

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 86/2

8995 SENATE RESOURCES

486

**SJR**

**23**

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

NO. \_\_\_\_\_  
BILL VERSION: SJR 23  
PUBLISH DATE: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: Proposing postage stamps honoring  
wild Alaska salmon and centuries of continued...  
Sponsor: Senate Resources Committee  
Requestor: Senate Resources Committee

Department Affected: Legislative Affairs Agency  
BRU: All  
Component: All

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

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

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

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact to the Legislative Affairs Agency.

Prepared By: Karla Schofield, Deputy Director *Karla Schofield* Phone: 465-3852  
Division: Administrative Services Date: 4/26/95

Approved By: Pamela A. Varni, Executive Director *Pamela A. Varni*  
Agency: Legislative Affairs Agency Date: 4/26/95

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



# Alaska State Legislature

Session:  
State Capitol  
Juneau AK 99801-1182

MEMO

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

TO: George Utermohle, Attorney  
Legal Services

VIA FAX: 2029

FROM: Annette E. Kreitzer, Aide to  
Senator Loren Leman

DATE: April 1, 1995

RE: Senate Joint Resolution companion

\*\*\*\*\*

Please prepare a SJR companion to LS0962C relating to postage stamps honoring wild Alaska salmon.

The sponsor is Senator Leman (Capitol Room 115).

9-LS0962C ✓  
Utermohle  
3/24/95

*Kristin*

**HOUSE JOINT RESOLUTION NO.**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE ELTON**

Introduced:  
Referred:

**A RESOLUTION**

1 **Proposing postage stamps honoring wild Alaska salmon and centuries of continued**  
2 **use of wild Alaska salmon for subsistence, sport, and commercial fish harvesters.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the cold, clear, clean waters off Alaska's 34,000 mile coast are the world's  
5 greatest resource for natural, wild salmon; and

6 **WHEREAS** Alaska's rivers and streams are the nurseries for the world's most  
7 important and productive runs of wild and natural salmon; and

8 **WHEREAS**, in the pristine waters of Alaska, the five species of Alaska salmon mature  
9 in an unmatched natural environment that provides them with superior flavor, color, and  
10 texture; and

11 **WHEREAS** wild Alaska salmon have increased in numbers year after year; and

12 **WHEREAS** Alaska's wild and natural salmon are a mainstay of Alaska's complex  
13 subsistence economy and lifestyle, providing protein and adding to the rich complexity of  
14 Alaska's diverse cultures; and

15 **WHEREAS** subsistence harvesting of salmon allows extended families to support  
16 themselves in meaningful, productive work in areas of the state that do not have cash

1 economies to sustain the protein needs of Alaskans; and

2       **WHEREAS** Alaska's wild and natural salmon play an increasing role in the state's  
3 visitor industry, attracting sport anglers from around the world who are served by a growing  
4 lodge, charter boat, and tourism industry; and

5       **WHEREAS** participation in recreational fishing in Alaska has grown from 46,000  
6 anglers at statehood to 426,514 anglers in 1993; and

7       **WHEREAS** there were more than 2,500,000 angler days of fishing in Alaska in 1993;  
8 and

9       **WHEREAS** sport angler expenditures translate into gross business revenue of about  
10 \$500,000,000 and several thousand jobs in Alaska; and

11       **WHEREAS** the premier sport fish in Alaska is wild, natural salmon; and

12       **WHEREAS** wild Alaska salmon account for more than 90 percent of all salmon  
13 harvested commercially in the United States each year; and

14       **WHEREAS** exports of wild Alaska salmon help balance the United States trade deficit  
15 because more than 50 percent of the Alaska commercial harvest of salmon is sent overseas;  
16 and

17       **WHEREAS** exports of wild Alaska salmon were worth nearly \$750,000,000 in 1993,  
18 the last year for which accurate customs numbers are available; and

19       **WHEREAS** more than 35,000 jobs in Alaska rely on the seafood industry and the  
20 seafood industry is the largest private sector employer in Alaska; and

21       **WHEREAS** the salmon segment of the seafood industry is the oldest component of  
22 the industry and one of the most important elements in the industry;

23       **BE IT RESOLVED** that the Alaska State Legislature supports recognition of wild  
24 Alaska salmon through the issuance of United States postal stamps recognizing the five  
25 species of wild Alaska salmon and centuries of continued use of wild salmon, Alaska's most  
26 important renewable resource and a resource that is managed on a sustained yield basis for  
27 the benefit of subsistence, sport, and commercial harvesters.

28       **COPIES** of this resolution shall be sent to the Honorable Marvin Runyon, Postmaster  
29 General, United States Postal Service; and to the Honorable Ted Stevens and the Honorable  
30 Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative,  
31 members of the Alaska delegation in Congress.

**SJR**

**27**

# FISCAL NOTE

STATE OF ALASKA

BILL NO. SJR27

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources  
 Title: Endorsing development of the Falls Creek BRU: Resource Development  
hydropower project Component: Land Development  
 Sponsor: Senator Zharoff  
 Requestor: Senate Resources Component Serial No. 431

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

There is no anticipated fiscal impact associated with passage of this resolution.

Prepared by: Ron Swanson, Director Phone: 762-2692  
 Division: Land Date: 25-Apr-95  
 Approved by Commissioner: *John Shively* Date: 4-25-95  
 Agency: Natural Resources

PREPARER TO PROVIDE  
For further
NOR'S LEGISLATIVE OFFICE  
Legislative Office

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 4/25/95

FURTHER:

Date of 5-Day Notice: 24-Hour Note  
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-26-95

Resources Committee considered SJR 27

Endorsing development of the Falls Creek hydropower project.

and recommends:

- be replaced with \_\_\_\_\_ CS SJR 27 (RES)  Senate Bill: same title
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( )  new title
- attached amendment(s)  House Bill: same title
- adopt Letter of Intent by \_\_\_\_\_ Committee  technical title
- further referral to the \_\_\_\_\_ Committee  new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>1 rule technical</i>	✓				
<i>Ann Hoff</i>					
<i>Alvin H. Taylor</i>	✓				
<i>Rick Helford</i>	✓				
<i>Shirley</i>	✓				
CHAIR: <i>Loren D. Leman</i>	✓				

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
<i>DNR</i>	<i>4/25</i>	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

9-LS1110G ✓  
Cramer  
4/26/95

**CS FOR SENATE JOINT RESOLUTION NO. 27(RES)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR ZHAROFF**

**A RESOLUTION**

1 **Endorsing development of the Fall Creek hydroelectric project near Gustavus.**

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS** electricity used in Glacier Bay National Park and Gustavus is provided  
4 by diesel generation; and

5 **WHEREAS** power consumption in this area is projected to increase; and

6 **WHEREAS** a small hydroelectric project at Fall Creek could satisfy the needs of  
7 Glacier Bay National Park and the community of Gustavus well into the 21st century; and

8 **WHEREAS** hydroelectric generation at Fall Creek could result in fuel savings,  
9 reduced operating and maintenance costs, and reduced capital expenditures for improvements  
10 and upgrades to the existing power system to meet demand, and thereby reduce power costs  
11 to consumers; and

12 **WHEREAS** the Fall Creek hydroelectric project is intended to be financed solely by  
13 private capital; and

14 **WHEREAS** issues related to Glacier Bay National Park are frequently contentious, but  
15 the community of Gustavus and the National Park Service agree that the Fall Creek  
16 hydroelectric project could be environmentally sound and economically advantageous; and

17 **WHEREAS** the community of Gustavus recently reaffirmed support of the Fall Creek

1 hydroelectric project in a unanimous vote; and

2       **WHEREAS**, because the site of the proposed hydroelectric project is within the  
3 boundaries of Glacier Bay National Park and Preserve, an Act of Congress will be needed to  
4 change designation of the land status;

5       **BE IT RESOLVED** that the Alaska State Legislature endorses private development  
6 of the Fall Creek hydroelectric project and encourages the Congress to enact appropriate  
7 measures to redesignate the land status; and be it

8       **FURTHER RESOLVED** that the Alaska State Legislature urges the National Park  
9 Service and other federal agencies to cooperate with the project developer and state agencies  
10 for expeditious permitting for the Fall Creek hydroelectric project.

11       **COPIES** of this resolution shall be sent to the Honorable Bruce Babbitt, Secretary of  
12 the U.S. Department of the Interior; Roger G. Kennedy, Director, National Park Service, U.S.  
13 Department of the Interior; Robert Barbee, Alaska Regional Director, National Park Service,  
14 U.S. Department of the Interior; and to the Honorable Ted Stevens and the Honorable Frank  
15 Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of  
16 the Alaska delegation in Congress.



# Alaska State Legislature

Session:  
State Capitol  
Juneau AK 99801-1182

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

MEMO

TO: Terry Cramer, Attorney  
Legal Services  
via fax: 2029 1 page

FROM: Annette E. Kreitzer, Aide to  
Senate Resources Committee

DATE: April 26, 1995

RE: Senate Resources CS for SJR 27 (LS1110NF) 4/26/95

\*\*\*\*\*

Please make these additional changes to SJR 27 ( Fall Creek resolution).

- 1) Page 1, Line 10: DELETE [could]
- 2) Page 1, Line 16: Insert new Whereas

WHEREAS the community of Gustavus recently reaffirmed support of the Fall Creek hydroelectric project in a unanimous vote; and

- 3) Page 2, line 5: [.] : and <sup>01/80</sup> BE IT FURTHER RESOLVED that the National Park Service and other federal agencies cooperate with the project developer and State agencies for expeditious permitting for the Fall Creek hydroelectric project.

9-LS1110F ✓

Cramer

4/26/95

**CS FOR SENATE JOINT RESOLUTION NO. 27(RES)**

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

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

Offered:

Referred:

Sponsor(s): SENATOR ZHAROFF

**A RESOLUTION**

1 **Endorsing development of the Fall Creek hydroelectric project near Gustavus.**

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS** electricity used in Glacier Bay National Park and Gustavus is provided  
4 by diesel generation; and

5 **WHEREAS** power consumption in this area is projected to increase; and

6 **WHEREAS** a small hydroelectric project at Fall Creek could satisfy the needs of  
7 Glacier Bay National Park and the community of Gustavus well into the 21st century; and

8 **WHEREAS** hydroelectric generation at Fall Creek could result in fuel savings,  
9 reduced operating and maintenance costs, and reduced capital expenditures for improvements  
10 and upgrades to the existing power system to meet demand, and thereby ~~could~~ reduce power  
11 costs to consumers; and

12 **WHEREAS** the Fall Creek hydroelectric project is intended to be financed solely by  
13 private capital; and

14 **WHEREAS** issues related to Glacier Bay National Park are frequently contentious, but  
15 the community of Gustavus and the National Park Service agree that the Fall Creek  
16 hydroelectric project could be environmentally sound and economically advantageous; and

17 **WHEREAS**, because the site of the proposed hydroelectric project is within the

*It WHEREAS the community of Gustavus recently reaffirmed support of the Fall Creek hydroelectric project in a unanimous vote; and*

1 boundaries of Glacier Bay National Park and Preserve, an Act of Congress will be needed to  
2 change designation of the land status;

3 **BE IT RESOLVED** that the Alaska State Legislature endorses private development  
4 of the Fall Creek hydroelectric project and encourages the Congress to enact appropriate  
5 measures to redesignate the land status; *and*

6 *→* **COPIES** of this resolution shall be sent to the Honorable Bruce Babbitt, Secretary of  
7 the U.S. Department of the Interior; Roger G. Kennedy, Director, National Park Service, U.S.  
8 Department of the Interior; Robert Barbee, Alaska Regional Director, National Park Service,  
9 U.S. Department of the Interior; and to the Honorable Ted Stevens and the Honorable Frank  
10 Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of  
11 the Alaska delegation in Congress.

*BE IT FURTHER RESOLVED that the National Park Service  
and other federal agencies cooperate with the project  
developer and State agencies for expeditions permitting for  
the Fall Creek hydroelectric project.*

9-LS1110\F ✓  
Cramer  
4/26/95

**CS FOR SENATE JOINT RESOLUTION NO. 27(RES)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATOR ZHAROFF**

**A RESOLUTION**

1 **Endorsing development of the Fall Creek hydroelectric project near Gustavus.**

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7 Glacier Bay National Park and the community of Gustavus well into the 21st century; and

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9 reduced operating and maintenance costs, and reduced capital expenditures for improvements  
10 and upgrades to the existing power system to meet demand, and thereby could reduce power  
11 costs to consumers; and

12 **WHEREAS** the Fall Creek hydroelectric project is intended to be financed solely by  
13 private capital; and

14 **WHEREAS** issues related to Glacier Bay National Park are frequently contentious, but  
15 the community of Gustavus and the National Park Service agree that the Fall Creek  
16 hydroelectric project could be environmentally sound and economically advantageous; and

17 **WHEREAS**, because the site of the proposed hydroelectric project is within the

1 boundaries of Glacier Bay National Park and Preserve, an Act of Congress will be needed to  
2 change designation of the land status;

3 **BE IT RESOLVED** that the Alaska State Legislature endorses private development  
4 of the Fall Creek hydroelectric project and encourages the Congress to enact appropriate  
5 measures to redesignate the land status.

6 **COPIES** of this resolution shall be sent to the Honorable Bruce Babbitt, Secretary of  
7 the U.S. Department of the Interior; Roger G. Kennedy, Director, National Park Service, U.S.  
8 Department of the Interior; Robert Barbee, Alaska Regional Director, National Park Service,  
9 U.S. Department of the Interior; and to the Honorable Ted Stevens and the Honorable Frank  
10 Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of  
11 the Alaska delegation in Congress.



# Alaska State Legislature

Session:  
State Capitol  
Juneau AK 99801-1182

MEMO

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

TO: Terry Cramer, Attorney  
Legal Services  
via fax 2029 (3 pages)

FROM: Annette E. Kreitzer, Aide to  
Senate Resources Committee

DATE: April 25, 1995

RE: CS for SJR 27, Endorsing Fall Creek Project

---

Please draft a Resources Committee substitute for SJR 27 using the attached marked up draft (LS1110C). Please note the area was incorrectly noted the as Falls Creek in the C version of this resolution. It is apparently Fall Creek.

This resolution is scheduled for the Senate Resources hearing April 26. It is necessary to have the work draft by 10:00 a.m..

Thanks for your assistance. If there are any problems reading the faxed material, please call. The marks were made with red pencil, but I don't think that affects the quality of the fax on your end.

2

WHEREAS the Community of Gustavus recently reaffirmed support of the Fall Creek proposal in a unanimous vote;

WHEREAS the Community of Gustavus wishes to reduce air pollution, the risk of oil spills, and rate increases with the State's eventual elimination of the Power Cost Equalization subsidy which would occur with the much lower rates from the Fall Creek system and substantially reduced storage systems at the National Park Service in Glacier Bay;

WHEREAS the Community of Gustavus is experiencing increased tourist related activities and transfers to National Park facilities in Bartlett Cove which will result in significant expenditures to upgrade the National Park Service electrical system which otherwise could be diverted as contributions to the lower rates of the Fall Creek system thereby reducing the State's contribution;

WHEREAS, national organizations have opposed declassification from wilderness of the Fall Creek area which is not pure wilderness having been logged twice, contains an old logging road and fish trap, and two inholdings;

WHEREAS, local interests are becoming usurped by national interests;

WHEREAS the Fall Creek system will open the door to cooperation by the Federal government and reflect local and State reasons being favored as opposed to National interests;

Gustavus Electric Co.  
P.O. Box 102  
Gustavus, Alaska 99826

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April 26, 1995

FAXLETTER

Pages 2

Honorable Loren Leman  
Chairman  
Senate Resources Committee  
ALASKA STATE LEGISLATURE

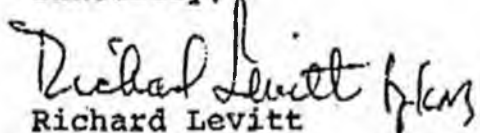
Dear Senator Leman:

We understand a committee substitute version will be offered for SJR 27. We respectfully request your consideration for incorporating the attached language. We strongly feel the Fall Creek proposal breaks down to a National versus local and State issue. Consequently, we feel it is very important to send a clear message to our Congressional delegation that local and State reasons to support the Fall Creek proposal should prevail.

