Attachment #3

IV

MISSION STATEMENT & GUIDING PRINCIPLES

MISSION STATEMENT

The International Joint Commission prevents and resolves disputes between the United States of America and Canada under the 1909 Boundary Waters Treaty and pursues the common good of both countries as an independent and objective adviser to the two governments.

In particular, the Commission rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects; it assists the two countries in the protection of the transboundary environment, including the implementation of the Great Lakes Water Quality Agreement and the improvement of transboundary air quality; and it alerts the governments to emerging issues along the boundary that may give rise to bilateral disputes.

GUIDING PRINCIPLES

1. The Commission gives full effect to the spirit and purpose of its mandate as expressed in relevant agreements and references.

2. As a binational institution, the Commission maintains strict impartiality in the performance of its duties.

3. Commissioners represent only the Commission and not the government that has appointed them. Advisers and staff members serve only the Commission and not their respective governments. Members of the Commission's boards or similar bodies serve on such bodies in their personal and professional capacity and not as representatives of the agencies or organizations that employ them.

4. While the Commission comprises two sections and maintains offices in Washington, Ottawa and Windsor, it remains a single integrated body working collegially in a

spirit of openness, mutual trust and confidence, and in the common interest of both countries.

5. The Commission seeks to achieve consensus wherever possible, both in its own deliberations and those of its boards and similar bodies.

6. The Commission employs joint fact-finding as a foundation for building consensus and determining appropriate action.

7. The Commission affords all parties interested in any matter before it a convenient opportunity to be heard. It promotes the engagement of state, provincial and municipal governments and other authorities in the resolution of these matters.

8. While directing its advice and assistance to governments, the Commission takes account of the need to foster public awareness of the issue in question and ensure that the public is able to contribute to the consideration and implementation of its assessments by governments.

9. The Commission's advice must be not only independent and objective but also timely, well- founded, honest, and relevant.

10. In environmental matters, the Commission affirms the concept of sustainable development, the ecosystem approach, and the virtual elimination and zero discharge of persistent toxic substances. While emphasizing the importance of a sound scientific basis for its conclusions and recommendations, the Commission also recognizes that it may sometimes be necessary to adopt a precautionary approach and to act even in the absence of a scientific consensus where prudence is essential to protect the public welfare.

11. The Commission's rules of procedure must be in accordance with justice and equity.

12. The Commission adheres to the highest ethical standards in all its activities.

13. The Commission seeks to ensure the inclusion of appropriate expertise in the membership of its boards, while drawing that expertise from a diversity of sources on a non-discriminatory basis.

Edward Hansen
F/V Ocean Gold
5875 Glacier Hwy #21
Juneau, AK 99801
(907) 780-5816

Senate Resources Committee
Senator Halford, Chairman
State Capitol, Juneau AK

I am an Alaskan resident and commercial fisherman in Alaska for the last 14 years. I mainly salmon fish the Taku – Stephens Passage fishery. I am concerned about the effect the Tulsequah Chief Mine will have on my fishery and ultimately my source of income to support my family.

I believe that with careful assessment and adequate planning that mining and fishing can co-exist but it must be done to minimize the risk to the other user. Unfortunately, with mining and fishing within the same area, the mine gets the economic benefits and most of the risks are to the fish habitat and water quality that my livelihood depends on.

At this time, the Tulsequah Chief Mine still has not adequately assessed the risks to the Taku watershed and the Canadian and Alaskan Taku fishery for commercial, sport and personal uses.

I would like to take this opportunity to thank the Governor for protecting my interests in this situation.

Sincerely,

Edward R Hansen

Edward Hansen
F/V Ocean Gold

3/3/99

Len Peterson
3152 Pioneer Ave. Juneau, Alaska
Alaskan since 1970
Member of United Southeast Alaska Gillnetters
Commercial fishing the Taku River since 1981

Written testimony in support of Governor Knowles request for a IJC hearing concerning development of the Taku River watershed and specifically the Tulsequah Chief mine and road.

I support the Governor's request for a hearing before the International Joint Commission (IJC) concerning the Tulseqauh Chief mine project and other potentially devastating projects impacting the Taku River watershed. I ask that Governor Knowles continue to push this request since that request is the only means my interests with the Taku Drainage development might be addressed.

Projects such as the Tulsequah Chief mine which potentially impact resources and economies of both Alaska and British Columbia seem appropriate to bring before the IJC. Indeed, that is precisely why there is an Internation Joint Commission. The IJC is the proper political arena to address concerns with this project since any mishap at the mine, or the road to the mine, or any mishap in the Taku watershed could affect, in a few short miles, my ability to etch a partial living from the river using my purchased gillnet permit. Loss of spawning area and rearing area directly affects my opportunity to catch and sell product which contributes to the Juneau economy. I have nothing to gain from the Tulsequah Chief mine and road project but could lose all I presently enjoy fishing the Taku River each summer and fall.

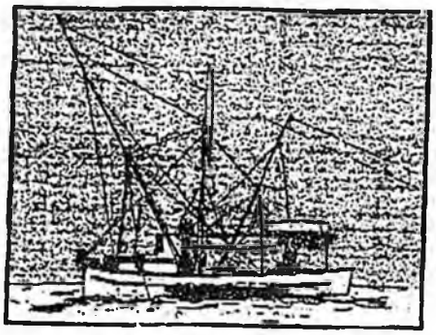
I am unwilling to substitute the established arena of the IJC for this hearing process, though I must add that this hearing is more of a hearing than I have had before any Canadian agency or the developers. The one "hearing" held in Juneau concerning the mine and road was, by Mr. Ringstad's admission, merely a courtesy. The impression given was "mind your own business Alaskans." Unfortunately, any development on the Taku River of this magnitude must be my business. Within a short flowing distance any Canadian problem becomes my problem, shared with a fleet of 80 or so Alaskan fishers.

Canadian representatives and developers will testify that they have undertaken an exhaustive study of the project. They will assure you that all is safe and that squads of noted scientists have placed a stamp of approval on the project. They may even show you the volumes of data carefully packaged into thick binders or the hearing schedule and volumes of testimony. But please recognize my interests and ask why other Canadian scientists not on Redfern's dole question the data, question the road impact, question the habitat impacts, and question the environmental protection, or have data in contradiction to that provided. Question how habitat and rearing areas will be protected and how U.S. fishers depending upon the fish bounty provided by the Taku River will be compensated if, contrary to promises, spawning habitat and fish numbers decline dramatically. Please question why Alaskan interests were ignored. The IJC is a proper venue to address these questions, but those of you against that submission, please protect my Alaskan interests now rather than the convenience of a developer already satisfied by a Canadian speedy review process.

Again. I support the Governor's request for an IJC hearing and trust this committee also sees the wisdom of protecting Alaskan interests with the IJC process.

Sincerely,

Len Peterson
3152 Pioneer Ave., Juneau, AK 99801



Alaska
Trollers
Association

130 Seward St., No. 505
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

March 25, 1999

Senator Rick Halford, Chairman
Senate Resources Committee
AK State Legislature
Juneau, AK 99811

Dear Senator Halford:

I am writing to express the Alaska Trollers Association (ATA) concern about language in SCR 7, which asks Governor Knowles to withdraw his request for an evaluation of the Tulsequah Chief Mine project by the International Joint Commission of the Boundary Waters Treaty.

While our association is not generally opposed to mining, ATA is concerned about the implications for water quality and fish habitat posed by large-scale development on any body of water that houses anadromous fish. Considering the state's minimal involvement to date with this project; the fact that Alaska will have little input into the near and long-term policy decisions surrounding this mine; and, given the importance of the Taku River to Alaska residents, a third party review does not seem unreasonable.

The Taku River is one of the largest salmon-producing rivers in the state. Sport, commercial and subsistence fishermen from both sides of the border derive significant benefit from fish originating in this river. In one district alone, Taku River salmon have directly contributed up to $5.3 million dollars a year to the commercial harvest. This doesn't account for processing and support industry revenue. Canada has established an in-river commercial fishery, which is of great importance to its residents. And, the Canada's Tlingit First Nation is highly reliant on this area for fishing and hunting purposes.

Under the Pacific Salmon Treaty, Alaska has been party to a successful and cooperative transboundary river agreement on the Taku and Stikine Rivers. In the name of conservation and fair sharing, Alaska fishermen have foregone harvest of thousands of Taku River fish since the mid-1970s. The end result has been a rejuvenation of the resource and enhanced goodwill between our nations.

It is not clear that Canada's environmental laws and programs for project review are as thorough as Alaska's. The status of its fisheries resource on both coasts does little to allay our fears. It is not clear whose science is being utilized in Canada's review process. Given some of the concerns raised about the validity of Canadian data, in this and other forums, by Alaska and Canada's own citizen's and scientific community, it seems even more prudent to consult a third party. After all, the Tulsequah Chief Mine could affect more than just Canada. Degradation of this watershed could mean the loss of millions of dollars to Alaska's fishing industry and the state. If there is another mechanism for working with Canada on this issue without an IJC review, which is supported by ADFG, it may be easier for the fishing industry to trust the end result.

SCR 7 suggests that Alaska cooperate with the Canadian government toward development of this mine. While it makes sense that Alaska would want input into any project that affects a shared waterway, the intent of this provision is unclear.

Thanks in advance for your consideration of ATA's concerns.

Sincerely,

Dale A. Kelley

Dale A. Kelley
Executive Director

By Charles Enman The Ottowa Citizen Friday 4 July 1997

36 scientists: End the Suppression
Manifesto calls for the restoration of integrity within DFO

Thirty-six prominent scientists from across the country have called for an end to suppression and control of government-supported fisheries scientists. They speak of a "long-overdue debate on how to ensure the integrity of government-administered science."

This issue, they say, is important to all Canadians, and not just those in government departments. They say concerns about bureaucratic interference in scientific work are widely held in the academic community and must be discussed "without filtration by senior bureaucrats with a vested interest in suppressing criticism."

These scientists are joint signatories of a letter sent to Dr. Arthur Carty, President of the National Research Council. The council publishes the Canadian Journal of Fisheries and Aquatic Sciences, which two weeks ago published an article and an editorial that were highly critical of the Department of Fisheries and Oceans' (DFO's) use of science in support of bureaucratic decisions.

The journal and the publisher soon came under the guns of a top DFO bureaucrat. "As scientists reliant on the objectivity and fairness of publications such as the Canadian Journal of Fisheries and Aquatic Sciences, we wish to take strong exception to the views expressed by W.A. Rowat, Canadian Deputy Minister of Fisheries and Oceans, in a letter sent to you and posted on the DFO web page," the scientists' letter says.

The scientists accuse Mr. Rowat of misrepresenting the nature of both the article and the editorial.

The article, entitled "Is Scientific Inquiry Incompatible with Government Information Control?," was authored by three biologists – Jeffrey Hutchings of Dalhousie University, Carl Walters of the University of British Columbia, and Richard Haedrich of Memorial University in St. John's, Nfld.

The editorial, by retiring journal editor David Cook, summarized the article by saying: "They demonstrate a tendency for DFO to suppress scientific facts and opinions that do not conform either to current departmental orthodoxy or to political expediency."

Mr. Cook goes further: "This disturbing pattern lends great strength to their argument that a politically independent organization (reminiscent of the late, lamented Fisheries Research Board of Canada) is required to provide the difficult, vital link between scientific research and resource management."

That, of course, would tear apart the DFO, which since its creation in 1979 has had a scientific branch under the wing of departmental bureaucrats.

In recent days, the Citizen has published comments from a number of scientists who have been critical of DFO's treatment of science.

David Schindler, a University of Alberta biologist, worked for the DFO for 22 years until 1989. He said he was reprimanded several times for publicly criticizing policy decisions.

"There has to be something to buffer the politicians interested in being elected and the bureaucrats interested in being promoted from the scientists who are interested in helping the environment and know what they're doing," he said.

Andrew Read, an expatriate Canadian who works at Duke University in North Carolina, said: "I have colleagues in DFO who feel they can't speak out openly. But for good science, they have to be able to speak out without worrying about political pressures being brought to bear on them."

David Lavigne of the International Marine Mammal Association in Guelph was reported saying: "The general principle that the DFO abuses science is not new. The department does not accurately convey accepted scientific views to the people of Canada, a problem that has been going on for a long time."

Ransom Myers, who holds the Killam Chair of Ocean Studies at Dalhousie University, accused the DFO of suppressing scientific papers and scientific discussion. He said that bureaucrats have been responsible for disastrous decisions that have cost tens of thousands of jobs and billions of dollars.

Two DFO bureaucrats have since threatened Mr. Myers with a lawsuit if he does not issue an apology for remarks he made in a June 27 article in the Citizen. The Citizen itself has been threatened with a lawsuit if no retraction and apology for the article are published.

Messrs. Schindler, Read, Lavigne and Myers are among the 36 signatories of the letter sent to Mr. Carty of the National Research Council.

The article and editorial in the Canadian Journal of Fisheries and Aquatic Sciences were unexceptionable parts of a scientific journal addressed to fisheries issues, the letter of the 36 scientists said.

"The Perspectives section of the journal, in which the piece by Hutchings, et al appeared, is clearly intended as a forum for opinion and has a history of lively debate," the scientists' letter says.

As for the editorial, "the opinions of the editor are his own business, and any journal requiring editorial clearance from government bureaucrats would not be worth publishing in."

The letter of DFO Deputy Minister W.A. Rowat to Dr. Carty complaining about the article and editorial was withering in tone and assertion.

"I am appalled at the unprofessional and unsubstantiated nature of their attacks on DFO, its scientists, and its managers," Mr. Rowat wrote. "These authors have maligned the reputations of hundreds of dedicated, hard-working scientists and managers across the country."

He continued: "These are not scientific papers. They are tabloid journalism of the sort one would not expect to encounter in a scientific journal. They are based on innuendo and misrepresentation which have no place in a scientific journal."

It was in response to these strongly worded sentiments from the department's deputy minister that the 36 scientists chose to append their signatures to the letter to Dr. Carty.

"This letter and this collection of signatures is very much a first when it comes to the question of keeping science at arm's length from management," said David Lavigne, executive director of the International Marine Mammal Association in Guelph, where staff penned the actual text of the letter.

"Those who have signed include some very prominent scientists indeed," Mr. Lavigne said. And more signatures were coming in by the hour, he added.

The primary recipient of the letter will of course be Dr. Carty.

But the letter, which in its own words asks for a debate on "the integrity of government-administered science," will also be sent to the very pinnacle of government - Prime Minister Jean Chretien himself.

Other copies will be sent to Fisheries Minister David Anderson, to Ambassador for the Environment John Fraser, and to the two incoming journal editors, John Roth and Moira Ferguson.

In the article by Jeffrey Hutchings and his colleagues, it is alleged that interference in DFO science by bureaucrats and members of government has been costly to the fishing industry.

Such interference "compromises the DFO's efforts to sustain fish stocks and, thereby, the socioeconomic well-being of fishing people and fishing communities."

Bureaucrats, the paper said, do not deal well with the uncertainties and shadings in scientific work. This tendency may partly have accounted for disastrous decisions affecting the Atlantic cod fishery. The cod population may have been routinely overestimated, the paper says.

But then scientific work on the problems afflicting the cod fishery was compromised by a variety of bureaucratic intrusions, which included government denunciation of independent work, interference in scientific conclusions, and disciplining scientists who spoke publicly of the results of peer-reviewed research.

Many of these problems would be solved if fisheries science operated freely of bureaucracy and government, the paper concluded.

"The formation of a politically independent organization of fisheries scientists, or some such reorganization of the link between scientific research and the management of natural resources, is a timely idea that merits immediate, serious, and open debate."

The Canadian Journal of Fisheries and Aquatic Sciences "had a moral obligation to the community" to publish the article, David Cook wrote in his editorial.

Dr. Cook had his own instances of bureaucratic interference to point out. In 1988, he wrote, the DFO attempted to alter a statement in a paper that had been accepted for publication. In 1994, someone from the DFO attempted to find out the name of one or more referees of a published paper whose conclusions the department didn't like.

The DFO asked to read an advance copy of the Hutchings article to prepare a response for publication in the same issue of the journal. However, Mr. Hutchings preferred that any response to the article appear in a following issue, and no advance copy was given.

