

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

February 20, 2002

1:10 p.m.

**MEMBERS PRESENT**

Representative Beverly Masek, Co-Chair  
Representative Drew Scalzi, Co-Chair  
Representative Hugh Fate, Vice Chair  
Representative Joe Green  
Representative Mike Chenault  
Representative Lesil McGuire  
Representative Gary Stevens  
Representative Beth Kerttula

**MEMBERS ABSENT**

Representative Mary Kapsner

**COMMITTEE CALENDAR**

HOUSE BILL NO. 420

"An Act relating to the use of water; and providing for an effective date."

- MOVED HB 420 OUT OF COMMITTEE

HOUSE BILL NO. 421

"An Act relating to water use and appropriation."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 392

"An Act relating to the use and appropriation of water."

- SCHEDULED BUT NOT HEARD

**PREVIOUS ACTION**

BILL: HB 420

SHORT TITLE: TEMPORARY WATER USE PERMITS

SPONSOR(S): RESOURCES

Jrn-Date	Jrn-Page		Action
02/13/02	2243	(H)	READ THE FIRST TIME - REFERRALS

02/13/02            2243            (H)            RES  
02/20/02                            (H)            RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

MARILYN CROCKETT, Deputy Director  
Alaska Oil & Gas Association (AOGA)  
121 West Fireweed Lane, Number 207  
Anchorage, Alaska 99503  
POSITION STATEMENT: Testified in support of HB 420.

BOB LOEFFLER, Director  
Division of Mining, Land and Water (Central Office)  
Department of Natural Resources (DNR)  
550 West 7th Avenue, Suite 1070  
Anchorage, Alaska 99501-3579  
POSITION STATEMENT: Testified in support of HB 420.

CARL ROSIER, President  
Alaska Outdoor Council (AOC)  
8298 Garnet Street  
Juneau, Alaska 99801  
POSITION STATEMENT: Testified on HB 420.

TADD OWENS, Executive Director  
Resource Development Council (RDC)  
121 West Fireweed Lane  
Anchorage, Alaska 99503  
POSITION STATEMENT: Testified in support of HB 420.

SUSAN SCHRADER, Representative  
Alaska Conservation Voters (ACV)  
P.O. Box 22151  
Juneau, Alaska 99802  
POSITION STATEMENT: Testified on HB 420.

JAN KONIGSBERG  
Trout Unlimited  
1399 West 34th, Number 205  
Anchorage, Alaska 99503  
POSITION STATEMENT: Testified on behalf of the Alaska Public  
Water Coalition on HB 420.

BILL TEGOSEAK, Executive Director  
Inupiat Community of the Arctic Slope (ICAS)  
P.O. Box 390  
Barrow, Alaska 99723

POSITION STATEMENT: Testified on HB 420.

**ACTION NARRATIVE**

TAPE 02-8, SIDE A  
Number 0001

CO-CHAIR BEVERLY MASEK called the House Resources Standing Committee meeting to order at 1:10 p.m. Representatives Masek, Scalzi, Fate, Green, Chenault, McGuire, Stevens, and Kerttula were present at the call to order.

HB 420-TEMPORARY WATER USE PERMITS

CO-CHAIR MASEK announced that the only order of business before the committee would be HOUSE BILL NO. 420, "An Act relating to the use of water; and providing for an effective date." [The bill was sponsored by the House Resources Standing Committee.]

CO-CHAIR MASEK read from the sponsor statement: "A statutory revision is needed to better facilitate the ability of the Department of Natural Resources [DNR] to issue temporary water use permits. A repeal of the sunset clause included in last year's HB 185 is intended to protect the state's interests in water use distribution cases currently under appeal."

Number 0236

MARILYN CROCKETT, Deputy Director, Alaska Oil & Gas Association (AOGA), informed the committee that AOGA is a trade association of 18 oil and gas companies with interests and operations in Alaska. She explained that HB 420 would repeal the sunset provision that was contained within HB 185, which passed the legislature last year. She said HB 185 put into statute the existing practices that DNR had been using for many years with regard to issuance of temporary water use authorizations. Those authorizations are important to the oil and gas industry; they provide a mechanism to construct ice roads on the North Slope. She explained that ice roads have been identified as the preferred method of accessing remote areas during the wintertime without having to place gravel. She remarked that the oil and gas industry is minimizing the impact on the environment from constructing the ice roads and using the temporary water.

