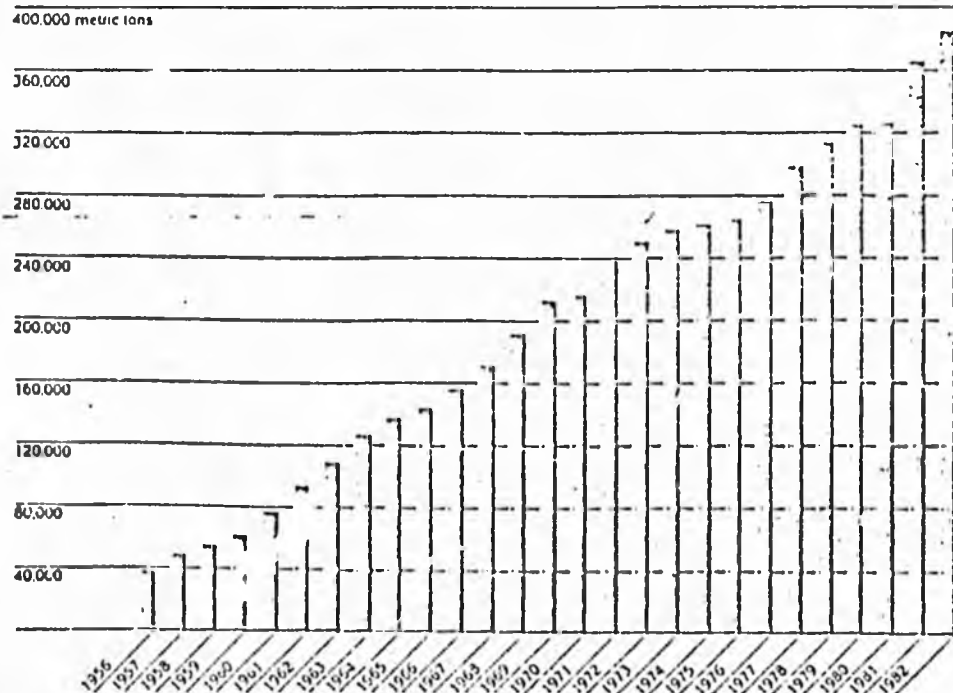
In summary, my recommendation that variances be approved is principally based on LPK's costs being 40 to 50 percent greater than the model mill and ALP's cost being essentially double the model mill costs.

Finally, attached is a letter from the State of Alaska certifying there will be no known water quality impacts resulting from granting a variance to either mill. Further support for a variance based on solids disposal is provided in that letter: "Of the possible alternatives disposal to the air and land are precluded by unique local conditions or may have substantial adverse effects on the environment". Also, attached is a staff analysis of the variance request. As indicated, some of the material is confidential and should not be released outside the agency.

Concurrence \_\_\_\_\_

Non-Concurrence \_\_\_\_\_

**S**AICCOR's production performance is one of which the Group is justifiably proud, showing a ten-fold increase since 1956. In the first year, the mill manufactured 38,000 tons compared to 386,000 tons in 1982. The Group's on-going research programme has made a material contribution to this expansion which has been achieved over the years. Three major areas of concentration have been responsible for SAICCOR's regular growth: progressive refinements in the process, modernisation of plant and equipment and regular capital investment. Without exception, every one of the intervening twenty six years has seen a boost in production capacity.





Luke Popovich is contributing editor-national affairs for Pulp & Paper.

## Treatment for its own sake

Press reports last month confirmed our doubts about the future of the Administration's dwindling effort to deregulate business. Officials at the Office of Management & Budget (OMB) told reporters the effort for now was dead—"ended," as they delicately put it. Since OMB was the locus maximus of the deregulation effort, sadly we must take these officials at their word that little will be done to discourage environmental regulation until after the 1984 election, assuming the home team wins.

Vice President Bush chaired the President's Task Force on Regulatory Relief, which closed down this summer, leaving to OMB the day-to-day vigilance over unnecessary rules. In signaling an end to the much-touted deregulatory effort, the Administration has borrowed liberally from the Vietnam antiwar strategy propounded by former Vermont Senator George Aiken: simply declare a victory, allow a self-satisfied smile, and withdraw. But if a thumping victory has been won against environmental regulation, the paper industry has yet to be informed.

**AN ALASKAN CASE.** Battlefield conditions still suggest that the war against treatment for treatment's sake is far from over. A story from Alaska illustrates the enemy's tenacity. Ketchikan Paper Co. and Alaska Lumber & Pulp Co. of Sitka applied to the Environmental Protection Agency for variances from secondary-treatment requirements under the Clean Water Act in December 1981. The companies had good reasons for asking a waiver from compliance with costly best practicable technology (BPT) requirements beyond the secondary treatment they had already employed.

First, the companies cited insufficient sites for installing sludge disposal facilities. Second, alternative power sources were not available to run generators during installation of control technology. Third, the additional treatment would harm other, nonwater values. Together, they said, additional requirements to treat then-nonhazardous wastes would cost more than EPA's model for similar reductions in the lower 48 states had suggested was proper. Nor would the treatment result in cleaner water.

Their case looked persuasive. The state's Department of Environmental Conservation and congressional delegation okayed the variance. So too did EPA's then-Region X administrator John Spencer on Dec. 20, 1981 recommend that the variance be approved. Again on May 10, he wrote to his EPA superiors in Washington for a variance, citing EPA's own view, dating back to 1974, that "the Alaska

mills are entitled to different treatment... because of peculiar land, energy, and iceistical constraints." Not only were the companies entitled to a variance, he said, but since EPA staff thought the BPT rule for the sulfate pulp category was "too stringent," the rule ought to be reviewed for immediate suspension.

So it was somewhat surprising that on Aug. 29, EPA announced it had tentatively decided to deny the variance, citing the absence of "fundamentally different factors" in the Alaskan case that would justify suspension of the additional secondary treatment requirements. "We did a thorough economic test and didn't find that their costs were out of line" with those facilities in the lower 48, said one EPA official in Washington.

**INSIDE EPA.** But an internal EPA memo from the Washington staff to EPA's acting water chief dated Feb. 3, 1982 suggests a different motivation for the denial. "A variance based on these problems does not appear to be entirely foreclosed," conceded EPA staff. "Nevertheless," the memo continued, "this [approval] could present a legal problem" because the "Natural Resource Defense Council has been closely following" the case. Worse, the memo alluded to the many other variance applications EPA would be forced to answer if it granted this one, thus upsetting its priorities for approving industrial permits.

Instead of granting the variance, EPA staff suggested the agency grant the two firms a temporary suspension of the BPT rules for the pulp category. And what of the quality of receiving water in all this decision making? It seems that consideration was irrelevant; water quality per se is expressly forbidden to bear on the issue of BPT compliance, and so it is irrelevant to the approval or disapproval of a variance. "If what these companies must do doesn't affect water quality one bit, they still have to install [BPT technology]," said EPA water effluent expert Bob Dellinger in Washington, D.C.

Treatment for treatment's sake is not only pointless but expensive. If the tentative decision isn't overturned after the Nov. 15 comment period expires, officials of Alaska Lumber & Pulp claim they'll be forced to spend \$51 million to achieve mandated reductions of 28 lb/ton. That's in addition to the \$45 million they've already spent to get from 275 lb to 75 lb/ton. "We don't have \$51 million to dump into this project," complained one company spokesman. Too bad money, like environmental quality, has nothing to do with the issue.

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

**DEPT. OF ENVIRONMENTAL CONSERVATION**  
OFFICE OF THE COMMISSIONER  
POUCH O, JUNEAU, ALASKA 99811

Telephone: (907)  
Address:

465-2600

January 13, 1984

The Honorable Bettye Fahrenkamp  
Chairman Senate Resources Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Thank you for providing us with the opportunity to comment on Senate Joint Resolution No. 29 "Supporting variance request by pulp mills in Southeast Alaska".

On September 16, 1983, the U.S. Environmental Protection Agency (EPA) issued notice of its tentative decision to deny the mills' request for a variance from newly established national effluent limits. During November, hearings on this decision were held in Seattle, Sitka, and Ketchikan. Governor Sheffield, Commissioner Lyon and I attended these hearings and provided EPA with the reasons why we feel the variance should be granted. Copies of our testimony have been provided to your committee for review.

This department has worked carefully and closely with the mills and the Environmental Protection Agency on improving water quality in Sitka and Ketchikan for over ten years. During that time, substantial progress has been made toward eliminating water quality impacts from the mills' operations. In fact, the installation of effective primary treatment at both facilities was accomplished largely because of a state requirement. Proper operation of the secondary treatment plants which began in 1978, provides, in our opinion, adequate protection of water quality. EPA's proposed requirements for additional treatment to the mills' waste streams would not result in a concomitant improvement in water quality.

EPA's nationally imposed effluent limitations do not permit a holistic approach to the environmental concerns unique to Alaska. It appears, in our view, that their effluent limitations do not take into consideration all resulting environmental problems, especially air and land pollution or energy consumption. As a practical matter, the type of treatment proposed essentially converts biochemical oxygen demand to sludge and suspended solids. Therefore, existing suspended solids and sludge handling problems will increase accordingly. The resulting increased volume of secondary sludge can only be treated in a very limited number

JAN 20 1984

of ways, many of which themselves cause substantial environmental problems. Some of these problems are aggravated by the topographical and energy considerations present at the mill sites.

If some sort of relief from these effluent limits is not achieved the Alaska Lumber and Pulp Company's mill in Sitka has threatened to seriously reduce its current level of employment. Louisiana Pacific Corporation, Ketchikan Division is expected to do the same. In total a possible 6,000 jobs may be lost in Southeastern Alaska.

We recognize EPA's difficulty in properly applying their national requirements in Southeastern Alaska's unique environment. Alaska's mills and their surroundings are different from the model mill EPA used to develop the effluent limitations proposed. In light of the fact that no adverse water quality impact will result, it is important that the federal government find ways to allow Alaska's pulp mill industry to continue. This department is working hard to find a satisfactory resolution of this issue.

Sincerely,



Richard A. Neve  
Commissioner

RAN/AV/bp

cc: W.E. Fisher, Manager Ward Cove Operations - LP/K  
F. Roppel, Ex. Vice President and General Manager - ALP  
Ernesta Barnes, Regional Administrator, EPA  
S.E.A.C.C.

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

#### MINUTES

January 16, 1984  
2:32 pm

Beltz Room  
Room 211, Capitol

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#### MEMBERS PRESENT

Senator Ziegler, Vice Chair  
Senator Eliason  
Senator P. Fischer  
Senator V. Fischer  
Senator Mulcahy  
Senator Sturgulewski

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#### CALENDAR

SJR 29 Supporting variance requests by pulp mills in  
Southeast Alaska

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Frank Roppel, Executive Vice President, Alaska Lumber and Pulp Company, ALP, Sitka, testified against the Environmental Protection Agency (EPA) decision to deny the Fundamentally Different Factor Variance for secondary treatment of effluent from Alaskan pulp mills. Compliance with EPA's environmental standards would cause the shut down of ALP's Sitka pulp mill, severely impacting the economic base of several Southeast communities. Over 3,000 loggers and millworkers would be affected.

Michael A. Barton, Deputy Regional Forester, U.S. Forest Service submitted written testimony. He asked to amend the Resolution, page 1, line 29, changing the figure \$143 million to \$147.6 million. The amendment was adopted without objection.

Senator Eliason stated for the record that at recent EPA hearings in Seattle, Governor Sheffield and Commissioner Neve testified in support of the variance. He moved to adopt the Committee Substitute and report it out with individual recommendations. There was no objection.

The meeting adjourned at 2:50 pm

Introduced: 1/9/84  
Referred: Resources

Original sponsors: Eliason, Ziegler,  
Ray and Fahrenkamp

BY THE RESOURCES  
COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE JOINT RESOLUTION NO. 29.

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

Supporting variance requests by pulp

6

mills in Southeast Alaska.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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WHEREAS the Environmental Protection Agency is now considering vari-

9

ance requests from the pulp mills in Southeast Alaska; and

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WHEREAS the pulp mills in Sitka and Ketchikan provide an economic base

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by employing many residents of Southeast Alaska; and

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WHEREAS the quality of water and marine life ~~is~~<sup>is</sup> not ~~being~~ adversely

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affected by the current effluent discharge from the pulp mills; and

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WHEREAS the Alaska Department of Environmental Conservation has found

15

that continued discharge will not ~~impact~~<sup>impact</sup> state water quality standards and

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supports the issuance of the variance; and

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WHEREAS the former Environmental Protection Agency Regional Adminis-

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trator issued a tentative decision on December 28, 1981, that would have

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granted the variance; and

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WHEREAS the variance being considered would enable the pulp mills to

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continue to treat their waste products in a more efficient and economical

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manner; and

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WHEREAS the denial of the variance would constitute treatment for

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treatment's sake, would create an air pollution problem if the mills did

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comply and would most likely cause the pulp mills and related facilities to

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cease operating because the cost of additional waste treatment is prohibi-

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tive; and

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WHEREAS the United States Forest Service has determined that the

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closure of the pulp mills would cause a \$143 million per year loss of

\$147.6

1 income in Southeast Alaska;

2 BE IT RESOLVED that the Alaska State Legislature urges that the vari-  
3 ances requested by the mills be granted; and be it

4 FURTHER RESOLVED that the Alaska State Legislature urges the Environ-  
5 mental Protection Agency to consider the loss of income in the event of the  
6 mills' closure as part of the cost of achieving guideline best ~~practicable~~ practical  
7 technology in determining whether the cost of compliance is wholly out of  
8 proportion to the model mill.

9 COPIES of this resolution shall be sent to the Honorable Ronald  
10 Reagan, President of the United States; the Honorable William Ruckelshaus,  
11 Administrator of the Environmental Protection Agency; Ernesta Barnes,  
12 Regional Administrator of the Environmental Protection Agency; and to the  
13 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and  
14 the Honorable Don Young, U.S. Representative, members of the Alaska delega-  
15 tion in Congress.

GOOD AFTERNOON. MY NAME IS BILL SHEFFIELD, AND I AM THE GOVERNOR OF THE STATE OF ALASKA. I AM HERE TO DISCUSS THE STATE'S POSITION IN REGARD TO THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSED DENIAL OF WAIVERS TO CERTAIN WATER POLLUTION CONTROL REQUIREMENTS REQUESTED BY TWO PULP AND PAPER MILLS IN SOUTHEAST ALASKA.

I HAVE RECEIVED MANY, MANY LETTERS OF CONCERN LATELY FROM CITIZENS OF MY STATE ABOUT EPA'S TENTATIVE DECISION. THEREFORE I AM PRESENTING IN MY TESTIMONY THE STATE'S SENTIMENTS -- WHICH ARE SHARED BY MY CONSTITUENTS -- ABOUT THE SOLID REASONS WHICH WE BELIEVE SHOULD BE CAUSE FOR EPA TO REVIEW AND HOPEFULLY GRANT THE REQUEST FOR WAIVERS.

I SHOULD ADD THAT DUE TO THE IMPORTANCE OF THIS ISSUE TO THE STATE, I HAVE REQUESTED COMMISSIONER NEVE' OF THE STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND COMMISSIONER LYON OF THE STATE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO WORK WITH EPA AND OTHER RELEVANT PARTIES TO ACHIEVE A RESOLUTION OF THIS ISSUE THAT WILL BE REASONABLE, FAIR AND JUST.

