

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9989 HOUSE RULES



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original documents after microfilm reproductions have been made.

William J. Carter

Signature of Camera Operator

9-19-2001

Date

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PROOF.

SERVICE

CONTRACT

PROFESSIONAL SERVICES CONTRACT AMENDMENT BETWEEN

ALASKA HOUSE RULES COMMITTEE

AND

RON SOMERVILLE
4506 ROBBIE ROAD
JUNEAU, AK 99801

AMENDED CONTRACT AMOUNT: \$100,000.00
(excluding reimbursement for expenses)

The parties to this contract amendment, made and entered into the date the Legislative Affairs Agency Executive Director or her designee signs the contract amendment, are the Alaska House Rules Committee, whose address is State Capitol, Juneau, Alaska 99801-1182, hereinafter referred to as the "Agency", and Ron Somerville, whose address is 4506 Robbie Road, hereinafter referred to as the "Consultant".

This document amends the March 3, 1999, professional services contract between the Agency and the Consultant.

IT IS THEREFORE MUTUALLY AGREED THAT:

1. **Paragraph (A) of CLAUSE II – PERIOD AND DATES OF PERFORMANCE AND TERMINATION, IS AMENDED TO READ AS FOLLOWS:**

(A) The work under this contract shall begin January 20, 1999 and terminate January 20, 2001.

2. **Paragraph (F) of CLAUSE III – COMPENSATION AND METHOD OF PAYMENT, IS AMENDED TO READ AS FOLLOWS:**

(F) Total payments under this contract, excluding reimbursement of expenses, may not exceed One Hundred Thousand and No/100 Dollars (\$100,000.00).

AUTHORIZATION AND CERTIFICATION.

Execution of this contract was authorized by a majority of the members of the Alaska House Rules Committee in a meeting on _____, 2000.

RON SOMERVILLE

PERSONAL PROFILE SUMMARY

1/24/00

Raised in Craig, Alaska

60 year Alaskan Resident

14 Years as Commercial Fisherman

B.S. Degree in Wildlife Management - Humboldt State College - Arcata, Calif.

M.S. Degree in Wildlife Management - University of Montana - Missoula, Mont.

24 Years with Alaska Department of Fish and Game - Career Involved:

Research Biologist

Management Biologist

Lands Coordinator - Game Division

Regional Supervisor - Game Division

Director - Game Division

Special Assistant to the Commissioner - ADF&G

Deputy Commissioner - ADF&G

Served as the Alaska Department of Fish and Game's representative on the Governor's d2 Task Force from 1974 - 1979. Was fully involved in all aspects of the State's lobbying efforts on d2. Directed the establishment of the State's first full time office in Washington DC

Retired the first time in 1983 and the second time in 1994.

Was the first Executive Director of the Alaska Outdoor Council from 1983 - 1987.

Was employed by the Wildlife Legislative Fund of America in 1987 to set up their Washington DC office. This organization was primarily dedicated to countering the animal rights movement and maintaining regulated hunting and fishing opportunities.

Presently Self Employed as Natural Resources Consultant - Including 5 years as Technical Consultant to the Senate and House majorities.

An active member in Juneau's Territorial Sportsmen - presently serving on the nine member Board of Directors. Also serves on the Territorial Sportsmen Scholarship Foundation which promotes educational scholarships for local high school graduates. The Territorial Sportsmen have been granting local scholarships for over 50 years. The Foundation has committed to reaching the total of \$1 million in high school scholarships and graduate fellowships this year.

MEMORANDUM

TO: Senate President Drue Pearce
and
House Speaker Brian Porter

FR: Ron Somerville, Resource Consultant, Senate and House Majorities
&
Ted Popely, Legal Counsel, Senate and House Majorities

RE: Major Resources Issues

DT: January 5, 2000

The following is a brief summary of some of the major natural resources issues and related litigation which the legislature has been dealing with in some form and we anticipate will be major topics during this next year and the upcoming session.

1. STATE/FEDERAL LEGISLATIVE ISSUES

A. SUBSISTENCE. Senator Murkowski and Congressman Young continue to pursue legislative remedies to extend a moratorium on federal management of subsistence fisheries. They have also pushed for legislation which would provide a window of opportunity for the state to regain management on federal lands once appropriate changes were made to the state Constitution and statutes. Chances of legislation passing, however, appear slim with strong opposition from the Secretary of Interior.

B. ANILCA AMENDMENTS. Senator Murkowski has introduced legislation to make technical and clarifying amendments to ANILCA. Major conflicts have occurred since the passage of ANILCA, such as the restrictions on public access, which need to be clarified. Access to inholdings, Title 11 restrictions dealing with transportation corridors, maintenance of private cabins on some federal lands and the identification of compatible uses allowed on federal lands are some of the issues that need to be addressed. In the past, the legislature has taken an active role in promoting some of these changes.

C. ENDANGERED SPECIES ACT REAUTHORIZATION. Congress continues to delay passing a reauthorization bill for the Endangered Species Act, mostly due to the stalemate over proposals to revamp or reform the Endangered Species Act and its programs. It is questionable that any legislation will pass Congress this next session. Alaskans continue to be impacted by questionable interpretations and applications of the law. Direct conflicts between the timber industry and the southeastern wolves and goshawks,

between Steller sea lions and the fisheries industry and between Columbia River king salmon and Alaska's fisheries clearly illustrate the potential and real impacts. The legislature has continually taken a much more aggressive position than the Knowles administration in providing support to the Alaska delegation for major reforms to the Act.

D. RS 2477. The Secretary has attempted to push through regulations which would significantly reduce or restrict RS 2477 assertions by Alaska or any other state. The Alaska delegation has successfully inserted appropriations language prohibiting the adoption of these regulations. The federal agencies continue to implement the restrictive policy of the Secretary of Interior by administrative actions.

E. OCS REVENUE SHARING. Legislation has been introduced in both the U.S. Senate and House dealing with proposed OCS Revenue Sharing. Because of the formulas used and the fact that this legislation is designed to benefit coastal states and those adjacent to the Great Lakes, a significant amount of money may be targeted for Alaska. It is estimated that Alaska may have up to \$100 million at stake.

Legislation has passed out of the House Resources Committee, chaired by Congressman Young, and will more than likely come to the House floor fairly early this coming session. If passed by the House, the future of this revenue sharing bill is uncertain in the Senate.

There continues to be strong opposition to this legislation from private property rights organizations. Although some accommodations have been made, it appears that additional compromises will be necessary if any legislation is going to pass.

F. TRIBAL SOVEREIGNTY. Litigation continues over the subject of village tribal sovereignty, although the U.S. Supreme Court made it clear in the "Venetie" case that the bulk of ANCSA lands transferred to the corporations do not constitute "Indian Country." Recognition by the federal and state governments that tribal governments do exist in Alaska has resulted in litigation concerning the extent of tribal sovereignty that remains. See memo from Ted Popely concerning the detailed legal analysis.

Of major concern to the state is the recent proposal by AFN and other Native groups for Congress to modify ANCSA and ANILCA to grant expanded governmental powers of self-determination. Details of their proposal have not been fully reviewed but reports are that many of the powers reserved to state government entities would be transferred to or legally shared with village tribal governments under their proposal.

Close scrutiny of this issue should continue as there are major differences between the legislature and the state administration over how to deal with the

issue of tribal sovereignty and self-determination. If the administration attempts to implement most of the recommendations of the Commission on Rural Governance and Empowerment then major conflicts with the legislature will most likely occur.

2. STATE/FEDERAL NON-LEGISLATIVE ISSUES

A. FEDERAL SUBSISTENCE LAW IMPLEMENTATION. The federal agencies have adopted final regulations for the implementation of federal subsistence fisheries regulations on federal public lands. In many cases, these regulations are in direct conflict with state regulations. The big question remains -- whether or not the Secretary can extend his jurisdiction on to adjacent state and private lands to effectively implement a subsistence priority on federal public lands. As further regulatory actions are taken by the Federal Subsistence Board, decisions will have to be made concerning what litigation strategies will be implemented. The legislature should and will be involved in developing that strategy due to the conceivably large price tag.

B. MAGNUSON/STEVENS ACT AMENDMENT IMPLEMENTATION. The North Pacific Fisheries Management Council (NPFMC) continues the process of reviewing changes to the Magnuson/Stevens Act dealing with fisheries management within 200 miles of the Alaskan coast. The major changes involve allocation of pollock in the North Pacific and the Bering Sea. Major shifts from the offshore processors to inshore processors are required. Additional language relating to bycatch and community development quotas were also included in the amendments.

The Council still must prepare any recommendations it may have to the Secretary of Commerce concerning critical habitat considerations. As mentioned previously, this is a new role for the Council.

The Council has decided not to reallocate more pollock to the recovery effort for Steller sea lion. The fact that western Steller sea lion populations are listed as Endangered raises the possibility of more litigation attempting to close the pollock fishery by some of the animal rights groups.

The Council will be meeting in February of 2000.

The Magnuson/Stevens Act is up for reauthorization.

C. NATIONAL WILDLIFE REFUGE REFORM IMPLEMENTATION. Congress passed legislation reforming the National Wildlife Refuge System two years ago with considerably more emphasis on protecting traditional uses. The development of regulations implementing this Act have still not been completed, although some regulations have been proposed dealing with "compatibility" criteria. Since Alaska has the vast majority of this nation's wildlife refuges, it is imperative that the state be a major participant in the final regulatory process.

D. ENDANGERED SPECIES ACT IMPLEMENTATION. National environmental groups have attempted to use the ESA as a tool to stop development. Proposals to improperly utilize the listing of species as endangered or threatened have included species like wolves and goshawks in Alaska. Continued vigilance and monitoring of ESA regulations is required. New proposed listings such as Beluga whales in Cook Inlet could pose major problems for the state. The legislature has traditionally been more aggressive in protecting state interests in this arena than has Governor Knowles.

As mentioned above, there is a real potential threat of new litigation designed to close all or most of the north Pacific pollock fishery because of the continued decline of Steller sea lion in western Alaska. The state must be a very active player in any legal or political solution developed over the recovery of this species.

E. GLACIER BAY COMMERCIAL FISHING REGULATIONS. The NPS continues with its program to phase out commercial fishing in Glacier Bay proper and establish co-management authority with the state on outer waters along the coast. The state has consistently taken the position that the marine waters are the exclusive jurisdiction of the state. Working out any co-management agreements with the federal agency may require legislative involvement.

F. ANTIQUITIES ACT WITHDRAWALS. There continues to be some rumors that the Clinton Administration intends to use the Antiquities Act authorities of the President to withdraw sizable acreage in the West, including Alaska, for expanded National Parks or similar designations. Some protection exists in Alaska under ANILCA against the establishment of permanent withdrawals of this type. There would most certainly be a legal confrontation, however. Impacts on Alaska could be severe if this type of action were not successfully challenged.

G. NATIONAL MARINE PRESERVES. There is growing support within the national environmental groups to establish National Marine Preserves. Agencies like the National Park Service and National Marine Fisheries Service have been considering Marine Preserves for years. Special attention has to be given to monitoring agency efforts in this regard and assuring that state jurisdictions are not negatively impacted in any designations that occur.

H. BIODIVERSITY TREATY IMPLEMENTATION. President Clinton signed the Biodiversity Treaty his first year in office. Since then, the agencies, under the leadership and guidance of Secretary Babbitt, have been attempting to implement a plan to designate large areas as Biodiversity Reserves and to provide federal oversight over land and water use activities within these and adjacent areas. Significant amounts of state and private lands and waters are included in some of the proposals. Numerous state jurisdictional issues are involved which requires close monitoring and active involvement by the state.

I. NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL

REGULATIONS. The Council has again proposed consideration of very controversial halibut subsistence regulations which could discriminate between Alaskan residents based on race. These regulations had been placed on hold but will be up for further consideration in February or April, 2000. The NPFMC is also considering critical habitat recommendations for possible Secretary of Commerce actions. Changes to the Magnuson/Stevens Act has broadened the responsibilities of the Council regarding habitat issues. It is unclear where this additional responsibility will lead but there could be potential impacts on other activities within marine waters of the state.

There have been some frustrations expressed recently over the fact that the Council has been increasing its regulatory influence over fish, particularly halibut, harvested recreationally rather than commercially. The lack of sport fishery representation on the Council has become a major issue with some members of the public.

J. USFS REGULATIONS. The U.S. Forest Service is presently undergoing a major overhaul. New regulations have been proposed basically redefining the mission and goals of the agency. New planning regulations are also being proposed along with various regulatory and policy actions designed to make the agency more acceptable to the environmental community. The legislature has been a strong critic of the emerging agency, especially as it pertains to resource development and uses. Proposed increases in roadless withdrawals could have serious impacts on an already heavily impacted timber industry.

K. TLMP IMPLEMENTATION. The U.S. Forest Service will continue the process of implementing the Tongass Land Management Plan. The viability of the timber industry in southeast Alaska is critically tied to the implementation of this plan. Further removal of land from the timber base could be a devastating blow to the industry. Of particular interest is the attempt to establish major roadless areas within major portions of the forest now open to timber cutting. The short and long term effect of this action will be to further inhibit timber harvesting and exacerbate the existing economic turmoil and create even greater conflicts between the timber industry and the environmental community over cutting opportunities in areas that remain available.

L. CO-MANAGEMENT AGREEMENTS WITH TRIBAL GOVERNMENTS. Increased pressure is being applied to the Secretary of Interior to develop and implement fish and wildlife co-management agreements with tribal governments. In light of the State's court victory over the existence of "Indian Country" in Alaska, it is questionable where these agreements can be applied in Alaska. Major concerns exist over possible attempts to improperly delegate federal jurisdictional authorities and potential direct conflicts with state management jurisdictions.

It is clear that the issue of co-management agreements will be raised in current negotiations between the state administration and tribal governments in their discussions on "rural empowerment." Any delegation of jurisdiction will, however, require legislative concurrence and possibly a state Constitution change.

