

RESOURCE REVIEW

OCTOBER 2017 \ AKRDC.ORG

State to defend its decision rejecting proposed initiative

The State of Alaska filed an appeal on October 20th to the Alaska Supreme Court in the lawsuit over the constitutionality of proposed ballot initiative 17FSH2, which revises permitting standards for activities that affect anadromous fish habitat.

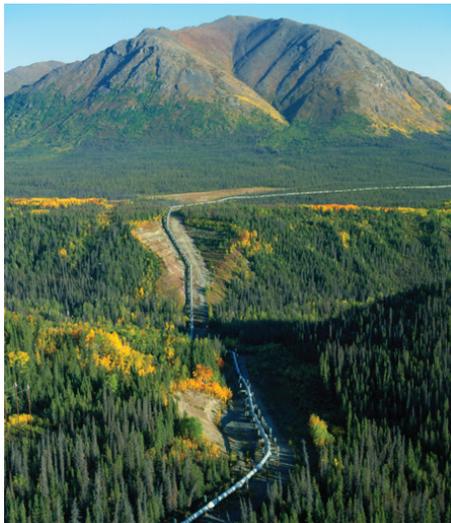
In September, Lieutenant Governor Byron Mallott, upon the recommendation of the Department of Law, declined to certify 17FSH2 because it made an unconstitutional appropriation of a state asset – fish and wildlife habitat – by initiative. The Alaska Constitution prohibits the making or repealing of appropriations by ballot initiative.

The sponsors of the proposed initiative sued to overturn the Lieutenant Governor's decision and obtain petition booklets for circulation throughout the state.

In early October, Anchorage Superior Court Judge Mark Rindner ruled against Mallott's decision, granting summary judgment to the plaintiffs through Trustees for Alaska. The judge directed the Lieutenant Governor to produce petition booklets for circulation.

As detailed in the Department of Law's briefing to the superior court, the case presents a single question of constitutional law, namely the scope of the Legislature's power to allocate state assets among competing uses and the limits of the initiative process. The State's legal opinion is that the proposed ballot measure unconstitutionally infringes on the Legislature's discretion to decide how to allocate fish habitat among competing uses, thereby making it an impermissible appropriation by initiative.

"The question of whether a proposed ballot initiative makes an appropriation is an important constitutional question that should be answered by the Alaska Supreme



If the proposed initiative were to become law, it could stop resource development projects from being built, including pipelines such as the Alaska LNG Project and expansion of community infrastructure.

Court," said Attorney General Jahn Lindemuth.

"This is about the superior court's legal conclusion and our duty to defend the Alaska Constitution, and we believe the superior court got it wrong," Lindemuth said. "The Alaska Supreme Court's case law on initiatives prohibits the type of resource allocations that 17FSH2, by its terms, makes a foregone conclusion. The Legislature, and only the Legislature, can decide how to allocate this public asset among industry, fisheries, and other competing interests and uses."

Petition booklets for the proposed ballot measure have been delivered to sponsors. The State will request expedited consideration by the Alaska Supreme Court in order to provide clarity before ballots have to be printed for next year's elections.

[BROAD COALITION continued on page 2](#)

GROUP FORMS TO FIGHT PROPOSED BALLOT MEASURE

A new group has formed to fight the anti-development effort calling itself "Yes for Salmon." The new, pro-Alaska group opposing the measure, "Stand for Alaska," is co-chaired by members representing diverse interests in Alaska: Aaron Schutt, Doyon, Limited, Marleanna Hall, Resource Development Council for Alaska, Inc. and Joey Merrick, Alaska Laborers Local 341.

Cheryl Frasca will serve as Stand for Alaska's treasurer. Other co-chairs will be announced soon.

The group formed to begin pushing back on the false narrative that current laws and regulations fail to adequately protect salmon. Instead, Stand for Alaska will work to inform fellow Alaskans of the real dangers of the potential ballot initiative, namely the creation of a job-killing, community-damaging, regulatory nightmares that would not only hurt the state's ability to develop many of its natural resources, but would likely do nothing to improve fish protections.

