

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8433 SENATE RESOURCES

SB

46

P. O. Box 966
Delta Junction, Alaska 99737
March 7, 1991

Senator Dick Shultz
Pouch V
Juneau, Alaska 99811

I am requesting that you introduce legislation so that I may receive and raise wildlife on a wildlife sanctuary that I am developing in the Delta area. I have developed the sanctuary by introducing bison and will soon be adding elk.

My farm is approved and inspected by the U. S. D. A. who have issued a license (96-C-13) to operate, to keep and to handle large animals. I am subject to periodical and unannounced inspections. The farm is fenced with New Zealand Game Fence. Cort Zachel, a Fairbanks Veterinarian provides the medical attention necessary-observing them weekly and is constantly on call.

I will receive any large animal that is injured and salvagable, abandoned animals, starving animals, problem animals around residential areas or animals in danger of being killed. I will receive these animals, give them proper medical attention and feed them in a confined area of 2,000 acres. Ownership of all the animal would remain with the state.

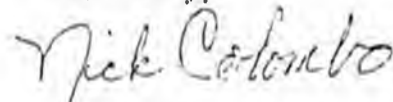
I am requesting permission to conduct a five-year experiment to save these animals. At the end of five years, the legislature and Fish and Game will review the status of the sanctuary and decide whether to continue the program.

Currently, the animal with a big problem is the moose. Last winter it is estimated that we lost 8,000 to 10,000 moose by railroad and highway kills and just plain starving to death. This has been going on for years with the number of kills depending on snow depth. Solutions have been a token effort, consequently, the slaughter continues. The latest solution in effect is to feed the moose to the bears, as 100,000 pounds of moose was fed to grizzly bears on the McComb Plateau last winter and will be done again this year. I believe this is a crime when missions and the Salvation Army are pleading for food to feed the homeless, the poor and hungry children. With social program funds being cut, the problem will get worse.

My partial solution to the railroad kills would be, as the snow depth increases and moose are in imminent danger (determined from the previous year kills) to allow me to capture 50 yearlings a year before they are killed and transport them to my sanctuary. I am in the process of obtaining a chipping and pelletizing machine to produce moose feed from aspen dust and Delta barley according to the formula for moose feed developed by the Alaska Fish and Game. Moose fed this ration require far less land area than free ranging moose.

I would appreciate the legislature considering my proposal and any help and support your office can give me.

Sincerely,



Nick Colombo

Support

Alaska State Legislature

SENATOR
MIKE MILLER
P.O. Box 55094
North Pole, Alaska 99705
(907) 488-0862



White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4970

Senate District 0

Senate

MEMORANDUM

TO: Rep. Bill Williams, Chairman
House Resources Committee

FROM: Sen. Mike W. Miller, Chairman
Senate Resources Committee

A handwritten signature in black ink, appearing to read "Mike W. Miller", written over the printed name in the "FROM" field.

DATE: April 13, 1993

SUBJ: SB 46 AUTHORIZING MOOSE FARMING

Please consider this my formal request that SB 46, An Act authorizing moose farming, to be heard before your committee as soon as possible.

The purpose of this legislation is to amend state law relating to game farming and to allow moose farming if the Department of Fish and Game determines that a surplus of moose exists.

I would appreciate your notification of the hearing date.

Thank you for your consideration in this matter.



Fairbanks North Star Borough

Assembly

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907.459.1400

Newick Shultz

TO: The Members of the Interior Delegation
FROM: Harold Gillam
Assemblymember
DATE: April 28, 1992
SUBJ: Moose Farming Resolution

The Borough Assembly passed a resolution last Thursday night urging that the legislature pass legislation this session that would allow for "Moose Ranching."

This is not a new concept for it has been done with success in Russia. Wild animal ranching is done in several states of the union. It is also done in Canada. Reindeer ranching is done on a very limited basis today and is restricted to only Alaska natives. Prior to the restriction (1959) it was done on a large scale in Western Alaska and was considered one of the greatest resources, next to mining, in Northwestern Alaska. There has been considerable study by the University of Alaska concerning the Musk Ox.

It is a viable concept that will not cost the State any money to implement, for with a simple change of the law there are people that are willing to invest their own money, time and effort to make it a success.

I would urge you to allow these people the chance to make a success of this endeavor and to show that the State of Alaska is willing to encourage individual initiative.

Sincerely,
Harold Gillam

SUPPORTING STATEMENTS

By: Harold Gillam
Introduced: 04/23/92
Adopted: 04/23/92

RESOLUTION NO. 92-039

A RESOLUTION RELATING TO MOOSE FARMING

WHEREAS, there are individuals throughout the state who are interested in the farming of certain wild animals including moose; and

WHEREAS, in other countries, such as Canada, moose and other game animals are raised for both tourist viewing and the commercial sale of meat; and

WHEREAS, moose farming may provide for an increase in the productivity of moose; and

WHEREAS, moose farming, like musk ox farming, would provide the opportunity to study the animals while at the same time, provide for increased tourism. In many cases, it may be the only way some tourists would be able to see a moose in close, safe proximity and which would allow them to take part in "the Alaskan experience"; and

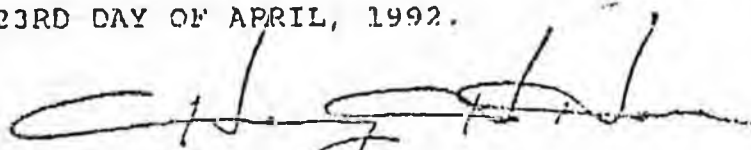
WHEREAS, permitting moose farming would provide further opportunity for economic development; and

WHEREAS, two bills have been introduced, House Bill 478 and Senate Bill 216, and both are currently in the House and Senate Resources committees respectively.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly respectfully requests the Resource Committees to report the bills out of committee and the Legislature to enact legislation which would allow moose farming.

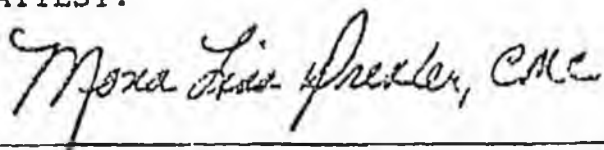
BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Walter J. Hickel, Governor, State of Alaska; the Honorable Lloyd Jones, Chair, Senate Resources Committee; the Honorable Cliff Davidson, Chair, House Resources Committee; and all members of the Interior Delegation.

PASSED AND APPROVED THIS 23RD DAY OF APRIL, 1992.



Henry "Hank" Howe
Presiding Officer

ATTEST:



Mona Lisa Drexler, CMC/AAE
Municipal Borough Clerk

Alaska State Legislature

SENATOR
MIKE MILLER
P.O. Box 55094
North Pole, Alaska 99705
(907) 488-0862

Senate District Q



Senate

Write in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4976

SPONSOR SUMMARY

SB 46

The purpose of this legislation is to amend state law relating to game farming and to allow moose farming if the Department of Fish and Game determines that a surplus of moose exists. If there is an existing surplus, it can grant the surplus or portions of it to persons, groups, associations, partnerships or corporations for the purpose of raising and breeding domestic stock for commercial purposes, or for scientific and educational purposes.

This bill also amends existing statutes, to allow the sale of commercially raised moose meat.

Game farming can provide opportunities for food production, economic diversification, and social stability in Alaskan communities where the development of alternative resources is limited or nonexistent. It can provide jobs and productive activity for people on a sustainable basis. Game farming can be a significant economic and social benefit for Alaskans.

In the specific case of farming, permissible species can be raised on private land bases and help add this missing dimension of management to our State goals.

Dr. Wood

Revised

A RESOLUTION RELATING TO THE ESTABLISHMENT OF A COMPREHENSIVE AND PROGRESSIVE POLICY OF GAME AND HABITAT ENHANCEMENT FOR THE STATE OF ALASKA.

GOAL: DEVELOPMENT OF A WRITTEN PLAN FOR THE LONG RANGE MAXIMUM UTILIZATION OF ALASKA'S NATURAL GAME AND HABITAT RESOURCES WITH THE CONCURRENT ENHANCEMENT AND PROTECTION OF OTHER RESOURCE VALUES.

WHEREAS without a working State of Alaska policy which is clearly defined and supported by the people of Alaska, by the Legislature and by the Governor, little progress will be made toward an economically worthwhile program of game and habitat enhancement in Alaska; and

WHEREAS the people of Alaska generally lack the knowledge of the economic and esthetic benefits of a wise game and habitat enhancement program commonly applied in other nations throughout the world; and

WHEREAS the full potential of the wildlife resource in Alaska has not been realized; and

WHEREAS modern methods of habitat enhancement such as wildfire management are not being used to their highest potential; and

WHEREAS game and habitat enhancement can promote economic development and future well being for all Alaskans; and

WHEREAS Alaska has fallen behind other states and nations of the world in optimizing game and habitat enhancement opportunities; and

WHEREAS active terrestrial game and habitat enhancement programs have been neglected while fisheries enhancement programs have demonstrated a profound economic success.

WHEREAS Alaska provides a unique opportunity with the establishment of large tracts of privately owned land with excellent game and habitat opportunities; and

WHEREAS Alaska now produces far less game than enhanced habitat is potentially capable of supporting and does not realize the full potential of modern active management techniques promoting the wise use of the renewable base. This includes but is not limited to; habitat enhancement, game ranching or herding, fur farming, consumer and subsistence food and fur needs, industrial raw materials and aesthetic products at competitive prices on the world market.

WHEREAS Alaska has a minimum of 220 million acres of land capable of supporting game and habitat management programs. The land includes 44 million acres owned by Alaska Natives and 104 million acres owned by the State of Alaska.

Suggested resolution

WHEREAS there has been a failure to coordinate within the State and between the State and federal government, programs and policies regarding game and habitat enhancement.

BE IT RESOLVED by the Alaska State Legislature that the State of Alaska hereby commits to a policy of game and habitat enhancement that encourages and promotes the wise use of Alaska's renewable resources including, but not limited to the following actions:

(1) The State of Alaska shall promptly determine the most expedient means to promote game and habitat management programs.

(2) The State of Alaska shall identify and remedy current State statutory and regulatory barriers to game and habitat enhancement.

(3) The State of Alaska shall actively assist in the planning and development and when appropriate, in the financing of game and habitat enhancement programs.

(4) State of Alaska agencies shall work closely with private and Native land owners and with federal land owners to cooperatively stimulate game and habitat enhancement programs and to provide for the processing and marketing of game as a result of these programs.

(5) The State of Alaska, in cooperation with educational entities within the State shall develop an information and education program designed to inform and involve the public about the benefits and potential of game and habitat enhancement.

(6) The Legislature, in cooperation with the Governor, shall establish a task force, composed of representatives of forestry, game management, agriculture, business, and consumer interests, which shall be responsible for the study of legislative options for implementing the policies enunciated in this resolution.

Dr Wood

WILD GAME ENHANCEMENT/GAME RANCHING/GAME FARMING

INTRODUCTION

Alaska has a diversity of fish and wildlife, much of which is found in relatively low densities, generally in remote situations and/or seasonally. One of the attractions for non-Alaskans, as well as many Alaskans, is the opportunity to view, photograph, catch and shoot one or many individuals from within this renewable resource group. The above provides an economic opportunity which to date has only received limited attention through guiding operations for both consumptive and non-consumptive purposes, and the limited fur industry which includes wild harvest and some fur farming.

The economic opportunities for rural Alaska, particularly with the establishment of large parcels of private land, warrant consideration by private enterprise as well as state government. It is probable that existing state policies will require modification before Alaska will realize the benefits enjoyed by other areas of the world.

To date, Alaska has primarily managed hunters, trappers and fisherman as they practiced wild harvest of fish and game populations. Limited attempts have occurred in the areas of habitat modifications, transplanting and stocking. World-wide experience suggests that habitat enhancement and intensive management of the animals themselves results in increased populations of fish and wildlife. These efforts can range from relatively simple habitat manipulations, through game ranching and aquaculture to intensive game, fish or fur farming. Such efforts in Alaska are likely to benefit Alaskans and a wider diversity of society than is currently enjoyed.

At present, enjoyment and use of much of Alaska's wildlife resource is limited by poor access and undeveloped marketing schemes. In many areas, wildlife is the only renewable resource present. Timber production is marginal or non-existent in most of the state, and farming of agronomic crops is feasible only in selected areas of favorable climate and soils. However, wildlife is present in most of the state in forms which can potentially be used on a sustained basis to provide meat, hunting and viewing pleasure, hides, fiber and other materials for crafts. Considering the renewable nature of this resource in the absence of other such resources, it becomes apparent that ways of more fully utilizing wildlife should be investigated.

Game Farming
11/16/77

Game and fish ranching should not be viewed as a means of greatly increasing wildlife populations. This is particularly true in northern latitudes, such as Alaska, where primary production of plant life in rangelands, streams and lakes is relatively low. However, it is reasonable to expect that more intensive management of wildlife populations and habitat can provide increased opportunities for wildlife viewing, improved conditions or facilities for harvest and/or hunting and fishing, reduced waste, better preservation of game products, culling and manipulation of population structure to better match demand, and control of predatory losses. Habitat improvements resulting in increased carrying capacity and species diversity may also be possible in some situations, particularly where profit taking is possible. These activities will also generate meaningful employment.

Any type of game production system must be based on ecological principles. The first step in its development should be the inventory of available lands in terms of acreages and distributions of habitats for specific animal species. Seasonal availability of food and cover within each habitat must be estimated and possibilities for improvements evaluated. Common use grazing relationships, fire, predation, disease, insect disturbance, snow and other weather conditions all affect the carrying capacity of different habitats. Consequently, considerable understanding of year-round animal requirements and tolerances is essential in the successful management of a game production enterprise. One of the earliest lessons learned in game ranching or farming activities in Africa was that these activities require more, not less, knowledgeable management than do common livestock. Mismanagement of vegetation, soil and water resources can result in disastrous reduction of carrying capacity and catastrophic decreases in animal populations. Losses of this type can be particularly serious when they involve overutilization of vegetation, since recovery may require decades of reduced use.

With increased biological and legal control of animal populations, greater inputs in habitat management are justified. In situations where the game rancher can control the size and structure of populations using his land and be entitled to the profits generated with the animals, inputs to habitat can become practical. Generally, the most cost-

effective inputs are those which manipulate plant succession to produce vegetation more suitable as habitat for a particular species. Removal of spruce by cutting, burning or crushing to enhance production of willow or aspen is an example of the above. Production of supplemental feeds or mechanical manipulation of physical features of the habitat are more costly and change the nature of the ranch more to that of a farm, but are alternatives that may have a place under some goals of ownership.

Game ranching and farming operations in other regions of the world have demonstrated a number of values to society. Increased sustained-yield harvest of animal products has been achieved through professional hunting, use of corrals and fences, salting, spotlighting, and use of portable abattoirs. Simultaneously, significant income has been generated through allowance of fee hunting for trophy animals. Additional income has also been generated by providing accommodating conditions and facilities for tourists and other recreationists.

In some areas, wild species have actually been demonstrated to have the ecological advantage over common stock, providing for more complete use of the vegetation resources. In brushland situations, browsing herbivores (e.g., giraffe, white-tailed deer and moose) are more productive than true grazers. Similarly, reindeer or caribou have a distinct advantage over other species in utilizing snow covered tundra. For centuries, reindeer herding was a main stay of the Lap society, and is a major occupation in the U.S.S.R. today, just as white-tailed deer ranching has become a major income-generating activity in west Texas. Horse and yak production as well as reindeer herding represents a major economic base in nearby northeastern Siberia. Moose farming has also been undertaken in that region. Closer to home, western Alaska once had a thriving reindeer ranching industry of over 600,000 animals, where in fact, little, if any other opportunity for a land-based economy has been developed. Mining may change this picture temporarily, but mines are not renewable.

As stewards of the land we must be careful not to limit our agricultural perspective to those species typically considered in ranching or farming systems. This is particularly true in our state traditional agriculture is relatively limited in potential. Conversely, we must also avoid sentimentality and select game production schemes which are ecologically sound. Our vision and wise action in these matters will tap a huge, relatively untouched, renewable resource which will benefit generations to come.

ISSUES

In order for Alaska to optimize the opportunities available to the broadest segments of society, which is mandated under Alaska's constitution, a number of issues must be explored in depth with regard to existing state policy, laws, and in some cases, as these relate to the federal government. The following is a list of some of these issues, although it is not exhaustive.

Alaska Fish and Game Laws and Regulations:

- Establishment of seasons and bag limits.
- Methods of take.
- Sale of fish and game products.
- Subsistence versus other consumptive and non-consumptive uses.
- Management, including utilization of fish and animals, on private lands.
- Importation of fish and animals which has implication to both existing and imported fish and wildlife as well as to domestic animals from a predator, disease and pest stand point.
- Predator control.
- Baiting.

Land management and regulation:

- Access and trespass.
- Burning or other vegetation manipulation.
- Construction of ponds, fish ladders or other structures on private lands.
- Fencing or the use of natural barriers.
- Determination of carrying capacities.
- Water quality standards and wetland regulations.
- Leases of state or federal land.

Health and inspection standards

- Pre and post slaughter inspections.
- Processing plant standards and inspection.
- Field slaughter opportunities.
- Mobile slaughter facilities.
- By-product processing.
- Meat grading.
- Antler grading.
- Carcass disposal.
- Other waste product disposal.
- Raw product export.

