

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8949 SENATE RESOURCES

CONFIRM.

SHIVELEY

DNR

COMMIS.



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

SENATE RESOURCES COMMITTEE

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

February 9, 1995


The Honorable Druce Pearce
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Madam President:

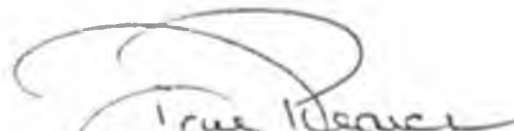
The Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

Department of Natural Resources :
Commissioner designee John Shively

Respectfully,




Senator Leman, Chairman

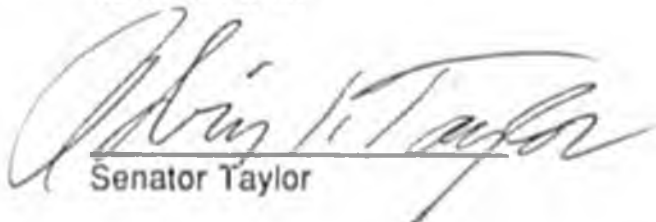


Senator Pearce

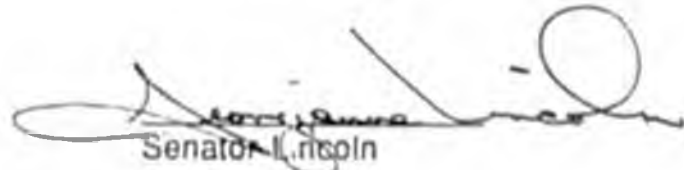
Senator Frank



Senator Halford



Senator Taylor



Senator Lincoln

Senator Hoffman



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832

February 9, 1995

MEMORANDUM

TO: Senator Leman, Chair
Resources Committee

FROM: Nancy Quinto *N*
Secretary of the Senate

SUBJECT: Governor's Confirmations

President Pearce has referred the following names (no resumes attached) for legislative confirmation to your committee for a hearing, recommendation and report:

Department of Environmental Conservation
Commissioner designee Gene Burden

Department of Natural Resources
Commissioner designee John Shivley

NQ/hv

BIOGRAPHY JOHN T. SHIVELY

Commissioner, Alaska Department of Natural Resources

John Shively became commissioner of the Alaska Department of Natural Resources on February 8, 1995 at the age of 51. He grew up on a dairy farm in upstate New York, attended school in Watertown, Connecticut and graduated from the University of North Carolina, Chapel Hill. Mr. Shively began his public service as a VISTA volunteer in Alaska in 1965.

Shively developed a long-term interest in Alaskan Native and rural issues during his three years with VISTA. He worked as a health planner both in Anchorage and Rural Alaska, consultant, community college instructor, Deputy Director, and later Executive Director of Rural Alaska Community Action Programs, before beginning his work as an executive with Alaskan Native organizations. He was Executive Vice President of the Alaska Federation of Natives from 1972 to 1975 where he was responsible for grants and programs that provided services in the fields of health, education, housing and business technical assistance. He served the NANA Regional Corporation first as Vice President of Operations from 1975 to 1983, then as Senior Vice President from 1986 to 1992 and finally as Senior Vice President and Chief Operating Officer for its Development Corporation from 1992 to 1994. While at NANA, he oversaw oil & gas activities, construction, utilities and security operations and participated in lobbying efforts in Washington D.C.

Alaskan Governor Bill Sheffield tapped Shively for his Chief of Staff in 1983. He left that position in 1985, doing consulting work for a number of clients until his return to NANA in 1986. He also took on the challenge of Chairman and CEO of the United Bancorporation Alaska, Inc. and United Bank of Alaska during 1987-88. Just prior to his return to public service as Commissioner of the Alaska Department of Natural Resources, Mr. Shively was a consultant on management issues, Alaska Native Land Claims, litigation and government relations.

Shively has been a Pageant for the University of Alaska, a member of the Alaska Commission on Postsecondary Education and was a founding board member of the Alaska Public Interest Research Group (AkPIRG). He has also served on the boards of the Anchorage Symphony, Democratic Leadership Council, Junior Achievement of Alaska, Inc. and the Alaskan Federation of Natives Legislative Council as well as a number of other boards.

Shively is the author of a number of publications on the Alaska Native Claims Settlement Act and other native and rural issues. He is listed in Who's Who in the World, Who's Who in Business and Finance, and Who's Who in the West.

Mr. Shively has resided in Anchorage, Alaska with his wife Alexandra and daughter Natasha.

13 Feb 1995

To All Legislators

I am well aware and very concerned about the history of some of Mr. John Shivers involvement in the Natural Resources of Alaska. I am most concerned about what I consider his contempt for the peoples input and interest in such a public matter as the States Natural Resources.

I remember a series of meetings held several years ago at which the subject was the attempt to gain private ownership of the public and navigable waters encompassed within the Native land selections. These meetings were well represented by Federal and Corporations interests but with very little presence for the most important interest of the people of the State.

Our Nations past and present history reflects that the waters and the underlying lands and natural resources are retained, for the benefit of the public as a whole, by the State. In this instance the potential is in untold Natural Resource wealth (ie primary source of the Alaska Permanent Fund and State finance revenues) and most important the constitutional right of continued free public access to the waters. At one of this series of meetings I, as one of only two public members present, well

Page 2

remember an off-hand remark by Mr Shively. His related remark was a lack of concern for the voiced public opposition by "two sportsmen" as they would not have the "money" to stay actively involved in this matter. To me such a statement, no matter who's interests a person may represent, shows a lack of respect for the public, no matter their size or concerned involvement.

Alaskans must ask if Mr Shively's position, in this Water and Natural Resources ownership matter also showed a personal obligation to a lesser concern for the good of the people as a whole; as was his "mistake" in the Fairbanks debauchery of the public's interests. I believe that such a cavalier attitude, as Mr Shively displayed in these two public incidents, is not an acceptable commitment to the public as is required of any Commissioner. I had hoped that Governor Knowles would reexamine his proposed appointment of Mr Shively Commissioner of Alaska's public Waters and Natural Resource.

Now I request Legislators to withhold confirmation of Mr Shively to this most important position, in the interest of All Alaskans.

Dale Bondurant

Phone 262-0818

HC 1 Box 1197

Soldotna AK 99669

13 Feb 1995

Senate Resource Committee
Senator Loran Lemmon, Chair

The following letter voices my concern with the appointment of John Shively for Commissioner of Natural Resources. I will appreciate any consideration given to my concern.

Thank you

Dale Bondurant

Please furnish the House Resource Committee with a copy of my letter. *WMB 2/24/95*

CONFIRM.

UMPHEN

OUR

BOARD

OF FISH.



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

SENATE RESOURCES COMMITTEE

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

February 9, 1995

The Honorable Drue Pearce
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Madam President:

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

BOARD OF FISHERIES:

Virgil L. Umphenour - Fairbanks

Respectfully,

Senator Leman, Chairman

*I fully support
this appointment.*

Senator Pearce

Senator Frank

Senator Halford

Senator Taylor

Senator Lincoln

Senator Hoffman

RESUME
VIRGIL L. UMPHENDUR
2400 Davis Road
Fairbanks, Alaska 99701
(907) 456-3885
FAX 456-3889

OBJECTIVE

Appointment to the Alaska Board of Fish

QUALIFYING EXPERIENCE

Have been involved in all aspects of the fishing industry: commercial, sport, subsistence

COMMERCIAL

Have fished commercially on the Tanana River in Fairbanks since 1984. In 1985 became a commercial fish processor, processing both fish and roe from my fish and buying from commercial fishermen in Fairbanks, Nenana, Norton Sound and villages along the Yukon River. Have expanded this business so that now my company operates year round doing smoked fish and value added salmon products. Company does approximately 50,000 lbs of value added salmon products a year. Upwards of 250,000 lbs of salmon and roe can be processed during the summer months pending availability of fish.

SPORT

Have been an avid sport fisherman all my life. I have sport fished from the Kenai Peninsula to the Seward Peninsula and am well aware of the importance of the sport fishing industry to both the Alaskan sport fisherman and the tourism industry. My company processes in excess of 40,000 lbs/yr of sport caught fish.

SUBSISTANCE

Have subsistence fished for two seasons while living in Nome. As a commercial fish processor, have dealt extensively with the commercial/subsistence fishermen of the Yukon River Drainage and Norton Sound. For the most part, fishermen in these areas commercial fish to obtain cash to support their subsistence lifestyle. I have seen first hand the devastating effects of the failed fish runs on these people.

HUMAN RELATIONS

Past and present positions have required a wide range of interpersonal skills, public information management techniques and political awareness. As a commercial fisherman/processor and former military officer, have learned to deal with a wide range of individuals and be cognizant of their special interests and concerns. Am able to work with others to strike a consensus on critical issues. Was co-organizer of the Yukon River Drainage Fishermen's Association (YR DFA). Prior to the formation of this organization, it was a common belief that fishermen on the Yukon would never work together. YR DFA has since become a model of cooperation, by showing that when it comes to protecting the common resource, fishermen will set aside their differences and work together.

COMMUNICATION

Certified military instructor. Am completely at ease when speaking to large groups of people.

EMPLOYMENT HISTORY

CEO, Interior Alaska Fish Processors, Inc.
Registered Alaskan hunting guide
Officer, US Army Reserve, retired

MEMBERSHIP

Delegate, US Canada Yukon River Salmon Treaty
Negotiating Committee since 1988

Co-Chairman, Yukon River Drainage Fishermen's
Association since Dec 1990

Tanana Valley Sportmen's Association, life member

REFERENCES

Lt. Governor Jack Coghill
State Senator Georgianna Lincoln
State Representative Richard Foutler
State Representative Irene Nicholas
State Representative Allen Vezev
Charles Meehan, Deputy Commissioner, ADF&G
Roger Huntington, BOG

878 Lynwood Way
North Pole, AK 99705
January 5, 1984

Honorable Walter J. Mickel
Governor, State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Sir

I herein present myself as a candidate to fill the upcoming vacancy on the Board of Fish. I am a commercial fisherman/processor, sport fisherman, and in the past, have been a subsistence fisherman. Hence, I have had actual experience in the three areas where the BDF must try to reach an equitable balance in allocating the fisheries resource. Trying to achieve a balance between these various interests is almost an impossible task.

Currently there are a certain number of sport fishermen on the Board and a certain number of commercial fishermen. These people are from coastal communities. The vast interior region has no representation even though fish is one of their main sources of food. The dollar value of the fish resource on the commercial market exerts a strong influence on the BDF decisions. It is crucial that we get past looking at the fishing industry as how much we can sell the resource for. We must look at the resource with an eye toward conservation and as food and recreation for the people who live here. Unless we insure that enough fish return to the spawning grounds, there will be no fishing for anybody. Our tourist industry will suffer through the collapse of the sport fishery and our cherished Alaskan lifestyle of living off the land will be diminished when we are no longer able to subsist on and sport fish to feed our families. For the Alaskan living in the bush, the traditional lifestyle will be destroyed. I believe that it is time to appoint Board members who care about the state's common fisheries resources and who have a balanced view of the needs of all of the user groups.

I am a commercial fishermen, but my company (Interior Alaska Fish Processors in Fairbanks) yearly processes thousands of pounds of sport caught fish. For the past several years there has been virtually no sport fishing in the Fairbanks area. Visitors have asked us where they can fish. We tell them they must go elsewhere. The Fairbanks Visitor and Convention Bureau has expressed great concern about the impact of the failed fishery both on local businesses and residents who fish for personal use.

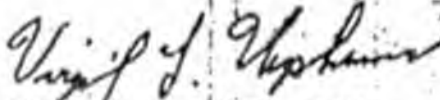
As a fish processor, I buy fish from fishermen on the Yukon and Tanana Rivers and at Norton Sound. For the most part, commercial fishermen in the Interior and Norton Sound are also subsistence fishermen. The money they get from selling their catch is used to buy fuel, etc for their subsistence fishing and hunting. The 1993 failure of the summer and fall chum runs was devastating to the people who rely on these fish to feed their families. The people in Elim, on Norton Sound, have also experienced closures of their subsistence fisheries. This past year, many commercial/subsistence fishermen had their electricity cut off in August. They have had to rely on welfare and government subsidies. The economic impact of the salmon failures on the state is immense...but there is no subsistence fishery representation on the BOF.

Since 1988 I have been a representative on the US/Canadian Yukon River Salmon Treaty Negotiating Committee. Through this position and as a commercial/sport/subsistence fisherman, I have gained a degree of expertise in both in river and terminal fisheries management. There is currently no one on the BOF with this qualification.

I feel I would be an asset to the BOF. Request your favorable consideration. Resume enclosed.