Thank you very much for your consideration.

However, we do not favor incorporating this language if it could prevent a Resolution of support from passing this legislative session.

Sincerely,

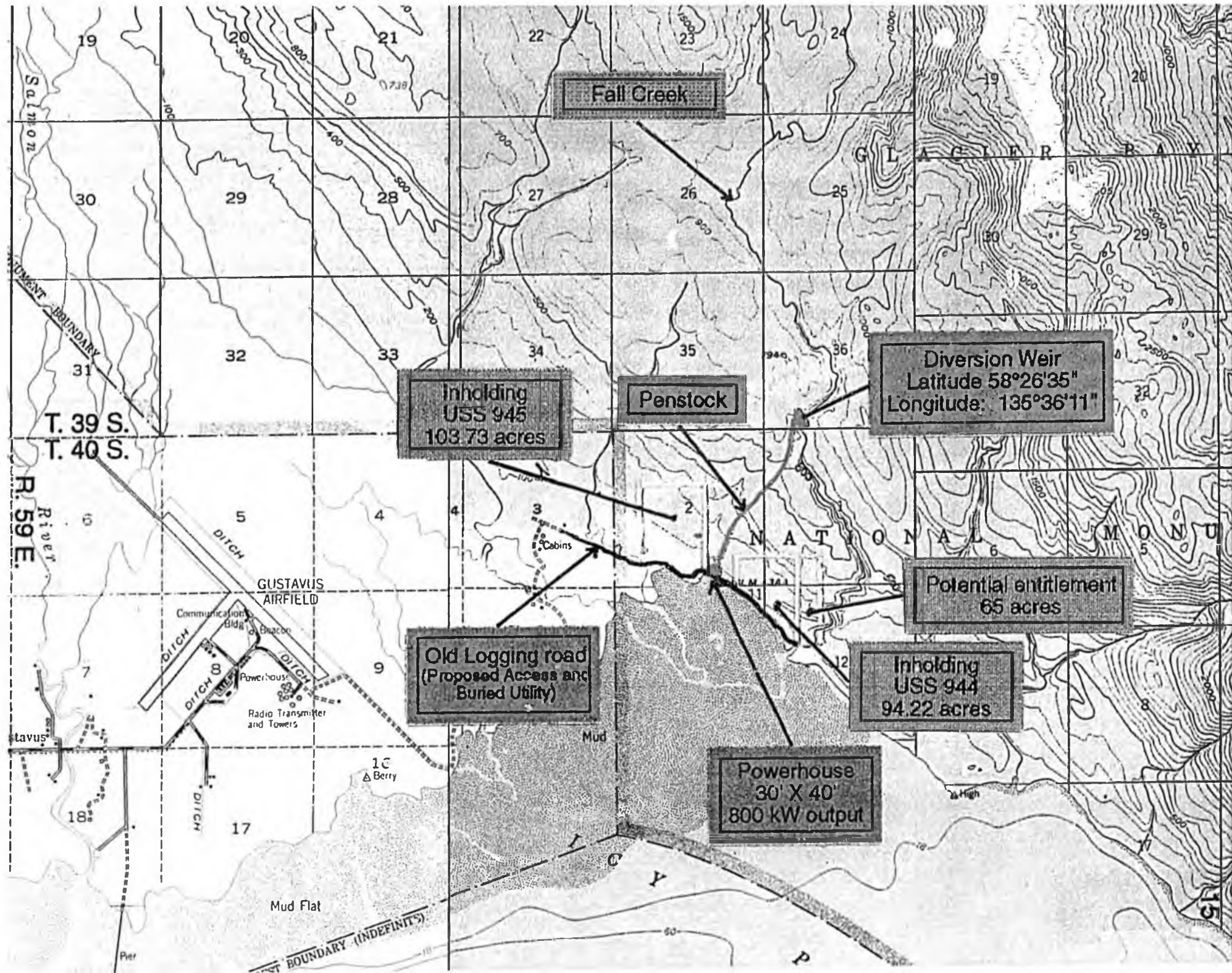


Richard Levitt  
President  
Gustavus Electric Company

Juneau Contact: Kellus Sewell - Tel 907 586 3333 or 790 4477

586-4444 FAX

cc Senator Zharoff  
Senator Robin Taylor



Fall Creek

GLACIER BAY

Penstock

Diversion Weir  
Latitude 58°26'35"  
Longitude: 135°36'11"

Inholding  
USS 945  
103.73 acres

Potential entitlement  
65 acres

Powerhouse  
30' X 40'  
800 kW output

Old Logging road  
(Proposed Access and  
Buried Utility)

Inholding  
USS 944  
94.22 acres

GUSTAVUS  
AIRFIELD

NATIONAL MONUMENT

Mud Flat

Salmon

River

T. 39 S.  
T. 40 S.

R. 59 E.

DITCH

DITCH

DITCH

BOUNDARY (INDEFINITE)

Pier

Communication Bldg

Beacon

Powerhouse

Radio Transmitter  
and Towers

Cabin

Mud

1C  
Berry

High

15



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (607) 486-5259 (FAX ALSO)

DURING SESSION:

STATE CAPITOL, JUNEAU, ALASKA 99801-1182 • (907) 465-3473 • FAX: (907) 463-3043

DISTRICT C

KODIAK ISLAND • RURAL SOUTHEAST • SOUTH KENAI PENINSULA

## Sponsor's Statement

### SJR 27

SJR 27 has been introduced to help address the long term energy needs of Gustavus and the Glacier Bay area. There is a stream and waterfall close to the town - Fall Creek - that lends itself to harnessing for power generation. It is located within the boundary of Glacier Bay National Park, and therefore it will take Congressional action to change the land designation. Our Congressional delegation in Washington plans to address this issue soon, and they have indicated that strong state endorsement would aid them.

At present, there are two separate diesel power-generating plants - one for the town, and one for Park Headquarters. Each requires the maintenance of a dock, distribution system, and storage tanks. Neither generating facility is adequate to meet the long term needs of the area.

Fall Creek has been identified as a site that could be developed to meet the needs of the growing community and Glacier Bay National Park with relatively small impact on the surrounding area. The hydropower project would result in significant cost savings to the state and lower power costs to the users, and I believe it is good public policy to encourage this type of development.

# Gustavus Community Association



Post Office Box 62  
Gustavus, Alaska 99826

---

4-24-95

DICK LEVITT  
P.O. BOX  
GUSTAVUS AK  
99826

DEAR MR. LEVITT

THE GUSTAVUS COMMUNITY ASSOC. HAD AN ADVISORY VOTE FROM THE GENERAL MEMBERSHIP. THE VOTE APPROVING THE PROPOSED HYDRO ELECTRIC PROJECT IS AS FOLLOWS; 29 IN FAVOR, 0 AGAINST.

THANK YOU

A handwritten signature in cursive script, appearing to read "Tom Morrow", is centered on the page.

TO MORROW  
PRESIDENT G.C.A.

Support Letter

BEAR TRACK MERCANTILE  
BOX 259  
GUSTAVUS, AK. 99826  
907-697-2358

Senator F. Zharoff  
Alaska State Senate  
Juneau, Ak. 99811  
April 25, 1995

Subject: Hydro Electric power

Dear Sen. Zharoff:

I have been asked by Dick Levitt of the Gustavus Electric Company to supply a short note to your office concerning the Hydro. Project that Dick has been working on for years. I would like to add our names to the list of supporters for this project. The majority of existing commerce within Gustavus has been developed since the inception of the Gustavus Electric Company. Hydro. power is a clean, and for most of the year, a dependable source of electricity. The continued growth of Gustavus will benefit from this type of power generation.

We ask that you help garner support for this proposal during this legislative session. Thank you for your time and consideration.

Sincerely;

Bruce Tedtsen -- John Nixon

( HI !!! Sandy)

Senator Zharoff m



This letter is in support of  
the Fall Creek Hydroelectric project as  
proposed by Gudavus Electric Company.  
Please do everything in your power to  
see that congressional action proceeds  
to make this project possible.

Thank you, I am  
Aimée M. Johnson  
OWNER

THE SALMON RIVER SMOKEHOUSE

SHOOTING STAR LANE • BOX 40 • GUSTAVUS, ALASKA 99826 • (907) 697-2311

# Gusto Building Supply

"BUILD WITH GUSTO"



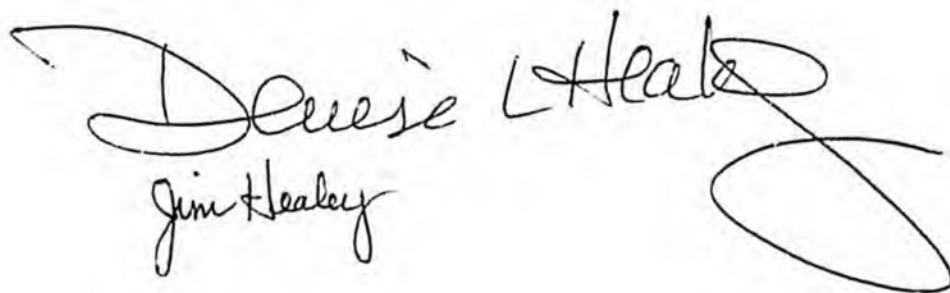
P.O. BOX 10 GUSTAVUS, ALASKA 99826

(907) 697-2297 FAX (907) 697-2291

Senator Zharoff

My husband and myself  
are in strong support  
of The Electric Company's  
effort to develop Falls Creek  
as a hydro power project.

Please accept this letter as  
our endorsement

  
Denise L. Healey  
Jim Healey

Paul Berry  
PO Box 143  
Gustavus

Thursday, April 20th, 1995

Dick Levitt  
Gustavus

Hello Dick:

I appreciated your presentation at the GCA meeting tonight and I wanted to express my support for the Falls creek Hydro project. I'm an environmentalist / preservationist by nature but I'm also a user of electricity.

I appreciate your efforts to involve and inform the community about all this as well as your apparent respect for the various views in regards to land swaps. I'm left with the impression that you've thought things through and have asked some questions.

Changing the status of NPS Wilderness lands or the Dude Creek Crane Refuge is a loaded issue. I'd rather see the Fall Creek Wilderness acres swapped with other non-wilderness NPS acres. Also as Rita Wilson mentioned there are lands within the Dude Creek Refuge that are potential sites for Gustavus's future Landfill / Septage facility, and transferring them to the NPS would probably eliminate that.

I donno, as I'm sure you've realized this project has or will have a life of it's own especially in the hands of our Congressional deligation.

Thanks again for keeping the community informed,



*TRI Bed & Breakfast  
P. O. Box 214  
Gustavus, Ak 99826  
(907) 697-2425*

April 25, 1995

Senator Fred Zharoff  
Capitol, Room 121  
Juneau, AK 99801

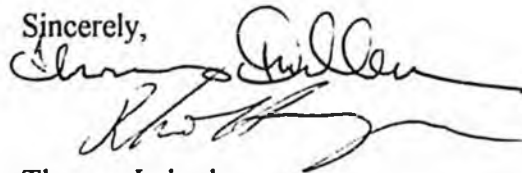
Dear Senator Zharoff:

We are writing this letter in support of the Gustavus Electric Company's proposed hydroelectric project at Falls Creek, Gustavus, Alaska. We believe this project will be of benefit to the citizens of Gustavus and the citizens of Alaska.

We request support from the Alaskan State Legislature for this project and convey this support to our congressional delegation in Washington, D.C.

Thank you for your support.

Sincerely,

Handwritten signatures of Thomas Imboden and Rhio Imboden Harper.

Thomas Imboden  
Rhio Imboden Harper

**SJR**

**28**

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SJR 28

Revision Date: 5/4/95 Dept. Affected: ADFG  
 Title: Requesting the Federal BRU: \_\_\_\_\_  
 Subsistence Board recind actions on the Kenai Peninsula Component: \_\_\_\_\_  
 Sponsor: Sen. Salo  
 Requester: \_\_\_\_\_ COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL					-	
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY95) cost: \$ \_\_\_\_\_

**POSITIONS**

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

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

There are no direct costs to the Department of Fish and Game that would result from passage of this resolution.

Prepared by: \_\_\_\_\_  
 Division: \_\_\_\_\_  
 Approved by Commissioner: *Frank R.*  
 Agency: \_\_\_\_\_

Phone: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Date: 5-4-95

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**ENATE COMMITTEE REF RT  
First Committee of Referral**

DATE: 4/29/95

FURTHER: State Affairs

Date of 5-Day Notice: 24-Hour Rule  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5-5-95

Resources Committee considered SJR 28

Requesting Federal Subsistence Board not to adopt the proposed subsistence moose hunting regulations for Kenai.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John Taylor</i>		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
CHAIR:		<i>Steven A. Swan</i>	✓		

**NEW FISCAL NOTE(S):**

Department                      Date    Zero    Fiscal

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date    Zero    Fiscal

Department	Date	Zero	Fiscal
ADD-6	5/4	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill



# Teleconference

DATE: 5-5-95

SPONSOR: SRES

TIME: START \_\_\_\_\_ END \_\_\_\_\_

1) STR 28 - KENAI PENINS SUBSISTENCE  
 2) HTR 24 - WASTE IN PACIFIC & BEA/W/ SEA  
 3) HTR 38 - MAGADONSON FISHERY  
 4) H8141 -  
 TCN# 50715

NAME (PLEASE PRINT)	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP CODE	(H) PHONE	(W) PHONE	TESTIFYING	WHAT SUBJECT OR BILL?
Dale Bondurant	Self	401 Box 1192 Soldotna AK	99669	2620818		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	STR 28
Leo Palmer	Self	P.O. Box 681 Stereoka AK	99669	262-7888		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	STR 2A
Theo Matthews	UCIDA	Box 4649	611			<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	
Winnie Johnson	Self	Hc 1 Box 1513-10 Kenai AK	99611	252-1009		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	STR 28
						<input type="checkbox"/> Y <input type="checkbox"/> N	
						<input type="checkbox"/> Y <input type="checkbox"/> N	
						<input type="checkbox"/> Y <input type="checkbox"/> N	
						<input type="checkbox"/> Y <input type="checkbox"/> N	
						<input type="checkbox"/> Y <input type="checkbox"/> N	



MAY 5 FRIDAY 15:30 - 17:30 BUTROVICH ROOM CAP205  
PUBLIC HEARING ANNOUNCED \*\* UPDATE 2 \*\*  
SENATE RESOURCES 50715

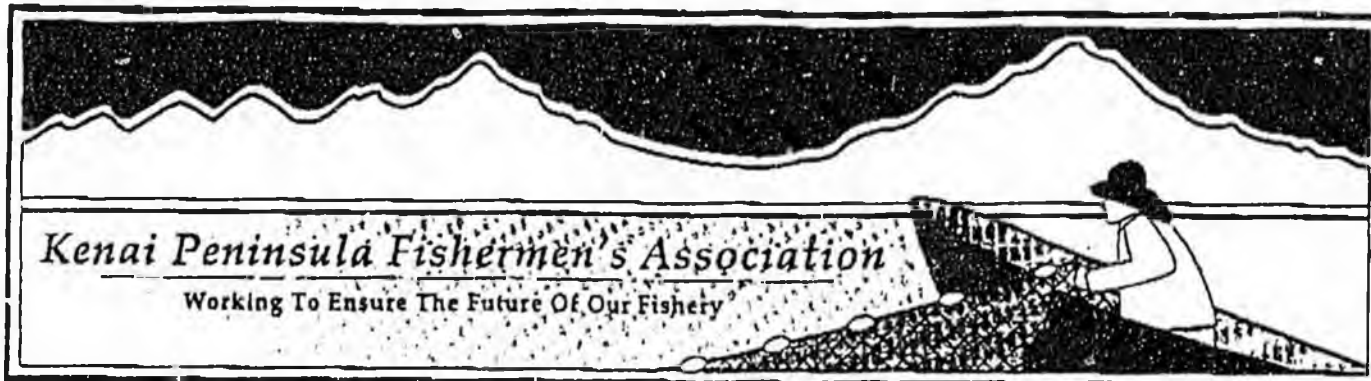
SITES: ANC, DLG, FBX, \*JNU, SOL  
OFFNETS: OF1-NINILCHIK

SJR 28 KENAI PENINSULA SUBSISTENCE PROPOSAL  
HJR 24 WASTE IN PACIFIC AND BERING SEA FISHERY  
HJR 38 MAGNUSON FISHERY CONSERVATION & MGMT ACT  
HB 141 TERM OF FISH BOARD MEMBERS  
HB 207 ADJUSTMENTS TO OIL AND GAS ROYALTIES

SPONSOR REMARKS TO THE PUBLIC  
TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.

