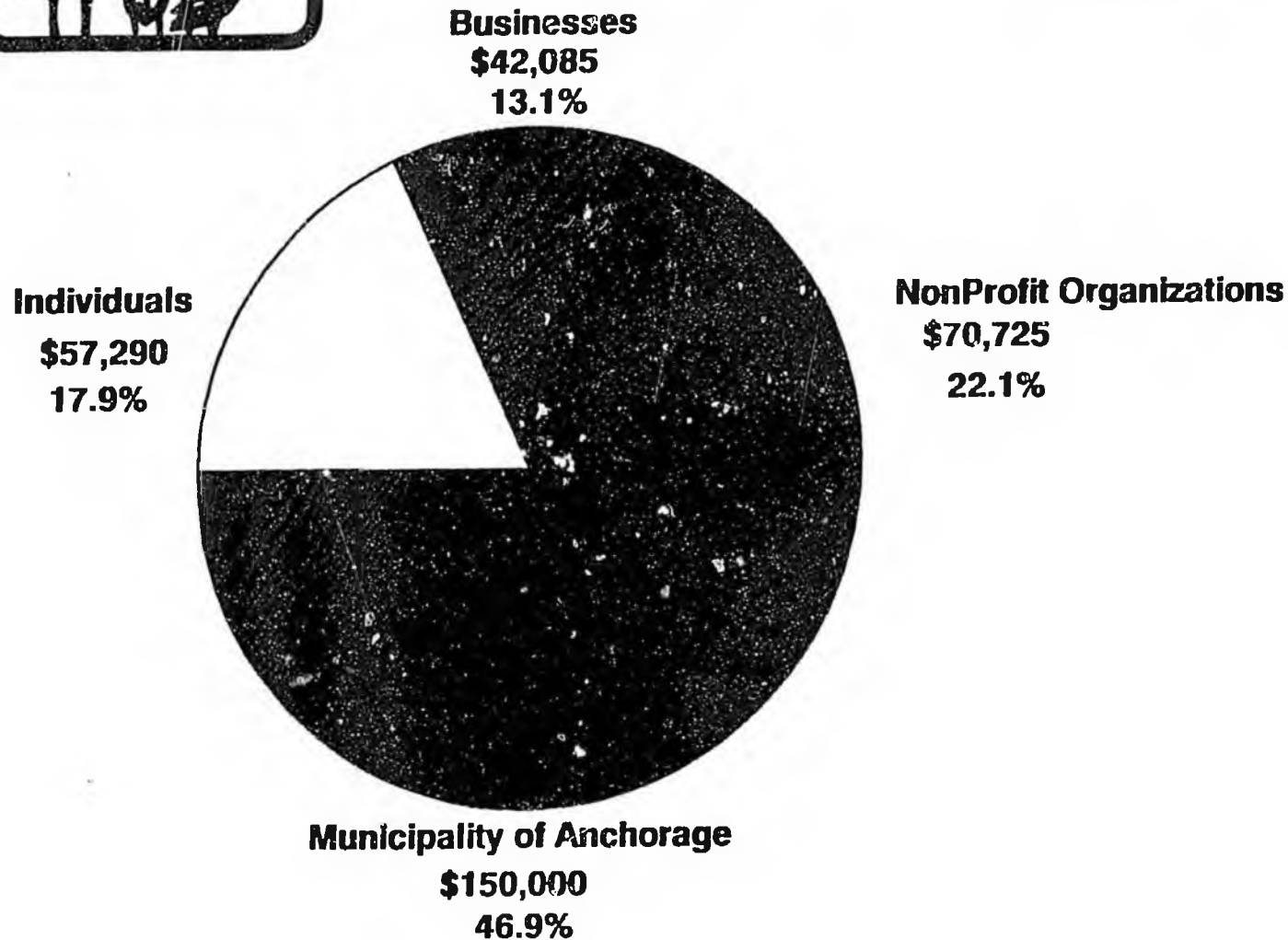


ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7680 SENATE RESOURCES



# Anchorage Business Park Wetlands Sources of Contributions

Total Raised to Date: \$320,100



## **BUSINESS AND OTHER MAJOR SUPPORTERS ANCHORAGE BUSINESS PARK WETLANDS**

Alaska Mill and Feed  
Alyeska Pipeline Service Company  
Municipality of Anchorage  
Anchorage Daily News  
Arco Foundation  
Arctic Welding Supply  
Ashburn & Mason  
AT Publishing, Inc.  
Black-Smith & Richards  
BP Exploration  
Chevron USA Inc.  
Cold Weather Contractors, Inc.  
Dave's Appliance Repair  
Dimond Chiropractic Center  
Don Chemical Company  
Earthscape  
The Esteck Group  
Law Office of Charles Evans  
Exxon Co. USA  
HDR Engineering  
Jack White Company  
Jon Issacs & Associates  
Kodiak Bed & Breakfast  
Kumin Associates Inc.  
Landmark & Associates  
Moore Business Forms  
The Nature Conservancy  
Security Aviation, Inc.  
Law Office of Brock Shamberg, P.C.  
Stewart Title Co.  
Jim Thiele, CFP  
Thomas Head & Greisen CPAs  
TimeFrame  
TRF/Brayton  
Waterfowl USA

1  
2  
3  
4  
5  
6  
SUBMITTED BY: CHAIRMAN RUDOLPH  
Prepared by: Assembly Utility  
Budget Analyst  
For Reading: March 26, 1991

Anchorage, Alaska  
AR NO. 91-60

7  
8  
9 A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE RECOGNIZING THE  
10 BUSINESS PARK WETLANDS AND ENDORSING THE GROUP'S LEGISLATIVE  
11 REQUEST  
12

13  
14 WHEREAS, the Business Park Wetlands Coalition is a successful  
15 public-private partnership dedicated to preserving wetlands within  
16 an urban setting; and  
17

18 WHEREAS, as a partnership, the Business Park Wetlands  
19 Coalition has raised nearly \$170,000 from corporations, businesses  
20 and individuals and received a \$150,000 appropriation from the  
21 Municipality of Anchorage which also furthered development at the  
22 Port of Anchorage; and  
23

24 WHEREAS, the Business Park Wetlands Coalition successfully  
25 purchased 5.3 acres and envisions purchasing almost 25 additional  
26 acres; and  
27

28 WHEREAS, the Business Park Wetlands is one of the most  
29 productive waterfowl breeding areas in urban Anchorage and because  
30 of its location provides unique educational, recreational and  
31 tourism opportunities; and

32  
33 WHEREAS, the Alaska State Legislature made an appropriation of  
34 \$150,000 to this project in 1990 that Governor Cowper subsequently  
35 vetoed; and  
36

37 WHEREAS, the Business Park Wetlands Coalition requests State  
38 funding to match private and public monies raised to complete the  
39 second and third phases of their acquisition program.  
40

41 NOW, THEREFORE, the Anchorage Assembly resolves:  
42

43 Section 1: That the Anchorage Assembly endorses the Business  
44 Park Wetlands and supports the Business Park Wetlands Coalition's  
45 legislative request.  
46

47 Section 2: That the public-private partnership aspect of the  
48 Business Park Wetlands offers the public sector leverage by  
49 continuing to attract significant amounts of private and nonprofit  
50 sector dollars to replace diminishing public dollars.  
51

52 PASSED AND APPROVED by the Anchorage Assembly this 2nd  
53 day of April, 1991  
54  
55  
56

Chair

57  
58 ATTEST:

59  
60  
61 Richard E. Goldkamp  
62 Municipal Clerk  
63

AM 312-91

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

April 9, 1991

**SUBJECT:** Anchorage Coastal Wildlife Refuge (HB 200)(W.O. 17LS-0825)

**TO:** Representative Max Gruenberg  
Attn: Mark Handley

**FROM:** Jerry Luckhaupt *JER*  
Legislative Counsel

Mark Handley of your staff has asked what is the effect of HB 200's expansion of the legal description of the Anchorage Coastal Wildlife Refuge: is all the land within the legal description to be included in the refuge so that, in effect, HB 200 works as a condemnation proceeding for all privately owned lands within the legal description? The answer is no.

HB 200 amends AS 16.20.031(a) by the addition of a new paragraph that extends the legal description of the Anchorage Coastal Wildlife Refuge. This extension of the legal description only includes within the refuge the "state-owned land and water" within the legal description, including the addition made by HB 200. AS 16.20.031(a). The state and the City of Anchorage may not acquire privately owned land within the legal description of the Anchorage Coastal Wildlife Refuge by eminent domain for inclusion within the refuge. AS 16.20.031(e). The Department of Fish and Game and the City of Anchorage may acquire privately owned land within the refuge "by purchase, exchange, or otherwise, except by eminent domain." No condemnation, or acquisition by eminent domain, of all lands within the legal description is contemplated by, nor permitted by, the bill and the existing statute.

I hope this short discussion addresses your concerns.

GPL:lmb  
91-106.lmb

HB

207

SENATE COMMITTEE REPORT

5/9/92

FURTHER:

N.F. J

DATE TURNED INTO OFFICE: May 10, 1992

Resources Committee considered HOUSE BILL NO. 207

"An Act relating to the Village Safe Water Program."

and a majority of the committee recommends do pass

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ ( )
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( )
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

- adopts \_\_\_\_\_ Letter of Intent
- further referral to the \_\_\_\_\_

- 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

- zero fiscal notes OCRA  
DEC
- fiscal notes \_\_\_\_\_

**DO PASS:**

[Signature] Yes

[Signature] Yes

[Signature] Yes

**OTHER RECOMMENDATIONS:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature] (Do Pass)

Chair: Signature and Recommendation

FISCAL NOTE

No. 1  
 Bill Version: HB 207  
 (H) Publish Date: 4/5/91

STATE OF ALASKA  
 1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Community & Regional Affairs  
 Title: "An Act relating to the Village Safe Water Program." BRU: \_\_\_\_\_  
 Sponsor: Representative Lincoln Component: \_\_\_\_\_  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
 Division: Administrative Services Date: 4/1/91  
 Approved by Commissioner: Edgar Blatchford *Edgar Blatchford*  
 Agency: Community & Regional Affairs Date: 4/1/91

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

*DCRA Fiscal note*

FISCAL NOTE

No. 1

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Bill Version: HB 207

(H) Publish Date: 4/5/91

Revision Date: \_\_\_\_\_ Department Affected: Community & Regional Affairs  
 Title: "An Act relating to the Village Safe Water Program." BRU: \_\_\_\_\_  
 Sponsor: Representative Lincoln Component: \_\_\_\_\_  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
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Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

# ALASKA STATE LEGISLATURE

*Representative Georgianna Lincoln*



HESS Committee, Co-Chair  
Resources Committee, Vice-Chair

Eudget Subcommittees  
Health and Social Services  
Revenue

P.O. Box V  
Juneau, Alaska 99811

Phone: (907) 465-3732  
FAX: (907) 465-2652

Alatna  
Allakaket  
Aniak  
Anvik  
Arctic Village  
Beaver  
Bettles  
Birch Creek  
Chalkyitsik  
Chuathbaluk  
Crooked Creek  
Evensville  
Fort Yukon  
Galena  
Grayling  
Holy Cross  
Hughes  
Huslia  
Kalskag  
Katag  
Koyukuk  
Lake Minchumina  
Lima Village  
Lower Kalskag  
Manley Hot Springs  
Marshall  
McGrath  
Minto  
Mountain Village  
Nikolai  
Nulato  
Pilot Station  
Pitkas Point  
Rampart  
Red Devil  
Ruby  
Russian Mission  
Shageluk  
Sleetmute  
St. Mary's  
Stevens Village  
Stony River  
Takotna  
Tanana  
Telida  
Tuluksak  
Tyonek  
Venetie  
Wiseman

## SPONSOR STATEMENT

### HOUSE BILL 207

#### An Act relating to the Village Safe Water Program

House Bill 207 was introduced at the request of one of the villages in my district. This particular village has a population of 491, is located in rural Alaska, is referred to as a village and has identified water system repairs and improvements as a top priority. However, because this village has incorporated as a First Class City, it does not qualify for funding under the Village Safe Water Program.

This legislation proposes to do one thing -- amend the definition of "village" under AS 46.07.080(2). This would add first class cities with a population of not more than 600 residents to the eligibility list for funding under the Village Safe Water Program.

According to the population list based on the 1990 census as certified by the Department of Community and Regional Affairs, only six additional villages would become eligible for Village Safe Water Program funding under provisions of House Bill 207.

There is a zero fiscal note attached to this bill; no additional funding would be required to implement its provisions. The six villages that would be added to the Village Safe Water Program eligibility list are similarly situated to those already on the list and would be competing for the same funds.

STEVE COWPER, GOVERNOR

**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**

OFFICE OF THE COMMISSIONER

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

April 3, 1991

POSITION PAPER

RE: House Bill 207

SPONSOR: Representative Lincoln


Program Effects of the Bill

This bill extends eligibility for the village safe water program to first class cities with populations less than 600. Presently only unincorporated communities with a population less than 600 and second class cities are eligible.

Six cities would be affected by this legislation, they are: Hydaburg, Pelican, Saint Mary's, Seldovia, Tanana, and Yakutat.

Comments

The Department supports this bill because it furthers the concept of making similarly situated communities eligible for the same State benefits.

  
Edgar Blatchford, Commissioner

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 465-4700
- 949 E. 38TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

April 3, 1991

The Honorable Georgianna Lincoln  
Alaska State Representative  
Capitol Building, Room 112  
P.O. Box V  
Juneau, AK 99811

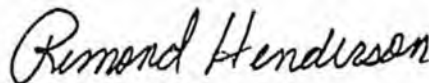
Dear Representative Lincoln:

This is in response to your inquiry of April 2, requesting a listing of first class cities with a population of less than 600. According to our Municipal Population Report of December 15, 1990, there are six cities that fit in that category:

Hydaburg  
Pelican  
Seldovia  
St. Mary's  
Tanana  
Yakutat

Please contact me should you have any further questions.

Sincerely



Edgar Blatchford  
Commissioner



CITY OF TANANA  
P.O. Box 181  
Tanana, Alaska 99777  
(907) 366-7159

"NUCHALAWOYYA" - Where the two rivers meet.

April 5, 1991

Rep. Georjianna Lincoln  
District 24  
Capital Building  
Juneau, Alaska 99811

Dear Georjianna:

Thank you for introducing the amendment to HR 207 adding first class cities under 600 population.

Small first-class cities are mandated to provide more services with essentially the same municipal assistance as second class cities and villages, yet are excluded from state-assisted programs such as VSW. Your recognition of this is to be commended.

