

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 30, 2012

3:33 p.m.

MEMBERS PRESENT

Senator Joe Paskvan, Co-Chair
Senator Thomas Wagoner, Co-Chair
Senator Bill Wielechowski, Vice Chair
Senator Hollis French
Senator Gary Stevens

MEMBERS ABSENT

Senator Bert Stedman
Senator Lesil McGuire

OTHER LEGISLATORS PRESENT

Senator Cathy Giessel
Senator Joe Thomas

COMMITTEE CALENDAR

SENATE BILL NO. 145

"An Act providing for a credit against the oil and gas production tax for costs incurred in drilling certain oil or natural gas exploration wells in the Nenana Basin."

- HEARD & HELD

SENATE BILL NO. 215

"An Act requiring the Alaska Gasline Development Corporation to construct a natural gas pipeline to deliver Cook Inlet natural gas to Fairbanks and other communities between Cook Inlet and Fairbanks that do not have access to a natural gas pipeline."

- HEARD & HELD

SENATE BILL NO. 219

"An Act relating to the Alaska Land Act, including certain lease, sale, and other disposal of state land and materials; relating to production royalties from miners; relating to rights to use state water; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 145

SHORT TITLE: OIL/GAS PRODUCTION TAX CREDITS: NENANA

SPONSOR(s): SENATOR(s) WAGONER, COGHILL

01/17/12 (S) PREFILE RELEASED 1/6/12
01/17/12 (S) READ THE FIRST TIME - REFERRALS
01/17/12 (S) RES, FIN
03/28/12 (S) RES AT 3:30 PM BUTROVICH 205
03/28/12 (S) Heard & Held
03/28/12 (S) MINUTE(RES)
03/30/12 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 215

SHORT TITLE: GASLINE DEV. CORP: IN-STATE GAS PIPELINE

SPONSOR(s): SENATOR(s) THOMAS

02/21/12 (S) READ THE FIRST TIME - REFERRALS
02/21/12 (S) RES, FIN
03/19/12 (S) RES AT 3:30 PM BUTROVICH 205
03/19/12 (S) Heard & Held
03/19/12 (S) MINUTE(RES)
03/23/12 (S) RES AT 3:30 PM BUTROVICH 205
03/23/12 (S) Heard & Held
03/23/12 (S) MINUTE(RES)
03/26/12 (S) RES AT 3:30 PM BUTROVICH 205
03/26/12 (S) Heard & Held
03/26/12 (S) MINUTE(RES)
03/28/12 (S) RES AT 3:30 PM BUTROVICH 205
03/28/12 (S) Scheduled But Not Heard
03/30/12 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 219

SHORT TITLE: DISPOSALS OF STATE RESOURCES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/29/12 (S) READ THE FIRST TIME - REFERRALS
02/29/12 (S) RES, FIN
03/28/12 (S) RES AT 3:30 PM BUTROVICH 205
03/28/12 (S) Heard & Held
03/28/12 (S) MINUTE(RES)
03/30/12 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

JOHN LARSEN, Audit Master
Department of Revenue (DOR)
Anchorage, AK

POSITION STATEMENT: Answered tax questions relating to SB 145;
had no position.

CARL HANNEMAN
International Tower Hill Mines, Ltd.
Fairbanks, AK

POSITION STATEMENT: Supported SB 215.

MICHAEL LAMB, CFO
Fairbanks Northstar Borough
Fairbanks, AK

POSITION STATEMENT: Supported SB 215.

GENE THERRIAULT, Vice President
Resource Development and External Affairs
Golden Valley Electric Association (GVEA)
Fairbanks, AK

POSITION STATEMENT: Supported SB 215.

FRED PARADY, Executive Director
Alaska Miners Association
Barrow, AK

POSITION STATEMENT: Supported SB 215.

JERRY CLEWORTH, Mayor
City of Fairbanks
Fairbanks, AK

POSITION STATEMENT: Supported SB 215.

BILL WALKER, Attorney
Walker & Levesque
Representing the Alaska Gasline Port Authority (AGPA)
Anchorage, AK

POSITION STATEMENT: Supported SB 215.

SENATOR JOE THOMAS
State Capitol Bldg.
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 215.

