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FILE COPY

September 17, 2007

Representative Jay Ramras
1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Representative Jay Ramras
State Capitol
Room 718
Juneau, AK 99801-1182 (fax 465-2070)

RE: Representative Ramras' Statement

Dear Representative Ramras:

I represent Village corporations in the Bristol Bay Region. A number of those Village corporations, including Alaska Peninsula Corporation, Pedro Bay Corporation, Levelock Natives, Ltd., and Twin Hills Native Corporation, have approached me regarding the rash, intemperate statements you made on KTUU last night, September 16, 2007. You claim that Northern Dynasty paid leaders of Native corporations "some as much as \$300,000 per year, to encourage locals to take a pro-mine stance." You are also recorded as stating that you see no difference "between this situation and legislators getting paid for a consulting contract." You further suggested that Native corporation leaders are receiving money in order to "sway public opinion." In short, you accuse my clients of taking money in order to publicly support the project.

Your allegations are false, defamatory, and they hold the representative members and Village corporation leaders in a false light. To top it off, you allege that Village corporation leaders have accepted bribes to the tune of "as much as \$300,000 per year, to encourage locals to take a pro-mine stance." That statement is a reckless, intentional disregard of the truth.

Representative Jay Ramras
September 17, 2007
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Your statements are false, malicious and in complete disregard of the truth. Your statements have caused, and will continue to cause, damage to the reputations of the Native corporation leaders, both internally, within their Village corporations, as well as externally, as laughing stock, criminals, and, perhaps worse, engaging in the same conduct as Alaska legislators. Demand is made that you immediately retract your statements, publicly, and apologize, again publicly, for your rash, false and defamatory statements.

I will also advise you that my clients will be meeting with me to discuss their legal options.

Very truly yours,

FORTIER & MIKKO, P.C.

A handwritten signature in black ink, appearing to read "S. Fortier", written over the typed name "Samuel J. Fortier". The signature is fluid and cursive, with a large initial "S" and a long horizontal stroke.

Samuel J. Fortier

SJF/cab

Re: HB 134

Dear Ladies and Gentlemen:

This letter will concern recently introduced HB 134. This bill proposes to radically curtail most forms of water appropriation and uses in most of Bristol Bay. The only permitted uses, in the event that HB 134 becomes law, would be:

- uses authorized, approved *and* permitted before the effective date of the Act
(which is to take effect immediately upon its adoption);
- drinking water and domestic uses;
- ordinary existing and future municipal uses; or
- traditional, cultural or residential uses.

HB 134 therefore proposes to radically change the existing regime under Alaska law regarding resource use and consumption, so that virtually all forms of future economic development in Bristol Bay will be prohibited.¹ In addition to not addressing extraordinary situations, such as drought, that may effect villages and cities, the bill would effectively prohibit any new water-intensive industries or businesses. It would prohibit any alternate energy projects that are water derivative, including hydroelectric and geothermal projects. And, it would impact not only state owned lands, but also privately held lands, including Native corporation lands. I will explain, below, some of the impacts if this bill becomes law.

Section 2, part 1 of HB 134 prohibits:

- withdrawing
- obstructing

¹ H.B. 134 refers to the Bristol Bay Fisheries Reserve, which became law in 1972 and is codified as part of the Alaska Lands Act, at Alaska Stat. 38.05.140(f), as its precedent. The Reserve was created to prohibit oil drilling in state waters absent future legislation. H.B. 134's findings assert that, just as the Seventh Legislature was justified in closing the Bay to oil drilling without legislative approval, those same considerations now warrant a further extension of the protections to all waters within the "drainage systems that connect to the surface water of Bristol Bay." HB 134, Proposed Findings. The proposed findings, however, are based on different facts than what faced Bristol Bay in 1972, and the Reserve legislation only prohibited oil and gas activity on state submerged lands and shore lands. By contrast, HB 134 appears to apply to uplands, both state and private.

