

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8072

9978 HOUSE RESOURCES

and potential impacts to fish and wildlife habitat along any alternate transport routes and approve a route and design that protect fish and wildlife.

Canada-British Columbia are confident that the review to date and the information provided at the November 16/17 meeting have addressed the items raised in the remedy. On the question of long-term watershed management and planning US agencies are invited to participate in the British Columbia land use planning process for this area.

**Item 1** - A comprehensive assessment of the potential for cumulative effects was undertaken as part of the overall review of the Tulsequah project. The results of both the broader assessment (looking into the future), and the potential for cumulative water quality effects arising from the development of the Tulsequah project and the historic and current water quality from the Tulsequah, Big Bull and Polaris Taku mine sites, were presented in the Tulsequah Project Committee Recommendations report.

There are no identified forest resource values, mine projects other than the potential for the Polaris Taku re-opening, access road requirements for other mineral claims in the Taku/Tulsequah watershed, or other developments expected to be put forward prior to the completion of a land use plan for the area, which is scheduled to begin in about five years.

In addition to the cumulative effects assessment, a number of access management strategies are to be put in place as the project development proceeds to ensure that the access does not contribute to a cumulative effect on the resource values of the Taku and Tulsequah River watersheds. These include:

- The Tulsequah access road being approved under the British Columbia *Mining Right-of-Way Act*, that authorizes Redfern to control public access on its private industrial road;
- Terms and conditions under the *Mining Right-of-Way Act* approval for the road that holds Redfern responsible for ensuring public access control in accordance with the access management plan put forth by Redfern and agreed to by project committee members;
- A Redfern-sponsored and funded public access management plan that consists of a 24hr-7 day per week controlled gate to ensure access control;
- A Redfern corporate policy prohibiting company employees and contractors from carrying firearms, hunting or fishing while employed by Redfern anywhere within the public access controlled area of the Taku and Tulsequah River watersheds;
- A British Columbia Ministry of Environment, Lands and Parks ability to develop and enforce restrictive harvest regulations as a complement to access management strategies, if required;

- Department of Fisheries and Oceans monitoring and re-allocation of the Canadian allowable commercial fish harvest, if British Columbia First Nation fishers choose to change fishing locations;
- The British Columbia Ministry of Forests commitment to not allocate any timber tenures or harvest approvals in the Taku River watershed not currently accessed, until such time as a future land use plan has been completed. It should be noted here that the Ministry of Forests have conducted a reconnaissance level assessment of the Taku River area and has determined that the potential for merchantable timber near the proposed Tulsequah mine road is minimal; and
- The Tulsequah Project Committee recommended that the Ministry of Forests consider the establishment of a Resource Management Zone along the access road until such time as a land use plan could be completed, if it was determined to be necessary. This plan would prevent any timber harvesting except that required for the access road development.

In summary the overall review to date has concluded that the development of the Tulsequah mine will improve existing water quality in the lower Tulsequah and Taku Rivers, by eliminating the current ARD drainage from the old mine workings. As well, there are no projects other than the potential re-opening of the Polaris Taku mine (no development plans to date) that could be identified in the cumulative effects assessment that may be proposed prior to the development of a future land use plan, that would create a potential for transboundary or cumulative effects.

Item 2 - A full assessment of transportation options was undertaken as part of the overall review of the Tulsequah project. The barge option was legally removed from review in June 1997, and Redfern conducted a reconnaissance level assessment of all-Canadian private industrial access road alternatives. The access route chosen avoided lands set aside under the Province's Protected Area Strategy. Plans to properly mitigate for any potential for fish and wildlife habitat and population disruption have been determined to be adequate to ensure the potential for adverse effects will not be significant in a British Columbia or transboundary context.

#### **Canada-British Columbia remedy for addressing long term watershed planning and cumulative effects.**

British Columbia reiterates its invitation to Alaska to develop a protocol for participating in British Columbia's well-founded land use planning process for the Taku River watershed, set to begin in about five years. This comprehensive land use planning process provides for:

- multiple stakeholder participation;
- consensus based recommendations to the British Columbia Cabinet on a full range of potential land uses; and
- established zonation, objectives and strategies to guide the implementation of land use, once approved.

As indicated in the May 21, 1998 Binder response, the legislative and policy environment for British Columbia land use planning includes the participation of neighbouring jurisdictions. A precedent for Alaska participation in the Taku land use planning process has been established by the protocol for participation of the States of Montana and Idaho in the development of the Kootenay Boundary Land Use Plan in south-eastern British Columbia.

When a land use plan for the Taku/Tulsequah area is to be undertaken British Columbia is willing to develop a similar protocol for Alaska participation in the planning that:

- meets Alaska's requirements for information and involvement in planning that takes place in adjacent areas in British Columbia;
- fosters communication and co-operation between governments; and
- recognizes respective jurisdictional responsibilities.

December 12, 1998

## INTERNATIONAL JOINT COMMISSION (IJC) WATERSHED BOARD STRATEGY

The IJC's Watershed Board strategy proposes the establishment of IJC appointed boards to provide land-use planning and resource management for all "transboundary watersheds" within Canada and the United States. Implementation of this strategy would allow the IJC to effectively usurp land-use planning decisions and jurisdiction over provincial and state resources. A review of the report prepared by the IJC provides some insight into the Watershed Board strategy, and raises a number of serious concerns about its implications.

Despite clearly stating that "The Commission does not ... intend to make proposals that would require amendments to treaties or international agreements.", the 21<sup>st</sup> Century report proposes a new definition for transboundary waters, which is different from that stated in the Boundary Waters Treaty. This is clearly an amendment to an existing treaty and would dramatically increase the authority of the IJC. This is best illustrated by comparing the definition of "boundary waters" in the Boundary Waters Treaty with the proposed revision:

### Boundary Waters Treaty:

"...boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, *but not including* tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary."

### Proposed New Definition:

"An international drainage basin is the entire area, known as the watershed, that contributes to the principal river, stream, or lake or other common terminus."

"The waters of an aquifer that is intersected by the boundary between two or more States are international groundwaters and such an aquifer with its waters forms an international basin or part thereof."

Adoption of this new definition would expand the jurisdiction of the IJC beyond, and in direct contradiction to, the intent of the Boundary Waters Treaty. The phrase "other common terminus" can only mean tide water, and introduces a new category of transboundary water, for example the Fraser River, which was never intended by the Boundary Waters Treaty.

The 21<sup>st</sup> Century report also states that "The Commission does not intend to propose venturing into areas where other institutions are successfully involved...", yet it is

difficult to see how this can be reconciled with the proposed responsibilities of Watershed Boards. The IJC envisions that the "... international watershed boards will offer a means of coordinating the efforts of federal, state, provincial, municipal and other authorities." and that the boards will "...coordinate with existing agencies and institutions in the watershed."

In studying some of the issues involved in watershed management, the IJC states that it will "... look to establish partnerships with departments, agencies, binational inter-governmental organizations, universities and foundations to avoid duplication and to take full advantage of work that has or can be done elsewhere, *provided only that such arrangements are satisfactory to the IJC and its binational advisory institutions.*" In contrast to its stated intention, the IJC not only wishes to venture into areas where other institutions are successfully involved, but it means to ensure that it has control over those areas.

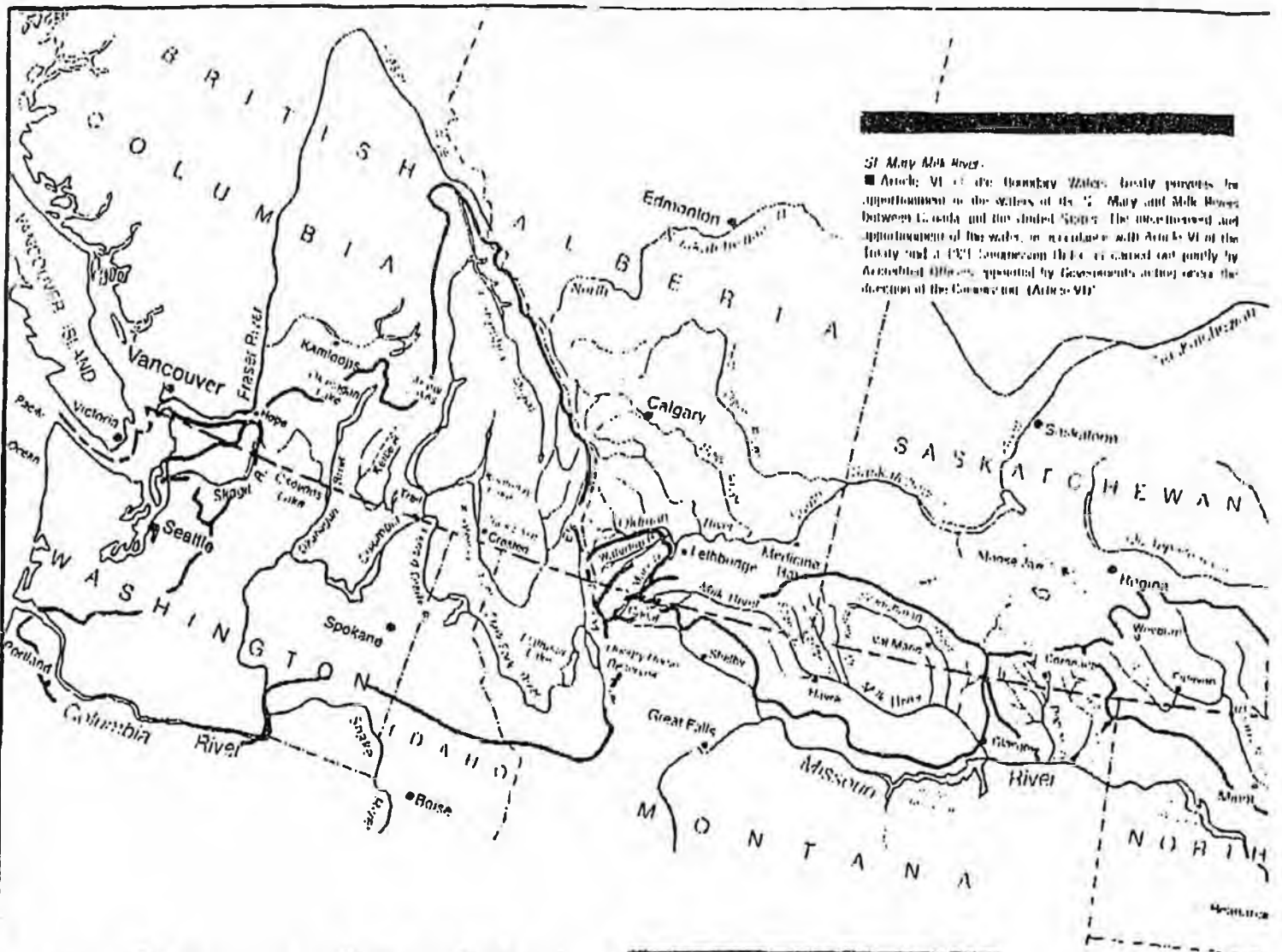
Perhaps the most disconcerting aspect of the Watershed Board strategy is its apparent anti-development disposition. Watershed boards would adopt "an integrative, ecosystem approach" to watershed management. The 21<sup>st</sup> Century report suggests that environmental protection will be the goal of watershed management, presumably at the expense of responsible resource development. An example of this philosophy is provided by the report's description of the Flathead River review undertaken by the IJC in the 1980's. The review involved a proposed coal mine on a tributary creek to the Flathead River in southeastern B.C. After 5 years of study, the IJC recommended that the project not be allowed to proceed. In the 21<sup>st</sup> Century report, the IJC describes this conclusion as "... a sustainable development approach for the upper Flathead basin."

The IJC and the 21<sup>st</sup> Century is an alarming document. It describes a plan which would allow the IJC to expand far beyond its current purpose, and would fundamentally change the way natural resources are managed. It indicates that the IJC would like to change the Boundary Waters Treaty, its governing contract, and to gain control over current resource management and land-use planning agencies, despite reassurances to the contrary. It describes a decision to refuse a mine permit as a sustainable development approach. It states that "... policymakers must often act in the absence of absolute scientific proof of cause and effect."

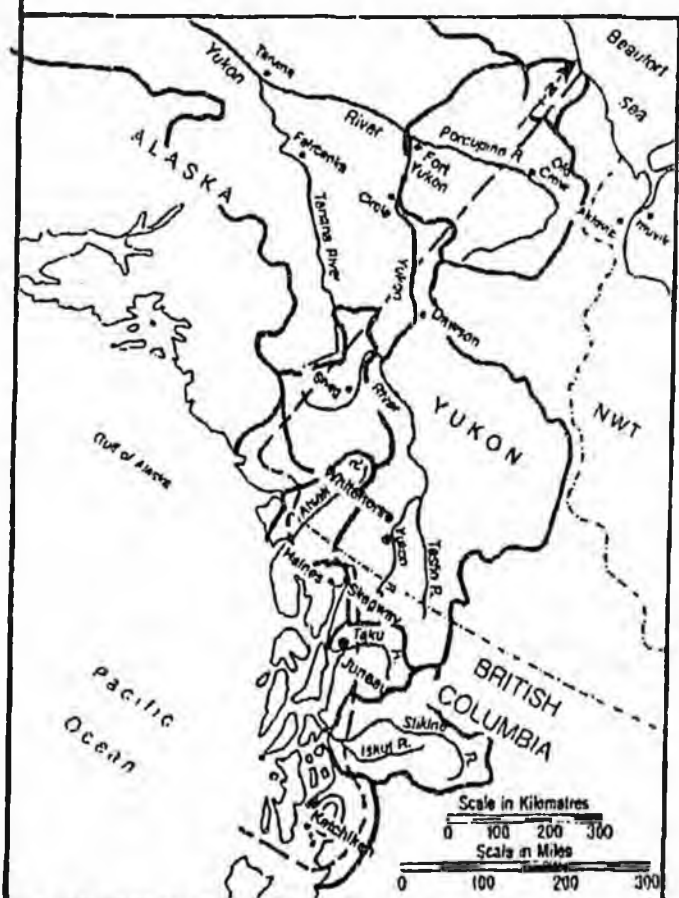
Enclosed with this letter is the table of contents of the 21<sup>st</sup> Century report and the text of the Watershed Board section. The entire report is available on the internet at:

[www. Ijc.org/comm/21stc.htmSec1C7](http://www.Ijc.org/comm/21stc.htmSec1C7)

This is an issue which threatens to destroy the ability of the provinces and states to manage their own resources. We urge you to express your concern to Lloyd Axworthy, and convey to him your strong opposition to the Watershed Board strategy.



