

**HB**

**421**

HAFIN

FILE



# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 421(RES)  
(H) Publish Date: 3/22/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DNR  
Title: HB421: WATER USE AND APPROPRIATION BRU: \_\_\_\_\_  
Sponsor: House Resources Committee Component: \_\_\_\_\_  
Requester: House Resources Committee Component Number: \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002    | FY 2003    | FY 2004    | FY 2005    | FY 2006    | FY 2007    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

|                        |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES ( ) |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1037 GF/Mental Health    |            |            |            |            |            |            |
| Other (Specify Type)     |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

The Department of Natural Resources received \$300K last year for the purposes of addressing the backlog of water rights adjudication applications. This appropriation has remained in the current budget proposal. The department has testified in budget subcommittee meetings this legislative session that it has not yet finished development of a program, or completed hiring for this project. The department has proposed verbally that the required positions for implementing the requirements in this bill will approximate \$80K. It is reasonable to expect that amount to be taken from the above mentioned appropriation.

Prepared by: Jennifer Yuhas, Committee Aide Phone \_\_\_\_\_

Representative Masek, Co-chair Date 3/22/02  
House Resources Committee

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSHB 421(RES)  
 (H) Publish Date: 3/22/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title: Water Use and Appropriation BRU: Minerals, Land & Water Dev  
 Component: Water Development

Sponsor: (H) Resources  
 Requester: (H) Fin Component Number: 916

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003     | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    |
|------------------------|-------------|------------|------------|------------|------------|------------|
| Personal Services      |             |            |            |            |            |            |
| Travel                 |             |            |            |            |            |            |
| Contractual            | 75.0        |            |            |            |            |            |
| Supplies               |             |            |            |            |            |            |
| Equipment              |             |            |            |            |            |            |
| Land & Structures      |             |            |            |            |            |            |
| Grants & Claims        |             |            |            |            |            |            |
| Miscellaneous          |             |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>75.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

|                        |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES ( ) |  |  |  |  |  |  |
|------------------------|--|--|--|--|--|--|

**FUND SOURCE (Thousands of Dollars)**

|                          |             |            |            |            |            |            |
|--------------------------|-------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |             |            |            |            |            |            |
| 1003 GF Match            |             |            |            |            |            |            |
| 1004 GF                  | 75.0        |            |            |            |            |            |
| 1005 GF/Program Receipts |             |            |            |            |            |            |
| 1037 GF/Mental Health    |             |            |            |            |            |            |
| Other (Specify Type)     |             |            |            |            |            |            |
| <b>TOTAL</b>             | <b>75.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2002) cost: none  
 Check this box (X) if funding for this bill is included in the Governor's FY2003 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** *(Attach a separate page if necessary)*

The bill calls for providing Internet access to DNR water rights, water use reports, and temporary water use authorizations. The Internet access would provide the public with following:

- GIS map interface showing location of water rights and permits
- Ability to view specific casefile information about new rights, authorizations or permits. This would not be all documents related to the casefile, but a casefile summary.
- Ability to view DNR regional summary information about rights, authorizations and permit activity (e.g... how many water rights or temporary water use authorizations in a particular region).
- Offer ability to link to DNR well log information system.

Prepared by: Bob Loeffler, Director Phone 269-8600  
 Division: Division of Mining Land and Water Date/Time 12-Mar-02  
 Approved by: Pat Pourchot Date 12-Mar-02  
 Agency: Natural Resources

CSHB 421(RES) FN# 2 - ANAL, SIS: (continued)

- It may be possible to view individual water right certification and permits from the time that the system is developed, but historical documents (other than casefile summaries) would not be available.

As part of this on-line system, DNR will assure on-going updates are made available.

The DNR Water Unit would contract with the Information Resource Management component via RSA to deliver these services. No additional staff are needed to complete this project.

CS FOR HOUSE BILL NO. 421(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/1/02

Referred: Finance

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to water use and appropriation."

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

3 \* Section 1. AS 46.15.020(b)(2) is amended to read:

4 (2) develop and maintain a standardized procedure for processing  
5 applications and the issuance of authorizations, permits, and certifications under  
6 this chapter; shall keep a public record of all applications for permits and certificates  
7 and other documents filed in the commissioner's office; [AND] shall record all permits  
8 and certificates and amendments and orders affecting them and shall index them in  
9 accordance with the source of the water and the name of the applicant or appropriator;  
10 and shall make the record of applications, authorizations, permits, certificates,  
11 amendments, and orders affecting them available to the public on the Internet;

Committees:

Resources  
Co-Chair

Transportation

World Trade and  
State & Federal Relations

# Alaska State Legislature



During Interim: (June-Dec.)  
Mat-Su LIO  
600 E. Railroad Avenue  
Wasilla, AK 99654  
(907) 376-2679  
Fax: 373-4745

During Session: (Jan.-May)  
State Capitol  
Juneau, AK 99801-1182  
(907) 465-2679  
Fax: 465-4822  
1-800-505-2678

Representative Beverly Masek

## Sponsor Statement

### **HB421 "An Act relating to water use and appropriation."**

**This bill directs the Department of Natural Resources to develop a standardized procedure for processing water rights applications.**

Alaska's water is a public trust resource. Our state constitution tasks our legislature with the responsibility to oversee distribution of all public trust resources. The distribution of our state's water has been statutorily delegated to the administrative branch of our state government, specifically to the Commissioner of our Department of Natural Resources.

This legislation is a response to overwhelming public testimony given at meetings conducted in the Fall of 2001. The meetings were initiated by the Department of Natural Resources in order to meet with various environmental groups in order to explain the proposed regulation changes to the water rights adjudication process. Many individuals voiced complaints that they were unsure as to the status of their own permit, or that they could not obtain information as to pending permits in a given area. Examples of water uses that have been distributed for bodies of water with pending applications for adjudication of a water right were revealed at these meetings. Directing the department to develop and implement a standardized procedure is an effort which will better serve the public interest regarding the distribution of our state's water.

