

S B

290

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4-20-89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

4/19/89

DATE TURNED INTO OFFICE 4-3-90

Mr. President:

RESOURCES

Committee considered

SB 290

use of water for certain salmon hatcheries as a preferred use of water;
efd

and recommended:

replace with CS SB 290(Res) same title
new title

attached amendment(s) and

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

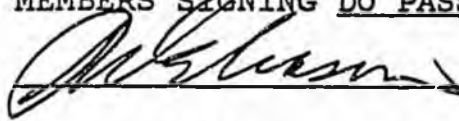
further referral to _____

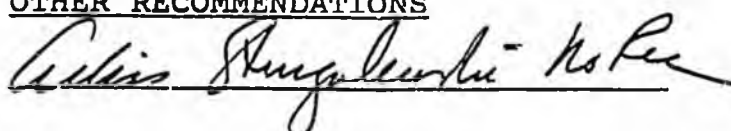
FISCAL NOTE(S) attached zero
 appropriation no FN attached

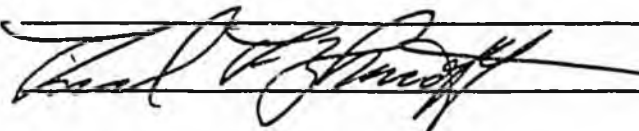
fiscal impact
 Gov. FN introduced w/ bill

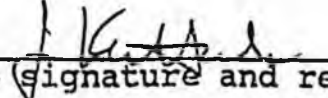
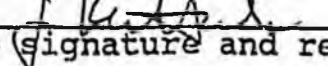
MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS







Vice Chair  Do pass
Chair:  signature and recommendation

Committee backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Act relating to use of water for certain salmon hatcheries....
 Sponsor: Kerttula and Szymanski
 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)

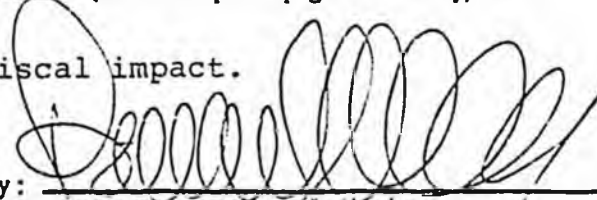
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

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: [Signature]
 Agency: ADF&G

Date: 4/25/89

Distribution (by preparer):

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 290
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: ^{AO} 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)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 290

PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to use of water for
certain salmon hatcheries as a preferred...
Sponsor: Karttula 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...)

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 Guich Hydroelectric project, the annual cost impact of the reappropriation of one cubic foot per second of water is about \$85,000.

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

Prepared by: Brent N. Petrie Phone: 561-7877
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.

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.



Alaska State Legislature

SENATE

Official Business

MEMORANDUM

P.O. Box V
State Capitol
Juneau, Alaska 99811

Bettye

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senator Kerttula *Jan*

SUBJ: Senate Bill 290 --
Hatcheries Water Use

DATE: March 30, 1990

I would appreciate your hearing Senate Bill 290, relating to the release of water for certain salmon hatcheries by state-owned hydroelectric projects, at your earliest convenience. Attached is a proposed committee substitute for the bill. Also attached is a fiscal note which I prepared.

The proposed committee substitute for Senate Bill 290 would provide that a state-owned hydroelectric project would release up to 10 cubic feet per second at the request of a non-profit salmon hatchery. This bill has strong support in Valdez, where operation of the Valdez Fisheries Development Association's (VFDA) salmon hatchery is totally dependent upon water released from the Solomon Gulch Hydroelectric project. Long-term planning by VFDA has been hindered by the unreliability of the volume of water which is discharged from Solomon Gulch. Uncertainty over water flows, and the possibility that water would be shut off, would mean that the hatchery fish would be wiped out and VFDA would be unable to repay state loans valued in the millions.

I am very unhappy with the present circumstances in Valdez, and am convinced that legislation is necessary to remedy the situation. Bob Kellar, a city councilman in Valdez and president of the VFDA, informs me that, at the time of construction of Solomon Gulch, VFDA was told the project would be generating year-round, with water available to the hatchery after power generation, also year-round. To their detriment, VFDA relied on this representation by the Solomon Gulch project engineers. I believe that the VFDA hatchery is in an untenable position with regard to being able to rely on the benevolence of Solomon Gulch. Understandably, the hatchery wishes to be in a position where continued reliance on good will is unnecessary.

As indicated in the attached memorandum from Fish and Game, dated February 23, 1990, water use disputes between state-owned hatcheries and the AEA are handled by contract. I do not understand why the AEA can commit to discharging a certain volume of water to state-owned hatcheries, but cannot make a similar commitment to non-profit hatcheries. My conclusion is that state-owned hatcheries are in a better bargaining position with the AEA, than are non-profit hatcheries such as VFDA. I believe that the same assurances which are available to state-owned hatcheries in contract should be made available to non-profit hatcheries in statute.

Also attached is a letter from VFDA, dated March 23, 1990, which indicates their need for Senate Bill 290 as well as the importance of VFDA's activities to the region and the state. As noted, the VFDA hatchery is the major producer of salmon in Valdez Arm and produces pink salmon, chum, coho, and chinook. Since 1987, VFDA has contributed a total commercial and sports fish value to the state of \$11 million dollars. I believe that VFDA makes a telling point in comparing the value of water in Valdez for electricity as \$70.74 per acre-foot and the value of water in Valdez for hatchery operations as \$1,825 per acre-foot. As also noted in the attached letter, this water is not "lost money" for the AEA, since it has already been used for power generation.