- injecting
- polluting
- pumping, either temporarily or permanently

“any subsurface or surface water in drainages supporting salmon or any water hydrologically interrelated or connected” to those drainages in the Nushagak, Naknek, Egegik, and Ugashik watersheds. The sweeping prohibition against withdrawal of water is likely unconstitutional. Appropriation of water is guaranteed under Article VIII, § 13, Alaska Constitution.²

It is possible that virtually of the aquifers in the Bristol Bay watershed are “hydrologically interconnected or related to” drainages. Subsurface waters on private lands are the property of the subsurface owner, upon capture. Thus, the bill would effect private water wells and other forms of use, apparently even on private lands. Because village corporations own the surface estate, and BBNC owns the subsurface, of most of the privately held land in Bristol Bay, the bill has a profoundly disproportionate and adverse effect on these entities, and, I believe could subject the state to takings claims under Art. VIII, § 16.³ Surface estate owners possess riparian rights, including the right to beneficial uses of water adjacent to and beneath their property.⁴ Subsurface water is construed to be a subsurface resource. Thus, the bill's restrictive language could, for instance, prohibit oil and gas exploration on Native lands, as well as exploitation of the same, which requires injection as well as pumping.

The bill could prohibit geothermal energy development, as well. Presently, there is an interest in such alternative energy exploration. However, any development that would result in pumping or withdrawing geothermal energy sources, such as steam, that is “hydrologically interrelated or connected” to a salmon stream drainage would be off-limits.

The prohibitions contained within HB 134 are also redundant of prohibitions contained in Alaska Stat. 16.10.010. That statute protects salmon streams from the same harms as HB 134 proposes to extend to *all* of Bristol Bay. HB 134, however, strips other regulatory agencies, such as the Department of Environmental Conservation, from deciding on a case by case basis, whether to permit or license hydroelectric power, or to permit water use for civic, domestic, irrigation, manufacturing, mining, “or other purposes tending to develop the natural resources of the state,” as allowed under

² Art. VIII, § 13 provides in part, “All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to *appropriation*.” (my emphasis). Obstructing and polluting salmon streams is already prohibited under Alaska Stat. 16.10.010.

³ Art. VIII, § 16 provides “No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use of public purpose and then only with just compensation and by operation of law.”

⁴ Wernberg v. State, 516 P.2d 1191 (Alaska 1973), reh. den. 519 P.2d 801 (Alaska 1974).

Alaska Stat. 16.10.015.⁵

The bill is silent on the criteria used to determine interrelatedness and interconnectedness. Nor are any definitions supplied for either of these terms.

Section 2, part 2 of the bill forbids:

- altering,
- destroying,
- displacing,
- relocating,
- channeling,
- damming,
- converting to dry land, or
- otherwise adversely affecting

“any portion of a river, stream, lake, bog, tributary, or any other water body, including the beds of water bodies, in drainages supporting salmon.”⁶ Because the major drainages of Bristol Bay are incorporated into the bill, any of the foregoing acts would be criminal under the proposed legislation. The ambiguous phrase, “otherwise adversely affecting,” is so broad as to render any use, even something so mundane as traveling across a swamp on an ATV, a criminal act. It would most assuredly halt any oil and gas or mineral exploration or development on Native lands. The bill would prohibit filling boggy lands for the purpose of airport construction, road building, and new businesses. The bill would also prohibit damming, or even reacting to flood conditions.

The grandfathering of the existing industries to the exclusion of any new industries or businesses that are water consumptive would have a significant and negative impact on economic growth and orderly development in Bristol Bay, virtually guaranteeing that it will remain a captive colony of fishing lodges and fish processors. In this manner, the bill would also appear to violate every Alaskan’s right to uniform application of laws and regulations guaranteed under Art. VIII, §17 of the Alaska Constitution.⁷

⁵ Art. VIII, § 1, Alaska Constitution states that “the policy of the State [is] to encourage ... the development of its resources by making the available for the maximum use consistent with public policy.” There has been no finding that the draconian measures suggested in HB 134 are consistent with public policy, or the least restrictive alternative under the circumstances.

⁶ As noted, existing law permits certain uses, upon application and approval, of water from salmon streams. Alaska Stat. 16.05.015. HB 134 prohibits uses that the law presently allows in all “hydrologically interrelated *or* connected” surface and ground water. Other laws presently permit wetlands mitigation, and utilization of certain wetlands. Under HB 134, such uses would be illegal.

⁷ Art. VIII, § 17 states, “Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.”

The author of the legislation appears to recognize these flaws, attempting to cover the radical effect by stating that the law applies, "[n]otwithstanding any other provision of law...."⁸ However, such savings language does not render the otherwise prohibited language lawful.

