

ALASKA LEGISLATURE COMMITTEE FILES 1985 - 1986 8672

4222.14 SRES CORRESPONDENCE (file 2)

195

(C) \$70,000,000 during each of the third, fourth, and fifth fiscal years;

(D) \$40,000,000 during the sixth fiscal year; and

(E) \$30,000,000 during each of the next five fiscal years.

(2) Four percent interest per annum, which is authorized to be appropriated on any amount authorized to be appropriated by this paragraph that is not appropriated within six months after the fiscal year in which payable.

(3) \$500,000,000 pursuant to the revenue sharing provisions of section 9.

(b) None of the funds paid or distributed pursuant to this section to any of the Regional and Village Corporations established pursuant to this Act shall be expended, donated, or otherwise used for the purpose of carrying on propaganda, or intervening in (including the publishing and distributing of statements) any political campaign on behalf of any candidate for public office. Any person who willfully violates the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than twelve months, or both.

(c) After completion of the roll prepared pursuant to section 5, all money in the Fund, except money reserved as provided in section 20 for the payment of attorney and other fees, shall be distributed at the end of each three months of the fiscal year among the Regional Corporations organized pursuant to section 7 on the basis of the relative numbers of Natives enrolled in each region. The share of a Regional Corporation that has not been organized shall be retained in the Fund until the Regional Corporation is organized.

Fund expenditures for propaganda or political campaigns, prohibition. Penalty.

Distribution.

REGIONAL CORPORATIONS

SEC. 7. (a) For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment at this Act into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

- (1) Arctic Slope Native Association (Barrow, Point Hope);
- (2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);
- (3) Northwest Alaska Native Association (Kotzebue);
- (4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);
- (5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);
- (6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);
- (7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);
- (8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);
- (9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);
- (10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);
- (11) Kodiak Area Native Association (all villages on and around Kodiak Island); and
- (12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Alaskan Treaty - 1986?

The following resolution was presented at a convention of the Alaskan Federation of Natives and was co-sponsored by the Alaskan Native Brotherhood and United Tribes of Alaska.

The word is that a bill to consider this resolution is currently under consideration by Congress and is expected to be voted on soon.

Congressman Young of Alaska was quoted in the June/July issue of the AFN Newsletter as saying "as amendments are drawn up, we have to take into consideration the possibility of outside influences on the legislation. It (the legislation) has to be drawn carefully so that it is only referred to the interior committee on the house side.

AFN SPECIAL CONVENTION RESOLUTION NO. 35

WHEREAS, Alaska Natives should have the option to determine whether or not village lands including townsite lands should be reconveyed to tribes rather than state-chartered municipalities; and

WHEREAS, the State of Alaska has construed its constitution so as to preclude the State from dealing with Alaska tribes on a government-to-government basis.

NOW THEREFORE BE IT RESOLVED by the Alaska Federation of Natives in Convention assembled, that the Convention endorse the concept that ANCSA should be amended to provide that as a threshold matter ANCSA and any amendments thereto are and shall continue to be Indian legislation.

BE IT FURTHER RESOLVED that Alaska Natives, acting through their village corporations, traditional tribal councils or their Indian reorganization Act Councils shall have the option to adopt any of the following provisions.

1. No provision of ANCSA should be construed as enlarging, diminishing or in any way affecting the scope of any governmental powers of Alaska Native tribal governments.
2. All inherent governmental powers, and all provisions of the 1934 Indian Reorganization Act, as amended, which as of the date of passage of ANCSA, applied to Alaska Native tribes (including groups of Indians, Eskimos or Aleuts), shall continue in full force and effect thereafter notwithstanding Section 704(a) of the Act of October 21, 1976 (which repealed Secretarial authority to proclaim new reservations).
3. No provision of ANCSA shall be construed as abridging in any way the governmental powers of Alaska Native tribes either over their members or over any areas of "Indian Country" (as defined in 18 U.S.C. 1151) within their respective jurisdictions.
4. No provision of ANCSA or any other law shall be construed as in any way im-



A Native Role In Resource Management

by Vernita J. Zilys, Director
Subsistence & Natural Resources

There is a short paragraph in *Village Journey* by Judge Tom Berger (page 163) which carries great potential for change in the way fish, game and other resources have been managed in Alaska. The words are not fancy; however, their meaning has prompted an outcry among people who oppose a greater degree of self-determination for Alaska Natives:

"Simply put, the members of Alaska Native tribes ought to have exclusive hunting and fishing rights and jurisdiction over Native lands and waters, and shared rights and jurisdiction over state and federal lands and waters. There are precedents that have been successful elsewhere."

Berger goes on to cite several examples of Native co-management of resources. Included are treaty fishing rights

blood. They continue to visit each other regularly, often trade resources, and hunt and fish together. During a trip to five villages in the Northwest Territories in April 1985 with representatives of the International Porcupine Caribou Commission, I witnessed touching reunions between IPCC Alaskan members and their Canadian relatives and long-time friends.

Although those reunited share family names, relatives in common, and have traditionally hunted, fished and gathered the same resources, there is a very real difference in the degree to which each Native group is given a voice in the management of fish and game. Even a brief reading of the Western Arctic Claim tells any reader that the Canadian Inuit have learned a good lesson from the Alaska Native Claims Settlement Act. Their agreement contains pages and pages of stipulations that assure the Inuit do not merely "participate" in resources management, but enjoy harvesting rights far beyond those of their neighbors to the west, Alaskan Inupiat.

For example, the position of the Canadian territorial government with respect to allocation of resources is about 180 degrees opposite to the state of Alaska. One little clause of the Western Arctic Claim, barely two lines long, says it all: 12.(41) (d) states, "the allocation of the Inuvialuit quotas amongst themselves shall be the responsibility of the Inuvialuit."

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



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"Simply put, the members of Alaska Native tribes ought to have exclusive hunting and fishing rights and jurisdiction over Native lands and waters, and shared rights and jurisdiction over state and federal lands and waters. There are precedents that have been successful elsewhere."

Berger goes on to give several examples of Native co-management of resources. Included are treaty fishing rights in the state of Washington which allow Washington Indians to take up to fifty percent of "the harvestable catch" of salmon in waters covered by the treaties; the James Bay Agreement of 1975 which provides that the Inuit of Northern Quebec should exercise jurisdiction over hunting, fishing and trapping of certain wildlife and fish; and the Western Arctic Claim of 1984.

These agreements have something in common: they all recognize that Natives have a right to jurisdiction over resources that do not necessarily live on Native lands, especially resources which they have "always used." For Alaska Natives who have, since statehood and before, become used to the idea that other people (including state and federal agencies) manage fish and game, even on Native-owned lands, what Berger says is startling. For people who do not recognize or accept the concept of even limited Native sovereignty, what he says is outrageous.

How outrageous is this concept? I thought it would be neat to look at one of the examples Berger cites and see for myself whether Native management of fish and game is so far-fetched. I read "The Western Arctic Claim" (the Inuvialuit Final Agreement), which was signed on July 25, 1984.

The Inuvialuit people are Eskimos of the Northwest Territories, next-door neighbors, friends and relatives of the Inupiat people of Alaska. There are people in Aklavik and Inuvik who are related to people in Barrow, Kaktovik and Fort Yukon. Though now politically separated by the United States/Canada boundary, these people are united by

Native Role in Resource Management (continued from page 6)

which of the communities included in the Western Arctic Claim can hunt polar bear and how many each can take.

An Inuvialuit hunter also has the right to decide whether he will take the polar bear for subsistence, or guide a non-Native on a sports hunt. This is important because either way, the Native appears to win; he can take the bear for subsistence and sell the whole hide as a rug (receiving perhaps \$2,000 in Canadian dollars), or cut it up to make handicrafts, or keep it for himself. Or, he can choose to conduct a sports hunt, charging a non-Native up to \$15,000 Canadian, and still keep the meat because most non-Natives do not eat polar bear meat.

The Canadian system of joint fish and game management with a strong decision-making role for the Inuvialuit is impressive. It obviously took many years of negotiations, but the document that outlines the Western Arctic Claim clearly defines the right of the Inuvialuit to have a say about every aspect of their lives, from subsistence to land use planning, to who should benefit from their claim in the future. They have made good use of their advantage over Alaska's Natives, that is, they have examined the Alaska Native Claims Settlement Act and included the best parts, while rejecting

blood. They continue to visit each other regularly, often trade resources, and hunt and fish together. During a trip to five villages in the Northwest Territories in April 1985 with representatives of the International Porcupine Caribou Commission, I witnessed touching reunions between IPCC Alaskan members and their Canadian relatives and long-time friends.

Although those reunited share family names, relatives in common, and have traditionally hunted, fished and gathered the same resources, there is a very real difference in the degree to which each Native group is given a voice in the management of fish and game. Even a brief reading of the Western Arctic Claim tells any reader that the Canadian Inuit have learned a good lesson from the Alaska Native Claims Settlement Act. Their agreement contains pages and pages of stipulations that assure the Inuit do not merely "participate" in resources management, but enjoy harvesting rights far beyond those of their neighbors to the west, Alaskan Inupiat.

For example, the position of the Canadian territorial government with respect to allocation of resources is about 180 degrees opposite to the state of Alaska. One little clause of the Western Arctic Claim, barely two lines long, says it all: 12.(41) (d) states, "the allocation of the Inuvialuit quotas amongst themselves shall be the responsibility of the Inuvialuit."

In case you are wondering how that clause translates from the abstract acceptance of the ability of Natives to allocate fish or game, to the practical exercise of such a right, we should now take a look at how polar bear are managed on either side of the U.S./Canada border.

In the United States, polar bear are included in the Marine Mammal Protection Act. According to this federal law, polar bear are managed by the federal government until and if the state government should decide to apply to take over management of polar bear or the other nine species of marine mammals covered by the MMPA. According to the Act, Alaska Natives have exclusive rights to hunt polar bear — they are exempt from the part of the Act that prohibits the hunting of polar bear.

However, it is the federal government that decides how many polar bear can be taken in a given season, and the federal government that decides which communities will get which amount of the federal quota. In addition, there are severe restrictions on the way in which polar bear can be used. Alaska Natives who take a polar bear for subsistence cannot sell the hide as a rug because they are told this is not a traditional use of the hide. They may cut up the hide and make handicrafts and sell those.

In Canada, the Northwest Territorial government works directly with the Inuvialuit Game Council to decide together how many polar bear can be taken without hurting the total population. Once this decision is made jointly, the government steps out of the picture, and the IGC decides

(continued on page 7)

I am sure that Tom Berger knew how his recommendations would be met in Alaska. But the recommendations are the only ones he could possibly have arrived at, given the strong expressions of dissatisfaction we find echoing through the transcripts of the hearings he held in the villages and in Anchorage. The courage with which he incorporated these recommendations into his report of the findings of the Alaska Native Review Commission must be matched by the courage it will take for Alaska Natives to pursue their implementation.

Of all of the recommendations contained in Chapter 7 of *Village Journey*, the brief paragraph I quoted at the beginning will be most important. It is imperative that Alaska Natives hold closely their right as aboriginal occupants of Alaska's lands and original users of fish, game and other Alaskan resources to maintain ourselves physically, culturally and economically, now and in the future. As Berger stated in his book, "Native governments are also essential if Native peoples are to defend subsistence. The State of Alaska is unable to defend Native subsistence; municipalities will not do it and the corporations cannot do it."

Yupit Nation pushes for legislation to clarify tribal government laws

February 15th, a nine-man delegation from the Yukon Kuskokwim Delta will journey to Washington D.C. to begin lobbying for amendments to various Indian laws which would further clarify tribal government rights and powers.

This decision was the result of a two-day "Wangkutnek Aulukelkarpuk" (Self-Determination) Conference held in Akiachak January 17th and 18th by the Yupit Nation. The conference was attended by approximately 100 people from 21 tundra villages.

The purpose of the conference was to provide information gain support and provide opportunity for discussion and clarification of Resolution 35. This resolution was defeated for inclusion in the 1991 legislation by AFN in 1984, and was placed in committee for study at this year's convention. The intent of Resolution 35 is to strengthen tribal government through clarification, and reaffirm the Secretary of the Interior's authority to accept land into trust for Alaskan Natives, among other things.

As a result of the Yupit Nation's Conference, a nine-member Board of Trustees was selected to act as a working committee to lobby the United States Congress for passage of Resolution 35 legislation. Other plans of action will be to gather support from within the region first, and then to inform and gather support from other tribes in the state. A media campaign to inform people of the issues

which holds fee simple title. The fact that land is owned in fee simple by a tribe makes the Non-Intercourse Act, 25 U.S.C., Section 177, applicable, so that conveyance may not occur without congressional approval. Accordingly, it is necessary to waive those protections and limitations for tribes to have complete freedom to choose the terms under which their land is held.

A section of the Indian Reorganization Act would be amended to further the idea that the tribe holds land in trust for its members; alienation of tribal lands would require approval by two-thirds of all members authorized to vote in tribal elections.

5. Protecting the Land from Loss Through Taxation or Debt. This provision relates to issues of tax immunity and the core concept behind each of the provisions is borrowed from the ordinary state of affairs involving Indian property, in which neither the property nor income earned from such property may be taxed

will be launched. Support for the efforts of the Yupit Nation to proceed was expressed by Dalle Sambo of the Inuit Circumpolar Conference, who will assist with fund-raising to finance the push.

The nine men who will go to Washington D.C. in February to begin and open up the lobbying effort are: Joshua Phillip, Noah Andrew, Owen Ivan, Martin Ivan, Mike Williams, Sam George, Willie Kasayulie, Moses Peter, and Andrew Alexei. William Lomack may go too. Upon the group's return from Washington D.C., a special convention will be held by the Association of Village Council Presidents in Kasigluk in mid-March for the group to report the results of their trip.

At the conference, considerable time was given to a thorough explanation and discussion of the proposed legislation which would protect the land, fish and game resources and tribal government rights. David Case, an attorney knowledgeable in Indian Law; two Native American Rights Fund attorneys, Lare Ashenbrenner and Bob Anderson; Willie Kasayulie as facilitator/interpreter; Carl Jack, interpreter; and Tom Richards from AVCP, went over the legislation point by point explaining what the purpose of each amendment was intended to accomplish, what it would change and why. Questions and comments were then accepted from the audience.

A brief synopsis of the major points of the proposed legislation follow:

6. Tribal Control of Fish and Game. The proposed legislation would clarify the authority of Alaskan Tribal governments to regulate subsistence hunting and fishing. The powers would be expanded so that the amendment could be read as recognizing that Tribal governments have exclusive jurisdiction to regulate hunting and fishing in areas used by their Tribal members for those lands transferred under ANCSA to village and regional corporations.

7. Getting Back ANCSA Money Lost to Legal Fees. This provision of Resolution 35 seeks to restore to Alaska Natives the full value of the settlement negotiated in 1971. The clause reflects a widely held perception that due to complexity of the Settlement Act, the ambiguities in the Act left unresolved by Congress, and the particularly severe "start up" costs incurred by the ANCSA corporations in adapting a rural subsistence based Native culture to corporate forms, substantial portions of the Settlement were lost.

See Comments
by ADA DEER on page 3

1. Protection of Tribal Government Rights. Language in the proposed legislation would clear up any contention that the passage of ANCSA terminated or reduced the governmental power of the Alaska Native tribes.

2. Placing Land in Trust. The Secretary of the Department of Interior takes the position that ANCSA revokes the Secretary's authority to accept Alaska Native tribal land into trust. This proposed amendment would expressly reaffirm the Secretarial authority to accept land into trust in Alaska. It also clarifies the authority of the Secretary to establish new, or add to existing, Indian reservations.

3. Defines the Area Over Which Tribal Governments Have Authority. This provision is intended to clarify the meaning of "dependent Indian community" in Alaska for purposes of determining the scope and extent of Native tribal powers.

4. Tribal Control of the Land Without Federal Interference. This proposed amendment contemplates something similar to the traditional trust protections without placing legal title in the United States. Instead, any protections and restrictions which may apply are selected by the Tribe.

(continued on page 3)

8. Land For Tribal Governments. This would give something like a first right of refusal to tribal government, as well as provide tribes a voice in the resource development of the land.

9. Townsite Lands. Under present law, Native townsite lands which were unoccupied as of October 21, 1976, whether subdivided or not, are to be transferred to the municipal government for the village in which the townsite lands are located. The proposed change would direct that these lands be transferred to "appropriate Native tribal entity."

10. State of Alaska Recognition of Tribal Sovereignty. "Notwithstanding any provision of the State of Alaska's Constitution or laws the state of Alaska may negotiate and enter into intergovernmental compacts with Alaska tribes for any lawful purpose and may enact legislation specially directed to Alaska tribes and their members."

1-27-86
by Patti Harper
For the Tundra Times

Yupiiit Nation

(Continued from Page One)

A fledgling regional coalition of village governments called the Yupiiit Nation is spreading its wings. At a recent three-day Wangkutnek Auluklerkarput (Self-determination) Conference, board representatives from the Kuskokwim River villages of Akiachak, Akiak and Tuluksak voted to take their tribal government cause to Congress.

Chief of the organization, Willie Kasayulie, said he expects to make his first flight to Washington, D.C. for that purpose in mid-February.

That means congressmen will be hit with two different messages next month. The Alaska delegation is expected to introduce legislation in early February which incorporates proposed amendments by the Alaska Federation of Natives (AFN) to the Alaska Native Claims Settlement Act (ANCSA).

Those amendments seek to insure Native control over ANCSA corporations and lands. AFN President Janie Leask said negotiations will begin soon with Department of Interior officials in an attempt to win support from the Reagan administration for the AFN-backed legislation. Leask said she doesn't think lobbying for tribal government interests will hinder AFN's efforts.

"I don't see that as conflicting with 1991 unless somebody tries to tie it to 1991," she said.

But almost certainly some of the tribal governments' suggestions will

relate to the 1991 legislation. Kasayulie and other tribal government advocates plan to push for acceptance in Congress of recommendations by Alaska Native Review commissioner Thomas Berger and of proposals to strengthen tribal governments grouped in AFN resolution 35, which was presented but never adopted at an AFN convention.

Resolution 35 draft legislative language seeks recognition of tribal authority over Indian country and fish and game management, as well as having land allocated by ANCSA to municipal governments turned over to tribal governments. A vote at the AFN October Convention to refer Resolution 35 to a special committee for review killed an expected floor fight over whether it should be sent to Congress with other AFN proposed amendments, but that only added fuel to the charges of supporters who claim that AFN refuses to hear their concerns. The village participants of the Yupiiit Nation Conference fiercely expressed their anger.

Leask concedes that in the rush to protect Native corporations from the hazards of 1991, such as loss of control of Native corporations and land

to non-Natives through the then-possible sale of stock, perhaps tribal concerns may not have gotten the attention they deserve. But she thinks there's plenty of time for that — after the already developed 1991 legislation is law.

Kasayulie disagrees. Though he sits on AFN's committee considering Resolution 35, he thinks Congress needs to hear what tribal governments have to say now. He hopes the decision to lobby separately for tribal governments will bring AFN to a more supportive stand.

"I hope they take it seriously enough to work something out to support each other, but that's up to AFN to decide," he said.

"I really feel it was settled at the convention," Leask said of whether to include Resolution 35 proposals in AFN's 1991 package.

Though AFN wants to sit on tribal government issues until 1991 legislation is passed, the Inuit Circumpolar Conference (ICC) stands ready to help. At the Yupiiit Nation Conference, ICC Special Assistant Dalee Sambo pledged that ICC is willing to assist efforts to pass legislation that embraces Thomas Berger's recommendations, "and that most importantly reflect the will of the community and what the people of the villages want."

"More power to the Yupiiit Nation!" she said.

The Yupiiit Nation was loosely formed in 1984 with the writing of a

AFN SPECIAL CONVENTION RESOLUTION NO. 35 (PAGE THREE)

Alaska Native tribes shall retain complete jurisdiction to regulate hunting and fishing by all persons within those areas traditionally used by tribal members for subsistence hunting and fishing. The State of Alaska shall only have a jurisdiction over rural Native subsistence hunting and fishing in so far as necessary to conserve species of fish and wildlife.

Setting a goal of tribal self-government

As readers of this column are aware, the Alaska Federation of Natives has expended the majority of its time and effort over the past few years on two principal issues: protection of Native lands and the preservation of subsistence in the Bush.

Lately, however, a third issue, closely related to land and subsistence, has become increasingly important. And that is the issue of tribal self-government in the villages. Tribal self-government is simply the power — the inherent right — of Native American tribes to make and enforce their own laws over their own members, and in some cases, over non-members, within the tribe's territorial jurisdiction.

Tribal self-government is a fact of political life in many states in the Lower 48. In Alaska, it is the right of Natives — as Natives — to govern themselves. This right descends from thousands of years of traditional practice which predates the Alaska Native Claims Settlement Act (ANCSA) of 1971, Alaska statehood, and the existence of the United States.

Tribal self-government is often confused with the concept of sovereignty, which basically means the capacity to act as a government and to resist the impositions of other governments. The words "sovereignty" and "tribal self-government" are often used interchangeably, although the one ("sovereignty") is obviously more volatile and elicits more of an



by
Janie
Leask

emotional response from the average citizen. When the majority of Alaska Natives say we want to be sovereign, we mean we want to govern ourselves, to regain control of our own lives and communities.

We have reason to be concerned. What has occurred all across rural Alaska during the 20th Century is the steady erosion of local control. In some ways, villagers' rights to self-government and their responsibility to take care of themselves have been usurped by external forces. In other ways, we have given up our rights and responsibilities in return for perceived benefits. But the net effect has been the same. Laws, bureaucracies and services consistently break down the community's ability to take care of itself and dictate what our people may do and may be . . . and the pressure is unrelenting.

A reassertion of tribal self-government is perceived by many village people as

one answer to shield them from external political and economic forces over which they have little or no control.

Above all, we want to protect the land. Our fears of loss of the land are bound up in ANCSA and the problems of 1991 which have been endlessly discussed: corporate stock, taxation, business failures, corporate values, dissenters' rights, etc. For many Natives, the answer to all of this is to transfer ANCSA assets, particularly village lands, out of corporate hands and into tribal ownership. They want it protected from external taxation and other threats of loss, and they want to be able to use it and other surrounding lands for continuation of traditional subsistence practices.

Apart from land and subsistence, Natives want to reassert local control over their own family and tribal members. A good example of this concern relates to the welfare of Native children.

When, for some reason, a Native child is taken away from home, he or she is often placed in an urban, non-Native foster home.

