

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES**

February 15, 2018

11:08 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Jonathan Kreiss-Tomkins
Representative Geran Tarr
Representative David Eastman
Representative Mark Neuman

MEMBERS ABSENT

Representative Zach Fansler
Representative Bryce Edgmon
Representative Mike Chenault

COMMITTEE CALENDAR

PRESENTATION(S) : DNR PERMITTING PROCESS

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

KYLE MOSELLE, Associate Director
Office of Project Management and Permitting (OPMP)
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Provided a PowerPoint presentation on the permitting process by DNR and answered questions from the committee.

BRENT GOODRUM, Director, Central Office
Division of Mining, Land and Water (DML&W)
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the presentation on the permitting process by DNR.

ACTION NARRATIVE

[11:08:47 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 11:08 a.m. Representatives Stutes, Kreiss-Tomkins, Neuman, and Tarr were present at the call to order. Representative Eastman arrived as the meeting was in progress.

Presentation on the Permitting Process by DNR

[11:10:14 AM](#)

CHAIR STUTES announced that the only order of business would be a "Presentation on the Permitting Process by DNR."

[11:10:38 AM](#)

KYLE MOSELLE, Associate Director, Office of Project Management and Permitting (OPMP), Department of Natural Resources (DNR), introduced himself. He turned to slide 2, titled "Department of Natural Resources," which read as follows [original punctuation provided]:

Our mission: Develop, Conserve, and maximize the use of Alaska's natural resources consistent with the public interest.

What we do: DNR manages all state-owned land, water, and natural resources, except for fish and game, on behalf of Alaskans.

How we are organized: DNR is comprised of seven divisions that reflect its major programs.

[11:13:00 AM](#)

MR. MOSELLE turned to slide 3, titled "Key Terms," which read as follows [original punctuation provided]:

Sec. 38.05.965. Definitions (abbreviated)

(14) "**navigable water**" means any water of the state forming a river, stream, lake... sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction

that is navigable in fact in any season, ... and for any useful public purpose...;

(21) "**public water**" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;

(23) "**shoreland**" means land belonging to the state which is covered by nontidal water that is navigable ... up to ordinary high water mark ...;

(24) "**state land**" or "land" means all land, including shoreland, tideland, and submerged land, or resources belonging to or acquired by the state;

(25) "**submerged land**" means land covered by tidal water between ... mean low water and seaward to a distance of three geographical miles ...;

(26) "**tideland**" means land that is periodically covered by tidal water between the elevation of mean high water and mean low water;

[11:13:49 AM](#)

REPRESENTATIVE NEUMAN asked whether the department has public noticed changes for definitions of water quality and noted that this would be useful information for [HB] 199.

CHAIR STUTES stated that she wanted to caution the committee that this presentation relates to the current permitting process. but it has nothing to do with HB 199.

REPRESENTATIVE NEUMAN acknowledged the presentation would be beneficial for the committee.

[11:15:23 AM](#)

MR. MOSELLE deferred to the division director, Brent Goodrum, to respond.

[11:15:41 AM](#)

BRENT GOODRUM, Director, Central Office, Division of Mining, Land and Water (DML&W), Department of Natural Resources (DNR), answered that water quality falls under the jurisdiction of the Department of Environmental Conservation (DEC). The division has a scoping process pertaining to some of its water regulations, but typically it does not involve water quality standards.

[11:16:40 AM](#)

MR. MOSELLE turned to slide 4, titled "Division of Mining, Land and Water," which read, in part, as follows [original punctuation provided]:

Generally Allowed Uses

- As provided in 11 AAC 96.020
- Travel across state lands
- Aircraft landing
- Use of watercraft
- Anchoring mooring buoy
- Hunting, fishing, trapping, gathering
- Recreational gold panning/prospecting/suction dredging

Permit/Authorization/ Approval

- Mineral exploration & mining
- Placer mining
- Temporary water withdrawal
- Commercial recreation activities
- Weir
- Floating dock
- Notice of application may be provided

Easement & Leases

- Rights-of-way
- Utility easement
- Boat launch
- Aquatic farm site
- Marine access facility (commercial dock)
- Public notice required
- Best Interest Finding required

MR. MOSELLE stated that the DML&W regulates a broad spectrum of activities using various tools, guided in its administrative decisions by the Alaska Constitution, state law, agency regulations, and policies, DNR area and management plans, previous decisions, and case law.

MR. MOSELLE said that many uses and activities are generally allowed on state land managed by the division and do not require prior approval from the division provided standard conditions are followed. Uses and activities on state land that are not generally allowed under state law require written authorization from the division. He said that land use permits authorize temporary, non-exclusive activities that can be effectively managed through project specific conditions. As a matter of agency policy, applications are posted to the statewide online public notice website. Easements and leases convey an interest for use of state land; therefore, the division must find it is in the best interests of the state prior to granting an "easement release" and public notice is required.

