

- 1 FEDERAL SUBSISTENCE BOARD
Board Meeting of May 3-6, 1999
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- 3 Location of Meeting
The Egan Center
Downtown Anchorage, Alaska
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- 5 Transcript of
May 5, 1999
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- 7 Board Members in Attendance:
- 8 Mitch Demientieff, Chairman
- 9 Dave Allen, U.S. Fish & Wildlife Service
Warren Heisler, Bureau of Indian Affairs
- 10 Niles Cesar, Bureau of Indian Affairs
Judy Gottlieb, National Park Service
- 11 Don Ostby, U.S. Forest Service
- 12 Keith Goltz, Office of the Solicitor
- 13 Others:
- 14 Ida Hildebrand, Bureau of Land Management
Tom Eley, U.S. Fish & Wildlife Service
- 15 Tom Boyd, U.S. Fish & Wildlife Service
Sandy Rabinowitch, National Park Service
- 16 Ken Thompson, U.S. Forest Service
Peggy Fox, Bureau of Land Management
- 17 Dan O'Hara, Bristol Bay Advisory Council Chair
Vincent Tutiakoff, Kodiak-Aleutians Advisory Council
Chair
- 18 Ralph Lohse, Southcentral Advisory Council Chair
- 19 Ronald Sam, Western Interior Advisory Council Acting
Chair
- 20 Bill Thomas, Southeast Advisory Council Chair
Willie Goodwin, Northwest Arctic Advisory Council Chair
Fenton Rexford, North Slope Advisory Council Chair
Grace Cross, Seward Peninsula Advisory Council Chair

21 Harry Wilde, Yukon-Kuskokwim Delta Advisory Council
Chair

22 John Andrew, Coordinator
Elizabeth Andrews, Alaska Department of Fish & Game

23 Taylor Brelsford, U.S. Fish and Wildlife Service

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1 Other Staff Members in Attendance:

2 Pat McClenahan
Dave Fisher

3 Jerry Berg
Donna Dewhurst

4 Barbara Armstrong
Helen Armstrong

5 Rachel Mason
Robert Willis

6 Cliff Edenshaw
Helga Eakon

7 Terry Haynes
Don Callaway

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1 P R O C E E D I N G S

2 (On record - 8:30 a.m.)

3 CHAIRMAN DEMIENTIEFF: Okay. We will
4 convene the meeting of the Federal Subsistence Board.

5 We've got a little bit of work to complete
6 this morning in Southcentral, and that's where we're
 going to begin. But we do have a time specific deferral
 on Proposal 34 and the moose portion of Proposal 36 in

Bristol Bay, so we'll note that it is off the table.

7 And using the prerogative of the chairman, I'm going to
go ahead and allow us to complete Southcentral before we
8 go to Bristol Bay, and finish that proposal, and then we
will begin the Kenai testimony.

9

For those of you who haven't already
10 completed, and wish to testify, public testimony on
these issues, the blue testimony cards are at the back
11 table and the folks back there will make sure you get
them to us.

12

With regard to completing our work in
13 Southcentral, the first issue we have up is the Board
policy with regard to individual C&T. And with regard
14 to that, I'm going to call on Sandy Hamilton to make a
presentation. Sandy Rabinowitch.

15

SANDY RABINOWITCH: Thank you.

16

As the Federal Board knows, there has been
17 a regulation in place for, well, since the beginning of
the program, in Section 50 CFR 100.16 of the Board
18 regulations that allows for individual C&T, and that
regulation has seen little to no use.

19

Since the inception of the program a year
20 ago, a proposal was submitted for an individual C&T, and
then this past year several additional proposals were
21 submitted. The Board directed the Staff Committee to
work on a policy to help deal with this. In simple
22 terms, the Board's plowing some new ground. And what
I'll do in a moment is go through that policy. I
23 believe there have been copies at the back table for a
day or two, and all the Board should have copies of
24 this, as should all the chairmen of the Regional
Advisory Councils.

25

What the policy allows for, just in a quick

1 summary, is the consistent approach in terms of how the
2 public -- how the public can understand kind of the
3 rules of the road, and how the Board staff understands
4 how they should be handled procedurally. The bottom
5 line is that the policy would allow for proposals from
6 individuals to come before the Board for individuals
7 requesting a customary and traditional use for species
8 in specific areas. When they come forward, as there are
9 several later today, or this morning, they will then be
10 taken up on their own merits like any other individual
11 C&T proposal.

12
13 And with that, let me get into the policy
14 paper. This is a one-page front and back paper labeled
15 Proposed Federal Subsistence Board Policy. The first
16 paragraph of the paper explains where it is in the
17 regulations and clarifies that the Board has discretion
18 with this policy. It also specifically points out that
19 the regulation allows for this individual C&T
20 determination only in National Park Service areas.
21 Then, in terms of the process and procedures, there's a
22 number of numbered items and I'll walk through those
23 just very quickly.

24
25 The first item is: In which National Park
26 Service areas will the Board make individual
27 determinations. And what the two paragraphs in this
28 document lay out is that the Board will make those
29 determinations in Park areas and Monument areas, but not
30 Preserve areas. And making that choice is using the
31 discretion of the Board that I mentioned originally.

32
33 The second paragraph of the document deals
34 with who may apply for an individual C&T use
35 determination. And the answer to that is individuals.
36 The further answer is that, as many people know, when
37 Congress wrote ANILCA in terms of Park Service areas,
38 they laid over what we think of as eligibility
39 requirements for National Park Service areas.

40
41 So in simple terms, generally speaking,
42 fewer people have eligibility in Park Service areas than
43 other federal public lands. And the way that

eligibility works in simple terms for these areas, for
23 the Parks and Monuments, is that either you need to be a
member of a resident-zoned community, and those are
24 listed in the federal regulations for each Park and each
Monument, or you need to hold an individual permit, and
25 that's often referred to as a 13.44 permit. It's at
Section 13.44 in the Park Service regulations.

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So the point here is that it's recommended
2 that the Board would take requests from individuals who
have accomplished Park Service eligibility. If you had
3 not yet accomplished Park Service eligibility, that
would be the first step to be done, and the Board
4 wouldn't receive applications from people who didn't
have that under their belt.

5

Let me also point out, and this isn't
6 written down, but Don Callaway, who will present some of
the proposals for Unit 11 later, will touch on this.
7 The regulation speaks to individuals. When some of the
applicants this past year submitted them, they submitted
8 them and wrote on their applications that they wanted
individual C&T for families. What Don will explain is
9 how that was dealt with, and basically you'll hear him
explain how he dealt with people in the households. So
10 I just wanted to kind of highlight that, and he'll get
into that later.

11

The third paragraph on the back of the
12 page, how do people apply, is the issue. The answer
here is very straightforward. Just as anyone else would
13 apply to have a regulation changed during the period of
time, usually through the summer and into the fall,
14 that's announced in the Federal Register. So that will
be the open window, just the standard approach there.

15

The fourth issue, what criteria are used to
16 evaluate these requests. Again, really no changes. The
same eight factors that are found in the regulations,
17 and we've had much discussion over the last few days
about those eight factors.

18

The fifth, is there a need to modify any
19 regulations to implement the process? The answer is
yes, there's one section, and that's Section .24,
20 actually 24(a), which lists the customary and
traditional use determinations. And in that section of
21 the regulation, if you have the paper here you see the
highlighted words that would need to be added.

22

What this does is allows for the listing of
23 those individuals who get a positive C&T finding. It
provides for a way to record that and then make copies
24 of that available locally in the area, with the local
Park Service office, and it also specifies that the list
25 of these individuals would be available on request of
anybody who wishes to have a copy.

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Sixth item, what role did the National Park
2 Service Subsistence Resource Commissions play? The
answer here is, the same that they play now. That is,
3 that they're given the information about these, and if
they have an opinion and a recommendation, that they
4 would forward that along. And typically that will come
to the Regional Advisory Council meetings, as has
5 happened for many years now on other issues.

6

Seventh and last item, what role did the
Regional Advisory Councils play. And the recommendation
7 here is exactly the same role they play right now, and

that is that these would come before them. They would
8 offer recommendation if they care to, that would come to
this table, at each annual meeting just like this, and
9 the Board makes its decision from there.

10 I might note that I believe it's three
Regional Councils, in past years as they have heard
11 these initial ones, have indicated varying degrees of
interest, some not a very high interest, in hearing
12 these individual requests. And so, it's -- but other
Councils may want to approach it differently. I mean,
13 that's three of the ten.

14 So it's envisioned that if more of these
come forward in the future, that the Councils would
15 basically again be presented with these; and if they
want to hear an analysis like the Board hears and the
16 Councils hear at their meetings, the staff would go
forward. If they didn't want to hear them, they would
17 basically say so and it would come to the table here
with the Board having no recommendation from a given
18 Regional Advisory Council. But that's at the will of
the Regional Advisory Council.

19
And with that, I'll simply say that the
20 Staff Committee recommends adoption of the process that
I've just summarized here and is written out, and I'll
21 now turn it back over to you, Mr. Chairman.

22 CHAIRMAN DEMIENTIEFF: Okay. So we have
the staff report on that and the Staff Committee
23 recommendation. Does the Department have any comments
with regard to this particular --

24
ELIZABETH ANDREWS: Mr. Chairman, I guess
25 the only question we still have is that once an
application is put in, what would be the time line for

1 putting together the information so that it would come
up before the Board in the spring meeting? I guess
2 we're interested to hear that if somebody puts in an
application in the fall or something, that by the
3 Board's spring meeting that there will be the
information gathered so that there's consideration,
4 rather than waiting several years before an individual
C&T might be taken up by this Board.

5
CHAIRMAN DEMIENTIEFF: Yes. We will -- it
6 will be treated like a normal proposal. And once the
application has been received timely, then the Staff
7 Committee will begin work on it and it will be treated
just like a regular proposal. And that's how we will
8 handle even consideration of this policy, we'll handle
those the same way at the Board meeting.

9
ELIZABETH ANDREWS: Thank you very much.

10
CHAIRMAN DEMIENTIEFF: We have no request
11 for public comments on this issue. Regional Council
comments?

12
NAT GOOD: Mr. Chair.

13
CHAIRMAN DEMIENTIEFF: Yes.

14
NAT GOOD: Are these comments on the
15 process now, or on Dan O'Connor?

16
CHAIRMAN DEMIENTIEFF: On the policy.

17
NAT GOOD: Well, I think Eastern Interior
is glad to see that the policy is being put into place.
18 We feel it's overdue and we think you're doing something
very wise here.

19
RALPH LOHSE: Mr. Chairman.

20
CHAIRMAN DEMIENTIEFF: Yes.

21
RALPH LOHSE: Southcentral concurs with
22 that. It's been an issue before us for quite a while.

23
CHAIRMAN DEMIENTIEFF: Yes, that is the

intent of the policy, is to find some way to move
24 forward with implementation.

25 I might add there's a mixed school of
thought, you know, and I think Sandy talked about the

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1 Regional Council participation and the fact that there
are some of the Regional Councils that don't want to
2 participate. But I, myself, think it's very important
for the Regional Councils, too. That's why we have the
3 Regional Councils, to get the local input.

4 So it's with a little reluctance, you know,
that I personally accept a policy without, you know --
5 and allow these proposals to go forward, without
Regional Council participation, because I think both the
6 Subsistence Resource Commissions and the Regional
Councils need to help us out, you know, with the local
7 participation on this. Even though we're prepared to go
forward without it, it's with a little reluctance. And
8 I don't think I'm the only Board member that has that
view. Ron? Oh, I'm sorry.

9
RONALD SAM: Thank you, Mr. Chairman. I
10 have one question. How much power, or how much does the
Federal Subsistence Board listen to the SRCs? Because I
11 would really like to see our SRCs be totally involved,
because they are SRCs for individual Parks, and I would
12 like to see -- I would like to know how much power that
is vested in them.

13
CHAIRMAN DEMIENTIEFF: With regard to this
14 issue --

15 RONALD SAM: Yes.

16 CHAIRMAN DEMIENTIEFF: -- you know, they're
equally as important as Regional Councils. And maybe in
17 some cases as far as bringing the really truly, you
know, because the Regional Councils represent a region,
18 you know, they're very, very important to us, because
they are for the specific Parks. So it's not one
19 without the other. I mean, you know, we do want that
participation very much. That's a big part of the --
20 big piece of this pie. Yes?

21 GRACE CROSS: Mr. Chair, you expressed my
sentiment very well. This is the first I've ever seen
22 this, probably because I'm new, but it would be nice to
be able to show this to my Regional Advisory Council and
23 make comments on it. But I'm not sure what part of the
game it is now in. I'm sure that my Council would be
24 able to make comments. Thank you.

25 CHAIRMAN DEMIENTIEFF: Well, you know, I
think it's our intent to adopt the policy at this time.

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1 And this, you know, I don't think it's something that's
cast in stone. You know, if there are recommendations
2 that come forward from Regional Councils for revisions
of the policy, I think we'd be open, you know, to those
3 revisions. It's a beginning point for us on how to try
to move forward with these individual C&T requests.
4 Yeah, if you do have suggestions in the future, or any
Regional Council does, we're going to listen to those.
5 Willie?

6 WILLIE GOODWIN: Mr. Chairman. Am I
correct in saying that this policy only is only for
7 Parks and Monuments?

8 CHAIRMAN DEMIENTIEFF: That's correct.

9 WILLIE GOODWIN: The irony is, and I
brought it out yesterday, is that somebody that marries
10 into another family, for instance, from Kiana to
somebody in Point Hope, 150 miles away, can't come into
11 the Kobuk Valley National Park and hunt, even though
they grew up in Kiana. That's the sad part of it.

12

CHAIRMAN DEMIENTIEFF: Sandy will respond
13 to that.

14 SANDY RABINOWITCH: I think there would be
a way. I'm not sure I can construct a scenario as well
15 as you might, Willie. But if an individual, let's say
it was a -- grew up in a resident-zoned community, for
16 instance, and then they moved away. They certainly
could apply to the Park Service superintendent for the
17 individual permit, the 13.44 permit. And in a very
simple scenario like I just said, I would imagine that
18 would be granted. And then as long as they were still
in a rural community, and the example you gave is that,
19 then I think they could, they could go back and hunt.

20 WILLIE GOODWIN: Except for those that move
to Anchorage and Fairbanks and Kenai and Juneau.

21

SANDY RABINOWITCH: Yes, you're correct.
22 The dilemma there, and the irony there, as you correctly
point out, is then they would be in an urban community
23 and would not have eligibility to the federal program
because of residence in an urban location.

24

WILLIE GOODWIN: Thank you.

25

CHAIRMAN DEMIENTIEFF: Any additional

1 Regional Council comment? I think we're ready to move
on. Any Board comment? We're ready to proceed on with
2 the motion to adopt the policy.

3 NILES CESAR: Mr. Chairman.

4 CHAIRMAN DEMIENTIEFF: Yes.

5 NILES CESAR: I move that we adopt the
proposed Federal Subsistence Board policy on individual
6 C&Ts.

7 CHAIRMAN DEMIENTIEFF: There's a motion.
Is there a second?

8 UNIDENTIFIED SPEAKER: Second.

9 CHAIRMAN DEMIENTIEFF: It's been moved and
10 seconded. Additional discussion? Hearing none, all
those in favor of the policy, please signify by saying
11 "aye."

12 IN UNISON: Aye.

13 CHAIRMAN DEMIENTIEFF: Those opposed, same
sign.

14 (No response.)

15 CHAIRMAN DEMIENTIEFF: Motion carries.
16 We'll go to Proposal 25. Staff report, please.

17 HOLLIS TWITCHELL: Chair, Board members,
Regional Council chairs, I'm Hollis Twitchell. I'm with
18 Denali National Park. I was asked to present Proposal
25 since it's directly applicable to the Denali Park
19 area.

20 Proposal 25 was submitted by Dan O'Connor,
who requests an individual customary and traditional use
21 determination for the use of moose from Denali National
Park lands within wildlife management Units 20(C) and
22 13(E). Dan O'Connor holds a National Park Service
subsistence use permit, but is unable to utilize moose
23 on the Denali National Park lands since he resides in a
rural committee which does not have a positive customary

24 and traditional use determination for moose.

25 Proposal 25 replaces a 1998 proposal,
number 38, which was deferred in last year's cycle.

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1 Proposal 38 was presented to the Eastern, Western and
2 Southcentral Regional Advisory Councils in 1998. The
3 three Regional Advisory Councils supported Proposal 38
4 with a modification that individuals with the National
5 Park Service subsistence use permits be granted a
6 positive individual C&T determination for use of Park
7 lands, and that individual names not be listed in the
8 federal regulations.

5

6 The intent of their recommendation was to
7 recognize subsistence use permit holders as a group, and
8 not have individual names listed in the regulations; and
9 to reduce the burden of individuals having to go through
10 duplicating processes before being allowed to practice
11 their traditional subsistence way of life on National
12 Park Service lands.

9

10 The Federal Subsistence Board deferred
11 Proposal 38 in 1998 and requested a legal review of the
12 portion of the federal regulations that relates to the
13 Board's authority to make customary and traditional use
14 determinations on lands administered by the National
15 Park Service.

13 The Denali Subsistence Resource Commission
14 met in August 1998 to review what actions had been taken
15 on Proposal 38. The Commission passed a motion
16 supporting Proposal 38 as modified by the Eastern,
17 Western and Southcentral Regional Advisory Councils.

18 The Commission is familiar with the Dan O'Connor family
19 subsistence use of moose in Denali National Park and

believes that he should be granted an individual C&T
17 use.

18 The Commission has also written to the
Federal Subsistence Board and the Secretary of the
19 Interior requesting that a legal review be expedited and
that Proposal 38 come back before the Board at the
20 earliest possible date.

21 In February, the Denali Subsistence
Resource Commission again reviewed Proposal 25 for this
22 cycle, prior to the Regional Advisory Council's meeting
in February, and again passed a motion in support of
23 Proposal 25 as it was modified by the Eastern, Western
and Southcentral Regional Advisory Councils.

24
In going into the analysis, the information
25 presented here was gathered through interviews with the
O'Connor family, Pat O'Connor, Dan O'Connor, through

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1 documents within the Park Service's records, and also
from interviews with other individuals who have
2 firsthand knowledge of the O'Connor family's specific
use in this area.

3
The O'Connor family has depended upon moose
4 in Alaska as a primary source of sustenance for four
generations, and have regularly and consistently hunted
5 moose for 57 years in Units 13 and 20. Dan O'Connor's
grandmother and grandfather settled in Palmer in 1940.
6 They actively hunted moose in Units 13 and 14. Dan
O'Connor's father began hunting moose in 1948 and has
7 continued uninterrupted through 1998. Dan O'Connor's
father was an eligible subsistence user for Denali
8 National Park between 1972 and 1995 while he resided in
the McKinley Village area. Dan O'Connor himself has

9 participated in hunting moose since he was a young
child, and has actively hunted moose every year since
10 1971.

11 Dan O'Connor is an eligible subsistence
user who resided in the McKinley Village area prior to
12 moving to Healy in 1981. After establishing his own
household in the Healy area, Dan was issued a
13 subsistence use permit by the National Park Service to
continue his use of subsistence resources in Denali.
14 Moose is their primary source of sustenance since there
is no caribou season open in the Healy area.
15

The O'Connor families have hunted,
16 harvested and shared moose every fall season since 1940
to the present seasons, during the specific times
17 allowed in the regulations. Fall moose hunting
activities have always been a regular part of the
18 family's activities, despite extensive regulatory
changes, restrictions and closures to many of their
19 traditional subsistence seasons and use areas. Numerous
regulations, restrictions on both State and federal
20 lands within this region have had a negative effect upon
their efficiency and economy of effort and pattern of
21 use.

22 To cite some examples, the Healy-Lignite
Control Use Area east of Healy in Unit 20(A) is
23 restricted to bow and arrow hunting only. The Yanert
Control Use Area east of McKinley Village and the Wood
24 River Control Use Area east of Healy are restricted to
nonmotorized access only, except aircraft for hunting
25 and transporting large animals. National Park Service
regulations restrict the use of ATVs and aircraft as a

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1 means of access for subsistence wildlife harvest. The

winter seasons, with relatively easy access to moose,
2 have nearly all been eliminated.

3 Despite the many regulatory changes to
4 seasons and bag limits, access methods and means, and
5 areas open to harvesting moose, the O'Connors have
6 continued to maintain a recurring pattern of use within
7 the area, using traditional means, methods and means,
8 which are characterized by efficiency and economy of
9 effort within the constraints of the regulatory
10 restrictions.

11 The O'Connors travel to their hunting areas
12 by foot and ORVs, to hunt moose with rifles. The
13 O'Connors hunted primarily in Unit 13 during the early
14 years, the 1940s, '50s and '60s. Then they shifted
15 their primary use areas to Unit 20, and have been
16 utilizing that area for the last 15 to 20 years. A
17 major change occurred in 1988 when the State Board of
18 Game passed a negative customary and traditional use
19 determination, closing federal lands in Unit 20(C) to
20 moose hunting for residents of the McKinley Village area
21 and the area along the Parks Highway, Highway Mile 216
22 to 239.

23 As a result, from 1988 to the present, Dan
24 and Pat O'Connor families were excluded from subsistence
25 hunting moose from Denali National Park lands in Unit
26 20(C) and 13(E). During this period, the family was
27 forced to travel further from their resident communities
28 in McKinley Village and Healy to hunt on adjacent state
29 lands under state hunting seasons.

30 The O'Connors use all eligible parts of the
31 moose. Winter freezing -- excuse me. Freezing meat
32 outdoors is done during the colder winter months and is
33 not usually possible during the September hunt, so the
34 meat is canned or stored in freezers to preserve it.
35 Some portions of the moose are processed by drying and
36 jerkying. The O'Connors use the same process learned
37 from his parents and grandparents and is passing those
38 skills and knowledge on to his son. The handling
39 techniques are common both historically and during the
40 contemporary period across the state. When weather
41 permits, Dan brings out the nonedible portions to use as
42 trapping bait for his winter trapping activities.

25 Dan O'Connor's grandparents learned their
hunting skills regarding Alaska hunting in the Palmer

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1 and the Glennallen area. Dan, as a young child,
2 accompanied his father and mother and often other
3 relatives long before he was actually old enough to hunt
4 himself. Dan hunted moose every year since he turned 10
5 years old. Dan O'Connor continues to use traditions
6 with his family and is passing them on to his children.
7 Hunting, trapping and fishing are significant values
8 upon which the O'Connor families depended.

9
10 Moose hunting is generally a family event,
11 participated in and shared by all family members, both
12 within and between households. They've shared in their
13 harvest between family members and other nonfamily
14 members who were participating in the hunt. They
15 traditionally share their resources at annual community
16 events, potlucks and holidays and social gatherings.
17 They share the resources with friends and neighbors and
18 those in need and those who assisted in the processing
19 of the harvest.

20
21 Moose were, and still are, the O'Connor
22 families' primary source of meat, but the family
23 utilizes a wide variety of subsistence resources, such
24 as caribou, sheep, bear, ptarmigan, spruce hens, hare,
25 fish, and fur bearers such as beaver, marten, fox, wolf,
26 lynx, and otter.

27
28 In addition to wildlife and fish resources
29 providing substantial nutritional needs of the family,
30 the hunting and harvest activities provide a significant
31 social and family activity involving all members of the
32 household. Often, multiple generations in several

17 O'Connor households participate in the fall moose
hunting and processing activities together.
18 Approximately 85 percent of Dan O'Connor's meat comes
from resources from hunting. Typically, wildland
19 resources provide meals five out of seven days per week.
That concludes the analysis.

20

CHAIRMAN DEMIENTIEFF: Thank you. Are
21 there any written public comments?

22 HELGA EAKON: Yes, Mr. Chair. The program
received four written comments on Proposal 25.

23

The Eastern Interior Regional Advisory
24 Council would like an expedited resolution to individual
customary and traditional use determinations with
25 respect to National Park Service lands. They said that
qualified subsistence users have been denied subsistence

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1 opportunity for too many years on Park lands.

2 The Western Interior Regional Council had
the same comment, adding that they recommend that all
3 CFR 13.44 permittees be granted a positive C&T
determination for Park lands.