While this may be in the best interests of the child in the short-term, many question the removal and suggest that strengthening the capacity of the village and the extended family to care for the child locally would be more effective. Again, local control and local responsibility equate with local government — of, by, and for Native people who want to

deal with their own problems in more traditional ways.

In response to the increased interest in tribal self-government as a viable alternative to the ANCSA corporate structure, and in response to a resolution passed by the delegates attending last year's convention, the AFN board recently appointed a Committee on Tribal Governments. The Committee, composed of 11 members representing regional Native non-profit associations, regional and village ANCSA corporations, IRA and traditional governments, and the United Tribes of Alaska, met for the first time this past week. The group plans to research the current status of tribal governments in Alaska and the Lower 48 and to present its strategy and recommendations to the AFN Convention next October.

The work will not be easy. But the importance of it should not be underestimated. Without a thorough look at political and legal strategies to halt the steady erosion of local control, who can say if villages will exist tomorrow? That may mean little or nothing to some non-Natives, but for Native people, it is the core of our concern for the land, for the fish and game, and for our future survival.

Janie Leask, an Alaska Native, is president of the Alaska Federation of Natives.

F

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

August 9, 1985 OVERSIGHT HEARING - 9:30 AM to NOON

Egan Civic and Convention Center
555 West Fifth Avenue
Anchorage, Alaska

*Note:
only Native rep-
resentatives allowed
to testify!*

WITNESSES

1. Governor William Sheffield, accompanied by Mr. Emil Notti, Commissioner of Community and Regional Affairs and Ms. Sandra Borbridge, Special Assistant
STATE OF ALASKA

ALASKA FEDERATION OF NATIVES (AFN)

2. Mr. Charlie Johnson, Chairman
3. Mr. Spud Williams, Chairman of the Human Resources Board
4. Mr. Ivan Gambell, Village Steering Committee Representatives
5. Ms. Janie Leask, President

ALASKA NATIVE REVIEW COMMISSION

6. The Honorable Thomas R. Berger

PANEL OF ELDERS

7. Mr. Walter Soboleff, Village Elder*
8. Mr. Al Grant, Village Elder

VILLAGE CORPORATION PANEL

9. Mr. Larry Mercurieff, Tangdusix (Aleut)
10. Ms. Viola Burgess, Chairman, Haida Corporation
11. Mr. Myron Naneng, Sea Lion (Calista)

REGIONAL CORPORATION PANEL

12. Mr. Byron Mallott (Sealaska Corp.)
13. Mr. Don Nielsen (Bristol Bay Native Corp.)
14. Mr. Morris Thompson (Doyon Limited)

VILLAGE GOVERNANCE PANEL

15. Mr. Andy Hope, Administrator, Sitka Community Association
16. Mr. Willie Kayasulie, Akiachak
17. Mr. Sheldon Katchatag, United Tribes of Alaska

WITNESSES

2:00 pm to 4:00 pm

NATIVE NON-PROFIT PANEL

1. Mr. Gordon Pullar, President, Kodiak Area Native Assoc. (KANA)
2. Mr. Caleb Pungowiyi, President, Kawerak, Inc.
3. Mr. Ed Thomas, Tlingit-Haida Council

YOUTH PANEL

4. Kermit LaBelle
5. James LaBelle, Jr.

to be accompanied by their Father, Mr. Jim LaBelle

OTHERS

6. Mr. Daniel Alex, President, Alaska Native Land Mangers Assoc.
7. Mr. Andy Johnson, President, Salamantoff Native Assoc.
8. Mr. Roy Roehel, Chairman & President, Chugach Native Corp.
9. Mr. Will Mayo, Sub-Regional Liaison Officer, Tannana Chiefs Conference (TCC)
10. Mr. Dave Lacey, representing Stevens Village
11. Mr. Dewey Skan, representing Klawock IRA Council
12. Mr. Frank Miller, Board of Directors, Takotna Village
13. Mr. Jonathon Soloman, Second Chief, Village of Fort Yukon
14. Mr. Franklin Madross, Sr., Traditional Leader, Kaltag Village
15. Ms. Jacqueline Guzialek, President, Cook Inlet Tribe, accompanied by
Mr. Charlie Edwardson
16. Mr. Richard Kito, Petersburg Indian Association, accompniaed by Mr.

Victor Gunthrie

* Congressman Don Young, refused the right of Sam E. Mc Dowell to testify at these hearings. Congressman Young should be held accountable for his actions!!!

Alaska's legislators discuss 1991 issues during convention

On March 28, 1985, delegates to the AFN Special Convention on 1991 were able to listen to Senators Ted Stevens and Frank Murkowski and Congressman Don Young discuss 1991 issues live, via audio/video satellite transmission. Senator Stevens, the senior members, noted the key positions held by members of the Alaska delegation and the roles they will play in the 1991 legislature process. Senator Murkowski is a member of both the Senate Energy and Natural Resources Committee and Senate Select Committee on Indian Affairs, while Congressman Young is on the House Interior and In-

sular Affairs Committee. Senator Murkowski stressed the points that the Native community must have a consensus on 1991 and that ANCSA amendments must be well drafted to assure that they won't be subject to extended litigation. One big concern of Congress will be minority shareholder rights ("dissenters" rights). The federal government does not want to expose itself to potential litigation, and Congress will want assurance that there will be no federal liability to compensate dissenters. Senator Murkowski concluded by telling the delegates that the only way ANCSA legisla-

tion can pass Congress is to have it clean, meaning that it must be relatively free of constitutional and legal problems, that it must be uncluttered by extraneous issues and that there must be a Native consensus behind it.

Congressman Young informed the delegates that "...as amendments are drawn up, we have to take into consideration the possibility of outside influences on the legislation. It (the legislation) has to be drawn carefully so that it is only referred to the Interior Committee on the House



U.S. Sen. Frank Murkowski

"...there must be a Native consensus behind it."



U.S. Sen. Ted Stevens

side. Remember, we have got ourselves, in the past, into some very difficult situations by not carefully drafting legislation when it was first introduced."

Senator Stevens started his discussion by re-enforcing the idea of consensus. "It is essential that you reach an agreement...in any way that demonstrates a real understanding of the process we all face." Additionally, said Stevens, "I hope what you do is presented in a positive way to Congress. Congress did the best

it could do in 1971; that was the first time that Congress ever settled claims such as were presented by your people... There still are many members here who participated in 1971 events that led to the Land Claims Act, and I hope that you approach them constructively, without being critical of Congress, in terms of what was done then, but seeking help for what we would like to do to deal with the 1991 problems."

The Senator concluded by saying that "subsequent generations will look at what you do here with as critical an eye as you now look at what went on in 1971."

At the close of the 40-minute transmission, all the members of

the delegation thanked the Convention. Congressman Young struck a final note of realism by stating that issues of ANCSA and 1991 only effect Alaska and that, as a consequence, there needs to be an education process for the more than 300 members of the House of Representatives who were not around in 1971 and who have no knowledge of what Congress should do.

One Convention delegate, summed up the reaction of many to the topics discussed by Alaska's Senators and Congressman: "I'm glad these guys were frank with us. The process of getting a bill through Congress isn't going to be easy."

AFN President, board members, at work in D.C.

AFN President Janie Leask, accompanied by several Board members and other representatives, visited Washington, D.C. on May 22 and 23 in order to keep key Congressional and ad-

ministration officials informed on what is happening with 1991 issues. The delegation consisted of John Schaeffer, NANA; Roger Lang and Chris McNeil, Sealaska; Nick Jackson,

AHTNA; Don Mitchell and Ken Bass, AFN Attorneys; Steve Silver, a Washington attorney for BBNC, also participated in many of the discussions.

The trip provided a valuable perspective to AFN's legislative strategy; what Alaska Natives believe to be the critical issue (1991) is not considered an important topic in Washington. Congress has its own priority issues and timelines, and the Native community of Alaska will have to fit its interests around several major problems of nationwide significance.

The AFN delegation formally requested that the House Interior and Insular Affairs Committee hold public hearings on ANCSA and 1991 in Alaska during August, a time when members of the Committee will be touring the state. The House trip to Alaska is not solely for the purpose of holding these hearings. The Committee will also conduct meetings on environmental and development topics and will conduct inquiries into the Red Dog Mine, timber harvest in the Tongass National Forest and management of the Arctic National Wildlife Refuge. (See Important Update, Page 4, for more information on the format of the August hearings).

During their last day in the

Capital, the AFN representatives met with Alaska's congressional delegation. Ms. Leask pointed out that Natives all across the state want to play an active role in the development of 1991 solutions and in the amendatory legislation submitted to Congress. The House hearing will not allow that kind of broad participation.

"Congress has its own priority issues and timelines..."

due to the fact that it is scheduled in August, in Anchorage, for one day only. In response to this concern, the AFN delegation requested that the Senate schedule a number of meetings in Alaska villages and regional centers during the Congressional recess in November. Senators Stevens and Murkowski were supportive of this idea and will make themselves available, according to the schedule of their duties in

Washington. The testimony received by Alaska's Senators will then be submitted as part of the record for the formal Senate hearings in Washington next year. This method was previously used in the D-2 legislation and worked well.

The six rural locations recommended by AFN for the Senate meetings in Alaska are Bethel, Dillingham, Nome, Kotzebue, Hoonah and Tanacross. These regional centers were selected to give village shareholders the maximum opportunity to voice their views.

The AFN delegation also met with representatives of Senators Malcolm Wallop, Wyoming; James McClure, Idaho; Mark Andrews, North Dakota; Bennet Johnson, Louisiana; and John Melcher of Montana. These Senators will be key players on the Senate Natural Resources Committee and Senate Select Committee on Indian Affairs. Each Senator's staff was briefed on 1991 issues and legislation.

Deputy Under Secretary of the Interior Bill Horn met with the AFN group and covered the topics of subsistence, 1991 and the 1985 Report. The AFN delegation concluded its Washington, D.C. trip by attending House hearings on the NANA land exchange.

Hodel

(Continued from Page Three)

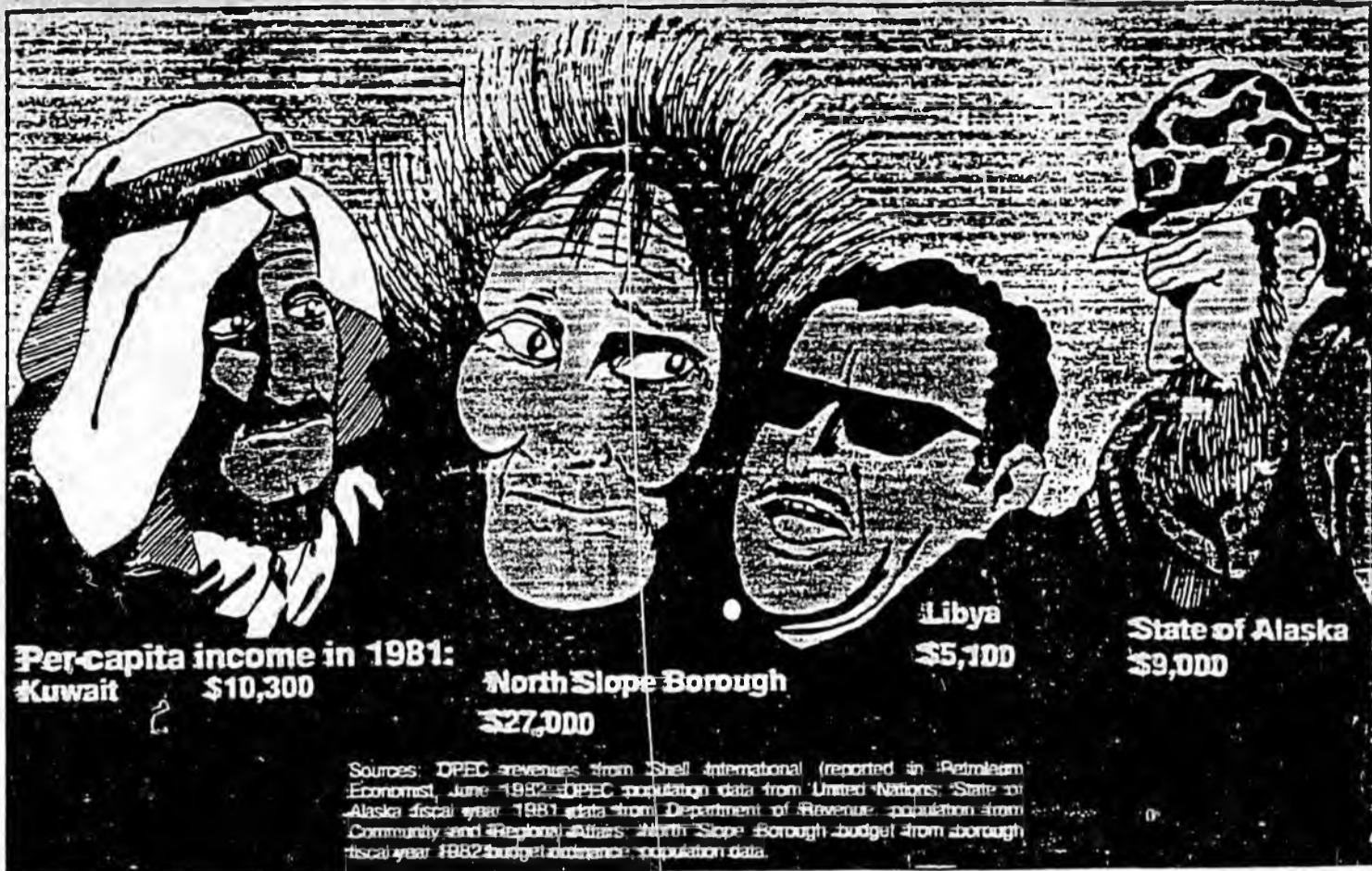
state law and rural interests will be endangered in the 1990's when the Alaska State legislature will be controlled by Anchorage. AFN concluded 1991 discussions by asking for Secretary's support in amending ANCSA.

The current issues surrounding the subsistence priority was discussed with Secretary Hodel in detail. AFN representatives described the subsistence related problems within the State and asked for support to ensure that the people most dependent on fish and game get first priority to it. Secretary Hodel told the group that the Department of Interior preferred that the State of Alaska take action to comply with federal regulations on subsistence priorities. The Secretary stated that if the State of Alaska does not comply within a specific amount of time, the federal government will step in as the government is mandated to by law. Another issue discussed was

the non-escrowed funds being held by federal agencies. The funds are revenues from oil, gas and mineral sales from lands owned by Native corporations. Sixty to seventy percent of these revenues are shareable under ANCSA Section 7(i) and 7(j). In 1980, Section 1411 of the Alaska National Interest Conservation Act directed the federal government to account for these funds which amount to \$18 million, and make payments, with interest, to the appropriate corporations.

Secretary Hodel responded that he would work to ensure the corporations were distributed the funds that are rightfully theirs.

The indecision of the Department of Interior to approve the Eagle IRA Constitution was briefly discussed. Secretary Hodel spoke to the fact that IRA's were not a simple issue and he was reluctant about creating additional tribal governments in Alaska. AFN representatives reaffirmed their position that the federal government is required to approve new IRA consultations or work with Native groups to make appropriate changes.



Per-capita income in 1981:
Kuwait \$10,300

North Slope Borough
\$27,000

Libya
\$5,100

State of Alaska
\$9,000

Sources: OPEC revenues from Shell International (reported in Petroleum Economist, June 1982); OPEC population data from United Nations; State of Alaska fiscal year 1981 data from Department of Revenue; population from Community and Regional Affairs; North Slope Borough budget from borough fiscal year 1982 budget; Libya population data.

Anchorage Daily News/Peter Dunlap-Shohl

A \$1 billion borough

Money flows like oil in the North Slope Borough

By DON HUNTER
Daily News reporter

BARROW — From a cubby-hole office in a weathered, blue two-story building at the edge of the Arctic Ocean, the mayor of the 7,500 residents of the North Slope Borough directs a financial empire that dwarfs the ambitions of any other local government in Alaska.

It's a billion dollar empire, one that shot up from the ice of the far North over a dozen years of power politics, nurtured by visions of a social Utopia and fueled by the same crude oil bonanza that underwrites permanent fund dividends, highway construction and dam building across the state.

The North Slope's wealth leaves a legacy in which the borough — in the fiscal year beginning July 1 — will spend about 32 times as much to operate local government for each of the 7,552 residents living there as the Municipality of Anchorage will spend to operate the local government of 204,000 residents in 1983.

Most of the borough's operating expenses — more than \$240 million next year, compared to less than \$200 million this year in Anchorage — are dedicated to payments on nearly \$1 billion of bonds sold to finance capital construction projects.

To date, the North Slope Borough has sold \$987 million of general obligation bonds. The current capital projects budget now being reviewed by the borough assembly — if adopted in large part as proposed — would cause that figure to escalate to more than \$1.5 billion.

Hundreds of capital projects ranging from sewers to satellite

INSIDE

- Bush senator pushes for more money for borough. Page A-12.
- North Slope mayor builds his election war chest. Page A-12.

era communications facilities have been or are scheduled to be built. A public housing project underway for the past five years now totals \$232 million. With that money, the borough is building homes at costs ranging from \$200,000 to more than \$600,000 for rent to residents in Barrow and the outlying villages of Nuiqsut, Anaktuvuk Pass, Kak-tovik, Pt. Hope, Wainwright and Atkasuk.

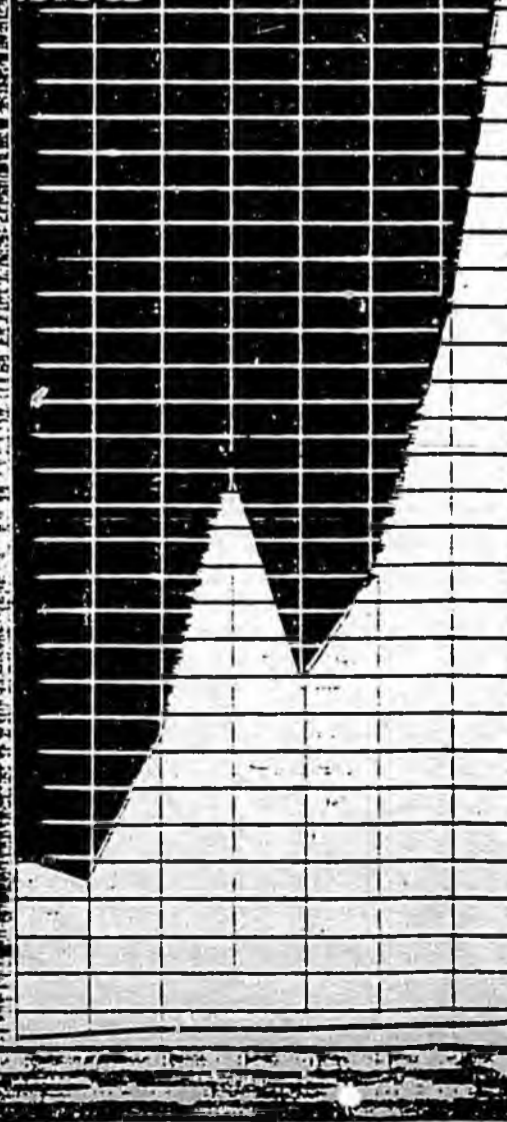
The money — and the money to be made on the North Slope — have attracted dozens of construction companies, architectural and design firms, and "arrangers" men who, like powerful lobbyist Lew Dischner and financial adviser Robert DuPere, had personal ties to the late borough Mayor Eben Hopson predating the borough's incorporation in 1972, and like Alex Miller, the lobbyist for multimillionaire Neil Berg's Alaska International family of transportation and construction companies.

Dischner and his firm, Trust Consultants, have been employed by the borough throughout its existence. The relationship has proved lucrative to both sides. Last year, Trust Consultants took home \$169,000 in lobbying fees from the North Slope. A partner in the lobbying firm, former state legislator Marty Farrell, works as general counsel to the borough.

Predominant among the con-

See Page A-13. NORTH SLOPE

Comparing per capita spending in operating budgets 1976-83



North Slope Borough is awash with money and officials who aren't afraid to spend it

Continued from Page A-1

struction companies at work on the North Slope is the Washington-based H.W. Blackstock Co. Blackstock's presence on the slope began early in the capital building boom, borough officials say, when Hopson was searching for construction companies that would assure a maximum number of borough residents would be put to work and Blackstock devised a way to prefabricate housing structures in Washington and ship them to the borough, where they would be assembled by local residents. The firm's president is a well-known Seattle businessman Kenneth Rogstad, a former chairman of the King County Republican Party and a long time — and influential, according to reports — friend of President Reagan.

The relationship no doubt assists in the direct access the borough's current mayor, Eugene Brower, says he has to U.S. Secretary of Interior James Watt.

In addition to its share of the public housing program, Blackstock also acts as a purchasing agent for the borough on other construction projects, acquiring materials and supplies.

The money to be made in the borough has carried over to internal politics. In a statement filed with the Alaska Public Offices Commission, Brower, who does not run for election again until 1984, reported receiving some \$57,000 in contributions on one day last December. Nearly all were the maximum \$1,000 donations allowed by state law, and the vast majority were from companies or individuals — in Alaska, Washington state and Texas — that do business on or with the North Slope.

While the borough's enormous construction program may be well intentioned, it is not always well planned or well executed. For example, a \$24 million high school planned five years ago to serve some 200 Barrow students is currently budgeted at \$71 million. Virtually complete, it will open its doors next fall, but the expected operating costs have caused concern, and some observers say privately that the school cost may approach \$100 million.

Borough officials concede that the escalation is striking, but they say construction in arctic conditions is a still-evolving science and point to the experience of the trans-Alaska oil pipeline, originally estimated to cost about \$900 million and completed at more than \$8 billion.

Reviews of the borough's annual financial reports, bond prospectuses, capital and operating budgets disclose other examples of eyebrow-raising expenditures: Among them an advance payment of \$406,000 to a company called Jen-Air Inc. during 1981 and in previous years. The advance payment was to be credited against future borough air travel. But, according to a borough financial statement, borough attorneys believed "anticipated service is not feasible and the amounts prepaid for services to be provided by Jen-Air Inc. are not currently collectible." The deposit, according to the financial statement, was written off as of June 30, 1982.

(1)

The North Slope Borough combines opposites, a vast, harsh landscape of 88,281 square miles stretching from Canada to the Bering Sea. The expanse is interrupted only by seven villages and the boomtown capital, Barrow. The largest — in sheer acreage — local government in the United States, it numbers only 7,500 permanent residents.