In conclusion, VFDA's hatchery operations are an integral part of the regional and state economy. I believe that Senate Bill 290 is essential for the continued economic health of the hatchery. I appreciate your consideration of my request for scheduling.

MEMORANDUM**STATE OF ALASKA
DEPARTMENT OF FISH AND GAME**

TO: Gordon Harrison
Director
Legislative Research Agency

DATE: February 23, 1990

FILE NO.:

THRU: Molly McCammon *MM*
Special Assistant
Office of The Commissioner

TELEPHONE NO.: 465-4160

SUBJECT: Water Use by
State and PNP
Hatcheries

FROM: Kevin C. Duffy *KCD*
Planner IV
FRED Division

You requested through Molly McCammon, Special Assistant to the Commissioner, information on water use by fish hatcheries in terms of volume and a description of any ongoing conflicts regarding water use at hatcheries. The Division of Fisheries Rehabilitation, Enhancement and Development (FRED) operates 16 hatcheries in the state. In addition, the Division regulates 16 Private Nonprofit (PNP) hatcheries and 4 state owned hatcheries which are contracted to PNP corporations. PNP hatcheries are issued permits by the Commissioner of ADF&G under AS 16.10.400.

Water use profiles for hatcheries vary significantly, depending on the species raised and the production numbers (magnitude of fish production). Water use profiles (required cubic feet per second flow) identify water demands for efficient fish production on a monthly basis. Given variances in numbers, species, etc. no standard water use profile has been developed.

In southeast Alaska, the state-operated Snettisham, Crystal Lake, and Hidden Falls Hatcheries have contracts with the Alaska Energy Authority regarding mutual use of the water source because these sites are all hydroelectric power sources. In these situations, ADF&G relies on the other parties good faith efforts, but the potential for adverse impacts on hatchery production is possible. However, contractual relationships reduce the likelihood of any adverse impacts.

In the PNP hatchery program, similar situations arise. Two examples of ongoing or potential conflicts are the Solomon Gulch Hatchery in Valdez and the Sheldon Jackson College Hatchery in Sitka.

The Solomon Gulch Hatchery is owned and operated by the Valdez Fisheries Development Association (VFDA). The VFDA hatchery is located downstream from an Alaska Energy Authority (AEA) hydroelectric project presently operated by the Copper Valley Electric Association, and the hatchery receives water from the AEA hydroelectric project. At certain times of the year, due to low flows and cold temperatures, the hatchery is faced with a shortage of water. Because of this shortage, VFDA must purchase water from AEA. VFDA purchased water from AEA in prior years and the price of that water was relatively inexpensive. However, they are now concerned that the hatchery's future water costs will increase significantly.

Mr. Gordon Harrison

-2-

February 23, 1990

VFDA recently requested ADF&G's assistance in resolving various aspects of the hatchery's use of Solomon Gulch water. The enclosed response letter to VFDA identifies ADF&G's previous efforts in assisting them regarding water use at the hatchery. However, the letter states that ADF&G can not agree to sacrifice the natural habitat (further reduction of instream flow for anadromous fish) in Solomon Gulch Creek for additional hatchery production. ADF&G's understanding of the situation is that VFDA only needs additional water for hatchery production when the hydroelectric project is not operating, which occurs one to two weeks annually in April or May. Therefore, ADF&G suggested that if VFDA needed additional water for hatchery production, water source alternatives to Solomon Gulch Creek should be found.

Sheldon Jackson College operates a hatchery on Indian River in Sitka. Water rights, use and appropriation of Indian River water is currently the subject of an adjudication process that includes detailed and ongoing negotiation and mitigation efforts of water rights claims by the City of Sitka, The U.S. Park Service, Sheldon Jackson College, and ADF&G in terms of instream flow requirements to protect anadromous fish habitat.

I wanted to provide you with some general information on the participants involved in water allocation. Both state and PNP hatcheries are required to apply for and obtain water use permits from the Department of Natural Resources (DNR). DNR not only has the authority to appropriate and distribute water rights in Alaska, but also can adjudicate water rights among competing claimants. DNR is mandated to adopt necessary procedural and substantive regulations which take into account the statutory responsibilities of ADF&G and the Department of Environmental Conservation. DNR must always consider the effect on fish and game resources in making its public interest determination as a component of reviewing water appropriation applications. This is in addition to the ability of DNR, after adjudicating a request from ADF&G, to reserve a specified instream flow or level of water under AS 46.15.145 for protection of fish and wildlife habitat, migration, and propagation, which in adjudicating later claims is treated by DNR as a prior appropriation under AS 46.15.080 (a)(1).

The ADF&G Habitat Division has a responsibility under AS 16.05.870 to protect, maintain, and enhance fish habitat in anadromous streams. In these instances, the Division is responsible for issuing the appropriate permit. ADF&G also has permit authority if the water appropriated is in a special area. If the method of taking or use within the special area may affect fish or game or their habitat in a refuge or critical habitat area, ADF&G has permit authority. Also, if the use is in a sanctuary, ADF&G has permit authority.

