



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Public Access Assertion & Defense Unit

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March 30, 2023

The Honorable Sarah Vance,
Chairman
House Judiciary Committee
Alaska State Capitol
Juneau AK, 99801

Re: Judiciary Committee Questions on HB 98 (State Submerged Lands in Federal Areas Legislation)

Dear Representative Vance:

I wanted to express my thanks again for your affording my team the opportunity to address the House Judiciary Committee in support of the aforementioned legislation sponsored by Representative Saddler.

Two issues were raised during the committee hearing yesterday that you asked for me to investigate further and respond to you in writing. I believe the following are the two issues and what I have learned after further consultation with the Alaska Department of Law:

- 1. Why does the proposed legislation change the statutory language from "at the time of statehood" to "on the date of statehood" throughout the relevant statutory sections?***

I am advised that this global change within the legislation was offered to bring greater uniformity within the Alaska Code when this phrasing is used. Stylistically, I am advised that use of the word "time" in statutory construction typically refers to matters of the clock while the word "date" usually refers to matters of the calendar. Since other more substantive statutory changes are included within the legislation, it was determined that this slight change could be conveniently made at the same time to achieve better uniformity and consistency with the usage of this prepositional phrase that is not uncommon in various parts of the code. There is no deeper explanation: it is simply a matter of stylistic housekeeping.


- 2. What effect will the retroactivity section of the legislation have upon prior decisions made before the effective date of the legislation if it is enacted into law?***

After discussions with the Alaska Department of Law and others, I am unaware of any prior decisions (management or otherwise) that have been previously made by the Alaska Department of Natural

Resources that would be called into question or adversely affected by passage of this legislation with its retroactivity provisions. I am unaware of any decisions made or positions taken by the Alaska Department of Law that are not in conformity with provisions included within the legislation—specifically including the detailed listing of rivers and lakes within federal areas that are navigable-in-fact or tidally influenced. The only scenarios we can envision where adverse consequences may have occurred due to the absence of clear assertion of state ownership, management and control of rivers and lakes within federal areas involve suspected instances where (1) individuals may have been wrongly cited by federal law enforcement authorities for violating some federal law that should not be applied to usage of state land (e.g. a “John Sturgeon” situation) or (2) guides or commercial operators were wrongfully required to obtain federal permits or authorizations to use what are truly state lands. It is regrettable that such instances may have occurred previously, but there is little, if anything, that could be done now to rectify such wrongs. That such occurrences may have happened in the past, moreover, adds further incentive to pass the legislation to prevent their recurrence in the future. In other words, there is little, if anything, that can be done to change the past, but I respectfully submit that knowing such injustices may have happened makes it incumbent upon us to prevent their recurrence from now on.

I hope that the foregoing is responsive to your requests. Please do not hesitate to contact me with further questions or concerns.

Sincerely Yours,



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