In a letter published on the DFO website, the department's assistant deputy minister, Scott Parsons, decried this decision.

"Why did these authors choose to deny the institution and individuals being attacked a timely and and fair opportunity to respond?" he asked in a letter published on the department's website.

"DFO's request was consistent with the Journal's common practice."

However, an editorial insert in the journal issue in which the Hutchings article appeared seems to confute Mr. Parson's statement.

"The authors were asked for their permission to provide advance copies of the Perspectives to DFO so that DFO could respond in the same issue. As is their right according to the editorial policy of the journal, the authors declined to do so. A response from the department on the scientific issues raised is anticipated in the June issue of the journal."

David Lavigne of the International Marine Mammal Association said that having the DFO's rejoinder published in a later issue of the journal was normal academic practice. "Usually, until a paper appears, it is essentially embargoed, unless the author chooses to circulate it," he said. "And if you found a point of disagreement after it appears, you would then submit your comments for publication in a subsequent issue."

ALASKANS FOR JUNEAU

Dedicated to Clean, Healthy Economic Diversity in the Capital City

March 26, 1999

Comments on SCR 7 and HCR 4
Resolutions Regarding Tulsequah Chief Mine, Canada

Alaskans for Juneau, a citizens group formed in 1989, supports International Joint Commission review of the proposed Tulsequah Chief Mine. The mine project with its planned road through the Taku River watershed could have detrimental effects on American and Alaskan resources, particularly fish and water quality. IJC review provides important scrutiny of the international issues raised by our state and federal governments.

We do not support the proposed resolutions to develop the mine without the diligent review necessary to fully evaluate its impacts on the valuable resources shared with our Canadian neighbors. Complete analysis of the mine's impacts must be presented prior to construction of the mine road or any project facilities.

It is clear from the British Columbia government's decision to proceed with issuing a special use permit for mine road construction over the objections of Governor Knowles that Alaskans' concerns are not being given full consideration. The State of Alaska is recommending IJC evaluation to protect transboundary salmon, fisheries, and wildlife. Potential adverse impacts to the lands and people of the Taku River Tlingit First Nation are also being ignored by promoting development of the Tulsequah Chief Mine.

It is untimely and unwise for Alaskans to support a mine project with potentially harmful effects on salmon at a time when Pacific Northwest citizens are facing restrictions on their activities to protect newly listed endangered species of salmon. Residents and businesses throughout our region need to promote healthy salmon habitat and maintain good water quality to ensure the continuing survival of wild salmon.

IJC referral will encourage careful development of the common resources shared by Americans and Canadians.

Submitted by Laurie Ferguson Craig, Issues Coordinator, Alaskans for Juneau. Contact 907.789.2768

P.O. Box 22428 Juneau, Alaska 99802 (907) 463-5065

Notes for Michael Dunlap, March 25, 1999

The wording of the Resolution includes the statement (last Whereas clause):

WHEREAS, the government of British Columbia has made assurances that the development of the Tulsequah Chief Mine will result in no transboundary impacts;

This is the very question that is being challenged by Alaska's Governor, Tony Knowles---and by the Douglas Indian Association. The truth is that we do not trust British Columbia enough to let them proceed without more assurances than they have offered. If there could be binding contract assurances that would require compensation in the event of transboundary impacts, such as using a posted bond that would be put up by the mine ahead of time, we would be more impressed....

It is not an arbitrary position to question the assurances of British Columbia in this matter. There are indications that Glen Clark's credibility is in question on a number of counts at this time in general, and the track record for environmental control over mine pollution in BC is not good in particular.

There is also the issue of the Judicial Review of the BC Mining Certificate that has been filed by the Taku River Tlingits. This First Nation is concerned enough to take expensive legal action to defend their homeland. We are told to expect the review to be heard within the next few weeks.

It does not seem prudent for the Legislature of the State of Alaska to be making a claim that all of the concerns have been met over this issue. In fact, it may be that the intervention of the IJC is the only way to deal with the jurisdictional questions and the outstanding environmental concerns that have been expressed by many interest groups in addition to the Douglas Indian Association and the Taku River Tlingits.

The Douglas Indian Association has begun a water testing program on the Taku River together with USGS and EPA. The second sampling will be taken in the next two weeks, and shipped to the EPA Manchester Lab in Washington State. This is a five-year project that will document the base-line water quality at the USGS Gage, just down-stream of the BC/Alaska Border. The data base will document the water quality from November, 1998, to October, 2002, according to the official protocols of the USGS and EPA.

We suggest that this work will tell us whether there are transboundary impacts or not, so that we will not have to take the word of British Columbia, or the Redfern Mining Company. We ask that the Alaska State Legislature support this activity, and rather than assuming that there will be no transboundary impacts, ask instead that there be contractual assurances established that will pay for any damages to the valuable fisheries and other natural resources that Alaskans depend upon from the Taku River. If the Legislature is not prepared to take this position, we ask that at the very least the proposed Resolution, being considered here, not pass.

Testimony of Don Weir, President of the
TAKU WILDERNESS ASSOCIATION
before the Alaska State Legislature on
Senate Concurrent Resolution No. 7

3-26-99

I am the president of the Taku Wilderness Association in Atlin, BC. We are a grassroots organization who oppose the reactivation of the Tulsequah Chief mine in the Taku watershed. We have serious reservations about the mine site, the location of the tailings pond, and other technical issues that we feel could lead to problems in the long term. Our main concern, however, is with the creation of a 100-mile road into the Taku. Aside from wilderness values and the closing off of other economic opportunities, the main issue is the lack of proper long-tern planning. To put it bluntly, there is NO PLAN.

This is not 1950, and to move into a large tract of essentially untouched land without a clear idea of what is in the best long-term interest of all the stakeholders from both sides of the border is foolhardy and dangerously irresponsible. Efforts are ongoing at the present time by the Taku River Tlingit First Nation to create a long-term management plan for the region, and this proposal by Redfern Resources and the provincial government to open up the area circumvents these local initiatives.

From the point of view of other stakeholders, the key question should be whether the assessment of this process properly addressed the short and long-term impacts of this project. Another question is whether the mitigation measures created by the provincial government to cover up flaws in Redfern's Project Report will adequately deal with long-term impacts. The best way to make this determination is to look at British Columbia's track record on other mining projects. The record does not provide much assurance.

We have been told by numerous government officials that due to severe budgetary cutbacks it will be difficult to properly investigate and remedy the inevitable problems that will come about from this project. Should stakeholders from both sides of the border trust that the BC government will take care of their interests? It's Alaska's call on that one, but to make an informed decision you need to be aware of the BC government's record.

Numerous lawsuits have been filed against the provincial government because of inadequate regulatory standards on past projects. The following will give you an idea of some of the problems with the environmental assessment of the Huckleberry and Kemess mines.

In the past, APPROVALS AND PERMITS have been ISSUED BY THE PROVINCIAL GOVERNMENT DESPITE A DEFICIENCY OF INFORMATION.

· During the Kemess environmental assessment, the company's mill site selection was deemed geotechnically acceptable on the basis of three boreholes. Not surprisingly, the

assessment turned out to be erroneous-the bedrock was not competent enough to support the mill. By the time this was revealed, however, the province had already granted a Project Approval Certificate.

· The province issued pre-production construction permits for the mine and mill site with woefully inadequate information. A proper evaluation of the newly proposed mill site had not been conducted by the province; the federal assessment of the project was not yet completed; the Fisheries Act authorization for permission to destroy 17 km of fish-bearing stream had not yet been granted by the federal Department of Fisheries and Oceans; there was no materials handling plan, sediment control plan, or effluent permits ;

· After a series of disastrous sedimentation problems leading to an eventual Pollution Abatement Order in July of 1997, it was acknowledged by provincial government that the problems were due, in part, to the fact that the government did not have guidelines for sedimentation control during the construction phase, nor did they require advanced approval of sedimentation or materials handling plans.

THE KEMESS and HUCKLEBERRY PROJECTS HIGHLIGHT THE INABILITY OF THE GOVERNMENT TO ENSURE COMPLIANCE WITH REGULATIONS and CONDITIONS SET OUT IN THE EA CERTIFICATES, PERMITS AND AUTHORIZATIONS.

The following is a condensed list of violations at the Kemess mine site:

· July 4 1997 - creek diversion is a VIOLATION OF the Water Act; sediment levels were in VIOLATION OF the Project Approval Certificate, Mines Act permit, and the Fisheries Act.

· July 16 1997 - a POLLUTION ABATEMENT ORDER was issued under the Waste Management Act, because construction activities were causing elevated levels of total suspended solids in Kemess Creek and its tributaries.

· as of Sept. 12 1997, the company had still FAILED TO MEET REQUIREMENTS of the July 16 pollution abatement order

· February 9, 1999 - FAILURE TO COMPLY with a January 29, 1999 order to raise the height of the tailings dam. A letter from the Ministry of Energy and Mines told the company that any delay in meeting the schedule would create a hazard, i.e., breaching of the dam and flooding of the valley downstream, would place the dam, workers and downstream environment at serious risk.

There were similar violations at the HUCKLEBERRY mine site:

· August 1996 - FAILURE TO PRODUCE water quality data; LACK OF Sediment Control Plan, even though it was a permit requirement;

· Sept. 1996- the Sediment Control Plan was submitted, but it was NOT ADHERED TO.

· June, 1997 - the company was OUT OF COMPLIANCE with Mines Act Permit because they began excavating East Zone Pit prior to submitting required Acid Rock Drainage information; many of the required monitoring reports were submitted LATE; in VIOLATION OF its Mines Act permit, the company constructed roads and a saddle dam out of potentially acid-generating materials!!

Finally, it appears that the tools used by the province to ensure environmental protection at mines sites are being traded away. Last month, the BC government (Job Protection Commission) waived their right to increase the reclamation bond payments for two years as part of a bailout package for the Huckleberry Mine. In so doing, the province accepted the possibility that public funds would have to be used to fund some of the mine's reclamation costs. This use of environmental securities as an economic and political negotiating tool represents a major breach of the public trust in terms of protection against environmental liability posed by poorly financed junior mining companies.

A more detailed written analysis of the problems with the BC assessment and regulation of Kemess and Huckleberry mines is available. It highlights additional potential problems that may be encountered at the Tulsequah Chief mine if the same lax regulations and monitoring occur with this controversial project.

The final question that I want to put forth is whether or not an IJC will address all of the concerns that residents on both sides of the border have on this project. I don' t have the answer to that question. But it's clear that a more thorough analysis of the controversial and flawed BC environmental assessment process that gave approval to the Tulsequah Chief project must come under closer scrutiny.

The judicial review initiated by the Taku River Tlingit First Nation will hopefully elucidate the way the province interfered with a proper assessment on this project. We ask that you reserve judgment on this resolution until the facts come out on this court case. There is too much at stake to do anything less.

Thank you for giving me the opportunity to speak.

Don Weir
Taku Wilderness Association

Lessons from the Environmental Assessment process of the South Kemess Copper/Gold Mining Project

The Kemess South Project is an excellent case study of the consequences of ineffective environmental assessment, certification, permitting, enforcement and monitoring.

1. PROCESS FLAWS

1.1 DECISIONS BASED ON LACK OF ADEQUATE INFORMATION

· During the EA process, the Project Committee accepted the company's selection for a mill site, despite the fact that the geotechnical adequacy of the site was determined on the basis of three boreholes. Not surprisingly, the assessment made on the basis of three boreholes turned out to be erroneous-the bedrock was not competent enough to support the mill. This was not, however, determined until after the company had received their Project Approval Certificate. If more detailed technical information had been provided, the appropriate mill site could have been selected DURING the EA review, and the process would have been far more credible.

1.2 PROVINCIAL AND FEDERAL ASSESSMENTS NOT COORDINATED

· The company then proposed to revert back to a mill site that had been one of the alternatives proposed during the EA process but was rejected early on for environmental and economic reasons.

· When informed of the proposed changes, the Department of Fisheries and Oceans (DFO) immediately asked the Canadian Environmental Assessment Agency to put the federal environmental review on hold pending an assessment of the new mill site. Before the federal environmental assessment of the project had been completed, however, the provincial MEI went ahead and issued permits for pre-production construction to begin, which included the relocated mill and facilities.

· Thorough studies were never properly conducted nor a proper evaluation undertaken of the alternative mill site. Clearly, the provincial government did not have enough information to assess competently the adverse effects of the mill site change, and there was no plan in place detailing how to mitigate or prevent potential adverse effects prior to issuance of the construction permit. The process was not open or accountable, since the MEI did not consider public or even federal input on the mill site change prior to issuing the permits.

1.3 Permits were issued by the provincial government despite a deficiency of information.

At the end of the BC EA process, there were too many information gaps to

have a clear idea of how the project was going to proceed. Yet MEI issued permits for the pre-production construction phase even though:
· there was no Mitigation Plan and Construction Phase Environmental Program
· the Fisheries Act authorization for permission to destroy 17 km of fish-bearing stream had not yet been granted by DFO ;
· the company had not finalized the Independent Supervisor Terms of Reference.
· a materials handling plan,
· a sediment control plan, and
· effluent permits from structures (tailings impoundments, open pits).

After the series of disastrous sedimentation problems leading to an eventual Pollution Abatement Order in July of 1997, it was acknowledged by provincial government representatives that the problems were the due, in part, to the fact that neither MEI nor MELP have guidelines that apply to the construction phase for sedimentation control, nor do they require advanced approval of a sedimentation or materials handling plans.

2. IMPLEMENTATION FAILURES

2.1 Changes to the Certificate led to a failure of the independent environmental monitoring program, with subsequent adverse environmental impacts.
· The Project Approval Certificate required Royal Oak to cover the cost of the environmental supervision program. However, MEI and Royal Oak later negotiated a bilateral agreement that the amount the company would pay would be capped at $100 000, after which MEI would cover the costs. Within four months Royal Oak's budget was spent, and so MEI assigned one of its employees to take on monitoring. During the second summer of construction, severe sedimentation problems were occurring all over the mine site; problems which, according to a DFO official, the Reclamation Inspector (through no fault of his own) lacked the necessary expertise to assess.

2.2 The Kemess project also points out the inability of the government to ensure compliance with conditions set out in the EA certificantes, permits and authorizations.
· August 1996 - during construction of the pit no soil salvage was carried out and that fill was placed directly on the topsoil, contrary to the soil salvage requirements of the permit. The report also notes poor maintenance of the Omineca Mine Access Road (OMAR), and resultant impact on the Sustut River
· September 1996 - serious sedimentation occurs in the Upper Sustut River, a valuable salmon spawning tributary of the Skeena, due to careless upgrading of the OMAR

· October - an Environmental Complaint was laid with MELP in by service men working at the mine. They made allegations of illegal burning of oil, improper storage of oil and heavy equipment crossing Kemess Creek, which were later substantiated by the Reclamation Inspector

· February 1997 - Reclamation Inspector stated that an aggressive program of seeding the disturbed areas along the road must be implemented prior to the growing season in mid-June. Hydro-seeding did not begin until August, by which time the growing season was practically over.

· March 3 - improper burning of refuse, improper refuse disposal (i.e., non-permitted wastes including solvents), improper storage of oil, illegal burning of oil

· July 4 - the diversion of a creek was in violation of the Water Act

- sediment levels were in violation of the Project Approval Certificate, Mines Act permit, and the Fisheries Act.

- the company failed to follow its mitigation plan, to install sediment control and runoff works; to begin seeding; to have proactive monitoring; to have appropriate expertise; to have appropriate authorizations; to submit plans and manuals for dams, diversion ditches and associated structures, and to make frequent monitoring data submission.

· July 16 - a Pollution Abatement Order was issued under the Waste Management Act, because construction activities were causing elevated levels of total suspended solids in Kemess Creek and its tributaries.

· August 9-16 - in blatant disregard of the Order, Kemess began construction work on the foundations of the tailings dam without any effective sediment control works in place.

- substantial exceedances of water quality objectives noted in Kemess Creek

· August 19 - lack of compliance with sewage permits

· Sept. 12 - as of this date, Kemess had still failed to meet almost every condition of the July 16th order: there were no plans on how to prevent and control sediment prior to the tailings pipeline road construction; plans for open pit/waste rock dump area sedimentation had not been received; reseeding efforts were inadequate.