Selection=>

PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12  
HELP EXIT BASIS PRINT BWD FWD FIRST LAST QUIT



34824 Kalifornsky Beach Road • Suite E • Soldotna • Alaska • 99669 • (907) 262-2492

May 5, 1995

Senator Judy Salo  
Rep. Mike Navarre  
State Capital Bld.  
Juneau, AK. 99801

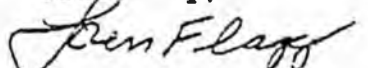
Dear Senator Salo and Rep. Navarre,

KPFA would like to thank you for your May 2, 1995 letter to the Federal Subsistence Board requesting that it "revisit the rural designation" for Kenai Peninsula communities.

We support and appreciate your efforts through HJR 48/SJR 28 on behalf of Kenai Peninsula residents. We feel quite strongly that the Federal Subsistence Board should not adopt any federal regulation changes for hunting or fishing on the Kenai Peninsula.

KPFA continues to support SJR 19 as at least one part of the solution to the subsistence dilemma and would urge you to also support this resolution. I think it is important to note that there has been strong support for this resolution from the fishing community - both sport and commercial - as well as from concerned hunters.

Sincerely,

  
Loren Flagg  
Executive Director

cc: Governor Tony Knowles  
Lt. Governor Fran Ulmer  
Senator John Togerson  
Rep. Gary Davis  
Rep. Gail Phillips  
UFA

*9:00 PM Resources*

9-LS1140F ✓

Cook

5/4/95

CS FOR HOUSE JOINT RESOLUTION NO. 48( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES NAVARRE, G.Davis

A RESOLUTION

1 Requesting that the Federal Subsistence Board not adopt the proposed subsistence  
2 moose hunting regulations for the Kenai Peninsula, not adopt any other federal  
3 regulation changes for hunting or fishing on the Kenai Peninsula, and not adopt  
4 the changes in federal regulations that make a customary and traditional use  
5 determination for certain communities in Alaska.

6 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 WHEREAS the Federal Subsistence Board has proposed granting new subsistence  
8 preferences to several communities on the Kenai Peninsula for the purposes of subsistence  
9 hunting; and

10 WHEREAS the adoption of any new federal regulation changes for subsistence  
11 hunting may create additional conflicts with subsistence hunting and fishing and further divide  
12 residents of the Kenai Peninsula and Alaska; and

13 WHEREAS this will be the first time that communities will have been given new  
14 subsistence preferences since the federal government took over the management of subsistence  
15 of hunting on federal lands; and

1           WHEREAS this federal proposal does not address the adverse effects on the 44,400  
2 residents of the Kenai Peninsula, most of whom do not agree with this plan; and

3           WHEREAS a petition opposing the Federal Subsistence Board's proposal was signed  
4 by 1,800 residents of the Kenai Peninsula within 10 days after the petition began to be  
5 circulated; and

6           WHEREAS there was not sufficient opportunity for peninsula residents to testify  
7 before the Federal Subsistence Board to address their concerns about these drastic changes in  
8 hunting regulations on the Kenai Peninsula; and

9           WHEREAS the public is poorly informed about the process of the regional subsistence  
10 advisory councils and the degree of deference given to those regional councils by the Federal  
11 Subsistence Board; and

12           WHEREAS the residents of the communities of Hope, Cooper Landing, Whittier,  
13 Seldovia, and Ninilchik should not receive special preference over other residents of Kenai  
14 Peninsula communities; and

15           WHEREAS Alaskans are working for a comprehensive solution for regaining state  
16 management of fish and game;

17           BE IT RESOLVED that the Alaska State Legislature respectfully and urgently  
18 requests that the Federal Subsistence Board not approve the proposed subsistence moose  
19 hunting regulations for the Kenai Peninsula; and be it  
*Alaskan Communities*

20           FURTHER RESOLVED that the Alaska State Legislature respectfully requests the  
21 Federal Subsistence Board not to adopt any future federal regulations that would grant  
22 subsistence preferences for fish or game until January 1, 1997, unless the regulations are  
23 concurred in by the commissioner of the Alaska Department of Fish and Game; and be it

24           FURTHER RESOLVED that the Alaska State Legislature respectfully requests that  
25 the Federal Subsistence Board refrain from changing any of the customary and traditional use  
26 determinations for Kenai Peninsula communities in federal regulations until January 1, 1997,  
27 to allow the new administration, the legislature, and Alaska's Congressional delegation the  
28 opportunity to build consensus among all Alaskans to provide a solution to the subsistence  
29 dilemma that will return management of Alaska's fish and game resources to the State of  
30 Alaska.

31           COPIES of this resolution shall be sent to the Honorable Al Gore, Jr., Vice-President

1 of the United States and President of the U.S. Senate; the Honorable Strom Thurmond,  
2 President Pro Tempore of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S.  
3 House of Representatives; the Honorable Bruce Babbitt, Secretary of Interior; the Honorable  
4 Dan Glickman, Secretary of Agriculture; and to the Honorable Ted Stevens and the Honorable  
5 Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative,  
6 members of the Alaska delegation in Congress; and to the Federal Subsistence Board.

**MEMORANDUM****STATE OF ALASKA  
DEPT OF FISH AND GAME**

**To:** Wayne Regelin, Acting Director  
Wildlife Conservation Div., Juneau

**Date:** May 5, 1995

**Through:** Steve Peterson, Senior Staff Biologist  
Wildlife Conservation Div., Juneau

**From:** John Morrison, Coordinator  
State-Federal Subsistence Regulations  
Wildlife Conservation Div., Anchorage

**Telephone:** 267-2420

**Subject:** Kenai C & T and moose hunt

The Federal Subsistence Board will sponsor eight meetings in June for public information and testimony regarding the recent federal decision to grant various Kenai communities federal customary and traditional subsistence use qualification and to create a subsistence moose hunting season to begin in August, 1995.

At present, meetings have been tentatively scheduled as follows:

June 7 - Seldovia  
June 8 - Port Graham  
June 15 - Hope  
June 16 - Cooper Landing  
June 17 - Soldotna

Meetings are planned also for Anchorage, Homer, and Ninilchik, but dates have not yet been designated. I will follow up this memorandum with the remaining dates as soon as they become available. The federal subsistence staff at these meetings will explain the rationale for the customary and traditional determinations and the moose hunt, answer questions from the audience, and record any public testimony presented.

The Federal Register describing for public review the Federal Subsistence Board (FSB) decisions for 1995-1996 regulations is scheduled to appear next week. The public will then have 60 days to present requests for reconsideration of any regulations. This Federal Register will contain a *Proposed Rule* for the moose hunting season. In its April meeting, the FSB approved the moose season proposed by the Southcentral Federal Subsistence Advisory Council except that it was amended to restrict harvest to bulls having spike-fork or three-brow-tines antlers instead of the council's proposed any-bull opportunity. It is not clear whether or not the federal regulation will also contain the 50" antler spread restriction.

Post-It™ brand fax transmittal memo 7871		no of pages = 2
To	ROB	From
Co.	BRISWORTH	Co.
Dept.		Phone #
Fax #	5-5-95	Fax #

A 60-day comment period will be open for the public to respond to this proposed rule. On July 10th, the FSB will meet to prepare a final rule, and its decision to either cancel the regulation, amend it, or to accept it as approved in April, will be announced August 3rd in time to affect the scheduled opening date of the moose season on August 10.

cc:

Rob Bosworth  
Karl Schneider  
Ted Spraker  
Gino Delfrate  
Terry Haynes  
Jim Fall  
John Trent  
Jim Lieb  
Tina Cuning

# *Senator Judith E. Salo*

*Alaska State Legislature*

## **SPONSOR STATEMENT SJR 28**

I have introduced SJR 28 due to the opposition of most Kenai Peninsula Residents to recent actions by the Federal Subsistence Board. The Federal Subsistence Board has adopted a recommendation by the Regional Subsistence Advisory Council to grant customary and traditional use determinations to several communities on the Kenai Peninsula, and grant residents of those communities preference for subsistence moose hunting on federal lands.

It is my belief as well as the 1800 residents who have signed a petition opposing rural preference on the Kenai Peninsula feel that the Alaska State Legislature should oppose the customary and traditional use determinations for the Kenai Peninsula and not grant preferential hunting rights for residents of those communities. This resolution also asks the Federal Subsistence Board to hold any other proposals until January 1, 1997, so that we can try and solve the subsistence issue and regain state management.

The objections of many of the residents result from the fact that many of these communities are on the road system and the residents of these communities should not receive special preference over other residents on the Kenai Peninsula.

The Kenai National Wildlife Refuge is where most of the 3600 licensed moose hunters from the peninsula go to hunt moose. Giving a ten day head start to residents of the communities who have been given a customary and traditional use determination for moose hunting has the residents of the peninsula very upset and they believe that this will severely limit their opportunity to harvest a moose. This is coupled with the fact that the Kenai Peninsula as well as the rest of the state, is coming out of an extremely tough winter which has resulted in a heavy winter moose kill which will further reduce the opportunity to harvest a moose this season.

If the Federal Subsistence Board goes forward with this proposal, it will pit neighbor against neighbor and will result in a divisive situation for residents of the Kenai Peninsula.

I ask for your support of Senate Joint Resolution 28. Thank you.

*South Anchorage • Lower Hillside • Ocean View • Klatt • Kenai • Nikiski • Kalifornsky Beach*

*During Session: State Capitol • Juneau, AK 99801 • (907) 465-4940 • (907) 465-3766 FAX*  
 *Interim Anchorage: 716 W 4th, Suite 450 • Anchorage, AK 99501 • (907) 258-8183 • (907) 258-5571 FAX*  
 *Interim Kenai: 145 Mainstreet Loop • Kenai, AK 99611 • (907) 283-7996*

# Board approves subsistence hunt for Kenai moose

*Ther  
Apr. 11/83  
Clarion*

Hunters from seven Peninsula towns would get a head start on neighbors

By TOM KIZZIA  
Daily News reporter

Federal land managers voted Thursday to create a new subsistence moose hunt this August for residents of a handful of communities on the Kenai Peninsula.

The tentative decision was broad enough to include road-accessible settlements such as Cooper Landing and Ninilchik despite a half-day of testimony from Kenai Peninsula residents who said such a hunt would pit neighbor against neighbor.

But in a bow to conservation concerns, the Federal Subsistence Board voted to keep in force the state's antler restrictions, which biologists said are necessary to ensure the long-term health of the moose population.

Some subsistence backers said the new hunt could force the federal government to close the Kenai National Wildlife Refuge to nonsubsistence hunters. The board's decision Thursday left that question unresolved.

At issue is whether the

antler rules, which restrict hunters to shooting only yearling bulls or older bulls with 50-inch racks, might be the kind of subsistence restriction that cannot be imposed under federal law until competing users such as sport hunters are eliminated.

Several officials, including board chairman Mitch Demientieff of Nenana, said it might not be necessary to close the refuge, where nearly half the Kenai Peninsula moose harvest occurs each year. The board would have to vote to close it.

The board will assess the potential impact of the subsistence hunt during a 45-day comment period, Demientieff said. The board will meet in June to make a final decision so a subsistence hunt can be held in August, he said.

The subsistence hunt adopted Thursday would not threaten the overall population of Kenai moose, said Ted Spraker, area biologist with the state Department of Fish and

Please see Back Page, **MOOSE**

# MOOSE: Federal panel approves subsistence hunt for the Kenai

Continued from Page A-1

Game. The 10-day hunt start on the Aug. 20 sport-hunt opening would just give subsistence hunters an advantage and increase competition for everyone else, he said.

But if the federal refuge were closed to nonsubsistence hunting, more than 2,500 hunters would be expected to crowd onto state and private land on the Kenai Peninsula or go elsewhere in Alaska to hunt — a prospect that alarmed not only sport hunters but also Lee Basnar of Cantwell, a member of the regional advisory council that brought the subsistence hunting proposal to the federal board.

"They're going to move up in my back yard," Basnar said. "We have to con-

sider the ripple effect on other subsistence users."

Thursday's decision by the federal board, which is meeting all week in Anchorage, marked the first time subsistence rights were given to new communities since the federal government took over management of subsistence on Alaska's federal lands in 1980.

The board said the seven Peninsula communities meeting the federal definition of "rural" — Hope, Whittier, Cooper Landing, Ninilchik, Seldovia, Port Graham and Nanwalek — had traditional uses for moose, bear, sheep and other animals.

The only federal official to vote against that conclusion was Dave Allen, regional director for the U.S. Fish and Wildlife Service.

Allen said very few Cooper Landing residents have roots going back to the community's founding in the 1920s, while Whittier was founded only during World War II.

About 50 people showed up for Thursday's meeting, and many of them testified against subsistence on the Kenai.

"I would urge you not to make our place of residence a battleground," said Gary Hull of Soldotna.

Among those who opposed the rural preference were members of the Cooper Landing state fish and game advisory committee, who would qualify for the subsistence hunts.

"We believe the granting of special hunting and fishing privileges by ZII' code or race is wrong," said

Lyman Nichols, chairman of the Cooper Landing committee.

People complained there had been little public awareness of the subsistence proposal during the year it was being prepared by the Southcentral advisory council, one of 10 regional panels created by the federal government in 1993.

Several Native elders from Ninilchik testified in favor of subsistence, saying they had been overrun by tourists and heavily mechanized hunters.

The original advisory council proposal would have opened the refuge to hunting for any bull moose, including those mid-sized breeding bulls protected by the state's 0-year-old antler restriction.

Biologists said unres-

tricted hunters would probably be able to kill at least 200 bulls, posing a long-term threat to the health of a moose population that lost most of its calves this winter. Spraker said the state would have probably held no moose season on the entire Peninsula if that proposal were adopted.

Some advisory council members said the 200-bull harvest estimate was exaggerated.

Hunters from the seven communities took 36 moose last year during the normal sport season. Given the antler restrictions, subsistence hunters might only take 50 to 75 bulls, biologists estimated. Last year, 221 bulls were shot on the refuge, but this year's harvest is expected to be

smaller because of the tough winter.

