

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

February 22, 2017

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator John Coghill, Vice Chair
Senator Natasha von Imhof
Senator Bert Stedman
Senator Shelley Hughes
Senator Kevin Meyer

MEMBERS ABSENT

Senator Bill Wielechowski

COMMITTEE CALENDAR

OVERVIEW ON WETLANDS BANK MITIGATION PROJECTS

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

ANDY MACK, Commissioner
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Participated in overview of wetland bank mitigation projects.

JEFF BRUNO, Acting Executive Director
Office of Project Management and Permitting (OPMP)
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Provided an overview of wetland bank mitigation projects.

ACTION NARRATIVE

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CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Coghill, Von Imhof, Stedman, Hughes, Meyer, and Chair Giessel.

Overview on Wetlands Bank Mitigation Projects

CHAIR GIESSEL announced that today the committee would hear a presentation from the Office of Project Management and Permitting (OPMP) on an overview of wetlands bank mitigation projects. Nearly half the state is composed of wetlands and in fact, if the Environmental Protection Agency (EPA) Waters of the U.S. rule were to go into effect, virtually the whole state would come under the Clean Water Act (CWA). That being said, they know all of Alaska's land is ecologically important and that it has the best regulatory regime of any of the states. Constructing anything of importance in the state - a road, a port, a pipeline, a mine, a school - inevitably comes into contact with wetlands. The state has been subjected to the cost of replacing those wetland acreages, which has led to costs for wetlands mitigation anywhere from \$10,000 an acre to several hundred thousand dollars an acre. This prohibitive expense causes them to search for innovative ways to leverage the sheer size of the state's wetlands with getting the cost of public and private projects down. She said the Department of Natural Resources (DNR), and particularly OPMP, has been working for years to get those costs down and keep Alaskans working.

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ANDY MACK, Commissioner, Department of Natural Resources (DNR), Anchorage, Alaska, said the compensatory mitigation topic not only hits the largest projects in the State of Alaska, but also local projects all across the state. Alaska is a state full of wonderful wetlands, which puts it in front of a series of federal agencies led by the United States Army Corps of Engineers (USACE), and Mr. Bruno would provide the main presentation on compensatory mitigation.

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JEFF BRUNO, Acting Executive Director, Office of Project Management and Permitting (OPMP), Department of Natural Resources (DNR), Juneau, Alaska, said he would talk about compensatory mitigation as it falls under Section 404. He would also touch on some of the other mitigation requirements that have popped up recently.

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Why is compensatory mitigation required? Mr. Bruno said the answer can be found in 33 C.F.R. Part 332.3 (a) (1). Ultimately, the idea of compensatory mitigation projects is to offset unavoidable environmental impacts that the Corps permits in what is called a "no-net-loss" policy. It is very problematic in Alaska and efforts are being made to make the federal agencies aware of the issues.

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The USACE is responsible for administering the wetlands compensatory mitigation requirements as described in Sect. 404 of the Clean Water Act. This is usually done through the National Environmental Policy Act (NEPA) process or through a general permit (mainly for the large projects). The EPA has a large role in that it helped develop the regulations. It has oversight authority and can elevate a specific project if it has an issue with the way it is being managed. This results in project timeline delays. The tool that gets used most throughout the process is the Aquatic Site Assessments (ASA), a document that determines the amount of wetland impacts and sets mitigation ratios.

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Once the Corps assesses the unavoidable impacts for a project, the project applicant is required to purchase what is known as mitigation credits. These can be obtained from three different places:

1. Mitigation bank, which is projects that are already developed,
2. In-lieu fee (ILF) program credits, which means you give money to somebody and they have in general three years to find acceptable projects, or
3. Permittee-responsible mitigation, which means they are the ones that are responsible for developing the project and carrying forward the long term management goals of those projects. That can vary in length of time and often the mitigation will outlive the project.

SENATOR STEDMAN asked if wetland mitigation applies to a contractor building a house or three houses, or to a company building another pipeline in the state.

MR. BRUNO said the bigger the project the more likely compensatory mitigation will be required, but because of the vast nature of our Alaska's wetlands, especially in certain regions, it's hard to figure out what a functional loss and gain ratio is. Maybe it's for projects of 10 acres or more, but

generally any large project - transportation or utility, or community improvement - is going to require compensatory mitigation of some sort.

SENATOR STEDMAN recalled that some contractors in his district who are in the 2 and 3 acre range run into these situations.

