

SCR

29

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

\*\*FISCAL NOTE(S) ATTACHED \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

5/5/87 DATE TURNED INTO OFFICE  
Mr. President:

RESOURCES Committee considered SCR 29

water quality standards regarding turbidity under the Clean Water Act.

recommended:

- replace with CS SCR 29  same title
- attached amendment(s) and  new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_
- letter of intent adopted and attached

\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

[Signature]

[Signature]

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OTHER RECOMMENDATIONS

[Signature]

[Signature]

[Signature] - No Rec

[Signature] No Rec

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\_\_\_\_\_

[Signature] **DO PASS**

Chairman signature and recommendation

Committee Backup Attached



5-1185B

Bradley

5/9/87

Original sponsor: Resources Committee

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE CONCURRENT RESOLUTION NO. 29 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 Relating to the water quality standards  
6 regarding turbidity under the Clean  
7 Water Act.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS the Legislature believes that the federal Clean Water Act was  
10 enacted to protect the water of the nation from degradation; and

11 WHEREAS the Legislature is concerned about the turbidity criteria  
12 included in Alaska's water quality standards, specifically whether less  
13 stringent standards could protect water uses and still avoid adverse  
14 environmental consequences; and

15 WHEREAS the Legislature is considering the repeal of the existing  
16 water quality standard for turbidity but wishes to comply with the require-  
17 ments of sec. 303 of the Clean Water Act; and

18 WHEREAS the Legislature has sought to determine whether the repeal of  
19 the state turbidity standard is permitted under the Clean Water Act and  
20 whether there would be adverse environmental consequences if it relies on  
21 the remaining water quality standards; and

22 WHEREAS the drinking water standards now apply to all but two water  
23 bodies in the state; and

24 WHEREAS the Legislature believes that the application of the drinking  
25 water standard for turbidity has been incorrectly applied to state water  
26 under the terms of the Clean Water Act and the multiple use classification  
27 of state water;

28 WHEREAS the Legislature wishes to participate in a resolution of  
29 issues associated with the turbidity standards and to resolve conflicts

1 between placer mining and other water uses; and

2 WHEREAS the Department of Environmental Conservation has started a  
3 process to work with the Alaska Miners Association and other water users to  
4 address these issues; and

5 WHEREAS the Legislature believes that it is critical to clearly and  
6 fully identify areas of flexibility available under the Clean Water Act;  
7 and

8 WHEREAS it is crucial for the administration to proceed expeditiously  
9 with this process, as outlined in the Governor's memorandum on placer  
10 mining to the resource commissioners.

11 BE IT RESOLVED the the Alaska State Legislature respectfully requests  
12 the Governor to direct the Attorney General of Alaska to propose procedures  
13 under which the legislative committee hearings on legislation to change the  
14 water quality criteria in Alaska would qualify under the public participa-  
15 tion criteria required under federal regulations at 40 C.F.R. 131.20(b) and  
16 report these procedures to the resources committees of the Legislature by  
17 the 10th day of the Second Session of the Fifteenth Alaska State Legisla-  
18 ture; and be it

19 FURTHER RESOLVED that the Legislature respectfully requests the Gover-  
20 nor to direct the commissioner of environmental conservation to submit an  
21 outline of the procedures that are necessary for the Department of Environ-  
22 mental Conservation to submit to the Environmental Protection Agency a  
23 revised water quality plan with a turbidity standard that affects water  
24 only where drinking water enters a distribution system and report this  
25 outline to the resources committees of the Legislature by the 10th day of  
26 the Second Session of the Fifteenth Alaska State Legislature; and be it

27 FURTHER RESOLVED that the Alaska State Legislature respectfully  
28 requests the Governor to direct the commissioner of environmental conserva-  
29 tion to provide written summaries of the department's meetings with the

1 Alaska Miners Association to the Resources Committees and to conduct a  
2 quarterly briefing for the Resources Committees to ensure that the commit-  
3 tees' concerns are addressed during the process; and be it

4 FURTHER RESOLVED that the Legislature respectfully requests the  
5 Governor to direct the commissioner of environmental conservation to con-  
6 sider fully in the commissioner's deliberations whether the state's exist-  
7 ing turbidity criteria are required under the Clean Water Act and to pro-  
8 vide the recommendations and analysis to the committee by the 10th day of  
9 the Second Session of the Fifteenth Alaska State Legislature; and be it

10 FURTHER RESOLVED that the Legislature respectfully requests the  
11 Governor to direct the commissioner of environmental conservation to pro-  
12 vide to the Legislature by the 10th day of the Second Session of the Alaska  
13 State Legislature a report on the results of the commissioner's review of  
14 sources of flexibility under the Clean Water Act and concrete recommenda-  
15 tions for changes to the water quality standards or other regulations that  
16 would increase flexibility for economic development and enhance economic  
17 opportunities for Alaskans while adequately protecting water uses.

