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ADDRESSES BY

THE HONORABLE STEVE COWPER
GOVERNOR
STATE OF ALASKA

AND

THE HONORABLE TED STEVENS
U. S. SENATOR

BEFORE THE

FIRST SPECIAL SESSION OF THE
16TH ALASKA STATE LEGISLATURE

JUNE 25, 1990

JUNEAU, ALASKA

Governor Cowper's remarks before the Joint Session:

Nearly 35 years ago in Fairbanks, a small but distinguished group of Alaskans gathered to write a constitution, a solid frame that would support Alaska standing alone, independent from the federal government that had run this territory as a private preserve for Washington bureaucrats and the Seattle salmon packers for the five previous decades.

The document they produced was unique for many reasons. But the most innovative and perceptive creation in that charter was the article setting a firm policy for the conservation and use of Alaska's natural resources.

They were not dealing simply with oil or coal or minerals or trees. They made direct reference to stocks of wild fish and game for the use of the people, because they knew that Alaska was the last place in America where people truly depended on wild fish and game.

More importantly, they knew that the people who conducted what we now call subsistence activities were not part of some dying backwoods culture or some display of local color calculated to appeal to the romantic fantasies of tourists.

Subsistence was then, and is now, a living, changing, active economic and social system in Alaska. The people of Alaska have affirmed the support of that system again and again over the past 15 years.

Every Governor has supported it. Every Legislature presented with the question has supported subsistence. In a statewide vote in 1982 almost sixty percent of Alaskans said that subsistence was a vital part of our state's heritage.

This subject - subsistence hunting and fishing - is about how some Alaskans feed their families, and about how most Alaskans think of our society. In no other place in America can people choose to live in a way that is fundamentally much the same as the lives of the pioneers of this country, and of the aboriginal people before them. It is a way of life that is forever lost to the rest of America. It distinguishes Alaskan life by providing a dimension to our experience that is unknown to New Yorkers and Californians.

There was a time in Alaska when all our citizens could depend primarily on wild resources. For many years, at least by any definition common to Americans, all Alaska was rural in character. Our major cities consisted of a few thousand people living around the edges of a great wilderness.

But times have changed in Alaska, especially over the last twenty years. Today the economic characteristics of our major population centers are similar in many ways to cities elsewhere. Anchorage, Fairbanks and Juneau are no longer big villages: They are cities, with a typically urban

economic base. People move to urban Alaska for economic opportunity. Alaska's international trade figures are the highest in America when expressed as a percentage of total cash transactions. We are no longer a remote and isolated outpost, but active participants in a dynamic global economy.

The resulting pressure on fish and wildlife has compelled us to make some distinctions among Alaskans which were not necessary before. Twelve years ago, at the height of the pipeline boom, the Alaska Legislature decided that when there was not enough to go around, subsistence users would get a preference.

In 1980, the United States Congress passed an act called the Alaska National Interests Land and Conservation Act, later shortened to "ANILCA." The act classified much of the federal land in Alaska, some sixty percent of our state's acreage, and it also required a subsistence preference for rural Alaskans on most of that land.

In order to assure the rural subsistence preference on federal lands, ANILCA provided for federal fish and wildlife management there. But the act also provided that if the State passes a subsistence law of general application which is consistent with the ANILCA provisions calling for rural subsistence, then the State of Alaska may retain full fish and wildlife management powers.

In response to ANILCA, the joint Boards of Fish and Game provided for rural subsistence by regulation. In 1982, there was a citizens' initiative to repeal the subsistence preference, which by then was available only to rural Alaskans. In November of 1982, almost sixty percent of Alaska voted in favor of subsistence.

After the 1982 vote, most Alaskans assumed the subsistence issue was settled. But political peace does not seem to last very long in Alaska. In 1986, an Alaska Supreme Court case led to the adoption of a rural subsistence preference by statute instead of by regulation. Once again a sense of relief pervaded the ranks of subsistence advocates, and once again peace was an illusion.

