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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT CASSELL,

Plaintiff,

v.

STATE OF ALASKA, BOARD OF GAME,

Defendant.

Case No. 3AN-19-07460 CI

**MEMORANDUM IN SUPPORT OF MOTION FOR INTERVENTION BY
ALASKA PROFESSIONAL HUNTERS ASSOCIATION**

The Alaska Professional Hunters Association ("APHA"), by undersigned counsel, respectfully moves for intervention as of right under Civil Rule 24(a) as a defendant and, in the alternative, for permissive intervention under Rule 24(b).

APHA moves to intervene on behalf of its hunting guide members including Paul Chervenak, Mike Munsey, and Samuel Rohrer who earn the majority of their income from guiding hunters who are not residents of Alaska (“non-residents”) on bear hunts on Kodiak Island. Plaintiff Cassell demands that named Defendant State Board of Game (“State Board of Game” or “Board”) be required to reallocate bear tags for this hunt, and other hunts. Cassell wants almost all tags (individual hunter permits to harvest a bear in this Kodiak Island off-road-system hunt) to be available only to hunters who are residents of Alaska (“residents”). The motion is supported by the Affidavits of APHA Executive Director Deborah Moore and APHA members Chervenak, Munsey, and Rohrer. As required by Rule 24(c), a proposed Answer to the Complaint is submitted with this Motion. Defendant State Board of Game does not oppose intervention. Plaintiff Cassell does oppose intervention, and asks that APHA be restricted to *amicus curiae* status.

I. FACTUAL BACKGROUND

APHA is a non-profit organization that is dedicated to wildlife conservation and protecting Alaska’s hunting heritage, and is the trade association for Alaska’s hunting guides. Moore Aff. ¶¶ 1-3. The association participates in a number of activities such as the creation of a board to oversee the ethical standards and licensing provisions for guides, as well as sponsoring wildlife conservation initiatives designed to enhance hunting opportunities. *Id.*

APHA members include 15 hunting guides who live on Kodiak Island. Moore Aff. ¶ 1. This includes Master Guides Chervenak, Munsey, and Rohrer. Each of them earn the substantial majority of their income guiding bear hunts on the Island for non-resident hunters in fall and spring hunts that are directly at issue in this case. Chervenak

Aff. ¶¶ 1-4, 9; Munsey Aff. ¶¶ 1-4, 9; Rohrer Aff. ¶¶ 1-5, 10. The particular hunt directly at issue is the Kodiak off-road bear hunt, which is conducted mostly on federal lands inside the Kodiak National Wildlife Refuge (“Refuge”). Rohrer Aff. ¶ 8; Munsey Aff. ¶ 7; Chervenak Aff. ¶ 7. Chervenak, Munsey, and Rohrer each hold competitively-awarded federal concessions (called Special Use Permits or “SUPs”) granted by the Refuge, giving them the exclusive right to guide hunts on their respective guide use areas in the Refuge. *Id.* Alaska residents are free to hunt on the same Refuge lands without a guide, but non-residents must hire a guide. See AS § 16.05.407-408. The federal land manager granted the SUPs in part so that citizens of other States (i.e. non-residents) have the ability to hunt on this federal land unit, and in part because of the conservation values that having a guide promotes. See Chervenak Aff. ¶¶ 7-8; Munsey Aff. ¶¶ 7-8; Rohrer Aff. ¶¶ 8-9; Kodiak N.W.R. Comprehensive Conservation Plan, Summary p. 11, p. 2-67, and Appx. E (excerpts supplied as Exhibit A to this Motion and quoted in these guide affidavits).

We have a zero-sum game here. Plaintiff Cassell seeks a judicial decree invalidating the existing State rule (5 AAC 92.061), under which the majority of Kodiak Island brown bear hunting tags (currently 67%) are allocated to Alaska residents and the minority are allocated to nonresidents (currently 33%). Cmpt. ¶¶ 33, 36, 39, and 42; Chervenak Aff. ¶ 9; Munsey Aff. ¶ 9; Rohrer Aff. ¶ 10. Cassell proposes that Defendant State Board of Game instead allocate 90% of tags exclusively to resident hunters. *Id.* at ¶ 19. Cassell asks that the remaining 10% of tags for which non-residents would be eligible be also open to residents, and distributed through a drawing, with the result that the very small number of tags that non-residents could obtain fluctuates each year, making business planning for guides even harder. *Id.* at ¶ 20. Cassell filed this lawsuit

after Defendant State Board of Game denied his proposal to amend the Rule in an administrative proceeding in which he and his association Resident Hunters of Alaska (“RHAK”) squared off against the guides and their association APHA, after both sides and others provided testimony and comments. *Id.* at ¶¶ 21-30. Copies of the public comments list and testifying citizens lists from the Board proceeding are supplied as Exhibit B to this Motion, and the audio recording of the Board’s debate and vote is Exhibit C. Plaintiff Cassell attaches to his Complaint some of the evidence submitted to the Board.

Cassell’s proposal would devastate the hunting guide industry on Kodiak Island, due to the fact that almost all the guides’ business comes from guiding non-resident hunters, most importantly for bear hunts, a business that substantially supports the Kodiak economy. See Rohrer Aff. ¶ 5; Munsey Aff. ¶ 4; Chervenak Aff. ¶ 4; Moore Aff. ¶ 5. The State’s hunting guide industry is dependent on business from non-residents for two reasons. First, Alaska statutes mandate that non-residents hire a guide for certain types of hunt, including this hunt. AS § 16.05.407-408. Second, non-residents are far more likely than residents to voluntarily hire guides, because non-residents need more help than residents in overcoming the many logistical hurdles to hunting in remote portions of Alaska (transportation, shelter, equipment), and non-residents are quicker than residents to recognize they need help understanding the local species’ habits and hunting conditions. Rohrer Aff. ¶ 5; Munsey Aff. ¶ 4; Chervenak Aff. ¶ 4; Moore Aff. ¶ 5. The changes sought by this lawsuit, particularly the requested finding by this Court that the State Constitution mandates a preference for resident hunters, would also devastate the hunting guide business in Alaska generally. Guides throughout the State are dependent

on business from non-residents, and there are many hunts for which tags are allocated by drawing with an allocation between residents and non-residents. Moore Aff. ¶¶ 5-7.

II. SUMMARY OF ARGUMENT

Regardless of whether this lawsuit is formally a judicial review under the Administrative Procedure Act, the Complaint makes clear that this is litigation that arises from and seeks to change the result of an agency adjudication between the plaintiff (Cassell) and applicant defendant intervenor (APHA) in which APHA prevailed when Defendant State Board of Game denied Cassell's request to amend 5 AAC 92.061. See Cmpl't. ¶¶ 21-30 (noting guides' arguments to Board). APHA is the appellee in substance, if not in formal procedural terminology.

The adjudicating agency here (Defendant State Board of Game) is charged with making the decision allocating hunting opportunities between two competing and irreconcilably different interests (Cassell/RHAK on the one hand, and the hunting guides/APHA on the other hand), and so must maintain neutrality, and therefore cannot adequately represent the interests of the competing litigants before it. AS § 16.05.255(j) ("This section authorizes the board to regulate regarding the conservation, development, or utilization of game in a manner that addresses whether, how, when, and where the public asset of game is allocated or appropriated."). There is a divergence of interests between the Board's duty to seek the best solution for Alaska's citizens and APHA's narrow parochial interest in maintaining a sufficient number of non-resident tags so APHA member guides (the vast majority of whom are Alaskans) can maintain hunting guide businesses dependent on non-resident clients. Further, as a State agency, the Board has no interest in representing the interests of APHA members Chervenak, Munsey, and

Rohrer arising under their competitively-awarded exclusive federal concessions (SUPs) to guide hunters on Kodiak National Wildlife Refuge, where most of the bear hunt in question is held. As discussed above, that federal land unit issued the SUPS in large part so that citizens of other States could come to Alaska and have a hunting experience – a federal action that would be frustrated (and the SUPs rendered largely worthless) if the non-resident hunters cannot obtain tags.

The case therefore presents an even stronger argument for intervention than in this Court's recent decision in *Municipality of Anchorage v. Uber Technologies, Inc.*, 2014 WL 8764781 (Alaska Super. 2014) ("Uber Technologies"). There, Judge Michael Corey granted taxi cab drivers permissive intervention to intervene as plaintiffs in an enforcement lawsuit brought by the Municipality of Anchorage alleging Uber was engaged in operating a taxi business without a taxi license. *Id.* at *1-2. He denied the taxi cab drivers intervention-as-of-right because of a finding that the taxi cab drivers and Anchorage had an identical alignment. *Id.* at *1. In that case, Anchorage represented all its citizens, including taxi cab drivers, in enforcing its regulatory laws. The Municipality did not act as an impartial administrative adjudicator between two competing interests in an agency proceeding leading up to the lawsuit, as is the case here. APHA should be granted intervention as of right, as well as permissively, so that it can continue its participation as a party in this case as it moves from the agency to the judicial level.

III. STANDING OF APHA TO MOVE TO INTERVENE ON BEHALF OF ITS MEMBERS.

An association has standing to intervene on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted

nor the relief requested requires the participation of individual members in the lawsuit. *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 911 (Alaska 2000) (citing *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333 (1977)). “Favoring increased accessibility to judicial forums,” courts grant standing liberally. *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987).

In applying the first element (whether the association’s members would themselves have standing to move to intervene), Alaska employs the interest-injury approach. *Id.* (citing *Trustees for Alaska*, 736 P.2d at 327). The interest-injury approach asks whether the members’ interests are “adversely affected by the complained-of-conduct,” resulting in an injury that may be economic or intangible. *Id.*¹ This requirement is easily satisfied here. As previously stated, several of APHA’s members, including Chervenak, Munsey, and Rohrer, earn the majority of their income working as bear hunting guides on Kodiak Island for clientele who are almost entirely non-residents. Moore Aff. ¶¶ 5, 7; Chervenak Aff. ¶¶ 1-4, 9; Munsey Aff. ¶¶ 1-4, 9; Rohrer Aff. ¶¶ 1-5, 10. They would effectively be put out of business should non-resident hunting permits be dramatically reduced in number, as Plaintiff is seeking. *Id.* That is an injury to the members of the association. The injury element of association standing is met.

The second element (whether APHA defending its members on the issues raised by the lawsuit is germane to APHA’s mission) is also easily satisfied. APHA is a trade

¹ “The degree of injury need not be great; an ‘identifiable trifle’ is said to suffice to fight out a question of principle.” *Trustees for Alaska*, 736 P.2d at 327. Further, this threshold is lower than the interest standard needed to satisfy Alaska Civil Rule 24(a), which requires the interest be “direct, substantial, and significantly protectable.” *State v. Weidner*, 684 P.2d 103, 113 (Alaska 1984).

association of Alaskan hunting guides who, as discussed above, depend almost entirely on the business of non-resident hunters. Moore Aff. ¶ 5; Chervenak Aff. ¶¶ 1-4, 9; Munsey Aff. ¶¶ 1-4, 9; Rohrer Aff. ¶¶ 1-5, 10. Defending against legal actions that threaten its members' ability to earn income in their trade is the quintessential mission of a trade association like APHA. Moore Aff. ¶¶ 6, 11.

The third element of association standing (that direct participation of the injured association members as parties is not necessary) is also met here. There is no need for the injured members, including the three members who have submitted affidavits, to directly participate as parties, so long as APHA participates for them. *Alaskans for a Common Language, Inc.*, 3 P.3d at 915-16. APHA members Chervenak, Munsey, and Rohrer have all committed in their Affidavits to participate in producing information in any discovery that may occur, despite not being direct parties. Chervenak ¶ 12; Munsey ¶ 11; Rohrer ¶ 12. Thus the factual element of this case (the benefits to Alaska's people that flow from non-resident hunters spending substantial sums to pay Alaskan hunting guides, pilots, equipment vendors, hotels, etc.) can be explored in discovery with the participation of the member guides should this case not be judicially reviewed on a closed administrative record. And should the case be judicially reviewed on a closed administrative record, then we have legal issues on which no discovery is needed. Either way, the participation of the APHA members as direct parties is not necessary. Furthermore, it is more efficient for individuals to be collectively represented by a single party. Finally, should the Court determine that direct participation of the injured members is necessary, Chervenak, Munsey, Rohrer all state in their Affidavits their willingness to

intervene directly as defendant parties. Chervenak Aff. ¶ 12; Munsey Aff. ¶ 11; Rohrer Aff. ¶ 12.

Because the three elements of association standing are satisfied, APHA has standing as an association to move to intervene. *Alaskans for a Common Language, Inc.*, 3 P.3d at 911.

IV. ARGUMENT

A. STANDARDS FOR INTERVENTION

Alaska R. Civ. P. 24(a) governs intervention as a matter of right while Alaska R. Civ. P. 24(b) governs permissive intervention.

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common.

...
In exercising its discretion the court shall consider whether the intervention would unduly delay or prejudice the adjudication of the rights of the original parties.

B. APHA IS ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(A)

A litigant seeking to intervene under Alaska R. Civ. P. 24(a) bears the burden of establishing: (1) that the motion to intervene is timely; (2) that the movant has an interest in the subject matter of the action that is direct, substantial, and significantly protectable; (3) that the interest may be impaired as a consequence of the action; and (4) that the interest may not be adequately represented by an existing party. *Alaskans for a Common*

Language, Inc., 3 P.3d at 911-12 (citing *State v. Weidner*, 684 P.2d 103, 113 (Alaska 1984)). In evaluating these elements, the courts favor allowing access to the courts and liberally construe Alaska R. Civ. P. 24(a). *Id.*

1. Timeliness

This motion is filed less than three weeks after the filing of the State of Alaska's Answer, and no motions of any kind have been filed. Discovery has not yet commenced. Under the Court's Scheduling Order, trial will not occur until August 10, 2020, which is more than a year from now. APHA gave written notice to Plaintiffs of their intent to intervene on July 12, 2019. The motion to intervene is timely.

2. Sufficiency of Intervenor's Interests and Possible Impairment of Interests

When seeking intervention under Alaska R. Civ. P. 24(a), the proposed intervenor's interest must be "direct, substantial, and significantly protectable." *Alaskans for a Common Language, Inc.*, 3 P.3d at 912 (citing *Weidner*, 684 P.2d at 113). Maintaining the viability of the APHA's members' businesses satisfies this requirement. See *Uber Technologies*, 2014 WL 8764781, at *1 (finding that taxi cab drivers satisfied significant protectable interest element in seeking to join Anchorage's lawsuit against Uber).

Some repetition here of the discussion of member injury in the association standing section above is unavoidable. Should Plaintiff's Complaint succeed and the number of Kodiak Island bear hunting tags allocated to non-residents is reduced by 70% to 87.5%, as Cassell seeks, APHA's members (specifically Chervenak, Munsey, and Rohrer) will be severely economically injured by the loss of non-resident bear hunters, losing more than half of their income. Chervenak Aff. ¶ 9; Munsey Aff. ¶ 9; Rohrer Aff. ¶ 10.

Non-resident bear hunts comprises 75% to 85% of the guides' income. Chervenak Aff. ¶ 3; Munsey Aff. ¶ 3; Rohrer Aff. ¶ 2. Even if a non-resident received one of the few remaining available bear tags, or a resident hunter occasionally hired a guide, the lack of economies of scale would make guiding unprofitable. Chervenak Aff. ¶ 9; Munsey Aff. ¶ 9; Rohrer Aff. ¶ 10. As noted, APHA members also hold competitively-awarded SUPs issued by the U.S. Fish and Wildlife Service ("FWS") that grant them the exclusive right to guide hunts on specific areas of Kodiak National Wildlife Refuge, where most of the bear hunt at issue is held. Chervenak ¶ 7; Munsey ¶ 7; Rohrer ¶ 8. Should Plaintiff's Complaint succeed, these SUPs would no longer be economically viable (due to the loss of 75% to 85% of income derived from guiding non-resident bear hunts). Chervenak ¶ 8; Munsey ¶ 8; Rohrer ¶ 9. As discussed above, the lawsuit would impair all these interests if successful. Cassell seeks a judicial order mandating that the State Board of Game decline to allocate any set of tags to non-residents, and seeks (or has sought before the Board) an order mandating that at least 90% of tags go to residents. Cmpl't. ¶¶ 19-20. Finally, Cassell seeks a declaratory ruling that the State Constitution mandate resident preference, further impairing APHA's interests. *Id.* ¶¶ 33, 36, 39, and 42. The relief Cassell seeks would reduce non-resident bear tags by approximately 80%. Chervenak Aff. ¶¶ 3, 7-9; Munsey Aff. ¶¶ 4, 7-9; Rohrer Aff. ¶¶ 5, 8-10.

The significant protectable interests and possibility of impairment elements are met.

3. The State Board of Game Does Not Adequately Represent APHA's Interests.

Where the other elements are met, Rule 24(a) requires that intervention be granted "unless the applicant's interest is adequately represented by existing parties." The State

Board of Game is an adjudicating agency that does not adequately represent APHA's narrow interests.

The Alaska Supreme Court has held that the inadequate representation element in Alaska R. Civ. P. 24(a) "requires application of the same test" as the nearly identical Fed. R. Civ. P. 24(a), on which it is modeled, and so cites federal cases as authoritative. See *McCormick v. Smith*, 793 P.2d 1042, 1044 n. 7 (Alaska 1990).² For example, the Court held it is not necessary to show that representation will be inadequate, because it is sufficient if representation "may be inadequate." *Id.* (quoting *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538, n. 10 (1972)) (emphasis added).

Where the named defendant is a government agency charged with representing the interest of a citizen constituency including the proposed intervenor, which is not the case here as explained below, representation is rebuttably presumed to be adequate. *McCormick v. Smith*, 793 P.2d 1042, 1044 (Alaska 1990) (citing the First Circuit case of *Morgan v. McDonough*, 726 F.2d 11, 13 (1st Cir. 1984)). Where this presumption applies, it is rebutted by a showing that there is: (1) collusion, (2) adversity of interest, (3) possible nonfeasance, or (4) incompetence. *Alaska v. Weidner*, 684 P.2d 103, 113 (1984) (citing *Curtis v. United Transportation Union*, 486 F.Supp. 966, 908 (E.D.Ark. 1979)); see also *McCormick*, 793 P.2d at 1045 (following *Weidner*).

² Federal Rule of Civil Procedure 24(a) provides:

(a) **INTERVENTION OF RIGHT.** On timely motion, the court must permit anyone to intervene who: ...

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The first step in determining if the State Board of Game is charged with representing the interests of APHA, and thus whether the rebuttable presumption applies. To be sure, the guides who make up APHA are mostly Alaska residents. Moore Aff. ¶ 5. However, if Plaintiff Cassell is correct in arguing that the State Constitution mandates that the interests of non-resident hunters be subordinated to the interests of resident hunters, even where the non-resident hunters spend money in Alaska hiring Alaskan guides, it follows that the interests of non-resident hunters (who appear only through APHA) are interests State agencies, including the Board, are not charged with representing. See Cmpl't. ¶¶ 10, 12, 28, 32, 35, 38, 41. Because Plaintiff's allegations that the Board must ignore or subordinate the interests of non-residents must be presumed true at this stage of the case, the State Board of Game is **not** charged with representing APHA's interests in supporting non-resident hunters, and the rebuttable presumption of adequate representation is inapplicable. This is the flip side of the First Circuit case (*Morgan*) that the Alaska Supreme Court cited for presumption that a public agency adequately represents the citizens it is "charged" with representing. See *McCormick*, 793 P.2d at 1044, n. 7 (citing *Morgan*, 726 F.2d at 13). There the First Circuit observed that a school board is charged with representing the interests of students in the schools it administers. *Morgan*, 726 F.2d at 13. By the same token, a school board would not be charged with representing the interests of students in **another** school district. Similarly, the State Board of Game is not charged with representing the interests of out-of-State hunters.

