

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988  
5031 HRES SB 475 - SB 484 8672

603

April

March 28, 1988

Dear Senator Jharoff,

Thank you for the introduction and support of SB 475 concerning critical habitat status for Igloodak Island.

Being such a lovely unspoiled area of the Kodiak Archipelago, I would be terribly disappointed to see it opened to mass mining or other destructive activities. With critical habitat status, I feel the general integrity of the land would be protected through careful monitoring. I appreciate being able to leave unspoiled land for future generations to enjoy too.

Sincerely,

Susan S. Blott

Susan S. Blott

P.O. Box 1244

Kodiak, AK 99615



# United States Department of the Interior

Fish and Wildlife Service  
Anchorage Fish and Wildlife Enhancement  
Sunshine Plaza, Suite 2B  
411 West 4th Avenue  
Anchorage, Alaska 99501

# COPY

IN REPLY REFER TO:  
ANC-FWE

Colonel Wilbur T. Gregory, Jr.  
District Engineer  
Alaska District, Corps of Engineers  
Pouch 898  
Anchorage, Alaska 99506-0898

NOV 13 1987

Re: 1-870437  
Tugidak Passage 1

Dear Colonel Gregory:

The U.S. Fish and Wildlife Service (Service) has reviewed Public Notice 1-870437, dated August 17, 1987. Mr. Gary J. Peterson has requested a Department of the Army permit to perform work in waters of the United States. The project is located on Tugidak Island, Trinity Islands Group, Alaska.

The applicant has modified the original proposal and now proposes to dredge approximately 500 cubic yards of beach sand per day, process the dredged material, and return it to its point of origin. All work would be performed landward of the mean low tide line. Beach material would be worked using front-end loaders, sand pump, or tractor-mounted bucket. A water trap intake pit would be constructed each day by dredging approximately three cubic yards. This material would be stockpiled alongside the pit and returned to the pit at the close of operation. Two work site locations involving five mining claims are currently proposed at the northeast end of Tugidak Island. Materials and personnel would be transported to the island via barge or aircraft. Four-wheeled all-terrain vehicles would be used for island travel. The camps would be located in upland areas near the work sites. The purpose of the proposed work is to extract metallic concentrates for commercial sale.

The Service has long been aware of the extraordinary fish and wildlife resources found on Tugidak Island, especially birds and marine mammals. Originally approved for inclusion into the Alaska Maritime National Wildlife Refuge (Alaska National Interest Lands Conservation Act, Public Law 96-487, December 2, 1980, 94 Stat. 2371, sec. 303), Tugidak Island did not become part of the refuge due to a previous State of Alaska land selection. The Alaska Department of Fish and Game also has a history of concern over protection of the islands's valuable wildlife resources, previously proposing "Critical Habitat" status for Tugidak Island (House Bill 656) and promoting closure of the island to minerals entry and cattle grazing.

Tugidak Island is unique in that it is apparently the largest island in Alaska to remain free of introduced fox. Fox have been released for fur farming on virtually all islands originally free of such predators, resulting in severe adverse impacts to nesting waterfowl and seabirds. Also, unlike most other

large islands with extensive marsh habitat, no cattle or other grazing mammals have been introduced to Tugidak. Cattle grazing has seriously damaged many islands through removal of vegetation and subsequent erosion. The lack of cattle grazing and fox predation are factors contributing to the island's importance to insular avifauna.

Tugidak Island has unusual physiographic features which attract many species of wildlife. Unlike most islands in the Aleutian Arc and Gulf of Alaska, which are mountainous, Tugidak is relatively flat with numerous lakes. The northeast end of the island, the location of this proposal, consists of a large lagoon containing extensive mudflats and eelgrass beds. The lagoon is enclosed by a circular spit with beaches composed of sands and gravel. Above the high tide line, the sand dunes are stabilized by salt-tolerant grasses and many drift logs. Further inland, tundra-like vegetation consisting of crowberry and lichens alternates with freshwater wetlands.

On August 26, 1987, biologists from the Service and the Alaska Department of Fish and Game conducted an aerial survey of Tugidak Island. While many species of wildlife were observed, the following were identified from the air: bald eagle, tundra swan, willow ptarmigan, parasitic jaeger, harbor seal, and Steller's sea lion. On October 15, 1987, biologists from the Service, National Marine Fisheries Service, Environmental Protection Agency, and Alaska Department of Fish and Game conducted aerial and ground surveys around the lagoon. The purposes of the surveys were to confirm the presence of eelgrass in the lagoon, assess anadromous fish usage of three undocumented streams which outlet into the lagoon, survey terrestrial vegetation at the project site, and assess seasonal fish and wildlife use of the area.

Since 1960, several accounts of wildlife observations on Tugidak Island have been written. In one account of bird observations on the island during June, 44 species of birds were noted using the island, with evidence of nesting by 34 species (MacIntosh 1978). Among these, six species of raptors use the island, five of which, including bald eagle and peregrine falcon, nest there. At least seven species of ducks nest on the island, including mallard and northern pintail, and the only record of nesting gadwalls in the Kodiak Archipelago. Nesting density of ducks is thought to be far greater here than anywhere else in the Kodiak region. As many as 30 or 40 tundra swans utilize the island's many lakes for nesting. Tugidak Island exhibits an unusual abundance and diversity of migratory and nesting shorebirds, including the easternmost breeding location of rock sandpipers in Alaska. Nesting colonies of arctic and Aleutian terns and mew gulls are found on the island. Other nesting species of note include a large number of parasitic jaegers and probably the only nesting population of long-tailed jaegers on an island outside the Bering Sea. To summarize, at least 56 species of birds occur on Tugidak Island, with 38 species known to nest there.

Tugidak lagoon is used extensively for staging by migrating waterfowl. Species include Canada goose, greater white-fronted goose, brant, mallard, northern pintail, and American wigeon. This staging area is important to fall migrants about to begin long-distance southward flights. Species staging on the lagoon during the October 1987 field survey of the project area included approximately 600 Canada geese, 1000 ducks of three species, and hundreds of unidentified shorebirds. The entire island is used by concentrations of snow geese during spring migration (Alaska Department of Fish and Game 1985).

The lagoon is especially important in that it provides winter habitat for the emperor goose, a species of special concern to the Service because of recent sharp population declines. The Alaska population of emperor geese has fallen from an estimated fall population of 150,000 in 1971 to 68,000 in 1986 and has declined annually from 1982 through 1986 (Service 1986). Past winter survey counts indicate that Tugidak lagoon provides habitat for approximately 50 percent of the wintering emperor geese in the Kodiak Archipelago. Biologists at the Kodiak National Wildlife Refuge, now charged with conducting winter goose population surveys in the Kodiak area, counted 877 emperor geese on the Tugidak Island lagoon during January, 1987 (Ryan, pers. comm.). An October 1987 survey counted 600 emperor geese on the lagoon. Emperor geese arrive at their winter habitat in September and depart in March. The Service is currently undertaking studies to obtain information on the wintering ecology of the emperor goose (Service 1986).

Tugidak Island supports one of the largest populations of harbor seals in the world, previously estimated at 15,000 to 20,000 animals with an annual production of 5,000 pups (Pitcher, pers. comm.). Alaska Department of Fish and Game survey data indicates that this population decreased by 77 percent between 1976 and 1982 (Calkins and Pitcher 1983). Beaches in the project area are used for haulout during pupping beginning in May and molting through September. Other marine mammals occurring at Tugidak Island include sea otter and occasionally Steller's sea lion.

During the October 1987 field survey, two streams which outlet at the southwest side of the lagoon were found to be used by anadromous fish, specifically coho salmon and Dolly Varden. These streams will be formally documented in the Alaska Department of Fish and Game's Catalog of Waters Important for the Spawning, Rearing, and Migration of Anadromous Fishes.

The extensive eelgrass beds which were observed in the lagoon are thought to be a major nursery area for dungeness crab. The largest commercial catches of dungeness crab in the Kodiak Archipelago occur just offshore of the mouth of Tugidak lagoon (Alaska Department of Fish and Game 1981-1985). The lagoon is also a known rearing and feeding area for Pacific herring (Alaska Department of Fish and Game 1985).

Of the species known to occur on Tugidak Island, the following are designated National and Regional Resource species (Department of the Interior 1983): Canada goose, greater white-fronted goose, snow goose, brant, tundra swan, mallard, bald eagle, sea otter, and coho salmon. Emperor goose and peregrine falcon (Falco peregrinus pealei) are considered Regional Resource species.

In accordance with the Service's Mitigation Policy (Department of the Interior 1981), we have selected emperor goose, harbor seal, northern pintail, rock sandpiper, and dungeness crab as our evaluation species. These species have been selected to represent the habitats for the diverse group of species which utilize the project area. The project area, defined as the area which will potentially be affected by the proposed work and associated activities, includes the lagoon and surrounding area.

The bald eagle, although potentially impacted, is not included as an evaluation species for mitigation purposes, because it is specifically protected by the federal Bald Eagle Protection Act (16 U.S.C. 668-668c).

Based on information about the fish and wildlife resources of Tugidak Island, we have preliminarily assigned the habitats for the evaluation species found in the project area to the following Resource Categories:

| <u>Evaluation Species</u> | <u>Resource Category</u> |
|---------------------------|--------------------------|
| Emperor goose             | 1                        |
| Harbor seal               | 1                        |
| Northern pintail          | 2                        |
| Rock sandpiper            | 3                        |
| Dungeness crab            | 3                        |

Resource Category 1 habitats are considered unique and irreplaceable on a national or ecoregion basis. Our mitigation goal for Resource Category 1 is no loss of existing habitat. Resource Category 2 habitats are high value habitats and are relatively scarce or becoming scarce on a national or ecoregion basis. Our mitigation goal for Resource Category 2 is no net loss of in-kind habitat value. Resource Category 3 habitats are high value for the evaluation species and are relatively abundant on a national basis. Our mitigation goal for Resource Category 3 is no net loss of habitat value while minimizing the loss of in-kind habitat value.

Factors influencing Tugidak Island's unique habitat quality include: the lack of introduced fox or cattle; its ability to support one of the world's largest populations of harbor seals; its use by thousands of birds during migration; its ability to support nesting populations of birds not normally found elsewhere in the Kodiak Archipelago; and its support of a declining population of emperor geese.

The potential adverse impacts of placer mining on intertidal beaches and mudflats include the long and short-term loss of habitat resulting from dredging, material stockpiling, road use, camp operations, and dewatering of ponds or creeks for industrial use. Travel through vegetated areas and camp use would not only result in the long-term loss of habitat through destruction of vegetation, but also in short-term disturbance to wildlife along travel routes. Ground-nesting species, such as northern pintail and rock sandpiper, are particularly vulnerable to avian predation following disturbance. To support mining operations on opposite sides of the lagoon, it is likely that travel around the entire lagoon would be necessary in order to obtain fresh water for camp use, or meet aircraft or barges. Unrestricted recreational use of all-terrain vehicles would further contribute to this disturbance. During spring and fall migration periods, low-level aircraft overflights, or barge operations within the lagoon, would cause a short-term disturbance to waterfowl concentrations already under stress from migration.

Short-term disturbance to wintering emperor geese would result from low-level aircraft overflights, barge operations, and beach travel during the September to March use period. Frequent disturbance to wintering emperor geese could result in the underutilization of the available goose habitat, resulting in local population declines.

Harbor seals are sensitive to disturbance while pupping during the spring and molting during late summer. According to Pitcher and Calkins (1979), seals on Tugidak Island seemed particularly sensitive to aircraft. Other forms of human-related disturbances include: all-terrain vehicles, hikers, domestic animals, and boats. During pupping, panic flights into the water may cause separation of females and newborn pups, resulting in the death of the pup. During molting, seals are in poor physical condition and entering the water at this time may have detrimental effects on their health. Because of the importance of all the beaches around and inside the mouth of the lagoon to harbor seals, disturbance would be difficult to avoid during mining operations.

According to project plans, processed material would be returned to its place of origin. We are concerned, however, with the effect that removal and replacement of large amounts of beach sand will have on the integrity of the spit. The physical forces affecting erosion and deposition of sediments on Tugidak Island are not fully understood. The applicant currently proposes to dredge 500 cubic yards of material per day; however, we are unable to ascertain the total amount of material that would be dredged over the life of the project or what impacts would occur to the stability of the spit.

Much additional information is needed before a thorough assessment of the potential impacts of placer mining on Tugidak Island can be made. Informational needs include a complete biological assessment of the fish and wildlife use of the island, and an assessment of the physical factors which influence the island.

The Service believes that there exists a potential for additional placer mining proposals in the future for Tugidak Island. This applicant has already indicated that additional work may be proposed in the future and has staked several hundred mining claims. Also, we are aware of other individuals who have staked claims or applied for local permits. Because of this potential for additional proposals, consideration must be given to assessment of potential cumulative impacts.

Based on the testimony given at recent local public hearings and coverage in the local news media, it is apparent that the potential for mining on Tugidak Island has become a highly controversial issue.

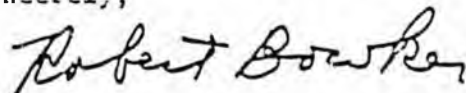
We believe that the potential adverse impacts of placer mining to the fish and wildlife resources of Tugidak Island are significant based on the following criteria: (1) Tugidak Island exhibits unique characteristics as demonstrated by the diverse and abundant wildlife which the island supports; (2) the proposed project has become highly controversial; (3) the potential project-related adverse impacts are uncertain and involve unknown risks; and (4) the action to permit this project may set a precedent for future actions with significant effects. We advise that these issues can best be addressed through preparation of an Environmental Impact Statement.

We recommend that a permit for this or similar projects not be issued pending further assessment of resource value, potential impacts of placer mining development, and opportunities for mitigation of adverse impacts. Once the above assessment has been completed, we will finalize our Resource Category designations and reevaluate opportunities to mitigate adverse impacts to fish and wildlife resources.

We are willing to meet with you and the applicant to explore practicable alternatives where mitigation of fish and wildlife habitat values can be achieved. If you propose not to accept this recommendation, please advise us in accordance with "local procedures" agreed to by our offices.

These comments are submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended: 16 U.S.C. 661 et seq.) and constitute the report of the Department of the Interior. These comments also are for use in your determination of 404(b)(1) guidelines compliance (40 CFR 230), and in your Public Interest Review (33 CFR 320.4) relating to protection of fish and wildlife resources.

Sincerely,

A handwritten signature in cursive script that reads "Robert Bowker".

