

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 13, 2011

3:36 p.m.

MEMBERS PRESENT

Senator Joe Paskvan, Co-Chair
Senator Bill Wielechowski, Vice Chair
Senator Bert Stedman
Senator Lesil McGuire
Senator Hollis French
Senator Gary Stevens

MEMBERS ABSENT

Senator Thomas Wagoner, Co-Chair

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 185(RES)

"An Act relating to an exemption from authorizations that may be required by the Department of Environmental Conservation for the firing or other use of munitions on active ranges."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 21

Urging the Secretary of the United States Department of the Interior to withdraw a secretarial order that creates a wild land classification and to administer federal lands in the state in accordance with existing statutes and agency guidelines; and urging the United States Congress to prohibit the use of appropriated funds by the United States Department of the Interior and the Bureau of Land Management to implement, administer, or enforce the secretarial order.

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 23 am

Urging the United States Congress to classify hydroelectric power as a renewable and alternative energy source.

-HEARD AND HELD

HOUSE CONCURRENT RESOLUTION NO. 9

Establishing in the Alaska State Legislature the Alaska Working Group on Interstate Energy Production.

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 185

SHORT TITLE: EXEMPT DISCHARGES FROM USE OF MUNITIONS

SPONSOR(S): REPRESENTATIVE(S) T.WILSON

03/10/11	(H)	READ THE FIRST TIME - REFERRALS
03/10/11	(H)	RES
03/18/11	(H)	RES AT 1:00 PM BARNES 124
03/18/11	(H)	Heard & Held
03/18/11	(H)	MINUTE(RES)
03/28/11	(H)	RES AT 1:00 PM BARNES 124
03/28/11	(H)	Moved CSHB 185(RES) Out of Committee
03/28/11	(H)	MINUTE(RES)
03/29/11	(H)	RES RPT CS(RES) 7DP 1NR
03/29/11	(H)	DP: FOSTER, MUNOZ, P.WILSON, HERRON, DICK, FEIGE, SEATON
03/29/11	(H)	NR: GARDNER
04/01/11	(H)	TRANSMITTED TO (S)
04/01/11	(H)	VERSION: CSHB 185(RES)
04/04/11	(S)	READ THE FIRST TIME - REFERRALS
04/04/11	(S)	RES
04/13/11	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: HJR 21

SHORT TITLE: OPPOSING FEDERAL WILD LAND DESIGNATION

SPONSOR(S): REPRESENTATIVE(S) FEIGE

03/10/11	(H)	READ THE FIRST TIME - REFERRALS
03/10/11	(H)	RES
03/21/11	(H)	RES AT 1:00 PM BARNES 124
03/21/11	(H)	Moved Out of Committee
03/21/11	(H)	MINUTE(RES)
03/23/11	(H)	RES RPT 7DP
03/23/11	(H)	DP: MUNOZ, GARDNER, DICK, HERRON, P.WILSON, SEATON, FEIGE
04/01/11	(H)	TRANSMITTED TO (S)
04/01/11	(H)	VERSION: HJR 21
04/04/11	(S)	READ THE FIRST TIME - REFERRALS
04/04/11	(S)	RES
04/13/11	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: HJR 23

SHORT TITLE: HYDROELECTRIC POWER; RENEWABLE ENERGY

SPONSOR(s): ENERGY

03/16/11 (H) READ THE FIRST TIME - REFERRALS
03/16/11 (H) ENE
03/22/11 (H) ENE AT 3:00 PM BARNES 124
03/22/11 (H) Heard & Held
03/22/11 (H) MINUTE(ENE)
03/24/11 (H) ENE AT 3:00 PM BARNES 124
03/24/11 (H) Moved Out of Committee
03/24/11 (H) MINUTE(ENE)
03/25/11 (H) ENE RPT 4DP 2NR
03/25/11 (H) DP: LYNN, SADDLER, PRUITT, FOSTER
03/25/11 (H) NR: TUCK, PETERSEN
04/06/11 (H) TRANSMITTED TO (S)
04/06/11 (H) VERSION: HJR 23 AM
04/07/11 (S) READ THE FIRST TIME - REFERRALS
04/07/11 (S) RES
04/13/11 (S) RES AT 3:30 PM BUTROVICH 205