· Sept. 24 - Kemess finally shuts down ongoing construction at the tailings pump house until runoff and seepage could be collected and pumped into a drainage ditch on the north side of the tailings pond

· Oct. 14-21 - less than one month after agreeing to remedy the situation, Kemess violates the agreement with MELP by pumping into the south drainage

MOST RECENTLY...

· February 9, 1999 - Royal Oak received a letter from MEM stating that the company had failed to comply with a January 29, 1999 order to raise the dam core crest in adherence to a minimum elevation schedule. The letter stated that any delay in meeting the schedule would create a hazard, i.e., breaching of the dam and flooding of the valley downstream, would place the dam, workers and downstream environment at serious risk.

- DFO expressed their own concerns in letters to the company and MEM. A

DFO official wrote to MEM: "you will recall that all federal and provincial agencies approval of this mine were contingent upon a zero release tailings system. We believe that a discharge from the tailings impoundment could have significant impacts on the environmental, and be a serious violation of the Fisheries Act. . . we are putting your Ministry on notice, and are considering issuing an Inspectors Direction to your Ministry, as a party who has contributed to the potential release of tailings water from the tailings impoundment as a result of relaxing freeboard requirements of the tailings dam from July 7, 1998 to Jan. 28, 1999."

As of Saturday, March 19, 1999, the required dam elevation had not been met (the target was 1437.5 m, the actual elevation was 1436.41 m). On March 22 a new plan was put forth by Royal Oak's engineering consultants, which stated that using a new design plan the tailings impoundment construction requirements could be met.

MEM gave the company until March 29 to get tailings dam elevation on schedule (if not by March 29). If they fail to do so, they will be ordered to stop mining/milling operations.

HUCKLEBERRY

1. PROCESS FLAWS

1.1 Inadequate information from the proponent led to significant delays in the EA process.

During the review of the Project Report submitted by Princeton, Huckleberry Mines Ltd. (HML), the Project Committee determined that the standard of information provided by Huckleberry in its application was not satisfactory.

· At a Project Committee meetings in Smithers, in August, 1995, an MEI official stated that the Huckleberry application was "the worst certificate application I've viewed."

· Project Committee participants in the ARD Working Group agreed that the ARD testwork and related predictions in the Application were "insufficient" or even "useless." Due to the poor quality of information provided in the application, the ARD Working Group was assigned the task of bringing the mine proposal into compliance. The reanalysis of the ARD data caused significant delays to the process.

· Lack of accurate fisheries data to determine Fisheries Compensation Plans and Cumulative Effects also caused delays in the EA process. HML's Project Report stated that "there is no fish habitat in the majority of the reaches of the streams that will be affected by the mine." On the

contrary, a MELP biologist concluded that the streams did contain plenty of fish habitat.

· Not only were delays caused by problems with the original data, but a failure to provide information in a timely manner also created delays. For example, the acid-base accounting (ABA) data in the Project Report, submitted in May, contained numerical errors, but HML did not revise the data until September.

· Delays continued into the permitting phase. Review and approval of ARD prediction/prevention information was held up because the company was late submitting their Permit Application document.

1.2 Information deficiencies may cause potential environmental problems HML experienced problems due to deficiencies with the initial inventory studies.

· Based on the original inventory studies, it was predicted that there would be sufficient construction materials (i.e., waste rock till) to build the dam. However, it was recently determined that there is a more mineable ore than originally thought, which means that there is less waste rock (one million tonnes less) than estimated. The new design may pose problems (environmental and/or procedural) because HML is proposing to build the impoundment dam from tailings (cyclone) sand.

1.3 Cumulative Effects not adequately assessed.

A true Cumulative Effects package could not be completed for the Huckleberry Project because the company would not commit to a location for their port facility. The location of the port in Stewart, B.C., was not announced until 15 months after Certificate for development was issued.

2. IMPLEMENTATION PROBLEMS

2.1 Non-compliance issues highlight the need for a stronger government commitment to enforcement.

· August 1996 - Effluent Permit for the construction phase was non-existent, and there was no intent to develop any legal permit regulations; water quality data had not been received, despite the Interim Reclamation Permit requirement that water quality monitoring data be reported monthly; as of this date, HML had no Sediment Control Plan, even though it was a permit requirement

· Sept. 1996 - the Sediment Control Plan was submitted, but it was not adhered to.

· June, 1997 - HML began excavating East Zone Pit prior to submitting ARD prediction/prevention information (required in Mines Act Permit Application); many of the required monitoring reports were submitted late; reporting on ARD was inconsistent and late; and monthly construction reports were typically submitted at least three to four weeks following the month of reference; in violation of its Mines Act permit, HML constructed

roads and a saddle dam out of potentially acid-generating materials!!

When there are continuous acts of non-compliance with permits or certificate specifications, governments should step-up their enforcement activities. It is within the provincial government's powers to "halt construction, operation, modification, dismantling or abandonment activities until the proponent obtains a project approval certificate, or complies with conditions of a project approval certificate." Furthermore, "In the event of non-compliance with an order made under the Act, the minister may apply to the Supreme Court for an order to comply.

2.2 Structural problems with tailings impoundment
In the summer of 1998, the company, halted construction of their tailings dam after it recorded unusual movements (as much as 400 mm or 16 inches) in the structure. The safety of the tailngs pond dam has been called into question by Glenda Ferris, who notes that water is flowing out of impoundment from between the bedrock and the till - but in the original design the impoundment was not supposed to have any seepage. A report by AGRA Earth and Environmental, released in November, highlighted that the lower fill in the dam appeared to be spreading as construction added more weight to the top. In a newspaper article in early February, 1999 , an official with MEM noted that there has not been significant movement in the past couple of months, and that he's satisfied the dam is solid. Work resumed on raising the height of the dam at the beginning of February.

2.3 BC's commitment environmental protection required by certificates further curtailed.
The government recently traded away one of their strongest tools for ensuring long-term environmental protection at the end of the mine's life, i.e., the mine reclamation bonds. In late February, 1999, the government waived reclamation bond payments for two years as part of a bailout package for the Huckleberry Mine.
John Errington of the MEM said in an email to EMCBC that by agreeing to the deferral of the security, the province accepts the possibility that public funds could be used to fund some of the reclamation costs.
The use of environmental securities as an economic and political negotiating tool represents a major breach of the public trust in terms of protection against environmental liability posed by poorly financed junior mining companies such as Huckeberry Mines Ltd (owned by Imperial Metals). This case sets a poor precedent and does not provide the public with much confidence that there will be environmental protection at potentially environmentally hazardous sites such as the Tulsequah Chief mine site, and implies that the public might have to bear the liability for small companies like Redfern.

Len Peterson
3152 Pioneer Ave. Juneau, Alaska
Alaskan since 1970
Member of United Southeast Alaska Gillnetters
Commercial fishing the Taku River since 1981

Written testimony in support of Governor Knowles request for a IJC hearing concerning development of the Taku River watershed and specifically the Tulsequah Chief mine and road.

I support the Governor's request for a hearing before the International Joint Commission (IJC) concerning the Tulseqauh Chief mine project and other potentially devastating projects impacting the Taku River watershed. I ask that Governor Knowles continue to push this request since that request is the only means my interests with the Taku Drainage development might be addressed.

Projects such as the Tulsequah Chief mine which potentially impact resources and economies of both Alaska and British Columbia seem appropriate to bring before the IJC. Indeed, that is precisely why there is an Internation Joint Commission. The IJC is the proper political arena to address concerns with this project since any mishap at the mine, or the road to the mine, or any mishap in the Taku watershed could affect, in a few short miles, my ability to etch a partial living from the river using my purchased gillnet permit. Loss of spawning area and rearing area directly affects my opportunity to catch and sell product which contributes to the Juneau economy. I have nothing to gain from the Tulsequah Chief mine and road project but could lose all I presently enjoy fishing the Taku River each summer and fall.

I am unwilling to substitute the established arena of the IJC for this hearing process, though I must add that this hearing is more of a hearing than I have had before any Canadian agency or the developers. The one "hearing" held in Juneau concerning the mine and road was, by Mr. Ringstad's admission, merely a courtesy. The impression given was "mind your own business Alaskans." Unfortunately, any development on the Taku River of this magnitude must be my business. Within a short flowing distance any Canadian problem becomes my problem, shared with a fleet of 80 or so Alaskan fishers.

Canadian representatives and developers will testify that they have undertaken an exhaustive study of the project. They will assure you that all is safe and that squads of noted scientists have placed a stamp of approval on the project. They may even show you the volumes of data carefully packaged into thick binders or the hearing schedule and volumes of testimony. But please recognize my interests and ask why other Canadian scientists not on Redfern's dole question the data, question the road impact, question the habitat impacts, and question the environmental protection, or have data in contradiction to that provided. Question how habitat and rearing areas will be protected and how U.S. fishers depending upon the fish bounty provided by the Taku River will be compensated if, contrary to promises, spawning habitat and fish numbers decline dramatically. Please question why Alaskan interests were ignored. The IJC is a proper venue to address these questions, but those of you against that submission, please protect my Alaskan interests now rather than the convenience of a developer already satisfied by a Canadian speedy review process.

Again, I support the Governor's request for an IJC hearing and trust this committee also sees the wisdom of protecting Alaskan interests with the IJC process.

Sincerely,

Len Peterson
3152 Pioneer Ave., Juneau, AK 99801

Edward Hansen
F/V Ocean Gold
5875 Glacier Hwy #21
Juneau, AK 99801
(907) 780-5816

Senate Resources Committee
Senator Halford, Chairman
State Capitol, Juneau AK

I am an Alaskan resident and commercial fisherman in Alaska for the last 14 years. I mainly salmon fish the Taku – Stephens Passage fishery. I am concerned about the effect the Tulsequah Chief Mine will have on my fishery and ultimately my source of income to support my family.

I believe that with careful assessment and adequate planning that mining and fishing can co-exist but it must be done to minimize the risk to the other user. Unfortunately, with mining and fishing within the same area, the mine gets the economic benefits and most of the risks are to the fish habitat and water quality that my livelihood depends on.

At this time, the Tulsequah Chief Mine still has not adequately assessed the risks to the Taku watershed and the Canadian and Alaskan Taku fishery for commercial, sport and personal uses.

I would like to take this opportunity to thank the Governor for protecting my interests in this situation.

Sincerely,

Edward R Hansen

Edward Hansen
F/V Ocean Gold

3/3/99

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Senate Resources
Committee Name

Committee on Senate Concurrent Resolution No. 7 Dated 3-26-99
Bill / Subject

I support Senate Concurrent Resolution No 7

Unfortunately I can not support Governor Knowles position on the Tulsequah Chief Mine. I feel the Governor has been misinformed by Environmental groups & other special interest groups with regard to the Mine and the permitting process.

We know the Sierra Club and other Environmental groups would like to have the Taku River corridor put into a wilderness area blocking any development along the river corridor. The environmentalist have already locked up a major World Class Mineral Deposit - The Windy Craig Deposit into a World Heritage Park. - Their purpose is to stop development in both Canada and the U.S.

The United States has a treaty with Canada which guarantees Canada access for commercial and other uses to the Ocean. The Tulsequah Chief Mine is an economic venture which will benefit both Canada & Alaska.

The Mine can be developed in an Environmentally sound manner. British Columbian and Canadian federal agencies as well as agencies from Alaska and the US can work together to insure the protection of the environment. The use of the "International Joint Commission under the Boundary Waters Treaty" is not guaranteed. Both Nations have to agree. - We need to work with the Canadians - not against them.

SIGNED: Roger C. Burggraf
Testifier

Self and the Mining Industry
Representing

830 Sleep Creek Rd., Fairbanks, Alaska 99709-6130
Address / Phone Number

02350
V

APR 01 1999

Senator Rick Halford, Chair
Senate Resources Committee
Alaska State Capitol
4th and Main Streets
Juneau, AK 99801

March 27, 1999

Senator Halford:

It is my understanding that the Senate Resources Committee wants to encourage the State of Alaska to give the go-ahead to Redfern's Tulsequah Chief Mine. My past work experiences include four seasons in the fisheries. I have seen often how the Canadian government's regulatory agencies have not taken protective care toward their fisheries. As a result, their fish populations are dwindling and they blame Alaska as the cause in that we over-fish. I disagree. I don't think it is the fault of Alaska, but that the Canadians do not have the fisheries and environmental management expertise that we do which keep our fish populations strong.

In the U.S. we have a variety of regulatory agencies whose approval is required before a project can receive a permit to proceed. By having each regulatory agency approve each individual part of a permit, as citizens we are assured of the best quality management for our resources. It might take more time, but in the end the operation of the project is the safest, cleanest and best that we can make it. Although the Tulsequah Chief Mine is located in Canada, if the United States and Alaska do not require the highest levels of environmental safeguards from Canada on this project, we will be allowing our fisheries to be put in danger as well as our health to be threatened.

Before our government gives the approval for this mine project, I ask that our federal and state regulatory agencies give their go ahead first. The Taku Watershed is an incredibly important asset of our Southeast fisheries resources. Please do not put the quality of the water in this river at risk. Many of you do not live in the area so perhaps it does not concern you as much. For myself and others who eat the fish from the Taku River, please allow these fish to remain healthy and their populations to be bountiful and not dwindle like the Canadian fish populations. Thanks.

Sincerely yours,

Joyce Levine

Joyce Levine
P.O. Box 21705
Juneau, AK 99802

Andrew Williams,
Atlin, British Columbia

Mar 31, 1999

Senator Rick Halford
Chair, Senate Resources Committee
State Capitol
Juneau, Alaska 99801-1182

via fax: 1-907-465-4928

re: Senate Resolution No. 7

Dear Senator Halford:

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

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

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

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

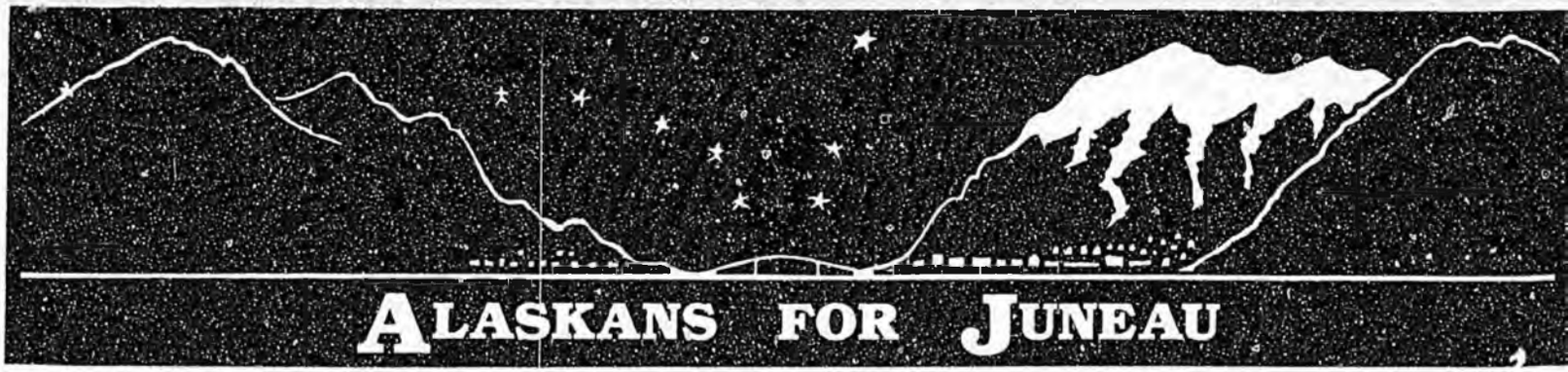
Earlier, environmental groups tried to stop the project by spreading misinformation on the impacts of the project. It has now become clear to us in the north that they have cynically tried to manipulate the TRTFN into opposing the project. The TRTFN is currently split on this issue, with some people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

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

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

Yours sincerely,

Andrew Williams



Dedicated to Clean, Healthy Economic Diversity in the Capital City

March 27, 1999

The Honorable Rick Halford, Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Chairman Halford,

Yesterday during my testimony in Senate Resources on SCR 7 on the Tulsequah Chief Mine, I mentioned a relevant Alaska Supreme Court decision and offered to provide a copy to Senator Taylor who was co-chairing the committee in your absence. The legal opinion clarifies that permitting a project in phases is unlawful. I am enclosing a copy of the decision and would appreciate your assistance in distributing the document to the committee and to Senator Taylor in particular. I am grateful for his interest in the supreme court's opinion.

