

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

9025 SENATE RESOURCES



February 19, 1996

An Open Letter to the Kenai Peninsula Delegation
Senator Judy Salo
Senator John Torgerson
Representative Gary Davis
Representative Mike Navarre
Representative Gail Phillips

Dear Ms Salo, Mr. Torgerson, Mr. Davis, Mr. Navarre, and Ms Phillips:

I am writing in response to your December 18, 1995 letter to Mr. Charles Clark, Director, EPA Region 10, regarding the proposed NPDES permit for oil and gas discharges in Cook Inlet. In the letter, you stated that "regulations for the oil and gas industry must be derived from sound scientific measurement and observation and then tempered by economic considerations." You stated that you "concur with the concerns expressed by UNOCAL."

I was disappointed in your response to the EPA because you have only reiterated UNOCAL's position on the permit. You have not, I believe, given adequate consideration to legitimate and scientifically-founded concerns regarding the reissuance of the permit. We asked an independent scientist from Cornell University, Dr. Robert Howarth, to review the draft permit and associated documents (including CIRCAC, MMS, and industry studies). Dr. Howarth is an internationally renowned scientist (his report and credentials are enclosed) who has served on a number of National Academy of Sciences panels and is the Atkinson Professor of Ecology and Environmental Biology at Cornell University.

Dr. Howarth concluded "that the scientific basis for issuing the proposed NPDES permit is flawed and inadequate." His report details the potential and pathways for transport and bioaccumulation of pollutants from the oil and gas industry. He clearly demonstrates that previous studies in Cook Inlet are inconclusive. "the actual risk to the biota of Cook Inlet cannot be adequately determined but is likely to be far greater than stated." Monitoring standards required by EPA in the draft permit are inadequate, not excessive.

COMMENTS ON THE PROPOSED NPDES GENERAL PERMIT FOR
OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION
FACILITIES IN COOK INLET, ALASKA

by

Robert W. Howarth, Ph.D.
Section of Ecology & Systematics
Division of Biological Sciences
Cornell University
Ithaca, NY 14853 USA

25 January 1996

I have carefully reviewed the draft NPDES Permit #AKG285100 for Cook Inlet, the September 7, 1995 "Cook Inlet (Reissuance) Fact Sheet" for that permit, and the November 1995 report from Parametrix on "Mixing Zone Determination and Risk Assessment of Produced Waters from Oil and Gas Facilities in Cook Inlet, Alaska" which is relied upon heavily in the draft permit. Based on this review, I conclude that the scientific basis for issuing the proposed NPDES permit is flawed and inadequate. The actual risk to the biota of Cook Inlet cannot be adequately determined from the information provided in these reports but is likely to be far greater than stated.

The "Cook Inlet (Reissuance) Fact Sheet" for the proposed permit states "If a definitive determination of no unreasonable degradation cannot be made because of insufficient information, EPA must then determine whether a discharge will cause irreparable harm to the marine environment and whether there are reasonable alternative to on-site disposal" (p. 7). The application of this policy to Cook Inlet mandates further analysis. I believe that such further analysis will lead to a requirement for alternatives to on-site disposal, such as reinjection of formation waters and shore-based disposal (and recycling and re-use) of drilling fluids (Howarth and Marcus 1991). Since such alternatives are possible, the proposed permit conflicts with the national policy that, whenever feasible, pollution should be prevented or reduced at the source; that pollution which cannot be prevented should be re-cycled in an environmentally safe manner, and that disposal or release into the environment should be employed only as a last resort ... (p. 35 of "Cook Inlet (Reissuance) Fact Sheet"). Major failings of the permit and associated reports follow.

Bioaccumulation of Toxic Substances is Ignored:

The draft permit and fact sheet make no mention of the accumulation of oil hydrocarbons and other toxic substances in living organisms. In the supporting document for estimating mixing zones, Parametrix (1995) discounts problems with bioaccumulation and bioconcentration of toxic substances in formation waters. Their logic is based on the relatively low octanol-water partitioning coefficient for many oil hydrocarbons in formation waters, on a supposed rapid elimination of oil hydrocarbons from marine organisms, and on the often low and variable concentrations of oil hydrocarbons found in previous monitoring efforts in Cook Inlet (Parametrix 1995, pp. 24-25). Parametrix (1995) goes on to assert that "the few marine mammals and birds known to occupy upper Cook Inlet ... are unlikely to be at risk from exposure to produced water constituents since these compounds do not readily bioaccumulate" (p. 30).

These conclusions and the underlying logic are wrong. All of the hydrocarbons considered by Parametrix (1995) preferentially accumulate in fatty tissues over seawater, as shown by octanol-water partitioning coefficients well over 1 and as high as 2,000 (Table E-a in Parametrix 1995). This simply must be explicitly considered in determining the exposure of organisms to toxic substances and therefore the size of the mixing zone, and cannot be dismissed by simple references to others who say that a little bioconcentration is O.K. (Parametrix 1995, p. 25). According to the National Academy of Science's report on *Oil in the Sea*: "Numerous studies have shown that bivalves can accumulate hydrocarbons to a level several orders of magnitude above the concentration in the water (NAS 1985, p. 239). Table 4-3 of that report supports this statement and specifically shows high levels of bioaccumulation of naphthalene and diatomics, major toxic components of formation waters

Parametrix (1995, p. 25) states that the hydrocarbons taken up from formation waters into organisms will be rapidly depurated or removed from the organism. Such depuration can occur, but is often much slower than stated by Parametrix (1995). The length of original exposure of the organism to the pollutants is critical, with depuration being much longer in chronic pollution conditions (such as associated with formation waters) than in the short-term lab exposure studies cited by Parametrix (1995), see pp. 249-252 of the National Academy of Science report (NAS 1985). In the case of chronic pollution, the half life for depuration can be more than 1 month (NAS 1985, pp. 300-301), far longer than the hours to days stated by Parametrix (1995).

Parametrix (1995, p. 24) cites monitoring studies which have shown generally low concentrations of oil hydrocarbons in organisms near rigs, or in the case of the Arthur D. Little study, the lack of "any clear spatial pattern associated with the produced water outfall for the Trading Bay Production

Facility." Rather than indicating no problem with bioaccumulation, these findings may result from long-range transport of substances away from discharge sites, with bioaccumulation which is highly variable in space and may be most pronounced well away from rigs (where there has been little or no monitoring). The possibility of long-range transport is discussed further below.

Bioaccumulation poses a particular threat to birds and marine mammals since they have no gills through which oil hydrocarbons are equilibrated back into solution in seawater. Bioaccumulation in birds and mammals is often through the food they consume (NAS 1985, p. 303). The extent to which birds and marine mammals (including endangered species) in Cook Inlet are currently exposed to toxic oil hydrocarbons from formation waters and other sources is completely unknown and needs to be assessed before further discharges should be permitted.

Assumption that NPDES Permit will not Increase Pollution is Wrong:

Page 8 of the fact sheet issued in September 1995 for the proposed permit states: "The reissuance of this permit will not result in additional pollutant loading to the receiving waters; therefore, this action complies with the State's antidegradation policy." This statement is not correct. The amount of formation water produced during OCS development increases dramatically with age in a well and in a field. In a new well, the volume of formation water is small relative to the amount of oil produced, but in an old well may produce 20-times more formation water than oil (Neff et al. 1967). Thus, if current production rigs in Cook Inlet are allowed to continue to use the same technology, pollution from formation waters is likely to increase substantially over time under the new NPDES permit.

Proposed Testing Procedures are Extremely Permissive

For monitoring effects, the proposed permit would rely very heavily on acute toxicity testing, or LC50's, where test organisms are exposed to various dilutions of effluents for 48 hrs and the concentration which kills half the test organisms is estimated. LC50 tests would be the only toxicity testing for drilling fluids (p. 16 of draft permit). For formation waters, LC50's would still be the primary method of determining toxicity, but tests would be augmented with determinations of pollutant effects on growth and some other sublethal effects (p. 24 of draft permit). To date, only LC50 and growth studies have been performed for effluents in Cook Inlet (Parametrix 1995, pp 7-8 and 35). These tests are the basis for one of the approaches used to estimate required mixing zones for effluent discharges under the permit (p. 31 of Cook Inlet (Reissuance) Fact Sheet)

Problems with LC50 approach are thoroughly reviewed and discussed in the 1985 National Academy of Sciences' report (NAS 1985), by Schindler (1987) and by Howarth (1989). The approach tends to greatly underestimate ecological harm. In the case of dissolved oil hydrocarbons, LC50 tests often lead to "values of concern" of 1,000 to 3,000 µg/l, while adverse ecological effects occur at oil concentrations as low as a few µg/l (NAS 1985; Howarth 1989). The National Academy of Sciences' report (NAS 1985) recommends that LC50 tests be used only to compare the toxicity of different substances or to compare the sensitivity of different organisms or life stages, and not to predict ecological harm or set "safe levels," as the draft NPDES attempts. "Such bioassays are helpful in ranking oils in order of toxicity but are of limited value for ecological prediction" (NAS 1985, p. 163).

Using growth rather than death as the measure in toxicity tests does little to improve the situation, and in fact the two approaches give comparable results (Parametrix 1995, pp. 35-38). This is at least in part due to the insensitivity of using growth rate as a measure. According to the National Academy of Sciences' report, "growth of fish is relatively easy to monitor, but fish require long exposure times before significant differences can be detected, compared with controls" (NAS 1985, p. 189). That report goes on to suggest that using behavioral changes provides a much more sensitive test of adverse effects from oil (NAS 1985; pp. 138-139). The NPDES permit would require no such testing. Some sublethal testing would be required, but only for formation waters (not drilling mud discharges), and only fecundity and larval development in two test invertebrate populations would be measured (p. 24 of draft permit).

In situ Environmental Monitoring is Inadequate:

During exploratory drilling, the proposed NPDES permit would require monitoring for changes in sediment pollutant concentrations and for impacts on the benthic community (p. 17 of draft permit). Previous monitoring efforts in Cook Inlet have been unable to see a major effect on the benthos during exploratory drilling, nor have they generally observed a predictable increase in pollutants near rigs. This, however, contrasts with studies elsewhere. In the North Sea, effects from chronic pollution associated with OCS activity have been clearly documented (Kingston 1987; Bakke et al. 1989-b; Reiersen et al. 1989; Gray 1989; Gray et al. 1990). Interestingly, effects have been seen even when low toxicity drilling fluids have been used (Kingston 1987; Reiersen et al. 1989), and these benthic effects were not predictable from toxicity testing, even including non-lethal testing (Bakke et al. 1989-a). The lack of measurable accumulation of pollutants near rigs in Cook Inlet, and the lack of a clearly demonstrable effect of pollutants on the benthos there, may be the result of transport of toxic substances away from the rigs (see discussion

below). Such transport seems likely given the strong tides and currents which characterize Cook Inlet. Without knowledge of the fate of the toxic substances discharged, it is impossible to estimate the amount of ecological harm. At present, this fate is unknown.

Under the terms of the proposed NPDES permit, environmental monitoring during development activities may not be required: "An exemption to post-drilling monitoring will be granted if no impact was indicated during drilling" (p. 17 of draft permit). This ignores potential problems of pollution from the formation waters during production. Continuous monitoring throughout the life of the field should be required, particularly since the volume of formation waters increases in an older field (discussed above).

