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POSITION PAPER ON CS SENATE BILL 407

Richard A. Neve', Commissioner

Alaska Department of Environmental Conservation
May 3, 1984

An Act Relating to the Prevention and Abatement of Water Pollution

The Department had reservations about the original bill, but following some suggestions and modifications, now finds CS SB 407 more consistent with state policy and less at odds with state and federal restrictions, principally found in the Clean Water Act.

The miners have asked for the state to inventory its waters according to the federal Clean Water Act. This was not a problem for many of the lower 48 states with few rivers and lakes and little coastline and with many years of flow, chemical and water use information. Alaska has too many waters and too little information to do this adequately.

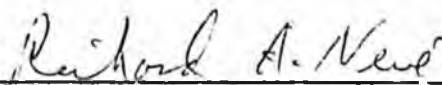
The information required by CS SB 407 involves knowing 1) stream flows, 2) chemical, biological, and physical characteristics of streams, lakes and coastal waters, 3) uses of the waters by fishermen, sport, commercial and subsistence; industries; cities; boaters; etc. 4) the effects upon streams from pollution discharges and 5) how the above information varies with season.

To say that the information already exists is not true. Some information, e.g. numbers of fish or mineral content, exists for some streams. But there are no streams in Alaska that have the complete set of data required. We estimate that less than 8% of Alaska's waters have as much as 10% of the required information. Alaska claims three million lakes and uncounted hundreds of thousands of miles of perennial streams. In Southeast alone, there are over 2600 anadromous fish streams alone for which there are incomplete data on fish populations at peak times of year. There is little data on water flow or quality. There is little multi-season data.

DEC estimates the cost of collecting the above information to range from \$1,000 to \$20,000 per stream or lake, depending upon transportation costs, existing information, complexity of the stream, etc. At the present FY 85 budget levels, DEC could collect enough information to reclassify from about thirty up to about two hundred streams in the next two years.

Creation of a separate classification for placer mining provides the least promise for relief and the most potential for false expectations since the reclassification process actually goes about the deletion of conflicting uses not present on a stream. A miner would still have to demonstrate that there are no fish in the stream and so forth. The breakout of a separate placer mining category does little more than avoid the stigma of being lumped in with its present industrial category. The federal Clean Water Act provides for an EPA veto of any DEC reclassification. Our considerations of economics and relative values will bear little weight with EPA's review, which is limited to goals of fishable-swimmable waters.

The most promising aspects of CS SB 407 lie with management plans for basins or mining districts to resolve conflicts and maximize uses. This approach would organize piecemeal efforts and map out mining plans for an identifiable area.


Richard A. Neve'
Commissioner

ANALYSIS OF CSSB 407 (Resources)

Prevention and abatement of water pollution

Section 1 establishes legislative findings that seem clear.

The codified sections of the bill constitute amendments to AS 46.03, a chapter entitled "environmental conservation." Except for the amendments to Sec. 2 (which relates to a declaration of policy covering the entire chapter), the remaining provisions of the bill that amend AS 46.03 amend Article 3, sections dealing with water pollution control.

Section 2 of the bill amends AS 46.03.010(b), a legislative "Declaration of Policy." The amendment changes existing law subtly:

(b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations and concerned individuals, and to develop and manage the basic resources of water, land and air in an economically and environmentally sound manner to the end that the state may fulfill its responsibility as trustee of its resources [THE ENVIRONMENT] for [THE] present and future generations.

Section 3 of the bill repeals and reenacts AS 46.03.080. As now written, the provision provides:

Sec.46.03.080. QUALITY AND PURITY STANDARDS. After study and public hearings held upon due notice, the department may establish standards of quality and purity or group the designated waters of the state into classes as to minimum quality and purity, or both. The department shall classify waters in accordance with considerations of best usage in the interest of the public. The department may alter and modify classifications after hearing.

As used in this bill, "department" means the Department of Environmental Conservation.

The changes made in the section substitute the establishment of "categories and classifications for the waters of the state considering their traditional, present and potential, social and economic beneficial uses" for the previous, more permissive authorization that the department "establish standards of quality and purity or group the designated waters of the state into classes as to minimum quality or purity, or both". The department was authorized previously to "alter and modify" the previous "categories and classifications" and this power continues with the provision that it be done no less often than "each three years".

Section 4 adds two new sections to Article 3.

Sec. 46.03.082(a) establishes a hierarchy for the classification of state waters.

Sec. 46.03.082(b) permits the classifications established under (a) to vary according to the season of the year, with the stated goal being the "maximum use" of state waters.