WYN MENEFEE, Chief of Operations
Division of Mining, Land and Water
Department of Natural Resources (DNR)

Anchorage, AK

POSITION STATEMENT: Explained water use and temporary water use authorizations as applied in the DNR relative to SB 219.

CAMERON LEONARD, Assistant Attorney General

Department of Law (DOL)

Anchorage, AK

POSITION STATEMENT: Answered legal questions about water use temporary water use authorizations and water rights on SB 219.

JOE BALASH, Deputy Commissioner

Department of Natural Resources (DNR)

Anchorage, AK

POSITION STATEMENT: Commented on SB 219.

ACTION NARRATIVE

[3:33:49 PM](#)

CO-CHAIR THOMAS WAGONER called the Senate Resources Standing Committee meeting to order at 3:33 p.m. Present at the call to order were Senators French, Wielechowski, Stevens, Co-Chair Wagoner and Co-Chair Paskvan.

SB 145-OIL/GAS PRODUCTION TAX CREDITS: NENANA

[3:34:45 PM](#)

CO-CHAIR WAGONER announced consideration of SB 145 and said that he had objected to adoption of Version D for discussion purposes. Today the committee would ask questions of the Department of Law, the Department of Revenue and the Division of Oil and Gas.

He asked if anyone wanted to testify on SB 145 and finding none, closed the public hearing.

SENATOR WIELECHOWSKI asked if a combination of tax deductions and credits add up to be more than 100 percent if the state-wide progressivity rate were to be reduced.

[3:37:12 PM](#)

JOHN LARSEN, Audit Master, Department of Revenue (DOR), Anchorage, AK, said to properly answer that question, two different scenarios would have to be considered. In the case of costs incurred from a segment that was currently in production, a lease expenditure deduction under a net tax system would be a tax benefit and a combination of lease expenditure deductions, progressivity rate and tax credits could possibly exceed the

amount of the investment. However, it wouldn't be possible for costs incurred from a segment that was not currently producing, because there would be no revenues in the segment with which to offset the lease expenditures. Under the proposed language in the bill, there are no credits available for carry forward loss credits or any other credit under [AS 43.55.025].

CO-CHAIR WAGONER asked if there was any production in the geographic area that SB 145 relates to.

MR. LARSEN replied no and they commonly refer to that area - south of 68 degrees north latitude - as "Middle Earth."

SENATOR WIELECHOWSKI asked if he meant that the state couldn't exceed 100 percent for companies that aren't producing right now as well as existing companies that are producing.

MR. LARSEN answered that a company in current production could not exceed the 100 percent, because the lease expenditures for a certain segment are ring-fenced while a tax credit can be exported and applied against any tax liability in the state.

SENATOR WIELECHOWSKI said the lease expenditures are ring fenced, but what about the reduction of the tax rate due to the reduced per barrel profits.

MR. LARSEN replied the answer was still no. The lease expenditures under the bill basically end right there and won't affect anyone's progressivity. Typically, when lease expenditures exceed the gross value at the point of production, the excess is allowed to be a carry forward annual loss credit under AS 43.55.023(b), but the language of the bill specifically precludes any credits under AS 43.55.023 or any other section of AS 43.55.025.

[3:41:42 PM](#)

SENATOR WIELECHOWSKI asked if this bill would apply to any oil and gas producing fields north of 68 degrees latitude.

MR. LARSEN answered that was his understanding.

CO-CHAIR WAGONER recognized that Senator Cathy Giessel was in attendance.

SENATOR WIELECHOWSKI asked him to talk about the public information the state would get under this bill in exchange for providing credits.

MR. LARSEN answered that the information that would be made public through this bill would be the seismic and well data; the provisions in the bill expedite its release above what is ordinarily prescribed in other statutes.

[3:43:10 PM](#)

SENATOR WIELECHOWSKI asked where it says "ring-fenced."

MR. LARSEN responded that was just how the tax basically worked.

SENATOR WIELECHOWSKI asked if a company could write off lease expenditures and capital credits from production elsewhere, resulting in a negative tax.