Along these same lines, would it be possible to sponsor a similar amendment to the funding for the VPSO program? If Tanana was forced to drop the Dept. of Public Safety position due to budget considerations, I am sure that the State troopers would be unable to provide the level of law enforcement necessary.

May I hear from you on this?

Sincerely,

Peter L. Platten, Mayor

Post-It™ brand fax transmittal memo 7871		# of pages ▶ 1	
To	GEORJIANNA LINCOLN REPRESENTATIVE	From	Pete Platten
Co.	Dist 24	Co.	City of Tanana
Dept.	ATTN: Pat Jackson	Phone	366-7159
Fax #	465-2652	Fax #	366-7249

City of Seldovia

P.O. Drawer B  
Seldovia, Alaska 99663

RECEIVED  
APR - 8 P.M.

March 26, 1991

Honorable Georgianna Lincoln  
Alaska State Legislature  
P.O. Box "V" (MS 3100)  
Juneau, Alaska 99811

SUBJECT: House Bill No. 207

Dear Representative Lincoln:

Thank you very much for sponsoring HB 207. We support passage of it and are writing to all of the members of the referral committees in the affirmative.

Your Bill is one of key significance to the smaller, rural towns. Keep up the good work.

Very truly yours,

THE CITY OF SELDOVIA



Vern C McCorkle  
City Manager

# Alaska State Legislature

AG's Opinion Excluding St. Mary's from VSW funding

Legislative Research Agency



P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 465-3991  
Fax: (907) 463-3331

April 3, 1991

TO: Representative Georgianna Lincoln  
FROM: Dale O. Brandt <sup>DB</sup>  
Legislative Analyst  
RE: Village Safe Water Program  
Research Request 91.240

Please check the appropriate box and return to Mail Stop 3100 or the above mailing address.

- ( ) I approve the release of this information.
- ( ) I approve the release of this information, but remove my name.
- ( ) Keep confidential.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

To assist us in improving the quality of our research services, we would appreciate your response to the following questions. Please be assured that we will take your comments seriously in performing future research for you.

Was the information objective?

Was it clearly written?

Did it provide answers to (or, at least, useful information on) all the questions you posed?

Was the research completed and delivered to you in a timely manner?

# Alaska State Legislature

Legislative Research Agency



P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 465-3991  
Fax: (907) 463-3351

April 3, 1991

## MEMORANDUM

TO: Representative Georgianna Lincoln

FROM: Dale O. Brandt *DOB*  
Legislative Analyst

RE: Village Safe Water Program  
Research Request 91.240

You asked us to research the legislative history of the Village Safe Water Act of 1970 to determine if there is an explanation of why first-class cities of fewer than 600 residents were excluded from eligibility (AS 46.07.080(2)). We reviewed archive files, committee minutes and bill histories. We also spoke with administrators of the program. In the time available to us we could find no discussion of the exclusion of first-class cities.

The Village Safe Water Act was adopted in 1970. Prior to 1972 there were no first-class cities with fewer than 600 residents, according to Dan Bockhurst of the Alaska Department of Community and Regional Affairs. At the present time there are six first-class cities with fewer than 600 residents: Hydaburg, Pelican, Seldovia, St. Mary's, Tanana and Yakutat.

The original definition of village in AS 46.07.080(2) read:

village means an unincorporated community which has between 25 and 600 people residing within a two-mile radius, or a fourth class city.

In 1973, AS 29.08.050(b) reclassified fourth-class cities to second-class cities. The appropriate change in terminology was made to the definition section of the Village Safe Water Act.

In 1980, the City of St. Mary's was an incorporated first-class city with a population of 382. Attached is an opinion of the attorney general regarding St. Mary's access to Village Safe Water program funds.

If you have questions or need additional information, please contact this agency.

Attachment

# MEMORANDUM

# State of Alaska


TO: The Honorable Wilson Condon  
Attorney General  
Department of Law

DATE: July 22, 1981

FILE NO:

TELEPHONE NO:

FROM:

  
Ernst W Mueller  
Commissioner  
Department of Environmental Conservation

SUBJECT:

Village Safe Water Act

Governor Hammond recently signed into law HB 334, an act making funds available for sanitation improvements in various Alaskan communities. Section 1 (a)(2) authorizes a feasibility study under the Village Safe Water (VSW) Act in St. Mary's, which is a first class city. However, Section 46.07.000 of the VSW Act defines village as "An unincorporated community....between 25 & 600 people.. or a second class city." Because of this definition, we are not sure whether the VSW program can assist St. Mary's. Your advice on this matter would be appreciated.

\*\*\*\*\*  
F A X T R A N S M I T T A L M E M O  
TO: Dale Bradt  
DEPT: \_\_\_\_\_ FAX #: 463-3351  
FROM: Capito PHONE: \_\_\_\_\_  
CO: VSW FAX #: \_\_\_\_\_  
Post-It® brand fax transmittal memo 7671

NO. OF PAGES
-----------------

# MEMORANDUM

State of Alaska

*Kelton  
Bergin  
→ Capito*

Ernst W. Mueller, Commissioner DATE: July 30, 1981  
Department of Environmental Conservation

RECEIVED

J-66-068-82

AUG 3 1981

TELEPHONE 465-3600

RECEIVED  
JUL 31 1981  
FROM: WILSON L. CONDON  
ATTORNEY GENERAL  
Department of Environmental Conservation

SUBJECT: Status of St. Mary's  
under the Village  
Safe Water Act

DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: Douglas K. Mertz  
Assistant Attorney General

You have asked our advice on an apparent inconsistency between chapter 88, SLA 1981 (SCS CSHB 334 (R1a)), and existing statutory authority. Specifically, chapter 88 is an appropriations bill authorizing, among other things, expenditure of funds for a village safe water study in St. Mary's, under the Village Safe Water Act, AS 46.07. However, the Village Safe Water Act is applicable only to "villages," which are defined at AS 46.07.080(2) as:

An unincorporated community which has between 25 and 600 people residing within a two-mile radius, or a second class city. [Emphasis added.]

St. Mary's is an incorporated first-class city.

We conclude that under these facts, the sum in question cannot be spent for the proposed safe water study in St. Mary's. The statutory scope of the Village Safe Water Act is clear on its face: it was intended to provide assistance in procuring safe water to "villages" (AS 46.07.010), and that term is defined narrowly and unambiguously. It cannot be argued that St. Mary's is a "village" within the meaning of the Act because its small size fits the common definition of a village (1980 population: 382), since for purposes of the statute, the statute's own definition controls.

On a previous occasion, we informed you that under certain circumstances, a bond proposition could implicitly amend a portion of the Village Safe Water Act (see Memorandum of Advice dated September 5, 1980, by Assistant Attorney General G. Thomas Koester). That reasoning cannot be extended to the instant appropriations bill, however. Article II, section 13 of the Alaska Constitution requires that appropriations bills be limited solely to appropriations, i.e., they may not include substantive law. An expansion of the statutory definition of "village" in the Village Safe Water Act would clearly be a substantive revision of that Act. Thus,

Hon. Ernst W. Mueller

- 2 -

July 30, 1981

even if the legislature intended chapter 88, SLA 1981 to be a vehicle for implicitly rewriting the definition of "village" under the Village Safe Water Act, they could not constitutionally do so in the context of an appropriations bill.

Therefore, in giving effect to chapter 88, SLA 1981, you should consider the appropriation for the St. Mary's safe water study to be a nullity and proceed as if it did not exist. The rest of the appropriation is not affected.

DKM/pjg

HB

296

RECEIVED MAY 10 1991

**Kodiak  
Area  
Native  
Association**



402 Center Avenue  
Kodiak, Alaska 99615  
Phone (907) 486-5725

Representative Cliff Davidson  
State of Alaska House of Representatives  
Box V, Juneau, AK 99811

May 6, 1990

Dear Cliff,

I would like to express my wholehearted support for House Bill 296, as professional archaeologist, and on behalf of the Kodiak Area Native Association. The bill offers long overdue protection for human remains in Alaska, and recognition of the rights and dignity of Native Alaskans. I am particularly pleased with Section 6, which will be one of the few protections available for archaeological sites on private land.

On page 2, line 5 and 6, you might consider legitimately obtained skeletons purchased by physicians and others, which are generally imported from India and other places. Perhaps it would be best to address the bill specifically to human remains from the state of Alaska.

Also, it may be wise to make the proposed dispute committee, described in page 5, lines 27-31, and on page 6, and odd number to avoid split decisions. I would urge you to retain the full representation of the Native community, and consider dropping the area resident.

On the whole the bill is clear, solidly written, and does what it is supposed to. Please accept my thanks, and that of the Native community for introducing this fine piece of legislation. It is fully consistent with your excellent record for supporting and protecting the cultural heritage of Native people.

Sincerely,  
KODIAK AREA NATIVE ASSOCIATION  
Kelly Simeonoff, President

Rick Knecht  
Culture and Heritage  
Program Administrator

*Tanana Chiefs Conference, Inc.*

122 First Avenue  
Fairbanks, Alaska 99701-4897  
(907) 452-8251  
Fax (907) 451-8936

May 6, 1991

Representative Cliff Davidson  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Davidson,

Thank you for this opportunity to comment on HB 296. Here are some initial observations for your review.

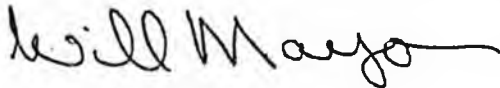
- 1) "Report the presence and location of the remains to the nearest law enforcement agency as soon as possible." The first thought was what are the tribes traditional beliefs regarding the finding of remains. As each subregion has numerous Native burial sites adjacent to villages, many of which are not recorded, might it be the tribe's belief to immediately bury the remains discovered/naturally uncovered at the burial grounds versus contacting the state troopers to conduct their investigations. I am concerned that a class A misdemeanor sentence is quite stringent in such a case and has possibilities of abuse similar to the federal Safeguard program, to the point of where a person may be re-burying naturally unearthed remains of ancestors according to traditional customs, while an unfriendly source uses western law to incarcerate an innocent person.
- 2) The "eminent domain proceedings" section should insure that a situation does not occur such as happened stateside last year where the state and feds allocated numerous dollars to construct a highway which resulted in the disturbances of ancient Native remains that had to be resolved in court under a compromised settlement unfavorable to traditional customs. The state has the resources of a top notch legal department to begin eminent domain proceeding while our tribal governments are financially stressed and are unable to adequately confront the legal resources of the state if it comes down to a lengthy court battle.
- 3) The formation of a "dispute resolution committee" may also be an area of concern, particularly in light of the governor's recent appointment of various Natives to a commission to review Native needs without consulting the Native leadership. On conflicting claims, the governor will establish a committee consisting of a state liaison officer, a physical anthropologist, three descendants and a resident of the area. This could be strengthened by requiring a consultation with Native or committee appointments.

Rep. Davidson  
Page Two  
May 6, 1991

4) In addition to contacting known descendants by certified mail, the village tribal council should also be notified and otherwise included in the process. The regional non-profit Native organization should be copied with these notices as well. In cases where a known descendant may be incapacitated or unresponsive, the village or regional Native entity should be given the opportunity to be inserted into the process officially.

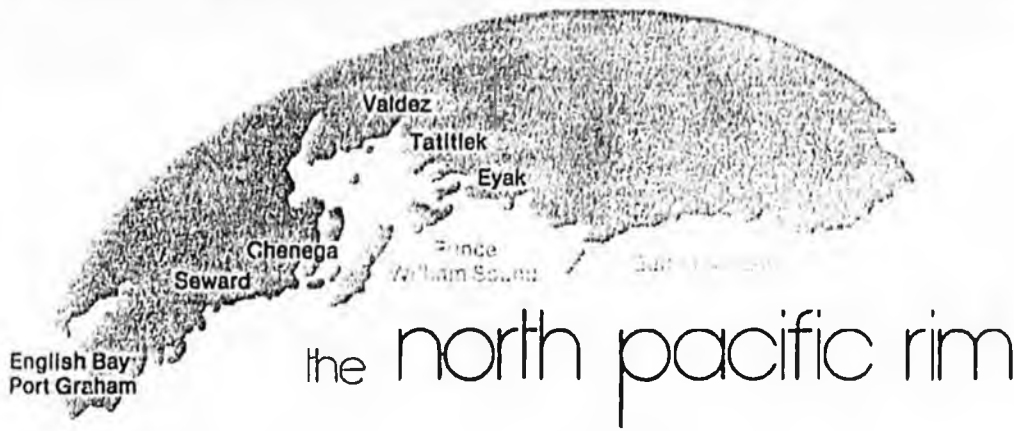
Sincerely,

TANANA CHIEFS CONFERENCE, INC.

A handwritten signature in cursive script that reads "Will Mayo". The signature is written in dark ink and has a long, sweeping horizontal stroke at the end.

Will Mayo  
President

WM/tc/nd



May 6, 1991

Representative Cliff Davidson  
Chairman  
House Resources Committee  
State of Alaska  
House of Representatives  
Box V  
Juneau, Alaska 99811

Dear Representative Davidson:

The North Pacific Rim, the Alaska Native regional tribal organization serving the people of the Prince William Sound and lower Kenai Peninsula, is pleased to see the progress of House Bill 296, "An Act relating to human remains and funerary objects." This Act will close a loophole in current state law and provide some much needed protection for Alaska Native burial sites.

We would like to emphasize that we do not view this legislation as being "anti archaeology" or "anti science" in any way. We would like to point out that The North Pacific Rim is incorporating an archaeology component into a youth Spirit Camp project this summer. We view HB 296 as a vehicle for showing respect for the Native cultures of our state and recognizing the right of Native people to protect the graves of their ancestors.

Thank you and the other sponsors for the time and effort you have put into this important piece of legislation.

Sincerely,

Richard A. Rolland  
Executive Director



# Alaska Federation of Natives, Inc.

May 3, 1991

Mr. Cliff Davidson, Chairman  
House Resources Committee  
House of Representatives  
Box V  
Juneau, Alaska 99811

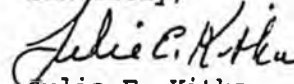
Dear Mr. Davidson:

The Alaska Federation of Natives has followed, with great interest, the repatriation/unmarked burial site hearings of the last one and one-half years. I am pleased to see that progress on the issue has resulted in House Bill 296 now being before the House Judiciary Committee. The Federation supports HB 296 as currently drafted.

As you are well aware, Native burial site disturbances and the removal of remains and funerary objects is an extremely sensitive issue. Time and time again events in Alaska have shown that respect for ancestral remains and Native culture has been readily sacrificed for science and/or personal gain.

