

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 30, 2007

1:04 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Co-Chair
Representative Craig Johnson, Co-Chair
Representative Vic Kohring
Representative Bob Roses
Representative Paul Seaton
Representative Peggy Wilson
Representative Bryce Edgmon
Representative David Guttenberg
Representative Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 17

Encouraging Coeur Alaska, Inc., to pursue all legal options to resolve the issues presented in Southeast Alaska Conservation Council v. United States Army Corps of Engineers on behalf of itself and consistent with the state's efforts to enforce its rights as a state over its resources; and requesting the United States Court of Appeals for the Ninth Circuit to adjudicate those matters that come before the court in a fair and impartial manner so that the state's natural resources can be developed in a timely and lawful manner.

- MOVED CSHJR 17(RES) OUT OF COMMITTEE

SENATE BILL NO. 109

"An Act relating to the regulation and permitting of drilling and other operations by the Alaska Oil and Gas Conservation Commission, to civil penalties assessed by the commission, to reconsideration and appeal of decisions and the allocation of costs in investigations and hearings before the commission, and to information filed with and fees of the commission; and providing for an effective date."

- MOVED CSSB 109(RES) OUT OF COMMITTEE

HOUSE BILL NO. 94

"An Act relating to fishing, hunting, and trapping in marine park units of the Alaska state park system, amending the area within designated marine park units of the Alaska state park system, and adding marine park units to the Alaska state park system."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HJR 17

SHORT TITLE: KENSINGTON MINE APPEAL/9TH CIR.

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

04/05/07 (H) READ THE FIRST TIME - REFERRALS
04/05/07 (H) RES, JUD
04/30/07 (H) RES AT 1:00 PM BARNES 124

BILL: SB 109

SHORT TITLE: OIL & GAS CONSERVATION COMMISSION

SPONSOR(S): RULES BY REQUEST OF LEG BUDGET & AUDIT BY REQUEST

03/07/07 (S) READ THE FIRST TIME - REFERRALS
03/07/07 (S) RES
03/12/07 (S) RES AT 3:30 PM BUTROVICH 205
03/12/07 (S) Scheduled But Not Heard
04/13/07 (S) RES AT 3:30 PM BUTROVICH 205
04/13/07 (S) Moved CSSB 109(RES) Out of Committee
04/13/07 (S) MINUTE(RES)
04/16/07 (S) RES RPT CS 4DP 1NR SAME TITLE
04/16/07 (S) DP: HUGGINS, STEDMAN, STEVENS, GREEN
04/16/07 (S) NR: WIELECHOWSKI
04/18/07 (S) TRANSMITTED TO (H)
04/18/07 (S) VERSION: CSSB 109(RES)
04/19/07 (H) READ THE FIRST TIME - REFERRALS
04/19/07 (H) RES
04/30/07 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

TREVOR FULTON, Staff
to Representative Craig Johnson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HJR 17 on behalf of the sponsor,
Representative Johnson.

CAMERON LEONARD, Senior Assistant Attorney General
Natural Resources Section
Civil Division (Fairbanks)
Department of Law (DOL)
Fairbanks, Alaska

POSITION STATEMENT: During discussion of HJR 17, responded to questions and offered comments.

STEVE BORELL, Executive Director
Alaska Miners Association (AMA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 17.

ED FOGELS, Acting Director
Office of Project Management & Permitting
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: During discussion of HJR 17, responded to questions and offered comments.

ROB CADMUS, Water Quality and Mining Organizer
Southeast Alaska Conservation Council (SEACC)
Juneau, Alaska

POSITION STATEMENT: During discussion of HJR 17, responded to questions and offered comments.

CHERYL SUTTON, Staff
to Representative Ralph Samuels
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 109 on behalf of the sponsor, Legislative Budget & Audit Committee, of which Representative Samuels is the chair.

JOHN NORMAN, Chair
Alaska Oil and Gas Conservation Commission (AOGCC)
Anchorage, Alaska

POSITION STATEMENT: During discussion of SB 109, answered questions on behalf of the Alaska Oil and Gas Conservation Commission.

KARA MORIARTY, External Affairs Manager
Alaska Oil and Gas Association (AOGA)
Anchorage, Alaska

POSITION STATEMENT: During testimony, offered comments and support for SB 109.

ACTION NARRATIVE

CO-CHAIR CARL GATTO called the House Resources Standing Committee meeting to order at [1:04:26 PM](#). Representatives Gatto, Johnson, Seaton, Roses, Edgmon, Kawasaki were present at the call to order. Representatives Kohring, Wilson, and Guttenberg arrived as the meeting was in progress.

HJR 17-KENSINGTON MINE APPEAL/9TH CIR.

[1:04:30 PM](#)

CO-CHAIR GATTO announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 17, Encouraging Coeur Alaska, Inc., to pursue all legal options to resolve the issues presented in Southeast Alaska Conservation Council v. United States Army Corps of Engineers on behalf of itself and consistent with the state's efforts to enforce its rights as a state over its resources; and requesting the United States Court of Appeals for the Ninth Circuit to adjudicate those matters that come before the court in a fair and impartial manner so that the state's natural resources can be developed in a timely and lawful manner.

[1:05:08 PM](#)

TREVOR FULTON Staff to Representative Craig Johnson, Alaska State Legislature, paraphrased from the following sponsor statement [original punctuation provided]:

Mr. Chairman, members of the committee, thank you for allowing me this opportunity to speak on House Joint Resolution 17.