But it is also the wealthiest of governments. Borough officials anticipate a tax base of \$10 billion in the coming fiscal year — a level that roughly equals the assessed value of taxable property in Anchorage. The North Slope's future is grounded in an ancient treasure tapped only in the last half-dozen years.

Oil

The commodity fuels virtually everything in the borough, from the five Orion transit buses that traverse the icy streets of Barrow and Pt. Hope to a unique new sewer system that may cost as much as \$300 million to build. The

Where did the money go?

The following outlines the purposes and the total bonds sold from 1975 to June 30, 1982.

PURPOSE	BONDS SOLD
Station and service center facilities	\$171 million
Roads and related facilities	\$66.7 million
Housing facilities	\$131.7 million
Water facilities	\$64.97 million
Sewage treatment facilities	\$54.1 million
Airport and terminal facilities	\$18.875 million
Urban development projects	\$8.53 million
Light, power and heating systems	\$27.15 million
Public safety facilities	\$31.8 million
Sanitary facilities	\$52.87 million
Communications	\$3.1 million
Health facilities	\$1.3 million
Library/cultural facilities	\$1.7 million
Administrative facilities	\$3.5 million
TOTAL	\$664 million

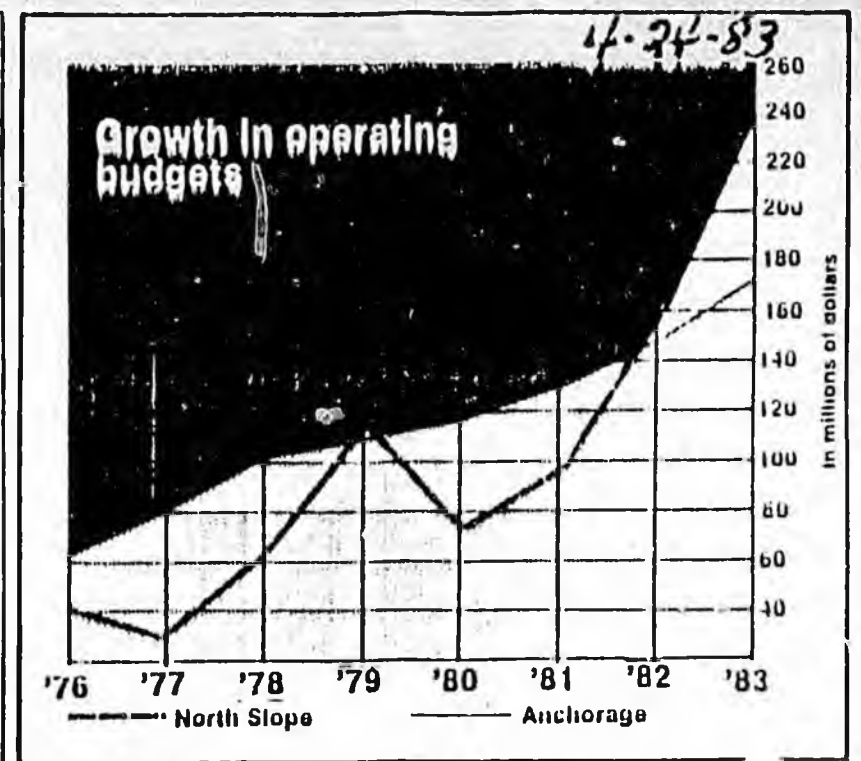


Chart: Daily News staff compilation

taxes it produces has enabled the North Slope Borough to embark on a building program probably unmatched by any other local government, anywhere.

From a relatively humble \$150 million capital projects budget in 1972, the year the borough incorporated, the ambitions of borough officials have escalated ten fold, to the current plan totaling more than \$1.5 billion.

The borough's ability to market such enormous amounts of bonds is based in the wording of a 1973 tax law that allows local government officials to exceed normal tax ceilings to repay bond debts. It means that normally conservative bond buyers are willing to accept the long-term debts of the North Slope Borough because they are, in the words of one observer, backed "by the full faith and credit of the oil companies" whose energy investments directly or indirectly underwrite better than 90 percent of borough spending.

The remark is a play on the phrase commonly used in the legalese of municipal bonds — a guarantee that the bonds are backed by the "full faith and credit" of the taxpaying residents and businessmen of a given community. It is given as an assurance that residents are willing to pay increased taxes to pay back the debt.

But it also underscores another critical factor in North Slope spending. Because the normal check on government expenditures — taxpayer caution about commitment to additional taxes — is diminished by the overwhelming proportion of oil property-tax support, borough voters in effect have given the North Slope Borough a virtual blank check. The significant increases in North Slope spending don't directly affect the oil industry, which pays a flat tax to the state. The revenues from that payment then are distributed among the various cities and boroughs in which oil pipeline property is located — Valdez, Fairbanks and the North Slope.

The ready availability of oil-supported tax revenues also has undoubtedly stimulated spending in Valdez and Fairbanks, but to a much lesser degree. As of July 1, 1981, Valdez had marketed \$76.8 million of bonds, and the debt averaged \$23,437 for each Valdez resident. At the same time, the North Slope had sold \$454.2 million in bonds. The average debt of North Slope residents was \$63,990.

Today, even those figures pale.

To date, the North Slope Borough has marketed more than \$750 million of bonds. Borough officials have invited bids on another \$200 million in bonds that could sell any day, bringing the total to nearly \$1 billion. Figures for Jan. 1, 1983, show the borough's debt amounted to an average of \$81,936 per resident. If translated to the current court-approved population figure for the North Slope — about 7,550 — the average for each resident soars to more than \$126,000. In contrast, current figures for Anchorage, according to municipal finance officials, show outstanding bonded indebtedness from the sale of general obligation bonds of about \$353 million. The average debt of Anchorage's 204,000 residents comes to \$1,726.

Created only 10 years ago, in the birthing pangs of arctic oil development, the men and women in control of the North Slope Borough have undertaken an unprecedented social and economic revolution. Schools and sewers, and satellite communications, in the space of a decade, have appeared in a frosty soil that in all preceding history had supported precious little beyond the rude basics of survival.

Much of what has been accomplished in the North Slope Borough in the last five years of oil financed construction already is being redone. The seven-member borough assembly is reviewing the latest version of a capital spending program for the fiscal year beginning July 1. Among the items: renovation or, in at least one case, replacement of buildings to house electrical generation facilities in the borough's seven villages.

The same proposed capital spending plan includes some \$529 million of projects yet to go to voters. If authorized and sold, those bonds would bring the borough's indebtedness to more than \$1.5 billion.

Because the borough has unlimited power to levy taxes to repay bonds, its bond debt is as secure as the oil industry's interest in the petroleum wealth of the North Slope.

But the prospect of a multi-million dollar debt remaining when the oil industry winds down North Slope operations in the next 10 to 20 years concerns some lawmakers and state officials, who point out that the state might have to step into the gap to prevent a North Slope default on its bonds. Such a development, they say, could have devastating consequences on the ability of other Alaska towns to market bonds.

State mistakes cost millions

Native corporation got oil, gas worth as much as \$500 million

By RONNIE CHAPPELL
Daily News reporter
© 1985 Anchorage Daily News

Mistakes by state officials executing a land swap 10 years ago have cost the state at least \$35 million in oil and gas revenues, an examination by the Daily News reveals.

The cost of these oversights by state resource managers is growing by \$5 million or more a year, and one day may exceed \$500 million.

In response to inquiries by the Daily News, state officials have begun looking for ways to recover the lost oil and gas lapd and revenue. They also are drafting new land disposal rules designed to prevent the kind of errors that resulted in:

- The transfer of 11 valuable state-owned leases on the Kenai Peninsula to Cook Inlet Region Inc., the Anchorage-area Native regional corporation.
- The loss to CIRI of nearly half the state's ownership interest in one of the largest gas fields in the United States.
- The conveyance of more than 2,000 acres in the Cannery Loop gas field without knowing that it was worth \$50 million to \$120 million. Today, because of increases in the price of natural gas, the land could be worth \$300 million to \$720 million.
- The overlooking of a section of the Alaska Native Claims Settlement Act that allowed CIRI to take a third of state revenue from two known oil and gas fields.

The land CIRI has obtained is among the most valuable in Alaska. Over the past five years, the company has grown into a financial powerhouse that earns millions of dollars a year, and pumps millions more into 11 other Native regional corporations.

The engine of CIRI's success is the oil and gas income unwittingly turned over by the state.

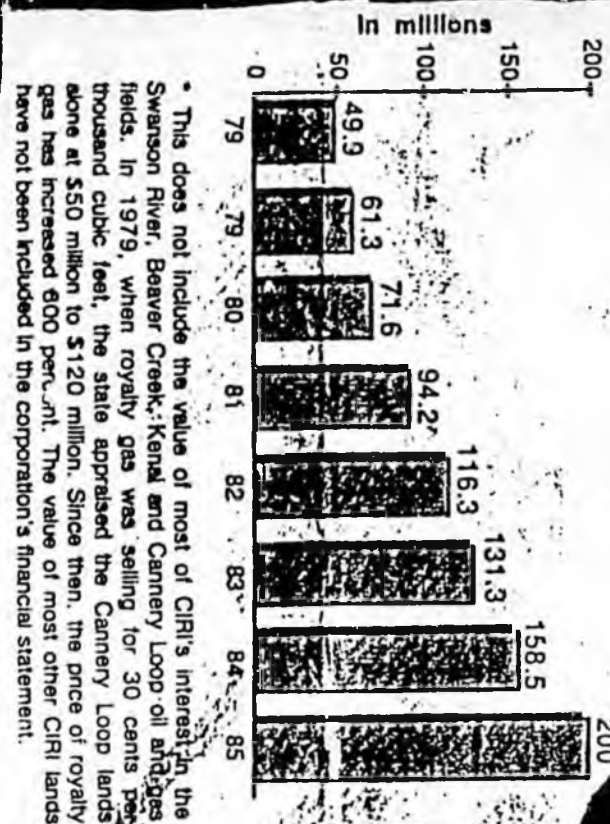
Under federal law, the state receives 90 percent of all oil and gas royalties from federal land in Alaska. Under that system, the state once earned up to \$7 million a year from the Swanson River oil field.

CIRI used the land trade to take a 35.1 percent cut of the income from Swanson River. The state's share fell from 90 to 58.4

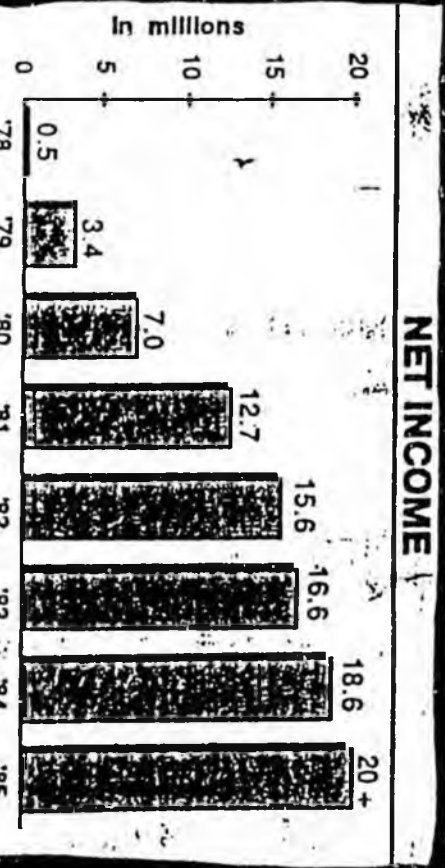
percent; the federal government gets 6.5 percent.

The loss to the state was even greater in the Kenai gas field, one of the largest in the country. The field heats most of Anchorage, supplies raw material for a world-class fertilizer plant and fuels the only liquified natural gas export facility in the U.S.

Before 1976, the state collected more than 90 percent of the royalty income from the Kenai field. Through the land trade, CIRI acquired 65 percent, worth more than \$10 million a year beginning in 1986, and the state share fell to 31.5 percent, with the balance going to the federal government.



* This does not include the value of most of CIRI's interest in the Swanson River, Beaver Creek, Kenai and Cannery Loop oil and gas fields. In 1979, when royalty gas was selling for 30 cents per thousand cubic feet, the state appraised the Cannery Loop lands alone at \$50 million to \$120 million. Since then, the price of royalty gas has increased 600 percent. The value of most other CIRI lands have not been included in the corporation's financial statement.



THE FINANCIAL PICTURE FOR COOK INLET REGION INC.

Cook Inlet Region, Inc. (CIRI) will receive over \$31 million of its share of back royalties as the state, federal government and CIRI reach settlement with Enstar Natural Gas Company. Seventy percent of this windfall will be shared with the other twelve Native regional corporations, along with the 6,000 plus stockholders in CIRI. CIRI president Roy Huhndorf said, "The settlement with Enstar will not generate any large amount of user fees, maybe an increase of \$3 to \$4 per month and about a total of around \$50 a year."

Native firms pay top executives well

Northland News, Fairbanks, Alaska, December 1985-15

ANCHORAGE (AP)—The top officials of at least seven of Alaska's 13 regional native corporations are earning more than \$100,000 a year. Cook Inlet Region Inc. and Sealaska Corp. lead the pay parade, each with five executives making more than \$100,000. Arctic Slope Regional Corp. and Doyon Ltd. each paid three executives more than \$100,000.

At the Fairbanks-based Doyon Ltd., executive vice president Peter McMahon made \$165,662, acting chief operating officer Millard Stiles, \$140,625 and president Ben Katz, \$125,000. Katz has since been fired and replaced by Morris Thompson, who is earning \$95,000 a year.

The Aleut Corp. had two employees over the century mark, and a third very near it, while Chugach Natives Inc. and Bristol Bay Native Corp. each had one. Roy Huhndorf, president of the Anchorage-based Cook Inlet Region Inc. was the top-paid corporate official at \$184,627, including bonuses and profit sharing. CIRI vice president George Kriste was second on the statewide list at \$171,237. Other top earners at CIRI were vice presidents Lance Anderson (finance) \$119,340, Carl Marrs (business operations and development) \$112,607 and Frank Klett, \$110,294.

Archie Kovanen, vice president and chief operating officer, led the list for the Juneau-based Sealaska Corp. at \$168,658. Insurance and benefits added \$37,751. Sealaska's president and chief executive officer Byron Mallott made \$123,288, plus insurance and benefits of \$44,709. The presidents of Sealaska subsidiaries also were among the best paid. Victor Horgan Sr., of Ocean Beauty Seafoods, was paid \$157,533, plus insurance and benefits of \$21,274; William Troy of Pacific Western Lines, \$126,812, plus \$17,481; and Dennis Purviance of Alaska Brick Co., \$125,000, plus \$17,300.

- Bering Straits Native Corp.: Charles Johnson, \$86,913;
- Calista Corp.: Nelson Angapayk, \$77,700, plus benefits of \$9,619
- NANA Regional Corp.: John Schaeffer, \$71,000;
- Koniag Inc.: Charles Winegarden, \$50,000;
- 13th Regional Corp.: Kurt Engelstad, \$48,000, plus \$11,000 deferred.

Cook Inlet Communications Corporation, a JV of Cook Inlet Region Inc. (CIRI), Whitcom Communications Inc. and Pain Webber, has just offered \$114 million in bonds and notes to finance the purchase price of \$170 million for TV station WTNH, an ABC affiliate in New Haven, from Capital Cities Communications Inc. This will be CIRI's second venture into eastcoast broadcasting.

Task force prepares report on sovereignty

By Mary Scarpinato
Times Writer

Gov. Bill Sheffield may be advised to test Alaska native sovereignty issues in court — and aid both sides in the issue by collecting information on the subject.

That is one recommendation that could come out of the governor's Task Force on Federal, State and Tribal Relations after a 1 1/2-year study.

Federal officials and congressional leaders have not helped much in attempting to settle controversial sovereignty issues, according to a recently published draft report of the task force. The task force is a 14-member panel of both native and government experts. A final report is due in December.

This task force study, and separate inquiries by Canadian jurist Thomas Berger and the U.S. Department of Interior, are considered the three major investigations of late into Alaska native issues.

While Berger's report recommended an expansion of the practical application of sovereignty rights in Alaska, the Interior report is not expected to favor expanded sovereignty.

The governor's task force may urge Sheffield to bring "a series of test cases" on native sovereignty or self-government,

issues. The draft report said that by such filings Sheffield could work with, not against, Alaska natives also, who want sovereignty questions settled in a legal forum.

Regarding Alaska's congressional delegation, the draft report criticized its three members for refusing to play a role toward the resolution of the growing sovereignty debate here.

Despite the delegation's repeated claims that sovereignty matters must be settled between natives and the state, the draft report cites the U.S. Constitution's designation of Congress as the authority over all Indian and native affairs.

The sovereignty movement here is basically a call for native villages and tribes to be able to govern their local communities and surrounding areas with little or no interference from the state, much like the situations on Indian reservations in the Lower 48.

Alaska natives claim they are guaranteed certain self-government rights under federal law and treaty.

But the sovereignty call is met by opposition from some state officials and others.

The opposition argument says: Natives' political rights in Alaska are the same as non-na-

tives, such as to vote in state elections and hold state office. Therefore, native properties and activities here fall under state regulation, just as those of non-natives.

"In recent years, the intensity of the public debate between the proponents and opponents of these two diametrically opposed positions has substantially increased," according to the draft report.

The federal government has not stepped into the fray on behalf of either side. At times, the draft says, federal officials and federal law seem to regard Alaska natives the same as Indians of the Lower 48. Yet, at other times, they do not.

One state assistant attorney general was quoted in the draft, saying: "The federal government does not speak with one voice. From our perspective, what we see is confusion in the (federal) law."

According to the draft, the task force might also suggest that natives leaders and state legislators together request that Congress clarify its laws on state and native jurisdictions or that the Interior Department develop some formal legal opinions on these matters.

AFN urges sovereignty movement not to ignore the political realities

By Mary Scarpinato
Times Writer

A "strong dose of political realism" was urged on delegates at United Tribes of Alaska's second annual convention.

The message came from what many consider UTA's political and philosophical rival in this state — Alaska Federation of Natives.

UTA, the leader of the native sovereignty (or self-government) movement here, was reminded of considerable federal government opposition already aligned against some of its emerging strands.

AFN President Janie Leask also proposed a working alliance between the state's two most prominent native activist organizations in an effort to amend the Alaska Native Claims Settlement Act (ANCSA).

She noted when she addressed UTA's Thursday convention session here that both organizations share major complaints with ANCSA.

"Although we can agree on the problems, the solutions will be limited by political and economic facts and events which take place outside the native community," she cautioned.

When ANCSA was passed in 1971, it awarded 44 million acres to Alaska natives and placed this land under the ownership of corporations with all natives alive then enrolled as shareholders.

AFN is pushing amendments primarily aimed at

providing additional financial protections against these corporations' failures or takeovers.

UTA is primarily pushing for the transfer of land assets to local native governments for further protection — a transfer that can be accomplished without federal approval, according to UTA.

But Leask noted that the federal government is a formidable force and it has already let it be known that proposals by both AFN and UTA to keep native lands and land income tax free forever is unacceptable.

"Despite President Reagan's assurances of government-to-government relationships and support of tribes, there is little evidence from the behavior of bureaucrats that his assurances will be put into practice in Alaska," she said.

And while other federal officials have said that they will not necessarily oppose land ownership transfer to native governments, Leask reported they have said they will oppose any declaration of this land as "Indian country" with all special governmental privileges this status entails.

It was not a "desire to do justice" that won the original ANCSA awards from the federal government and Washington, D.C., powerbrokers, according to Leask. It was instead powerful interest groups' need to settle land claims arguments so the 900-mile trans-Alaska pipeline could be built.

The Kaltag Native Council approved a measure "to reassert jurisdiction on minor criminal offenses committed within the boundaries of the village" but will leave enforcement of felonies to the state. The village is forming a tribal court and drafting a comprehensive tribal code of criminal laws, and is seeking help from the Tanana Chiefs Conference. According to Second Chief Clasker Nikolai they have built their own jail and already had a constitution written down from "way back". How the state of Alaska will deal with this unrried situation is awaiting judgement. This process called retrocession occurs on an Indian reservation, but according to Jake Lestenkopf of the Bureau of Indian Affairs, "I don't know if the village has the capability of saying, 'Listen state, we don't like what you're doing here. Come on in feds.'" The Alaska State Troopers have a resident village public safety officer who is to enforce the law in Kaltag.

United Tribes of Alaska (UTA) is continuing to develop a legislative proposal package of its own for amendments to the Alaska Native Claims Settlement Act — despite warnings that federal lawmakers don't want to get involved in a dispute among Alaska's Native factions. UTA contends that the Alaska Federation of Natives is unqualified to speak on behalf of Alaska's Natives, but that Alaska's tribal governments should be dealing with federal lawmakers. The UTA amendments are much broader and center around returning Native lands to tribal governments. The cover hunting and fishing rights to tribal government guarantees to land conveyance. UTA will be aided in their congressional presentation by Ada Deer, a Menominee from Wisconsin who led the Menominee fight to win restoration of 234,000 acres of reservation land.

United Tribes of Alaska (UTA) attorney Lloyd Miller indicated to the Anchorage press that UTA's money troubles would be eased by funds from the Bureau of Indian Affairs (BIA). However, BIA official, Timothy DeAsis said BIA's procurement process just does not made such funding available. He indicated that most of the villages were recipients of the bureau's 104(a) self-determination grants and that those grants would cover a tribal member for travel and per diem expenses involved in attending statewide meetings and conventions.

Hi-Lites of Native Business

December 15, 1985



Mitch:

I suggest you
read the attached and
you will see what type
of problems Sec 7C amend-
ment will cause in Alaska

Sam

Indian issue
I am Verna Lawrence of Sault Ste Marie, Michigan. I am of Indian descent and am an elected City Official and have held this office for 8 years. I am elected by the citizens at large in the Community. I speak to you from personal experience, as I have been involved in various aspects of the Indian issue. *Page 84*

I appreciate the opportunity to address the members of your group attending this session on "Unraveling the Native American Rights Issue." I understand that there are quite a few liberals among your membership. That's fine. I used to be a liberal myself, until my experiences on the Indian issue. Do you know the definition of a conservative? It's a liberal who has been mugged!! That's what happened to me!!

When I became involved in the Indian issue, I was shocked to discover the "MEDIA SILENCE" which prevailed. It was nearly impossible to get ANY information on the Indian problems. We had to dig for facts, and often ran into a brick wall. To say that the news media was reluctant to print anything reflecting on the Indian is an understatement. Unfortunately, it is still true to a great extent, that the Indian issue with all its various and widespread problems is NOT being discussed publically. The problems will never be solved until they are examined objectively, honestly, and with an open mind, free of any accusation of racial bias and free from the "Great American Guilt Syndrome."

