

ALBANY COUNTY -  
VOLUME 7

SRES  
SB 338

4274

184



# RECORDS CERTIFICATION

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James O. Smith  
Signature of Camera Operator

11/24/89  
Date

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# 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

M E M O R A N D U M

February 17, 1986

TO: Mary Nordale, Commissioner  
Department of Revenue

FROM: Senator Arliss Sturgulewski  
Chairman, Senate Resources Committee

RE: CSSB 338 (Resources)

"An Act making, amending, and repealing appropriations for the Alaska Power Authority for railbelt energy development, Bradley Lake hydroelectric project, and the power cost equalization fund; and providing for an effective date"

Based on Senate Resources Committee testimony on January 29, 1986, a CS for SB 338 is being proposed at our next hearing on February 21, 1986.

Please review the attached draft and advise as to its accuracy in amending the Susitna hydroelectric project fund.

Thank you.

1           “(F) any offense which may be prosecuted in a  
2 court of the United States which involves the exporta-  
3 tion of firearms or ammunition.”.

4                           AMENDMENTS TO SECTION 925

5           SEC. 105. Section 925 of title 18, United States Code,  
6 is amended—

7           (1) in subsection (c)—

8                   (A) by deleting the words “has been convict-  
9 ed of a crime punishable by imprisonment for a  
10 term exceeding one year (other than a crime in-  
11 volving the use of a firearm or other weapon or a  
12 violation of this chapter or of the National Fire-  
13 arms Act)” and inserting in lieu thereof the words  
14 “is prohibited from possessing, shipping, trans-  
15 porting, or receiving firearms or ammunition”;

16                   (B) by inserting the word “transportation”  
17 after the word “shipment”;

18                   (C) by deleting the words “and incurred by  
19 reason of such conviction,”; and

20                   (D) by adding after the words “the public in-  
21 terest.” the words “Any person whose application  
22 for relief from disabilities is denied by the Secre-  
23 tary may file a petition with the United States  
24 district court for the district in which he resides  
25 for a judicial review of such denial. In a proceed-  
26 ing conducted under this subsection, the scope of

1           judicial review shall be governed by section 706  
2           of title 5, United States Code. The court may in  
3           its discretion admit additional evidence where fail-  
4           ure to do so would result in a miscarriage of jus-  
5           tice.”; and

6           (2) in subsection (d)—

7                   (A) by deleting the words “may authorize”  
8                   and inserting in lieu thereof the words “shall  
9                   authorize”;

10                   (B) by deleting the words “the person im-  
11                   porting or bringing in the firearm or ammunition  
12                   establishes to the satisfaction of the Secretary  
13                   that”; and

14                   (C) by inserting before the semicolon in para-  
15                   graph (3) the following: “, except in any case  
16                   where the Secretary has not authorized the im-  
17                   portation of the firearm pursuant to this para-  
18                   graph, it shall be unlawful to import any frame,  
19                   receiver, or barrel of such firearm which would be  
20                   prohibited if assembled”; and

21                   (D) by deleting the words “may permit” and  
22                   inserting in lieu thereof the words “shall permit”.

23                   **AMENDMENTS TO SECTION 926**

24           **SEC. 106.** Section 926 of title 18, United States Code,  
25 is amended by—

1 (1) inserting "(a)" before "The Secretary" the  
2 first place it appears;

3 (2) inserting the word "only" after the word  
4 "prescribe";

5 (3) deleting the words "as he deems reasonable"  
6 and inserting in lieu thereof the words "as are";

7 (4) deleting the words "The Secretary shall give  
8 reasonable public notice, and afford interested parties  
9 opportunity for hearing, prior to prescribing such rules  
10 and regulations" and inserting in lieu thereof the  
11 words: "*Provided*, That no such rule or regulation pro-  
12 mulgated after the effective date of this Act may re-  
13 quire that records required to be maintained under this  
14 chapter or any portion of the contents of such records,  
15 be recorded at or transferred to a facility owned, man-  
16 aged, or controlled by the United States or any State  
17 or any political subdivision thereof, nor that any  
18 system of registration of firearms, firearms owners, or  
19 firearms transactions or dispositions be established:  
20 *Provided further*, That nothing in this section shall be  
21 deemed to expand or restrict the Secretary's authority  
22 to inquire into the disposition of one or more firearms  
23 pursuant to a criminal investigation."; and

24 (5) inserting at the end thereof the following:



1 eighty days after the date of enactment of this Act. At that  
2 time the Secretary shall publish and provide to all licensees a  
3 compilation of the State laws and published ordinances of  
4 which licensees are presumed to have knowledge pursuant to  
5 chapter 44 of title 18, United States Code, as amended by  
6 this Act. All amendments to such State laws and published  
7 ordinances as contained in the aforementioned compilation  
8 shall be published in the Federal Register, revised annually,  
9 and furnished to each person licensed under chapter 44 of  
10 title 18, United States Code, as amended by this Act.

11 (2) The provisions of sections 103(5)(C), 104(2), 105,  
12 and 107 of this Act shall be applicable to any action, petition,  
13 or appellate proceeding pending on the effective date of this  
14 Act. In considering any petitions for Presidential pardons  
15 submitted by persons convicted of violations of chapter 44 of  
16 title 18, United States Code, prior to the effective date of this  
17 Act, the Congress recommends that consideration be given to  
18 whether the violation would have been punishable under this  
19 Act, and to the purposes and findings contained in the pream-  
20 ble thereto.

21 **TITLE II—AMENDMENTS TO TITLE VII OF THE**  
22 **OMNIBUS CRIME CONTROL AND SAFE**  
23 **STREETS ACT OF 1968**

24 **SEC. 201.** Title VII of the Omnibus Crime Control and  
25 Safe Streets Act of 1968 (sections 1201, 1202, and 1203 of

1 the appendix to title 18, United States Code) is hereby  
2 amended to read as follows:

3       "SEC. 1201. (a) In the case of a person who violates  
4 section 922(g) of title 18, United States Code, and who has  
5 three previous convictions by any court referred to in section  
6 922(g)(1) of title 18, United States Code, for robbery or bur-  
7 glary, or both, such person shall be fined not more than  
8 \$25,000 and imprisoned not less than fifteen years, and, not-  
9 withstanding any other provision of law, the court shall not  
10 suspend the sentence of, or grant a probationary sentence to,  
11 such person with respect to the conviction under section  
12 922(g) of title 18, United States Code, and such person shall  
13 not be eligible for parole with respect to the sentence im-  
14 posed under this subsection.

15       "(b) As used in this title—

16               "(1) 'robbery' means any crime punishable by a  
17 term of imprisonment exceeding one year and consist-  
18 ing of the taking of the property of another from the  
19 person or presence of another by force or violence, or  
20 by threatening or placing another person in fear that  
21 any person will imminently be subjected to bodily  
22 injury; and

23               "(2) 'burglary' means any crime punishable by a  
24 term of imprisonment exceeding one year and consist-  
25 ing of entering or remaining surreptitiously within a

1 building that is property of another with intent to  
2 engage in conduct constituting a Federal or State  
3 offense.”.

Passed the Senate July 9 (legislative day, July 8),  
1985.

Attest:

JO-ANNE L. COE,  
*Secretary.*

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

January 29, 1985

Hon. Arliss Sturgulewski  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

Re: Review of proposed CSSB 338

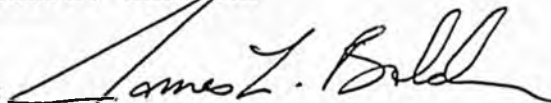
Dear Senator Sturgulewski:

We have reviewed the proposed committee substitute for SB 338. This bill appears to make the amendments necessary to maintain the status quo for appropriations made for the power cost equalization program, Bradley Lake, and Susitna River hydroelectric projects. The original version appeared to delete the fiscal year 1985 installments of the continuing appropriations in dispute in Trustees for Alaska, et al. v. State, No. 3AN-84-12053 CIV (Super. Court, 3d Jud. Dist.). Please let me know if we can be of further assistance.

Sincerely yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

By:



James L. Baldwin  
Assistant Attorney General

JLB/pjg

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

TRUSTEES FOR ALASKA, ALASKA )  
PUBLIC INTEREST RESEARCH )  
GROUP )  
Plaintiffs )  
vs. )  
STATE OF ALASKA )  
Defendant )  
\_\_\_\_\_ )

No. 3AN-84-12053 CIV

JUDGMENT

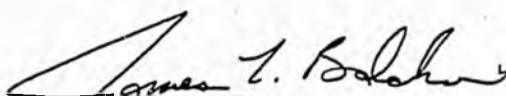
This action having been tried before the Court on cross-motions for summary judgment,

IT IS ORDERED, that judgment shall be entered for plaintiff as to the claim under Article IX, section 7 of the Alaska Constitution; and that plaintiff's complaint is dismissed on the merits as to the claim under Article II, section 13 of the Alaska Constitution.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Brian C. Shortell  
SUPERIOR COURT JUDGE

Approved as to form:

  
James Baldwin  
Assistant Attorney General

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3 TRUSTEES FOR ALASKA, ALASKA )  
4 PUBLIC INTEREST RESEARCH )  
5 GROUP, )

6 Plaintiffs, )

7 vs. )

8 STATE OF ALASKA, )

9 Defendant. )

No. 3AN-84-12053 CIV.