BILL: HCR 9

SHORT TITLE: STATE ENERGY PRODUCTION WORKING GROUP

SPONSOR(s): ENERGY

03/16/11 (H) READ THE FIRST TIME - REFERRALS
03/16/11 (H) ENE, FIN
03/22/11 (H) ENE AT 3:00 PM BARNES 124
03/22/11 (H) Moved Out of Committee
03/22/11 (H) MINUTE(ENE)
03/23/11 (H) ENE RPT 5DP 1AM
03/23/11 (H) DP: TUCK, LYNN, SADDLER, PRUITT, FOSTER
03/23/11 (H) AM: PETERSEN
04/05/11 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/05/11 (H) Moved Out of Committee
04/05/11 (H) MINUTE(FIN)
04/06/11 (H) FIN RPT 8DP 3NR
04/06/11 (H) DP: GUTTENBERG, FAIRCLOUGH, T.WILSON,
JOULE, COSTELLO, EDGMON, STOLTZE,
THOMAS
04/06/11 (H) NR: DOOGAN, GARA, HAWKER
04/08/11 (H) TRANSMITTED TO (S)
04/08/11 (H) VERSION: HCR 9
04/11/11 (S) READ THE FIRST TIME - REFERRALS
04/11/11 (S) RES
04/13/11 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HB 185.

MAJOR GENERAL THOMAS H. KATKUS, Commissioner
Department of Military & Veterans Affairs (DMVA);
Adjutant General for the State of Alaska
Fort Richardson, Alaska

POSITION STATEMENT: Testified in support of HB 185.

MCHUGH PIERRE, Deputy Commissioner
Department of Military & Veterans Affairs (DMVA)
Fort Richardson, Alaska

POSITION STATEMENT: Testified in support of HB 185.

LYNN KENT, Director
Water Division
Department of Environmental Conservation (DEC)
Juneau, AK

POSITION STATEMENT: Testified that HB 185 will ensure that the state program implemented under the Clean Water Act remains consistent with the Act over time.

ALPHEUS BULLARD, Attorney
Legislative Legal Services
Legislative Affairs Agency
Juneau, AK

POSITION STATEMENT: Answered questions related to HB 185.

KEVIN WARD, Counsel
U.S. Army
Northern Regional Environmental Office

POSITION STATEMENT: Testified in support of HB 185

REPRESENTATIVE ERIC FEIGE
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Prime sponsor of HJR 21.

REPRESENTATIVE LANCE PRUITT
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HJR 23 and HCR 9.

HAP SYMMONDS, Chair
Board of Directors
Cordova Electric Cooperative, Inc.
Cordova, AK

POSITION STATEMENT: Testified in support of HJR 23.

DIRK CRAFT, Staff
Representative Lance Pruitt; House Special Committee on Energy
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Introduced HCR 9 on behalf of the sponsor.

ACTION NARRATIVE

[3:36:33 PM](#)

CO-CHAIR JOE PASKVAN called the Senate Resources Standing Committee meeting to order at 3:36 p.m. Present at the call to order were Senators French, Stedman, Stevens, Wielechowski, McGuire, and Paskvan.

HB 185-EXEMPT DISCHARGES FROM USE OF MUNITIONS

[3:38:10 PM](#)

CO-CHAIR PASKVAN announced HB 185 to be up for consideration.
[CSHB 185(RES) 27-LS0506\X was before the committee.]

REPRESENTATIVE TAMMIE WILSON, sponsor of HB 185, highlighted the important technical changes that House Resources committee substitute made to the original bill. On page 2, lines 19-20, the phrase "or service" was added to clarify that the U.S. Coast Guard is to be included in the provision. Also, the Federal Water Pollution Control Act was referenced differently, but the content was unchanged.

REPRESENTATIVE T. WILSON explained that in 2008, the State of Alaska sought Environmental Protection Agency (EPA) approval of its Clean Water Act program. The exclusion for active military ranges under Title 46 was amended so as to exclude the firing or other use of munitions in training activities conducted on active ranges, including those operated by the Department of Defense or military agencies unless it results in a discharge into U.S. waters. She pointed out that HB 185 was vetted by the EPA, the Alaska Department of Environmental Conservation (DEC), the Department of Defense, and the Alaska Department of Military & Veterans Affairs (DMVA). AS 46.03.100(e)(7) clarifies that military exercises on ranges are not restricted other than instances where the Federal Water Pollution Control Act ("Clean

Water Act") would apply. This, she stated, reduces potential litigation in trying to interpret waters within the U.S.

[3:41:16 PM](#)

SENATOR FRENCH asked if the list in AS 46.03.100(e)(1)-(7) describes instances for which a state water discharge permit is not needed.

REPRESENTATIVE T. WILSON said that is correct.