THEY WILL BE TESTIFYING SEPARATELY ABOUT THE DETAILS OF THE MILLS' SITUATION, SO I WILL CONFINE MY REMARKS TO THE BROADER POLICY ISSUES. MY HOPE TODAY IS TO MAKE A CONVINCING CASE FOR EPA TO ACCEPT OUR OFFER OF TAKING ANOTHER LOOK AT THE PULP MILLS' REQUEST, AND TO WORK WITH THE STATE TO DEVELOP A EQUITABLE DECISION FOR THE MILLS.

THE CRUX OF OUR CONCERNS IS THAT EPA'S PROPOSED ACTION WILL HAVE SIGNIFICANT NEGATIVE ECONOMIC EFFECTS ON THE MILLS. EPA'S ACTION WILL BE TAKEN MERELY TO ACHIEVE WASTE DISCHARGE REDUCTIONS WHICH ARE NOT NECESSARY IN TERMS OF ENVIRONMENTAL PROTECTION.

I RECOGNIZE THAT THE ENVIRONMENTAL PROTECTION AGENCY AND THE TWO PULP MILLS HAVE BEEN IN DISCUSSIONS OVER THIS ISSUE FOR A LONG TIME. I ALSO UNDERSTAND THAT THE THRUST OF EPA'S CASE SUPPORTING ITS PROPOSED ACTION DOES NOT FUNDAMENTALLY HAVE TO DO WITH THE EFFECT OF THE MILLS' DISCHARGE ON LOCAL WATER QUALITY. RATHER, IT CENTERS AROUND THE CONCLUSION THAT THE COSTS OF INSTALLING ADDITIONAL POLLUTION CONTROL EQUIPMENT ARE NOT EXCESSIVE, ACCORDING TO EPA'S CURRENT INTERPRETATION OF LAW.

OUR DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAS MONITORED THE TWO SITES IN QUESTION EXTENSIVELY FOR A NUMBER OF YEARS. WE CONCLUDE, CATEGORICALLY, THAT THERE IS NO APPRECIABLE ADVERSE EFFECT ON WATER QUALITY BY THE MILLS AT THE CURRENT LEVEL OF DISCHARGE. THEREFORE THE EPA DECISION, IF SUSTAINED, MAY WELL BE A CLASSIC EXAMPLE OF IMPOSING ADDITIONAL POLLUTION CONTROL REQUIREMENTS FOR THEIR OWN SAKE, AND NOT FOR ANY IDENTIFIABLE AND NEEDED ENVIRONMENTAL PROTECTION.

I AM SURE EPA IS SUBJECT TO LEGAL AND POLICY CONSTRAINTS WHICH HAVE CONTRIBUTED TO THE TENTATIVE DECISION. BUT I MUST BELIEVE THERE IS FLEXIBILITY TO ENABLE THE AGENCY TO REACH A DIFFERENT CONCLUSION BASED ON ALASKA ENVIRONMENTAL CONDITIONS OR ON THE RESULTANT COSTS TO THE MILLS.

AS GOVERNOR, I CANNOT STAND BY WHILE UNNECESSARY COSTS AND SEVERE ECONOMIC HARDSHIP TO MANY OF OUR CITIZENS IN SOUTHEAST ALASKA ARE LOOMING AS A RESULT OF WHAT APPEARS TO BE EPA'S DETERMINATION TO PREVAIL IN THIS MATTER, DESPITE THE MERITS.

WE ARE ASKING EPA TO AVOID A NEEDLESS THREAT TO THE VIABILITY OF THE TWO PULP MILLS AND TO THOUSANDS OF PRIMARY AND ASSOCIATED JOBS IN OUR STATE. WE ARE NOT ASKING EPA TO

AND THE COASTAL ZONE MANAGEMENT ACT. THEY HAVE BEEN PROVIDED TO ME, AND WE ARE ASSESSING THESE OPTIONS CAREFULLY. TO ALLOW TIME TO WORK TOGETHER WITH EPA AND TO EXPLORE COLLECTIVELY THESE OPTIONS, I WOULD LIKE TO REQUEST THAT EPA EXTEND THE PUBLIC COMMENT PERIOD ON THE PROPOSED WATER DISCHARGE PERMITS.

TO BE SURE THAT THE PUBLIC DOCKET IS COMPLETE, I WOULD ALSO LIKE TO SUBMIT AS WRITTEN TESTIMONY THE LETTER I SENT LAST MONTH WITH ATTACHMENTS TO EPA ADMINISTRATOR RUCKELSHAUS. THE ATTACHMENTS INCLUDE THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION'S TESTIMONY AT THE PREVIOUS HEARING ON THE ISSUES BEING DISCUSSED TONIGHT AND VARIOUS LETTERS FROM ALASKA RESIDENTS WHICH DISCUSS THESE ISSUES.

IN CONCLUSION, I WOULD SIMPLY LIKE TO REITERATE THAT DENIAL OF THESE WAIVERS, IF IT WERE TO OCCUR, WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON MY STATE -- BOTH ECONOMICALLY AND ENVIRONMENTALLY. THUS, I URGE EPA TO RE-EXAMINE ITS POSITION AND ASK WHETHER THESE IMPACTS ARE REALLY NECESSARY -- ON GROUNDS OF ENVIRONMENTAL BENEFITS, ECONOMIC CONSEQUENCES, OR AS A MATTER OF SOUND PUBLIC POLICY. THE STATE OF ALASKA REMAINS HOPEFUL THAT EPA WILL CONCLUDE THAT A DIFFERENT COURSE OF ACTION SHOULD BE TAKEN.

THANK YOU.

TESTIMONY OF  
THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
BEFORE  
THE U. S. ENVIRONMENTAL PROTECTION AGENCY  
CONCERNING EPA'S PROPOSED DECISIONS  
REGARDING  
THE TWO ALASKA PULP MILLS

MY NAME IS DOCTOR RICHARD A. NEVE', COMMISSIONER OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION. I AM HERE TODAY TO TESTIFY ON THE ENVIRONMENTAL PROTECTION AGENCY'S PROPOSED DENIAL OF THE FUNDAMENTALLY DIFFERENT FACTORS VARIANCE REQUEST FROM THE ALASKA LUMBER AND PULP COMPANY, INCORPORATED, FOR THEIR SITKA MILL, AND THE LOUISIANA PACIFIC CORPORATION, KETCHIKAN DIVISION, FOR THEIR KETCHIKAN MILL.

THE EPA'S TENTATIVE DECISION TO DENY THE MILLS' REQUEST FOR A VARIANCE IS THE RESULT OF YEARS OF COMPLEX STUDY AND TECHNICAL WORK BY BOTH THE MILLS AND THE EPA. THE EPA'S FINAL DECISION WILL SUBSTANTIALLY CHANGE OUR VIEW OF BOTH MILLS' DRAFT NPDES PERMITS AND THE STATE OF ALASKA'S CLEAN WATER ACT SECTION 401 CERTIFICATION. BOTH THE PUBLIC AND THE STATE OF ALASKA NEED ADEQUATE TIME TO EVALUATE THE RELEVANT VERBAL AND WRITTEN COMMENTS PRESENTED AT THESE HEARINGS BEFORE PROVIDING MEANINGFUL INPUT ON THE EPA DRAFT NPDES PERMIT FOR THE MILLS. THEREFORE, I PETITION THE EPA TO EXTEND THE PUBLIC HEARING COMMENT PERIOD ON THE DRAFT NPDES PERMIT UNTIL IT HAS REACHED A FINAL DECISION ON THE VARIANCE REQUEST AND THE PROPOSAL FOR A SEPARATE SUBCATEGORY FOR ALASKA.

OUR COMMENTS ON THE ESTABLISHMENT OF A SEPARATE ALASKA SUBCATEGORY OF THE PULP, PAPER, AND PAPERBOARD INDUSTRY WILL BE SENT TO ROBERT W. DELLINGER AS REQUESTED IN THE EPA'S PUBLIC NOTICE OF SEPTEMBER 23, 1983. I WILL MAIL YOU A COPY OF THAT LETTER FOR INCLUSION AS PART OF MY TESTIMONY HERE TODAY.

MY TESTIMONY, WITH THE ATTACHED WRITTEN DOCUMENTS, IS INTENDED TO HELP THE EPA AND THE ALASKAN MILLS SATISFACTORILY RESOLVE QUESTIONS SURROUNDING THE VARIANCE REQUEST. THESE WRITTEN DOCUMENTS IDENTIFY THE ITEMS WHICH MY DEPARTMENT BELIEVES NEED ADDITIONAL ATTENTION BEFORE THE EPA REACHES ITS FINAL DETERMINATION. THEY INCLUDE THE DEPARTMENT'S ANALYSIS OF THE EPA'S DECISION ON RESTORATION OF EXISTING COSTS THAT CONTRIBUTE TO ACHIEVING BEST PRACTICABLE TECHNOLOGY EFFLUENT LIMITATIONS AND A DISCUSSION OF COST ESTIMATES OF EXPANDED TREATMENT SYSTEMS THAT MAY BE NEEDED TO ACHIEVE BPT EFFLUENT LIMITATIONS.

THE EPA'S DECISION DOCUMENT DATED AUGUST 24, 1983, INDICATED THE NEED FOR BETTER QUANTIFICATION OF ADVERSE IMPACTS ON AIR QUALITY THAT WOULD RESULT FROM THE BURNING OF ADDITIONAL WASTEWATER SLUDGE. THE DOCUMENT ALSO POINTED OUT A LACK OF SUFFICIENT DATA TO IDENTIFY THE NON-WATER QUALITY ENVIRONMENTAL IMPACTS WHICH MAY RESULT IF THE VARIANCE REQUEST IS DENIED. MY STAFF HAS REVIEWED THE DECISION DOCUMENT WHICH SET THE STAGE FOR THE EPA'S PRELIMINARY DECISION TO DENY THE VARIANCE. OUR REVIEW OF THE EPA'S ANALYSIS REVEALED SOME AREAS THAT NEED FURTHER EXAMINATION BEFORE A FINAL DECISION IS MADE.

A PORTION OF THE COSTS INCURRED BY THE INITIAL EXPANSION OF THE WASTEWATER TREATMENT SYSTEMS IN THE LATE SEVENTIES HAS BEEN ESTIMATED BY THE INSTALLATION OF AN OIL BOILER. WHILE THIS MAY BE VALID TO ACCOUNT FOR THE POWER REQUIRED TO OPERATE THE WASTEWATER TREATMENT SYSTEM, THERE IS NO CREDIT ALLOWED FOR AN INCINERATOR TO BURN THE SLUDGE, THE POWER LOST IN EVAPORATING THE SLUDGE, AND, MOST IMPORTANTLY, THE COST OF CONTROLLING THE AIR POLLUTION FOR THE EMISSIONS FROM SLUDGE BURNING.

INCINERATION OF THE SLUDGE GENERATED BY OPERATION OF EXISTING SECONDARY WASTE-WATER TREATMENT CONTROLS HAS DELAYED BOTH MILLS' PROGRESS TOWARD COMPLIANCE WITH AIR QUALITY REGULATIONS. EXTENSIVE STUDIES AND THE INSTALLATION OF ADDITIONAL PROCESS CONTROLS HAVE BEEN NEEDED TO MINIMIZE THE SIGNIFICANT INCREASE IN AIR POLLUTANT EMISSIONS. ADDITIONAL CONTROLS ARE STILL NEEDED AT BOTH MILLS TO COMPLETELY CONTROL THE INCREASED AIR POLLUTION CREATED SINCE THE WASTEWATER TREATMENT PLANT SYSTEMS WERE INSTALLED IN THE LATE SEVENTIES.

THE COSTS OF THESE CONTROLS MUST BE CONSIDERED IN THE ANALYSIS OF WHETHER THE MILLS ARE BEING ASKED TO SPEND CONSIDERABLY MORE DOLLARS THAN EPA'S MODEL MILL.

A SECOND AREA THAT IS UNCLEAR IS THE ELIMINATION OF A LARGE PORTION OF CREDIT FOR THE REVISED SOLIDS HANDLING FACILITIES AT BOTH MILLS. THE REVISIONS PERFORMED AFTER THE INSTALLATION OF THE SECONDARY TREATMENT FACILITY ARE A RESULT OF THE WATER DISCHARGE REQUIREMENTS, AND SHOULD BE ALLOWED.

FINALLY, IN THE EVALUATION FOR THE COSTS OF WHAT WILL BE NEEDED TO BE INSTALLED TO MEET THE GUIDELINES TREATMENT, IT IS NOT CLEAR HOW THE ADDITIONAL SLUDGE GENERATED WILL BE HANDLED AND BURNED. IT IS POSSIBLE, HOWEVER, THAT THE ONLY VIABLE OPTION IS THE REPLACEMENT OF A POWER BOILER. IF THIS PROVES TO BE THE CASE, THEN THE COSTS TO MEET GUIDELINE LIMITS WILL NEED TO REFLECT THIS POSSIBILITY.

ALSO, THE COSTS OF ANY NEW PERMITS REQUIRED BY THE INSTALLATION OF A NEW BOILER OR SLUDGE INCINERATOR OR BY THE MODIFICATION OF AN EXISTING WOODWASTE BOILER MUST BE INCLUDED. ADDITIONAL SLUDGE BURNING WILL PROBABLY FALL INTO THE REQUIREMENTS OF A PREVENTION OF SIGNIFICANT DETERIORATION AIR QUALITY

PERMIT. THESE PERMITS CAN REQUIRE UP TO ONE YEAR OF BACKGROUND METEOROLOGICAL AND AIR QUALITY MONITORING DATA AND EXTENSIVE COMPUTER MODELING TO SHOW VIOLATIONS OF AIR-QUALITY REGULATIONS WILL NOT OCCUR ON THE NEARBY HILLSIDES. THIS ANALYSIS CAN BE VERY EXPENSIVE.

OTHER PORTIONS OF THE DECISION DOCUMENT ARE UNCLEAR BUT IT IS MORE APPROPRIATELY DISCUSSED BY THE PULP MILLS. I REQUEST THE PULP MILL REPRESENTATIVES PROVIDE SPECIFIC INFORMATION REGARDING THE ADDITIONAL COSTS IN THESE AREAS ALONG WITH PROOF OF NON-WATER QUALITY ENVIRONMENTAL IMPACTS AS REQUESTED BY THE EPA.

SINCE THE EXPANSION OF THE SLUDGE HANDLING AND DISPOSAL SYSTEM IS A DIRECT RESULT OF THE EPA'S PROPOSED DENIAL OF THE VARIANCE, PROOF THAT THE PROPOSED SOLUTION TO SLUDGE DISPOSAL WILL NOT IMPACT AIR QUALITY IS NEEDED BEFORE THE VARIANCE REQUEST IS RESCINDED. WE DO NOT WANT TO BE IN THE POSITION WE WERE IN, IN 1980, OF COPING WITH AN AIR POLLUTION PROBLEM CAUSED BY WATER DISCHARGE CONTROLS. IN FACT, THAT PROBLEM STILL EXISTS TODAY.