4

The Delta Advisory Committee supports the
5 proposal.

6 The Denali National Park and Preserve
Subsistence Resource Commission supports Proposal 25 as
7 modified by the Eastern Interior, Western Interior, and
the Southcentral Regional Advisory Councils in their
8 1998 deliberations of deferred Proposal 38. End of
comments.

9

CHAIRMAN DEMIENTIEFF: Staff Committee

10 recommendation?

11 KEN THOMPSON: The Staff Committee
12 recommends adopting Proposal 25, with the modification
13 that specifies the individual customary and traditional
14 use determination applies only to Denali National Park
15 lands within Units 20(C) and 13(E). The Eastern,
Western, and Southcentral Councils recommended modifying
the proposal to include broader groups of individuals,
such as 13.44 permittees, residents of resident-zoned
communities, and other qualified individuals.

16 The Staff Committee, however, felt it was
17 premature to concur with these recommendations before
the Board has evaluated and acted on these options.
Accordingly, the Staff Committee evaluated the merits of
18 Dan O'Connor's individual circumstances. The testimony
and written record provided by Dan and Pat O'Connor
19 provides adequate documentation that Dan O'Connor has
customarily and traditionally harvested moose in the
20 portions of Unit 20(C) and 13(E) at issue.

21 Dan O'Connor and his family have
22 established a customary and traditional use of moose
long before Dan's move from McKinley Village to the
community of Healy. He should be granted an individual
23 customary and traditional use determination to utilize
subsistence moose resources from Denali National Park
24 lands within Units 13(E) and 20(C).

25 CHAIRMAN DEMIENTIEFF: Thank you.
Department comments?

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ELIZABETH ANDREWS: Mr. Chairman, the Staff
2 Committee recommendation included the concerns that we

had raised in our written comments, and therefore we
3 support the Staff Committee recommendation.

4 CHAIRMAN DEMIENTIEFF: Thank you. Gloria
Stickwan, you had filled out a -- did you wish to
5 comment on this particular issue?

6 GLORIA STICKWAN: I support the families
using C&T for the area that they're proposing to use if
7 they can prove C&T.

8 CHAIRMAN DEMIENTIEFF: Is Miss Calcote
here? Will somebody advise me if she does come in,
9 because she's had a request in and I've called upon her
for a couple of days. Regional Council comments?
10

NAT GOOD: Mr. Chairman. Eastern Interior
11 is going to be very glad to not see this one on an
annual basis. And we think that at the same time --
12 we're assuming this will be granted this year -- that we
should perhaps thank Dan O'Connor for his patience and
13 thank him also for his tenacity, because I don't think
without him sticking with it here we'd have gotten this
14 policy. So I think that we appreciate his efforts.
Thank you.

15
CHAIRMAN DEMIENTIEFF: Thank you.
16 Additional Regional Council comments? Mr. Sam.

17 RONALD SAM: Thank you, Mr. Chairman. We
concur with Eastern Interior. It seems like we go
18 through this every meeting that we have. I would like
to go back and reiterate the powers vested in individual
19 SRCs. I think that if they have that much power, that
they could grant them outright, National Park Service
20 SRCs. If they're individually vested and recognized, I
think that we should give them more power to go ahead
21 and grant these individual C&Ts, instead of coming
before the Federal Board. Thank you.

22
CHAIRMAN DEMIENTIEFF: Thank you. Ron, you
23 know, the understanding that I have is that we can't
grant the authority to the SRCs. It's strictly vested
24 in the Board. But at least now we have a process when
an SRC is dealing with this issue, that they can advance
25 it to us and it's going to be a key part of our

considerations. And that's what I'm talking about. But

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1 there's no way under existing regulation that we can
grant that authority to the SRC, but certainly we would
2 be able to advance it. Additional comment?

3 RALPH LOHSE: Mr. Chair.

4 CHAIRMAN DEMIENTIEFF: Yes.

5 RALPH LOHSE: Ralph Lohse, Southcentral.
We'd like to concur with the eloquence of the Eastern
6 Interior and the way they expressed our feelings
completely.

7

CHAIRMAN DEMIENTIEFF: Thank you.
8 Additional Regional Council comment? Do we have a
motion?

9

JUDY GOTTLIEB: Mr. Chairman?

10

CHAIRMAN DEMIENTIEFF: Yes.

11

JUDY GOTTLIEB: Public testimony and
12 written record provided by Dan O'Connor provides
adequate documentation. I move that we modify the
13 Southcentral, Eastern Interior and Western Interior
Regional Advisory Councils' recommendations for Proposal
14 25. The modification would grant an individual
customary and traditional use determination for Dan
15 O'Connor for moose on Denali National Park lands within
Units 20(C) and 13(E). Let me clarify. This does not
16 include Preserve land nor Park lands established prior
to 1980. Only those Park lands established by ANILCA in
17 1980.

18 CHAIRMAN DEMIENTIEFF: Okay. That was your
19 motion? Now we need a second. I got lost in the
20 filibuster. I'm sorry. Is there a second?

21 PEGGY FOX: I'll second.

22 CHAIRMAN DEMIENTIEFF: Okay. Additional
23 discussion? Final Regional Council comment? Hearing
24 none, all those in favor of the motion please signify by
25 saying "aye."

26 IN UNISON: Aye.

27 CHAIRMAN DEMIENTIEFF: Those opposed, same
28 sign.

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1 (No response.)

2 CHAIRMAN DEMIENTIEFF: Motion carries. So
3 9 and 11 will be considered together; is that correct?
4 Okay. Go ahead. Staff report?

5 DON CALLAWAY: Mr. Chairman, Board members,
6 and Regional Advisory Council chairmen, my name is Don
7 Callaway. I work for the National Park Service in
8 Anchorage. I did the staff work on Proposals 9 and 11,
9 which address the individual C&T for Frank Entsminger,
10 Danny Grangaard, Doug Hoskens for use of sheep in Unit
11 11, south of Sanford River.

12 Based on these interviews and utilizing the
13 eight factors, Danny Grangaard and Frank Entsminger
14 indicated a high use of subsistence foods, use of a
15 variety of wildlife resources, up to 30 species each. A
16 large part of their diet comes from subsistence
17 products, probably 75, 85 percent of the meat in their

11 diet. They share these products widely both within the
12 community and within family. They teach their children
13 preservation techniques, utilize the whole animal. And
14 both Danny Grangaard and Frank Entsminger have
15 demonstrated a long-term consistent use, beginning in
16 the mid 1960s, for these resources, south of the Sanford
17 River. Whereas, Doug Hoskens, although he meets many of
18 the eight factors, did not demonstrate such a use of the
19 resource. He was interested, in this case, in sheep
20 south of Sanford River.

16

CHAIRMAN DEMIENTIEFF: Thank you. Written
17 public comments?

18 HELGA EAKON: Mr. Chair, we received three
19 written comments of support, from the Upper Tanana
20 Fortymile Advisory Committee, the Delta Advisory
21 Committee, and the Wrangell-St. Elias National Park
22 Subsistence Resource Commission. End of comments.

21 CHAIRMAN DEMIENTIEFF: Staff Committee
22 recommendation?

22

KEN THOMPSON: The Eastern Interior and
23 Southcentral Regional Councils recommended modifying the
24 proposals to include broader groups of individuals, such
25 as the 13.44 permittees, residents of resident-zoned
communities, and other qualified individuals.

25

The Staff Committee, however, felt it was

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1 premature to concur with these recommendations before
2 the Board had evaluated and acted on these options.
3 Accordingly, the Staff Committee evaluated the merits of
4 the individual applications. And the results of those
5 evaluations lead us to recommend to the Board that it

adopt the proposal to grant an individual customary and
4 traditional use determination to Frank and Sue
Entsminger for goat on National Park lands in Unit 11.

5

Secondly, adopt the proposal to grant an
6 individual customary and traditional use determination
to Danny and Lance Grangaard for sheep on National Park
7 lands in Unit 11 south of the Sanford River, and for
goat on National Park lands in Unit 11.

8

And thirdly, to reject the request to grant
9 an individual customary and traditional use
determination to Greg Hoskens for sheep south of the
10 Sanford River in Unit 11.

11 CHAIRMAN DEMIENTIEFF: Department comments?

12 ELIZABETH ANDREWS: Mr. Chairman, the
Department supports the recommendation made by the Staff
13 Committee since our written comments were taken into
consideration, or at least our concerns were addressed
14 by that recommendation. So we support the individual
determination for Frank and Sue Entsminger and for Danny
15 and Lance Grangaard.

16 We do have a comment, though, on the
proposed rejection of the C&T finding for Doug Hoskens,
17 since it appears that that's based largely on the fact
that he didn't hunt in the area due to regulatory
18 constraints, and it's our understanding that such
interruptions are beyond the control of local residents
19 and therefore should be taken into account when
evaluating the eight factors. Thank you, Mr. Chair.

20

CHAIRMAN DEMIENTIEFF: Don, do you have
21 some response to that?

22 DON CALLAWAY: Yes, Mr. Chairman. The
intent of this individual C&T is to grant individual C&T
23 to households who have a demonstrated use prior to 1980
of the resource in the particular area they're
24 requesting C&T for. Both Danny and Frank's households
demonstrated prior to 1980 a long-term consistent use of
25 the resource in that area. Whereas, Doug Hoskens had
the opportunity, since he lived in the area for about

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1 the same amount of time, to hunt in that area prior to
2 1980, but had not.

2

3 So that on Factor 1, which is a long-term
4 consistent use of the resource, and based on the logic
5 of the individual C&T process; that is, you have to have
6 used the resource in the area consistently prior to
7 1980. So I don't believe there is a contradiction
8 there.

9 CHAIRMAN DEMIENTIEFF: Thank you. Did you
10 wish to add additional public -- okay, thank you.
11 Regional Council comments?

12 NAT GOOD: Mr. Chairman?

13 CHAIRMAN DEMIENTIEFF: Yes.

14 NAT GOOD: I'll read what Eastern Interior
15 has here. Support with modification that resident-zoned
16 communities, 13.44 permittees, and qualifying individual
17 families be granted positive C&T determinations for Unit
18 11.

19 When you look at this, what we were really
20 looking at was trying to avoid some of the duplication
21 of effort and provide a means for a family to be
22 recognized here. I think this policy that you've just
23 passed here has given us a method of doing that. And
24 I'd have to also comment that we didn't have all of the
25 materials at our meeting on the individual families, but
26 I think at this point we certainly would support what we
27 perceive to be the Board's action here.

28 CHAIRMAN DEMIENTIEFF: Thank you. Could we
29 maybe respond. Sandy, are you prepared to respond to

19 the Regional Council modification, or their request for
modification, with regard to 13.44 permittees?

20

SANDY RABINOWITCH: I'd be happy to.

21

CHAIRMAN DEMIENTIEFF: Would they be
22 allowed to bring a proposal like that forward under our
existing policy?

23

SANDY RABINOWITCH: If I understand the
24 Council's recommendation from -- and I was at one of the
meetings, I think in Minto, where this was discussed at
25 some length. I understand that the Council wanted to
take those people who had 13.44 permits, the individual

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1 permits, and essentially grant them individual C&T based
on the fact that they had permits. Let me make sure I'm
2 on the right track. Right. Okay.

3 My understanding -- the bottom line, as I
understand it, consistent with the policy that we just
4 put in front of you and you adopted, which is also in
large part based on the legal opinion from the Regional
5 Solicitor's Office of the regulation, is that the answer
to that is we can't do that. And the simple reason is
6 that the 13.44 permits are issued under a separate
criteria, those being Park Service criteria, in Section
7 13.44 of the Park Service regulations, and as such are
Park Service decisions. Though the Park Service is a
8 member of the Federal Board, the Federal Board's a
separate entity and has its own regulations. And so, my
9 grasp of what we've been told by the Solicitor, they're
two separate decision making processes and basically
10 they need to be kept separate. Does that make sense?

11 RONALD SAM: I'll have to read through, but
what you have said so far makes sense and I thank you

12 for addressing it.

13 SANDY RABINOWITCH: Okay. I'm happy to
14 talk with you or anyone else in the audience later, if
15 that would help.

16 CHAIRMAN DEMIENTIEFF: Any additional
17 Regional Council comments? Yes, Ralph.

18 RALPH LOHSE: Mr. Chair, Ralph Lohse,
19 Southcentral. Like Eastern Interior said, we did not
20 have this information in front of us on the individuals
21 to pursue it. I have a couple questions on the staff
22 analysis, if I may ask them.

23 One of the questions is why Frank
24 Entsminger and his family would be found a positive C&T
25 for goat in Unit 11 and not for sheep, when in his thing
26 he talks about hunting sheep in Unit 11, and would like
27 the -- he already has one?

28 UNIDENTIFIED SPEAKER: He has eligibility
29 for Unit 11 already, for sheep.

30 RALPH LOHSE: He has eligibility in Unit 11
31 for sheep?

32 UNIDENTIFIED SPEAKER: Right, because his

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1 residence is below the C&T line.

2 RALPH LOHSE: Thank you.

3 CHAIRMAN DEMIENTIEFF: Additional Regional
4 Council comment? If none, we'll advance to the Board.

5 I'm a little bit -- this is kind of a mishmash of two

proposals. I'm kind of curious how we're going to go
5 forward here. Are we going to -- separate motions? So
we're going to do 9?

6

JUDY GOTTLIEB: Mr. Chairman, I have two
7 motions for Number 9.

8 CHAIRMAN DEMIENTIEFF: Okay.

9 JUDY GOTTLIEB: The first one being, I move
that we modify the Southcentral and Eastern Interior
10 Regional Advisory Council recommendations for Proposal
Number 9. The modification would grant an individual
11 customary and traditional use determination for Danny
and Lance Grangaard for sheep on Wrangell-St. Elias
12 National Park lands within Unit 11, the remainder south
of the Sanford River. And again let me clarify, this
13 would not include Preserve lands.

14 CHAIRMAN DEMIENTIEFF: Okay. Is there a
second to that motion?

15

UNIDENTIFIED SPEAKER: Second.

16

CHAIRMAN DEMIENTIEFF: It's been moved and
17 seconded. Is that Proposal Number 9 or 11?

18 JUDY GOTTLIEB: This is Number 9 for
Grangaard sheep.

19

CHAIRMAN DEMIENTIEFF: Okay. Discussion?
20 Hearing none, all those in favor, please signify by
saying "aye."

21

IN UNISON: Aye.

22

CHAIRMAN DEMIENTIEFF: Those opposed, same
23 sign.

24 (No response.)

25 CHAIRMAN DEMIENTIEFF: Motion carries.
Okay.

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JUDY GOTTLIEB: And Mr. Chairman, I then
2 have a second motion for Proposal Number 9. I move that
we reject the request to grant an individual customary
3 and traditional use determination to Doug Hoskens on
Wrangell-St. Elias National Park lands within Unit 11,
4 the remainder south of the Sanford River.

5 CHAIRMAN DEMIENTIEFF: That's the motion.
Is there a second?

6

UNIDENTIFIED SPEAKER: Second.

7

CHAIRMAN DEMIENTIEFF: Discussion? Hearing
8 none, all those in favor signify by saying "aye."

9 IN UNISON: Aye.

10 CHAIRMAN DEMIENTIEFF: Those opposed, same
sign.

11

(No response.)

12

CHAIRMAN DEMIENTIEFF: Motion carries.
13 What about 11?

14 JUDY GOTTLIEB: Mr. Chairman, I have two
more motions, please.

15

CHAIRMAN DEMIENTIEFF: Okay.

16

JUDY GOTTLIEB: And these involve Proposal
17 Number 11. I move that we modify the Southcentral and
Eastern Interior Regional Advisory Council
18 recommendations for Proposal Number 11. The
modification would grant an individual customary and
19 traditional use determination for Frank and Sue
Entsminger for goat on Wrangell-St. Elias National Park

20 lands within Unit 11. Once again to clarify, this does
not include Preserve lands.

21

CHAIRMAN DEMIENTIEFF: Is there a second to
22 that motion?

23 UNIDENTIFIED SPEAKER: Second.

24 CHAIRMAN DEMIENTIEFF: Moved and seconded.
Discussion? This is 11?

25

JUDY GOTTLIEB: This is 11.

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1

CHAIRMAN DEMIENTIEFF: And the subsequent
2 one is also 11?

3 JUDY GOTTLIEB: Correct.

4 CHAIRMAN DEMIENTIEFF: Okay. Is there any
further discussion on 11-A, motion 11-A? I don't know
5 what we call it, we never dealt with these before.

6 JUDY GOTTLIEB: Right.

7 CHAIRMAN DEMIENTIEFF: Discussion? All
those in favor of the motion, please signify by saying
8 "aye."

9 IN UNISON: Aye.

10 CHAIRMAN DEMIENTIEFF: Those opposed, same
sign.

11

(No response.)

12

CHAIRMAN DEMIENTIEFF: Motion carries.

13 Okay.

14 JUDY GOTTLIEB: Mr. Chairman, 11-B, motion
for Proposal Number 11. I move that we modify the
15 Southcentral and Eastern Interior Regional Advisory
Council's recommendation for Proposal Number 11. The
16 modification would grant an individual customary and
traditional use determination for Danny and Lance
17 Grangaard for goat on Wrangell-St. Elias National Park
lands within Unit 11. This does not include Preserve
18 lands.

19 CHAIRMAN DEMIENTIEFF: There's a motion.
Is there a second?

20

UNIDENTIFIED SPEAKER: Second.

21

CHAIRMAN DEMIENTIEFF: Discussion? Hearing
22 none, all those in favor of the motion, please signify
by saying "aye."

23

IN UNISON: Aye.

24

CHAIRMAN DEMIENTIEFF: Those opposed, same
25 sign.

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1 (No response.)

2 CHAIRMAN DEMIENTIEFF: Motion carries.
Okay, that completes our work in Southcentral.

3

We now will move back -- what region is
4 Bristol Bay?

5 UNIDENTIFIED SPEAKER: Four.

6 CHAIRMAN DEMIENTIEFF: Region 4, Bristol
7 Bay. Proposal Number 36. And the moose portion of
8 Proposal 34. Is that correct? Did I do that right?

8 UNIDENTIFIED SPEAKER: Yes.

9 CHAIRMAN DEMIENTIEFF: Okay. We've already
10 exhausted through the staff report recommendations,
11 heard all the comments, all the public testimony. We
12 had a motion to adopt the Interagency Staff Committee
13 recommendation, which failed on a 3-3 vote. We are
14 waiting at this time for some information regarding
15 additional field work, and Mr. Allen, I think, may have
16 a report for us with regard to that issue.

13
14 DAVE ALLEN: Yes, Mr. Chairman. I do want
15 to speak to the issue of additional field work, but
16 before I do that, just very briefly I'd like to add some
17 information that was not part of the Staff Committee's
18 report that is an indicator of nonlocal effort in this
19 area. Our Refuge permits all the air taxis that drop
20 hunters off in the federal lands, the Refuge portion of
21 federal lands. Our records from 1991 through 1997, 15
22 air taxis shown there have been no drop-offs of moose
23 hunters in those years in the area that's proposed for
24 closure.

19
20 Just last year there was an individual in
21 Chignik. I don't know if it's Chignik or Chignik
22 Lagoon, but the operator of Chignik Air, who was
23 permitted by the Refuge for the first time in 1998, he
24 did ferry four hunters last year into that area, and I
25 also understand he probably does some contract work for
26 some of the guides in that area as well.

23
24 Once again, this is just some additional
25 information to indicate the fact that the use level in
26 this area by nonlocal residents is very low, as was
27 indicated by the harvest tag information and the other
28 information that was shared with us yesterday.

1

2 On the issue of doing a survey, before the
3 Board makes a decision relative to this proposal, Fish
4 and Wildlife Service certainly can and is willing to do
5 this. However, I think I should point out for the Board
6 that the utility of the information that is gained by
7 the survey, even if we do it in the next few days, may
8 be relatively small.

5

9 If in fact the absence of snow cover in
10 areas where moose might be becomes a factor, that of
11 course complicates the survey. Moose should be
12 beginning to disperse. Bulls of course have dropped
13 their antlers at this time. Last year's calves may be
14 separated from cows, which increases the likelihood of
15 misclassifying some of the data. And because of all
16 these things, the key population statistics that we
17 would be looking for; namely, the bull-cow ratios and
18 calf-cow ratios, it would be very difficult, if not
19 impossible, to obtain.

11

20 In spite of this, Mr. Chairman, we are
21 certainly willing to do this. In fact, I believe, Dan,
22 one person that may be contacted to do this is, I
23 believe, your son, Tom, as you indicated, may be willing
24 to do that. But I felt that it's important that the
25 Board know that even with this information, it may be of
26 rather marginal value to us with respect to bringing any
27 more pertinent information to the board. But as I said,
28 we are certainly willing to do that at the pleasure of
29 the Board, and we can do that very soon so that a
30 decision could be made well in advance of the season.

17

CHAIRMAN DEMIENTIEFF: Mr. O'Hara, do you
18 have additional comment with regard to that?

19 DAN O'HARA: Yes. Dan O'Hara, Chair,
20 Bristol Bay. My son, Tom, works for (inaudible), so I
21 better not make any commitments where he's going to be
22 going. He may not have a job.

21

But actually, if -- I think it's possible
22 to do a survey still within the next week or so, ten
days, depending on the weather, and all we're looking
23 for is adequate number of animals there. The bulls have
fairly good size horns already, they're sticking out
24 that far already, they're growing the horns. So at
least the big ones you can tell. And there's no
25 foliage, and they're still herded up together. I came
by the other day and lying there in the community, Lake

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1 Iliamna, was seven animals in the village boundaries
together. So I think that would be good.

2

One of the things we were thinking might
3 take place is, occasionally you let an observer go
along, Dave, to look, and if you had an extra seat for
4 someone from the Village Council or something, so that
when we say we're representing these subsistence needs,
5 they're on board, they're looking at it, too, and
they're going to see the animals there. And I think
6 we'd all benefit by that, so -- I certainly would buy
off on that if we could do that. And then, you know,
7 make your proposal subject to the survey of those
animals or do something different. Thank you,
8 Mr. Chairman.

9

CHAIRMAN DEMIENTIEFF: I guess in looking,
10 trying to look for some solution here, and I guess --
let me just toss out an idea, if we have an agreement
11 that we can get this done in the next week to ten days,
to set aside the conservation concerns. You know, what
12 I'm suggesting is that maybe we may want to simply defer
consideration of the proposal, which would leave the
13 existing regulation on the books. And I certainly would
be sensitive to, you know, Regional Council request to

14 bring the proposal up again, you know, pending this
15 information if we're able to get out there in the next
16 week or ten days. And that, you know, I think would
potentially resolve the issue, pending additional
biological information.

17 I think, as Mr. Allen pointed out, it would
18 not be as -- you know, if the conservation concerns of
19 the population were to be resolved, it would not be as
beneficial to the local subsistence users because the
20 interagency staff recommendation did add some time to
the season. You know, and pending good biological
21 information, we could certainly maybe deal even with
that issue as a special action request, or however the
22 Regional Council wants to do it. But pending further
analysis of the biological -- of the conservation
23 concerns, it may be at least a short-term remedy that we
could deal with. And then if things did turn out, you
24 know, the conservation concerns were there, you know, I
think we would be responsive to bringing the deferral
25 off, you know, and dealing with it, even it's a
teleconference mode, fairly soon, so we can get some
resolve to this issue one way or the other fairly
quickly.

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2 Mr. O'Hara, do you have any comments on
that?

3

DAN O'HARA: That would be fine. Just go
4 ahead and do your action according to the survey, and go
from there. And if we have adequate animals, go back to
5 your existing regulation. I don't think we have to come
back again. You know, one of the things that the
6 Councils do is, working and living in the area, we are

aware of these type of situations that exist. For
7 instance, in the Park Service last year, they did not do
a stream survey in the fall of Naknek Lake. That's very
8 critical. That stream survey has to be done every fall.
You're not going to be able to tell what's going on with
9 the resource there if you don't do that stream survey.

