

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672  
2678 SCOM 120: HOUSE SPEC. COMM. UTILITY RESTRUCTURING, 1999-2000

# RECORD DRAWING

This record drawing is submitted as representing the as-constructed condition of the contracted improvements. Based on periodic inspection and field checks by the Engineer, the data appears reasonable and represents that the project was constructed in substantial conformance with the approved plans and specifications.

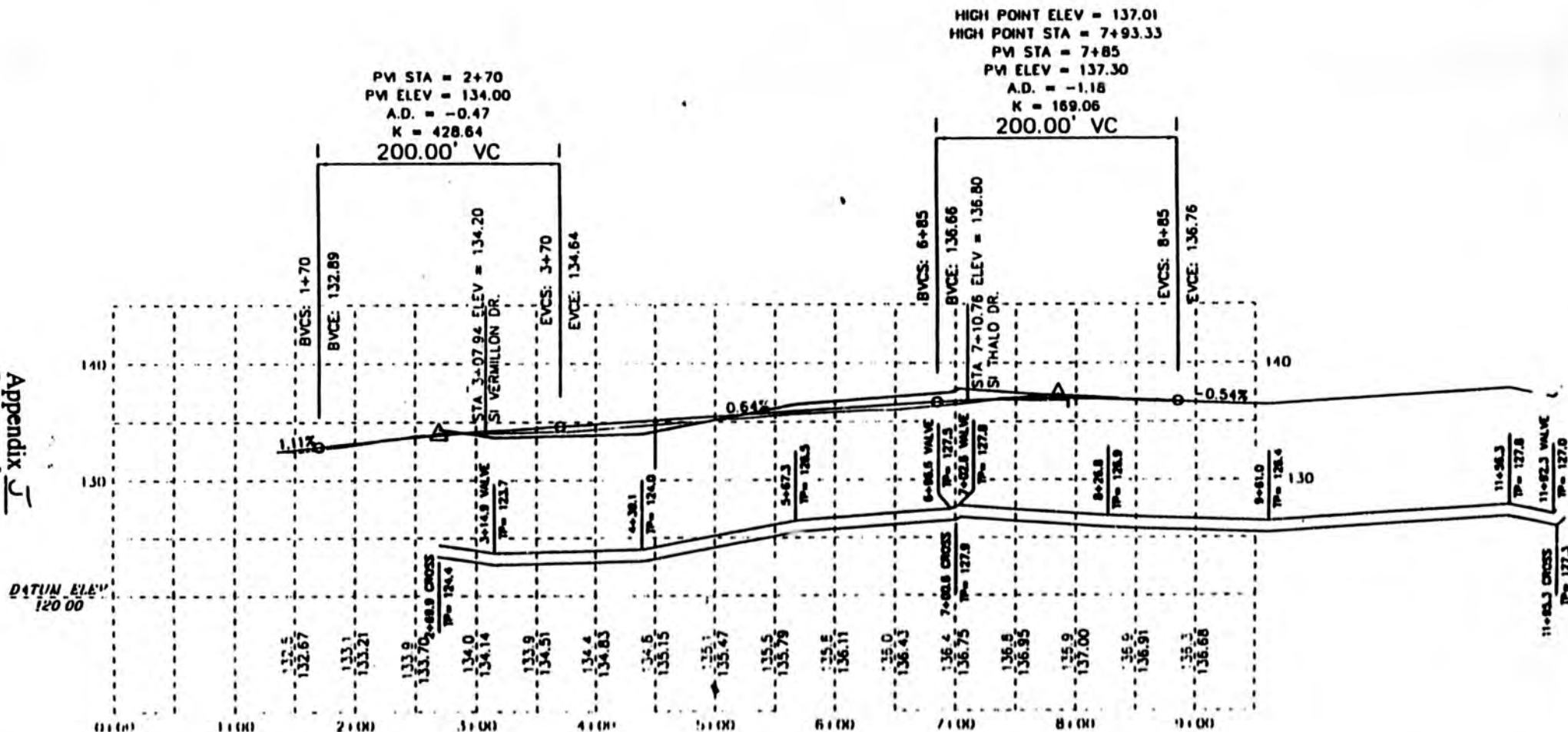


1" = 100' HOR.  
1" = 10' VERT.

CIENNA AVE.

DATUM

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Page 31



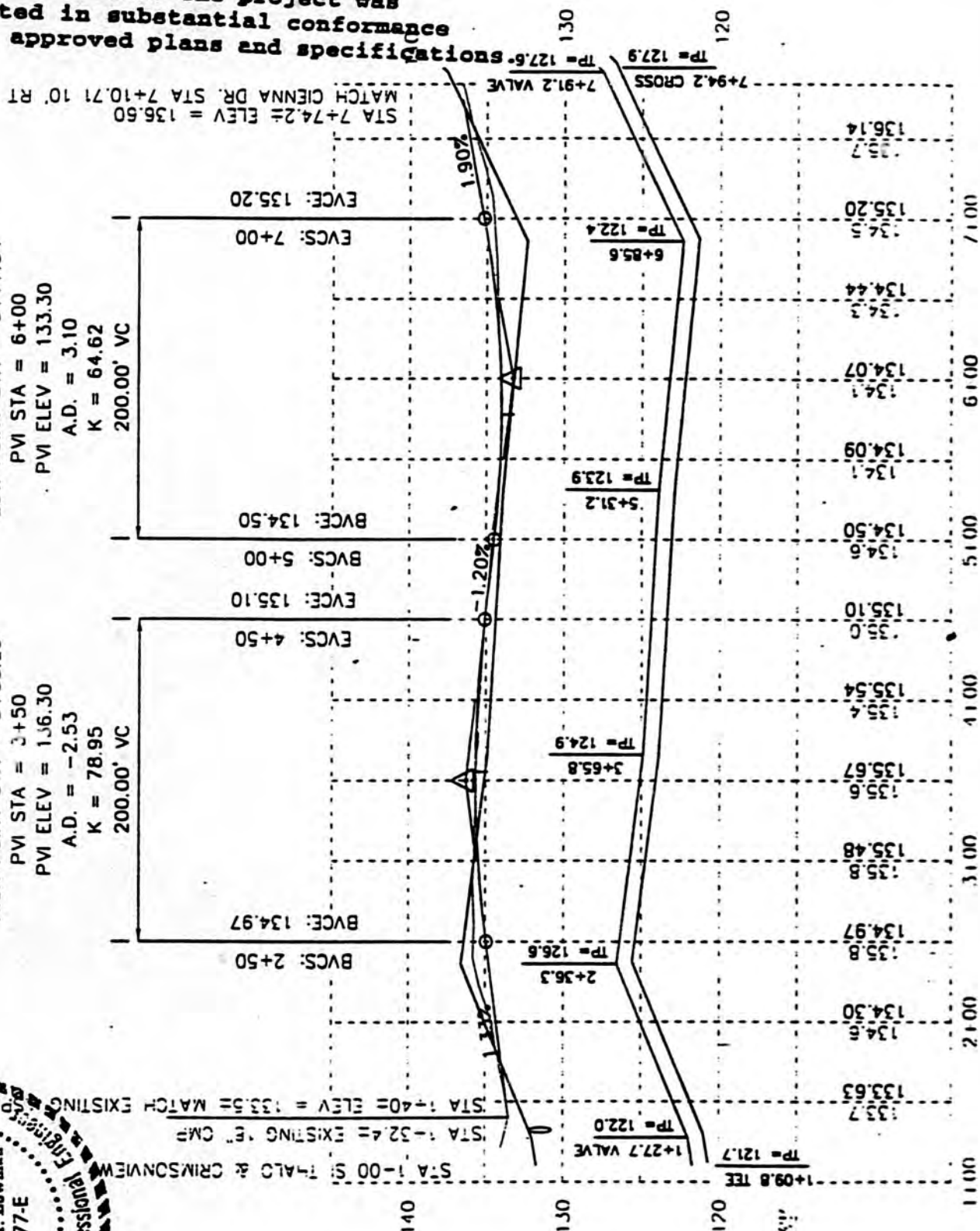
# RECORD DRAWING

This record drawing is submitted as representing the as-constructed condition of the contracted improvements. Based on periodic inspection and field checks by the Engineer, the data appears reasonable and represents that the project was constructed in substantial conformance with the approved plans and specifications.

## THALO DRIVE

HIGH POINT ELEV = 135.67  
HIGH POINT STA = 3+55.26  
PVI STA = 3+50  
PVI ELEV = 136.30  
A.D. = -2.53  
K = 78.95  
200.00' VC

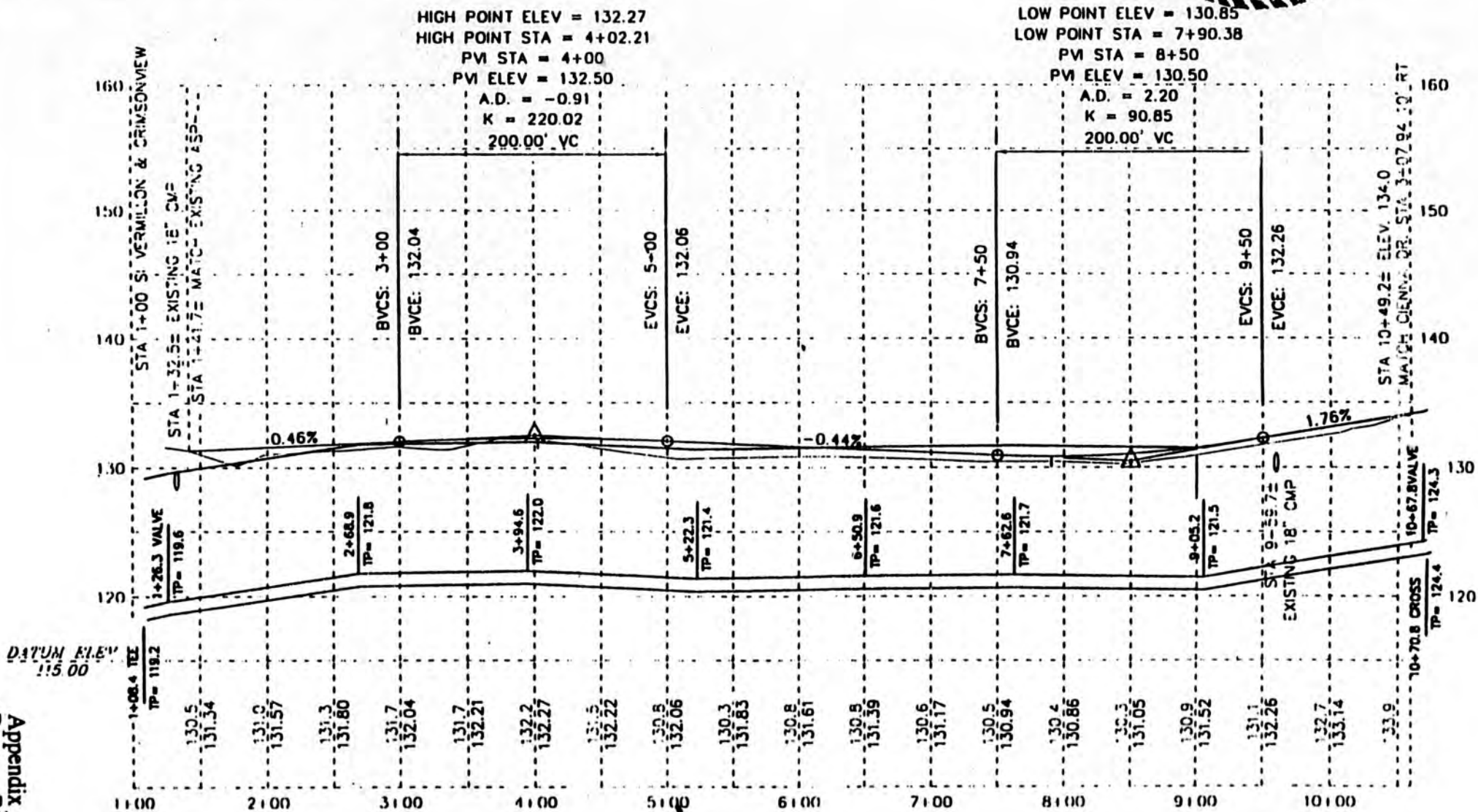
LOW POINT ELEV = 134.03  
LOW POINT STA = 5+77.54  
PVI STA = 6+00  
PVI ELEV = 133.30  
A.D. = 3.10  
K = 64.62  
200.00' VC



# RECORD DRAWING

This record drawing is submitted as representing the as-constructed condition of the contracted improvements. Based on periodic inspection and field checks by the Engineer, the data appears reasonable and represents that the project was constructed in substantial conformance with the approved plans and specifications.

## VERMILLON DRIVE



September 6, 1985

376-5038  
P.O. Box 871064  
Wasilla, Alaska  
99687-9998

Mr. Bob Gilfillian, P.E.  
Gilfillian Engineering, Inc.  
P.O. Box 871868  
Wasilla, Alaska 99687

Re: Crimsonview Subdivision, Class A Public Water Supply System, Phase I

Dear Mr. Gilfillian:

Please refer to the Department's letters of July 24, 1984 and October 12, 1984, which conditionally approved construction of the referenced system. On the Department's behalf, I have reviewed the information submitted by your letter of August 12, 1985 and the record drawings that were submitted on August 13, 1985. Based upon these submittals, the system was constructed in substantial conformance with the approved plans. Therefore, a 90 day Interim Approval to Operate the well house and the Phase I portion of the distribution system is being granted at this time. This approval is constituted by the enclosed certificate. During the interim approval period, the results of routine monitoring of the water from this system for coliform bacteria must be submitted on a monthly basis. Noting the date of the most recent analysis for coliform bacteria, August 9, 1985, the next analysis should be conducted within the next week. The Public Water System Identification Number assigned to this system is: 224329. This number should be included on all water quality testing results submitted to this Department.

Prior to the expiration date of the Interim Approval to Operate this system, and before the issuance of a Final Operation Certificate, an operation and maintenance agreement must be submitted to and approved by this Department along with assurance that easements for distribution system and well house will be recorded. As previously requested, data verifying that the service factor for the well pump's motor will not be exceeded under conditions of normal operation must also be submitted. In addition, the Department would like to conduct a Public Water System Sanitary Survey during the interim approval period. At this time the survey is being scheduled for 11:00 a.m. on September 17, 1985. It may be beneficial to have someone familiar with the system present during the survey. If the scheduled date or time is not convenient, this office should be notified no later than September 13, 1985. The survey may then be rescheduled.