Field Supervisor

cc: ADF&G, NMFS, DGC, EPA, ADEC - Anchorage

## Literature Cited

- Alaska Department of Fish and Game. 1985. Alaska Habitat Management Guide, Reference Maps, Vol. I. Southwest Region. Juneau, Alaska.
- \_\_\_\_\_. Western Region Shellfish Report to Board of Fisheries. 1981-1985. Division of Commercial Fisheries. Kodiak, Alaska.
- Calkins, D. and K. Pitcher. 1983. 1982 Pinniped Investigations in Southern Alaska. Alaska Department of Fish and Game unpublished report. Anchorage, Alaska. 11pp.
- MacIntosh, R. 1978. Observations of birds on Tugidak Island, Trinity Islands, Alaska, 1-16 June 1978. Unpublished report. Kodiak, Alaska. 16pp.
- Pitcher, K. 1987. Personal Communication. Alaska Department of Fish and Game, Game Division. Anchorage, Alaska.
- \_\_\_\_\_ and D. Calkins. 1979. Biology of the Harbor Seal, Phoca vitulina richardsi, in the Gulf of Alaska. Alaska Department of Fish and Game. Anchorage, Alaska.
- Ryan, K. 1987. Personal Communication. U.S. Fish and Wildlife Service, Kodiak National Wildlife Refuge. Kodiak, Alaska.
- U.S. Fish and Wildlife Service. 1986. Management Plan for the Emperor Goose. Unpublished report. 24pp.
- \_\_\_\_\_. 1981. Mitigation Policy; Notice of Final Policy. Federal Register 46(15):7644-7663. January 23, 1981.
- \_\_\_\_\_. 1983. National Objectives for National Species of Special Emphasis. Washington D.C.

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MEMORANDUM

STATE OF ALASKA

TO: Lance Trasky  
Regional Supervisor  
Habitat Division  
Anchorage

Date: July 31, 1987

Telephone: 486-4791

FM: Roger B. Smith *RBS*  
Area Management Biologist  
Game Division  
Kodiak

Subject: Tugidak Mining Applications  
A87-3283-Trinity Gold Inc.  
and A87-3282-Gary Joseph  
Peterson

The proposed placer mining operations on northern Tugidak pose some serious threats to both marine and terrestrial wildlife. The lagoon supports eel grass and marine invertebrates, including extensive razor clam beds and rearing crabs which are important to several species of waterfowl, seabirds and other bird species. It is an important feeding, resting and staging area for migrating waterfowl. The adjacent uplands contain the highest densities of nesting waterfowl in the Kodiak Archipelago. A major harbor seal haul out occurs within the area and some pupping occurs on the northern beaches. Major unexplored archeological sites occur in the lagoon.

This is a major mining operation with potential long-term effects on wildlife and habitat. The uplands, where equipment would be staged, are extremely sensitive to erosion (as evidenced by sand dunes). The effects on productivity of marine plants and invertebrates could be substantial from the proposed dredging activity. Direct loss of nesting habitat for many species of birds would occur in any areas with vegetation disturbance or removal (roads, spoil area, camps, pipelines, etc.). Much of the waterfowl nesting occurs in the narrow fringe of beach drift and ryegrass habitat which would be destroyed by the proposed mining of the dunes. Disturbance of seals in critical pupping and molting periods is a likely occurrence. The grapevine has it that an airstrip is also proposed for the near future which would have further impacts on seals, nesting bald eagles and waterfowl.

Before any permits are issued, I believe it is imperative that an on-site inspection of the proposed operation be conducted by DNR and ADF&G. A complete inventory of resource values should be made before an irreversible commitment of this area to placer mining. I believe the magnitude of this operation is such that a public hearing should be held in Kodiak to give the affected public an opportunity to review the proposal.

The Department supported legislation introduced by Representative Fred Zharoff in 1980 to make Tugidak Island a Critical Habitat area. We supported a proposal by Department of Natural Resources in 1982 to close Tugidak to minerals entry. The Critical Habitat bill failed to get out of the committee process and the minerals entry closure was never implemented. Neither bureaucratic nor legislative efforts have thus far been sufficient to protect the unique and irreplaceable wildlife values of Tugidak.

cc: Dan Timm                      P. Murray                      J. Fall  
      Greg Sos                        R. Blackett  
      L. Nicholson                    *J.* Bellinger

**DEPARTMENT OF FISH AND GAME**

Game Division

P.O. BOX 686  
KODIAK, ALASKA 99615  
PHONE: (907) 486-4791

September 4, 1987

Bob Pederson  
Kodiak Island Borough  
Associate Planner  
Planning & Zoning  
710 Mill Bay Road  
Kodiak, AK 99615

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Subject: Tugidak Island Mining Development

Dear Mr. Pederson:

This letter is in response to your telephoned request for an analysis of the potential impacts on wildlife of the proposed placer mining operations (Case No. 87-046 and 87-047) on Tugidak Island. My comments are addressed mainly to mammals and birds as another division will be addressing the fisheries issues.

Tugidak Island is one of only 2 large islands in the northern Gulf of Alaska which has neither introduced foxes nor a history of livestock grazing. The lack of fox predation and presence of unaltered native vegetation provides ideal habitat for many species of birds. During the 14 years I've been employed as an Area Game Biologist on Kodiak, I've done wildlife surveys on nearly every island from the Barrens to the Semidis. I have yet to discover anyplace that compares with Tugidak Island for birdlife in terms of either sheer numbers or in diversity of species. During a field trip to Tugidak from 9-16 June 1978, 44 species of birds were observed and 24 species were confirmed to be nesting there. Nesting waterfowl including mallards, pintails, green-winged teal, American wigeon and Greater scaup, were commonly found with nests spaced only a few feet apart in the narrow band of beach drift and ryegrass along the north lagoon and nearby freshwater ponds. I have previously seen waterfowl nesting in such high densities only on intensively managed waterfowl refuges in the lower 48 states. An estimated 30-40 whistling swans, including 2 pairs with recently fledged young were also seen there. The island also has high densities of nesting willow ptarmigan.

In January 1987 the U.S. Fish and Wildlife Service observed 1,673 emperor geese wintering on <sup>Kodiak</sup> Tugidak, including 877 geese seen feeding and nesting on the lagoon. This species has recently experienced a serious decline in Alaska. Tugidak Island is an important feeding and resting area for migrating waterfowl, including at least 4 species of geese.

Over 12,000 harbor seals have been counted hauled out on Tugidak Island. As many as 4,000 seals have been counted on the northeastern barrier spits and lagoon included in the subject mining applications. Tugidak Island now has the 2nd or 3rd largest harbor seal population in the world although in the 1970's it was rated as the largest in the world. Commercial harvest of seal pups was conducted on Tugidak until passage of the Marine Mammals Protection Act of 1972 which put a moratorium on harvest. Seals are particularly vulnerable to disturbance during pupping activities in late May-June and during moulting which occurs from August through September.

The Department of Fish and Game has long supported greater protection for the truly unique wildlife resources of Tugidak Island. We have previously recommended to Department of Natural Resources that the area be deleted from an existing grazing lease and that minerals leasing be restricted. We supported legislation to designate Tugidak Island as a Critical Habitat area and urged Department of Natural Resources (DNR) to classify it as Wildlife Habitat in the interim. We have consistently requested that DNR incorporate specific provisions to protect wildlife as conditions for issuing previous permits for placer mining on southern Tugidak Island.

The 2 proposed mining applications now under consideration appear to have serious conflicts with wildlife. Dredging in the lagoon as proposed would seriously reduce the availability of marine organisms on which many species of shorebirds and waterfowl rely for food. Natural recovery of the lagoon could take many years and I am not aware of any previously proven artificial rehabilitation that would be either economically feasible or effective.

Mining the beach dunes around the lagoon as proposed would result in long-term and possibly permanent losses of high density waterfowl nesting areas. There are also several nesting colonies of gulls and terns within the proposed mining area north of the lagoon which could be destroyed. The dunes are susceptible to erosion and removal of the accumulated drift logs and beach rye currently stabilizing them could result in severe erosion, possibly resulting in a major alteration of the spit and lagoon.

Disturbance of the seal population is a long-standing concern which we have addressed in previous mining applications. During the pupping period any significant disturbance would cause abandonment of newborn pups resulting in increased mortality and reduced productivity. Seals would be severely stressed by disturbances during the molting period. Abandonment of traditional seal haulouts would likely occur if daily disturbances from heavy equipment, aircraft and off-road vehicles occurred. Previous studies of seals on Tugidak determined that low flying aircraft are a significant disturbance factor.

The Department of Fish and Game has not yet formally reviewed the 2 subject applications, but I expect that we will continue to maintain the position that Tugidak Island should be protected from major alterations of the valuable wildlife habitat there. We have recommended that several specific provisions to protect seals and nesting birds be included in previous mining permits issued for Tugidak. Those provisions included pre-designated travel routes and locations of major facilities; seasonal restrictions on operating;

B. Pederson

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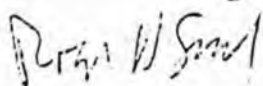
September 4, 1987

prohibition of domestic animals; on-site inspections; aircraft restrictions.

As a footnote, the U.S. Fish and Wildlife Service rates Tugidak as number 1 in their list of priorities among parcels of State lands desired for addition to the National Wildlife Refuge system through possible future land trades.

If you need further specific information let me know.

Sincerely,



Roger B. Smith  
Area Management Biologist  
Game Division  
Kodiak, AK 99615

cc: G. Bos - ADF&G  
J. Westland - ADF&G  
D. Timm - ADF&G  
L. Trasky - ADF&G

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING

STEVE COWPER, GOVERNOR

PO. BOX 107016  
ANCHORAGE, ALASKA 99510-7016

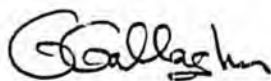
February 24, 1988

The Honorable Fred Zharoff  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

Dear Senator Zharoff:

As requested, enclosed is a map showing the location of state mining claims on Tugidak Island. Please do not hesitate to contact me if you need additional information.

Sincerely,



Gerald Gallagher  
Director

Enclosure

OCEAN

PACIFIC



TIGIDAK PASSAGE

SITKIDAK ISLAND

ISLAND

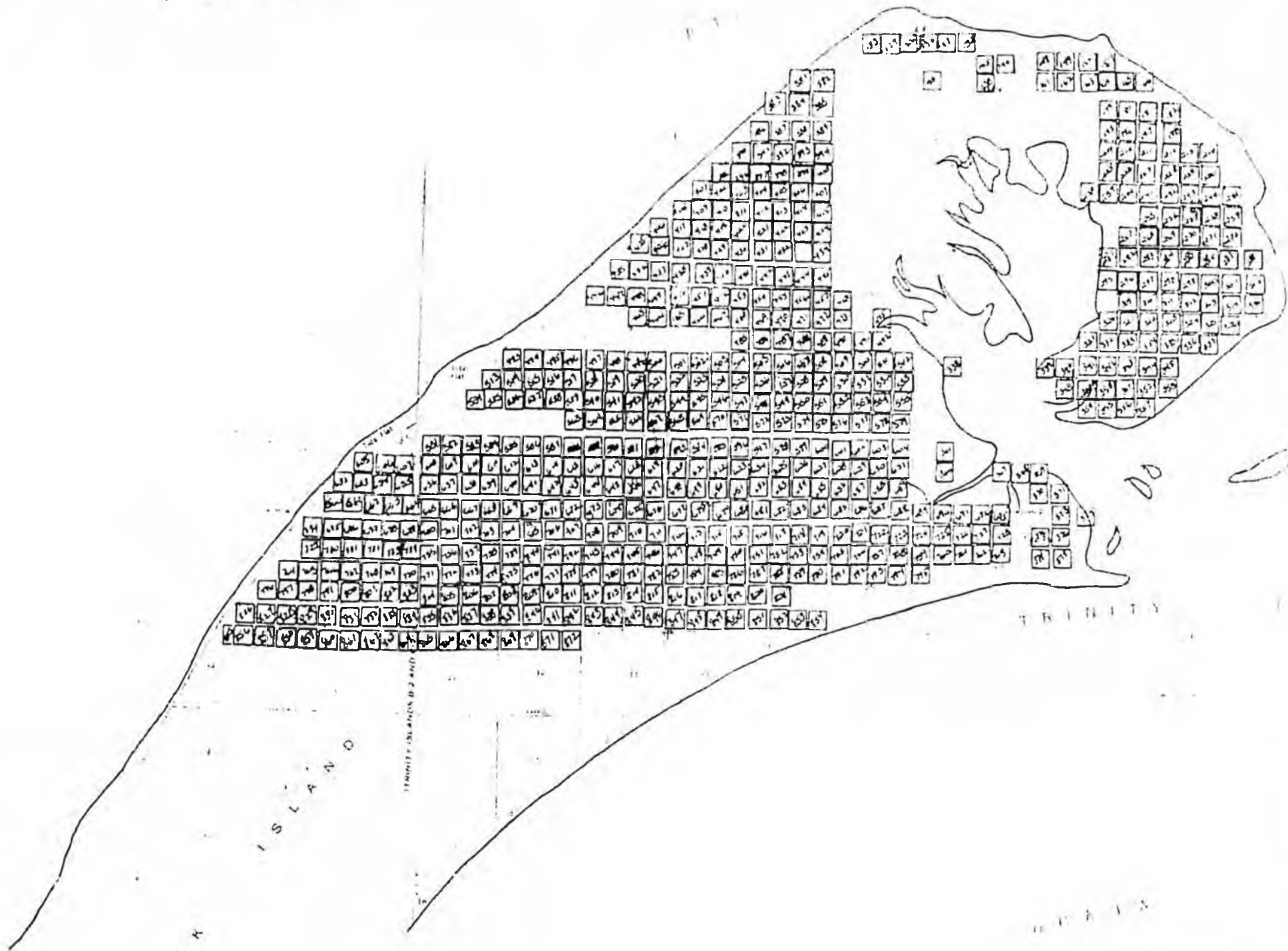
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TUGIDAK ISLAND

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1 return to the state and shall require that the parcels of land that  
2 are composed primarily of cropland soils be restricted to agricultural  
3 uses.

4 \* Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the  
5 return to the state, the Agricultural Revolving Loan Fund Board may re-  
6 structure loans in existence on June 25, 1987, made by the board or by the  
7 Alaska Agricultural Action Council based upon guidelines approved by the  
8 board. The restructuring may only include reduction of interest to rates  
9 below those specified by AS 03.10.030, an extension of the term of the  
10 loan, and an improvement to the security interest of the state. It may not  
11 reduce the amount of principal and interest owed before the loan is re-  
12 structured.

13 (b) The maximum term of a loan modified under (a) of this section is  
14 30 years from the date of restructuring.

15 (c) Notwithstanding any other provision of this section, the Agricul-  
16 tural Revolving Loan Fund Board may approve an application for restructur-  
17 ing under this section only upon

18 (1) the applicant's written release of the state, including the  
19 Alaska Agriculture Action Council, the agricultural revolving loan fund,  
20 and the University of Alaska, from all potential liability for actions and  
21 omissions occurring before the date of restructuring that relate in any way  
22 to a state farm project, land sale, land sale relinquishment, farm loan, or  
23 loan application or loan modification application, whether granted or  
24 denied by the state; and

25 (2) assignment by the applicant to the board of the proceeds  
26 from the federal government under 7 U.S.C. 1442 (Conservation Reserve  
27 Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended.