10 ORDER GRANTING IN PART  
11 STATE'S MOTION FOR A STAY

12 The court, having read the pleadings submitted by the  
13 parties and after hearing argument finds:

14 (1) By order dated August 30, 1985 the State, Alaska  
15 Power Authority, was enjoined from expending any money from  
16 three appropriations made for fiscal year 1986. The court found  
17 that the manner in which these appropriations were enacted vi-  
18 olated the dedicated fund prohibition set out in art. IX, sec. 7  
19 of the Alaska Constitution. These appropriations were made to  
20 provide for the financing of the Susitna and Bradley Lake Hydro-  
21 electric projects and the power cost equilization program.

22 (2) The state and members of the public will suffer  
23 immediate irreparable harm if the fiscal year 1986 appro-  
24 priations enacted in ch. 96, SLA 1985, page 9, line 5 (Bradley  
25 Lake Hydroelectric financing), and ch. 98, SLA 1985, page 59,  
26 line 18 (power cost equilization) are enjoined.

27 (3) The state and members of the public cannot be  
28 adequately protected from the harm occasioned by an injunction  
29 which prevents the state from providing assistance to consumers  
30 for power cost equilization under AS 44.83.162.

31 (4) The state and members of the public cannot be  
32 adequately protected from the harm caused by the loss of  
33 preconstruction earnings on bond proceeds from a sale of bonds  
34 scheduled as a part of the financing of the Bradley Lake Hydro-  
electric project.

1 (5) The state has suffered no harm as a result of the  
2 injunction ordered by this court as to the appropriation enacted  
3 in ch. 98, SLA 1985, page 8, line 17, for the Susitna Hydroelec-  
4 tric project. The state has represented that it does not plan  
5 to implement the appropriation until late June of 1986. The  
6 state has represented that any money to implement the appro-  
7 priation would not be transferred from the general fund to the  
8 power development fund (AS 44.83.382) until well after the leg-  
9 islature has convened and adjourned and the defendant has had  
10 sufficient time to prosecute its appeal.

11 (6) It is in the public interest to preserve the sta-  
12 tus quo for the power cost equilization and Bradley Lake appro-  
13 priations.

14 IT IS ORDERED

15 (1) The order dated August 30, 1985 granting plain-  
16 tiffs' motion for an injunctio. is stayed as to the appro-  
17 priations enacted in ch. 96, SLA 1985, page 9, line 5 (Bradley  
18 Lake Hydroelectric financing), and ch. 98, SLA 1985, page 59,  
19 line 18 (power cost equilization).

20 (2) The Alaska Power Authority may expend the appro-  
21 priations made for fiscal year 1986 in ch. 98, SLA 1985, page  
22 59, line 18 for the power cost equilization program as provided  
23 in AS 44.83.162.

24 (3) The Alaska Power Authority may make necessary  
25 expenditures from the appropriations enacted in ch. 96, SLA  
26 1985, page 9, line 5, to complete the financing of the Bradley  
27 Lake Hydroelectric Project. These expenditures may include the  
28 transfer of amounts under appropriations in dispute in this  
29 action to a fund or funds created under a trust indenture or  
30 other financing documents established for the benefit of owners  
31 of obligations issued or to be issued in connection with the  
32 financing of the Bradley Lake Hydroelectric project, and the  
33 irrevocable pledge or expenditure of this amount for those pur-  
34 poses.

1 (4) Because there is no proof of immediate harm to  
2 the public interest, the state's motion for a stay of the in-  
3 junction ordered as to the appropriation enacted in ch. 96, SLA  
4 1985, page 8, line 17 (Susitna Hydroelectric project), is  
5 DENIED. However, if, before the legislature convenes or an ap-  
6 peal is decided, the state believes that new facts have arisen  
7 which prove imminent harm to the public interest, the state may  
8 renew its request for a stay from this court, if appropriate, or  
9 the Alaska Supreme Court.

10  
11  
12 DATED: \_\_\_\_\_

\_\_\_\_\_  
13 Brian Shortell  
14 Superior Court Judge

15 APPROVED AS TO FORM:

16  
17 \_\_\_\_\_  
18 Bob Adler  
19 Counsel for Plaintiffs  
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ATTORNEY GENERAL, STATE OF ALASKA  
STATE CAPITOL  
POUCH K. JUNEAU, ALASKA 99811  
PHONE 465-3600

Eric Smith  
Deborah Williams  
c/o Trustees for Alaska  
333 Gambell Street, Suite B  
Anchorage, AK 99501  
(907) 276-4244

Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

TRUSTEES FOR ALASKA, ALASKA )  
PUBLIC INTEREST RESEARCH )  
GROUP, )  
Plaintiffs, )  
vs. )  
STATE OF ALASKA, )  
Defendant. )

No. 3AN-84-12053 CIV

ORDER GRANTING MOTION FOR JUDGMENT TO PLAINTIFFS

This action came before this Court on Plaintiffs' Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment, pursuant to a Stipulation filed by the Parties. The Court finds, upon consideration of the pleadings and briefs, and arguments of counsel, that there is no genuine issue of material fact in dispute, and that Plaintiffs are entitled to judgment as a matter of law.

IT IS ORDERED that Plaintiffs' Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment is granted, and that the following relief is appropriate:

1. The Court finds and declares that AS 44.83.165, 44.83.410, and 44.83.420, and Sections 314, 317, and 318 of ch 171 SLA 1984 are unconstitutional, and are null and void and of no effect;
2. The State is enjoined from expending any monies appropriated by AS 44.83.165, AS 44.83.410 and AS 44.83.420 on or after July 1, 1985;
3. The State is ordered to return to the general fund the unexpended balance of any funds appropriated by AS 44.83.165, AS

44.83.410, and AS 44.83.420 on or after July 1, 1985;

4. The Court will award Plaintiffs their reasonable costs and attorneys fees incurred in connection with this action, upon appropriate motion filed by the Plaintiffs.

\_\_\_\_\_  
Judge Brian C. Shortell

Dated: \_\_\_\_\_

Proposed letter of intent to CS for SB 338 (Resources)

By the Alaska Environmental Lobby  
February 21, 1986

---

It is the intent of the Legislature that none of the monies appropriated in sections 4 and 8 of this act be used for continuation of licensing proceedings before the Federal Energy Regulatory Commission relating to any proposed Susitna River hydroelectric project.

It is further the intent of the Legislature that "Railbelt energy development" as mentioned in sections 4 and 8 of this act specifically includes the development, promotion, and dissemination of energy conservation technologies, devices, and practices.

For many of us who have been supporters of a strong program for railbelt energy, it has become apparant that there are severe problems with the financial feasibility of Susitna as a megaproject.



You are the Chairman of the Board of the Alaska Power Authority. When will you be prepared to come before this committee and give us APA's answer to the energy needs of southcentral and the railbelt?

*if plans for financing  
if support of railbelt utilities*

*not so forward — ~~if not from~~  
no so good  
other options*

---

*7 lesser projects!  
shift — carefully done*

*Small project — include —*

*2 stage — 3 stage*

*Devils Canyon*



**Homer Electric Association, Inc.**

CENTRAL OFFICE: 3977 LAKE STREET • HOMER, ALASKA 99603 • (907) 235-8167

March 20, 1986

MAR 25 1986

Mr. Lee Nunn, Chairman  
Alaska Power Authority  
P. O. Box 190869  
Anchorage, Alaska 99519-0869

Dear Mr. Nunn:

The Homer Electric Board and Staff have reviewed recent information concerning the three-step plan for the Susitna Hydroelectric Project. More specifically, we looked at the Devil Canyon phase that anticipates a total direct cost of \$1,323,000,000 (1985 dollars). Attached is a summary of the information presented to us.

We understand it will cost about \$5 million to complete the feasibility study and the FERC licensing for this first phase. Preliminary data indicates cost of power from the project appears feasible.

Homer Electric endorses continued work toward the Devil Canyon phase of the Susitna Project. We specifically request: (1) continue work on the FERC licensing and feasibility study; (2) re-appropriation of the \$200 million appropriated last year.

To stop work on the project now appears foolhardy. Work should be completed necessary to make a final decision on Devil Canyon. The cost to do this of approximately \$5 million appears reasonable. Secondly, it is our understanding new appropriations are not being requested beyond re-appropriation of last year's funding. This too seems reasonable in face of falling state revenue.

Susitna is controversial, but a lot of progress has been made, including down-sizing of the initial cost impact by building it in phases. This progress is significant.

Mr. Lee Nunn, Chairman -- Page 2

March 20, 1986

We will do our part by negotiating in good faith for a power sales agreement. Thank you for your continued work.

Sincerely yours,

HOMER ELECTRIC ASSOCIATION, INC.



B. Kent Wick  
General Manager

BKW:em

cc: ~~Sen. Arless Sturgulewski~~  
Chairman, Senate Resources Committee

Sen. Paul Fischer  
Rep. Mike Navarre  
Rep. Andre Marrou

March 19, 1986

DEVIL CANYON DAM -- SUMMARY

<u>Project Cost:</u>	1985 Dollars	\$1,323,000
	Nominal Dollars (inflated to 1999)	3,800,000

<u>Cost of Power:</u>	<u>Assumptions</u>	<u>Cost/kWh in 1999</u> <u>(Nominal Dollars)</u>
	No State Equity/5.5% inflation	18.3¢
\$300 Million State Equity/5.5% infl.	13.8¢	
\$500 Million State Equity/5.5% infl.	11.2¢	
No State Equity/4.0% inflation	13.3¢	
\$300 Mill. State Equity/4.0% infl.	9.8¢	
\$500 Mill. State Equity/4.0% infl.	7.8¢	

Power & Energy Output:

Installed Capacity	460 MW
Annual Energy Output	1,998 GWH

Due to water limitations, winter capacity would be as low as 65 mW (April). This can be mitigated by regulating the winter daily flows between 200 mW peak and 50 mW off-peak.