MY DEPARTMENT IS COMMITTED TO REQUIRING THAT BOTH ALASKA LUMBER & PULP AND LOUISIANA-PACIFIC, KETCHIKAN DIVISION, MEET THE AIR QUALITY REGULATIONS FOR THEIR PULP MILLS. WERE THERE NO WASTEWATER SLUDGE TO INCINERATE IT IS PROBABLE THE MILLS WOULD ALREADY BE MEETING AIR QUALITY REQUIREMENTS. MY DEPARTMENT IS ALSO ON RECORD AS STATING THAT WATER QUALITY NEAR THE PULP MILLS, SIGNIFICANTLY IMPROVED OVER EARLIER YEARS, WOULD NOT BE MEASURABLY BETTER AS A RESULT OF EPA'S REQUIREMENTS. THE ADDITIONAL END-OF-PIPE TREATMENT TO REMOVE BIOLOGICAL OXYGEN DEMAND BY 28 POUNDS PER TON OF PULP PRODUCED WOULD NOT RESULT IN A MARKED IMPROVEMENT OF THE WATERS NEAR THE PULP MILLS.

THE PROPOSED VARIANCE WOULD ALLOW THE PULP MILLS TO MAINTAIN A WASTEWATER DISCHARGE WITH A  $BOD_5$  LEVEL OF 75 POUNDS PER TON OF PULP PRODUCED. BASED ON OUR WATER QUALITY SURVEY IN 1980, IT IS OUR OPINION THAT THE EXISTING LEVEL OF  $BOD_5$  CONTROL IS NOT CAUSING AN ADVERSE IMPACT ON THE RECEIVING WATERS.

EVEN THE AMOUNT OF CONTROL REALIZED BY THE DENIAL OF THE VARIANCE IS MISLEADING. UNDER THE PROPOSED GUIDELINES FOR  $BOD_5$  CONTROL THE MILLS WOULD LOWER THEIR  $BOD_5$  DISCHARGE BY ABOUT 28 POUNDS PER TON OF PULP PRODUCED. THE GUIDELINES, HOWEVER, WOULD ALSO ALLOW THE MILLS TO RAISE THEIR WASTEWATER EMISSIONS OF TOTAL SUSPENDED SOLIDS IN THE WASTEWATER DISCHARGE BY ABOUT 12 POUNDS PER TON OF PULP PRODUCED. THIS OCCURS BECAUSE THE VERY ACT OF TREATMENT TO REMOVE  $BOD_5$  FROM THE WASTEWATER STREAM CREATES SLUDGE AND SUSPENDED SOLIDS.

PREVIOUS COMMISSIONERS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HAVE VOICED THIS SAME CONCERN, THAT THE REDUCTION OF BOD FROM THE EFFLUENT RESULTS IN SLUDGE TO BE BURNED AND ADDITIONAL SUSPENDED SOLIDS TO BE DISCHARGED. OUR OBJECTIONS TO PERMITS PROPOSED IN 1973 AND 1980 WERE BASED ON THAT VERY SAME POINT.

WE AS REGULATORS IN AN EFFORT TO PROTECT THE ENVIRONMENT HAVE AN EQUAL RESPONSIBILITY TO REALIZE AND CONSIDER THE EFFECTS THESE REGULATIONS WILL HAVE IN OTHER PARTS OF THE ENVIRONMENT AND ON THE PEOPLE FOR WHOM THE ENVIRONMENT WAS CREATED. IN THIS CASE, IT APPEARS TO BE A MATTER OF MINIMAL GAIN IN ONE AREA FOR AGGRAVATED LOSSES IN OTHERS. IF THE PULP MILLS WERE PROVEN TO BE DESTROYING THE WATER QUALITY NEAR THE MILLS AND IF THE SECONDARY TREATMENT HAD NOT AND WILL NOT IMPACT THE AIR QUALITY OF THE AREA, YOUR DECISION WOULD MORE THAN LIKELY BE EASIER.

IN CONCLUSION, I WOULD LIKE TO STATE THAT THE DEPARTMENT DOES NOT PRESENTLY SUPPORT THE EPA'S TENTATIVE DECISION TO DENY THE PULP MILLS' REQUEST FOR A VARIANCE. IT APPEARS TO US THAT RECENT, UPDATED INFORMATION ON THE ECONOMIC FACTORS AFFECTING THE MILLS' VARIANCE REQUESTS IS VITAL TO THE FINAL DECISION AND MUST BE GIVEN SERIOUS ATTENTION. I URGE THE EPA TO CAREFULLY CONSIDER THE TESTIMONY BEING PRESENTED HERE, AND I LOOK FORWARD TO CONTINUING OUR COOPERATIVE EFFORT TO ACHIEVE A REALISTIC RESOLUTION OF THE ISSUE OF WASTEWATER CONTROL FOR THE PULP MILLS.

THANK YOU FOR THIS OPPORTUNITY TO PRESENT MY DEPARTMENT'S VIEWS.

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF (1) TENTATIVE DECISION TO DENY FUNDAMENTALLY DIFFERENT FACTORS VARIANCE REQUESTS OF ALASKA LUMBER AND PULP CO., INC., SITKA, ALASKA AND LOUISIANA-PACIFIC CORPORATION, KETCHIKAN, ALASKA, (2) PROPOSED REISSUANCE OF NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS TO DISCHARGES TO WATERS OF THE UNITED STATES, (3) PUBLIC HEARING ON THE TENTATIVE DECISION AND THE PROPOSED REISSUANCE OF NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS, (4) STATE CERTIFICATION, AND (5) TENTATIVE DECISION TO DENY PETITION TO ESTABLISH AN ALASKA SUBCATEGORY IN THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY.

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative NPDES Permit Decisions and Tentative Decision to Deny Petition to Establish an Alaska Subcategory.

SUMMARY: The Environmental Protection Agency (EPA), Region X and the Assistant Administrator for Water, are today providing notice of (1) a Tentative Decision to deny fundamentally different factors (FDF) variance requests submitted by Alaska Lumber and Pulp Co., Inc., Sitka, Alaska (ALP) and Louisiana-Pacific Corporation, Ketchikan, Alaska (LPK), (2) proposed reissuance of National Pollutant Discharge Elimination System (NPDES) permits to discharges of ALP and

LPK to waters of the United States, (3) public hearings on the Tentative Decision and the proposed reissuance of NPDES permits, and (4) request for certification of the NPDES permits by the Alaska Department of Environmental Conservation (ADEC).

At this time, EPA is also notifying ALP and LPK that EPA is tentatively denying their petition for establishment of a new Alaska subcategory in the pulp, paper, and paperboard point source category.

DATES:

Comment Period - Interested persons may submit written comments on the Tentative Decision to deny the FDF variance requests, the proposed reissuance of NPDES permits, and the administrative record to the Region X Administrator at the address below no later than (60 days after publication). Persons wishing to comment on the Tentative Decision to deny the request for establishment of an Alaska subcategory should submit written comments to the Effluent Guidelines Division at the address below no later than (60 days after publication). Persons wishing to comment on the State Certification should submit written comments to the Alaska Department of Environmental Conservation at the address below no later than (60 days after publication).

Public Hearing - The Hearing Officer designated by the Regional Administrator will conduct a public hearing on the Tentative Decision to deny the FDF variance requests and the proposed reissuance of the NPDES permits on November 8, 1983 at 7:00 pm in Sitka, Alaska and on November 9, 1983 at 7:00 pm in Saxman, Alaska at the addresses indicated below.

ADDRESSES:

Public Comments - Send comments on the Tentative Decision to deny the FDF variance requests and the proposed reissuance of NPDES permits to: Region X Administrator, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Send comments on the Tentative Decision to deny the request for establishing a new Alaska subcategory to: Robert W. Dellinger, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, SW, Washington, D. C. 20460.

Send comments on State Certification to: Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, Alaska 99801.

Public Hearings - EPA will conduct public hearings on November 8, 1983 at 7:00 pm in Sitka, Alaska at Centennial Building, 330 Harbor Drive, Sitka, Alaska 99835 and on November 9, 1983 at 7:00 pm in Saxman, Alaska (which is near Ketchikan, Alaska) at Saxman Community Hall, Saxman, Alaska 99901.

Administrative Record - These actions are based on the administrative record available for public review during normal prevailing business hours at the offices of the Environmental Protection Agency described below. The major documents are the Tentative Decision and the Tentative Decision Support Document, which may be obtained free of charge from Messrs. Danforth Bodien and Robert W. Dellinger at the addresses indicated below in "FOR MORE INFORMATION CONTACT".

Library  
Region X  
Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101  
8:00 am to 4:30 pm  
(206) 442-1259

Alaska Operations Office  
Environmental Protection Agency  
3250 Hospital Drive, Suite 101  
Juneau, Alaska 99801  
8:00 am to 4:30 pm  
(907) 586-7619

Library  
Region IV  
Environmental Protection Agency  
345 Courtland Street, N.E.  
Atlanta, Georgia 30365  
8:30 am to 4:30 pm  
(404) 881-4216

Public Information Reference Unit  
Room 2922 (Library)  
Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460  
8:00 am to 4:30 pm  
(202) 382-5926

Copying machines are available at the EPA Libraries in Seattle, Washington, Atlanta, Georgia, and Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Further information on these actions, and requests for copies of the Tentative Decision, Tentative Decision Support Document and draft NPDES permits, may be obtained from Mr. Danforth Bodien, Region X, Environmental Protection Agency (M/S 329), 1200 Sixth Avenue, Seattle, Washington 98101 (Telephone No. (206) 442-1531) or Mr. Robert W. Dellinger, Environmental Protection Agency (WH-552), 401 M Street, SW, Washington, D.C. 20460 (Telephone No. (202) 382-7137).

#### SUPPLEMENTARY INFORMATION

##### Background

The following companies applied for reissuance of their NPDES permit to discharge pollutants to waters of the United States in March 1980.

Alaska Lumber and Pulp Co., Inc.  
Post Office Box 1050  
Sitka, Alaska 99835  
NPDES Permit No. AK000053-1

Louisiana-Pacific Corporation  
Post Office Box 6600  
Ketchikan, Alaska 99901  
NPDES Permit Number AK000092-2

ALP is engaged in the production of dissolving sulfite pulp at their facility near Sitka, Alaska. ALP discharges from two outfalls into Sawmill Creek and Silver Bay which are presently protected for the following uses according to the State's federally approved water quality standards: water supply; water recreation; growth and propagation of fish, shellfish and other aquatic life; and harvesting for consumption of raw mollusks.

LPK is engaged in the production of dissolving sulfite pulp at their facility near Ketchikan, Alaska. LPK discharges from three outfalls into Ward Cove which is presently protected for the following uses according to the State's federally approved water quality standards: water supply; water recreation; growth and propagation of fish, shellfish and other aquatic life; and harvesting for consumption of raw mollusks.

At the same time that ALP and LPK applied for reissued permits, they requested variances from EPA's best practicable control technology currently available (BPT) effluent limitations guidelines for biochemical oxygen demand (BOD<sub>5</sub>) for the Dissolving Sulfite Pulp Subcategory of the Pulp,

Paper, and Paperboard Point Source Category (40 CFR 430, Subpart K). These EPA regulations are national standards which are to be met by all point source dischargers pursuant to Sections 301(b)(1)(A) and 304(b)(1)(A) of the Clean Water Act unless the discharger obtains a FDF variance. EPA regulations provide that, upon finding factors relating to a particular discharger that are "fundamentally different" from the factors considered by EPA in establishing the national guidelines regulations, alternative effluent limitations may be established for that discharger. The criteria to qualify for such a FDF variance are contained in EPA regulations at 40 CFR Part 125, Subpart D. The procedures for handling FDF variance requests are contained in EPA regulations at 40 CFR §§124.62 - 124.63.

Today's action announces EPA's tentative decision to deny the variance requests. After the public comment period, EPA Region X will make its Final Decision. If the decision of Region X is to approve the FDF variance requests, that decision must be submitted to the Director, Office of Water Enforcement and Permits, EPA Headquarters in Washington, D.C. for concurrence. Appeals of variance decisions are governed by EPA regulations at 40 CFR §124.64.

The basis of both ALP's and LPK's FDF variance requests can be reduced to four factors claimed to be fundamentally different:

1. the lack of land and the unavailability of external power sources and the resulting necessity to produce all power requirements,
2. non-water quality environmental impacts, particularly energy requirements,
3. costs of compliance, and
4. lack of effect on receiving water quality.

Both ALP and LPK have requested, in their FDF variance requests, that the BOD<sub>5</sub> be set at 75 pounds/ton (daily average) instead of the 46.8 pounds/ton (daily average) required by the BPT effluent limitations guideline. In addition, both have requested that their new total suspended solids (TSS) limitations be relaxed from their current TSS permit limitation and instead be based on the BPT effluent limitations guideline for TSS which is 76.3 pound/ton (daily average). The FDF regulations are not applicable to the companies' requests concerning TSS, as discussed subsequently.

Finally, ALP and LPK also requested that EPA create a separate subcategory within the pulp, paper, and paperboard industry for pulp production in the State of Alaska. Both facilities are currently within the dissolving sulfite pulp subcategory (40 CFR Part 430, Subpart K). They cited non-water quality environmental impacts relating to energy and solid waste disposal as factors that would justify establishing a separate Alaska subcategory.

## Tentative Decision

### A. Requests for Alternative Limitations

#### 1. BOD<sub>5</sub> FDF Variance Requests

ALP and LPK have claimed that the lack of land and the unavailability of external power sources and the resulting necessity to produce all power requirements; certain non-water quality environmental impacts, particularly energy requirements; the costs of compliance with the guidelines; and the lack of effect on receiving water quality are individually, and in combination, factors that are fundamentally different from those considered by EPA in establishing the guidelines.

EPA has tentatively decided to deny ALP's and LPK's FDF variance requests from the BOD<sub>5</sub> effluent limitations guidelines. Detailed examination of all available information indicates that factors related to the ALP and LPK facilities are not fundamentally different from those considered in developing the national guidelines. ALP and LPK have provided data to support their claims of fundamental difference; the detailed analysis of this data is reflected in the Tentative Decision, the Tentative Decision Support Document and the administrative record.

EPA has determined that the unavailability of land for disposal of excess wastewater sludge at ALP and LPK is not fundamentally different from factors considered in the

guidelines development. When developing the national guidelines, EPA considered that some mills would have to incinerate, rather than landfill, excess wastewater solids. This technology is available to both ALP and LPK. In addition, EPA has determined that special site preparation claimed to be necessary at ALP to expand their treatment system is not fundamentally different from factors considered in guidelines development. When developing BPT effluent limitations, EPA included an engineering contingency factor to account for such situations. Second, EPA has determined that both ALP and LPK have the capability of generating sufficient electricity to enable compliance with the effluent limitations guidelines and, therefore, finds that the unavailability of external power sources, by itself, is not fundamentally different from factors considered in guidelines development. EPA has determined that, taken together or alone, none of the non-water quality environmental impacts, including energy impacts, discussed by ALP and LPK are fundamentally different from those factors considered in guidelines development.

EPA also has evaluated whether ALP's and LPK's energy, solid waste disposal and site preparation costs would result in compliance costs that are fundamentally different from and wholly disproportionate to those considered in guidelines development. EPA evaluated the costs that ALP and LPK have already expended for wastewater treatment now in place, plus the costs of any additional treatment claimed to be necessary

to attain the appropriate guidelines limitations. EPA has also factored in costs necessary to compensate for the necessity to burn excess sludge in a power boiler and the unavailability of external power sources. EPA disallowed those costs claimed by ALP and LPK that EPA found were not properly attributable to the attainment of BPT established by the guidelines. A summary of cost data appears below.

