

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

February 11, 2015

1:07 p.m.

**MEMBERS PRESENT**

Representative David Talerico, Co-Chair  
Representative Mike Hawker, Vice Chair  
Representative Bob Herron  
Representative Craig Johnson  
Representative Kurt Olson  
Representative Paul Seaton  
Representative Andy Josephson  
Representative Geran Tarr

**MEMBERS ABSENT**

Representative Benjamin Nageak, Co-Chair

**COMMITTEE CALENDAR**

OVERVIEW(S): POINT THOMSON

- HEARD

HOUSE BILL NO. 70

"An Act adding land and water to the Creamer's Field Migratory Waterfowl Refuge."

- MOVED CSHB 70(RES) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 70

SHORT TITLE: CREAMER'S FIELD REFUGE

SPONSOR(S): REPRESENTATIVE(S) WOOL

01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	RES
02/11/15	(H)	RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

GOVERNOR BILL WALKER  
State of Alaska  
Juneau, Alaska

**POSITION STATEMENT:** Spoke in regard to Point Thomson.

REPRESENTATIVE ADAM WOOL  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As the sponsor, introduced HB 70.

DAVID DUNSMORE, Staff  
Representative Wool  
Juneau, Alaska

**POSITION STATEMENT:** On behalf of Representative Wool, sponsor, outlined the changes made by the proposed committee substitute for HB 70.

MARK HALL, Land Surveyor  
Division of Mining, Land and Water  
Department of Natural Resources  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to HB 70.

DAVID JAMES, Fish and Game Coordinator  
Division of Wildlife Conservation  
Alaska Department of Fish & Game  
Fairbanks, Alaska

**POSITION STATEMENT:** Answered questions related to HB 70.

#### **ACTION NARRATIVE**

[1:07:09 PM](#)

**CO-CHAIR DAVID TALERICO** called the House Resources Standing Committee meeting to order at 1:07 p.m. Representatives Herron, Josephson, Johnson, Seaton, Tarr, Olson, Hawker, and Talerico were present at the call to order.

#### **OVERVIEW(S): Point Thomson**

[1:08:09 PM](#)

**CO-CHAIR TALERICO** announced that the first order of business is an overview of Point Thomson. He related that the committee had requested the Department of Law to provide an overview and update regarding the Point Thomson litigation process. However, he explained, Alaska Governor Bill Walker requested that he be able to personally address the committee about Point Thomson.

[1:09:19 PM](#)

GOVERNOR BILL WALKER, State of Alaska, paraphrased from the following written statement [original punctuation provided with some formatting changes]:

Mr. Chairman and members of the committee, you asked for someone from my Administration to testify on the Point Thomson lawsuit that I brought several years ago as a public interest litigant. I am here to talk to you directly about this and set the record straight.

Let's talk first a bit about how we got here, and why I brought this public interest lawsuit.

In 1975 and 1977, the first wells were drilled at Point Thomson. Since then, we have known that the Point Thomson area is rich in oil and gas.

It is one of Alaska's natural resource crown jewels.

The field contains trillions of cubic feet of natural gas reserves, and hundreds of millions of barrels of oil and condensate. It's a resource that is worth billions of dollars to the state and means thousands of jobs to Alaskans.

That wealth has been kept from the market and from Alaskans for decades.

Here are some numbers, and a history of how that happened.

The Point Thomson unit is 93-thousand acres of land. That land contains 38 leases.

Richfield Oil, Humble Oil and BP acquired the very first oil and gas leases in Point Thomson in 1965.

Twelve years later, Exxon discovered very substantial oil and gas in the main Point Thomson reservoir.

In 1977, the state approved ExxonMobil as the unit operator.

For 22 years, Exxon presented 22 individual plans of development -one each year-for the Point Thomson unit. Yet, no development occurred.

So in 2005, as the state was evaluating yet another Plan of Development-the 23rd POD-I brought a lawsuit against the state on behalf of citizen taxpayers. The relief sought was for the state to at least hold a public hearing on why the state should or should not grant yet another POD when no development had taken place at Point Thomson since 1983.

As a result of that lawsuit, a hearing was held where I was able to present witnesses, which included Governor Wally Hickel and one of our constitutional drafters Vic Fisher, and shortly after that, the Murkowski administration rejected the POD and put the Point Thomson unit in default.