The court, in *Thane Neighborhood Association v. City and Borough of Juneau*, September 6, 1996, determined that permitting the Alaska-Juneau Gold Mine in a segmented manner was improper. The court concluded:

> "The [City and Borough of Juneau Planning] Commission deferred approval of components of the mine which are interlinked with other components, creating an unacceptable danger that cumulative impacts would not be sufficiently analyzed.... If allowed to use such phasing in response to defects in mining applications, the Commission could grant approval to any permit application no matter how deficient it is, making the Juneau code virtually meaningless and Commission decisions effectively unreviewable."

My purpose in noting the court's decision in my testimony was to suggest that a cautious approach should be taken by the Legislature in supporting the Canadian mine and British Columbia's permitting process which in a similar situation in Alaska was found to be unlawful. I hope the attached opinion is helpful in determining that SCR 7 should not be passed.

Sincerely,

Laurie Ferguson Craig
Issues Coordinator

enclosure

P.O. Box 22428 Juneau, Alaska 99802 (907) 463-5065 ak4jnu@alaska.net

THE SUPREME COURT OF THE STATE OF ALASKA

THANE NEIGHBORHOOD ASSOCIATION, ALASKANS FOR JUNEAU,	)	Supreme Court No. S-6710
Appellants,	)	
	)	Superior Court No.
v.	)	1JU-93-1609 CI
	)	
CITY AND BOROUGH OF JUNEAU,	)	O P I N I O N
	)	
Appellee,	)	
	)	[No. 4395 - September 6, 1996]
and	)	
	)	
ECHO BAY ALASKA, INC.,	)	

(Commission) approved the application in a notice of decision issued on May 14, 1993. The approval was subject to a set of conditions. The permit was to be issued after a financial warranty was paid and after Echo Bay agreed to the conditions and signed a mitigation agreement. Approval of the tailings dam and impoundment and the discharge of wastewater was withheld until additional information was provided.

Appellants, Thane Neighborhood Association (TNA) and Alaskans for Juneau (AFJ), appealed the Commission's decision to the City and Borough of Juneau Assembly (CBJ) on June 7, 1993. Echo Bay was granted permission to participate as a party. The CBJ heard oral argument on August 30, 1993, and issued a decision denying the appeal on September 22, 1993. TNA and AFJ then appealed to the superior court and Echo Bay was permitted to intervene. On October 26, 1994, the superior court affirmed the decision of the CBJ. In this appeal, the appellants argue that the "CBJ impermissibly used a 'phased' approach in approving" the permit and that the CBJ's finding that issuance of the permit complied with standards set forth in the CBJ mining ordinance is not supported by substantial evidence. In December 1995 CBJ and Echo Bay filed a supplemental brief, and TNA and AFJ filed a response addressing the issue of whether the "Planning Commission [could] assure future compliance with the substantive standards for mining operations . . . by imposing permit conditions requiring future performance rather than by demanding pre-application-approval demonstration of future ability to comply."

THE CODE

The review of large mine permits is governed by the Code of the City and Borough of Juneau (CC&BJ) 49.65 (1989). CC&BJ 49.65.110 provides in part: "It is the purpose of this article to foster the development of a safe, healthy and environmentally sound mining industry while protecting the overall interests of public health, safety and the general welfare and minimizing the environmental and surface effects of mining projects for which an exploration notice or mining permit is required."

The procedure for obtaining a large mine permit is governed by CC&BJ 49.65.130. CC&BJ 49.65.130(b) requires an application for a large mine permit to

> be submitted in the form of a report containing sufficient information so that the department can, after reviewing the application, evaluate, in accordance with the standards of subsection 49.65.135(a), the impacts[(EN1)] described in this subsection that the mining operation may have on the city and borough The application shall contain a map on a scale of 1:63,360 or a more detailed scale, a description of the mine site and affected surface; a description and timetable of the proposed mining operation, including all roads, buildings, processing and related facilities; a description and timetable of proposed reclamation of affected surface; a description of proposals for the sealing of open shafts, adits and tunnels upon the completion or temporary cessation of mining operations; a description of methods to be used to control, treat, transport and dispose of hazardous substances, sewage and solid waste; and a description of other potential environmental, health, safety and general

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

Central Microfilm Services
Department of Education & Early Development
State of Alaska

Rev. 6/98

THE SUPREME COURT OF THE STATE OF ALASKA

THANE NEIGHBORHOOD ASSOCIATION, ALASKANS FOR JUNEAU, Appellants, v. CITY AND BOROUGH OF JUNEAU, Appellee, and ECHO BAY ALASKA, INC.,	)	Supreme Court No. S-6710 Superior Court No. 1JU-93-1609 CI O P I N I O N [No. 4395 - September 6, 1996]

THE SUPREME COURT OF THE STATE OF ALASKA

THANE NEIGHBORHOOD ASSOCIATION, ALASKANS FOR JUNEAU, Appellants, v. CITY AND BOROUGH OF JUNEAU, Appellee, and ECHO BAY ALASKA, INC., Intervenor-Appellee.	Supreme Court No. S-6710 Superior Court No. 1JU-93-1609 CI O P I N I O N [No. 4395 - September 6, 1996]

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Michael A. Thompson, Judge.

Appearances: Eric Smith, Anchorage, for Appellants. John R. Corso, City & Borough Attorney, Juneau, for Appellee City & Borough of Juneau. James F. Clark, Terry L. Thurbon, Robertson, Monagle & Eastaugh, Juneau, for Intervenor-Appellee Echo Bay Alaska.

Before: Compton, Chief Justice, Rabinowitz, Matthews, Eastaugh, Justices, and Carpeneti, Justice, pro tem.

MATTHEWS, Justice. Echo Bay Alaska, Inc., applied to the City and Borough o Juneau in November 1990 for a large mine permit for the AJ Mine. The proposed mine is located four miles from downtown Juneau. The tailings that will result from the processed ore are to be pumped into a tailings pond created by constructing a dam in Sheep Creek Valley. The proposed dam will be 332 feet high and 750 feet long. If the mine goes into production 100 million tons of tailings are expected to be produced and pumped into the pond. The excess water from the tailings pond will be discharged into Gastineau Channel. The discharge from the tailings pond to the channel could be as great as 250 cubic feet per second.
The City and Borough of Juneau Planning Commission

(Commission) approved the application in a notice of decision issued on May 14, 1993. The approval was subject to a set of conditions. The permit was to be issued after a financial warranty was paid and after Echo Bay agreed to the conditions and signed a mitigation agreement. Approval of the tailings dam and impoundment and the discharge of wastewater was withheld until additional information was provided.

Appellants, Thane Neighborhood Association (TNA) and Alaskans for Juneau (AFJ), appealed the Commission's decision to the City and Borough of Juneau Assembly (CBJ) on June 7, 1993. Echo Bay was granted permission to participate as a party. The CBJ heard oral argument on August 30, 1993, and issued a decision denying the appeal on September 22, 1993. TNA and AFJ then appealed to the superior court and Echo Bay was permitted to intervene. On October 26, 1994, the superior court affirmed the decision of the CBJ. In this appeal, the appellants argue that the "CBJ impermissibly used a 'phased' approach in approving" the permit and that the CBJ's finding that issuance of the permit complied with standards set forth in the CBJ mining ordinance is not supported by substantial evidence. In December 1995 CBJ and Echo Bay filed a supplemental brief, and TNA and AFJ filed a response addressing the issue of whether the "Planning Commission [could] assure future compliance with the substantive standards for mining operations . . . by imposing permit conditions requiring future performance rather than by demanding pre-application-approval demonstration of future ability to comply."

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> be submitted in the form of a report containing sufficient information so that the department can, after reviewing the application, evaluate, in accordance with the standards of subsection 49.65.135(a), the impacts[(EN1)] described in this subsection that the mining operation may have on the city and borough. The application shall contain a map on a scale of 1:63,360 or a more detailed scale, a description of the mine site and affected surface; a description and timetable of the proposed mining operation, including all roads, buildings, processing and related facilities; a description and timetable of proposed reclamation of affected surface; a description of proposals for the sealing of open shafts, adits and tunnels upon the completion or temporary cessation of mining operations; a description of methods to be used to control, treat, transport and dispose of hazardous substances, sewage and solid waste; and a description of other potential environmental, health, safety and general

> welfare impacts, as well as neighboring property impacts and measures to be taken to mitigate their adverse effects. The application shall also contain additional information normally prepared by the operator for its feasibility studies and mining plans, including information establishing the right to use the affected surface, labor force characteristics and timing, payroll projections, anticipated duration of the mining operation, construction schedules, infrastructure description, and other information reasonably requested by the department in the preapplication conference held pursuant to Section 49.15.330(b). . . .

(Emphasis added.) Likewise, CC&BJ 49.15.130(b), which governs applications for land use permits in general, provides that "[a]n application is complete when it contains all of the information necessary to determine if the development will comply with all of the requirements of the permit applied for."

CC&BJ 49.65.130(f) requires the Community Development Department (Department) to conduct an application review, which

> shall include, but not be limited to, the following determinations: whether air and water quality will be maintained in accordance with federal, state, and city and borough laws, rules and regulations; where sewage, solid waste, hazardous and toxic materials will be properly contained and disposed of in accordance with federal, state, and city and borough laws, rules and regulations; the extent to which the operator will agree to mitigate adverse impacts on the city and borough; whether the mining operation will be conducted in such a way as to minimize safety hazards to the extent reasonably practicable and will mitigate adverse impacts on the public and on neighboring properties such as those from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion; and whether appropriate historic sites will be protected.[(EN2)]

CC&BJ 49.65.130(f) further provides:

> The department shall form a recommendation as to whether the permit should be approved . . . . The department's recommendation may include such conditions or stipulations as the department deems to be reasonably necessary to mitigate any adverse environmental, health, safety, or general welfare impacts which may result from the proposed mining operation. . . . If the [planning] commission determines that the application, with stipulations or conditions[(EN3)] as appropriate, satisfies the standards of Sections 49.65.135 and 49.15.330, it shall approve the application . . . .

The primary requirements for a large mine permit are contained in CC&BJ 49.65.135 (1989), which states:

> STANDARDS FOR ISSUANCE OF PERMITS AND CONDUCT OF OPERATIONS. (a) In determining whether to recommend issuance of a permit, the [community development] department shall require that:
>
> (1) The mining operations be conducted in accordance with this article, Section 49.15.330,[(EN4)] and any other applicable provisions of the city and borough code in such a way as to mitigate adverse environmental, health, safety and general welfare impacts;
>
> (2) Air and water quality be maintained in accordance with federal, state, and city and borough laws, rules and regulations;
>
> (3) Hazardous and toxic materials, sewage, and solid waste be properly contained and disposed of in accordance with applicable federal, state, and city and borough laws, rules and regulations;
>
> (4) The operator conduct all mining operations according to the standards of the city and borough as contained in this article, Section 49.15.330, the permit, and any other applicable provisions of the city and borough code, so as to minimize to the extent reasonably practicable safety hazards and to control and mitigate adverse impacts on the public and neighboring properties, such as from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion;
>
> (5) Appropriate historic sites designated as significant by the city and borough be protected;
>
> (6) Reclamation of the affected surface be in accordance with the approved reclamation plan of the operator; and
>
> (7) With respect to a large mine permit application, the operator negotiate and enter into a mitigation agreement with the city and borough . . . .
>
> . . . .
>
> (b) Reclamation of all affected surfaces shall be completed as soon as is reasonable after affected surface areas are no longer being used in exploration and mining operations. Reclamation shall include the following: cleanup and disposal of dangerous, hazardous or toxic materials; regrading of steep slopes of unconsolidated material to create a stable slope; backfilling underground shafts and tunnels to the extent appropriate; adequate pillaring or other support to prevent subsidence or sloughing; plugging, or sealing of abandoned shafts, tunnels, adits or other openings; adequate steps to control or avoid soil erosion or wind erosion; control of water runoff; revegetation of tailings and affected

> surface areas with plant materials that are capable of self-regeneration without continued dependence on irrigation and equipment where appropriate; rehabilitation of fisheries and wildlife habitat; and any other conditions imposed by the commission. Subsequent to the issuance of a permit or the grant of authority under an exploration notice, the operator's compliance shall be measured against the requirements contained in that permit or the conditions of the exploration notice and the operator's plans submitted with the permit application or the notice.

THE LARGE MINE PERMIT

After making its determination, the Commission issued a notice of decision, granting approval for the application for a large mine permit subject to a set of conditions. The notice of decision lists the six requirements that are applicable to all conditional use permits as set forth at CC&BJ 49.15.330 and the twenty-one requirements set forth in the mining ordinance (CC&BJ 49.65.100-195), and states its findings for each of these requirements.

TNA and AFJ argue that the findings and conditions in the notice of decision evidence a lack of compliance with the code. They argue that the CBJ used a "'phased' approach in approving the large mine permit." They point to three ways in which they believe the CBJ engaged in phasing. First, the Commission withheld approval of the dam, the tailings pond and marine water discharges until further information was provided, yet granted the permit for the remainder of the project. Second, the Commission approved the permit, yet required Echo Bay to provide further information on certain matters. Third, the Commission imposed as a condition that Echo Bay obtain necessary permits from other agencies.

Echo Bay and CBJ argue that this phasing is consistent with the code. CBJ argues "[t]he purpose of the mining ordinance and the Commission is to grant permits, not to deny them." CBJ and Echo Bay argue that "the CBJ mining ordinance does not vest the commission with discretion to disapprove a large mine permit application when the standards for permit issuance have been met," relying on CC&BJ 49.65.130(f), which states that "if the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of Sections 49.65.135 and 49.15.330, it shall approve the application." (Emphasis added.)

CBJ and Echo Bay also contend that the mining ordinance can be satisfied by including permit conditions which incorporate the requirements of the ordinance -- it is not necessary to determine in advance whether the plans submitted in the permit application will satisfy those requirements. CBJ argues that the purpose of the ordinance "is to mandate compliance not predict it."

DISCUSSION

This court must determine to what extent the City and Borough of Juneau's code allows phasing when evaluating large mine permit applications. This is a question of statutory interpretation which does not involve agency expertise. Thus, this court will use its independent judgment. See Marlow v. Municipality of Anchorage, 889 P.2d 599, 602 n.1 (Alaska 1995) (reviewing zoning commission's and board's constructions of zoning ordinance under independent judgment standard, as issues presented were "pure questions of statutory construction which d[id] not involve agency expertise").

A. Did the Commission Err by Granting a Large Mine Permit Which Excluded the Tailings Dam and Impoundment and Wastewater Discharge?

In this case, CC&BJ 49.65.135(a)(2) requires that "water quality be maintained in accordance with federal, state, and city and borough laws, rules and regulations." In its findings concerning the AJ Mine, the Commission stated that it could not "conclusively determine at this time with current information that the proposed treatment system will maintain water quality in accordance with federal, state and local laws, rules and regulations." The Commission further found that "[t]he available data shows that the federal limit for total suspended solids (TSS) will not be met by the marine water discharge." CC&BJ 49.65.135(a)(4) provides that a mine operator must "conduct all mining operations . . . so as to minimize to the extent reasonably practicable safety hazards." The staff had various concerns about the safety of the AJ Mine's proposed tailings dam.

The Commission responded to these problems by withholding approval of the tailings dam and impoundment and the marine wastewater discharge components of the project. The Commission decided that it would determine whether to approve the tailings dam and impoundment and the marine wastewater discharge after the receipt of further information.

While the Juneau code does have provisions allowing the Commission to put conditions on a permit, see CC&BJ 49.15.330(g), 49.65.130(f), there is nothing in the code to support granting the permit for a project as a whole, while excepting one part of a project. Past decisions of this court make clear that phasing a project by permitting it in stages is disfavored.

