

SB

139

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 03 2001
SENATE FINANCE
COMMITTEE

DATE: 4/12/01

FURTHER:

DATE TURNED IN TO OFFICE: 4 May 01

Finance Committee considered

SENATE BILL NO. 139

STATE WATER USE

"An Act relating to fees for certain uses of state water and the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date."

and recommends:

- be replaced with CS CS 139 (FIN)
- adopt previous CS CS forthcoming ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

F/n forthcoming #

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			⊕	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>			✓	

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB139(RES)
() Publish Date: _____

Revision Date/Time (Note if correction): 05/03/2001 Dept. Affected: Natural Resources
Title: State Water Use BRU: Minerals, Land & Water
Component: Water Development
Sponsor: (S) Rules
Requester: (S) FIN Component Number: 916

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		275.0	275.0	275.0	275.0	170.2
Travel		7.0	7.0	7.0	7.0	5.0
Contractual		15.0	15.0	15.0	15.0	7.0
Supplies		3.0	3.0	3.0	3.0	2.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	300.0	300.0	300.0	300.0	184.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (Fees)	0.0	84.2	184.2	184.2	184.2	184.2
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		215.8	115.8	115.8	115.8	
1005 GF/Program Receipts	(135.8)	(135.8)	(135.8)	(135.8)	(135.8)	(135.8)
1037 GF/Mental Health						
1156 Receipt-Supported Services	135.8	220.0	320.0	320.0	320.0	320.0
TOTAL	0.0	300.0	300.0	300.0	300.0	184.2

Estimate of any current year (FY2001) cost: none
Check this box (X) if funding for this bill is included in the Governor's FY2002 budget proposal:

POSITIONS

Full-time		5	5	5	5	2.5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The fundamental issue facing the Water Development component is the fact that there is no longer enough staff to conduct the program required by statute. The problem is exacerbated by a court ruling that requires procedures for temporary water use permits that have historically not been conducted and that significantly increase staff time required to process these permits. The consequence of this problem is that the Department of Natural Resources has a backlog of over 600 applications for water rights and over 3,000 total actions (including permit extensions, transfers, etc.). Thus, many industries and citizens are frustrated by their inability to receive authorization to proceed with their projects, or to gain the security of a water right. [cont.]

Prepared by: Bob Loeffler, Director Phone (907) 269-8625
Division: Mining, Land and Water Date/Time 03-May-01
Approved by: Pat Pourchot Date 03-May-01
Agency: Natural Resources

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

Fee-Supported Services.

This bill would provide for a method of funding the water management program. It would require the water management program to use the application-fee methodology provided in AS 37.10.050 - 37.10.058. This methodology was pioneered by the legislature last year in HB 361, commonly known as the "DEC fees bill."

The fees methodology would allow DNR to set application fees for a temporary water use authorization or a water right at a price up to the estimated average reasonable direct cost incurred. These application fees, in addition to the existing general fund amount, would provide a secure funding source for program. That is, applicants would pay for the reasonable direct cost, and remaining indirect costs would remain the responsibility of the general fund. If applications increased, fees and therefore funds to the program would increase. If applications decreased, the opposite would occur.

The Department estimates that the new fees would be approximately double the existing fees for most water right applications. For some of the more complex types of applications, fees would increase further.

The additional funds would allow DNR to adjudicate a typical, new temporary water use authorization within 15 days, and a typical water right application within 60 days. It would also allow DNR to eliminate the backlog of over 600 water right applications and over 3,000 total actions within 5 years. The Department estimates that it will require \$300K in additional funds to accomplish these performance measures. Of this amount, approximately \$125K would be dedicated to eliminating the backlog of applications and other actions within 5 years. After five years, the funds used to eliminate the backlog would no longer be needed.

The effect of the fees would not be immediate. The establishment of an application-fee system that reflects the reasonable direct cost of providing the service will require up to two years to promulgate regulations, set up a revenue and billing system, and update the water right files. For this reason, this fiscal note includes the additional \$300K in general funds for the first year, FY 02 while regulations are being developed and implemented (it also transfers existing general fund program receipts to receipt-supported services). In the second year, \$215.8 included general funds with the balance in receipt supported services. In the years three through five, the fee program is fully operational. In that year, the department estimates that it will need only \$115.8 in new general funds, all of which would be used to eliminate the backlog. After year five, we project the water rights backlog to be eliminated, the fee program to remain fully operational, and no additional general funds would be required.

This program is consistent with the philosophy that, "Those who benefit from the service should pay for it."

To compliment the water use fee, DNR is currently writing regulations that will allow it to more efficiently process water right applications.

adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

22-GS1087/P
Luckhaupt
5/2/01

CS FOR SENATE BILL NO. 139()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to fees for certain uses of state water and to the accounting and
2 appropriation of those fees; relating to authorizations for the temporary use of state
3 water; making other amendments to the Alaska Water Use Act; and providing for an
4 effective date."

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

6 * Section 1. The uncodified law of the State of Alaska is amended by adding new sections
7 to read:

8 POLICY REGARDING STATE WATER USE FEES. (a) It is the policy of the
9 legislature to authorize the Department of Natural Resources to assess a reasonable fee for the
10 services it provides in facilitating the use of state water; the fee should reflect the reasonable
11 direct cost of providing the service, but it is the policy of the state that the fee not include

12 (1) the costs and salaries of administrative, support, or supervisory personnel
13 who are not directly engaged in providing the service;

14 (2) other budgeted overhead expenses, including rent and utilities;

1 (3) interagency charges that would not meet the requirements of AS 37.10.052
2 - 37.10.058 if those charges had been incurred or invoiced by the agency providing the
3 designated regulatory service;

4 (4) public consultation costs when the consultation is not required by law;

5 (5) costs related to an appeal of permit issuance by a person other than the
6 applicant for that permit;

7 (6) expenses that are not reasonably necessary to comply with the law under
8 which the service is provided; or

9 (7) travel expenses for inspecting businesses having not more than 20
10 employees.

11 (b) It is the policy of the legislature that the Department of Natural Resources not
12 apply a charge to the holder of a certificate of appropriation that is not specifically related to
13 services provided by the department, except that the department may continue to charge the
14 annual \$50 administrative service fee currently in use by the department in order to maintain
15 the water rights program for the benefit of Alaskans and current water rights holders.

16 (c) It is the policy of the legislature that the Department of Natural Resources
17 minimize the required costs, including application fees, on individuals and businesses
18 withdrawing less than a significant amount of water.

19 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 FINDINGS, POLICY, AND PURPOSE RELATED TO AUTHORIZATIONS FOR
22 CERTAIN TEMPORARY USES OF STATE WATER. (a) The legislature finds that

23 (1) many construction, development, commercial, and private activities
24 require an authorization for the temporary use of the state's water without the need to acquire
25 a permanent right to appropriate water;

26 (2) for many years, in appropriate circumstances, the Department of Natural
27 Resources has issued revocable permits for the temporary use of state water under AS 46.15;
28 and

29 (3) the legislature validates and affirms that temporary permits authorizing the
30 temporary use of state water continue to be appropriate under AS 46.15.

31 (b) It is the policy of the legislature to expressly confirm in the Department of Natural

1 Resources the authority to issue authorizations for temporary use of water subject to
2 appropriate conditions and limitations set by the Department of Natural Resources.