**This bill also directs the department to make public records, including pending applications for water rights adjudication, available on the internet.**

It was agreed in many of the meetings this Fall that the posting of information on the internet was an acceptable method of public notice, and a desirable avenue for public access to records. The department was able to use their website for several well designed pages supporting the proposed regulation changes, and should be able to implement a means of similar access to other matters of public record.

# Alaska State Legislature

Representative Beverly Masek

Co-Chair  
State Capitol  
Juneau, AK 99801-1182  
(907) 465-3715  
Fax: 465-4822  
1-800-505-2678



Representative Drew Scalzi

Co-Chair  
State Capitol  
Juneau, AK 99801-1182  
(907) 465-6890  
Fax: 465-3472  
1-800-665-2689

## House Resources Committee

15 January 2002

Alaska Department of Natural Resources  
Division of Mining, Land and Water  
Bob Loeffler, Director  
555 West 7<sup>th</sup> Avenue, Suite 1070  
Anchorage, Alaska 99502

CC: Pat Porchot, Commissioner, Department of Natural Resources

Dear Mr. Loeffler,

I am writing to you regarding the distribution process of the Division of Mining, Land and Water. The passage of HB185 last year contained a sunset clause for temporary water permits. An October 5<sup>th</sup> Alaska Superior Court ruling deemed the Department of Natural Resources' current process for issuance of temporary water permits arbitrary and capricious, as well as illegal.

I am aware that DMLW solicited a number of meetings this Fall regarding the water rights process. It is my understanding that lack of departmental process in the handling of water rights applications dominated discussions.

As the Co-Chair of the House Resources Committee I am requesting a written proposal from you as to your plan for addressing this discrepancy during the second session of the 22<sup>nd</sup> Alaska Legislature. This request is based on statements made by Mr. Loeffler at various meetings this Fall, and on Mr. Pourchot's testimony today before the House Finance Committee. I would also like you to supply my office with the policy and procedures that your department has used in the past with regards to the handling of water rights applications, within the next ten days. This request is based upon your testimony that such documents exist and are on file for review.

I look forward to your reply, and to rectifying this situation to the benefit of all Alaskans.

*Beverly Masek*

Representative Beverly Masek, Co-Chair House Resources Committee

# JENN'S NOTES

## Proposed Regulation Changes Division of Water Oct. 2001

### PUBLIC NOTICE:

#### (CONSTITUTION)

AK Constitution Article VIII Natural Resources, Section 10. Public Notice:

"No Disposal or leases of state lands, or interests therein, shall be made without public notice and other safeguards of the public interest as may be prescribed by law."

#### (STATE LAW)

Alaska State Law gives the Department of Natural Resources Commissioner authority to designate types of appropriations that are exempt from public process under AS 46.15.133 Notices; objections. :

"(f) The commissioner may, by regulation, designate types of appropriations that are exempt from this section and provide for ruling on the applications. The commissioner may not exempt under this subsection appropriations for removal under AS 46.15.035, appropriations by the state for sale or sales by the state under AS 46.15.037, or removals of water under AS 46.15.035 and 46.15.037."

#### (REGULATION)

- Currently temporary water rights are excluded by regulation 11 AAC 93.100 Exemptions to notice.
- The department of natural resources is proposing to repeal this section and amend 11 ACC 93.080 to require that public notice be given once the department begins adjudicating a water right, rather than when an application for a water right is received. It is also proposing that the adjudication process will not begin unless the department determines the process necessary under proposed 11 ACC 93.037 where it will create a "second threshold" allowing up to 50,000 gpd from some sources in what it explains is an effort to avoid the expense of public process in it's justification for this new classification.

When the DNR public notice section of their web site was reviewed 9/21/01, only three applications could be found to have been submitted in the last 6 months. Gary Prokosh confirmed this was the case at a meeting in his conference room the department was holding to explain their proposed regulation changes to some environmental groups, and explained that the no water rights had been adjudicated to his knowledge in the last two and a half months. Bob Loeffler with the department explained that there has never been a back log for temporary water use permits, and that most of the departments time is spent here.

The creation of the classification of water use applications that would qualify for "authorization" of use without necessitating an actual adjudicated water right greatly increases the number of applications that would not be subject to public process at the commissioners discretion.

## PRIORITY OF RIGHTS:

### (CONSTITUTION)

AK Constitution Article VIII Section 13. WATER RIGHTS says that "Priority of appropriation shall give prior right."

### (STATE LAW)

AS 46.15.165. Administrative adjudications allows - under subsection (a) - for the commissioner to "by order, initiate an administrative adjudication to quantify and determine the priority of all water rights and claims", and lists the types of sources he may do that for.

### (REGULATION)

The department's proposed regulations express in ARTICLE 4. 11 ACC 93.210 TEMPORARY WATER USE. (b) that "No water right or priority is established by a temporary water use authorization."

When several scenarios were posed and the question was asked in a meeting at the Anchorage DNR office with statewide environmental groups which was teleconferenced to Juneau, Bob Loeffler also answered that no prior right would be recognized by the department for either the first or second tiers of non-substantial use authorizations. He testified that the department would maintain a policy of only recognizing an actual adjudicated right as a primary right even when a second tier authorization is bumped up to a level where the department chooses to adjudicate that use.

This seems to be in conflict with the state constitution in that the constitution guarantees a priority to the water, which was first appropriated. Appropriation may happen under the authorization of use without an adjudication being necessary. This is an established public trust principle with supporting case history.

Although the department has testified that other applicants and / or use entities will be taken into account at the time the department appropriates a water use, examples exist to the contrary.

A Superior Court judicial opinion exists supporting both these statements, as well as admonishing the department for what was found to be ambiguity and capriciousness regarding it's process for appropriation of water.