The Federation supports HB 296 as presented to the House Judiciary Committee and thanks its sponsors for their efforts in this matter.

Sincerely,

  
Julie E. Kitka  
President

STATE OF ALASKA  
House of Representatives  
District 27

Representative Cliff Davidson  
Chairman  
House Resources Committee



Box V, Juneau, AK 99811  
(907) 465-2487  
Box 746, Kodiak, AK 99615  
(907) 486-8250

TO: All Legislators  
FROM: Representative Cliff Davidson  
DATE: March 13, 1992  
SUBJECT: House Bill 296, "An Act relating to human remains and funerary objects."

House Bill 296 is legislation I introduced to address problems the Alaska Native community has had with repatriation of their ancestral human remains.

The recent return of approximately 800 Alaskan Native skeletons and 150 related artifacts to the village of Larsen Bay on Kodiak Island brings an end to the long battle over who has "ownership" of the burial remains removed in the 1930's by an anthropologist from the Smithsonian Institute. Included in this packet, for your information, are news clippings of this event.

House Bill 296 amends the Alaska Historical Preservation Act. It directs those who come across unmarked burial sites to leave interred remains and funerary objects in place, when possible. If disinterred, the remains would be examined by an archaeologist from the Office of Historic Resource Management for closest kinship identification. If identified, a relative would be notified that the remains and funerary objects are available for disposition. If the remains include Native human remains or funerary objects and the department is unable to ascertain the existence and address of living descendants, the department shall contact the decendent's tribe or the governing body of the nearest tribe, if exact tribal identification is not possible. A person would have the opportunity to study human remains and funerary objects by making a request to the tribe or descendant who is granted disposition rights.

I would appreciate your support on House Bill 296.

Thank you.

**MEMORANDUM****STATE OF ALASKA**

DEPARTMENT OF NATURAL RESOURCES  
 DIVISION OF PARKS & OUTDOOR RECREATION  
 Office of History and Archaeology

TO: Carol Wilson  
 DNR Special Assistant

DATE: May 8, 1992

THRU: Neil Johannsen *R. Shumaker*  
 DPOR Director

FILE NO: 3130-2 AK Legislation

TELEPHONE: 762-2622

FROM: Judith Bittner, Chief *R. Shumaker*  
 History and Archaeology

SUBJECT: 2d-CS HB296  
 Analysis

STAFF ANALYSIS OF 2d-CS for House Bill 296 "An Act Relating to Human Remains and Funerary Objects"

## ANALYSIS

## Comments on New Sections Added to AS12.65

Page 1, line 6 in relation to Page 2, line 2 -- The wording "in the state" when coupled with the requirement to "notify the Department of Natural Resources" (Page 2, line 2) will increase the number of incidents being reported to DNR which will require repatriation per the new requirement of this bill under AS41.35.410 (Page 4-5). These provisions make it clear that at least the new portions of AS41.35 apply to all lands within the territorial boundary of the state regardless of ownership. With this extension over private property, it is especially likely that increased conflicts of property rights will arise for which DNR will be the mediator between private land owners and tribal units.

P1, L7 -- Aside from natural erosion, excavations for construction projects are the most likely class of activity which will result in unexpected discovery of human remains. A requirement to cease activity may result in costly delays to construction, even on private lands. In order to be able to respond in a timely fashion, DNR will need a staff person to directly handle these situations. Failure to do so may expose the state to litigation for costs associated with failure to respond promptly. Currently, the staff responding to the few burial discoveries we actually deal with are paid for mostly by RSA funds from other projects -- most notably from the State Crime Lab and DOT. There is no general fund support for this activity.

P1 13 -- The apparent intent here is to exempt persons doing work expected to result in the discovery of human remains from the reporting requirement; eg., professional archaeologists. This seems sound, but making that exemption specific to permits under

Memo to Carol Wilson  
page 2  
May 8, 1992

AS41.35.080 is not sufficiently inclusive since DNR only issues such permits for state lands. Federal agencies issue permits under federal authorities that are equivalent to state permits. Since this act applies to all lands within the territorial boundaries, "or federal archaeological permits" should be added to line 13. Burials on private lands is also an issue in regard to this provision; archaeologists working on private lands can also be expected to encounter burials. It would be reasonable to equally exempt those persons from this requirement. Doing so might be accommodated by an addition inserted between lines 13-14 reading, "Likewise, professional archaeologists working on private lands are exempt from the requirements of (a) of this section, but shall promptly report human remains discovery to the Department of Natural Resources." Action by DNR would then follow the normal course, without unnecessarily involving law enforcement agencies the loop.

P2, L3 -- The penalty set in this section seems low given the sensitivity of human burials issues. \$50 is on a par with smoking in a nonsmoking area. With such a low penalty, people may simply not report human remains discoveries and proceed with actions that destroy the burial if their liability is limited to \$50 -- especially when discovery is associated with construction where delays could cost them thousands of dollars. \$1000 per individual represented by the human remains at the grave site would provide more realistic incentive and would be more in line with enforcement costs. Along this same line, the discussion relating to changes to the definition of "historic, prehistoric and archaeological resources" (P4, L4) should be closely considered since the definition change may eliminate "human remains" and "funerary objects" from protection as part of that resource class. Please note that unmarked wording changes have been made at P2, L3-4 in generating this draft.

P2, L5 -- If changing the definition of "historic, prehistoric and archaeological resources" to exclude "human remains" and "funerary objects" eliminates protection of those materials from the provisions of AS41.35.200 thru .215, it would be desirable to extend the list of unlawful act associated with those materials by adding "excavate, remove, injure or destroy; offer to sell, buy or barter; transport within the state resources acquired in violation of this section without a permit from the appropriate state or federal agency charged with managing the specific resource involved."

#### Comments on Changes and New Additions to AS41.35

P3, L13-23 -- There is a problem with the existing provision and it is compounded by the addition of the new language. Both acquisition by eminent domain proceedings and salvaging of are expensive activities. This section needs to clarify whether DNR is to bear the costs (with identification via fiscal note) or if the private developer is to pay the costs. Additionally, what is to happen if DNR does not act by the end of three months. Is the developer then free to proceed without further consideration of the subject resources? Given the realities of Alaskan winters, it would, in most areas of the state, be entirely possible to notify DNR (perhaps in December) and have three months pass before there was a reasonable opportunity for field examination of the area to be accomplished. While DNR has no objection to the new wording, we wonder what it will actually accomplish.

P4, L4.8 -- Graves are part of archaeological sites, sometimes being intentionally placed within the midden deposits that built up as a result of humans living at a given locality for hundreds of years, sometimes incorporated into the deposits simply because humans began

Memo to Carol Wilson  
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May 8, 1992

to use old grave localities. Graves simply are part of the historic and prehistoric record; the mechanism for their development is only one element of the lives of humans that produce "historic, prehistoric and archaeological resources." Defining them out of the term seems inappropriate and contrary to reality as an average citizen would understand it. However, we all recognize that graves (human remains and funerary objects) deserve special treatment. It would seem more appropriate to focus on the character of that special treatment than delete them from resource categories to which they empirically belong.

Additionally, there are very pragmatic reasons for opposing deletion of human remains and funerary objects from the definition. Deletion appears to remove human remains and funerary objects from protection under AS41.35.200 thru .215 and other places such as AS41.35.060 where authority for acquisition by eminent domain is given. If human remains and funerary objects are defined out of the existing definition of historic prehistoric and archaeological resources, DNR will not have clear authority to acquire such resources via eminent domain. Not having such authority would make the instructions in this bill at P3, L21 impossible to execute.

A similar problem may exist with regard to AS41.35.070 in regard to surveying for historic, prehistoric and archaeological sites and dealing with them in regard to public construction work.

Rather than defining them out of the resource class, it might be more advantageous to focus on the special treatment that these resources deserve and foster a closer working relationship between the concerned native people and archaeologists performing work which is integral to public construction projects or academic research.

P4, L19 -- Tribes as defined by the Secretary of Interior are numerous within Alaska and the territories over which they have interests overlap significantly. This creates potential for complicated determinations of relative interests between tribes and individuals in relation to their own or other tribes. But beyond that issue -- inclusion of this definition of tribe specifically extends tribal status to native villages and regional corporations as part of a state act. Tribal status has been an issue of concern to the current and prior state administrations. This definition and its implications from a broad policy standpoint should be referred to the Attorney General's office and consideration by the Governor.

P4, L30-31 -- "further investigation" will likely take the form of field examination by a professional archaeologist in numerous cases. This provision specifically charges DNR with that investigation and it will cost money to perform that work.

P5, L2-3 -- The provision in L2-3 is geared to the belief that disposal of human remains is by burial in the ground. Disposition of human remains varied considerably in the several regions of the state until recently. In several regions the historic burial pattern was placement on the ground surface or within containers on the surface. The L4-5 requirement for notification can reasonably be interpreted as requiring DNR to notify descendants when such surface burials are discovered even if they are not being disturbed. The requirement to notify descendants that disinterred remains are available for disposition seems to assume that the remains have been collected and examined by DNR staff. Again this will require field work by professional staff. The general public and nonarchaeological staff of DNR do

Memo to Carol Wilson  
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not usually have the expertise to collect human remains and funerary objects in an appropriate manner. They are unlikely to be able to record the data pertinent to age and tribal affiliation, or even to be able to consistently identify the full range of funerary objects that occur with human remains. Unless done by professional archaeological staff we are likely to have some very unsatisfactory cases in which the remains are not collected and treated appropriately.

P5, L6-9 -- Determining the closest living descendants and their current addresses could be a difficult and time consuming task. Again, it will come with a cost. In determining closeness of relationship are we to use native kinship systems or Euroamerican system that is in predominant use among the United States populous.

P5, L7-10 -- Likewise, tribal affiliation can be a complicated matter requiring significant research and considerable uncertainty. Tribes move and/or displaced, sometimes moving hundreds of miles. In historic times, there were Indian populations occupying areas occupied by Eskimo groups during prehistoric times. There are even instances in which Indian groups lived like their Eskimo neighbors and are indistinguishable based on the material culture. There are gradual geographic shifts in racial characteristics by which Eskimo and Indian groups are identifiable. In instances of very old remains, tribal relationship probably has very little validity; remains beyond 5,000 years age are likely not related to the modern people resident in a given locality. Tribal, even racial identify, is a difficult and problem fraught area -- specialized professional staff is needed to even begin to adequately address the issues.

P5, L11-13 -- Given the definition of "tribe" being given on P4, numerical predominance will be an interesting problem. The basis for defining tribes is multiple and the areas of influence overlap. If you deal with "regional corporation" as a tribal unit, it will numerically predominate over any of the villages within it and will have control over human remains proceeding its constituent villages.

P5, L17 -- Replace the words "submitted to" with "approved by". There is high variability in regard to what is appropriate disposition of remains and funerary objects. This section relinquishes authority to tribes with no recourse or option once the decision is made which tribe is the "appropriate" entity. It is possible that disposition decisions could be challenged by conflicting claims that postdate disposition. There are some funerary objects of such high cultural significance that disposition which would be damaging to them should not be allowed. At minimum, DNR needs to have the option to negotiate with the tribe in the interest of preservation of the remains and funerary objects. The DNR role should be developed as one of respectful, consistent and responsible stewardship.

**GENERAL COMMENT:** The relationship of human remains and associated funerary objects with individuals, families, clans, kin groups, tribes, and races becomes increasingly attenuated through time. With that attenuation, the logic of preferential claim diminishes. It would be reasonable to recognize time related attenuation by setting time thresholds at which there is corresponding increase in the right of the more general public to a say in the specific management of the remains and funerary objects. Additionally, there are instances in which the greater public interest in human remains and funerary objects should be served in preference even to the individual, family and tribal interests. This is not a new concept.

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page 5  
May 8, 1992

Recently deceased persons are subjected to autopsy and embalming against family wishes. There are clearly instances in which the significance of funerary artifacts, data on their relationship to the human remains, and characteristics of the remains themselves are important to the greater public understanding and appreciation for the culture involved; they should be preserved. As the public entity charged with dealing with these materials it is important that DNR have greater latitude and influence in determining the fate of the materials. There is no objection to having that decision made in consultation with native groups, it is even desirable that it be so, but DNR needs to come to the table as an equal in the public interest.

P5, L25-31 - The concept of a committee to deal with conflict resolution for human remains and funerary objects is a sound approach. However, DNR recommends a somewhat different structure with clarified duties, responsibilities and structure. The existing version of AS41-35 specifies the existence of a Historic Sites Advisory Committee to advise the Commissioner and Governor on historic preservation matters. The committee has native Alaskan representation. It would seem appropriate to use that committee in dealing with burial issues. An advantage of doing so is that the individuals serving on the committee are familiar with the context of the state's overall historic preservation program, receive training related to the issues involved, and have some measure of objective independence to resolve the dilemmas likely to be presented to them. Serious consideration should be given to using the Historic Sites Advisory Committee to resolve disputes relating to burials. While the descendants and representatives of tribes with colorable claims to the remains should play an integral role in the dispute resolution, they are likely to have strong vested interests in the case and lack objectivity. After all, the reason for forming the committee is to resolve conflicting claims among the very people being assigned to the committee. It would appear to set up an inherent conflict of interest situation. It might be better to have the people with a claim to the remains presenting their case to an objective, experienced committee. If you choose not to use the Historic Sites Advisory Committee (their existing work load may make it desirable to have a separate committee), it should have membership that has reasonable duration of service so that they can receive training in their duties and serve for sufficient lengths of time that decisions are consistent and in tune with pertinent state and federal laws. Forming a committee to deal with single instances of conflict on individual burials seems cumbersome.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION  
*Office of History and Archaeology*

WALTER J. HICKEL, GOVERNOR

3001 C STREET, Suite 1278  
ANCHORAGE, ALASKA 99503  
PHONE: (907) 762-2622

MAILING ADDRESS:  
P.O. Box 107001  
ANCHORAGE, ALASKA 99510-7001

8 May 1992

The Honorable Cliff Davidson  
Chairman, House Resources Committee  
Alaska State Representative  
State Capital, Room 108  
Juneau, AK 99801-1182

Dear Representative Davidson:

As you requested in your letter of May 1, 1992, I am providing you a synopsis of unmarked burial site discoveries that involved the Office of History and Archaeology (OHA) during the past two years.

OHA has responsibilities based on state laws (AS 41.35) and regulations and the State Historic Preservation Officer (SHPO) program authorized by the National Historic Preservation Act (NHPA). Section 106 of the NHPA requires the SHPO to review Federal projects for conflicts with heritage resources. With the recent passage of Native American Graves Protection and Repatriation Act (NAGPRA), all project review consultations include consideration of what actions are appropriate if unmarked burials are encountered.