HJR 17 addresses yet another chapter in the long and familiar story of Alaska having to defend its rights to allow development of its own natural resources. Regardless of the type of resource - oil, timber, fish and seafood, minerals - large scale projects in Alaska have always been used as a chess piece of sorts - a litmus test, if you will - in a larger battle between the interests of outside entities and the interests of the State and its people. The Kensington Mine is no different.

On March 16th, the US 9th Circuit Court of Appeals announced a forthcoming decision that would undermine a two decades long permitting process and halt the already ongoing construction of the Coeur Alaska owned and operated Kensington Mine.

Kensington Mine has already proven to be a huge boost for the economy of the area and has garnered widespread support among the businesses, the communities, and the people of Southeast Alaska. Halting construction of this valuable economic engine has immediate consequences for Southeast Alaska, and long term consequences for the State of Alaska as a whole.

The 9th Circuit Court of Appeals' decision hinges on a tailings disposal plan that was approved twice by the US Army Corps of Engineers, found to be in complete compliance with the Clean Water Act, and upheld by the Federal District Court of Alaska.

This practical and environmentally sound tailings disposal plan came about as the end result of over 900 studies conducted by and nearly 60 permits approved for the Kensington Mine Project over the last ten years.

There is pending federal legislation that would split the 9th Circuit Court of Appeals - for good reason. The 9th Circuit is by far the largest of the 13 courts of appeals. It presides over nine western states and the territories of Guam and the Northern Mariana Islands and encompasses over 20% of the US population. The 9th Circuit has a proven history of antidevelopment decision making when it comes to Alaska and its right to develop its natural resources.

Until the day when the court is split and litigation involving Alaska's resources can be adjudicated in a fairer and more impartial manner, developers like Coeur Alaska will have to continue to seek litigation at the Supreme Court level. In the ongoing effort to assert our state's rights to our resources, it is important that Alaska encourage and support these pursuits.

For these reasons and the reasons expressed in HJR 17, we must resolve our objection to impartial treatment by the 9th Circuit Court and our encouragement of Coeur Alaska to pursue all legal options to continue the construction and operation of the Kensington Mine Project.

Mr. Chairman, respected members of the committee, I thank you for listening and I urge you to support HJR 17.

[1:08:36 PM](#)

CO-CHAIR GATTO asked for an explanation of the tailings disposal plan, and he asked how it is different from any other SE Alaska mine plan.

CAMERON LEONARD, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Fairbanks), Department of Law (DOL), said that he is available for questions.

[1:10:35 PM](#)

STEVE BORELL, Executive Director, Alaska Miners Association (AMA), stated that the AMA letter of support is in the members' packets.

MR. BORELL read from the following testimony:

Thank you, Mr. Chairman and Members of the Committee,

My name is Steve Borell. I am Executive Director of the Alaska Miners Association and I am testifying on behalf of the Association.

I believe you have our letter of support for this Resolution in your packets so I will not repeat that but I do wish to make a few additional comments.

Coeur Alaska has been up front and straight forward with the community and with the environmental groups that opposed the project for more than 20 years. Coeur made numerous concessions and changes in their plans to address the issues that were raised. United Fishermen of Alaska originally opposed the project but based on changes to the design, they no longer oppose it.

At one point Coeur committed to use a higher cost alternative where they would ship a bulk concentrate from the mine, rather than produce a gold bar on site. This was in response to complaints SEACC regarding use of certain chemicals on site. In effect, this means that some of the "value added processing" [original punctuation provided] that could be done in Alaska was sent elsewhere, and with it Alaska lost approximately 24 high quality local jobs.

But the real issue at this time is the decision of the 9th Circuit Court of Appeals. This Court is out of touch. A higher percent of decisions from this court have been overturned by U.S. Supreme Court than from any other court of appeal. I apologize that I could not find the exact quote and reference, but if my memory serves me, of the past 72 cases from the 9th Circuit that were appealed to the U.S. Supreme Court, 65 of those cases were overturned. That gives the 9th Circuit a 90% failure rate.

We agree with Federal District Court Judge Singleton when he ruled that EPA and the Corps of Engineers properly applied the law.

We urge that this Resolution be passed and forwarded to the listed parties at the earliest possible date.

[1:13:43 PM](#)

CO-CHAIR GATTO asked for examples that show Coeur Alaska is willing to make changes.

MR. BORELL reported that the initial mine project was going to be along the Lynn Canal, and all the tailings were going to be deposited in the 700 foot deep waters of the canal, as there will not be any biological effect. However, the fishermen are concerned that their nets could entangle on the pipes. He said that the final design, currently under appeal, is proposing to use a small deep lake of minimal fisheries value near Berners Bay.

MR. BORELL indicated that Coeur Alaska is proposing to dam one end of the valley, thereby doubling the size of the lake, and using it for tailings disposal. He expressed his belief that the resulting shallow lake will be a better fish habitat. He

stated that the initial plan for dry stack tailings disposal is the same process used at nearby Greens Creek Mine. He established that the dry stack method will impact a larger area and will require quarrying rock for a cap on the tailings. He offered his belief that lake use is the best solution. He reported that the facilities can't be seen from Lynn Canal and it will allow mine workers to live at home with their families and access the mine by boat, instead of helicopter.

[1:19:22 PM](#)

ED FOGELS, Acting Director, Office of Project Management & Permitting, Department of Natural Resources (DNR), said that DNR and the State of Alaska believe that this is a good project and that all the permits are legal. He expressed his belief that the United States Forest Service (USFS) Environmental Impact Statement (EIS) reflects that this project could be environmentally responsible.

CO-CHAIR GATTO asked if he agreed with the Record of Decision from the District Court.

MR. FOGELS agreed.

