

**ALASKA STATE LEGISLATURE  
SENATE RESOURCES STANDING COMMITTEE**

February 12, 2003

3:30 p.m.

**MEMBERS PRESENT**

Senator Scott Ogan, Chair  
Senator Thomas Wagoner, Vice Chair  
Senator Fred Dyson  
Senator Ralph Seekins  
Senator Ben Stevens  
Senator Kim Elton  
Senator Georgianna Lincoln

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

Confirmation Hearing: Commissioner of the Department of Natural Resources Tom Irwin

Overview: Department of Environmental Conservation

**WITNESS REGISTER**

Commissioner-designee Tom Irwin  
Department of Natural Resources  
400 Willoughby Ave.  
Juneau, AK 99801-1724

Commissioner-designee Ernesta Ballard  
Department of Environmental Conservation  
410 Willoughby Ave.  
Juneau, AK 99801-1795

Mr. Tom Chapple  
Division of Air & Water Quality  
Department of Environmental Conservation  
555 Cordova St.  
Anchorage, AK 99501-2617

Mr. Dan Easton  
Division of Facility Construction & Operation  
Department of Environmental Conservation

410 Willoughby Ave.  
Juneau, AK 99801-1724

Ms. Kristin Ryan  
Division of Environmental Health  
Department of Environmental Conservation  
410 Willoughby Ave.  
Juneau, AK 99801-1795

**ACTION NARRATIVE**

**TAPE 03-4, SIDE A**

Number 0001

**CHAIR SCOTT OGAN** called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Senators Elton, Dyson, Seekins, Wagoner and Chair Ogan were present. Chair Ogan asked Mr. Irwin, commissioner-designee, to address the committee.

MR. TOM IRWIN, Commissioner-designee of the Department of Natural Resources (DNR), told members he has been in his current position since January 17, 2003. He made the following comments about his philosophy and the department.

Most importantly, he is a Christian and bases his principles on his faith. He has been married for 35 years and has two adult daughters who live in Fairbanks and three Alaska-born grandchildren. He is a graduate of the Colorado School of Mines, where he focused on mineral engineering and chemistry. He expected to work in an "oil patch" but got involved in mineral resource development early in his career. He stated, "As you get deeply as involved in mineral resources as I have been, I think it's really important to understand resource is resource and to me they all have huge importance in this state."

COMMISSIONER-DESIGNEE IRWIN said he clearly supports the Governor's position on resource development. Resource development is vital to a strong, healthy, growing economy and necessary to provide a future and hope for Alaska's children and grandchildren. Two aspects of resource development are particularly important. First, a strong economy will allow Alaska's youth to work and remain in Alaska. Second, the Alaska environment needs to be as special for Alaska's youth as it is for him. He believes that both can be accomplished. He encouraged everyone to look into his environmental accomplishments during his career. He has received a commendation from the Nevada Department of Wildlife for care and

concern of Nevada's wildlife resources and a reclamation award from the Alaska Department of Fish and Game.

COMMISSIONER-DESIGNEE IRWIN said DNR's mission is clear and appropriate. DNR is to develop, conserve, and maximize the use of Alaska's natural resources consistent with the public interest. As commissioner of DNR, he is to represent Alaskans. He noted he does not presume to know everything about DNR's issues; the learning curve has been straight up.

His first effort as commissioner has been to build a team. He said the support he has received from DNR's management has been excellent. He has spent hours with Mark Myers, the Director of the Division of Oil and Gas, reviewing technical and legal information. Mr. Loeffler, the director of the Division of Mining, Land and Water, has spent hours preparing papers for him to get up to speed. He noted that Nico Bus is helping him to understand the numbers. He said his approach to the budget is to look at program funding as investing with limited dollars. He plans to look at the net present value and the rate of return.

COMMISSIONER-DESIGNEE IRWIN described his management priorities as follows.