Three of our recent cases provide considerable guidance as to what sorts of permit approval "phasing" techniques are appropriate and what kinds are not: Trustees for Alaska v. Gorsuch, 835 P.2d 1239 (Alaska 1992); Trustees for Alaska v. State, Department of Natural Resources, 851 P.2d 1340 (Alaska 1993); and Kuitsarak Corp. v. Swope, 870 P.2d 387 (Alaska 1994). In Gorsuch, we held that in granting mining permits, "[Department of Natural Resources (DNR)] may not ignore cumulative effects of mining and related support facilities . . . by permitting facilities separately." 835 P.2d at 1246. We ruled that when DNR reviews a mining permit application, it must "consider the probable cumulative impact of all anticipated activities which will be a part of a 'surface coal mining operation,' whether or not the activities are part of the permit under review." Id. "If DNR determines that the cumulative impact is problematic," we stated, "the problems must be resolved before the initial permit is approved." Id.

We explained that "[t]his type of 'concept approval' is necessary to avoid a situation where, because of industry investment and reliance upon a past mining permit approval, DNR might feel compelled to approve a subsequent permit for a related but environmentally unsound facility." Id. at 1246 n.6. We added that "[i]n some cases, this may require concurrent, as opposed to serial, review of separate, related permit applications," while "[i]n other cases, anticipated problems resulting from cumulative impacts may require that approval of an initial permit be conditioned upon satisfactory resolution of the problems anticipated in subsequent permits." Id.

This court split in Gorsuch on whether an access/haul road for the mining operation could be permitted under a separate mining permit. The majority determined that a specific regulation

implied that separate permitting was allowed and that cumulative impacts could be adequately considered under separate permitting in that instance. Id. at 1245-46. Justice Rabinowitz, joined by Justice Matthews, dissented, arguing that the applicable regulations prohibited separate permitting, and that a single permit was necessary to ensure that the cumulative effects of the mining operation would be adequately considered. Id. at 1250-51.

Justice Rabinowitz contended that "[c]ourts have disallowed segmentation of a proposed project . . . to assure that the cumulative effects of the project are adequately considered . . . ." Id. at 1251. Justice Rabinowitz cited Thomas v. Peterson, 753 F.2d 754, 760 (9th Cir. 1985), for the proposition that "allowing consideration of cumulative impacts after a portion of [a] project is already approved" swings the balance in favor of project approval even if the project would have been disapproved had all components of the project been considered in the initial permit application. Gorsuch, 835 P.2d at 1251.

In Trustees for Alaska v. State, Department of Natural Resources, 851 P.2d 1340, 1341 (Alaska 1993) (Camden Bay II), DNR's approval of a sale of oil and gas leases was challenged. A regulation required DNR to identify known geophysical hazard areas, and prohibited approval of development in such areas until measures to minimize geophysical hazards were provided. Id. at 1343. DNR identified the entire sale area as a geophysical hazard area. Id. DNR intended to consider particular geophysical hazards on a lease-site-by-lease-site basis, requiring lessees to submit plans to mitigate potential geophysical hazards before approval to develop a specific lease site would be given. Id. at 1343-44 & n.7.

We disapproved DNR's approach. We held that DNR was required to identify known or substantially possible hazard areas before approving the lease sale as a whole. Id. at 1344-45. We explained that "deferring a careful and detailed look at particularized geophysical hazards to later stages of the development process . . . entails certain practical risks." Id. at 1344. Such deferral "may tend to mask appreciation of any cumulative environmental threat that would otherwise be apparent if DNR began with a detailed and comprehensive identification of [the] hazards." Id. We again noted that "the more segmented an assessment of environmental hazards [is], the greater the risk that prior permits will compel DNR to approve later, environmentally unsound permits." Id.

Another regulation at issue in Camden Bay II required DNR to identify important historic sites. Id. at 1345. DNR purportedly attempted to comply with this regulation by requiring the lessees to report on such sites and to try to preserve such sites, arguing that the regulation did not state when historic sites had to be identified. Id. at 1345 & n.9. We held that DNR had not complied with the regulation, and that DNR was required to identify known historic sites before approving the initial sale. Id. at 1346. We explained that evaluation of historic sites on a lease-site-by-lease-site basis ran "the risk of undervaluing the cumulative cultural significance of the region as a whole," and that the lessees would have an incentive to underreport historic sites. Id. We added that our holding that the regulation at issue required identification of historic sites before approval of the initial sale did "not mean that more intensive duties are not required by this regulation at later stages of development." Id.

We also ruled in Camden Bay II, however, that DNR did not have to examine transportation routes and utility sites before approving the initial sale because "[u]ntil exploration is proposed and, in all likelihood, until and unless a commercially exploitable

discovery is made, there will be no occasion for siting, designing or constructing transportation and utility routes." Id. We further decided that DNR was not required "to evaluate the effectiveness of [environmental harm mitigation] measures before even receiving detailed development proposals," since DNR would not be able to assess "detailed mitigation measures even before knowing which activities it needs to mitigate." Id. at 1347.

In Kuitsarak Corp. v. Swope, 870 P.2d 387 (Alaska 1994), DNR approved offshore prospecting permits in a region without conducting an in-depth analysis of the effects of mining in the region. Id. at 391 n.13, 394 & n.21. DNR contended that it lacked sufficient information to conduct such an analysis and that it would be easier to do the analysis when specific mining activities were performed. Id. at 391 n.13, 394 n.21. We rejected this procedure. We found that DNR had not adequately considered the potential and cumulative impacts of mining in the region. Id. at 395-96.

We noted that DNR's argument that it was difficult to obtain the information necessary to perform a proper evaluation of the impacts of mining in the region was undermined by evidence of federal studies similar to the studies which DNR needed to do. Id. at 396. We stated that "[o]nce the initial impact of mining on the region has been assessed, any unforeseen occurrences or conditions that are revealed during exploration can be dealt with by DNR through use of stipulations and conditions imposed on mining." Id. (emphasis added). We disapproved of DNR's use of conditions to require the development of plans to minimize potential dangers as a substitute for a complete analysis of the potential dangers. See id. at 396 n.27.

We can draw three general, guiding principles concerning when and in what manner "phasing" or "segmentation" is permissible from Gorsuch, Camden Bay II, and Kuitsarak. First, unless a specific statute or regulation allows phasing, phasing is disfavored. Compare Gorsuch, 835 P.2d at 1245-46 (regulation interpreted as permitting phasing) with Gorsuch, 835 P.2d at 1250-51 (Rabinowitz, J., dissenting) (regulation interpreted as prohibiting phasing). Where a statute is silent or ambiguous, phasing should generally not be allowed. See Camden Bay II, 851 P.2d at 1345-46 (regulation silent on when historic sites must be identified, but best interpreted as requiring identification of known sites at initial permitting stage).

Second, phasing is prohibited if it can result in disregard of the cumulative potential environmental impacts of a project. See Kuitsarak, 870 P.2d at 396 n.30; Camden Bay II, 851 P.2d at 1344, 1346; Gorsuch, 835 P.2d at 1246. The more interlinked the components of a project are and the greater the danger that phasing will lead to insufficient consideration of cumulative impacts, the greater the need to bar phasing. Compare Gorsuch, 835 P.2d at 1245-46 (separate permitting permissible so long as DNR determines that cumulative impacts will not be problematic) with Gorsuch, 835 P.2d at 1250-51 (Rabinowitz, J., dissenting) (unified permitting process necessary to ensure adequate consideration of cumulative effects).

Third, conditions and stipulations may be used to address unforeseen occurrences or unforeseen situations that may arise during exploration or development, but permit conditions may not serve as a substitute for an initial pre-permitting analysis that can be conducted with reasonably obtainable information. See Kuitsarak, 870 P.2d at 395-96 & n.27 (approving possible use of conditions to deal with unforeseen events but disapproving use of conditions as substitute for feasible, complete analysis).

Thus, phasing through the use of conditions is prohibited where it is feasible to obtain the information necessary to determine whether environmental standards will be satisfied before granting an initial permit, but allowed where it is impractical or impossible to create detailed development plans without conducting additional physical exploration. See Camden Bay II, 851 P.2d at 1343-47 (geophysical hazards and historic sites can be investigated during initial permitting stage but transportation routes and mitigation measures cannot be analyzed without further exploration and planning).

Based on these principles the Commission should not have granted the AJ Mine permit while excepting major portions of the project. The tailings dam and impoundment and the marine wastewater discharge system are integral components of the mining project; they are significantly interlinked to other parts of the project. If extensive redesigns to these components become necessary, the mining project could have a significantly greater environmental impact. Phasing the approval of those components could therefore cause the cumulative impacts of the mining project to be inadequately considered.

After the Commission granted Echo Bay the large mine permit for the project as a whole, the United States Environmental Protection Agency (EPA) disapproved the proposal for the dam at Sheep Creek, and Echo Bay abandoned the plan to build the dam there. The EPA's action will undoubtedly force major redesigns in the mine project. This sequence of events illustrates the dangers of CBJ's improper use of phasing -- the initial approval for most components of the AJ Mine may cause CBJ to fail to take into account the cumulative impacts of the redesigns made necessary by the change in the location of the tailings dam.

For these reasons we conclude that the Commission erred in granting permit approval of the project while deferring consideration of important portions of the project.

B. Did the Commission Err by Granting the Permit, Yet Imposing as a Condition that Echo Bay Provide Further Information?

As noted, the Commission found that it could "not conclusively determine at this time with current information that the proposed treatment system will maintain water quality in accordance with federal, state and local laws, rules and regulations." In addition, the Commission found that "[t]he available data shows that the federal limit for total suspended solids (TSS) will not be met by the marine water discharge." In addition to withholding approval of a portion of the project, the second way the Commission responded to this problem was to place conditions into the permit requiring the project "to comply with federal and state water quality standards." The Commission should not have granted the AJ mine permit without knowing whether the plan that was submitted to it would satisfy water quality standards.

The ordinance requires that an application contain enough information for the Department and the Commission to make determinations as to impacts and compliance. First, CC&BJ 49.65.130(f) requires the Department to conduct an application review, form a recommendation and provide the recommendation to the Commission. CC&BJ 49.65.130(b) provides that the application must contain "sufficient information so that the Department can, after reviewing the application, evaluate, in accordance with the standards of subsection 49.65.135(a), the impacts described in this subsection that the mining operation may have on the city and borough." That subsection includes "a description of other potential environmen-

tal, health, safety and general welfare impacts." Subsection 49.65.135(a)(2) provides that "[a]ir and water quality be maintained in accordance with federal, state, and city and borough laws, rules and regulations." Second, after the Department provides the recommendation, the Commission must determine whether the "application, with stipulations or conditions as appropriate satisfies the standards of Sections 49.65.135 and 49.15.330." CC&BJ 49.65.130(f). CC&BJ 49.65.330(e)(1)(B) in turn provides that the Commission shall determine whether the application is complete. CC&BJ 49.15.130(b) provides that "[a]n application is complete when it contains all of the information necessary to determine if the development will comply with all of the requirements of the permit applied for." Thus the ordinance requires that (1) the application contain sufficient information for the Department to determine the environmental impacts of the mining operation; and (2) the Commission determine whether the application contains the information necessary to determine whether it will comply with water quality rules and regulations. The Commission's statement that it did not have enough information to determine whether the system would adhere to water quality standards makes it clear that the application failed to meet either of these requirements. Without this information, the Department lacked sufficient information to determine the environmental impacts of the project. In addition, without this information the Commission could not have determined that the application was complete.

This interpretation of the code is further supported by Kuitsarak, 870 P.2d at 394-96. In Kuitsarak, DNR did not gather necessary information regarding environmental impacts before granting an offshore prospecting permit. Id. Similarly, in this case, further information on water quality was necessary before the Commission could grant the mining permit, or even consider the application complete. (EN5)

CONCLUSION

The Juneau Planning Commission engaged in impermissible phasing in its approval of the AJ Mine permit. The Commission deferred approval of components of the mine which are interlinked with other components, creating an unacceptable danger that cumulative impacts would not be sufficiently analyzed. The Commission utilized conditions as a substitute for evaluations that could have been conducted with feasibly obtainable information.

The Commission reacted by placing conditions on the permits and deferring approval of mine components when it was faced with data that the proposed mine projects would not comply with Juneau code requirements or when it did not have sufficient information to determine whether the requirements would be met. If allowed to use such phasing in response to defects in mining applications, the Commission could grant approval to any permit application no matter how deficient it is, making the Juneau code virtually meaningless and Commission decisions effectively unreviewable.

For these reasons, we REVERSE the decision of the superior court and REMAND this case to the court with directions to vacate the decisions of the Juneau Assembly and of the Commission granting the mine permits, and to REMAND to the Commission for further proceedings in accordance with this opinion. (EN6)

ENDNOTES:

1. CC&BJ 49.80.120 defines "impact" as used in CC&BJ 49.65 as

"the reasonably foreseeable effects or consequences of a mining operation."

2. These required determinations track the "standards for issuance of permits and conduct of operations" put forth in CC&BJ 49.65.135.

3. CC&BJ 49.15.330(g) allows the Commission to place seventeen kinds of enumerated conditions, as well as "other conditions as may be reasonably necessary," on a conditional use permit.

4. CC&BJ 49.15.330 contains the general standards for obtaining a conditional use permit in Juneau.

5. AFJ and TNA argue that "an applicant simply cannot demonstrate compliance with all applicable requirements unless it first has obtained the necessary permits from other agencies." The code does not necessarily require this level of demonstration of compliance, but at the very least, the application must contain the "information necessary to determine" whether the project will comply. CC&BJ 49.15.130(b)

6. The issues regarding the existence or lack of substantial evidence to support various CBJ findings are mooted by our decision.

Southeast Alaska Conservation Council

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(907) 586-6942 phone (907) 463-3312 fax

To: Senator Halford

SOUTHEAST ALASKA CONSERVATION COUNCIL
FAX COVER SHEET

RETURN FAX NUMBER: (907) 463-3312

DATE: 4/2/99

TO: CHAIRMEN OF HOUSE + SENATE RESOURCE COMMITTEES

TO FAX #:

NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 7

FROM: Bart Koehler; Executive Director

SUBJECT: Tulsequah Chief Mine Proposal / TAKU RIVER WATERSHED PROTECTION

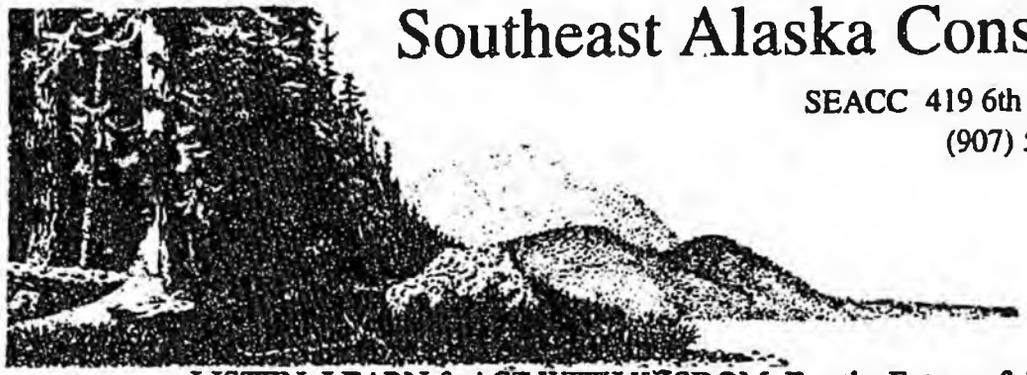
MESSAGE:

Dear Chairmen: (Senator Halford)

Please make the following statement an official part of the record for your hearings on this important matter —

Thank you,

Bart Koehler



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LISTEN, LEARN & ACT WITH WISDOM. For the Future of the Taku River Watershed

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My name is Bart Koehler, and I am on the staff of the Southeast Alaska Conservation Council, otherwise known as SEACC. SEACC is the regional grassroots coalition of 17 conservation groups in 13 of our far-flung Alaskan communities.

Mr. Chairman, take a moment and look south out the window. You can see the Taku right out there. It's no more than 12 miles away, as the raven and eagle fly.