There is a second independent reason the rebuttable presumption of adequate representation does not apply, and why sufficient adversity exists to rebut that presumption if it does apply. The Board is charged with being an impartial adjudicator in

hunting opportunity allocations. AS § 16.05.255(j). The Board's statutory duty is not to represent the interests of either (1) Plaintiff Cassell and like-minded Alaska resident hunters who want all, or the lion's share of tags to go to residents, or (2) APHA and its guides who want sufficient tags to go to non-residents for the guiding business to be viable. The Board cannot adequately represent either of the competing groups, in the same way that a trial court judge cannot adequately represent the interests of either the tort plaintiffs or tort defendants who appear before her. Indeed, it would be highly problematic if the Board was somehow charged with representing the narrow interests of APHA in keeping hunting opportunities available to non-residents. Such a duty of representation would make it difficult for the Board to impartially adjudicate.

As noted above, the Alaska Supreme Court in *McCormick* found the federal cases construing Fed. R. Civ. P. 24(a) to be authoritative. The strong majority of federal circuits grant intervention, whereas here, the state or federal agency represents the broader public interest and the proposed intervenor represents a much narrower and parochial interest in advocacy before that agency. See *Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810, 818, 822-23 (9th Cir. 2001); *Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489, 1499 (9th Cir. 1995) ("Inadequate representation is most likely to be found when the applicant asserts a personal interest that does not belong to the general public"); *Dimond v. District of Columbia*, 792 F.2d 179, 192-93 (D.C. Cir. 1986) (agency entrusted with representing the public cannot simultaneously protect a potential intervenor with a "more narrow and parochial financial interest" not shared by its other citizens); *Maine v. United States Fish & Wildlife Serv.*, 262 F.3d 13, 19 (1st Cir. 2001); *Kleissler v. U.S. Forest Service*, 157 F.3d 964, 972 (3d Cir. 1996) (government-

defendant's "views are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor"); *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997); *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 1000–01 (8th Cir. 1993) (following *Dimond*, *supra*); *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir.2009) (government's broader public interest is not "identical to the individual parochial interest" of group even though both seek same result); *National Farm Lines v. I.C.C.*, 564 F.2d 381, 383-84 (10th Cir. 1977).³

We acknowledge that Judge Corey in *Uber Technologies* took the view that Alaska has "diverged" from the federal case law and construes the "adversity" prong much more strictly. 2014 WL 8764781 at *1. Judge Corey thus denied intervention as of right to the taxi cab drivers, but granted permissive intervention. *Id.* As an initial matter, the denial of intervention-as-of-right in *Uber Technologies* is readily distinguishable on the facts. There was no indication in that case that Anchorage was in the position of an agency adjudicator charged with fairly adjudicating disputes between Uber and the applicant plaintiff intervenor taxi cab drivers. See 2014 WL 8764781 at *1. Instead, the Municipality, acting in its capacity as a prosecutor, initiated a traditional enforcement action to enforce against Uber its interpretation of taxi cab licensing regulations adopted to benefit all its citizens

³ The minority view differs from the majority in that an applicant intervenor must demonstrate **actual** adversity to overcome the presumption the government is an adequate representative. See *U.S. v. Hooker Chemicals & Plastics Corp.*, 749 F.2d 968, 984-87 (2d Cir. 1984); *Solid Waste Agency of Northern Cook Cnty. v. U.S. Army Corps of Engin.*, 101 F.3d 503, 508 (7th Cir. 1996).

including taxi drivers. Enforcement actions are subject to prosecutorial discretion, making intervention-as-of-right problematic.

Moreover, Judge Corey did not provide a textual reason why Alaska R. Civ. P. 24(a) should be construed differently than the nearly identical Fed. R. Civ. P. 24(a) on which it is modeled. *Id.* His observation that Alaska courts apply a stricter standard than federal courts is in tension with the Alaska Supreme Court's ruling that "possible appearance of adversity of interest" is sufficient, *Alaskans for a Common Language, Inc.*, 3 P.3d at 914, and its admonition that Alaska R. Civ. P. 24(a) should be construed using the "same test" as Fed. R. Civ. P. 24(a). *McCormick*, 793 P.2d at 1004, n. 7. The Alaska Supreme Court is thus far more likely to follow, than to reject the strong majority view in the Fed. R. Civ. P. 24(a) cases cited above, that a government agency charged with representing the broad public interest will very often not adequately represent narrow parochial views of parties who appear as advocates before the agency. We know of no Alaska case in which an agency adjudicated a dispute and then the prevailing party was denied intervention when the losing party then sued the agency in court seeking judicial reversal.

In addition to the inherent differences in alignment that come from the State Board of Game having to represent the broad public interest of Alaska citizens in hunting allocation disputes, while APHA represents the narrow interests of Alaskans selling services to persons who are not Alaska citizens, several other factors support a finding that representation may be inadequate. First, the economic stake of APHA members is an intense one. The State Board of Game will stay in business regardless of the outcome of this proceeding, while the viability of the guiding business is highly in doubt if Cassell

prevails. APHA Members Chervenak, Munsey, and Rohrer earn the majority of their income from guiding non-residents on bear hunts on Kodiak Island. See Chervenak Aff. ¶¶ 1, 3, 9; Munsey Aff. ¶¶ 1, 3, 9; Rohrer Aff. ¶¶ 1, 4, 10; Moore Aff. ¶ 10. Thus there is a difference in “intensity” of interests. *Glancy v. Taubman Cts., Inc.*, 373 F.3d 656, 675 (6th Cir. 2004) (“[A]symmetry in the intensity of the interest can prevent a named party from representing the interests of the absentee.”) (citing *Nat’l Union Fire Ins. Co. v. Rite Aid of S.C., Inc.*, 210 F.3d 246, 251 (4th Cir. 2000)).

Second, as noted in the Complaint, a key issue is whether the economic benefit to Alaskan guides, outfitters, transportation businesses (float planes), and hospitality businesses supports an allocation decision that provides a reasonable number of bear tags to non-resident hunters. See Cmplt. ¶ 28. While Cassell contends economic evidence is irrelevant, he acknowledges the State Board of Game disagreed with him (*id.*), and the Court may as well. No one knows those economic benefits better than the Kodiak Island guides who sell their guiding and outfitting services to non-resident hunters and are intimately familiar with the local economy; so APHA, if granted intervention, can present this issue more effectively than the State Board of Game can. See Moore Aff. ¶ 10; *Northwest Environmental Advocates v. U.S. Dept. of Commerce*, 769 Fed. Appx. 511, 512 (9th Cir. 2019) (proposed intervenors had “specialized expertise”).

A third factor weighing in favor of intervention is the substantial chance the State Board of Game will not raise all the issues APHA would raise. *Southwest Center for Biological Diversity*, 268 F.3d at 818 (“[I]t is not Applicants’ burden at this stage in the litigation to anticipate specific differences in trial strategy. It is sufficient for Applicants to show that, because of the difference in interests, it is likely that Defendants will not

advance the same arguments as Applicants”). Here, the State’s Answer does not address an important State Constitution provision, Art. I, Sec. 23. That provision declares that the State Constitution “does not prohibit” State agencies from granting resident preferences to the extent permissible under the Federal Constitution, and so strongly implies that the grant by State agencies of resident preferences is optional, rather than mandatory as Cassell contends. While the State may make this argument later, there can be no guarantee it will do so.

Finally, and regardless of the precise legal standard employed, a separate basis for finding that representation “may be inadequate” comes from the complete lack of interest the State Board of Game has in protecting the monetary value of the federal concessions granting APHA members Chervenak, Munsey, and Rohrer the exclusive right to guide hunts on particular portions of Kodiak National Wildlife Refuge. As noted above, the federal land unit issued these competitively awarded exclusive concessions (SUPs) for purposes that included making hunting opportunities available to non-resident hunters on these federal lands, which are supported by taxpayers across the Nation. See Exhibit A (Kodiak NWR CCP, Summary p. 11, p. 2-67, and Appx. E, pp. E-8 through E-14); see Chervenak Aff. ¶¶ 7-8; Munsey Aff. ¶¶ 7-8; and Rohrer Aff. ¶¶ 8-9 (quoting CCP). Each guide has invested substantial effort in maintaining compliance with federal concession requirements, and those concessions are a critically valuable element of their guiding businesses. Chervenak ¶¶ 7-8; Munsey ¶¶ 7-8; Rohrer ¶¶ 8-9. The federal regulator’s decision to grant these SUPs will therefore be frustrated if Cassell succeeds in this lawsuit in eliminating almost all non-resident bear tags for hunting on these federal lands. Frustration of the purpose of a federal regulatory program is grounds for

preemption, so APHA asserts a preemption defense that the State is unlikely to join, as it would limit the Board's discretion. See APHA Proposed Answer, Affirmative Defenses.⁴

In *Anchorage Baptist Temple v. Coonrod*, 166 P.3d 29, 35 (Alaska 2007), a similar situation arose. Plaintiffs opposing Government support for religion sued the State under the Establishment Clause of the State and Federal Constitutions for a declaratory ruling invalidating an Alaska statute that extended a property tax exemption to teacher housing owned by churches. *Id.* at 33-34. The Attorney General defended on the ground that the statute was permissible under the Establishment Clause, noting that teacher housing owned by non-religious charities also received the tax break. *Id.* at 32. Although agreeing with the State on the *Establishment Clause* issue, several churches moved to intervene, raising a separate defense – the argument that it would be an *Equal Protection* violation for the State to fail to extend to churches the same tax break given to non-religious charities. *Id.* at 34-36. The State Attorney General did not join that argument. The State's interest was in preserving its discretion to grant or withhold tax breaks, and contending that the Equal Protection clause compelled a tax break that was contrary to State interest. The trial court denied the churches' motion to intervene and stayed the case so that the churches could appeal. *Id.* at 36. The Alaska Supreme Court reversed, holding that "[b]ecause the churches make an equal protection argument that the state is unlikely to raise, we conclude that the churches' and state's interests are adverse." *Id.* at 35. Here

⁴ State law or action may be preempted when it "would frustrate a federal scheme." *Saridakis v. United Airlines*, 166 F.3d 1272, 1276 (9th Cir. 1999) (citing *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985)). Preemption may be found where state law or action frustrates the purpose of a program established through and in compliance with federal law. See *Whistler Investments, Inc. v. Depository Trust and Clearing Corp.*, 539 F.3d 1159, 1164, 1167-68 (9th Cir. 2008).

the State Board of Game is highly unlikely to advocate that APHA's members' rights arising under their federal concessions (SUPs) constrain the Board's discretion.

APHA satisfies all the requirements for intervention as of right.

C. PERMISSIVE INTERVENTION UNDER RULE 24(B) IS APPROPRIATE.

In the alternative, should this Court hold that APHA is not entitled to intervention as of right under Alaska R. Civ. P. 24(a), this Court should grant permissive intervention under Alaska R. Civ. P. 24(b), which is quoted above. As the name would imply, the standard for granting permissive intervention under Alaska R. Civ. P. 24(b) is much more relaxed than that for granting intervention as of right under Alaska R. Civ. P. 24(a). See *Weidner*, 684 P.2d at 114. There is no requirement to prove that representation by an existing party may be inadequate or that the movant holds a significant protectable interest. Many of the same points that support intervention-as-of-right also show satisfaction of the less rigorous permissive intervention test.

Permissive intervention is appropriate under Alaska R. Civ. P. 24(b) when (1) applicant's motion is timely, (2) "applicant's claim or defense and the main action have a common question of law or fact," and (3) applicant's intervention will not "impair the rights of the original parties by causing undue delay or prejudice." *Mat-Su Regional Medical Center, LLC v. Burkhead*, 225 P.3d 1097, 1106 (Alaska 2010) (quotation omitted).

Cassell makes no claim that the guides and APHA caused an unreasonable delay in the proceedings before the State Board of Game described in the Complaint, and there is no basis for believing that APHA will behave in a dilatory manner or cause undue delay in this judicial arena either. As discussed above, APHA's motion to intervene is timely. The requirement that there be at least one common issue of law or fact between the

defenses of the State Board of Game and the proposed defenses of APHA is easily satisfied. Both the State Board of Game and APHA deny that the allocation decision of the Board of Game challenged by Plaintiff is unlawful. *Compare* State Board of Game Answer *with* APHA's Proposed Answer, filed with this Motion.

In instances where the applicant intervenor raises no new issues, sometimes "the most effective and expeditious way to participate is by a brief of amicus curiae and not by intervention." *Weidner*, 684 P.2d at 114. However, here the proposed intervenor does raise new issues. As discussed above, APHA's Proposed Answer raises an important State Constitution provision not yet raised by the State (Art. I, Sec. 23, which in declaring that the Constitution "does not prohibit" the State from preferring residents, strongly implies that such preferences are optional rather than mandatory) and a federal preemption issue regarding federal concessions that the State will almost certainly never join. Further, as also detailed above, APHA's members includes guides who live and work on Kodiak Island (including but not limited to Chervenak, Munsey, and Rohrer) and are in the best position to provide evidence on the economic benefits to Alaska that flow from non-residents hiring Kodiak guides and supporting the local economy.

The grant of permissive intervention in *Uber Technologies, Inc.* further supports granting intervention to APHA here, 2014 WL 8764781. The economic stakes for the individual APHA members are even higher here than they were for the taxi cab drivers. Had Anchorage's enforcement action against Uber failed, the taxi cab drivers could still continue in business, albeit facing more competition from what they view as an unlicensed and unregulated competitor. By contrast, APHA's guides here are at risk of losing their businesses entirely due to a regulatory barrier that Plaintiff demands be erected that will

prevent their customers from hiring them (restricting non-residents to a token handful of bear tags).

Another factor here is that APHA merely seeks to continue its existing involvement as this case moves from the now-completed administrative adjudication before the State Board of Game into the judicial arena. See Cmplt. ¶¶ 27, 28 (crediting the guides with persuading the State Board of Game not to adopt Cassell's proposal). It would be grossly inequitable to deprive APHA of the opportunity to continue its participation, and its defense of the victory APHA won before the agency. Certainly it would be grossly inequitable were Cassell to negotiate a settlement with the State Board of Game in a negotiation from which APHA was excluded as a non-party, depriving APHA of its successful defense against Cassell's proposal.

V. CONCLUSION

For the reasons stated above, the Court should grant the Motion to Intervene filed by the Alaska Professional Hunters Association.

DATED this 2nd day of August, 2019.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Defendant Intervenor Alaska
Professional Hunters Association

By: _____



Adam W. Cook, ABA #0611071
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of August, 2019, a true and correct copy of the foregoing was served on the following in the manner indicated:

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BIRCH HORTON BITTNER & CHEROT

By: VS Fontana

Case No. 3AN-19-7460CI

Motion for Intervention by
Alaska Professional Hunters Association (APHA)

EXHIBIT A

Revised Comprehensive Conservation Plan

Kodiak National Wildlife Refuge

Decision Summary

The Adopted Conservation Plan, continued

Management of Camping Areas:

Camping will be allowed throughout the Refuge, except at O'Malley River during the seasonal closure. Camping areas (undeveloped sites where people camp) may be improved (e.g., minor leveling of tent sites or maintenance of user-developed trails), and equipment and/or facilities may be provided (e.g., outhouses, temporary bear-resistant food storage containers, or temporary solar-powered electric fences), if needed for resource protection or public health and safety. Regulations prohibiting camping within one-quarter mile of public use cabins and administrative sites will be promulgated.



Mike Getman/USFWS

In 2006, 71 special use permits were issued to guides for big game hunting, sport fishing, wildlife viewing, and air transporters. Guides provide an important service to refuge visitors who need assistance with their trip.



Mike Getman/USFWS

Employees at public use camps on the Ayakulik and Karluk rivers emphasize the need for anglers to exhibit proper etiquette and bear safety protocols to avoid hazardous encounters with bears.

Management of O'Malley River: The existing O'Malley River closure regulations will be modified to allow a bear viewing program combining agency-supervised use—U.S. Fish and Wildlife Service/Alaska Department of Fish & Game—with commercially guided use by one or more operators. The O'Malley River closure is identified on the map.



Steve Hillebrand/USFWS

Brown bear feeding on salmon.



Steve Hillebrand/USFWS

WHERE IS THIS? O'MALLEY BY ANY CHANCE? USE DIFFERENT PIC?

Revised Comprehensive Conservation Plan and Environmental Impact Statement

Kodiak National Wildlife Refuge



U.S. Fish and Wildlife Service Mission Statement

The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people.



Refuge Mission Statement

The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

—National Wildlife Refuge System Improvement Act of 1997

The comprehensive conservation plan details program planning levels that are substantially greater than current budget allocations and, as such, is for strategic planning and program prioritization purposes only. This plan does not constitute a commitment for staffing increases or funding for future refuge-specific land acquisitions, construction projects, or operational and maintenance increases.

Photo credits: front cover—"Fox and Bear Go Walking," © Heather Johnson, Kiak Arts & Images; back cover (eagle)—USFWS; (harlequin)—Denny Zwiefelhofer, USFWS; (brown bears)—Leslie Kerr, USFWS

Revised Comprehensive Conservation Plan and Environmental Impact Statement

Kodiak National Wildlife Refuge

August 2006

*Prepared by
U.S. Fish and Wildlife Service
Region 7
Anchorage, Alaska*

Kodiak National Wildlife Refuge
1390 Buskin River Road
Kodiak, AK 99615

U.S. Fish and Wildlife Service
Region 7
1011 East Tudor Road, MS-231
Anchorage, AK 99503

Any recommendation by the President would take effect only after enactment of a joint resolution by Congress.

Alaska Mineral Resource Assessment Program—Section 1010 of ANILCA requires that all federal lands be assessed for their oil, gas, and other mineral potential, although Section 304(c) prohibits new hardrock mining on refuges. Mineral assessment techniques that do not have lasting impacts—such as side-scanning radar, trenching, and core drilling—may be allowed throughout Kodiak Refuge. Special use permits issued to other government agencies or their contractors for assessment work would include stipulations to ensure that the assessment program is compatible with refuge purposes. For example, stipulations may limit access during nesting, calving, spawning, or other times when fish and wildlife may be especially vulnerable to disturbance.

Commercial Recreation Services

Air-taxi and water-taxi operators, wildlife viewing guides, tour operators, wilderness guides, recreational fishing guides, big-game hunting guides, and others providing recreation services are required, under 50 CFR 27.97, to obtain special use permits to operate on refuge lands. Where the number of special use permits is limited, refuge managers will award permits competitively (see 50 CFR 36.41). Special use permits require compliance with all applicable laws and regulations (e.g., Coast Guard licensing regulations). Permit stipulations ensure that camps; travel methods; storage of food, fish, and game meat; and activities are compatible with refuge purposes and reduce the potential for impacts to resources and to other refuge users. If problems arise relating to commercial recreation activities—such as disturbance of active nests, conflicts with subsistence use, chronic incidence of bears getting into food, or violations of state or federal regulations—the Refuge may modify or terminate use under the special use permit stipulations. The Refuge will monitor the number and type of guides and outfitters operating in the Refuge and the number of their clients and will, if necessary, further regulate use.

Under Section 1307 of ANILCA, local preference is provided for all new commercial visitor services except guiding for recreation hunting and fishing. Regulations defining local preference are in 50 CFR 36.37.

Currently, Kodiak Refuge awards all 25 big game guide permits allowed on the refuge (25 exclusive guide areas are identified on the Refuge) by means of a competitive selection process in order to limit the number of permits and ensure quality guiding services to the public. In addition, recreational fishing guide permits are awarded on specific refuge drainages (the Dog Salmon, Ayakulik, Uganik, and Little rivers) using a similar competitive selection process. Outside these drainages, there is no limit on the number of recreational fishing guides. More detailed information on commercial big game and recreational fish guiding can be found in Chapter 3 (see [Hunting](#)

COMPATIBILITY DETERMINATION

Use: Commercially Guided and Outfitted Hunting Services

Primary Use: Hunting (big-game guiding, small game and waterfowl guiding and outfitting)

Supporting Uses: Boating (electric and wind-driven), boating (human-powered), boating (motorized), interpretation (not conducted by refuge staff or authorized agents), fishing (guiding and outfitting), hunting (upland-game—guiding or outfitting), hunting (waterfowl—guiding or outfitting), hunting (other—guiding or outfitting), plant gathering, natural resource collecting, camping, hiking and backpacking, pets, photography, swimming and beach use, outdoor recreation (other), photography (wildlife), wildlife observation (guiding or outfitting), fixed-wing aircraft, tree harvest (firewood).