28 (d) In order to provide an incentive and opportunity to continue milk  
29 production, the board shall restructure the debt of any dairy farm that has

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1 produced at least 30,000 pounds of milk a month since November 15, 1985,  
2 and continues to produce 30,000 pounds of milk a month and uses a majority  
3 of Alaskan grown grain and forage. If milk production falls below 30,000  
4 pounds a month, the restructured debt shall become immediately due and  
5 payable. Restructure under this section is subject to the same limitations  
6 and conditions as provided in (a), (b), and (c) of this section.

7 \* Sec. 3. Section 2 of this Act is retroactive to June 25, 1987.

8 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

HOUSE RESOURCES COMMITTEE

LETTER OF INTENT

HCS CSSB 484 (Res)

It is the intent of the Legislature that the board of the Agricultural Revolving Loan Fund will restructure loans when the applicant is able to make a reasonable showing of the need for a restructuring. The Legislature strongly urges the Board to adopt a restructuring policy that will show the sensitivity needed for the agricultural industry to grow stronger over the long term. *recovers restructuring*

*The loans of more farmers who would have*

*been*

*Adopted 2/27/77*  
*Approved*  
*Members*

*463 232*

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SB 484  
STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

### Land and Clearing Debt Restructuring Completed to Date

- (a) Nelson                      Not in CRP or any other federal program
- (b) Schultz                    CRP, land and clearing and ARLF debt  
restructured (no write down of ARLF  
debt)
- (c) Green                      CRP on other parcel
- (d) Carlyle                    Clearing debt only restructured
- (e) Strong                     Clearing debt only restructured

-All actions including waiver of the leasing step and including CRP have been suspended.

-No more relinquishments will be processed except in strict compliance with SB 349, which will sunset on June 30, 1988.

-All actions on land and clearing debt will be reported to the Senate Finance Committee.

HOUSE CALENDAR:

HOUSE ACTION:

HOUSE JOURNAL MAY 4, 1988

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 484 (Finance)  
amended, by the Finance Committee, entitled:

"An Act relating to the powers of and loans made  
by the Agricultural Revolving Loan Fund Board; and  
providing for an effective date."

was read the first time and referred to the Resources and  
Finance Committees.

HOUSE JOURNAL MAY 6, 1988

The Resources Committee has considered:

CS FOR SENATE BILL NO. 484 (Finance) amended  
"An Act relating to the powers of and loans made  
by the Agricultural Revolving Loan Fund Board; and  
providing for an effective date."

and recommends it be replaced with the following committee  
substitute:

HOUSE CS FOR CS FOR SENATE BILL NO. 484  
(Resources)  
(same title)

Recommending do pass (5): Cotten (Co-chairman), Navarre,  
Sund, Pearce, Shultz

No recommendation (1): Herrmann

\*A zero fiscal note was published May 6, 1988. *(On following page)*

CSSB 484(Fin)am was referred to the Finance Committee.

HOUSE ACTION MAY 7, 1988

The Finance Committee referral was waived.

CSSB 484(FIN) was referred to the Rules Committee for placement on the  
calendar.

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: HCS CSSB 484 (RES)  
PUBLISH DATE: HOUSE 5/6/88

FISCAL NOTE

REQUEST:

Revision Date: May 5, 1988  
Title: Powers of ARLF Board

Agency Affected: Natural Resources  
BRU: Ag Management

Sponsor: House Resources Committee  
Requestor: House Resources Committee

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |       |       |       |       |       |       |
| TRAVEL            |       |       |       |       |       |       |
| CONTRACTUAL       |       |       |       |       |       |       |
| SUPPLIES          |       |       |       |       |       |       |
| EQUIPMENT         |       |       |       |       |       |       |
| LAND & STRUCTURES |       |       |       |       |       |       |
| GRANTS, CLAIMS    |       |       |       |       |       |       |
| MISCELLANEOUS     |       |       |       |       |       |       |
| TOTAL OPERATING   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

FUNDING: (Thousands of Dollars)

|               |  |  |  |  |  |  |
|---------------|--|--|--|--|--|--|
| GENERAL FUND  |  |  |  |  |  |  |
| FEDERAL FUNDS |  |  |  |  |  |  |
| OTHER         |  |  |  |  |  |  |
| TOTAL         |  |  |  |  |  |  |

POSITIONS:

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: Carol Wilson Phone: 465-2400  
Division: Commissioner's Office Date: 5/5/88

Approved by Commissioner: Judith M. B... Date: 5/5/88  
Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)

REPRESENTATIVE  
SAM COTTEN  
DISTRICT 15

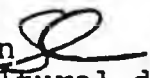


P.O. BOX 296, EAGLE RIVER, AK 99577  
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES

MEMORANDUM

May 7, 1988

TO: House members  
FROM: Rep. Sam Cotten   
SUBJECT: SB 484 (Agricultural debt)

This bill is enormously important to the continued administration of Alaska's agricultural program. Under an Attorney General's opinion issued in late April (attached), it turns out that the Department of Natural Resources and the Agricultural Revolving Loan Fund (ARLF) may have lacked authority for recent loan restructurings. The litigation and financial burden that could result from this finding would be expensive and draining, as well as counterproductive.

Under Sec. 2 of the bill, the authority to restructure failing agricultural loans is clearly conferred. Several dozen loans that would have been referred to the AG's Office for collection can instead remain paying and in compliance, with no reduction in the aggregate interest and principal payable to the state. A list of the loans that have been sent to the AG's Office for collection is attached.

Sec. 1 of the bill does several related things: it allows the ARLF Board to hire a financial analyst (paragraph (d)) subject to appropriation, it establishes an incentive program for prompt payers (paragraphs (e) and (f)), and it sets conditions for the disposal of property taken by the state in foreclosure actions (paragraph (g)).

Sec. 3 of the bill allows DNR and the ARLF Board to convey the Mat Maid dairy to the Alaska dairy farmers' cooperative if, after two years of participating in managing the dairy, the cooperative is financially and administratively capable of acquiring the creamery. My attached correspondence with the commissioner sets out some of the anticipated conditions for the eventual conveyance. This, by the way, could be a major step forward for the Alaska dairy industry.

Sec. 4 of the bill repeals a section of SLA 1986 Ch. 109 that prohibited restructuring the loans of certain farmers receiving federal payments for keeping land out of

production. Instead, under Sec. 2 (paragraphs (c)(2) and (d)) of this bill, the farmers may apply for restructuring but must assign their federal payments to the state inasmuch as the proceeds are necessary to cover the payments of the restructured loans.

Sec. 5 makes the authority to restructure loans retroactive.

Sec. 6 provides an immediate effective date.

attachments

# MEMORANDUM

State of Alaska

DEPARTMENT OF LAW

TO: Judith M. Brady, Commissioner  
Department of Natural Resources  
Mark Weaver, Director  
Division of Agriculture  
Board of Directors  
Agricultural Revolving Loan Fund

DATE: April 25, 1988

FILE NO: 661-87-0376

TELEPHONE NO: 276-3550

THRU: SUBJECT: ARLF Restructuring Guidelines

*Bonnie Robson*

FROM: Bonnie Robson  
Assistant Attorney General  
Commercial Section-Anchorage

The issue addressed by this memorandum is whether the Department of Natural Resources (DNR), Division of Agriculture (DOA), or Agriculture Revolving Loan Fund Board of Directors (ARLF Board) has authority to adopt and implement a program that extends the terms for, reduces the interest rates on, and forgives part of the principal of delinquent ARLF loans. The specific program giving rise to the need for this letter is described in the June 25, 1987 ARLF Board Guidelines for Restructuring (the Guidelines). <sup>1/</sup> For the reasons discussed below, DNR, DOA, and ARLF Board do not have authority to adopt and implement the Guidelines.

## I. BACKGROUND INFORMATION

The Agriculture Revolving Loan Fund (the fund) was created by statute "to promote the more rapid development of agriculture as an industry . . . by means of long-term low-interest loans" for farm development, irrigation, farm product processing, land clearing, purchase of chattels, and operating expenses. AS 03.10.010, AS 03.10.030. DNR, in conjunction with the ARLF Board, made these types of farm loans under AS 03.10.010 et seq. from the fund's inception to present. Seventy-five percent of the loans became delinquent. In an effort to maximize return to the fund and minimize the number of farm foreclosures, DNR, DOA, and the ARLF Board conducted public hearings statewide, then adopted the Guidelines. Most notably, the Guidelines allow a delinquent borrower to: (1) aggregate loan balances, then repay 1/20th of the aggregate in each of the next 20 years; (2)

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<sup>1/</sup> A copy of the Guidelines is attached.

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pay 8 percent interest per year on 1/20th of the aggregate, but no interest on the remaining balance; and (3) have 1 percent of the aggregate forgiven for repaying the rewritten debt in 19 years instead of 20 years (2 percent forgiven for repayment in 18 years, 3 percent for 17 years, etc.).

Former Assistant Attorney General Joan Travostino issued an unpublished memorandum of advice on December 7, 1987 approving adoption and implementation of the Guidelines. Between December 7, 1987 and April 11, 1988, the ARLF Board approved 19 applications submitted under the Guidelines, finalized six of the 19 approved, and denied 22 applications. Another 60 applications remain to be considered.

## II. THE STATUTES

The Alaska Agricultural Loan Act (AS 03.10.010 et seq.) authorizes making loans for farm development, irrigation, farm product processing, land clearing, purchase of chattels, and operating expenses. Farm development and irrigation loans "may not exceed a term of 30 years" and "shall bear interest at a rate that may not be less than 8 percent ...." AS 03.10.030(a)(4). Farm product processing loans "may not exceed a term of 30 years or bear interest that is less than 8 percent a year." AS 03.10.030(f). Land clearing loans "may not ... have a term in excess of 20 years" and "may not ... bear interest that is less than 8 percent." AS 03.10.030(g). "[A] chattel loan may not exceed a term of seven years" (AS 03.10.030(a)(1)) and "shall bear interest at a rate that may not be less than 8 percent ...." (AS 03.10.030(a)(4)). Operating loans are "to be amortized within one year" (AS 03.10.030(c)); no interest rate is specified by statute for operating loans.

There are only two statutory provisions for deviation from the maximum terms of loans or minimum interest rates for loans. A one-year operating loan "may be extended for up to three years by the Agricultural Revolving Loan Fund Board, in the discretion of the Board." AS 03.10.030(c). And DNR may "establish amortization plans for repayment of loans, which may include delayed payments of principal and interest for not to exceed five years." AS 03.10.020(a)(4).

## III. STATUTORY INTERPRETATION AND APPLICATION

Three principles of statutory interpretation are pertinent: (a) "shall" and "may not" are mandatory, (b)

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administrative bodies have only those powers given them by the legislature, and (c) inclusion of specific powers presumptively excludes those not enumerated.

A. "Shall" And "May Not" Are Mandatory

By statute, each farm loan "shall bear interest at a rate that may not be less than 8 percent." And, depending on the type of loan, each farm loan "may not exceed a term of [X] years," where X is 1, 7, 20, or 30. AS 03.10.030 (emphasis added).

According to the Alaska Supreme Court, "the use of the word 'shall' in a statute denotes mandatory intent." Fowler v. City of Anchorage, 583 P.2d 817, 820 (Alaska 1978). 2/

The Alaska Supreme Court has not interpreted the words "may not." However, 2A C. Sands, Sutherland Statutory Construction, § 57.09 (4th ed. 1984) states:

One of the strongest indications of what construction should be given a statutory provision may be found in the use of negative [or] prohibitory ... words. Where statutory restrictions are couched in negative terms they are usually held to be mandatory.

"May not" is negative or prohibitory, and hence mandatory.

Applying these rules of statutory construction to AS 03.10.030, one must conclude that the maximum loan terms of 1, 7, 20, and 30 years are mandatory, as is the minimum interest rate of 8 percent per year. Being mandatory, DNR, DOA, and the ARLF Board cannot extend a loan's term beyond the statutory maximum or reduce its interest rate below the statutory minimum.

B. Administrative Bodies Have Only Those Powers Given Them By The Legislature

DNR, DOA, and the ARLF Board are administrative

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2/ Unless the context otherwise indicates, which is not the case here.

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agencies or boards. Administrative bodies are purely creatures of legislation without inherent or common law powers. As a general rule, administrative bodies are entitled to exercise only those powers as are conferred on them by the legislature, expressly or by necessary implication. 2A C. Sands Sutherland Stat. Const. § 65.01 (4th ed. 1984).

The federal Agricultural Credit Act of 1978 provides an example of an express grant of power from a legislature to an administrative body to extend the term of a loan, reduce its interest rate, and forgive principal (among other things). 7 USC § 1981(d) states:

The Secretary [of Agriculture] may ... compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require .... The Secretary may release borrowers or others obligated on a debt incurred under this chapter from personal liability with or without payment of any consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim, except that no compromise, adjustment, reduction, or charge-off of any claim may be made or carried out ... on terms more favorable than those recommended by the appropriate county committee ....

Unlike the federal Agricultural Credit Act, the Alaska Agricultural Loan Act (AS 03.10.010 et seq.) does not expressly confer powers on any administrative body to extend the term of a loan, reduce its interest rate, or forgive principal, except that: (1) the ARLF Board may extend a one-year operating loan for up to three years (AS 03.10.030(c)), and (2) DNR may establish amortization plans which may include delayed payments of principal and interest for up to five years (AS 03.10.020(a)(4)).

Whether or not the Alaska Agricultural Loan Act vests DNR, DOA, or the ARLF Board with the powers in question by implication is a more difficult issue.

[T]o authorize the supplying of a power by implication . . . it is not sufficient that the act is

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advantageous or convenient to the major power conferred, or even effectual in the exercise of it. The power to be supplied by such process must be practically indispensable and essential in order to execute the power actually conferred.

2A C. Sands, Sutherland Stat. Const., § 55.03 (4th ed. 1984).

The ARLF Board has by implication the power to draft and require fund borrowers to sign promissory notes and security instruments, as this power is "practically indispensable and essential in order to execute" its express power to make farm loans. However, extending the terms of loans beyond the mandatory maximum, reducing interest rates below the mandatory minimum, and forgiving principal <sup>3/</sup> would be contrary to the express statutory language. Furthermore, these powers are not "practically indispensable and essential in order to execute" the express power to make farm loans. Consequently, the power to make these changes cannot be implied. This remains true even though the powers in question are advantageous and convenient to the power to lend, and effectual in the exercise of the power to lend.

C. Inclusion Of Specific Powers Excludes Those Not Enumerated

In Burrell v. Burrell, 696 P.2d 157, 165-166 (Alaska 1984), the Alaska Supreme Court interpreted an Alaska statute unrelated to agriculture. Nonetheless, the rule of interpretation established in Burrell is controlling here:

The court's power to modify a final judgment in a divorce suit is limited by the terms of AS 09.55.220 to those arrangements providing for the support and care of minor children, alimony and maintenance payments. It is an accepted rule of statutory construction that to include specific terms presumptively excludes those which are not

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3/ Whether or not DNR or the ARLF Board has authority to forgive principal is answered in the negative by the January 31, 1986 memorandum of advice of Assistant Attorney General John McDonagh. A copy of that memorandum is attached.

