IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

GORDON WARREN: EPPERLY, et.al. Plaintiffs, vs., UNITED STATES, STATE OF ALASKA, CITY AND BOROUGH OF JUNEAU, Defendants.	Case Number J90-010 CIVIL Plaintiff's Brief "Wetlands"

INTRODUCTION

The Plaintiffs property that is described as follows:

> "*Lot 5 (and (6) of the Mendenhall Peninsula Small Tract Unit No. 2, of the land embraced in U.S. Survey No. 3260, situated at the junction of Glacier Highway and Engineers' Cutoff about ll miles northwest of Juneau, Alaska.*"

was recently classified as "Wetlands" by the U.S. Department of Environmental Protection Agency.

It appears that the U.S. Army Corp of Engineers has laid claim that it has "*jurisdictional authority*" under "*Section 404*" of the "*Clean Water Act*" (33 USC 1344) to regulate and issue "*dredge and fill permits*" for "*private property*" that has been classified as "*wetlands*." Whereas all of the Plaintiffs' property is located within the boundaries of a sovereign state of the United States of America known as the State of Alaska; this jurisdictional authority does not exist.

CLEAN WATER ACTS

In the days that Alaska was referred to as a "*District*" of the United States; the Congress recognized that all "*tidelands*" and "*beds*" of "*navigable waters*" that were located within Alaska were held "*in trust*" for the people of any State that may be erected out of said District:

> "*... PROVIDED, That nothing in this Act contained shall be construed as impairing in any degree the title of any State that may hereafter be out of said District, or any part thereof, to tide lands and beds of any of its navigable waters, OR THE RIGHT OF SUCH STATE TO REGULATE THE USE THEREOF, nor the right of the United States to resume possession of such lands, it being declared that all such rights shall continue to be held by the United States IN TRUST for the people of any State or States which may hereafter be erected out of said District. The term "navigable waters," as herein used, shall be held to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary high-water mark.*"
>
> 30 Stat. 409, Chap. 299

Upon statehood; the Congress had declared that State of Alaska's sovereignty over submerged lands rested upon the "*Submerged Lands Act*" of 1953 (67 Stat. 29, 43 USC 1301-1315):

> **NOTE :**
>
> > *Section 6(m)* of the *Alaska Statehood Act* of July 7, 1958, provides that the *Submerged Lands Act* "shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder." 72 Stat. 343, note following 48 USC c2, Section 2 of the *Act* provides, "*The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.*" 72 Stat. 339, note following 48 USC c2.

By this *Act*, Congress effectively confirmed to the States the ownership of submerged lands within three miles of their coast-lines. See United States v. Maine, 420 US 515, 43 L.Ed.2d 363, 95 S.Ct. 1155 (1975).

> **NOTE :**
>
> > Section 3(a) of the *Submerged Lands Act*, 43 USC 1311(a), provides:

> "*It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be and they are, subject to the provisions hereof, recognized, confirmed, established, and assigned to the respective States* ..." [Emphasis added]

Section 2(b), 43 USC 1301(b); defines a State's boundaries:

> "*The term 'boundaries' includes the seaward boundaries of a State ... as they existed at the time such State became a member of the Union ... but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean ...*"

"Coast line" was defined in terms not only of land but, as well, of "*the seaward limit of inland waters.*" The term "*inland waters*" was left undefined.

NOTE :

Section 2(c) of the *Act*, 43 USC 1301(c), reads:

> "*The term 'coast line' means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.*"

In United States v. California, 381 US 139, 161-167, 14 L.Ed.2d 296, 85 S.Ct. 1410(1965), the Court concluded that the definitions provided in the Convention on the Territorial Sea and the Contiguous Zone, [1964], 2 UST 1606, TTAS No. 5639, should be adopted for purposes of the *Submerged Lands Act*. See also United States v. Louisiana, 394 US 11, 35, 22 L.Ed.2d. 44, 89 S.Ct. 773 (1969). Under Art. 7 of the Convention, and particular Sections 5 and 6 thereof, a bay with natural entrance points separated by more than 24 miles is considered as "*inland water*" only if it is a "*historic*" bay.

NOTE :

The full text of Art 7 of the Convention is as follows:

"1. *This article relates only to bays the coasts of which belong to a single State.*

"2. *For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.*

"3. *For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.*

"4. *If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.*

"5. *Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.*

"6. *The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article 4 is applied.*"

The above documents are formal Congressional declarations of the "*Rights*" of the State of Alaska to regulate and develop its lands and waters. With this thought in mind; let us now look at the following pertinent sections of 62 Stat. 1155. Chap. 758 (the "*Clean Water Act*" of June 30, 1948):

"Sec. I ... *it is declared to be the policy of Congress to recognize, preserve, and protect the primary responsibilities and RIGHTS OF THE STATES in controlling water pollution* ....

