

Alaska State Library
Historical Collections

Guide to Collection

Alan Stein, collector

Point Baker Association logging suit and forestry legislation lobby file, 1973-1993

[Zieske v Butz (Pt. Baker Association), 1973-1984; and
Stein v Barton (Salmon Bay Protective Association), 1976-1993.]

MS 093

1-5" letter boxes
5-7" letter boxes
3-5" legal boxes
(4.5 linear feet)

Processed By: Phyllis DeMuth & Marilyn
1986?; Sept. 1993
Revised: Dec. 1995

ACQUISITION: The papers were donated over a period of years (1978-1993) by Alan Stein (acc. no. 91-31 in part, 88-34,91-37,91-38, 95-50).

ACCESS: The collection is unrestricted.

COPYRIGHT: Request for permission to publish material from the collection must be discussed with the Librarian. PHOTOCOPYING DOES NOT CONSTITUTE PERMISSION TO PUBLISH.

PROCESSING: Zieske v Butz was received earlier and organized in Ms 93. Stein v Barton was later donated in several boxes. Alan Stein was requested to sort and organize these papers, and write an introduction. The papers were housed according to his instructions. Notes were not checked for accuracy by the archivist.

Zieske v Butz
Point Baker Association law suit, 1973-1984

Introduction:

In 1978, Alan Stein, a fisherman and homesteader at Port Protection, Alaska, donated these papers documenting the work of the Point Baker Association on Prince of Wales Island, Tongass National Forest. Alan founded the Point Baker Association in 1973, when a group of local citizens joined to protest clearcut logging near Point Baker. The association initiated a federal law suit in December 1975, *Zieske v Butz*, which stopped clearcut logging near Point Baker and threatened all logging on the west coast. Richard C. Folta of Juneau was attorney for the plaintiff (*Zieske, Stein and the Point Baker Association*) against Earl Butz, U.S. Secretary of Agriculture.

This law suit sparked reaction and involvement from the Alaska State Legislature, Governor Jay Hammond, the Congressional delegation, fishing groups, conservation and development interests. In the spring of 1976 the U.S. Congress responded by repealing the Organic Act of 1893, which had governed management of the national forests. The National Forest Management Act passed in May 1976, and set up planning guides and protection for all the resources of the forest. It resulted in systematic inventory of forest resources in the Tongass and major planning documents, such as the AREA GUIDE AND TONGASS LAND MANAGEMENT PLAN.

This collection shows the efforts and joint cooperation developed by an Alaskan bush community to protect salmon streams essential for its economic base and way of life. The results of the *Zieske v Butz* case went far beyond the limited protection sought for Point Baker. The association's lobbying effort in 1976 made Congress aware of the complex problems that result from establishing wilderness preserves along with logging development, etc. Congress, conservation and development interests were involved in a three year struggle which led to the Alaska Lands Act of 1980.

The collection contains correspondence, newspaper clippings about Point Baker, *Zieske v Butz*, buffer strips on streams, legislation/lobbying materials, state and federal agency memos and position papers on salmon stream protection measures; resolutions of the United Fisherman of Alaska, the State Legislature, conservation groups; testimony of Alan Stein before the U.S. Senate and House Committee of Agriculture, his notes and other materials.

Stein v Barton
Salmon Bay Protective Association, EIS appeal & law suit, 1989-1993

Introduction by Alan Stein (donor)

In July 1989, I challenged the USFS Environmental Impact Statement (EIS) [Ketchikan Pulp Co. Long-Term Sale Area, 1989-94, Operating Period] and Record of Decision as they affected commercial clearcut logging of the trees along approximately 1,800 salmon streams in the Tongass National Forest in S.E. Alaska, and the plan to clearcut the most north-easterly watershed of Prince of Wales Island, Salmon Bay .

I organized a group of commercial fishermen into the Salmon Bay Protective Association (SBPA). We incorporated on August 4, 1989. There were 180 members who contributed \$100 apiece. Every major fish processor in S.E. Alaska also made substantial contributions of up to \$4,500 each.

The appeal of the EIS and ROD were significant. We not only won a U.S. District Court order prohibiting logging along Class I and II streams - the first nationally mandated prohibition ordered by a court, in this case covering 100' no-cut buffer strips on approximately 2,800 streams - but we also used the publicity and precedent of the court decision to persuade the U.S. Congress and the Alaska State legislature to pass buffer strip statutes which created permanent mandatory no-cut 100' wide buffer strips on all Class I & II streams in the Tongass National Forest, and weaker buffer strip protection on private and state land adjacent to streams [Tongass Timber Reform Act, 11/90, and State Forest Practices Act, respectively].