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enumerated. 2A C. Sands, Sutherland Statutory Construction §§ 47.23-47.24 (4th ed. 1973). In keeping with this precept, we have held that "AS 09.55.220 does not give a court authority to modify a decree as it relates to property rights ...." Allen v. Allen, 645 P.2d 774, 776 (Alaska 1982); Stone v. Stone, 647 P.2d 582, 584-585 (Alaska 1982).

(Emphasis added, footnote omitted.)

The Alaska Agricultural Loan Act expressly grants administrative bodies certain powers to vary terms of repayment. AS 03.10.030(c), AS 03.10.020(a)(4). Under the most liberal interpretation, these provisions allow the ARLF Board to extend an operating loan from one to three years, and allow DNR to delay the due dates for principal and interest on farm development, irrigation, farm product processing, land clearing, and chattel loans for five years. Under the Burrell, supra, rule of statutory construction, the legislature's inclusion of language allowing administrative bodies to extend the terms of operating loans by an additional two years beyond the otherwise mandatory maximum of one year, and to delay for up to five years the due dates for other farm loans, presumptively excludes related but not enumerated powers, such as powers to extend the terms of 7 year chattel loans and 20 year land clearing loans beyond those maximum periods, respectively, reduce interest rates from 8 percent to an effective rate of less than 1 percent, and forgive principal.

#### IV. PRIOR OPINION APPROVING ADOPTION AND IMPLEMENTATION OF GUIDELINES

As noted earlier, former Assistant Attorney General Joan Travostino's December 7, 1987 unpublished memorandum of advice approved adoption and implementation of the Guidelines. A copy of that memorandum is attached.

The approval contained in that memorandum was reached by reviewing federal regulations on servicing farm loans, noting that extending terms and reducing interest rates are labelled as "loan servicing functions," and concluding that the Alaska Agricultural Loan Act implicitly grants ARLF the power to perform these "loan servicing functions" where necessary to maximize returns on loans.

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As noted in Part III, above, by statute Congress expressly granted DNR's federal counterpart authority to extend terms, reduce interest rates, and forgive principal. 7 U.S.C. § 1981(d). This federal statute enabled promulgation of those "loan servicing" regulations which allow term extension and interest rate reduction. The statute, and not the "loan servicing function" label, provides authority. To the extent inconsistent with this opinion, the December 7, 1987 memorandum is superceded.

#### V. INTERPRETATION OF STATE REGULATION

Regulations have been promulgated under the Alaska Agricultural Loan Act. One regulation specifically addresses modification of loan terms. 11 AAC 39.311 states:

OTHER LOAN ACTIONS BY BOARD. (a) ... [A] change in loan terms will not be granted without the approval of a majority of the board ....

(b) A change in loan terms includes, but is not limited to, a change in interest rate, loan amount, maturity date, amortization schedule, payment date, or collateral ....

A regulation is valid only if consistent with the statute under which it was promulgated. AS 44.62.030. See Kalmakoff v. State Commercial Fisheries, 693 P.2d 844, 853 (Alaska 1985); 1A C. Sand Sutherland Stat. Const. ¶ 31.02 (4th ed. 1985). Therefore, 11 AAC 39.311 must be read in conjunction with the Alaska Agricultural Loan Act and interpreted so as to be consistent with that act. When so read and interpreted, we believe 11 AAC 39.311 allows the ARLF Board to reduce a theoretical borrower's interest rate from, say, 10 percent to the minimum statutory rate of 8 percent, or extend the maturity date of a five-year chattel loan to the maximum statutory term of seven years. 4/ However, it cannot be read to permit the ARLF Board to change the term of a loan in a manner which would be inconsistent with express statutory limitations on the various loan terms. Also 11 AAC 39.311

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4/ These powers are of little practical value since all farm loans have been made at the minimum interest rate, and almost all at the maximum term.

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may not be interpreted to allow a "change in ... loan amount" through principal forgiveness, since statutory authority to forgive principal is lacking. 5/

#### VI. CONSEQUENCE OF LACK OF AUTHORITY

Whether DNR, DOA, and the ARLF Board possess authority to implement the Guidelines may be the subject of litigation. Three potential formats for litigation are discussed below; others may exist. The discussion below is included only to reveal potential losses and liabilities; it should not be interpreted as an endorsement of allegations that could be made by adverse parties or as an admission of liability.

##### A. ARLF Sues Borrower on Restructured Debt

ARLF has already restructured six borrowers' debts. Should one of these borrowers stop making payments on the debt as restructured, the Attorney General's Office would file a debt collection action on behalf of ARLF to enforce the restructured note and security instruments. The borrower might raise as a defense the administrative bodies' lack of statutory authority to execute the restructured note and security instruments.

Contracts that violate statutes might be unenforceable. Were the restructured note and security instruments entered into by two private parties, an Alaska court would apply the Restatement (Second) of Contracts § 178 to determine enforceability. Brown v. Baker, 688 P.2d 943 (Alaska 1984). The Restatement provides:

#### § 178. When a Term is Unenforceable on Grounds of Public Policy

(1) A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.

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5/ See footnote 3.

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(2) In weighting the interest in the enforcement of a term, account is taken of

- (a) the parties' justified expectations,
- (b) any forfeiture that would result if enforcement were denied, and
- (c) any special public interest in the enforcement of the particular term.

(3) In weighing a public policy against enforcement of a term, account is taken of

- (a) the strength of that policy as manifested by legislation or judicial decisions,
- (b) the likelihood that a refusal to enforce the term will further that policy,
- (c) the seriousness of any misconduct involved and the extent to which it was deliberate, and
- (d) the directness of the connection between that misconduct and the term.

However, the parties to restructuring are not both private. The highest courts of other states hold that contracts between a governmental entity and private party which violate a statute are not subject to a balancing test, but are void and unenforceable. Chemical Bank v. Washington Public Power Supply System, 666 P.2d 329, appeal after remand 691 P.2d 524, certiorari denied Haberman v. Chemical Bank, 105 S.Ct. 2140, 471 U.S. 1065, 85 L.Ed.2d 497 and 105 S.Ct. 2154, 471 U.S. 1075, 85 L.Ed.2d 510; Noel v. Cole, 655 P.2d 245 (Washington 1982); First Equity Corp. of Florida v. Utah State Univ., 544 P.2d 887 (Utah 1975); Martin v. City of Corning, 101 Cal. Rptr. 678 (Cal. App. 1972).

The Alaska Supreme Court has not clearly stated whether it will apply Restatement (Second) of Contracts §178 or the rule employed by other states' courts when one of the parties to an illegal contract is a governmental entity. However, a recent opinion suggests the latter, which would render void the restructured notes and security instruments. McBirney &

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Associates v. State of Alaska, \_\_\_ P.2d \_\_\_, Op. No. 3298 (Alaska, April 15, 1988) ("The state has an established procurement process which includes competitive bidding .... McBirney's conduct violated the state's procurement process and the resulting contract was void.") See also King v. Alaska State Housing Authority, 512 P.2d 887, 891 (Alaska 1973). ("A public corporation cannot bind itself to any contract which is beyond the scope of its powers.")

Should the restructured notes and security instruments be held void, then ARLF could only sue delinquent borrowers on their original notes and security instruments. However, claims on many of the notes and instruments might soon be barred by the applicable statutes of limitations. There will be no recovery on claims barred.

B. ARLF Sues Borrower On Original Debt

Should ARLF sue a restructured borrower on his original notes and security instruments, the borrower will claim that, in reliance on ARLF's representation that his debt has been restructured, he rearranged his financial affairs so that he is no longer to pay the original notes according to their terms. This defense will: (1) increase the expense of litigation, (2) delay the entry of any judgment against the borrower, (3) possibly reduce the amount of any judgment, and (4) possibly result in court imposition of "equitable" repayment terms.

C. Taxpayer Sues

Restructuring reduces the amount of ARLF's claim against a borrower, although it is intended to increase the amount of ARLF's recovery from the borrower. A taxpayer might sue to prevent reductions in claims.

To sue, a taxpayer must have standing. Important considerations in determining whether a taxpayer has a sufficient personal stake in the outcome of such a suit to vest the taxpayer with standing are: (1) whether specific constitutional provisions have been violated, (2) the potential economic impact on the state treasury, and (3) whether there is anyone in a better position to litigate the issue. Hoblit v. Commissioner of Natural Resources, 678 P.2d 1337, 1340-1341 (Alaska 1984).

Here: (1) specific constitutional prohibitions may not be implicated, but specific statutory prohibitions are, (2) the

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maximum potential economic impact on the Agricultural Revolving Loan Fund is to reduce claims by \$21,156,000, 6/ and (3) a potential ARLF borrower is probably in a better position to litigate the issue than a taxpayer. Because the farm loan fund is a revolving fund, the potential ARLF borrower stands to lose more than the taxpayer if the net effect of implementation of the Guidelines is to reduce the fund. Consequently, while a taxpayer may not have standing to challenge the implementation of the Guidelines, a potential ARLF borrower might. A successful challenge could invalidate the Guidelines and void agreements entered into under the Guidelines.

#### VII. CONCLUSION

In our view, DNR, DOA, and the ARLF Board are without authority to adopt or implement the June 25, 1987 Restructuring Guidelines. The legislature may grant this authority to DNR, DOA, or the ARLF Board, but has not yet done so.

BR:cmh

Enclosures

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6/ Balances outstanding on delinquent ARLF loans total approximately \$30,000,000. Eight percent (8%) interest on \$30,000,000 payable over 20 years is \$31,116,000. Interest calculated under the Guidelines on \$30,000,000 payable over 30 years equals \$9,960,000. \$31,116,000 minus \$9,960,000 is \$21,156,000. \$21,156,000 is the maximum potential reduction of claims. However, since roughly half of the applications for restructuring considered to date have been denied, the actual reduction in claims would be less.

ARLF FILES IN THE ATTORNEY GENERALS OFFICE

|                            |                |                     |               |
|----------------------------|----------------|---------------------|---------------|
| Alamasu, Inc. *            | \$ 731,148.98  | Jurgens, *          | \$ 16,062.00  |
| Alaska Fur Farms           | \$ 236,038.17  | Kachelmeier         | \$ 47,277.75  |
| AK Golden Nugget Pot. Chip | \$ 363,593.41  | Karr, Richard       | \$ 180,180.00 |
| Anchor Renewable Farms     | \$ 198,111.60  | Keaster, Charles *  | \$ 235,080.29 |
| Arden Farms                | \$ 250,186.00  | Kelley, Laura       | \$ 23,293.00  |
| Bannon, Jesse and Wesley   | \$2,285,175.57 | Kilmurray, Brendon  | \$ 300,509.58 |
| Bearson, Myron             | \$ 430,805.00  | Kratzer, Donald     | \$ 77,425.36  |
| Beaver, Roy                | \$ 128,386.52  | Lasley, Jimmy       | \$ 308,726.42 |
| Blyth, James               | \$ 40,259.22   | Mays, Wm. David *   | \$ 22,304.00  |
| Bradley,                   | \$ 29,695.01   | Mead                | \$ 5,000.00   |
| Brehmer, Gerald *          | \$ 655,262.97  | Melin               | \$ 19,320.00  |
| Brown, Victor              | \$ 101,412.84  | Melton, Len         | \$ 886,096.75 |
| Buck and Kirsch *          | \$ 270,177.01  | Miller, Terry       | \$ 334,780.02 |
| Cange, Charles             | \$ 76,921.00   | Mitchell, Earl      | \$ 459,686.46 |
| Carlson, Charles           | \$ 56,085.29   | Mulligan, Patrick   | \$ 962,274.11 |
| Carlson, Lyle              | \$ 113,547.19  | Muth and Sons, Inc. | \$ 182,891.88 |
| Crook                      | \$ 83,452.34   | Olson, Arnold       | \$ 3,500.00   |
| Crowson                    | \$ 454,929.65  | Olson, Manvil       | \$ 533,819.57 |
| Dairy West *               | \$1,252,305.00 | Orcutt Farms        | \$ 460,973.35 |
| Delta K                    | \$ 133,226.78  | Peninsula Grnhs     | \$ 935,202.50 |
| Ditchen, Carl              | \$ 650,150.00  | Peterson, Alan      | \$ 651,131.83 |
| Eberhardt, Bernard         | \$ 86,453.00   | Petty, Larry *      | \$ 88,564.52  |
| Engellant                  | \$ 603,559.23  | Porter,             | \$ 19,034.29  |
| Evans, Dorothy             | \$ 3,732.97    | Richards, Ronald    | \$ 15,000.00  |
| Far North Apiary           | \$ 27,912.00   | Roberts, Bruce *    | \$ 30,290.00  |
| Fett, Lee and Marie        | \$ 275,051.00  | Ruitt, John         | \$ 690,396.65 |
| Fielding, Thomas           | \$ 93,167.42   | Saylor              | \$ 333,722.19 |
| Fretwell,                  | \$ 48,000.00   | Schade, Lloyd       | \$ 163,078.34 |
| Gentz, Wayne and Patricia  | \$ 395,129.37  | Schenk, Neil        | \$ 504,891.41 |
| Gerstle River Farms        | \$ 667,700.00  | Schmidt             | \$ 239,086.12 |
| Gilliland (Gold n Honey)   | \$ 52,996.25   | Schweigert          | \$ 41,482.18  |
| Golden Valley              | \$ 454,002.86  | Smith, Evander      | \$ 550,198.00 |
| Green, Dennis *            | \$ 823,613.61  | Smith, Howard       | \$ 45,600.00  |
| H & R Farms *              | \$1,028,280.52 | Snowcrest Farms     | \$ 740,742.97 |
| Hartman, Albert            | \$ 130,324.49  | Spears/OHM          | \$ 227,456.00 |
| Heather Farms              | \$ 268,771.00  | Stromberg, Gary     | \$ 30,852.53  |
| Heaton, Richard            | \$ 968,464.13  | Taggo               | \$ 43,914.66  |
| Hendershot, Ed             | \$ 211,871.00  | Thom, Robert        | \$ 553,466.70 |
| Holcomb, Steve *           | \$ 252,246.91  | Thomas, Alvin       | \$ 6,056.00   |
| Ingalls, Gayland           | \$ 40,723.33   | Vickaryous, James   | \$ 7,309.05   |
| Jacobson, Doug & Shirley   | \$ 146,118.00  | Wassink, Harry      | \$ 668,917.63 |
| Jenn, Eugene               | \$1,023,465.00 | Wener,              | \$ 29,812.00  |
| Johnson, David *           | \$ 14,413.00   | Willard, Bruce      | \$ 70,718.52  |
| Johnson, Elvin "Bud" *     | \$ 939,125.00  | Wright, Sande       | \$ 985,075.77 |
| Joyce, Mickey              | \$ 29,625.97   | Zimmerman, Ed       | \$ 659,783.44 |

\* Board Action of 4/13/88

OVER 30 MILLION IN DELINQUENT  
LOANS - WE ARE TAKING ACTION

REPRESENTATIVE  
SAM COTTEN  
DISTRICT 15



P.O. BOX 296, EAGLE RIVER, AK 99577  
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES

May 7, 1988

The Hon. Judy Brady  
Commissioner  
Department of Natural Resources  
P.O. Box M  
Juneau, AK 99811

Dear Commissioner Brady:

I am writing about the Mat Maid creamery now in the state's possession. I appreciate the participation of you and your staff in recent discussions about the future of the creamery and the Alaska dairy industry, and naturally I share your interest in seeing both succeed over the long term. I also recognize your interest in getting the state out of the creamery management business.

