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both the governor and the legislature of 'any real control over the finances of the state.'" Id. at 3 (citation omitted). Requiring all monies received by the state to be deposited into the general fund clearly would satisfy both interrelated purposes of the prohibition. The strict interpretation view of the dedication prohibition would preclude the use of public monies to establish a standing or revolving loan fund or any other program which would be self-sustaining. 2/

However, a second approach in interpreting the meaning of Article IX, section 7 is also very plausible. Under this view, the dedication prohibition is not to be construed to require a blanket prohibition of self-sustaining programs set up by the legislature. As noted in 1975 Op. Atty. Gen. No. 9 at 6-8 (Alaska, May 2, 1975), the constitutional framers substituted the phrase "[t]he proceeds of any state tax or license" for the phrase "[a]ll public revenues" to avoid having to state a number of intended exceptions to the prohibition on dedicated funds. Examples of these exceptions were pointed out in a January 4, 1956, 3/ memorandum by the Public Administration Service (PAS) to

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2/ Of course, even under the strict view, there would be some kinds of monies received by the state which it could not, for independent legal reasons, deposit into the general fund. These monies would include trust funds, restricted gifts, and funds subject to restrictions by contract.

3/ The actual date shown on the memorandum is "January 4, 1955". However, considering the timing of the constitutional convention, this was certainly a typographical error.

the Constitutional Convention: "pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units." 4/

Some of those examples were specifically mentioned by the court in State v. Alex, 646 P.2d 203 (Alaska 1982), which held that the phrase "proceeds of any state tax or license" was to be broadly construed to include all sources of public revenues. The court noted that the drafters intended to permit the establishment of certain special funds, (e.g., sinking funds for the repayment of bonds), but to prohibit the earmarking of any special tax to such a fund. Alex, supra at 210. The court did not elaborate on the application of the dedicated funds prohibition in these situations.

4/ The Public Administration Service prepared a publication entitled "Alaska Statehood Commission, Constitutional Studies (1955)" at the request of the Alaska Territorial Legislature for use at the constitutional convention. Ch 108 SLA 1949. This publication collected research papers on other state constitutions. Copies were mailed to all delegates, and it was often referred to in the convention proceedings. Alaska Statehood Committee, "Handbook for Delegates to the Alaska Constitutional Convention" 4 (1955). Referred to in State v. Alex, 646 P.2d 203, 209 n. 5 (Alaska 1982). The memorandum of January 4, 1956 contained comments by the PAS on the proposed draft of the Finance and Taxation article. Constitutional Convention Finance Committee minutes, Jan. 13, 1956.

II. MEANING OF THE PHRASE "PROCEEDS OF ANY STATE TAX OR LICENSE"

There has been continuing controversy over the proper construction of the phrase "proceeds of any state tax or license." In a number of earlier opinions, this office concluded that the dedicated fund prohibition did not reach all public revenues but, under its plain language, only the actual "proceeds of any state tax or license." See 1969 Op. Atty. Gen. Nos. 3 (Alaska, April 4, 1969) and 5 (Alaska, April 15, 1969); and 1959 Op. Atty. Gen No. 7 (Alaska, March 11, 1959). This conclusion also was reached by the Division of Legal Services in the Legislative Affairs Agency. See September 1, 1977 memorandum from Bill G. Berrier, Director, to Subcommittee on Alaska Renewable Resources Development Fund of Alaska Permanent Fund (House).

Those opinions all concluded that the prohibition did not reach revenues derived from the disposal of state-owned natural resources. Given this conclusion, it followed that the legislature was free to dedicate all or a certain portion of such revenues to specific purposes. An example of this is found in AS 37.11.020, which requires that not less than five percent of state mineral lease receipts be deposited in the Alaska Renewable Resources Development Fund. (This statutory dedication was the subject of Mr. Berrier's September 1, 1977, memorandum).

On the other hand, 1975 Op. Atty. Gen. No. 9 at 24 (Alaska, May 2, 1975) reached the opposite conclusion:

> Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.
>
> Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

(Emphasis added.)

In State v. Alex, 646 P.2d at 210, the Alaska Supreme Court adopted the position set out in 1975 Op. Atty. Gen. No. 9 (Alaska, May 2, 1975). 5/ It now is clear that the term "proceeds of any state tax or license" is to be construed broadly to reach all public revenues, including public revenues from the development of state-owned natural resources, and not just the proceeds of taxes and license fees.

5/ Alex involved a challenge by commercial fishermen to the collection by a private aquaculture association of a special assessment authorized by statute and imposed on the sale of salmon. The court held that the statute improperly delegated the legislature's taxing authority, and that the assessment constituted "proceeds of a state tax or license" within the meaning of Article IX, section 7. State v. Alex, 646 P.2d at 210, 213.

After the decision in Alex we can now reach some definite conclusions regarding some of the funds and accounts you have asked us to review. The answers to other questions, however, are not as clear.

III. IMPLICATIONS OF THE ALEX DECISION

There is no question that the dedicated funds prohibition in Article IX, section 7 flatly prohibits the legislature from dedicating future unrestricted general revenues to any particular purpose unless the dedication is required for participation in a federal program or the dedication existed before ratification of the Constitution. Alex, supra at 208-210. This confirms the view expressed in our April 1, 1981 memorandum opinion to the legislative auditor that the requirement in AS 37.11.020 that not less than five percent of state mineral revenues be placed in the Alaska renewable resources development fund is unconstitutional. This would be true of any statutory requirement that a specified percentage of revenues derived from the development of state-owned resources be deposited in a fund or earmarked for a particular purpose.

The Alex decision, however, does not provide answers to a number of additional questions. For example, does the dedicated funds prohibition apply (1) to money received through the sale of bonds (either general obligation bonds of the state or

revenue bonds of a public corporation); (2) to receipts from operation of facilities constructed with bond proceeds; or (3) to interest or investment income earned on money appropriated for a specific purpose? In short, are there any exceptions to the prohibition beyond those expressly set out in the Constitution? The section immediately following discusses this question.

IV. POSSIBLE EXCEPTIONS TO THE DEDICATED FUND PROHIBITION

A. Implied Exceptions.

An early draft of what is now Article IX, section 7 (but which was at that time numbered section 8) read as follows: "All public revenues shall be deposited in the state treasury . . ." Subsequent to this early draft, the Committee on Finance and Taxation of the Constitutional Convention requested comments from the Public Administration Service on this wording. The PAS responded with the January 4, 1956 memorandum in which it warned that a strict interpretation of section 7 (then section 8) would prohibit the segregation of state money without regard to the source. The PAS then suggested that certain exceptions be identified in section 7. These exceptions included pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts

which the state might collect on behalf of local government units.

After considering the PAS memorandum, the committee deleted the phrase "all public revenues shall be deposited ..." and substituted the phrase "The proceeds of any state tax or license ...". 3 Alaska Const. Conv. Proceed. at 2361. The record of the committee debate makes it clear that the purpose of this change was to meet the problems raised by the PAS in its January 4 memorandum. See 1975 Op. Atty. Gen. No. 9 at 8 (Alaska, May 2, 1975).

Given this drafting history, a very good case can be made that the present language of Article IX, section 7 must be read to include certain implied exceptions, such as those that are set out in the January 4 PAS memorandum, i.e., pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units. We believe this implied exception approach is the better interpretation of the dedicated fund prohibition and would be adopted by the Alaska Supreme Court if the question is presented to it.

B. Dedication of Money to Specific Purposes on a Continuing Basis When Appropriated

A question of the proper application of the dedicated funds prohibition arises when money is appropriated to a revolving loan fund or other special reserve fund or account. Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) 6/ which was loaned to them from the fund so that new loans can be made on a continuing basis. Special reserve funds involve essentially the setting aside of money for certain specified future needs or conditions which may or may not occur. 7/ When this is done, it might be argued that the legislature has made an impermissible dedication with respect to the future use of the money placed in those funds and accounts.

We believe the better view is that the dedication prohibition does not apply to money once appropriated by the legislature, regardless of whether the appropriation contemplates that the money will be expended. Usually appropriations authorize money to be spent. In other cases, however, the legis-

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6/ We discuss the dedication of interest earned by revolving loan funds and other separate funds and accounts in the next portion of this opinion which begins below at p. 14.

7/ The "Rainy Day Account," AS 37.05.179, is an example of such an account.

lature may prefer to establish by general law a continuing loan program and finance it through a one-time appropriation or to reserve money in a special fund or account for future use for limited purposes. A strong argument can be made that money once appropriated, regardless of the mechanism utilized, loses its character as revenue for the purpose of the dedicated funds prohibition because the purpose of the prohibition, i.e., that the legislature retain control over state revenues, has been satisfied.

Under this reasoning there would be no unlawful dedication involved in the return to a revolving loan fund of principal payments on loans. The initial appropriation would suffice to authorize the use of that money for other loans until the legislature reappropriates the unobligated assets of the fund or abolishes the fund.

Support for this position is found in the Alaska Supreme Court's analysis in the Alex case. In Alex, the court took note of the drafting change of Article IX, section 7 referred to earlier. This change, said the court, "did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund." State v. Alex, supra at 210.

The Alaska Supreme Court has thus recognized that the dedication prohibition of Article IX, section 7 does not operate to prohibit all dedications whatever their nature. Rather, the court seems to be saying that Article IX, section 7 must be read to allow certain necessary dedications of money by the legislature after that money is received and placed in the state treasury (i.e., general fund). This analysis by the Supreme Court gives support to the argument that the dedication prohibition does not apply to money once it has been lawfully appropriated from the general fund and that the legislature can, without violating Article IX, section 7, create "necessary dedications" out of that money.

C. Income Generated by Specific Funds or Accounts

A question separate from that just discussed arises concerning the application of the dedicated fund prohibition to the interest or other income earned by money appropriated to revolving funds and other funds and accounts. Is that derivative income revenue which, under the prohibition, must be deposited in the general fund, or may it accrue directly to the fund or account which "earned" it, increasing the amount of money in that fund or account which may be spent without further appropriation?

We are advised by the Department of Administration that the National Committee on Governmental Accounting has defined a fund to be:

> A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

Municipal Finance Officers Association of the United States and Canada, "Governmental Accounting, Auditing, and Financial Reporting," 1980, Appendix B.

From the point of view of generally accepted accounting principles, then, income generated by a fund accrues to that fund unless a transfer is authorized. Economic theory also leads to that result, arguing that the interest or investment income on a particular fund is simply an increase in the value of the fund which offsets inflation and reflects the gradual growth of our economy. Under either approach, such derivative income ought not to be considered revenue subject to the dedicated funds prohibition.

Derivative income such as interest and investment income is not a traditional source of public revenue. It is generated by public revenue which has been received and appropriated and would not be generated if the legislature had

simply spent the money rather than appropriated it to a separate fund. Thus, a statutory dedication of the interest or investment income of a separate fund would not impair the ability of future legislatures to control the spending of general revenues. Rather, it would create a new pool of resources to be used under the statutory guidelines applicable to a particular fund until a future legislature amended or repealed those guidelines. There is no indication in the minutes of the Constitutional Convention that the drafters considered the treatment of separate funds which are endowed in this manner.

A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasing amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters sought to avoid. For this reason, while we are not certain about the likely outcome, we doubt that a blanket exception for derivative income would be approved by the courts.

After all, the Alaska Constitution was not written for accountants and economic theorists. Although not expressly addressed by them, the framers were very much aware of the boom-bust cycle of Alaska's economy. In fact, a driving force

behind statehood was the desire of Alaskans themselves to be able to manage the income derived from those brief periods -- as Prudhoe Bay bears witness -- when the state may receive enormous sums of money which are then immediately available for expenditure or placement, by appropriation, into a variety of funds and accounts for various permissible purposes. Depending on the number and size of those funds and accounts, the interest earned on the money placed in them could itself be substantial and would almost certainly be of a magnitude which is far greater than that likely envisioned by the National Committee on Government Accounting in the above-quoted standard. Moreover, the significance of that interest income in properly managing the state's budget leads us to the conclusion that our framers would have considered it to be within the dedicated fund prohibition. As we have indicated, however, the answer to this question is not free from doubt. Consequently, until the question is ruled on by the courts, we will defend legislative action dedicating, by general law, derivative income to the funds which "earned" them.

In the absence of valid general law dedications of derivative income, we believe there would still be a way to maintain legislative control over revenues through the budgetary process while achieving the efficient accounting organization provided by separate funds. This would be if the legislature appropriated to the separate fund for a fixed period the amount

of interest or investment income received by that fund. Since each legislature has implicit budgetary authority for a maximum period of only two years, this practice would not impair the ability of future legislatures to dispose of those derivative revenues. Under this line of reasoning, the interest on a loan fund or other separate fund is public revenue which must be transferred to the treasury, unless the fund is authorized by appropriation to retain it for a specific period. Although it may be possible to argue in favor of a longer period, our recommendation is that these appropriations of derivative income to the fund which "earns" them be made annually, for each fiscal year.

D. Appropriations Stated in General Terms, Rather than Specific Amounts.

The annual budget has traditionally included certain appropriations not stated in specific dollar amounts but rather in terms of money to be received from certain sources during the fiscal year. Such an appropriation, for example, would authorize the risk management division of the Department of Administration to spend the anticipated proceeds from any insurance settlement

or judgment arising from the damage or loss of state property. 8/ This practice ensures effective legislative control over state finances while, at the same time, it provides for budgeting flexibility which is especially useful for programs like risk management, the needs of which are necessarily unpredictable.

We have consistently advised that an appropriation is valid if it states a public purpose, has a source, states or implies a time period, and states an amount which is ascertainable by reference to specified information. Under this view a "revolving" loan fund could be established and operated, even if both principal and interest payments on loans are considered to be revenues which may not be dedicated, as long as there is an annual appropriation to the fund of all principal and interest payments received by the fund during the fiscal year. The fund would continue to revolve as long as it was included in the budget.

8/ See, for example, Sec. 7 ch. 113, SLA 1978 which provides:

> Amounts equivalent to the amounts to be received in settlement of insurance claims for property losses are appropriated from the general fund to the affected agency for the purpose of replacing the facility or service lost as a result of the incident giving rise to the insurance claim.