"As the state's largest private land owner, this initiative, if passed, will prevent Doyon from developing the vast resources that we received under the Alaska Native Claims Settlement Act, and will destroy our ability to create a sustainable socioeconomic future for Alaska Native people," said Schutt.

"Without question, this ballot initiative is the most serious threat to

[NEW GROUP continued on page 2](#)

Broad coalition supports rejection of initiative

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A broad coalition of diverse interests across Alaska urged the Walker administration to appeal the superior court ruling.

In writing Mallott, the coalition urged the State to send a strong message that the Walker administration will vigorously defend its decision that this initiative is unconstitutional and demonstrate to Alaskans that the State will proactively protect the interests of those who will be adversely impacted.

The coalition believes the initiative would be detrimental to responsible resource development, including Alaska Native interests, and efforts to build and maintain community infrastructure, among many other concerns. The measure will be particularly harmful on rural Alaska, and the people who live there.

“As has been said before, the intent to safeguard Alaska’s salmon fisheries is an objective we share and it is why we support Alaska’s existing rigorous and science-based regulatory system,” the letter stated. “Shutting down economic and community development is a disproportionate response to a problem that doesn’t exist. We cannot overstate how important it is to have consistent regulatory and permitting processes.”

Those reaching out to the administration included a diverse block of urban and rural Alaskans, and businesses and associations



October 16, 2017

The Honorable Byron Mallott
Lieutenant Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Re: Appeal of ruling on Ballot Initiative 17FSH2

Dear Lieutenant Governor Mallott:

The undersigned broad coalition of entities, with very diverse interests, write regarding the ballot initiative titled “An Act providing for protection of wild salmon and fish and wildlife habitat” (Initiative 17FSH2).

representing tens of thousands of Alaskan jobs.

“This coalition knows community and resource development projects in Alaska can be and are done responsibly, with a strong focus on protecting the environment, cultural activities, and wildlife, while providing good-paying jobs, quality of life, and opportunities for people to remain in their communities,” the letter stated. “Instead, this initiative would likely cause costly delays for community projects like airport expansions and village wastewater facility upgrades. It could ultimately halt even the smallest of projects. Further, the added costs, while still unknown, will likely deepen our State’s fiscal crisis.”

New group, Stand for Alaska, to inform Alaskans on perils of proposed initiative

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Alaska’s economy in state history,” said Hall. “We support the State of Alaska defending its decision to deny certification. The initiative will not only hamper, halt, or even deny responsible resource development projects, it will also impact community development across the state.”

A recent legal analysis of the proposed initiative shows that newly created regulations would lead to the following negative consequences:

- Prudhoe Bay (and likely all Alaska oilfields) would have been impossible to permit or construct if this initiative was in place during concept development or planning for oilfield startup. In other words, the terms of the proposed ballot measure would put future energy projects in peril.
- Construction of airport runways, roads, wastewater treatment plants, and other critical infrastructure would become much more difficult, if not impossible, under the terms of the proposed ballot measure.

Stand for Alaska organizers supported the State of Alaska’s recent decision to appeal the latest legal ruling on the ballot initiative’s constitutionality to the Alaska Supreme Court. In the event the initiative is certified for the ballot, Stand for Alaska will take its message statewide, working to inform Alaska voters of the hidden dangers of this deeply flawed ballot initiative.



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From left to right are Kati Capozzi, Carl Portman, and Marleanna Hall.

RESOURCE DEVELOPMENT COUNCIL

is an Alaskan, non-profit, membership-funded organization comprised of individuals and companies from Alaska’s oil and gas, mining, timber, tourism, and fisheries industries. RDC’s purpose is to link these diverse industries together to encourage a strong, diversified private sector and grow Alaska through responsible resource development.

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BRIGHTER DAYS FOR FOREST INDUSTRY?

A Message from the Deputy Director

In October, the Alaska Forest Association (AFA) held its 60th annual convention in Ketchikan. It was a privilege for me to attend the event and participate in the discussions on current federal issues impacting the forest industry in Southeast Alaska. The organization is to be congratulated for its perseverance in seeking to rebuild the industry in the Tongass National Forest. RDC works closely with AFA and we wish it much success going forward.