Source of Financing:

To be determined. Probably a combination of State Equity contributions and revenue bonding.

Prepared from APA data of March 18, 1986



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

M E M O R A N D U M

January 28, 1986

TO; All Members  
Senate Resources Committee  
FROM: Staff, <sup>H</sup> Senate Resources Committee  
RE: CSSB 338

CSSB 338 would correct the state statutes as required by the courts ruling that the continuing appropriation for power projects violated constitutional provisions.

The CSSB 338 repeals the continuing appropriations for the Susitna hydroelectric project, the Bradley Lake hydroelectric project, and the power cost equalization fund, and reappropriates those funds as specific appropriations.

There are no additional funds appropriated.

# 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

M E M O R A N D U M

January 28, 1986

TO: All Members  
Senate Resources Committee

FROM: Staff, <sup>H</sup> Senate Resources Committee

RE: CSSB 338

CSSB 338 would correct the state statutes as required by the courts ruling that the continuing appropriation for power projects violated constitutional provisions.

The CSSB 338 repeals the continuing appropriations for the Susitna hydroelectric project, the Bradley Lake hydroelectric project, and the power cost equalization fund, and reappropriates those funds as specific appropriations.

There are no additional funds appropriated.

W/ 30 days

- ① Financial analysis of the Perm Fund fund
- ② Statement of what they are going to do.

non-financial w/out using PF

R.B. energy -  
(4 - Director  
majority on Bd.)

- ③ ~~State report~~  
State report  
w/ finance plan

Senator Arliss Sturgulewski  
 Chairman, Senate Resources Committee  
 Senate Resources Hearing on  
 Railbelt Energy  
 January 29, 1986

no in developing

We are at a critical point in the process of finding a solution to the demand for railbelt energy. Several years ago we asked the APA to go and look for a feasible method of providing for this need.

### Construction -

APA focused on the Susitna Dam for their study. That study has been through numerous versions. The FERC licensing application has been changed and an amended application is being prepared. Statutes require that APA prepare a financial plan and present it to OMB and the Governor for their review before presentation to the legislature. This finance plan has never been presented to the legislature. A preliminary plan of financing has been presented to the Alaska Power Authority Board and that plan says we should go no further in the project. A recommendation to the APA Board of Directors by the Executive Director states that we should limit spending to essential activities. A team of financial experts tells us that the project cannot be financed without using the income stream from the Permanent Fund.

Amended FERC application ~~slide~~  
 Preliminary - only financing of PF ~~income~~  
 Confusing policy trends

We have requested Mr. Heath, Executive Director of the APA, to discuss Railbelt Energy with the Senate Resources Committee and to help resolve some of these questions. Are we at the end of the line on Susitna? Is it prudent to continue to spend money on a project that does not have a viable financial plan and no purchase contracts by the railbelt utility companies? We need to ask, where do we go from here?

If Susitna is not built, there will still be a demand for energy, and it must come from some other source.

This meeting today will hopefully provide the public and the committee with the facts of the matter. The people and this committee deserve to know what is happening.

# opinion

*File  
Sundman*  
*Frank*

## Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly  
Publisher

Howard Weaver  
Managing Editor

Suzan Nightingale  
Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983  
Lawrence Fanning, Editor and Publisher 1967 to 1971

Alaska's Only Morning Newspaper • Founded In 1946 by Norman C. Brown

# A chance Alaska simply won't take

Some gambles just aren't worth the risk, no matter how big the payoff. Take the idea of using permanent fund earnings to guarantee the bonds needed to finance the Susitna hydroelectric project.

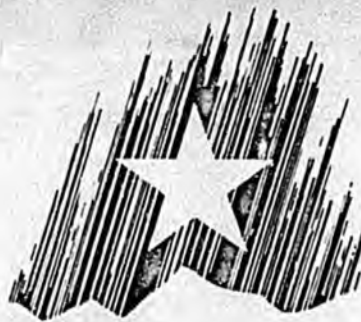
According a preliminary financing plan prepared for the Alaska Power Authority, the state would have to offer the entire earnings of the Alaska Permanent Fund as security for the bonds. Since the proposed bonds would amount to \$12.1 billion for just the first two of the project's three stages, the repayment guarantee would involve hundreds of millions of dollars a year.

Although the plan is still just a draft, it raises serious questions about how far Alaska may have to go to secure funding for Susitna. Only oil generates more revenue for the state treasury than the permanent fund. Right now the fund's income pays dividends to every Alaskan and helps inflation-proof the fund. If the earnings are ever going to be used for some other purpose, they should help pay for the basics of state government — education, public safety, health and welfare — not to secure one of the most expensive hydro projects ever built in the country.

Gov. Bill Sheffield and several legislators quickly rejected using fund earnings to guarantee Susitna bonds, and rightfully so. Even Susitna supporters know this is a chance Alaskans aren't willing to take.

A good end on the ...

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Anchorage • Star of the North  
Chamber of Commerce

Frank  
File  
Jan 31 1986

January 29, 1986

Honorable William Sheffield  
Governor of Alaska  
Pouch A  
Juneau, Alaska 99811

RE: Preliminary Draft Susitna Plan of Finance  
dated January 16, 1986

Dear Governor Sheffield:

To write off the Susitna Hydroelectric project at this time based on a draft preliminary finance report is premature and would prove to be irresponsible. Other sources of financing that would not involve the Permanent Fund should have been explored.

The Legislature and the Executive Branch should continue funding the FERC application and its study of the railbelt energy alternatives so that all avenues of financing can be considered.

The undisputed energy crisis to the Railbelt is still coming. Finalization of these energy studies will lead to the best solutions for the 400,000 consumers that live in this area.

We ask for your consideration.

Sincerely yours,

Anchorage Chamber Energy Committee  
Robert C. Penney, ~~Chairman~~  
Al Fleetwood  
Joe Henri  
Tom Stahr  
David Gottstein  
Ken Johnson  
Mano Frey

cc: Legislators

President: Elaine Atwood Executive Committee: Larry Baker,  
Ken Calhoon, George Easley, Lee Fisher, Joe Heintz, Harold Heinze, Glenda Rhodes  
Board: Col. Larry Bolls, Mike Burns, Dave Dittman, Sen. Jan Faiks, Al Fleetwood, Alice Hartig, Jack Hayes,  
Duane Heyman, Col. Scott Tippin, Kay Linton, Bill MacKay, Earl Miller, George N. Nelson, John Norman, Al Parrish,  
Bob Penney, Chief Brian Porter.

415 F Street, Anchorage, Alaska 99501-2254 (907) 272-2401

Introduced: 1/15/86  
Referred: House Special Committee on  
State Loans and Finance

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 477

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making and amending appropriations for the  
7 Alaska Power Authority; and providing for an effective  
8 date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. (a) The sum of \$200,000,000 is appropriated from the  
11 general fund to the Alaska Power Authority for deposit in the power devel-  
12 opment fund (AS 44.83.382) for the purpose of financing the Susitna River  
13 hydroelectric project.

14 (b) Up to \$9,100,000 of the amount set out in (a) of this section may  
15 be spent in fiscal year 1987 for planning and predesign activities for the  
16 Susitna River hydroelectric project.

17 \* Sec. 2. The sum of \$50,000,000 is appropriated from the general fund  
18 to the Alaska Power Authority for deposit in the power development fund  
19 (AS 44.83.382) to finance the Bradley Lake hydroelectric project.

20 \* Sec. 3. The sum of \$21,700,000 is appropriated from the general fund  
21 to the Alaska Power Authority for deposit in the power cost equalization  
22 fund (AS 44.83.162).

23 \* Sec. 4. AS 44.83.165 is amended to read:

24 Sec. 44.83.165. [CONTINUING] APPROPRIATION FOR POWER COST EQUAL-  
25 IZATION. The sum of \$16,300,000 is appropriated on July 1, 1984 [,  
26 AND THE SUM OF \$21,700,000 IS APPROPRIATED ON JULY 1 OF EACH SUBSE-  
27 QUENT FISCAL YEAR] from the general fund to the power cost equaliza-  
28 tion fund (AS 44.83.162).

29 \* Sec. 5. AS 44.83.410 is amended to read:

1           Sec. 44.83.410. [CONTINUING] APPROPRIATION FOR SUSITNA RIVER  
2           HYDROELECTRIC PROJECT. The sum of \$100,000,000 is appropriated on  
3           July 1, 1984 [AND THE SUM OF \$200,000,000 IS APPROPRIATED ON JULY 1 OF  
4           EACH SUBSEQUENT FISCAL YEAR] from the general fund to the authority  
5           for deposit in the power development fund (AS 44.83.382) for the pur-  
6           pose of financing [EQUITY INVESTMENT IN, AND RATE STABILIZATION FOR,]  
7           the Susitna River hydroelectric project.