# Water Rights

## HB-185 / SB-139

- Late in Session (Gov. forgot to place priority)
- Dept. → ability to charge \$50 / yr for water right, & received \$300K to address backlogged water rights applications, with which it created 5.5 new positions.
- Temporary water rights received 1yr sunset, and extensions clause was removed.

## Statute

- Now allows DNR Commissioner to exempt types of water appropriations (but not types of uses) from public notice.
- No checks and balances regarding this issue.

## Current Regulations

- Allow for Temporary Water Use Permits without public notice.
- Do not require an application for non-substantial use.
- Define "Non-Substantial Use" as below 5K gpd.
- Do not specify criteria for application review.

## Proposed Regulations

- Seem to solve public notice questions by repealing exemptions section.
- Introduces a definition for "Substantial Use" (50K gpd), and requires adjudication for this use.
- Would change requirement for public notice from "when a water rights application is received" to "when the department begins adjudicating a water rights application".
- The department would not adjudicate temporary water use permits, or what it is calling "second threshold applications". It would, however, allow the use of the water without the adjudicated right. The proposed regulations therefore create a higher degree of water use that would not be subject to public process.
- Do not specify criteria for application review.

## Communications with DNR. Water Division

- Argues that public process is cost prohibitive.
- Has not "fully adjudicated a water right since 1991"
- Has only posted 3 applications for adjudication to public notice since March 2001
- Has not communicated a plan beyond "in Bob's head" for the processing of the 3K backlogged applications.
- Has never had a backlog for temporary water use permits
- Argues that creating "second threshold" of water use allows people to "use water, and not break the law", ignoring it's circumvention of public process.

(Side note: if second threshold applications do not require processing except at the department's discretion, this regulation will actually be responsible for eliminating the majority of the backlog...what else will the \$300K go toward?)

- Cannot produce or articulate the review process for applications subject to the department's discretion for adjudication.

## Complaints

- Process: Farmers would like to know what the \$50 / year fee to the department will be supporting. The department has not yet answered specifically.
- Accessibility: Applicants for water rights adjudication have not felt they have been given accurate, if any, information regarding the status of their pending permit.
- Accessibility: Individuals who have inquired as to the status or specifics of pending permits have been denied access to public information.
- Inconsistency: Water rights have been adjudicated with disregard to pending applications, although the department has testified that all applications will be taken into account before a right is appropriated.
  - Yellow Eagle Mine / home owners
  - BP / FWS at Kaparuk
- Ambiguity: The department cannot produce a criteria for application review, or for it's plan to relieve the backlogged applications.
- Ambiguity: A Superior Court Judge has cited the department's practices as "ambiguous and capricious" as he has found in favor of Greenpeace without holding BP responsible for the Karparuk ice road situation.

### Future / Possibilities

- Criteria and process must be drafted for water rights applications that satisfy constitutional requirements for public trust, enable use of the resource for the public good, and facilitate ease of acquiring use in a uniform manner.

(This may require that the drafting process occur outside the department.)

- Statute for eliminating public process must be refined.
- Effectiveness of current process must be evaluated specifically, and measures should be implemented.
  - Regulation Review
  - Departmental Audit
- Statutory revision
  - Possibly a DNR revision
  - Possibly revised to incorporate other departments
  - Possibly revised to institute a separate entity

# Review of Water Rights Issues in Alaska

## **I. Water Is A Pubic Resource To Be Held In Public Trust.**

### **A. Public Trust Doctrine**

1. Originally Roman Law.
2. States that certain resources are to be managed to the maximum benefit of the populous.
3. Has been adopted by many civilizations, and defined specifically for each.
4. Has been nationally accepted since the creation of the United States, and has an extensive supporting case history.

### **B. The Alaska State Constitution addresses this expressly in Article VIII, Natural Resources.**

1. Section 2 charges the state with the responsibility to make use of the states water "to the maximum benefit of it's people".
2. Section 3 guarantees the common use of water be reserved for the people.
3. Section 6 guarantees that the states water is public domain.
4. Section 10 requires public notice of water disposal.
5. Section 13 again guarantees that water is reserved for public use and guarantees prior right to priority of appropriation - regardless of it's form.
6. Section 14 guarantees access to navigable waters by the people
7. Section 16 protects the public from being involuntarily divested of their right to use the states waters
8. Section 17 requires the uniform application of regulations for the disposal of water.

### **C. The people are demanding that the state uphold this responsibility through lawsuits.**

## **II. The Largest Issues Facing State At This Time Are Costly Lawsuits.**

### **A. Access Cases**

1. **Katie John**
  - a. It's not about subsistence fishing.
  - b. Federal control of our navigable waters will extend to all facets of water use.
2. **Gulkana Issues**
  - a. Native corporation restricted access on the river as it contested the river was non navigable, and therefore fell under the authority of their property rights
  - b. Landmark case used in other access areas to validate the states responsibility to the people regarding the public trust of water

### **B. Use Cases**

1. **Greenpeace v. State of Alaska Div. of Land Water & Mining**
  - a. Judge Murhpy ruled last week that the public process was in fact violated by DNR's issuance of temporary water permits, and admonished the department for what he found to be ambiguous and inconsistent practices. He also warned the department that this could have been avoided, and that he expects the department to henceforth comply with statutory and constitutional requirements.
  - b. The oil companies were not held responsible.
  - c. The problem was identified as a lack of organization, and disregard for due process at the level of our states water division practices.
2. **Yellow Eagle Mine - Fairbanks**
  - a. The mine struck an aquifer depleting the user supply to local homes.
  - b. Though department acted quickly once faced with an emergency, however, confusion could have been avoided among the affected property owners had a standardized process been in place prior to the incident.
  - c. Yellow Eagle Mine acted with extreme generosity by treating all claimants equally regardless of their adjudication status, thus saving the state an inordinate sum of money. (thank you YEM)

### III. Costly Lawsuits Are Avoidable

#### A. Prevention is the best medicine

1. **Providing for the peoples needs** by adequately satisfying their constitutional rights through the departmental process is one way to discourage the need for judicial intervention.
  - a. The department's primary responsibility is to serve the public interest.
  - b. Orderly compliance to statutory and constitutional authority by the department is necessary.
    1. Confusion regarding processes is a breeding ground for the request for judicial intervention.
    2. Following a standardized process promotes public trust, and assists the judicial branch in its selection of valid claims to be heard.
2. The Katie John case is too far gone for prevention, but we have the chance now in other areas of water rights issues.