It is noted that there appears to have been some confusion regarding the applicability of the Department's October 12, 1984 construction approval to the "Phase II" portion of the subject system's distribution piping. Although the Department does not object to the construction of that portion of the distribution system, an additional well and/or expanded storage and standby power facilities will need to be provided and unqualified as-built or record drawings for the "Phase II" distribution piping will need to be submitted before approval to operate that portion of the system can be granted. Plans for any expansion of the system will, of course, need to be approved by this Department.

September 6, 1985  
Page 2

It is also noted that the Interim Approval to Operate the subject water supply system neither constitutes nor implies approval of the subdivision plans. A copy of the Department's letter of June 25, 1984, which summarizes the Department's review of the proposed subdivision plans, is enclosed for your information.

Thank you for your continued cooperation with this Department. If you have any questions, please do not hesitate to contact me.

Sincerely,

*Shaun E. Sexton*

Shaun E. Sexton  
Environmental Engineer

SES:bkr

Enclosures: As Stated

cc: Ray Niemi/Mat-Su Borough, w/o Encs.

# ABC Pump & Well Supply

SR BOX 2201  
WASILLA, ALASKA 99687

December 17, 1985

Re: Crimson View Pump House

6N 130-4 Standard Pump  
7½ hp 230V 1Ø 6" Franklin Motor

140 Gpm @ 168 TDH

Water Horsepower - 5.9

Pump Efficiency - 70%

BHP - 8.48

Motor Efficiency - 79.8%

Motor Input Hp - 10.63

Unit Efficiency - 56%

KWH Per 1000 Gal. Pumped - .942

Motor KW Load - 7.93

Motor SF - 1.15

Motor SF Hp - 8.625

Sincerely yours,

*Robert Tapley*

Robert Tapley

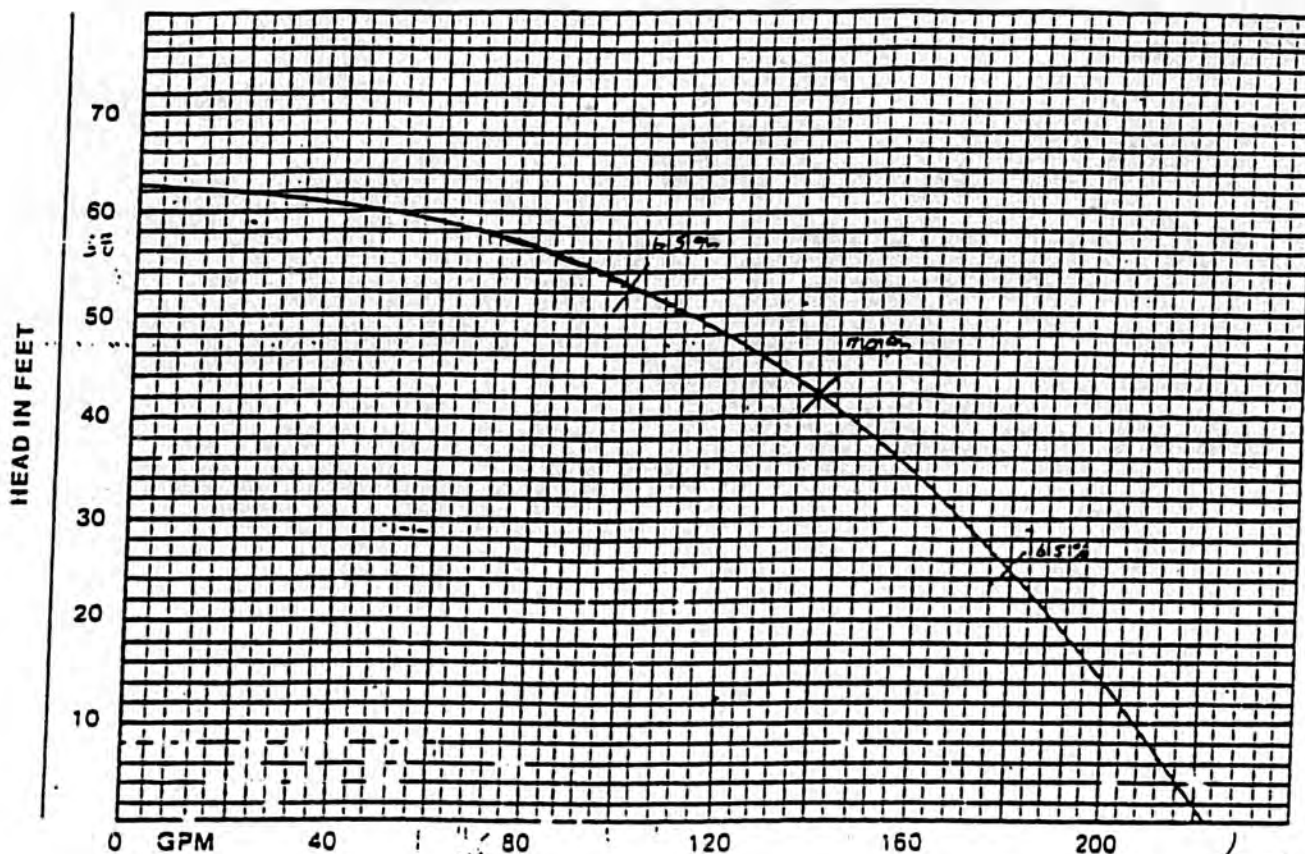
Pump Specialist

RT/ngs



6N130

PUMPS INC.

ONE STAGE PUMP PERFORMANCE  
3450 RPM

2 hp per stage

4" DISCHARGE

| MODEL     | NO. OF STAGES | HP REQUIRED | LENGTH | SHIP WT. | PART NUMBER |
|-----------|---------------|-------------|--------|----------|-------------|
| 6 N130-2  | 2             | 5           | 22.13" | 70       | 47607-7     |
| 6 N130-4  | 4             | 7 1/2       | 28.25" | 99       | 47608-5     |
| 6 N130-5  | 5             | 10          | 32.13" | 113      | 47609-3     |
| 6 N130-8  | 8             | 15          | 43.75" | 156      | 47610-1     |
| 6 N130-10 | 10            | 20          | 51.13" | 184      | 47511-9     |
| 6 N130-13 | 13            | 25          | 62.25" | 227      | 47612-7     |
| 6 N130-16 | 16            | 30          | 73.38" | 270      | 47613-5     |
| 6 N130-21 | 21            | 40          | 91.88" | 341      | 47614-3     |

RECEIVED

DEC 18 1985

Environmental Conservation

BARTLESVILLE, OKLAHOMA

STANDARD PUMPS Inc.

APRIL 1, 1983

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# WELL LOG

Wheaton Water Wells, Inc.

Box 071210 • Wasilla, Alaska 99607 • 376-2041

230-1-5-10y  
17

OWNER Hugh Adams DEPTH OF WELL 100  
 ADDRESS SRA, BOX 61168, PALMER, AK. 99645 STATIC LEVEL 40  
 WELL - SITE CRIMSON VIEW GALS. PER MIN. APPROX. 100  
 LOT TRACT A SCREENED 20'-100' slot  
 BLOCK \_\_\_\_\_ PERFORATED 60'-80'  
 DATE 7-30-84 SIZE OF CASING 6.50

## KIND OF FORMATION:

|                                                       |                                   |
|-------------------------------------------------------|-----------------------------------|
| FROM <u>0</u> Ft. to <u>2</u> Ft. <u>Top soil</u>     | FROM _____ Ft. to _____ Ft. _____ |
| FROM <u>2</u> Ft. to <u>45</u> Ft. <u>Sand/Gravel</u> | FROM _____ Ft. to _____ Ft. _____ |
| FROM <u>45</u> Ft. to <u>60</u> Ft. <u>moist sand</u> | FROM _____ Ft. to _____ Ft. _____ |
| FROM <u>60</u> Ft. to <u>100</u> Ft. <u>Gravel</u>    | FROM _____ Ft. to _____ Ft. _____ |
| FROM _____ Ft. to _____ Ft. <u>Gravel/water</u>       | FROM _____ Ft. to _____ Ft. _____ |
| FROM _____ Ft. to _____ Ft. _____                     | FROM _____ Ft. to _____ Ft. _____ |
| FROM _____ Ft. to _____ Ft. _____                     | FROM _____ Ft. to _____ Ft. _____ |
| FROM _____ Ft. to _____ Ft. _____                     | FROM _____ Ft. to _____ Ft. _____ |

DRILLER 3

Anchorag

OWNER Hugh Adams

ADDRESS \_\_\_\_\_

ENGINEER \_\_\_\_\_

WELL LOCATION Crimson View SubdivisionTOTAL DEPTH 101 DEPTH OF CASING 81SCREEN FROM 81 TO 1CASING SIZE 6" SCREEN DIA 6"SCREEN SLOT 20REMARKS Perforated 60-80"PUMP INTAKE DEPTH 74PUMP SIZE 20 hpAIRLINE DEPTH 68STATIC WATER LEVEL 47AVG DISCHARGE GMP

MAX DRAW DC

PUMP ON: 10:00 TIME 8-12 DATE: (am)PUMP OFF: 4:00 TIME 8-12 DATE: (pm)

| DATE    | TIME  | PIEZO<br>TUBE | FLOW<br>RATE | WATER LEVEL | COMMENTS             |
|---------|-------|---------------|--------------|-------------|----------------------|
| 8-12-84 |       |               |              | 47          |                      |
|         | 10:00 | 18            | 178          | 49          | Brown cast, 60 PSI   |
|         | 10:05 | 18            | 178          | 49          | Clearing             |
|         | 10:10 | 18            | 178          | 49          |                      |
|         | 10:15 | 26            | 214          | 49          | OTV 55PSI            |
|         | 10:20 | 35            | 250          | 49.5        | OTV                  |
|         | 10:25 | 45            | 280          | 50          | OTV                  |
|         | 10:30 | 50            | 300          | 50          | OTV                  |
|         | 10:35 | 50            | 300          | 50          |                      |
|         | 10:40 | 50            | 300          | 50          |                      |
|         | 10:45 | 50            | 300          | 50          |                      |
|         | 10:50 | 50            | 300          | 50          |                      |
|         | 10:55 | 50            | 300          | 50          |                      |
|         | 11:00 | 50            | 300          | 50          |                      |
|         | 11:05 | 50            | 300          | 50          |                      |
|         | 11:10 | 50            | 300          | 50          |                      |
|         | 11:15 | 50            | 300          | 50.5        | OTV - Open Discharge |
|         | 11:20 | 52            | 305          | 50.5        | Crystal Clear        |
|         | 11:25 | 52            | 305          | 50.5        |                      |
|         | 11:30 | 52            | 305          | 50.5        |                      |
|         | 11:35 | 52            | 305          | 50.5        |                      |
|         | 11:40 | 52            | 305          | 50.5        |                      |
|         | 11:45 | 52            | 305          | 50.5        |                      |
|         | 11:50 | 52            | 305          | 50.         |                      |
|         | 12:00 | 52            | 305          | 50.5        |                      |
|         | 12:05 | 52            | 305          | 50.5        |                      |
|         | 12:10 | 52            | 305          | 50.5        |                      |
|         | 12:15 | 52            | 305          | 50.5        |                      |
|         | 12:20 | 52            | 305          | 50.5        | TDS ~220 PPM         |
|         | 12:25 | 52            | 305          | 50.5        | Pulled Samples       |
|         | 12:30 | 52            | 305          | 50.5        |                      |
|         | 12:35 | 52            | 305          | 50.5        |                      |
|         | 12:40 | 52            | 305          | 50.5        |                      |
|         | 12:45 | 52            | 305          | 50.5        |                      |
|         | 12:50 | 52            | 305          | 50.5        |                      |
|         | 12:55 | 52            | 305          | 50.5        |                      |
|         | 1:00  | 52            | 305          | 50.5        |                      |
|         | 1:05  | 52            | 305          | 50.5        |                      |
|         | 1:10  | 52            | 305          | 50.5        |                      |

NOV 27 1982  
DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
HSDC

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Anchorage

WATERWELL - TEST PUMP RE

OWNER Hugh Adams

ADDRESS \_\_\_\_\_

ENGINEER \_\_\_\_\_

WELL LOCATION Crimson View SubdivisionTOTAL DEPTH 101 DEPTH OF CASING 81SCREEN FROM 11 TO 1CASING SIZE 6" SCREEN DIA 6"SCREEN SLOT 20REMARKS Perforated 60 - 80PUMP INTAKE DEPTH 74PUMP SIZE 20 hpAIRLINE DEPTH 68STATIC WATER LEVEL 47