COMMISSIONER MACK answered the truth is that EPA has given primacy to the USACE to write the permits and enforce the terms of the Clean Water Act, and they can exempt some projects, but they still have to deal with their sister agency, which is the EPA.

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For large-scale projects, like CD-5, the EPA is really threatening to elevate the permit to headquarter level in Washington, D.C., where agencies will try to hash out the differences between themselves. The Alaska District Corps has the discretion to exempt some projects, but they have to meet certain criteria, and therefore, sometimes very small projects will be required to have compensatory mitigation.

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SENATOR STEDMAN said his district has pretty much small contractors and small parcels and they are continually running into extremely expensive EPA requirements.

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SENATOR VON IMHOF said sometimes a single body of water goes through a parcel that is not necessarily a wetland, like a marsh, and asked if those are handled differently and if there are setbacks or things of that nature.

MR. BRUNO replied that those are all treated the same. Wetlands relates to aquatic resources: lakes, streams, creeks, wetlands, and anything with some kind of water resource on it.

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MR. BRUNO next touched on the kinds of mitigation types that the Corps generally accept in order of preference: ultimately it prefers restoration of wetlands or aquatic resources, then comes enhancement or creation of one. The one they like least, and that is most prominent in Alaska, is preservation.

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He explained that a mitigation bank is an actual project that has already been approved by the Corps. It has to have restored,

established, or enhanced some kind of wetland, and bank sponsors have put up the upfront capital to do that project hoping that somebody will need to purchase it as a mitigation credit. Long term management of those projects is also required for things like: annual reports, inspections, and making sure performance standards are met.

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MR. BRUNO explained that an in lieu fee program (ILF) is a different type of program. This is where a permittee provides the funds to an in-lieu fee provider - generally a non-profit or public agency - that uses them to develop a project. This type of project is usually developed and approved after the permitted impact occurs. So, a large diameter pipeline, for instance, could give an in-lieu fee provider money and within three years they would have to develop a project that is approved by the Corps that offsets the impacts from the pipeline. It's more of a money transaction that happens on the back end of a project.

The last, and least preferred by the Corps and a lot of people, is one where the applicant is responsible for the development and long term management of these projects that are site-specific. It doesn't combine projects for mitigation efforts. That is why these applicants generally are in the business of resource development or managing a city, not in managing long term requirements of a compensatory mitigation project.

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MR. BRUNO explained that the CWA no net loss policy was developed to respond to Lower 48 resource situations that have intense pressure and were rapidly declining. Fortunately, Alaska doesn't have that issue, because much of its wetlands are still pristine or ubiquitous and don't really have a functional loss or gain depending upon a small impact to them. That is the problem; it means there are limited opportunities in Alaska for compensatory mitigation.

Additionally, these resources to be eligible or at least economically feasible, must be under imminent threat, and Alaska doesn't have the same threat the Lower 48 states have. However, sometimes the same criteria is applied to address a threat. The big statistic that makes Alaska so unique is its population density; nobody is close. One of the biggest threats in the Lower 48 is urban sprawl and population growth. So, one of the things that could make the program better is to work on what "threat" means in Alaska.

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MR. BRUNO said he was not so sure that Alaska should wait to have a policy in place until its resources are threatened. It has a unique opportunity to have more of a proactive program in which high value resources could be used by the state for compensatory mitigation while development was allowed to happen around them.

A flexible program addressing part of the problems and strategies to get this program up and running for Alaska is outlined in the "1994 Memo" written by several federal agencies to the national decision-makers. It talks about how restoring, enhancing, or creating wetlands through compensatory mitigation may not be practical in Alaska due to the limited availability of sites, as well as technical and logistical limitations. The memo went as far as saying there may be certain regions of the state, like the North Slope, where mitigation sites are not available due to the abundance of wetlands, and that in those cases, compensatory mitigation should not be required. The memo was accompanied by a report called "The Alaska Wetlands Initiative" that details more examples of what is needed to get the program up and running.

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SENATOR STEDMAN asked if the 1994 Alaska Initiative Memo was changed in 2008.

MR. BRUNO answered the 1994 Memo was written based on the policy in effect at the time, which was the Clean Water Act (CWA). The mitigation rule was updated in 2008, but the requirements for a bank were changed to focus more on Lower 48 situations that took away some potential mitigation options in Alaska. It was also more definitive about what mitigation could offset certain impacts and where.

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SENATOR STEDMAN said he wasn't clear that Alaska could back any of this stuff up.