SENATOR FRENCH asked if getting a state permit for firing munitions only became an issue once the state assumed primacy for water permits.

REPRESENTATIVE T. WILSON said that is correct.

CO-CHAIR PASKVAN clarified that version X was before the committee.

MAJOR GENERAL THOMAS H. KATKUS, Commissioner, Department of Military & Veterans Affairs (DMVA) and Adjutant General for the State of Alaska, stated that HB 185 is another step to show support for the presence of the military in Alaska. The bill attempts to clarify and offset potential challenges and double permitting related to the development of ranges in Alaska. It is not an effort to reduce constraints or lessen standards that would in any way adversely affect the Alaska environment. HB 185 would not in any way reduce Alaska's primacy in how it determines quality.

MCHUGH PIERRE, Deputy Commissioner, Department of Military & Veterans Affairs (DMVA) added that HB 185 is part of the overall effort and intent to enhance the open working relationship with the military and to keep the current military industrial complex here in Alaska. He offered his understanding that the 2008 legislation changed that intent and potentially added to bureaucracy associated with growing every sector of the business world.

CO-CHAIR PASKVAN thanked Commissioner Katkus for meeting earlier to discuss the issue of state primacy. He noted that according to the House Journal, the intent of the 2008 amendment was "an essential component of the state's effort to receive primacy from the Environmental Protection Agency." He said he wanted to make sure that HB 185 didn't have unintended consequences that would lessen the state's ability to regulate as necessary.

[3:46:22 PM](#)

SENATOR WIELECHOWSKI observed that the debate in 2008 was that the state really wanted primacy and this legislation appears to back away from that and say, in this case, the state really didn't want primacy. He asked Commissioner Katkus to talk about levels of munitions and types of chemicals that would be used in the ordnances.

COMMISSIONER KATKUS replied he couldn't talk to the types of chemical compounds or the components, but the rounds would be the current technology employed on the battlefield. This includes everything from small arms munitions to artillery rounds for aerial gunnery ranges to bombing ranges.

SENATOR WIELECHOWSKI noted that over the years there have been situations at Fort Richardson and Eagle River Flats in particular where thousands of waterfowl died, and the probable cause was chemicals from explosive ordnances. He said he therefore wanted to make sure that this legislation in no way lowers standards and increases the ability to put dangerous substances into the water or air.

COMMISSIONER KATKUS replied the military has become a better steward of the environment every year and is now almost a renowned gold standard for environmental protection. He offered his understanding that the white phosphorus issue on the Eagle River Flats was a long-term problem that was not recognized until waterfowl numbers began to drop. But once the problem was identified, the military was quick to address and fix the problem. He reiterated that HB 185 is not an effort to reduce [water or air quality] standards. It's in everyone's best interest to maintain and continue to meet those high standards. He suggested that the DEC representative could specifically address the white phosphorus issue on the impact area for Fort Richardson.

[3:49:15 PM](#)

LYNN KENT, Director, Water Division, Department of Environmental Conservation (DEC), said she couldn't speak to the remediation efforts at Eagle River Flats, but she could say that the bill does not represent DEC backing off on primacy for its Clean Water Act permitting program. What the bill does is ensure that the state program implemented under the Clean Water Act remains consistent with the Act over time.

SENATOR WIELECHOWSKI asked if Alaska law was similar to the federal Clean Water Act and if she could describe any differences.

MS. KENT explained that in order for a state to have primacy to implement a permitting program under the federal Clean Water Act, the state program has to be as stringent as the federal program. Thus, the Alaska program virtually mirrors the federal Clean Water Act program, she said.

SENATOR WIELECHOWSKI noted that when the debate on primacy took place several years ago, one big concern was that the federal government wasn't hearing cases quick enough. He asked if DEC continued to have that concern.

MS. KENT replied there certainly has been delay in EPA review and approval of water quality standards upon which DEC bases permits, but that problem is nationwide and not specific to Alaska.

SENATOR FRENCH asked who will be issuing permits to the U.S. military for firing ranges under the bill.

MS. KENT replied the permitting authority has been delegated to DEC if the use of the firing range requires a permit under the Clean Water Act.

SENATOR FRENCH asked if the federal Clean Water Act will require a permit for the ranges that are under consideration here. He understands the range outside of Fairbanks is the primary consideration.

MS. KENT explained that DEC is taking on the permitting authority in phases and taking on munitions permitting is scheduled for October 2011. She wasn't familiar with the range he referenced, but DEC will be responsible for issuing a permit for any facility that requires one under the Clean Water Act.