3 (c) The purpose of the enactment of AS 46.15.155 in sec. 6 of this Act is to

4 (1) confirm the authority of the Department of Natural Resources to issue
5 authorizations for temporary use of water; and

6 (2) affirm the validity of existing temporary permits for the use of state water
7 issued before the effective date of this Act that may have been called into question by the
8 rationale used by the court in *Greenpeace v. Alaska Department of Natural Resources*, 3AN-
9 00-3415 Civil.

10 * Sec. 3. AS 37.10.058(2) is amended to read:

11 (2) "designated regulatory service" means a regulatory service
12 provided under the following regulatory programs:

13 (A) regulation of the disposal of waste into waters of the state
14 under AS 46.03.100;

15 (B) certification of federal permits or authorizations under 33
16 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

17 (C) a coastal management consistency determination relating to
18 a permit or authorization issued under a program listed in (A) or (B) of this
19 paragraph, if the determination is made by the agency issuing the permit or
20 authorization; and

21 (D) any authorization for the use or appropriation of water
22 under AS 46.15.

23 * Sec. 4. AS 46.15.020(b)(4) is amended to read:

24 (4) prescribe fees or service charges for any public service rendered
25 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
26 under regulations adopted by the department an annual \$50 administrative
27 service fee to maintain the water management program;

28 * Sec. 5. AS 46.15.035(e)(2) is amended to read:

29 (2) "hydrologic unit" means a hydrologic subregion established by the
30 United States Department of the Interior, Geological Survey, on the "Hydrologic Unit
31 Map-1987, State of Alaska"; "hydrologic unit" includes the water of an ocean that

1 is adjacent to a hydrologic subregion of the state. ["

2 * Sec. 6. AS 46.15 is amended by adding a new section to read:

3 Sec. 46.15.155. Authorization for temporary use of water. (a)

4 Notwithstanding any contrary provision of this chapter, the commissioner may
5 authorize the temporary use of a significant amount of water, as determined by the
6 department by regulation, for a period of time not to exceed five consecutive years, if
7 the water applied for has not been appropriated in accordance with this chapter.

8 (b) Notwithstanding any contrary provision of this chapter, an authorization
9 for a temporary use of less than a significant amount of water is not required under
10 this section unless the commissioner has determined by regulation that the use may
11 have an adverse effect on other water uses and that an authorization must be obtained
12 from the department.

13 (c) The issuance of an authorization for temporary use of water under this
14 section does not establish a right to appropriate water. The temporary use of water
15 under an authorization remains subject to appropriation under this chapter.

16 (d) Notwithstanding any contrary provision of this chapter, the commissioner
17 is not required to provide public notice under AS 46.15.133 of a proposed
18 authorization for temporary use of water; however, the commissioner shall request
19 comment on an application for temporary use of water from the Department of Fish
20 and Game and the Department of Environmental Conservation.

21 (e) The provisions of AS 46.15.080 do not apply to the issuance under this
22 section of an authorization for temporary use of water.

23 (f) The commissioner may impose reasonable conditions or limitations on an
24 authorization for temporary use of water to protect the water rights of other persons or
25 to protect fish and wildlife habitat, human health, or other public interests.

26 (g) Upon approval by the department, an authorization under this section may
27 be transferred to another person under the same conditions and limitations under
28 which the authorization was issued.

29 (h) A person to whom an authorization for temporary use of water was issued
30 under this section may allow another person to use the authorization, consistent with
31 the conditions and limitations of the authorization.

1 (i) The commissioner may modify, suspend, or revoke an authorization issued
2 under this section if the commissioner determines it necessary to protect the water
3 rights of other persons or the public interest.

4 * Sec. 7. AS 46.15.180(a) is amended to read:

5 (a) A person may not

6 (1) construct works for an appropriation, or divert, impound, withdraw,
7 or use a significant amount of water from any source without a permit, [OR] certificate
8 of appropriation, or authorization issued under this chapter;

9 (2) violate an order of the commissioner to cease and desist from
10 preventing any water from moving to a person having a prior right to use it;

11 (3) disobey an order of the commissioner requiring the person to take
12 steps to cause the water to move to a person having a prior right to use it;

13 (4) fail or refuse to install meters, gauges, or other measuring devices
14 or control works;

15 (5) violate an order establishing corrective controls for an area or for a
16 source of water;

17 (6) knowingly make a false or misleading statement in a declaration of
18 existing right.

19 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 VALIDITY OF EXISTING TEMPORARY PERMITS ISSUED BEFORE THE
22 EFFECTIVE DATE OF THIS ACT. (a) A temporary permit issued before the effective date
23 of this Act by the Department of Natural Resources under AS 46.15 authorizing the temporary
24 use of water is valid and remains in effect, notwithstanding that public notice was not
25 provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied before
26 the temporary permit was issued.

27 (b) A temporary permit described in (a) of this section shall be considered to be an
28 authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as
29 if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary
30 permit described in this subsection is subject to the terms and conditions set out in the
31 temporary permit and is subject to the requirements of AS 46.15.15⁷, enacted by sec. 6 of this

1 Act.

2 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 TRANSITION: REGULATIONS. (a) Under ' S 44.62.125(b)(6), the regulations
5 attorney may change the term "temporary water use permit" in regulations of the Department
6 of Natural Resources concerning water use to "authorization for temporary use of water" as
7 consistent with this Act.

8 (b) To the extent that the regulations are not inconsistent with this Act, regulations
9 related to water management adopted by the Department of Natural Resources under
10 AS 46.15 and in effect on the effective date of this Act remain in effect until amended or
11 repealed and may be administered and enforced by the Department of Natural Resources.

12 * Sec. 10. Except as provided in sec. 11 of this Act, this Act takes effect immediately under
13 AS 01.10.070(c).

14 * Sec. 11. Section 4 of this Act takes effect July 1, 2002.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR GREEN

TO: CSSB 139(), Draft Version "J"

1 Page 3, lines 23 - 27:

2 Delete all material.

3 Insert a new bill section to read:

4 **** Sec. 4.** AS 46.15.020(b) is amended to read:

5 (b) The commissioner shall

6 (1) adopt procedural and substantive regulations to carry out the
7 provisions of this chapter, taking into consideration the responsibilities of the
8 Department of Environmental Conservation under AS 46.03 and the Department of
9 Fish and Game under AS 16;

10 (2) keep a public record of all applications for permits and certificates
11 and other documents filed in the commissioner's office; and shall record all permits
12 and certificates and amendments and orders affecting them and shall index them in
13 accordance with the source of the water and the name of the applicant or appropriator;

14 (3) cooperate with, assist, advise, and coordinate plans with the
15 federal, state, and local agencies, including local soil and water conservation
16 districts, in matters relating to the appropriation, use, conservation, quality, disposal,
17 or control of waters and activities related thereto;

18 (4) prescribe fees or service charges for any public service rendered
19 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
20 under regulations adopted by the department an annual \$50 administrative
21 service fee to maintain the water management program;

22 (5) before February 1 of each year, prepare a report describing the
23 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner
24 shall notify the legislature that the report is available; the report must include

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(A) information on the number of applications and appropriations for the removal of water from one hydrological unit to another that were requested and that were granted and on the amounts of water involved;

(B) information on the number and location of sales of water conducted by the commissioner and on the volume of water sold;

(C) recommendations of the commissioner for changes in state water law; and

(D) a description of state revenue and expenses related to activities under AS 46.15.035 and 46.15.037."