This precedent setting case also, in the next three years, inspired scientists to propose 300' buffer strips in the Pacific Northwest (see headline in JUNEAU EMPIRE, Aug. 13, 1993).

The SBPA case culminated over 20 years' of fishermen's efforts to protect salmon streams. In 1976, for instance, fishermen failed to persuade Congress about buffers (see *Zieske v Butz*, in Boxes 1-3), despite efforts of national environmental groups. This time the SBPA suit rallied many organizations around Alaska who were beginning to see the effects of logging in their areas. The crucial factor which made the SBPA suit successful was the deposition of a NOAA scientist that their research demonstrated irreparable harm resulting [from] logging next to salmon streams.

Summary:

The Ketchikan Pulp Co. EIS appeal and the law suit filed by Salmon Bay Protective Association are both known as *Stein v Barton*, and were closely related. They asked that the U.S. Forest Service institute requirements of 100' buffers around anadromous fish streams from timber harvesters. Additionally, they specified protection of Salmon Bay on Prince of Wales Island, a critical salmon area supporting subsistence users and a commercial fishing industry.

The appeal was directed to the chief of the U.S. Forest Service. The law suit was filed in Federal District Court and challenged the EIS for the following reasons:

- Violated the National Environmental Protection Act (NEPA)

- Violated the federal Water Pollution Control Act
- Violated the Alaska National Interest Lands Conservation Act (ANILCA)

The appeal and law suit ran almost concurrently in the courts. Their outcome was also tied to events in Congressional committees associated with the Tongass Timber Reform Act, which passed in November 1990. The four boxes containing the law suit are not included in this collection, but were retained by Alan Stein.

Chronology of EIS Appeal

1989:

- February 15 Initial investigation by Alan Stein begins. Freedom of Information Act requests were made to U.S. Forest Service, Alaska Department of Fish & Game, National Oceanic & Atmospheric Administration. Other research.
- March Stein makes presentation to Southeast Alaska Conservation Council (SEACC) board of directors in Juneau, to sue USFS on water quality violations. Board voted to sue and ask Sierra Club Legal Defense Fund (SLCDF).
- April SLCDF refuses to take on the law suit
Stein comments on draft environmental impact statement (EIS) for Ketchikan Pulp Co. Long-Term Sale Area, 1989-94 Operating Period.
- Spring Stein obtains documents agencies file # appear as exhibits to appeal & law suit
- June 2 Record of Decision (ROD) on the final EIS for Ketchikan Pulp Co. 1989-94.
- June 20 Stein meets with Bart Koehler & Steven Kallick (SEACC) who decline to sue USFS but pledge technical advice if he should wish to do so himself.
- June 29 Stein hires Buck Lindekugel for \$4,000 to do an appeal of the Ketchikan Pulp Co. ROD.
- July 17 Lindekugel files request for stay & Notice of Appeal (NOA)
- July 20 Notice to Amend (see Box 5 Folder 8-Exh. 22)
- July 27 Amends NOA
(Meanwhile Stein contacts other fishermen to help raise money for lawyer).
See also Diary entry, June 26, 1989. Appellants: Robert Dolan, Robert Larson, Michael Schwartz, Edward P. Churchill
- July 20 Wrangell Cooperative Assoc. joins appeal
- Aug. 4 Signing of incorporation papers and first meeting of Salmon Bay Protective Assoc. (See Box 6) Jack O'Donnel, Edward P. Churchill, and Alan Stein, officers & incorporators
- Aug. 7 File 2 (1?)
- Fall Lobbying for Tongass Timber Reform Act and State Forest Practices Act

1990

- May Alaska State Legislature passes buffer measures on State and private land
- November Tongass Timber Reform Act passed. Did away with SBPA injunction on buffers.

1991

- April Buck Lindekugel withdrew from the case

1992

- December 7 End of appeal?

