

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

February 22, 2002

1:13 p.m.

MEMBERS PRESENT

Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Gary Stevens
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

Representative Joe Green
Representative Mike Chenault
Representative Lesil McGuire

COMMITTEE CALENDAR

HOUSE BILL NO. 286

"An Act allowing a person to hold more than one commercial fishing entry permit for a fishery; relating to the power of the Board of Fisheries to establish fishing periods and areas for subgroups of commercial fishing permits and commercial fishing permit holders and to establish limits on the amount of fishing gear that may be used by certain commercial fishing permit holders; and providing for an effective date."

- MOVED CSHB 286(RES) OUT OF COMMITTEE

HOUSE BILL NO. 392

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

- HEARD AND HELD

HOUSE BILL NO. 421

"An Act relating to water use and appropriation."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 286

SHORT TITLE:FISHING PERMITS/ASSOCIATIONS/ASSESSMENTS

SPONSOR(S): REPRESENTATIVE(S) SCALZI

Jrn-Date	Jrn-Page		Action
01/14/02	1949	(H)	PREFILE RELEASED 1/4/02
01/14/02	1949	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1949	(H)	FSH, RES
01/30/02	2100	(H)	COSPONSOR(S): FATE
02/04/02		(H)	FSH AT 3:30 PM CAPITOL 124
02/04/02		(H)	Heard & Held
02/04/02		(H)	MINUTE(FSH)
02/11/02		(H)	FSH AT 3:30 PM CAPITOL 124
02/11/02		(H)	Moved CSHB 286(FSH) Out of Committee
02/11/02		(H)	MINUTE(FSH)
02/13/02	2229	(H)	FSH RPT CS(FSH) NT 4DP 3NR
02/13/02	2229	(H)	DP: DYSON, SCALZI, WILSON, STEVENS;
02/13/02	2229	(H)	NR: COGHILL, KERTTULA, KAPSNER
02/13/02	2229	(H)	FN1: ZERO(DFG)
02/13/02		(H)	RES AT 1:00 PM CAPITOL 124
02/13/02		(H)	Heard & Held
02/13/02		(H)	MINUTE(RES)
02/13/02		(H)	MINUTE(RES)
02/22/02		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 392

SHORT TITLE: WATER RIGHTS AMENDMENTS

SPONSOR(S): REPRESENTATIVE(S) HARRIS

Jrn-Date	Jrn-Page		Action
02/08/02	2182	(H)	READ THE FIRST TIME - REFERRALS
02/08/02	2182	(H)	RES
02/08/02	2182	(H)	REFERRED TO RESOURCES
02/20/02		(H)	RES AT 1:00 PM CAPITOL 124
02/20/02		(H)	Scheduled But Not Heard
02/22/02		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

GORDY WILLIAMS, Legislative Liaison
Office of the Commissioner
Alaska Department of Fish & Game
P.O. Box 25526
Juneau, Alaska 99802-5526

POSITION STATEMENT: Testified on in favor of HB 286 on behalf of the department but asked for some changes.

SUE ASPELUND

Cordova District Fisherman United (CDFU)

P.O. Box 939

Cordova, Alaska 99574

POSITION STATEMENT: Testified in support of HB 286 but called for clarification on some of the language.

THOM WISCHER

United Salmon Association

P.O. Box 202

Kodiak, Alaska 99615

POSITION STATEMENT: Testified in support of HB 286.

ALAN REEVES

P.O. Box 741

Wrangell, Alaska 99929

POSITION STATEMENT: Testified on HB 286 that he would like to see other gear types included in the legislation.

JIM SMITH, Fisherman

P.O. Box 2025

Wrangell, Alaska 99929

POSITION STATEMENT: Testified on HB 286 that different gear types and fisheries should not be viewed as the same.

DAVID BEDFORD, Executive Director

Southeast Alaska Seiners Association

526 Main Street

Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 286; would like the associations to represent all permit holders within a fishery, and his group would support any change that would bring about that end.

GERALD (JERRY) McCUNE, Lobbyist

for United Fishermen of Alaska (UFA)

211 4th Street, Suite 110

Juneau, Alaska 99801-1172

POSITION STATEMENT: Testified on behalf of the UFA on HB 286.

KATHY HANSEN, Executive Director

Southeast Alaska Fisherman's Alliance

9369 North Douglas Highway

Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 286.