[1:20:43 PM](#)

ROB CADMUS, Water Quality and Mining Organizer, Southeast Alaska Conservation Council (SEACC), read from the following testimony:

Good afternoon, my name is Rob Cadmus. I am the Water Quality and Mining Organizer for SEACC, the Southeast Alaska Conservation Council. SEACC is a coalition of 17 volunteer citizen conservation groups in thirteen communities across Southeast Alaska, from Ketchikan to Yakutat. Our mission is to protect the extraordinary resources of Southeast Alaska while ensuring their wise and sustainable use.

I want to thank you all for the opportunity to testify on House Joint Resolution 17. There are important issues at stake with the Kensington Mine- issues of jobs and the responsible use of our resources- and the more broadly and fully they are understood, the better we, Alaskans, can make wise decisions regarding them.

SEACC has actively worked on the Kensington Mine Project since its exploration phase 2 decades ago.

Since then, we have watched it go through several different designs and two full permitting processes. In 1998, Coeur received all necessary permits for a project that ultimately the corporation chose not to pursue. Instead, it redesigned the mine and reinitiated the review and permitting process to arrive at the current mine proposal. SEACC has participated at every step of this process.

SEACC warned Coeur Alaska and the agencies that its tailings disposal design was illegal 4 ½ years ago. Coeur's plan to dump chemically processed tailings into a lake is a clear violation of the Clean Water Act, they put our Clean Water at risk, and could set a dangerous precedent of using our lakes and streams as mine waste dumps.

Unfortunately, Coeur chose to ignore our warnings. Instead, it gambled by betting that it could successfully roll back a generation of settled law and that no citizen would step forward to defend our right to clean water.

Coeur lost its gamble. Its job now is to redesign the Kensington Mine so that it's legal and fully protects the waters and resources of Berners Bay.

Alternatives to dumping tailings into a lake exist. In 1998, Coeur had all the necessary permits for Dry Stack Tailings facility. It is the same method tailings disposal the Greens Creek Mine and Pogo Mine uses. It is the method that SEACC has stated that it prefers for the Kensington.

Our state's constitution requires that development of our natural resources benefits all Alaskans. There is little value to this state, and no value to the country in the long run, if we do not do it right at the Kensington. Cutting corners today will result in larger problems in the future.

This case will impact the way we care for our clean water throughout the nation, and because the United States is often a model for other countries, it could influence how mines in other parts of the world are managed.

It is important to remember the legacy of mining is not a good one. Too many people and too many communities have been devastated by the toxicity of mine wastes to take lightly what Coeur proposed to do. As we have said since the early days of this mine, it is important to do it right.

[1:25:36 PM](#)

MR. CADMUS encouraged committee members to use House Joint Resolution 17 to meet the constitutional mandate that development is done for the benefit of all Alaskans. He advocated that Coeur Alaska redesign its tailings disposal plan so that it is legal and will fully protect Alaska's clean water.

REPRESENTATIVE ROSES asked if SEACC supports the original dry stack tailings proposal.

MR. CADMUS reported that since 1991, SEACC has maintained that dry stack is the preferred alternative for disposal, and SEACC has never opposed this method.

[1:26:33 PM](#)

REPRESENTATIVE ROSES asked to clarify if SEACC or its 17 members has encouraged Coeur Alaska to take a different approach for the tailings disposal.

MR. CADMUS clarified that SEACC does not oppose the dry stack tailings method, though they have offered suggestions to improve the method.

REPRESENTATIVE ROSES asked if SEACC has made any recommendations regarding the Greens Creek Mine.

MR. CADMUS stated that SEACC has not filed any lawsuits against the Greens Creek Mine. He noted that SEACC had concerns with the acid mine drainage problems and that SEACC did get involved with the tailing expansion permits.

[1:28:22 PM](#)

CO-CHAIR GATTO asked what Mr. Cadmus's job entailed.

MR. CADMUS explained that his background is with water quality and mining issues, but he spends a lot of time working with people in the community.

CO-CHAIR GATTO asked what his background was.

MR. CADMUS responded that he has a Masters in Water Quality Restoration.

[1:29:36 PM](#)

CO-CHAIR JOHNSON asked if SEACC is confident of the appeal with the 9th Circuit Court of Appeals.

MR. CADMUS replied that SEACC is confident that the appeal is right.

CO-CHAIR JOHNSON asked why SEACC is opposing the case going to the U.S. Supreme Court.

MR. CADMUS reminded Co-Chair Johnson that it is the Coeur Alaska decision for appeal to the U.S. Supreme Court. He pointed out that SEACC wants to ensure the tailings facility meets the law.

CO-CHAIR JOHNSON repeated his question.

MR. CADMUS reiterated that it is Coeur Alaska's decision to appeal. He offered his belief that the best option is for Coeur Alaska to redesign the tailings facility so that it is legal and protects clean water.

[1:31:10 PM](#)

CO-CHAIR GATTO asked what is meant by the statement that "it doesn't benefit the state or the country if we don't do it right."

MR. CADMUS observed that no mine has been allowed to use a lake as a tailings disposal system in 30 years, and that this decision could set a precedent. He offered his belief that cutting corners at the Kensington Mine will not do the nation any good.

[1:31:47 PM](#)

CO-CHAIR GATTO asked for a clarification of "right."

MR. CADMUS agreed that this is a difficult definition. He pointed out that SEACC does not oppose the 1997 dry stack tailings proposal. He declared that if a mine is legal, is

meeting the Clean Water Act, and is protecting the resources to the maximum extent possible, then that is considered "right."

CO-CHAIR GATTO asked for an explanation of why the current plan will not meet the Clean Water Act.

