

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 16, 2010

8:06 a.m.

MEMBERS PRESENT

Representative Bob Herron, Co-Chair
Representative Cathy Engstrom Munoz, Co-Chair
Representative John Harris
Representative Wes Keller
Representative Sharon Cissna
Representative Berta Gardner

MEMBERS ABSENT

Representative Charisse Millett

COMMITTEE CALENDAR

HOUSE BILL NO. 318

"An Act relating to public use of unregulated water systems."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 318

SHORT TITLE: UNREGULATED POTABLE WATER SYSTEMS

SPONSOR(S): REPRESENTATIVE(S) HARRIS

01/29/10	(H)	READ THE FIRST TIME - REFERRALS
01/29/10	(H)	CRA, RES
02/25/10	(H)	CRA AT 8:00 AM BARNES 124
02/25/10	(H)	Heard & Held
02/25/10	(H)	MINUTE(CRA)
03/11/10	(H)	CRA AT 8:00 AM BARNES 124
03/11/10	(H)	Heard & Held
03/11/10	(H)	MINUTE(CRA)
03/16/10	(H)	CRA AT 8:00 AM BARNES 124

WITNESS REGISTER

KRISTIN RYAN, Director
Division of Environmental Health
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 318, answered questions.

PETE FELLMAN, Staff
Representative John Harris
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 318, reviewed CSHB 318, Version 26-LS1357\E, Bullard, 3/15/10.

MARIT CARLSON-VAN DORT, Legislative Liaison
Office of the Commissioner
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 318, answered questions.

ACTION NARRATIVE

[8:06:33 AM](#)

CO-CHAIR BOB HERRON called the House Community and Regional Affairs Standing Committee meeting to order at 8:06 a.m. Representatives Herron, Munoz, Harris, and Keller were present at the call to order. Representatives Cissna and Gardner arrived as the meeting was in progress.

HB 318-UNREGULATED POTABLE WATER SYSTEMS

[8:06:51 AM](#)

CO-CHAIR HERRON announced that the only order of business would be HOUSE BILL NO. 318, "An Act relating to public use of unregulated water systems."

[8:08:10 AM](#)

REPRESENTATIVE HARRIS, speaking as the sponsor of HB 318, related his understanding that in Salcha there's a regulated water supply that's used by a few folks. The cost to supply that water is onerous. He then inquired as to where the department intends to head in terms of resolving some of these issues to provide an easier, less cumbersome way to provide good drinking water for Alaskans who may not live in an area where they utilize a community water system. He then specifically

inquired as to what the department is going to do to accommodate the residents in Salcha.

8:10:08 AM

KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), stated that DEC tries to do what it can to help all water systems. There are about 1,600 federally regulated water systems in Alaska. Of those, 295 are extremely small water systems; these are systems that are the size of Salcha or smaller. The department tries to provide as much technical assistance and support as possible to help these systems stay in or come into compliance. However, the department is restricted in many ways by the mandatory federal definition of a water system. She emphasized that the state has no additional requirements beyond what the Environmental Protection Agency (EPA) mandates. Therefore, the department doesn't have much ground to maneuver other than to provide as much technical assistance as possible to help the water system stay in or come into compliance.

MS. RYAN informed the committee that the current requirements of water systems are based on someone becoming sick or dying, albeit it may be from somewhere else in the U.S. Therefore, there's a public health reason for the requirements. For a ground water system, the requirements aren't that difficult. However, the EPA is reviewing the potential problems with ground water systems. At this point, Salcha only needs to test, it doesn't have to do any treatments if there's nothing in the water. Ms. Ryan said that she doesn't believe it's unreasonable to require a system to test the water to ensure that the water doesn't contain anything dangerous. The [contaminants] that are required to be tested are outlined and there's a clear public health reason for the testing.

MS. RYAN then related that DEC's plan for the future is to provide as much support as possible to water systems so that they can provide safe water and stay in compliance with the EPA. The department has developed some methods that have been working well. For a water system that is having difficulty, the department utilizes an intensive intervention process in which the department, some nonprofits, other funding agencies, and the USDA intensively work with the water system for a week. The operators, whether it's the local government or another entity, are trained to ensure the best possible setup. In this process, follow up occurs to ensure the water system remains on track. Ms. Ryan likened this to a mental health model.

8:14:48 AM

REPRESENTATIVE HARRIS requested that Ms. Ryan describe the efforts or direction the department gave Salcha regarding its water system or, he asked, were the residents of Salcha merely notified that the water system was out of compliance and could no longer be used.