**Chronology of law suit
Stein v Barton, Civil #J89-016**

1989

August 8 First motion to Judge Van der Heydt for Salmon Bay and buffers.
 August 30 Law suit filed
 Sept. 29 First temporary restraining order (TRO)
 a) extension of TRO
 b) second extension of TRO
 First negotiation, SBPA-Forest Service, KPC
 Second negotiation
 Third negotiation
 Fourth negotiation
 Fall Lobbying for Tongass Timber Reform Act and State Forest Practices Act

1990

Feb. 15 Fifth negotiation: settlement conference in Judge Holland's chambers.
 March 1 Preliminary injunction
 May Alaska State Legislature passes buffer measures on State and private land
 Dispute with United Fishermen of Alaska
 October Operation Meltdown (lobbying)
 Conference Committee bill
 November Tongass Timber Reform Act passed. Did away with SBPA injunction on buffers.
 December Judge's last order: 100 ft. buffers on Class I and II tributaries. Did away with protection of Salmon Bay. We had not ANILCA.

1991

Spring Dispute with Buck Lindekugel about entering ANILCA issues.
 March Motion for temporary restraining order (TRO), ANILCA claim.
 Order on TRO
 April Court order allowing Lindekugel to withdraw from the case

1992

August 24 Last motion

INVENTORY - MS 93 Alan Stein, Collector. Papers

Box 1 Correspondence File

- Folder 1 Baade, Dixie (Tongass Conservation Society). 1972-1984. Re Point Baker.
- Folder 2 Barlow, Tom (Coalition to Save Our National Forest). Letter to John McGuire, Chief, U.S. Forest Service, dated November 24, 1976; notes, etc
- Folder 3 Folta, Richard C: (Attorney for Point Baker Association in Zieske vs. Butz). 1975.
- Folder 4 Governor, Office of. Copies of letters in Gov. Jay Hammond's Office file pertaining to state policy on environmental issues in southeast Alaska. 1975 (from Alaska State Archives).
- Folder 5 Myren, Richard T. (Sierra Club, Juneau group president; retired NOAA-Auke Bay Laboratory employee). 1970-1979. Re Point Baker.
- Folder 6 Stein, Alan. Letters sent, 1973-1974.
- Folder 7 Stein, Alan. Letters sent., 1975-1979.
- Folder 8 Stein, Alan. Letter to Senator Ted Stevens and reaction to bill he introduced allowing clearcutting. January 26, 1976.
- Folder 9 Stein, Alan. Letters received. 1974-1975.
- Folder 10 Stein, Alan. Letters received. 1976.
- Folder 11 Stein, Alan. Letters received. 1977-1979.
- Folder 12 Stein, Alan. Letters received. 1983-1984.
- Folder 13 Wilson, Richard (U.S. Forest Service Supervisor). Regarding Point Baker appeal to the Forest Service. 1974.
- Folder 14 Letters (various correspondents). 1972-1974.
- Folder 15 Letters (various correspondents). 1975-1976.

Action files: appeals, memos, etc.

- Folder 16 Point Baker Association petition to Governor's Office. January 1975.
- Folder 17 Sierra Club (Juneau group). Statement on Point Baker - Port Protection clearcut suit.
- Folder 18 Stein, Alan. Memo to state administration officials regarding state strategy for National Forest Management Act legislative action. 1976.
- Folder 19 Memos/policy statements of government agencies regarding protection measures. 1976.
- Folder 20 Memos/comments of agencies and organizations on forest land use plan, etc. 1972-1976.
- Folder 21 Resolutions: Tenakee Springs Council (1974) re logging at Tenakee Inlet; Alaska Legislature Senate Joint Resolution No. 12 (1975) re timber sale, Afognak Island; Northern Southeast Regional Aquaculture Association Resolution, January 10, 1979, re Chilkat-Chilkoot drainages.
- Folder 22 Comments of state agencies on management plan for South Lindenberg, Tongass National Forest.
- Folder 23 Hammond, Governor Jay. "State Action Following Clearcutting Decision" (speech).
- Folder 24 Appeal: Forest Service responses from supervisor Richard Wilson and decision of the Secretary of Agriculture. 1974-1975. .

Stein files on Point Baker lawsuit activity, etc.

- Folder 25 Stein, Alan. Photographs: Point Baker logging. 1976
(Shown in Washington D.C. and Juneau for lobbying).
- Folder 26 Stein, Alan. Writings regarding issues relative to Point Baker lawsuit, stream protection...
- Folder 27 Stein, Alan. Testimony before the U.S. Congress. 1976.