MR. CADMUS explained that since the passage of the Clean Water Act in 1972, mines have not been allowed to dump untreated waste water or tailings into lakes. He directed attention to the Environmental Protection Agency standards passed in 1982 that address mines exactly like Kensington. These specific standards are set because alternatives exist to using lakes as tailings disposal systems. He suggested that dry stacks tailings is an alternative.

[1:33:32 PM](#)

CO-CHAIR GATTO asked if the U.S. District Court is aware of this.

MR. CADMUS stated that he is unsure, but that is why SEACC is appealing the decision.

[1:33:51 PM](#)

REPRESENTATIVE GUTTENBERG asked if the U.S. Army Corps of Engineers (USACE) responded to SEACC after the initial inquiry into the legality of dumping tailings into Lower Slate Lake.

MR. CADMUS responded that he will need to research the correspondence. He offered that the initial SEACC statement of concern for legality of the tailings disposal into Lower Slate Lake was made during the USFS scoping process.

[1:34:46 PM](#)

REPRESENTATIVE GUTTENBERG asked if both the Greens Creek and Pogo Mine tailings disposal processes adhere to the Clean Water Act.

MR. CADMUS explained that the dry stack process at both Greens Creek and Pogo mines takes the tailings, squeezes the water from the tailings, recycles the water for use in the mine, and stacks the tailings in a land fill. The proposed Kensington process will dump the tailings into Lower Slate Lake, allow the sediment to settle, and treat the lake water before it can leave the lake. He mentioned that the dry stack process is more

expensive, and he offered his belief that the extra cost is one of the reasons that Kensington changed the tailings disposal plan.

[1:36:07 PM](#)

REPRESENTATIVE GUTTENBERG asked why the 9th Circuit Court of Appeals is reversing the Record of Decision.

MR. CADMUS recounted that the court specifically told SEACC that the USACE violated the Clean Water Act by issuing Coeur Alaska a permit to dump the mine tailings into the lake.

REPRESENTATIVE GUTTENBERG posed that the U.S. District Court does not believe this is a violation.

MR. CADMUS agreed.

[1:37:09 PM](#)

REPRESENTATIVE WILSON offered her belief that testimony in another committee indicated that Coeur Alaska revised their disposal plan because of initial opposition to the dry stack tailings by environmentalists.

MR. CADMUS responded that there was never any active opposition to the 1997 proposal for dry stack tailings. He explained that SEACC did not actively support the mine project as they believed that there was not a complete USFS analysis for the cumulative effects of the mine, the proposed Juneau Access Road, a proposed hydroelectric facility near the Lace River, and the ferry traffic to the mine.

[1:39:08 PM](#)

REPRESENTATIVE WILSON expressed her belief that Lower Slate Lake has almost no use and will be self contained, and asked if SEACC is most concerned for the precedent.

MR. CADMUS allowed that a major concern for SEACC is that this decision will set a precedent. He noted that 40 percent of the stream reaches from headwaters in the Western U.S. are polluted by mine waste, and he declared that mines dumping their tailings into a lake does put clean water at risk. He added that the Kensington plans for restoration of Lower Slate Lake are inconclusive.

[1:40:52 PM](#)

REPRESENTATIVE WILSON said that some people will support the plan and others will oppose it.

MR. CADMUS agreed.

REPRESENTATIVE WILSON asked for an update on mine problems since the mining quality standards have been improved.

MR. CADMUS identified a recent report by James Kuipers and Ann Maest, "Comparison of Predicted and Actual Water Quality at Hardrock Mines: the reliability of predictions in Environmental Impact Statements", that analyzes every permitted mine since the Environmental Impact Statement (EIS) process was initiated 25 years ago. This study determines that while 100 percent of these mines predicted attainment of water quality standards, only 24 percent actually achieved these standards. He offered to send the executive summary of this report to the committee.

[1:42:34 PM](#)

REPRESENTATIVE WILSON asked if SEACC is doing anything.

MR. CADMUS replied that this history is the reason for the SEACC involvement with the Kensington process.

REPRESENTATIVE WILSON asked if SEACC can be involved in other locations.

MR. CADMUS explained that SEACC is a small organization based in Southeast Alaska, but that many agencies are working to clean up these mining problems.

[1:43:19 PM](#)

CO-CHAIR GATTO asked the depth of Lower Slate Lake.

MR. CADMUS replied that he is not sure.

CO-CHAIR GATTO posed that if Lower Slate Lake were merely a dry depression, would the disposal process then be considered dry stacking.

MR. CADMUS responded that without a pond this would be dry stacking. He allowed that a dam around a dry basin that contains slurry is not a violation of the Clean Water Act.

[1:44:02 PM](#)

CO-CHAIR GATTO asked to clarify that dry stacking is not slurry.

MR. CADMUS replied that the dry stack process removes about 70 percent of the water, and stacks the remaining concentrate.

CO-CHAIR GATTO asked what is done with the contaminated water.

MR. CADMUS stated that the water is recycled for other mine uses, or it is treated to meet water quality standards. He confirmed that the water released from Lower Slate Lake will have to be treated, as it will not meet water quality standards.

[1:45:02 PM](#)

CO-CHAIR GATTO asked how to treat water with heavy metal contamination.

MR. CADMUS explained that there are methods, such as filters and reverse osmosis, though he is unsure which method Kensington has proposed.

CO-CHAIR GATTO commented that reverse osmosis would be very expensive.

MR. CADMUS agreed, and stated that he is not familiar with the processes.

[1:45:38 PM](#)

CO-CHAIR GATTO asked if water treatment will make water acceptable for fish.