8           \* Sec. 6. AS 44.83.420 is amended to read:

9           Sec. 44.83.420. [CONTINUING] APPROPRIATION FOR BRADLEY LAKE  
10           HYDROELECTRIC PROJECT. The sum of \$50,000,000 is appropriated on July  
11           1, 1984 [OF EACH FISCAL YEAR] from the general fund to the authority  
12           for deposit in the power development fund (AS 44.83.382) for the pur-  
13           pose of financing [EQUITY INVESTMENT IN, AND RATE STABILIZATION FOR,]  
14           the Bradley Lake hydroelectric project.

15           \* Sec. 7. The fiscal year 1986 appropriations made at page 8, line 17  
16           and page 9, line 5, ch. 96, SLA 1985; and page 59, line 18, ch. 98, SLA  
17           1985 are repealed.

18           \* Sec. 8. Obligations, encumbrances, and expenditures incurred against  
19           appropriations repealed or amended in this Act are considered obligations,  
20           encumbrances, and expenditures of the appropriations enacted in secs. 1 --  
21           3 of this Act. The appropriations enacted in secs. 1 -- 3 of this Act do  
22           not appropriate any more money than was previously appropriated by the  
23           appropriations amended or repealed in secs. 4 -- 7 of this Act.

24           \* Sec. 9. The appropriations in secs. 1 and 2 of this Act are for capi-  
25           tal projects, and lapse in accordance with AS 37.25.020.

26           \* Sec. 10. Sections 1 -- 7 of this Act are retroactive to July 1, 1985.

27           \* Sec. 11. This Act takes effect immediately in accordance with AS 01.-  
28           10.070(c).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

TRUSTEES FOR ALASKA, ALASKA )  
PUBLIC INTEREST RESEARCH )  
GROUP )  
Plaintiffs )  
vs. )  
STATE OF ALASKA )  
Defendant )  
\_\_\_\_\_ )

No. 3AN-84-12053 CIV

JUDGMENT

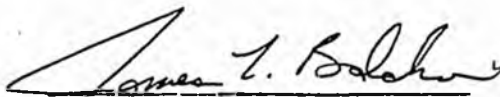
This action having been tried before the Court on cross-motions for summary judgment,

IT IS ORDERED, that judgment shall be entered for plaintiff as to the claim under Article IX, section 7 of the Alaska Constitution; and that plaintiff's complaint is dismissed on the merits as to the claim under Article II, section 13 of the Alaska Constitution.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Brian C. Shortell  
SUPERIOR COURT JUDGE

Approved as to form:

  
James Baldwin  
Assistant Attorney General

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE

3 TRUSTEES FOR ALASKA, ALASKA )  
4 PUBLIC INTEREST RESEARCH )  
GROUP, )  
5 Plaintiffs, )  
6 vs. )  
7 STATE OF ALASKA, )  
8 Defendant. ) No. 3AN-84-12053 CIV.  
9

10 ORDER GRANTING IN PART  
11 STATE'S MOTION FOR A STAY

12 The court, having read the pleadings submitted by the  
13 parties and after hearing argument finds:

14 (1) By order dated August 30, 1985 the State, Alaska  
15 Power Authority, was enjoined from expending any money from  
16 three appropriations made for fiscal year 1986. The court found  
17 that the manner in which these appropriations were enacted vi-  
18 olated the dedicated fund prohibition set out in art. IX, sec. 7  
19 of the Alaska Constitution. These appropriations were made to  
20 provide for the financing of the Susitna and Bradley Lake Hydro-  
21 electric projects and the power cost equilization program.

22 (2) The state and members of the public will suffer  
23 immediate irreparable harm if the fiscal year 1986 appro-  
24 priations enacted in ch. 96, SLA 1985, page 9, line 5 (Bradley  
25 Lake Hydroelectric financing), and ch. 98, SLA 1985, page 59,  
26 line 18 (power cost equilization) are enjoined.

27 (3) The state and members of the public cannot be  
28 adequately protected from the harm occasioned by an injunction  
29 which prevents the state from providing assistance to consumers  
30 for power cost equilization under AS 44.83.162.

31 (4) The state and members of the public cannot be  
32 adequately protected from the harm caused by the loss of  
33 preconstruction earnings on bond proceeds from a sale of bonds  
34 scheduled as a part of the financing of the Bradley Lake Hydro-  
electric project.

1 (5) The state has suffered no harm as a result of the  
2 injunction ordered by this court as to the appropriation enacted  
3 in ch. 98, SLA 1985, page 8, line 17, for the Susitna Hydroelec-  
4 tric project. The state has represented that it does not plan  
5 to implement the appropriation until late June of 1986. The  
6 state has represented that any money to implement the appro-  
7 priation would not be transferred from the general fund to the  
8 power development fund (AS 44.83.382) until well after the leg-  
9 islature has convened and adjourned and the defendant has had  
10 sufficient time to prosecute its appeal.

11 (6) It is in the public interest to preserve the sta-  
12 tus quo for the power cost equilization and Bradley Lake appro-  
13 priations.

14 IT IS ORDERED

15 (1) The order dated August 30, 1985 granting plain-  
16 tiffs' motion for an injunction is stayed as to the appro-  
17 priations enacted in ch. 96, SLA 1985, page 9, line 5 (Bradley  
18 Lake Hydroelectric financing), and ch. 98, SLA 1985, page 59,  
19 line 18 (power cost equilization).

20 (2) The Alaska Power Authority may expend the appro-  
21 priations made for fiscal year 1986 in ch. 98, SLA 1985, page  
22 59, line 18 for the power cost equilization program as provided  
23 in AS 44.83.162.

24 (3) The Alaska Power Authority may make necessary  
25 expenditures from the appropriations enacted in ch. 96, SLA  
26 1985, page 9, line 5, to complete the financing of the Bradley  
27 Lake Hydroelectric Project. These expenditures may include the  
28 transfer of amounts under appropriations in dispute in this  
29 action to a fund or funds created under a trust indenture or  
30 other financing documents established for the benefit of owners  
31 of obligations issued or to be issued in connection with the  
32 financing of the Bradley Lake Hydroelectric project, and the  
33 irrevocable pledge or expenditure of this amount for those pur-  
34 poses.

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(4) Because there is no proof of immediate harm to the public interest, the state's motion for a stay of the injunction ordered as to the appropriation enacted in ch. 96, SLA 1985, page 8, line 17 (Susitna Hydroelectric project), is DENIED. However, if, before the legislature convenes or an appeal is decided, the state believes that new facts have arisen which prove imminent harm to the public interest, the state may renew its request for a stay from this court, if appropriate, or the Alaska Supreme Court.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Brian Shortell  
Superior Court Judge

APPROVED AS TO FORM:

\_\_\_\_\_  
Bob Adler  
Counsel for Plaintiffs

ATTORNEY GENERAL, STATE OF ALASKA  
STATE CAPITOL  
POUCH K. JUNEAU, ALASKA 99811  
PHONE 465-3600

Eric Smith  
Deborah Williams  
c/o Trustees for Alaska  
333 Gambell Street, Suite B  
Anchorage, AK 99501  
(907) 276-4244

Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

TRUSTEES FOR ALASKA, ALASKA )  
PUBLIC INTEREST RESEARCH )  
GROUP, )  
Plaintiffs, )  
)  
vs. )  
)  
STATE OF ALASKA, )  
Defendant. )  
)

No. 3AN-84-12053 CIV

ORDER GRANTING MOTION FOR JUDGMENT TO PLAINTIFFS

This action came before this Court on Plaintiffs' Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment, pursuant to a Stipulation filed by the Parties. The Court finds, upon consideration of the pleadings and briefs, and arguments of counsel, that there is no genuine issue of material fact in dispute, and that Plaintiffs are entitled to judgment as a matter of law.

IT IS ORDERED that Plaintiffs' Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment is granted, and that the following relief is appropriate:

1. The Court finds and declares that AS 44.83.165, 44.83.410, and 44.83.420, and Sections 314, 317, and 318 of ch 171 SLA 1984 are unconstitutional, and are null and void and of no effect;

2. The State is enjoined from expending any monies appropriated by AS 44.83.165, AS 44.83.410 and AS 44.83.420 on or after July 1, 1985;

3. The State is ordered to return to the general fund the unexpended balance of any funds appropriated by AS 44.83.165, AS

44.83.410, and AS 44.83.420 on or after July 1, 1985;

4. The Court will award Plaintiffs their reasonable costs and attorneys fees incurred in connection with this action, upon appropriate motion filed by the Plaintiffs.

