

# MEMORANDUM

(Open Session Report)

## State of Alaska Department of Law

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

DATE: January 19, 2012

FILE NO.: BAC general

TEL. NO.: (907) 269-3039

SUBJECT: AAG report for  
January 30, 2012 BAC  
meeting

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

#### **1. Hans Geier Chapter 13 Bankruptcy Case.**

On October 5, 2011, Mr. Geier filed a motion to modify his chapter 13 plan due to a change in his employment circumstances. He is currently making payments to the bankruptcy trustee on three ARLF loans. The trustee remits those payments to the ARLF. The proposed modified plan does not make any changes to Mr. Geier's monthly payment obligations to ARLF but the amended plan removes the requirement of making balloon payments from farm income since he is no longer farming and does not have income from which a balloon payment can be made. His amended plan payments will only continue for another 11 months. As of the date of this memo no objections have been filed and the court has yet to rule on the motion but a hearing has been set for January 24, 2012. I believe the motion will probably be granted given his change in circumstances and the lack of any objections.

Once Mr. Geier fulfills his chapter 13 payment obligations he will receive a discharge and will no longer be personally liable for any loan balances that still remain on the ARLF loans. However, the ARLF will still have a lien on his equipment. If the equipment could be sold for a high enough price the ARLF would be made whole. The question is - what is that equipment worth and can it be sold for enough to pay the loan balances? It is my understanding that some of the equipment is in poor condition. That means there is a chance that the equipment might not be sold for enough to pay off the loan balances. The only way to determine what equipment is left and its condition and

value, is to have an inspection done. Obviously January is NOT a good time to inspect farm equipment in Fairbanks but an inspection could be done sometime in spring or early summer. I have discussed this with the loan officer and she is attempting to get an updated list of the remaining equipment. Once we know what property remains the board will have a better idea of the likelihood of full recovery on these three loans.

## **2. Transfer of Creamery Corporation assets to ARLF.**

A meeting of the Creamery Corporation (“CC”) board of directors was held on December 20, 2011. The purpose of the meeting was to finalize the winding up and dissolution process which began over 3 years ago. As part of the final dissolution process the CC has finished transferring all of its remaining assets, with the exception of the bank account, to the ARLF. Those assets include the Matanuska Maid trademark, a promissory note from Valley Dairy and a variety of other items of personal property. The bank account should be transferred in very short order and I expect to have an update for the board on this issue by the time the board meets on January 30, 2012.

## **3. Disposal of Creamery Corporation assets:**

The board will eventually want to dispose of some of the CC assets it received. The following is a short summary of the general procedure for disposing of ARLF assets:

Once the board has decided to dispose of any personal property of the fund it must first establish a minimum acceptable price.<sup>1</sup> If the property has a value in excess of \$1,000 the board must give public notice of the sale by publishing the notice in a newspaper of general circulation, posting the notice at the division offices and posting the notice on the Alaska Online Public Notice System.<sup>2</sup> If the property has a value of less than \$1,000 it is not necessary to publish the notice in the newspaper but notice must still be posted on the Alaska Online Public Notice system and posted at the division offices before disposal.<sup>3</sup> The notice must contain a general description of the property and the other information listed in 11 AAC 39.730.<sup>4</sup>

I suggest the board discuss the asset disposal issues at the next meeting.

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

Open Meetings Act – A.S. 44.62.310(b)<sup>5</sup>  
Attorney Client Privilege - Alaska Evidence Code §503(b)<sup>6</sup>

<sup>1</sup> 11 AAC 39.710 (c)

<sup>2</sup> 11 AAC 39.720 (j) and 11 AAC 39.730(a)

<sup>3</sup> 11 AAC 39.720(k)

<sup>4</sup> 11 AAC 39.730(b)

<sup>5</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>6</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...”

Board of Agriculture and Conservation Statutes<sup>7</sup>  
ARLF Regulations<sup>8</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>7</sup> AS 03.09.040 authorizes the board to classify some loan and marketing information confidential.

<sup>8</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.