SENATE FINANCE COMMITTEE
2001 COMMITTEE ACTION

5/3/01

Bill Number	SB 139		
Amendment	#1		
Motion	adopt		
<u>Motion by</u>	G		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Olson			
Senator Ward			
Senator Wilken			
Senator Austerman			
Senator Green			
Senator Hoffman			
Senator Leman			
Co-Chair Donley			
Co-Chair Kelly			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	PASS		

SENATE FINANCE
COMMITTEE

Amendment Number: #2
Bill Number: SB 139
Sponsor: Green Date: 5/3/01
Logged In By: Mindy

22-GS1087J.2
Luckhaupt
5/3/01

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR GREEN

TO: CSSB 139(), Draft Version "J"

1 Page 2, line 17, before "minimize":

2 Insert "(1)"

3

4 Page 2, line 18, following "water":

5 Insert ";

6 (2) consider providing a partial fee reduction for water rights holders and

7 applicants who have approved irrigation management plans"

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

5/3/01

Bill Number	SB 139		
Amendment	#2		
Motion	adpt		
<u>Motion by</u>	G		
<u>Objection by</u>	K		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Ward			
Senator Wilken			
Senator Austerman			
Senator Green			
Senator Hoffman			
Senator Leman			
Senator Olson			
Co-Chair Donley			
Co-Chair Kelly			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

CS FOR SENATE BILL NO. 139(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to fees for certain uses of state water and to the accounting and
2 appropriation of those fees; relating to authorizations for the temporary use of state
3 water; making other amendments to the Alaska Water Use Act; and providing for an
4 effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * Section 1. The uncodified law of the State of Alaska is amended by adding new sections
7 to read:

8 POLICY REGARDING STATE WATER USE FEES. (a) It is the policy of the
9 legislature to authorize the Department of Natural Resources to assess a reasonable fee for the
10 services it provides in facilitating the use of state water; the fee should reflect the reasonable
11 direct cost of providing the service, but it is the policy of the state that the fee not include

12 (1) the costs and salaries of administrative, support, or supervisory personnel
13 who are not directly engaged in providing the service;

14 (2) other budgeted overhead expenses, including rent and utilities;

1 (3) interagency charges that would not meet the requirements of AS 37.10.052
 2 - 37.10.058 if those charges had been incurred or invoiced by the agency providing the
 3 designated regulatory service;

4 (4) public consultation costs when the consultation is not required by law;

5 (5) costs related to an appeal of permit issuance by a person other than the
 6 applicant for that permit;

7 (6) expenses that are not reasonably necessary to comply with the law under
 8 which the service is provided; or

9 (7) travel expenses for inspecting businesses having not more than 20
 10 employees.

11 (b) It is the policy of the legislature that the Department of Natural Resources not
 12 apply a charge to the holder of a certificate of appropriation that is not specifically related to
 13 services provided by the department, except that the department may continue to charge the
 14 annual \$50 administrative service fee currently in use by the department in order to maintain
 15 the water rights program for the benefit of Alaskans and current water rights holders.

16 (c) It is the policy of the legislature that the Department of Natural Resources

17 (1) minimize the required costs, including application fees, on individuals and
 18 businesses withdrawing less than a significant amount of water; #2

19 (2) consider providing a partial fee reduction for water rights holders and
 20 applicants who have approved irrigation management plans.

21 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
 22 read:

23 FINDINGS, POLICY, AND PURPOSE RELATED TO AUTHORIZATIONS FOR
 24 CERTAIN TEMPORARY USES OF STATE WATER. (a) The legislature finds that

25 (1) many construction, development, commercial, and private activities
 26 require an authorization for the temporary use of the state's water without the need to acquire
 27 a permanent right to appropriate water;

28 (2) for many years, in appropriate circumstances, the Department of Natural
 29 Resources has issued revocable permits for the temporary use of state water under AS 46.15;
 30 and

31 (3) the legislature validates and affirms that temporary permits authorizing the

1 temporary use of state water continue to be appropriate under AS 46.15.

2 (b) It is the policy of the legislature to expressly confirm in the Department of Natural
3 Resources the authority to issue authorizations for temporary use of water subject to
4 appropriate conditions and limitations set by the Department of Natural Resources.

5 (c) The purpose of the enactment of AS 46.15.155 in sec. 6 of this Act is to

6 (1) confirm the authority of the Department of Natural Resources to issue
7 authorizations for temporary use of water; and

8 (2) affirm the validity of existing temporary permits for the use of state water
9 issued before the effective date of this Act that may have been called into question by the
10 rationale used by the court in Greenpeace v. Alaska Department of Natural Resources, 3AN-
11 00-3415 Civil.

12 * Sec. 3. AS 37.10.058(2) is amended to read:

13 (2) "designated regulatory service" means a regulatory service
14 provided under the following regulatory programs:

15 (A) regulation of the disposal of waste into waters of the state
16 under AS 46.03.100;

17 (B) certification of federal permits or authorizations under 35
18 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

19 (C) a coastal management consistency determination relating to
20 a permit or authorization issued under a program listed in (A) or (B) of this
21 paragraph, if the determination is made by the agency issuing the permit or
22 authorization; and

23 (D) any authorization for the use or appropriation of water
24 under AS 46.15.

25 * Sec. 4. AS 46.15.020(b) is amended to read:

26 (b) The commissioner shall

27 (1) adopt procedural and substantive regulations to carry out the #1
28 provisions of this chapter, taking into consideration the responsibilities of the
29 Department of Environmental Conservation under AS 46.03 and the Department of
30 Fish and Game under AS 16;

31 (2) keep a public record of all applications for permits and certificates

1 and other documents filed in the commissioner's office; and shall record all permits
2 and certificates and amendments and orders affecting them and shall index them in
3 accordance with the source of the water and the name of the applicant or appropriator;

4 (3) cooperate with, assist, advise, and coordinate plans with the
5 federal, state, and local agencies, including local soil and water conservation
6 districts, in matters relating to the appropriation, use, conservation, quality, disposal,
7 or control of waters and activities related thereto;

8 (4) prescribe fees or service charges for any public service rendered
9 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
10 under regulations adopted by the department an annual \$50 administrative
11 service fee to maintain the water management program;

12 (5) before February 1 of each year, prepare a report describing the
13 activities of the commissioner under AS 46.15.035 and 46.15.037; the commissioner
14 shall notify the legislature that the report is available; the report must include

15 (A) information on the number of applications and
16 appropriations for the removal of water from one hydrological unit to another
17 that were requested and that were granted and on the amount of water
18 involved;

19 (B) information on the number and location of sales of water
20 conducted by the commissioner and on the volume of water sold;

21 (C) recommendations of the commissioner for changes in state
22 water law; and

23 (D) a description of state revenue and expenses related to
24 activities under AS 46.15.035 and 46.15.037.

25 * Sec. 5. AS 46.15.035(e)(2) is amended to read:

26 (2) "hydrologic unit" means a hydrologic subregion established by the
27 United States Department of the Interior, Geological Survey, on the "Hydrologic Unit
28 Map-1987, State of Alaska"; "hydrologic unit" includes the water of an ocean that
29 is adjacent to a hydrologic subregion of the state. [""]

30 * Sec. 6. AS 46.15 is amended by adding a new section to read:

31 **Sec. 46.15.155. Authorization for temporary use of water. (a)**

1 Notwithstanding any contrary provision of this chapter, the commissioner may
2 authorize the temporary use of a significant amount of water, as determined by the
3 department by regulation, for a period of time not to exceed five consecutive years, if
4 the water applied for has not been appropriated in accordance with this chapter.

5 (b) Notwithstanding any contrary provision of this chapter, an authorization
6 for a temporary use of less than a significant amount of water is not required under
7 this section unless the commissioner has determined by regulation that the use may
8 have an adverse effect on other water uses and that an authorization must be obtained
9 from the department.