MR. CADMUS offered his belief that the technology does exist.

CO-CHAIR GATTO posed that when the Record of Decision was pronounced, SEACC endorsed pursuit of an objection.

MR. CADMUS asked to clarify which Record of Decision.

CO-CHAIR GATTO replied that he meant the decision of the U.S. District Court.

MR. CADMUS recounted that SEACC filed an appeal immediately after the ruling.

CO-CHAIR GATTO commented that this is a legal right.

MR. CADMUS agreed.

CO-CHAIR GATTO asked if SEACC objects to a Coeur Alaska appeal.

MR. CADMUS agreed that Coeur Alaska does have that legal right.

CO-CHAIR GATTO asked if Mr. Cadmus supports that right.

MR. CADMUS emphasized that SEACC supports that right.

[1:46:47 PM](#)

REPRESENTATIVE EDGMON lamented that this discussion had not transpired earlier in the session because of the magnitude of the underlying issues. He mentioned that the Pebble Mine issue in Southwest Alaska is approaching and there is concern with the precedent that will be set. He allowed that water quality, fisheries, economic benefits, and jobs are all issues that need to be discussed. He asked what attempts at mediation SEACC has been involved in.

MR. CADMUS emphasized that SEACC is willing to be engaged in the planning for an alternative to this tailings disposal process. He reported that SEACC has twice negotiated with Coeur Alaska, and neither time was a settlement reached. He noted that this appeal will delay the project and that will affect the jobs at Kensington. He pointed out that more than half the current work force is temporary, construction related, and that a dry stack tailings disposal process will create more permanent jobs. He directed attention to the delay of jobs caused by Kensington when the 1997 plan was altered.

[1:51:12 PM](#)

REPRESENTATIVE GUTTENBERG commented that the definition for the disposal of tailings is key to the Court's decision. He asked what the U.S. District Court used as a definition that makes this decision inconsistent with other decisions regarding "waters of the United States."

MR. CADMUS agreed that a definition to the "waters of the United States" is central to this case. He briefed that the Kensington is the first mine since passage of the Clean Water Act that has been permitted to dump its tailings into "waters of the United

States." He stated that there is no dispute that Lower Slate Lake is "waters of the United States." He explained that the USACE granted a permit for fill material to be dumped into Lower Slate Lake; however, these tailings are not fill material as defined by the EPA in 1982.

[1:53:45 PM](#)

REPRESENTATIVE ROSES asked for an example of a mine in Southeast Alaska that is "doing it right."

MR. CADMUS said that SEACC has not opposed the Greens Creek Mine, although he would not say they are "doing it completely right" as they have had an occurrence of acid mine drainage.

[1:55:02 PM](#)

CO-CHAIR JOHNSON asked which mines SEACC has opposed.

MR. CADMUS clarified that SEACC is filing a lawsuit against the Kensington Mine tailings storage facility, not against the mine itself.

[1:55:39 PM](#)

CO-CHAIR GATTO expressed his belief that the Pebble Mine is applying for a permit to fill Frying Pan Lake, and he opined that the similarity to Kensington would trigger opposition from SEACC.

MR. CADMUS stated that SEACC is opposed to using lakes as mine waste dumps.

[1:56:18 PM](#)

REPRESENTATIVE WILSON asked if SEACC will take a position on the Pebble Mine, as it is not in Southeast Alaska.

MR. CADMUS clarified that SEACC is actively dealing with the issues in Southeast Alaska, but SEACC is still opposed to dumping tailings into a lake.

REPRESENTATIVE WILSON opined that SEACC will oppose the Pebble Mine.

MR. CADMUS expressed that the Pebble Mine project is still far in the future, and he reiterated that SEACC is actively working primarily in Southeast Alaska.

[1:57:21 PM](#)

CO-CHAIR GATTO closed public testimony.

REPRESENTATIVE SEATON asked Mr. Fogels if he agrees that the Clean Water Act does not allow discharge of mine tailings into fresh water bodies.

MR. FOGELS replied that he does not believe that a permit for tailings discharge into fresh water has been approved since the Clean Water Act was enacted. He offered his belief that permits have been issued to discharge into wetlands and other waters of the United States.

[1:58:50 PM](#)

REPRESENTATIVE SEATON asked if the Greens Creek and Pogo Mines use the dry stack tailings disposal.

MR. FOGELS responded that they do.

REPRESENTATIVE SEATON asked what the Fort Knox Mine disposal method is.

MR. FOGELS responded that Fort Knox uses a wet tailings discharge process. He explained that Fort Knox has built a dam across the Fish Creek Valley and they pipe the wet tailings into the valley.

REPRESENTATIVE SEATON assessed that this is a wet tailings disposal in an artificially constructed lake.

MR. FOGELS allowed that there were wetlands, streams, and waters of the United States, but not a lake.

[2:00:29 PM](#)

CO-CHAIR GATTO posed that the subsequent pumping of flood waters after Hurricane Katrina is a violation of the Clean Water Act.

MR. FOGELS replied that he did not know the answer, and offered his belief that there was probably not an Environmental Impact Statement done prior to the pumping.

CO-CHAIR GATTO opined that it is possible to get exceptions to the rule, and asked if there is any issue in Alaska that would allow violation of the Clean Water Act.

MR. FOGELS allowed that he did not know if there is any emergency provision to the Clean Water Act.

[2:02:09 PM](#)

REPRESENTATIVE GUTTENBERG related a story of flooding in his district and allowed that the rescue response may not have been legal.

REPRESENTATIVE ROSES asked why the USACE and the EPA issued permits if this is a violation of the Clean Water Act.