	<u>ALP</u>		<u>LPK</u>	
	<u>Capital</u>	<u>Total Annual</u>	<u>Capital</u>	<u>Total Annual</u>
	(In \$ Millions, March 1980)			
In-Place Allowed (EPA) Wastewater Pollution Control Costs to Meet Guidelines BPT	44.1	18.2	37.3	16.2
Additional Allowed (EPA) Wastewater Pollution Control Costs Necessary to Meet Guidelines BPT	<u>16.3</u>	<u>5.5</u>	<u>17.9</u>	<u>5.0</u>
Total Allowed (EPA) Wastewater Pollution Control Costs Necessary to Meet Guidelines BPT	60.4	23.7	55.2	21.2
EPA Model Mill Wastewater Pollution Control Costs Necessary to Meet Guidelines BPT	57.0	21.2	62.3	23.3

The estimated capital and total annual costs at ALP to attain the national BPT limitations are 6.0 and 11.9 percent, respectively, higher than the model mill costs developed by EPA, while the capital and total annual costs at LPK to attain the national BPT limitations are lower than the model mill costs developed by EPA. EPA has determined that the

cost of compliance with the national BPT effluent limitations guidelines at ALP and LPK is neither fundamentally different from nor wholly disproportionate to those costs used by EPA in guidelines development. Thus, EPA has not identified any factor that makes ALP and LPK fundamentally different from other dissolving sulfite pulp mills. Further, the lack of effect on receiving water quality is not a factor upon which a FDF variance may be granted. 40 CFR §125.31(e)(4). EPA is, therefore, proposing to deny the FDF variance requests and to reissue the NPDES permits for ALP and LPK based upon the effluent limitations contained in the dissolving sulfite pulp subcategory effluent guidelines.

The detailed justification of this decision may be found in the Tentative Decision, the Tentative Decision Support Document and the administrative record.

## 2. Request for Guidelines TSS Limitations

ALP and LPK have requested that their reissued permits reflect the TSS limitation in the national BPT guidelines (76.3 pounds/ton, daily average) instead of the TSS limitations in their current permits (60 pounds/ton, daily average). At various times, the companies have characterized this request as one for a FDF variance. That characterization is incorrect; FDF variances are available only from promulgated effluent limitations guidelines, not from previous permit limitations imposed under Section 302(a)(1) of the Clean Water Act.

The companies have made a special request to have the national TSS limitations incorporated into their reissued permits, apparently in the belief that 40 CFR §122.44(1) would require that the lower TSS limitation in their current permits be incorporated into their new permits instead of the higher national TSS limitation. As discussed further in the Tentative Decision, we have determined that the national TSS and BOD<sub>5</sub> limitations are not less stringent than those included in the current permits. Therefore, the prohibition in 40 CFR §122.44(1) against establishing less stringent permit limitations in reissued permits is inapplicable in this situation and the TSS limitation in the draft permits is based on the promulgated effluent limitations guidelines.

#### B. Resubcategorization

EPA is also tentatively denying ALP's and LPK's petition to establish a separate Alaska subcategory of the pulp, paper, and paperboard industry. Both facilities are currently in the dissolving sulfite pulp subcategory of the pulp, paper, and paperboard point source category (40 CFR Part 430, Subpart K). After examining the factors specified in Section 304(b) of the Clean Water Act which EPA considers when developing the subcategorization scheme for an industrial category, we have found that the factors that exist at the Alaska mills are very similar to the factors that exist at other mills in the dissolving sulfite pulp subcategory.

ALP and LPK are two of the newer mills in the dissolving sulfite pulp subcategory. Their raw wastewater flows and pollutant loadings are lower than those which formed the basis of the national BPT effluent limitations applicable to viscose grade production in the dissolving sulfite pulp subcategory. Both ALP and LPK are capable of meeting the national BPT effluent limitations through the installation and operation of biological treatment, the technology identified by EPA as the best practicable control technology currently available for the dissolving sulfite pulp subcategory. The total costs of meeting BPT at ALP and LPK are not significantly different from costs projected for similarly sized model viscose grade dissolving sulfite pulp mills. Additionally, we determined that installation and operation of available wastewater treatment technologies, including solid waste disposal and energy generating facilities, have not been shown to lead to non-water quality environmental impacts that differ significantly from those that EPA anticipated when issuing the national BPT limitations. For the above reasons, we have tentatively concluded that there is no basis for establishing a new Alaska subcategory.

#### Draft NPDES Permits

EPA has developed draft NPDES permits for ALP and LPK that require compliance with the national BPT, best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) effluent

limitations. The permits continue to require compliance with the mills' current BPT limitations, as required by the Clean Water Act. A July 1, 1984 compliance deadline will be established for the national BPT and BCT effluent limitations. (As explained in the fact sheets for the draft permits, EPA has determined that BCT will be equal to the national BPT limitations.) Finally, an immediate BAT compliance deadline will be established since the mills are already meeting the BAT limitations.

Neither ALP nor LPK are expected to be able to comply by July 1, 1984 with the national BPT/BCT effluent limitations. Consequently, through administrative orders, an amendment to the existing consent decrees, or some other enforcement mechanism, both ALP and LPK will be placed on the following compliance schedule to meet the national BPT effluent limitations. EPA specifically invites comment as to the appropriateness of this compliance schedule.

April 1, 1984 - Completion and submittal of final engineering plans.

June 1, 1984 - Commencement of construction.

December 1, 1984 - Report on construction progress.

June 1, 1985 - Completion of construction.

July 1, 1985 - Attainment of operational level.

#### State Certification

This notice will also serve as public notice of the intent of the Alaska Department of Environmental Conservation to consider certifying that the subject discharges will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act. The NPDES permits will not be issued until the certification requirements of Section 401 have been met.

#### Public Comments and Public Hearing

Persons wishing to comment on the tentative decisions relative to the FDF variance requests and the proposed re-issuance of the NPDES permits may do so in writing, within 60 days of the date of this public notice. Written comments must be received within this 60 day period to be considered in the formulation of final determinations regarding the applications. All written comments should include the name, address, and telephone number of the commenter and a concise statement of the exact basis of any comment and the relevant facts upon which it is based. All written comments should be submitted to the Region X Administrator as indicated above.

200  
5/15/83

Public hearings will be held in both Sitka, Alaska and <sup>Saxman</sup>~~Ketchikan~~, Alaska, at the times and locations as indicated earlier in this notice, to receive both oral and written testimony on the tentative decisions and the proposed reissuance of the NPDES permits.

Persons wishing to comment on the Tentative Decision relative to establishing a new Alaska subcategory should submit written comments within this 60 day period to the Effluent Guidelines Division as indicated above.

Persons wishing to comment on State Certification should submit written comments within this 60 day period to the Alaska Department of Environmental Conservation as indicated above.

It is important to note that this will be the only opportunity to comment on these matters prior to EPA's final decisions on these matters.

29 Aug. 1983  
Date

Ernesta B. Barnes  
Ernesta B. Barnes  
Regional Administrator  
EPA Region X

24 Aug 1983  
Date

Rebecca W. Hammer  
Rebecca W. Hammer  
Acting Assistant Administrator  
for Water

# ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN  
RESOURCES COMMITTEE  
JUDICIARY COMMITTEE  
FISHERIES SUB-COMMITTEE



P.O. BOX 143  
SITKA, ALASKA 99835  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4916

November 10, 1983

The Honorable William Ruckelshaus  
Administrator  
Environmental Protection Agency  
401 M Street, SW  
Washington, D.C. 20640

Dear Mr. Ruckelshaus:

I am writing to urge you to grant the variance requested by Alaska Lumber & Pulp Co. The variance would allow this pulp mill, located at Silver Bay in Southeast Alaska, to continue to operate in a productive manner. Without the variance, the mill will most likely be forced to shut down.

Currently, the mill flushes its waste into Silver Bay. EPA regulations say the mill waste should be treated and disposed. The problem is that to treat and dispose the waste is extremely expensive, not to mention that the burning of the treated waste creates air pollution.

I am a commercial fisherman. Water quality is a concern to me because it effects the fish I catch. I can assure you there is no water quality problem in Silver Bay. In fact, you can catch fish right up to the mill!

As the state senator for Sitka, the town near Silver Bay, I must urge you to grant this variance. The mill provides many jobs for the people of Sitka. Fishing and the pulp mill are our economic base. For years the two have been compatible. The variance will allow this harmonious economy to continue.

Sincerely,

Sen. Dick Eliason

Forest Service Presentation to the Senate Resources Committee,  
Alaska Legislature, Regarding  
SJR 29 -- "Supporting Variance Requests  
by Pulp Mills in Southeast Alaska"

2:30 p.m., January 16, 1984, Beltz Room, Alaska Capitol Building  
Michael A. Barton, Deputy Regional Forester

The Forest Service is pleased to provide testimony on Senate Joint Resolution 29 relating to EPA's decision to deny the Fundamentally Different Factor Variance for secondary treatment of effluent from Alaskan pulpmills. James S. Watson, former Ketchikan Area Forest Supervisor, presented testimony on this matter to the EPA at a hearing in Ketchikan on May 11, 1976, concerning secondary treatment for the Ketchikan Pulp Company. Forest Service Supervisors Gee and Green also provided testimony to EPA on the subject at two hearings in November, 1983.

The significance of the timber industry to the economy of Alaska is fully recognized by the Forest Service. At the same time, the Forest Service is in full agreement with objectives of the Clean Water Act. We believe that a healthy timber-based economy can exist within the framework of this Act.

The value of the pulp industry to the economy of Southeast Alaska has been recognized since near the turn of the century. The efforts of many Alaskans during the first half of the century were instrumental in the development of the pulp industry in Alaska during the early 1950's. Some of the original and still valid objectives are: (1) encouraging the development of Alaska, (2) the establishment of new industry with a commercially sound and permanently economical basis while providing due regard for the protection of the natural resources of Alaska, and (3) specifically for the establishment of the pulpmill industry for the efficient utilization of forest projects.

The nature and composition of the commercial forests of Southeast Alaska along with Pacific Rim markets dictate the type of industry needed to efficiently utilize the timber. Most of the timber stands are mature and overmature western hemlock with considerable defect. The optimal market for these stands is pulpwood. Without the pulp market, less than one-half of these stands would be marketable. There is no feasible economical opportunity to harvest saw logs only with such operations being silviculturally or environmentally acceptable. Integrated and balanced markets for both pulpwood and saw logs are key to sustaining the timber base economy of Southeast Alaska.

The Sitka and Ketchikan pulpmills provide the only economic outlet for pulpwood in Southeast Alaska. The plants have a total capacity of 392,000 short tons of pulp annually. Approximately 334 MMBF of logs are required each year for this production level. The material comes from National Forest, State of Alaska, and Alaska Native Corporation lands.

Closure of one or both mills will have a significant impact on Southeast Alaska and reverse decades of effort on the part of many to strengthen and diversify the economy. Well over 2,500 jobs could be lost to the Regional economy with the closure of these pulpmills.

We have recently evaluated the effects of closure of both pulp mills upon the economy of Alaska. A conservative estimate of the direct and indirect reduction in income as a result of the closure of both mills is \$147.6 million annually. This estimate assumes no alternative market for pulp logs and hemlock cant production can continue independent of pulp production.

This was derived by using the Alaska Interactive Policy Analysis Simulation System developed by the Forest Service (Pacific Northwest Forest and Range Experiment Station) in cooperation with the University of Minnesota.

Indirectly, the pulp industry has also provided benefits to Alaska and the country as a whole that exceeded the original objectives. These benefits relate to the continuing development of a critically needed ground transportation network in Southeast Alaska and the balance of payments through heavy export of timber projects from Alaska.

An example of the benefits to the transportation network is the approximately 70 miles of State highway system on Prince of Wales Island which links several island communities to the Alaska Marine Highway system. These State highways were developed by improving existing roads that were originally constructed for the harvest of timber. Currently there are about 300 miles of State highways in Alaska that were developed in this fashion, and more are planned.

Since most of Alaska's wood products are exported, indirect benefits may be more significant than the direct contribution to the Nation's economy. Alaska has historically exported many of its resource-based products in raw or semi-processed form. Logs, lumber, dissolving pulp, minerals, fish, and natural gas are the primary exports. Alaska's major trading area is the Pacific Rim, accounting for nearly two-thirds of Alaska's domestic and foreign trade. Japan is Alaska's principal trading partner, representing more than 90 percent of Alaska's foreign import/export trade. The value of forest products exported has increased roughly 65 percent since 1976, with the greatest growth in round log and pulp exports. Forest exports represent approximately one-quarter of the total value of exports from Alaska, or about \$190 million dollars in 1983.

However, Alaska is supplying less than 1 percent of the total volume of wood being used in Japan, South Korea, the Peoples Republic of China, and Taiwan. Competition from Canada and other exporting countries is keen. Purchasers of National Forest timber in Alaska must meet much higher utilization, environmental practices, and primary manufacturing requirements than those required by these competing countries. These requirements add to the cost of production, and with the current poor market situation both the long-term pulp

timber sales are at or near "base rates" with little room to absorb additional production costs. Under present markets, these two pulpmills may not be able to operate if these requirements are to be imposed at this time.

Although we foresee some improvement in markets for the next rate redeterminations on the long-term sales, there is little chance that markets will improve to the point of absorbing the construction and operating costs of the additional secondary treatment requirements being considered. To date the mills have spent approximately \$49 million for environmental protection measures.

In our statement we have avoided making judgments on the impacts of effluent discharge on water quality. We recognize that the law simply does not provide for consideration of effects on receiving waters as the criterion for granting a variance. However, requiring sizeable expenditures if there is no improvement in water quality would seem inconsistent with the objective of environmental protection as well as the efforts to improve the competitive position of the United States in world markets.



# ALASKA MINERS ASSOCIATION, INC.

*NRN  
of Yukon*

FAIRBANKS BRANCH  
P.O. Box 73069  
Fairbanks, Ak 99707

February 2, 1984

CHAIRMAN

DONALD STEIN  
105 Dunbar Avenue  
Fairbanks, Alaska 99701  
(907) 456-7642

Senator Bettye Fahrenkamp  
State of Alaska  
Pouch V  
Juneau, Ak 99811

VICE CHAIRMAN

ROGER BURGGRAF  
S.R. Box 20088  
3 1/2 Mile Sheep Creek Road  
Fairbanks, Alaska 99701  
(907) 479-2596

Dear Bettye;

SECRETARY

ROSE RYBACHEK  
P.O. Box 55698  
North Pole, Alaska 99705  
(907) 488-6453

We wanted to send you the enclosed Resolution regarding the pulp mill problem with EPA. We feel that the situation facing that industry is very similar to that facing the mining industry.

We certainly appreciate all the support we have received from you.