MS. RYAN related her belief that the committee packet includes quite a bit of communication between the Salcha water system representative and the department. The Salcha community has been a water system since the 1990s and the first record of Salcha in DEC's database is 1990. Therefore, the department has been working with Salcha for 20 years. Last year Salcha placed a notice in the paper advertising water, which is when the department contacted Salcha to ask if things had changed and whether the water system was serving more people. Salcha was informed that if it was serving more people, it would be a federally regulated system not just a state regulated system. The aforementioned, she opined, is the dialogue that has resulted in the discussion before the committee today. Ms. Ryan related her belief that Salcha would need to meet certain requirements, which the department likely related, in order to be an approved federal water system and serve more than 25 people. For instance, Salcha would have to hire an engineer to review the well in order to ensure that the well was drilled properly and encased properly so that contamination doesn't enter the wellhead at the source. A second step about which Salcha would've been told was testing. The federal government requires testing for more [contaminants] than the state requires. Again, she acknowledged that the aforementioned would have a cost. Ms. Ryan specified that the federal government requires testing for inorganic or volatile organic compounds, total coliforms, lead and copper, radio nuclei, nitrates, and arsenic. The aforementioned testing would cost several hundred dollars and the results would be available within approximately a month. The department's goal for Salcha would be for it to do the aforementioned to ensure that the water is safe and can serve the entire community. However, she recalled that Salcha wasn't sure it wanted to go that route, which led to the conversations with the department relating that if Salcha chooses not to follow the [federal requirements], then it needed to limit the number of people using the well. After some time, Salcha likely decided it wasn't interested in pursuing the aforementioned route, and thus DEC communicated the need to

reduce the number of people accessing the water system in order to avoid crossing the federal threshold.

8:20:29 AM

REPRESENTATIVE HARRIS related his understanding that once a water system serves more than 25 people, it falls under the federal EPA regulations for which the state has primacy. The department must enforce the federal EPA regulations in order to continue to receive federal funds. He asked if there is any timeframe in which the water systems can be provided while coming into compliance or is there any help they can be provided in order to help them come into compliance with the federal requirements.

MS. RYAN answered that there is no set timeframe. Once DEC learns of a system that meets the federal definition, the department begins a conversation regarding what it will take for the water system to comply with the federal requirements or reduce the population being served. She acknowledged that it takes time to ensure that the water is safe. For example, if Salcha decided it wanted to become a federally regulated water system and performed the testing, the department would be fine waiting for the engineer reviews. As long as the water is shown to be safe by testing, DEC would allow the water system to serve the community while continuing to get the engineering performed. Therefore, there is some flexibility if DEC knows a water system wants to be a federal public water system and works with the department to achieve what is necessary. However, Salcha chose early on that it didn't want to go that route, and therefore had to reduce the number of people it served.

8:23:12 AM

REPRESENTATIVE HARRIS asked if DEC offered help to Salcha and it was turned down. He inquired as to what led to the situation that Salcha is in today.

MS. RYAN responded that DEC can only provide technical assistance, such as what laboratory or engineers to contact. She opined that she didn't know what other assistance DEC could provide Salcha because the stage it is at isn't that difficult. Salcha simply needs to go to a laboratory to run some samples and hire an engineer to review the well casing. Ms. Ryan surmised that Representative Harris may be asking about variances, which have been mentioned at early hearings. She acknowledged that Pete Fellman, Staff to Representative Harris,

doesn't believe DEC has used all of its options to give the community a variance to comply. However, that's not the case because a variance can only be used for specific rules, as defined in the federal law. A variance can't be used for water system testing or the initial engineering review. Variances can be used if, for instance, testing returns show a level of arsenic above the minimum level but not dangerously high. The variance in the aforementioned case can be used to provide the community the time and the money to determine how to come into compliance with arsenic. By federal law, DEC can't issue a variance for a water system that doesn't want to perform testing or have an engineer review the system. Ms. Ryan opined that DEC is providing all the technical assistance it can to Salcha and reiterated that she didn't know what more assistance she could provide. Furthermore, because the cost for the initial work is so low, \$15,000, she said she wasn't sure Salcha would qualify for funding from the other branch in DEC that provides funding for water systems. The funding, she recalled, requires a minimum level of \$100,000 for a grant or loan. In further response to Representative Harris, Ms. Ryan reminded the committee that there are 295 water systems in the state that are the size of Salcha or smaller. She was sure that it was a struggle for some of those water systems, of which three are fairgrounds that provide water to the local community, to meet the federal EPA requirements. She further reminded the committee that, to a degree, DEC has its hands tied by the federal law.

[8:27:07 AM](#)

CO-CHAIR HERRON asked whether DEC advised Salcha in writing that it may qualify for a variance if it [met a couple of the requirements].

MS. RYAN replied not to her knowledge. She reiterated that unless Salcha was further along in the process, such as needing to treat a contaminant in the water that isn't considered life-threatening, it wouldn't qualify for a variance. She said she couldn't believe that DEC would've told Salcha there is an option for a variance because it's not at that point.