**St. Mary Milk River**  
 ■ Article VI of the Boundary Waters Treaty purports the appointment of the scales of the St. Mary and Milk Rivers between Canada and the United States. The measurement and appointment of the water, in accordance with Article VI of the Treaty and a 1951 Commission Order, is carried out jointly by Accredited Officers, appointed by Governments acting under the direction of the Commission (Article VII)



**Kootenay Lake**  
 ■ In 1938 the Commission approved the construction and operation of the Cotnam Dam control structure to regulate Kootenay Lake. The International Kootenay Lake Board of Control supervises the operation of the dam and ensures that certain conditions for Kootenay River and Truck Lake by the Commission are maintained (Article IV)

**Columbia River**  
 ■ Since 1941 the International Columbia River Board of Control has monitored the effects of the operation of Grand Coulee Dam and Franklin D. Roosevelt Lake on the level and flows of the Columbia River at the boundary and reported on compliance with the 1948 Commission Order of Approval (Article IV)

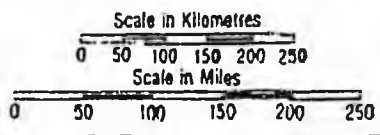
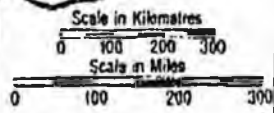
■ Differences arising under the 1961 Columbia River Treaty which Canada and the United States of America cannot resolve may be referred by either to the International Joint Commission for arbitration (Columbia River Treaty)

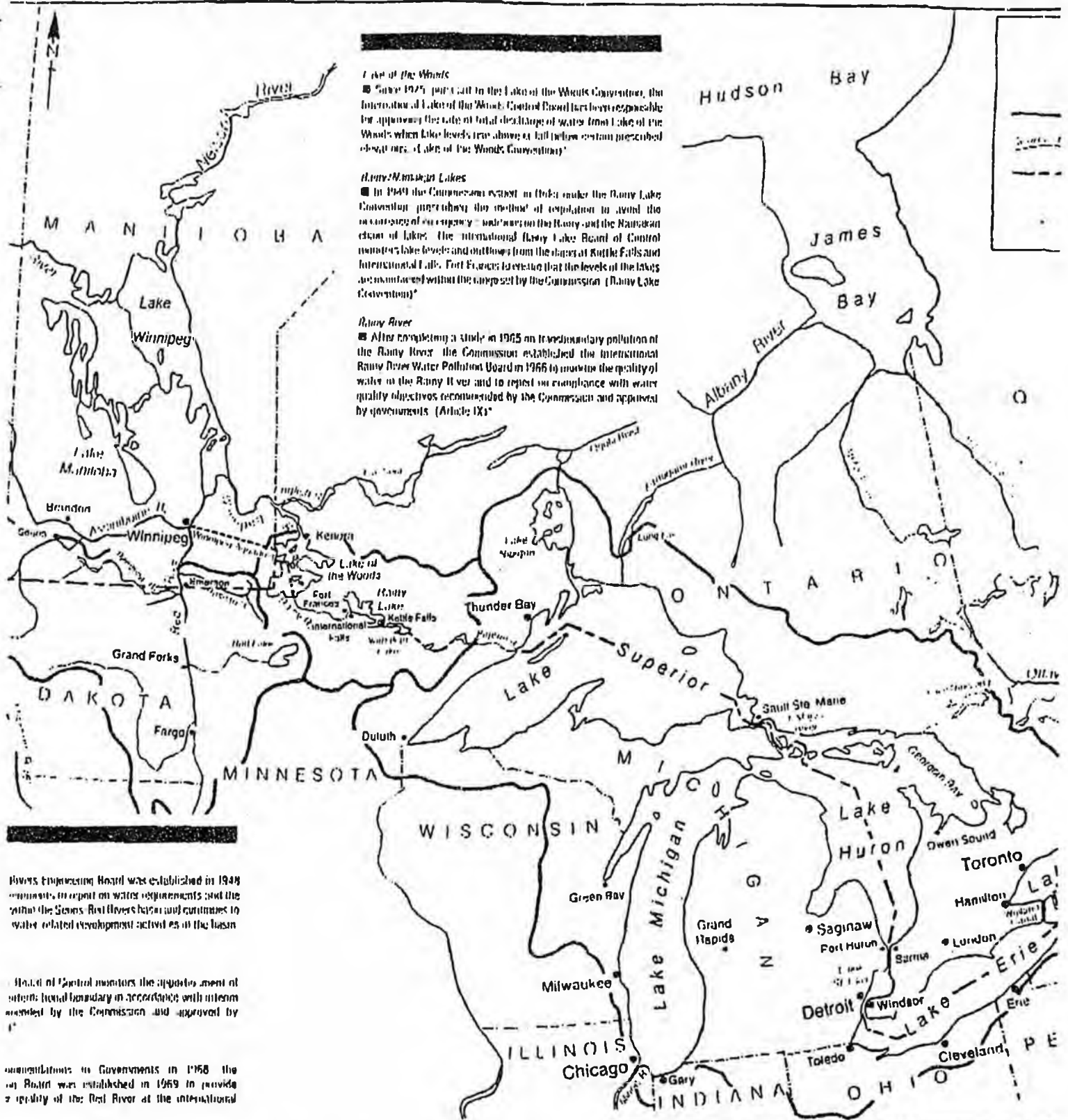
**Osoyoos Lake**  
 ■ A new control structure (Zedel Dam) to regulate the levels of Osoyoos Lake was completed in 1987. The International Osoyoos Lake Board of Control supervises the operation of the dam to ensure compliance with conditions established by the Commission in its 1982 Order of Approval, amended in 1985 (Article IV)

**Stony Red Rivers**  
 ■ The International Stony River Board of Control supervises the operation of the dam and ensures that certain conditions for the Stony River and Truck Lake by the Commission are maintained (Article IV)

**Stony River**  
 ■ The International Stony River Board of Control supervises the operation of the dam and ensures that certain conditions for the Stony River and Truck Lake by the Commission are maintained (Article IV)

**Red River**  
 ■ Based on Commission and International Red River Panel continuing, compliance of will boundary (Article IV)





**Lake of the Woods**

Since 1975, pursuant to the Lake of the Woods Convention, the International Lake of the Woods Control Board has been responsible for approving the rate of total discharge of water from Lake of the Woods when lake levels are above or fall below certain prescribed elevations. (Article IX)

**Rainy/Nainagan Lakes**

In 1949 the Commission issued a Order under the Rainy Lake Convention providing the method of regulation to avoid the occurrence of an emergency outflow on the Rainy and the Nainagan chain of lakes. The International Rainy Lake Board of Control monitors lake levels and outflows from the dam at Kettle Falls and International Falls, Fort Frances to ensure that the levels of the lakes are maintained within the control by the Commission (Rainy Lake Convention)

**Rainy River**

After completing a study in 1965 on transboundary pollution of the Rainy River, the Commission established the International Rainy River Pollution Board in 1966 to monitor the quality of water in the Rainy River and to report on compliance with water quality objectives recommended by the Commission and approved by governments. (Article IX)

Rivers Engineering Board was established in 1949 pursuant to report on water requirements and the joint the St. Lawrence River basin and continues to water related development activities in the basin

Board of Control monitors the operation of international boundary in accordance with international agreement by the Commission and approved by

agreements to Governments in 1968 the Board was established in 1969 to provide a quality of the Red River at the international

**AIR POLLUTION**

**International Boundary**

Under a 1966 Reference, the Commission was asked to keep Governments informed of air pollution problems along the Canada - United States boundary. The International Air Quality Advisory Board provides advice to the Commission on matters related to transboundary aspects of air quality. (Article IX)

**Detroit/Windsor - Saginaw/Port Huron Region**

In 1968 the Commission established the International Air Pollution Advisory Board for the Detroit/Windsor - Port Huron/Saginaw Region, to commence work under a 1975 Reference from governments and to examine and report upon the actual and potential hazards posed to human health and the environment from airborne emissions in the region. (Article IX)

**Lake Superior**

Since 1914, when the Commission approved applications for the diversion of water from the St. Lawrence for the purpose of hydro power development and for a control structure, the International Superior Board of Control has supervised the operation of regulatory structures in the river pin connections established by the Commission. The Board monitors levels and supply conditions of Superior and Michigan-Huron and determines monthly outflows from Lake Superior at Sault Ste Marie. (Article III)

**Lake Ontario/St. Lawrence River**

In 1952 the Commission approved construction of hydro power development works in the international section of the St. Lawrence River. It established the International St. Lawrence River Board of Control to monitor the discharge of water from Lake Ontario and the flow of water through the international section of the St. Lawrence River. The Board also supervises a small diversion of water from the St. Lawrence to improve summer flows in the Raisin River in accordance with a Commission Order of Approval. (Article III)

### **The Charge to the IJC from the Governments April 16, 1997**

The governments of the United States of America and Canada have agreed to request the advice of the International Joint Commission on how the Commission itself might best assist the parties to meet the environmental challenges of the 21st Century within the framework of their treaty responsibilities.

The governments affirm that the International Joint Commission, under the Boundary Waters Treaty of 1909 and the Revised Great Lakes Water Quality Agreement of 1978, and through its various Boards of Control and its Water and Air Quality Boards, has assisted the United States and Canada in establishing the best environmental relationship of any two countries in the world.

The Governments of Canada and the United States of America reaffirm their commitment to the IJC and its important role in fostering cooperative action in support of the health and well-being of their citizens and the natural ecosystems along the border. The governments recognize that these ecosystems constitute an environmental and economic resource of tremendous value that must be conserved and protected into the next century and in perpetuity for the mutual benefit of present and future generations of both countries.

The governments further recognize that the environmental challenges faced collectively by our peoples have grown in size and complexity, requiring strengthened collaborative action.

With a view toward confronting these challenges, the Governments of the United States and Canada request the International Joint Commission, in consultation with governments and others that the IJC deems appropriate, to examine its important mission in the light of relevant agreements and references, and to provide to the parties, within the next six months, proposals on how the Commission might best assist the parties to meet the environmental challenges of the 21st century within the framework of their treaty responsibilities.

**EXCERPT FROM "THE IJC AND THE 21<sup>ST</sup> CENTURY"**

## The IJC and the 21st Century

### Response of the IJC to a Request by the Governments of Canada and the United States for Proposals on How To Best Assist Them to Meet the Environmental Challenges of the 21st Century.

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*"In recent years, in region after region, we have found that our diplomacy has been influenced by successor failure in managing the environment. This shouldn't surprise us. After all, competition for scarce resources is an ancient source of human conflict. In our day, it can still elevate tensions among countries or cause ruinous violence within them.... By definition the global environment deeply affects our own people."*

Madeleine Albright  
Press Remarks on Earth Day  
April 22, 1997

*"Environmental degradation and resource scarcity are the underside of globalization. They are threats to human security that respect no boundaries. Faced with this kind of threat, the old approaches will not be sufficient. And finding new approaches will not be easy or non-controversial. But we have substantial assets and skills to bring to bear on the problems.... And we have the strongest reasons possible to get our answers right: the future of our children, and of our children's children."*

Lloyd Axworthy  
Address on Sustainable Development  
April 17, 1997

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#### **Table of Contents**

#### Executive Summary

#### Introduction

#### Section One: National Differences and Binational Successes

##### A. National Differences

##### B. The IJC's Role in a Successful Transboundary Environmental Relationship

Consultation and Consensus Building  
Providing a Forum for Public Participation  
Engagement of Local Governments

Joint Fact-finding  
Objectivity and Independence  
Flexibility

C. IJC Achievements in Fostering Cooperative Transboundary Environmental Management

Trail Smelter  
St Croix  
St Mary and Milk Rivers  
Columbia River  
Garrison Diversion  
Skagit River  
Flathead River  
Continuing Activities of IJC Control and Pollution Boards  
Great Lakes Water Quality  
Air Quality

Section Two: Environmental Challenges of the 21st Century

A. Forces of Change

Population Growth and Urbanization  
Economic Expansion, Energy Demand, and Waste Generation  
Climate Change  
Environmental Awareness

B. Transboundary Environmental Challenges

Water Quality, Supply and Demand  
Air Pollution  
Toxic Chemical Use and Release  
Habitat Loss and Biological Diversity  
Exotic Species  
Waste Management  
Nuclear Issues  
Infrastructure Needs

C. Information Challenges

Public Participation and the Need for Social Capacity  
Science and Public Policy

D. Institutional Challenges

Down-sizing of Governments and Loss of

Environmental Monitoring Capacity  
Fragmentation of Governmental  
Jurisdictions  
The Roles of Various International Bodies

Section Three: Proposals to Provide Greater Assistance to the Parties in Meeting Future  
Transboundary Environmental Challenges

Overview

Proposal I: International Watershed Boards  
Proposal II: Commission Studies  
Proposal III: Review of Commission Orders  
Proposal IV: Reference on Certain Nuclear  
Issues  
Proposal V: Reporting on the  
Transboundary Environment

Implementation

Resource Implications

Conclusion

Annexes

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**Proposal I: Establishment of International Watershed Boards**

The International Joint Commission proposes to build on the successes of the Great Lakes Water Quality Agreement by offering to provide similar opportunities to other major transboundary basins through the establishment of permanent IJC international watershed boards. These boards would provide a much improved mechanism for avoiding and resolving transboundary disputes by building a capacity at the watershed level to anticipate and respond to the range of water-related and other environmental challenges that can be foreseen for the 21st century. This includes effective coordination of government institutions at various levels, acquisition and fostering of expertise, knowledge and information about the ecosystem of the watershed, consultation with and involvement of the full range of interests concerned, including the public, and above all the flexibility to identify and deal with unforeseen developments. This improved mechanism could be implemented without substantially affecting existing institutions.

In the past, transboundary water issues were often seen as localized at a specific dam or structure, or were examined as pollution problems in isolation from other factors. Experience with the Great Lakes Water Quality Agreement and the ecosystem approach have changed that perspective. Transboundary water issues must be addressed in an integrative manner, including both biophysical and human aspects.

Outside the Great Lakes region, however, existing IJC boards continue to deal with water issues under mandates that focus primarily on administering the terms of Commission orders or, in some cases, monitoring water pollution or apportionment arrangements. Even within the Great Lakes, distinctions are drawn between matters of water quality and quantity, and the three Great Lakes control boards are involved primarily in regulating the structures at Sault Ste. Marie, Niagara and Cornwall-Massena. By contrast, the new international watershed boards would adopt an integrative, ecosystem approach to the full range of water-related issues that arise in the transboundary environment, including consumptive uses, diversions and effects of air deposition and volatilization on water quality. Control boards will, however, have to remain to administer provisions of the IJC's legally-required approvals of certain structures.

For almost ninety years, the IJC has been involved in preventing disputes and resolving problems on transboundary watersheds between Canada and the United States. During that period, difficulties between the two countries over water have not degenerated into conflict and, for the most part, transboundary water resources have been managed successfully for the common benefit of Canadian and U.S. citizens. The Commission and its system of boards have played a major role in this achievement.

Demographics, climate change and technologies are, however, combining to increase the potential for conflict over water resources and other environmental concerns. At the same time, resolution of these issues is often made more difficult by changing governmental responsibilities at all levels and by demands from many interests to be involved in decisions that affect them. Changes in jurisdiction and governance may not always be the same on both sides of the border. IJC boards provide a proven means for dealing with such changes and with asymmetrical governance situations in an integrative and non-adversarial way. The Commission is vitally interested in coordinating the new watershed boards with any regional (e.g. provincial-state) structures that may already exist. This will in some instances, be facilitated by inviting members of regional institutions to serve on, or be associated in some way with, the relevant IJC watershed board.

Although governmental roles are changing, federal, provincial, state and other forms and levels of government will all continue to play important roles in transboundary water and environmental issues. In the Great Lakes Basin, the IJC's Great Lakes Water Quality boards have served as neutral forums in which federal, state and provincial decision-makers could meet to discuss issues, develop ideas, coordinate activities, reconcile differences and achieve efficiencies in water quality policies and programs that further the common interests of the region and both countries. This is a role that permanent IJC international watershed boards could be given a mandate to play in other transboundary basins. It could serve as a link that would help the U.S. Environmental Protection Agency and Environment Canada as well as state and provincial agencies address transboundary issues in the watershed in a coordinated and concerted manner.

The requirement for regional bodies to deal with transboundary environmental and water issues has been reflected in the growth of provincial-state arrangements discussed above. IJC boards can complement and contribute to these arrangements by bringing binational perspectives and expertise to bear on regional issues in ways that respect local concerns and responsibilities. Unlike the state-provincial bodies, the IJC's international watershed boards will offer a means of coordinating the efforts of federal, state, provincial, municipal and other authorities. This is essential when responsibility for related issues rests with different levels of government in the

two countries.

Permanent IJC international watershed boards would provide governments at all levels, and the public at large, with independent binational institutions composed of persons expert in, and in some cases with responsibilities for, the watershed. The boards would encompass the public, private and non-governmental sectors, but would be committed to acting in the common interest. There are clear advantages to be gained from having stable, long-lived yet flexible institutions. Members would be accustomed to working together and the board itself would be a source of watershed history and experience. The boards' membership, mandate and priorities would be tailored to the needs of each particular watershed and could be adjusted over time to meet changing conditions and challenges.

International watershed boards of this sort would be available for monitoring, alerting, studying, advising, facilitating and reporting on a broad range of transboundary environmental and water-related issues. Like other permanent IJC boards, they would have the capacity to assist in coordinating the work of multiple jurisdictions and to contribute to the development of consensus among disparate governmental and non-governmental interests. They would also offer standing mechanisms -- which can endure even in times of transboundary tension -- for cooperative management, public consultation, joint fact-finding and dispute prevention and resolution. In recent years, IJC boards have also demonstrated their ability to serve an educational role in fostering knowledgeable transboundary communities and to act as a channel between citizens and governments. In short, boards contribute to the development of binational civil societies and help to build consensus and local capacity for binational action in response to water-resource and environmental challenges.

The IJC has developed considerable expertise in understanding and addressing the interfaces of freshwater, salt water and terrestrial ecosystems. This capacity and expertise should be further developed when the responsibilities of international watershed boards extend to coastal areas.

The IJC could be authorized by reference to establish international watershed boards for the following major transboundary watersheds that extend across the Canada -U.S. boundary, or some regional combination of these watersheds. Together, these boards would provide coverage of most of the Canada - U.S. border region. The watersheds are: St. Croix River and Saint John River; Lake Memphremagog- St Francis River and Lake Champlain-Richelieu River; Great Lakes-St Lawrence River; Rainy Lake-Lake of the Woods-Lake Winnipeg; Red River and Souris River, together or separately; St. Mary River and Milk River; the Columbia River system; Skagit River; Yukon River and Porcupine River; and the Alsek River, Taku River, Stikine River and Iskut River. (A map outlining the areas that would be covered by each international watershed board is attached as Annex C.)