10 So this is one of the jobs that we have.
We can, as Council chairs, and as the Council represents
11 the area, come back and ask the departments to look more
closely at these issues, because we -- our first -- our
12 first thing we do in the Bristol Bay Council, we take
care of the resource, and then we take care of
13 subsistence. Thank you very much, Mr. Chairman.

14 CHAIRMAN DEMIENTIEFF: Willie, and then --
go ahead.

15 WILLIE GOODWIN: Thank you, Mr. Chairman.
16 One of our proposals early on, which we pulled back, was
of the same issue. Mainly because the subsistence user
17 at home automatically notices when something is wrong,
when the animals are not there. Furthermore, when the
18 count was done -- I'm using the moose situation at
Squirrel River as an example here. When the count was
19 done, they estimated 1300 moose. That was in October.
In November I flew with one of the local guys. Two
20 airplanes went out. We counted 140 moose in the area.
Granted, they migrate, we know that. But we also know
21 where the high concentrations of the moose are at that
time of the year. I mean, that's local knowledge. We
22 know that. So we counted, and that's what we counted.
Granted, we're not experts in counting, but my God, we
23 didn't miss them by much.

24 The other thing I'd like to point out is
that from our observations in both the Squirrel and --
25 because moose migrate between Noatak Preserve and
Squirrel River and the Lower Kobuk areas, this spring's

1 calf count or ratio that the Park Service done, has
indicated already that the calf production is real low.
2 It certainly substantiates the concern that the local
people had of the moose population in our area.

3

Now I'm a little worried about our moose.

4 I want to take a look at that a little bit further and
may pull back that proposed regulation to close it off
5 to nonqualified subsistence user. But it's an
observation that -- and it's something that we've done
6 that I take note in his same situation there. And I'm
glad that there will be a count to see what's happening
7 out there. We went through that up there, and if the
calf count is correct, then certainly the observations
8 by our people are correct. Thank you.

9 CHAIRMAN DEMIENTIEFF: Yes, Mr. Allen.

10 DAVE ALLEN: Just a comment, Mr. Chairman.
As you indicated, if we're able to address the
11 conservation concerns through the survey and
subsequently then take no action on the motion, it
12 should be noted that the State regulations have already
extended the seasons to 20 days in January. So even if
13 we took no action, that part of our motion -- that part
of the proposal, at least, would be available to local
14 residents, irrespective of our decision here today. I'm
sorry; of any decision we ultimately make on this.

15

CHAIRMAN DEMIENTIEFF: As I would indicate,
16 there would be nothing to prevent, you know, a special
action request to match, to align our season. And if
17 the biology was there, and the conservation concerns
were addressed, I think it would be a fairly easy matter
18 for us to align the seasons. Niles?

19 NILES CESAR: Yes, Mr. Chairman. Just a
process question. As I understand it, this motion
20 failed 3-3, so we therefore have nothing before us.

21 CHAIRMAN DEMIENTIEFF: That's correct.

22 NILES CESAR: That's correct. So would it
be our intent, then, to leave it as nothing before us,
23 or make a motion to adopt something that we would later
ratify, and table it?

24

CHAIRMAN DEMIENTIEFF: I don't really look
25 for -- I was looking for a deferral motion, just a
motion to defer.

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NILES CESAR: But you have to have
2 something on the table before you can defer something.

3 CHAIRMAN DEMIENTIEFF: Well, the proposal
is still before us. The motion that failed was a motion
4 to accept the interagency request over the Regional
Council recommendation. That was the motion that failed
5 on the 3-3 vote. Okay? So the proposal is still before
us. And what I was -- procedurally, I was thinking that
6 a motion to defer consideration of that proposal would
leave it before us if the biological concerns weren't
7 met, and allow us an easy opportunity -- the easiest
opportunity to consider it.

8

NILES CESAR: Thank you, Mr. Chairman.

9

DAVE ALLEN: Mr. Chairman?

10

CHAIRMAN DEMIENTIEFF: Were you getting
11 ready to make a motion?

12 DAVE ALLEN: Well, I don't want to bog this
up, but I thought there was a second motion that we
13 tabled yesterday, and the record would show that. Which
is the Regional Advisory Council's proposal. I believe
14 a second motion was made and seconded and we tabled it.

15 CHAIRMAN DEMIENTIEFF: The motion was to
16 table the action until 8:30, the consideration of this
17 proposal until 8:30 this morning, time specific. So we
18 don't have a motion before us. Ralph? Yes, Ralph.

19
20 RALPH LOHSE: Mr. Chair. Dave Allen kind
21 of answered one of my questions. One of the things that
22 I was wondering is whether you could split your motion
23 and at least make sure that the season was extended to
24 January 20th. But if the State season is extended to
25 January 20th, then they're allowed to hunt on federal
lands until January 20; am I correct in assuming that?

DAVE ALLEN: Even if we take no action.

RALPH LOHSE: Even if you take no action at
all.

DAVE ALLEN: Yeah.

RALPH LOHSE: Then I'd like to comment on

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1 Dan's suggestion, and I think this would be a good thing
2 in a lot of situations, is if in some way or another --
3 now, I realize it's hard when you're out flying Super
4 Cub doing counts, to have somebody else along. But it
5 would really pay in the future if sometimes you could
6 take an observer from the area. I think that's one of
the best suggestions I've heard. Because it would help
to alleviate some of the confusions and fears and things
like that. I know it's hard to find people that are
capable of sitting in a plane and doing moose counts,
because a lot of people can't take it, but it would sure
be worthwhile doing.

7

CHAIRMAN DEMIENTIEFF: Thank you. Yes?

8

DAVE ALLEN: Just in response to Ralph. We
9 make every effort to do that, particularly when people
are interested in participating. That was a key issue,
10 as a matter of fact, with caribou, near the Izembek
Lagoon, in the very southernmost end of the peninsula,
11 and I think that went a long way, I think, to build
confidence and credibility in these efforts.

12

Mr. Chairman, I'm prepared to make a
13 motion, if it's appropriate to do so now.

14

CHAIRMAN DEMIENTIEFF: Yes.

15

DAVE ALLEN: Mr. Chairman.

16

CHAIRMAN DEMIENTIEFF: I'm sorry.

17

NILES CESAR: You tabled this motion. It
doesn't go anywhere until you take it off the table. So
18 somebody has to make a motion to bring it off the table.

19

CHAIRMAN DEMIENTIEFF: No; it was tabled
time specific.

20

NILES CESAR: It was tabled until --

21

CHAIRMAN DEMIENTIEFF: No; it was tabled
22 time specific. The motion was time specific until 8:30
this morning.

23

NILES CESAR: Then it's off the table,
24 okay.

25

CHAIRMAN DEMIENTIEFF: At 8:30 this
morning, I acknowledged that it was off the table, and

1 then I used the prerogative of the chair to move
2 consideration of the proposal until after we completed
3 our work in Southcentral.

3 NILES CESAR: And I agree with Mr. Allen.
4 Let's just go do something here and quit wasting
5 everybody's time, because we know we want to count the
6 animals and go on with the program.

5 DAVE ALLEN: Mr. Chairman, I move that we
6 defer the Regional Advisory Council's proposal until
7 such time that we have an opportunity, within hopefully
8 the next ten to 14 days, to gather more information by
9 survey with regard to the moose population in the area
10 proposed.

9 CHAIRMAN DEMIENTIEFF: We have a motion.
10 Is there a second?

10 PEGGY FOX: Second.

11 CHAIRMAN DEMIENTIEFF: It's been moved and
12 seconded. Discussion? Hearing none, all those in favor
13 please signify by saying "aye."

13 IN UNISON: Aye.

14 CHAIRMAN DEMIENTIEFF: Those opposed, same
15 sign.

16 (No response.)

17 CHAIRMAN DEMIENTIEFF: Motion carries.

18 At this time, the chair will entertain a
19 motion to adopt the consent agenda items, Proposals 3,
20 4, 16, 17, 18, 19, 20, 21, 26, 27, 35, 37, 38, 39, 41,
42, 50, 51, 52, 53, 54, 56, 57, 59, 60, 62, and that's
21 it.

21 JUDY GOTTLIEB: Mr. Chairman.

22 CHAIRMAN DEMIENTIEFF: Yes.

23 JUDY GOTTLIEB: I move that we adopt the
consent agenda items that you've just listed.

24

CHAIRMAN DEMIENTIEFF: Is there a second to
25 the motion?

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1 UNIDENTIFIED SPEAKER: Second.

2 CHAIRMAN DEMIENTIEFF: Discussion? Hearing
none, all those in favor signify by saying "aye."

3

IN UNISON: Aye.

4

CHAIRMAN DEMIENTIEFF: Those opposed, same
5 sign.

6 (No response.)

7 CHAIRMAN DEMIENTIEFF: Motion carries. Is
it 9:45 already?

8

UNIDENTIFIED SPEAKER: Yes, it is.

9

CHAIRMAN DEMIENTIEFF: Okay. What we're
10 going to do here -- procedurally, that completes our
proposal consideration. What we're going to do is we're
11 going to take a short break here, and then we're going
to come back and we're going to start the Kenai rural
12 request, public testimony. And even if we complete it
this morning, we have to keep in mind that we did notice
13 that the consideration wouldn't come up until 1:00. So
if we took an hour's worth of testimony and completed
14 all the testimony, we still couldn't deliberate the
issue until 1:00 this afternoon.

15

So what we're going to do is come back and
16 just begin the testimony process. If we get done prior
to noon, that's fine. If not, we will come back at 1:00
17 and continue the testimony, at which time right after
that we will begin to deliberate the request. Okay, so
18 we'll take a short break here.

19 (Short recess taken.)

20 CHAIRMAN DEMIENTIEFF: Okay, we're going to
go ahead and begin. Again, let me go over procedurally
21 where we're at. We did send out public notice that we
would begin the consideration of the Kenaitze Indian
22 Tribe request for review of Kenai Peninsula nonrural
determination.

23

If we complete public testimony prior to
24 noon, we will go ahead and take a break at that time.
We will come back at 1:00, because that's the time we
25 advertised public testimony. And at 1:00, we will ask
if there are any additional people that wish to testify

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1 on this issue. Once we exhaust public testimony, we
will begin consideration.

2

Now, earlier this week we had a request
3 from the Kenaitze Indian Tribe to break at 2:30, and
which we will, in honor of that request. If we are
4 still in public testimony at that time, at that time
I'll make the decision on whether or not we come back
5 this evening and complete public testimony. One way or
the other, it's my intent to complete public testimony
6 today. And then if we have to meet this evening, or if
we get past 2:30, we may just go ahead and come back and
7 do the deliberation on the request in the morning.

We're just going to go by ear. But if we do exhaust all
8 public testimony this morning and there's no additional
testimony, at 1:00 we will begin deliberation. So just
9 so everybody knows what we're dealing with.

10 And other than that, for Board members, we
do have, once we complete the deliberation on this
11 request, we have some reports with respect to the core
group, staff community who will be working with the
12 State, and also we have a report on the Regional
Advisory Councils' appointees to add to our mix of
13 discussions with the State. Those will be more along
the report nature. So once we complete the Kenaitze, we
14 still have two little items that we'll have to take care
of, but it won't take very long. So that's our kind of
15 road map here for the day.

16 And with that -- we still have to do all of
our reports this afternoon, don't we? Or do we need to
17 do that report now?

18 UNIDENTIFIED SPEAKER: (Inaudible)

19 CHAIRMAN DEMIENTIEFF: Yeah. Well, this
is -- we notified that. We're just going to do public
20 testimony.

21 UNIDENTIFIED SPEAKER: Right now?

22 CHAIRMAN DEMIENTIEFF: Yeah. And we will
do -- I think what we'll do is we'll do the staff
23 report. And who is going to do that?

24 UNIDENTIFIED SPEAKER: Rachel.

25 CHAIRMAN DEMIENTIEFF: Rachel. We're just
going to do the staff report, and that's part of it.

1 Then we'll deviate from our normal schedule and we'll go
right into public testimony. We don't do the Staff
2 Committee recommendation or anything like that. We'll
just do the report. I may ask you to do a brief
3 synopsis of the report again at 1:00 for any people who
may arrive at that time. But maybe we'll just do a
4 brief staff report right now and then we'll begin the
public testimony.

5

RACHEL MASON: Thank you, Mr. Chairman. In
6 1998, the Kenaitze Indian Tribe requested that the
Federal Subsistence Board reconsider its 1990 rural
7 determinations and declare the entire Kenai Peninsula
rural. As you know, rural determinations throughout the
8 state are scheduled to be reviewed following the 2000
census, but they may be reconsidered before that time if
9 special circumstances are recognized by the Board.

10 And the request states that out-of-cycle
review is warranted by special circumstances in the
11 Kenai Peninsula case. These include legal and
analytical errors in the original determinations, as
12 well as new information coming from public testimony and
a report prepared by UAA's Institute of Social and
13 Economic Research, which I'll refer to as the ISER
report. At its Spring 1998 and Fall 1998 meetings, the
14 Southcentral Regional Council voted to support the
Kenaitze Tribe's request. The Regional Council also
15 conducted public hearings on this issue on the Kenai
Peninsula in November 1998, and at its March 1999
16 meeting reaffirmed its previous recommendations
supporting the request.

17

The approach that's taken in the staff
18 analysis is to examine the assertions of special
circumstances in the request. First, to review the
19 methodology that was used in the Board's 1990 rural
determinations, they involved two steps: Aggregation,
20 and categorization as rural or nonrural.

21 First, the criteria that were used for
aggregation were whether 15 percent or more of the
22 working people in a community commute from one community
to another. Whether the two communities share a common
23 school district. And whether daily or semi-daily

shopping trips were made from one community to another.
24 And the intent of this aggregation was to include
bedroom communities that might otherwise be considered
25 rural in the same category with nearby communities that
were more clearly nonrural.

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1

Following aggregation, the communities were
2 categorized by population size. The communities with
fewer than 2,500 people were presumed rural.
3 Communities with a population between 2,500 and 7,000
could be either rural or nonrural. And those with 7,000
4 or more people were presumed nonrural. However,
population size alone was not considered an adequate
5 indicator of rural or nonrural status. And especially
for communities falling into the middle category,
6 further criteria were used to evaluate their rural
status. These included fish and wildlife use, diversity
7 of economy, transportation, community infrastructure,
and the level of education available in a community.

8

In a letter to the chair of the
9 Southcentral Regional Council on December 9, 1998, the
Native American Rights Fund, on behalf of the Kenaitze
10 Indian Tribe, made several assertions of special
circumstances apply to the Kenai Peninsula rural
11 determinations. These assertions can be grouped into
several categories: Their assertions concerning the
12 rural determination criteria used by the Board in 1990;
the Board's application of the rural determination
13 process; new information not available in 1990; the
Board's responsibility to defer to the Regional
14 Councils; and finally, the current situation on the
Kenai Peninsula. And some of the assertions fit into
15 more than one category.

16 A problem in considering these is that
17 federal regulations give no definition of special
18 circumstances. They imply that the special
19 circumstances in question are significant demographic
20 changes in the communities. And so, while the Board has
21 no regulatory guidance for evaluating assertions of
22 special circumstances, based on new information or past
23 legal procedural or analytical errors, in rural
24 determinations, these factors are used to reconsider
25 other types of Board decisions. For example, in RFRs
for the Subpart D proposals, of customary and
traditional determinations.

 In regard to the assertions that are
related to the rural determination criteria used by the
Board in 1990, and these are primarily legal questions,
one of the assertions is that the Board's 1990 nonrural
determination for the Kenai Peninsula violated the
Kenaitze decision. The issue before the Kenaitze court
was a narrow one: whether the State of Alaska had

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1 properly defined the term "rural." And when the Federal
2 Subsistence Board began to make rural determinations in
3 1990, it did take into consideration the Kenaitze
4 decision. The federal process used population as the
5 initial screen for the determinations, rather than fish
6 and wildlife use as the State had done.

 And so in deciding against the State, the
Kenaitze court found deference to the State
inappropriate. However, federal agencies are entitled
to deference, and the Secretaries acted within their
authority in adopting the rural process regulations, and
these regulations are therefore entitled to deference.

8 Another assertion related to the rural

determination criteria is that Title VIII of ANILCA is
9 Indian legislation and, as such, must be interpreted
broadly in favor of protecting the subsistence rights of
10 Alaska Natives.

11 Title VIII is racially neutral, and the
purpose of the title is to consider the opportunity for
12 subsistence uses by both Natives and non-Natives.
Further, the Ninth Circuit Court stated in March 1999
13 that Title VIII benefits rural Alaska residents,
regardless of whether they are members of tribes. And
14 that was in Hoonah Indian Association vs. Morrison.

15 The next category of assertions are those
that are related to the Board's application of the rural
16 determination process. And one is that the Board
treated different areas in the state inconsistently. In
17 particular, on the Kenai Peninsula the Board aggregated
communities, whereas in other parts of the state they
18 did not. And an example given in the petitioner's
assertions is that Saxman was not combined with
19 Ketchikan. But in fact, Saxman was initially aggregated
with Ketchikan in the Board's preliminary rule
20 determination, but in the final determinations Saxman
was considered rural.

21
More broadly, the assertion of
22 inconsistencies also relates to the fact that Sitka,
Kodiak and Saxman were granted rural status, whereas the
23 Kenai Peninsula was not. The Board changed its initial
nonrural determinations for Kodiak, Sitka and Saxman on
24 the basis of testimony and new information that came in
after the initial determinations had been made.

25
The Board was persuaded by testimony that

1 unconnected by road, and there was testimony that the
2 economies of these communities centered around
3 commercial fishing and logging, and that the residents
4 of these communities intensively used subsistence
5 resources. And the Board also heard testimony that
6 Sitka, Saxman and Kodiak were hubs of subsistence trade
7 within their region.

8

9 In reference to Saxman, the Board was
10 persuaded to change its determination and make Saxman
11 rural, both by testimony and other information that
12 Saxman was a distinct Native community separate from
13 Ketchikan and that they relied heavily on fish and
14 wildlife resources. No such distinctions were found for
15 the Kenai communities that were aggregated. And on the
16 basis of -- on the question of whether the Board erred
17 when it changed its rural determinations for Sitka,
18 Kodiak and Saxman, and made them rural, but let stand
19 the Kenai Peninsula as nonrural, the only conclusion is
20 that there was some basis in the record for the Board's
21 decision.

22

23 Moving on to assertions related to new
24 information that was not available in 1990, one of them
25 is that the demographic and socioeconomic information
26 relating to the Kenai Peninsula that is contained in the
27 ISER report was not available at the time that the Board
28 made its 1990 rural and nonrural decisions. Actually,
29 the ISER report uses data from a mixture of years, from
30 1980 through 1996, includes some new information from
31 the mid 1990s, such as harvest data, employment and
32 income data from some communities that was not available
33 in 1990. However, there's little indication that a
34 significant change in the character of the communities
35 being compared has occurred since 1990, nor that the
36 demographic and socioeconomic data that were used by the
37 Board to make the nonrural determinations in 1990 was in
38 error.

39 Another assertion brought forward is that
40 the Regional Council has received more extensive
41 information from a larger number of Kenai Peninsula
42 residents now than was provided in the course of public
43 hearings during the rural determination process in 1990.

44 Before making those 1990 determinations,

there were some subsistence scoping meetings held on the
25 Kenai Peninsula in the communities of Seward, Kenai and
Homer. And these were in conjunction with the

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1 Environmental Impact Statement public review process.
Testimony at those meetings relevant to rural
2 determinations included comments that roaded portions of
the Kenai Peninsula should not be considered rural;
3 statements of people who perceived themselves as
subsistence users although their taking occurs under
4 sport regulation; frustration at nonrural
determinations; and the statement that there should be
5 an appeal process and periodic reevaluation of nonrural
determinations.

6

During the December 1990 board meeting at
7 which Sitka, Saxman and Kodiak were declared rural,
there was no request to add the Kenai Peninsula
8 communities to those considered rural. The Kenaitze
Tribe submitted a request for reconsideration in
9 February 1991, and it contained some of the same
assertions that were submitted in the 1998 request.

10

In the summer of 1995, public hearings were
11 conducted in communities on the Kenai Peninsula. The
focus of these hearings was the proposed customary and
12 traditional use determinations, but many of those who
testified also addressed the rural determinations. And
13 again, there were statements that the boundaries -- that
the boundaries between rural and nonrural appeared
14 arbitrary, that the federal program's definition is
flawed, and many of those who testified stated that all
15 the portions of the Kenai Peninsula on the road system
should be considered nonrural.

16

In November 1998, public hearings were

17 conducted in Seward, Homer and Kenai to address the
18 Kenaitze Tribe's request to make the whole Kenai
19 Peninsula rural, and those who testified were asked to
20 focus on special circumstances that would warrant an
21 out-of-cycle review. From those opposed to the request,
22 there were many of the same comments heard during the
23 1995 meeting, hearings, and testifiers who supported the
24 Kenaitze request told of their subsistence practices on
25 the Kenai Peninsula or endorsed the request and
resolution submitted by the petitioners.

22

In addition to their testimony at public
23 meetings, Kenaitze tribal members brought forth
information on their subsistence practices on the Kenai,
24 both at the March 1998 and the March 1999 Southcentral
Regional Council meetings.

25

Clearly, there has been much more public

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1 input now from the residents of the Kenai Peninsula than
2 was available at the time that the Board made its rural
3 determinations. However, not all of the recent public
4 testimony has supported a rural determination for the
5 entire Kenai Peninsula, and there's little evidence from
6 the testimony that the Kenai Peninsula has a more rural
7 character now than it did in 1990.

8 Another category of assertions refers to
9 the Board's responsibility to defer to the Regional
10 Councils. One statement was that the Board's initial
11 rural determinations were made without input from the
12 Southcentral Regional Advisory Council, which had not
13 yet been established. Another is that the Regional
14 Council's recommendation is entitled to deference under
15 Title VIII of ANILCA.

9

Under ANILCA, there is a system of
10 deference to Regional Council recommendations on matters
concerning subsistence take. For matters concerning
11 rural designations, the decision rests with the
Secretary of the Interior, who has delegated that
12 authority to the Board. And although deference to the
Regional Councils on rural designations is not mandated
13 by Section 805, the Board does rely on Regional Council
advice on all matters of subsistence, and will seek
14 Regional Council involvement in making rural
determinations after the 2000 census data become
15 available. And all of the ten Regional Councils were
established after the 1990 rural determinations were
16 made.

17 Finally, there are some assertions that are
related to the current situation on the Kenai Peninsula.
18 One is that the rural determinations have been divisive.
And also that the time involved in waiting for the 2000
19 census data to be available, and for the public process
to take place, is in itself a special circumstance. The
20 members of the Kenaitze Tribe who have testified at
Regional Council meetings and at public hearings have
21 made clear that they have waited a long time for their
subsistence way of life to be recognized. For example,
22 one testifier stated that there have been disruptions in
intergenerational transmission of subsistence knowledge
23 and skills.

24 These two assertions, that they've been
divisive and that the waiting time is itself a special
25 circumstance, must clearly be acknowledged. Although,
again, because special circumstances are not defined in

determination for all the communities on the Kenai
3 Peninsula.

4 The preliminary -- on the question of
whether there could be an out-of-cycle review conducted
5 with the data that's available now, preliminary
community population data that's collected in the year
6 2000 census will be available in late 2000 or perhaps
2001. Other demographic information collected by the
7 census and used in the rural determination process may
not be available until a year later, or more.

8
 Presently, there are population data
9 available for all the Kenai Peninsula communities and
the areas that are counted in the 1990 census. The
10 availability and the quality of current demographic data
suggests that it would be difficult to conduct an
11 analysis and a reassessment of the Kenai Peninsula's
rural status, including a comparative analysis of
12 Kodiak, Sitka and Saxman, without benefit of the 2000
census.

13
 But for consistency in determinations, it
14 is important that the same types of data are used for
all communities and areas. And so, in considering
15 special circumstances, the consequences of delay for
another two or more years must be weighed against the
16 benefits of waiting for the census data to be able to
make consistent decisions during the statewide review of
17 rural determinations.