CO-CHAIR HERRON asked if DEC told Salcha that if it did A, B, and C, it would be qualify for loans or financial assistance.

MS. RYAN responded, "Probably not." She reiterated that the community couldn't obtain a loan for the initial assessment of the water as the cost is too low.

[8:29:18 AM](#)

CO-CHAIR HERRON asked if Salcha has the ability to be a disadvantaged community, in terms of state statute.

MS. RYAN answered that she wasn't sure and thus would have to review that. However, she offered a guess that Salcha wouldn't be a disadvantaged community.

[8:29:53 AM](#)

REPRESENTATIVE CISSNA characterized this as an important discussion. She informed the committee that the country has a 99 percent safe water standard, while in Alaska it's somewhere in the 70th percentile. Moreover, recent research has shown that there's an enormous cost when a water system drops below the safe water standards. Such a situation is extremely dangerous, particularly to children. She then highlighted that she's not hearing any plan between Salcha, DEC, and the federal government that addresses what she referred to as a "moral constitutional requirement." She characterized not paying attention to safety issues as evil. Representative Cissna asked if the interaction with Salcha has been purely via e-mail and letters or has anyone actually visited the community and spoke with Salcha residents.

MS. RYAN related her understanding that DEC staff did visit with a Salcha fairground representative on several occasions. However, if they don't want to be a water system, then DEC's hands are tied to a degree. A water system that serves more than 25 people has to comply with the federal requirements.

[8:33:26 AM](#)

REPRESENTATIVE KELLER asked if the 25 persons using the water system refers to 25 persons using it per day or is it the same 25 persons using it.

MS. RYAN specified that it's averaged; 25 people per day over a six-month period. Furthermore, if an individual takes water home to four others, then those folks are counted as well. As she recalled, the Salcha water system was serving well over 25 people. If the number of individuals using a water system is "on the line," the department tends to be flexible, she related.

[8:34:40 AM](#)

CO-CHAIR HERRON explained that he had requested Representative Harris review alternative approaches to the situation, which resulted in a committee substitute (CS) labeled 26-LS1357\E, Bullard, 3/15/10.

[8:35:35 AM](#)

PETE FELLMAN, Staff, Representative John Harris, Alaska State Legislature, explained that Version E clarifies in statute some of the possible solutions that seem to be written into the Code of Federal Regulations (C.F.R.). When the C.F.R. was updated in 1996, the updates addressed unfunded mandates as well as assistance to small communities and disadvantaged communities. The updated C.F.R. provided a means for the state to exercise flexibility in the way that it addresses small water systems in an area in which the community is disadvantaged or doesn't have the ability to obtain water. The hope with Version E is to specify in statute that technical assistance, water supplies, possible variances and guidance, as well as loans and grants can be provided. Mr. Fellman emphasized that the federal law does provide ways and means to help small water systems come into compliance with federal requirements.

MR. FELLMAN then informed the committee that the well in Salcha was drilled sometime after 2003. He noted that he has information from 2005 when folks first started using the well. The Salcha well has been tested and has never had a problem with safety, and therefore that's not the issue. He opined that the issue really revolves around the fact that less than 25 people a day were using the Salcha well. When the number of people using the well was verified, the community was told the [requirement to have a well that's not covered by the federal government] was less than 25 people per month not per day. He characterized threshold of users as a moving target and noted that he has seen three different manners of language regarding the threshold of 25 users of a well. However, C.F.R. 40.41.2 clearly says "at least 50 service connections or regularly serves an average of at least 25 individuals daily". Therefore, there were less than 25 people a day using the Salcha water system and they were still required to limit use. With regard to the engineering and variance language, it is lengthy and extensive and there are costs. Mr. Fellman reminded the committee that the Salcha water system is maintained voluntarily through community support and the earlier projected cost of \$15,000 to meet the requirements would be fairly significant. In conclusion, Mr. Fellman

expressed hope that Version E will provide some clarity with regard to what DEC can do.

8:41:23 AM

CO-CHAIR HERRON informed the committee that it's the intent of the co-chairs not to adopt Version E in order to provide time for everyone to review it.

8:41:41 AM

REPRESENTATIVE CISSNA identified a pivotal matter in the Salcha situation to be the public advertisement of available [safe] water. She then opined that perhaps one of the things the state hasn't done a good enough job of is understanding the importance of clean water. She pointed out that the lack of clean water contributes to the state's rising health care costs. [With regard to the Salcha situation], Representative Cissna related her understanding that the required testing that is verifiable hasn't been done.

