

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 1, 2019
6:32 p.m.

MEMBERS PRESENT

Representative Geran Tarr, Co-Chair
Representative Grier Hopkins, Vice Chair
Representative Sara Hannan
Representative Ivy Spohnholz
Representative Chris Tuck
Representative Dave Talerico
Representative George Rauscher
Representative Sara Rasmussen

MEMBERS ABSENT

Representative John Lincoln, Co-Chair

OTHER LEGISLATORS PRESENT

Representative Chuck Kopp
Representative Steve Thompson
Representative Sarah Vance
Representative Kelly Merrick

COMMITTEE CALENDAR

CONFIRMATION HEARING(S) :

Commissioner, Department of Environmental Conservation

Jason Brune - Anchorage

- CONFIRMATION(S) ADVANCED

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

JASON BRUNE, Commissioner Designee
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: Speaking as commissioner designee to the Department of Environmental Conservation, answered questions.

ACTION NARRATIVE

[6:32:01 PM](#)

CO-CHAIR GERAN TARR called the House Resources Standing Committee meeting to order at 6:32 p.m. Representatives Hannan, Hopkins, Rasmussen, Rauscher, Talerico, Tuck, and Tarr were present at the call to order. Representative Spohnholz arrived as the meeting was in progress. Representatives Kopp, Thompson, Vance, and Merrick were also present.

CONFIRMATION HEARING(S):
Commissioner, Department of Environmental Conservations

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CO-CHAIR TARR announced the only order of business would be the confirmation hearing of Commissioner Designee Jason Brune, Department of Environmental Conservation (DEC).

REPRESENTATIVE RASMUSSEN asked Commissioner Brune whether he holds any financial interest in companies or industries overseen by DEC and how he would use an unbiased approach in permitting decisions related to companies with which he was previously involved.

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JASON BRUNE, Commissioner Designee, DEC, said on [12/3/18] he sold all of the stock he owned in any resource development company doing business in Alaska. Further, his money is invested in a blind trust for retirement. Turning to the subject of conflict of interest, he said the DEC commissioner has a responsibility to do no more or less than authorized by the legislature, or by Congress, when authorization is delegated to the commissioner by Congress. He said his job is to produce science-based, legally defensible permits that will not be challenged. The team at DEC is focused on science-based permits, therefore, it is impossible for him to be biased.

REPRESENTATIVE HANNAN recalled Commissioner Brune's statement that Alaska has an unstable permitting process, ranked behind "the Congo" in the predictability of permitting. She advised in Africa, projects do not advance without bribes, and asked which

aspects of Alaska's permitting process are unpredictable and need reform.

COMMISSIONER BRUNE said he was repeating information from an annual study by the Fraser Institute that reported on the predictability of permitting in all mining regimes worldwide. In geology, Alaska "ranks in the top five." For predictability in its permitting regime, mining executives ranked Alaska behind "the Congo." From his personal perspective, he said there have been constant changes made by previous administrations. Commissioner Brune said the state permitting regime should follow certain steps - laid out by the legislature or Congress - and grant permits based on the rules; the governor should support the process so that companies can come and invest without fear. He said he seeks to bring back predictability, ensure due process for companies, and put the onus to prove a project can be developed safely on the project proponent.

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REPRESENTATIVE HANNAN noted proposed legislation [SB 51, related to the Clean Water Act's antidegradation regulation Tier 3 water designation] would create a process finalized by the legislature, which is a political entity. She asked whether Commissioner Brune would support a Tier 3 water designation based on a science-based process.

COMMISSIONER BRUNE said Alaska's process to designate Tier 3 waterbodies directs the legislature to vote on the designation. He provided a brief background of the process and noted the goal of SB 51 is to codify that the legislature has the final decision on water use and land use designation. He advised proposed SB 51, section B, requires that DEC, the Department of Natural Resources, and the Alaska Department of Fish and Game provide "science-based justification" for the Tier 3 designation. Furthermore, proposed SB 51 would codify regulations and transfer powers from the executive branch to the legislature.

REPRESENTATIVE HANNAN asked for Commissioner Brune's stance on the restoration of the [Alaska Coastal Management Program (ACMP)] and on other ballot measures that would affect Alaska's permitting process.

COMMISSIONER BRUNE informed the committee in 2010 he [represented the Resource Development Council (RDC)] and worked on [failed] legislation to maintain ACMP. He said RDC probably

opposed the initiative to reinstate ACMP because RDC was concerned that initiatives do not undergo a deliberative legislative process. He said he worked to oppose "the cruise ship initiative, the clean water initiative ... [and] the gas reserves tax issue."