Public and/or private economics

- Capital availability.
- Projected returns to individuals, regions, the state.
- Types of operations.
- Projected demand by type.
- Enhancement of existing tourist industry.
- Regulation and enforcement costs.

CONCLUSION

Existing worldwide experience suggests that Alaska is not optimizing its opportunities relative to fish and wildlife. Presence of large blocks of private land in rural Alaska have altered the status quo of how the state manages and/or regulates this renewable resource. Is the State of Alaska going to play a positive role in optimizing its fish and wildlife resources?

In order to begin to answer the above question, it is suggested that the legislature establish and fund a broad based task force, charged with bringing recommendations back to the legislature within one year.

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Game Production: Agricultural Diversification For Alaska?

Lyle A. Renecker

It has become abundantly clear in recent years that agricultural enterprises must diversify if they hope to survive. North America has wrestled with the concept of alternative agricultural practices for over 20 years. Farmers no longer want to approach this business of agriculture with all "their peas in one pod." Political subsidy wars, stabilization plans, depressed commodity prices, and over-production are among the reasons why traditional farming is less profitable and why farmers are diversifying their conventional farm businesses. To the real people in the agricultural sector—the farmers—any change must offer a positive cash flow. More importantly, it must gain the confidence and general interest of farmers.

Consumer trends have been towards healthier and leaner meat products. Meat from native wild ungulates is a natural candidate because of its lean qualities, low percentage of intramuscular fat, and low energy content. In 1986, a conference was held in Des Moines, Iowa which provided 100 options for diversification of the farming community. Deer farming was among them. Commercial game farming would seem a natural alternative to conventional agricultural enterprises that choose to diversify and attempt to meet the greater demand for leaner meats. Here, I describe some of the history behind game production in North America, important political and conservation considerations that involve the game industry and private sector, and how Alaska may fit into the greater global picture.

Historical Perspective



Lyle A. Renecker, Assistant Professor of Animal Science (Reindeer), School of Agriculture and Land Resources Management, University of Alaska Fairbanks.

Man has been associated with the use of native wild herbivores in North America since Paleolithic times more than 100,000 years ago. Prior to the arrival of European fur traders, the Great Plains of North America were abound with wildlife. An estimated 35-75 million plains bison and about 10 million wapiti lived on the continent.

In historic times, native ungulates were utilized as an available source of food first by indigenous Indians and then by explorers and later by settlers who arrived in North America in search of new homes. From his explorations in western Canada, Samuel Hearne in 1770 stated that "moose were the easiest of the deer kind to tame." Homesteaders quickly recognized the favorable disposition of moose and often trained them as beasts of burden or for light farm chores (Figure 1).

However, as this new civilization pushed westward, populations of wild ungulates were slaughtered because of the unprecedented need for food by the frontier settlements and loss of habitat to conventional agriculture. Bison herds were soon decimated in such numbers that between 1873 and 1875 approximately 6.75 million head were killed (most in the United States Midwest). By 1889, William Hornaday estimated that only 635 bison remained in North America. Existence of plains bison today stems from the private efforts of a Flathead Indian and seven ranchers. The roots of plains bison populations were largely derived from 54 wild calves that were caught and raised by these private individuals. This historical event was of great consequence in the conservation of the species and delivers a message about the role of the farmer in wildlife management.

Interest in the commercial production of native herbivores continued to thrive in Canada. In 1915, the Federal Department of Agriculture established a program to evaluate the potential of plains bison x cattle crosses. The purpose was to develop a breed that retained the natural adaptive characteristics of bison to extreme environmental conditions, but maintain the favorable meat characteristics and

temperament of cattle. The program was terminated in 1973. Based on the research findings over the years of the program, it was determined that cross breeding the two species would not be as successful as concentrating on improving the bison or cattle.

Early Interest in Production Strategies

With establishment of Elk Island National Park, a working model of a mixed-species grazing system was initiated. This production strategy utilized an assemblage of a grazer (bison), mixed feeder (wapiti), and browser (moose) which have minimal overlap in their winter food habits. The

Kikino Metis Settlement, in North Central Alberta, Canada was the first to apply this large-scale (game ranch) management system to a commercial operation. This strategy dilutes the cost of fencing by increasing the size of the land base to more than 9 1/2 miles square and minimizes the labor-input by stocking animals at carrying capacity with no supplementary feeding. However, the experience of the Kikino Wildlife Ranch was one of little control over animal movement and economic opportunities were limited to winter when animals can be baited into corrals or traps. The decision of the Kikino operation was a change in direction to more intensive management.

Few private land owners possess the large contiguous tract of land that is necessary for an extensive game ranch. As a result, most commercial operations have been intensive game farms, on smaller properties, with supplementary feeding, which orchestrates a farm management program that exploits all economic opportunities.

Game farming in some Canadian provinces has been increasing at a rate of 30% per year. There are about 17,700 wapiti and 82,600 plains bison on

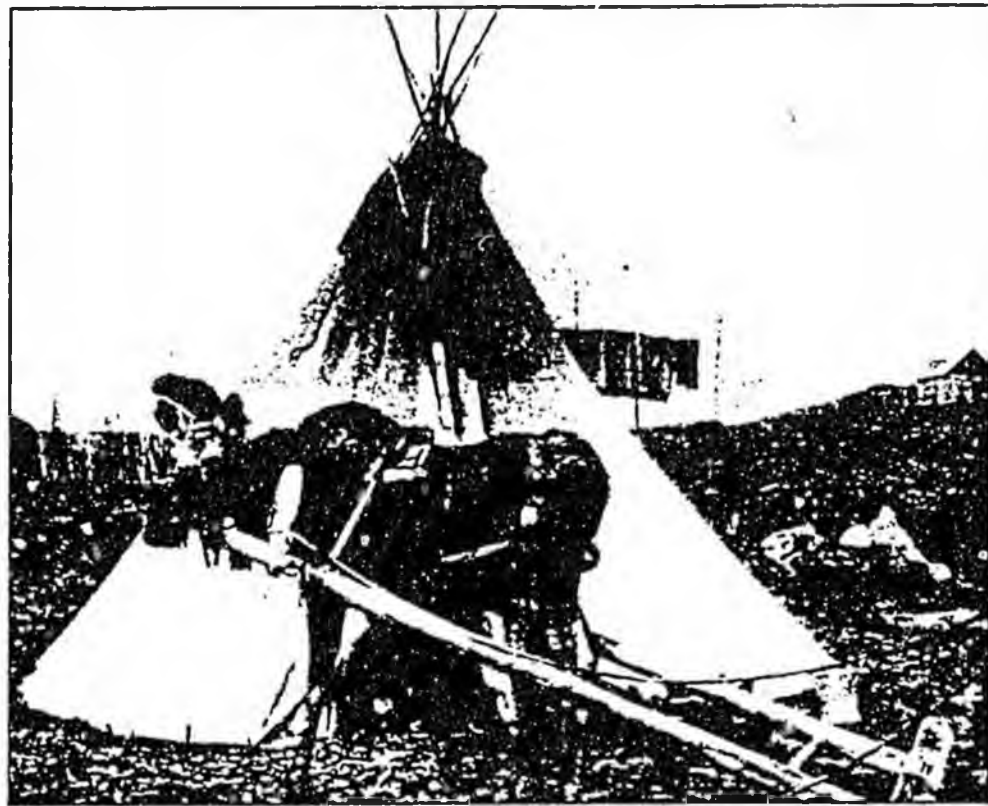


Figure 1. Moose pulling an Indian travois in north central Alberta (c. 1899). Photograph by C.W. Mathers; permission granted by Saskatchewan Archives (Renecker et al. 1989).

commercial farms and ranches in Canada and the United States. At this stage of development, the game/bison farm industries are largely constrained by availability of breeding stock. It is logical to predict that it will require about 15-20 years for the industry to grow and reach a stable level that is based on the price of meat. For example, if the commercial population of wapiti in Canada continued to grow with the assumptions of good management and normal harvest of products and animals, by 2004, a respectable over-wintering herd of more than 200,000 head would be present on farms (Figure 2). This stock would produce annually 10,500 tons live weight of wapiti for meat production and 133 tons of velvet antlers (Figure 3) for total gross returns of about \$62 million (US).

Industry Development in Alaska at a Glance

Physical Environment

The climate of Alaska is extremely pulsed with short warm summers from June to September and typically cold winters with a mean January

minimum temperature of about -19° F in the Interior. The vegetation varies from temperate forest to montane and tundra types. Only a small proportion of Alaska has a climate and soil base that is suitable for cultivation and crop production. These areas consist of the Cook Inlet-Susitna Lowland and the Tanana Valley of the Interior Alaska Lowlands. Where agriculture is practiced, the principal crops grown in Alaska are cereals (barley and oats), grasses for hay and silage, and potatoes. Because of extremely cold winters and frost conditions forage legume crops are not widely grown in Alaska.

Generally, crop production and grazing in these regions are limited by a growing season which varies from three to four months. However, on Kodiak Island and the Aleutians, grazing can be maintained year round with some supplemental feeding. The best soils for grass production are those with good drainage, have a natural vegetation cover of grasses and forbs, and receive adequate precipitation. Organic soils are poorly drained and susceptible to flooding and erosion. Tundra soils are generally limited in depth and by the environment and not good for intensive agricultural production.

Commercial Game Production

Under the current game farm regulations in Alaska, commercial game production is permissible with bison, musk oxen, reindeer, or wapiti. Commercial reindeer herding has been practiced by indigenous people in the state of Alaska since the turn of the century. During the industry's development, health, management, and marketing programs have been developed and applied. The result has been an extremely important industry to both the Seward Peninsula, where much of the industry is concentrated, and the state as a whole. Because of their adaptive behavior and tolerance to harsh environments, wapiti and bison are other target species that could be easily farmed by the private sector in the agricultural regions of Alaska. For example, wapiti eat less than cattle, adjust quickly to conventional feedstuffs, and their gregarious behavior is compatible with intensive production. Each of these species has adapted to northern environments. With interest in alternative agriculture systems, ecological, physiological, and behavioral adaptations of these wild or semi-domestic species could

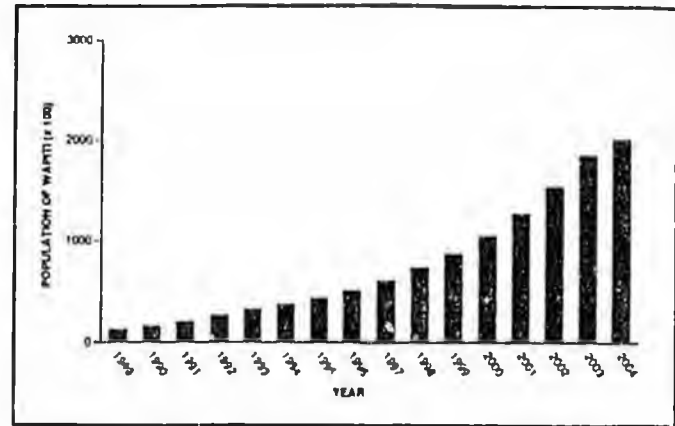


Figure 2. Projected growth of the population of wapiti on Canadian game farms until 2004.

be deployed with an advantage to the farmer. These species have growth cycles adapted to the seasonal food supply and cold tolerance and digestive systems to efficiently utilize native, as well as, domestic forages. For example, bison have adapted to more efficient utilization of low quality feedstuffs than cattle, wapiti are very productive with high growth rates, and reindeer have adapted to both extensive herding in the tundra and, as with other species, they have shown promise for intensive farm operations.

The Private Land Issue

Perhaps the greatest challenge that faces government wildlife agencies is management of resources on private lands. It is difficult to convince a farmer that he should not drain a wetland, clear a forest, or plow a grassland if it translates into more cash returns and less disparity in his annual budget. The farmer requires a tangible benefit in order to fully appreciate the importance of these marginal agricultural lands. Game and bison farming may have created that tangible benefit.

During the winter of 1986-87, there was an estimated 1 million acres of topsoil lost in Western Canada from wind erosion. From pre-settlement to 1985, about 40% of the prairie wetlands disappeared, and during 1984-85, some calculations have shown that forests were being removed at a rate of 80 ac/hr in Western Canada. These areas, like many in Alaska, are marginal, fragile, and probably should never have been altered. They were excellent habitats and range for wapiti and bison and with proper

cies that are naturally adapted to these conditions. With the high value and returns for reindeer, wapiti, and bison, intensive farm operations should seriously consider diversifying conventional agricultural enterprises. If the cost of production is 70-76 percent that of beef and the returns are two-to-three times the price of beef, as has been observed for wapiti and bison (as described by Renecker et al., 1989: p. 264), then it is only common sense to provide the best management possible. Currently, there is one wapiti producer in the state of Alaska. However, it is important for every perspective game farmer to understand the infrastructure, management, and production needs of the species to be farmed and the markets where they can sell their products. But, a new industry must remember that strong public support is maintained through developments that are ethical and logical. There must also be a clear direction in the regulatory procedures of the industry and this originates from consistent definitions mentioned earlier. This new industry of game farming could offer a method of agricultural diversification for Alaskan farmers, however, we will never know unless we conduct the necessary research on which to develop the industry. In a capsule, the needed research is: a) a study of relocation and nutritional stress; b) herd health programs; c) pasture management; d) herd management and productivity; and e) market development, product consistency, supply consolidation. □

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BRIEF ON GAME PRODUCTION

by

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Game production is not exactly new to man. Man has been associated with the use of native wild herbivores in North America since Paleolithic times more than 10,000 years ago. Deer farming has been practiced by the Chinese people for more than 2,000 years. Also, reindeer herding has been present in the cultures of northern Europe and Asia for over 2,000 years. The Romans enclosed deer in parks for both pleasure and profit as was stated by Columella in accounts of ancient times that "wild creatures such as red, roe, and fallow deer... sometimes serve to enhance the splendor and the pleasure of their owners, and sometimes bring profit and revenue". He also makes note of deer being in enclosures and given supplemental feed in order that "...when the custom of giving feasts called for game, it might be produced as it were out of store". This is not that different from what we perceive as game farming today.

Agriculture today must diversify in order to realistically anticipate survival. One of the options which has been pursued around the world is game farming. The form and rules vary in accordance with the political jurisdiction, however, the concept is not new. For a complete world wide perspective, see Renecker and Hudson (*Wildlife Production: Conservation and Sustainable Development*; 1991).

Management Systems

In order to develop and diversify wildlife management strategies, a blend of protective (parks), multiple-use (integrated), and productive strategies should be employed. Protective measures represent parks and wildlife preserves but these areas are small and usually are separated by political boundaries. Multiple-use or sometimes referred to as integrated or compromise systems attempt to satisfy the conflicting demands of several users. Land uses are integrated in this type of management system typical of government jurisdictions in order to maximize benefits, however, there are always trade-offs. Finally, the missing link in complete diversification of wildlife management is productive systems. Here a single resource is managed

intensively for peak performance. Game ranching/farming is one way to provide this missing dimension. Today, present concepts relate to control on removal rates of wildlife and guarantee a supply of wild stock for sport hunting. However, this does not resolve the management issue on privately-owned land where importance is an issue of value.

Demands for Precise Definition

One of the most important considerations in the development of a commercial game production industry is the proper definition of the business at hand. Terms can confuse and suggest different conceptual ideas to various sectors of the public. Therefore it is important that definitions be concise and consistent with biological and agricultural terminology. Specifically, I refer to the confusion that can revolve around the use of either game cropping, herding, ranching, or farming. These are clearly defined by Renecker (*Agrobrealis* 23: 20-24; 1990).

Positives Realized

Growth & Demand - In recent years, conventional agricultural has been subjected to continual pressure of diversification. The farming business continent wide has been plagued with family farm foreclosures as a result of low commodity prices and political subsidy wars. Commercial game production offers a lean, healthy meat product that is in public demand. In return, this health conscious society is willing to pay sound returns for a quality, consistent product. Over the last 5 years, there has been a consistent increase in the trade of farm-raised venison. For example, from 1986 to 1991, New Zealand has increased its export sales of venison from about 1,300 metric tonnes to 3,000. The increase has come with concomitant demand for standards of quality and supply. In 1991, the USA alone bought New Zealand farm-raised venison valued at over \$ 1 million which has doubled from the mid 1980's. Clearly, the market will bear a considerable increase in supply, however, growth must occur in the industry world-wide to meet this demand for a quality product. Quality Alaska reindeer, wapiti, or bison are possible candidates for sale in this marketplace.

Culturally-consistent - An additional benefit is the culturally-consistent livelihood it provides for our Native people. Whether, the production strategy is farming or herding, commercial game production can provide employment and financial opportunities and yet attempt to remain in balance with traditional cultures.

Health - Disease regulation and control has been a concern of both opponents and proponents of this new industry. For example, there has been continuous blame placed on the game industry for the outbreak of the tuberculosis situation in Canada and the lower 48 states of the USA. However, is this a realistic evaluation or, in fact, was it the game production industry that has raised important questions that relate to the testing of even domestic ruminants. Precisely, the tuberculosis situation resulted from a breakdown in the screening process - the tests were not accurate enough. This does not open an immediate arena for emotional and erratic decisions but rather the situation must be resolved to allow business to be conducted as usual. Remember, this means the industry will have clean, healthy animals because they can be tested or vaccinated - and the system works. These newly developed techniques can then be applied by biologists to wild populations of ungulates.