In mid-1989, in what became known as the "Kenaitze decision," a group of learned federal judges from San Francisco ruled that Alaska's 1986 act was not consistent with ANILCA. Even though our Alaskan subsistence law was clearly consistent with the intent of Congress, that didn't matter. They knew what rural was, and that was that. Rural meant farms and cows. Their proposed definition of rural would have excluded Bethel, Barrow, Kotzebue and Dillingham residents from the subsistence harvest, and included the 50,000 Fairbanks residents who live outside the city limits. A federal takeover to assure this absurd result would be forthcoming.

As we were attempting to address the fallout of the Kenaitze case in Washington, the Alaska Supreme Court, on December 22, 1989, decided that the Alaska Constitution did not allow a rural subsistence preference at all, even though one is clearly required under federal law if the State is to retain fish and wildlife management authority.

In the wake of the so-called "McDowell" decision, those of us who have been in the subsistence trenches for many years first concluded that rural subsistence preference was sound policy for the reasons mentioned earlier, and because it allowed for unified state fish and wildlife management. We also concluded that the only way to get there from here was for the people of Alaska to pass an amendment to the State Constitution in November which expressly authorizes the rural subsistence preference that is clearly supported by the majority of Alaskans.

For an assortment of reasons that do not need to be detailed here, the amendment did not receive the necessary two-thirds vote of each legislative body required to place it before the voters in November. That is why we are here today.

I have introduced a package of legislation for your consideration in this special session which will resolve the untenable position in which are placed as a result of the Supreme Court's McDowell decision.

The most important component of this proposal is a resolution calling for a constitutional amendment to be placed before the voters this November. If adopted by the Alaskan people, this amendment would authorize the Legislature to provide for a subsistence preference for rural residents. The amendment would also retroactively validate the existing subsistence laws until such time as the Legislature sees fit to change them.

In order to address the ambivalence that some citizens feel about making a constitutional distinction between rural and urban residents, I have also included a provision that provides for a second vote on the constitutional amendment in 1994. If the amendment passes in 1990, and if by 1994 the majority of Alaskans believe that the constitutional approach was a mistake, they may vote to repeal the amendment. While I do not share the ambivalence that led to this new proposal, I recognize that the language renders the resolution acceptable to some who otherwise would not support it.

It is important to recognize that you, the Legislature, cannot pass a constitutional amendment. All you can do is authorize the people of Alaska to pass a constitutional amendment. It is the people who have the authority. The Legislature's role is limited to allowing them to exercise that authority. I urge you to let the people vote.

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Along with the resolution, I am submitting to you legislation which would establish a Subsistence Review Commission to review all aspects of state and federal laws relating to subsistence uses of fish and wildlife and the implementation of those laws. It would be made up of nine members, including members from the Board of Fisheries or Board of Game, from the Regional Council System, from organizations representing Alaska Natives, sportsmen, and commercial fishing interests, and four public members. Between now and the second vote of the people, in 1994, the Subsistence Review Commission would provide a forum to bring together all segments of the Alaska population to consider this issue and to make recommendations to the Governor and Legislature regarding any necessary changes to state or federal law.

Section 5 of the bill repeals and reenacts the current statutory definition of "rural area," to authorize the Board of Fisheries and the Board of Game jointly to define that term in administrative regulation. This addresses the problems caused by the Kenaitze case which I mentioned earlier. By authorizing the joint boards to define "rural area" in administrative regulations, the State will have the necessary flexibility to adopt a definition that is consistent with ANILCA and thereby retain State management of fish and wildlife on all land in Alaska.

If adopted, these proposals will allow us to return to a fish and wildlife management and allocation regime which has, on the whole, served Alaskans well. If the proposals are rejected, we are certain to see the chaos of fragmented management, with the attendant risk that major decisions about our fish and wildlife will reflect pressure groups that patrol the halls of Congress in of Washington, D.C. Go to an animal-rights meeting on the East Coast and see if you identify with the views expressed there. Listen to a gathering of West Coast salmon harvesters and processors and judge whether they are ever likely to represent your interests.