OHA is involved in discovery of unmarked burial sites in several ways. These are through field surveys conducted by this office, activities of other state agencies, Section 106 process activities, oil spill related activities, recording site locations of reported burials for inclusion on the state inventory of sites, forensic analyses provided for the Scientific Crime Detection Laboratory (Crime Lab), and consultation with the general public.

### **OHA Field Activities**

The OHA conducts field research through our Archaeological Survey Unit which is funded predominantly by Alaska Department of Transportation and Public Facilities (ADOT&PF) projects using federal funds for construction of airports and highways. In areas where a high probability for the discovery of human remains exists, ADOT&PF (acting on behalf of the Federal Highway Administration) conducts consultations with the appropriate native groups on the treatment of burials prior to field work by OHA archaeologists. In the past two years, no projects have been conducted in areas where the discovery of unmarked burials was considered probable.

Representative Cliff Davidson

page 2

8 May 1992

#### Activities of Other State Agencies

In the past two years, the OHA has been involved in two instances of the discovery of unmarked burials as a result of the actions of or referrals by other state agencies:

(a) ADOT&PF road maintenance near Haines (Chilkoot Lake) resulted in the recovery of human remains. In cooperation with the Bureau of Land Management, personnel from the OHA helped excavate two disturbed skeletons. A member of the local tribal group was present during excavation. These remains were analyzed and a report on the physical character of the bones was generated prior to being returned to the Chilkoot Native Association for reburial. Part of the costs incurred during this project were paid by ADOT&PF.

(b) The second instance was a referral from the Scientific Crime Detection Laboratory. An individual found a human mandibular fragment in a U.S. Forest Service (USFS) cabin used by a nordic ski group. The remains were probably collected from an archaeological site by one of the people training at the center. Because the remains were apparently recovered from federally owned lands, they are currently being held by the OHA until collection by a representative of the Chugach National Forest for disposition under NAGPRA.

#### Project Review Related Actions

Project review consultation with federal agencies involve NAGPRA considerations. In the past two years this office has been involved in two such consultations where burials were encountered:

(a) During the construction of City of Gambell's water and sewage improvements by the Village Safe Water project (Department of Environmental Conservation) with Public Health Service (PHS) funds, several burials were found while trenching to lay pipe. After consultation with the SHPO, an archaeologist was hired by PHS to monitor the remainder of the trench excavations and recover skeletal remains as they were encountered. These remains were turned over to the village corporation after their removal for reinterment in a nearby location (consistent with provisions of NAGPRA). The federal agency was responsible for making arrangements with the village corporation.

(b) During consultations with Public Health Service staff in preparation for additions to water lines in Larsen Bay, SHPO staff highly recommended the presence of an archaeological monitor during excavations in areas thought to contain evidence of ancient occupations. A burial containing the remains of three individuals was recovered during excavation for the water line. The remains are currently undergoing analysis by the PHS archaeologist. SHPO staff are advising coordination by PHS of the final disposition through the local native group. Because this is a federal project, the federal agency is bound by NAGPRA.

Representative Cliff Davidson  
page 3  
8 May 1992

#### **Oil Spill Related Activities**

As a result of OHA involvement in cleanup activities following the EXXON-VALDEZ Oil Spill, the OHA received reports of a number of unmarked burial sites. Not all of the unmarked burial sites (particularly cave sites) were known prior to the oil spill. To avoid damage to these sensitive cultural resources, an archaeological monitor was required at each of the beach segments when any cleanup activity was scheduled. In only two instances were remains removed from their original area of internment:

(a) On July 8, 1989, the leader of a native cleanup crew working in the Kodiak area reported finding a badly decomposed body to the Exxon supervisor who reported it to the field operations office. The State Troopers were notified and the remains were removed to the Anchorage Crime Lab for identification. These skeletal remains were examined by OHA personnel and Dr. John E. Lobdell, a physical anthropologist, and determined to be prehistoric on the basis of the presence of associated cultural material and skeletal traits. The final disposition is still pending.

(b) The second incident involved the removal of human skeletal remains from a burial cave on Knight Island. The cave was discovered by a oil spill beach security guard. The State Troopers were notified and some remains were removed from the cave and transferred to the Crime Lab for analysis. Sometime prior to the State Troopers collecting the remains, unsanctioned removal of several skeletal elements occurred. The individual responsible for this illicit activity was later prosecuted and all skeletal remains taken from the cave were reburied near the cave entrance by representatives of Chugach Alaska Corporation. Reburial efforts were coordinated by USFS in consultation with OHA.

#### **Reports of Sites**

OHA maintains an inventory of all reported sites for the State of Alaska. This inventory, the Alaska Heritage Resources Survey (AHRs), receives reports of the discovery of skeletal remains by other agencies (typically federal agencies). These reports are incorporated into the AHRs listings which are used by SHPO staff in reviewing development projects. In the past two years, unmarked burial sites have been reported to this office, but the exact number is not immediately ascertainable. We do not maintain sites of unmarked burials as a separate category.

Representative Cliff Davidson

page 4

8 May 1992

#### Forensic Analyses

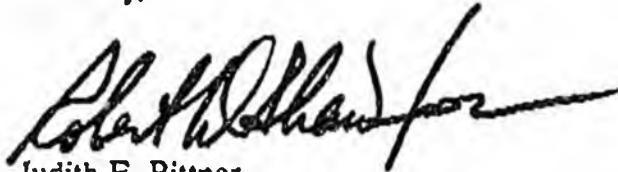
The OHA has a Reimbursable Services Agreement with the Scientific Crime Detection Laboratory for the analysis of skeletal remains. The Crime Lab does not have resident experts in the analysis of skeletal remains and, therefore, uses OHA personnel on an intermittent basis. In the past two years, OHA office personnel have been involved in 23 cases. All cases are treated as criminal investigations and follow legal requirements for chain of custody.

#### General Public Consultations

Because staff of the OHA have expertise in skeleton analysis, we were requested by John Johnson of Chugach Alaska Corporation to analyze a skeleton recovered from Yukon Island, prior to its reburial by the people of English Bay and Port Graham. We are in the process of preparing a report as a professional courtesy and public service.

If you have any further questions regarding actions of OHA in the discovery and mitigation of unmarked burial sites, please feel free to contact me at 762-2622.

Sincerely,



Judith E. Bittner  
Chief, Office of History and Archaeology

cc: Neil Johannsen, Director DPOR  
Carol Wilson, Special Assistant, DNR Commissioner's Office

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

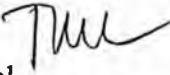
240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

May 10, 1992

**SUBJECT:** Human Remains and Funerary Objects (2d CSHB  
296(Resources))

**TO:** Representative Cliff Davidson

**FROM:** Terri Lauterbach   
Legislative Counsel

You have asked whether sec. 6 of the above-referenced bill would "shut down all construction projects for 3 months until discovered human remains' and funerary objects' descendants are identified."

In my opinion, sec. 6 has nothing to do with shutting down construction projects. However, other sections of the bill might affect them.

Section 6 relates only to privately owned, officially designated state monuments and historic sites. And the new language in sec. 6 pertains only to construction that "involves **known** reasonably identifiable human remains or funerary objects." Most likely, the sites are monuments or historic sites precisely because they are known to have remains or funerary objects on them. Section 6 merely requires that someone intending to make improvements at these sites must not only give 3 months' prior notice to the department (current law), but also to the identifiable descendants (new language). The notice can be given in the winter for a summer construction season.

The discovery of remains **during** public construction projects or construction on private land **other** than designated monuments and historic sites is covered under secs. 4 and 8 of the bill. AS 41.35.420(c), which would be enacted by sec. 8, directs the department to leave discovered remains interred "when possible" while identification and notice procedures take place. The legislature may wish to change this subsection, based on policy considerations. For instance, the language could be changed to the following:

(c) If human remains or funerary objects described in (a) and (b) of this section are not disinterred, the department shall leave them in the place where they are interred unless they are likely to be destroyed by natural or

Representative Cliff Davidson  
May 10, 1992  
Page 2

human actions if left in place. If the human remains or funerary objects are likely to be destroyed if left in place, the department shall disinter them and give them appropriate protective care...(rest of subsection continues.) (New language underlined.)

With the above language, there would still be some delay while the department disinterred the remains or objects, but it would not necessarily be three months. It might be eight hours or it might be six months, depending on the nature of the discovery. Meanwhile, the notice to possible descendants and the identification of the remains could be taking place.

I hope this discussion is helpful to you. Please let me know if I can be of further assistance.

TML:lmb  
92-119.lmb

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FACSIMILE: (907) 586-2754

May 8, 1992

The Honorable Lloyd Jones, Chair  
Senate Resources Committee  
State Capitol  
Juneau, AK 99811-1182

Dear Senator Jones:

Subject: 2d CSHB 296 (Resources), relating to human remains and funerary objects.

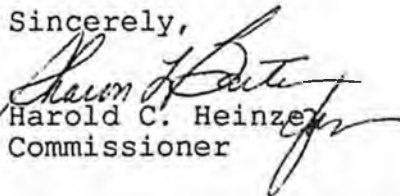
Position: The Department of Natural Resources supports the intent of this bill, to ensure that human remains and funerary objects with historic or prehistoric significance are treated with dignity and returned to relatives or tribal entities, but cannot take on these new statutory responsibilities without additional funding.

Determining the ethnic and individual identity of human remains is not an easy task and will require specialized expertise. Providing official notices, completing historical research, training existing agency personnel, and staffing the dispute mediation committee will all require additional funds.

Recommendation: If this bill is passed, provide the department with sufficient funding (see attached DNR fiscal note) to meet its new responsibilities.

Please contact me or the State Historic Preservation Officer Judy Bittner if you have additional questions.

Sincerely,

  
Harold C. Heinze  
Commissioner

cc: Representative Davidson  
Paul Fuhs, Legislative Liaison, Office of the Governor  
Judy Bittner, SHPO, Division of Parks and Outdoor Recreation

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. 2DCSHB 296 (Res)

Revision Date: 7-May-92 Department Affected: Natural Resources  
 Title: An Act Relating to Human Remains and Funerary Objects BRU: Parks & Outdoor Recreation  
 Components: Historic Resource Management  
 Sponsor: Representative Davidson  
 Requestor: Senate Finance COMPONENT SERIAL NO. 451

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	55.9	57.2	58.5	59.8	61.1	62.4
TRAVEL	24.3	26.3	28.3	30.3	32.3	34.3
CONTRACTUAL	22.7	23.7	24.7	25.7	26.7	27.7
SUPPLIES	1.2	1.3	1.4	1.5	1.6	1.7
EQUIPMENT	8.7					
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	112.8	108.5	112.9	117.3	121.7	126.1

CAPITAL						
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	112.8	108.5	112.9	117.3	121.7	126.1
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	112.8	108.5	112.9	117.3	121.7	126.1

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Provision should be made in this bill to allow the department to recover the costs of activities required by this bill from the person(s) responsible for disinterring human remains and funerary objects. The public should not be required to shoulder the entire burden of costs.

Prepared by: Bob Shaw/Judy Bittner Phone: 762-2622  
 Division: Parks and Outdoor Recreation Date: 7-May-92

Approved by Commissioner: Harold C. Heip Date: 7-May-92  
 Agency: Department of Natural Resources

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

## FISCAL NOTE ANALYSIS

Assumptions: This bill will significantly increase identification and reporting of human burials annually. Ethnic and individual identity will be difficult to establish. DNR will not routinely fund investigations of burials on non-state lands.

Program Summary: An Archaeologist II (new position) will implement the bill provisions. Specific duties will include: drafting regulations changes specific to HB-296 requirements; archaeological field examination and excavation of disturbed burials; analysis of human remains and funerary objects; determination of ethnic affiliation; historic research to determine individual person identify for historic period remains; forensic anthropology consultation with State crime lab personnel; training on human bone identification to Alaska State troopers; consultation with tribal units on ethnic identification of burials and curation/reburial issues; participation in a technical committee appointed by the Governor to mediate burial claims disputes; timely notification of tribes of burials in which they may have interests and processing of tribal claims for burial remains; record keeping and management of state administered human remains collections.

In addition to one new staff, physical anthropologists with specialized topical or regional expertise will be routinely required (Annual need 20 days at \$400/day = 8.0 contractual) to supply expert opinion on ethnic affiliation. These experts may be appointed to the gubernatorial committee to adjudicate claims disputes and occasionally to make field inspections. Burials are routinely encountered in remote areas as well as rural villages, requiring travel to inspect the remains in their disturbed context. Since burials often are in archaeological deposits, care must be taken in the field to recover associated funerary objects as specified by the bill. The remote locations and sometimes volatile emotional nature of burial issues will make two person investigation teams necessary.

Economic Impact: No income production is anticipated from this bill.

Impact on Local Government: Distribution of burials is statewide and impacts on local governments will be dependent on the number of development projects they undertake. Specific impacts are not precisely predictable, but will be ameliorated by good project planning in advance of construction start-up. There will also be impacts to persons developing their private lands since they may also occasionally encounter burials.