Over the past 25 years, the forest industry in Southeast Alaska has shrunk to a mere shadow of itself. In 1990, the industry supported 4,200 direct and indirect jobs on our nation’s largest national forest. Annual harvests of 450 million board feet (mmbf) of over-mature timber supported local sawmills and two major pulp mills utilized the by-products from those mills.

Today, the forest industry has one sawmill operating in the region and several hundreds jobs. The pulp mills and other facilities are long gone. Sustainable annual harvests have declined to 20-40 mmbf annually. What went wrong?

In 1980, the Alaska National Interest Lands Conservation Act (ANILCA) set aside 4.5 million acres of the Tongass as Wilderness in exchange for a sustainable annual harvest of 450 mmbf. The law also provided \$40 million each year to build roads and fund pre-commercial thinning.

In a recent editorial in the Ketchikan Daily News, former U.S. Senator and Governor Frank Murkowski pointed out that the “no more” clause in ANILCA was to prevent changes in the Congressional compromise by administrative action or through litigation. However, environmental groups working with the Clinton and Obama administrations gutted the compromise.

The 450 mmbf annual harvest and the \$40 million fund were eliminated. Unilateral terms on the pulp mills led to their demise and a million acres of new Wilderness and other land set-asides, including the Clinton Roadless Rule, left the vast majority of the forest off-limits to harvesting.

Then days before President Trump took office, the Obama administration promulgated a rule mandating a transition plan from old-growth harvests to pre-mature second growth timber over the next 15 years. This politically-mandated rule is a bad idea and will not work for many reasons. The U.S. Forest Service even acknowledged the plan is not practical or economic at this time. It will put what is left of the industry out of business.

However, there is good news on the horizon. Alaska’s congressional delegation is working to reverse the flawed transition plan and reinstate an Alaska exemption to the Roadless Rule (see page four).

The Tongass is rich in timber and mineral resources which have the potential to create thousands of jobs and build a strong year-round economy in Southeast Alaska. Working with AFA and our congressional delegation, RDC will do its part to ensure the forest industry in the Tongass not only survives, but thrives over the next 60 years and beyond.

RDC supports proposal to rescind WOTUS definition

The Resource Development Council (RDC) is supporting a proposed rule by the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) to redefine the “Waters of the United States” (WOTUS).

In a letter to EPA Administrator Scott Pruitt, RDC supported the proposed rule which would rescind the so-called Clean Water Rule definition of WOTUS and codify the status quo that is now being implemented under the U.S. Court of Appeals for the Sixth Circuit’s stay of the 2015 rule.

“The 2015 rule, if implemented, would inhibit job creation and economic investment and growth, subject resource development operations to undue permitting delays and expenses, unlawfully expand federal jurisdiction over land and waterways, and create further regulatory confusion and financial risks for Alaska’s resource development industries,” wrote RDC executive director Marleanna Hall.

RDC submitted comments on the proposed rule three years ago and at that time stated the agencies had introduced a rule that radically defined the definition of WOTUS much further than what was statutorily authorized.

The definition of WOTUS is of utmost importance to RDC and its membership.



Alaska contains more wetlands than the entire Lower 48 combined. In fact, nearly half of Alaska is considered wetlands.

Given Alaska’s economy is based on the development of its natural resources, and with more wetlands than all other states combined, Alaska is uniquely vulnerable to EPA regulations.

With its obscure and poorly defined changes, and significant expansion of Clean Water Act jurisdiction, the 2015 rule could result in conflicts with other federal regulations and result in significant delay and additional cost burden in permitting.

One major concern lies in the lack of clarity throughout the 2015 rule. Definitions of numerous key terms and concepts, like waters, floodplain, wetlands, subsurface connection, adjacent, ordinary high water mark, dry land, and significant nexus are ambiguous and unclear, Hall pointed out. “Without explicit definition of all technical and enforceable terms, we are left with an unpredictable and confusing rule.”

Since the Sixth Circuit’s October 2015 issuance of the nationwide stay, the agencies have been implementing the regulations defining WOTUS that were in effect immediately before the 2015 rule. The proposed action would simply continue that practice and recodify the status quo that has been in place for decades.