- When looking for team members, integrity is supreme. He wants his team to be able to look at themselves in the mirror every morning and feel okay.
- His employees need to know the information. DNR makes critical decisions for the state. Employees need to analyze the data, add scientific and engineering expertise, understand the situation and make the best decision possible.
- Teamwork is essential. Team members need to have direction. Teamwork extends to the Legislature. Everyone is accountable for doing something special for Alaska.
- Communications - people need to become better listeners and stop thinking about the argument before hearing all sides.
- Employees need to have enthusiasm.

COMMISSIONER-DESIGNEE IRWIN said he was recently offered a promotion at a company that is expanding on a global level but he and his wife could not envision leaving Alaska. Instead, he left the company to stay in Alaska. At that time, he never guessed he would now be sitting before the Legislature. He believes if one loves their family and a place and contributes, decisions follow logically.

COMMISSIONER-DESIGNEE IRWIN said he is a strong supporter of the concept of missions and measures. He believes it is vital, when one has limited funds to invest, to prioritize. One has to be able to measure to judge success. One has to be flexible. The world is changing at a high rate of speed. One may have great measures but the wrong mission. One has to keep updating.

CHAIR OGAN announced that Senators Lincoln and Stevens joined the meeting shortly after it began. He then opened the meeting for questions of the commissioner.

3:45 p.m.

SENATOR ELTON asked Commissioner-designee Irwin if he is satisfied with the existing management team and whether he anticipates making any changes to that team.

COMMISSIONER-DESIGNEE IRWIN said the folks he is working with have been very supportive and meet the qualifications; he has been very satisfied with them. He has not registered his opinion to the Governor's Office because he intends to put together a package, part of which is still being evaluated. To date, he has focused on merging divisions and creating a more efficient permitting system. He emphasized that the welcome he has received at DNR has been humbling. The group's accomplishments, records, and the revenues it has collected are complimentary.

SENATOR ELTON asked when Commissioner-designee Irwin was appointed.

COMMISSIONER-DESIGNEE IRWIN said he was appointed on January 17.

SENATOR ELTON said his understanding is that the five and ten percent budget cut scenarios were due to the Governor's Office on January 8. He asked the commissioner whether he was able to influence the suggested budget cuts.

COMMISSIONER-DESIGNEE IRWIN said Nico Bus, who knows the numbers extremely well, prepared that information. Cabinet members have been attending a commissioner's retreat with the Governor for the last 2 1/2 days. Commissioners have been looking at what can be accomplished in a limited budget scenario so he believes the budget is still open for input.

SENATOR SEEKINS noted he was pleasantly surprised to hear of Commissioner-designee Irwin's appointment and looks forward to

seeing his approach toward management. He said it seems to him that it is an administrative function to look for any overlaps within the departments rather than a legislative responsibility. He asked Commissioner-designee how he would do that.

COMMISSIONER-DESIGNEE thanked Senator Seekins and recounted that he was on the Governor's transition team and did not submit his name as a candidate for this appointment. He felt several other people were very qualified. He got a call from the Governor's Office asking him to serve. He said he feels as though he has been drafted. He and his wife feel that with alignment in DNR, the Legislature and the Governor's Office, this state can be improved. He stated:

Missions and measures. I think that answers all of your comments. Yes, I don't believe anybody can set out priorities better than the internal group. I absolutely believe that. But, I also believe that since we're all in this together, in this as a team - you folks sign over funds. You're accountable for folks. If you confirm that I'm in this position, you also have an accountability and it makes a much stronger position if we're all on the same page of what the goals are for Alaska so I think it's our obligation to bring these ideas up. It doesn't always work that way I understand, but the way I would do it is we propose you folks put your intelligence to it because those things we obviously can miss. Let's get the priorities and then let's go to work.

SENATOR SEEKINS noted that transferring the Habitat Division into DNR has received a lot of media attention. He asked Commissioner-designee Irwin if he would insist on the integrity of the information brought forward by the Habitat Division regarding pending fish and game habitat decisions.

