

HB

291

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 291
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 25-Apr-89 Agency Affected: Natural Resources
Title: An Act relating to use of water BRU: Land & Water Mgmt
for certain salmon hatcheries.
Sponsor: Kertulla and Szymanski Components: Land & Water Mgmt
Requestor: Senate Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: ^{AD} Larry Ostrovsky Phone: 465-2400
Division: Commissioner's Office Date: 25-Apr-89
Approved by Commissioner: Lennie Gorsuch Date: 25-Apr-89
Agency: Department of Natural Resources

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Act relating to use of water
for certain salmon hatcheries....
Sponsor: Kerttula and Szvmanski
Requestor: Senate Resources

Agency Affected: Fish and Game
BRU: FRED
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

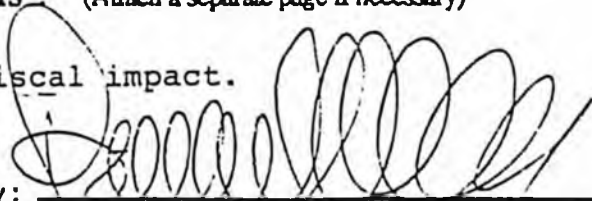
GENERAL FUND						
FEDERAL FUNDS						
JTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.



Prepared by: _____
Division: ADF&G, FRED Division

Phone: 465-4160
Date: 4/25/89

Approved by Commissioner: Orin Celisworth
Agency: ADF&G

Date: 4/25/89

Distribution (by preparer):
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Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 291

PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to use of water for certain salmon hatcheries as a preferred...
Sponsor: Keretula and Szymanski
Requestor: _____

Agency Affected: Alaska Power Authority
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		*	*	*	*	*
TRAVEL		*	*	*	*	*
CONTRACTUAL		*	*	*	*	*
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE		*	*	*	*	*

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The fiscal impact of this bill is directly related to the amount of water reappropriated from hydroelectric projects to hatcheries. In the case of the Solomon Gulch Hydroelectric project, the annual cost impact of the reappropriation of one cubic foot per second of water is about \$65,000.

There will be other costs related to agency personal services, not only within the Power Authority.

Prepared by: Brent N. Petrie Phone: 361-7877
Division: ALASKA Power Authority Date: April 26, 1989

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

* Will be affected to varying degrees depending on amount of water reappropriated.

but other State regulatory agencies which will need to amend or reissue permits.

There will be a cost impact to Four Dam Pool rate payers who will need to pay increased rates related to loss of capability to generate power hydroelectrically and need to make up that loss by additional diesel generation.

VALDEZ FISHERIES
DEVELOPMENT ASSOCIATION, INC.

P.O. BOX 125
VALDEZ, ALASKA 99686
835-4874



April 28, 1989

Representative Cliff Davidson
Co-Chairman Resources
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Davidson:

I write in support of House Bill 291, an Act relating to the use of water for nonprofit salmon hatcheries as a preferred use of water. This bill, as submitted to the Senate by Senator Kerttula, would help remedy the water resources problem faced by the Valdez Fisheries Development Association in its attempts to maintain a secure water source for our hatchery, which is located on Solomon Gulch in Valdez, below the Solomon Gulch hydroelectric facility.

This bill is tightly drafted to give private nonprofit fish hatcheries a preferred water right over State-owned hydroelectric projects. Under this bill, in order to obtain a water appropriation preference, a private nonprofit hatchery must demonstrate that they have received a permit to construct a salmon hatchery and have received a loan from the Department of Commerce and Economic Development to construct a hatchery, and that a State-owned hydroelectric project with a prior water appropriation right will either prevent or substantially interfere with the hatchery's use of water. Only then would the nonprofit hatchery receive a preferred use of the water over the State-owned hydroelectric project.

For more than a decade it has been of the policy of the State of Alaska to promote the enhancement of the State's fisheries. One of the ways in which the State implements this policy is by providing long-term, low interest loans for the construction and operation of nonprofit salmon hatcheries. The

DEDICATED TO THE UTILIZATION, CONSERVATION,
AND REHABILITATION OF ALASKA'S FISHERY RESOURCE
WITHIN THE 200 MILE LIMIT

purpose of these salmon hatcheries is to enhance and rehabilitate salmon resources in Alaska.

The Valdez Fisheries Development Association has constructed a private nonprofit fish hatchery on Solomon Gulch near Valdez. Our hatchery is currently permitted to incubate one hundred fifty-six million pink eggs, three million chum, two million coho, and three hundred thousand chinook. From humble beginnings in Valdez, we have grown to the major salmon producer in the Valdez Arm area.

