

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 15, 2023

3:30 p.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Cathy Giessel, Co-Chair
Senator Bill Wielechowski, Vice Chair
Senator Scott Kawasaki
Senator James Kaufman
Senator Forrest Dunbar
Senator Matt Claman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 33

"An Act relating to the renewable energy grant fund and recommendation program; and providing for an effective date."

- MOVED SB 33 OUT OF COMMITTEE

PRESENTATION(S): OVERVIEW OF STATEHOOD DEFENSE

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 33

SHORT TITLE: RENEWABLE ENERGY GRANT FUND

SPONSOR(S): SENATOR(S) KAUFMAN

01/18/23	(S)	PREFILE RELEASED 1/13/23
01/18/23	(S)	READ THE FIRST TIME - REFERRALS
01/18/23	(S)	RES, FIN
02/13/23	(S)	RES AT 3:30 PM BUTROVICH 205
02/13/23	(S)	Heard & Held
02/13/23	(S)	MINUTE(RES)
02/15/23	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

DOUG WOODY

350 Juneau, Climate Action for Juneau
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 33.

MATTHEW JACKSON, Climate Program Manager
Southeast Alaska Conservation Council
Sitka, Alaska

POSITION STATEMENT: Testified in support of SB 33.

JASON BRUNE, Commissioner
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: Participated in the overview of statehood defense from DEC's perspective.

CORI MILLS, Deputy Attorney General
Office of the Attorney General
Civil Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Participated in the overview of statehood defense from DOL's perspective.

JOHN BOYLE, Commissioner-Designee
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Participated in the overview of statehood defense from DNR's perspective.

BRENT GOODRUM, Deputy Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Participated in the overview of statehood defense from DNR's perspective.

JOHN CROWTHER, Deputy Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Participated in the overview of statehood defense from DNR's perspective.

BEN MULLIGAN, Deputy Commissioner
Alaska Department of Fish and Game
Juneau, Alaska

POSITION STATEMENT: Participated in the overview of statehood defense from ADF&G's perspective.

ACTION NARRATIVE

[3:30:20 PM](#)

CO-CHAIR CLICK BISHOP called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Kaufman, Dunbar, Wielechowski, Claman, Co-Chair Giessel and Co-Chair Bishop. Senator Kawasaki arrived during introductions.

SB 33-RENEWABLE ENERGY GRANT FUND

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CO-CHAIR BISHOP announced the consideration of SENATE BILL NO. 33 "An Act relating to the renewable energy grant fund and recommendation program; and providing for an effective date."

He noted that this was the second hearing. The intention was to hear public testimony and look to the will of the committee.

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CO-CHAIR BISHOP opened public testimony on SB 33.

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DOUG WOODBY, 350 Juneau, Climate Action for Alaska, Juneau, Alaska, stated support for SB 33. He emphasized the importance of extending the Renewable Energy Grant Fund for at least 10 years and appropriating at least \$50 million annually. Rural communities in particular will benefit. The bill is important for the rapid transition to renewable energy that's needed to have sustainable communities in Alaska.

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MATTHEW JACKSON, Climate Program Manager, Southeast Alaska Conservation Council (SEAAC), Sitka, Alaska, testified in support of SB 33. He stated that he also works closely with the Alaska Climate Alliance and recently submitted a petition to the committee with 230 signatures from people statewide who support the Renewable Energy Grant Fund. He echoed Mr. Woodby's sentiments that this fund has been wildly successful. It has funded more than 100 projects that are operational and 44 more under development. It keeps communities from burning multiple millions of gallons of diesel every year. This saves multiple millions of dollars and keeps millions of tons of carbon dioxide

from being released into the air. He urged the committee to not only pass SB 33, but also to fund it with \$50 million during the budget process this year. The Renewable Energy Grant Fund is the most effective means of helping communities transition to renewable energy.

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CO-CHAIR BISHOP closed public testimony on SB 33, and reviewed the fiscal note.

Department: Department of Commerce, Community and Economic Development
Appropriation: Alaska Energy Authority
Allocation: Statewide Project Development, Alternative Energy and Efficiency
OMB Component Number: 2888
Fund Source (Operating Only): 1210 Renewable Energy (DGF) - \$1.4 million/year through FY29.

SB33 extends the effective date of the Renewable Energy Grant Fund and recommendation program to June 30, 2033.

CO-CHAIR BISHOP found no questions or comments and solicited the will of the committee.

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CO-CHAIR GIESSEL moved to report SB 33, work order 33-LS0235\A, from committee with individual recommendations and attached fiscal note(s).

CO-CHAIR BISHOP found no objection and SB 33 was reported from the Senate Resources Standing Committee.

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At ease

PRESENTATION(S): OVERVIEW OF STATEHOOD DEFENSE

[3:38:47 PM](#)

CO-CHAIR GIESSEL reconvened the meeting and announced the committee would hear an overview of statehood defense by a group of commissioners and attorneys. She invited the presenters to the witness table.