TREASURER

BARRY DONNELLAN  
P.O. Box 73795  
Fairbanks, Alaska 99707  
(907) 456-2309

Sincerely yours,

DIRECTORS

DEL ACKELS  
P.O. Box 2157  
Fairbanks, Alaska 99701  
(907) 452-4971

Rose Rybachek, Secretary

EARL H. BEISTLINE  
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Colligo, Alaska 99708  
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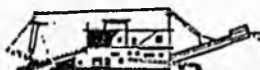
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RUDY VETTER  
P.O. Box 342  
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RUDY VETTER  
P.O. Box 342  
Fairbanks, Alaska 99707

WHEREAS: The State of Alaska is a developing state without an industrial base and must rely almost totally on the production of its natural resources for revenue, and

WHEREAS: The pulp and lumber industry is economically vital to the State of Alaska, and

WHEREAS: There is no substantial local environmental degradation to Alaskan waters as a result of the pulp and lumber industry, and

WHEREAS: Public Law 92-500 (Clean Water Act) provides the mechanism for granting a variance where there is no substantial degradation to state waters, and

WHEREAS: EPA has tentatively denied a variance to Alaskan pulp mills partially on the grounds of uniform standards, THEREFORE

BE IT RESOLVED that the Alaska Miners Association go on record as supporting the granting of a variance from EPA to Alaska's pulp and lumber mills, and

BE IT FURTHER RESOLVED that the Alaska Miners Association requests EPA to consider economic factors as outlined in the Clean Water Act when making their decision on the variance.

APPROVED 1/31/84 BY FAIRBANKS AND JUNEAU BRANCHES





STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

June 15, 1984

Dear Congressman :

I am writing to you concerning a matter of great importance to me and the people of Southeast Alaska. The House Public Works and Transportation Committee has reported unanimously an amendment in H.R.3282 which addresses the effective National Pollutant Discharge Elimination System (NPDES) permit conditions for two Southeast Alaska pulp mills. It has come to my attention that there may be an effort to remove this amendment either in a Committee substitute or on the House floor, and I am seeking your support to prevent this.

A legislative solution to this issue originally was determined necessary by the Committee because the mills' request for a waiver from guideline Best Practicable Technology compliance has been tentatively denied by the Environmental Protection Agency (EPA). EPA's administrative review of the mills' request revolves around comparison with a hypothetical "model mill". Unfortunately, EPA is precluded from considering either the mills' ability to pay for any mandated investment or the impact on water quality which the current permits allow. Both of these factors argue strongly for a legislative solution to the issue.

Absent legislative action, and if the tentative denial of the waiver request is upheld by EPA, massive new investment in water pollution control equipment would become mandatory for the two mills. Due to worldwide recession, the economic condition of the timber industry is extremely depressed in Southeast Alaska. Additionally, foreign sources of pulp products, operating without nearly as stringent environmental controls as the Alaskan mills currently have, provide competition which has shrunk the market share for American-produced products. New pollution-related investment, thus, would likely cause both mills, which are far and away the largest employers in the two cities of Ketchikan and Sitka and

The Honorable  
June 15, 1984  
Page Two

around which much of the rest of the economy of Southeast Alaska revolves, to cease operations permanently. The upheaval and economic hardships that closure of the mills would cause is incalculable in terms of human suffering. Our economists estimate that up to five thousand industry-dependent jobs would be lost if the mills closed, and this from a total employment base in the surrounding area of fifteen thousand jobs! I would not be fully committing the resources of my office to preventing this if I thought that the amendment did not afford adequate environmental protection. However, I have been assured by the State's Department of Environmental Conservation, as well as numerous other credible outside observers that the current permit conditions do afford adequate protection for Alaska's marine waters. Indeed, due to the unique geographical locations of these mills and the lack of adequate landfill for sludge disposal, further attempts at water pollution abatement will cause additional incineration of sludge waste, with potentially deleterious impacts on air quality. I have also noted that Administrator Ruckelshaus' extensive critique of H.R.3282 did not include this amendment as one of the defects in the bill from EPA's point of view.

As you can imagine, being a Democratic Governor I cannot stand by while unnecessary costs and severe economic hardship to many of our citizens in Southeast Alaska are looming if additional water pollution control requirements are imposed for no commensurate environmental protection. Thus, in light of this situation, I am asking for your help. Your support for retaining the Committee's amendment as H.R.3282 heads to the House floor is urgently needed to maintain the economic base of Southeast Alaska. Since our party has rightfully prided itself on its record of environmental protection, you can be assured that your support will also maintain needed environmental protection for Alaska's waters as well.

I hope I can count on your support. If you have any questions on this issue or desire any additional information, please do not hesitate to contact me or John Katz of my Washington, D.C. office at (202) 624-5858.

Thank you for your consideration and attention to this important matter for the people of Southeast Alaska.

Sincerely,

*/Signed/*

Bill Sheffield  
Governor

# EPA denies waivers

By the Log Staff

Southeast Alaska's pulp industry and two communities are preparing for a struggle with the U.S. Environmental Protection Agency (EPA) over tentative denial of variances from federal wastewater quality standards.

Ketchikan and Sitka are marshaling community leaders and arguments for November hearings on EPA decisions the cities believe threaten crucial local industries.

EPA regional administrator Ernesta Barnes ruled tentatively last month that Alaska Lumber and Pulp (ALP) of Sitka and Louisiana-Pacific Ketchikan (LP) would be denied variances from environmental protection requirements. The sulfite pulp mills operated by the companies would have to improve their wastewater treatment facilities if the federal agency upholds its decision.

The agency estimates the cost at \$17 million for safeguards at LP's Ward Cove pulp mill. EPA says a similar outlay would be needed for ALP's Sitka mill, but some company and business leaders say the cost could be as much as \$50 million.

The decision by Ms. Barnes overturned a 1981 ruling by former regional administrator John Spencer granting variances. Present EPA standards for the dissolving pulp plants permit discharges of as much as 75 pounds of biological oxygen-demanding substances per ton of pulp product. The standards that would be in effect with a denial of variances would reduce the permitted discharge to 45 pounds per ton. The companies face the prospects of installing secondary effluent treatment plants which would require increased power and for land or incinerator disposal of sludge. LP says the costs could increase its pulp price by as much as a third, hurting the company in competitive markets.

Both companies reportedly have talked about closing their mills rather than install treatment devices. Both say they are hard pressed because of diminishing markets and low prices. LP this month has proposed selling its pulp mill to employees through a stock option plan.

The Sitka Chamber of Commerce has said the EPA ruling could close the pulp mill and throw about 500 employees out of work. LP has implied its pulp operations in Ketchikan might cease in the face of the EPA order, though no one at the company has said it

outright. But in the words of LP's controller in Ketchikan, Martin Pihl, "In today's economic environment the monies just aren't available for any significant additional expenditure."

The EPA will hold public hearings on the tentative decisions Nov. 8 in Sitka and Nov. 9 in Saxman, south of Ketchikan. A Nov. 7 hearing in Seattle will precede the local meetings. Ms. Barnes will attend the hearings with Ron Kreizenbeck of the agency's Juneau office. Kreizenbeck said EPA will also bring along technical experts, including a pulp and paper scientist. An administrative law judge will conduct the hearings.

In Ketchikan recently, LP officials met with nearly a hundred community leaders to prepare for the Saxman hearing. Pulp mill manager Ed Fisher told the gathering the environmental agency had changed its guidelines and now based them on money spent for water quality protection equipment, rather than on the former standard of improved water quality. He said the agency was basing its decision that LP didn't meet the standard for a variance on a hypothetical model mill's pollutant discharge and anti-pollution devices.

Pihl said the two pulp companies seek either variances or a new category for Alaskan mills under EPA statutes. Pihl cited higher costs of anti-pollution equipment and of power in Alaska than for the agency's model mill, the lack of land for plant siting and sludge disposal and the absence of impact on the ocean from the mill's disposal.

Pihl noted that both mills had made progress in reducing pollutant discharge since the EPA reduced thresholds in 1976, but at the cost of many millions of dollars. But the agency did permit the pulp mills to install equipment for pollution reduction at a smaller price than originally thought and over a longer time. The agreements with the agency followed heated, emotional public meetings.

Fisher told Ketchikan leaders an "emotional outpouring" wouldn't help the companies this time. He said the local hearing in Saxman should be an opportunity for the community to present facts to the federal agency.

"The EPA, in this hearing, is not concerned that someone's business will go 30 percent if the mill closes," Fisher said. "It will be interested solely in the facts surrounding the variance request."

# EPA grants waivers

By GREGG POPPEN  
Log Staff Writer

Three Southeast Alaska communities this September became the first in the U.S. to receive permission from the Environmental Protection Agency (EPA) to discharge their sewage effluent without secondary treatment.

The waivers mean significant cost savings to these communities and other Southeast cities are hoping to gain the same advantage.

Sitka, Skagway and Wrangell won EPA waivers that will allow them to discharge sewage into salt water after primary treatment. The coastal communities had applied in the late 1970s for exemptions from the federal Clean Water Act. The approval came last month from EPA regional administrator Ernesta Barnes in Seattle. Ms. Barnes said the cities had "made convincing showings that their sewage effluents, with less than secondary treatment, will not harm the waters into which they are discharged."

Ms. Barnes said the waivers were granted because the discharge won't affect public water supplies, marine life or recreational activities or violate state water quality standards. The waivers are good for five years and EPA requires the water to be monitored for renewal requests.

Skagway and the city filed for the waiver in

1979 and sued the environmental agency along with several other Southeast coast cities, said city manager Skip Elliott. Free legal help was provided by the Pacific Legal Foundation, he said. Cities argued that rules requiring environmental impact statements for waiver requests were "discriminatory and costly" to small communities. The EPA counter-sued for non-compliance with Clean Water Act standards after changes in environmental law last year, he said.

The city, with a population of 761, built a secondary treatment plant in 1979.

"At its best-phase operation the plant just did not work," said Elliott. "We were spending \$12,000 to \$15,000 a month trying to reach the EPA requirements. Because it was so expensive and didn't work the City Council blew up at the EPA" and sued. He said operation of the primary treatment plant, discharging effluent into Taiya Inlet, will cost Skagway about \$1,200 a month.

"We were trying to get the EPA to look at pollution as more than just a mathematical equation from behind their desks in Washington, D.C.," Elliott said. The Alaska Department of Environmental Conservation (DEC) supported the city in its suit and its attempt to find "a realistic, workable and

# Waivers

Continued from page B-12

minimal treatment" for small communities, he said. "There's no industrial waste here, and there's little actual sewage per receiving water. DEC helped convince the judges that EPA standards are not responsive to small communities."

Skagway and Wrangell will screen and discharge their sewage under the waivers. Wrangell's population of about 1,800 has a secondary treatment plant, but city manager Joyce Rasler said it has modified the facility for screening and outfall discharge into Zimovia Strait. She said Wrangell too will save thousands of dollars a year because of the waiver.

Sitka and Ketchikan were not involved in the suit against the EPA. Neither city has previously had a sewage treatment plant, though Sitka will finish its new plant by the end of this month and Ketchikan is moving toward final design of its own.

Sitka, however, has received an EPA waiver and its plant will provide primary treatment. City engineer Larry Harmon said the design can be modified for secondary treatment if needed. But Harmon said that would add 50 percent to the cost of the \$7.8 million primary plant. The Sitka sewage treatment will add clarifying and other physical and chemical processes to its primary plant.

"If you have the right conditions you can use the simple primary treatment," Harmon said. "But you have to prove to the EPA that you can meet their standards for the receiving water. We felt screening alone wouldn't work." Sitka's effluent goes into Middle Channel in Sitka Sound.

Harmon noted that the city had to submit

environmental studies of the sound with its waiver request. The EPA said in approving the waivers for the three cities that the qualities of the marine waters that would receive the discharges was crucial.

Ketchikan city manager James Van Altvorst said the city is hoping for an EPA waiver to permit discharge of effluent into Tongass Narrows after primary screening treatment.

Of the active tidal area, Van Altvorst said, "It's our contention the treated effluent will not degrade the Tongass Narrows. It will in fact improve it." He said Ketchikan now discharges its untreated sewage into the Narrows through eight outfalls.

The city is planning to build a treatment plant "that presumes a waiver," said Van Altvorst, with potential for adding on secondary treatment if a waiver is denied. But with more than \$10 million in grants pledged from the state and federal governments for the more expensive plant originally planned, the city doesn't want to start construction of a \$3 million plant. Grant money not needed for construction would be reclaimed when a construction contract is signed, and if the waiver is denied the city would be several million dollars short of its need for a full-scale secondary plant.

Ron Kreizenbeck of the EPA's Anchorage office said the tentative decision on the Ketchikan waiver request is several weeks away. He said some of the conditions for the city's waiver are different from other cities. "The big difference between those granted waivers and Ketchikan is the population and the proximity of beaches and homes."

He said public hearings would be held if the EPA turns down Ketchikan's request.

# Whale watch planned

By RANDI SULKIN

Staff Writer

Besides keeping track of whale activity, volunteers will also keep records of the

SJR

31

# Opinion

## JUNEAU EMPIRE

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# Sea World project is worthwhile

Several years ago, the National Marine Fisheries Service and the National Park Service ran into a serious problem. The humpback whales that had frequented Glacier Bay National Monument (now a national park) had all but disappeared, and they didn't know why. In fact, they didn't know much at all about the huge marine mammals.

The disappearance of the whales sent NMFS and the Park Service scrambling. Did an increase in tour ship traffic cause the whales to leave? Did the whales simply leave because they found food elsewhere? Years of research later and after manipulating the tour ship traffic in the bay, they still don't have all the answer; to these and other questions.

That's what ignorance gets you: intelligent guesses but little else.

Just as the humpback whale is something of a mystery to scientists, so too is the killer whale, also called the orca. Until a couple of decades ago, orcas were considered mindless marauders of the sea. It was only after they were captured that scientists began to learn about them, discovering that they are highly intelligent animals and can even be trained.

Unfortunately, two decades ago, so little was known about them that many orcas died as they were rounded up in areas of Washington state's Puget Sound.

Those practices have been stopped by the federal government, and any activities involving orcas are now closely supervised and take place only after public hearings and close scrutiny of permit applications by the National Marine Fisheries Service.

The Hubbs-Sea World Research Institute has received a permit from the National Marine Fisheries Service to study killer whales and to capture 10 from Alaska waters off Southeast Alaska, Prince William Sound and Kodiak during the next five years. The whales, which will be breeding age, will go to new homes at the Sea World parks in San Diego, Calif.; Aurora, Ohio; or Orlando, Fla., where new, larger facilities are already under construction especially for them.

Sea World is thought of as an entertainment park, but it is much more. In the field of marine mammals, for example, Sea World pioneered the captive breeding of smaller animals such as bottlenose dolphins.

Now, its scientists hope to breed orcas for the first time in captivity, but that requires "pods" of 4-10 members to be established at its facilities. Right now, the facilities simply do not have enough breeding-age killer whales to attempt it, hence the need for several more.

Without the ability to capture more orcas, there can be no attempt at captive breeding.

With it, it is possible the captive killer whale population can become self-sustaining, negating the need to take any more animals from the wild — ever.

The breeding program is only a part of the research effort. Scientists will observe the animals in the wild through most of the summer, gathering information on their behavior. The only time they will get near them will be for the actual capture, in which they will use a net nearly a mile long to encircle the pod. The animals will be measured, blood samples taken and other tests done in conjunction with scientists from Alaska and elsewhere. The entire effort will last three hours at most. Then, all the killer whales will be released except for those chosen for the breeding project.

Sea World and aquarium detractors say no sea animals should be kept in captivity, but that position refuses to acknowledge the expanded knowledge and appreciation of marine life gained by the millions of visitors to places such as Sea World. Anyone who has ever been to a Sea World facility knows it is not only a top-flight form of entertainment but a world-renown research organization.