MR. BRUNO responded that Alaska has some potential opportunities to work with the current rule that gives a lot of flexibility to the Corps district engineer. It allows him to decide when mitigation is required, what mitigation can offset impacts, and where that mitigation needs to be. However, the Corps will say it is not their job to tell somebody how to mitigate a project. So it's up to a project proponent to offer these unique solutions. This is one of the conundrums they fall into: an

applicant is needed who is willing to make a proposal that is unique.

SENATOR STEDMAN said there are differences all over the state. He deals with small contractors - mom and pops running their business on two to four acres. Mitigation issues for them are a little more complex than they can handle versus people at the state level doing a big project.

COMMISSIONER MACK said the Clean Water Act policy is "no loss wetlands," and several attempts have been made over the decades to figure out precisely what that means. Some folks complained that the policy was not being implemented, which resulted in a rule-making process, which is the National 2008 Compensatory Mitigation Rule. From that came the hierarchy of mitigation preferences: banks, in-lieu fee programs, and the permittee responsible option. To be very clear, he doesn't know of any exemption or any distinction between a sophisticated applicant and somebody who wants to build a couple of homes, or maybe a local contractor.

SENATOR STEDMAN said he agreed with that. Several of his constituents are stressed out to a point where they just want to quit their business.

SENATOR VON IMHOF asked how much flexibility the Corps has with interpretation of the rule for a small contractor.

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MR. BRUNO answered there is flexibility, but it has to be proposed by somebody, and it needs to be accepted by the Corps district engineer.

SENATOR VON IMHOF supposed that that flexibility is in the eye of the beholder and can change with directors.

MR. BRUNO answered that the Corps is receptive to trying to understand what flexibility is needed.

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COMMISSIONER MACK added that Mr. Bruno is correct about flexibility being built in, which is one of the difficult prospects of this particular system. For example, if an exploration company wants to build some roads and pads, it will probably be required to pay a couple hundred thousand dollars to an engineering firm that will go out and do an aquatic

assessment, and based on the types of wetlands that are impacted, they will calculate the need to mitigate.

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SENATOR HUGHES said this isn't a new problem, and asked if the state has a plan to try to fix the uncertainty and if other states are experiencing similar things. Is he working with counterparts, and is there a chance that the new administration might straighten some of this out?

COMMISSIONER MACK said a couple of big distinctions are always in the background for Alaska: one being that it just doesn't fit well into the national model. For instance in Wyoming, one can go to a rancher and buy an easement on his property that will protect the aquatic functions and share in the sale of those easements to provide mitigation for a pipeline project, and a lot of private land owners are willing to take you up on it. But the amount of non-ANCSA (Alaska Native Claims Settlement Act), privately-owned land in Alaska is not only consolidated in certain areas but is not a very large chunk of the overall land mass. This huge distinction between the amount of privately held land in Alaska and in other states is a barrier to people setting up banks, and buying credits out of a bank is the most preferred method to mitigate.

SENATOR HUGHES asked if the Alaska could use its state lands for a mitigation bank since it has a shortage of private lands.

MR. BRUNO answered yes, and that is one of the best solutions that they actually have control over. An in lieu fee program would allow the state to use its lands for compensatory mitigation. One reason it's important that either the state or the feds have a mitigation program at this point is that private non-ANCSA lands are not only limited but also consolidated, and most of the time resource rights have been retained with the state and federal agencies. Additionally, if you're talking about homestead lands, not many people are homesteading wetlands.

SENATOR HUGHES said she hopes if the state does that that it is nice to the small contractors.

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SENATOR STEDMAN said he thought the state should take over the current banks and hold the property in perpetuity, because at some point policies will change, then our descendants can

dispose of it according to those policies. He wanted to know if that is the direction in which the state is heading.

CHAIR GIESSEL responded that this morning a Washington Post article said that President Trump is planning to repeal the Waters of the U.S. policy, and that could possibly impact the Tier 3 water situation that the committee dealt with last year. But it would be prudent for them to plan something like a state mitigation bank regardless of what happens.

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MR. BRUNO said the 1994 Memo was accompanied by a detailed report called the Alaska Wetlands Initiative. It acknowledged that the no-net-loss policy is probably unrealistic on a permit to permit basis. This is where the problem is with putting the small mom and pop businesses in the same box as large developments.