There are sound reasons based on our history as a territory and as a state for us to do whatever is necessary to maintain the opportunity for rural Alaskan residents to live off the land, and to keep the power to manage our fish and wildlife for ourselves. Our resources will be better for it; our people will be better for it; and the world will be better for it.

Thank you for your attention, and I look forward to working with you in this special session.

6/25/90

U. S. Senator Steven's remarks before the Joint Session:

FOR DECADES, ALASKANS HAVE SOUGHT TO CONTROL THE MANAGEMENT OF OUR NATURAL RESOURCES -- PARTICULARLY FISH AND WILDLIFE, WHETHER ON FEDERAL, STATE, OR PRIVATE LANDS OR WATERS.

MANY EFFORTS HAVE BEEN MADE BY OUTSIDERS TO TAKE MANAGEMENT AWAY FROM US. IN 1978, DURING THE ALASKA LANDS DEBATE, THE HOUSE OF REPRESENTATIVES PASSED A BILL TO STRIP ALASKA OF FISH AND WILDLIFE MANAGEMENT AUTHORITY ON FEDERAL LANDS.

THAT BILL DID NOT PASS THE SENATE. GOVERNOR JAY HAMMOND AND I -- IN CONSULTATION WITH REPRESENTATIVE DON YOUNG AND THE ALASKA STATE LEGISLATURE -- FORGED A BIPARTISAN ALLIANCE WITH THE LATE SENATOR SCOOP JACKSON AND SENATOR MARK HATFIELD TO DEFEND ALASKA'S RIGHTS AS A STATE.

EARLIER IN 1978, THE ALASKA LEGISLATURE HAD PASSED A LAW PROVIDING FOR A RURAL SUBSISTENCE PRIORITY. UNDER THE ULTIMATE LEGISLATIVE COMPROMISE -- WHICH SENATOR HATFIELD DEvised -- ALASKA RETAINS FISH AND WILDLIFE MANAGEMENT AUTHORITY SO LONG AS IT MAINTAINS SUCH A PRIORITY. THAT COMPROMISE WAS A VICTORY -- NOT A DEFEAT -- FOR THE SUPPORTERS OF STATE MANAGEMENT AUTHORITY.

ALTHOUGH I AGREE WITH JUSTICE RABINOWITZ' DISSENT IN THE MCDOWELL CASE, I'M NOT CRITICAL OF THE DECISION OF THE MAJORITY. THE ALASKA SUPREME COURT IS OBLIGED TO INTERPRET AND DEFEND OUR CONSTITUTION AS AMENDED BY THE PEOPLE.

THE RESULTS, HOWEVER, OF THE COURT'S DECISION -- FEDERAL TAKEOVER AND RADICAL RESTRUCTURING OF THE STATE SUBSISTENCE LAW -- ARE CATASTROPHIC.

IN WASHINGTON STATE, THE BOLDT DECISION ON INDIAN TREATY FISHING RIGHTS TURNED THE FEDERAL DISTRICT COURT INTO THE ULTIMATE MANAGER OF AFFECTED FISHERIES. THE FEDERAL COURT CALLS ALL THE SHOTS ON SALMON FISHING IN THE COLUMBIA RIVER, ON PUGET SOUND, AND OUT TO THE 200 MILE LIMIT.

THE MCDOWELL DECISION COULD LEAD TO THE SAME RESULT: FEDERAL AND STATE COURTS PARCELING OUT ACCESS TO FISH AND WILDLIFE TO RURAL RESIDENTS. THE NEED IS THERE -- AND THE COURTS WILL NOT ABANDON RURAL ALASKANS -- AND REMEMBER THAT MORE THAN 50 PERCENT OF RURAL ALASKANS ARE NON-NATIVE. LITIGATION, NOT SCIENCE AND PUBLIC COMMENT, WILL MANAGE OUR FISH AND WILDLIFE RESOURCES.