In our particular case, City of Sault Ste Marie vs Andrus, we were before our time. There is no doubt in my mind that the decision will be overturned one day and our efforts will be vindicated. In my opinion, there was no due process given by the Government to the City, and the Reservation was established for a Tribe who

was recognized through the political process instead of the accepted procedures. There are NO full blood Indians on the Sault Ste Marie Reservation. In fact, the whole Tribe is composed of dilute bloods and the blood quantum of the so called Chief is rumored to be only 3/16! This is a violation of the 1934 Indian Reorganization Act which requires a Chief to be at least one-half Indian. No Government agency reacted to a protest of this violation, which is a typical government response to an Indian problem....It is characterized as an "Internal Tribal Problem" outside government intervention.

Indian Treaties were written as an agreement between a State or the Federal Government with and for the full blood Indians ONLY. Any benefits (including Fishing) given to the half-blood Indians were definitely requested by the full bloods. Today Governments are dealing with dilute bloods and IF there are no longer any full blood Indians, than the Treaty guarantees NO LONGER APPLY and the Treaties should be abrogated!!

Blood quantum should be standard for every Tribe and set by the Federal Government, after thorough and impartial research of blood lines. At present, Tribes can certify their own quantum. In the State of Michigan we have people who are 1/32 Indian blood degree fishing with an Indian Fishing Card!!! They are 1 part Indian and 31 parts something else!! In addition, the original Indian fished for food to feed his family. The sophisticated methods that make it possible to rape lakes and streams were not available when Treaties were written, and this ability was not the intent of the Government when Treaties were written.

New Indian Reservations are being created. One was established within the corporate boundaries of the City of Sault Ste Marie, Michigan

without the consent of City residents. Reservation residents may vote in every election and receive every social service benefit, yet pay NO taxes. Reservations exist on taxpayer dollars, yet are Sovereign Nations. The definition of Sovereign is; "Supreme in power or authority", "Having independent authority", "Power to govern without external control", "Supreme political power in a State". Even though Reservations are dependent Sovereign States, they are exempt from Freedom of Information laws and the Open Meetings Act. Loss of personal freedoms can occur, as Reservation residents are not governed under the U.S. Constitution, as the Tribal Constitution takes precedence. That means that Reservation residents are deprived of the protection of our Constitution and further no State or local Government has any control over that land or what occurs on that land. There is a loss of jurisdiction, as codes and ordinances do not apply and cannot be enforced. Reservation businesses pay NO property taxes and can operate in unfair competition with private enterprise. Party stores selling non-taxed items, gas, cigarettes and liquor. In Cities where Reservations exist in close proximity. Checkerboarding may occur when individual Indians put their land in trust to avoid Municipal taxes and local codes and ordinances. Tolls have been placed on roads within Reservation boundaries in Western States. Casino gambling, Bingo not subject to State Law, polluting Industries, unfair business competition-subsidized by taxpayers, control of our natural resources, such as coal reserves and water. Water is our most precious resource and it belongs to all of us.

No benefits should be granted or denied on the basis of race. Surplus food in our area is distributed to needy Indians only!!

All other people are excluded. Don't white and black people starve the same?? When Federal dollars are given to Tribes, advertisements are inserted in our local paper which state "Native American preferred". I resent this statement, anyone born in the United States IS and SHOULD be considered Native American!! This is a prime example of reverse discrimination!!

Because I disagreed with the policies of the Federal Government and opposed the creation of an Indian Reservation within the Corporate boundaries of Sault Ste Marie, Michigan, I was harassed by the Justice Dept., the F.B.I., and the Tribal attorney who was allied with Legal Services. My personal safety was threatened by telephone calls and, at a Congressional Hearing on Indian Fishing, at which I testified, a guard was assigned to protect me. I opposed the so-called Indian person with only 1/32 Indian blood degree receiving the benefits of Indian Fishing when Treaty Rights were granted to full bloods ONLY!!

In the State of Michigan, the fishing resource is being controlled by Indian Tribes which let dilute blood members fish under the guise of Indian Fishing. The State of Michigan spent over two million dollars of taxpayer dollars to fight the case, but bungled it when they did not hire a specialist in Indian law. Through the State's ineptness in handling the case and the maneuvering of the Tribes to see that the case was awarded to ULTRA LIBERAL Judge Noel Fox, this once great State resource is in jeopardy. This suite was initiated by Legal Services in Sault Ste Marie, Michigan.

Problems are spreading at an alarming rate all over the United States. The Onieda Tribe in Green Bay and DePere Wis. is claiming 65,000 acres of private homes, prime farm land, business and Airport properties, and the Industrial Park. In Seneca Falls N.Y. the Cuyuga Tribe is ~~claiming~~ ^{claiming} 65,000 acres of Public Lands. The Tribes are encouraged in these assaults on the American taxpayer by federally funded agencies, Justice Dept., Interior Dept., Legal Services Corp., Ford Foundation, ~~and~~ ^{AND} various church organizations which have NO idea how their money is being spent. And then to protect themselves the U.S. taxpayer must pay again and again as problems escalate. Soon the financial burden is beyond the ordinary person or a small community. In LacDuFlambeau Wis., a Tribe is attempting to tax non-Indian businesses. This is taxation without representation, and if my memory is correct, there was a war fought over this issue!!

Unfortunately, Indian culture has been dead for years due to intermarriage and the adopting by Indians of a more comfortable and progressive lifestyle. No Indian person today would forsake his automobile, indoor plumbing, central heat, grocery stores, schools, health care, and on and on. Of the Indians in our area, no one speaks the Indian language or lives by the old customs and few remember the old ways. The Indian person must live today in the modern world, with education, skills and a job to survive with dignity. This is NOT what the Tribes want to hear, as to ^{Acknowledge} ~~acknowledge~~ the truth would destroy their power base and source of Government funds. But remember, it is NOT in the best interest of the Tribe that the individual Indian be independent. If they were to become self sufficient and self supporting, contributing members of society, the Tribe COULD NOT use them in the head

count for Federal Funds.

Reservation life is a prime example of unworkable socialism and is a lesson in despair, where individuals are entirely lacking in hope and where drugs, alcoholism, and suicide are rampant. The U.S. Public Health which supervises Indian Health, has not yet addressed the number one health problem of the Indian.... Alcoholism!! In my opinion, Reservations are a form of genocide, where intelligent human beings are exiled for a lifetime and conditioned to be totally dependent on the handout from taxpayers. This is NOT a situation which affords the individual satisfaction, respect, or dignity.

The Indian person HAS TO INSIST on the Educational or skill benefits they are entitled to at a blood quantum of one-quarter to insure they are prepared to enter the job market with proper training so that they will develop some self confidence and belief in their own ability to provide for themselves and their dependents by holding a steady job.

Since Tribal Leaders are too GREEDY for money and power and too self serving to view the problems objectively and in the best interest of the Indian person and ^{are not} ~~are~~ willing to curtail their unceasing and excessive demands on the taxpayer for money, it stands to reason that Congress MUST review the problem and abrogate the Treaties as the ultimate solution to the problem. My question is, how can the U.S. Government have a Treaty with a U.S. citizen??

As a solution to the many problems facing the States and

the whole Nation on the Indian issue, two areas MUST be addressed by the U.S. GOVERNMENT;

1. Indian Blood Degree, (quantum)

At present, anyone can declare themselves Indian, Congress MUST determine who is an Indian and set a definite quantum for ALL Tribes. The minimum quantum should be one-quarter for ALL benefits with NO exceptions.

2. Treaty Rights;

Treaty Rights were granted to full bloods ONLY. If the TREATIES no longer apply, then the Treaties should be abrogated, the full bloods paid off, the Reservations abolished, and these Americans assimilated into their rightful place in society. I am an advocate of full rights and responsibilities for ALL citizens!!

In closing, I challenge you to report on the Indian issues and how they affect our resources in a fair and objective manner, without being swayed or intimidated by feelings of guilt. Anyone who has traced their ancestry can find inequities in past history which they could apply to themselves, if they choose to wallow in self pity. You and I ARE NOT RESPONSIBLE for what happened in the early 1800's and should NOT let ourselves be swayed back into the "POOR INDIAN SYNDROME" or the Indian problems will NEVER be solved in the United States.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 3, 1986

The Honorable Edward J. Gamble, Sr.
Mayor of Angoon
P. O. Box 189
Angoon, AK 99820

Dear Mayor Gamble:

Thank you for sending me a copy of your letter about pending subsistence legislation. As you point out, the customary and traditional use of fish and wildlife is very important to rural Alaskans. That is why I introduced HB 288 last year. I also felt that it was very important that the state meet the requirements of ANILCA Title VIII so that we can continue to manage our resident fish and wildlife.

Like you, I appreciate the fact that the Senate Resource Committee substitute for HB 288 is a major improvement from earlier Senate versions. It comes much closer to my original bill in meeting the conditions that I believe are necessary for an acceptable subsistence bill, including being constitutional, enforceable, complying with federal law, and giving the boards flexibility to provide fairly for all uses of fish and wildlife. The bill is now in the Senate Judiciary Committee, chaired by Senator Pat Rodey. I am hopeful that the Senate will take prompt action.

I also understand the concerns that you raise about regulations and permits. I feel that both the bill I introduced and the Senate Resources version give the Boards of Fisheries and Game the direction and flexibility they need to protect traditional uses. Once a bill passes, it will be extremely important for you and your community to work closely with the boards to ensure that appropriate regulations for subsistence hunting and fishing are adopted.

Mayor Gamble

-2-

April 3, 1986

Thank you for expressing your views on this important subject.

Sincerely,

Bill Sheffield
Governor

cc: Senator Arliss Sturgulewski
Commissioner Don W. Collinsworth



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

September 23, 1985

Honorable Bill Sheffield
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

On May 14, 1982, former Secretary of the Interior James Watt certified that the State of Alaska's subsistence program complied with the requirements of sections 803, 804 and 805 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. §§ 3113, 3114 and 3115. Accordingly, the State has for the last three years assumed primary responsibility for the management of the program providing the preference for subsistence uses on the public lands in Alaska. Unfortunately, the Department of the Interior finds it necessary to advise you formally that the State subsistence program is no longer in compliance with the requirements of ANILCA as specified in Title VIII.

As you are aware, the Alaska Supreme Court, in Madison v. Alaska Department of Fish and Game, 596 P.2d 168, Op. No. 2911 (Alaska Feb. 22, 1985), invalidated a State Board of Fisheries regulation designed to determine eligibility for subsistence fishing in the Cook Inlet Region because the regulation was inconsistent with the State subsistence statute. This ruling held that under the State statute the subsistence preference must be extended to both "rural" and "urban" subsistence users. Because section 803 of ANILCA limits the subsistence preference to "rural Alaska residents," the Madison decision raised questions as to the continuing eligibility of the State to manage subsistence on public lands in Alaska under section 805(d) of ANILCA. In an effort to determine the State's views on this issue prior to Departmental action, I requested on April 7, 1985, the legal opinion of the State Attorney General on the effect of the Madison decision. To date we have received no formal response from the State on the effect of Madison on the State's eligibility under section 805(d) of ANILCA. We did receive a letter outlining the administrative actions taken by the State in the wake of Madison but it offered no opinion regarding compliance with Title VIII. Nonetheless, the absence of legislative action this year to amend the State subsistence statute to conform to ANILCA has confirmed our preliminary determination that the State is no longer in compliance with the requirements of section 805(d).

You are hereby advised that the State has until June 1, 1986, to revise its subsistence program to bring it back into compliance with the requirements of sections 803, 804 and 805 of ANILCA. Compliance will require that the subsistence preference be limited to those rural Alaska residents who customarily and traditionally make use of subsistence resources. If the State has not conformed its subsistence program to the requirements of ANILCA by that date, the Department will be obligated to discharge its obligations pursuant to section 805. As we noted to the State Boards of Fisheries and Game in 1982, there are various ways to comply with the requirements of section 805; the regime in force when the Madison decision was handed down represented one possible approach. I am confident and hopeful that the State can make the necessary changes in its program within this period, and I offer the full cooperation and assistance of the Department in this effort.

The Department has concluded that section 805(d) does not require an immediate Federal take over of the subsistence program, given the circumstances by which non-compliance with the ANILCA requirements has occurred. Section 805(d) provided the State with a one year period of grace following enactment of ANILCA in order to give the State an adequate amount of time to prepare and implement a program that met the requirements of ANILCA. After successfully establishing an adequate program, the State made a good faith effort to keep in compliance with the requirements of Title VIII of ANILCA. Indeed, the recent problems that have befallen the State's program have not been the result of legislative repeal of the program; instead, an unexpected State Supreme Court ruling in a case that was vigorously defended by the State has altered the State's subsistence program and created a non-compliance situation. Under these circumstances, we are persuaded that the spirit and intent of section 805(d) warrants a grace period in order to provide the State with a reasonable opportunity to make the necessary adjustments to its program. We have chosen as a deadline June 1, 1986, because it is roughly one year from the time the State legislature failed to rectify the State subsistence statute.

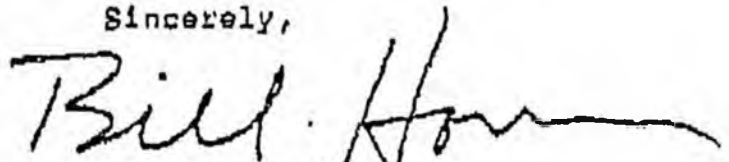
This course of action is further justified due to the fact that it appears unlikely that any adverse impact on rural subsistence users will occur during the grace period. The State subsistence program will continue to ensure that the Title VIII class of rural subsistence users are able to hunt, trap, and fish for necessary resources. The problem is that the Madison decision permits urban residents to be included in the subsistence class, contrary to the requirement of ANILCA that the preference be limited to rural residents. My decision that a grace period is warranted would, of course, have to change if significant adverse impacts on rural, customary and traditional subsistence users and on subsistence resources subsequently become apparent.

I Fully expect that the State, in cooperation with the Department, will bring its subsistence program back into compliance with the requirements of Title VIII of ANILCA prior to June 1, 1986. I have, however, directed the U.S. Fish and Wildlife Service, in cooperation with the Office of the Solicitor, to begin preparation of a contingency plan for providing the subsistence preference on public lands that meets the requirements of ANILCA. My goal is to ensure that, in the event that the State is not able to bring its program into compliance by June 1, 1986, the Department is ready and able to discharge effectively its obligations under sections 803, 804 and 805 of ANILCA.

As a matter of information, the Madison ruling does not expand eligibility to pursue subsistence activities in those national parks and monuments where subsistence taking is authorized. Eligibility to engage in subsistence activities within those units of the National Parks System in Alaska is still determined pursuant to Federal regulations issued in 1981, since the State of Alaska never sought to acquire control of this aspect of the ANILCA subsistence program.

I regret the unexpected decision by the Alaska Supreme Court in the Madison case that has moved the State subsistence program out of compliance with the requirements of ANILCA. I am confident, though, that the State will be able to bring its program back into compliance by within one year.

Sincerely,



William P. Horn
Assistant Secretary
Fish and Wildlife and Parks

cc: AK Delegation
CHM-Sen Energy
CHM-House Interior
Ranking Minority of both Committees
Asst. Sec, Peter Myers, U.S. Dept. Agriculture .



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

September 23, 1985

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Governor of Alaska
Juneau, Alaska 99811

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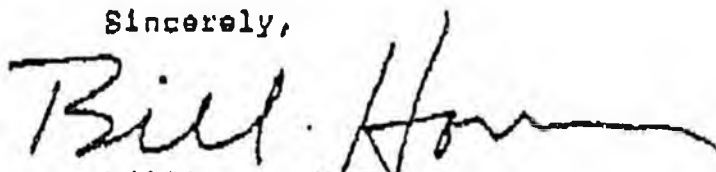
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Sincerely,



William P. Horn
Assistant Secretary
Fish and Wildlife and Parks

cc: AK Delegation
CHM-Sen Energy
CHM-House Interior
Ranking Minority of both Committees
Asst. Sec, Peter Myers, U.S. Dept. Agriculture .

Many of us believed that the question of subsistence rights in rural Alaska was settled with the election of 1982. Since that time, a Supreme Court opinion has opened the question again. Today, a bill is locked up in the Alaska Senate which would again insure subsistence priority for rural Alaskans. I am writing to urge your assistance in helping pass this important law.

The question of subsistence priority is more than one of access to our state's fish and game. It is a question of our state's responsibility to assist in maintaining cultural distinctions which predate most Alaskan's arrival here by thousands of years. It is the responsibility of all of us to protect the rights of Alaskans who depend on fish and game for their daily food and to insure that they have priority access to this food source.

You can assist me in the passage of this legislation by writing letters and sending public opinion messages to members of the Alaska State Senate. With your assistance, we can again insure that the subsistence rights of our fellow Alaskans are protected.

Warmest regards,

Stephen McAlpine
Lieutenant Governor

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

TO: Billy Berrier, Director
Division of Legal Services

FROM: Mary Margaret Brady *Mary Margaret Brady*
Administrative Assistant

DATE: December 30, 1985

SUBJECT: John Reeves Contract and Reeves and Associates

The above-referenced contracts are to the same individual. The John Reeves contract is in the amount of \$25,000 and Senator Fahrenkamp is the Project Director. The funds are paid from the Placer Mining and Distribution Grant Program which is under Councils and Subcommittees.

The Reeves and Associates contract is in the amount of \$5,000 and Senator Sturgulewski is the Project Director. The funds are paid from the Senate Resources Committee which is under Senate Leadership.

QUESTION:

Can an individual have two contracts when the total of the two contracts exceeds \$25,000 without requiring a sole justification if each contract is requested by a different committee or source?

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

December 30, 1985

SUBJECT: Reeves Contract

TO: Mary Margaret Brady
Special Assistant

FROM: Billy G. Berrier 
Director
Division of Legal Services

Two contracts have been awarded to John Reeves. One is for \$25,000 from one funding source and Senator Bettye Fahrenkamp is Project Director. The other is from another funding source, Senate Resources Committee, and Senator Arliss Sturgulewski is Project Director. The sum is in the amount of \$5,000. Although not mentioned in your memo the work under both contracts are related but the work in the second contract was not contemplated at the time the first contract was entered into and could not have been contemplated then.

You have asked in this connection, can an individual have two contracts when the total of the two contracts exceeds \$25,000 without requiring a sole justification if each contract is requested by a different committee or source?

The governing statute is AS 24.23.010 (1) which is part of the chapter governing legislative contract procedure. That section provides:

Sec. 24.23.010. Application. This chapter applies to contracts for services to be provided to a legislative agency or legislative committee unless

(1) the total amount of a professional services contract or contracts awarded to a person from a legislative agency or legislative committee does not exceed \$25,000 in a 12-month period;

Mary Margaret Brady
Page 2
December 30, 1985

In my opinion the phrase "a legislative agency or legislative committee" as used in the section makes it clear that contracts are cumulative only if they are from the same agency or committee.

Therefore each of the contracts are exempt and it is proper to award the second without requiring a sole source justification.

I have therefore approved both.

BGB:ml
me1/035

February 6, 1986

Mr. Ralph W. Tarr
Solicitor-Designate
Office of the Solicitor
Department of the Interior
C St. between 18th & 19th Sts., N.W.
Room 6348
Washington, D.C. 20240

Dear Mr. Tarr:

On September 23, 1985, William Horn, Assistant Secretary, Department of the Interior, informed Governor Sheffield that a determination had been made that Alaska's subsistence program is no longer in compliance with the requirements of the Alaska National Interests Lands Conservation Act, Title VIII ("ANILCA"). That determination was based on an analysis of Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985).

In response to the ANILCA ramifications of Madison, as well as the allocation disruptions it mandated, Governor Sheffield had introduced a bill into the State House of Representatives during the 1985 session, House Bill No. 288. That bill would have inserted the word "rural" into the State statutory definition of subsistence uses, and clarified the authority of the State Board of Fisheries to authorize and regulate "personal use fishing," as distinct from "subsistence fishing."

The Alaska Senate did not act on the bill during 1985, but recently the Senate State Affairs Committee passed on a Senate Committee Substitute for House Bill 288, to the Senate Resources Committee. A copy of that February 3, 1986, Senate Committee Substitute is also attached.

Since the Department of the Interior will eventually be reviewing whatever bill is enacted into law, as indicated by Bill Horn's September 1985 letter, your view on the fundamental requirements of ANILCA, and how the Senate Committee Substitute corresponds to those requirements, would assist us in giving the most correct advice to the Legislature and the Governor. In particular, it would be useful to have an assessment from your office on the following issues:

1. Does ANILCA require that "subsistence uses" be limited to customary and traditional uses of fish and game by residents of rural Alaska? It appears that ANILCA § 803 so defines the term.
2. Does ANILCA require that takings for subsistence uses as defined in ANILCA be afforded a priority over takings for other uses whenever it is necessary to restrict the harvest to protect the resource or the continuation of subsistence uses? It appears that ANILCA § 804 establishes that standard.
3. Does ANILCA require that the priority operate to provide reasonable opportunity for all subsistence uses even if that means restricting or eliminating takings for other purposes before any subsistence use is restricted? ("Restrict" is not here intended to include reasonable regulation.) It has been suggested that the extent of the priority may vary, depending upon a balancing of the importance of subsistence uses against the importance of non-subsistence uses. However, the legislative history appears to indicate otherwise. See, for example, 126 Cong. Rec. H10647 (Nov. 12, 1980).
4. Do the provisions of ANILCA § 804 apply to each fish stock and game population which is the subject of subsistence uses? It appears that legislative history mandates that subsistence uses are stock and population specific. See, for example, 126 Cong. Rec. H29279 (Nov. 12, 1980).
5. Does ANILCA authorize a durational rural residency requirement in identifying who may engage in subsistence uses? It appears that legislative history indicates otherwise. See, for example, Senate Report No. 96-413, 96th Cong., 1st Sess. 233 (1979).
6. Does ANILCA require that subsistence uses be identified and regulated on a community or area basis? It appears that legislative history indicates that ANILCA does not intend for subsistence to be identified and regulated on an individual basis. See, for example, 126 Cong. Rec. H10546 (Nov. 12, 1980).