Game animals have few unique diseases and are generally considered to have fewer parasite/disease problems than livestock. Once intensive practices are employed on the range or farm, animals can be managed through normal health program procedures.

Fences and Handling - Fences and handling are incredibly important. As with other animals, facility designs must be utilized that minimize stress and take advantage of the animal's natural behavior to the manager's advantage. Game farm producers have rapidly learned these behavioral principles and adapted methods that facilitate management. For example, any wild or even an animal habituated to the presence of humans will rarely move down a straight alley that ends in a right angle corner or a dark shadow that streams across the end of the passage. It could be referred to as natural instinct or perhaps common sense. However, place a slight bend or curve in the alley and the animal can see there is a possible exit and a place to hide and feel secure from the herder who approaches from the rear. The animal moves around the corner into the security of a holding pen and the gate is closed before realizing that it is captured.

Fence materials (hi-tensile netting) have been developed and marketed specifically designed for game farms. Various combinations can be used to meet both practical and legal concerns for the perimeter and management needs of the internal paddocks. There is also wire netting that is designed with smaller openings at the bottom that increase in opening size towards the top. This keeps dogs and coyotes outside and prevents small calves from escaping.

Development Plan - Since facilities are essential it is important that the farm layout and design for the initial construction and future developments are thoroughly considered. A

development plan has helped many game farmers and herders plan their needs for infrastructure and capital many years in advance.

Economics and Markets - The initial investment for physical structures (eg. fences, handling facilities, etc.) is higher than for livestock production. However, barns and calving sheds are not required as they are with cattle. Markets for farmed and herded game animals exist and appear to have the potential to expand in the future. In Alaska, reindeer, wapiti, and bison are potentially three possible source of lean and well-flavored meat which is in consumer demand. Velvet antler is another commodity produced by both wapiti and reindeer that is utilized in Asian pharmaceuticals and traditional tonics. Other markets, such as for breeding stock, viewing, etc., can also be explored and researched.

Poaching - It has been suggested that poaching will increase with the expansion of the legal market for game meat. This will be improbable because of consumer desires for a consistent, high quality product. It implies government inspection and ante and post mortem inspection. In order to obtain the government stamp, the meat must be handled under rigorous standards which will be one of the producer's platforms for marketing a quality specialty-item.

It is obvious that there is potential in this new industry - situations and developments both around the world and here in Alaska have shown this. The industry will require research as it integrates and grows in size. An important issue is the continuous interaction, understanding, and compromises of all persons involved in order to ensure logical business development.



Future of Agriculture Task Force

We submit the Future of Agriculture Task Force's final report in order that this basic resource, enjoyed by every Alaskan every day, can be developed in the best interests of all.

In the past six months, the task force has held thirteen public meetings statewide. Input was sought from every sector of the agricultural community. Members of the task force included men from a broad spectrum: Co-Chairmen Lt. Governor Jack Coghill, DNR Commissioner Harold Heinze; Bob Baer and Mark Kulstad, both in Real Estate in Anchorage; Jim Carter, homesteader from Willow; Jim Drew, Dean of the School of Agriculture and Land Resource Management, University of Alaska Fairbanks; Herb Eckman, owner of Alaska Sausage, Anchorage; Bob Havemeister, second generation Colony dairyman, Palmer; Paul Huppert, owner, Palmer Produce, Palmer; Mike Schultz, grain, hay and grass seed producer, Delta Junction; Ron Sexton, owner, Trinity Greenhouses from Soldotna; and David Wright, an organic grower of vegetables, Harmony Acres of Palmer.

Meetings were held in Palmer, Anchorage, Glennallen, Trapper Creek, Kenny Lake, Kodiak, Ninilchik, Delta Junction, Fairbanks and Juneau.

Governor Hickel asked the task force to examine Alaska's agricultural successes and make realistic recommendations for future state involvement. The following eleven points are submitted to Governor Hickel for implementation into a healthy state agricultural policy.

We thank Governor Hickel for the opportunity to study and serve and hope this plan of action will keep the government from repeating the mistakes of prior administrations and build on the successes for the Future of Alaskan Agriculture.

Sincerely,

Lt. Governor Coghill
Mark Kulstad
Herb Eckman
Mike Schultz

Commissioner Heinze
Jim Carter
Bob Havemeister
Ron Sexton

Bob Baer
Jim Drew
Paul Huppert
David Wright

SUMMARY

"Let us never forget that the cultivation of the earth is the most important labor of man. When tillage begins, other arts follow. The farmers, therefore, are the founders of civilization." -Dante Webster.

The State of Alaska shall establish a positive, solid, forward thinking agricultural policy by establishing a long-term environment suitable for the development of a stable, sustainable agriculture community for Alaskans.

A stable agricultural system includes the people who produce food and fiber, provide financing, carry out processing, transportation, and marketing, and conduct applied research and technology transfer for agriculture. Each of these links must be strong for Alaska's agriculture to provide opportunities that contribute to the economy of the State. The success in developing a quality state policy for agriculture lies in establishing the essential element of continuity. To this end, the Alaska Department of Natural Resources, Division of Agriculture, will prepare an eight-year plan to strengthen and develop these important links.

The State of Alaska's agricultural policy should:

1. Provide greater consumer availability of quality Alaskan grown products in the marketplace through inspection, certification, labeling, marketing, and education programs.
- * 2. Support unrestricted domestic breeding and raising of all animals, including game species.
3. Support the movement of agricultural materials and products through a farm-to-market road priority and an agricultural discount on the state ferry system.
4. Continue the state's investment in agricultural science and technology to protect and enhance the quality of Alaskan soils, seeds, plants, produce, animals, and other agricultural products; and the necessary knowledge transfer.
5. Facilitate the development and use of agriculture in conjunction with other Alaskan resource uses and needs (i.e., fish meal, forestry).
6. Assure the availability of financing sources for agricultural operations that are financially viable.
7. Make state land available for agriculture under a variety of provisions including fee-simple title with fair market value purchase or homestead credits.
8. Continue to make agricultural land available in a range of parcel sizes throughout the state.

9. Make grazing leases available through the Division of Agriculture for up to a 30 year term with contraction at least every ten years to the area developed and utilized.
10. Preserve the long-term availability of agriculture land by the creation of a 500,000 acre agricultural land bank to be managed and administered by the Division of Agriculture.
11. Facilitate the formation and operation of cooperative ownership of major agricultural facilities and the development of farmer's markets.

FINANCING

Financing is critical in the development of successful agriculture. In the past, the State of Alaska has provided direct loans to the agricultural community and has experienced a high number of delinquencies and defaults. The State of Alaska should encourage the privatization of the agricultural loan function by encouraging the commercial banking industry to assist in financing short term capital requirements of the individual farmers and ranchers.

As in the development of other resources in underdeveloped regions, the development stages of agriculture involve more financial risk than in established agricultural regions where the needed infrastructure is in place. The state should assist banks in setting up controlled loan programs which could be guaranteed through the Alaska Industrial Development and Export Authority.

In addition, the state should consider divesting the Agricultural Loan Fund of the existing portfolio of performing agricultural loans, freeing up between \$6 to \$9 million in capital through selling these loans to individual private financial institutions. This would save the State of Alaska from the expensive role of servicing the loan portfolio.

LAND

Successful agriculture requires a suitable land base. Consequently, agricultural land must be made available for sale or lease throughout the state. Fee simple land should be made available with an agriculture covenant when special price and conditions are offered under agriculture uses. The Division of Agriculture will administer an agricultural land bank of 500,000 acres to ensure the future availability of agricultural land for transfer to farmers. Agricultural land will be made available under a variety of provisions including fee simple title. Land sales will be based on fair market value and carried out through direct sale or a system involving homestead credits.

* GRAZING

Alaska's agriculture should include the unrestricted domestic breeding and raising of all animals, including game species. Grazing leases administered by the Division of Agriculture will be made available for up to thirty years with provisions for review of grazing use every ten years. Leases not actively maintained for this purpose will be made available for lease to other livestock producers.

TRANSPORTATION

Transportation is an essential link in an agricultural system, and includes coordination of several levels of transport. Favorable rates throughout the transportation systems are necessary for Alaskan agricultural products to compete in the marketplace. This involves a rate preference for Alaskan agricultural products carried on state-owned railroad and ferry systems, provisions for favorable trucking rates, licensing, and the construction and maintenance of farm-to-market roads.

PROCESSING

Processing is essential to market agricultural commodities and to provide value-added products for consumers. When necessary, facilities for cost-effective processing will be provided by the State until levels of production make it possible to shift these operations to private individuals, corporations, or cooperatives.

MARKETING

State assistance will be provided to establish cooperatives when these entities are deemed appropriate and the State will encourage the development of farmers markets as direct consumer outlets for food and fiber produced in Alaska. A marketing entity could be developed similar to the Alaska Seafood Marketing Institute for Alaskan agricultural products.

QUALITY CONTROL

The quality of Alaskan grown products will be ensured through inspection, certification, and labeling. Agriculturally related inspection (formerly administered by the Division of Agriculture) and seafood inspection should be transferred from the Department of Environmental Conservation to USDA qualified inspectors at the Division of Agriculture to correspond with the administration of inspection in other states.

In addition, promotional and informational programs such as the Alaskan Grown program will be continued within the Division. These programs are essential links in increasing the market share of agricultural products produced and consumed in Alaska.

RESEARCH & TECHNOLOGY TRANSFER

Results of investments in agricultural research and technology transfer provide an essential link for all segments of a sustainable agricultural system. Support for agricultural research and technology transfer will be provided by the State through the Agriculture and Forest Experiment Station and the Cooperative Extension Service to protect Alaska's soil and water resources, and to enhance the quality of seeds, plants, produce, animals, and other agricultural products grown in Alaska. In addition, the State will encourage support for this work from the Cooperative State Research Service, the Agricultural Research Service, and Forest Service Research, USDA, through cooperative, integrated programs.

CONCLUSION

An efficient agricultural system involves small farms, family farms, greenhouse production, domestic red meat, natural animal farming, larger grain farming and other enterprises as well as the multiple use of infrastructure for processing, transporting, and marketing a variety of commodities.

The State of Alaska should let the farmer farm. Agriculture should not be directly managed by the state but supported and encouraged through technological advice and expertise. Then Alaska will have a healthy food and fiber industry that will enhance both Alaska's economy and benefit her people.

DEPARTMENT OF FISH AND GAME
POSITION PAPER

Bill No: SB 46 (1/14/93)

Sponsor: Senator Miller

Division: Wildlife Conservation

Bill Title: An Act authorizing moose farming.

Department Position: Speculative benefits of this bill are greatly outweighed by serious concerns described below.

Background/Legislative Intent: This bill would amend AS 16.40.010-.020 to allow moose to be raised as domestic animals for commercial purposes and legalize the sale of moose meat. The department would be responsible for determining when a surplus of moose existed that could be made available for disposition to private ownership.

Analysis of Bill/Program Effects: Public ownership of wildlife and prohibiting sale of game meat are foundations of wildlife management in North America. We believe the passage of legislation legalizing these activities would be a major error and detrimental to successful wildlife management in Alaska. These and other concerns, listed below, are currently causing most other western states and provinces to tighten their laws governing private ownership of big game animals.

- (1) Moose are the most highly sought after big game species by hunters, wildlife viewers, and photographers. Approximately 50,000 hunters pursue moose each year, harvesting from 7,000 to 8,000 animals. Thirty-six drawing permit applications are received for each permit available. The demand for moose greatly exceeds supply; surpluses do not exist.
- (2) Moose farming/ranching will require large acreages. Some proponents of this bill have expressed interest in leasing state agricultural lands. Highly productive state-owned wildlife habitat, currently used by the general public, could be removed from production of wildlife. Conflicts between big game farms and large predators are certain to occur. Populations of wolves, black bears, and grizzly bears will be impacted over a large area surrounding any big game farm.
- (3) Ensuring the general welfare and humane treatment of big game on farms will become a responsibility of the department. Moose are not herd animals and do not tolerate crowding. High densities of animals in confinement will cause behavioral and disease problems with the potential for spreading diseases to wildlife and domestic animals outside the farms.
- (4) Some individuals will use the opportunities provided by this bill to own a few moose as pets, for a hobby, or to promote their tourist businesses. Allowing wildlife to be exploited by roadside attractions diminishes the

value of all wildlife and may lead to legal liability for the state if animals are abused or someone is injured by a moose.

- (5) Allowing sale of moose meat will create serious law enforcement problems. Poachers will have an added economic incentive that they presently lack. Current and proposed levels of wildlife law enforcement are inadequate to cope with this added burden.
- (6) Moose are expensive to maintain in captivity. The high stocking levels proposed for moose farming would require high levels of supplemental feeding. Moose require a special diet and cannot survive on diets that sustain domestic livestock. Moose farming has proven to be uneconomical in Canada where game farms are more common. The Yukon Territory has prohibited the use of moose on game farms. Attempts to domesticate moose in Alberta have been economic failures due to the biology of the animal (moose are unsuitable as beasts of burden, produce small volumes of milk under labor intensive conditions, and are very expensive to feed). To expect moose farming to succeed in Alaska where no infrastructure exists and no market has been established is unrealistic. The state has promoted agricultural projects in the past that resulted in continuing subsidies. The department considers the transfer of publicly owned wildlife to private ownership to be a subsidy.
- (7) Alaska's wildlife resources generate hundreds of millions of dollars annually through tourism, guiding, hunting, and subsistence. Tourists list wildlife viewing as their primary reason for visiting Alaska. This experience will be diminished if tourists observe wildlife at roadside attractions and game farms.

(Please refer to the department briefing paper, *Farming of Big Game Animals*, for additional information.)

Commissioner's Signature

Ron Samuella by G.B.

Date

1/28/93

BRIEFING PAPER, DEPARTMENT OF FISH AND GAME, JANUARY, 1993

FARMING OF BIG GAME ANIMALS

INTRODUCTION

This paper will further document the position of the Alaska Department of Fish and Game regarding game farming, and specifically, the proposed legislation authorizing moose farming in the state.

Proposed legislation (SB 46) would amend AS 16.40.010 authorizing the transfer of surplus moose into private ownership as domestic stock for commercial or scientific/educational purposes; AS 16.40.020 would be amended to allow meat from the slaughter of these moose, and their offspring, to be commercially sold.

Alaska's *Species Management Policies*, similar to those throughout North American states and provinces, have long held that the transfer of game animals to private ownership for commercial purposes is not a wise use of these resources. These policies were adopted following public hearings and approval by the Board of Game. The Department has consistently discouraged commercialization and privatization of big game for over 20 years. Past legislation has provided for the transfer of excess wild muskoxen and bison into private ownership. These species, as well as elk (under AS 16.04.050), may now be privately raised in Alaska. *Species Management Policies* must be modified to recognize commercial uses of these species. However the Department continues to have serious concerns that follow many other states and provinces regarding the private ownership of other native big game animals.

Current Status of Moose

Moose are one of the most highly desired big game species in the state. Approximately 50,000 hunters harvest about 7,000 to 8,000 moose annually. There are about 32 drawing permit hunts for moose throughout the state, and for each available permit, 36 applications are received. Clearly, the demand for moose greatly exceeds the supply. Surplus animals do not exist.

Moose are also a major attraction for wildlife viewers, photographers and outdoor enthusiasts. Millions of dollars are

generated annually by these visitors to Alaska. A primary reason why these groups travel to Alaska is to view wildlife, and moose are an important component of that opportunity. Diminishing this experience by privatizing moose or other big game species would not be in the best economic interests of the state.

Economic Considerations

Moose are very expensive to maintain in captivity. Average moose food consumption is 20-30 pounds per day during summer, and 10-12 pounds per day in winter. The most productive natural areas in the state can only support 6-8 moose per mile² during winter. Moose farming advocates have proposed stocking densities in excess of 16 moose per mile². A high level of supplemental feeding would obviously be required. All moose held in captivity throughout the world are fed either native browse (which is very labor intensive to acquire) or a pelleted ration containing 33% aspen sawdust which is very expensive to produce; roughly twice the cost of domestic livestock feed. The Department's Moose Research Center (MRC) spends \$15,000 per year on winter supplemental feed for 20 animals.

Fencing required to keep moose contained in an area is a substantial capital cost. Material costs alone (no labor) for fencing adequate to keep moose contained averaged \$13,000 per mile (1987 figures). Therefore, a 1 mile² enclosure (4 linear miles of fence) would cost \$52,000.

Moose farming has not proven to be economically feasible in areas where game farms have already been established and where considerable effort has been spent establishing markets for wild game products. Game farms in Alberta do not commercially raise moose because they are not profitable.

The Yukon Territory Department of Renewable Resources contracted a private consulting firm in 1986 to analyze the economic feasibility of game farming in the Yukon. The feasibility study concluded that moose are not suitable game farming animals because of their tendency to develop density-related disease. The Yukon government subsequently adopted a policy that prohibits the use of moose in game farming. The same study indicated that game farming of other species might be feasible, however the initial investment would be at least \$400,000 to 450,000 and annual operating costs would be \$17,000 to \$20,000 excluding labor.