Refuge Name: Kodiak National Wildlife Refuge

Establishing and Acquisition Authorities

Original authority was Executive Order 8857 (1941); modified by Public Land Order 1634 (1958), Alaska Native Claims Settlement Act (1971), and Alaska National Interest Lands Conservation Act (1980)

Refuge Purposes

Executive Order 8857 established Kodiak National Wildlife Refuge “. . . for the purpose of protecting the natural feeding and breeding ranges of the brown bears and other wildlife on Uganik and Kodiak Islands . . .”

Section 303(5)(B) of ANILCA states the following:

“The purposes for which the Kodiak National Wildlife Refuge is established and shall be managed include

- (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited, to Kodiak brown bears, salmonids, sea otters, sea lions, and other marine mammals and migratory birds;
- (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;
- (iii) to provide, in a manner consistent with purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and
- (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in subparagraph (i), water quality and necessary water quantity within the refuge.”

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United

States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended [16 U.S.C.668dd-668ee]).

Description of Use

This determination re-evaluates commercial guiding and outfitting services for recreational hunting on Kodiak Refuge. Although big game species, brown bear, deer, mountain goat, and elk are the primary species hunted, waterfowl, ptarmigan, fox, and other species are also hunted by clients of guides and outfitters. The compatibility of recreational hunting is evaluated separately. Guided hunting of brown bear predates Refuge establishment in 1941. Other commercial uses conducted concurrently and incidentally to big-game guiding activities are routinely authorized. These include wildlife viewing, photography, guided small-game and waterfowl hunting, hiking, river floating, other related activities, and boat and aircraft access. Commercially guided hunting and related services contribute to fulfillment of Refuge purposes and to the National Wildlife Refuge System mission by facilitating priority public use and management of healthy wildlife populations through controlled hunting.

Big-game guides are competitively selected to operate on Refuge lands through a formal process established by regional policy in 1992. This policy manages commercial guiding activities at a level that is compatible with Refuge purposes and that ensures high-quality guiding services are available for the public. There are 25 big-game guide use areas on the Refuge. All the guide areas are designated as sole-use areas and are limited to one authorized guide. Individual guides are limited to special use permits for no more than three use areas on Refuge lands in Alaska.

Currently, there are 17 guides operating on the Refuge. Guides must be qualified and licensed by the State of Alaska and are required to follow their written operations plans, which are evaluated by Service personnel during the competitive selection process. Operations plans include (1) dates of operation, (2) species to be hunted, (3) maximum and expected number of clients for each species, (4) number and type of existing or new camps (i.e., tent, temporary platform with tent, cabin, boat), including other needed facilities such as caches, (5) access points and mode(s) of transportation (i.e., airplanes, boats, and other nonmotorized means), (6) fuel storage needs, and (7) services provided by others (contracts for transportation, food services, etc.).

In addition to the competitively awarded permits for big game guiding, permits are issued for guided hunting of other than big game. This type of permit allows for the guiding of small game and waterfowl hunters. From one to three permits are issued annually.

This compatibility determination addresses the full spectrum of uses associated with the overall activity of commercially guided hunting, including all means of access, lodging and facilities, and other elements identified in the guides' operations plans. Authorized means of access for areas on the Refuge include fixed-wing aircraft, motorboats, nonpowered boats, hiking, snowshoeing, and cross-country skiing. Lodging and facilities include tents, tent frames, temporary platforms, existing cabins, and caches. Use of off-road vehicles by hunting guides and their clients is prohibited on the Refuge.

Hunting guides operate on the Refuge from early spring through late fall, in accordance with seasons established by State of Alaska hunting regulations. Guiding occurs during the various hunting seasons. Guides are in the field before and after seasons, preparing

for hunting season and removing any temporary facilities established under their special use permits. Guides report their activities annually as required under the terms of their special use permits.

From 1997 through 2002, guided recreational hunting averaged about 760 client use days per year, with a high of 1,311 use days in 1998 and a low of 546 use days in 2002. Most guided hunting is brown bear hunting. There is also guided goat and deer hunting. Under state law, most hunters who are not Alaska residents must use the services of a licensed big game guide to hunt brown bears and mountain goats. There are occasional guided elk hunts, and guided hunters may also harvest reindeer. For other-than-big-game hunts, waterfowl, small upland game are the target species.

Availability of Resources

Adequate Refuge personnel and base operational funds are available to manage guided big-game hunting activities at existing and projected levels. Administrative staff time primarily involves issuing and renewing special use permits every five years; ensuring licenses and certifications are current; collecting client use day fees; and reporting data on an annual basis. Fieldwork associated with administering the program primarily involves monitoring the permittees' compliance with permit terms.

Permits are issued competitively for a five-year term, with provision for automatic renewal for a second five-year term. The competitive process requires a significant level of time and effort for the applicants as well as for Refuge and agency staff.

Refuge staff participation includes the following: Refuge Manager—five months, full time, for the competitive process, possibly including additional time for dealing with appeals that result in litigation; Refuge staff members who served on ranking panels (three panel members for five weeks each) equal 3.75 months staff time; administrative staff assistance provided by this Refuge—two people for two weeks each (1.0 months). Total minimum staff time by Kodiak Refuge staff members is 9.75 months to issue 25 permits.

Refuge staff time to annually administer and monitor these permits is 9.0 months. Transportation and other operational costs for monitoring is about \$25,000 per year. A nonrefundable administrative fee is assessed when each permit is issued. In addition, client use fees are assessed for each day a guide has a client on the Refuge. Current client use fees are \$16.70 for bear hunters, with \$100.00 per-client minimum, and \$5.60 for deer and goat hunters. Fees collected are deposited into the general fund and are not returned to the Refuge.

Adequate Refuge personnel and base operational funds are also available to manage other than big-game guiding activities at existing and projected levels. Currently, there is a nonrefundable administrative fee for this annual permit and a client use fee of \$5.60 per day is assessed each day a guide has a client on the Refuge.

Anticipated Impacts of the Use

Criteria in the competitive scoring and selection process used to select big-game guide permittees address minimizing impacts to Refuge resources and to other visitors. These criteria include impacts on wildlife resources; other Refuge resources such as water

quality, soil and vegetation disturbance, and other Refuge users, especially subsistence. The criteria address such factors as target species, number of clients, transportation modes, number of and amount of aircraft use, fuel storage, garbage and human waste management, methods to protect wildlife and habitat, type and location of lodging, and location of access points. These selection criteria are used to rank or score applicants and provide a strong incentive to maintain a low-impact guide service. Permit conditions and stipulations noted in a following section also contribute to minimizing potential impacts.

Commercial big-game guide operations have limited competition with other recreational or subsistence harvest. Brown bear hunting on Kodiak is tightly regulated by the State of Alaska's drawing permit system. A specific number of permits are available each season for resident and nonresident hunters. A limited number of federal permits (11) are available for subsistence use, with an average harvest of three bears each year. Guides use a variety of strategies to minimize conflicts with other hunters, including basing their operations on private land, using less desirable camping locations, or backpacking camps into more remote parts of hunt areas. Guided hunts for waterfowl, ptarmigan, and small game have similar patterns of Refuge use.

Big-game guides also may target deer and mountain goats, the latter being an introduced species that is rapidly expanding its range on Kodiak Island. Maximum harvest quotas are established for each hunt area for mountain goats and brown bears to maintain population objectives. State hunting regulations favor harvest of male bears to protect breeding females. No harvest quotas are established for deer by the Service because weather, not hunting, is the primary limiting factor on deer populations.

Refuge officers and State Troopers routinely patrol the Refuge during the relatively short big-game hunting seasons.

A majority of the guides access the Refuge by landing on saltwater, lakes, and rivers with float-equipped aircraft or by boats, thus minimizing impacts on Refuge habitat. A potential impact or threat associated with floatplane access is the introduction of invasive species carried on the aircraft floats, although it is not known to have occurred on the Kodiak Archipelago to date. Temporary displacement and/or disturbance to wildlife can occur during takeoffs and approaches to landings. There may be occasional disturbance of wildlife along coastal areas used by boats. There are no known long-term impacts to Refuge wildlife populations from this disturbance.

Public Review and Comment

Public comment was solicited concurrently with the revision of the Refuge's comprehensive conservation plan. No comments were received on this compatibility determination. However, the State of Alaska noted during a meeting that there were inconsistencies in some of the special conditions for special use permits. These inconsistencies were corrected.

Determination

_____ Use is Not Compatible

X _____ Use is Compatible With the Following Stipulations

Stipulations Necessary to Ensure Compatibility

A special use permit is required.

The management direction provided in the revised comprehensive conservation plan for the Refuge will be implemented. Revision of the public use management plan will be used to identify specific management to ensure that this activity continues to remain compatible with Refuge purposes. This includes monitoring of wildlife-dependent recreation and other compatible activities. Findings from monitoring would be used to determine what additional management actions, if any, were needed to ensure compatibility. Continuing law enforcement and administrative monitoring of permits will be carried out to ensure compliance with the following conditions that are incorporated into all permits to minimize impacts on Refuge lands and resources.

Permit special conditions currently limiting access to nine bear concentration areas will be replaced by special conditions developed through the step-down planning process outlined in the final revised Kodiak National Wildlife Refuge Comprehensive Conservation Plan.

Regional Special Conditions

- Failure to abide by any part of this special use permit; violation of any Refuge-related provision in Titles 43 or 50, Code of Federal Regulations; or violation of any pertinent state regulation (e.g., fish or game violation) will be considered grounds for immediate revocation of this permit and could result in denial of future permit requests for lands administered by the U.S. Fish and Wildlife Service. This provision applies to all persons working under the authority of this permit (e.g., assistants or contractors). Appeals of decisions relative to permits are handled in accordance with 50 Code of Federal Regulations 36.41.
- The permittee is responsible for ensuring that all employees, party members, contractors, aircraft pilots, and any other persons working for the permittee and conducting activities allowed by this permit are familiar with and adhere to the conditions of this permit.
- Any problems with wildlife and/or animals taken in defense-of-life-or-property must be reported immediately to the Refuge Manager, the Alaska Department of Fish and Game, and the Alaska State Troopers. Animals taken must be salvaged in accordance with state regulations.
- The permittee and permittee's employees do not have the exclusive use of the site(s) or lands covered by the permit.
- This permit may be cancelled or revised at any time by the Refuge Manager for noncompliance or in case of emergency (e.g., public safety, unusual resource problems).
- The permittee or party chief shall notify the Refuge Manager during Refuge working hours in person or by telephone before beginning and upon completion of activities allowed by this permit.
- Prior to beginning any activities allowed by this permit, the permittee shall provide the Refuge Manager with: (1) name and method of contact for the field party chief/supervisor; aircraft and other vehicle types to be used, identification information for these vehicles; and names of crew members, and (2) any changes in information provided in the original permit application.
- Prior to beginning any activities allowed by this permit, the permittee shall provide the Refuge with (1) a copy of current business license and guide-outfitter license; (2) proof of comprehensive general liability insurance, listing Kodiak National Wildlife Refuge as additionally insured, (\$300,000 each occurrence, \$500,000 aggregate for guides/outfitters) covering all aspects of operations throughout the annual use period; (3) changes in names of assistant guides and other employees; (4) copies of CPR and First Aid cards for permittee and all

personnel that will operate on the Refuge; and (5) any changes in information provided for the original special use permit proposed operations plan.

- The permittee is responsible for accurate record keeping and shall provide the Refuge Manager with a comprehensive summary report of the number of clients, number of client days per activity type and locations by December 31 for all uses during that calendar year, unless stated otherwise in the permit. The permittee shall provide this information on a Hunting Activity Report form provided with the special use permit. A legible copy of the state's "Hunt Record" for each client will be required in addition to the summary report.
- A nonrefundable administrative fee will be assessed prior to issuing this permit. The permittee shall provide the Refuge Manager client-use information on a form provided with the special use permit at the end of the calendar year. Client use day fee for bear hunters, deer hunters and goat hunters will be assessed. Client use fees are adjusted by the Regional Office every three years based on the Implicit Price Deflator Index (PDI). A client use day is defined as one calendar day (24 hours), or portion thereof, for each client using the Refuge.
- Failure to report the actual number of client use days per type of authorized activity by December 31 of each calendar year and annually paying the Service's established fees (client use day and reserved land site) within 30 days after receiving a bill for collection will be grounds for revocation of this permit.
- In accordance with the Archaeological Resources Protection Act (16 U.S.C. 470aa), the disturbance of archaeological or historical sites, and the removal of artifacts are prohibited. The excavation, disturbance, collection, or purchase of historical, ethnological, or archaeological specimens or artifacts is prohibited.
- Permittees shall maintain their use areas in a neat and sanitary condition. Latrines must be located at least 150 feet from springs, lakes, and streams. All property of the permittee except for cabins and tent frames is to be removed from Refuge lands upon completion of permitted activities.
- The construction of landing strips or pads is prohibited.
- The use of motorized vehicles is prohibited on all Refuge lands.
- The operation of aircraft at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited. It is recommended that all aircraft, except for takeoff and landing, maintain a minimum altitude of 2,000 feet above ground level.
- The use of helicopters is prohibited.
- Unauthorized caches of fuel or other supplies are prohibited. Fuel storage, if any, will be as outlined in the operations plan and in compliance with regional Service fuel storage policy.
- Construction of cabins or other permanent structures is prohibited.

Kodiak Refuge Conditions

- Visitors will be required to comply with any temporary restrictions, emergency orders or other types of regulatory actions promulgated by the Refuge Manager to prevent resource problems or conflicts, in cases of emergency, public safety, or unusual resource problems.
- The use of Native or State lands that have been conveyed (patented) is not authorized by this permit.
- Use of Native or State lands that have been selected but not yet conveyed is prohibited unless a letter of concurrence is submitted to the Refuge Manager prior to beginning any activities allowed by this permit.
- A copy of this special use permit must be in the party leader's possession at all times while exercising the privileges of the permit.

- Cabins on Refuge lands shall not be used by the permittee without the permission of the Refuge Manager except in cases of dire emergency for survival purposes.
- Food or garbage attractive to bears or other wildlife will be immediately disposed of. No attractive nuisance for bears or other wildlife shall be created by food storage, improper disposal of garbage (includes of burying of garbage), fish smoking, salting, drying, or other uses.
- Combustibles (paper, wood, etc.) may be burned, but all other debris, including cans, bottles, fuel containers, and any other noncombustible material shall be removed and disposed of off Refuge when departing camps.
- The permittee or his or her designated assistant must accompany clients while on the Refuge. Permittee or assistant must be present within the permit area while clients are engaged in activities authorized under this permit. Permittees with more than one permit area must be present within one of the Kodiak National Wildlife Refuge areas in which they are authorized to operate.
- Closed and Limited Access Areas—An area approximately 2,560 acres near the outlet of the O'Malley River, as described in 50 CFR 36.39 (j)(1), is closed to all public access, occupancy, and use (general and commercial) from June 25 through September 30 annually.
- The following areas are currently closed seasonally to commercial use:
 - Connecticut Creek (July 15–August 31)
 - Humpy Creek (July 15–September 15)
 - Seven Rivers (July 15–September 15)
 - Lower Dog Salmon Falls (June 25–August 31)
- The following areas are currently restricted seasonally to day use only by commercial users:
 - Red Lake River and shoreline (July 1–August 31)
 - Upper Thumb River (July 1–August 31)
 - Southeast Creek (Red Lake) (July 15–August 31)
 - Little River Lakeshore (July 15–August 31)
 - Deadman Bay Creek (August 15–September 30)
- Following are the special conditions for operations on the Ayakulik River effective May 25 through July 15:
 - Over fly the area of intended landing to check for floaters and other aircraft.
 - Announce your position and intention, for takeoff/landing or transit of the area, on CTAF 122.8.
 - Slow (displacement) taxi only, no step taxi.
 - No takeoff or landing on the four designated corners. (See attached map.)
 - Unless the wind creates a safety hazard or makes operations impossible, the area downstream from easternmost designated corner is restricted to landings and displacement taxi only. Avoid the lower area for takeoff or landing.
 - Please advise your clients that airplanes are necessary for the Ayakulik recreational fishery, but there are hazards to both anglers and airplanes. Everyone involved needs to be cautious, courteous, and respectful of other users on the river and the resource.
- All aircraft being used in commercial operations must have 12-inch identification numbers in contrasting colors, which are readily visible.
- Motorboat operators must possess U.S. Coast Guard (USCG) licenses for all passenger-carrying operations, if required by USCG regulations.

Appendix E: Compatibility Determinations

- Any action by a permittee or the permittee's employees that unduly interferes with or harasses other Refuge visitors or impedes access to any site is strictly prohibited. Examples of prohibited acts include, but are not limited to, low flights over camps or persons at less than 500 feet (unless landing) and parking aircraft or placing other objects on any landable area to restrict use by other aircraft or persons.
- The permittee's operations plan and the attached synopsis, as amended and accepted by the U.S. Fish and Wildlife Service, are hereby incorporated in their entirety as a special condition. All deviations from the operations plan and synopsis must receive prior written approval by the Refuge Manager or his/her designee.
- No long-term tent camps are permitted on Refuge lands without permission of the Refuge Manager. Overnight hunting camps may be maintained in one location for not more than 15 days during any 30-day period and must be completely removed at the end of each camping period. All commercial tent camps must be located at least three miles from other commercial camps and must be moved at least three miles following each use period. All camps must be located at least one mile from any Refuge public use cabin.
- Fixed tent platforms are prohibited. Wall tents with floors that are completely removed from the Refuge at the end of the permit period are allowed.
- Maximum overnight camp size will be six people, including guides and assistants. The Refuge Manager may restrict use and duration of some sites for overnight camping to prevent resource problems or conflicts.
- The permittee may not sublet any part of the authorized use area and is prohibited from subcontracting clients with any other guide.
- Access on Alaska Maritime NWR islands, rocks, and spires adjacent to Kodiak NWR is allowed for glassing or scoping of game and wildlife viewing. Access is restricted to day use only, colonies of nesting birds must be avoided, and any foot travel must be performed in a manner to avoid damage of ground-nest sites.
- This special use permit specifically does not authorize the following:
 - Construction of blinds, stands or any other structures
 - Baiting, feeding, harassing, herding, or any other activity that changes, or attempts to change, normal behavior, this includes but is not limited to bears, fox, deer, and eagles
 - Any other types of commercially guided activities as described in attachment (a) Refuge Guide and Other Visitor Service Definitions.
- Additions or alterations to existing structures and construction of new facilities must have the Refuge Manager's prior approval in writing.
- The discharge of firearms is prohibited, except in conjunction with authorized hunting seasons or for protection of life or property.

Justification

Recreational hunting has been found to be compatible with the purposes of Kodiak Refuge and with the National Wildlife Refuge System mission. Commercial big-game guiding and outfitting services are a form of traditional activity that Congress intended to preserve with enactment of the Alaska National Interest Lands Conservation Act, which redesignated the Refuge. These services support not only hunting, but also other activities, including wildlife observation and photography; these are three of the priority public uses of national wildlife refuges. Most non-Alaska residents would not be able to hunt brown bears on Kodiak Refuge if guiding were not allowed.

Commercial hunting guides also provide the public with high-quality, safe, and unique recreational hunting opportunities found few places in the world. These visitor services are a valuable benefit to a segment of the American public that is not physically able to, not comfortable with, or for other reasons chooses not to participate in unguided hunts on the Refuge.

Requirements placed on recreational hunting guides by the Service through the original selection process and the terms of their special use permits and regulations of the State of Alaska ensure that these commercial operators provide safe, high-quality experiences for their clients. These operations can help the Refuge achieve its purposes of protecting fish and wildlife resources of the Refuge and meeting legal requirements to provide compatible opportunities for the public to use and enjoy these resources.

"According to a 2003 analysis conducted by the Institute for Social and Economic Research at the University of Alaska Anchorage, recreational hunting on Kodiak Refuge contributes about \$678,000 in payroll and 25 average annual jobs to the Alaska economy each year. Average annual jobs are calculated by dividing payroll by the average annual pay for a job related to the hunting industry (guiding and support services). Due to the seasonal nature of hunting, the number of jobs during peak periods is much greater than the annual average. Payroll figures are based on Refuge visitor numbers and estimated expenditures; they do not include hunting activities that occur outside the Refuge, although those activities may partially depend on Refuge wildlife and habitat resources."