Number 0390

MS. CROCKETT said temporary water use authorizations do not convey a water right; they are revocable at any time. She said temporary water use authorizations do not require public notice requirements that a water right or water appropriation would carry with it because the authorizations provide some additional rights that temporary water use does not have. She remarked that [AOGA] encourages the committee to move HB 420.

Number 0438

BOB LOEFFLER, Director, Division of Mining, Land and Water (Central Office), Department of Natural Resources (DNR), informed the committee that the state has had a temporary water use program in effect for 20 years. He said the program is administered in a way that protects the environment and meets the temporary water needs of Alaskans and industry. He said DNR fully supports the passage of HB 420.

Number 0483

REPRESENTATIVE KERTTULA reflected on the passage of a bill from the prior year. She asked Mr. Loeffler for an update on the [water permit] backlog and also for a description of the process that DNR set up to administer the water permits.

MR. LOEFFLER said he believes last year the legislature gave the water use program additional funds so that DNR could finally get to the water rights of individual Alaskans. He explained that because of a couple of lawsuits and concentrating on the issues of water rights, state income, and employment, DNR had only finished its hiring and training around late December. He said he suspects that there will be a substantial number of water rights administered so that "you" can see how the system works in about a month to six weeks. He commented that he did not have a lot of progress to report at this time.

REPRESENTATIVE KERTTULA remarked that HB 420 is pretty simple; however the bill [HB 185] that HB 420 is extending was actually fairly complicated. She asked if any public notices had been issued on the large permits.

MR. LOEFFLER replied that DNR issued approximately 20 public notices on the large water permits on the North Slope this year.

REPRESENTATIVE KERTTULA asked how many small permits had been put through in the same time as the 20 [public notices].

MR. LOEFFLER commented that DNR typically does about 100 per year. He said he suspects that DNR has done some portion of about 40 or 50, but he couldn't say exactly how many had been done and he doubted public notice had been issued on any of those. He added that most of those would not have been on the North Slope.

REPRESENTATIVE KERTTULA asked what kind of response DNR received on the public notice for those that were on the North Slope.

MR. LOEFFLER answered that DNR received comments from the Northern Alaska Environmental Center and Greenpeace.

REPRESENTATIVE KERTTULA asked for an update on the court action from last year involving the permits.

MR. LOEFFLER answered that there were two court actions in particular. First, in October a judge ruled on how DNR interpreted the state provisions in its appeal language. He explained that the subject of the appeal was a temporary water use permit; however, the judge ruled on how DNR interpreted its appeal regulations and not the [actual] permit. He said at the time of the [ruling] DNR's appeal regulations had been repealed in a new section, so the judge ruled on an appeal program that had since been repealed and replaced by new procedures. He remarked that the substantive aspect that the judge ruled on, how he determined a stay, didn't really have any effect. He said "we" think the language and background of his judgment was in serious error, so it's being appealed by the Department of Law. He said the second [lawsuit resulted in] a remand last spring for work on two issues involving water rights. He added that DNR has finished that remand.

Number 0795

REPRESENTATIVE KERTTULA asked what the ruling was.

MR. LOEFFLER said DNR issued a temporary water use permit, which was appealed. He said at that time there was an automatic stay provision, unless DNR took it off; Greenpeace asked that the stay be retained. He said DNR went to the applicant and asked for the applicant's side of the story. He said DNR told Greenpeace a day in advance that it was going to lift the stay, which it did. He said the judge ruled that DNR had to give Greenpeace a due-process right to respond, and to provide the applicant's response and DNR's decision to lift the stay.