#### B. It may be time to swallow the Litter pill of reconstruction.

1. **Our current structure is in a state of dilapidation, and was virtually condemned by a superior court judge last Friday.**
  - a. The department has argued that the public process is too costly
  - b. Circumventing public process has proven to be a significant cost to the state in time, money, and resources, as well as public service.
2. Although Alaskans are pioneers, and we know that flat roofs don't do well in our environment, others have the blue-prints that we could be using to **build a fortified program.**
  - a. Other states may have issues that differ from those in Alaska, and some states may have problems with their adjudication process that are similar to those faced by our state
  - b. We should also give credit to some states that are either implementing or designing modifications to the process that attempt to alleviate the cumbersome process, while satisfying the states responsibility to provide for the people.
3. Throwing money at the situation can only do so much for the structure.  
Someone will need to put forth **real labor.**
  - a. I believe that it is feasible to build a better foundation for Alaska's process for water rights adjudication that will serve the public interest in a timely fashion
  - b. I believe that we have the human resources to do so in a way that meets the needs of those who have a need for water use, and comply with our constitutional duty to the public at the same time

Fairbanks Daily News-Miner

Water use bill draws wide concern

February 23, 2002

By SEAN COCKERHAM News-Miner Juneau Bureau

JUNEAU--Legislation pushed by Delta Junction farmers drew intense fire on Friday from conservationists and state officials.

Critics objected that the bill would remove state oversight from nearly all large-scale use of water, including water from North Slope lakes and streams used to build ice roads for oil development.

"This would then eliminate the protection that the review process has for Alaska's fisheries and wildlife," Alaska Division of Mining, Land and Water Director Bob Loeffler testified.

Other parts of the bill would give farmers a priority use of water, eliminate the fee for maintaining water permits, and require that if the state does not make a decision on a temporary water use application within 30 days then a permit is granted by default.

The bill, which was heard and held in the House Resources Committee, is sponsored by Valdez Republican Rep. John Harris.

His district includes Delta Junction and his aide Pete Fellman, a Delta Junction dairy farmer, said the bill is meant as a vehicle to spur discussion on how to fix an inefficient system.

There has been a host of questions raised in the Interior since legislation passed last year that increased fees and prompted the state to pay closer attention to water issues, Fellman said.

"(The bill) is really an effort on our part to address some of these questions and find out how the Division of Mining, Land and Water is going to serve the people in the state of Alaska," Fellman told the House Resources Committee.

Loeffler said the bill would define a "significant amount of water" as the use of a million or more gallons a day for 100 consecutive days.

"This would essentially eliminate the need for anyone to get a permit anywhere," Loeffler testified.

That would include oil companies building ice roads on the North Slope, testified Jan Konigsberg of the Alaska Public Waters Coalition.

"It would exclude almost all ice road permits and other temporary uses of water, thereby removing the permits from any kind of scrutiny at all," Konigsberg said.

Fellman, in an interview after the hearing, conceded the million gallon number is high but he said it is designed as a starting point for discussion. A problem is that the state does not have a set definition of what "a significant amount of water" is, Fellman said.

Another controversial part of the bill is the automatic granting of a temporary water use permit if the state does not make a decision on an application within 30 days.

"This would eliminate our ability to give public notice (on the permits), when in fact public use is justified," he said.

Fellman said the provision is the result of real problems like a person who applied for a permit in May and did not receive it until around October when the season was over.

He does not trust the state's assertion that such permits are being issued in a timely manner or the promises that speed will improve. "I think the system needs to be streamlined," Fellman said.

The bill would also make agriculture the second highest priority use of water, after domestic use. This would ensure that farmers will have access to water for irrigation, Fellman said.

"It seems a little bold, I understand, but agriculture is the foundation of all economy," he said.

He said farmers borrow a great deal of money to put in an irrigation system and want a guarantee the state will not cut off the supply, he said.

He cited a farmer in Point Mackenzie who could not get a temporary water permit.

Fellman was backed by testimony from three people via teleconference from Delta Junction, who said support is needed to help Alaska become more independent as its own food source.

"Farmers do bear some tremendous costs in gearing up for their operations," testified Phil Kaspari. "Farming is a long-range investment and

not having any security as to whether or not they will be able to use water from year to year makes for some difficult decision-making."

But Fairbanks Republican Rep. Hugh Fate was worried the agricultural priority could conflict with mining. "You wouldn't want to stop a mine the size of Fort Knox for 3 or 4 acres of barley," he said.

Fellman said he was open to discussion with Fate on the matter. "I would be absolutely open to improving the language," he said.

The bill also seeks to drop the \$50 annual state fee for maintenance of water permits.

"If you have a permit already filed, and it is already in the system and there is no change, why do you have to have a yearly fee to maintain that file?" he asked.

Loeffler, of the Alaska Division of Mining, Land, and Water, said removing the fee would cost the division \$130,000 and it would have to ask legislators to foot the bill through the state general fund.