MR. LARSEN replied no; lease expenditures from one segment cannot be exported to another segment - the idea of the ring-fencing. A credit can be used anywhere in the state a tax liability is due to the state. So a producer could apply tax credits from other areas of the state to the tax liability of production in the Middle Earth area if it would have any. The reciprocal is also true that tax credits from the Middle Earth area could be exported and applied against a tax liability from other segments in the state.

CO-CHAIR PASKVAN asked him why a company would pick the system under this section as compared to the current structure of credits.

[3:46:16 PM](#)

MR. LARSEN answered that the benefit in SB 145 would allow a credit under AS 43.55.025 and that would allow a credit of \$22.5 million or 80 percent of the total exploration expenditures for a well, no more than two of which could be within any one basin area. Under AS 43.55.025, the producers or explorers are eligible for credits up to 40 percent depending on the location of the exploration, which would apply, given that there is no production within the Middle Earth area. But the remaining sections of AS 43.55.025 have caps or limitations on the amount of the expenditures to which credits could be earned against.

SENATOR WIELECHOWSKI asked if the DOR had modeled any scenarios on how this would impact the treasury if there were to be fields of 10/25/100 thousand barrels/day of production.

MR. LARSEN answered no.

SENATOR WIELECHOWSKI asked if he could do that.

MR. LARSEN said he would be happy to do that if he could be a little more definitive about what he wanted modeled.

SENATOR WIELECHOWSKI asked if the DOR had concerns about the state losing money with a large oil find.

MR. LARSEN answered yes; it was his absolute fiduciary duty for the state as a certified public accountant.

[3:50:06 PM](#)

SENATOR WIELECHOWSKI asked if the administration supported this bill.

MR. LARSEN replied no; this is not the administration's bill and they have no position on it. He asked for parameters for the modeling he wanted him to provide saying that he would forward that to the appropriate people and try to get it done for him.

SENATOR WIELECHOWSKI said he would get him something.

CO-CHAIR WAGONER, finding no further questions, closed the public hearing on SB 145 and held it in committee.

[3:52:01 PM](#)

At ease from 3:52 to 3:53 p.m.

CO-CHAIR WAGONER passed the gavel to CO-CHAIR PASKVAN.

SB 215-GASLINE DEV. CORP: IN-STATE GAS PIPELINE

[3:53:34 PM](#)

CO-CHAIR PASKVAN announced consideration of SB 215 and that the committee had invited testimony.

[3:54:51 PM](#)

CARL HANNEMAN, International Tower Hill Mines, Fairbanks, AK, thanked the committee for the opportunity to offer their comments in support of their efforts to bring more cost effective energy to the Interior as soon as possible. He said that Tower Hill Mines is new and is conducting a feasibility study on the potential development of the Livengood Gold project located by paved highway 70 miles north of Fairbanks. With a gold resource of over 20 million ounces, he said this project is ranked in the top tier of undeveloped gold deposits in the world. The project is planned as a large surface mine with a

capital investment in excess of \$1.6 billion, a mine life of 23 years, over 1,000 jobs during construction and approximately 500 long term jobs for generations of Alaskans.

MR. HANNEMAN said they didn't have enough of the facts to be able to choose between specific projects or legislation, but he said they support the work legislators are going to bring real solutions to the high cost of energy in Interior Alaska. Tower Hill had been working with the Fairbanks Chamber of Commerce to develop a unified position that recognizes the need for both short-term and long-term solutions, and resolution of those challenges could make a meaningful difference to a long-term project like the one in Livengood.

He said they believe the community could benefit from a short term project like natural gas trucking that could result in up to \$40 million in annual energy savings and allow the community to begin preparing for a permanent natural gas pipeline project. The Healy Clean Coal project could create similar savings if it could ever come on line; it is now struggling through the permitting process. Mr. Hanneman said the community should aggressively support both of these projects, because they can provide real meaningful relief in the two-to-three year time period.

MR. HANNEMAN said mid-term solutions are significant, too, and the gasline in SB 215 is one of those. They believe that tariffs could be adjusted and incorporated so that the Interior could achieve long-term fair pricing stability that would "open up" the community.

In conclusion, he said they support the gasline proposals with the necessary engineering and environmental work on an expedited basis. The state should also continue to pursue the economic long-term energy solutions such as Susitna/Watana. All together the short-term, mid-term and long-term solutions could make a meaningful difference.