However, our ability to maintain the propagation of salmon on Solomon Gulch and our commitment to rebuilding salmon populations recently devastated in Prince William Sound by the oil spill, is substantially interfered with by our inability to secure a constant source of water on Solomon Gulch for our fish. The Solomon Gulch hydroelectric facility, which is a State constructed facility operated by the Copper Valley Electric Association, has a prior water appropriation right to the water in Solomon Gulch. During periods of low water flow (for example between December and June) the supply of water in Solomon Gulch is reduced such that the dam can retain water, putting us in the position of having to buy water from the dam's operators. The prospect of making large payments for water, which our salmon fry and smolt need to survive, makes our hatchery's financial outlook questionable because these payments for water are not included in our State loan repayments.

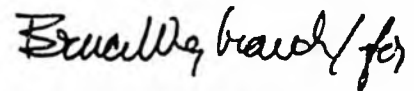
By adopting this bill, the Legislature makes a policy decision to grant a preferred use to nonprofit fish hatcheries over State-owned hydroelectric projects. This is a laudable policy for two major reasons. First, it is an implicit recognition by the Legislature that there are alternative means of generating electricity (for example by diesel generation conservation, or interties), but that there are not alternative means of obtaining fresh water for salmon hatcheries if water is cut-off. Second, the Legislature acknowledges that it deems private nonprofit fish hatcheries to be an integral part of the State's fisheries policy. This policy is all the more important, particularly in Prince William Sound where the salmon fishing industry has been knocked to its knees by the recent oil spill there.

I look forward to providing you with any information you would care to have from the hatchery on why we support this bill and addressing the concerns of any other member of the

Page 3

House Resources Committee or the Legislature. Please do not hesitate to contact me if you have any questions or if I can provide additional information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jason C. Wells".

Jason C. Wells
Executive Director

JCW/lmw/5688i

AGENCY POSITION PAPER REGARDING
SENATE BILL NO. 290 - AN ACT ENTITLED:

"An Act relating to the use of water for
certain salmon hatcheries as a preferred use of water;
and providing for an effective date."

General Background

This bill would establish that use of water by salmon hatcheries operated under AS 16.10.400, Permits for Salmon Hatcheries, and receiving financial assistance under AS 16.10.500-560, Fisheries Enhancement Loan Program, is preferred over the use of water for a state-owned hydroelectric facility. Furthermore, under this bill, that preference would be granted over a prior appropriation to a state-owned hydroelectric project.

Constitutionality

The Power Authority asserts its belief that adoption of this bill violates Section 15 of the State Constitution which is as follows:

Section 15. Prohibited State Action. No bill of
attainder or ex post facto law shall be passed. No law
impairing the obligation of contracts, and no law making

any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

The basis for this belief is that this bill would impair fulfillment of obligations of long-term power sales agreements between the Alaska Power Authority and each of the Four Dam Pool utilities committing to deliver power on the basis of existing, lawful entitlements of water use. We believe that, in itself, the questionable constitutionality of this bill is enough to disqualify it from consideration for adoption. However, there are additional practical considerations, which, when duly examined, should compel the Legislature to not consider adoption.

Loss of Revenue

The Solomon Gulch Hydroelectric project, which is the project that this bill is directed toward, has actually produced an average of 37,000 megawatt-hours of energy. At the current wholesale rate of 5.6 cents a kilowatt hour, total power sales average about \$2.1 million per year. On an annual basis, each cubic foot per second (cfs) of water used for generation is worth \$22,100. Each cfs used for power generation re-appropriated for hatchery use would result in this amount of lost revenue. Furthermore, this loss would have to be made up by generation by diesel plants. The replacement cost of diesel generation for each cfs of hydroelectric ability lost based on the current cost of 16 cents per kilowatt-hour would be \$62,300. Therefore, the true cost of the

loss of one cfs of water used for generation at this facility is about \$85,000 per year. This cost, of course, would need to be passed on to the rate payers served by the Four Dam Pool utilities. The loss of the use of water does not relieve the State or utilities from paying operation and maintenance costs and debt service that would have been paid out of the revenue stream dependent upon hydroelectric generation.

Permits and Licenses

The Federal Energy Regulatory Commission License for the Solomon Gulch Hydroelectric project, and any other project, is issued on the basis of a strict set of circumstances. To obtain a license, the applicant must demonstrate that he has, or can obtain a water right that makes it possible to construct and economically operate a plant of stated capacity. Any deviation from stated output and configuration of the plant may require an amendment of the FERC license. It is conceivable that, if the capacity, or the annual energy output of the plant is adversely affected to a very great degree, a license amendment would not be granted.

In addition, to obtain a significant license amendment, there would need to be consultation and review with state and federal agencies, similar to that which is required for the initial license application. This would put additional burdens on state agencies, which are already short on funding and staff. Of course, there is a cost associated with preparation of the amendment exhibits required by FERC.

State permits will also need to be amended. Again, this poses an additional burden on an already strained agency regulatory mechanism.

Legal Precedent

It is our belief that if this bill could be adopted it would establish a precedent of a most undesirable nature where persons or parties could unfairly usurp the water rights of another without ample justification nor due compensation.

Conclusion

We recommend that the Legislature, in its sense of fairness and recognition of the State Constitution, not enact such a law that has far reaching effects, essentially into the homes of every electric rate payer served by state-owned hydroelectric generation facilities in this State.