10 (c) The issuance of an authorization for temporary use of water under this
11 section does not establish a right to appropriate water. The temporary use of water
12 under an authorization remains subject to appropriation under this chapter.

13 (d) Notwithstanding any contrary provision of this chapter, the commissioner
14 is not required to provide public notice under AS 46.15.133 of a proposed
15 authorization for temporary use of water; however, the commissioner shall request
16 comment on an application for temporary use of water from the Department of Fish
17 and Game and the Department of Environmental Conservation.

18 (e) The provisions of AS 46.15.080 do not apply to the issuance under this
19 section of an authorization for temporary use of water.

20 (f) The commissioner may impose reasonable conditions or limitations on an
21 authorization for temporary use of water to protect the water rights of other persons or
22 to protect fish and wildlife habitat, human health, or other public interests.

23 (g) Upon approval by the department, an authorization under this section may
24 be transferred to another person under the same conditions and limitations under
25 which the authorization was issued.

26 (h) A person to whom an authorization for temporary use of water was issued
27 under this section may allow another person to use the authorization, consistent with
28 the conditions and limitations of the authorization.

29 (i) The commissioner may modify, suspend, or revoke an authorization issued
30 under this section if the commissioner determines it necessary to protect the water
31 rights of other persons or the public interest.

1 * Sec. 7. AS 46.15.180(a) is amended to read:

2 (a) A person may not

3 (1) construct works for an appropriation, or divert, impound, withdraw,
4 or use a significant amount of water from any source without a permit, [OR] certificate
5 of appropriation, or authorization issued under this chapter;

6 (2) violate an order of the commissioner to cease and desist from
7 preventing any water from moving to a person having a prior right to use it;

8 (3) disobey an order of the commissioner requiring the person to take
9 steps to cause the water to move to a person having a prior right to use it;

10 (4) fail or refuse to install meters, gauges, or other measuring devices
11 or control works;

12 (5) violate an order establishing corrective controls for an area or for a
13 source of water;

14 (6) knowingly make a false or misleading statement in a declaration of
15 existing right.

16 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 VALIDITY OF EXISTING TEMPORARY PERMITS ISSUED BEFORE THE
19 EFFECTIVE DATE OF THIS ACT. (a) A temporary permit issued before the effective date
20 of this Act by the Department of Natural Resources under AS 46.15 authorizing the temporary
21 use of water is valid and remains in effect, notwithstanding that public notice was not
22 provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied before
23 the temporary permit was issued.

24 (b) A temporary permit described in (a) of this section shall be considered to be an
25 authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as
26 if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary
27 permit described in this subsection is subject to the terms and conditions set out in the
28 temporary permit and is subject to the requirements of AS 46.15.155, enacted by sec. 6 of this
29 Act.

30 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 TRANSITION: REGULATIONS. (a) Under AS 44.62.125(b)(6), the regulations
2 attorney may change the term "temporary water use permit" in regulations of the Department
3 of Natural Resources concerning water use to "authorization for temporary use of water" as
4 consistent with this Act.

5 (b) To the extent that the regulations are not inconsistent with this Act, regulations
6 related to water management adopted by the Department of Natural Resources under
7 AS 46.15 and in effect on the effective date of this Act remain in effect until amended or
8 repealed and may be administered and enforced by the Department of Natural Resources.

9 * **Sec. 10.** Except as provided in sec. 11 of this Act, this Act takes effect immediately under
10 AS 01.10.070(c).

11 * **Sec. 11.** Section 4 of this Act takes effect July 1, 2002.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 5/3/01 TIME: 7:25 pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please
CS SB 139 22-GS1087 \ P
5/2/01

PLUS 2 amendments: K
22-GS1087 \ J.1 5/3/01
22-GS1087 \ J.2 5/3/01

note both P & J versions

Thanks
Mindy

CS FOR SENATE BILL NO. 139()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fees for certain uses of state water and to the accounting and**
2 **appropriation of those fees; relating to authorizations for the temporary use of state**
3 **water; making other amendments to the Alaska Water Use Act; and providing for an**
4 **effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 *** Section 1.** The uncodified law of the State of Alaska is amended by adding new sections
7 to read:

8 **POLICY REGARDING STATE WATER USE FEES.** (a) It is the policy of the
9 legislature to authorize the Department of Natural Resources to assess a reasonable fee for the
10 services it provides in facilitating the use of state water; the fee should reflect the reasonable
11 direct cost of providing the service, but it is the policy of the ^{legis. body} (state) that the fee not include

12 (1) the costs and salaries of administrative, support, or supervisory personnel
13 who are not directly engaged in providing the service;

14 (2) other budgeted overhead expenses, including rent and utilities;

1 (3) interagency charges that would not meet the requirements of AS 37.10.052
2 - 37.10.058 if those charges had been incurred or invoiced by the agency providing the
3 designated regulatory service;

4 (4) public consultation costs when the consultation is not required by law;

5 (5) costs related to an appeal of permit issuance by a person other than the
6 applicant for that permit;

7 (6) expenses that are not reasonably necessary to comply with the law under
8 which the service is provided; or

9 (7) travel expenses for inspecting businesses having not more than 20
10 employees.

11 (b) It is the policy of the legislature that the Department of Natural Resources not
12 apply a charge to the holder of a certificate of appropriation that is not specifically related to
13 services provided by the department, except that the department may continue to charge the
14 annual \$50 administrative service fee currently in use by the department in order to maintain
15 the water rights program for the benefit of Alaskans and current water rights holders.

16 (c) It is the policy of the legislature that the Department of Natural Resources
17 minimize the required costs, including application fees, on individuals and businesses
18 withdrawing less than a significant amount of water.

19 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **FINDINGS, POLICY, AND PURPOSE RELATING TO AUTHORIZATIONS FOR**
22 **CERTAIN TEMPORARY USES OF STATE WATER.** (a) The legislature finds that

23 (1) many construction, development, commercial, and private activities
24 require an authorization for the temporary use of the state's water without the need to acquire
25 a permanent right to appropriate water;

26 (2) for many years, in appropriate circumstances, the Department of Natural
27 Resources has issued revocable permits for the temporary use of state water under AS 46.15;
28 and

29 (3) the legislature validates and affirms that temporary permits authorizing the
30 temporary use of state water continue to be appropriate under AS 46.15.

31 (b) It is the policy of the legislature to expressly confirm in the Department of Natural

1 Resources the authority to issue authorizations for temporary use of water subject to
2 appropriate conditions and limitations set by the Department of Natural Resources.

3 (c) The purpose of the enactment of AS 46.15.155 in sec. 6 of this Act is to

4 (1) confirm the authority of the Department of Natural Resources to issue
5 authorizations for temporary use of water; and

6 (2) affirm the validity of existing temporary permits for the use of state water
7 issued before the effective date of this Act that may have been called into question by the
8 rationale used by the court in *Greenpeace v. Alaska Department of Natural Resources*, 3AN-
9 00-3415 Civil.

10 * Sec. 3. AS 37.10.058(2) is amended to read:

11 (2) "designated regulatory service" means a regulatory service
12 provided under the following regulatory programs:

13 (A) regulation of the disposal of waste into waters of the state
14 under AS 46.03.100;

15 (B) certification of federal permits or authorizations under 33
16 U.S.C. 1341 (sec. 401, Clean Water Act); [AND]

17 (C) a coastal management consistency determination relating to
18 a permit or authorization issued under a program listed in (A) or (B) of this
19 paragraph, if the determination is made by the agency issuing the permit or
20 authorization; and

21 (D) any authorization for the use or appropriation of water
22 under AS 46.15.