## PERSONNEL SERVICES

Archaeologist II (Range 18A = \$4658/mo w/ benefits) 55.9

## TRAVEL

Staff Commercial air for 10 incidents  
(Archaeo + assistant) \$400per ticket (20 tickets) 8.0  
For committee (3 people w/air r/t \$400ea -- 3 incidents) 3.6  
For consultant physical anthropologist - 3 trips \$400ea 1.2  
Per diem for all above 115 days at \$100/day 11.5

## CONTRACTUAL

Physical Anthropologist (\$400/day for 20 days) 8.0  
Air charter 2.5  
Radio repeater service (Trident) .3  
Film processing .4  
Postage .4  
Misc. xerox, phone .4  
Archaeological field assistant (1.1 months Archaeologist I  
Range 16D = \$4294/mo w/ benefits) 4.7  
Frontier office space rental at \$3.06/sq. ft/month  
Staff office 64 sq. ft + 100 sq. ft storage and analysis 6.0

## SUPPLIES

Packing for human and funerary objects .6  
Office supplies .4  
Film .2

## EQUIPMENT

Computer 1.8  
Office (desk, file cabinet, chair, bookcase, table, partitions,  
computer table) 2.3  
Forensic instruments and measuring devices 2.6  
Locking storage cabinet .8  
Emergency radio .6  
Camera w/ macrolens .6

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112.8

Position Title Archaeologist II		No. of Positions	Range/Step 1B/A	Org. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		District Medford District
Type of Expenditure		Amount		
1	2	3		
Salary	38,592.00			
Benefit	14,644.32			
Premium Pay				
Other				
Total Personal Services		55.9		
Travel		8.0		
Contractual		9.6		
Commodities		1.2		
Equipment		8.7		
Other				
Total Cost		83.4		
Funding Source for Total Cost				
Federal Receipts	1002			
G. P. Match	1003			
General Fund	1004	83.4		
I.A. Receipts	1006			
CIP Receipts	1061			
Other				
		83.4		
<p>Justification</p> <p>11B-296 requires identification of human remains and funerary objects statewide for the purpose of returning the remains to relatives or native tribal entities for reburial. Decisions as to the group which will receive the materials will be based on a preponderance of evidence compiled from physical anthropological characteristics of the human remains and the artifact characteristics of the funerary objects. Research to compile and evaluate that evidence will require an experienced archaeologist (with specialized skills in forensic anthropology or human osteology) or a physical anthropologist with training and experience in field archaeology. Detailed knowledge of the physical characteristics of Alaskan regional populations must be developed by the incumbent to allow assignment of ethnicity to human remains. Identification of funerary objects will also require detailed knowledge of archaeology statewide. Special skills are required above those normally held by field archaeologists and are not routinely and dependably available as contracted services. A full-time position is required to insure expertise availability and meet the anticipated work load.</p>				

**Request For  
New Position**

Agency Natural Resources  
 BRU Park and Recreation Management  
 Component State Historic Preservation Program

Page 1 of 1  
 Revised Date

**FY 93**

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. 2DCSHB 296 (Res)

Revision Date: 7-May-92 Department Affected: Natural Resources  
 Title: An Act Relating to Human BRU: Parks & Outdoor Recreation  
Remains and Funerary Objects Components: Historic Resource Management  
 Sponsor: Representative Davidson  
 Requestor: Senate Finance COMPONENT SERIAL NO. 451

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	55.9	57.2	58.5	59.8	61.1	62.4
TRAVEL	24.3	26.3	28.3	30.3	32.3	34.3
CONTRACTUAL	22.7	23.7	24.7	25.7	26.7	27.7
SUPPLIES	1.2	1.3	1.4	1.5	1.6	1.7
EQUIPMENT	8.7					
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	112.8	108.5	112.9	117.3	121.7	126.1

CAPITAL						
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	112.8	108.5	112.9	117.3	121.7	126.1
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	112.8	108.5	112.9	117.3	121.7	126.1

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Provision should be made in this bill to allow the department to recover the costs of activities required by this bill from the person(s) responsible for disinterring human remains and funerary objects. The public should not be required to shoulder the entire burden of costs.

Prepared by: Bob Shaw/Judv Bittner Phone: 762-2622  
 Division: Parks and Outdoor Recreation Date: 7-May-92  
 Approved by Commissioner: Harold C. Heine Date: 7-May-92  
 Agency: Department of Natural Resources

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

## FISCAL NOTE ANALYSIS

Assumptions: This bill will significantly increase identification and reporting of human burials annually. Ethnic and individual identity will be difficult to establish. DNR will not routinely fund investigations of burials on non-state lands.

Program Summary: An Archaeologist II (new position) will implement the bill provisions. Specific duties will include: drafting regulations changes specific to HB-296 requirements; archaeological field examination and excavation of disturbed burials; analysis of human remains and funerary objects; determination of ethnic affiliation; historic research to determine individual person identify for historic period remains; forensic anthropology consultation with State crime lab personnel; training on human bone identification to Alaska State troopers; consultation with tribal units on ethnic identification of burials and curation/reburial issues; participation in a technical committee appointed by the Governor to mediate burial claims disputes; timely notification of tribes of burials in which they may have interests and processing of tribal claims for burial remains; record keeping and management of state administered human remains collections.

In addition to one new staff, physical anthropologists with specialized topical or regional expertise will be routinely required (Annual need 20 days at \$400/day = 8.0 contractual) to supply expert opinion on ethnic affiliation. These experts may be appointed to the gubernatorial committee to adjudicate claims disputes and occasionally to make field inspections. Burials are routinely encountered in remote areas as well as rural villages, requiring travel to inspect the remains in their disturbed context. Since burials often are in archaeological deposits, care must be taken in the field to recover associated funerary objects as specified by the bill. The remote locations and sometimes volatile emotional nature of burial issues will make two person investigation teams necessary.

Economic Impact: No income production is anticipated from this bill.

Impact on Local Government: Distribution of burials is statewide and impacts on local governments will be dependent on the number of development projects they undertake. Specific impacts are not precisely predictable, but will be ameliorated by good project planning in advance of construction start-up. There will also be impacts to persons developing their private lands since they may also occasionally encounter burials.

**PERSONNEL SERVICES**

Archaeologist II (Range 18A = \$4658/mo w/ benefits) 55.9

**TRAVEL**

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(Archaeo + assistant) \$400per ticket (20 tickets) 8.0  
For committee (3 people w/air r/t \$400ea -- 3 incidents) 3.6  
For consultant physical anthropologist - 3 trips \$400ea 1.2  
Per diem for all above 115 days at \$100/day 11.5

**CONTRACTUAL**

Physical Anthropologist (\$400/day for 20 days) 8.0  
Air charter 2.5  
Radio repeater service (Trident) .3  
Film processing .4  
Postage .4  
Misc. xerox, phone .4  
Archaeological field assistant (1.1 months Archaeologist I  
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Frontier office space rental at \$3.06/sq. ft/month  
Staff office 64 sq. ft + 100 sq. ft storage and analysis 6.0

**SUPPLIES**

Packing for human and funerary objects .6  
Office supplies .4  
Film .2

**EQUIPMENT**

Computer 1.8  
Office (desk, file cabinet, chair, bookcase, table, partitions,  
computer table) 2.3  
Forensic instruments and measuring devices 2.6  
Locking storage cabinet .8  
Emergency radio .6  
Camera w/ macrolens .6

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112.8

Position Title Archaeologist II		No. of Positions	Range/Step 18/A	Barg. Unit GGU
Time Status PFT	Start Month 12	Location Anchorage		District District
Justification				
<p>HB-296 requires identification of human remains and funerary objects statewide for the purpose of returning the remains to relatives or native tribal entities for reburial. Decisions as to the group which will receive the materials will be based on a preponderance of evidence compiled from physical anthropological characteristics of the human remains and the artifact characteristics of the funerary objects. Research to compile and evaluate that evidence will require an experienced archaeologist (with specialized skills in forensic anthropology or human osteology) or a physical anthropologist with training and experience in field archaeology. Detailed knowledge of the physical characteristics of Alaskan regional populations must be developed by the incumbent to allow assignment of ethnicity to human remains. Identification of funerary objects will also require detailed knowledge of archaeology statewide. Special skills are required above those normally held by field archaeologists and are not routinely and dependably available as contracted services. A full-time position is required to insure expertise availability and meet the anticipated work load.</p>				
Type of Expenditure		Amount		
1	2	3		
Salary	38,592.00			
Benefits	14,644.32			
Provision Pay				
Other				
Total Personal Services		55.9		
Travel		8.0		
Contractual		9.6		
Commodities		1.2		
Equipment		8.7		
Other				
Total Cost		83.4		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	83.4		
I.A. Receipts	1006			
CIP Receipts	1061			
Other				
		83.4		

**Request For  
New Position**

Agency Natural Resources  
 BRU Park and Recreation Management  
 Component State Historic Preservation  
 Program

Page 1 of 1  
 Revised Date

**FY 93**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**FISCAL NOTE**

No. 4  
 Bill Version: CSHB 296 (JUD)  
 (H) Publish Date: 2/18/92

Revision Date: 01/16/92 Department Affected: Public Safety  
 Title: An Act relating to human remains and funerary objects. BRU: Alaska State Troopers  
 Sponsor: Representative Davidson Component: Detachments  
 Requestor: House Rules COMPONENT SERIAL NO. 

7	9	9
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**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>REVENUE</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>FUND SOURCE:</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

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

Estimate of current year impact: None

**ANALYSIS: (Attach a separate page if necessary.)**

No fiscal impact upon the Division of Alaska State Troopers is anticipated.

Prepared By: Gavle A. Horetski Phone: 465-4322  
 Division: Alaska State Troopers Date: 01/20/92  
 Approved by Commissioner: Gavle A. Horetski for Richard L. Burton  
 Agency: Department of Public Safety Date: 01/20/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

**COMMITTEE COPY**

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

3  
Version: CSHB 296 (JUD)  
(H) Publish Date: 2/18/92

Revision Date: \_\_\_\_\_ Department Affected: Natural Resources  
 Title: Re: Human Remains and Funerary BRU: \_\_\_\_\_  
objects Component: \_\_\_\_\_  
 Sponsor: Rep. Davidson  
 Requestor: House Finance Committee COMPONENT SERIAL NO. 

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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	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Rep. Mike Navarre, Co-Chair *Mike Navarre* Phone: 465-3706  
Rep. Eileen MacLean, Co-Chair *Eileen MacLean* Phone: 465-3722  
 Division: House Finance Committee Date: Feb. 18, 1992

Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_ Date: \_\_\_\_\_

*Committee Copy*

HOUSE BILL 296  
"RELATING TO HUMAN REMAINS AND FUNERARY OBJECTS"

<u>ISSUE</u>	<u>CURRENT LAW</u>	<u>HB 296</u>
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TITLE 12

Discovery of Human Remains

No direction on who to contact.

Contact nearest law enforcement. Violation with \$50 fine for not reporting. Class A misdemeanor to sell, buy or barter human remains. *(Current statute, AS 41.35.200(c) has a Class A misdemeanor penalty for digging in gravesites.)*

TITLE 41

ALASKA HISTORIC PRESERVATION ACT

State Lands

State reserves title to all historical, prehistoric & archaeological resources on state land. Preserved and administered by DNR. Study allowed by permit. Public construction stops until site is expeditiously salvaged. Law stays the same. Class A misdemeanor to excavate, destroy, deface gravesites.

Human remains and funerary objects are separated from "resource" definition. Treated differently because of cultural significance. Study allowed by request. Leave remains intact if possible. If not, try to reasonably define descendants or if can't, and remains include Native remains contact nearest governing body of the predominate tribe in the discovery area.

Federal Lands

Archaeological Resources Protection Act protects archaeological resources and sites which are on federal lands.

No change. Title 12 change in HB 296 requires law enforcement be notified of discovery.

Private Lands

Historical resources on private land belong to the land owner. State can obtain through eminent domain proceedings.

Human remains & funerary items are separated from the resource definition. Discovery must be reported and disposition procedure followed as on state lands.

**ALASKA STATE LEGISLATURE**  
**HOUSE BILL NO. 296**

**HISTORY IN THE HOUSE**

1991	Read first time and referred to: <u>Jud FIN</u>												
4/22													
5/8	<table style="width:100%; border: none;"> <tr> <td><u>Jud</u></td> <td>RPT</td> <td>CS(Jud)</td> <td>New Title</td> </tr> <tr> <td><u>5</u></td> <td>DP</td> <td><u>0</u> DNP</td> <td><u>0</u> NR <u>0</u> AM</td> </tr> <tr> <td></td> <td>FN</td> <td><u>1</u> OFN</td> <td>Previous FN</td> </tr> </table>	<u>Jud</u>	RPT	CS(Jud)	New Title	<u>5</u>	DP	<u>0</u> DNP	<u>0</u> NR <u>0</u> AM		FN	<u>1</u> OFN	Previous FN
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5/18	<table style="width:100%; border: none;"> <tr> <td><u>FIN</u></td> <td>RPT</td> <td>CS(Jud)</td> <td>New Title</td> </tr> <tr> <td><u>11</u></td> <td>DP</td> <td><u>0</u> DNP</td> <td><u>0</u> NR <u>0</u> AM</td> </tr> <tr> <td></td> <td>FN</td> <td><u>1</u> OFN</td> <td>Previous FN <u>0</u></td> </tr> </table>	<u>FIN</u>	RPT	CS(Jud)	New Title	<u>11</u>	DP	<u>0</u> DNP	<u>0</u> NR <u>0</u> AM		FN	<u>1</u> OFN	Previous FN <u>0</u>
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2/28	<table style="width:100%; border: none;"> <tr> <td><u>RES</u></td> <td>RPT</td> <td>CS(RES)</td> <td>New Title</td> </tr> <tr> <td><u>3</u></td> <td>DP</td> <td><u>0</u> DNP</td> <td><u>2</u> NR <u>0</u> AM</td> </tr> <tr> <td></td> <td>FN</td> <td><u>0</u> OFN</td> <td>Previous FN</td> </tr> </table>	<u>RES</u>	RPT	CS(RES)	New Title	<u>3</u>	DP	<u>0</u> DNP	<u>2</u> NR <u>0</u> AM		FN	<u>0</u> OFN	Previous FN
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	FN	<u>0</u> OFN	Previous FN										
2-18	Read second time												
2-18	CS(JUD) Adopted												
2-18	Held to next calendar w/amend pending; Amended, <i>amend withdrawn</i> referred to RES												
3/18	2nd CS (RES) adopted;												
3/23	Advanced												
3/23	Read third time												
	Return to second for specific amendment												
3/23	<table style="width:100%; border: none;"> <tr> <td>PASSED</td> <td>EFD Same ___ or</td> </tr> <tr> <td>Yeas 37</td> <td>Yeas</td> </tr> <tr> <td>Nays 1</td> <td>Nays</td> </tr> <tr> <td>Excused 2</td> <td>Excused</td> </tr> <tr> <td>Absent <u>0</u></td> <td>Absent</td> </tr> </table> <p>___ Intent adopted</p>	PASSED	EFD Same ___ or	Yeas 37	Yeas	Nays 1	Nays	Excused 2	Excused	Absent <u>0</u>	Absent		
PASSED	EFD Same ___ or												
Yeas 37	Yeas												
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	Reconsideration												
	Reconsideration not taken up												
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PASSED ON RECON.	EFD Same ___ or												
Yeas	Yeas												
Nays	Nays												
Excused	Excused												
Absent	Absent												
3/23	Reported correctly engrossed Signed by Speaker, to the Senate												
	<i>Quentin Gray</i> Chief Clerk of the House												