[3:58:37 PM](#)

MICHAEL LAMB, CFO, Fairbanks Northstar Borough, Fairbanks, AK, said he was pleased to hear Mr. Hanneman's comments and that he also supported SB 215. { When the gas pipeline gets built, it will actually allow for gas to flow in both directions, which is a long-term win-win conclusion. The cost of heating fuel is dramatic in the Interior and hundreds of millions of dollars leave the community because of it. This is the only project that

is really doable in the near-term timeframe, and he would support it in any way he could.

MR. LAMB said many discussions had taken place about how the cost of energy impacts the Department of Defense facilities and it has become even more critical in looking at what is happening to the federal budget.

[4:02:21 PM](#)

CO-CHAIR WAGONER asked how the bases get their power now.

MR. LAMB replied that they use coal generation, but a lot more was getting done by diesel. In addition, Fairbanks has issues with federal PM2.5 requirements and clean air. There are a lot of reasons that getting clean energy, including converting existing coal to natural gas, makes a lot of sense.

CO-CHAIR WAGONER asked if the federal government is committed to taking the coal-fired generation of their power generation off line and installing gas generation or buying it from somewhere else in the immediate area.

MR. LAMB replied that he couldn't speak for the federal government, but he understood that four power plants were in the process of being switched in Eielson and it looked like things in general were going in that direction.

[4:05:17 PM](#)

At ease from 4:05 to 4:06 p.m.

[4:06:47 PM](#)

GENE THERRIAULT, Vice President, Resource Development and External Affairs, Golden Valley Electric Association (GVEA), Fairbanks, AK, supported SB 215 and said as a large industrial consumer, they are anxiously watching proposals that can deliver gas to the Interior. He said GVEA provides electric service to 44,000 individual customer accounts in Interior Alaska going from Fairbanks to Fort Greely on the Richardson Highway and Fairbanks to Cantwell on the Parks Highway, an area that is home to approximately 100,000 Alaskans.

MR. THERRIAULT said they are also closely monitoring announcements regarding gas development in the Cook Inlet basin whose preliminary results have the potential to assist with the energy needs if surplus quantities of gas are available at an affordable price and for a long-enough period of time. If these parameters are met, GVEA would be very interested in switching

as much of their oil fired generation as possible to natural gas.

MR. THERRIAULT said to facilitate meeting that goal, GVEA supported state participation in the development of a pipeline system and an associated tariff structure that would assure Interior residents would be able to access the state natural gas resources. To that end, they support the efforts of Senator Joe Thomas on SB 215 and appreciated that the legislation proposes to use a portion of the right-of-way.

To ensure that a pipeline will have the largest possible natural gas market to serve immediately upon completion, GVEA is currently working on a project to transport gas to the region via trailer. Such a project will allow industrial and residential use in the Interior to develop now, which will improve the economics of a future pipeline. While GVEA still believes that a large-volume pipeline may still be constructed to serve an export market under AGIA, it is prudent to undertake pipeline efforts that are focused on serving in-state needs. If the governor's request that North Slope producers align under a new effort to build a large pipeline to tidewater results in moving forward, the infrastructure proposed by SB 215 would be of tremendous value to continue serving in-state needs or to potentially transport Cook Inlet or Nenana Basin gas to the export line. In closing, he said that GVEA believed that pipeline infrastructure supported by SB 215 will be important infrastructure no matter how natural gas ultimately gets developed across the state. As a result, they encourage the passage of SB 215 from the committee today so that the matter may be considered by the Senate Finance Committee.

[4:10:22 PM](#)

CO-CHAIR PASKVAN asked what the potential for gas would mean to GVEA in providing power to the Tower Hill Mine, Pogo or some other major development in the Interior.