COMMISSIONER-DESIGNEE IRWIN said he absolutely sees no conflict with integrity. He told members:

What we've done, we have taken what I consider the best of the best in Alaska. We have taken habitat people - the very people we worked with to achieve the reclamation award. We've taken habitat people from down in the Juneau area. We've taken fish and game people. We've taken legal people. We've taken representatives from DNR that understand the priorities and the system and those folks have

literally been moving day after day, in large and small groups, to understand the issue to make it correct, to not compromise. We're not here to compromise. We want a very efficient system where individuals can ask for, obtain permits, go to work without compromising any of the values we want for this state. And so I actually see this putting it in one house as a huge efficiency and folks that I've worked with - I'm not going to compromise my integrity. They're not forming this to compromise their integrity. These are really good Alaskan people.

SENATOR SEEKINS asked if his philosophy of doing the best job without compromising integrity is in step with the Governor.

COMMISSIONER-DESIGNEE IRWIN said absolutely. He said the Governor took some heat about why he wasn't filling certain positions, his being one. The [delay] was caused by the fact that they were having in-depth communications about priorities. He felt they were in sync when he agreed to take the job.

CHAIR OGAN commented that he finds Commissioner-designee Irwin's candor when speaking politically incorrectly about his faith and profession to be refreshing.

3:59 p.m.

SENATOR LINCOLN noted that the Governor, in his State of the State address, remarked, "As a majority of the state's resource development will take place in rural Alaska, rest assured that rural Alaska will have a seat at the table during the decision-making process." She said she represents 129 of those communities and would like to know how he intends to implement that.

COMMISSIONER-DESIGNEE IRWIN said that Tara Sweeney (ph) is helping him to arrange visits to the villages. He said he continues to hear the Governor make the same comment, and he agrees that DNR needs to be getting input.

SENATOR LINCOLN asked how talking to people in the villages will provide rural Alaska with a seat at the table during the decision making process.

COMMISSIONER-DESIGNEE IRWIN said the executive order only moves the Habitat Division and Coastal Zone Management Agency into DNR. DNR will then have to work with the House and Senate to

formulate a new structure. He feels it will be appropriate to take input at that point.

SENATOR LINCOLN said that yesterday, a committee discussed extending the railroad into Canada. There was disagreement about a segment that would cross a village. Last year, hearings were held about building a highway along the Yukon River to access resources. She commented that she hopes dialogue occurs not only during the decision making process, but also during the planning and implementation phases.

SENATOR WAGONER said he comes from a rich commercial fishing area and has received e-mail messages from constituents doubting whether it is a good move to transfer the Habitat Division to DNR. As far as he is concerned, the jury is still out on that question. He continues to support the Governor's decision, but he will be watching. He noted that this Saturday he will be speaking to the Cook Inlet Aquaculture Association. He asked for assurance that the Habitat Division will continue to do habitat business as it has in the past and that its mission to protect Alaska's streams and salmon runs will not be diminished in any way.

COMMISSIONER-DESIGNEE IRWIN replied:

Senator Wagoner, I can tell you wholeheartedly to the best of our abilities that is not going to happen - one, because of our goals in DNR, but also because of the individuals involved through Habitat - and the individuals involved through Habitat - the research side, they have strong principles also and they care incredibly and I've worked so much with some of these people. As an example, I know this works - we built a reservoir outside of Fairbanks - a 3,500-acre foot reservoir. That reservoir, because Habitat had their priorities, Habitat had their goals, but they had the willingness to work with industry. And industry had their goals but the priorities also to take care of the environment. What we ended up with was a team effort - was no compromise of the environment at all but a very clear enhancement of the environment. We now have a reservoir because of the team effort that in ten years was supposed to have several thousand 'catchable' grayling. Right now, it has far exceeded any of the ten-year goals in the first few years. The marked grayling - Al Ott, Habitat, particularly contributed to the success of this. He never

compromised his principles but he used his huge intelligence to say if you guys do this it might cost a little more but I can help you over here because this does nothing for the environment.