Long-Range Transport of Toxic Substances is Ignored:

The draft permit and supporting documents fail completely to discuss the probability that toxic substances, both from drilling fluids and from formation waters, are likely to be transported for significant distances from the site of discharge. An implicit assumption behind the mixing zone models used (Parametrix 1995) is that such transport occurs, but apparently it is assumed that toxic substances will be diluted during such transport. Toxic materials may well be dispersed and diluted, but they may well also be accumulating in low-energy environments, including such sensitive areas as coastal marshes. The majority of toxic discharges from OCS operations are either particle bound or quickly become particle bound in the environment, particularly onto fine particles. Such fine particles, and associated pollutants, can easily accumulate in low-energy environments long distances away.

Currently in Cook Inlet, the fate of toxic discharges is not known, and very little is known about transport of such substances. However, two reports present data which hint at accumulation of pollutant oil hydrocarbons away from rigs. Neff and Douglas (1944, as cited on page II.A.15 of the 1995 DEIS for lease sale 149 in Cook Inlet) found very high levels of petroleum hydrocarbons (8.97 to 13.76 ppm) 2 miles to the northeast of an outfall, concentrations much greater than found closer to rigs in Cook Inlet. Also, Arthur D. Little, Inc. (1995, pp. 3-4) found higher levels of sediment oil contamination at two sites away from rigs than near rigs and outfalls in the Beluga River and Trading Bay areas of Cook Inlet. Further discharges of formation waters should not be allowed in Cook Inlet until the fate of toxic hydrocarbons in such discharges is better known.

Problems with Synthetic Drilling Muds are Not Adequately Considered:

The "Cook Inlet (Reissuance) Fact Sheet" implies that synthetic drilling muds will be allowed and states that "preliminary data" show the toxicity of these muds to be similar to others used under Region 10's NPDES permit (pp. 18-19). The mutagenic and carcinogenic potential of synthetic oils is greater than that for natural crude oils (NAS 1985, p. 478). This led the National Academy of Science's report to conclude that "...the future use and discharge of these synthetic products should be monitored with care" (NAS 1985, p. 478). The testing procedures proposed for the NPDES permit are totally unable to determine whether the discharges are having mutagenic or carcinogenic effects.

Effects within Mixing Zone are Ignored, and Standards are Permissive:

The size of the proposed mixing zones are set by the State of Alaska water quality standards: 10 µg/l for aromatic hydrocarbons, and 15 µg/l for total aqueous hydrocarbons (p. 29 of "fact sheet"). These values may not be adequate, and if they are, they barely are. The National Academy of Science's report (NAS 1985) points out numerous biological effects which occur at lower concentrations of dissolved oil hydrocarbons, concentrations as low as 1 µg/l or less. Also, it is important to note that the toxicity of oil hydrocarbons in formation waters is higher than for many other oils since formation waters are enriched in the most water soluble, toxic fractions (Howarth and Marino 1991, p. 6). Benzene alone, which is a known carcinogen in addition to being extremely toxic, can constitute 30-40% of the oil discharged in formation waters in Alaska (NAS 1985, p. 474).

The report of the National Academy of Sciences (NAS 1985) is particularly concerned over the effects of fairly low levels of oil hydrocarbons on behavior. "Of all the processes examined, the perturbation of normal behavior at very low concentrations of petroleum (as low as 10 µg/L) suggests a particular concern. The continuance of normal behavior underlies and is absolutely critical to larval settling, feeding, reproduction, substrate recognition, and homing. In this context a change in or cessation of feeding is one of the first indications of oil pollution in many test animals." (NAS 1985, p. 486).

Even if one accepts the Alaskan water quality standards as adequate, it is critical to note that these cannot be met in Cook Inlet at the end of pipe discharges. The draft permit fully acknowledges that a "mixing zone" is required to allow for pollution to be diluted to these levels. Within the mixing zone, pollutant concentrations will be incredibly high, as high as 182,000 µg/l for total aromatic hydrocarbons from formation waters (p. 23 of draft permit). Organisms within this area will certainly be adversely affected. To meet the Alaskan water quality standard, mixing zones of up to 955 m (for

Granite Point) are proposed. This corresponds to an area of up to 720,000 m² around individual discharges. The draft permit and supporting documents make absolutely no effort to assess the magnitude of ecological harm from the pollution allowed within these areas.

Potential Effects on Marine Mammals are Real and Underestimated:

Even within the rather permissive analysis of the draft permit, it is acknowledged that species such as Beluga whales are at risk (p. 27 of "fact sheet"). The permit makes no provision for dealing with this risk. And for the reasons outlined above, the risk to Beluga whales and other species is probably much greater than the draft permit and supporting documents estimate. At present, it is probably not possible to fully assess the risk to marine mammals such as whales, and "probably less is known of how oil affects marine mammals than any other group of marine organisms" (NAS 1985). In addition to potential direct effects from bioconcentration of oil hydrocarbons in whales (discussed above), "marine mammals including whales may be adversely affected by alterations in the ecosystems supporting them, changing food webs. For instance, amphipods -- which regularly disappear from oil-contaminated sediments -- are a favored food for gray whales...." (Howarth and Marino 1991, p. 31). Such considerations dictate that toxic pollutants not be discharged into Cook Inlet until their effects can be better understood and predicted.

References Cited:

- Arthur D. Little, Inc. 1995. Cook Inlet Monitoring Study. Final Report. A. D. Little, Inc., Cambridge, MA.
- Bakke, T., J. A. Berge, M. Schaanning, G. M. Skeie, and F. Orelid. 1989-a. Effects of low-aromatic drill cuttings on an enclosed deepwater sediment community. Pages 495-519 in: F. R. Englehardt et al. (eds.), *Drilling Wastes*, Elsevier, London, U.K.
- Bakke, T., J. A. Berge, K. Naes, F. Orelid, L. O. Reiersen, and K. Bryne. 1989-b. long term recolonization and chemical change in sediments contaminated with oil-based cuttings. Pages 521-544 in: F. R. Englehardt et al. (eds.), *Drilling Wastes*, Elsevier, London, U.K.
- Gray, J. S. 1989. Effects of environmental stress on species rich assemblages. *Biol. J. Linn. Soc.* 37: 19-32.
- Gray, J. S., K. R. Clarke, R. M. Warwick, and G. Hobbs. 1990. Detection of initial effects of pollution on marine benthos: an example from the Ekofisk and Eldfish oilfields, North Sea. *Mar. Ecol. Progr. Ser.* 66: 285-299.
- Howarth, R. W. 1989. Determining the ecological effects of oil pollution in marine ecosystems. Pages 69-97 in: S. A. Levin et al. (eds.), *Ecotoxicology: Problems and Approaches*. Springer-Verlag, N.Y.

- Howarth, R. W., and R. Marino. 1991. *Oil in the Oceans*. Greenpeace, London, U.K.
- Kingston, P. F. 1987. Field effects of platform discharges on benthic macrofauna. *Phi. Trans. Roy. Soc. B* 316: 545-565.
- Neff, J. M., N. N. Rabalais, and D. F. Boesch. 1987. Offshore oil and gas development activities potentially causing long-term environmental effects. Pages 149-174 in: D. F. Boesch and N. N. Rabalais (eds.), *Long-Term Environmental Effects of Offshore Oil and Gas Development*. Elsevier, London, U.K.
- Parametrix. 1995. *Mixing Zone Determination and Risk Assessment of Produced Waters from Oil and Gas Facilities in Cook Inlet, Alaska*. Parametrix, Inc., Kirkland, Washington.
- Reiersen, L. O., J. S. Gray, K. H. Palmork, and R. Lange. 1989. Monitoring in the vicinity of oil and gas platforms: results from the Norwegian sector of the north Sea and recommended methods for forthcoming surveillance. Pages 91-117 in: R. R. Englehardt et al. (eds.), *Drilling Wastes*. Elsevier, London, U.K.
- Schindler, D. W. 1987. Determining ecosystem responses to anthropogenic stress. *Can. J. Fish. Aquat. Sci.* 44: 6-25.

About the Author:

Robert W. Howarth is an expert in coastal water quality and oil pollution. He received his Ph.D. in Biological Oceanography from the MIT/Woods Hole Oceanographic Institution Joint Program in 1979. He served as a staff research scientist in Woods Hole for 6 years before joining the faculty at Cornell University in 1985. At Cornell, Howarth is the Atkinson Professor of Ecology & Environmental Biology, the Director of Graduate Studies in Ecology & Evolutionary Biology, the Director of the Program in Biogeochemistry & Environmental Change, and the Director of the Cornell Laboratory for Natural Abundance Isotope Analysis. He is also the Editor-in-Chief of the international journal *Biogeochemistry* and the co-chair of the International SCOPE Nitrogen Project.

Howarth has published over 80 scientific articles. His research is funded by the National Science Foundation, the SeaGrant Program, the Hudson River Foundation, and the Mellon Foundation. Howarth has served on 8 committees, panels, and working groups of the National Academy of Sciences. In the past few years, he has served as a member of the NAS Committee on Managing Wastewater in Coastal Urban Areas, the NAS Committee on the Coastal Ocean, and the NAS Committee on High-Priority National Needs in the Coastal Zone. He is also a member of the NAS Panel on Nitrogen Cycling in China and chairs the NAS Working Group on the Conduct of Science on Public Lands. Howarth serves as a member of the Committee on Ethics of the American Society of Limnology & Oceanography and of the Advisory Committee for the Sustainable Biosphere Project of the Ecological Society of America.



Indigenous People's Council for Marine Mammals

P.O. Box 200908

Anchorage, Alaska 99520

(907) 279-2511

Fax (907) 279-6343

23 January 1996

Environmental Protection Agency, Region 10
Attn: Ocean Programs Section, WD-137
1200 Sixth Avenue
Seattle, WA 98101

MEMBERS:

Alaska Eskimo
Whaling Commission

Alaska & Inuvialuit
Beluga Whale Committee

Alaska Sea Otter
Commission

Arctic Marine
Resources Commission

Assn. of Village
Council Presidents

Bristol Bay Native
Association

Eskimo Walrus
Commission

Inuit Circumpolar
Conference

North Slope Borough
Dept. of Wildlife Mgmt.

Pribilof Aleut Fur
Seal Commission

Southeast Native
Subsistence Commission

RURAL CAP STAFF:

Carl Lusk
Subsistence Director

Carol Torsen
Subsistence Coordinator

Carl Hild
Marine Mammal Biologist

To whom it may concern:

This letter is commentary on the Draft National Pollution Discharge Elimination System (NPDES) Permit for Cook Inlet Oil and Gas Exploration, Development and Production. My comments will focus largely on the marine mammals of the region and the materials in the EPA's fact sheet and proposed permit. I am opposed to issuing the permit as it stands and would request that a zero discharge permit be issued for this region.

In 1994 and 1995 I participated as a member of the U.S. delegation to the eight nation Arctic Monitoring and Assessment Program (AMAP). The major theme of the AMAP report that is being prepared is that pollution from all over the globe is moving to the north and impacting living systems.

AMAP considers movement of pollutants on a global scale. Within this permit the exclusion zones range from 1000 m to 20 miles along a relatively closed inlet system. Considering the inlet has the second highest tidal action in the world there will be movement of any discharged materials. Unfortunately this movement is not so much one of flushing, particularly in the winter months when fresh water input into the inlet is limited, but one of sloshing about in a tub of dirty water.

Materials discharged from a site will move at one period of the day down to the ocean in the normal current and with the outgoing tide. Within a few hours the tide changes and the materials reverse their action and move up the inlet perhaps even past their point of origin. Those materials discharged during tidal flow will first move up the inlet. During the Exxon Valdez oil spill, weathered crude was found well up the inlet in the summer, indicating that even at a time of increased river flow materials can move up the inlet over time.