Box 2 Newspaper clippings

- Folder 28-29 Point Baker Association clearcut suit, Coalition to Save the National Forests, and environmental issues. 1973-1976.
- Folder 30 Yates, Charles. Article reprinting Yates' 1975 speech that led to his termination as regional forest supervisor.
- Folder 31 Southeast Alaska Conservation Council/Sitka Conservation Society. Publications.
- Folder 32 Publications: Ketchikan Pulp Company Timber Sale, 1974-79 draft environmental impact statement, Tongass National Forest; studies on Alaska by federal agencies.
- Folder 33 Publications: general activities and studies regarding fishing, logging and other topics.
- Folder 34 Folta, Richard (attorney). Reference material, incl. several laws and court cases.
- Folder 35 Miscellaneous: cartoon, Point Baker Legal Defense Fund bills, Misty Fjords-U.S. Borax material .

Box 3 Lobby/Lawsuit Files

- Folder 36 Stein, Alan. Notes of meetings; preparation for lawsuit hearing. 1974-76.
- Folder 37 National Forest Management Act: copies of legislation and lobbying materials.
- Folder 38 Forest practice drafts and responses (received from Jeff Haines, Asst. Attorney General). Late 1975-76.
- Folder 39 Zieske vs Butz: pleadings, affidavits, notice of Forest Service certification of the appeal record.
- Folder 40 Bob Weeden, Division of Policy and Planning (State of Alaska)
Files: Zieske vs. Butz, 1975-76
- Folder 41 List of filings at Federal Court Archives, Washington (Zieske vs. Butz)
- Folder 42 Richard Myren materials: affidavit, etc., 1970

Box 4 Appeal research and Freedom of Information Act requests, 1989. (18 folders)

Folder A List of box contents made by Alan Stein (3 l. photocopy).
Evidence gathered in preparation for the appeal of the Final Environmental Impact Statement of the Ketchikan Pulp Co. 1989-94 operating plan, and law suit. Includes Freedom of Information Act requests and responses, documentation on state logging practices at the time, legal research, notes of meeting with agency personnel.

Box 5 Appeal to the Record of Decision & Environmental Impact Statement for the 1989-94 Operating Period for the Ketchikan Pulp Company Long-Term Sale area. (12 folders)

Affidavit of Michael Murphy, National Marine Fisheries Service, dated June 21, 1989 (original and copy)

Copies of first and third appeals and drafts, exhibits to first, second and third appeals, USFS Final Decision on Appeal, research data, etc.

Box 6 1989 EIS appeal papers & documents, Salmon Bay Protective Association (SBPA) records, 1989-1990. (21 folders)

Copy of the temporary restraining order, dated 9/29/89.

Copy of Addendum to the Record of Decision, dated 9/15/89.

Negotiation papers.

SBPA organization and papers (minutes, incorporation papers, correspondence).

Box 7 SBPA records and activities, lobbying, timber industry, 1988-1990. (36 folders)

Dispute with United Fishermen of Alaska, May 1990.

Salmon Bay Protective Association correspondence, petitions in support of Salmon Bay protection, testimony.

Operation Meltdown (lobbying effort)

Congress-related materials on Tongass Timber Reform Act mark-up, Johnstone amendment.

Research materials.

Miscellaneous including color photographs of the "Ward Creek fiasco, August 11/12, 1988"; black & white photographs of clearcuts (aerial) and buffers.

Box 8 Law suit papers, 1989-1991. (7 folders)

ANILCA issues; dispute between Alan Stein and Buck Lindekugel over introduction of this material.

Final judgment and circumstances, other legal documents.

Alan Stein's diaries (photocopies), dated 6/26/89-7/7/91.

Box 9 SBPA publicity; publications and newspaper clippings, 1976-1993 (4 folders)

SBPA news releases and news clippings on buffers; THE WILD SALMON, Voice of the Salmon Bay Protective Association, Vol. 1 no. 1 (12/4/89) and Vol. 2 no. 1 (1/1/91).

Also includes clippings or issues of: ALASKA FISHERMAN'S JOURNAL, ALASKAN FISHERY, INNER VOICE, NATIONAL FISHERMAN, PACIFIC FISHING, RAVENCALL, REPORT TO ALASKA, 1990 (Sen. Frank Murkowski), SOUTHEAST LEGISLATIVE CHRONICLES, TED STEVENS: UNITED STATES SENATOR FOR ALASKA, UNITED FISHERMEN OF ALASKA MEMBERS' REPORT, UNITED SOUTHEAST ALASKA GILLNETTERS.

Miscellaneous: newsletters and letters of other groups.