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A map illustrated the wetlands in Alaska, but the new Waters of the U.S. rule turns the whole map green, Mr. Bruno said. Alaska has 174 million acres that cover about 43 percent of the state. Much of the 1994 Memo and the Wetlands Initiative discuss the problems of running the compensatory mitigation program when the project is right in the middle of one of these vast areas of wetlands and the lack of ability to judge what the functional loss and gain is. Most wetlands are in regions that aren't very populated or have a lot of infrastructure. Also, a lot of Alaska's wetlands are pristine and don't need restoration or enhancement, nor are they under threat as the definition works in the Lower 48.

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SENATOR STEDMAN said most of Southeast is dark on the map and that they seem to go through and designate skunk cabbage patches as wetlands. When you're in a rain forest - and no one argues that it is dry - how do you not include the entire Southeast as wetlands!?

MR. BRUNO said they should definitely see what could be done and that some new national wetland inventory information needs updating.

SENATOR STEDMAN quipped that he didn't have a problem with being excluded.

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MR. BRUNO said Alaska has only one federally approved provider for the in lieu fee program, specifically the North Slope. But the Department of Natural Resources (DNR) is proposing a statewide in lieu fee program that breaks the state up into seven different regions and several marine service areas. Additionally, in lieu fee instruments have estimated the cost on the North Slope could be anywhere from \$44,000 - \$125,000 per acre. A mitigation ratio is used which means that impacting one acre in a valuable area might require five acres of mitigation. That is what you would buy from the bank. It can also be translated into an in lieu fee cost when you don't know where you're going to buy your credits. The money is given to the in lieu fee program and their job is to find the projects.

SENATOR STEDMAN commented that \$44,000 - \$125,000 per acre is "appalling," to say the least and that is even higher than what a farmer gets for his subsurface estate in the North Dakota oil fields. If one has to pick what is more valuable for mitigation - acreage in the Permian Basin or North Dakota or wilderness in Alaska - he wasn't sure that the wilderness and wetlands weren't more valuable than the oil fields.

MR. BRUNO agreed that wetlands resources are becoming more valuable based on federal policy and laws, even though it's a subjective valuation.

SENATOR HUGHES asked if mitigation credits can be purchased across state lines and if other states could look to Alaska for mitigation acreage.

COMMISSIONER MACK answered no. In fact, the Corps and the EPA prefer that the mitigation be provided in the same watershed and certainly in the same service area - the North Slope, for example, is a service area.

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He added that the 2008 rule was designed to set up a private industry that would create these instruments, get them certified by the federal agencies, then go to the marketplace and facilitate development by providing the mitigation on a private contract basis for somebody that was seeking a CWA permit.

This has worked fairly well in the other contiguous states where banks will loan money to and private funds are invested in wetland mitigation banks. This is just another example of where it just doesn't work that way in Alaska. He wasn't aware of a single example of a high net worth individual who has invested

in the wetland mitigation bank in Alaska, but it happens all the time in the Lower 48.

MR. BRUNO said the state retains a lot of the resources that this program would use for mitigation, and without a state or federal program, there are limited options. A recent project in the NPR-A had an 11-acre pad and a 7-mile road. That company had a mitigation ratio that required it to purchase a deed restriction that covered 350 acres of land, which is a huge discrepancy.

Other projects on the North Slope have historically paid into an in lieu fee program. But things like Polar bear habitat have escalated prices and mitigation ratios making it very expensive to do mitigation on the North Slope. Additionally, because Alaska has only one in lieu fee provider and a limited amount of banks, it's quite possible that a mitigation provider might not be in the area of a project. And even if a provider exists, a limited amount of resources are available for compensatory mitigation.

The last hurdle the state has is to loosen up the Corps' definition of "threat" in Alaska, because even if a provider is found and the mitigation resources are set aside, the definition of "threat" has to be met. This is where Alaska needs more clarification and flexibility.

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SENATOR STEDMAN asked the department to provide some basic information about banks including a list of existing banks in Alaska and their status, what kind of costs are incurred, and areas that don't have banks.

MR. BRUNO said he would do that.

SENATOR VON IMHOF asked what the entity did with the money in the earlier example of the 7-mile road and 350 acres of mitigation.

COMMISSIONER MACK answered that he was talking about Greater Mooses Tooth 1 (GMT-1), an extremely important project to the State of Alaska for a number of reasons. It's the second project in the NPR-A. The Bureau of Land Management (BLM) was leading permitting agency and provided the NEPA process planning documents on behalf of various federal agencies. ConocoPhillips was required to get a Clean Water permit to place gravel on the tundra and it eventually paid for a deed restriction of 350

acres to a private land owner. He preferred to not talk about particular parties, but it's a difficult situation, because folks have thought about development options all over the North Slope. So, the question has to be asked whether the private land owner really wanted to do this or whether they wanted to see the GMT-1 project move forward and felt they needed to do it.