Under this language, the state could undertake immediate repair or reconstruction of a school, maintenance facility, or other property damaged by fire or other cause covered by insurance without having to wait for actual settlement and payment by the insurer.

The practice of appropriating to a separate fund an amount to be ascertained by reference to receipts from a specified source during a definite period accommodates the need and desire of each legislature for budgetary flexibility without impairing the ability of future legislatures to control and dispose of public revenues. In fact, since the legislature maintains control of the appropriation by means of the budget, it could be argued that this practice does not even create a dedication in the first place since a true dedication must function to take control away from the legislature. If legislative control is present, then a dedication does not exist.

We do not think that this practice violates the dedication prohibition.

V. APPLICATION OF DEDICATION PROHIBITION TO SPECIFIC FUNDS, ACCOUNTS AND APPROPRIATIONS

We have identified the following categories of funds, accounts, and appropriations which raise dedicated funds questions.

A. Allocation of a revenue source by statute to a fund or account from which it may be withdrawn only for limited purposes by appropriation.

1. Tobacco Tax (School) Fund (AS 43.50.140). This fund existed before ratification of the Alaska

Constitution and is therefore authorized to continue under Article IX, section 7. This tax and dedication have not been changed, but the legislature has imposed an additional tax on cigarettes which is deposited in the general fund. Although we have issued several opinions on the subject, there has been no judicial review, and it remains unclear to what extent the legislature may change the dedication or the underlying revenue source within the limit of "continuing" the dedication. 9/

2. Fish and Game Fund (AS 16.05.100 et seq.). The dedication of proceeds of fishing and hunting licenses to the operation of a Department of Fish and Game is required by federal law for participation in federal programs and is therefore authorized by Article IX, section 7. See 16 U.S.C. § 669. However, as discussed earlier, it is not clear whether a dedication of interest

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9/ See Atty. Gen. Op. Nos. 7, 9, and 14; inf. memo (Alaska, March 10, 1966); Atty. Gen. Op. No. 22 (Alaska, June 2, 1978); inf. memo (June 30, 1981).

earned on investments in a fund such as that made by AS 16.05.110(5) is constitutional.

3. Reserves for Capital Outlay (AS 37.05.157) and Energy Facilities Development (AS 37.05.158).

By statute there is allocated to each of these accounts a fixed percentage of annual receipts from minerals on state land. Both of these funds appear to be unconstitutional dedications to the extent that they restrict the purpose for which money may be spent. We are informed that the Department of Administration has recorded the amounts to be allocated to each account but has not retained that money for expenditures related to capital outlay or energy facilities development. We also understand that the legislature has not made any appropriations from these two accounts. We suggest that AS 37.05.157 and AS 37.05.158 be repealed.

4. Renewable Resources Fund (AS 37.11.010-090). As we advised in our 1975 Attorney General Opinion No. 9, this statutory dedication is unconstitutional. We understand that the Department of Administration has followed our advice and has disregarded AS 37.11.010-090. We suggest that these statutes be repealed.

B. Allocation by Statute of Revenue to a Fund or Account From Which it may be Spent or Used Without Further Appropriation

1. Public Employees Retirement System Fund (AS 39.35)

This fund receives money from employees and employers who participate in the system. State employer contributions are paid to the fund monthly. AS 39.35.280. State employee contributions are statutorily required to be withheld from wages and transferred to the funds. AS 39.39.170. Participating political subdivisions make similar contributions on behalf of their employees. Benefits are paid to members of the retirement systems according to statute AS 39.35.370 et seq. Expenses of administering the system are also paid from the fund but are specifically required by statute to be included in the annual operating budget. AS 39.35.100(b)(4). The Teacher's Retirement System is accounted for in the same manner.

Although this is clearly a dedication of money received by the state, we believe that it is permissible under the implied exception theory

discussed earlier. It is our opinion that there is an implied exception to the dedicated funds prohibition for pension fund contributions. 10/

2. International Airport Funds (AS 37.15.420, 430, 440)

The fund established under AS 37.15.420 contains money received from the sale of general obligation bonds for airport improvements and other grants or money provided for the same purpose for which the bonds were authorized. The fund established under AS 37.15.430 contains revenues received by the state from ownership and operation of its airports. The fund established under AS 37.15.440 contains interest earned on money in the section 420 fund and revenues transferred from the section 430 fund for the purpose of redeeming airport revenue bonds.

Although each fund provides for a dedication of state revenue, we believe that they are permissible under the implied exception theory discussed earlier at pp. 5 and 6. It is our opinion that there is an implied exception to the

10/ The constitutional provision for state employee retirement systems supports such an implied exception. Alaska Constitution, Article XII, section 7.

dedicated funds prohibition for revenue derived from bond issues and for revenue derived from facilities constructed with bond proceeds, at least to the extent that it is necessary to satisfy the debt obligation or maintain the facility so that it continues to generate revenues for that purpose. To the extent that revenues are dedicated for purposes which are not related to satisfying the debt or maintaining the facility 11/, we believe that dedication would

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11/ AS 37.15.430(a) authorizes use of funds dedicated to the International Airport Revenue Fund for six purposes providing, in pertinent part, as follows:

> The money in the revenue fund shall only be used for the purpose of paying or securing the payment of the principal of and interest on the bonds and of and on any other revenue bonds issued by authorization of the legislature to provide funds to acquire, equip, construct and install additions and improvements to, and extensions of and facilities for, the airports and to be payable out of the revenue fund, the purpose of paying the normal and necessary costs of maintaining and operating the airports and all of the improvements and facilities of them, the purpose of paying the costs of renewals, replacements and extraordinary repairs to the airports and all of the improvements and facilities of them, the purpose of redeeming before their fixed maturies any and all revenue bonds issued for the purposes of the airports, the purpose of providing funds to acquire, construct and install necessary additions and improvements to and extensions of and facilities for the airports and all of their facilities, and the purpose of providing funds to pay any and all other costs relating to the ownership, use and operation of the airports.

violate Article IX, section 7 unless it either existed prior to ratification of our Constitution or is required by federal law. 12/

3. Continuing Debt Service Appropriation (AS 37.15-.012)

This statute purports to create a continuing annual appropriation from the general fund of the amount necessary to pay debt service on all outstanding general obligation bonds. This may be a dedication of revenues for a specific purpose. 13/ Even if it is, it is our opinion that there would be an implied exception to the dedicated fund prohibition for bond obligations.

4. Rural Electrification Revolving Loan Fund (AS 44-.83.361)

This fund received an initial appropriation from which the Alaska Power Authority is authorized to make loans. Principal and interest

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12/ A dedication of airport revenues did exist prior to ratification. § 32-3A-15 ACLA 1949. However, it was repealed in 1968 by § 2 ch. 14, SLA 1968. On the other hand, it may be that 49 U.S.C. § 1718, adopted in 1970 and amended in 1982 by Section 511 of the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-760, would be interpreted to require dedication of all airport revenues to construction, maintenance and operation of airports.

13/ Our uncertainty on this point arises from the fact that the statute does not purport to dedicate a particular revenue source.

payments on loans made from the fund are required by law to return to the fund. As we pointed out above, at n. 1, the questions of whether the principal and/or interest payments are revenues which may not be dedicated in this manner is now a matter in litigation in a suit filed by the Trustees for Alaska.

We will be defending the legislature's action in making both those dedications. In doing so, we will present in more detail a number of the arguments discussed above in support of the legislature's action. In addition, we will discuss the presumption of constitutionality of statutes and the deference due to the administrative and legislative interpretation of the dedicated funds prohibition. As indicated above, we believe that the return of principal payments to a loan fund does not offend the Constitution and that the return of interest payments to the loan fund may be permissible. However, we cannot predict with certainty the position that the court will adopt.

C. Appropriation of an amount from a specific revenue source (e.g., program receipts).

From time to time the legislature, by means of an annual operating budget appropriation, authorizes an agency to spend money that is generated out of one of the agency's programs. The appropriation also sets an upper limit on the amount that can be spent. Although program receipts are clearly state revenues which may not be dedicated, the practice of identifying program receipts as an appropriation source does not in any way limit legislative control over the expenditure of revenues because the legislature maintains control of the appropriation by means of the budget. Therefore, we believe that this practice is not affected by the dedicated funds prohibition.

D. Appropriation of an amount which is ascertainable only by reference to specified information.

Appropriations are regularly made to the risk management division, Department of Administration, of all proceeds during a fiscal year from claims, settlements or judgments arising from damage to or loss of state property. As pointed out above, at 18, this permits the state to repair or replace damaged property without specific appropriations, which would probably be either more or less than the actual property damage in any fiscal year.

The only difference between this and a typical appropriation is in the determination of the amount appropriated. When a fixed amount is appropriated, obligations incurred against it may be honored as long as there is cash available in the treasury. When an appropriation is made for an amount to be received from a certain source during a specific period, obligations may be honored only if a sufficient amount of money has been received from that source and there is cash available in the treasury. However, the amount of the appropriation remains determinable. Consequently, it is our opinion that these kinds of appropriations do not violate the dedicated fund prohibition. 14/

14/ The pending litigation discussed earlier (Trustees for Alaska v. State, supra) also includes a claim that an appropriation to the Alaska Power Authority of the interest to be received on money separately appropriated to the Power Development Fund violates the dedicated funds prohibition. § 1 ch. 90, SLA 1980, as reenacted by § 69 ch. 92, SLA 1981 and amended by § 236 ch. 141, SLA 1982. The questioned appropriation does not state a specific time period during which the interest is to be accrued. Consideration by the court of this particular question might not occur since, by informal memo dated April 19, 1982, we advised the Treasury Division of the Department of Revenue that the interest must be returned to the general fund because of a specific statutory requirement, AS 44.83.388(b). We are informed that no interest has accrued to the Power Development Fund.

E. Other Miscellaneous Dedications

1. Appropriations to the Permanent Fund. Since the constitution (Article IX, section 15) specifically authorizes dedications to the Permanent Fund of "at least" 25 percent of certain revenues, we believe any additional dedication to the fund by statute 15/ or by appropriation is also permissible.

2. Rainy day account. AS 37.05 179 creates a reserve fund to which money is appropriated and authorizes it to be spent for certain necessary emergency operating expenses at some future time. It is our opinion that this practice is permissible under the theory discussed above beginning at p. 12 that money once it is appropriated loses its character as revenue for purposes of the dedicated funds prohibition. A contrary view would severely restrict flexibility in state budgeting and accounting, and we doubt that such a view would be adopted by the courts.

15/ In 1980, the legislature increased the percentage dedication applicable to most new mineral leases to 50 percent. AS 37.13.010(a)(2).

We hope you find this analysis helpful in determining the nature of the problems presented by the dedicated fund prohibition and the various statutory programs which may or may not run afoul of it. We expect to be able to advise you with greater certainty on some of these questions at the conclusion of the pending litigation described above.

Sincerely,

Wilson L. Condon
Attorney General

WLC:jf

cc: Ron Lehr, Director
Division of Budget and Management

Jay Hogan, Director
Division of Legislative Finance
Legislative Affairs Agency

Section 9.7 - DEDICATED FUNDS.

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Cross References -

For an exception to the prohibition against dedicated funds, see Sec. 15 of this article which establishes the permanent fund.

Amendment Notes -

The amendment effective February 21, 1977 (9th Legislature's SCS CSSSHJR 39 (Res) am S (1976)) inserted "as provided in section 15 of this article or" in the first sentence.

AG Opinions -

Among the reasons such a prohibition, as is found in this section, was recommended are the following: (1) flexibility of budgeting; (2) financial control; and (3) lack of relationship between the tax and purpose. 1959 Op. Att'y Gen. No. 7.

Delegates to the constitutional convention were desirous of eliminating dedications so that the legislature would have the greatest flexibility in allocating tax revenues on a basis of need. 1959 Op. Att'y Gen. No. 7.

A dedication encompasses (1) proceeds or part of the proceeds of a tax or license (2) set aside at a certain rate (3) for a particular purpose. 1959 Op. Att'y Gen. No. 7.

As a matter of compromise, a grandfather clause was included in this section to permit all dedications existing on the date of ratification of the constitution (April 24, 1956) to continue. 1959 Op. Att'y Gen. No. 7.

The intent of the drafters of the state constitution was to permit the continuance of existing dedications at the then existing rates until the legislature saw fit to exercise the only power retained in relation to them: That is, the power to repeal. 1959 Op. Att'y Gen. No. 7.

This section had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes, and (2) to prevent the creation of new special funds separate from the general fund. May 2, 1975 Op. Att'y Gen.

This section of the state constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues. May 2, 1975, Op. Att'y Gen.

The dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever, is limited by the state constitution to those existing when the constitution was ratified or required for participation in federal programs. May 2, 1975 Op. Att'y Gen.

The real concern at the constitutional convention was about earmarked funds, not taxes or licenses, but funds. May 2, 1975 Op. Att'y Gen.

Dedication of the revenues from the lease or sale of state natural resources offends the state constitutional prohibition against dedicated funds. May 2, 1975 Op. Att'y Gen.

The practice of appropriating to a separate fund an amount to be ascertained by reference

to receipts from a specified source does not violate the dedication prohibition of the constitution. November 30, 1982 Op. Att'y Gen.

Language of this section prohibiting dedication of proceeds of any state tax or license must be read as embodying certain implied exceptions, specifically, pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units. November 30, 1982 Op. Att'y Gen.

There is no unlawful dedication involved in the return to a revolving loan fund of principal payments on loans. The initial appropriation would suffice to authorize the use of that money for other loans until the legislature reappropriates the unobligated assets of the fund or abolishes the fund. November 30, 1982 Op. Att'y Gen.

For discussion of issues involved in question of whether dedication prohibition applies to interest or other income earned by money appropriated to revolving funds and other funds and accounts, see November 30, 1982 Op. Att'y Gen.

If the moneys in the general fund must be applied in a particular way and the amount to be applied is determined by a set formula, rather than by each legislature's judgment, the intent of this section has been thwarted. The legislature's hands are tied as effectively as in the case where the proceeds of a particular tax are dedicated. 1969 Op. Att'y Gen. No. 5, overruled in part on other grounds, May 2, 1975 Op. Att'y Gen.

As to constitutionality of requiring a portion of the general fund to be allocated to local governments each year in accordance with a fixed formula, see 1969 Op. Att'y Gen. No. 5, overruled in part on other grounds, May 2, 1975 Op. Att'y Gen.