The new international watershed boards would be constituted and directed to adopt a multi-disciplinary, integrative approach that takes appropriate account of all interests and sectors, governmental and non-governmental. While it would be necessary to tailor the mandates of individual international watershed boards to the needs of specific watersheds, these boards could, in general terms, be directed to:

- i. coordinate with existing agencies and institutions in the watershed;

- ii. assess and report to the Commission biennially on the state of the environment in the transboundary watershed, including the integrity of its ecosystem, water management issues and emerging environmental issues and provide recommendations, where appropriate, for addressing them;
- iii. advise on the core data sets that should be maintained by the parties and others for the management of water and the identification of emerging environmental issues in the transboundary watershed;
- iv. develop indicators for monitoring and assessing the state of the environment in the transboundary watershed and identify data that would have to be provided by the parties to maintain those indicators;
- v. undertake such studies as the Commission may direct, including studies for the purpose of determining the significance of emerging environmental issues in the transboundary watershed;
- vi. facilitate, wherever possible, the prevention of disputes and the resolution of problems concerning the environment of the transboundary watershed, for example, by drawing upon information made available through procedures for transboundary impact assessment developed by the parties;
- vii. support the development of an informed transboundary watershed community through a range of activities, including the provision of information on principles for watershed management;
- viii. receive, consider and investigate comments and complaints from the public about transboundary watershed environmental issues and, as appropriate, draw such matters to the attention of the IJC with recommendations for further action if, in the opinion of the international watershed board, the comment or complaint raises a significant issue that pertains to the integrity of the watershed; and
- ix. in the case of international watershed boards whose areas of responsibility extend to coastal areas, address interfaces between freshwater, salt water and terrestrial ecosystems and related environmental issues in adjacent estuaries and marine areas.

In addition, these boards would be directed to:

- a. work, as appropriate, in cooperation with other IJC boards, especially the International Air Quality Advisory Board, control boards in the watershed and the Health Professionals Task Force; and
- b. follow procedures that promote the involvement of all interested governments and sectors of the transboundary community, including private citizens.

For the purposes of this proposal, "trans-boundary watershed" would be defined as meaning watersheds,<sup>15</sup> including aquifers<sup>16</sup>, that straddle the international boundary between Canada and the United States.

To avoid duplication, the work of the IJC's St. Croix, Rainy and Red River Pollution Boards, the

Souris River Board of Control (which monitors an apportionment reference), and the Souris-Red Rivers Engineering Board would be merged into the international watershed boards. The other control boards, including those for the St. Mary and Milk Rivers, would remain in order to perform the specific duties assigned to them under the IJC's system of orders.

### **Great Lakes Water Quality Institutions**

Work on the reference given to the IJC in the Great Lakes Water Quality Agreement has for many years provided a significant share of the Commission's agenda. At the present time, the Commission does its work under the Great Lakes Water Quality Agreement primarily with the assistance of the boards established under the agreement, which, because of the terms of the agreement, focus on water quality issues. At the same time, the IJC orders (and the Niagara reference) on the structures at Cornwall-Massena, Niagara and Sault Ste. Marie provide the mandates for the three Great Lakes control boards. The capacity of the Commission and governments to identify and address transboundary water-resource and environmental challenges will be significantly enhanced in the Great Lakes-St Lawrence River watershed if, as in other transboundary watersheds, there is an institution that can adopt an ecosystem approach and integrate the full range of water-related issues.

There has been a proliferation of environmental and water-related Great Lakes institutions, reflecting the influence that the Great Lakes have over the region. None of these bodies, however, has the capacity of the IJC to bridge and enfold on a permanent basis all levels of government and interests. None of them has the capacity to address issues in an informed, expert, but, at the same time, impartial and dispassionate way, focusing only on the common interests of the region.

The IJC does not wish to add to the multiplicity of existing Great Lakes institutions by introducing a new "Great Lakes Watershed Board" nor does it wish to recommend abolishing the existing institutions, such as the Great Lakes Water Quality and Science Advisory Boards and the Council of Great Lakes Research Managers, which serve the objectives of the Great Lakes Water Quality Agreement. These institutions have in many ways served as the genesis for the Commission's proposal to establish international watershed boards from coast to coast. It therefore seems appropriate to expand the mandate and membership of one of these boards, the Great Lakes Water Quality Board, so that it can take on the role of an IJC international watershed board for the Great Lakes and St. Lawrence River. The Great Lakes Science Advisory Board and the Council of Great Lakes Research Managers would also be directed to expand and adjust their activities when supporting the Great Lakes Water Quality Board in its new role.

The mandate of the Great Lakes Water Quality Board under the Great Lakes Water Quality Agreement would not be altered. The Great Lakes Water Quality Board, as expanded, however, would be asked to assume the additional responsibilities of an international watershed board with respect to transboundary water-related issues in the Great Lakes-St Lawrence River watershed at least as far as tidewater and beyond, if necessary. This means that the Great Lakes Water Quality Board would address all water-related issues in the watershed whether they raise questions of water quality or quantity, including the issues of consumptive uses and diversions. The Great Lakes Water Quality Board would also take on the other functions of international watershed boards, including providing a forum for coordination and consultation among governments and

interests, reporting (in conjunction with its reports under the agreement) on the state of the environment and emerging issues in the transboundary watershed, advising on the core data sets that need to be maintained to address the range of challenges that can be foreseen, facilitating the avoidance and resolution of disputes, and supporting the development of an informed transboundary watershed community.

All other IJC boards with responsibilities in the Great Lakes region, including the control boards, the International Air Quality Advisory Board and the Health Professionals Task Force, would be directed to adopt an ecosystem approach and to cooperate and work together to the maximum extent possible within their mandates.

### **Membership of International Watershed Boards**

The members of international watershed boards would be selected bearing in mind the nature of the boards' responsibilities and any transboundary issues that have been identified in the watershed. International watershed boards would normally include members drawn from federal, state, provincial, municipal and other authorities with relevant responsibilities. In addition, consideration would be given to including members familiar with relevant interests, including members from the public. Co-chairs of control boards would, as a matter of practice, be appointed to watershed boards, including the Great Lakes Water Quality Board, to provide a link between boards in the same watershed. The IJC would continue its long-standing practice of appointing an equal number of members from Canada and the United States, of requiring members to act impartially in their personal and professional capacities, and of calling on them to seek collegially the common interest of communities in both countries.

The Great Lakes Water Quality Board would expand to reflect its additional functions. It would need, among others, additional members who have knowledge of water quantity issues, the policies of the governments and of key interests involved in these issues. The Commission intends to include members from organizations such as the Great Lakes Commission and the Great Lakes Fishery Commission.

### **Implementation**

#### **International Watershed Boards**

The Commission proposes that the Canadian and U.S. Governments provide it with a reference to establish international watershed boards as confirmation of the governments' support for this action.

The Commission would establish the boards at appropriate times, on a staged basis, following consultations with relevant federal, state, provincial, and other authorities as well as bilateral inter-governmental organizations, and after taking steps to identify relevant interests and issues in the watershed.

The Commission would arrange for the establishment of locally situated binational secretariats to support the work of the international watershed boards. In the case of the Great Lakes, secretariat services would be provided by staff of the Great Lakes Regional Office, who would support the watershed work of the Great Lakes Water Quality Board in much the same way as they support its work under the Great Lakes Water Quality Agreement. In other watersheds, the Commission

would provide secretariat services or ask governments with members on an international watershed board to furnish those services. This would be a matter for further consultation with governments in the implementation phase.

<sup>15</sup> "The International Law Association's commentary on Article II of "The Helsinki Rules" states that "An international drainage basin is the entire area, known as the watershed, that contributes to the principal river, stream or lake or other common terminus."

<sup>16</sup> "Article I of the International Law Association's "Rules on International Groundwaters" states that, "The waters of an aquifer that is intersected by the boundary between two or more States are international groundwaters and such an aquifer with its waters forms an international basin or part thereof."

The Governments of Canada and the United States of America have received from the International Joint Commission its seminal report, *The IJC and the 21<sup>st</sup> Century*, constituting the response of the Commission to the request of 16 April, 1997 of the two Governments for proposals on how the IJC might best assist the parties to meet the environmental challenges of the 21<sup>st</sup> century.

In their March 10, 1998 meeting in Ottawa, the Secretary of State and the Minister of Foreign Affairs welcomed the recommendations of the report, and accepted in principle the proposal to establish international watershed boards that would adopt an integrated, ecosystem approach to transboundary environmental issues.

I have the honor to inform you that, pursuant to Article IX of the Boundary Waters Treaty of 1909, the Governments of Canada and the United States have agreed to ask the International Joint Commission, in consultation with the two federal governments and with the relevant states and provinces, and with tribes, First Nations, and local interests, as appropriate, to carry out the following tasks:

- To further define the general framework under which watershed boards would operate, including, but not limited to mandate, scope of activities, and operating principles, recognizing that boards would be modified to meet the special circumstances of each watershed.
- To recommend a location where the first international watershed board could be established.
- To recommend the structure, composition, and Terms of reference for such a board, including the priority issues that it would address.
- To develop cost projections and possible sources of funding, including innovative funding mechanisms, for the task of forming the first international watershed board, and for the operation of the board, including cost projections for special studies that would be projected to be carried out by the board in the first few years of operation. In so doing the Commission and Governments shall be guided by the principle that forming and operating the new board shall entail the least possible requirement for new resources.
- At the same time, to pursue similar consultations with provinces and states, and the Governments of Canada and the United States of America, on the identification of locations, and the development, planning and establishment of additional international watershed boards at appropriate times.

The Governments request the Commission to pursue its activities, examinations, and consultations expeditiously, and to make periodic reports to the Governments as appropriate.

The Governments further request the Commission to initiate its work on these tasks drawing on resources from its current reference levels.

In carrying out these tasks, the Governments encourage the commission to draw upon the expertise, data and technology available from the provinces, states and federal governments, communities, organizations, academic institutions, business, and others as appropriate to

accomplish their task in a comprehensive manner.

As well, it is noted that numerous activities are underway within the international watersheds at federal, state and provincial government levels pertaining to water or land use management, environmental data gathering and monitoring, and other matters relevant to the international watershed board proposal. The Governments urge the Commission to draw upon and complement these initiatives to the extent it deems appropriate.

Jeffrey Williams,  
Box 3886,  
Wood Street,  
Whitehorse, Yukon Y1A 5M6

Mar 31, 1999

Senator Rick Halford  
Chair, Senate Resources Committee  
State Capitol  
Juneau, Alaska 99801-1182  
via fax: 1-907-465-4920

**re: Senate Resolution No. 7**

Dear Senator Halford:

I am a member of the Taku River Tlingit First Nation. I am from the Crow Clan.

This letter concerns the proposed Tulsequah Chief Mine on the Tulsequah River in B.C., within the Traditional Territory of the Taku River Tlingit First Nation (TRTFN).

Mining has been the main stay of the Atlin and TRTFN economies since the gold rush in the late nineteenth century. These communities have relied on the jobs and wealth creation associated with mining. We have seen the industry ebb and flow over time as commodity prices move up and down. We are currently in a serious slump in northern Canada as gold and other metals have fallen in value.

The Tulsequah Chief Project is a hoped for respite from this down turn. It will produce many different metals thus making it relatively immune from the price fluctuations of any one commodity. The Project has been subjected to intense environmental scrutiny, like no other mining project this community has experienced. The owners have expressed not only the willingness but the desire to work with the community to ensure that impacts are minimized and benefits to local people are maximized. Many of us feel confident that the environmental review and the attitude of the company (Redfern Resources) will ensure that the project will be a success for all.

Earlier, environmental groups tried to stop the project by spreading misinformation on the impacts of the project. It has now become clear to us in the north that they have cynically tried to manipulate the TRTFN into opposing the project. The TRTFN is currently split on this issue, with some people still worried about the terrible and inaccurate stories that the environmental groups have been telling. A growing number of the TRTFN look to the project as a key

element in the quest for growth of confidence, wealth, opportunity, and hope that it will provide both the aboriginal and non-aboriginal members of the local area.

This project is important to us in northern B.C. It can be the economic and social engine that starts a renewed beginning for our community and for Atlin, Whitehorse and Skagway. It has been reviewed and approved by an extremely intensive environmental review process. It deserves the support of the State of Alaska in addition to the support it has earned from the governments of Canada and British Columbia. I urge you and your colleagues to ensure that Resolution No. 7 is supported, that the request for a referral to the IJC be withdrawn and that the State of Alaska inform the world of its comfort in working with native and non-native Canadians in the orderly development of the north.

Yours sincerely,



Jeffrey Williams

ATT. ROBIN TALOR  
FROM DICK FELDMAN

MINE REVIEW & PERMITTING BRANCH,  
4th Floor, 1810 Blanshard St.,  
Victoria, B.C.,  
V8V 1X4

28 March 1995

ATTN: Mr. Norm Ringstad

TO WHOM IT MAY CONCERN

The attached list of names gathered on this Petition is the result of hearing conflicting stories and rumours here in Atlin. Consequently, we decided to find out the actual feeling of people by going to each person and talking and listening to them.

These are people who have lived here most of their lives, and some who have been here only a short time. They all realize that Atlin must have some progress.

We would like it known that we are not affiliated with any Group or Organization in Atlin.

Sincerely,

Richard Feldman

Original - N. Ringstad, Mine Review & Permitting Branch, Victoria  
cc - T. Chandler, Redfern Resources Ltd., Richmond  
- JI. Williams, Taku River Tlingets, First Nations, Atlin  
- R. Wilton, A.P.C. Atlin

office copy  
—

REDFERN RESOURCES LTD.,  
205-10711 GAMBIE ST.,  
RICHMOND, B.C.  
V6X 3G5

WE THE UNDERSIGNED, WANT IT TO BE KNOWN BY ALL PARTIES INVOLVED,  
THAT WE ARE IN FAVOUR OF REDFERN'S PROPOSED ROAD PROJECT.

Name	Address	Length of Residen in Atlin, B.C.
Nora Graham	Box 178 Atlin	10 years
Trent Lemke	Box 316 Atlin	5 years
Rob Graham	Box 179 Atlin	1 year
Skip Blake	Box 281 Atlin	15 years
Barbara Watt	Box 134 Atlin	7 years
SHANE BROCKMAN	Box 323 Atlin	8 YEARS
Jack a son	Box 92 Atlin	24 YEARS
Marie Smith	Box 224 Atlin	20 yrs
Doak	Box 43 ATLIN B.C.	4 yrs.
Joan Carlson	Box 56 Atlin B.C.	25 yrs.
Jerry Ross	Box 180	7 yrs
Jill Veelkind	Box 180	1 year
Jo Dehmann	Box 251	20 yrs.
Don Murray	Box 298	1 yr
Jack Corlick	Box 68	30 yrs.
Jerry Simpson	Box 302	13 yrs.
Barbara Adams	Box 302 Atlin B.C.	13 years
Terry Lynn Maxwell	Box 243	1 year.

REDFERN RESOURCES LTD.,  
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RICHMOND, B.C.  
V6X 3G5

WE THE UNDERSIGNED, WANT IT TO BE KNOWN BY ALL PARTIES INVOLVED,  
THAT WE ARE IN FAVOUR OF REDFERN'S PROPOSED ROAD PROJECT.

Name	Address	Length of Residence in Atlin, B.C.
Isabel C. Adelman	Box 172	45 yrs
Tammy Whitney	Box 378	9 years
Donald Shaw	Box 232	37 years
Aaron McKenzie	Box 70	25 years
Maria Simpson	Box 3870 WH	1 yr.
ABJ	Box 3870 WH	1 yr.
Brad White	G.O.	15 yr
Bob Fisher	Box 314 Atlin BC	15 yrs
O. Fisher	Box 314 Atlin B.C.	21 yrs
Shirley Almeida	Box 293 Atlin BC	10 mo
Richard Kull	Box 239 ATLIN, B.C.	7 yrs
John M. Dick	Discovery Ave. Atlin B.C.	1 yr
Reg Shaw	Box 238	20 yrs
W. R. G. Kassen	Box 28	34 yrs
Don John	Box 527	3 yrs
Peter Burns	Box 84	
Keith Davies	Box 242	ATlin BC 23 yrs
Tracy Moore	Box 25	15 years
Beah Anderson	Box 225	15 years
	Box 71	Atlin 12 year
		Atlin 20 yrs

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WE THE UNDERSIGNED, WANT IT TO BE KNOWN BY ALL PARTIES INVOLVED,  
 THAT WE ARE IN FAVOUR OF REDFERN'S PROPOSED ROAD PROJECT.