AS A FORMER SOLICITOR OF THE INTERIOR DEPARTMENT, I MUST TELL YOU THAT SECRETARY LUJAN'S LETTER TO GOVERNOR COWPER IS THE TOUGHEST I'VE EVER SEEN. WHEN HE SAYS THAT HE MAY BE FORCED TO CLOSE FEDERAL LANDS TO NON-SUBSISTENCE HUNTING OR FISHING OR EXTEND THE FEDERAL TAKEOVER TO STATE LANDS, HE IS STATING A FACT.

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MANUEL LUJAN -- A WESTERNER FROM NEW MEXICO -- IS A GOOD FRIEND OF ALASKA. I BELIEVE HE'LL DO HIS BEST NOT TO TRAMPLE ON ALASKA'S PREROGATIVES, BUT HE IS OBLIGATED TO COMPLY WITH FEDERAL LAW AS IT IS INTERPRETED BY THE COURTS.

WHAT LIES AHEAD FOR ALASKA UNDER A FEDERAL TAKEOVER? THE PROPOSED FEDERAL SUBSISTENCE REGULATIONS ARE BAD FOR ALASKA, AND THEY WILL INEVITABLY GET WORSE AND NOT ONLY BECAUSE OF LITIGATION. ANTI-HUNTING GROUPS ARE A STRONG FORCE IN WASHINGTON, D.C., AND THEY WILL CONTINUOUSLY LOBBY FEDERAL AGENCIES TO REDUCE HUNTING OPPORTUNITIES IN ALASKA.

THE RECENT FEDERAL HEARING IN FAIRBANKS WHERE ALASKANS SHOWED UP TO TESTIFY ON THE SUBSISTENCE REGULATIONS ONLY TO FIND THAT THE FEDERAL OFFICIAL IN CHARGE HADN'T EVEN READ THEM IS JUST ONE EXAMPLE OF WHAT LIFE UNDER A FEDERAL TAKEOVER WILL BE LIKE. ASK THE PEOPLE OF ANAKTUVUK PASS WHAT IT'S LIKE TO HAVE FEDERAL OFFICIALS SPYING ON YOU BY REMOTE CAMERA TO MAKE SURE THAT YOU DON'T VIOLATE FEDERAL RULES.

ALL ALASKANS -- RURAL AND URBAN, SUBSISTENCE HUNTERS AND NON-SUBSISTENCE HUNTERS, NATIVE AND NON-NATIVE -- ARE GOING TO SUFFER. AS A LIFETIME MEMBER OF THE NATIONAL RIFLE ASSOCIATION AND A FORMER MEMBER OF THE NRA'S NATIONAL BOARD, I AM PARTICULARLY CONCERNED ABOUT THE SPLIT DEVELOPING BETWEEN RURAL AND URBAN HUNTERS. URBAN NRA MEMBERS SHOULD REALIZE THAT PROMOTING SUCH A SPLIT WILL BENEFIT ONLY THE OPPONENTS OF HUNTING AND ALASKA MANAGEMENT AUTHORITY.

LITIGATION WILL NOT RESOLVE THE CRISIS ENGULFING ALASKA. WHATEVER THE MERITS OF A LEGAL CHALLENGE TO THE FEDERAL SUBSISTENCE PRIORITY -- AND I HAVE NO PROBLEM WITH VIGOROUSLY PURSUING A CHALLENGE -- COURTS WILL NOT ACT QUICKLY ENOUGH TO PREVENT MANAGEMENT CHAOS.

SENATOR MURKOWSKI, CONGRESSMAN YOUNG AND I ARE CONVINCED THAT TAKING THE SUBSISTENCE ISSUE BACK TO CONGRESS WHILE A FEDERAL TAKEOVER IS IN PLACE WILL BE DISASTROUS FOR ALASKA.