SCOTT McALLISTER, Alaskan Salmon Fisherman
316 Distin Avenue
Juneau, Alaska 99801
(No address provided)

POSITION STATEMENT: Testified as an Alaskan salmon fisherman
in support of HB 286.

PETE FELLMAN, Staff
to Representative John Harris
Alaska State Legislature
Capitol Building, Room 513
Juneau, Alaska 99801-1182

POSITION STATEMENT: Spoke on behalf of the sponsor of HB 392.

PHIL KASPARI
P.O. Box 177
Delta Junction, Alaska 99737

POSITION STATEMENT: Testified in favor of HB 392.

JAN KONIGSBERG
Trout Unlimited
1399 West 34th, Suite 205
Anchorage, Alaska 99503

POSITION STATEMENT: Testified on behalf of the Alaska Public
Water Coalition in opposition to HB 392; opposes any amendments
to the Alaska Water Use Act that would establish specific
preferences among different water users.

RUSS BOWDRE
P.O. Box 1048
Delta Junction, Alaska 99737

POSITION STATEMENT: Testified in support of HB 392.

ART GRISWOLD
HC 60 Box 4493
Delta Junction, Alaska 99737

POSITION STATEMENT: Testified in support of HB 392.

BOB LOEFFLER, Director
Division of Mining, Land and Water
Department of Natural Resources
550 West 7th Avenue, Suite 1070
Anchorage, Alaska 99501-3579

POSITION STATEMENT: Testified on HB 392; indicated the bill had
significant problems.

ACTION NARRATIVE

TAPE 02-9, SIDE A
Number 0001

CO-CHAIR DREW SCALZI called the House Resources Standing Committee meeting to order at 1:13 p.m. Members present at the call to order were Representatives Kapsner, Kerttula, Fate, Stevens, Masek, and Scalzi.

HB 286-OWNERSHIP OF MORE THAN ONE FISHERY PERMIT

Number 0125

CO-CHAIR SCALZI announced that the first order of business would be HOUSE BILL NO. 286, "An Act allowing a person to hold more than one commercial fishing entry permit for a fishery; relating to the power of the Board of Fisheries to establish fishing periods and areas for subgroups of commercial fishing permits and commercial fishing permit holders and to establish limits on the amount of fishing gear that may be used by certain commercial fishing permit holders; and providing for an effective date."

[Before the committee was CSHB 286(FSH); in packets was a proposed committee substitute (CS), Version T.]

CO-CHAIR SCALZI, sponsor of HB 286, addressed changes in the [Version T] that he characterized as small and innocuous. He said the change on page 1, line 8, replaces "the commissioner shall" with "the commissioner may". On page 7, lines 20-21 are changed to "during each month to the department by the last day of the next month", consistent with the Alaska Seafood Marketing Institute (ASMI) Salmon Enhancement Tax. And page 8, line 9, has a change from "shall" to "may".

Number 0265

CO-CHAIR MASEK asked why "shall" was changed to "may".

CO-CHAIR SCALZI said he should let the department speak to that issue, but added, "The inference of 'shall assist in and encourage the formation of qualified salmon fishery associations for the purpose of promoting the consolidation' ... may not be in the best interest of any group in one particular area to have that mandated on them." He said the department may not want the

word "shall" used in this case. He said the bill would not be broad-based across all salmon fisheries, but may be specific to different areas. The change from "shall" to "may" gives the department and different fishing areas some latitude.

CO-CHAIR MASEK asked to hear from the department on the matter. She also inquired about the changes on page 7, lines 20-21.

Number 0412

GORDY WILLIAMS, Legislative Liaison, Office of the Commissioner, Alaska Department of Fish & Game (ADF&G), explained that the change from "shall" to "may" is more appropriate. He said the department wouldn't want to have to force people into doing something they didn't want to do by using "shall". This gives people the option of either seeking the department's assistance in developing an operating plan or not.

Number 0505

CO-CHAIR MASEK asked Mr. Williams if it would cost the department any funding to assist in those areas.

MR. WILLIAMS replied that the department does a lot of outreach already, and that he didn't foresee this plan-development assistance creating a large fiscal strain.

Number 0572

CO-CHAIR MASEK moved to adopt the proposed CS, version 22-LS1099\T, Utermohle, 2/20/02, as the working document. There being no objection, Version T was before the committee.