Name	Address	Length of Residency in Atlin, B.C.
Bruce Abel	Box 94	17
Tracie Bennie	Box 84	22
Pete Whitby	Box 270	9
Dag Johnson	Box 118	16
Jerry Hetherington	Box 231	18
Wayne Dand	Atlin	15 1/2
20th Braya	ATLIN	47
John Reed	ATLIN	28
Mark Stehler	ATLIN	20
Ron Bowden	atlin	25
R. Peterson	ATLIN	15
Lorina Johnson	ATLIN	16 yrs.
Kathy Taylor	Atlin	9 yrs.
W. J. [Signature]	Atlin	4 yrs.
John [Signature]	Atlin	16 yrs.
BOB BRUNS	Box 324 Atlin	22 yrs.

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THAT WE ARE IN FAVOUR OF REDFERN'S PROPOSED ROAD PROJECT.

Name	Address	Length of Residency in Atlin, B.C.
Randy Souds	Box 376	13 yrs
M. C. Sudo	Box 341	4 yrs
W. Sudo	Box 134	3 yrs
J. Sudo	Box 134	6 yrs
D. Sudo	Box 134	2 years
Bill Bayle	Box 18	23 years
Andre Holman	Box 28	20 years
Cindy Bate	Box 341	6 years
Heather Sudo	Box 145	2 yrs.
Doreen	Box 18	13 yrs
W. Sudo	Box 258	2 years
Cindy Williams	Box 260	4 yrs
Sue Hansen	Box 254	14 yrs
Donna LaFortune		3 yrs.

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THAT WE ARE IN FAVOUR OF REDFERN'S PROPOSED ROAD PROJECT.

Name	Address	Length of Residence in Atlin, B.C.
Alfred Feldman	Box 227	21 years
Julie Mann	Box 37	3 years
P. Johnson	Box 269	14 years
Karen Randall	Box 39	2 years
Glenn Fuller	Box 95	23 years
Shane Fuller	Box 58	21 years
Charles DePuy	Box 261	10 years
Steve Siskala	Box 248	16 years
Greg Horn	Box 85	2 years
Sony Butel	Box 341	6 years
Chris Ferguson	Box 306	5 YEARS
A. Stevenson	Box 41	3 YRS.
Paul W. W. W.	Box 43	4 1/2 YRS
Alan Murray	Box 351	20 yrs.
Charles Bernier	Box 84	22.
Jean Anderson	Box 173	18 yrs.
Gracy Whitney	Box 127	22 yrs

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WE THE UNDERSIGNED, WANT IT TO BE KNOWN BY ALL PARTIES INVOLVED,  
THAT WE ARE IN FAVOUR OF REDFERN'S PROPOSED ROAD PROJECT.

Name	Address	Length of Residence in Atlin, B.C.
Walter Hobbins	Atlin BC	4 yrs
Patricia Fisher	Atlin BC	10 years
Joy Smith	Atlin B.C.	1 year
W.D. Anderson	Atlin B.C.	8 YEAR
Morris Stewart	Atlin BC	79 years
Oliver Adams	Atlin BC	23 years
Gail Hindbo	Atlin BC	12 years
Vickie DeVries	Atlin B.C.	1 year
Robert & Whelan	Atlin B.C.	16 years.
Les A. Sudds	Atlin B.C.	4 years
Worobky E. Kludick	Atlin BC	10 years
William R. Roy	Atlin B.C.	8 years
<del>Jeff Smith</del>	Atlin BC	20 years.
Roxann Smith	Atlin B.C.	20 years
Lois Anderson	Atlin B.C.	28 years
D.R. Anderson	Atlin B.C.	28 years

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V6X 3G5

WE THE UNDERSIGNED, WANT IT TO BE KNOWN BY ALL PARTIES INVOLVED,  
THAT WE ARE IN FAVOUR OF REDFERN'S PROPOSED ROAD PROJECT.

Name	Address	Length of Residence in Atlin, B.C.
Red Cowan	Box 225	13 years
Mary Cowan	Box 225	13 years
Robert Andrew	Box 225	16 years
Ellen Smallwood	Box 225	18 years
H. Colwell	Box 108	26 years
Harold Smith	Box 114	60 years
L. Martin	Box 81	3 yrs.
Ways Sewell	Box 77	15 yrs.
Jeanette Klein	Box 77	15 yrs.
Vera Kirkwood	Box 125	32 yrs.
Irene Coleman	Box 82	58 yrs.
Tom Anderson	Box 125	55 yrs.
J. Zorn	Box 293	10 yrs
Jan Orr	Box 38	25
Helen Kennedy	Box 11	22 yrs
Corne Williamson	Box 127	8 yrs.

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V6X 3G5

WE THE UNDERSIGNED, WANT IT TO BE KNOWN BY ALL PARTIES INVOLVED,  
THAT WE ARE IN FAVOUR OF REDFERN'S PROPOSED ROAD PROJECT.

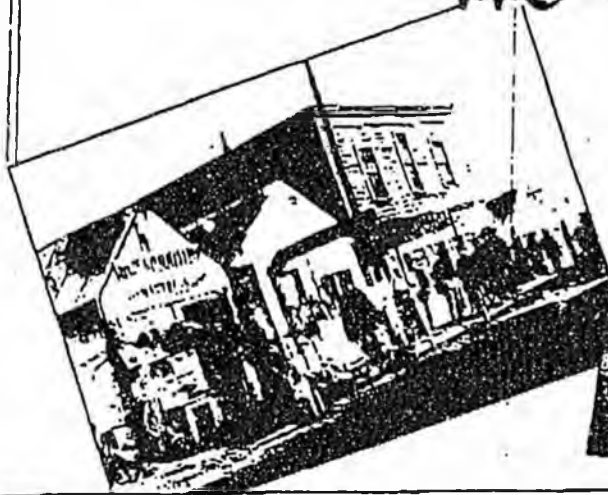
Name	Address	Length of Residency in Atlin, B.C.
Margaret Ann Laker	Box 193	18 yrs.
Neil H. Carles	Box 162	18 yrs.
Cathie Sando	Box 316	13 yrs.
Carol Murphy	Box 57	20 yrs.
Pat Kennedy	Box 107	8 yrs.
JWR Smith	Box 9	24 yrs.
Maidyn Jack	Box 323	26 yrs.
Ray Ward	Box 172	49
Leah Dawson	Box 172	22
By Trudeau	Box 3	76 yrs.
Johny Carlisle	Box 151	59
W. C. Stude	Box 371	10 yrs.
Victoire Trudeau	Box 3	15 yrs.
Judy Whitney	Box 270	9 yrs.
Phil Whitney	Box 270	9 yrs.
Fred Jenkins	Box 92	7 yrs.
Shirley McKernin	Box 70	25 years.
Glenn Taylor	Box 178	10 yrs.

REDFERN RESOURCES LTD.,  
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RICHMOND, B.C.  
V6X 3G5

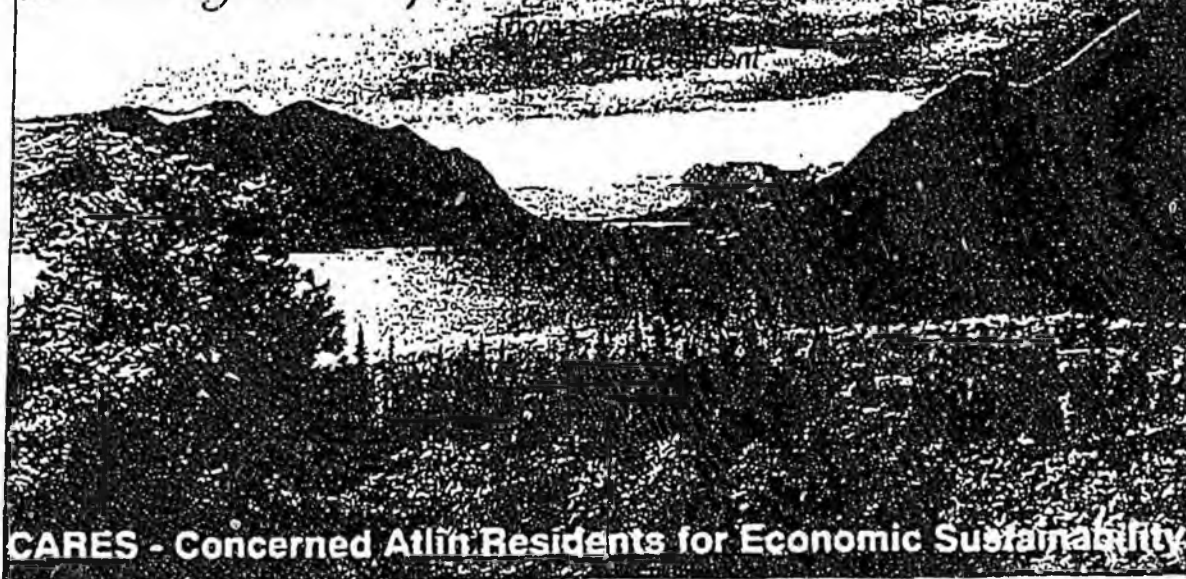
WE THE UNDERSIGNED, WANT IT TO BE KNOWN BY ALL PARTIES INVOLVED,  
THAT WE ARE IN FAVOUR OF REDFERN'S PROPOSED ROAD PROJECT.

Name	Address	Length of Residency in Atlin, B.C.
LARRY PRINCE	P.O. Box 126 Atlin	8 yrs
GREG MCNEIL	P.O. Box 278 Atlin	7 yrs
Stanley McNeil	P.O. Box 228 Atlin B.C.	7 yrs.
David McNeil	P.O. Box 243 Atlin B.C.	1 yr.
Thomas McNeil	Box 243 Atlin B.C.	1 yr.
Carol Goodwin	Box 72, Atlin B.C.	28 yrs.
Kerrie Wess	" " " "	18 "
J.A. Luntz	Box 40 Atlin	18 "

# We Live Here... We Care



*"Atlin is no different than any other community  
when change takes a priority in our lives. There is division*



**CARES - Concerned Atlin Residents for Economic Sustainability**

Booklet produced with \$ donations  
in 1996/97 in response to ~~current~~  
un-factual productions produced by  
BC Wild and other environmental groups.

- To "give Atlin residents and TRTFN  
members who support the project  
a voice on the issues"



Vera Kirkwood.  
Long-time Atlin Resident

## Who is CARES ?

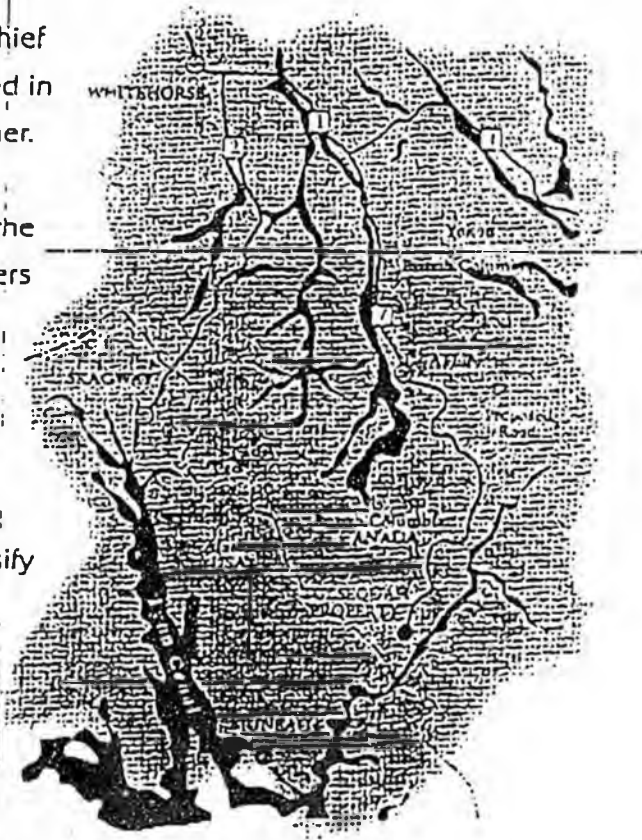
**CARES** is a group of local residents from the community of Atlin who have formed an association to encourage community planning and sustainable economic development. **CARES** supports Redfern Resources Ltd.'s proposal to reopen the Tulsequah Chief Mine in north western B.C.

This mine is located south of Atlin on the Tulsequah River. It was formerly operated by Cominco in the 1950's and is now 100% owned by Redfern. Redfern's proposal is currently undergoing public review through B.C.'s Environmental Assessment Process.

*"We formed CARES because we believe that local concerns and opinions must be of primary importance when deciding development issues. We felt helpless because we were not being heard over the noise from the large well-financed, special interest groups from outside of our community. We also believe that a wise, informed and balanced approach is the only way of ensuring the health of our community."*

**CARES** was formed as a means of giving Atlin residents a stronger voice in this matter. Because we are a small remote community with no municipal government, many residents were concerned that their opinions and input are over-shadowed by the predominantly outside, well-financed lobby groups who oppose this project. **CARES** members represent a broad spectrum of the Atlin community, including both First Nation and non-native members.

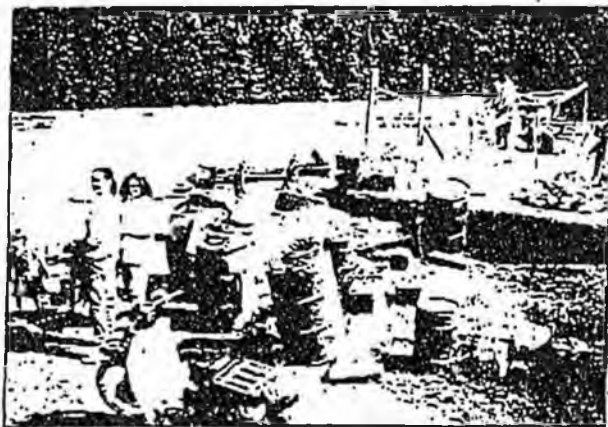
**CARES** believes that the Tulsequah Chief Mine will be constructed and operated in an environmentally responsible manner. We are committed to working with Redfern, the provincial government, the Taku River Tlingit First Nation and others in our community to ensure that any concerns are dealt with adequately. We also believe that, by participating fully in the mine development process, Atlin will enjoy substantial economic benefits that will help diversify our economy, provide us with real opportunities and contribute to the sustainable economic future of our community.



*Map of Atlin and Region*

## A Diverse History

The Taku River watershed and the Atlin area is a region of spectacular scenery. It has been the home of the Taku River Tlingit First Nation (TRTFN) for thousands of years. The Taku River is an important salmon producing river and the area is home to grizzly, moose, mountain goats and eagles. The TRTFN continue to fish for



*Fishing on the Taku River*

salmon during the summer months and use the area for their traditional and cultural pursuits. Today, the TRTFN are in the process of negotiating a land claims treaty settlement with the provincial and federal governments.

While the Taku River Valley is spectacular, it is in no sense untouched. The area also supports big game outfitting, sports fishing, tourism, mineral exploration and previously, mining and logging.

On the Alaskan side of the river, there is many summer homes used by residents of Juneau, the nearest community. The Taku Lodge caters to thousands of visitors per year. The Canadian portion of the river is dotted with cabins and small permanent communities. There are numerous airstrips, many of which were built for mining exploration, that presently, allow air transportation for the commercial fishers, river rafters, big game outfitters and prospectors. During the summer months, thousands of flights by helicopter and fixed wing aircraft as well as significant boat traffic make this area a beehive of activity. It is a beautiful area with healthy populations of wildlife, but is also well used by people.



*The Polaris Taku townsite was established in the 1930's to service the Polaris Taku Mine. This prosperous community of several hundred people consisted of a post office, bowling alley, doctor and many other services. The Polaris Taku is located across the Tulsequah River and downstream from the Tulsequah Chief Mine.*

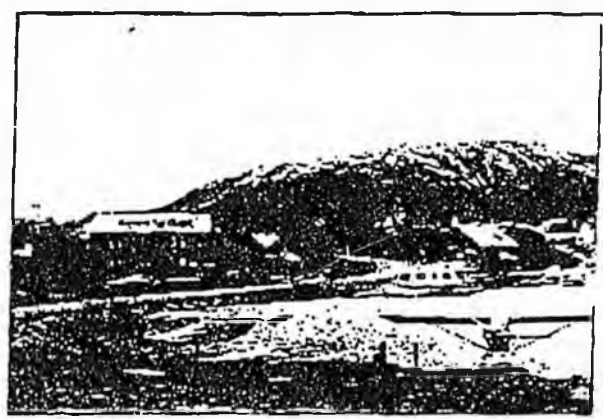
The community of Atlin was established during the Klondike Gold Rush in 1898 when gold seekers, on their way to Dawson City, were diverted to the region after



*Atlin at the height of the gold rush*

news of a strike on Pine Creek. Like Dawson, the Atlin area rapidly grew to a bustling gold rush community with a population of over 10,000 people. Population decreased over the next few decades until a road was built in 1949 linking Atlin to the Alaska Highway. Easier access for larger equipment allowed placer gold mining to continue as a viable industry. It also encouraged diversification of the economy into other sectors.