In order to gain a greater understanding of the processes and issues regarding water use, we recommend that you contact DNR, Division of Land and Water Management and the ADF&G Habitat Division.

If you require additional information regarding the state and PNP hatchery program, contact us at your convenience.

cc: Brian Allee

Jerry Madden

VALDEZ FISHERIES
DEVELOPMENT ASSOCIATION, INC.

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

copy



March 23, 1990

Senator Jalmar M. Kerttula
P.O. Box V
Juneau, Alaska 99811

Dear Senator Kerttula:

You have asked information on the Valdez Fisheries Development Association's salmon hatchery. Specifically, you wanted information on water flows into the hatchery and on our problems receiving an adequate flow of water to meet our hatchery operation goals.

The VFDA is a private nonprofit hatchery operating on Solomon Gulch (downstream from an Alaska Energy Authority hydroelectric project) near the Alyeska terminal at Valdez, Alaska. VFDA is presently authorized by the Alaska Department of Fish and Game to incubate and raise 156 million pink salmon, 18 million chum, 2 million coho, and 300,000 chinook. The VFDA salmon hatchery is the major producer of salmon in Valdez Arm.

Our ability to successfully rear and release salmon is wholly dependant on water we receive from the AEA hydroelectric project. Please refer to the attached schematic of pipes coming to the hatchery (Exhibit 1). This schematic shows our water pipe system connected to the hydroelectric project. Our water flows coming to the hatchery from the hydroelectric project vary through each of these sources and varies depending on the time of the year. A table showing our water intake from these sources is shown in Exhibit 2.

Generally, the hatchery does not experience water supply problems between the months of June and December. Rain, run-off, and melting snow all add to a usually adequate supply of water.

However, during January through May (especially April) cold temperatures mean low water flows. The Solomon Gulch lake which feeds the hydroelectric plant and the hatchery is drawn down. Our need for water is great during this low flow period because our salmon are growing and using large amounts of oxygen. To insure their survival, we must be assured of 10 cfs of water.

Insuring that the hatchery receives 10 cubic feet per second will guarantee the survival of our salmon. And, making sure that the hydroelectric project keeps the water coming to the hatchery

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

Senator Jalmar M. Kerttula
March 23, 1990
Page 2

will provide a net economic benefit to the area including the consumers of the project's power.

According to our calculations, VFDA has contributed \$8.5 million in revenue to the commercial fishermen since 1987. Now that we are at full production, we should have an average annual contribution of \$9.5 million to commercial fishermen made up of \$7.8 million from pink salmon, \$1.1 million from chum salmon, and \$593,000 from silver salmon.

Our sport fishing programs have produced about 150,000 sport caught pink salmon and 28,500 silver salmon since 1987. The Solomon Gulch Hatchery is responsible for propagating the largest sport fishery in Alaska in terms of numbers of fish caught at one location. It is not uncommon on the 4th of July weekend to have over 200 motor homes camping out at Allison Point near the hatchery (a popular spot where people catch hatchery fish).

From the 1990 season on, we should sustain an average contribution to sport fishermen of 75,000 pink salmon and 40,000 silver salmon annually. While difficult to put a dollar value on sport caught fish, the economic impact would probably be many times the actual market value of the same fish caught commercially. If a conservative value of \$5 per fish is used to assess the sport fishing contribution to the economy, then the value of recreational fishing is at least \$892,500 annually. Combining commercial and sports fish values results in a total contribution by VFDA to date of \$11 million. The total annual economic benefit would then be almost \$10.4 million.

We use about 1.8 billion gallons of water per year to run the hatchery. This equates to 5,524 acre feet. In terms of water consumption, the net worth of the hatchery could be stated as \$1,825 per acre foot. At 13 cents per kilowatt hour (kwh) and 540 kwh per acre foot, the value of water for hydroelectricity is \$70.74 per acre-foot. The hatchery generates \$1,825 to the local economy for the same acre foot: 26 times more economic benefit to the State. The hatchery gets its water from AEA's Solomon Gulch Hydroelectric Plant "downstream" of their turbines. Therefore, this water used by the hatchery should not be considered "money lost" to AEA, since the water has already been pulled out of the lake and used for power generation.

VFDA pays back loans to the State and since the water we use has already been used for power generation, our annual revenue contribution of \$10.4 million is certainly worthy of the simple protection we need in terms of water supply. Securing 10 cfs of water is crucial because it protects the hatchery from future

Senator Jalmar M. Kerttula
March 23, 1990
Page 3

watershed management changes that might occur. No situation short of a natural disaster would prevent AEA, from supplying us with water.

If we were guaranteed a simple 10 cfs of water year-round, we could insure our continued hatchery production. On balance, our request for 10 cfs of water will be fairly limited depending on the time of year. However, a steady supply of water to the hatchery will guarantee salmon to Prince William Sound for generations. As you can see from the enclosed news article, this will not only benefit the regional economy in the long run, it may assist in the short-term restoration of our tourist season, which has been affected by the oil spill.