CO-CHAIR SCALZI referred to page 8, following line 2, and said the Department of Revenue had concerns about the collection of fees; the department felt it would help in ensuring the enforcement of AS 43.05 and AS 43.10.

Number 0714

CO-CHAIR SCALZI offered Amendment 1, 22-LS1099\T.1, Utermohle, 2/20/02, which read:

Page 8, following line 2:

Insert a new subsection to read:

"(e) The provisions of AS 43.05 and AS 43.10 apply for the enforcement and collection of a salmon

fishery assessment levied under AS 43.76.220 -
43.76.280."

He explained that it was for the purposes of better enforcement of collection.

Number 0758

REPRESENTATIVE KERTTULA asked if it would be better to replace "for" with "to" on line 3 of the aforementioned amendment.

CO-CHAIR SCALZI said Representative Kerttula is the committee's resident attorney and deferred to her judgment on the matter, saying he thought it was fine. He said he didn't think the change was so great as to require substantiation by the Department of Revenue.

Number 0857

CO-CHAIR SCALZI asked if there were any objections to Amendment 1 [including Representative Kerttula's suggested amendment to the amendment]. There being no objection, Amendment 1 was adopted.

Number 0916

MR. WILLIAMS asked for clarification of Section 1, page 2, line 1 [Version T], which read in part, "(2) represents interim-use permit and entry permit holders who participate in the salmon fishery". He said the department had had discussions about the word "participate", and that within some fisheries, some permit holders don't fish their permits but renew them so that they are still valid. He suggested it might be better for the bill to say, "represents interim use and entry permit holders in the salmon fishery", thereby deleting "who participate" from the language.

Number 1056

CO-CHAIR SCALZI responded that it doesn't exclude permit holders who are not actively fishing and that he doesn't see a problem with the language as it is.

Number 1126

SUE ASPELUND, Cordova District Fisherman United (CDFU), testified via teleconference. She said CDFU had no problem with

amending the language from "shall" to "may", but would like clarification on the "participant" issue raised by Gordy Williams. She said CDFU supports the legislation and characterized it as a good "tool in the box" to get gear out of the water. She asked the committee to support the bill.

Number 1234

THOM WISCHER, United Salmon Association, testified via teleconference. He said his association supports the bill and agrees with the amendment regarding ["shall" to "may"], which preserves regional self-determination. He said the United Salmon Association also likes that there can only be one additional permit held per area by a permit holder. He said the ability to form associations and pursue fleet reduction are also pleasing to the United Salmon Association.

Number 1353

ALAN REEVES testified via teleconference. He said he wanted to "piggyback" other fisheries onto the bill. He raised the scenario of fishermen being paid not to fish their permits in other districts and going to other districts and crowding them out. He said the committee would probably be hearing from the other gear groups in the following year.

CO-CHAIR SCALZI expressed his concurrence with many of Mr. Reeves' thoughts but underlined the difficulty of getting any bill passed in the present year. He said other gear types should be included, perhaps in the following year if the bill goes through.

Number 1471

JIM SMITH, Fisherman, testified via teleconference. He disagreed with Mr. Reeves that all other gear groups and fisheries should "be looked at with the same eye."

Number 1520

DAVID BEDFORD, Executive Director, Southeast Alaska Seiners Association, testified before the committee. He said the bill is a good start to getting the salmon industry back to health, and that the amendments have good justifications. He said he would like to see the associations represent all of the permit holders within a fishery and that his group would support any change which would bring about that end.

Number 1620

REPRESENTATIVE MASEK remarked that the bill is formed well and thanked the associations for helping to craft legislation to keep the state's salmon fisheries a viable part of the economy.

Number 1676

GERALD (JERRY) McCUNE, Lobbyist for United Fishermen of Alaska (UFA), testified before the committee. He said the UFA supports the bill and its amendments. He said over the summer the UFA would try to survey all of the other fisheries - 86 fisheries in the state, 26 of those regarding salmon. He said if the other fisheries come to a conclusion, the UFA will support an amendment in the following year to include them. The reason that salmon fisheries were the only ones specified in the bill is "that was all we ever talked about."

Number 1756

KATHY HANSEN, Executive Director, Southeast Alaska Fisherman's Alliance, testified before the committee in support of HB 286, saying her organization would like to see the bill extended into statewide fisheries because salmon fisheries have a "downstream effect on other fisheries." The other fisheries need tools to deal with issues in their fisheries also. She gave the example of the pot-shrimp fishery in Southeast as one looking for ways to reduce permits in its fishery. She said it wouldn't be good to see other fisheries harmed because they weren't allowed to deal with their problems, while salmon fisheries were allowed to do so.