18 And one more. In conclusion, the
assertions about the Board's application of its own
19 criteria for aggregation do raise questions about the
use of this methodology and its application statewide.
20 Specifically, the ISER report shows that on the Kenai
Peninsula, appropriate information was lacking to apply
21 to the three factors used to aggregate communities:
commuting from work; sharing a common school district;
22 and daily shopping trips. So it may be -- given the
proximity of the availability of the 2000 census data,
23 at this point it may be appropriate to review the
Board's methodology for statewide rural determinations
24 rather than to conduct an out-of-cycle review. Thank
you.

25

CHAIRMAN DEMIENTIEFF: Thank you. I forgot

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1 one more thing, before we call on our first person
2 requesting to testify. This matter has already had
3 Regional Council testimony, per -- basically, the Board
4 had asked that the Regional Council do it. So this is a
5 hearing of the Federal Subsistence Board. Therefore, if
6 there are any questions to be asked of people who are
7 testifying, it will come from Board members only. The
8 Regional Councils will still have the opportunity to
9 comment, as we deliberate, when the deliberations begin.
10 But during the public testimony, Board members only to
11 ask any questions that they may wish to ask.

12 Rita Smogge is the first person signed up
13 to testify. And also, as you begin the testifying, I
14 ask you to be as brief as possible, but I will be
15 flexible on that. If there are certain people who
16 are -- who have, you know, a lot to offer. I know you
17 have some expert witnesses lined up, attorneys and these
18 kind of things. While I don't expect long filibusters,
19 I will ask you to be as brief as possible. Yes, ma'am.

20
21 RITA SMOGGE: Thank you. My name is Rita
22 Smogge, I'm the executive director for the Kenaitze
23 Indian Tribe, and I'm also a tribal member. If I can, I
24 would like to read a resolution from the Kenai Native
25 association first. This is Resolution 99-05.

26
27 Whereas, the Kenai Native Association, Inc.
28 is a local Alaskan profit corporation located at Kenai,
29 established in accordance with the Alaska Native Claims
30 Settlement Act in '97 -- 1971, excuse me. Public Law
31 92-203; and

32
33 Whereas, the Kenai Native Association, Inc.

18 has real and permanent concerns for the collective and
19 individual economic and social needs of its 570
20 shareholders, a majority of which reside in the Kenai
Peninsula Borough; and

20

Whereas, the Kenai -- KNA Board of
21 Directors considers the Kenai Peninsula to be a rural
area by any reasonable definitions of the term; and

22

Now therefore be it resolved that the Board
23 of Directors of the Kenai Native Association fully
supports and endorses Title VIII of ANILCA, which grants
24 rural preference to the citizens of the Kenai Peninsula
Borough, thereby making them eligible to practice their
25 indigenous, customary and traditional subsistence way of
life. Thank you. That's signed by Richard Segura,

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1 President, and Carol A. Segura, Secretary. Thank you.

2 As I stated before, my name is Rita Smogge.
I would like to urge the Federal Subsistence Board to
3 reconsider assigning nonrural determination, to comply
with Title VIII of ANILCA. Since 1975, the tribe has
4 been asking for it to reconsider its rural/nonrural
determinations. It's been a long hard battle and our
5 people have become very weary and disillusioned with the
entire process. Although the law is clearly on their
6 side, the burden of proof continues to be placed on the
tribe.

7

The rural/nonrural issue is hard to grasp
8 for many of our elders. They don't understand why their
subsistence rights were taken away because a Board
9 somewhere classified their traditional homeland as
nonrural. Did this decision arbitrarily eliminate their
10 need to participate in traditional activities? Of

course not. Many residents, Native and non-Native
11 alike, are heavily dependent on a subsistence way of
life, and the tribe believes that there's sufficient
12 resources to take care of all our needs.

13 Admittedly, the population of the
Kenai-Soldotna area has increased since the discovery of
14 oil and gas, yet the very characteristics of these towns
remain rural. Employment is seasonal in nature,
15 primarily tied to the fishing industry. Unfortunately,
several of the local canneries were forced to close this
16 past year because the fishing fleets were unable to fish
their normal fishing grounds due to restrictions imposed
17 by Fish & Game to corridors, thereby severely limiting
their catch.

18

The entire Kenai Peninsula is sparsely
19 populated and many areas are not served by city water or
sewer. For example, the tribe's administrative
20 headquarters is located approximately six miles from
downtown Kenai and the Kenai airport. The 50-acre
21 Native allotment parcel has no access at this time to
city sewer or water. And from what we understand, the
22 City of Kenai doesn't have plans to install these
facilities for another two years. Also, wildlife, such
23 as moose, caribou, eagles, rabbits, sandhill cranes, and
sometimes bear, can be seen roaming the property. There
24 is no mass transit system in the Kenai Peninsula
Borough. And numerous federal agencies consider the
25 Kenai Peninsula to be rural.

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1 Although special circumstances has never
been defined, I submit the following points for your
2 consideration. The initial determinations were made
without input from the Regional Advisory Council. Since
3 then, the Regional Advisory Council has twice

recommended that the communities on the Kenai Peninsula
4 be reclassified as rural. The Board's original
determination was made without regard to the fact that
5 Title VIII of ANILCA is Indian legislation and, as such,
it must be interpreted broadly in favor of protecting
6 the subsistence rights of the Kenaitze.

7 And I have one last comment, and it's on
the Interagency Staff Committee recommendation. The
8 staff of the agencies have admitted that procedural
errors were made in making the Kenai Peninsula nonrural
9 determination. However, they recommend that this Board
should wait until after they establish a methodology for
10 rural determination to revisit the Kenai Peninsula
determination. That is not fair to the tribe. We
11 should be judged by the 1990 standards, like the rest of
the communities in Alaska were. We have already been
12 denied our subsistence rights guaranteed in federal law,
and it is the Board's obligation to protect those
13 rights. We should not be expected to wait another four
or five years. Thank you.

14
CHAIRMAN DEMIENTIEFF: Thank you. Are
15 there any questions from Board members? Thank you very
much. Carol Daniel.

16
CAROL DANIEL: Thank you, Mr. Chairman.

17
CHAIRMAN DEMIENTIEFF: Wait a minute, he's
18 got to -- okay.

19 CAROL DANIEL: Thank you, Mr. Chairman.
The issue before the Board is whether special
20 circumstances exist to warrant this Board's
reconsideration of its 1991 rural determination with
21 respect to communities on the Kenai Peninsula. Is it
working?

22
UNIDENTIFIED SPEAKER: (Inaudible.)

23
CAROL DANIEL: My name is Carol Daniel and
24 I'm an attorney. I represent the Kenaitze Indian Tribe
and I've been working with the Kenaitze Indian Tribe
25 since the mid 1980s on the rural issue. The issue
before the Board today is whether special circumstances

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1 exist to revisit the Board's 1991 nonrural
determinations with respect to the communities on the
2 Kenai Peninsula.

3 Before addressing special circumstances, I
would like to address briefly, by way of background, how
4 we got here. The issue came before this Board initially
as a result of a recommendation from the Southcentral
5 Regional Council following eight public hearings that
were held on the Kenai Peninsula in 1995, to gather
6 testimony on the customary and traditional use
determinations that were being considered for the Kenai
7 Peninsula.

8 After those hearings, the Advisory Council
concluded that the entire Kenai Peninsula should be
9 considered rural. The Councils spoke of the
divisiveness of the issue on the Kenai Peninsula, and
10 the mistakes that had been made in aggregating
communities in the initial process, and the importance
11 of hunting and fishing to the people, all residents on
the peninsula.

12
When the Board met the following January,
13 it kicked the issue back to the Regional Council, with
the suggestion that the Council would have to hold
14 hearings on whether or not the Kenai Peninsula nonrural
determination should be revisited. Having just held
15 public hearings that were very divisive on the Kenai
Peninsula, the Regional Council decided -- was
16 reluctant, understandably, to go back and hold hearings
so soon after they had held hearings on the customary
17 and traditional use determinations.

18 It was primarily for that reason that the
Southcentral Regional Council, at its meeting in Cordova

19 in February of 1996, decided to table the issue. It was
20 at that point that the Kenaitze Indian Tribe consulted
21 with and hired Dr. Kruse and commissioned the ISER
22 report. And following that report, in February of 1999,
23 the Kenaitze Indian Tribe requested that the
24 Southcentral Regional Council bring the matter back --
25 to take the matter off the table and bring it back to
the Regional Council. And it was -- the Regional
Council agreed to do that. It heard testimony at its
Glennallen meeting in March of 1996; and following that
meeting, for a second time recommended to this Board
that the Board revisit its 1991 nonrural determinations
on the Kenai Peninsula and declare all of the
communities on the peninsula rural.

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The Board at that point again advised the
2 Regional Council that it needed to hold hearings on the
3 Kenai Peninsula and to set forth specific special
4 circumstances justifying the Board's taking this matter
5 up out of cycle. The Board agreed to hold the hearings.
6 Hearings were held on the Kenai Peninsula in November of
1998; and following those hearings, the Board again -- I
7 mean the Regional Council again recommended to this
8 Board that it revisit the 1991 rural determinations
9 based on special circumstances.

7 The special circumstances that I would like
8 to highlight are, first of all, the Regional Council
9 recommendation itself. The original determination was
10 made without input from the Regional Advisory Council.
11 Since then, the Council has three times recommended that
the Board revisit this issue. The first time in 1995;
again in 1998 following public testimony, in
consideration of the 1998 ISER report; and finally, most
recently, following hearings on the Kenai Peninsula, the

Regional Advisory Council recommended at its March 1999
12 meeting that the Board find special circumstances to
reconsider the nonrural determinations on the Kenai
13 Peninsula.

14 These recommendations were not made in a
vacuum. They were made after numerous hearings on the
15 Kenai Peninsula and after much public input. The
recommendations to classify the Kenai Peninsula as rural
16 is supported by substantial evidence, and the Regional
Council's recommendation is due deference. But the
17 Board doesn't even have to reach that issue today. The
issue is whether special circumstances exist, and the
18 recommendation from the Regional Council is that they
do.

19

 With all due respect to the staff report,
20 which suggests that deference to the Regional Council
recommendation is not required in this situation unless
21 it deals with subsistence take, I would submit that they
cite no authority for that proposition. And
22 furthermore, the Board had this issue before it in 1995
and deferred the issue, or submitted the issue back to
23 the Regional Council, Advisory Council on two occasions
since 1995, suggesting that the Regional Council hold
24 hearings. If that process was -- if the Regional
Council's recommendation is not required, then why defer
25 the decision for three years following the time that it
initially came before the Board?

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 In any event, we would suggest that the
2 recommendation of the Regional Advisory Council does
deal with subsistence take in the most fundamental way.
3 It involves the total denial of the subsistence
opportunity to people who live on the Kenai Peninsula to
4 engage in any subsistence take.

5 In terms of the Board's initial
6 determination, we still submit that it was based
7 primarily on the State's nonrural determinations which
8 were expressly rejected by the Kenaitze case -- by the
9 Ninth Circuit in the Kenaitze case. The temporary
10 subsistence management regulations for public lands in
11 Alaska were published in June of 1990, and at that point
12 the Board simply adopted the State's rural, old
13 rural/nonrural determinations.

14 The Board was then given a period, a very
15 short period, until the end of the year, to adopt its
16 own designation for rural and nonrural designations in
17 the state. As the staff report acknowledged, this
18 process had to be expedited in order to quickly
19 establish the federal program. In fact, the hearings
20 that were held on the Kenai Peninsula only -- did not
21 focus on the rural/nonrural issue. It was a scope --
22 there were scoping hearings that focused on the
23 proposed -- the Environmental Impact Statement. So it
24 covered all the issues for the federal program.

25 In the rush to establish that program, it's
26 apparent that what the Board did was it did not make its
27 decision in accordance with the Kenaitze case. While
28 the Board acknowledges that the term "rural" refers to
29 areas that are sparsely populated, it went on to deny
30 any application of population density. And the only way
31 it used population, total population of communities, was
32 not as an initial screen, but to indicate or to
33 establish a presumption. In other words, if the
34 community had a population of less than 2,500, it was
35 presumed to be rural; and if it had a population in
36 excess of 7,000, it was presumed to be nonrural.

37 But those presumptions proved meaningless
38 when communities were then -- were aggregated prior to
39 applying any kind of population screening. By
40 aggregating the communities on the Kenai Peninsula in
41 terms of criteria that the staff has conceded there was
42 no information, no reliable information, on which to
43 make those decisions, every community -- or almost every

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1 community on the Kenai Peninsula was denied the right to
the subsistence priority. Even though no community on
2 the Kenai Peninsula in 1991 had a population in excess
of 7,000 people. In fact, there were some communities
3 as small as 200 people, or less, that were aggregated
with larger communities and then denied the rural
4 priority.

5 So population was not used as an initial
screening device. It proved to be meaningless when
6 communities were aggregated. The staff's response to
this argument is simply that the federal agency is
7 entitled to deference in its interpretation of rural. I
would submit that that deference does not apply in this
8 case since the agency chose to ignore the direction
given by the Court of Appeals in the Kenaitze case.
9

Deference is due only when the agency
10 interpretation is reasonable. In this case, its
conclusion with respect to the Kenai Peninsula
11 communities was not reasonable and did not comport
with -- was not supported by the facts. It's obvious
12 that in determining the factor -- in using the factors
to determine whether communities that had been
13 aggregated was not whether they were sparsely populated,
but how they scored on a list of indicators, which for
14 all practical purposes were the same as the ones the
State used, which the Ninth Circuit Court of Appeals
15 invalidated as being inconsistent with Title VIII of
ANILCA.

16
Turning to the Title VIII itself, we still
17 contend that the Board's original determination was made
without reference to the fact that Title VIII is Indian
18 legislation. Now, the staff report points to a recent
case, Hoonah vs. -- Hoonah Indian Association vs.
19 Morrison, which is a recent case that held that Title
VIII is not Indian law. That case is directly contrary

20 to a previous case that held that Title VIII is Indian
21 law. So it's incorrect to say that there's precedent in
22 the Ninth Circuit that invalidates that proposition.
23 There's also precedent in the Ninth Circuit that
24 supports that proposition. And the plaintiffs in the
25 Hoonah case are petitioning the Ninth Circuit for
rehearing on that issue.

24 But that aside, the fact remains that Title
25 VIII of ANILCA was remedial legislation. It was passed
for the benefit of Native and non-Native subsistence
users, and Congress intended the statute to benefit

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1 those subsistence users, and the statute should be
2 interpreted broadly to accomplish Congress's intent in
3 passing Title VIII of ANILCA.

3 It certainly is entitled to as broad a
4 reading as it has gotten in other federal programs. The
5 Kenai Peninsula is rural for just about every federal
6 program available to rural communities, from everything
7 from fire protection, economic development, housing,
8 rural utilities, and weatherization funds. So Title
9 VIII of ANILCA should be at least given that broad an
10 interpretation, since it was Congress's intent to allow
11 Native and non-Native subsistence users in Alaska to
12 choose whether or not to continue their subsistence
lifestyle.

9 In terms of new information, the staff
10 report points out that the ISER report provided new
11 information that was not available at the time the
12 initial determinations were made. And in addition,
there has clearly been more input from the public since
the initial determination. A number of hearings have
been held on the Kenai Peninsula, in 1995 and again this

past fall.

13

Now, the staff points to the fact that this
14 testimony -- it discounts a lot of the testimony by
saying that there were many who testified that did not
15 support a nonrural -- I mean a rural designation for the
Kenai Peninsula. But I think the Board needs to
16 remember that this isn't a popularity contest. This has
always been a contentious issue on the Kenai Peninsula.
17 It has been since 1978, and it will be after the year
2000 census information becomes available. It's not a
18 popularity contest as to how many people testify they
don't like rural, they don't agree with the Title VIII
19 of ANILCA, they think federal management will be
devastating to the communities on the Kenai Peninsula.
20 That's not the issue. The issue is whether the
communities on the Kenai Peninsula were treated the same
21 as communities in the rest of the state, and whether
they met the criteria that the Board used in determining
22 rural and nonrural when it made its determination in
1991.

23

Finally, there were errors that were made
24 in the original analysis that affected the way the
communities were aggregated for the Board's
25 rural/nonrural determinations in 1991. The Staff
Committee acknowledges there were inconsistencies, not

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1 only in the way the communities were aggregated, but
also in the way the socioeconomic characteristics were
2 applied in making those determinations.

3 The communities on the Kenai Peninsula were
treated differently. I don't think that anybody here
4 can say that they weren't. And to deny those
communities the subsistence opportunity for another two

5 or three years is a serious problem. I mean, it's a
6 denial of their rights under federal law, it's a denial
7 of equal protection, and due process. And for what
8 reason? There are only three that are given in terms of
9 delaying or deferring the Board's reconsideration of its
10 1991 determinations.

8

9 One is basically for the convenience of the
10 Board. The fact that it would be inconvenient to
11 reconsider those determinations now. But inconvenience
12 or reluctance -- the other reason is reluctance for the
13 fact that it's a controversial issue. But reluctance
14 for political reasons or bureaucratic inconvenience are
15 not valid reasons to deny a remedy to the Kenaitze
16 Indian Tribe, who are entitled to the same benefits
17 under federal law as the rest of the subsistence users
18 in this state.

14 The Kenaitze -- the remedy is not to say
15 that you have to wait, two, three, four more years,
16 before you'll get the benefits of federal law. This
17 Board has the responsibility to correct its errors and
18 to treat the communities on the Kenai Peninsula as it
19 did similarly situated communities in Sitka, Kodiak and
20 Saxman, for example. The Kenaitze and others who live
21 on the Kenai Peninsula should not be denied those rights
22 under federal law for another three or four years.

19 Now, that doesn't mean that the Board
20 cannot at the same time reevaluate the criteria that it
21 used to make its 1991 rural determinations. We strongly
22 agree that that needs -- that's an issue that needs to
23 be revisited. But that's a separate issue. You don't
24 have to defer reconsideration of mistakes that were made
25 in 1990 in setting up a new methodology that will be
used after the 2000 census. That's something that can
be taken up simultaneously and considered at the same
time.

24

25 Everyone agrees that there were
inconsistencies in the methodology used to aggregate the
communities, and inconsistencies in applying the

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1 socioeconomic characteristics. The Kenaitze have
2 already waited nine years to see this corrected, and
3 there's just no excuse to delay this matter for another
4 three or four years. It needs to be dealt with now.

5

6 In terms of waiting for the latest figures,
7 I would submit that the ISER report used the latest
8 demographic and socioeconomic information that was
9 available in all of those categories. And as the
10 Subsistence Staff Committee report suggests, there was
11 not a lot of difference between the information in 1990
12 and the information that's available now. So I think
13 the Board has an obligation to use the information
14 that's available, the best available information, or the
15 information that was available in 1990, and to reassess
16 how it applied the rural/nonrural designations on the
17 Kenai Peninsula.

18 I guess in conclusion, I know this is a
19 difficult issue for the Board. It's always been a
20 difficult issue when it's come up before the State
21 Board, and it's been difficult for the Regional Council,
22 Advisory Council. But we have to put the politics and
23 the controversial aspect of this aside and look at Title
24 VIII of ANILCA and what's required. The Kenai
25 Peninsula, if it's viewed in any reasonable fashion, is
26 a rural place. The largest communities are comparable
27 to those of Sitka or Kodiak, and the smaller communities
28 are comparable to smaller communities all over this
29 state, on the road system and off. Special
30 circumstances exist, and fundamental fairness should
31 guide the Board's decision on this. It's not a remedy
32 to ask people to live with the mistakes that were made
33 in 1991 until new methodology or new information is
34 available from the census. Thank you, Mr. Chairman.

35 CHAIRMAN DEMIENTIEFF: Thank you. Are
36 there any questions from Board members? Sandy.

37

38 SANDY RABINOWITCH: About midway through

21 your testimony you made reference to a case from the
22 Ninth Circuit that suggests that ANILCA is Indian
23 legislation. Can you either cite that or look it up and
24 write it down?

23

CAROL DANIEL: It's cited in our letter
24 to --

25 SANDY RABINOWITCH: Okay.

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1 CAROL DANIEL: -- the Board. It's the
2 Gambell case, Native village of Gambell.

2

SANDY RABINOWITCH: Okay.

3

CAROL DANIEL: And I can provide you with
4 the full cite after, after my testimony.

5

SANDY RABINOWITCH: Okay, thank you.

6

CHAIRMAN DEMIENTIEFF: Any other questions?
Dave.

7

DAVE ALLEN: Yes, Mr. Chairman. Carol,
8 during your testimony you several times made the point
9 that it's been identified that there may be some
10 inconsistencies in the way the original decisions were
11 made. And these inconsistencies did not just impact the
12 Kenai, but they potentially impacted decisions that
13 affected other communities as well. Is that an accurate
14 characterization of what you said?

12 CAROL DANIEL: That could be. We are
13 asking for a reconsideration of the communities on the
14 Kenai Peninsula, and I have not looked at how those

criteria were applied to other parts of the state. The
14 ISER report made comparisons between communities that
were similarly situated, and concluded that the Kenai
15 communities were treated differently.

16 DAVE ALLEN: And I realize that that is
your proposal here, but I would just ask your opinion
17 anyway, given the fact that, you know, it's been pointed
out that there may be several inconsistencies in the way
18 that those decisions were made. Would you care to
venture an opinion as to the appropriateness of the
19 Board, if it were to decide to accept this as an
out-of-cycle process, should we look beyond the Kenai in
20 the application of those previous decisions? In order
to be consistent.

21

CAROL DANIEL: My opinion -- I guess my
22 opinion on that is that the Kenaitze are the only --
they're the ones that have brought the issue to the
23 Board, and that is what the Board has to deal with in
this instance. And since the statewide review is coming
24 up and nobody else has brought an issue before the
Board, making the same claim, that I'm not convinced
25 that the Board has to undergo a statewide review of all
the communities under the 1990 standards.

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I think that the federal regulations
2 provide a process for people to come to the Board and
ask that decisions that were made in 1991 be
3 reconsidered based on special circumstances. And I
think one of the special circumstances would be that the
4 Kenaitze have been petitioning this Board, in support of
the Southcentral Regional Advisory Council's
5 determination in 1995, that mistakes were made and the
Board should revisit those determinations made on the

6 Kenai Peninsula. So I guess, no, I don't think you have
to address it statewide.

7

DAVE ALLEN: Okay. My point wasn't
8 statewide. It was, again, those communities that were
pointed out as comparison, but I assume your answer
9 would be the same?

10 CAROL DANIEL: Yes.

11 DAVE ALLEN: Okay, thank you.

12 CHAIRMAN DEMIENTIEFF: Any other questions?
Thank you very much. Lare Aschenbrenner.

13

LARE ASCHENBRENNER: Carol covered all of
14 the issues excellently. I just have one additional
thing I'd like to comment on, and I just would like to
15 say that we want to ask this Board to focus on the
dissenting report of Fish and Wildlife. The very fact
16 that there is a dissenting report is significant because
they're infrequent. The dissenting report in essence
17 says it all. It says the 1990 determinations are
seriously flawed and must be reconsidered. It says, no
18 delay for 13 years or more, quote, merely because of,
for bureaucratic convenience, unquote.

19

It says, no denial of subsistence for
20 another three or four years, not one or two. Let's get
these -- the time line straight. It's going to be at
21 least two and a half, or three or four. And the
dissenting report says, no continued denial of equal
22 protection for the Kenaitze for another four years.
Right now, and for the last nine years, they've been
23 treated differently than similarly situated communities.
In other words, those other communities have priority
24 subsistence rights, and they don't. And the dissenting
report says that's a violation of equal protection. And
25 it is.

1 The very march that you graciously are
recessing for this afternoon, the whole purpose of it is
2 to protest the failure to implement ANILCA. That is the
primary purpose of the march, for the past nine years.
3 This is a golden opportunity for this Federal Board to
demonstrate its difference between the Alaska
4 Legislature and take a small but significant step in the
right direction. No more delay of ANILCA. Thank you.

5

 CHAIRMAN DEMIENTIEFF: Thank you, Lare.
6 Are there any questions of Mr. Aschenbrenner? Thank you
very much. Mary Lou Bottorff.

7

 MARY LOU BOTTORFF: For the record, it is
8 Bottorff.

