

To: Kristy Tibbles E.D./Alaska Board of Game
Via fax at; (907) 465-6094

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From: Mark Moderow *MM*

Please find my supplemental comments on
Proposal 232 before the upcoming Board of Game
meetings.

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March 1, 2011

RE: AK Board of Game, Proposal 232, Supplemental Comment

Members of the Board and representatives of the Department of Law:

My name is Mark Moderow. Our property, house and family sled dog kennel are located within the Yanert Controlled Use Area which is the subject of this proposal. My mailing address is P.O. Box 185, Denali Park, AK 99755. I submitted timely comments in opposition to Proposal 232, as it was noticed, and am compelled to file this supplemental comment due to the material nature of the failure of process in this case. Proposal 232 cannot and should not be adopted.

Out-of-Schedule; Out-of-Area
Inadequate Notice; Impermissible Prejudice

Proposal 232 was put forth by the Fairbanks Advisory Committee and was accepted by the Board of Game through the Agenda Change policy as a supplemental proposal out-of-schedule and out-of-area. The proposal, as noticed to the public, log number 1-11S-G-002, listed the reasons advanced by the out-of-area committee in favor of the proposal. Public comment was requested on the proposal, as noticed, and the only comment by an Advisory Committee, the local Middle Nenana Advisory Committee, as well as 100% of public comments, stated cogent opposition to the proposal. The comments, constituting 31% of all comments filed on all proposals before the Board at

this out-of-area meeting, rebutted, as a matter of fact and not mere opinion, the reasons originally advanced in support of the proposal. There was not a single comment filed in support of the proposal. As such there is no comment in the record supporting the alleged 'factual' bases underlying the proposal as against voluminous and learned comments rebutting those bases. There is no credible factual evidence in support of the proposal.

Only after public comment for inclusion in the Board workbook was closed was an additional 'reason' in support disclosed to the public. This was buried in the Preliminary Recommendations of the ADF&G Staff. Amazingly, the additional justification consisted of yet another outside-of-schedule and outside-of-area matter, the potential relocation of a motorized muzzleloader hunt into the Yanert Valley CUA if the initial outside-of-schedule and outside-of-area proposal 232 was adopted. The public was never afforded any opportunity whatsoever to comment on this second out-of-schedule follow on proposal. Apparently the AF&G Staff deems two compromises to the public's ability to have input into local Interior matters okay, despite only one having been waived onto the agenda of the Central/Southwest Region meeting held in Anchorage Alaska! There being a total lack of credible or documented support for the original proposal, and with the patent unfairness of shifting consideration to another reason without any, let alone adequate, time for the affected public and local Advisory Committee to react, it falls to the Department of Law to advise rejection and the Board to reject both the original proposal as well as rejecting any new proposal to relocate an existing muzzleloader hunt.

Out-of-Schedule; Out-of-Area
Inadequate Record

Proposal 232 changes a long-standing and balanced policy on motorized vehicle use in a unique, discrete local area. As such, as the DOL has set out in its comments, the Board must explain clearly any departure from consistency with this past approach to management of the Yanert Valley CUA. Any departure must be rationally supported by facts properly before the Board to satisfy the "hard look" requirement. A decision based on any less of a process or without any supportive evidence as to "salient facts" will not be upheld on review.

The record before the Board contains no evidence of any alleged benefits or improvements, but only the bald assertions contained in the proposal of the out-of-area Fairbanks Advisory Committee. Similarly, the negative impacts are greatly understated by the out-of-area committee's assertions on the proposal and corrected by the comments in the record. The comment of the local Middle Nenana Advisory Committee and 100% of the public comments, based on personal knowledge as set forth in the record, undermine totally the credibility of the obviously unsupported assertions of the out-of-area committee.

It falls to the DOL to advise the board that all of the Proposal's affected areas, and thus factual assertions as to the conditions in these areas, lie outside of the area where the statute presumes that the Fairbanks committee members are "well informed on the fish or game resources of the locality." As stated in my initial comments, but now doubly important to note, the Board's own regulation

specifically sets up the Middle Nenana Committee as the “appropriate advisory committee” to possess such local knowledge of the affected areas. The comment filed by the Middle Nenana Committee as to the correct facts upon which the Board may make any decision is entitled to preemptive weight relative to the bald assertions of the out-of-area committee.

Further, foreshortening the initial comments on the proposal as noticed was prejudicial enough, but foreclosing entirely any comment on a new out-of-area proposal in support of the original is over the line. As neither the Middle Nenana Committee nor the public has had any meaningful opportunity to be heard before the Board, the DOL must advise the Board that consideration of a cascade of out-of-time and out-of-area proposals is improper. There is little likelihood that the record for either Proposal 232 or its follow-on out-of-area hunt relocation could be adequately supported on review. In fact, as the muzzleloader hunt is advocated on the basis of eliminating “social conflicts”, the existing Advisory Committee and public comments are clear that the Yanert Valley CUA is simply too small an area to ‘relocate’ problems.

There are no credible facts in the record that would demonstrate that an out-of-area, out-of-time decision by the Board overturning a long-standing policy should be made within its authority, that its procedural authority was properly exercised given the new notice problems or that any decision it makes based on the record as it stands was reasonable.

Conclusion

Proposal 232, proposed out-of-schedule by the out-of-area Fairbanks Advisory Committee as part of an annual reauthorization of antlerless moose hunts, must not be adopted. The proposal, changing a long-standing and balanced policy on motorized vehicle use in a discrete local area, cannot be accepted without a complete opportunity to be heard by both the local advisory committee and appropriate and meaningful notice and opportunity to be heard by all interested parties. As demonstrated above, the benefits and improvements advanced in support are non-existent and/or are not present in the record. By the same token, the negative impacts are greatly understated or ignored by the proposal. In fact, the comments of the Middle Nenana Advisory Committee, which are presumed by law to be "well informed on the fish or game resources of the locality", rebut the bald assertions in the original Proposal as do 100% of the factual public comments.

Stated simply, for the reasons stated above, a factual basis cannot be found in the record, the new out-of-area, out-of-time justification must be ignored, and Proposal 232, on any basis, must be rejected.

Thank you for your time and for a fair hearing before the Board.



Mark Moderow