CO-CHAIR PASKVAN asked if DEC will be enforcing federal law, which set the minimum standards.

MS. KENT answered yes.

CO-CHAIR PASKVAN asked what process the state will follow if this law passes and the state's interests weren't parallel with the federal minimum standards.

MS. KENT replied this law, as proposed, will not interfere with DEC meeting the minimum requirements under the Clean Water Act. The bill will make sure that the state is consistent with the Clean Water Act.

CO-CHAIR PASKVAN asked how DEC would engage in the process under the proposed law if the State of Alaska were to advance standards that were higher than the federal minimum.

[3:54:58 PM](#)

MS. KENT said the Clean Water Act requires state programs to be at least as stringent as the federal program and the provision under consideration in HB 185 is neither more nor less stringent than the Clean Water Act requires.

CO-CHAIR PASKVAN asked if the State of Alaska can determine that its interests are such that greater protection would be warranted.

MS. KENT replied the state can have a more stringent program than is required by the federal Clean Water Act, but the bill doesn't propose that at present.

CO-CHAIR PASKVAN asked if the state could impose more stringent requirements than the federal requirements if this bill were to pass.

MS. KENT replied HB 185 would not prevent the Legislature from imposing more stringent requirements in the future.

CO-CHAIR PASKVAN asked if DEC could issue a permit if it wasn't allowed under the federal government system.

MS. KENT answered no and added that the state already regulates discharges that are not covered by the Clean Water Act. For example, DEC has a program that regulates discharges to the land surface and to ground water, neither of which is required by the Clean Water Act.

CO-CHAIR PASKVAN asked if she was comfortable that the state would remain primary with respect to the standards that will be applied in the state.

MS. KENT answered yes.

SENATOR WIELECHOWSKI expressed confusion; his understanding of the reason for the bill was so the military could bypass DEC and

instead go directly to the federal government for these permits. He asked if this was incorrect.

MS. KENT replied she could understand the confusion if the bill is considered by itself, but other statutes give DEC the authority (and it has received approval) to implement the federal program. HB 185 does not change the fact that the military will have to both seek the application and get the permit from DEC.

SENATOR WIELECHOWSKI questioned the need for the bill.

MS. KENT responded DEC's perspective is that the proposed language change makes the state's program consistent with the Clean Water Act right now and as it may change in the future.

SENATOR FRENCH asked if she had learned anything that might cause her to change her statement since she wrote to Representative Paul Seaton and Representative Eric Feige on March 21, 2011 stating:

CSHB 185 would only require the state to issue a permit if it is required to do so under the CWA. It is a subtle, but important change that will retain the state policy to exempt ranges from permitting requirements for munitions discharges to the land and for discharges to waters that are not required to have a permit under the CWA.

MS. KENT replied that's still accurate; the language in subsection (e) has exemptions for a number of operations that do not need a state permit. In 2008 DEC asked for an amendment to AS 46.03.100 to make the statute consistent with the Clean Water Act, which requires a permit for certain munitions discharges. It was necessary for DEC to have the authority to issue those permits under the terms of the Clean Water Act in order to have primacy for the state program. It's been long-standing state policy that munitions use and a few other things are exempt from state permitting requirements and it was necessary to rectify that in order to receive primacy to implement the permitting program. HB 185 basically clarifies the language.

[4:01:22 PM](#)

SENATOR FRENCH said he too labored under a misconception, but he now understands that the purpose of the bill is to retain primacy and maintain the long-standing exemption for munitions ranges. He added that it is his belief that if the bill were to

pass the military would not need a permit in order to conduct training exercises in many areas of Alaska ranges.

MS. KENT reiterated that DEC has the permitting authority even though the Clean Water Act is referenced.

CO-CHAIR PASKVAN asked what DEC's original concerns were with the law that was passed in 2008.

MS. KENT replied the changes were proposed by the Department of Defense to clarify that when a permit is required under the federal Clean Water Act, one will also be required under the state permitting program.

4:03:25 PM

ALPHEUS BULLARD, Attorney, Legislative Legal Services, Legislative Affairs Agency, speaking via teleconference, introduced himself and said he was available to answer questions.

CO-CHAIR PASKVAN asked if he followed the discussion on state primacy and the state's ability to issue a standard that is different than the federal minimum standard.

MR. BULLARD said yes.

CO-CHAIR PASKVAN asked him to offer his thoughts.

MR. BULLARD said he didn't have thoughts on the primacy issue, but was available to answer specific questions.

SENATOR FRENCH reviewed the proposed new language and asked if he had reviewed 33 U.S.C. 1251-1376 of the Clean Water Act.