Today, placer gold mining continues to be of vital importance to our community. It is the largest and most significant employer in Atlin's seasonal economy. Mineral exploration is another sector which makes a substantial economic contribution to our community. Tourism is also becoming increasingly important. Stunning wilderness, clean lakes, abundant wildlife and a romantic gold mining history attract people from around the world to visit our area. Atlin also enjoys a thriving artistic community, small family-run forestry operations and an expanding service sector.



*Atlin today*

CARES believes that a diverse community that allows people with different interests, experiences and skills to find a place here is essential. In this way, Atlin will be prepared to deal with uncertainties experienced in all sectors of the economy from time to time. We cannot depend on any one industry, whether it be tourism or resource industries, if we are to have a sustainable future. Mining has been historically and will continue to be in the future a fundamental part of our community.

## The Tulsequah Chief Mine

The Tulsequah Chief deposit contains zinc, copper, lead, gold and silver. It is located on the Tulsequah River 14 km. upstream from its confluence with the Taku River. It is an underground mine and uses much less land than an open pit mine. Mine personnel will be flown from Atlin, Whitehorse and Smithers, eliminating the need for a townsite and the consequent surface disturbance that would entail. In other words, the mine site will occupy an extremely small portion of the Taku Valley watershed and should not affect other users in the area. In fact, it will occupy only 120 hectares of the 1.5 million hectare Taku watershed or .008% of the total land area.



*The Historic Tulsequah Chief Mine Site  
The Tulsequah Chief Deposit was mined by  
Cominco in the 1950's*

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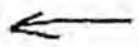
## How long Will the Tulsequah Chief Mine Operate?

Redfern has defined a reserve of 7.9 million tonnes which will allow a 9 year mine life, at an annual rate of production of 900,000 tonnes. As Redfern has not yet found the limits to the deposit, the mine life maybe extended - perhaps significantly. Comparisons with similar deposits mined elsewhere indicate that the mine could be operating for 25 years or more. In fact, a doubling or tripling of the initial reserve and mine life is the norm in the Canadian mining experience: not the exception.

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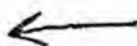
Redfern has spent over 3 years completing a very comprehensive project report. Studies undertaken include wildlife, habitat, fisheries, hydrology, water and air quality, geotechnical, socioeconomic, cultural, and many other studies too numerous to list.

**CARES** believes that the company has developed a sound proposal that will have minimal environmental impacts either at the site or down river. During operation, Redfern proposes to segregate all acid generating waste rock and mine tailings, mix them with cement and return them underground to backfill the mined out slopes. Cement contains limestone and will help neutralize the acidity of these deposits. On mine closure the mine will be flooded and the portal sealed off. This innovative procedure will ensure a permanent solution to acid rock drainage from the tailings. The historical mine waste rock from previous workings in the 1950's will be treated in the same fashion. The non-acid generating mine tailings will be mixed with limestone to ensure its permanent neutrality and will be stored in the tailings enclosure. At mine closure, it will be contoured, revegetated and returned to a natural state. Redfern will post a reclamation bond prior to construction to guarantee that effective reclamation of the mine-site occurs.



All used mine water will be treated in a water treatment plant to ensure that it meets stringent provincial water quality standards prior to discharge into the Tulsequah River. An independent lab conducted bio-assays in which rainbow trout and fresh water shrimp were immersed in the treated water for 96 hours. The tests had a 100% survival rate. This was without consideration for the dilution that would occur in real life. Sewage will also be fully treated before discharge. Daily monitoring & testing will occur to ensure that all standards are met.

**CARES** understands that the regulations that govern the mining industry today are very different from what they were many years ago. With the stringent standards that now exist, coupled with new and innovative technology, the Tulsequah Chief Mine will have only minimal environmental impacts. In fact, it will have a net benefit by cleaning up the acid rock generation from the previous mine workings and permanently encasing them underground.





Access Road Route & Mine Site

## The Access Road

**CARES** supports Redfern's proposal to construct a 160 km single lane gravel road from the mine site to Atlin. This road has been engineered and will be constructed following stringent government regulations under a Special Use Permit. For example, extreme care will be taken at all stream crossings to ensure that fisheries values are not jeopardized. Route changes have been made after consultation with residents and Taku River Tlingit members. We believe that those of us who have lived in the region for a long time have a fundamental knowledge of it. We are encouraged that Redfern agrees with this.

**CARES** also supports the company's plan to limit non-company use of the road only to legitimate tenure holders already in the area (eg. trappers, guide outfitters, placer miners, fishers and the TRTFN). A manned gate will be located south of already roaded area. The road will be patrolled to ensure the integrity of this limited access management plan. The company's policies include a firearms ban along the road corridor to ensure that wildlife in the area is not impacted.

## What will happen to Highway 7?

The Atlin to Jakes Corner road must be upgraded to accommodate mine traffic. **CARES** believes that a better road will also be of great benefit to the whole community. Previous upgrades promised by government, were cancelled due to budget cuts. The increase in government revenue from this project will more than compensate for the necessary upgrades.

The access road proposal has generated much controversy. Some argue that, once the road is constructed, people will ignore the limited access arrangements and hunt along the corridor. Others argue the government will open up this area to large logging companies for commercial harvest.



*Wildlife on Atlin-Road*

*Leading wildlife biologists agree that wildlife will adapt to resource roads provided they are not hunted.*

**CARES** shares these concerns. **CARES** believes that with meaningful First Nation and local involvement in the access management plan we can control the road's use. The Forest Practices Code also has extensive requirements for First Nation and public consultation regarding any forestry issues. These concerns are ones of human use and can be dealt with if there is a commitment to do so. **CARES** believes that it makes no sense to oppose the mine based on fears of forestry or other land use concerns when public processes to address these concerns are already in place. We must balance all land use decisions with the need to protect wildlife and the environment and use our resources wisely.

*"I have worked in road construction, hunting and mining camps including Tulsequah for about 20 years off and on. It's been my experience that wildlife are curious by nature and they will remain in the area if they are not threatened by predators. People destroy wildlife, not mines and with a no hunting ban in place, the animals will be protected."*



*Richard Feldman  
Long-Time Atlin Resident*

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# The Tulsequah Chief Mine and the Taku River Tlingit First Nation

**CARES** understands that Redfern is pursuing talks with the TRTFN concerning a potential Impacts and Benefits agreement. A comprehensive agreement with the TRTFN would benefit the whole community by ensuring that local opportunities are maximized. The TRTFN is an integral part of the Atlin community. Anything that benefits the First Nation will inevitably benefit the community as a whole. Furthermore, an extensive agreement will allow considerable TRTFN involvement in management and monitoring of the Tulsequah Chief Mine project and access road.

**CARES** believes that this level of local involvement will produce a better project in which we can all benefit while promoting proper resource use.

Today, First Nations participate extensively in the resource activities that take place within their traditional territory. This participation is usually embodied in an Impacts and Benefits Agreement with the proponent of the project.

Fundamentally, these agreements are partnerships between the First Nation and the proponent to ensure that First Nation needs and concerns are addressed.

These agreements address concerns over the proper use of resources, through First Nation participation in such things as environmental compliance committees,

access management boards, joint management committees and any special arrangements deemed necessary to ensure that the land is adequately protected.

First Nations are extensively involved in all aspects of the development from construction, through operations to reclamation and closure.

At the same time, these agreements include provisions for preferential hiring and contracting of First Nation members and businesses. They usually include training and scholarship arrangements as well as business development provisions to ensure that First Nations are in a position to fully take advantage of the opportunities presented by development proposals.

Impacts and Benefits agreements are advantageous to developers not only because they promote a cooperative relationship with local First Nations, but also because they allow the company to learn from those who have intimate knowledge of the land and the environment. These partnerships can result in the development of better projects in which all can benefit.



*Jackie Williams  
Wolf Clan Elder*

*I am a Wolf Clan elder. My great grandfather was the Wolf Clan Leader of the Taku River. I would like to see for the young generation to have their own businesses and jobs that Redfern's mine will provide for the First Nation of the Taku. I would like to see the First Nation have full management of the land of the Taku River and the road so it is done in the right way*

# Economic Opportunities

CARES believes that the reopening of the Tulsequah Chief Mine will have many positive economic impacts on our community. Redfern has committed to ensuring that the TRTFN and the local community enjoy maximum benefits through preferential hiring and contracting opportunities. At the present time, most of Atlin's economy is seasonal. Year round, high paying mine jobs, spin-off employment as well as contracting opportunities will inject much needed stability and financial resources into our economy. Residents will have the financial ability to pursue business ventures in tourism, building and mechanical trades and other industry. They may also acquire essential experience and training in the mining sector, trades and other areas that will allow them to be employed in mining and other industry in the region. Many businesses and individuals will have acquired valuable business and management experience along with a proven track record from the completion of mine contracts that will allow them to successfully bid on other contracts from the region. Furthermore, a more prosperous community may allow local businesses to expand and provide more varied goods and services at a more competitive price, thereby capturing more of the local market than they currently enjoy. The increase in goods and services available will benefit all residents.

Contracting Opportunities (Estimated Annual Costs)		Operating Supplies Required (Estimated Annual Costs)	
Limestone Quarry .....	80,000	Mine Supplies .....	9,925,000
Crew Transp. - Buses, Air Charter .....	300,000	Mill Supplies .....	7,045,000
Camp - Food, Laundry Maint. ....	1,020,000	Fuel / Power Supply .....	7,670,000
Tulsequah - Atlin Road Maint. ....	1,100,000	General / Admin. Supplies .....	1,211,000
Atlin - Jakes Corner Road Maint. ....	1,500,000	Concentrate Movement to Smelters .....	6,210,000
Mine Mobile Equip. Maint. ....	2,200,000	<b>TOTAL SUPPLIES .....</b>	<b>25,851,000</b>
Mine Fuel Supply .....	8,600,000		
Mine Cement Supply .....	2,400,000		
Concentrate Trucking to Skagway .....	6,480,000		
Concentrate Handling in Skagway .....	1,870,000		
Concentrate Movement to Smelters .....	6,210,000		
<b>TOTAL ANNUAL .....</b>	<b>31,760,000</b>		

*Many local spin-off jobs will be created by these contract and supply opportunities.*

## Employment & Contracting

Direct Employment .....	199
Contract Trucking Jobs .....	60
Supply Contracts .....	\$25 million / year
Average Salary + Benefits .....	\$77,000
Road Construction .....	\$30.6 million
Capital Required .....	\$148 million

## Atlin Estimated Employment

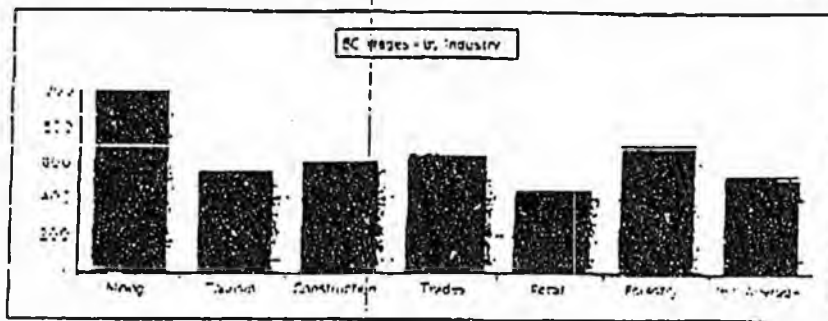
	Direct	Indirect
Construction (2 years)	80	12
Operations (9 years + ?)	51	8

## Atlin Estimated Contracting

\$7 million per year

## Opportunities for the Region

Atlin will be the preferred community for employment and contracting. However, because Atlin is a small community with few resources, Redfern anticipates that Whitehorse and Smithers will also benefit dramatically from this project. These communities will be fly in points for employees and will benefit from the many contracts associated with the Tulsequah Chief Mine.



### Mining is Canada's Highest Paying Industry

CARES understands that the community must plan for mine closure. However, we have at least 9 years and potentially much longer in which to do so. With proper planning, much of the prosperity enjoyed during the mine's life can be carried beyond if we use this opportunity as a means to explore other options. This planning, on an individual business and community level, is necessary if we are to ensure a sustainable future for our community.

CARES believes that planning for the future is necessary in all areas of the economy. Many sectors, such as tourism, depend on global trends and world economic conditions for their well-being. Inevitably, downturns occur that can have devastating impacts on communities that are dependent on a single industry. Furthermore, every sector, including government and the public sector, is experiencing restructuring and downsizing. Clearly, no single industry or economic sector can guarantee the well-being of a community. What is needed is a diverse foundation in which mining, with its tremendous economic benefits, can play an important role. CARES is committed to ensuring that we take advantage of all opportunities that will contribute to a sustainable and healthy future for our community.



James Williams with Daughter Tara  
TRTFN Members

*"I support the Tulsequah Chief project because there are benefits for the community of Arlin not only for the TRT. But the whole community. Not only me as a grocery business, but all the other people that are in business - they will benefit. And if it means that I have to hire somebody, then I will be hiring somebody local. All the way around, the garage will do the same, the Inn will do the same. I imagine that anyone that's in business will make it happen. So it's not just me, the business community, it's the whole community."*

# Community Benefits

CARES believes that the reopening of the Tulsequah Chief mine will have many positive social and community impacts. Perhaps the most important is the opportunity for friends and family members who have had to move elsewhere for work to return home. Spouses forced to work far outside of the region for long periods in order to make a living can have a devastating impact on families and relationships. Furthermore, a more prosperous community may allow our school to offer programs up to grade 12. Having to send our youth to Whitehorse or further to continue their education is difficult for families and the community as a whole. Indeed, some families move when their child reaches grade 10 so as not to break up the family.

A more prosperous community may also be able to support better services that other communities take for granted. Services such as full service banking, more extensive health and pharmaceutical care, more varied recreational opportunities, such as a youth center, will provide for a healthier community.

Residents working year round earning a good income contribute to the economic and social health of any community. At present many people must depend on employment insurance or social assistance in order to make ends meet. Surely the ability to support oneself and ones family is a social good and should be encouraged.



Mary Cowan & Family  
Long-Time Allin Residents

*"I support this project for the future of my four children I have raised here. My son, his wife and daughter, and two of my daughters have been forced to move because of no work. Our children are our future, and their future relies on jobs. Without jobs our children have no future in this community."*

# Benefits to the Province

Taxes and Royalties to Government - \$191 million over 9 year life of mine  
(not including employment income taxes)

In the province of BC we enjoy a high standard of living that is envied around the world. We have sophisticated accessible health care, a comprehensive social welfare network, a first class public education system and modern infrastructure that allows us to live safely and comfortably. Our society believes these things are essential to our way of life and must be supported. Indeed, elections have been won and lost over these very issues.