Supporting Documents

- U.S. Fish and Wildlife Service. 1987. Kodiak National Wildlife Refuge Final Comprehensive Conservation Plan, Wilderness Review, and Environmental Impact Statement. U.S. Fish and Wildlife Service. Anchorage, Alaska. 533 pp.
- U.S. Fish and Wildlife Service. 1993. Kodiak National Wildlife Refuge, Final Public Use Management Plan and Environmental Assessment. U.S. Fish and Wildlife Service. Kodiak, Alaska. 202 pp.
- U.S. Fish and Wildlife Service. 2004. Draft Revised Comprehensive Conservation Plan and Environmental Impact Statement Kodiak National Wildlife Refuge. U.S. Fish and Wildlife Service. Anchorage, Alaska.

Refuge Determination

Refuge Manager /
Project Leader Approval: LESLIE KERN 2-17-2006
(Signature) (Date)

Concurrence

Regional Chief,
National Wildlife
Refuge System: Todd J. Joy 2/17/06
(Signature) (Date)

Case No. 3AN-19-7460CI

Motion for Intervention by
Alaska Professional Hunters Association (APHA)

EXHIBIT B

Southcentral Region Meeting

Anchorage, AK | March 15-19, 2019

Public Testimony List

#	Name	Organization/AC Name	Subject	RC/PC#
✓ 1	Laine Lahndt	Self	GMU 9A	
✓ 2	Drew Hilterbrand	Self	GMUs 9A&9B	
✓ 3	Frank Sanders	Self	GMUs 9A&9B	RC 23
✓ 4	Neil DeWitt	Self	Proposals 111, 114, 116-126	
✓ 5	Burnis Sims	Self	Moose	
2 nd ✓ 6	Martin Andrew		150, 133, 139	
✓ 7	Chris Hanna	Kenai/Soldotna AC	Proposals	AC 13
2 nd ✓ 8	Richard Person	Alaska Trappers Assoc.		
✓ 9	Jim Simon	Self	C&Ts, 34, 92, 72-76, 78, 60-62	
✓ 10	Willow Hetrick	Self	GMU 7	
✓ 11	Jacob Fletcher	Self	99, 108	
✓ 12	Ken Taylor	Self	SB87	
✓ 13	Timothy Malchoff	Self	76, Tier I/II	
✓ 14	Chelsea Kovalcsik	Self	76	
✓ 15	Hope Roberts	Self	76, 136	
✓ 16	Charlie Wright	Self	136	
✓ 17	Dan Presley	Self	15C Moose	RC 22
✓ 18	Dave Blossom	Self	Declining moose population / Kenai Peninsula Intensive Mgmt	PC 106
✓ 19	John McCombs	Self	Proposal comments	
✓ 20	James R Van Oss	Self	Prop 89	RC 24 & 25
✓ 21	Frank Bishop	Self	Brown bear hunting on Kodiak	PC 35
✓ 22	Tom Carpenter	Copper River/PWS AC	Unit 6 overview and comments on proposals	AC 9
✓ 23	Tom Hagberg	Self	SC Game proposals	

Southcentral Region Meeting

Anchorage, AK | March 15-19, 2019

Public Testimony List

✓ 24	David Martin	Self & Central Peninsula AC	Comments on Proposals	AC 05
✓ 25	Steve Miller	Kenai NWR	Prop 63 – 78, 88 and 90	RC 16
✓ 26	Doug Malone	Self	Prop 74	RC 28
✓ 27	Matt Moore	Anchorage AC	Comments on Proposals	AC 1
✓ 28	Tim McManus	Self	Prop 136	PC 93
✓ 29	Doug Blossom	Self	Declining moose populations	PC 31
✓ 30	Thomas Hedlund	Self	Prop 147 Unit 9B	
✓ 31	Erik Salitan	Self	Prop 147 Unit 9B bear	
2 nd 32	Ray Williams	Self	Prop 147 Unit 9B bear	
✓ 33	Jason Bunch	Self	Unit 8 proposals	
✓ 34	Barry Whitehill	AK Chapter Backcountry Hunters & Anglers	Proposal 128	PC 3
✓ 35	Brian Watkins	Self	Prop 116 & 121	
✓ 36	Bob Cassell	Self	Prop 99	
✓ 37	Rob Stone	Self	Prop 55	
✓ 38	Brad Sparks	Self	Kodiak proposal comments	PP - RC 40
✓ 39	Patty Schwalenberg	Chugach Regional Resources Commission	Prop 76	PC 20
✓ 40	Sam Rohrer	Self	Kodiak proposals	PC 86
✓ 41	John Frost	AK Bowhunter's Association	Prop 54, 75, 80, 84, 110	PC 6
✓ 42	John Rydeen	Self	Prop 99	
✓ 43	Peter Mathiesen	Susitna Valley AC	Comments on proposals	RC 9
✓ 44	Lance Kronberger	Self	Prop 99	
✓ 45	Dave Lyon	Self & Homer AC	Proposal comments	AC 12
✓ 46	John Frost	Self	Proposal comments	
✓ 47	Matt Moore	Self	Prop 99, 118 – 119 comments	
✓ 48	Bob Cusack	Self & AK Peninsula Corp	Unit 9 & 9B Prop 147	RC 18 & RC 34

Public Testimony List

✓ 49	Mike Zweng	Self	Prop 105	PC 68 & RC 35
✓ 50	Cabot Pitts	Self	Prop 147 & 148	
✓ 51	Tom Kirstein	Self	Proposal comments	RC 36 & RC 37
✓ 52	Mike Munsey	Self	Prop 99	PC 70
✓ 53	Don Dygert	Self	Proposal comments	
✓ 54	Patrick Ford	Self	Prop 128	
✓ 55	Ross Wardrop	Self	Prop 128	
✓ 56	Dan Montgomery	Self	Proposal comments	PC 26
✓ 57	Dick Rohrer	Self	Kodiak	
✓ 58	Rod Arno	AK Outdoor Council	Proposal comments	
2 nd 59	Nicole Cusack	Self	Prop 147 9B bear season	
✓ 60	Kevin Kehoe	AK Wild Sheep Foundation	M.ovi status	RC 39
✓ 61	Mark Richards	Self & Resident Hunters of AK	Proposal comments	PC 79
✓ 62	Thor Stacey	Self	Kodiak proposals	
✓ 63	Thor Stacey	AK Professional Hunters Assoc	Proposals affecting guides	
✓ 64	Wayne Kubat	Self	Proposal comments	
✓ 65	Mike Edgington	Self	Prop 121	PC 66
✓ 66	Alayna DuPont	Self	Prop 120 – 121	
2 nd 67	Phil Zumstein	Self	Prop 121	
✓ 68	Dan Montgomery	Mat Valley AC	Proposal comments	AC 19 & RC 38
✓ 69	Paul Chervanek	Self & Kodiak AC	Unit 8 proposals and Prop 130	PC 77 & AC 14
✓ 70	Randy Alvarez	Lake Iliamna AC	Prop 147	AC 16
✓ 71	Alysia Hancock	Self & Copper Basin AC	Prop 128 & 131	AC 8 RC 45
✓ 72	Lisa Feyereisen	Self & Central Kuskokwim AC	Moose in GMU 19 – Holitna	AC 4

Southcentral Region Meeting

Anchorage, AK | March 15-19, 2019

Public Testimony List

✓ 73	Testify prior to Prop 127 Doug Carney	Stony Holitna AC	Prop 127	AC 27
✓ 74	Testify 3/18 in AM Al Barrette	Fairbanks AC	Proposal comments	AC 11

Please note: ✓ Means they testified on the first call; and

2nd ✓ Means they made the 2nd call to testify; and

2nd ~~Name~~ means they missed their 2nd call and opportunity to testify.

ALASKA BOARD OF GAME
Southcentral Region Meeting
Anchorage, AK | March 14-19, 2019

On-Time Public Comment Index

Aaron Busche-Vold.....	PC001
Adam Grenda	PC002
Alaska Chapter of Backcountry Hunters and Anglers.....	PC003
Alaska Trappers Association	PC004
Alaska Wildlife Alliance	PC005
Alaskan Bowhunters Association	PC006
Barbara Pape.....	PC007
Barbara Parker	PC008
Ben Lee.....	PC009
Birch Yuknis.....	PC010
Blake Schaugaard	PC011
Brian Ohlen	PC012
Brian Okonek.....	PC013
Brian West.....	PC014
Brooks Bradley Horan	PC015
Carolyn Brodin	PC016
Christian Hicks.....	PC017
Christina Hendrickson	PC018
Christopher Gates	PC019
Chugiak Regional Resources Commission.....	PC020
Chugach State Park Citizen’s Advisory Board	PC021
Cliff Eames.....	PC022
Cole Styron	PC023

ALASKA BOARD OF GAME
Southcentral Region Meeting
Anchorage, AK | March 14-19, 2019

On-Time Public Comment Index

Colt Foster	PC024
Customary & Traditional Use Committee	PC025
Dan Montgomery	PC026
Dan Huttunen	PC027
Daniel Elliott	PC028
David Heuman	PC029
Diane Wilson	PC030
Doug Blossom	PC031
Douglas Stephens	PC032
Edward Soto	PC033
Ethan Williams	PC034
Frank Bishop	PC035
Frank Baker	PC036
Frank Noska IV	PC037
G Origer	PC038
Garry Barnett	PC039
George Matz	PC040
Greg Acord	PC041
Greg Pepperd	PC042
Hans Nordstrom	PC043
Hugh Wisner	PC044
Ian Zwink	PC045
Janelle Eklund	PC046

ALASKA BOARD OF GAME
Southcentral Region Meeting
Anchorage, AK | March 14-19, 2019

On-Time Public Comment Index

Jenya Aleksandrushkin	PC047
Jodi Estrada	PC048
Joe Klutsch	PC049
John Sikes	PC050
Jon Essert	PC051
Jonathan Rupp Strong	PC052
Julian Hiner	PC053
Justin Coffman	PC054
Kalie Harrison	PC055
Karen Yashin	PC056
Kelly Krueger	PC057
Ken Wilkinson	PC058
Kevin Laemmrich	PC059
Kodiak National Wildlife Refuge; Fish & Wildlife Service	PC060
Kurt Whitehead	PC061
Larry Carroll	PC062
Lawrence Carroll	PC063
Linda Lance	PC064
Lindsey Cassidy	PC065
Michael Edgington	PC066
Michael Bryan	PC067
Michael Zweng	PC068
Mike McCrary	PC069

ALASKA BOARD OF GAME
Southcentral Region Meeting
Anchorage, AK | March 14-19, 2019

On-Time Public Comment Index

Mike Munsey	PC070
Nat Nichols.....	PC071
National Park Service	PC072
Natura Richardson	PC073
Office of Subsistence Management; Fish & Wildlife Service.....	PC074
Old Harbor Native Corporation.....	PC075
Patricia Picha.....	PC076
Paul Chervenak	PC077
Paul Ferucci.....	PC078
Resident Hunters of Alaska	PC079
Richard Rohrer	PC080
Rick Metzger	PC081
Robert Clark	PC082
Robert Mattson.....	PC083
Robert Tracey.....	PC084
Ruth McHenry.....	PC085
Sam Rohrer.....	PC086
Scott Mileur.....	PC087
Shannon OBrien	PC088
Sleetmute Traditional Council	PC089
Steve MacLean	PC090
Steven Shannon	PC091
Stig Yngve.....	PC092

ALASKA BOARD OF GAME
Southcentral Region Meeting
Anchorage, AK | March 14-19, 2019

On-Time Public Comment Index

Tim McManus	PC093
Todd Bowey	PC094
Tom Lessard	PC095
Tom Van Every	PC096
Tony Jacobson.....	PC097
Tony Russ	PC098
Will Elliot	PC099
Will Taygan.....	PC100
William Barnett.....	PC101

Comments not providing proposal numbers or complete names: PC102-133

(These comments are posted on the meeting information webpage at:

<http://www.adfg.alaska.gov/index.cfm?adfg=gameboard.meetinginfo&date=03-14-2019&meeting=anchorage>)

**EXHIBIT C to Memo ISO APHA
Motion to Intervene
(Audio of 03-19-19
Board of Game Meeting)**

Birch Horton Bittner & Cherot
510 L Street, Ste 700,
Anchorage AK 99501
(907) 276-1550
100,959.17

**Robert Cassell v. State of Alaska, Board of Game
3AN-19-07460 CI**

James H. Lister
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jllister@dc.bhb.com
Telephone 202.659.5800
Facsimile 202.659.1027

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

ROBERT CASSELL,

v.

STATE OF ALASKA, BOARD OF GAME,

Defendant.

Case No. 3AN-19-07460 CI

NOTICE OF FILING ELECTRONIC SIGNATURES

CASELL V. ALASKA BOARD OF GAME
NOTICE OF FILING ELECTRONIC SIGNATURES
100959/17/

CASE NO. 3AN-19-07460 CI
PAGE 1 OF 2

Mike Munsey, and (4) Samuel Rohrer, all in support of Defendant-Intervenor's Motion for Intervention.

APHA further notes that, in accordance with Alaska Statute § 09.63.020, the signed and certified affidavits of Samuel Rohrer and Mike Munsey are not notarized due to their current respective locations off the road system that is only accessible by float plane during the guiding season.

The executed originals will be filed with this Court immediately upon their receipt.

DATED this 2nd day of August, 2019.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Defendant Intervenor Alaska
Professional Hunters Association

By:



Adam W. Cook, ABA #0611071
Shane C. Coffey, ABA #1705018
James H. Lister, ABA 1611111

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of August, 2019, a true and correct copy of the foregoing was served on the following in the manner indicated:

Matthew T. Findley
Eva R. Gardner
Ashburn & Mason
1227 W. 9th Avenue, Suite 200
Anchorage, AK 99501
Attorneys for Plaintiff

☒ U.S. Mail
☐ Facsimile
☐ Electronic Delivery
☐ Hand Delivery

Cheryl Rawls Brooking
Aaron Peterson
Office of the Attorney General
1031 W. 4th Avenue, Suite 200
Attorneys for Alaska Board of Game

☒ U.S. Mail
☐ Facsimile
☐ Electronic Delivery
☐ Hand Delivery

BIRCH HORTON BITTNER & CHEROT

By:



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT CASSELL,)	
)	
Plaintiff,)	
)	
)	Case No. 3AN-19-7460CI
v.)	
)	
)	
STATE OF ALASKA, BOARD OF GAME,)	
)	
Defendant.)	

Affidavit of Deborah Moore (APHA Executive Director)

I, Deborah Moore, make this Affidavit in support of the Motion to Intervene being filed by the Alaska Professional Hunters Association.

1. I am the Executive Director of the Alaska Professional Hunters Association (“APHA”), and work at its office in downtown Anchorage. See www.alaskaprohunter.org. I came to Alaska in 1998. APHA is a non-profit Internal Revenue Code Section 501(c)(6) organization that serves as the trade association of Alaska’s hunting guides. There is no other statewide organization that fulfills this function. APHA’s records show that 15 of its member are Kodiak Island residents.¹ Three APHA members who reside on Kodiak Island and guide bear hunts on the island (Paul Chervenak, Mike Munsey, and Sam Rohrer) have supplied their own Affidavits in support of APHA’s motion to intervene. The purpose of this Affidavit is to support APHA’s standing as an association to move to intervene on its members’ behalf, and to provide APHA’s perspective as a trade association on this dispute.

¹ This figure is from APHA membership records.

2. I have served as Executive Director of APHA since 2015, and am responsible for running APHA's office in Anchorage and communicating with APHA's Officers, Board of Directors, Members, and vendors. I attend APHA Board meeting in a non-voting role. From this work, I have become familiar with APHA's mission and operations.

3. Our members are in the business of serving client hunters as guides for a fee, using their guiding and hunting expertise. All guides must possess a professional guide license and pass stringent exams while documenting time in the field and harvest of animal. APHA works to advance the interests of the guides by preserving opportunities to hunt, advocating scientifically supported conservation strategies, and advocating policies that permit guides to conduct their business in a cost-effective efficient manner. APHA members support the educational and professional development and licensing opportunity of prospective guides through the hiring of such persons as assistant guides. The hiring or apprenticeship of less experienced prospective guides is the primary method by which a person may become a registered guide in Alaska, and thereby our organization continues. Any injury to the ability of our members to conduct their guides hinders their ability to hire and train future guides.

4. Customers hire hunting guides in Alaska for one or both of two reasons: (1) they are a non-resident of Alaska who by law can only hunt certain species in Alaska, including brown bear on Kodiak Island, if they hire a guide, (2) they voluntarily choose to hire a guide in order to improve their hunting experience by taking advantage of the guide's experience in leading hunts and/or the guide's logistical and support capabilities in supplying transportation, equipment, and shelter, and labor. The first reason to hire guides applies only to non-residents, as residents are never legally required to have a guide. The second reason is much more likely to motivate non-residents than residents to voluntarily hire a guide. While guides can help most

hunters with the actual hunting, residents of Alaska have far greater abilities than non-residents when it comes to arranging transportation to remote areas, assembling equipment, and finding shelter. Residents may have vehicles they can sleep in and airplanes and boats. Residents may know people who live near where the hunt will occur. Some residents know the local geography well. APHA members arrange these difficult logistics for non-residents as part of the hunting trips. To give an example, it is not easy for a resident of California to find a place to stay off the road system on Kodiak Island while hunting bear, or to get there, or to find food to eat while in the wild. Further, customers hire guides for the increased safety they provide as guides are specifically trained in safety, and the guides who operate on Federal lands have extensive safety plans as required by our Federal SUPs, which most likely far exceeds state guide licensing requirements.

5. The end result is that guided hunting in Alaska is mostly a tourism industry that brings economic benefits to Alaskans through serving non-resident customers (hunters) who come to Alaska and spend their money here. The majority of the guides who are APHA members are Alaskan residents (approximately 98%). Many of the guides, and particularly Master Guides such as Chervenak, Munsey, and Rohrer, support themselves and their families primarily through income from guiding, as is explained in their Affidavits. Other guides earn supplemental or seasonal income from guiding. Like any other form of tourism, the benefits spread further into the Alaskan economy, as non-residents are more likely than residents to pay for hotels than to camp, more likely to buy equipment to use on the trip than to re-use equipment they already have, more likely to charter a plane than to fly their own small plane, etc. The amount of money spent by non-residents in Alaska on hunting trips, which quite often involve guides, is very substantial. A report commissioned by APHA and prepared by a firm of

economist, the McDowell Group, concluded that 1,620 people were directly employed in guided hunting in Alaska in 2012 and earned \$21 million in direct wages and guide income, and that related employment from guiding generated another 590 jobs and \$14 million in wages, and that the total economic activity in Alaska resulting from guided hunting was \$78 million a year. Please see the Affidavits of APHA Members Chervenak, Munsey, and Rohrer for specific information on the percentage of their income that comes from guiding bear hunts on Kodiak Island, the hunt directly affected by this lawsuit.

6. Thus a core mission of APHA as a trade association is to maintain the ability of its member to stay in business through maintaining as far as reasonably possible the ability of non-resident hunters to come to Alaska and hunt. Non-residents will only come to Alaska to hunt if they can obtain the “permits” necessary to hunt the species they wish to pursue. Permits are State-issued licenses specific to particular areas and species. Where a species is numerous enough in an area that the State Board of Game does not have to limit the number of permits issued to hunt that species in that area, residents and non-residents are generally able to obtain permits “over the counter,” as opposed to having to hope to win one in a drawing (lottery). Where the amount of take (hunting) must be limited to maintain healthy population levels, the Board of Game will declare particular hunts to be “draw” hunts and issue a limited number of permits that may be distributed in various ways generally favoring residents but allowing some opportunity for non-residents. The Alaska Department of Fish and Game assists the Board of Game in implementing these programs.