EPA 1/96 - Hild

Water movement and exclusion zones are therefore a concern. The fact sheet states that unique habitat was considered in this permit and that discharge is not allowed in some selected areas. Exclusion limits are mentioned for Steller Sea Lion aquatic foraging area (please note that this animal was named for a biologist whose name was Steller not for stars and so the spelling needs to be corrected), as well as for Sugarloaf Island, and other areas along the inlet. The implication is that with these exclusions that the permit would be safe for unique habitat and species of the region.

On the other hand, within the permit on page 37 under "2. Produced Water" it states that it "may affect, but is not likely to adversely affect, all of the considered species except the Beluga whale." The paragraph ends with the EPA concluding that "'may adversely affect' is based on lack of conclusive evidence regarding the actual impact of produced water discharges upon the species." This to my mind means that there is concern for the entire inlet for the Beluga whale.

In addition there is conflict with the concepts behind the mixing zones. The mixing zones have been described and it is noted that due to the flow of water in the Inlet, with its extremely high tides, any discharges will be stirred well. These statements are contradictory to the relatively small exclusion zones (1,000 - 1,500 m) that have been established for most of the Inlet. If there is a great deal of water movement, then that would require larger exclusion zones, especially if that movement is one of back and forth and not flushing in just one direction. I therefore have serious concerns over the mixing zones and relatively small discharge exclusion zones as outlined in the permit. This becomes a critical concern when the health of the marine mammals of the region are considered.

As stated above there may be adverse impact to Beluga. In 1994 I was appointed to sit on the National Scientific Review Group for the Alaska Region to evaluate all marine mammals under the amendments to the Marine Mammal Protection Act. Those reports list the Cook Inlet Beluga, and the Western Steller Sea Lion as "strategic stocks" which will be evaluated on an annual basis and for which habitat degradation must be considered. Harbor Seals were not classified due to a lack of definitive information. They have had significant declines in their population but it is unclear if there are multiple stocks and therefore the resilience of the animals.

Steller Sea Lions have been declining in this region for nearly twenty years. Harbor Seals have been declining in this region for nearly twenty years. Harbor Seals are known to feed on octopus which feed on benthic populations. Benthic animals pick up pollution as they are filter feeders and/or search the sediments for food. Therefore it is possible that Harbor Seals are being impacted by the years of discharge in the region.

Several years ago there was a massive die off of Harbor Seals in Europe. It has been concluded that the animals died of a virus. It has also now been found that the blubber of the animals that died had low levels of an organochlorine compound. This pollutant of itself was well within "safe limits" and did not cause the deaths, but it had compromised the animals' ability to fight off infection by depressing the immune systems.

In people we carry a herpes virus in our body. It does not manifest itself unless we are stressed. Work loads, sickness, poor nutrition can cause the eruption of "cold sores" or "fever blisters." These are indications that our system is weak. They are not related directly to a cold or fever, but are the manifestation of the virus itself. If we do not take care we can then become very sick, and if pneumonia sets in we can die. Those who die of pneumonia did not die of herpes, nor stress, nor even the sickness that may have made them bed ridden, but they do die of pneumonia.

Herring in Prince William Sound were observed to seriously suffer from a virus in 1993 four summers after the oil spill. It has been reported that they carry this virus all the time and it manifests itself when they are stressed. It is unknown what the exact stress was in 1992 or 1993 that caused the effect but the impact to herring, and the animals which feed on herring was evident.

Recent blood tests on Steller Sea Lions and Harbor Seals in this region, as reported by the University of Alaska Fairbanks Institute of Marine Studies, indicate from liver enzymes that they are under stress. It is unknown how stressed these animals are and what type of "straw it will take to break the camel's back" with a disease outbreak. No further pollution should be added to this scenario. We know that the ecosystem of the lower Cook Inlet is stressed. We have the ability to reduce pollution into the Inlet. We need to take precautions to

EPA 1/96 - Hild

protect those species before there is any further degradation of their health.

Alaska Native hunters in Cook Inlet, who are legally allowed to take Beluga whales for subsistence, have reported lesions, and tumors in the animals over the past few years. Only recently have tissues been sampled to evaluate the health of these animals. As more analysis is completed there will be a better understanding of the overall health of these animals. Until then, and in light of these physical signs of ill health, it is prudent to, where possible, reduce the pollution into Cook Inlet. This permit is an excellent way to address this concern.

Humpback and Fin whales are also listed as "endangered" and are "strategic stocks." They do not come up the inlet, however they do feed at its southern end. Therefore there are four and possibly soon to be five "strategic stocks" which live and feed in the effluent of Cook Inlet. Two are already "endangered," and one is being considered to be listed as "endangered." I am not aware of any other area of the country where there is that type of concentration of marine mammals of concern which could all be impacted by one NPDES permit. It is incumbent upon EPA and ADEC to make this a zero discharge permit.

There has been an old saying "the solution to pollution is dilution." For centuries this has been the practice. What is now known is that no matter where pollution is created, and no matter what medium it is disposed into for dilution, it will move to areas of less energy, be metabolized and become incorporated into living systems. The EPA and the Alaska Department of Environmental Conservation have officially stated that their philosophy is one of pollution prevention. The Clean Water Act states that the national goal is to eliminate the discharge of pollutants into navigable waters. Considering the best technology available, the best management practice would be to insist on a zero discharge permit for this region.

Sincerely,



Carl M. Hild, M.S. Sci. Mgmt.
Biologist / Planner

PENINSULA CLARION

LORI EVANS
Executive Editor

SUSIE B. MORRIS
Publisher

STAN PITLO
General Manager

PAT PORTER
Composition
Supervisor

LINDA BELL
Controller
Human Resources Director

BOB HONEA
Production
Manager

A Morris Communications Corp. Newspaper

New discharge permit for inlet doesn't need tougher requirements

THE HOUSE RESOURCES COMMITTEE MEETS IN KENAI today to talk about two issues of importance to the Kenai Peninsula — HJR 59, which deals with federal discharge permit for Cook Inlet platforms, and HB 175, a bill which would limit the number of sport fishing guides in the state.

First, many thanks to the committee for holding hearings on these two measures on the peninsula, where oil and sport fishing are central to residents' livelihoods, as well as their lifestyles. It's great that the committee is taking an interest in these issues and was willing to come to Kenai to learn more about the area and to hear first-hand from residents.

Second, we'd like to lend our support to HJR 59, which asks the U.S. Environmental Protection Agency to issue a final National Pollutant Discharge Elimination System permit for the inlet's oil and gas operations that, in general:

1. Omits the incremental monitoring and reporting obligations required of permit holders in the draft proposal, and
2. Allows permit holders to operate under discharge monitoring and reporting requirements that are not more rigorous than those of the last permit.

Requirements of the existing permit, which expired several years ago, have worked well to protect the inlet. Fishing and oil have managed to co-habitate successfully, if not always peacefully, in inlet waters for about 30 years. Recent studies have not shown that the inlet and its fish have been harmed by oil and gas operations.

Interestingly enough, the same studies are being used by different sides in this issue — environmentalists who have lobbied for a zero-discharge permit requirement and the oil industry and its supporters who have lobbied just as hard for the discharge of muds and cuttings, produced water and miscellaneous water-based fluids to be continued.

Environmentalists say the sampling hasn't gone far enough, so it can't be concluded that there has been no harm to the inlet. The industry says the studies show they've been good neighbors.

Those who have conducted the studies have been careful not to take sides.

While some would say it would be taking a leap of faith, we believe the studies provide enough evidence that adequate protections are currently in place to ensure no harm comes to inlet waters. It follows — if it's not broken, does it need fixing?

The proposed permit, while still allowing discharges into the inlet, also increases certain monitoring and testing requirements. There is no doubt a need for monitoring and testing — even the industry agrees with this — but the amount should be supported by common sense and scientific reasoning. Testing and monitoring for the sake of testing and monitoring are wastes of time and money.

As an example, the draft permit proposes increased reporting requirements for sanitary waste discharges from the platforms even though the discharges have not been shown to be harmful. The old permit requires monthly testing; the draft permit calls for weekly testing with stricter limits.

Requirements of the old permit are sufficient. It's ironic that the EPA in its 1996 National Water Program Agenda set as a goal reducing monitoring and reporting obligations by about 25 percent, while for the NPDES permit for inlet platforms it increases those obligations.

It's no secret that the maturing oil fields of the inlet are undergoing some tough times. It's getting harder and more expensive to make it economically feasible for the oil industry to do business here. That doesn't mean EPA or the community should turn their heads and not require adequate protections for the inlet.

But there's big difference in providing protection for the inlet and mandating reporting and testing that will do the inlet no good.

The public comment period for the NPDES permit has closed and a final decision on what will be required will be issued later this year. It goes without saying that no one wants to harm the health of the inlet — including those in the oil industry. There is vast disagreement as to what's harmful and what's not — as evidenced by the different sides in this issue using the same studies to support their positions.

When a final permit is rendered, we hope it will continue to allow discharges from the platforms and eliminate additional testing and monitoring that serve only to create more paperwork and expense while not helping the inlet.

Northern Test Lab

(907) 282-4624 Phone

35186 Spur Hwy, Soldotna, Alaska 99669

(907) 282-5777 Fax

FAX MEMO

Date: 23 February 1998

To: House Resources Committee Fax: 465-4316
Representatives Green, Williams, Ogan, Barnes, Kott, Austerman,
Davies, Long, Nicholas

Copy: Representative Gary Davis Fax: 465-3835

From: Mike Taunainen



I am writing to comment on the draft NPDES Permit for Cook Inlet Oil & Gas Exploration, Development, and Production. I have lived and worked in the Kenai-Soldotna area since 1959 and own a consulting engineering and environmental business. My family and I hunt, fish, play, and work on the Kenai Peninsula and are concerned about what happens to our community and the environment.

The proposed permit conditions are too stringent. I believe the permit should be renewed as is to allow the industry to continue operating essentially as they have. Our firm is regularly involved in environmental investigations, giving me a better than average understanding of industry impacts on the local environment. We test discharges from 12 Cook Inlet oil facilities on a weekly or monthly basis - roughly 500 - 600 samples per year, permit limits are exceeded maybe a half dozen times per year, and when they happen, the problems are usually rectified immediately. Just like the rest of us, the oil industry is not perfect, but they do a good job and are good neighbors.

Several studies have been done on the Inlet, some looking specifically for environmental degradation caused by the oil industry. The results? No indication of significant environmental damage, contrary to claims by a few environmental extremists. The challenges and cost of operating in Alaska and Cook Inlet are already burdensome. Sampling is costly because samples have to be transported by helicopter. I am concerned that the proposed permit would add an unfair burden on the oil operators in Cook Inlet and would result in cut backs and loss of jobs.

We have a good balance in Cook Inlet between development and environmental protection (other than too many regulations already). Please base the permit conditions on already available scientific evidence and not on emotion. Thanks for the opportunity to comment.

Alaska State Legislature

Senator Judy Salo * Senator John Torgerson * Rep. Gary Davis * Rep. Mike Navarre * Rep. Gail Phillips



Kenai Peninsula Delegation

December 18, 1995

Mr. Charles Clarke, Director
E.P. A. Region X
ATTN: Ocean Program Section WD-137
1200 Sixth Avenue
Seattle, WA 98101

Dear Mr. Clarke:

On November 30, UNOCAL Petroleum Products & Chemical Division forwarded a letter to you protesting the proposed NPDES Permit limitations on discharges into Cook Inlet. We concur with the concerns expressed by UNOCAL.