MR. TERRIAULT answered because of some work they have already done on trucking, GVEA knew if a gas product were to be delivered to the turbine (a 12 bcf/plant that serves space heat and some industrial needs) in North Pole that the price of gas could be brought down to \$8 to \$10 and that would result in a an overall savings of \$30-40 million to current customers. New generation might have to be brought on to serve a large new project like Tower Hill Mine, but the existing plant was designed specifically to be able to double its capacity. He explained that it is basically a large aircraft engine with a

heat capture unit on the back end that generates steam that in turn generates additional electricity. This backend unit was oversized so that an additional jet engine, basically, could be added to that facility; gas could fire it, too. The potential savings, even though the plant would have to be upsized for a 100 megawatt mine coming on line, but they would hopefully still be able to continue those savings.

CO-CHAIR PASKVAN thanked him and went to the invited testimony saying they would have public hearings on SB 215 on Monday.

4:13:23 PM

FRED PARADY, Executive Director, Alaska Miners Association, Barrow, AK, said SB 215 could bring gas to the Interior market sooner than any other line. He said the association was established in 1939 to represent the mining industry in Alaska and they are composed of more than 1,400 individual prospectors, geologists, engineers, vendors, suction dredge miners, small family mines, junior mining companies and major mining companies. They produce gold, silver, platinum, diamonds, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock and other materials who work throughout the state in each of their legislative districts.

Based on the potential new finds showing up to 19 tcf/gas modeled by the USGS, Mr. Parady said that SB 215 could bring gas to the Interior sooner than any other line. It has the clear advantage of 305 miles versus 737 miles for the ASAP line. Because it's a shorter distance, the construction timeline is shorter, too. It's cheaper to build, has better access to transportation, supplies, infrastructure like railroads and housing, and well-maintained roads. He said that many mines along the way - Donlin and International Tower Hill - would have access to gas sooner. The operating life of Pogo and Fort Knox could be extended with more affordable energy on the GVEA grid.

MR. PARADY said that creating a larger market for Cook Inlet gas would incentivize development and increase the economic viability of bringing new finds on line. SB 215 helps to create this larger market and it works with any pipeline being discussed today and is not an either/or situation. Coming from another western mining state, he could say that Alaska is resource rich and infrastructure poor and they should load as many options into the legislative pipeline as possible.

CO-CHAIR PASKVAN announced that Senator Thomas, sponsor of SB 215, was in attendance.

4:17:22 PM

JERRY CLEWORTH, Mayor, City of Fairbanks, Fairbanks, AK, said he was encouraged by all of their efforts including the ones in SB 215. Everyone realizes there is a crisis in Interior Alaska and the Bush community in terms of staggering fuel costs that take any wealth out of it. If they are ever going to be compliant with the PM2.5 (particle pollution) requirement, it will probably be gas that will do it for them and they are working on getting the distribution system in place.

CO-CHAIR WAGONER asked if he was talking about the distribution system for just Fairbanks or the whole geographic area.

MAYOR CLEWORTH replied that the original distribution study broke it down into the urbanized area where it would be simpler to put down lines and the more questionable areas for private companies. They want to get it to the most homes possible. The Fairbanks Economic Development Corporation (FEDC) is spearheading that along with the borough.

4:20:54 PM

BILL WALKER, Attorney, Walker & Levesque, representing the Alaska Gasline Port Authority (AGPA), Anchorage, AK, brought their attention to a big book he brought saying it was Volume 1 of two volumes of gasline announcements that have happened since 1987. Thinking about gas going north from Cook Inlet is the same thought process as going south from Prudhoe Bay; everyone agrees the best way to get more oil in the pipeline is to have a gasline coming south. The same can be true for a Cook Inlet line going north. A bigger market will work for either route, and if you're looking for oil you can find oil or gas or both.

He related that the president of Buccaneer said Alaska is the best place in the world to do business. He was very aggressive about what was going to happen in Cook Inlet and the market opportunities there were good for everybody. The obvious positive for gas going from south to north was no need for gas conditioning facility because gas is dryer.

He said they might want to consider a different route going north. Some time ago, the Fairbanks Economic Development Corporation did an analysis of the Parks Highway v. the Richardson Highway and found a significant difference in the population of the two; about 10,000 going north on the Parks and about 18,000 going by way of Glennallen. But the analysis didn't anticipate that Glennallen was the power generation hub for that

region and already had a transmission line between it and Valdez. Power could be pushed through it into the Alyeska Marine Terminal where they preferred using electricity for unloading the tankers to using heavy sulfur diesel.