OUR OPPONENTS ON ANWR, TONGASS, WETLANDS, AND NUMEROUS OTHER ISSUES MAY NEGOTIATE THE RETURN OF MANAGEMENT AUTHORITY TO ALASKA -- BUT THE PRICE WILL BE TOO GREAT. JUST AS IMPORTANTLY, BATTLES THAT WE WON DURING THE ALASKA LANDS DEBATE ON TRADITIONAL LAND ACCESS, INHOLDERS RIGHTS, STATE LAND SELECTIONS, AND OTHER ISSUES WILL BE REOPENED.

THE ONLY REALISTIC WAY TO PRESERVE ALASKA MANAGEMENT AUTHORITY IS TO AMEND OUR CONSTITUTION TO AUTHORIZE A STATE RURAL SUBSISTENCE PRIORITY. I ALSO SUPPORT ESTABLISHMENT OF A COMMISSION TO EXAMINE THE LONG-TERM FUTURE OF THE SUBSISTENCE PRIORITY IN ALASKA.

FURTHERMORE, IF AN AMENDMENT IS APPROVED TO RESTORE THE ALASKA SUBSISTENCE PROGRAM, I WILL PURSUE GENERAL LEGISLATION IN CONGRESS TO PROVIDE THAT THE TERM "RURAL" AND OTHER TERMS NOT SPECIFICALLY DEFINED IN FEDERAL LAWS AFFECTING STATE FISH AND WILDLIFE MANAGEMENT WILL BE DEFINED IN ACCORDANCE WITH THE LAWS OF AFFECTED STATE.

6/25/90

THE OUTCOME OF THE SUBSISTENCE CRISIS WILL SHAPE OUR STATE'S FUTURE FOR YEARS TO COME. OUR CONSTITUTION STATES THAT "ALL POLITICAL POWER IS INHERENT IN THE PEOPLE." THE PEOPLE OF ALASKA DESERVE A CHANCE TO VOTE ON A SUBSISTENCE AMENDMENT -- TO CHOOSE WHAT FUTURE THEY WANT FOR ALASKA.

IF THE SUBSISTENCE AMENDMENT IS VOTED DOWN, OUR ENEMIES IN WASHINGTON WILL CONCLUDE THAT A NEW GENERATION OF ALASKANS, LESS CONCERNED ABOUT ALASKA'S RIGHTS AS A STATE, IS IN CONTROL. FURTHER ATTACKS ON ALASKA'S SOVEREIGNTY WILL BE ENCOURAGED.

IF THE SUBSISTENCE AMENDMENT IS APPROVED, THE DETERMINATION OF ALASKANS TO WORK OUT OUR PROBLEMS AT HOME IN ALASKA WILL BE REAFFIRMED. OUR OPPONENTS WILL SEE THAT WE WILL NOT ALLOW THEM TO EXPLOIT OUR DIFFERENCES.

DURING SENATE DEBATE ON THE ALASKA LANDS BILL IN 1979, WE FACED AN AMENDMENT TO REPUDIATE VALID LAND SELECTIONS MADE BY ALASKA UNDER THE STATEHOOD ACT. I WAS ABLE TO FORCE THE WITHDRAWAL OF THAT AMENDMENT BUT ONLY BECAUSE ALASKA WAS UNITED BEHIND THE CONSENSUS POINTS DEVELOPED BY THE GOVERNOR'S BLUE RIBBON PANEL. THESE CONSENSUS POINTS ALSO CALLED FOR THE PRESERVATION OF STATE MANAGEMENT AUTHORITY ON FEDERAL LANDS. WE NEED TO SEEK THAT CONSENSUS AGAIN.

IN ANY EVENT, I URGE YOU -- WHETHER OR NOT YOU SUPPORT A RURAL SUBSISTENCE PREFERENCE ON ITS MERITS -- TO GIVE ALASKANS THEIR CHANCE TO DETERMINE THE COURSE OUR STATE WILL TAKE OVER THE NEXT DECADE. WE ALL SHOULD PUT OUR TRUST IN THE GOOD JUDGMENT OF THE PEOPLE WHO ELECTED US.