

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7661 SENATE RESOURCES

wood for barns, garages and shops. "We're only getting about half of what we need to fulfill our markets."

But the proposed settlement hasn't affected logging from any old timber sales nor should it hamper mining on existing leases. That should allow the huge Fort Knox gold mine near Fairbanks to go forward.

The state also can go ahead with recreational or commercial development that might increase the value of the land, Koester said.

The proposed settlement is intended to resolve one of Alaska's most complex land disputes, which dates back to territorial days when the federal government authorized a trust of 1 million acres to fund Alaska mental health programs.

After Alaska became a state in 1959, the government moved to dissolve the trust and transferred much of the prime land. That triggered a 1982 class-action lawsuit, and the state and mental health attorneys have been struggling to resolve the dispute since.

Once finalized, the settlement will be submitted to state Superior Court for approval. In court, it faces opposition from the fourth mental health attorney, Philip Volland, who doesn't

think the plan will raise enough money quickly enough for his clients.

"Rather than put money into the programs, it puts money into a bureaucracy to go through the land selection process," Volland said.

The plan also will be challenged by environmentalists who have been allowed to join the approval process.

Even if the state court approves the plan, it may face appeals to the state and federal supreme courts before land can be transferred, according to Volland. As for the 4 million acres of collateral, they won't be fully freed up until the entire trust is rebuilt, Volland said.

That process could take six to eight years or even longer, Volland said.

Volland is hoping for new negotiations that will ditch the idea of rebuilding the 1 million acre trust, and replace it with a guaranteed percentage of the state budget pledged to mental health programs and a smaller chunk of land.

Cole said such negotiations are unlikely.

"It's taken well over a year to get to this point," Cole said. "Virtually every word in the agreement has been the subject of extensive discussion."

TRUST: Efforts to free up resources may boomerang



KEY

Major tracts to be included in a new Mental Health Trust Settlement if the deal is approved by the court

- Tanana forest lands
- Healy-most of the coal land being mined by Usibelli Coal Co., the state's only coal producer
- Palmer/Sutton-Wishbone Hill, a coal deposit proposed for development by Idemitsu Kosan, a Japanese corporation
- Beluga coal deposits-one of Alaska's largest, located on Cook Inlet's west side. Proposed for development by Diamond Chutna Co.
- Homer Spit-some tracts along the edge of the spit, a prime recreational development area
- Haines Forest Resources Area-timber land that borders Chilkat State Game Preserve. The timber land has been the subject of extensive public review, and cutting is being limited to help protect eagles

Lands pledged as security

- ① Chandalar District-gold prospects in northern Alaska
- ② Fort Knox Gold Project-located near Fairbanks, the state's richest gold deposit
- ③ Iron Creek-precious metal prospects near Talkeetna
- ④ Susitna forest land-more than 500,000 acres located in the salmon rich Southcentral drainages. Valued by conservationists and sportsmen who took part in an extensive state planning process. The final plan proposed minimal logging
- ⑤ Cook Inlet-150 active offshore oil and gas leases

SB 469

Council backs land trust amendment

4-21-92 News

The Resource Development Council has thrown its support behind a Senate bill intended as an alternate solution to the legal battle over the Mental Health Lands Trust.

The trust was set up by the federal government to help fund Alaska mental health programs but was abolished by the state government. Gov. Wally Hickel, in a bill approved by the

legislature last year, is seeking to solve the dispute by re-creating the original trust.

But opponents of that plan, now pending in court, say it would cast a legal shadow over more than 6 million acres of land and Cook Inlet lease tracts that might eventually be put back in the trust.

The alternate solution, proposed in a recent Senate

amendment, would re-create part of the trust and then guarantee that at least 0 percent of the state budget would be dedicated to mental health programs. It has been backed by environmentalists and one of four attorneys representing mental health litigants.

"RDC's executive committee urges the governor and his commissioners to intro-

duce and support the amendment," wrote RDC president John Renne in a letter to the governor and his top staff.

"The proposed amendment, if enacted, offers a true win-win situation to all parties involved in ... the Mental Health Trust litigation," said Bob Stiles, an RDC member who also serves as president of the Alaska Coal Association.



Susitna Valley Lodge Association

March 23, 1992

Senator Jim Duncan, Vice-Chairman
Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

RE: SUGGESTION FOR \$5 MILLION BUDGET CUT

Dear Senator Duncan,

At hearings Saturday, the Finance Committees appealed to the public to suggest ways to cut costs. A good place to start is by eliminating the \$5 million request by the administration to prepare for implement of the proposed mental health land trust settlement.

The settlement agreement, negotiated behind closed doors for the past ten months, is still not finalized... the judge has yet to accept the proposal... it may still be rejected by the class... and most importantly, there is a lawsuit questioning whether the proposed settlement is constitutional, or in violation of the statehood act. A number of very legitimate and complex issues have been raised that will put this thing in litigation for years; and, could very likely stop it cold. In simple terms, the proposed settlement may not be legally possible.

However, according to OMB, DNR is requesting \$1.4 million dollars in the operating budget, and another \$2.5 million in capital requests, to forge ahead with preparations for the implementation of this thing! Another \$1 million is being requested to pay for the increasing numbers of attorneys.

With the looming deficit, we certainly have more responsible ways to spend our money. The land work necessary to implement the proposed settlement is highly complex, labor intensive, and will be extremely costly. It would be far more appropriate to at least wait until we know if such expenditures are necessary.

You might want to look at other options in the meantime such as an alternative settlement proposal which is circulating, and which I understand has been sent to you. It avoids all the land exchanges (and therefore the lawsuits, and associated land work), would be far cheaper and quicker to implement, and appears to be generating broad support.

Sincerely,

Duke Bertke
President
Susitna Valley Lodge Assoc.

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MEMORANDUM

April 28, 1992

SUBJECT: Amendment S.2 to SB 469, mental health trust legislation
(Work Order No. 7LS-2152/S.2)

TO: Senator Lloyd Jones, Chair
Senate Resources Committee
ATTN: Terry Otness

FROM: Jack Chenoweth
Legislative Counsel 

This is a "nice but not necessary" amendment. Rather than substitute reference to "superior court" to existing references to the "supreme court," in the alternative, to accomplish the objectives being sought by the court system, the committee might simply delete these provisions from the bill. ^{1/}

The provisions with which you are concerned were included in this measure to alter the presumption that civil cases are commenced and first tried in the state's superior court. Under AS 22.10.020, the superior court is the court of general jurisdiction, and has jurisdiction over challenges to the implementation of the provisions of this Act. See AS 22.10.020(a). Moreover, provision is made in the Civil Rules for appointment of special masters. See Alaska Rules of Civil Procedure 53.

My point is this: since the statutes and civil rule already address these circumstances, it isn't necessary to make special provision for these directives in this measure. You could just delete sections 1 and 9 and have the same result.

JC:gc
92-324.glc
Enclosure

^{1/} It is significant to this memo to note that the assignment of jurisdiction to the Alaska Supreme Court of all questions and issues relating to last year's mental health trust legislation made by sec. 57 of that Act (sec. 57, ch. 66, SLA 1991) is to be repealed by this bill. See sec. 8, repealing, among other sections, the assignment of jurisdiction that is made by sec. 57, ch. 66, SLA 1991.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 469

Page 1, lines 5 - 7:

Delete all material and insert:

"* Section 1. AS 22.10.020 is amended by adding a new subsection to read:

(j) The superior court is the court of original jurisdiction to hear and determine any dispute arising under AS 37.14.036(c) - (e)."

Page 3, line 3:

Delete "supreme"

Insert "superior"

Page 3, lines 26 - 30:

Delete all material and insert:

"* Sec. 9. SPECIAL MASTER. The superior court may refer the proceedings under AS 22.10.020(j), added by sec. 1 of this Act, to a special master."



Resource Development Council

for Alaska, Inc.

121 West Fireweed Lane, Suite 292, Anchorage, Alaska 99503-2035

Phone 6077278-0700 Fax 278-3887

April 4, 1992

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Senator Ted Stevens

Governor Walter J. Hickel
PO Box 110001
Juneau, Alaska 99811-0001

Governor Hickel:

The Resource Development Council for Alaska, Inc., has been involved in the resolution of the Mental Health Trust Lands issue for some time and applauded the Hickel administration's actions in 1991 to achieve a settlement of the issue. RDC's executive committee believes that those efforts, as codified in chapter 66, brought this divisive and constricting issue to a point that no other governor has been willing or able to achieve.

In reviewing the multitude of issues raised by chapter 66, and the recent proposed amendment by those involved in the case, RDC believes that minor changes are necessary. Simply put, 95% of the problem was solved through chapter 66, and the amendment being offered by mental health advocates and other industry groups will resolve the remaining 5% of this long-term lands dilemma.

Since it was your handiwork and that of your commissioners that brought this issue to resolution in 1991, RDC's executive committee urges the governor and his commissioners to introduce and support the amendment that would reconstitute approximately 500,000 acres of original trust land and provide a 6% payment of unrestricted general fund revenues to mental health trust programs.

RDC appreciates your efforts, and the work of your commissioners and advisors to close the chapter on this important Alaska lands issue.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

John Rense
President

cc:
Max Hodel
Charlie Cole
Harold Heinze
Paul Fuhs

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April 2, 1992

Via Fax

Charles E. Cole
Attorney General
Box K
Juneau, AK 99811

Re: Weiss v. State

Dear Charlie:

I understand that you will be meeting with the administration regarding the mental health lands case. As you know, I have recently encouraged consideration of an alternative settlement which in my view solves the problems associated with delays and litigation over the proposed settlement agreement. The alternative proposal has received support from the resource development community, the intervenors who have challenged Ch. 66, and members of the plaintiff class who are unhappy with the proposed settlement.

In my public discussions of this alternative proposal I have not articulated how it can result in a speedy release of the injunctive restraints on mental health land. As this may be important to your consideration, I wanted to share my thoughts on how this can be addressed.

Were the parties and intervenors to agree in principle on the alternative proposal, I would suggest an immediate request for a pre-approval conference with Judge Greene. As you know, the preferred method of settlement approval in complex class actions is the presentation of an outline of the settlement to the court prior to formalization of the settlement and distribution of notice to the class. While awaiting the date for a pre-approval conference, the parties can move forward on agreements regarding the timing, form, and content of notice, and the drafting of a settlement agreement. I would anticipate a favorable response by the court at a pre-approval conference as the proposed alternative settlement would address the legal challenge of the public interest intervenors and resolve the concerns of objecting members of the plaintiff class.

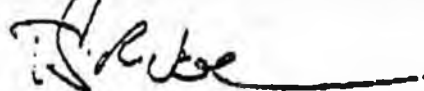
Charles E. Cole
Attorney General
April 2, 1992
Page 2

The parties would then be justified in requesting an immediate release of the injunction and *lis pendens*. As much of the proposed alternative settlement has already been acted into law (Ch. 210 and Ch. 66), there would be a sufficient basis for the court to find the interests of the class are protected pending notice and formal approval. Similarly, as the alternative settlement does not involve a complex land selection process, the need for an injunction to protect the interests of the plaintiff class in trust land is minimized.

I realize that the administration has yet to endorse any alternative settlement proposal for the Weiss case. Nonetheless, I felt that it was important to be candid with you about my support for an early release of the injunction. I have also discussed this with others, including counsel for the intervening public interest litigants, who agree that resolution of their concerns by an alternative settlement could result in almost immediate release of the injunction.

Sincerely,

RICE, VOLLAND AND GLEASON, P.C.



Philip R. Volland

PRV/sf

cc: Thomas Koester
Wendy Feuer
Brian Bjorkquist
Plaintiffs' Counsel

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MEMORANDUM

April 13, 1992

SUBJECT: Senate Bill 469: Amendments to the Mental Health Trust --
sectional analysis (Work Order No. 7-LS2152S)

TO: Senator Jim Duncan
ATTN: Roxanne Stewart

FROM: Jack Chenoweth
Legislative Counsel

This measure, introduced this morning by the Senate Finance Committee, makes significant changes in the reconstitution of the corpus of the mental health trust, the subject of ch. 66, SLA 1991, and in the manner of the enforcement of the obligations imposed on the state under that trust. Necessarily, I will discuss these provisions out of the order in which they appear in the bill.

Bill section 8: This is a provision that repeals four temporary provisions of ch. 66, SLA 1991. Those temporary provisions in last year's Act provide a mechanism by which

(1) the corpus of the mental health trust is to be reconstituted (sec. 54, ch. 66, SLA 1991);

(2) that trust is compensated by the transfer to it of other state land in the event land originally selected as mental health trust land is not available, that compensation to be determined on an equal market basis through negotiation (sec. 55);

(3) the state's assurance is backed by an enforcement measure in the event reconstitution of the trust corpus is not accomplished (sec. 56); and

(4) the Alaska Supreme Court or, in the alternative, the superior court is given jurisdiction over disputes arising under these sections (sec. 57).

Because they involved activity that would be expected to be completed over a relatively short period of time, these were treated as temporary sections and were drafted as uncodified provisions in last year's measure.

The approach proposed in SB 469 differs.

First, bill section 6 reconstitutes the mental health trust corpus as a matter of permanent law (AS 38.05.800). Most, but not all, of the elements originally described in sec. 54, ch. 66, SLA 1991, are set out as elements of the reconstituted trust under this provision. Notable omissions or deletions include former mental health lands within the Haines State Forest Resources Management Area and the Tanana Valley State Forest, and "other land."

In lieu of the former mental health trust land that cannot be included in the reconstituted trust, the change made by bill section 4 eliminates former AS 37.14.036(c) under which the state would pay, through June 30, 2003, a declining percentage of unrestricted state general fund revenue to the mental health trust income account and replaces it with language that commits the state to pay over an indefinite period to the mental health trust income account six percent of its unrestricted state general fund revenue. (It is principally because of this extended, indefinite commitment in the law that these provisions have been codified.)

Bill section 5 is the mechanism for enforcement of this payment commitment. Under proposed AS 37.14.036(d), former mental health trust land that has, during these intervening years, been placed in a "legislatively designated" status is pledged as security to assure allocation of the six percent of unrestricted state general fund revenue. Under proposed AS 37.14.036(e), the court may determine how the trust may foreclose on these lands that have been pledged as security.

Finally, Bill Section 1 gives original jurisdiction in the enforcement of the payment provisions to the Alaska Supreme Court. However, if the supreme court determines that it is not the proper party to exercise original jurisdiction, then under bill section 9 these matters of enforcement are assigned to the superior court.

The remainder of the bill makes other changes:

Bill section 2 revises the responsibility given to the Alaska Mental Health Trust Authority as to management of the land assets of the trust: the revision establishes a presumption that the Authority shall contract with the Department of Natural Resources for that service but reserves to the Authority the right to make other arrangements if it determines that "the best interests of trust beneficiaries would be served by other arrangements."

The change made in bill section 3 clarifies that money earned from the management of the trust's land assets received by the trust under AS 38.05.800 are constituted part of the mental health trust fund (and are not to be deposited into the mental health trust income account).