AVG DISCHARGE \_\_\_\_\_ GPM

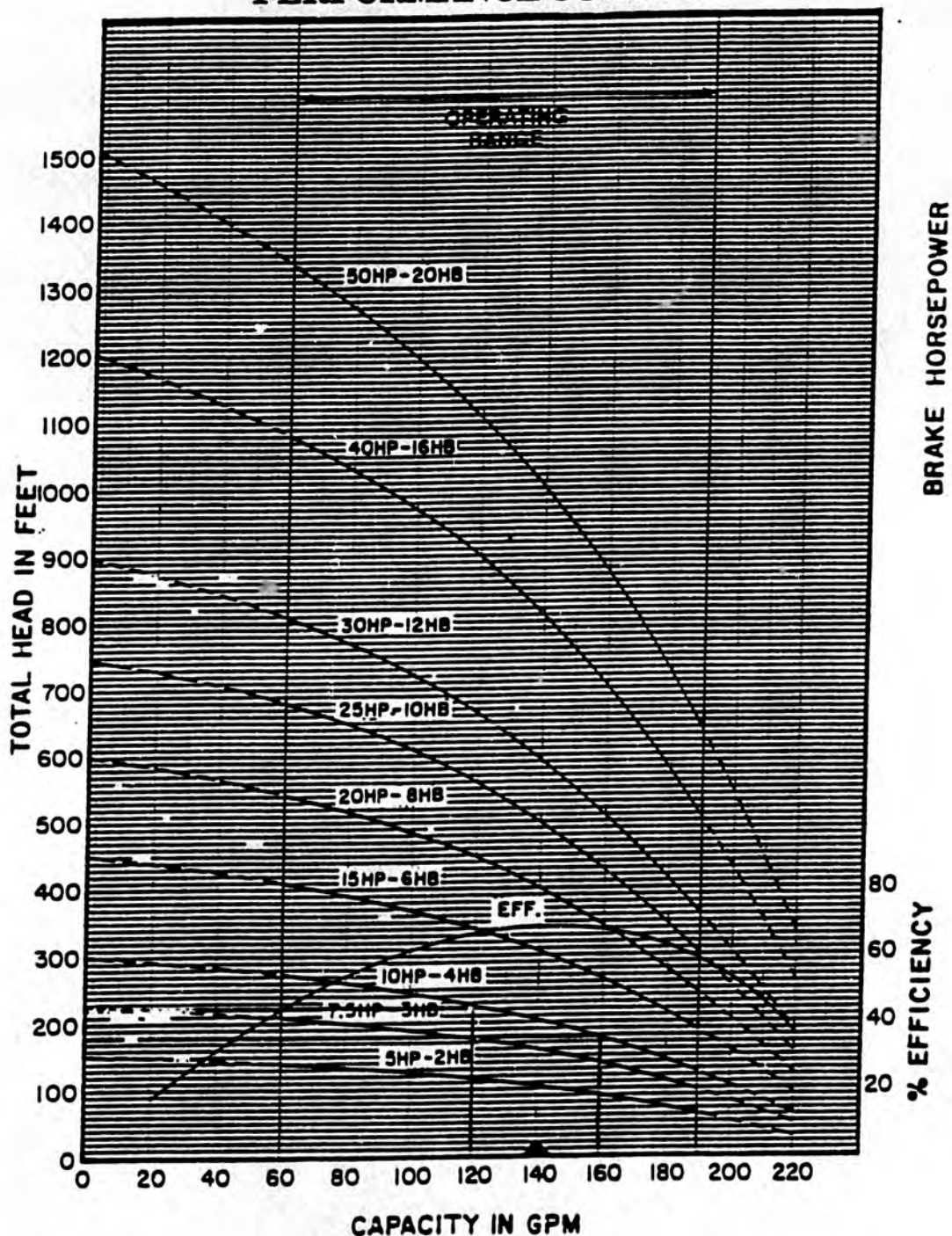
MAX DRAW DC

PUMP ON: 10:00 TIME 8-12 DATEPUMP OFF: 4:00 TIME 8-12 DATE

| DATE   | TIME | PIEZO<br>TUBE | FLOW<br>RATE | WATER LEVEL | COMMENTS  |
|--------|------|---------------|--------------|-------------|-----------|
| 8-1-84 | 1:20 | 52            | 305          | 50.5        |           |
|        | 1:30 | 52            | 305          | 50.5        |           |
|        | 1:35 | 52            | 305          | 50.5        |           |
|        | 1:40 | 52            | 305          | 50.5        |           |
|        | 1:45 | 52            | 305          | 50.5        |           |
|        | 1:50 | 52            | 305          | 50.5        |           |
|        | 1:55 | 52            | 305          | 50.5        |           |
|        | 2:00 | 52            | 305          | 50.5        |           |
|        |      |               |              | 47          | Shut down |
|        |      |               |              | 47          | 15 sec.   |
|        |      |               |              | 47          | 30 sec.   |
|        |      |               |              | 47          | 45 sec.   |
|        |      |               |              | 47          | End Test  |
|        | 2:01 |               |              |             |           |
|        | 2:02 |               |              |             |           |
|        | 2:03 |               |              |             |           |
|        | 2:04 |               |              |             |           |
|        | 2:05 |               |              |             |           |
|        | 2:10 |               |              |             |           |
|        | 2:15 |               |              |             |           |
|        | 2:20 |               |              |             |           |
|        | 2:25 |               |              |             |           |
|        | 2:30 |               |              |             |           |
|        | 2:40 |               |              |             |           |
|        | 2:50 |               |              |             |           |
|        | 3:00 |               |              |             |           |
|        | 3:10 |               |              |             |           |
|        | 3:20 |               |              |             |           |
|        | 3:30 |               |              |             |           |
|        | 3:40 |               |              |             |           |
|        | 3:50 |               |              |             |           |
|        | 4:00 |               |              |             |           |



## 140 GPM SERIES "HB" PUMPS PERFORMANCE CURVES



▲ RATED FLOW

Note: Continuous operation outside operating range will void warranty.

MODEL HB 140 GPM — RPM 3450  
STAGE "HB" SERIES

GUARANTEED AS MINIMUM PERFORMANCE ONLY IF CERTIFIED

MINIMUM WELL SIZE 6" I.D.

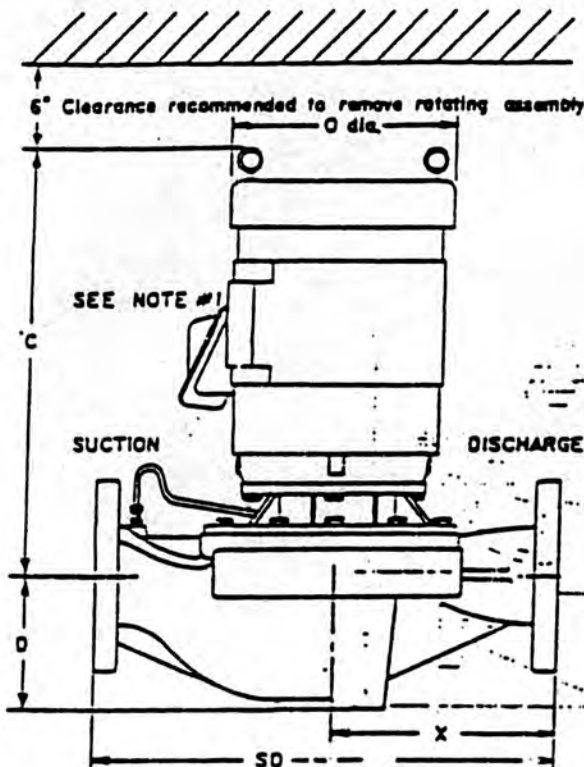
SECTION 2230  
Page 2  
July 15, 1977

# INLINE PUMPS TYPE PV



**Peerless Pump**  
An Indian Head Company  
Indianapolis, IN 46204

## OUTLINE DIMENSIONS SINGLE PHASE UNITS



BASE (Pedestal)  
OPTIONAL  
☐ Furnished  
☐ Not Furnished

5 Dia. 4 Holes  
equally spaced  
straddle  
centerline  
on HE dia.  
bolt circle



ALL DIMENSIONS  
ARE IN INCHES

APPROX. TOTAL  
UNIT WT. LBS.

| PUMP<br>SIZE                   | ANSI 125 LB.<br>FLANGES<br>SUCT. & DISCH. | BARE PUMP DIMENSIONS |                         |                       |                |                      | APPROX.<br>PUMP<br>WT. LBS. |
|--------------------------------|-------------------------------------------|----------------------|-------------------------|-----------------------|----------------|----------------------|-----------------------------|
|                                |                                           | D                    | SD                      | X                     | HA             | HE                   |                             |
| 2X2X6A<br>2.5X2.5X6A2B         | 2<br>2.5                                  | 4.88<br>5.62         | 13.50<br>15.50          | 6.50<br>7.00          | 9<br>10        | 7.88<br>8.68         | 63<br>83                    |
| 2X2X8A                         | 2                                         | 4.88                 | 15.50                   | 7.50                  | 9              | 7.88                 | 85                          |
| 2.5X2.5X8A<br>3X3X8A<br>4X4X8A | 2.5<br>3<br>4                             | 5.62<br>5.88<br>6.50 | 16.50<br>18.00<br>21.00 | 8.00<br>8.50<br>10.00 | 10<br>10<br>11 | 8.88<br>8.88<br>9.88 | 99<br>113<br>146            |
| 4X4X7A                         | 4                                         | 6.50                 | 20.50                   | 9.50                  | 11             | 9.88                 | 153                         |
| 2X2X10A<br>3X3X10B<br>4X4X10B  | 2<br>3<br>4                               | 5.50<br>5.88<br>6.50 | 19.00<br>20.00<br>22.00 | 9.50<br>9.50<br>11.00 | 9<br>10<br>11  | 7.88<br>8.88<br>9.88 | 121<br>142<br>173           |

NOTE 1: CLAUDI' BOX LOCATED 45° CLOCKWISE FROM SUCTION  
FLANGE WHEN VIEWED FROM MOTOR END. (MOTOR MAY BE RELATED  
IN 90° INCREMENTS)

NOTE 2: MAINTAIN 'X' DIMENSION FROM CENTERLINE OF UNIT  
ON EACH SIDE OF CASING FOR MINIMUM CLEARANCE.

| SINGLE PHASE<br>MOTOR HP |      | MOTOR<br>FRAME | UNIT<br>DIMENSIONS |          | APPROX.<br>MOTOR<br>WT. LBS. |
|--------------------------|------|----------------|--------------------|----------|------------------------------|
| OPEN<br>CRIP<br>PROOF    |      |                | C<br>MAX           | D<br>MAX |                              |
| 1750                     | 3500 |                |                    |          |                              |
| .5                       | 1.5  | 143JMV         | 15.75              |          | 35                           |
| .75                      | -    | 143JMV         |                    | 8.50     | 35                           |
| 1                        | -    | 143JMV         |                    |          | 35                           |
| 1.5                      | 2    | 145JMV         | 16.75              |          | 45                           |
| 2                        | 3    | 182JMV         | 20.50              |          | 75                           |
| 3                        | 5    | 184JMV         | 21.25              | 10.50    | 87                           |
| 5                        | 7.5  | 213JMV         | 23.25              |          | 127                          |
| 7.5                      | 10   | 215JMV         | 24.25              | 12.12    | 160                          |
| 10                       | -    | 215JMV         | 24.25              |          | 170                          |

CUSTOMER \_\_\_\_\_ JOB NAME \_\_\_\_\_  
P.O.NO. \_\_\_\_\_ ITEM NO. \_\_\_\_\_  
S.O.NO. \_\_\_\_\_ SERIAL NO. \_\_\_\_\_  
MOTOR MFR. \_\_\_\_\_ ENCL. \_\_\_\_\_ FRAME \_\_\_\_\_ HP \_\_\_\_\_ VOLTS \_\_\_\_\_ HZ. \_\_\_\_\_  
PUMP TYPE & SIZE \_\_\_\_\_ RPM \_\_\_\_\_ G.P.M. \_\_\_\_\_ TOTAL HD. FT. \_\_\_\_\_  
CERTIFIED FOR ☐ APPROVAL ☐ CONSTRUCTION BY \_\_\_\_\_ DATE \_\_\_\_\_

SUBJECT TO  
CHANGE UNLESS  
CERTIFIED FOR  
CONSTRUCTION

Appendix J  
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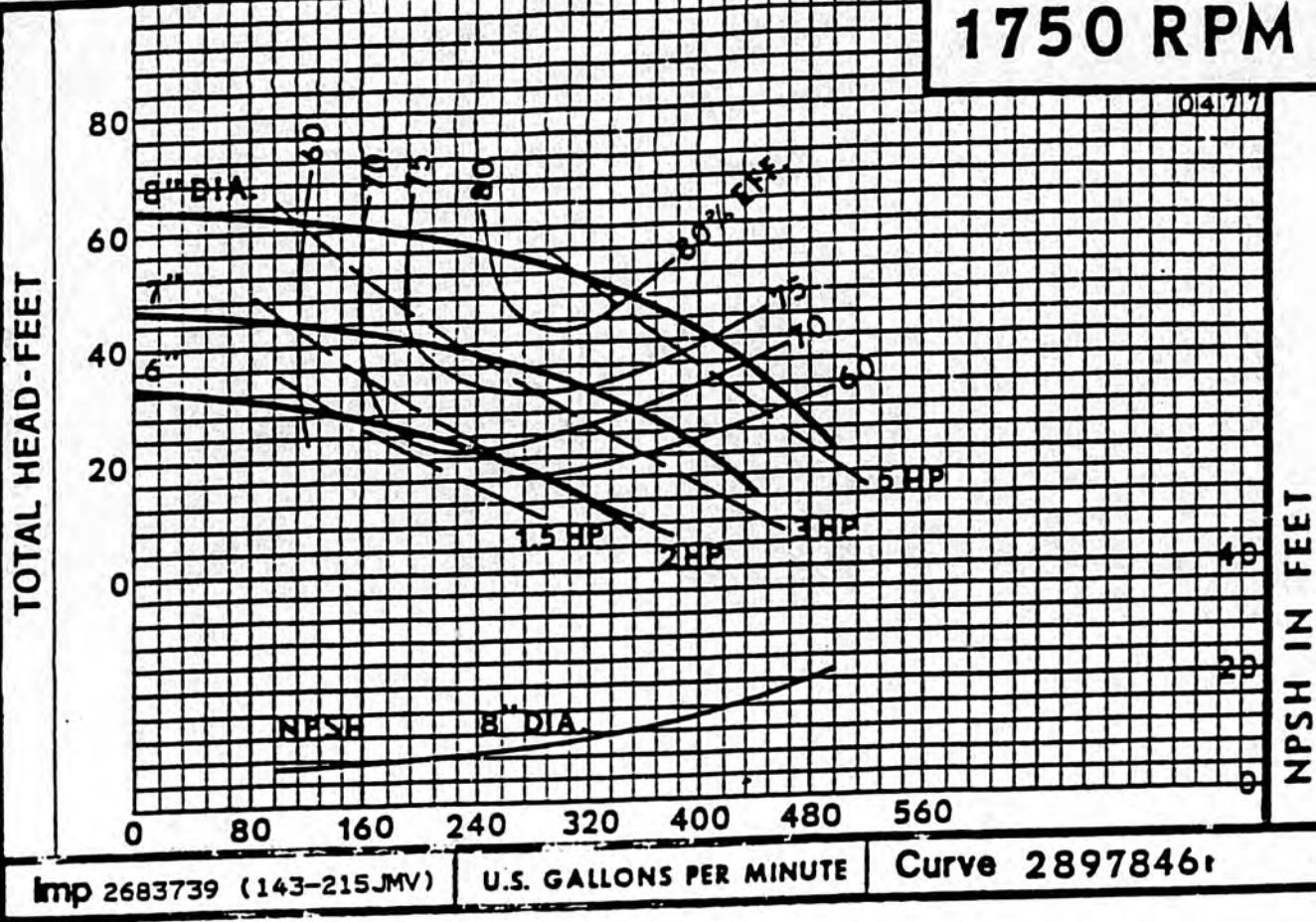
DT 2898341  
REV 7-77