23 * Sec. 4. AS 46.15.020(b)(4) is amended to read:

24 (4) prescribe fees or service charges for any public service rendered
25 consistent with AS 37.10.050 - 37.10.058, except that the department may charge
26 under regulations adopted by the department an annual \$50 administrative
27 service fee to maintain the water management program;

28 * Sec. 5. AS 46.15.035(e)(2) is amended to read:

29 (2) "hydrologic unit" means a hydrologic subregion established by the
30 United States Department of the Interior, Geological Survey, on the "Hydrologic Unit
31 Map-1987, State of Alaska"; "hydrologic unit" includes the water of an ocean that

1 is adjacent to a hydrologic subregion of the state. ["

2 * Sec. 6. AS 46.15 is amended by adding a new section to read:

3 **Sec. 46.15.155. Authorization for temporary use of water. (a)**

4 Notwithstanding any contrary provision of this chapter, the commissioner may
5 authorize the temporary use of a significant amount of water, as determined by the
6 department by regulation, for a period of time not to exceed five consecutive years, if
7 the water applied for has not been appropriated in accordance with this chapter. The
8 commissioner may extend an authorization under this section for one additional term
9 of five consecutive years.

10 (b) Notwithstanding any contrary provision of this chapter, an authorization
11 for a temporary use of less than a significant amount of water is not required under
12 this section unless the commissioner has determined by regulation that the use may
13 have an adverse effect on other water uses and that an authorization must be obtained
14 from the department.

15 (c) The issuance of an authorization for temporary use of water under this
16 section does not establish a right to appropriate water. The temporary use of water
17 under an authorization remains subject to appropriation under this chapter.

18 (d) Notwithstanding any contrary provision of this chapter, the commissioner
19 is not required to provide public notice under AS 46.15.133 of a proposed
20 authorization for temporary use of water; however, the commissioner shall request
21 comment on an application for temporary use of water from the Department of Fish
22 and Game and the Department of Environmental Conservation..

23 (e) The provisions of AS 46.15.080 do not apply to the issuance or extension
24 under this section of an authorization for temporary use of water.

25 (f) The commissioner may impose reasonable conditions or limitations on an
26 authorization for temporary use of water to protect the water rights of other persons or
27 to protect fish and wildlife habitat, public health, or other public interests.

28 (g) Upon approval by the department, an authorization under this section may
29 be transferred to another person under the same conditions and limitations under
30 which the authorization was issued.

31 (h) A person to whom an authorization for temporary use of water was issued

1 under this section may allow another person to use the authorization, consistent with
2 the conditions and limitations of the authorization.

3 (i) The commissioner may modify, suspend, or revoke an authorization issued
4 under this section if the commissioner determines it necessary to protect the water
5 rights of other persons or the public interest.

6 * Sec. 7. AS 46.15.180(a) is amended to read:

7 (a) A person may not

8 (1) construct works for an appropriation, or divert, impound, withdraw,
9 or use a significant amount of water from any source without a permit, [OR] certificate
10 of appropriation, or authorization issued under this chapter;

11 (2) violate an order of the commissioner to cease and desist from
12 preventing any water from moving to a person having a prior right to use it;

13 (3) disobey an order of the commissioner requiring the person to take
14 steps to cause the water to move to a person having a prior right to use it;

15 (4) fail or refuse to install meters, gauges, or other measuring devices
16 or control works;

17 (5) violate an order establishing corrective controls for an area or for a
18 source of water;

19 (6) knowingly make a false or misleading statement in a declaration of
20 existing right.

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22 read:

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24 EFFECTIVE DATE OF THIS ACT. (a) A temporary permit issued before the effective date
25 of this Act by the Department of Natural Resources under AS 46.15 authorizing the temporary
26 use of water is valid and remains in effect, notwithstanding that public notice was not
27 provided under AS 46.15.133 or the criteria set out in AS 46.15.080 were not applied before
28 the temporary permit was issued.

29 (b) A temporary permit described in (a) of this section shall be considered to be an
30 authorization for temporary use of water under AS 46.15.155, enacted by sec. 6 of this Act, as
31 if AS 46.15.155 had been in effect at the time the temporary permit was issued. A temporary

1 permit described in this subsection is subject to the terms and conditions set out in the
2 temporary permit and is subject to the requirements of AS 46.15.155, enacted by sec. 6 of this
3 Act.

4 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITION: REGULATIONS. (a) Under AS 44.62.125(b)(6), the regulations
7 attorney may change the term "temporary water use permit" in regulations of the Department
8 of Natural Resources concerning water use to "authorization for temporary use of water" as
9 consistent with this Act.

10 (b) To the extent that the regulations are not inconsistent with this Act, regulations
11 related to water management adopted by the Department of Natural Resources under
12 AS 46.15 and in effect on the effective date of this Act remain in effect until amended or
13 repealed and may be administered and enforced by the Department of Natural Resources.

14 * **Sec. 10.** Except as provided in sec. 11 of this Act, this Act takes effect immediately under
15 AS 01.10.070(c).

16 * **Sec. 11.** Section 4 of this Act takes effect July 1, 2002.

CHANGES BETWEEN RESOURCES & FINANCE
COMMITTEE SUBSTITUTES FOR SB 139
STATE WATER RIGHTS

Using Resources CS as basis for Page & Line #s.

- 1) Removes Findings language on Page 1, Lines 10-14 and Page 2 Lines 1-9. This language is not necessary to accomplish the goals of this bill.
- 2) Makes clear that this is Legislative policy replacing the word "state" with the word "legislature" (Page 2, Lines 10, 13 & 27, Page 3, Lines 1 & 16). Drafter missed one of these: need to change on Fin CS Page 1, Line 11.
- 3) Page 3, Lines 12- 13: Removed vague language
Insert
"Resources has issued revocable permits for the temporary use of state water under AS 46.15; and"
- 4) Page 6, Line 27:
DELETE [RELATING]
Insert
related

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 455-2400
FAX: (907) 465-3886

550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

April 19, 2001

The Honorable Pete Kelly, Co-Chair
Senate Finance Committee
Alaska State Senate
State Capitol
Juneau, AK 99811

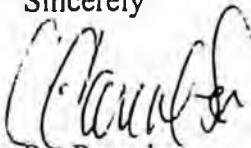
Dear Senator Kelly:

The Department of Natural Resources respectfully requests a hearing on CSSB 139(RES) "An Act relating to fees for certain uses of state water and to the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date."

The bill will solve a long-standing, significant problem that has plagued implementation of the Alaska Water Use Act. Additionally, if passed, the bill will validate with express, statutory authority, the department's practice of providing temporary water use permits.

I look forward to working with you on this bill. If you require further information, please contact Carol Carroll at 465-4730.

Sincerely



Pat Pourchot
Commissioner

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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JUNEAU, ALASKA 99801-1796
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CSSB 139 (RES)

An Act relating to fees for certain uses of state water Sectional Analysis

Sections one and two are the findings, policy and purpose statements relating to water fees and temporary water use authorizations

Section three: Amends AS 37.10.058 to add water fees to the receipt supported services category of fees as a designated regulatory service.

Section four: allows the department to continue charging an annual \$50 administrative service fee to maintain the water management program in addition to those fees authorized under the designated regulatory service structure

Section five: This is a house keeping amendment to the existing law that would amend the definition of a "hydrologic unit" to include as part of the hydrologic unit the waters of an ocean that are adjacent to a hydrologic subregion of the state. This applies when water taken from the mainland is moved to an island offshore or used to construct ice roads across a portion of a bay, inlet or sea. The amendment makes it clear that the ocean waters off shore of a hydrologic subregion are in fact part of the hydrologic unit.