1 incl

Sincerely


Virgil L. Umphenour

STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office

Applicant Endorsement List

Virgil Umphenour of Fairbanks
has been endorsed for the following board(s):

Board	Position	Endorser	Date
037		Abel Saccheus	06/27/94
037		Albert Jackson	01/20/94
037		Alice Fagerstrom	01/20/94
037		Alvin Owletuck	01/10/94
037		Annie Conger	01/25/94
037		Bert Sharp	02/01/94
037		Bill Fliris	01/07/94
037		Bosco Olson	01/12/94
037		Byron Haley	01/28/94
037		Carl Morgan Jr.	01/07/94
037		Carol Oliver	01/20/94
037		Daniel Nelson	01/12/94
037		Dean Paddock	06/01/94
037		Dorothy Barr	01/07/94
037		Edgar Jackson, Sr.	01/20/94
037		Fred Sagoonick	01/07/94
037		Fritz Willie	01/10/94
037		Gene Thermault	02/01/94
037		George Berry	01/14/94
037		George Yaska	01/27/94
096		Georgianna Lincoln	07/28/93
037		Georgianna Lincoln	01/28/94
037		Gilbert Gutierrez	01/21/94
037		Harry Wilde	02/01/94
037		Irene Nicholia	02/01/94
037		Jack Carpenter	01/07/94
037		Jack Coghill	02/20/91
096		Jack Coghill	02/20/91
037		Jack Coghill	01/10/94
037		Jeannette James	01/19/94
037		Joe Sitton	01/12/94
037		Joel Kawahara	02/03/94
037		John Davies	01/27/94
037		Joseph Peter	01/21/94
037		Kenneth Kingeekuk	01/11/94
037		Loretta Bullard	01/07/94
037		Luci Eningowuk	01/07/94
037		Lucy Olick	01/24/94
037		Lyman Hoffman	01/24/94
037		Martina Azean	01/11/94
037		Mike Dalton	01/24/94
037		Mike Miller	01/21/94
037		Myron Naneng	01/07/94
037		Myron Naneng	06/08/94
037		Nina Nanouk	01/27/94

STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office

Applicant Endorsement List

Virgil Umphenour of Fairbanks
has been endorsed for the following board(s):

Board	Position	Endorser	Date
037		Nina Patkotak	01/20/94
037		Oliver "Bud" Burns	01/18/94
037		Ralph Seekins	01/17/94
037		Richard Foster	01/11/94
037	retain	Richard Foster	01/10/95
037		Steve Frank	02/01/94
037		Tom Brice	01/12/94
037		Will Mayo	01/05/94
037		William Topsekok	01/12/94
Total Endorsements:		54	

Distributed for your information
by Representative Carl E. Moses

PENINSULA MARKETING ASSOCIATION

P.O. BOX 248
SAND POINT, ALASKA 99661
PH(907)383-3600 FAX(907)383-5618

By Facsimile:(907)465-3532

February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles:

I am writing to you on behalf of the Peninsula Marketing Association's 125 members. The association is composed of commercial fishermen who participate in the salmon and groundfish fisheries in the Alaska Peninsula/Aleutian Islands. The vast majority of our members are lifelong residents of Sand Point, King Cove, Nelson Lagoon, and False Pass.


These four Eastern Aleut villages depend entirely on commercial fishing. Since the early 1900's salmon has been the mainstay of family incomes, and since the 1980's it has also been the mainstay of our local governments. Naturally, we have participated in the Board of Fisheries process since its inception.

You are undoubtedly aware that our June fishery, which is erroneously referred to as the False Pass fishery, has been the subject of a great deal of controversy. We have been assaulted on all sides by people from outside our region who know nothing about us, and less than nothing about our fisheries.

Mr. Virgil Umphenour, who was appointed by your predecessor Governor Hickel, is among the most offensive assailants on our way of life. In addition to his obvious personal bias and his self proclaimed agenda to shut this area down, Mr. Umphenour's financial conflicts of interest coupled with those of Mr. Angasan, and our own representative, Mayor Jacobsen threaten to derail the Board of Fisheries process.

It is critical that the Board be able to function. We have reviewed the State of Alaska's Ethics Act, and Mr. Umphenour's conflict of interest statement. We do not believe that he is qualified to serve and further we believe that having two AYK representatives on the board will not provide the necessary balance. In your comments to the UFA Board of Directors, we thought we heard a commitment to the Board of Fisheries process. We sincerely hope that you will make every effort to make good on that commitment and work to appoint qualified, open minded individuals who represent this state's truly diverse fishing interests.

Sincerely,


Barbara Wilson
President

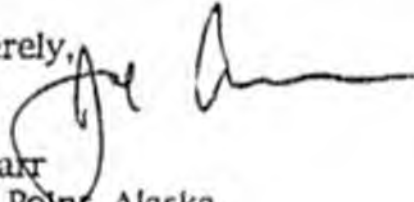
February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

Appoint someone from Southeast or some-one who has not already voiced his negative opinion. I think an appointment of someone without a negative view is what this Board needs. A flat out negative view of an issue is not what I want. I feel you should look towards an appointment of a person with a open unbiased view.

Sincerely,


Joe Carr
Sand Point, Alaska

February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

My name is Dale Pedersen. I feel that if you appoint either Mr. Umphenour or Mr. White to the Board of Fish, the fisheries as I know them will be completely wiped out. Over the years we fishermen down here in Area M have been cut back so much it's damn hard to make a living. Please think long and hard when you make your decision.

Thank You


Dale Pedersen

February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

There are some very serious and hard decisions to be made about Area M Fisheries. I myself have fished here all my life and depend on the resources very much. Please take into consideration the importance of your decision of whom to appoint to the Board of Fisheries. Hopefully the decisions may better serve our area here and other areas on Alaska.

Sincerely,

Fred Holmberg Jr.

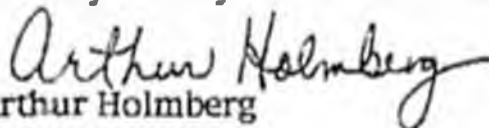
February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

I am a Area M fisherman and I'm concerned about the up coming Board meeting concerning Area M. I don't think it would be fair and in our best interest to have Mr. Umphenour and Mr. White on the Board after reading and hearing what they have said about all of us in Area M. I feel they would not be fair in the particular issues concerning Area "M".

Thank you for your careful consideration.


Arthur Holmberg

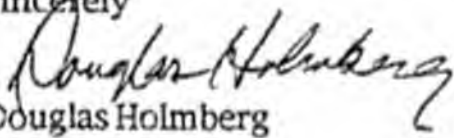
February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

I want to oppose these two people for the Board of Fish seats. Let's have you appoint a person from Southeast Alaska or Kodiak. I do not want to see Mr. Umphenour confirmed for another term.

Sincerely


Douglas Holmberg

February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

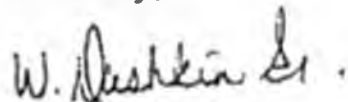
Dear Governor Knowles,

I myself feel that having a Board of Fish is very important for each area. I also believe that anyone sitting on the Board should go there with an open mind.

As for Mr. Umphenour's statement about Vietnam and Rick's parents. I myself took that very personal. I've fished the Cape's of Area M all my life and make a living at it. EXCEPT 14 months, 7 days and 7 hours I spent in Vietnam!!!!

My true feeling is that Mr. Uphenour and Mr. White are very narrow minded and trying to fill two seats with these gentlemen's attitude is out of the question.

Sincerely,



William Dushkin Sr.

February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

My name is Steven Galovin from Sand Point.
Concerning Mr. Umphenour's appointment. I don't think anyone so
one sided should be on the Board of Fish. He has made some very
untrue and unfair allegations about Area M fishermen.

Thank You


Steven Galovin

February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

I strongly oppose these appointments of Virgil Umphenour and John White to the Board of Fish.

Thank You

Marie Osterback
Marie Osterback



February 9, 1995

Governor Tony Knowles
P.O. Box 110001
Juneau, Alaska 99811

Honorable Governor Knowles,

On behalf of ONC we would like to support the following of the appointment to the Board of Fisheries.

- Trifon
- Hanson
- Umphenour

Thank You.

ORUTSARARMUIT NATIVE COUNCIL

Henry Hunter
Henry Hunter, Chairman

cc: Senate Resource Committee
House Resource Committee



Alaska Sportfishing Association

We've Moved 1
Alaska Sportfishing Association
P.O. Box 241847
Anchorage, AK
99524-1847

TO: Members of the Senate and House Resources Committees

Re: Confirmation Hearings for Virgil Umphenour

Ladies and Gentlemen:

Thank you for holding the hearings for Virgil in such a timely manner. It is important for all of us fishery users to feel comfortable with who is on the Board of Fisheries and in what esteem they are held by their "bosses", you-the Legislature. These hearings will hopefully provide some insight into your feelings on the qualifications and abilities of Mr. Umphenour.

To us, the 'bottom line' is "What does Mr. Umphenour bring to the Board of Fisheries?" First, and most importantly, we feel he provides the Board with knowledge of several of the very important Interior in-river fisheries. Some of these fisheries are unique in that they are fished by all four user groups in Alaska-Subsistence, Commercial, Sport, and Personal Use. Additionally, the Yukon is co-managed with Canada. His knowledge of the international fisheries may be beneficial in managing our other treaty fisheries in Southeast.

As sport fishers, we have appreciated his in-river fishing perspective that he has imparted to the Board of Fisheries over the past year.

We know that you will give him a fair and open hearing and are anxiously awaiting the results of these hearings.

Thank You


Phil Cutler, President

February 8, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Knowles,

Thank you for asking me to be a part of the Fisheries Policy Transition Team. I believe all of the members of the Fisheries Policy Transition Team worked hard at Kodiak to come up with recommendations that would advise your administration as you develop fishery policies.

Lieutenant Governor Fran Ulmer assured me at the Kodiak meeting that the recommendations you received from this transition team would be seriously considered by you and your administration. If that is the case, then I would refer to page 9, first four recommendations regarding the Board of Fish process. I quote this as follows:

Board of Fisheries:

- Retain the basic structure of the existing Board of Fisheries (BOF).
- Maintain a BOF comprised of lay citizens.
- Ensure board geographic interest and expertise by members so that the BOF represents the diversity of interests and regions of the state. Emphasis should be on selecting knowledgeable, fair minded individuals.
- Provide that individual BOF seats should not be designated for specific interest groups.

If you believe those recommendations you would not consider John White or Virgil Umphenour for appointments to the Board of Fish. Mr. Umphenour has made very serious allegations concerning Area M residents. These allegations are pointed at our lack of military commitment during the Vietnam war, how we were deferred from military service due to the fact that our "rich parents" bought us off. Just for the record, many of us served our country very well and still do. He has made allegations about the Area M fishery being 100% responsible for the decline of all AYK salmon stocks. How can such a person be fair minded as a member of the BOF when Area M salmon fishery proposals come up February 21, 1995 for deliberation and action? Mr. John White is also from AYK like Mr. Umphenour, and his testimony at Board of Fish meetings is even more radical than Mr. Umphenour's, if that is possible. All of this is a matter of record. I would encourage you to have your staff get copies of their testimony from previous BOF meetings. You would understand very quickly that these two people are not fair minded at all. It is crucial to our survival at Sand Point, King Cove, False Pass and Nelson Lagoon that whoever you select to the Board of Fish are folks who have a broad geographic interest and expertise on fish issues. That these people represent the diversity of interests and regions of the state, and are knowledgeable and fair minded individuals. They should not be appointed for specific interests.

We do not support Mr. White or Mr. Umphenour to represent our interests on the Board of Fish.

Please call me if you have any questions.

Sincerely,

David O. Osterback

David O. Osterback, Chairman
Sand Point Fish & Game Advisory Committee

Jim Brown, Vice-Chair

Jim Brown

Melvin Larsen

Melvin Larsen

Paul Gronofsky

Paul Gronofsky

Bruce Foster, Sr.

Bruce A. Foster, Sr.

Hubert McCallum

Hubert G. McCallum

Ruel Holmberg, Sr.

Ruel Holmberg, Sr.

John Foster, Jr.

John Foster, Jr.

Charles Gundersen

Charles Gundersen

Alvin Osterback

Alvin Osterback

February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

I do not support John White or Virgil Umphenour for appointment to the Board of Fisheries.

I would like to see someone from Southeast Alaska or Kodiak appointed to the Board before the Board meets to consider Area M fishing interests.

By the way, I spent four years in the Navy during the Vietnam War.

Sincerely,

Lawrence Calugan, Sr.

Lawrence Calugan Sr.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

I do not support John White or Virgil Umphenour for appointment to the Board of Fisheries.

I would like to see someone from Southeast Alaska or Kodiak appointed to the Board before the Board meets to consider Area M fishing interests.

By the way, I spent four years in the Navy during the Vietnam War.

Sincerely,

Lawrence Calugan, Sr.
Lawrence Calugan Sr.

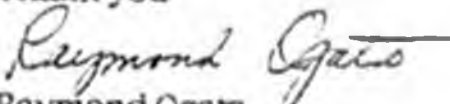
February 9, 1995

Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

I am opposed to the appointments of Mr. Umphenour and Mr. White to the Board of Fish. I am in favor of an appointment from a person from Southeast or Kodiak.

Thank you


Raymond Ogata

February 9, 1995

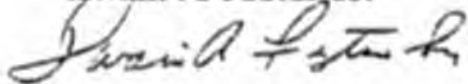
Honorable Tony Knowles, Governor
State of Alaska
Office of the Governor
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles,

I am writing this letter regarding the upcoming appointments to the Board of Fish. I strongly oppose either John White or Virgil Umphenour due to the fact that both of these gentlemen have strongly stressed their negative allegations towards Area M. Being a lifelong resident of Alaska and being of Native Blood, I am hoping you will understand my position in these matters. I would also like to state that I live in Sand Point and have been a lifelong Area M fisherman as have my father and grandfathers. If any appointments are to be made I would suggest that these seats be filled by someone either from the Southeast Area or from the Kodiak Area. I strongly feel this should be accomplished before the upcoming February Board of Fish meetings and not after.

Sincerely,

Dwain A. Foster Sr.



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STATE OF ALASKA
BOARD OF FISH

Excerpts of Proceedings
November 15, 1991
December 3, 1993
March 25, 1994

Testimony of Virgil Umphreus

COPY

EXCERPT OF PROCEEDINGS

1
2 November 15, 1991
3 Tape 9A
4 252

5 CHAIRMAN MARTIN: Virgil.

6 MR. UMPHENOUR: My name is Virgil Umphenour.
7 I live in North Pole, Alaska. I represent the Yukon River
8 Drainage Fisheries Association here right now. I'm a
9 commercial fisherman in District Y-6, which is the Tanana
10 River. I also own a small family-owned fish processing plant.
11 I buy fish in Districts Y-4, 5, and 6, in Moses Point in
12 Norton Sound.

13 The Yukon River drainage encompasses an area
14 one-and-a-half times the size of the state of California. It
15 has a population base of approximately 95,000 people, which is
16 approximately 20 percent of the population of the state of
17 Alaska.