◆ The Alaska Flyfishers Association ◆ Southeast Alaska  
Conservation Council ◆ American Rivers ◆ Trustees for Alaska ◆  
Trout Unlimited ◆ Northern Alaska Environmental Center ◆  
SMART (Scientific Management of Alaska's Resource Treasures)  
◆ Alaska Conservation Alliance ◆ Thomas Meacham, Esq. ◆

October 22, 2001

Mr. Gary Prokosch  
Chief, Water Resources Section  
Department of Natural Resources  
550 West 7<sup>th</sup> Avenue, Suite 900A  
Anchorage, Alaska 99501

**RE: Comments on the Proposed Department of Natural Resources, Division  
of Mining, Land and Water Regulations, 11 AAC 93.020 - .970.**

Dear Mr. Prokosch:

Thank you for the opportunity to comment on the proposed changes to the above-cited regulations. The stated objective of these proposed regulations is to allow the Department of Natural Resources (DNR) to focus its limited staff on those water rights applications deemed by DNR to be significant. However, the process that the regulations outline is far from ideal, and the regulations have the potential to exacerbate conflicts between users, foster lawsuits, and to negatively impact state resources.

**I. General Comments**

**A. The Proposed Regulations are Drastic and Unnecessary given DNR's recent Staffing Changes**

DNR has offered these amendments to its regulations as a result of staffing problems and a backlog of water right applications. DNR states "the proposed changes to the water regulations are intended to streamline DNR's water management process" and will "decrease workload." [Letter from Bob Loeffler to Interested Alaskans, 8/20/01.] DNR also indicates that due to the recent legislative changes, the DNR water staff will more than double (from 4 to 9 positions). Given this significant increase in staff, it is unclear why some of the proposed "streamlining" measures – especially those that will fundamentally alter accepted water law practices in Alaska – are necessary. DNR may wish to assess whether or not the increased staffing will allow it to address its backlog under the existing regulations, before instituting such sweeping changes in the

regulations. Since the staffing problems have now been remedied, it is expected that the current regulations (with some minor housekeeping modifications) will be satisfactory. Creating an entirely new permitting system (without precedents from other jurisdictions), particularly at a time of significant DNR staffing changes, may create unexpected and negative impacts to administration of the state's water resources.

**B. The Proposed Regulations Introduce Untested Procedures in the Complex Area of Water Law.**

DNR's proposed permitting system is unlike any other western state's water law, and does not appear to be consistent with the Alaska Constitution or the Alaska Water Use Act (AS 46.15.010, *et seq.*). DNR stated that it has not consulted with water law specialists to determine whether the proposed changes may generate legal problems. [Comments of Bob Loeffler, October 2, 2001.] Since Alaska's current water law has been deemed a model water appropriation scheme, and was created after consultation with some of the best water law experts in the nation, it would best serve the public if DNR consulted with water experts prior to instituting this new, untested system.

The new system creates a four-tiered water management scheme for Alaska:

**Tier 1**

The first tier is for "de minimus" water use, and individuals are not required to apply for a permit to use minor amounts of water, and acquire no water right or priority from such use. Such provisions are typical in many states. This was formerly the "insignificant amount" or "de minimus" water use threshold under Alaska law. 11 AAC 93.970(14).

**Tier 2**

The (new) second tier allows a person to use water, after application, if DNR deems the water use to be "non-significant." Non-significant is defined as less than 5,000 gallons/day from an anadromous stream, or less than 50,000 gallons/day from a non-anadromous stream or groundwater source. No permit or water right is issued. Nevertheless, the person submits an application, and obtains DNR approval to use water in a "non-significance" letter determination. The applicant receives a "conditional priority date," apparently established by the date DNR receives the application.

DNR, in issuing the "non-significance" determination, *does not* consider the "public interest" factors defined in AS 46.15.080. DNR states "[T]he applicant will not gain water rights until an adjudication takes place" [Loeffler, 8/20/01 Letter, p. 2] yet the user acquires a *potential* water right, that may ripen into a permanent right to appropriate (certificate) after five years of beneficial use, should DNR decide to later adjudicate the use. DNR states that if there is no conflict in the water source, it may never adjudicate (i. e., issue a permit or a certificate of appropriation) the Tier 2 user. There is no public notice of this "non-permit."

If there is a conflict with other water users, or if the applicant wishes to pay for adjudication, DNR will adjudicate, and issue or deny a permit, after public notice.

### **Tier 3**

The (new) third tier allows a person to apply to use a "significant amount of water," defined as greater than 5,000 gallons/day from an anadromous stream, or greater than 50,000 gallons/day from a non-anadromous stream or groundwater source. DNR states that it will "adjudicate" the water right (issue a permit) after "full agency scrutiny" [Notice of Proposed Changes, p. 1] at the time of application. There is public notice of this permit, prior to DNR's action.

### **Tier 4**

The fourth tier is the certificate of appropriation, which is a right to use water in perpetuity. DNR considers this a "ministerial" function, after the water use has been established under a Tier 3 permit for five years. DNR currently issues no notice of this certificate, although a recent case questioned this DNR practice.

This four-tier system could create significant problems for DNR and for any water user that expends time and resources to perfect the beneficial use in reliance on the Tier 2 DNR authorization. By allowing users to use water indefinitely, with no permit and without analysis of "beneficial use" by DNR, the quasi-right may suddenly be diminished in times of shortage, by unknown prior appropriators. The right may never be adjudicated unless other Tier 2 appropriators of the same source seek adjudication, or there are subsequent Tier 3 users.

The history of water use conflicts in Alaska reveals that many conflicts have involved single family domestic and other small (or "non-significant") water users. Conflicts have included those in the North Kenai area, South Anchorage, Auke Nu/Indian Cove in Juneau, and Eagle River, just to name a few. Under these proposed regulations, small water users would be deemed insignificant and would not be adjudicated until a conflict arose. Thus, future similar situations involving unadjudicated small water users would lead to even more complex water management problems.

Further, this scheme appears to focus on the "user," not the impacts to the water source. For example, it allows multiple Tier 2 users of the same anadromous stream water source to use amounts of water that would be considered "significant" (or Tier 3) if a single user sought to use the combined Tier 2 users' amount of water from the stream. The multiple users are individually deemed Tier 2 "non-significant", because DNR reviews the water use in a piecemeal applicant-by-applicant fashion, rather than looking cumulatively at the "whole stream" water use. While the proposed Tier 2 scheme does have a "preliminary determination" by DNR that there will be no effect on "other users" [11 AAC 93.037(b)(4)] there is no mandatory DNR analysis of the effect on public resources.