Before the Alaska Legislature is a pair of resolutions regarding the killer whale capture. Although much of the extraneous — and inaccurate — language in the resolutions is apparently an attempt to malign Sea World and to stop or delay the project, the bottom lines call for Sea World to comply with the National Marine Fisheries Service permit, work with the Alaska Department of Fish and Game and repay the state for costs it encounters in observing Sea World's work.

The extraneous and inaccurate language aside, the resolutions would only reiterate the conditions of the permits and the wishes of Sea World to cooperate fully with the state to assure the project's success.

We urge legislators to find out about Sea World for themselves before accepting generalizations and accusations that are less than well-founded.

We believe that after they have been exposed to the facts, legislators will agree that the research project is well worth the effort and the \$1.5 million Sea World is ready to invest in it.

It will expand the extremely limited knowledge of killer whales, and it will possibly end the need to capture wild killer whales by pioneering a captive breeding program.

DON YOUNG  
CONGRESSMAN FOR ALL ALASKA

WASHINGTON OFFICE  
2331 RAYBURN BUILDING  
TELEPHONE 202/725-5763

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July 13, 1983

Mr. Richard Roe  
Acting Director  
Office of Protected Species and  
Habitat Conservation  
National Marine Fisheries Service  
National Oceanic & Atmospheric Adm.  
Washington, D.C. 20235

Dear Dick:

It has come to my attention that you have under consideration a permit which would allow Sea World, Inc. to take killer whales for scientific research and public display under the authority of the Marine Mammal Protection Act. I request that you act expeditiously to grant the permit.

The project proposed by Sea World will have no adverse effect on killer whale populations in the Pacific Ocean. Only a small number of whales will be removed from the ocean and the remainder will only be taken (as the MMPA defines the term) for a short period of time. The project will provide an excellent research platform for scientists interested in killer whale research. In addition, the Sea World research and captive breeding programs will offer an excellent opportunity to increase the information base available on these animals. I see no reason why this project - which has been supported by scientists and the general public - should not go forward.

I understand that you have recommended that a public hearing be held in Seattle to discuss the permit application. While I do not object to giving the public the opportunity to comment, I seriously question the choice of Seattle as a location for the hearing. If any hearing is to be held, it should be in the area that will be affected by the research project. While I recognize that the need for quick action precludes further hearings in this instance, future policy of your office should include recognition of local needs as well as national needs. Hearings on this application should have been scheduled for Alaska, not Seattle.

I appreciate this opportunity to comment and trust you will resolve the permit problem quickly.

Sincerely,

  
DON YOUNG

Congressman for all Alaska

APR 2 1984


DY:rhm

# North Slope Borough Health and Social Services Agency

Box 925  
Barrow, Alaska 99723

(907) 852-2383

LMD:tjh  
Ser: 373  
3 June 1983



Director  
National Marine Fisheries Service  
U.S. Department of Commerce  
Washington, D.C. 20235

Dear Sir,

This letter is being written in support of the proposed research project submitted to you by Sea World Enterprises Inc., 7 March 1983, regarding killer whales (Orcinus orca). Much of what is believed to be known at present regarding cetaceans in actuality is speculation based upon casual observations. It is imperative that research be conducted on such mammals for the long term benefit of not only the species being studied but also for related species.

Current knowledge regarding killer whales in the areas of population size, reproductive capabilities, age/growth relationships, genetics, sexual distribution, blood/chemistry values, and effects of environmental pollution (to include noise) is totally inadequate. As you well know, current knowledge of a species is necessary for proper management and the eventual survival of that species. If such information is not thoroughly gathered we may witness, or cause through our own ignorance, the premature disappearance of that species.

Many of my reasons for adamant support of Sea World's proposal stem from the current research on the bowhead whale being conducted through Dr. Tom Albert, Barrow, Alaska. The conditions through which the bowhead project is being conducted make it virtually impossible to gain adequate information for management in a period of time favorable to all concerned. The conditions to which I am referring are climatic, governmental, and resident human population on the North Slope.

If one species of great cetaceans could be studied thoroughly the information gained could conceivably be inferred to others. It would at least improve existing conditions.

The present population size and composition of orcas is unknown. Size/age relationships in the wild population are only speculative.

APR 2 1983

Current genetic concepts are as undefined in the killer whale as they are in the bowhead. Blood/chemistry values of the wild species have not been adequately documented, nor have the effects of environmental pollution and noise.

Baseline data are critically needed in all these areas. How else can one judge the meaning of fluctuations in population size or pod composition when such information has not been collected in the past for reference? The same holds true for the other parameters discussed.

I urge you to favorably consider the proposal presented to you by Sea World Enterprises dated 7 March 1983.

Respectfully,

*Leslie M. Dalton*

Leslie M. Dalton, D.V.M.  
Public Health Officer/NSB

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

February 21, 1984

SUBJECT: Use of joint resolution  
(SJR 31)

TO: Senator Vic Fischer

FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

You have asked whether, in a fact situation in which a joint resolution was introduced addressing both state and federal agencies and it was later determined that the resolution be addressed to only state agencies may a committee substitute or sponsor substitute so amended continue to be a joint resolution.

In my opinion this would be permitted.

Resolutions are covered in Rule 49(a) of the Uniform Rules of the Alaska State Legislature. Under paragraph (3) it is stated that a concurrent resolution is used to request action of executive agencies and under (5) it is stated that a joint resolution is used to express the wish or view of the legislature. No specific provision is made for addressing both state and federal agencies.

The joint resolution is the more formal since it is treated in all respects as a bill except for the veto while a concurrent resolution does not require the full enactment procedure. In a mixed resolution it is necessary that a joint resolution be used since part of the material requires the more formal procedure.

If the resolution were amended so that it only is addressed to state agencies in my opinion the amendment would be proper and would not require that the resolution be converted to a concurrent resolution.

Senator Vic Fischer  
Page 2  
February 21, 1984

There are specific matters in which the use of a joint resolution or a concurrent resolution is mandated. In my opinion in the fact situation involved here use of a concurrent resolution is not mandated since compliance with the more formal procedure necessarily includes compliance with the less formal and the language of the rule which applies is quite general.

BGB:ojb  
J3/116



UNIVERSITY OF ALASKA, FAIRBANKS  
Fairbanks, Alaska 99701

13 March 1984

Senator Vic Fischer  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Vic:

I have been very much disturbed by your telephone call yesterday. Your charge that Dr. Lanny Cornell has acted dishonestly and the suggestion that I have had, at the least, poor judgement have caused me to examine once again my positions and statements regarding the killer whale - Sea World affair. I can not escape the conclusion that it is altogether a bizarre phenomenon, a model of media exploitation.

Consider for a moment what has been put to the Alaskan public: "a California amusement park of dubious reputation has been issued a permit to capture 100 killer whales in Alaskan seas for public display and profit. The permit was issued by a federal agency, the National Marine Fisheries Service, without consultation in Alaska and without adequate knowledge of the populations in question." What conclusion can be anticipated from the Alaskan public other than alarmed and righteous rejection?

Regrettably, the truth has been severely stretched and the accusations do not stand up to scrutiny. It has been my wish to express and to substantiate what I know of the facts in an effort to set the record right and to achieve some semblance of fairness. Naturally, there are risks in taking a view which has been rendered unpopular. And, of course, my own motives come up for question.

Please let me briefly review what I know. I have worked in collaboration with and with support of Sea World for the 20 years of its existence, and I claim to have knowledge of their operation, their commitment to quality of displays, education and science. I have never been on their payroll. I am not a Sea World stockholder, and I have absolutely no relation to their management and business. I have stated that Sea World is a world leader in what they do and that they have developed and set the standards for oceanaria everywhere.

Far from avoiding Alaskan consultations, their representatives have repeatedly visited the state. They have met with administrative, native, academic and other groups in Alaska. They actively sought to have the permit hearings held in Alaska and were refused that opportunity for reasons which are unclear to me. The removal of not more than 10 killer whales over 5 years, which the permit calls for, is based upon the most conservative determinations of population abundance. The proposed research program, while obviously of value to Sea World, is also an unprecedented opportunity for marine scientists and for the State of Alaska to expand our knowledge of these animals and their environment.

So much for a quick review of my position. Turning now to your specific allegations... I have known Dr. Cornell and I have worked with him for several years. He enjoys an excellent reputation, and I am fully satisfied that he is a man of integrity, honesty and sincerity of purpose. You indicated yesterday that he had (1) denied State of Alaska authority and contradicted his earlier testimony and (2) accused you of "playing politics with the killer whale issue." You also questioned my motives and my judgement in relation to my statements and testimony. Surely you would not deny both Dr. Cornell and me a chance to respond.

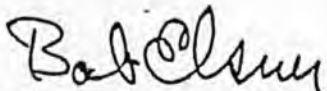
I confronted Dr. Cornell yesterday by telephone with your charges. He, of course will speak for himself, but he most emphatically stated, as he has to me repeatedly, that he has great respect for your efforts to seek a compromise position. He fully supports the revised senate resolution which you have drawn up. His suggestions of political manipulation were not directed at you. As for the state's authority, Dr. Cornell has to my knowledge always insisted that the cooperation of the State of Alaska was essential for the success of the project. Indeed such is stated in the Senate resolution to which he has agreed. Frankly, I believe that what you refer to is yet another misunderstanding in a long sequence which have over and over again clouded this issue. Can we not, as rational men, find some common ground of comprehension and good will in which to achieve goals providing benefits to all concerned participants - Alaska, Sea World, our knowledge?

My motives are to support a professional and scientific approach to needed new knowledge of our Alaskan Marine Frontier upon which societal decisions can be based. I have repeatedly stated that I will take part in the proposed killer whale research, although that represents a minor part of my research program. I agree with your admonition that my participation must always be crystal clear to avoid the suggestion of hidden and dissembling motives. I assure you that I will make every effort to do so. Please recognise, however, ~~that~~ the extent and profit from that participation is vanishingly small. Still, I defend it and I am willing to see it exposed to scrutiny.

Finally, I should like to tell you of an event which illustrates better than long, tiresome discussions just what Sea World's contribution to public education is. In recent days two dolphins have given birth in their San Diego establishment. The mother-infant pair is on public display in an underwater viewing tank where thousands of people can witness nursing and other maternal care activities without disturbance to the animals. It is difficult to imagine a more significant and more deeply moving medium for providing public appreciation of those marine species with whom we share this globe. Such appreciation should be of special value to Alaskans, since we are lucky enough to live in a region unequalled in the wealth and diversity of our marine mammal inhabitants, killer whales included.

Please be assured of my enthusiasm for whatever initiatives may be required to produce a resolution of this issue and to move ahead to realise its promise.

Respectfully,



Robert Elsner  
Professor of Marine Science

(Postscripts on following page.)

PS. I think that the suggestion that I had written to Washington, to which you alluded, comes from the fact that a copy of my earlier letter to Representative John Ringstad was sent to the National Marine Fisheries Service. It was in fact sent to the Juneau office, not to Washington.

I wish to point out another indication of the professional credibility of the Hubbs-Sea World Research Institute. Their director, Dr. William Evans, has recently been appointed - pending congressional confirmation - to be chairperson of the Marine Mammal Commission. That appointment also speaks for the independence of HSWRI from the Sea World business organization.



UNIVERSITY OF ALASKA, FAIRBANKS  
Fairbanks, Alaska 99701

19 March 1984

Governor William Sheffield  
State Capitol  
Pouch A  
Juneau, Alaska 99811

Dear Governor Sheffield:

The matter of the proposed capture of killer whales near the south coast of Alaska has attracted an unusual amount of attention and publicity. The purpose of this letter is to convey to you my concern for what I regard as a considerable misunderstanding of the intentions and goals of the California oceanarium, Sea World, and to indicate my support for the anticipated capture activities and associated research program.

The Sea World organization has been given a permit by the National Marine Fisheries Service to temporarily hold up to 100 killer whales. From these animals, which will be retained for no more than several hours, two each year, a total of ten, would be taken into permanent captivity. A research program would be undertaken on those temporarily held and upon those permanently retained. All of these activities would be preceded by an observational study of killer whale population abundance, composition and distribution to supplement what is already known.

In my opinion, the proposed studies and captures have been planned with extraordinary efforts to avoid unnecessary environmental disturbance. Sea World has tried to foster full cooperation with Alaskan interests, notably the Alaska Department of Fish and Game. I have been involved directly with the research planning, I am a member of the Scientific Advisory Board which has been established by Hubbs-Sea World Research Institute for the purpose of over-seeing the killer whale investigations and I am a member of the proposed research team. Seventeen marine mammal scientists from 12 institutions will take part in that program. It represents an unprecedented opportunity for us to learn more about the biology, ecology, behavior, physiology and life history of this relatively unknown species. The results of these studies can not fail to benefit the people of the state of Alaska in terms of new knowledge pertaining to wise management of our rich marine environment.

Sea World will benefit also, of course, but it would appear to me to be an opportunity lost if we fail to take part in this enterprise. Several unfortunate misunderstandings have arisen in connection with the planned killer whale captures. Some of these problems relate to the manner in which the permit was awarded. Sea World officials have repeatedly visited Alaska over a period of several years. They have met with Fish

APR 8 1984

UNIVERSITY OF ALASKA

Governor Sheffield

19 March 1984

Page Two of Two

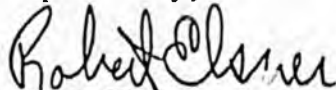
and Game personnel, University of Alaska, native groups and others for various collaborative activities and in an attempt to explain their wishes regarding killer whales. They actively sought to have the public hearings related to the permit procedure held in Alaska, but that request was denied and the hearings were held in Seattle last September. That regrettable situation has given credence to the suggestion that Sea World has wished to avoid encounter with Alaskan legislators, administrators and the public. The evidence points in the opposite direction, but much damage has been done to their credibility.

I have been working in collaborative research programs with Sea World personnel intermittently throughout the 20 year history of that organization, earlier while I was a member of the research staff and faculty of Scripps Institution of Oceanography and subsequently during the 11 years while I have been on the faculty of the University of Alaska. In my view Sea World has throughout its history shown an unselfish devotion to research on marine mammals. Many reputable scientists as well as advanced students have thereby had available to them resources and assistance which would otherwise be impossible to obtain. Sea World has established the highest standards for animal capture, maintenance in captivity and educational display. They are, in fact, the world leaders in this field. Many millions of Americans, including thousands of Alaskans, have visited Sea World. In this manner Sea World has become responsible in large measure for the current appreciation and awareness among the public of significant features of the marine environment.

In addition to Sea World's accomplishments in display and research, a notably successful and unique captive-breeding program has been developed. That program is so successful, in fact, that the need for further capture of dolphins in the wild has been eliminated. One of the primary purposes for the proposed killer whale capture is the initiation of a similar captive breeding program with that species.

For the various reasons stated, I believe that every effort should be taken to foster improved communication and understanding among the federal, state and public groups sharing an interest in the killer whale issue, and that we should proceed to share in the benefits to be realized. The extensive hearings are a matter of public record, and the conditions imposed within the NMFS permit appear to exercise conservative safeguards and control. Sea World officials have repeatedly stated their willingness to work closely with the State of Alaska in re-affirming and providing assurance that those restrictions will be formally and deliberately adhered to.