COMMISSIONER MACK noted that GMT-1 started out with ARCO and had been around a minimum of six or seven years and was finally permitted and sanctioned in 2015 by ConocoPhillips. It had two outstanding issues that were not solved until a few weeks ago: one was metering and the second was compensatory mitigation. The compensatory mitigation element was the last item to be resolved and it was a struggle for ConocoPhillips that is an extremely sophisticated organization that understands how all this works.

SENATOR VON IMHOF asked if the private landowner is "one and done" or can your land continue to be used as mitigate over and over again.

COMMISSIONER MACK answered one and done; the deed restriction document lists activities that cannot occur on this land. He said GMT-2 is now in the permitting process, and would also have to find additional acres and have difficult negotiations with the private land owner.

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SENATOR STEDMAN asked if a deed restriction on swamp land projects into the subsurface, but then then directional drilling could still be used to extract the underlying resources. Most folks in the state don't own subsurface, so how does that work out?

COMMISSIONER MACK answered the subsurface is predominantly owned by the state, and one can't unnecessarily restrict access to the subsurface. So, an agreement with the subsurface owner is needed. This comes into play in rural Alaska where a village corporation owns surface estate, and they may want to sell some credits. But typically speaking, the subsurface is owned by the regional corporation, and they have an obligation to their shareholders (which are mostly the same as the village corporation shareholders), a "ticklish" situation. The truth of the matter is that in particular cases on the North Slope one doesn't want to put together such a large menagerie of deed restrictions that at some point you can't access the subsurface. This kind of tickles up against all of the new technology that is being deployed in the Fjords West project and others. He

emphasized that this deed restriction is permanent, so one has to think in terms of generations.

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MR. BRUNO said in addition to the 350 acres for GMT-1, the Corps required a \$9 million compensatory mitigation cost for their impacts on subsistence activities.

CHAIR GIESSEL asked who defines "threat."

MR. BRUNO answered the federal district engineer for the State of Alaska.

CHAIR GIESSEL clarified that it is a federal person, not a state person.

MR. BRUNO said it is incumbent on someone to offer a new definition of "threat" to the district engineer.

SENATOR COGHILL asked if the state decides to be a mitigation bank could it be more in charge of the definition.

MR. BRUNO said that was a good point. If the state took over the in-lieu fee program, it would be incumbent on the state to define threat, and if there were disputes, it would be left up to the court to determine who was right.

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MR. BRUNO said the 2008 rule is much more detailed in terms of what is needed for submittal of a project, performance measures, reporting protocols, and how a property is to be managed long term. It also defines the hierarchy for mitigation providers and known proven projects, because they get money from the in lieu fee programs and have to develop the projects.

If the state were to develop an in lieu fee program, it wouldn't be in direct competition with the banks, because the banks are informally given preference over the state. It is an opportunity for the state to play a larger role if it is the only mitigation bank available. The only requirement is to get approval and operate as a non-profit.

Lastly, Mr. Bruno said, the district engineer can decide when mitigation is required, what mitigation is acceptable, and the location and type of mitigation. They have to live within certain standards, but they get to decide things that are in the grey area.

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MR. BRUNO said they had done some informal reviews of the draft in lieu provider prospectus and the formal prospectus was submitted to the court on Friday. One of the goals of that program is to fill the gaps where mitigation options aren't available by offering a new suite of aquatic resources and other lakes, rivers, and creeks for compensatory mitigation, reducing the need to encumber private lands with federally required conservation easements. Not that somebody can't use their private lands if they want to, but it wouldn't be the only option of resort. They also want to assure that current and future development is not jeopardized by the lack of available compensatory mitigation options.

CHAIR GIESSEL asked what if a he offered a piece of wetland property and then later some kind of resource is found on that land. Is it off the table?

MR. BRUNO answered probably not, but first one needs to replace the mitigation and then new additional mitigation has to be applied, what he called a form of "double mitigation." It is economically very difficult to justify depending on the project.

He said Alaska would be the 32nd or 33rd state to create a compensatory mitigation program. The Lower 48 has 25 mitigation banks, 12 in lieu fee programs, and some states have both. Most programs are administered by the DNR and the Department of Transportation.