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REPRESENTATIVE SPOHNHOLZ asked Commissioner Brune to describe the rules that are changing.

COMMISSIONER BRUNE said, in relation specifically to the Pebble project, at the federal level there was concern by the mining industry about [the Clean Water Act section 404(c)] proposal to stop Pebble before its application was submitted, and federal action to stop an Arch Coal project that had been permitted. At the state level, the previous governor took a position in opposition to a project on state land that was designated for mining; further, the chief of staff for the previous administration was an adamant Pebble opponent. This raised concern that Pebble was not going to be treated fairly by the previous administration. He opined there are certain areas of the state that should never have mining, oil and gas, or other development; however, the Pebble mine site was designated for mining, and companies have made investments, so they should not be stopped from participating in a fair permitting process.

REPRESENTATIVE SPOHNHOLZ questioned whether the aforementioned Fraser Institute's study was based solely on a change in administration.

COMMISSIONER BRUNE said he could not speak to the reason; however, he opined the thought is "... it should not be a, an executive decision that's made" He pointed out [the Fraser Institute issued] a confidential study.

REPRESENTATIVE SPOHNHOLZ questioned the generalization that Alaska's permitting structure is unstable due to a change of governor. She surmised in the U.S., a change in administration brings a mandate for an agenda, but Alaska's underlying structure did not substantially change in the last four years.

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COMMISSIONER BRUNE referred to [Alaska Bristol Bay Mining Ban Question, Ballot Measure 4, passed 11/4/14, known as Bristol Bay Forever] that requires after a project has been permitted, the

legislature can make a final decision, which makes mining in Bristol Bay a political process as well as a permitting process, and sends a "very dangerous message."

REPRESENTATIVE HOPKINS reminded the speaker the aforementioned ballot initiative was found unconstitutional by the Alaska Supreme Court thus is no longer in effect. Furthermore, this process was not a regulation change brought by the administration or the legislature but was a process made available to the citizens of Alaska by its state constitution. He remarked:

If a resource company wants to hold the legislature in Alaska responsible for our citizens being able to pass an initiative every two years, so be it, but that's not going to be changing with an administration or not, that's going to be up to its people's will.

COMMISSIONER BRUNE restated the point of the Fraser Institute study is related to the unpredictability of the permitting regime regardless of its source.

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REPRESENTATIVE HOPKINS directed attention to Commissioner Brune's perception on the influence of local voices and governments to the permitting process. For example, a number of communities throughout the region of the Donlin mine project have urged the developers to use a dry stacking method to store the tailings and thereby avoid storing tailings in a pond for 1,000 years. However, the economic viability of the mine would be affected. He asked where the commissioner's priorities would lie.

COMMISSIONER BRUNE acknowledged the value of local, Tribal, village corporation, and regional corporation input is incredibly important. However, when a permitting agency reflects on a local community's participation in the workings of a project, the local community's desires may not be consistent with the best available technology or the best science. He said it is important to "weigh" the community's input and to mitigate local concerns as much as possible.

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REPRESENTATIVE HOPKINS expressed his understanding dry stacking technology is currently in use in Alaska; he asked if a

technology is well-known and favored by local governments, should Alaska require a developer to absorb additional costs and comply.

COMMISSIONER BRUNE said investment decisions are made by developers; he cautioned extra costs may mean projects leave the state. He said he was unsure as to the best technology for the Donlin project; however, if a company can meet permitting requirements, it should have the opportunity [to advance its project].

REPRESENTATIVE HOPKINS recalled the Pebble mine site was designated for mining development in the '70s before it was known the full Pebble deposit is nearly one mile deep. He asked:

Why should we continue to maintain our same ideas about what needs to happen on that land from an agreement 50 years ago, when we didn't have the technology and the facts then that we do now? Shouldn't we be able to understand that when the facts change our opinions should change as well?

COMMISSIONER BRUNE agreed one should not use 50-year-old technology to build a mine today.

REPRESENTATIVE HOPKINS clarified his question is also directed to what is known about the land and the possible effects of aspects of a mine; for example, it is now known the mine will be a hole 5,000 feet deep.