7. Does ANILCA authorize only "important" subsistence uses to be subject to the protections of the subsistence law? It appears that ANILCA § 803 and § 804 require that all subsistence uses of a fish stock or game population be authorized, rather than only "important" subsistence uses.
8. Is the subsistence priority in ANILCA limited to a priority over other consumptive uses, or would it include a priority over other takings, such as catch-and-release fishing? It appears that ANILCA § 804 simply refers to "taking."
9. Does ANILCA require that fish stocks and game population can be harvested for subsistence uses only by people living in the immediate vicinity of the stocks and populations? It appears that such an interpretation would not take into account the customary and traditional patterns of use of residents of certain rural communities and areas who travel some distance to hunt or fish at certain times of the year.
10. Would defining "subsistence uses" in terms of individual need be consistent with ANILCA? It appears that legislative history indicates otherwise. See, for example, 126 Cong. Rec. H10546 (Nov. 12, 1980).

Your assessment of these specific questions would be of great assistance to us. Since it is not possible to predict how quickly the Senate will act, as prompt a reply as is feasible would be appreciated.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Bill Horn
David Gayer
Sharon Allender



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

September 23, 1985

Honorable Bill Sheffield
Governor of Alaska
Juneau, Alaska 99811

Dear Governor Sheffield:

On May 14, 1982, former Secretary of the Interior James Watt certified that the State of Alaska's subsistence program complied with the requirements of sections 803, 804 and 805 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. §§ 3113, 3114 and 3115. Accordingly, the State has for the last three years assumed primary responsibility for the management of the program providing the preference for subsistence uses on the public lands in Alaska. Unfortunately, the Department of the Interior finds it necessary to advise you formally that the State subsistence program is no longer in compliance with the requirements of ANILCA as specified in Title VIII.

As you are aware, the Alaska Supreme Court, in Madison v. Alaska Department of Fish and Game, 596 P.2d 168, Op. No. 2911 (Alaska Feb. 22, 1985), invalidated a State Board of Fisheries regulation designed to determine eligibility for subsistence fishing in the Cook Inlet Region because the regulation was inconsistent with the State subsistence statute. This ruling held that under the State statute the subsistence preference must be extended to both "rural" and "urban" subsistence users. Because section 803 of ANILCA limits the subsistence preference to "rural Alaska residents," the Madison decision raised questions as to the continuing eligibility of the State to manage subsistence on public lands in Alaska under section 805(d) of ANILCA. In an effort to determine the State's views on this issue prior to Departmental action, I requested on April 7, 1985, the legal opinion of the State Attorney General on the effect of the Madison decision. To date we have received no formal response from the State on the effect of Madison on the State's eligibility under section 805(d) of ANILCA. We did receive a letter outlining the administrative actions taken by the State in the wake of Madison but it offered no opinion regarding compliance with Title VIII. Nonetheless, the absence of legislative action this year to amend the State subsistence statute to conform to ANILCA has confirmed our preliminary determination that the State is no longer in compliance with the requirements of section 805(d).

You are hereby advised that the State has until June 1, 1986, to revise its subsistence program to bring it back into compliance with the requirements of sections 803, 804 and 805 of ANILCA. Compliance will require that the subsistence preference be limited to those rural Alaska residents who customarily and traditionally make use of subsistence resources. If the State has not conformed its subsistence program to the requirements of ANILCA by that date, the Department will be obligated to discharge its obligations pursuant to section 805. As we noted to the State Boards of Fisheries and Game in 1982, there are various ways to comply with the requirements of section 805; the regime in force when the Madison decision was handed down represented one possible approach. I am confident and hopeful that the State can make the necessary changes in its program within this period, and I offer the full cooperation and assistance of the Department in this effort.

The Department has concluded that section 805(d) does not require an immediate Federal take over of the subsistence program, given the circumstances by which non-compliance with the ANILCA requirements has occurred. Section 805(d) provided the State with a one year period of grace following enactment of ANILCA in order to give the State an adequate amount of time to prepare and implement a program that met the requirements of ANILCA. After successfully establishing an adequate program, the State made a good faith effort to keep in compliance with the requirements of Title VIII of ANILCA. Indeed, the recent problems that have befallen the State's program have not been the result of legislative repeal of the program; instead, an unexpected State Supreme Court ruling in a case that was vigorously defended by the State has altered the State's subsistence program and created a non-compliance situation. Under these circumstances, we are persuaded that the spirit and intent of section 805(d) warrants a grace period in order to provide the State with a reasonable opportunity to make the necessary adjustments to its program. We have chosen as a deadline June 1, 1986, because it is roughly one year from the time the State legislature failed to rectify the State subsistence statute.

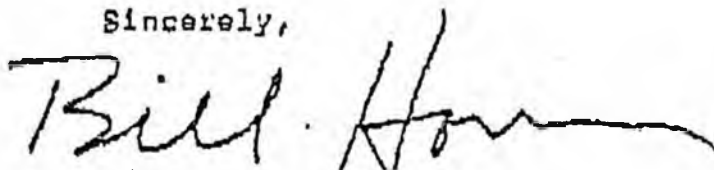
This course of action is further justified due to the fact that it appears unlikely that any adverse impact on rural subsistence users will occur during the grace period. The State subsistence program will continue to ensure that the Title VIII class of rural subsistence users are able to hunt, trap, and fish for necessary resources. The problem is that the Madison decision permits urban residents to be included in the subsistence class, contrary to the requirement of ANILCA that the preference be limited to rural residents. My decision that a grace period is warranted would, of course, have to change if significant adverse impacts on rural, customary and traditional subsistence users and on subsistence resources subsequently become apparent.

I fully expect that the State, in cooperation with the Department, will bring its subsistence program back into compliance with the requirements of Title VIII of ANILCA prior to June 1, 1986. I have, however, directed the U.S. Fish and Wildlife Service, in cooperation with the Office of the Solicitor, to begin preparation of a contingency plan for providing the subsistence preference on public lands that meets the requirements of ANILCA. My goal is to ensure that, in the event that the State is not able to bring its program into compliance by June 1, 1986, the Department is ready and able to discharge effectively its obligations under sections 803, 804 and 805 of ANILCA.

As a matter of information, the Madison ruling does not expand eligibility to pursue subsistence activities in those national parks and monuments where subsistence taking is authorized. Eligibility to engage in subsistence activities within those units of the National Parks System in Alaska is still determined pursuant to Federal regulations issued in 1981, since the State of Alaska never sought to acquire control of this aspect of the ANILCA subsistence program.

I regret the unexpected decision by the Alaska Supreme Court in the Madison case that has moved the State subsistence program out of compliance with the requirements of ANILCA. I am confident, though, that the State will be able to bring its program back into compliance by within one year.

Sincerely,



William P. Horn
Assistant Secretary
Fish and Wildlife and Parks

cc: AK Delegation
CHM-Sen Energy
CHM-House Interior
Ranking Minority of both Committees
Asst. Sec, Peter Myers, U.S. Dept. Agriculture .

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

TO: Senate Resource Committee Members

March 5, 1986

FROM: Senate Resources Committee Staff

MSK

RE: SCS for CS for HB 288 (Resources) "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

SECTION BY SECTION ANALYSIS

This legislation is designed to comply with Title VIII of Public Law 96-487, the Alaska National Interest Lands Conservation Act.

Section 1

Section 1 amends the authority of the Board of Fisheries for classifying fish stocks whenever the board finds it necessary for regulatory purposes. Two new categories are added. They are "personal use fish" and "subsistence fish." Small personal use fisheries exist on the Copper River and on some salmon stocks on the Kenai Peninsula, in Southeast Alaska, and on the Naknek River. In addition to areas where personal use fishing already occurs, it is envisioned that personal use fisheries would be particularly appropriate in certain areas of the state that were considered rural before the enactment of this bill.

Classifying fish for particular purposes does not imply that the uses are exclusive of other uses. However, allocation decisions, management concerns, or biological considerations may in particular circumstances require that use of a fish stock be reserved for particular uses or that certain uses be excluded.

The classification of "subsistence fish" merely enables the board to classify fish to bring them under subsistence regulation.

Section 2

Section 2 adds a new paragraph to the authority of the Board of Fisheries.

This paragraph tracks the purposes of the Board of Fisheries, as stated in the statute that established the board and as stated in Article VIII of the Alaska State Constitution. Article VIII gave the Legislature the authority over the conservation, utilization, and development of natural resources. The Legislature delegated that authority to the Board of Fisheries. This new paragraph is broadly worded so that the board's authority for conservation, utilization, and development of fisheries is tied to all aspects of regulating commercial, sport, subsistence and personal use fisheries.

Section 3

Section 3 is identical to paragraph (13) in section 2, except that section 3 applies to game. Two minor drafting changes are suggested for this section. In Alaska statutes, "game" is defined to include all wild animals.

Section 4

Section 4 is a major portion of the bill. It adds two new sections to the Alaska Statutes. AS 16.05.258 sets out a method of allocating fish and game among subsistence, sport, commercial, and nonconsumptive uses. It also contains important aspects of current subsistence law, such as the subsistence preference. It is intended to be consistent with Federal law. AS 16.05.259, is the second statute dealt with in this section. It addresses administrative appeals of decisions made by the boards.

Because the first of these two new sections, AS 16.05.258, is important and long, the detailed analysis of AS 16.05.258 is by subsection. In brief, AS 16.05.258(a) provides for the identification of those fish stocks and game populations that are subject to subsistence uses. Subsection (b) provides for a determination of what portion of those stocks or populations can be harvested consistent with sustained yield and how much of that portion is needed to provide a reasonable opportunity for subsistence uses of the stocks and populations. AS 16.05.258(c) describes the preference that shall be accorded for nonwasteful subsistence uses.

AS 16.05.258(a)

Subsection (a) requires the Board of Fisheries and the Board of Game to identify the fish stocks and game populations that are the subject of customary and traditional uses in each rural area.

In making these identifications, the boards should look at which fish stocks and game populations are normally used for subsistence in each rural area. The boards should consider the patterns of local use as established over time. It is not the intention of this bill to exclude from subsistence use any stock or population that is regularly used in that area, even if the level of use is small. It is the intention, however, to exclude from subsistence use those stocks and populations that are not normally used for subsistence and whose use is limited to an occasional individual animal.

The identification of which fish stocks and game populations will or will not be subject to subsistence regulations is a situation where both groups can potentially win. Identified stocks and populations are the ones on which allocation errors would infringe on subsistence. Identification of these stocks and populations will assure that use by those eligible for the subsistence preference is protected.

The identification of customary and traditional stocks leaves those that are not identified to be harvested by all Alaskans under nonsubsistence regulations as specified in proposed subsection (e) of AS 16.05.258. Some of the fish and animals most important to sport users are least important to subsistence users. Examples might be bison; goats; many sheep populations; elk and transplanted game; and perhaps some steelhead and trout stocks and brown bear populations.

Whether or not these are or are not subsistence stocks and populations is not decided by the proposed legislation. That matter should be left to factual determinations made by the boards. This bill gives them authority to make those determinations.

This section call for game populations and fish stocks to be identified in each rural area. Stocks and populations are geographically specific groups of animals and fish, as specified in the definition section of this bill. The identification of each stock or population subject to subsistence uses should be factually determined on a case by case basis.

Areas, as set by the board, should be large enough to include both where a particularly stock or population is normally taken and where it is normally used. As an example, the boundaries of areas should not pose a barrier to village residents who traditionally travel to a fish camp some distance from the village.

The boards should act with sensitivity in identifying subsistence stocks. They and the department should seek the assistance of regional councils and local advisory committees that are in place to assist the boards. However, the board may choose not to follow a regional council's recommendation if the board determines that the recommendation is not supported by substantial evidence. This requirement for substantial evidence is consistent with existing regulations governing the relationship between the councils and the boards, and this is consistent with Federal subsistence law concerning the regional councils.

AS 16.05.258(b)

After the boards identify subsistence stocks, subsection AS 16.05.258(b) then requires the boards to determine whether a harvestable portion exists and how much of that portion is necessary to provide a reasonable opportunity for subsistence. The determination of whether a harvestable portion exists must be consistent with sustained yield. The "sustained yield" principle is derived from Article VIII of the Alaska Constitution.

Paragraph (2) in subsection AS 16.05.258(b) establishes a legal standard for determining how much of a fish stock or a game population is needed for subsistence. The standard is a "reasonable opportunity to satisfy subsistence uses". Reasonable is a commonly accepted concept in law frequently used in statutes and applied by courts. Reasonable currently appears 1,356 times in the Alaska Statutes. The standard means that the boards' decisions should be based on available information, for example, a consideration of the customary and traditional levels of harvest. It does not permit the boards to be arbitrary, capricious, or prejudiced in allocating to subsistence. Conversely, it does not require the boards to satisfy desires of subsistence users that are unreasonable, that are inconsistent with available information, or that might be based on prejudice.

A "reasonable opportunity to satisfy subsistence uses" does not guarantee that every subsistence user will get every fish or animal he or she wants before any uses of lower priority are allowed. In hunting and fishing, that type of guarantee is impossible to provide. What this standard does provide is that every subsistence user, shall be able to hunt or fish with the reasonable expectation of taking the amount of fish and game needed.

AS 16.05.258(c)

Subsection (c) requires the boards to adopt subsistence regulations for subsistence stocks and populations. Subsection (c) also contains the preference for subsistence. It is consistent with Federal law. It is a redrafting of the current State law, AS 16.05.251(b) and AS 16.05.255(b). The redrafting is intended to make the preference more clear.

The current State law contains the so-called "Tier I" and "Tier II" levels of the preference. The U.S. Senate Committee Report on the Federal law clearly indicates that Federal law also contains the "Tier I" and "Tier II" levels. Tier I is when there is not enough of a harvestable surplus to accommodate all consumptive uses without interfering with sound management of the resource, but there is enough portion to allow a reasonable opportunity for subsistence. At Tier I, the preference allocates enough of the resource to provide that reasonable opportunity, with any surplus that is left going to other consumptive uses.

Tier II is when there is not enough of a harvestable portion to provide a reasonable opportunity for subsistence. When that occurs, other consumptive uses must be prohibited and subsistence must be restricted on the basis of three factors: (a) customary and direct dependence on the fish stock or game population as the mainstay of livelihood, (2) local residency, and (3) the availability of alternative resources. Alternative resources means other wildlife and alternatives purchased with cash.

Several additional points need to be made about this subsection. First, almost all of the Tier II hunts that occurred after the Madison decision will be reopened by this bill. The Tier II hunts will be reopened by dramatically reducing the number of hunters eligible to participate in subsistence hunts. The effect of this will be to leave more game for sports hunters. Also, some hunts that are presently Tier II hunts are on game populations that will probably no longer be classified as subject to subsistence uses. Bison are an example.

Second, the subsistence preference is only a preference over other consumptive uses. This is consistent with Federal law, as stated in the policy and intent sections of the Federal law. Catch and release fisheries, taking of fish and game for management purposes such as transplanting stocks or poisoning undesirable fish prior to stocking are not consumptive uses for purposes of the subsistence law, so long as they do not interfere with reasonable opportunities for subsistence. Similarly, nonconsumptive uses in national parks or other areas, and administrative actions consistent with State and Federal law, may take precedence over subsistence.

AS 16.05.258(d)

Subsection (d) authorizes the boards to adopt regulations for stocks and populations identified under (a) to provide for nonsubsistence harvest of that portion of the harvestable portion that is not needed for subsistence. This would be the normal state of affairs for almost all hunts and fisheries.

AS 16.05.258(e)

Subsection (e) provides that fish stocks and game populations that are not identified as subsistence stocks and populations under (a) may only be harvested under nonsubsistence regulations. This section is previously discussed in more detail in the discussion of subsection (a).

AS 16.05.258(f)

Subsection (f) provides that all takings of fish and wildlife, including subsistence harvest, are subject to reasonable regulation of seasons, bag and catch limits, methods and means, and other such restrictions including prohibitions of wanton waste.

AS 16.05.259

This new section grants the boards authority to establish administrative appeal procedures. It should be emphasized that this ability to adopt an appeal procedure is strictly optional at the boards discretion and that there are a variety of forms the appeal procedure could take.

Section 5

Section 5 amends AS 16.05 by adding a new section, AS 16.05.261, which states that in a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense to the charge that the taking was done for subsistence use. This section requires a person who disagrees with a board action or statute to seek to correct that action or statute through appeal, petitions for reconsideration, court action, etc. rather than permitting the person to violate the statute or regulation and claim subsistence as a defense. This eliminates the "subsistence defense" as arose in the Eluska and Skuse cases.

This section does not effect AS 16.05.930 (b) which allows people to take fish and game in case of emergency.

Section 6

Section 6 amends AS 16.05.330 to allow the boards to adopt regulations providing for subsistence permits. Those permits may be for all subsistence users within a rural area, for rural communities or villages, or for groups or individuals in rural areas. The boards are required to adopt a permit program when the subsistence preference requires reductions in the harvest by nonsubsistence users. Such a reduction should only take place in case of a resource shortage compared to the number of users. When that situation exists, the Department and boards should have such a system in place so they can closely monitor the harvest and the demand on the resource.

Section 7

Section 7 amends the definition of subsistence fishing to state that subsistence fishing may only be engaged in by rural residents domiciled in a rural area.

Section 8

Section 8 amends the definition of subsistence uses to state that it does not include harvests for commercial enterprises. The addition of the word "noncommercial" to the definition is not meant to prevent limited exchanges of goods for cash under customary and traditional trading practices, but it is meant to prevent subsistence harvest for substantially commercial enterprises. As specified in Section 2, it is understood that subsistence uses shall be nonwasteful. The definition of subsistence uses is also amended to to make plain that subsistence uses have to be by a resident domiciled in a rural area of the state.

Section 9

Section 9 addresses several other definitions. The first of these is "domicile" which is defined as a person's "true and permanent home...". The definition states that domicile may be proved by presenting evidence acceptable to the boards. The board of fisheries already has regulations on domicile and it is anticipated that the board of game would adopt similar regulations.

Fish stocks and game populations are defined as any species or subgroup of a species that is manageable as a unit.

A definition of personal use fishing is contained in this section. This definition is very similar to the definition in the House version of this bill. Neither sport, commercial, or personal use fishing is afforded any priority over any other type of fishing in this legislation. As indicated in section 1 it is envisioned that personal

use fishing may be particularly appropriate in certain areas of the state that were considered rural before the enactment of this bill. This legislation is not intended to statutorily increase or decrease existing personal use fishing. The scope of these fisheries is an allocation decision left to the board.

The bill adopts a definition of "rural area" similar to the definition added in the House. It is defined as a community or area of the State where the noncommercial, customary and traditional use of fish and game for personal and family consumption is a significant characteristic of the economy of the community or area. The definition is designed to mesh with the definition of subsistence uses. The definition is not meant to preclude an area from being rural simply because there may also be significant elements of the cash economy in the area, such as commercial fishing.

The focus in this bill on the significance of the noncommercial, customary and traditional harvest and use in a particular area is consistent with ANILCA and its legislative history. In that history, Congress indicated an intent to protect subsistence use in areas of Alaska where subsistence "...uses have played a long established and important role in the economy and culture of the community...". The legislative history lists several communities that were considered rural in 1979, but acknowledged that the economic development and rural character of such communities may change over time. It is expected that the boards would look at ANILCA's legislative history when establishing rural areas and would review areas as conditions change to assure a rural or nonrural classification is still appropriate. As mentioned earlier in this sectional, areas, as set by the board, should be large enough to include both where a particular stock or population is normally taken and where it is normally used.

The definition of subsistence hunting is similar to the definition of subsistence fishing discussed above.

Section 10

Section 10 repeals three portions of subsistence law. AS 16.05.251(b) concerns fish, and AS 16.05.255(b) concerns game. They are similarly worded in current law. They require the boards to adopt subsistence regulations and establish the preference in current law. In the bill, these requirements and the preference are readopted in the new AS 16.05.258(c).

AS 16.05.257 is repealed because it is unused and is old law that predates the 1978 state subsistence law.

Section 11

Section 11 provides that the bill would take effect on June 1, 1986.

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1986

R O N S O M E R V I L L E

FOR

GOVERNOR OF ALASKA

8800 Glacier Hwy., Suite 250
JUNEAU, AK. 99801

March 5, 1986

Senate Resources Committee
State of Alaska
Senator Arliss Sturgulewski, Chairman
Pouch V
Juneau, AK. 99811

Dear Senators:

It is my understanding that your review of Senate CS for HB 288 (subsistence) is coming to an end and there may not be any further public testimony on this piece of legislation in your committee. Unfortunately, I was unaware of your one teleconference on the bill and thus was not able to testify. I do believe, however, that there are a few points that have not been stressed adequately and since it appears that I will not be able to present them personally, I am putting them in writing.

First, I want to stress that all Alaskans are praying that a fair and workable law will be forthcoming which will lay the subsistence controversy to rest, once and for all. We are also appreciative of the complexity of the problem and the seriousness of the issue as, in one way or the other, it affects the daily lives of most Alaskans.

I would like to compliment the State Affairs and Resource Committees attempts to improve on the simplistic legislation introduced by the Governor and narrowly passed by the House during the last session. There are definite improvements in the legislation.

The provisions which provide the authority to regulate subsistence taking, give the Boards authority to identify subsistence stocks, authorize issuance of subsistence permits, provide that subsistence users be given a reasonable opportunity to harvest and allow no subsistence defense for fish and wildlife harvested outside the regulations are all important and crucial additions to the original bills.

The major stumbling blocks of the subsistence law debates are, however, still left unattended. The committee chose to eliminate

a critical section of an early draft which allowed the Boards to apportion subsistence use among species, stocks and populations that are similar and reasonably available. The committee also chose to insert the word "rural" into the state law without providing a definition which would possibly narrow a subsistence priority down to the "true subsistence users" which most Alaskans would agree deserve some preferential treatment.

The committee has also chosen to ignore the overwhelming testimony of most Alaskans that any preferential allocation of our common property resources for subsistence should be based on need rather than residency. Alaskans have also strongly endorsed a revision of the existing policy to base subsistence on individual or family need rather than on a community basis where "need" is totally ignored.

We all fully realize that you are under pressure from the Federal government and subsistence advocates to adopt a state law precisely in line with their narrow interpretations of the existing Federal law. Unfortunately, most Alaskans are not going to endorse a law which discriminates based on where a person lives in Alaska.

One of the most volatile issues has been concerned with identifying "who" is a subsistence user. In your legislation, by complying with the Federal law and inserting the word rural, the only residents that are really eliminated from the priority use are those that live in Anchorage, Fairbanks, Juneau and Ketchikan. I fully realize that you have provided direction, through the letter of intent, for the Boards of Fisheries and Game to further delineate "subsistence uses" and "rural areas". In my opinion, by passing the buck to the regulatory boards, the legislature is neglecting its responsibilities. It is obvious that if each legislator is forced to define which area is or is not a subsistence area and thus which constituents are subsistence users, that it is going to be extremely difficult to draft legislation which will pass both houses.