M. U.S./CANADA SALMON TREATY. The treaty process had completely stalled although there were continued efforts to maintain some semblance of a coordinated conservation program on the primary salmon species involved. Canada has continued in their attempts to bypass the treaty process to get direct government to government intervention. Although nothing has been finalized, there has been a new effort initiated to get this treaty back on track.

The general perception that this treaty only affects southeast Alaska has resulted in some ambivalence throughout the rest of the state. Because of the wide ranges of some stocks of kings salmon from the Columbia River and other streams in the Pacific Northwest, the impacts could be significantly expanded. Columbia River king salmon have been located in fisheries as far away as the Bering Sea. Certainly, fisheries in the Kodiak and Cook Inlet areas could be affected.

N. CREATION OF INDIAN TRUST LANDS. DOI has proposed regulations dealing with tribal conversion of land to Indian Country by giving land to the agency to be held in trust. If allowed for corporate lands conveyed under ANCSA, this could create "Indian Country" by a backdoor method. It would also negate the major purpose of ANCSA and negate the U.S. Supreme Courts decision in the "Venetie" case. The legislature has submitted initial comments and should continue to maintain a strong presence on this issue.

O. NPS REGULATIONS - TRADITIONAL ACCESS. The NPS has attempted to eliminate snowmachine access to the central (core) portion of Denali National Park. This action has resulted in litigation on the grounds that this action is illegal and overturns a major concession given to the state when ANILCA was passed in 1980. Section 1110 (a) of ANILCA reads, in part:

"Notwithstanding any other provisions of this Act or other law, the Secretary shall permit on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from Villages and homesites".

In essence, the law guarantees "traditional access" within the Conservation Units established under ANILCA. The law does allow the Secretary to establish

reasonable regulations but the Units are opened to traditional access unless the Secretary can demonstrate that such uses would be detrimental to the values of the resources or areas. A federal judge recently agreed with the initial claims filed by the plaintiffs in their suit against the NPS. The Secretary has responded with proposed restrictive regulatory interpretations of the law to define "traditional activities" in such a way as to significantly reduce these activities in the Park, which would undermine the basic intent of the law.

Although there is very little snowmachine use of the core Park area, this conflict has ramifications far beyond the boundaries of Denali National Park. If the Secretary of Interior is allowed to legally limit traditional activities by narrowly defining "traditional access", the impacts will affect virtually every federal Conservation Unit established in the state. The impact could well include over 120 million acres of federal lands.

See Ted Popely's memo concerning the recent ruling by Judge Sedwick over proposed temporary NPS regulations essentially banning snowmachine use in most of Denali National Park. Essentially, Judge Sedwick agreed that NPS had not followed the law. Proposed permanent regulations are designed to overcome the ruling by Judge Sedwick and narrowly define "traditional uses" in the park in such a way as to eliminate the uses.

P. WATERFOWL MANAGEMENT REGULATORY PROCESS. Last year, Congress passed a Protocol amendment to the Migratory Bird Treaty which provided for controlled spring and summer harvesting of migratory birds -- a practice which was illegal under the old Treaty. The amendment also established a more complex regulatory process primarily directed at Alaska. Some of the management options being considered by the Secretary of Interior would create major conflicts within the state. The state should be an active participant in identifying management regimes that are workable.

3. **LITIGATION.** See January 2000 memo from Ted Popely.

4. **STATE ISSUES**

A. ALASKA SUBSISTENCE LAW. The leadership of the Alaska State Legislature is well aware of the existing conflicts in federal and state law dealing with the management of subsistence uses of fish and wildlife resources on federal public lands. Previous general and special sessions of the legislature have not resulted in any meaningful short term or permanent solution to the growing social and economic crisis.

Since the federal agencies assumed management of subsistence uses of fish and wildlife on federal public lands on October 1, 1999, it is clear that there are going to be escalating conflicts between the federal and state agencies over the management of these resources. If it is the decision of the leadership that this issue not be dealt with in the second session of the twenty-first legislature, then

it seems appropriate to develop a strategy within the state to address obvious attempts by the federal agencies to extend their jurisdiction far beyond the boundaries of the federal conservation units.

If it is in the state's best interest to do everything possible to protect its fish and wildlife management authorities, it is imperative that the legislature and the Knowles administration collectively adopt and fund a comprehensive program to aggressively pursue every possible avenue -- including a litigation strategy.

The memo from Ted Popely, Legal Counsel, will briefly summarize the results of the Legislative Council lawsuit concerning subsistence and fish and wildlife management jurisdictions.

The administration is presently involved in various forms of litigation against the federal government over state's rights issues, including fish and wildlife management authorities, and other litigation options will become available during the coming legislative session. These options should be seriously and thoroughly examined.

Even if the legislature does not address a comprehensive subsistence management package, there will undoubtedly be numerous committee hearings dealing with the subject in some form.

B. NAVIGABLE WATERS. When Alaska became a state, the ownership and jurisdiction over all tide and submerged lands under navigable and territorial waters were transferred to the state except where the Congress had explicitly withdrawn them prior to statehood. This amounted to almost 60 million acres in addition to the statehood land grant. There are many areas in Alaska where jurisdiction and ownership over navigable waters and tide and submerged lands are still unresolved. The Senate Resources Committee held several hearings on this topic and legislation passed during this past session dealing with the issue of navigable waters and public access. It is expected that the issue of "navigable waters" will once again be a major subject during this coming session as the administration attempts to implement the law.

There are considerable points of disagreement between the Knowles administration and the legislature over where and how the state should aggressively protect its jurisdiction over navigable waters and the associated public access to and from these waterbodies.

Legislative staff have, however, been working closely with the Attorney General's office concerning possible amendments to federal laws, such as the Quiet Title Act, which could strengthen the state's legal position. At present, a draft white paper has been prepared. It is clear, however, that the long tedious process of determining navigability will continue unless some innovative solution is developed which expedites the process in Alaska.

C. WATER RIGHTS ADJUDICATION. The whole issue of water rights adjudication is critical to the state's interests. Where the state's have established an adjudication process, the federal agencies have basically abided by that process. Alaska presently has an adjudication process in place. There has been an interest in previous legislative sessions for the state to bolster its legal claim requiring federal reserved water rights adjudication through state courts. Unfortunately, this process is extremely costly and time consuming. Considering the vast number of potential conflicts over water rights and navigability determinations in the state, efforts have been made to establish a more rational administrative process. It is possible that some consideration may have to be given to crafting a linked federal/state solution which would require action by Congress and the State Legislature.

It is clear that if there is going to be a expedited process put in place that the legislature is going to have to take the lead.

D. RURAL EMPOWERMENT TASK FORCE. Governor Tony Knowles created the Rural Empowerment Task Force in 1998. The Task Force presented the Governor with a report in 1999. The responsibility of the Task Force was to develop mechanisms for empowering additional self government to rural communities, villages and tribal governments.

The Governor has appointed an administrative committee to negotiate with tribal governments on ways to implement some of the recommendations of the Commission on Rural Governance and Empowerment. Any recommendations from the Commission will more than likely require legislative action for implementation. Changes in state statutes or the State Constitution will undoubtedly demand intense legislative scrutiny.

E. RS 2477. Alaska has been working systematically towards the protection of its access rights established under the original Reserved Statute 2477 (RS 2477). RS 2477 provided for the granting of rights-of-ways across public lands for the construction and maintenance of highways (including paths and trails) for public use. The state of Alaska has been documenting access routes deemed to qualify under the RS 2477 rights-of-way grants. Of the 1,700 routes identified, 1,300 were researched and 600 routes were deemed to qualify under the provisions of RS 2477.

Despite the fact that Congress has never terminated rights-of-ways created or granted under RS 2477, the Department of Interior has initiated regulations and policies designed to thwart access grants under RS 2477. Because of the critical importance of access to the State, the Alaska Legislature has joined forces with other states to assure that RS 2477 grants are maintained. A close working relationship with our Washington delegation has provided assurances that regulations will not be adopted soon. The federal agencies continue, however, to work against the best interests of the states with regard to access across federal public lands.

The state legislature has adopted a statute asserting RS 2477 rights-of-way on specific routes and requiring state platting of these rights-of-way. The administration continues to drag its feet, however, in following through on the mandated language of the statute. It is possible that this issue may have to be addressed again during this next session.

F. ENDANGERED SPECIES ISSUES - BELUGA WHALES. Beluga whales in Cook Inlet continue to dominate a portion of our time and effort partly because of the possible listing under the federal and state Endangered Species Acts. Listing as endangered under either or both of the Acts could have significant impacts on resource development and uses in the Inlet.

Extrapolated 1999 fall counts of Beluga whales in Cook Inlet by National Marine Fisheries Service have pegged the population at approximately the same level as last year. If the count is relatively accurate, there is some indication that the precipitous decline may have stopped. It is doubtful that conclusion can be reached, however, until additional comparative population assessments can be made. The collective effort to significantly reduce the Native harvest appears to have been successful. National Marine Fisheries Service and Alaska Department of Fish and Game have indicated that relatively high harvest levels have been responsible for the rapid decline in this small population of whales.

Legislative staff have been in continuous contact with both the federal and state agencies in an effort to encourage aggressive action by the bureaucracies to avoid listing the population as endangered. The legislature has been a major force in urging the agencies to take preemptive action. The legislature was also a major player in urging Congress to provide the National Marine Fisheries Service with emergency authority to regulate the harvest prior to this past season.

The most recent twist to the continuing saga is the petition from Trustees For Alaska to list the Cook Inlet Beluga whale as endangered under the state's Endangered Species Act. The petition to list the Beluga whales as endangered under the state's Endangered Species Act has raised certain questions about the state's law which may need to be addressed by the legislature. We will brief the leadership on some of the problems which have been discovered.

RON SOMERVILLE

PERSONAL PROFILE SUMMARY

2/26/99

Raised in Craig, Alaska

60 year Alaskan Resident

14 Years as Commercial Fisherman

B.S. Degree in Wildlife Management - Humboldt State College - Arcata, Calif.

M.S. Degree in Wildlife Management - University of Montana - Missoula, Mont.

24 Years with Alaska Department of Fish and Game - Career Involved:

Research Biologist

Management Biologist

Lands Coordinator - Game Division

Regional Supervisor - Game Division

Director - Game Division

Special Assistant to the Commissioner - ADF&G

Deputy Commissioner - ADF&G

Served as the Alaska Department of Fish and Game's representative on the Governor's d2 Task Force from 1974 - 1979. Was fully involved in all aspects of the State's lobbying efforts on d2. Directed the establishment of the State's first full time office in Washington DC

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Was the first Executive Director of the Alaska Outdoor Council from 1983 - 1987.

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MEMORANDUM

TO: Pam Varni,
Executive Director
Legislative Affairs Agency

FR: Ted Popely
Project Director

RE: Sole Source Justification for Contract with Ron Somerville

DT: February 17, 1999

Ron Somerville possesses the skills, knowledge and experience essential to the work under this contract. His work with the Legislature over the past several years puts him in a rather unique position to assist the current Legislature in the work contemplated by this contract. It is unlikely that anyone else could perform the contract functions as effectively and efficiently due to Mr. Somerville's particular expertise in these matters. Therefore, it is not practical to award this contract through a competitive method, and it is in the best interest of the House Rules Committee to award this contract under section 040 of the Legislature's procurement procedures.

PROFESSIONAL SERVICES CONTRACT BETWEEN

ALASKA HOUSE RULES COMMITTEE

AND

RON SOMERVILLE
4506 ROBBIE ROAD
JUNEAU, AK 99801

CONTRACT AMOUNT: \$50,000.00
(excluding reimbursement for expenses)

The parties to this contract, made and entered into the date the Legislative Affairs Agency Executive Director or her designee signs the contract, are the Alaska House Rules Committee, whose address is 130 Seward Street, Suite 313, Juneau, Alaska 99801-2187, hereinafter referred to as the "Agency", and Ron Somerville, whose address is 4506 Robbie Road, hereinafter referred to as the "Consultant".

THE PURPOSE OF THIS CONTRACT IS TO PROVIDE research and consulting services to the Agency on a variety of state and federal issues.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

The Consultant shall research and consult with the Agency and other persons as directed by the Agency on a variety of state and federal issues, including but not limited to, subsistence, RS 2477 (rights of way), navigable waters determinations, National Park Service regulations, Department of Interior usurpation of power within Alaska, state and tribal sovereignty, and salmon treaty controversies, and shall perform other duties as determined by the Project Director.

CLAUSE II - PERIOD AND DATES OF PERFORMANCE AND TERMINATION

- (A) The work under this contract shall begin January 20, 1999 and terminate January 20, 2000.
- (B) This contract may be terminated by the Agency upon delivery of written

notice to the Consultant. If this contract is so terminated and the termination is not based on a breach by the Consultant, the Consultant shall be compensated for services provided under the terms of this contract to the date of termination if the Consultant provides the Agency with a written report containing a description of the services performed, a statement of the results or conclusions formed based upon the research or analysis performed, and a copy of the written material produced during the contract.

CLAUSE III - COMPENSATION AND METHOD OF PAYMENT

- (A) For the work specified in this contract the Consultant shall be compensated at the rate of \$50 per hour.
- (B) The Consultant will be reimbursed for those expenses that are necessary and reasonable for Consultant's performance of this contract and that are approved for reimbursement by the Project Director.
- (C) Payment shall be based on proper billing provided by the Consultant.
- (D) The Project Director must approve a billing before it may be paid.
- (E) If a payment is not made within 90 days after the Agency has received a proper billing, the Agency shall pay interest on the unpaid balance of the billing at the rate of 1.5 percent per month from, and including, the 91st day through the date payment is made. A payment is considered made on the date it is mailed or personally delivered to the Consultant.
- (F) Total payments under this contract, excluding reimbursement of expenses, may not exceed Fifty Thousand and No/100 Dollars (\$50,000.00).

CLAUSE IV - PROJECT DIRECTOR

The Project Director is Ted Popely, Majority Legal Counsel.

CLAUSE V - COVERAGE UNDER THE ETHICS LAW

The Consultant may be subject to the provisions of AS 24.60 (Legislative Ethics) as a legislative employee unless excluded from the definition of "legislative employee" under AS 24.60.990(10).