\_\_\_\_\_  
Judge Brian C. Shortell

Dated: \_\_\_\_\_

## MEMORANDUM

**TO: Steve**

**DATE: December 3, 1985**

**FROM: Garrey**

**SUBJECT: Continuing Power  
Appropriations**

**During the last legislative session, suit was filed by Trustees of Alaska challenging the continuing appropriation scheme set up in 1985 for:**

**Power Cost Equalization  
Susitna Hydroelectric Project  
Bradley Lake Hydroelectric Project**

**The legislature then put the FY '86 appropriations in the budget bill as separate items.**

**The court has ruled that the FY'86 appropriations are invalid because they were set up as continuing appropriations. The state has appealed that decision to the Alaska Supreme Court. The Supreme Court has taken no action on the appeal.**

**The state filed a Motion for Stay and a Superior Court hearing was held on 9/19/85. Specifically the state requested that the stay be granted for the Power Cost Equalization and Bradley Lake appropriations.**

**The state argued and Trustees of Alaska agreed that "there is immediate and irreparable harm to the people who are beneficiaries of the Power Cost Equalization Program".**

**Trustees of Alaska maintain that the correct solution is for the legislature to meet in special session to appropriate the money. They did not object, however to the stay in the case of Power Cost Equalization.**

**The state requested the stay for the Bradley Lake appropriation because three Japanese banks have committed to the bond financing; the documents are in the final drafting stage; the bond sale is scheduled for October 2nd; that the banks relied on the last legislature's confirmation of their appropriations.**

**Further, the financing commitment was to expire on October 19 and proposed federal legislation would make it impossible to do Bradley Lake with tax exempt bonds.**

**Continuing Appropriations - Page 2**

**The loss of tax exempt financing would increase the cost of the Bradley Lake project by an estimated \$39 million.**

**The court took the general position that, if they had a chance to deal with them now, the legislature would approve the Bradley Lake and Power Cost Equalization appropriations.**

**The original court order with respect to the FY '86 Susitna appropriation still stands. The money must, unless the state wins on appeal, go back to the General Fund.**

**The judge made it clear that if the legislature doesn't take action on the appropriations in January, 1986, he will be favorable to a motion to dissolve the Stay Order.**

**My personal opinion is that the Supreme Court will say that continuing appropriations are invalid but that since the legislature included them in the FY'86 budget act as separate items, they are as legal as any other appropriation in that bill.**

AS PROMISED, HERE IS THE COMPLETE  
TRANSCRIPT OF THE STAY HEARING ON THE  
CONTINUING APPROPRIATION ISSUE.

Mike Greany  
9/24/85

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TRANSCRIPT OF PROCEEDINGS  
TRUSTEES OF ALASKA v. STATE  
No. 3AN 84-12053  
September 19, 1985

H & M COURT REPORTING  
1031 WEST 4TH AVENUE, SUITE 220  
ANCHORAGE, ALASKA 99501  
(907) 274-5661

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

TRUSTEES OF ALASKA, )  
 )  
Plaintiff, )  
 )  
vs )  
 )  
STATE OF ALASKA )  
 )  
 )

Case No. 3AN-84-12053

TRANSCRIPT OF PROCEEDINGS  
M.O. GRANTING DEFENDANT'S MOTION FOR STAY  
M.O. TAKING UNDER ADVISEMENT DEFENDANT'S MOTION  
RE: CONFINEMENT

SEPTEMBER 19, 1985

BEFORE THE HONORABLE BRIAN SHORTELL

A P P E A R A N C E S:

Eric Smith, Esq. for defendant  
833 Gambell Street, Suite B  
Anchorage, Alaska 99501

James Baldwin, Esq. for plaintiff  
Attorney General's Office  
1031 West 4th Avenue, Suite 200  
Anchorage, Alaska 99501

Tape: K-1185  
Logs: 1542 - 1885

H & M COURT REPORTING  
1031 WEST 4TH AVENUE, SUITE 220  
ANCHORAGE, ALASKA 99501  
(907) 274-5661

1 P R O C E E D I N G S

2 SEPTEMBER 19, 1985

3 THE CLERK:

4 This court now resumes its session.

5 THE COURT:

6 Be seated. We're not the record in case  
7 no. 3AN-84-12053 Civil, Trustees for Alaska  
8 versus State of Alaska. This is on a Motion to  
9 -- Motion for Stay and an associated Motion to  
10 Clarify Order.

11 I think, I'd like to discuss the Motion for  
12 Stay, unless there's some reason why I  
13 shouldn't first; and to the extent that -- that  
14 it's affected by the Motion to Clarify the  
15 order, we'll discuss that also. All right.

16 I think I probably will have some questions  
17 for you on the motion for stay first. It may  
18 make this a little quicker than it might  
19 normally will.

20 First, I got a message that somehow you  
21 were involved in some of negotiations. Is that  
22 true?

23 MR. BALDWIN:

24 We were, Your Honor. Those negotiations  
25 have terminated at this time.

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THE COURT:

Okay. So I want to know, first, is the -- the -- the reason you need the stay in your view are really relate only to the Bradley Lake situation and the Power Cost Equalization Plan, right? Because there is no immediate harm threatened with regard to Susitna, is that correct?

MR. BALDWIN:

There is no immediate harm threatened with regards to Susitna, that's correct, Your Honor.

THE COURT:

And, by the same token, the Plaintiffs have no objection to my entering a stay of my order with regard to the Power Cost Equalization Program, correct?

MR. SMITH:

Your Honor, we believe that there is one available remedy for the State, which would be for the legislature to convene in a special session to appropriate the money, and that would be one available extra judicial remedy. And we're not sure whether it's appropriate for the court to hear this motion on that grounds.

1                   However, we do understand that there is  
2                   immediate and irreparable harm to the people  
3                   who are beneficiaries of the Power Cost  
4                   Equalization Program, and we certainly  
5                   sympathize with that concern and understand on  
6                   the court's equitable powers to deal with that  
7                   situation.

8                   THE COURT:

9                   Well, that's not my -- an answer to my  
10                   question. Do you oppose a stay with regard to  
11                   the financing of the immediate expenditures  
12                   with regard to the Power Cost Equalization  
13                   Program?

14                   MR. SMITH:

15                   I guess, our initial position is that the  
16                   appropriate solution is for the State -- is  
17                   that the court should not grant equitable  
18                   relief when there is an available remedy to the  
19                   State.

20                   However, as an alternative argument, that  
21                   the court is not prepared to rule on that  
22                   issue, we do not oppose the stay.

23                   THE COURT:

24                   Okay. I see.

25                   All right. I have another question for the

1 Plaintiff and this -- this relates to the  
2 Motion to Clarify. Your original position  
3 seemed to me to be that there were a number of  
4 grounds for invalidating this statutory scheme.

5 And that if I found in your favor on -- on  
6 any one of them, the -- your -- all three of  
7 these programs would -- well, the whole scheme  
8 wouldn't necessarily have to go. And there was  
9 no real distinction between the Fiscal Year '85  
10 monies and the '86 monies; the '85 money would  
11 not be invalidated, and the '86 monies would.  
12 Right.

13 MR. SMITH:

14 That's correct.

15 THE COURT:

16 And it's now your position -- and it really  
17 only recently arrived at and, in fact, arrived  
18 at read after you read the State's Motion for  
19 Clarification. That there are a number of  
20 funds, which relate to 1985 -- Fiscal Year 1985  
21 appropriations, that may, in fact, be  
22 invalidated; but only if I found in your favor  
23 on the confinement issue, correct?

24 MR. SMITH:

25 Correct.

1 THE COURT:

2 Okay.

3 Well, let me tell you so that you can all  
4 understand this. My feeling was that the --  
5 that the continuing appropriations -- the issue  
6 as to whether or not -- whether or not the  
7 continuing appropriations violated Article 9  
8 Section 7 of the constitution is what I decided  
9 this case on.

10 And I didn't go beyond that. And the  
11 reason that I didn't go beyond that was because  
12 it was not brought to my attention that there  
13 would be any different result with regard to  
14 any of the other arguments made.

15 Now, that you tell me that, I suppose, that  
16 opens up a number of new and interesting  
17 avenues for us. But there's only one ground  
18 that I have found in your favor on, and it's  
19 the Article 9 Section 7 issue.

20 So the extent that you need clarification,  
21 I think, you've got it. It's what the basis of  
22 my decision is.

23 But that, you know, that does conjur up the  
24 possibility that I'm going to have to go  
25 further and deal with the other argument.

1 MR. SMITH:  
2 If I may, Your Honor.  
3 THE COURT:  
4 Uh-hm (affirmative).  
5 MR. SMITH:  
6 In the letter of clarification, does your  
7 ruling hold that the FY -- Fiscal Year 1986  
8 Appropriations enacted by the 14th Legislature  
9 are invalid...  
10 THE COURT:  
11 Yes.  
12 MR. SMITH:  
13 ...is that ruling?  
14 THE COURT:  
15 Yes.  
16 MR. SMITH:  
17 And even then -- even though if they  
18 appropriated separately in the FY-86 budget?  
19 THE COURT:  
20 Yes.  
21 MR. SMITH:  
22 I think, it would be a simple matter to  
23 draft the order to that effect.  
24 THE COURT:  
25 Sure. And all you really have to do is do

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that.

On the other hand, if the plaintiffs want to -- want to -- want all of these ground to be decided then, I suppose, you can approach me in a better way than you've done up until this point. So that I can deal with it.

It appears to me that, really, you didn't think too much about this until now, plaintiffs; and that, perhaps, what we need is supplemental briefing on those other issues if you really think it's necessary to go on with those other issues.

MR. BALDWIN:

If -- if I may incur, Your Honor.

THE COURT:

Uh-hm (affirmative).

MR. BALDWIN:

Our position was that the case on confinement was very weakened; for purposes of appeal could be abandoned at this point. And one of the reasons for asking for this hearing was so that we could limit the issues for the Supreme Court so that we could arrive at an expeditious proceeding.

I would be willing to accept a concession

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from plaintiffs that that issue is no longer with us.

THE COURT:

You mean, in other words, they give up to you?