SECTION 2240  
INLINE PUMPS

PV 4 x 4 x 8A

 **Peerless Pump**  
An Indian Head Company

**1750 RPM**



RECEIVED DEC 0 1 1997

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|                        |                |                 |                  |
|------------------------|----------------|-----------------|------------------|
| CUSTOMER _____         |                | JOB NAME _____  |                  |
| P. O. NO. _____        | ITEM NO. _____ | S. O. NO. _____ | SERIAL NO. _____ |
| PUMP TYPE & SIZE _____ |                | HP _____        | RPM _____        |
| TOTAL NO. FT. _____    |                | DATE _____      |                  |
| BY _____               |                | DATE _____      |                  |

CERTIFIED FOR ☐ APPROVAL ☐ CONSTRUCTION

# STATE OF ALASKA

## DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH  
DRINKING WATER AND WASTEWATER PROGRAM  
1075 CHECK STREET  
P.O. BOX 871064  
WASILLA, ALASKA 99687-1064  
<http://www.state.ak.us/home.htm>

Telephone: (907) 376-5038

Fax: (907) 376-2382

January 28, 1998

Mr. Dick Lowman, P.E.  
Alaska Rim Engineering  
P.O. Box 2749  
Palmer, Alaska 99645

RE: Crimsonview Class "A" Public Water System (PWSID #224329); Proposed Water System Upgrades for Phase II Service; Plan Review/More Information Requested

Dear Mr. Lowman:

On December 5, 1997, this office received your submittal of plans to upgrade the referenced public water system. Subsequently, on December 8 and 17, 1997, additional information was provided for this project. On January 27, 1998, I met with Mr. Nelson Elliot and two other members of the Crimsonview Homeowners Association to discuss the proposed upgrades. These upgrades are intended to expand the capacity of the system to provide service to phase II of Crimsonview Subdivision. I have reviewed the submittals and have the following comments:

**Owner's Statement:** You provided an owner's statement from the developer of phase II of this subdivision. This owner's statement provides authorization to review the proposed system upgrades. However, since most of the water system is owned by the Homeowners Association, a second owner's statement will need to be completed and submitted by the Homeowners Association before an "Approval To Construct" Certificate can be issued.

**Peak Demand:** You provided peak demand calculations for phases I and II combined (68 lots), which show that the water system needs to be capable of producing 146.6 gpm under peak demand. You provided current well flow test results (July 7, 1997) which show the well is capable of meeting the estimated peak demand and total daily demand requirements of the subdivision. You stated that the existing well pump (7.5HP/140 gpm) is slightly undersized to meet the estimated peak demand and you are proposing the installation of a Peerless 2HP inline booster pump to provide 20 to 30 feet of additional lift. You stated that this will result in the existing well pump being capable of producing 160 gpm. Based on the information you provided, it appears that the proposed booster pump is adequately sized, when combined with the existing well pump, to meet the minimum peak demand requirements for both phases I and II.

During my meeting with the Homeowners Association representatives, a copy of the subdivision covenants was provided. Article #5, item #7 of the covenants provides a requirement for landscaping the lots. The Homeowners Association has reported water use of 1000 gpd/home during

peak irrigation months for phase I in the past. This is twice the total daily demand expected from typical residential use. The peak demand calculations you provided do not address the expected additional demand from landscape irrigation. The original water system design for this subdivision also did not include additional demand capacity for landscape irrigation. Although the State's Drinking Water Regulations do not require public water systems to meet additional demand expected from landscape irrigation, this issue needs to be addressed, since it is a requirement of the subdivision covenants. One means of addressing this issue is to amend the subdivision covenants to include a provision for scheduled irrigation. Specific times or days can be identified for the homeowners to irrigate their yards. Irrigation periods should not coincide with typical morning and evening peak demand periods.

**Future Well Pump:** You stated that the developer of phase II is proposing to establish an escrow account to cover the cost of a larger well pump (10HP), when the existing well pump is failed. You provided a performance curve for the proposed well pump: Red Jacket 10HP-4B. Based on the information you provided, it appears that this well pump is adequately sized for the intended use.

**Storage:** You stated that the system currently uses 14 Con-Aire 85 gallon pressure tanks. The ADEC records indicate that 14 Con-Aire 220 gallon pressure tanks were originally installed. It appears that there is an error in the ADEC records. The Homeowners Association has verified that the pressure tanks provide approximately 300 gallons of drawdown storage under the normal operating pressures. Based on this information, it appears that the pressure tanks are adequately sized to meet the minimum storage requirements for both phases I and II, with either the existing 7.5 HP well pump or the proposed 10HP well pump, and including the proposed 2HP booster pump.

**Water Mains:** The distribution system (4-inch DIP) for phase II was installed in 1985 along with the construction of the water system for phase I. You stated that the phase II water main was excavated in several locations and a portion of the water main was found to have inadequate ground cover. You verified that insulation has been installed on that portion of the water main. You also stated that the water main was pressure tested and a leaking valve was found. You verified that the valve has been replaced. You stated that the water main will be retested and chlorinated in the spring prior to use. This is acceptable to the Department once the proposed upgrades have been approved, subject to a requirement that satisfactory bacteria test results be obtained from this portion of the distribution system, once it has been disinfected and flushed.

**System Reliability:** You stated that the system is currently provided with reliable power through the Matanuska Electric Association, and that a backup power supply is not needed. You are proposing the installation of a multi-function automatic dialer in the well control building. You stated that the operator can be alerted to abnormal pump running conditions, unusual noises, temperature extremes, line voltage, running amps, and pressure abnormalities, and that the automatic dialer can serve as a data logger. The Department agrees that a backup power supply is not required for this public water system, and that the automatic dialer can be used to enhance system reliability.

**Construction Approval:** Before an "Approval to Construct" Certificate can be issued for the proposed upgrades, an owner's statement will need to be provided by the Homeowners Association. The owner's statement needs to specifically identify which items are authorized for installation: 2HP booster pump and/or future 10HP well pump. Once this information is received, an "Approval to Construct" can be issued by the Department.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Archie Giddings, P.E.  
Environmental Engineer

AG:

cc: Donald Mellish  
Nelson Elliot

State of Alaska  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
**OWNER'S STATEMENT**

- ☐ DOMESTIC WASTEWATER SYSTEM  
☒ DRINKING WATER PLAN REVIEW

*Information required by 18 AAC 15.030, 18 AAC 80.310(8) and 18 AAC 80.355.*

|                            |
|----------------------------|
| Department Completion Only |
| Project No. _____          |
| Date Received: _____       |

Submitted at DEC Office: **Mat-Su**  
Public Water System Name: **Crimsonview Subdivision, Phase II**  
Public Water System Location: **Mile 40, Glenn Highway**  
Describe type of work proposed: **Expand water system to include Phase II**  
Project Name: **Crimsonview Subdivision, Phase II**

These plans submitted by:

- ☐ Owner  
☒ Representative of Owner

I submit the enclosed items concerning the above referenced proposed project for review. By my signature I certify that the project is (check one):

- ☐ Privately owned and that I am the owner.  
☐ Owned by a sole proprietorship and that I am the proprietor.  
☐ Owned by a partnership of which I am a general partner.  
☐ Owned by a corporation of which I am a principal executive officer of at least the level of vice-president, or a duly authorized representative responsible for the overall management of this project.  
☐ Owned by a municipal, state, federal, or other public agency, of which I am a principal executive officer, ranking elected official, or other duly authorized employee.

*Donald Mellish* 11-5-97  
Signature of Owner or Representative Date

DONALD MELLISH REPRESENTATIVE OF ROBERT MELLISH  
Name and Official Title

2200 CLIFF COURT ANCHORAGE AK. 99517  
Address of Owner

**SIGNING OF APPLICATIONS:** This form must be signed as follows:

- 1) in the case of corporations, by the principal executive officer of at least the level of vice-president or his duly authorized representative, if the representative is responsible for the overall management of the project or operation;
- 2) in the case of partnership, by a general partner;
- 3) in the case of a sole proprietorship, by the proprietor; and
- 4) in the case of municipal, state, federal, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

## LAW OFFICES

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April 27, 1999

Representative Bill Hudson  
 Chairman  
 Utility Restructuring Committee  
 State Capitol, Room 108  
 Juneau, Alaska 99811-1182

Re: House Bill 185

Dear Chairman Hudson:

Enclosed please find a written copy of my testimony during last week's hearing on H.B. 185.

Thank you for the opportunity to provide you with my comments. Please don't hesitate to contact me if you have any questions or need any additional information.

Sincerely,



Rebecca C. Pauli

Enclosure

cc: Chairman Sam Cotten (w/o enc)  
 Commissioner Tim Cook, Manager of Docket U-98-151 (w/o enc)  
 Bob Lohr, Executive Director (w/o enc)  
 Bob Mahoney, Counsel for Crimsonview  
 Owners Association (w/o enc)

## **Testimony of Rebecca Pauli**

### **House Bill 185**

My name is Rebecca Cohen Pauli and I am an attorney with the Law firm of Birch, Horton, Bittner and Cherot. I am testifying here today on behalf of Robert Mellish. Our firm represents Robert Mellish in his Complaint against The Crimsonview Owners Association ("Association") before the Alaska Public Utilities Commission ("APUC"). We would like to thank the Committee for providing this opportunity to testify against H.B. 185, "An Act Exempting Certain Small Water Utilities From Regulation by the Alaska Public Utilities Commission".

We believe H.B. 185 was introduced in an attempt to eliminate the APUC's authority to resolve Mr. Mellish's complaint against the Association. Mr. Mellish's property is located in the Crimsonview Subdivision and the complaint is Mr. Mellish's final effort to obtain water service from the community well that serves the Crimsonview Subdivision. This is not a case of a developer seeking to obtain water service from a neighboring subdivision but rather is a case of a developer seeking to obtain water service for property located within a subdivision from a community well which was designed to service the entire subdivision and has served the entire subdivision up until now.

Over the past two years, Mr. Mellish has attempted to work with the Association regarding his development of Phase II of the Crimsonview Subdivision. The Association has been both unreasonable and unfair in its demands of Mr. Mellish. If H.B. 185 passes, Mr. Mellish's frustrating and time-consuming experiences will become routine for other developers. As discussed below, we believe H.B. 185 is both anti-consumer and anti-development.

My testimony will cover three areas. First, I will provide a brief background which will provide you with an overview of Mr. Mellish's experiences. This overview will provide insight into what the future will hold for developers and the individual homeowner seeking water should small water utilities be completely exempt from the APUC's jurisdiction. Second, I will address why we believe H.B. 185 is unnecessary reactive legislation that will have an unintended negative impact. And third, I will propose a solution.

#### **I. Mr. Mellish's Attempts to Develop Phase II of the Crimsonview Subdivision**

Following is a summary of the undisputed facts as admitted by the Association in their Answer to Robert Mellish's Complaint. The Crimsonview Subdivision was designed and platted to be developed in two phases. Phase I consists of 47 lots and Phase II consists of 22 lots. The community well and the integrated looped water distribution system were originally designed and installed to serve both Phase I and Phase II. This intent is expressed in the notes to the official plat of the subdivision.

Note 2 provides:

Lot 11 of Block 1, Phase I of this plat is the site of the community well system, and will be exclusively used as such until the time of connection of this subdivision's designed water system to a possible future city water system at which time the community well will be abandoned.

- The community well and water distribution were installed in 1985. It is noteworthy that the water distribution system to serve both Phases I and Phase II was installed at the same time is an interconnected looped distribution system.
- In February 1997, the title to the lot in Phase I on which the well house is located was conveyed to the Association. Since that time the Association has operated the water system, asserted ownership, and charged Phase I owners an initial hook up fee and a monthly water assessment.
- When Mr. Mellish was ready to develop Phase II, he wanted to do it right. He hired the engineering firm that originally designed the water system to determine whether the existing system's distribution facilities were adequately sized to serve the lots in Phase II. The firm concluded they were, however, the additional homes in Phase II required a two horsepower pump to ensure adequate pressure. It is undisputed that the existing distribution system is adequately sized to serve all 68 lots. It is also undisputed that the aquifer is more than adequate to supply the entire subdivision.
- A second well makes no sense because it would be relatively close to the first well, would draw from the same aquifer, and would require changes to the existing distribution system to ensure against backflow from the second well.
- In an abundance of caution, Mr. Mellish hired a second engineering firm to review the original engineering firm's conclusion that the existing system's design was still suitable to serve both Phase I and II. The Second firm, Alaska Rim, confirmed the existing system was appropriate. Upon two engineers assurances, Mr. Mellish informed the Association of his plans to develop the 22 lots in Phase II and that this would necessitate the operation of the water distribution system located in Phase II.
- Throughout 1997, Mr Mellish performed extensive work to bring Phase II into compliance with the Matanuska-Susitna Borough subdivision requirement, including upgrades to the water system.
- Mr. Mellish hired Alaska Rim to design the necessary upgrades to the water system and address any Association concerns Regarding lawn watering. Prior to Mr. Mellish's plans for development, the Phase I homeowners has experienced poor water pressure when they would

be watering their lawns during the dry summer months Alaska Rim prepared a proposal to satisfy ADEC requirements and to address the Association's concerns about lawn watering.