While adoption of the antler restrictions could soften the impact on the moose population and other hunters, it could have other far-reaching effects. A new legal opinion issued by the Interior Department this week said that under the 1980 federal law establishing rural subsistence preference, "non-subsistence uses must be eliminated before subsistence uses may be restricted."

Gary Oskolkoff of Ninilchik, a member of the advisory council, said he was happy the federal board granted the subsistence hunt but sorry to see the antler restrictions. He predicted the rules would force a shutdown of the refuge to other hunters.

# Fisheries balance altered

April 24

## Ruling opens door for subsistence

By TONY LEWIS  
Peninsula Clarion

A recent court ruling may pave the way for subsistence fishing on the Kenai River and other popular peninsula fishing streams.

The 9th U.S. Circuit Court of Appeals ruled Thursday that federal subsistence laws apply to Alaska rivers that flow through federal lands.

The court did not list the affected rivers, but said those adjoining national parks, forests and wildlife refuges would fall under federal control.

Roughly half of the Kenai River flows through the Kenai National Wildlife Refuge and the Chugach National Forest.

Other rivers that flow through the wildlife refuge include the Kasilof River, Crooked Creek, Swanson River, Moose River, Killey River, Funny River, Russian River, Fox River, Sheep Creek and Chickaloon River.

The court did not propose specific sub-

See RULING, page 3

## ...Ruling

Continued from page 1

istence fishing seasons on any of the rivers. Those decisions will be left to the Federal Subsistence Board.

Recent actions by the board suggest subsistence fishing could be allowed on the peninsula in the future.

"We are very concerned that the decision leaves the door open to federal subsistence management of all commercial and sport fisheries, including such popular rivers as the

Kenai River — maybe even this summer — and that would be unacceptable," said Alaska Senate President Drue Pearce and House Speaker Gail Phillips in a prepared statement.

One week before the court decision, the board tentatively approved broad subsistence rights for residents of the peninsula's "rural" communities, including Cooper Landing, Ninilchik and Hope. Those board based on their "customary and traditional" use of the peninsula's resources. For now, those rights extend only to big game animals, such as moose and caribou, but fish could be added to the

list.

Under federal law, subsistence users have a priority over all others for Alaska's fish and game. A proposed subsistence moose hunt on the peninsula could close the Kenai refuge to sport hunting.

Commercial and sport fishers fear their seasons could be significantly scaled back if subsistence fishing is allowed on the peninsula.

"I don't know what this will mean to us," said Refuge Manager Dan Doshier. "One would have to suspect this could have a major impact on fishing in the area given the recent customary and traditional findings by the subsistence

board."

The U.S. Fish and Wildlife Service's subsistence division met Friday to decipher the meaning of Thursday's court decision. Assistant Regional Director Dick Pospabala said a group has been formed by the court to make guidelines for determining the Alaska rivers that will fall under federal control.

Dave Nelson, who heads the Alaska Department of Fish and Game's sportfish division in Soldotna, did not know Friday how the court decision might affect management of the Kenai River's prized salmon and rainbow trout fisheries.

# Hunting future unclear

## Agencies scramble over subsistence

By TONY LEWIS  
Peninsula Clarion

Sport hunting for most game would likely have to be curtailed and possibly eliminated on federal land on the Kenai Peninsula if proposed subsistence rights are upheld.

Moose, caribou, sheep, goat, brown bear and black bear could be off limits to everyone but subsistence users on the peninsula's Kenai National Wildlife Refuge and U.S. Forest Service lands under provisions for subsistence use tentatively approved by the Federal Subsistence Board last week.

Under the board's proposal, 589 households in the "rural" communities of Cooper Landing, Hope, Whittier, Ninilchik, Seldovia, Port Graham, and Nanwalek were determined to have a "customary and traditional use" for the peninsula's big game animals. That determination would give them a priority to harvest game on nearly 3 million acres of public land on the peninsula.

Federal land managers have not yet had time to assess the potential effects of the proposal, but are certain sport hunters will be faced with cutbacks.

"What I can foresee in the near future, unless this is overturned, is a substantial change in sports hunting on the refuge for all the species determined to have a customary use," said Dan Doshier, manager of the 1.97 million acre Kenai

## ...Hunt

Continued from page 1

### National Wildlife Refuge.

A subsistence moose hunt tentatively scheduled for this fall may be a harbinger of what is to come. Sport hunters may be prohibited from harvesting moose on the refuge, depending on the outcome of a legal review.

At issue is whether or not there is enough game on federal lands to accommodate the needs of both subsistence users and sport hunters. By law, subsistence users have first priority. Before subsistence hunting can be restricted, sport hunting must be eliminated.

On Thursday, the Federal Subsistence Board voted to restrict subsistence moose hunting, effectively shutting out sport hunters.

But the fight over moose could just be the beginning. Sport hunting for caribou, sheep, goat, black bear and brown bear is already severely

restricted. If subsistence hunters are given the right to harvest those species, there may not be enough left over to allocate to sport hunters while still ensuring healthy game populations.

Subsistence hunts for big game other than moose could be made as early as next year.

"This is way beyond my wildest imagination of where this was going to lead us," Doshier said. "It paints a pretty bleak picture."

Doshier isn't the only federal land manager taken off guard. Although no subsistence hunts are being discussed on the 1 million acres of Forest Service land on the peninsula this year, that would likely change in 1996 under the current proposal.

"It's hitting us cold," said Duane Harp, manager of the Forest Service's Seward Ranger District. "We don't know the consequences yet."

The subsistence board's decision is far from final. After undergoing a standard review, the pro-

posal will be open for public comment for at least 30 days. The board will then meet again to make its final decision. That meeting will likely take place around the middle of July, said the U.S. Fish and Wildlife Service's Taylor Brelsford.

Sport hunters' hopes bank on the board changing its view on what qualifies a community for subsistence rights. On Thursday, the board determined that all seven of the peninsula's "rural" communities had a "customary and traditional use" of game.

According to Brelsford, the Alaska National Interest Lands Conservation Act, or ANILCA, does not clearly define what constitutes "customary and traditional" use, leaving wide room for interpretation.

So far, the subsistence board and its peninsula advisers have broadly interpreted the term.

Gary Oskolkoff, a member of an advisory council for subsistence issues on the peninsula, said coun-

Peninsula Clarion, April 17, 1995 5

cil members determined that "customary and traditional use" is applicable to all communities whose residents have hunted game for at least three generations.

The community of Hope has been in existence since the turn of the century. Cooper Landing was founded in the 1920s and Whittier in the 1940s.

The area around Kenai, Soldotna, Seward and Homer do not qualify for subsistence because they are not considered "rural" under the law.

The subsistence board voted 5-1 to accept the advisory council's definition of "customary and traditional use." If sport hunting is going to be allowed on the refuge in the near future, Doshier believes that decision will have to be reversed.

"Once they voted to accept the customary and traditional determinations, it was pretty much locked," Doshier said. "I think the only possibility for relief is to change the customary and traditional determination."

# Senator Judith E. Salo

Alaska State Legislature



## SPONSOR STATEMENT SJR 28

I have introduced SJR 28 due to the opposition of most Kenai Peninsula Residents to recent actions by the Federal Subsistence Board. The Federal Subsistence Board has adopted a recommendation by the Regional Subsistence Advisory Council to grant customary and traditional use determinations to several communities on the Kenai Peninsula, and grant residents of those communities preference for subsistence moose hunting on federal lands.

It is my belief as well as the 1800 residents who have signed a petition opposing rural preference on the Kenai Peninsula feel that the Alaska State Legislature should oppose the customary and traditional use determinations for the Kenai Peninsula and not grant preferential hunting rights for residents of those communities. This resolution also asks the Federal Subsistence Board to hold any other proposals until January 1, 1997, so that we can try and solve the subsistence issue and regain state management.

The objections of many of the residents result from the fact that many of these communities are on the road system and the residents of these communities should not receive special preference over other residents on the Kenai Peninsula.

The Kenai National Wildlife Refuge is where most of the 3600 licensed moose hunters from the peninsula go to hunt moose. Giving a ten day head start to residents of the communities who have been given a customary and traditional use determination for moose hunting has the residents of the peninsula very upset and they believe that this will severely limit their opportunity to harvest a moose. This is coupled with the fact that the Kenai Peninsula as well as the rest of the state, is coming out of an extremely tough winter which has resulted in a heavy winter moose kill which will further reduce the opportunity to harvest a moose this season.

If the Federal Subsistence Board goes forward with this proposal, it will pit neighbor against neighbor and will result in a divisive situation for residents of the Kenai Peninsula.

I ask for your support of Senate Joint Resolution 28. Thank you.

*South Anchorage • Lower Hillside • Ocean View • Klatt • Kenai • Nikiski • Kalifornsky Beach*

☐ *During Session: State Capitol • Juneau, AK 99801 • (907) 465-4940 • (907) 465-3766 FAX*  
☐ *Interim Anchorage: 716 W 4th, Suite 450 • Anchorage, AK 99501 • (907) 258-8183 • (907) 258-5571 FAX*  
☐ *Interim Kenai: 145 Mainstreet Loop • Kenai, AK 99611 • (907) 283-7996*



# Alaska State Legislature

(Official Business

State Capitol  
Juneau, AK 99801-1182

May 2, 1995

Mitch Demientieff, Chair  
Federal Subsistence Board  
c/o FWS Office of Subsistence Management  
1011 East Tudor Road  
Anchorage, AK 99503

Dear Mr. Demientieff:

This letter is to comment on the proposed rule determining communities where "customary and traditional" subsistence uses exist. Additionally, we request that the Federal Subsistence Board not act in adopting the proposed regulations until the definition of "rural" can be revisited.

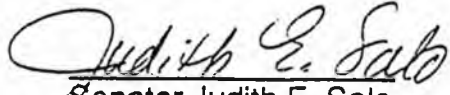
Current regulations identify the communities of Hope, Whittier, Cooper Landing, Niniitchick, Seldovia, Port Graham and Nanwalek as "rural." The proposed regulations would identify "customary and traditional" uses in those communities for specific species. If the current proposal is finalized, and coupled with the definition of "rural", it will have substantial negative repercussions on the Kenai Peninsula as well as Alaska.

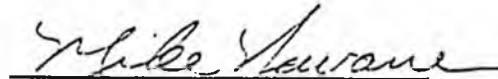
The "rural" determination comment period ended December 10, 1990. The intent of public notice and hearings is to inform those potentially affected by a proposed rule what decisions may be made and then offer a chance for testimony. As the Regional Subsistence Advisory Council was developing the "rural" determination in 1990, no one anticipated the level of deference the Federal Subsistence Board would give them. We do not believe that Kenai Peninsula residents were aware of the potential outcome of the "rural" definition being applied to various communities on the Peninsula.

As noted in the Federal Register, (Thursday January 3, 1991, page 236) ANILCA does not define "rural." On the same page it also states that "rural... is not a static condition and can change". State law, prior to the McDowell lawsuit, defined "rural", for the Kenai Peninsula, as those areas not on the road system. As most Kenai Peninsula residents will testify, they are satisfied with the original state determination. We would submit that the area on the Kenai Peninsula covered by the road system is not rural by any reasonable definition applicable to Alaska.

Finally, it is not the desire of the residents in the affected areas to have this designation imposed on their communities. Overwhelming testimony was given during public hearings opposing the proposed rule.

We respectfully request the Federal Subsistence Board revisit the "rural" designation for Kenai Peninsula communities before finalizing anymore regulations for the Kenai including the "customary and traditional" determination.

  
Senator Judith E. Salo

  
Representative Mike Navarre

4/2/95  
F.B. MCKEY

# United States Department of the Interior

OFFICE OF THE SOLICITOR

APR 1 1995

In reply, please address to:  
Main Interior, Room 6456

To: Acting Regional Solicitor, Anchorage

From: Associate Solicitor, Division of Conservation and Wildlife  
 Associate Solicitor, Division of Energy and Resources  
 Acting Associate Solicitor, Division of Indian Affairs

Subject: Federal Subsistence Management Program: Scope of Agency Authority Under ANILCA Sections 804 and 805(c)

This is in response to your inquiry regarding the Federal Subsistence Management Program. We agree that subsection 805(c) of ANILCA, codified at 16 U.S.C. § 3114(c), generally requires the Federal Subsistence Board (Board) to follow the recommendations of the Regional Councils established pursuant to subsection 808( ). Subsection 3114(c) provides that:

The Secretary, in performing his monitoring responsibility pursuant to section 3116 of this title and in the exercise of his closure and other administrative authority over the public lands, shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses. The Secretary may choose not to follow any recommendation which he determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted by the Secretary, he shall set forth the factual basis and the reasons for his decision.

The impetus for the interest in this matter is a recommendation by the Southcentral Regional Council for a subsistence regulation permitting moose hunting by rural residents on public lands on the Kenai Peninsula. If accepted, the Regional Council's recommendation might effectively limit hunting opportunities on the Kenai Peninsula by non-rural residents. The Regional

The Federal Subsistence Board has been delegated Secretarial authority to set seasons and bag limits for subsistence uses of fish and game on the public lands. 50 C.F.R. § 100.10(a); 36 C.F.R. § 242.10(e).

Director, Region 7, Fish and Wildlife Service (FWS), in a memorandum dated March 10, 1995, requested that the Solicitor's Office recommend a course of action to deal with related policy issues in a public forum. Then, on April 4, 1995, the Assistant Regional Director, Subsistence Management, FWS, made recommendations to the Interagency Staff Committee (Staff) as to the appropriate subsistence moose season on the Kanai Peninsula. The recommendations included limitations on the subsistence hunt that are inconsistent with the recommendations of the Regional Council. The April 4 recommendation appears to be based on consideration of the subsection 805(c) criteria and concludes that the Regional Council's recommendation would "threaten the conservation of a healthy moose population." However, because subsection 805(c) plays a crucial role in the ANILCA subsistence program and because we are concerned that the April 4 recommendation may violate the requirements of subsection 804, codified at 16 U.S.C. § 3113, we recommend that you provide the following legal analysis to the Chairman of the Board.

As an initial matter, the recommendation in the April 4 memorandum could restrict the subsistence harvest while leaving the non-subsistence harvest undiminished. Under ANILCA section 804, codified at 16 U.S.C. § 3114, non-subsistence uses must be eliminated before subsistence uses may be restricted. To permit hunting by non-rural residents while simultaneously restricting the subsistence hunt, as recommended in the April 4 memorandum, is contrary to section 804. In 1989, the federal district court articulated this standard when it considered the application of Alaska's second subsistence law to the hunting of moose and caribou. Bobby v. State, 718 F. Supp. 764 (D. Alaska 1989).

With regard to any portion of a wildlife population . . . the taking of which must be restricted for conservation purposes, all other uses must be reduced or proscribed before subsistence use is restricted. . . . An established subsistence use of a particular wildlife population must be afforded its statutory preference, and such use may be curtailed or proscribed only as a last resort . . . .

*Id.* at 783.

In addition, the court cautioned that any implementation of the portion of Alaska's second subsistence law that requires a "reasonable opportunity to satisfy subsistence uses" must not adversely impact the subsistence priority guaranteed by section 804 of ANILCA. *Id.* at 781. We agree with the district court's analysis of the plain language of the statute.

Turning to the matter of subsection 805(c), the language of this provision indicates that the recommendations of the Regional Councils must be followed unless the Board determines that:

(1) the recommendations are not supported by "substantial evidence;" (2) the recommendations violate conservation principles; or (3) the recommendations are detrimental to subsistence needs. This position should not be interpreted as an attempt to discourage pre-proposal interchanges, communications, and discussions among the Board and Staff. Staff should likewise actively work with the Regional Councils in the development of proposals.