MR. FOGELS stated that all the agencies determined that the proposal is in compliance with the Clean Water Act, and that they do not agree with either the SEACC challenge or the 9th Circuit Court of Appeals ruling.

[2:04:26 PM](#)

REPRESENTATIVE ROSES asked if there is a provision in the permitting process outlining that filtration of the tailings water will be prior to entering or prior to exiting the lake.

MR. FOGELS reported that the analysis shows that the water quality in the lake at closure will meet water quality standards. He declared that all the water that is leaving the lake system over the dam will meet clean water standards and that Coeur Alaska is proposing a water treatment plant at the dam to ensure compliance with the Clean Water Act. He stated that the analysis indicates that the post-mining lake will be as or more productive than prior to mining.

[2:05:43 PM](#)

REPRESENTATIVE ROSES asked if there is concern that the dumping into the lake will leach into the water sources beneath the lake.

MR. FOGELS said that is not a concern. He explained that the models show that the flotation agents in the tailings are relatively benign and will biodegrade, and that no polluted water will leave the lake. He stated that there is some

question about toxicity of the tailings, but Coeur Alaska is proposing to place an organic cap on the surface of the tailings if nothing will grow on the tailings. He noted that all of the agencies feel that this is adequate to ensure successful reclamation of the lake.

[2:07:05 PM](#)

REPRESENTATIVE ROSES posed that the floating chemicals and the toxicity will biodegrade with exposure to the sun and the air.

MR. FOGELS expressed his belief that this is the process, and that it was shown to all the agencies that the water quality in the lake will meet clean water standards at closure.

REPRESENTATIVE ROSES asked what the outcome is for the liquid separated during the dry stack process and re-used in the mine.

MR. FOGELS replied that he does not know the answer. He offered his belief that the water is pumped back into the mill and reused, but that the environmental impact of that water is not evaluated.

[2:08:36 PM](#)

REPRESENTATIVE ROSES asked why Coeur Alaska changed the plan from a dry stacking process, and why they now have to reapply and resubmit for these permits.

MR. FOGELS expressed his belief that wet disposal is much more economical, and that dry stack tailings disposal will make the project uneconomical.

REPRESENTATIVE GUTTENBERG asked to what judicial level this decision has been upheld before, and if the 9th Circuit Court of Appeals has ever heard and ruled on this type of case.

MR. FOGELS expressed his belief that this is the first time either the U.S. District Court or the 9th Circuit Court of Appeals has heard this type of case.

[2:12:09 PM](#)

REPRESENTATIVE SEATON opined that he supports the portion of the resolution telling Coeur Alaska to pursue all legal options however, he does not agree with the sections stating that the 9th Circuit Court of Appeals does not know what they are doing.

He said that he would like to hear a final determination of the status of federal law in this situation.

REPRESENTATIVE EDGMON affirmed that these issues are complicated and it is valuable to bring all the parties to the discussion. He asked where a representative for Coeur Alaska is.

CO-CHAIR JOHNSON responded that Coeur Alaska is in a legal proceeding and opted not to testify, so they asked Steve Borell, Alaska Miners Association, to represent the mining interests.

[2:14:23 PM](#)

REPRESENTATIVE EDGMON asked what the future of the Alaska mining industry is, if the U.S. Supreme Court upholds this decision.

MR. FOGELS pointed out that every mine permit in Alaska is for tailings disposal in wetlands, so the 9th Circuit Court of Appeals final decision has far reaching ramifications for Alaska.

REPRESENTATIVE EDGMON commented that the court decision has both federal and state significance.

MR. FOGELS agreed.

[2:16:00 PM](#)

REPRESENTATIVE WILSON observed that the committee is concerned about the environment and wants to ensure that Alaska is preserved in every possible way, but this is not an easy decision. She said:

"We all care about the state and we all want to make sure that things are safe, but we also have to realize that we do have resources in the state, that's the only thing we have, only thing we have in the state, and the people of the state have made it very obvious that they don't want to have to pay for anything. They would rather that the state uses the resources so that they could live here and not have to fork over lots of money, so it's a very hard decision for legislators."

[2:17:22 PM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 1, as follows:

Page 2, line 9, delete the word "and"

Page 2, delete lines 10-12

CO-CHAIR JOHNSON objected. He offered his belief that "having 64 of 75 cases overturned once they get to the Supreme Court is a pretty good statement as to how successful they've been at litigating in these types of issues." He expressed his belief that the language in the resolution is "barely strong enough."

REPRESENTATIVE GUTTENBERG pointed out that success with the 9th Circuit Court of Appeals requires a conversation, not an inflammatory attack. He emphasized that the State of Alaska is asking the court for permission to develop.

[2:19:24 PM](#)

CO-CHAIR JOHNSON declared that this resolution is not to the 9th Circuit Court of Appeals and that it would be inappropriate to send the court a resolution on a pending case. He said that this resolution encourages Coeur Alaska to pursue all legal options, and that it is sent to various members of the U.S. Congress and the U.S. Supreme Court.

CO-CHAIR GATTO pointed out that page 2, line 25, mentions the Chief Judge of the 9th Circuit Court of Appeals as a recipient of the resolution.

CO-CHAIR JOHNSON maintained that the Chief Judge can be a recipient because she is the overseeing person of that body.

[2:20:13 PM](#)

CO-CHAIR JOHNSON emphasized that he does not want to remove the Chief Judge as he believes she needs to know. He stated that "quite honestly, I wouldn't have introduced it if I didn't think it was good the way it is."