Last year's ch. 66, SLA 1991 proposes to repeal AS 38.05.800. However, since bill section 6 of this measure repeals and reenacts existing AS 38.05.800 (discussed

Senator Jim Duncan
April 13, 1992
Page 3

above), the change made by bill section 7 simply removes AS 38.05.800 from the list of repealed sections in last year's Act.

Bill section 10 ties the effective date of this measure to the effective date of ch. 66, SLA 1991. That effective date, you may recall is expressed in terms of a final order dismissing the litigation titled Weiss v. State.

JBC:pl:gc
92-261.plm

cc: Senator Pat Pourchot, Co-Chair
Senate Finance Committee

AMENDMENT - SB 469

Page 1, following line 4:

Delete section 1.

Insert a new bill section to read:

"*Section 1. AS 22.10.020 is amended by adding a new subsection to read:

(j) The superior court is the court of original jurisdiction to hear and determine any dispute arising under AS 37.14.036(c) - (e)."

Page 3, line 3:

Delete "supreme court."

Insert "superior court."

Page 3, following line 25:

Delete section 9.

Insert a new bill section to read:

"*Sec. 9. SPECIAL MASTER. The superior court may refer the proceedings under AS 22.10.020(j), added by sec. 1 of this Act, to a special master."

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 27, 1992

Hon. Lloyd Jones, Chairman
Senate Resources Committee
Seventeenth Alaska State Legislature
Room 30
State Capitol
Juneau, Alaska 99801-1182

Re: SB 469 (mental health lands trust)

Dear Senator Jones:

During Attorney General Charles E. Cole's testimony on Senate Bill 469 at the Senate Resources Committee on April 24, 1992, he expressed his fundamental objections to the bill as a settlement of Weiss v. State, 4FA-82-2208 Civ., the mental health lands litigation. He also mentioned that we had identified a number of legal problems with the bill in the short time we have had to review it. Those legal problems are outlined below.

It is our understanding that the intent of the bill is to shorten the time it will take to gain judicial approval of the settlement of the Weiss litigation embodied in Chapter 66, SLA 1991. To that end, and as an alternative to the provisions of SB 469 as currently drafted, we suggest that the legislature consider three amendments to Chapter 66 which would eliminate any legal argument as to the validity of Chapter 66 (1) under section 6(i) of the Alaska Statehood Act, (2) with respect to the hypothecated lands, and (3) regarding the application of AS 38.04 and 38.05 to the process of reconstituting the trust. The proposed amendments, along with a brief explanation of each one, also are set out below.

I. SB 469 would violate the Alaska Mental Health Enabling Act.

Section 3 of SB 469 would require that all revenues from the reconstituted mental health trust lands -- i.e., both principal from the sale of trust land or extraction of nonrenewable resources and income from leasing the land or the sale of renewable resources -- be deposited in the mental health trust fund, a permanent fund from which only the earnings may be spent. Subsection 202(e) of the Alaska Mental Health Enabling Act (the federal act that created the trust), however, provides in part that "such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska."

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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JUNEAU, ALASKA 99811-0300
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FAX: (907) 463-5295

We believe we can defend the deposit of principal from the lands in the mental health trust fund under general private trust law principles. But income from trust lands is normally spent for trust purposes, and Congress clearly intended that income from mental health lands be spent first for programs before being used in any other way. Depositing the income directly in the fund, therefore, is prohibited by the Act.

II. SB 469 would create an unconstitutional dedicated fund.

Article IX, section 7 of the Alaska Constitution prohibits the dedication of state revenues to specific purposes "unless required by the federal government for state participation in federal programs" or if the dedication pre-dated the constitution. As noted in the preceding section, section 3 of SB 469 would dedicate trust land income to the mental health trust fund, and such income could not be spent on mental health programs as Congress required when it created the trust originally.

Because the dedication of income to the permanent mental health trust fund is not required by federal law (and, indeed, automatic dedication is prohibited by the Enabling Act), it would violate article IX, section 7.

III. SB 469 would violate the single appropriation bill requirement.

Chapter 66 imposes several restrictions on appropriations of income from the reconstituted mental health land trust, including a requirement that the governor introduce a separate appropriation bill limited to appropriations from the mental health trust income account. SB 469 would apply the separate bill requirement to a percentage of the unrestricted general fund. Article IX, section 12 of the Alaska Constitution, however, requires that the governor "submit a general appropriation bill to authorize the proposed expenditures [of all departments, offices, and agencies of the State]." The important objective of the provision is to ensure that the legislature considers the expenditure of the state's general revenues comprehensively and not in a piecemeal fashion.

As long as it applies only to revenues from the trust lands that will be reconstituted under Chapter 66, we can defend the separate bill requirement on the ground that the Enabling Act requires that income from mental health lands "shall first be applied to meet the necessary expenses of the mental health program of Alaska." Applying it to a percentage of general fund revenues instead of just those from mental health lands, however, would violate article IX, section 12.

IV. Land management would remain a question under SB 469.

The proponents of SB 469 suggest that, because SB 469 requires the Alaska Mental Health Trust Authority to contract with the Department of Natural Resources to manage the land unless the Authority determines that it is in the best interest of the trust to do otherwise, SB 469 allows continuity of management and gives affected industries some comfort with respect to trust ownership of the land.

What they fail to recognize, however, is that the courts will require that trust lands be managed in a fiduciary manner and in the best interest of the trust. Whether DNR or the Trust Authority exercises management duties, therefore, the current state pricing structure and policies for land use could not be applied to trust lands unless they meet fiduciary standards and are in the best interests of the beneficiaries and not just the best interests of the state standard employed by DNR for non-trust lands. The "comfort" to affected industries therefore is illusory.

V. SB 469 provides no protection to third party interests and would create potential liability for the state.

As under Chapter 66, SB 469 would reconstitute the trust with some "encumbered land" -- i.e., land subject to an oil or gas lease, coal lease, or other lease, timber contract, mining claim, sale of materials, land use permit or right-of-way. Under the Settlement Agreement implementing Chapter 66, the plaintiffs agreed that the trust would be bound by the terms of such encumbrances because the trust will be compensated to the extent those encumbrances reduce the value of the lands returned to the trust.

Nothing in SB 469, however, provides that the trust will be bound by the terms of the encumbrances, nor does it provide compensation for those encumbrances. Instead, the trust would be given an "all or nothing choice" to either accept the encumbrance and receive no compensation in return for the devaluation or contest the validity of the encumbrance and, if successful, receive the parcel with no devaluation. Faced with this choice, the trust would vigorously contest the validity of third party interests.

If the trust were to successfully challenge an encumbrance or some of its terms, an affected third party might then try to hold the state liable for the termination of the encumbrance or an increase in rents or royalties. The state would then have settled the Weiss case only to expose itself to numerous other lawsuits.

VI. SB 469 would preclude development of some land currently available for development.

Section 5 of SB 469 would pledge all original mental health lands in state parks, state forests, state wildlife refuges, etc., as security for the state's performance under the bill. Under the Settlement Agreement implementing Chapter 66, and to the extent permitted by the statutes governing the areas, those lands will be available for development prior to court approval of the settlement if plaintiffs agree and after court approval whether plaintiffs agree or not. If they become security for the state's performance as SB 469 would provide, however, the state would be obligated not to diminish their value. In other words, even if otherwise allowed by law, development would be prohibited.

VII. SB 469 does not protect Native allotments.

Under Chapter 66 and the Settlement Agreement, original trust land encumbered by valid Native allotment claims will not be returned to the trust; instead, the trust will receive other state land to compensate for any value lost to the trust as a result of those claims. As a result, the state will decide whether to challenge the validity of Native allotment claims and will review Native allotments on original trust land under the same standards applied to general state land instead of under a higher trust standard of review which would result in more challenges. Under SB 469, land with allotment claims would go back to the trust, and the trust would be almost compelled to challenge each claim because, if the claim were found valid, the trust would receive less valuable over-selection land.

VIII. The provisions of the April 6, 1992 Settlement Agreement cannot be simply cut and pasted into a new agreement.

Supporters of SB 469 have argued that, as a time saving measure, all that will be necessary for a new Settlement Agreement is to cut and paste pertinent parts of the Chapter 66 Settlement Agreement. This will not be possible because each provision of the April 6 Settlement Agreement was negotiated in the context of Chapter 66.

For example, the Settlement Agreement defines an encumbrance to mean every kind of lease, permit, contract, right-of-way, interagency land management agreement, etc. If that very expansive definition is used in a new settlement agreement, very little original trust land would be returned to the trust because SB 469 provides that only certain encumbered land is returned to the trust. As another example, Chapter 66 provides for conveyance of the reconstituted trust lands to the Trust Authority, and the Settlement Agreement includes detailed provisions for such conveyances and for proper accounting following such conveyance.

Under SB 469, trust lands will not be conveyed. Instead, they will simply be redesignated, and an entirely different approach would have to be taken in any implementing settlement agreement.

For all of the foregoing reasons, as well as those Attorney General Cole expressed during his testimony before the Committee, he has asked us to make clear that he will have to recommend that Governor Hickel veto SB 469 should it pass the legislature in its current form. In his view, it is not appropriate to pass such legislation as a settlement of litigation, especially since Chapter 66 will settle the case on terms which are fair to both the trust and the state.

At the same time, Attorney General Cole understands the legislature's and affected third parties' desire to reduce the amount of time it will take to get court approval of Chapter 66, however. To accomplish that result, we have identified three amendments to Chapter 66 that would significantly advance that goal. It is our understanding that all of the attorneys who have signed the Settlement Agreement support these amendments.

The first proposal would make clear that section 6(i) of the Alaska Statehood Act applies to the Trust Authority's management of the reconstituted mental health trust:

AS 37.14.009, added by sec. 10, ch. 66, SLA 1991, is amended by adding a new subsection to read:

(c) In exercising its authority under (a)(2) or (3) of this section, the authority shall comply with the restrictions imposed by section 6(i) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (1958).

This result is already provided for in the Settlement Agreement as a term of the patent documents which will be used for conveyance of land to the Trust Authority. The amendment would simply incorporate the parties' agreement in statute, and eliminate any argument that Chapter 66 violates section 6(i).

The second proposal is not really an amendment to Chapter 66. Instead, it would simply ratify the hypothecated lands provision:

Section 56, ch. 66, SLA 1991, is confirmed and re-enacted in its entirety to read:

Sec. 56. SECURITY FOR COMPENSATION TO TRUST. (a) To secure the reconstitution ... [etc.].

This would eliminate any legal argument that the hypothecated lands provision of Chapter 66 was not passed by the legislature in

accordance with constitutional requirements.

The third proposal would amend two subsections of section 55 of Chapter 66 to make clear that the criteria in section 55(e) are substitute safeguards of the public interest for those contained in AS 38.04 and 38.05, and those statutes do not apply to the reconstitution process:

Subsection (e), sec. 55, ch. 66, SLA 1991, is amended to read:

(e) Additional factors prescribed as safeguards of the public interest that shall be considered in determining whether land proposed for exchange under this section should be conveyed by the commissioner of natural resources in trust to the authority are:

(1) ensuring ... [etc.]

Subsection (g), sec. 55, ch. 66, SLA 1991, is amended to read:

(g) The provisions of AS 38.04, 38.05, and 38.50 do not apply to exchanges under this section.

These amendments would make clear that there are significant legal safeguards of the public interest as the reconstitution process moves forward.

We must stress that these amendments are not necessary for the state to prevail against the legal challenges to Chapter 66. If passed, however, they will effectively eliminate the challenges on the specified grounds and significantly hasten judicial approval of Chapter 66.

We urge you to give the proposed amendments serious consideration. If we can answer any questions, please contact us at your convenience.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:

G. Thomas Koester

for

Brian Bjorkquist
Wendy S. Feuer
Assistant Attorneys General

G. Thomas Koester
G. Thomas Koester
Special Assistant Attorney
General

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 469

Revision Date: 22-Apr-92 Department Affected: Natural Resources
 Title: Mental Health Trust Alternative BRU: Mental Health
 Settlement Proposal: _____ Components: Mental Health
 Sponsor: Senate Finance
 Requestor: Senate Resources COMPONENT SERIAL NO. 1635

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	917.2	872.9	218.0	218.0	218.0	218.0
TRAVEL	15.0	12.6				
CONTRACTUAL	548.5	788.5	619.0	619.0	619.0	619.0
SUPPLIES	30.0	28.0	4.0	4.0	4.0	4.0
EQUIPMENT	1.0					
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1,511.7	1,702.0	841.0	841.0	841.0	841.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/MHT						
Fnd Source: 1006	1,511.7	1,702.0	841.0	841.0	841.0	841.0
TOTAL	1,511.7	1,702.0	841.0	841.0	841.0	841.0

POSITIONS:

FULL-TIME	14.0	11.0	3.0	3.0	3.0	3.0
PART-TIME	2.0	5.0				
TEMPORARY	3.0	3.0				

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 22-Apr-92
 Approved by Commissioner: Harold C. Heinzer Date: 22-Apr-92
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 469

Revision Date: 22-Apr-92 Department Affected: Natural Resources
 Title: Mental Health Trust Alternative BRU: Mental Health
 Settlement Proposal _____ Components: Mental Health
 Sponsor: Senate Finance
 Requestor: Senate Resources COMPONENT SERIAL NO. 1635

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	917.2	972.9	218.0	218.0	218.0	218.0
TRAVEL	15.0	12.6				
CONTRACTUAL	548.5	788.5	619.0	619.0	619.0	619.0
SUPPLIES	30.0	28.0	4.0	4.0	4.0	4.0
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TOTAL OPERATING	1,511.7	1,702.0	841.0	841.0	841.0	841.0
CAPITAL						

REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
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Fnd Source: 1006	1,511.7	1,702.0	841.0	841.0	841.0	841.0
TOTAL	1,511.7	1,702.0	841.0	841.0	841.0	841.0

POSITIONS:

FULL-TIME						
PART-TIME	2.0	5.0				
TEMPORARY	3.0	3.0				

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Changes in CS SB 469 (Res) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.
 4/30/92 Terry O'Brien TCC
 date Comte Aide (initial)

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 22-Apr-92
 Approved by Commissioner: Harold C. Heinz Date: 22-Apr-92
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 475

Revision Date: _____
Title: "...amending and reenacting ch. 66, SLA 1991..."
Sponsor: Senate Resources/By Request
Requestor: Senate Resources

Department Affected: Department of Law
BRU: Legal Services
Component: Mental Health Lands

COMPONENT SERIAL

1	4	2	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This bill amends and reenacts provisions of the Mental Health trust lands settlement legislation contained in ch. 66, SLA 1991. The amendments should help decrease litigation that now challenges and threatens the ch. 66 settlement legislation and, if the bill is approved, the amendments will speed up the settlement process. Consequently, the bill will also help avoid sharply increased litigation costs, and help insure that the state's settlement costs for legal services will be reduced starting in FY 95, as originally envisioned.