However, once a Regional Council has decided on a course of action and makes a proposal to the Board, their proposal should receive deference except in the limited circumstances described in subsection 805(c). If a Regional Council's proposal is rejected, subsection 805(c) requires the Board to set out the factual basis and reason for rejection. A federal district court stated the very rigorous standard to which the Board must adhere in reviewing Regional Council recommendations when it noted that the recommendations were entitled to "very considerable weight." Transcript of Proceedings at 8, Tanana Fish & Game Ass'n v. Alaska, No. 788-804 (D. Alaska) (Aug. 4, 1988) (interpreting the identical standard governing state management pursuant to subsection 805(d), pre-McDowell). Finally, the importance of setting out the factual basis was also demonstrated in the Quinhagak appeal, where the court presented an extensive discussion of subsistence uses and the plain congressional mandate that such uses receive priority and protection. Native Villages of Quinhagak v. United States, 35 F.3d 388, 393-94 (9th Cir. 1994).

A narrow interpretation of subsection 805(c) would be contrary to the canons of construction which require that enactments for the benefit of Native Americans be construed in their favor. Although Title VIII of ANILCA protects subsistence uses of non-Native rural residents, it is viewed as being remedial "Indian legislation" non-retroactive. People of Village of Gambell v. Clark, 746 F.2d 572, 581 (9th Cir. 1984), rev'd on other grounds sub nom., Amoco Production Co. v. Village of Gambell, 480 U.S. 531 (1987). The review by the Board of Regional Council recommendations must therefore reflect this special protection for Alaska Natives' subsistence lifestyle.

In addition, the comprehensive subsistence-use management system envisioned in subsections 805(a) through (c) is informed at its most fundamental level by input from the Regional Councils, the entities most familiar with the wildlife resources and customary and traditional uses. Indeed, Congress found that:

(T)he national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative

structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.

16 U.S.C. § 3111(5).

To conclude, the operative sections of the management scheme encourage maximum local participation such that agency restructuring of Regional Council recommendations is limited by subsection 305(c). The Board should be so advised.

cc: Solicitor  
Special Assistant to the Secretary for Alaska

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## Notices

Federal Register

Vol. 58, No. 2

Thursday, January 2, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

### DEPARTMENT OF AGRICULTURE

Forest Service

### DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

#### Subsistence Take of Fish and Wildlife on Public Lands in Alaska: Final Rural and Non-Rural Determinations

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice.

**SUMMARY:** This notice by the Federal Subsistence Board (Board), on behalf of the Department of Agriculture and Department of the Interior land managing agencies in Alaska, announces the final determinations of "rural" and "non-rural" areas and communities in accordance with the procedures described in "Temporary Subsistence Management Regulations For Public Lands in Alaska" published in the Federal Register (55 FR 27114) on June 29, 1990.

**DATES:** These determinations are effective as of January 2, 1991. The determinations constitute an action of the Board, subject to requests for reconsideration under the procedures outlined in 38 CFR 24225 and 50 CFR 100.18; the last day for filing such a request for reconsideration of these determinations is February 14, 1991.

**ADDRESSES:** Appeals should be addressed to the Chairman, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 3100 Richard Pospahala, 1011 E. Tudor Road, Anchorage, Alaska 99503.

**FOR FURTHER INFORMATION CONTACT:** Richard Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 207-1401.

**SUPPLEMENTARY INFORMATION:** Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3112-3125) requires the Secretaries of Agriculture and the Interior to implement a program to grant preference in favor of subsistence uses of fish and wildlife on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State of Alaska had such a program that was found by the Department of the Interior to be consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of the decision, the Departments of Agriculture and the Interior were required to take over implementation of title VIII of ANILCA on public lands on July 1, 1990. Federal subsistence management would impact the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Air Force, Army and various other Federal land managing agencies.

The Board, as the managing entity, started by publication in the Federal Register (55 FR 40897) on October 3, 1990, the process of collecting public comments relating to a number of issues on subsistence management on public lands, including the rural determination process. Again on November 23, 1990 (55 FR 48877), the Board published Notices in the Federal Register explaining the proposed Federal process for making rural determinations, the criteria to be used and the application of those criteria in preliminary determinations. Public meetings were then held in some 58 communities throughout Alaska, specifically to solicit comments on the Federal Subsistence Program, including rural determinations. The period for submitting comments on rural determinations closed on December 30, 1990. In addition to comments in the public meetings attended by some 7,670 persons, the Board received a total of 140 written comments from 34 governmental entities, 33 comments

from organizations and 73 comments from individuals during the comment period.

The definition of rural is, perhaps, the key element in the regulations. The term "rural" was not defined in ANILCA. The Ninth Circuit Court of Appeals ruled in 1938 that the rural definition in the State's 1986 subsistence law was not consistent with ANILCA and the common meaning of the term rural. The legislative history of ANILCA provides some insight. Senate Report 96-113 identified Anchorage, Juneau, Fairbanks and Ketchikan as examples of non-rural communities in 1980 and Barrow, Kotzebue, Nome, Bethel and Dillingham as examples of rural communities. It further states that the rural nature of such communities is not a static condition and can change.

#### Analysis of Comments

(a) Several people commented that they felt the ANILCA subsistence preference for rural residents of Alaska was unconstitutional and objected to the establishment of regulations which allow for rural subsistence priority. Several comments called for an amendment to ANILCA.

The Departments of the Interior and Agriculture have no authority to make such an interpretation since the rural priority is a provision of Federal law. Only Congress may amend a law. Until such time as the law is changed, the Federal government must provide a subsistence priority to rural Alaskan residents for use of fish and wildlife resources on public lands.

(b) A large number of commenters felt that all Alaskans should receive equal treatment and access to subsistence resources.

Title VIII of ANILCA specifies that rural Alaska residents must be afforded a priority for subsistence use of fish and wildlife resources on public lands.

(c) Some comments addressed the issue of granting subsistence preference based on individual circumstances rather than by community or area.

Although not addressed in the Act, the legislative history clearly indicates the rural/non-rural determinations are to be made on a community or area basis and not on the basis of individual circumstance. The record also indicates that the designation of communities may change over time.

(d) Some commentators believed that the location of one's residence or the size of the community was not indicative of life style and the need for subsistence resources.

It is recognized that many urban residents utilize wild resources as part of their diet; however, as defined by Congress, "subsistence" applies to the customary and traditional usage of fish and wildlife by rural residents. We agree that population estimates are not the only component which should be used to define the character of a community. However, they are an important characteristic. The Ninth Circuit Court of Appeals in *Ketchikan Indian Tribe v State of Alaska* found the State's definition of rural to not be in accordance with ANILCA. The State definition relied totally on socioeconomic characteristics. The Court went on to state: "the term rural is not difficult to understand . . . it refers to areas of the country that are sparsely populated." It gave examples of existing Federal agency use where a base population figure is 2,500 and a set of community characteristic variables are used to allow the population of the community to exceed the 2,500 level and still be rural if the characteristics so indicated.

(e) Many commentators felt that a subsistence priority should be based on and as indicated by income level.

Many individuals may need assistance of various types. Congress did not include dependence as part of its subsistence definition in Section 803 of ANILCA. In contrast, Section 804 of ANILCA does include dependency on the resource and a criterion for implementing subsistence priority.

(f) Some commentators believe that being located on the road system should be used as a basis for making the rural/non-rural determination.

The Board believes that although being located on the road system might be an indicator of non-rural status, the road system is not in and of itself the primary determinant for dividing rural and non-rural communities. A much better primary characteristic is that of population.

(g) Many commentators felt that Alaska Natives, no matter where they live, should be afforded a subsistence priority; others disagreed.

Under ANILCA, a subsistence priority on Federal lands is to be provided only to rural Alaska residents regardless of ethnic background, meaning that Natives and non-Natives in rural areas only will receive this preference. Likewise, since ANILCA specifies rural residents, those individuals living in non-rural areas, even if they are

Natives, do not qualify for a subsistence preference.

(h) Many commentators spoke to a history of fish and wildlife use and customary and traditional practices, desiring that a preference be based on those grounds.

We agree that the use of natural resources are important to the social and cultural well being of many communities throughout Alaska. There is sharing of these resources in every community in Alaska, even Anchorage. The question is to what extent does this take place in a community. A decision to consider any Alaska community non-rural will not prohibit those residents from taking wild resources. It will mean that in times of fish and game scarcity on land and waters included in the Federal subsistence program, they will not have a priority use of those resources.

(i) Some commentators felt that to qualify for a subsistence priority, a person should meet certain residency requirements.

A subsistence user must be an Alaskan resident and eligible to purchase a resident hunting, fishing or trapping license.

(j) Many comments related specifically to the proposed non-rural classification for Sitka. These included comments addressing:

1. Incorrect comparison of the 7,000 population level with the 1988 population of the Sitka City/Borough (8,257) because Sitka has unified its city and borough boundaries. Thus, the Board should either compare the 1980 Ketchikan Borough population (11,318) to the 1988 Sitka Borough population (8,257) or compare the 1980 Ketchikan City population (7,200) to the 1988 population residing within the pre-city/borough unification Sitka City limits.

After evaluating public comments and reexamining community characteristics, it became clear that Sitka possesses both rural and non-rural characteristics; therefore, the Board has determined Sitka to be rural for the purposes of subsistence on Federal lands.

2. The fish and game harvest information for Sitka, obtained from the Tongass Resource Use Cooperative Study, isn't accurate because of the survey methodology. The survey employed a telephone sampling technique in Sitka while household interviews were used in the rest of the communities sampled.

The Study methodology is valid and it is the best data available. The Study does show very close correlation with an earlier study conducted by the Alaska Department of Fish and Game. Also, a comparison of the harvest rates

of Kodiak (a community where household studies have been done and with very similar characteristics) and Sitka shows very similar rates and adds credibility to the Sitka data.

3. If Congress intended communities greater than 7,000 to be non-rural why did they not identify Sitka City, with a 1980 population of 7,900, as non-rural.

The Senate report only identifies examples of non-rural and rural communities to be used as guidelines by the administering entity. The list is not intended to be all inclusive. For example, not all communities which are obviously rural were mentioned. Only Dillingham, Bethel, Nome, Kotzebue, and Bettow were listed as examples of rural communities. Because of the borderline nature of Sitka and because of extensive public testimony indicating rural characteristics, the Board designated Sitka as rural.

4. Another way of defining rural communities is to use a population density approach.

This is a very misleading approach when some communities have a unified City/Borough boundary and other communities do not. Using this approach according to the Sitka position paper would show that Ketchikan has had a density of 9.1 persons/square mile in 1980 while Sitka has a density of 2.8 persons/square mile in 1988. This is very misleading. The unified Sitka City/Borough had a 1988 population of 8,257 people. The City/Borough boundary covers 4,710 square miles. However, approximately 95% of the people live in a core area of approximately 30 square miles. By way of comparison the Municipality of Anchorage only covers 1,938 square miles.

5. The Sitka economy is seasonal. It is based on the seafood, forest products and tourism industries as well as government employment. The first three are seasonal as is even government employment to some extent. Thus indicating a rural nature. In addition, Sitka's unemployment rate and taxable income level indicated it is rural.

All of the above factors are very similar when Sitka is compared to Ketchikan. The economy of Ketchikan is also based on the seafood, timber products and tourism industries as well as government employment. In addition, the taxable income and employment rates are very similar between the two communities.

(k) Many comments related specifically to the proposed non-rural classification for Saxman. These included comments addressing:

1. The use of subsistence resources is being very important to the social and

cultural well being of Saxman residents. This should be an important criterion to be considered when determining whether a community is rural or not.

We agree that the use of natural resources is important to the social and cultural well being of many communities throughout Alaska. There is sharing of these resources in every community in Alaska, even Anchorage. Because of the overriding socioeconomic and cultural characteristics of Saxman, differentiating it from Ketchikan, the Board determined Saxman to be a rural community.

2. Saxman is a rural community because of its character composition and personality not because of the number of people living there.

Saxman possesses both rural and non-rural characteristics; therefore, based on extensive public testimony, the Board has determined Saxman to be rural for the purposes of subsistence on Federal lands.

(1) A few comments related specifically to the proposed non-rural classification for Kodiak. These included comments relating to the high use of fish and game resources.

After evaluating public comments and reexamining community characteristics, it became clear that Kodiak possesses both rural and non-rural characteristics. Therefore, because of the borderline nature of Kodiak as evidenced by extensive public testimony, Kodiak has been determined to be a rural community for the purposes of Federal subsistence management.

(m) Some individuals commented, asking that certain other specified communities be considered "rural", either continuing the State's prior designation or asking the Federal government to change a prior State non-rural designation. Many of these individuals pointed out a traditional use of the resources.

The level of past use is just one characteristic that is used only to modify a preliminary determination based on population level. Additionally, the level of past use is based on community-wide data, not on individual or single family history.

#### Federal Subsistence Management Program—Rural/Non-rural Determination Process

The Federal government recognized that communities of the same size may vary greatly in character for a variety of reasons. Therefore, no single population number adequately serves as a dividing line between rural and non-rural communities. Before examining community characteristics communities that are socially and economically

integrated were aggregated. The criteria used to determine if communities are socially and economically integrated includes: (1) Do 15% or more of the working people commute from one community to another; (2) do they share a common school district; (3) are daily or semi-daily shopping trips made. The aggregation criteria were developed by working with the Institute of Social & Economic Research, the Alaska Department of Labor and the Municipality of Anchorage.

Communities were aggregated according to these criteria: the population for the community or area was determined; and preliminary rural/non-rural screening of communities began. The process to determine rural was designed to incorporate the common meaning of rural and is based on two rebuttable presumptions as described below. A community or area of less than 2,500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or is part of an urbanized area. The number 2,500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from non-rural. A community between 2,500 and 7,000 bears no presumption as to its rural or non-rural status. Some communities that fall in this population range may have rural characteristics.

Communities 7,000 or greater in population are presumed to be non-rural. The 7,000 population level was chosen because Ketchikan, the smallest of the non-rural communities mentioned in the Senate report, was approximately that size when ANILCA was passed and consequently is an indicator of Congressional intent. Communities in Alaska can approach and may rarely exceed a population level of 7,000 and still be rural in character.

This definition and process recognizes that population alone is not the sole indicator of a rural or non-rural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural. Indicators which the Federal Subsistence Board evaluates to decide if a community is rural or non-rural in character are: use of fish and game; development and diversity of the economy, community infrastructure, transportation, and educational institutions.

Use of fish and game includes the variety of species used per household, the participation of households using subsistence resources (percent of households in community), and the level of harvest based on the average pounds per-capita consumed. The economy of an area was considered to include

whether employment was considered high, moderate, low, seasonal or year-round; the unemployment rate; and 1985 average taxable income level, the diversity of services within the community or area, and the cost of food index.

Community infrastructure as a measure of urban development (based on the fact that electricity costs are normally lower in urban areas versus rural areas) included the 1988 average cost of electricity per kilowatt hour. Transportation included the variety and means, the predominate methods and the number of miles of road system. Evaluation of educational institutions included the level of education provided in a community.

The community characteristics were developed through coordination with the Alaska Department of Labor, Alaska Department of Revenue, the Institute of Social and Economic Research, the Alaska Department of Commerce and Economic Development, the Alaska Department of Fish & Game and the Alaska Energy Authority.

The following communities/areas have been determined by the Board to be non-rural. Communities which are grouped (below) are considered to be socially and economically integrated. All communities or areas not listed are determined to be rural.