Proponents of farming moose refer to the reported success of Russian moose farming, where moose have been used as work animals, and for milk and meat production. These reports are not accurate. Alaska Department of Fish and Game biologists have confirmed through literature review and personal discussions with Russian project biologists that moose farming in Russia was unsuccessful.

In the early 1940's, two large farms were built for moose farming; one in the Pechora River Valley and one in central Siberia. By the mid 1960's, the Siberia site was abandoned, and the Pechora Valley site is now only a field research site, similar to the MRC. The experiment was abandoned for the following reasons:

- *Moose could only be used as work animals in winter because they do not have sweat glands and summer work caused overheating and death;
- *Milk production was low and very labor intensive;
- *Intensive management of wild animals produced as many animals as on the farms;
- *hand-cutting browse for feeding was too labor intensive;
- *there were many behavioral problems with the farmed moose.

Additional costs for a moose farming project, which should be considered in any discussion, are those associated with the oversight, inspection and enforcement of the program. There is no doubt that these costs would be substantial, and would have to be absorbed by either the state or the industry.

Conflicts with Large Predators

Game farming, for moose or other species, would result in significant conflicts with large predators such as wolves, and grizzly and black bears. These predators are common in most places of Alaska where game farming might occur.

Large predators would certainly be attracted to concentrations of farmed animals, and losses to game farm stock would occur. Large powerful predators such as brown bear could destroy fences, resulting in increased maintenance costs to the farmer, as well as the release of stock into the wild. Game farmers would either destroy wild predators attracted to their operations, or expect the state to resolve the problem. Either way, valuable resources belonging to the people of the state would be needlessly destroyed.

Additional conflicts could occur between farmed and wild individuals of the same species. Adult wild bull moose during the rutting period, could be attracted to farmed animals and easily destroy a fence or injure animals during rutting displays or fights.

Disease

This issue is, without doubt, the most serious concern in terms of monetary costs to agencies, as well as to the health of the public and wild populations.

Importation and transportation of wildlife species poses the risk of spreading disease to free-ranging populations. Major diseases of concern include bovine tuberculosis (*Mycobacterium bovis*) and bovine brucellosis (*Brucella abortus*) in elk, rangiferine brucellosis (*Brucella suis* type 4) in reindeer, and bluetongue in elk. Bovine tuberculosis and brucellosis are transmissible to humans as well as native wildlife. In Alberta, over \$10 million has been spent in an unsuccessful attempt to control tuberculosis, and at least 30 people have contracted the disease from game farming situations.

Other diseases and parasites potentially present in translocated wildlife include anaplasmosis (*Anaplasma marginale*), meningeal worm (*Parelaphostrongylus tenuis*), carotid artery worm (*Elaeophora schneideri*), and giant liver flukes (*Fascioloides magna*). Quarantine and inoculation of ranched game can reduce the risk of disease transmission to native wildlife, but these measures will fail when animals escape quarantine, when tests for disease are not foolproof, or when an unethical game farmer attempts to circumvent proper procedures. Introduced parasites and diseases could seriously diminish Alaska's wildlife populations and reduce opportunities for consumptive and nonconsumptive users of these species.

Genetics/Hybridization

Individuals or groups of animals that are farmed or herded will eventually escape captivity through accidents or inadequate fencing. For example, bison and reindeer have escaped captivity in Alaska, and elk in Alberta and Colorado. In 1992, at least 5 elk with ear tags were killed during the hunting season in Colorado. Overall, a total of 155 exotic free-ranging animals have been killed in Colorado; all escapees from game farms.

Wildlife that escapes captivity poses the risk of contaminating the genetic integrity and fitness of Alaska's wildlife species through hybridization. Native wildlife populations exhibit particular genetic adaptations to their environment, which have caused them to be successful through time. Some domesticated stocks, especially exotic species, may be able to out-compete wild populations. Colorado has spent over \$750,000 in a 3 year program to eliminate genetic contamination from red deer for elk farms in the state.

Habitat Loss

Game farming for some species requires the fencing of large blocks of public land if the operation is to be economically feasible. This would present two major problems:

- 1) Fencing of the land and the associated habitat (with fencing adequate to contain farmed animals) would preclude use of that area by native wildlife, resulting in a loss of production on these lands and a decline in populations of wild species favored by the public.
- 2) Fencing would also preclude use of the area by the general public for consumptive and non-consumptive uses, and may increase access or trespass problems.

Some states, for example Colorado, do not allow any public land to be incorporated into game farms. They also can deny any game farm application if it is in a critical habitat area, such as a calving area or migration route.

Poaching

An established commercial market for the sale of game meat introduces an incentive for large scale poaching of free-ranging wildlife species and for illegal sale of game meat. A poacher could sell poached wild meat to an unethical game farmer to mix with farmed meat or sell directly to an unscrupulous retailer.

Unauthorized capture of wild animals, in this case moose, to supplement farmed breeding stock could also occur. In some areas where these farms would be located, it would be very easy to capture wild adult or calf moose for commercial sale or harvest. In Colorado for example, 3 prosecutions in 5 years have been made for capturing wild animals to stock game farms. A large regulatory network and inspection force would be necessary to reduce the incentive for illegal take and sale of game. Current levels of law enforcement are inadequate to cope with this situation.

The public would be the eventual losers in this situation, as public wild resources would become scarce in areas adjacent to unethical farms, and reductions in hunting opportunity would be necessary to maintain wildlife populations at minimum levels.

Experience in Other States

Wyoming, in the mid 1970's, declared a total ban on all forms of game farming.

Washington, in 1992, approved permanent regulations prohibiting the importation, propagation and movement of native deer, elk, moose and caribou in the state. These regulations were established to "protect the state's free-ranging animals from disease, interbreeding and other risks..." from game farm animals.

Utah prohibits ownership of all native big game except bison, and all exotics except fallow deer.

California has a moratorium on importation of any new, non-domestic stock pending development of new disease testing protocols.

Oregon is currently working to adopt new regulations concerning the private holding of all deer species (cervids).

Yukon Territory has banned moose farming.

Alberta had spent over \$10 million and destroyed over 2,000 game farm animals in an unsuccessful attempt to control an outbreak of Tb.

Montana, in May 1992, adopted a new, more restrictive set of regulations covering game farming in that state. New legislation, modifying game farming operations was introduced in January 1993.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 46

Revision Date: _____

Department Affected: Fish and Game

Title: An Act authorizing moose farming

BRU: Wildlife Conservation

Component: Wildlife Conservation

Sponsor: Senator Miller

Requestor: Senate Resources

COMPONENT SERIAL NO. 0473

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

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 (FY93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Larry Jones

Phone: 465-6085

Division: Administration

Date: January 25, 1993

Approved by Commissioner: *Tom Amundson*

Agency: Department of Fish and Game

Date: 1/28/93

PREPARER TO PRO _____ OFFICE _____

The time has come for moose farming

By DOUG WELTON

As I go through this life here on planet Earth, amidst all the confusion and grime, I am constantly aware of how unsettled society is—the soaring crime, suicide and destruction.

I get up in the morning and turn on the radio and hear the day's recital of what we are doing to ourselves, and to each other, and what our government is doing to all of us. And then I compare the way I live my life, and the way I treat others, and think about what I want to do in this crazy world. And I can only wonder how what I want to do is illegal, while all the grief and greed and grossness of the world is apparently acceptable.

What do I want to do? My family and I have for four years now studied and dreamed about a way of life separate from all that we see going wrong in this world. All we want to do is salvage the orphaned, the hurt, and the problem moose, and put them to good use.

Through our extensive research, we have concluded that not only is this quite possible, but is exactly what is being done successfully in other countries, such as Russia. It may not be the biggest breakthrough since man on the moon, but it is definitely an option to the present policy of allowing moose to be hunted and killed only.

The Alaska Department of Fish and Game has this attitude that our wildlife should not be used commercially, or be privatized. But again, as I look out on this world, I see big game guides making millions carting people around, and getting paid to kill, kill, kill. I am also aware of people being allowed to display these animals, and charging others to have a look. Then, how about the research facilities that have for decades been allowed to privately conduct every imaginable kind of experiment on these animals?

Why can these people exploit our wildlife, and I cannot? While game farming science doesn't hold the moose to be the most economically viable species, in my view it is the most loved and desirable and enjoyed of them all. Most game farms in Canada keep a couple around, just because. And the fact that we've not yet realized how to capitalize on the potential, doesn't mean the potential is not there.

It's known for a fact that moose tame as easily as calves, that they give the most nutritious milk on earth, that they will pull a sleigh or a cart, that they can be ridden in places other animals would find inaccessible, can breed at one year of age, and generally throw twins from the second

calving on.

When raised in captivity, they grow year round, and achieve larger size. When castrated they don't participate in the rut and continue to gain weight. They can provide a reliable source of meat to a family, and don't require watering in winter like all other farm animals. The antlers, hides, hooves, and bones provide materials for crafts and clothing, and yet it is not legal to raise them here in Alaska.

The Alaska Department of Fish and Game says that raising them would ruin the "Alaskan experience" for our visitors, and that they simply cannot be raised. I can't believe that this one department in our corrupt government has been allowed to become so powerful. They are a dark cloud over this state,

and I wish the people would wake up and see the truth.

I suppose if I were Oscar Meyer, I would get somewhere, but I'm not. I'm just a little ol' Alaskan. Do you have to be a multi-national corporation or millionaire to develop an industry, or even a way of life, in Alaska today?

Our legislators have all thrown in the towel, and won't even dispute what our so-called experts say. However, they have an opportunity with two bills legalizing the raising of moose, and predictably, Fish and Game will say no. Who owns this state anyway, and who owns all the wildlife and other renewable resources?

House Bill 478 and Senate Bill 216 would do more than legalize moose and caribou farming. It would give people like us a purpose and something to do. Are our



children going to be forced to seek their fortunes elsewhere? Or are we going to open opportunities to enrich their lives with the resources with which this state has been blessed? Or is Alaska just for the rich and powerful?

I am sick of hearing no, of denial and discrimination. I'm tired of getting nowhere and numb from the cold evasiveness of politics as usual. I'm not wanting any damned welfare or privileges; I'm not looking for a hand out, just a hand.

I see opportunities and I've sought them, but not got them. This country was built by dreamers and doers, not the passive and the politicians. Exxon us and BP yuu! Funny, they seem to get to do whatever they want to do. It doesn't matter what it takes, whether it's a park or refuge or forbidden place, they seem to run this whole damn human race.

Please consider what I've had to say; there is a better way!

Doug Welton is president of the Alaska Game Rancher's Association, a thirteen year resident of Alaska, and an advocate of the legalization of moose farming for the past four years.



"Our tame animals are fed, and the wild ones get hooked on it as well."

Wildlife Institute of India. For six months, he worked with a variety of animals—none of which were moose. He enjoyed the project so much that last year, Franzmann retired from his MRC post and pursued similar work in other countries.

Although he had many such professional honors to his credit, Franzmann preferred to talk about his animals and the Moose Research Center than himself.

As we bounced down the Swanson River Road and onto a side road, Franzmann told me about the beginnings of the Moose Research Center. In the early '60s, officials from several state and federal agencies gathered for the first Alaska Inter-agency Moose Meeting. They decided that before wise management decisions could be made, they needed more research on habitat and wildlife, with an emphasis on moose, and the MRC was conceived.

While he drove, Franzmann pointed out remaining evidence

of two large forest fires that swept the Kenai Peninsula in 1947 and in 1969. In time, these natural burns created excellent foraging areas for moose—and the moose responded by increasing their numbers where there was abundant regrowth.

Moose are not grazers, they're browsers, Franzmann said. They'd rather munch on tree branches and leaves than grass. The half-ton adults have to eat a lot, and they enjoy aspen and birch trees, but willow is their "ice cream" plant. Franzmann said. On the Kenai Peninsula, willow is less abundant than birch, so in this part of the state, birch makes up about 70 percent of their diet.

When moose aren't walking or sleeping, they're eating, Franzmann said. By late summer, they may even forgo sleeping for eating because they have only four months to increase their body weight 30 percent to 40 percent. That fat reserve will sustain them through a winter with much less food readily available.

This means a 1,000-pound cow must eat at least 3 percent of her body weight daily, or 30 pounds of food, to stay alive. That's figured in dry matter, Franzmann said, because the weight varies dramatically if moisture is included in the calculations. Adding moisture weight could increase the figure

Continued on page 54



Left: Past studies included comparing the moose's activity level with the amount of food it has eaten. (Helen Rhode)

Above: These twins, like their mother, were raised by hand and lived as test animals for the Moose Research Center on the Kenai Peninsula. (A.W. Franzmann)

Right: Bottle feeding this big baby is just a trick to get him on the scale for weigh-in. Wildlife biologist Wayne Regelin plays substitute mom. (A. Franzmann)

ADF&G MOOSE RESEARCH CENTER
ALASKA MAGAZINE ARTICLE

7/88

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years improved, but in 1986, with a 150,000-pound harvest, most of the fishermen still were unable to make their boat payments. In 1987, the catch came to 250,000 pounds.

Building a federally backed boat harbor on each island boosted the local economy, and the harbors should help the bottomfish industry. Again, the Aleuts find resistance from animal rights activists who question if the harbors will affect seal numbers.

"Given a choice, I think our people would not have opted for the boat harbor," Merculleff says, adding that the people have mixed reactions. They have to have an economy, but recognize the possibility of damage. "Our leaders are listening to the elders about what we should be trying to protect.

"Our people have shown that we can adapt, and we're going to learn the new ways," Merculleff says it like he means it.

Closer to self-reliance than ever before, the Pribilofs also are perilously close to economic collapse.

"The future is uncertain at this point," Merculleff says. "One thing that we have learned in 10,000 years in the Bering Sea area, is Aleut people are survivors. We must produce answers, and not tears." ❄

Tricia Brown is Regional Editor of Alaska magazine

Moose

Continued from page 29

by as much as 80 percent, he said. In winter, a 1,000-pound cow needs to eat at least 1 1/2 percent of her body weight.

Calves are the first to die when food is scarce because they are the least able to build fat reserves in summer. Next are the yearlings, followed by the bull moose. Storing fat in August is especially important for bulls because they lose their appetite in rutting season, and more, they expend a lot of energy during the rut.

Studies at the MRC have shown that temperature does not cause moose to migrate, but snow can be a big factor. The animals will dig through the snow, or "crater," in search of lowbush cranberries if their preferred food is out of reach or below snow level. Biologists like Franzmann are concerned by this behavior.

"Cratering is a sign that the habitat is not as good as it should be," he said. "If they have to crater for all their food, they're in a world of hurt because they're into negative energy."

* Wildlife biologists and land-use planners want to know more about the relationship between moose and where they choose to live. For instance, just how many animals can a given habitat feed? Conversely, how much territory does a given number of animals need to find enough food? These and other questions have been studied since the Moose Research Center opened in 1969, cutting a place for Alaska as a leader for moose studies.

"Nowhere else in the world has there been anything like it," Franzmann said, "and now there are some others beginning. The Swedes, for example, came over here to see the MRC, and then they built a similar facility."

* Last year, 14 tame moose lived at the center in one of four square-mile pens. Later, they were joined by about six free-ranging moose who were temporarily enclosed. These "guests" were trapped in the facility and were released later. Sometimes getting them to leave isn't easy.

"Our tame animals are fed, and the wild ones get hooked on it as well," Franzmann said. "That's our biggest problem."

All the animals were familiar subjects to the leaders of several research projects. Depending on which study they were part of, some moose worked harder than others to sustain themselves, and all were watched closely.

Through the years, some of the most respected names in wildlife biology have "graduated" from the MRC: Art Braille, Bob LeResche, Jim Davis, Paul Arneson, Bob Seemel, John Oldemeyer and Wayne Regelly among them.

Nine graduate students, most from the university in Fairbanks, have completed their advanced-degree research at the MRC. Others have been part of mini-studies involving veterinary schools in the Lower 48. And since the MRC opened, the staff has included many volunteers who are merely for room and board.

They live and work in an assortment of log buildings constructed by the staffers and students themselves. The facilities include two resident cabins, a telemetry and lab building, storage area and a generator building. The generator can provide all their power, but they don't use it full time. There is no phone, but they do have radio contact with Soldotna, 50 road miles away.

The log outbuildings house the metabolism chambers, a scale house, small holding pens and a fully equipped mini-lab. These are connected to two 15-acre pens used

to shuffle the animals from the larger enclosed ranges.

For humans, driving through the four enclosed areas involves a number of stops to open and close gates. For moose—and some other creatures—getting in and out of the pens is as simple or as impossible as the biologists and technicians desire.

In ongoing research, scientists are examining the effects of late breeding in calf survival. Cow moose have two estrus cycles, and researchers question whether calves conceived in the second cycle are born too late in the spring. Do they have enough time to grow fat in the summer, before their first long winter? Several females were bred during the first estrus and others in the second. This fall, the calves will be recaptured, weighed and measured. Researchers will repeat the experiment next year, said Chuck Schwartz, the current MRC director.

* In the past, studies have measured how an animal responds to its surroundings, Franzmann said. "For instance, documenting a moose's behavior and physiology by sampling its blood or hair—these are but a few of the ways in which we can check how a moose is responding to its environment."