CLAUSE VI - EXPENSES AND DUPLICATION

- (A) Except as may be otherwise provided by Clause III, the office space, equipment, supplies, clerical support and other expenses that are necessary for the Consultant to carry out the Consultant's obligations under this contract shall be supplied and paid by the Consultant at no cost to the Agency.
- (B) Duplicates of any material or other item produced under this contract may be produced by the Agency; the office space, equipment, supplies, clerical support and other expenses required for the duplication shall be supplied by the Agency.

CLAUSE VII - RECORDS, DOCUMENTS, AUDIT

The Consultant shall accurately maintain those records, including detailed time records, that are required by the Project Director. The records are subject to inspection by the Agency or the Project Director at all reasonable times. Except for items licensed under this clause, all documents, reports, material and other items generated as a consequence of work done under this contract are the property of the Agency. To the extent they are works of authorship, they are deemed to be "works made for hire" under the copyright laws of the United States and will be and remain the sole and exclusive property of the Agency. If an item is not eligible under U.S. copyright laws to be a "work made for hire," the Contractor assigns to the Agency a perpetual license to use the items in the Agency's operations. Upon completion of the work or the termination of this contract, the items shall be delivered to the Project Director.

CLAUSE VIII - INDEMNIFICATION

The Consultant shall indemnify, save harmless, and defend the Agency, and the Agency's officers, agents and employees from liability for any claim, including costs and attorney fees arising from the claim, arising from Consultant's negligence in the performance of Consultant's obligations under this contract.

CLAUSE IX - VENUE

In the event that the parties to this contract find it necessary to litigate the terms of the contract, venue shall be the State of Alaska, First Judicial District, at Juneau, and the

contract shall be interpreted according to the laws of Alaska.

CLAUSE X - ASSIGNMENT

This contract may not be assigned to another party unless in accordance with sec. 160 of the Procurement Procedures of the Alaska State Legislature.

CLAUSE XI - WORKERS' COMPENSATION

During the life of this contract, the Consultant shall, in accordance with AS 23.30.045(d), provide and maintain workers' compensation insurance. The Consultant shall require any subcontractor to provide and maintain workers' compensation insurance for the subcontractor's employees. Consultant shall provide the Agency, upon request, with written proof of the coverage required by this clause.

CLAUSE XII - AUTHORIZATION AND CERTIFICATION.

Execution of this contract was authorized by a majority of the members of the Alaska House Rules Committee in a meeting on _____, 1999.

The use of a sole source exemption under Procurement Procedure 040(a) for this contract was approved by a majority of the members of the Alaska House Rules Committee on the same date as above and has been approved by the procurement officer. The justification for the exemption is attached as Exhibit A to this contract.

Execution of this contract by the Legislative Affairs Agency Executive Director or her designee hereby constitutes a certification that funds are available in an appropriation to pay for work performed through June 1999. Availability of funds to pay for work performed from July 1, 1999 through January 20, 2000 is contingent upon appropriations of funds for the next fiscal year. In addition to any other right of the Agency to terminate the contract, if, in the judgement of the Executive Director of the Legislative Affairs Agency, sufficient funds are not appropriated for the next fiscal year, the contract will be amended or canceled. To terminate under this paragraph, the Agency shall provide notice of termination to the Consultant.

CLAUSE XIII - MODIFICATION AND PREVIOUS AGREEMENTS

This document contains all terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be

deemed to exist or to bind either of the parties to this contract.

This contract may not be modified unless in writing and signed by the parties to this contract.

IN WITNESS WHEREOF, the parties have executed this contract on the dates indicated below:

CONSULTANT:
RON SOMERVILLE

Ron Somerville 2/22/99
Ron Somerville Date
SSN 562-46-2397

AGENCY:
ALASKA HOUSE RULES COMMITTEE

Rep. John Cowdery, Chair Date
House Rules Committee
Procurement Officer

ACCEPTED:

Ted Popely Date
Project Director

APPROVED AS TO FORM:

Theresa J. Bannister 2-19-99
Legal Counsel Date

CERTIFYING AUTHORITY:

Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

Interim:
716 West 4th Ave., Suite
320 Anchorage, AK 99501

Phone: 907-269-0222
Fax: 907-269-0223
Toll Free: 1-888-269-3879



**Representative
John J. Cowdery
Chairman
House Rules
Committee**

Session:
State Capitol Bldg., Suite
204
Juneau, AK 99801

Phone: 907-465-3879
Fax: 907-465-2069
Toll Free: 1-888-269-3879

DATE: January 24, 2000

TO: House Rules Committee Members

FROM: Representative John J. Cowdery
House Rules Committee

RE: Rules Committee Meeting

CC: Speaker Porter, Representative Green, Representative Phillips,
Representative Kott, Representative Berkowitz, Representative Joule

The House Rules Committee will have a scheduled committee meeting
at the following time:

**Monday
January 31, 2000
4:00 PM
Butrovich Room**

Professional Services Contract

LITIGATION

1.) MOSES V. CIGNA

In September, the Legislature filed an amicus brief in this case relating to Tribal sovereign immunity. The case involved denial of State workers' compensation benefits by an insurance carrier to avoid paying benefits to a Yup'ik widow whose Yup'ik husband died on the job while employed by an IRA Council in Mekoryuk. If the Alaska Supreme Court rules in favor of the insurance carrier, the decision could stand for the proposition that all 226 "federally recognized tribes" are hereafter exempt from compliance with any number of state laws. The case has been submitted to the Alaska Supreme Court and is currently pending.

2.) JOHN V. BAKER

In the meantime, this case went before the Alaska Supreme Court. It is a child custody dispute involving parents from different Native villages. In the Court's final majority opinion, Justice Fabe explicitly recognized the validity of Alaska's 226 entities as "federally recognized tribes." The language contained in this opinion would essentially decide the issues before the court in *Moses v. Cigna*.

Don Mitchell was retained by the Office of Public Advocacy in its representation of Mr. Baker. He has written and filed a petition for writ of certiorari before the United States Supreme Court. It is the last avenue of appeal for this case. The Leadership has written a letter asking that the Delegation file an amicus brief also asking the Court to review the Alaska court's decision. They have apparently declined to do so.

I have written an amicus brief for the leadership asking the Court to review the case. It will be filed this week.

The State A.G.'s office filed its own amicus brief asking that the Supreme Court *not* hear the appeal. They are satisfied with the Alaska court's holding.

3.) RURAL EMPOWERMENT TASK FORCE

No litigation yet. There has been a substantial amount of media attention lately relating to the Governor's intention to meet re- granting villages additional powers of self-governance. AFN has also recently been to Congress seeking changes to federal law regarding Native powers, including self-rule, fish and game co-management, and other powers.

4.) SCHOOL FUNDING

This 1997 case, *Kasayulie v. State of Alaska*, called into question the state's methodology for funding capital projects for education in Alaska. In September, the Superior Court granted the Plaintiffs' motion for summary judgment. It held that the current funding mechanism violates the Education Clause of Alaska's Constitution. Because rural areas do not have substantially equal access to facilities funding, the Court ruled, the funding mechanism violates the Constitution and is therefore invalid. A final order is currently pending. When issued, the State will file its notice of appeal.

In the meantime, the parties have entered into settlement negotiations with the State. Several legislators have expressed some discomfort with the notion that the Department of Law is negotiating the appropriation level for school funding.

5.) RURAL POLICE/VPSO FUNDING

This case was filed last Fall challenging the State's method of funding its rural police, Trooper and Village Public Safety Officers programs. Similar to the school funding case, the plaintiffs seek to invalidate the method by which the State allocates funds for police protection. The complaint alleges that rural and bush areas are vastly underfunded as compared to urban Alaskan areas, thus resulting in an inequitable and unsafe situation for much of rural Alaska.

6.) KATIE JOHN CASE

On January 7 of this year, U.S. District Court Judge Holland issued a final judgment in *Katie John et al. v. United States of America et al.* This case had been stayed until October 1, 1999, the date that federal subsistence fisheries regulations took effect.

The plaintiffs alleged that ANILCA requires the federal government to manage fisheries in navigable waters of Alaska. Both the District Court and the Ninth Circuit Court of Appeals agreed in part and the Appellate Court held that the term "public lands" includes navigable waters in which the United States has reserved water rights. Under the reserved water rights doctrine, when the United States withdraws land and reserves it for a federal purpose, it also reserves by implication water rights minimally necessary to fulfill the purposes of the reservation.

The court remanded the case to the Departments of Interior and Agriculture to identify those waters. The state's petition to the U.S. Supreme Court asking it to review the Ninth Circuit decision was denied in 1996. In January 1999, the Departments of Interior and Agriculture published final regulations to assume management of subsistence fisheries. The regulations cover subsistence activities on all waters within or adjacent to the exterior boundaries of 34 identified federal area, including national parks, refuges, preserves, monuments, wild and scenic rivers, and national forests. They also will extend the Federal Subsistence Board's management to some federal lands selected under ANCSA or the Alaska Statehood Act until conveyed. In addition, the rules purport to

confirm the Secretaries' authority to restrict or eliminate hunting, fishing and trapping on state and private lands when these activities interfere with the subsistence priority on the public lands.

Now that the final regulations are effective, Judge Holland has issued this final judgment. Procedurally, that means that the State has 60 days from January 7 to file its Notice of Appeal if it wishes to appeal to the Ninth Circuit Court of Appeals. That court would undoubtedly issue an unfavorable ruling, which could then be appealed to the U.S. Supreme Court.

The Department of Law and the Administration may or may not choose to appeal the case. If they do not, the result for the state could be serious. Experts through several Administrations have felt that this case is positioned perfectly for a reversal by the U.S. Supreme Court. First, the decision could have impacts well beyond the State of Alaska, extending its effect on many western states with related water management issues. That prospect obviously supports the Supreme Court's desire to hear the case. Second and more importantly, Chief Justice Rehnquist and Justice Sandra Day O'Connor are renowned water law experts. It is widely believed that they would never allow the Ninth Circuit's decision to stand. It is virtually unheard of for the reserved water rights doctrine to stand for the proposition that the federal government reserved water rights so that it may extend management and control downstream from the federal reserve to affect fisheries and other activities. Rather, the reserved water rights doctrine evolved from the federal government's need to reserve its power to prevent upstream states and citizens from affecting the federal government's land downstream.

Not unlike the legislature's role in the *Venetie* case, it is in a position to elevate the issue publicly and to place pressure on the Administration to either appeal the case or state its reasons for declining to do so. The time frame is extremely short--we now have 25 days to file a Notice of Appeal. The Resources Committees have scheduled hearings to examine the Department of Law's position with respect to the appeal. Appropriate funding for this appeal process is something that will merit further discussion as well.

If the Administration chooses not to appeal the case, the Legislature will not have standing to continue the litigation. Private litigants affected by the decision may intervene, but the Legislature almost certainly cannot.

7.) BABBITT LITIGATION

This is a past case where the Legislature and the Administration sharply disagreed. The case, originally brought under the Hickel Administration, challenged the authority of the Secretary of Interior to assume management of subsistence caught fish and game in Alaska. Nothing in ANILCA or Congressional history leading up to the momentous legislation created any authority for the secretary to so manage within Alaska. To the contrary, Congressional history clearly demonstrates that Congress was confronted with the choice, and deliberately chose to not confer such authority on the Secretary.

The Assistant Attorneys General working on the case felt we had an excellent chance of prevailing at the appellate level. When Governor Knowles was elected, however, he directed the Department of Law to withdraw its appeal of the case with prejudice. The Legislature attempted to intervene, but the court denied standing, and the case was lost.

8.) VENETIE

This litigation consisted of 2 distinct parts: one issue was the Tribal issue, the other the Indian Country issue. Again, the case began long before Governor Knowles was elected to office. He again directed his Department of Law to drop its motion for reconsideration after losing on the Tribal issue.

On the issue of the existence of Indian Country in Alaska, the State successfully challenged the lower court's ruling, achieving a 9-0 decision from the U.S. Supreme Court.

MEMORANDUM

TO: Senate President Drue Pearce
and
House Speaker Brian Porter

FR: Ron Somerville, Resource Consultant, Senate and House Majorities
&
Ted Popely, Legal Counsel, Senate and House Majorities

RE: Major Resources Issues

DT: January 5, 2000

The following is a brief summary of some of the major natural resources issues and related litigation which the legislature has been dealing with in some form and we anticipate will be major topics during this next year and the upcoming session.

1. STATE/FEDERAL LEGISLATIVE ISSUES

A. SUBSISTENCE. Senator Murkowski and Congressman Young continue to pursue legislative remedies to extend a moratorium on federal management of subsistence fisheries. They have also pushed for legislation which would provide a window of opportunity for the state to regain management on federal lands once appropriate changes were made to the state Constitution and statutes. Chances of legislation passing, however, appear slim with strong opposition from the Secretary of Interior.

B. ANILCA AMENDMENTS. Senator Murkowski has introduced legislation to make technical and clarifying amendments to ANILCA. Major conflicts have occurred since the passage of ANILCA, such as the restrictions on public access, which need to be clarified. Access to inholdings, Title 11 restrictions dealing with transportation corridors, maintenance of private cabins on some federal lands and the identification of compatible uses allowed on federal lands are some of the issues that need to be addressed. In the past, the legislature has taken an active role in promoting some of these changes.

C. ENDANGERED SPECIES ACT REAUTHORIZATION. Congress continues to delay passing a reauthorization bill for the Endangered Species Act, mostly due to the stalemate over proposals to revamp or reform the Endangered Species Act and its programs. It is questionable that any legislation will pass Congress this next session. Alaskans continue to be impacted by questionable interpretations and applications of the law. Direct conflicts between the timber industry and the southeastern wolves and goshawks,

between Steller sea lions and the fisheries industry and between Columbia River king salmon and Alaska's fisheries clearly illustrate the potential and real impacts. The legislature has continually taken a much more aggressive position than the Knowles administration in providing support to the Alaska delegation for major reforms to the Act.