7. The Kodiak bear hunt is a draw hunt.² Please see the affidavits of APHA Members Chervenak, Munsey, and Rohrer for the figures specific to the Kodiak bear hunt regarding the percentage of permits available to residents as opposed to the percentage of permits available to non-residents, and how Plaintiff Cassell hopes to change those figures through this lawsuit. To summarize their affidavits, those three APHA members earn their living primarily from guiding brown bear hunts on Kodiak Island for non-residents, and thus are utterly dependent on the Board of Game retaining a reasonable number of permits for non-residents. As the three APHA members explain, Plaintiff Cassell's proposal to the Board of Game (Proposal 99) would have resulted in approximately 80% or more of the non-resident permits for the Kodiak brown bear hunt being eliminated, resulting in the loss by each guide of more than half their income. APHA participated in the March 15-19, 2019 hearings before the Alaska Board of Game on Mr. Cassell's proposal. APHA presented testimony against Mr. Cassell's proposal through its Director of Government Affairs, Thor Stacey. Numerous APHA members including Mr. Chervenak, Mr. Munsey, and Mr. Rohrer submitted comments and several (including Mr. Chervenak, Mr. Munsey, and Mr. Rohrer) testified against the proposal.³

8. Fortunately, the Board of Game at the conclusion of its hearings rejected Mr. Cassell's Proposal 99 in a 5-1 vote. This was after the Board considered arguments and evidence from both sides of the debate. While APHA was the prevailing party before the Board in this

² In addition to the Kodiak bear draw hunt, which is primarily on the Refuge and off the road system, there exists the Kodiak Road System hunt, which is an over the counter permit. The SUPs belonging to the respective APHA member affiants (Chervenak, Munsey, and Rohrer) relate to the Kodiak bear draw hunt.

³ APHA President Sam Rohrer guides full-time on Kodiak Island and is one of several APHA members who would be severely injured by loss of income from guiding bear hunts if Plaintiff Cassell obtains from this Court the relief he seeks. The decision by APHA to file this motion to intervene was approved unanimously by the Board of Directors of APHA, which consists of nine persons, only two of whom are full-time guides on Kodiak Island.

particular instance, APHA and its guides remain exposed to a possible judicial reversal of the Board's decision in this lawsuit and also to other similar petitions / proposals to the Board relating to Kodiak Island or other locations in the State where there are draws for permits for various species including brown bear, sheep, and others. There is a constant "us-or-them" struggle pitting certain resident hunters who believe all or almost all permits should go to resident hunters, represented by their association Resident Hunters of Alaska ("RHAK"), and the Alaskan guides represented by APHA. The Board of Game serves as the "judge" in deciding these issues.⁴

9. The Board of Game is a neutral tribunal that is not "controlled" by either RHAK on the one hand or APHA on the other hand. One former member of RHAK's board of directors and current RHAK member (Tom Lamal) was on the Board of Game at the time of the vote on Cassell's proposal (he was the dissenter in the 5-to-1 vote). He remains on the Board of Game today. One present member of APHA (Nate Turner) was on the Board of Game at the time of that vote (he was among the majority voting against Cassell). However, he is no longer on the Board of Game. No APHA member guide is on the Board of Game today.⁵

10. In short, the Board of Game wields enormous power over the viability of guiding in Alaska and is and should be a neutral decision-making tribunal that serves as an impartial judge and is in no way a "representative" of either the interests supported by APHA or the opposing interests supported by RHAK. For these reasons, I do not believe the Board of Game can or should adequately represent the interests of APHA and its members in this lawsuit.

⁴ The Board of Game has to comply with its statutory and constitutional mandates and must be neutral in its approach to RHAK and APHA.

⁵ I have compared the APHA list of member guides (master guides, registered guides, assistant guides) to the present Board of Game members.

11. As indicated by the above discussion, defending APHA members from the threat to their livelihood posed by this lawsuit and by other efforts to reduce the number of permits available for non-resident hunters is a core part of APHA's mission. We could not exist as a trade association if we failed to defend our Alaskan members' ability to earn a livelihood serving primarily non-resident hunters. As discussed above, APHA was an active participant in this case when it was before the Board of Game. APHA respectfully requests to continue its participation in this new phase of the case now that Plaintiff Cassell has effectively appealed the Board of Game's decision to this Court by asking the Court to order the Board to grant Cassell the relief that the Board declined to grant Cassell when the Board rejected Cassell's Proposal 99.

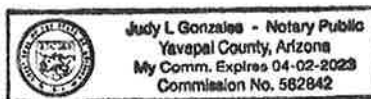
VERIFICATION


I state under penalty of perjury that the foregoing is true and correct.


Deborah Moore

State of Arizona
County/City *Yavapai*

This Affidavit was subscribed and sworn before me, a Notary Public, after satisfactory proof of identification, by Deborah Moore.




Notary Public
My Commission expires *04/02/2023*

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT CASSELL,

Plaintiff,

v.

STATE OF ALASKA, BOARD OF GAME,

Defendant.

Case No. 3AN-19-7460CI

Affidavit of Paul Chervenak in Support of APHA Motion to Intervene

I, Paul A. Chervenak, make this Affidavit in support of the Motion to Intervene filed by the Alaska Professional Hunters Association ("APHA").

1. I am a hunting guide on Kodiak Island. I am a member of APHA. My Master Guide license number is GUIM160. APHA is the State's association of hunting guides. I provide this Affidavit in support of APHA's motion to intervene. As explained in this Affidavit, Plaintiff Cassell's lawsuit seeks to reduce by around 80% the number bear permits (licenses to take a bear) on Kodiak Island available to hunters who are not residents of the State of Alaska ("non-residents"). Because the substantial majority of my income is from guiding bear hunts on the Island for non-residents, Mr. Cassell seeks relief that, if granted, would destroy my business, on which I depend for my livelihood. I therefore seek to participate in this case through my trade association APHA, which is moving to intervene as a defendant.

2. I operate my business Kodiak Outdoor Adventures on Kodiak Island. This is a guided hunt business. I guide brown bear, mountain goat, and deer hunts. I earn the substantial majority of my income from this business (I also engage in some commercial fishing and

construction contracting during hunting off-seasons). I came to the Island in 1980, where I met my wife Angie, who teaches in the local schools. I have operated my guiding business on the Island since 1988. My clients fly to the main airport in Kodiak and from there take float planes to campsites which I use as a base of operations to guide my hunts. The campsites are off the road system on the Island

3. Brown bear is by far the most economically significant species for my business. About 80% of my revenue is from brown bear hunting. Guiding hunts for other species (mountain goat, deer, waterfowl) and a few days a year of guiding fishing and wildlife review accounts for the remaining 20% of my revenue. Because hunters will pay more for a brown bear hunt than other types of hunts, due to the allure of the larger Kodiak bears as compared to the other species which can easily be hunted elsewhere, I can charge far more for brown bear hunts than hunts of other species, and so earn a higher margin on brown bear hunts. After considering what I must pay my assistant guides, vendors, and suppliers, brown bear hunting accounts for about 85% of my income (the money I earn from the business after accounting for my expenses). In summary, I earn most of my livelihood from guiding brown bear hunts.

4. Almost all (well over 90%) of our bear hunting clients are non-residents (persons whose home is somewhere other than Alaska). This is for two reasons. First, Alaska State law requires that non-residents hire a guide to hunt bear, but allows Alaska resident to hunt bear without a guide. Second, Alaska residents have a greater ability than non-residents to navigate the difficult logistics of getting to Kodiak Island to hunt bear, and to find lower cost sleeping / shelter arrangements and transportation. Many resident hunters own their own small planes or boats and so can travel for less to, from, and around the Island. For all these reasons, Alaska residents have much less incentive to hire a guide to help them with these logistics.

5. Having a guide provides a conservation value whether the client is a resident or non-resident. As was shown in the evidence presented to the Board of Game when that Board made the decision to reject Plaintiff Cassell's proposal (the decision that prompted Cassell's lawsuit), guided hunters are substantially more likely than non-guided hunters to take boars (male bears) than sows (female bears). As also shown by the evidence in that proceeding, the key to maintaining a healthy bear population is to limit harvest of sows, who have litters of cubs only once every four or five years. Guides have the expertise at spotting and viewing bears to help both non-resident and resident hunters avoid harvesting sows. Unlike unguided hunters from Anchorage or elsewhere in the State, guides on Kodiak Island have a substantial economic incentive to minimize harvest of sows, as doing so preserves the natural resource (the bears) on which their guiding business depends for long-term success. Further, customers hire guides for the increased safety they provide as guides are specifically trained in safety, and the guides who operate on Federal lands have extensive safety plans as required by our Federal SUPs, which most likely far exceeds state guide licensing requirements.

6. Throughout my career, I have worked hard to maintain the State of Alaska licensure necessary to guide clients and supervise assistant guides who directly guide some of my customers. Shadowing or apprenticing for master guides is the primary method by which prospective guides become master guides. The educational and professional development and licensing opportunity for these prospective guides is hindered by the interference this lawsuit (if successful) would post to the activities of master guides. I hold a Master Guide license from the State's Big Game Commercial Services Board, and am currently authorized to work as a Master Guide in three Guide Use Area (08-15, 08-19, and 08-25), all on Kodiak Island. I comply with the requirements to be a Master Guide. This includes obtaining numerous client

recommendations, maintaining continuity in my business operations, paying for general liability insurance or posting a \$100,000 bond to ensure payment of any judgments that may be entered as a result of my big game guiding service, maintaining workers' compensation insurance for assistant guides, and obeying the wildlife regulations.¹

7. I have also devoted and continue to devote substantial effort and resources to obtaining permission from the Federal and Native Corporation land managers to guide hunts on their lands. Much of the land on Kodiak Island, and the substantial majority of good bear habitat, is within Kodiak National Wildlife Refuge, which is run by the U.S. Fish and Wildlife Service ("FWS"). FWS has divided the Refuge into 25 areas and awards one Special Use Permit ("SUP") for big game guided hunting in each area. I hold the SUPs issued by FWS for three of those areas, KOD 4, KOD 10, and KOD 14. FWS awarded me my SUPs through a competitive process in which I was selected over other applicants. The terms of my SUPs require me to file annual operating plans with FWS, maintain substantial liability insurance, and comply with various other requirements established by FWS to ensure quality client experiences and protection of Refuge habitat. The substantial majority of my guided hunting, including for bears, is on my SUP areas on the Refuge, and the remainder is generally on Koniag Native Corporation Land. I pay Koniag on a per-hunter basis (roughly \$1,250 per hunter) for permission to hunt Koniag lands. I have worked hard to maintain good relations with both FWS and Koniag.

8. FWS recognize the conservation value of guided hunting on Refuge lands, a value that would be jeopardized if Mr. Cassell's lawsuit prevails. FWS's Kodiak NWR Comprehensive Conservation Plan ("CCP") states that "Guides provide an important service to

¹ While the precise requirements to be a Master Guide have varied over the years, the current requirements are detailed in the instructions to current form to apply for this license: <https://www.commerce.alaska.gov/web/Portals/5/pub/gni4010.pdf>.

refuge visitors who need assistance with their trip” and that “Commercially guided hunting and related services contribute to fulfillment of Refuge purposes and to the National Wildlife Refuge System mission by facilitating priority public use and management of healthy wildlife populations through controlled hunting.”² FWS in the CCP explains that guided big-game hunting on Kodiak is a traditional activity Congress has preserved through legislation: “Commercial big-game guiding and outfitting services are a form of traditional activity that Congress intended to preserve with enactment of the Alaska National Interest Lands Conservation Act, which redesignated the Refuge.”³ FWS concludes that “Most non-Alaska residents would not be able to hunt brown bears on Kodiak Refuge if guiding were not allowed” and that competitively awarding one guiding permit per area helps “ensure quality guiding services to the public.”⁴ As a National Wildlife Refuge, Kodiak NWR exists for the benefit of all citizens of the United States, including non-residents who travel to the Refuge to hunt bear.

9. Under Alaska regulation 5 AAC 92.061 the current system distributes a minimum of 60 percent of Kodiak bear permits to residents and a maximum of 40 percent to non-residents. The actual numbers demonstrate an allocation of 67 percent of permits to residents and 33 percent to non-residents.⁵ In his Proposal, Cassell asked that the Board of Game change the distributions so that 90 percent of Kodiak bear permits are reserved for residents and the remaining 10 percent are available to both residents and non-residents (with that 10 percent

² Kodiak NWF CCP Summary, p. 11 and Appendix E, p. E-8.

³ CCP, p. E-14.

⁴ CCP, p. 2-67 and E-14.

⁵ The State now uses a lottery system to distribute the resident permits to residents who apply for them and to distribute the non-resident permits to non-residents who apply for them. This system has been in place for many years. The total number of permits is revised from time to time based on estimates of the Kodiak bear population.

“pooled” and then distributed to by lottery).⁶ This is a devastating reduction in the number of bear permits available to non-residents no matter how calculated:

A. Assuming that non-residents receive all 10 percent of the pooled permits that would be available to both residents and non-residents under Cassell’s proposal (even though Cassell would make that 10 percent pool available to both residents and non-residents), Cassell is asking to reduce the number of non-resident bear permits by more than 75 percent from its regulatory maximum (40 percent of all permits)⁷ and by approximately 70 percent from its actual number (33 percent of all permits).⁸

B. Much more realistically, assuming that both residents and non-residents participate in the 10 percent pool Cassell proposes and each category of hunter secures half of the permits in that pool, then non-residents will secure only 5 percent of all Kodiak bear permits. That would be a reduction of 87.5 percent from the current maximum distribution of bear permits to non-resident hunters⁹ and approximately 85 percent from the current actual distribution of bear permits to non-resident hunters.¹⁰

⁶ I am referring to bear hunts in areas not on the Kodiak road system. As I have explained, I conduct my hunting primarily on Kodiak National Wildlife Refuge lands, where I hold SUPs. These lands are not on the road system, and so are governed by the current permit drawing system that Plaintiff Cassell challenges. There is a separate less valuable bear hunt, conducted on primarily State lands on the road system, where permits are available over-the-counter. The best bear habitat is off the road system, including on the Refuge lands where I lead hunts.

⁷ Math: 10% divided by 40% equals 25%. Subtracting this 25% from the 100% total equals 75%, which is the reduction.

⁸ Math: 10% divided by 33% equals 30.3%. Subtracting this 30.3% from the 100% total equals 69.7%, which is approximately a 70% reduction.

⁹ Math: 5% divided by 40% equals 12.5%. Subtracting this 12.5% from the 100% total equals 87.5%, which is the reduction.

¹⁰ Math: 5% divided by 33% equals 15.15%. Subtracting this 15.15% from the 100% total equals 84.84%, which is approximately an 85% reduction.

Again, as I stated above, approximately 85 percent of our income is from Kodiak bear hunters and upwards of 90 percent of my bear hunter clients are non-residents. Based on the number above, if Cassell's proposal is ordered by the Court, either directly or as a result of a ruling by the Court that results in an adverse Board of Game ruling, I am looking at the loss of more than half my income. In addition, there would be no economies of scale to guide the rare resident bear hunter clients now and then. That would destroy my business. Cassell's proposal would also destroy the value of my U.S. FWS-issued SUPs, both to me and to U.S. FWS.

10. Realizing the threat from Cassell's proposal to the Kodiak economy in general, my business and particular, as well as the risk that an increase in the permit allocation to unguided residents could well result in an increase in the harvest of sows and thereby reduce the bear population, I participated in the proceeding before the Board of Game that considered that proposal. I submitted public comments opposing the proposal. A copy of my comments is attached as Exhibit 1 to this Affidavit. I traveled to Anchorage to testify against the proposal at the public hearings held by the Board of Game on March 15 through 19, 2019. My testimony and public comments are noted in the Board's hearing record. I coordinated with other guides who are APHA members in opposing Cassell's proposal.

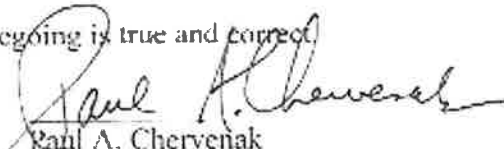
11. In addition to personally filing comments and testifying against Cassell's proposal, I participated in my role as Chair of the Kodiak Advisory Committee to the Board of Game. The Kodiak AC is a volunteer organization of Kodiak residents who meet and provide recommendations to the Board of Game. The Kodiak AC prepared and submitted a recommendation opposing Proposal 99. All members of the AC (about 16 were present) voted to recommend rejection of the Proposal. I assisted in the researching and drafting of the AC's recommendation, which is supplied as Exhibit 2 to this Affidavit. We presented legal arguments

with citations to case law and cited economic data on the benefits of guided hunting of non-residents to the Kodiak economy and the State's budget (non-resident hunters pay more for permits).

12. After hearing from both proponents and opponents of Cassell's proposal, the Board voted 5 to 1 to reject the proposal. Cassell has now appealed the Board of Game's decision by filing this lawsuit seeking to reverse that decision. As a prevailing party in the proceeding before the Board of Game, whose livelihood is substantially impacted, I seek to continue my participation in this new phase of the proceeding through APHA's motion to intervene. As a member of APHA, I trust APHA to represent my interests. If there is discovery in the case, I will participate and provide the required information, even if my participation is through APHA, rather than as a direct party to the case. However, should the Court determine that my direct participation as a party is preferable to my indirect participation through my trade association APHA, then I request to intervene directly as an individual party.

VERIFICATION


I state under penalty of perjury that the foregoing is true and correct.


Paul A. Chervenak

State of Alaska
Borough of Kodiak Island

This Affidavit was subscribed and sworn before me, a Notary Public, after satisfactory proof of identification, by Paul A. Chervenak.




Notary Public
My Commission expires 01/18/2022



**Alaska Board of Game
South Central Region Meeting
March 15-19, 2019**

My name is Paul Chervenak and I am a 39-year resident of Kodiak Alaska. I have been in the guide/outfitting business for 33 years. During this time, I have actively participated with the ADF&G, USF&WS and local native association resource managers and biologists. I participated in the development of the 2002 Kodiak Brown Bear Management Plan and then helped form, and have been chairman of, the Kodiak Unified Bear Subcommittee (KUBS) which oversees this plan and deals with bear issues on Kodiak. I am the State trustee, and chairman of, the Kodiak Brown Bear Trust. I have been on the Kodiak Advisory committee for over 20 years.

I am **opposed** to proposals 98 (changing season dates) and proposals 99,101,102,103,104 and 130 that deal with changing brown bear permit allocation on Kodiak. These will all result in a change in the current harvest rate of bears on Kodiak.

In recent years, there has been a push to change the resident/non-resident allocation for bear permits on Kodiak, increasing permits to residents. These ideas range from changing the distribution from the current 60/40 split (residents/non-residents-which currently is actually 66/34) to a 90/10 or greater, giving non-resident permits to residents and/or establishing a resident waiting list for under subscribed permits.

The first question that should be asked is: **What is good for the bears?**

The current management system is working beautifully. Changes, if any, should be slight and closely monitored.

Bear Management on Kodiak Island is one of the major successes in wildlife conservation. The current population is at an all-time high with a large percentage of the harvest being mature males, showing the health of the population. ADF&G consistently hits the annual target harvest of 6% (~180 animals). It a unique, interdependent and complex system developed over time and we are now at the micro management level. We need to be extremely careful, just slight changes could have potentially multiple and lasting consequences.

The second question that should be asked is: **What will be gained?**

The tables 1&2 in the Kodiak AC minutes show an example of what would happen if you gave the residents 90% of the current permits issued on Kodiak. The tables show: the existing # of non-resident permits, resident permits and total permits by hunt area. The fourth column shows the current resident draw success percentages with the existing resident # of permits (taken from the 2018 ADF&G hunt supplement). The 5th column shows the new draw success percentages for residents given the same # of applicants given 90% of the current # of permits issued. Draw percentages go up minimally.



Giving the “under subscribed” non-resident permits to residents and/or establishing a waitlist for non-used resident permits will negate the variable used by ADF&G in establishing permit numbers. They figure in some resident and non-resident permits being unused, thus issuing a higher number of permits than harvest would allow. These options will probably lead to an actual reduction in permits issued, making the drawing odds even greater.

With the current # of resident applicants, even giving them 90% of the current permits available, drawing odds only increase slightly. Only giving them a few more permits as some of the proposals would do, basically doesn’t change their odds of drawing a permit. There is practically nothing gained.