"Sec. 2(a) .... *for eliminating or reducing the pollution of INTERSTATE WATERS and tributaries thereof* ..."

"Sec. 2(d)(2) *The pollution of interstate waters in or adjacent to any State or States (whether the matter causing or contributing such pollution is discharged directly into such waters or reaches such waters after discharge into a tributary of such waters), which endangers the health or welfare of persons in a State other than that in which the discharge originates, is hereby declared to be a public nuisance and subject to abatement as herein provided.*"

"Sec. 10(d) *The term "State" means a State, the District of Columbia, Hawaii, Alaska, Puerto Rico, or the Virgin Islands;*"

"Sec. 10(e) *The term "interstate waters" means all rivers, lakes, and other waters that flow across, or form a part of, State boundaries;*"

This chapter of 62 Stat. 1155 re-enforces the previous statements that the individual States have exclusive jurisdiction over their lands and waters. A most interesting note is that Sections 2(a), 2(d)(1), and 10(e) makes it very clear that the federal "*Clean Water Acts*" (and subsequent amendments thereto) only apply to "*interstate waters*" that flow cross State lines. Section 10(d) also makes it very clear that the definition of "State" does not include an "*international State*" such as "*Canada*" or its territories. Can anyone show where any waters of the State of Alaska flow across its State lines into any other State of the United States of America? As a practical matter; it is obvious that the federal "*Clean Water Acts*" do not apply to the State of Alaska as any waters that cross international borders would be an issue to be govern by "*treaties*." The Court of Hoffman Homes Inc. v. Administrator, E.P.A., 961 F.2d. 1310 (7th Cir., 1992) declared that the federal wetland laws were not treaty based.

COASTAL ZONE MANAGEMENT

In regard to "*Coastal Zone*" management; the Congress of the United States at Section 1451(i) of Title 16 of the United States Code has declared that the States have original and exclusive authority over the lands and waters that are located within a coastal zone of a sovereign state of the United States of America:

"1451(i) - *The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise THEIR FULL AUTHORITY over the lands and waters in the coastal zone.*"

NOTE:

The Plaintiffs are disturbed that the words: "*to encourage*" in the above Section 1451(i) of Title 16 of the U.S. Code has been interpreted by various federal administrative agencies as a license to abuse the taxing powers of the U.S. Congress for the purpose of "*coercing*" any of the 50 sovereign states of the united States of America and their citizens into surrendering their "*sovereign powers*" to the corporate United States.

The U.S. Congress goes on to declare at 16 USC 1452(2) what the "*National Policy*" of the Nation is in regard to the States:

"*The Congress finds and declares that it is the national policy -*

"*(2) to encourage and assist the states to exercise effectively THEIR RESPONSIBILITIES in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, which programs should at least provide for -*

(A) the protection of natural resources, including WETLANDS, ... within the coastal zone, (Emphasis added)

(B) the management of coastal development to minimize ... the destruction of NATURAL PROTECTIVE FEATURES such as ... WETLANDS, (Emphasis added)

Again we find the words: "*to encourage*" in item "(2)" above. Whereas all the above sections of Title 16 of the U.S. Code are made in reference to the "*coastal zone;*" a question is raised that needs to be answered: What is a "*Coastal Zone?*" This question is answered at 16 USC 1452(1):

"*(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, saltmarshes, WETLANDS, and beaches. The zone extends inland from the shorelines ONLY to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters.*"
(Emphasis added)

NOTE:

> We can see from 16 USC 1452(1) that for the coastal waters of a State to be classified as a "*coastal zone*", that State's coastal waters must be in proximity to the shorelines of the several coastal states. Can any one find any coastal state of the united States of America that is in close proximity to the shorelines of the State of Alaska?

The U.S. Congress goes on to define "*coastal resource of national significance*" and "*coastal waters*" at 16 USC 1453(2), (3) as follows:

> "*(2) The term "coastal resource of national significance" means any COASTAL WETLAND, ... or fish and wildlife habitat, if any such area is determined by a coastal state to be of SUBSTANTIAL biological or natural STORM PROTECTIVE VALUE.* " (Emphasis added)
>
> "*(3) The term "coastal waters" means:*
>
> > *(B) ... those waters, adjacent to the shorelines, which CONTAINS a measurable quantity or percentage of sea water, ...*" (Emphasis added)

The above described Plaintiffs' property is located approximately 80 miles from any SHORELINE as described by Section 2(c) of the *Submerged Lands Act* of 1953, [43 USC 1301(c)] and is located 1.5 to 2 miles from any "*inland*" body of waters that are located within the State of Alaska. The elevation of the Plaintiffs' property is at least 100 feet above the "*mean high tide level*" and THERE IS NO MEASURABLE QUANTITY OF SEA WATER ON ANY PROPERTY OF THE PLAINTIFFS .