D. RS 2477. The Secretary has attempted to push through regulations which would significantly reduce or restrict RS 2477 assertions by Alaska or any other state. The Alaska delegation has successfully inserted appropriations language prohibiting the adoption of these regulations. The federal agencies continue to implement the restrictive policy of the Secretary of Interior by administrative actions.

E. OCS REVENUE SHARING. Legislation has been introduced in both the U.S. Senate and House dealing with proposed OCS Revenue Sharing. Because of the formulas used and the fact that this legislation is designed to benefit coastal states and those adjacent to the Great Lakes, a significant amount of money may be targeted for Alaska. It is estimated that Alaska may have up to \$100 million at stake.

Legislation has passed out of the House Resources Committee, chaired by Congressman Young, and will more than likely come to the House floor fairly early this coming session. If passed by the House, the future of this revenue sharing bill is uncertain in the Senate.

There continues to be strong opposition to this legislation from private property rights organizations. Although some accommodations have been made, it appears that additional compromises will be necessary if any legislation is going to pass.

F. TRIBAL SOVEREIGNTY. Litigation continues over the subject of village tribal sovereignty, although the U.S. Supreme Court made it clear in the "Venetie" case that the bulk of ANCSA lands transferred to the corporations do not constitute "Indian Country." Recognition by the federal and state governments that tribal governments do exist in Alaska has resulted in litigation concerning the extent of tribal sovereignty that remains. See memo from Ted Popely concerning the detailed legal analysis.

Of major concern to the state is the recent proposal by AFN and other Native groups for Congress to modify ANCSA and ANILCA to grant expanded governmental powers of self-determination. Details of their proposal have not been fully reviewed but reports are that many of the powers reserved to state government entities would be transferred to or legally shared with village tribal governments under their proposal.

Close scrutiny of this issue should continue as there are major differences between the legislature and the state administration over how to deal with the

issue of tribal sovereignty and self-determination. If the administration attempts to implement most of the recommendations of the Commission on Rural Governance and Empowerment then major conflicts with the legislature will most likely occur.

2. STATE/FEDERAL NON-LEGISLATIVE ISSUES

A. FEDERAL SUBSISTENCE LAW IMPLEMENTATION. The federal agencies have adopted final regulations for the implementation of federal subsistence fisheries regulations on federal public lands. In many cases, these regulations are in direct conflict with state regulations. The big question remains – whether or not the Secretary can extend his jurisdiction on to adjacent state and private lands to effectively implement a subsistence priority on federal public lands. As further regulatory actions are taken by the Federal Subsistence Board, decisions will have to be made concerning what litigation strategies will be implemented. The legislature should and will be involved in developing that strategy due to the conceivably large price tag.

B. MAGNUSON/STEVENS ACT AMENDMENT IMPLEMENTATION. The North Pacific Fisheries Management Council (NPFMC) continues the process of reviewing changes to the Magnuson/Stevens Act dealing with fisheries management within 200 miles of the Alaskan coast. The major changes involve allocation of pollock in the North Pacific and the Bering Sea. Major shifts from the offshore processors to inshore processors are required. Additional language relating to bycatch and community development quotas were also included in the amendments.

The Council still must prepare any recommendations it may have to the Secretary of Commerce concerning critical habitat considerations. As mentioned previously, this is a new role for the Council.

The Council has decided not to reallocate more pollock to the recovery effort for Steller sea lion. The fact that western Steller sea lion populations are listed as Endangered raises the possibility of more litigation attempting to close the pollock fishery by some of the animal rights groups.

The Council will be meeting in February of 2000.

The Magnuson/Stevens Act is up for reauthorization.

C. NATIONAL WILDLIFE REFUGE REFORM IMPLEMENTATION. Congress passed legislation reforming the National Wildlife Refuge System two years ago with considerably more emphasis on protecting traditional uses. The development of regulations implementing this Act have still not been completed, although some regulations have been proposed dealing with "compatibility" criteria. Since Alaska has the vast majority of this nation's wildlife refuges, it is imperative that the state be a major participant in the final regulatory process.

D. ENDANGERED SPECIES ACT IMPLEMENTATION. National environmental groups have attempted to use the ESA as a tool to stop development. Proposals to improperly utilize the listing of species as endangered or threatened have included species like wolves and goshawks in Alaska. Continued vigilance and monitoring of ESA regulations is required. New proposed listings such as Beluga whales in Cook Inlet could pose major problems for the state. The legislature has traditionally been more aggressive in protecting state interests in this arena than has Governor Knowles.

As mentioned above, there is a real potential threat of new litigation designed to close all or most of the north Pacific pollock fishery because of the continued decline of Steller sea lion in western Alaska. The state must be a very active player in any legal or political solution developed over the recovery of this species.

E. GLACIER BAY COMMERCIAL FISHING REGULATIONS. The NPS continues with its program to phase out commercial fishing in Glacier Bay proper and establish co-management authority with the state on outer waters along the coast. The state has consistently taken the position that the marine waters are the exclusive jurisdiction of the state. Working out any co-management agreements with the federal agency may require legislative involvement.

F. ANTIQUITIES ACT WITHDRAWALS. There continues to be some rumors that the Clinton Administration intends to use the Antiquities Act authorities of the President to withdraw sizable acreage in the West, including Alaska, for expanded National Parks or similar designations. Some protection exists in Alaska under ANILCA against the establishment of permanent withdrawals of this type. There would most certainly be a legal confrontation, however. Impacts on Alaska could be severe if this type of action were not successfully challenged.

G. NATIONAL MARINE PRESERVES. There is growing support within the national environmental groups to establish National Marine Preserves. Agencies like the National Park Service and National Marine Fisheries Service have been considering Marine Preserves for years. Special attention has to be given to monitoring agency efforts in this regard and assuring that state jurisdictions are not negatively impacted in any designations that occur.

H. BIODIVERSITY TREATY IMPLEMENTATION. President Clinton signed the Biodiversity Treaty his first year in office. Since then, the agencies, under the leadership and guidance of Secretary Babbitt, have been attempting to implement a plan to designate large areas as Biodiversity Reserves and to provide federal oversight over land and water use activities within these and adjacent areas. Significant amounts of state and private lands and waters are included in some of the proposals. Numerous state jurisdictional issues are involved which requires close monitoring and active involvement by the state.

I. NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL

REGULATIONS. The Council has again proposed consideration of very controversial halibut subsistence regulations which could discriminate between Alaskan residents based on race. These regulations had been placed on hold but will be up for further consideration in February or April, 2000. The NPFMC is also considering critical habitat recommendations for possible Secretary of Commerce actions. Changes to the Magnuson/Stevens Act has broadened the responsibilities of the Council regarding habitat issues. It is unclear where this additional responsibility will lead but there could be potential impacts on other activities within marine waters of the state.

There have been some frustrations expressed recently over the fact that the Council has been increasing its regulatory influence over fish, particularly halibut, harvested recreationally rather than commercially. The lack of sport fishery representation on the Council has become a major issue with some members of the public.

J. USFS REGULATIONS. The U.S. Forest Service is presently undergoing a major overhaul. New regulations have been proposed basically redefining the mission and goals of the agency. New planning regulations are also being proposed along with various regulatory and policy actions designed to make the agency more acceptable to the environmental community. The legislature has been a strong critic of the emerging agency, especially as it pertains to resource development and uses. Proposed increases in roadless withdrawals could have serious impacts on an already heavily impacted timber industry.

K. TLMP IMPLEMENTATION. The U.S. Forest Service will continue the process of implementing the Tongass Land Management Plan. The viability of the timber industry in southeast Alaska is critically tied to the implementation of this plan. Further removal of land from the timber base could be a devastating blow to the industry. Of particular interest is the attempt to establish major roadless areas within major portions of the forest now open to timber cutting. The short and long term effect of this action will be to further inhibit timber harvesting and exacerbate the existing economic turmoil and create even greater conflicts between the timber industry and the environmental community over cutting opportunities in areas that remain available.

L. CO-MANAGEMENT AGREEMENTS WITH TRIBAL GOVERNMENTS. Increased pressure is being applied to the Secretary of Interior to develop and implement fish and wildlife co-management agreements with tribal governments. In light of the State's court victory over the existence of "Indian Country" in Alaska, it is questionable where these agreements can be applied in Alaska. Major concerns exist over possible attempts to improperly delegate federal jurisdictional authorities and potential direct conflicts with state management jurisdictions.

It is clear that the issue of co-management agreements will be raised in current negotiations between the state administration and tribal governments in their discussions on "rural empowerment." Any delegation of jurisdiction will, however, require legislative concurrence and possibly a state Constitution change.

M. U.S./CANADA SALMON TREATY. The treaty process had completely stalled although there were continued efforts to maintain some semblance of a coordinated conservation program on the primary salmon species involved. Canada has continued in their attempts to bypass the treaty process to get direct government to government intervention. Although nothing has been finalized, there has been a new effort initiated to get this treaty back on track.

The general perception that this treaty only affects southeast Alaska has resulted in some ambivalence throughout the rest of the state. Because of the wide ranges of some stocks of kings salmon from the Columbia River and other streams in the Pacific Northwest, the impacts could be significantly expanded. Columbia River king salmon have been located in fisheries as far away as the Bering Sea. Certainly, fisheries in the Kodiak and Cook Inlet areas could be affected.

N. CREATION OF INDIAN TRUST LANDS. DOI has proposed regulations dealing with tribal conversion of land to Indian Country by giving land to the agency to be held in trust. If allowed for corporate lands conveyed under ANCSA, this could create "Indian Country" by a backdoor method. It would also negate the major purpose of ANCSA and negate the U.S. Supreme Courts decision in the "Venetie" case. The legislature has submitted initial comments and should continue to maintain a strong presence on this issue.

O. NPS REGULATIONS - TRADITIONAL ACCESS. The NPS has attempted to eliminate snowmachine access to the central (core) portion of Denali National Park. This action has resulted in litigation on the grounds that this action is illegal and overturns a major concession given to the state when ANILCA was passed in 1980. Section 1110 (a) of ANILCA reads, in part:

"Notwithstanding any other provisions of this Act or other law, the Secretary shall permit on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from Villages and homesites".

In essence, the law guarantees "traditional access" within the Conservation Units established under ANILCA. The law does allow the Secretary to establish

reasonable regulations but the Units are opened to traditional access unless the Secretary can demonstrate that such uses would be detrimental to the values of the resources or areas. A federal judge recently agreed with the initial claims filed by the plaintiffs in their suit against the NPS. The Secretary has responded with proposed restrictive regulatory interpretations of the law to define "traditional activities" in such a way as to significantly reduce these activities in the Park, which would undermine the basic intent of the law.

Although there is very little snowmachine use of the core Park area, this conflict has ramifications far beyond the boundaries of Denali National Park. If the Secretary of Interior is allowed to legally limit traditional activities by narrowly defining "traditional access", the impacts will affect virtually every federal Conservation Unit established in the state. The impact could well include over 120 million acres of federal lands.

See Ted Popely's memo concerning the recent ruling by Judge Sedwick over proposed temporary NPS regulations essentially banning snowmachine use in most of Denali National Park. Essentially, Judge Sedwick agreed that NPS had not followed the law. Proposed permanent regulations are designed to overcome the ruling by Judge Sedwick and narrowly define "traditional uses" in the park in such a way as to eliminate the uses.

P. WATERFOWL MANAGEMENT REGULATORY PROCESS. Last year, Congress passed a Protocol amendment to the Migratory Bird Treaty which provided for controlled spring and summer harvesting of migratory birds -- a practice which was illegal under the old Treaty. The amendment also established a more complex regulatory process primarily directed at Alaska. Some of the management options being considered by the Secretary of Interior would create major conflicts within the state. The state should be an active participant in identifying management regimes that are workable.

3. **LITIGATION.** See January 2000 memo from Ted Popely.

4. **STATE ISSUES**

A. ALASKA SUBSISTENCE LAW. The leadership of the Alaska State Legislature is well aware of the existing conflicts in federal and state law dealing with the management of subsistence uses of fish and wildlife resources on federal public lands. Previous general and special sessions of the legislature have not resulted in any meaningful short term or permanent solution to the growing social and economic crisis.

Since the federal agencies assumed management of subsistence uses of fish and wildlife on federal public lands on October 1, 1999, it is clear that there are going to be escalating conflicts between the federal and state agencies over the management of these resources. If it is the decision of the leadership that this issue not be dealt with in the second session of the twenty-first legislature, then

it seems appropriate to develop a strategy within the state to address obvious attempts by the federal agencies to extend their jurisdiction far beyond the boundaries of the federal conservation units.

If it is in the state's best interest to do everything possible to protect its fish and wildlife management authorities, it is imperative that the legislature and the Knowles administration collectively adopt and fund a comprehensive program to aggressively pursue every possible avenue -- including a litigation strategy.

The memo from Ted Popely, Legal Counsel, will briefly summarize the results of the Legislative Council lawsuit concerning subsistence and fish and wildlife management jurisdictions.

The administration is presently involved in various forms of litigation against the federal government over state's rights issues, including fish and wildlife management authorities, and other litigation options will become available during the coming legislative session. These options should be seriously and thoroughly examined.

Even if the legislature does not address a comprehensive subsistence management package, there will undoubtedly be numerous committee hearings dealing with the subject in some form.

B. NAVIGABLE WATERS. When Alaska became a state, the ownership and jurisdiction over all tide and submerged lands under navigable and territorial waters were transferred to the state except where the Congress had explicitly withdrawn them prior to statehood. This amounted to almost 60 million acres in addition to the statehood land grant. There are many areas in Alaska where jurisdiction and ownership over navigable waters and tide and submerged lands are still unresolved. The Senate Resources Committee held several hearings on this topic and legislation passed during this past session dealing with the issue of navigable waters and public access. It is expected that the issue of "navigable waters" will once again be a major subject during this coming session as the administration attempts to implement the law.

There are considerable points of disagreement between the Knowles administration and the legislature over where and how the state should aggressively protect its jurisdiction over navigable waters and the associated public access to and from these waterbodies.