CARL ROSIER, President, Alaska Outdoor Council (AOC), informed the committee the AOC is a federation of approximately 50 outdoor recreation groups statewide; they have strong interests in matters pertaining to fish and wildlife. He commented that the appropriation of water is one of AOC's major interest areas. He said AOC's concern in this case is the protection for the multiple fishery resources of the state; there must be instream flow reservations if they are to survive. He said AOC is concerned that the simple deletion of the sunset provision is little more than a "Band-aid" approach to a system adopted last year that needs to be thoroughly reviewed. He said AOC believes that the legislature had some misgivings about the final version passed last year with the inclusion of a one-year sunset provision. He remarked that there seems to be less than total agreement and less than togetherness between the Alaska Department of Fish and Game (ADF&G) and DNR over the priority of protecting fish and wildlife within DNR's "lack of priority for instream flow adjudication to reservation applications." He said he thinks many questions need to be answered at the present time, in view of [the past] year, to look at the administration of this particular Act. He asked how much water can be authorized under the temporary water use permit.

MR. ROSIER asked what procedures and criteria DNR utilizes in making a temporary water use permit decision of where, when, and how much; what the examples are of present temporary water use permit applications; and how many are out there presently. He asked what the working relationship is among ADF&G, the Department of Environmental Conservation (DEC), and DNR. He said ADF&G and DEC objected to issuance of temporary water use permits. He suggested that there have been efforts made by ADF&G to raise various issues regarding instream flow and adjudication. He added that AOC does not know what DNR's response has been. He said DNR has determined how much water has been applied for or appropriated from any specific drainage before a temporary water use permit is issued.

MR. ROSIER asked what had been done to clean up the water rights applications now on the books. He said it was an issue back when he worked for the Hickel Administration, and it doesn't seem to be any further along today. He said it doesn't make a lot of sense to be dealing with this issue on a temporary basis, adding appropriations of water on top of a backlog of appropriation applications that have been lying around [for a long period of time]. He remarked that there has to be some

logical basis for doing what is [being proposed] in regard to the more formal applications for appropriations. He said AOC doesn't necessarily have a problem with a temporary water use permit, but there definitely should be standards as well as oversight by all three agencies before [the committee] moves ahead on the bill.

Number 1186

CO-CHAIR SCALZI asked Mr. Rosier if he was concerned about "due deference" in regard to ADF&G.

MR. ROSIER said it would be an improvement over what AOC currently has on this issue. He mentioned that AOC went through a similar process with the Forest Practices Act [Alaska Forest Resources and Practices Act]; AOC feels very strongly that there has to be "equal footing" as far as the agencies are concerned.

Number 1235

CO-CHAIR SCALZI agreed, as long as the timeframe the agencies act upon is short enough.

MR. ROSIER said, "That's right."

Number 1306

REPRESENTATIVE KERTTULA asked Mr. Rosier what level of water usage would be appropriate and whether it is too difficult to tell because of the effect it might have on a stream or spawning area.

MR. ROSIER said it was difficult to answer. He said his view is that it is going to change in areas of the state where the work is performed. He suggested that the requirements for water for an ice road on the North Slope would probably be substantially different from what temporary water use might be in Southeastern Alaska. He said he foresees that the level will be based on individual projects.

REPRESENTATIVE KERTTULA asked if it would be helpful to have a system in which other agencies were given notice and their expertise had to be relied on.

MR. ROSIER said, "Yes."

Number 1365

TADD OWENS, Executive Director, Resource Development Council (RDC), testified via teleconference. He informed the committee that RDC is an Alaskan-based nonprofit trade association that represents companies from the mining, timber, fisheries, tourism, and oil and gas industries. He explained that RDC has been working with DNR and the legislature for the past few years on issues related to the water program. He stated that RDC is strongly supportive of HB 420. He said DNR's current process for handling temporary water use authorizations is a good process that provides the necessary protections to the environment and the fish and wildlife resources around the state. He explained that the temporary water use authorizations are very important to RDC's membership for development activities around the state. He reiterated that RDC is supportive of HB 420 and he urged the committee to pass the bill.

REPRESENTATIVE KERTTULA asked Mr. Owens to describe the protection that the current program offers.

MR. OWENS suggested that it would be more appropriate for Mr. Loeffler to give the details of the program.

REPRESENTATIVE KERTTULA asked Mr. Owens to proceed.