- As I previously indicated Alaska Rim found the existing well has a flow yield capability far in excess of the total instantaneous peak demand and total daily demand of all 68 lots, the existing storage capacity is more than adequate to serve all 68 lots and the exiting pump equipment exceeds the minimum capacity requirements for Phase I and is a mere 7 g.p.m. shy of meeting the instantaneous combined peak demand of Phases I and II.
- To address these concerns and to obtain water from his Association, Mr. Mellish offered to purchase and install a 2 horsepower booster pump as recommended by his engineers.. Mr. Mellish also offered to purchase and install a multi function automatic dialer which would monitor the system's operation and immediately report any deviations from the norm. Finally he was willing to establish and fund an escrow account to cover the capital cost of a 10 horsepower pump which would provide more than adequate peak capacity to replace the existing pump if it fails in the future or to increase system capacity.
- On January 28, 1998, the ADEC agreed with Mr. Mellish's plans stating that the well yield and proposed addition of a 2 horsepower pump were adequate to meet the demand requirements of all 68 lots and that scheduled irrigation could be employed to address any concerns regarding lawn watering, the existing storage tanks were adequate to meet the storage requirements of all 68 lots and that a standby power supply is not necessary.
- The ADEC, having made these findings, required a completed "Owner's Statement" from the Association. The Association refused to sign the Owner's Statement and rejected Mr. Mellish's earlier proposal to bear all the costs of the upgrades even though all the lots would benefit.
- The Association counter offered demanding that, in addition to the upgrades and the payment of the higher developed lot rate for Mr. Mellish's undeveloped lots, he must also:
  1. At his own expense, design, supply, install, and warranty a 30,000 gallon water storage facility with attendant plumbing, booster pumps and installation, heating, and water treatment systems;
  2. At his own expense, design supply, install, and warranty a standby power generation system.
  3. Submit all engineering plans for the storage facility and power system for approval by the Association and pay the fees for the Association to hire an engineer to inspect and approve the plans.
  4. Pay the Association an initial assessment fee of 125 per Phase II lots (2750) in order for Mr. Mellish to accept financial responsibility for the expenses the association incurred in operating the Phase I portion of the water system during the previous year.

5. The association and additional administrative fee of 2,000
  6. Maintain the system's water mains that are located in Phase II until 50% of the Phase II lots have occupied dwellings; and
  7. Obtain a certificate to operate from the ADEC.
- In response to these ransom demands of the Association, Mr. Mellish reluctantly agreed to pay the \$4,750 and to maintain the water mains until 50% of the phase II lots had houses on them. Mr. Mellish had buyers for 50% of the lots. Because of the Associations refusal to provide Phase II of the subdivision with water the purchasers canceled.
  - The Association rejected Mr. Mellish's second offer.
  - On April 20, 1998, Mr. Mellish yet again attempted a compromise and made a third offer agreeing to pay the Phase II lots proportionate share of the cost of installing the Association's requested 30,000 gallon storage facility even though such a facility is unnecessary and would involved increased operation and maintenance costs for the entire system. The Association refused to alter its demands and ultimately added to their list of demands paved roads.
  - Mr. Mellish had no recourse other than to seek a legal solution. Because the Association, by its own admission controls a water system for providing water to 10 or more persons for compensation, it is a public utility with an obligation to serve all persons within its service area under equal terms and conditions. Because it is undisputed that the water system was designed and constructed for both Phase I and Phase II to provide drinking water to all 68 lots from a single community well and water distribution system, it is only natural that the public interest would support a finding that the service area be the Crimsonview subdivision (both Phase I and II). This is the least cost means of service. Water service to Phase II is as simple as a turn of a valve. Accordingly, in mid September 1998 Mr. Mellish filed a complaint with the APUC seeking service under equal terms and conditions.
  - The APUC provides a forum that is in many intances quicker that the court system and generally less expensive. In this Case, the APUC scheduled a hearing for April 5, 1999. Because it is undisputed that the Association owns the water system, provides service to 46 households, and receives payments from those households, Mr. Mellish requested the Commission rule that under the statutes the Association is public utility. Mr. Mellish was ready to proceed to hearing. The Association requested the Commission to delay the hearing until after it rules on Mr. Mellish's request.
  - Were it not for the Associations request for further delay, this matter would have proceeded to hearing and a final order would be forthcoming with in the next few weeks. Because of the Association's actions, Mr. Mellish will forgo yet another construction season.

## **II. H.B. 185 is Both Anti-Consumer and Anti-Developer**

- While HB 185 may be backed by good intentions, upon closer examination it becomes apparent as a public policy matter you do not want water service disputes in the court system.
- For these types of matters, the APUC is much more expedient, inexpensive and user friendly than the Court system. The APUC also has the expertise on staff, engineers etc. to determine whether an existing system is adequate or inadequate.
- Historically, the APUC has not sought out small water utilities such as homeowners associations for regulation. The APUC only becomes involved in the "regulation" of these water utilities when asked to do so by a consumer or a lending institution.
- By statute, AS 42.05.990, a homeowner's association that owns, operates, manages or controls a utility system servicing ten or more customers/members for compensation is a "public utility" subject to regulation under AS 42.05. The Commission will grant exemptions to homeowners under AS 42.05.711(d) because it has found that under certain circumstances, full regulation is not in the public interest.
- By providing for the public interest exemption, prior legislatures and the APUC wisely recognize that consumers must have an easily accessible and friendly forum for disputes. Perhaps the most important function of the APUC is to provide a forum where an aggrieved or potential consumer may be heard. If HB 185 became law, the only recourse for an aggrieved or potential consumer would be the court system. The APUC is a much friendlier and accessible forum than the legal system. Unlike the court system, the APUC has as one of its purposes to assist the consumer in obtaining service from a utility. By preventing the consumer from having access to the APUC, HB 185 is anti-consumer.
- HB 185 is anti-development. The impact of HB 185 on potential developments such as Mr. Mellish's must be considered. If it becomes law, you have the ultimate NIMBY ("not in my back yard") weapon. Here, we have a case where all engineers (including the Association's) agree there is an adequate water supply and an adequate water distribution system ready to provide water service with the turn of a valve.
- However, a few individuals who control the Association do not want further development in their neighborhood and are effectively blocking responsible development by refusing to provide water via the existing facilities. If HB 185 passes, it is possible that Mr. Mellish will have to dedicate several lots to a well to draw from the same aquifer as the existing well and modify the existing distribution system, thereby increasing the cost of the development. This is not a case of a developer asking a neighboring subdivision for water, this is a case of homes within the existing subdivision being deprived of water.

### III. Mr. Mellish's Proposed Solution

- H.B. 185 appears to be intended to eliminate the APUC's authority to require homeowners associations to obtain certificates of public convenience and necessity, to impose rate regulation on homeowners associations and to require homeowners associations to pay the Regulatory Cost Charge. However, the APUC does not require homeowners associations to obtain certificates of public convenience, does not subject homeowners associations to rate regulation and does not require homeowners associations to pay the Regulatory Cost Charge. Rather, the APUC merely provides an accessible, user friendly and affordable forum for resolving disputes between homeowners associations and consumers.
- As a result, the Committee should adopt either one of two alternatives. First, the Committee should not pass this legislation to exempt certain small water utilities from regulation. As explained above, the APUC does not require homeowners associations to comply with most provisions in AS 42.05. Rather, the APUC only retains jurisdiction to resolve disputes such as the one between Mr. Mellish and the Association.
- Second, in the alternative, the Committee should add language providing that H.B. 185 will not become effective until January 1, 2000 to clarify that the APUC will have the authority and opportunity to resolve any pending complaints or other matters relating to small water utilities including the complaint filed by the Mellishes. This complaint has been pending since early last fall, the Mellishes have already expended a significant amount of time and resources before the APUC, and they are now only waiting for the APUC to issue a decision. In view of this investment of public and private resources, it would not be fair for the Alaska Legislature to completely and immediately eliminate the APUC's authority to resolve this and other pending complaints.
- Unlike telephone and electric where the homeowner has other means of obtaining service, water utilities maintain the ultimate natural monopoly. In small water utility situations, competition cannot protect the consumer. Therefore, as a public policy matter small water utility systems should not be deregulated leaving the consumer with no protection.

### IV. Conclusion

If HB 185 passes, consumers will be left with little recourse except to resort to the judicial system. A lawsuit is more expensive and takes longer than filing a complaint at the APUC. The Court staff is not statutorily required to protect the public interest. The APUC has the authority to resolve disputes relating to the provision of water service and is less expensive. Moreover, based upon Mr. Mellish's experiences with the Crimsonview Owners Association, without APUC intervention, homeowners associations will be able to frustrate further development in their areas by refusing to provide water service to certain property owners.

Thank you for the opportunity to provide these comments.



# Alaska State Legislature

## UTILITIES RESTRUCTURING COMMITTEE

State Capitol  
Juneau, Alaska  
99801-1182  
Phone: (907) 465-6820  
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bill\_hudson@legis.state.ak.us

Bill Hudson Chair  
John Cowdery Vice Ch.  
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Norman Rokeberg  
Pete Kott  
John Davies  
Ethan Berkowitz  
Joe Green Alt.

Alaska Public Utilities Commission  
1016 West 6<sup>th</sup> Ave., Suite 400  
Anchorage, Alaska 99501-1963

Re: Electric utility restructuring policy guidance

Dear Chairman Cotten and Members of the Commission,  
It is the findings of the House Special Committee on Utilities Restructuring, that:

- The issue of electric utility restructuring is a highly complex matter for which there is no easy or quick solution.
- Changes within the industry have the potential to irrevocably impact virtually every Alaskan, and every business in the state of Alaska
- The Utilities Restructuring Committee reached the conclusion, corroborated by CH2MHill, that no template exists in the lower 48 that can be directly applied to the unique geographic and economic conditions extant in Alaska.
- Rural Alaska is not conducive to conventional restructuring, however rural Alaska could potentially benefit from innovative management and technological changes.
- Safety, reliability, and long-term availability of electricity are the primary mandates of the industry. Such important public mandates should not be compromised by hasty actions; the long-term implications have not been fully explored or appreciated.
- It is the intent of the House Utilities Restructuring Committee to continue the essential task of considering if, when, and how to incorporate changes in the way Alaska's electrical industry conducts its vital business.

Because of the complexities and implications of introducing competition among electricity providers in the electric industry, and the importance of the issue for all Alaskans, it should remain the domain of the Legislature to decide when retail competition should be addressed. The APUC should not proceed to initiate retail electric competition, even on a pilot basis, until such time that the Legislature provides appropriate guidance. There are efficiency benefits to be gained through improved regulation and through targeted regulatory initiatives aimed at improving generation, transmission, and dispatch systems and operations in Alaska. As a result, the house committee on restructuring finds that the commission should move expeditiously to craft and initiate an appropriate regulatory agenda to reform regulation, within the boundaries of current legislative authority, to capture these efficiencies.

If there are any questions please contact Walt Wilcox, or me.

Rep. Bill Hudson Chair House Utilities Restructuring Committee  
cc: Governor  
Commissioner, Department of Commerce, Attorney General

Ethan - word cleanup  
Brian - ✓ -

May 6, 1999

Redraft

individuals sign

**HOUSE BILL NO. 185**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE OGAN**

**Introduced: 4/9/99**

**Referred: House Special Committee on Utility Restructuring, Labor and Commerce**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act exempting certain small water utilities from regulation by the Alaska  
2 Public Utilities Commission."

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

4 \* Section 1. AS 42.05.711(e) is amended to read:

5 (e) Notwithstanding any other provisions of this chapter, any electric, water,  
6 or telephone utility that does not gross \$50,000 annually is exempt from regulation  
7 under this chapter unless the subscribers petition the commission for regulation under  
8 AS 42.05.712(h).

#1

**AMENDMENT**

OFFERED IN THE HOUSE

by Representative Berkowitz

TO: HB 185

- 1 Page 1, following line 8, insert,
- 2 "Sec. 2. This Act does not apply to utilities with open dockets before the Alaska Public
- 3 Utilities Commission until those dockets are closed."

eff date 7/1/00

Amended to  
also

|   |   |
|---|---|
| Y | N |
| B | C |
| D |   |
| K |   |
| P |   |
| H |   |

Mon

185  
Amend  
8/1  
Amend



## **REPRESENTATIVE SCOTT OGAN**

**Alaska State Legislature**

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

### **SPONSOR STATEMENT**

#### **HB 185**

#### **Representative Ogan**

This bill will make the same statutory exemptions that apply to "small electric" and "small telephone" utilities also apply to "small water utilities".

In my area, a group of homeowners who financed and built a water system are asking that they not be included under APUC oversight.

In researching the issue, I discovered there is a precedent in statute for exempting small electric and telephone utilities. I am asking colleagues to extend the same exemption to small water utilities as well.

Presently telephone and electric utilities that take in under \$50,000.00 in revenues per year are exempt from APUC.

Representative Bill Hudson  
Chairman Utility Restructuring Committee  
State Capital  
Juneau, Alaska

RE: HB185 An act exempting certain small water utilities from regulation by APUC

CRIMSONVIEW OWNER'S ASSOCIATION TESTIMONY IN SUPPORT OF HB185  
WEDNESDAY, 21 APRIL, 1999

This homeowner's association, as are most others in Alaska, is set up following the HUD model for a Community water system. These systems require Articles of Incorporation, Covenants and By-Laws and determine how the systems are owned and operated. These systems are self-regulating and HUD approval of them is required to obtain mortgages under federal programs (i.e. VA or FHA). (See encl 1)

The Articles, Covenants and By-Laws are the documents under which the current homeowners purchased their homes. This is how the property was represented to them. Clearly no one purchased their home with the understanding that they were going to have to operate a "public" utility that would have to be expanded upon a request for service by other than the 46 units that the system was approved for. Operating a public utility is not a normal part of home ownership.

APUC's current informal policy is that it does not regulate homeowner's associations. When the current complaint was filed against CVOA, our directors contacted APUC staff and were informed by five different staff members that APUC does not regulate homeowner associations. One informed a director that they do not issue certificates to homeowners association. A second staff member would not believe that the commission had decided to hear this complaint until given the case number and then called it up on her computer. Only if a complaint is filed will APUC evaluate if the case has merit and rule whether or not to regulate.

It would appear from the APUC Staff Advocacy Group filing in the CVOA case that no regulations or procedures are in place to regulate homeowner's associations. Their filing, through their Attorney General legal counsel, recommends that the commission convene a rule-making docket to establish guidelines/regulations for homeowner associations.

Current APUC policy prevents owner operated water systems from complying with statutes. They cannot get a certificate of convenience and necessity without which they cannot file a tariff or rate schedule nor can they apply for an exemption from regulation. There are no guidelines or regulations to follow that would provide reasonable assurance of protection from even frivolous complaints.

