

Cowper responds to Murkowski letter

Editor's note: This letter was written by Gov. Steve Cowper last week to Sen. Frank Murkowski, R-Alaska.

Dear Sen. Murkowski:

In a recent letter, you urged me to pursue a legal challenge to the constitutionality of the federal fish and game provisions contained in Title VIII of the Alaska National Interest Lands Conservation Act.

In your view, the uncertainty over ANILCA's constitutionality "tends to carve ugly divisions among citizens, making state action to protect subsistence lifestyles more difficult."

I have made clear that, in my view, the subsistence debate in Alaska revolves around a policy choice that we must make, and that I favor a subsistence preference for rural residents. Indeed, this is the position the state adopted in the negotiations leading up to the passage of ANILCA in 1980.

It also was reflected in the fish and game regulations in effect in 1982 when voters overwhelmingly defeated an initiative to repeal the state subsistence law.

The Legislature enacted a subsistence preference for rural residents in the 1986 state subsistence law, and such a preference continues to enjoy broad public support in virtually all areas of the state, as reflected in recent public opinion polls.

That policy approach — a subsistence preference for rural residents — is the same approach Congress adopted in ANILCA. Filing a lawsuit challenging the constitutionality of that preference in ANILCA would be viewed by some as a dramatic reversal of state policy, something which I do not believe should occur.

I also am aware that private parties have already brought such a challenge. Thus, such concerns are already being expressed in judicial form.

There are several other reasons why I believe challenging ANILCA is not in the state's interest. If the state files a lawsuit, it virtually guarantees that no action will be taken by the state Legislature to address the issue.

I continue to believe that people of goodwill, those who are truly concerned about the merits of this ques-

tion, ultimately will agree with you, the rest of our Congressional Delegation, me, and the majority of Alaskans who favor a subsistence preference for rural residents.

I do not want to provide others, who wish this issue would simply go away, with an excuse for not facing up to the issue.

I also am concerned that a lawsuit by the state challenging ANILCA's subsistence preference for rural residents might jeopardize the state's ability to participate meaningfully in congressional deliberations over other issues.

There is a widespread perception that Alaska agreed (albeit reluctantly) to ANILCA's provisions — that it was a compromise among the various interest groups participating in the deliberations that led to its enactment.

If we challenge one of those provisions now, it might adversely impact our ability to participate in negotiations with Congress over questions such as the opening of ANWR to oil and gas development.

Unless circumstances change significantly, federal officials and private parties previously involved with ANILCA should be able to rely on representations the state has made in the past.

In my view, it is generally advisable to pursue consistency in public policy advocacy.

Perhaps most important, however, I am concerned about what we might get from Congress if we were to win such a lawsuit. In Title VIII of ANILCA, Congress expressed genuine concern for the ability of Alaska Natives to continue living a subsistence lifestyle.

If the state successfully challenges ANILCA's subsistence preference for rural residents I envision a major effort by Alaska Natives (aided perhaps by Indians from the Lower 48, native Hawaiians and others) to establish a statewide Native subsistence preference under Congress's plenary authority to legislate with respect to Indian affairs.

I am convinced that such legislation

would not be in the state's best interest. In my view, the divisiveness we see over the question whether rural residents should have a subsistence preference is nothing compared to the divisiveness that would result from the federal government mandating a subsistence preference for Alaska Natives statewide.

For all of these reasons, I believe that it is not in the state's best interest to file a lawsuit challenging the constitutionality of ANILCA's subsistence provisions. I agree with you that Alaskans do know best when it comes to managing fish and wildlife and meeting the needs of Alaska's residents.

I continue to hope that men and women of goodwill in this state will bring appropriate pressure on their elected representatives, including making appropriate choices at the upcoming election, to allow Alaska to once again take charge of its own destiny.

Sincerely,
Gov. Steve Cowper