**HISTORY IN THE SENATE**

1992	Read first time and referred to: <u>RES, FIN</u>																					
3/25																						
	<table style="width:100%; border: none;"> <tr> <td>___</td> <td>RPT( ___ )</td> <td>CS ___</td> <td>DP ___</td> <td>NR ___</td> <td>DNP ___</td> <td>AM ___</td> </tr> <tr> <td>___</td> <td>New Title</td> <td>___</td> <td>Same Title</td> <td>___</td> <td>Previous FN</td> <td>___</td> </tr> <tr> <td>___</td> <td>FN</td> <td>___</td> <td>OFN</td> <td>___</td> <td>To</td> <td>___</td> </tr> </table>	___	RPT( ___ )	CS ___	DP ___	NR ___	DNP ___	AM ___	___	New Title	___	Same Title	___	Previous FN	___	___	FN	___	OFN	___	To	___
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	Read second time																					
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Excused	Excused																					
Absent	Absent																					
	Reported correctly engrossed Signed by President, to the House																					
	Secretary of the Senate																					

HOUSE-SENATE HISTORY Continued

19

Received from the Senate \_\_\_\_\_

Concur in Senate amendment  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_  
\_\_\_\_\_ Efd same or Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

Failed to concur Senate amendment, ask Senate recede  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

Senate failed to \ receded from amendment  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

CC appointed by House \_\_\_\_\_ Chair  
\_\_\_\_\_

CC appointed by Senate \_\_\_\_\_ Chair  
\_\_\_\_\_

(H) Granted Limited Powers of Free Conference

(S) Granted Limited Powers of Free Conference

19

(H) Adopted CC Rpt \_\_\_\_\_  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_  
\_\_\_\_\_ Efd same or Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

(S) Adopted CC Rpt \_\_\_\_\_  
Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_  
\_\_\_\_\_ Efd same or Y \_\_\_ N \_\_\_ E \_\_\_ A \_\_\_

To enrolling  
Reported enrolled and sent to Governor

\_\_\_\_\_ By Governor

Legislative Resolve Number \_\_\_\_\_

Filed with Lieutenant Governor

HB

306

# SENATE COMMITTEE REPORT

DATE: 5/13/91

FURTHER: Finance

DATE TURNED INTO OFFICE: 5-18-91

Resources Committee considered CS FOR HOUSE BILL NO. 306 (FINANCE)

"An Act establishing a McNeil River State Game Refuge and altering the McNeil River State Game Sanctuary; and providing for an effective date."

and recommended:

replace with SCS CS HB 306 (Resources)  same title  
 or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title  
 attached amendment(s)  technical title change (HB only)  
 \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):  
Dept/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

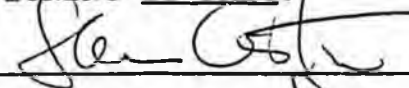
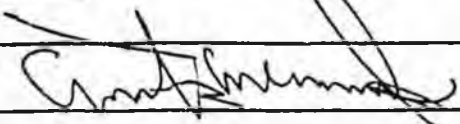
APPROVES PREVIOUS:  
Dept/Date:

fiscal note(s) F&G 5/1/91  
\_\_\_\_\_

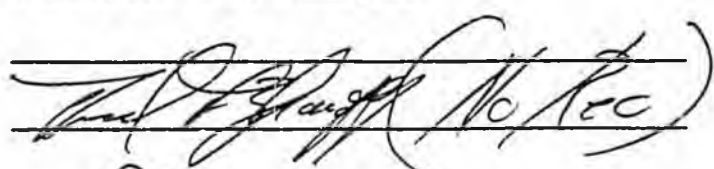
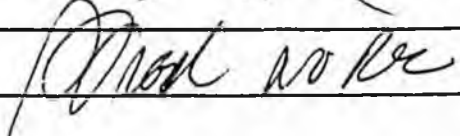
zero fiscal note(s) none 4/30/91  
\_\_\_\_\_

Governor's bill w/fiscal note

SIGNING DO PASS:

  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS:

  
  
\_\_\_\_\_  
\_\_\_\_\_

  
Chair: Signature and Recommendation



## Friends of McNeil River

P.O. Box 231091 Anchorage, AK 99523-1091

Phone (907) 345-7036

May 18, 1991

Sen. Lloyd Jones  
Alaska State Senate  
Senate Resources Committee  
Juneau, AK

Dear Senator:

I request that this letter be entered for the record at today's hearing of HB 306 by the Senate Resources Committee.

It has come to our attention that mining interests have mounted a strong lobbying effort to reinstate language designating mineral entry as a purpose within the proposed McNeil River State Game Refuge. Their alternative proposal withdrawal of some of the most biologically sensitive parts of the proposed refuge from designation to avoid limits on entry or operation under the bill.

Friends of McNeil River strongly opposes both alternatives. We do not feel that mineral entry or mining is an appropriate use of a wildlife refuge. Mining operations are inherently intrusive; the stack of research documenting their negative impact on the environment, wildlife in general, and bears specifically, is too high to step over. The message must not be ignored. I enclose just a few annotated references in support of our opinion.

Exemptions to allow mineral development to escape the regulatory controls imposed by refuge/sanctuary makes no sense with regard to protecting key grizzly habitat. The land specified is in the heart of upstream spawning areas expected to draw sanctuary bears seeking Paint River fish, and includes another fish ladder site.

Removing that central portion from designation as refuge/sanctuary literally guts the bill, splits the refuge, and compromises the integrity of any future management plans for Paint River drainage. Bears crossing in and out controlled areas will not know what is expected of them. Behavior modification of people-neutral McNeil bears using these areas would seem a certainty, and that would affect the existing sanctuary.

With regard to new mineral entry and subsequent mining, we are strongly opposed. I remind the Committee of the consensus opinion of all other user groups consulted at a meeting conducted by Alaska Fish and Game Deputy Commissioner Ron Somerville on 5/7/91. All groups agreed that the phrase "and mineral" entry should be removed from HB 306, and all parties agreed that mineral entry should be closed within the refuge/sanctuary.

Thank you for the opportunity to comment.



Tony Dawson  
A Founding Member

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

No. \_\_\_\_\_  
 Bill Version: CSHB 306 (RES)  
 (H) Publish Date: 5/6/91

Revision Date: \_\_\_\_\_ Department Affected: Natural Resources  
 Title: McNeil River State Game BRU: Land & Water Management  
Refuge Components: Land & Water Management  
 Sponsor: Representative Grussendorf  
 Requestor: House Resources COMPONENT SERIAL NO. 431

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Janet Bureson Phone: 465-3400  
 Division: Land & Water Management Date: 30-Apr-91

Approved by Commissioner: Harold Heinze Date: 30-Apr-91  
 Agency: Department of Natural Resources

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

- Fiscal Notes -



**House Bill 306 Fiscal Note Continuation Page**

The following estimated expenditures are based on assumptions that the Paint River project will be constructed as scheduled, and salmon begin returning to the system in summer 1994.

The department anticipates that 2 permanent seasonal staff will be stationed in a remote camp, and will survey the Paint River to document salmon distribution and use, as well as bear distribution and their use of salmon over time. The department will also conduct aerial surveys during salmon migration and spawning periods to further document bear distribution and habitat use.

As the salmon runs become established, the seasonal staff may be required to meet user groups, and provide guidelines regarding appropriate human behavior in the area.

Personal services - includes 4 months each of WTIV and WTIII (Anchorage 13C & 11 A respectively).

Travel - includes air travel of staff to and from field.

Contractual - includes air charter support for re-supply of field crew and aerial surveys. One survey per week -10 weeks June 1 through August 15.

Supplies - includes annual operating supplies for staff and camp.

Equipment - includes initial purchase of inflatable boat with motor, communications equipment, weapons and field tents.

COMMITTEE COPY

MAY 16 1991

May 15, 1991

The Honorable Lloyd Jones  
Chairman, Senate Resources Committee  
Alaska State Senate  
Capital Building, Room 30  
P.O. Box V  
Juneau, AK 99811

Dear Senator Jones:

**RE: House Bill No. 306 (McNeil River State Game Refuge)**

America Copper and Nickel Company, Inc. (ACNC), a wholly-owned subsidiary of Inco United States, Inc., is actively carrying out mineral exploration and holds 34 leasehold claims within the area being proposed for the McNeil River State Game Refuge.

ACNC has discovered significant gold-copper mineralization within the area now proposed as a game refuge. In August, 1990, we drilled six core holes totalling 1,545 feet and on the basis of that program, we consider the potential for a large economic gold-copper ore deposit to be excellent. The four best holes contained mineralized intersections as follows:

length (feet)	ounces gold/ton	per cent copper
130	0.04	0.5
70	0.05	0.6
47	0.03	0.9
50	0.03	1.4

This exciting, newly-discovered deposit (Kamishak Deposit) requires a great deal of additional drilling to fully test its economic potential.

ACNC has already expended in excess of \$250,000 at Kamishak and we plan to spend an additional \$500,000 in 1991. Our 1991 surface use permit was recently issued by the Department of Natural Resources and we are currently mobilizing

INCO EXPLORATION AND TECHNICAL SERVICES INC.

2600-666 BURHARD STREET, VANCOUVER, BRITISH COLUMBIA V6C 2X8 • (604) 669 2247 FACSIMILE (604) 669 6901

our exploration crews and equipment. Work on the deposit is scheduled to start on June 1st.

ACNC is committed to mineral exploration and development in Alaska. We have reduced our exploration budgets in all areas of the United States except Alaska, where we plan to spend \$2.5 million during 1991. We are in the process of opening an exploration office in Anchorage which will be staffed by two senior geologists relocated from Nevada. This increased level of activity and commitment to your state is based in part on our understanding that leaseholders have the "exclusive right of possession and extraction of minerals" except to the extent that such activities may be determined to be incompatible with "significant surface uses" (sec 38.05.195). H.B. No. 306 would place our rights of possession and extraction in an unsecured and subordinate position.

ACNC is proud of its track record with regard to mineral development in environmentally sensitive areas. We believe that we can work harmoniously with all other surface users. We placed the Mineral Hill Mine (contiguous to Yellowstone National Park) into production in 1989, and have since received awards from both the U.S. Forest Service and environmental groups.

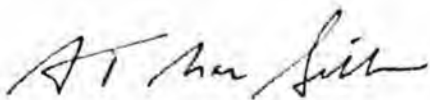
However, we are gravely concerned that if H.B. No. 306 is passed unamended, it would jeopardize the possible development of the mineral resource at Kamishak. We strongly recommend that H.B. No. 306 be amended so as to guarantee the leaseholders' current rights and, further, to exclude the north half of Township 11 South, Range 31 West, and thereby allow exploration, evaluation and development of the mineral potential of that area. In addition, an access corridor to Kamishak Bay will be required.

ACNC is extremely concerned that H.B. No. 306 is on the verge of being passed without the public and industry having an adequate opportunity to comment. It is almost inconceivable that legislation which places onerous limitations on the development of the State's non-renewable natural resources can be passed in only two weeks. Such hasty actions establish a poor business climate and fail to promote investment in Alaska's natural resources.

I would be pleased to meet with you to elaborate on our concerns regarding H.B. 306 and how it could adversely affect the mining industry in Alaska.

We have sent similar correspondence to Senators Steve Frank and Jay Kertulla, and Commissioner Harold Heinze.

Yours truly,



A.T. MacGibbon  
President  
American Copper & Nickel Company, Inc.

7-LS1266S ✓

Chenoweth

5/17/91

**SENATE CS FOR CS FOR HOUSE BILL NO. 306 (RESOURCES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

Offered:

Referred:

Sponsor(s): REPRESENTATIVES GRUSSENDORF, Navarre, Jacko, Mackie, Davidson, Boyer, Brown, Ellis, Finkelstein, Gruenberg, Koponen, Kubina, Moyer, Ulmer, B.Davis, Donley

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act establishing a McNeil River State Game Refuge and altering the McNeil River  
2 State Game Sanctuary; and providing for an effective date."

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

4 \* Section 1. AS 16.20 is amended by adding a new section to read:

5 Sec. 16.20.041. MCNEIL RIVER STATE GAME REFUGE. (a) The following state-  
6 owned land and water, including the tidelands but exclusive of marine water and submerged land,  
7 lying within the parcels described in this subsection is established as the McNeil River State  
8 Game Refuge:

9 Township 10 South, Range 29 West, Seward Meridian

10 Section 19: S1/2

11 Section 20: SW1/4

12 Section 29: W1/2

13 Sections 30 - 31

14 Township 10 South, Range 30 West, Seward Meridian

- 1 Section 3: SW1/4
- 2 Section 4: SE1/4
- 3 Sections 10 - 11
- 4 Sections 14 - 16
- 5 Section 17: E1/2
- 6 Sections 20 - 23
- 7 Sections 25 - 29
- 8 Section 30: SE1/4
- 9 Section 31: NE1/4, S1/2
- 10 Sections 32 - 36
- 11 Township 11 South, Range 29 West, Seward Meridian
- 12 Sections 1 - 35
- 13 Section 36, except Nordyke Island and its tidelands
- 14 Township 11 South, Range 30 West, Seward Meridian
- 15 Sections 1 - 36
- 16 Township 11 South, Range 31 West, Seward Meridian
- 17 Sections 1 - 36
- 18 Township 11 South, Range 32 West, Seward Meridian
- 19 Sections 1 - 36, except land within Katmai National Park and Preserve
- 20 Township 12 South, Range 31 West, Seward Meridian
- 21 Sections 1 - 36
- 22 Township 12 South, Range 32 West, Seward Meridian
- 23 Sections 1 - 36, except land within Katmai National Park and Preserve
- 24 Township 13 South, Range 33 West, Seward Meridian
- 25 Section 1, except land within Katmai National Park and Preserve.
- 26 (b) The McNeil River State Game Refuge is established to
- 27 (1) provide permanent protection for brown bear and other fish and wildlife
- 28 populations and their habitats, so that these resources may be preserved for scientific, aesthetic,
- 29 and educational purposes:
- 30 (2) manage human use and activities in a way that is compatible with (1) of this
- 31 subsection and to maintain and enhance the unique bear viewing opportunities in the McNeil

1 River State Game Sanctuary established under AS 16.20.160;

2 (3) provide opportunities that are compatible with (1) of this subsection for  
3 wildlife viewing, fisheries enhancement, fishing, hunting, and trapping, for temporary safe  
4 anchorage, and for other activities.

5 (c) The Board of Game shall determine whether hunting of brown bears within the  
6 McNeil River State Game Refuge should be prohibited.

7 (d) The use and enjoyment of valid rights and interests in mineral claims, including the  
8 right of access, within the McNeil River State Game Refuge is protected. This subsection does  
9 not affect the power of the commissioner of natural resources to open or close land within the  
10 McNeil River State Game Refuge to new mineral entry under AS 38.05.185 - 38.05.275.