If APUC now holds that they have the power to regulate homeowners associations, do they then have a statutory responsibility to regulate all homeowner associations without discrimination? What statutory authority do they have to nullify Articles of Incorporation, Covenants and By-Laws under which consumers purchase their property?

ADEC indicates that there are approximately 700 Class A Water Systems in Alaska. How many does APUC regulate? Do they have the staff and budget resources to support regulation of all of them? Again, if systems fall under their regulatory authority, do they not have a statutory responsibility to regulate or establish clear rules for exemption? Under current statute, how can APUC claim power to regulate utilities that they don't certificate?

APUC staff indicate that current caseloads can exceed two years. Delays of this magnitude can jeopardize homeowner's property value and cause delays to developers as well. After nearly 8 months, the case against CVOA is unresolved and there is no indication of when a hearing will be scheduled.

Given that annual and special assessments are the only source of revenue for homeowners associations, if APUC regulates them, associations will have no way of raising funds to meet emergency situations if their reserve funds are insufficient to cover the costs. They would have to file for relief through the tariff and rate process prior to being able to collect any monies. Financial flexibility would be lost.

HB185 proposes the same exemption for water systems as that of electric and telephone utilities. A utility grossing less than \$50,000 annually has a limited subscriber base. The cost of regulation by APUC would dramatically increase per customer costs. In CVOA's case we would no longer be able to manage the water system ourselves. We would have to contract with a management firm having utility tariff and rate making experience. This, coupled with APUC's fees for regulation, could easily double the cost of operation.

The current APUC policy of "regulation by complaint" is even more expensive. When a complaint is filed the utility has little choice but to respond. Failure to do so would be construed as an admission of the facts as presented by the complainant and a judgement entered against the utility. The legal counsel costs associated with this process are high. This homeowner association is two years old. Time to accumulate reserves has been limited and legal costs associated with the APUC complaint have eroded most of those.

The issues in dispute between CVOA and a developer have little relevance to the merits of this proposed legislation.

HB185 will provide uniform standards of regulation for all small water systems, prevent unnecessary costs associated with regulation, and leave current Articles of Incorporation, Covenants and By-Laws intact while still providing the protection of AS 42.05.712(h) to subscribers.

We believe it is in the best public interest to support passage of HB185.

#### ADDITIONAL COMMENTS

The following are comments by CVOA members subsequent to the Wednesday, 21 April hearing.

APUC staff has indicated that current caseloads can exceed two (2) years. Regulation of homeowner associations and other small water utilities would only increase that caseload and delays in the decision process. In addition to increasing legal counsel costs, delays of this magnitude will unfavorably affect property values and cause delays in sale/loan closures. Costs to developers, builders and consumers will go up.

To illustrate. To date, this association has spent between 15 and 20 thousand dollars defending itself against a developer's complaint. Using that as a basis we estimate that the developer has now spent as much or more on legal counsel than he would have spent had he accepted our proposal for adding his proposed lots to the water system.

Within the APUC complaint process there is no mechanism for financial aid to parties if they are unable to pay the costs for adequate defense. If there is inability to contest or support expert defense of a complaint, dispute resolution due to no-contest or non-representation may occur. The APUC Staff Advocacy role does not represent those consumers residing within association against which a complaint has been filed.

Developers can and do have options to access water systems through communications and negotiations with owners of existing systems. They also have the additional choices of drilling individual wells or developing other community systems to support their development projects. Issues related to protection of developer profit margins in these decisions, or unresolved disputes amongst parties can and should be resolved in the courts.

Although the state constitution and statutes may provide for the sharing of utility assets there has been no planning of water utilities to accomplish this. Neither the state nor the Mat-Su borough has any standards or codes relating to the development of water systems. ADEC provides only **suggested practices** for small water systems. It is the design engineer who decides what is appropriate. As a result developers have been allowed to design water systems using a "least-cost" method and with little regard to adjacent properties and future development. These water systems are typically designed with 4-inch water mains, which allow for domestic use only. No consideration is given to yard irrigation or even fire protection. Ability to expand these systems beyond the original approved development without incurring significant costs or degrading system performance is very limited. Until such time as the useful life of these distribution systems is exhausted, it is cost prohibitive to both developers and consumers to replace them with larger mains so that these small systems can be joined together. Until then there are systems existing in close proximity to one another and more are being planned. Coincidentally, another community water system is being planned for an 83-acre tract adjacent to Crimnsonview. It is currently in the borough platting process.

*(As a matter of Record) This homeowners association is comprised of 46 owners and one well lot. It has been forced into a complaint with APUC by a developer who asserts right to the community well and distribution system. The association has 3 legal opinions, which state that the water system is owned by and operated for the existing association. Automatic membership to this association for the developer or any future buyers of his property is in dispute. It is not the intent of this homeowners association to try the existing complaint in this forum. Per the APUC Staff Advocacy Group, there are many issues that warrant further investigation in this case.*

*Should questions or concerns arise over this case as it has been addressed by the developers attorney or lobbyist CVOA would be happy to furnish any information or material requested. Additional information can be obtained through Nelson Elliott, CVOA Director at (907) 746-0775.)*

**DONALD L. MELLISH  
2200 CLIFF COURT  
ANCHORAGE, ALASKA 99517**

**April 24, 1999**

**Chairman Bill Hudson  
Utility Restructuring Committee  
State Capitol, Room 108  
Juneau, Alaska 99801-1182**

**Re: House Bill 185**

**Dear Chairman Hudson:**

I am writing to express my opposition to House Bill 185. This legislation would eliminate the APUC's authority to resolve a complaint against the Crimsonview Home Owners Assn which has been pending since last fall and which has been fully briefed and is awaiting the APUC's decision.

My son and I have been trying to develop the property located in the Crimsonview Subdivision and have been thwarted at every turn by the Crimsonview Owners Association. My son purchased this property located within, platted within as part of the Crimsonview Subdivision. However, the Crimsonview Owners Assn has refused to provide our property with water and has been using its control of the Crimsonview Subdivision's water distribution system to prevent our development of the remaining lots in the subdivision. They have ignored the Mat-Su Boro approval of the plat, they have ignored the approval of the Alaska Department of Environmental & Conservation's approval of the plan for upgrades to the system which I agreed to pay for and finally they ignored the opinion of their own engineer which they employed to review the plan submitted to ADEC. I negotiated in good faith with the Assn for some months and then it became apparent, after agreeing to further demands that the objective really was to stop development of Phase II of the subdivision.

As a result, we filed a complaint against the Crimsonview Owners Association with the APUC and requested a ruling as to whether or not the Crimsonview Owners Assn operating a Public Water System can refuse service. This decision to deny service is to pass up an increase in their income of 47% at no capital cost to the Assn ! This complaint has been pending since early last fall, we have already expended significant time and dollars before the APUC, and now we are only awaiting for the APUC to issue a decision. In view of this investment of public and private resources, it would not be fair for the Alaska Legislature to completely eliminate the APUC's authority to resolve this pending complaint. Moreover, based on our experience with the Crimsonview Owners Assn, I believe

that the APUC should retain its authority to resolve similar disputes in the future. We have complied with all of the laws and regulations of the State of Alaska and the Mat-Su Boro. The Crimsonview Owners Assn. have the opinion that they are not bound by any laws or regulation. Without the regulation of the APUC then someone in our predicament would have to file a lawsuit in the courts. It would appear to me that to have a regulatory body who is already established to deal with utility matters would be the proper place for settling such disputes.

Thank you for the opportunity to provide you with my comments. Please contact me if you have any question or need any additional information

Sincerely,



Donald Mellish

Attached:

Arial photo of the subdivision when purchased by Robert Mellish  
Overlaid with a transparency of Phase I lots  
Overlaid bordered in yellow Phase II

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES





**BIRCH, HORTON, BITTNER and CHEROT**  
1127 West 7th Avenue  
Anchorage, Alaska 99501-3563  
(907) 263-7229, Fax (907) 276-2822

**TELECOPY TRANSMITTAL COVER SHEET**

**TO:** Representative Bill Hudson

**FROM:** Rebecca C. Paull

**DATE/TIME:** April 20, 1999

**OUR FILE NO.:** 505,640.1

**SEND TO FAX NUMBER:** (907) 465-2273

**NUMBER OF PAGES (INCLUDING THIS COVER SHEET):** 9

**COMMENTS:** See attached 4/20/99 letter regarding HB 185.

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (907) 263-7229 AS SOON AS POSSIBLE.**

**Arle Dehut**  
**Secretary**

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April 20, 1999

Representative Bill Hudson  
Chairman, Utility Restructuring Committee  
State Capital, Room 108  
Juneau, AK 99801-1182

VIA FACSIMILE  
(907) 465-2273

Re: House Bill 185, An Act Exempting Certain Small Water Utilities From Regulation by the Alaska Public Utilities Commission

Dear Chairman Hudson:

Our firm represents Robert Mellish in his Complaint against The Crimsonview Owners Association ("Association") before the Alaska Public Utilities Commission ("APUC"). The purpose of this letter is to present Mr. Mellish's position regarding HB 185, "An Act Exempting Certain Small Water Utilities From Regulation by the Alaska Public Utilities Commission," sponsored by Representative Ogan.

Over the past two years Mr. Mellish has attempted to work with the Association regarding his development of Phase II of the Crimsonview Subdivision. The Association has been both unreasonable and unfair in its demands of Mr. Mellish. The Association is located in the Matanuska-Susitna Borough. If HB 185 passes, Mr. Mellish's frustrating and time-consuming experiences will become routine for other developers. As discussed below, we believe HB 185 is both anti-consumer and anti-development.

The Crimsonview Subdivision was designed and platted to be developed in two phases. The community well and the integrated looped water distribution system were originally designed and installed to serve both Phase I and Phase II. Phase I was successfully developed in the mid-'80s. Robert Mellish owns and desires to develop Phase II. However, the Association is preventing him from developing Phase II. As owner of the community well, the Association must sign an "Owner's Statement" form authorizing the Alaska Department of Environmental Conservation to review Mr. Mellish's plans to provide drinking water to Phase II through the existing looped water distribution system. Once the plans are approved, all that is necessary to actually provide water service to Phase II is the installation of a 2 horse power booster pump and "the turning of a valve." The Association has used its control of the system to prevent further development in its neighborhood and to unjustly extract payments and facilities from Mr. Mellish.

**BIRCH, HORTON, BITTNER AND CHEROT**  
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Representative Bill Hudson  
April 20, 1999  
Page 2

The Association's unreasonable actions forced Mr. Mellish to file a complaint with the APUC. Mr. Mellish is entitled to service from the Association because he is a member of the Association and because the Association is a public utility.<sup>1</sup> Mr. Mellish is awaiting an APUC decision on whether the Association is a public utility with an obligation to serve Mr. Mellish under the same terms and conditions as it provides service to the other members in the subdivision.

HB 185 amends AS 42.05.711(e) to read:

(e) not withstanding any other provisions of this chapter, any electric, water, or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless the subscriber petition the commission fro regulation under AS 42.05.712(h).

When I contacted Representative Ogan's office and inquired into the impetus for the legislation, I was informed that Representative Ogan saw no difference between a small electric or telephone utility and a small water utility. On the surface they appear to be the same. However, water is essential to a person's survival while electricity and telephone service are not.

It is our position that HB 185 is unnecessary, reactive legislation. Historically, the APUC has not sought out small water utilities such as homeowners associations for regulation. The APUC only becomes involved in the "regulation" of these water utilities when asked to do so by a consumer or a lending institution.<sup>2</sup> Wisely, the APUC retains jurisdiction to resolve disputes in these situations but grants the association a public interest exemption under AS 42.05.711(d)<sup>3</sup> from certification and

---

<sup>1</sup> AS 42.05.990 defines public utility as:

every corporation, public, cooperative or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for furnishing water to the public (10 or more persons) for compensation.

Under established Commission precedent, the Association is a public utility.

<sup>2</sup> See, e.g., *Re Country Lane Estate Subdivision Property Owners Association, Inc.*, 11 APUC 238 (1991) (case enclosed).

<sup>3</sup> AS 42.05.711(d) provides "the commission may exempt a utility, class of utilities, or a utility service from all or a portion of this chapter if the commission finds that the exemption is in the public interest."

**BIRCH, HORTON, BITTNER AND CHEROT**  
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Representative Bill Hudson  
April 20, 1999  
Page 3

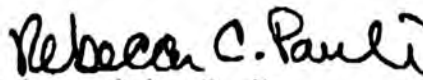
rate regulation. By providing for the public interest exemption, prior legislatures and the APUC wisely recognize that consumers must have an easily accessible and friendly forum for disputes. Perhaps the most important function of the APUC is to provide a forum where an aggrieved or potential consumer may be heard. If HB 185 became law, the only recourse for an aggrieved or potential consumer would be the court system. The APUC is a much friendlier and accessible forum than the legal system.

The impact of HB 185 on potential developments such as Mr. Mellish's must be considered. Here, we have a case where all engineers (including the Association's) agree there is an adequate water supply and an adequate water distribution system ready to provide water service with the turn of a valve. However, a few individuals who control the Association do not want further development in their neighborhood and are effectively blocking responsible development by refusing to provide water via the existing facilities. If HB 185 passes, it is possible that Mr. Mellish will have to dedicate several lots to a well to draw from the same aquifer as the existing well and install his own distribution system, thereby increasing the cost of the development. This is contrary to the public interest and this is why the APUC regularly amends water utilities service areas to accommodate new developments when it makes economical and engineering sense to do so. House Bill 185 appears to be a piece of reactionary legislation, which is both anti-consumer and anti-development. Accordingly, it should not pass.

Thank you for your prompt attention to this matter. If you have any questions or would like to discuss this matter in further detail, please do not hesitate to contact me.

Very Truly Yours,

BIRCH, HORTON, BITTNER and CHEROT

  
Rebecca Cohen Pauli

RCP:and

Enclosures: *Re Country Lane Estate Subdivision*

cc: Robert Mellish (w/o encls.)  
Don Mellish (w/o encls.)

*Melish  
Crimsonview*

# ALASKA PUBLIC UTILITIES COMMISSION — 11 APUC

approved as modified herein.