Legislative staff have, however, been working closely with the Attorney General's office concerning possible amendments to federal laws, such as the Quiet Title Act, which could strengthen the state's legal position. At present, a draft white paper has been prepared. It is clear, however, that the long tedious process of determining navigability will continue unless some innovative solution is developed which expedites the process in Alaska.

C. WATER RIGHTS ADJUDICATION. The whole issue of water rights adjudication is critical to the state's interests. Where the state's have established an adjudication process, the federal agencies have basically abided by that process. Alaska presently has an adjudication process in place. There has been an interest in previous legislative sessions for the state to bolster its legal claim requiring federal reserved water rights adjudication through state courts. Unfortunately, this process is extremely costly and time consuming. Considering the vast number of potential conflicts over water rights and navigability determinations in the state, efforts have been made to establish a more rational administrative process. It is possible that some consideration may have to be given to crafting a linked federal/state solution which would require action by Congress and the State Legislature.

It is clear that if there is going to be a expedited process put in place that the legislature is going to have to take the lead.

D. RURAL EMPOWERMENT TASK FORCE. Governor Tony Knowles created the Rural Empowerment Task Force in 1998. The Task Force presented the Governor with a report in 1999. The responsibility of the Task Force was to develop mechanisms for empowering additional self government to rural communities, villages and tribal governments.

The Governor has appointed an administrative committee to negotiate with tribal governments on ways to implement some of the recommendations of the Commission on Rural Governance and Empowerment. Any recommendations from the Commission will more than likely require legislative action for implementation. Changes in state statutes or the State Constitution will undoubtedly demand intense legislative scrutiny.

E. RS 2477. Alaska has been working systematically towards the protection of its access rights established under the original Reserved Statute 2477 (RS 2477). RS 2477 provided for the granting of rights-of-ways across public lands for the construction and maintenance of highways (including paths and trails) for public use. The state of Alaska has been documenting access routes deemed to qualify under the RS 2477 rights-of-way grants. Of the 1,700 routes identified, 1,300 were researched and 600 routes were deemed to qualify under the provisions of RS 2477.

Despite the fact that Congress has never terminated rights-of-ways created or granted under RS 2477, the Department of Interior has initiated regulations and policies designed to thwart access grants under RS 2477. Because of the critical importance of access to the State, the Alaska Legislature has joined forces with other states to assure that RS 2477 grants are maintained. A close working relationship with our Washington delegation has provided assurances that regulations will not be adopted soon. The federal agencies continue, however, to work against the best interests of the states with regard to access across federal public lands.

The state legislature has adopted a statute asserting RS 2477 rights-of-way on specific routes and requiring state platting of these rights-of-way. The administration continues to drag its feet, however, in following through on the mandated language of the statute. It is possible that this issue may have to be addressed again during this next session.

F. ENDANGERED SPECIES ISSUES - BELUGA WHALES. Beluga whales in Cook Inlet continue to dominate a portion of our time and effort partly because of the possible listing under the federal and state Endangered Species Acts. Listing as endangered under either or both of the Acts could have significant impacts on resource development and uses in the Inlet.

Extrapolated 1999 fall counts of Beluga whales in Cook Inlet by National Marine Fisheries Service have pegged the population at approximately the same level as last year. If the count is relatively accurate, there is some indication that the precipitous decline may have stopped. It is doubtful that conclusion can be reached, however, until additional comparative population assessments can be made. The collective effort to significantly reduce the Naive harvest appears to have been successful. National Marine Fisheries Service and Alaska Department of Fish and Game have indicated that relatively high harvest levels have been responsible for the rapid decline in this small population of whales.

Legislative staff have been in continuous contact with both the federal and state agencies in an effort to encourage aggressive action by the bureaucracies to avoid listing the population as endangered. The legislature has been a major force in urging the agencies to take preemptive action. The legislature was also a major player in urging Congress to provide the National Marine Fisheries Service with emergency authority to regulate the harvest prior to this past season.

The most recent twist to the continuing saga is the petition from Trustees For Alaska to list the Cook Inlet Beluga whale as endangered under the state's Endangered Species Act. The petition to list the Beluga whales as endangered under the state's Endangered Species Act has raised certain questions about the state's law which may need to be addressed by the legislature. We will brief the leadership on some of the problems which have been discovered.

PROFESSIONAL SERVICES CONTRACT AMENDMENT BETWEEN
ALASKA HOUSE RULES COMMITTEE

AND

RON SOMERVILLE
4506 ROBBIE ROAD
JUNEAU, AK 99801

AMENDED CONTRACT AMOUNT: \$100,000.00
(excluding reimbursement for expenses)

The parties to this contract amendment, made and entered into the date the Legislative Affairs Agency Executive Director or her designee signs the contract amendment, are the Alaska House Rules Committee, whose address is State Capitol, Juneau, Alaska 99801-1182, hereinafter referred to as the "Agency", and Ron Somerville, whose address is 4506 Robbie Road, hereinafter referred to as the "Consultant".

This document amends the March 3, 1999, professional services contract between the Agency and the Consultant.

IT IS THEREFORE MUTUALLY AGREED THAT:

1. **Paragraph (A) of CLAUSE II – PERIOD AND DATES OF PERFORMANCE AND TERMINATION, IS AMENDED TO READ AS FOLLOWS:**

(A) The work under this contract shall begin January 20, 1999 and terminate January 20, 2001.

2. **Paragraph (F) of CLAUSE III – COMPENSATION AND METHOD OF PAYMENT, IS AMENDED TO READ AS FOLLOWS:**

(F) Total payments under this contract, excluding reimbursement of expenses, may not exceed One Hundred Thousand and No/100 Dollars (\$100,000.00).

AUTHORIZATION AND CERTIFICATION.

Execution of this contract was authorized by a majority of the members of the Alaska House Rules Committee in a meeting on _____, 2000.

RON SOMERVILLE

PERSONAL PROFILE SUMMARY

2/26/99

Raised in Craig, Alaska

60 year Alaskan Resident

14 Years as Commercial Fisherman

B.S. Degree in Wildlife Management - Humboldt State College - Arcata, Calif.

M.S. Degree in Wildlife Management - University of Montana - Missoula, Mont.

24 Years with Alaska Department of Fish and Game - Career Involved:

Research Biologist

Management Biologist

Lands Coordinator - Game Division

Regional Supervisor - Game Division

Director - Game Division

Special Assistant to the Commissioner - ADF&G

Deputy Commissioner - ADF&G

Served as the Alaska Department of Fish and Game's representative on the Governor's d2 Task Force from 1974 - 1979. Was fully involved in all aspects of the State's lobbying efforts on d2. Directed the establishment of the State's first full time office in Washington DC

Retired the first time in 1983 and the second time in 1994.

Was the first Executive Director of the Alaska Outdoor Council from 1983 - 1987.

Was employed by the Wildlife Legislative Fund of America in 1987 to set up their Washington DC office. This organization was primarily dedicated to countering the animal rights movement and maintaining regulated hunting and fishing opportunities.

Presently Self Employed as Natural Resources Consultant - Including 4 years as Technical Consultant to the Senate and House majorities.

An active member in Juneau's Territorial Sportsmen - presently serving on the nine member Board of Directors. Also serves on the Territorial Sportsmen Scholarship Foundation which promotes educational scholarships for local high school graduates. Since its inception this program has given out almost \$1 million in high school scholarships and graduate fellowships.

MEMORANDUM

TO: Pam Varni,
Executive Director
Legislative Affairs Agency

FR: Ted Popely
Project Director

RE: Source Justification for Contract with Ron Somerville

DT: February 17, 1999

Ron Somerville possesses the skills, knowledge and experience essential to the work under this contract. His work with the Legislature over the past several years puts him in a rather unique position to assist the current Legislature in the work contemplated by this contract. It is unlikely that anyone else could perform the contract functions as effectively and efficiently due to Mr. Somerville's particular expertise in these matters. Therefore, it is not practical to award this contract through a competitive method, and it is in the best interest of the House Rules Committee to award this contract under section 040 of the Legislature's procurement procedures.

PROFESSIONAL SERVICES CONTRACT BETWEEN

ALASKA HOUSE RULES COMMITTEE

AND

RON SOMERVILLE
4506 ROBBIE ROAD
JUNEAU, AK 99801

CONTRACT AMOUNT: \$50,000.00
(excluding reimbursement for expenses)

The parties to this contract, made and entered into the date the Legislative Affairs Agency Executive Director or her designee signs the contract, are the Alaska House Rules Committee, whose address is 130 Seward Street, Suite 313, Juneau, Alaska 99801-2187, hereinafter referred to as the "Agency", and Ron Somerville, whose address is 4506 Robbie Road, hereinafter referred to as the "Consultant".

THE PURPOSE OF THIS CONTRACT IS TO PROVIDE research and consulting services to the Agency on a variety of state and federal issues.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

The Consultant shall research and consult with the Agency and other persons as directed by the Agency on a variety of state and federal issues, including but not limited to, subsistence, RS 2477 (rights of way), navigable waters determinations, National Park Service regulations, Department of Interior usurpation of power within Alaska, state and tribal sovereignty, and salmon treaty controversies, and shall perform other duties as determined by the Project Director.

CLAUSE II - PERIOD AND DATES OF PERFORMANCE AND TERMINATION

- (A) The work under this contract shall begin January 20, 1999 and terminate January 20, 2000.
- (B) This contract may be terminated by the Agency upon delivery of written

1

notice to the Consultant. If this contract is so terminated and the termination is not based on a breach by the Consultant, the Consultant shall be compensated for services provided under the terms of this contract to the date of termination if the Consultant provides the Agency with a written report containing a description of the services performed, a statement of the results or conclusions formed based upon the research or analysis performed, and a copy of the written material produced during the contract.

CLAUSE III - COMPENSATION AND METHOD OF PAYMENT

- (A) For the work specified in this contract the Consultant shall be compensated at the rate of \$50 per hour.
- (B) The Consultant will be reimbursed for those expenses that are necessary and reasonable for Consultant's performance of this contract and that are approved for reimbursement by the Project Director.
- (C) Payment shall be based on proper billing provided by the Consultant.
- (D) The Project Director must approve a billing before it may be paid.
- (E) If a payment is not made within 90 days after the Agency has received a proper billing, the Agency shall pay interest on the unpaid balance of the billing at the rate of 1.5 percent per month from, and including, the 91st day through the date payment is made. A payment is considered made on the date it is mailed or personally delivered to the Consultant.
- (F) Total payments under this contract, excluding reimbursement of expenses, may not exceed Fifty Thousand and No/100 Dollars (\$50,000.00).

CLAUSE IV - PROJECT DIRECTOR

The Project Director is Ted Popely, Majority Legal Counsel.

CLAUSE V - COVERAGE UNDER THE ETHICS LAW

The Consultant may be subject to the provisions of AS 24.60 (Legislative Ethics) as a legislative employee unless excluded from the definition of "legislative employee" under AS 24.60.990(10).

CLAUSE VI - EXPENSES AND DUPLICATION

- (A) Except as may be otherwise provided by Clause III, the office space, equipment, supplies, clerical support and other expenses that are necessary for the Consultant to carry out the Consultant's obligations under this contract shall be supplied and paid by the Consultant at no cost to the Agency.
- (B) Duplicates of any material or other item produced under this contract may be produced by the Agency; the office space, equipment, supplies, clerical support and other expenses required for the duplication shall be supplied by the Agency.

CLAUSE VII - RECORDS, DOCUMENTS, AUDIT

The Consultant shall accurately maintain those records, including detailed time records, that are required by the Project Director. The records are subject to inspection by the Agency or the Project Director at all reasonable times. Except for items licensed under this clause, all documents, reports, material and other items generated as a consequence of work done under this contract are the property of the Agency. To the extent they are works of authorship, they are deemed to be "works made for hire" under the copyright laws of the United States and will be and remain the sole and exclusive property of the Agency. If an item is not eligible under U.S. copyright laws to be a "work made for hire," the Contractor assigns to the Agency a perpetual license to use the items in the Agency's operations. Upon completion of the work or the termination of this contract, the items shall be delivered to the Project Director.

CLAUSE VIII - INDEMNIFICATION

The Consultant shall indemnify, save harmless, and defend the Agency, and the Agency's officers, agents and employees from liability for any claim, including costs and attorney fees arising from the claim, arising from Consultant's negligence in the performance of Consultant's obligations under this contract.

CLAUSE IX - VENUE

In the event that the parties to this contract find it necessary to litigate the terms of the contract, venue shall be the State of Alaska, First Judicial District, at Juneau, and the

contract shall be interpreted according to the laws of Alaska.

CLAUSE X - ASSIGNMENT

This contract may not be assigned to another party unless in accordance with sec. 160 of the Procurement Procedures of the Alaska State Legislature.

CLAUSE XI - WORKERS' COMPENSATION

During the life of this contract, the Consultant shall, in accordance with AS 23.30.045(d), provide and maintain workers' compensation insurance. The Consultant shall require any subcontractor to provide and maintain workers' compensation insurance for the subcontractor's employees. Consultant shall provide the Agency, upon request, with written proof of the coverage required by this clause.

CLAUSE XII - AUTHORIZATION AND CERTIFICATION.

Execution of this contract was authorized by a majority of the members of the Alaska House Rules Committee in a meeting on _____, 1999.

The use of a sole source exemption under Procurement Procedure 040(a) for this contract was approved by a majority of the members of the Alaska House Rules Committee on the same date as above and has been approved by the procurement officer. The justification for the exemption is attached as Exhibit A to this contract.

Execution of this contract by the Legislative Affairs Agency Executive Director or her designee hereby constitutes a certification that funds are available in an appropriation to pay for work performed through June 1999. Availability of funds to pay for work performed from July 1, 1999 through January 20, 2000 is contingent upon appropriations of funds for the next fiscal year. In addition to any other right of the Agency to terminate the contract, if, in the judgement of the Executive Director of the Legislative Affairs Agency, sufficient funds are not appropriated for the next fiscal year, the contract will be amended or canceled. To terminate under this paragraph, the Agency shall provide notice of termination to the Consultant.