Sec. 46.03.084(a) provides that the department "establish standards of water quality for each classification established under AS 46.03.082 (a)". The standards are required to be "consistent with the most beneficial present and potential use of the waters considering the social and economic values of the known renewable and nonrenewable resources." Standards may be modified after public hearings.

Sec. 46.03.084(b) provides that either in the establishment of water standards or in granting permits, the department shall consider the effect of "establishing the water standards or granting the water permit" with reference to identified policies. The subsection then establishes six possible impacts that the department should consider either in the establishment of water standards or in the granting or a water permit.

Section 5 of the bill directs the department to designate "those waters of the state determined suitable for placer mining classification" within 60 days of the effective date of the Act.

Section 6(a)(1) of the Act directs the commissioner of environmental conservation to inventory the "significant state waters" and identify the specific uses of those waters considering seven specific factors, including mineral potential and use, the presence of fish, recreational use, and the like.

Section 6(a)(2) of the Act requires the commissioner to develop management plans for specific "drainage, basin, mining district, or other logical geographic basis" that possesses common water uses, resources, or values.

Section 6(b) directs the commissioner to use the expertise of other state agencies in identifying the uses listed in sec. 6(a)(1).

Section 6c) provides that the management plan developed under sec. 6(a) shall consider "geology, soil and stream conditions, constraints of water access and supply, the use of state waters for fisheries and drinking water, and economic and recreational values" to remedy existing or potential mining water use conflicts to "maximize the use of the water resources of the state."

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Section 5 of the bill directs the department to designate "those waters of the state determined suitable for placer mining classification" within 60 days of the effective date of the Act.

Section 6(a)(1) of the Act directs the commissioner of environmental conservation to inventory the "significant state waters" and identify the specific uses of those waters considering seven specific factors, including mineral potential and use, the presence of fish, recreational use, and the like.

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Section 6c) provides that the management plan developed under sec. 6(a) shall consider "geology, soil and stream conditions, constraints of water access and supply, the use of state waters for fisheries and drinking water, and economic and recreational values" to remedy existing or potential mining water use conflicts to "maximize the use of the water resources of the state."

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 2, 1984

SUBJECT: Prevention and abatement of water pollution
(CSSB 407(Resources))

TO: ~~Senator Bettye Fahrenkamp~~

FROM: ~~Richard A. Bradley~~
~~Legislative Counsel~~

~~You have requested a sectional analysis of CSSB 407-
(Resources).~~

Section 1 establishes legislative findings that seem clear.

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Section 4 adds two new sections to Article 3.

Sec. 46.03.082(a) establishes a hierarchy for the classification of state waters. ~~The section states the apparent intended preferences though I am not sure that the law states that as clearly as it might.~~

Sec. 46.03.082(b) permits the classifications established under (a) to vary according to the season of the year, with the stated goal being the "maximum use" of state waters.

Sec. 46.03.084(a) provides that the department "establish standards of water quality for each classification established under AS 46.03.082(a)". The standards are required to be "consistent with the most beneficial present and potential use of the waters considering the social and economic values of the known renewable and nonrenewable resources." Standards may be modified after public hearings.

Sec. 46.03.084(b) provides that either in the establishment of water standards or in granting permits, the department shall consider the effect of "establishing the water

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standard ^{OR} ~~to~~ granting the water permit" with reference to identified policies. ~~(Before discussing the policies, it seems that the last "to" should be "or")~~

The subsection then establishes six possible impacts that the department should consider either in the establishment of water standards or in the granting of a water permit.

~~I assume that the "water permit" described is the "waste disposal permit required under AS 46.03.100; if not, then the reference is unclear. In any case, the reference could be clearer.~~

Section 5 of the bill directs the department to designate "those waters of the state determined suitable for placer mining classification" within 60 days of the effective date of the Act; ~~an affirmative effective date is not added.~~

Section 6(a)(1) of the Act directs the commissioner of environmental conservation to inventory the "significant state waters" and identify the specific uses of those water considering seven specific factors, including mineral potential and use, the presence of fish, recreational use, and the like. ~~The sequence here suggests no priority valuations.~~

Section 6(a)(2) of the Act requires the commissioner to develop management plans for specific "drainage, basin, mining district, or other logical geographic basis" that possesses common water uses, resources, or values.

Section 6(b) directs the commissioner to use the expertise of other state agencies in identifying the uses listed in sec. 6(a)(1).

Section 6(c) provides that the management plan developed under sec. 6(a) shall consider "geology, soil and stream conditions, constrains of water access and supply, the use of state waters for fisheries and drinking water, and economic and recreational values" to remedy existing or potential mining water use conflicts to "maximize the use of the water resources of the state."

~~If I may be of further assistance, please advise.~~

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