With that type of approach, we now have a reservoir, and I think you must know that the Interior of Alaska has been greatly depleted of grayling. This reservoir we built is now estimated to hold 25 percent of the grayling in the Interior of Alaska. These tagged grayling are now going over the spillway. This river was an impaired water body. Because of the work we've all done, it's cleaned up. The Little Chena to the Chena that flows through Fairbanks, into the Tanana, they found unmarked Grayling clear up near Delta. We're going to, because of this type of cooperation you're asking about, we're going to repopulate the Interior of Alaska with grayling. I firmly believe it because it's happening.

That's the kind of goal we want. I'm not compromising the people working together to make things work for the best, not to delay or tear things apart. Certainly, they want multiple levels. We want it to just work and work efficiently.

SENATOR DYSON asked Commissioner-designee Irwin if he shares his high opinion of Mark Myers and whether he intends to retire him.

COMMISSIONER-DESIGNEE IRWIN said that Mark Myers has been a tremendous help to him. He said he will put together a package and Mr. Myers' name will be in it.

SENATOR ELTON asked Commissioner-designee Irwin if he is comfortable with the fiscal note for HB 57 as it was originally issued.

COMMISSIONER-DESIGNEE IRWIN said he signed and agrees with it.

CHAIR OGAN said he is very supportive of the Governor's actions to transfer the Division of Habitat Restoration and the Coastal Zone Management Agency to DNR because he has seen agency turf wars that create permitting problems at the 11th hour at great expense to permittees. However, he is concerned about the law of unintended consequences and the consolidation of power within one department. He noted that Commissioner-designee Irwin would be the most powerful DNR commissioner in the history of Alaska.

He commented that it is important to look at the downside of the consolidation and keep the bigger picture in mind.

COMMISSIONER-DESIGNEE IRWIN said he accepts that as wise counsel and he will look for sideboards. He said he could relate to that concern because he has been privileged to be involved in some very special properties. He said he questions how to make certain that, when he is gone, the State of Alaska is protected. He repeated that he would look for sideboards.

CHAIR OGAN said he was excited about the Governor's announcement but said that consolidating power is a daunting responsibility.

There being no further questions, SENATOR DYSON moved to forward Mr. Irwin's name to the full body for a confirmation vote.

CHAIR OGAN announced that with no objection, the motion carried. The committee took a brief at-ease and, upon reconvening, CHAIR OGAN welcomed Commissioner-designee Ballard and asked her to tell members about the Cabinet retreat.

#### DEPARTMENT OF ENVIRONMENTAL CONSERVATION OVERVIEW

COMMISSIONER-DESIGNEE ERNESTA BALLARD, Department of Environmental Conservation (DEC), told members that during the Cabinet retreat, DEC, ADF&G, and DNR agreed that when a scoping announcement is made for a federal environmental impact statement (EIS), they would work with federal agencies throughout the process to anticipate permit requirements. That way, by the time the preferred alternative is finally selected and the record of decision is signed, the departments would be ready to issue the permits.

TAPE 03-4, SIDE B

COMMISSIONER-DESIGNEE BALLARD said DEC has proposed two legislative initiatives to the Governor: one modifies and streamlines the contingency response planning process for the entire oil industry; the other will overhaul DEC's air permitting program. The changes will make the permitting process easier while maintaining the same environmental standards. She noted that DEC used a stakeholder process last year, which resulted in an agreed-upon position from the stakeholder groups and proposed legislation.

COMMISSIONER-DESIGNEE BALLARD agreed with Chair Ogan that DEC should provide industry with a linear permit process that

provides certainty for permit applicants, financiers, and stakeholders.

SENATOR SEEKINS asked if any of Alaska's environmental standards exceed national standards.

COMMISSIONER-DESIGNEE BALLARD said one aspect of water permitting in Alaska results in a strict permitting regime, which should be changed. She favors getting state primacy of the federal wastewater discharge program [NPDES], which would allow the state to exercise regulatory discretion with mixing zones or zones of deposit. The Legislature has provided funds to enable DEC to bring the program forward by the end of this year.