MR. BALDWIN:

They give up to us on that point. I feel...

THE COURT:

It looked like they were going to do that in their opposition.

MR. BALDWIN:

However, Your Honor, the -- the -- the position is...

THE COURT:

Well, what -- what I'd like to know from you is -- is -- as soon -- since -- since it appears that other -- that funds other than those already -- invalidated under the Article 9, Section 7 argument are implicated here.

And since it appears that plaintiffs doesn't -- don't want those funds to be spent either, it would appear that I'm going to have to decide this.

1           But I don't know that there's been a whole  
2           lot of deep analysis given to it, since the  
3           only opportunity the plaintiffs have had to  
4           deal with it is in the context of an opposition  
5           to a Motion to Clarify that's been brought on  
6           in short notice.

7           MR. BALDWIN:

8           Well, Your Honor, I believe, the issue was  
9           submitted to you in briefs and argued. We felt  
10          that your holding must have -- must have denied  
11          them that relief based on the confinement  
12          argument, Your Honor.

13          We felt that it was a weak argument, it was  
14          not well supported, and that we prevailed. And  
15          that's what we hope to arrive at through this  
16          clarification.

17          THE COURT:

18          Well, you just got clarification then; you  
19          were wrong. And with -- not necessarily wrong  
20          in the long run, but you were -- you were wrong  
21          as to the basis for my decision.

22          Now, you know what it is. So you gotta --  
23          you're going to have to tell me what you want  
24          me to do from here on in, because it appears  
25          they're not going to drop that argument; and it

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would appear that I'm going to have to decide it.

Do you want me to let you brief it further? Do you want me to decide it on the papers that I've got?

Plaintiff.

MR. SMITH:

It's out position that the issue has been briefed adequately on -- by way of a brief explanation, I hope you appreciate that it was our intent to request only that relief that we felt was appropriate at the time.

THE COURT:

Uh-hm (affirmative).

MR. SMITH:

And our initial analysis was simply that the first year, in which the appropriations acted as a continuing appropriation, was Fiscal Year 1986. And we did not want to approach the court with relief that extended beyond that that we felt we were entitled to.

Upon analysis of the Motion to Clarify, it occurred to us that that line of reasoning was not correct with respect to the confinement issue; and we felt somewhat obligated to bring

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this matter to the court's attention.

We do so with apologies to the court, but our clients are simply not prepared at this time -- and I would have to confer to them before they abandon that argument -- we do not agree with the state that the arguments are weak. However, they were briefed and argued before the court; and we would simply ask the court to pass on that issue.

THE COURT:

All right. All right. And I'll do that. But I'll -- I'm going to have to take it under advisement and go into it much more deeply than I did. So that will take some time.

MR. SMITH:

I appreciate that.

MR. BALDWIN:

Your Honor, certainly, if the court feels that additional briefing would assist us...

THE COURT:

Well, I'm gonna -- I'll leave it up to you. If you want to brief it further, that's fine with me. I don't mind. And the more briefing probably the better able I'll be able to understand your position.

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But I'm willing to take it under advisement now or I'm willing to defer that, taking it under advisement until you submit that you ask me to allow you to file. But if you don't ask me, I will take it under advisement right now.

And plaintiffs are not asking me; do you want to file something further?

MR. BALDWIN:

I think, that the delay occasioned by that will be more harmful for the State than -- then...

THE COURT:

Okay. All right.

MR. BALDWIN:

...expedited decision.

THE COURT:

So at this point, it's fully briefed and -- and it's -- it will be taken under advisement and I'll decide it as quickly as I can. And it may -- that may occasion some delay; I don't know how much, but I'm certainly not going to have an immediate decision for you and I'd be surprised if I got it for you before two weeks.

MR. BALDWIN:

Yes, Your Honor. Well, as I -- I think, as

1 we set out in our briefs, the -- the delay  
2 occasioned by that decision, of course, will  
3 really adversely affect the financing that we  
4 have underway for Bradley Lake, which would  
5 bring a substantial benefit to the state and  
6 the public, and we only ask the court to  
7 consider that affect. And -- and...

8 THE COURT:

9 All right. Tell me what -- what -- what --  
10 now, just the delay occasioned by a decision on  
11 the confinement issued, tell me what harm that  
12 causes you?

13 MR. BALDWIN:

14 The harm is that we have now a commitment  
15 from banks who are offering a letter of credit  
16 to back up a financing of short -- long term  
17 variable demand notes for the actual financing  
18 of the -- of the Bradley Lake Project.

19 The problem is that this type of an  
20 arrangement is currently authorized under  
21 Federal law, which we are advised is subject  
22 very soon to change in the congress. And  
23 without an -- this legal form, of what is known  
24 as arbitrage, will be available to us only for  
25 a very short time.

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THE COURT:

Well, I understand -- I understand that that -- I just want to know if the Fiscal Year '85 funds are part of this whole security arrangement?

MR. BALDWIN:

Yes, they are. '85 and '86, we must have unrestricted availability. Although, not the ability to spend, but the availability of the funds for the purpose as appropriated from both Fiscal Year '85 and Fiscal Year '86 before we can close on the financing arrangements.

THE COURT:

Okay. So -- so the issue, now, with regard to the stay and with regard to any delay that might be occasioned by my deciding the confinemen issue is, essentially, the same; and that is whether deprivation of the use of the funds as security for the short term financing plan would be of irreparable harm to defendants, right?

MR. BALDWIN:

Basically, that is -- that is it, Your Honor. Not only to the defendants, but to all of the rate payers who would be under an

1 increased debt service obligation if we cannot  
2 obtain the investment income earned through  
3 this financing arrangement.

4 THE COURT:

5 Sure. Sure. That -- that's just a  
6 secondary effect. Right.

7 I -- I -- the way I see your argument is,  
8 briefly, with regard to Bradley Lake is that  
9 the banks have committed to the bond financing;  
10 that the documents are in the final drafting  
11 stage; that the bond sale is scheduled for  
12 October 2nd; that the banks relied on the last  
13 legislature's confirmation of their  
14 appropriations.

15 And, in other words, the fact that they  
16 didn't refuse to allow these appropriations to  
17 go through for Fiscal Year '86.

18 That the commitment expires on the 19th of  
19 October; and the federal legislation would  
20 remove the benefits of -- of financing if -- if  
21 bond delivery doesn't occur during 1985; and  
22 that particular -- the scheme that's under --  
23 that is now and it will be in effect would  
24 reduce the cost of long-term fixed rate  
25 financing by \$39 million, right?

1 MR. BALDWIN:

2 That's right, Your Honor. Our best advice  
3 that we have received from financial advisors  
4 and individuals in Washington who are following  
5 this bill, is that the likelihood is very high  
6 that by January 1st, the Federal Internal  
7 Revenue Code will be changed to assist  
8 arbitrage -- that legal arbitrage arrangements  
9 will no longer be possible under federal law.

10 THE COURT:

11 By when?

12 MR. BALDWIN:

13 By January 1st.

14 THE COURT:

15 Okay. Okay. All right.

16 So if I get no objection to this, I think,  
17 that I'm going to take it up under the same --  
18 take up the issue of delay for my taking the  
19 confinement issue under advisement.

20 Under the -- under the same analysis as I  
21 would take up whether or not I would issue a  
22 Stay of the Order with regard to the -- to the  
23 ground for which I found in favor of plaintiffs

24 That sounds -- does that ring a sour note  
25 anywhere for either one of you?

1 MR. BALDWIN:

2 No, Your Honor.

3 THE COURT:

4 Okay. All right.

5 Well, I think, I understand what you're  
6 saying about Bradley Lake and irreparable harm  
7 seems to be conceded on the Power Cost  
8 Equalization Program, assuming that I'm not  
9 going to buy the argument that I should force  
10 the -- or that I should force a decision to be  
11 made whether or not a special session should  
12 take place.

13 And I'm prepared, at this point, to find  
14 that there would be irreparable harm if I  
15 didn't stay the case. So, really, the  
16 secondary issue then it occurs is that -- is  
17 that of adequate protection.

18 Tell me, I'd just like to hear why you  
19 think that you that you can't be adequately  
20 protected? Or maybe the issue is, really, what  
21 real harm is going to occur.

22 And let me tell you how I feel about  
23 this. Although, I invalidated this plan, it  
24 does appear to me that if the legislature had a  
25 chance to deal with this and was forced to

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appropriate a separate appropriation for these funds for this year, it seems, highly likely, that they would indeed appropriate the funds.

Which suggests to me, that if they did and there's not really that much difference between the time -- timed plan if they do it in October, or if they do it in January or February.

If I'm wrong on that, you have to tell me why I'm wrong.

MR. SMITH:

Your Honor, I think you have to go to the gravamen of this lawsuit. The major point of this lawsuit is that the constitution requires the legislature to give affirmative annual consideration of each expenditure that it makes.

If the legislature does not do that, the irreparable harm to the plaintiffs is the automatic violation of the Alaska Constitution with each dollar that is spent under these unlawful appropriations.

THE COURT:

Well, I can understand that that is certainly an academic affect. You can say that

1           there's -- there's harm and it's irreparable in  
2           a sense from any violation of law.

3           But question is what the real irreparable  
4           harm is, in fact, if it's highly probably that  
5           that the appropriations will take place as soon  
6           as the legislature gets a chance to deal with  
7           it.