CLAUSE XIII - MODIFICATION AND PREVIOUS AGREEMENTS

This document contains all terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be

deemed to exist or to bind either of the parties to this contract.

This contract may not be modified unless in writing and signed by the parties to this contract.

IN WITNESS WHEREOF, the parties have executed this contract on the dates indicated below:

CONSULTANT:
RON SOMERVILLE

Ron Somerville 2/22/99
Ron Somerville Date
SSN 562-46-2397

AGENCY:
ALASKA HOUSE RULES COMMITTEE

Rep. John Cowdery, Chair Date
House Rules Committee
Procurement Officer

ACCEPTED:

Ted Popely Date
Project Director

APPROVED AS TO FORM:

Sheresa J. Bannister 2-19-99
Legal Counsel Date

CERTIFYING AUTHORITY:

Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

PROFESSIONAL SERVICES CONTRACT AMENDMENT BETWEEN

ALASKA HOUSE RULES COMMITTEE

AND

RON SOMERVILLE
4506 ROBBIE ROAD
JUNEAU, AK 99801

AMENDED CONTRACT AMOUNT: \$100,000.00
(excluding reimbursement for expenses)

The parties to this contract amendment, made and entered into the date the Legislative Affairs Agency Executive Director or her designee signs the contract amendment, are the Alaska House Rules Committee, whose address is State Capitol, Juneau, Alaska 99801-1182, hereinafter referred to as the "Agency", and Ron Somerville, whose address is 4506 Robbie Road, hereinafter referred to as the "Consultant".

This document amends the March 3, 1999, professional services contract between the Agency and the Consultant.

IT IS THEREFORE MUTUALLY AGREED THAT:

1. **Paragraph (A) of CLAUSE II – PERIOD AND DATES OF PERFORMANCE AND TERMINATION, IS AMENDED TO READ AS FOLLOWS:**

(A) The work under this contract shall begin January 20, 1999 and terminate January 20, 2001.

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(F) Total payments under this contract, excluding reimbursement of expenses, may not exceed One Hundred Thousand and No/100 Dollars (\$100,000.00).

AUTHORIZATION AND CERTIFICATION.

Execution of this contract was authorized by a majority of the members of the Alaska House Rules Committee in a meeting on _____, 2000.

RON SOMERVILLE

PERSONAL PROFILE SUMMARY

1/24/00

Raised in Craig, Alaska

60 year Alaskan Resident

14 Years as Commercial Fisherman

B.S. Degree in Wildlife Management - Humboldt State College - Arcata, Calif.

M.S. Degree in Wildlife Management - University of Montana - Missoula, Mont.

24 Years with Alaska Department of Fish and Game - Career Involved:

Research Biologist

Management Biologist

Lands Coordinator - Game Division

Regional Supervisor - Game Division

Director - Game Division

Special Assistant to the Commissioner - ADF&G

Deputy Commissioner - ADF&G

Served as the Alaska Department of Fish and Game's representative on the Governor's d2 Task Force from 1974 - 1979. Was fully involved in all aspects of the State's lobbying efforts on d2. Directed the establishment of the State's first full time office in Washington DC

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Was employed by the Wildlife Legislative Fund of America in 1987 to set up their Washington DC office. This organization was primarily dedicated to countering the animal rights movement and maintaining regulated hunting and fishing opportunities.

Presently Self Employed as Natural Resources Consultant - Including 5 years as Technical Consultant to the Senate and House majorities.

An active member in Juneau's Territorial Sportsmen - presently serving on the nine member Board of Directors. Also serves on the Territorial Sportsmen Scholarship Foundation which promotes educational scholarships for local high school graduates. The Territorial Sportsmen have been granting local scholarships for over 50 years. The Foundation has committed to reaching the total of \$1 million in high school scholarships and graduate fellowships this year.

MEMORANDUM

TO: Senate President Drue Pearce
and
House Speaker Brian Porter

FR: Ron Somerville, Resource Consultant, Senate and House Majorities
&
Ted Popely, Legal Counsel, Senate and House Majorities

RE: Major Resources Issues

DT: January 5, 2000

The following is a brief summary of some of the major natural resources issues and related litigation which the legislature has been dealing with in some form and we anticipate will be major topics during this next year and the upcoming session.

1. STATE/FEDERAL LEGISLATIVE ISSUES

A. SUBSISTENCE. Senator Murkowski and Congressman Young continue to pursue legislative remedies to extend a moratorium on federal management of subsistence fisheries. They have also pushed for legislation which would provide a window of opportunity for the state to regain management on federal lands once appropriate changes were made to the state Constitution and statutes. Chances of legislation passing, however, appear slim with strong opposition from the Secretary of Interior.

B. ANILCA AMENDMENTS. Senator Murkowski has introduced legislation to make technical and clarifying amendments to ANILCA. Major conflicts have occurred since the passage of ANILCA, such as the restrictions on public access, which need to be clarified. Access to inholdings, Title 11 restrictions dealing with transportation corridors, maintenance of private cabins on some federal lands and the identification of compatible uses allowed on federal lands are some of the issues that need to be addressed. In the past, the legislature has taken an active role in promoting some of these changes.

C. ENDANGERED SPECIES ACT REAUTHORIZATION. Congress continues to delay passing a reauthorization bill for the Endangered Species Act, mostly due to the stalemate over proposals to revamp or reform the Endangered Species Act and its programs. It is questionable that any legislation will pass Congress this next session. Alaskans continue to be impacted by questionable interpretations and applications of the law. Direct conflicts between the timber industry and the southeastern wolves and goshawks,

between Steller sea lions and the fisheries industry and between Columbia River king salmon and Alaska's fisheries clearly illustrate the potential and real impacts. The legislature has continually taken a much more aggressive position than the Knowles administration in providing support to the Alaska delegation for major reforms to the Act.

D. RS 2477. The Secretary has attempted to push through regulations which would significantly reduce or restrict RS 2477 assertions by Alaska or any other state. The Alaska delegation has successfully inserted appropriations language prohibiting the adoption of these regulations. The federal agencies continue to implement the restrictive policy of the Secretary of Interior by administrative actions.

E. OCS REVENUE SHARING. Legislation has been introduced in both the U.S. Senate and House dealing with proposed OCS Revenue Sharing. Because of the formulas used and the fact that this legislation is designed to benefit coastal states and those adjacent to the Great Lakes, a significant amount of money may be targeted for Alaska. It is estimated that Alaska may have up to \$100 million at stake.

Legislation has passed out of the House Resources Committee, chaired by Congressman Young, and will more than likely come to the House floor fairly early this coming session. If passed by the House, the future of this revenue sharing bill is uncertain in the Senate.

There continues to be strong opposition to this legislation from private property rights organizations. Although some accommodations have been made, it appears that additional compromises will be necessary if any legislation is going to pass.

F. TRIBAL SOVEREIGNTY. Litigation continues over the subject of village tribal sovereignty, although the U.S. Supreme Court made it clear in the "Venetie" case that the bulk of ANCSA lands transferred to the corporations do not constitute "Indian Country." Recognition by the federal and state governments that tribal governments do exist in Alaska has resulted in litigation concerning the extent of tribal sovereignty that remains. See memo from Ted Popely concerning the detailed legal analysis.

Of major concern to the state is the recent proposal by AFN and other Native groups for Congress to modify ANCSA and ANILCA to grant expanded governmental powers of self-determination. Details of their proposal have not been fully reviewed but reports are that many of the powers reserved to state government entities would be transferred to or legally shared with village tribal governments under their proposal.

Close scrutiny of this issue should continue as there are major differences between the legislature and the state administration over how to deal with the

issue of tribal sovereignty and self-determination. If the administration attempts to implement most of the recommendations of the Commission on Rural Governance and Empowerment then major conflicts with the legislature will most likely occur.

2. STATE/FEDERAL NON-LEGISLATIVE ISSUES

A. FEDERAL SUBSISTENCE LAW IMPLEMENTATION. The federal agencies have adopted final regulations for the implementation of federal subsistence fisheries regulations on federal public lands. In many cases, these regulations are in direct conflict with state regulations. The big question remains -- whether or not the Secretary can extend his jurisdiction on to adjacent state and private lands to effectively implement a subsistence priority on federal public lands. As further regulatory actions are taken by the Federal Subsistence Board, decisions will have to be made concerning what litigation strategies will be implemented. The legislature should and will be involved in developing that strategy due to the conceivably large price tag.

B. MAGNUSON/STEVENS ACT AMENDMENT IMPLEMENTATION. The North Pacific Fisheries Management Council (NPFMC) continues the process of reviewing changes to the Magnuson/Stevens Act dealing with fisheries management within 200 miles of the Alaskan coast. The major changes involve allocation of pollock in the North Pacific and the Bering Sea. Major shifts from the offshore processors to inshore processors are required. Additional language relating to bycatch and community development quotas were also included in the amendments.

The Council still must prepare any recommendations it may have to the Secretary of Commerce concerning critical habitat considerations. As mentioned previously, this is a new role for the Council.

The Council has decided not to reallocate more pollock to the recovery effort for Steller sea lion. The fact that western Steller sea lion populations are listed as Endangered raises the possibility of more litigation attempting to close the pollock fishery by some of the animal rights groups.

The Council will be meeting in February of 2000.

The Magnuson/Stevens Act is up for reauthorization.

C. NATIONAL WILDLIFE REFUGE REFORM IMPLEMENTATION. Congress passed legislation reforming the National Wildlife Refuge System two years ago with considerably more emphasis on protecting traditional uses. The development of regulations implementing this Act have still not been completed, although some regulations have been proposed dealing with "compatibility" criteria. Since Alaska has the vast majority of this nation's wildlife refuges, it is imperative that the state be a major participant in the final regulatory process.

D. ENDANGERED SPECIES ACT IMPLEMENTATION. National environmental groups have attempted to use the ESA as a tool to stop development. Proposals to improperly utilize the listing of species as endangered or threatened have included species like wolves and goshawks in Alaska. Continued vigilance and monitoring of ESA regulations is required. New proposed listings such as Beluga whales in Cook Inlet could pose major problems for the state. The legislature has traditionally been more aggressive in protecting state interests in this arena than has Governor Knowles.

As mentioned above, there is a real potential threat of new litigation designed to close all or most of the north Pacific pollock fishery because of the continued decline of Steller sea lion in western Alaska. The state must be a very active player in any legal or political solution developed over the recovery of this species.

E. GLACIER BAY COMMERCIAL FISHING REGULATIONS. The NPS continues with its program to phase out commercial fishing in Glacier Bay proper and establish co-management authority with the state on outer waters along the coast. The state has consistently taken the position that the marine waters are the exclusive jurisdiction of the state. Working out any co-management agreements with the federal agency may require legislative involvement.

F. ANTIQUITIES ACT WITHDRAWALS. There continues to be some rumors that the Clinton Administration intends to use the Antiquities Act authorities of the President to withdraw sizable acreage in the West, including Alaska, for expanded National Parks or similar designations. Some protection exists in Alaska under ANILCA against the establishment of permanent withdrawals of this type. There would most certainly be a legal confrontation, however. Impacts on Alaska could be severe if this type of action were not successfully challenged.

G. NATIONAL MARINE PRESERVES. There is growing support within the national environmental groups to establish National Marine Preserves. Agencies like the National Park Service and National Marine Fisheries Service have been considering Marine Preserves for years. Special attention has to be given to monitoring agency efforts in this regard and assuring that state jurisdictions are not negatively impacted in any designations that occur.

H. BIODIVERSITY TREATY IMPLEMENTATION. President Clinton signed the Biodiversity Treaty his first year in office. Since then, the agencies, under the leadership and guidance of Secretary Babbitt, have been attempting to implement a plan to designate large areas as Biodiversity Reserves and to provide federal oversight over land and water use activities within these and adjacent areas. Significant amounts of state and private lands and waters are included in some of the proposals. Numerous state jurisdictional issues are involved which requires close monitoring and active involvement by the state.

I. NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL

REGULATIONS. The Council has again proposed consideration of very controversial halibut subsistence regulations which could discriminate between Alaskan residents based on race. These regulations had been placed on hold but will be up for further consideration in February or April, 2000. The NPFMC is also considering critical habitat recommendations for possible Secretary of Commerce actions. Changes to the Magnuson/Stevens Act has broadened the responsibilities of the Council regarding habitat issues. It is unclear where this additional responsibility will lead but there could be potential impacts on other activities within marine waters of the state.

There have been some frustrations expressed recently over the fact that the Council has been increasing its regulatory influence over fish, particularly halibut, harvested recreationally rather than commercially. The lack of sport fishery representation on the Council has become a major issue with some members of the public.

J. USFS REGULATIONS. The U.S. Forest Service is presently undergoing a major overhaul. New regulations have been proposed basically redefining the mission and goals of the agency. New planning regulations are also being proposed along with various regulatory and policy actions designed to make the agency more acceptable to the environmental community. The legislature has been a strong critic of the emerging agency, especially as it pertains to resource development and uses. Proposed increases in roadless withdrawals could have serious impacts on an already heavily impacted timber industry.

K. TLMP IMPLEMENTATION. The U.S. Forest Service will continue the process of implementing the Tongass Land Management Plan. The viability of the timber industry in southeast Alaska is critically tied to the implementation of this plan. Further removal of land from the timber base could be a devastating blow to the industry. Of particular interest is the attempt to establish major roadless areas within major portions of the forest now open to timber cutting. The short and long term effect of this action will be to further inhibit timber harvesting and exacerbate the existing economic turmoil and create even greater conflicts between the timber industry and the environmental community over cutting opportunities in areas that remain available.

L. CO-MANAGEMENT AGREEMENTS WITH TRIBAL GOVERNMENTS. Increased pressure is being applied to the Secretary of Interior to develop and implement fish and wildlife co-management agreements with tribal governments. In light of the State's court victory over the existence of "Indian Country" in Alaska, it is questionable where these agreements can be applied in Alaska. Major concerns exist over possible attempts to improperly delegate federal jurisdictional authorities and potential direct conflicts with state management jurisdictions.