Sally Zeylemaker's dozen bottlefed calves were part of a four-year study on moose digestion and nutrition. Two sets of the orphaned moose calves were monitored to measure how much food they ate, how fast it went through their digestive tracts, and how much protein and energy was used as a result. The initial studies of what went in and out of every moose were followed by more restrictive testing. Zeylemaker recorded their metabolic rates—lying down versus standing up—and compared them with the amount of nutrients consumed.

* "Through these studies," Franzmann said, "we'll learn how much a moose needs to eat in order to sustain certain activities."

Later in the study, John Bevins, a UAF master's degree candidate, drew even more specifics. He wanted to know when the moose were walking, feeding, bedding down or cratering. With leg transmitters on the moose, Bevins was as good as there. He measured how an animal's metabolic rate changes depending on what it's doing and how often it needs to "re-fuel" as a result.

Another test was a clear case of the haves versus the have-nots. In two of the pens, radio-collared moose chose from an abundance of highly nutritious food; in the other two, the residents didn't have it smorgasbord-style. Bevins expect-

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ed to see significant differences in the moose's activity levels.

In a separate feeding trial, biologists checked blood samples of four tame moose to see how their energy level is related to what time of day they eat.

Although the MRC certainly centers on moose-related experiments, it also serves as a logistical base for "non-moose" studies. One Swedish man used the facilities for two summers while studying four pairs of loons that live on a nearby lake. And Chuck Schwartz concluded nine years of work studying black bears on the Kenai Peninsula—their movements, home ranges, population and love of devil's club.

Franzmann sees part of the work at the MRC as vital to wildlife management in Alaska. Animals there are often test subjects for research that involves developing and testing new techniques and veterinary drugs. The drug Ivermectin, used to counter outbreaks of lice on wolves, was tested here, as was Carfentanil, what Schwartz calls the "drug of choice for immobilizing moose." Current tests on the drug R-51163 will determine if moose will respond as well to the new tranquilizer as do elk, big-horn sheep and caribou.

With volunteers like Chief and Charlie to help researchers better understand how moose operate, results of the work at the Moose Research Center will aid policymakers who must decide when and where to develop land and other natural resources, yet ensure natural habitat for wildlife. ☆

Karen L. Lew is a 20-year Alaskan and free-lance writer on outdoor subjects. She lives in Juneau where she is working on a book about another aspect of her home state.

Homer's Own

Continued from page 33

It's a Saturday night in February, and Tom and his wife, Debt, are celebrating with friends at a Homer rock 'n' roll club called Alice's Champagne Palace. Most everyone is out on the plywood dance floor, up by the stage where a local band, the Rock Doctors, are blasting out an Elvis Costello tune. Tom tips a shot of whiskey and a beer sent to the table by a well-wisher.

He doesn't look at all like he sounds, or even how he writes. "People expect me to be in my 50s, fat and ugly," he says. In reality, he's a fit 33-year-old with longish brown hair and gray-blue eyes, who wears wire-rim glasses, and on this occasion, leather tennis shoes, pleated pants and a thin leather tie.

On the radio, Bodett tells his tales in a slow, folksy, almost Southern drawl; off-mike, his speech is less affected, flatter, sounding more like the Michigan native he is.

He drags on a Marlboro and reaches across the bar table to shake a buddy's hand.

"We did twice as good as I thought we'd do," he yells over the music. "It's a winner. If it doesn't go, it's not because we didn't give it our best."

Bodett and crew had just come from the high school's Mariner Theater, where they'd given two performances of story-telling and music-playing to a sell-out crowd of nearly 1,000 people.

"The End of the Road Review" was the biggest thing to happen to Homer all winter, and it held promise for bigger things in the town's future.

The show, created by Bodett and Homer pianist-composer Johnny Bushell, was a pilot for a nationally syndicated commercial radio variety show originating in Homer every week.

The target date for the first live broadcast from Homer is Sept. 1. Stations throughout the country received tapes of the pilot and Bodett made a sales pitch to radio executives when he flew to the National Association of Broadcasters annual meeting in Las Vegas last spring. "We're getting all green lights," he said.

Dick Brescia, a former CBS executive who heads the New York company marketing the program, plans to line up at least 100 stations to air it. Motel 6, naturally enough, was the first sponsor to sign.

Regardless if the show flies on national airwaves, the folks in Homer loved what they heard that night. Bodett told them in his opening remarks, before the tape started running, that he was aiming the show at a guy 80 miles west of Omaha who's driving home with a six-pack of beer to watch reruns of "A1c."

"What I want him to do is sit in his driveway, and listen to the rest of the show," Bodett said.

The show was patterned after radio variety programs of the 1940s, a format revived on public radio in the mid-1970s by Garrison Keillor's "A Prairie Home Companion."

This one included several original rags and boogies by Bushell, a loose-jointed piano jockey whose flailing elbows and bouncing legs kept the audience wondering if he'd fall off the bench. Bodett profiled a few of Homer's more colorful characters, roughly based on real towns-

people, who'd be regulars if the show is syndicated.

There was Tamera DuPrey, the vegetarian activist who'd make gagging noises if you got in front of her at the grocery with a package of hamburger; Pastor Frank, a black-belt fundamentalist from the First and Last Baptist Church, whose wife got so upset at a lecture on evolution that she pursed her lips together and dislocated her jaw; and the town's self-appointed mystic, Rev. Sapphire, who claims spiritual kinship with cosmic dust, rocks and the like, having fallen out of the sky and gathered himself up on the beach.

Comparisons between "End of the Road" and "A Prairie Home Companion" irk Bodett, but they're inevitable. Bodett has some of the same gifts that made Kelllor successful, an easy touch in writing and delivery. One of the biggest differences is that Homer, unlike Lake Wobegon, is a real place.

"It's all Homer," Bodett said as the last of the crowd filtered out of the auditorium. "I can't say it enough. The support from people here is unlike anything you can describe."

Homer hasn't always been Bodett's home.

He grew up in Sturgis, Mich., one of five brothers and sisters, and spent his high school years wrestling and writing self-described bad poetry. A 107-pound lightweight who was called "Boda" by his friends, he worked summers in the recreational vehicle factory across the border in Lagrange, Ind.

Bodett went on to college at Michigan State and spent a year-and-a-half in the writing program there.

"I was frustrated," he recalls. "I realized I hadn't a damn thing to say. I had nothing to write about."

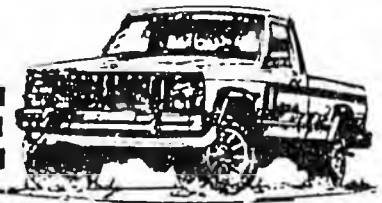
So he headed toward the West Coast, earning money as a carpenter. By 1976, he was working in canneries, and logging and building in Petersburg, an island town south of Juneau in rainy southeastern Alaska.

During his travels, Bodett regularly wrote his high school friend, Debi Hochstetler. He invited her to Petersburg, and before she realized it, she was a mail-order bride.

Here she was, an art teacher in a small fishing town that already had the only art teacher the schools needed. The place was nothing like where she'd come from. It rained all the time—106 inches a year—and the only roads were around town. In six months, the teaching job opened, and she took it. But deep

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3/23/92 RDNM

Farming task force urges specialization

By BRIAN O'DONOGHUE
Staff Writer

The future of agriculture in Alaska depends not on seeding big projects with state dollars, but on tree farms, moose ranching and other efforts that market specialized, quality products, according to a task force preparing recommendations for Gov. Walter Hickel.

After months of public hearings around the state, Hickel's 11-member task force is nearing completion of drafting recommendations on a new state agriculture policy for the 1990s.

During a public hearing Friday at the University of Alaska Fairbanks, a consensus took shape within the task force in support of the following points:

- Better marketing efforts are needed, possibly in conjunction with an improved state inspection program.

- The state should continue to make land available for farming, but in smaller blocks under a variety of sales conditions and homesteading options.

- The Legislature needs to address problems created by the restricted titles conveyed in recent agricultural land programs. These programs have left farmers dependent on state loans for development, as the ag-titles are "not bankable," as task force chairman Harold Heinze put it.

- The state should support practical research, while doing a better job of spreading the news about successful products and technologies.

- The state needs to assure the availability of farm operating

loans to finance seed, fertilizer or other annual purchases.

- Tree farming and other select forestry programs should be managed as a form of agriculture, giving farmers on state "ag parcels" the option of raising such crops.

- The task force supports "unrestricted ownership and domestic breeding of all animals, including game species.

"That little point there will be controversial," Heinze said, alluding to Fish and Game's past opposition to moose farming legislation.

Task force member Mike Schultz suggested the recommendations should be linked to specific production goals. "I thought one of our duties would be to set a goal of where we ought to be eight, 10 years from now," said the Delta Junction farmer.

Lt. Gov. Jack Coghill agreed. "I think we're all on the same wavelength of having an overall agriculture policy," said Coghill. "That plan has got to be put in there someplace."

Heinze said he favored more general policy statements.

"One of the problems of putting in goals is it sounds like the mistakes of the past," Heinze said. "Let the marketplace control. We've heard a lot from small family farms. They're alive and well. Most of them are just telling us to get out of the way."

Members of the task force include Heinze, Coghill, Schultz, Jim Carter, Dave Wright, Bob Havemeister, Rob Sexton, James Drew, Herb Eckman, Mark Kulstad and Bob Baer.

Game ranching idea deserves consideration

In the continuing quest for the wisest and best use of the lands of Alaska, the idea of modern game ranching now merits serious consideration. Game ranching could have an important role in any reasoned scenario for use of Interior Alaska lands today and tomorrow.

There are successful models elsewhere, notably in Africa, Australia, and for a very long time in parts of Europe. There is growing interest in New Zealand and Canada where preliminary assessments of the practical as well as the potential are most encouraging.

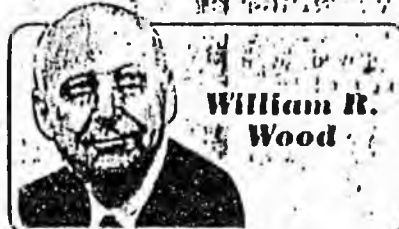
Appearing in the May 1975 issue of the Journal of Range Management, a fine article by Telfer and Scotter, "Potential for Game Ranching in Boreal Aspen Forests of Western Canada," is an eye opener for those of us unfamiliar with the extensive and rapidly growing body of professional literature on the topic. The Canada-based article is of particular significance for Interior Alaskans where similar favorable conditions exist for successful game ranching operations: large acreages of marginal agricultural and forest lands, with "shallow snow cover, productive soils, variety of vegetative types, and a variety of native wild ungulates, in-

For the last two species named, it would be appropriate to suggest caribou and perhaps musk ox for our tundra, muskeg, hill and valley country of Interior Alaska.

Telfer and Scotter define game ranching as "the keeping of wild mammals, principally large ungulates, either in fenced enclosures or under close surveillance, so that efficient systematic harvesting of meat is possible. The animals thus kept in semi-domestication may be either exotic or native species, but game ranching usually refers to the latter."

In its broad application game ranching has been practiced extensively for years in the Lower 48: For example, pheasant farms in the Midwest, quail and wild turkey private game preserves in the Southeast and South, bison, elk, and antelope projects in Montana and Wyoming, some under joint public/private state-of-the-art management practices.

In the last half dozen years game ranching in the form of aquaculture featuring both public and privately financed salmon and trout hatcheries has rejuvenated a diminishing fishing industry, as well as greatly improved increasingly popular sports fishing in Alaskan waters. A most dramatic instance of successful big-scale game ranching is, of course, the translocation



William R. Wood

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of Lake Michigan from the status of the dying to that of the vigorously alive. The successful transplanting of Alaska silver salmon, "Cohos," turned the trick. Both sport fishing and commercial fishing were never as good at any time in history as they are now in Lake Michigan.

Earlier this year a realistic and exciting proposal for the introduction of game ranching in Interior Alaska, featuring bison (our beloved and beloved Delta buffalo), moose, caribou, and possibly musk ox, was made by Bud and Martha Helmericks of Fairbanks, long-time, well-known authors and Arctic consultants. For many years they have lived with their three sons, one now a Rhodes Scholar at Oxford after graduating from Lathrop High with honors in 1976, in their headquarters home at the mouth of the Colville River on the coast of the

guiding, flying, Arctic engineering and information services while studying the High North and writing about it successfully.

Harmon "Bud" Helmericks and Martha are prominent pioneers of the last half of the 20th century. His "Last Of the Bush Pilots" has been highly acclaimed by the general public as well as the Arctic buffs.

The Helmericks' proposal, which has been submitted to state administrative and legislative leaders and to University of Alaska agriculture and wildlife managements experts, should be given the closest scrutiny and serious consideration for accomplishment during the 1983 legislative session.

Setting aside in some appropriate manner marginal agricultural and forest lands of Interior Alaska for a pilot game ranching project of 25,000 to 30,000 acres, approximately 40 to 50 square miles, makes good sense. The first effort might well be in the Delta area as a complementary undertaking to the agriculture project. A second might be planned jointly with the Nenana agriculture proposal.

Game ranching is compatible with the multiple-use principle of sound land utilization. In addition to scientifically managed wildlife enhance-

and winter recreation outlets are provided, from an opportunity for tourists actually to see big game animals of Alaska in their natural habitat to skiing and other winter sports for residents.

There are, of course, many questions to be raised and answered, positive and constructive viewpoints to be discussed, in order that appropriate action can be taken on a sound basis during the 1983 session in Juneau.

Game ranching for Interior Alaska is a worthwhile idea whose time has come. In a subsequent article let's take a look together at some of the aspects of game ranching that would be of particular interest to residents of the area. Typically some of these interests may be in conflict, perhaps in most cases from lack of basic information.

Fortunately we have available to all of us the good counsel of well-informed and experienced specialized talent, such as that of Bud and Martha Helmericks. We need not venture alone into the dark on yet another wild-goose chase as we address a fundamental fact of life: that idle resources are a luxury no people however richly endowed, can long afford. Let's put "our lands where our dead lie buried" to sensible good use.

Alaska could benefit from game ranching

Of Alaska wilderness and wildlife, relative to the rest of the nation, there is a very great amount. Empty lands? Not necessarily.

After the large acreage transfers authorized under the historic land settlement act have been accomplished, the state of Alaska will own about 104 million acres, about 28 percent of the total Alaska land mass; Alaska Native people will own an additional 44 million acres, about 12 percent, or roughly 1/3 of all Alaska. Together the non-federal lands will represent a bit more than two-fifths or 40 percent of the total. The federal government will retain ownership of nearly three-fifths or 60 percent of Alaskan lands.

This vast acreage apparently is dedicated almost entirely to wilderness and wildlife purposes. Initially after transfer much of the land in Native private ownership will remain essentially wilderness with minimum use by people. Of the state's portion, nearly 2/3 has been classified for fish and wildlife. A tiny amount has been classified for agriculture, about 2 percent, and only 16 percent for commercial forestry production.

Then an inescapable fundamental top-priority question facing all Alaskans, including Native Alaskan com-

munities, is working out some reasonable balance in the use of their lands.

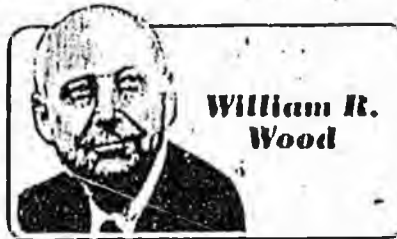
To resolve the fundamental "All Alaska" question will take more than emotionalism, fixed ideologies of any extreme, and selfish specialized interests, however attractive out of context, or in isolation from consideration of the general good.

Any acceptable resolution will require a painfully realistic assessment of potential land resource uses, creative concepts for immediate, mid-term, and long-range uses that fit into a reasoned and well-balanced design for utilization. Truly this is a process without end—so long as the human mind and spirit prevail on earth. There is no quick fix in prospect.

Given the above, is there a common-sense approach to bringing Alaskan wilderness and wildlife into greater production for the benefit of residents in an all-inclusive sense? That is what our endless quest for an answer to our land issue is all about.

The goal of leaving a place better than we found it, over-simplified for clarity, exemplifies husbandry at its best of the natural resources available to us, in reality merely lent to us for a brief time.

For some of the state's marginal



William R. Wood

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lands, including private ownership lands, game ranching holds much promise. It may offer the soundest approach to bringing a portion of Alaskan wilderness and wildlife into greater production to enhance the several "good-life" styles we enjoy in the North.

A strong case can be made for game ranching in Alaska, particularly in the Interior, but also in Southcentral and southwestern and northwestern areas. In Southeast Alaska the game ranching principle already is being used successfully in the fishing industry. The good case for can be spelled out readily in outline from successful game ranching operations elsewhere. Such experience and state-of-the-art practices must be examined closely

in relation to the particular Alaska project or series of projects that undoubtedly will be proposed this year and subsequently.

For discussion, to whom does Alaska state wilderness wildlife belong? All of us? Then how can we best preserve it and increase its productivity in multiple ways for the common good?

How can a reasonable portion of Alaska state and private lands be set aside for game ranching, beginning perhaps with a pilot project or two?

There are several types of game ranching operations, including but not limited to: those government-operated for preservation of species and tourism, with culling of herds open for recreational hunting, including trophy taking, on a limited permit basis; private club-type operations with access limited to members and their guests only; and private operations for profit, featuring a wide range of income-producing possibilities, from meat production and trophy taking to general recreation, sightseeing, picture taking, and esthetic fulfillment to be derived from wilderness and wildlife.