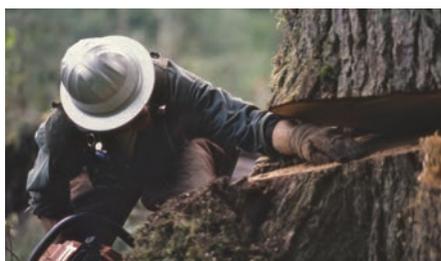
In its latest comments to the EPA, RDC said its members across Alaska’s natural resource sectors have serious concerns with the requirement of compensatory mitigation.

“A ‘no net loss’ wetlands policy designed for the Lower 48 is not practicable or realistic in Alaska due to the limited availability of sites or technical limitations,” Hall said. “The Corps needs a policy that is unique to Alaska and recognizes the reality of the Alaska environment – a state with little or no opportunities for compensatory mitigation.”

GAO: 2016 Tongass plan amendment is a rule

U.S. Senator Lisa Murkowski, welcomed the Government Accountability Office’s (GAO) determination that the U.S. Forest Service’s 2016 Amendment to the Tongass Land Management Plan (TLMP) is a “rule” and therefore subject to the Congressional Review Act (CRA). Murkowski asked GAO to determine whether the TLMP Amendment met the definition of a “rule” earlier this year, and GAO announced on October 23rd that it does.

“I welcome GAO’s determination that the 2016 TLMP Amendment is a rule and subject to congressional review,” Murkowski said. “Every sector of the Southeast Alaska economy needs greater access to the Tongass, but this rule failed to provide it. Most concerning was the Forest Service’s decision to accelerate a transition to young-



Since the 1990s, timber harvests have fallen sharply in the Tongass National Forest.

growth timber harvesting, even though it never completed an inventory to ensure it would be carried out successfully. While this rule can be improved administratively or legislatively, disapproving it entirely is now another option that we will consider in the days ahead.”

Spanning a total of 16.7 million acres, the Tongass covers most of Southeast Alaska and is the largest national forest in

the United States. Despite its expansive size, the Forest Service has increasingly restricted access for timber, mining, transportation, renewable energy, and even recreation. Those restrictions increased when the Obama administration finalized the TLMP Amendment on its way out of office in December 2016. Moreover, the Amendment was completed without a comprehensive inventory of young growth, a key recommendation of the Tongass Advisory Committee, and it largely dismissed more than 1,000 objections.

The Congressional Review Act helps maintain the balance of power between the branches of government by allowing Congress to pass a joint resolution of disapproval to overturn executive branch regulations. It now has 60 days to decide whether to stop the Tongass plan.

Ketchikan welcomes one millionth cruise ship visitor

This past summer, Ketchikan welcomed more than one million cruise ship visitors in a single season for the first time.

John Binkley, president of Cruise Lines International Association Alaska said the one million mark is just the beginning for Ketchikan as projected growth in the cruise ship industry should lead to further increases in coming years.

Binkley is forecasting another record year in 2018 for cruise ship visitors to Alaska. Over the next ten years, the industry is investing \$53 billion in 97 new ships, which will require some Southeast Alaska ports, including Ketchikan, to upgrade port infrastructure to accommodate larger ships.

Ketchikan's population is near 14,000 residents, but that number can more than double on certain days during cruise season, which begins in May and ends in September. Many local businesses depend heavily on the cruise ship industry.

Meanwhile, Juneau could see 1.5 million cruise ship visitors per season in ten years, according to a study commissioned by the city. Floating births in Juneau can accommodate four large ships at a time, plus one anchored offshore. That's 10,000 to 15,000 passengers and crew on a full day.

Last year Juneau broke the million passenger mark for the first time since 2009.



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BALLOT INITIATIVE COMES WITH RISKS TO ECONOMY

Guest Opinion by Dan Hall

No one wants to protect our economy, way of life, and Alaska more than Alaskans do. We stand together to protect our jobs, our communities, and to make Alaska a viable place to live now and for the future.

Our state is beautiful; full of wildlife, aquatic life, outdoor activities and endless possibilities. We also have high cost of living, from milk to heating oil, from purchasing land to purchasing materials to build. When we go to build a house, cabin, bridge or landing strip, what we want to build needs to be durable and long lasting. Our homes, whether in downtown Anchorage or next to a scenic river, must be rugged, just like Alaskans.