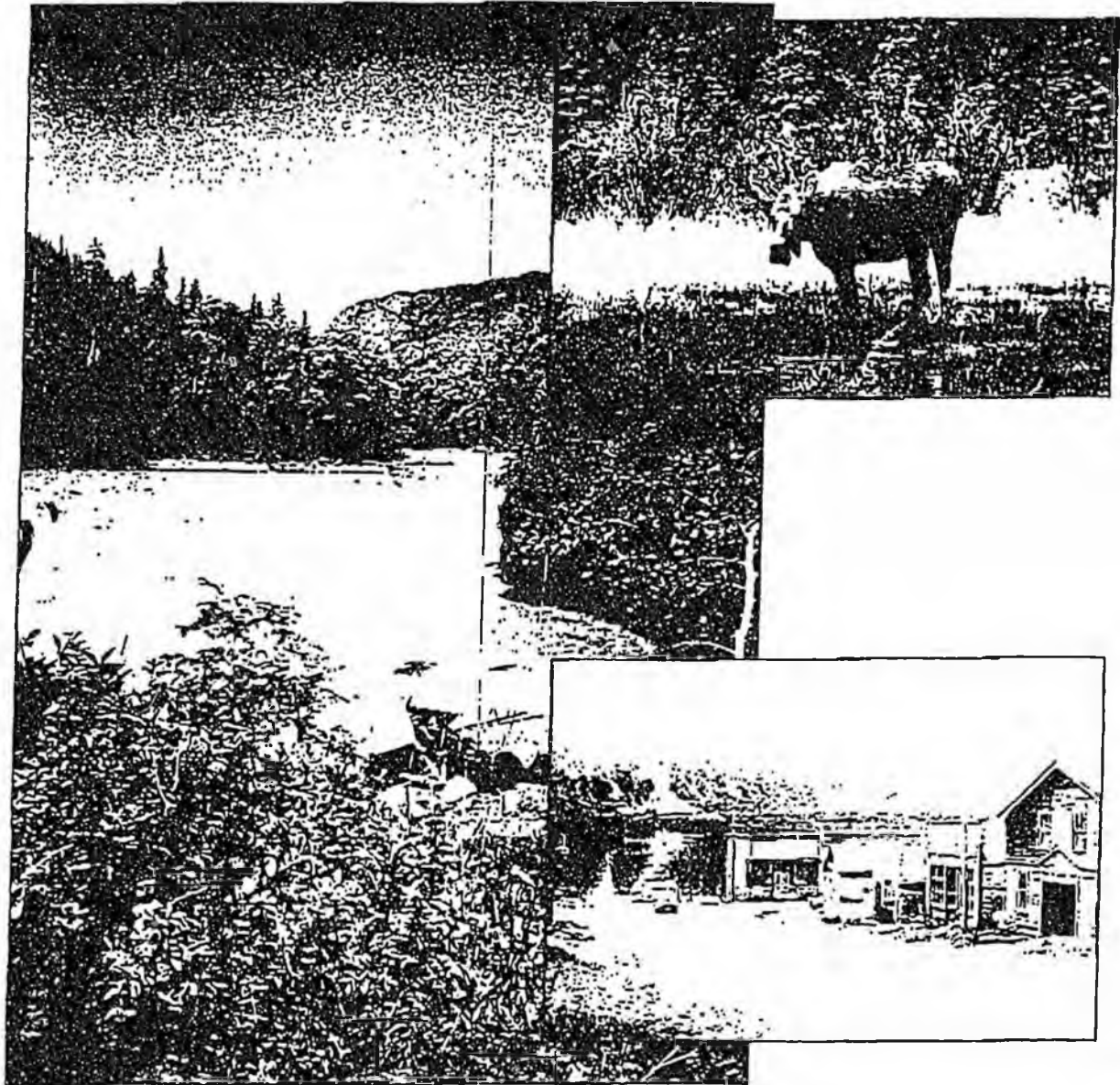
At the same time, we must maintain the ability to finance these public goods through government revenue. In order to do this, we must encourage a healthy and vigorous economy through which these revenues are generated. We are fortunate that our province is richly endowed with natural resources that form the basis of our economy. Although efforts are ongoing to diversify beyond the primary industries such as mining, our natural resources will continue to be an essential part of our economy. It is unrealistic to expect that we can stop using these resources and still maintain our standard of living.

CARES members are concerned about the health of our environment. At the same time, we realize that the social and economic health of our community is also important. CARES believes that we must continually seek a balance to ensure that while the environment is protected we are still able to make a living here and provide a future for our children. We have confidence in Redfern's commitment to the community and to the sound environmental management of the Tulsequah Chief Mine.

*"Most of us have lived in this community for many years. We are true environmentalists who care intimately about what happens here. We don't want to see this area destroyed. After all, it's beauty is one of the main reasons we have chosen to live in this remote corner of the province. We also care deeply about the economic and social health of our community. We want our children to inherit a healthy environment and a healthy community that can provide them with real opportunities."*



*Irene Coleman  
Long-Time Atlin Resident*



Produced by Concerned Atlin Residents for Economic Sustainability  
Box 172, Atlin, B.C. V0W 1A0  
Printed by Willow Printers Ltd.

CARES would like to thank all those who generously donated their time and resources to this publication.

HCR

9

FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HCR 9

Revision Date: \_\_\_\_\_  
Title: Take A Kid Hunting Week

Dept. Affected \_\_\_\_\_  
BRU \_\_\_\_\_  
Component \_\_\_\_\_

Sponsor: Representative Phillips  
Requester: House Resources

Component Serial No. \_\_\_\_\_

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

*No Fiscal Impact*

Prepared by Loral Meunier

Phone 465-3215

House Resources Committee Aide

Phone \_\_\_\_\_

Date 5-3-99

#2

**Proposed Amendment to HCR 9**

Page 1, Line 1 – delete “Weekend” after “Hunting” and insert week.

Page 2, Line 2 – delete “Weekend” after “Hunting” and insert week.

Page 2, Line 6 - delete “Weekend” after “Hunting” and insert week.

This amendment is supported by AOC and other conservation groups and would more appropriately recognize the importance of hunting in Alaskan culture.

Passed

#3

replace “kid” with “child” throughout  
the resolution.

Passed

2029

AMENDMENT

#1

OFFERED IN THE HOUSE

by: Rep. Joule

TO: HCR 9

#1 whereas

Add a new "Whereas" clause to read:

"WHEREAS Alaska's abundance and variety of natural resources are unmatched in the United States; and"

renumber

passed

\* This will be the first whereas  
Please renumber accordingly.

# Alaska State Legislature



Official Business  
Phone: (907)465-2689  
Fax: (907)465-3472

State Capitol  
Room 411  
Juneau, Alaska 99801-1182

**Representative Gail Phillips**

## **SPONSOR STATEMENT**

### **HCR 9 – Naming “Take a Kid Hunting Weekend”**

**Offered before the  
House Resources Committee**

HCR 9 seeks to name the second weekend in September each year as “Take a Kid Hunting Weekend”. Such an event would greatly assist in preserving our hunting heritage and to encourage Alaskan hunters to become knowledgeable in the areas of sportfishing and hunting. Naming a special weekend would greatly compliment the Hunter Education and Shooting Sports program funded last year by the legislature.

I am hopeful that the members of this committee are willing to dedicate a special weekend where experienced hunters can pass along to our children hunting skills, gun safety awareness and the contributions of responsible and ethical hunter behavior.

Thank you.



P. O. Box 2988 • Soldotna, Alaska 99669

March 25, 1999

Senator John Torgerson  
State Capitol  
Juneau, AK 99801-1182

FAX: (907) 465-4779

Dear Senator Torgerson:

My name is Keith Phillips and I am president of Alaska's Kenai Peninsula Chapter of Safari Club International. I'm writing this letter in support of the "Take a Kid Hunting Weekend" proposal Larry Lewis has discussed with you.

Too many of today's young people have been brain washed into believing that hunting is unnecessary and that hunters enjoy inflicting pain. It's time to tell them the truth!

Animal rights activists have shaped the minds of our youth through television, movies and schools as indicated by the results of a youth vote on the wolf snaring initiative during the last election. If the majority of the voting public felt the same way these young people feel we would have already lost our rights to hunt, trap, and bear arms.

One of the problems is that the majority of hunters don't fully realize the danger of not taking a proactive position in teaching our young people the importance of hunting in wildlife conservation. If we don't start doing something about protecting and preserving our hunting heritage now - that means giving young people equal time with our viewpoints - the animals rights activists will gain the control they've always dreamed of. That's when the youngest generation of Americans turns voting age and eventually gets the majority vote. This day is fast approaching.

It's our obligation - not our option - to teach as many young people as we can about how enjoyable, character building, and essential the right to hunt is. We need to teach hunting's importance as a game management tool to every child whose life we touch. If each one of us doesn't do that right now, the very near future may see all of us, including our children and grandchildren, lose the right to hunt - forever!

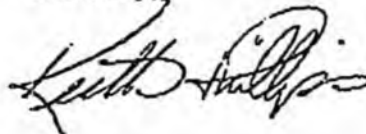
Individual interaction with our youth is the only way of reversing the damage already done. Proof of this is the success of SCI's educational moose hunts. The past two years we've taken high school kids, with very little chance of ever having an opportunity to hunt, and taught them about gun safety, hunters education/ethics, and actual "hands on experience with packing, field dressing and butchering a permitted moose kill. All of these young people

thoroughly enjoyed the experience and if they never hunt again, they have at least learned an appreciation for hunting.

If you consider yourself an outdoorsman and you truly cherish our hunting heritage, an important moment has come. You are in the enviable position of being able to help hunters throughout this state turn back the tide of lies, and twisted misinformation generated by the animal rights movement. By introducing legislation as proposed by Larry Lewis, for a state sanctioned "Take a Kid Hunting Weekend" you would be giving us a tremendous tool for generating awareness of the importance of hunting to our youth. The rest of it is up to us.

Thank you for your attention to this critical issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Keith Phillips".

Keith Phillips, President  
Alaska's Kenai Peninsula Chapter SCI

Commissioner Frank Rue  
Alaska Department of Fish & Game  
Juneau, Alaska 99802

PO Box 403  
Kasilof AK 99610  
January 16 1999

RE: "Take a kid hunting weekend"

Dear Commissioner Rue,

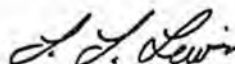
My name is Larry Lewis and I work for the Alaska Department of Fish & Game as a seasonal F&W Technician out of the Soldotna office. I am on the Board of Directors of, and am very active in, our local chapter of Safari Club International. I have recently signed on as a volunteer Hunter Education Instructor and also hold a hunting representative seat on the Kenai - Soldotna Fish & Game Advisory Committee. I strongly feel that we need to work to preserve our American hunting heritage for future generations. Part of our responsibility as hunters in meeting that goal is to endeavor to become better educated, well trained, and more ethically minded in all our hunting related activities. It is equally important that we encourage others to do the same.

As you know, Hunter Education will become mandatory in units 7, 14 and 15 in the year 2000 for those born after 1984. A "Take A Kid Hunting Weekend" held the second weekend in September, and the media attention it is sure to receive, would tie-in perfectly with this program. I see a wonderful opportunity here to create a greater public awareness of the Hunter Education program and direct the interest of kids and, hopefully, more adults toward attending the course. I seek no special regulatory changes for "Take A Kid Hunting Weekend" other than a legislatively approved, annual fall weekend. It would be a time set-aside as a reminder of our responsibility to mentor our younger generations of Alaskans (future policy makers), so that this important part of our American heritage will be forever preserved.

I met and spoke with you briefly when you were here in our office last summer but didn't have a chance to talk to you about an idea I had at the time. I recently spoke with Senator John Torgerson about his interest in sponsoring a bill that would mandate an official, annual, "Take A Kid Hunting Weekend" for the entire state of Alaska. He expressed great interest in the concept and felt the idea would be well received in the legislature. He asked me to do more homework on the subject so I sent him a copy of similar legislation from my home state of Minnesota. He informs me he has just recently forwarded this information on to your office for comment.

I have talked to Ted Spraker, Kenai Area Biologist; Tony Monzingo, Hunter Services Coordinator, Anchorage; and Ken Taylor about this idea and it has been very well received. I realize you are a very busy man, but I would respectfully ask for any time you can devote towards the Departments approval and support of this idea. Senator Torgerson has informed me that he awaits your comments before he moves ahead with any legislative action. The legislatures plate is sure to be very full, and I would like to see this to fruition this session. Once again, thank you for your time.

Sincerely,



Larry L Lewis  
Kasilof, AK  
(907) 262-1370 HM  
(907) 262-9368 WK

CC: Ken Taylor; Tony Monzingo; Ted Spraker

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 25526  
JUNEAU, ALASKA 99802-5526  
PHONE: (907) 465-4100  
FACSIMILE: (907) 465-2332

March 5, 1999

Mr. Larry Lewis  
P.O. Box 403  
Kasilof, AK 99610

Dear Mr. Lewis:

Thank you for your letter regarding efforts to preserve our hunting heritage and to encourage Alaskan hunters to become more knowledgeable, skilled, and ethical in the field. I applaud your dedication and efforts to expand public awareness of the positive contributions of the Hunter Education Program to safety, conservation, and responsible hunter behavior. I am aware that the age of the average hunter continues to rise and that we are experiencing poor recruitment of young people into our hunting community.

Therefore, I support your efforts to have the second weekend in September nominated by the state legislature as "Take a Kid Hunting Weekend." To ensure the continuation of hunting, experienced hunters must assume the duty of passing along revered traditions and respect for the resource to future generations. I will willingly work with Senator Torgerson and other legislative leaders should they choose to introduce such legislation.

Sincerely,



Frank Rue  
Commissioner

cc: Senator John Torgerson

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 25526  
JUNEAU, ALASKA 99802-5526  
PHONE: (907) 465-4100  
FACSIMILE: (907) 465-2332

January 7, 1999

The Honorable John Torgerson  
145 Main St. Loop, Ste.226  
Kenai, AK 99611

Dear Senator  Torgerson:

Thank you for your letter of December 23 suggesting that we consider legislation creating a "Take a Kid Hunting Weekend" in Alaska. I agree this concept has merit, and I have asked staff in the Wildlife Division to review the attached statutes from Minnesota to see what might be the best approach to take. I concur exemptions from license requirements may not make as much sense here as it may in Minnesota.

As you probably know, both the Division of Sport Fish and the Division of Wildlife are investing considerable resources in outreach efforts to youth in Alaska through hunting and sport fishing education programs. Last year, the legislature funded a mobile Hunter Education and Shooting Sports program that we plan to have operational this spring in time for the Anchorage and Fairbanks sport shows. This program will be on the road through the summer and will reach thousands of Alaska's youth who have an interest in developing their skills in the shooting sports and learning safe responsible firearms handling. It would be a good vehicle to use to generate participation in a "Take a Kid Hunting Weekend" program if it is introduced and passed this session.

My staff and I are available to discuss this further at your convenience.

Sincerely,



Frank Rue  
Commissioner

HJR

3

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HJR3

Revision Date/Time (Note if correction) _____	Dept. Affected _____	Office of the Governor _____
Title <u>Constitutional Amendment relating to</u>	BRU _____	Elective Operations _____
<u>initiatives regarding natural resources belonging to the state</u>	Component _____	General and Primary _____
Sponsor <u>Representative Bunde</u>		
Requester <u>House Resources Committee</u>	Component Serial No. _____	<u>22</u>

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by <u>Gail Fenumia</u> <i>Gail Fenumia</i>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date/Time <u>1/28/99 9:47 AM</u>
Approved by <u>Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i>	Date <u>1/28/99</u>
Agency <u>Office of the Lieutenant Governor</u>	

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Notice: This opinion is subject to correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878.

THE SUPREME COURT OF THE STATE OF ALASKA

JAMES W. BROOKS, former  
Commissioner of the Alaska  
Department of Fish and Game,  
JOEL BENNETT, former member  
of the Alaska Board of Game,  
and WOLF MANAGEMENT REFORM  
COALITION,

Appellants,

Supreme Court No. S-8676

Superior Court No.  
4FA-97-879 CI

O P I N I O N

[No. 5066 - January 15, 1999]

PATRICK WRIGHT, ALBERT W.  
FRANZMANN, ALASKA FISH AND  
WILDLIFE CONSERVATION FUND,  
and SCIENTIFIC MANAGEMENT OF  
ALASKA'S RESOURCE TREASURES,

Appellees.

STATE OF ALASKA, OFFICE OF  
THE GOVERNOR OF THE STATE OF  
ALASKA, LIEUTENANT GOVERNOR  
FRAN ULMER,

Appellant,

Supreme Court No. S-8685

Superior Court No.  
4FA-97-2337 CI

PATRICK WRIGHT, ALBERT W.  
FRANZMANN, ALASKA FISH AND  
WILDLIFE CONSERVATION FUND,  
and SCIENTIFIC MANAGEMENT OF  
ALASKA'S RESOURCE TREASURES,

Appellees.

NOTICE TO COUNSEL: This opinion will be released to the press and public at 12:30 p.m. (Alaska time) on the date indicated. This copy is provided to counsel of record in advance. Prior to the release time, please do not inform persons other than your clients in this case of the outcome.