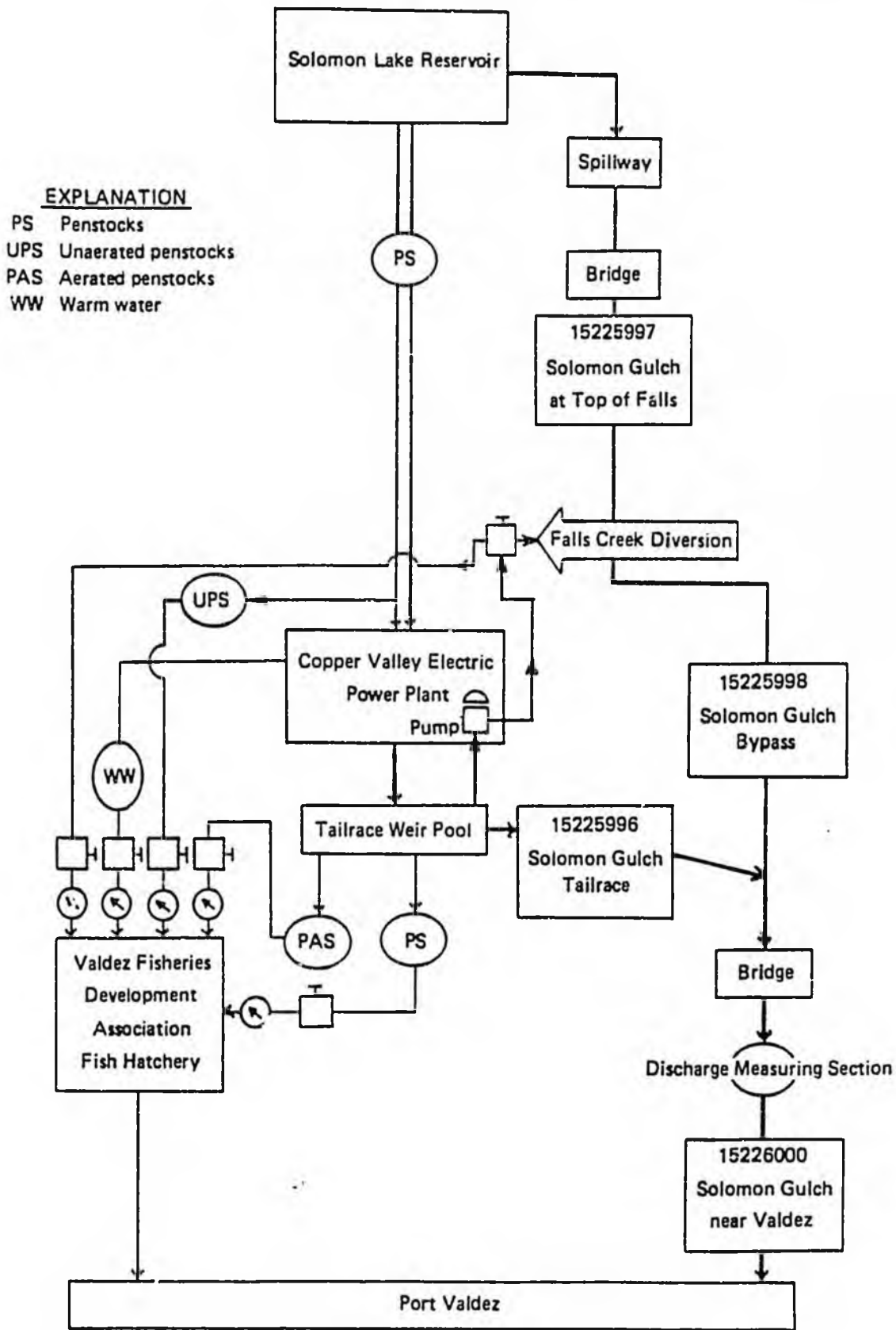
Please let me know if I may provide you with additional information.

Very truly yours,

Jason Wells BW

Jason Wells
Executive Director

c:\wp50\bbw\jason.1



VALDEZ FISHERIES DEVELOPMENT ASSOCIATION

SOURCES AND AMOUNTS OF WATER TO HATCHERY¹
(Figures in cubic feet of water per second)

	<u>Falls Creek Diversion</u>	<u>Warm Water</u>	<u>Unaerated Penstock</u>	<u>Aerated Penstock</u>	<u>Penstock</u>	<u>Hydro Total</u>	<u>Total</u>
Jan	1.5	0.4	0.0	3.2	5.0	8.6	10.1
Feb	1.3	0.4	0.0	3.2	6.0	9.6	10.9
Mar	1.1	0.4	0.0	3.2	6.8	10.4	11.5
Apr	0.9	0.4	0.0	3.2	6.8	10.4	11.3
May ²	1.0	0.0	0.0	0.0	0.0	0.0	1.0
June	2.0	0.8	0.0	0.0	2.0	2.8	4.8
July	6.0	0.8	0.6	0.0	15.0	16.4	22.4
Aug	6.0	0.8	1.25	0.0	15.0	17.05	23.05
Sept	6.0	0.8	1.25	0.0	10.0	12.05	18.05
Oct	4.0	0.8	1.5	0.0	10.0	12.3	16.3
Nov	2.0	0.4	0.0	2.5	4.6	7.5	9.5
Dec	1.8	0.4	0.0	3.2	5.0	8.6	10.4
Avg.	2.8	0.53	0.38	1.54	7.18	9.64	12.52

c:\wp50\BBW\kertul.1b

¹ The hatchery receives water from a Falls Creek diversion pipe by a water appropriation permit from the Department of Natural Resources. The water received under the columns headed "Warm Water", "Unaerated Penstock", "Aerated Penstock", and "Penstock" are water sources coming to the hatchery from the hydroelectric plant.