#### Non-Rural Communities/Areas in Alaska for the Determination of Subsistence Priorities

Municipality of Anchorage  
Kenai Area (including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kaslof and Ciam Gulch)

Wasilla Area (including Palmer, Wasilla, Sutton, Big Lake, Houston and Bodenbergturte)

Fairbanks North Star Borough  
Juneau Area (including Juneau, West Juneau and Douglas)

Ketchikan Area (including Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennock Island)

Homer Area (including Homer, Anchor Point, Kachemak City and Fritz Creek)

Seward Area (including Seward and Moose Pass)

Valdez Area, Valdez  
Adak

Title VIII allows for reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources on public lands by rural Alaskan residents for subsistence purposes are of

paramount importance to the Federal government and to the public as a whole.

Curtis V. McVee,

Chairman, Federal Subsistence Board,  
Department of the Interior.

Michael A. Barton,

Regional Forester, USDA—Forest Service.

[FR Doc. 91-11 Filed 1-2-91; 8:46 am]

SHLWD CODE 410-45-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

#### Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held January 30, 1991, 9:30 a.m. in the Herbert C. Hoover Building, room 1529, 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

#### Agenda

##### General Session

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public.
4. Report on status of Core List 3 (Telecommunications).

##### Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OPA/BXA, room 1800, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20220.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 8829, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2533.

Dated: December 23, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 91-52 Filed 1-2-91; 3:45 am]

SHLWD CODE 218-07-M

### International Trade Administration

(A-588-019)

**Cyanuric Acid and Its Chlorinated Derivatives From Japan; Preliminary Results of Antidumping Duty Administrative Reviews, and Intent to Revoke on Trichloro Isocyanuric Acid and to Revoke in Part on Dichloro Isocyanurates.**

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of Preliminary results of antidumping duty administrative reviews, and intent to revoke on trichloro isocyanuric acid and to revoke in part on dichloro isocyanurates.

**SUMMARY:** In response to requests by both the petitioner and respondents, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. The reviews cover two manufacturers/exporters of this merchandise to the United States, Nissan Chemical Industries, Ltd., and Shikoku Chemicals Corporation, and two consecutive annual periods from April 1, 1987 through March 31, 1989, for the order on cyanuric acid, and from April 1, 1987 through November 30, 1988,

for the orders on dichloro isocyanurates ("DCA") and trichloro isocyanuric acid ("TCA"). It also covers the two trading companies through which the respondents sell in the United States, Mitsubishi Corporation and Toyo Menka Kaisha, Ltd. We published a tentative determination to revoke the orders on DCA and TCA on November 21, 1988.

Our reviews indicate zero or *de minimis* weighted-average dumping margins for Nissan Chemical Industries for DCA and TCA for both review periods. They also indicate the existence of dumping margins for Shikoku Chemicals Corporation for DCA for both review periods, and either zero or *de minimis* weighted-average dumping margins for TCA for the review periods.

As a result of our reviews, we intend to revoke the order in its entirety on TCA, and to revoke the order on DCA only with respect to Nissan Chemical Industries. Because we found margins on DCA with respect to Shikoku Chemicals Corporation, we do not intend to revoke the order on DCA with respect to Shikoku.

We invite interested parties to comment on these preliminary results and intent to revoke in part.

**EFFECTIVE DATE:** January 3, 1991.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker or Robert Marekic, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 388-5255.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 7, 1988, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (53 FR 11540) of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan (49 FR 18148; April 27, 1984). On April 29, 1988, the petitioner, Monsanto Company, and respondents, Shikoku Chemical Corporation and Nissan Chemical Industries, Ltd., requested administrative reviews of the antidumping duty orders. We initiated the reviews, covering the period April 1, 1987 through March 31, 1988, on May 23, 1988 (52 FR 18324). We published a tentative determination to revoke the orders on DCA and TCA on November 21, 1988 (53 FR 46896).

On March 31, 1989, the Department published a notice of "Opportunity to Request an Administrative Review" (54 FR 13211) of the antidumping duty order on cyanuric acid and its chlorinated derivatives from Japan (49 FR 18148:

Summary of Southcentral Regional Council Recommendations for Kenai C&T Determinations  
February 28 - March 2, 1995  
(Prepared March 7, 1995)

Unit	Species	Communities	Season and Harvest Limit Regulations
Unit 7	Moose	Hope, Cooper Landing, Whittier	
	Caribou	Hope, Cooper Landing	
	Sheep	Hope, Cooper Landing, Ninilchik	
	Goat	Hope, Cooper Landing, Ninilchik	
	Black Bear	Hope, Cooper Landing	
	Brown Bear	No C&T uses on Federal lands	
Unit 15(A)	Moose	Hope, Cooper Landing, Ninilchik, Seldovia	1 antlered bull by Federal registration permit, August 10 - September 20
	Caribou	Hope, Cooper Landing, Ninilchik	
	Sheep	Cooper Landing	
	Goat	No C&T uses on Federal lands	
	Black Bear	Hope, Cooper Landing, Ninilchik	
	Brown Bear	No C&T uses on Federal lands	
Unit 15(B)	Moose	Hope, Cooper Landing, Ninilchik, Seldovia, Nanwalek, Port Graham	1 antlered bull by Federal registration permit, August 10 - September 20
	Caribou	Ninilchik	
	Sheep	Cooper Landing, Ninilchik	
	Goat	Cooper Landing, Ninilchik	
	Black Bear	Hope, Cooper Landing, Ninilchik	
	Brown Bear	No C&T uses on Federal lands	

*foraker*

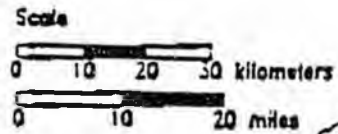
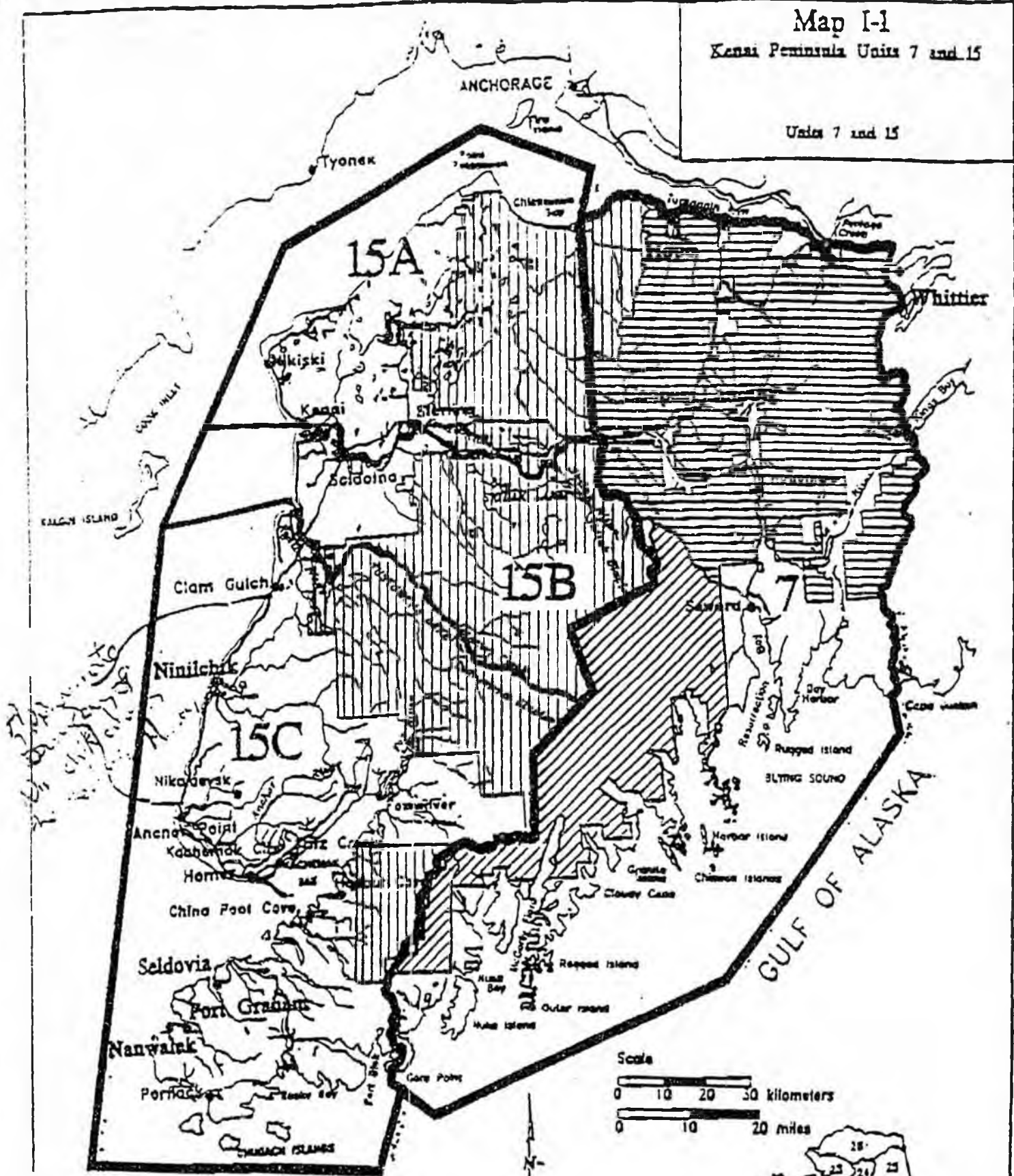
Summary of Southcentral Regional Council Recommendations for Kenai C&T Determinations  
February 28 - March 2, 1995  
(Prepared March 7, 1995)

Unit	Species	Communities	Season and Harvest Limit Regulations
Unit 15(C)	Moose	Ninilchik, Nanwalek, Port Graham, Seldovia	1 antlered bull by Federal registration permit. August 10 - September 20
	Caribou	Ninilchik, Nanwalek, Port Graham, Seldovia	
	Sheep	Ninilchik, Nanwalek, Port Graham, Seldovia	
	Goat	Ninilchik, Nanwalek, Port Graham, Seldovia	
	Black Bear	Ninilchik, Nanwalek, Port Graham, Seldovia	
	Brown Bear	Ninilchik, Nanwalek, Port Graham	

1. The Council intended that the existing antler restrictions (i.e. spike, fork, 50" plus) in State regulations would not apply to the Federal subsistence hunt.
2. The Council did not estimate that the Federal subsistence season would require closure of Federal public lands to non-subsistence hunters. However, they understood that a technical analysis of this question is required for the Board's consideration.
3. The Council was apprised that existing prohibitions on the use of ATV's in the Kenai NWR would remain in place.
4. The Council was apprised that existing Federal subsistence regulations require the salvage of edible meat from brown bears. Nonetheless, the Council recommended a finding of C&T use of brown bear in Unit 15(C) on the basis that even though use for food would be very rare, a tradition of use of fur and parts in ceremonies and adornment should be accommodated. This might be taken to require a change in the salvage requirement.
5. The Council was apprised that a technical analysis of the proposed season for compatibility with the purposes of the Kenai Peninsula NWR is required prior to the Board's action.
6. The Council indicated the intention to define "Ninilchik" to include residents along the Sterling between the boundaries of the Kenai and Homer Non-rural Areas, including the "tributary" roads leading directly into the highway in this portion. The Homer Rural Area, for which no C&T uses were recommended, is found just to the northwest and the east of the Homer Non-rural Area.

# Map I-1 Kenai Peninsula Units 7 and 15

Units 7 and 15



**LEGEND**

	FWS Administered Land		Sub-Unit Boundaries
	NPS Administered Land		Areas
	USFS Administered Land		



**UCIDA****UNITED COOK INLET DRIFT ASSOCIATION**

P.O. Box 389 • Kenai, Alaska 99611 - 0389

(907) 283-3600 • FAX (907) 283-3306

May 3, 1995

By Telefax

Senator Judy Salo  
Representative Mike Navarre  
State Capitol  
Juneau, AK 99801

Dear Senator Salo and Rep. Navarre,

I would like to thank you for your May 2, 1995 letter to the Federal Subsistence Board requesting that it "revisit the rural designation" for Kenai Peninsula communities.

Under federal law - ANILCA - once an area has been designated "rural" the consequences are inevitable and irreversible. The subsistence priority for "rural" residents is a legal privilege that requires the elimination of all other uses prior to any limitation being placed on subsistence uses.

I would like to stress that even for a "rural" resident granted a subsistence preference a heavy price must at times be paid. That is to say that even a subsistence "user's" right to access a resource for commercial or recreational purposes must be eliminated to supply all subsistence uses. Further, if the fish or game resource involved is not numerous enough to supply all subsistence users then even the "subsistence" right may be eliminated for many as Tier II criteria are applied.

It is clearly not in anyone's best interest to have a legal subsistence priority apply in areas of either high population densities or ready access to fish and game resources such as the Kenai Peninsula.

UCIDA has long recognized this fact and tried - unsuccessfully - to oppose positive "rural" determinations for the Kenai Peninsula. Further, working with UFA, UCIDA requested our congressional delegation to amend ANILCA "to reflect the definitions in state statutes" - including the state definition of rural (please see UFA Letter to Senator Stevens, May 19, 1989 and Senator Stevens Reply of June 2, 1989, enclosed).

In conclusion, UCIDA appreciates your efforts on behalf of the Kenai Peninsula residents. Your efforts with the Federal Subsistence Board and HJR48/SJR28 are to be commended. UCIDA also continues to support SJR19 as yet another "partial" solution. We would like to note, however, that without clarifying definitions being inserted in ANILCA the subsistence "dilemma" will not be resolved (please see UFA Comments on Subsistence, June 20, 1990, enclosed).

Sincerely,



Theo Matthews,  
Executive Director

cc: Governor Tony Knowles  
Lt. Governor Fran Ulmer  
Senator Frank Murkowski  
Senator Ted Stevens  
Senator John Torgerson  
Congressman Don Young  
Representative Gail Phillips  
Alaska Outdoor Council  
UFA

**SJR**

**37**

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/12/96

FURTHER:

Date of 5-Day Notice: 2-29-96  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-12-96

The Resources Committee considered SJR 37

Urging the United States Congress to give an affirmative expression of approval to a policy authorizing the state to regulate, restrict, or prohibit the export of unprocessed logs harvested from its land and from the land of its political subdivisions and the University of Alaska.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

**Senate Bill:**

- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<b>CHAIR:</b> <i>[Signature]</i>	✓	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
Resources Committee	3/1/96	✓	

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

WITBERENS  
(one tool to help the dea. + balance) po  
not ml to always be viewed as a total ban  
no equal on mlrc

9-LS1693VA

**SENATE JOINT RESOLUTION NO. 37**

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

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY SENATOR TORGERSON**

**Introduced: 2/12/96**

**Referred: Resources**

**A RESOLUTION**

1 **Urging the United States Congress to give an affirmative expression of approval**  
2 **to a policy authorizing the state to regulate, restrict, or prohibit the export of**  
3 **unprocessed logs harvested from its land and from the land of its political**  
4 **subdivisions and the University of Alaska.**

5 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 **WHEREAS** Alaska had, by regulation, imposed a primary manufacturing requirement  
7 **applicable to timber harvested from state-owned land that is destined for export from the state;**  
8 **and**

9 **WHEREAS** that regulation was permissive, allowing the director of the division of  
10 **land to require that primary manufacture of forest products be accomplished within the state;**  
11 **and**

12 **WHEREAS**, considering the Commerce Clause of the United States Constitution, in  
13 **Southcentral Timber Development, Inc. v. Wunnicke, 467 U.S. 82, 81 L.Ed.2d 71, 104 S.Ct.**  
14 **2237 (1984), the United States Supreme Court determined that the state's regulation could not**  
15 **be given effect; while the court found evidence of a clearly defined federal policy imposing**  
16 **primary manufacture requirements as to timber taken from federal land in Alaska, it**

1 determined that the existing Congressional sanction reached only to activities on federal land  
2 and concluded that the state's assertion of Congressional authorization by silence to allow a  
3 state to regulate similar activities on nonfederal land could not be inferred; and

4       **WHEREAS** since the Wunnicke decision, Congress has, in the Forest Resources  
5 Conservation and Shortage Relief Act of 1990, extended an existing ban on unprocessed log  
6 exports from federal land in the 11 contiguous Western states to cover timber harvested from  
7 nonfederal sources in those states; the extension of the ban on unprocessed log exports in  
8 those states collectively does not affect Alaska; and

9       **WHEREAS** the principal purposes, stated or assumed, in the 1990 Congressional Act  
10 for extending the ban on unprocessed log exports in the contiguous Western states -- the  
11 efficient use and effective conservation of forests and forest resources, the avoidance of a  
12 shortfall in unprocessed timber in the marketplace, and concern for development of a rational  
13 log export policy as a national matter -- are equally valid with respect to the significant timber  
14 resources held by this state, its political subdivisions, and its public university; and

15       **WHEREAS** the state cannot act to regulate, restrict, or prohibit the export of  
16 unprocessed logs harvested from land of the state, its political subdivisions, and the University  
17 of Alaska without a legislative expression demonstrating Congressional intent that is  
18 unmistakably clear;

19       **BE IT RESOLVED** that the legislature of the State of Alaska urges the United States  
20 Congress to give an affirmative expression of approval to a policy authorizing the state to  
21 regulate, restrict, or prohibit the export of unprocessed logs harvested from its land and from  
22 the land of its political subdivisions and the University of Alaska.