Clerk of the Appellate Courts

He points to resolutions passed by the legislature and Game Board endorsing share trapping as evidence that the initiative is ill-conceived. We agree with Wright that such issues are sensitive and complex; indeed, "public policy stakes are usually high" in initiative law.<sup>23</sup> But the framers of the constitution chose to include the initiative process as a law-making tool with full knowledge of the risks inherent to direct democracy.<sup>24</sup> And the public's disagreement with legislative and administrative officials can just as easily be taken as evidence of the appropriate use of the initiative process. Additionally, safeguards exist in the process, allowing the legislature to repeal initiated legislation after two years and to amend such legislation at any time.<sup>25</sup> Concerned parties can also bring a post-election substantive challenge to what they may believe is an ill-advised law. As the Alaska Wildlife Alliance (AWA) points out, if any specific initiated law is "constitutionally infirm," it can be invalidated on that basis.<sup>26</sup>

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<sup>23</sup> M. Kathryn Bradley & Deborah L. Williams, "Be It Enacted by the People of the State of Alaska . . ." - A Practitioner's Guide to Alaska's Initiative Law, 9 Alaska L. Rev. 279, 302 (1992).

<sup>24</sup> See Thomas v. Bailey, 595 P.2d 1, 8 (Alaska 1979) ("The restrictions on permissible subjects for direct legislation represent a recognition . . . that certain particularly sensitive or sophisticated areas of legislation should not be exposed to emotional electoral dialogue and impulsive enactment by the general public.") (internal citation omitted).

<sup>25</sup> See Alaska Const. art. XI, § 6.

<sup>26</sup> See also Ovsichuk v. State, Guide Licensing & Control Bd., 763 P.2d 488, 494-96 (Alaska 1988) (invalidating board's establishment of guide areas for hunting as violative of Article (continued.))

# Alaska State Legislature

*CHAIR*  
HOUSE HEALTH, EDUCATION  
& SOCIAL SERVICES COMMITTEE

*VICE-CHAIR*  
HOUSE JUDICIARY COMMITTEE

*MEMBER*  
LEGISLATIVE BUDGET & AUDIT COMMITTEE  
HOUSE SPECIAL COMMITTEE ON OIL & GAS  
SELECT COMMITTEE ON LEGISLATIVE ETHICS

## REPRESENTATIVE CON BUNDE

District 18

*DURING SESSION*  
STATE CAPITOL, ROOM 104  
JUNEAU, AK 99801-1182  
(907) 465-4843 (800) 892-4843

*DURING INTERIM*  
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Representative\_Con\_Bunde@legis.state.ak.us

## SPONSOR STATEMENT

### HJR3

**Proposing an amendment to the Constitution of the State of Alaska relating to initiatives regarding natural resources belonging to the state.**

The purpose of this proposed amendment is to raise the bar for the passage of all natural resources ballot initiatives. HCR 3 will require a natural resources initiative to obtain a two-thirds vote of the people voting in order to pass. By raising the bar for management of our resources, we encourage the possibility that scientific data, both pro and con, will be available to the public to persuade them of the validity of the issues.

Resource management should be well reasoned and based on sound scientific principles. As a state we want to avoid the proliferation of initiatives that plagued California. We want to maintain access to our natural resources.

Recently, the Supreme Court of Alaska in Brooks v Wright, Opinion No. 5066, January 15, 1999, found that the legislature does not have exclusive law-making powers over natural resources and that management of natural resources belonging to the state is an appropriate subject for an initiative.

Our State's historic voter turn-out is not to our credit. The number of people who vote in an election is relatively small in relation to the number of registered voters in our state. HCR 3 will prevent something as important as resource management from being dictated by the "majority of the moment". Alaskans cannot properly maintain the resources they depend on for a living if we don't participate in the process. Alaska is the Owner State; we all have a stake in assuring that our resources are managed by a clear majority.

FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HJR3

Revision Date: \_\_\_\_\_  
Title: Const. Am: Wildlife Initiatives

Dept. Affected \_\_\_\_\_  
BRU \_\_\_\_\_  
Component \_\_\_\_\_

Sponsor: Representative Bunde  
Requester: \_\_\_\_\_

Component Serial No. \_\_\_\_\_

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES [ ]						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

*No fiscal impact*

Prepared by House Resources Committee

Phone \_\_\_\_\_

- Lorali Meier, Aide

Phone 465-3715

*Lorali Meier*

Date 1-22-99

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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Juneau, Alaska 99801-2105

## MEMORANDUM

January 18, 1999

**SUBJECT:** HJR 3; Proposed constitutional amendment relating to initiatives regarding natural resources belonging to the state (Work Order No. 21-LS0211D)

**TO:** Representative Con Bunde  
Attn: Patti Swenson

**FROM:** George Utermohle *GU*  
Legislative Counsel

In a prior memorandum regarding an early version of HJR 3, I mentioned that there was an unresolved constitutional issue as to whether the people may propose an initiative measure that relates to management of fish and game or other natural resources belonging to the state. The concern that I expressed was that by setting a supermajority vote requirement for approval of initiatives relating to natural resources, HJR 3 would be explicitly recognizing the right of the people to propose such initiatives.

Just last Friday, January 15, 1999, the Alaska Supreme Court settled the question as to the power of the people to propose initiatives regarding management of natural resources. In a case that challenged the constitutionality of the proposed initiative that sought to ban the snaring of wolves (Brooks v. Wright, Opinion No. 5066, January 15, 1999; URL: <http://www.alaska.net/~akctlib/sp5066.txt> (copy enclosed)), the court found that the legislature does not have exclusive law-making powers over natural resources and that management of natural resources belonging to the state is an appropriate subject for an initiative.

Now that it is clear that the people may propose initiatives relating to management of natural resources<sup>1</sup>, it is possible for you to offer HJR 3 without unintentionally affecting the determination as to whether the people ever had the power to propose initiatives relating to natural resources.

If I may be of further assistance, please advise.

GU:glc  
99-008.glc  
Enclosure

---

<sup>1</sup> The power of the people to propose an initiative on any matter, including the management of natural resources, is subject to art. XI, sec. 7, of the Alaska Constitution which reads (in relevant part): "The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation."



750 W. 2nd Ave. #109, Anchorage AK 99501 / Ph. 907-258-6171 / Fax 907-258-6177

P.O. Box 22151, Juneau AK 99802 / Ph. 907-463-3366 / Fax 907-463-3312 / [unite@akvoice.org](mailto:unite@akvoice.org)

---

March 3, 1999

Attention:  
House Resources Committee

The Alaska Conservation Voice is a coalition of twenty-seven conservation organizations representing over 15,000 individuals statewide.

We are opposed to HJR 3 on the grounds that it reduces legitimate involvement of Alaska citizens in formulating the laws of their state.

Public participation is a fundamental component of Alaska's system of government. The initiative process is valuable as it provides another check and balance in which the citizens of Alaska can directly participate.

It provides an escape valve for when the mechanisms of government are not responsive.

If the legislature does not agree with the results of a citizen-passed initiative, current law provides that you can amend or even completely do away with the initiative after two years.

Thus, it is within the legislature's power to correct any legitimate problems that might result from the initiative process.

We feel it is ill-advised for elected representatives of the citizens of Alaska to further restrict the public's right to participate in making the laws that the govern them.

If the legislature feels there is a problem with initiatives by-passing the normal regulatory process, we feel the solution lies in making that process itself more accessible to the public.

We also question why it is necessary to single out natural resources-related initiatives to be governed differently than initiatives on other subjects.

In conclusion, we urge you not to move this resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Shelton", written over a horizontal line.

Kirsten Shelton  
Lobbyist, ACV

Conserve Alaska. It's Only Natural.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 1, 1999

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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Representative Scott Ogan, Co-Chair  
House Resources Committee  
State Capitol  
Juneau Alaska 99811

Hand-Delivered

Re: HJR 3

Dear Representative Ogan:

Per your request to Jim Baldwin, enclosed are copies of some of the constitutional convention debates regarding art. XII, sec. 11 of the Alaska Constitution regarding initiatives and citations to it by the parties in the Brooks v. Wright case which addressed the placement of the wolf snare initiative on the ballot.

Please let me know if you require further information.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By: Kathleen Strasbaugh  
Assistant Attorney General

KS:jn  
Enclosures

cc: Representative Con Bunde, sponsor  
John Lindback, Chief of Staff  
Office of the Lieutenant Governor  
Pa: Pourchot, Legislative Director  
Office of the Governor  
Frank Rue, Commissioner  
Department of Fish and Game  
Deborah Behr, Assistant Attorney General  
James L. Baldwin, Assistant Attorney General



P.L.L.C., Anchorage, for Amicus Curiae Alaska Wildlife Alliance.

Before: Matthews, Chief Justice, Compton, Eastaugh, Fabe, and Bryner, Justices.

FABE, Justice.

I. INTRODUCTION

Various citizens and community organizations sought to remove from the ballot an initiative prohibiting use of snares to trap wolves. The superior court agreed to decertify the initiative, reasoning that the initiative process is "clearly inapplicable" to natural resource management under Article XII of the Alaska Constitution because the state's role as "trustee" over natural resources gives it exclusive law-making powers over natural resource issues. After concluding that the prohibition of wolf snare traps is an appropriate subject for initiative, we reversed the superior court's order and placed the initiative back on the November 1998 general election ballot, announcing that an opinion would follow. Voters rejected the initiative in the November 1998 general election.

II. FACTS AND PROCEEDINGS

In October 1997 Lieutenant Governor Fran Ulmer certified a ballot initiative which, if passed, would criminalize both the use of snares to trap wolves and the possession, sale, or purchase of wolf pelts known to have been taken by snare. The initiative, titled "An Act Relating to the Use of Snares in Trapping Wolves," reads in full:

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

AS 16.05 is amended by adding a new section to read:

Section 16.05.784. PROHIBITED METHODS OF TRAPPING WOLVES.

(a) A person may not use a snare with the intent of trapping a wolf.

(b) A person may not possess, purchase, offer to purchase, sell, or offer to sell the skin of a wolf known by the person to have been caught with a snare.

(c) A person who violates this section is guilty of a Class A misdemeanor.

One month later, a group of two citizens and two community organizations (Wright) [Fn. 1] filed suit against the State challenging the constitutionality of the initiative. Wright argued that, by virtue of the state's role as trustee over Alaska's natural resources under Article VIII, the legislature has exclusive law-making power with respect to wildlife management issues.

Wright had filed a previous suit against the State challenging a separate initiative that prohibited same-day airborne hunting of certain wildlife. Several proponents of the airborne hunting initiative (Brooks) [Fn. 2] intervened in that suit. Brooks also filed briefs in this appeal. In December 1997 Superior Court Judge Ralph R. Beistline consolidated the wolf snare suit with the airborne hunting suit.

Although Judge Beistline ruled that the challenge to the airborne hunting initiative was untimely because the initiative had

already become law, he barred placement of the wolf snare initiative on the 1998 general election ballot. Relying on Justice Compton's concurrence in Pullen v. Ulmer, [Fn. 3] Judge Beistline reasoned:

It would be inappropriate to dictate to the legislature the method or tool it should use to manage wildlife. The effect of such restrictions would be to infringe upon the legislature's exclusive right to manage wildlife resources and would compromise the legislature's ability to fulfill its trust obligation to preserve Alaska's fish and wildlife for the common use of all Alaskans.

The State appealed the superior court's ruling on the wolf snare initiative. On June 2, 1998, we issued an order to expedite the appeal. On August 17, 1998, after hearing oral arguments in the case, we reversed the superior court's ruling and vacated the injunction, thereby placing the wolf snare initiative back on the ballot. We stated in our order that an opinion of the court would follow. In the November general election the voters rejected the initiative.

III. STANDARD OF REVIEW

This appeal centers around the constitutionality of using the initiative process to prohibit wolf snare traps. We review such questions of law de novo, applying our independent judgment and "adopt[ing] the rule of law which is most persuasive in light of precedent, reason, and policy." [Fn. 4]

When reviewing initiative challenges, we liberally construe constitutional provisions that apply to the initiative process. [Fn. 5] Specifically, we narrowly interpret the subject matter limitations that the Alaska Constitution places on initiatives. [Fn. 6] Still, we have a duty to give questions involving the propriety of an initiative's subject matter careful consideration because the constitutional right of direct legislation is [also] limited by the Alaska Constitution." [Fn. 7]

Pre-election review of challenges to ballot initiatives is limited to ascertaining "whether [the initiative] complies with the particular constitutional and statutory provisions regulating initiatives." [Fn. 8] But "[g]eneral contentions that the provisions of an initiative are unconstitutional are justiciable only after the initiative has been enacted by the electorate." [Fn. 9] Hence, our review of the initiative at this stage is limited to whether the subject matter is constitutionally permissible.

IV. DISCUSSION

Articles XI and XII are the only provisions of the Alaska Constitution that explicitly mention the initiative process. Article XII describes when the people of Alaska may use the initiative to propose and pass legislation:

LAW-MAKING POWER. . . . Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI. [Fn. 10]

In turn, Article XI imposes certain subject matter restrictions on initiatives:

SECTION 7. RESTRICTIONS. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. [Fn. 11]

Wright does not claim on appeal that the wolf snare initiative falls within one of the enumerated Article XI limitations. [Fn. 12] Rather, he only argues that, under Article XII, the initiative process is "clearly inapplicable" to natural resource management decisions because of the state's role as trustee over wildlife and other natural resources. We first discuss whether wildlife management is "clearly inapplicable" to

the initiative process based on the language and framers' understanding of Articles XI and XII. We then address whether the state's trustee-like duty set forth in Article VIII implies that the public may not propose initiatives relating to wildlife management.

A. Whether Wildlife Management Is "Clearly Inapplicable" to the Initiative Process Based on the Language and History of Articles XI and XII

To determine whether the subject matter of wildlife management is clearly inapplicable to the initiative process, we look first to the language and history of the constitutional provisions regarding the initiative process.

We apply basic rules of statutory construction when interpreting the Alaska Constitution. [Fn. 13] When construing constitutional provisions, we use our independent judgment, "adopting a reasonable practical interpretation in accordance with common sense based upon the plain meaning and purpose of the provision[s] and the intent of the framers." [Fn. 14] We also "look to the meaning that the voters would have placed on [the] provision." [Fn. 15] Although the restrictions included in Article XI are relatively straightforward and easy to decipher, the meaning of the phrase "clearly inapplicable" in Article XII is less obvious. We therefore look to the intent of the framers for guidance in interpreting the provision.

The debates about the initiative process at the Alaska Constitutional Convention make clear the framers' understanding of the phrase "clearly inapplicable" in Article XII. During the discussion of what is now Article XII, sec. 11, Delegate George McLaughlin, chair of the Judiciary Committee and author of the proposed language, explained that use of the phrase "the legislature" in an article marked the delegates' intent to make the article subject to the initiative process as well:

What do I mean here by "unless clearly inapplicable"? . . . Certainly we wouldn't intend, where you read in the article on the judiciary that the supreme court may adopt rules which may be, in substance, disapproved by two-thirds of each house of the legislature, because it was obviously meant from that context that that couldn't be subject to the initiative, and so we are clearly indicating here that where we use the expression "by the legislature" or the expression "the legislature" we mean completely, thoroughly, and wholeheartedly know that it is subject not only to the initiative but to the referendum, and where it is clearly inapplicable, even 55 idiots would agree that it was inapplicable. [Fn. 16]]

The convention adopted McLaughlin's proposed language shortly after he gave this speech. [Fn. 17]

Delegate Victor Fischer, in response to a motion to make "the legislature" signify exclusively the legislature, argued that such an interpretation would leave "hidden meanings" in the constitution that would limit the people's legitimate use of the initiative:

I don't think it is right for us as an afterthought to start going through the whole constitution and add additional items that are not subject to the initiative. . . . If

you believe that certain items should be exempted let's put them into Section 3 of Article 3 [later renumbered as art. XI, sec. 7] and specifically exempt them from the initiative instead of going through each article, section by section, and by hidden meanings prevent the people from exercising the initiative. [Fn. 18]] Shortly after Fischer's speech, the motion to narrow the intended meaning of the term "the legislature" was defeated by a 2-1 margin.

[Fn. 19]

The framers chose to use the phrase "the legislature" in Article VIII, which concerns natural resource management:

GENERAL AUTHORITY. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people. [Fn. 20]

Such language evidences the delegates' intent that natural resource issues would be subject to the initiative. Indeed, unlike the Judiciary Committee, [Fn. 21] the Resources Committee made no effort to have the subject matter of Article VIII excluded from the initiative process. If we were to grant the legislature an exclusive right to propose wildlife legislation based on the state's role as "trustee" over wildlife under Article VIII, we would be relying on the very hidden meanings against which Fischer warned and that the delegates at the constitutional convention squarely rejected.

Even if Article VIII had not contained the words "the legislature," the subject of wildlife management is not so clearly inapplicable to the initiative process as to pass Delegate McLaughlin's "55 idiot" test. The convention debates suggest the framers added "clearly inapplicable" to Article XII so that the initiative would not replace the legislature where the legislature's power serves as a check on other branches of government, such as legislative power to define courts' jurisdiction or override judicial rules. [Fn. 22] This separation-of-powers concern does not exist with respect to natural resource issues under Article VIII. Hence, the debates do not support an interpretation of Article XII that would grant the legislature exclusive law-making powers over natural resource management on the grounds that such subject matter is "clearly inapplicable" to the initiative process.