Number 1842

REPRESENTATIVE KERTTULA asked Ms. Hansen what she thought of the proposal to work on including other fisheries during the summer.

MS. HANSEN characterized the bill as well written and voluntary. She said a fleet would not join in unless that was the will of its majority. She said that to not give the fisheries "a tool" is hampering them.

REPRESENTATIVE KERTTULA asked Ms. Hansen if she is supportive of the bill, even if it is not "statewide."

MS. HANSEN answered in the affirmative. She said she preferred that it be debated once, instead of going through the whole process again. She said fishermen around the state are paying attention to the bill already.

Number 1973

SCOTT McALLISTER, Alaskan Salmon Fisherman, testified before the committee. He said 15 years prior, he could see the salmon-marketing "train wreck" coming with the advent of farmed salmon. He called the bill timely and constructive.

Number 2054

MR. WILLIAMS offered the ADF&G's and the administration's support of the bill. He said bills like this give the industry tools to pick and choose ways to help itself. Referring to Section 1, he said he wanted to continue to work with some of the bill's language in that section. He pointed out that the bill allows for more than one association.

CO-CHAIR SCALZI said the language was left as it is because "multi-associations" can be formed in fisheries presently, without the bill. He added, "The language as it is actually reflects what is going on today."

Number 2154

MR. WILLIAMS referred to page 3, line 4, which read in part, "(1) there exists in the administrative area in which the fishery occurs an association". He said he wasn't certain of the intent of that portion or what "administrative area" meant in the bill. He suggested perhaps it should read, "there exists for the fishery an association".

Number 2205

CO-CHAIR SCALZI explained that the administrative area is the area of the permitted use, in which there may be several overlapping limited entry uses. For example, there may be gillnet, seine, and setnet uses in the same area; it is specific to that administrative area of the fishery, which is why that language is used. He indicated the administrative area is more specific than a limited entry area.

MR. WILLIAMS said he would continue to look at that, although it seems now that Southeast Alaska is an administrative area. He

said if one fishery had an association, then there is a qualified association existing in the area; however, it may not be the one that wants to impose the tax. He indicated the words could be clarified but the intent was understandable.

Number 2287

REPRESENTATIVE FATE noted that there had been discussion on the participation in the fishery. He suggested it was fine in its current form. For example, there is a salmon fishery on the Yukon River; although there hasn't been commercial fishing on that river for two years, they still participate. He said HB 286 doesn't specify the geographic location of that salmon fishery; thus it would [be included] if there were qualifications for these associations in that fishery. He suggested that things limiting that commercial fishery can happen to heighten participation. Therefore, he said he wouldn't spend much time on that issue. Representative Fate related his belief that HB 286 may even help the "brown water" fishery.

REPRESENTATIVE KERTTULA remarked that she wasn't sure that this shouldn't be opened up to other fisheries, but indicated she was willing to [pass HB 286], knowing that UFA and others will work on bringing others in. However, she noted that she shared Ms. Hansen's concerns regarding the impact on other fisheries.

CO-CHAIR SCALZI concurred with Representative Kerttula's comments. He noted that this process is going to take time. There won't be an immediate consolidation, and perhaps the other fisheries can be brought in by the time the downstream impacts are determined.

Number 2444

CO-CHAIR MASEK moved to report HB 286 [version 22-LS1099\T, Utermohle, 2/20/02, as amended] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 286(RES) was reported from the House Resources Standing Committee.

[Co-Chair Scalzi turned the gavel over to Co-Chair Masek.]

HB 392-WATER RIGHTS AMENDMENTS

Number 2484

CO-CHAIR MASEK announced that the next order of business would be HOUSE BILL NO. 392, "An Act relating to the use and appropriation of water."

Number 2528

PETE FELLMAN, Staff to Representative John Harris, Alaska State Legislature, presented HB 392 on behalf of Representative Harris, sponsor. He noted that previous legislation, HB 185 and SB 139, had generated a lot of discussion in Districts 35 and 36; there were many questions and thoughts from landowners, farmers, small rural villages, and water users. He said HB 392 is an effort to address some of those questions; it will also help determine how the Division of Mining, Land and Water is going to serve Alaskans' needs. For example, HB 392 attempts to address questions such as why there is an annual fee charged when there is no change in the water permit; he said [the annual fee] seems to be a way to generate money or create jobs.