23       **COPIES** of this resolution shall be sent to the Honorable Al Gore, Jr., Vice-President  
24 of the United States and President of the U.S. Senate; the Honorable Bob Dole, Majority  
25 Leader of the U.S. Senate; the Honorable Tom Daschle, Minority Leader of the U.S. Senate;  
26 the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the Honorable  
27 Dick Armey, Majority Leader of the U.S. House of Representatives; the Honorable Richard  
28 Gephardt, Minority Leader of the U.S. House of Representatives; to the Honorable Ted  
29 Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young,  
30 U.S. Representative, members of the Alaska delegation in Congress.

# Alaska State Legislature

Committee Chair  
Community & Regional Affairs

Committee Vice-Chair  
Labor & Commerce

Committee Membership  
Legislative Council



District Address:  
145 Main St. Loop; Suite 226  
Kenai, AK 99611  
(907) 283-2690; fax 283-9267

Session Address:  
State Capitol, Room 427  
Juneau, AK 99801-1182  
(907) 465-2828; fax 465-4779

*Senator John Torgerson*

## SPONSOR STATEMENT

### SJR 37 - Primary Manufacturing of Publicly Owned Timber

This resolution urges Congress to provide the authority necessary for the State of Alaska to regulate, restrict or prohibit the export of unprocessed logs from State Lands, Municipal Lands, and the University of Alaska Lands.

In 1984, the Supreme Court ruled that Alaska's Primary Manufacture laws were in conflict with the Commerce Clause of the United States Constitution, where the requirement of in-state manufacture placed an unauthorized restriction of the free trade between states.

In 1990, Congress adopted the Forest Resources Conservation and Shortage Relief Act, which in part authorized eleven Western States an exemption to the Commerce Clause. This exemption has led these states to restrict the purchase of timber to only entities that are operating within their borders.

Alaska was not included in this legislation, therefore authorizing other states to come to Alaska and purchase our raw materials and "export" them from Alaska to their own state. However, Alaska's manufacturers are restricted from going to any of the other states in search of raw timber to run our facilities.

When authorized by congress, primary manufacturing of our timber resources will create value added jobs within the State. We will be using our raw materials to provide jobs for Alaskans.

(JT: maj: SJR 37: 2/29/96)



# ALASKA CENTER *for the* ENVIRONMENT

519 West 8th Avenue, Suite 201 • Anchorage, Alaska 99501  
(907) 274-3621 • fax: 274-8733

March 8, 1996

Senate Resources Committee  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

Re: SJR 37

Dear Committee Members:

We just faxed to you a letter on SB 180 that includes an expression of support for SJR 37, a resolution urging the Congress to authorize the state to regulate, restrict or prohibit the export of unprocessed timber logged on state lands. We believe that this resolution is sufficiently important, however, that we wanted to submit a brief separate letter on it for your consideration and your files.

We do not support timber industry job creation at all costs because of the adverse effects logging can have on a wide variety of other very important forest resources and uses. However, in those situations where it is appropriate to undertake commercial logging on the public lands in the first place, we very much support the concept of adding high value to timber rather than exporting round logs, or chips, out of the state (or region), and consequently exporting processing jobs as well.

Yet without Congressional action the state appears to be prevented from regulating or prohibiting these exports. SB 180, for example, might be unconstitutional unless the Congress acts. Senator Torgerson's resolution, and further activity in support of it, is essential if we are to stem the export of these processing jobs. We urge you to support SJR 37.

Sincerely,

A handwritten signature in cursive script that reads "Cliff Eames". The signature is written in black ink and is positioned above the typed name.

Cliff Eames  
Issues Director

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SJR 37

Revision Date: Initial Dept. Affected: \_\_\_\_\_  
 Title: Primary Manufacturing of Publicly Owned Timber BRU: \_\_\_\_\_  
 Component: \_\_\_\_\_  
 Sponsor: Senator Torgerson  
 Requester: Senate Resources Committee COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL EXPENDITURES</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

Estimate of any current year (FY96) cost: \$ -0-

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This resolution will have no fiscal impact on state departments.

Prepared by: Senate Resources Committee Phone: 465-4907  
 Division: \_\_\_\_\_ Date: \_\_\_\_\_  
 Approved by ~~Commissioner~~ Chairman, Senator Loren Leman Date: 3/7/96  
 Agency: \_\_\_\_\_

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

**SJR**

**38**

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 3/8/96

FURTHER:

Date of 5-Day Notice: 3-7-96  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-12-96

The Resources Committee considered SJR 38

Opposing the proposed expansion of the United States Environmental Protection Agency's toxics release inventory program.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO/PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>W. H. Hubbard</i>	✓				
<i>Robin L. Taylor</i>	✓				
<i>Tom Pearce</i>	✓				
<i>Robert Huff</i>					
<i>Chair: Loren D. Swen</i>	✓	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
Res. Committee	3/11/96	✓	

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

## UPDATE ON EXPANSION OF TRI PROGRAM

As of March 25, 1996

According to Mark Rubin with the American Petroleum Institute, the decision whether to include oil and gas exploration in the TRI reporting program was to have been made in January 1996;

The schedule as of today is for a decision to be made in April by EPA, with an internal review to follow; and then the regulatory proposal to be issued in September 1996.

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 5
To	Annette Kreitzer	
From	Ardie Gray	
Co.	Co.	
Dept.	Phone #	
Fax #	465-3810	Fax # 279-8114

# MEMO

**To:** Annette Kreitzer, Senate Resources  
**From:** L. A. (Ardie) Gray  
**Subject:** TRI  
**Date:** March 13, 1996

Annette:

As we discussed by phone, enclosed are:

- API's point paper on TRI expansion to the E&P industry; and
- a letter from API, Mid-Continent Oil and Gas Association, IPAA, and NOIA, transmitting to EPA their evaluation of EPA's database developed to support TRI expansion to the E&P industry. As the letter notes, the associations' review of EPA's data indicates the agency significantly overestimated TRI chemical releases from E&P facilities.

EPA plans to meet with representatives of the Interstate Oil and Gas Compact Commission on March 15 to discuss TRI expansion and, by the end of March, is expected to make a final decision about whether to include the E&P industry in its proposed rulemaking.

FYI, EPA is expected to transmit in late spring or early summer a draft regulatory proposal on TRI expansion to the Office of Management and Budget for the standard Administration review process. The actual notice of proposed rulemaking is expected to appear in the Federal Register in September.

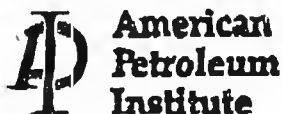
Enclosures (2)

**TRI EXPANSION TO THE OIL AND GAS  
EXPLORATION AND PRODUCTION INDUSTRY  
(SIC CODE 13)**

EPA is planning to expand the number of industries that report to the Toxics Release Inventory (TRI) program. Reporting is currently limited to manufacturing industries. SIC code 13, which covers oil and gas exploration and production (E&P), is one of several non-manufacturing sectors being targeted by EPA for the expansion. TRI reporting is inappropriate for the E&P industry for the following reasons:

- **TRI reporting would provide virtually no environmental or community right-to-know benefit.** The vast majority of E&P facilities are located in remote, rural areas, or offshore, far from communities. In addition, most E&P "releases" consist of water and naturally occurring constituents that are injected back into the oil and gas formation from which they came for onshore operations and discharged in accordance with NPDES permits offshore. There is practically no potential for public exposure from these and most other E&P operations.
- **TRI reporting by the E&P industry will not promote pollution prevention.** Many TRI chemicals exist as naturally occurring constituents in oil and gas production and waste streams and cannot be reduced without shutting in oil and gas production. State pollution prevention and waste minimization programs, as well as controls being implemented under the Clean Air Act, are all contributing to achieving emissions reductions within the E&P industry.
- **TRI reporting would be extremely costly.** The American Petroleum Institute estimates that TRI reporting would cost the E&P industry \$228 million in the first year alone and \$110 million in each subsequent year. An independent study by the Department of Energy estimates that the cost to the E&P industry could be in the billions of dollars.
- **TRI expansion to the E&P industry is inconsistent with the Administration's efforts to reduce paperwork burdens.** At a time when EPA Administrator Browner and the President have committed to reduce paperwork by 25% (the 1995 Paperwork Reduction Act also sets tough annual goals for reducing paperwork), expansion to E&P would create a massive increase in paperwork of over 2.8 million burden hours in the first year.
- **TRI data from the E&P industry would mislead the public.** An October 1994 *Bakersfield Californian* headline billed a Department of Energy E&P facility, Elk Hills, as Kern County's top polluter. This conclusion was based on TRI reporting required by Executive Order and was misleading because the reported releases were mainly regulated injection of produced water and other associated wastes back into the original hydrocarbon reservoir.

The E&P industry supports pollution prevention and providing information that has value to local communities. Any additional information needed by the public, beyond that which is currently reported under existing state and federal regulations, should be addressed at the state level. EPA has funded the Interstate Oil and Gas Compact Commission (IOGCC) State Review Program with the goal of improving state oil and gas regulatory programs. The Administration has praised this program as a successful model as part of its effort to reinvent regulation. We believe that EPA should work with the states through the IOGCC to achieve Right-to-Know goals for the E&P industry.



**American  
Petroleum  
Institute**

1220 L Street, Northwest  
Washington, DC 20005-4070  
202-682-4000

March 7, 1996

The Honorable Fred Hansen  
Deputy Administrator  
Environmental Protection Agency  
401 M. Street, SW  
Washington, DC 20460

Dear Mr. Hansen:

The American Petroleum Institute (API), Independent Petroleum Association of America, Mid-Continent Oil and Gas Association, and National Ocean Industries Association appreciate the willingness of EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) to continue the dialogue on expansion of the Toxic Release Inventory (TRI) program to the oil and gas exploration and production (E&P) industry. As we have discussed with OPPTS staff, we are very concerned about the lack of value for, and the economic impact of, TRI expansion to the E&P industry.

On February 1, as follow-up to a meeting between our associations and EPA, we were provided data being used by the Agency to evaluate the inclusion of SIC 1311, Crude Petroleum and Natural Gas, in the TRI program. These data were developed by EPA contractors as part of the study titled "Consolidating Industrial Release Estimates from PCS, BRS and AFS in Support of TRI Expansion Workgroup Activities." Our review of these data is attached. EPA has indicated the TRI expansion will be focused on industries that have significant releases of TRI chemicals. It is apparent that expansion of the TRI program to the E&P industry cannot be justified by the data presented. Our review indicates that most of the release estimates are erroneous or not representative of actual releases from E&P facilities.

We have been able to review approximately 80%, by volume, of the information being used for the SIC Code 1311 profile. For the Biennial Reporting System (BRS) data, we estimate that the TRI reportable chemicals actually sent offsite as RCRA hazardous waste were 7600 pounds, not the 7.3 million pounds shown in the database. Of this 7600 pounds, over 50 percent was solvents sent to recyclers and not released to the environment.

Our analysis of the Aerometric Information Retrieval System/Aerometric Facility System (AIRS/AFS) data shows that estimates of toxics released are extremely overstated due to the use of old, inaccurate emission factors to extrapolate values from priority pollutant data to individual hazardous air pollutants or TRI reportable chemicals and the use of emissions data from non SIC 1311 activities. We estimate that the emissions from SIC 1311 activities were 481,000 pounds instead the 4,891,241 pounds shown in the database.

The third database provided by EPA, the Permit Compliance System (PCS), indicates a total of 1,904 pounds of TRI chemicals released by SIC 1311 activities. API evaluated the methodology

The Honorable Fred Hansen

March 7, 1996

Page 2

for the PCS data, which appears to be correct; however, API did not further evaluate the validity of the data due to the insignificant volumes of TRI chemicals reported in this database.

EPA's total estimate of TRI chemical releases for the three databases is 12,192,000 pounds for a sampling of SIC 1311 facilities. Our review of the data indicates the actual releases should be estimated at only 491,000 pounds for the sample, a small fraction of EPA's estimate.

API estimates that the TRI program will cost the E&P industry \$228 million in the first year and over \$110 million each year thereafter. API's estimate is conservative relative to the impact analysis performed by the U.S. Department of Energy<sup>1</sup>, which found that the cost could be as high as \$8.5 billion over the first 5 years. In light of these impacts, this rulemaking clearly constitutes a "significant regulatory action" as defined by Executive Order 12866 and the Unfunded Mandates Reform Act of 1995. In addition, the vast majority of E&P facilities are located in remote areas, far from communities. We believe that TRI reporting for facilities where there is no surrounding community is without any benefit and does not serve the purpose of the law. Consistent with Sections 1(a) and (b), and Section 6(a)(3)(C) of Executive Order 12866, we believe that an objective assessment of the costs and benefits of this expansion of the TRI program to the E&P industry will demonstrate that:

- there is no compelling public need for this new regulation;
- the degree and nature of the risks posed by TRI chemicals at E&P facilities is minimal;
- reporting burdens would be substantial;
- any potential benefits to society are not justified by the potential costs; and
- the least burdensome alternative to address any new regulatory needs for the E&P industry would use existing state oil and gas environmental regulatory programs.

Additionally, at a time when the Administration has committed to reducing paperwork burdens by 25%, expansion of the TRI program would significantly increase reporting burdens for the E&P industry. The reauthorized Paperwork Reduction Act emphasizes the need to minimize and control burdens for any new information collection activities. Thus, any expansion should be carefully evaluated in accordance with the new Paperwork Reduction Act regulations. In particular, 5 CFR 1320.5(d)(1) requires EPA to demonstrate that "it has taken every reasonable step" to minimize burden and show the information has practical utility. We ask the agency to review the API and DOE analyses to understand the potential burdens to the E&P industry of an expansive reporting program. We stand ready to work with EPA to develop credible estimates of the burden and utility of any new TRI reporting requirements.

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<sup>1</sup>Expansion of the Toxic Chemical Release Inventory Reporting Requirement to Energy Industries: Potential Impacts, Draft Report, November 10, 1994, Prepared for the U.S. Department of Energy by Analytical Services, Inc.