REPRESENTATIVE WILSON agreed that this resolution needs to be respectful, and she offered her support of Amendment 1.

CO-CHAIR JOHNSON removed his objection.

There being no objection, Amendment 1 was adopted.

[2:21:40 PM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 2, as follows:

Page 2, line 17:
Delete "; and be it"

Page 2, line 17:
After "resources" add "."

Page 2, lines 18-21:
Delete all material

[2:22:11 PM](#)

REPRESENTATIVE GUTTENBERG objected and moved to adopt an amendment to Amendment 2, to now include:

Page 1, lines 4-7:
After "resources" delete all material

Page 1, line 4:
After "resources" add "."

[2:23:14 PM](#)

REPRESENTATIVE ROSES said that he supports the amendment to Amendment 2.

There being no objection, the amendment to Amendment 2 was adopted.

REPRESENTATIVE GUTTENBERG removed his objection to Amendment 2.

There being no objection, Amendment 2, as amended, was adopted.

[2:24:09 PM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 3, as follows:

Page 1, Line 22:
After "sent" insert "by electronic transmission"

There being no objection, Amendment 3 was adopted.

[2:25:09 PM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 4, as follows:

Page 2, line 26 - Page 3, line 22:

After "Circuit;" delete all material through and including "Delegation;"

CO-CHAIR GATTO asked if Representative Seaton wants the Honorable Mary M. Schroeder to remain as a recipient of the resolution.

REPRESENTATIVE SEATON replied that he does.

There being no objection, Amendment 4 was adopted.

[2:27:24 PM](#)

REPRESENTATIVE KAWASAKI commented that the testimony indicates a desire to work toward resolution through mediation. He offered his belief that it is bad advice for a resolution to send a message to Coeur Alaska inviting lawsuits involving the Supreme Court.

CO-CHAIR JOHNSON stated that mediation is a legal option.

REPRESENTATIVE ROSES asked if Coeur Alaska should be a recipient of the resolution.

CO-CHAIR JOHNSON moved to adopt Conceptual Amendment 5 that would include Coeur Alaska to be a recipient of the resolution.

There being no objection, Amendment 5 was adopted.

[2:29:29 PM](#)

CO-CHAIR JOHNSON moved to report HJR 17, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes.

REPRESENTATIVE GUTTENBERG objected. He expressed his belief that the state might not like the decisions handed down by the 9th Circuit Court of Appeals and the Supreme Court, and that the CBJ resolution in the members' packets is far more acceptable as it allows the state to mediate a solution. He offered two examples of the dialogue process that settled the contentious issues for both the Pogo Mine and the Fort Knox Mine. He allowed that an agreeable settlement is reached far more quickly through dialogue than through litigation.

REPRESENTATIVE SEATON established his belief that this resolution is clarifying a request for the solution to a definition of federal law. The resolution is now directed to the people who are actually working on the Kensington Mine.

CO-CHAIR JOHNSON declared his desire to show support for the Kensington Mine. He emphasized that the 9th Circuit Court of Appeals is overturning the state and federal process, and that Coeur Alaska should pursue the legal options.

REPRESENTATIVE GUTTENBERG withdrew his objection.

[2:34:54 PM](#)

REPRESENTATIVE ROSES objected, explaining that as a mediator, the goal is for both parties to come to an agreement. He declared that he does not see a common ground for compromise. He removed his objection and said that he supports the resolution.

CO-CHAIR GATTO announced that there being no further objection, CSHJR 17(RES) was moved out of committee.

SB 109-OIL & GAS CONSERVATION COMMISSION

[2:37:02 PM](#)

CO-CHAIR GATTO announced that the next order of business would be CS FOR SENATE BILL NO. 109(RES), "An Act relating to the regulation and permitting of drilling and other operations by the Alaska Oil and Gas Conservation Commission, to civil penalties assessed by the commission, to reconsideration and appeal of decisions and the allocation of costs in investigations and hearings before the commission, and to information filed with and fees of the commission; and providing for an effective date."

[2:37:29 PM](#)

CHERYL SUTTON, Staff to Representative Ralph Samuels, Alaska State Legislature, explained that Representative Samuels introduced SB 109 and the companion bill, HB 183, at the request of the Alaska Oil and Gas Conservation Commission (AOGCC). The AOGCC requested this legislation to update and improve the governing statute, Title XXXI. She stated that HB 183 is exactly the same as CSSB 109(RES) and this same version passed

without objection from the House Special Committee on Oil and Gas. She deferred to John Norman for any further questions.

[2:38:33 PM](#)

JOHN NORMAN, Chair, Alaska Oil and Gas Conservation Commission (AOGCC), stated that SB 109 is a comprehensive update of the Alaska Oil and Gas Conservation Act, first adopted by the Territorial Legislature in 1955. He stated that Section 1 of SB 109 removes from the Act outdated territorial provisions relating to appeals of decisions by the Commission from other agencies.

[2:41:03 PM](#)

MR. NORMAN explained that Section 3 adds public health and safety to the AOGCC area of oversight. This is consistent with what the commission is already doing and follows the recommendations from the Declaration of Purpose of the Model Oil and Gas Conservation Act. He said Section 3 also clarifies the AOGCC authority to regulate natural gas storage. He explained that South Central Alaska has seasonal variations of demand for gas and has a need to identify reservoirs and inject gas into the ground to store for peak demand. He added that all the bill provisions have a zero fiscal note, and that the bill allows the law to conform to the industry developments and standards.

[2:42:53 PM](#)

MR. NORMAN explained that Section 7 proposes to retain the two year period of confidentiality only for exploratory wells and stratigraphic test wells, not on the development of routine oil and gas well drilling.