After the Resources Committee's review of SB 484 on ag debt restructuring and SB 472 on transferring the dairy, I am interested in pursuing several concepts with you.

The dairy farmers' largest concern (which led to the introduction of SB 472) appears to be that the Alaska dairy industry needs security, or assurance, about its future stake in the creamery. They point out that most creameries nationwide are coop-owned and that the Alaska industry needs to be able to control prices and marketing at the creamery.

The Department of Natural Resources has successfully managed the creamery and the Alaska industry seems to be on the verge of stability and success. Still, I understand the Department's concerns about the proposal to transfer the creamery to the coop: first, that the coop should be able to gain control gradually in a way that doesn't destabilize the farmers' other operations or debt and which provides some time to gain management experience; and second, that the Department cannot sell the creamery to a selected buyer under existing law.

SB 484 now contains language that should give the Department of Natural Resources two years during which to sell or lease-purchase the creamery to the coop and give the coop the opportunity to gain the experience necessary to own and

manage the creamery unilaterally. It also provides DNR with authority to sell the creamery to the dairy coop noncompetitively, and at below market value if such a sale would be in the state's interests.

I am hopeful, after discussions with your staff, that the Department will agree to amend the pending creamery oversight agreement between the coop and the Department to include an option for the coop to purchase or lease-purchase the creamery within two years if the coop meets existing quality standards and demonstrates both financial stability and the management capability to take over the creamery.

SB 484 has been written to allow a transaction at less than market value in case the 1990 appraisal of the creamery should show that the coop would not be able to meet the payments for the creamery. If the Department determines in 1990 that a below-value sale is in the public interest (which it may be), there should be flexibility to sell the creamery to a functioning, successful coop at a price that can be fairly paid.

Some of the farmers have been concerned about paying the 1990 value for the creamery. They don't want to have to pay twice for improvements made over the next two years at their own expense. I understand that under ordinary circumstances the Department writes its leases so that rental adjustments and conveyances are based on value not reflecting improvements made at the expense of the lessee. I believe the same approach should be taken in valuing the creamery for sale to the coop.

I hope that the Department and the ARLF Board will recognize, in 1990 or before if the coop appears ready, that the Legislature enacted a special provision for the creamery transfer in hopes that the Alaska industry could be fostered and enhanced. This does not mean that the language included in SB 484 encourages a below-market sale of the creamery, nor that the coop should be guaranteed the conveyance unconditionally. However, if the Department in 1990 determines that the coop has met quality standards and conveyance criteria, and if the coop can afford to purchase the creamery at some reasonable price, I would hope to see the Department and the ARLF Board proceed with the sale.

Some of the farmers have also been concerned because they lack discrete authority, under the proposed agreement, to establish milk prices. However, from my reading of the

The Hon. Judy Brady

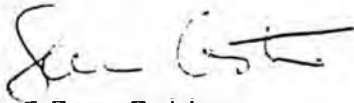
- 3 -

May 7, 1988

agreement, the coop will have important influence over the milk price, and of course should have complete control over the milk price in two years after the creamery conveyance is made.

In conclusion, I hope that the Department will be able to commit to rewriting the proposed creamery management agreement 1) to remove references to assignment, and 2) to include the option for the coop to purchase or lease-purchase the creamery in two years if quality and conveyance criteria have been met. A commitment by the Department to these two points will go a long way toward stabilizing Alaska's dairy industry and allowing the careful and fair transfer of the creamery to the coop.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sam Cotten", written in a cursive style.

Rep. Sam Cotten

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801  
PHONE: (907) 465-2400

OFFICE OF THE COMMISSIONER

May 7, 1988

The Honorable Sam Cotten  
Co-Chair, House Resources Committee  
Alaska State House of Representatives  
P.O. Box V  
Juneau, AK 99801

Dear Representative Cotten:

This letter is to confirm the department's commitment to sell the Matanuska Maid creamery to an Alaskan dairy farmer's cooperative before June 30, 1990, if practical and equitable terms of sale or lease/purchase can be negotiated, if the sale or lease/purchase would help ensure the future of Alaska's dairy industry, and if the sale or lease/purchase is determined to be in the best interests of the state.

As you know, the department intends to implement a one year agreement with Alaska Dairy Inc. (ADI). The agreement will provide ADI with management oversight of the Matanuska Maid land and buildings at 814 Northern Lights Boulevard in Anchorage. The purpose of this agreement is to provide local dairy producers with an opportunity to participate in and learn to manage the creamery business. If necessary, the agreement will be extended for one additional year.

I assure you that the department will not sell the creamery to a purchaser other than a cooperative of Alaska dairy producers prior to June 30, 1990, provided that the cooperative demonstrates financial stability and the management capacity to participate successfully in the operation of the business, and that existing creamery quality standards are met. In recognition of this, references to assignment will be dropped from the written agreement and an option for sale or lease purchase will be included.

Should the HCSCSSB 484 (Resources) be enacted, a sale of Matanuska Maid creamery assets at fair market value to the cooperative of Alaska dairy producers will include a dis-

May 7, 1988

count for capital improvements made and equipment purchased by contributions from members of the cooperative, during the term of the management agreement. If a cooperative of Alaska dairy farmers is unable to successfully execute the creamery purchase by June 30, 1990, the department may offer the business at a competitive bid sale to other prospective buyers. It is not the intention of the department to retain long term ownership of the creamery.

We appreciate your interest in the continuation of Alaska's agricultural industry. Please let me know if I may provide additional information or assistance.

Sincerely,

*Jennie Gorsuch*

*for* Judith M. Brady  
Commissioner

cc: Rod Swope  
Bob Evans  
Mark Weaver  
Hal Ward

SB 489

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AN ACT

Relating to the reorganization of private debt at a  
Delta Project.

\* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the large grain farms that were developed on state agricultural land in the Delta Projects are subject to a personal debt load that is unmanageable because of a coincidence of unique and unforeseen circumstances:

- (1) the unforeseen difficulties with the limited growing seasons including the extremely short period in which the crops may be planted;
- (2) conflicts with the herds of bison located in the area;
- (3) the inadequate agricultural infrastructure in the area of the Delta Projects and in the state;
- (4) the depressed grain prices nationwide;
- (5) the unexpected problems with economic farm size.

\* Sec. 2. (a) The commissioner of natural resources shall, at the request of an individual who holds agricultural rights to land purchased from the state in a Delta Project,

- (1) accept the relinquishment of agricultural land purchased from the state in a Delta Project and credit the percentage of the debt owed to the state on land purchased and land clearing loans that equals the percentage of land relinquished under this section, either by acreage or by value, as determined by the commissioner;
- (2) enter into an agreement with the individual for the lease for agricultural purposes only of a portion of or all of the land

Chapter 109

1 relinquished for a term of 20 years at the full fair market value of the  
2 land; a survey under this paragraph, if required, shall be at the expense  
3 of the individual.

4 (b) If an individual who has relinquished land under this section  
5 applies before July 1, 1987 for a lease on all or part of the land relin-  
6 quished, the lease shall provide the lessee an option to purchase the land  
7 leased under (a)(2) of this section at full fair market value at the time  
8 of purchase without reduction to reflect the remaining lease term.

9 (c) The commissioner of natural resources in consultation with the  
10 Agricultural Revolving Loan Board may renegotiate with the individual loans  
11 for chattels or farm improvements located on the agricultural land in a  
12 Delta Project if the commissioner determines that renegotiation is neces-  
13 sary to minimize financial losses to the state and that it is in the best  
14 interest of the state.

15 \* Sec. 3. The provisions of this Act are not available to an individual  
16 participating in a federal farm program that provides monetary or other  
17 incentives for keeping agricultural land in a Delta Project out of produc-  
18 tion.

19 \* Sec. 4. This Act is repealed July 1, 1988.

Eff. 9/5/86

**SENATE ACTION:**

**SENATE JOURNAL FEBRUARY 29, 1988**

SENATE BILL NO. 484 by the Judiciary Committee by request, entitled:

"An Act restructuring the debt of certain dairy farmers; and providing for an effective date."

was read the first time and referred to the Resources Committee and the Finance Committee.

**SENATE JOURNAL APRIL 6, 1988**

The Resources Committee considered SENATE BILL NO. 484 "An Act restructuring the debt of certain dairy farmers; and providing for an effective date" and recommended it be replaced with

CS FOR SENATE BILL NO. 484(Resources), entitled:  
"An Act restructuring agricultural debt;  
and providing for an effective date."

Senator Coghill, Chairman, signed "do pass." Senators Duncan, Fischer, Zharoff and Sturgulewski signed "no recommendation."

Fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 484 was referred to the Finance Committee.

**SENATE JOURNAL APRIL 30, 1988**

The Finance Committee considered SENATE BILL NO. 484 "An Act restructuring the debt of certain dairy farmers; and providing for an effective date" and recommends it be replaced with

CS FOR SENATE BILL NO. 484(Finance), entitled:  
"An Act relating to the powers of and loans  
made by the Agricultural Revolving Loan Fund  
Board; and providing for an effective date."

and reports it back without recommendation. The report was signed by Senator Halford, Co-chairman, and concurred in by Senators Zharoff, Fischer, Duncan, Uehling, Hensley and Binkley.

Fiscal note published today from Senate Finance Committee.

SENATE BILL NO. 484 was referred to the Rules Committee.

**SENATE JOURNAL MAY 3, 1988**

The Rules Committee considered SENATE BILL NO. 484 "An Act

restructuring" the debt of certain dairy farmers; and providing for an effective date" and recommended calendar. The report was signed by Senator Eliason, Chairman and concurred in by Senators Hensley, Binkley, Faiks and Jones.

SENATE BILL NO. 484 is on today's calendar.

SENATE JOURNAL MAY 3, 1988

SENATE BILL NO. 484 "An Act restructuring the debt of certain dairy farmers; and providing for an effective date" was read the second time.

Senator Halford moved and asked unanimous consent for the adoption of the Finance Committee Substitute offered on page 3301. Without objection, CS FOR SENATE BILL NO. 484 (Finance) "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" was adopted.

CS FOR SENATE BILL NO. 484 (Finance) was read the second time.

Senator Coghill offered Amendment No. 1:

Page 1, line 24: Delete "Director of Agriculture shall"  
Insert "Commissioner may"

Senator Coghill moved and asked unanimous consent for the adoption of Amendment No. 1. Senator Halford objected.

Senator Kelly called the Senate.

President Faiks stated the call was satisfied.

Senator Josephson moved and asked unanimous consent that he be allowed to abstain from voting. There were objections.

Senator Coghill requested that the question be divided.

Senator Coghill moved to adopt Amendment No. 1, Part 1, that part being:

Delete "Director of Agriculture"  
Insert "Commissioner"

The question being: Shall Amendment No. 1, Part 1 be adopted? The roll was taken with the following result:

CSSB 484 FIN PART 1 AM 1

Yeas: 10 Abood, Coghill, Faiks, Fanning, Fischer, Jones, Josephson, Kelly, Sturgulewski, Uehling

Nays: 10 Binkley, Duncan, Eliason,  
Fahrenkamp, Halford, Hensley,  
Kerttula, Rodey, Szymanski,  
Zharoff

Senator Faiks changed from "nay" to "yea".

and so, Amendment No. 1, Part 1 failed.

Senator Coghill moved to adopt Amendment No. 1, Part 2, that part being:

Delete "shall"  
Insert "may"

The question being: Shall Amendment No. 1, Part 2 be adopted? The roll was taken with the following result:

CSSB 484 FIN PART 2 AM 1

Yeas: 3 Coghill, Josephson, Uehling

Nays: 17 Abood, Binkley, Duncan, Eliason,  
Fahrenkamp, Faiks, Fanning,  
Fischer, Halford, Hensley, Jones,  
Kelly, Kerttula, Rodey,  
Sturgulewski, Szymanski, Zharoff

and so, Amendment No. 1, Part 2 failed.

Senator Coghill offered Amendment No. 2:

Page 2, line 27: After "amended"  
Insert "; to the extent that the  
proceeds assigned exceed payments due each calendar year,  
the excess shall be refunded to the applicant."

Senator Coghill moved and asked unanimous consent for the adoption of Amendment No. 2. Senator Halford and Uehling objected.

The question being: Shall Amendment No. 2 be adopted? The roll was taken with the following result:

CSSB 484 FIN AM 2

Yeas: 4 Coghill, Fahrenkamp, Josephson,  
Sturgulewski

Nays: 16 Abood, Binkley, Duncan, Eliason,  
Faiks, Fanning, Fischer, Halford,  
Hensley, Jones, Kelly, Kerttula,  
Rodey, Szymanski, Uehling,  
Zharoff

and so, Amendment No. 2 failed.

Senator Coghill offered Amendment No. 3:

Page 3, line 7: Insert a new Section 3 to read:  
"Section 3 of SLA 1986, Chapter  
109, is repealed"

Re-number accordingly.

Senator Coghill withdrew Amendment No. 3.

Senator Coghill offered Amendment No. 4:

Page 2, line 29: Delete "may"  
Insert "shall"

Page 3, line 2: After "month"  
Insert "and purchases a majority of  
Alaskan grown grain and forage"

Senator Coghill withdrew Amendment No. 4.

Senator Kerttula offered Amendment No. 5:

Page 2, line 29: After "the board"  
Delete "may"  
Insert "shall"

Senator Kerttula moved and asked unanimous consent for the adoption of Amendment No. 5. Senator Coghill objected.

Senator Kerttula withdrew Amendment No. 5.

Senator Coghill re-offered Amendment No. 4, that amendment being sponsored by Senators Coghill and Kerttula.

Senator Coghill moved and asked unanimous consent for the adoption of Amendment No. 4. Senator Fischer objected.

Senator Coghill offered an amendment to Amendment No. 4:

Page 3, line 2: Delete "purchases"  
Insert "uses"

Senator Coghill moved and asked unanimous consent for the adoption of the amendment to Amendment No. 4. Senator Fischer objected, then withdrew his objection. There being no further objections, amendment to Amendment No. 4 was adopted.

Senator Coghill moved and asked unanimous consent for the adoption of Amendment No. 4 as amended. Without objection, it was so ordered.

Senator Eliason moved and asked unanimous consent that CS FOR SENATE BILL NO. 484(Finance) am be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 484(Finance) am was read the third time.

The question being: Shall CS FOR SENATE BILL NO. 484 (Finance) am "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" pass the Senate? The roll was taken with the following result:

CSSB 484 FIN AM 3RD

Yeas: 18 Abood, Coghill, Duncan, Eliason, Fahrenkamp, Faiks, Fanning, Fischer, Halford, Jones, Josephson, Kelly, Kerttula, Rodey, Sturgulewski, Szymanski, Uehling, Zharoff

Nays: 0

Absent: 2 Binkley, Hensley

and so, CS FOR SENATE BILL NO. 484(Finance) am passed the Senate.