The Honorable Fred Hansen

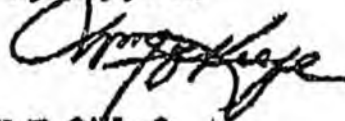
March 7, 1996

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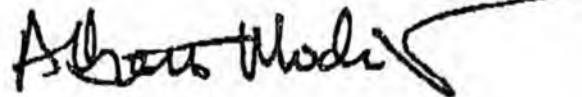
We support pollution prevention and providing information that has value to local communities. Any additional information needed by the public, beyond that which is currently reported under existing state and federal regulations, should be addressed at the state level. EPA has funded the Interstate Oil and Gas Compact Commission (IOGCC) State Review Program with the goal of improving state oil and gas regulatory programs. The Administration has praised this program as a successful model as part of its effort to reinvent regulation. We believe that EPA should work with the states through the IOGCC to achieve Right-to-Know goals for the E&P industry.

In closing, we would like to re-extend our invitation to provide OPPTS management and staff with a tour of E&P facilities. A tour had been arranged for Dr. Lynn Goldman in December, however, she was forced to cancel due to budget constraints. We believe that it is essential for the people involved in developing these regulations to visit our facilities to gain a greater understanding of our industry and the impact of TRI expansion before imposing significant new regulatory burdens.

Very truly yours,



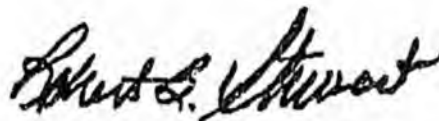
W. F. O'Keefe  
Executive Vice President  
American Petroleum Institute



Albert Modiano  
Vice President  
Mid-Continent Oil and Gas Association



Barry Fussell  
Senior Vice President and General Counsel  
Independent Petroleum Association of America



Robert B. Stewart  
President  
National Ocean Industries Association

c: Lynn Goldman, M.D., EPA

## U.S. Department of Energy Congressional Priorities for 1996

Dirk Forrister  
Assistant Secretary for Congressional  
and Intergovernmental Affairs  
U.S. Department of Energy

Clearly one of the primary energy issues facing Congress this year is the debate over electric restructuring, although the outlook for completion of such legislation is far from certain. The U.S. Department of Energy will also be addressing its budget before the Congress in the coming weeks, impacting Department activities ranging from the fossil energy program to the national labs. Finally, the intersection of electric restructuring, Clean Air Act amendments and the debate over global climate change is sure to draw attention.

### Toxic Release Inventory - One Size Does Not Fit All

Mark Rubin  
Exploration and Production Environmental Coordinator  
American Petroleum Institute

Upcoming U.S. Environmental Protection Agency (EPA) regulations could impose a major new reporting burden on the oil and gas exploration and production (E&P) industry. If covered by the expansion of the Toxic Release Inventory Program (TRI), thousands of E&P facilities encompassing over 40 percent of the oil and gas wells in the U.S. will have to report their discharges to air, water, land, and even underground oil and gas reservoirs. The result: significant costs to the E&P industry, misleading press reports, duplicative reporting, inefficient use of company resources -- and no environmental benefits.



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# TRI – One Size Does Not Fit All

## *Why Expanding the Toxic Release Inventory to the Oil and Gas Exploration and Production Industry Doesn't Make Sense*

Upcoming U.S. Environmental Protection Agency (EPA) regulations could impose a major new reporting burden on the oil and gas exploration and production (E&P) industry. If covered by the expansion of the Toxic Release Inventory Program (TRI), thousands of E&P facilities encompassing over 40% of the oil and gas wells in the U.S. will have to report their discharges to air, water, land, and even underground oil and gas reservoirs. The result: significant costs to the E&P industry, misleading press reports, duplicative reporting, inefficient use of company resources -- and no environmental benefits.

### **What is TRI?**

The Toxic Release Inventory is EPA's program for providing information to the public on releases of toxic chemicals into the environment. Each year, industries covered by the program must report releases of over 600 toxic chemicals. Most of these reported "releases" are safe, legal, permitted disposal, recycling, and air emissions.

Currently, only manufacturing facilities must report under TRI. However, during the next year, EPA may expand the program to cover a host of additional industries -- including E&P facilities.

### **Why E&P?**

Last year, EPA prepared "profiles" of 25 industries not currently reporting under TRI to determine whether their releases warrant inclusion in the program. Based on these profiles, EPA has targeted 14 industries, including E&P, for the program expansion.

EPA's goal in expanding TRI to additional industries is to "provide the public with a more comprehensive picture of toxic releases." In the case of E&P, however, expansion will only give

the public an inaccurate impression of an industry that is already regulated according to the low risk posed by its operations.

One of the most misleading and inappropriate requirements for E&P facilities would be reporting underground injection as a "release" to the environment. Because produced water and associated wastestreams are injected thousands of feet below drinking water zones -- and usually into oil and gas reservoirs -- there is practically no potential for public exposure from these operations. In addition, because the vast majority of E&P facilities are in remote, rural areas -- or are far offshore -- they are miles from the nearest community. Reporting E&P releases, therefore, provides little, if any, environmental benefit.

EPA's profiles assume that "typical" releases for a given industry remain constant. This assumption is wrong for E&P operations, where the concentrations of chemicals in wastestreams change constantly. Because of this variability in the streams, the *only* way for E&P facilities to ensure accurate reports is for operators to perform regular, expensive wastestream tests. The accounting burden for collecting this virtually valueless data is huge.

EPA wants to expand the TRI program to give the public better information about toxic chemicals in their communities. The truth is, however, that E&P facilities have fundamentally different operations than the manufacturing facilities already covered by TRI. E&P facilities would be forced to spend a substantial amount of time and manpower trying to figure out how to make their operations "fit" into the TRI program. In short, TRI reporting just doesn't make sense for the E&P industry.

### **What Would Expansion to E&P Facilities Mean?**

Expansion of the TRI program to E&P facilities would impose an expensive, unnecessary paperwork requirement on an already economically distressed industry.

Specifically, TRI expansion would result in a **costly reporting burden** for E&P facilities. According to a recent study by the American Petroleum Institute, the potential costs of such an expansion would be over \$200 million in the first

year alone. This money would be spent testing wastestreams, filling out forms, and figuring out how to report under an inappropriate program. Over 4,700 facilities, encompassing over 40% of the oil and gas wells in the U.S., would be subject to this unnecessary requirement. In addition, an independent study by the U.S. Department of Energy estimates that the costs could be even higher -- with impacts into the billions of dollars.

Tragically, companies would be spending this money to provide virtually *no* environmental benefit, since the remoteness of E&P facilities means that their "releases" pose minuscule risks to the public. In addition, because TRI reporting requirements would require a great deal of interpretation for the E&P industry, expansion could expose facilities to substantial liability for administrative errors in reporting. Penalties for such unintended violations could reach up to \$25,000 a day!

The potential to mislead the public is another negative result of E&P reporting under TRI. A recent *Bakersfield Californian* headline, "Elk Hills Tops Kern's List of Toxic Polluters," illustrates the kind of confusion and misinformation that results when the media take release data out of context. In this case, the U.S. Department of Energy's Naval Petroleum Reserve voluntarily reported release information from its Elk Hills production facility in Kern County, California.

At Elk Hills, 99% of the reported releases were strictly regulated underground injection. When the public and the press received the data about these releases, no one told them that the "pollution" from the facility was being injected into oil and gas reservoirs with no possibility of public exposure.

TRI expansion to the E&P industry also would divert company resources away from pollution prevention efforts toward expensive testing and release calculation activities. For example, in its second year of reporting, Elk Hills devoted additional resources to characterizing its variable product streams in order to do more accurate calculations that would show how low its releases really are. Had such recalculation not been necessary, this money could have been spent

on more productive environmental protection activities.

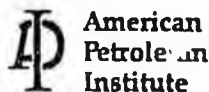
Proponents of expanded TRI reporting argue that public attention to the volumes and types of chemicals released into the environment provides an incentive for companies to prevent pollution. For E&P facilities, "release" reduction can only be achieved through reductions in the amount of oil and gas produced. The TRI program will create perverse incentives for E&P operators to eliminate so-called "releases" by **shutting in oil and gas production wells.**

## Conclusion

At a time when Congress and the public favor relief for industry and the states from costly and bureaucratic reporting and recordkeeping requirements and when the Administration is encouraging "common sense" regulation, EPA is threatening to impose a needless, unreasonable burden on the domestic oil and gas production industry. Communities have the right to know about potential threats to their health and the environment. But there is *no* reason to mislead the public with confusing information on releases that pose virtually no threat.

Right-to-know laws should not be used as a right to mislead. The public has a right to expect that taxpayer money is going to protect human health and the environment against *real* threats. Held up to the lens of cost-effectiveness, environmental benefits, and appropriateness, EPA's proposed expansion of the TRI program to the E&P industry is not sound public policy.

If you would like further information on how TRI expansion could affect the E&P industry, please call Mark Rubin of the American Petroleum Institute at (202) 682-8057.



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### **103. FACILITY COVERAGE AMENDMENT; TOXIC CHEMICAL RELEASE REPORTING; COMMUNITY RIGHT-TO-KNOW**

**Agency:** Environmental Protection Agency/Office of Prevention, Pesticides, and Toxic Substances

**Priority:** Other Significant

**Legal Authority:** 42 USC 11013; 42 USC 11023; 42 USC 11048; 42 USC 11076; EPCRA 313

**CFR Citation:** 40 CFR 372

**Legal Deadline:** None

**Abstract:** The original Toxics Release Inventory (TRI) required reporting from facilities in Standard Industrial Classification (SIC) codes 20-39. These SIC codes cover manufacturing facilities only. This requirement was imposed under the Emergency Planning and Community Right-To-Know Act (EPCRA) section 313(b)(1)(A). The Environmental Protection Agency (EPA) is considering expanding this original list. EPCRA section 313(b)(1)(B) and (b)(2) provide the Administrator with the authority to add or delete SIC codes and the discretion to add particular facilities based on a broad set of factors. EPA is currently conducting analysis to determine which SIC codes (or portions thereof) should be considered for coverage in TRI. Facilities in a broad set of industries are under consideration, including but not limited to, electric utilities, waste management facilities, mining, oil and gas production, materials recovery and recycling, and some warehousing activities.

**Statement of Need:** TRI is the most complete and accessible source of information for the public on toxic chemical releases in communities across America. The intention of Congress was for TRI, and indeed all of EPCRA, to provide information to local communities. Communities need this information to better understand the nature of the releases at the local level. The intent of TRI has been to share information on releases with local communities to help in their assessments of the risks. This basic local empowerment is the cornerstone of the right-to-know program. Yet TRI collects data from only the manufacturing sector, and for only a subset of toxic chemicals that are introduced into the environment. Congress gave EPA the authority to expand TRI, both in terms of the chemicals reported and the facilities required to report, because it recognized that the American public has a right to know what is happening to the environment near their homes, schools, and businesses. Manufacturing facilities account for only a portion of the toxic chemicals released in the United States. EPA recognizes the reporting burden inherent in TRI, and is continuing to take every reasonable opportunity to reduce this burden. The industries under consideration for addition to TRI would conceivably add significantly to the data available to the public on toxic chemical releases. For this proposal, industries will be selected based on a number of factors including the importance of the releases to the community, the relative rank of release estimates, the relationship of activities in these industries to manufacturing, and the compatibility of these activities with current reporting requirements.

**Alternatives:** Although data on releases from many of the facilities under consideration can be found, there is no centralized, publicly available, comprehensive, easily understandable, or consistently collected source of information for the public on toxic chemical releases from facilities outside of manufacturing. EPA has examined all available data sources, including information reported under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act, as well as other sections of EPCRA, State data collection programs, and available data provided by industry. EPA can find no information comparable to the data which TRI provides the American public. Consequently, there are only two alternatives to the expansion of TRI reporting requirements to cover additional facilities: voluntary reporting by facilities or a determination that any additional information TRI might collect from these facilities is of little or no value in terms of community right-to-know.

**Anticipated Costs and Benefits:** The anticipated costs of this action are unknown at present. The addition of facilities to TRI is intended to expand upon the past success of the program in enabling all interested parties to establish credible baselines and to set realistic goals over time. The information reported in TRI increases knowledge levels of pollutants released to the environment and pathways to exposure, improving scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate lenders and purchasers to more accurately gauge a facility's potential liability; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxics in communities.

**Risks:** Manufacturing facilities, which are currently required to report to TRI, represent only a portion of the facilities that release toxic chemicals in the United States. Although what portion of releases these facilities represent is uncertain, the Congressional Office of Technology Assessment has estimated that the original chemical and facility coverage of TRI in 1987 resulted in data on only 5 percent of releases in the U.S. EPA believes that the public has a right to know about such releases and about what facilities are doing to manage wastes. The public can then use this data to evaluate potential risks from these facilities and to determine how to avoid these risks.

**Timetable:**

Action	Date	FR Cite
NPRM	03/00/96	

**Small Entities Affected:** Businesses

**Government Levels Affected:** State, Federal

**Analysis:** Regulatory Flexibility Analysis

**Additional Information :** SAN No. 3034.

**Agency Contact:** Susan B. Hazen Environmental Protection Agency Office of Prevention, Pesticides, and Toxic Substances (7408) Washington DC 20460 Phone: 202 260-1024

**RIN:** 2070-AC71



## 3419. CHEMICAL LIST EXPANSION; EMERGENCY PLANNING AND COMMUNITY RIGHT-TO- KNOW ACT SECTION 313

**Agency:** Environmental Protection Agency/Office of Prevention, Pesticides, and Toxic Substances

**Priority:** Other Significant

**Legal Authority:** 42 USC 11013; 42 USC 11023; 42 USC 11048; 42 USC 11076/EPCRA 313

**CFR Citation:** 40 CFR 372

**Legal Deadline:** None

**Abstract:** The original Toxics Release Inventory (TRI) chemical list consisted of 320 chemicals and chemical categories. In an effort to provide the public with a broader picture of chemicals that will have to submit information for the Toxics Release Inventory in their communities, EPA is expanding the original TRI chemical list. On January 12, 1994 (59 FR 1788), EPA published a proposed rule to add 313 chemicals and chemical categories to the TRI chemical list. Of the 313 chemicals and chemical categories proposed, there are approximately 160 pesticide active ingredients. The chemicals and chemical categories being proposed were selected from numerous other regulatory lists and meet the criteria for human health and environmental toxicity and in addition are extremely toxic to aquatic organisms, EPCRA section 313(d)(2). In addition, the chemicals passed a production volume screen to ensure that reports would be received if the substance is added to the TRI chemical list. Part of this activity included the review of 17 chemicals, previously described in RIN 2070-AC40, 16 of which are from a list of hazardous air pollutants subject to the requirements of the Clean Air Act Amendments of 1990, and one of which was considered for addition due to its extreme aquatic toxicity. Of these 17 chemicals, nine were included in the proposed rule. Linked to this rule is a possible small-source exemption that will provide some measure of relief to the reporting community. This exemption will allow facilities releasing small amounts of listed chemicals to be exempt from full TRI reporting requirements.

### Timetable:

Action	Date	FR Cite
NPRM	01/12/94	59 FR 1788
Final Rule	11/30/94	59 FR 61432
Final Action Deferred Chemicals	03/00/96	

**Small Entities Affected:** Businesses

**Government Levels Affected:** State, Federal

**Analysis:** Regulatory Flexibility Analysis

**Additional Information:** SAN No. 3007.

**Agency Contact:** Susan B. Hazen, Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances, 401 M ST SW (7408), Washington, DC 20460 Phone: 202 260-1024