MR. FELLMAN mentioned [that the bill] creates a priority second to domestic [water] use for agriculture. He said agriculture is the foundation of all economies, without which there is no food. Referring to the terrorist attacks of September 11, 2001, he suggested Alaska would have three days' worth of food [if shipping ceased]. He remarked that giving a water preference to farmers is similar to an insurance policy.

Number 2726

MR. FELLMAN said farmers bear the expense of creating the system to extract water. Some changes made last year allowed farmers to use water but provided no guarantees of [long-term water use]. He talked about farmers acquiring loans for irrigation systems and the difficulties of not having a secure source of water. He indicated the bill is a way to open discussion and provide [security for] farmers making the investment in Alaska. He discussed making it easier to renew temporary water permits. He gave an example of a farmer who had applied for a temporary water permit in May but wasn't issued a permit until October; consequently, he was unable to irrigate [because he missed the deadline]. He mentioned that if an application is filed and there is no response from the department in 30 days, then the applicant would have the right to use the water.

Number 2816

MR. FELLMAN noted that the definition of "significant amount of water" is left to the department to determine. He said irrigation requires a significant amount of water for 30 days; however, on an annual basis this would amount to less water than would be used if water were used on a daily basis. He remarked that he thought there should be some clarification of what "significant use" is. He said "our" effort was a good one - a million gallons a day for 100 consecutive days. To irrigate 40 acres would require about 87,000 gallons of water per acre in a 30-day period; this would amount to an annual use of just over 3 million gallons of water, he said. He mentioned that using 5,000 gallons a day would amount to 2 million gallons of water annually. Although the water use is significant for 30 days, it is comparable to other uses over the long term.

Number 2867

CO-CHAIR MASEK referred to Section 4 [page 3], proposed subsection (j). She asked about the current process.

MR. FELLMAN indicated he thought it was currently in statute. He said the [subsection] was added so the [permits] could be reauthorized easily at the end of a certain period.

CO-CHAIR MASEK asked if [reauthorization] would require going through the provisions again.

MR. FELLMAN said not if all of the circumstances were still relevant to the application.

Number 2920

REPRESENTATIVE FATE asked how [HB 392] would affect water usage in the mining industry. He said there are two types of mining that both require large amounts of water.

MR. FELLMAN said he thought mining used pass-through water. If it is not used, then it doesn't go anywhere; it's used and diverted. He indicated a farmer would have priority over a miner with regard to water rights if there were a lack of water. He indicated he didn't think it was very likely to have farming and mining in the same area, however.

Number 2963

REPRESENTATIVE FATE said he did [know of areas likely to have both farming and mining in close proximity]. He said strict

state and federal laws regulate the usage of water in the mining industry; he indicated those laws may counter provisions in the bill. Not all water used in mining is pass-through water, he said. A certain percentage doesn't go back into the stream; the water put back into the source is usually as clean or cleaner than the water taken out, he offered. He mentioned that there might be problems related to impounding dams.

TAPE 02-9, SIDE B
Number 2990

REPRESENTATIVE FATE indicated the bill might curtail the amount of water that miners can use. Miners do get water permits, he remarked. He reiterated his question about whether [the bill] would cause a conflict.

Number 2976

MR. FELLMAN indicated he would be willing to work to bring the mining industry, the oil industry, and agriculture underneath the same "umbrella." He said he thought development of natural resources and use of water were primary to the state's income and future. Mr. Fellman told Representative Fate he would be willing to meet with his staff to discuss the language and make improvements.

REPRESENTATIVE FATE indicated improving the language would help resolve any conflict the bill might have with the mining industry.

MR. FELLMAN agreed.

Number 2942

REPRESENTATIVE KERTTULA noted a possible conflict because her father is a farmer.

Number 2901

PHIL KASPARI testified via teleconference. He told the committee that he is a local producer in Delta Junction. He said he appreciates the way the bill was written with the farmer's interests in mind. Farmers do bear some tremendous costs in gearing up for their operation. Farming is a long-range investment, and not having any security regarding the ability to use water from year to year makes decisions difficult, he concluded.