² The hydroelectric project usually shuts down during May for maintenance. Therefore, the hatchery must place all its fish in salt water ponds except for the next years batch of cohos.

6-1207E
Utermohle
3/21/90

Original sponsor(s) ~~SEN. KERTTULA~~, Szymanski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 290 (*Resources*)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of water for certain
7 salmon hatcheries by state-owned hydroelectric proj-
8 ects; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 46.15 is amended by adding a new section to read:

11 Sec. 46.15.155. RELEASE OF WATER FOR SALMON HATCHERIES. A
12 state-owned hydroelectric project shall release throughout the year
13 the amount of water requested by a salmon hatchery that is permitted
14 under AS 16.10.400, that receives financial assistance under
15 AS 16.10.500 - 16.10.560, and that is in operation on the effective
16 date of this section; however, a hatchery may not request more than 10
17 cubic feet per second under this section. A state-owned hydroelectric
18 project may not charge a fee for the release of water under this
19 section.

20 * Sec. 2. This Act does not affect agreements between state-owned
21 hydroelectric projects and hatcheries for the release and sale of water
22 that are in effect before the effective date of this Act.

23 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
24
25
26
27
28
29

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 25, 1989

APR 25 1989

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

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.

Curtis McVee, Executive Director AMA

4/25/89

Mr. Chairman, members of Resources Committee

Testimony on HB 210
Alaska Miners Association

Alaska does not have an instream flow problem. There is no need for this legislation. Instream flows are protected through the current water rights process. These blanket classifications would not recognize site specific needs. Just remember the problem created by classifying all of Alaska waters for drinking water irrespective of the location of downstream use. This is a ridiculous comparison, it's like setting a harvest limit of 1000 salmon from every stream.

Arbitrary limits which don't consider site specific need are a very poor way of approaching management of natural resources.

I heard testimony last week which said we need to reserve instream flow on 12,000 streams. The question is why? What is happening on each of these streams right now which is threatening the flow? If a project is proposed contemplating the use of water from the stream doesn't State law and regulation require an application and a permit and consideration of specific needs?

We in the mining industry have been asking where -- give us examples -- the mining industry is creating losses in renewable resources which are not balanced by economic returns.

Birch Creek is normally held up as an example yet water quality data shows substantial improvement over the past three years, also realize that this area was heavily mined (No Standards) in the early 1900's then discontinued for several years. Recovery of renewable resources was rapid during this period.

DNR now requires an application for the use of water, this application is adjudicated, public comment is solicited, DEC and ADF&G are asked for their input including the need for an instream flow reservation. The criteria used by DNR are very good:

1. protection of prior appropriation
2. need for the water
3. availability of water
4. public interest

Address cost of gathering data - Recognize need for more data on states rivers and streams.

No necessity for gathering all data possibly needed immediately for 12,000 streams, first analyze where developments are occurring. There are not that many locations.

Exploration activity preceeds mining for several years and is an indicator of what may happen. Then design a selective data collection process. Issue water rights when applied for using this data.

Talking about protection of fish - fish which are an important economic base for the state have economic values. Also recognize subsistence - has priority.

Mining is also part of the economic base sometimes when there are no further opportunities to mitigate impacts decisions may have to be made on economics, however I firmly believe that using modern mining methods and technology (placer mines are required to recycle) that impacts are at most negligible and easily compensated by the economic contribution of the industry.

We see no need for this legislation. In the current process of handling applications for appropriation of water protects all other public uses, including fish populations allowing for management flexibility, as determined by Professional Resource Managers in DNR, DEC and ADF&G after evaluating site specific data are considered.

All water use applicants should be treated equitably and each resource stand on its own merits - scientific, economic, etc..

VALDEZ FISHERIES DEVELOPMENT ASSOCIATION, INC.

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



April 25, 1989

Senator Bettye Fahrenkamp
Chair, Senate Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Madam Chair:

I write in support of Senate Bill 290, 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 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

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

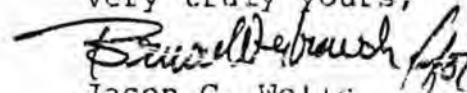
near Valdez. Our hatchery is currently permitted to incubate one hundred fifty-six million pink eggs, three million chum, two million coho, and three hundred thousand chinook. From humble beginnings in Valdez, we have grown to the major salmon producer in the Valdez Arm area.

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.

Senator Fahrenkamp, 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 Senate 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,



Jason C. Wells

Executive Director

Sec. 16.10.400. Permits for salmon hatcheries. (a) The commissioner or a designee may issue a permit, subject to the restrictions imposed by statute or regulation under AS 16.10.400 — 16.10.470, to a nonprofit corporation organized under AS 10.20, after the permit application has been reviewed by the regional planning team, for

- (1) the construction and operation of a salmon hatchery;
- (2) the operation of a hatchery under AS 16.10.480.

(b) The application for a permit under this section shall be on a form prescribed by the department and be accompanied by an application fee of \$100. The commissioner may waive the submission of an application for a permit to operate a hatchery under AS 16.10.480.

(c) A hatchery permit is nontransferable. If a permit holder sells or leases a hatchery for which a permit is issued under this section, the new operator shall apply for a new permit under this section.