18 The fishermen on the Yukon, about 900
19 commercial fishermen and untold subsistence and sport
20 fishermen, as has already been said, have had to take --
21 suffer drastic conservation measures. The outlook for 1992 on
22 the mainstem Yukon -- something else, I'm also a delegate to
23 the U.S.-Canada treaty negotiation process over the salmon on
24 the Yukon River. The outlook for 1992, on the mainstem Yukon
25 River, across the border into Canada is that there were 37,000
spawners in 1988, the brood year for this coming season.

Alaska-Juneau

Court Reporting & Secretarial Services
P.O. BOX 62229 JUNEAU, ALASKA 99812
MARY STURROCK, OWNER
(907) 586-6846

1 Right now, the agreement we have with the Canadians is that we
2 will endeavor to put between 115[,000] and 135,000 fall chum
3 on the spawning grounds in the mainstem Yukon River in Canada.

4 As you can see, the outlook is pretty grim.
5 On the Toklat River, I [indisc.] just talked to Louie Barton
6 (ph) and he'll be here on Monday and you can question him on
7 this, but he just completed the foot surveys and annual
8 surveys both on the Toklat, and they only achieved 35 percent
9 of the escapement objective. The Chandalar and Sheenjek
10 River, which are two of the other main spawning areas there on
11 the north side of the Yukon, up in the Fort Yukon area, both
12 of them have had sonars, one run by Fish and Wildlife Service
13 and one by the State of Alaska, for the past five years. In
14 1988, they had the lowest count of salmon on the spawning
15 grounds in those two rivers. So our outlook for 1992 really
16 looks grim.

17 Therefore, I'm for proposal 106 and I'm
18 against proposal -- and our organization 117 and 118.
19 Approximately 80 percent of the coho salmon that enter the
20 mouth of the Yukon are headed for the Tanana River drainage.
21 This year, the fishermen in District Y-6 on the Tanana River
22 only took approximately 9,000 cohos.

23 The value of the fish. The value of the fish
24 on the Yukon [indisc.] already said, is higher than any other
25 chum in the world. The Yukon River fall chum salmon and even

Alaska-Juneau

Cost Reporting & Accounting Services
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-2-

1 the summer chum salmon is the most highly priced chum salmon
2 in the world. The price that I paid for them clear up on the
3 Tanana, after they swam 950 miles, was 40 cents a pound this
4 year. When I bought fish in Norton Sound, at Moses Point, I
5 chartered a DC-4 this year. I've bought fish there the last
6 two years. I flew a DC-4 over there to bring back 803 chum
7 salmon, which was an effort for a 24-hour opening of 24
8 fishermen from the village of Elim. That's the only season
9 they had, period. For those fish I paid the fishermen 30
10 cents a pound.

11 I have some information on the tagging study
12 of 1987, that I would like to address that has not been
13 addressed yet. The Fish Board was not told that there were 20
14 fish categories -- categorized as summer/fall chums caught in
15 the Yukon River drainage. Now the summer chums and the fall
16 chums have an overlap. Myself, personally as a fisherman,
17 start catching fall chums in late July on the Tanana River.
18 And from speaking with fishermen in the Yukon Territories, I
19 know that they also start catching fall chums, because that's
20 the only chums they get, in the Canadian portion of the Yukon,
21 in late July. So I feel that this report is misinformative in
22 that a number of these fish labeled summer chums are indeed
23 fall chums. And another thing is, as it says, and this is
24 from Fisheries Research Bulletin No. 91-01, page 46, from the
25 Alaska Department of Fish and Game.

Alaska-Juneau

-3-

Court Reporting & Secretarial Services
P.O. BOX 123000 JUNEAU, ALASKA 99803
MARY STURROCK OWYER
(907) 586-6846

1 I was involved in a radio transmitter study in
2 1988 and '89 on the Tanana River to try to identify spawning
3 areas. My fish wheel was used in 1988 to catch the fish that
4 the radios were put on. Louie Barton, the research biologist,
5 was only able to recover 10 percent of these radio
6 transmitters even though he had a receiver and he could tell
7 exactly where they were. The only place he was able to
8 recover them was in the main channel of the Delta River, which
9 is a small part of the Tanana River spawning grounds for fall
10 chums. And so therefore, when you have a radio transmitter on
11 a fish and you can't even find your radio transmitter, how are
12 you going to find a tag when you're walking those spawning
13 areas that are half frozen in October and November, when the
14 temperature might be 40 below zero, when it's just a tag on
15 one side of the fish? It's hard to do.

16 Okay. I'm -- there's a lot I'd like to say,
17 but what I've got to say now might offend some people; it's
18 not intended to. But 21 years ago on this day I was an
19 ~~airborne~~ ~~major~~ infantry captain and my butt was in Vietnam.
20 My job was that as a division sniper officer of the (Indisc.)
21 Division. I had eight of my young men come home in coffins
22 and eight of them come back on stretchers. We all took an
23 oath. And what that oath involved was defending the
24 Constitution of the United States against all enemies foreign
25 and domestic. The Bill of Rights to the Constitution of the

Alaska-Juneau

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P.O. BOX 60000 JUNEAU, ALASKA 99802
MARY STELLOCK, OWNER
(907) 586-6846

1 United States, guarantees all Americans the right to life,
2 liberty, and the pursuit of happiness. All the young men that
3 were under me were people that came from areas such as the
4 Yukon, Kuskokwim, and Norton Sound. The people like the
5 drifters and the seiners from Area M, none of their kids were
6 there because they got either a college deferment or their
7 parents had enough influence to get them into an
8 apprenticeship program so they were deferred from being
9 drafted. Now, if we were to have an outbreak right now, that
10 the regular service could not handle any conflict, the
11 children of the people from the Yukon, the Kuskokwim, and the
12 poor fishermen, their children would go. And they would die.
13 While the kids from Area M would go to school if they got
14 their four-year degree and the conflict was still going on,
15 then they would go to graduate school. The Constitution of
16 the state of Alaska says that all the fish, game, and wildlife
17 belong to all -- resources belong to all the people of the
18 state of Alaska. There's over 900 commercial fishermen on the
19 Yukon, and there's 600 on the Kuskokwim; I don't know how many
20 in Norton Sound, but I cannot see where the constitution says
21 that 300 fishermen in Area M should take the resource of over
22 2,000 commercial fishermen and untold number of subsistence
23 and sport fishermen in the rest of the state. Thank you.

24 CHAIRMAN MARTIN: Thank you. Board members,
25 questions? Mr. Hanson.

Alaska-Juneau

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Coast Reporting & Secretarial Services
P.O. BOX 020029 JUNEAU, ALASKA 99802
MARY STURROCK, OWNER
(907) 586-6846

29-02-1994 12:32PM FROM Aleutian East Juneau

TO

RE Anchorage P.07

FEB 10 1995

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MR. HANSON: Yeah, thank you, Mr. Chairman. Yeah, Virgil, maybe you can -- this is a new association for probably almost a year now. Could you tell me what is the makeup of the your association? You must have, what, nine, ten, members on your association?

MR. UMPHENOUR: We have a board of directors that is six -- well, we have delegates from the six Y regions, plus we have delegates from nine Y regions. Six is the Koyukuk River, Hooper Bay, places like that. And then we have a -- that's delegates and then we have two members on the board from each of the eight regions for a total of 16 people on our board of directors. And we represent -- the delegates, some represent sport fish, some represent subsistence fish, and some represent commercial fish.

MR. HANSON: Yeah, thank you. So on your board, there, the two members from each region would be commercial, subsistence, or like that?

MR. UMPHENOUR: The delegates vote from each district as to who their two members on the board of directors would be. So it could -- some of them are subsistence fishermen, some are commercial fishermen.

MR. HANSON: Yeah, thank you.

CHAIRMAN MARTIN: Thank you. Board members, questions? Mr. Samuelson.

MR. SAMUELSON: Well, Virgil, you gave good

Alaska-Juneau

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1 statements and I was -- prepared a question list here for you,
 2 but, you know, that last part was a little bit too much for
 3 me, personally, so I'm not going to ask you any questions. I
 4 think you deviated away from the topic that we're all here to
 5 discuss. So I won't be asking you any questions.

6 CHAIRMAN MARTIN: Board members? Thank you,
 7 Virgil.

8 420

9 *****
 10 * End of requested portion *
 11 *****

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DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

207 465-3867 or 465-2430
FAX 207 465-2029
Mail Stop 3101

130 Seward Street Suite 409
Juneau Alaska 99501-2103

MEMORANDUM

January 20, 1995

SUBJECT: Removal of Board of Fisheries Member (Work Order No 9-LS0468)

TO: Representative Richard Foster
Attn Bryce Edgmon

FROM: Gerald P. Luckhaupt *GL*
Legislative Counsel

QUESTIONS PRESENTED

I. May Governor Knowles remove Virgil Umphenour as a member of the Board of Fisheries, effective January 6, 1995, without cause, and appoint someone else to Mr. Umphenour's position?

ANSWER: No. A member of the Board of Fisheries may only be removed from office by the governor for "inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish and game or of a felony. An interim appointee, as is Mr. Umphenour, may only be removed by the governor for the "cause" cited or, if the legislature should fail to confirm Mr. Umphenour, Mr. Umphenour would be removed from his position by operation of law - by the failure of the legislature to confirm. See discussion I.

II. What can the legislature do concerning the appointment of Mr. Umphenour to the Board of Fisheries if the governor does not forward Mr. Umphenour's name to the legislature or forwards someone else's name to the legislature for confirmation?

ANSWER: The legislature can confirm or reject Mr. Umphenour's appointment or do nothing concerning Mr. Umphenour's appointment. If the legislature fails to take any action regarding Mr. Umphenour's appointment then by operation of law, AS 39 05 080(3), Mr. Umphenour would be removed from his membership on the Board of Fisheries as of the last day of the legislative session. If the legislature rejects Mr. Umphenour's appointment by affirmatively voting in joint session not to confirm him, then by operation of law (AS 39 05 080(3)), Mr. Umphenour will be removed from his membership on the Board of Fisheries as of that day and the governor will be free to appoint someone else at that time. If the governor attempts to appoint someone else to Mr. Umphenour's position and forwards that new name to the legislature for confirmation and that person is confirmed without Mr.

Representative Richard Foster

January 20, 1995

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Umphenour being rejected, a court could rule that Mr. Umphenour is entitled to the office until the last day of the session (as Mr. Umphenour was not confirmed by the legislature) or could decide that the new appointee's confirmation was an implicit rejection of Mr. Umphenour, thereby entitling the new appointee to the office. See Discussion II.

FACTUAL BACKGROUND

The facts as presented to me by Bryce Edgmon of your office are that Governor Hickel appointed Virgil Umphenour to the Board of Fisheries on July 22, 1994 to the position on the board that became vacant when Kay Andrew's appointment to the position was rejected by the legislature when the legislature failed to confirm Ms. Andrew. See 18th Alaska Legislature, Senate Journal, at 4662, House Journal, at 4324. On January 6, 1995, Mr. Umphenour was informed by a phone call from Jim Ayers, Chief of Staff for Governor Knowles, that Mr. Umphenour was being removed from position on the Board of Fisheries. To date Mr. Umphenour has not received any written notification that he has been removed from his position on the Board of Fisheries.

DISCUSSION

I

In answer to your first question, it is my opinion that Governor Hickel's appointment of Virgil Umphenour to the Board of Fisheries is valid and binding on Governor Knowles and Mr. Umphenour cannot be removed from office by the Governor absent a finding by the Governor that there is cause for Mr. Umphenour's removal from office as provided in AS 16.05.280.

Article III, § 26 of the Alaska Constitution provides

Section 26 Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor. [Emphasis supplied]

This provision clearly delineates the respective powers of the governor and the legislature regarding the appointment of members of boards and commissions. The governor has the

Representative Richard Foster

January 20, 1995

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exclusive power to appoint and the legislature has the exclusive power to confirm and to provide how a member of a board or commission may be removed from office."

AS 16 05 221(b) provides that the Board of Game is "composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session". AS 16 05 280 provides

The governor may only remove a board member for inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish or game or of a felony, and shall do so by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or through counsel at a public hearing before the governor or a designee upon at least 10 days' notice by registered mail. The member may confront and cross-examine adverse witnesses. Upon removal, the governor or a designee shall file in the proper state office the findings and a complete statement of all charges made against the member."

The governor may appoint members of boards and commission, such as the Board of Fisheries, to fill vacancies that occur while the legislature is not in session pursuant to art. III, § 27 of the Alaska Constitution

Further, AS 39 05 080(4) provides that

Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, and have the powers and be charged with the duties prescribed by law for the appointive positions or membership.

Based upon the facts as presented there was a vacancy on the Board of Fisheries and Governor Hickel, pursuant to statutory and constitutional authority appointed Mr. Umphenour to that vacant position. Mr Umphenour entered upon and was vested with all the duties of his office at that time. But is this interim appointment binding on Governor Knowles or may Governor Knowles withdraw Mr. Umphenour's appointment because he has not been confirmed by the legislature or otherwise remove Mr. Umphenour from office? It

¹ Article III, § 26 of the Alaska Constitution only applies to boards and commissions that are "at the head of a principal department or a regulatory or quasi-judicial agency." The Board of Game is, I believe, clearly a regulatory board subject to art. III, § 26

² AS 16 05 221 was amended by the legislature in section 1, chapter 121, SLA 1992. The quoted language was not affected.

³ This section, as amended by section 3, chapter 121, SLA 1992, took effect September 20, 1992. The entire section is made applicable to all members of the Board as of September 20, 1992, by section 6, chapter 121, SLA 1992.

Representative Richard Foster

January 20, 1995

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is my opinion that Mr. Umphenour's appointment is binding on Governor Knowles and that Mr. Umphenour may not be removed from office absent the legislature's failure to confirm Mr. Umphenour or Governor Knowles' compliance with the procedure provided in AS 16 05 280 by removing Mr. Umphenour for cause.