Wright argues that natural resources issues are "sensitive and sophisticated" in Alaska, and therefore should be free from the "impulsive enactment of laws by the general public." He points to resolutions passed by the legislature and Game Board endorsing snare trapping as evidence that the initiative is ill-conceived. We agree with Wright that such issues are sensitive and complex; indeed, "public policy stakes are usually high" in initiative law. [Fn. 23] But the framers of the constitution chose to include the initiative process as a law-making tool with full knowledge of the risks inherent to direct democracy. [Fn. 24] And the public's disagreement with legislative and administrative officials can just as easily be taken as evidence of the appropriate use of the initiative process. Additionally, safeguards exist in the process, allowing the legislature to repeal initiated legislation after two years and to amend such legislation at any time. [Fn. 25] Concerned parties can also bring a post-election substantive challenge to what they may believe is an ill-advised law. As the Alaska Wildlife Alliance (AWA) points out, if any specific initiated law is "constitutionally infirm," it can be invalidated on that basis. [Fn. 26]

Finally, the delegates' decision to submit Ordinance 3, which banned commercial salmon traps, for voter ratification along with the rest of the constitution evidences the delegates' and voters' understanding that wildlife management issues would be subject to direct democracy. The wording of the referendum submitted to the people emphasized the public's role in the decision to abolish fish traps:

As a matter of immediate public necessity, to relieve economic distress among individual fishermen and those dependent upon them for a livelihood, to conserve the rapidly dwindling supply of salmon in Alaska, to insure fair competition among those engaged in commercial fishing, and to make manifest the will of the people of Alaska, the use of fish traps for the taking

of salmon for commercial purposes is hereby prohibited in all the coastal waters of the State. [ (Fn. 27) ]

Those delegates opposed to submitting the ordinance to the voters argued that the matter should be resolved by future state legislative action rather than by popular vote. [Fn. 28] A motion to this effect was defeated by a 42-12 vote. [Fn. 29] After ratification, we held that Ordinance 3 was a valid modification of the territorial laws. [Fn. 30] We viewed Ordinance 3, and by implication the process through which it was adopted, as being consistent with the state's management responsibilities for wildlife and other "property of the state, held in trust." [Fn. 31]

Thus the language and framers' understanding of Articles XI and XII, along with the chosen wording of Article VIII and the inclusion of Ordinance 3 for ratification, suggest that natural resource management is not, as Wright contends, "clearly inapplicable" to the initiative process.

B. Whether the Legislature Has Exclusive Law-Making Powers over Wildlife Management by Virtue of the State's Trustee-Like Duties under Article VIII

Article VIII of the Alaska Constitution concerns the management of natural resources:

SECTION 3. COMMON USE. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

SECTION 4. SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses. [ (Fn. 32) ]

Wright argues that these clauses establish a "public trust" for management of the state's wildlife, with the State of Alaska as "trustee" and the people of Alaska as the intended beneficiaries. From this premise, Wright further claims that the state, as part of its fiduciary duty, retains exclusive law-making authority over natural resource issues. We disagree.

We have frequently compared the state's duties as set forth in Article VIII to a trust-like relationship in which the state holds natural resources such as fish, wildlife, and water in "trust" for the benefit of all Alaskans. [Fn. 33] Instead of recognizing the creation of a public trust in these clauses per se, we have noted that "the common use clause was intended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state." [Fn. 34]

We have applied the public trust doctrine to cases involving exclusive grants of natural resources by the state. In CWC Fisheries, Inc. v. Bunker, [Fn. 35] we held that a holder of a state-granted fee interest in tidelands takes the land subject to a public easement. [Fn. 36] We based our holding in part on the state's public trust responsibilities with respect to tideland conveyance, [Fn. 37] but did not address whether Article VIII creates a public trust per se or whether such responsibilities preclude public participation in natural resource management decisions. Furthermore, we suggested that expansion of the public trust doctrine to include all or most public uses merely because it has been applied to a particular public use would be inappropriate. [Fn. 38]

A few months after CWC Fisheries, we clarified in Owsichuk v. State, Guide Licensing & Control Board that the purpose of the public trust doctrine was not to grant the legislature ultimate authority over natural resource management, but rather to prevent the state from giving out "exclusive grants or special

privilege as was so frequently the case in ancient royal tradition." [Fn. 39] Hence, the State of Alaska acts as "trustee" over wolves and other wildlife not so much to avoid public misuse of these resources as to avoid the state's improvident use or conveyance of them.

Indeed, in *Owsichuk*, after a discussion of the holding in *CWC Fisheries*, we emphasized that the state's duties with respect to natural resource management under Article VIII "[are] to be exercised like all other powers of government, . . . and not as a prerogative for the advantage of the government as distinct from the people." [Fn. 40]

Wright relies on a recent case, *Baxley v. State*, [Fn. 41] to argue that we should apply basic principles of private trust law to the trust-like relationship described in Article VIII. In *Baxley*, we referred to the public trust doctrine in examining the propriety of four state oil leases in the Beaufort Sea:

The public trust doctrine provides that the State holds certain resources (such as wildlife, minerals, and water rights) in trust for public use and that government owes a fiduciary duty to manage such resources for the common good of the public as beneficiary. [Fn. 42]

Although we declined to address in *Baxley* whether the state had breached its fiduciary duty, we relied on another case, *State v. Weiss* (*Weiss I*), in noting that we should apply "basic principles of trust law to public land trusts." [Fn. 43]

But, unlike this case, *Weiss I* involved the state's duty as trustee over expressly created special purpose public land grants and leases. [Fn. 44] In that case we stated:

Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See *Lassen v. Arizona*, 385 U.S. 458, 87 S. Ct. 584, 17 L. Ed. 2d 515 (1967); *State v. University of Alaska*, 624 P.2d 807 (Alaska 1981). Both *Lassen* and *University of Alaska* involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." [Fn. 45]

We have since emphasized that the applicability of private trust law depends greatly on both the type of trust created and the intent of those creating the trust. In *Weiss v. State* (*Weiss II*), [Fn. 46] involving the same grant lands as in *Weiss I*, we cautioned that "reliance [on principles of private trust law] does not imply that application of such principles yields the same result regardless of the nature of the trust at issue." [Fn. 47]

*Baxley*, unlike *Weiss I*, did not involve an expressly created public land grant. Rather, *Baxley* simply relied on *Weiss I* to show that, if *Baxley* had timely raised his public trust argument in the trial court, then questions of fact and law might exist as to whether the state breached its fiduciary duty. Wright relies on dicta in *Baxley* to argue that private trust law should be applied wholesale to the public trust doctrine. This result, however, would be an overbroad interpretation of our holdings in *Baxley* and *Weiss I*.

Moreover, application of private trust principles may be counterproductive to the goals of the trust relationship in the context of natural resources. For instance, private trusts generally require the trustee to maximize economic yield from the trust property, using reasonable care and skill. [Fn. 48] But Article VIII requires that natural resources be managed for the benefit of all people, under the assumption that both development and preservation may be necessary to provide for future generations, and that income generation is not the sole purpose of the trust relationship. [Fn. 49] And although trust law dictates

that the acts of a trustee should be reviewed for abuse of discretion, we have held that grants of exclusive rights to harvest natural resources listed in the common use clause are subject to close scrutiny. [Fn. 50] Private trust law principles also provide no guidance as to when the public's right to common use of resources can be limited through means such as licensing requirements. [Fn. 51] Finally, exceptions do exist to the general principle that beneficiaries cannot dictate how to manage the trust property. For example, in some circumstances, the creator may provide for the beneficiary's participation in trust management, [Fn. 52] and the beneficiary of a trust may act as trustee. [Fn. 53]

Other jurisdictions have held that, while general principles of trust law do provide some guidance, they do not supercede the plain language of statutory and constitutional provisions when determining the scope of the state's fiduciary duty or authority. [Fn. 54] One commentator notes that general trust law should not be applied to the public trust doctrine in a way that limits or destroys the democratic process: "It would be a strict violation of democratic principle for the original voters and legislators of a state to limit, through a trust, the choices of the voters and legislators of today." [Fn. 55]

We most recently visited the public trust doctrine in the natural resource context in Pullen v. Ulmer. [Fn. 56] In that case, we decertified an initiative allowing subsistence, personal use, and sport fisheries to have preference over other fisheries with respect to the harvestable salmon surplus. [Fn. 57] We concluded that salmon should be considered "assets" of the state for purposes of carrying out the state's trust duties with respect to wildlife. [Fn. 58] Because state assets may not be appropriated by initiative pursuant to Article XI, [Fn. 59] and because we viewed the preferential treatment of certain fisheries over others as an appropriation, [Fn. 60] we removed the initiative from the ballot. We left open the question of whether the state's trust responsibilities under Article VIII give the legislature exclusive law-making control over wildlife management. [Fn. 61]

We find little support in the public trust line of cases for the proposition that the common use clause of Article VIII grants the legislature exclusive power to make laws dealing with natural resource management. Article VIII does not explicitly create a public trust; rather, we have used the analogy of a public trust to describe the nature of the state's duties with respect to wildlife and other natural resources meant for common use. Additionally, the wholesale application of private trust law principles to the trust-like relationship described in Article VIII is inappropriate and potentially antithetical to the goals of conservation and universal use. And in Pullen, the only case in which we discussed the initiative process, we declined to hold that the public trust doctrine gives the legislature exclusive law-making authority over the subject matter of Article VIII. We therefore reject Wright's argument to the contrary and decline to decertify the initiative on public trust grounds.

For these reasons, we conclude that the legislature does not have exclusive law-making powers over natural resources issues merely because of the state's management role over wildlife set forth in Article VIII of the Alaska Constitution, and therefore the wolf snare issue is not "clearly inapplicable" to the initiative process under Article XII.

#### V. CONCLUSION

Pursuant to this court's August 17, 1998 order, the superior court's order on summary judgment is REVERSED and its injunction against placement of the proposed ballot measure, "An Act Relating to the Use of Snares in Trapping Wolves," on the general election ballot is VACATED.

FOOTNOTES

Footnote 1:

The four plaintiff-appellees in this case are: Patrick Wright, a member of the Anchorage Fish and Game Advisory Committee; Albert Franzmann, a past member of the Alaska Board of Game; the Alaska Fish and Wildlife Conservation Fund; and Scientific Management of Alaska's Resource Treasures (SMART).

Footnote 2:

Intervenor-appellants include James Brooks, a former commissioner of the Alaska Department of Fish and Game; Joel Bennett, a former member of the Alaska Board of Game; and the Wolf Management Reform Coalition.

Footnote 3:

923 P.2d 54, 65-66 (Alaska 1996) Compton, J., concurring).

Footnote 4:

Ford v. Municipality of Anchorage, 813 P.2d 654, 655 (Alaska 1991) (citing Guin v. Ha, 591 P.2d 1281, 1284 n.6 (Alaska 1979)).

Footnote 5:

See Interior Taxpayers Ass'n, Inc. v. Fairbanks North Star Borough, 742 P.2d 781, 782 (Alaska 1987).

Footnote 6:

See Citizens' Coalition for Tort Reform v. McAlpine, 810 P.2d 162, 163 (Alaska 1991) ("[T]he law-making powers assigned to the legislature are to be liberally construed as within the people's right to legislate by initiative.").

Footnote 7:

Pullen v. Ulmer, 923 P.2d 54, 58 (Alaska 1996) (quoting Fairbanks v. Convention & Visitors Bureau, 818 P.2d 1153, 1155 (Alaska 1991)).

Footnote 8:

Boucher v. Engstrom, 528 P.2d 456, 460 (Alaska 1974), overruled in part on other grounds, McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988).

Footnote 9:

Id. at 460 n.13.

Footnote 10:

Alaska Const. art. XII, sec. 11 (emphasis added).

Footnote 11:

Alaska Const. art. XI, sec. 7.

Footnote 12:

At no stage of this case has any party argued that the wolf snare initiative makes or repeals an appropriation in violation of Article XI, sec. 7. As Judge Beistline wrote:

[N]or did [the parties] address the issue of whether or not an initiative addressing methods of wildlife management or harvest, such as the use of snares, would constitute an appropriation of state assets . . . .

Indeed, Wright himself acknowledges that:

While an argument can be made that the establishment of laws involving means and methods of game harvest may effectively result in an appropriation of state assets, . . . Wright argues here, as he did in the superior court, that the subject of the wolf snare initiative is clearly inapplicable . . . .

The question is therefore not properly before us, and we do not address it here.

Footnote 13:

See *Thomas v. Bailey*, 595 P.2d 1, 4 (Alaska 1979).

Footnote 14:

*Cissna v. Stout*, 931 P.2d 363, 366 (Alaska 1996) (citation omitted).

Footnote 15:

*Division of Elections v. Johnstone*, 669 P.2d 537, 539 (Alaska 1983) (citation omitted).

Footnote 16:

See 4 Proceedings of the Alaska Constitutional Convention (PACC) 2849 (January 21, 1956) (emphasis added).

Footnote 17:

See *id.* at 2850-51.

Footnote 18:

Id. at 2837 (emphasis added).

Footnote 19:

See id. at 2841.

Footnote 20:

Alaska Const. art. VIII, sec. 2 (emphasis added).

Footnote 21:

See 4 PACC at 2843-46 (January 21, 1956).

Footnote 22:

See, e.g., PACC at 2848-49 (January 21, 1956) (statement of Del. McLaughlin) (stating that initiative should not be used to override judicial rules); id. at 2821 (statement of Del. Davis) (defining the jurisdiction of courts); id. at 2835-37 (statement of Del. Rivers) (challenging fundamental aspects of the judiciary as defined in the constitution). See also Citizens' Coalition for Tort Reform v. McAlpine, 810 P.2d 162, 168 (Alaska 1991) (invalidating an initiative to limit attorney contingency fees because "[o]nly the law-making powers assigned to the legislature" are within the right to legislate by initiative).

Footnote 23:

M. Kathryn Bradley & Deborah L. Williams, "Be It Enacted by the People of the State of Alaska . . ." - A Practitioner's Guide to Alaska's Initiative Law, 9 Alaska L. Rev. 279, 302 (1992).

Footnote 24:

See Thomas v. Bailey, 595 P.2d 1, 8 (Alaska 1979) ("The restrictions on permissible subjects for direct legislation represent a recognition . . . that certain particularly sensitive or sophisticated areas of legislation should not be exposed to emotional electoral dialogue and impulsive enactment by the general public.") (internal citation omitted).

Footnote 25:

See Alaska Const. art. XI, sec. 6.

Footnote 26:

See also Owsichuk v. State, Guide Licensing & Control Bd., 763 P.2d 488, 494-96 (Alaska 1988) (invalidating board's establishment of guide areas for hunting as violative of Article VIII's public use clause).

Footnote 27:

Alaska Const. art. III, sec. 2 (emphasis added).

Footnote 28:

See 5 PACC at 3564-3752 (January 30, 1956).

Footnote 29:

See id. at 3572.

Footnote 30:

See Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 922-23 (Alaska 1961), vacated on other grounds, 369 U.S. 45 (1962), aff'd sub nom on other grounds, 369 U.S. 60 (1962).

Footnote 31:

Id. at 915. One could argue that regulation of salmon traps is an allocation of resources, given that the purpose of the ordinance was to give individual commercial Alaska fishermen greater access to the salmon population. See 5 PACC at 3564-71 (January 30, 1956); Alaska Const. ord. III, sec. 2. This argument was not made by opponents of Ordinance 3, nor was it made by Wright in this case with respect to the wolf snare initiative. Moreover, the wolf snare initiative, the main purpose of which is presumably to prevent cruelty to animals, does not present the same opportunity or motive for self-dealing as did Ordinance 3. In any event, such an argument does not diminish the persuasiveness of the Ordinance 3 example in countering Wright's public trust argument.

Footnote 32:

Alaska Const. art. VIII, sec.sec. 3, 4.

Footnote 33:

See, e.g., McDowell v. State, 785 P.2d 1, 18 (Alaska 1989); Herscher v. State, Dep't of Commerce, 568 P.2d 996, 1002-03 (Alaska 1977).

Footnote 34:

Owsichek v. State, Guide Licensing & Control Bd., 763 P.2d 488, 496 (Alaska 1988).

Footnote 35:

755 P.2d 1115 (Alaska 1988).

Footnote 36:

See id. at 1121.