(d) *[Repealed, § 19 ch 154 SLA 1977.]*

(e) A qualified regional association formed under AS 16.10.380, if it has become a nonprofit corporation under AS 10.20, has a preference right to a permit under (a)(1) of this section if its proposed hatchery is provided for in the comprehensive plan for that region developed under AS 16.10.375 and the fresh water source exceeds one cubic foot per second minimum flow. Another local nonprofit hatchery corporation approved by a qualified regional association has an identical preference right.

(f) Except for permits issued before June 16, 1976, a permit may not be issued for construction or operation of a hatchery on an anadromous fish stream unless the stream has been classified as suitable for enhancement purposes by the commissioner. The commissioner shall undertake to make such classifications in conjunction with the development of the comprehensive plan under AS 16.10.375.

(g) During the development of a comprehensive plan for a region no permit may be issued for a hatchery unless the commissioner determines that such an action would result in substantial public benefits and would not jeopardize natural stocks. (§ 2 ch 111 SLA 1974; am § 3 ch 161 SLA 1976; am §§ 3, 19 ch 154 SLA 1977; am §§ 2 — 4 ch 14 SLA 1988)

Effect of amendments. — The 1988 amendment, effective March 31, 1988, in subsection (a), divided the formerly undivided language into an introductory paragraph and paragraph (1), and added paragraph (2); added the second sentence in subsection (b); and, in subsection (e), inserted "under (a)(1) of this section" in the first sentence and substituted "Another" for "Any other" in the second sentence.

Sec. 16.10.410. Hearings before permit issuance. (a) At least 30 days before the issuance of a permit under AS 16.10.400, a public hearing shall be held in a central location in the vicinity of the proposed hatchery facility.

(b) eral c
tion

(c) for a
plan
and o
the p
portu

(d) mend
sectic
held,
heari

Eff
amend
pealed

Sec
(a) E
hatch
retur
anoth
utiliz
tirem
eries
for th
ing ft
tion.

(b) shall
ies ir
curre
§ 6 c

Eff
amend
design
senten
"Excep

Sec
(a) If
ing a
to pr
anoth

(b) Notice of the hearing shall be published in a newspaper of general circulation once a week for three consecutive weeks, with completion of the notice at least 10 days before the hearing.

(c) The hearing shall be conducted by the department. At a hearing for a permit under AS 16.10.400(a)(1), the applicant, shall present a plan for the proposed hatchery, describing the capacity of the hatchery and other relevant facts that may be of interest to the department or the public. Interested members of the public shall be afforded an opportunity to be heard.

(d) The department shall record and consider objections and recommendations offered by the public at the hearing conducted under this section. It shall respond in writing, within 10 days after the hearing is held, to any specific objections offered by a member of the public at the hearing. (§ 2 ch 111 SLA 1974; am § 5 ch 14 SLA 1988)

Effect of amendments. — The 1988 amendment, effective March 31, 1988, repealed and reenacted subsection (c), which formerly related to the transferability of the hatchery permit.

Sec. 16.10.450. Sale of salmon and salmon eggs by hatchery.

(a) Except as otherwise provided in a contract for the operation of a hatchery under AS 16.10.480, a hatchery operator who sells salmon returning from the natural waters of the state, or sells salmon eggs to another hatchery operating under AS 16.10.400 — 16.10.470, after utilizing the funds for reasonable operating costs, including debt retirement, expanding its facilities, salmon rehabilitation projects, fisheries research, or costs of operating the qualified regional association for the area in which the hatchery is located, shall expend the remaining funds on other fisheries activities of the qualified regional association.

(b) Fish returning to hatcheries and sold for human consumption shall be of comparable quality to fish harvested by commercial fisheries in the area and shall be sold at prices commensurate with the current market. (§ 2 ch 111 SLA 1974; am § 5 ch 154 SLA 1977; am § 6 ch 14 SLA 1988)

Effect of amendments. — The 1988 amendment, effective March 31, 1988, designated the formerly undesignated two sentences as subsections (a) and (b), added "Except as otherwise provided in a contract for the operation of a hatchery under AS 16.10.480" at the beginning of subsection (a), and made a series of minor stylistic changes throughout the section.

Sec. 16.10.480. Contracts for the operation of state hatcheries.

(a) If the department determines that it is unable to continue operating a state-owned hatchery or that it is in the best interest of the state to provide for the operation of the hatchery by another person or by another person in cooperation with the state, the department may

enter into a contract for the operation or cooperative operation of the hatchery.

(b) Notwithstanding AS 36.30, when selecting a contractor under (a) of this section, the department shall give a preference to the regional association organized under AS 16.10.380 that is located in the region in which the hatchery is located. If the department determines that the preferred regional association does not meet the criteria established by the department for the contract, the department may not award the contract to the preferred regional association and shall procure the contract under AS 36.30 after considering the recommendations of the preferred regional association.

(c) A contract entered into under this section must provide that the hatchery will be operated under AS 16.10.400 — 16.10.445 and 16.10.460 — 16.10.470 and the regulations adopted under those sections.

(d) The department may issue to a contractor who operates a hatchery under this section a permit to harvest adult salmon during the term of the contract in a quantity sufficient to allow the contractor to recover all or part of the contractor's costs of operating the hatchery.

(e) A contract under this section for the operation of a hatchery may not affect the state's ownership of the hatchery and does not affect the state's responsibility to manage the resource.