By any standard, the Taku River watershed is a world class fisheries, wildlife, wildland, cultural and historical treasure. The fundamental question is this: do we allow this wild watershed to be torn apart with roads and mines, or do we safeguard this natural treasure for all time? The fisheries alone are worth more than any gold mine and if protected and nurtured the Taku will produce millions of dollars of salmon year in and year out.

SEACC echoes the concerns voiced by Alaska commerical fishermen and women and their organizations; by the Taku River landowners; by the Taku Wilderness Association; and especially by the Taku River Tlingit people – both the Taaku Kwaan (the Douglas Indian Association Tribal Government) here in Alaska, and the Taku River Tlingit First Nation people in Canada, who winter in Atlin, British Columbia and summer in the heart of their homeland — along the Nakina, Sloko, Inklin, Tulsequah, Silver Salmon and King Salmon Rivers, Kuthai Lake and the mighty Taku .

SEACC strongly supports the on-going efforts of Governor Tony Knowles and of the excellent and hard-working professionals who have been watchdogging this issue for the State of Alaska. The Governor's efforts, cooperating actions by the U.S. Department of Interior and the Environmental Protection Agency, plus the tireless efforts of key officials in the U.S. Department of State are all aimed at pushing for an International Joint Commission (IJC) referral and review, and taking a long hard look at the big picture.

SEACC believes that only an IJC referral and review will take an eagle-eyed view of the future of the Taku watershed over its entire length and expanse — from its headwaters clear on down river to Alaska by the sea. We feel that a comprehensive review must take place before irreparable damage and a cascade of negative impacts strike deep into the heart of the watershed -- threatening the existing and magnificent commercial fishery that is so vitally important to Alaskans and to the Taku River Tlingit people on both sides of the border.

I will focus the rest of my comments on fisheries, history and human rights.

WORLD CLASS SALMON FISHERY

Just how valuable is the Taku Watershed's international fishery? The Taku River and its near pristine watershed fisheries are worth more than $5 million dollars each year to Alaskan, Canadian and First Nation fishermen. It has been noted that the Taku is most likely the largest salmon producer in all of Southeast Alaska and British Columbia north of the Skeena River. According to the State of Alaska, the peak production levels of Taku River Salmon stocks in recent years have been as follows: Chinook – 100,000; Sockeye – 300,000; Coho – 400,000; Pink—1,000,000; and Chum – 50,000. These figures do not include significant runs of steelhead and cutthroat trout, Dolly Varden char, and eulachon. By any standard, the Taku is a critical fishery of world class significance.

Two critically important wetlands, Flannigan Slough and Shazah Slough, provide vital spawning and rearing habitat for large numbers of Coho. These two areas are located very near to the proposed mine project and must be protected at all costs. Additionally, Flannigan Slough is of international importance for waterfowl, moose and other wildlife.

The proposed road slicing deep into the Taku watershed will undoubtedly lead to more development in the future. The results caused by acid mine drainage, and the damage from additional mines, logging and road building will heavily impact water quality in spawning and rearing areas. We simply must not put the Taku's incredibly valuable salmon resource at risk -- not now, not ever.

TAKU RIVER TLINGIT HOMELAND

The Taku watershed is the ancestral homeland of the Tlingit people. Calling themselves the Takuquan in Canada and the Taaku Kwaan in Alaska, their names mean "the people of the Taku watershed". There is no treaty respecting the area, and **the Tlingits' aboriginal rights and title to the Taku watershed have never been surrendered or extinguished. The Taku River Tlingit First Nation Government is currently in the midst of treaty negotiations with the governments of Canada and British Columbia.**

Think about this: **if the British Columbia Government approves the mine and the road, they will have committed an egregious act of bad faith & will have completely & irrevocably undermined the rights of the Taku River Tlingit First Nation.**

LEARNING FROM OUR HISTORY ON THE NORTHERN PLAINS & THE LAKOTA

We have our own tragic tale from our United States history that is amazingly telling on this current Taku issue. Most of you have probably never heard of the Bozeman Trail. You probably have never heard of the "Thieves Road" either. Well, <u>you should learn about them now, before this Taku proposal goes one step further.</u>

As a result of the Treaty of Fort Laramie in 1851, the Lakota Nation (which we wrongly call the Sioux) was granted aboriginal rights to lands stretching from the sacred Black Hills (called Paha Sapa, or the center of the earth by the Lakota) westward across the Powder River Basin, to the crest of the Big Horn Mountain Range (called the Shining Mountains by the Lakota). These lands reached from the North Platte River on the south to the Yellowstone River on the north. These lands were only to be crossed by the Oregon Trail, and the railroad, known as the Iron Road. White people were to only use these narrow routes to travel to the west coast, and were not to exploit the resources in the territory nor to build settlements, etc.

By the early 1860's John Bozeman illegally blazed a trail and wagon road across the heart of this Lakota homeland and their main buffalo hunting grounds. The wagon road was to give access for miners to the gold fields of Montana, near Virginia City. A little bit later the U.S. Army built a series of forts to protect the miners on their way to the gold fields. In 1865 the Indians north of the North Platte River who were defending their hunting grounds, were to be relentlessly hunted down. It was the beginning of the end.

On June 13th, 1866, the U.S. Government commenced Peace Talks, in an effort to gain an officical right of way for the Bozeman Trail. While the negotiations were going on the U.S. Army brought in troops. According to author Dee Brown in his epic Bury My Heart At Wounded Knee. "Red Cloud accused the Americans of deceit of pretending to negotiate for land that they all along intended to take by force. Red Cloud then said, 'The Great Father sends us presents and wants us to sell him the road, but **the White Chief goes with soldiers to steal the road before the Indians say yes or no.'"(p.125)(This clearly echoes the concerns we are hearing today from the Taku River Tlingit people – that the B.C. Government is pushing for this Taku road before their treaty talks are completed and before the Taku people say yes or no.)**

These Peace Talks failed and in 1867 the Lakotas attacked the forts, and closed down the Bozeman Road. There were a series of battles between the Lakota and the Army – the so-called Fetterman Massacre (they were only called massacres when the US Army lost), the Wagonbox Fight, and other conflicts. During this year the Lakota Chief Spotted Tail (Sinte Gleska) flatly stated, **"...roads are the cause of all our troubles".** (p.138)

1868 was the year that a new Fort Laramie Treaty created a huge reservation for the various Lakota tribes in the Lakota Nation – from the Missouri on the east (near the present day southeastern border of South Dakota) to the Sacred Black Hills on the west. The beloved buffalo hunting grounds of the Powder River Basin, where the Bozeman Road crossed, were not part of this new reservation. Many of the Lakota warriors refused to go to the reservation, and as we often say, "the rest is history". It must be noted that the 1868 Treaty gave the Black Hills to the Indians, because at that time the U.S.Government thought the land was worthless.

Four years later, in 1872, hordes of white men had swarmed into the Black Hills, blatantly violating the Treaty by their intense search for gold.

The threat of another road to new gold fields loomed on the ever-darkening horizon. In 1874, the Army made a reconnaissance trip into the Black Hills, with General Custer in the lead. Custer reported that the Black Hills were filled with gold. The trail that Custer's supply wagons had cut deep into the heart of this sacred land soon became known as the "Thieves Road". This was another road to new gold fields: another road that would ultimately bring about the end of a way of life for the indigenous Lakota people.

In 1875, once the U.S. Government figured out that the Black Hills were no longer worthless, the Government leaders at first tried to negotiate for the mineral rights. Senator Allison proposed that, "when the gold or other valuable minerals are taken away, the country will again be yours." After that proposal failed, the U.S. offered to buy the Black Hills outright, for $ 6 milllion. (This was a great bargain, since the Black Hills have yielded more than $ 500 million, so far.) The Lakota rejected this outrageous offer.(p.269)

As Dee Brown noted in Bury My Heart At Wounded Knee, **"Thus was set in motion a chain of actions which would bring the greatest defeat ever suffered by the U.S. Army in its wars with the Indians, and ultimately would destroy forever the freedom of the Northern Plains Indians."** (p.271)

In the dead of winter of December 1875, the U.S. Army issued an ultimatum to those Lakotas who had not gone to their new reservation and Indian agencies. Couriers were sent out with the grim news that if the Lakotas did not go to their agencies by January 31st of 1876, then "the Army would use military force to compel them." (p.272)

There was heavy snow. It was bitterly cold. Constant blizzards kept these Lakotas hunkered down in their winter camps. They could not travel in these deadly conditions. Many of the couriers did not even arrive at the Lakota camps until after the ultimatum deadline had passed.

When one courier finally made it to Crazy Horse's camp near Bear Butte, Crazy Horse politely told him that he could not come in until the cold went away. A young Lakota warrior of Crazy Horse's camp later recalled, "It was very cold....and many of our people and ponies would have died in the snow. Also, we were in our own country and were doing no harm." Crazy Horse and Sitting Bull said they would have to wait until Spring (the Moon When the Green Grass Is Up) to come in to the reservation agencies. (p.273)

On February 7th, 1876, when the Lakota could not travel hundreds of miles in the killing winter blizzards, the U.S. Army "commenced operations against the 'hostile Sioux'. In the Moon of the Snowblind, war began when General Crook came marching northward along the fateful Bozeman Road. On February 8th, General Custer headed westward along the "Thieves Road".

1876 proved to be a watershed year for the Lakotas and their Cheyenne and Arapaho allies. Crazy Horse defeated General Crook at the Rosebud, and then Crazy Horse,

Sitting Bull, and others wiped out General Custer at the Battle of the Little Bighorn in June, 1876. After that came the unrelenting revenge of the U.S. Cavalry. In August of 1876, the U.S. Congress passed a law forcing the Lakota to give up all rights to the Powder River Country and the Black Hills – without regard to the Treaty of 1868. Less than a year after his greatest victory, Crazy Horse was led off to prison. When Crazy Horse resisted, a soldier plunged a bayonet in his back. He died on Sept. 5, 1877. His mother carried away his heart and bones, & buried them somewhere near Wounded Knee.

All of this amazing history took place in a span of only 26 years. **This tragic and heartbreaking ending began with the building of two roads to the gold fields which cut deeply through the very heart of an Indian Nation's Homeland.**

LEARNING FROM OUR HISTORY IN ALASKA 101 YEARS AGO

Let's listen thoughtfully to words spoken here in Alaska, from an account called "The Canoe Rocks", 101 years ago. In a wonderful book edited by the Dauenhauers entitled Haa Tuwunaagu Yis, For Healing Our Spirit, Tlingit Oratory, a group of Tlingit Chiefs met with Alaska Governor John Green Brady on December 14, 1898. The Klondike Gold Rush created the need for this meeting. The Native people were in the way.

Let me quote, "The first speaker was Chief Kah-du-shan from Wrangell. He protested the taking of land and petitioned for the return of creeks and hunting grounds. The second speaker was Chief Johnson, Yash-noosh, of Juneau, Chief of the Takou (sic) tribe. He repeated the first speaker's theme, and focussed on love and friendship....The fifth speaker, Chief Shoo-we-kah from Juneau ....went to to make this striking comparison: **'We are like a certain man in a canoe. The canoe rocks; we do not know what will become of us.'**...The eighth and final speaker, Jack Williams of Juneau...described the loss of hunting grounds and requested a reserved area or reservation for Indians." (p.135)

This book goes on to say that " **The pattern of exploitation and usurpation objected to by the Tlingit elders in their 1898 meeting with Governor Brady is but one example of patterns of seizure of Native American land and resources that characterized the westward expansion of the United States.** 'The Canoe Rocks' is a very eloquent and powerful presentation, but unfortunately the speeches fell on deaf ears." (page 136)

LISTEN, LEARN, AND ACT WITH WISDOM

I am hopeful that we can all learn from this history. The parallels between what happened to the Lakota people, the concerns voiced by Alaskan Tlingit Chiefs in 1898, and what could now happen to the people of the Taku Watershed are not only striking, they are downright shocking. Listen closely to what the mine proponents are saying – "trust us, we can mitigate the impacts; it's only one road to a mine and we'll close it down after we're done." Listen to the written words of British Columbia official Gunter Stahl, stating in a March 1, 1999 letter that " The access road to the proposed Tulsequah Chief Mine is a portion of a much larger project."

If you listen very closely, you can hear the echoes of the words said about the Bozeman Trail, and Custer's "Thieves Road" thru the sacred Black Hills, and the terribly hollow phrases found in too many broken treaties.

The lesson we must learn was stated honestly by Black Elk, a Lakota Holy Man. He said the following about the White Man's (called Wasichus) road to the gold fields: "They told us that they wanted to only use a little land, as much as a wagon would take between the wheels; but our people knew better.....The Wasichus came and they have made little islands for us, and other little islands for the four-leggeds, and always these islands are becoming smaller; for around them surge the gnawing flood of the Wasichus and it is dirty with lies and greed." (from Black Elk Speaks)

Listen: it is SEACC's sincere hope that the eloquent and powerful statements of deep concern spoken by the Taku Watershed people in Canada and Alaska today will never again fall on deaf ears. We hope that the tragic story of "The Canoe Rocks" is never repeated, ever again. We urge all decision-makers to listen very carefully to these voices and understand that these concerns echo and reverberate up and down the vast and wild Taku River watershed. We urge you to listen to the people who live in this great land and who care deeply about the future. Listen to the Alaskan commercial fishermen and women as well, to the Alaskan land owners along the Taku, to all of the rest of us who urge you to act with wisdom. Listen to the song of the river and to all the life that depends on a living Taku.

I have tried my best to urge you to learn from the lessons of our history. Look what we've done to the land and to the people. I will not even try to speak for the Taku River Tlingit people who live in Canada and Alaska. Today, these people speak very eloquently for themselves and for their land.

I urge you to listen to Bryan Jack of the Taku River Tlingit people in Canada. He recently wrote the following: "My name is Watsait. My given name is Bryan Cecil Taku Jack. I now have a solid relationship with my land...**My talking will not mean as much to you until you touch the Spirit of the land yourself and let that Spirit touch you.....If you don't hear us.....the land will speak for itself."**

We urge you to think carefully and to look deep into your heart. Do not place this great watershed at risk. At 4.5 million acres, the Taku is the largest unprotected wild watershed on the west coast of North America. There is an international boundary which cuts across this watershed, but when it comes to protecting the great and wild Taku, there should be no boundaries between us. The only wise decision is for you to support an IJC review. This is the only way that you can do justice to the land, water, and the people of the Taku.

Bart Koehler

Bart Koehler/Executive Director *Prepared for the Alaska State Senate; 3/11/99*

(6)

Submitted to House + Senate
4/2/99 Resource Committees

SJR

5

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/27/99

FURTHER:

Date of 5-Day Notice: 1/28/99
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 2/3/99

Resources Committee considered SENATE JOINT RESOLUTION NO. 5

Opposing the closure of the former Mount McKinley portions of Denali National Park and Preserve to snowmachine use.

and recommends:

[ ] be **replaced** with _____ CS _____ (_____)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR# _____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
	✓		✓		
Robert Harwell	✓				
Gloria Taylor	✓				
Lyda Green	✓				
CHAIR: Rick Halford	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
SRES	1/29	X	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

Alaska State Legislature

Senate

Official Business

RICK
HALFORD
State Capitol
Juneau, Alaska
99801-1182
Phone (907) 465-4958
Fax (907) 465-4928

P.O. Box 670190
Chugiak, Alaska 99567
Phone (907) 694-4958
Fax (907) 694-0549

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

Senate Joint Resolution 5
Sponsor Statement

"A Resolution opposing the closure of the former Mount McKinley portions of Denali National Park and Preserve to snowmachine use."

In November of 1998, the National Park Service announced their plan to temporarily close two million acres of Denali National Park snowmachine access.

This proposed closure, without prior documentation of detrimental impacts to the resource values of the park and preserve, is not in compliance with the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) which guarantee traditional access and set out specific procedures for regulatory action affecting that access.