[3:39:38 PM](#)

JASON BRUNE, Commissioner, Department of Environmental Conservation, Juneau, Alaska, stated that he was eager to talk about the measures that have been implemented over the last two years to defend the state. He introduced the panel that had been meeting weekly over the last two years to talk about how the state can defend against attacks and have self-determination. He thanked the legislature for funding this effort.

COMMISSIONER BRUNE stated that statehood defense is about more than litigation. It is preparing for the potential for litigation with baseline science that does not rely solely on science from the federal government. This requires preparing a record that is as Alaska-specific as possible. Participating in amicus briefs and initiating litigation may be appropriate and it's important to engage with other states impacted by federal policies from a Tenth Amendment perspective. He emphasized the importance of Alaska having control over its destiny, speaking to the following definition of statehood defense:

Defending the rights and privileges promised to the Citizens of the State of Alaska upon the State's admission into the Union, especially concerning the use, conservation, and management of the State's lands, waters, and natural resources.

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COMMISSIONER BRUNE spoke to the following laws that protect Alaska's right to manage its own land, waters, fish, and wildlife: statehood defense:

United States Constitution:

- Establishes a federal government of limited power
- 10th Amendment - Expressly reserves State rights
- Equal Footing Doctrine - State submerged lands, inland and tidal waters
- Anti-commandeering doctrine

Statehood Act:

- State land selections
- State submerged lands
- Right to manage state lands, waters, fishery resources, mineral development, and wildlife

Federal Submerged Lands Act:

- State submerged lands - inland, tidal, and coastal waters

Alaska National Interest Lands Conservation Act (ANILCA):

- State land selections
- Management of state lands, waters, fish and wildlife confirmed
- Sturgeon v. Frost - limits the extent of federal lands in Conservation System Units

Alaska Native Claims Settlement Act (ANCSA)

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COMMISSIONER BRUNE spoke about taking on statehood defense, touching briefly on the following points on slide 6:

- Limit federal overreach into issues that are best handled by the State
- Assert and defend State's ownership and management of its resources for the benefit of the citizens of the State

He noted that Deputy Commissioner Mulligan would talk about some of ADF&G's studies on polar bears and other fish and wildlife species.

- Defend State and its citizens' ability to access State, private, and Tribal resources
- By
 - State of Alaska Science
 - Comment/Record development
 - Direct litigation
 - Intervention
 - Amicus support
 - Multi-State Coordination

COMMISSIONER BRUNE stated that the general strategy to defend statehood is to engage experts on Alaska's resources, partner with others, and outsource when necessary. He deferred to Cori Mills to discuss how funding in defense of statehood had been used in the past.

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CORI MILLS, Deputy Attorney General, Office of the Attorney General, Civil Division, Department of Law (DOL), Juneau, Alaska, directed attention to the legal proceedings listed on

slide 8 and explained that it is the current list of cases that the legislature had funded through the multi-year statehood defense funding. She opined that the list would grow by three or four in the next several months because of upcoming matters related to waters of the United States (WOTUS) and the recent Tongass Roadless Rule. She said what's important to note is that the legislature had appropriated about \$6.5 million, and half had been spent. She directed attention to the anticipated costs column that totals about \$8.7 million and conveyed that these capture the upper range of potential costs.

She also advised that Department of Law releases an annual federal law and litigation report for the legislature that has 47 total cases, some of which draw from different pots of money than the multi-year statehood defense fund.

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SENATOR DUNBAR asked how the legislature knows that the funding it appropriates for statehood defense actually go to these lawsuits and not to anti-birth-control lawsuits, for example.

MS. MILLS answered that the department uses a case management system and each case is pointed to a specific funding source. That funding source can be undesignated general fund or another department's reimbursable services agreement if they are paying for the litigation. For statehood defense cases there are three fund codes: 1) the original \$4 million, 2) \$2 million from last year, and 3) \$500,000 specifically for the Tongass litigation. Outside counsel contracts are handled the same way. She reviews those invoices to make sure they point to the correct funding source. The matters on slide 8 are pointed to the three statehood defense funding sources.

She clarified that the abortion case he mentioned, was an amicus brief that specifically supported a state's right to regulate that type of public health care. Department of Law is not a party to that and it does not change any laws relating to abortion in Alaska.

SENATOR DUNBAR said it seems as though that matter could easily fit under statehood defense. He asked how a distinction is made and what the legislative recourse would be if DOL were to decide to use that as a fund source.

MS. MILLS restated that the department is very specific about funding sources and where matters are pointed. An audit will show which cases have been funded in which manner. Also, there

isn't a significant cost associated with joining an amicus brief. She offered to follow up with further conversations about the process.

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SENATOR CLAMAN, in follow up to Senator Dunbar's questions, said the news reported that the Texas attorney general joined the lawsuit as a party plaintiff. He offered his understanding and experience that amicus briefs come later in the process, often after an appeal. He asked whether he misunderstood or the news got it wrong.