MR. BULLARD answered yes.

SENATOR FRENCH asked if anything in those federal statutes will require issuance of a permit before firing or use of munitions in training activities conducted on active ranges.

MR. BULLARD said the definition of "waters of the U.S." found in regulation in 18 AAC 83.990(77) is the same as the definition under the Clean Water Act. He offered his belief that changing the language to read, "the discharge into waters regulated under 33 U.S.C." would clarify that the waters and the discharge into the waters is the concern, not the firing or other use of

munitions. As the law stands now, his understanding is that what would be regulated would be the same.

SENATOR FRENCH asked if he means without the passage of HB 185.

MR. BULLARD explained that the definition of the term "waters of the U.S." is the same right now under both the Clean Water Act and state regulations. However, it's very possible that the two definitions will differ in the future.

[4:07:06 PM](#)

SENATOR WIELECHOWSKI asked, when he refers to the Clean Water Act, if he is referring to the federal Water Pollution Control Act.

MR. BULLARD answered yes.

SENATOR WIELECHOWSKI asked Mr. Bullard to explain what the bill does.

MR. BULLARD replied the effects and purpose of the legislation were not clear to him.

[4:08:31 PM](#)

KEVIN WARD, Counsel, U.S. Army, Northern Regional Environmental Office, stated support for HB 185 and advised that the legislation was a collaborative effort between DEC, DMVA, the Alaska Military Force Advocacy and Structure Team (AMFAST), and the Office of the Attorney General. He said the bottom line is that the proposed amendment provides that the Alaska Clean Water Act would apply to military ranges only if otherwise required by the federal Clean Water Act. The military believes this is necessary. He explained that when DEC sought U.S. EPA approval of its Clean Water Act program, EPA said the blanket exemption needed to be changed and in 2008 the Legislature changed the statute to its current form.

As previously noted, he said, the current statute provides an exemption for military and other ranges unless there is a discharge into waters of the U.S. The difficulty for the military is that the phrase "waters of the United States" is the subject of numerous ongoing debates and discussions as to its meaning and scope, including a recent U.S. Supreme Court decision. In addition, there may be an inconsistency between the state Act and the federal Act if the federal law changes and the state law continues to use the phrase "discharge into waters of

the United States" for purposes of determining whether a permit is required for a military range.

MR. WARD stated that the question of whether or not a permit would be required of a military or other range is not determined by HB 185. What the bill does is provide comfort to the Department of Defense that the issue will be decided pursuant to and in accordance with the federal Clean Water Act. This will give the military consistency in Alaska and other states as to whether or not it needs to have permits for its ranges. He emphasized that the bill does not affect primacy or EPA approval of the state program, it does not decide whether a permit is or is not required and if a permit is required it will not affect what standards Alaska could impose pursuant to its Clean Water Act program. The only thing the bill does is to say that whether a permit is or is not required will be determined in accordance with the federal Clean Water Act.

CO-CHAIR PASKVAN asked if the State of Alaska could require a permit for a higher standard than under the current federal process.

MR. WARD answered the state could ask the military to ask for such a permit under existing law or pursuant to HB 185. Whether or not that permit would be required under current statute would be whether waters were discharged into U.S. waters.

[4:14:22 PM](#)

CO-CHAIR PASKVAN asked if Alaska's laws will be primary if there is inconsistency between the state and federal acts.

MR. WARD replied, under HB 185, the question of whether or not a permit is required would be determined in accordance with an interpretation of the federal act.

CO-CHAIR PASKVAN asked what the interpretation of the federal law would be if there was an inconsistency and the state wanted to require a permit.

MR. WARD replied that issue has been discussed and remains unresolved with regard to military ranges.

[4:16:03 PM](#)

CO-CHAIR PASKVAN asked if the ultimate conclusion could be that the state's voice in that process could potentially be eliminated.

MR. WARD said no; Alaska's voice cannot be eliminated because it retains primacy and would still be the permitting authority. He offered the opinion that Alaska could assert whatever position it deemed appropriate under the circumstances and seek to require a permit.

CO-CHAIR PASKVAN asked if he was using the word "primacy" in the sense of the issuing agency being a state agency as opposed to a federal agency.

MR. WARD replied he was using the term in the manner the Chair summarized.

SENATOR WIELECHOWSKI asked how current Alaska law and the federal Clean Water Act differ with respect to "discharge into waters of the United States."