Our rules and regulations should be durable and long lasting too, from state and federal permitting to rights and access. When we look to the Governor and legislature, we expect them to “look out” for all Alaskans, for our rights and for our future. We expect fair and balanced laws, well-vetted and thoughtful. We expect responsible budgeting, with a long-term look to the future.

We also expect that when a law or regulation needs improvement or updating, for legislators to do their job. However, if they don't, Alaskans can work to change the law through the initiative process.

It is the right of all Alaskans to change law through the initiative process. However, that doesn't mean it is always done in a productive way. Generally speaking, ballot measures contain very broad language, which often leads to litigation to clarify the intent.

These types of initiatives put economic activities such as construction, fish processing, timber harvests, and mineral extraction at risk. Not to mention oil and gas, which has historically supported as much as 90% of Alaska's state government.

These shot-gun approaches spray a perceived issue with changes, rather than focus on a specific solution to a specific concern. This type of approach has consequences far beyond what may be needed. For example, an initiative that targets mining could have a big impact on the construction industry.

This onerous ballot measure would create an expensive and extremely cumbersome state permitting system that would be more stringent than current federal regulations.

A truly thoughtful initiative would be done to benefit the state and the people, and with the input of all stakeholders. The process should be transparent and open, and demonstrate that it is in the public interest.

Many people believe ballot initiatives should be eliminated, and the work should be left to the people's legislature to craft and develop our laws and regulations.

Unfortunately, Alaskans may be facing yet another ballot measure to protect fish habitat, a protection that is already in place.

This onerous ballot measure would create an expensive and extremely cumbersome state permitting system that would be more stringent than current federal regulations.

The seismic shift in permitting would make it much harder to get state approval for virtually all private, community and resource development projects across the state than it would be to get permits under the Endangered Species Act or the Clean Water Act.

The cost to the Alaskan public is valuable private sector dollars, often millions per initiative, being spent on ads and materials to inform Alaskans of the consequences of such initiatives. This is millions that otherwise could be invested in new projects or expanding existing projects in the private sector.

In addition to private sector costs, ballot measures cost significant public funds, and will deepen Alaska's fiscal crisis at a time when the state is facing a serious and prolonged recession.

As we in the construction industry learn more about any initiative, we will rely on each other to engage in communicating the risks to our industry, whether intentional or not.

Dan Hall is president of Associated General Contractors of Alaska.

Senate passes bill offering opportunity to open ANWR

The U.S. Senate has passed a budget resolution that could provide Alaska's congressional delegation its best chance in decades to open a small part of the 19-million acre Arctic National Wildlife Refuge (ANWR) to oil and gas exploration and development.

In October, the Senate voted 51-49 along party lines to pass the resolution.

U.S. Senator Lisa Murkowski has been granted the opportunity to include an

ANWR drilling provision in a tax reform bill known as a budget reconciliation that requires a simple 51 votes to pass. It could also pass on a 50-50 tie with the Vice President casting the tie-breaking vote. Senate leaders hope to pass a bill before the end of this year or early in the new year.

The budget resolution instructs the Energy and Natural Resources Committee to write legislation that raises \$1 billion in federal revenue.

Following the Senate vote, the House passed a controversial budget measure by a four-vote margin with a provision allowing drilling in ANWR.

In 1980, the Alaska National Interest Lands Conservation Act expanded the refuge, but in a compromise, set aside 1.5 million acres of the coastal plain for potential drilling. Murkowski said drilling today would require only 2,000 acres, given modern advances in technology.



INDUSTRY DIGEST



RDC comments on regulatory reform executive order

In October, RDC sent comments into the U.S. Army Corps of Engineers on Executive Order 13777, which has established a federal policy to alleviate unnecessary regulatory burdens and directs federal agencies to establish a regulatory reform task force.

The task force is to evaluate existing regulations and make recommendations to the Corps regarding their appeal, replacement or modification. It will attempt to identify regulations that eliminate jobs or inhibit job creation, are outdated, unnecessary, and ineffective, impose costs that exceed benefits, and create serious inconsistencies.