Prepared by: Richard I. Peques, Director
Division: Administrative Services
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: April 30, 1992
Date: April 30, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Req

Rev 10/07/91

Changes in CS SB 475 (RES) have no fiscal impact. This fiscal note is appropriate.
4/30/92 date Terry Otves TCO. Comte Aide (initial)
Page 1 of 1

PRINCIPLES OF ALTERNATIVE SETTLEMENT

1. The following land will be returned to trust status: Land originally granted to the State under the Alaska Mental Health Enabling Act which (a) has not been conveyed or encumbered by the State or reserved by law from public domain, (b) is subject only to oil and gas leases, coal leases or other leases, timber contracts, mining claims, or material sales, (c) is not necessary to carry out the purposes of an interagency land management agreement, (d) is subject only to a land use or right-of-way permit issued by the Department, and (e) has not been approved or disapproved as a Municipal selection.

This description of land to be returned to the Trust is different than that provided in Sec. 54 of Ch. 66 SLA 1990. It deletes the Haines State Forest and Tanana Valley forest from the list of land returned to the Trust and does not provide for the "replacement" of land.

2. Principles of ownership, management and disposition of the land described in paragraph 1 will remain as embodied in Ch. 66 SLA 1991. This means that the land will be conveyed in fee, including subsurface rights, to the Alaska Mental Health Trust Authority. In the context of this settlement, the ACE intervenors agree that, except for the public notice requirements of AS 38.05.945(b) and (c), management and disposition of this land will be as private land and not be subject to the provisions of AS 38.04 and AS 38.05.

3. The State will make an annual payment equal to six percent (6%) of the unrestricted general revenue of the State during each fiscal year as compensation for land which is not returned to trust status. This money will be allocated to the Mental Health Trust Income Account established by Sec. 11 of Ch. 66 SLA 1991.

4. From the funds allocated to the Mental Health Trust Income Account, including proceeds earned from the management of the land, amounts will be appropriated each year to meet the necessary expenses of a comprehensive mental health program. The responsibilities of the Trust Authority, the Governor, and Legislature in carrying out these obligations, the mechanisms for determining annual expenses, and participation by various advisory boards, and the principles governing use of Trust funds will remain as defined in Ch. 66 SLA 1991.

5. To secure the State's obligation to make annual payments from the unrestricted general revenue of the State each year, land that was granted to the State under the Alaska Mental Health Enabling Act and that is designated by law as a State Park, State Forest, State Game Refuge, State Wildlife Refuge, State Game Sanctuary, State Recreational Area, State Recreational River, State Wilderness Park, State Maritime Park, State Special Management Area, State Public Use Area, Critical Habitat Area, Bald Eagle Preserve, Bison Range, or Moose Range will be pledged as security to the Mental Health Trust.

6. Management of and title to the land described in paragraph 5 will remain with the State and income from the land shall be deposited in the General Fund and considered unrestricted general income of the State. In the event that the State forfeits on its obligation to deposit 6% of unrestricted general income in the Mental Health Trust Income Account, the Trust may elect to foreclose upon the land pledged as security. Any action for foreclosure shall be filed in the Supreme Court which shall retain jurisdiction of all issues related to foreclosure, including the transfer of title, the parcels to be foreclosed, and the laws applicable to management of the foreclosed land.

7. The undersigned support S.B. 469 as introduced, incorporating these changes and repealing certain provisions of Ch. 66 SLA 1991.

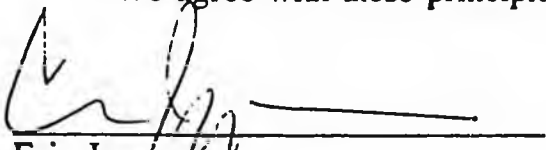
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8. Upon the effective date of legislation incorporating this settlement, the ACE intervenors would dismiss their complaint in intervention and support immediate lifting of the injunction and lis pendens, and the objecting plaintiffs would withdraw their opposition to Ch. 66 SLA 1991.

We agree with these principles:



Eric Jorgensen
Sierra Club Legal Defense Fund, Inc.,
for ACE Intervenors:

Alaska Center for the Environment
Alaska Sportfishing Association
Lynn Canal Conservation
Northern Alaska Environmental Center
Susitna Valley Association
Sierra Club
Southeast Alaska Conservation Council
Trout Unlimited



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX (907) 278-7997 Telephone (907) 276-0347

April 22, 1992

Honorable Lloyd Jones
Alaska State Senate
State Capitol
Juneau, AK 99801-1182

Dear Senator Jones,

Enclosed per your request is a copy of our comments before the Senate Resources Committee regarding SB-469, Modifications to Mental Health Trust. The two items that we feel need to be clarified in this legislation are on page two of these comments.

As stated in our comments, Chapter 66 was and is absolutely essential to bring this issue to an effective conclusion. This SB-469 is some additional fine tuning. It has taken the past year and the state budget woes for the plaintiffs to come to the point where they would accept this needed modification. It has also taken time for them to realize that a value of \$2.2 billion for the land is ridiculous. They were led to believe that this was true by their own attorneys so it has been a difficult pill for them to swallow.

Thank you for your consideration of this legislation. If we can answer any questions or be of any help in insuring passage please contact me.

Sincerely,

Steven C. Borell, P.E.
Executive Director

Post-It™ brand fax transmittal memo 7671 # of pages 3

To	Lloyd Jones	From	Steven C. Borell
Co	AK Legis	Co	ALASKA MINERS ASSOC.
Dept		Phone #	
Fax #		Fax #	



ALASKA MINERS ASSOCIATION, INC.

April 22, 1992

SB-469 Modifications to Mental Health Trust

For the record, my name is Steven C. Borell, I am the Executive Director of the Alaska Miners Association and I am testifying on behalf of the Association,

Thank you Mr. Chairman and Committee Members for this opportunity to testify on this proposed modification to Chapter 66. The AMA and its members have been affected by the mental health trust lands issue for many years and have worked hard to help find an effective settlement to the court order and the entire issue.

We wish to commend the Administration and the Legislature for their work last year in passing Chapter 66. Governor Hickel and various Legislators promised to find solutions to the mental health trust lands issue and that is precisely what was done. Chapter 66 has been and continues to be absolutely essential. It has brought us to where we are today.

At the time of passage, it was our belief that Chapter 66 would meet the requirements of the court, settle the questions and remove the cloud of uncertainty in rapid fashion. Since that time however, a third party lawsuit has raised questions regarding the 6.i. requirements. Many have speculated as to the outcome of that lawsuit. But no matter what the outcome, estimates for the time that will be required to settle this lawsuit range from two to ten years. Also, regardless as to the outcome, we can be certain that the case will be taken to both the State and U.S. Supreme Courts.

The problem for the minerals industry is that this will add two or more years of land status uncertainty which is likely to scare exploration investments away from Alaska. Regarding mineral industry investments in North America, Alaska is today in a very unique situation. Mineral investment for exploration projects has greatly decreased in Canada and the Lower 48 states. Exploration dollars are moving out of North America and into Mexico, Chile, Bolivia, Indonesia, and the former Soviet Union. But in Alaska we are seeing continued interest and continued exploration investments. Two or more years of land status uncertainty on State lands would however have a very negative affect on investments.

The general view of the international mining industry is that Alaska has, in the past, been a bad place to do business. Land set-asides, land closures to multiple use and mining uncertainty in tax and regulatory policies have all contributed to that view. If the uncertainties of the Mental Health Trust Lands issue require another two to ten years in the courts to be solved, the uncertainty will re-appear.

Because of the need to clear up this uncertainty, the AMA supports some amendments to Chapter 66 and it is important that the amendments be enacted this Session.

There are two sections in this bill that we feel need further clarification. The first clarification is in Section 5 on page 2 lines 23 to 31 which references AS 37.14.036(d). The intent of this section is that income from these "security lands" will go into the general fund. These income sources would include concession leases on state park or refuge lands, logging receipts, leases for lodges and resorts, receipts from mining claim rents and royalties, etc from these "security lands". However, it needs to be made clear in this paragraph that these uses of the lands are allowed just as they are on other state lands. Without that clarification, someone may argue that no development could occur because it would decrease the value of these "security lands".

The second clarification is in Section 6 starting on page 3 at line 10 which references AS 37.05.800(2). It is our understanding that the intent of this section is that lands subject to the listed types of encumbrances will be returned to the trust, and further, that they will be returned to the trust subject to those encumbrances. However, this last point of being returned "subject to the existing encumbrances" is not stated and needs to be added.

In conclusion, we believe that the modifications to Chapter 66 proposed in this legislation are needed and that with the changes that we have suggested they will greatly help to remove the uncertainty that will otherwise continue.

**IMPLEMENTATION FUNDING FOR
PROPOSED MENTAL HEALTH LAND TRUST SETTLEMENT**

DON'T FUND THIS PROPOSAL!!

THE SETTLEMENT PROPOSAL

- **May likely be rejected by the court as unacceptable.**
- **May not be constitutional.**
 - Already challenged on a number of points by eight public interest organizations.
 - Even the Department of Law has acknowledged there are substantial legal questions which must be answered.
 - A final determination on the issues could take years.
- **May be rejected by the mental health community.**

Judge must send the proposal out to members of the class action lawsuit for review and comment. Many have voiced concern and apprehension about the proposal.
- **Is so complex and questionable** that the Department of Law further anticipates a whole new series of lawsuits when DNR attempts to transfer state public lands into the trust.

**In other words, it will be years before anyone knows if there is a "settlement".
The issue is a long way from being resolved!**

Until the courts have determined that Chapter 66 is fully constitutional and is an acceptable settlement, further funding of millions of dollars to DNR and the plaintiff's attorneys for land work to prepare for the complex and extremely costly implementation of a settlement which may never occur is unnecessary at this time, nonproductive, and a waste of money . . . and would provide no direct benefit to mental health needs.

IN THE MEANTIME:

1. Mental Health will continue to be adequately funded through the existing provisions of Chapter 210, SLA 1990.
2. An alternative settlement proposal is circulating which is based support. It is far simpler and less likely to be challenged, will be less costly. The settlement, does not require land valuations, has a better chance of providing necessary mental health funding, and eliminates or diffuses the public interest concerns that have been raised. Most importantly, it is based on existing legislation so the necessary components are already in place. New funding would not be required.

Once approved by the court, the alternative would provide immediate injunctive relief for all original trust lands owned by third parties, including municipalities. Presently, those lands, plus over 4 million acres on the hypothecated list, are destined to be tied up for years until the legal issues raised by Chapter 66 are resolved. (Dated 3-10-92)

Mental Health Land Trust Settlement

ALTERNATIVE PROPOSAL

An alternative settlement proposal is circulating which has broadly based support. It is far simpler and less likely to be challenged, will be less costly to implement, does not require land valuations, has a better chance of providing necessary mental health funding, and eliminates or diffuses the public interest concerns that have been raised. Most importantly, it is based on existing legislation so the necessary components are already in place. New funding would not be required.

Once approved by the court, the alternative would provide immediate injunctive relief for all original trust lands owned by third parties, including municipalities. Presently, those lands, plus over 4 million acres on the hypothecated list, are destined to be tied up for years until the legal issues raised by Chapter 66 are resolved.

ALTERNATIVE SETTLEMENT OPTION

Mental Health Trust Litigation

March 10, 1992

INTRODUCTION: The following proposed alternative settlement option to the mental health trust litigation is based on combining substantial portions of two existing pieces of legislation (Chapter 210, SLA 1990, and Chapter 66, SLA 1991).

The proposal makes the percentage of unrestricted general revenue funding mechanism of Chapter 210 (six percent) significantly more attractive by (1) adding to it the program provisions and appropriation procedures adopted in Chapter 66, (2) returning original mental health lands which have not been transferred out of state ownership or placed in legislatively designated areas, and (3) providing for a cash corpus account.

A. Mental Health Program Provisions.

The settlement alternative is based on the format of Chapter 66, retaining desirable provisions relating to mental health programs and trust responsibilities.

B. Funding.

1. Provisions of Chapter 66 would be retained relating to the appropriation process and role of the Trust Authority, including provisions contained in AS 37.14.003 and 37.14.005 regarding the relationship between the Authority and the Governor, and the Authority and the Legislature.
2. Six percent of unrestricted state revenues would continue to be allocated to the mental health trust income account per existing law (Chapter 210), as payment for original mental health lands which cannot be returned to the trust.

After the necessary expenses of the state's mental health program have been funded, the legislature could authorize transfer of the unobligated and unappropriated fiscal year-end balance in the mental health trust income account to the state general fund per existing law (Chapter 210).

3. The legislature would continue to consider mental health budget requests annually, taking into consideration the committed allocation from the general fund, as well as the income from investments of the cash corpus account. The intent is that any shortfall that might occur would be given equal and fair consideration along with other health and social service programs.

C. Lands, and related cash corpus account.

1. Replace all unencumbered lands of original trust , plus all or a portion of original trust lands which have coal leases, oil and gas leases, timber sales, land leases, ILMAs, material sales, and mining claims, for a possible total of up to 496,900 acres, as currently provided in Chapter 66.

The lands would be managed similar to the University of Alaska Land Trust, including the establishment of a cash corpus account. All income generated from land management activities would go into the cash corpus account for further investment. Income from the investments would go into the trust income account, providing additional security for supplemental funding of mental health programs if unrestricted general revenues decline in the future as anticipated.

2. Upon approval of the settlement, all original trust lands owned by third parties, including municipalities, would be immediately and permanently released.

D. Security.

All original mental health lands located within legislatively designated areas (approximately 317,000 acres) would be held by the state as security to insure that the annual payments would be made to the mental health trust income account in accordance with the settlement agreement. The land would remain in state ownership and continue to be managed consistent with its legislatively designated purposes, similar to the agreement in Chapter 210.

If there is difficulty identifying the parties necessary to finalize an alternative settlement agreement, or difficulty reaching an agreement on the final details of the alternative settlement, a formal mediation process facilitated by an independent neutral mediator should be employed.

Box 521
Haines, AK 99827

March 10, 1992

Senator Arliss Sturgulewski
Box V
Juneau, AK 99811

Dear Senator Sturgulewski:

Thank you for holding the recent Senate HESS oversight hearing on the Mental Health Trust. I appreciate the opportunity for everyone to hear the status of and opinions about the potential settlement.

As you heard, the potential settlement still has a windy path to travel through the court. It is very possible that the legislature will have to revisit some or all of the settlement. So, it seems appropriate for legislators to keep tuned into some of the problems with the current potential settlement.

The proposed settlement is problematic concerning the Haines State Forest. If this settlement is approved by the court in its present form, most of the Haines State Forest will return to the Mental Health Trust.

This would include the Chilkat Ridge, a 10 mile-long ridge that is the scenic backdrop to the Alaska Chilkat Bald Eagle Preserve. The Chilkat Ridge has national significance because of its proximity to the Bald Eagle Eagle Preserve and its heavy use by bald eagle during extreme winter weather. Although it is not protected from logging in DNR's current plans, public outcry has been significant enough that DNR is keeping the Ridge out of its past and current operating plans. The Chilkat Ridge, which has the most significant timber volume in the area, would be at risk of logging if returned to the Mental Health Trust. Senator Duncan recognized this, naming the Chilkat Ridge as a delicate problem area, just before the Senate passed Mental Health Trust legislation last spring.