The law is clear – ANILCA, Section 1110, expressly authorizes access to federal conservation system units for traditional activity. Allowing the National Park Service to ignore clear legislative direction and impose this closure without regard to the procedure specifically outlined in law is not only improper, but has tremendous implications in setting undesirable precedent for the over 200 million acres of other Federal Conservation Units throughout Alaska

Passage of this resolution will reiterate the Alaska State Legislature's continued opposition to extra-jurisdictional action by federal agencies, and the Legislature's resolve to preserve access to all Federal Conservation Units as was promised in their enabling legislation.

I urge the members support for this resolution.

FISCAL NOTE

STATE OF ALASKA **BILL NO.** SJR 5
1999 LEGISLATIVE SESSION

Revision Date 1/27/99 Dept. Affected none
Title Snowmachine use in Denali National Park BRU
Component
Sponsor Halford
Requester Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services						0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

This resolution is anticipted to have no fiscal impact on state agencies.

Prepared by Senate Resources Committee Phone 465-4907
Division Date 1/29/99
Approved by Senator Rick Halford, Chairman Date
Agency

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ALASKA BOATING ASSOCIATION

Rick Halford Senator
Chairman, Senate Resources Committee
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

January 28, 1999

Dear Senator Halford:

Thank you for the opportunity to comment on SJR 5. The Alaska Boating Association continues to appreciate your commitment to maintaining traditional access to Alaska's resources for all Alaskans. We are definitely in support of SJR 5. While it is not suppressing it is certainly disparaging that the National Park Service would act to close Denali Park and Preserve to snowmachine use in complete disregard of the letter and the spirit of the Alaska National Interest Lands Conservation Act. Snowmachines are a traditional means of access to and transportation within the Denali Park and Preserve. I have personal snowmachined in the area as far back as 35 years ago. In fact I still have the old 1960 Fox Track that was used in those days-albeit in pieces. We are committed to the support of equal access for all user groups.

In these days of revenue shortfalls, the tourism and recreational industries are becoming more and more important to our economy. Motorized recreation enthusiasts spend thousands of dollars at businesses along our highways in pursuit of their activities. Area closures such as this will have a negative effect on the Alaskan economy. Again we endorse SJR5 and will support your efforts in this matter wherever we can.

Cliff Judkins, President
Alaska Boating Association

cc.
Co-sponsors

Senators:
Drue Pearce
Pete Kelly
Robin Taylor
Gary Wilken
Dave Donley
Jerry Ward
Loren Leman
Mike Miller

Cliff Judkins - President • P.O. Box 874124 • Wasilla, Alaska 99687
(907) 373-3591 • Fax 373-3592 • E-Mail: cjudkins@customcpu.com

ALASKA

Subject: Resolution
Date: Wed, 27 Jan 1999 15:48:46 -0900
From: "Michele Trainor" <mtt@knix.net>
To: <Senator_Rick_Halford@legis.state.ak.us>

Senator Halford,

It was brought to my attention your intent to introduce a resolution opposing the Denali closures as an attack on ANILCA. For your information, I am forwarding a copy of a letter ASSA mailed to Governor Knowles recently. His office was approached on this matter earlier, but no answer was ever forthcoming. Take care, and thanks so much for taking the time to address this matter. It is much appreciated.

Michele

****

Michele T. Trainor
President, ASSA
mtt@knix.net

Subject: =20
Date: Wed, 27 Jan 1999 15:47:23 -0900

Dear Governor Knowles:

Although I have not yet received a response from you concerning this matter, I'm sure you are aware of the National Park Service's move to prohibit snowmobiles in the wilderness zone of Denali National Park and Preserve. Even though use of snowmobiles is guaranteed under section 1110a of ANILCA, Steve Martin, Park Superintendent, is intent on closing what he terms the "old park" to snowmobiling. While this proposed closure currently affects only snowmobilers, Martin's disregard for the specific provisions of ANILCA raises concern among more than just Alaskans who snowmobile. Our position has always been one of cooperation and compromise from our first meeting with Martin in 1997. We even suggested some areas to be left closed. Superintendent Martin chose to ignore us and continues to this day.

Congressman Don Young's letter to Don Barry, Assistant Secretary of Fish & Wildlife, is evidence of the importance of this issue to Alaskans .

Additionally, we expect the legislature to oppose the closure, along with numerous other outdoor groups, in state and out of state. Also, the Alaska State Snowmobile Association has retained Bill Horn, of Birch, Horton, Bittner and Cherot to represent us in this matter. Since Bill Horn was involved with the drafting and implementation of ANILCA he has a unique insight into and understanding of the document. Mr. Horn is anxious to assist in any way possible, including a cooperative effort with the Attorney Generals office.

While this may at first glance seem to be a "federal" matter best handled as such, the National Park Service disregard for ANILCA, a document drafted specifically to protect the rights of Alaskans, demands a response from our state at the highest level. What started out as a snowmobile issue has now escalated into Alaska's struggle to preserve the original intent and purpose of ANILCA. The Alaska State Snowmobile Association has two requests. We ask that the Office of the Governor issue a statement opposing the closure of the wilderness zone of Denali National Park and Preserve to snowmobile use, with an appeal to the NPS to work with us . Such a statement will insure the National Park Service realizes ANILCA is a document not subject to interpretation. Second, we request you have the Attorney Generals office contact us or Bill Horn to see if there is anything they can do to assist us in our struggle. How this matter is resolved will affect future closure actions for all lands falling under ANILCA guidelines. Let us make sure ANILCA stands as written and does what it was designed to do.

Thank you for your time and consideration.

Michele T. Trainor
President, Alaska State Snowmobile Association

Subject: Date: Fri, 29 Jan 1999 14:47:47 -0900
From: "Darrell L. Bohn" <dlb@gvea.COM>
To: '"senator_rick_halford@legis.state.ak.us'"
<Senator_Rick_Halford@legis.state.ak.us>

Dear Sir

I do not support the closing of Denali Park by the National Park Service. I think ANILCA gave us the right to ride in the park. (Which I have done every year since 1987.) I see no reason why snowmachine's shouldn't be allowed in the park, it is unproven that snowmachine cause any damage to plants, wildlife or add to soil erosion. Please help block another Federal reversal on agreed procedure. I see no reason that Denali Park couldn't become the kind of winter tourist attraction that Yellowstone Park is.

Thank You

Darrell Bohn
1504 27 Ave
Fairbanks Ak. 99701

Delta Snow Seekers

PO Box 324 ♦ Delta Jct., AK 99737
Fax 907-895-4254 ♦ Email mtt@knix.net

2 February 1999

Senator Rick Halford
Alaska State Senate
Room 121
Juneau, Alaska 99801-1182.

Dear Senator Halford,

The Delta Snow Seekers Snowmobile Club extends its support in passage of Senate Joint Resolution 5. As snowmobilers and as Alaskans we realize the importance of passing such a resolution. First and foremost to a snowmobile club, it is crucial in retaining access to snowmobile areas. Past experience shows once land loss begins it is difficult to keep in check. Special interest groups use the opportunity to attempt to shut riders out of other areas, creating a snowball effect.

Additionally, Superintendent Steve Martin's proposed ban is in violation of ANILCA. ANILCA states plainly that snowmobiling will be allowed in the event of adequate snow cover. If Superintendent Martin is allowed to interpret ANILCA as he sees fit he is undermining the principles of the document. How this is handled in reference to Denali will set a precedence for other ANILCA areas. It will be used to dictate access to other user groups and set policies for other preserves and land areas falling under ANILCA measures.

On behalf of the Delta Snow Seekers, I thank you and all your co sponsors for taking the time to prepare and present SJR 5.

Sincerely,

Dale Williby
President, Delta Snow Seekers

ELLIS

To: Senator Rick Halford
State Capitol, Room 121
Juneau, AK 99801-1182

Re: Senate Joint Resolution No. 5

Sir,

I would like to express my support for SENATE JOINT RESOLUTION NO. 5 to Oppose the closure of any portion of Denali National Park and Preserve to snowmachine use. Alaska has become our most backward State in regard to Snowmobile useage. Other States now have thousands of Miles of Trails all State, City, and Fed. maintenained. We have an uphill fight everyday just to mantain what Riding we have. I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

Respectfully submitted

Subject: Support SJR No. 5
FirstName: Mr. Lynn
LastName: Ellis
Address: P O Box 105
City: Glennallen
State: AK
Zip: 99588

Email: lellis@alaska.net

Senator Rick Halford

Re: Senate Joint Resolution No. 5

Sir,

The Fairbanks Snow Travelers would like to express it's support for SENATE JOINT RESOLUTION NO. 5 to Oppose the closure of any portion of Denali National Park and Preserve to snowmachine use.

The notion that it is wrong to get to particularly scenic or remote locations by snowmobile rather than other means of transport is discriminatory and offensive to those who choose to do so, especially when ANILCA says it shall be allowed. There is no exception noted in section 1110a of ANILCA. Accordingly, wilderness zones (in Alaska) are no different from any other conservation system unit with respect to access.

We appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

Respectfully submitted

John E. Johnston
President. FST Board of Directors

To:
Senator Rick Halford
State Capitol, Room 121
Juneau, AK 99801-1182

Re: Senate Joint Resolution No. 5

Sir,

I would like to express my support for SENATE JOINT RESOLUTION NO. 5 to Oppose the closure of any portion of Denali National Park and Preserve to snowmachine use.

The notion that it is wrong to get to particularly scenic or remote locations by snowmobile rather than other means of transport is discriminatory and offensive to those who choose to do so, especially when ANILCA says it shall be allowed. There is no exception noted in section 1110a of ANILCA. Accordingly, wilderness zones (in Alaska) are no different from any other conservation system unit with respect to access.

I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

Respectfully submitted

Subject: Support SJR No. 5

FirstName: sheila
LastName: gauna
Address: 7421 silver birch dr
City: anchorage
State: ak
Zip: 99502

Email: sjgauna@juno.com

GOOZEN

snogooz@alaska.net wrote:

Senator Halford.

The Copper Country Snowmobile Club sends this email in support of passage of Senate Joint Resolution 5. If Superintendent Steve Martin is allowed to impose a ban contrary to ANILCA it will not only begin a process of land denials to snowmobiler, but will also undermine the ANILCA document. The CCSC commends Senator Halford and all co-sponsors for taking the time to draft and present this Resolution. Not only does this affect snowmobilers, but it will set standards against which other areas covered by ANILCA will be judged.

Respectfully,

Eric P. Goozen
President, Copper Country Snowmobile Club

To: Senator Rick Halford
State Capitol, Room 121
Juneau, AK 99801-1182

Re: Senate Joint Resolution No. 5

Sir,

As a Snowmobile Club President, and member of the Board of Directors for the Montana Snowmobile Association, I see first hand the direction our public lands are headed. There is a concerted effort by those extremist groups who profess locking them up to everyone but "them" is the answer. We in Montana have plenty of congeressionally declared Wilderness, just as you do in Alaska. Enough is enough. What we need is responsibly managed multiple use public lands.

I would like to express my support for SENATE JOINT RESOLUTION NO. 5 to Oppose the closure of any portion of Denali National Park and Preserve to snowmachine use.

The notion that it is wrong to get to particularly scenic or remote locations by snowmobile rather than other means of transport is discriminatory and offensive to those who choose to do so, especially when ANILCA says it shall be allowed. There is no exception noted in section 1110a of ANILCA. Accordingly, wilderness zones (in Alaska) are no different from any other conservation system unit with respect to access.

I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

Respectfully submitted,

Guyle Guderian

Subject: Support SJR No. 5
FirstName: Guyle
LastName: Guderian
Address: 609 Redwood
City: Missoula
State: MT
Zip: 59802
Email: KGSnowline@aol.com

Subject: SJR 5
Date: Mon, 01 Feb 1999 07:08:20 -0900
From: "Scott Heidorn" <sheidorn@igloo.pplant.uaf.edu>
To: Senator_Rick_Halford@legis.state.ak.us

February 1, 1999

Senator Rick Halford

Re: Senate Joint Resolution No. 5

Sir,

I would like to express my support in favor of the Senate Joint Resolution No. 5 to oppose the closure of any portion of Denali National Park and preserve to snowmachine use.

Over the years I have ridden with friends and family in DNP+P and found the snowmobile an outstanding means for accessing this winter wonderland. As a conservationist I am always concerned with my potential to impact the environment I enjoy and I can say with confidence that the thousands of miles I've ridden in DNP+P have had no significant impact on the Park.

I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to Alaska National Parks is maintained as outlined in ANILCA.

Respectfully,

Scott Heidorn
PO Box 84591
Fairbanks AK, 99708

To: Senator Rick Halford
State Capitol, Room 121
Juneau, AK 99801-1182

Re: Senate Joint Resolution No. 5

Sir,

As an officer of the Alaska State Snowmobile Association and a recreationist, I would like to express my support for SENATE JOINT RESOLUTION NO. 5 to Oppose the closure of any portion of Denali National Park and Preserve to snowmachine use. You will hopefully be recieving many letters of support on tis resolution. As the former President of both the ASSA as well as the Anchorage Snowmobile Club, I have had the opportunity to speak with you on several issues. Your input on the Ptarmigan Valley trail issue was most helpful.

The notion that it is wrong to get to particularly scenic or remote locations by snowmobile rather than other means of transport is discriminatory and offensive to those who choose to do so, especially when ANILCA says it shall be allowed. There is no exception noted in section 1110a of ANILCA. Accordingly, wilderness zones (in Alaska) are no different from any other conservation system unit with respect to access.

I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

Respectfully submitted

Kevin Hite
Alaska State Snowmobile Association

Subject: Support SJR No. 5
FirstName: Kevin
LastName: Hite
Address: 8050 Summerset Drive
City: Anchorage
State: AK
Zip: 99518

Email: kehite@gci.net

To: Senator Rick Halford
State Capitol, Room 121
Juneau, AK 99801-1182

Re: Senate Joint Resolution No. 5

Sir,

I would like to express my support for SENATE JOINT RESOLUTION NO. 5 to Oppose the closure of any portion of Denali National Park and Preserve to snowmachine use.

The notion that it is wrong to get to particularly scenic or remote locations by snowmobile rather than other means of transport is discriminatory and offensive to those who choose to do so, especially when ANILCA says it shall be allowed. There is no exception noted in section 1110a of ANILCA. Accordingly, wilderness zones (in Alaska) are no different from any other conservation system unit with respect to access.

I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

Respectfully submitted

Subject: Support SJR No. 5
FirstName: Charlie
LastName: Little
Address: 22306 - 36th Ave. W
City: Mountlake Terrace
State: WA
Zip: 98043

Email: EFI60JCAT@aol.com

To:
Senator Rick Halford
State Capitol, Room 121
Juneau, AK 99801-1182

Re: Senate Joint Resolution No. 5

Sir,

I would like to express my support for SENATE JOINT RESOLUTION NO. 5 to oppose the closure of any portion of Denali National Park and Preserve to snowmachine use.

The notion that it is wrong to get to particularly scenic or remote locations by snowmobile rather than other means of transport is discriminatory and offensive to those who choose to do so, especially when ANILCA says it shall be allowed. There is no exception noted in section 1110a of ANILCA. Accordingly, wilderness zones (in Alaska) are no different from any other conservation system unit with respect to access.

I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

Respectfully submitted

Subject: Support SJR No. 5

FirstName: Jeff

LastName: Mausolf

Address: 4404 Oakley St

City: Duluth

State: MN

Zip: 55804-1226

Email: MnUSA1@aol.com

To:: Senator Rick Halford<br
State Capitol, Room 121<br
Juneau, AK 99801-1182<br

Re: Senate Joint Resolution No. 5

Sir,

I would like to express my support for SENATE JOINT RESOLUTION NO. 5 to Oppose the closure of any portion of Denali National Park and Preserve to snowmachine use.

The notion that it is wrong to get to particularly scenic or remote locations by snowmobile rather than other means of transport is discriminatory and offensive to those who choose to do so, especially when ANILCA says it shall be allowed. There is no exception noted in section 1110a of ANILCA. Accordingly, wilderness zones (in Alaska) are no different from any other conservation system unit with respect to access.

I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

I currently ride my snowmobiles in New Hampshire, Maine, and the Province of Quebec, Canada. Though Alaska is a far stretch for me to go my fear is that if I decided to plan a trip I would be restricted.