8           MR. SMITH:

9           I guess, the real irreparable is that once  
10          the money is spent, it cannot be recovered. It  
11          is conceivable, perhaps, it is entirely likely  
12          that the legislature would reappropriate this  
13          money, but I cannot answer that question on  
14          behalf of the legislature.

15          The point is that when passing on a Motion  
16          for Stay, I think, the key consideration for  
17          the court is whether the plaintiff's position  
18          or the defendant's position can be returned to;  
19          can you preserve the status quo if the stay is  
20          granted.

21          If the stay is granted, we cannot return  
22          the plaintiffs to the status quo, because the  
23          money cannot be recovered. Conversely, if the  
24          stay is denied and the case is reversed on  
25          appeal, the money will remain in the general

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fund and the only harm to the defendants will be delay.

And, I guess, perhaps, the easiest way to address this is by analogy. If, as a person who generally practices environmental law, if I want to prevent someone from building a condominium on an area that has been proposed as a wilderness area, once they build the condominium, you have destroyed the wilderness nature of the region. You cannot recover it.

Now, it may be true that the wilderness area would or would not be designated. It's impossible for us to prove the negative. But the fact remains, that we cannot be returned the status quo antea if the money is spent.

THE COURT:

Well, what -- all right. In review what does the evidence show? What money is going to be spent between now and February?

MR. SMITH:

In -- well, in the case of Power Cost Equalization, the money will be spent. But, we have agreed to that.

In the case of Bradley Lake, the State is proposing to use that money as collateral.

1 Now, I would ask the court to consider what  
2 happens in the event that the Supreme Court  
3 upholds this court's decision? That money can  
4 no longer be used as collateral and it's not  
5 clear what would happen, but the Alaska Power  
6 Authority has built a half of cart on a body of  
7 money that's no longer there.

8 They might default on the bond. The  
9 legislature might have to bail them out. In  
10 which case, the APA has essentially ratcheted  
11 the same money out of the legislature.

12 But, I think, you can see that it's a  
13 rather tenuous position to use as collateral,  
14 for \$226 million worth of bonds, money that is  
15 granted on a judicial stay and that might be  
16 removed eventually.

17 THE COURT:

18 Well, I'm assuming that the banks would --  
19 would understand the tenuous position they'd be  
20 in relying on stay that -- that -- of a  
21 decision that, in fact, I believe is going to  
22 be affirmed, and so do you. Although, the  
23 State disagrees.

24 And if they make that commitment, I'm --  
25 I'm assuming that they're dealing with the

1 State knowing all of the facts.

2 MR. SMITH:

3 As a matter of fact, Your Honor, I'm not  
4 sure the State has demonstrated that the deal  
5 would go through on the basis of a stay.

6 Remember that the State entered into these  
7 negotiations knowing that the money had been  
8 challenged, but assuming that they would be  
9 upheld.

10 THE COURT:

11 All right. But, if the deal doesn't go  
12 through if -- when -- if a stay is issued and  
13 they are in a tenuous position, there's no  
14 irreparable harm -- there's no harm to your  
15 interests, is there?

16 Because, in fact, none -- the money is not  
17 used as -- the funds aren't used as collateral  
18 and they're not in a position of ratcheting the  
19 legislature back in to -- in to appropriating  
20 the funds, are they?

21 MR. SMITH:

22 Not if the bank does not uphold the deal,  
23 that is correct. I guess, what my problem is  
24 is a question of burden of proof here.

25 In order to ask the court for a stay, the

1 State has to proof that it needs needs the  
2 money. So the basic rule should be that they  
3 can't use the money for any other purpose than  
4 some irreparable harm, and assuming that other  
5 equitable defenses that we've raised in our  
6 papers don't work.

7 So, perhaps, even if the court's reasoning  
8 is upheld, the State should be limited to only  
9 those matters that the State has proven to the  
10 court are necessary. If you grant the stay  
11 across the board and this deal falls through,  
12 then we'd still be free to spend that money on  
13 anything...

14 THE COURT:

15 Oh, I see what you mean.

16 MR. SMITH:

17 ...whether or not they've proven  
18 irreparable harm for a need.

19 THE COURT:

20 Okay. All right. I think, I understand  
21 you.

22 MR. BALDWIN:

23 Your Honor...

24 THE COURT:

25 Go ahead.

1 MR. BALDWIN:

2 ...there is one point, I think, we've  
3 loosely used the word collateral here for the  
4 status of the appropriation...

5 THE COURT:

6 Uh-hm (affirmative).

7 MR. BALDWIN:

8 ...is that as I understand collateral is  
9 security for a note or something of that  
10 effect, that it's not quite that way in this  
11 transaction.

12 The availability of the appropriation --  
13 that's just it -- it just has to be available  
14 for expenditure for construction, or rate  
15 stabilization, or some other construction  
16 reserve type purpose, has to be available but  
17 not expended; and, therefore, is not pledged as  
18 a repayment of any obligation.

19 The obligation that we have on these bonds  
20 is purely what's known as a naked moral  
21 obligation of the State when no funds are  
22 pledged from the general fund.

23 THE COURT:

24 Okay. Where do I have that in the  
25 evidence?

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MR. BALDWIN:

It's in the -- I believe, it's in the -- in the -- in the Affidavit of Seegraves, or it is in the Affidavit of Grimes (phoenetic). If it's not there, I can provide that to you as an additional bit of evidence.

THE COURT:

Well, I was trying to figure out what the -- exactly what the security plan was.

MR. BALDWIN:

Your Honor, this may be out of the ordinary. We are in a rather strange proceeding here today. I have present in court today bond counsel on this transaction who is prepared to address the court.

If you would like a detailed discussion of how the transaction works, I would defer to him myself.

THE COURT:

Well, that's fine. I -- I -- I would appreciate that. The question would be, I suppose, whether it's under oath or whether it's simply by representation as a lawyer for the State. This is a lawyer who represents the State?

1 MR. BALDWIN:

2 He represents the Power Authority in this  
3 transaction.

4 THE COURT:

5 Well, I hear from him. I may require him  
6 to be put under oath, but I'm not inclined to  
7 do that.

8 MR. BALDWIN:

9 It's up to...

10 THE COURT:

11 Go ahead. I'd just like to hear what --  
12 what the security arrangement really is so that  
13 I can...

14 MR. BALDWIN:

15 Your Honor...

16 THE COURT:

17 ...grab on to it.

18 MR. BALDWIN:

19 ...for the purposes of the record, this is  
20 Mr. Eric Wohlforth of Wohlforth and Flint, the  
21 State's bond counsel, on the stand.

22 MR. SMITH:

23 I guess, my only question is that this is  
24 going to be viewed as testimony for the  
25 purposes of appeal. It's not evidence on the

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record. It's simply advising the court on the nature for purposes of...

THE COURT:

Yes, and I'm assuming that it -- that whatever information that's given here can be supplemented by affidavit -- or, I mean, can be substantiated by...

MR. BALDWIN:

I would be happy to do that, Your Honor.

THE COURT:

All right.

MR. WOHLFORTH:

Your Honor, the nature of the -- the appropriation, which was made last year for Fiscal Year 1985-86 or the fiscal year which we're in, was represented to the three Japanese banks who have made the Letter of Credit Commitment as an appropriation available and unencumbered.

It is not an appropriation which is in the nature of a security collateral for the debt. It was represented to the bank that in the nature of State equity for the construction of the project with earlier appropriations totaling 118 million.

1           That's simply and precisely the nature of  
2           the appropriation as viewed from the consortium  
3           of the three Letter of Credit Japanese banks,  
4           not in the nature of a pledge or otherwise  
5           devoted to the bonds. But equity money, freely  
6           available, unencumbered, and ready to be used  
7           for construction and financing of the project.

8           THE COURT:

9           What would happen, in your view, if -- if  
10          in February it turned out that this money was  
11          no longer available?

12          MR. WOHLFORTH:

13          Your Honor, it's an instant situation. Mr.  
14          -- a present day situation has been made -- I  
15          think, made clear by the assistant attorney  
16          general. The banks have been dealing with a  
17          state of facts, which includes the availability  
18          of the \$50 million 1985-86 appropriation.

19          If -- if somehow that matter cannot be  
20          clarified that the money is, in fact, available  
21          through affirmative action of this court, then  
22          the banks will say within the matter of -- of  
23          -- without exaggeration -- ten days to two  
24          weeks, we're abandoning this commitment. You  
25          represented a state of facts to us which is not

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-- turns out to be not what you said it was because of an unfavorable court decision.

What would happen then, assuming, federal tax law would permit -- and there's a large assumption there -- there would have to be a renewal of negotiations with other banks to obtain a brand new \$271 million commitment for financing of this type, and this is one of the large commitments that's ever been obtained for this kind of Letter of Credit Tax Exempt Financing.

There's a substantial doubt whether or not there could be a renewal of a commitment, certainly, from these or other banks given the posture of, if you will, a failure of the instant financing.

So it's really a matter of accomplishing within a ten day to two-week timeframe this current financing or starting all over again, really, from ground one with a much lesser chance of success. I won't represent...

THE COURT:

I think, I understand that. But, my question was directed at -- at sometime in the future if the funds no longer become available.

1           Certainly, if the plan is invalidated and  
2           it's held up -- suppose the supreme court  
3           decision comes down in January or something  
4           like that then, of course, the funds aren't  
5           available, are they?