DNR should submit this new regulatory scheme to qualified experts to ascertain whether it is consistent with Alaska's water law and Constitution, and whether legislative

changes are needed to implement this significant restructuring of Alaska's established water law.

**C. The Proposed Regulations Eliminate Most of the "Public Interest" Criteria set forth in AS 46.15.080**

The proposed regulations eliminate the "public interest criteria" the Legislature mandated be evaluated before permit issuance under AS 46.15.080, and substitutes the "non-significance" criteria for permitting analysis for Tier 2 water users. The "non-significance" criteria eliminate such necessary considerations as public health, navigation, beneficial use, means of diversion, and intent and ability of applicant to complete the appropriation. *See* AS 46.14.080. The only public interest evaluations are related to fisheries [anadromous streams addressed in 11 AAC 93.037(b)1 and 2] and whether the appropriation will affect "other water users." *See* 11 AAC 93.037b(4). This is not the equivalent of the AS 46.15.080 "public interest" determination. In this regard, Tier 2 and Tier 3 users from the same source are treated differently: a Tier 3 user must have a "public interest" determination and a Tier 2 user does not, although each is, in effect, co-equal in terms of ability to apply their water rights. This may violate the provisions of Article VIII, sec. 17 of the Alaska Constitution (the "uniform application" clause).

**D. The Proposed Regulations Create Uncertainty for Valid Water Users Seeking Permanent Appropriations**

Under DNR's proposed regulations, the "significant" Tier 3 user, after obtaining a permit and filing the five-year statement of beneficial use could, in many instances, not be issued a certificate because of prior Tier 2 "non-significant users" that have "conditional priority dates" predating the Tier 3 user.

This creates a high degree of uncertainty for all water users. DNR claimed at its public meetings that "that is how the system works in actuality now." However, because of the currently existing public notice provisions, and because DNR must currently affirmatively act to issue a permit (considering all public interest criteria before issuing a permit), applicants are "screened" at the outset to ensure that public resources are being put to beneficial use, consistent with public interest criteria, and are treated equally. The issuance of a "non-significance letter" to Tier 2 users will give the non-permitted applicant an automatic priority date superior to the permitted Tier 3 applicant, who has complied with all of the statutory criteria. This is confusing and could create innumerable conflicts between Tier 2 ("non-significant") and Tier 3 ("significant") users.

**II. Comments on Specific Sections**

**11 AAC 93.035, REQUIREMENT TO APPLY FOR THE USE OF WATER**

This section results in a redefinition of the current regulation defining "significant amount" in 11 AAC 93.970(14). The existing definition of "significant amount" includes "any water use that might adversely affect the water rights of other appropriators or the public interest." 11 AAC 93.970(14). "Public interest" is "determined by the criteria set out in AS 46.15.080."

Yet the proposed new definition eliminates the key components in the existing definition of significant amount, the concept of "public interest" and the subsequent application of AS 46.15.080.

There is no justification for eliminating this important aspect of the definition. Given the Alaska courts' recent attention to the "public interest" in the state's water resources, the elimination of this aspect of the definition may be unconstitutional.

### 11 AAC 93.037. SIGNIFICANT AMOUNT OF WATER

This section places the burden on the self-professed already overworked and backlogged staff to notify persons that they are not using a significant amount of water. This seems like a roundabout way to administer water resources: instead of spending staff time administering those applications that are significant, under these regulations the staff will now spend time notifying people that their water use is not significant. DNR staff must make the "non-significance" determination within 45 days. There is no consequence for DNR's failure to issue the "non-significance" notice, therefore if a water use applicant receives no notice, he/she is left in the position of having a "significant" water use, even though it may actually meet the 11 AAC 93.037(a) and (b) definitions of "non-significance."

Given DNR's past inability to meet its administrative obligations, this could create substantial problems for water users whose use is truly non-significant. The water user will not be able to construct the works, and begin use of the water to perfect an appropriation, despite the fact that such use would be allowed under current law. Conversely, an applicant may, in fact, be seeking a permit for a significant use of water, but the applicant may argue that DNR's failure to render a decision within 45 days constitutes a *de facto* determination of non-significance.

Moreover, the definition of non-significance [subsection (b)(1-3)] is contrary to the current regulations, as discussed above. Finally, the "non-significance" determination may be in effect for the entire water use period, regardless of changing hydrologic circumstances or climatic conditions that may make the water use significant. There is no provision for a review of "non-significance" decisions by DNR upon request or at its own initiative.

Additionally, the proposed approach should be rejected for the following reasons:

(b)(1): The gallon limitation in this subsection (less than 5,000 gallons/day from an anadromous stream is deemed non-significant) does not recognize the potential sensitivity of anadromous streams that may be damaged by withdrawals of far less than

5,000 gallons/day, depending upon the season, the fish species, the method of withdrawal, and the instream flow needs. If a stream has a pending instream flow application, there should be no "minimum" below which the withdrawal is deemed non-significant. There is no requirement that the applicant provide hydrologic information about the timing of withdrawal, so that DNR will be able to assess whether, at times of low flow (i.e. winter) the stream can sustain a withdrawal of 5,000 gallons/day.

[Note: While it is recognized that the current regulations at 11 AAC 93.100 allow a similar exemption, the changes proposed by DNR eliminate the existing regulations' provision that a local, state or federal agency and DNR can allow notice/comment on this type of application to protect the public interest.]

In addition, there should be an automatic "significance" determination for water uses on waterbodies that are "known or suspected to be degraded, polluted or threatened." [See Alaska's Clean Water Actions (ACWA) publications].

(b)(2): This subsection lacks any reasoned analysis of whether withdrawals of 50,000 gallons/day from a non-anadromous stream or aquifer will result in non-significant impacts. Again, DNR should require the applicant to provide hydrologic analysis of the stream or aquifer that justifies any claim that this amount is "non-significant."