Naturally the next question is: **What will be the cost?**

There will be definite major economical ramifications for the small businesses (guides), Kodiak and the state of Alaska. The change in allocation will most likely have major biological ramifications. Some unknowns probably will be: a decrease in resident permits, depending on harvest, and the loss of the long standing and traditional bear guide industry on Kodiak.

Economically: there will be a major loss of revenue for the small business owners, the guides, and the Kodiak economy.

It’s hard to calculate the exact figures, but you would first look at the money generated from the hunts. The Kodiak AC minutes reflect some very minimal figures with just the hunt costs listed, 4.1 million dollars. It is hard to estimate the additional income these nonresidents bring to the economy. They, and often accompanying non-hunters they bring, have the added expenditures of non-resident accommodations, food and drink, equipment, gifts and other tourism related expenditures. Then there is the additional revenue that is gained by many of these hunters returning to Kodiak, often with their families, for other types of trips once they’ve gotten to know the Island.

Additionally, there is the loss of the guides higher per hunt expenditures of employees, air transportation, food, fuel, equipment, permitting, advertising, etc. These nonresident permits being given to residents will not generate anything even close to the same dollar figures.

Following the 10% allocation of some states in the lower 48 (which some proposers like to use in requesting this allotment) there would only be one non-resident permit available if the prescribed hunt had at least 10 permits available. Using the current # of permits issued, this would reduce the non-resident allotment to a maximum of 15 spring and 3 fall permits. Possibly 18 total permits, down from 170. (see the last column in Kodiak AC’s minutes, figures 1&2) Even taking a straight 10%, or 50 of the current 500 drawing permits, would reduce it to less than 1 permit for each of the 62 possible prescribed hunts. This would put most of the bear guiding operations and their employees out of business.



These economic impacts carry over to the state level. These non-resident hunters often have additional tourism related expenditures throughout other parts of Alaska as they travel to Kodiak and then in return trips. It's well documented that non-resident hunters pay for most of the operating costs of the ADF&G (78%). Loss of license and tag revenue from Kodiak nonresident bear hunters alone would be close to one million dollars, if you gave the residents the current nonresident tags. (using the figures in Kodiak AC minutes-Proposal 99)

185 non-res licenses/tags @ \$1160=\$214,600. PR fund match \$643,800 Total \$858,400
120 non-res deer tags @ \$300=\$36,000. PR fund match \$108,000 Total \$144,000
Total lic/tag expenditures \$1,002,400
Comparison-160 res lic/tag @\$70=\$11,200 PR Fund match \$33,600 Total \$44,800

I believe the Kodiak AC's comparison numbers would actually be much lower, if you account for resident show participation rates and the likely probability that they would all already have their hunting licenses. So, 160 res tags@25=\$4000 and with PR funds would total \$16,000.

Biologically: there will be biological ramifications with the change in permit allocation. I disagree with the ADF&G being "political" and saying this is an allocation issue when it is also a biological issue. There will be an increase in sow harvest and a decrease in adult boar harvest. Both leading to lower cub production and lower sow/cub survivability. The resident hunters have a higher percentage of sow harvest. The targeted harvest of adult boars has helped increase sow/cub survivability which has led to a higher bear population. Harvest of adult males needs to continue to maintain the population as is or it will decrease. The guided non-resident hunters account for the majority of the harvest of adult males. (See the Kodiak AC'S Table 3- numbers taken from ADF&G harvest data over the last 8 years: whether looking at 28+", 27+" or 26+" skull sizes defining large boars). These percentages go up if you factor in the resident harvest by guides who drew a resident permit, and the residents who had help from a guide. Guides are primarily responsible for the harvest of large adult boars. Their predictable participation and anticipated harvest rates are very important for the continued health of Kodiak bear management.

Brown bears are not like ungulates, you cannot stockpile them. If you fail to harvest moose in an area, the majority will be there the following year, they do not kill each other. You cannot stockpile bears, you have to keep the harvest of adult boars ongoing.

I'm not trying to be mean, but it's a fact, the resident hunters will not be able to harvest the adult boars anywhere near the guides rate of success, or they already would. The majority of them do not know how to hunt brown bears, even if they were to put in the effort and time the guides do. They do not have the experience or knowledge to do so effectively. Brown bears are too smart, too wary and have too big of home ranges.

I started as a resident rookie brown bear hunter and have now been hunting them extensively in each of the last 35 years. I have a lot of experience, but am not even close to, or will ever, know too much. I have also watched and talked with many resident hunters, often helping



them, and see them repeatedly make the same mistakes I did early on, especially on scent control.

Non-experienced brown bear hunters have no idea on how careful you have to be with scent control. They often; take the easy route into an area, camp close to or in bear concentration areas often having fires, hike around looking for bears, try low odds of success stalks and often try to outdo other hunters in the area. This lack of scent control instantly drives the adult boars miles and miles away, leaving the sows and sub adult boars (both with smaller home ranges) as the bears available for harvest.

Guides are also better at spreading out use over time and the hunt area, giving everyone a higher quality and more successful hunt opportunity. They often coordinate with some of the resident hunters and have better knowledge of the hunt area and means of moving and/or accommodating other hunters. Resident hunters often concentrate in the May time period and lack the ability to coordinate with other residents, often ending up on top of each other, creating a less successful hunt and quality of experience. Putting more resident hunters into these hunts, by changing allocation, will worsen this problem.

Board of Game authority, mandates and their Nonresident Hunter Allocation Policy (NHAP)

The BOG by the Alaska constitution has general authority to provide for the utilization, development and conservation of all natural resources... "for the maximum benefit of the people." The BOG is required to look at the Common Use Policy ... "where the resources are reserved to the people for common use" and they are mandated to make sure the resources are maintained on the sustained yield principle. Additionally, by Alaska Statute, the commissioner of ADF&G is required to manage the resources of the state in the interest of the economy and general well-being of the state.

Maximum benefit of the people-The Kodiak bear is a unique situation in that it is not a "meat" animal, thus isn't managed to maximize it as a food source for the people of Alaska. So, that leaves it for its intrinsic and economic value. The intrinsic value is for all to see and enjoy, photograph. The primary value of the brown bear is to the economic value of the state and local economy. "For the maximum benefit of the people" should thus involve a high percentage of nonresident guided hunters which clearly maximizes the economic value of the Kodiak bear.

Common Use-The common use clause in the constitution makes no differentiation between personal and commercial use. The legal discussion of this is pointed out in the Kodiak AC minutes. Thus, unless conservation demands it, no preference is given to one or the other, residents or resident guides. The vast majority, 97%, of the guides registered in Unit 8 (Kodiak) are Alaskan residents. The times when a preference can be given is when there is a conservation concern. So, in fact, looking at "conservation", it might demand that guides be given preference with their lower sow, and much higher adult boar, harvest rates.



The BOG NHAP also acknowledges that "60% of state remains in Federal ownership and is managed for the benefit of all residents of all U.S. citizens equally". Approximately 2/3's of Kodiak Island is in Federal ownership. The USF&WS service wants access to the Kodiak National Wildlife Refuge open to all U.S. citizens equally. In fact, in 1976 when they came up with the current allocation, the USFWS wanted a 50/50 allocation, but compromised on the current allocation.

I think it is very clear that in the **best interest of the bears**, operating on the sustained yield principle, maximizing the benefit to the people and holding to the common use clause, the BOG should maintain the status quo on permit allocation.

Thank you for the opportunity to submit comments and feel free to contact me should you desire any additional information or clarification.

Sincerely,

Paul A. Chervenak
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Kodiak, AK 99615
907-486-3008
paul@kodiakoutdoors.com



**Kodiak Advisory Committee
January 30, 2019
Kodiak High School Conference Room**

I. Call to Order: 1740 by Paul Chervenak (Chair)

II. Roll Call:

Members Present: 16

Guide	Paul Chervenak
Alternate	Jason Bunch
Large Boat	Tyler Schmeil
Small Boat	Oliver Holm
West Set Net	Kip Thomet
Port Lions	Kevin Adkins (Phone)
Citizen	Melissa Burns
Subsistence	Andrew Finke Conc.
Citizen	Julie Kavanaugh

Transporter	Rolan Ruoss
Alternate	Nate Rose
Port Lions Alt.	George Weaver (phone)
Processor	Randy Swain (phone)
Old Harbor	Conrad Peterson
South Set Net	Theresa Peterson
Ouzinkie	Danny Clarion (phone)

Members Absent: 2

Trawl	Patrick O'Donnell
Small Boat	Ronald Kavanaugh

Quorum on AC: 8

User Groups Present:

Big Game Guides
KNWR

Concerned Citizen

III. Fish and Game Staff Present:

Tyler Polum
John Crye

Matt Miller (Phone)
Nate Svoboda

IV. Approval of Agenda:
Approved Unanimously

V. Approval of Previous Meeting Minutes:
From 1/4/2019, Approved Unanimously

VI. Old Business: Board of Fish Proposals 169 and 170.

VII. New Business: (Page 4)

1. Board of Game proposals for Southcentral Alaska Proposals 93 - 109.



BOG 99		Allocate at least 90% of the Unit 8 Brown Bear drawing permits to residents.	
<input type="checkbox"/> Support <input type="checkbox"/> Support as Amended <input checked="" type="checkbox"/> Oppose <input type="checkbox"/> No Action	0	14	<ul style="list-style-type: none">• This proposal undermines a highly successful management program which provides balance between economic stability and opportunity with maximum sustainability.• This proposal is unanimously opposed.• The current Kodiak Bear Management Program is regarded as the most successful program in the world. Changes, if any, should be slight and closely monitored.• Any management change can and will have a trickle effect with multiple and potentially lasting biological consequences. <p>Discussion,</p> <ul style="list-style-type: none">• As stated by the proposer, "Constitution mandates that wildlife will be utilized for maximum benefit for its people." The Kodiak Brown Bear is a "non-meat animal", thus it is not managed to maximize as a food source. Therefore, priority management is for economic and intrinsic value. "For the maximum benefit of the people" should thus involve a high percentage of nonresident guided hunters which clearly maximizes the economic value of the Kodiak bear.• The common use clause, "for the maximum benefit of its people" makes no distinction between use for personal purposes and use for professional purposes. (Owsichек, 763 P.2d at 497)• The committee understands this proposal seeks to challenge guide and resident opportunity not non-resident and resident opportunity• Guide and non-resident opportunity are one in the same as established in Owsichек vs State. <p><i>(Owsichек, 763 P.2d at 497 note 15 states "while a hunting guide does not actually take the game, a privilege reserved for the client. We view this as an insignificant distinction that does not remove professional hunting guides from protection under the common use clause. The work of a guide is so closely tied to hunting and taking wildlife that there is no meaningful basis for distinguishing between the rights of a guide and the rights of a hunter under the common use clause.")</i></p> <ul style="list-style-type: none">• Common Use interpretation within the Owsichек vs State case asserts; unless conservation demands, no preference is to be given to either Alaskan residents or Alaskan guides. (Currently 97% of active professional guides registered in Unit 8 are Alaskan residents.)



		<ul style="list-style-type: none">• An argument could be made that conservation may demand that guide opportunity (non-resident permits) take precedent with their lower sow and higher mature boar harvest rates when it relates to conservation. <p>Referencing the Board of Game Non-resident Allocation policy 2017-222-BOG; In a draw hunt, allocation will be based upon the historical data of the past 10 or more years.</p> <ul style="list-style-type: none">• The up to 60-40 allocation policy (which is actually 66-34) has been in place since 1976.• Since 1899 Guides and Non-resident hunters have played the critical role in establishing the Kodiak Brown Bear as the iconic animal it is today. These tremendous efforts include today's conservation measures; ending market hunting, establishing bag and season limits, establishing a full-time game biologist, ending agricultural and ranching pursuits, prohibiting the taking of cubs and sows with cubs, implementing sealing requirements, establishing the Kodiak National Wildlife Refuge and instituting guide requirements. <p>This BOG policy also recognizes that "nonresident hunters provide the majority of direct funding into Alaskan Wildlife Management" and tasks the BOG with "preserving the heritage of hunting."</p> <p>Changing the current 66/34 allocation will have a major economic impact on small businesses throughout Kodiak and State of Alaska and most likely eradicate the long-standing guiding tradition on Kodiak.</p> <p><u>Money generated for small businesses in Kodiak:</u></p> <ul style="list-style-type: none">• 185 non-resident hunts @ \$22,500.00 per hunt equals an additional 4.16 million dollars infused into Alaska's economy.• Additional non-resident expenditures not accounted for include transportation, accommodations, food and drink, equipment, gifts and miscellaneous services.• Other tourism related expenditures incidental to hunting also exist.• Non-resident expenditures are exponentially higher than that of a self-guided resident hunt. Guided hunts have higher per hunt costs such as employees, transportation, fuel, food, equipment, permitting and advertising.
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			<p><u>Money Generated for the State of Alaska through non resident hunts.</u></p> <ul style="list-style-type: none">• 185 license and tags @1160.00 each equals \$214,600.00.• Pitman Roberts Fund (PRF) match @ x3 equals \$643,800.00• Totals of bear license, tag and PRF match equals \$858,400.00• Approximately 120 deer tags @300.00 equals \$36,000.00• PRF match @ x3 equals \$108,000.00• Totals of deer license, tag and PRF equals \$144,000.00• Totals for license revenue to the State of Alaska through non-resident participation equals \$1,002,400.00 <p><u>Money Generated for the State of Alaska through resident hunts.</u></p> <ul style="list-style-type: none">• 160 resident license and tags @ \$70.00 each equals \$11,200.00• PR Match equals \$33,600.00• Totals for license revenue to the State of Alaska through resident participation equals \$44,800.00 <p><u>A comparison between non-resident and resident money generated to the state without non-resident participation.</u></p> <ul style="list-style-type: none">• Economic loss to the State of Alaska equals \$957,600.00.• These figures do not take into account additional tourism related expenditures in Alaska as they travel to Kodiak. <p>Utilizing the proposed "up to 10 percent" allocation for non-resident permits as used in the lower 48 States where 10 permits must be available to allow 1 non-resident permit and with the current number of permits issued; (See Attachments 1 and 2)</p> <ul style="list-style-type: none">• Resident draw success would only increase slightly, sacrificing both biological and economic stability.• Kodiak would have up to 15 spring and 3 fall non-resident permits annually.• These numbers would put most Kodiak guides out of business and severely impact an already depressed economy.
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			<p>Biological and Conservation concerns;</p> <p>The board of game policy mandates management for sustainable yield per the constitution. The current allocation accomplishes the primary goal of maintaining a stable and healthy bear population.</p> <p>A change in allocation will result in an increase in sow harvest and a decrease in adult boar harvest. Both leading to lower cub production and lower sow-cub survivability. Targeted harvest of adult boars has helped increase the bear population and needs to continue.</p> <ul style="list-style-type: none">• Resident hunters have a higher percentage of sow harvest.• Non-resident guided hunters have a higher percentage of adult boar harvest at 73%. (see Attachment 3)• Consistent adult boar harvest is an essential factor for management decisions and the sustainability of the population.• An assessment from the department estimates an increase in female harvest would likely result in a decrease in the number of drawing permits available overall to the resident hunter.
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT CASSELL,)	
)	
Plaintiff,)	
)	
)	Case No. 3AN-19-7460CI
v.)	
)	
)	
STATE OF ALASKA, BOARD OF GAME,)	
)	
Defendant.)	
)	

Affidavit of Mike Munsey in Support of APHA Motion to Intervene

I, Mike Munsey, make this Affidavit in support of the Motion to Intervene filed by the Alaska Professional Hunters Association ("APHA").

1. I am a hunting guide on Kodiak Island. My Master Guide license number is GUIM78. I am a member of the APHA. APHA is the State's association of hunting guides. I provide this Affidavit in support of APHA's motion to intervene. As explained in this Affidavit, Plaintiff Cassell's lawsuit seeks to reduce by around 80 percent the number bear permits (licenses to take a bear) on Kodiak Island available to hunters who are not residents of the State of Alaska ("non-residents"). Because the substantial majority of the income my wife and I live on is from guiding bear hunts on the Island for non-residents, Cassell seeks relief that, if granted, would destroy my business, on which I depend for my livelihood. I therefore seek to participate in this case through my trade association, APHA, which is moving to intervene as a defendant.

2. My wife Robin Barefield and I operate Munsey's Bear Camp on Kodiak Island. We earn essentially all our income from this business. My parents founded the business in 1956. I purchased it from them in 1980, and have operated it since then. We live year-round at our

hunting lodge on Kodiak Island, which has been our home for the past 62 years. Our hunting lodge where our clients stay with us is on Uyak Bay, which is on an inlet on the Western side of the Island. The site is off the road system. It is reached by a 30-minute float plane ride from the town of Kodiak, where there is air service to the Alaska Mainland.

3. As the name “Munsey’s Bear Camp” suggests, guiding bear hunts is our primary business. Looking at revenue as opposed to income, roughly 55 percent of the revenue our business earns is from guiding bear hunts, the type of hunting directly affected by this case. Another 15 percent or so of our revenue comes from guiding mountain goat and deer hunts. Information on our guided hunts is at www.hunt.munseysbearcamp.com. The remaining 30 percent of our revenue comes from guiding wildlife viewing and fishing. Information on that part of our business is available at www.munseysbearcamp.com. Looking at income (the money available to support my wife and I after paying assistant guides, fuel vendors, charter air vendors, lodge maintenance costs, land manager permission fees, and other business expenses), guiding bear hunts is even larger proportion of our business – roughly 70 percent of our income. The proportion of income from guiding bear hunting is even higher than the proportion of our revenue from that activity because it is a relatively high margin business compared to guiding hunts of other species and guiding wildlife viewing and fishing. Kodiak bears have a worldwide reputation for size and substantial allure to hunters, resulting in higher customer demand and pricing. Although the market has resulted in pricing for guiding mountain goat and deer hunts being much lower, the costs of guiding hunts for those species remain substantial (I still have to hire assistant guides and pay for fuel, food, and many other costs). In summary, my wife and I rely on our business income, which is primarily from guiding bear hunts, for our livelihood.

4. Almost all (well over 90 percent) of our customers for bear hunting are non-residents (persons whose home is somewhere other than Alaska). This is for two reasons. First, Alaska State law requires that non-residents hire a guide to hunt bear, but allows Alaska residents to hunt bear without a guide. Second, Alaska residents have a greater ability than non-residents to navigate the difficult logistics of getting to Kodiak Island to hunt bear, and so have much less incentive to hire a guide to help them with these logistics. An Alaskan resident may very well own their own small plane and be able to fly to the Island, or own a boat and come over from the Homer area. An Alaskan resident is far more likely to know Island residents with whom he or she can stay while hunting on the Island, or how to camp on their own. An Alaskan resident is more likely to already own their own weather-appropriate hunting equipment. Further, customers hire guides for the increased safety they provide as guides are specifically trained in safety, and the guides who operate on Federal lands have extensive safety plans as required by our Federal SUPs, which most likely far exceeds state guide licensing requirements.

5. Having a guide provides a conservation value whether the client is a resident or non-resident. As was shown in the evidence presented to the Board of Game when that Board made the decision to reject Plaintiff Cassell's proposal (the decision that prompted Cassell's lawsuit), guided hunters are substantially more likely than non-guided hunters to take boars (male bears) than sows (female bears). As also shown by the evidence in that proceeding, the key to maintaining a healthy bear population is to limit harvest of sows, who have litters of cubs only once every four or five years. Guides have the expertise at spotting and viewing bears to help both non-resident and resident hunters avoid harvesting sows. Unlike unguided hunters from Anchorage or elsewhere in the State, guides on Kodiak Island have a substantial economic

incentive to minimize harvest of sows, as doing so preserves the natural resource (the bears) on which their guiding business depends for long-term success.