In 2008, DNR notified the lease holders that their leases had expired. In order to keep several leases in the Point Thomson unit, Exxon then agreed to drill the first new Thomson wells in more than two decades.

That initial lawsuit was an important catalyst leading to development in Point Thomson today.

In May of 2012, the State released a signed settlement of the Point Thomson dispute but the terms of the settlement violated the Alaska Constitution and Alaska Law. Alaska's Constitution and statutes are very specific about the public process required in the development of our natural resources because the citizens of Alaska, unlike any other state, own the resources. We are an Owner State and we should act like one.

[1:13:07 PM](#)

In 2012, I brought suit against the state for entering into the Point Thomson settlement agreement which violated the Alaska Constitution and Alaska Statutes.

I asked for no monetary damages, only that Alaska's Constitution and Alaska laws be followed.

It's now 2015. Alaska has a new governor; a governor who recognizes that settlement was illegal. It left Alaskans out.

Here are but a few of the illegal acts set forth in the settlements that are in clear violation of Alaska's Constitution and Alaska law:

1. The Settlement attempts to contract around the Department of Natural Resource's Regulatory Authority in managing the Point Thomson Unit.
2. The Settlement attempts to alter the regulatory Plan of Development process.
3. The settlement results in the abrogation of the Commissioner of DNR's obligation to make findings under 11.AAC.83.303, thus leaving the method of field development up to the Working Interest Owners.
4. The State agreed to stand down and not object to any issues regarding the development of the Point Thomson Unit brought before the Alaska Oil and Gas Conservation Commission by the Working Interest Owners.
5. The State agreed to an alternate method of dispute resolution other than what is set forth in Alaska statute.

That leads me to where we are today.

Since I have taken office, I have met with ExxonMobil representatives numerous times; as recently as Monday.

My challenge to the Point Thomson settlement is not about ExxonMobil. This lawsuit is not about stopping the development of Point Thomson. It is about following our Constitution and our laws in the development of our natural resources.

My only goal is to increase production of oil and gas from Point Thomson for the maximum benefit of Alaskans.

However, as the Governor of this state, I must be assured that people of Alaska are never again shut out of the process.

On Friday, I will introduce legislation to strengthen our statutes so that future settlement negotiations related to the extraction of oil and gas on state land shall not be used as an excuse to bypass our Constitutional and legal obligations to citizens of Alaska. As soon as I file this legislation, I will file my motion to dismiss the Point Thomson litigation.

All I did in bringing this lawsuit was to stand up for Alaska. Someone had to.

Together, let's make sure future Administrations cannot violate the Alaska Constitution and Alaska's laws and bypass the public process in developing our natural resources when settling litigation.

Together, let's ensure that Alaskans are never again left out of the process to develop the natural resources that belong to all of us on our land, let's never again allow the public trust that we hold sacred to be violated.

Never, ever again.

Thank you, Mr. Chairman.

[1:16:23 PM](#)

CO-CHAIR TALERICO thanked Governor Walker for coming before the committee and stated that the governor had to leave immediately.

REPRESENTATIVE HAWKER expressed his disappointment with the governor's departure and therefore the committee's resulting inability to engage in a dialogue with him.

CO-CHAIR TALERICO agreed.

The committee took an at-ease from 1:17 p.m. to 1:18 p.m.

CO-CHAIR TALERICO inquired whether committee members had any comments or questions they wished to place on the record.

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REPRESENTATIVE HAWKER said he thinks he heard the governor say that he intends to dismiss the lawsuit and introduce legislation in its place. Unknown to the committee is a definitive timeline for that and whether the governor's dismissal of this lawsuit is going to still allow the governor to pursue his claim in another venue at the same time as the legislation. Absolute, definitive statements were made that illegal acts were performed. Those are alleged. Those were matters that had been taken before the Alaska state superior court and the superior court in Alaska reached very different conclusions than the governor has just stipulated. The Alaska superior court determined that the settlement was within the State of Alaska attorney general's discretion. The Alaska superior court determined the settlement was not an appealable decision of the Department of Natural Resources. The superior court determined the appellant had to challenge the legality of the settlement through an original action, not an administrative question, and the governor is questioning whether the superior court actually had the jurisdiction to hear the appeal "and they believe they did not." Representative Hawker said he had wanted the opportunity to thank the governor for listening to the legislature's concerns and following through with doing the right thing, which was to remove this great cloud that exists over the development of Point Thomson and entire Alaska North Slope natural gas pipeline. He expressed disappointment that the committee does not have the opportunity to ascertain that, in fact, the governor will drop the suit, there will be no contingencies attached to it, there will be an absolute and complete ability of the North Slope natural gas pipeline project to move forward without a cloud, and that the legislature along with the governor will consider possible legislation to address the concerns that Governor Walker originally raised in court and had dismissed by the superior court of the state.