Support for this conclusion is found in the plain language of the Constitution and in the court decisions. The Constitution recites in art. III, sec. 26 that the members of those boards or commissions shall be "appointed" by the governor. To determine the meaning of "appointed" we can look to other provisions of the Constitution for assistance. Article II, sec. 5 of the Constitution refers to the terms "nominated," "elected," or "appointed" as exclusive alternatives which are "clearly intended to catalogue the routes by which one may attain an office or position of profit." Brych v. Jefferson, 441 P.2d 27, 32 (Alaska 1968). In Alaska, "appointed" clearly does not mean "nominated."

That "nominated" and "appointed" are not synonymous terms in this state is further supported by the proceedings of the framers of our constitution. Art. III, § 26 of our constitution, as originally proposed in Committee Proposal No. 10a, by the Executive Branch Committee of the Alaska Constitutional Convention stated:

Whenever a board or commission is at the head of a principal department or of a regulatory or quasi-judicial body, the members thereof shall be **nominated and appointed** by the governor, with the advice and consent of the senate. [Emphasis supplied]

This "nomination" language and reasoning was specifically rejected by the framers of our constitution as it was finally enacted.

The distinction between "nominated" and "appointed" is significant. In the federal system, the president "nominates" persons to the senate for confirmation. A federal "nominee" does not take office pending confirmation. In that situation:

There is no appointment within the meaning of vesting final title to the office until acted upon affirmatively by the legislative branch of government. Justice Marshall states that until the legislature acts, the president is free to choose whom he will.

Munson v. Territory of Alaska, 16 Alaska 580 (1956). But, an "appointee" takes office and is vested with all the duties, powers, and responsibilities of the office subject only to the legislature's authority to fail to confirm the appointment. When a person is "appointed" and takes office and exercises the powers of the office, the governor has performed the "last act" necessary to vest the person with the powers of the office. The governor may not later withdraw or revoke the appointment except that he may remove the appointee as provided by law.

Representative Richard Foster

January 20, 1995

Page 5

In Division of Elections v. Johnstone, 669 P 2d 537, 539-540 (Alaska 1983) the supreme court held that the term appointment as used in the Constitution means "to designate for office." The court also found that the appointment of a superior court judge was effective on the completion of the "last act" of the appointing authority, in that case, the letter of appointment issued to the judge by the governor.

The Alaska Supreme Court, in Johnstone, cited McChesney v. Sampson, 232 Ky 395, 23 S W 2d 584 (1930) in support of this proposition. McChesney is strikingly similar to the present case. In McChesney, the Kentucky Supreme Court was confronted with a situation where the governor, having the authority to appoint members of a board subject to confirmation by the Senate, appointed in the interim (between sessions of the legislature), McChesney who entered upon and performed the functions of the office. Several months later, before the legislature had again convened, the governor removed McChesney without cause and appointed another person. McChesney sued to retain his office. The court held that the governor's purported removal of McChesney was illegal. The court stated that the governor by naming and appointing McChesney had exhausted his power to appoint and performed the "last act" necessary to vest McChesney with his office, subject only to the state senate's authority to confirm or fail to confirm and to the governor's authority to remove McChesney for cause as provided by law. The court further contrasted the situation where an officer is "appointed" subject to confirmation by the legislature (as exists in Alaska by art. III, sec. 26 of the Constitution) with the situation where an officer is "nominated" subject to confirmation (as exists for federal appointments) and said:

Furthermore, in cases where the nomination must be confirmed before the officer can take the office or exercise any of its functions, the power of removal is not involved and nominations may be changed at the will of the executive until title to the office is vested. But under our system the appointee of the Governor takes the office, enters upon the performance of its duties, and is charged with responsibility. He holds then subject alone to the action of the Senate. His status is not that of a nominee awaiting confirmation, but that of an officer invested with the powers, privileges, and responsibilities of the position until the Senate acts. A recall of his designation would operate as a removal from office. It is argued that appointment to the office consists of two separate acts, one by the Governor and one by the Senate, and until both have acted there is no appointment such as to bring the incumbent within the protection of the law. Even so, the two powers do not act concurrently, but consecutively, and action once taken and completed by the executive is not subject to reconsideration or recall. What, then, constitutes an appointment insofar as the chief executive has to do with it? Appointment to an office by one possessing the appointing power is the designation of another person to discharge the duties of the office. [Citation.] It is completed when the appointing authority has performed the acts incumbent upon him to accomplish the purpose. [Citations.] The fact that the title to the office, and the tenure of the officer, are yet subject to the

Representative Richard Foster

January 20, 1995

Page 6

action of the Senate, does not render incomplete the act of the chief executive in making the appointment. The appointment alone confers upon the appointee for the time being the right to take and hold the office, and constitutes the last act respecting the matter to be performed by the executive power. (Emphasis supplied)

McChesney, supra. at 587

The court concluded by stating "Such power as flows from the act of the Governor in making the appointment is invested by the statute in the appointee, and may not thereafter be recalled or bestowed upon another unless the consent of the Senate is withheld." See also Barrett v. Duff, 114 Kan. 244, 217 P. 918 (1923)

The rule discussed in McChesney v. Sampson has been variously stated by courts and commentators to be the "majority rule," the "general rule," and to be "universally held." See e.g., Barrett v. Duff, supra, State v. Essling, 128 N.W. 2d 307, 311 (Minn. 1964) ("well settled"), State v. Brewster, supra, 89 ALR 135 ("general rule")

McChesney and the rule discussed in it are based upon Marbury v. Madison, 1 Cranch 137, 5 U.S. 137, 159-60, 2 L. Ed. 60, 68-69 (1803) in which Justice Marshall stated:

[W]hen the officer is not removable at the will of the executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights which cannot be resumed. The discretion of the executive is to be exercised until the appointment has been made. But having once made the appointment, his power over the office is terminated in all cases, where by law the officer is not removable by him.

While the principle of a strong executive is embraced by our Constitution and recognized by our courts, Bradner v. Hammond, 553 P.2d 1, 3, n.3 (Alaska 1976), that principle does not mandate a different conclusion than that reached by the United States Supreme Court, the McChesney court and their progeny. To state that a subsequent governor has the authority to recall the appointments of a previous governor, absent constitutional or statutory authority, would render appointments to office personal to the particular governor and his term. This is contrary to our Constitution which establishes an office of governor and provides for succession to that office. Under our Constitution there is a governor and a governor there will always be, though the individuals occupying that office may come and go. See e.g., People v. Shaver, 30 Wyo. 366, 222 P. 11 (1924), Barrett v. Duff, supra, State v. Brewster, 84 S.E.2d 231, 246 (W. Va. 1954), Tappy v. State, 82 So.2d 161, 169 (1955)

When Governor Hickel appointed Mr. Umphenour, that is, named him to the office in the letter of appointment, there was a present vacancy on the Board of Fisheries due to the legislature's failure to confirm Ms. Andrew. Under the rationale of the Alaska Supreme Court in Johnstons, supra, Mr. Umphenour was appointed at that time. If there is a present vacancy

in office and when the governor performs that "last act," in this case the letter of appointment, then the appointment is effective and binding upon the executive branch, subject only to the legislature's power to confirm or not to confirm and the statutory authority of the governor to remove the appointee "as provided by law." If Governor Hickel had attempted to appoint Mr. Umphenour to a position where a vacancy did not then exist, but for which a vacancy was anticipated in the future (for example, a seat on the board that was currently occupied but the occupant's term was due to expire, say on January 1, 1995), then I would conclude that a purported appointment by Governor Hickel to take effect in the future, after Governor Hickel had left office, would not be binding on the subsequent administration.*

This distinction was recognized in an Alaska Attorney General's opinion from Rodger Pegues to Vicki Clayman on December 10, 1979 (Copy attached). In that opinion the attorney general opined that appointments by an outgoing governor to take effect beyond the governor's term are not binding upon and may be withdrawn by the new administration. That opinion, though, recognizes that if "the appointments can be accomplished in their entirety before the expiration of the appointing authority's own term of office, midnight appointments make some sense." Presumably, if they make some sense, then they are also effective and binding upon the new administration. If there is a present vacancy in an office when the governor performs that "last act," in this case the letter of appointment of Mr. Umphenour in July of 1994, then the appointment is effective and binding on the new administration, subject only to the legislature's power to confirm or not to confirm and the statutory authority of the new governor to remove the appointee "as provided by law."

Support for this conclusion is found in the settlement of a lawsuit brought by a former member of the Alaska Commercial Fisheries Entry Commission, Michael Whitehead against the state. Mr. Whitehead was appointed to a position on the commission on October 16, 1982, by then Governor Hammond. Governor Sheffield took office in December, 1982, and on February 28, 1983, Governor Sheffield appointed another person to fill the position occupied by Mr. Whitehead. AS 16.43.030(a) provided that the members of the commission could only be removed for cause. Governor Sheffield contended that he had the authority to withdraw Mr. Whitehead's appointment as Mr. Whitehead had not as yet been confirmed by the legislature.² Mr. Whitehead then sued to retain his position on the commission. The state settled the lawsuit by paying Mr. Whitehead his salary and benefits as a member of the commission up to June 16, 1983, and an additional \$75,000.

The Whitehead case seems identical to the present case. The settlement by the state seems to support a conclusion that a subsequent administration may not withdraw or revoke the

* A purported "appointment" to take effect at some date in the future is in actuality a "nomination" because the purported "appointee" is not then, at the time of "appointment," vested with all the duties, powers, and responsibilities of the office.

² It was apparently the state's position that Mr. Whitehead was a "nominee" and that the "last act" necessary to make his appointment effective was confirmation by the legislature.

Representative Richard Foster
January 20, 1995
Page 8

valid, effective appointments of a previous administration, or replace an appointee except "as provided by law," where the appointee has taken office and is exercising the powers, duties, and responsibilities of the office

Further support for this position is found in Governor Hickel's purported removal of Peter Sokolov as a member of the Alaska Public Utilities Commission in 1991. Mr. Sokolov had been appointed by Governor Cowper in November, 1990, to begin a new term after the expiration of Mr. Sokolov's previous term. In January 1991, Governor Hickel notified Mr. Sokolov that his appointment was being "withdrawn." The legislature that year took up Mr. Sokolov's appointment, even though the governor failed to send Mr. Sokolov's name to the legislature for confirmation. The legislature then failed to confirm Mr. Sokolov's appointment.

Just last session the Alaska Legislature revisited this issue when Governor Hickel appointed Jack Didrickson to the Board of Game after the governor's previous appointment to the position was rejected by the legislature. Mr. Didrickson took office and performed the duties of that office until he was notified by the governor's office that his "nomination" was being withdrawn, he was being removed from office, and the governor was forwarding the name of a different person to the legislature for confirmation to the seat that had been held by Mr. Didrickson. Absent any communication from the governor the legislature took up the confirmation of Mr. Didrickson and rejected his appointment to the Board of Game.

* Be advised that the Alaska Attorney General in an opinion from James L. Baldwin to Kevin Bruce, dated February 3, 1983 (copy attached) advised the Sheffield administration that the governor had the authority to withdraw an appointment made by a previous governor. The opinion does not cite any authority for this position other than another Department of Law opinion from Rodger Pegues to Vicki Clayman issued on December 10, 1979, discussed earlier. That opinion also does not cite any authority other than Marbury v. Madison, discussed herein.

II

You have asked what the legislature can do with reference the Umphenour matter. I see the legislature as having two options: (A) hold confirmation proceedings for Mr. Umphenour and treat Governor Knowles' purported removal of Mr. Umphenour as ineffective, and (B) do nothing. I will discuss these options each in turn.

A

If the legislature decides that Governor Knowles's purported removal of Mr. Umphenour is ineffective then I believe the legislature can consider Mr. Umphenour for confirmation in the absence of a communication from the governor requesting the confirmation.

Art III, sec 26 provides

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.*

This provision provides that the governor has the authority to appoint the members of each board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency." These appointees are subject to the legislature's constitutional authority to confirm or reject them.

In Bradner v. Hammond, 553 P 2d 1, 7 (1976), the Alaska Supreme Court described the authority of the legislature to confirm the appointees described in sections 25 and 26 as:

not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government.

Therefore, the power of confirmation of the governor's appointees to the "head of each principal department" and to membership on each board or commission that "is at the head of a principal department or a regulatory or quasi-judicial agency," though normally an executive branch function, has been exclusively delegated to the legislature by the Alaska Constitution.

To implement this confirmation power granted by the constitution the legislature has enacted AS 39.05.080. This section provides that the governor:

shall, within 30 days of the convening of the legislature in regular session, present to the legislature the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature or either house of it; (B) persons appointed subject to confirmation to fill an existing position or membership vacancy; (C) persons to be appointed subject to confirmation to fill a position or

* Art. III, § 25 provides that the governor may appoint the "head of each principal department" of the state.

* Other appointments subject to legislative confirmation include certain military officers, art. III, §19; the non-attorney members of the judicial council, art. IV, §8, members of the Commission on Judicial Qualifications, art. IV, §10, and members of the University of Alaska Board of Regents, art. VII, §3.

membership the term of which shall expire before July 2, following the session of the legislature. If an appointment is made after the deadline but while the legislature is in session, the appointing authority shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution.