6. Throughout my career, I have worked hard to maintain the State of Alaska licensure necessary to guide clients and supervise assistant guides who directly guide some of my customers. Shadowing or apprenticing for master guides is the primary method by which prospective guides become master guides. The educational and professional development and licensing opportunity for these prospective guides would be hindered by the interference this lawsuit (if successful) would pose to the activities of master guides. I hold a Master Guide license from the State's Big Game Commercial Services Board, and am currently authorized to work as a Master Guide in Guide Use Areas 08-17, 08-18, and 08-20, all on Kodiak Island. I comply with the requirements to be a Master Guide. This includes obtaining numerous client recommendations, maintaining continuity in my business operations, paying for general liability insurance or posting a \$100,000 bond to ensure payment of any judgments that may be entered as a result of my big game guiding service, maintaining workers' compensation insurance for assistant guides, and obeying the wildlife regulations.¹

7. I have also devoted and continue to devote substantial effort and resources to obtaining permission from the Federal and Native Corporation land managers to guide hunts on their lands. Much of the land on Kodiak Island, and the substantial majority of good bear habitat, is within Kodiak National Wildlife Refuge, which is run by the U.S. Fish and Wildlife Service ("U.S. FWS"). U.S. FWS has divided the Refuge into 25 areas and awards one Special Use Permit for big game guided hunting in each area. Thus only one guide can guide in each

¹ While the precise requirements to be a Master Guide have varied over the years, the current requirements are detailed in the instructions to current form to apply for this license: <https://www.commerce.alaska.gov/web/Portals/5/pub/gui4010.pdf>.

area of the Refuge. I hold the Special Use Permits (“SUPs”) issued by U.S. FWS for three of those areas, KOD 9, KOD 11, and KOD 17. FWS awarded me my SUPs through a competitive process in which I was selected over other applicants. The terms of my SUPs require me to file annual operating plans with U.S. FWS, maintain substantial liability insurance, and comply with various other requirements established by U.S. FWS to ensure quality client experiences and protection of Refuge habitat. Most of my guided hunting, including for bears, is on my SUP areas on the Refuge, and the remainder is generally on Koniag Native Corporation Land. I pay Koniag on a per-hunter basis (roughly \$1,000 per hunter) for permission to hunt Koniag lands. I have worked hard to maintain good relations with both U.S. FWS and Koniag.

8. U.S. FWS recognize the conservation value of guided hunting on Refuge lands, a value that would be jeopardized if Cassell’s lawsuit prevails. U.S. FWS’s Kodiak NWR Comprehensive Conservation Plan (“CCP”) states that “Guides provide an important service to refuge visitors who need assistance with their trip” and that “Commercially guided hunting and related services contribute to fulfillment of Refuge purposes and to the National Wildlife Refuge System mission by facilitating priority public use and management of healthy wildlife populations through controlled hunting.”² U.S. FWS in the CCP explains that guided big-game hunting on Kodiak is a traditional activity Congress has preserved through legislation: “Commercial big-game guiding and outfitting services are a form of traditional activity that Congress intended to preserve with enactment of the Alaska National Interest Lands Conservation Act, which redesignated the Refuge.”³ U.S. FWS concludes that “Most non-Alaska residents would not be able to hunt brown bears on Kodiak Refuge if guiding were not allowed” and that competitively awarding one guiding permit per area helps “ensure quality

² Kodiak NWR CCP Summary, p. 11 and Appendix E, p. E-8.

³ CCP, p. E-14.

guiding services to the public.”⁴ As a National Wildlife Refuge, Kodiak NWR exists for the benefit of all citizens of the United States, including residents of other states who may desire to travel to the Refuge to hunt bear.

9. Under Alaska regulation 5 AAC 92.061, the current system distributes a minimum of 60 percent of Kodiak bear permits to residents and a maximum of 40 percent to non-residents. The actual numbers demonstrate an allocation of 67 percent of permits to residents and 33 percent to non-residents.⁵ In his Proposal, Cassell asked that the Board of Game change the distributions so that 90 percent of Kodiak bear permits are reserved for residents and the remaining 10 percent are available to both residents and non-residents (with that 10 percent “pooled” and then distributed to by lottery).⁶ This is a devastating reduction in the number of bear permits available to non-residents no matter how calculated:

A. Assuming that non-residents receive all 10 percent of the pooled permits that would be available to both residents and non-residents under Cassell’s proposal (even though Cassell would make that 10 percent pool available to both residents and non-residents), Cassell is asking to reduce the number of non-resident bear permits by more than 75 percent from its regulatory maximum (40 percent of all permits)⁷ and by

⁴ CCP, p. 2-67 and E-14.

⁵ The State now uses a lottery system to distribute the resident permits to residents who apply for them and to distribute the non-resident permits to non-residents who apply for them. This system has been in place for many years. The total number of permits is revised from time to time based on estimates of the Kodiak bear population.

⁶ I am referring to bear hunts in areas not on the Kodiak road system. As I have explained, I conduct my hunting primarily on Kodiak National Wildlife Refuge lands, where I hold SUPs. These lands are not on the road system, and so are governed by the current permit drawing system that Plaintiff Cassell challenges. There is a separate less valuable bear hunt, conducted on primarily State lands on the road system, where permits are available over-the-counter. The best bear habitat is off the road system, including on Refuge lands where I lead my bear hunts.

⁷ Math: 10% divided by 40% equals 25%. Subtracting this 25% from the 100% total equals 75%, which is the reduction.

approximately 70 percent from its actual number (33 percent of all permits).⁸

B. Much more realistically, assuming that both residents and non-residents participate in the 10 percent pool Cassell proposes and each category of hunter secures half of the permits in that pool, then non-residents will secure only 5 percent of all Kodiak bear permits. That would be a reduction of 87.5 percent from the current maximum distribution of bear permits to non-resident hunters⁹ and approximately 85 percent from the current actual distribution of bear permits to non-resident hunters.¹⁰

Again, as I stated above, approximately 70 percent of my business income is from Kodiak bear hunters and upwards of 90 percent of my bear hunter clients are non-residents. Based on the number above, if Cassell's proposal is ordered by the Court, either directly or as a result of a ruling by the Court that result in an adverse Board of Game ruling, I am looking at the loss of more than half my income. In addition, there would be no economies of scale to guide the rare resident bear hunter clients now and then. That would destroy my business. Cassell's proposal would also destroy the value of my U.S. FWS-issued SUPs, both to me and to U.S. FWS.

10. Realizing the threat to my business from Cassell's proposal, I participated in the proceeding before the Board of Game that considered that proposal. I submitted public comments opposing the proposal. A copy of my comments is attached as Exhibit 1 to this Affidavit. I traveled to Anchorage to testify against the proposal at the public hearings held by the Board of Game on March 15 through 19, 2019. I coordinated with other guides who are APHA members in opposing Cassell's proposal.

⁸ Math: 10% divided by 33% equals 30.3%. Subtracting this 30.3% from the 100% total equals 69.7%, which is approximately a 70% reduction.

⁹ Math: 5% divided by 40% equals 12.5%. Subtracting this 12.5% from the 100% total equals 87.5%, which is the reduction.

¹⁰ Math: 5% divided by 33% equals 15.15%. Subtracting this 15.15% from the 100% total equals 84.84%, which is approximately an 85% reduction.

11. After hearing from both proponents and opponents of Cassell's proposal, the Board voted 5 to 1 to reject the proposal. Cassell has now appealed the Board of Game's decision by filing this lawsuit seeking to reverse that decision. As a prevailing party in the proceeding before the Board of Game, whose livelihood is substantially impacted, I seek to continue my participation in this new phase of the proceeding through APHA's motion to intervene. As a member of APHA, I trust APHA to represent my interests. If there is discovery in the case, I will participate and provide the required information, even if my participation is through APHA, rather than as a direct party to the case. However, should the Court determine that my direct participation as a party is preferable to my indirect participation through my trade association APHA, then I request to intervene directly as an individual party.

VERIFICATION

State of Alaska

Borough of Kodiak Island

I certify under penalty of perjury that the foregoing is true. In accordance with Alaska Statute § 09.63.020, I attest that no public notary or other official empowered to administer oaths is available to certify this affidavit because, as explained above, I am at a location off the road system that is only accessible by float plane during the guiding season.


Mike Munsey

Dated: July 28, 2019

EXHIBIT 1 TO MUNSEY AFFIDAVIT



PC070
1 of 1

Submitted By
Mike Munsey
Submitted On
2/24/2019 9:55:40 AM
Affiliation
Munsey's Bear Camp

Phone
9072025619

Email
munseymike12@gmail.com

Address
P.O. Box AOS
P.O. Box AOS
Kodiak, Alaska 99697

I was born and raised on Kodiak Island and have lived my entire life here, and I am strongly opposed to Proposal 99. Nonresident hunters provide a huge source of revenue to the State of Alaska through licenses and tag fees. They also contribute more to the local economy than resident hunters. Nonresident hunters statistically spend more money in local sporting goods stores, hotels, restaurants and tourist shops than resident hunters. Passage of this proposal would be a huge financial blow to not just the guides who operate on Kodiak, but also to the local economy in general, and to the ADF&G budget.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT CASSELL,)	
)	
Plaintiff,)	
)	
)	Case No. 3AN-19-7460CI
v.)	
)	
)	
STATE OF ALASKA, BOARD OF GAME,)	
)	
Defendant.)	
)	

Affidavit of Samuel Rohrer in Support of APHA Motion to Intervene

I, Samuel Rohrer, make this Affidavit in support of the Motion to Intervene filed by the Alaska Professional Hunters Association (“APHA”).

1. I am a hunting guide on Kodiak Island. My Master Guide license number is GUIM204. I am a member of the APHA. I currently serve as APHA’s president. However, because of my personal interest in this controversy, the affidavit describing APHA’s interest in the proceeding as an organization is supplied by its Executive Director, Deborah Moore. APHA is the State’s association of hunting guides. I provide this Affidavit in support of APHA’s motion to intervene. As explained in this Affidavit, Plaintiff Cassell’s lawsuit seeks to reduce by around 80 percent the number bear permits (licenses to take a bear) on Kodiak Island available to hunters who are not residents of the State of Alaska (“non-residents”). Because the substantial majority of my income is from guiding bear hunts on the Island for non-residents, Cassell seeks relief that, if granted, would destroy my business, on which my wife Sarah and I and our children depend for my livelihood. I therefore seek to participate in this case through my trade association, APHA.

2. I own and operate Rohrer Bear Camp on Kodiak Island. This guiding business is incorporated as Rohrer Bear Camp, Inc. It presently supplies 85 percent of the income of my family (I also do some landscape construction work). My father Dick Rohrer has guided on Kodiak since 1969. He owned and operated Rohrer Bear Camp, Inc. for decades. Starting at age 15, I worked in his family business first as a general helper and then, as I got older, took on additional roles, including fishing guide, hunting packer, assistant hunting guide, registered hunting guide, and finally Master Guide. My wife and I purchased the business from my dad in 2015.

3. Rohrer Bear Camp consists of several cabins on Uganik Bay on the west side of Kodiak Island. The site is off the road system. It is reached by an approximately 30-minute float plane ride from the town of Kodiak, where there is air service to the Alaska Mainland.

4. As the name “Rohrer Bear Camp” suggests, guiding bear hunts is our primary business. Looking at revenue as opposed to income, roughly 76 percent of our revenue comes from guiding bear hunts, the type of hunting directly affected by this case. The remainder comes from guiding goat and deer hunts, wildlife viewing, and fishing. Looking at income (the money available to support my wife and I and our children after paying assistant guides, fuel vendors, charter air vendors, lodge maintenance costs, land manager permission fees, and other business expenses), guiding bear hunts is even larger proportion of our business – it accounts for roughly 85 percent of our income. The proportion of income from guiding bear hunting is even higher than the proportion of our revenue from that activity because it is a relatively high margin business compared to guiding hunts of other species and guiding wildlife viewing and fishing. Kodiak bears have a worldwide reputation for size and substantial allure to hunters, resulting in higher customer demand and pricing. My 2019 pricing sheet, which is available at

www.kodiakbearcamp.com, is attached as Exhibit 1 to this Affidavit. Although the market has resulted in pricing for guiding mountain goat and deer hunts being much lower, the costs of guiding hunts for those species remain substantial (I still have to hire assistant guides and pay for fuel, food, and many other costs). Guiding wildlife viewing and fishing produces better margins than deer or goat hunting, but not nearly as much as bear hunting. In summary, my wife and I rely on our business income, which is primarily from guiding bear hunts, for our livelihood.

5. Almost all (well over 90 percent) of our customers for bear hunting are non-residents (persons whose home is somewhere other than Alaska). This is for two reasons. First, Alaska State law requires that non-residents hire a guide to hunt bear, but allows Alaskan residents to hunt bear without a guide. Second, Alaska residents have a greater ability than non-residents to navigate the difficult logistics of getting to Kodiak Island to hunt bear, and so have much less incentive to hire a guide to help them with these logistics. An Alaskan resident may very well own their own small plane and be able to fly to the Island, or own a boat and come over from the Homer area. An Alaskan resident is far more likely to know Island residents with whom he or she can stay while hunting on the Island, or how to camp on their own. An Alaskan resident is more likely to already own their own weather-appropriate hunting equipment. Alaskan residents just do not want to pay the prices necessary for a guide to put on a quality bear hunt. See Exhibit 1 (pricing table — bear hunt is \$23,500 per customer, which supports the Kodiak economy). Further, customers hire guides for the increased safety they provide as guides are specifically trained in safety, and the guides who operate on Federal lands have extensive safety plans as required by our Federal SUPs, which most likely far exceeds state guide licensing requirements.

6. Having a guide provides a conservation value whether the client is a resident or non-resident. As was shown in the evidence presented to the Board of Game when that Board made the decision to reject Plaintiff Cassell's proposal (the decision that prompted Cassell's lawsuit), guided hunters are substantially more likely than non-guided hunters to take boars (male bears) than sows (female bears). As also shown by the evidence in that proceeding, the key to maintaining a healthy bear population is to limit harvest of sows who have litters of cubs only once every four or five years. Guides have the expertise at spotting and viewing bears to help both non-resident and resident hunters avoid harvesting sows. Unlike unguided hunters from Anchorage or elsewhere in the State, guides on Kodiak Island have a substantial economic incentive to minimize harvest of sows, as doing so preserves the natural resource (the bears) on which their guiding business depends for long-term success.

7. Throughout my career, I have worked hard to maintain the State of Alaska licensure necessary to guide clients and supervise assistant guides who directly guide some of my customers. Shadowing or apprenticing for master guides is the primary method by which prospective guides become master guides. The educational and professional development and licensing opportunity for these prospective guides is hindered by the interference this lawsuit (if successful) would pose to the activities of master guides. I hold a Master Guide license from the State's Big Game Commercial Services Board, and am currently authorized to work as a Master Guide in Guide Use Areas 08-22, 08-23, and 08-24, all on Kodiak Island. I comply with the requirements to be a Master Guide. This includes obtaining numerous client recommendations, maintaining continuity in my business operations, paying for general liability insurance or posting a \$100,000 bond to ensure payment of any judgments that may be entered as a result of

my big game guiding service, maintaining workers' compensation insurance for assistant guides, and obeying the wildlife regulations.¹

8. I have also devoted and continue to devote substantial effort and resources to obtaining permission to guide hunts on Kodiak National Wildlife Refuge, which is run by the U.S. Fish and Wildlife Service ("U.S. FWS"). I conduct all my bear hunts on Refuge lands. U.S. FWS has divided the Refuge into 25 areas and awards one Special Use Permit for big game guided hunting in each area. Thus only one guide can guide in each area of the Refuge. I hold the Special Use Permits ("SUP") issued by U.S. FWS for three of those areas, KOD 03, KOD 07 and KOD 08. U.S. FWS awarded me my SUPs through a competitive process in which I was selected over other applicants. Because U.S. FWS recently renewed my SUPs for five year terms, over four years remain on the current term of each SUP (2019-2023). The terms of my SUPs require me to file annual operating plans with U.S. FWS, maintain substantial liability insurance, and comply with various other requirements established by U.S. FWS to ensure quality client experiences and protection of Refuge habitat.

9. U.S. FWS recognize the conservation value of guided hunting on Refuge lands, a value that would be jeopardized if Cassell's lawsuit prevails. U.S. FWS's Kodiak NWR Comprehensive Conservation Plan ("CCP") states that "Guides provide an important service to refuge visitors who need assistance with their trip" and that "Commercially guided hunting and related services contribute to fulfillment of Refuge purposes and to the National Wildlife Refuge System mission by facilitating priority public use and management of healthy wildlife

¹ While the precise requirements to be a Master Guide have varied over the years, the current requirements are detailed in the instructions to current form to apply for this license: <https://www.commerce.alaska.gov/web/Portals/5/pub/gui4010.pdf>.

populations through controlled hunting.”² U.S. FWS in the CCP explains that guided big-game hunting on Kodiak is a traditional activity Congress has preserved through legislation: “Commercial big-game guiding and outfitting services are a form of traditional activity that Congress intended to preserve with enactment of the Alaska National Interest Lands Conservation Act, which redesignated the Refuge.”³ U.S. FWS concludes that “Most non-Alaska residents would not be able to hunt brown bears on Kodiak Refuge if guiding were not allowed” and that competitively awarding one guiding permit per area helps “ensure quality guiding services to the public.”⁴ As a National Wildlife Refuge, Kodiak NWR exists for the benefit of all citizens of the United States, including non-residents who may desire to travel to the Refuge to hunt bear.

10. Under Alaska regulation 5 AAC 92.061 the current system distributes a minimum of 60 percent of Kodiak bear permits to residents and a maximum of 40 percent to non-residents. The actual numbers demonstrate an allocation of 67 percent of permits to residents and 33 percent to non-residents.⁵ In his Proposal, Cassell asked that the Board of Game change the distributions so that 90 percent of Kodiak bear permits are reserved for residents and the remaining 10 percent are available to both residents and non-residents (with that 10 percent

² Kodiak NWF CCP Summary, p. 11 and Appendix E, p. E-8.

³ CCP, p. E-14.

⁴ CCP, p. 2-67 and E-14.

⁵ I am referring to bear hunts in areas not on the Kodiak road system. As I have explained, I conduct my hunting on Kodiak National Wildlife Refuge lands, where I hold SUPs. These lands are not on the road system, and so are governed by the current permit drawing system that Plaintiff Cassell challenges. There is a separate less valuable bear hunt, conducted on primarily State lands on the road system, where permits are available over-the-counter. The best bear habitat is off the road system, including on the Refuge lands where I lead my bear hunts.

“pooled” and then distributed to by lottery).⁶ This is a devastating reduction in the number of bear permits available to non-residents no matter how calculated:

A. Assuming that non-residents receive all 10 percent of the pooled permits that would be available to both residents and non-residents under Cassell’s proposal (even though Cassell would make that 10 percent pool available to both residents and non-residents), Cassell is asking to reduce the number of non-resident bear permits by more than 75 percent from its regulatory maximum (40 percent of all permits)⁷ and by approximately 70 percent from its actual number (33 percent of all permits).⁸

B. Much more realistically, assuming that both residents and non-residents participate in the 10 percent pool Cassell proposes and each category of hunter secures half of the permits in that pool, then non-residents will secure only 5 percent of all Kodiak bear permits. That would be a reduction of 87.5 percent from the current maximum distribution of bear permits to non-resident hunters⁹ and approximately 85 percent from the current actual distribution of bear permits to non-resident hunters.¹⁰

Again, as I stated above, approximately 85 percent of our income is from Kodiak bear hunters and upwards of 90 percent of my bear hunter clients are non-residents. Based on the number

⁶ The State now uses a lottery system to distribute the resident permits to residents who apply for them and to distribute the non-resident permits to non-residents who apply for them. This system has been in place for many years. The total number of permits is revised from time to time based on estimates of the Kodiak bear population.

⁷ Math: 10% divided by 40% equals 25%. Subtracting this 25% from the 100% total equals 75%, which is the reduction.

⁸ Math: 10% divided by 33% equals 30.3%. Subtracting this 30.3% from the 100% total equals 69.7%, which is approximately a 70% reduction.

⁹ Math: 5% divided by 40% equals 12.5%. Subtracting this 12.5% from the 100% total equals 87.5%, which is the reduction.