Senator Eliason moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

#### SENATE JOURNAL MAY 3, 1988

SB 484 cont'd

Senator Eliason moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

Senator Uehling gave notice of reconsideration on CS FOR SENATE BILL NO. 484(Finance) am "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" and moved and asked unanimous consent that it be taken up at this time. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 484(Finance) am was before the Senate in third reading on reconsideration.

The question to be reconsidered is: Shall CS FOR SENATE

BILL NO. 484 (Finance) am "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" pass the Senate? The roll was taken with the following result:

CSSB 484 FIN AM RECONSIDERATION

Yeas: 16 Abood, Coghill, Eliason,  
Fahrenkamp, Faiks, Fanning,  
Fischer, Halford, Hensley, Jones,  
Josephson, Kelly, Kerttula,  
Sturgulewski, Szymanski, Uehling

Nays: 0

Absent: 4 Binkley, Duncan, Rodey, Zharoff

and so, CS FOR SENATE BILL NO. 484(Finance) am passed the Senate on reconsideration.

Senator Eliason moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 484(Finance) am was referred to the Secretary for engrossment.

CS FOR SENATE BILL NO. 484(Finance) am "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

# COWPER

## FOR GOVERNOR

Anchorage Headquarters  
2605 Denali #101  
(907) 276-1150

RECID  
5/4/89  
SL

P.O. Box 100019  
Anchorage, Alaska 99510

### Steve Cowper on Alaska Agriculture

Agriculture in Alaska is a productive industry with enormous potential. It is an essential component of a diversified Alaska economy and, with proper management, can employ several thousand Alaskans and feed many thousands more. For example, it is projected that sales of certain agriculture products in Alaska could reach \$60 million annually by 1990 compared to only \$18 million in 1983. Agriculture in Alaska therefore, merits serious consideration in state planning decisions, a voice in state government and the benefit of stable long-range policies.

For the most part, past state agricultural policies have emphasized large projects characterized by high costs and risks and sometimes unrealistic production goals. These policies have often obscured the vital role of small-farming operations which are oriented toward local markets.

Alaska's agriculture industry should strive for an integrated system whose first goal is to provide food and other products for Alaskans. We should encourage the development of small operations independent of massive state subsidies. At the same time, we cannot ignore the plight of some large project farmers who began with state commitments that have since been withdrawn.

### The Problem

Alaska's agriculture policies have changed nearly as quickly as the weather, with one group of politicians promising a new commitment to agricultural development while others pull the rug out from under Alaska's farmers. After several years of struggle by Alaska's burgeoning agriculture industry, the current administration has reneged on promises and turned its back on Alaska's farmers.

For example, candidate Bill Sheffield promised farmer representation on state boards. But within two months of taking office, Gov. Sheffield abolished the Alaska Agricultural Action Council. Candidate Sheffield vowed to split the Department of Natural Resources into two departments to focus more attention on agriculture. As governor, Sheffield has failed to live up to his pledge. As a candidate, Sheffield also pledged to develop agriculture infrastructure. But as governor, he mothballed the Seward grain export facility after the state had already spent \$8.2 million.

### The Solution

• Realistic market goals. It is senseless to produce crops that can't be sold at a profit. Therefore, we must establish market goals for crops and products with proven production records and demonstrated potential. In most cases, production should be oriented toward local markets except where the economics of export are proven. Crops and products should include: vegetables, dairy products, animal feed, meat including hogs, beef, poultry and reindeer, small grains and speciality horticulture materials.

• Improved marketing. A proper role of state government is helping farmers market their products, much like the state currently does with the Alaska Seafood Marketing Institute. Marketing techniques should include promotion campaigns, the use of surplus state facilities as marketing outlets and encouraging preferential use of Alaska agricultural products by state agencies including school districts and prisons. The state should adopt a law permitting and encouraging the formation of cooperative marketing groups within the industry.

• Streamline loan programs. Accumulated debt is one the biggest problems facing some Alaska farmers, especially those involved in the Delta I and II projects. Confusing changes in regulations and procedures and under-funding have contributed to that problem. While the state can't flatly forgive loans to farmers, it should act to both improve the lending climate and the operations of the Agriculture Revolving Loan Fund. We must investigate methods for restructuring farm debt through reduced farm parcel size and with lease preferences on land returned to the state by current owners. We also must give the ARLF more flexibility to meet modern farm requirements, provide for greater contact between loan examiners and borrowers and assist proven producers with good credit records.

• Improve government operations. Since the Sheffield administration abolished the Alaska Agriculture Action Council, Alaska's farmers have had little voice in state government. That must change. Officials of the Division of Agriculture should be experts in agriculture with experience in Alaska farming, and not political cronies. We must rely on agriculture groups for advice on policy issues, and their voice should not be buried under cumulative levels of government bureaucracy. For example, we should establish an Agriculture Advisory Board to the governor and reactivate the Milk Advisory Board.

• Stable state regulations. Alaskans in the agriculture business, as well as other fields, must have a clear and stable set of regulations which are enforced without favoritism. Unnecessary delays and time-consuming paperwork can and should be minimized through the use of modern information systems. Alaska agriculture officials should undertake a review of state statutes and regulations and recommend modifications to favor local production, where constitutionally feasible.

• Research and technology. Alaska's future depends on our ability to become experts in marketing and to employ the best technology available. We must rely on and, when necessary, redirect the activities of the UA Agriculture Experiment Station, the Cooperative Extension Service, the Soil Conservation Service and the Plant Materials Center to provide technical assistance to commercial growers. Those agencies should emphasize the development of vegetables, potatoes and seed crops especially suited to Alaska.

• Rural agriculture. There is great potential for the development of small-scale agriculture in certain areas of rural Alaska which could provide inexpensive products for local residents. These efforts should be encouraged through state land use and disposal policies.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 11, 1988

The Honorable John Binkley  
Co-Chairman, Senate Finance Committee  
Fifteenth Alaska Legislature  
Second Session  
P.O. Box V  
Juneau, Alaska 99811

APR 11 1988

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

P O BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE (907) 465-3600

Re: CSSB 484(Res)

Dear Senator Binkley:

The Senate Resources Committee Substitute for Senate Bill 484 ("CSSB 484(Res)") has been referred to the Senate Finance Committee. We would like to alert you to some possible legal problems with the bill.

CSSB 484(Res) would forgive any interest and penalties due to the agricultural revolving loan fund on July 1, 1988. In the absence of substantial justification, preferably in the form of legislative findings of fact, such a blanket forgiveness would appear to be nothing more than a gratuitous gift to the borrowers of funds legally due the state. Such gratuitous gifts would probably violate the requirement of article IX, section 6, of the Alaska Constitution that public funds must be expended only for public purposes.

In addition, the bill presents a question of fairness which may rise to constitutional dimension. Borrowers who are current on their loan payments, regardless of the hardships they may have endured in order to remain current, receive no relief with respect to interest and penalties they have already paid. On the other hand, those who have not remained current -- whether as a result of circumstances or by choice -- would receive a substantial benefit by forgiveness of the interest and penalties. Indeed, the greatest benefits would be given to the borrowers most in arrears. In addition to the obvious policy question presented -- i.e., should the state in effect reward people who have not lived up to their legal obligations while not rewarding those who have? -- there also may be a constitutional equal protection question: is it constitutionally permissible to grant forgiveness to borrowers who are in arrears while not granting an equivalent benefit to borrowers who are current on their obligations?

The Honorable John Binkley  
Co-Chairman, Senate Finance Committee

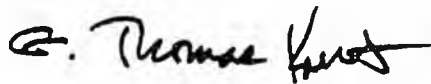
April 11, 1988  
Page 2

Part of the problem is that no distinction is made between borrowers who may be solvent, and in a position to discharge their financial obligations with no additional relief, and those who are not in a position to do so. To the extent that debt restructuring may serve a public purpose in a given instance, you may wish to consider giving the Agricultural Revolving Loan Board the discretionary authority to do so on a case-by-case basis. Such authority may be appropriate simply from a prudent business standpoint.

We bring this matter to your attention in case the Senate Finance Committee might wish to consider a different approach to addressing the problem that prompted the bill.

Sincerely,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:   
G. Thomas Koester  
Assistant Attorney General

GTK:d1m  
cc: Senator Jack Coghill  
Senator Jalmar Kerttula

HOUSE LETTER OF INTENT  
HCS CSSB 484 (Res)

It is the intent of the Legislature that the Board of the Agricultural Revolving Loan Fund will give all possible consideration to restructuring of loans when the applicant is able to make a reasonable showing of the need for a restructuring. The Legislature strongly urges the Board to give immediate attention to the loans of farmers who are substantially delinquent and who have some promise of being able to meet the demands of a restructured loan.

The Legislature also intends that "persons who are residents of the state" will include corporations whose ownership is more than 50% ALaskan.

*Cortner*

~~MASTER~~

Original sponsor: Judiciary Committee  
by Request

DNR comments

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 484 (Finance) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the powers of and loans made by  
the Agricultural Revolving Loan Fund Board; and  
providing for an effective date."

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

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\* Section 1. AS 03.10.050 is amended by adding new subsections to read:

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Handwritten: b, A, [ ]

(d) To facilitate execution of its duties, the Agricultural  
Revolving Loan Fund Board may appoint, supervise, and remove a finan-  
cial analyst.

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(e) To encourage the prompt payment of loans, the department may  
establish a program of credits for persons who have a loan from the  
agricultural revolving loan fund and maintain good financial standing.  
The credits may be applied against no more than two percentage points  
a year of the interest due on agricultural revolving loan fund loans.

(f) A credit may not be granted under (e) of this section to  
reduce interest due on a loan if the borrower has an agricultural loan  
in default, has a loan that has been rewritten, restructured, rolled  
over, or otherwise had its term extended or interest rate reduced, or  
has had a land payment or land clearing loan restructured.

(g) The ~~director of agriculture shall~~ dispose of property ac-  
quired by the Agricultural Revolving Loan Fund Board or by the commis-  
sioner through foreclosure, default, or other action arising out of  
agricultural loans or the sale of agricultural land. Disposals shall  
be conducted under regulations approved by the board. [The regulations  
shall ensure that the property is disposed of so as to maximize the

Handwritten: 10 For use by 6/22/88

fee parcel in Valley -  
Jerry G. Oakes - Mulligan's farm  
Kertula -

KERTULA

~~return to the state and shall require that the parcels of land that  
are composed primarily of cropland soils be restricted to agricultural  
uses.] 120 ac 80/40~~

\* Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the  
return to the state, the Agricultural Revolving Loan Fund Board may re-  
structure loans in existence on June 25, 1987, made by the board or by the  
Alaska Agricultural Action Council based upon guidelines approved by the  
board. The restructuring may only include reduction of interest to rates  
below those specified by AS 03.10.030, an extension of the term of the  
loan, and an improvement to the security interest of the state. It may not  
reduce the amount of principal and interest owed before the loan is re-  
structured.

(b) The maximum term of a loan modified under (a) of this section is  
30 years from the date of restructuring.

(c) Notwithstanding any other provision of this section, the Agricul-  
tural Revolving Loan Fund Board may approve an application for restructur-  
ing under this section only upon

(1) the applicant's written release of the state, including the  
Alaska Agriculture Action Council, the agricultural revolving loan fund,  
and the University of Alaska, from all potential liability for actions and  
omissions occurring before the date of restructuring that relate in any way  
to a state farm project, land sale, land sale relinquishment, farm loan, or  
loan application or loan modification application, whether granted or  
denied by the state; and

**HALFED** (2) assignment by the applicant to the board of the proceeds  
from the federal government under 7 U.S.C. 1442 (Conservation Reserve  
Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended.

(d) In order to provide an incentive and opportunity to continue milk  
production, the board shall restructure the debt of any dairy farm that has

not in BK  
to be in the  
board  
payments  
need under  
restructured loan

where needed

and etc. for p. 3 (top)  
add to ...  
the ...

Based on demonstrated financial need and ability to meet the terms of a repay, the loan restructured loan.

Based on financial need

(large that land to production need) since 15. problem

1 produced at least 30,000 pounds of milk a month since November 15, 1985,  
2 and continues to produce 30,000 pounds of milk a month and uses a majority  
3 of Alaskan grown grain and forage. If milk production falls below 30,000  
4 pounds a month, the restructured debt shall become immediately due and  
5 payable. Restructure under this section is subject to the same limitations  
6 and conditions as provided in (a), (b), and (c) of this section.

7 \* Sec. 3.1 Section 2, of this Act is retroactive to <sup>and Sec 3</sup> ~~June 25~~ <sup>January 1</sup> 1987.

8 \* Sec. 4.5 This Act takes effect immediately under AS 01.10.070(c).

Sec. 3. Sec 3 of SLA 1986 (6, 109) is repealed. (orig) CRP law of Halford's

HALFORD

Went

M E M O R A N D U M

May 7, 1988

TO: House members  
FROM: Rep. Sam Cotten  
SUBJECT: SB 484 (Agricultural debt)

This bill is enormously important to the continued administration of Alaska's agricultural program. Under an Attorney General's opinion issued in late April (attached), it turns out that the Department of Natural Resources and the Agricultural Revolving Loan Fund (ARLF) may have lacked authority for recent loan restructurings. The litigation and financial burden that could result from this finding would be expensive and draining, as well as counterproductive.

Under Sec. 2 of the bill, the authority to restructure failing agricultural loans is clearly conferred. Several dozen loans that would have been referred to the AG's Office for collection can instead remain paying and in compliance, with no reduction in the aggregate interest and principal payable to the state. A list of the loans that have been sent to the AG's Office for collection is attached.

Sec. 1 of the bill does several related things: it allows the ARLF Board to hire a financial analyst (paragraph (d)) subject to appropriation, it establishes an incentive program for prompt payers (paragraphs (e) and (f)), and it sets conditions for the disposal of property taken by the state in foreclosure actions (paragraph (g)).

Sec. 3 of the bill allows DNR and the ARLF Board to convey the Mat Maid dairy to the Alaska dairy farmers' cooperative if, after two years of participating in managing the dairy, the cooperative is financially and administratively capable of acquiring the creamery. My attached correspondence with the commissioner sets out some of the anticipated conditions for the eventual conveyance. This, by the way, could be a major step forward for the Alaska dairy industry.

Sec. 4 of the bill repeals a section of SLA 1986 Ch. 109 that prohibited restructuring the loans of certain farmers receiving federal payments for keeping land out of

production. Instead, under Sec. 2 (paragraphs (c)(2) and (d)) of this bill, the farmers may apply for restructuring but must assign their federal payments to the state inasmuch as the proceeds are necessary to cover the payments of the restructured loans.

Sec. 5 makes the authority to restructure loans retroactive.