COMMISSIONER BRUNE cautioned against the possibility of the state becoming liable for a [prohibition on taking property without just compensation] claim. He urged for the best use of technology, science, and strong regulation to ensure a safe project; however, after an area has been designated for resource development, and leases or claims are granted, if the state prevents developers from following a federal or state permitting process, that sends a very a dangerous message. He restated companies should be required to meet very high standards at the state and federal level.

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CO-CHAIR TARR observed Commissioner Brune speaks in favor of a science-based policy but recalled the governor removed references to climate change from "the website," and thus there

is evidence that leadership at the federal and state levels may not be using science-based systems; in fact, although one may believe permitting processes work independently of the administration, that is not what is happening. She expressed her concern about a certain project being fast-tracked on both federal and state levels, which is a conflicting message with the commissioner's statement.

COMMISSIONER BRUNE assured the committee his emphasis on science is "spot on." He restated DEC can do no more and no less than what it has authority to do through legislation. Further, DEC is directed by regulation from the Clean Water Act and the Clean Air Act, including the National Pollutant Discharge Elimination System, by rulings that are specific to Alaska, but delegated by the U.S. Environmental Protection Agency (EPA). Turning to the Climate Action for Alaska Leadership Team, he advised there is no delegation of authority from the legislature on climate change, but said Alaska is impacted by climate change, no matter the cause, and he gave examples. He said he and the governor want to take action to mitigate the impacts of climate change.

REPRESENTATIVE RASMUSSEN asked for the commissioner's goals for DEC.

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COMMISSIONER BRUNE said he is excited about working with good scientists at DEC and those who are passionate about their work. He said he retained all but one director from the prior administration. Currently, DEC will focus on working with industry to develop communities and resources, and to focus on protecting human health and the environment, which is the mission of DEC. He found many DEC employees did not have current evaluations and now all do, and he emphasized the need to develop employees, promote employees from within, and create new opportunities.

REPRESENTATIVE SPOHNHOLZ expressed her ongoing concern that budget downsizing at DEC has slowed water quality testing in senior centers, and daycare centers, and that kitchens are not being inspected in a timely manner.

COMMISSIONER BRUNE agreed restaurant and water-quality inspections have decreased, although an emphasis has been placed on areas of highest risk; DEC seeks to cross train "rainbow" employees who can perform multiple tasks in rural communities thereby fully utilizing travel funds. In addition, DEC proposes

to share flights to rural Alaska with the Department of Public Safety. He suggested there can be local solutions; for example, Anchorage has taken over DEC authority for restaurant inspections and other communities may do so.

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REPRESENTATIVE SPOHNHOLZ inquired as to the date of the aforementioned Fraser Institute report.

COMMISSIONER BRUNE said 2018.

REPRESENTATIVE SPOHNHOLZ related in 2016, the Fraser Institute rated Alaska as the highest jurisdiction in the U.S. for mining exploration and reported 75 percent of the time respondents received permits within six months. She said she was curious as to the circumstances of the change in rating.

COMMISSIONER BRUNE stressed Alaska needs the highest standards in the world for development and the highest environmental oversight; he said he was unsure of what affected the study.

REPRESENTATIVE TUCK recalled Commissioner Brune has identified regulations that are unnecessary and asked for an example.

COMMISSIONER BRUNE explained the governor wishes to eliminate unnecessary or duplicative regulation within all departments. At DEC, regulatory reform will address contingency plans that are so complicated they are unusable. He said DEC will work with the environmental community and industry to improve contingency plans.

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REPRESENTATIVE TUCK appreciated Commissioner Brune's science-based focus, and he pointed out sufficient time is needed to ensure for transparency and peer-review evaluations [of proposed projects]. He related there have been concerns expressed regarding the draft environmental impact statement (DEIS) [issued 2/20/19 by the U.S. Army Corps of Engineers (USACE) on the proposed Pebble Project] and asked whether USACE might have made a mistake.

COMMISSIONER BRUNE said it is possible. He agreed science and peer review are important; he observed industry's concern about the Bristol Bay watershed assessment was that the peer review of

that process was insufficient. He said it is possible for a federal agency to get something wrong.

CO-CHAIR TARR gave examples of statements made by Commissioner Brune in social media in support of Pebble mine and relating to the cost of doing business in Alaska. She said the cost of doing business is irrelevant to the mission of DEC. Further, although Commissioner Brune raised questions related to bias by the previous executive branch in certain resource development proposals, in the same manner, others have questioned Commissioner Brune's objectivity in light of his previous work history.