MR. FELLMAN noted that he has copies of the last test performed on the Salcha water system. He further noted his understanding that the Salcha water system has been tested every year. The testing was performed in a state laboratory and the results were free of any coliform or any possible contaminants. With regard to the "advertising" of the Salcha water system, Mr. Fellman clarified that there was a newspaper article about the Salcha fairgrounds and the Salcha Fairground Association and the article mentioned that it has a well that provides water for the community.

8:44:51 AM

REPRESENTATIVE CISSNA surmised that in the case of Salcha, folks believe they have done what's necessary. Therefore, she surmised that they don't seem to understand the law well enough.

MR. FELLMAN opined that it's highly unlikely that folks will drive to Salcha for water. Therefore, it wouldn't even make sense to advertise coming to Salcha for water.

REPRESENTATIVE CISSNA agreed, but returned to the fact that there are laws that often people don't understand. She then inquired as to Mr. Fellman's view of Version E.

MR. FELLMAN said that Version E clarifies and allows average people to review statute rather than having to also go to the C.F.R. in order to understand the process. Furthermore, Version E may help DEC be clearer with communities and maintain an attitude in which the community and the department work together rather than the department being in the role of an enforcer.

[8:47:31 AM](#)

REPRESENTATIVE KELLER related his understanding that Salcha is currently providing water under certified letter that it will serve less than 25 residents without specifying whether that's 25 residents per day or per month.

MR. FELLMAN specified that the aforementioned is one of the problems and requires clarification.

[8:49:12 AM](#)

REPRESENTATIVE HARRIS, referring to Section 1 of Version E, asked if a public water system used by 25 people or more would be a regulated public water system.

[8:49:37 AM](#)

MARIT CARLSON-VAN DORT, Legislative Liaison, Office of the Commissioner, Department of Environmental Conservation, confirmed that such a public water system would be a regulated public water system under federal law. In further response to Representative Harris, related her belief that it would also be a regulated public water system per statute.

[8:49:58 AM](#)

REPRESENTATIVE HARRIS questioned then whether inserting the language "per day" at the end of line 6 on page 1 of Version E would provide clarity.

MS. CARLSON-VAN DORT replied yes, adding that using the language "25 people per day averaged over six months" would conform with federal language.

[8:50:31 AM](#)

REPRESENTATIVE HARRIS expressed concern with the language in Section 1(a)(2) that specifies the department shall provide communities with financial assistance per AS 46.03.030(b) or

46.03.036(b). He inquired as to what the aforementioned statutes refer.

MS. CARLSON-VAN DORT, upon referring to the statute, related her understanding that those statutes outline the municipal matching grant program through the Division of Water. She related her further understanding that those statutes refer to the program that requires a minimum threshold for the amount of grant or loan funds the department would consider. However, she offered to review it further and provide the committee with a definite answer.

[8:52:50 AM](#)

CO-CHAIR MUNOZ recalled Ms. Ryan's earlier testimony relating that the department has financial assistance available for larger projects. She then inquired as to whether DEC is able to provide assistance to communities with smaller financial requests, such as would be the case for Salcha.

MS. RYAN said that she isn't sure because it's handled in a different program within the Division of Water. She related that she has been told that there's a minimum for the loan. Ms. Ryan highlighted that loans are easier to obtain, but have a minimum amount whereas grants are more difficult to obtain and the grantee must illustrate disadvantaged qualifications. The Division of Water, she said, told her that Salcha wouldn't meet the requirements for a grant because they don't fit into the definition of a disadvantaged community. Furthermore, Salcha would likely not be able to obtain a loan because loans are only provided for larger amounts. She offered to double check with the Division of Water.

[8:54:20 AM](#)

CO-CHAIR MUNOZ, referring to the correspondence between the Salcha Fair Association representative and the department staff, pointed out that department staff used a threatening tone. Therefore, she requested that Ms. Ryan review that correspondence. She encouraged the department to improve the [tone] of its interactions with communities, most of which aren't familiar with the law.

MS. RYAN agreed to do so.

[8:56:01 AM](#)

REPRESENTATIVE CISSNA suggested that a water system that's located in a community with over 25 people and accessible to the entire community should be defined in regulation. She then asked if there is any other public way to obtain water in Salcha.

MS. RYAN pointed out that the regulations include a clear definition [of a public water system] that mimics the federal definition. The state's definition refers to smaller water systems because the state has water systems that don't meet the federal definition that the state regulates, which is the category in which Salcha is now. For the state water system, the water system must be smaller than a water system outlined in the federal regulations but larger than a water system serving a duplex. She further clarified that those with a private well for a home or duplex don't interact with DEC at all. However, if the well serves two duplexes, it becomes federally regulated, which is the category in which Salcha is now. She offered her understanding that the belief is that once a system serves 25 people, they could pay a certain fee in order to perform the requirements to ensure safe water.

[HB 318 was held over.]

[8:59:27 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 8:59 a.m.