Number 2844

JAN KONIGSBERG, Trout Unlimited, testified via teleconference on behalf of the Alaska Public Water Coalition. He said the coalition is concerned about the executive actions, legislative, and regulatory initiatives affecting Alaska's water resources that would further special interests at the expense of the public interest. In terms of HB 392, he said the coalition would oppose any amendments to the [Alaska] Water Use Act that would establish specific preferences among different water users. He referred to Article VIII, Section 13, of the Alaska constitution, which he said establishes public supply as the only preferred use, subject to the reservation of water for fish and wildlife; granting a preferred-use status for any other use requires just compensation under Article XVI, Section 13.

MR. KONIGSBERG said HB 392 is a bad bill; Sections 1 and 4, when read together, would decrease funding for water management but allow for default approvals of temporary water use permits. He said those temporary water use permits would now be good for ten years. He remarked that the coalition supports temporary water use permits for truly temporary water uses not to exceed a year; the only protection that any water user gets for the long term would require permanence. He mentioned financial and water rights.

MR. KONIGSBERG indicated he didn't understand how a temporary water use permit would increase the viability of an industrial application in terms of going to financial funding sources. Furthermore, Section 5 defines "significant amount of water" in a way that excludes almost all ice-road permits and temporary uses of water, thereby removing the permits from any kind of scrutiny at all. He mentioned "weak scrutiny" and amending [HB] 185. He said ice road construction usually stretches from November to early April; the "100 days in the calendar year" requirement means that the days between November and December will not be added to the days from January to April. He suggested this is an absurd way to calculate significant amounts of waters. Additionally, amounts smaller than 1 million gallons of water a day for 100 days could still be a vast amount of water. Furthermore, the coalition believes it should be reviewed, he told members.

Number 2673

RUSS BOWDRE testified via teleconference. He told the committee he was a farmer and a rancher, and thought [HB 392] was an excellent bill. He said the bill [helps] to secure [farmers'] needs for water in the future. He indicated he thought the creators of the bill had taken everybody's needs into consideration. He indicated he was in support of HB 392.

Number 2627

ART GRISWOLD testified via teleconference. He told the committee he was involved in agriculture and had been involved in mining in the past. He said he thought [HB 392] was a great bill. He said agriculture is [necessary]. In addition, money has been going outside of Alaska to buy food for years, when food could be produced in Alaska. Agriculture demands water, he pointed out. He said the situation is [intolerable] because farming in Alaska is a tight-budget [business]. Protections need to be developed if Alaska is ever going to become an independent state as far as agriculture, and so that [Alaska] has the safety of producing its own food. He said he disagreed with Representative Fate because gold isn't a nonrenewable resource, whereas agriculture is.

Number 2550

BOB LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources (DNR), testified via teleconference. He told the committee that he thought the bill had significant problems. He said would explain how each section would affect the [water rights and temporary water use] program. He referred to Section 1, which he said eliminates DNR's administrative service fee. He explained that DNR would rather not bill people, but that [section] would [result in] a cost of approximately \$130,000 in general funds to maintain the program.

MR. LOEFFLER noted that Section 2 gives preference for agricultural use, which he said would have no effect most of the time; however, it would have an effect when there isn't sufficient water for agricultural use. He said if there are a number of unadjudicated applications, then preference would be given to agriculture first. He said DNR opposes a preference to specific uses; moreover, he said he didn't believe it was justified or good public policy. Agriculture has not had a problem with having water rights denied, he suggested. He mentioned that there is not a record of denied water rights and there is not a problem that [HB 392] would be needed as a

solution for, although it could create a problem. He mentioned situations that involve single-family dwellings, or an existing community and a lot of unadjudicated water rights filed, or a backlog, for example.

Number 2454

MR. LOEFFLER referred to Section 3 and said he didn't think allowing temporary water use permits to be renewed for an additional five years was justified. Temporary water use permits should be for things that are temporary, he remarked. He indicated that public comment has suggested there would be a potential for abuse, and if there is facility that is expected to go on for more than five years, then it should get a water right. He indicated he agreed with public comment. He mentioned that in the event that a temporary water right permit needs to be renewed and conditions haven't changed, there would not be a problem in obtaining a second permit. He reiterated that in general, he didn't see a need to renew temporary water use permits.

MR. LOEFFLER specified that Sections 1 and 5 are problematic because temporary water use permits would be issued if DNR does not act to deny the permit in 30 days. For example, in an unusual case where an ACMP [Alaska Coastal Management Program] review is required, the review would take more than 30 days. In the instance that the ACMP review is required, despite what DNR does or what the application is, the [permit] would be automatically issued, he said. Similarly, DNR does occasionally issue public notice for temporary water use applications, in which case it would take more than 30 days.