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COMMISSIONER BRUNE said at the time of his appointment he did not delete his social media history in order to be transparent. He reviewed his employment history with Anglo American, RDC, and Cook Inlet Region, Incorporated (CIRI), and his service to the Alaska Miners Association. While working in the private sector, he supported "that project." As commissioner of DEC, he said science must be the foundation for the decisions made by DEC; in fact, a commissioner cannot unilaterally permit any project without supporting documentation that will survive legal challenges.

CO-CHAIR TARR read a quote that indicated Commissioner Brune made a favorable decision about the Pebble project before it was evaluated. She has heard from those who are troubled by that statement.

COMMISSIONER BRUNE explained a commissioner needs "relevant real-world experience" and that he brings experience from every side. He restated his background as a representative of industry, a biologist, in the private sector for a large mining company, and for a regional Native corporation; therefore, he has considered projects from different perspectives, which will be an asset to DEC and the state.

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REPRESENTATIVE HOPKINS directed attention to the health and economic concerns about air quality in Fairbanks. He asked for the status of [the EPA grants] to address the [wood smoke fine particulate matter (PM)2.5] issue and how to ensure the state fulfills its responsibility to develop an effective improvement plan that will be acceptable to EPA.

COMMISSIONER BRUNE said DEC has developed a Serious State Implementation Plan (SIP) that will be released in early May [2019]. There has been contact with the governor's office, local stakeholders, the private sector, and throughout the community of Fairbanks. He said he was frustrated by the [2018 citizen's initiative] passed in the Fairbanks North Star Borough because he seeks local solutions for local problems; however, DEC put together a plan that would not have a negative impact on development, but would address the issue. He said progress has been made by the local community to reduce burning on inversion days; for example, although the PM2.5 attainment level is 35 [micrograms per cubic meter], PM2.5 levels have been reduced from 150 to 60-65. No Other Adequate Source of Heat (NOASH) waivers are issued for those who have no other options.

REPRESENTATIVE HOPKINS asked whether DEC will be in contact with the Interior delegation in this regard.

COMMISSIONER BRUNE said yes, possibly on [4/16/19].

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REPRESENTATIVE KOPP inquired as to the background of former DEC commissioner, Larry Hartig.

COMMISSIONER BRUNE said Mr. Hartig was on the board of RDC and was a lawyer who represented Alyeska Pipeline Service Company, the Red Dog mine, and other resource development companies. Mr. Hartig was a well-respected commissioner; in fact, there is a long history of DEC commissioners who have worked for industry.

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REPRESENTATIVE KOPP referred to issues, particularly in downtown Anchorage, where businesses cannot make improvements to their properties. Representative Kopp related businessowners feel DEC regulations do not provide a solution to problems related to contaminants on land that were not treated by previous owners. He pointed out previous legislation has addressed this issue on land owned by Alaska Native corporations.

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COMMISSIONER BRUNE explained [the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)] requires that a party in the chain of title to land is potentially a

responsible party even if there is no prior knowledge of contaminants; in the case of Alaska Native Claims Settlement Act (ANCSA) lands, he suggested DEC should provide indemnification to developers to clean up ANCSA land instead of creating new wetlands. He said this is an "outside of the box [idea]" that may provide a way to get non ANCSA contaminated land cleaned up. He said he would review the circumstances of properties in downtown Anchorage.

REPRESENTATIVE HANNAN reviewed the implementation and purpose of the Ocean Ranger Program, Division of Water, DEC, that was created by ballot initiative and that operates at no cost to the state. She pointed out the cruise ship industry brings 2 million visitors and crew to the Southeast region and residents do not support the repeal of the Ocean Ranger program, without additional oversight, due to a history of violations by the industry. The cruise ship industry is not similar to other industries because discharge permits normally are for facilities located in a fixed location that are more easily reported. She said she could not support repealing the program without a replacement to assure safe and clean water in Southeast Alaska.

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COMMISSIONER BRUNE stated he will work for a better Ocean Ranger program. He said there is technology that can monitor cruise ships; he acknowledged the program was necessary when it began, but it is not necessary now. Ocean Ranger program funds can be used by DEC to develop technology that is more transparent to the public; further, DEC can make inspections at any point. He said there is no other industry that has [24 hours-per-day/7 days-per-week (24/7)] oversight and the state seeks to be fair to industry. In addition, DEC holds the cruise ship industry to higher standards for water quality than are required of Alaska towns and cities.

REPRESENTATIVE SPOHNHOLZ returned to the issue of contaminated land in Anchorage and noted, in addition to business owners, residents are also affected.