MR. TOM CHAPPLE, Director of the Division of Air and Water Quality, told members that Alaska has naturally occurring high levels of contaminants, such as arsenic and suspended solids from glacial rivers that do not meet the expected water quality standards. Therefore, an industrial process may use water from a stream or lake that does not meet water quality standards so discharging that same water becomes problematic. DEC's regulations allow it to recognize a naturally occurring high level of contaminants.

MR. CHAPPLE explained that DEC does regulate emissions and other things not regulated under federal law. The Clean Air Act requires pollutant sources over a certain size to be permitted. States decide which smaller sources to regulate. DEC has an emission level standard that requires asphalt plants to be permitted. As a result, the federal law appears to be less stringent than the state permit program because the federal law does not directly speak to asphalt plants.

Regarding cost recovery of state acceptance of the primacy role in wastewater discharge, MR. CHAPPLE said the cost of permitting programs for the air quality program is completely recovered through fees but the water quality program costs are not. He told members that the study to accept NPDES primacy would include recommendations for cost recovery.

CHAIR OGAN expressed concern that DEC's strict water quality standards have put "mom and pop" placer operations out of business. He said those standards are appropriate if water is being discharged into a clear stream, but they don't work for all cases.

MR. CHAPPLE told members that placer mines still exist in Alaska but some are not being mined because of the price of gold. He noted that many placer miners have a retention basin that, in most cases, does not have a discharge because the solids settle out. Their discharge permits allow discharge because of high runoff. In answer to concerns expressed about whether discharging wastewater with contaminants is prohibited if those contaminants were present on the intake, he said those stories do not make sense and he would like to provide legislators with a more informative response at a later date.

COMMISSIONER-DESIGNEE BALLARD told members the existing DEC management team is outstanding, however the Governor has requested commissioners to take the time necessary to review all senior level positions and analyze the vacant positions. She said that she has not finished that process yet.

Regarding the DEC seafood lab, SENATOR ELTON suggested the ASI building in Anchorage could be reconfigured to fit DEC's needs since the current lessee has been unable to make any lease payments. That building is a state-of-the-art lab, owned by the Alaska Industrial Development & Export Authority (AIDEA).

After further discussion about the proposed lab and the Livingston Slone study, CHAIR OGAN instructed Commissioner-Designee Ballard to provide the committee with a copy of the cost analysis and lab analysis.

SENATOR ELTON asked that DEC discuss the matter with AIDEA rather than ASI.

COMMISSIONER-DESIGNEE BALLARD expressed caution that time is of the essence because DEC must have a laboratory to protect public health and its current lab will no longer be available in a few years. She noted that the Livingston Slone team reviewed the cost effectiveness of remodeling the ASI facility versus building a new facility and found a new building to be preferable.

SENATOR LINCOLN talked about the lack of sanitation facilities and dust control in the 129 communities she represents and the resulting negative health effects. She said she is tired of studies and committed any amount of time required of her to discuss the common denominators that could be causing disease in her communities.

COMMISSIONER-DESIGNEE BALLARD invited Senator Lincoln to meet with Dan Easton of DEC, Dr. Jim Berner of the Alaska Native Tribal Health Consortium and herself the following morning. She also offered to review the funding priorities used by DEC for the Village Safe Water Program at a later date. She noted that DEC is spending about \$50 to \$60 million per year on rural sanitation.

The committee resumed discussion of the DEC lab. COMMISSIONER-DESIGNEE BALLARD told members that the new lab needs to have about 19,000 square feet. The growth of the geoduck industry has increased the lab requirements because DEC is testing for paralytic shellfish poisoning, a deadly toxin. A majority of that space will be used for heat and ventilation systems. A small amount of space will be used for administrative activities.

CHAIR OGAN said he would consider appointing a subcommittee to review the matter but not at this time.

The committee meeting was adjourned at 5:00 p.m.