Sec. 6 provides an immediate effective date.

attachments

RESTRUCTURED ARLF LOANS APPROVED BY BOARD

THROUGH 4/14/88

| AREA      | NAME          | AMOUNT RESTRUCTURED |
|-----------|---------------|---------------------|
| Matanuska | Jenn          | \$1,023,465         |
| Delta     | Miller, S.    | 175,462             |
| Matanuska | Boyd          | 224,718             |
| Delta     | Karr          | 180,180             |
| Delta     | Moritz        | 64,606              |
| Delta     | Ditchen, C.   | 650,150             |
| Delta     | Golden Valley | 454,003             |
| Delta     | Mertz         | 702,067             |
| Delta     | Carpenter     | 28,957              |
| Delta     | Shultz        | 480,263             |
| Tanana    | O'Donnell     | 21,244              |
| Other     | Mercer        | 31,526              |
| Tanana    | Shoen         | 193,626             |
| Delta     | Thuerenger    | 178,933             |
| Matanuska | Baskin        | 813,838             |
| Delta     | Bradley       | 39,851              |
| Delta     | Alamasu       | 911,310             |
| Matanuska | P&M Gardens   | 332,712             |
| Matanuska | Williams, T.  | 418,119             |
| Matanuska | Pherson       | 22,000              |
| Delta     | Robertson     | 106,138             |

Total 6,873,013

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801  
PHONE: (907) 465-2400

May 7, 1988

The Honorable Sam Cotten  
Co-Chair, House Resources Committee  
Alaska State House of Representatives  
P.O. Box V  
Juneau, AK 99801

Dear Representative Cotten:

This letter is to confirm the department's commitment to sell the Matanuska Maid creamery to an Alaskan dairy farmer's cooperative before June 30, 1990, if practical and equitable terms of sale or lease/purchase can be negotiated, if the sale or lease/purchase would help ensure the future of Alaska's dairy industry, and if the sale or lease/purchase is determined to be in the best interests of the state.

As you know, the department intends to implement a one year agreement with Alaska Dairy Inc. (ADI). The agreement will provide ADI with management oversight of the Matanuska Maid land and buildings at 814 Northern Lights Boulevard in Anchorage. The purpose of this agreement is to provide local dairy producers with an opportunity to participate in and learn to manage the creamery business. If necessary, the agreement will be extended for one additional year.

I assure you that the department will not sell the creamery to a purchaser other than a cooperative of Alaska dairy producers prior to June 30, 1990, provided that the cooperative demonstrates financial stability and the management capacity to participate successfully in the operation of the business, and that existing creamery quality standards are met. In recognition of this, references to assignment will be dropped from the written agreement and an option for sale or lease purchase will be included.

Should the HCSCSSB 484 (Resources) be enacted, a sale of Matanuska Maid creamery assets at fair market value to the cooperative of Alaska dairy producers will include a dis-

May 7, 1988

count for capital improvements made and equipment purchased by contributions from members of the cooperative, during the term of the management agreement. If a cooperative of Alaska dairy farmers is unable to successfully execute the creamery purchase by June 30, 1990, the department may offer the business at a competitive bid sale to other prospective buyers. It is not the intention of the department to retain long term ownership of the creamery.

We appreciate your interest in the continuation of Alaska's agricultural industry. Please let me know if I may provide additional information or assistance.

Sincerely,

*Jeanne Gorsuch*

*for* Judith M. Brady  
Commissioner

cc: Rod Swope  
Bob Evans  
Mark Weaver  
Hal Ward

May 5, 1988

Jan Faiks  
President, Alaska State Senate  
P. O. Box V  
Juneau, Alaska

Re: Senate Bill 472 & 484

Dear Jan,

I know of no words which can adequately express the appreciation which all Point MacKenzie farmers feel because of your tremendous efforts during the session in moving the various agriculture bills. We shall always be grateful for your dedicated and genuine efforts.

But as often times occurs in life and more often than not in the political world what is right does not prevail. Today Sam Cotten destroyed SB 472 by taking the detailed language in SB 472 and adding some language in SB 484 which was very weak and vague, his intent being to destroy the intent and purpose of SB 472. Therefore all of the efforts of so many have been for naught.

But even though the dairy farmers may have lost in their effort to effect the privatization of the creamery I would ask that you continue to give SB 484 priority treatment. Although SB 484 has no benefit to me I do believe strongly that it's passage in ANY FORM is critical to the future of the Point MacKenzie dairy project.

I would therefore ask that you continue to do everything you can to see that SB 484 becomes law. I would ask that when the bill passes the House that you appoint pro-agriculture Senators to the conference committee. I believe that Senators Kerttula, Halford, and Josephson would be excellent appointments because of their prior efforts and work on the agriculture issues.

I am returning to the real world today and although I am saddened by the dairy farmer's defeat today I believe that the benefits to all agriculture are so important to the state that I will not let my personal animosity supersede what is in the public interest.

Thank you again for all of your assistance.

Your friend,

Joseph Patrick Cange

cc: Senator Halford  
Senator Josephson  
Senator Kerttula  
Commissioner Brady

May 7, 1988

The Honorable Sam Cotten  
Co-Chair, House Resources Committee  
Alaska State House of Representatives  
P.O. Box V  
Juneau, AK 99801

Dear Representative Cotten:

This letter is to confirm the department's commitment to sell the Matanuska Maid creamery to an Alaskan dairy farmer's cooperative before June 30, 1990, if practical and equitable terms of sale or lease/purchase can be negotiated, if the sale or lease/purchase would help ensure the future of Alaska's dairy industry, and if the sale or lease/purchase is determined to be in the best interests of the state.

As you know, the department intends to implement a one year agreement with Alaska Dairy Inc. (ADI). The agreement will provide ADI with management oversight of the Matanuska Maid land and buildings at 814 Northern Lights Boulevard in Anchorage. The purpose of this agreement is to provide local dairy producers with an opportunity to participate in and learn to manage the creamery business. If necessary, the agreement will be extended for one additional year.

I assure you that the department will not sell the creamery to a purchaser other than a cooperative of Alaska dairy producers prior to June 30, 1990, <sup>and will transfer to the creamery</sup> provided that a majority of cooperative members are performing satisfactorily on loan payments, existing creamery quality standards are met, the cooperative demonstrates the management capacity to successfully participate in the operation of the creamery and ~~has~~ sufficient working capital to operate the creamery consistent with parameters developed for other businesses of this type. In recognition of this, references to assignment will be dropped from the written agreement and an option for sale or lease purchase will be included.

Should the HCSCSSB 484 (Resources) be enacted, a sale of Matanuska Maiu creamery assets at fair market value <sup>for below market value if determined it meet</sup> to the cooperative of Alaska dairy producers will include a discount for capital improvements made and equipment purchased by contributions from members of the cooperative, during the term of the management agreement. If a cooperative of Alaska dairy farmers is unable to successfully execute the creamery purchase by June 30, 1990, the department may offer the business at a competitive bid sale to other prospective buyers. It is not the intention of the department to retain long term ownership of the creamery.

We appreciate your interest in the continuation of Alaska's agricultural industry. Please let me know if I may provide additional information or assistance.  
Sincerely,

*Handwritten notes:*  
Care  
10

*Handwritten notes:*  
transfer  
creamery  
copy

*Handwritten note:*  
↻

*Handwritten note:*  
meet the state's interest and it is justified under the Circ. 1112

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

### Land and Clearing Debt Restructuring Completed to Date

- (a) Nelson                      Not in CRP or any other federal program
- (b) Schultz                    CRP, land and clearing and ARLF debt  
restructured (no write down of ARLF  
debt)
- (c) Green                      CRP on other parcel
- (d) Carlyle                    Clearing debt only restructured
- (e) Strong                     Clearing debt only restructured

-All actions including waiver of the leasing step and including CRP have been suspended.

-No more relinquishments will be processed except in strict compliance with SB 349, which will sunset on June 30, 1988.

-All actions on land and clearing debt will be reported to the Senate Finance Committee.

~~SAM~~  
This is what  
Gave Malford  
had down.  
DNR  
to calm  
Re SB 484  
Ned

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SB 484

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

May 5, 1988

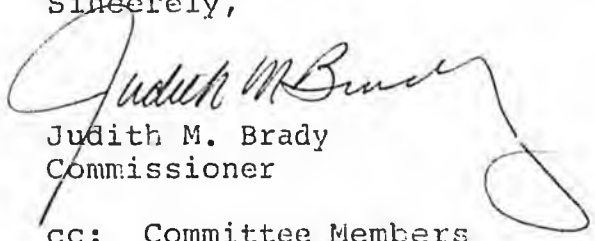
The Honorable Sam Cotten  
Co-Chair, House Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Representative Cotten:

I appreciate the House Resources Committee's consideration of agricultural problems and support the committee's substitute of SB 484. I assure you that the Department of Natural Resources and the Agricultural Revolving Loan Fund Board will not sell the Matanuska Maid Creamery during the one-year term of the creamery management agreement with Alaska Dairy, Inc. We hope that in one year Point MacKenzie farm operations will have stabilized to the point where dairy farmers are able to take on the obligation of a creamery purchase.

Please let me know if you would like additional information about the creamery.

Sincerely,



Judith M. Brady  
Commissioner

cc: Committee Members  
Rod Swope  
Ron Clarke  
Bob Evans  
Mark Weaver  
Senator Kerttula  
Senator Szymanski  
Representative Menard  
Representative Larson

FISCAL NOTE

REQUEST:

Revision Date: 3/31/88  
Tide: Transfer Matanuska Maid Assets

Agency Affected: Natural Resources  
BRU: Agricultural Management

Sponsor: Sen. Resources Committee  
Requestor: Senate Finance Committee

Components: ADRF

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING         | FY 88 | FY 89    | FY 90   | FY 91   | FY 92   | FY 93   |
|-------------------|-------|----------|---------|---------|---------|---------|
| PERSONAL SERVICES |       |          |         |         |         |         |
| TRAVEL            |       |          |         |         |         |         |
| CONTRACTUAL       |       |          |         |         |         |         |
| SUPPLIES          |       |          |         |         |         |         |
| EQUIPMENT         |       |          |         |         |         |         |
| LAND & STRUCTURES |       |          |         |         |         |         |
| GRANTS, CLAIMS    |       |          |         |         |         |         |
| MISCELLANEOUS     |       |          |         |         |         |         |
| TOTAL OPERATING   | -0-   | -0-      | -0-     | -0-     | -0-     | -0-     |
| CAPITAL           | -0-   | -0-      | -0-     | -0-     | -0-     | -0-     |
| REVENUE           | -0-   | (3222.2) | (222.2) | (222.2) | (222.2) | (222.2) |

FUNDING: (Thousands of Dollars)

|               |  |  |  |  |  |  |
|---------------|--|--|--|--|--|--|
| GENERAL FUND  |  |  |  |  |  |  |
| FEDERAL FUNDS |  |  |  |  |  |  |
| OTHER         |  |  |  |  |  |  |
| TOTAL         |  |  |  |  |  |  |

POSITIONS:

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

ANALYSIS : (Attach a separate page if necessary)

This fiscal note adjusts the revenue loss to the state related to transfer of the creamery to a dairy cooperative because the cash, accounts receivable, inventory and prepaid expenses will not be included in the transfer. (See attached explanation).

Prepared by: Hal Ward Phone: 745-7200  
Division: Division of Agriculture Date: 3/31/88

Approved by Commissioner: *L. Gorman* Date: 3/31/88  
Agency: Natural Resources

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Explanation for Revised Fiscal Note

CSSB 472 (Resources)

| <u>FY 89</u> |                              | <u>FY 90-93</u>                |
|--------------|------------------------------|--------------------------------|
| 156.0        | Lease Income                 | 156.0 Lease Income             |
| (148.2)      | Loss of Opportunity for Sale | (148.2) Loss of Opportunity    |
| (230.0)      | Depreciation                 | (230.0) Depreciation           |
| (3000.0)     | Loss of Capital Improvements |                                |
| <hr/>        |                              |                                |
| (3222.2)     | Loss for FY 89               | (222.2) Loss per year FY 90-93 |

Lease payment income is projected to be \$156,000 per year (\$13,000 per month). The loss in income from immediate sale of the land and buildings in Anchorage over 20 years at 8% for the current tax value (March, 1988) is \$1,475,500 (\$148,200 per year). The loan fund would receive no repayment for the contribution of over \$3,000,000 in operating capital and plant improvements during the last three years.

The recently incorporated cooperative that is seeking to lease/purchase the creamery has no assets and no financial capacity to provide operating capital or plant maintenance. The exposure to the State of Alaska as owner of the facility would include working capital of 3,000,000 and replacement of equipment based on depreciation of \$230,000 per year for 15 years to offset obsolescence and provide for future expansion.

*Draft*

AGREEMENT

This Agreement is made among Alaska Dairy, Inc. (hereafter "ADI"), the State of Alaska, Department of Natural Resources, Agricultural Revolving Loan Fund (hereafter "ARLF"), and the Alaska Quality Dairy Cooperative, Inc. to provide management oversight for the creamery located in Anchorage, Alaska, and the feedmill and store located in Palmer, Alaska, both formerly owned by Matanuska Maid, Inc. (hereafter "the creamery"), and other rights and duties.

RECITALS

1. ARLF commenced its operation of the creamery on November 16, 1984.
2. ARLF completed its acquisition of the creamery assets in December, 1985.
3. The Department of Natural Resources and ARLF have concluded that the creamery should receive management oversight from a corporation which has representation from the dairy farming community, the State of Alaska, and the Alaska business community.

TERMS

1. ARLF, with the consent of the Commissioner of the Department Natural Resources, ADI, and the Alaska Quality Dairy Cooperative, Inc. enter into this Agreement for ADI to provide management oversight for the creamery for the period January 1, 1988 to December 31, 1988, and other rights and duties. ARLF may extend this Agreement for one year.

2. ADI will receive no fee for its services under this Agreement. ADI is willing to enter into this contract because the members of its parent corporation are dairy farmers. The dairy farmers desire an agreement that allows the farmers to participate in the management oversight for the creamery, which is currently the only entity which will purchase the milk produced on their farms. ADI and Alaska Quality Dairy Cooperative, Inc. agree that the ability to participate in management oversight has economic value to them. The State agrees that participation from the farmers in management oversight has economic value to the State.
3. ADI agrees that it will at all times faithfully, industriously, and to the best of its ability, experience, and talents perform the oversight management for production, finance, and marketing in the ordinary course of business for the creamery as it existed on the date of this agreement, except when its oversight management authority is limited by other terms of this Agreement. Management decisions outside the ordinary course of business for the creamery as it existed on the date of this Agreement require ARLF Board approval.

The directors of ADI acknowledge they have a fiduciary duty to ARLF arising out of their responsibility to manage ARLF assets.

4. ADI agrees that in performing its duties under section 3 above that it will not permit any combination of payable accounts to exceed \$5,000.00 for longer than 45 days.
5. The members of the Board of Directors of ADI are:

Thomas Tatka, an ARLF Board representative  
Karen Lee —  
John Seawell  
Paul Huppert —  
Joseph VanTreeck —  
John Cairns  
Augie Heibert  
Ron Bosi  
Chris Swalling  
Joseph C. Cange —  
Harvey Baskin —  
Robert Havemeister —  
Director of the Division of Agriculture or  
his designee

The members of the executive committee of the Board of Directors are:

John L. Seawell  
Thomas Tatka, an ARLF Board representative  
Karen O. Lee  
Joseph P. Cange  
Paul Huppert  
Director of the Division of Agriculture or  
his designee

The Director of the Division of Agriculture will serve as a non-voting member of the executive committee; unless there is a tie vote among the executive committee members attending.