The nearest shoreline of a sister state (State of Washington) to the State of Alaska (that is required to bring into effect a *Federal Coastal Management Plan*), is separated by a foreign country known as "Canada" and its Territories. As the State of Washington is located over 1,000 miles from the State of Alaska, its shoreline is not in close proximity to the shorelines of the State of Alaska and therefore, the Federal Coastal Management Laws do not apply to Alaska.

The absurdity of the "*classification policies*" of the U.S. Corp of Army Engineers/E.P.A. does not stop with the Plaintiffs' property. The U.S. Corp of Army Engineers has taken the liberty to classify other "*private lands*" within the City and Borough of Juneau as "*Wetlands*" that are located in the middle of subdivisions and which are located at elevations as high as 300 feet above sea level.

Let us continue with the definitions as provided to us by the U.S. Congress at 16 USC 1453(10), (12):

> "*(10) The term "land use" means activities which are conducted in or on the shorelands within, the coastal zone*, ..." (Emphasis added)
>
> "*(12) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance WITH THE PROVISIONS OF THIS CHAPTER, setting forth directives, policies, and standards to guide public and private use of lands and waters IN THE COASTAL ZONE*. (Emphasis added)

The "management program" for the City and Borough of Juneau DOES NOT follow the guidelines of Chapter 33 of Title 16 of the United States Code (U.S. Coastal Zone Management). It is also obvious that the U.S. Corp of Army Engineers is not following the "Coastal Management Policy" as set forth by the U.S. Congress.

THE ALASKA STATE CONSTITUTION

From the above Code provisions; the U.S. Congress has recognized that the "States" have "exclusive" jurisdictional authority over its "*coastal zones*" (16 USC 1451(i)) and as such, there cannot be any question that a State cannot exceed its authority under its State Constitution to implement any "federal" coastal management program. We can also conclude that the U.S. Congress has NO CONSTITUTIONAL AUTHORITY to grant any "State" a power that does not exist within its State Constitution. In regard to the State of Alaska; the Constitution for the State of Alaska governs the implementation of any wetland policies of the federal government over the lands of the State.

The federal Wetland program raises Constitutional questions that must be addressed. For example: Does the regulations of the U.S. Corp of Army Engineers and the "*Wetland Ordnances*" of the City and Borough of Juneau deprive the land owners of their "*full use*" of their property? The answer to the question must be "YES." Several staff members of the Alaska Attorney Generals Office have taken notice of this fact and have commented "*off the record*" that the federal Wetland regulations and the CBJ "*Wetland Ordnance*" are "unconstitutional" for they are nothing more than regulations adopted for the purpose of taking private property for public use without just compensation. In the case of First Lutheran Church v. Los Angeles, 42 US 304, 96 L.Ed.2d 250 (1987); the U.S. Supreme Court had this to say about such regulations:

"*[A] Regulation depriving owner of all use of property held to entitle owner to compensation for period before determination that regulation effected "taking" under Fifth Amendment.*"

It should be noted that the Attorney General for the United States and Attorney General Harold M. Brown for the State of Alaska (along with several other Attorney Generals of other States) filed a "Brief" as an "amicus curiae" urging the Court for "affirmance" of the case in favor of the City of Los Angeles. It cannot be said that the U.S. Attorney General or the Alaska Attorney General are not aware of this case nor can it be said that the United States or the State of Alaska are not bound by this U.S. Supreme Court decision. This case was later "*reaffirmed*" in Nolan, et ux v. Calif. Coastal Comm'n, 97 L.Ed.2d 677 (1987).

Although the above U.S. Supreme Court decision was founded upon the 5th Amendment via the 14th Amendment of the U.S. Constitution; the same protection is offered within the Alaska Constitution at Article I, Section 18 and at Article VIII, Section 6. Although Article I, Section 18 declares that "*private property*" shall not be taken or damaged without just compensation; Article VIII, Section 16 makes it clear that no person may be divested of any right to the full use of his lands without just compensation or outside the operation of law.

Under the above U.S. Supreme Court decisions; the above named Respondents normally would have available two options:

- "they may abandon the regulations or;
- they may continue to regulate and compensate those whose property they take."