The prohibition of this section is against new dedications, i.e., those dedications of revenues which did not exist on April 24, 1956, the date of the constitution's ratification. June 2, 1978 Op. Att'y Gen.

Existing dedications may be continued but may not be revised upward or downward by means of altering the tax, the rate of dedication or the purpose for which the dedication will be used. 1959 Op. Att'y Gen., No. 9; 1959 Op. Att'y Gen. No. 7; 1959 Op. Att'y Gen. No. 14.

No action of the legislature is permissible which would (1) tend to increase or decrease the percentage of the total tax and license proceeds which are dedicated, or (2) which would tend to increase or decrease the amount of proceeds which are dedicated. 1959 Op. Att'y Gen. No. 7; 1959 Op. Att'y Gen. No. 14.

Reducing a dedication makes it different from that which existed, i.e., and existing dedication is not continued when it is reduced any more than it is when it is increased. June 2, 1978 Op. Att'y Gen.

Any attempted alteration short of repeal is a nullity. 1959 Op. Att'y Gen., No. 7.

Legislation developed to eliminate the double fee paid by commercial fishermen who are also holders of limited entry permits, which in effect, exempted permit holders from license fees and provided for payment into the fishermen's fund from moneys collected for permit fees of an amount equal to the amount which would have been paid into the fund from collections for commercial fishing licenses offends this section since it did not continue an existing dedication. June 2, 1978, Op. Att'y Gen.

The 1957 amendment to AS 43.40.010, which reduced the tax on motor fuel used in commercial fishing crafts for purposes of commercial fishing from five cents to two cents per gallon, effected no change in the dedication-inasmuch as the reduction in the tax is coupled with an exemption from the refund of three cents per gallon formerly allowed to users of fuel in

commercial fishing craft for commercial purposes. Nothing has been done which increases or decreases the dedication. 1959 Op. Att'y Gen. No. 14.

When the tax is lowered the entire dedication falls and all tax proceeds are covered into the general fund. This result is compelled by a realization that the lowering of the tax irretrievably lowers the dedication because insufficient revenues are available to maintain the present rate of the dedication. Since the only power retained by the legislature with respect to a dedication (other than administrative alterations in the management of the dedication) is the power of repeal, such irretrievable action is tantamount to a repeal of the dedication. 1959 Op. Att'y Gen., No. 14.

When the legislature raises the tax, the excess tax simply goes into the general fund. 1959 Op. Att'y Gen. No. 14.

A dedication is not repealed in its entirety by the partial elimination of its source but rather that it is reduced to provide for a dedication solely from all that is left of the source. June 2, 1978 Op. Att'y Gen.

The prohibition against dedications should be read in conjunction with Alaska Const., art. XI, Sec. 7, which deals with restrictions on the initiative and referendum. Therein it is stated that the initiative and referendum shall not be used to create or apply to dedications of "revenue." 1959 Op. Att'y Gen., No. 7.

Pre-existing dedications of revenue established by statute to satisfy trust obligations imposed by federal law are excluded from the reach of Alaska Const., art. IX, Sec. 17. That section applies to proceeds net of dedications otherwise permitted under this section, which permits dedications that are required for participation in a federal program. 1993 Op. Att'y Gen. No. 1.

Any attempted dedication of funds after April 26, 1956, which was not absolutely required for participation in federal programs, had to be covered into the general fund, any statute notwithstanding. 1959 Op. Att'y Gen. No. 7, issued prior to the 1977 amendment of this section.

Although fourth class cities may now be incorporated cities within the intent of AS 43.70.080, they would not be entitled to any refunds under such section, since if this were the case, the effect of ch. 79, SLA 1959 would be to make a new dedication of a state tax or license for a special purpose. Any such dedication would be invalid under the provisions of this section. 1960 Op. Att'y Gen., No. 5.

Any repeal or repeal and re-enactment of a dedication during the 1957 session takes the dedication from under the protection of the grandfather clause, and a re-enactment either in 1957 or later is a nullity unless the dedication is required by the federal government for participation in federal programs. 1959 Op. Att'y Gen., No. 7, issued prior to the 1977 amendment of this section.

Employees' retirement system and emoluments of office for all commissioners, heads of state agencies and the members of the judiciary and legislature are authorized by the Alaska Constitution and are implied exceptions to the prohibition of this section. 1969 Op. Att'y Gen., No. 5 overruled in part on other grounds, May 2, 1975 Op. Att'y Gen.

The Violent Crimes Compensation Board is authorized by statute to recover, receive, and collect receipts; however, under the Alaska Constitution, all receipts must revert to the general fund. September 25, 1980 Op. Att'y Gen.

The provisions of AS 16.43.310 and 16.43.320, which authorize the Commercial Fisheries Entry Commission to establish and administer a buy-back program, offend the state constitutional prohibition against dedicated funds. May 23, 1985 Op. Att'y Gen.

Decisions -

This clause prohibiting dedicated funds seeks to - preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources. Sonneman v. Hickel, 836 P.2d 936 (Alaska 1992).

Assessments authorized by former AS 16.10.530 were "proceeds of a state tax or license." - Since the constitution prohibits the dedication of any source of revenue, including both "taxes" and "special assessments," the assessments authorized by former AS 16.10.530 were "proceeds of a state tax or license," within the meaning of this section, whether or not the salmon assessments fit the definition of "special assessments." State v. Alex, 646 P.2d 203 (Alaska 1982).

Coastal protection fund held invalid. - As provided for in ch. 266, SLA 1976, the coastal protection fund in former AS 30.25, which regulated the transfer of crude oil, refined petroleum products, or by-products of oil terminal facilities, was a dedication of the proceeds of a tax or license and invalid under this section. Chevron U.S.A., Inc. v. Hammond (A77-195 Civil), F. Supp. (D. Alaska 1978).

Risk charges for each classification of certificate issued under former AS 30.25, which were deposited in the coastal protection fund, were the proceeds of a license or tax within the meaning of this section, which prohibits the dedication of any state tax or license to any special purpose with certain exceptions. Chevron U.S.A., Inc. v. Hammond (A77-195 Civil), F. Supp. (D. Alaska 1978).

Attorney general could not save provisions of former AS 30.25 from unconstitutionality under this section by directing promulgation of regulations inconsistent with statute. - See Chevron U.S.A., Inc. v. Hammond (A77-195 Civil), F. Supp. (D. Alaska 1978).

Deposit of Alaska Power Authority revenues into state general fund. - Net proceeds from the Alaska Power Authority's operations in excess of actual debt payments are deposited into the state general fund, the Authority receiving money for maintenance and operation of its facilities from legislative appropriations. M-K Eng'g Co. v. Alaska Power Auth., 662 F. Supp. 303 (D. Alaska 1986).

Based upon this article, funds left over from Alaska Power Authority projects are lapsed into the state's general fund for later reappropriation. M-K Eng'g Co. v. Alaska Power Auth., 662 F. Supp. 303 (D. Alaska 1986).

Cited in State v. Anthony, 810 P.2d 155 (Alaska 1991).

Alaska State House of Representatives
House District 39

Session
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Aklak, Alaska 99552
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Representative Ivan M. Ivan

MEMORANDUM

TO: Representative Jeannette James, Chair
House State Affairs Committee

FROM: Representative Ivan M. Ivan

DATE: January 29, 1997

RE: Scheduling of House Joint Resolution 18

Please consider this request to hear House Joint Resolution 18: Dedicated Funds; Rates May be Changed, before the House State Affairs Committee at your earliest possible convenience.

This proposed constitutional amendment will allow voters in the next general election to decide if the legislature can change the rate or license the proceeds of funds dedicated for a special purpose. The dedicated fund had to be in existence as of April 24, 1956.

Please do not hesitate to contact either myself or Tom Wright of my staff if you have questions or need further information.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR 18

Revision Date
Title: Const. Amdt.: Changing rate of a tax or license
Sponsor: Representative Ivan
Requester: House State Affairs

Dept. Affected: Office of the Governor
BRU: Elective Operations
Component: General and Primary Elections
Component Serial No.: #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

Full-time		0				
Part-time		0				
Temporary		0				

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

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by $56.0.

Prepared by: Dana LaTour — Phone: 465-5347
Division: Division of Elections — Date: 1/31/97
Approved by Co Agency: Lt. Governor Fran Ulmer — Date: 1/31/97
Office of the Lieutenant Governor

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

HJR

21

Bob —

Ramona says she has a bill re substitute that conforms to the "use" section of our constitution She said I could have a copy — Please call her office and get me one —

She's "returning" it 4/15/97

Bob — Let's try & see what happens if we ask Mike Heatwole to have HJR3 referred just to state affairs?

Will probably have to talk to the speaker about it, but —

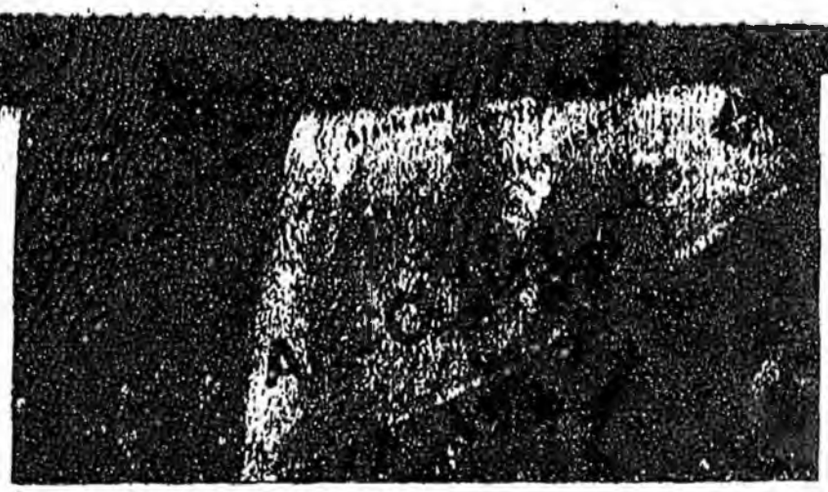
I understand Ted Bagley & crew are in the process of drafting a constitutional amendment re substitute —

I think Joan should get credit if there is going to be one —

J

Rep. Beverly Masek

P. 05



VICKI NAEGELE/Frontiersman

CLEAN SWEEP

Palmer-Wasilla Highway is looking neat and tidy after local volunteers swept over it Saturday, removing months worth of trash. At left, Teddy Babcock holds a bright yellow bag from Alaskans for Litter Prevention and Recycling (ALPAR). Above, Sally Heath and her grandson Track Palin make the cleanup a cross-generational effort. All three volunteers were with a group from the Mat-Su Covenant Church, which is located on the Palmer-Wasilla Highway.

ready. But Halford, who has also called for a state audit, has indicated he means more than a simple accounting check. His resolution, SJR 28, requests "the federal government to conduct an audit of the Alaska Native Regional Corporations to determine their compliance with the Alaska Native Claims Settlement Act and to review the accountability of the corporations to their shareholders."

Havelock said, "Every state

See AUDITS, Page A12

AOC concession could alienate members

By PAUL STUART
Frontiersman reporter

WASILLA — By endorsing a resolution to amend federal law governing subsistence in a way that still permits rural preference, the Alaska Outdoor Council, has made a big concession, AOC president Rod Arno said Friday.

"In fact," Arno said, "we went so far in signing on to this resolution, that we may have alienated a large part of our membership." The AOC has about 12,000 members.

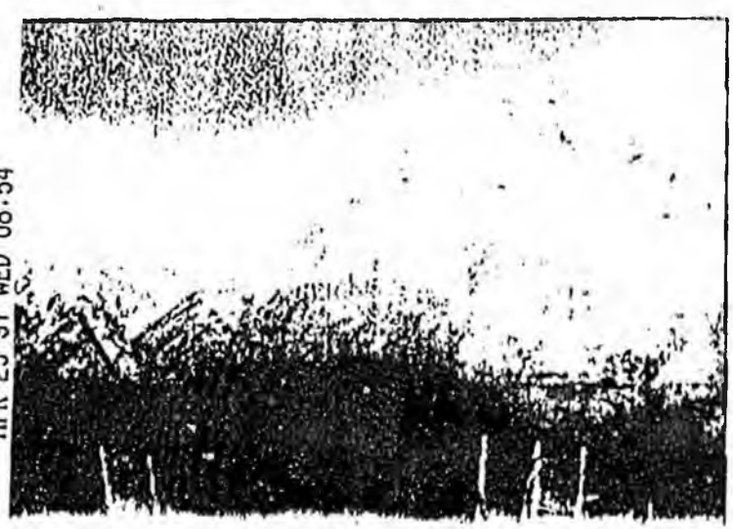
The AOC at its annual meeting in Juneau last month voted to endorse a resolution to Congress put forward by state Rep. Beverly Masek, R-Willow, to amend the contentious Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA).

Masek's resolution calls for continued rural preferences for fish and game harvesting in times of scarcity, but allows the State of Alaska to define phrases about rural and traditional use.

At the same time, the AOC has continued to endorse a traditional policy of public trust, which Arno says is "embedded in our state constitution — calling for equal access for all Alaskans to resources that include fish and game." He indicated the AOC, "in offering this olive branch, has straddled a dangerous fence. We've gone about as far as we can go."

AOC executive director Dick Bishop announced he would be retiring from the position he has held for three years, to move to a rural area north of Denali National Park.

Arno said the council has not yet decided upon a replacement for Bishop, who will be retiring on July 1.



APR-23-97 WED 08:54

School board mulls Sherrod schedule

By EOWYN LeMAY IVEY
Frontiersman reporter

A new scheduling plan for Sherrod Elementary may prove to be as controversial among school board members as it has been among community members.

During its April 16 meeting, the Mat-Su school board was presented with principal Rick [illegible] ule and asked school board members to give him some direction. While the board is waiting until after an April 29 work session to make a decision, members already appear to be of conflicting opinions.

"There has been a tendency ... for different school sites to be going in different directions," board member John Hensel said following Luthi's presentation.

INSIDE

PASSING THE BATON

Track season officially got underway Saturday at the Palmer Relays.

See SPORTS, Page B1.