Respectfully submitted

Guy T. Pappalardo

Subject: Support SJR No. 5
FirstName: Guy T.
LastName: Pappalardo
Address: 9 McKinley Ave.
City: Methuen
State: Ma
Zip: 01844
Email: GUY.PAPPALARDO@COMPAQ.COM

SMITH

To:: Senator Rick Halford<br
State Capitol, Room 121<br
Juneau, AK 99801-1182<br

Re: Senate Joint Resolution No. 5

Sir,

I would like to express my support for SENATE JOINT RESOLUTION NO. 5 to Oppose the closure of any portion of Denali National Park and Preserve to snowmachine use.

The notion that it is wrong to get to particularly scenic or remote locations by snowmobile rather than other means of transport is discriminatory and offensive to those who choose to do so, especially when ANILCA says it shall be allowed. There is no exception noted in section 1110a of ANILCA. Accordingly, wilderness zones (in Alaska) are no different from any other conservation system unit with respect to access.

I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

Why does the US Government want to take away my rights and also force me to pay for somthing I can not use.

Respectfully submitted
Bert Smith

Subject: Support SJR No. 5
FirstName: Bert
LastName: Smith
Address: 1415 Butte St
City: Green River
State: Wy
Zip: 82935
Email: bsco@sweetwater.net

To: Senator Rick Halford
State Capitol, Room 121
Juneau, AK 99801-1182

Re: Senate Joint Resolution No. 5

Sir,

I would like to express my support for SENATE JOINT RESOLUTION NO. 5 to Oppose the closure of any portion of Denali National Park and Preserve to snowmachine use.

The notion that it is wrong to get to particularly scenic or remote locations by snowmobile rather than other means of transport is discriminatory and offensive to those who choose to do so, especially when ANILCA says it shall be allowed. There is no exception noted in section 1110a of ANILCA. Accordingly, wilderness zones (in Alaska) are no different from any other conservation system unit with respect to access.

I appreciate and wholly support this resolution by our State Senate to insure that snowmobile access to our conservation system units is held intact as outlined by ANILCA.

If we do not stop this closer who will be there to stop them from closing other parks to riding?

What will stop them at just snowmachines, are 4-wheelers next. Many Alaskans find enjoyment on their public lands with these forms of transportation.

Respectfully submitted

Subject: Support SJR No. 5

FirstName: Lance
LastName: Stevens
Address: 17419 Kantishna
City: Eagle River
State: AK
Zip: 99577

Email: gizmo@arctic.net

Subject: Fw: sjr 5
Date: Fri, 29 Jan 1999 20:05:17 -0900
From: glenn e swan <tgswany@juno.com>
To: Senator_Rick_Halford@legis.state.ak.us

--------- Forwarded message ----------
From: tgswany@juno.com
To: senator_risk_halford@legis.state.ak.us
Date: Fri, 29 Jan 1999 19:34:47 -0900
Subject: sjr 5 Message-ID: <19990129.193606.-424565.1.tgswany@juno.com>

AS THE PRESIDENT OF THE ANCHORAGE SNOWMOBILE CLUB WE ARE IN STRONG SUPPORT OF SJR 5 ITS TIME THAT THE STATE OF ALASKA STOOD UP TO THE FEDERAL GOVERNMENT AND ASSERT STATE RIGHT REMEMBER ITS THE FEDS THAT WANT USE TO CHANGE ARE CONSTITUTION TO GET IN COMPLIANCE OF ANILCA AND HERE THEY ARE NOT EVEN FOLLOWING WHAT IS ALL READY THERE SOME ONE IN JUNO SHOULD BRING THAT UP!!!!

Glenn Swan
pres. ASC

To:
Senator Rick Halford
State Capitol, Room 121
Juneau, AK 99801-1182

Re: Senate Joint Resolution No. 5

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Respectfully submitted

Glenn Swan

Subject: Support SJR No. 5

FirstName: glenn
LastName: swan
Address: po box 770794
City: eagle river
State: ak
Zip: 99577

Email: tgswany@juno.com

To: Senator Rick Halford<br
State Capitol, Room 121<br
Juneau, AK 99801-1182<br

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Machines are more reliable today and emissions and noise have been reduced as the machines are improved. This leads to increased safety to humans and more environmentally friendly to the land.

I have been to Denali Park in the fall and would love to see the area again in the winter time.

Respectfully submitted,

Glenn Warren
442 Bundy Hollow
Dayton, WA 99328

Email: flyingw@bmi.net

Subject: SJR5 Legislation
Date: Fri, 29 Jan 1999 12:49:14 -0800
From: "Steven J. & Linda L. Wilhelmi" <wilhelmi@alaska.net>
Organization: S & L Enterprise
To: Senator_Rick_Halford@legis.state.ak.us

Thank you for introducing and sponsoring the trails liability legislation. I strongly support it.

Steven J. Wilhelmi
1801 Crescent Drive
Anchorage, AK 99508

To: Senator Rick Halford
State Capitol, Room 121
Juneau, AK 99801-1182

Re: Senate Joint Resolution No. 5

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Respectfully submitted

Tylor Wilson
5906 Mego
Anchorage Alaska
99507
aktufftrucks@usa.net

Citizens' Advisory Commission on Federal Areas

3700 Airport Way
Fairbanks, Alaska 99709-4699
(907) 451-2775
Fax: 451-2781

December 15, 1998

Mr. Steve Martin
Superintendent
Denali National Park & Preserve
Post Office Box 9
Denali Park, AK 99755

Dear Mr. Martin:

The Citizens' Advisory Commission on Federal Areas strongly opposes the National Park Service proposal to implement temporary closure regulations for snowmachine use in the former Mt. McKinley National Park portion of Denali National Park & Preserve. There are a number of reasons we oppose the proposed action, foremost of which is the continuing failure of the NPS to follow its own regulatory procedures under 36 CFR Part 13 and 43 CFR Part 36 for implementing these types of closures. Until such time as these procedural requirements are met, we do not believe that a legitimate and meaningful discussion of the appropriateness of restricting snowmachine use in any portion of this park unit can occur.

Additionally, we are particularly concerned about the inaccurate and misleading information contained in the handouts distributed by the NPS at the November public meetings. At best, these handouts demonstrate little understanding of the provisions of the Alaska National Interest Lands Conservation Act (ANILCA), its legislative history or the history of this particular issue. At worst, they represent a revisionist history that needlessly complicates the issue and further confuses the public.

For example, the handouts wrongly assert that snowmachine use in the former Mt. McKinley portion of Denali National Park & Preserve is not allowed because such use did not occur there prior to 1980. There is no dispute that little snowmachine use occurred in most of the original park area prior to 1980. Nor is there any dispute that their use was prohibited by regulation. Under the provisions of ANILCA, however, these facts are irrelevant and provide no legitimate justification for the current proposed action. Section 1110(a) of ANILCA, which authorizes use of snowmachines for traditional activities in all conservation system units in Alaska, superseded any regulation in place at the time of passage of the statute and clearly authorized their use in the entire park, including the former Mt. McKinley.

There is a general misconception, which has been carefully nurtured by the NPS, that the special access provisions of ANILCA 1110(a) somehow do not apply to the parks and monuments which predated ANILCA. There is absolutely no evidence of this found in the statute, nor the legislative history. In fact, ANILCA Section 1110(a) applies to all conservation system units. Conservation system unit is defined in Section 102 as "any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic River Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument, including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter." (emphasis added) Not only is there no exclusionary language for the pre-ANILCA park units, those units are specifically included by definition.

The supplementary information accompanying publication of the final Title XI regulations (43 CFR Part 36) in September 1986 further supports this interpretation:

> "Other comments suggested that the provisions of this section should not apply to parks and monuments which predated ANILCA. The argument is made that Congress did not intend to open the pre-ANILCA areas to the uses described in section 1110(a), since these pre-ANILCA areas had been closed to such uses prior to the enactment of ANILCA. Interior does not find any statutory support for this position, since section 1110(a) provides no exception for the pre-ANILCA areas. Accordingly,

> no exception for pre-ANILCA areas is provided for in these regulations." (51 FR 31627)

Even before the Title XI regulations were adopted in 1985, the National Park Service recognized that ANILCA authorized the use of snowmachines in the former Mt. McKinley National Park. Proposed regulations, which would have closed portions of the original park to snowmachines and other motorized access were released in April 1983. While these proposed regulations were never adopted, given that the NPS felt it necessary to promulgate regulations to close portions of the old park to snowmachine and other motorized uses, the obvious conclusion which must be drawn from that action is that ANILCA not only authorized snowmachine use in all of Denali National Park, but that the NPS recognized that it did so. Is the NPS now suggesting that the agency was in error in that instance? We would welcome the opportunity to review any legal analysis that would support such a change in interpretation.

Previous actions, notwithstanding, the NPS now claims that snowmachine use is not allowed in the former Mt. McKinley since their use was not allowed prior to 1980 and is, therefore, not a traditional activity. It cites statements in the park's 1986 General Management Plan which documented the fact that snowmachine use did not occur in the original Mt. McKinley National Park as support for this claim. The fact that the 1986 GMP contains such a statement is also irrelevant to the current issue. More importantly, no documentation that such use occurred prior to ANILCA is required under the law. Congress was quite clear that use of snowmachines (and other motorized uses) for conducting traditional activities, where such activities are otherwise allowed, was to continue in the park units created or expanded by ANILCA. On the issue of special access and access to inholdings, the legislative history of ANILCA states:

> The Committee amendment guarantees access subject to reasonable regulation by the Secretary on conservation system units, National Recreation Areas and National Conservation Areas, for traditional or customary activities such as subsistence and sport hunting, fishing, berrypicking, and travel between villages.

> The Committee recommends that traditional uses be allowed to continue in those areas where such activities are allowed. This is not a wilderness type pre-existing use test. Rather, if uses were generally occurring in the area prior to its designation, those uses shall be allowed to continue and no proof of pre-existing use will be required.
>
> The transportation modes covered by this section are float and ski planes, snowmachines, motor boats, and dog sleds. The adverse environmental impacts associated with these transportation modes are not as significant as roads, pipelines, railroads, etc. both because no permanent facilities are required and because the transportation vehicles cannot carry into the country large numbers of individuals. Existing law does not guarantee this form of access into Parks, Wildlife Refuges, Wild Rivers, or Wildernesses, although in all cases the law does permit provision of such access in the land manager's discretion. Even in wilderness, access by airplane and motorized boat may be permitted at pre-existing levels of intensity.
>
> In order to prevent the land manager from using his discretion to unnecessarily limit such access, the Committee amendment provides that such access shall not be prohibited unless the Secretary finds after holding a hearing in the area that it would be detrimental to the resource values of the unit." (Senate Report 96-413, pp 247-248)

The NPS mistakenly argues that in order for snowmachine use to be allowed in the former Mt. McKinley, the use itself must be recognized as a "traditional" activity. What the statute clearly says is that snowmachine use is permitted for traditional activities (where such activities are permitted by this Act or other law). This is a critical distinction. Obviously, snowmachines to support sport hunting would not be allowed as that use is not allowed in this portion of Denali. However, there are a number of winter-time activities, such as camping, ice-fishing, and sight-seeing that may be supported by use of snowmachines and are activities that are allowed and were generally occurring in the area of Mt. McKinley National Park before its 1980 expansion.

If we extend the NPS interpretation to other forms of access, wintertime park visitors who may access the park by dog team or cross-country skis could not engage in an activity while in the park unless that activity had occurred prior to 1980. It is not the method of access that must meet the "traditional" test, it is the underlying activity which must do so. This is a critical element among the compromises that were made in enacting this statute. Snowmachine, aircraft and motorboat use within a park unit may be an anathema to some, but they are, nevertheless, a statutorily recognized, legitimate means of access.

The National Park Service also claims that the proposed temporary closure maintains the "status quo" because the area continues to be closed by the park's General Management Plan. In fact, no portion of Denali National Park or any other national park unit in Alaska can be legally closed to snowmachine use under the terms or provisions of a management plan. This has been acknowledged numerous times by the NPS during the development of the General Management Plans and other planning documents for Alaskan park units. Any closure of a National Park Service managed area to snowmachine use or other means of access specifically provided for under Section 1110(a) of ANILCA requires compliance with the regulations at 36 CFR §13.30 and 43 CFR 36.11. These procedures have never been followed for Denali National Park & Preserve. This so-called "status quo" is artificial and is precisely the reason that the current "closures" have been determined to be legally insupportable.

The National Park Service also claims that it continues to prohibit, through the Superintendent's Compendium, all snowmachine use in the former Mt. McKinley portion of Denali National Park & Preserve. We find this particularly objectionable because of our longstanding opposition to the use of compendia in Alaskan park units to implement these types of closures and because your agency has acknowledged that legal deficiencies exist with these documents. We strongly protest use of these improper compendium restrictions as justification for the current action.

In an August 1994 letter to this Commission, Steve Shackleton, Chief, Branch of Law Enforcement for the National Park Service Alaska Region, stated that the NPS would recommend special regulations be proposed to address procedural concerns about snowmachine use restrictions contained in the compendium for Denali NP&P. Shackleton and other regional office staff have also verbally acknowledged that

adopting these types of restrictions in a park compendium was inappropriate and that the snowmachine closures in the compendium were not legally enforceable. To now use these same legally flawed documents to support this regulatory effort is completely unacceptable. Such misuse clearly validates our origina. fears that these illegal compendium restrictions and closures would, at some future point, be used for precisely this purpose.

The National Park Service asserts that recreational use of snowmachines in Denali National Park has not been the subject of any planning documents or been analyzed in any National Environmental Protection Act (NEPA) document. No analysis of snowmachine use in a planning document or a NEPA document for Denali NP is required for that use to continue. As we have shown, snowmachine use in this park is statutorily recognized. We view this purported need to complete a NEPA document before this use can be "allowed" as simply another attempt to justify this closure. However, any closure of any portion of the park and preserve, even on a temporary basis, does require compliance with ANILCA standards, including presentation of the necessary findings of resource impacts.

National Park Service has stated that a literature review documenting impacts from snowmachine use in other protected areas has been completed. Documentation of impacts on resources in the area in question, in this case Denali NP, are required under ANILCA and the regulations at 43 CFR Part 36. The supplementary information published with these regulations states: "For purposes of this section, only if it is determined that a proposed use otherwise authorized by this section would be detrimental to the resource values of a particular area may that area be closed to the use, unless the closure is authorized under other agency law." (51 FR 31627, September 4, 1986) We believe that studies conducted elsewhere, while useful as background information for beginning the examination of potential impacts in Denali NP&P, do not, by themselves, meet the threshold required by the regulations.

We want to make it clear that this Commission is willing to discuss certain restrictions on snowmachine use should the NPS decide first to comply with the statutory and regulatory requirements for making such restrictions. This includes collection and presentation of park specific findings that continued snowmachine use is detrimental to the resource values of the park. In the current action, the NPS has failed to adequately support the need for implementing the proposed closure. Additionally, it is inappropriate for the NPS

to restrict a statutorily permitted use while it conducts planning activities. This current proposed action is precisely the type of discretionary and arbitrary use restriction that Congress intended to prevent when it adopted Section 1110(a) of ANILCA.

In conclusion, while we do not question the legal authority of the National Park Service to implement closures of this nature, we must point out that it must comply fully with the legal standards and procedural requirements established by ANILCA and its implementing regulations. The agency has not met those standards or requirements. Therefore, this proposed temporary closure must be withdrawn.

Because of our working relationship with you and your staff, an explanation of our adamant opposition to this proposed closure is perhaps appropriate. The issue at hand has far less to do with snowmachine use in this or any other park unit in Alaska than it does with process and precedent. It has less to do with an agency's ability to exercise its legal power and authority than with that agency acting responsibly and dealing with the public in an open and honest manner. It has to do with the National Park Service meeting its responsibilities, not only for the land it manages, but also to the public for which it manages them. The significance of this issue transcends Denali National Park and Preserve. If this Commission acquiesces to this failure of process and allows statutorily protected activities to be improperly restricted, then we will have failed to meet our legal mandate. We strongly urge you to reconsider your approach to addressing this issue.

Sincerely,

Stan Leaphart

Stan Leaphart
Executive Director

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Governor Tony Knowles
Robert Barbee- Alaska Regional Director

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