(b)(3): This subsection would benefit from a better definition of what "in combination with any other application" means. It is unclear whether an applicant that has filed an application for withdrawals from two different streams (or different tributaries of the same stream), that together exceed 5,000 gallons per day, will be required to be deemed "significant."

It is also unclear whether, for example, an applicant who withdraws 4,900 gallons per day from multiple streams, which contribute to the sustainability of a fishery in a particular watershed, can be deemed "non-significant." Again, seasonal assessments of water availability and diversion methods are important variables that DNR should address prior to deeming a use non-significant.

(b)(4): This subsection allows DNR to make the "non-significance" determination, with no public notice (only agency notice), and without consideration of the public interest. The only consideration is whether it is "likely to have an adverse effect on other water users." While this language may be intended to be the functional equivalent of a "public interest" determination, the use of different language creates a doubt as to what standard should be applied.

(d): There is no limit on the amount of water that can be withdrawn under a "temporary water use permit." This may violate the Alaska Constitution, Article VIII, §§1,2,3,4,10,13,14,16, 17, and AS 46.15.080.

### 11 AAC 93.039, AGENCY NOTICE

Since neither ADF&G nor DEC received funding to carry out the functions set forth in this section, DNR's reliance on these agencies to perform the new analysis is, in effect, an unfunded mandate to those agencies. As Mr. Loeffler stated during the public

meetings, DEC does not routinely review these permits, and ADF&G does review temporary and other water use permits, but not in all cases (i.e. ADF&G does not routinely review applications for non-anadromous streams).

There is no criteria for the types of permits for which the agencies can "decline to be notified." 11 AAC 93.039(a)(1). Because the public will not receive notice under DNR's revised regulations, the public will be totally dependent upon agencies for analysis of water permits. Thus, the categories or specific "agency declines" decisions should be published, and an opportunity for the public to comment should be allowed. The public relies on the agencies for expertise and/or review of the permits, but if the agency cannot provide that expertise, then the public should be allowed to participate.

Under subsection (c), the word "may" should be replaced by "shall." There should be a requirement that DNR notify the local government, tribal governments, federal land managers of state waters and the local coastal district of all applications for water use which may affect the people or resources of that government or geographic region, allowing a 15 day comment period. This is necessary because coastal districts receive deference in the interpretation and application of their coastal programs, which must be consulted before water use is permitted. In non-coastal areas, the local governments and tribal governments should be notified. (See Governor's Administrative Order 186; and the Millennium Agreement.) The trend in most western water states is to increasingly rely upon local knowledge and expertise about stream and water body characteristics and carrying capacities. DNR would eliminate this important source of expertise by failing to provide required notice to these local entities.

#### 11 AAC 93.040 (14). HYDROLOGIC DATA

DNR should identify, in the regulation or by separate Departmental publication, the types of hydrologic methods it allows to satisfy this requirement. Otherwise, the applicant may expend significant time and money using a method not approved by the Department. Further, given the potential for extreme seasonal variations in flow rate, DNR should require mean monthly flow data.

#### 11 AAC 93.070. DEPARTMENTAL INVESTIGATIONS

The word "may" should be changed to "shall." Without a requirement for investigation, potential use conflicts could easily go unnoticed by DNR.

#### 11 AAC 93.080. PUBLIC NOTICE

It is unclear who will pay for the public notice (the regulation states only that the Department "will prepare" the notice; there is no requirement that the applicant ensure that it is published in the newspaper or pay for the newspaper publication). While AS 46.15.133 states that the applicant will pay, the regulations should also so state.

DNR is proposing to require public notice only when it "begins adjudicating a

water right application.” This means that users of non-significant amounts of water will be able to use water, perhaps indefinitely, with no public notice. DNR’s explanation confirms that “some applications may not be adjudicated for many years (if ever)” and states that no notice will be required, absent adjudication. This may be a violation of Article VIII, section 10, of the Alaska Constitution. Public notice of every water use application should be given.

The provision of subsection (2), posting on the Alaska Online Public Notice System, is a significant improvement. This should be applied whenever a water use application is received and deemed complete by DNR, rather than when the application is adjudicated. The regulation should state that the Online Public Notice should be placed on the first day of the public notice in AS 46.15.133. The proposed language states that the notice will be placed online “during” the comment period. Unless it is online on the first day of newspaper notice, those who rely on online notice may not have sufficient time to comment.

The regulation should include public notice when DNR proposes to issue a certificate of appropriation.

#### 11 AAC 93.100, EXEMPTIONS TO NOTICE (REPEALED)

As stated in the discussion above (under 11 AAC 93.037) this current section (proposed for repeal) contains provisions much more protective of the public’s interest in water than the proposed 11 AAC 93.037. It is recommended that this provision be retained, or that only the *limited* exceptions to public notice be incorporated into 11 AAC 93.037.

#### 11 AAC 93.115, CLOSURE OF AN APPLICATION FOR A WATER RIGHT

(b) This section is a trap for the unwary non-significant water user. DNR proposes to establish the new Tier 2 system of “non-significant” (non-permitted) use, presumably to make the administration of water rights easier for DNR and the applicant. However, under this section, the unwitting applicant who forgets to provide the statement of beneficial use can be immediately terminated from the water right he has spent 5 years perfecting, just for his failure to file a single piece of paper. This section will undoubtedly generate litigation, and appears to violate the “priority of use equals priority of right” concept of Art. VIII, Sec. 13 of the Alaska Constitution.

If DNR does not notify the applicant that (1) his beneficial use statement is due, or (2) DNR intends to terminate his use, then the applicant (who has had no communication from DNR for five years) may suddenly lose his priority date and significant investment. Since under the current law, DNR considers it a “ministerial” duty to issue a certificate after 5 years of beneficial use, it is difficult to see how DNR can automatically terminate the “non-significant” water user for failing to file the beneficial use statement on a specific date. At a minimum, some notice and grace period should be provided.