MS. MILLS opined that the news misunderstood and the reporting was inaccurate.

SENATOR CLAMAN asked why the Department of Law disregarded the legislature's specific directive to stop participating in the Janus suit.

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MS. MILLS answered that the Janus matter was about spending outside counsel dollars on the lawsuit, not about not participating at all. That distinction was not in the budget last year; it was in the previous year's budget. In any event, she said DOL was no longer using outside counsel for that case.

SENATOR CLAMAN asked how the legislature should express its desire appropriately, if the body were to decide it was not going to appropriate money to challenge the Pebble Mine decision.

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MS. MILLS opined that there was a fundamental disagreement between the legislature and the Department of Law about what the appropriation power does versus the Confinement Clause in substantive law. The attorney general has the authority over litigation decisions, including contracting with outside counsel. She offered to share letters that provide the department's position on those issues. She said the department has tried to adhere to the legislature's intent, but it is a substantive law and separation of powers issue for the legislature to tell the department it can or cannot enter into certain types of lawsuits.

She restated that DOL had been strict in how it spent the money the legislature had appropriated for the lawsuits listed on

slide 8. The focus is on natural resources and the purposes of these departments in the arena of natural resources management.

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SENATOR WIELECHOWSKI said his recollection of the Janus matter was different. He referenced a letter that was sent to the Legislative Budget and Audit Committee that indicated there had been a clear violation. The administration violated the directive not to spend any funds on Janus. He said he supports defending state's rights but when the legislature inserts a provision in the budget that prohibits spending on something and the administration ignores that directive, it is a violation of trust. As the appropriating body, the legislature wants to know that the funds will be used as directed.

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COMMISSIONER BRUNE transitioned to talk specifically about DEC activities in defense of statehood. He advanced to slide 10, and restated that Alaska wants to be in control of its own destiny. One way to do this is to assume primacy of federal programs within the state. Currently, Alaska has primacy over the following programs:

- ~ Safe Drinking Water Act
- ~ Clean Air Act
- ~ Clean Water Act Section 402, National Pollution Discharge Elimination System C

The FY23 budget has funding to create a hazardous waste control program under the Resource Conservation Recovery Act (RCRA).

The governor's amended budget has approximately \$5 million to assume primacy of the Section 404, Dredge & Fill Permitting Program under the Clean Water Act.

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SENATOR KAWASAKI asked, in addition to what's in the governor's amended budget, would statehood defense money also be spent to assume primacy of the Section 404, Dredge & Fill Permitting Program.

COMMISSIONER BRUNE answered no; the governor's budget proposes \$10 million for the preparation of comments, science, and litigation. The efforts to assume primacy over the Section 404 Dredge & Fill Permitting Program are separate budget items.

SENATOR KAWASAKI asked if that separate budget item was currently in DEC's budget.

COMMISSIONER BRUNE clarified that while having primacy programs is a component of statehood defense, it is not part of the \$10 million that is proposed for the governor's statehood defense budget.

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SENATOR WIELECHOWSKI asked if staffing was sufficient for the programs that the state had already assumed primacy, or if there were complaints from industry about the lack of staff.

COMMISSIONER BRUNE answered that before the legislature provided funding to create a hazardous waste control program under RCRA, the Environmental Protection Agency (EPA) provided program oversight with one-half of one position located in Seattle. DEC proposed six positions so it certainly seems that would be sufficient, but they were only in the application process. He continued that there was absolutely sufficient staff for the Safe Drinking Water Act. The state assumed primacy over the NPDES Program in 2008 through 2012 with 41 positions. In response to an annual report four years ago that said enforcement staffing was insufficient, he requested four additional enforcement staff positions and the reports since then have been glowing.

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SENATOR WIELECHOWSKI asked if industry had lodged complaints about the time DEC takes to process permits.

COMMISSIONER BRUNE said the department has never missed a permitting deadline related to the Clean Air program, but industry nevertheless has requested a more expedited timeline for the permitting process.

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COMMISSIONER BRUNE directed attention to the federal proposals listed on slide 11 that DEC experts evaluated and provided commentary to articulate Alaska's perspective. He highlighted the following:

Waters of the United States (WOTUS): EPA and the Army Corps continue to push the limits of federal jurisdiction under the Clean Water Act and Congress's authority under the U.S. Constitution. DEC and DOL prepared comments and are evaluating the final rule. Most recently, the Biden administration put

forward an expanded definition of WOTUS. DEC submitted extensive comments expressing concern about that.

Clean Water Act Section 404(c) Dredge and Fill Permitting Program: He clarified that this effort is not just about the Pebble Mine; EPA peremptorily vetoed 41 additional claims in the area. This made 309 square miles of state-owned lands off limits to resource development. DNR, DEC, ADF&G, and DOL commented and are now preparing to challenge the final determination.