11 (e) The department and the Department of Natural Resources

12 (1) may not enter into sales of land within the McNeil River State Game Refuge;

13 (2) may enter into leases within the McNeil River State Game Refuge if the  
14 commissioner finds that activity conducted under the lease is compatible with the purposes for  
15 which the refuge is established.

16 \* Sec. 2. AS 16.20.160 is repealed and reenacted to read:

17 Sec. 16.20.160. MCNEIL RIVER STATE GAME SANCTUARY. The following state-  
18 owned land and water, including the tidelands but exclusive of marine water and submerged land,  
19 lying within the parcels described in this subsection is established as the McNeil River State  
20 Game Sanctuary:

21 Township 12 South, Range 29 West, Seward Meridian

22 Sections 1 - 36

23 Township 12 South, Range 30 West, Seward Meridian

24 Sections 1 - 36

25 Township 13 South, Range 29 West, Seward Meridian

26 Sections 5 - 8

27 Sections 17 - 20

28 Sections 29 - 32

29 Township 13 South, Range 30 West, Seward Meridian

30 Sections 1 - 36

31 Township 13 South, Range 31 West, Seward Meridian

- 1                   Sections 1 - 36  
2                   Township 13 South, Range 32 West, Seward Meridian  
3                   Sections 1 - 36  
4                   Township 14 South, Range 32 West, Seward Meridian  
5                   Sections 1 - 12  
6                   Sections 15 - 22  
7                   Sections 27 - 30.

8 \* Sec. 3. AS 16.20.170 is repealed and reenacted to read:

9                   Sec. 16.20.170. PURPOSE; REGULATIONS. (a) The McNeil River State Game  
10 Sanctuary is established to

11                   (1) provide permanent protection for brown bear and other fish and wildlife  
12 populations and their habitats, so that these resources may be preserved for scientific, aesthetic,  
13 and educational purposes;

14                   (2) manage human use and activities in a way that is compatible with (1) of this  
15 subsection and to maintain and enhance the unique bear viewing opportunities within the  
16 sanctuary; and

17                   (3) provide opportunities that are compatible with (1) of this subsection for  
18 wildlife viewing, fisheries enhancement, and fishing, for temporary safe anchorage, and for other  
19 activities.

20                   (b) Hunting and trapping within the McNeil River State Game Sanctuary are prohibited.

21                   (c) The department and the Department of Natural Resources

22                   (1) may not enter into sales of land within the McNeil River State Game  
23 Sanctuary;

24                   (2) may enter into leases within the McNeil River State Game Sanctuary if the  
25 commissioner finds that activity conducted under the lease is compatible with the purposes for  
26 which the sanctuary is established.

27                   (d) The McNeil River State Game Sanctuary is closed to mineral entry under  
28 AS 38.05.185 - 38.05.275.

29                   (e) The boards may adopt regulations governing access, entry, development, construction,  
30 fishing, and other uses and activities affecting the natural habitat, fish and wildlife, and public  
31 use of the McNeil River State Game Sanctuary.

1 \* Sec. 4. AS 16.20.160 is repealed and reenacted to read:

2           Sec. 16.20.160. SANCTUARY ESTABLISHED. The following described area and  
3 adjacent state waters are established as a state game sanctuary to be known as the McNeil River  
4 State Game Sanctuary: Beginning at the NE corner of Section 13, T 12 S R 30 W, S.M., westerly  
5 along the section lines to the NW corner of Section 18, T 12 S R 30 W, S.M., thence southerly  
6 along the township boundary to the SW corner of T 12 S R 30 W, S.M., thence westerly along  
7 the north boundary of T 13 S R 31 W, S.M., to the NW corner of T 13 S R 31 W, S.M., thence  
8 westerly along the north boundary of T 13 S R 32 W, S.M., to the NW corner of T 13 S R 32  
9 W, S.M., thence southerly along the west boundary of T 13 S R 32 W, S.M., to the SW corner  
10 of T 13 S R 32 W, S.M., thence southerly along the west boundary of T 14 S R 32 W, S.M., to  
11 the SW corner of Section 30, T 14 S R 32 W, S.M., thence easterly along the section lines to the  
12 SE corner of Section 27, T 14 S R 32 W, S.M., thence northerly along the section lines to the  
13 NE corner of Section 15, T 14 S R 32 W, S.M., thence easterly along the section lines to the east  
14 boundary of T 14 S R 32 W, S.M., thence northerly along the east boundary of T 14 S R 32 W,  
15 S.M., to the NE corner of T 14 S R 32 W, S.M., thence easterly along the south boundary of T  
16 13 S R 31 W, S.M., to the SE corner of T 13 S R 31 W, S.M., thence northerly along the east  
17 boundary of T 13 S R 31 W, S.M., to the NE corner of Section 24, T 13 S R 31 W, S.M., thence  
18 easterly along the section lines to the SE corner of Section 16, T 13 S R 30 W, S.M., thence  
19 northerly along the section lines to the NE corner of Section 4, T 13 S R 30 W, S.M., thence  
20 easterly along the south boundary of T 12 S R 30 W, S.M., to the SE corner of T 12 S R 30 W,  
21 S.M., thence easterly along the south boundary of T 12 S R 29 W, S.M., to the shoreline of  
22 Horseshoe Cove located in Section 32, T 12 S R 29 W, S.M., thence northerly, westerly, and  
23 northerly along the line of mean high tide to the point of beginning.

24 \* Sec. 5. AS 16.20.170 is repealed and reenacted to read:

25           Sec. 16.20.170. APPLICABILITY OF OTHER LAWS. The provisions of AS 16.20.120  
26 - 16.20.140 relating to administration, multiple use and sale and lease of the Walrus Islands State  
27 Game Sanctuary apply also with respect to the McNeil River State Game Sanctuary.

28 \* Sec. 6. AS 16.20.041 is repealed.

29 \* Sec. 7. Sections 1 - 3 of this Act take effect on the date the Paint River fish ladder begins  
30 operation. The commissioner of fish and game shall certify to the revisor of statutes the date the fish  
31 ladder begins operation.

1 \* Sec. 8. Sections 4 - 6 of this Act take effect upon entry of a final order permanently enjoining the  
2 operation of the Paint River fish ladder and the expiration of any time for appeal of the order. The  
3 commissioner of fish and game shall certify to the revisor of statutes the date determined under this  
4 section.

# Alaska State Legislature

Sen. Lloyd Jones, *Chair*  
Sen. Sam Cotten, *Vice Chair*  
Sen. Dick Ellason, *Member*  
Sen. Steve Frank, *Member*  
Sen. Rick Halford, *Member*  
Sen. Curt Menard, *Member*  
Sen. Fred Zhuroff, *Member*



P.O. Box V  
Juneau, AK 99811  
907 465-4907  
Fax: 907 465-3922

## Senate Resources Committee

May 18, 1991

TO: Legal Services

FROM: Senator Lloyd Jones, Chair *by Paula Tanel*

SUBJECT: House Bill 306

Please add a FINDINGS section to Draft LS'266/S 5/17/91 as follows. I would like to have this in final to be read across at 7 p.m. session.

### FINDINGS

The Legislature finds that :

- 1) the viewing of bears and other uses of fish and wildlife;
- 2) fishing and fish enhancement;
- 3) mineral resource development; and
- 4) traditional, cultural and historical uses

are important uses of the McNeil River State Game Refuge. The management plan for the McNeil River State Game Refuge shall address these uses.

Thank you.

Staff has checked with the legislative drafter who confirms that this language in no way prevents the Commissioner of Natural Resources from temporarily or permanently closing an area to new mineral entry by administrative order

INTERNATIONAL ASSOCIATION  
FOR BEAR RESEARCH AND MANAGEMENT

Box 1271  
Black Canyon State 2  
Phoenix, AZ 85019  
(602) 465-7306  
May 15, 1991

Friends of McNeil River et al.  
PO Box 231091  
Anchorage, AK 99523-1091

Dear Sirs:

The International Association for Bear Research and Management (IBA) is an organization composed mostly of professional scientists involved in research on different aspects of bear biology and management. We are the parent organization of the Bear Specialists Group of the International Union for the Conservation of Nature and Natural Resources (IUCN) and publish a series of technical papers in our conference proceedings titled Bears--their Biology and Management. A brochure for our next conference is attached for your reference.

Most of the members of our association are familiar with the McNeil River State Game Sanctuary through films and photos and acknowledge it as a truly exceptional wildlife viewing opportunity and wildlife management success story. As you can see from the enclosed conference brochure, we have asked a staff member from the Alaska Dept. of Fish and Game to present an invited paper next year on how this area has been managed to produce such impressive results.

My colleagues in Alaska have informed me that a salmon enhancement project on the Paint River, just north of the McNeil River State Game Sanctuary, is scheduled to be constructed this summer. This project would introduce all 5 species of Pacific salmon into a large drainage immediately north of the Sanctuary. I share your concerns that the construction of the ladder as well as the enhancement of the fishery could have serious and adverse impacts on brown bear concentration and viewing opportunities in the McNeil River Sanctuary. If the salmon runs develop as planned, it is likely that some to many of the bears currently fishing in the McNeil River will be attracted to areas on the Paint River where salmon concentrate and can be readily caught.

I am also aware that the bears within the McNeil River State Game Sanctuary have become especially tolerant of close proximity to humans. I expect that some of these bears will transfer these tolerant attitudes to their fishing activities in the Paint River area which may result in conflicts with other human uses in this area and increased kills of bears by persons unaccustomed to such tolerant bears.

Most of the members of the IBA, including myself, believe that bear hunting is an appropriate use of a renewable resource. As hunters, however, we also recognize that hunting is not the highest and best use of a wildlife resource in all circumstances. This is certainly the case at the McNeil River where bears that have learned to be tolerant of close human proximity would be especially vulnerable to hunters. If, as seems probable, these tolerant bears are attracted to the Paint River area by earlier or later runs of salmon, the IBA believes the larger public interest would be served by closing these areas to hunting.

There has been a great deal of information published in our proceedings and elsewhere about the negative effects of disturbance on the distribution and behavior of grizzly bears. I understand that extensive blasting will be necessary to construct the fish ladder which is only 3 miles from the Sanctuary. I have little doubt that such activities will influence the behavior of the bears in vicinity of this construction and at McNeil Falls which is only 3-4 miles away. Depending on the frequency and magnitude of the disturbance, these impacts may range from increased nervousness to abandonment of the area. These comments also apply to increased air traffic, especially from helicopters, if this is anticipated.

The IBA does not have enough information on which to base an opinion on the magnitude of impacts of the proposed enhancement project on the distribution and abundance of bears using the McNeil River State Game Sanctuary. From what we know of the project, however, we believe that it is probable that there would be significant impacts and that these would result in a deterioration of the exceptional bear viewing opportunities that currently exist within the McNeil River State Game Sanctuary.

I hope these comments are useful. Please let me know if I or the IBA can be of more assistance. The Secretary-Treasurer of the IBA is Dr. Sterling Miller in Anchorage (home phone 345-5158). Sterling will be glad to put you in contact with other IBA bear experts in Alaska if you require additional comments.

Best regards,



Al LaCount  
President, IBA

cc: Carl Rosier  
Commissioner, Alaska Dep. of  
Fish and Game

1. HANLEY, P.T., J.E. HEMMING, J.W. MORSELL, T.A. MOREHOUSE, L.E. LEASK, AND C.S. HARRISON. 1981. Natural resource protection and petroleum development in Alaska. USFWS, Office of Biol. Services, Washington, D.C. August. 306 pp., (ADF&G-A)\*

Focuses on 6 species including black and brown bears. Field studies conducted between 1944 and 1981. "Conclusive results showed that brown bears were attracted to garbage in drilling camps in the NPR-A and that brown and black bears were attracted to construction camps and construction areas for the trans-Alaska pipeline. The activity of blasting was responsible for the documented direct impact of passive harassment. Brown bears within 2 km of winter seismic blasting in NPR-A conclusively moved within their dens as a result of the blasts.

Activity: blasting; drilling; transport of oil/gas/water - land.

Impact: attraction to artificial food source; harassment, active (hazing, chasing) or passive (noise, scent).

2. REYNOLDS, P., H.V. REYNOLDS, III, AND E.H. FOLLMANN. 1983. Effects of seismic surveys on denning grizzly bears in northern Alaska. Draft paper presented at the sixth international conference on bear research and management. Bear Bio. Assoc. Grand Canyon, AZ. February, 1983. (ADF&G, Habitat)\*

"The activities of drilling, blasting, and transporting personnel/equipment/material by air and land produced a documented direct impact of passive harassment. Tentative results indicated that female bears had increased heart rates and/or movements within their dens during seismic detonation 0.8 - 2.4 km (0.5-1.5 mi) from their dens."

Activity: blasting; drilling; transport of personnel/equipment/material - air.

Impact: harassment, active (hazing, chasing) or passive (noise, scent).

3. HARDING, L., AND J.A. NAGY. 1980. Responses of grizzly bears to hydrocarbon exploration on Richards Island, Northwest Territories, Canada. Pages 277-280 in C.J. Martinka and L.L. McArthur, eds. Bears - their biology and management. Fourth international conference on bear research and

management, Kallispeil, MT, February 1977. Bear Biology Assoc. Conf. Ser. No. 3. (UAF)

The activities of drilling, grading/plowing, human disturbance, sewage disposal, and transporting personnel/equipment/material by land and air were responsible for the documented direct impacts of active and passive harassment and the indirect impact of terrain alteration or destruction. A potential direct impact included attraction to an artificial food source...Responses of habituated bears to helicopters were aversive in 88% of the cases. For aversive responses to fixed-wing single-engine airplanes, the percentage was 61 (no distances given). Although current levels of development cannot be proven to affect the brown bear population, development of production facilities is expected to reduce the population to where its continued existence will depend on immigration."

Activity: drilling; grading/plowing, human disturbance; sewage disposal; transport of personnel/equipment/material - air; transport of personnel/equipment/material - land.

Impact: harassment, active (hazing, chasing) or passive (noise, scent), terrain alteration or destruction (e.g., raptor cliffs).

4. MCLELLAN, B.N. 1990. Relationships between human industrial activity and grizzly bears.

"(Extraction industries) can affect individual bears and therefore populations by 1) causing strong, energetically expensive reactions by bears that disrupt their normal behaviour, 2) displacing bears from areas of human use, 3) altering habitats in which bears live, 4) disrupting the bears' social system, and 5) industrial personnel killing bears or increasing mortality rates indirectly by improving access for hunters, poachers, other resource users, and settlers..."

"Cumulative effects models have been built to predict the impact of human activities on bear populations. These models are in early stages and require data to support the coefficients used and the relationships between coefficients. Then they should be tested. One significant variable the models lack is the potential for a specific activity to be the seed for blooming additional perhaps more harmful developments."