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REPRESENTATIVE JOSEPHSON, relative to the issue of conflict, said nothing was raised in the presentation that there was anything untoward. Rule 1.11(d) of the Alaska Rules of Professional Conduct, would apply because there is frequently movement between private and public sector attorneys and no concerns were heard about that. There was some recognition on the governor's part that what is at Point Thomson is not going to be undone and that it is in the state's economic interest to move forward. The governor said very clearly that he was going

to dismiss the action, or rather have his subordinates [do that] using what is called the "Chinese wall" system, whereby the governor has attorneys general handling the case for the state. Presumably there is someone in Anchorage covering the side of the plaintiff. The governor did not give any indication that he was going to try another forum and re-litigate the matter. Representative Josephson said he thinks the governor expects, and that the committee will give, a fair hearing on the governor's legislation to strengthen, apparently, the requirements for a public process and review of a plan of development. He said that is what he heard and it sounds to him like a win-win.

[1:22:47 PM](#)

REPRESENTATIVE OLSON said he did not hear any mention of the status of the attorney general in this whole thing and that is the question he would have asked the governor.

CO-CHAIR TALERICO reiterated that the committee did ask the Department of Law for a review and therefore he will be consulting with Co-Chair Nageak about getting that review. He offered his appreciation for the aforementioned comments, but said he will not speculate what will happen this coming Friday [2/13/15] because he is uncomfortable with speculating.

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REPRESENTATIVE HERRON asked whether it is Co-Chair Talerico's intent to relay the committee's questions to the governor.

CO-CHAIR TALERICO replied he will certainly relay the questions.

REPRESENTATIVE HERRON asked that Co-Chair Talerico request a copy of the governor's written document. He related that the legislature has had briefings that Governor Walker would drop the lawsuit if he got his stipulation. Representative Herron requested clarification on whether Governor Walker received this stipulation or if the alternative is to introduce legislation. He said he has another question that he will personally bring to Co-Chair Talerico.

The committee took an at-ease from 1:24 p.m. to 1:27 p.m.

**HB 70-CREAMER'S FIELD REFUGE**

[1:27:10 PM](#)

CO-CHAIR TALERICO announced that the next order of business is HOUSE BILL NO. 70, "An Act adding land and water to the Creamer's Field Migratory Waterfowl Refuge."

[1:27:17 PM](#)

REPRESENTATIVE ADAM WOOL, Alaska State Legislature, introduced HB 70 as the sponsor. He explained that the bill would expand the Creamer's Field Migratory Waterfowl Refuge in Fairbanks. He spoke as follows:

This bill would add four state-owned parcels to the refuge. These parcels were purchased with the intention of being added to the refuge and are currently being managed in accordance with the refuge management plan. Passing this bill will formally designate these as refuge lands and allow the [Alaska] Department of Fish & Game to manage these lands as part of the refuge. This bill will expand the refuge from 1,776 acres to approximately 2,000 acres.

From the beginning Creamer's Field has been a public-private partnership. When the ... Creamer family announced plans to sell the historic dairy, Fairbanks community worked to raise funds to purchase and preserve it and ... Governor Hickel introduced legislation for the state to purchase the historic dairy site.

The Friends of Creamer's Field, a 501(c)(3) nonprofit, works with [the Alaska Department of] Fish & Game to provide educational and community activities at the refuge, including Camp Habitat, which my two daughters attend.

Thank you for considering this legislation and for supporting a Fairbanks community landmark.