But what if the governor fails or refuses to transmit the names of his appointments, or a particular appointment, to the legislature? Is the legislature without authority to confirm or reject the appointment if the governor does not commence the confirmation process by transmitting the name? The Alaska Supreme Court has never considered this issue but the courts of several other states have. The leading case on the subject of the legislature's authority to confirm or reject a gubernatorial appointment in the absence of a communication by the governor appears to be People v. Shawyer, 30 Wyo. 366, 222 P.2d 11 (1924). Shawyer was cited by the Alaska Supreme Court in Bradner for the proposition that confirmation is actually a portion of the executive's appointment power that has been delegated to the legislature by the constitution. Bradner, supra at 7, n. 19. In Shawyer, the Wyoming Supreme Court after reaching this conclusion addressed the next part of the issue presented by that case: Whether the Wyoming Senate (granted the power to confirm the appointees of the governor by the Wyoming Constitution) could act to confirm or reject an appointee when the governor did not transmit the appointee's name to the Senate and did not ask that the appointee be confirmed? The case involved the appointment of an individual to a state office by a governor who was then succeeded by another governor. The new governor failed to submit the appointment to the Senate for confirmation. The court said:

But why may not the Senate act upon an appointment of which it has knowledge, if the Governor should refuse or neglect to ask for such action especially where the appointee is known to have entered upon the duties of the office? A provision for an appointment by the Governor with the consent of or to be confirmed by the Senate directs not only what shall be done, but also in effect what shall not be done. The affirmative act of the two governmental agencies is required to confer title to an office under such a provision. A completed appointment cannot be made in any other way than as so provided. [Citations omitted] While the Governor's act in selecting the person to be considered for an office may be the principal and perhaps the more important one of the two, it is not alone sufficient. A construction of such provision denying the right of the Senate to act in any case unless directly requested to do so by the Governor or by a communication from his office would obviously provide him the power to ignore the coordinate right of the Senate, and might mean the abolition of that right, and certainly would make it entirely dependent upon the Governor's pleasure.

Shawyer, supra at 23 - 24. The court then held that the Wyoming Senate properly confirmed an appointee, though the governor had not requested the confirmation.

The Kansas Supreme Court reached a similar conclusion in Barrett v. Duff, 114 Kan. 220, 217 P. 918 (1923). That case involved the appointments to state offices by a governor during a recess of the legislature. The appointees entered upon the duties of their offices. A new governor took office and attempted to appoint others to the offices and removed the previous governor's appointees. By constitution, the Kansas Senate had the authority to confirm the appointees of the governor and the governor could not remove the state officers involved here except as provided by law, for cause. The court said:

The plaintiffs deny any force or validity to the action of the Senate in considering and confirming the appointments of defendants because of the failure of the executive to directly transmit the names of defendants. No good reason is advanced why the Senate would not consider such recess appointments without such direct word from the executive. Judicial notice or knowledge is the cognizance of certain facts which judges and jurors may properly take and act upon without proof because they already know them. Judicial notice means that the court will bring to its aid and consider, without proof of the facts, its own knowledge of those matters of public concern which are known to all well-informed persons. Legislative notice is far broader than judicial notice. 23 C.J. 58. The legislative department is equipped to deal with any condition, general or special, however manifested or brought to the knowledge of the law-making power. The mass of individual legislation found among the statutes of all the states demonstrates this legislative attribute. [Citation omitted].

The offices in controversy are all located in the capitol building, in which the Senate holds its deliberations. They are important departments of the state government. The Senate may, and often does, have official business with them. It receives reports from them. It considers the service which the departments are, by law, required to perform. It considers the extent of such service and its requirements. It considers and passes appropriations in order that they may lawfully and properly function. Under all the circumstances, the Senate cannot shut its eyes to the facts as to whether their respective offices are filled, whether they are functioning under the law, or whether there is a vacancy therein. The Senate, which has official knowledge of all of the acts of another state department, may not close its eyes to an existing fact merely because the executive has failed to transmit a communication giving it the advice. The fact that the Senate is called upon to consent to or confirm appointments presupposes an investigation upon which to base its judgment as to whether or not it should confirm or reject the named appointee. It is a matter of common knowledge that the Senate of Kansas, likewise the Senate of the United States, may, and frequently does, investigate the character, fitness, and ability of the appointee submitted for its consideration. The Senate must be permitted to investigate on its own initiative, and without communication from the Governor, the status of offices; otherwise the

Governor could fill and refill them at his pleasure by simply failing to advise the Senate. We conclude that the Senate did not go beyond its powers in making the investigation concerning the offices held by the defendants, and, having satisfied itself, that it could properly exercise its judgment thereon. While it is the usual and customary courtesy of the executive to transmit such facts to the Senate, we believe it the better view to hold that the Senate may, on its own initiative, if it so desires, ascertain the facts upon which to base its deliberative and final judgment in confirming or rejecting appointees of the Governor.

Bartlett, supra, 925-926. The Kentucky Supreme Court in McChesney, supra, discussed in Discussion I also reaches the same conclusion.

In fact, virtually all other courts that have considered this issue have reached the same conclusion. See, e.g., Bell v. Sampson, 232 Ky. 376, 23 S.W.2d 575 (1930); State v. Halladay, 219 N.W. 125 (S.D. 1928); State v. Brewster, 34 S.E.2d 231, 248 (W.Va. 1954); Commonwealth v. Stewart, 286 Pa. 511, 134 A. 392 (1926). Our research has disclosed only two court decisions that have reached an opposite conclusion, Attorney General v. Warner, 299 Mich. 172, 300 N.W. 63 (1941) and Burke v. Schraidi, 191 N.W. 2d 281 (S.D. 1971)). In Warner, the court though, held that under the Michigan Constitution and that State's court decisions that the confirmation power of the legislature is a legislative power, not a delegation of the executive's appointment power. As such, its reasoning is contrary to the Alaska Supreme Court's decision in Bradner and is distinguishable on that ground. In Burke, it appears the court held that the board members involved were not entitled to succeed to their offices and perform the duties thereof until they were confirmed. Burke, Supra, at 285. This is contrary to the procedure that is provided here in Alaska by constitutional provision and statute and is clearly distinguishable on that ground. See Art. I, § 27 of the Alaska Constitution and AS 39.05.080(4).

Therefore, I conclude that the legislature may properly consider the confirmation or rejection of Mr. Umphenour as an art. III, § 26 appointee of the governor. While it is hoped that the governor will comply with the reasonable procedure for communication of appointments the legislature has provided in AS 39.05.080, if the governor fails or refuses to request the confirmation of an appointee (as apparently is the case with Mr. Umphenour), the legislature may take notice of previous appointments and of the persons occupying the constitutional offices listed in section 26. To hold otherwise would allow the governor to prevent the legislature from exercising its constitutional confirmation power at his whim, caprice, or neglect and would render the confirmation function a nullity. Shawyer, supra. Such an absurd result was not intended by the framers of our constitution and would not, I believe, be embraced by our courts.

Vicki A. Clayman
Office of the Governor

DATE December 10, 1979

FILE NO. J-66-334-80

TELEPHONE NO.

AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT Reappointments to
boards or commissions

By:

Rodger W. Pegues
Assistant Attorney General

You have asked whether, prior to the expiration of his own term, the Governor can make reappointments of members of boards or commissions whose terms expire thereafter. You also ask whether, if that is the case, the new Governor can revoke the reappointment and appoint someone else.

We believe that the answer to both questions is yes.

When a term for an office is set by law, the term continues until its conclusion, regardless of the actual tenure of any person who may hold the office from time to time. Thus, when an incumbent leaves office prior to the expiration of his term, his successor is appointed for the remainder of that term, and the successor must be reappointed if he is to hold the position beyond the end of that term. Accordingly, no matter what an incumbent may do, his term continues until its prescribed end.

Nothing, however, precludes the Governor, as appointing authority, from anticipating the end of terms of office and making present appointments to fill the offices as those terms expire in the near future. Indeed, he is required to do this during each session of the legislature with respect to offices which have terms which will expire before July 2, and to submit the names of his appointees to the legislature for confirmation. AS 39.05.080(1). Hence, the Governor, even though he may be leaving office in early December, may make appointments for terms which begin the following January.

If the appointments are subject to confirmation, they are not complete until the legislature confirms them. Prior to confirmation, the new Governor may withdraw the nomination. And indeed, he need not even submit it and can merely revoke the nomination outright. If the appointments are not subject to nomination, they take effect when the appointee qualifies and takes office. That cannot happen until the new term for the office begins. Until that time,

Vicki A. Clayman
December 10, 1979
Page #2

the appointment can, as a general rule, be revoked.

It is probably because each new Governor has the power to countermand any appointive actions taken by each outgoing Governor which remain pending that the latter have not established a history of making midnight appointments to terms of office which begin after they leave office. Where, as in the famous case of Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), the appointments can be accomplished in their entirety before the expiration of the appointing authority's own term of office, midnight appointments make some sense. But where they remain pending, they will have been futile unless the incoming chief executive approves of them as well.

7/pjg

MEMORANDUM

State of Alaska

TO: Kevin Bruce, Special Assistant
Office of the Governor

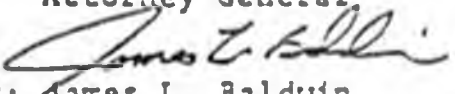
DATE: February 3, 1983

FILE NO: 366-391-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Withdrawal of
appointment

By: 
James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

You have asked if Governor Sheffield may refuse to forward to the legislature the name of a person appointed by the former governor to an office in the executive branch of state government.

We have attached a copy of our earlier memorandum of advice of December 10, 1979. In that memorandum we advised the governor that he may remove a person before confirmation by withdrawing the nomination, or if the name has not been forwarded to the legislature, by informing the person that he or she is no longer under consideration. We reaffirm that advice. However, you should consider the fact that no authority is cited for our earlier advice and that no Alaska case exists to guide us concerning the resolution of this issue.

If our reasoning expressed in the earlier memorandum is rejected by a court, and the appointment is not considered to be a nomination, then an appointee whose name is summarily withdrawn may have a cause of action for denial of a property right without due process of law. See Breeden v. City of Nome, 625 P.2d 924 (Alaska 1981).

JLB/pjg

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(3) When the legislature declines to confirm an appointment, the legislature shall notify the appointing authority of its action and a vacancy in the position or membership exists which the appointing authority shall fill by making a new appointment. The new appointment shall be presented for confirmation to the legislature within 20 calendar days following receipt by the appointing authority of the legislature's notification of its refusal to confirm the prior appointment. If the name of a person is submitted and is not confirmed, the appointing authority may not, upon resubmission of appointments, submit again the name of the person whose confirmation was refused for the same position or membership during the session of the legislature at which confirmation was refused. The person whose name is refused for appointment by the legislature may not thereafter be appointed to the position or membership during the interim between legislative sessions. Failure of the legislature to act to confirm or decline to confirm an appointment during the session in which the appointment was presented is tantamount to a declination of confirmation on the day the session adjourns.

(4) Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, and have the powers and be charged with the duties prescribed by law for the appointive positions or membership. (§ 4 ch 64 SLA 1955; am §§ 1 — 3 ch 1 SLA 1964; am § 1 ch 2 SLA 1967; am § 1 ch 65 SLA 1974; am § 2 ch 82 SLA 1975)

NOTES TO DECISIONS

Legislative history of ch. 82, SLA 1975. — See *Bradner v. Hammond*, Sup. Ct. Op. No. 1297 (File No. 2802), 533 P.2d 1 (1976).

Laws requiring bilateral appointments are mandatory. *Munson v. Territory of Alaska*, 16 Alaska 580 (1956).

Paragraph (2) of this section imposes a direct mandate upon the legislature to act upon the nominations of the governor. *Munson v. Territory of Alaska*, 16 Alaska 580 (1956).

The reason for dual consideration of prospective officeholders is the benefit of the considered opinion of the legislators, to avoid the possibility of incompetency and injury to the public which may otherwise be perpetrated. *Munson v. Territory of Alaska*, 16 Alaska 580 (1956).

Affirmative rejection not required. — Paragraph (2) of this section does not demand affirmative rejection. *Munson v. Territory of Alaska*, 16 Alaska 580 (1956).

Failure of legislature to act on an

appointment is, in effect, rejection. *Munson v. Territory of Alaska*, 16 Alaska 580 (1956).

And not tacit confirmation. — In acting upon an appointment, the legislature is not exercising a prerogative granted it in its own interest or that of its members; there can be no waiver of that duty so that inaction would be the equivalent of a tacit approval of an appointment. *Munson v. Territory of Alaska*, 16 Alaska 580 (1956).

Tacit confirmation negated by paragraph (3). — The language of paragraph (3) of this section tends to negate any argument of tacit confirmation. *Munson v. Territory of Alaska*, 16 Alaska 580 (1956).

The question of confirmation is determined at the first vote under paragraph (2) of this section. *Munson v. Territory of Alaska*, 16 Alaska 580 (1956).

The purpose of paragraph (4) of this section is to vest authority in necessary interim appointees. *Munson v. Territory of Alaska*, 16 Alaska 580 (1956).

Cross references. — For appointment of members of Board of Education, see AS 14.07.085; for a description of districts of the state public school system, see AS 14.12.010.

Sec. 39.05.070. Purpose. It is the purpose of AS 39.05.070 — 39.05.200 to provide procedural uniformity in the exercise of appointive powers conferred by the legislature to eliminate, insofar as possible, recess or interim appointments except in the event of death, resignation, inability to act or other removal from office and the exercise, insofar as possible, of appointive powers only when the legislature is in session. (§ 1 ch 64 SLA 1955)

NOTES TO DECISIONS

Section repugnant to tacit confirmation of appointments. — The expressed intention of this section is repugnant to tacit confirmation of appointments. Munson v. Territory of Alaska, 16 Alaska 580 (1956).

Sec. 39.05.080. Procedure for all appointments. Appointments shall be made in the following manner:

(1) The appointing authority shall, within 30 days of the convening of the legislature in regular session, present to the legislature for confirmation the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature or either house of it; (B) persons appointed subject to confirmation to fill an existing position or membership vacancy; (C) persons to be appointed subject to confirmation to fill a position or membership the term of which shall expire before July 2, following the session of the legislature. If an appointment is made after the deadline but while the legislature is in session, the appointing authority shall, within five calendar days after the appointment is made, present to the legislature for confirmation the name of the person appointed. The deadline may be extended by the legislature by the approval of a concurrent resolution.