I maintain that the boards are even less prepared to deal with the construction of socially discriminatory laws than is the legislature and further more it is not the function of an allocation board. It is clearly the function of the legislature to develop clear guidelines by which the boards would follow in implementing the laws. Most importantly, every Alaskan would be able to judge and comment personally on the legislation. It is critical that everyone be able to determine whether he or she is "in" or "out" directly from the proposed legislation.

I believe it is hypocritical for the legislature to consistently criticize the administrative agencies for developing broad regulatory authority and then pass a piece of legislation as poorly constructed as this legislation with almost unlimited regulatory options. It is clear that because the legislature cannot deal with the politics of this issue, they are pulling the pin and throwing the hand grenade to the Boards in hope that they

will develop the political guts to do what the legislature is apparently unable to do.

I personally feel you should craft a subsistence law which is acceptable to most Alaskans based on some criteria of need and lack of alternative resources and let the courts settle whether or not it is in compliance with the Federal law. I also strongly urge you to face up to your public responsibilities if you decide to descriminate against urban residents by giving a priority to rural residents by precisely defining what is rural. The public deserves that much consideration on this volatile issue.

I would like to point out in closing that despite recent testimony to the contrary, Alaskans voted in 1982 to retain the exisiting State law which clearly does not descriminate against urban users. For some reason, subsistence advocates have twisted the 1982 vote as an endorsement of the privilege for only rural residents.

It is also important to express my concern for your lack of consideration for public input into the constantly changing legislation. One poorly advertised teleconference can hardly be considered public participation.

Thank you for considering my comments.

Sincerely,



Ron Somerville

MAY 10 1985



ALASKA PUBLIC INTEREST RESEARCH GROUP
Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

May 10, 1985

Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator:

Although it appears that differences between the House and the Senate on the Longevity Bonus, the budget and the public employee pay raise may finally get settled before the end of the session, the Alaska Public Interest Research Group has grave fears that a fourth, just as important issue will remain unresolved through the summer. That issue is subsistence.

Since February 22nd, the legislature has been on notice that the subsistence preference would have to be resolved before the 120 day limit expired. The House version of the bill is an improvement over the governor's original bill, and is clearly preferable to the Senate versions now being considered. The House version implements the will and intentions of the voters in opposing the 1982 ballot proposition. The Senate versions revoke that vote by extending subsistence preferences to all Alaskans, rural and urban alike, provided they leave town before they shoot a caribou.

We urge you to live up to your legislative responsibilities, follow the will of the voters and pass a rational, equitable bill similar to the House version before adjournment. Subsistence is not a rural issue, it is a statewide issue.

Sincerely,

Maureen Kennedy
Director

For the Board:

Abby Arnold
Hugh Fleischer
Jim Gottstein
Karla Huntington
Bob Lohr
Pat Smutz

Linda Snyder
John Suddock
Phil Volland
Marsha Walton
Matt Zencey

MAY 07 1985

April 30, 1985

810 Ballaine Road
Fairbanks, Alaska 99701

Dear Legislator:

As professional fisheries and wildlife biologists, we are deeply concerned about the wise management and conservation of Alaska's fish and wildlife resources. Sections of the current Alaska statutes governing those resources seem to deny the use of a management approach that we believe is essential in order to manage those resources safely. In this letter, we identify the statutory sections in question and request legislative action to correct them.

The sections of the statutes of primary concern are those (Sec. 16.05.251 and 16.05.255) which require that a particular consumptive use, subsistence, must remain unrestricted unless the Board of Fisheries or the Board of Game determines that such use, continued without restriction, would jeopardize the sustaining of such use (i.e. would not allow sustained yield). That approach -- unrestricted use unless damage is proven -- is opposite to the accepted and established resource management strategy of the fisheries and wildlife professions.

The consistently reliable approach in connection with consumptive uses of fish and wildlife is a conservative one. In effect, one should manage from an initial position of complete closure, removing restrictions in a safe manner as understanding of the resources increases so that we can be assured that the desired consumptive uses can be accommodated. Current understanding of most wild populations, and of their consumptive harvests, allows us safely to set limited seasons and bag limits. However, even though Alaska has one of the best fisheries and wildlife staffs in the country, the existing specific population data usually are not sufficient to prove, before we can impose restrictions, that unrestricted use is jeopardizing sustained yield. Given the budget constraints presently inhibiting gathering additional information, that situation likely will persist. Hence we should take a conservative approach to managing consumptive uses if we are to guarantee that users, subsistence and others, will have long-term access to fish and wildlife resources.


Another undesirable consequence of the unrestricted approach is that harvests often will occur at times of the year when they have greater detrimental impacts on the fish and wildlife populations than do controlled harvests occurring at specific times. Obvious examples of the need for control over timing of harvests in order to protect resource productive potential exist in the instances of king salmon smolt leaving fresh water, of ptarmigan on the nesting grounds, of cow moose when they have calves, and of sow bears when they have cubs. Many other examples also could be cited. The point is, greater total yields often could be provided if restrictions on seasons, methods and means, etc., could be

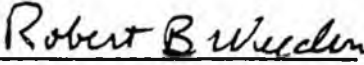
put in place based on our understanding of population dynamics. The current statutory language regarding controls on subsistence use does not permit such restrictions, even those that conceivably could increase total allowable harvest. We believe such management latitude is necessary, particularly in this day and age when subsistence use does not have the same dire dependence associated with it that was true several decades ago. In addition, subsistence harvesting with steadily increasing use of modern equipment often places the resource in essentially the same risk situation that non-subsistence uses do.

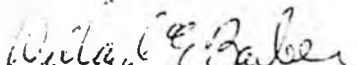
We hope that you will see the need for regaining a conservative, flexible management approach in order to provide long-term protection to resources whose continuation is critical to subsistence lifestyles as well as to all other uses. Wise and responsible management of our fish and wildlife populations requires that we change the current statutory language regarding management of subsistence uses. We request your help in that regard.

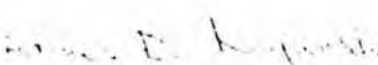
Thank you for your concern for Alaska's fish and wildlife.


Sincerely,

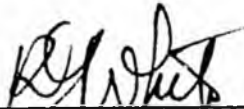

Dr. Frederick C. Dean
Ph.D., Forest Zoology


Dr. Robert B. Weeden
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Dr. Willard E. Barber
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Dr. James B. Reynolds
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Dr. David R. Klein
Ph.D., Wildlife Management


Dr. Robert G. White
Ph.D., Zoophysiology and Nutrition

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF BOARDS

MAR 27 1985
BILL SHEFFIELD, GOVERNOR

BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4110

February 11, 1985

Mr. Theodore J. Almasy
Nixon Fork Mine
McGrath, Alaska 99627

Dear Mr. Almasy:

We received your proposal for change to the regulations of the Alaska joint Boards of Fisheries and Game. Unfortunately, the board is not considering the subject of your proposal at the spring 1985 meeting. I am returning your proposal so it will not be lost or misplaced. I have enclosed a copy of the Game Board regulations. The joint board subsistence regulations begin on page 66.

The board appreciates your interest in Alaska's fish and wildlife resources.

Sincerely,

Bob Larson

Bob Larson
Assistant Executive Director

Enclosure

3/25/85

*Chairman: Committee on Natural Resources
Alaska State Senate*

I would appreciate consideration by your committee of my recent proposal to the joint Boards of Fisheries & Game regarding subsistence regulations. The intent is to create a regulation or statute that is acceptable while designed to withstand any court challenge based upon equal rights of citizenship, civil rights as the case may be. Thank you.

*Sincerely,
Theodore J. Almasy*

REGULATION PROPOSAL FORM

Alaska Boards of Fisheries and Game

See Other Side
For Instructions
on Completing
This Form

Proposal Concerns (Check one)

Commercial Sport Personal Use Hunting Trapping Subsistence Advisory
Fishing Fishing Fishing Fishing Fishing Boards of Fisheries and Game Committees

RECEIVED
DEC 21 1981
DEPARTMENT OF FISH & GAME

Use Separate Forms For Each
Change of Regulation

1. Area(s) Affected Statewide

2. Alaska Administrative Code Number 5 AAC Regulation Book Page No.

3. Purpose of Proposal

To Define; State the Legal Basis; Determine Qualifications and Exemptions; and, Establish the Rules of Implimentation of a Subsistence Regulation.

4. Suggested Wording of Proposed Regulation (Use separate sheet if necessary)

As per Attached: Three (3) Pages.

5. Justification Act and Order of Congress

6. Submitted By: Name Theodore J. Almasy
Address Nixon Fork Mine - McGrath, Alaska Zip Code 99627 Phone None
Representing Self Advisory Committee:
 Regional Council: Other:

PROPOSAL

THEODORE J. ALMASY

Pioneer "Alaskan Woodsman" Guide-Outfitter

McGrath, Alaska 99627

The Tikchik Lakes - The Kuskokwim - The Alaska Range
Trophy Fishing • Trophy Hunting • Recreation & Exploration
Dec. 15, 1984

State of Alaska
Boards of Fisheries & Game
Box 3-2000
Juneau, Alaska 99801

Subject: Regulation Proposal Item 4. (extra sheets as required)

DEFINITION: Subsistence in Alaska today is simply all or that portion of an individual or family unit's living or livelihood that is derived and obtained from land and sea by self-employment through use, utilization and development of available natural resources by Alaska's permanent inhabitants (without regard to race or ancestral heirdity); and, including, but not limited to; agriculture, mining and forest products along with personal harvest of fur, fish and game.

IN SHORT: Self-support by direct acquisition and personal processing and use of Alaska's land and sea natural resources to provide all or most of one's living or livelihood, and with cash flow not involving wages and salaries from this self-employment.

* * * * *

LEGAL BASIS: "GRANDFATHER RIGHTS" established by present day Alaskan inhabitants by and through historic personal use. These rights are not limited to any particular race, but rather belong to an ethnic group in a mixed and integrated society. The U.S. Government, after all, invited foreign immigration, permanent settlement, and encouraged and fostered economic development by these pioneers through use, utilization and development of Alaska's natural resources for more than 100 years; and, while she may have changed the rules and policies with reference to recent and current immigrants - she (and her Colonial Arm - the so-called State of Alaska) are legally duty and honor bound to keep promises and commitments made in the past. Thus, after some 250 years (beginning with the Russian occupation) of foreign immigration, permanent settlement, and racial integration and assimilation both an ethnic group has developed and a way of life evolved in which individual rights cannot be decided nor judged based upon racial nor ancestral heirdity; but must be treated on the basis of members of an ethnic society. We are now aware of many flaws in the Alaska Native Claims Settlement Act, and a major flaw yet to be contested in the courts is based on the Civil Rights of those Alaska Nationals forcefully segregated and disenfranchised because of our race, and thus denied our "equal rights".

IN SHORT: "GRANDFATHER RIGHTS".

* * * * *

DETERMINATION of WHO and WHOM QUALIFIES

WHO IS QUALIFIED? : All Legal Residents of Alaska whose home and permanent residence is outside of the limits of first and second class cities tied into the integrated highway system and Marine Highway Systems, and who as individuals or family units qualify as subsistence users under the "DEFINITION" and "LEGAL BASIS" as stated.

WHO IS EXCLUDED ? : All persons whose home and permanent residence is located within the city limits of any First or Second Class City tied into the integrated highway or Marine Highway systems; residents of government (federal or state) owned housing located upon government owned or reserved lands; and, all U.S. Citizen immigrants who may hold Alaska Resident Status under Law, but whom are themselves in Alaska under "labor" or "tour of duty" contracts or agreements on full time wages and/or salaries; and, who are granted and accorded special benefits, privileges, and tax exemptions including "cost of living allowances" by their employer and governments "as an condition of employment" that are not equally granted nor accorded nor available to local permanent inhabitants of Alaska. Such "Residents" cannot claim Subsistence Rights in Alaska.

IMPLEMENTATION

1. (a) For the purpose of implimenting this Section: Each full Game Unit (as they currently exist including all divisions and sub-units) shall henceforth be declared to be also a Subsistence Unit and Unit of Permanent Residence for all legal (one year) Alaska Residents who maintain their home and permanent Post Office address within such Unit's boundaries.

(b) Both Subsistence Rights and Resident Hunting and Fishing Rights (without payment of trophy fees) for all Resident Alaskans shall be limited to (1) Unit only - the Unit of Permanent Residency; and, in order to maintain these rights a party must reside year around in Alaska and not less than six (6) months per year within the boundaries of the Unit for which he claims these rights.

2. All Subsistence Users and legal Residents hunting and fishing outside of their Unit of Permanent Residence shall be deemed to be Trophy Hunting and Sports Fishing and subject to the prevailing trophy fees, but exempt (as Residents) from the Registered Guide Requirement.

3. Trapping is hereby designated as a subsistence right, and trapping is closed except to Subsistence Users.

4. Any Alaskan holding a: "Permanent Hunting, Fishing & Trapping License is automatically declared to be a subsistence user and hold Subsistence Rights.

5. That where the taking of certain game animals is restricted by permit that subsistence users within said Game Unit shall have first preference rights to these permits with the general public taking the excess.

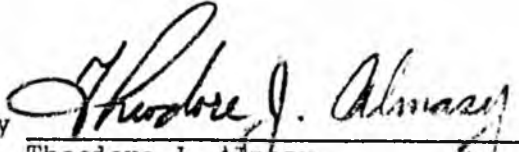
Implimentation Continued:

6. Nothing in this or these regulations is intended nor shall prevent immigrant settlers from acquiring Subsistance Rights as an Earned Right so long as they meet the requirements.

* * * * *

END

* * * * *

by 
Theodore J. Almsy

*Jim Brown
presented to public
meeting - 11/22/85*

REGULATION PROPOSAL FORM

Alaska Boards of Fisheries and Game

See Other Side
For Instructions
on Completing
This Form

Proposal Concerns (Check one)

- Commercial Fishing Sport Fishing Personal Use Fishing Hunting Trapping Subsistence Advisory Committees

Use Separate Forms For Each
Change of Regulation

1. Area(s) Affected STATEWIDE

2. Alaska Administrative Code Number 5 AAC 01.010 sec. a sub. par. g
Regulation Book SUBSISTENCE
Page No. 10

3. Purpose of Proposal THIS PROPOSAL WILL PROVIDE ACCESS FOR HOOK AND LINE FISHERMEN TO THE SUBSISTENCE PRIORITY.

4. Suggested Wording of Proposed Regulation (Use separate sheet if necessary)

ADD WORDS "HELD IN THE HANDS OR CLOSELY ATTENDED, HOOK AND LINE HELD IN THE HANDS, AND DIPNET IS LAWFUL." AFTER THE WORD "POLE". DELETE THE WORDS AFTER "POLE" AND ALL OTHER RESTRICTIONS ON THE USE OF HOOK AND LINE GEAR CONTAINED IN SUBSISTENCE REGULATIONS. ADD THE WORDS "A SUBSISTENCE FISHERY IS ESTABLISHED WITH THE USE OF HOOK AND LINE EVERYWHERE THAT A SPORT FISHER FOR ANY SPECIES OTHER THEN RAINBOW AND STEELHEAD, OCCURED LFGALLY IN 1983." TO THIS SECTION AS SUB. PARAGRAPH "M".

5. Justification BETTER THEN 90% OF THE PERSONAL USE OF THE FISHERY IN ALASKA OCCURS WITH THE USE OF HOOK AND LINE. HOOK AND LINE ARE THE SECOND OLDEST TYPES OF FISHING GEAR. THERE IS NO BIOLOGICAL JUSTIFICATION FOR LIMITING USE OF HOOK AND LINE UNDER THE SUBSISTENCE LAW IN AREAS, WAYS, AND WITH

6. Submitted By: Name Thomas E. Brown
Address P.O. Box 657 Homer Zip Code 99530 Phone _____
Representing Self Advisory Committee: _____
 Regional Council: _____ Other: all applications to fish
hook and line fishery

PAGE TWO REGULATION PROPOSAL BY TOM BROWN

JUSTIFICATION CONT.: THE SAME BAG LIMITS AS PRESENTLY OPEN TO THE USE OF HOOK AND LINE UNDER THE SPORTS REGULATIONS. SINCE THE SUBSISTENCE PRIORITY WILL ALLOW GREATER UTILIZATION OF FISHERIES RESOURCE BY INDIVIDUAL ALASKAN RESIDENTS AND WILL FUNCTION TO PROVIDE MORE SALMON IN STREAMS ALSO UTILIZED BY THOSE NOT ELEGABLE FOR THE SUBSISTENCE PRIORITY THE NET EFFECT WILL BENEFIT THE PEOPLE OF THE STATE AND THE INDUSTRIES WHICH SERVICE THOSE PEOPLE.

Nince Fast

MINUTES

WASTE DISPOSAL COMMISSION MEETING

OCTOBER 2, 1985

MEMBERS PRESENT:

Joe Arness
Tom Brown
John Landua
Larry Smith

MEMBERS ABSENT:

Keith Laurie

ALSO PRESENT:

Skip Bambard
Jessica Black
Bob Pollard
Marilyn Dimmick
Dave Brown
Mike Kennedy
Larry Acomb
Charlie Dixon
Bob Delaney

David Weyers
47 West 9th Ave.
Ambrose Ave
ALPHA Health Project

The regularly scheduled meeting of the Waste Disposal Commission was called to order at 7:55 pm on October 2, 1985 by Chairman Joe Arness. Joe said there were several people present, he asked that if someone would like to speak that they should come forward and speak into a microphone.

Jessica Black: my name is Jessica Black - probably some of the board members have heard of me because there has been some publicity about problems. I am here because I wanted to express my concern as a resident of the Kenai Peninsula Borough about problems that are affecting my husband and I. We bought some property in May of last year at the end of West Poppy Road and that is bordering on land that is owned by Union 76. At the time that we bought the property it had a small cabin on it, we planned on building a larger house on it. About two or three months after we bought the property and we'd built a floor and we'd started to frame up the walls my husband had an occasion to meet with Larry Cutting from Union 76 and we had been involved in the drilling mud issue because of our membership in Audubon Society and just by chance my husband happened to ask Larry Cutting if there were any drilling muds that were dumped on the property next to our house. He said absolutely not, there is nothing, it was just a benign old gravel pit that they used to build their pad with. Well, just as recently as three weeks ago, DEC found drilling muds within a hundred yards of my house and there is a mysterious puddle of unknown substances and oil welling up from the ground. There are photographs that were taken by my neighbors of a fire that occurred in the pit that was found by the forestry people that put out the fire that was of a chemical nature. All sorts of interviews have resulted in information that there were things that had been dumped in the pit. I've got a lot of concerns about that. I found out in November that DEC had been talking to one of my neighbors about a pile of gaswell condensate that was out there. There is two hundred and fifty cubic yards of it - four hundred parts per million was found in the tests and point five per million is considered toxic by federal standards. Right now my husband and I are carrying our water into our house and I had some health concerns because we noticed that our health had generally gone down since we started living in the house so I had some medical tests done and originally my blood showed that I had a real high amount of chromium in it, like maybe ten times the normal amount of chromium that is found in humans. After six months, I had myself retested at Harborview Medical Clinic by specialists in epidemiology and the level had gone down, however she said that wouldn't be unusual because you can pee it out. Chromium is something that you can get rid of. However, nobody can tell us what the medical risks are. Union 76 won't reveal what could be possibly be in the pit, or what ingredients could be in drilling muds, so we can't sufficiently test ourselves, or our water or the soil around our house to find out just what kind of health risks we might be exposed to right now. We are also feeling pretty helpless because there is a lot of different concerns with drillings muds and with other wastes and it's not being very cohesive because some people are interested in just making sure the water is ok and some people are interested in checking for the hazardous waste thing, and some people are just checking for the soil and I just feel like we haven't gotten the satisfaction of feeling like there is a cohesive study going on of that pit to make sure that it is being taken care of. Also, we have been told that there really isn't a plan to get rid of that stuff out of the pit and if it was - who knows if the water would be safe for up to ten years. Everybody at DEC is saying they are doing what they can and saying that everything is ok, but they always end every sentence by saying "you are not drinking your water are you?" - and that is pretty unsettling. It might sound sort of stuffy and funny, but I finally felt like I had to come in and address this group because I feel like there is some urgency to locate a hazardous waste site so that there is a place to take the stuff out of the pit next to our house to put it away from

Tom Brown
Felt we should
have this
testimony
should be

Brought to public only
Tom Brown
11/2/85

our homes and the stuff that got put in the Kenai Landfill because I had seen the stuff that came out of it before it got put in the landfill and that was not anything that was benign, it was bad stuff. Also, I urge you to hurry on your task and I also ask you that there are people that are being hurt by this because I can't sell my house right now so I am stuck with a house - I have to disclose to any potential buyer what I think is wrong with the house. I built that house, and I'm proud of it, but I don't feel like living in it anymore because sometimes I dream it is killing me - that sounds kind of hoaky, but it's true. I'm feeling stressed out because I'm living in a house that I feel is dangerous to me and my health and my husbands health and also because we might not be able to sell it when we decide to move on and because I feel like we haven't gotten the response that we'd hoped for from the different government and Borough agencies.

Joe Arness: have you had your water tested?

Jessica Black: yes, but I was talking to Carl Reller - he came down for a meeting a couple of months ago and he stopped by my house before he came to the meeting - they have never tested for the gaswell condensate items in our water and that was one thing at that time that they knew was in the pit. He told me that they had not done the appropriate tests, but I'm not sure cause I'm not a chemist and I don't know what those tests were, but he told me that the appropriate test to find whether any of the things that are in gaswell condensate - and I guess it's straight C carbons, it's real highly volatile stuff and it's really toxic to humans is what I've been told by DEC. Larry Cutting happened to make a joke the other day while he was out there at the pit, he said to my neighbor Charlie something to the effect that maybe we should just make this the waste site - ha, ha Larry - I don't want to live next to it - it's a hassle.

John Landua: I want to say for the record that I have seen some of the test results from Jessica Black's well. I don't remember seeing any results from hydrocarbon testing on any of those things and those things were what they were going down there for - it was clearly Jessica Black's concern at that time. We have talked about this before.

Jessica Black: not only that, but apparently they can only do so many tests on so many things in the water and without knowing a list of ingredients that are in the drilling mud they can't test for things unless they know they are there. Also, Northern Tests Labs had been hired by Union 76 to do tests as an impartial person and they sent me a letter saying something about that they were going to have to re-do the oil and grease test because there had been some kind of result showing something about oil and grease and they were going to retest it to see what came out of that and we've never gotten results, we've never heard back from them from that time and that was about February or March.