[11:17:48 AM](#)

CHAIR STUTES asked whether there was a public process on all approvals for permits.

MR. MOSELLE responded by referring to slide 4, to the generally allowed uses provided in 11 AAC 96.020. That regulation would have gone through a rule-making process to define those uses; thus, those allowable uses do not require a full public noticing process. He stated that applications under the middle tier, titled "Permit/Authorization/Approval" as a matter of division policy would be public noticed through the statewide online notice website. Applications under the third tier, "Easement and Leases," by statute require public notice, he said.

[11:18:59 AM](#)

REPRESENTATIVE NEUMAN asked whether the uses listed on slide 4 under the second tier "Permit/Authorization/Approval" also had an approval process within other departments; for example, he said that floating docks would require approval from Alaska Department of Fish & Game's (ADF&G's) Division of Sport Fish and Division of Habitat. He asked for further clarification on other departments' roles in the permitting process.

MR. MOSELLE answered yes. He agreed there may be other state permit authorizations, laws, and regulations that apply to

permitted activities. During its review process the DML&W would consult with the other departments as needed in that peripheral relationship; however, the applicant would be responsible for securing all federal, state, and local approvals for the activity, he said.

[11:20:21 AM](#)

REPRESENTATIVE NEUMAN related his understanding that the departments worked collaboratively with other agencies.

CHAIR STUTES related that in its presentation, the Alaska Department of Fish & Game (ADF&G), Division of Habitat went into more depth on the various departments and agencies that work together on permits. She acknowledged that his point was well taken.

REPRESENTATIVE NEUMAN concurred that there were "checks and balances" in the permitting process. It was not just one person making the approval decision, he said.

[11:21:13 AM](#)

MR. MOSELLE turned to slide 5, titled "Single Agency Review," which depicted process diagrams, which contained the following headings and action items, as follows:

Application

- Completeness review
- Consider proposed action

Research

- Review relevant resource data
- Review ownership and legal data
- Determine classification
- Review relevant area or management plan

Agency Review

- Develop maps and necessary information
- Identify conditions, stipulations, mitigation
- Conduct interagency consultation
- Consult applicant on issues of concern

Preliminary Decision

Draft preliminary decision

MR. MOSELLE stated that this slide and the next slide showed a generalized summary of a single-agency review by the Division of Mining, Land & Water (DML&W) for a process related to a lease or easement.

[11:21:25 AM](#)

MR. MOSELLE explained the application process, such that once a completed application was received by the division, technical staff would research relevant resource data and area plans and develop supporting information and would consult with other state agencies. For example, during the division's review, it would consult with ADF&G to gather relevant fish and wildlife information and evaluate potential impacts from the proposed activity on important habitats or known harvest areas. The division staff would also consult with the applicant to discuss issues of concern. All information would then be compiled in the project record and the agency would draft a preliminary decision for management review.

[11:22:05 AM](#)

MR. MOSELLE turned to slide 6, titled "Single-Agency Review," which depicted a diagram showing public notices and coordination. He stated that the division would public notice the decision in local newspapers and on the statewide online public notice website. The division would then collect public input, consider each comment received during the public notice period, and consult with other state agencies on substantive issues. The final decision would then be public noticed, he said.

[11:23:25 AM](#)

REPRESENTATIVE NEUMAN offered his belief that the division was working to reduce federal paperwork and conduct inspections for small mining operations.

MR. GOODRUM responded that one important issue to miners in Alaska was in places where the state had state-selected lands. Last year the division brought in approximately 17 federal mining claims, he said. Several months ago, the division brought in 709 acres immediately adjacent to the Fort Knox mine, which would allow that small operation to continue to operate.

Further, the division recently received a decision from the U.S. Bureau of Land Management (BLM) regarding land in and near the Graphite One Resources, Inc. project. He anticipated that the division would be able to bring in both mining claims and allow them to be converted to state claims, he said. He characterized this as being an important issue to Alaska.

[11:25:27 AM](#)

REPRESENTATIVE NEUMAN commented that this project could help small miners since the permitting authority would be in Alaska and the state would be more familiar with the processes and local issues.

[11:25:41 AM](#)

REPRESENTATIVE TARR referred to slides 5-6, regarding the single agency review and the public noticing. She directed attention to the Temporary Water Use Authorization (TWUA) on slide 7, [consisting of a flowchart of the permitting process], which does not seem to have a public process. She suggested that the department may wish to add a public review component to this. She further noted that there may be other circumstances of single-agency review that do not solicit public input. She related her understanding that a scoping period was begun to collect public comments on the Temporary Water Use Authorization (TWUA) and asked for further clarification on the status of public input.