Section six: expressly confirms the authority of DNR to issue temporary water use authorizations, under appropriate circumstances, as has been DNR's practice for over 20 years. Temporary water use authorizations do not confer any rights to use water. Temporary water use authorizations have been issued for construction and development of specific commercial, industrial, and private activities or projects where water was required, for a temporary period of time, and a permanent water right was not needed. The bill lays out under what circumstances a temporary water use authorization can be issued the procedures to be followed. Because a temporary water use authorization is conveys no property right and is not a disposal of an interest in land, the bill makes clear that these authorizations are exempt from public notice required prior to issuance of a permanent property right to water (a water right). The bill allows for the transfer of a temporary water use authorizations between parties with DNR approval and for the sharing of an authorization between parties if they so intend. Because of its temporary nature, without any rights or priority attached, an authorization can be modified, suspended, or revoked by DNR if its necessary to protect water right holders or the public interest.

Section seven: is amended to include a temporary water use authorization under the crime section so that, if necessary, DNR can enforce against the unlawful use of water.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Section eight: validates the existing temporary water use permits that have been issued prior to the effective date of the Act. The temporary water use permits issued prior to the Act are to be considered an authorization issued under AS 46.15.155 and are subject to the terms and conditions set out in the permit and subject to the requirements of AS 46.15.155. This section affirms the validity of existing temporary permits that may have been called into question by the rationale used by the court in *Greenpeace, Inc. v. DNR*, 3AN-00-345 Civil.

Section nine: allows the regulations attorney to change the term "temporary water use permit" to "authorizations for temporary use of water" as consistent with the Act, and keeps the current statute in effect.

Sections ten and eleven: sets effective date of the bill. The effective date of Section 3 of the bill is delayed a year, until July 2001, to allow the department to establish fee regulations consistent with the requirements of the law.

TONY KNOWLES
GOVERNOR



P O Box 110001
Juneau Alaska 99811 0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 2001

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Halford:

This bill I transmit today creates a logical source of funding for Alaska's water use program, bringing much needed efficiency to the program for commercial and residential users. The program has suffered continued underfunding for several years, causing a serious backlog in permits. This inability to issue permits in a timely manner stalls development and frustrates water users. This bill also clearly authorizes the Department of Natural Resources (DNR) to allow a streamlined approval process for temporary water uses as another way to optimize program efficiency.

Funding for implementation of the Alaska Water Use Act, commonly known as the water rights program, has seen a more than 50% reduction in funding over the past 10 years, leading to two-thirds reduction in staff. The remaining four staff positions can no longer carry out the requirements of the Act.

This legislation is part of a three-part solution to provide adequate funding and staffing for the water rights program. First, DNR is promulgating regulations that make implementation of the program less costly. Second, the FY 2002 budget includes a \$300,000 budget increment to fund the program adequately. This proposed legislation provides the third part of the solution: a water use fee.

Under this bill, the natural resources commissioner would establish a sliding fee for water use based on the quantity intended for use. That money would be separately accounted for within the general fund and available for appropriation to program operation.

The Honorable Rick Halford

March 9, 2001

Page 2

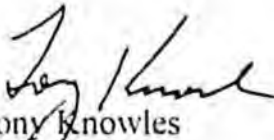
The bill affirms DNR's authority to allow temporary water uses for construction, development, commercial and private activities in cases where a long-term water right is not appropriate or necessary. The department has been authorizing these temporary uses for several years and many industries, such as oil development and road construction, find them crucial to their ability to proceed with their projects in a timely manner. Losing this program option would needlessly exacerbate the current backlog in water permits.

The bill confirms that the temporary water use authorizations are revocable and do not create a property right. Because of the revocable nature and finite duration of these authorizations, DNR would not be required to provide prior public notice or conduct an administrative review under the criteria applicable to permits for water rights. However, the commissioner will continue to provide notice to the Alaska Departments of Fish and Game and Environmental Conservation and be authorized to impose reasonable conditions or limitations on these temporary uses.

Finally, a transitional provision of the bill would provide that temporary water use permits issued before the effective date of the bill may not be invalidated on the grounds that DNR did not provide public notice under AS 46.15.133 or review a permit application under the criteria set out in AS 46.15.080. A recent decision by the superior court in Greenpeace, Inc. v. Alaska Department of Natural Resources, concluded that DNR should have provided public notice of a temporary water use permit application and conducted a detailed review of the application before issuing the permit. This decision could cause serious delays in development projects and DNR's water use processing.

In the interest of promoting efficiency for project development across the state, I urge your prompt and favorable consideration of this measure.

Sincerely,


Tony Knowles
Governor

INUPIAT COMMUNITY of the ARCTIC SLOPE
an IRA Regional Tribal Government

P.O. Box 934 • Barrow, Alaska 99723
Ph: (907)852-4227 1-888-788-4227 Fax: (907) 852-4246



May 04, 2001

TO: STATE OF ALASKA
House Finance Committee Members

FR: Bill Tegoseak, Interim Executive Director *BT*

RE: Comments on Committee Substitute for House Bill No 185 (RES).

MY NAME IS BILL TEGOSEAK. I AM THE INTERIM EXECUTIVE DIRECTOR FOR THE INUPIAT COMMUNITY OF THE ARCTIC SLOPE, A FEDERALLY RECOGNIZED REGIONAL TRIBAL GOVERNMENT INCLUSIVE OF ALL EIGHT VILLAGE TRIBAL GOVERNMENTS IN THE NORTH SLOPE. I AM A 57 YEAR RESIDENT OF THE NORTH SLOPE AND A VIETNAM WAR VETERAN.

LAST WEEK I TELEFAXED MY COMMENTS TO THE HOUSE RESOURCE COMMITTEE AND THE SENATE FINANCE COMMITTEE EXPRESSING OPPOSITION TO THIS PROPOSED BILL. ALL MEMBERS OF THIS COMMITTEE WILL BE RECEIVING A COPY OF THOSE COMMENTS IN ITS ENTIRETY THIS EVENING.

TWO DAYS AGO, DURING A SENATE FINANCE COMMITTEE HEARING ON THE COMPANION BILL TO THE HOUSE VERSION, BOB LOEFFLER FROM DNR CALLED MY CALCULATION THAT DNR HAD AUTHORIZED WATER USE IN THE NORTH SLOPE FOR INDUSTRIAL DEVELOPMENT IN THE BILLIONS OF GALLONS. HE MADE IT VERY PLAIN TO THE SENATE FINANCE COMMITTEE THAT MY CALCULATIONS AND PROJECTIONS OF BILLIONS OF GALLONS OF TEMPORARY WATER USE AUTHORIZED BY DNR WERE INCORRECT AND OVER-EXAGGERATED. IN REBUTTAL TO THAT, ALL COMMITTEE MEMBERS ARE PROVIDED A COPY OF TEMPORARY WATER USE PERMIT (TWUP A2001-11), SIGNED BY BOB LOEFFLER ON JANUARY 04, 2001, AUTHORIZING OIL INDUSTRY THE USE OF AN EQUIVALENT OF 27,701,500,000 GALLONS OF WATER IN THE NORTH SLOPE WITHOUT A PUBLIC COMMENT PROCESS. IF THE PUBLIC COMMENT PROCESS IN LOCATIONS SUCH AS ANCHORAGE AND FAIRBANKS WERE CIRCUMVENTED, SOME, OR ALL OF YOU, PLUS YOUR COLLEAGUES IN JUNEAU WOULD PROBABLY BE LOOKING FOR A DIFFERENT LINE OF WORK.