RESOLUTION 89-28

A RESOLUTION OF THE PROJECT MANAGEMENT COMMITTEE
OF THE FOUR DAM POOL RECOMMENDING REJECTION OF SENATE BILL NO. 290

WHEREAS, the State of Alaska through the Alaska Power Authority, has developed four hydroelectric projects providing power to the communities of Kodiak, Valdez, Glennallen, Wrangell, Petersburg and Ketchikan, which are collectively known as the Four Dam Pool and are served respectively by the Kodiak Electric Association, Copper Valley Electric Association and municipal utilities of Wrangell, Petersburg and Ketchikan; and

WHEREAS, the Alaska Power Authority has constructed the four hydroelectric projects and entered into long-term contracts with each of the Four Dam Pool utilities to deliver power to these utilities on the basis of existing, lawful entitlements to water use.

WHEREAS, these communities share all costs of electric power generated by the four hydroelectric facilities; and

WHEREAS, Senate Bill 290, "An act relating to the use of water for certain salmon hatcheries as a preferred use of water" would have the possible effect of increasing the current cost of operating the Solomon Gulch Hydroelectric project and may increase the future cost of other Four Dam Pool projects; and

WHEREAS, the increased operating costs would impact all ratepayers in Four Dam Pool communities, and

WHEREAS, the water supply to the hydroelectric projects provides a clean renewable energy source, which, if displaced, would require replacement with oil-fired generation; and

WHEREAS, the licensing arrangements and water flow requirements for these hydroelectric projects were the result of considerable state and federal review and permission; and

WHEREAS, existing contractual arrangements for use of these project facilities have been relied upon by power purchasers to meet their residential and commercial customer requirements and would be disrupted if SB 290 passed into law;

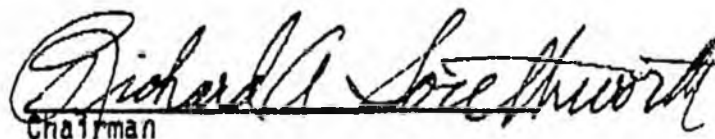
NOW, THEREFORE, be it resolved by the Four Dam Pool Project Management Committee, representing the communities as follows:

Section 1. The Project Management Committee hereby advises the Legislature that Senate Bill No. 290 will result in increased power costs to residents of all Four Dam Pool communities.

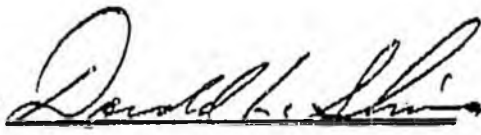
Section 2. Senate Bill No. 290 would change the water availability that is the legal basis of the Federal Energy Regulatory Commission licenses to construct and operate the state-owned hydroelectric projects.

Section 3. Senate Bill No. 290 would abrogate the power sales agreement between the State of Alaska - Alaska Power Authority, and each of the Four Dam Pool utilities, and invite litigation against the State of Alaska - Alaska Power Authority, to enforce the terms of the Power Sales Agreement.

Section 4. The Project Management Committee requests that the Legislature reject Senate Bill No. 290.


Chairman

ATTEST:

Secretary 

Approved at the PMC Meeting held April 25 - 26, 1989.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99801
(907) 457-3800

MEMORANDUM

April 25, 1989

150

SUBJECT: Constitutionality of SB 290; An Act relating
 to the use of water for certain salmon
 hatcheries as a preferred use of water

TO: Senator Jay Kerttula

FROM: George Utermohle *GU*
 Legislative Counsel

This memorandum is in response to a question posed by Paula Terrel of your staff as to whether HB 290 is constitutional.

There is nothing on the face of the bill to suggest that it is not constitutional.

HB 290 provides that the state will surrender its rights as a prior appropriator of water for use in a state-owned hydroelectric project to a later qualified applicant who will use the water for a private nonprofit hatchery. The state as owner of specific water rights may relinquish those rights to that water. There is no constitutional provision that prevents the state from relinquishing its rights to use water.

If HB 290 attempted to redistribute property rights in water held by a private person, corporation, or municipality, then there could be an unconstitutional taking of property rights. Under the United States and Alaska constitutions, the state may not take private property without compensating the owner. The state would have to compensate the owner of water rights for the value of those rights taken away. However, as I mentioned, this situation does not exist under HB 290.

Under Article VIII, sec. 13 all surface waters of the state are subject to appropriations and priority of appropriation gives prior rights to the water. This prior right to water gives the appropriator a property right in the use of the

Senator Jay Kerttula
Page 2
April 25, 1989

water. However, the holder of this property right may relinquish those rights. Under SB 290, the state is agreeing to relinquish its existing rights to use water for hydroelectric projects to a later qualified appropriator who wants to use the water for a private nonprofit hatchery.

If I can provide further assistance, please advise.

GU:gc
WKG9/117