SENATOR COGHILL said the in lieu fee program would be Alaska's best option, because it has so much pristine land. He asked him to go through the mechanics of an in lieu fee program so he can understand how the transfer works.

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COMMISSIONER MACK responded that a project applicant would get a 404 permit (CWA) from the Corps (basically to put gravel in wetlands). A question in the questionnaire is how the applicant intends to fulfill the policy under the final rule. Then the applicant would eventually have to show that it was more than offsetting the impacts to the wetlands. If the state were to have an in lieu fee program, it would have identified and already evaluated state-owned land that qualifies as wetlands, which could be placed in protected status in perpetuity. It would take a project applicant's money and make sure that a deed restriction (easement) is placed on the land to the satisfaction

of the Corps of Engineers. Administration of that project would be paid for through the proceeds of the project applicants. The first project applicants would probably be the Department of Transportation and Public Facilities (DOTPF) with a railroad project or a municipality with building schools or roads. That's how the money would transfer.

SENATOR COGHILL asked if he had already vetted properties to be available for project-specific negotiations.

COMMISSIONER MACK answered yes. An aquatic assessment of their inventory would be made to understand the aquatic values of the property. A project that needs specific types of mitigation could be matched up with a particular parcel, which then would be placed in protected status through an easement or other instrument. Some pre-work would be required, which is fairly expensive. Then there would be some work at the time. An in lieu fee program has a term called "produced credits" that allows a certain amount of time to make good on the CWA and the Corps on behalf of an applicant. But with a bank, an applicant literally goes into an office, sees precisely what the aquatic functions are for a particular parcel and buys that credit off the shelf.

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SENATOR HUGHES asked if he picks the sites out in advance and if he is looking now. How many acres is he talking about?

MR. BRUNO replied they are starting to do some of the inventory work using a geographic information system (GIS) screening tool that displays state land in different layers and valuations. They are really working with the agencies to figure out what the proper equation is.

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CHAIR GIESSEL asked if a statute change is needed to go forward.

MR. BRUNO answered no; they have most of the tools in-house to create easements, do construction work, and make improvements to these resources.

SENATOR STEDMAN thanked the department for clearing up this murky subject and commented that the irony of today's conversation is that the original 13 colonies along with Texas have virtually no federal land; Alaska on the other hand has virtually no state land. So they are put in the position of deed restricting the state's very precious private land. He asked if

there is any way to get the federal government to use its land for mitigation because the state can't get to anyway.

MR. BRUNO answered yes; the BLM is looking at those options, and the department has discussed with them if there is an opportunity to actually combine an in lieu fee program with whatever they want to do. Pilot projects are happening at Jack Wade Creek.

SENATOR STEDMAN said he thought that having the federal government be the bank should be pursued, because the state has such a small amount of land.

COMMISSIONER MACK said the rule requires "functional uplift," which is a fancy way to say something is needed that wouldn't otherwise be done. The federal government deems itself as protective of wetlands, so they have never considered their ability under the Clean Water Act to place a benefit in protected status. "It's an amazing conundrum."

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COMMISSIONER MACK said everything they are talking about today is the result of the Clean Water Act, various memorandums, a rule that was promulgated and finalized in 2008, and its practical application in Alaska. More recently, the prior administration in Washington, D.C., decided to shift gears and in addition to the CWA compensatory mitigation required five different agencies (DOI, DOD, EPA, NOAA, and DOA) to implement instead of a policy of no loss wetlands, to now focus on "net gain." He provided a memo from the president to five different departments that changed the national policy of no loss wetlands to showing a net benefit. He said this policy is now taking its turn in Alaska and the GMT-1 project is being required to both mitigate the impacts to the aquatic landscape through the CWA and to negotiate additional fees with the federal government, in this case the BLM, for impacts not related to the aquatic environment. His position is that this policy should be totally withdrawn or significantly amended. Maybe the new administration will withdraw it.

SENATOR COGHILL asked what the legislature could do to add to the volume of comment on it.

COMMISSIONER MACK answered that speaking in resolution form on some of these issues is very important. The Waters of the United States is another critical issue, because the new definitions

broaden the amount of acres in Alaska that qualify as wetlands from 50 percent to 80 or 90 percent. "It's very disconcerting."

SENATOR COGHILL remarked that a resolution was worth entertaining, particularly with the new administration in Washington, D.C.

CHAIR GIESSEL said she wonders how that will ripple out to the Tier 3 issue the legislature dealt with last year.

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CHAIR GIESSEL adjourned the Senate Resource Standing Committee meeting at 4:51 p.m.