MR. WARD explained that the phrase "waters of the United States" is used in the federal Clean Water Act and the interpretations of that phrase are not always consistent. The U.S. Supreme Court examined the issue and came up with three different opinions. The debate often involves whether or not a particular water body is a water of the United States. The fact that there's an ongoing debate as to what the phrase means is one reason the military supports removing the phrase from the statute and replacing it with the "Federal Water Pollution Control Act."

CO-CHAIR PASKVAN announced he would hold HB 185 in committee.

HJR 21-OPPOSING FEDERAL WILD LAND DESIGNATION

[4:20:09 PM](#)

CO-CHAIR PASKVAN announced the consideration of HJR 21

[4:20:22 PM](#)

REPRESENTATIVE ERIC FEIGE, prime sponsor of HJR 21, stated that this resolution opposes the creation of de facto wilderness in the state without congressional oversight. On December 22, 2010, U.S. Secretary of the Interior Ken Salazar issued Secretarial Order (S.O.) Number 3310 directing the Bureau of Land Management (BLM) to inventory and designate land with wilderness characteristics as "wild lands," a new classification for which there is no legal definition. He offered his belief that S.O. No. 3310 may go so far as to seek wilderness status in an area that is critical to the economies of Alaska and the nation, the National Petroleum Reserve-Alaska (NPRA).

REPRESENTATIVE FEIGE asserted that S.O. No. 3310 is in conflict with and superseded by both the Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA) because it is only Congress that has the authority to designate wilderness areas. Furthermore, S.O. No. 3310 directly conflicts with the "no more" clauses in ANILCA and the Federal Land Policy and Management Act.

REPRESENTATIVE FEIGE highlighted that several states have gone on record opposing S.O. No. 3310 including Governor Parnell who sent Secretary Salazar a letter outlining Alaska's concerns. HJR 21 urges the Secretary of the Interior to withdraw S.O. 3310 and to direct the BLM to administer federal land in Alaska in accordance with existing statutes and agency guidelines. If S.O. No. 3310 is not withdrawn, HJR 21 asks Congress to prohibit the use of appropriated funds by the Department of Interior to implement, administer, or enforce S.O. No. 3310.

SENATOR FRENCH asked for help understanding the difference between "wild lands" and "wilderness."

REPRESENTATIVE FEIGE replied "wild lands" doesn't have a definition and "wilderness" has a legal definition.

SENATOR FRENCH asked what S.O. No. 3310 says about wild lands.

REPRESENTATIVE FEIGE answered it establishes wild lands as a new designation.

[4:24:52 PM](#)

SENATOR FRENCH directed attention to the "whereas" clause on page 2, lines [8-10], that states "Secretary Salazar failed to recognize that the policy expressed in the order will negatively affect the state's cultural resources and economic prosperity;" and asked if S.O. No. 3310 didn't make specific reference to cultural resources.

REPRESENTATIVE FEIGE replied he wasn't sure.

CO-CHAIR PASKVAN asked Representative Feige if he was concerned that the wild land designation may impact NPRA or the Arctic National Wildlife Refuge (ANWR).

REPRESENTATIVE FEIGE replied the concern centers on the fact that no one knows exactly what that designation will mean. Because of the uncertainty, the fear is that it will lead to

more wilderness designation and accompanying development restrictions within the state.

CO-CHAIR PASKVAN closed public testimony and announced he would hold HJR 21 in committee.

HJR 23-HYDROELECTRIC POWER; RENEWABLE ENERGY

[4:27:48 PM](#)

CO-CHAIR PASKVAN announced the consideration of HJR 23. [HJR 23 am was before the committee].

[4:27:54 PM](#)

REPRESENTATIVE LANCE PRUITT, sponsor of HJR 23, informed the committee that HJR 23 urges Congress to classify hydroelectric (hydro) power as a renewable [and alternative energy source]. Hydro power is the largest source of renewable energy in both Alaska and the U.S., and has long been a vital aspect of the energy solution. He advised that the U.S. has used targeted tax incentives to spur investment and innovation in the energy sector, both for fossil and renewable resources. In fact, investment and production tax credits for renewable energy have been highly successful.

The concern is that hydro power receives only one-half the tax credits available to other renewable energy sources. Equalizing the tax credits will give Alaskans the opportunity to replace a large portion of the non-renewable power generation in the state. For the most part, this tends to be diesel.

REPRESENTATIVE PRUITT told the committee that Alaska has about 50 hydropower projects, ranging in size from 126 megawatts to 7 kilowatts. They provide approximately 24 percent of Alaska's electric power. He pointed out that 32 projects in Southeast are either under construction or on the drawing board and more than 200 locations statewide have been identified as potential hydropower sites.