It is clear that the issue of co-management agreements will be raised in current negotiations between the state administration and tribal governments in their discussions on "rural empowerment." Any delegation of jurisdiction will, however, require legislative concurrence and possibly a state Constitution change.

M. U.S./CANADA SALMON TREATY. The treaty process had completely stalled although there were continued efforts to maintain some semblance of a coordinated conservation program on the primary salmon species involved. Canada has continued in their attempts to bypass the treaty process to get direct government to government intervention. Although nothing has been finalized, there has been a new effort initiated to get this treaty back on track.

The general perception that this treaty only affects southeast Alaska has resulted in some ambivalence throughout the rest of the state. Because of the wide ranges of some stocks of kings salmon from the Columbia River and other streams in the Pacific Northwest, the impacts could be significantly expanded. Columbia River king salmon have been located in fisheries as far away as the Bering Sea. Certainly, fisheries in the Kodiak and Cook Inlet areas could be affected.

N. CREATION OF INDIAN TRUST LANDS. DOI has proposed regulations dealing with tribal conversion of land to Indian Country by giving land to the agency to be held in trust. If allowed for corporate lands conveyed under ANCSA, this could create "Indian Country" by a backdoor method. It would also negate the major purpose of ANCSA and negate the U.S. Supreme Courts decision in the "Venetie" case. The legislature has submitted initial comments and should continue to maintain a strong presence on this issue.

O. NPS REGULATIONS - TRADITIONAL ACCESS. The NPS has attempted to eliminate snowmachine access to the central (core) portion of Denali National Park. This action has resulted in litigation on the grounds that this action is illegal and overturns a major concession given to the state when ANILCA was passed in 1980. Section 1110 (a) of ANILCA reads, in part:

"Notwithstanding any other provisions of this Act or other law, the Secretary shall permit on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from Villages and homesites".

In essence, the law guarantees "traditional access" within the Conservation Units established under ANILCA. The law does allow the Secretary to establish

reasonable regulations but the Units are opened to traditional access unless the Secretary can demonstrate that such uses would be detrimental to the values of the resources or areas. A federal judge recently agreed with the initial claims filed by the plaintiffs in their suit against the NPS. The Secretary has responded with proposed restrictive regulatory interpretations of the law to define "traditional activities" in such a way as to significantly reduce these activities in the Park, which would undermine the basic intent of the law.

Although there is very little snowmachine use of the core Park area, this conflict has ramifications far beyond the boundaries of Denali National Park. If the Secretary of Interior is allowed to legally limit traditional activities by narrowly defining "traditional access", the impacts will affect virtually every federal Conservation Unit established in the state. The impact could well include over 120 million acres of federal lands.

See Ted Popely's memo concerning the recent ruling by Judge Sedwick over proposed temporary NPS regulations essentially banning snowmachine use in most of Denali National Park. Essentially, Judge Sedwick agreed that NPS had not followed the law. Proposed permanent regulations are designed to overcome the ruling by Judge Sedwick and narrowly define "traditional uses" in the park in such a way as to eliminate the uses.

P. WATERFOWL MANAGEMENT REGULATORY PROCESS. Last year, Congress passed a Protocol amendment to the Migratory Bird Treaty which provided for controlled spring and summer harvesting of migratory birds -- a practice which was illegal under the old Treaty. The amendment also established a more complex regulatory process primarily directed at Alaska. Some of the management options being considered by the Secretary of Interior would create major conflicts within the state. The state should be an active participant in identifying management regimes that are workable.

3. **LITIGATION.** See January 2000 memo from Ted Popely.

4. **STATE ISSUES**

A. ALASKA SUBSISTENCE LAW. The leadership of the Alaska State Legislature is well aware of the existing conflicts in federal and state law dealing with the management of subsistence uses of fish and wildlife resources on federal public lands. Previous general and special sessions of the legislature have not resulted in any meaningful short term or permanent solution to the growing social and economic crisis.

Since the federal agencies assumed management of subsistence uses of fish and wildlife on federal public lands on October 1, 1999, it is clear that there are going to be escalating conflicts between the federal and state agencies over the management of these resources. If it is the decision of the leadership that this issue not be dealt with in the second session of the twenty-first legislature, then

it seems appropriate to develop a strategy within the state to address obvious attempts by the federal agencies to extend their jurisdiction far beyond the boundaries of the federal conservation units.

If it is in the state's best interest to do everything possible to protect its fish and wildlife management authorities, it is imperative that the legislature and the Knowles administration collectively adopt and fund a comprehensive program to aggressively pursue every possible avenue -- including a litigation strategy.

The memo from Ted Popely, Legal Counsel, will briefly summarize the results of the Legislative Council lawsuit concerning subsistence and fish and wildlife management jurisdictions.

The administration is presently involved in various forms of litigation against the federal government over state's rights issues, including fish and wildlife management authorities, and other litigation options will become available during the coming legislative session. These options should be seriously and thoroughly examined.

Even if the legislature does not address a comprehensive subsistence management package, there will undoubtedly be numerous committee hearings dealing with the subject in some form.

B. NAVIGABLE WATERS. When Alaska became a state, the ownership and jurisdiction over all tide and submerged lands under navigable and territorial waters were transferred to the state except where the Congress had explicitly withdrawn them prior to statehood. This amounted to almost 60 million acres in addition to the statehood land grant. There are many areas in Alaska where jurisdiction and ownership over navigable waters and tide and submerged lands are still unresolved. The Senate Resources Committee held several hearings on this topic and legislation passed during this past session dealing with the issue of navigable waters and public access. It is expected that the issue of "navigable waters" will once again be a major subject during this coming session as the administration attempts to implement the law.

There are considerable points of disagreement between the Knowles administration and the legislature over where and how the state should aggressively protect its jurisdiction over navigable waters and the associated public access to and from these waterbodies.

Legislative staff have, however, been working closely with the Attorney General's office concerning possible amendments to federal laws, such as the Quiet Title Act, which could strengthen the state's legal position. At present, a draft white paper has been prepared. It is clear, however, that the long tedious process of determining navigability will continue unless some innovative solution is developed which expedites the process in Alaska.

C. WATER RIGHTS ADJUDICATION. The whole issue of water rights adjudication is critical to the state's interests. Where the state's have established an adjudication process, the federal agencies have basically abided by that process. Alaska presently has an adjudication process in place. There has been an interest in previous legislative sessions for the state to bolster its legal claim requiring federal reserved water rights adjudication through state courts. Unfortunately, this process is extremely costly and time consuming. Considering the vast number of potential conflicts over water rights and navigability determinations in the state, efforts have been made to establish a more rational administrative process. It is possible that some consideration may have to be given to crafting a linked federal/state solution which would require action by Congress and the State Legislature.

It is clear that if there is going to be a expedited process put in place that the legislature is going to have to take the lead.

D. RURAL EMPOWERMENT TASK FORCE. Governor Tony Knowles created the Rural Empowerment Task Force in 1998. The Task Force presented the Governor with a report in 1999. The responsibility of the Task Force was to develop mechanisms for empowering additional self government to rural communities, villages and tribal governments.

The Governor has appointed an administrative committee to negotiate with tribal governments on ways to implement some of the recommendations of the Commission on Rural Governance and Empowerment. Any recommendations from the Commission will more than likely require legislative action for implementation. Changes in state statutes or the State Constitution will undoubtedly demand intense legislative scrutiny.

E. RS 2477. Alaska has been working systematically towards the protection of its access rights established under the original Reserved Statute 2477 (RS 2477). RS 2477 provided for the granting of rights-of-ways across public lands for the construction and maintenance of highways (including paths and trails) for public use. The state of Alaska has been documenting access routes deemed to qualify under the RS 2477 rights-of-way grants. Of the 1,700 routes identified, 1,300 were researched and 600 routes were deemed to qualify under the provisions of RS 2477.

Despite the fact that Congress has never terminated rights-of-ways created or granted under RS 2477, the Department of Interior has initiated regulations and policies designed to thwart access grants under RS 2477. Because of the critical importance of access to the State, the Alaska Legislature has joined forces with other states to assure that RS 2477 grants are maintained. A close working relationship with our Washington delegation has provided assurances that regulations will not be adopted soon. The federal agencies continue, however, to work against the best interests of the states with regard to access across federal public lands.

The state legislature has adopted a statute asserting RS 2477 rights-of-way on specific routes and requiring state platting of these rights-of-way. The administration continues to drag its feet, however, in following through on the mandated language of the statute. It is possible that this issue may have to be addressed again during this next session.

F. ENDANGERED SPECIES ISSUES - BELUGA WHALES. Beluga whales in Cook Inlet continue to dominate a portion of our time and effort partly because of the possible listing under the federal and state Endangered Species Acts. Listing as endangered under either or both of the Acts could have significant impacts on resource development and uses in the Inlet.

Extrapolated 1999 fall counts of Beluga whales in Cook Inlet by National Marine Fisheries Service have pegged the population at approximately the same level as last year. If the count is relatively accurate, there is some indication that the precipitous decline may have stopped. It is doubtful that conclusion can be reached, however, until additional comparative population assessments can be made. The collective effort to significantly reduce the Native harvest appears to have been successful. National Marine Fisheries Service and Alaska Department of Fish and Game have indicated that relatively high harvest levels have been responsible for the rapid decline in this small population of whales.

Legislative staff have been in continuous contact with both the federal and state agencies in an effort to encourage aggressive action by the bureaucracies to avoid listing the population as endangered. The legislature has been a major force in urging the agencies to take preemptive action. The legislature was also a major player in urging Congress to provide the National Marine Fisheries Service with emergency authority to regulate the harvest prior to this past season.

The most recent twist to the continuing saga is the petition from Trustees For Alaska to list the Cook Inlet Beluga whale as endangered under the state's Endangered Species Act. The petition to list the Beluga whales as endangered under the state's Endangered Species Act has raised certain questions about the state's law which may need to be addressed by the legislature. We will brief the leadership on some of the problems which have been discovered.

RON SOMERVILLE

PERSONAL PROFILE SUMMARY

2/26/99

Raised in Craig, Alaska

60 year Alaskan Resident

14 Years as Commercial Fisherman

B.S. Degree in Wildlife Management - Humboldt State College - Arcata, Calif.

M.S. Degree in Wildlife Management - University of Montana - Missoula, Mont.

24 Years with Alaska Department of Fish and Game - Career Involved:

Research Biologist

Management Biologist

Lands Coordinator - Game Division

Regional Supervisor - Game Division

Director - Game Division

Special Assistant to the Commissioner - ADF&G

Deputy Commissioner - ADF&G

Served as the Alaska Department of Fish and Game's representative on the Governor's d2 Task Force from 1974 - 1979. Was fully involved in all aspects of the State's lobbying efforts on d2. Directed the establishment of the State's first full time office in Washington DC

Retired the first time in 1983 and the second time in 1994.

Was the first Executive Director of the Alaska Outdoor Council from 1983 - 1987.

Was employed by the Wildlife Legislative Fund of America in 1987 to set up their Washington DC office. This organization was primarily dedicated to countering the animal rights movement and maintaining regulated hunting and fishing opportunities.

Presently Self Employed as Natural Resources Consultant - Including 4 years as Technical Consultant to the Senate and House majorities.

An active member in Juneau's Territorial Sportsmen - presently serving on the nine member Board of Directors. Also serves on the Territorial Sportsmen Scholarship Foundation which promotes educational scholarships for local high school graduates. Since its inception this program has given out almost \$1 million in high school scholarships and graduate fellowships.

MEMORANDUM

TO: Pam Varni,
Executive Director
Legislative Affairs Agency

FR: Ted Popely
Project Director

RE: Sole Source Justification for Contract with Ron Somerville

DT: February 17, 1999

Ron Somerville possesses the skills, knowledge and experience essential to the work under this contract. His work with the Legislature over the past several years puts him in a rather unique position to assist the current Legislature in the work contemplated by this contract. It is unlikely that anyone else could perform the contract functions as effectively and efficiently due to Mr. Somerville's particular expertise in these matters. Therefore, it is not practical to award this contract through a competitive method, and it is in the best interest of the House Rules Committee to award this contract under section 040 of the Legislature's procurement procedures.

PROFESSIONAL SERVICES CONTRACT BETWEEN

ALASKA HOUSE RULES COMMITTEE

AND

RON SOMERVILLE
4506 ROBBIE ROAD
JUNEAU, AK 99801

CONTRACT AMOUNT: \$50,000.00
(excluding reimbursement for expenses)

The parties to this contract, made and entered into the date the Legislative Affairs Agency Executive Director or her designee signs the contract, are the Alaska House Rules Committee, whose address is 130 Seward Street, Suite 313, Juneau, Alaska 99801-2187, hereinafter referred to as the "Agency", and Ron Somerville, whose address is 4506 Robbie Road, hereinafter referred to as the "Consultant".

THE PURPOSE OF THIS CONTRACT IS TO PROVIDE research and consulting services to the Agency on a variety of state and federal issues.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF WORK

The Consultant shall research and consult with the Agency and other persons as directed by the Agency on a variety of state and federal issues, including but not limited to, subsistence, RS 2477 (rights of way), navigable waters determinations, National Park Service regulations, Department of Interior usurpation of power within Alaska, state and tribal sovereignty, and salmon treaty controversies, and shall perform other duties as determined by the Project Director.

CLAUSE II - PERIOD AND DATES OF PERFORMANCE AND TERMINATION

- (A) The work under this contract shall begin January 20, 1999 and terminate January 20, 2000.
- (B) This contract may be terminated by the Agency upon delivery of written

notice to the Consultant. If this contract is so terminated and the termination is not based on a breach by the Consultant, the Consultant shall be compensated for services provided under the terms of this contract to the date of termination if the Consultant provides the Agency with a written report containing a description of the services performed, a statement of the results or conclusions formed based upon the research or analysis performed, and a copy of the written material produced during the contract.