Fairbanks PM2.5 Non-Attainment Area: EPA proposes to disapprove the stakeholder-driven plan for correcting air quality concerns; DEC will engage to address concerns raised. [DEC also intervened in a lawsuit brought by Earth Justice seeking to force EPA's hand to ensure the state is heard.] He said it's important to ensure that the State Implementation Plans (SIP) are developed. DEC believes the state can improve air quality in Fairbanks and prevent an adverse effect on the economy. He noted that there would be a public hearing on the issue in early March.

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Aviation Gas Endangerment Finding: Rural Alaska relies on aviation gas to deliver goods. The EPA proposal [regarding lead emissions from aircraft] may compromise access to rural communities.

Oil & Gas Methane Rule: The EPA proposes to penalize maintenance activities and unleash third-party observers to oversee facilities. Nevertheless, the state has to continue to remind the EPA that it is doing things right and is not a major contributor to the release of methane gas into the environment. By state law, methane from the North Slope is reinjected for enhanced oil recovery.

COMMISSIONER BRUNE advanced to slide 12 and discussed the areas that DEC has engaged on national policy priorities to ensure the state's perspective is represented.

Arctic Policy: Alaska is the reason the US is an Arctic nation, so it's appropriate that the new Arctic ambassador is an Alaskan. Alaska should be guiding the science and policy.

Environmental Justice Initiatives: Alaska works to highlight aspects of social justice that are often overlooked. The economic opportunities afforded Red Dog and oil development on the North Slope have increased life expectancy and helped to maintain cultures and subsistence lifestyles.

Maintenance and Operations for IAJA-Funded Facilities: Alaska has highlighted the long-term operation and maintenance needs for the 32 communities that will be upgraded from honey buckets.

Human Health Criteria

Environmental Social Governance and Greenhouse Gas Analyses

Toxic Release Inventory: The Red Dog and Greens Creek mines are known as two of the top five releasers of toxic material, but it's because of what is defined as a release. Moving a rock from one place to the other is considered a release, but manufacturers in the Lower 48 that release toxins into the air or water are ranked lower because of the way they're classified. DEC is pointing this out to the EPA and trying to change how toxic release inventory is identified.

COMMISSIONER BRUNE advanced to slide 13 and discussed two areas where DEC is holding federal agencies accountable:

ANCSA Contaminated Sites: DEC is pushing the Department of Interior to clean up contamination they left on properties the federal government transferred to Alaska Native Corporations under ANCSA.

EPA Woodstove Certification Program: EPA required DEC (and Fairbanks residents) to replace old woodstoves in the non-attainment area with EPA-certified woodstoves. DEC discovered that the EPA certification program is fundamentally flawed and is pushing the agencies to do its job to ensure the new stoves are actually cleaner.

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SENATOR DUNBAR questioned the reason that maintenance and operations for IAJA funded facilities were in a DEC statehood defense presentation. He asked if DEC intended to lobby or litigate the matter.

COMMISSIONER BRUNE responded that the Village Safe Water Program and the State Revolving Loan Fund help put infrastructure for potable and waste water in rural Alaska. He stressed that it was a statehood defense issue to hold the federal government accountable for the ongoing maintenance and operations of that infrastructure or the legislature would be responsible for appropriating the funds. He noted that the director of water for EPA told DEC to ignore the scoring for managerial, technical,

and financial requirements for communities to qualify for that infrastructure and just put it in.

SENATOR DUNBAR indicated he was still puzzling over the connection to DEC.

COMMISSIONER BRUNE offered to follow up after the meeting to provide additional clarity.

CO-CHAIR BISHOP asked if the director of water for the EPA had articulated her position in writing.

COMMISSIONER BRUNE answered no.

CO-CHAIR GIESSEL recognized DNR Commissioner-Designee Boyle as the next presenter.

[4:14:07 PM](#)

JOHN BOYLE, Commissioner-Designee, Department of Natural Resources, Anchorage, Alaska, stated that DNR's perspective of statehood defense is through the prism of the Alaska Statehood Act. The state received a land entitlement of approximately 105 million acres so it could stand on its own economically and not become a ward of the federal government. At that time, it was generally understood that Alaska's future success as a state was tied to its abundant and diverse natural resources. This state has found and will continue to find its wellbeing and prosperity tied to its oil and gas resources, minerals, fish and game, and timber through traditional uses or innovative means such as carbon offset and sequestration programs or expanded tourism opportunities.

COMMISSIONER-DESIGNEE BOYLE emphasized that the state's wealth was inherently meaningless without having management and control of transportation corridors such as rivers, lakes, tidal waters, RS 2477 rights-of-way, and other state land easements so Alaskans can access the natural resources in the state and reach the markets for those resources. He said this was why the importance of statehood defense cannot be overstated. Through statehood defense initiatives, DNR endeavors to secure, for current and future Alaskans, the right to enjoy the promises made at statehood.