9 CHAIRMAN DEMIENTIEFF: I promise to use my
glasses when I look at these from now on.

10

 MARY LOU BOTTORFF: My name is Mary Lou
11 Bottorff, I'm a Kenaitze tribal member. I spoke at the
last testimony, and today I'm introducing my
12 granddaughter to speak, Nicole Harmon. I have not
raised her since she was 2, but she's been in and out of
13 my care since then. And I would like to have her speak
to the Board. Thank you.

14

 NICOLE HARMON: Hi, my name is Nicole
15 Harmon. I'm 13 years old and I've lived on subsistence
food all my life. I know what types of greens and
16 berries to pick and what seasons to pick them in and how
to prepare them. I know the difference between male and
17 female fish. I know how to cut them with an ulu. And
I've cut traditional foods for the Circumpolar
18 Conference held in Nome three years ago. The foods
consisted of cooked walrus meat; walrus oogruk, which is
19 the hide and blubber. Also, I dry and smoke fish of all
types for my consumption. My grandmother, Mary Lou
20 Bottorff, has taken me in all seasons to teach me what
types of foods is available in those times. At my house
21 in Soldotna I have my own personal freezer in which I
keep traditional foods that my cousin Jacqueline and I

22 like to eat. Every once in a while after school, I go
to my freezer to eat things like fish and muktuk.

23

When I get older and have kids, I will pass
24 on my knowledge about subsistence. I will teach them
how to do things in a subsistence way. I would like my
25 children to grow up without having to worry about people
taking their freedom to be who they are. I think that

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1 no one should have taken away the subsistence rights.
If you'd please listen to what the Native people have to
2 say about this, then you will get a real answer. Please
consider what I said about rural subsistence. Thank you
3 very much for having me here today.

4 CHAIRMAN DEMIENTIEFF: And I thank you.
Are there any questions? Thank you very much. Okay, we
5 have a request for two people to testify together.
Bernadine Atchison and Jacqueline Comeaux.

6

BERNADINE ATCHISON: Thank you for inviting
7 me to testify today. My name is Bernadine Atchison, a
Dena'ina of the Kenai Peninsula and a Kenaitze tribal
8 member. I want to go on record stating that no one
person, entity or organization has my permission or the
9 right to represent me without my prior knowledge or
consent. I am testifying on the special circumstances
10 for subsistence on the Kenai Peninsula. Taken into
consideration of the rest of Alaska as the choice is
11 made for this area will have an impact on all Alaskan
indigenous people.

12

The issue of subsistence is more than
13 determining if we are urban or rural. It is a human
right. Special circumstances. That means different
14 from others, unique, exceptional and extraordinary. A

fact or an event. Conditions surrounding and affecting
15 a person. Subsistence is unique and an exceptional
circumstance to the indigenous people of Alaska and has
16 been ever since the beginning of time. For the last 200
years, subsistence has been a mechanism to control and
17 dominate the well-being of the indigenous people. Today
the Alaska Natives have the highest disease, poverty,
18 unemployment, welfare, mental health, alcoholism and
suicides than any other ethnic group in the United
19 States.

20 However, our health, mental and spiritual
well-being, is the result of our genetics. We know that
21 subsistence is essential to our existence. The special
circumstance is 200 years is long enough. Subsistence
22 is not a political issue. It is not whether we are
urban or rural, nor is it something to be viewed as a
23 financial gain for select groups. Subsistence is the
right to exist. It is an inherent right.

24

The rights are protected by laws, treaties,
25 proclamations, and the Constitution of Alaska, which
reads in Article 12, Section 12: The state of Alaska

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1 and its people forever -- which means eternity --
disclaim all right or title in or to any property,
2 including fishing rights, the right or title to which
made be held by or for any Indian, Eskimo or Aleut.

3

The special circumstances are the
4 insensitive regulations that are put in place that
undermine the laws and restricts our rights to customary
5 and traditional uses to sustain life.

6 Providing food for sustenance requires
health of our environment. Ten years after the

7 devastating Exxon oil spill, water life, plant life and
8 mammals have not recovered, and may not in my lifetime,
9 if ever. In the Cook Inlet, there are less belugas
10 returning each year because of the extraordinary
11 decrease in the salmon, due to the impact caused by oil
12 spills, factory-trawlers and environmental pollution.

10

The special circumstance is subsistence
11 users protect the environment. We consider the effect
12 it will have on those who are not born yet and those --
13 and that is the next seven generations.

13 I want to go on record that my basic sacred
14 fundamental human rights are not negotiable. I am proud
15 today to introduce my daughter, Jacqueline Comeaux, a
16 Dena'ina and a Kenaitze member. It is by her request
17 that she is speaking and addressing this board today.
18 Thank you.

16

JACQUELINE COMEAUX: Hello. My name is
17 Jacqueline Comeaux. I started fishing when I was a
18 baby. My mom took some pictures of me, and we were
19 fishing with a net on Cook Inlet beach. That was ten
20 years ago. I do not waste any of the subsistence food
21 or the berries and plants we pick. I do -- I do it to
22 gather food for my family and for their health and for
23 the cold winter months. I have learned how to respect
24 the earth and all the living plants and animals.
25 Subsistence is represented on the flag of the Kenaitze
26 Nation. Mountains symbolize the strength and endurance
27 and steadfastness of the Kenaitze people. The splashing
28 salmon depicts their spirit. The river means forever.
29 And the snowshoes portray the fact that -- the snowshoes
30 portray the fact that our people continue to walk with
31 assurity on our earth. This is how I feel about
32 subsistence. Thank you for your time.

25

CHAIRMAN DEMIENTIEFF: Thank you both very

1 much. Helene Hartfield, maybe. I'm sorry.

2 HELENE HATFIELD: Hello. My name is Helene
3 Hatfield. I am a lifelong resident of Kenai. For
4 generation after generation my family is from Kenai. I
5 have been raised and lived on fish all my life.

6 There are things that have stayed the same
7 on the Kenai Peninsula that continue to be rural. Of
8 these aspects in the Kenai Peninsula are work in the
9 area is very seasonal. Many people can only work during
10 the summer, with commercial and sports fishing jobs or
11 tourism jobs. Unemployment takes a large leap every
12 fall and begins to taper off again in the spring when
13 jobs start to open up. People travel long distance to
14 work, some to the North Slope, and they are gone
15 anywhere from two to four, sometimes six weeks at a
16 time. Some drive two to three hours round trip every
17 day, five days a week, to get to these jobs.

18 Some people who want a higher education,
19 like myself, have to go to other parts of the states.
20 Some even have to move away for maybe four to six years.
21 My husband went to Fairbanks to get a job logging when
22 we were done logging on Montague Island. And we logged
23 there for 12 years. He was killed in a car accident.
24 And I wanted to be a registered nurse. I loved nursing,
25 and been in it all my life. And being the sole support
26 of my child, my two children, I dismissed the option of
27 becoming an RN, because it took me three to four years
28 and I'd have to leave home to do it. So I took the
29 option and took the nurse's assistance training instead.
30 So I had to come to Anchorage, leave my kids for five
31 and a half months, come to Anchorage. And I put in 800
32 hours, 40 hours a week, for five months, through snow
33 slides, rain or shine. In Alaska, you name it, we got
34 it. Because I know my kids didn't want me to be away
35 that long, and I didn't want to be away from my family
36 either.

37 The Kenai Peninsula receives several grants
38 in the district, as well as Homer Electric Association,
39 HUD housing, which is one of the requirements being in a

rural area. The grants have traditionally been awarded
23 to organizations and agencies as well as small
businesses, block grants and HUD subsidies, just to name
24 a few.

25 As a Native person, our family has relied
on fish and game for survival for generations. It is a

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1 part of my ancestry that I want to pass on to my future
generation as well. I sincerely hope this information
2 is helpful in your decision to having the Kenai
Peninsula considered rural once and for all. Thank you.

3

CHAIRMAN DEMIENTIEFF: Thank you. Any
4 questions? Thank you. Amanda Sonju.

5 AMANDA SONJU: Hello, my name is Amanda
Sonju. I've lived on the Kenai Peninsula for three
6 years. Where I live is on a road connected to Soldotna.
It's 18 miles long. I live in a 12 by 14 white wall
7 tent with no running water, no electricity, no phone.
And in the springtime during breakup, we have to walk in
8 for a month. In last summer, I have seen a brown -- a
grizzly, brown bear, and a black bear. I'm from
9 Nondalton, which is a Dena'ina village across the inlet.
Moving to the Kenai Peninsula has made me feel that I am
10 closer to my own people.

11 I have lived in Anchorage and I'm not a
city person, so it was kind of hard for me. So moving
12 down to Kenai was -- it was a blessing because it made
me feel like I'm connected back to my people and living
13 in the rural way. Since I have been working with the
tribe, I have been working with the youth on the Kenai
14 Peninsula, Native and non-Native. We run a summer camp,
fish camp. And it fills me up with pride to see our
15 youth go through the whole process of going from fishing

the net, picking it, cutting it, brining it, and finally
16 hanging it. I feel that our youth should not have to --
we should not have to have a permit to do this, but it
17 should be there for them, to be able to do something
like that. I've always lived a subsistence life, and I
18 feel like if we don't do it now, that some of it will be
gone, so please consider our request. Thank you.
19

CHAIRMAN DEMIENTIEFF: Thank you. Any
20 questions? Thank you very much. James Showalter.

JAMES SHOWALTER: Good morning. My name is
21 James Showalter. I'm Kenaitze chairman and a tribal
22 member. I've got a resolution from the Tribal Council.
It's Resolution Number 98-38. It's a tribal resolution
23 in strong support of the Kenai Peninsula Borough being
designated as a rural area for purposes of subsistence.
24

Whereas, the Kenaitze Indian Tribe IRA is a
25 federally recognized tribal government, reorganized
under the statutes of the Indian Reorganization Act of

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1 1934, as amended for Alaska in 1936, and in accordance
with the (inaudible) and the tribal constitution. It is
2 responsible for the social welfare of its 1,009 tribal
members and 2,767 Alaska Native residents in upper
3 central, southcentral Kenai Peninsula; and

4 Whereas, the Kenaitze Indian Tribe IRA has
established a long-term goal which relates to the
5 collective and individual social, economical and
government concerns of its people; and
6

7 Whereas, the Kenaitze Indian Tribe IRA, the
natural spirits of its land and its resources, since
time immemorial, have respected and depended upon the

8 natural resources along the Cook Inlet basin and its
tributaries as our inherent and cultural way of life;
9 and

10 Whereas, the Kenai Peninsula is a rural
area by a reasonable definition of the term, which is
11 demonstrated by the following factors, among others:

12 One. Seasonal employment, such as
commercial and construction. And the lack of jobs and
13 opportunity, thus creating a high degree of
unemployment.

14

 Two. Many sparsely settled communities on
15 the Kenai Peninsula are isolated from each other and
many people in these communities have no close
16 neighbors.

17 Three. Many of the citizens living on the
Kenai Peninsula have depended upon the subsistence way
18 of life for generations, surviving on the abundant
wildlife resources for food for their families.

19

 Four. The communities in the Kenai
20 Peninsula Borough, aside from the cities of Kenai and
Soldotna, are not connected by sewer and water systems,
21 and must rely on well and septic tanks.

22 Five. The citizens of the Kenai Peninsula
must rely on the medical facilities located in Anchorage
23 and the Lower 48 states for most specialized medical
care.

24

 Six. There is no public transportation
25 system within the Kenai Peninsula Borough, thus making
it difficult for the elderly and many of the low income

1 families to commute to shopping areas and medical
2 facilities.

2

3 Six (sic). Many federal and State funding
4 agencies, such as Alaska Village Initiative, the U.S.
5 Department of Agriculture, consider the Kenai Peninsula
6 a rural area, thus providing funds for projects such as
7 agriculture, economic development, training assistance,
8 and other projects to improve the well-being of the
9 rural Alaskan communities.

6

7 Whereas, it is the conviction of the
8 Executive Committee, Tribal Council of the Kenaitze
9 Indian Tribe IRA, that the preservation of fostering the
10 traditional subsistence lifestyle for its members and
11 all Alaska Natives residing within the Kenai Peninsula
12 Borough is a primary means of promoting, protecting its
13 vital heritage of Dena'ina, Athabaskan, whose ancestors
14 settled along the shores of the Cook Inlet basin and its
15 tributaries.

11

12 Whereas, special circumstances which exist
13 justify reconsideration of the Board's rural/nonrural
14 determination as follows:

13

14 One. The Board's initial rural/nonrural
15 determination with respect to the Kenai Peninsula was
16 made without any input from the Regional Advisory
17 Council, which had not yet been established.

16 The Board's initial determinations were
17 based primarily on the State's nonrural determination of
18 the Kenai Peninsula, which the Ninth Circuit Court of
19 Appeals flatly rejected in the Kenaitze case vs. Alaska,
20 on the grounds that it violated the definition of rural
21 in ANILCA. The Board determination is in violation of
22 the ethical mandatory law and it is a special
23 circumstance justifying reconsideration at this time.

20

21 Two. During the 1995 public hearings on
22 customary and traditional use determination on the Kenai
23 Peninsula conducted by the Board as well as the Regional
24 Advisory Council, a majority of local residents
25 testified agreed that the Board's 1991 rural/nonrural
26 determination was divisive, erroneous, and should be

reconsidered. See script of the 1995 Kenai hearing.
24 The testimonies taken during the public hearing, in
addition to providing new and relevant information, also
25 indicates that errors were made in the analysis and
affecting the ways the communities were aggregated.

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1

Three. The demographics of other
2 information relating to the Kenai Peninsula contained in
the report of the Institute of Social and Economic
3 Research was not available at the time the Board made
its 1991 rural/nonrural determination. The report
4 provides compelling -- it is not consistent evidence,
that the Board's 1991 nonrural determination with
5 respect to the Kenai Peninsula violated the Board's own
criteria for the rural/nonrural determination, as well
6 as the Ninth Circuit Court of Appeals Kenaitze decision.

7

Four. The Council recommends
recommendation to the Board in and of itself continues
8 its special circumstances justifying reconsideration of
the Board's nonrural determination. The Board is
9 obligated to defend the Council's recommendation, except
in the limited circumstances described in Subsection
10 50 -- or, excuse me, 805-C. Here no justification
exists in rejecting the Regional Advisory Council
11 recommendation.

12

Now therefore be it resolved by the
Executive Committee, Tribal Council of the Kenaitze
13 Indian Tribe IRA, that the Kenaitze Indian Tribe IRA
fully supports and endorses Title VIII of ANILCA, which
14 grants rural preference to the citizens of the Kenai
Peninsula, therefore making them eligible to practice
15 their indigenous, customary and traditional subsistence
way of life.

16

And I've got one written up here for
17 myself. On rural. We, the Kenaitze, have been to court
on rural meanings. In 1989, we, the Kenaitze, have won
18 the issue on rural in the Ninth Circuit court, which is
an order from the high court, and yet the State is still
19 saying no to rural. And now, and since then, the
Federal Subsistence Board is ruling by the State's word.
20 This action is in violation of ANILCA, Title VIII. And
of the federal court's decision, which the Kenaitze has
21 won, and you're still making a ruling by the State's
thinking. Don't you think it's about time that you
22 looked at what the Ninth Circuit court said back in 1989
and say that the area is rural? Now you want to put
23 this off until after the year 2000 census, which in turn
would have information that remains on the 2000 census
24 until years later. So why don't you just go by what the
high court said and just do it? That's the word of the
25 Ninth Circuit court. They said it way back in 1989.

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1 Special circumstances. The Regional
Advisory Council has twice recommended the Kenai
2 Peninsula to be rural. In 1995 and 1998. After the
hearings on customary and traditional use by Kenaitze
3 Tribe members, and by report from the Institute of
Social and Economic Research. So since the Regional
4 Council has recommended twice in the past that the
peninsula be rural, so the Council should stand by their
5 word and support, which they did, the meaning of rural
on the peninsula. To get the numbers the State would
6 like by aggregating communities on the Kenai is unreal
and it's not right. On the Kenai is a vast area. Just
7 the city limits of Kenai. It's large, scattered, and
not like other large cities. So the research that was
8 done aggregated all the rural cities together to get a

large number for a nonrural determination, but look at
9 the vast areas of wilderness and wilderness wildlife
areas on the peninsula.

10

And for being classified rural, it's also a
11 big plus for the Kenai. The rural cities of Kenai do
receive large amounts of federal dollars because they
12 are classified as rural. To name a few, the Rural Fire
Protection Area; Rural Development Program; Economic
13 Development Recovery Program; Resources, Conservation
and Development Program; Rural Department Loans Program;
14 Rural Utilities, and there's much more that rural
dollars go to the Kenai.

15

And in closing, the Federal Subsistence
16 Board must look at what the Ninth Circuit court has
said, and that the Kenai is rural because of Title VIII
17 of ANILCA. So you must do what the law is and just do
it. Make the Kenai rural. Thank you.

18

CHAIRMAN DEMIENTIEFF: Thank you. Any
19 questions? Thank you very much.

20 UNIDENTIFIED SPEAKER: I've got one here,
written one. Do you want it to be submitted?

21

CHAIRMAN DEMIENTIEFF: Helga or Rachel can
22 get that. That's written testimony from --

23 UNIDENTIFIED SPEAKER: Yes, from an
individual.

24

CHAIRMAN DEMIENTIEFF: Could we get that
25 copied and distributed. We need to do that probably
during the lunch hour, I would imagine, so we can have

1 it available to us at 1:00. Thank you. Liz Dalton.

2 LIZ DALTON: My name is Liz Dalton. I'm
here to support the Kenaitze Indian Tribe and would like
3 to ask the Board to consider classifying the entire
Kenai Peninsula as rural before the year 2000. I do
4 believe that there are special circumstances that are
here to back up the special circumstances. A lot of
5 them are already listed. The programs that claim rural
and the agencies that get grants and services.

6

I've lived in Alaska all my life and grew
7 up in a subsistence lifestyle, and that's the way I
would like to teach my children. And as it is right
8 now, I have -- I can take them to one fish camp a year,
through the Kenaitze Indian Tribe, where they can learn
9 to process, and they have one moose subsistence hunt,
and that's the extent of what my kids know of
10 subsistence. I really want to support the tribe on
their -- I want to support them in being here on
11 classifying the Kenai Peninsula as rural. Thank you.

12 CHAIRMAN DEMIENTIEFF: Thank you very much.
Any questions? Thank you. Archie Minkler.

13

ARCHIE MINKLER: Hello, I'm Archie Minkler.
14 I grew up in Kenai with my grandparents. My grandfather
was always hunting and fishing or gathering some sort of
15 plants and berries. Basically, my whole childhood and
development has been nothing but harvesting of the land.
16 The last couple of years it's been harder and harder to
harvest anything. The reason being all the rules and
17 regulations that the State has put on the different
animals and locations where we used to go gather our
18 food. I hunt and fish not just for myself but my whole
family and friends. I also give some of my catch to the
19 not so fortunate people that I do know. We share
everything in my family, as does the tribe.

20

Here on the peninsula there are many
21 families and elders that have nobody to provide for
them. I hear people say, well, just go buy some food.
22 Well, if you're not working, how are you going to pay
for it? Especially on the peninsula, now with all the
23 different things being cut, there's a lot of people
losing their jobs from the oil field, and also all the

24 canneries being shut down.

25 If you look at some of our elders, they
love the traditional foods because it tastes good, and

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1 somebody cared enough to go and harvest it for them.
Each year gets rougher and rougher with the new laws
2 that are passed. For example, the moose hunt, they have
to be a certain size or over a certain size in order to
3 bag them, and you're only restricted to certain
locations where you can go get them at. With hundreds
4 of other people also in that same area. It's almost
like we have to tranquilize those moose and go out there
5 with our tape measure to make sure that they're the
right size. I hunt every year, and I'm lucky if I can
6 get one out of every six to seven years.

7 You know, it's a lot different if you live
on the peninsula. It's like the State don't want to
8 acknowledge the people that do live there year-round and
provide the community with their hard-earned money. It
9 seems the State is more interested in the out-of-state
people. Even with the subsistence now, you're only
10 allowed so much each year. These families are not rich.
They depend on the subsistence harvest. There are
11 families on the peninsula that I do know that don't have
electricity or running water. If they cannot afford
12 these basic essentials, how can they afford food? I
guess what I'm trying to say is that we really need
13 subsistence for the people that do live here year-round.
And if you don't believe me, just come on down and look
14 at some of the families and tell me how they're supposed
to support their families and supply them with enough
15 nutritional food if you cut off their supply.

16 I do have my own well and my own leach
field, and I'm about six and a half miles from downtown

17 Kenai. And I did at one point in time catch a live
18 trap, with Ted Spraker from the Department of Fish &
19 Game down there in Kenai at the tribal headquarters, a
20 good-sized brown bear sow and three cubs. You know, I
21 guess my biggest fear is knowing that our kids aren't
22 going to be able to do a lot of the different things
23 that I was able to do with my grandparents. I used to
24 go hunting and fishing with them all the time. And I do
25 work with some of the kids down there, doing educational
26 fisheries and educational moose hunts, and a lot of
27 these kids have never even seen it or done it. What I'm
28 afraid of, if a natural disaster ever does happen, how
29 are they going to know to take care of themselves and to
30 harvest the land. Thank you.

CHAIRMAN DEMIENTIEFF: Thank you very much.
Any questions? Thank you. Arthur Moonin.

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1 ARTHUR MOONIN: Hello, my name is Arthur
2 Moonin. I'm 21 years old. I lived in Port Graham up
3 until I was 12. I moved up to Kenai and I've lived on
4 the Kenai Peninsula my whole life. To tell you the
5 truth, Palmer is as far north as I've gone. Never went
6 down south past Nanwalek. I've done commercial fishing.
7 I have not yet hunted. Hopefully, if things go through
8 here, I'll be looking forward to going with Archie to go
9 get me a moose.

10 I've also seen what taking away some things
11 from people can do to tribes, or whatever you want to
12 call it. And sometimes it's good, it's for a good
13 cause, but then it turns out to be something that leads
14 to misfortune. And people get upset, yeah, but -- the
15 people I've been with have been raised on Native foods.
16 And the game that's around here, or on the peninsula, is

what they're raised on. I really don't care for Native
10 foods, it kind of tastes funny to me. But I'd love to
give my mom, my grandparents, family, any kind of food
11 they want. They all like moose, porcupine, fish, seal,
sea lion. But from what I understand, it would be very,
12 very difficult to do it. It would almost be like owning
a black market -- or going to a black market, just to
13 get the stuff. I know that you think that you're trying
to help out, but have you thought about the consequences
14 of people losing their traditions and lifestyles that
they've kept with their families for hundreds and
15 hundreds of years? That's about all I have to say, and
thank you for giving me your time and listening to me.
16 Thank you.

17 CHAIRMAN DEMIENTIEFF: Thank you, any
questions? Thank you very much. Geneva Marinkovski.
18

GENEVA MARINKOVSKI: My name is Geneva
19 Marinkovski, employed by Kenaitze Indian Tribe IRA,
Kenai, Alaska. On behalf of my family and the Kenaitze
20 Indian Tribe, I urge you to reconsider nonrural
determination and make clear that the entire Kenai
21 Peninsula be rural.

22 I was born and raised in the village of
Selawik, where I was taught to live subsistence
23 lifestyle. My folks, Andrew and Vera Skin, taught me
traditional values of Inupiaq subsistence lifestyle. In
24 1982, I moved to the Kenai Peninsula to raise my own
family, where I continue my subsistence lifestyle with
25 the help from my sister and brother-in-law.

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1 Up to this day I live on a rural setting,
where the moose roam around my backyard, and eagle nest

2 within 100 feet of our home. And also, to this day, I
3 live on a gravel road and rely on well and septic for
4 water and sewer. If Kenai Peninsula is considered
5 nonrural, then we would not be able to get funds to
6 provide socioeconomic work for our tribe or local
7 entities. On behalf of my family, respectfully, the
8 Kenaitze Indian Tribe IRA, and as resident of Kenai
9 Peninsula, I urge you to reconsider the Kenai Peninsula
10 be rural. In addition, I'm also supporting the "We The
11 People" by marching this afternoon in support of the
12 subsistence rights. Thank you.