Finally, HB 134 proposes significant penalties. §2, part c proposes that, in addition to existing penalties for violations of existing laws, a violator would also be subject to day fines. An individual who rides his ATV across a swamp that is "hydrologically interrelated or connected" would face a minimum fine of \$10 per day and a maximum fine of \$ 5,000/ day. A corporation that filled a low area that is "hydrologically interrelated or connected" to a salmon stream drainage would face a *day* fine of not less than \$ 100,000 and not more than \$ 1,000,000. Each day on which a violation occurs would constitute a separate violation.⁹

Conclusion:

HB 134 poses tremendous risks to the Bristol Bay watershed, from Lake Iliamna to Ugashik Lake. Village corporations would have no opportunity for future economic expansion. If implemented, persons living in any of the over 20 villages impacted would not be able to travel cross country without significant risk of violating the law. There would be no new industries, and no development of "hydrologically interrelated or connected" alternate energy sources. The bill proposes a radical change to existing law, and could have significant adverse economic and social consequences to the region, which is already losing population due to declining fish prices.

⁸ See HB 134, § 2, line 7.

⁹ See HB 134, § 2(c)

HOUSE BILL NO. 134

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES EDGMON, Ramras, Dahlstrom, Gara, Kerttula

Introduced: 2/14/07

Referred: House Special Committee on Fisheries, Resources

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to conservation and protection of wild salmon production in drainages**
2 **affecting the Bristol Bay Fisheries Reserve; and providing for an effective date."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **LEGISLATIVE FINDINGS.** The legislature finds that

7 (1) in 1972, the Seventh Alaska State Legislature determined that a heightened
8 level of protection was needed for the Bristol Bay fisheries and acted by designating the
9 Bristol Bay Fisheries Reserve in order to protect the longstanding and valuable commercial,
10 subsistence, and sport fishing in the area;

11 (2) the area described as the Bristol Bay Fisheries Reserve and the rivers,
12 streams, and lakes that produce the fish continue to need protection just as when the reserve
13 was created; and

14 (3) the considerations that justified the 1972 action also warrant extension of

1 similar conservation measures and protections to the river systems, ground water, aquifer
 2 systems, and other hydrologic regimes, including any hydrologically interrelated or connected
 3 surface and ground water, within the drainage systems that connect to the surface water of
 4 Bristol Bay.

5 * **Sec. 2.** AS 16.10 is amended by adding a new section to read:

6 **Sec. 16.10.015. Protection of salmon streams within certain drainages**
 7 **affecting the Bristol Bay.** (a) Notwithstanding any other provision of law, within the
 8 watersheds of the Nushagak, Kvichak, Naknek, Egegik, and Ugashik Rivers, a person
 9 may not

10 (1) withdraw, obstruct, divert, inject, pollute, or pump, either
 11 temporarily or permanently, any subsurface or surface water in drainages supporting
 12 salmon or any water hydrologically interrelated or connected to those drainages; or

13 (2) alter, destroy, displace, relocate, channel, dam, convert to dry land,
 14 or otherwise adversely affect any portion of a river, stream, lake, bog, tributary, or any
 15 other water body, including the beds of water bodies, in drainages supporting salmon.

16 (b) The prohibitions listed in (a) of this section do not apply to

17 (1) uses authorized, approved, and permitted before the effective date
 18 of this Act;

19 (2) drinking water and domestic uses;

20 (3) ordinary existing and future municipal uses; or

21 (4) traditional, cultural, or residential uses.

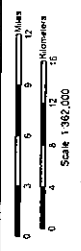
22 (c) In addition to any other penalties, a person who violates (a) of this section,
 23 upon conviction, is punishable by a fine of not less than \$10 a day or more than \$5,000
 24 a day, except that a corporation is punishable by a fine of not less than \$100,000 a day
 25 or more than \$1,000,000 a day. Each day on which a violation described in (a) of this
 26 section occurs constitutes a separate violation of that subsection.

27 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

DRAFT
General Land Status
Collings Proposed Route

Legend

- Possible Road (10/2005)
- Possible Power Line
- - - Possible Submerged Power Cable
- Possible Port Site (7-27-2004)
- X Limestone Deposits (NDM 9/1/04)
- Existing Roads
- General Land Status (BLM 1-15-2004)
- Bureau of Land Management
- National Park Service
- Native Patent or IC
- Native Selected
- State Patent or TA
- State Selected
- Native Allotments/Private Lands (RDI reviewed 5/05)
- Village Corp. Boundaries (BEESC)
- National Park and Preserve



Scale 1:382,000
 Alaska State Plane Zone 5 (units feet)
 1983 North American Datum

File: RDI_HDR_LBRFS_NL_11K17_Totl_D07.mxd Date: September 22, 2007
 Author: RDLIS
 Version: 7