## 11 AAC 93.120. ISSUANCE OF A PERMIT TO APPROPRIATE WATER

The regulations are vague as to what triggers a "priority date," and that term appears to grant different rights depending on the type or tier of the application. This lack of clarity could mean that two users that apply simultaneously will have different priority dates, depending upon what tier they apply under and DNR's backlog at the time of the application. Both "significant" and "non-significant" users should have a priority date of the date each application is received by DNR, and this concept needs to be explicitly stated. This is especially confusing when read with the language in proposed 11 AAC 93.035(b) ("unless an application is filed *and* a permit or certificate is issued") (emphasis added).

In addition, under this section the "significant" user has a potential for an extension and is not required to file statements of beneficial use, but the "non significant" user (as proposed under 11 AAC 93.115) can be automatically terminated for failing to file the beneficial use statement. This inconsistency should be remedied.

### New Section (i)

This section allows water use to continue, despite DNR's failure to carry out its responsibilities to administer water resources. In no other permitting situation does a failure of a state agency to act result in a permit extension. It is unclear why, with twice as much staff, DNR is now building this step into the regulations.

If DNR fails to act within the time period required, then the permittee should be able to proceed to court for a judicial determination of water rights, and DNR should be required to pay the court costs for the action. Further, section (i) is inconsistent with section (f), which states that there may be no extension longer than 10 years.

## 11 AAC 93.140. WATER WELLS

This regulation change is acceptable.

## 11 AAC 93.210. TEMPORARY WATER USE

This section allows temporary water use of significant amounts of water for five years, with no analysis of the public interest factors in AS 46.15.080. This section is likely to be unconstitutional, particularly since there is no limit to the amount of water that may be used, no prior notice to the public, and no consideration of constitutionally mandated public trust-type principles. Although DNR justifies this provision by stating that this does not create a "property right" [see "explanation," p. 11], that argument is misinformed. No water use or appropriation creates a property right under Alaska law. Under Alaska law, the only "right" created is a usufructory right: the right of enjoying a thing, the property of which is vested in another. The water of the state is vested in the people of the state and may be appropriated (used) in accordance with the Constitution, under the appropriation scheme. Further, the five-year permit period is questionable,

given the coterminous period for a full water right. A temporary water use permit should be limited in duration to no more than 1 year, or some other period that is rationally related to the public need for a "temporary" use of water, rather than a lawful appropriation, a concept which has been recognized in the Alaska Water Use Act since 1966, and in the western states' water laws for more than a century.

#### 11 AAC 93.220. SIMPLIFIED PROCEDURE FOR TEMPORARY WATER USE

Same comments as above. While these procedures allow notice to ADF&G and DEC, there is no public notice, nor notice to local government, tribal governments, federal land managers of state waters or coastal management councils. Since, for example, DNR gives away 22 billion gallons of water each winter to the oil industry on the North Slope alone [Gary Prokosch, "North Slope Water Use and Hydrology," March 9, 2000], there must be a recognition that, at a minimum, those people who live in the region and depend upon that water and related resources for subsistence should receive notice and opportunity to comment on the permits. Further, DNR has a legal obligation to make copies of each written determination for granting or denying a temporary permit available to any member of the public upon request.

#### 11 AAC 93.290. COMMISSIONER'S ORDERS

No comment on this section.

#### 11 AAC 93.530. EFFECT OF ORDER

No comment on this section

#### 11 AAC 93.920. EXEMPTIONS

Please see discussion of 11 AAC 93.035.

#### 11 AAC 93.930. PROCEDURE FOR THE TRANSFER AND CHANGE OF APPROPRIATIONS

This section provides public notice of changes in permits to appropriate and certificates of appropriation. The notice to agencies and the Online Public Notice is a positive step. It is recommended that DNR expand this notice to all those who commented on the underlying permit or certificate. The exemption for changes or transfers of uses less than 5,000 gallons/day should be analyzed on the basis of impacts to the resource, not on a strict gallon limit. Further, there are unresolved questions in this section: Does this include applicants without a permit or certificate who have been determined to be not significant? Does "water right holders of record" include those with adjudicated water right applications? Such a lack of clarity should be remedied.

### **III. Conclusions and Concerns**

The proposed regulations provide DNR with too much discretion in determining whether or not to adjudicate small water use applications. If the regulations go forward, standards are needed to clearly identify how and why DNR will make the determination of whether or not to adjudicate an application.

There are no provisions regarding how to handle conflicts among water users, especially where there are pending applications, including instream-flow applications. For example, how will harm to unadjudicated applicants be handled? How will harm from unadjudicated applicants to water rights holders be handled? The regulations should be clear that when conflicts occur for a given water source, that applications will be adjudicated and enforced in order of priority date, including those applications for instream reservations. Any water use or water reservation priority date should be clearly stated as the date the application is received by DNR.

All water right adjudications should include a written public interest determination based on the public interest criteria listed in AS 46.15.080. This will make clear for the public record the information and reasoning used by DNR and other agencies in making decisions. Public notice should be given upon receipt of an application in each tier and for their temporary permits.

While the proposed regulations do not include changes to the instream water right regulations, DNR should make clear that instream water right applications are "significant" applications and water uses, and will therefore be adjudicated on an equal basis with all other water right applications.

Thank you for the opportunity to comment.  
Sincerely,

Jenna App  
Trustees for Alaska

*On behalf of:*

Les Gara  
The Alaska Flyfishers Association

Back Lindekugel  
Southeast Alaska Conservation Council

Steve Rothert  
American Rivers

Jan Konigsberg  
Trout Unlimited

Arthur Hussey  
Northern Alaska Environmental Center

Keith Bayha  
SMART (Scientific Management of Alaska's Resource Treasures)

Sue Schrader  
Alaska Conservation Alliance

Thomas E. Meacham, Esq.