Apparently they dug this winter for five monitoring wells to test for what could be down in that well, four out of five of those tests have apparently shown really high levels of arsenic, but nobody can agree whether or not that arsenic came out of the dirt, or came out of the water. Because their testing techniques haven't been the same, that has all been up in the air too. I think the one thing that we'd like Union 76 to do is just to go out there with a backhoe and dig it up and see what's there, but if they would that would sure set a lot of minds to rest because we are unsure about the unknown. All year long we've been told even by DEC there are no drill muds out there, what was put in was taken out and there is nothing out there and yet two weeks ago they found drilling muds. Who am I supposed to believe? I have been lied to.

Tom Brown - have you been able to gather all of the documents that you have on this so that you could present them to the Special Waste Commission - all of the letters, all of the test results, etc.

Jessica Black - I could put them together, but it is kind of a hassle because we're building our house and everything is all over the house in boxes, but given some time if you wanted them I could do that.

Skip Bambard - state statutes say that any well must be 32 feet.

Jessica Black - I know, the guy that I bought the property from said the well was 32 feet, but it wasn't until Charlie told me that it was only 17 feet.

John Landua - I'd be interested in if you have any thoughts on what kind of pressure you consider that this commission might be able to apply to get this excavation done that you are talking about.

Jessica Black - I think that above and beyond everything else, because it's apparently health testing as far as blood and urine on humans doesn't tend to show as well as water and soil because the medical testing isn't very far advanced. So that leaves us to continuing the water tests and continuing to have Union to allow to have DEC to take samples of the water at the same time they take their samples and also digging that place up would just set a lot of peoples minds to rest. Charlie has lived there the longest and has witnessed the most of what has gone on. If Union or DEC could find the money to get a backhoe out there to dig where Charlie says and dig as deep as Charlie says - if they don't find anything there we'll all shut up. But so far I've been told there wasn't anything and now there is something and so I have a tendency to think that there really is something there and they just don't want us to know.

Joe Arness - you say they found drilling mud - is it just a pocket of drilling mud or is it mixed with gravel.

Jessica Black - it's all over the place, you can walk around the pit and see chunks of bentonite all over and bentonite just doesn't occur around there - it is obvious what it is and it's all over that pit.

Joe Arness - does Union try to keep DEC off the property.

Jessica Black - I don't know to what DEC has attempted to get Union's cooperation or what extent Union has cooperated.

John Landua - have you poked around out there very much, is there other debris out there?

Jessica Black - Yes, sure there is lots of couplings, and there is barrels and barrels with writing on them and there are things that look like skids and lots of other debris out there - scrap steel and lots of other stuff. One of my neighbors, Mr. Engelman has lived there for quite some time, he homesteaded part of that area told me that at one time there was this big stack of barrels and the number of barrels he's not quite sure of, but they were in the corner of the pit near our house and then he said that one day he rode a snowmobile down there and they were there and the next day the dirt was all pushed around and they were all gone which led him to believe that they got buried there. I don't have any doubt that there is lots of industrial barrels buried under the surface of the ground because they are surfacing now and there is lots of other stuff under there.

John Landua - there is no permitted waste site out in that direction is there?

Skip Bambard - No.

Jessica Black - it's just right there down Poppy Lane right where it leads into the roads that go into the gas fields back there the road that has a guardrail across it. So there is a lot of

traffic that goes back in there and there is a pit back in there, an unlined pit that they are trying to get the permit for is just beyond there.

Joe Arneas - how big is this gravel pit?

Jessica Black - I think it's twenty acres, I think they own 40 acres and twenty of it is still wooded and twenty of it is the pit.

Larry Smith - do you have any idea what time all of the activity out there is taking place?

Jessica Black - no not really, Charlie knows better than me. I've talked to everybody about this - Carl Reller came from Juneau to talk to us about it and Mike Lucky is the one who I originally talked to and who I have pretty constant rapport with because he is down here and because I have professional contacts with him and so I corner him every once in a while and ask him what is going on. Colleen Byrd, has a position with DEC that is funded by the EPA comes down and is doing a hazardous waste study down here. You can ask one of them one thing and then ask another one another thing and you don't get the same answer.

Tom Brown - are you aware that we are an advisory body and that we are receiving your complaint? We will be making a communication to the Assembly and to the Mayor concerning this complaint and requesting direction. Any documentation that you can provide to us will be presented to the Assembly and they will see it.

Jessica Black - yes, and I would be willing to come before the Assembly if they have questions.

Charlie Dixon - my name is Mr. Dixon and I live right next door to Jessica Black. I could draw you a picture of what we are dealing with out there. (He drew a drawing and explained about the land, the houses near it and the Union oil company land) He showed where the peat condensate has been for about six years. He showed an area behind Mrs. Black's house that was used for years to store about two hundred barrels - no idea if they were full or empty. He showed where Mr. Engelman has lived for years. purchased this property and started clearing and building on it in the spring of 80. During that time, these red pump trucks would come in and start dumping an oozy gray liquid - I have no idea what the liquid was. The trucks belongs to Saltz Construction, the name was written on the side of the trucks. We watched them dumping this oozy gray liquid with a black oilish look to it - I've since learned that was drilling mud. I watched them dump a good dozen loads in this area. At that time, from the smell of the stuff I decided this wasn't stuff that maybe should be dumped right out on the ground so I went and talked to Mr. Roger Moulton who worked for DEC (he is no longer with them) I went in and spoke to him and advised him of what was taking place in this area and he said he needed to catch the trucks out there, what they were doing was dumping drilling muds and they had no permit to dump them in this area. So, whenever the trucks were out there I was to call him and he would come out and catch them in the act of dumping. He said that if we could get pictures, we should do that. It was hard to get this done because the trucks would pull up, dump the mud and be gone before he could get out there. After trying a couple of times and being unsuccessful we finally got Mr. Moulton and a driver of a truck together - he said he was pumping wash water. At that time my wife walked down there with Mr Moulton and pointed out several things on the ground that pertained to illegal dumping. He told her at that time that they had been dumping there for a minimum of five years and he pointed out the various things that they were dumping besides drilling muds - there were other chemicals involved. They took three samples, they were sent to a Juneau lab and I was finally able a couple of weeks ago to get that information relayed verbally over the phone from DEC that they

had tested for bacteria - - now why would they take chemical samples and test them for bacteria, but apparently something happened to the samples. You'll find the area where they have dumped the drilling has been plowed over and covered up with gravel pit or a big gravel berm. They basically built a road in here. The state has come in and plowed a channel to drain this corner here on Poppy because it floods real bad. So they know have all of this water draining down to where these drilling muds are. Union came in with their Cats and their equipment after we'd had all of the ruckus and DEC out there and just covered all of this up where it can't be seen anymore. It's still out there, it's just covered up. It's obvious what has occurred when you go out and look at it. This area where they were dumping was about 12 feet down - it had been excavated, gravel had been taken out of it. They were dumping literally three feet from the water table and they have now covered it up. This area also has several little ponds in it. About a year and a half after I moved into this area I raised sled dogs, a couple of my young dogs got loose and they went down and played in this pond for about an hour and then came back up to the house. They came back up to the house and within an hour they dropped, down - they couldn't even lift their head up - they were just about dead. I took them to the vet and he said they had been poisoned, but he didn't know what type of poison, they were in such bad shape he said they would either live or die - he gave them some medicines and they did pull through. But within an hour of playing in this pond they were damn near dead - they hadn't gone anywhere else because I was watching them. When I look out of my kitchen window there is a pool of drilling mud. DEC has been out there and seen all of this. They have had a head in the sand attitude, they don't want to do anything. I have asked them to come in here with a backhoe and dig a trench across here, maybe a hundred to one hundred and fifty feet long. If they don't find what I've said is in there I would shut up (I've seen what was put in there, friends have seen it put there, my family has seen it put there), but they don't want to do any digging out here because I'm afraid gentlemen what is going to be found is this has been used as an illegal dump for many years. In 1980 I was informed by DEC that what had occurred out there was illegal, a search warrant was issued, samples were taken and then nothing has been done. I've had Andre Marrou out there, he's inspected it. I built this house with a relative for resale, but I can't sell it, I've gone through 80 perspective buyers but nobody wants to buy it. I spoke to Mr. Lameroux at DEC and he informed me that they are working with DEC that they want Union Oil to come out and dig it up, but they aren't going to spend the money and do that because they aren't going to cut their own throats. When this whole thing started Mrs Black's husband and I went and talked to Mr. Lucky and the four public speakers for Union Oil and they agreed to come out and put these tests wells in to test our water. I got a phone call from Mr. Taurianen of Northern Test Lab, he informed me that they were going to come out and test our well and he brings this form out that says that if they test my well and find anything that is bad that I am releasing them from any responsibility. I refused to sign the form and subsequently we had some discussion and they decided they would retype the form and they would take that portion about responsibility out. I was then informed there was a very specific procedure in taking these samples and that was that they had to come from the well with the proper equipment and be placed into the proper containers and shipped within a certain amount of time under certain temperatures for testing. They went through the first portion of it very specific - they said it could not come through the pipes in the house and be airtight because of the volatility of the chemicals we are dealing with. They said it must come directly from the well. They came out to test it, they cycled my well three times and then took the sample directly from my faucet after telling me this wasn't the way it was supposed to be done because everything that was in the water that they want to test for is now boiled out. DEC came out and took a test of my water, I informed Miss Colleen Berg that the sample she was taking according to the experts I had talked to was very crucial to have

it done correctly. She said that this was the way that Juneau told her to do it. So I have two tests on my water that say everything is fine.

In 1981 there was a fire. There was a couple of Union Oil Trucks (signs on the trucks) I looked out of the window and there were a few people out there with the trucks, they were dumping this black oozy liquid out of the truck onto the ground and they lit a fire. The ground was dry and the wind was blowing so naturally I was concerned because they were starting a fire right outside of my house. This black, thick smoke that you couldn't see through started boiling up - KSRM called the fire department. I went out there because the smell coming off of the fire would just take your breath away it was a caustic smell. I asked them what they were doing, the gentlemen's name was Bob I think, he said they were burning a chemical up. I said I didn't think they were supposed to be doing this, I said I was going to call DEC and they all got into their trucks and left. The fire was burning, the high grass was very dry and the wind was blowing. We called State Forestry to help and it took several hours to put the fire out.

What is occurring gentlemen is whenever I raise a ruckus DEC comes out in the paper and says they are going to do a bunch of things, but then nothing happens. They don't do anything at all. The stuff is in the ground and they are arguing about who is going to dig it up.

From investigations that we've been doing there are about 300 illegal pits in the area. You have drilling mud pits in your water table for the City of Kenai. What we're dealing with here in the future is going to be genocide. Do you realize what is going to happen to our water in about 20 years from now when the increased draw from the population, the wells that are being drilled everyday, the stronger draw that is going to be from industry and from the City itself as we start drawing on that water. We have laws to protect our health and welfare in this state but no one is doing anything to uphold them. Do we want the Kenai Peninsula to turn into another Louisiana, do we want entire families dying from cancer? I don't think so, if the people in this community want that then I don't want to be a part of the community. We cannot allow our land, our water and our health to be jeopardized like it is now.

Dave Brown: Jessica, don't go away cause I want to pick on you for a minute before you leave. I thought that I was the only one who cared. Jessica, could I invade your privacy for just a wee little bit for a half a second. I won't ask you any questions, but she mentioned to you earlier, Jessica Black, about her medical problem and she showed me her medical report a few months ago and I read it because I was mailing some stuff to Anchorage and she asked me if I'd drop that in the mail for her on the way and the level I believe of chromium in her bloodstream - was it chromium Jessica? - was ten times what the medical profession considers to be safe. Now, she went later on as she told you to the Harborview Medical Clinic and got a clean bill of health, but the only reason, I think she got a clean bill of health from the Harborview Medical Clinic was a very simple fact - she stopped drinking the water that was coming out of her drinking well and she is terrified of drinking it now and I told her - I said Jessica, if you want to win your case just go back to drinking the water out of that water well again and then go back to the Harborview Medical Clinic and you'll get the same thing all over again. She said the heck with the case, I don't want any part of that, I want to stay healthy. So anyway I have brought some documentation that I want to give to you people. I want everyone on the Waste Commission to have a copy of this and so I put it in file folders, I'm going to give one to each of you and I've got some notes that I made so that I won't hold you up any longer than necessary and I'll ask you to refer to some of the documentation in these file folders while I'm reading the notes. I'll wait a minute for Tom Brown to get back. I think he only went to the little boy's room didn't he - Tom Brown?

Up until about a year ago when I went public most of the people on the Kenai Peninsula including you people right here in the room had never heard of me. Now as a result of having gone public, a lot of the people think I'm crazy, the DEC hates me, and industry hates me also. No one, not even the oil industry likes to get caught with their hand in the cookie jar. No one likes to be accused of not doing their job. Pollution is a serious crime whether you people have stopped to think about it or whether you have not and when it's done willfully it should result in instant punishment and that punishment should fit the crime. Anyone who thinks that local industry, not all of it, but much of it is not guilty of the crime of very serious and willful pollution is extremely naive and had better wake up before it's too late. Perhaps my going public was a bit unconventional, but if that's what it took to get my point across, then maybe it was worth it even though it's just about put me out of business. Now, we went to the DEC prior to going public, we went to the Governor - we got nowhere going anywhere and the idea of going public and buying full page ads in the newspaper and telling it exactly like it was, was poor legal advice from a young attorney that I had who had more ambition than he had good sense. I took his advice because I think if you can't listen to your attorney you had better get rid of him which I did here a month and a half ago. Be that as it may, regardless of the fact that DEC hates me for exposing their ineptness that does not give them the right to assume powers which they do not have. Nor does it give them the right to lie to me or about me, nor does it give them the right to revoke my permit. The Sterling Waste site exists because it was needed by industry. It was needed by the DEC, by the Borough and by the people so that these wastes would all remain in one location - the reason being that one location is easier to manage than many locations. At the present time, three hundred and five wells have been drilled onshore within the Kenai Peninsula Borough; those are the lists that I gave you. Now the first list lists sixty-seven wells that have been drilled onshore on the Peninsula itself. The second one lists twenty-eight that have been drilled across the inlet, but within the confines of the Borough and if you notice some of the wells on that second list have been crossed out with a line by myself and the reason for that is when the Oil and Gas Commission made those lists for me they made a computer error and those wells were repeated on the previous sheet so I just lined them out, but there are a total of ninety-five wells that have been drilled since July 1, 1973 when the DEC established its first set of Solid Waste Regulations and when they decided that drilling mud was solid waste. The third list that you have is a list of wells that were drilled prior to regulations in other words from July of 1957 when the discovery well came in at Swanson River until July of 1973 when the regulations were enacted by the DEC and there are two hundred and ten of those. There are a total of three hundred and five wells existing onshore within the confines of the Kenai Peninsula Borough. The vast majority of them are on this side of the inlet on the Peninsula, there are a few across the inlet. I did not go in in this study at all to off-shore wells, I was only concerned with onshore wells. Now if you'll look, you've looked at those lists, there is a document right here I'd like you to see. First of all there is a letter from Bill Ross to me dated April 26, 1985 addressed to Dave Brown, Alaska Environmental Industries and he says if you will look that he cannot give me the location and the well numbers of any and all gas wells from 1957 on because the DEC doesn't have that information. He can't tell me which wells were drilled after the establishment of the Sterling Special Waste Site in 1976 because DEC doesn't have that information. If they had been doing their homework they would because other agencies do. Who was the landowner not the leaseholder - the DEC doesn't have that information so on page two I said give me permit numbers and copies of any and all solid waste disposal permits for the disposal of drilling mud which were issued or even applied for at each and every one of these wells and he says a summary sheet with copies of the issued permits is enclosed and this gentlemen is the summary sheet. Out

of three hundred and five wells drilled down here, onshore, and granted two hundred and ten of them were prior to regulations, but ninety five of them have been since the DEC established its regulations and out of those remaining ninety-five only twelve times has an oil company applied for a permit to bury drilling muds and cuttings in place and only five times has that permit been issued. Now your sheet indicates only four I believe, but permit number 8423BA012 for ARCO has since been issued so that makes number five. In other words gentlemen, five times the DEC has done their job in twelve years and ninety times they have not done their job. Now, so much for that.

Now, I mentioned the number of wells and the number of permits and the ridiculousness of the situation. In that same folder are some articles that I included on pollution and they may not sound to you like too much, but there is one at the bottom that comes on the letterhead of my ex-attorney the law offices of William Eixby, that is a condensed version of a Wall Street Journal article that was published last October in the Wall Street Journal referring to the disastrous situation in Louisiana from the Oil and Gas industry and the fact that entire families are coming down with cancer because there are thousands and thousands of drilling mud pits in the wetlands. There are a couple of other articles pertaining to pollution, if you'll notice this one right here, I do not belong to the Sierra Club nor the Center for the Environment, nor any other conservation organization except the Isaac Walton League because Saul Raymond from Union Chemical talked me into joining it about three years ago and I pay my dues and they don't have a local chapter, but they send an interesting little magazine out about four times a year called "Outdoor America" and in the Spring 1985 issue, I wished I'd had enough paper left in my copying machine to copy the entire story, but there was a story about cancer in fish and what does it mean. I'm originally from northern New York State. I lived on Lake Ontario all my life and when I read that right today, now that I've been gone for twenty-one years that the Department of Health recommends that people back there eat no more than one half pound of fish a week from any water in that State that kind of tears me up. Now, what would Les Anderson do with that ninety-seven pound King Salmon that he caught this summer if the State of Alaska said, Les you can only eat a half a pound of that a week. If the man is a bachelor it would take him two years to eat the fish, if he had a wife he could eat it in a year, if he could suffer through the freezer burn and everything else. Now you can say what you will, but I bring up this fish issue for one reason, New York State to this day is a hell of a lot cleaner than Alaska is. If you walk around the Adirondack Mountains and the St. Lawrence River and Lake Ontario and look at how clean and green it is, believe me its got it all over this place, but it's got more industry - for clean it has, but it's got more industry than this state has got so its got more pollution alright, but what you'd better stop and consider is that the State of Alaska is the only state in the fifty states in the United States that still allows offshore dumping of drilling mud - that's a fact. I spent over two-thousand dollars in one month on my phone bill calling the DEC or its equivalent in every single state in the lower union - lower forty-eight that drills for oil and gas and I may have missed a state or two but that's it. In the state of California, believe it or not, and even Budd Kloppenburg at Chevron who hates me with a passion will verify this. They come in off an offshore platform with drilling mud in a barge and a vacuum truck greets the barge, sucks up the load and sometimes goes as far as a hundred miles one way to a remote site to get rid of that load of mud - now that's pretty far out, but that's the way they are handling it in California now. Texas and Louisiana no longer dump drilling mud offshore. They bring it in by barge and they truck it off to a remote site. Yet, we do this in Alaska and I know allegedly we've got ferocious tides in Cook Inlet and the stuff goes downstream and it comes back upstream, but sooner or later it falls out and it lands somewhere and I'm not so sure that that's good. You can pick up "Outdoor Life" or "Field and Stream" or you can borrow a copy from me of the "New York State

Conservationist cause my son subscribes to it and I steal it from him. They have fantastic runs of salmon back there now, Lake Ontario is loaded with salmon and the Salmon River and a lot of the other streams are because the State has done a marvelous job, spent billions of dollars cleaning up the rivers and lakes and stocking with salmon, but you can't eat the fish after you catch them. Now my question to you is what the heck are we going to do if we don't wake up and this continues because where are we going to be if ten years from now if the runs for Salmon in the Cook Inlet are four times as big as they are right today. You've got to admit that the fishing industry has not fallen off in spite of the offshore oil drilling. In fact, it's probably picked up. The fishing in the Kenai River is fantastic the only problem is the boat traffic. But if we reach a point ten or twenty years down the road where the Department of Health or the DEC or someone comes along and says, hey guys, you can catch those fish, but turn them loose - you can't eat them anymore. What's going to happen? I'll tell you what's going to happen, Joe Arness and his father aren't going to be able to commercial fish anymore because nobody's going to buy the fish. If you want to throw your set-net out and pick your fish and throw them back in the inlet just to keep your arm in shape have at it, but I don't think that's why you do it Joe. Skip, you going fishing in the Kenai River or wherever you're going to have to practice catch and release if they don't turn the situation around and mister I'm not exaggerating, the State of Michigan is getting the same way, they are saying to people, hey - don't eat more than something like a pound of fish a week. This is crazy, but this is the real world and you people - you know on the Kenai Peninsula say hey Dave Brown is a nut you know, let's shut him down. I'll tell you something, all due respect to Walt Pedersen I like the old man okay, I hated him for a while, but I finally got to where I like him, but the end result of his campaign is very simple - if that site is shut down you can blame him for half of the pollution that goes on. You can blame him for a good share of the pollution that's gone on in the last five years because his campaign has been so intense that nobody wants to use that site. Very few people do and the oil industry sits back and says hell the DEC doesn't care so why should we care and it's obvious when out of ninety-five wells drilled since the regulations went into effect only five permits have been issued to bury any in place and yet every single well out there has got mud buried in place. Now I've been here five and a half years. I took over MAR Enterprises and the Sterling Waste Site the seventh day of July 1980. I came down here and started learning the business from Bob Houser in June, but I took it over on the seventh of July. From then until now there have been thirty-five wells drilled onshore. From then until now I have been required to spend approximately a quarter of a million at that little, dinky, ridiculous eleven acre site by the DEC whether I wanted to or not, you will by God do this or if you don't we'll jerk your permit. I've spent all that money. The oil industry hasn't spent a dime to put drilling muds there with a couple of exceptions, ARCO has spent some, Marathon has spent some, Union Oil has spent just enough to say hey by God we're doing what we're supposed to, it gives them a front okay. When they had to have the Sterling Site, Chevron - George Day from Chevron stood up and spoke and said by God we need that site. The oil industry has no place to go with its mud, we can no longer put it in the Kenai landfill we've got to have a permitted site. I'd like to ask George Day if he were in this room right now why by God Chevron has got over one hundred, illegal, covered up, back-filled drilling mud pits at Swanson River alone without one permit for any of them. I'd like to ask George Day why he has never used that site. Stop and think about that for a minute. You can say Swanson River is remote, it's not like Union Oil, Union Oil is in downtown Kenai and Soldotna. Sure they are, but when Union Oil first started drilling in that gas field many, many years ago that wasn't downtown Kenai and Soldotna, that was remote - semi at least it was out in the brush and there weren't many people living out there. Right now, Kenai Native Association owns an awful lot of land right close to Swanson

River and if George Miller keeps working as hard as he is he will see the day I think when Uncle Sam will say, go ahead guys and subdivide your land, we give up, because he's as tenacious as Walt Pedersen is, he don't know when to quit, he'll get his wish and when he does they'll put up their new houses right next to all these old mud pits and there are over a hundred of them at Swanson River which is why Chevron doesn't like me very well.