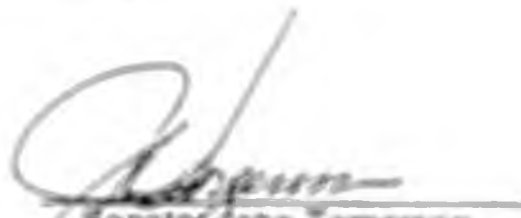
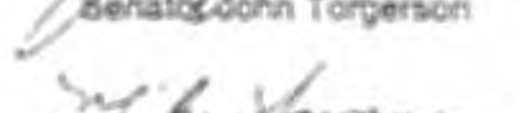
Regulations for the oil and gas industry must be derived from sound scientific measurement and observation and then tempered by economic considerations. Otherwise, they will not be in the best interests of anyone in the industry, the state of Alaska or its citizens.

We strongly urge you to reconsider these actions and to develop regulations which are user-friendly and in the best interests of all concerned.

Sincerely,


Senator Judy Salo

Rep. Gary Davis


Senator John Torgerson

Rep. Mike Navarre


Rep. Gail Phillips

LEGISLATIVE REFERENCE LIBRARY

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-1000
FAE (907) 465-2029
Mail Stop 1101

130 Simon Street, Suite 400
Juneau, Alaska 99801-2100

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

House Resolutions
2-23-96 8:30am
1059

Mary Paganóski

HJR

60

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

N 1
Bill Version: HJR 60
(H) Publish Date: 2/21/96

Title: Relating to RS 2477
Sponsor: Rep James
Requestor: _____

Dept Affected: LFA
BRU: _____
Component: _____
Serial #: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

FOR BUDGET ANALYSIS

H. State Affairs Committee
by Walt Wilcox
Lee A. De...
Shirley Kilian

Date: 2/19/96
Phone: 465-3743
Phone: _____

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/25/98

FURTHER:

DATE TURNED INTO OFFICE: 4-2-98

The Resources Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 60(RES)
 Relating to Revised Statute 2477 rights-of-way.

and recommends:

- be replaced with SEN CS 147C 6D (Res)
- 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>Beauce</i>	✓	<i>[Signature]</i>			
<i>Christ Taylor</i>					
<i>[Signature]</i>					
<i>[Signature]</i>					
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>LAA</i>	<i>4/1/98</i>	✓	

*Grant
date to
CS, also*

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's MB

SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 60(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A RESOLUTION

1 **Relating to Revised Statute 2477 rights-of-way.**

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

3 **WHEREAS** Revised Statute 2477 (RS 2477) provided, "the right-of-way for the
4 construction of highways over public lands, not reserved for public uses, is hereby granted";
5 and

6 **WHEREAS** the Congress repealed RS 2477 in 1976 in the Federal Land Policy and
7 Management Act, but the Act expressly reserved existing rights-of-way created under RS
8 2477; and

9 **WHEREAS** the Alaska State Legislature funded a \$1,200,000 project conducted by
10 the Alaska Department of Natural Resources to document the RS 2477 rights-of-way in
11 Alaska; and

12 **WHEREAS** the project found more than 560 routes that qualified as RS 2477 rights-
13 of-way; and

14 **WHEREAS** RS 2477 rights-of-way resulted from the public's use of routes for travel
15 between settlements and to access mineralized areas in Alaska from the late 1800's until 1968;
16 and

17 **WHEREAS** it is in the best interests of Alaska to preserve this historical and

1 traditional rural transportation system because these routes form the transportation network for
2 surface travel between rural settlements and access to mineralized areas and because the routes
3 create significant entrepreneurial, recreational, and tourism opportunities for our citizens; and

4 **WHEREAS** the State of Alaska is committed to a balanced philosophy of the
5 development and wise use of Alaska's scenic beauty, mineral wealth, wildlife, and other
6 natural resources coupled with environmental protection to ensure that future generations will
7 experience Alaska as it is known by present generations of Alaskans; and

8 **WHEREAS** the surface transportation system in Alaska is inadequate to address the
9 needs of our state; and

10 **WHEREAS** the United States Department of the Interior adopted regulations in 1938
11 interpreting RS 2477 stating that RS 2477 is "effective upon the construction or establishing
12 of highways, in accordance with State laws, over public lands not reserved for public uses";
13 and

14 **WHEREAS** the interpretation of RS 2477 by the United States Department of the
15 Interior remained unchanged until the repeal of the statute when the regulations were also
16 repealed; and

17 **WHEREAS** federal and state courts have consistently ruled for 100 years that it was
18 the intent of the Congress in enacting RS 2477 that the law of the state where the RS 2477
19 right-of-way is located defines the acts that constitute acceptance and the scope of the right-of-
20 way; and

21 **WHEREAS** the United States Department of the Interior is attempting to
22 administratively rescind the long-standing and widely accepted interpretation of RS 2477 by
23 adopting regulations restrictively defining key statutory terms contrary to the intent of the
24 Congress and virtually eliminating all RS 2477 rights-of-way in Alaska; and

25 **WHEREAS** legislation has been introduced in the United States Senate by Senator
26 Frank Murkowski and Senator Ted Stevens, and legislation has been introduced in the United
27 States House of Representatives to preserve the long-standing judicial and executive
28 interpretation of RS 2477 and to protect the existence of rights-of-way previously granted by
29 the federal government under RS 2477;

30 **BE IT RESOLVED** that the Alaska State Legislature endorses the efforts of the
31 Alaska delegation in Congress to preserve and protect the original meaning of Revised Statute

1 2477 to enable this generation and future generations of Alaskans to use the routes established
2 by Native and pioneer Alaskans; and be it

3 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests the
4 members of the Alaska delegation in Congress to ensure that federal law recognizes the
5 controlling nature of state law in regard to the construction and establishment of RS 2477
6 rights-of-way, as recognized by 100 years of judicial decision and by 38 years of Department
7 of the Interior regulation by enacting such a provision into federal statutes; and be it

8 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that
9 the Congress include a 10-year period and a reasonable process for the assertion, recognition,
10 and determination of the existence of RS 2477 rights-of-way as part of legislation addressing
11 RS 2477 rights-of-way.

12 **COPIES** of this resolution shall be sent to the Honorable Ted Stevens and the
13 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
14 Representative, members of the Alaska delegation in Congress.




Alaska State Legislature

Official Business

State Capitol
Juneau AK 99801

MEMO

TO: Legal Services
via fax: X2029 this page only

FROM: Annette Kreitzer, Aide to
Senate Resources Committee 

DATE: April 1, 1996

RE: CS HJR 60: RS2477 Highway Rights of Way

Please create a FINAL Resources committee subcommittee for HJR 60 that incorporates an amendment adopted in Senate Resources:

1) Page 3, Line 9:
the Congress include a [REASONABLE] 10-year period and a reasonable process...

There were no other changes to the bill. Please deliver the FINAL to Senator Leman's office, Room 115 of the Capitol.

CS FOR HOUSE JOINT RESOLUTION NO. 60(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/18/96

Referred: Rules

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A RESOLUTION

1 Relating to Revised Statute 2477 rights-of-way.

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

3 WHEREAS Revised Statute 2477 (RS 2477) provided, "the right-of-way for the
4 construction of highways over public lands, not reserved for public uses, is hereby granted";
5 and

6 WHEREAS the Congress repealed RS 2477 in 1976 in the Federal Land Policy and
7 Management Act, but the Act expressly reserved existing rights-of-way created under RS
8 2477; and

9 WHEREAS the Alaska State Legislature funded a \$1,200,000 project conducted by
10 the Alaska Department of Natural Resources to document the RS 2477 rights-of-way in
11 Alaska; and

12 WHEREAS the project found more than 560 routes that qualified as RS 2477 rights-
13 of-way; and

14 WHEREAS RS 2477 rights-of-way resulted from the public's use of routes for travel
15 between settlements and to access mineralized areas in Alaska from the late 1800's until 1968;
16 and

17 WHEREAS it is in the best interests of Alaska to preserve this historical and

1 traditional rural transportation system because these routes form the transportation network for
2 surface travel between rural settlements and access to mineralized areas and because the routes
3 create significant entrepreneurial, recreational, and tourism opportunities for our citizens; and

4 WHEREAS the State of Alaska is committed to a balanced philosophy of the
5 development and wise use of Alaska's scenic beauty, mineral wealth, wildlife, and other
6 natural resources coupled with environmental protection to ensure that future generations will
7 experience Alaska as it is known by present generations of Alaskans; and

8 WHEREAS the surface transportation system in Alaska is inadequate to address the
9 needs of our state; and

10 WHEREAS the United States Department of the Interior adopted regulations in 1938
11 interpreting RS 2477 stating that RS 2477 is "effective upon the construction or establishing
12 of highways, in accordance with State laws, over public lands not reserved for public uses";
13 and

14 WHEREAS the interpretation of RS 2477 by the United States Department of the
15 Interior remained unchanged until the repeal of the statute when the regulations were also
16 repealed; and

17 WHEREAS federal and state courts have consistently ruled for 100 years that it was
18 the intent of the Congress in enacting RS 2477 that the law of the state where the RS 2477
19 right-of-way is located defines the acts that constitute acceptance and the scope of the right-of-
20 way; and

21 WHEREAS the United States Department of the Interior is attempting to
22 administratively rescind the long-standing and widely accepted interpretation of RS 2477 by
23 adopting regulations restrictively defining key statutory terms contrary to the intent of the
24 Congress and virtually eliminating all RS 2477 rights-of-way in Alaska; and

25 WHEREAS legislation has been introduced in the United States Senate by Senator
26 Frank Murkowski and Senator Ted Stevens, and legislation has been introduced in the United
27 States House of Representatives to preserve the long-standing judicial and executive
28 interpretation of RS 2477 and to protect the existence of rights-of-way previously granted by
29 the federal government under RS 2477;

30 BE IT RESOLVED that the Alaska State Legislature endorses the efforts of the
31 Alaska delegation in Congress to preserve and protect the original meaning of Revised Statute

1 2477 to enable this generation and future generations of Alaskans to use the routes established
2 by Native and pioneer Alaskans; and be it

3 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests the
4 members of the Alaska delegation in Congress to ensure that federal law recognizes the
5 controlling nature of state law in regard to the construction and establishment of RS 2477
6 rights-of-way, as recognized by 100 years of judicial decision and by 38 years of Department
7 of the Interior regulation by enacting such a provision into federal statutes; and be it

8 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that
9 the Congress include a ^{10-year} [reasonable] period and a reasonable process for the assertion,
10 recognition, and determination of the existence of RS 2477 rights-of-way as part of legislation
11 addressing RS 2477 rights-of-way.

12 **COPIES** of this resolution shall be sent to the Honorable Ted Stevens and the
13 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
14 Representative, members of the Alaska delegation in Congress.

3 10-year
work on



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

The Alaska Environmental Lobby cannot support HJR 60

This resolution accurately quotes the language of RS 2477 providing that *"the right-of-way for the construction of highways over public lands, not reserved for public use, is hereby granted."*

It correctly notes that the Federal Land Policy and Management Act repealing RS 2477 in 1976 expressly reserves existing rights-of-way created under RS 2477.

It laudably commits Alaska *"to a balanced philosophy of the development and wise use of Alaska's scenic beauty, mineral wealth, wildlife, and other natural resources coupled with environmental protection to ensure future generations"* might experience Alaska as we know it now.