(2) When appointments are presented to the legislature for confirmation,

(A) the presiding officer of each house shall assign the name of each appointee to a standing committee of that house for a hearing, report and recommendation; standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person; then

(B) the legislature shall, before the end of the session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

(3) When legislative vacancy authority appointment shall calendar legislature. If appointment submitted for the legislature at refused: pointed legislative decline appointment:

(4) Procedure, powers appointive ch 1 SLA ch 82 SI

Legislative 1978. — S Ct. Op. No 1 (1976).

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Alaska State Legislature

Official Business

State Capitol
Juneau, AK 99801-1182

January 17, 1995

Governor Tony Knowles
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Knowles:

For quite some time the Interior delegation has worked to place on the Board of Fisheries an individual who is knowledgeable of Alaska's inland fisheries.

The recent Yukon River chum salmon collapse may have been more effectively mitigated had someone with experience and understanding of Interior fisheries been in place on the Board at that time. The 1994 appointment of Virgil Umphenour succeeded in shaping the make-up of the Board of Fisheries in such a manner.

We find it disconcerting that in less than a year Mr. Umphenour faces being removed from the Board of Fisheries and replaced by an individual from another area of Alaska. Before Mr. Umphenour's appointment, the Interior was not represented. The prospect of our region now being returned to that condition is unacceptable in our view.

Alaska's Interior fisheries are an important resource to large Native populations, to small commercial fish processing concerns, as well as to the sportfishing public. The issues are significant enough to warrant representation on the Board of Fisheries. We urge you to consider these constituencies with respect to Mr. Umphenour's tenure on the Board. He can meet and understand these needs. His appointment was and is appropriate.

Sincerely,

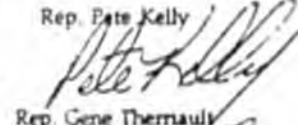

Senator Steve Frank


Rep. Tom Brice

Rep. Pete Kelly

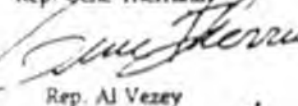

Senator Mike Miller


Rep. John Davies


Rep. Gene Therauly


Senator Bert Sharp


Rep. Jeanette James


Rep. Al Vezey



Lawyer says Knowles cannot dump Umphenour

Governor wants to choose another

By KATE RIPLEY

Staff Writer

JUNEAU A legislative attorney says Gov. Tony Knowles cannot kick a local fish processor off the state Board of Fisheries and replace him with his own appointee.

The Knowles administration, however, stands by its plan to replace Virgil Umphenour, owner of Interior Alaska Fish Pro cesses Inc. of Fairbanks, with someone hand-picked by the governor.

Umphenour was appointed to the fish panel last July by former Gov. Walter J. Hickel to fill a vacancy. He has 15 years

left to serve.

The Legislature has not yet confirmed nor denied the appointment, so Knowles wants to put in his own nominee—most likely someone from Southwest Alaska.

But it's not that easy, according to a 12 page memo by Gerald Luchhaupt, an attorney for the Legislature. In a memo dated Friday, Luchhaupt told Nome Rep. Richard Foster that Knowles may not remove Umphenour on a political whim.

A Board of Fisheries member may be removed from office only for inefficiency, neglect of duty, misconduct in office, or for fish and game violations, Luchhaupt said.

Therefore, Umphenour's appointment is binding on Knowles—absent the Legislature's failure to confirm him.

Foster said he requested the legal opin-

ion because he views the seat as a statewide seat—and one reserved for any particular region. Umphenour has done a good job on the board, Foster said.

"I know him to be fair and impartial in all matters of fishing," he said.

Rep. Jeannette James, R-North Pole, said the memo is encouraging.

"My read on it is the governor doesn't have the legal option to take Umphenour away," she said.

Umphenour, who was in Chillingham for a fish board meeting, could not be reached Monday for comment.

Knowles should simply allow Umphenour to serve out his term, James said.

"That's not acceptable," said Knowles' press secretary Bob King.

"We feel we are on firm legal footing in

putting a different name other than Umphenour's up for confirmation," King said. "We're aware of the different legal opinions."

Indeed, controversy over appointments by outgoing governors is nothing new. In 1982, former Gov. Jay Hammond appointed Michael Whitehead to the Alaska Commercial Fisheries Entry Commission. Then Bill Sheffield took office and appointed his own choice to the panel.

Like Knowles, Sheffield contended he had the authority to withdraw Hammond's nominee because the Legislature had not yet voted on the confirmation. But Whitehead sued to keep his job.

The state eventually settled the lawsuit by paying Whitehead his salary and benefits as a commission member through

June 1983, as well as an additional \$75,000.

Luchhaupt said the Umphenour case seems identical.

Past court cases from other states imply the Legislature could ignore Knowles and vote on Umphenour's appointment, even without Knowles' stamp of approval. Or the Legislature could ignore Umphenour and simply vote on Knowles' new nominee.

Whatever happens, it's likely not to be anytime soon.

The Legislature will not vote on confirmations until the end of the 120 day session in May.

King said Knowles may have an announcement about fish board appointments later this week. Two other seats on the panel expire at the end of the month.

RECEIVED JAN 25 1995

Keep Umphenour

Jan. 19, 1995

To the editor:

I am disappointed in Gov. Knowles. Bob King, the governor's press secretary, is quoted as saying that. "We're looking at putting our own people on all boards and commissions." The new administration is politicizing positions that were established to administer and allocate the state's resources and assets for the people. They were never intended to be used to pay off political debts or campaign promises to the big guys.

In the case of the Board of Fisheries currently held by Virgil Umphenour, it took the Interior eight long years to get it back. It was not traditionally held by Southeast. The Interior and Northwestern Alaska have had virtually no fish in their streams and rivers for the last four years. With Umphenour, we had a voice on the Board of Fisheries to

speaking for us against the big intercept fishermen on the coast.

Tony "The Boss" Knowles conned the Interior to get elected then

old us out!
B. C. [unclear] JAN 25 1995
Fairbanks

RECEIVED JAN 27 1996

Fish politics

Jan. 23, 1996

To the editor:

Tony Knowles is setting up Tammany Hall in Juneau. He is removing people from commissions and jobs that aren't supposed to be used to pay off political debts. We lost Ralph Seekins from the Permanent Fund Board and now we might lose Virgil Umpheour from the Board of Fish.

Gov. Hickel appointed Umpheour to the fish board because the Interior and northwestern Alaska need a voice on the board. There are no more fish coming into our rivers . . . no fish for the sportsman, no fish for the people in the villages to put up for their winter food. The big guys from False Pass and Southeast control the fish board. I guess they put a lot of money in Tony's "grab" pot!

Marvin Londere
Fairbanks

Board needs Interior member

Interior Alaska may not have the vast fishing industry that coastal areas enjoy, but decisions about fish management still have a significant effect on life here. The Interior needs a voice in those decisions.

Gov. Tony Knowles has told Virgil Umphenour, the only member of the state Board of Fisheries from the Interior, that his name likely will not be on the list submitted to the Legislature for confirmation in the next few weeks.

Maybe Knowles isn't comfortable with Umphenour's style. That's his choice. But he should recognize the importance of having an Interior voice on the board.

Salmon allocations and limits have created great controversy along Interior rivers for the past several years. The board needs someone who carries the background and perspective of people from this area.

Umphenour, the owner of Interior Alaska Fish Processors in Fairbanks, has supplied that. However, he sits in an awkward spot. He was nominated last spring for a three-year term by former Gov. Walter Hickel. He replaced Kay Andrew of Ketchikan, an earlier nominee who the Legislature rejected. But the Legislature never confirmed Umphenour's appointment. He has participated in board meetings, as is accepted practice, but the appointment process was not complete.

Now Knowles will submit a new list of nominees, for two seats that are scheduled to open, as well as for Umphenour's seat.

Fish issues are not easy to understand or resolve. Interior residents deserve to have someone studying the questions from their perspective.

For example, argument has raged for years over whether chum salmon catches off the Alaska Peninsula have hit Interior salmon stocks too hard. It appeared that the shrinking chum salmon runs in Interior and western Alaska rivers could be blamed in part on "by-catch" at False Pass off the Alaska Peninsula. Boats there pick up large numbers of chum salmon while looking for other salmon species.

The board each year has set a limit on the number of chum caught, but it refused to drop the by-catch limit below 700,000 fish even when chum stocks continued to decline. A majority of board members concluded that there wasn't enough evidence to show that the by-catch was causing a problem. Genetic studies are due next month that should shed more light on the subject.

We need a fish board member to take a close look at these studies and other issues from an Interior viewpoint. People here may not catch as many fish as coastal residents, but what fish we do have are critical for maintaining both subsistence lifestyles and sportfishing opportunities.

STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office

Applicant: Endorsement List

Virgil Umphenour of Fairbanks
has been endorsed for the following boards:

Board	Position	Endorser	Date
037		Abel Saccheus	06/27/94
037		Albert Jackson	01/20/94
037		Alice Fagerstrom	01/20/94
037		Alvin Owlertuck	01/10/94
037		Annie Conger	01/25/94
037		Bert Sharp	02/01/94
037		Bill Fliris	01/07/94
037		Bosco Olson	01/12/94
037		Byron Haley	01/28/94
037		Carl Morgan Jr.	01/07/94
037		Carol Oliver	01/20/94
037		Daniel Nelson	01/12/94
037		Dean Paddock	06/01/94
037		Dorothy Barr	01/07/94
037		Edgar Jackson, Sr.	01/20/94
037		Fred Sagoonick	01/07/94
037		Fritz Willie	01/10/94
037		Gene Thernault	02/01/94
037		George Berry	01/14/94
037		George Yaska	01/27/94
096		Georgianna Lincoln	07/28/93
037		Georgianna Lincoln	01/28/94
037		Gilbert Gutierrez	01/21/94
037		Harry Wilde	02/01/94
037		Irene Nicholia	02/01/94
037		Jack Carpenter	01/07/94
037		Jack Coghill	02/20/91
096		Jack Coghill	02/20/91
037		Jack Coghill	01/10/94
037		Jeannette James	01/19/94
037		Joe Sitton	01/12/94
037		Joel Kawahara	02/03/94
037		John Davies	01/27/94
037		Joseph Peter	01/21/94
037		Kenneth Kingeekuk	01/11/94
037		Loretta Bullard	01/07/94
037		Luci Eningowuk	01/07/94
037		Lucy Olick	01/24/94
037		Lyman Hoffman	01/24/94
037		Martina Azean	01/11/94
037		Mike Dalton	01/24/94
037		Mike Miller	01/21/94
037		Myron Naneng	01/07/94
037		Myron Naneng	06/08/94
037		Nina Nanouk	01/27/94

STATE OF ALASKA - OFFICE OF THE GOVERNOR
Boards and Commissions Office

Applicant Endorsement List

Virgil Umphenour of Fairbanks
has been endorsed for the following boards:

Board	Position	Endorser	Date
037		Nina Patkotak	01/20/94
037		Oliver "Bud" Burris	01/18/94
037		Ralph Seekins	01/17/94
037		Richard Foster	01/11/94
037	retain	Richard Foster	01/10/95
037		Steve Frank	02/01/94
037		Tom Brice	01/12/94
037		Will Mayo	01/05/94
037		William Topsekok	01/12/94

Total Endorsements: 84

CONFIRM.

**MICHAEL
BROWN**

DECC

COMMS.
1996



Alaska State Legislature

Senate Resources Committee

Official Business

State Capitol
Juneau AK 99801

April 24, 1996

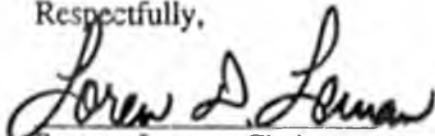
The Honorable Drue Pearce
President of the Senate
State Capitol
Juneau, AK 99801-1182

Dear Madam President:

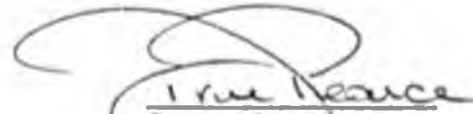
The Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

Department of Environmental Conservation
Michele Brown - Juneau
Appointed 1/24/96

Respectfully,



Senator Leman, Chairman



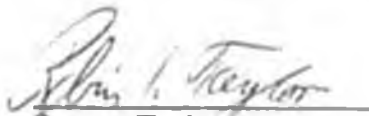
Senator Pearce



Senator Halford




Senator Frank



Senator Taylor

Senator Hoffman



Senator Lincoln



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL
JUNEAU, ALASKA 99801-1102
(907) 465-3701
FAX: 465-2632

March 22, 1996

MEMORANDUM

TO: Senator Leman, Chair
Resources Committee

FROM: Nancy Quinto *NQ*
Secretary of the Senate

SUBJECT: Governor's Confirmations

Pursuant to AS 39.05.080, President Pearce has referred the following name for legislative confirmation to your committee for a hearing, recommendation and report:

Commissioner, Department of Environmental Conservation
Michele Brown - Juneau
Appointed: 1/24/96

NQ:vsw

Resume attached

MICHELE D. BROWN

410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801-1795

Relevant Experience

- **Commissioner, Alaska Department of Environmental Conservation**
Juneau, Alaska. Appointed January 24, 1996
- **Deputy Commissioner, Alaska Department of Environmental Conservation**
Juneau, Alaska. January 30, 1995 to January 23, 1996
- **Senior Environmental Advisor, United States Agency for International Development,**
Moscow, Russia, June 1993 to January 1995
- **Executive Director, Alaska State Legislature's Citizens' Oversight Council on Oil and Other Hazardous Substances**
Anchorage, Alaska, February 1991 to August 1992
- **Regional Administrator, Southcentral Region, Alaska Department of Environmental Conservation**
Anchorage, Alaska, March 1990 to February 1991
- **Assistant Attorney General, Alaska Department of Law**
Anchorage, Alaska, October 1978 to February 1990

Credentials

Published law journal articles on the *Exxon Valdez* oil spill and addressed many conferences on various topics, including environmental development programs in Russia, oil spill response, oil pipeline regulation, and public participation in environmental decision-making.