He summarized that HJR 23 asks Congress to incentivize the further production of hydroelectric power through both federal programs and tax incentives. He noted that the resolution dovetails with Senator Lisa Murkowski's recently introduced federal legislation on the topic.

[4:31:48 PM](#)

SENATOR WIELECHOWSKI asked if this is the same resolution that Representative Thomas introduced a couple of years ago.

REPRESENTATIVE PRUITT replied it is modeled on previous legislation.

SENATOR STEDMAN asked if anyone paid attention to the previous resolution.

REPRESENTATIVE PRUITT said Congress didn't take action, but then Senator Lisa Murkowski hadn't introduced legislation either. This is an effort to show support for her and the legislation she recently introduced.

[4:33:17 PM](#)

HAP SYMMONDS, Chair, Board of Directors, Cordova Electric Cooperative, Inc., stated support for HJR 23. Responding to Senator Stedman's question, he explained that HJR 23 was amended on the House floor to ask Congress to classify Alaska hydroelectric power as renewable, whereas the resolution that Representative Thomas introduced asked for all hydroelectric power to be classified as renewable. HJR 23 specifically targets Alaska hydropower. He further explained that Senator Lisa Murkowski had three bills before the Senate right now; SB 629 gives grants for environmental analysis and mitigation, SB 630 makes grant money available for building new hydro projects, and SB 631 ensures that generation of hydroelectric power is treated as a renewable resource for purposes of any federal program or standard. He urged the committee to send HJR 23 to Congress without delay.

SENATOR MCGUIRE said she's always wondered if resolutions go into the circular file and she recalled that U.S. Senator Lisa Murkowski spoke to that question more than once when they served together in the other body. In light of this, she urged Representative Pruitt to make the resolution as effective as possible, including testifying in person during hearings in Washington D.C.

She referred to page 1, line 15, of the resolution and asked if he had considered inserting the renewable energy goal the state set for itself as matter of policy. Developing the hydroelectric potential in the state is a critical part of attaining that goal. She offered to help develop the language.

REPRESENTATIVE PRUITT said he was open to any suggestions that would decrease the likelihood of the resolution being put in the circular file.

[4:39:08 PM](#)

CO-CHAIR PASKVAN closed public testimony and told Representative Pruitt he looked forward to working on the resolution with him. He announced he would hold HJR 23 in committee.

HCR 9-STATE ENERGY PRODUCTION WORKING GROUP

[4:39:58 PM](#)

CO-CHAIR PASKVAN announced the consideration of HCR 9.

REPRESENTATIVE LANCE PRUITT introduced HCR 9 on behalf of the House Special Committee on Energy saying that the resolution seeks to establish a working group within the Alaska State Legislature to work with other producing states on matters of energy production.

DIRK CRAFT, Staff to Representative Pruitt and the House Special Committee on Energy, explained that the goal of the working group is to develop a proposal for an inter-legislature agreement to facilitate collaboration in efforts to influence federal energy-related law and policy and to discourage delay or cancelation of economically viable energy projects in Alaska and other states. The intent is to discuss issues of mutual concern, share information, and identify areas for possible collaboration.

He directed attention to page 2, line 10, and noted the resolution states that the working group shall consist of four members, two of which will be appointed by the President of the Senate and two appointed by the Speaker of the House. On page 2, line 14, the resolution states that the working group can meet during and between regular legislative sessions and members may travel to meetings, subject to approval by the presiding officer of each body. On page 2, line 20, the resolution states that the working group will terminate on January [18], 2013. On page 2, line 22, the resolution directs that the working group shall issue a report by January 17, 2012, and allow for additional reports as the group sees fit.

[4:42:20 PM](#)

MR. CRAFT explained that this working group will be a little different than others but the resolution is modeled after legislation in other states. He said the majority leader from the Wyoming State Legislature brought it to the sponsor's attention that these issues were discussed during the Western States Energy and Environment Symposium that was held in Wyoming in 2009. Feedback from that symposium indicated that consumer

states dominated that discussion and had different missions for resource development and extraction than states that align with Alaska. Hopefully, he said, this working group will be more specific for developing one voice to lead the discussion on a national scale.

SENATOR STEDMAN observed that this appears to potentially duplicate a lot of Energy Council efforts. He explained that Energy Council is a group of energy-producing states, provinces, Venezuela, and potentially Mexico; he didn't recall that Wyoming was a member. The group meets four times a year on energy issues and to help with the federal energy policy. The upcoming meeting will be in Anchorage and one meeting is held every year in Washington D.C. during which time the Alaska State Legislature virtually pauses. He reiterated his belief that this will be a duplication of effort.