However, this resolution's confidence in case law that supports the intent of a Congress that governed the United States over 130 years ago might very well be misplaced. "The law must be stable, but it cannot stand still".

This resolution's reliance on a definition of "construction" satisfied by mere seasonal use weakens Alaska's RS 2477 case and at the very least will make lawyers wealthy.

It is not a bad thing that this resolution recognizes the efforts of our Alaskan delegation in Congress, but the legislation that's come out of that effort-so far-does not address the concerns of many of their constituents.

- Owners of private land are concerned about "takings".
- The Native community is concerned about the status of their lands.
- Nothing has been done by our Alaskan delegation to clarify the State's still evolving position on section lines. Do surveyed section lines qualify? Unsurveyed?

Nonresidents have problems with Alaska's RS 2477 effort too.

- What about access through National Parks?
- Should traditional winter trails across wetlands be turned into all-weather highways?

Alaska has a public relations problem. Alaskans' reactions to it range from anger to embarrassment, but eventually it will effect all of us...one way or another. The reality is that this resolution and the legislation it endorses will do nothing positive for that problem and might very well make it worse...even as it whips up problems among the very residents of Alaska it intends to help.

4/1/96



TYONEK NATIVE CORPORATION

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

17 8260
D-36 Tyonek

Senator Georgianna Lincoln
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

March 14, 1996

MAR 18 1996

Faxed this date to (907)465-2652

Dear Senator Lincoln:

Tyonek Native Corporation and The Native Village of Tyonek are requesting your assistance in conveying our concerns over House Joint Resolution No. 60. relating to Revised Statute 2477 right-of-way(RS2477).

Please be aware that the State has made a claim of RS2477(#200) that crosses the Chuitna River at its mouth, takes out a 100 feet through the village, and violates the Russian Orthodox cemetery in the village, then travels on to the old village site where it terminates in the old village cemetery(also Russian Orthodox), turns around and comes back.

The purpose of RS2477 is supposedly to provide access to mineralized areas to the general public. As you know, Tyonek is a private community much like the private communities elsewhere in the lower 48. However to meet the needs of the resource development industry, Tyonek has already provided access to resource developers such as ARCO, Placer Dome, Unocal, to name a few. Such access was provided by Tyonek, at no cost to the State of Alaska and without disrupting the community. Why then is RS2477#200 needed? Why does the State need access to Tyonek's cemeteries?

RS2477 as written and proposed by U.S. Congress Bill H.R. 2081, provides for no public review or comment on any R.S. 2477 right-of-way, no permitting or environmental impact review, no compensation to the land owner(constituting a taking under the 5th Amendment), and no commitment by the State to maintain the right-of-way after it is taken. While we agree that there are certain rights-of-way that everyone can agree to support, we cannot and do not support RS 2477 #200 in its present format, and have grave concerns about the constitutionality of RS2477 in its present form. Thank you for your support and consideration on this issue.

Sincerely,



Tom Harris
CEO, TNC

Sponsor Statement

April 1, 1996

HJR 60 RS 2477 highway rights of way
By Rep. Jeannette James

Federal Revised Statute 2477 (RS 2477) provided for "the right-of-way" for the construction of highways over public lands, not reserved for public uses. This preserves access all over Alaska using traditional roads and trails for current and future roads and trails.

Congress repealed RS 2477 in 1976, but reserved existing rights-of-way created under RS 2477.

The US Department of the Interior is attempting to administratively recind the long-standing and widely accepted interpretation of RS 2477 by adopting regulations restrictively defining key statutory terms contrary to the intent of the Congress and virtually eliminating all RS 2477 rights-of-way in Alaska.

S. 1425 has been introduced in the US Senate, and H.R. 2081 has been introduced in the US House to preserve the long standing judicial and executive interpretation of RS 2477 and to protect the existing rights-of-ways previously granted by the federal government under RS 2477.

HJR 60 supports the federal legislation and asks that the US government allow us a reasonable period and process for the assertion, recognition, and determination of the existence RS 2477 rights-of-way.

HJR

66

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 5/1/96

FURTHER:

DATE TURNED INTO OFFICE: 5-3-96

The Resources Committee considered HOUSE JOINT RESOLUTION NO. 86 am
 Relating to opposing the American Heritage Areas 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>Keace</i>	<input checked="" type="checkbox"/>	<i>W. H. Taylor</i>	<input checked="" type="checkbox"/>		
		<i>Rich Halford</i>	<input checked="" type="checkbox"/>		
		<i>Dr. [Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Steven D. Herman</i>		CHAIR: _____			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
(4) STA	4/1/96	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

HOUSE JOINT RESOLUTION NO. 66 am
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Amended: 4/26/96
 Introduced: 4/19/96

A RESOLUTION

1 Relating to opposing the American Heritage Areas Program.

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

3 WHEREAS the federal government is proposing to authorize an American Heritage
 4 Areas Program that would designate areas of the country and make those areas subject to
 5 legislation as part of the National Park System; and

6 WHEREAS federal proposals labeling private property invite, and are intended to
 7 invite, the destruction of private property rights, particularly when used by federal agencies
 8 in conjunction with other or subsequent legislation, and

9 WHEREAS provisions should be made under the American Heritage Areas Program
 10 in federal legislation to allow private property owners to reject or withdraw their property
 11 from such labeling without penalty, and to allow private property owners to avoid such
 12 labeling entirely, and

13 WHEREAS the National Park Service has devised the label "eligible but not
 14 designated" that creates the false impression that private property owners can avoid the
 15 consequences of being designated under the program despite the fact that this "eligible" label
 16 amounts to a de facto designation under the program because the government may treat
 17 eligible property the same as designated property under language such as, "This Act applies

1 to and properties eligible to be so designated"; and

2 WHEREAS the power to plan or zone private land is a power reserved to the states
3 and the people of the states; and

4 WHEREAS, despite claims to the contrary, the clear intent and effect of the proposal
5 would be to, de facto, involve the federal government in planning and zoning activities; and

6 WHEREAS it would be imprudent to tolerate or favor constitutionally questionable
7 land designations and labels for which the consequences cannot be fully specified in advance
8 but which appear likely to be injurious to private property rights; and

9 WHEREAS giving the American Heritage Areas Program a basis in legislation would
10 greatly facilitate and increase the intrusive designation and labeling by government of private
11 land; and

12 WHEREAS the enormity of some of the proposed areas (Rocky Mountain Heritage
13 Corridor, Mississippi River Valley Heritage Corridor, and others) demonstrates an inexcusable
14 and unacceptable federal arrogance;

15 BE IT RESOLVED that the Alaska State Legislature opposes the authorization of an
16 American Heritage Areas Program and urges the members of Alaska's Congressional
17 delegation to oppose the authorization and work to abolish the American Heritage Areas
18 Program.

19 COPIES of this resolution shall be sent to the Honorable Ted Stevens and the
20 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
21 Representative, members of the Alaska delegation in Congress.

SENATE JOINT RESOLUTION NO. 41
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

Introduced: 4/19/96

Referred: Resources

A RESOLUTION

1 Relating to opposing the American Heritage Areas Program.

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

3 WHEREAS the federal government is proposing to authorize an American Heritage
 4 Areas Program that would designate areas of the country and make those areas subject to
 5 legislation as part of the National Park System; and

6 WHEREAS federal proposals labeling private property invite, and are intended to
 7 invite, the destruction of private property rights, particularly when used by federal agencies
 8 in conjunction with other or subsequent legislation; and

9 WHEREAS the National Park Service has a record of insensitivity to private property
 10 rights, as evidenced by 26 years of misconduct under the National Natural Landmark Pr gram
 11 and by the current proposal, the American Heritage Areas Program, in which no provision has
 12 been made to allow private property owners to reject or withdraw their property from such
 13 labeling without penalty or to shield private property owners from the likely and severe
 14 adverse effects of such labeling; and

15 WHEREAS the National Park Service has devised the label "eligible but not
 16 designated" that creates the false impression that private property owners can avoid the
 17 consequences of being designated under the program despite the fact that this "eligible" label

1 amounts to a de facto designation under the program because the government may treat
2 eligible property the same as designated property under language such as, "This Act applies
3 to. . . . and properties eligible to be so designated"; and

4 WHEREAS the power to plan or zone private land is a power reserved to the states
5 and the people of the states; and

6 WHEREAS, despite claims to the contrary, the clear intent and effect of the proposal
7 would be to, de facto, involve the federal government in planning and zoning activities; and

8 WHEREAS it would be imprudent to tolerate or favor constitutionally questionable
9 land designations and labels for which the consequences cannot be fully specified in advance
10 but which appear likely to be injurious to private property rights; and

11 WHEREAS giving the American Heritage Areas Program a basis in legislation would
12 greatly facilitate and increase the intrusive designation and labeling by government of private
13 land; and

14 WHEREAS the enormity of some of the proposed areas (Rocky Mountain Heritage
15 Corridor, Mississippi River Valley Heritage Corridor, and others) demonstrates an inexcusable
16 and unacceptable federal arrogance;

17 BE IT RESOLVED that the Alaska State Legislature opposes the authorization of an
18 American Heritage Areas Program and urges the members of Alaska's Congressional
19 delegation to oppose the authorization and work to abolish the American Heritage Areas
20 Program.

21 COPIES of this resolution shall be sent to the Honorable Ted Stevens and the
22 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
23 Representative, members of the Alaska delegation in Congress.

Alaska State Legislature



Official Business
Penalty for Private Use \$300

Speaker of the House of Representatives

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3720
(907) 465-2689

Sponsor Statement

for

HJR 66 Opposed to American Heritage Area

This resolution is a priority for all Western States. It opposes a federal bill which would directly affect the rights of Western States to govern their land.

The American Heritage Areas Program is a federal bill in the House Resources Committee. The bill provides the means to recognize natural, historic, scenic and cultural resources and recreational opportunities of the United States. Enactment of this proposed legislation would authorize the Secretary of the Interior to provide technical assistance to State and local governments and private nonprofit organizations to study and promote the potential for conserving and interpreting these areas. Further, it would establish within the Department of the Interior a body to assist the Secretary in carrying out this Act.

While there is merit in the preservation of Heritage Areas, their creation and governance should be state sponsored. The American Heritage Areas Program would dramatically amplify the role of the Park Service in the West, giving authority to yet another arm of the Department of the Interior with jurisdiction over Western lands. The endorsement of new Federal power continually erodes the authority of local government over local land issues.

The American Heritage Areas Program threatens the future value, ownership, and management of private lands by the de facto designation of "eligible" lands. The government may treat eligible property the same as designated property by applying language which refers to "properties eligible to be so designated". This bill must be amended to explicitly protect private lands before further consideration.

This resolution opposes the authorization of an American Heritage Areas Program as currently proposed.

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LAND & COMMERCE COMMITTEE
HOUSE STATE AFFAIRS COMMITTEE
INTERNATIONAL TRADE & TOURISM
COMMITTEE

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF EDUCATION
COURTS



DISTRICT 20

SESSION
STATE CAPITOL ROOM 110
1100 STATE ALASKA FIRM 1100
PHONE (907) 259-8100
FAX (907) 259-8100

OFFICE
100 W 4TH AVE. SUITE 200
ANCHORAGE, AK 99501-2100
PHONE (907) 259-8100
FAX (907) 259-8100

Introduced by Representative Brian Porter

page 1, lines 9-14
delete all materials

page 1, line 9

add the following:

"WHEREAS provisions should be made under the American Heritage Areas Program in federal legislation to allow private property owners to reject or withdraw their property from such labeling without penalty, and to allow private property owners to avoid such labeling entirely; and "



ASSOCIATED GENERAL CONTRACTORS of ALASKA

401 B STREET • ANCHORAGE, ALASKA 99503
P.O. BOX 240609 • ANCHORAGE, ALASKA 99524-0609
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

APR 26 1996

April 23, 1996

Honorable Loren Leman
Chairman, Senate Resources Committee
Alaska State Senate
Capitol Building
Juneau, AK 99801

Fax 465-3870

Re: SJR-41, Opposing American Heritage Areas Programs

Dear Senator Leman:

We are in support of Senate Joint Resolution 41 which opposes the authorization of an American Heritage Areas Program and urges the members of the Alaska Congressional Delegation to oppose any such program.