MR. OWENS explained that current regulation requires consultation with ADF&G and DEC in processing the temporary water use authorizations. He said the authorizations, unlike a formerly adjudicated water right, are temporary, revocable permits. He suggested if there were some demonstrated environmental impact, DNR would have the authority to revoke the authorization at any time; having the distinction between a temporary water use authorization and a property right is important. He said the temporary water use authorizations do not grant or imply a priority for a property right for water use. He suggested this would allow water use for construction projects around the state to go forward in a timely manner, with adequate safeguards to ensure that water is used appropriately.

Number 1620

SUSAN SCHRADER, Representative, Alaska Conservation Voters (ACV), explained that ACV is a nonprofit organization consisting of approximately 34 member organizations; the combined membership in Alaska is about 35,000 registered voters. She said last year she spoke to the committee about the concerns

that ACV had with HB 185; HB 420 eliminates the sunset provision. She reiterated ACV's concerns with HB 185. She said ACV supported the provisions in HB 185 that set up a new fee system for DNR to manage its water program; however, there were concerns with two of the provisions, including the exemption from public notice and comment. She said in addition to the Northern Alaska Environmental Center, a number of Native groups have commented on temporary water use permit applications. The Native groups' concerns typically involve subsistence use on the North Slope and the need to maintain and protect those uses. She said the rights of Alaskans should not be compromised by prohibiting the opportunity to publicly notice and comment on the temporary water use permits.

Number 1716

MS. SCHRADER turned attention to AS 46.15.080. She said the criteria in this section deal with a number of different concerns, from the effects water withdrawal has on economic activity to impacts on fish and other resources. She indicated that she thought DNR should be required to perform an analysis of those impacts. She explained that under current law, a temporary water use permit is good for five years; depending on some determinations made by the legislature on some current bills, it may be extended back to the original ten-year length of time. "It is hardly temporary," she remarked. She suggested that the North Slope is a "desert" that gets 4 to 7 inches of rain per year. She said the oil and gas industry uses a huge amount of water on the North Slope. There are other interests, resources, and concerns that need to be protected, she said.

Number 1806

MS. SCHRADER suggested that having DNR go through an analysis of the criteria would better protect this resource. She suggested that with the introduction of HB 420 and other related bills, the legislature has taken quite an interest in the [Alaska] Water Use Act. She said ACV does not have a problem with that; however, they would suggest that a better way of dealing with potential changes to the Alaska Water Use Act is to get the interested parties together. She suggested a way to do this would be to reactivate, refund, and reenergize the water resources board; to have them hold hearings around the state; and to get the oil and gas industry to work with the Native groups on the North Slope and the agencies - DEC, DNR, and ADF&G - and look into what changes, if any, are needed in the Alaska Water Use Act. She remarked, "Simply sitting here and having a

bill written by the oil and gas industry, passed down without a lot of opportunity for other people to effectively weigh in, I don't think is doing the protection of this critical resource very much good." She said ACV would recommend those suggestions as an alternative to extending the sunset provision in HB 185.

Number 1860

CO-CHAIR SCALZI asked Ms. Schrader which resource she is concerned with.

MS. SCHRADER answered that she is concerned with all of the resources on the North Slope: the water resources, fish, and wildlife that depend so critically on it. She said the lakes and streams on the North Slope are tapped heavily under current temporary water permits to build the ice roads.

CO-CHAIR SCALZI stated that he is unaware of any other provisions that may help the oil and gas industry in regard to accessing those areas that [Ms. Schrader] finds so sensitive. He remarked that those ice roads seem to be a good solution. He asked if there was anything else available that would augment the use of ice roads.

MS. SCHRADER said she is not aware of the oil and gas industry's having any problems with getting ice roads built. She agreed with Mr. Rosier's suggestion that some instream flow reservations should be examined, in addition to the amount of water in the multitude of lakes on the [North Slope] that are potentially going to be used. She stated that AOC didn't have a problem with ice-road development; she agreed that it is better than gravel roads. She stated that simply letting the oil and gas industry have total, unfettered access to the water on the [North Slope] is not in the best interest of anyone.

CO-CHAIR MASEK offered her opinion that there is no problem on the North Slope with regulatory provisions; the industry is continuously being sued by conservation organizations. She said HB 420 will take care of the sunset provision; there are also a couple of water bills [coming before the committee.] She asked that comments be kept to HB 420.