Paramount for consideration of continued success for private enter-

prise game ranching is not only the preservation but the enhancement of scientific principles of both wilderness and wildlife. Attempts at "exploitation for profit only" are doomed to fail promptly. An enlightened, well-informed people will not tolerate them.

To what extent might limited game ranching, especially in Interior Alaska, relieve pressure upon other wilderness lands and their wildlife? That pressure is building up dramatically. In particular, might a game ranching pilot project featuring Delta buffalo serve more than one good purpose, including resolution of the present farmer vs. buffalo conflict in the Delta agricultural area? Both/and rather than either/or.

Let's think this game ranching prospect through together beginning with a positive and constructive analysis of possibilities as well as problems. Let's reason together and act sensibly for the general good without political posturing or attempt at manipulation. Is this too much to ask in face of the number one priority basic issue of land utilization in Alaska?

There is urgent necessity here that demands immediate attention.

FAIRBANKS NEWSMINER 17 NOV. 1982

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MEMORANDUM

January 28, 1993

SUBJECT: Senate Bill 67, amending provisions of ch. 66, SLA 1991 (relating to the reconstitution of the mental health trust); and providing for an effective date -- sectional analysis (Work Order No. 8-LS0409\A)

TO: Senator Mike Miller, Chair
Senate Resources Committee
ATTN: Teresa Sager-Stanchiff

FROM: Jack Chenoweth
Legislative Council

The measure, based on CSSB 469 (Resources) of the last legislature, sets out a series of proposed amendments to ch. 66, SLA 1991, the legislation reconstituting the mental health trust. Necessarily, I will discuss these provisions out of the order in which they appear in the bill.

I

Sec. 54 of existing ch. 66, SLA 1991, reconstitutes the corpus of the mental health trust by identifying specific land held by the state and that is to be conveyed by it in order to reconstitute the trust. Sec. 55, ch. 66, SLA 1991, authorizes substitution of other state land (i.e. "replacement land" as substitution for former mental health lands that now cannot be returned to the trust because it is unavailable to the state) to the reconstituted trust and sets out standards to guide the making of replacement land substitutions. Sec. 56, ch. 66, SLA 1991, is an enforcement mechanism in that it hypothecates or pledges certain state assets to secure the transfer of compensation due the reconstituted trust corpus. These provisions are proposed to be repealed by **bill section 8**.

In their place, **bill section 6** proposes to reconstitute the trust corpus in the permanent law. Some, but not all, of the land identified in sec. 54, ch. 66, SLA 1991, is carried over into this section. Omitted from the list approved in the 1991 Act is land identified in paragraph (5) (Tanana Valley State Forest and Haines State Forest

Resource Management lands), paragraph (6) (other land satisfactory to the plaintiffs drawn from legislatively-designated areas), and paragraph (7) (compensation land identified under former sec. 55). Added, in the enumeration set out in bill section 6, is land subject to "other lease" (proposed AS 38.05.800(2)(A)), land subject to mining claim or sale of materials (proposed AS 38.05.800(2)(D) and (E)), and land exclusive of that necessary to carry out purposes of an interagency land management agreement (proposed AS 38.05.800(3)).

In the 1991 legislation, existing AS 38.05.800 was to have been repealed. Since, in this bill, AS 38.05.800 would be modified and continued, the change set out in **bill section 7** drops that section from the list of sections repealed in the 1991 legislation.

II

This legislation also proposes to revise the mechanism by which to reconstitute an important element of the mental health trust, the mental health trust income account. Under current AS 37.14.036(c), the state obligates itself to pay to the mental health trust income account a declining percentage (six percent at inception declining to one percent in the last years) of unrestricted state revenue, the last payment to be made by June 30, 2003. The change proposed by **bill section 4**, a reenactment of AS 37.14.036(c), directs that a fixed annual payment of six percent of unrestricted state general fund revenue be allocated for an indefinite period "as compensation for land that constituted the [original] trust . . . and that is not reconstituted as part of the mental health trust corpus established under AS 38.05.800 . . ." The payment, when made by the state and received by the trust, would be added to the balance of the mental health trust income account, the principal source of support for the programs and services to the trust beneficiaries.

However, payment of the allocation requires legislative appropriation. As a guarantee that the allocation will be made, **bill section 5** adds two subsections to AS 37.14.036. Under proposed subsection (d), land that came to the state under the mental health enabling act and that has been since placed in so-called "legislatively-designated" land status--state park, state forest, state game refuge, and the like--would be pledged as security. Under proposed subsection (e), the superior court is given the authority to determine the manner of the trust's foreclosure against those lands in the event the state fails to make the required allocation under subsection (c).

I want to note that it was the decision to convert the six percent payment obligation from one with a set termination date to one of indefinite duration that prompted the addition or revision of permanent law sections and the repeal or deletion of temporary law sections.

III

Two provisions, bill sections 2 and 3, change provisions of ch. 66, SLA 1991, that relate to the management of trust assets.

The language added in **bill section 2** revises the responsibility given the Alaska Mental Health Trust Authority as to management of the land assets of the trust. It would require that the land assets of the trust be managed by the state's Department of Natural Resources under an agreement between the department and the mental health trust authority unless the authority "determines that the best interests of trust beneficiaries would be served by other arrangements." The change would replace the current language providing the mental health trust authority the option to contract with the department for land management services.

Ch. 66, SLA 1991, reestablishes a mental health trust fund. That fund consists of the cash assets constituting part of the trust principal. The amendment made by **bill section 3** would direct that the earnings derived from management of the land that is within the trust corpus--that is, of the land identified in AS 38.05.800, reenacted in bill section 6--are to be constituted part of the trust principal (and not added to or made part of the mental health trust income account).

IV

Finally, the Alaska Court System had asked that several changes be made in the definition of the jurisdiction of a court to hear disputes arising under ch. 66. Accordingly, in **bill section 1**, the superior court is designated the court of original jurisdiction to hear and resolve disputes arising out of AS 37.14.036(c) (the subsection is reenacted in bill section 4) and out of AS 37.14.036(d) and (e) (these subsections would be added by bill section 5). Under **bill section 9**, a dispute to be heard by the superior court may be referred by a judge to a special master appointed for the purpose. Finally, under existing sec. 57, ch. 66, SLA 1991, original jurisdiction to hear disputes is vested in the Supreme Court. (Sec. 57, ch. 66, SLA 1991, is repealed as part of the series of repealers set out in **bill section 8**.) These changes have the effect of making the judicial examination and resolution of disputes involving reconstitution and payment of money due the reconstituted trust similar to the manner of examination and resolution of other disputes to which the state is a party.

*

Senate Bill 67 is given an immediate effective date. Since the effective date of the principal measure, ch. 66, SLA 1991, is dependent on the outcome of judicial proceedings dismissing the litigation in Weiss v. State, the coming into effect of this bill would in effect be delayed as well.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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February 3, 1993

The Honorable Mike Miller, Chairman
Senate Resources Committee
Seventeenth Alaska State Legislature
Room 423
State Capitol
Juneau, Alaska 99801-1182

Re: SB 67 (RES) (mental health
lands trust)

Dear Senator Miller:

A bill relating to Weiss v. State, 4FA-82-2208 Civil, the mental health lands trust litigation, has been introduced by your committee. It is SB 67 (RES) (hereafter referred to as "SB 67"). SB 67 is substantially identical to SB 469 which was before this committee last year. Governor Hickel, Natural Resources Commissioner Olds, and I all opposed SB 469 last year and we oppose SB 67 now. This letter gives you our reasons for opposing the bill.

We oppose SB 67 because, notwithstanding what the legislature might want to do with respect to mental health funding on an annual basis, this bill is nothing more than a raid on the state treasury. It also presents several other problems which cast serious doubt on whether it would resolve the litigation.

In Chapter 66, SLA 1991, the bill passed as a framework for settlement of the case, the state gave up a \$1.3 billion offset which the Alaska Supreme Court held that the state is entitled to. Chapter 66 also provides a number of other benefits to the plaintiff class which they would not be able to obtain in continued litigation, including (1) a new mental health permanent fund would be established, (2) a new Mental Health Trust Authority to manage the reconstituted trust and oversee the administration of the state's mental health programs would be created, (3) a separate process for appropriating trust revenues would be provided, (4) the state's current mental health program will be significantly amended to make it both more comprehensive and more expensive, and (5) perhaps most significantly, court approval would be required for any change in the future. SB 67, in addition to giving up the offset and all of the other benefits given plaintiffs in Chapter 66, would return much of the original land grant to trust status and commit six percent of the unrestricted general fund and all new

revenues from the returned lands to the trust every year in perpetuity. Because of the restrictions which would be applied to that money, however, the actual amount committed to mental health programs would be substantially greater.

That is much too much to pay to settle the case. Any litigation settlement that I approve must be drafted in light of the state's potential liability. Under the Supreme Court's order, a fair resolution of this case would be to return to trust status the original mental health lands which SB 67 (RES) would return, and consider the \$1.3 billion offset as having purchased the balance of the original grant. By reconstituting the equivalent of the full original one million acre mental health trust, Chapter 66 was more than fair. The threatened continued litigation over Chapter 66 by its opponents is not a sufficient reason to return much of the original land grant to trust status, commit six percent of the unrestricted general fund to the trust in perpetuity, and create a possibility that substantially greater expenditure of state general funds will be required for mental health programs.

Some say that passage of this bill would be a panacea and make all the litigation over this issue disappear. That simply is not true. Other claims will be made, at least some of which we have already identified and describe below.

Fundamentally, however, I would recommend a veto of SB 67 if it passes in its current form because it simply is too much to pay for a quick resolution of this case. It would be a breach of my fiduciary duty as Alaska's Attorney General, a duty that I owe to all Alaskans, to do otherwise.

Brief explanations of the problems with SB 67 are set forth below.

I. SB 67 could cost the state far more than six percent of the unrestricted general fund every year.

SB 67 would commit six percent of the unrestricted general fund to the mental health trust every year. Proponents of the bill argue that, because the state currently spends about six percent of the unrestricted general fund on mental health programs, SB 67 would not cost the state any more than it currently is spending. That is not true.

The legislature authorized expenditure of \$132,386,900 from the mental health trust for mental health programs in FY 92, while six percent of projected FY 92 unrestricted general fund revenues is almost identical -- \$132 million. But the programs for which the more than \$132 million in trust spending is authorized are those that the legislature has determined are appropriate for funding from the trust. Not everyone agrees with the legislature's determination in that regard.

Most specifically, the Alaska Mental Health Board (which has current responsibility for making recommendations for funding from the trust, a responsibility that under SB 67 would be assumed by the Alaska Mental Health Trust Authority established under Chapter 66) believes only about half of that amount goes to programs that should be funded by the trust.

Under Chapter 66's stringent restrictions on the legislature's and the governor's ability to deviate from the Trust Authority's recommendations for appropriation of trust funds, more than \$60 million in programs currently funded by the trust would have to be funded from general fund revenues over and above the six percent SB 67 would commit to the trust if the Trust Authority were to adopt the current board's narrow approach to programs that qualify for trust funding. SB 67 thus could result in far more than six percent of the unrestricted general fund being committed to mental health programs every year. (We "accepted" the restrictions on appropriations in Chapter 66 because they were coupled with a declining percentage of general fund contributions to the trust. They would have been unacceptable if applied to a fixed percentage in perpetuity, which is what SB 67 would do.)

In other words, the true cost of this bill is far more than six percent of the state's unrestricted general fund, and that does not even count additional monies attributable to development of the lands which would be returned to the trust. SB 67 would simply cost the state too much.

II. SB 67 would violate the Alaska Mental Health Enabling Act.

Section 3 of SB 67 would require that all "proceeds earned" from the reconstituted mental health trust lands -- i.e., both principal from the sale of trust land or extraction of nonrenewable resources and income from leasing the land or the sale of renewable resources -- be deposited in the mental health trust fund, a permanent fund from which only the earnings may be spent. Subsection 202(e) of the Alaska Mental Health Enabling Act (the federal act that created the trust), however, provides in part that "such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska."

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

III. SB 67 may create an unconstitutional dedicated fund.

Article IX, section 7 of the Alaska Constitution prohibits the dedication of state revenues to specific purposes "unless required by the federal government for state participation

in federal programs" or if the dedication pre-dated the constitution. As noted in the preceding section, section 3 of SB 67 would dedicate trust land income to the mental health trust fund, and such income could not be spent on mental health programs as Congress required when it created the trust originally.

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

IV. SB 67 may violate the single appropriation bill requirement.

Chapter 66 imposes several restrictions on appropriations of income from the reconstituted mental health land trust, including a requirement that the governor introduce a separate appropriation bill limited to appropriations from the mental health trust income account. SB 67 would apply the separate bill requirement to a percentage of the unrestricted general fund. The Alaska Constitution imposes specific requirements upon the Governor with respect to the preparation and review of the budget and all appropriations and upon the legislature with respect to passage of the budget and all appropriations. The restrictions placed on the budget and appropriation processes in Chapter 66 when applied to a percentage of the unrestricted general fund revenue in perpetuity raise serious questions regarding the permissibility of delegating some of those responsibilities to an agency such as the Trust Authority. We are analyzing these issues.

V. Land management would remain a question under SB 67.

The proponents of SB 67 suggest that, because it would require the Alaska Mental Health Trust Authority to contract with the Department of Natural Resources to manage the land unless the Authority determines that it is in the best interest of the trust to do otherwise, SB 67 allows continuity of management and gives affected industries some comfort with respect to trust ownership of the land.

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

VI. SB 67 provides no protection to third party interests and would create potential liability for the state.

As under Chapter 66, SB 67 would reconstitute the trust with some "encumbered land" -- i.e., land subject to an oil or gas lease, coal lease, or other lease, timber contract, mining claim, sale of materials, land use permit or right-of-way. Under the Settlement Agreement implementing Chapter 66, the plaintiffs agreed that the trust would be bound by the terms of such encumbrances because the trust will be compensated to the extent those encumbrances reduce the value of the lands returned to the trust.

Nothing in SB 67, however, provides that the trust will be bound by the terms of the encumbrances, nor does it provide compensation for those encumbrances. Instead, the trust would be given an "all or nothing choice" to either accept the encumbrance and receive no compensation in return for the devaluation or contest the validity of the encumbrance and, if successful, receive the parcel with no devaluation. Faced with this choice, the trust would vigorously contest the validity of third party interests.

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

VII. SB 67 would preclude development of some land currently available for development.

Section 5 of SB 67 would pledge all original mental health lands in state parks, state forests, state wildlife refuges, etc., as security for the state's performance under the bill. Under the Settlement Agreement implementing Chapter 66, and to the extent permitted by the statutes governing the areas, those lands will be available for development prior to court approval if plaintiffs agree and after court approval whether plaintiffs agree or not. If they become security for the state's performance as SB 67 would provide, however, the state would be obligated not to diminish their value. In other words, even if otherwise allowed by law, development would be prohibited.

VIII. SB 67 does not protect Native allotments.

Under Chapter 66 and the Settlement Agreement, original trust land encumbered by valid Native allotment claims will not be returned to the trust; instead, the trust will receive other state land to compensate for any value lost to the trust as a result of those claims. As a result, the state will decide whether to challenge the validity of Native allotment claims and will review Native allotments on original trust land under the same standards applied to general state land instead of under a higher trust standard of review which would result in more challenges. Under SB

67, land with allotment claims would go back to the trust, and the trust would be almost compelled to challenge each claim because, if the claim were found valid, the trust would receive less valuable over-selection land.

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

Supporters of SB 67 have argued that, as a time saving measure, all that will be necessary for a new Settlement Agreement is to cut and paste pertinent parts of the Chapter 66 Settlement Agreement. This will not be possible because each provision of the April 6 Settlement Agreement was negotiated in the context of Chapter 66.

For example, the Settlement Agreement defines an encumbrance to mean every kind of lease, permit, contract, right-of-way, interagency land management agreement, etc. If that very expansive definition is used in a new settlement agreement, very little original trust land would be returned to the trust because SB 67 provides that only certain encumbered land is returned to the trust. As another example, Chapter 66 provides for conveyance of the reconstituted trust lands to the Trust Authority, and the Settlement Agreement includes detailed provisions for such conveyances and for proper accounting following such conveyance. Under SB 67, trust lands will not be conveyed. Instead, they will simply be redesignated, and an entirely different approach would have to be taken in any implementing settlement agreement.

X. Certain pending challenges to Chapter 66 raised by intervenors would be equally applicable as to SB 67.

Certain issues raised by both the environmental and oil company intervenors to challenge Chapter 66 are equally applicable as to SB 67. The issues raised by the environmental intervenors have been fully briefed and the matter is pending for decision before the trial court. The issues raised by the oil company intervenors will be briefed on an expedited schedule dictated by the trial court, with dispositive motions due on or before March 22, 1993. While we believe these challenges have little or no merit, the interventions have raised the following issues:

1. A settlement that provides too much compensation may not be approved because it is contrary to the public interest.

The environmental intervenors argued in opposing preliminary approval of the proposed Chapter 66 settlement that the broad public interest must be considered, and any settlement that provides too much compensation is contrary to the public interest and must be rejected by the court. Their specific claim is that because the state waived the "offset" and agreed to reconstitute a land trust comparable in value to the original one million acre grant, the trust receives too much, the settlement is therefore

contrary to the public interest, and the court may not approve it. As is set forth above, an even better claim may be made that SB 67 would "overcompensate" the mental health trust at the expense of other public needs, such as education, public safety, transportation, etc.