[4:45:09 PM](#)

SENATOR MCGUIRE suggested the sponsor take time to respond to Senator Stedman to explain the need for the proposed working group and how it differs from both the Energy Council and the Pacific NorthWest Economic Region (PNWER). She said that when she participated in the Wyoming project, her understanding was that instead of the Venezuela model, the focus was on states and how individual states could be a part of bringing energy independence to the U.S.

REPRESENTATIVE PRUITT said this group provides a unique opportunity to focus solely on energy production within U.S. states and what is being done at the federal level. By contrast, the Energy Council consists of producing states within the U.S. as well as provinces in Canada, the country of Venezuela, and potentially Mexico. The proposed working group will limit the discussion so that states can focus on specific issues with the federal government. Wyoming and Utah have passed similar resolutions and several other states are in the process of proposing legislation.

[4:48:39 PM](#)

SENATOR STEDMAN clarified that Mexico isn't currently an Energy Council member and Venezuela seldom attends the meetings. The discussion from energy-producing states and provinces at Energy Council relates to state and provincial issues and cross-border relationships. He observed that some of the states that are interested in the proposed working group are energy-consuming states rather than energy-producing states, and stated his belief that Alaska is better off working with producing states.

SENATOR STEDMAN pointed out that a lot of time is spent on federal issues during Energy Council meetings. Federal agencies are brought in at virtually every meeting and of course provincial agencies are brought in when the meetings are in Canada. This is appropriate because the oil and gas relationship between the two countries runs very deep. Canada is probably the U.S.'s largest trading partner in both gas and oil so it's not possible to have a U.S. energy policy without working with Canada and vice versa.

4:50:54 PM

CO-CHAIR PASKVAN asked what purpose the 2013 termination date serves.

REPRESENTATIVE PRUITT replied the idea is to lay the foundation for initial discussions with other states. The sunset limits the state's involvement should the initial discussion prove to be unsatisfactory. If the discussions are satisfactory the group can decide if it wants to participate on a long-term basis.

SENATOR FRENCH noted that the enabling legislation from Utah ensured that the group of four would have political diversity by directing that no more than three of the four members shall be from the same political party. He asked the sponsor if he would entertain the idea of inserting a similar provision.

REPRESENTATIVE PRUITT replied he decided to leave the appointments to the discretion of the leaders of the House and Senate because he didn't want any hint that he was calling their integrity into question.

4:53:39 PM

SENATOR FRENCH referred to the "whereas" clause on page 1, lines 13-16, and asked for an example in the energy arena of federal law and federal law enforcement overreaching the federal government's constitutional authority.

MR. CRAFT cited the Colville Bridge in Prudhoe Bay as a potential example.

SENATOR FRENCH asked if he was suggesting that the federal government doesn't have the constitutional authority to make a decision about a bridge.

REPRESENTATIVE PRUITT responded the "wild lands" designation that HJR 23 addresses is an example of the federal government

pushing the limit. That executive branch decision disregards the legislative branch and is arguably unconstitutional.

SENATOR FRENCH pointed out that neither Wyoming nor Utah felt the urge to claim that the federal government was acting unconstitutionally when they passed their enabling legislation.

[4:55:53 PM](#)

SENATOR STEVENS highlighted that Alaska spends a lot of money to belong to the National Conference of State Legislatures (NCSL), the Council of State Governments (CSG) and the Energy Council when many states are cutting back and trying to decide which organizations are most valuable. He asked if the proposed working group would duplicate those efforts and potentially need staff and perhaps see the need to impose membership dues.

REPRESENTATIVE PRUITT answered that is not his intent. There will potentially be costs and some travel, but probably not for staff. The costs wouldn't be anywhere near as much as for some of the previously mentioned memberships.

[4:57:48 PM](#)

SENATOR WIELECHOWSKI questioned how the group would travel and pay for costs in light of the fact that the House Finance Committee zeroed out the initial \$20,000 fiscal note.

REPRESENTATIVE PRUITT said the House Finance Committee zeroed the fiscal note after it determined that the costs and travel fell within the cost of doing business day-to-day in the Legislature.

CO-CHAIR PASKVAN announced he would hold HCR 9 in committee.

[4:59:27 PM](#)

There being no further business to come before the committee, Co-Chair Paskvan adjourned the Senate Resources Standing Committee at 4:59 pm.