INDEX

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 1, 1997 FURTHER REFERRALS:

Date of Committee Action: 5/3/97

The STATE AFFAIRS Committee considered: HJR 21

HOUSE JOINT RESOLUTION NO. 21 REQUESTING CONGRESS TO AMEND ANILCA

Relating to amendment of Title VIII of the Alaska National Interest Lands Conservation Act.

recommends it be replaced [ ] the same title
with the following committee substitute _____ [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____ [✓] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Jeannette James				✓
[illegible]		✓		
[illegible]		✓		
[illegible]			✓	
[illegible]				✓
[illegible]	✓			

CHAIR'S SIGNATURE Jeannette James

Alaska State Legislature

Committees:

Military & Veteran Affairs,
Chair

House Resources,
Vice-Chair

House Transportation,
Vice-Chair

Legislative Council

Representative Beverly Masek

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SPONSOR STATEMENT
HJR 21

HJR 21, "Relating to amendment of Title VIII of ANILCA," provides for two important items within the confines of the subsistence debate. First it will allow Alaskans an opportunity to discuss how the resolution of this important issue should take place, among Alaskans, or as imposed on us by federal law. As the legislature debates the merits of HJR 21, the people of Alaska will have a chance to participate in deciding whether this issue is better resolved by placing Alaskans at the table and working out a reasonable solution, or if we should relinquish some of our State's authority by following federal directives.

Secondly, if Alaskans agree, the basic tenets put forth by HJR 21 should be presented to Congress as a possible answer to this long running debate. It is important to note that if Congress acts favorably on HJR 21, that the major issue of a rural preference will remain in federal statute as a prerequisite for state management. However, Alaskans will have the option of trying to come to a reasonable agreement on what the terms "rural" and "customary and traditional" mean. I strongly believe the people of this state can do that.

HJR 21 also makes a request of Congress to clarify or change some of the other provisions of ANILCA. Among the changes requested are: a definition of public lands that would exclude state and private land and water, prohibit the preemption of state fish and wildlife management on state and private land and water, repeal of federal court oversight provision of state subsistence management programs, and the elimination of commercial sale of subsistence taken resources.

So far neither side in the subsistence debate seems willing to budge on the issues of amending ANILCA or the state constitution as the first step in returning full management authority to the state. The approach in HJR 21 is somewhat different in that it asks that the major stumbling block, "the rural priority," be kept in ANILCA, but at the same time to allow the state to define it. I realize this isn't by any means a perfect answer that will satisfy the parties involved on either side of this divisive issue; however, I am hopeful Alaskans, given the chance, can sit down and come up with a workable definition. I would encourage everyone to take a close look at this approach and give it some consideration as I feel it might start us towards resolving this important issue.

0-LS0922\A~
Utermohle
4/17/97

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE BARNES

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act relating to subsistence hunting and fishing; and providing for an effective date."

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

* **Section 1.** AS 16.05.251(e) is amended to read:

(e) The Board of Fisheries may allocate fishery resources among <u>subsistence,</u> personal use, sport, guided sport, and commercial fisheries. The board shall adopt criteria for the allocation of fishery resources and shall use the criteria as appropriate to particular allocation decisions. The criteria <u>for the allocation to and among subsistence uses must be consistent with AS 16.05.258. The criteria for the allocation among personal use, sport, guided sport, and commercial fishing</u> may include factors such as

(1) the history of each personal use, sport, guided sport, and commercial fishery;

(2) the number of residents and nonresidents who have participated in

each fishery in the past and the number of residents and nonresidents who can reasonably be expected to participate in the future;

(3) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;

(4) the availability of alternative fisheries resources;

(5) the importance of each fishery to the economy of the state;

(6) the importance of each fishery to the economy of the region and local area in which the fishery is located;

(7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

* Sec. 2. AS 16.05.251 is amended by adding a new subsection to read:

(i) The Board of Fisheries shall establish by regulation criteria for determining the individuals who may take a fishery resource

(1) for subsistence uses; and

(2) in a fishery for subsistence uses in the event of restrictions on subsistence uses of the fishery resource.

* Sec. 3. AS 16.05.255(a) is amended to read:

(a) The Board of Game may adopt regulations it considers advisable in accordance with AS 44.62 (Administrative Procedure Act) for

(1) setting apart game reserve areas, refuges, and sanctuaries in the water or on the land of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishing open and closed seasons and areas for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture, taking, and transport of game, including regulations, consistent with resource conservation and development goals, establishing means and methods that may be employed by persons with physical disabilities;

(4) setting quotas, bag limits, harvest levels, and sex, age, and size limitations on the taking of game;

(5) classifying game as game birds, song birds, big game animals, fur

bearing animals, predators, or other categories;

(6) methods, means, and harvest levels necessary to control predation and competition among game in the state;

(7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation, and stocking of game;

(8) prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;

(9) establishing the times and dates during which the issuance of game licenses, permits, and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed;

(10) regulating sport hunting and subsistence hunting, **consistent with AS 16.05.258,** as needed for the conservation, development, and utilization of game;

(11) taking game to ensure public safety;

(12) establishing criteria for determining which individuals may take game for subsistence uses and the individuals who may take game from a game population in the event of restrictions on subsistence uses of the game population.

* **Sec. 4.** AS 16.05.258(a) is repealed and reenacted to read:

(a) The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence uses in each area identified by the boards.

* **Sec. 5.** AS 16.05.258(b) is repealed and reenacted to read:

(b) The boards shall determine

(1) what portion, if any, of the stocks and populations identified under (a) of this section can be harvested consistent with sustained yield; and

(2) how much of the harvestable portion is needed to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

* **Sec. 6.** AS 16.05.258(c) is repealed and reenacted to read:

(c) The boards shall, for each stock and population for which a harvestable portion is determined to exist under (b)(1) of this section, allocate by regulation the

percentage of the stock or population that may be taken for subsistence uses, for personal uses, for sport uses, and for commercial uses. The percentage allocated for subsistence uses must give a preference to satisfy subsistence uses. If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sustained yield or continue subsistence uses, then the preference shall be limited, and the boards shall distinguish among subsistence users on the basis of their

(1) customary and direct dependence on the fish stock or game population for human consumption as the mainstay of livelihood; and

(2) ability to obtain food if subsistence use is restricted or eliminated.

* **Sec. 7.** AS 16.05.258 is amended by adding a new subsection to read:

(g) The boards may adopt regulations consistent with this section that authorize taking for nonsubsistence uses a stock or population identified under (a) of this section.

* **Sec. 8.** AS 16.05.940(30) is amended to read:

(30) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

* **Sec. 9.** AS 16.05.940(31) is amended to read:

(31) "subsistence hunting" means the taking of, hunting for, or possession of game [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses by means defined by the Board of Game;

* **Sec. 10.** AS 16.05.940(32) is amended to read:

(32) "subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by <u>an individual who significantly depends on the resource</u> [A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis;

* **Sec. 11.** AS 16.05.940(27) is repealed.

* **Sec. 12.** Sections 3, 5, and 9, ch. 1, SSSLA 1992, are repealed.

* **Sec. 13.** TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries and the Board of Game expeditiously adopt regulations necessary to implement secs. 1 - 10 of this Act.

(b) Regulations adopted by the Board of Fisheries, Board of Game, or Department of Fish and Game after the effective date of this Act may not be inconsistent with the provisions of secs. 1 - 10 of this Act.

(c) Regardless of whether regulations in effect on the effective date of this Act, and adopted under the authority of AS 16.05.251, 16.05.255, or 16.05.258, as those statutes read on the day before the effective date of this Act, are inconsistent with the provisions of secs. 1 - 10 of this Act, they may continue to be implemented and enforced until October 1, 1997.

* **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).

SENATE JOINT RESOLUTION NO. 28

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATORS HALFORD, Green, Taylor, Miller, Sharp, Torgerson, Donley, Leman, Wilken, Ward, Phillips

Introduced:
Referred:

A RESOLUTION

Requesting the federal government to conduct an audit of the Alaska Native regional corporations to determine their compliance with the Alaska Native Claims Settlement Act and to review the accountability of the corporations to their shareholders.

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

WHEREAS the 92nd Congress of the United States adopted the Alaska Native Claims Settlement Act (ANCSA) on December 18, 1971; and

WHEREAS the Congress intended the regional corporations created by ANCSA to be the economic foundation that would allow Alaska Natives to build upon the settlement and preserve the benefits of the settlement for future generations of Alaska Natives; and

WHEREAS the Native regional corporations created by ANCSA have never been audited by the State; and

WHEREAS Governor Knowles has stated that the State should not and will not audit Native regional corporations; and

WHEREAS the open dialogue between the Native regional corporations, their shareholders, and the state that the Congress intended to promote by exempting the Alaska

Native regional corporations from many of the security laws have instead lessened the Native regional corporations' accountability to their shareholders; and

WHEREAS the State and federal governments have substantial investments, over $1,000,000,000 and 44,000,000 acres of land, in the Alaska Native regional corporations to settle claims by Native people of Alaska; and

WHEREAS a call from the Alaska State Senate floor was made for an audit of the Native regional corporations to find where this money went, why the people did not receive lands and benefits promised, and why Native people want to return to a failed federal system in order to get those promises fulfilled; and

WHEREAS officers of some of the regional corporations make substantial income while over one-third of their shareholders live at or below the poverty level; and

WHEREAS ANCSA has apparently failed the Native people of Alaska, and one of the results of this failure is an outcry by Native people of Alaska for sovereignty; and

WHEREAS many Alaska Natives feel intentionally disenfranchised by, and uninformed about, the actions of the regional corporations; and

WHEREAS Alaska Natives deserve accountability and responsiveness from the regional corporations that were established by the Congress to assist them in their bid for self-determination;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the President and the United States Congress to conduct a multi-year audit of the Alaska Native regional corporations to determine their compliance with the Alaska Native Claims Settlement Act and to review their accountability to their shareholders for the over $1,000,000,000 and the promises of the Alaska Native Claims Settlement Act; and be it

FURTHER RESOLVED that the results of the audit should be provided to the Governor and Legislature of the State of Alaska.

COPIES of this resolution shall be sent to the Honorable Bill Clinton, President; the Honorable Al Gore, Jr., Vice-President and President of the U.S. Senate; the Honorable Strom Thurmond, President Pro Tempore of the U.S. Senate; the Honorable Trent Lott, Majority Leader of the U.S. Senate; the Honorable Thomas Daschle, Minority Leader of the U.S. Senate; the Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the Honorable Dick Armey, Majority Leader of the U.S. House of Representatives; the Honorable

Richard A. Gephardt, Minority Leader of the U.S. House of Representatives; and the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

INFORMATIONAL HANDOUT FROM ROBERT W. RUDE

For those of you that supported my election last year, I thank you. Since July 1996, I have been trying to get information on how much land CIRI still owns and on management compensation but Marrs has denied many of my requests. After 8 months, I was finally given the information which I am bringing to you in this handout.

REPORTED COMPENSATION. In 1995 Huhndorf was paid $441,390, Marrs $297,190, Hillard $348,729, and Kroloff $228,179. In 1994, Huhndorf was paid $391,224, Hillard $655,483, Marrs $235,896, and Kroloff $$212,492. In 1993, Huhndorf was paid $548,971, Hillard $405,179, Marrs $326,270. In the last five years Huhndorf's pay averaged approximately $8,417 per week (CIRI Proxy Statements 1994 to 1996).

SERVICE AWARD. In 1994, the CIRI Board approved a Service Award of $800,000 for Huhndorf. Minutes of the Compensation Committee said the award was to be paid 12-31-95. The award was not reported to shareholders in CIRI's 1995 or 1996 Proxy Statements (CIRI minutes of 2-18-94).

ANOTHER $825,000. CIRI's May 1996 newsletter it said Huhndorf was paid a total of $800,000 in retirement compensation: $200,000 from CIRI and $600,000 from BellSouth for services as chairman of the CIRI/BELLSouth partnership. The newsletter did not tell you the correct amount. Huhndorf was paid $625,000---not $600,000. The three year contract was approved by the CIRI Board in October 1995, and it was signed by Mr. Hillard (an executive of Cook Inlet Corporation a subsidiary of CIRI) on January 16, 1996. WHY WASN'T THE CONTRACT SIGNED BY BELLSOUTH? There was no mention of a $200,000 retirement bonus in the contract. Huhndorf was paid the $625,000 on April 26, 1996, as a result of the early termination of his contract. MUST BE NICE TO MAKE $825,000 IN THREE MONTHS! The money was not reported to shareholders in CIRI's 1996 Proxy Statement.

SPLIT THE POT. In early 1996, $398,000 was given to Huhndorf and Marrs. The money was given as a RETIREMENT BONUS for Huhndorf and a raise for Marrs. WASN'T PROFIT SHARING PROVIDED AS A RETIREMENT OPTION FOR CIRI EMPLOYEES?

PROFIT SHARING. Proxy Statements from 1984 to 1996 show Huhndorf was paid over $167,000 for PROFIT SHARING. When 12 years of Fund earnings are included the amount paid him is SUBSTANTIAL. I asked for the total amount of Profit Sharing that was paid Huhndorf but my request was denied by Marrs.

MORE MONEY. A Consulting Agreement pays Huhndorf $150 PER HOUR plus expenses. He retains compensation paid from LIN TV, Southcentral Foundation, Cook Inlet Tribal Council and CIRI. In addition, he is paid board fees from our subsidiary corporations. Board fees received from subsidiaries are deducted from consulting fees owed Huhndorf by any of the subsidiaries. I asked for information that would show how much our subsidiaries paid Huhndorf but the information was denied me by Marrs.

SEVERANCE. In February 1995, the CIRI Board adopted a severance policy for executives which provided UP TO 12 MONTHS OF SALARY PLUS $50,000 for executives who were employed at CIRI for 15 or more years. I wrote CIRI requesting a list of the executives and the severance paid to each of them but by request was denied by Marrs.

LONG-TERM COMPENSATION. CIRI management has a long-term compensation plan that covers ten years (from 1993 to 2003). Shareholders should request that the plan be explained to them.

RETIREMENT PARTY? In Dec. 1995, Huhndorf resigned from CIRI as CEO. His date of resignation was Jan. 2, 1996. DID YOU KNOW CIRI SPENT OVER $110,000 FOR HUHNDORF'S RETIREMENT PARTY and for label pins?