Law Clerk to Justice Roger G. Connor, Alaska Supreme Court, and to Chief Justice Donald R. Wright, California Supreme Court

J.D. Degree, University of California, Davis, 1977
Phi Kappa Phi Honor Society; American Jurisprudence Award

A.B. Degree, University of California, Berkeley, 1973
Honor Society

DEC

Tony Knowles, Governor

APR 03 1996

Michele Brown, Commissioner



Update

Vol. 2, Issue 1, February — March 1996

Alaska Department of Environmental Conservation

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Governor appoints Brown

DEC has a new commissioner. Citing her experience in working with the public and industry, Governor Tony Knowles on January 24 named Michele Brown as his new commissioner of the Department of Environmental Conservation. Brown replaces Gene Burden, who stepped down earlier in January for family reasons.

Brown, 45, has extensive experience working with Alaska environmental issues, as an assistant attorney general, executive director of the Alaska Citizens Council on Oil and Other Hazardous Substances, and deputy commissioner of DEC until her appointment as commissioner. She was also a senior environ-

mental advisor in Moscow to the U.S. Agency for International Development.

Governor Knowles said, "Michele Brown has a record of working with industry and the public to find solutions to protect our precious environment, but also keep Alaskans working."



The new commissioner said, "Gene Burden set the tone for this administration in seeking partnerships between industry and environmental groups, and he was highly successful. Governor Knowles and I think this approach is the right direction for Alaska. Protecting the cleanliness and beauty of our home is part of our message when we tell the world that Alaska is open and ready for business."

Letter to Alaskans

by Michele Brown

I felt distinctly honored when Governor Knowles asked me to serve as DEC Commissioner, especially after my long association with the department. I'm very pleased to be able to continue with the positive developments underway at DEC.

A quick glance back at the first year

of the Knowles administration reveals an astonishing number of accomplishments by DEC staff. With direction and support of the Governor, we installed a new management by objectives package — workplan, organizational restructuring

Please turn to back page

NOAA to clean up Pribilofs

In early February, Governor Knowles announced an agreement between state and federal agencies to clean up pollution left over from the years of federal management of fur seal harvests on the Pribilof Islands.

The agreement to clean up long-standing pollution problems on St. Paul and St. George Islands was hammered out between the state and the U.S. National Oceanic and Atmospheric Administration, after former DEC Commissioner Gene Burden took a special interest in the issue and pushed for quicker action.

The fur seal harvest was halted in the early 1980's and ownership of much of

the islands was transferred from the federal government to local entities, but the agencies involved did not clean up their leftover wastes.

Islanders are concerned about possible hazardous materials in old dumps, numerous old fuel spills, and tons of rusting tanks and piping.

Island residents wish to develop their fishing and tourism industries, but want hazardous and solid wastes cleaned up and need improved waste disposal and transportation facilities.

"This agreement will finally provide for a quick and complete effort by the federal agency to clean up their waste," said DEC Commissioner Michele



Photo by Ray Dronenburg, DEC

Buried drums like this one were unearthed in August 1995 next to St. Georges' school playground.

Brown. She said residents of both island communities helped in reaching the final agreement and will continue to participate in decisions and the cleanup.

Contact: Ray Dronenburg, DEC
Anchorage, 269-7518,
rdronenb@envircon.state.ak.us

To keep publication costs low, *ADEC Update* is distributed to a small mailing list. Please feel free to copy this newsletter and give it to others.



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Alaska Dept. of Environmental Conservation
Administrative Services
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795
(907) 465-5010

Michele Brown
Commissioner

Kurt Fredrikson
Acting Deputy Commissioner

Juneau Offices
(907) 465-5010

Anchorage Offices
(907) 299-7500

Fairbanks Offices
(907) 451-2663

**DEC's Internet home
page address:**

<http://www.state.ak.us/dec/home.htm>

Exemptions won for remote landfills

DEC-initiated federal legislation that passed the U.S. House on March 7 will give the state the discretion to exempt remote landfills from certain federal requirements and thereby prevent steep operational cost increases, while still protecting the environment and human health, according to Heather Stockard, DEC solid waste program manager.

"We've been working hard on this for a long time. It makes way for more state and local control, and is the pay-off of more than a year's work by DEC, the Governor's Washington, D.C. office, and Alaska's congressional delegation," said Stockard.

She explained that the legislation will

allow EPA approval of Alaska's regulations which provide for Class III landfills and other exemptions required by Alaska's unique conditions.

"Alaska will be able to make realistic decisions based on actual environmental risks and allow communities to do what makes sense at their landfills," said DEC Commissioner Michele Brown.

Contact: Heather Stockard, DEC
Juneau, 465-5162,
hstockar@envircon.state.ak.us

Air force to clean up King Salmon sites

Twenty-five contaminated sites at King Salmon will be evaluated for cleanup by the U.S. Air Force under innovative three-party agreements being negotiated by DEC, the U.S. Environmental Protection Agency, and the Air Force.

The agreements will address contamination from historic military fuel spills and disposal areas at King Salmon Air Station. Present at the facility are old dumps, fuel-contaminated soils and groundwater, drums, and other contamination and debris — all of great concern to the community.

All parties are expected to sign a crucial consensus document shortly, which addresses the most visible of the

sites, North and South Barrel Bluffs. The other sites and contaminated groundwater will be dealt with in one or more additional agreements.

The Air Force has already started cleanup preliminary work, and an aggressive schedule has been set for this summer, including wetlands monitoring, installation of monitoring wells, property or rights acquisition needed for construction work at the bluffs, limited recontouring and installation of preliminary base soil at North Barrel Bluff, limited removal of drums at South Barrel Bluff needed for slope stabilization, and drum removal in King Salmon Creek.

Please turn to page 4

Are your children at risk from lead-based paint?

If you have children age six or younger, and your house was built before 1978, you may qualify for a free lead-based paint test. It's part of a survey funded by the federal government to see how widespread the problem of lead-based paint is in Alaska.

Since children are especially susceptible to health-damaging effects of lead-based paint, the survey will be done in homes, day care centers, and other buildings where young children gather.

If your home is selected for the survey, an environmental technician will make an appointment to do the test. Painted surfaces are checked with equipment that does not damage the paint but can detect lead, even if it is painted over. The test is free and the confidential results are reported to the resident.

To participate in the survey, call DEC

at 800-478-7798. Participation will be limited to the funding available.

There is no requirement to remove or cleanup lead that is detected, but residents will be given information about protecting their children from any further exposure. Funding for the survey will pay for the tests, but does not cover removal and cleanup of the lead-based paint.

Tests are being done only on buildings constructed before 1978 because the sale of lead-based paint was banned in the U.S. after that. DEC will consider all requests

received for testing, but volunteers not selected because of budget constraints will still be given ample information about how to have their homes tested.

**Call
800-478-7798
lead survey**

Contact: David Pikul, DEC Anchorage,
269-7696.
dpikul@envricon.state.ak.us

Source found in Pribilofs spill

On February 16, DEC's Prevention and Emergency Response Program received notice from the Coast Guard of

a Panamanian-registered freighter, the M/V Citrus, anchored at Saint Paul Island and taking on water. The Coast Guard helped stabilize the ship, but at the time officers in charge observed no sheen or other evidence of any spilled fuel.

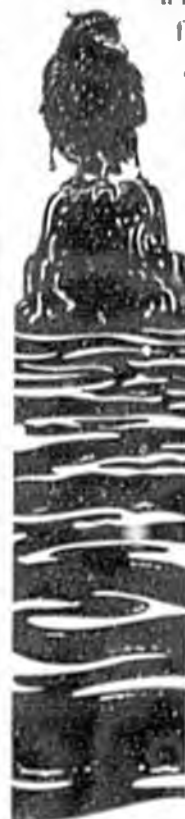
About a week later, subsistence hunters on St. Paul Island reported oiled birds on the beach. This prompted a response to an incident that, by February 27, involved an estimated 1500 oiled birds — mostly King Eiders — on St.

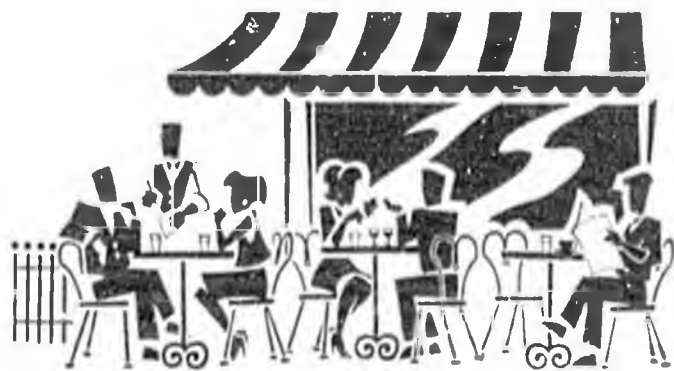
Paul and nearby St. George Islands, and a sizable response by federal and state agencies, including DEC, activated under a Unified Command. Bird mortalities confirmed numbered nearly 800.

"Mystery spills" are common in waters with heavy shipping, but samples taken from birds' feathers and the M/V Citrus showed a "match." The Coast Guard announced that legal action would be taken against the M/V Citrus.

Both DEC and the Department of Fish and Game sent response personnel to St. George. DEC provided field radio communication services during the response.

Contact: Brad Hahn, DEC Anchorage,
269-7548.
bhahn@envricon.state.ak.us





Food Safety Awareness Month is April

Alaska Governor Tony Knowles has proclaimed April 1996 as Food Safety Awareness Month. The Alaska Department of Environmental Conservation is teaming up with five groups to offer food safety educational opportunities to employees, managers, and consumers. Helping to highlight food safety in April are the Alaska Seafood Marketing Institute, the Alaska Visitors' Association, the Cabaret, Hotel, Restaurant and Retail Association, the Alaska Cooperative Extension Service at the University of Alaska Fairbanks, and the Municipality of Anchorage.

The groups will distribute brochures and consumer information, sponsor videos and public service announcements on radio and television, and provide training for employees. Training events will be listed in the calendar on DEC's home page: www.state.ak.us/dec/home.htm

"The safety and wholesomeness of the food supply in America is usually taken for granted," said Governor Knowles in the proclamation. "Yet even with the safest food system in the world, some 9,000 Americans die each year from food-borne illnesses. These illnesses are 100 percent preventable if proper sanitation and handling procedures are followed."

Look for ways that managers, food handlers, employees, and co-workers can get valuable food safety training during April!

Nancy Napolilli, Program Manager
Environmental Sanitation and Food Safety
Alaska Department of Environmental Conservation
610 University Ave.
Fairbanks, AK 99709-3643
phone 451-2110, fax 451-2188



Kevin O'Sullivan
Quality Program Manager
Alaska Seafood Marketing Institute
111 West 8th Street, #100
Juneau, AK 99801-1895
phone 465-5567, fax 465-5572



Tina Lindgren, Executive Director
Alaska Visitors' Association
3201 C Street, Suite 403
Anchorage, AK 99503
phone 561-5733, fax 561-5727



Carol Wilson, Executive Director
Cabaret, Hotel, Restaurant and Retail Association
341 East 56th Avenue, Suite 200
Anchorage, AK 99518
phone 563-8133, fax 563-8640



Kristy Long, Ph.D.
Home Economics Program Leader
Alaska Cooperative Extension Service
University of Alaska Fairbanks
PO Box 756180
Fairbanks, AK 99775-6180
phone 474-7974, fax 474-6567



Lura Morgan, Ph.D.
Manager, Environmental Services Division
Municipality of Anchorage
P.O. Box 196650
Anchorage, AK 99519
phone 343-4065, fax 343-4786



CALENDAR

For the most up-to-date information see the calendar on our home page:
www.state.ak.us/dec/home.htm

If you are a person with a disability or need a special accommodation to comment or participate in meetings, please contact Fran Podmoll, at (907) 465-5040. The department's TTY telephone number is (907) 465-5133.

Air Quality

Proposed air quality permit regulations

March 18: Anchorage Public workshop 1-4 PM, Public Conference Room, Z.J. Loussac Library, 3600 Denali St.
March 18: Anchorage Public hearing, 7-8 PM, Public Conference Room, Z.J. Loussac Library, 3600 Denali St.
Public comment period ends 4:30 PM, March 19, 1996.
Contact: Don McGlothlin, at 465-5100 or dmcgloth@envirocon.state.ak.us

Additional public hearing on air quality - inspection and maintenance regulations

April 10: Anchorage 1-4:30 PM Loussac Library, Wilda Marston Theatre, 3600 Denali Street
April 10: Fairbanks 1-4:30 PM DEC Conference Room, 610 University, Fairbanks
Public comment period has been extended to 4:30 p.m. on April 12, 1996
Contact: Ronald G. King, (907)465-5100 or rking@envirocon.state.ak.us

Water, Wastewater

Public hearing on proposed water quality standards regulations

March 22, 1996 Public comment period ends, 4:30 PM
Contact: Pamela Grafstrud, (907) 259-7652 or pgrafstru@envirocon.state.ak.us

Governor's Council on Rural Sanitation

March 21-22 Teleconferenced meeting, beginning 9:00 AM, Juneau, Anchorage, Fairbanks and Barrow.
Public testimony will be taken on March 22, 9-11 AM, on specific issues.
Contact: Brenda Mann, (907) 465-5147, or bmarr@envirocon.state.ak.us

Alaska Water / Wastewater Management Association research and development seminar

March 29, Anchorage 8:30 AM, Wilda Marston Theatre, Z.J. Loussac Library, 3600 Denali St.
On innovative ideas for water / wastewater and solid waste technology for small towns.
Contact: Phillip Benson, P.O. Box 81069, Fairbanks, AK 99708, pbenson@polamet.com

Pesticide application

Public workshop on proposed pesticide application at Bear Valley Golf Course:

April 15 1996 Deadline for public comment on this U.S. Coast Guard application...
Contact: Dick Barrett, Carl Kab, Susan Mircovich, or Rosemary Lombardi at (907) 745-3236, or toll free in Alaska, (800) 478-2577.