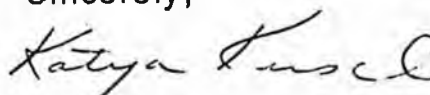
If the Mental Health Settlement becomes law, another big problem for Haines is that 15 years of public process and public trust may be

wasted. DNR and the community of Haines spent 15 years formulating the Haines State Forest Plan. Will existing rules apply if Mental Health legislation is approved by the court? Will public process and public notice be honored? Will Title 41 and 38-04/38-05 still apply? If not, this settlement will make a mockery of the public planning process.

During legislative proceedings last spring, there was no public involvement as to which Haines State Forest lands would be returned to the Mental Health Trust. In fact, legislators did not even know which specific lands were involved. (The same can certainly be said about the "hypothecated" lands). This is not the way to make good legislation.

Once again, thank you for offering a forum for the legislature and the public to hear the current status of the proposed Mental Health Settlement.

Sincerely,



Katya Kirsch

copies: Senate HESS Committee
House HESS Committee
Senate Resources Committee
House Resources Committee
Senator Jim Duncan
Senator Dick Eliason
Representative Mark Boyer
Representative Ben Grussendorf
Representative Jerry Mackie
Representative Fran Ulmer

ALASKA ALLIANCE FOR THE MENTALLY ILL
4060 Lake Otis Pky, Suite 103
Anchorage, Alaska 99508

April 29, 1992

Hon. Lloyd Jones, Chairman
Senate Resources Committee
Seventeenth Alaska State Legislature
Room 30
State Capitol
Juneau, Alaska 99801-1182

RE: Proposed Amendments to Ch.66, SLA 1991

Dear Senator Jones:

I am in receipt of Mr.G. Thomas Koesters' letter to you and the Senate Resources Committee dated April 27, 1992. This letter speaks in opposition to SB 496 as an alternative settlement proposal and further requests that the committee adopt three amendments to Ch. 66. My comments address one of Mr. Koester's proposed amendments to Ch. 66 and the current settlement agreement before the court.

The one amendment of which he is requesting your consideration would amend AS 37.14.009 by adding a new subsection to read:

(c) In exercising its authority under (a)(2) or (3) of this section, the authority shall comply with the restrictions imposed by section 6 (i) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (1958).

This constitutes a most serious breach in our understanding of the reconstitution of the mental health lands trust.

The theme of the Ch 66 settlement proposal is to reconstitute the Mental Health Lands Trust with an all lands based corpus to be administered by a newly created Mental Health Trust Authority. This reconstitution process addressed two categories of land: original mental health land that was unencumbered as defined within Ch 66, and compensation land of similar character and equal value to replace land that had been encumbered (Ch 66 Sec. 54 & 55). All lands are to be conveyed by patent to the newly created Trust Authority as unencumbered land and managed in " a fiduciary manner to fulfill the purposes of the trust:" (Ch 66 Sec. 37.14.009).

I think we are all acutely aware that one of the big concerns of this reconstitution scheme is the 6(i) provision of the Statehood Act which requires the State to reserve to itself the mineral estate in all general grant lands conveyed to it by the federal government. The consequence of breaching this provision is to have these lands revert back to the federal government. The original mental health trust lands are not general grant lands.

This is an issue of most significant concern. The Committee should recall the findings of the Interim Mental Health Trust Commission that determined the most significant value contained in these original trust lands is their mineral estate. Neither Ch.66 nor the signed Settlement Agreement makes any provision for determining the lost value such an encumbrance brought on by this amendment will effect, nor how the trust will be compensated for such. Additionally, this amendment removes from the Trust Authority their ability to manage this most valued asset of the trust in the most productive manner (joint ventures, etc.).

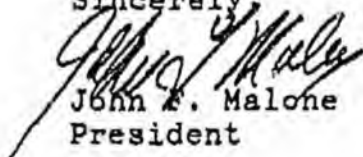
I should hope that I, nor anyone else, need remind the Committee that the original mental health trust lands enjoy a special status pursuant to Judge Greene's Memorandum Decision and Order of July 9, 1990. An order that was unfortunately brought about by the States unilateral conduct of proceeding with trust land disposals. It should be clearly evident that proceeding with such an amendment that places an encumbrance of such undetermined magnitude on these original trust lands cannot be in the best interest of the trust beneficiaries. If such is not so, then it need be clearly demonstrated.

The following excerpt from Judge Greene's Memorandum Decision and Order should make this point quite clear:

(page 12) "It is true that Section 202(e) of the Alaska Mental Health Enabling Act gave the Alaska Legislature the power to sell, lease, mortgage, exchange, or otherwise dispose of the mental health lands. However, as the Supreme Court has clearly held in this case, it must do so in light of its fiduciary responsibilities to the trust. One of those responsibilities is to preserve the corpus of the trust. Weiss, 706 P.2d at 683. It is similarly clear that it is the duty of the state in administering this trust to administer solely in the interest of the beneficiaries."

I hope you find these comments of assistance in your deliberations on this issue.

Sincerely,



John F. Malone
President

cc: Judge Mary E. Greene

ALASKA MENTAL HEALTH BOARD

WALTER J. HICKEL, GOVERNOR
STATE OF ALASKA

431 N. Franklin St., Suite 101
Juneau, Alaska 99801
(907) 465-3071
FAX: (907) 465-3079

Senator Lloyd Jones
Alaska State Senate
P.O. Box V
Juneau, Ak. 99811

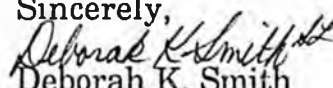
April 20, 1992

Dear Senator Jones,

At the April 12, 1992, meeting of the Alaska Mental Health Board held in Juneau, the following motion regarding SB 469, Mental Health Trust Amendments, was passed:

1. By Motion 92-46, (November 1991) the Board accepted and approved Chapter 66, SLA 1991 (Chapter 66) as the basis of a settlement of the mental health trust litigation (subject to negotiation of acceptable settlement documents) because Chapter 66 was the most favorable settlement of the litigation that the parties were likely to obtain.
2. The Board has now reviewed the settlement documents filed in the mental health trust litigation and they appear to be satisfactory.
3. A new proposal is under discussion in the legislature providing for 6% of unrestricted general fund revenues as compensation to the Trust for the original mental health trust lands that will not be returned to the Trust; this proposal deserves serious consideration.
4. For that reason, the Alaska Mental Health Board requests the parties to remain open to considering any proposal that could better serve the interests of the beneficiaries of the Trust and the people of the State as an alternative basis for settlement of the mental health trust land litigation.

We felt it was important that the Resources Committee be aware of the position of the AMHB as you hear this bill. If I can answer any questions regarding this issue, please do not hesitate to call.

Sincerely,

Deborah K. Smith
Executive Director

cc: AMHB

TYONEK NATIVE CORPORATION

1689 C Street, Suite 219
Anchorage, Alaska 99501
(907)272-0707

Senator Lloyd Homes
Room 30
State Capitol
Juneau, Alaska 99801-1182

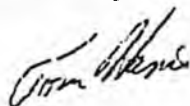
April 8, 1992

Dear Senator:

Please accept this letter of support for the passage of the **Mental Health Amendment Bill** "An Act amending provisions of ch. 66, SLA 1991 that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date."

We encourage the Senate, House and Governor to take all appropriate actions necessary to reinstate a viable solution to this impasse and to allow the state to return to the business of making Alaska strong.

Sincerely,



Tom Harris
CEO, TNC

MENTAL HEALTH LANDS TRUST

Chapter 66 Amendment
SB 469/HB 584

BRIEFING PACKET

MENTAL HEALTH LANDS TRUST
PROPOSED ALTERNATIVE SETTLEMENT

The Chapter 66 proposal for settlement faces a lengthy and uncertain future in the courts. It is opposed by many Alaskans. The unavoidable delay in its approval will severely limit development on 7.7 million acres of land when oil revenues are declining. The goal of this alternative is to reach a settlement that is acceptable to all Alaskans. This would avoid further litigation and the resulting restriction on land use and provide a basic level of funding for the Mental Health Program. Most importantly, it would not require a cash payment from the State to settle this issue.

This new proposal is a mixed land/income stream approach which incorporates the Trust Authority developed for Chapter 66.

THE LAND

In this new proposal, like Chapter 66, nearly half of the original Trust lands will be returned to the Trust. This is the least valuable of the original lands. The Trust would take these lands subject to all third party interests such as leases or rights of way.

Unlike Chapter 66, income from this land would be placed in a cash corpus account and invested like the Permanent Fund. The income from this principal would be deposited in the Trust income account and be available each year to support the Mental Health Program. This is the mechanism used in the University of Alaska Land Trust Settlement.

INCOME STREAM

This new proposal incorporates existing law where 6% of unrestricted general fund revenue would continue to be allocated to the Trust income account. This would provide a continuing and dependable source of funds available for the Mental Health Program. It is tied directly to overall State income.

Each year the money available to fund the Mental Health Program would include this 6% plus any earnings from the cash corpus account. Any of this money not needed to meet the necessary expenses of the Mental Health Program will be returned to the State general fund.

TRUST MANAGEMENT

As in Chapter 66, a Trust Authority appointed by the Governor would manage the land and cash corpus account. In addition, it would make recommendations to the Governor and the Legislature on how to spend available funds.

NONRETURNED TRUST LANDS

When the new proposal is approved, all lands owned by third parties, including Municipalities, will be immediately and permanently released from claims by the Trust. Original Trust lands which are now in Legislatively Designated Areas, such as State parks, would serve as security for the State's promise to allocate the 6%. The State would still own these lands and continue to manage them according to their designation.

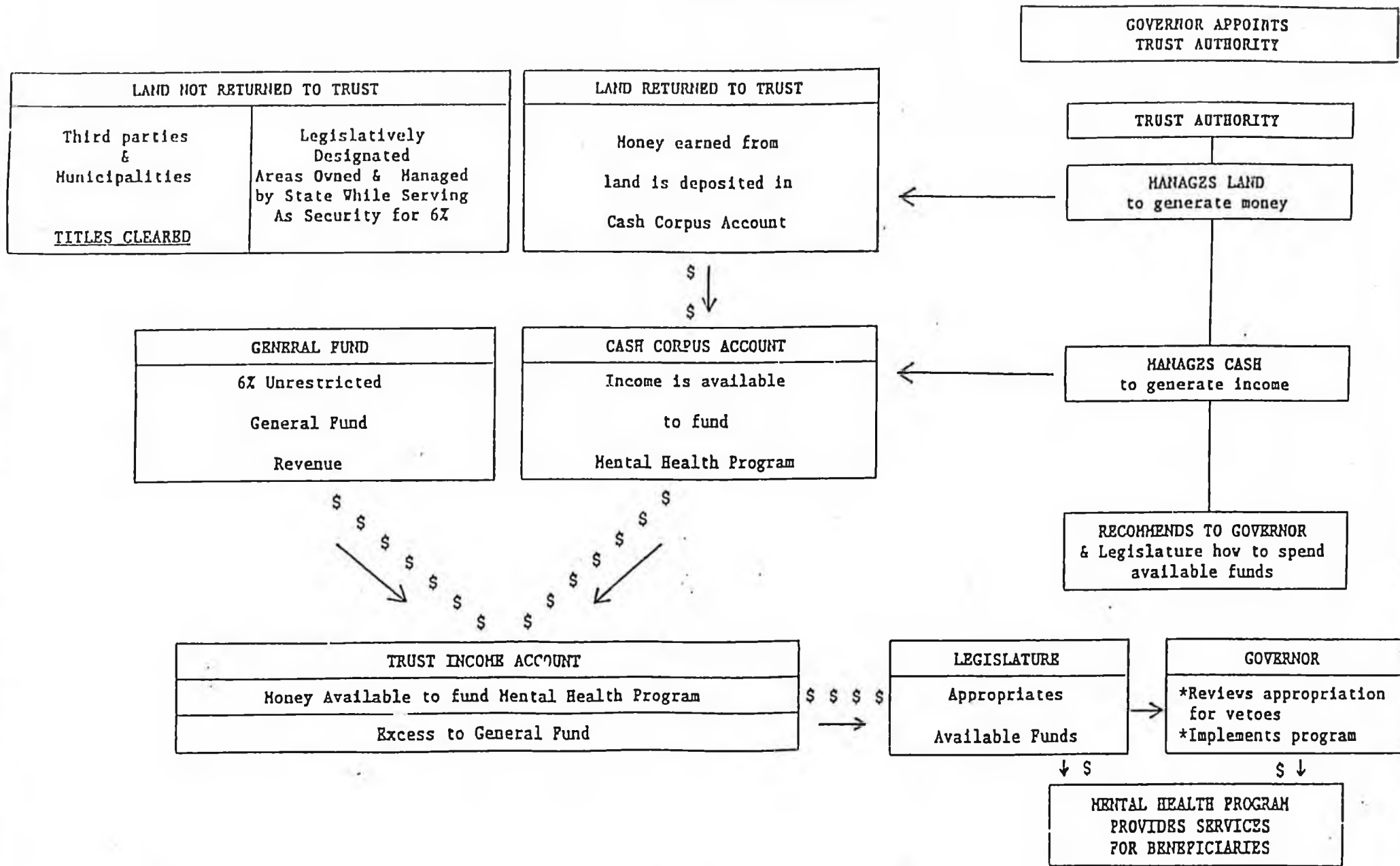
ADVANTAGES

- *The main advantage is that this proposal could build a consensus leading to the fastest final resolution possible.
- *Each element of this new proposal is either in existing law or has universal acceptance as part of a Trust settlement. This dramatically reduces the possibility of a long and difficult approval process.
- *It eliminates any restriction on the additional 6.7 million acres of State land held hostage by Chapter 66.
- *This new proposal will generate wealth from two sources. First, the land will be used to generate money. Then this money will be invested like the Permanent Fund and would increase over the years. It is this capacity to increase earnings over time which may make the 6% income stream acceptable to the beneficiaries despite the coming reduction in State income.
- *The cash corpus will grow over time and reduce the Mental Health Programs dependence on the General Fund. The massive land driven Trust envisioned in Chapter 66 would spend all that it earns every year and could never fund the Mental Health Program.
- *The 6% allocation is currently in effect and is working. It goes down as State income goes down. The Office of Management and Budget (OMB) estimates the cost of the current Mental Health Program at \$145 million. Although the 6% is estimated to generate only \$116 million in FY 93, it will at least provide a base level for funding the Mental Health Program.
- *The Constitution requires that 25% of the earnings from State land be placed in the Permanent Fund. Chapter 66 would place over a million acres of State land into the Trust. No contribution to the Permanent Fund would be made from this land. The new proposal would eliminate this problem and avoid any reduction in Permanent Fund dividends.

CONCLUSION

This new proposal offers the quickest, least expensive and most acceptable solution to a problem that we must all put behind us.