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COMMISSIONER-DESIGNEE BOYLE displayed slide 15 and spoke to navigability as a vital aspect of state sovereignty. It read:

Estimated 800,000 miles of Navigable Rivers in Alaska

Estimated 30 million acres of Navigable Lakes in Alaska

The State of Alaska owns the submerged lands beneath every navigable-in-fact river and lake, and beneath tidally influenced waters in the state—unless a valid pre-Statehood withdrawal or reservation defeats State title.

In Federal Conservation System Unit areas created in Alaska post-Statehood, the submerged lands beneath navigable-in-fact and tidally influenced waters are State-owned lands.

This is a fundamental promise of Statehood enjoyed by Alaska—like all other states—pursuant to the Equal Footing Doctrine of the United States Constitution.

COMMISSIONER-DESIGNEE BOYLE displayed slide 16, Federal acknowledgement of State title to submerged lands (1959-present). He deferred to Mr. Goodrum to discuss the important work being done by DNR's Public Access Assertion and Defense (PAAD) Team, but not before noting that their work to determine navigability of waterways often involved high adventure and the use of rafts and camping equipment.

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BRENT GOODRUM, Deputy Commissioner, Department of Natural Resources, Anchorage, Alaska, directed attention to slide 17, stating that on the second anniversary of the Sturgeon v. Frost II US Supreme Court decision in March 2021, Governor Dunleavy announced the Unlocking Alaska Statehood Defense Initiative. This signaled that Alaska was not content to wait for federal agencies to tell the state it could manage its own lands. Rather, Alaska was going to act like the rightful landowner.

He spoke to the multifaceted approach the state is taking to exercise its ownership rights of navigability:

- ~ Heighten number of Recordable Disclaimers of Interest (RDI) applications filed to exacerbate BLM backlog. Since the state last filed suit several years ago on the north and middle forks of the Fortymile River, the Bureau of Land Management has not issued a single RDI determination, despite the growing number of staff to do this.

- ~ Assert state management rights of submerged lands in federal areas. DNR hopes that legislation to codify state-owned navigable waters in federal areas will pass this year.
- ~ Aggressive approach in state and federal land planning initiatives.
- ~ Release map of state-owned navigable waters in federal areas.
- ~ Legislatively codify state-owned navigable waters in federal areas.
- ~ Intensify quiet title litigation against the federal government. He noted that this will be demonstrated on slide 18.
- ~ Partner with users to document navigable water usage for strategic purposes.
- ~ Negotiate in good faith with federal authorities.
- ~ Educate and energize the public on state efforts and heighten federal failures.

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MR. GOODRUM highlighted DNR's efforts to assert state interests pursuant to the federal Quiet Title Act listed on slide 18.

Pending Cases:

North Fork and Middle Fork of Fortymile River
(Pending) (BLM)

He noted that the state often goes through a protracted litigation process only to have BLM disclaim interest in the matter shortly before a court ruling. To date in the Fortymile River litigation, BLM had disclaimed about 80 percent of the submerged lands in question. He opined that the state would likely still pursue summary judgement.

Middle Fork of Koyukuk River, Bettles River and
Dietrich River (Pending) (NPS, BLM)

Mulchatna River, Chilikadrotna River, Turquoise Lake, Twin Lakes (Pending) (NPS, BLM)

Mendenhall River and Mendenhall Lake (Pending) (USFS, BLM)

Ready to File (Expired 180-Day Quiet Title Act Notice of Intent):

Birch Creek (BLM)

Sarkar Lake and Prince of Wales Island (USFS, BLM)

Walker Lake and Kobuk River (NPS, BLM)

Ready to Serve 180-Day Quiet Title Act Notice of Intent:

Telaquana River, Necons River, Stony River, Two Lakes, Telaquana Lake (NPS, BLM)

Nabesna River (BLM NPS USFWS)

Noatak River (NPS, BLM)

Resurrection River (USFS, NPS, BLM)

Other rivers and lakes of great strategic importance

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SENATOR CLAMAN offered his understanding that in the Sturgeon case, the state is seeking title to the submerged lands based on a finding that the waterbody is navigable and navigability makes it a federal waterbody.

MR. GOODRUM said that's close. He explained that if a waterbody is navigable in fact, the submerged lands beneath that waterbody are rightfully held by the state.

SENATOR CLAMAN maintained that he did have it right; the federal government owns the navigable waters, and when the state files quiet title action it is to the submerged lands under a river or lake. He noted that Ms. Mills was nodding her head.

[4:25:08 PM](#)

MS. MILLS said multiple laws and constitutional principles relate to navigability so applicability depends on the body of law and area of regulation. Sturgeon said operation of a hovercraft was okay under ANILCA, the Submerged Lands Act, and the Equal Footing Doctrine, and the US Supreme Court agreed.