MR. WALKER said he found the Mining Association's conclusion interesting in comparing the developable resources going up the Parks v. the Richardson and concluded that the difference was that the Richardson route would have between 53 million and 30 billion more resources available for development. He applauded their efforts to get gas north sooner rather than later. He concluded by saying that even though this route is about 100 miles longer, it would deliver more bang for the buck and bring energy to another 10 or 15,000 people in homes that are having a tough time surviving.

[4:26:07 PM](#)

He also had Yukon Pacific Corporation's final environmental impact statement (EIS) for the Richardson Highway with him, one of about 12 permits they had received. The military bases were important pieces and Ahtna had conducted about \$20 million worth of gas exploration in the Copper River Basin. This line would provide an opportunity for an outlet for their gas finds.

CO-CHAIR PASKVAN thanked him and said that concluded invited testimony. He asked Senator Thomas if he had any remarks.

[4:27:47 PM](#)

SENATOR JOE THOMAS, sponsor of SB 215, Alaska State Legislature, Juneau, AK, said he didn't prepare comments, but wanted to say that gas pipelines had been talked about for a long time and it was hard to believe that one of them hadn't happened yet, because it would provide so many benefits to the Interior. He thanked them for taking public testimony today and he looked forward to answering any questions now and into the future.

CO-CHAIR PASKVAN said the USGS announced a likely discoverable 19 tcf/gas in Cook Inlet and that created the potential for serious consideration of this line along with not needing a gas treatment facility. This line could also serve as a lateral for a large diameter line because the gas can flow either way in the pipeline.

[SB 215 was held in committee.]

[4:31:29 PM](#)

At ease from 4:31 to 4:32 p.m.

CO-CHAIR PASKVAN transferred the gavel to CO-CHAIR WAGONER.

SB 219-DISPOSALS OF STATE RESOURCES

4:32:32 PM

CO-CHAIR WAGONER called the meeting back to order and announced consideration of SB 219, version A, recounting that he had objected for discussion purposes. Finding no one to testify, he closed public testimony. He asked if any committee members wanted a briefing as to the development of SB 219.

SENATOR FRENCH asked what this statute does to temporary water use authorizations and if they were first put into statute in 2001.

4:34:25 PM

WYN MENEFEE, Chief of Operations, Division of Mining, Land and Water, Department of Natural Resources (DNR), Anchorage, AK, said he but didn't know the date they were put in statute.

SENATOR FRENCH said the idea then was instead of having permanent water rights assigned to someone, an individual would just get a temporary permit. His concern was that the temporary permits were getting to be permanent since they are extended for five years. He asked how many were out there.

MR. MENEFEE replied 672 temporary water use permits were administered in 2011. He explained that the reason they aren't permanent is because a permanent water right is actually a property right that goes with the property regardless of ownership. A temporary water use authorization is not a right to water; it's the management of that water. So, it can be changed, revoked, additional conditions can be added like reduction in water quantities or use periods can be suspended to protect the public interest. None of that can be done with a water right without the consent of the water right appropriator or the abandonment of that water use. Therefore, a temporary water use permit is designed to allow the Division of Mining, Land and Water to manage the water use in Alaska, whereas the water right is more of a process where the company or an individual can protect their water source from others from adversely affecting their use. They have different purposes.

4:37:00 PM

SENATOR FRENCH said maybe it was an issue of semantics, but it seemed funny to have something they called a "temporary water

use authorization" that one can get for as long as five years and then get a reauthorization for another five years. Now it's been in existence for 10 or more years and its being called temporary. It doesn't seem temporary.

MR. MENEFEЕ replied that each five-year renewal is a new authorization even if they call it a renewal, and the state can decide to issue it for only one year if there are other needs for the water.

SENATOR FRENCH recalled that these authorizations were being issued without the same level of public notice as other permits.

MR. MENEFEЕ answered that was correct and explained that because it is actually a property right, they go through a more formalized public notice procedure. The temporary water authorizations, although they don't do a "public notice" in the sense of going out and advertising in newspapers, are on a public website that shows all the temporary water use authorizations that have been issued. People can look at the site which allows querying anywhere in Alaska by meridian, township and range to find out if an authorization had been issued.