2. A bill that includes provisions that affect both the status of public lands and other substantive provisions violates the constitutional requirement that bills for appropriation shall be confined to appropriations [Art. II, Sec. 13, Alaska Constitution].

The environmental intervenors challenged Chapter 66 arguing that constitutional provisions related to appropriation bills apply to bills that affect the status of public lands. The State argued that this constitutional provision applies only to appropriations of state revenues. If the environmental intervenors argument is correct, then SB 67 is unconstitutional because it includes both an "appropriation" of land [see Sec. 6, SB 67] with other substantive provisions. Further, if the environmental intervenors argument is correct, whether any public lands are now validly within legislative designated areas is subject to challenge because legislation that created those designated areas included both "appropriations" of land and other substantive provisions.

3. SB 67 provides no "other safeguards of the public interest" in terms of management of lands by the Trust Authority or conveyance of lands to the Trust Authority.

The environmental intervenors argue that Chapter 66 violates Article VIII, Section 10 of the Alaska Constitution because it fails to provide "other safeguards of the public interest" both as to the management of lands by the Trust Authority and as to the conveyance of lands to the Trust Authority. SB 67 does not address either of those arguments, but instead leaves trust land management and conveyance of land to the Trust Authority as they appear in Chapter 66.

4. Whether state leases may be assigned to the Trust Authority.

The oil company intervenors challenge whether the state may assign its lessor's interest in state oil and gas leases to the Trust Authority. The court permitted the intervention, in part, because "[i]f the [oil company] intervenors are correct and the reason [they are correct] is broadly applicable to state leases, it will be impossible to reconstitute the trust under the Chapter 66 procedures." The assignability of all state leases -- and more broadly land contracts -- is therefore at issue. Whether the state may assign its interest in oil or gas leases, coal leases, or other leases, timber contracts, mining claims, material sales, land use permits or rights-of-way under Sec. 6 of SB 67 could also be challenged.

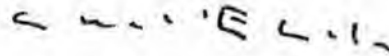
Hon. Mike Miller, Chairman
Senate Resources Committee

May 5, 1992
Page 8

For all of the foregoing reasons, I would recommend that Governor Hickel veto SB 67 should it pass the legislature. It certainly is not appropriate to pass such legislation as a settlement of the Weiss litigation, especially since Chapter 66 will resolve the litigation on terms which are fair to both the trust and the state.

If I or my staff can answer any questions, please contact us at your convenience.

Very truly yours,



Charles E. Cole
Attorney General

cc: Glenn Olds, Commissioner of Natural Resources
Kris Lethin, Senior Legislative Liaison

PRINCIPLES OF ALTERNATIVE SETTLEMENT

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

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

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

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

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

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

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

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

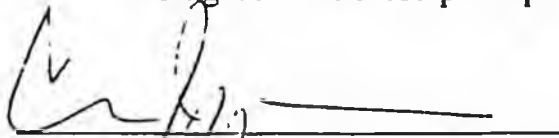
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8. Upon the effective date of legislation incorporating this settlement, the ACE intervenors would dismiss their complaint in intervention and support immediate lifting of the injunction and lis pendens, and the objecting plaintiffs would withdraw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

We agree with these principles:



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

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

WEISS v. STATE: AN OVERVIEW

January 27, 1993

The mental health trust litigation, Weiss v. State, has been pending for more than ten years and has been the subject of much discussion in the legislature and throughout the state. To understand the issues, this memorandum reviews the history of the case and its current status.

The federal law

Prior to 1956, the Territory of Alaska was precluded from legislating with respect to mental health. The federal government -- as distinct from the territorial government -- had that responsibility. The mental health program administered by the federal government was barbaric. The United States Attorney would file a complaint in court alleging that there was an "insane person at large." The person would be jailed, and then tried by a jury. If found "not insane," the person would be released back into the community. If found "insane," the person would be shipped to Morringside Hospital in Portland, Oregon, and institutionalized in a custodial (as opposed to therapeutic) setting.

Alaskans were dismayed by this approach to mental illness, and continually petitioned Congress to be given the authority to deal with the issue. They succeeded when Congress enacted the Alaska Mental Health Enabling Act ("the Enabling Act"), P.L. 84-830, 70 Stat. 709 (1956), which granted the Territory of Alaska the same authority with respect to mental health that the other states and territories had.

Since the territory had no taxing power, the Act included two forms of grants-in-aid. The first was a temporary transitional grant of decreasing amounts of money, and required that the territory meet certain program minimums. The second was a one million acre land grant and requiring that "[a]ll lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska." The land grant to the territory was confirmed to the state in sec. 6(k) of the Alaska Statehood Act.

State administration of the land grant

Initially, the state did not establish and maintain a separate account for proceeds from the lands. A record of trust land income was kept until 1973, however, and a board was set up to oversee management of the lands. As a rule, mental health expenditures greatly exceeded revenues from the lands.

Municipal and private parties' demands for land in the late 1970s resulted in passage of chapters 181 and 182, SLA 1978, both of which redesignated all mental health lands as general grant lands. Both acts provided for the trust to be compensated by payment of one and one-half percent of all state land revenues to a permanent trust fund, but chapter 182 made it subject to legislative appropriation of sufficient funds and the legislature never appropriated any money.

Many transactions have occurred with respect to the original one million mental health land grant. The following table sets out the current status of the original mental health trust land grant:¹

Conveyed to third parties (3,162 parcels)	46,000 acres
Conveyed to municipalities (888 parcels)	43,000
Land settlements	
Conveyed to Native corporations	36,000
Conveyed to University of Alaska	3,000
Condemned	5,000
Leased to third parties	89,225
Material sales	1,900
Mining claims	60,000
Legislatively designated areas	
State forests	113,289
Parks, wildlife refuges, etc.	243,600
Inter-agency land management agreements	4,500
Unencumbered	<u>352,386</u>
 TOTAL	 997,600 acres

The litigation

On November 26, 1982, a class of plaintiffs needing mental health services sued the state alleging that the 1978 redesignation legislation was invalid and that the state should be required to administer as a trust as provided in the Enabling Act. The state opposed on the ground that the 1978 legislation was consistent with the purpose of the Enabling Act, maintenance by the state of a mental health program. On June 15, 1983, Superior Court Judge Warren Taylor held (1) that the 1978 legislation was a breach of the trust, but (2) that the remedy was not to invalidate the 1978 law but instead to order the state to compensate the trust for

¹ Many of the acreage figures are approximations. As a result, the total shown is 997,000 acres and not one million. Precise acreage figures will have to await completion of detailed title work.

the value of the lands.² The state appealed the first holding to the Alaska Supreme Court, and the plaintiffs cross-appealed the second holding.

In the meantime, the plaintiffs filed lis pendens³ on all mental health lands, including those which the state had conveyed to third parties. The state moved to remove the lis pendens on the grounds that (1) title to mental health lands was not at issue in the case; and (2) the lis pendens were over broad in that (i) they reached lands the state had conveyed away, and (ii) they affected the rights of innocent third parties. The plaintiffs opposed, as did the Alaska Mental Health Association and two individuals (collectively "the Association"), even though at that time they were not parties to the action. The Association also moved to intervene on the ground that the original plaintiffs were not providing the class with adequate representation. Cook Inlet Region, Inc. ("CIRI"), filed an amicus brief in support of the state's motion to expunge the lis pendens and in opposition to the Association's motion to intervene. On October 31, 1984, Judge Taylor granted the state's motion to remove the lis pendens on the ground that the plaintiffs' remedy was money and not title to the land, and denied the Association's motion to intervene on the ground that they had delayed too long before moving to intervene. The Association appealed the denial of the motion to intervene.

In State v. Weiss, 706 P.2d 681 (Alaska 1985), the Alaska Supreme Court affirmed the trial court's finding that the 1978 legislation was a breach of trust, but reversed the monetary compensation remedy and invalidated the 1978 legislation. The Court distinguished the University of Alaska case on the ground that one could infer a legislative intent to compensate the trust in that case, which involved including university trust lands in Chugach State Park, but such an intent could not be inferred from the 1978 mental health lands redesignation legislation. The Court remanded the case to the superior court to reconstitute the mental health trust with those original mental health lands still in state

² For this holding, the superior court relied on State v. University of Alaska, 624 P.2d 807 (Alaska 1981), in which the Alaska Supreme Court held that the legislature has plenary authority over state lands, including trust lands, and that the proper remedy for a legislative removal of trust lands from trust status for a specific purpose is monetary compensation and not invalidation of the law removing the lands from trust status if a legislative intent to compensate the trust can be inferred.

³ Lis pendens are notices filed with the state recorder's office, giving notice that the lands are the subject of litigation. The filing of a lis pendens on a particular parcel of land makes it difficult to sell the land or use it as collateral to obtain a loan.

ownership. For "former mental health lands" which the state had "sold," the Court instructed that the trust was to receive the fair market value of the lands at the time of sale, subject to a set-off for state mental health expenditures (approximately \$1.3 billion since 1978). The Court did not otherwise address the title of third parties to whom the state had conveyed mental health lands.

On January 24, 1986, the Supreme Court directed that the Association be permitted to intervene. Judge Mary E. Greene (to whom the case was assigned following Judge Taylor's retirement) granted the motion. In the order allowing intervention, she authorized the Association to file an amended complaint "only insofar as the Additional Claims relate directly to the reconstitution of the trust ordered by the Alaska Supreme Court in State v. Weiss."

In chapter 132, SLA 1986, the state created the interim mental health trust commission. Its primary duties were (1) to oversee the state's administration of mental health lands by requiring commission approval for all sales, leases, or exchanges of original mental health lands, (2) to determine state mental health program expenditures since 1978, and (3) to make recommendations to the legislature on how to fix the problem.⁴

At almost the same time, two additional groups moved to intervene: Mentally defective and retarded persons represented by Advocacy Services of Alaska ("Advocacy Services") and Alaska Addiction Rehabilitation Services and chronic alcoholics with psychosis ("Nugen's Ranch"). They argued that they were beneficiaries of the trust on the ground that Congress intended the beneficiaries of the trust to include all those who were at risk of being institutionalized at Morningside Hospital, a group that included the mentally defective and retarded and chronic alcoholics with psychosis. The state opposed the motions on the ground that construing the Act as including those groups would be contrary to the basic purpose of the Act, which was to give the territory and now the state plenary authority to determine who its mental health program was serve and that the state's program covered only those considered mentally ill in the traditional sense. The original plaintiffs also opposed the motions and agreed with the state. The Association said Congress only intended those traditionally considered mentally ill to be covered by the program, but even if it intended others it did not intend that the territory and now the state could pick and choose.

Judge Greene agreed with Advocacy Services and Nugen's Ranch, and held that the beneficiaries of the trust at minimum

⁴ The commission included five members: the commissioners of health and social services and natural resources, and three representatives of the plaintiffs.

include (1) those traditionally thought of as mentally ill, (2) the mentally retarded and defective, (3) chronic alcoholics with psychoses, and (4) the senile elderly who, as a result of their senility, suffer major mental illness.

Chapter 48, SLA 1987 was thought to be a giant step toward settlement. It provided for a four-step settlement: (1) the commissioner of natural resources would value the original one million acre land grant as of the effective date of September 7, 1987 under procedures proposed by the commissioner and approved by the commission;⁵ (2) the original lands would be exchanged for lands within legislatively designated areas (parks, wildlife refuges, etc.) of equal value which would then comprise the reconstituted mental health trust corpus; (3) the state would rent the reconstituted corpus for eight percent of its fair market value annually, adjusted at least every five years; and (4) pending conclusion of the valuation and exchange process, the state would pay five percent of unrestricted general fund revenues as a transitional measure. The payments would go into a mental health trust income account in the general fund (AS 37.14.011), and the legislature would be required to first make appropriations from the fund to meet the necessary expenses of the state's mental health program before it could appropriate any money in the account for other purposes.

The process broke down when the commissioner and the commission could not agree on procedures to determine the value of the one million acre land grant. The commissioner proposed procedures that produced a value of \$574 million; the commission approved procedures proposed by the plaintiffs that produced a value of \$2.243 billion. The commissioner then declared impasse and suggested that the matter would have to be resolved by the legislature.

The plaintiffs' attorneys wrote letters to a number of third parties to whom the state had conveyed mental health lands, threatening to file title challenges and suggesting that, in order to avoid such litigation, they urge their legislators to accept the plaintiffs' value of the original land grant. The state moved to enjoin the plaintiffs from filing such actions on the grounds that (1) filing quiet title actions in an effort to influence the political process was an abuse of the legal process, (2) the state would be irreparably harmed by that abuse of the legal process, (3) the plaintiffs could be adequately protected under the University of Alaska and Weiss cases' monetary compensation remedy, (4) the state would prevail on the monetary compensation theory, and (5) the public interest would be harmed if the preliminary injunction was not granted. No decision was immediately

⁵ The commission also was reduced to three: the commissioner and two plaintiffs' representatives.

forthcoming, but the plaintiffs did not file any title challenges.

The 1990 legislature sought to resolve the valuation impasse by enacting an alternative resolution mechanism which is not predicated on the value of the lands. Chapter 210, SLA 1990, provides that all lands that were in legislatively designated areas on September 7, 1987, are exchanged for the original mental health lands not in such areas, and that the state will rent those lands from the trust for six percent of unrestricted general fund revenues plus all incidental revenues from those lands (camping fees, etc.).

After the bill which became chapter 210 passed the legislature, but before it was signed by the governor, the plaintiffs moved for a preliminary injunction to enjoin the state from issuing any patents, leases, rights-of-way, permits, or other authorizations for activities on the original mental health lands on the ground that doing so might diminish the trust. The state opposed on basically the same grounds on which the state's preliminary injunction motion was based (adequacy of monetary compensation, etc.).

On July 9, 1990, Judge Greene denied the state's motion and granted the plaintiffs' motion. She concluded that it was not clear that the plaintiffs could be adequately compensated in money despite the fact that the purpose of the grant was to generate funds, that the Alaska Supreme Court had directed the superior court to reconstitute the trust as it existed just prior to the 1978 legislation (to the extent that was possible), and that she had no authority to deviate from the Supreme Court's mandate. She urged the parties "to move expeditiously" to resolve the legal issues relating to third parties' title to mental health lands the state had conveyed to them. The state petitioned the Alaska Supreme Court to review the decision, but the Court declined.⁶

The state moved in superior court for clarification of the July 9, 1990 injunction. Chapter 210 became effective on July 10, 1990, and there was confusion whether the injunction covers only the original mental health lands, the reconstituted ("new") trust lands in legislatively designated areas, or both. Judge Greene clarified that the injunction covers only the original mental health lands and not the lands in legislatively designated areas placed in trust status under chapter 210. She also ruled that the state could continue issuing camping permits for original mental health lands in state parks as long as the fee charged was comparable to that charged for similar private camping privileges and the fees generated were deposited in a mental health trust account.

⁶ Unlike an appeal of right, the granting of a petition for review is discretionary with the Court.

The plaintiffs then moved for leave to file new lis pendens. Judge Greene granted the motion on August 12, 1990.

Usibelli Coal Mine, Inc. and Idemitsu Alaska, Inc. (operator of the Wishbone Hill coal project) moved to intervene in order to seek modifications of the preliminary injunction. Usibelli wanted to do some exploratory drilling on mental health lands it has under lease, which Judge Greene allowed; Idemitsu needed a mining plan approved,⁷ but Judge Greene denied the motion.

The plaintiffs also filed a motion for a preliminary injunction to prevent the transfer to the general fund of the unappropriated balance in the mental health trust income account for FY 1990 -- that is, the portion of the five percent of unrestricted general fund revenues allocated to that account under the transitional provision of chapter 48 which was not appropriated to fund the state's mental health program.⁸ The state opposed on the grounds that (1) the FY 1991 budget was predicated on the transfer of those funds, and preventing the transfer had the potential to unbalance the budget, and (2) preparation of the FY 1991 budget began in the fall of 1989 and was concluded with legislative passage of the operating budget at the end of the 1990 session, and it was unfair to allow the plaintiffs to challenge the transfer of funds on which the budget was predicated after it already had been enacted. Following oral argument on August 6, 1990, Judge Greene denied the plaintiffs' preliminary injunction motion to prevent the transfer of funds on the ground that the potential harm to the state of an unbalanced budget outweighed any potential harm to the plaintiffs. Judge Greene cautioned, however, that the state should not rely on such transfers to balance the budget in the future unless the state could show that the necessary expenses of the state's mental health program had been met.

The plaintiffs also moved for a declaratory judgment that the Enabling Act requires that the legislature consider the state's mental health needs independently of any other state needs and, to the extent that mental health trust revenues are available, must fund programs to meet those needs regardless of any other needs which might exist. That motion is still pending.