FISHING LODGE. CIRI management has an EXCLUSIVE FISHING LODGE for executives, and it only cost US approximately $235,000 in 1996. MUST BE NICE TO HAVE A FISHING LODGE PAID FOR BY SHAREHOLDERS. YOU MIGHT CALL AND SEE IF YOU CAN FISH THERE.

ITS YOUR MONEY. Last year CIRI spent over $90,000 for Participation committees. DO YOU THINK THE COMMITTEES WERE WORTH THE EXPENSE? CIRI also spent about $1.3 MILLION for professional services, advertising and promotion. A large amount of the money was spent to improve the image of management. HOW DO YOU LIKE THEM SPENDING YOUR MONEY TO IMPROVE THEIR IMAGE? Did you know that CIRI increased its advertising and promotion expenses by over $41,000 last year to oppose my election to the CIRI Board?

LIVING IN POVERTY. It has been stated that approximately $70% OF OUR SHAREHOLDERS LIVE IN POVERTY. CAN YOU SEE WHY? ISN'T IT TIME WE PUT AN END TO CORPORATE GREED AND CONTROL?

4 OPTIONS.

- o CIRI's assets, including natural gas and oil holdings not included in year end reports, are worth nearly $1 BILLION, according to Mr. Kriste a CIRI executive (Feb. 16, 1989 Anchorage News).
- o Include (CIRI's) Alaska real estate, and (CIRI) shares might well be worth $100,000 OR MORE (Huhndorf Forbes 11-12-90).
- o Shareholder equity was $70,525 PER 100 SHARES (CIRI 1995 Annual Report). WHAT WOULD SHAREHOLDER EQUITY BE IF ANCSA LANDS AND SUBSURFACE RESOURCES WERE ADDED?
- o Investors are paying 4.6 times book value (shareholder equity) for the Standard and Poors 500 and 20.5 TIMES PROFIT (quote from New York Times in Anchorage News 2-16-97).
- o CIRI's return on shareholder equity is about 2.6%. Many shareholders feel they could get a return of 6% or $4200 per year instead of the $1800-$1900 a year we get.
- o Why is the vote on the options an advisory vote? Could it have anything to do with dissenters rights?

My book AN ACT OF DECEPTION is out, if you want a copy send a check or money order in the amount of $13.50 (includes shipping) made out to: Robert W. Rude, 14940 Woodland Ave., Eagle River, Ak. 99577.

At next Shareholder Meeting.

INFORMATIONAL HANDOUT #2 FROM ROBERT W. RUDE

OUR LAND. When testimony was being taken on the Land Claims bill, hundreds of Alaska Natives gave testimony on the importance securing a land base and retaining those lands to protect our culture.

ANNUAL REPORTS. Say CIRI's land entitlement was 1,260,000 acres and 2,285,000 acres of subsurface. In 1995 CIRI land figures changed to 1,302,000 acres of surface and 2,360,000 acres of subsurface. The 1995 report said our Alaska land entitlements were traded for $220,484,000 of surplus government properties, and our trade accounts had all been used up. I requested information as to why our land entitlements increased, but Marrs refused to answer my question or provide me documents on the subject.

BLM REPORT. Unable to get answers to my questions, I attended a meeting with several other shareholders and Bureau of Land officials. We was given the following information; 1) Our out-of-region entitlement was 763,776 acres; 2) ALL OF OUR OUT OF REGION entitlement was traded except for 128,695 acres (98,860 were conveyed and 29,835 acres remained to be conveyed) and 3) Our surplus property account increased from $220,484,000 to $236,300,000. It appears to me that CIRI has traded approximately 635,081 acres of our out of region (Alaska land selection rights) for surplus properties, and we were remaining entitlement was approximately 662,536 acres.

LIQUIDATION OF LANDS. In the May/June 1993 newsletter, Huhndorf said CIRI had about $30 million of earning asset properties and was developing another $40 million. The balance of the surplus properties (about $100 million) have been sold off or are in the process of being sold in order to realize their cash value. As of 1993, CIRI sold about $50 million of our surplus properties. When the sales of government surplus properties are added to sales of Alaska lands the amounts could be substantial. HOW MUCH LAND DO WE HAVE LEFT?

Our 1991 to 1995 annual reports said we owned 924,000 acres of surface estate and 1.6 million acres of subsurface estate in Alaska. When I questioned this number, CIRI sent out a newsletter in May 1996, saying we owned about 700,000 acres of surface and 1,764,286 acres of subsurface estate.

QUESTIONS. Did CIRI fully disclose the land trades it made? Did you get to vote on the land trades? Did you get to vote on the CIRI land sales? Did you get to use any of CIRI lands? Did CIRI set aside any lands for shareholders to use for subsistence fishing, hunting or gathering? CIRI's May 1996 newsletter said CIRI would be printing a special land report in the summer BUT THEY NEVER DID. WHY NOT?

SECTION 2(b) OF ANCSA. Says we are suppose to be involved in decisions that affect our rights and property. CIRI management keeps telling you we have Native control of our corporation. WE DO NOT HAVE NATIVE CONTROL, WE HAVE MANAGEMENT CONTROL. Did you:

o Ever get to vote on CIRI's articles or by-laws? Were you notified when CIRI changed its articles or by-laws? Did you get to ratify

or vote on article and by-law changes?

- o Get full disclosure on amendments to ANCSA? Did you get to vote on ANCSA or the amendments to ANCSA?
- o Get full disclosure on management's long-term compensation Plan (which could pay Marrs $2 million) and did you get to vote on it? Shareholders should request an explanation and a vote on the Plan because it could involve the TRANSFER OF MILLIONS OF DOLLARS OF OUR MONEY TO MANAGEMENT STAFF.
- o Get to vote on the transfer of hundreds of millions of dollars to CIRI's 22 subsidiary corporations?
- o Get to vote on approximately $13 million that was donated to the CIRI Foundation? Did you get to vote on the donation of millions of dollars to the Native Heritage Center, Koahnic radio station, the University of Alaska ($400,000), and to Native Justice Center?
- o Get to vote for the directors of the CIRI Foundation, Southcentral Foundation, or the Cook Tribal Council?
- o Get to vote on the participation committees which cost us about $95,000 last year?
- o Get to vote on the fishing lodge for executives which cost us about $235,000 last year?
- o Get to vote on the Indemnification Agreement for directors and managers (in case they are sued).

All of the above questions show how much participation you have in matters that affect your rights and stock values. YOU HAVE VERY LITTLE. Shareholders have not had full disclosure on the actions taken by our management. We have not voted on the issues. and we don't get to vote on the directors of the CIRI Foundation, CITC, and Southcentral Foundation. All of these entities have their directors appointed, even the chairman of CITC is appointed by CIRI management. WE NEED TO END THE DICTATORSHIP and END THE GREED. Carl Marrs said CIRI has nothing to hide. If that is the case, CIRI should support a state or federal audit. I recommend shareholders support Senator Halford's call for a state audit of the regional corporations. Regional corporation audits should be overseen by a the state or federal government.

NO PROTECTIONS. In 1976, AFN exempted ANCSA corporations from protections offered shareholders under the Securities Exchange Act and the Investment Company Act. ANCSA shareholders are not recognized "Indian tribes" and we are not protected by the Indian Civil Rights Act of 1968---and we are not under all the laws that are afforded non-Native shareholders in Alaska. SEC exemptions were extended until 1-1-2001 or until shareholders vote to unrestrict stock by P.L. 100-241. Was this amendment explained to you, and DID YOU VOTE ON IT?

AN ACT OF DECEPTION is out and can be purchased for $13.50 per copy. Send check or money order to ROBERT W. RUDE, 14940 WOODLAND AVE., EAGLE RIVER, AK. 99577. Book is must reading for Alaska Natives and Alaskans who want to know more about ANCSA. It is a book that examines ANCSA, Amendments to ANCSA, legislative histories, court decisions, reports, studies, Native corporation agreements, land trades, annual reports, proxy statements, state laws, and federal laws to show that ANCSA was an act of deception.

#JR 21 Moved from STA

1. Ordered by Leadership —

2. They promised to hold it in Rules.

Mr. Chairman: My name is Arthur Lake. I am a tribal administrator for the village of Kwigillingok. For the record, my testimony is against the adoption of HJR 21. Mr. Chairman, HJR is ill-conceived. It is a resolution that calls for the repeal of Title VIII of ANILCA. It is a resolution that calls for the first step in the termination of the special relationship of the Alaska Natives with the Federal Government. It is ill-conceived because the enactment of Title VIII of ANILCA is premised upon the federal supremacy over indigienous people of Alaska as well as federal supremacy over federal property and interstate commerce.

Mr Chairman, many of the whereas's of the resolution are indefensible and proposed do are sometime the very opposite of what it propose to do. Example, the proposition to Amend ANILCA's definition of "public lands" to exclude state and private land and water. ANILCA'S current definition of "public lands" already excludes all private and state-owned lands, including Native owned lands. Instead, this body should work toward bringing the state into compliance of ANILCA. With respect to amending ANILCA to prohibit federal preemption of state fish and wildlife management on state and private lands and water unless expressly authorized by the Congress, - ANILCA only applies to the federal lands. These are just example of how ill-conceived the propositions are under HJR 21. One can only assume these propositions are vield propositions to "gut" Title VIII of ANILCA, reverse Katie John Decision and take away the only legal protection of the true subsistence users in Alaska. In sort, Mr. Chairman, it is not only ill-conceived, it is a misguided proposition. Mr. I rise in opposition to HJR 21.

March 18, 1997

To: Representative Foster, Ogan, and Masek
From: Dick Kugzruk, Brevig Mission, Alaska
Subj: HJR 21 Testimony

My name is Dick Kugzruk, born to Phillip Kugzruk Sr. and Ida Kugzruk. I come from a family of 8 (5 sisters, 2 brothers). I'm the youngest, so I was the only one born in a hospital, my brothers and sisters were born the way to a hospital or at camp. My parents were primarily subsistence people until I was born. They settled in Nome, AK. where both me parents started full-time work, that did not stop them from what they loved to do and taught us to live off the land.

My parents grew up living a subsistence lifestyle, spoke my Inupiaq language, respected elders, shared their catch with those who were unfortunate, traded what they could for cash, coffee, tea, flour, crackers, lard, etc. to the staples, to local merchants. My father was fortunate to graduate 8th grade, where he was taught English, speaking Inupiaq was frowned upon by his teachers, violators were harshly punished. My mother was uneducated because she was needed at home to help raise her parents family, then she had a family of her own to take care of. During this time of change, subsisting off the land remained unchanged. It was the only way to survive in our harsh environment.

In out present time, substance is still unchanged; we hunt to live, we fish to live, and we gathered to live A few people trade for staples now, but mostly now its cash they receive to buy the staples. The Inupiaq have lost the language, we have lost of sense of being the people that we once were in my father's time. The cost of living in Rural Alaska is ridiculous, some people go hungry some months because there is no money. Educating the Eskimo is or was both good and bad, now at this time, the 80's-90's, its mostly good to be educated, the young Natives are coming home to help the people overcome change. Instead of speaking Inupiaq, we speak mostly English all of the time, we write testimonies like I am doing now to fight for our sovereign inherent rights and we continue to live off the land that I believe is there for everyone and anyone who is hungry. Please keep in mind while we were being educated, we lost the time to learn to live off our land because we were forced to change.

In our present time the young people hardly take notice of the elders, there are few who share the catch, and I'd like to congratulate the person in my generation who can carry on a conversation in Inupiaq with an Elder.

I have heard the promises of Government for change; jobs, water and sewer, and how many more times do we need to testify for our subsistence right. Please, people we are not racist or prejudiced because we think this is a native issue. Representative Ogan, I invite you to come hunt with me I want to bring up another point the state allocates some

money to fight its own people and then has the guts (no pun intended) to talk about jobs and money for the people of our great state. What is wrong with this picture?

In closing of my testimony, I oppose HJR 21 because I believe our state government is taking care of their own interests and not the interests of all Alaskans. Listen to the Elders wisdom, train the people to take over your job, for the good of all, not train the people to fight for your job because nothing good comes out of it.

Testimony on House Joint Resolution 21

Mr. Robert Keith
Chairman
Board of Directors, Kawerak, Inc.
March 13, 1997

Mr. Chairman, members of the Resources Committee. My name is Robert Keith. I am the chairman of Kawerak Board of Directors. Kawerak represents 19 villages representing approximately 6,500 Alaska natives in the Bering Straits region. I am also the President of Elim IRA Council and Elim Native Corporation. I respectfully voice my opposition to HJR 21.

In September of 1996, the Board of Directors of Kawerak passed Resolution 96-10 opposing any amendments to ANILCA which would weaken or undermine the subsistence protection provided to rural Alaskans.

In my opinion, HJR 21 is off the mark and is equivalent to totally gutting Title VIII of ANILCA. The State of Alaska, at the present time, does not provide for the protection of subsistence during times of resource shortage. The present State management of Fish and Game generally favors the commercial and sports hunting and fishing and creates the divisions that exist in Alaska. House Joint Resolution 21 will only perpetuate this division. It is extreme and its final result will only cause greater disunity.

Subsistence harvest of all wild resources is only a small portion of the total harvest in Alaska - 4% and yet this small harvest is extremely important to those people whose harvest is dependent on these resources for their livelihood, and nutritional and cultural well-being.

I strongly encourage the Alaska State Legislature not to pass this resolution and hope that you will seek a wiser course of action in the resolution of the subsistence dilemma.

Thank you.

KAWERAK, INC.

P.O. BOX 948 • NOME, ALASKA 99762

TELEPHONE: (907) 443-5231 • FAX (907) 443-5708

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STEBBINS
ST MICHAEL
TELLER
UNALAKLEET
WALES
WHITE MOUNTAIN

March 14, 1997

To: IRA / Tribal Leaders
From: April Ferguson, TSG
RE: Update

Yesterday, the House Resources committee held hearings on Representative Masik's House Joint Resolution 21 which asks Congress to amend Title VIII of ANILCA so that State management can be returned. The resolution proposes to destroy the existing federal subsistence protections that Title VIII provides. The purpose of the resolution in Ms. Masik's words is to "shift the emphasis from amending the state constitution, to allowing the state to define the terms in ANILCA." I find it very unlikely that Congress will allow a state to redefine terms in federal law.