NEW PROPOSAL



LAW OFFICES OF
RICE, VOLLAND AND GLEASON
A PROFESSIONAL CORPORATION

WILSON A. RICE
PHILIP R. VOLLAND
SHARON L. GLEASON
R. SCOTT TAYLOR

211 H STREET
ANCHORAGE, ALASKA 99501
(907) 276-5231
FAX (907) 278-5328

April 2, 1992

Via Fax

Charles E. Cole
Attorney General
Box K
Juneau, AK 99811

Re: Weiss v. State

Dear Charlie:

I understand that you will be meeting with the administration regarding the mental health lands case. As you know, I have recently encouraged consideration of an alternative settlement which in my view solves the problems associated with delays and litigation over the proposed settlement agreement. The alternative proposal has received support from the resource development community, the intervenors who have challenged Ch. 66, and members of the plaintiff class who are unhappy with the proposed settlement.

In my public discussions of this alternative proposal I have not articulated how it can result in a speedy release of the injunctive restraints on mental health land. As this may be important to your consideration, I wanted to share my thoughts on how this can be addressed.

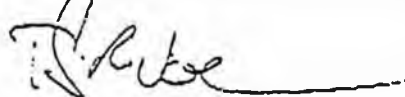
Were the parties and intervenors to agree in principle on the alternative proposal, I would suggest an immediate request for a pre-approval conference with Judge Greene. As you know, the preferred method of settlement approval in complex class actions is the presentation of an outline of the settlement to the court prior to formalization of the settlement and distribution of notice to the class. While awaiting the date for a pre-approval conference, the parties can move forward on agreements regarding the timing, form, and content of notice, and the drafting of a settlement agreement. I would anticipate a favorable response by the court at a pre-approval conference as the proposed alternative settlement would address the legal challenge of the public interest intervenors and resolve the concerns of objecting members of the plaintiff class.

The parties would then be justified in requesting an immediate release of the injunction and lis pendens. As much of the proposed alternative settlement has already been acted into law (Ch. 210 and Ch. 66), there would be a sufficient basis for the court to find the interests of the class are protected pending notice and formal approval. Similarly, as the alternative settlement does not involve a complex land selection process, the need for an injunction to protect the interests of the plaintiff class in trust land is minimized.

I realize that the administration has yet to endorse any alternative settlement proposal for the Weiss case. Nonetheless, I felt that it was important to be candid with you about my support for an early release of the injunction. I have also discussed this with others, including counsel for the intervening public interest litigants, who agree that resolution of their concerns by an alternative settlement could result in almost immediate release of the injunction.

Sincerely,

RICE, HOLLAND AND GLEASON, P.C.



Philip R. Volland

PRV/sf

cc: Thomas Koester
Wendy Feuer
Brian Bjorkquist
Plaintiffs' Counsel



Resource Development Council

for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035

Phone 907/276-0700 Fax 276-3887

April 4, 1992

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Becky L. Gay

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Curtis W. Foster, Sr. Vice Pres.
Paul Glavinovich, Vice Pres.
Rex I. Bishopp, Secretary
Kyle Sandel, Treasurer
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Thomson
Thorsen
Joe Usibelli, Jr.
William R. Whiteside
Jeff Wilson
George P. Wuerch

EX-OFFICIO MEMBERS
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young

Governor Walter J. Hickel
PO Box 110001
Juneau, Alaska 99811-0001

Governor Hickel:

The Resource Development Council for Alaska, Inc., has been involved in the resolution of the Mental Health Trust Lands issue for some time and applauded the Hickel administration's actions in 1991 to achieve a settlement of the issue. RDC's executive committee believes that those efforts, as codified in chapter 66, brought this divisive and constricting issue to a point that no other governor has been willing or able to achieve.

In reviewing the multitude of issues raised by chapter 66, and the recent proposed amendment by those involved in the case, RDC believes that minor changes are necessary. Simply put, 95% of the problem was solved through chapter 66, and the amendment being offered by mental health advocates and other industry groups will resolve the remaining 5% of this long-term lands dilemma.

Since it was your handiwork and that of your commissioners that brought this issue to resolution in 1991, RDC's executive committee urges the governor and his commissioners to introduce and support the amendment that would reconstitute approximately 500,000 acres of original trust land and provide a 6% payment of unrestricted general fund revenues to mental health trust programs.

RDC appreciates your efforts, and the work of your commissioners and advisors to close the chapter on this important Alaska lands issue.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

John Rense
President

cc:
Max Hodel
Charlie Cole
Harold Heinze
Paul Fuhs

TYONEK NATIVE CORPORATION

1689 C Street, Suite 219
Anchorage, Alaska 99501
(907)272-0702

Senator Jim Duncan
Room 119
State Capitol
Juneau, Alaska 99801-1182

April 8, 1992

Dear Senator:

Please accept this letter of support for the passage of the **Mental Health Amendment Bill** "An Act amending provisions of ch. 66, SLA 1991 that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date."

We encourage the Senate, House and Governor to take all appropriate actions necessary to reinstate a viable solution to this impasse and to allow the state to return to the business of making Alaska strong.

Sincerely,



Tom Harris
CEO, TNC

Charles E. Cole, Esq.
P.O. Box K, State Capitol
Juneau, Alaska 99811-0300
(907) 465-3600

David T. Walker, Esq.
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Attorney General of the
State of Alaska, Defendant

Lead Counsel for Plaintiffs

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406 G Street, Suite 206
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(907) 274-7686

Jeffrey L. Jessee, Esq.
615 E. 82nd Avenue
Anchorage, Alaska 99518
(907) 344- 1002

Attorney for Plaintiffs,
the Alaska Mental Health
Association, et al.

Attorney for Plaintiffs
Anita Bosel, et al.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

VERN T. WEISS, father and next)
friend of CARL WEISS, a minor)
child, and EARL HILLIKER, on)
behalf of themselves and all)
others similarly situated; the)
ALASKA MENTAL HEALTH ASSOCIATION,)
MARY C. NANUWAK and JOHN MARTIN,)
on behalf of themselves and all)
others similarly situated;)
ANITA BOSEL, FRANCES DOULIN,)
SHARON GOODWIN, AND GABRIEL)
MAYOC; and H.L., M.K. and ALASKA)
ADDICTION REHABILITATION SERVICES,)

Plaintiffs,)

vs.)

STATE OF ALASKA,)

Defendant.)

Case No. 4FA-82-2208 CIVIL

SETTLEMENT AGREEMENT

(b) In the event this settlement is terminated as provided in this Section or otherwise, the settlement embodied in Chapter 66 and this Settlement Agreement shall be void and, except as provided in Article III, Section 31, the parties returned to their respective positions as if this settlement had never become effective, including the right to re-assert claims to Original Trust Lands.

31. Cancellation of Re-Notice of Lis Pendens and Modification to Remove Preliminary Injunction With Respect to Certain Third Party Transactions. (a) Plaintiffs recorded re-notices of lis pendens affecting all Original Trust Lands in or about September 1990, and by order of the Superior Court dated July 9, 1990, the State has been enjoined

from issuing any patent(s) or other documents or taking any further steps which convey or transfer mental health trust lands or any interest(s) therein, including without limitation, any permits to use or occupy mental health trust lands, or extract resources from any mental health trust lands, pending final resolution of this litigation or earlier order of this court.

Upon final approval of this Settlement Agreement and Chapter 66 taking effect, all such third party rights are validated and the need to litigate issues relating to title is eliminated. The length of time, however, to obtain approval may cause substantial hardship to certain third parties who have received patents or who have entered into contracts to receive title to Original Trust Lands from the State or municipalities. Therefore, upon presentation of this Settlement Agreement to the court for approval, the State and the Plaintiffs executing this Settlement

Agreement through counsel shall immediately move for cancellation of the re-notice of lis pendens and modification to remove the preliminary injunction with respect to Original Trust Lands in which the State or any municipality conveyed or agreed to convey title to a third party in the form attached hereto as Exhibit H. For purposes of this Section, a conveyance or agreement to convey by the State to a municipality is not one to a third party.

(b) In order to protect the Trust's interests in the Original Trust Lands described in Subsection (a), the parties agree that if the settlement of this action contemplated by Chapter 66 and this Settlement Agreement is not finally approved by the court, the Plaintiffs may reassert claims to such lands. The parties further agree that if the settlement of this action contemplated by Chapter 66 and this Settlement Agreement is not finally approved by the court, or is terminated for any reason, the State shall compensate the trust for the fair market value of any valid interest(s) of the Trust that were cut-off after the date the re-notices of lis pendens were canceled. The compensation may be made in land as comparable in character as practicable to the land for which the Trust's valid interests were cut-off, as provided in Section 55 of Chapter 66.

(c) If the court denies the motion or if an order approving the motion for cancellation of the re-notice of lis pendens and for modification to remove the preliminary injunction set forth in subsection (a) is not entered within 4 months of the date the motion is submitted to the court for decision, the parties shall have 60 days to arrive at a mutually agreeable way to address the

March 17, 1992

RECEIVED
Chambers of
Mary E. Greene
MAR 24 1992

Honorable Mary E. Greene
Superior Court
604 Barnette, Rm. 430
Fairbanks, Alaska 99701

Dear Judge Greene:

My name is Leon Lynch and I am writing to you regarding the Mental Health Lands Settlement. My wife and I own ADL 409805 which we fully paid the State of Alaska for in March of 1990. Since that time we have been constantly frustrated in our attempts to get patent to the land. For the past two years I have tried my best to remain patient and work with the system to help attain a solution to this complex issue. Although pacified along the way by sympathy and promises from both the State and representatives of the Trust, I find that nothing has changed. My family is still unable to get a home construction loan and we must continue renting cheap housing, or house-sit, in order to save enough money to build out of pocket- the only option we have.

I have been informed that both the Trust and the State have agreed that this deplorable situation of unjustly punishing innocent citizens is intolerable and both have agreed to "free the hostages". Apparently the settlement will be sent for your review this month. The purpose of letter is to request that you deal with the issue of third parties who have fulfilled their contracts quickly and fairly. I can appreciate the fact that the entire issue may take months if not years to completely resolve. Please separate the hostages out. There is no purpose in continuing the suffering people in my situation have undergone. No one will benefit from denying me the right to provide a home for my wife and baby.

If you are truly concerned with justice I feel confident that you'll agree with my request.

Sincerely,

Leon C. Lynch

Leon C. Lynch

LANDS HYPOTHECATED

to the

MENTAL HEALTH TRUST

May 1991
(as refined)

Alaska Department of Natural Resources

Anchorage, Alaska

April 3, 1992

Note: The list of legal descriptions is over 600 pages long and is not attached hereto. Copies of the list are available upon request from all Department of Natural Resources Regional Offices. A pictorial atlas of the Hypothecated Lands will also be available in the near future from the Department of Natural Resources.

LANDS HYPOTHECATED to the MENTAL HEALTH TRUST

May 1991
 (as refined April 3, 1992)

Index #	Area	Acres	Page No.
1	SUBDIVISION LOTS: Data list of 3/5/92)	45,695.82	1
2	LARGE TRACTS SUMMARY:	2,491,070.05	459
3	MAT-SU TIMBER(SFG): Note: A portion of the Mat-Su Timber Area overlays the SUAP Settlement Lands.	494,228.92(net)	473
4	AREA PLAN SETTLEMENT SUMMARY: TANANA BASIN - OTHER NORTHERN AREAS - PRINCE of WALES - OTHER SOUTHEAST AREAS - COPPER BASIN - SUSITNA USE AREA PLAN - (gross 472,267)	18,176.77(gross) 16,538.00(gross) 772.00(gross) 4,004.00(gross) 38,439.07(gross) <u>84,112.00(net)</u>	490
	SUBTOTAL FOR AREA PLANS: Gross and Net Amounts refer to Area Plans only.	162,041.84	
5	MINERAL AREAS SUMMARY: Chandalar Block Large Tract overlays Chandalar Mineral Area	997,701.95	503
6	OTHER PARCEL SUMMARY:	8,654.43	509
7	STATE LEASES: (Data List of 3/5/92)	<u>18,307.03</u>	511
	LAND INTEREST TOTAL:	4,217,700.04	
8	COLLATERAL of LAST RESORT: Cook Inlet Area Oil and Gas Interests	2,491,039.47	Attach.
	GRAND TOTAL:	6,708,739.51	

FY 92/93 Mental Health Trust Income Account

Carry Forward Balance From FY 91 82.3
(Per ch 88 SLA 91, balance to MH capital projects account
effective upon settlement agreement)

Fiscal Year 1992

Revenues 132.0
Based on Spring 1992 ADOR Forecast - Mid Case of
16.38/bbl; 1.787 MM bbls/day

Expenditures 140.5

Operating:

FY 92 Operating Budget	122.4
Indirect Cost Recovery	2.0
K-12 Education	7.2
Capital Budget	7.4
New Legislation	1.3
Supplemental	0.2

(Reflects Governor's requests in HB 470)

FY 92 Revenues v. Expenditures -8.5
MHTIA Balance to Carry Forward 73.8

Fiscal Year 1993

Revenues 116.4
Based on Spring 1992 ADOR Forecast - Mid Case of
15.86/bbl; 1.710 MM bbls/day

Expenditures 145.2

Operating Budget	134.7
<small>(Per Governor's proposed budget - HB 405)</small>	
Capital Budget	10.5
<small>(Per Governor's proposed budget - HB 451/SB 460)</small>	

FY 93 Revenues v. Expenditures -28.8
MHTIA Balance at Year End 45.0

GENERAL COMMENTS

Summary:

The proposed legislation substantially reduces the costs for reconstituting the Mental Health Trust. However, ambiguity in the legislation as to whether it intends to convey Original Mental Health parcels to the Trust or simply contemplates the "designation" of these parcels has a great impact on the work required to complete Trust reconstitution and, therefore, the costs of this project. The conveyance of parcels to the Trust will require surveying and platting, while the "designation" of Original Trust parcels avoids these processes. However, past conversations with the Plaintiffs suggest they will want conveyance. Therefore, our fiscal note will represent the activity of conveyance.

Comments on Legislation:

The comments that follow deal with that part of the legislation concerning the reconstitution of the Mental Health Trust. This evaluation is not an attempt to compare the proposed legislation with the current 1991 legislation, nor does it deal with certain of the policy issues and constitutional issues that may be appropriately part of the overall review of this legislation.