Legislation to deal with the case was introduced at the beginning of the 1991 legislative session (SB 65 and HB 79). As initially introduced, it would have (1) returned unencumbered

⁷ The Matanuska-Susitna Borough moved for leave to file an amicus brief in support of Idemitsu; the Wishbone Hill coal project would create approximately 200 new jobs in the Mat-Su Borough.

⁸ The five percent totaled \$125 million; \$44 million was appropriated for the state's mental health program, leaving an unappropriated balance of \$81 million.

original mental health lands to trust status, (2) purchased those original mental health lands not appropriate for return to trust status (e.g., those included in legislatively designated areas, conveyed to third parties and municipalities, etc.) at values determined under the procedures approved by the interim mental health commission (approximately \$2 billion total) with no set-off for mental health expenditures by the state as authorized by the Alaska Supreme Court in the Weiss decision, (3) established a Mental Health Trust Authority to administer trust assets (both land and money) and make all decisions regarding expenditure of trust revenues and program funding, and (4) made the program more comprehensive and consistent with current thinking. Because the cost of purchasing the lands not returned to trust status at the values determined under the procedures approved by the interim mental health trust commission would have been so great, and because both the legislature and the governor would have been cut out of their constitutional roles in the budgetary and appropriation process with respect to mental health funding and expenditures, the administration opposed the bills.

Near the end of the 1991 session, the administration and three of the four plaintiff groups reached conceptual agreement on a proposed settlement that, instead of requiring the state to purchase the original mental health lands not returned to trust status, required the state to reconstitute a mental health land trust by exchanging other state lands of equal fair market value and comparable character to the original mental health lands not returned, including those in legislatively designated areas (except that those in the Haines State Forest and the Tanana Valley State Forest), those conveyed to third parties and municipalities, and those subject to certain other encumbrances. The exchange process would require a balancing of the public interest in retaining lands proposed for exchange and the trust's interest in having the lands conveyed, with any irreconcilable disputes resolved by the court. It also provided for creation of a Trust Authority to manage the trust's assets and make recommendations to the governor and the legislature regarding the state's mental health program and appropriate funding for it. It provided for a separate appropriation process for mental health spending under which the governor and the legislature retained their constitutional authority over the process but, if the final decisions differed from the Trust Authority's recommendations, required written findings supporting the determinations that the different funding levels meet the projected needs of the beneficiaries of the mental health trust. Certain state lands agreed to by the administration and the settling plaintiffs would be pledged as security for the state's performance of its duties under the proposed settlement (the hypothecated lands), and the agreement would take effect upon dismissal of the case. The conceptual agreement was passed by the legislature as chapter 66, SLA 1991, and the state and settling plaintiffs agreed on the lands to be hypothecated (including Cook Inlet oil and gas leases as the "collateral of last resort) shortly

thereafter.

On October 26, 1991, eight environmental and fishing organizations challenged chapter 66 on a number of grounds: (1) that article VIII, section 10 of the Alaska Constitution requires "other safeguards of the public interest" beyond public notice prior to disposal of state lands and chapter 66 did not include such safeguards either before conveyances to the Trust Authority or disposal by the Trust Authority and therefore is unconstitutional; (2) that chapter 66 does not provide for deposit of any mineral revenues from the reconstituted trust in the permanent fund and therefore is unconstitutional; (3) that the conveyance of the mineral estate in exchange lands to the Trust Authority would violate section 6(i) of the Alaska Statehood Act; (4) that requiring the conveyance of lands to the Trust Authority is an appropriation of lands and chapter 66 therefore includes an appropriation in a substantive bill in violation of article II, section 13; (5) the pledging of lands as security for performance through the hypothecation provisions of chapter 66 was unconstitutional as violating the three readings requirement of article II, section 14, being too broad a delegation to the Department of Natural Resources, violating the "other safeguards" provision of article VIII, section 10, and violating the "public trust;" (6) that the planning and classification provisions of AS 38.04 and 38.05 would have to be followed in reconstituting the mental health trust; and (7) that the forest management plans governing the Haines State Forest and the Tanana Valley State Forest would continue to govern management of the original mental health lands within their boundaries even though conveyed to the trust.

The administration and the settling plaintiffs negotiated and entered into a comprehensive settlement agreement to implement chapter 66 on April 6, 1992, and the state moved for preliminary court approval of the proposed settlement⁹ on April 10, 1992. On May 4, 1992, the state and the settling plaintiffs jointly moved to modify the July 9, 1990 preliminary injunction and to remove the lis pendens on original mental health lands the state had conveyed to private third parties (the "moms and pops"). The settling plaintiffs moved for preliminary approval of the proposed

⁹ Because this is a class action, court approval is required before the case can be dismissed. The court process involves (1) preliminary approval of the proposed settlement as within the range of possible judicial approval, (2) notice to members of the class that a settlement has been proposed, and (3) a formal hearing at which all class members may express their views of the proposed settlement to the court. The court may only approve the settlement if it finds that it is fair, reasonable, and adequate. The primary criterion for making that determination is to compare the proposed settlement with the probable outcome of continued litigation.

settlement on June 29, 1992. Nugen's Ranch and the environmental intervenors opposed the state's and settling plaintiffs' motions. The state moved for summary judgment on the environmental intervenors' challenges on August 28, 1992. On September 4, 1992, Union Oil Company and Marathon Oil Company moved to intervene to challenge the information sharing provision of the settlement agreement and the inclusion of the state's interest in Cook Inlet oil and gas leases in the lands hypothecated as security for the state's performance. The settling plaintiffs moved to dismiss the environmental intervenors' challenges or, in the alternative, for summary judgment on October 14, 1992. The environmental intervenors cross-moved for summary judgment on November 5, 1992. Advocacy Services withdrew its support for the proposed settlement on December 12, 1992. On January 14, 1993, Judge Greene denied the state's and settling plaintiffs' motion to modify the July 9, 1990 preliminary injunction and lift the lis pendens with respect to lands conveyed to private third parties, but without prejudice to refile it once she has ruled on the motions for preliminary approval and the cross-motions with respect to the environmental intervenors' challenges. On January 22, 1993, oral argument was held on the oil companies' motion to intervene, the state's and settling plaintiffs' motions for preliminary approval, and the cross-motions with respect to the environmental intervenors' challenges. At the conclusion of the argument, Judge Greene took all of the motions under advisement. She granted the oil companies' motion to intervene later in the day on January 22, 1993; the other motions remain under advisement.

RECEIVED JAN 22 1993

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

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

Plaintiffs,)

and)

ALASKA CENTER FOR THE)
ENVIRONMENT, ALASKA)
SPORTFISHING ASSOCIATION,)
LYNN CANAL CONSERVATION,)
NORTHERN ALASKA ENVIRONMENTAL)
CENTER, SIERRA CLUB, SOUTHEAST)
ALASKA CONSERVATION COUNCIL,)
SUSITNA VALLEY ASSOCIATION and)
TROUT UNLIMITED,)

Intervenor-)
Plaintiffs,)

vs.)

STATE OF ALASKA,)

Case No. 4FA-82-2208 Civil)

Superior Court, Fourth District
JAN 14 1993
Clerk, Trial

SUMMARY DECISION AND ORDER RE:
JOINT MOTION TO MODIFY 7/9/90 PRELIMINARY
INJUNCTION AND TO CANCEL LIS PENDENS

The State and the then-settling plaintiffs, Weiss and Hilliker; Alaska Mental Health Association, Nanuwak and Martin;

and Bosel, Doulin, Goodwin and Mayoc ("Movants"), filed a joint motion to modify the preliminary injunction issued July 9, 1990, and to cancel the lis pendens with respect to lands patented to or subject to contracts to convey title to certain third parties. The joint motion was made in accordance with Article III, § 31 of the proposed settlement agreement. Specifically, the relief sought is stated by the movants as follows:

The undersigned parties . . . jointly move and recommend to the court, with respect to parcels of land wherein a third party has received or has entered a contract to receive patent or title to land from the State of Alaska ("State") or a municipality, subject to protection of the trust's interests as set forth below, that the Re-Notices of Lis Pendens, and prior Lis Pendens to the extent they have any continued validity, recorded in various recording districts within the State and identified in the attached Exhibit A ("Lis Pendens"), be canceled, and that the preliminary injunction dated July 9, 1990 ("Preliminary Injunction"), be modified to allow the State and municipalities to administer the contracts and when a third party has paid in full any amounts owed under the contract and is otherwise eligible under the contract, issue patent or convey title. For purposes of this joint motion, a conveyance or agreement to convey by the State to a municipality is not one to a third party.

The dissenting plaintiffs, H.L., M.K., and AARS, and the public interest intervenors, Alaska Center for the Environment, Alaska Sportfishing Association, Lynn Canal Conservation, Northern Alaska Environmental Center, Sierra Club, Southeast Alaska Conservation Council, Susitna Valley Association, and Trout Unlimited, have opposed.

The State and settling plaintiffs argue that the

preliminary injunction should be modified and the lis pendens canceled as to these lands because (1) the proposed settlement agreement and the relief offered by the motion provide sufficient protection of the class's rights, and (2) principles of equity favor such action. If the proposed settlement agreement obtains final approval, any land that was mental health trust land at the time of the legislature's redesignation in 1978 which was conveyed to the type of third parties designated in this motion will remain in the hands of those third parties. Stated more simply, if the proposed settlement agreement is approved, the rights of third party owners of this former mental health trust land will not be effected. In this motion, the State and the settling plaintiffs have agreed to the following, if the proposed settlement agreement is not accepted:

1. The plaintiffs may reassert claims to such Affected Trust Land and interests therein.

2. If enforceable rights to have any Affected Trust Land or interests therein returned to trust status are cut off by virtue of or after the date the applicable Lis Pendens is canceled herein, the State shall compensate the Mental Health Trust for the fair market value of any such Affected Trust Land or interests therein not returned to trust status as follows:

- a. The fair market value of such Affected Trust Land or interests therein shall be determined as of April 6, 1992.

- b. The State may compensate the Mental Health Trust through a land exchange under AS 38.50 or other applicable law, with land of equal fair market value and as comparable in character as practicable to the Affected Trust Land or interests therein for which the Mental Health Trust's enforceable rights

were cut off. The comparability of each such parcel of Affected Trust Land or interest therein and any land to be exchanged therefor shall be determined by using the criteria set forth in Sec. 55, Ch. 66, SLA 1991.

3. The court shall resolve any disputes and shall approve any resolutions arising from this joint motion and any related order.

The State and settling plaintiffs maintain that this agreement provides sufficient protection to the class to make the preliminary injunction and lis pendens unnecessary.

The dissenting plaintiffs urge the court to deny the joint motion. They argue that the legal prerequisite for modification of a preliminary injunction, changed circumstances, has not been shown by the movants. They assert that modification of the injunction must await resolution of the public interest intervenor's challenge to the legality of the settlement legislation, Chapter 66, SLA 1991. They assert that the court has no authority to cancel the lis pendens until final approval of the settlement. They argue that the relief sought in the motion provides no real relief to the affected third parties.

The public interest intervenors argue that the motion is premature and should await resolution of their claims. They argue that the equities favor the status quo.

A preliminary injunction may be modified or canceled if the injunctive relief is no longer necessary, changed circumstances eviscerate the justification for the preliminary injunction, or failure to dissolve the injunction would occasion severe hardship.

See Kocher Coal Co. v. Marshall, 505 F.Supp. 156 (E.D. Pa. 1981). The decision whether to modify an injunction is committed to the discretion of the court; the court should be guided by general equitable principles in the exercise of that discretion. See Merrell-National Laboratories, Inc. v. Zenith Laboratories, Inc., 579 F.2d 786, 790-91; Kocher Coal Co., 505 F.Supp. at 158.

Lis pendens may be terminated by the court before judgment. See 7 R. Powell & P. Rohan, Powell on Real Property ¶ 907.5[1], at 82A-26 (1992 rev.). The court may cancel a lis pendens if a plaintiff unreasonably fails to pursue an action with due diligence or if the operation of the lis pendens will prove to be harsh or arbitrary. See White v. Wensauer, 702 P.2d 15, 18 (Okla. 1985); Dice v. Bender, 117 A.2d 725, 727 (Pa. 1955). The court must apply equitable principles in deciding whether to terminate a lis pendens.

The State asserts that the lis pendens should be terminated because the plaintiffs have not pursued this case with due diligence. The court disagrees. The State correctly points out that this case is now ten years old. However, the court must consider the activity that has occurred in those years.

The case was initially prosecuted in a timely manner in the superior court. The decision was appealed and the Alaska Supreme Court issued its decision near the end of 1985. State v. Weiss, 706 P.2d 681 (Alaska 1985). After remand, the parties engaged in complex negotiations which led to a legislatively-

adopted mechanism to settle this lawsuit, Chapter 48, SLA 1987. The parties continued with the implementation of that settlement mechanism until April 17, 1990, when the Commissioner of Natural Resources wrote to the Chair of the Alaska Mental Health Board declaring an impasse and announcing that the Department would not follow the procedures adopted by the Interim Mental Health Trust Commission in its final report of December 20, 1989. The parties then litigated the issue of the preliminary injunction and lis pendens at issue here and the court entered its decision on July 9, 1990. The plaintiffs continued efforts to reach a negotiated settlement and ultimately the legislature passed this settlement vehicle in Chapter 66, SIA 1991. After passage, the parties negotiated the proposed settlement agreement which was signed April 6, 1992. This motion was filed four days later.

The court could only find unreasonable delay on these facts if the court concluded that seeking a negotiated resolution was unreasonable. Clearly, it was not. The reconstitution of the trust, as mandated by the Supreme Court, is a herculean task. It will involve litigation in every judicial district in this state. It will necessitate adjudicating private third party rights to up to 3162 parcels of land, involving almost 50,000 acres of land which have been conveyed by the State. It will involve litigation regarding over 83,000+ acres of land conveyed to municipalities in 888 conveyances. The time, money, and effort spent at reaching a negotiated settlement is not unreasonable. It is a fraction of

what it would take to litigate this case.

In resolving this motion the court must be guided by equitable principles. Can the plaintiffs be adequately protected if the court grants the motion? Does the proposal alleviate the harm suffered by the third parties? Would the rights of the public be adversely impacted by granting the relief?

The court concludes that the equities in this situation vary greatly with the likelihood that the court will grant final approval of the proposed settlement agreement.

At one end of the spectrum, where the likelihood of final approval approaches 100%, the equities clearly favor granting the motion, modifying the preliminary injunction and terminating the lis pendens. If the proposed settlement agreement is approved, the land held by individuals affected by this motion will remain in their hands without challenge. If final approval was certain, there would be no reason not to give those individuals relief now.

At the other end of the spectrum, where the likelihood of final approval approaches 0%, the equities favor denying the motion and maintaining the status quo. If the proposed settlement is not approved, the plaintiffs are free to reassert all claims against the lands affected by this decision. The rights of the plaintiffs to the land would not change, except where new bona fide purchasers for value took title as a result of a conveyance made as a result of modification of the preliminary injunction and the cancellation of the lis pendens.

The State and the settling plaintiffs disagree regarding whether it is possible to create bona fide purchasers in this situation. If the settling plaintiffs are correct and no bona fide purchasers can be created, the "relief" in this motion becomes nothing more than a cruel hoax visited on the third parties. They get no relief; they would receive a worthless piece of paper and unmarketable title. They would not get any better title than they have now. If they transferred their interest in the land, they would be selling a lawsuit and both they and the purchasers would ultimately have to litigate. This would only further complicate this litigation by adding yet another layer of subsequent title holder whose rights would have to be adjudicated.

If the State is correct that bona fide purchasers can be created in this situation, it is reasonable to presume that a significant number of bona fide purchasers will be created. In that instance, the mental health lands trust will lose substantial land which it is presently entitled to receive. In exchange, the trust will get the fair market value of the land as of April 6, 1992, or an exchange of "comparable land." At first glance, it might appear that this is adequate relief. However, on closer inspection it is not. There are very real, very practical problems with valuation of the land. These valuation difficulties led to the impasse which destroyed the first settlement attempt. It was this problem, in part, that led the court to conclude that money damages were not an adequate remedy when the preliminary injunction

was issued. There are also difficulties in determining what is "comparable land." If the public interest intervenors are correct that the trust will not receive mineral rights to replacement lands in the reconstituted trust, replacement with "comparable land" is virtually impossible. Moreover, even assuming that plaintiffs are adequately protected, the public interest may be adversely affected by the transfer of additional public lands over and above the original trust lands. Additionally, the reconstitution of trust is made more difficult by the addition of another layer of complexity.

The court concludes that at this point in time, before preliminary approval is obtained, before resolution of the public interest intervenors claims,¹ before notice to the class and without any response from class members, the likelihood of final approval is speculative, at best. The court, then, further concludes that the equities favor denying the motion, without prejudice. If it becomes much more likely that the settlement will achieve final approval, the motion should be refiled and would, at

¹ The court had hoped that the issues of preliminary approval and the intervenors claims would be resolved before it was necessary to act on this motion. However, because of the time necessary to brief these complex issues, the briefing on the intervenors claims concluded in late December. The earliest time when all attorneys were available to complete the evidentiary hearing on preliminary approval and for argument on the intervenors claims was January 21 and 22. The court's time to decide this motion under AS 22.10.190(b) expires January 29, 1993. The questions presented in the request for preliminary approval and the motions on the intervenors claims will not be decided by that date.