6           MR. WOHLFORTH:

7           It's true, Your Honor. Again, I have to  
8           speculate -- and I don't represent this as firm  
9           from the banks. But it is our feeling, and my  
10          judgment, that if the court should rule that  
11          the 1985-86 appropriation was, in fact, made by  
12          the legislature separately from the continuing  
13          appropriation; as having been made separately,  
14          stands not withstanding the invalidity of the  
15          continuing appropriation.

16          And as bond counsel, and as the bankers  
17          insist on it, that the attorney general, as  
18          well, were able to state in the offering  
19          documents that the appeal as to the 1985-86  
20          dollar appropriation by the legislature was  
21          without merit, then it's our feeling and, I  
22          guess, without making it a certainty; it's a  
23          feeling of judgment that the banks would go  
24          forward under the commitment, because they are  
25          used to and accept the notion of non-

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meritorious appeals.

They -- in other words, they would be prepared to take the risk that there would be supreme court divestment of that...

THE COURT:

Okay.

MR. WOHLFORTH:

...1985-86 appropriation under those circumstances.

THE COURT:

I see. Thank you.

MR. WOHLFORTH:

Thank you.

THE COURT:

I appreciate it.

(Pause)

THE COURT:

Well, as far as I'm concerned, I have all I need to make a decision. Does anybody else want further time?

MR. SMITH:

If I may, Your Honor, I'd just like to respond to one or two things that were just said.

The Alaska Power Authority -- knowing that

1 this lawsuit had been brought and knowing that  
2 these funds might be ruled unconstitutional --  
3 approached this consortium of Japanese banks  
4 and represented that this money would be  
5 available.

6 In fact, on the basis of the plaintiff's  
7 lawsuit, the court has ruled that the money is  
8 -- had been unconstitutionally appropriated  
9 and, therefore, is not available.

10 Now, the State is coming before the court  
11 and saying that they are being irreparably  
12 harmed. But they're being irreparably harmed  
13 not because of this court's decision, but  
14 because of the negotiations that they entered  
15 into of their own accord, knowing that these  
16 funds have been challenged. And I would simply  
17 submit to the court in equity that that is  
18 bootstrapping and is inappropriate.

19 THE COURT:

20 All right. Thanks.

21 MR. BALDWIN:

22 Yes, just in brief reply to that.

23 When we entered into this case, Your Honor,  
24 we -- and, I say, the State -- was of a mind  
25 that it had a possibility of losing it.

1           And, in order to hedge our bets, so to  
2           speak, or in an over-abundance of caution, we  
3           moved forward by appropriating the money  
4           separately in the FY-86 budget; thinking that  
5           by using that device -- by approaching the 14th  
6           Legislature separately and asking that body to  
7           appropriate separately -- then the money for  
8           these three purposes that, at least, that money  
9           would be secure.

10           And the court's ruling in joining the State  
11           on the Fiscal Year '86 Appropriation was  
12           totally unsuspected. Because we had taken this  
13           separate action to approach the legislature to  
14           put it in our budget and to seek separate  
15           enactment of that money.

16           And we felt that based on those actions --  
17           even flying in the face of the statute, which  
18           on its face appears to automatically  
19           appropriate the money, that we could assure  
20           that our project could go forward and let the  
21           battle fly on about whether automatic  
22           continuing annual appropriations are valid.

23           So in counter to what counsel for plaintiff  
24           has said, we felt that we approached this with  
25           all the caution that could be exhibited to

1 preserve our important financing of hydro-  
2 electric projects.

3 And, even, a cursory review of the pages of  
4 the budget in Chapter 96 SLA-85 and Chapter 98;  
5 if the court would -- would draw its attention  
6 to page 8 of the budget, it will note that the  
7 legislature specifically conditioned the FY-86  
8 appropriation for Susitna and indicated with  
9 this condition, which is a binding condition as  
10 far as our -- as far as we can tell as a matter  
11 of law.

12 Stating, it is the intent of the  
13 legislature the following total amount of  
14 capital improvement monies for preliminary  
15 design and licensing of the Susitna Project  
16 shall not be exceeded in FY 1986, unless  
17 reviewed and approved by the Legislative Budget  
18 and Audit Committee.

19 And listed a total of expenditures  
20 totalling approximately \$22 million.  
21 Basically, it told the Power Authority it can't  
22 spend anymore than \$22 million in that fiscal  
23 year out of the -- out of the \$200 million  
24 appropriated in this bill.

25 And we feel that that's absolutely clear

1 that the legislature did not feel bound to live  
2 up to the appropriation enacted by the  
3 13th Legislature, but stepped forward and took  
4 its own, independent, individual action on  
5 this.

6 So that's why we proceeded; that's why we  
7 made our representation; and that's why we feel  
8 we did not act in a reckless and irresponsible  
9 matter.

10 And that's why we asked the court for  
11 clarification today, because we thought that  
12 since plaintiffs had submitted the order to you  
13 before the legislature had acted in March, the  
14 order -- a formal order was submitted to Your  
15 Honor in March of 1984; the legislature  
adjoined in of May, 1984.

17 And plaintiffs were not even aware that the  
18 matter was in the budget until we brought it to  
19 their attention.

20 We thought that, clearly, we could validate  
21 the '86 -- if they had agreed to the '85,  
22 certainly, the reasoning must apply to '86.  
23 Their reasoning appears to be that the  
24 13th Legislature had the power over the FY-85  
25 Appropriation, therefore, it was conceded to be

1 valid under their Article 9, Section 7  
2 argument.

3 That that analysis, surely, must apply to  
4 the Fiscal Year 1986 Appropriation since that  
5 the 14th Legislature, itself, acted  
6 specifically in regard to that amount of money  
7 as shown by the -- the condition it placed on  
8 the -- on Fiscal Year 1986 Appropriation.

9 So, I think, the Power Authority has not  
10 acted in a recklessly in any way to the  
11 detriment of the public interest here.

12 THE COURT:

13 Okay. Thank you.

14 I'm going to grant the stay. Specifically,  
15 I find that -- that the defendants are  
16 threatened with irreparable harm. It's clear  
17 that their -- the security plan is in  
18 jeopardy. It looks like they could suffer a  
19 huge financial loss if, in fact, the -- the  
20 security plan is thrown out. The Power Cost  
21 Equalization Program funds, of course, their  
22 irreparable harm is conceded as to them.

23 As to adequate protection to the  
24 plaintiffs, I have sympathy for the idea that  
25 -- that an illegal plan -- and I -- I think,

1 that in a large part I found and I'm going to  
2 go on further with regard to the confinement  
3 issue and decide on those issues -- but in a  
4 large part, I found that this statutory plan is  
5 unconstitutional and I don't lightly stay a  
6 decision like that. If I feel that my decision  
7 is based on reason and I do. I mean, it seems  
8 very -- the plaintiffs have a very strong  
9 argument with regard to Article 9, Section 7.

10 But it seems very clear to me from the  
11 material that I've had in this file that the  
12 legislature given an opportunity to  
13 independently appropriate monies for  
14 Fiscal Year '86 and to validate whatever  
15 appropriations remain from Fiscal Year '85,  
16 that might be involved in this whole equation  
17 would do that.

18 They might take a different position with  
19 regard to monies in 1989 or 1988, but it seems  
20 very clear to me that they would appropriate,  
21 given the situation.

22 Now, so that the issue would be whether or  
23 not I force a legislative session -- a special  
24 legislative session, which we've got almost  
25 conclusive evidence, I think, that it's very

1 expensive; and we've already had one this  
2 year. I see no reason to compel another one  
3 when the new session of the legislature  
4 convenes in three months.

5 And any other harms to the plaintiffs from  
6 issuance of the stay, aside from some  
7 vindication of constitutional principles is, to  
8 me, it's pretty speculative at this point.

9 So I find that they can be adequately  
10 protected and there are surely serious and  
11 substantial issues in this case. Clearly,  
12 there are with regard to the confinement issue,  
13 even if I fine in the plaintiffs' favor.

14 And, although, I think, their argument is  
15 strong on Article 9, Section 7, I'm not  
16 prepared to say that these are -- issues are  
17 not obviously without merit on appeal.

18 Counsel?

19 MR. SMITH:

20 Yes, I'd like to ask two questions.

21 First, to clarify that the stay would apply  
22 not to Susitna funds, but only to Bradley Lake  
23 and the Power Cost Equalization.

24 THE COURT:

25 You mean the -- the question that --

1            yeah.    I -- I -- as I understand your  
2            presentation, Susitna expenditures are not  
3            likely within the next year.

4    MR. BALDWIN:

5            Not likely until the earliest, FY-87.

6    THE COURT:

7            And actual expenditures for Bradley Lake  
8            aren't likely until spring.

9    MR. BALDWIN:

10           We -- we plan to encumber in the spring.  
11           It's not likely that we will begin spending.

12   THE COURT:

13           Well, encumbrance; let's talk about  
14           encumbrance.

15           You won't even be encumbering until the  
16           spring of next year?

17   MR. BALDWIN:

18           That's how I understand it.

19   THE COURT:

20           Well passed the time when the legislature  
21           will have an opportunity to look at this.

22   MR. BALDWIN:

23           Certainly, Your Honor.

24   MR. SMITH:

25           My second question, Your Honor, in line