Alaska has already paid more than its fair share of land into special restricted use set-asides and no legislation should be allowed that will further restrict the lands in our state.

We urge that SJR-41 be passed at the earliest possible date.

Sincerely,

ASSOCIATED GENERAL CONTRACTORS
OF ALASKA


Heinrich Springer
Executive Director

cc: Members, Senate Resources Committee

Public lands - vital part of Western, Midwestern life

States	Acres federal public lands	% of state
Alaska	247,802,244	68%
Arizona	31,491,365	43%
California	61,042,578	61%
Colorado	22,647,838	34%
Idaho	33,121,959	63%
Missouri	2,030,505	5%
Montana	25,862,496	28%
Nevada	57,803,208	82%
New Mexico	25,747,308	33%
Oregon	29,668,753	48%
Utah	33,611,396	64%
Washington	12,373,150	29%
Wyoming	30,407,259	49%

Dear People for the West!

The following is a letter that I sent to Bruce Babbitt. I may send copies to my congressman also:

(Excerpt:) There seems to be an effort in this country to eliminate the mining industry, a cornerstone of this nation's

Federal Wilderness in Alaska



If Alaska's 57 million acres of designated Wilderness were made into one state, it would be the 11th largest state in America or larger than the combination of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Delaware and Maryland.

Comparative state acreage:

10. Oregon	62 million acres
11. Alaska designated Wilderness	57
12. Utah	54
13. Minnesota	54
14. Idaho	53
15. Kansas	52

Federal Lands in Alaska



The 220 million acres of federal lands within Alaska alone would comprise the second largest state in the Union. This acreage, a large portion of which severely restricts or prohibits economic development and public access, is comparable in size to the following combination of 15 eastern states or more than three West Coast states as shown above.

(millions of acres)

Maine (21.2)	Pennsylvania (28.9)
New Hampshire (5.9)	Ohio (26.4)
Vermont (6.1)	Delaware (1.3)
Massachusetts (5.3)	Maryland (6.7)
Rhode Island (1.7)	Virginia (26.1)
Connecticut (3.2)	North Carolina (33.7)
New York (31.4)	South Carolina (19.9)
New Jersey (4.9)	

Federal Land Withdrawals (closed to mineral entry)

Pre-1971



Post-1980



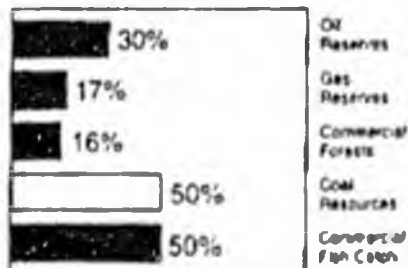
Alaska

The 49th star of America is a challenging land, for beneath all its vast climatic and geologic diversity lies much of the future wealth and security of the United States. With its vast resources, Alaska has the means — and the raw materials — to be a vital contributor to the security and economic well-being of America.

Yet Alaska, which has barely scratched the surface of its resource potential, may see many future economic opportunities vanish under relatively new government policies affecting land use in general and federal Wilderness in particular. These policies have led to the continuing withdrawal of giant amounts of land from many productive multiple-uses, leaving striking implications for resource development, utilities, recreation, local governments and tourism.

In 1980, when Congress passed the Alaska National Interest Lands Conservation Act, a staggering 104 million acres of the public domain was withdrawn into conservation system units. Overall, 158 million acres in Alaska have been set aside into federal conservation units. These units, which nearly equal the combined size of California and Oregon, comprise 70% of America's national park lands and 90% of its wildlife refuges. These withdrawals may very well embrace many valuable resources needed by Alaska to develop flourishing industries to support itself and its people.

Alaska's percentages of total U.S. resources



Wilderness

The average citizen is likely to define wilderness as land in which one can enjoy pristine natural conditions and leave the concerns of city life behind. Small wonder this concept of wilderness is popular with Americans. However, few are aware of the stark differences between designated Wilderness, or in lay terms, big "W" versus small "w" wilderness.

When land managers think of big "W" Wilderness, they mean those areas under federal regulation where most human activity is virtually eliminated. Wilderness with a small "w," on the other hand, includes those wild places still easily accessible and useable by the general public.

Designated Wilderness is an environment where man is alien. It is not user friendly:

- It not only bans all types of resource development, including commercial fishing, it prohibits the construction of public and private recreation facilities. Small backcountry lodges, ski resorts, visitor centers and motor tours are not allowed in federal Wilderness.
- With few exceptions, roads, as well as new access trails and cabins are banned.

The facts show Alaska has given more than its fair share of designated Wilderness:

- Alaska contains 57 million acres of designated Wilderness — 62% of all federal Wilderness in the United States. Millions of additional acres in Alaska are under Wilderness consideration.

Throughout Alaska a cumulative overlay of federal and state land withdrawals restricts or prohibits development. With the exception of the narrow Trans-Alaska pipeline corridor, it is impossible to cross the vast mainland of Alaska without entering at least one restrictive conservation unit. Despite provisions within ANILCA to accommodate traditional access, there are endless complaints about agencies eliminating or severely impairing access.

More big "W" Wilderness in Alaska will mean fewer resource development and recreational opportunities. It won't even lead to significant improvements in environmental protection since non-designated Wilderness areas of our parks and refuges are already managed to very high standards.



Wilderness and Energy

The nation's increasing dependency on foreign oil makes it more vulnerable to petroleum price increases and oil supply disruptions. The inherent risks will only grow larger with the continued withdrawal of hundreds of millions of acres of federal lands from petroleum exploration and development.

America's oil industry is struggling to replace the petroleum now being produced from domestic oil and gas fields. Most of these fields are in a declining state of production and require new technology to enhance recovery. Land withdrawals are limiting new operations to areas that have already been heavily worked by.

Along with conservation, the best opportunity for reversing the nation's increasing reliance on foreign crude is finding more domestic oil. But only a fraction of federal lands are being leased while millions of acres are being withdrawn into federal designations prohibiting development.

The energy industry is not seeking to open designated Wilderness areas to oil and gas exploration and development. However, it is deeply concerned with proposals to add millions more acres of federal lands across Alaska into the wilderness system.

Alaska State Legislature

Senator Drue Pearce
President of the Senate

during interim:
716 West 4th Avenue, Suite 500
voice: (907) 258-8185
fax: (907) 258-0226

during session:
Juneau, AK 99801-1182
voice: (907) 465-4993
fax: (907) 465-3872



Representative Gail Phillips
Speaker of the House

during session:
Juneau, AK 99801-1182
voice: (907) 465-2689
fax: (907) 465-3472

during interim:
716 West 4th Avenue, Suite 620
voice: (907) 258-8164
fax: (907) 258-1642

April 24, 1996

Honorable Don Young
Chairman, Committee on Resources
House of Representatives
2331 Rayburn House Office Building
Washington, D.C. 20515-0201

VIA FAX (202) 225-5929
ATTN: Duane Gibson

Dear Don,

The Alaska Legislative Leadership is opposed to the authorization of an American Heritage Areas Program as currently proposed.

We have drafted a House Joint Resolution echoing the opposition of the Western States in the further withdrawal of land from local governance, and the increased authority this would offer the Department of the Interior.

While there is merit in the preservation of Heritate Areas, their creation and governance should be state sponsored. The American Heritage Areas Program appears to threaten the future value, ownership, and management of private lands by the de facto designation of "eligible" lands. The bill must be ammended to explicitly protect private lands before further consideration.

We expect this Resolution to pass a House vote very soon. We urge that you ammend this bill to reflect the value of local decision-making and private property rights.

Sincerely,

A handwritten signature of Drue Pearce, enclosed in a circular scribble.

Drue Pearce

SENATE PRESIDENT

GP:mfn

Sincerely,

A handwritten signature of Gail Phillips.

Gail Phillips
SPEAKER OF THE HOUSE

104TH CONGRESS
1ST SESSION

H. R. 1280

To establish guidelines for the designation of National Heritage Areas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1995

Mr. HEFLY (for himself and Mr. TORRILDBEN) introduced the following bill; which was referred to the Committee on Resources

A BILL

To establish guidelines for the designation of National Heritage Areas, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Technical Assistance
5 Act of 1995".

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds that—

8 (1) certain areas of the United States represent
9 the diversity of the national character through the
10 interaction of natural processes, distinctive land-

1 scapes, cultural traditions, and economic and social
2 forces that have combined to create a particular pat-
3 tern of human settlement and activity;

4 (2) in these areas, natural, historic, or cultural
5 resources, or some combination thereof, combine to
6 form a cohesive, nationally distinctive landscape aris-
7 ing from patterns of human activity shaped by geog-
8 raphy;

9 (3) these areas represent the national experi-
10 ence through the physical features that remain and
11 the traditions that have evolved in the areas;

12 (4) continued use and adaptive reuses of the
13 natural and cultural fabric within these areas by
14 people whose traditions helped to shape the land-
15 scapes enhance the significance of the areas; and

16 (5) the complexity and character of these areas
17 distinguish them and call for a distinctive system of
18 recognition and management.

19 **SEC. 2. STATEMENT OF PURPOSE.**

20 The purposes of this Act are—

21 (1) to recognize that the natural, historic, sce-
22 nic, and cultural resources and recreational opportu-
23 nities of the United States represent and are impor-
24 tant to the great and diverse character of the Na-
25 tion, and that these resources and opportunities

1 must be wisely managed so they may be passed on
2 to future generations;

3 (2) to recognize that combinations of such re-
4 sources and opportunities, as they are geographically
5 assembled and thematically related, form areas that
6 provide unique frameworks for understanding the
7 historical, cultural, and natural development of com-
8 munities and their surroundings;

9 (3) to encourage appropriate partnerships
10 among Federal agencies, State and local govern-
11 ments, nonprofit organizations, and the private sec-
12 tor, or combinations thereof, to conserve and man-
13 age those resources and opportunities;

14 (4) to encourage within these areas a broad
15 range of economic opportunities which enhance the
16 quality of life for present and future generations;

17 (5) to authorize the Secretary of the Interior to
18 provide technical assistance to State and local gov-
19 ernments and private nonprofit organizations, or
20 combinations thereof, to study and promote the po-
21 tential for conserving and interpreting these areas;
22 and

23 (6) to prescribe the process by which areas may
24 be designated as National Heritage Areas and the

1 standards according to which areas may be assessed
2 for eligibility for such designation.

3 **SEC. 4. DEFINITIONS.**

4 For purposes of this Act:

5 (1) **COMPACT.**—The term "compact" means a
6 compact described in section 6(a)(2).

7 (2) **FEASIBILITY STUDY.**—The term "feasibility
8 study" means a study described in section 6(a)(1).