CLAUSE III - COMPENSATION AND METHOD OF PAYMENT

- (A) For the work specified in this contract the Consultant shall be compensated at the rate of \$50 per hour.
- (B) The Consultant will be reimbursed for those expenses that are necessary and reasonable for Consultant's performance of this contract and that are approved for reimbursement by the Project Director.
- (C) Payment shall be based on proper billing provided by the Consultant.
- (D) The Project Director must approve a billing before it may be paid.
- (E) If a payment is not made within 90 days after the Agency has received a proper billing, the Agency shall pay interest on the unpaid balance of the billing at the rate of 1.5 percent per month from, and including, the 91st day through the date payment is made. A payment is considered made on the date it is mailed or personally delivered to the Consultant.
- (F) Total payments under this contract, excluding reimbursement of expenses, may not exceed Fifty Thousand and No/100 Dollars (\$50,000.00).

CLAUSE IV - PROJECT DIRECTOR

The Project Director is Ted Popely, Majority Legal Counsel.

CLAUSE V - COVERAGE UNDER THE ETHICS LAW

The Consultant may be subject to the provisions of AS 24.60 (Legislative Ethics) as a legislative employee unless excluded from the definition of "legislative employee" under AS 24.60.990(10).

CLAUSE VI - EXPENSES AND DUPLICATION

- (A) Except as may be otherwise provided by Clause III, the office space, equipment, supplies, clerical support and other expenses that are necessary for the Consultant to carry out the Consultant's obligations under this contract shall be supplied and paid by the Consultant at no cost to the Agency.
- (B) Duplicates of any material or other item produced under this contract may be produced by the Agency; the office space, equipment, supplies, clerical support and other expenses required for the duplication shall be supplied by the Agency.

CLAUSE VII - RECORDS, DOCUMENTS, AUDIT

The Consultant shall accurately maintain those records, including detailed time records, that are required by the Project Director. The records are subject to inspection by the Agency or the Project Director at all reasonable times. Except for items licensed under this clause, all documents, reports, material and other items generated as a consequence of work done under this contract are the property of the Agency. To the extent they are works of authorship, they are deemed to be "works made for hire" under the copyright laws of the United States and will be and remain the sole and exclusive property of the Agency. If an item is not eligible under U.S. copyright laws to be a "work made for hire," the Contractor assigns to the Agency a perpetual license to use the items in the Agency's operations. Upon completion of the work or the termination of this contract, the items shall be delivered to the Project Director.

CLAUSE VIII - INDEMNIFICATION

The Consultant shall indemnify, save harmless, and defend the Agency, and the Agency's officers, agents and employees from liability for any claim, including costs and attorney fees arising from the claim, arising from Consultant's negligence in the performance of Consultant's obligations under this contract.

CLAUSE IX - VENUE

In the event that the parties to this contract find it necessary to litigate the terms of the contract, venue shall be the State of Alaska, First Judicial District, at Juneau, and the

contract shall be interpreted according to the laws of Alaska.

CLAUSE X - ASSIGNMENT

This contract may not be assigned to another party unless in accordance with sec. 160 of the Procurement Procedures of the Alaska State Legislature.

CLAUSE XI - WORKERS' COMPENSATION

During the life of this contract, the Consultant shall, in accordance with AS 23.30.045(d), provide and maintain workers' compensation insurance. The Consultant shall require any subcontractor to provide and maintain workers' compensation insurance for the subcontractor's employees. Consultant shall provide the Agency, upon request, with written proof of the coverage required by this clause.

CLAUSE XII - AUTHORIZATION AND CERTIFICATION.

Execution of this contract was authorized by a majority of the members of the Alaska House Rules Committee in a meeting on _____, 1999.

The use of a sole source exemption under Procurement Procedure 040(a) for this contract was approved by a majority of the members of the Alaska House Rules Committee on the same date as above and has been approved by the procurement officer. The justification for the exemption is attached as Exhibit A to this contract.

Execution of this contract by the Legislative Affairs Agency Executive Director or her designee hereby constitutes a certification that funds are available in an appropriation to pay for work performed through June 1999. Availability of funds to pay for work performed from July 1, 1999 through January 20, 2000 is contingent upon appropriations of funds for the next fiscal year. In addition to any other right of the Agency to terminate the contract, if, in the judgement of the Executive Director of the Legislative Affairs Agency, sufficient funds are not appropriated for the next fiscal year, the contract will be amended or canceled. To terminate under this paragraph, the Agency shall provide notice of termination to the Consultant.

CLAUSE XIII - MODIFICATION AND PREVIOUS AGREEMENTS

This document contains all terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be

Interim:
716 West 4th Ave., Suite
320 Anchorage, AK 99501

Phone: 907-269-0222
Fax: 907-269-0223
Toll Free: 1-888-269-3879



**Representative
John J. Cowdery
Chairman
House Rules
Committee**

Session:
State Capitol Bldg., Suite
204
Juneau, AK 99801

Phone: 907-465-3879
Fax: 907-465-2069
Toll Free: 1-888-269-3879

DATE: January 24, 2000

TO: House Rules Committee Members

FROM: Representative John J. Cowdery;
House Rules Committee

RE: Rules Committee Meeting

CC: Speaker Porter, Representative Green, Representative Phillips,
Representative Kott, Representative Berkowitz, Representative Joule

The House Rules Committee will have a scheduled committee meeting
at the following time:

**Monday
January 31, 2000
4:00 PM
Butrovich Room**

Professional Services Contract

RON SOMERVILLE

PERSONAL PROFILE SUMMARY

1/24/00

Raised in Craig, Alaska

60 year Alaskan Resident

14 Years as Commercial Fisherman

B.S. Degree in Wildlife Management - Humboldt State College - Arcata, Calif.

M.S. Degree in Wildlife Management - University of Montana - Missoula, Mont.

24 Years with Alaska Department of Fish and Game - Career Involved:

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Director - Game Division

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Fax: 907-465-2069

Toll Free: 1-888-269-3879

**Representative
John J. Cowdery
Chairman
House Rules
Committee**

DATE: January 24, 2000

TO: House Rules Committee Members

FROM: Representative John J. Cowdery
House Rules Committee

RE: Rules Committee Meeting

CC: Speaker Porter, Representative Green, Representative Phillips,
Representative Kott, Representative Berkowitz, Representative Joule

The House Rules Committee will have a scheduled committee meeting
at the following time:

**Monday
January 31, 2000
4:00 PM
Butrovich Room**

Professional Services Contract

Emerald Contract Hire

Procedure for scheduling Rules meeting:

- Look at all schedules and find a convenient date (including sponsor's schedule)
(4-6 is a good time) *Mon Jan 31 4-6* *Buttner (Fahnenberg)*
- Reserve Room
(Senate Sergeant at Arms for Beltz; Judiciary Comm. Room, etc.)
 - Call sponsor
 - notify of time/place
 - Ask for packets ASAP
 - Ask if there will be any teleconference (also ask JC)
- Give notice to chief clerk by memo by 4:00 Thursday of week before
- Give notice by memo to all members
- If teleconference, call TC people at LIO for setup. (who, where, etc.)
- Call House Records (2214)
- Make labels
- Get files ready
- Check on Fiscal note...make sure to produce one.
- Let Marco look at files in case of changes
- Give out files day before meeting. *Resume?* *Make Marco a packet*
- 30 minutes before meeting:
 - Call legislator's offices for confirmation (get a quorum)
 - Set up room
 - Placques
 - Notepads, pens, etc.
 - Gavel
 - Confirm water, records, etc.
- Bring yellow file of bill to meeting.

Rules Committee Folder Distribution

<input checked="" type="checkbox"/> Cowdery	204
<input checked="" type="checkbox"/> Porter	208
<input checked="" type="checkbox"/> Green	214
<input checked="" type="checkbox"/> Phillips	411
<input checked="" type="checkbox"/> Kott	118
<input checked="" type="checkbox"/> Berkowitz	404
<input checked="" type="checkbox"/> Joule	405

Rules Committee Announcement Memo Distribution

- Cowdery 204
- Porter 208
- Green 214
- Phillips 411
- Kott 118
- Berkowitz 404
- Joule 405

G
25 Jan 80

Sponsor Distribution

- ~~Nil~~ Popely 118

HB

225

Bill History/Action Display



BILL: HB 225 SHORT TITLE: CAMPAIGN FINANCE AND LEGISLATIVE ETHICS
BILL VERSION: SCS CSHB 225(JUD) AM S
SPONSOR(S): REPRESENTATIVES(S) COWDERY, Kohring

CURRENT STATUS: RETURN TO (H) RLS STATUS DATE: 5/19/99

HEARING: (H) RLS Apr 10 4:00 PM CAPITOL 1.20

TITLE: "An Act relating to election campaigns and legislative ethics; and providing for an effective date."

Full Text **Amendment** Detailed 2000 fiscal note information currently not available on-line.

Committee Action With Bill History

Jrn-Date	Jrn-Page	Action
5/05/99	<u>1180</u>	(H) READ THE FIRST TIME - REFERRAL(S)
5/05/99	<u>1180</u>	(H) JUD
5/07/99	<u>1247</u>	(H) COSPONSOR(S): KOHRING
5/08/99	<u>1259</u>	(H) JUD RPT CS(JUD) 2DP 4NR
5/08/99	<u>1260</u>	(H) DP: JAMES, ROKEBERG; NR: COFT,
5/08/99	<u>1260</u>	(H) MURKOWSKI, GREEN, KERTTULA
5/08/99	<u>1260</u>	(H) ZERO FISCAL NOTE (H.JUD)
5/08/99	<u>1271</u>	(H) RULES TO CALENDAR 5/8/99
5/08/99	<u>1271</u>	(H) HELD TO 5/10 CALENDAR
5/10/99	<u>1289</u>	(H) READ THE SECOND TIME
5/10/99	<u>1290</u>	(H) JUD CS ADOPTED UNAN CONSENT
5/10/99	<u>1290</u>	(H) AM NO 1 FAILED Y16 N23 A1
5/10/99	<u>1291</u>	(H) AM NO 2 FAILED Y16 N19 A5
5/10/99	<u>1291</u>	(H) AM NO 3 FAILED Y16 N20 A4
5/10/99	<u>1292</u>	(H) AM NO 4 FAILED Y18 N22
5/10/99	<u>1293</u>	(H) AM NO 5 FAILED Y17 N21 A2
5/10/99	<u>1294</u>	(H) ADVANCED TO THIRD READING UNAN CONSENT
5/10/99	<u>1294</u>	(H) READ THE THIRD TIME CSHB 225(JUD)
5/10/99	<u>1294</u>	(H) PASSED Y27 N12 A1
5/10/99	<u>1294</u>	(H) EFFECTIVE DATE(S) SAME AS PASSAGE
5/10/99	<u>1295</u>	(H) KERTTULA NOTICE OF RECONSIDERATION
5/11/99	<u>1329</u>	(H) RECONSIDERATION NOT TAKEN UP
5/11/99	<u>1329</u>	(H) TRANSMITTED TO (S)
5/12/99	<u>1385</u>	(S) READ THE FIRST TIME - REFERRAL(S)
5/12/99	<u>1385</u>	(S) JUD
5/16/99	<u>1514</u>	(S) JUD RPT SCS 1DP 2NR SAME TITLE
5/16/99	<u>1514</u>	(S) NR: TAYLOR, HALFORD; DP: DONLEY
5/16/99	<u>1514</u>	(S) (H) ZERO FN (H.JUD)
5/17/99	<u>1565</u>	(S) RULES TO CALENDAR AND 1DNP 5/17/99
5/17/99	<u>1580</u>	(S) READ THE SECOND TIME
5/17/99	<u>1580</u>	(S) JUD SCS ADOPTED UNAN CONSENT
5/17/99	<u>1580</u>	(S) AM NO 1 ADOPTED UNAN CONSENT
5/17/99	<u>1580</u>	(S) AM NO 2 FAILED Y6 N14
5/17/99	<u>1581</u>	(S) AM NO 3 NOT OFFERED
5/17/99	<u>1581</u>	(S) AM NO 4 FAILED Y5 N15
5/17/99	<u>1582</u>	(S) AM NO 5 ADOPTED UNAN CONSENT
5/17/99	<u>1582</u>	(S) AM NO 6 FAILED Y5 N15
5/17/99	<u>1583</u>	(S) AM NO 7 ADOPTED Y12 N8
5/17/99	<u>1584</u>	(S) ADVANCED TO THIRD READING UNAN CONSENT
5/17/99	<u>1584</u>	(S) READ THE 3RD TIME SCS CSHB 225(JUD) AM S

5/17/99	<u>1584</u>	(S)	PASSED Y14 N6
5/17/99	<u>1585</u>	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
5/17/99	<u>1585</u>	(S)	ELLIS NOTICE OF RECONSIDERATION
5/18/99	<u>1610</u>	(S)	RECON TAKEN UP - IN THIRD READING
5/18/99	<u>1610</u>	(S)	RETURN TO SECOND FOR AM 9 UNAN CONSENT
5/18/99	<u>1610</u>	(S)	AM NO 9 ADOPTED Y14 N4 A2
5/18/99	<u>1614</u>	(S)	AUTOMATICALLY IN THIRD READING
5/18/99	<u>1615</u>	(S)	RETURN TO SECOND FOR AM 10 UNAN CONSENT
5/18/99	<u>1615</u>	(S)	AM NO 10 FAILED Y7 N13
5/18/99	<u>1617</u>	(S)	AUTOMATICALLY IN THIRD READING
5/18/99	<u>1617</u>	(S)	PASSED ON RECONSIDERATION Y14 N6
5/18/99	<u>1618</u>	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
5/18/99	<u>1658</u>	(S)	TRANSMITTED TO (H) AS AMENDED
5/18/99	<u>1590</u>	(H)	HELD UNDER UNFINISHED BUSINESS
5/18/99	<u>1635</u>	(H)	RETAINED IN UNFINISHED BUSINESS
5/19/99	<u>1672</u>	(H)	RETURN TO RULES COMMITTEE

Similar Subject Match or Exact Subject Match

CAMPAIGNS

ELECTIONS

ETHICS

Bill Root: | |

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