¹⁰ Math: 5% divided by 33% equals 15.15%. Subtracting this 15.15% from the 100% total equals 84.84%, which is approximately an 85% reduction.

above, if Cassell's proposal is ordered by the Court, either directly or as a result of a ruling by the Court that results in a Board of Game ruling, I am looking at the loss of more than half my income. In addition, there would be no economies of scale to guide the rare resident bear hunter clients now and then. That would destroy my business. Cassell's proposal would also destroy the value of my U.S. FWS-issued SUPs, both to me and to U.S. FWS.

11. Realizing the threat to my business from Cassell's proposal, I participated in the proceeding before the Board of Game that considered that proposal. I submitted public comments opposing the proposal and testified against the proposal (I understand Board records may not reflect that I testified, perhaps because of confusion with my father, who also testified, and has the same last name as me). A copy of my comments is attached as Exhibit 2 to this Affidavit. My father Dick Rohrer filed comments against the proposal and testified against it at the public hearings held by the Board of Game on March 15 through 19, 2019. APHA, of which I am President, also presented public testimony as an organization against the proposal, through its Director of Government Affairs, Thor Stacey. I coordinated with other guides who are APHA members and APHA in opposing Cassell's proposal. These comments and testimony are noted in the public record of the Board of Game hearings.

12. After hearing from both proponents and opponents of Cassell's proposal, the Board voted 5 to 1 to reject the proposal. Cassell has now appealed the Board of Game's decision by filing this lawsuit seeking to reverse that decision. As a prevailing party in the proceeding before the Board of Game, whose livelihood is substantially impacted, I seek to continue my participation in this new phase of the proceeding through APHA's motion to intervene. As a member of APHA, I trust APHA to represent my interests. If there is discovery in the case, I will participate and provide the required information, even if my participation is

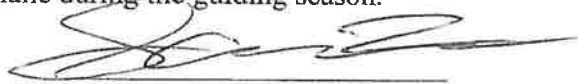
through APHA, rather than as a direct party to the case. However, should the Court determine that my direct participation as a party is preferable to my indirect participation through my trade association APHA, then I request to intervene directly as an individual party.

VERIFICATION

State of Alaska

Borough of Kodiak Island

I certify under penalty of perjury that the foregoing is true. In accordance with Alaska Statute § 09.63.020, I attest that no public notary or other official empowered to administer oaths is available to certify this affidavit because, as explained above, I am at a location off the road system that is only accessible by float plane during the guiding season.

A handwritten signature in black ink, appearing to read 'Samuel Rohrer', written over a horizontal line.

Samuel Rohrer

Dated: July 27, 2019



ROHRER BEAR CAMP

Master Guide #204

Sam Rohrer
P.O. Box 1388
Kodiak, Alaska 99615
Phone: 1-907-486-4074
Cell: 1-907-539-1828
sam@kodiakbearcamp.com
www.kodiakbearcamp.com

Fair Chase Hunting

Brown Bear
Mountain Goat
Sitka Black-tailed Deer
Family Trips
Fishing
Trekking

HUNTING PRICE LIST

Brown Bear	10 Day	\$23,500.00
Mountain Goat	6 Day	\$9,500.00
Sitka Black-tailed Deer	6 Day	\$6,500.00
APHA Hunter Preservation Fee		\$150.00
Deposit Required		50%

FISHING PRICE LIST

Wildlife Viewing & Fishing	6 Day/5 Nights	\$3,300.00
Wildlife Viewing & Fishing	4 Day/3 Nights	\$2,200.00
Deposit Required		50%

LICENSE & TAG FEES

Hunting License:	\$160.00	Fishing License	
Bear Tag:	\$1000.00	3 Day Fishing License:	\$45.00
Goat Tag:	\$600.00	7 Day Fishing License:	\$70.00
Deer Tag (Each):	\$300.00	14 Day Fishing License:	\$105.00

Prices Valid for 2019

From the desk of

Sam Rohrer
P.O. Box 1388
Kodiak, AK 99615



PC086
1 of 2

February 28, 2019

Kristy Tibbles
Executive Director, AK BOG
P.O. Box 115526
Juneau, AK 99811-5526

RE. 2019 Southcentral Region Comments

Chairman Spraker and BOG Members,

Thank you for serving our state and its wildlife resources and thank you for taking the time to read my comments on Southcentral Region proposals.

I will be brief in my comments, but I do encourage you to look closely at the Kodiak Advisory Council comments and meeting minutes, as they accurately reflect the views of our Kodiak community. Our community put a tremendous amount of time and effort into AC meetings to thoughtfully consider all the Kodiak proposals. This was an effort to protect and maintain a system of Brown Bear Management that has taken over 40 years to perfect.

Kodiak's Brown Bear Management Strategy is regarded as one of the most successful systems in wildlife conservation. As you know, Kodiak is world famous for its large bears and record book skull sizes. The facts are clear, there has never been a better time to hunt Kodiak in terms of chances of success on large record book skulled bears. But this has not happened by accident. It is the result of years of careful management and developing a plan that works. I ask that the BOG be very careful in how it changes this enormously successful program.

Proposal – 99 OPPOSE

I ask that you oppose proposal 99. This proposal would single handedly upset the management structure on Kodiak that has been in place for over 40 years. It would also have devastating financial affects on local small business and our community at large. The Alaska Constitution mandates that wildlife be managed "for the maximum benefit of its people". But this benefit it not just reserved for the person who actually pulls the trigger and harvests the bear. This benefit is for ALL Alaskans, that includes the financial benefit to the local community.

This proposal would also very likely increase sow harvest, which would ultimately result in fewer tags being issued. Even if 100% of available tags were offered to resident hunters, resident hunters would still not have substantially higher draw odds, especially for the most popular hunts. It is important to remember, that the Kodiak Road System area offers over the counter tags and continues to produce some of the largest skulled bears taken in all of Alaska.

Resident hunters have numerous opportunities to harvest bears via over the counter tags both on Kodiak and the entire Alaska Peninsula. There is no reasonable purpose to change the current set allocation.

Proposal – 100 Support

I ask that you support proposal 100. The Board of Game has long asked for the public to bring a proposal that could be applied statewide for management of 2DK permits. The Kodiak AC has proposed this separate drawing hunt with a separate 2DK allocation. For the guiding industry in Alaska to have long term viability it needs stability. A separate 2DK drawing and allocation provides this stability. I believe this proposal could be duplicated in other areas of the state, which would help bring stability to all non-resident drawings.

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Proposal – 101 Oppose

I ask that you oppose proposal 101. First, this proposal is outside of the purview of the Board of Game, however, even if this was not the case, the Board should still oppose it. This proposal would create 2 classes of Alaskan resident hunters, those who can afford high license and tag fees and those who cannot afford them. This is not equal access, this is "special access" for those who are rich. This also ignores the additional economic benefit that nonresident hunters bring to rural Alaska, besides their license and tag fees.

Proposal – 102 Oppose

I ask that you oppose proposal 102. It is telling that the entire community of Kodiak, through the local AC, unanimously opposed this proposal. Currently, most locals would encourage a higher harvest in the "Road System Area". If conflicts were happening on the "Road System Area" the BOG could rest assure, that the local AC would bring a proposal forward to address it. This is a proposal that is offering a "solution" where a problem does not exist.

Proposal – 103 Oppose

I ask that you oppose proposal 103. Again, the Kodiak AC unanimously opposed this proposal. It is important to remember that Managers consider unused permits by both resident and nonresidents when establishing permit numbers. If all unused permits were used, it would require fewer permits be issued in the first place. On average only 8 permits go unused by nonresident hunters each year.

Proposal – 104 Oppose

I ask that you oppose proposal 104. The argument against this proposal is very similar to the argument in opposition to proposal 103. Re-issuing the high number of permits drawn but not used would result in higher participation and harvest. Currently Kodiak is hitting its harvest goals, if participation and harvest increase, then the number of permits originally offered would have to significantly decrease to keep Kodiak within its harvest objectives. This proposal would ultimately *decrease* the opportunity of Resident hunters to obtain a drawing permit.

Proposal – 106 Take No Action

I ask that you take no action on proposal 106. The first part of the proposal recommends that the Department develop educational material to encourage the harvest of mature bears. This is such a good idea, that the Department already did this many years ago. Currently the department offers an information letter, a website, a video, an in-person presentation at time of tag pick-up, and a booklet all aimed at educating the public about Brown Bears. The second part of the proposal asks for a penalty if sows are harvested. Currently, female harvest is within the Department's objectives, however if the female harvest climbs above objectives, the current bear management plan for Kodiak recommends that sow skull size minimums be initiated. This strategy has been used successfully in the past on Kodiak, however it is not currently needed.

Proposal – 130 Oppose or Take No Action

I ask that you either oppose or take no action on proposal 130. The issue that this proposal seeks to address, will already be addressed by Proposal 100.

Thank you for taking the time to thoughtfully read my comments. I appreciate all that you do for Alaska!

Respectfully,

Sam Rohrer
Kodiak, AK

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Attorneys for Defendant Intervenor Alaska Professional Hunters Association

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ROBERT CASSELL,

Plaintiff,

v.

STATE OF ALASKA, BOARD OF GAME,

Defendant,

v.

ALASKA PROFESSIONAL HUNTERS
ASSOCIATION,

Applicant Defendant-
Intervenor.

Case No. 3AN-19-07460 CI

ANSWER OF APPLICANT DEFENDANT-INTERVENOR
ALASKA PROFESSIONAL HUNTERS ASSOCIATION

Applicant Intervenor-Defendant Alaska Professional Hunters Association ("APHA"), respectfully submit this Answer to Plaintiff's Complaint for Declaratory and Injunctive Relief ("Complaint"). Defendant State of Alaska, Board of Game is referred to as "State Board." All allegations in Plaintiff's Complaint that are not expressly admitted to herein are hereby denied.

1. Paragraph 1 of the Complaint is a summary of the Complaint and does not require a response. APHA denies Plaintiff is entitled to any relief.

2. Paragraph 2 of the Complaint is a summary of the Complaint and does not require a response. APHA denies Plaintiff is entitled to any relief. On information and belief APHA admits that Plaintiff Cassell is an Alaskan resident and hunter.

3. APHA lacks sufficient information to determine the truth of the allegations in paragraph 3 of the Complaint and for that reason, deny them, except that APHA admits Plaintiff Cassell is a member of the Board of Resident Hunters of Alaska.

4. APHA admits the allegations in paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint states conclusions of law and does not require a response.

6. Paragraph 6 of the Complaint states conclusions of law and does not require a response.

7. Paragraph 7 of the Complaint states conclusions of law and does not require a response.

8. APHA admits the allegations of paragraph 8 of the Complaint.

9. APHA admits the allegations of paragraph 9 of the Complaint.

10. The first, second, and fifth sentences of paragraph 10 of the Complaint are conclusions of law and do not require a response. The third and fourth sentences of paragraph 10 quote state constitutional provisions which speak for themselves and do not require a response. APHA denies that Plaintiff is entitled to any relief under the cited legal provisions.

11. The first sentence of paragraph 11 of the Complaint states legal conclusions to which no response is required. In response to the remainder of paragraph 11, APHA admits that the State Board adopts drawing systems to allocate tags (hunting permits) as to some hunts of some species, and denies all other allegations.

12. APHA denies the allegations of paragraph 12 of the Complaint.

13. Paragraph 13 is generally correct, but APHA lacks sufficient information at this time to respond to allegations concerning the “unique, genetically isolated subspecies” status of the brown bear, and for that reason denies them.

14. APHA admits the allegations of the first sentence of paragraph 14 of the Complaint. In response to the allegations of the second sentence, APHA admits that the State Board distributes permits in certain areas by lottery, and denies all other allegations.

15. APHA admits that Kodiak Island is in GMU 8. The remainder of paragraph 15 of the Complaint quotes regulatory language that speaks for itself.

16. APHA lacks sufficient information to determine the truth of the allegations in paragraph 16 of the Complaint and for that reason, deny them.

17. The 2018-2019 Alaska Drawing Permit Hunt Supplement in paragraph 17 speaks for itself and no response is required.

18. APHA lacks sufficient information to determine the truth of the allegations in paragraph 18 of the Complaint and for that reason, denies them.

19. In response to the allegations of paragraph 19 of the Complaint, APHA admits that Plaintiff submitted a proposed regulatory change to the State Board that the State Board described as proposal 99. The text of Proposal 99 speaks for itself. Any other allegations in paragraph 19 are denied.

20. APHA lacks sufficient information to determine the truth of the allegations in paragraph 20 of the Complaint and for that reason, denies them.

21. APHA admits the allegations in paragraph 21 of the Complaint.

22. APHA admits the allegations in paragraph 22 of the Complaint, and also notes that the State Board asserts in its Answer that the State Board also met on March 20, 2019.

23. In response to the allegations of paragraph 23 of the Complaint, APHA admits that Plaintiff Cassell and/or allies submitted some amount of comments and testimony in support of his Proposal 99, and that other parties included hunting guides and APHA provided opposing comments and testimony. All other allegations of paragraph 23 are denied.

24. APHA admits the allegations in paragraph 24 of the Complaint, except that it cannot immediately confirm that Exhibit 5 to the Complaint consists of the ADF&G materials submitted to the State Board, and therefore denies that allegation for that reason.

25. APHA admits the allegations in paragraph 25 of the Complaint.

26. In response to the allegations of paragraph 26 of the Complaint, APHA admits that the Department of Law provided a public statement during the State Board's consideration of Proposal 99 that the existing regulation was lawful, and denies all other allegations.

27. In response to the allegations of paragraph 27 of the Complaint, APHA admits that at least some members of the State Board in their public statements before the vote on Proposal 99 lawfully and appropriately noted the economic importance of the guiding industry to Kodiak Island. All other allegations are denied.

28. Paragraph 28 is a paraphrase of the statement of the Chairman of the State Board at the hearing on Proposal 99. The statement in the public record of the hearing (recorded on a public audio file) speaks for itself and no response is required.

29. APHA denies the allegations of paragraph 29 of the Complaint.

30. APHA denies the allegations of paragraph 30 of the Complaint.

31. Paragraph 31 of the Complaint incorporates allegations in earlier paragraphs of the Complaint into Count I. See APHA's responses above to the earlier paragraphs.

32. APHA denies the allegations in paragraph 32 of the Complaint.

33. APHA denies the allegations in paragraph 33 of the Complaint.

34. Paragraph 34 of the Complaint incorporates allegations in earlier paragraphs of the Complaint into Count II. See APHA's responses above to the earlier paragraphs.

35. APHA denies the allegations in paragraph 35 of the Complaint.

36. APHA denies the allegations in paragraph 36 of the Complaint.

37. Paragraph 37 of the Complaint incorporates allegations in earlier paragraphs of the Complaint into Count III. See APHA's responses above to the earlier paragraphs.

38. APHA denies the allegations in paragraph 38 of the Complaint.

39. APHA denies the allegations in paragraph 39 of the Complaint.

40. Paragraph 40 of the Complaint incorporates allegations in earlier paragraphs of the Complaint into Count IV. See APHA's responses above to the earlier paragraphs.

41. APHA denies the allegations in paragraph 41 of the Complaint.

42. APHA denies the allegations in paragraph 42 of the Complaint.

RESPONSE TO PRAYER FOR RELIEF

APHA denies that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES¹

1. The Complaint fails to state a claim upon which relief may be granted.
2. The Alaska State Constitution contradicts Plaintiffs' Complaint. Article I, Section 23 of the Alaska State Constitution provides that: "This constitution **does not prohibit** the State from granting preferences, on the basis of Alaska residence, to residents of the State over nonresidents to the extent permitted by the Constitution of the United States." (Emphasis added). By declaring that preferences for residents are "not prohibited" to the extent permitted by the U.S. Constitution, Article I, Section 23 confirms

¹ Without taking on the burden of proof on any matter for which that burden properly rests on Plaintiff, APHA gives Plaintiff notice of the following additional matters that bar some or all of the relief sought by Plaintiff.

that the State Constitution makes resident preferences optional, not mandatory as Plaintiff claims in his Complaint.²

3. Plaintiff Cassell's Complaint seeks relief preempted by federal law. Because APHA members hold competitively-awarded, sole-use concessions (called Supplemental Use Permits) to guide hunts that a federal land management authority (Kodiak National Wildlife Refuge, the "Refuge") granted for purposes including providing opportunities for hunters for are not residents of Alaska to hunt on these federal lands, the extreme preference for resident hunters that Plaintiff asks that this Court to require would frustrate and effectively nullify the federal regulatory action granting those concessions, and so would be preempted by federal law.³ Under Alaska state law, non-residents must hire a guide to hunt bear on the Refuge, and must also obtain a non-resident permit (tag). APHA members guiding on Kodiak Island including Paul Chervenak, Mike Munsey, and Samuel Rohrer hold concessions on the Refuge. Most of the hunt directly at issue in this case occurs on the Refuge, and Plaintiff proposes that non-residents would be almost entirely excluded from the hunt if the Court grants Plaintiff his requested relief. Almost all the clientele that APHA members serve under those

² Before granting a resident preference, the State Board would also need to satisfy any other conditions imposed by Federal or State law.

³ In addition, Alaska Const. Art. 1, Sec. 23, quoted above, forbids the State from granting preferences to residents to the extent doing so would violate the U.S. Constitution, as would occur were Cassell to obtain an extreme resident preference preempted by federal law.

federal concessions are non-residents, so the relief Plaintiff seeks by this lawsuit (if granted by the Court) would effectively negate these federal concessions.⁴

4. Plaintiff Cassell lacks standing to sue. On information and belief Plaintiff Cassell did not apply for a permit to hunt bear on Kodiak Island in 2019 and thus has not been injured by the State Board's rejection of his Proposal 99 and lacks standing to sue.

REQUEST FOR RELIEF

The Alaska Professional Hunters Association asks this Court to dismiss Plaintiff Cassell's Complaint with prejudice and to grant APHA such other and further relief as is just and appropriate.

DATED this 2nd day of August, 2019.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Defendant-Intervenor Alaska
Professional Hunters Association

By:



Adam W. Cook, ABA #0611071
Shane C. Coffey, ABA #1705018
James H. Lister, ABA 1611111

⁴ APHA as a trade association has standing to represent its members including Chervenak, Munsey, and Rohrer. See *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 911 (Alaska 2000) (citing *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 333-34 (1977)). Defending APHA members from legal and regulatory actions that would jeopardize their business is germane to APHA's function as a trade association and there is no need for the members to participate directly in the case as parties if APHA participates.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of August, 2019, a true and correct copy of the foregoing was served on the following in the manner indicated:

Matthew T. Findley

Eva R. Gardner

Ashburn & Mason

1227 W. 9th Avenue, Suite 200

Anchorage, AK 99501

Attorneys for Plaintiff



U.S. Mail



Facsimile



Electronic Delivery



Hand Delivery

Cheryl Rawls Brooking

Aaron Peterson

Office of the Attorney General

1031 W. 4th Avenue, Suite 200

Attorneys for Alaska Board of Game



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Attorneys for Defendant Intervenor Alaska Professional Hunters Association

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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ROBERT CASSELL,

Plaintiff,

v.

STATE OF ALASKA, BOARD OF GAME,

Defendant,

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ALASKA PROFESSIONAL HUNTERS
ASSOCIATION,

Applicant Defendant-
Intervenor.

Case No. 3AN-19-07460 CI

ORDER RE MOTION FOR INTERVENTION
BY ALASKA PROFESSIONAL HUNTERS ASSOCIATION

THIS MATTER having come before the Court on Applicant Defendant-Intervenor's, Motion for Intervention by Alaska Professional Hunters Association ("Defendant-Intervenor"), and the Court having heard all arguments in support and opposition thereto, and being fully informed in the premises, hereby

GRANTS Applicant Defendant-Intervenor's Motion to Intervene pursuant to Alaska Rule of Civil Procedure 24; and it is

FURTHER ORDERED that Applicant Defendant-Intervenor is hereby granted Defendant-Intervenor status.

DATED this _____ day of _____, 2019.

ERIC A. AARSETH
Superior Court Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of August, 2019, a true and correct copy of the foregoing was served on the following in the manner indicated:

Matthew T. Findley
Eva R. Gardner
Ashburn & Mason
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Anchorage, AK 99501
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BIRCH HORTON BITTNER & CHEROT

By: _____

V. Skovtans