SENATOR FRENCH asked if the website would convey when the authorization expires and when the opportunity to provide input into the renewal would ripen.

[4:40:54 PM](#)

MR. MENEFEЕ replied that he would have to research that.

SENATOR WIELECHOWSKI asked the standard of review on appeal in one of these cases.

CAMERON LEONARD, Assistant Attorney General, Department of Law (DOL), Anchorage, AK, said he agreed that most of these cases would use an abusive discretion standard, but the standard of review the court uses depends upon how the appeal is framed. So, if for example, someone were claiming that the commissioner had misapplied either the regulations or the statutes, then a less deferential standard would apply. For a typical case of someone objecting to the renewal of a temporary water use authorization, he would argue on behalf of DNR that the standard of review should be abusive discretion.

SENATOR WIELECHOWSKI asked if it's hard to overcome an abusive discretion standard.

MR. LEONARD answered yes; it's probably the most deferential of the various standards the courts use. He explained that in general, the court will make sure the agency has taken a hard look at the relevant factors and no obvious mistake in judgment had occurred.

SENATOR FRENCH asked how often that happens.

MR. LEONARD replied that he found only one reported decision brought by Greenpeace against a temporary water use authorization for building an ice road on North Slope; it was a procedural challenge to the way DNR's appeal procedures worked. Because it was a question of law, the standard of review was substitution of judgment, which means the judge doesn't defer to DNR at all on how the law should be interpreted.

CO-CHAIR PASKVAN asked if there is a concern as to any capacity for water volumes that will be needed on the North Slope at this time.

MR. MENEFEE answered that his research revealed that Pioneer wanted to receive some water from the ConocoPhillips desalination facility. When ConocoPhillips' needs are low they could provide more water to Pioneer, but if they need the whole amount, then they are not required to supply that water to Pioneer as per an agreement between companies. The solution is either ConocoPhillips decides to expand their facility or Pioneer builds their own.

Will there be water shortages? He said they don't know of any places where water shortage would prevent development. However, they recognized there are certain areas of the North Slope that have less water in the surface systems and until they drill, they aren't sure whether the subsurface systems have any. But development companies regularly incorporate water use into their planning for the North Slope, because it is in their best interest to seek and obtain a water right versus a temporary water use authorization. At this point, it isn't known if a situation would actually restrict development.

[4:46:10 PM](#)

CO-CHAIR PASKVAN asked if there is a limitation at this time on any company's capacity to obtain water rights from the State of Alaska and if temporary water use permits can be used to force people into bad competitive circumstances.

MR. LEONARD said that was a challenging question and what he could tell him was that there are instances where because of a lake's depth, the company could only pull so much from water from it and had to maybe go to a different lake or stream to pull that water. That influences development, but at this point it appears that at any time they have had a reduction in the amount of water that someone could take from an area, another way was found to address the issue although it might mean that it's more expensive. But at this point, he was not aware of anything that had prevented development or had adversely hurt an independent from coming in because of a water issue.

CO-CHAIR PASKVAN asked if this is a priority for the division, why the legislation was not introduced until Feb 29, 2012.

[4:48:50 PM](#)

JOE BALASH, Deputy Commissioner, Department of Natural Resources (DNR), Anchorage, AK, replied that the department has had a backlog from the transition in 2010. The work had largely been done with the assistance of the legislature in terms of appropriations to increase staffing in the Division of Mining, Land and Water. They have taken on the task of maintaining the workload and at the same time tackling the analysis and the reconstruction of the system. To manage the land and the water in the division they undertook an internal review and conducted a series of public hearings and meetings all across the state during the late summer and fall to gather input from interested parties. The information was put together and analyzed about how to make their processes more efficient. That was "the low hanging fruit and noncontroversial." That is what is in front of the committee now. There is also a sentiment that this will be a process of improvement that will take place over many years. They are attempting to resolve many things through regulatory packages that will be put out to public comment.

CO-CHAIR PASKVAN asked if the holder of a temporary water use permit could sell a portion of it or all of it.