Number 2024

REPRESENTATIVE GREEN recalled that when he was building ice roads [on the North Slope], streams weren't used. Mentioning concern that the fish might be impacted, he said the lakes used

for water are sterile; in addition, there are numerous shallow lakes [on the North Slope].

REPRESENTATIVE KERTTULA asked Ms. Schrader if she knew what DNR's regulations were and if they provided any process for an impact analysis.

MS. SCHRADER suggested that Mr. Loeffler would be the best person to answer that question. She said she'd checked with Mr. Loeffler last fall, and DNR had not yet drafted regulations to address HB 185. She said this summer there were draft regulations about the water use program circulating for public comment; however, they were not the ones to be promulgated under HB 185.

Number 2119

REPRESENTATIVE KERTTULA asked what kind of impact analysis was presently being done on the temporary water permits before the permits are issued.

MS. SCHRADER reiterated that Mr. Loeffler should answer that. She said one of the contentions of some of the groups that she represents is just how much of that is being done.

REPRESENTATIVE FATE indicated that a limit on temporary water use permits could have an effect on Alaska's economy. He remarked that if HB 185 needs to be fixed, it could be done at another time.

Number 2215

JAN KONIGSBERG, Trout Unlimited, testified via teleconference on behalf of the Alaska Public Water Coalition, a group representing sport-fishing interests and organizations, former members of the Alaska water board, and other individuals who'd decided to work together after HB 185 was passed last year over the objections of a number of individuals. He said they are concerned about executive actions, legislation, and regulatory initiatives that affect water resources but further special interests at the expense of the public's interest. He stated that the group is particularly dismayed by DNR's demonstrated inability to manage Alaska's freshwater resources over the last several years. He said the group is opposed to HB 420; however, the group does support the temporary water use permit for actual temporary uses.

MR. KONIGSBERG suggested that such authorizations must be limited to one-year terms, preceded by public notice and accompanied by working public-interest "determinations." He suggested that current regulations exempt the use of seawater and the emergency use of water to protect life or property from any authorization; the group does not believe that any other exemptions are needed for temporary water uses. He said the group is most concerned about the impact on the environment resulting from temporary water use permits.

Number 2315

MR. KONIGSBERG reminded the committee of Article VIII [of the state constitution], regarding the sustained-yield principle applied to the replenishable resources of Alaska. He said the group believes that the sustained-yield mandate forbids any action that would reduce the sustained yield of any renewable resource. He said in regard to the replenishable salmon resources, it is obvious that salmon need water. He stated that it is the responsibility of the government to ensure that habitat conditions which maximize the yield of fish are maintained, not degraded.

MR. KONIGSBERG said the group believes that under the provisions of temporary water use permits under HB 185, removal of the sunset provision is jeopardizing the salmon habitat throughout the state. He reaffirmed that the responsibility to protect habitat is not discretionary, optional, or conditional on any factors - whether they're cultural, political, or economic. He said, "It's pretty simple: we shouldn't be harming the goose that laid the golden egg, ... and removal of the sunset provision is going to drown, if not cook, the goose." He said the group believes that if the people's representatives are not willing to fund the actual cost of properly and appropriately administrating the Alaska Water Use Act through devices such as HB 185, private uses will have to wait until adequate self-funding is available. He remarked that amending the [Alaska] Water Use Act to reduce the cost of giving away a public resource is simply not acceptable.

MR. KONIGSBERG said the bottom line regarding Alaska's water resources is that water is needed to sustain fish, wildlife, and the public health; therefore, the only significant amendment to the [Alaska] Water Use Act that the group would support is the automatic protection of instream flow for fish, wildlife, public safety, and human health.

Number 2428

BILL TEGOSEAK, Executive Director, Inupiat Community of the Arctic Slope (ICAS), testified via teleconference. He told the committee that last year he had provided comment on HB 185. He remarked that ICAS opposed giving away natural resources that belong not to the state, but to the people of Alaska. He suggested that HB 185 had authorized billions of gallons of water to be given away to special interests, in this case, the oil industry in the [Arctic Slope] region. He said [HB 185] permitted the extraction of [large] amounts of water from 90 lakes; this was done without an environmental assessment, which would determine the impacts to other natural resources and the ecosystem on the North Slope.