Section 38.05.800 Reconstitution of Mental Health Trust Corpus:

1. The wording of "encumbered" under Subsection (1) is ambiguous, and can be interpreted either broadly or narrowly. Because of the ambiguity, the interpretation of what "encumbered" actually means will have to be resolved through discussions in a revised Settlement Agreement. Similarly, under Subsection (2), the term "lease" is not well-defined and, again, is subject to a variety of interpretations. Presumably, long-term leases represent a type of encumbered type of parcel that precludes conveyance to the Trust Authority. Under Subsection (3) the reference is to a "interagency land management _____". It is presumed that the legislation is referring to land owned by the State that is utilized by state agencies. In fact, such land may be utilized under management rights, ILMA's, ILMT's, applications for ILMA's and ILMT's, and other forms of preference rights. The wording, if this is what is intended, should be of a different, broader form to encompass the concept of the conveyance of non-essential state land to the Trust Authority.
2. This section refers to the "reconstitution" of the Mental Health Trust to the Trust Authority. It is not clear whether parcels of Original Trust Land are to be conveyed to the Trust Authority or if simply the land is to be designated as Original Trust Land. Conveyance implies that the parcel will have to be transferred to the Trust Authority through a patent or quit claim deed with the patent or quit claim deed specifying subject to's and exclusions. In the alternative, "reconstitution" implies that conveyance of property will be unnecessary. The DNR will simply "designate" Original Trust Land and there will be no formal conveyance of

the land to the Trust Authority. The latter process does not involve conveyance and the associated processes of survey and platting. It is important to clarify whether or not land is to be conveyed to the Trust Authority or is simply to be reconstituted to the Trust Authority.
3. In the 1991 legislation, the requirements for adherence to state plans and other regulations, under AS 38.05, were voided once the property was conveyed from DNR to the Trust Authority. This legislation does not void AS 38.05 requirements. For this reason, the Original Trust Land conveyed or designated to the Trust Authority will be subject to the full variety of regulations under AS 38.05. We are unclear whether or not AS 38.05 is intended to apply to these transferred properties.

Section 33.14.031 Trust Fund Established:

4. The collateral provided under Section 4 of the legislation is considerably reduced in the amount from that now specified in the Hypothecated Lands List. We estimate that about 375,000 acres are included within the areas that are designated by the proposed legislation. Thus the amount of collateral provided to ensure the annual payment of 6% of the general fund revenue during a given fiscal year is substantially smaller than what had previously been pledged as collateral under the 1991 legislation.

This land functions as collateral. For that reason, we presume that there can be no departmental action that involves a substantial devaluation of areas designated as collateral under Section 5. In most cases, this will not be a problem since these areas are not intended to be used for development purposes. Nonetheless, state forests are included as an element of this collateral and, given the aforementioned concern, it can be assumed that such areas would not be used for timber harvest in future years. Relatedly, the Wishbone Hill coal complex is within an LDA as are much of the Chickaloon coal resource sites. This legislation could also prevent development of the subsurface resource there.

There is also concern that there may be an inability to perform certain functions and activities within the areas designated as collateral, since it can be interpreted that these actions will diminish the overall value of the collateral. For this reason, consideration should be given in the legislation to allow activities that would typically appropriate and necessary.

Fiscal Evaluation:

Ambiguity in parts of the legislation make it difficult to thoroughly determine program impacts:

- * "Encumbered" in Subsection (1) is not carefully defined, and can be interpreted broadly or narrowly.
- * "A lease" in Subsection (2) is also not carefully defined; similarly, "LM____" is not defined precisely to indicate whether this also applies to other state land managed and owned by the state.
- * Finally, and most importantly, it is not clear if the land is to be "conveyed" or simply "re-designated". Depending on which action is intended in the legislation, there will be significant differences in programmatic impacts.

Given this uncertainty, we cannot precisely identify the necessary analytic process, but it is clear that the following components of the current legislation (1991) will be unnecessary: comparability, appraisal and land exchange analyses.

If it is assumed that some form of parcel conveyance will be necessary, there will be a need for title review and survey/platting. If we assume, however, that only "designation" of original trust parcels is required, then survey/platting would be unnecessary and the level of title review can be somewhat reduced.

PARCEL CONVEYANCE REQUIRED

The following is a brief description of the personnel and work activities associated with SB 496, assuming that parcel conveyance from the Department to the Trust Authority will be required.

DIVISION OF LAND

Mental Health Project Team

Personnel: One NRM II (Project Manager), two NRO II, one NRO I, one CT III and two college interns.

Tasks: The tasks required in the proposed legislation include the revision of the Settlement Agreement and Department Order, and interim management of Original Trust Land. The title analysis process involves the identification of non-conveyable (500,000 acres) and conveyable (500,000 acres) Original Trust Land, and the actual conveyance and parcels by quit claim deed to the Trust. The identification of easements and rights-of-way will also be required. In addition, it will be necessary to perform and administer hazardous waste evaluations prior to actual parcel conveyance, and it will be necessary to continue to adjudicate the validity of native allotment claims; provide guidance to the survey, mapping and platting processes; resolve competing Trust and ANSCA claims; and conduct Smallest Practicable Determinations on original trust lands utilized by state agencies. Certain of these evaluations would be performed with the regional offices.

Contractual: Costs are included for environmental site inventory and/or assessments of hazardous waste substances sites that may exist on conveyable original trust property and the costs of survey and platting for conveyable parcels.

Land And Resources

Personnel: One Cadastral Surveyor III

Tasks: Tasks include the creation of survey and platting standards for parcel conveyance, development of RFP's and contract/project administration of survey and platting activities carried out by contractors to DNR. Survey will continue for several years until completed.

Regional Offices

Personnel: Three NRO II, two DPC II (part-time).

Tasks: Tasks include the updating of title related information to the Land Administration System, undertaking research on title related questions, participating in smallest practicable tract determinations, and identifying specific easements and rights-of-way. The regional offices will also act as liaison to the borough and municipalities in possible land exchanges involving original trust land, and will write all decisions of regulations of preliminary selected original trust lands. It is anticipated that the regions' tasks will be reduced to 9 months in FY94.

PARCEL CONVEYANCE PREQUIRED

DIVISION OF LAND

	<u>EY93</u>		<u>EY94</u>
7100 Personal Services			
<u>Mental Health Project Team (MHPT)</u>			
(1) NRM II - Project Manager	76.1		77.6
(2) NRO II (60.6 + 55.1)	115.7		118.0
(1) NRO I	48.7		49.6
(1) CT III	35.2		36.2
(2) College Interns	<u>27.5</u>		<u>27.5</u>
Subtotal	303.2		308.9
<u>Land & Resource Management</u>			
(1) Cadastral Surveyor III	104.0		104.0
<u>Regional Offices</u>			
Northern Regional Office			
(1) NRO II	57.0	9 mo	40.0
DPC II (6 months)	18.5		19.0
South Central Regional Office			
(1) NRO II	57.0	9 mo	40.0
DPC II (6 months)	18.5		19.0
Southeast Regional Office			
(1) NRO II	<u>57.0</u>	9 mo	<u>40.0</u>
Subtotal	208.0		158.0
SUBTOTAL	615.2		570.9
7200 Travel			
MHPT	3.0		3.0
Land & Resources			
Regional Offices			
NRO	4.0		3.2
SCRO	4.0		3.2
SERO	<u>4.0</u>		<u>3.2</u>
Subtotal	15.0		12.6
7300 Contractual			
MHPT	6.0		6.0
Hazardous Substance Inventory			
Area Analysis	150.0		200.0
Site Analysis			200.0
Land & Resources			
Cadastral Survey	350.0		350.0
Regional Offices	---		---
Subtotal	506.0		756.0

7400 Commodities		
MHPT	6.0	6.0
Land & Resources	3.0	3.0
Regional Offices		
NRO	3.0	2.3
SCRO	3.0	2.4
SERO	<u>3.0</u>	<u>2.3</u>
Subtotal	18.0	16.0
TOTAL	1,154.2	1,355.5

TABLE 1

Project Tasks Associated With Legislation

	Chapter 66 (1991)	SB Parcel Conveyance (1992)
Settlement Agreement	x	x
Department Order	x	x
Comparability Analysis	x	
Smallest Practicable Tract (State Land)	x	x
Appraisal	x	
Title Review		
Non-Conveyable Parcel Identification	x	x
Conveyable Parcel Identification	x	x
Elective Parcel Identification ¹	x	x
Easement/ROW Identification	x	x
Conveyance (MRTL parcels)/ Clear List	x	x
Land Exchange Analysis	x	
Hazardous Materials	x	x
Municipal Entitlement Exchange	x	x
Survey	x	x
Adjudicate Validity of Native Allotment Claims	x	x
Tyonek "Resolution"	x	x

¹ Parcels that may be conveyed to the Trust Authority

TABLE 1
Page 2

Interim Management State Land

Original Trust Land (OTL)	x	x
Hypothecated Land (HL)	x	
Proposed Substitute Land (PSL)	x	

Mapping (including Status Plats)

HL	x	
OTL	x	x
PSL	x	
Collateral		x

Information System

MH Subsystem	x	x
Comparability/Value	x	
Land Exchange	x	
Collateral		x

TABLE ²

Current Project: 1991 Legislation

Operating Budget	CIP Budget
93 94	93 94

DIVISION OF LAND

Mental Health Project Team	577.7	577.7	100.0	50.0	Data Repository
			675.0	300.0	Comparable Characteristics
Regional Offices			0	450.0	Hazardous Waste (General)
NRO	91.0	45.5		300.0	Hazardous Waste (Specific)
SCRO	91.0	45.5			Appraisal
SEO	91.0	45.5	1,130.0	1,570.0	Surface
			25.0	75.0	Forestry
			<u>750.0</u>	<u>1,750.0</u>	Survey
	850.7	850.7	4,505.0	4,505.0	

DIVISION OF MINING

	105.1	52.5	20.0	20.0	Tech. Review Committee
			15.0	15.0	Other Consultants
			<u>230.0</u>		Mineral Evaluation(s)

DIVISION OF MANAGEMENT

	<i>2m</i> 350.0	<i>2m</i> 350.0	10.0	25.0	Recorder's Office
--	-----------------	-----------------	------	------	-------------------

DIVISION OF FORESTRY

	72.6	36.3			
TOTALS	⁴⁷ 1,388.4	³⁸ 1,288.8	2,455.0	4,365.0	
TOTAL	⁸ 2,666.9		7,020.0		

INFORMATION RESOURCE MANAGEMENT (IRM) COMPONENT
LAND RECORDS INFORMATION SECTION
Submittal for
FISCAL NOTE FOR SB NO. 469

SB No. 469: Sponsored By: Senate Finance Introduced: 4/13/92

An act amending provision of ch. 66, SLA 1991, that related to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date.

(See Division of Land's fiscal note and bill analysis for a complete project description.)

Assumptions

The proposed legislation specifies the Department of Natural Resource shall manage the land that constitutes the corpus of the mental health trust under the direction of the Mental Health Trust Authority. The proposed legislation does not define "reconstitution" of the mental health trust corpus.

This fiscal note assumes that the department must establish and maintain the public lands records in such a manner that provides for the future management of the mental health trust corpus. It also assumes that, at a minimum, management of the land by the Mental Health Trust Authority has to be annotated to the public land record.

This fiscal note assumes the life-of-the-project is through June 1994. If the lands that constitute the corpus of the mental health trust are required to be surveyed and conveyed to the Mental Health Trust Authority, the positions specified in this fiscal note will have to be extended through the life-of-the-project.

Program Summary

This fiscal note is for the continuation of the Mental Health Project, which received first year funding under ch. 66, SLA 1991. Four positions were established under last year's legislation; and, these positions will be utilized to the completion of the project. One incremental position and a student intern are being requested to facilitate tabular index and graphic record notation that is required by June 1994; and to provide geographic index mapping.

The Information Resource Management (IRM) Component will provide design, programming, and analysis necessary to extract and report on information contained in the state's Land Administration System (LAS) database of state land activity and revenues. This includes the development of a title subsystem to track the Mental Health trust corpus and incorporate that information into public land records. The IRM Component is also responsible for noting the disposition of all lands involved to the graphic record, and will annotate the tabular record on the LAS for those Legislatively Designated Areas pledged as security to the Mental Health Trust Authority. LRIS will provide geographic index mapping at various scales and complexity, as required by the project.

The project will require six positions for two years:

- 1) Analyst/Programmer IV to provide computer applications support, and development of the title subsystem;
- 2) Natural Resource Officer II to modify the LAS structures to accommodate tabular recordation of mental health lands, and extraction of LAS data for geographic index mapping;
- 3) Natural Resource Officer I to review notation of the graphic record, and provide quality assurance for geographic index mapping;
- 4) Natural Resource Technician II to prepare relevant data and produce final notation of trust lands to the graphic record; and, gather documentation and prepare relevant data for geographic index mapping;
- 5) Data Processing Clerk I to process documents to support record notation, index mapping, and LAS data entry; and,
- 6) Student Intern to produce geographic index mapping.

Computations

Personal services are based on anticipated FY93 employer costs.

Space rental is calculated using the following formula:

$$125 \text{ sq. ft.} * \$3.00 * 12 \text{ months} * 5 \text{ positions} = \$22,500 \text{ per year.}$$

Indirect charge is **NOT INCLUDED**. Indirect charge will need to be added at the department level.

Project Costs

	<u>FY93</u>	<u>FY94</u>	<u>Total</u>
Personal Services			
Analyst/Programmer IV	72.0	72.0	144.0
Natural Resource Officer II	60.0	60.0	120.0
Natural Resource Officer I	50.0	50.0	100.0
Natural Resource Tech. II	46.0	46.0	92.0
Data Processing Clerk I	36.0	36.0	72.0
Student Intern	20.0	20.0	40.0
<u>Subtotal</u> Personal Services	284.0	284.0	<u>568.0</u>
<u>Subtotal</u> Travel	0	0	<u>0</u>
Contractual Services			
Computing Resources including			
DOA Data Processing Chargeback	20.0	10.0	30.0
Space Rental	22.5	22.5	45.0
<u>Subtotal</u> Contractual Services	42.5	32.5	<u>75.0</u>
Supplies			
Plotter, Micrographic, and Office Supplies	12.0	12.0	24.0
<u>Subtotal</u> Supplies	12.0	12.0	<u>24.0</u>
Equipment			
Office Furniture	1.0		1.0
<u>Subtotal</u> Equipment	1.0		<u>1.0</u>
<u>PROJECT TOTAL</u>	<u>339.5</u>	<u>328.5</u>	<u>668.0</u>

Economic Impact

Successful delivery on the Mental Health Project will satisfy the Mental Health litigation and establish a land and capital based trust to be managed under the direction of the Mental Health Trust Authority.

For further information, see Division of Land's fiscal note and bill analysis.

Impact to Local Government

See Division of Land's fiscal note and bill analysis.