Number 2381

MR. LOEFFLER said [HB 392] would eliminate DNR's ability to give public notice when it is justified. In general, even though DNR does have a backlog regarding temporary water rights, the department is very good at getting temporary water use permits out when an applicant needs it. He said he didn't think that the facts justify Section 4. In addition, Section 5 is very problematic; it defines a significant amount of water to be a million gallons for 100 consecutive days; however, this would essentially eliminate the need for anyone to get a permit anywhere. He suggested that almost all uses throughout the state would be able to use a million gallons for less than 100 consecutive days. Mr. Loeffler gave an example of how the "significant amount of water" provision could be subject to

abuse. He said he could think of almost no use in the entire state that would require a water right or temporary water use permit. This section would eliminate the protection that the review process has for Alaska's fisheries and wildlife; furthermore, prior appropriators no longer would have the protection of the program, he said.

NUMBER 2302

MR. LOEFFLER suggested the best protection for farmers and others [involved in agriculture] is a water-management program that functions. As a result of the work put together last year and the funding work - especially the fee mechanism - DNR has committed, by the end of the fiscal year, that all typical new water rights will be processed within 60 days and that a typical water use permit will be processed within 20 days - a level of service that gives agriculture and other industries the surety they require. Getting to that point will solve the problems people have identified and will provide what Alaskan's need; however, this bill will not do so, he concluded.

Number 2203

CO-CHAIR SCALZI asked Mr. Loeffler if discontinuing annual record maintenance could save any money.

MR. LOEFFLER said it takes time for DNR to put out the fee and answer questions and complaints; [discontinuing annual record maintenance] would result in a savings of \$5,000 to \$6,000.

CO-CHAIR SCALZI asked him if he meant \$5,000 to \$6,000 [in savings] versus \$130,000 in revenue.

MR. LOEFFLER said yes.

Number 2162

CO-CHAIR SCALZI referred to Section 2. He asked Mr. Loeffler what other preference [agriculture] would have, besides the one over the mining industry.

MR. LOEFFLER said everything. Under this bill, agriculture would have preference over the following uses: residential [this was later corrected by reference to Section 2], seafood processing, "hydro," oil, gas, lumber, forestry, in-stream flow, road construction, and so forth, he remarked.

CO-CHAIR SCALZI mentioned last year's request from DNR for an additional \$400,000 to address the backlog for water rights. He asked Mr. Loeffler if DNR had received that money and if the program has been accelerated for the logbook renewal.

MR. LOEFFLER said last year DNR received \$300,000 more in general funds. Over the next two years, DNR will receive less in general funds as it raises more money in fees, he explained. This year, DNR's budget proposes a decrement of \$84,000; next year will be a similar amount. He said DNR will be raising that much more in fees; the result will be that DNR will be at the service levels [previously mentioned].

CO-CHAIR SCALZI asked Mr. Loeffler if DNR's backlog will be caught up by the end of the year.

MR. LOEFFLER said with the exception of in-stream flow applications, the backlog will be caught up in five years.

Number 2034

REPRESENTATIVE KERTTULA asked Mr. Loeffler what the average amount of time was to process a temporary water use permit.

MR. LOEFFLER said DNR had made an effort over the last few years to process temporary water use permits so that the permitting is kept current. If the permit is complex - as many of the North Slope permits are - DNR works with the applicant for a couple of months before he or she applies. The permitting can take from a few days to a month, depending on the complexity of the issues. He mentioned that in extreme cases, DNR can process permits in two to three days, as long as DNR and the Alaska Department of Fish & Game (ADF&G) are convinced there won't be any significant impacts. He summarized that [permitting] is widely variable but relatively quick. He said DNR had promised a performance measure of a typical [permit's being processed] within 20 days in the future, but that's not too far from what happens now.

Number 1936

REPRESENTATIVE KERTTULA asked MR. Loeffler what the five-year backlog is.

MR. LOEFFLER said the backlog is water rights. He clarified that there is no backlog for temporary water use permits.

Number 1911

CO-CHAIR SCALZI asked Mr. Loeffler how the new regulations that were adopted last year will affect the backlog.