During the course of testimony, which the committee dominated with their own comments, several things became apparent:

1. The Outdoor Council was forewarned, actively testifying and solidly behind this resolution.

2. The greater Bush community was again unable to participate in the public testimony because there were not enough lines available. For those who wanted to testify but were unable to get through both to listen and to comment please complain to Representative Richard Foster at 1-800-478-3789, and contact Representative Ogan's office with commentary also. He is the co-chair of the committee.

   Comments that you wish to go into the public record should be faxed either to Representative Richard Foster (fax) 465-3242 or Representative Ogan (fax) 465-3265 and addressed to the Natural Resources Committee with a heading that clearly states that your written testimony is intended to go into the permanent record. It will then be distributed to all the committee members.

   During the course of testimony, the NARF attorney, Heather Kendall asked that the hearings be extended so that the greater Bush community would be able to participate and that the committee was only hearing from the urban centers. Representative Barnes and Representative Ogan responded as if they had been personally attacked, stating that they were offended that anyone would imply that they were intentionally keeping the rural areas from participating. That was not what Ms. Kendall was

implying and her point is valid. Representative Nickolai responded by saying that she had seventy-five villages that wanted to comment but that only one was able to get on line.

The committee was not responsive and the hearings for this committee will not be extended, there will, however, be other committee hearings in this process. We will try to keep you updated from this office but please insist that Representative Foster keep you updated on the status of this resolution and that he make arrangements for you to participate, also let his office know that you wish to be notified when these hearings are broadcast so that you can listen in to commentary from around the state. Again contact the Nome legislative office at (907) 443-5555 and ask that they keep you current on any legislation that impacts subsistence and notify you of all upcoming hearings.

I would appreciate a copy of your commentary and notice of whether you tried to get through and were unable to participate. I believe that being able to listen to the comments of the committee and of the other voices around the state is a fundamental right of an Alaska citizen. How can you effectively respond to the committees questions and arguments if you are not able to listen in on or comment on what they are discussing? There was testimony from Juneau, Ketchican, Fairbanks, Kotzebue, Nome, Glenallen, Kenai all of which have legislative information offices, the only two villages able to get through and testify were Kipnuk and Quinhagak.

3. The committee appears to be uniform in their opinion, opposing a state constitutional amendment, deadset on amending ANILCA, equal rights for all, equal access for all, and adamantly opposed to any "commercial use and sale of fish and wildlife taken for subsistence uses." They persist in viewing a subsistence as a racial preference.

4 Representative Ogen also stated during the course of testimony that no one has ever tried to contact him about subsistence. Lets change that. I know it is tiring to have to reeducate the legislature and congress every session but they do have a crucial role to play. John Borbridge, former President of SeaAlaska testified, and he was wonderful, reasoned and informed. I believe that the committee co-chair Ogen was responsive to his testimony. Julie Kitka also was able to testify and she was also eloquent and reassuring. She invited the committee to come out to the rural areas to see the subsistence lifestyle for themselves Representative Barnes stated that she has plenty of friends in the Bush and she knows what the lifestyle is like, Representative Masik stated that she grew up in Anvik in a subsistence lifestyle and that she's only trying to introduce something that is fair to all Alaskans, Representative Ogen said he would come but would he be allowed to hunt. Although the committee's mind seems to be

pretty well made up and it is difficult to talk to people who know it all already, your written testimony is needed because it does become documentary evidence in the public record in the event that there is ever a lawsuit. There needs to be a written record for the future that the Native people actively opposed in every instance any attempts to abrogate their subsistence rights.

GOOD AFTERNOON. MY NAME IS GEORGE YASKA AND I'M AN EXECUTIVE OFFICER WITH TANANA CHIEFS CONFERENCE, INC. MY COMMENTS TODAY REFLECT THE POSITION OF TANANA CHIEFS ON HJR 21 AS SUBMITTED BY REP. MASEK.

BY WAY OF OBSERVATION, WE WOULD LIKE TO TAKE NOTICE THAT RECENT ACTIONS WITHIN THE NATIVE SUBSISTENCE MOVEMENT AND THIS PROPOSED RESOLUTION MAY REPRESENT SOME PROGRESS TOWARD A MEETING OF MINDS ON THE SUBSISTENCE ISSUE. IN FEBRUARY, RURALCAP SPONSORED A SUBSISTENCE ROUNDTABLE IN ANCHORAGE WHICH PRODUCED A PROCLAMATION ON SUBSISTENCE WHICH REPRESENTED A SHIFT IN POSITIONS ON SUBSISTENCE. PRIOR TO THIS PROCLAMATION, THE CONSENSUS WITHIN THE NATIVE COMMUNITY FAVORED RETURN TO STATE UNITARY MANAGEMENT AND SUPPORT OF A CONSTITUTIONAL AMENDMENT WHICH WOULD COMPLY WITH ANILCA. AFTER SEVERAL YEARS OF EFFORT IN THIS DIRECTION, THE ROUNDTABLE PRODUCED A NEW RECOGNITION THAT WE IN ALASKA HAVE REACHED AN IMPASSE AND THAT DUAL MANAGEMENT WILL BE A PERMANENT FEATURE OF FISH AND GAME MANAGEMENT IN ALASKA IN THE FORESEEABLE FUTURE. IN RESPONSE, THE ROUNDTABLE PROCLAMATION CALLS UPON THE NATIVE COMMUNITY TO REFOCUS OUR EFFORTS TO MAKE THE DUAL MANAGEMENT SYSTEM WORK THROUGH DEVELOPMENT OF GREATER COOPERATION BETWEEN

LAND MANAGERS AND THE DEVELOPMENT OF SYSTEMS OF CO-MANAGEMENT WHICH WILL MEET THE NEEDS OF SUBSISTENCE USERS.

INTERESTINGLY, THIS RESOLUTION IS PREMISED UPON A SIMILAR REALIZATION THAT DUAL MANAGEMENT IS LIKELY TO CONTINUE IN THE NEAR FUTURE. IT MAY SIGNIFY SOME PROGRESS THAT BOTH SIDES ACKNOWLEDGE THIS FACT. THE RESOLUTION SUGGESTS A DIFFERENT ALTERNATIVE TO ADDRESS FISH AND GAME MANAGEMENT. RATHER THAN FOCUSING ON CO-MANAGEMENT, THE RESOLUTION CALLS FOR AMENDMENTS TO ANILCA WHCIH WOULD ERECT AN IMPENETRABLE WALL BETWEEN STATE AND FEDERAL GAME MANAGEMENT. WHILE THERE ARE ASPECTS OF THE PROPOSAL WHICH MAY SHOW PROMISE, WE WOULD URGE THE COMMITTEE TO CONSIDER POSSIBLE CO-MANAGEMENT OPTIONS.

HOW WOULD CONSERVATION FOR MIGRATORY SPECIES BE ADDRESSED?

CONSERVATION REPRESENTS THE GREATEST CONCERN. UNDER DUAL MANAGEMENT, SOMEONE NEEDS TO KEEP AN EYE ON THE BOTTOM LINE TO ASSURE THAT WE MEET CONSERVATIONS GOALS. GENERALLY, THE FEDERAL SUBSISTENCE BOARD IS RESTRICTED TO MAKING ALLOCATION DECISIONS ONLY ON FEDERAL LANDS. HOWEVER, IT IS

WIDELY RECOGNIZED THROUGHOUT THE COUNTRY THAT THE FEDERAL REGULATORS MAY GO OUTSIDE FEDERAL LANDS TO REGULATE MIGRATORY SPECIES FOR CONSERVATION PURPOSES. RECENT ACTIONS BY THE FEDERAL SUBSISTENCE BOARD HAVE EXTENDED FEDERAL RESTRICTIONS ONTO STATE AND PRIVATE LANDS TO PREVENT OVERHARVEST ON STATE LANDS, WHICH MIGHT ADVERSELY AFFECT GAME POPULATIONS FOUND ON FEDERAL LANDS.

THE RESOLUTION WOULD PROPOSE TO PROHIBIT ALL FEDERAL REGULATION ON STATE LAND. THE PROPOSAL BEGS THE QUESTION: HOW WILL CONSERVATION GOALS BE COORDINATED AND ATTAINED ON FEDERAL AND STATE LAND?

UNDER ANILCA AS CURRENTLY WRITTEN, THE FEDERAL GOVERNMENT MUST COOPERATE WITH OTHER AFFECTED LAND MANAGERS, AND THE FEDERAL GOVERNMENT HAS GENERALLY ATTEMPTED TO DO THIS. THERE IS NO CURRENT SIMILAR OBLIGATION UNDER STATE LAW, ALTHOUGH AUTHORITY EXISTS IN STATE LAW TO ALLOW COOPERATION BETWEEN STATE AND FEDERAL AGENCIES, WITHOUT THE STATE AND FEDERAL COOPERATION, CONSERVATION CONCERNS RESPECTING MIGRATORY SPECIES CANNOT BE ADEQUATELY ADDRESSED. THE ACTIONS PROPOSED IN THE RESOLUTION DO NOT ADDRESS HOW CONSERVATION GOALS RESPECTING SPECIES MIGRATING BETWEEN

FEDERAL AND STATE LANDS SHOULD BE ESTABLISHED. AND IN THE ABSCENCE OF A WILLINGNESS BY THE STATE TO COOPERATE IN CO-MANAGEMENT EFFORTS WITH FEDERAL AGENCIES, THE FEDERAL AGENCIES MUST MAKE UNILATERAL DECISIONS TO PROTECT THE CONSERVATION OF FISH AND WILDLIFE POPULATIONS. SIMPLY PUT, THE RESOLUTION PROPOSES TO SCRAP THE CURRENT SYSTEM FOR ADDRESSING CONSERVATION CONCERNS FOR MIGRATING FISH AND WILDLIFE POPULATIONS, BUT DOES NOT OFFER A PROPOSAL TO REPLACE THE CURRENT SYSTEM.

WE CAN ACCEPT THE NOTION THAT DUAL MANAGEMENT IS HERE TO STAY. WE SHOULD NOT RESPOND TO THAT CHALLENGE BY BUILDING THIS "BERLIN WALL" BETWEEN THE TWO MANAGERS. RATHER, WE SHOULD BE BUILDING A BRIDGE OF COOPERATION AND UNDERSTANDING, WHICH MIGHT ULTIMATELY LEAD TO RESOLUTION OF THIS CONTINUING CONTROVERSY.

TRUSTING THE STATE?

THE PROPOSAL SUGGESTS THAT THE STATE BE ALLOWED TO DEFINE THE TERMS 'RURAL" AND "CUSTOMARY AND TRADITIONAL". ADDITIONALLY, THE PROPOSAL WOULD REMOVE FEDERAL COURT OVERSIGHT OF STATE COMPLIANCE WITH THE SUBSISTENCE PRIORITY.

IT IS UNCLEAR HOW THIS WOULD CHANGE CURRENT LAW, SINCE THE STATE HAS THESE OPTIONS AT THE CURRENT TIME ON STATE LAND. THE ARGUMENT GOES THAT "THE STATE SHOULD BE TRUSTED TO PROVIDE FOR SUBSISTENCE USES". THE ARGUMENT WOULD BE PERSUASIVE IF WE DID NOT HAVE ALMOST THREE DECADES OF EXPERIENCE WITH THE ISSUE. ANSCA TERMINATED NATIVE HUNTING AND FISHING RIGHTS. THE LEGISLATIVE HISTORY OF ANSCA EXPRESSED THE COMMON ASSUMPTION BY NATIVE, STATE AND FEDERAL OFFICIALS THAT THE STATE MANAGEMENT SYSTEM COULD ACCOMODATE NATIVE SUBSISTENCE USES.

THERE IS GENERAL AGREEMENT THAT IF THE STATE WANTED TO FULFILL THIS NEED, IT COULD DO SO USING STANDARD METHOD AND MEANS REGULATIONS. BUT WE MUST REMEMBER THAT THE FIRST TIME THE STATE BOARD OF GAME TRIED TO DO SO WHEN ADDRESSING THE CRASHING WESTERN ARCTIC CARIBOU HERD IN THE 1970S', THE COURTS BLOCKED STATE OFFICIALS EFFORTS. THAT EXPERIENCE DEMONSTRATED A NEED TO PROVIDE SPECIAL RULES TO ADDRESS SUBSISTENCE IN TIME OF DECLINING RESOURCES. THE STATE COURTS HAVE CONTINUED TO BLOCK THE EFFORTS BY STATE AGENCIES TO MEET THE NEEDS OF NATIVE SUBSISTENCE USERS. AFTER 25 YEARS OF BROKEN PROMISES, IT IS HARD TO TRUST THE STATE EXPRESSIONS OF GOOD INTENT.

CURRENTLY, THE STATE HAS CONTROL OVER STATE LAND, WHICH IS AN OPPORTUNITY TO DEMONSTRATE WHAT IT CAN DO. WE SHOULD NOT WAIT FOR THE STATE TO REGAIN FULL UNITARY MANAGEMENT AUTHORITY AS A PRECONDITION FOR THE STATE TO ADDRESS SUBSISTENCE NEEDS. IF THE STATE CAN ACCOMODATE NATIVE SUBSISTENCE USE ON STATE LAND, IT SHOULD PROCEED TO DO SO, AND TO DEMONSTRATE NOT ONLY ITS GOOD INTENT, BUT ITS CAPACITY TO PROTECT SUBSISTENCE. IF THE STATE CAN DEMONSTRATE THAT IT CAN SUCCESSFULLY ACCOMODATE SUBSISTENCE NEEDS IN THE CONTEXT OF DECLING RESOURCE POPULATIONS, IT WILL GO A LONG WAY IN MAKING THE ARGUMENT THAT THE STATE CAN BE TRUSTED. ALTERNATIVELY, IF THE STATE IS UNABLE TO IMPLEMENT SUCH A SYSTEM ON STATE LANDS, IT ALSO DEMONSTRATES THE CONTINUED NEED FOR FEDERAL INVOLVEMENT. IT IS NOT POSSIBLE FOR US TO SUPPORT THE BILL AS PRESENTED TO THE COMMITTEE TODAY. THIS IS THE EXTENT OF OUR COMMENT AT THIS TIME. THANK YOU.