The effects of developments and primary roads on grizzly bear habitat use in Yellowstone National Park, Wyoming.

# Alaska State Legislature

Sen. Lloyd Jones, *Chair*  
Sen. Sam Cotten, *Vice-Chair*  
Sen. Dick Ellason, *Member*  
Sen. Steve Frank, *Member*  
Sen. Rick Halford, *Member*  
Sen. Curt Menard, *Member*  
Sen. Fred Zhuroff, *Member*



P.O. Box V  
Juneau, AK 99811  
907 465-4907  
Fax: 907 465-3922

## Senate Resources Committee

May 18, 1991

TO: Senate Resources Committee Members  
FROM: Senate Resources Committee Staff - Paula Terrel *PT*  
SUBJECT: House Bill 306

A working group met for two hours to consider consensus language for House Bill 306. Included in the group were members of the mining industry, legislative staff from the offices of Representative Grussendorf and of Senators Jones, Zhuroff, Frank, Cotten, Menard, representatives from the Departments of Natural Resources and Fish and Game, United Fishermen of Alaska and the Environmental Lobby, and the Outdoor Council. Alan Phipps of the Alaska Center for the Environment was included by speaker phone.

The following language is being proposed for inclusion in the proposed SCS for CS HB 306 (Resources). While the interested parties have indicated that this may not be an ideal solution, they can support the compromise language.

### FINDINGS

The Legislature finds that :

- 1) the viewing of bears and other uses of fish and wildlife;
- 2) fishing and fish enhancement;
- 3) mineral resource development

are important uses of the McNeil River State Game Refuge. The management plan for the McNeil River State Game Refuge shall address these uses.

Staff has checked with the legislative drafter who confirms that this language in no way prevents the Commissioner of Natural Resources from temporarily or permanently closing an area to new mineral entry by administrative order

**HARTIG, RHODES, NORMAN, MAHONEY & EDWARDS**

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SPENCER C. SNEED

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MICHAEL D. WHITE

JAMES J. USTASIEWSKI

May 16, 1991

VIA FAX/ORIGINAL TO FOLLOW

OF COUNSEL

GRUENING & BRITZFADEN

217 SECOND STREET, SUITE 204

JUNEAU, ALASKA 99801

TELEPHONE (907) 888-8110

REPLY TO:

Anchorage

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

RE: Senate CS for CS for HB 306  
Our File No. McNeil River Game  
Sanctuary Extension

Dear Senator Jones:

Our firm represents Cook Inlet Aquaculture Association in matters relating to the Paint River Fish Ladder project, which include the litigation commenced against the Corps of Engineers ("Corps") and the Economic Development Administration ("EDA") by Friends of McNeil River and other interested parties. In that lawsuit the plaintiffs are seeking an injunction requiring the Corps of Engineers to revoke a permit necessary to the construction and an injunction prohibiting the EDA from providing \$1 million in grant funds for the construction. Plaintiff's are claiming in that litigation that the Corps and EDA failed to follow procedures required by the National Environmental Protection Act ("NEPA") prior to issuing the permit and approving the grant.

I am writing on behalf of our client to clarify what I understand to be some confusion regarding the status of that litigation and the effects that passage of Senate CS for CS for HB 306 might have on the litigation or, more importantly, on the successful construction and operation of the Paint River fish passage.

As you know, a hearing was held on May 14th before United States District Court Judge Andrew Kleinfeld on plaintiff's motion for a preliminary injunction. After hearing arguments by counsel that lasted for more than two hours the court determined that the plaintiff's had not, at that point in time, made a sufficient showing, and the preliminary injunction was denied. That ruling is without prejudice to

Senator Lloyd Jones  
May 16, 1991  
Page 2

the plaintiff's to renew the motion based upon supplemental information.

Basically, a decision on a motion for a preliminary injunction is made based on the court's weighing, or balancing, of several factors which include the likelihood that the plaintiff's will prevail on the merits, irreparable harm that will result to the plaintiffs if the preliminary injunction is not granted, harm to the defendants if the injunction is granted, and the public interest. In a very well reasoned decision, the judge weighed the available facts as they applied to the specific issues under consideration and denied the injunction. Review of the court's analysis reflects that a similar result cannot be assured at a future hearing on the merits or on a renewed motion for a preliminary injunction.

On the issue of probable success on the merits the court weighed a number of factors which included plaintiffs' standing, a defense of laches, and compliance with the NEPA regulations. Because the plaintiffs had failed to file affidavits relating to standing until the hearing, the court did not consider them for purposes of the preliminary injunction, and without those affidavits the plaintiffs did not show they had standing; without which the court did not have jurisdiction to enter an injunction. Those affidavits will, however, be considered in future hearings.

The court also considered the probability that the defendants would prevail on an affirmative defense of laches raised by Cook Inlet Aquaculture Association. Laches basically means the plaintiffs delayed in taking action, without a good reason, and as a result of that delay the defendant will suffer serious harm. At this initial stage that defense was determined to be viable because the defendants appeared to have knowledge of the project and funding at least as early as February, but did not file suit until April, after a contract was signed. It is possible that discovery will reveal that one or more of the current plaintiffs did not have knowledge of the project or that the defense is otherwise not available.

As to the issue of failure to comply with the NEPA regulations, the court found there was a high probability of success demonstrated by the plaintiffs. The court made a preliminary determination that publication of notice in the federal register was required because the project was a matter of national concern, but that such publication had not occurred. A tentative determination was also made that the agencies had not complied with the regulations adopted by the Council on Environmental Quality which prescribe the procedures for an Environmental Assessment, and had issued a Finding of No Significant Impact without adequate review and analysis of the factors to be considered. This is the issue to which the expansion of the McNeil Refuge is most critical.

Senator Lloyd Jones  
May 16, 1991  
Page 3

Denial of the preliminary injunction has basically provided the agencies with an opportunity to correct the procedural deficiencies alleged to have occurred in the permitting and grant award processes. If the deficiencies alleged by the plaintiffs, which the court has found are likely to be proven at a hearing on the merits, are not corrected prior to further court action, it is possible that the court will enjoin the construction of the fish ladder, the operation of the fish ladder, or the federal participation in the funding for the fish ladder.

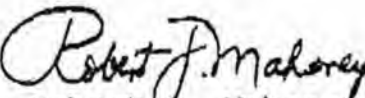
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The critical difference is that an EA might be performed in a period of two or three weeks, while an EIS could take as long as a year or more to complete. It is also clear that an EIS will involve significantly greater cost, and that Cook Inlet Aquaculture Association, as the applicant, may be asked to bear the cost of such study. That cost and attendant delays may have serious adverse impacts on the feasibility of the project. It is therefore imperative that SCS CS HB 306 be passed into law this session.

If you have any questions regarding the status of the pending litigation or the procedures that appear to be necessary to the successful completion of the Paint River Fish Ladder project, I will, with our client's permission, respond immediately.

Very truly yours,

HARTIG, RHODES, NORMAN,  
MAHONEY & EDWARDS

By:   
Robert J. Mahoney

**HARTIG, RHODES, NORMAN, MAHONEY & EDWARDS**

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May 16, 1991

VIA FAX/ORIGINAL TO FOLLOW

OF COUNSEL

GRUENING & SPITZFADEN

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May 16, 1991

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Senator Lloyd Jones  
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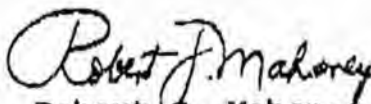
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The critical difference is that an EA might be performed in a period of two or three weeks, while an EIS could take as long as a year or more to complete. It is also clear that an EIS will involve significantly greater cost, and that Cook Inlet Aquaculture Association, as the applicant, may be asked to bear the cost of such study. That cost and attendant delays may have serious adverse impacts on the feasibility of the project. It is therefore imperative that SCS CS HB 306 be passed into law this session.

If you have any questions regarding the status of the pending litigation or the procedures that appear to be necessary to the successful completion of the Paint River Fish Ladder project, I will, with our client's permission, respond immediately.

Very truly yours,

HARTIG, RHODES, NORMAN,  
MAHONEY & EDWARDS

By:   
Robert J. Mahoney

# Sierra Club

Alaska Field Office

241 E. Fifth Avenue, Suite 205, Anchorage, Alaska 99501

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MAY 17 1991

TESTIMONY ON  
 HB 306, TO EXPAND THE MCNEILL RIVER STATE GAME SANCTUARY  
 Before the  
 SENATE RESOURCES COMMITTEE  
 JUNEAU, ALASKA  
 MAY 17, 1991  
 BY JACK HESSION

I am Jack Hession. I am speaking for the Sierra Club and for the Wilderness Society. We recommend that HB 306 incorporate the following provisions:

1. Brown/grizzly bear hunting should be prohibited by the bill throughout the Paint River drainage and the adjacent Amakdedori Creek drainage, whether these areas are designated as sanctuary or refuge. We favor sanctuary status because sanctuaries are traditionally closed to hunting and offer the highest degree of protection to wildlife and habitat.
2. The bill should close the new sanctuary/refuge to new entry under the State's mining and mineral leasing laws. Valid existing rights would not be affected.
3. In subsection (3) under "Purpose" of the expanded sanctuary, "fisheries enhancement" and "other activities" should be deleted as purposes of the existing sanctuary and its two Kamishak River additions. Fisheries enhancement should be limited to the Paint River drainage. In the McNeill River watershed, fisheries enhancement has already been found to conflict with the bears' food requirements.
4. New leases for sport fishing camps, lodges, and other commercial developments should not be allowed in the new areas designated by the bill. These kinds of development will promote increased human-bear conflicts and probable killing of bears "in defense of life and property." Bear viewing by the non-fishing public should be managed in the same careful way as at McNeill River, without the need for elaborate facilities.

Thank you for this opportunity to present our views.



SIERRA CLUB  
ALASKA FIELD OFFICE  
241 E. 5th Ave., Suite 205  
(907) 276-4048 FAX (907) 258-6807

DATE: 5-17-91

TO: Senate Resources Committee

FIRM: \_\_\_\_\_

FAX NUMBER: 465-3922

Total number of pages transmitted, including this fax  
information sheet: \_\_\_\_\_

If pages were not received, contact Pam

MEMO:



# THE WILDERNESS SOCIETY

## STATEMENT OF THE WILDERNESS SOCIETY

For the Hearing Record on

HB 306, to expand MCNEIL RIVER STATE GAME SANCTUARY

Before the SENATE RESOURCES COMMITTEE

Juneau, Alaska, May 17, 1991

The Wilderness Society urges the State Senate to safeguard the integrity of the McNeil River State Game Sanctuary. We believe HB 306, in its present form, does not ensure protection of the sanctuary and we recommend incorporation of the following provisions into HB 306:

1. Brown/grizzly bear hunting should be prohibited by the bill throughout the Paint River drainage and the adjacent Amakdedori Creek drainage, whether these areas are designated as sanctuary or refuge. We favor sanctuary status because sanctuaries are generally closed to hunting and offer the highest degree of protection to wildlife and habitat.
2. The bill should close the new sanctuary/refuge to new entry under the State's mining and mineral leasing laws.
3. In subsection (3) under "Purpose" of the expanded sanctuary, delete "fisheries enhancement" and "other activities" as purposes of the existing sanctuary and its two Kamishak River additions. Fisheries enhancement should be limited to the Paint River drainage. In the McNeil River watershed, fisheries enhancement has already been found to conflict with the bears' food requirements.
4. New leases for sport fishing camps, lodges, and other commercial developments should not be allowed in the new areas designated by the bill. These kinds of development will promote increased human-bear conflicts and probable killing of bears "in defense of life and property." Bear viewing by the non-fishing public should be managed in the same careful way as at McNeil River, without the need for elaborate facilities.

Thank you for the opportunity to present our views.

ALASKA REGION

130 WEST 7TH AVENUE, ANCHORAGE, AK 99501

TEL (907) 272-9453 FAX (907) 274-4145

7-LS1266P ✓  
Chenoweth  
5/17/91

SENATE CS FOR CS FOR HOUSE BILL NO. 306 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GRUSSENDORF, Navarre, Jacko, Mackie, Davidson, Boyer, Brown, Ellis, Finkelstein, Gruenberg, Koponen, Kubina, Moyer, Ulmer, B.Davis, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing a McNeil River State Game Refuge and altering the McNeil River  
2 State Game Sanctuary; and providing for an effective date."

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

4 \* Section 1. AS 16.20 is amended by adding a new section to read:

5           Sec. 16.20.041. MCNEIL RIVER STATE GAME REFUGE. (a) The following state-  
6 owned land and water, including the tidelands but exclusive of marine water and submerged land,  
7 lying within the parcels described in this subsection is established as the McNeil River State  
8 Game Refuge:

9                   Township 10 South, Range 29 West, Seward Meridian

10                   Section 19: S1/2

11                   Section 20: SW1/4

12                   Section 29: W1/2

13                   Sections 30 - 31

14                   Township 10 South, Range 30 West, Seward Meridian

- 1 Section 3: SW1/4
- 2 Section 4: SE1/4
- 3 Sections 10 - 11
- 4 Sections 14 - 16
- 5 Section 17: E1/2
- 6 Sections 20 - 23
- 7 Sections 25 - 29
- 8 Section 30: SE1/4
- 9 Section 31: NE1/4, S1/2
- 10 Sections 32 - 36
- 11 Township 11 South, Range 29 West, Seward Meridian
- 12 Sections 1 - 35
- 13 Section 36, except Nordyke Island and its tidelands
- 14 Township 11 South, Range 30 West, Seward Meridian
- 15 Sections 1 - 36
- 16 Township 11 South, Range 31 West, Seward Meridian
- 17 Sections 1 - 36
- 18 Township 11 South, Range 32 West, Seward Meridian
- 19 Sections 1 - 36, except land within Katmai National Park and Preserve
- 20 Township 12 South, Range 31 West, Seward Meridian
- 21 Sections 1 - 36
- 22 Township 12 South, Range 32 West, Seward Meridian
- 23 Sections 1 - 36, except land within Katmai National Park and Preserve
- 24 Township 13 South, Range 33 West, Seward Meridian
- 25 Section 1, except land within Katmai National Park and Preserve.

(b) The McNeil River State Game Refuge is established to

(1) provide permanent protection for brown bear and other fish and wildlife populations and their habitats, so that these resources may be preserved for scientific, aesthetic, and educational purposes;

(2) manage human use and activities in a way that is compatible with (1) of this subsection and to maintain and enhance the unique bear viewing opportunities in the McNeil