MR. MENEFEE answered that the temporary water use authorization is not sellable. If, for instance, ConocoPhillips was using a well instead of a desalination plant and wanted to sell part of it, they could do that as part of their business plan. The department doesn't issue a temporary water use authorization or a water right for using salt water, because there is so much of it. They can, but they don't.

CO-CHAIR PASKVAN asked if there is a way a company could improperly use a temporary water use permit and block someone from access to a water resource on the central North Slope.

4:54:05 PM

MR. MENEFEE replied that is not an issue, because the renewal is not automatic. The staff reviews and decides. Other things having demand on the water will be considered before issuing another temporary water use authorization to the same company for that use. The authorizations are revocable and can be changed.

4:55:18 PM

CO-CHAIR PASKVAN remarked that a book by James Michener, named "Centennial," told how an economic interest focused on all the areas that had water, because that was going to control tens of thousands of miles. He wanted to make sure this was not creating that type of situation where you allow an economic interest to essentially dominate an entire region by just owning a few little pinch points.

MR. MENEFEE said temporary water use authorizations will not do that. But he wouldn't say that water rights couldn't be used toward that end. You can't diminish a water use right; it's first come first served.

SENATOR WIELECHOWSKI said they probably will see this play out on the North Slope at some point, particularly with shale gas, and asked if the dominant right exist only during the time of the permit. Does it expire and they have to renew it? Or do they have a dominant right forever for that water?

MR. MENEFEE clarified that a temporary water use authorization is not a water right. Water rights are where you get the right to the water and the first in line gets the dominant right. Temporary water use authorizations have nothing to do with that; it is the division deciding to give them water to use for their intended purpose. So, therefore, if a company chooses to apply for the water right, 5,000 gallons for instance, if historically they show they only used 1,000 and don't really need the 5,000, you could argue to reduce it. But as long as they use the amount they said they would, that stays with the land in perpetuity even if it gets sold.

4:59:06 PM

SENATOR WIELECHOWSKI said his dominant concern was they see the issue of water rights playing out in western states. Alaska is

fortunate because it has a lot of water, but he thought it would play out on the North Slope because shale oil needs huge amounts of water. He was very concerned about giving companies what appears to be de facto permanent right to water use and he wanted to make sure this bill wasn't doing that, because it takes away the notice and the opportunity to oppose, and the standard for appeal is abuse of discretion, which is virtually impossible to overturn.

MR. MENEFEE explained in order to have a water right you have to have ownership control of the land. On the North Slope, an oil and gas lease is the right to the land. As long as that oil and gas lease stays in place, they have the water rights. If the oil and gas lease goes away and they don't have it any more, then the water right does not stay. It disintegrates on the point of the land ownership control. So, as long as someone has an ownership interest, then the water right stays perpetual, but there is a difference between a temporary water use authorization and a water right, because every five years or even three years into the permit and someone comes along and needs to share the water, the division has to make a management decision at that point in time and there is nothing stopping them from changing that person's water use.

He said a situation might come up when a company might use all the existing water and someone else wants to come along and there is no more water left; a decision would be made somewhere along the line to share the water or make the other company haul water from farther away.

MR. BALASH sought to assure him about the department's plans for managing water on the central North Slope saying they requested a geo-hydrologist position for the Division of Geologic Geophysical Surveys, because it is critically needed to understand the water resource there, particularly as the state is on the leading edge of shale development. He used an example of work the division had done from the MatSu area where a number of businesses, community wells and home owners rely on shallow water wells to provide their water supply. As that population has mushroomed over the last couple of decades, it's got to be a bigger and bigger deal. The division has its arms around it now and has a good understanding of where the demand and production are - and they want a similar understanding on the central North Slope.

[5:04:15 PM](#)

CO-CHAIR PASKVAN repeated his concern with water rights issues and creating pinch points.

CO-CHAIR WAGONER commented that he came from a state where water rights are treated like mineral rights; they have battles and wars and lawsuits. He then concluded saying amendments needed to be in his office by 9 am on Monday and that other amendments would conform this bill to HB 361. He thanked the presenters.

[SB 219 was held in committee.]

[5:05:39 PM](#)

CO-CHAIR WAGONER adjourned the Senate Resources Committee meeting at 5:05 p.m.