SENATOR CLAMAN offered that there has to be a river-by-river, stream-by-stream, or lake-by-lake determination. Sometimes the state can exercise exclusive control over regulating that water, sometimes it's done concurrently with the federal government, and sometimes the state has no power to regulate the water.

MS. MILLS said that sounds right, but she would defer to Ron Opsahl who would speak to the committee on Friday.

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SENATOR WIELECHOWSKI asked what would change if the state were to be successful in its quiet title action for the Mendenhall River and Mendenhall Lake, for example.

MR. GOODRUM said it would mean that the US Forest Service acknowledges it has an adjacent landowner. If the agency were to decide to build a dock or structure in the submerged land of the lake, they would apply for a state permit.

SENATOR WIELECHOWSKI asked if the Forest Service could build a dock or structure on the Mendenhall Lake right now.

MR. GOODRUM answered that with quiet title the regulation of the uses and activities on the lake or river would fall to the state as opposed to the Forest Service making those decisions unilaterally regardless of ownership of the lake.

[4:29:00 PM](#)

SENATOR WIELECHOWSKI recalled that the Juneau representatives' position on that lawsuit was that the people of Juneau did not object to the way Mendenhall River and Mendenhall Lake were being managed. He asked if that was incorrect.

MR. GOODRUM answered that those waterbodies were included in the evaluation by the state as the landowner, of waterbodies from a navigability perspective.

SENATOR WIELECHOWSKI wondered if it was the best use of limited resources if the Juneau community was happy with the status quo management of the Mendenhall Lake and Mendenhall River.

CO-CHAIR GIESSEL asked Mr. Goodrum to continue the presentation.

[4:30:57 PM](#)

MR. GOODRUM advanced to slide 19 and briefly spoke to the following:

Statehood Defense and RS 2477 rights-of-way

Alaska has a vast network of RS 2477 rights-of-way (ROWS) that often provide the only land-based public access to many areas statewide.

Many of Alaska's state-owned RS 2477 ROWs cross federal lands in conservation system units (CSUs) across the state.

Even when located within the external boundaries of a federal CSU, a valid RS 2477 ROW remains a property interest of the SOA and remains subject to state ownership, management and control.

MR. GOODRUM directed attention to the state maps on slide 20. The image on the left depicts the DOT road network and the image on the right depicts the DOT road network plus the RS 2477 network that has been codified by the legislature. He pointed out that the critically important Dalton Highway is a RS 2477 right.

MR. GOODRUM advanced to slide 21 and explained that in the spring of 2022, DNR launched the Yukon-Charley Rivers National Preserve RS 2477 project. Field work commenced for the purpose of seeking quiet title to all known RS 2477 rights-of-way in an entire federal conservation system unit (CSU). This was a break from the historical approach of litigating the validity of RS 2477 ROWs either route-by-route or mile-by-mile. The eight RS 2477 ROWs within the Yukon-Charley Rivers National Preserve, in conjunction with the state's navigable waters, create a transportation network. In December 2022, the state filed a 120-day notice. The image on the right of the slide shows a portion of the 190 mile Eagle to Circle mail trail that is part of this network. The field work for this important endeavor will continue in the coming season.

[4:33:55 PM](#)

JOHN CROWTHER, Deputy Commissioner, Department of Natural Resources, Anchorage, Alaska, stated that the last few slides provide updated information about the Willow Project within the National Petroleum Reserve-Alaska (NPR), which is the 1002 Area of the Arctic National Wildlife Refuge; and a little about the Ambler Road Project and the associated federal authorization and issues the department sees with each one of those.

He spoke to slide 22:

Willow and NPR-A Update

Permitting

- Comment period for Draft Final Supplemental Environmental Impact Statement (SEIS) closed August 29, 2022
- Final SEIS review completed by cooperating agencies in January 2023
- Publication of Final SEIS February 1, 2023
- A Record of Decision (ROD) should follow as soon as 30 days after Final SEIS publication - potentially early March

Anticipated Performance

- Expected peak production of 180,000 barrels of oil per day
- 600 million barrels of oil estimated total production over project life
- \$8-17 billion in royalty and property tax payment to State of Alaska, US, and municipal governments

Integrated Activity Plan (IAP) Litigation

- Biden Administration has reverted to 2013 management plan for the broader National Petroleum Reserve - Alaska (NPR-A) and some parties are continuing to litigate
- No lease sales have been scheduled/planned at this time

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SENATOR WIELECHOWSKI referenced the bullet point about anticipated royalty and property tax payments of \$8-17 billion. He said his understanding was that the state does not get any royalties from Willow. He asked if that was accurate.