13 CHAIRMAN DEMIENTIEFF: Thank you. Any
14 questions? Thank you very much. Mary Ann Mills.
15

16 MARY ANN MILLS: My name is Mary Ann Mills.
17 I am Dena'ina Aleut from the Kenai Peninsula and I am a
18 tribal member of the Kenaitze Indian Tribe, and among
19 one of many indigenous peoples whose homeland is Alaska.
20 The subsistence issue is of great concern to the people
21 of the Kenai Peninsula, in part because of a sneaky
22 maneuver called "rural preference." This concerns all
23 Alaska Natives because if subsistence can be taken from
24 our people, it can be taken from the rest of the
25 indigenous peoples of Alaska.

26 The Kenai Peninsula is referred to as the
27 testing ground for subsistence for the state of Alaska.
28 The subsistence issue can and should be remedied by
29 basing our resolve in honesty and in truth, and in
30 accordance with inherent rights, laws, constitutions,
31 conventions, tribunals, and sacred trusts assumed by the
32 State, federal and universal entities, and anyone else
33 who chooses to speak on our behalf.

34 I would like to request this of the
35 following concerns be included on special circumstances
36 for consideration. The indigenous peoples of Alaska
37 have been very good hosts and hostesses of most guests
38 who have come into our land. It is our culture to care
39 and share with others, and it is our culture to respect
40 everyone and everything in our existence. Before the
41 United States and before the state of Alaska, our land
42 was pristine, our waters were clean, and our fish and
43 wildlife was plentiful.

25 The biggest deception of the U.S.
Government was when they announced to the American

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1 people and the world they purchased Alaska from Russia.
It is a well documented fact, Russia never claimed
2 ownership of Alaska. Verification of this is found in
the Kozlizof (ph) memorandum and further documented in
3 the 58th Congress, Second Session, Document 162, Alaska
Boundaries Tribunal Proceedings of Alaska Boundaries
4 Tribunal Convened at London.

5 What the U.S. purchased from Russia was the
right to trade with the Indian, Eskimo and Aleut
6 peoples. After the Jewish Holocaust of World War II,
the United States and other countries formed the United
7 Nations in an effort to provide world peace and to
prevent other Holocausts or genocide from occurring.
8 Their guidelines are found in the U.N. Charter, which
includes the convention of the prevention and the
9 punishment of the crime of genocide. The United States
took upon themselves the sacred trust over Alaska and
10 its peoples, as defined in the U.N. Charter, Chapter 73,
which states that our peoples were to be brought to the
11 full measure of our own self-governance. In an
unprecedented move, the U.S. not only allowed military
12 servicemen to vote for statehood, but paid them money as
well. Those who were not allowed to vote were those who
13 could not speak English, most of whom were Alaska
Natives.

14

As a preexisting condition for statehood,
15 Alaska had to accept into its constitution a disclaimer
clause, Article 12, Section 12, of the State
16 Constitution, which states, the state of Alaska and its
people forever disclaim all rights and titles to
17 property, which includes hunting and fishing rights of
Indian, Aleut and Eskimo peoples. Forever is infinite,

18 boundless, limitless.

19 Other special circumstances is the fact
20 that the indigenous peoples of Alaska has never
21 relinquished, or have any treaties or any other
22 arrangements, formal or otherwise, with Imperial Russia,
23 the Russian-American country, or the United States, in
24 which our people conveyed, ceded, impaired, or otherwise
25 relinquished or encumbered or restricted our freedom,
our liberty, or our inherent rights to our homeland.

23

In 1971, the U.S. signed into law the
24 Alaska Native Claims Settlement Act. This was
accomplished without the consent or ratification of our
25 peoples. ANCSA is a product of greed that has created
dire -- crisis of dire proportion. When Congress passed

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1 the Alaska Native Claims Settlement Act, it committed to
keep subsistence options open to future generations of
2 Alaska Natives. The Conference Committee report for the
act states that, quote, all Native interests in
3 subsistence can and will be protected by the Secretary
of Interior through exercise of his existing withdrawal
4 authority. The Conference Committee expects both the
Secretary and the State to take action necessary to
5 protect the subsistence needs of the Natives. End of
quote.

6

ANILCA was accomplished by the United
7 States with input from our corporate leaders, without
the consent of our peoples. In testimony on H.R. 39,
8 Byron Mallott, representing AFN, stated, quote, frankly,
the major reason we have researched the Native-only
9 subsistence system is that while our lawyers feel
certain that Congress has the power to create a Native
10 subsistence system which will withstand all attacks on

constitutional grounds, they are concerned that if a
11 broader subsistence system which includes non-Native is
established, it may be struck down as an
12 unconstitutional exercise of power. End of quote.

13 The advice given to AFN by their lawyers
went unheeded, and 50,000 Alaska Natives AFN claimed to
14 represent was given no voice in their affairs. In the
congressional record of November 12th, 1980, H-10545,
15 the manager of the House of Representatives on the
matter of ANILCA, Mr. Udall, stated, quote, I am
16 particularly proud of the subsistence language in the
bill because it fully reflects the commitment that was
17 made to the Alaska Native people at the beginning of the
95th Congress. At that time we promised that any law
18 would recognize the importance of subsistence and would
contain management provisions which recognize the
19 responsibility of the federal government to protect the
opportunity from generations to generations, so that the
20 Alaska Natives now engaged in subsistence uses, their
descendants and their descendants' descendants, will
21 determine for their own cultural orientation and at a
rate and degree of evolution, if any, of their Alaska
22 Native culture.

23 Mr. Udall also pointed out, although there
are many non-Natives living a subsistence way of life in
24 rural Alaska, which may be an important national value,
the subsistence title would not be included in the bill
25 if non-Native subsistence provisions are included, in
recognition of ongoing responsibility of Congress to

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1 protect the opportunity for continued subsistence uses
in Alaska by the Alaska Native people, and
2 responsibility consistent with our well-recognized
constitutional authority to manage Indian affairs. End

3 of quote. And the State did agree on that.

4 This special circumstance portrays the
5 fiduciary responsibility of the United States with
6 regards to the indigenous peoples of Alaska. For
7 thousands of years our people have lived in balance with
8 our environment, understanding Creator has put his
9 spirit into all life. Subsistence to the Dena'ina is
10 very sacred. It isn't about money, control, greed, or
11 rural preference. We believe our earth mother is a
12 living being and we are here to respect her by
13 establishing a management plan that includes seven
14 generations into our future. To the Dena'ina, the
15 plants, animals, fish, water and earth are our relations
16 and are literally who we are. They have been a part of
17 our genetics since before memory.

18 It is a proven medical fact that when we
19 are deprived of our traditional food, we become sick.
20 Today our ethnic group has among one of the highest
21 disease rates in the nation, and is comparable to that
22 of Third World countries. It is important to point out
23 that all indigenous peoples of Alaska inherited
24 subsistence from their Creator who placed us here, and
25 from our ancestors who reserve these sacred rights for
26 their future generations. The Dena'ina intend to pass
27 these sacred rights on to our future generations.

28 I would like to go on record stating that,
29 as one of Alaska's indigenous peoples, I have never
30 relinquished any of my inherent rights, nor do I give
31 anyone permission to give or compromise away any of my
32 rights. I stand firm and would like to go on record
33 that basic sacred, fundamental human rights are not
34 negotiable. Thank you.

35 CHAIRMAN DEMIENTIEFF: Thank you. Are
36 there any questions? Thank you very much. I'd like to
37 ask --

38 MARY ANN MILLS: I have a copy for you.

39 CHAIRMAN DEMIENTIEFF: That's fine. Allan
40 Balkwin. I'm not sure -- is that right? I'm not
41 calling him up at this time. Nina Demidoff, Eva
42 Lorenzo. Are there any of you that can't come back this

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1 afternoon? It's lunchtime now and I'm wanting to break.
Is there anybody that can't come back, of those three?

2

Let me just tell you what we're going to do
3 this afternoon. We have a certain process that we go
through, and what I did is kind of, I just jumped ahead
4 to get in additional public testimony time because we
had the time. This afternoon we will summarize written
5 comments. The letter that was passed out by
Mr. Showalter will be read into the record. Then we'll
6 have the Staff Committee recommendation, Department of
Fish & Game comments, and then we will resume public
7 testimony after that process. So at this time we will
go ahead and break for lunch until 1:00.

8

(Lunch recess from 12:00 to 1:00 p.m.)

9

CHAIRMAN DEMIENTIEFF: We'll reconvene the
10 meeting of the Federal Subsistence Board. At this time
we are going to go into our -- continue on with our
11 procedure for addressing proposals. And with that,
we've already had the staff report. It looks like most
12 everybody was here that heard that report, so we're not
going to go into that again. It is on the record. At
13 this time we will move on with written public comments.

14 HELGA EAKON: Mr. Chairman, members of the
Board. For the record, my name is Helga Eakon, and I am
15 the Regional Council Coordinator for Southcentral.
Regarding the public hearings that were held in November
16 of 1998, they were chaired by the vice-chair of the
Council, Fred John, Jr., and our hearing officer was
17 Bill Knauer. And they both asked the members of the
public to focus on are there special circumstances.
18 With that in mind, I shant belabor the testimony on the

larger issue of rural and nonrural. I'm going to focus
19 on the special circumstances testimony.

20 At the November 9, 1998 public hearing at
Seward, there were 15 people in attendance, with four
21 testifying, and none of the four spoke to special
circumstances. They just opposed the Kenaitze request.
22 At the November 11 hearing in Homer, at which 25 people
signed in, of whom 13 testified, six of the 13 opposed
23 the request, and the only one who spoke to special
circumstances was deputy commissioner of the Alaska
24 Department of Fish & Game, who said that the Department
does not see any special circumstances for the Board to
25 reconsider its determinations out of cycle. And he
urged the Board to wait until the 2000 census

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1 information was available. Of the seven testifiers who
supported the Kenaitze request, none spoke directly to
2 the issue of special circumstances.

3 At the Kenai public hearing, at which a
total of 81 people signed in, with 27 testifying, the 17
4 testifiers who opposed the request did not mention
special circumstances. Of the eight who supported the
5 Kenaitze request, only one spoke to special
circumstances, and that was the Kenaitze Indian Tribe,
6 who submitted a resolution outlining the special
circumstances. And those were already read into the
7 record by Mr. Showalter when he testified before
noontime, so I shant go into that.

8

Regarding written public comments during
9 the period of October 9 through December 10, 1998, the
Southcentral Regional Council received 57 written
10 comments. Of these, 38 were in opposition to the
Kenaitze Indian request, and 17 were supportive. Of

11 those who opposed the request, the Alaska Department of
12 Fish & Game wrote and said -- they put down in writing
13 that they did not see any special circumstances, and it
14 was again said the Board should wait for the 2000 census
15 data. And the Cooper Landing Fish & Game Advisory
16 Committee expressed the same concern. Those who wrote in
17 support of the request, the Copper River Native
18 Association supported the request, citing the Ninth
19 Circuit Court of Appeals Kenaitze case, that the Kenai
20 areas is a rural place and the decision should be
21 considered a special circumstance.

17 The Kenaitze Indian Tribe once again read
18 their Resolution 98-38 into the record, and as did the
19 Native American Rights Fund. And they added a fifth
20 special circumstance; namely, that Title VIII is Indian
21 legislation and, as such, must be interpreted broadly in
22 favor of protecting the subsistence rights of Alaska
23 natives.

21 The Southcentral Regional Council held a
22 public meeting in March 1998, and of the people who
23 testified, there were 18, and they were all in favor of
24 the Kenaitze request. One in particular was Mr. Emil
25 Dolchok, and you did receive his letter which I will
read into the record as your chair asked me to do after
I do the summary. And his concern was that local
Natives who have lived here all their lives have every
right to harvest early run king salmon. In fact, they
should have a prior right to the taking of these king

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1 salmon at any time during the summer months when they
2 are running. Recognize the year-round residents as a
3 priority in harvesting these king salmon when they first
enter the Cook Inlet. And he said that right now the
local residents do not have access to the king salmon,

and this lack of access is a special circumstance.

4

The Kenaitze Tribe reread their Resolution
5 98-38 into the record, and someone testified that the
Kenaitze case is a special circumstance. And there were
6 several residents who had lived in rural areas and
testified that they lost their subsistence rights when
7 they moved to the Kenai Peninsula. And someone else --
and that was the attorney for the tribe, said these in
8 the 1995 customary and traditional use public hearings
provided more information than the Board had when it
9 made its initial determinations. Special circumstances
are more than just a sudden population change.

10

And for the members of the public that are
11 here, there are booklets containing the letters of
public comment on the table over there, as well as a
12 table that summarizes those public comments. And that
concludes -- oh. After the Regional Council meeting,
13 our Office of Subsistence Management did receive three
letters in support of the Kenaitze Indian Tribe request.
14 The first came from the Alaska Inter-tribal Council,
signed by Mike Williams, chair. And he wrote to support
15 the tribe's request that the Board revisit its earlier
determination that the Kenai Peninsula is not rural.

16

The second letter is dated March 31, 1991,
17 and it came from the Native American Rights Fund, signed
by Heather Kendall-Miller, and she again listed five
18 special circumstances. And I believe that previous
testimony today did capture all of her fine points, so I
19 shant reread those.

20 And finally there was a letter from the
Rural Alaska Community Action Program, signed by Jeanine
21 Kennedy, executive director, addressed to
Mr. Demientieff. And she said that she thought it was
22 very important for the Board to reconsider the 1991
rural determinations for the Kenai Peninsula. And you
23 have the letter there in your packet, so I shant go into
detail on that. And that summarizes public comment to
24 date, Mr. Chair.

25 Did you want me to read this? Okay. This
is a letter from an elder of the Kenaitze Indian Tribe,

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1 Emil Dolchok. This is dated May 1, 1999. My name is
Emil Dolchok. I was born and raised in Kenai, and I
2 would like to remind this Board that our subsistence
lifestyle up until the sport fishermen arrived and took
3 over the Kenai River was very, very real. We would set
our family net out at the mouth of the Kenai River
4 around the middle of April and catch a few king salmon
for the smokehouse. We would salt the heads, sun-dry
5 the backbone, and smoke the rest. And believe me, I
still do live a subsistence lifestyle. Just because
6 there is a paved highway connecting us to the rest of
the outlying communities should not and will not stop me
7 from living the subsistence lifestyle I have been raised
in. This very lifestyle that had been handed down to me
8 and firmly sealed within my mind and body by my loving
and caring parents.

9

I have witnessed since the sport fishermen
10 moved into the Kenai area their greedy, heartless
methods in lobbying the Board of Fisheries and the
11 Department of Fish & Game, in eventually cutting us off
completely from harvesting the early run king salmon,
12 which was our main food supply that we smoked, salted
and dried for winter. Sure, they do let us fish for
13 personal use, but not until half the summer is over,
around the end of June month, when the early run king
14 salmon have gone by and the late run king salmon have
not started to show up yet. These very early run king
15 salmon that we Natives prized and cherished for our
subsistence through the winter is being completely
16 monopolized by the greedy sport fishing guides for the
mostly nonresident sport fishermen.

17

I have written letters to the governor, the
18 Legislature, the Board of Fisheries, and the Department
of Fish & Game. I guess a person has to be wealthy to

19 be wine and dine the personnel of the Board of Fisheries
20 to turn their heads towards the needs of the lifelong
21 year-round Native residents who want and need these
22 early run king salmon for our subsistence lifestyle.
23 That is why I urge this Board to reconsider the Kenai
24 Peninsula rural area. We are not living among
25 skyscrapers or underground commuters or in the hustle
and bustle which goes on in urban areas. We are in a
rural area, and there is no way anyone can dispute that.
This Kenai Peninsula area is rural, rural, rural. I can
go to bed at night and not be bothered by never-ending
noisy traffic or the hustle and bustle of the
never-ending commuter traffic.

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1 I live about four miles from the village of
2 Kenai, the very little village I've loved and cherished
3 all my life. My old house still stands near the banks
4 at the mouth of the Kenai River, next to the Old Russian
5 Orthodox Church and the St. Nicholas Chapel where my
6 great-grandfather is buried beneath. My old home is now
7 a coffee shop, but still setting around its rural
8 surroundings. Sure, I live in a modern dwelling, two
9 bedrooms, with electricity, running water and indoor
10 plumbing, and I am not on city water and sewer. I have
11 my own deep well and septic system. My home is located
on the banks of Beaver Creek, upstream one mile from the
Kenai River. The ice has gone out and the ducks have
arrived. A pair of mallard ducks and a pair of cranes
nest across the creek from our house every year. Kings,
reds, silvers and pink salmon all are in this creek
throughout the summer months. Beaver, otter, muskrat,
mink all use this waterway in the summer. Coyote,
weasel, black and brown bear have all wandered by our
house since we moved here in 1979. This wildlife is
only visible in the rural areas. Proof positive that

the Kenai Peninsula has always been rural.

12

Now I urge this Board to please reconsider
13 this Kenai Peninsula area as rural. Please give us
lifelong Kenai Natives our subsistence lifestyle back.
14 Constitutionally, we have every right to harvest these
king salmon that our Creator placed on this earth for
15 the residents of this area for our family to survive on.

Thank you. You know, by using good judgment you will in
16 some strange way be very gratefully rewarded.

Respectfully, Emil Dolchok, lifelong Kenai resident.

17

CHAIRMAN DEMIENTIEFF: Thank you, Helga.
18 Staff Committee recommendation?

19 TOM BOYD: Mr. Chair. The Staff Committee
finds that sufficient information has been provided by
20 the petitioners and the Regional Advisory Council to
suggest that there were inconsistencies in the methods
21 used to aggregate communities and the application of
socioeconomic characteristics in making the 1990
22 rural/nonrural determinations for the communities on the
Kenai Peninsula, and the communities of Saxman, Kodiak
23 and Sitka.

24 Given the serious questions posed by the
petitioners and the Council, the Staff Committee
25 recommends a review be conducted of the methodology used
in these earlier rural determinations, that revisions to

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1 this methodology be made where appropriate in view of
the questions raised by this petition, and that the
2 methodology be clearly documented prior to the next
round of rural determinations following receipt of the
3 year 2000 census data.

4 The Staff Committee also finds that a

revised methodology for rural determination should be
5 applied for all communities statewide, and that this new
assessment be done following receipt of, again, the 2000
6 census data.

7 The focus of the Committee's finding on the
assertions pointing to the inconsistencies in
8 aggregation and the application of the socioeconomic
characteristics for these communities. Although the
9 testimony and information provided to the Board during
its 1990 deliberation provided a basis for the Board
10 determinations, the comparative analysis between the
Kenai communities and Kodiak, Sitka and Saxman provided
11 by the ISER report suggested that earlier analysis
provided to the Board in support of their determinations
12 was problematic. The other assertions listed by the
Council and the petitioner were not found persuasive by
13 the Staff Committee for the reasons presented in the
staff analysis.

14

Let me just recap there for a second. I
15 think where the Staff Committee is focusing is on the
assertions of inconsistencies in the treatment of the
16 Kenai nonrural communities with the communities of
Sitka, Saxman and Kodiak in the 1990 determinations.

17

Another concern discussed by the Staff
18 Committee was that the administrative record and
supporting documentation on these initial Board
19 decisions is sketchy and difficult to follow, and not up
to the standards of thoroughness that would be applied
20 if these decisions were made today. I think during our
review, we were reminded that many of the earlier
21 decisions of the Board in establishing the Federal
Subsistence Program were expedited in order to make this
22 program functional in a hurry. And while we could not
conclude that wrong decisions were made, the
23 incompleteness of our analytical record, taken together
with the more rigorous ISER analysis provided by the
24 Kenaitze petition, caused concern.

25 Another difficulty faced by the Staff
Committee in reviewing this petition is the lack of

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1 guidance in the regulations regarding special
circumstances. One could logically conclude that this
2 provision was inserted into the regulations to cover
significant shifts in demographics of a community that
3 lead to a change in its rural or nonrural status.

4 I think the example that's been articulated
is Adak, which resulted in a significant shift in
5 demographics when the military base was closed and the
people, many of the people left that area. Currently,
6 that area is determined to be nonrural, or urban, if you
will, under the current Board determinations. However,
7 if you looked at it today, one may argue otherwise.

8 Lacking such guidance, it seems also
appropriate that we also be guided by the criteria
9 applied in reconsidering other Board determinations.
These criteria include whether new information has been
10 provided that might lead to a change in a previous Board
decision, or whether it was demonstrated that the Board
11 erred in its original decision as a result of the
information provided or the procedures used. In
12 applying these guidelines to the Kenaitze Tribe's
request, we have concluded that new information does
13 exist and, if reevaluated, could lead to changes in the
determinations.

14
In summary, the Staff Committee finds that
15 both the Kenaitze Tribe and the Regional Advisory
Council requests raise serious questions regarding the
16 Board's original rural determinations. These questions
revolve around the application of factors used in the
17 aggregation of the communities on the Kenai Peninsula,
as well as the consistency of application factors
18 between the Kenai communities and other communities
outside the Kenai Peninsula; namely, Kodiak, Saxman and
19 Sitka. The appearance of inconsistent treatment between
communities gave us cause for this concern. That left us

20 wondering the best way to proceed.

21 And in short, we felt, first of all, that a
22 review of the methodology was warranted. And given the
23 short time remaining until the decennial census and the
24 time it would take to develop and gain consensus on a
25 new rural process and then conduct a new analysis, and,
moreover, to go through the rule making process, it
seems more prudent to us that we would use this
intervening time to review and revise the process, and
that a new process could then apply to the 2000 census
data in the normal cycle of reviewing rural

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1 determination. For consistency in determinations, we
2 felt that it was important that the same types of census
3 data are used for all communities or areas.

3 I think our main concern in this was that
4 we provide the Board a credible effort. And given the
5 timing of where we're at, just prior to the year 2000,
6 we felt that we needed the time to develop the
7 methodology first and then apply it, and it just seemed
8 to make more sense not to go backwards with the '90
9 effort, but to go forward with the 2000 data.

7 I'll just conclude by saying that we
8 struggled with this, as a staff and an interagency
9 committee. Obviously, we weren't all in agreement. And
10 while the majority of the committee favored the view
11 I've just explained, there was a dissenting view as
12 well. And I'll just read that to you.

10 To deny review of the Federal Board's
11 rural/nonrural determinations for the Kenai Peninsula
12 before the 2000 census is furthering the violation of
the Equal Protection rights of the Kenaitze Tribe. The

13 questions raised by the Tribe and the Southcentral
14 Regional Advisory Council regarding the aggregation and
15 the methods used by the Federal Board clearly show that
16 they have been treated differently than other
17 communities in Alaska. To further deny that review
18 until after the year 2000 census is also to deny their
19 due process. In addition, the Board is failing to
20 provide the subsistence opportunity that the Board is
21 mandated by ANILCA to provide. The Board has denied
22 this priority to them for nine years and, if the
23 decision is left in abeyance until after the 2000
24 census, for 13 or more years, merely for bureaucratic
25 convenience. Finally, the Regional Advisory Council has
recommended that the Board make this review and find the
Kenai Peninsula rural.

20

A new methodology does not have to be made
21 for the Kenai analysis or review. The Board merely has
22 to review using the criteria or standard used in 1991
23 for all communities. Then apply the 1991 standard to
24 the Kenai Peninsula.

23

The concern regarding the creating of a
24 clear methodology for the year 2000 review of all
25 communities in Alaska is a separate and different issue.
The Kenai question and their treatment is based on a
standard used in 1991, not the standard that will be

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1 applied after the 2000 census. That concludes our
2 recommendation, Mr. Chair.

2

CHAIRMAN DEMIENTIEFF: Thank you.
3 Department comments?

4 ELIZABETH ANDREWS: Thank you,
5 Mr. Chairman. Appreciate the opportunity to comment on
this again.

6 Previously, the State of Alaska has
7 commented on this request, both in oral testimony by the
8 Deputy Commissioner of Fish & Game, Rob Bosworth, on
9 November 11th, 1999 -- I mean 1998, at the Southcentral
10 Council hearings in Homer, and in a letter from
11 Commissioner Frank Rue to the Southcentral Council,
12 dated December 9th, 1998. And I'd like to incorporate
13 those comments just by reference to them. They're
14 included in your packet that has been handed out to the
15 public, as well as yourself, that's titled Kenai
16 Peninsula Rural Determinations: Review of Special
17 Circumstances, May 5-6, 1999.