Although the alternative: "to continue to regulate and compensate those whose property they take" would normally be a viable option; this option can not be exercised under the Alaska Constitution. The "Alaska Constitution" (Article VIII, Section 1) declares that it is the "*Public Policy*" of the State to encourage the "settlement" of its lands and develop its resources by making them [lands] available to their "maximum use." Article VIII, Section 1 of the Alaska Constitution also makes it clear that once the lands of the State have passed into "private ownership;" they cannot be taken under the laws of "*eminent domain*" for the purpose of returning those lands to their "*natural state of being*."

"*It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest*."

Alaska Constitution, Article VIII Section 1

"*This (Ak Const. Art. VIII Sec 1) is a strong statement that the policy of the state is to encourage the develonment of its land and resources. The qualifying phrase "consistent with the public interest" is subject to broad and changing interpretation, in much the same way that the phrase "except for a public purpose" in Article IX, Section 6 may be interpreted differently at different times. However, the words "public interest" are important because they make clear that the goal of resource development should not be pursued blindly. The early history of resource utilization in Alaska was marked by flagrant exploitation that made no lasting contribution to the development of the territory. The delegates did not consider this type of resource utilization to be in the public interest.*" (Emphasis added)

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"*The constitution (Alaska) clearly establishes a presumption in favor of the development and utilization of Alaska's resources. That is, development is considered desirable except when it is wasteful, destroys the ability of living resources to regenerate, violates the rights of others, is narrowly selfish and exploitive, or otherwise outrageous and offensive to the public interest. The constitution says, in effect, that there should be development but not development at any cost*." (Emphasis added)

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Further evidence that the People of the State of Alaska are to develop their property may be found within the Alaska Statutes governing "*eminent domain*." Alaska Statutes, Title 9, Chapter 55, Sections 250-460 govern the procedures of "*eminent domain*" and Sections 240 and 25O state very clearly that any private property that is taken for public use must be DEVELOPED. A few examples as to where the Legislature has declared the taking of property for preservation by "*eminent domain*" was against Public Policy are found at: A.S. 41.21.113, A.S. 41.21.134, A.S. 41.21.152, A.S. 41.21.445, A.S. 41.21.480, A.S. 41.21.508, A.S. 41.21.613, A.S. 41.23.060, etc..

Not only are those lands that have been placed into "*private ownership*" by the State of Alaska are to be developed; but so are those lands that have gone into "*private ownership*" under the "*Land Settlement Acts*" of the Congress of the United States. Every "*Act*" of the U.S. Congress authorizing "*land settlement*" in the "*Territory*" of "*Alaska*" mandated that certain improvements will take place before the "United States" would issue "*Land Patents*" on that land. Most of the "*Titles*" within the State of Alaska run to and are founded upon a "*U.S. Land Patent*" and those "*U.S. Land Patents*" are protected from "*infringement*" under Section 6(a)(b) of P.L. 85-508 (*Alaska Statehood Act*):

> "*That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied*." (Emphasis added)
>
> Section 6(a)(b) of P.L. 85-508

The same limitations of "*eminent domain*" applies to the U.S. Corp. of Army Engineers. Under the U.S. Constitution; the U.S. Congress have also the powers of "*eminent domain*" (e.g. Article V of the Bill of Rights), but unlike the several states of the united States of America; the U.S. Congress is severally limited as to what purposes it may exercise its eminent domain powers. In regard to the State of Alaska; the U.S. Constitution at Article I, Clause 8, Section 17 "*limits*" the eminent domain powers of the U.S. Congress to:

> "*... all places purchased by the consent of the Legislature of the State in which the same shall be, FOR THE ERECTION of forts, magazines, arsenals, dock-yards, and other needful buildings*".

It is obvious that not only does the U.S. Congress have to obtain "*permission*" from the Legislature of the State of Alaska to exercise its "*eminent domain powers*;" but the U.S. Congress is mandated by the U.S. Constitution to "*develop*" all "*private property*" that it may take for public use and then it may develop that property only for those purposes that are described within Article I, Clause 8, Section 17 (and within other Clauses) of the U.S. Constitution.

The Petitioners seriously doubt that the U.S. Corp. of Army Engineers or the U.S. Environmental Protection Agency can stretch the U.S. Constitution to cover their "trespass" upon the unalienable rights of the People of the State of Alaska to "*freely use*" their private lands to the "*fullest extent possible*" under the principles of the "*Declaration of Independence*" as protected by the U.S. Constitution.