(f) The operation of a hatchery under a contract authorized by this section shall be conducted in accordance with the fisheries management and production goals of the department, and must be consistent with the Comprehensive Regional Salmon Plan approved under AS 16.10.375. During the term of the contract, the department may order changes in the operation of the hatchery that are necessary to ensure consistency with the production goals of the Comprehensive Regional Salmon Plan. The contract must specify the species to be raised and the production goals for each species, and these specifications must comply with the Comprehensive Regional Salmon Plan. The department may terminate a contract if the contractor fails to operate the hatchery in accordance with the requirements established by and under this subsection. (§ 1 ch 14 SLA 1988)

Effective dates. — Section 7, ch. 14, SLA 1988, makes this section effective March 31, 1988, in accordance with AS 01.10.070(c).

Legislative history reports. — For legislative letter of intent on ch. 14, SLA 1988 (CCS SB 410), see 1988 Senate Journal 2422.

Article 9. Fisheries Enhancement Loan Program.

<p>Section 555. Disposal of property acquired by default or foreclosure</p>	<p>Section 600 — 620. [Repealed]</p>
--	---

Section
 540. Voluntary assessment on sale of salmon
 555. Disposal of property acquired by default or foreclosure

Section
 560. Definitions
 600. Creation of authorities
 610. Tax exemption
 620. Powers of the authority

Cross references. — For legislative findings and purpose of AS 16.10.375 — 16.10.620, see § 1, ch. 59, SLA 1979, in the 1979 Temporary and Special Acts and Resolves.

Sec. 16.10.500. Declaration of policy. It is the policy of the state, under AS 16.10.500 — 16.10.560, to promote the enhancement of the state's fisheries by means of grants for organizational and planning purposes to regional associations described in AS 16.10.510 which have qualified under AS 16.10.380, and by means of long-term, low interest loans for hatchery planning, construction, and operation and for planning and implementation of enhancement and rehabilitation activities including, but not limited to, lake fertilization and habitat improvement. (§ 1 ch 190 SLA 1976; am § 7 ch 154 SLA 1977; am § 2 ch 106 SLA 1980; am § 6 ch 21 SLA 1985)

Effect of amendments. — The 1985 amendment substituted "AS 16.10.500 — 16.10.560" for "AS 16.10.500 — 16.10.550."

Sec. 16.10.505. Fisheries enhancement revolving loan fund. There is created within the Department of Commerce and Economic Development a revolving fund to be known as the fisheries enhancement revolving loan fund. The fund shall be used to carry out the purposes of AS 16.10.500 — 16.10.560 and for no other purpose. (§ 8 ch 154 SLA 1977; am § 7 ch 21 SLA 1985)

Effect of amendments. — The 1985 amendment substituted "AS 16.10.500 — 16.10.560" for "AS 16.10.500 — 16.10.550" in the second sentence.

Sec. 16.10.507. Special account established. (a) There is established as a special account within the fisheries enhancement revolving loan fund the foreclosure expense account. This account is established as a reserve from fund equity.

(b) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans made under AS 16.10.520 or to defray expenses incurred during foreclosure proceedings after a default by an obligor. (§ 12 ch 79 SLA 1985)

Sec. 16.10.510. Powers and duties of the commissioner. The commissioner may

(1) make loans to permit holders, under AS 16.10.400 — 16.10.470, including those holders issued permits before June 24, 1977, for the planning, construction, and operation of hatchery facilities;

(2) make loans to qualified regional associations which have formed a nonprofit corporation or a local nonprofit corporation approved by a qualified regional association, for preconstruction activities necessary to obtain a permit;

(3) designate agents and delegate powers to them as necessary;

(4) adopt regulations necessary to carry out the commissioner's functions;

(5) establish amortization plans for repayment of loans, not to exceed 30 years;

(6) establish the rate of interest for loans not to exceed nine and one-half per cent a year;

(7) establish regional and local offices and advisory groups to carry out, or assist in carrying out, the duties and authority of the commissioner;

(8) *[Repealed, § 77 ch 106 SLA 1980.]*

(9) make grants for organizational and planning purposes to qualified regional associations which have formed a nonprofit corporation, in amounts not exceeding \$100,000 per region and up to an additional \$100,000 on a 50/50 cash matching basis with the regional associations which have an authorized royalty assessment under AS 16.10.540. The state portion of the matching share shall be available when a final vote for assessments is made under AS 16.10.540. This provision also applies to qualified regional associations which have formed a nonprofit corporation before June 24, 1977;

(10) make loans to qualified regional associations which have formed a nonprofit corporation or to local nonprofit corporations approved by qualified regional associations for planning and implementation of fisheries enhancement and rehabilitation activities including, but not limited to, lake fertilization and habitat improvement. (§ 1 ch 190 SLA 1976; am §§ 9 — 11 ch 154 SLA 1977; am § 5 ch 59 SLA 1979; am § 11 ch 72 SLA 1979; am §§ 3, 4, 77 ch 106 SLA 1980)

Sec. 16.10.520. Limitation on loans. (a) A single fisheries enhancement loan may not exceed \$10,000,000 for a hatchery or other enhancement or rehabilitation activity conducted under a permit granted to a qualified regional association which has formed a nonprofit corporation, or to a local nonprofit corporation approved by a qualified regional association. A loan for any other nonprofit hatchery corporation project may not exceed \$1,000,000.