If the Director of the Division of Agriculture chooses to designate another state employee to act on his behalf, he shall do so in writing. Karen Lee will serve as President

of ADI, Paul Puppert will serve as Vice-President of ADI, and Joseph P. Cange will serve as Treasurer of ADI. Any change in the members of board of directors or the executive committee requires ARLF Board approval.

6. ADI agrees to the terms of the ARLF professional services contract with Joe Van Treeck dated August 26, 1987. ADI may not alter or terminate the Van Treeck professional services contract without ARLF board approval.
7. The ARLF board may terminate this Agreement for cause, including but not limited to, breach of this Agreement, with 30-days written notice. The ARLF board may terminate this agreement on five days written notice in the event that there is \$5,000.00 cumulative in any payable accounts more than 45 days past due. ADI and the Alaska Quality Dairy Cooperative, Inc. waive damages arising out of termination.
8. As further consideration for the opportunity given to the dairy farmers to participate in the management oversight for the creamery, ADI and the Alaska Quality Dairy Cooperative, Inc. (hereafter in this section 8 referred to as "Indemnitors") agree to hold harmless and indemnify the State of Alaska, the directors of ADI, and the ARLF Board members (hereafter in this section 8 referred to as "Indemnitees") from any and all liability, damage, loss, cost and expense which may accrue to or be sustained by Indemnitees on account of any claim, action, complaint

and/or suit arising out of or related to the business of the creamery. Indemnitors agree that Indemnitees, in the sole discretion of Indemnitees, may hire attorneys to defend each of the Indemnitees. Indemnitors agree to pay directly to the attorneys the costs and expenses for attorney services as such costs and expenses are incurred. The obligations of Indemnitors continue after the termination of this Agreement as to any claim, action, complaint and/or suit arising out of or related to the business of the creamery during the term of this Agreement.

As further consideration for the opportunity given to the dairy farmers to participate in the management oversight for the creamery, ADI, the Alaska Quality Dairy Cooperative, Inc. and all directors of ADI who have an interest in a dairy farm, or an interest in a partnership or corporation which operates a dairy farm waive, for itself, themselves, and on behalf of any partnership or corporation in which they have an interest, all claims, actions, complaints and/or suits arising out of or related to the State's ownership, or operation of the creamery occurring during the term of this Agreement. The directors of ADI who have an interest in a dairy farm, or an interest in a partnership or corporation which operates a dairy farm warrant that they have the authority to bind the partnership or corporation.

9. Title to all real and personal property of the creamery remains in ARLF's name. ADI may not dispose of or in any way encumber property without ARLF Board approval.

The ARLF board reserves the right to sell any real or personal property of the creamery that is not essential to the operation of the creamery. Without limiting the preceding sentence, the ARLF Board reserves the right to change the product line of, sell, lease, or otherwise dispose of the feed mill and store provided the ARLF board makes a written decision of its intended action and notifies ADI by July 1, 1988.

10. ADI may not borrow money from any source for the operation of the creamery without ARLF approval, except ADI may allow the day-to-day creamery manager to bind the ARLF to trade credit terms that were in effect prior to the date of this agreement.
11. All profits and/or losses generated by the creamery operation belong to ARLF. Net profits may not be spent without ARLF Board approval. The ARLF Board will review the financial statements as of June 30, 1988 and December 31, 1988 to determine whether cumulative net profits for the prior six months exist. ARLF may withdraw cumulative net profits after the review of financial statements described in the preceding sentence, but may not withdraw cumulative

net profits more than once in a six-month period or withdraw cumulative net profits prior to the review of financial statements.

ARLF desires to limit monthly operating losses of the creamery. ARLF will provide up to a maximum of \$60,000 a month for January 1988, February 1988, March 1988, April 1988, May 1988, and June 1988 to cover operating losses at the creamery upon written request by ADI. The money available for any month will not exceed the operating loss for the prior month and in any event will not exceed the amounts stated in the preceding sentence. The loan manager for ARLF is directed to disburse money consistent with this paragraph after receipt of the ADI written request. ADI may not increase the price of milk as it exists on November 1, 1987 paid to dairy farms if the creamery shows an operating loss. ADI may lower the price of milk paid to dairy farms at any time, however, ADI will lower the price of milk paid to dairy farms if the operating loss exceeds \$60,000 in any one month during the period January 1, 1988 to June 30, 1988. After July 1, 1988, ADI will adjust the price of milk paid to dairy farms to prevent operating losses. If ADI fails to lower the price of milk paid to dairy farms as required in this paragraph, ARLF, at its option, may adjust the price of milk, terminate this Agreement, or take other

action that ARLF deems appropriate.

12. ADI may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, physical handicap, sex, or marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, or marital status, change in marital status, pregnancy, or parenthood. ADI shall take affirmative action to insure that the applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, sex, or marital status. This action must include, but need not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. ADI shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.

ADI shall state, in all solicitations or advertisements for employees, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national

origin, age, physical handicap, sex, or marital status.

ADI shall send to each labor union or representative of workers with which ADI has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of ADI's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.

ADI shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any construction, maintenance, or service contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.

ADI shall cooperate fully with the office or agency of the State of Alaska which seeks to deal with the problem of unlawful discrimination, and with all other State efforts to

guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

Full cooperation in the preceding paragraph includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of ADI to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting in inspection of ADI's facilities; and promptly complying with all state directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

13. ADI and the Alaska Quality Dairy Cooperative, Inc. agree that they will not discriminate between members and non-members in the purchase or sale by the creamery of raw material or products. Alaska Quality Dairy Cooperative,

Inc. will offer membership on equal terms to all dairy farmers whose farms are located south of the Alaska Range.

14. ADI, through the creamery employees, will provide quarterly financial reports and quarterly written narrative reports to the ARLF Board in a form determined by the ARLF Board, within 30 days after the end of the quarter. ADI, through the creamery employees, will prepare monthly financial reports of the creamery operation within 20 days of month end.
15. ADI may not arrange for or begin plant and/or equipment expansions without ARLF Board approval. ADI may not arrange for or perform repairs on the plant and/or equipment if the cost will exceed \$30,000 except in an emergency.
16. ADI will arrange to add itself as a named insured to the following insurance policies and any successor policies:

Industrial Indemnity  
Policy No. CN882-7673

Insurance Co. of North America  
Policy No. D1416425A

Chubb Group of Insurance Company  
Policy No. B78316110

F.B. Beatties  
Policy No. FB3 3143

17. ADI agrees that any action of indulgence or delay, failure to act, or failure to exercise any right or remedy by ARLF shall not affect or impair the obligations of ADI, or be construed as a waiver by ARLF or, otherwise affect ARLF's rights under this Agreement.

- 18. ARLF may assign this agreement after written notice to ADI.
- 19. This agreement will be construed by the laws of the State of Alaska.
- 20. ADI and ARLF agree that if any of the provisions hereof should be invalid or unenforceable, such unenforceability or invalidity shall void this Agreement in its entirety.
- 21. The date of this Agreement is \_\_\_\_\_.

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

ALASKA DAIRY INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

ALASKA QUALITY DAIRY  
COOPERATIVE INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

STATE OF ALASKA  
AGRICULTURAL REVOLVING  
LOAN FUND

By: \_\_\_\_\_

Its: \_\_\_\_\_

Consented To: \_\_\_\_\_  
Commissioner of  
Natural Resources

DRAFT

May 6, 1988

The Hon. Judy Brady  
Commissioner  
Department of Natural Resources  
P.O. Box M  
Juneau, AK 99811

Dear Commissioner Brady:

I am writing about the Mat Maid creamery now in the state's possession. I appreciate the participation of you and your staff in recent discussions about the future of the creamery and the Alaska dairy industry, and naturally I share your interest in seeing both succeed over the long term. I also recognize your interest in getting the state out of the creamery management business.

After the Resources Committee's review of SB 484 on ag debt restructuring and SB 472 on transferring the dairy, I am interested in pursuing several concepts with you.

The dairy farmers' largest concern (which led to the introduction of SB 472) appears to be that the Alaska dairy industry needs security, or assurance, about its future stake in the creamery. They point out that most creameries nationwide are coop-owned and that the Alaska industry needs to be able to control prices and marketing at the creamery.

The Department of Natural Resources has successfully managed the creamery and the Alaska industry seems to be on the verge of stability and success. Still, I understand the Department's concerns about the proposal to transfer the creamery to the coop: first, that the coop should be able to gain control gradually in a way that doesn't destabilize the farmers' other operations or debt and which provides some time to gain management experience; and second, that the Department cannot sell the creamery to a selected buyer under existing law.

SB 484 now contains language that should give the Department of Natural Resources two years during which to lease the creamery to the coop and give the coop the opportunity to gain the experience necessary to own and manage the coop unilaterally. It also provides DNR with authority to sell the creamery to the dairy coop noncompetitively, and at

below market value if such a sale would be in the state's interests.

I am hopeful, after discussions with your staff, that the Department will agree to amend the pending lease agreement between the coop and the Department to include an option for the coop to purchase the creamery after two years' lease if the coop has met existing quality and production standards and appears to be ready to take over the creamery.

SB 484 has been written to allow a transaction at less than market value in case the 1990 appraisal of the creamery should show that the coop would not be able to meet the payments for the creamery. If the Department determines in 1990 that a below-value sale is in the public interest (which it may be), there should be flexibility to sell the creamery to a functioning, successful coop at a price that can be fairly paid.

Some of the farmers have been concerned about paying the 1990 value for the creamery. I understand that under ordinary circumstances the Department writes its leases so that rental adjustments and conveyances are based on value not reflecting improvements made at the expense of the lessee. I believe the same approach will be taken in valuing the creamery for sale to the coop.

I hope that the Department and the ARLF Board will recognize, in 1990 or before if the coop appears ready, that the Legislature enacted a special provision for creamery transfer in hopes that the Alaska industry could be fostered and enhanced. This does not mean that the language included in SB 484 encourages a below-market sale of the creamery, nor that the coop should be guaranteed the conveyance unconditionally. However, if the Department in 1990 determines that the coop has met quality and production standards, and if the coop can afford to purchase the creamery at some reasonable price, I would hope to see the Department and the ARLF Board proceed with the sale.

Some of the farmers have also been concerned because they lack discrete authority, under the proposed lease, to establish milk prices. However, from my reading of the agreement, the coop will have important influence over the milk price, and of course should have complete control over the milk price in two years if the creamery conveyance is made.

I hope that the Department will be able to commit to rewriting the proposed lease agreement 1) to remove references to assignment, and 2) to include the option for the coop to purchase the creamery in two years if quality and production standards have been maintained. A commitment by the Department to these two points will go a long way

toward stabilizing Alaska's dairy industry and allowing the careful and fair transfer of the creamery to the coop.

Sincerely,

Rep. Sam Cotten

5-1589T ✓  
Bradley  
5/5/88

Original sponsors: Josephson, Szymanski,  
Halford, et al.

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 472 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the commissioner of natural  
7 resources to transfer the creamery formerly owned by  
8 Matanuska Maid, Inc."

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

10 Section 1. LEGISLATIVE INTENT. It is the intent of the legislature  
11 that the authority granted by sec. 2 of this Act be exercised to

12 (1) promote development of a stable, profitable, and unsub-  
13 sidized Alaskan dairy industry;

14 (2) encourage innovative and efficient management of dairy farms  
15 and processing facilities by the private sector;

16 (3) encourage production and marketing of competitively-priced  
17 Alaskan dairy products in lieu of imported products; and

18 (4) use past investments of public money in the dairy industry  
19 to further the objectives described in (1) - (3) of this section without  
20 depleting the agricultural revolving loan fund.

21 \* Sec. 2. LEASE-PURCHASE AGREEMENT AUTHORIZED. The commissioner of  
22 natural resources may enter into a one-year lease-purchase agreement with a  
23 cooperative composed of Alaska dairy product producers for the ownership,  
24 management and operation of the former Matanuska Maid Creamery at 814  
25 Northern Lights Boulevard, in Anchorage. The commissioner and the coopera-  
26 tive shall agree on the composition and membership of the board of direc-  
27 tors that manages the Matanuska Maid Creamery unless the commissioner  
28 chooses not to retain veto authority over the composition and membership of  
29 the board. The lease-purchase agreement is renewable annually for 14 years

1 if the lessee has complied with health, product quality, and other terms  
2 and conditions of the lease-purchase agreement and has managed the former  
3 Matanuska Maid Creamery economically, profitably, and efficiently under  
4 the terms of the lease-purchase agreement. The lease-purchase agreement  
5 shall require the lessee to treat each producer of dairy products equally.  
6 The lease-purchase agreement may be negotiated by the commissioner of  
7 natural resources at any time before July 1, 1989, but it is the intent of  
8 the legislature that the lease-purchase agreement be in effect on July 1,  
9 1989. The lease-purchase payment due from the lessee is an amount equal to  
10 \$.50 per hundredweight of milk processed per month at the creamery or  
11 \$13,000 per month, whichever is greater, and the lease-purchase payment  
12 shall be applied to the purchase price. If the cooperative composed of  
13 dairy product producers has continuously operated the former Matanuska Maid  
14 Creamery under a lease-purchase agreement authorized under this section  
15 through June 30, 1999, the commissioner of natural resources shall, at the  
16 request of the lessee at any time after June 30, 1999, but before June 30,  
17 2004, transfer the creamery to the lessee. In valuing the assets of the  
18 former Matanuska Maid Creamery for the purposes of a transfer under this  
19 section, the building shall be valued at its fair market value at the ini-  
20 tiation of the lease-purchase agreement and the land shall be valued at its  
21 fair market value on the date of the request by the lessee for a transfer  
22 under this section.  
23  
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29

SB 484  
See FINE

SECTION 1:

If, and only if, determined necessary by the Agricultural Revolving Loan Fund Board of Directors to maximize return on loans, the Board may modify the terms of notes and security instruments entered into or administered by the Agricultural Revolving Loan Fund.

SECTION 2:

Modification may reduce interest to rates below, and increase terms beyond, those specified in AS 03.10.030.

SECTION 3:

The terms of any modification under this Act shall be calculated to return not less than the amount of the original principal debt to the fund except as a credit for prepayment.

SECTION 4:

The maximum term of any modified loan shall be 30 years.

SECTION 5:

The effective date of this Act is retroactive to June 25, 1987.

What will the people do if their restrictions aren't legal?  
1. state will sue for part  
2. they'll counter-sue.

220 brms. \$40m total debt  
30m due/default  
~100 pass not in default  
defaulter 180 days  
1/3 delinq 90 days  
70 current - small balances / other income -  
who's in default now? - 90 days  
can id'g -  
very few foreclosures - none in the  
whole system in past two yrs.  
now he ~ 90 foreclosures in AGO