MR. CROWTHER replied that the law that allocates the royalty interest on federal lands in the NPR-A directs 50 percent to the federal government and 50 percent to the state. However, pursuant to the federal law, the payments go into a fund allocated to meeting the needs of communities most impacted or proximate to the development. State law established the Impact Assistance Program that is managed by the Department of Commerce, Community and Economic Development (DCCED) for villages on the North Slope. Grant funds from that program go to

meet the needs of impacted communities on the North Slope. He noted that should Willow move into full development, the state's royalty share and thus the funds going into that fund would increase significantly.

SENATOR WIELECHOWSKI noted that a flier from ConocoPhillips said the state was projected to receive \$1.3 billion over the life of the project from property tax, corporate income tax, and severance taxes.

MR. CROWTHER said it depends on how the life of the project is assessed, but that's an approximate number.

SENATOR WIELECHOWSKI said he'd heard that it will cost \$8-10 billion to develop the field.

MR. CROWTHER said that sounded about right.

SENATOR WIELECHOWSKI pointed out that the current tax structure allows ConocoPhillips to write off 35 percent of the development costs on the taxes it pays to the state. He calculated that if the cost were \$10 billion, the state would be writing off \$3.5 billion in production taxes over the life of the development and getting back \$1.3 billion in production taxes, corporate taxes, and property taxes. He asked if that sounded about right.

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MR. CROWTHER said he believed the Department of Revenue was working on a more specific estimate of the revenues and tax revisions as they apply to the Willow Project. It should be available in about a week.

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SENATOR KAUFMAN asked for the scope of the Integrated Activity Plan.

MR. CROWTHER explained that the Integrated Activity Plan is a federal land management plan for the entire NPRA. On a basic level, it lays out where there might be oil and gas leasing and where infrastructure might and might not be appropriate. The state does analogous land management plans for state lands, and federal agencies do land management plans for other federal lands. In the NPRA the land management plan is uniquely called the Integrated Activity Plan.

SENATOR KAUFMAN said he'd like to learn more about the master plan for primacy. He further asked if there was some way to

select good projects for primacy that are both proactive and reactive to emerging issues.

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COMMISSIONER-DESIGNEE BOYLE conveyed that the state had serious reservations about returning to the 2013 IAP. It put more than 50 percent of the NPRA off limits to oil and gas development and created expansive special areas where not only could there be no oil and gas development, but also no surface development. The local stakeholders found serious flaws in BLM's methodology and said multiple times that it would significantly impact communities' ability to develop infrastructure and thus property tax revenues. It sets bad precedent in terms of making the NPRA more a conservation unit than an area where oil and gas can be developed responsibly.

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MR. CROWTHER added that the Department of Law could brief the committee on Friday on the status of the continuing litigation on the Integrated Activity Plan. He advanced to slide 23 and provided the following update on the Arctic National Wildlife Refuge (ANWR).

- ~ The 2017 Tax Cuts and Jobs Act authorized leasing and development in the 1002 area on the coastal plain of ANWR. That law required an initial lease sale and the federal government conducted that sale and the leases were issued in early 2021. Shortly thereafter the new administration took actions that have affected the issued lease rights and the broader program.
- ~ Federal law still requires a second lease sale by the end of 2024.
- ~ Part of the administrative actions in early 2021 was a suspension order on the leases. AIDEA is the sole remaining lessee and is pursuing litigation with the state, challenging that the suspension was inconsistent with the regulations and laws that directed development to go forward.
- ~ The Biden administration also initiated a new EIS for the leasing program. The documents authorizing the first lease sale were revised with the stated intent of having new review documents and conditions for the second lease sale.
- ~ A new EIS document and federal review is expected in the next 12 to 18 months. The state is a cooperating agency and understands work has begun, but is not proceeding according to the original timelines.

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SENATOR WIELECHOWSKI noted that the state was getting just 50 percent of the royalties from oil development on federal lands in ANWR, which was a clear violation of the Statehood Act that said the state would get 90 percent of those royalties. He asked whether the state had considered litigation to challenge the 50 percent royalty split.

MR. CROWTHER said that as a general operating matter, Congress has asserted its authority to change the 90:10 royalty split. Congress exercised that authority previously when it adjusted the ratio in the NPRA. The actionable compromise that Congress made to advance development was with the perspective that 50 percent of something was more valuable than 90 percent of nothing.

SENATOR WIELECHOWSKI asked if there was clear case law on Congress's authority to unilaterally change the Statehood Act.

MS. MILLS said the Department of Law bought a claim in federal court in the '80s or early '90s asserting the Statehood Act and the court said those provisions could be changed because it wasn't a contract. When it applies and when it does not apply is very nuanced

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SENATOR WIELECHOWSKI said he'd like to hear from the Department of Law on this matter at some point, because it means a difference of billions of dollars to the state. He voiced support for funding the effort and suggested an in-office meeting to understand why the department hadn't gone forward.

MS. MILLS indicated she'd be happy to meet.