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REPRESENTATIVE HAWKER moved to adopt the proposed committee substitute (CS), labeled 29-LS0372\H, Bullard, 2/9/15, as the working document.

REPRESENTATIVE SEATON objected for discussion purposes.

1:30:08 PM

DAVID DUNSMORE, Staff, Representative Wool, explained that Version H makes several technical changes that were suggested by the Department of Natural Resources. [On page 1, line 8,] a comma was inserted after "Beginning". [On page 1, line 10; page 2, line 4; page 2, line 9; and page 2, line 12,] the word "continuing" is replaced with word "thence". The sponsor was advised that even if those changes were not made, the legal descriptions would still be accurate, but for drafting standards for propriety, "thence" is the term that is properly used to describe a boundary along a meander, and "continuing" is the proper word to describe at along a line. [On page 3, lines 13-18,] the legal description of the parcel described in paragraph (6) was revised to a simpler version because it removes a reference to a subdivision waiver by the Fairbanks North Star Borough. This was suggested because reference to the waiver might not be appropriate for statute because that waiver is not a readily obtainable public document. He pointed out that the sponsor has been assured [by DNR] that the legal descriptions still accurately describe the land.

REPRESENTATIVE SEATON removed his objection to adoption of the proposed CS.

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REPRESENTATIVE HERRON inquired how many people have reviewed the land descriptions.

MR. DUNSMORE replied that someone from DNR or ADF&G could better answer the question, but that to his knowledge at least five or six people have looked at them.

1:32:24 PM

CO-CHAIR TALERICO ascertained there was no objection to adopting Version H and ordered its adoption as the working document.

REPRESENTATIVE JOSEPHSON noted that the previous governor vetoed this legislation [House Bill 246 passed and vetoed in 2014]. He asked why it was vetoed and whether the issue had been resolved.

MR. DUNSMORE confirmed that [Governor Parnell] had vetoed the bill. He explained that the governor's veto message expressed support for the underlying intention of adding these lands to the refuge but that a Department of Law review had found an

error in the legal description that could have potentially caused a cloud on the title of the private landowner whose land was inadvertently described. Out of caution and respect for the private landowner who was unconnected to the bill in any way, the bill was vetoed.

REPRESENTATIVE SEATON inquired whether any of the contiguous landowners object to these lands being added to the refuge.

REPRESENTATIVE WOOL answered no.

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CO-CHAIR TALERICO opened public testimony on HB 70.

[1:34:45 PM](#)

MARK HALL, Land Surveyor, Division of Mining, Land and Water, Department of Natural Resources, said he reviewed the [land] descriptions. Responding to Representative Hawker, he said the land descriptions in HB 70 are correct to the best of his knowledge.

DAVID JAMES, Regional Supervisor, Division of Wildlife Conservation, Alaska Department of Fish & Game, pointed out that the property [being added to the refuge] is already owned by the state. To the degree possible, he said, ADF&G has been managing that property as part of the refuge although technically it is not. Two different sources of federal funds were used to purchase the land and it is part of the refuge's multiple use.

[1:36:40 PM](#)

CO-CHAIR TALERICO closed public testimony after ascertaining no one else wished to testify.

[1:37:07 PM](#)

REPRESENTATIVE JOHNSON observed from the map in the committee packet that some university land is within the [refuge] boundary and some is not. He asked whether there are any use limitations or restrictions on that land.

MR. DUNSMORE replied that his understanding is that use on the adjacent university land is consistent. Drawing attention to the map, he pointed out several trails that cross from the

refuge into the university land. He deferred further answer to Mr. James.

MR. JAMES responded that he is unaware of any issues in regard to conflicts or compromised uses on university land as opposed to the refuge. As far as large holdings of university land that might be used for other things in the future, he said that to the best of his knowledge most of that is on the west side of the refuge closest to the campus. As far as any issues with other rights of way, he said he is unaware of any.

REPRESENTATIVE JOHNSON said he just wants to make sure it is a compatible use to the university.

[1:39:33 PM](#)

REPRESENTATIVE HAWKER moved to report the proposed committee substitute for HB 70, labeled 29-LS0372\H, Bullard, 2/9/15, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 70(RES) was reported from the House Resources Standing Committee.

[1:39:52 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 1:40 p.m.