TESTIMONY OF LUKE SAMPSON REPRESENTING NORTHWEST ARCTIC BOROUGH, CHUCK GREENE, MAYOR

I am here to oppose the House Joint Resolution No. 21 in the Legislature of the State of Alaska, Twentieth Legislature–First Session.

In any form whatsoever, it does not represent the sentiment of our constituents in the Northwest Arctic Borough, and the eleven communities we serve.

As a local government in the State, our rights as citizens should not be weakened or unduly disrupted by the manner of legislative intent dealing against the rural constituency' needs that our people live and enjoy on a day-to-day basis.

To adopt House Joint Resolution #21 in any manner whatsoever, imposes upon our people to live a style that is not compatible with the wishes of legislators who cannot empathize with the need for maintaining cooperative subsistence protective measures contained in Title VIII of the Alaska National Interest Lands and Conservation Act (ANILCA).

The House Joint Resolution appears to merely change by use of descriptive words the majority, non-rural members intent of well-meaning things such as rural preference and constitutional amendments. The reality is that it takes away a significant Alaskan way of life necessary to both indigenous and rural people of Alaska, but also the same citizens of the State who are being deprived of local control under a deceptive use of a legislative mechanism called a joint resolution. There seems to be no concern that this is destructive in carrying out the demise

of a large number of people who have no advantage other than to live the kind of life that the State legislature now seeks to plunder under the guise of good legislation. It only creates more conflict for all citizens of the State of Alaska, and is insensitive by ill-informed legislators or to deliberately ignore the needs of constituents most directly impacted by the wrong type of legislation.

Our past record on the issue of protecting subsistence still stands, and we urge the legislators to listen to the pleas of our representatives in Juneau to do right and defeat House Joint Resolution 21 as unnecessary and not the will of the people under State law.

Thank you. On behalf of the citizens of Northwest Arctic Borough I hope you will acknowledge that we express our views as the local will of the people that you as legislators purport to represent.

Con - stict - u - with75

IN - digh - gin - Nana

Alaska State Legislature

Please enter into the record my testimony to the House Resources committee name

committee on HJR 21 bill/subject, dated 3/13/97.

I oppose HJR 21 simply because it effectively removes protections for rural NATIVE villages regarding subsistence issues. It does so by attempting to eliminate title VIII of ANILCA.

for the record, the state does not technically have a Constitutional problem. Article 12, Section 12 provides a way for Alaskans to comply, but obviously, only if the legislature chose to do so.

Signed: Pete Schaeffer
Testifier

SELF (NATIVE)
Representing (Optional)

Box 6
Address

Kotzebue, AK 99752
Phone No.

9/86 Legislative Information Office

P. O. M.

KOTZEBUE IRA

P.O. Box 296
Kotzebue, Alaska 99752
(907) 442-3467

March 13, 1997

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To Rep. Ogan	From John Erick L.
Co. AK Legislature	Co. Kotzebue IRA
Dept. Resources Committee	Phone # (907) 442-3467
Fax # (907) 465-3265	Fax # (907) 442-2162

Honorable Scott Ogen
Co-Chair, House Resources Committee
Alaska Legislature

Dear Mr. Ogen:

The Kotzebue IRA Council opposes HJR 21.

In formulating ANILCA, Congress clearly felt itself to have a responsibility to protect the livelihoods of people living in rural Alaska. The authorities spelled out in Title VIII of ANILCA were the deliberate means to meet that responsibility.

If Congress had not been concerned to begin with about how the state might approach a rural subsistence preference, federal supervision of the state's subsistence management program would not have been incorporated into Title VIII. For the same reasons, the federal government rightly saw fit to retain authority over defining the various ANILCA terms critical to meaningful protection of rural subsistence--terms such as "rural" and "customary and traditional." Considering what Congress views as its obligations, it makes sense for the federal government to continue supervising subsistence management.

About 60% of the land in Northwest Alaska is federal land, and all communities in this region rely heavily on wild resources. To areas like ours, the federal program, though not perfect, has definite advantages over the State's. First, the federal government has a stable history of recognizing the existence of tribal governments, and though ANILCA fails to mention them, it is more reasonable for tribes and villages to look forward to developing long-term, mature arrangements with federal agencies than with those of the State. Secondly, the federal advisory system allows us, as rural subsistence users, a more substantive role in management decisions than does the state system.

Rather than proposing language that assures rural users at the outset that the State will respect and protect the livelihoods of those in rural Alaska, HJR 21 attempts to destroy all assurances afforded rural people under federal law. This is an odd way to try convincing Congress that the State can behave responsibly on this issue. And it certainly is not a constructive approach to fostering a consensus in Alaska. It is instead a surreptitious attempt at regaining state control without resolving any of the core differences between federal law--which aims to protect people in rural Alaska--and State law, which is biased in favor of recreational hunting and fishing opportunities. Proposals such as HJR 21 confirm yet again the sentiments of many in rural Alaska that the Legislature is not really concerned with working out a solution that addresses the needs of all Alaskans.

Thank you for your time and consideration.

Sincerely,

Charlie R. Gregg

Charlie R. Gregg, Chairman

NATIVE VILLAGE OF EYAK

P.O. BOX 1388, CORDOVA, ALASKA 99574
TEL 907-424-7738/FAX 907-424-7739

March 19, 1997

Senator Georgianna Lincoln
Senate
State Capitol
Juneau, Alaska 99801-1182

Senator Lincoln

The Native Village of Eyak opposes House Joint Resolution #21.

Sincerely yours
Bob Henrichs
President, Traditional Council

cc: Representative Gene Kubina
Representative Bill Hudson
Representative Scott Ogan
Representative Jeanette James

Asa'carsarmiut Tribal Council
P.O. Box 32249
Mtn.Village, Alaska 99632
(907)591-2814 Telephone
(907)591-2811 Facsimile

Resolution No. 97-16

A Resolution in Opposition to House Joint Resolution 21, relating to amendment of the Title VIII of ANILCA.

WHEREAS: Asa'carsarmiut Tribal Council is federally recognized tribe representing the Asa'carsarmiut Tribe whose primary duty is to advocate and protect the rights and interests of the native people within the region, in maintaining their customary and traditional subsistence lifestyles; and

WHEREAS: the federal government has recognized this important fundamental principal in its relationships with the native indigenous peoples of the region when it provided projections under ANILCA as well as in PL 96-487, which states that the Yukon Delta National Wildlife refuge is establishing wildlife resources in order to provide continued opportunities for subsistence by the native people of the region; and

WHEREAS: the State of Alaska, up to now, has done within its power to abdicate the rights of subsistence way of life of the native indigenous people of Alaska, and has demonstrated a lack of ability to properly manage the resource in a manner to provide protection for the native people of Alaska and the subsistence way of life; and

WHEREAS: the Alaska State Legislature has introduced a House Joint Resolution No. 21 (HJR 21) relating to amendment of Title VII of the Alaska National Interest Lands Conservation Act (ANILCA), requesting the U.S. Congress to amend Title VIII of ANILCA in the management of Alaska fish and wildlife resources; and

NOW THERE BE IT RESOLVED, that Asa'carsarmiut Tribal Council and the Asa'carsarmiut Member Tribes oppose HJR 21 in its entirety, because we feel that if the ten provisions of the resolution are enacted by Congress, it will diminish or abolish the subsistence lifestyle recognition and protection the Title VIII of ANILCA provides to Alaska Natives.

BE IT FURTHER RESOLVED, that Asa'carsarmiut Tribal Council and the Member Tribes join the rest of Alaska Native Tribes who oppose HJR21.

Post-it® Fax Note 7671	Date	# of pages ▶
To Rep Nicholai	From Mtn. Village	
Co./Dept.	Co.	
Phone #	Phone # 907 591 2814	
Fax # 465-2197	Fax # 907 591 2811	

CERTIFICATION

Passed and approved by a quorum of the Asa'carsarmiut Tribal Council this 18th day of March, 1997 with a vote of 4 in favor, 0 opposed and 5 absent.

James C. Landlord, First Chief

ATTEST:

James Luke, Secretary/Treasurer

CHEVAK TRADITIONAL COUNCIL
P.O. BOX 140
CHEVAK, ALASKA 99563
(907) 858-7428
(907) 858-7812 FAX

Chevak Traditional Council's Opposition to House Joint Resolution No. 21

The Kashunamiut are a federally recognized tribe who is represented by their tribal government, the Chevak Traditional Council whose primary goal is to protects the health, safety and welfare and the inherent traditional and cultural rights of the Kashunamiut and for their best interests. Let this affidavit acknowledge that the we are in Opposition to the House Joint Resolution No. 21 as it infringes upon our inherent rights and will exploit our ancestral lands which are located on the Yukon Kuskokwim Delta National Wildlife Refuge and has been protected by ANILCA--Title VIII, Subsistence Use and Management (ANILCA, Title VIII) as it is written.

ANILCA Title VIII, should not be amended because the Resolution HJR21 contradicts the whole purpose of the Policy and Purpose of the Title VIII. These amendments are also directly contradicting the Rural Cap Subsistence Roundtable, held in Anchorage February 1997. The State of Alaska is out of compliance of ANILCA TITLE VIII, concerning Subsistence. The State of Alaska tends to lean towards "sports, commercial and other special interest groups" that are not aware of the importance of subsistence issues and use for the rural communities.

The following are section responses to "FURTHER RESOLVED" of the proposed resolution:

(1) "Public Land' is already defined in the Federal Register. Volume 57 No. 20.

(2) Congress is already authorized to take over management if State is not in compliance.

(4) "Section 807" provides for protection of subsistence users and repeal would undermine authority of the Federal Judicial System.

(5) The Customary and Traditional use, Subsistence use, and rural are defined in the Federal Register, Vol. 57, No. 20, Jan. 30, 1992, Proposed rules of the Department of Interior, under Sec. 4 Definition of Subpart A-General Provision. They are listed as such in the Final, Subsistence Management for Federal Public Lands in Alaska which attests to the Webster's definition of: The definition of the aforementioned terms are already defined and what this resolution proposes to do is authorize the State of Alaska to rewrite the Webster's Dictionary to soothe Masek's and Ogan's HJR 21.

(6) Under Title VIII, Sec. 804, the subsistence preference for reasonable opportunity contradicts the purpose and policy of ANILCA Title VIII.

(7) Tribal Sovereignty and Indian Country issues have been decided in favor of the Tribes across Alaska but is presently in the Appeal process, no amendments should even be considered because Court cases on these issues are and may be pending.

(8) The State of Alaska should not have option- If subsistence managment is handed to the State of Alaska, than it would be their obligation to establish regional advisory councils, meaning they should be mandated to establish such councils rather than "choose" to.

(9) The Sections (8) and (9) proposed amendments are addressed in Sec. 805 (a) (2) and (3) (D) (iv).

(10) The sale of Fish and Wildlife taken for subsistence uses, supplements incomes for expenses incurred for hunting necessities, i.e. ammunition, gasoline and oil, and other gears to do more subsistence hunting and fishing.

This whole resolution contradicts the ANILCA Title VIII and there is provisions in the ACT , Section 16 USC 3119 that the State can enter into an Cooperative Agreement rather than rewriting the whole Purpose and Policy of the Act.

THE KASHUNAMIUT,THE CHEVAK TRADITIONAL COUNCIL, CHEVAK TRIBAL COURTS AND THEIR DEPARTMENTS URGES DO NOT PASS THIS RESOLUTION!!!

DRAFT

Testimony on the House Joint Resolution 21

Mr. Wally Otton
Board Member, Board of Directors
Koyuk Native Corporation
March 20, 1997

House Resources Committee
c/o Richard Foster

Mr. Chairman, Members of the House Resources Committee. My name is Wally Otton. I am a member of the Board of directors of the Koyuk Native Corporation. I respectfully voice my opposition of HJR 21.

Marx mentions a dictatorship of the proletariat. HJR 21 is part of a construction of a stairway that will put one step closer to the end result a beginning of the genocide of Alaska's abroginal cultures. Actions and dictates of your state capitol democracy can and have suffered the daily lives of our Alaskan tribes.

Thank you.

Sincerely,
Wallace H. Otton

ORGANIZED VILLAGE OF KWETHLUK
KWETHLUK IRA COUNCIL
P.O. BOX 84
KWETHLUK, ALASKA 99621-0084
PHONE NO. (907) 757-6714
FAX NO. (907) 757-6329

RECEIVED
MAR 20 1997

KWETHLUK JOINT GROUP
KWETHLUK INDIAN REORGANIZATION ACT COUNCIL
KWETHLUK CITY COUNCIL
KWETHLUK,INCORPORATED

Resolution No. 97-03-01

A Resolution opposing Alaska Legislature House Joint Resolution 21 (HJR 21) Requesting Amendments to Title VIII of Alaska National Interest Lands Conservation Act (ANILCA).

Whereas, the Kwethluk Indian Reorganization Act Council (IRA) is the lead entity in various areas of concerns covering land, water, fish and wildlife, sanctuaries and habitats in the Permanent Subsistence Kwethluk River and Tributaries upon which its tribal members heavily depend on for their keeping of Cultural Integrity of traditional and customary subsistence way of living, and ;

Whereas, in 1959 when Alaska became a State, many- Alaska Natives residents living in rural villages were, and still are, intelligent in the way of their respective cultures and their Native Language during the period when the English Language could be barely spoken or understood, and this brings to question- who voted for Statehood?; and which included the management of Fish and Wildlife Natural renewable resources; and ,

Whereas, HJR 21 insults the Alaska Native Community way of life by seeking that the State of Alaska define the terms "rural", "subsistence uses" of the natural renewable resources when the State of Alaska has done dismally poor with respect to these concerns; and ..