MR. MOSELLE, in response, referred to the "key" on slide 7. He explained that the yellow box around the TWUA represents a "courtesy public notice," which was a term used to mean that there was not a statutory or regulatory requirement to public notice for that specific activity as there would be for a lease, easement, or water right. He explained that the red boxes on the chart represent "public notice required," either by statute or regulation. He clarified that as a matter of DNR's policy, the TWUA applications would be posted on the online public notice website.

[11:27:55 AM,](#)

MR. GOODRUM offered further clarification on TWUAs, such that the TWUA authorizations never advance to become "water rights" and would always be revocable at will by the state. He stated that these TWUA authorizations were ones generally used on projects throughout the state, but were of limited duration, not

to exceed five years. He acknowledged that DNR does reach out to ADF&G and DEC to ensure that any issues or concerns are addressed within the DNR's TWUA process. As Mr. Moselle previously mentioned, the division provides courtesy public notification of any TWUA applications received.

[11:29:09 AM](#)

REPRESENTATIVE TARR asked whether the courtesy notice also includes a public comment period.

MR. GOODRUM answered that there was not necessarily a formal "public comment" opportunity; however, any feedback or input the division received would be considered during the adjudication process for the application. He commented that there was not a "hard set" 30-day period established for public comment.

[11:29:55 AM](#)

REPRESENTATIVE TARR pointed out that this was an issue that was brought to her attention as an area that might be one which [the legislature] might wish to address statutorily. She said she was not as familiar with some of the authorizations but will research some of the yellow boxes for authorizations listed on slide 7. She referred to Administrative Order 266, noting that some people had submitted comments calling for reform on the TWUA process, including for public comment. She asked for further clarification on whether the division had considered formalizing the public comment period or if the department believes it has been receiving enough feedback from the public. She acknowledged some permits would be less controversial than others.

MR. GOODRUM responded that the division has received comments through the water rights' regulations process and the division has been evaluating all the comments; however, it has not yet come to any consensus on any necessary revisions. To the degree that the division has not performed any scoping in some areas, the division would address any issues that arise at that time, he said. In further response to Representative Tarr, he restated his comments on water regulations and scoping and how the division might better look at the processes.

[11:32:35 AM](#)

REPRESENTATIVE TARR asked to make some generic comments. She said that she wanted to address the public process concerns

because she has heard concerns voiced by some members of the public about the "lack of public process;" however, she acknowledged that some of the concerns expressed may not be related to a specific project. She offered her belief that sometimes trust can be broken between the public, the department, and the developer in instances in which people feel the public process is lacking. She expressed hope that the division would consider revisions to allow for more collaboration on the front end of projects to potentially avoid longer delays that result from lawsuits. She reiterated that sometimes people feel the department has not made enough information available.

[11:33:42 AM](#)

MR. MOSELLE directed attention to slide 8, titled "In Summary," which read as follows:

DNR manages all state-owned land, water and natural resources, except for fish and game, on behalf of the people of Alaska.

Proposed uses of those resources may be generally allowed, or require written authorization from DNR.

Approvals that diminish state interest must be found to be in the best interest of the state and publicly noticed.

DNR consults other state agencies and grants deference to ADF&G on fish and wildlife matters and ADEC on water quality.

For large projects, OPMP facilitates intergovernmental coordination with state, federal, and local government agencies to ensure effective communication, less duplication, and greater consistency in the permitting processes.

MR. MOSELLE added that leases and easements that convey an interest and use of state lands require a best-interest finding and public notice process.

[11:34:22 AM](#)

CHAIR STUTES remarked that the department must be considering some significant involvement in the proposed road project in

King Cove [a proposed 12-mile road corridor from King Cove to the Cold Bay Airport, connecting to existing roads in the Izembek National Wildlife Refuge], and she queried if that was the case.

[11:35:22 AM](#)

REPRESENTATIVE TARR related her understanding that the project involved a land transfer between the regional Native Corporation and the federal government since refuge lands would be transferred to the corporation. She expressed an interest in whether the federal government would maintain an ownership and if the project would go through the state's permitting process.

CHAIR STUTES asked for further clarification.

[11:35:54 AM](#)

MR. GOODRUM responded that land exchange was between the local community [Aleutians East Borough] and the federal government. He anticipated that if a road was being built at King Cove that the Department of Transportation & Public Facilities (DOT&PF) would be involved; however, he said he was uncertain as to other activities, noting that any water authorizations would be reviewed by the division.

CHAIR STUTES commented that she was just curious about the state's involvement.

[11:37:35 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:37 a.m.