

# MEMORANDUM

(Open Session Report)

## State of Alaska Department of Law

to: Board of Agriculture and  
Conservation  
  
Division of Agriculture,  
Department of Natural Resources

DATE: April 13, 2012

FILE NO.: BAC general

TEL. NO.: (907) 269-3039

SUBJECT: AAG report for April  
27, 2012 BAC meeting

FROM: Bob McFarlane  
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### **PART 1: NON CONFIDENTIAL MATTERS FOR OPEN MEETING SESSION**

**1. Transfer of Creamery Corporation bank account to ARLF:** On April 3, 2012 the Creamery Corporation authorized the transfer of all but \$75,000 of the Creamery bank account to the ARLF. Then on April 10, 2012 the amount of \$636,603.00 was transferred to ARLF leaving a balance of \$75,000 with the Creamery Corporation. The transfer has been confirmed with Cris Cowles-Brunton in Financial Services. The Creamery Corporation will use a portion of the retained funds to pay for an insurance policy to protect the directors against any unknown claims that may arise against them in their capacity as directors of the corporation, for payment of accounting fees for tax preparation services and for attorney fees. Once these bills are paid the balance of the \$75,000 will be transferred to ARLF. I'm optimistic that this final transfer can be accomplished within the next 60 days but this depends entirely on when the final bills are submitted to the Creamery Corporation.

**2. Right to farm lawsuit:** Eric Lancer vs. Robert Riddle, Case Number 4FA-11-3117 CIV. A real estate developer in the Fairbanks area has filed a lawsuit against a farmer to obtain a temporary restraining order to prohibit the farmer from operating sewage storage lagoons on the farm property. The developer has alleged that the storage lagoons are a nuisance because they emit odors that carry over to the developer's subdivision. The farmer is defending the case based upon AS 09.45.235 which protects agricultural operations from private nuisance suits. The case is important to Alaskan farmers because it may result in a ruling that limits or otherwise clarifies the type of agricultural operations that are entitled to protection from nuisance lawsuits. An evidentiary hearing was held before Judge Randy Olsen earlier this month but as of the date of this memo

there has been no ruling. A ruling is expected any day and I will provide an update to this memo at the BAC meeting.

**3. Status of legislation:** House Bill 191 to establish a Department of Agriculture had a hearing on 26, 2012 in the House Resources Committee. No further action has been scheduled on that bill as of the date of this memo and it appears unlikely that this bill will pass. HCR 24 relating to the establishment of a state food resource development working group passed the House and was referred to the Senate Resources Committee where a hearing was held on April 10, 2012. The resolution was well received and has been referred to rules. I think there is still a good chance the resolution will pass even though there are only a few days left in this legislative session. I will have another update at the meeting.

**PART 2: CONFIDENTIAL MATTERS FOR EXECUTIVE SESSION**

Open Meetings Act – A.S. 44.62.310(b)<sup>1</sup>  
Attorney Client Privilege - Alaska Evidence Code §503(b)<sup>2</sup>  
Board of Agriculture and Conservation Statutes<sup>3</sup>  
ARLF Regulations<sup>4</sup>

**1. Loan status information to be discussed at meeting.** See separate confidential report regarding loan status and delinquencies. Discussion of loan status is confidential pursuant to 11 AAC 39.061.

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<sup>1</sup> A motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session. A.S. §44.62.310(b).

<sup>2</sup> Section 503(b) of the Alaska Evidence Code states in relevant part: “A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client...”

<sup>3</sup> AS 03.09.040 authorizes the board to classify some loan and marketing information confidential.

<sup>4</sup> 11 AAC 39.061 makes most loan information confidential and 11 AAC 39.031(f) authorizes the board to meeting in executive session to consider loan applications.