(b) Loans for the total project costs may be made if the commissioner determines that the applicant has sufficient financial resources

and
te,
he
ng
ch
ow
nd
on
at
2

d.
ic
e-
ie
8

-
-
-

e
t
s

to insure the establishment of an equity position in the project equal to 10 percent of the loan within 10 years or less, either through a royalty assessment levied under AS 16.10.540 or other means approved by the commissioner. For purposes of this subsection, "total project costs" includes planning and construction costs for the facility and the cost of operations for not more than the first 10 years. The costs for operations shall be loaned on an annual basis.

(c) All loans must be secured by collateral satisfactory to the commissioner, including but not limited to a first deed of trust, assignment of lease and leasehold improvements, sale of surplus fish from the hatchery, or royalty assessments from fishermen levied under AS 16.10.540.

(d) The commissioner may require adequate evidence of performance in utilizing loan funds approved for an initial or preliminary project before approving a subsequent loan application.

(e) The total amount of loans made or purchased in any fiscal year may not exceed the amount specifically authorized by statute. The amount to be purchased may not exceed \$3,000,000 for fiscal year 1977 and \$10,000,000 for fiscal year 1978. (§ 1 ch 190 SLA 1976; am §§ 12, 13 ch 154 SLA 1977; am §§ 6, 7 ch 59 SLA 1979; am §§ 5, 6 ch 106 SLA 1980; am § 1 ch 32 SLA 1982)

NOTES TO DECISIONS

Stated in State, N.S.E. Regional Aquaculture Ass'n v. Alex, Sup. Ct. Op. No. 2488 (File Nos. 5065, 5086, 5142), 646 P.2d 203 (1982).

Sec. 16.10.525. Repayment of principal and interest on loans. The commissioner may not require the repayment of principal on a loan made under AS 16.10.510 for the initial period of the loan. Interest on the principal of a loan made under AS 16.10.510 does not accrue during the initial period of the loan. In this subsection, the "initial period of the loan" means a period of time determined by the commissioner which is not less than six years or more than 10 years from the date the loan is made. (§ 7 ch 106 SLA 1980)

Editor's notes. — Section 79, ch. 106, to, and applicable to loans made under AS SLA 1980, makes this section retroactive 16.10.510 after, June 18, 1976.

Sec. 16.10.530. Royalty assessment on sale of salmon. [Repealed, § 67 ch 6 SLA 1984.]

Sec. 16.10.540. Voluntary assessment on sale of salmon. (a) An association of persons who hold entry permits under AS 16.43, which consists of at least 51 per cent of the persons holding entry permits and actively participating in a fishery to be benefited by a hatchery program, may levy and collect an assessment from among its

members for the purpose of securing and repaying a loan made under AS 16.10.510.

(b) Upon satisfactory demonstration to the commissioner that an assessment levied under this section may reasonably be relied upon to secure and repay a loan to be made under AS 16.10.510, the commissioner may make the loan.

(c) *[Repealed, § 33 ch 14 SLA 1987.]* (§ 1 ch 190 SLA 1976; am § 9 ch 59 SLA 1979; am § 33 ch 14 SLA 1987)

Effect of amendments. — The 1987 amendment at the beginning of subsection (a) substituted "An" for "In place of or in addition to an assessment levied under AS 16.10.530, an," at the end of subsection (b) deleted "without requiring an assessment under AS 16.10.530," and deleted former subsection (c), which read "If an assessment made under this section fails to satisfy the payments required on the principal and interest due on the loan the commissioner may negotiate with the regional association to levy an assessment under AS 16.10.530."

Sec. 16.10.550. Sale or transfer of mortgages and notes. [Repealed, § 14 ch 122 SLA 1980.]

§ 16.10.555

FISH AND GAME

§ 16.20.030

Sec. 16.10.555. Disposal of property acquired by default or foreclosure. The Department of Commerce and Economic Development shall dispose of property acquired through default or foreclosure of a loan made under AS 16.10.500 — 16.10.560. Disposal shall be made in a manner that serves the best interests of the state, and may include the amortization of payments over a period of years. (§ 13 ch 79 SLA 1985; am § 1 ch 152 SLA 1988)

Effect of amendments. — The 1988 amendment, effective June 10, 1988, substituted "AS 16.10.500 — 16.10.560" for "AS 16.10.500 — 16.10.620" in the first sentence.

Secs. 16.10.600 — 16.10.620. Creation of authorities; tax exemption; powers of authority. [Repealed, § 3 ch 152 SLA 1988.]

Sec. 16.10.560. Definitions. In AS 16.10.500 — 16.10.560

(1) "commissioner" means the commissioner of commerce and economic development;

(2) "hatchery" means a facility for the artificial incubation of salmon eggs which may include means for the rearing of juvenile salmon. (§ 1 ch 190 SLA 1976)

Cross references. — For further definitions, see AS 16.05.940.

Sec. 16.10.600. Creation of authorities. (a) An association qualified under AS 16.10.380 as a regional association is given the authority to form a regional salmon enhancement authority. There is created with respect to each of the associations qualified under AS 16.10.380 a public body corporate and politic as a political subdivision of the state to function in the operating areas of the individual associations. Each authority may exercise all powers conferred by AS 16.10.600 — 16.10.620.

(b) A regional salmon enhancement authority may not transact business or exercise powers granted to it until the governing body of