BOB LOEFFLER STATED TWO DAYS AGO, AS WELL, THAT THERE IS NO NEED FOR TRIBAL CONSULTATION ON THIS BILL. THIS IS AN EXAMPLE OF EXTREME CULTURAL INCOMPETENCE ON HIS PART AND COMPLETELY ATTEMPTS TO, AGAIN, CIRCUMVENT RHW MOST RECENTLY SIGNED

MILLENIUM AGREEMENT BETWEEN THE GREAT STATE OF ALASKA AND THE PROUD INDIGENOUS TRIBES OF THIS GREAT LAND.

LASTLY, BOB LOEFFLER STATED THAT THE NORTH SLOPE WATER POLICY SIGNED BY COMMISSIONER ROBERT E. LERESCHE ON MAY 23, 1979 HAD BEEN REVOKED. IN A LETTER ADDRESSED TO ME BY DNR CHIEF OF WATER RESOURCES, GARY PROKOSCH, DATED DECEMBER 22, 2000 HE STATES THAT THE POLICY IS VERY MUCH OUTDATED AND UNDER REVIEW BY DNR FOR REVISION. THERE IS NO EVIDENCE OF REVOCATION...REVOCATION SHOULD HAVE INCLUDED A PUBLIC COMMENT PROCESS. I URGE THIS COMMITTEE TO HOLD THIS BILL INDEFINITELY UNTIL SUCH TIME AS A PROPER REVIEW IS CONDUCTED TO ENSURE THAT A DEMOCRATIC PROCESS IS ALIVE AND WELL IN OUR GREAT STATE. THANK YOU.

Encl: Copy, State of Alaska (DNR) TWUP a2001-11
Copy Tegoseak comments to Senate Finance Committee (same sent to House Resource Committee)

Alaska Department of Natural Resources
Division of Mining, Land and Water

(NPLA BP
Trailblazer)

AS 46.15.080 Finding and Determination

Temporary Water Use Authorizations
TWUP A2001-11

143,420,000 gallons of water per year (440 acre feet per year) from 90 Lakes
for ice road and ice pad construction

Water Rights of Record; There are no water rights of record to any of the 90 lakes covered by this application for temporary water use.

AS 46.15.080. Criteria for issuance of permit.

(a) The Commissioner shall issue a permit if the commissioner finds that

(1) rights of a prior appropriator will not be unduly affected;

There are no prior appropriators of record. We find that the rights of a prior appropriator will not be unduly affected.

(2) the proposed means of diversion or construction are adequate;

The applicant proposes to withdraw water from ninety-two lake. The water intake structure is an approved design by ADF&G. Water has been taken from lakes such as these for over 20 years by similar methods and design and has proven to be adequate.

We find the proposed means of diversion and construction to be adequate.

(3) the proposed use of water is beneficial;

The proposed use of water is for oil field related activities, including ice road/pad construction/maintenance, camp supply, and drilling. This type of water use is consistent with the definition of a beneficial use as defined in the Water Use Act under AS 46.15.260(3). Water use for these purposes has been authorized since the 1970s.

We find the proposed use of water beneficial.

(4) the proposed appropriation is in the public interest. The water used under a temporary water use authorization is not considered to be appropriated.

(b) In determining the public interest, the commissioner shall consider

(1) the benefit to the applicant resulting from the proposed appropriation;

We find the temporary water withdrawal will be a positive benefit to the applicant.

(2) the effect of the economic activity resulting from the proposed appropriation;

The Trailblazer project contributes to the regional economy through taxes and jobs, to the overall state economy as a primary revenue source, and to the United States by reducing the nation's dependency on imported oil. The ACMP coastal Consistency Determination AK 0010-02OG also addresses this issue.

We find there will be a positive economic benefit resulting from the proposed temporary water withdrawal, and will not hinder other economic activity that may be proposed.

(3) the effect on fish and game resources and on public recreational opportunities;

The following materials were considered as supporting evidence:

- ADF&G Memo dated December 15, 2000 in casefile
- ADF&G habitat permits for the 92 lakes
- ADF&G report on Fish Utilization of Lakes in Eastern NPR-A - 1999 Final Data Report January 2000
- ADF&G report Lake Sampled for Fish In and Near the Colville River Delta, Alaska 1979-1998, Final Report December 1998
- ACMP Final consistency determination AK 0010-02OG
- Hydrologist report dated December 15, 2000 in casefile.

The project area does not provide significant recreation opportunities. The taking of water from the lakes in no way hinders the hunting, fishing or recreation opportunities of those areas. The water is mainly taken during the winter month when little or no recreation activity takes place, and water in the lakes is replenished during spring breakup. The ACMP coastal Consistency Determination AK 0010-02OG also addresses this issue.

We find that there will be no significant effect on fish and game resources and on public recreational opportunities.

(4) the effect on public health;

After public and agency notice there has been no evidence presented or concerns expressed regarding the removal of water from the proposed sources on the public health.

The following materials were also considered:

- ADF&G Memo dated December 15, 2000 in casefile
- ADF&G reports
- ADF&G comments
- ADEC 401 Certification
- ACMP Final Consistency Determination AK 0010-02OG

We find there will be no effects on public health.

(5) the effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation;

After public and agency notice there has been no evidence presented or concerns expressed regarding the removal of water from the proposed sources and its effect of loss for alternate uses. The file contains no evidence of a direct predicted, planned or projected use of water in this area that would be precluded by this proposed temporary withdrawal of water. Water issued under a temporary water use authorization is not appropriated and does not preclude the use of water by others for their use. The file demonstrates that the proposed lake sources of water can supply water for these proposed uses, and more if the need arises.

We find that there will be no effect on or loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.

(6) harm to other persons resulting from the proposed appropriation;

After public and agency notice there has been no evidence of a likelihood of harm to other persons resulting from the proposed temporary water withdrawals.

We find there will be no undue harm to other persons resulting from the proposed temporary water withdrawal.

(7) the intent and ability of the applicant to complete the appropriation;

The applicant has the intent and ability to complete the temporary water withdrawal as demonstrated in the time and effort in their design and construction of the project to date. The ability of the applicant is not a question; BP has shown the ability to bring projects on-line in the development of its oil and gas projects.

We find the applicant has the intent and ability to complete the temporary water withdrawal.

(8) the effect upon access to navigable or public water.

After public and agency notice, the file contains no evidence of adverse effect on access to public or navigable water. The withdrawal of water from the proposed sources will not hinder access to navigable or public water. The ACMP coastal Consistency Determination AK 0010-02OG also addresses this issue.

We find there will be no effect on access to navigable or public water.

Conclusion and Decision

ADNR and ADF&G personnel (along with EPA, DEC, JPCO, etc.) are constantly in the field monitoring, inspecting, and enforcing industry activities. They are present before, during, and after ice road construction.

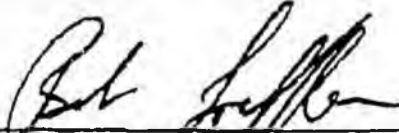
Ice road and ice pad construction has been a standard practice on the North Slope and in other areas of the state for more than 20 years. In this time period no evidence has been presented that ice road and ice pad construction and the withdrawal of water for ice road and ice pad construction has had an undue effect on the public interest. No evidence has been presented to show the rights of a prior appropriator or the public interest will be harmed by the withdrawal of water from the 92 lakes.