BRU: Management and Administration
Component: Information Resource Management (427)

Project Contact: Dianne M. Lyles, Chief
Land Records Information Section
Office of the Commissioner

Revised Figures for Fiscal Note to SB 469 4/22/92
Mental Health Trust Amendments
Land Records Information Section

Project Costs

	FY93	FY94	FY95	FY96	FY97	FY98	Total
Personal Services							
Analyst/Programmer IV	72.0	72.0	0	0	0	0	144.0
Natural Resource Officer II	60.0	60.0	0	0	0	0	120.0
Natural Resource Officer I	50.0	50.0	50.0	50.0	50.0	50.0	300.0
Natural Resource Tech. II	46.0	46.0	46.0	46.0	46.0	46.0	276.0
Data Processing Clerk I	36.0	36.0	0	0	0	0	72.0
Student Intern	20.0	20.0	0	0	0	0	40.0
Subtotal Personal Services	284.0	284.0	96.0	96.0	96.0	96.0	952.0
Subtotal Travel	0	0	0	0	0	0	0
Contractual Services							
Computing Resources including							
DOA Data Processing Chargeback	20.0	10.0	10.0	10.0	10.0	10.0	70.0
Space Rental	22.5	22.5	9.0	9.0	9.0	9.0	81.0
Subtotal Contractual Services	42.5	32.5	19.0	19.0	19.0	19.0	151.0
Supplies							
Plotter, Micrographic, and Office Supplies	12.0	12.0	4.0	4.0	4.0	4.0	40.0
Subtotal Supplies	12.0	12.0	4.0	4.0	4.0	4.0	40.0
Equipment							
Office Furniture	1.0						1.0
Subtotal Equipment	1.0						1.0
PROJECT TOTAL	339.5	328.5	119.0	119.0	119.0	119.0	1,144.0

Post-It™ brand fax transmittal memo 7671 # of pages 1

To Gary / Nico	From Wendy Wolff
Co. Fin Svc	Co. DNR - LRIS
Dept	Phone # 762-2390
Fax # 465-2492	Fax # 562-4871

PRINCIPLES OF ALTERNATIVE SETTLEMENT

1. The following land will be returned to trust status: Land originally granted to the State under the Alaska Mental Health Enabling Act which (a) has not been conveyed or encumbered by the State or reserved by law from public domain, (b) is subject only to oil and gas leases, coal leases or other leases, timber contracts, mining claims, or mineral sales, (c) is not necessary to carry out the purposes of an interagency land management agreement, (d) is subject only to a land use or right-of-way permit issued by the Department, and (e) has not been approved or disapproved as a Municipal selection.

This description of land to be returned to the Trust is different than that provided in Sec. 54 of Ch. 66 SLA 1990. It deletes the Haines State Forest and Tanana Valley forest from the list of land returned to the Trust and does not provide for the "replacement" of land.

2. Principles of ownership, management and disposition of the land described in paragraph 1 will remain as embodied in Ch. 66 SLA 1991. This means that the land will be conveyed in fee, including subsurface rights, to the Alaska Mental Health Trust Authority. In the context of this settlement, the ACE intervenors agree that, except for the public notice requirements of AS 38.05.945(b) and (c), management and disposition of this land will be as private land and not be subject to the provisions of AS 38.04 and AS 38.05.

3. The State will make an annual payment equal to six percent (6%) of the unrestricted general revenue of the State during each fiscal year as compensation for land which is not returned to trust status. This money will be allocated to the Mental Health Trust Income Account established by Sec. 11 of Ch. 66 SLA 1991.

4. From the funds allocated to the Mental Health Trust Income Account, including proceeds earned from the management of the land, amounts will be appropriated each year to meet the necessary expenses of a comprehensive mental health program. The responsibilities of the Trust Authority, the Governor, and Legislature in carrying out these obligations, the mechanisms for determining annual expenses, and participation by various advisory boards, and the principles governing use of Trust funds will remain as defined in Ch. 66 SLA 1991.

5. To secure the State's obligation to make annual payments from the unrestricted general revenue of the State each year, land that was granted to the State under the Alaska Mental Health Enabling Act and that is designated by law as a State Park, State Forest, State Game Refuge, State Wildlife Refuge, State Game Sanctuary, State Recreational Area, State Recreational River, State Wilderness Park, State Maritime Park, State Special Management Area, State Public Use Area, Critical Habitat Area, Bald Eagle Preserve, Bison Range, or Moose Range will be pledged as security to the Mental Health Trust.

6. Management of and title to the land described in paragraph 5 will remain with the State and income from the land shall be deposited in the General Fund and considered unrestricted general income of the State. In the event that the State forfeits on its obligation to deposit 6% of unrestricted general income in the Mental Health Trust Income Account, the Trust may elect to foreclose upon the land pledged as security. Any action for foreclosure shall be filed in the Supreme Court which shall retain jurisdiction of all issues related to foreclosure, including the transfer of title, the parcels to be foreclosed, and the laws applicable to management of the foreclosed land.

7. The undersigned support S.B. 469 as introduced, incorporating these changes and repealing certain provisions of Ch. 66 SLA 1991.

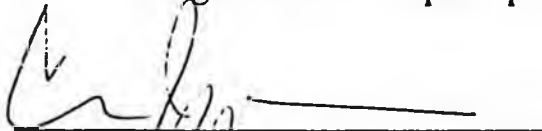
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8. Upon the effective date of legislation incorporating this settlement, the ACE intervenors would dismiss their complaint in intervention and support immediate lifting of the injunction and lis pendens, and the objecting plaintiffs would withdraw their opposition to Ch. 66 SLA 1991.

We agree with these principles:



Eric Jorgensen
Sierra Club Legal Defense Fund, Inc.,
for ACE Intervenors:

Alaska Center for the Environment
Alaska Sportfishing Association
Lynn Canal Conservation
Northern Alaska Environmental Center
Susitna Valley Association
Sierra Club
Southeast Alaska Conservation Council
Trout Unlimited



THE ALASKA JOURNAL OF COMMERCE

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Alaska's *Journal of Commerce*

Established 1976

One Dollar Week of April 13, 1992

JIM DUNCAN
ALASKA STATE SENATE
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JUNEAU AK 99811

INSIDE

Hickel seeks subsidy for Seward-bound coal

The Hickel administration has broached the idea of short-term rate adjustments for export coal moving to Seward on the Alaska Railroad, Page 6

The argument against the recent health care proposal in the Legislature

Ray Schalow of the state medical association argues that CSSB83 panders to public anger but doesn't deal with a multitude of realities, in a commentary on Page 6

A \$100 million Native hospital is in the works

Bids will go out late this summer on the Alaska Native Services Medical Center in Anchorage, in the lead story of our Real Estate/Construction Focus, Page 11

Koonce Pfeiffer is awarded the initial ADA contract for Anchorage

The preliminary work on determining what the Municipality of Anchorage must do to comply with the ADA was awarded to Koonce Pfeiffer, Page 11

PenAir buys the mother of all geoses

Peninsula Airways, Inc. has added a \$1 million Turbo Goose to its fleet, giving the carrier increased ability to get anywhere in the Aleutians in an emergency, Page 19

AlasCan will get a trial run in Massachusetts

Innovation and persistence may finally be paying off for a Fairbanks firm that makes composting toilets and greywater treatment systems as Gloucester, Mass. will use two units in a pilot project, Page 20

Miners and coal operators oppose Hickel on mental health land trust

By Tim Bradner
Alaska Journal of Commerce

JUNEAU—Miners and coal operators are now lobbying the Hickel administration to junk the complex and controversial mental health lands legislation passed in the closing days of the 1991 Legislature. "This thing is a tar-baby," one coal operator, whose project is impeded by mental health lands litigation, said privately.

An alternative proposal being circulated in Juneau would be easier to implement and would quickly clear title to millions of acres of state lands otherwise held in limbo, they argue.

The governor and state lawmakers are reportedly interested in any approach that will solve the problem, but legislators are waiting to see

Continued on Page 2



Railroad passes Uilbelli coal mine

Photo by Frank Flans

Heinze a natural for natural gas deals

By Bob Tkacz
For the Journal of Commerce

About a year from now, the Alaska Legislature will receive a contract proposal for the sale of state-owned North Slope natural gas, if Harold Heinze has his way.

While still functioning as commissioner of the Department of Natural Resources, Heinze was named, April 1, by Gov. Walter J. Hickel as his new special assistant for the marketing of natural resources.

"This is not an April Fool's joke. This one is for real,"

Heinze felt compelled to tell reporters at the announcement news conference.

His new duties will include the undefined "marketing," not necessarily meaning sale, he clarified, of the 103 million acres of Alaska land owned by the state and of the Fort Knox gold mine near Fairbanks. But his primary directive is to put together a deal involving North Slope natural gas.

"We believe the state is in a position to go to the marketplace," Heinze declared.

Like other Hickel administration schemes, the new



Harold Heinze

campaign resulted from a quick meeting of minds.

Heinze admitted feelings of frustration in the commissioner's post as that multi-faceted job did not allow him to focus on particular issues. With the need to enhance state revenue in the face of falling oil income growing like a dark shadow over the government and economy, Heinze proposed his new job to the governor.

"We agreed on almost every point almost instantly," Heinze said of their discussion in early March.

Continued on Page 4

Tesoro earnings disappoint to date

By Ray Tyson
For the Journal of Commerce

Weak residual fuel oil markets coupled with the cost of mounting environmental regulations are putting the bite on Tesoro Alaska Petroleum Co.'s current year earnings.

"We're disappointed so far in 1992. Earnings are not near what we expected," said Gene Burden, Tesoro's senior vice president for marketing.

Tesoro's corporate earnings, Burden said, plummeted from \$22 million in 1990 to \$3.9 million in 1991. But he stopped a hair short of pre-

dicting whether Tesoro would fall into the red by the end of 1992.

"This is definitely not as good a year as last year," Burden acknowledged.

Tesoro's Alaska subsidiary owns a 68,000 barrel-a-day refinery at Nikiski, a 10-inch pipeline between Kenai and Anchorage, 93 branded service stations and a chain of 7-11 stores. The refinery's full range of products generates 73 percent of the sales for its Texas based parent.

In past months, Tesoro stock has fallen in the wake of the company's financial woes.

Continued on Page 3

One man's opinion

By Robert J. Gould

As few people know, I am the principal owner of this publication and have been since August 1990. Over my past 16 years in Alaska, I have been involved as part or sole owner in a variety of businesses, one of the most recent of which is this paper. While historically my style has been to be low-profile, I have decided now to take pen in hand for two reasons. First, even with a very able staff, the increasing size, complexity and challenge of this business necessitates more day-to-day attention on my

part. In other words, to paraphrase the late Sen. Everett Dirksen, a few hundred thousand dollars here and a few hundred thousand dollars there and soon you're talking about serious money. Serious money requires serious attention. Second, rightly or wrongly I consider myself the businessman's Everyman. I have been involved with large businesses and small, inside and outside Alaska, and known good times and bad. While this background may not be very much different from that of some of you

Continued on Page 24

Administration's land trust is lawyers' dream

Continued from Page 1
 what position Gov. Walter J. Hickel will take. Meetings were held in the governor's office last week, but no decision was reached.

Lawmakers say they're willing to look at the new approach, but they want to make sure it really will end the litigation and clear title to hundreds of thousands of acres of state lands on which development is now blocked. But some legislative analysts are more critical, arguing the alternative would cost more money in the long run.

The current approach is a land-based settlement involving less cash than mental health groups would have liked. This involves reconstituting a mental health land trust with the original or replacement lands, then managing development of those lands to create income for state mental health services.

A key architect of that approach is former Natural Resources Commissioner Harold Heinze, who pushed the approach because it would get more state lands out for development. But the 1991 law sparked more litigation from a coalition of environ-

mental, recreation and tourism groups concerned about land aspects of the deal.

Also, the complexity of land exchanges involved are now seen to tie up considerable acreage of state lands for several years.

"This is a lawyer's dream," said Phil Volland, an attorney representing one mental health advocacy group that has backed the alternative proposal. "It will drag through the courts for years, tying up at least five million acres of land. The solution (being offered) is nothing radical, won't cost the state more money, and won't result in years of fruitless litigation."

The alternative being offered is simpler:

- It would place unencumbered lands once in the original land trust into a reconstituted trust, as well as original trust lands under coal or timber leases. This would involve about 496,500 acres. All original trust lands held by third parties would be released. Under current law, these lands must be compensated value-for-value through land exchanges from a pool of other state lands, the feature that has sparked the most

controversy.

- Six percent of unrestricted state revenues would be allocated to the mental health trust for support of mental health programs, instead of the declining percentages over 12 years set out in the 1991 law. This is in state law now, through legislation passed in 1990. That amount of funding will decline over the years as all state unrestricted revenues fall, but mental health groups feel they are better off under that approach than the uncertainties of trying to generate revenue through land management.

One major mental health advocacy group, being represented by Volland, is now backing the alternative. Others may come on board. They are more interested in a more secure funding source for mental health programs than being involved in land management problems.

If the mental health lands litigation can be resolved, legal roadblocks facing two major coal projects, the Wishbone Hill mine planned by Idemitsu Alasks, Inc. near Palmer and the Beluga mine being developed by Diamond Alaska Coal across Cook

Inlet from Anchorage, will be removed. Other problems also face those projects, mainly economic, but lawsuits brought over state mental health lands included in coal leases are an added obstacle.

Idemitsu has been given a state mining permit for its project but says it wants the mental health lands issue resolved before it moves ahead with the project, which will employ 200.

Another project affected is the new Fort Knox gold mine near Fairbanks. Though not originally in the mental health land trust, state lands in the Fort Knox mining area are included in a list of state lands up for exchange under the 1991 law. The uncertainty of who the future landowner will be is a concern to AMAX Gold, the developer at Fort Knox. That mine, in production, also will employ 200.

If settlement efforts continue under the current law, they will involve reconstituting a million-acre land trust dissolved by the Legislature in 1978. Chapter 66, enacted in state law last year, would allow the land trust to be reconstituted over a period of years through a series of complex land exchanges and negotiations.

A key feature is that the 1991 law requires exchanges on a value-for-value basis for lands taken from the original trust and transferred to third parties, either individuals or municipalities. Because some lands in or near communities, once in the original trust, are now valuable, compensating for their loss will require larger amounts of acreage taken in more outlying areas.

Thus, the pool of replacement lands needed for compensation is much larger, potentially three to five million acres. As long as negotiations proceed, those state lands are in limbo.

Continued on Page 3

Lawyers' dreams are developers' nightmares

Continued from Page 2
 and their future ownership in doubt.

Litigation filed by environmental and recreation groups is a serious added problem. That lawsuit raises important issues under state and federal law, some of them stemming from defects in the 1991 law rushed through the Legislature, that will take several years to resolve. That, added to the time it will take to negotiate land exchanges, means a cloud on several million acres of state land for a decade or more.

Environmental and recreation groups who brought litigation against the 1991 law helped draft the alternative. If it is adopted, "this proposal could enable us to drop our legal challenges and expedite its clearance with the courts," said Cliff Eames of the Alaska Center for the Environment, who worked with tourism, sports fishing and hunting groups in drafting the new proposals.

"This is a solution the environmental community feels will benefit all Alaskans, a true win-win situation."

Critics of the current approach argue it will discourage or preclude business development, because it will tie up millions of acres of land for an indeterminate number of years.

Management parameters on resource projects will be difficult to determine until land ownership—the new trust or the state—are known.


Two other problems cited: the freeze on some state lands could extend even further, because some lands on the exchange list must be held as collateral until a schedule of 12 years of cash payments from the state to the trust is completed.

Those payments will not begin until litigation is cleared and the final settlement is agreed on. Secondly, a profit-motivated land trust, as a beneficiary, must maximize its revenues. Royalties and lease payments may be increased on businesses or industries that are marginal.

Unlike the state, the trust is not in a position to recognize indirect revenues, such as taxes or the contributions to the local economy through creation of jobs.

A key problem that motivates tourism, recreation and environmental groups to oppose the current settlement is that other values important to the economy of a region, but not directly beneficial to the trust beneficiaries, will not be considered or protected. An example is scenic or wildlife values.