MR. LOEFFLER said DNR didn't adopt new regulations last year, but it did receive the money to fund the existing system. He said DNR hired new personnel, which will help address the backlog. New regulations were proposed to help streamline the system; however, those regulations have not gone into effect.

CO-CHAIR SCALZI asked Mr. Loeffler if DNR had gained anything in hiring five new personnel.

MR. LOEFFLER said the new personnel had been hired recently. He said it wasn't until around late December that DNR acquired four out of the five personnel. He said he is convinced that DNR is in the process of accelerating so it can stay current and address the backlog; furthermore, this is the transition year to hire and train people. He indicated that half of those new personnel will keep applications current and the others will address the backlog. He reiterated that he expects the backlog to be current in five years.

Number 1869

CO-CHAIR SCALZI asked Mr. Loeffler to explain the proposed regulations and how they will help the process.

MR. LOEFFLER said the proposed regulations were to provide a streamlined method of processing small water rights [without] full adjudication. The current system does not require a single-family dwelling or less to apply for a water right. A well can be drilled; the water right is optional, he explained. The larger water rights would require full adjudication; DNR proposed a three-tier system, he said. The middle group [of water-rights applicants] would require an inquiry with ADF&G and the Department of Environmental Conservation (DEC). If there were no issues, then the applicant would be given an authorization to proceed. Public notice would not be required, he said. He mentioned that there are a number of comments that need to be reviewed before DNR can proceed.

Number 1691

CO-CHAIR MASEK referred to Mr. Loeffler's earlier testimony and pointed out that [Section 2 of the bill], page 2, lines 24-29, read in part:

When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the commissioner shall give preference first to public water supply including domestic water uses, second to agriculture and irrigation, and third [Then] to the use that alone or in combination with other foreseeable uses will constitute the most beneficial use.

MR. LOEFFLER apologized for the error. He specified that his previous testimony that agriculture would be given preference to the domestic water supply was incorrect.

Number 1597

CO-CHAIR MASEK noted that Mr. Loeffler had testified that there might be abuse of the water rights in regard to the agricultural user group. She referred to Section 5, subsection (10), which read:

"significant amount of water" means the use of one million or more gallons of water a day for 100 consecutive days in a calendar year.

CO-CHAIR MASEK asked Mr. Loeffler what the current amount of a significant amount of water is.

MR. LOEFFLER said the current definition, in regulation, is 500 gallons day or 5,000 in a single day, or 30,000 of nonconsumptive use.

CO-CHAIR MASEK mentioned percentage users and the proposed regulation that would allow temporary water use for an applicant unless the commissioner takes action to deny it.

MR. LOEFFLER said DNR had not had that situation occur. He reiterated that DNR has been current on processing temporary water use permit applications. He said he didn't believe DNR had taken several weeks to process applications in situations of immediate need. He said that would occur in situations involving a significant issue that needed to be resolved to ensure that fish and wildlife are protected.

Number 1467

CO-CHAIR MASEK asked how the proposed regulations define significant use and what the difference is between existing regulations and proposed regulations.

MR. LOEFFLER mentioned the current proposed regulations and said, "The significant amount of water is ... the amount at which you have to apply, which is 500 gallons a day or 5,000 [gallons] in a single day." He said DNR keeps that as an application threshold but puts a second threshold in which, after a quick review, DNR determines that it is not a significant amount of water. The regulations give DNR the power to make that choice: up to 5,000 gallons a day from an anadromous fish stream or 50,000 from groundwater or a nonanadromous fish stream. He said DNR would only [raise the amount of water] after a review by DNR, ADF&G, and DEC, if they chose to review it.

Number 1364

REPRESENTATIVE STEVENS asked Mr. Loeffler if Section 2 would take preference over endangered species.

MR. LOEFFLER said DNR does not administer the Endangered Species Act; there is nothing DNR could do that would allow people to endanger an endangered species. He said DNR could give agriculture preference to anadromous fish under this [bill], however, if there were not enough water for both.

CO-CHAIR MASEK asked Mr. Loeffler if DNR consults with ADF&G during the review process or if [DNR] has to get permission from ADF&G.

MR. LOEFFLER said the law requires DNR to consult with ADF&G in all cases; however, it doesn't require ADF&G's concurrence or the need to wait for ADF&G's permission.

CO-CHAIR MASEK indicated that HB 392 would be held for further consideration.

ADJOURNMENT

Number 1163

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:35 p.m.