REPRESENTATIVE TUCK pointed out the number of cruise ship visitors continues to grow, and the Ocean Ranger program does not hinder that growth. He agreed with Commissioner Brune's recommendation to raise the standards of local communities. He related the commissioner stressed that the designation of the Pebble mine site was done 50 years ago, although there could be new information. Earlier today, there was testimony that

information in [the DEIS issued by USACE on the proposed Pebble Project] might have been hidden, omitted or was conflicting. He asked Commissioner Brune how "red flags" raised about any project should be handled.

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COMMISSIONER BRUNE, to response to Representative Tuck's comment on the Ocean Ranger program, said cruise ship passengers pay \$4 each for a program that is duplicative and unnecessary. He said the state should be good stewards of others' money and should use technology to improve the program if appropriate. In regard to the Pebble project, at this time DEC is evaluating the USACE permit application and will provide comments. When any project submits a formal application, DEC will incorporate the best science and technology available to formulate permits.

CO-CHAIR TARR reminded the committee prior to the Ocean Ranger program cruise ships were dumping damaging chemicals, which made oversight necessary. She turned to the subject of per- and polyfluroralkyl substances (PFAS) and cautioned awaiting action by the federal government could mean a delay of 20 years. For example, there are chemicals that have never been evaluated for impacts to human health or the environment, and new research shows there are harmful effects to both. She opined the state has the opportunity to prevent pollution in its drinking water and should not wait for federal regulations related to PFAS contamination.

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COMMISSIONER BRUNE agreed "if they're dumping in Alaska's water that's grossly inappropriate" He said he met with the executive director of Alaska Community Action on Toxins (ACAT), heard her concerns about four pesticide chemicals identified by ACAT, and referred her concerns to the regional administrator. The state has released revised regulations for pesticide application used to control invasive species, which requires a quick response. He opined Alaska has taken the lead on PFAS contamination by working with the Department of Transportation and Public Facilities on a risk matrix to determine locations where there may be contamination - from the use of firefighting foam - and to identify areas where drinking water supplies may have been affected. He listed the affected communities and noted Kenai and Valdez [airports] have been tested and PFAS were not found. For communities where PFAS or perfluorooctanoic acid (PFOA) levels above 70 parts per trillion have been found, the

state is providing drinking water. The Federal Aviation Administration (FAA), U.S. Department of Transportation, requires the firefighting foam to be available at every certified airport and also requires annual testing of the foam; however, the commissioner of DOT&PF has stopped testing of the foam. He said equally effective alternatives to aqueous film forming foam (AFFF) need to be developed to prevent further contamination. He reported EPA's evaluation of the foam will not be a multiyear process and that he will be meeting with his counterparts in other states on this issue.

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CO-CHAIR TARR urged for the state to take action and thereby prompt a federal response.

COMMISSIONER BRUNE noted the state is the responsible party at many airports in Alaska, therefore, addressing the needs of affected communities is a high priority.

REPRESENTATIVE HOPKINS pointed out DEC needs to work in close contact with local authorities and responsible parties, such as volunteer fire departments in volunteer service areas.

COMMISSIONER BRUNE agreed and observed some industries also maintain firefighting teams. He pointed out another emerging aspect of the issue is how to dispose of contaminated soil; in 2016, DEC set a regulation limit of 400 parts per trillion and a pilot project is underway to burn contaminated soil excavated at Eielson Air Force Base.

REPRESENTATIVE TALERICO pointed out [mining] engineering is left out in discussions; for example, when [the science of building a dam] is discussed, also included should be aspects of engineering such as compression, compaction, and the materials used in building a dam. Further, his personal experience is that graduates of the University of Alaska Fairbanks are engineers who are knowledgeable about Alaska's environment.

COMMISSIONER BRUNE agreed and noted Alaska has engineering marvels that have allowed for responsible resource development in the state: the Trans-Alaska Pipeline System was engineered to endure a major earthquake; new technology for tailings facilities are specific to Alaska; Alaska utilizes engineering to ensure concurrent reclamation during development projects.

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REPRESENTATIVE HOPKINS paraphrased from the following written statement:

The House Resources Standing Committee has reviewed the qualifications of the governor's appointee, Department of Environmental Conservation designee Jason Brune, and recommends the name be forwarded to a joint session for consideration. This does not reflect the intent by any of the members to vote for or against this individual during any sessions for the purposes of confirmation.

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 8:08 p.m.