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Brainwaves

Volume II, Issue 5

a publication of the Alaska Alliance for the Mentally Ill

March 1992

The President's Corner

Discussed within this issue of the newsletter are two important decision issues again confronting us. We have been presented with a renewed opportunity to again address, and hopefully bring about, a more reasoned and reasonable solution to these; the lands trust litigation and API 2000.

Lands: As you will gather from reading Senator Jim Duncan's article, an alternative settlement proposal is in the making; has been in the making. I've kept our own AKAMI Board members and Affiliate Presidents informed of this over the past weeks, and I'm sure all of you have seen the most recent news stories in the Anchorage papers. Very shortly you will be hearing of the introduction of proposed amendments to Chapter 66. These amendments address several of the most serious concerns that we have had about the current settlement proposal. Some of their apparent strengths are:

...They bring no new conditions to the bargaining table, i.e., these provisions have all been a part of previous statutory enactments or part of previous settlement agreements by all parties.

...They secure for the beneficiaries of the mental health trust a continued income stream for their programs.

...They further secure an investment account as additional security for supplemental funding of mental health programs.

...They remove the questionably cost effective burden of on-going land management by the present Trust Authority construct, presently contained in Chapter 66.

...They remove the one true "Achilles Heel" in the present Chapter 66 settlement: the 6(i) provision of the Statehood Act. Our failure to be correct in the interpretation of 6(i) would cost the State the forfeiture of its mineral holdings in lands that it conveys to the trust. These mineral holdings would also be lost to the trust; would revert back to the federal government. *This would bring nothing less than chaos to the State's land management practices and the settlement. All parties seem to agree that a question of such magnitude would have to proceed all the way to the U.S. Supreme Court, a process of several years and great expense, during which time the settlement would be held in abeyance and some 5+ million acres of land would now be tied up pending an outcome.

...Upon approval, all trust lands in the hands of third parties, including municipalities, would be immediately and permanently released. It further releases the 4+ million acres of hypothecated lands currently tied up under Chapter 66.

I would assert at this point that this alternative proposal offers us the quickest, least expensive and most acceptable solution so far to the settlement question.

(continued on page 2)

TYONEK NATIVE CORPORATION

1689 C Street, Suite 219
Anchorage, Alaska 99501
(907)272-0707

SB469

Rayan

Senator Jim Duncan
Room 119
State Capitol
Juneau, Alaska 99801-1182

April 8, 1992

Dear Senator:

Please accept this letter of support for the passage of the **Mental Health Amendment Bill** "An Act amending provisions of ch. 66, SLA 1991 that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date."

We encourage the Senate, House and Governor to take all appropriate actions necessary to reinstate a viable solution to this impasse and to allow the state to return to the business of making Alaska strong.

Sincerely,

Tom Harris

Tom Harris
CEO, TNC

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SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 4/29/92

FURTHER: Judiciary
Finance

Date of 5-Day Notice: Received
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: May 1, 1992

Resources Committee considered SB 475

"An Act amending and reenacting provisions of ch. 66, SLA 1991, relating to the trust established by the Alaska Mental Health Enabling Act of 1956; and providing for an effective date."

and recommends:

replace with CS SB 475 (Res)

attaches amendment(s)

adopts _____ Letter of Intent

further referral to the _____

same title
 new title
 technical
title change
(HB only)

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes:
zero fiscal notes Sen Rescumes 4/30/92

fiscal notes _____

DO PASS

[Signatures]

OTHER RECOMMENDATIONS:

[Signature]
Chair, Signature and Recommendation

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 27, 1992

Hon. Lloyd Jones, Chairman
Senate Resources Committee
Seventeenth Alaska State Legislature
Room 30
State Capitol
Juneau, Alaska 99801-1182

Re: SB 469 (mental health lands trust)

Dear Senator Jones:

During Attorney General Charles E. Cole's testimony on Senate Bill 469 at the Senate Resources Committee on April 24, 1992, he expressed his fundamental objections to the bill as a settlement of Weiss v. State, 4FA-82-2208 Civ., the mental health lands litigation. He also mentioned that we had identified a number of legal problems with the bill in the short time we have had to review it. Those legal problems are outlined below.

It is our understanding that the intent of the bill is to shorten the time it will take to gain judicial approval of the settlement of the Weiss litigation embodied in Chapter 66, SLA 1991. To that end, and as an alternative to the provisions of SB 469 as currently drafted, we suggest that the legislature consider three amendments to Chapter 66 which would eliminate any legal argument as to the validity of Chapter 66 (1) under section 6(i) of the Alaska Statehood Act, (2) with respect to the hypothecated lands, and (3) regarding the application of AS 38.04 and 38.05 to the process of reconstituting the trust. The proposed amendments, along with a brief explanation of each one, also are set out below.

I. SB 469 would violate the Alaska Mental Health Enabling Act.

Section 3 of SB 469 would require that all revenues from the reconstituted mental health trust lands -- i.e., both principal from the sale of trust land or extraction of nonrenewable resources and income from leasing the land or the sale of renewable resources -- be deposited in the mental health trust fund, a permanent fund from which only the earnings may be spent. Subsection 202(e) of the Alaska Mental Health Enabling Act (the federal act that created the trust), however, provides in part that "such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska."

WALTER J. HICKEL, GOVERNOR

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We believe we can defend the deposit of principal from the lands in the mental health trust fund under general private trust law principles. But income from trust lands is normally spent for trust purposes, and Congress clearly intended that income from mental health lands be spent first for programs before being used in any other way. Depositing the income directly in the fund, therefore, is prohibited by the Act.

II. SB 469 would create an unconstitutional dedicated fund.

Article IX, section 7 of the Alaska Constitution prohibits the dedication of state revenues to specific purposes "unless required by the federal government for state participation in federal programs" or if the dedication pre-dated the constitution. As noted in the preceding section, section 3 of SB 469 would dedicate trust land income to the mental health trust fund, and such income could not be spent on mental health programs as Congress required when it created the trust originally.

Because the dedication of income to the permanent mental health trust fund is not required by federal law (and, indeed, automatic dedication is prohibited by the Enabling Act), it would violate article IX, section 7.

III. SB 469 would violate the single appropriation bill requirement.

Chapter 66 imposes several restrictions on appropriations of income from the reconstituted mental health land trust, including a requirement that the governor introduce a separate appropriation bill limited to appropriations from the mental health trust income account. SB 469 would apply the separate bill requirement to a percentage of the unrestricted general fund. Article IX, section 12 of the Alaska Constitution, however, requires that the governor "submit a general appropriation bill to authorize the proposed expenditures [of all departments, offices, and agencies of the State]." The important objective of the provision is to ensure that the legislature considers the expenditure of the state's general revenues comprehensively and not in a piecemeal fashion.

As long as it applies only to revenues from the trust lands that will be reconstituted under Chapter 66, we can defend the separate bill requirement on the ground that the Enabling Act requires that income from mental health lands "shall first be applied to meet the necessary expenses of the mental health program of Alaska." Applying it to a percentage of general fund revenues instead of just those from mental health lands, however, would violate article IX, section 12.

IV. Land management would remain a question under SB 469.

The proponents of SB 469 suggest that, because SB 469 requires the Alaska Mental Health Trust Authority to contract with the Department of Natural Resources to manage the land unless the Authority determines that it is in the best interest of the trust to do otherwise, SB 469 allows continuity of management and gives affected industries some comfort with respect to trust ownership of the land.

What they fail to recognize, however, is that the courts will require that trust lands be managed in a fiduciary manner and in the best interest of the trust. Whether DNR or the Trust Authority exercises management duties, therefore, the current state pricing structure and policies for land use could not be applied to trust lands unless they meet fiduciary standards and are in the best interests of the beneficiaries and not just the best interests of the state standard employed by DNR for non-trust lands. The "comfort" to affected industries therefore is illusory.

V. SB 469 provides no protection to third party interests and would create potential liability for the state.

As under Chapter 66, SB 469 would reconstitute the trust with some "encumbered land" -- i.e., land subject to an oil or gas lease, coal lease, or other lease, timber contract, mining claim, sale of materials, land use permit or right-of-way. Under the Settlement Agreement implementing Chapter 66, the plaintiffs agreed that the trust would be bound by the terms of such encumbrances because the trust will be compensated to the extent those encumbrances reduce the value of the lands returned to the trust.

Nothing in SB 469, however, provides that the trust will be bound by the terms of the encumbrances, nor does it provide compensation for those encumbrances. Instead, the trust would be given an "all or nothing choice" to either accept the encumbrance and receive no compensation in return for the devaluation or contest the validity of the encumbrance and, if successful, receive the parcel with no devaluation. Faced with this choice, the trust would vigorously contest the validity of third party interests.

If the trust were to successfully challenge an encumbrance or some of its terms, an affected third party might then try to hold the state liable for the termination of the encumbrance or an increase in rents or royalties. The state would then have settled the Weiss case only to expose itself to numerous other lawsuits.

VI. SB 469 would preclude development of some land currently available for development.

Section 5 of SB 469 would pledge all original mental health lands in state parks, state forests, state wildlife refuges, etc., as security for the state's performance under the bill. Under the Settlement Agreement implementing Chapter 66, and to the extent permitted by the statutes governing the areas, those lands will be available for development prior to court approval of the settlement if plaintiffs agree and after court approval whether plaintiffs agree or not. If they become security for the state's performance as SB 469 would provide, however, the state would be obligated not to diminish their value. In other words, even if otherwise allowed by law, development would be prohibited.

VII. SB 469 does not protect Native allotments.

Under Chapter 66 and the Settlement Agreement, original trust land encumbered by valid Native allotment claims will not be returned to the trust; instead, the trust will receive other state land to compensate for any value lost to the trust as a result of those claims. As a result, the state will decide whether to challenge the validity of Native allotment claims and will review Native allotments on original trust land under the same standards applied to general state land instead of under a higher trust standard of review which would result in more challenges. Under SB 469, land with allotment claims would go back to the trust, and the trust would be almost compelled to challenge each claim because, if the claim were found valid, the trust would receive less valuable over-selection land.

VIII. The provisions of the April 6, 1992 Settlement Agreement cannot be simply cut and pasted into a new agreement.

Supporters of SB 469 have argued that, as a time saving measure, all that will be necessary for a new Settlement Agreement is to cut and paste pertinent parts of the Chapter 66 Settlement Agreement. This will not be possible because each provision of the April 6 Settlement Agreement was negotiated in the context of Chapter 66.

For example, the Settlement Agreement defines an encumbrance to mean every kind of lease, permit, contract, right-of-way, interagency land management agreement, etc. If that very expansive definition is used in a new settlement agreement, very little original trust land would be returned to the trust because SB 469 provides that only certain encumbered land is returned to the trust. As another example, Chapter 66 provides for conveyance of the reconstituted trust lands to the Trust Authority, and the Settlement Agreement includes detailed provisions for such conveyances and for proper accounting following such conveyance.

Under SB 469, trust lands will not be conveyed. Instead, they will simply be redesignated, and an entirely different approach would have to be taken in any implementing settlement agreement.

For all of the foregoing reasons, as well as those Attorney General Cole expressed during his testimony before the Committee, he has asked us to make clear that he will have to recommend that Governor Hickel veto SB 469 should it pass the legislature in its current form. In his view, it is not appropriate to pass such legislation as a settlement of litigation, especially since Chapter 66 will settle the case on terms which are fair to both the trust and the state.

At the same time, Attorney General Cole understands the legislature's and affected third parties' desire to reduce the amount of time it will take to get court approval of Chapter 66, however. To accomplish that result, we have identified three amendments to Chapter 66 that would significantly advance that goal. It is our understanding that all of the attorneys who have signed the Settlement Agreement support these amendments.

The first proposal would make clear that section 6(i) of the Alaska Statehood Act applies to the Trust Authority's management of the reconstituted mental health trust:

AS 37.14.009, added by sec. 10, ch. 66, SLA 1991, is amended by adding a new subsection to read:

(c) In exercising its authority under (a)(2) or (3) of this section, the authority shall comply with the restrictions imposed by section 6(i) of the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (1958).

This result is already provided for in the Settlement Agreement as a term of the patent documents which will be used for conveyance of land to the Trust Authority. The amendment would simply incorporate the parties' agreement in statute, and eliminate any argument that Chapter 66 violates section 6(i).

The second proposal is not really an amendment to Chapter 66. Instead, it would simply ratify the hypothecated lands provision:

Section 56, ch. 66, SLA 1991, is confirmed and re-enacted in its entirety to read:

Sec. 56. SECURITY FOR COMPENSATION TO TRUST. (a) To secure the reconstitution ... [etc.].

This would eliminate any legal argument that the hypothecated lands provision of Chapter 66 was not passed by the legislature in

accordance with constitutional requirements.

The third proposal would amend two subsections of section 55 of Chapter 66 to make clear that the criteria in section 55(e) are substitute safeguards of the public interest for those contained in AS 38.04 and 38.05, and those statutes do not apply to the reconstitution process:

Subsection (e), sec. 55, ch. 66, SLA 1991, is amended to read:

(e) Additional factors prescribed as safeguards of the public interest that shall be considered in determining whether land proposed for exchange under this section should be conveyed by the commissioner of natural resources in trust to the authority are:

(1) ensuring ... [etc.]

Subsection (g), sec. 55, ch. 66, SLA 1991, is amended to read:

(g) The provisions of AS 38.04, 38.05, and 38.50 do not apply to exchanges under this section.

These amendments would make clear that there are significant legal safeguards of the public interest as the reconstitution process moves forward.

We must stress that these amendments are not necessary for the state to prevail against the legal challenges to Chapter 66. If passed, however, they will effectively eliminate the challenges on the specified grounds and significantly hasten judicial approval of Chapter 66.

We urge you to give the proposed amendments serious consideration. If we can answer any questions, please contact us at your convenience.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: G. Thomas Koester
for Brian Bjorkquist
Wendy S. Feuer
Assistant Attorneys General
G. Thomas Koester
G. Thomas Koester
Special Assistant Attorney
General

Page 2, line 11:

Insert a new section, and renumber subsequent sections accordingly:

"*Sec. 4. Section 55(h), ch. 66, SLA 1991, is amended to read:

(h) If agreement cannot be reached between the plaintiffs in *Weiss v. State of Alaska*, 4FA-82-2208 Civil, and the commissioner of natural resources under (f) of this section as to appropriate lands to be conveyed to the trust as compensation or as to the value of the original lands taken or of replacement lands, the superior court [ALASKA SUPREME COURT] shall resolve the disagreements using the criteria set out in this section. The superior court [ALASKA SUPREME COURT] may order the commissioner of natural resources to appropriate state land to the trust without further legislative authorization."

Page 2, line 28:

Insert a new section, and renumber subsequent sections accordingly:

"*Sec. 5. Section 57, ch. 66, SLA 1991, is repealed and reenacted to read:

*Sec. 57. JURISDICTION ASSIGNED TO THE SUPERIOR COURT. (a) The superior court is the court of original jurisdiction to hear and determine any dispute arising under secs. 54 - 56 of this Act.

(b) The superior court may refer the proceedings under this section to a special master."