MR. NORMAN presented that Section 5 modifies that the coal bed methane water testing program is required only when a well goes into production, not during exploratory production testing which poses no threat to water quality.

There was a brief discussion comparing the definitions of "assure" and "ensure".

[2:46:28 PM](#)

MR. NORMAN noted that Section 4 increases the civil penalties assessed by the commission to be no more than \$100,000 for the initial violation and no more than \$10,000 per day for each

subsequent day of violation. He informed the committee that the civil penalty for wasting gas is increasing to two times the fair market value.

CO-CHAIR GATTO asked if flaring is considered wasting gas.

MR. NORMAN responded that there is always some flaring for safety.

[2:48:49 PM](#)

CO-CHAIR GATTO allowed that there is no penalty for flaring to protect us, but there is a difference with flaring to get rid of gas.

MR. NORMAN said that this is already addressed in the legislation and that it is further monitored by the commission. He pointed out that there are monthly accounting reports of gas disposition. He continued, explaining that Section 12 deletes the \$100 fee for a permit to drill as the fees are more efficiently collected through the regulatory cost charge. He noted that the bill makes a number of housekeeping and wording changes and that the AOGCC supports the bill.

CO-CHAIR GATTO asked if Mr. Norman is a commissioner of the AOGCC.

MR. NORMAN replied that he is the chairman of the commission.

[2:51:46 PM](#)

REPRESENTATIVE WILSON asked how it is ascertained that a company is flaring too much.

MR. NORMAN explained that the commission receives monthly gas disposition reports, and that the reports must exactly track the gas. He noted that the commission also has inspectors in the field, both in Cook Inlet and the North Slope.

CO-CHAIR GATTO asked how often there is blatant incorrect reporting.

MR. NORMAN stated that a few times a year there is incorrect reporting, but that overall there is a very high level of compliance.

[2:54:03 PM](#)

REPRESENTATIVE WILSON asked about the cost of time charge addressed in Section 11.

MR. NORMAN identified that the need to charge arose during a very lengthy investigation of falsification by an operator's employee. The investigation required many hours of engineers' time so this will allow the Commission to assess and recover these costs from the operator.

REPRESENTATIVE WILSON asked what the hourly charge will be.

MR. NORMAN replied that he did not have the rate, but it will be calculated based on the staff member used. He allowed that it will be infrequently used, but it is an enforcement tool to ensure the violator bears the responsibility.

[2:56:29 PM](#)

REPRESENTATIVE ROSES asked to clarify that gas flaring is for safety.

MR. NORMAN explained that gas comes up with oil and that although safety flaring can be for several reasons, it most commonly helps to avoid fires or explosions caused by a sudden abundance of gas.

REPRESENTATIVE ROSES asked if a system to deliver the gas directly to a pipeline eliminates the necessity for the flare.

MR. NORMAN replied that some flare might be necessary depending on how the gas is handled. He explained that flaring is not allowed to simply burn off the gas.

[2:59:23 PM](#)

REPRESENTATIVE ROSES posed that should a pipeline be available for a company to put gas into and they are still flaring, is this considered a waste of gas by not delivering it.

MR. NORMAN presented that flaring for safety or for fuel is permissible. He reported that the burden is on the operator to demonstrate why they are not putting it into the pipeline.

REPRESENTATIVE ROSES asked about re-injection.

MR. NORMAN replied that reinjection is not wasting gas.

[3:01:15 PM](#)

CO-CHAIR GATTO turned the gavel over to CO-CHAIR JOHNSON.

REPRESENTATIVE GUTTENBERG asked about the commission sentiment for having extended authority to determine gas takeoffs.

MR. NORMAN noted that the commission is an independent, quasi-judicial body. He allowed that the commission does not set offtake rates unless an operator requests it. For this legally structured process, the commission receives an application, publishes it, and takes public testimony. He said that gas sales from Prudhoe Bay have been discussed for the past 30 years. The commission has not tried to update the offtake rate of 2.9 billion cubic feet (bcf) per day. He allowed that the commission has done the research and is ready with a new rate, but they would be short circuiting the legal process.

[3:05:26 PM](#)

REPRESENTATIVE GUTTENBERG allowed that the House Resources Standing Committee is trying to write a bill to induce a company to enter the bidding.

REPRESENTATIVE SEATON asked if Section 2, subparagraph (B) requires that information be filed more quickly.

MR. NORMAN replied that the request for information in 90 days is a realistic amount of time to receive the information.

[3:08:20 PM](#)

REPRESENTATIVE SEATON asked for a definition of "completion" and asked for clarification that Section 2 (B) will provide more information than is currently required.

MR. NORMAN defined "completion" as bringing it into production. He informed that Section 2 identifies in more detail the types of information and specifies the response period is 30 days for reports, and 90 days for logs. He said that this section does not provide any more information than was received previously.

[3:10:34 PM](#)

CO-CHAIR JOHNSON opened up public testimony.

KARA MORIARTY, External Affairs Manager, Alaska Oil and Gas Association, said that the AOGCC has answered the AOGA questions and that AOGA supports the current bill version.

CO-CHAIR JOHNSON closed public testimony.

[3:12:34 PM](#)

REPRESENTATIVE SEATON asked if the reference in Section 4 applies to the new horizontal drilling technology.

MR. NORMAN said that Section 4 keeps pace with the new technology including the ability to have multiple completions within one well.

[3:13:30 PM](#)

REPRESENTATIVE SEATON moved to report CSSB 109(RES) out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSSB 109(RES) was reported out of the House Resources Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:14 p.m.