18 I'll just, in our testimony today, just
19 summarize what our comments are. First, at this time we
20 do not see that there are any special circumstances
21 justifying review of the current rural and nonrural
22 designations on the Kenai. We're not aware of any new
23 information creating special circumstances or of
24 information not available to the federal program when it
25 made its 1991 designations. We do not consider the fact
that the initial Federal Board determination was made
without input from the Regional Advisory Council to be a
special circumstance, since all of the Board's initial
determinations were made without Advisory Council input.
And that point was brought out in your staff analysis.

19 With regard to population information, the
20 State believes that any reassessment of the rural or
21 nonrural status of the Kenai Peninsula should occur only
22 with updated information from the 2000 U.S. census,
23 rather than information from the 1990 census or other
24 State or federal sources that provide only population
25 estimates and not censuses. This review should also use
information from a 1999 study of resource harvest and
socioeconomic factors on the Kenai Peninsula that's
being funded by one of your own agencies, the Fish and
Wildlife Service, to update information on the Kenai
Peninsula.

1 With regard to aggregation of communities,
the Federal Subsistence Board, in our view, should
2 continue to follow federal regulations regarding when to
aggregate populations for rural or nonrural
3 determinations. That is, and I quote, communities or
areas which are economically, socially or communally
4 integrated shall be considered in the aggregate. End of
quote. There's a solid information basis for
5 aggregating Kenai Peninsula road-connected populations.
The Federal Board findings, as well as the State Board
6 findings, are in agreement that the majority of the
Kenai Peninsula population, that is about 46,000 persons
7 in 1997, based on the estimates, lived in nonrural
areas.

8

 As I mentioned earlier, there is additional
9 information and details regarding these comments in our
December 9th, 1998 letter, as well as in November 11th,
10 1998 testimony. That concludes the State's comments,
Mr. Chair.

11

 CHAIRMAN DEMIENTIEFF: Thank you. We at
12 this time have three people who are signed up. If
there's anybody else who is willing to testify, please
13 get the blue cards from the back table and they'll get
them to us.

14

 Allan Balkwin. Is that the correct
15 pronunciation? Baldwin?

16 ALLAN BALDWIN: It's like the piano,
Baldwin.

17

 CHAIRMAN DEMIENTIEFF: Oh, okay.

18

 ALLAN BALDWIN: First, I have a letter from
19 Liisa Johansen Shaw, and I'll turn it in, but I'll just
read a couple of paragraphs and then turn it in.

20

 I urge the Southcentral Alaska Subsistence

21 Regional Advisory Council -- oh, excuse me. This was
delivered to the Advisory Council on March 22nd, and
22 I'll just turn it in for her to you now.

23 She says she would like to recommend that
the Kenai Peninsula be declared a rural area. As a
24 Tribal member and an employee of the Kenaitze Indian
Tribe IRA, in Kenai, I see the grief and outrage in our
25 people who cannot harvest their own subsistence foods.
It is a hard thing to see our people standing in line to

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1 receive a piece of road kill moose because they cannot
get a moose here due to the numbers of hunters and
2 regulations on the Kenai Peninsula.

3 When the Federal Subsistence Board
determined the Kenai Peninsula to be nonrural in 1991,
4 that decision was based on the State's nonrural
determination of the Kenai Peninsula, which the United
5 States Court of Appeals, Ninth Circuit Court, expressly
rejected in its decision in the Kenaitze Indian Tribe
6 vs. State of Alaska. Additionally, this nonrural
determination violated the Federal Subsistence Board's
7 own criteria for rural and nonrural determinations as
well. The Federal Subsistence Board's initial
8 determination was made without regard to the Title VIII
of ANILCA, 1980, which was expressly passed to protect
9 the rights of Alaska Natives.

10 She goes on to say that, in conclusion, I
believe the Federal Subsistence Board will recommend
11 that the Kenai Peninsula be determined as a rural area,
thereby allowing the residents a subsistence lifestyle,
12 a right that is guaranteed to all Alaska Natives by the
United States Congress; and an inherent right that gives
13 us our life.

14 And just a few comments of my own. One of
the -- in addition to the many special consideration
15 issues that have been brought before you, in this past
year the many meetings and board meetings that I
16 attend -- I sit on the RC&D Board in Kenai, the Kenai
Peninsula Watershed Forum, and on various other boards.
17 And it aggravates me and it surprises me that one day a
person can sit before you or the advisory boards and say
18 the Kenai Peninsula is nonrural and that it should be
considered urban. And they say that the Kenaitze just
19 want to take over the fish and game on the peninsula.
And then they come before a board asking for special
20 project money that is specifically designated for rural
areas.

21

 And they also demand that we take their
22 proposal, we deal with it in a very timely manner. They
will continue to call the organizations and find out
23 just where their proposal is in the machine of this
organization. And they want us to put it on the front
24 burner. They want us to treat their proposal in a fair,
just and, again, a timely manner. And I think that that
25 is the biggest consideration you have, is that the Kenai
Peninsula rural determination issue has not been dealt

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1 with timely. And I would just like to urge you to
consider that it's time to make a decision. It seems to
2 me that the buck is being passed from one person to the
other, and nobody wants to make the decision that
3 affects them while they're sitting on a board. And it
is a very hot issue, I understand that. There's a lot
4 of contention. But it's the black buck that should not
be passed to other people. Thank you.

5

CHAIRMAN DEMIENTIEFF: Any questions?

6 Thank you. Nina Demidoff.

7 NINA DEMIDOFF: Hello, I'm Nina Demidoff.
I'm Alutiiq from the south end of Kodiak, and I've made
8 my home in the Kenai for the past 24 years. From my way
of living as being a subsistence person, we follow the
9 four seasons, summer, winter, fall and spring, and we
know when we hunt and when we gather our plants and our
10 food. And we show our children this and I'd like to
pass it on to my children, and it hurts my kids to find
11 out that this is being taken away from them. One is 18
and the other one is 13, and I'm soon to be a
12 grandmother, and I'm hoping that I can pass this on down
to my own grandchildren. And I work for the Kenaitze
13 Indian Tribe myself, and my son finally went on his
first moose hunt with the Tribe, and they taught him how
14 to take care of the meat. And I'd like to pass this on
down to the other generations of the people in the area,
15 and I wish to have this area as rural and not nonrural.
Thank you.

16

 CHAIRMAN DEMIENTIEFF: Any questions?
17 Thank you. Eva Lorenzo.

18 EVA LORENZO: My name is Eva Lorenzo, and
I'm a lifelong resident of Kenai, which is my home. I
19 speak today for my own Native people, to have this
subsistence, because there's many years to come where it
20 should be passed from generation to generation. I have
grandchildren, and hopefully they'll pass it on to their
21 children. To me, subsistence is very important.

22 When I grew up, subsistence life was our
lifestyle. I helped my family to put up the fish. They
23 used to put the backbones on the rack and sun-dry them
for a couple of days, put them in the smokehouse and
24 make some -- when it smoked a little bit, put it in a
pot, put some potatoes, put some rice. And we helped to
25 butcher the fish and helped our parents put the fish
away. And I grew up with this lifestyle because we knew

1 how to make salt salmon and we knew how to butcher fish,
and we knew how to save our fish.

2

And to me, this Native tradition still is
3 with me. If I could pass it on to my grandchildren and
their children, I'd be very happy, because today we
4 don't have very many elders left in our Native tribe.
And in order to keep what we have, like someone said a
5 little while back, in order to keep this, we've got to
survive. And to me, born and raised in Kenai was my
6 lifestyle, and I'd like to keep my Native culture, my
Native tradition. And I want to hand it on to my
7 grandchildren and my great grandchildren. I have five
grandchildren already. And to me, this is very
8 important. This is why I come to these meetings,
because of that. I want to keep this for my Native
9 people.

10 And I struggle, and I come down here just
to be here and to speak before the advisory board
11 because it means a lot to me, my lifestyle that I was
raised up with. And it's been a long time. I've been
12 raised in Kenai, I've been a lifelong resident. And to
me, if this could be passed on from generation to
13 generation -- and I've already seen what they've been
teaching the children out at the youth camp, how to
14 smoke fish, how to pick the fish from the net, and do
all that stuff. So this is what makes me very happy,
15 because they know how to make the smoked salmon, they
know how to pick the fish and all the stuff, what I was
16 raised up with. So I would like to tell all of you
thank you for letting me be here today, and I always
17 make this trip because I know it's very important for
all my Native people. Thank you.

18

CHAIRMAN DEMIENTIEFF: Thank you. Any
19 questions? Thank you very much.

20 This concludes our public testimony. We
don't have any other requests. No more requests. This
21 concludes our public comments. We're going to move into
Regional Council comments, but before we begin that I

22 just want to caution the Council representatives that
23 the issue here are the special circumstances, and those
24 are what I want the comments on. We've all got much to
25 do, and if I hear somebody going on about something
other than the special circumstances, I'll be a little
bit short because we want to keep this conversation
focused. We're not here to debate the Kenai Peninsula's
rural or nonrural status. If we accept the special

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1 circumstances, that will begin that debate. So I just
2 want to caution that, as well as Board members, you
3 know, when we advance to the Board discussions. We need
4 to focus our discussions.

5

6 With that, we'll open the Regional Council
7 comments. We'll go to the Southcentral first. It's
8 their region.

9

10 RALPH LOHSE: Mr. Chairman, in response to
11 your remarks. One of the suggestions that has been put
12 before you from the staff is not dealing with special
13 circumstances. It's dealing with an action that you
14 could take. And I feel that I'm required to talk to
that at the same time. We, as a Council, have found the
Kenai Peninsula rural twice. We have voted as a Council
that there are special circumstances. The special
circumstances have been pretty well laid out before you
so far.

11 One of the special circumstances that we
12 see, as a Council, is that if there are errors, if there
13 are mistakes, if there are problems that needed
14 corrected, to further put it off is unfair to the
subsistence users of the Kenai Peninsula. And use my
colleague, Nat Good's, illustration that he didn't use
this morning and I thought he would when we were dealing

with the C&T findings for the Dan O'Connor family, if
15 you put it off long enough, like one of the ladies
pointed out out there, some of the elders that are out
16 there will not be there to enjoy your decision one way
or the other.
17

And from that standpoint, as a Council, we
18 felt that that was the biggest special circumstance. We
do feel that there were questionable practices and
19 errors made in the providing the communities. We feel
that the fact that the Kenai is found rural for many,
20 many other purposes, in fact for almost all other
purposes, it seems contradictory to have it nonrural for
21 subsistence. They've demonstrated their use of it.

22 The thing that I'd like to speak to is the
idea that you put it off and you develop a methodology.
23 I think you should use the review to develop your
methodology. With the input you get in doing your
24 review -- and you're going to generate input from a lot
of interested people -- you'll be able to set up a
25 methodology that will help you when it comes time to
review those further down the line who have not

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1 requested a review at this time, who have not been
consistent in trying to point out special circumstances
2 and why they need a review.

3 A suggestion from my point would be that if
you're going to do anything for reviewing on the Kenai
4 Peninsula, you should do it when the residents of the
Kenai Peninsula are there, which is in the wintertime.
5 Any time you're dealing with rural Alaska, the time to
deal with rural Alaska is in the winter. Those are the
6 people that are there that are making use of
subsistence. The Kenai Peninsula does appear like it
7 has a large population. That population is much greater

in summertime than in the winter, but the density is
8 still fairly low.

9 I don't know if you can call it a special
circumstance, but we, as a Council, feel like we have
10 put a lot of time into this. We feel the fact that we
have requested it, requested this determination twice,
11 and requested special circumstances once, should in
itself, maybe not be a special circumstance, but be a
12 fairly powerful reason for you to look closely at your
idea of what special circumstances are.

13

We feel that, you know, one of the things
14 that was done in the original design was the drawing of
lines. And those lines were arbitrary. We've had
15 testimony from people who one part of their family is on
one side of the line and the other part of the family is
16 on the other side of the line, and there really isn't
any difference between the two of them. They live in
17 the same kind of houses, they drive on the same kind of
road, they live just -- you know, it's a line drawn on
18 the map. And it's divided families, it's divided
neighbors, and it's caused contention in the area.

19

With that, I've got one more thing to say.
20 And that is, when you have your hearings, if you have
your hearings, I have to go along with what the lady
21 said earlier. Hearings are not popularity contests.
When it comes to subsistence issues, you should listen
22 to subsistence users. There are people who do not want
them to have subsistence access, but the issue really is
23 do they meet the qualifications of rural and are they
subsistence users. Thank you.

24

CHAIRMAN DEMIENTIEFF: Ralph, I was keeping
25 track of every bit of your comments and, you know, one
of the things was that was pointed out, in two different

1 areas, is that the Southcentral Regional Council was not
involved in the original determination, and the fact
2 that you have made two different recommendations to us.
Those both were pointed out. So, I mean, if you thought
3 your testimony was off -- I mean your comments were off,
you were on on at least one of every point all the way
4 through. So, I mean, you know, I guess what I'm saying
is that the Southcentral Regional Advisory Council, you
5 know, is one of the driving forces here. The Kenaitzes
I know made the request, but you know from your
6 involvement with us, the role that the Regional Advisory
Councils play within the Board process. And so I just
7 want to comment to that.

8 RALPH LOHSE: Thank you, Mr. Chair, and I
realize that. I just thought that I should bring it out
9 one more time.

10 CHAIRMAN DEMIENTIEFF: Sure. Bill, do you
have a comment?

11

BILL THOMAS: Yes, Mr. Chairman. Thank
12 you. I have some curiosities here. When you limit our
participation to special circumstances, (inaudible) with
13 what the ambitions of the Board are with regard to our
participation. Are you looking for some sort of a
14 resolve, or are you wanting us to help justify the delay
of making a decision? There's been some compelling
15 testimony heard today. So I guess if we're going to be
confined to special circumstances, I need to see a fence
16 that boundaries those circumstances so that any comments
that I have will fall within those boundaries.

17

CHAIRMAN DEMIENTIEFF: I think you'll find
18 them in the letter of request which outlines the special
circumstances that initiated this process. And that's
19 in the packet. There are the five points that are
listed in there. I just want to focus on the issue at
20 hand. We can sit here and debate the issue of whether
Kenai is rural or nonrural, but that's not the issue
21 here.

22 The issue here, is there a reason to
reconsider whether the Kenai is rural or nonrural? And

23 what's driving that are the five special circumstances
24 that the Kenaitze Tribe has given us to consider whether
25 or not we can take this out of cycle. And then, should
we find that there are special circumstances, then we'll
begin the process of considering the rural/nonrural
determination. So that's the issue at hand.

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1

BILL THOMAS: I'm going to have to get
ahold of that copy, review it, and I hope we're not
through with this session by the time I get through it.

3

CHAIRMAN DEMIENTIEFF: They're right at the
start of the letter. It's right in the packet. They've
been available here the whole time.

5

BILL THOMAS: Council members, Mr. Chair,
we get different correspondence at times.

7

CHAIRMAN DEMIENTIEFF: We do have a couple
of opportunities here. We go to Regional Council
comments, we're going to do Board deliberation, and we
come back for Regional comments again. You know, so we
will have a couple of opportunities here.

10

Are there additional Regional Council
comments at this time? Yes?

11

NAT GOOD: Mr. Chairman. First, it doesn't
seem to me that the concern is just on the part of the
Kenaitze. It does seem also members of our panel do
have some concerns here regarding what was done in the
past, and they're not convinced that what was done was
right.

15

Second, this request for review may seem at

16 this point to be untimely since it's 1999, and 2000 is
17 when the census will be done. But on the other hand, it
18 wouldn't be 1999 if we had been able to act sooner. The
19 fault, if it be a fault, that it's 1999, doesn't rest on
20 the shoulders of the Kenaitze people. I'd say it's more
21 on our shoulders.

19 We're not being asked at this point to rule
20 or make a decision on whether the Kenai is rural or
21 nonrural. We're simply being asked to look at it again
22 and reconsider original action that placed it in its
23 present status. And I'd like to support the
24 recommendation by Southcentral, that if we're going to
25 be looking at developing a new means or a better means
or a fairer means of determining rural or nonrural
status, doing such a review on the Kenai at this point
might be an effective way of developing that vehicle.

25 Finally, I'm not sure quite whether this is
pertinent or not, but every time I hear this thing, and
it was brought up again with Fish & Game on the road

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1 system for nonrural determination in the state of
2 Alaska, I always have to think about this to myself and
3 say, well, if there is a road system or no road system,
4 if that is what makes the determination, I think we need
5 to make sure that all rural funds go to the state of
6 Alaska, because by this determination there are no
7 further rural areas in the Lower 48. Thank you.

5 CHAIRMAN DEMIENTIEFF: Thank you.
6 Additional Regional Council comment? Yes.

6 WILLIE GOODWIN: Mr. Chairman. It seems to
7 me that the testimony that's been coming forth here
8 today pretty much spells out the special circumstance
here. Why is it that when the decision was made by the

Federal Board that they used a State standard? It don't
9 make no sense to me. Here we have a federal program
that makes a determination on what's rural or nonrural,
10 and yet a State standard, which again, by the way, has
some real problem with subsistence, was used.
11

Certainly, I can understand some Board
12 members feeling to wait for 2000, but why wait? You're
going to revisit it then again anyway. If the
13 population numbers come out at year 2000 that it's more
than what the standard being used for a rural setting,
14 then you will have to revisit it. So I would think that
a decision to determine whether or not it meets the
15 circumstances to come out of cycle is appropriate, and I
think the Board should make a decision whether or not
16 the communities within the borough are rural. Thank
you.
17

CHAIRMAN DEMIENTIEFF: Thank you.
18 Additional Regional Council comments? Yes.

VINCENT TUTIAKOFF: Yes, Mr. Chair. Vince
19 Tutiakoff of Kodiak-Aleutians.
20

Kodiak was used as an example of a
21 redefinition of nonrural to rural, and it was a special
type circumstance that came about. The communities, as
22 they developed in the past eight years that I have been
part of this Board, I've seen a great pride in culture,
23 grade pride in their language, a great pride in the use
of their substance on and around Kodiak. And that was
24 all because a determination was made that Kodiak is a
rural community. And that on its own should be taken
25 into -- as part of the special circumstance for the
Kenai Peninsula.

1

We from the Aleutians know full well the
2 impact of not having cultural pride, or being overrun
because there's a military need, being removed from your
3 homes. Basically, that's what's happened to the Kenai
Peninsula. The Alaska State Department of Fish & Game
4 has been anti-subsistence and, to use Willie's words
over there, why did we use the State standard to
5 determine subsistence? I understand the process, the
need to -- and not having the Advisory Councils being
6 part of the determination process. They were not in
place. There was a six-month period in the beginning of
7 this whole process that caused a lot of confusion. So
we from Kodiak-Aleutians support the Southcentral
8 subsistence recommendation for the Kenai rural issue,
and ask for the Board's vote to rectify an injustice to
9 these people on the peninsula. Thank you.

10 CHAIRMAN DEMIENTIEFF: I think your
testimony is real germane, because although it wasn't
11 appealed because it was found out during the regulatory
cycle, that most of Kodiak was found to be rural, but in
12 the original recommendation, Kodiak was aggregated with
Chiniak and the -- is that the Coast Guard station? You
13 know, so that was aggregated early on in the process.
And I guess what I'm pointing out to you, I think your
14 testimony is real -- because there was an aggregation
error that was made early on in our process when we
15 adopted the regulations back in 1990, 1991.

16 VINCENT TUTIAKOFF: Thank you, Mr. Chair,
and again we urge you to take the special action and
17 consider the Kenaitze's need to have subsistence in
their lifestyle. Thank you.

18

CHAIRMAN DEMIENTIEFF: Mr. Goodwin, I was
19 just going to comment briefly, too, that why did we use
that early on process. And, you know, it's been said
20 many times in many of the meetings that I've been
involved with the Federal Board, we had to have a
21 beginning point. And in order to get a program on the
ground, in many cases we adopted the State regulations.

22

UNIDENTIFIED SPEAKER: (Inaudible)

23

CHAIRMAN DEMIENTIEFF: I was talking about

24 the regulations. Mr. Thomas.

25 BILL THOMAS: Thank you, Mr. Chairman.
Having reviewed some of the language in here, one of the

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1 most interesting terms I find in here is "aggregation."
Growing up, one of the first words I learned was
2 "rural." Our textbooks in school made reference to
rural settings. And rural was like the cheese. It
3 stood alone. There wasn't any aggregation. So if you
want to change the character of something, aggregate it
4 and it's no longer what it's supposed to be. So that
was the flaw, a serious flaw, in any determination by
5 using the process of aggregation. Had it not been for
that, there wouldn't have been any argument that the
6 Kenai Peninsula would have in fact qualified as a rural
area.

7

I was here from the very first meeting, and
8 the testimony we heard at that meeting was in great
contrast to what it is now. There wasn't anybody at
9 that meeting that supported any part of ANILCA. And the
results of the determination from that point on, we
10 selected the attitudes and ambitions of the testimony we
heard then. So with my colleagues on the Regional
11 Councils, I would encourage you to eliminate that
process of aggregation in determining rural status, and
12 go back to the formula that we used initially. From
what I understand, there was a figure of 7,000
13 population in any one given community that decided
whether or not it was rural or not. And for some reason
14 that doesn't seem to apply to the Kenai Peninsula, but
it does in the rest of the state. So I would urge
15 reconsideration and support the testimony, the
compelling testimony, to get these proud people off
16 their knees and give them back the courage to look

society in the eye. Thank you.

17

CHAIRMAN DEMIENTIEFF: Thank you.

18 Additional Regional Council comment? Mr. Sam.

19 RONALD SAM: Yeah, thank you, Mr. Chairman.

Just for my clarification, I have a question. And it
20 is, just how -- to what extent does Title VIII of ANILCA
cover these people? Because I, too, feel for all of our
21 Native people.

22 CHAIRMAN DEMIENTIEFF: Is that with regard
to the fact that Title VIII is Indian legislation? Is
23 that something you could speak to, Keith?

24 KEITH GOLTZ: I can speak to it. I do so,
though, with a preface that I think much too much is
25 being made out of those terms. As lawyers use them,
it's a method, a tool, for interpretation, and you only

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1 use that tool when the plain language of the statute is
unclear. So that in almost every case, whatever the
2 answer is, it's going to be irrelevant to a
determination. Our first task should be to read the
3 plain words of the statute.

4 Having said that, there has been some
controversy over the term "Indian legislation." One
5 panel of the Ninth Circuit did say that it was. That
was the original Gambell court. That case was taken to
6 the Supreme Court and reversed there. A second panel of
the Ninth Circuit just recently has said that Title VIII
7 of ANILCA is not Indian legislation. I just heard this
morning that that will be brought up for
8 reconsideration. But whatever the answer is, that
shouldn't drive our considerations here, and it doesn't

9 drive the considerations of the court. We should be
10 looking at the purposes of ANILCA, the factual record
11 before us, and come to reasoned and rational decisions.

11 CHAIRMAN DEMIENTIEFF: Additional Regional
12 Council comment?

12

GRACE CROSS: Mr. Chair.

13

CHAIRMAN DEMIENTIEFF: Oh, yes.

14

GRACE CROSS: After listening all day and
15 reading the five special circumstances, I feel that just
16 the five special circumstances provide compelling
17 evidence to make expedient decision in this case instead
18 of having people to wait additional more years. We're
19 not talking about one individual, one individual looking
20 for C&T determination. We're looking at a group of
21 people. Thank you.

19 CHAIRMAN DEMIENTIEFF: Thank you.
20 Mr. Thomas, you have additional comment?

20

BILL THOMAS: Thank you, Mr. Chairman.
21 With respect to our Solicitor's explanation on getting
22 away from lawyers' sense of language and getting back to
23 existing language in Title VIII, of which I'm more than
24 happy to do. Because you read the first five lines of
25 Section 8.01 in Title VIII, and that will give you clear
26 direction on who is eligible and who is not.