Respectfully,



Robert Elsner

Professor of Marine Science

SUMMARY

SEA WORLD, INC. KILLER WHALE (ORCINUS ORCA)  
SCIENTIFIC RESEARCH AND PUBLIC DISPLAY PERMIT

After three years of study and preparation and nine months of public, government and scientific review, Sea World, Inc. was issued a permit by the National Marine Fisheries Service (NMFS) under the authority of the Marine Mammal Protection Act of 1972 to collect killer whales (Orcinus orca) for the purposes of public educational display, captive breeding and scientific research.

The permit authorizes the collection of an average of two killer whales per year from Alaskan waters over a five year period - a total of 10 whales - for public educational display and propagation in Sea World's facilities in San Diego, California, Orlando, Florida and Aurora, Ohio.

Killer whales occur in groups or pods. As the two animals a year are collected, an unknown number of associated animals - probably less than 10-20 a year - will be encountered. The second portion of the project as approved by NMFS will allow recognized scientists from a number of universities such as the University of Alaska and other research institutions to detain some of these additional animals for a brief period to conduct important, nonharmful research. This research is in part responsive to and supportive of the recommendations and policies of the International Whaling Commission.

The killer whales selected for maintenance at Sea World will be merged with its current captive population. This will allow Sea World to establish in all three facilities social units comparable to the four- to ten-member pods frequently found in the wild and considered to be the primary breeding unit. Sea World expects these groups to become reproductive. This expectation is based on several years of documented study on whales and a pilot propagation program with dolphins and other marine mammals which has culminated in the successful breeding of 27 bottlenose dolphins (Tursiops truncatus) at Sea World and dozens of seals and sea lions. Sea World also currently has a pregnant beluga whale.

PUBLIC DISPLAY AND CAPTIVE BREEDING

This portion of the permit authorizes the collection of a total of 10 killer whales over a five year period from Alaskan waters. An average of two animals will be collected per year. Of the 10 animals removed, approximately two to three will be males

and approximately seven to eight will be females. All will be juveniles and young adults between 340 cm and 550 cm (approximately 11 feet to 17 feet) long. These animals will be merged with Sea World's animals and maintained in Sea World's facilities in San Diego, California, Orlando, Florida and Aurora, Ohio. The Sea World objective is two-fold: to establish a captive breeding program and to continue to maintain public educational display schedules for the rapidly increasing attendance at Sea World (nearly 7 million visitors in 1983 and an estimated 10 million for the year 1990).

### Captive Breeding Program

In 1981 scientists at Sea World began to develop plans for a killer whale breeding program. The program rationale and approach are based on its highly successful breeding program which has resulted in live births of 27 bottlenose dolphin calves since 1977. (Sea World has five more pregnant bottlenose dolphins and one pregnant beluga whale in San Diego.) During the formative stages of this dolphin breeding program some theorized that marine animals could not be expected to reproduce in captivity in significant numbers. Sea World commenced its breeding program and proved the capability in just a few short years. The total number of births at Sea World is greater than the combined births at all other facilities in the U.S. during the 1977-1983 time frame.

From the data available on killer whales in the proposed study area, it appears that an average pod contains about four to six individuals. Under the program, Sea World would establish a small colony of five or six animals of varying sex and age classes in each of its facilities. We are convinced that such groupings will enhance social adjustment, breeding and educational display.

Until recently, Sea World's female killer whales have not been old enough to reproduce. We have only recently observed the beginning of sexual activity. One male killer whale is currently of breeding size and age, and several females are approaching sexual maturity. Hopefully these animals will be the first to conceive and reproduce successfully. They and the newly collected animals will form a core group for the breeding colonies.

Sea World scientists are confident killer whales can successfully reproduce in a Sea World environment. The program is designed to be self-sustaining as are the current bottlenose dolphin, California sea lion and harbor seal populations at Sea World.

Sea World will be able to maintain educational display schedules and its commitment to the public, as well as its responsibility to science and the species' reproduction in captivity.

## Public Display

In the space of two decades, Sea World has had an unparalleled impact on public awareness of marine mammals. This is due entirely to the public display of these magnificent animals and educational programs based on their physical presence. It is impossible to convey on paper the thrill and joy people experience as they touch the smooth skin of a killer whale and feel the warm air rush from its blow. These experiences - and Sea World offers many different kinds - foster a deep and unforgettable bond which serves to endear the animals of the sea to mankind. No movie, TV program or book could have such a profound effect.

Since the opening of the first small park in San Diego in 1964, Sea World has hosted nearly 75 million visitors. In the last 10 years alone, Sea World has shown an attendance increase of over 10 percent each year. Sea World's formalized educational program "Exploration Breach" has taught dozens of marine life programs to over 1.5 million students since its inception in 1972. A program coordinator for the Orange County Public School System in Florida wrote in recent correspondence, "We are dependent upon Sea World to provide marine biological programs. During May of 1983 alone, over 20,000 students were involved from the state's educational institutions."

Sea World provides continuing education programs, conducts a preceptorship program for veterinary medical students and offers an impressive range of programs for the mentally, visually or severely handicapped. Sea World has been the recipient of numerous educational and graphics awards and was rated by the Stanford Research Institute as "the world standard, against which all others of its kind are measured," adding that it is "superior from a family perspective in every way."

## NON-HARMFUL SCIENTIFIC RESEARCH

Killer whales to be studied under the permit will be examined in the field. Killer whales can be found as solitary individuals but are usually in groups ranging from 4-20 animals. The encirclement of such a group offers an opportunity for research which would otherwise be wasted.

An International Whaling Commission (IWC) workshop on killer whales held in 1981 (IWC 32: 617-694) stated in one of its reports: "...noting that chromosomal and biochemical studies may yield information concerning stocks and populations of killer whales, the meeting recommends that such studies be undertaken for all killer whales currently in captivity, and, whenever opportunity exists, to conduct studies on stranded and harvested whales in the wild."

Sea World has already conducted such studies with captive killer whales as well as other marine mammals and wishes to encourage these and other important studies of free-ranging killer whales coincidentally with the collection of animals for public display.

The National Marine Fisheries Service permit allows for the restraint of up to 90 animals for a length of time necessary to conduct the benign research activities for which the animals are selected. Some of the data collection procedures require only a few minutes. Other procedures require several hours. All will be conducted boatside or on the science vessel and the whale subjects released immediately afterward.

The permit reflects various requirements and restrictions, some of which are:

- 1) The collection over a five-year period of an average of two animals per year (for a total of 10 animals) for public educational display and captive propagation.
- 2) The authority to conduct important, nonharmful scientific research on up to 90 additional animals encircled in the nets coincidentally during the five-year collection effort. A specific number of animals for each research activity is defined. Some studies require further review and authorization from the Assistant Administrator of the National Marine Fisheries Service in consultation with the Marine Mammal Commission and the State of Alaska.
- 3) Animals incidentally encircled for research might be examined up to two times, but not more than once in each calendar year. Previously studied animals may be restrained, measured, blood-sampled, remarked if necessary and may have radiotelemetric packs removed or changed if necessary.
- 4) The permit must be reviewed and reauthorized by the Assistant Administrator for Fisheries in consultation with the Marine Mammal Commissioner annually.
- 5) The permit requires suspension of all activities in the event of any mortality. Any animal that dies will be considered taken under the 10 authorized for public educational display and captive propagation.
- 6) The permit prohibits the taking of any pregnant, nursing or unweaned animals.
- 7) Detailed status, annual and thorough research and activity reports will be submitted.
- 8) In addition, annual meetings will be held to define future goals and examine data produced by the research project.

A number of scientists and organizations will be associated with the research conducted under this permit. Among these are: Dr. John Burns, Alaska Department of Fish and Game; Dr. Robert Elsner, University of Alaska; Dr. John Hall, Anchorage Alaska; Mr. Kenneth C. Balcomb, Ocean Research Education, Gloucester, Massachusetts; Dr. Deborah Duffield, Portland State University; Dr. Colin M. Bloor and Francis C. White, University of California, Dr. Dan Costa, University of California, Santa Cruz; Dr. Sam Ridgway, Naval Ocean Systems Center, San Diego, CA; Mr. Stephen Leatherwood, Hubbs-Sea World Research Institute, San Diego, CA; Dr. Bruce Mate, Oregon State University, Newport, Oregon, Dr. Bernd Wursig, Moss Landing Marine Laboratory, Moss Landing, California; and Dr. Lanny H. Cornell, Sea World, San Diego, California.

SJR 31



March 19, 1984

The Honorable Bettye M. Fahrenkamp  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I thought you might be interested in the enclosed letter which is the result of our last meeting with Alaska Department of Fish and Game personnel. The letter clearly states Sea World's position on the killer whale project and our commitment to cooperative effort with the State of Alaska, continuing a relationship which in the case of some of our people dates more than 20 years. In 1983 over 21,000 Alaskans visited Sea World parks in California, Ohio and Florida. It would appear from these numbers that Alaskans have a longstanding relationship with Sea World as well.

We look forward to a continuing relationship with the Alaska Department of Fish and Game and with the legislature as well. Hopefully, Alaska will soon regain management of at least some marine mammals under authority of the Marine Mammal Protection Act.

We at Sea World hope to be able to continue assisting the State in any way possible in the conduct of research, the use of our animals as models for research as we have so frequently done in the past, or in gathering information to help Alaska make management decisions. We appreciate Alaska's unique environments and animals and the need to learn about them.

If you have any questions regarding this project or Sea World, please do not hesitate to contact me.

Sincerely,

Lanny H. Cornell, D.V.M.  
Sr. Vice President/  
Zoological Director

MAR 21 1984

# Sea World

March 12, 1984

Don W. Collinsworth  
Commissioner  
Alaska Department of Fish and Game  
Old Taku Twin Theater Building  
8th and Egan Streets  
Juneau, Alaska 99802

Dear Mr. Collinsworth:

As you know, the Sea World killer whale collecting/research project is divided into three phases:

Phase I - Observational research to establish population numbers, pod composition and range to the extent possible.

Phase II - Actual collection - purse seining killer whales to collect one or two animals each year for public display and captive breeding research.

Phase III - Hands on research on some of those animals encircled ccidental to Phase II. Phase III research will include (but not be limited to):

A) 50-500cc of blood for hematology, blood chemistry, genetic studies and analysis for pollutants (heavy metals, pesticides, etc.)

B) Morphometrics.

C) Cryogenic marking as needed to establish identifications for sighting by fishermen, etc.

D) Tooth extraction on 1 to 5 animals each year for Hubbs-Sea World Research Institute and National Marine Fisheries Service tooth aging study.

E) Such tests as Alaska Department of Fish and Game deem needed and are compatible with the limitations of Permit No. 439.

As we have discussed with the Alaska Fish and Game staff, Sea World and the Hubbs-Sea World Research Institute will begin

Don W. Collinsworth  
March 12, 1984  
page two

the Phase I research as called for in the National Marine Fisheries Permit and as agreed with the Alaska Department of Fish and Game. Phase I research will begin in April and continue through September each year for the 5-year period of the project. Thus at the end of this project considerable observational information will be available to the Alaska Department of Fish and Game and National Marine Fisheries Service as well as the rest of the scientific community.

During the course of each summer, and again at the end of each year, the Hubbs-Sea World Research Institute will submit the data to your office. As we have discussed with your staff, although the National Marine Fisheries Service view is that the Marine Mammal Protection Act supersedes state authority for all marine mammals, Sea World will voluntarily seek state authorization prior to the onset of Phase II and Phase III. Thus just as the National Marine Fisheries Service federal permit requires population data to be submitted prior to authorizing actual collection, so will Sea World assume that the state desires to be part of the authorization process as well. And we will await such authorization prior to commencing actual collecting.

As you know, Sea World's history of cooperation with the Alaska Department of Fish and Game dates back to 1961. We will continue to cooperate in every way possible in the future as well.

Sincerely,



Lanny H. Cornell, D.V.M.  
Sr. Vice President/  
Zoological Director

LHC/ld  
cc: D. Kelso  
L. Pamplin  
P. McGuire

SJR 31

# SOLACE ENTERPRISES

P.O. Box 4885  
Anchorage, Alaska 99510

March 15, 1984

Governor William Sheffield  
Office of the Governor  
Third Floor, State Capitol  
Pouch A  
Juneau, Alaska 99811

Dear Governor Sheffield:

I am writing you today as a deeply concerned marine mammal scientist. My letter concerns what I fear has become an emotionally pitched situation regarding the proposed killer whale capture by Sea World Inc., and associated research by Hubbs Sea World Research Institute. As a killer whale researcher since 1969 and resident of Alaska since 1975, I find the extreme misconceptions regarding the proposed program very disturbing. We all, lay and professional alike, agree that we know very little about the role of killer whales in the Alaska region marine ecosystem. These large carnivores likely have a dynamic impact on the ecosystem as well as a direct need for large amounts of food in order to grow and thrive.

From results of the existing Alaska region killer whale data base we know that a minimum of 239 killer whales spend at least a portion of the year in the three areas of Alaska we have information on (Southeast, Prince William Sound and Shelikof Strait). Based on these minimum counts the National Marine Fisheries Service has decided that, using IWC policies as guidelines and input from scientists and interested members of the public, the population is sufficient to allow Sea World Inc. to take an average of 2 killer whales per year (not more than 10 total) from Alaskan waters for display and breeding program purposes.

MAR 21 1984

The resulting program proposed by Sea World and the Hubbs Sea World Research Institute was developed with three major themes in mind. These themes are:

1. In accordance with the stipulations of the NMFS permit, conduct, at the outset, further population studies using completely passive (benign) research techniques of observation and photographic documentation of killer whales in the three study areas. Develop an interim report documenting the results of the population studies, and present the report to the NMFS for review prior to receiving authorization from the NMFS for capture activities.
2. After obtaining authorization from the NMFS (based on completion of No.1 above), conduct live capture operations for killer whales in Southeast, Pr. William Sound or Shelikof Strait, with the primary purpose of removing an average of 2 killer whales per year (total not to exceed 10) for display and breeding program purposes.
3. Using well accepted scientific research techniques described in the permit, conduct research on those killer whales incidentally captured and later released (not to exceed a total of 90 killer whales over the 5 year period).

These are, as I read the federal permit and understand the extensive conversations I have had with Sea World and Hubbs Sea World Research Institute professionals, the goals of the proposed activities.

A great deal of unfortunate misunderstanding and misconception has arisen concerning the entire program. Having listened to much testimony by both professional and interested lay persons, I believe the misconceptions fall into three main categories:

A. Need for killer whale research in Alaska region waters.

I believe the vast majority of both professional and lay people involved to date agree that we simply do not know as much as we should about how killer whales fit into the Alaska region marine ecosystem, and what impact these largest of porpoises have on that ecosystem. Response by many apparently well meaning people has been to suggest that we can gain enough information through the use of passive techniques and that the proposed research program will not use passive techniques.



As I have pointed out, Sea World must, according to the NMFS permit, conduct passive population level studies and report the results of those studies to the NMFS prior to NMFS authorization to begin capture activities. Thus you can see that passive studies are indeed an integral and required part of the overall research program.

In addition, I think it obvious that we cannot, with any validity, conduct passive observation programs during those critical and extensive portions of the year when the majority of killer whales are away from the protected waters of Southeast or Prince William Sound. We must know what the annual movements of killer whales in our region are if we are to better understand how this species fits into the marine ecosystem. We cannot look at killer whale activities only during the calm, convenient summer months and presume that these activities represent accurately the behavior and movements of the populations throughout the rest of the year. Fortunately telemetric techniques are available to help us understand the long term movements of killer whales. In order to utilize these well established techniques, we must be able to handle the animals for a short while in order to instrument them.