Whereas, since 1959 the Alaska Native Community has experienced poor "reasonable opportunity" to practice customary and traditional subsistence way of life; and,

Whereas, Kwethluk has a history of Elder Tribal members having had their subsistence fishing nets wrapped around holding poles, dragged unto beach with fish catches, creating wanton waste, which truly is suppression of "reasonal opportunity" to practice customary and traditional subsistence way of life; and ,

Whereas, Public Law 96-487, ANILCA, enacted 1980, Title VIII of which is providing positive protection to Alaska Natives subsistence way of life, legally encourages Alaska Native entities for Co-Management Agreements with the Federal and Alaska State agencies involved, enhances Fish and Wildlife conservation with sustain yield principles; and,

Now, Therefore, Be it Resolved: that the Kwethluk Joint Group composed of the Kwethluk Indian Reorganization Act Council in behalf of its tribal members, the

Kwethluk City Council in behalf of its residents, and the Board of Directors of Kwethluk Incorporated in behalf of its shareholders oppose passage of House Joint Resolution 21 in the Alaska State Legislature; and,

Be it Further Resolved: the copies of this resolution 97-03-01 is sent to: Honorable Tony Knowles, Governor of Alaska- Juneau
Honorable Senator Lyman Hoffman, Representative Ivan M. Ivan, Representative Irene K. Nicholai, Representative Beverly Masek, and Honorable Representative Gail Phillips, Speaker of the House of Representatives- Alaska, Honorable U.S. Senator Ted Stevens, Honorable U.S. Senator Frank Murkowski, Honorable U.S. Congressman Don Young, Honorable Representative Georgiana Lincoln.

PASSED AND ADOPTED THIS 13th DAY OF MARCH 1997.

Moses Nicholai, President
Kwethluk IRA Council

for Basil Eskelan Vice Mayor
Jerry J. Owens, Mayor
Kwethluk City Council

Phillip Lung, Vice chairman for
VICK J. AYAPAN, Chairman
Kwethluk Incorporated

Attest: Margaret Chyppa
Secretary

Attest: Dean R. Lam
~~Clerk/Administrator~~ Secretary

Attest: Carol Eskelan
Secretary/ Treasurer

MAR 10 1997

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax (907) 225-0713

Senator Robin L. Taylor

MEMORANDUM

TO: **Representative Gail Phillips**
Speaker of the House

Representative Beverly Masek

FROM: **Senator Robin Taylor**

DATE: **3/7/97**
RE: **HJR 21**

****

Please do everything possible to expedite passage of HJR 21, requesting Congess to amend ANILCA.

I spoke with Senator Murkowski about this resolution last weekend and it fits well with the request for guidance he made of the Legislature when he spoke to the joint session.

I did not introduce my own measure in order to allow Rep. Masek's version to be the vehicle by which we express our direction to the congressional delegation.

Early passage by the House will assure prompt attention in the Senate.

DOUGLAS N. LARSEN
58 BULL PINE PLACE
KETCHIKAN, AK 99901
(907) 247-3562

March 22, 1997

Representative Beverly Masek
House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Masek:

I am writing to express my support for HJR 21, and to commend you and other supportive House members for your efforts in seeking a responsible resolution to an untenable fish and wildlife management issue that continues to have far-reaching implications for Alaskans and Alaska's fish and wildlife resources. My support for HJR 21 comes as a result of resource use and management observations which I have made over the past several years. I would like to share some of these observations with you in this letter.

As a life-long Alaskan, I was born and grew up in Juneau. During the 18 years that I lived in Juneau, I had what seemed to me to be unlimited opportunities to fish and hunt with my family and friends. Deer meat, fish, and crabs were a big part of my family's diet during those years, and I can't recall ever feeling unnecessarily restricted in our opportunities to harvest and utilize these resources. Following 4 years of college, I returned to Alaska in 1980 and relocated to a remote field site on the east side of Prince of Wales Island. During the year and-a-half that I lived at this site, I had ample opportunity to harvest deer, fish, crabs, shrimp, and clams for my personal use. In the early to mid-1980s, I moved to Sitka where I again enjoyed ample opportunity to harvest fish and wildlife. Interestingly, throughout these years of living in an "urban" area (Juneau) and in "rural" areas (POW Island and Sitka), I was neither identified as a rural nor as a non-rural user. I was simply an Alaskan who, like other Alaskans, had an opportunity to share a part of the state's harvestable surplus of fish and wildlife.

In 1985 I moved to Kotzebue where, as in many parts of our great state, I found fish and wildlife populations to be healthy and abundant. Under state management, I watched as the Western Arctic caribou herd grew from an estimated 230,000 in 1985 to over 400,000 in 1990. With year round bag limits of 5 caribou per day, along with a moose and a sheep each season, I did not feel the slightest bit restricted in my opportunity to provide game meat for my family during the 5 years we spent in Kotzebue. Neither did I see others in

Northwest Alaska experiencing any lack of opportunity or success in providing game meats for their families.

In 1990 my family and I relocated to Ketchikan where we continue to enjoy fishing and hunting opportunities. With a 5-month deer season and 4-deer bag limit, obtaining sufficient meat for my family has not been a problem. With the added opportunity to harvest a moose, 2 mountain goats, and 2 black bears from the area, it has been relatively easy to keep an adequate supply of meat in the freezer.

During all but a couple of my 40 years as an Alaskan, the state has been managing the bulk of our fish and wildife resources. Based on my experiences in both "rural" and "non-rural" areas, I have to conclude that state management has worked, and has worked well. Recently, however, with the intrusion of the federal government into wildlife management and allocation in Alaska, I have seen things that trouble me deeply and which have raised my level of concern for the ultimate well-being of the state's fish and wildlife populations.

As a case in point, I would like to share with you a situation that has arisen in Game Management Unit 2 (Prince of Wales and adjacent islands). Two years ago, over the opposition of both state and federal wildlife biologists, the federal Southeast Regional Subsistence Advisory Council elected to open a rural hunt for doe deer in the unit because a couple of council members reported seeing numerous does along the island's extensive road system. When confronted with biologists' concerns, the council indicated that federal staff would be closely monitoring the doe hunt and that the council could always revisit the issue if it appeared to be a problem in the future. Not surprisingly, no federal monitoring of the doe hunt was ever initiated. In fact, the only harvest data that was obtained came from hunters responding to the state's annual hunter questionnaire.

Two years after the doe hunt was implemented, several hunters reported seeing fewer deer in Unit 2 than they had in past years. Although the cause for this wide-spread perception is presently unclear, biologists will be surveying several parts of the unit this April in an effort to obtain a clearer understanding of the status of the unit's deer population. In the meantime, the federal council decided to address hunter perceptions by proposing to eliminate non-rural, buck-only hunters from hunting in Unit 2. At the same time, despite their assurance 2 years ago that they could review the doe hunt if potential population problems arose, the council elected to retain the rural doe hunt because they claimed it was a customary and traditional use of the resource and people needed the opportunity to harvest does.

Like many other Ketchikan residents, I am willing to forego hunting deer in Unit 2 if there is a biological concern for the deer resource that can only be corrected by eliminating my opportunity to hunt there. However, if there is indeed a biological concern for the Unit 2 deer population, as the council's actions indicate they believe, then the responsible, science-based action would have been to first eliminate the existing rural doe hunt. This doe hunt, incidentally, has not only been opposed by biologists, but has also been opposed by the Sumner Strait Advisory Committee (rural residents of north POW Island), by the

Klawock Cooperative Association, by 65 Craig and Klawock residents who signed and submitted a petition, and by numerous residents of Unit 2 who have submitted individual letters of opposition. Indeed, in talking recently with a federal subsistence staff member in Anchorage, I learned that his office has not received a single letter supporting the doe hunt.

There are a couple of management implications that this Unit 2 situation illustrates for me. First, unlike the state's Fish and Game **Advisory** Committees, which submit proposals and **suggested** actions to the state Board of Game for consideration, the federal **Advisory** Councils appear to have repeatedly served as **policy** bodies with little oversight or interference from the federal Subsistence Board. Furthermore, unlike the state system, where public input is considered an integral part of the decision-making process, we observed in this instance what appears to be total disregard by the Southeast Council for the opposition to the doe hunt expressed by numerous rural residents. And finally, in making their decision, the Southeast Council totally ignored responsible, well-established and proven wildlife management considerations when they retained a doe hunt but eliminated the harvesting of bucks. This, more than anything else, is what causes me concern. If the federal system is going to allow biologically irresponsible recommendations to be implemented because of ANILCA's wording and interpretation, it is apparent that changes to the act need to be considered immediately. Herein lies my support for HJR 21. Unfortunately, because of federal oversight clauses in the act, I do not believe at this point that an amendment to our state constitution will solve our dilemma.

During recent teleconferences, I have heard rural Alaskans express concerns about losing the rural preference they are guaranteed under ANILCA. Although I see many inconsistencies with the rural preference allowance, I am willing to support it **if** that is what it takes to get the federal system out of Alaska and allows the state to resume its responsible, science-based management. Again, my concern is first and foremost for the long-term integrity of our fish and wildlife resources.

Thanks again for your commitment to resolving this most untenable resource management concern. Please don't hesitate to call on me if there is anything at all that I can do to assist you in your efforts.

Sincerely and appreciatively,

Doug Larsen

cc: House Res. Com. members
Senator Robin Taylor

Kay Andrew
P.O.Box 7211
Ketchikan,Alaska
April 3, 1997

Senator Ted Stevens,
522 Hart Building
Washington, D.C.

Dear Senator Stevens,
I am writting to you to tell you the feelings at a meeting I attended last evening in Ketchikan . We have held several meetings on the P.W.I. issues plus subsistence in general and are now meeting on subsistence and sovereignty. First I would like to express to you the deep concern from the people attending this meeting about your presentation to the joint House and Senate yesterday. HOW DARE YOU ! belittle Rep.Masek's ideas and Resolution.She and the others in the legislature that are in support of this resolution are trying to solve a mess you in Wash. created.Why wern't the PEOPLE in the state of Alaska told what ANILCA would do to us during its conception ?. This mess was created by Wash.not Alaska you knew this document was outside the State constitution and was in violation with the 10th ammendment,both of these declarations were violated when ANILCA was created , because of Washington's mistake you now want us to change are constitution , We say change ANILCA, it would not change anything if ALASKA changed its constitution we would still have to manage for subsistence,ANILCA created two class'es of people in our state rural and urban,we the urban people pay your and our goverment to operate and you continually tell us the urban area people have to give up something . Well Senator we the people are tired of giving, we are forming people from around the state to tell you and the federal goverment this has got to stop!. Alaskans are no longer willing to go down this road. I would like to stress to you, we were angered by your statments to Rep. Masek, we fully support her efforts she and the others supporting HJR21 are the only one's protecting ALASKANS civil and state rights. As far as I am concerned what you said at the legislature yesterday puts you in the same catogory as the Govenor and we will have to start saying WHERE IS TED ?. We in alaska were told by your supporters to vote for you and that it would be a vote for power in washington D.C.. You have 30 years of Alaskans support under your belt, you have a Republican majority, and you stand up in the legislature and say you can't do anything for us.well I don't agree ,go out and get the 60 votes you need. Its time to show us urban Alaskans you really are representing us.

Sincerely,

Kay Andrew

MATANUSKA VALLEY SPORTSMEN
PO BOX 1875
PALMER, ALASKA 99645
NRA AFFILIATED
RANGE PHONE: 746-4862

House Resorces Committee
State Capitol
Juneau,Alaska 99801-1182

MARCH 14,1997

Dear Representative, Beverly Masek-Vice-Chair:

At our March 1997 general membership meeting the subject of House Joint Resolution No. 21 was brought up and discussed and I was requested by unanimous concent of the members present to contact you and voice the support of M.V.S. for prompt passage of that resolution.

Matanuska Valley Sportsmen has an active membership of over 300, many of which are family memberships.

We strongly oppose any attempt by U.S Dept. of Agriculture, U.S. Dept of Interior, or any other branch of Government to force The State of Alaska to amend our State Constitution, which was reviewed and approved by tha Federal Government prior to their passage of the Statehood Act, creating Alaska as the 49th. state.

Many of us voted for Statehood so that Alaska could manage its resorces rather then continue to submit to Fedral managment.

Sincerely

Robert A. Lochman
President M.V.S.

C.C.
Sen. Rick Halford-Chairman Senate Resourses
Representative Mark Hanley- House Finance Sub-Commettee, Fish and Game

Rep. Beverly Masek
AK. State Capitol
Juneau, AK. 99801

Dear Rep Masek,

I am writing you this letter to congratulate you from the bottom of my heart for sponcering HJR 21.

As a Ketchikan resident I am stunned at the possibility of Deerhunting rights on Unit 2 and Prince of Wales Is will be stripped from me because I live on the wrong 1/2 acre patch of Alaskas 360 million acres. According to our own Dept of Fish and Game there is no biological reason for this.It is all political. Since I myself consider the right to subside off our world class supply of wildlife as my primary privilege, I have suddenly become more aware of my surroundings. I don't like what I see. We need now more than ever to pull together as Alaskans and not let the Federal Government polarize us.

I saw you on Gavel to Gavel last week speaking about HJR 21. Your statements about the importance of upholding the State Constitution and of the need for us to work together as a State were profound, sincere, and to the point. That is an incredibly refreshing trait in today's political world.

We cannot let ourselves be polarized, or as you say, be segregated by zipcodes.This is a battle for our children. I will ask every person I see on the trail or at sea, to send you words of encouragement.

Thank You Very Much.

Johnny Rice
Box 1535
Ward Cove, Alaska.
99928

FROM: ROGER L. SCHMIDT
POB 26
STERLING,AK 99672

SUBJECT: RESOLUTION HJR21

TO: REP. BEVERLY MASEK

I SUPPORT THE RESOLUTION HJR 21 WHICH YOU HAVE INTRODUCED THAT WOULD GRANT THE STATE OF ALASKA THE RIGHT TO MAKE THE DECISIONS ON OUR SUBSISTENCE ISSUES AND THE MANAGEMENT OF OUR STATE AND PRIVATE LANDS AND WATERS.

I FEEL VERY STRONGLY ABOUT THE CONTINUOS INTERFERENCE AND PRESSURE THAT IS PLACED ON OUR STATE GOVERNMENT BY THE FEDERAL GOVERNMENT IN THE MANAGEMENT OF OUR RESOURCES. I HOPE THAT MORE OF OUR ELECTED OFFICIALS WILL SUPPORT YOU AND DO THE JOB THEY ARE GETTING PAID FOR AND THAT IS TO WORK FOR THE WELL BEING OF THE PEOPLE AND THE STATE OF ALASKA.

SINCERELY,

Roger L. Schmidt