9 (3) **INDIAN TRIBE.**—The term "Indian tribe"
10 means any Indian tribe, band, nation, pueblo, or
11 other organized group or community, including any
12 Alaska Native village or regional corporation as de-
13 fined in or established pursuant to the Alaska Na-
14 tive Claims Settlement Act (43 U.S.C. 1601 et seq.),
15 which is recognized as eligible for the special pro-
16 grams and services provided by the United States to
17 Indians because of their status as Indians.

18 (4) **MANAGEMENT PLAN.**—The term "manago-
19 ment plan" means a plan described in section
20 6(a)(3).

21 (5) **NATIONAL HERITAGE AREA.**—The term
22 "National Heritage Area" means a place designated
23 by the Congress where natural, cultural, and historic
24 resources combine to form a cohesive, nationally dis-
25 tinctive landscape arising from patterns of human

1 activity shaped by geography. These patterns make
 2 National Heritage Areas representative of the na-
 3 tional experience through the physical features that
 4 remain and the traditions that have evolved in the
 5 areas. Continued use of National Heritage areas by
 6 people whose traditions helped to shape the land-
 7 scapes enhances their significance.

8 (6) SECRETARY.—The term "Secretary" means
 9 the Secretary of the Interior.

10 (7) TECHNICAL ASSISTANCE.—The term "tech-
 11 nical assistance" includes preparation of plans, com-
 12 pacts, resource inventories, and feasibility studies
 13 and professional guidance provided by the Secretary.

14 (8) UNIT OF GOVERNMENT.—The term "unit of
 15 government" means the government of a State or
 16 Commonwealth, a political subdivision of a State or
 17 Commonwealth, or an Indian tribe.

18 SEC. 6. NATIONAL HERITAGE AREAS PARTNERSHIP PRO-
 19 GRAM.

20 (a) ESTABLISHMENT.—In order to conserve nation-
 21 ally distinctive natural, historic, scenic, and cultural re-
 22 sources, and to provide opportunities for conservation,
 23 education, and recreation through recognition of and as-
 24 sistance to areas containing such resources, there is here-
 25 by established within the Department of the Interior a Na-

1 **National Heritage Areas Partnership Program**, which shall
 2 assist the Secretary in carrying out this Act.

3 (b) **GENERAL AUTHORITY OF SECRETARY.**—In ac-
 4 cordance with the purposes of this Act, the Secretary is
 5 authorized—

6 (1) to evaluate, in accordance with the criteria
 7 established in subsection (c), areas nominated under
 8 this Act for designation as National Heritage Areas;
 9 and

10 (2) to advise State and local governments, non-
 11 profit organizations, and other appropriate entities
 12 regarding suitable methods of recognizing and con-
 13 serving thematically and geographically linked natu-
 14 ral, historic, and cultural resources and recreational
 15 opportunities.

16 (c) **CRITERIA.**—To be eligible for designation as a
 17 National Heritage Area, an area shall meet each of the
 18 following criteria:

19 (1) **ASSEMBLAGE OF RESOURCES.**—The area
 20 shall be an assemblage of natural, historic, or cul-
 21 tural resources that—

22 (A) together represent distinctive aspects
 23 of American heritage worthy of recognition,
 24 conservation, interpretation, and continuing
 25 use; and

1 (B) are best managed as such an assem-
2 blage, through partnerships among public and
3 private entities.

4 (2) TRADITIONS, CUSTOMS, BELIEFS, OR
5 FOLKLIFE.—The area shall reflect traditions, cus-
6 toms, beliefs, or folklife, or some combination there-
7 of, that are a valuable part of the story of the Na-
8 tion.

9 (3) CONSERVATION OF NATURAL, CULTURAL,
10 OR HISTORIC FEATURES.—The area shall provide
11 outstanding opportunities to conserve natural, cul-
12 tural, or historic features, or some combination
13 thereof.

14 (4) RECREATIONAL AND EDUCATIONAL OPPOR-
15 TUNITIES.—The area shall provide outstanding rec-
16 reational and educational opportunities.

17 (5) THEMES AND INTEGRITY OF RESOURCES.—
18 The area shall have an identifiable theme or themes,
19 and resources important to the theme or themes
20 shall retain integrity capable of supporting interpre-
21 tation.

22 (6) SUPPORT.—Residents, nonprofit organiza-
23 tions, other private entities, and governments within
24 the proposed area shall demonstrate support for des-

1 ignation of the area and for management of the area
2 as appropriate for such designation.

3 (7) AGREEMENTS.—The principal organization
4 and units of government supporting the designation
5 shall be willing to commit to agreements to work in
6 partnership to implement the compact for the area.

7 (8) CONSISTENCY WITH ECONOMIC VIABIL-
8 ITY.—The compact shall be consistent with contin-
9 ued economic viability in the affected communities.

10 (9) CONSENT OF LOCAL GOVERNMENTS.—No
11 privately owned property shall be included within the
12 boundaries of the area unless the government of the
13 county, city, or town in which the property is located
14 agrees to be so included and submits notification of
15 such agreement to the Secretary.

16 (d) CONDITIONS FOR DESIGNATION.—An area may
17 be designated as a National Heritage Area only by an Act
18 of Congress. The Congress may designate an area as a
19 National Heritage Area only after each of the following
20 conditions is met:

21 (1) SUBMISSION OF STUDY, COMPACT, AND
22 STATEMENT OF APPROVAL TO SECRETARY.—An en-
23 tity requesting National Heritage Area designation
24 for the area submits to the Secretary—

25 (A) a feasibility study and compact; and

1 (B) a statement, from the Governor of
2 each State in which the proposed National Her-
3 itage Area lies, that such Governor approves of
4 the requested National Heritage Area designa-
5 tion.

6 (2) APPROVAL AND SUBMISSION BY SEC-
7 RETARY.—The Secretary approves, pursuant to sec-
8 tion 6(b), the compact referred to in paragraph (1)
9 and submits the feasibility study for the area and
10 the compact to the Congress together with any com-
11 ments that the Secretary deems appropriate regard-
12 ing a preferred action.

13 **SEC. 8. FEASIBILITY STUDIES, COMPACTS, AND MANAGE-**
14 **MENT PLANS.**

15 (a) CONTENTS AND REQUIREMENTS.—

16 (1) FEASIBILITY STUDIES.—Each feasibility
17 study submitted under this Act shall include suffi-
18 cient information to determine whether an area has
19 the potential to meet the criteria referred to in sec-
20 tion 5(c). Each such feasibility study shall be pre-
21 pared with public participation. Each such feasibility
22 study shall include, but need not be limited to, each
23 of the following:

24 (A) A description of the natural, historic,
25 and cultural resources and recreational opportu-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(ii) A discussion of the goals and objectives of the proposed National Heritage Area, including an explanation of the approach, proposed by the partners referred to in clause (iv), to conservation and interpretation of resources.

(iii) An identification and description of the management entity that will administer the proposed National Heritage Area.

(iv) A list of the initial partners to be involved in developing and implementing the management plan for the proposed National Heritage Area, and a statement of the financial commitment of the partners.

(v) A description of the role of the State or States in which the proposed National Heritage Area is located.

(B) PREPARATION OF AND ACTIONS CALLED FOR IN COMPACT.—

(i) PREPARATION.—The compact shall be prepared with public participation.

(ii) ACTIONS.—Actions called for in the compact shall be likely to be initiated within a reasonable time after designation of the proposed National Heritage Area

1 and shall ensure effective implementation
2 of the State and local aspects of the com-
3 pact.

4 (3) MANAGEMENT PLANS.—A management
5 plan submitted under this Act for a National Herit-
6 age Area shall present comprehensive recommenda-
7 tions for the conservation, funding, management,
8 and development of the area. The plan shall be pre-
9 pared with public participation. The plan shall take
10 into consideration existing Federal, State, county,
11 and local plans and involve residents, public agen-
12 cies, and private organizations in the area. The plan
13 shall include a description of actions that units of
14 government and private organizations are rec-
15 ommended to take to protect the resources of the
16 area. The plan shall specify existing and potential
17 sources of funding for the conservation, manage-
18 ment, and development of the area. The plan also
19 shall include the following, as appropriate:

20 (A) An inventory of the resources con-
21 tained in the National Heritage Area, including
22 a list of property in the area that should be
23 conserved, restored, managed, developed, or
24 maintained because of the natural, cultural, or

1 historic significance of the property as it relates
2 to the themes of the area.

3 (B) A recommendation of policies for re-
4 source management that consider and detail the
5 application of appropriate land and water man-
6 agement techniques, including (but not limited
7 to) the development of intergovernmental coop-
8 erative agreements to manage the historical,
9 cultural, and natural resources and the rec-
10 reational opportunities of the area in a manner
11 consistent with the support of appropriate and
12 compatible economic viability.

13 (C) A program, including plans for res-
14 toration and construction, for implementation
15 of the management plan by the management
16 entity specified in the compact for the area and
17 specific commitments, for the first 5 years of
18 operation of the plan, by the partners identified
19 in the compact.

20 (D) An analysis of means by which Fed-
21 eral, State, and local programs may best be co-
22 ordinated to promote the purposes of this Act.

23 (E) An interpretive plan for the National
24 Heritage Area.

25 (b) APPROVAL AND DISAPPROVAL OF COMPACTS.—

1 (1) IN GENERAL.—The Secretary, in consulta-
2 tion with the Governors of each State in which the
3 relevant National Heritage Area, or proposed area,
4 is located, shall approve or disapprove every compact
5 submitted under this Act not later than 90 days
6 after receiving such compact.

7 (2) DISAPPROVAL AND REVISIONS.—If the Sec-
8 retary disapproves a compact submitted under this
9 Act, the Secretary shall advise the submitter, in
10 writing, of the reasons for the disapproval and shall
11 make recommendations for revisions of the compact.
12 The Secretary shall approve or disapprove a pro-
13 posed revision to such a compact within 90 days
14 after the date on which the revision is submitted to
15 the Secretary.

16 **SEC. 7. MANAGEMENT ENTITIES.**

17 (a) DUTIES OF MANAGEMENT ENTITY.—The man-
18 agement entity for a National Heritage Area shall do each
19 of the following:

20 (1) MANAGEMENT PLAN.—The management
21 entity shall develop and submit to the Secretary a
22 management plan not later than 3 years after the
23 date of the designation of the area as a National
24 Heritage Area.

1 (2) PRIORITIES.—The management entity shall
 2 give priority to the implementation of actions, goals,
 3 and policies set forth in the compact and manage-
 4 ment plan for the area, including—

5 (A) assisting units of government, regional
 6 planning organizations, and nonprofit organiza-
 7 tions—

8 (i) in conserving the National Herit-
 9 age Area;

10 (ii) in establishing and maintaining
 11 interpretive exhibits in the area;

12 (iii) in developing recreational oppor-
 13 tunities in the area;

14 (iv) in increasing public awareness of
 15 and appreciation for the natural, historical,
 16 and cultural resources of the area;

17 (v) in the restoration of historic build-
 18 ings that are located within the boundaries
 19 of the area and relate to the themes of the
 20 area; and

21 (vi) in ensuring that clear, consistent,
 22 and environmentally appropriate signs
 23 identifying access points and sites of inter-
 24 est are put in place throughout the area;
 25 and

1 (B) consistent with the goals of the man-
2 agement plan, encouraging economic viability in
3 the affected communities by appropriate means.

4 (3) CONSIDERATION OF INTERESTS OF LOCAL
5 GROUPS.—The management entity shall, in develop-
6 ing and implementing the management plan for the
7 area, consider the interests of diverse units of gov-
8 ernment, businesses, private property owners, and
9 nonprofit groups within the geographic area.