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MR. CROWTHER displayed slide 24 and provided an update on the Ambler mining district and road project. He explained that this federal project had a National Environmental Policy Act (NEPA) review, and the EIS was developed. In 2020, that resulted in a joint record of decision between the Bureau of Land Management (BLM) and the Army Corps of Engineers. The road passes through the Gates of the Arctic National Park and Preserve so leases were required from the National Park Service. Leases from BLM are also required for the areas close to the Dalton Highway.

In late 2020, litigation was filed in district court. Ultimately, BLM accepted voluntary remand and asked for return of the record of decision for revision and review. In response to the remand, BLM began a supplemental EIS (SEIS) and has said it will be released this year. The right-of-way is suspended while the voluntary remand is ongoing, so project work cannot continue. The state is also participating in litigation about the scope of what has been suspended versus what can move forward under preliminary work, including work on state and private lands.

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BEN MULLIGAN, Deputy Commissioner, Alaska Department of Fish and Game, Juneau, Alaska, began ADF&G's portion of the statehood defense update by talking about the department's work to defend the state's right to manage its own resources. He spoke to the following points:

Protect Alaska's right to manage our state's fish and game resources and their uses

Ensure the best available information is being used in federal permitting processes

Challenge unnecessary and unjustified listings of species and their critical habitats under the Endangered Species Act

Fight for statehood was largely driven by federal fish and game mismanagement

Alaska's statehood compact gave us control over fish and game

On December 29, 1959, President Eisenhower formally recognized the transfer of authority over fish and game to Alaska (Executive Order 10857)

These rights were re-affirmed with the passage of ANILCA

BOTTOMLINE

The State is the primary manager of fish and game on all lands throughout Alaska

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MR. MULLIGAN spoke to why it is important for the state to have the right to manage its own resources. He said food security and continuing the heritage of hunting and fishing is important to the department and a large majority of Alaskans. He emphasized that Alaskans must be able to access fish and game resources without being unnecessarily restricted by federal agencies. He specifically mentioned the Endangered Species Act.

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MR. MULLIGAN stated that ADF&G's most important tool to protect Alaska's right to manage, access, and use its natural resources is to collect and utilize sound science that will inform federal processes. He reviewed the following state science initiatives:

Inform Endangered Species Act potential listing decisions

- Yellow cedar
- Bumble bees
- Bats
- Northern Bog Lemmings
- Southeast Alaska wolves

Inform Endangered Species Act Biological Opinion and incidental take provisions, including decisions involving the Marine Mammals Protection Act

- Polar Bear ITR
- Ringed Seal listing

[5:02:25 PM](#)

MR. MULLIGAN discussed informed participation and his role in the federal subsistence program. That program has its own board that takes action on federal public lands that relate to federal subsistence. The department comments on every proposal that comes before the board and participates in the federal subsistence regional advisory councils. He advised that the department provides much of the data that is used in this process. State biologists provide much of the analyses of the proposals that are considered.

He also highlighted the department's participation in lawsuits to defend federal findings they support. He specifically mentioned intervention in the lawsuit related to polar bear incidental take regulations (ITR). The department has conducted studies on snow modeling to better determine where polar bear dens will occur because activity can't occur within a mile. Studies are also ongoing to try to determine whether those

disturbances are actually detrimental and if certain activities can occur.

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MR. MULLIGAN discussed the department's challenge of certain federal decisions:

Unnecessary and unjustified listings of species and their critical habitats under the Endangered Species Act

- Ringed Seal Listing
- Ringed Seal Critical Habitat designation that covered 350,000 square miles of ocean. That was habitat, not critical habitat.
- Humpback Whale Critical habitat designation that covers all marine waters.

[5:07:46 PM](#)

MR. MULLIGAN displayed the list of current litigation that gives a flavor of what the commissioner might talk about on Friday. The list read as follows:

Kuskokwim River Management
- United States v. Alaska

Kake Special Hunt
- State v. Federal Subsistence Board

Nelchina Caribou Herd
- State v. Federal Subsistence Board

Kenai Wildlife Refuge Rule
- State v. Haaland, et. al.

National Park Service Rule
- Alaska Wildlife Alliance v. Haaland

Metlakatla Fishing Jurisdiction
- Metlakatla Indian Community v. State

Chinook Salmon & Southern Killer Whales
- Wild Fish Conservancy v. Rumsey, et. al.

Upper Cook Inlet Salmon Management
-United Cook Inlet Drift Association v. NMFS

SENATOR KAUFMAN commented that being able to control access and comply with the constitution was a critical issue. He expressed interest in learning more about how lawsuits are prioritized, given that there is a master plan for primacy.

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COMMISSIONER BRUNE stated that the departments welcome input from the committee on what should be prioritized. He called Senator Wielechowski's idea "fantastic" and assured the members that it would be on the agenda of the next commissioner meeting.

SENATOR KAUFMAN suggested going for the biggest bang for the buck.

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There being no further business to come before the committee, Co-Chair Giessel adjourned the Senate Resources Standing Committee meeting at 5:10 p.m.