2. No later than August 15, 1991, Alascom, Inc., shall submit revised tariff sheets incorporating the tariff modifications approved herein.

DATED AND EFFECTIVE at Anchorage, Alaska, this 26th day of July, 1991.

## FOOTNOTES

<sup>1</sup>The Commission understands that no charge for BCF will be applied to those customers already receiving the service. The Commission is in agreement that no charge should be applied in those cases.

## Re Country Lane Estates Subdivision Property Owners' Association, Inc.

U-90-65  
Order No. 1

Alaska Public Utilities Commission  
July 30, 1991

ORDER declaring a small residential subdivision's sewer operations to be a public utility, but exempting the utility from regulation by the commission.

1. PUBLIC UTILITIES, § 112 — Regulatory status — Sewer service — Provided by a homeowners' association — Factors.

(ALASKA) Where a homeowners' association was providing sewer service to more than 10 customers, and owned, operated, and managed associated sewer plant, the association was found to fall within the definition of a public utility subject to commission regulation.  
p. 239.

2. CERTIFICATES, § 26 — When required — Sewer service — Public utility status as a factor.  
(ALASKA) Any entity providing sewer

service that has been declared a public utility is subject to the commission's certification requirements.  
p. 239.

3. PUBLIC UTILITIES, § 51 — Regulatory status — Sewer service — Provided by a homeowners' association — Exemptions — Factors.

(ALASKA) Although a homeowners' association providing sewer service had been declared a public utility, it was exempted from regulation by the commission where (1) its operations were small and limited to the 44 lots in the subdivision; (2) by virtue of association membership, homeowners had significant control over operations; and (3) the costs of regulation would be disproportionate to the utility's size and revenues.  
p. 240.

4. PUBLIC UTILITIES, § 51 — Regulatory status — Sewer service — Provided by a homeowners' association — Exemptions — Conditions.

(ALASKA) The exemption from commission regulation granted a homeowners' association providing sewer service was conditioned on the association never serving more than 44 customers; also, the exemption could be rescinded should a petition requesting such and signed by at least 25% of the association's customers be filed with the commission.  
p. 240.

## Before Commissioners:

Don Schroer, Chairman  
Susan M. Knowles  
Daniel Patrick O'Tierney  
Mark A. Foster  
Donald F. May

## BY THE COMMISSION:

ORDER DECLARING  
ASSOCIATION A UTILITY AND  
GRANTING EXEMPTION FROM  
REGULATION

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## IN — 11 APUC

has been declared a public utility is the commission's certification

**UTILITIES, § 51 — Regulatory status — Service — Provided by a home-owners' association — Exemptions — Factors.**  
 A) Although a homeowners' association providing sewer service had been declared a public utility, it was exempted from the commission where (1) its service was small and limited to the 44 lots in the association; (2) by virtue of association the homeowners had significant contributions; and (3) the costs of regulation were disproportionate to the utility's services.

**UTILITIES, § 51 — Regulatory status — Service — Provided by a home-owners' association — Exemptions — Condi-**

(A) The exemption from commission granted a homeowners' association providing sewer service was conditioned on the association never serving more than 44 lots. Also, the exemption could be terminated if the association could not petition requesting such and at least 75% of the association's customers with the commission.

Commissioners:

Director, Chairman  
 I. Knowles  
 Patrick O'Tierney  
 Foster  
 F. May

COMMISSION:

**ORDER DECLARING  
 AN ASSOCIATION A UTILITY AND  
 DENYING EXEMPTION FROM  
 REGULATION**

## ALASKA PUBLIC UTILITIES COMMISSION — 11 APUC

## Introduction

Security Pacific Bank, Alaska (the Bank), on July 2, 1990, requested the Commission's declaration concerning the regulatory status of Country Lane Estates Subdivision Property Owners' Association, Inc. (the Association). The Bank's Request for Declaration, as confirmed by the Commission Staff's (Staff) subsequent inquiry and the May 8, 1991, letter from the Association, which is attached hereto as an Appendix, indicates that the Bank is currently the beneficial owner of at least one lot in Country Lane Estates and a member of the Association. Prior to filing its Request for Declaration on July 2, 1990, the Bank was beneficial owner of the majority of lots in Country Lane Estates and in effect controlled the Association.

The Association is a non-profit corporation whose members are comprised of the beneficial owners of 44 lots in Country Lane Estates. Each member of the Association is entitled to one vote for each lot held as beneficial owner. As set forth by its Articles of Incorporation and Bylaws, the purpose of the Association is, among other things, "to own and provide for maintenance and operation of a sewer drain field." The Association provides a common sewage drain system and leach field for the use of all of its members. There are 42 residences receiving sewage disposal services at this time. If sewer service is extended to Country Lane Estates by the Municipality of Anchorage d/b/a Anchorage Water and Wastewater Utility (AWWU), the Association may abandon the leach field and connect its system to the AWWU sewer system. The Association's board of directors determines the monthly charge and that portion of the charge collected for the sewer system is to be disbursed only in payment for expenses of the sewer system. Currently, the entire monthly charge is \$35, including all costs relating to the Association's operation.

The Bank's Request for Declaration further states that Alaska Housing Finance Corporation has refused to provide financing for lots within Country Lane Estates because the Asso-

ciation may constitute a public utility through its provision of sewer service. The Request for Declaration asks that the Commission determine that the Association is not a public utility or, alternatively, that the Commission exempt the Association from regulation pursuant to AS 42.05.711(d). The Association did not oppose the Bank's Request for Declaration; however, neither did the Association desire to join in that petition or participate in proceedings before the Commission. (Association Letter, May 8, 1991.)<sup>1</sup>

## Discussion

Pursuant to AS 42.05.990(4) a "public utility" or "utility" is specifically defined to include "every corporation whether public, cooperative, or otherwise, . . . that owns, operates, manages, or controls any plant, pipeline, or system for . . . furnishing water, steam, or sewer service to the public for compensation . . ." The term "public" is further defined under AS 42.05.990(3)(A) to mean "any group of 10 or more customers that purchase the service or commodity furnished by a public utility . . ."

[1, 2] It is apparent to the Commission, under the facts presented by this case, that the Association is a public utility. The Association is a corporation that owns, operates, manages, and controls a system for furnishing sewer service to 10 or more customers for compensation. As a public utility, the Association is subject to the Commission's full regulatory authority set forth in AS 42.05.141.<sup>2</sup> In the absence of an exemption, a public utility which provides sewer service is subject to the Commission's certification requirements (AS 42.05.221 — 281) and to the Commission's economic regulation. Presently, the Association has not obtained or otherwise qualified for any such regulatory exemption.

Upon determining that the Association is a public utility subject to the Commission's full regulatory authority, the Commission has proceeded to evaluate the Bank's alternative request that the Association be granted an exemption from regulation.<sup>3</sup> Pursuant to AS 42.05.711(d), "[t]he Commission may exempt a

## ALASKA PUBLIC UTILITIES COMMISSION — 11 APUC

utility, a class of utilities, or a utility service from all or part of this chapter if the Commission finds that the exemption is in the public interest."

[3] The Commission has considered the facts and circumstances of the sewer public utility service being provided by the Association and has determined that it would be in the public interest to grant the Association a complete exemption from regulation, subject to certain conditions. In this case the Commission is persuaded that the customers are provided significant protections by virtue of their right to control management and operation of utility services through Association membership. As set forth in the Association's Articles of Incorporation and Bylaws, each customer/member has the right to vote for election of the Association's board of directors and officers, who are selected from among the customers/members. Further, given the relatively small size of this utility, limited to 44 customers, even a small number of customers/members may have a significant voice in the utility's operations. The Commission also notes that the ownership of the properties which qualify individuals for customer/member status are now sufficiently dispersed that no one owner controls the Association.<sup>4</sup>

In addition to the ownership and governance of the Association supporting an exemption, the cost of regulation for this utility would be significant in relation to its size, operating budget, and the benefits to be achieved from regulation. Here, the utility's sewer service is limited to 44 customers/members, and the total monthly charge, including other Association expenses as well, is only \$35. The cost burden on the Association just for the certification process could well exceed several months of its gross revenues.

At the same time, the benefits to be conferred upon the customers by extensive regulation are speculative, at best. In the case of small homeowner associations such as this Association, where membership runs appurtenant to the customer/member's ownership in a parcel of land, there is but one source for payment of expenses, whether they be utility-related or not.

In such cases it appears to the Commission that its exercise of rate regulation for utility services would likely result in little more than a change in allocation of total charges between "utility" and "other" categories, with little or no overall real savings accruing to the customers/members. The Commission also notes that the Association has been essentially self-regulated since its inception and appears to be providing satisfactory sewer service at a reasonable cost to its customers/members.

The only concern raised by the exemption of the Association is the current status of the septic plant facilities. As the Association noted in its letter of May 8, 1991, there have been a number of problems with the sewer system primarily associated with a failure to construct or repair the system according to plans and specifications. Correspondence indicates, however, that the Bank has agreed to assume, at least in part, financial responsibility for making the repairs necessary to bring the facilities into conformance with operational and regulatory standards. The problems described by the Association would generally lead the Commission to decide against an exemption, at least until it could be demonstrated that they had been resolved. In this case, however, there is documentary evidence that the Association has been aware of the situation and has been, and is, working diligently and competently to bring the matter to resolution. Further, it is the Commission's understanding that the required corrections will be completed by the end of the 1991 construction season. For these reasons the Commission is not persuaded that its intervention would assure a better, more timely, or less costly result. Therefore, under the unique circumstances of this case the plant problem does not present a necessary or sufficient basis for denying the exemption request.

#### Conclusion

[4] Based on the foregoing, the Commission has determined that the Association is a sewer public utility under AS 42.05 but that it is in the public interest to exempt the Association from regulation pursuant to AS 42.05.711(d), subject, however, to two conditions. First, and

## - 11 APUC

appears to the Commission that regulation for utility services is little more than a change in charges between "utility" services, with little or no overall impact on the rates. The Commission also notes that the Association has been essentially inactive since its inception and appears to be providing sewer service at a rate that is not competitive with other customers/members.

Concern raised by the exemption is the current status of the system. As the Association noted in its response dated July 8, 1991, there have been problems with the sewer system primarily with a failure to construct or maintain the system according to plans and correspondence indicates, however, that the Association has agreed to assume, at least in part, the financial responsibility for making the system operational and regulatory compliance described by the Association. The Commission to the exemption, at least until it is determined that they had been operating the system, however, there is documentation that the Association has been operating and has been, and is, operating and competently to bring the system into operation. Further, it is the Commission's understanding that the required work is completed by the end of the season. For these reasons the Commission is persuaded that its intervention is a better, more timely, or less costly, under the unique circumstances, if the plant problem does not exist on a sufficient basis for intervention request.

## Conclusion

In the foregoing, the Commission has concluded that the Association is a public utility under AS 42.05 but that it is not exempt from the Association pursuant to AS 42.05.711(d), subject to two conditions. First, and

implicit in the Commission's rationale for exemption, the utility is limited to providing service to the 44 lots which are entitled to membership in the Association. Second, this public interest determination will be reevaluated if the Commission receives a petition for regulation signed by at least 25 percent of the customers/members of the Association. This condition utilizes a mechanism recognized by the Legislature in other exemptions to provide the customers/members of the Association access to Commission oversight if self-regulation becomes ineffective.

## ORDER

## THE COMMISSION FURTHER ORDERS:

1. Country Lane Estates Subdivision Property Owners' Association, Inc., is a public utility which furnishes sewer service pursuant to AS 42.05 and is subject to the regulatory authority of the Commission.

2. Country Lane Estates Subdivision Property Owners' Association, Inc., is granted an exemption from AS 42.05 by the Commission pursuant to AS 42.05.711(d), subject to two conditions:

a. Country Lane Estates Subdivision Property Owners' Association, Inc., is limited to serving the 44 lots which are entitled to membership in the Association.

b. The exemption shall be reevaluated if a petition for regulation under AS 42.05 is submitted by at least 25 percent of the customers/members of the Country Lane Estates Subdivision Property Owners' Association, Inc.

DATED AND EFFECTIVE at Anchorage, Alaska, this 30th day of July, 1991.

## FOOTNOTES

<sup>1</sup>At the Association's meeting on December 5, 1990, the members passed a motion agreeing "that our sewer system is a private system but that we, the Homeowners, were not the originators of suggesting that we are a Private System."

<sup>2</sup>Legal authorities advanced by the Bank in support of a finding that the Association is not a public

utility are found by the Commission to be not persuasive. In fact, the case primarily relied upon by the Bank, *Re Utility Status of Certain Water Supply Associations*, 91 PUR3d 126 (Iowa State Com. Comm'n, October 7, 1971) held that rural cooperative-type water systems constitute public utilities. In that case the Iowa commission found that the subject associations were formed by the rural residents who comprised the association's membership. 91 PUR3d at 127. Customers were required to be association members in order to receive water service. *Id.* The association rules also provided that following completion of the system, requests for service from potential customers may be denied by the association's board of directors. *Id.* The Iowa commission reinforced this limited access concept somewhat in stating that these rural cooperative-type water associations would not necessarily be required to accept all future requests for new service, even though they were public utilities subject to commission jurisdiction. 91 PUR3d at 132.

Other courts likewise have supported a finding of public utility status in this case. In *State v. Mackie*, 338 S.E.2d 888 (N.C. App. 1986), the court reviewed the North Carolina Utilities Commission's order that a small water and sewer system constituted a "public utility" even where the utility had not offered to extend services to residences other than those already connected to the system. 338 S.E.2d at 893. The *Mackie* court noted that "although a service may be offered to only a definable class . . . it still may be considered an offering of service to the 'public' within the meaning of the regulatory statutes." 338 S.E.2d at 893-94. Like the present case, the utility in *Mackie* "willingly provided service to new customers who moved into homes already connected to facilities." 338 S.E.2d at 894.

The Florida Supreme Court in *Fletcher Properties, Inc. v. Florida Public Service Commission*, 356 So.2d 289 (Fla. 1978), held an entity to be a public utility where it provided water and sewer service through a master meter system from another public utility, owned the lines and lift stations from the master meter to end-user, and merely recouped the cost of water and sewer service from various end-users. 356 So.2d at 290-1.