10 (4) PUBLIC MEETINGS.—The management en-
11 tity shall conduct public meetings at least quarterly
12 regarding the implementation of the management
13 plan for the area.

14 (b) DISQUALIFICATION FOR FEDERAL FUNDING.—If
15 a management plan regarding a National Heritage Area
16 is not submitted to the Secretary as required under sub-
17 section (a)(1) within the time specified in such subsection,
18 the National Heritage Area shall cease to be eligible for
19 technical assistance under this Act until such a plan re-
20 garding the National Heritage Area is submitted to the
21 Secretary.

22 (c) PROHIBITION OF ACQUISITION OF REAL PROP-
23 erty.—A management entity for a National Heritage
24 Area may not use Federal funds received under this Act
25 to acquire real property or any interest in real property.

1 (d) DURATION OF ELIGIBILITY FOR TECHNICAL AS-
 2 SISTANCE.—A management entity for a National Heritage
 3 Area shall be eligible to receive technical assistance from
 4 funds appropriated pursuant to this Act for a 13-year pe-
 5 riod beginning on the day on which the National Heritage
 6 Area is designated.

7 SEC. 8. WITHDRAWAL OF DESIGNATION.

8 (a) IN GENERAL.—The National Heritage Area des-
 9 ignation of an area shall continue unless—

10 (1) the Secretary determines that—

11 (A) the National Heritage Area no longer
 12 meets the criteria referred to in section 5(c);

13 (B) the parties to the compact approved in
 14 relation to the area under section 6(b) are not
 15 in compliance with the terms of the compact;

16 (C) the management entity of the area has
 17 not made reasonable and appropriate progress
 18 in developing or implementing the management
 19 plan for the area; or

20 (D) the use, condition, or development of
 21 the area is incompatible with the criteria re-
 22 ferred to in section 5(c) or with the compact
 23 approved in relation to the area under section
 24 6(b); and

1 (2) after making a determination referred to in
2 paragraph (1), the Secretary submits to the Con-
3 gress notification that the National Heritage Area
4 designation of the area should be withdrawn.

5 (b) PUBLIC HEARING.—Before the Secretary makes
6 a determination referred to in subsection (a)(1) regarding
7 a National Heritage Area, the Secretary or a designee
8 shall hold a public hearing within the area.

9 (c) TIME OF WITHDRAWAL OF DESIGNATION.— .

10 (1) IN GENERAL.—The withdrawal of the Na-
11 tional Heritage Area designation of an area shall be-
12 come final 90 legislative days after the Secretary
13 submits to the Congress the notification referred to
14 in subsection (a)(2) regarding the area.

15 (2) LEGISLATIVE DAY.—For purposes of this
16 subsection, the term “legislative day” means any
17 calendar day on which both Houses of the Congress
18 are in session.

19 **SEC. 9. DUTIES AND AUTHORITIES OF FEDERAL AGENCIES.**

20 (a) DUTIES AND AUTHORITIES OF SECRETARY.—

21 (1) TECHNICAL ASSISTANCE.—

22 (A) IN GENERAL.—The Secretary may
23 provide technical assistance to units of govern-
24 ment and private nonprofit organizations re-
25 garding feasibility studies and compacts and,

1 upon request of the management entity for the
2 relevant National Heritage Area, regarding
3 management plans and their implementation.

4 (B) PROHIBITION OF CERTAIN REQUIRE-
5 MENTS.—The Secretary may not, as a condition
6 of the award of technical assistance under this
7 section, require any recipient of such technical
8 assistance to enact or modify land use restric-
9 tions.

10 (2) DETERMINATIONS REGARDING ASSIST-
11 ANCE.—The Secretary shall decide which National
12 Heritage Areas shall be awarded technical assistance
13 and the amount of the assistance. Such decisions
14 shall be based on the relative degree to which each
15 National Heritage Area effectively fulfills the objec-
16 tives contained in the management plan for the area
17 and achieves the purposes of this Act. Such deci-
18 sions shall give consideration to projects which pro-
19 vide a greater leverage of Federal funds.

20 (3) OVERSIGHT OF HERITAGE AREAS WITH EX-
21 PIRED ELIGIBILITY.—The Secretary shall inves-
22 tigate, study, and monitor the welfare of all National
23 Heritage Areas whose eligibility for technical assist-
24 ance under this title has expired and shall report to

1 the Congress periodically regarding the condition of
 2 such National Heritage Areas.

3 (4) PROVISION OF INFORMATION.—In coopera-
 4 tion with other Federal agencies, the Secretary shall
 5 provide the general public with information regard-
 6 ing the location and character of National Heritage
 7 Areas.

8 (b) DUTIES OF OTHER FEDERAL AGENCIES.—Any
 9 Federal entity conducting any activity directly affecting
 10 any National Heritage area shall consider the potential ef-
 11 fect of the activity on the management plan for the area
 12 and shall consult with the Governor of the State or Com-
 13 monwealth containing the area with respect to the activity
 14 to minimize the adverse effects of the activity on the area.

15 SEC. 10. LACK OF EFFECT ON LAND USE REGULATION.

16 (a) LACK OF EFFECT ON AUTHORITY OF GOVERN-
 17 MENTS.—Nothing in this Act shall be construed to modify,
 18 enlarge, or diminish any authority of Federal, State, or
 19 local governments to regulate any use of land as provided
 20 for by law or regulation.

21 (b) LACK OF ZONING OR LAND USE POWERS OF EN-
 22 TITY.—Nothing in this Act shall be construed to grant
 23 powers of zoning or land use to any management entity
 24 for a National Heritage Area.

1 **SEC. 11. FISHING AND HUNTING SAVINGS CLAUSE.**

2 (a) **NO DIMINISHMENT OF STATE AUTHORITY.**—The
3 designation of a National Heritage Area shall not diminish
4 the authority of the affected State or Commonwealth to
5 manage fish and wildlife, including the regulation of fish-
6 ing and hunting within such Area.

7 (b) **NO CONDITIONING OF APPROVAL AND ASSIST-**
8 **ANCE.**— The Secretary may not make limitations on fish-
9 ing, hunting, or trapping a condition for the approval of
10 a compact or the determination of eligibility for technical
11 assistance under this Act, and neither the Secretary nor
12 any other Federal agency may make such limitations a
13 condition for the receipt, in connection with the National
14 Heritage Area status of an area, of any other form of as-
15 sistance from the Secretary or such agencies.

16 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) **IN GENERAL.**—There is hereby authorized to be
18 appropriated for technical assistance pursuant to section
19 9(a), and the administration of such assistance, annually
20 not more than \$8,000,000, to remain available until ex-
21 pended.

22 (b) **PERCENT OF COST.**—Technical assistance under
23 this Act for a feasibility study, compact, or management
24 plan may not exceed 75 percent of the cost for such study,
25 compact, or plan.

1 (c) LIMITATION ON TOTAL FUNDING FOR EACH
2 AREA.—Not more than a total of \$1,000,000 may be
3 made available under this section to each National Herit-
4 age Area.

5 (d) LIMITATION ON ANNUAL FUNDING.—The
6 amount of Federal funding made available under this sec-
7 tion for a National Heritage Area for a fiscal year may
8 not exceed \$150,000.

9 SEC. 13. EXPIRATION OF AUTHORITIES.

10 The authorities contained in this Act shall expire on
11 September 30 of the 15th fiscal year beginning after the
12 date of the enactment of this Act.

13 SEC. 14. REPORT.

14 The Secretary shall submit to the Congress, every 5
15 years while the authorities contained in this Act remain
16 in force, a report on the status and accomplishments of
17 the National Heritage Areas Partnership Program as a
18 whole.

19 SEC. 15. SAVINGS PROVISION.

20 Nothing in this Act shall be construed to expand or
21 diminish any authorities contained in any law that des-
22 ignates an individual National Heritage Area or Corridor
23 before the date of the enactment of this Act.

○

1 (c) LIMITATION ON TOTAL FUNDING FOR EACH
2 AREA.—Not more than a total of \$1,000,000 may be
3 made available under this section to each National Herit-
4 age Area.

5 (d) LIMITATION ON ANNUAL FUNDING.—The
6 amount of Federal funding made available under this sec-
7 tion for a National Heritage Area for a fiscal year may
8 not exceed \$150,000.

9 SEC. 13. EXPIRATION OF AUTHORITIES.

10 The authorities contained in this Act shall expire on
11 September 30 of the 15th fiscal year beginning after the
12 date of the enactment of this Act.

13 SEC. 14. REPORT.

14 The Secretary shall submit to the Congress, every 5
15 years while the authorities contained in this Act remain
16 in force, a report on the status and accomplishments of
17 the National Heritage Areas Partnership Program as a
18 whole.

19 SEC. 15. SAVINGS PROVISION.

20 Nothing in this Act shall be construed to expand or
21 diminish any authorities contained in any law that des-
22 ignates an individual National Heritage Area or Corridor
23 before the date of the enactment of this Act.

○

STATE OF COLORADO

BY REPRESENTATIVES Entz, Acquafresca, Taylor, Young, George, and Pankey;
also SENATOR Wattenberg.

HOUSE JOINT RESOLUTION 96-1019

1 WHEREAS, The federal government is proposing to authorize
2 an American Heritage Areas Program which would put designated
3 areas in the National Park System, forcing these areas to be
4 subject to legislation as such; and

5 WHEREAS, Federal proposals labeling private property
6 invite, and are intended to invite, the destruction of private
7 property rights, particularly when used by federal agencies in
8 conjunction with other or subsequent legislation; and

9 WHEREAS, The National Park Service has a record of
10 insensitivity to private property rights, as evidenced by
11 twenty-eight years of misconduct by the National Natural
12 Landmark Program and, more recently, by the American Heritage
13 Areas Program, in which no provision has been made that would
14 allow private owners to reject or withdraw their property from
15 such labeling without penalty or shield private property owners
16 from the likely and severe adverse effects of such labeling; and

17 WHEREAS, The National Park Service has devised the de
18 facto label "eligible but not designated" which creates the
19 false impression that private property owners can avoid the
20 consequences of being designated despite the fact that the
21 government may treat eligible properties the same as designated
22 properties under language such as "This Act applies to . . . and
23 properties eligible to be so designated"; and

24 WHEREAS, The power to plan or zone private land is a power
25 reserved to the states and the people thereof; and

26 WHEREAS, Despite claims to the contrary, the clear intent
27 and effect of the subject proposal would be to, de facto,
28 involve the federal government in planning and zoning
29 activities; and

30 WHEREAS, It would be imprudent to tolerate or favor
31 constitutionally questionable labeling the consequences of which
32 cannot be fully specified in advance but which appear likely to
33 be injurious to private property rights; and

1 WHEREAS, Giving the American Heritage Areas Program a
2 basis in legislation would greatly facilitate and increase the
3 intrusive labeling of private lands; and

4 WHEREAS, The enormity of some of the proposed areas (Rocky
5 Mountain Heritage Corridor, Mississippi River Valley Heritage
6 Corridor, and others) demonstrates an inexcusable and
7 unacceptable federal arrogance; now, therefore,

8 *Be It Resolved by the House of Representatives of the*
9 *Sixtieth General Assembly of the State of Colorado, the Senate*
10 *concurring herein:*

11 That we oppose the authorization of an American Heritage
12 Areas Program and urge the members of Colorado's Congressional
13 delegation to oppose such authorization and work to abolish said
14 program.

15 *Be It Further Resolved, That copies of this resolution be*
16 *sent to each member of Colorado's Congressional delegation.*