You say that is not what you are doing? Is it not the whole purpose and objective to classify "*private property*" as "*Wetlands*" under the "*Federal Clean Water Acts*" to keep private property in its "*natural state of being*" without classifying the property as "*Public Domain?*" We don't have to look any further than the wetland "*Mitigation Bank*" set up by the U.S. Environmental Protection Agency to see that the whole objective is not only to take private property for public use without payment of just compensation; but to reverse the burden by compelling the property owner to compensate the government with "*cash payments*" for its "*taking*" of his private lands for public use. Can it be said that if one is required to submit "*applications*" to obtain permission from some government "*hireling*" to use their property; that the MANDATORY "*permit application*" procedure does not destroy that individuals "*free*" access and use of his property under the "*principles*" of the "*Declaration of Independence?*"

Can any Public Official of the U.S. Corp. of Army Engineers/Department of Environmental Protection Agency/State of Alaska/City and Borough of Juneau bring forth any evidences that the "*development*" of private lands in accordance to the principles of the Declaration of Independence is "*injurious*" to the community or even to the Nation? Can any Public Official justify any "*trespass*" upon any "*unalienable right*" of any person to the "*free use*" and enjoyment of his property in the name "*Wetlands?*"

Under the "principles" of the "*Declaration of Independence*" (as protected by the U.S. Constitution); every man is entitled to own property and use/enjoy that property to its fullest so long as his use of the property does not injure the community (Keystone Bituminous Coal Assn. v. DeBenedictis, 480 US 470, 94 L.Ed.2d 472 [1987]; Mugler v. Kansas, 123 US 623 @ 665, 31 L.Ed. 205 [1887]). The "*Wetlands Ordnances*" are being deliberately adopted in such a manner as to discourage, if not absolutely prohibiting the development of private property. This "*ideology*" is not within the public interest of the State of Alaska as it violates the "*Statement of Policy*" of Article VIII, Section 1 of the Alaska Constitution. This "ideology" is also not within the "public interest" as the "*Wetlands Ordnances*" violate the principles of the "*Declaration of Independence*" in that every person is entitled to the "*unalienable right*" of the "*Pursuit of Happiness*" which includes the free use and ownership of lands. The Petitioners must also point out that the State of Alaska and the City and Borough of Juneau are "*bound*" by Federal law (P.L. 85-508, Section 3) to not violate any "*principle*" of the "*Declaration of Independence*."

INLAND JURISDICTION

Another question of law arises is the fact that the U.S. Congress has no "*inland*" jurisdiction over the private lands within the boundries of a State:

> "*The well-being of every community requires that the title to real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. The duty of accomplishing this is local in nature; it is not a matter of national concern or vested in the general government. It remains with the State; the manner of discharging it must be determined by the State, and no proceeding which it provides can be declared invalid, unless in conflict with some special inhibitions of the Constitution, or against natural justice. So it has been held repeatedly that the procedure established by the State in this respect, is binding; upon the federal courts.*"
>
> Arndt et.al. v. Griggs, 234 US 316

> "*The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisiton and transfer, and the rules of its descent, and the*

extent to which a testamentary disposition of it may be exercised by its owners is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent or any other mode, is exclusively subject to the government within whose jurisdiction the property is situtated."

U.S. v. Fox, 94 US 315, 320 [24:192];
Arndt et al. v. Griggs, 134 US 316;
McCormick v. Sullivant, 23 US 70 (Wheat. 202) [6:303];
Beauregard v. New Orleans, 59 US 18 (How. 497) [15:469];
Suydam v. Williamson, 65 US 24 (How. 427) [16:742];
Christian Union v. Yount, 101 US 352 [25:888];
Lathrop v. Commercial Bank, 8 Dana (Ky.) 114

and the fact that the U.S. Congress has "*encouraged*" the several states of the united States of America to carry out its "*Wetland Policies*" (and like programs) does not conceal the fact that these programs are still federal programs operating unconstitutionally upon the several states of the Union. The U.S. Corp of Army Engineers/U.S. Environmental Protection Agency have no "*Wetland*" jurisdiction over the lands and waters of the State of Alaska.

DATED this 2nd of November, 1990

/s/ Gordon Warren: Epperly

NOTE:

After the filing of several "*Motions*" by the U.S. Justice Department at Washington, D.C., the Defendants never denied that the Plaintiff's property was classified as "*Wetlands.*" With the Defendant's "*Motion to Dismiss*" of the above Case on the grounds that the Property of the Plaintiff was never "*regulated*" as "*Wetlands,*" the Court chose to avoid addressing the questions of law raised in the above Complaint by ruling (*in an unpublished Opinion*) that the filing of the Plaintiff's Complaint was premature.

Since this ruling, my neighbor was required to obtain "*fill and dredge permits*" from the U.S. Corp. of Engineers before he was permitted to place truckloads of dirt upon his property. He never challenged the classification of "*Wetlands*" of his property by the United States Government in a Court of Law.