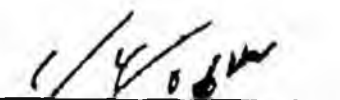
The total water use proposed for North Slope oil exploration and development from all authorized or proposed water sources (actual water use is less) is approximately 85,000 AF/Y. This represents 0.27% of the total water available on the North Slope in any given year. This leaves 99.73% of the water on the North Slope untouched. Also noteworthy is the fact that the majority of the water (0.27%) is used for ice road and ice pad construction, which eventually distributes the water on the tundra near the water sources and is once again available to the hydrologic unit during spring breakup. Accordingly, the most significant impact on the water resources is the effect on the water levels within the lakes, where only 15% of the water under the ice can be used. We conclude that this impact is at most, de minimis as the water is replenished each spring during break-up. The total quantity of water in these lakes, not counting the 30 lakes to be used for ice aggregate, is about 3.12 billion gallons of water. The available water, 15% of the water under 7 feet of ice, in these lakes proposed for use is 468,550,000 gallons. The total quantity authorized to be withdrawn under the temporary water use permit is 143,420,000 gallons per year or .046% of the total water and only 31% of the available water.

The subject files have been reviewed. A final ACMP Consistency Determination has been issued. We find that the rights of prior appropriators will not be unduly affected by the proposed temporary water withdrawal, the proposed means of diversion and construction are adequate, the proposed use of water is beneficial, and the proposed temporary water withdrawal is in the public interest. It is our decision that Temporary Water Use Permits TWUP A2001-11 shall be issued, effective the date of this decision to allow for the immediate use of water for the purposes intended.

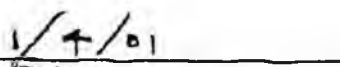
This is a final administrative order and decision of the department for purposes of an appeal to Superior Court. A person adversely affected by this final order and decision may (1) appeal to Superior Court within 30 days in accordance with the rules of the court, and to the extent permitted by applicable law, or (2) first request reconsideration of this decision, in accordance with AS 44.37.011 and 11 AAC 02.020, to Pat Pourchot, Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561. Any such request for reconsideration must be received at that address, or received by being faxed to 1-907-268-8918, within 20 calendar days after the date of "delivery" of this decision, as defined by 11 AAC

02.040(c) and (d). Failure of the commissioner to act on a request for reconsideration within 30 days after delivery of this decision is a denial of reconsideration and is also a final administrative order and decision for purposes of an appeal to Superior Court. It may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.


Bob Loeffler, Director, DMLW


Date


Pat Pourchot, Commissioner, ADNR


Date

note
conversion
acre feet to
gallons
— acre feet x
325900 =
— gallons

85,000 acre feet/
year =
27,701,500,000
gallons

INUPIAT COMMUNITY of the ARCTIC SLOPE

an IRA Regional Tribal Government



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Senator Pete Kelley, Co-chair of Senate Finance
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Senator Jerry Ward, District E
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Senator Alan Austerman, District C
Fax: (907) 465-4956

Senator Lyda Green, District N
Fax: (907) 465-3805

Senator Loren Leman, District G
Fax (907) 465-3810

Honorable Senators:

The Inupiat community of the Arctic Slope (ICAS) is a federally recognized Indian Tribe of the Inupiat established under the Indian Reorganization Act of 1934, as amended in 1936. ICAS has significant concerns about SB 139 (and its companion HB 185), particularly as it relates to the issuance of "temporary water use permits." This bill represents the continuation of the current Department of Natural Resources (DNR) illegal practice of giving billions of gallons of North Slope water resources away, with no public notice, not tribal consultation, no scientific analysis and no access to traditional knowledge about the water bodies from which the water is being taken.

A major concern about this bill is that the criteria in AS 46.15.080 (for assessing water use impacts to fish, wildlife, public health and other values) are specifically not applied to temporary water use permits. In addition, we are concerned that SB 139 will exempt all such permits from public notice.

DNR's current practice, and this bill, are contrary to the Water Management Policy for State Lands Between the Colville and Canning Rivers, ("North Slope Water Management Policy") initially drafted by DNR in 1976 (revised 1979) and agreed upon by the North Slope Borough representatives. This policy was the result of extensive work by DNR, the oil industry, the North Slope Borough, DEC and ADF&G.

In the North Slope Water Management Policy DNR committed to "extend to the North Slope Borough an opportunity to review all permit applications for water use within the North Slope Borough." DNR also committed that the temporary water use permits would be limited to "less than a three-year duration." Finally, DNR committed that "The State will discourage the taking of water between the period of November 1 to spring breakup from areas known to overwinter fish.

Over the years, DNR has unilaterally abrogated these commitments, and now seeks to ratify its breach of those commitments, through SB 139. This legislation would continue DNR's current practice of issuing temporary water use permits for periods which are frequently extended to ten years, and beyond. Contrary to the North Slope Water Management Policy, DNR currently allows water withdrawal in winter from anadromous streams and lakes. Most of the 27 billion gallons of North Slope fresh water permitted by DNR to be used each year for ice road construction and offshore oil development is withdrawn in winter without adequate information regarding in-stream flow needs for subsistence species. DNR does not consult the North Slope Borough or tribal governments to its issuance of these permits. The result of this practice is the non-public, unregulated use of our limited natural resources that threatens tribal sovereignty and the subsistence rights of the Inupiat people.

In an effort to gain support for this legislation, DNR has stated that the Department of Fish and Game and Environmental Conservation will be allowed to comment on temporary water permits. However, neither DNR, ADF&G nor DEC have staff or resources on the North Slope to evaluate the impacts to water quality, to fish and to other subsistence resources on the North Slope to evaluate the impacts to water quality, to fish and to other subsistence resources for the significant number of "temporary" permits that DNR currently issues. Given the recent changes in climate, affecting all parts of the North Slope, reliance on outdated data is not sufficient to protect our subsistence resources. We need an assessment by the state of the water body from which water is to be withdrawn, each year, prior to the allowance of these "temporary permits." Nor is the DNR assurance that such permits are "revocable" sufficient to protect the subsistence resources. In order to revoke the permit, there will have to be analysis of the adverse impacts to the stream or lake after-the-fact, when the damage to subsistence resources is already done. No State agency has any ongoing monitoring program to assess the impacts of the temporary permits on these water sources or subsistence resources.

We urge you to defeat SB 139, and to encourage DNR to keep its commitments in the North slope Water Management Policy. If there are to be changes to that policy, they are best accomplished by having the stakeholders who are impacted by the policy at the table. Thank you for your consideration of these views.

Sincerely,

Bill Tego

BILL TEGOSEAK
Interim Executive Director

Cc: North Slope borough

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/13/01

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-11-01

Resources Committee considered SENATE BILL NO. 139
STATE WATER USE

"An Act relating to fees for certain uses of state water and the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 139 (RES)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

- Senate Bill:**
 same title
 new title
- House Bill:**
 same title
 technical title
 new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DNR	4/12/01	✓	✗	2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DNR	4/12/01	✓	✗	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>George</i>			✓	
<i>K-8-50</i>			✓	
<i>Donna...</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

SITE: OFF-NETS
COMMITTEE: Senate Finance

DATE: 5/3/01

SUBJECT OF MEETING:

SB - 139

UPDATE #:



PLEASE SIGN IN

PLEASE PRINT:

NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

DO YOU WANT

TO TESTIFY?

Y or N

NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
BOB LEFFER			Y SB 139