18 COPIES of this resolution shall be sent to the Honorable Grace Berg  
19 Schaible, Attorney General, and the Honorable Dennis D. Kelso, Commissioner  
20 of Environmental Conservation.  
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29

# Alaska State Legislature

## Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman  
Sen. Paul Fischer, Vice-Chairman  
Sen. Lloyd Jones  
Sen. Arliss Sturgulewski  
Sen. Jim Duncan  
Sen. Fred Zharoff  
Sen. Dick Eliason

Box V  
Juneau, Alaska 99811  
(907) 465-1907

### MEMORANDUM

TO: Senate Resource Committee Members

FROM: Senate Resource Committee Staff *ERG*

RE: SCR 29; Relating to the water quality standards regarding  
turbidity under the Clean Water Act

DATE: May 6, 1987

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This resolution will generate the necessary information this committee and the legislature requires to make sound decisions on legislation such as SB 98; Use of Water.

Your packet includes a Department of Law zero (0) fiscal note, and a memorandum from the Governor regarding placer mining.

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

DEPARTMENT OF  
NATURAL RESOURCES

MAR 31 1987

COMMISSIONER'S OFFICE  
JUNEAU

CG → Jerry Callaghan  
FK



0.6106  
placer mining  
directive

MEMORANDUM

TO: Commissioner Judith M. Brady  
Department of Natural Resources

DATE: March 30, 1987

Commissioner Don W. Collinsworth  
Department of Fish and Game

Commissioner Dennis D. Kelso  
Department of Environmental  
Conservation

PHONE: 465-3500

FROM: Steve Cowper  
Governor

SUBJECT: Placer Mining

I have assigned a high priority to resolving the conflicts between placer miners and other water users. The miners believe they are faced with an impossible situation; they express concern about unattainable standards and unreasonable regulations. At the same time, other users of Alaska's water--fishermen, village residents, recreational users--express concern about the impacts of placer mining on their uses; they fear degradation of water quality leading to a loss of drinking water, fish habitat, and other values.

We need a clear set of rules, standards, and procedures that everyone can understand. Miners must be able to operate with the assurance that rules will not keep changing.

Continuation of the status quo is not acceptable.

We need to resolve these conflicts in a positive way, avoiding the adversarial relationships that have characterized this policy area.

A stable resolution will require two things. It must be clearly legal under the federal Clean Water Act; and it must protect the rights of both placer miners and other water users.

Only if these two requirements are met can we avoid years of slow, expensive, unpredictable litigation with the inevitable loss of state resource management prerogatives to the courts.

We can help bring about a stable resolution to the problem. By ensuring reasonable, litigation-proof rules and fair enforcement, we can create a regulatory climate in which placer miners and

other water users will have confidence. In addition, I want my administration to set a positive, cooperative tone: working with the miners and other groups to find policy options and mediating between the miners and other users to avoid or resolve conflicts.

I direct you, as commissioners of the state's three resource agencies, to work together to complete the following tasks, before the 1988 mining season.

### 1. Enforcement Policy

The state's enforcement program should emphasize technical assistance to miners who are making good faith efforts to maintain water quality, as well as protection of community drinking water sources, fish resources, and recreational uses. Please take appropriate actions to ensure that enforcement action is not taken against any miner who operates proper settling ponds for a violation of water quality standards where the violation results from upstream sources. In addition, no miner should be required to clean up natural background conditions or an upstream violation.

### 2. Technical Assistance

I expect the Department of Natural Resources, as well as the Departments of Environmental Conservation (DEC) and Fish and Game (DF&G) to provide technical assistance to operators in following state regulations. Nowhere is this more important than in working with placer miners.

Commissioner Brady has requested and received my support for two new positions in the Division of Mining to provide appropriate technical assistance to placer miners in part to help them mine more efficiently and to satisfy water quality requirements. Although neither DEC nor DF&G has staff added to their respective budgets for these functions, I expect you to work cooperatively with the placer miners in order to prevent water quality problems, where possible, or to resolve problems. Technical assistance will emphasize innovative operating techniques and improved mining methods. I believe this assistance can also help develop a more positive relationship between all three agencies and the miners.