Oil and Hazardous Substances

Public meeting to present a "White Paper on Secondary Containment"

March 20: Anchorage 1:00 PM, Sheraton Hotel, Kuskokwim Room, Anchorage
DEC presentation for contingency plans holders and others interested.
Contact: Ken Rogowski, (907)269-7540, krogowski@envirocon.state.ak.us

Notice of new regulations governing "response action contractors."

These regulations take effect March 13.
Contact: Chris Pace, (907) 465-5231, cpace@envirocon.state.ak.us

Unified Plan for Oil and Hazardous Materials Response

March 31, 1996 Deadline for public comment on changes to the Unified Plan, a joint federal/state contingency plan for responding to oil and hazardous materials incidents
Contact: Larry Iwamoto, (907) 269-7683, Iwamoto@envirocon.state.ak.us

Elmendorf AFB Restoration advisory board meeting

April 17, Anchorage 7 PM, at the Regal Alaskan
Contact: Mark Davidson, EAFB at (907) 552-5755

Underground Storage Tank Worker Exams

Anchorage: Every Saturday Fairbanks: Every 4th Saturday Juneau: 1st Saturday, February, May, August, November
Contact: Ben Thomas, (907), 455-5206, btthomas@envirocon.state.ak.us
To apply for the exam call 1-800-275-8301.

ServSafe Foodservice Sanitation Manager's Certification class

April 18, Anchorage The Anchorage Restaurant and Beverage Association (ARBA) is offering the National Restaurant Association's ServSafe Foodservice Sanitation Manager's Certification program. Governor Tony Knowles has proclaimed April as Food Safety Awareness Month.
Contact: ARBA, 341 E. 59th, Suite 200, Anchorage, AK 99518, phone (907)563-8133, fax 563-8640

Solid waste fees From agony to ecstasy

Determining fees for solid waste permits — for treatment and disposal of solid waste or closeout of inactive oil and gas drilling sites — has been in the works at DEC since 1993.

Hundreds of comments came from the public as program staff tried four times to develop a fair and workable fee structure. The issue was finally resolved early this year.

Permit fees charge the user for the department's costs in issuing the permits, passing on much of the expense of regulating to those using the services — the regulated entities.

On its third try, the department proposed basing fees on the model used in air permit fees — an hourly rate would be charged for work specific to a facility, combined with a "per ton" rate that would help include costs difficult to quantify in a specific facility, such as technical assistance.

"It *seemed* like a good idea but public comments clearly showed it wasn't," said Janice Adair, DEC environmental health director. "Inadvertently the proposal placed an unfair financial burden on the hard rock mining industry."

Nearly all comments also stressed that permit applicants should pay only for those costs associated with their own facilities. Larger permit holders did not want to subsidize the smaller ones, Adair said.

The fourth proposal started from scratch, beginning with a re-reading of every piece of public comment received. Those comments became the foundation of the final fee structure.

The proposal was mailed to over 850 people. Three public hearings were held, in Fairbanks, Anchorage,

Please see next page

Water quality standards revisions highlight mixing zones

Water quality specialists at DEC are asking for public comments until March 22 on a DEC proposal for revisions to the mixing zone provisions of the Alaska water quality standards. Public hearings were held in mid-March.

The revisions will clarify conditions for allowing mixing zones. They will also make the regulations easier to use and more predictable for regulated facilities, environmental groups and the public.

The changes result from a commitment made during the resolution of the Sierra Club Legal Defense Fund's

petition on the water quality standards regulations.

The department is requesting public comment on language simplification and suggested improvements in structure on the entire chapter of the regulations.

**Contact: Pamela Grefsrud, DEC
Anchorage, 269-7568,
pgrefsr@envircon.state.ak.us**

Solid waste fees continued from p. 6

and Juneau. The Juneau hearing was also a statewide teleconference. This time, the department received only 17 comments.

"By addressing all concerns, either by changing the proposed regulations or explaining why we couldn't do what they suggested, we were able to develop a fee structure that the public was willing to accept. The acceptance may be somewhat grudging because people

would rather not pay fees, but this structure is acceptable because it is fair and reasonable.

"No one likes to pay for something they've received for free in the past. Most people, however, realize that the law requires certain permits, and if they don't have them, their projects will be held up - which costs much more. So, they are willing to pay a reasonable and fair fee. Constructive comments can and do make a difference, and the process worked," said Adair.

**Contact: Heather Stockard, DEC
Juneau, 465-5162,
hstockar@envircon.state.ak.us**



PLAIN ENGLISH POLICY

Keeping It Simple

by **Billie Wilson**

The chief argument in defense of a complex regulation is: "It's written for scientists and engineers." This might be valid, except that (1) all readers deserve to know what government requires; and (2) scientists and engineers have asked, "What on earth does this mean?"

While a formula, standard, or equation cannot always be simplified, instructions for its use can be. We're so used to jargon, legalese, and important-sounding phrases, the idea of using simpler words can seem — simplistic. Even if some concepts cannot be simplified, clarity can be increased by breaking big blocks of instructions into short, numbered steps.

When writing about a complex subject, ask: (1) What needs to be said? and (2) Can it be said with fewer, shorter words? Another tip: when you see the phrase, "In other words....", pay close attention to what follows. That's often a better way to say it.

Billie Wilson, DEC paralegal assistant, originated the department's "plain English policy."

Hooper Bay, a city on the move!

by Greg Capito

The year was 1992 and in Hooper Bay Alaska, the situation could not have looked more bleak.

The local government was not functioning and an audit revealed a staggering municipal debt and inadequate bookkeeping system. Staff turnover in key positions was epidemic — six city administrators in eight years. The city's utility systems had fundamental operational problems.

Even worse, a local resident died from a fluoride overdose at one of the town's two watering points. The national media picked up on the tragedy and broadcast it around the nation.

To the casual observer visiting Hooper Bay today, not much appears to have changed. But a closer look shows startling improvements in this Yupik community of over 1,000 residents on the Yukon-Kuskokwim delta.

The town hired a competent administrator who has worked diligently with various government agencies to cut much of the city's debt. Accounting and personnel procedures were put in place to strengthen the city's overall management.

The mayor, council and local residents worked together and cleaned up a honey bucket dump near the school that was both an eyesore and public health hazard. This job was done so well that ducks now breed there each spring! And this was just the beginning. Road and sanitation improvements placed on the "back burner" by cautious federal and state agencies a few years ago are now scheduled for design and construction. The clinic and Head Start buildings have been completely refurbished.

All of these projects will ultimately result in better transportation, health and human services for all the residents. In short, after a long hiatus, Hooper Bay is a

city on the move.

Local leadership and commitment are the biggest reasons for these positive changes. Hooper Bay realized that outsiders could only do so much and the impetus for making improvements had to come from within. And this struggle continues today.

Running a small town government in rural Alaska has never been easy and the remaining problems will take years to resolve. But there is an element of hope for the future, and in Hooper Bay this most precious commodity is no longer in short supply.

Greg Capito is the chief of DEC's Village Safe Water Program, 465-5180, gcapito@envircon.state.ak.us

Remote maintenance workers fight big freeze

Remote maintenance workers (RMWs), Public Health Service and DEC personnel have been very busy saving water and wastewater systems in this winter's extreme weather, according to Bill Fagan, DEC's RMW manager.

Local water systems and Native health corporations employ ten RMWs in rural Alaska who travel to villages to maintain systems and assist operators.

"This winter once again dramatized the value of remote maintenance workers — they've saved a number of systems this year, and kept safe water flowing. This equates to public health, and saving the capital investments these expensive systems represent," said Fagan.

Both urban and rural systems

experienced problems, with smaller rural systems hit particularly hard. Systems were affected in Grayling, Kiana, Savoonga, Arctic Village, Huslia, Toksook Bay, Pitkas Point, St. Mary's, Pilot Station, Rampart, Beaver, Shungnak, New Stuyahok, Mt. Point, Klawock, Gambell and other rural and urban communities.

In response, temporary sources of water were developed by using local and agency resources to install temporary pumps and transmission lines to river sources, trucking and hand-carrying water to refill water tanks and circulating systems to maintain heat systems to prevent total system failures. Thawing machines were flown in for use and broken lines repaired.

"Skills of local operators have been improving steadily over the years, but technical assistance is still required due to Alaska's periodic extreme conditions. These are the times when RMW and other assistance providers are particularly appreciated," said Fagan. He said that because of improved operational skills and available technical assistance, there have been no reported catastrophic system failures over the last six or seven years.

"Hats off to local utility operators, RMWs and others who have been working long, cold hours to maintain service and protect expensive systems," Fagan said.

Please see next page

**Remote maintenance workers,
contin. from p. 8**

Many homes with septic systems have also come to the attention of DEC's Division of Statewide Public Service, in both rural and urban areas. With threats of freeze-up, staff members said that their most important advice is

to use hot water to maintain thawed septic systems. Taking baths, longer showers, and clothes washing produce large slugs of hot water which help keep the systems from freezing.

Home owners should fix small leaks or small flows to their systems since these tend to glacier in sewer lines, causing plugs which need to be thawed.

For properly-built systems this should be adequate maintenance to protect against freezing.

Contact: Bill Fagan, DEC Juneau, 465-5180, bfagan@or.vircon.state.ak.us

Spotlight on performance DEC employees

DEC employees responded generously to the SHARE campaign in November and December, skillfully coordinated by Sante Lesh. Employees pledged \$21,887 to charitable agencies of their choice through payroll deduction, \$4511 more than last year. Gennie French, and Rielle Markey offered to match others' contributions to increase the giving.

Christmas giving also took the form of several drives for donations to needy families. Bonnie Clouser, Accounting Clerk for the Contaminated Sites Program, spearheaded an effort for each floor of the Anchorage DEC offices to adopt a family. In Juneau, Mike Conway and Gerry Guay, in Air and Water Quality Division, also organized an effort to gather and distribute donated food and other gifts.

Mike Nafplotis, receptionist in the Fairbanks DEC office, was featured in the Fairbanks News Miner during National Disability Employment Awareness Month for his abilities in assisting the public, phone answering, and word processing. Mike is blind and makes use of equipment which converts computer text to Braille. Many who have called the Fairbanks office will agree he is

very effective and helpful.

The following employees have received thanks and kudos from clients and co-workers:

Jim Frechione of the solid waste program in Anchorage from the solid waste manager for the City of Valdez for Jim's helpfulness and professionalism.

Bill Stokes of the Statewide Public Service Division in Anchorage, from the community of Atka for a good working relationship and from the Lagoonarium for a ground water pollution demonstration at the 1995 State Science and Engineering Fair.

Jim Ferguson of the Industrial Operations Section, for an impromptu presentation on state-federal cooperative efforts on timber harvesting and water quality to the U.S. Secretary of Agriculture, Dan Glickman.

Tom Chapple and Steve Provant, of the Spill Prevention and Response Division, from the Regional Citizens' Advisory Council, for their exceptional work on the Prince William Sound tanker contingency plan.

M. J. Pilgrim of the State Chemistry Lab and **Lester Leatherberry** of the Spill Prevention and Response Division for their professionalism and cooperative attitude during a recent planning session with the Auke Bay Fire Department.

Nancy Napolilli, Belinda Swift, Cory Willis and Rob Danner of the Environmental Sanitation Program from the Alaska Cooperative Extension Service for their support in developing and implementing a food manager certification program, ServSafe.

Keven Kleweno of Statewide Public Service Division in Anchorage from the Resource Apprenticeship Program for Students for hard work in making their program a success.

Paul Pinard and the Mat-Su Public Service Office staff from a local property owner and subdivider for the office's excellent customer service, assistance, and timely action in a recent subdivision plan approval.

Leonard Verrelli of the Air and Water Quality Division for his participation on the Marketing Alaska Mining and Minerals sector work group.

Scott Bailey of the Air Quality Maintenance section from Tesoro Petroleum Company for quick and effective response to a recent permit amendment request.

Ray Dronenburg of the Contaminated Sites Program from the Alaska Village Electric Cooperative for assistance in resolving environmental issues during purchase of a power plant site for the Bethel Utilities Corporation.

Alaska Department of Environmental Conservation
Division of Administrative Services
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

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Letter to Alaskans

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ing, and revised budgeting and financial management — a huge accomplishment by any agency or company of our size, especially in a one-year period.

Indeed, among the gratifying results of these changes is that people are noticing our improvements in service. We received at least 200 letters or calls of appreciation for DEC staff's performance during 1995, and now average over 20 such contacts per month.

Certainly, this comes partly from organizing into clear reporting lines, linking program development with implementation. We are giving our clients a system that emphasizes cooperation, efficiency, and technical excellence, all of which will have even greater payoffs for Alaskans and the department in the future.

Our restructuring is also producing

cost efficiencies, reflecting the Governor's long-range fiscal plan for the state. For example, we are requesting fewer workers in the coming fiscal year while trying to protect employees through use of attrition or reassignment to other programs.

We have also slashed our dependence on the state's general fund. Our request for these state funds for next fiscal year is 6.9% below the current year. In 1992, DEC relied upon \$30 million in general funds, in contrast to a \$16.7 million request for fiscal year 97.

We also pulled administrative services together under one director, made our budget much clearer to the legislature and the public, and saved money in the Oil and Hazardous Response Fund and through alternative funding sources for work directly benefiting single clients — such as the Alaska Pulp Corporation's Silver Bay cleanup and several large permits for

mining, oil production, and pulp processing operations.

All this and more was made possible by some fundamental changes in policy, leaving behind solely end-of-the-pipe enforcement as our primary mission, and entering a time when compliance and technical assistance make up much more of our daily work.

It has been a good start made possible by the cooperation and assistance of the entire staff. My goal is to continue to build on this foundation, and I invite the continued support and suggestions of the staff and our clients, the Alaska public.