Forgetting Chevron for a minute, you've read the articles on pollution let me say this to you. A permit, whether any of you people have ever stopped to think about it or not, is not merely a piece of paper designed to give a Clerk/Typist down in Juneau a day's work. It is an actual certification from the Alaska Department of Environmental Conservation that says this method of disposal at this time, in this location is safe or at least by God it's as safe as anything that we know of go ahead and do it. Now when the DEC does not issue that permit there is only a couple of reasons for it: number one - they are lazy, number two - they are inept, number three- maybe there is something (question raised by Tom Brown of the Waste Disposal Commission asking what this all has to do with them) - it's got a lot to do with you and I'd like you to hear me out Tom. There maybe another reason and I don't care what the other reason might be. When an oil company does not apply for a permit there is only two reasons for it: number one- they don't want a permit because they know if they applied the DEC would not issue it because it's right in the water table or whatever, number two- it's a whole lot cheaper to bury it on site than to haul it to a permitted site so they aren't interested in being legal. Now a permit, Tom says what's this got to do with us - what it's got to do with you is the attempt to close the Sterling Site. A permit has to be written, whether the DEC wants to admit it or not within the parameters of the Alaska State Statutes and the DEC Solid Waste Management Regulations. Permits must be written with a reasonable degree of uniformity because regardless of the DEC's traditional policies of harassment and selective enforcement the Constitution of the United States of America which is supposed to be the supreme law of the land, guarantees to each and every one of us equal protection under the law. Now how does that apply to me or the Sterling Site, I'll tell you how. I called the U.S. Attorney in Anchorage and I said does that equal protection under the apply apply only to individuals or does it apply to corporations. They said to me and I quote, "unless there can be a reasonable basis for distinction - unless there is a reasonable basis for distinction there can be no distinction" in other words a corporation is treated like an individual so therefore is XYZ oil company can dump drilling muds in pits with straight up and down sides and not mix it with dry dirt in six inch lifts then so can any other oil company or so can I.

Now forgetting that for a moment. When my permit was renewed two and a half years ago we were merely asking for renewal of an already existing permit so there was no need for public notices, there was no need for public hearings, but they had them anyway, they weren't necessary. Their permit as it was re-written was altered considerably from its original state with no justification forever or whatever. Now, if you will pick up your copy of the Solid Waste Management Regulations which you've got in your folder, turn to page eight, on the left, two thirds of the way down the page, item three - drill mud disposed of on land is confined in a pit a trench or a diked area that prevents erosion or mass flow of the mud. See that, it does not say that drilling muds have to be in pits with three to one slopes, it doesn't say that drilling mud has to be mixed with dry dirt and put in in six inch lifts. Now, so much for page eight, no mention is made of six inch lifts. Now if you'll go back to page five which means turn about two sheets, and on the right hand side up near the top under item two finished lift height does not exceed eight feet. In other words, according to State Regulations any lift up to eight foot in depth is legal whether Mr. Martin up in Anchorage thinks so or whether he doesn't. Now, that doesn't look to me like six inches, but then the people that

wrote those regulations weren't bent on putting me out of business they were only intent upon writing sensible regulations. Now look on page four if you will please where I underlined surface water runoff. Okay, surface water runoff does not flow over, into or through uncovered solid waste. We have constructed very effective diversionary structures to prevent this from happening. Now nothing in the regulations, I'm talking about the things that DEC has cited me for which are illegal citations. (Mr. Tom Brown of the Commission again what that has to do with us?) Its got a lot to do with you because you are the Solid Waste Commission, the DEC is attempting to illegally revoke a permit and they are going to the public and you're part of the -- (Mr. Tom Brown stated "the Solid Waste Commission has no jurisdiction over that matter") I'm not asking you for jurisdiction, I'm just asking you to hear because I think you should be informed. Nothing in the regulations says where we have to get the material that we build our diversionary structures out of and nothing in the permit says where we have to get the material that we build the structures out of. Now, on the south end of the site we built those structures out of clean dirt from outside the fence. On the north end because of tight quarters we used materials from inside the fence that came out of Union Chemical's pit, but on the north end of the site gentlemen the site is at a lower elevation than the ground outside of the fence. We are preventing runoff from coming in, not from going out. We have had no violations at the Sterling Site except one and it has nothing to do with what we are being cited for. Now, at the top of page ten you will see item B underlined and all it says at the top of page ten - persons holding valid permits on the effective chapter shall have until July 1, 1984 to meet the requirements of this chapter. We have met every requirement of that chapter. Now, Bob Martin agreed verbally a couple of years ago with Jim Cross from Environmental Services Limited in Anchorage to amend our permit because these things were not necessary to begin with and he admitted this and he agreed to amend it by attaching to it a copy of Jim Cross' plan of operations. Now this was a verbal promise, he did not follow it up, he did put it in writing and he circulated the written version amongst the DEC offices, but he did not date it or sign it so at this point in time I suppose you could say it possibly isn't valid. McClellan EBA a soils engineering firm in Anchorage was picked recently by the DEC to help the state to locate a hazardous waste site for the state by testing the soils at the various locations. We hired McClellan EBA because I felt that if McClellan EBA was good enough to do this work for the state to find a hazardous waste site then by god they must have the qualifications to test the soil at Sterling. They came down here with three people (Arshud Mammu?) who is president of the company and has a PHD in soils engineering and two other gentlemen, one of whom was a engineering geologist and the other one was just a working man like the rest of us. They tested the soils in my twenty foot deep pit, they tested mud out of two pits that twenty foot deep pit and the adjoining pit which has ARCO's drilling mud in it from Wolf Lake number 2 that we put in their last January. They determined, they took the samples back to Anchorage. They weighed the drilling mud samples and then they put them in another one labeling them and they weighed them the next day and the weight loss was the water that went out. But they determined that the soil conditions were so tight around that twenty foot deep pit that there was no need of ever changing the slopes on the pit as long as we continued to maintain the dikes. Now the only thing he said in addition to that regarding that pit was he said: A. that pit is an excavation in the ground, there is no need to worry about dikes, but since it was built on the edge of a hill and where the hill starts to go down is on the east bank therefore you do have a built up dike on the eastbank that's about eight foot high. So he said fill the pit to the ten foot depth and then we will come and we will take soil samples from that dike and we may tell you at that point in time that you should reslope the outboard side of that dike from its present one to one to maybe one and a half to one or even two to one, depending upon soil conditions, but if you don't get ten feet of

mud in there don't worry about it don't spend the money. Now as far as the mud itself is concerned I was astounded, the mud in ARCO's pit that has been in there since January is still very close to 80% water even though you look at it and it looks like mud, but that which is in the big pit which was stacked up against the slope of the bank is down to about 20% water in other words our method of taking it out with a backhoe after the water off the top evaporates and stacking it up against the bank gives you the most efficiency you can get in a small site like that.

Anyway, forgetting Mammud and McClellan EBA for a minute, we have spent approximately a quarter of a million in Sterling doing all of the things that DEC has required in the meantime DEC allows the oil industry to do as they wish with no permits, no regard to statutes, no regard to regulations, no regard to the environment, no regard to the people that live in it. Now we have discussed the alleged permit violations at Sterling and there aren't any, only one about three years ago I'm going to say, one of my employees pumped some rainwater over the bank - he shouldn't have done it. I accepted the responsibility for that, we got cited by DEC for it. My attorney got involved because DEC claimed it was drilling mud and it wasn't. We took samples to test lab and DEC dropped the charges, they are bringing that up again now. Also they brought up one more issue recently in this list of violations when they decided to revoke my permit. And that was the issue of the day when I was set up by Dan Roberts, my favorite friendly competitor. Dan got a call from Marathon Oil to come and pump some oily bilge water off the Rig Engineer, he had a couple of trucks that weren't busy, but he knew that Ron Swanson's truck was busy so he said to Marathon (knowing that my trucks were not busy) he said hey I'm tied up, I can't make it, why don't you call Dave Brown. So they called me, Jerry (McClay?) called me. I said what is it Jerry? He said it's water Dave, it's just bilge water with traces of oil. I said fine, we'll come and get it. We did. I got a frantic phone call or not phone call, but call on the radio from my truck driver from the site at Sterling. He said you better come up here, Dan Roberts is here taking pictures and he took a sample of the stuff coming out of the back of the truck and he said when he took his sample it was pretty oily. So I went up and said to Dan, what's your problem Dan. He said we do have a problem let's get on the site and talk about it. I did. I went down there and there is a State Trooper has my truck driver's license. I said to the trooper the driver hasn't done anything wrong so why are you here? He said well I got a phone call, said something was going on that shouldn't be and I should come here. I said well look if anything has happened that shouldn't, I'm accepting the responsibility, I operate the site so let the man go and give him back his drivers license if you would please. So he did. Then two cars came from DEC with Bob Cannone in one and some others in the other one. They were followed by Skip Bamard from the Borough with a lady with him and that was followed by Polly Crawford from the Peninsula Clarion. Well that kind of did it. I said Polly what are you doing here? I like Polly. She said Dave, I got a phone call from Dan Roberts' secretary said that if I want to see the Sterling Waste Site shut down that I should come out here and bring my camera and take pictures. I said Polly you aren't going to see it shut down today or any other day, but I said go ahead, but I said while you are here why don't you ask Mr. Roberts since this is the first time that we pumped that ship or worked for Marathon in over two years and he has been taking their bilge every couple of months, why don't you ask him where he has been putting it. Has he been dumping it in the Cook Inlet at night in an outgoing tide or in the woods or in the Kenai River. Roberts of course didn't have any answers. Bob Cannone went out with his little jar and took a sample. My permit says that I can take water containing not more than four percent oil. Now that load was fifty barrels, okay. A hundred barrels is forty-two hundred gallons. Fifty barrels is twenty-one hundred gallons. Four percent of that would be about fifty gallons of oil. Okay, alright Skip? Fifty gallons of oil on a pond not more than fifty feet in diameter would completely

inundate the top of that pond with an oil slick. There was no oil slick, there were traces of oil over in the right rear corner as we stood in front of the pond, but there is a big berm around the side of the pond and my trucks back up against that berm, open their valve and blow out their load. Well when they blow out their load pretty soon the stream coming out of the valve peters out as the tank gets empty and the pressure goes down. There are always two or three holes right underneath, right in the bottom of the dike from erosion from that stream petering out coming out of the valve. Cannone took his sample right out of the hole that was underneath the valve and I'm going to say that that hole was probably that long and maybe that deep and it was full pretty much of straight oil, okay, but that hole could not have contained more than five gallons. I said to Cannone I said hey, why don't you take your sample from the pond, I said certainly you're going to get straight oil in there because oil and water don't mix, the oil rises to the top. He said, well I know that, but he said well I've got my low shoes on I can't take one from the pond. So, those idiots cited me with that in this recent list of violations, okay, now, so much for the intelligence of the DEC. Now the DEC is claiming there is pollution in Sterling and there isn't and there never has been and the EPA strongly disagrees with them and I'm going to suggest that the Waste Commission make a couple of phone calls to satisfy themselves. Call the EPA Region 10 in Seattle and talk with John Meyer. John Meyer is the man who is in charge of the testing at the Sterling Waste Site. John Meyer will tell you as he told my attorney and I - Bill Lameroux lied to the press, he lied to the press twice here the other day and I'm being hung on that by the people. First of all he said that the EPA found pollution in the catchment ditch that goes around the southeast corner of the Sterling Site - it runs all the way down the southside and all the way down the eastside and it meets on the corner and there is a catch basin there. EPA divided that catchment ditch into five segments. They took one sample out of each segment. They threw all of the samples into a pile and stirred them up and then took one representative sample out of that and sent it to the DEC's lab. The DEC's lab turned up seventeen hundred and fifty parts per billion of barium. Barium is an ingredient found in drilling mud. Our dikes our built out of dirt - our hill is made of dirt and there is a certain amount of dried drilling mud in that dirt, when it rains you get a certain amount of runoff from those dikes - that's what the catchment ditch is for. The seventeen hundred fifty parts per billion proves two things: A. that the catchment ditch is doing its job and B. that the EPA is also doing its job because their safe standard for barium is a hundred thousand parts per billion. So I've got about ninety eight thousand five hundred parts to go per billion on barium before Mr. Lameroux can tell the newspapers that there was pollution found in that catchment ditch. Now, the other thing Mr. Lameroux said that was a total lie - its not a total lie, but the way in which he gave it was a total lie - he said there is pollution there because well number six is turning up oil and grease. Well number six has turned up oil and grease several times and there isn't any oil and grease in it and the reason is very simple - we sample three wells when we go out there - two, four and six. Well number two and four you cannot pump dry, they will run water all day long without drying up and so when we take our sample from those two wells we hold our jug underneath the stream of water coming out of the pipe and DEC waits until our jugs are full and then they fill their jug and we wear rubber gloves when we do this normally. Okay, well six dries up in a hurry - it will pump for about four minutes and that's it. So because of that DEC has always followed a practice as I hold my jug down here, here is the pipe with the water I hold my jug down here and Mike Lucky reaches in up here and fills his bottles. Alright, Mike usually wears rubber gloves, but I'll tell you what if there is a quarter of an inch gap between the top of the gloves and his shirt sleeves and that water stream hits there you are going to get oil and grease in my bottle because the oil and grease is the oil out of everybody's skin. Now the last time we sampled those wells in July, Buckles came out and did it because Mike Lucky was

down in Homer or someplace. Buckles didn't wear any gloves and I wasn't paying attention, nor was the guy who was working for me. I held my jar - my guy held my jug down here, Buckles reached in with his bare hands and we turned up oil and grease like you wouldn't believe so a few days later we resampled that well and no oil and grease. Chem and Geo the test lab in Anchorage - you can talk to Gene Yonkin, he's the head man up there, but I gave you some well samples from the last time around. If you'll take a quick look at them you'll see that the last sheet amongst the well samples is the oil and grease that wasn't there. Okay folks, I'm done okay, but anyway the first sheet of the three is well number two - shows you all the different things we sampled for.

Skip Bamard: we need to take a quick little set cause I don't think this tape is going to turn over. She'll try it, but if it doesn't start recording on the other we are going to have to change it.

OFF RECORD TO CHANGE TAPE
BACK ON RECORD - Tape #2

The point I'm trying to make ladies and gentlemen - the point that I would like to make out of this whole thing is very simple and then I'll get out of here. When EPA was up there doing their sampling recently, the guy that was in charge of the EPA crew made some comments. There were some people there doing seismic work and they made some comments. There was a man by the name of (Kunuth?) from Juneau with DEC and he made some comments. And I had a man working for me by the name of Kerry Wright who is an ex-cop - he's got nine years as a cop and he just resigned up in Galena and came down here to get license as a private investigator and he was working for me at the time, but hang together - every time one of those people spoke to Kerry he never said a word he just waited and wandered back to his car and wrote down notes. Joe Smith said such and such at 8:25 am on January 22 or whatever the date was - he made two pages of notes. Alright, the head guy with EPA said this was the cleanest site he had ever investigated - that's a fact. Kunuth from the DEC in Juneau said this was the cleanest site he had ever been on and that you could almost drink the water out of the ponds, but there was one of them where he sure as heck wouldn't want to try it. The guys on the seismic crew said the soil was so tight they didn't see how anything could ever possibly leach out of it and the parting shot from the guy with EPA was a very simple parting shot - he said, hey this whole thing is political. Walt Pedersen has made all of this noise for so many years that the Borough can't handle it. The Borough has dumped it in the lap of the DEC, they can't handle it either so they have finally gone to the EPA and you know something he said we can't handle it. He said we have spent over two hundred thousand dollars doing sampling and testing last year and now he said we're going to put in a half a dozen new monitoring wells as we agreed and he said we don't expect to find a thing from those monitoring wells, but we're going to be able then to close the file on the Sterling Waste Site and forget about it. Now that's where it's at. Now, the last thing that I have to say before I leave and I think you should all give this a little bit of thought. Say what you will, but there's probably 20,000 people on the Kenai Peninsula - quite a few of them their quality of life is going to be affected somewhat in the next few years as Charlie Dixon said if this pollution continues. If you want to have three hundred sites out there - three thousand sites out there it may be okay, but sooner or later you are going to pay the price whether you put plastic liners in them or whether you don't. ARCO has no intention of doing any monitoring at Wolf Lake number two - they are taking the road out. How are they going to get in there to monitor it. The original concept behind the Sterling Waste Site was a good one. I don't like to get shot down for political reasons, I don't like to get shot down for my sparkling personality. Whatever the reason may be I don't care much for it. Now, I feel this way about it - whether the Borough is willing to accept this

fact or whether they aren't - the Borough has some very stout legal responsibility where I'm concerned. I don't want to get into a lawsuit with the Borough that's not my intention I live here. I have to say this in all fairness to the Borough they are several notches above the DEC - quite a few which is why the Waste Commission was formed. But, be that as it may, I wrote a freedom of information letter to Stan Thompson and gave a copy to your commission and one to the Assembly - it hasn't been answered yet. I have a paragraph in my lease that says the Borough will not allow the same types of wastes that we are permitted to dispose of at Sterling to be disposed of anywhere else within the Borough on lands actually owned by the Borough and that has not been the case - this has happened. In fact, at the present time the Borough is apparently negotiating with Chevron to buy some land probably across the inlet wherein Chevron is already drilling wells and even if they closed the sale of the land today it would not alter the fact that the intent of the Borough at the time that the wells were planned and the mud pits were put in was possibly not to read the lease for the Sterling Waste Site before they did it. Now it doesn't say in my lease anything about across the inlet - it just says within the Borough. As far as I'm concerned if drilling mud sits on land owned by the Borough across the inlet, even if there is no provision to bring it over by boat it is still a violation of the lease. But more important than that look in your Alaska State Solid Waste Regulations and find the paragraph that says

Tom Brown are you referring to the Beluga River Facility?:

Dave Brown any facility that you want pick -- if the Borough owns the land

Tom Brown what gives you the indication that there is drilling mud being deposited there?

Dave Brown well I'll tell you what, I've been around drilling mud long enough to know that drilling mud normally is buried within fifty feet of a well casing. Now forgetting that for a moment something you should look at in here - there is a paragraph in here that says anytime solid waste lays upon land without a permit, by state regulation that material has to be dug up and moved to a permitted site. Now maybe the Borough has never thought about it but with as much as the DEC has had to say about pollution at Sterling which doesn't exist, if they go ahead with this revocation and the Borough goes ahead with the termination of the lease then you cannot turn around and turn that over to another operator to run, okay. So if it ---

Tom Brown - Mr. Brown, we have no jurisdiction in these questions. You are wasting our time. We are trying to get on with some serious business here trying to find a site for wastes. If you are the adequate operator of that site, you will be the operator of that site whether it's in Sterling or someplace else. We have no jurisdiction over the questions you are bringing up here.

Dave Brown - not necessarily, no but you do have the authority to talk with the Assembly - you have the authority to talk with the Assembly.

Tom Brown - about what?

Dave Brown - about the various issues that we are discussing.

Larry Smith Tom, I think that later this evening, under the new business portion I want to discuss something to do with compliance.

Dave Brown - the regulation that I was trying to finish citing before you interrupted Tom which is alright it's your privilege states loud and clear if that permit is revoked whether you terminate the lease or not if that permit is revoked the Borough

is going to have to dig up everything in that Sterling Waste Site and take it to a permitted site and right now there is no permitted site they can take it to so it would seem to me that it might behoove the Waste Commission to suggest to the Assembly that maybe we should go ahead and find this big new site but do something with the DEC to get them to keep that permit active out there so the Borough isn't forced to dig it up and move it, because if I go bankrupt, I can't afford to do it and I got news for you the EPA isn't going to help you do it. By the time they drill those wells they have dumped every dime in that Sterling Site they are going to dump in unless they find disastrous pollution which they know they are not going to find.

Larry Smith - just out of curiosity you are under Chapter Eleven right now?

Dave Brown - you bet your life I am, thanks to the DEC. You bet your life I am - I've been doing a balancing act for --

Larry Smith - so you can't be forced to do anything in regards to that site even if (unintelligible)

Dave Brown - I can't be forced to do anything in regards to that site, but I'll tell you what, you know - the regulation is there - I'm not saying they would enforce it - they haven't enforced any of the regulations so far but you better consider one thing. Walt Pedersen is a pretty sharp old man - he is aware of that regulation - he is already asking to get the site cleaned up. So, if the permit goes and the lease goes - he will demand that the state clean the site up and his campaign then will be twice as heated as it's been so far. Now whether you guys know it or not the people on the Kenai Peninsula need a nasty old man like me that's a watchdog and to answer a concern that at least one of you have had and I think it's you - if you open a new site and it sits there if I have antagonized the oil industry by going public are they going to use it. Yes they are because I'll tell you why, the oil industry at this point in time is being very careful what it does at least on this side of the inlet, they have to be, they don't dare play any more games because I've got a lot of documentation that I didn't bring here tonite. But you people asked a question six months back what quantities might there be out there. Take those lists of wells I gave you and do some averages for yourself and that will give you some ideas of the quantities. Now let me get out of here and let you go on with your more important business. I hope I didn't tick any of you off. I thank you for your time.

Joe Arness thank you Dave.

BREAK - OFF RECORD FOR FIVE MINUTES

Joe Arness -- we're back on record.

Skip Bambard explained that there were two letters in the packet from Tony Neal and a response from him. He said that based upon Mr. Tom Brown's testimony at the last waste commission meeting regarding the baler, that they have instituted a new policy at the baler and we will be instituting it at all of our sites with regular photographic evidence as to the conditions of the site on a regular basis. The baler will be done three times a week. He explained that they are going to try and get the Kenai and Soldotna Landfills done on a daily basis. He said they would keep constant record. He said that the problem was one of not being to respond to comments such as Mr. Brown's and Mr. Neal's and have people be able to say, well on such and such a date this happened - we want to have something that we can refer to and say okay what really happened and were we out of line or does this person just got a problem with personnel or what - we want to know what the facts are. He then showed the commission some pictures that he had taken the day before and noted that on the lefthand corner they are dated so there is no question of when they were taken. He said that he asked the baler operator Mr.