MR. TEGOSEAK reiterated that he felt that a temporary water bill, in this case, is only a special-interest bill intended to satisfy the needs of special interests such as the oil industry. He remarked that the bills don't agree with what ICAS considers to be temporary; the bill [would extend the provision for five years]. He reiterated that the bill would allow a continuation of giving away natural resources that belong to the state. He said, "The giving away of water, in our region, gives an appearance of geographic discrimination of cultural incompetence." He reiterated that there has been no request for an environmental assessment regarding the extraction of water. He indicated legislative representatives from Fairbanks and Anchorage would have to answer to their constituents in regard to the extraction of billions of gallons of water in the 90 lakes through the use of temporary water use permits. He said he wants to be sure the committee understands "our" dependence on the natural resources. He suggested that there were no public hearings on HB 185 as it went through last year's session. He said he thought the people that are most affected need to provide comment; however, the people don't have the means to do that in small villages. He added that there is only one Legislative Information Office (LIO) [in the area], in Barrow.

Number 2612

REPRESENTATIVE McGUIRE stated that by supporting HB 420, she is not supporting any special interests; she resents that allegation. She said as a member of the House Resources Standing Committee she is there to look at the delicate balance between conservation and developing resources, as a resource-based state, to support the economy; it is a job that she takes

very seriously. She said she believes that the program has worked in the past. She said as she understands it, there are a lot of requirements that the commissioner has to consider in effectuating any regulations, including coordination with DEC and ADF&G and with local, state, and federal agencies that look at local soil and water conservation districts. She stated that DNR takes its job seriously, and that she trusts DNR to balance these things out when it issues the temporary water permits.

Number 2719

REPRESENTATIVE KERTTULA asked Mr. Loeffler to explain the progress of the regulations that were to be developed to implement HB 185, as well as the effects of those regulations. She also asked Mr. Loeffler what type of impact analysis is performed by DNR and what amount of water would have to be used before an impact analysis would be performed.

MR. LOEFFLER said the temporary water use program operated successfully for 20 years; as a result, no regulations were needed to implement temporary water use permits. He indicated DNR has regulations available that were authorized by the bill. He said regulations in regard to fee provisions are expected to be implemented by spring; therefore, fees will be increased. He explained that last fall, DNR implemented streamlined regulations for the water rights program; these regulations allowed a 60-day comment period, which closed in October; DNR is still reviewing the comments.

Number 2793

MR. LOEFFLER remarked that he feels DNR and ADF&G have an extremely close working relationship, especially in the northern region. He said the type of [impact] analysis performed by DNR reviews the potential effects on fish and wildlife. He explained that DNR has a couple of policies that are reasonably standard; DNR has not authorized a withdrawal from a stream or river on the North Slope since 1976. The water either comes from lakes or reservoirs that are constructed specifically for that purpose.

MR. LOEFFLER said the only connection to the river doesn't occur in the winter when flows are critical; it occurs in the "spring flood flows." This year, DNR reviewed temporary water use permits for the cumulative impact of authorizations applied for or authorized before issuing them; DNR worked closely with ADF&G and asked for its review. He explained that DNR does a more

streamlined version of this with all temporary water use permits, looking at other authorizations from that source before the permits are issued. He said the backlog for instream flow is a critical problem; however, DNR looks at [instream] flow applications to ensure that an authorization wouldn't impact that application before it is issued.

CO-CHAIR MASEK asked Mr. Loeffler to comment on the testimony given by Mr. Konigsberg in regard to the fishing issue.

MR. LOEFFLER said that he was not in the room at the time and therefore couldn't comment specifically on Mr. Konigsberg's testimony. He indicated that temporary water use permits are compared to instream flow reservations before they are issued. He said he believes the "critical mission" is to protect the fish; he is proud that has been done; he believes that ADF&G would testify that DNR had [protected the fish]. He said in the event of a problem, the temporary water use permits are revocable; they have been revoked and modified in the past. He indicated that [temporary water use permits] are compared with instream flow applications before DNR issues them.