RDC's comments pointed out that the Clean Water Act (CWA), the National Environmental Policy Act, the Endangered Species Act, and other laws have significantly impacted natural resource development industries operating on federal and state land, including the North Slope.

With regard to the CWA, RDC noted serious concerns with the requirement of compensatory mitigation for development projects in Alaska, pointing out that a "no net loss" of wetlands policy designed for the Lower 48 is not practicable in Alaska. Instead, RDC urged the Corps to use the 1994 Alaska wetlands initiative, which is still applicable to Alaska. In the case of the North Slope, RDC urged the Corps to exempt industry and community development from the requirements of the mitigation sequencing process.

RDC said the Alaska wetlands initiative is a policy that is unique to Alaska and recognizes the reality of the Alaska environment – a state with nearly half of its 365 million acres as wetlands, and little or no opportunity for compensatory mitigation.

Ninth Circuit Court of Appeals rules against Sturgeon

In early October, a three-judge panel of the Ninth Circuit Court of Appeals ruled against John Sturgeon, upholding the ban on hovercrafts as a lawful exercise of federal authority under the Alaska National Interest Lands Conservation Act (ANILCA).

The decision follows a unanimous 8-0 decision last year in the U.S. Supreme Court, which called an earlier Ninth Circuit decision a "topsy-turvy approach" and ordered the case back for further review.

The Court held that ANILCA did not limit the Park Service from applying the hovercraft ban on the Nation River in the Yukon-Charlie Preserve because the federal government has an implied reservation of water rights, rendering the river public lands.

The Supreme Court said ANILCA carves out numerous Alaska-specific exceptions to the Park Service's general authority over federally-managed preserves.

Sturgeon said the decision was not a surprise, saying the hovercraft aspect of the lawsuit got lost a long time ago. He said the issue is who will make management decisions such as what kinds of uses are allowed over navigable waters and therefore private property in Alaska's conservation units.

Sturgeon intends to file a petition for rehearing and another petition for Supreme Court review. The outcome of the case could

determine who controls state and Native property within the outer boundaries of Alaska's conservation units

Alaska legislators expressed disappointment in the decision. "The plain language of the law was acknowledged by the Supreme Court and, yet again, ignored by the Ninth Circuit," said Senator John Coghill.

Feds: No Endangered Species Act listing for Pacific walrus

The U.S. Fish and Wildlife Service said it will not list the Pacific walrus as a threatened species under the Endangered Species Act based on sea ice coverage in the Arctic Ocean, concluding that the marine mammals have adapted to the loss by foraging along coastlines.

Moreover, the federal agency said it can not determine with certainty that walrus are likely to become endangered in the foreseeable future, which the agency defines as the year 2060.

The decision has already been challenged in Court by the Center for Biological Diversity.

Alaska's congressional delegation welcomed the agency decision, noting that new data shows the walrus is adapting and is not experiencing reductions in population.

BLM to offer all available tracts in NPR-A

In its biggest lease sale ever, the U.S. Bureau of Land Management is planning to offer all available tracts in the National Petroleum Reserve-Alaska (NPR-A) in an upcoming December lease sale.

In August, BLM had called for nominations and comments for the sale, including the entire NPR-A.

In a late October announcement, U.S. Secretary of the Interior Ryan Zinke said: "In May, I put my hand on TAPS and pledged to help fill it by putting Alaskans back to work on the North Slope. This large and unprecedented sale in Alaska will help achieve our goal of American Energy Dominance."

The sale will occur December 6th with 900 tracts to be offered covering 10.3 million acres, "all the tracts designated as available for development in the 2013 Record of Decision for the Integrated Activity Plan/Environmental Impact Statement for the NPR-A," BLM said.

King Cove road efforts continue in Washington, D.C.

The U.S. Interior Department is considering an administrative process that would allow a land swap between the King Cove Corporation and the federal government so that a long sought-after 11-mile single lane gravel road can be built between the village and Cold Bay for medical evacuations. At the same time, members of Alaska's congressional delegation are still seeking a legislative solution, which would exchange land between the federal and state governments. The area's frequent bad weather can make medical evacuations by air impossible at times. The local borough says at least 19 people have died because of the road's absence, many in air crashes.



RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

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