### 3. Review of Regulations and Policies

Please conduct a thorough review of your agency's regulations and policies in order to determine whether there are duplicative provisions or unnecessary requirements and to take action as needed to correct any deficiencies. I would appreciate your providing me a written report describing your findings and any corrective actions you propose. Because this subject is of interest to the Alaska Minerals Commission (AMC), please consult with the Commission about the results of your review.

#### 4. State Water Quality Regulations

Commissioner Kelso and the Alaska Miners Association (AMA) have begun a process to develop agreement about what the Clean Water Act requires and to identify areas of flexibility available to the state in water quality regulations, especially areas where site specific factors can be considered.

I fully support this effort. Although there are no guarantees that a solution will be found, the process may produce valuable tools that can be used singly or in combination. It is important that views of fishermen, environmental groups, village representatives and other interested Alaskans, as well as the miners, be considered. Consultations with these other groups should be part of the overall effort. In addition, please keep the Placer Mining Advisory Group and the AMC apprised of your efforts.

#### 5. State Permitting

The tri-agency permit application process must operate efficiently and a placer miner should be able to deal with state permits through a single application. Please review the permitting process and take any actions you deem appropriate to improve the efficiency of this system.

#### 6. BLM vs. Sierra Club Lawsuit

By copy of this memorandum, I am directing the Department of Law to file an amicus curiae brief in this lawsuit. It is important that the brief be crafted carefully to ensure that the state can mediate, if necessary, to enable responsible placer mining to continue. It is also important that the brief avoid issues which could prove detrimental to the state's overall interests on other resource matters involving the federal government. Please provide assistance to the Department of Law in preparing these materials.

Our basic position should oppose judicial relief that would penalize miners for any errors that the court concludes BLM has made. We should oppose a blanket injunction that precludes all mining and should urge that if the court finds for the appellants, the order be framed in such a way that the state can help the parties negotiate a solution.

#### 7. Federal Effluent Guidelines (Best Available Technology Economically Achievable)

The Environmental Protection Agency (EPA) has just published its proposed effluent guidelines for the placer mining industry, establishing the pollution control technology considered by EPA to be economically achievable.

March 30, 1987

Because these guidelines are so important to the industry, I intend to see that the state is prepared to participate fully in the technical debate on their merits. By copy of this memorandum, I am asking the Department of Commerce and Economic Development to join with your departments in taking a hard look at the guidelines to see if they are based upon realistic assumptions and Alaskan data. When you have completed your analysis, we will prepare comments to EPA. While the state does not have a direct decision-making role on the effluent guidelines, I strongly believe that a well-reasoned, analytical position will have the greatest success in advancing the state's view.

My goal is for the state to participate as constructively as possible in creating a stable regulatory climate for the placer mining industry. A successful approach must be fair to the placer miners and acceptable to other water users. In order to reach this goal, the state must apply its best resources toward helping to find a reasonable approach. This is especially important in technical debates, such as discussion of the effluent guidelines. I am confident that through our combined efforts we can achieve the kind of progress that this important public policy issue deserves.

cc: Senator Don Eennett  
Senator Bettye Fahrenkamp  
Senator Jack Coghill  
Senator John Binkley  
Senator Willie Hensley  
Representative Adelheid Herrmann  
Representative Mike Miller  
Attorney General Grace Berg Schaible  
Department of Law  
Commissioner Tony Smith  
Department of Commerce and Economic  
Development  
Rod Swope, Special Assistant  
Office of the Governor  
Bob Grogan, Associate Director  
Division of Governmental Coordination

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: SCR 29  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "Relating to water quality standards regarding turbidity..."  
Sponsor: By the Resources Committee  
Requestor: Senate Resources

Agency Affected: Department of Law  
BRU: Legal Services  
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services

Phone: 465-3672  
Date: May 6, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.  
Agency: Department of Law

Date: May 6, 1987

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SCR 29

Senate Concurrent Resolution No. 29 requests that the Governor direct the Attorney General to propose procedures under which the legislative committee hearing on legislation to change the water quality criteria in Alaska would qualify under the public participation criteria required under federal regulations at 40 C.F.R. sec. 131.20(b) and report these procedures to the resources committees of the Legislature by November 1, 1987.

The legal research necessary to develop procedures under which state legislative committee hearings would qualify under federal public participation criteria will take about two weeks of existing attorney time, provided legislative committee hearings meet federal regulations for public participation. Because this work can be accomplished using existing staff resources, this resolution will not have a fiscal impact on the Department of Law.