Number 2922

REPRESENTATIVE MCGUIRE brought attention to subsection (i), beginning at page 5, line 31 [of CSHB 185(FIN)], which reads, "The commissioner may modify, suspend, or revoke an authorization issued under this section if the commissioner determines it necessary to protect the rights of other persons or the public interest". She expressed her belief that this [provision] is something that the department would take into consideration if necessary.

MR. LOEFFLER said "correct"; it is a mandate DNR takes seriously.

Number 2976

CO-CHAIR MASEK brought attention to page 5, line 20, subsection (e) [of CSHB 185(FIN)].

TAPE 02-8, SIDE B  
Number 2980

MR. LOEFFLER explained that the [subsection] is included because the public notice criteria are [related] to AS 46.15.080. He said DNR wants to ensure through the courts that there is a

dividing line between water rights and temporary water use permits. He explained that water rights are an irrevocable property right. They go through AS 46.15.080, require public notice, and are recorded; however, temporary water use permits are revocable, are not a property right, and are not recorded. He said AS 46.15.080 is a link; DNR wanted to ensure that [water rights and temporary water use permits] are separate so that it has [the option] of revoking them. He offered an example: if a small amount of water is needed for a road construction project for making concrete, DNR is not required by the courts to go through public notice in a 30-45 day period. He added that he thought that a [public notice requirement] would devastate Alaska's short construction season.

CO-CHAIR MASEK brought attention to page 5, line 22, subsection (f) [of CSHB 185(FIN)], which reads, "The commissioner may impose reasonable conditions or limitations on an authorization for temporary use of water to protect the water rights of other persons or to protect fish and wildlife habitat, human health, or other public interests".

MR. LOEFFLER remarked that DNR does this on a regular basis.

Number 2901

REPRESENTATIVE KERTTULA asked Mr. Loeffler if there is another kind of permit that does not require a public notice for using a public resource.

MR. LOEFFLER answered yes. He explained that most permits for the use of state resources don't require public notice because they don't involve property rights. Those include cross-country travel, trapping cabins, and operations on a mining-claim reclamation; the property right is the claim itself [in the latter example]. By contrast, the state constitution requires prior public notice for property rights; however, if it is revocable - or, according to the words of the court, "not functionally irrevocable" - then DNR is not required to give public notice.

REPRESENTATIVE KERTTULA asked Mr. Loeffler if DNR gives notice on some of those permits.

Number 2836

MR. LOEFFLER said that notice is given when DNR believes there is a public-values question or public controversy; however, sometimes it doesn't give notice; it is not required by law.

Number 2793

REPRESENTATIVE FATE moved to report HB 420 out of committee with individual recommendations and a zero fiscal note.

REPRESENTATIVE KERTTULA objected for purposes of discussion. She explained that under the circumstances, she feels DNR has done a really good job trying to [meet the terms] of a one-year period; however, she is troubled by the bill's moving so fast. She said she feels that she doesn't have a good [understanding] with only three minutes' testimony from each witness on exactly how DNR is working the system presently; she is not clear on how far the backlog is, or what the concerns are. She expressed concern about the fiscal situation, citing last year's fiscal note that was implemented to [deal with] the backlog. She agreed with Mr. Loeffler's testimony in terms of his belief and DNR's actions on trying to provide public notice and deal with the bigger usage; however, she expressed uncertainty about the future. She asked that the bill be held over so the committee would have more time to review it. She added that in comparison to other bills, however, HB 420 seems to be the least problematic.

CO-CHAIR MASEK remarked that HB 420 is providing a statutory revision repealing the sunset provision in HB 185. She expressed concerns about other, forthcoming water bills. She added that she thinks more work needs to be done on the issue. She said she felt there would be adequate time to come up with a permanent solution if DNR and the committee worked [together] on the issue during the remainder of the session and into the interim.

REPRESENTATIVE KERTTULA responded that she understands Co-Chair Masek's position, but believes it would be better to consider all of the [water bills] together.

Number 2653

REPRESENTATIVE KERTTULA removed her objection.

Number 2643

CO-CHAIR MASEK asked if there was any further objection. Hearing none, she announced that HB 420 was moved out of the House Resources Standing Committee with individual recommendations and the accompanying fiscal notes.

**ADJOURNMENT**

Number 2618

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:05 p.m.