24

Also, Title VIII is only an umbrella. If
25 the stocks are adequate, if the management principles
26 are as good as people say they are, then there shouldn't

1 be any concern. But the longer our meeting goes on, the

longer we find that there are many stocks in peril, and
2 nobody's made a determination that there's a problem
with fisheries management. So I would agree with the
3 Solicitor and make reference to Title VIII. Thank you.

4 CHAIRMAN DEMIENTIEFF: Thank you.
Additional Regional Council comment? Yes, Mr. Rexford.

5
6 FENTON REXFORD: Mr. Chairman. I'd like to
support the Southcentral Regional Advisory Council's
7 recommendation, in having the Kenaitze Indian Tribe
preserve their livelihood and their subsistence way of
8 life and pass it on to their children. I would urge
that we take care of this. After I've been hearing all
9 the testimony and reading background on many testimonies
taken, and there is enough to make a decision this
10 afternoon. So I support, again, Southcentral,
(inaudible) for the Kenaitze Indian Tribe folks from
down there, Kenai area. Thank you.

11
12 CHAIRMAN DEMIENTIEFF: Thank you.
Additional comment?

13 WILLIE GOODWIN: Mr. Chairman?

14 CHAIRMAN DEMIENTIEFF: Yes.

15 WILLIE GOODWIN: One other point I forgot.
I do support Southcentral's recommendation. But another
16 point I would like to point out is the majority decision
of the Staff Committee. I like that decision, to view
17 this as a special circumstance.

18 CHAIRMAN DEMIENTIEFF: Yes.

19 GRACE CROSS: Mr. Chairman. If the Board
can consider individual C&T, why not tribal C&T?

20
21 CHAIRMAN DEMIENTIEFF: Do you want to take
a crack at it?

22 KEITH GOLTZ: Yeah.

23 CHAIRMAN DEMIENTIEFF: Mr. Goltz was just
commenting on how proud he was that we got through the
24 whole regulatory process and never called on him once,

and here we are.

25

KEITH GOLTZ: That's true. It's a sign of

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1 a good meeting when you shut the lawyer up. And we're
going downhill now, you know.

2

This is not an easy one to answer. There
3 is an answer. And the answer is in the plain language
of ANILCA, and it has to do with Congress and how it
4 treated Park areas. The Park and Monument areas were
treated with special consideration for the Park and
5 Monument areas. Considerations that weren't given to
other public lands. And basically, what that means is
6 that fewer people are probably going to get to hunt and
fish on Parks and Monuments than they would get to do on
7 Refuges and Forests. And that's a judgment made by
Congress.

8

The way they did that is to set up a
9 different sort of eligibility requirements for Parks and
Monuments. And in the legislative history, Congress
10 said a couple of things. One is they didn't want a
permit society. And the Park Service has implemented
11 that basically by setting up resident zones. So that if
somebody's within that zone, you get to use the Park and
12 Monument lands.

13 They also had special consideration given
for people who had historically used Parks. This is
14 something different than the rest of Title VIII. In the
rest of Title VIII, you become a rural user by living in
15 a rural area. You don't need any long history, until we
get to periods of extreme shortage. In Parks and
16 Monuments we've got special rules, special results. And
I would agree with you, at first blush it appears wildly

17 inconsistent.

18 ANILCA does not, however, turn to the
tribal unit with a blind eye. It starts with a tablet
19 that includes all of rural Alaska in periods of
abundance. When shortages occur, we narrow down the
20 area of available user groups in Section 8.04, so that
we gradually become dealing with people who have a
21 higher dependence on the resource and an historical use
pattern. And I think our common experience would show
22 us that the people who have been on the land the longest
and who have lived closest to the resource probably are
23 going to be the tribal groups in many cases. We don't
start that way, we don't use that language to get there,
24 but that's probably where we do end up in 8.04.

25 CHAIRMAN DEMIENTIEFF: Further Regional
Council discussion? You will get another opportunity

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1 once we, of course, begin the Board deliberation
process, which we shall now begin.

2

3 NILES CESAR: Are you ready for Board
deliberation?

4 CHAIRMAN DEMIENTIEFF: Yes, that's what I'm
saying.

5

6 NILES CESAR: Mr. Chairman, I'm prepared to
make a motion so we have something to discuss on the
floor. I move to accept the Kenai tribe request and
7 Regional Advisory Council recommendation to reconsider
the Board's 1990 nonrural determinations on the Kenai
8 Peninsula, based on special circumstances. That review
is to be completed and back to the Board by May 2000.
9 So moved.

10 CHAIRMAN DEMIENTIEFF: We have a motion.
Is there a second to the motion?

11

UNIDENTIFIED SPEAKER: Second.

12

13 CHAIRMAN DEMIENTIEFF: It's been moved and
seconded. Discussion?

14 DON OSTBY: Mr. Chair.

15 CHAIRMAN DEMIENTIEFF: Yes.

16 DON OSTBY: It's with some hesitancy that I
comment, being the newest member of this group, so I
17 hope you'll be patient with me. The new ears and new
eyes I bring to this may have misunderstood. My
18 understanding, that this is really not a C&T question,
nor is it a Native preference question. What I
19 understand this to be is a question regarding the
original rural determination decision for the Kenai and
20 whether or not special circumstances exist which argue
for a review of that decision.

21

With regards to significance, and after
22 listening to the thoughtful testimony today, it would be
hard to not feel that this is certainly significant to
23 many of the people in this room. The staff, in their
report, acknowledged inconsistencies of applying
24 criteria, which raised questions in their minds, and
acknowledge the availability of new information. From
25 my perspective, at least, administrative convenience is
not an appropriate criteria for deciding whether or not

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1 to do out-of-cycle review.

2 In addition, the divisiveness of this issue
3 must be acknowledged, but cannot be avoided because it
4 exists regardless of what decision we make. So from my
5 perspective, at least, there is significance to this
6 situation. And I believe that the issue of timing
7 that's been raised, had this been a new proposal to the
8 Board, I think we would be fully justified in deferring
9 it, recognizing the oncoming census. However, this is
10 something that in many ways we brought upon ourselves
11 through the many years of discussion, and so I propose
12 to support this motion.

13 CHAIRMAN DEMIENTIEFF: Additional comment?

14 NILES CESAR: Mr. Chairman.

15 CHAIRMAN DEMIENTIEFF: Yes.

16 NILES CESAR: Without sounding like I'm
17 speaking to the choir here, I think we, you know, have
18 listened to a lot of testimony over the last few years,
19 and I think that we all have our own position about the
20 rightness or wrongness of the decisions made in 1990.
21 The fact remains, is we're here, we're here today, and
22 for us to put this off until information is available,
23 which would likely be 2002 or 3, possibly, before full
24 information is available, I don't think is reasonable,
25 and I think that we've got to start the process. And I
26 think this is the way we start it, is to get on with it.
27 I would support my own motion.

28 CHAIRMAN DEMIENTIEFF: Additional comment?

29 DAVE ALLEN: Mr. Chairman.

30 CHAIRMAN DEMIENTIEFF: Yes, Mr. Allen.

31 DAVE ALLEN: I'll be very brief. I came to
32 this meeting, I think, pretty well convinced that the
33 Staff Committee had made a very good argument for delay.
34 However, as I listened to the testimony today, I think
35 the issue of its significance to the community, I've
36 been reminded very sharply, not only because of today's
37 testimony, but also because of testimony that we've
38 received in the past on the Kenai relative to how
39 significant and how important this overall issue is on

25 the Kenai, and the divisiveness that clearly it has
created.

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1

I'm not sure whatever we can do,
2 Mr. Chairman, is going to at all diminish the
divisiveness, because even as we speak about the
3 possibility of passing the resolution to begin
immediately to consider this out of cycle, whatever our
4 decision, I don't think anyone should presume that that
decision is necessarily going to remove that issue on
5 the Kenai. Because whatever the outcome, I think that
the possibility still exists that some form of
6 divisiveness will remain.

7 However, we've been at this business for
quite a while now, as has been mentioned. When we began
8 the process in 1990, I think there was a high level of
expectation that the State would act quickly to resume
9 its responsibility by changing its constitution as
necessary. Here we are nine years later with the very
10 likely prospect that it's never going to happen. We
have been the managers of the subsistence priority for
11 the last nine years. It certainly looks like we'll
continue to do this. It seems to me that we need to get
12 on with the business, and this is certainly an issue of
important business that we need to deal with. So I
13 intend to support this motion, Mr. Chairman.

14 CHAIRMAN DEMIENTIEFF: Thank you.
Additional comment? Mr. Rabinowitch.

15

SANDY RABINOWITCH: Sandy is good enough.
16 Thank you, Mitch.

17 I'm encouraged by Mr. Allen's words and,
having been part of the process and been to many of the

18 meetings, both on the Kenai Peninsula and many of the
19 Southcentral Council meetings, and heard much of this
20 testimony several times, I intend to vote for the
21 motion.

20

CHAIRMAN DEMIENTIEFF: As far as my
21 perspective on this tonight, you know, I believe that
22 there was an error in the aggregation of the
23 communities. And I think we found that out in 1995 when
24 we did the C&T determinations, because in a similar
25 issue we found some huge gaping holes that we did our
best to work on at that particular time. And while it
wasn't a perfect decision, you know, we still were able
to document some C&T determinations.

25

And we have firsthand knowledge of the

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1 divisiveness of this issue. I, myself, personally
2 attended seven out of the eight of those hearings, six
3 out of the seven on the peninsula, and, you know, was
4 subject to some terrible testimony, indicating the
5 divisiveness of this issue. The only reason I missed
6 the one was because I recall I had brand-new car, car
7 problems, and that was the only thing that caused me to
miss one of the hearings. I think that was in Homer.
8 But believe me, when I did catch up with the crew, I
9 tracked them and I found that the same type of testimony
10 was received in Homer that was basically received pretty
much throughout the northern part of the peninsula
anyway.

8 With regard to, you know, whether or not
9 ANILCA is Indian legislation or not, I was particularly
10 caught by the testimony from Kodiak and with regard to
the correction in that decision that was made, and the
explosiveness that's happened, explosive regrowth in the

Alutiiq culture since then. And I don't doubt for one
11 minute that that was tied to that correction in the
determination. Because in this decade the Alutiiq
12 culture has come alive. And for the most part, it was
beginning to be a dormant culture at that time. And I'm
13 particularly speaking of whether or not ANILCA is Indian
legislation, there's no doubt that that decision, or
14 that correction of what was a wrong decision or wrong
assertion, was directly responsible, or one of the
15 principal responsibilities.

16 The fact that there was no Regional Council
participation, we didn't have Regional Councils at that
17 time. But the growth in the federal program, at least
on the game side, has come from recent years and the
18 absolute involvement of our Regional Councils and their
participation in all of our decisions. I wish we would
19 have had these kinds of Regional Councils when we first
started out. But the growth that we've made, the
20 progress that we made is because in recent years we
partnered, although we have retained, clearly, the
21 decision making authority, you know, clearly, because
that is the Board's responsibility. It's not a
22 responsibility of the Regional Councils. But we've
partnered and we've come to grow with their
23 recommendations. And it's been good advice. And every
time we've hit a thorny problem -- and we've hit a
24 few -- the Regional Councils have played a principal
role, whenever we've had to bring whatever. And the
25 most recent example was signed, the resolution was
adopted yesterday, and the recent signing of the Muskox

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1 Management Plan in the North Slope.

2 And every time we accomplish them, you
know, it makes me proud because that does prove that

3 irregardless of whether you're State, in the case of the
4 Borough, the federal government, you know, we've been
5 able to come together. We've been able to persevere
6 with local people, despite each of our mandates, in some
7 areas. And I'm proud of each and every one of those
8 successes. And at the bottom of each and every one of
9 those successes, the Regional Advisory Council has been
10 the driving force. And as we hit these thorny problems
11 in the future, it's going to continue to be that way
12 because that is their role.

8

With regard to the Southcentral Regional
9 Advisory Council rural recommendation, I've been
10 supportive in the past of delaying the Regional Council
11 recommendation. And the reason is because I wanted to
12 make sure that in this kind of a tough issue, that the
13 Southcentral Regional Advisory Council went out and did
14 its homework. And they did that last fall. They've
15 done everything that we have asked them to do.
16 Everything. And while part of me wants to jump in and
17 tackle these tough problems, in recognition of this
18 trend of going to the Regional Councils, I just wanted
19 to make sure that the Regional Council was out there and
20 knew exactly what the situation was.

15

And the Regional Council did that. They
16 went out there and they had their hearings, they took
17 the tough testimony. And their recommendation, for that
18 reason, because they went out and did their homework,
19 has so much more weight with me. And I never doubted
20 their recommendation at any point in time. But the fact
21 that the Council went out there and did its homework,
22 I'm ready to go for all of those reasons, to support
23 this motion.

20

But I caution, even if we pass this today,
21 it doesn't mean that tomorrow the Kenai Peninsula is
22 going to be rural or next week it's going to be rural,
23 or that we can make a decision next month. We are
24 making this based on what happened in 1990, the 1990
25 census information. We're basing it on that because
that's our most recent. Until we get complete. So
we're going to take our time.

25 And I think, as far as the staff
recommendation of waiting for the 2002 census, and

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1 building a good solid recommendation, I personally
2 subscribe to the testimony that several people gave
3 today. Use this as a tool to allow us, when the new
4 census information comes in, that we'll be that much
5 farther along.

6 But to the Kenaitzes, it appears that the
7 request is going to be answered, but don't expect it to
8 happen overnight. We're assuming management in fish.
9 There's no apparent change in the legislative
10 initiative. We have big and serious work on every
11 front. Still, it will be June 1st before we get the
12 first money to work on fish. We have all of these other
13 complicated issues, and some of you that have sat
14 through here the last few days and last few years have
15 seen them. Some of the things I've mentioned that we
16 have to work on.

17 If and when this motion does carry, we're
18 going to have to schedule it, we're going to have to
19 work on it. It's not going to happen overnight. We're
20 going to need the time to be able to do it, and that may
21 frustrate some of you. But the fact is, if this motion
22 carries, we're going to go ahead and we're going to
23 schedule that to the best of our ability, and within the
24 resources that we have. But believe me, we have worked
25 this staff as hard as we can with the resources we have.
26 It doesn't mean we can't do it. It doesn't mean we're
27 going to delay for years. But it does mean that we're
28 going to need some time to do it. But we will schedule
29 those meetings when we're going to talk about this. We
30 will schedule them, there will be a public meeting. You
31 will be available to track with us as we schedule these
32 things. But I just ask, knowing what I know about the
33 Kenai, having gone through those 95 determinations when
34 we had very much less on our plate -- you know, knowing

19 what I know about this issue, it's going to take some
20 time, but we will be able to do it. And you will be
21 able to track us, because it's not something that's
going to be done behind doors when we talk about
scheduling these things.

22 Final round of Regional Council comment and
we're ready to vote. Mr. Thomas?

23

BILL THOMAS: Thank you, Mr. Chairman.
24 This is indeed a milestone in my involvement. In the
capacity of a Regional Vice Chair, I knew the potential
25 was there, I knew the chemistry was there, I knew the
commitment was there. I appreciate the

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1 conscientiousness and the convictions that were
eloquently expressed, especially by Mr. Allen, with
2 regard to the divisiveness. The nature of the
population of Alaska, the nature of the issue at hand
3 has opposing philosophies, and respectable
justifications on both sides. Resource is one part of
4 our environment that demands respect and responsible
stewardship of its use, whether it's for consumption or
5 whether it's for marketing. It deserves the respect of
that responsibility and discipline.

6

I'm also really elated to know that the
7 testimony we heard today, based on some very good
homework from Southcentral, caught the ear and was able
8 to be understood to a point to give you the confidence
to move forward on it. I commend you for that. I think
9 it's very wise. It's not going to be easy. You're
going to run into confrontation in the process. But we
10 have a legislative process in ANILCA that gives us a
step by step guideline. As long as we can follow those
11 guidelines and steps to the best of our understanding

and interpretation and intent, we'll do okay. And I
12 just wish the Board as a majority to pass this motion.
I certainly support the motion. And in any case, you've
13 all got my respect regardless of the direction you take
on your vote. Thank you, Mr. Chair.

14

CHAIRMAN DEMIENTIEFF: Any other final
15 Regional Council comment?

16 RALPH LOHSE: Mr. Chair. Ralph Lohse,
Southcentral. I, too, would like to thank the Board for
17 the motion that's on the table. I hope after this
motion is voted on the ball will be in your court, not
18 ours. And as Southcentral chair, I'd like to also
remind you that, you know, the job's not going to be
19 done for the people that have been coming and
testifying. You're going to have to count on the fact
20 that a lot of the people that have brought it this far
are going to have to be coming again, and they deserve
21 our respect. And I thank you for that.

22 CHAIRMAN DEMIENTIEFF: Any other final
thoughts?

23

PEGGY FOX: Mr. Chair.

24

CHAIRMAN DEMIENTIEFF: Yes.

25

PEGGY FOX: We're done with Council

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1 comments?

2

CHAIRMAN DEMIENTIEFF: I don't know; are we
3 all done? Okay, go ahead, Fenton.

4 FENTON REXFORD: Thank you, Mr. Chairman.
Your actions today, or the other day, on the example
5 becoming reality is the cooperation with the
controversial partners or colleagues that we have around
6 this table here. It's difficult to get all the users
and all the federal and state agencies together, but
7 once we get a working group, we roll up our sleeves
together in the room and make it hot. But we got time
8 to cool off and pursue your project, whatever it is.
Thank you for using this as an example, and hopefully
9 that will go on with the folks in the Southcentral area.

10 CHAIRMAN DEMIENTIEFF: Vince.

11 VINCENT TUTIAKOFF: Yes, Mr. Chairman. I'd
like to thank you for your comments earlier regarding
12 the explosive lifestyle changes made in Kodiak. We
understand this process is going to take what it will
13 take for the people in Kenai. At least now they can
start to put together a program that will be good for
14 their communities, for their children, and the elders
now can be looked at as teachers. And hopefully this is
15 what this is all about, and I thank you for the motion
and hope that we go ahead from here. Thank you.

16

CHAIRMAN DEMIENTIEFF: Peggy?

17

PEGGY FOX: Yes. I just wanted to add my
18 support to the motion. And very briefly, I guess the
only thing else that I wanted to say that would add to
19 what's already been said is to build on what Ralph was
saying and thank the people that came today and that
20 came to the hearings on the Kenai. I think the more
information we have, the better the decisions we make.
21 And very often the decision sways on the testimony at
the hearing. And so I wanted to thank you and say I'll
22 probably see you at the next hearing.

23 CHAIRMAN DEMIENTIEFF: Okay. I think
everybody's had their say now, and if nobody has any
24 objection, we're going to go ahead and move on and take
the vote. All those in favor of the motion, please
25 signify by saying "aye."

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1 IN UNISON: Aye.

2 CHAIRMAN DEMIENTIEFF: Those opposed, same
3 sign.

4 (No response.)

5 CHAIRMAN DEMIENTIEFF: Motion carries.

6 With that we complete work in the
7 Southcentral Peninsula. I just want to make a brief
8 comment. We've got a couple of other items, Board
9 members, as I talked about earlier. One of our friends
10 is leaving us, and now I know why. He must have had an
11 inkling of the vote. Mr. Robert Willis, I guess will be
12 taking a job in D.C. But he was a big part of those
13 hearings on the Kenai in 1995, and he must have had an
14 inkling which direction this Board was going to go,
15 because he's transferring out before we head back to the
16 Kenai. But I understand, Robert, that you've got a new
17 assignment back in D.C., and I just want to express my
18 appreciation for all the work you've done within your
19 job responsibilities.

20 ROBERT WILLIS: Thank you, Mitch. Going
21 back to the Kenai has nothing to do with my decision.

22 (Laughter)

23 ROBERT WILLIS: I think the Board did some
24 excellent work today, and I'd like to personally thank
25 everybody that I've worked with and that supported me
26 and worked so hard to make this program go for the last
27 seven years. I agree with you that there's a lot of
28 thorny issues that are going to have to be dealt with.
29 Every time the Board meets and the Council meets and the
30 Staff Committee meets. I'm personally encouraged by the
31 increasing length of the list of consent agenda items

20 that we have.

21 Certainly there will always be a lot of
22 disagreement in an arena like this, but there's also a
23 common thread that binds us all together, and that is
24 that everybody here is concerned about making sure that
25 there are always healthy populations of wildlife out
there, both for its own intrinsic value and for the
benefit of the people who use it. And I think that as
long as we all remember that, that we'll continue to be
able to work together, even though we also continue to
disagree. So thanks for the experience and for the

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1 education.

2 CHAIRMAN DEMIENTIEFF: Thank you. Again,
we had asked the Regional Advisory Councils to meet to
3 name some people to help us with our fisheries
discussions with the State. I am going to ask the
4 Commissioner of Department of Fish & Game to add these
names to the list of people who will meet jointly. If
5 the State, for whatever reason, balks at the decision,
these two names and their alternate will be added to our
6 Federal Board when we meet to discuss these discussions.
You know, we will give the State the courtesy, since
7 this did come up only on Monday, we will give the State
the courtesy if they want to reject. That's no problem.
8 They'll still be a part of our own discussions, because
normally we meet prior to meeting with the State to go
9 over issues. But the Regional Council chairmen have
appointed Dan O'Hara and Willie Goodwin as their two
10 delegates, with Ron Sam as their alternate. So I would
just make that announcement. And they will be involved
11 in the discussions at whatever level.

12 The recommendation of the Staff Committee

with regard to the core team staff is that Greg Bos be
13 the federal lead, Bob Gerhard, Monty Millard, and Cal
Casipit. That's the recommendation from the Staff
14 Committee as the core team staff. I'm not sure, did we
need that for a Board motion?
15

UNIDENTIFIED SPEAKER: You asked us to
16 report to you.

CHAIRMAN DEMIENTIEFF: To report on what
17 the recommendation was. I don't know if we want to just
18 make that. Now, the thing to point out is irregardless,
even though we've kept this team staff, that it's not
19 going to limit other staff being there. They're not
going to be closed meetings. There just simply wasn't
20 enough seats to go around, since we tried to keep that
core team real small. But every time they meet, either
21 individually or with the State, you know, other staff
are still invited to that process. Particularly, I'm
22 sure they'll be airing out their agendas of what's going
to be on there, and if there's something that's a
23 subject matter that people feel they need to have a
staff person on there, then I don't think that's going
24 to be a problem. So do we want to just accept the Staff
Committee recommendation, or what's the pleasure of the
25 Board? Is there a move to do that?

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1 UNIDENTIFIED SPEAKER: So moved.

2 UNIDENTIFIED SPEAKER: Second.

3 CHAIRMAN DEMIENTIEFF: It's been moved and
seconded. Discussion? Hearing none, all those in favor
4 signify by saying "aye."

5 IN UNISON: Aye.

6 CHAIRMAN DEMIENTIEFF: Those opposed, same
7 sign.

8 (No response.)

9 CHAIRMAN DEMIENTIEFF: Motion carried.

10 I think we've completed our agenda, have we
11 not? Is there anything else? Mr. O'Hara?

12 DAN O'HARA: Mr. Chairman, I just want to
13 thank you for helping us out with the proposals. We
14 appreciate you taking each one and wading through them.
15 We found out that you are not a rubber stamp board. You
16 can tie a vote just like we can, and a lot of
17 consideration was given, and we thank you very much for
18 your time.

19 CHAIRMAN DEMIENTIEFF: Good, okay. With
20 that, we've completed our work ahead of schedule, and I
21 guess there being no further business, we shall adjourn
22 the Board.

23 (Meeting adjourned at 2:45 p.m.)

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1 STATE OF ALASKA)

2 I, KIM R. BEHRENS, RMR-CRR, Registered
3 Merit, Certified Realtime Reporter, Notary Public in and
4 for the State of Alaska, do hereby certify that the
5 above transcript, pages 220 through 323, inclusive, was
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8 I FURTHER CERTIFY that the foregoing is a
9 transcript of the proceedings which occurred at the time
10 and place specified hereinbefore.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand and seal this day of , 1999.

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Notary Public
State of Alaska

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17 My Commission Expires: 4.24.00

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