I also believe the other proposed research techniques are equally well established and important if we are to better understand this species of marine mammal. I think Mr. Jay Hair, Executive Vice President of the National Wildlife Federation, the world's largest private, not-for-profit conservation organization, with more than four million members, in his June 13, 1983 letter to the NMFS summed up very nicely the need for the proposed research program. Mr. Hair said, "Sea World Inc., seeks to conduct important field studies on killer whales, which are neither threatened nor endangered, a species for which little population and life history information exists." Mr. Hair further said, "The applicant, through the Hubbs-Sea World Research Institute and the assistance of qualified university researchers, is well equipped to conduct the proposed studies. We are especially encouraged that the applicant proposes to conduct telemetry, growth and gut contents studies on killer whales, although we note that few of the 90 animals proposed for capture and release will be part of these important studies. Much more information would be gained by conducting the full range of these benign procedures on the greatest number of killer whales practical." Mr. Hair concluded by saying, "We conclude that the research proposed by the applicant will add significantly



to the data base on killer whales and will further clarify the status of the species off the West Coast. The future of this species hinges on the accumulation of research information such as that proposed by the applicant. For these reasons the National Wildlife Federation requests that the National Marine Fisheries Service grant the permit for taking for research."

B. Need for State of Alaska permits.

A great deal of discussion has centered on the need for State of Alaska permits prior to the onset of activities by Sea World. As I understand the language of the NMFS permit and the Marine Mammal Protection Act of 1972, the existing federal permit is all that is legally required at present for the applicant to conduct activities, at least in federal waters. While no state or federal permit is required to photograph and observe killer whales as long as the animals are not harassed, I am under the impression that the applicant has, since at least 1977, been working closely with the present and former Commissioners of Fish and Game in order to be sure that State of Alaska fish and wildlife resource interests are heeded and that Fish and Game officials are kept well informed of all proposed or intended activities.

C. Need for captive killer whales for display and breeding program purposes.

Some people who have had the extreme good fortune to be able to see killer whales in the wild have suggested that there is little educational value to observing killer whales in captivity. This seems to me to be an incredibly short sighted and selfish view for that tiny minority of Americans to take. The vast majority of Americans who wish to learn of and appreciate the uniqueness of marine mammals have an exceptional opportunity to view first hand these fine animals in professionally run oceanaria such as Sea World. The millions of people who annually visit marine parks would never have had an opportunity to see, touch, feed or appreciate whales and pinnipeds if those parks did not exist. Films, even fine ones such as produced by Jacques Cousteau, pale before an opportunity to make eye contact with killer whales or touch the strangely soft, smooth skin of a bottle-nose porpoise.



I think it will be terribly short sighted and selfish if we Alaskans, representing only about 0.2% of the population of the rest of the United States, should refuse to allow activities that have been determined to be in the best interests of the entire nation. Governor Sheffield, as an Alaskan and marine mammal scientist, I urge you to support this effort to learn more about killer whales, both in the wild and in a professionally run oceanarium.

Sincerely,

*John D. Hall*

John D. Hall, Ph.D.  
President

JDH:hje



DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802  
PHONE:

July 6, 1983

Mr. Robert B. Brumsted, Chief  
Permits and Documentation Division  
U.S. Department of Commerce  
NOAA/NMFS  
Washington, D.C. 20235

Dear Mr. Brumsted:

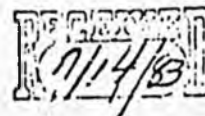
The following comments pertain to a scientific research and public display permit application submitted to your agency by Sea World, Inc. (application P2M). Taking of up to 100 killer whales would be authorized with up to 10 actually being removed from the wild. It is our understanding that most of the proposed research involving taking (as defined in the MMPA) as well as the capture and removal of whales would occur in waters adjacent to Alaska.

The Department of Fish and Game recommends approval of the Sea World, Inc. application. Killer whales are an important and highly visible component of the marine fauna of our waters. Nonetheless, relatively little is known about these magnificent animals. It is important that basic information about habitat preferences and utilization, movement patterns, food habits, and stock identity be obtained. The Federal Government is now on an accelerated leasing schedule of the outer continental shelf, for purposes of petroleum exploration and production. It is very important that basic biological information about living resources that use those lease areas be obtained.

We foresee a steady reduction in Federal and State funds available for biological investigations of our marine areas. Sea World, Inc. appears willing to underwrite, at least in part, scientific research which has applicability to issues raised by development of the outer continental shelf. We fully recognize that significant benefits will also accrue to Sea World in the form of gate receipts generated by killer whales they capture and maintain for public display. The trade-off, however, appears acceptable especially in view of the number of killer whales occurring in waters near Alaska.

One condition of the permit that we request is that approval of the State of Alaska must be obtained prior to any effort by Sea World, Inc. to take killer whales in State waters, under the broader authority of a Federal permit. There are many reasons for this, not the least of which is to avoid conflicts within designated State sanctuaries or marine

APR 2 1984

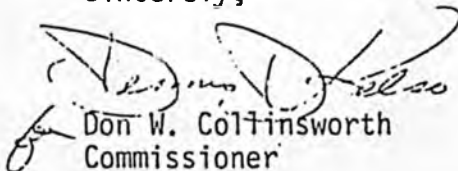


July 6, 1983

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mammal viewing areas. Additionally, there are other areas where the work might be interpreted as harassment of killer whales and might result in strong opposition from our citizens. Killer whales have an important role in the religious and social systems (e.g., clan totems) of peoples of some cultures within Alaska.

Thank you for the opportunity to comment.

Sincerely,

  
Don W. Collinsworth  
Commissioner

cc: John Burns, ADF&G  
C  
C

CENTURY ENGINEERING, INC. CONSULTING ENGINEERS • PLANNERS

June 16, 1983

Mr. Robert B. Brumsted  
Protected Species Division  
National Marine Fisheries Service  
Washington, D.C. 20235

Dear Mr. Brumsted:

I am writing you today with regard to the Marine Mammal Permit Application submitted by Sea World, Inc. to take by live capture, up to 100 killer whales, Orcinus orca, in the waters of Alaska and California over the next 5 years.

I am, though not surprised, disappointed at the recent outcry from certain elements of the marine mammal research community over this proposed activity.

As an eight year resident of Alaska with significant killer whale research in Prince William Sound (and resulting publications) under my belt, I believe it is incumbent upon the Secretary of Commerce, in conjunction with the NMFS and the Marine Mammal Commission, to endorse and expedite this matter to the maximum extent possible.

I have known, both as professional colleagues and personal friends, scientists and administrators of Sea World for the past 16 years. They have uniformly, and to an individual, placed the health and welfare of the animals they were working with foremost in their priorities. They have always been most cooperative and supportive of the research interests of professional colleagues, myself included.

When public sector funding or facilities for aspects of my marine mammal research was not available, Sea World has consistently stepped forward to provide support so the research might be continued. In 1969, when the Naval Undersea Center facilities at Pt. Loma in San Diego were still under construction, Sea World made available a killer whale and tank, and all associated support, so that I might conduct the behavioral audiogram work leading to our first understanding of killer whale hearing abilities. In 1976, when continuation funding from the Marine Mammal Commission was withdrawn before I was able to complete testing of the gastric lavage I designed for use on marine mammals, Sea World stepped forward and made available several porpoises, sea lions and support personnel, so that the lavage might be tested and perfected.

In 1977, when funding from NOAA was not available to conduct the summer aerial surveys I thought necessary in Prince William Sound, Sea World financed an extensive mid-summer effort, at considerable expense to themselves, in order that I might provide the Dept. of the Interior with a more complete picture of the summer cetacean distribution in Prince William Sound.

These are but three personal examples of the outstanding efforts by Sea World, Inc., and its employees, to assist with marine mammal research at considerable cost and risk to themselves.

With the current significant reduction in public sector funding for marine mammal research, it seems even more imperative that the offer by a private sector source to fund highly important research, designed to meet the needs specified by the IWC, be accepted and allowed to proceed unimpeded.

I think most of us in marine mammal research would agree that it is extremely unlikely that any specimen collection activities regarding sacrificed killer whales will be permitted in the foreseeable future. Yet most workers would also agree that measurement of life history parameters critical to the successful management of the species is necessary. It would appear that one of the best ways to accomplish the necessary research, without sacrificing animals, would be to conduct non-destructive research on captive animals. The research and display program proposed by Sea World in their permit application would meet the criteria of non-destructive testing, and in addition would be conducted and overseen by the most professional and dedicated captive marine mammal staff, with the very best holding facilities, in the world.

To deny this permit application, in light of our critical need for additional killer whale information would, it seems to me, be not unlike shooting ourselves in the foot. I think we will find it very difficult to make scientific progress with a serious foot wound.

Sincerely,

CENTURY ENGINEERING, INC.



John D. Hall, Ph.D.  
Senior Ecologist

JDH/css

cc: Mr. John Twiss

June 10 1983

To: Bob Brumstead  
Acting Chief  
Division of Endangered Species and Marine Mammals  
NMFS  
Dept. of Commerce  
Washington D.C. 20235

6/17/83

From: CRAIG MATKIN  
North Gulf Oceanic  
Society  
Box 156  
Cordova, AK  
99574

Dear Dr. Brumstead

Excuse the hand written letter. I am currently in the field and do not have access to the typewriter.

I write concerning Sea World's application to take killer whales in Alaskan waters. I have a background of marine mammal research having done my M.S. research under Dr. Francis Fay at the University of Alaska on Marine Mammal-Fishery Interactions in Alaska and having completed several contracts for humpback whale research in Prince William Sound since that time. I have produced several papers concerning killer whales in the Prince William Sound - Copper River Alaska area and Puget Sound.

I feel Sea World's proposed project is feasible and would greatly advance research in the area. I have personally desired increased attention to the study of killer whales in the Prince William Sound region and this would seem a good opportunity for the initiation of that research. I believe capture operations should be closely monitored, however, I believe the opportunity exists to obtain animals without a large risk to the health and well-being of those animals.

I would support granting of research/capture permits as outlined in the Sea World application. An opportunity exists for carefully controlled capture and research and it should be taken.

Sincerely,  
Craig Matkin

APR 2 1984

APPENDIX 6  
KILLER WHALES KEPT CAPTIVE<sup>1</sup>

NAME	SEX	SIZE		CAPTURE DATE	PLACE <sup>2</sup>	POD <sup>3</sup>	AQUARIUM <sup>4</sup>	STATUS	FINAL SIZE		TIME CAPT
		length (cm)	weight (kg)						length (cm)	weight (kg)	
1 No name	F	521	1,557	11/61	NH, CA	—	Marineland, CA	D* 11/61, gastroenteritis, pneumonia	521	1,857	1 day
2 Moby Doll	M	467	—	7/64	SI, BC	—	Vancouver, B.C. (held at Burrard Drydocks)	D 10/64, drowning (exhaustion?)	467	1,034	3 mos
3 Nanu	M	655	3,600	6/65	N, BC	—	Seattle, WA	D 7/66, clostridial enterotoxaemia	—	—	1 yr
4 Shamu	F	410	1,090	10/65	CI, WA	—	Sea World, CA (first at Seattle, WA)	D 8/71, pyometra, septicemia	544	—	6 yrs
5 Skana (Walter)	F	427	1,360	2/67	YH, WA	K	Vancouver, B.C. (first at Seattle, WA)	D 10/80, fungus	—	—	13½ y
6 Ramu	M	406	1,000	2/67	YH, WA	K	Sea World, FL (first at Seattle, WA)	Alive as of 8/80	—	—	13½ y
7 Kilroy	M	290	390	2/67	YH, WA	K	Sea World, CA (first at Seattle, WA)	D. ?/79, pneumonia?	—	—	12 yrs.
8 Katy	F	249	270	2/67	YH, WA	K	Seattle, WA	D. 5/67	—	—	3 mos
9 Kandu	F	312	700	2/67	YH, WA	K	Sea World, CA (Seattle, Wa. until 12/69)	D. 6/71, liver necrosis, pneumonia	442	—	4 yrs.
10 Orky	M	427	1,814	7/67	PtH, B.C.	—	Marineland, CA	D. 7/69, pneumonia (influenza?)	512	2,250	2 yrs.

\*D = died

<sup>1</sup>Includes all orcas kept for exhibition or research, plus those kept for more than a month with the intention of exhibition, even if they were later released or escaped; also includes orcas born in captivity.

<sup>2</sup>See Appendix 5 for full place names and capture data.

<sup>3</sup>According to Michael A. Bigg's system of letter designations for B.C.-Washington population of killer whales. "?" indicates that designated pod was present at the capture in the company of orcas from unidentified pods which may have been among those taken captive.

<sup>4</sup>See Appendix 7 for full names and addresses of aquariums that have exhibited killer whales.

11. Lupa	F	549	2,495	2/68	VB, WA	—	New York, NY	D. 9/68, respiratory ailment	—	—	7
12. Hugo	M	399	900	2/68	VB, WA	—	Miami Seaquarium, FL	D. 3/80, aneurysm of the brain	700	4,536	12
13. Hyak	M	500	1,800	2/68	PH, B.C.	—	Vancouver, B.C. (held at Pender Harbour)	Released 2/69	—	—	1
14. Irving (Skookum Cecil)	M	600	3,600	4/68	PH, B.C.	—	Vancouver, B.C. (held at Pender Harbour)	Escaped 8/68	—	—	4
15. Natsujalia	F	579	—	4/68	PH, B.C.	—	Vancouver, B.C. (held at Pender Harbour)	D 11/68, heart failure	—	—	7
16. Hyak (II) (Tung Jen)	M	290	450	4/68	PH, B.C.	—	Vancouver, B.C. (first at Pender Harbour)	Alive as of 10/80	—	—	12
17. Corky	F	401	1,150	4/68	PH, B.C.	—	Marineland, CA	D 12/70, mediastinal abscess	501	—	2
18. Orky (II) (Snorky)	M	511	—	4/68	PH, B.C.	—	Marineland, CA	Alive as of 10/80	—	—	12
19. Kianu	F	579	2,722	4/68	PH, B.C.	—	Shirahama, JAP. (Marine World, CA until 4/78)	D. 6/80	—	—	12
20. Bonnie	F	610	2,946	4/68	PH, B.C.	—	Marine World, CA	D. 7/68, stillbirth	—	—	3
21. Tula	M	399	—	7/68	MI, B.C.	—	Dolfinarium, NETH	D. 10/68, fungus (external)	—	—	3
22. Ishmael	M	518	2,041	10/68	YH, WA	P	U.S. Navy, HI	Escaped 2/71	—	—	2
23. Alah	M	579	2,495	10/68	YH, WA	P	U.S. Navy, HI	D ?/74	—	—	5
24. Hank	M	427	1,452	10/68	YH, WA	P	Sealand, B.C.	Alive as of 10/80	—	—	12
25. Mamma	M	399	1,361	10/68	YH, WA	P	Sea World, TX	D 6/74	—	—	5
26. Cookie	M	399	—	10/68	YH, WA	P	London Zoo, GB Farmingdale, N.Y., U.S.A. until 1977	D. 4/74 streptococcal pneumonia, enteromyelitis and colitis	—	—	5
27. Nana	F	427	—	4/68	CI, WA	—	Marineland, CA	D 5/77	—	—	1
28. —	F	427	—	4/68	CI, WA	—	Seattle, WA	D	—	—	—