Moreover, the Uniform Common Interest Ownership Act (UCIOA) (AS 34.06) contains no explicit reference to the provision of "utility" services for the benefit of common owners. It thus appears that the Alaska Legislature did not intend by this more recent enactment to displace the Commission's regulatory authority over sewer systems such as presented by this case. Further, as reported to Staff by the Connecticut Assistant Attorney General, the Connecticut

## ALASKA PUBLIC UTILITIES COMMISSION — 11 APUC

Public Utility Control Department (CPUC) found itself in the same quandary regarding this matter. In response to an apparent belief that owner associations under Connecticut's UCIOA were subject to the CPUC's authority, the Connecticut legislature in 1987 amended the CPUC definition of "water company" to state that "(a) water company does not include homeowners, condominium associations providing water only to their members and homeowners associations providing water to customers at least eighty percent of whom are members of such associations." Conn. Gen. Stat. § 16-1(a)(10).

<sup>3</sup>As a preliminary matter, while the Bank has standing to request a declaration as to the Association's status as a public utility, the Commission notes that the Bank may not have standing *per se* to request that the Association be exempt from regulation. However, in the instant case, the latter request has effectively been endorsed by the Association in its vote to be designated as a "private" rather than "public" utility and its explicit decision not to assume responsibility to be the moving party for acquiring such a designation. Under these circumstances to require the Association to file essentially duplicative legal pleadings would not be constructive. Additionally, and alternatively, the Commission has the option to grant exemptions on its own motion.

The Bank no longer owns the majority of the lots and, thus, does not have a dominant position in the Association relative to other lot owners.

### Re Providing and Charging for Statewide Directory Assistance

R-89-2  
Order No. 9

Re Alascom, Inc.  
U-91-30  
Order No. 2

Re Interior Telephone Company  
U-91-65  
Order No. 1

Re GTE Alaska Inc.  
U-91-66  
Order No. 1

Re Telephone Utilities of Alaska, Inc.  
U-91-67  
Order No. 1

Re Telephone Utilities of the Northland, Inc.  
U-91-68  
Order No. 1

Alaska Public Utilities Commission  
August 1, 1991

ORDER setting an interim per-message rate of 40 cents for local directory assistance (DA) calls, to be assessed only after a subscriber has surpassed a free call allowance of four local DA calls per month. Also, the charge is held not to be applicable to disabled or pay telephone customers.

1. RATES, § 553 — Telephone rate design — Information service — Directory assistance — Local information — Cost components — Billing and collection.

[ALASKA] Per-message charges for local telephone directory assistance calls should not include any component for billing and collection services, since such costs are already recovered through basic local rates.  
p. 244.

2. RATES, § 553 — Telephone rate design — Information service — Directory assistance — Local information — Monthly allowances — Exemptions.

[ALASKA] Per-message charges for local telephone directory assistance (DA) calls should be assessed only after a subscriber has surpassed a free call allowance of four local DA calls per month, while disabled and pay telephone users should be exempted from the charges entirely.  
p. 244.

3. RATES, § 553 — Telephone rate design — Information service — Directory assistance

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April 27, 1999

Representative Bill Hudson  
 Chairman  
 Utility Restructuring Committee  
 State Capitol, Room 108  
 Juneau, Alaska 99811-1182

Re: House Bill 185

Dear Chairman Hudson:

Enclosed please find a written copy of my testimony during last week's hearing on H.B. 185.

Thank you for the opportunity to provide you with my comments. Please don't hesitate to contact me if you have any questions or need any additional information.

Sincerely,



Rebecca C. Pauli

Enclosure

cc: Chairman Sam Cotten (w/o enc)  
 Commissioner Tim Cook, Manager of Docket U-98-151 (w/o enc)  
 Bob Lohr, Executive Director (w/o enc)  
 Bob Mahoney, Counsel for Crimsonview  
 Owners Association (w/o enc)

## **Testimony of Rebecca Pauli**

### **House Bill 185**

My name is Rebecca Cohen Pauli and I am an attorney with the Law firm of Birch, Horton, Bittner and Cherot. I am testifying here today on behalf of Robert Mellish. Our firm represents Robert Mellish in his Complaint against The Crimsonview Owners Association ("Association") before the Alaska Public Utilities Commission ("APUC"). We would like to thank the Committee for providing this opportunity to testify against H.B. 185, "An Act Exempting Certain Small Water Utilities From Regulation by the Alaska Public Utilities Commission".

We believe H.B. 185 was introduced in an attempt to eliminate the APUC's authority to resolve Mr. Mellish's complaint against the Association. Mr. Mellish's property is located in the Crimsonview Subdivision and the complaint is Mr. Mellish's final effort to obtain water service from the community well that serves the Crimsonview Subdivision. This is not a case of a developer seeking to obtain water service from a neighboring subdivision but rather is a case of a developer seeking to obtain water service for property located within a subdivision from a community well which was designed to service the entire subdivision and has served the entire subdivision up until now.

Over the past two years, Mr. Mellish has attempted to work with the Association regarding his development of Phase II of the Crimsonview Subdivision. The Association has been both unreasonable and unfair in its demands of Mr. Mellish. If H.B. 185 passes, Mr. Mellish's frustrating and time-consuming experiences will become routine for other developers. As discussed below, we believe H.B. 185 is both anti-consumer and anti-development.

My testimony will cover three areas. First, I will provide a brief background which will provide you with an overview of Mr. Mellish's experiences. This overview will provide insight into what the future will hold for developers and the individual homeowner seeking water should small water utilities be completely exempt from the APUC's jurisdiction. Second, I will address why we believe H.B. 185 is unnecessary reactive legislation that will have an unintended negative impact. And third, I will propose a solution.

#### **I. Mr. Mellish's Attempts to Develop Phase II of the Crimsonview Subdivision**

Following is a summary of the undisputed facts as admitted by the Association in their Answer to Robert Mellish's Complaint. The Crimsonview Subdivision was designed and platted to be developed in two phases. Phase I consists of 47 lots and Phase II consists of 22 lots. The community well and the integrated looped water distribution system were originally designed and installed to serve both Phase I and Phase II. This intent is expressed in the notes to the official plat of the subdivision.

Note 2 provides:

Lot 11 of Block 1, Phase I of this plat is the sight of the community well system, and will be exclusively used as such until the time of connection of this subdivision's designed water system to a possible future city water system at which time the community well will be abandoned.

- The community well and water distribution were installed in 1985. It is noteworthy that the water distribution system to serve both Phases I and Phase II was installed at the same time is an interconnected looped distribution system.
- In February 1997, the title to the lot in Phase I on which the well house is located was conveyed to the Association. Since that time the Association has operated the water system, asserted ownership, and charged Phase I owners an initial hook up fee and a monthly water assessment.
- When Mr. Mellish was ready to develop Phase II, he wanted to do it right. He hired the engineering firm that originally designed the water system to determine whether the existing system's distribution facilities were adequately sized to serve the lots in Phase II. The firm concluded they were, however, the additional homes in Phase II required a two horsepower pump to ensure adequate pressure. It is undisputed that the existing distribution system is adequately sized to serve all 68 lots. It is also undisputed that the aquifer is more than adequate to supply the entire subdivision.
- A second well makes no sense because it would be relatively close to the first well, would draw from the same aquifer, and would require changes to the existing distribution system to ensure against backflow from the second well.
- In an abundance of caution, Mr. Mellish hired a second engineering firm to review the original engineering firm's conclusion that the existing system's design was still suitable to serve both Phase I and II. The Second firm, Alaska Rim, confirmed the existing system was appropriate. Upon two engineers assurances, Mr. Mellish informed the Association of his plans to develop the 22 lots in Phase II and that this would necessitate the operation of the water distribution system located in Phase II.
- Throughout 1997, Mr Mellish performed extensive work to bring Phase II into compliance with the Matanuska-Susitna Borough subdivision requirement, including upgrades to the water system.
- Mr. Mellish hired Alaska Rim to design the necessary upgrades to the water system and address any Association concerns Regarding lawn watering. Prior to Mr. Mellish's plans for development, the Phase I homeowners has experienced poor water pressure when they would

be watering their lawns during the dry summer months Alaska Rim prepared a proposal to satisfy ADEC requirements and to address the Association's concerns about lawn watering.

- As I previously indicated Alaska Rim found the existing well has a flow yield capability far in excess of the total instantaneous peak demand and total daily demand of all 68 lots, the existing storage capacity is more than adequate to serve all 68 lots and the exiting pump equipment exceeds the minimum capacity requirements for Phase I and is a mere 7 g.p.m. shy of meeting the instantaneous combined peak demand of Phases I and II.
- To address these concerns and to obtain water from his Association, Mr. Mellish offered to purchase and install a 2 horsepower booster pump as recommended by his engineers.. Mr. Mellish also offered to purchase and install a multi function automatic dialer which would monitor the system's operation and immediately report any deviations from the norm. Finally he was willing to establish and fund an escrow account to cover the capital cost of a 10 horsepower pump which would provide more than adequate peak capacity to replace the existing pump if it fails in the future or to increase system capacity.
- On January 28, 1998, the ADEC agreed with Mr. Mellish's plans stating that the well yield and proposed addition of a 2 horsepower pump were adequate to meet the demand requirements of all 68 lots and that scheduled irrigation could be employed to address any concerns regarding lawn watering, the existing storage tanks were adequate to meet the storage requirements of all 68 lots and that a standby power supply is not necessary.
- The ADEC, having made these findings, required a completed "Owner's Statement" from the Association. The Association refused to sign the Owner's Statement and rejected Mr. Mellish's earlier proposal to bear all the costs of the upgrades even though all the lots would benefit.
- The Association counter offered demanding that, in addition to the upgrades and the payment of the higher developed lot rate for Mr. Mellish's undeveloped lots, he must also:
  1. At his own expense, design, supply, install, and warranty a 30,000 gallon water storage facility with attendant plumbing, booster pumps and installation, heating, and water treatment systems;
  2. At his own expense, design supply, install, and warranty a standby power generation system.
  3. Submit all engineering plans for the storage facility and power system for approval by the Association and pay the fees for the Association to hire an engineer to inspect and approve the plans.
  4. Pay the Association an initial assessment fee of 125 per Phase II lots (2750) in order for Mr. Mellish to accept financial responsibility for the expenses the association incurred in operating the Phase I portion of the water system during the previous year.

5. The association and additional administrative fee of 2,000
  6. Maintain the system's water mains that are located in Phase II until 50% of the Phase II lots have occupied dwellings; and
  7. Obtain a certificate to operate from the ADEC.
- In response to these ransom demands of the Association, Mr. Mellish reluctantly agreed to pay the \$4,750 and to maintain the water mains until 50% of the phase II lots had houses on them. Mr. Mellish had buyers for 50% of the lots. Because of the Associations refusal to provide Phase II of the subdivision with water the purchasers canceled.
  - The Association rejected Mr. Mellish's second offer.
  - On April 20, 1998, Mr. Mellish yet again attempted a compromise and made a third offer agreeing to pay the Phase II lots proportionate share of the cost of installing the Association's requested 30,000 gallon storage facility even though such a facility is unnecessary and would involved increased operation and maintenance costs for the entire system. The Association refused to alter its demands and ultimately added to their list of demands paved roads.
  - Mr. Mellish had no recourse other than to seek a legal solution. Because the Association, by its own admission controls a water system for providing water to 10 or more persons for compensation, it is a public utility with an obligation to serve all persons within its service area under equal terms and conditions. Because it is undisputed that the water system was designed and constructed for both Phase I and Phase II to provide drinking water to all 68 lots from a single community well and water distribution system, it is only natural that the public interest would support a finding that the service area be the Crimsonview subdivision (both Phase I and II). This is the least cost means of service. Water service to Phase II is as simple as a turn of a valve. Accordingly, in mid September 1998 Mr. Mellish filed a complaint with the APUC seeking service under equal terms and conditions.
  - The APUC provides a forum that is in many intances quicker that the court system and generally less expensive. In this Case, the APUC scheduled a hearing for April 5, 1999. Because it is undisputed that the Association owns the water system, provides service to 46 households, and receives payments from those households, Mr. Mellish requested the Commission rule that under the statutes the Association is public utility. Mr. Mellish was ready to proceed to hearing. The Association requested the Commission to delay the hearing until after it rules on Mr. Mellish's request.
  - Were it not for the Associations request for further delay, this matter would have proceeded to hearing and a final order would be forthcoming with in the next few weeks. Because of the Association's actions, Mr. Mellish will forgo yet another construction season.

## **II. H.B. 185 is Both Anti-Consumer and Anti-Developer**

- While HB 185 may be backed by good intentions, upon closer examination it becomes apparent as a public policy matter you do not want water service disputes in the court system.
- For these types of matters, the APUC is much more expedient, inexpensive and user friendly than the Court system. The APUC also has the expertise on staff, engineers etc. to determine whether an existing system is adequate or inadequate.
- Historically, the APUC has not sought out small water utilities such as homeowners associations for regulation. The APUC only becomes involved in the "regulation" of these water utilities when asked to do so by a consumer or a lending institution.
- By statute, AS 42.05.990, a homeowner's association that owns, operates, manages or controls a utility system servicing ten or more customer/members for compensation is a "public utility" subject to regulation under AS 42.05. The Commission will grant exemptions to homeowners under AS 42.05.711(d) because it has found that under certain circumstances, full regulation is not in the public interest.
- By providing for the public interest exemption, prior legislatures and the APUC wisely recognize that consumers must have an easily accessible and friendly forum for disputes. Perhaps the most important function of the APUC is to provide a forum where an aggrieved or potential consumer may be heard. If HB 185 became law, the only recourse for an aggrieved or potential consumer would be the court system. The APUC is a much friendlier and accessible forum than the legal system. Unlike the court system, the APUC has as one of its purposes to assist the consumer in obtaining service from a utility. By preventing the consumer from having access to the APUC, HB 185 is anti-consumer.
- HB 185 is anti-development. The impact of HB 185 on potential developments such as Mr. Mellish's must be considered. If it becomes law, you have the ultimate NIMBY ("not in my back yard") weapon. Here, we have a case where all engineers (including the Association's) agree there is an adequate water supply and an adequate water distribution system ready to provide water service with the turn of a valve.
- However, a few individuals who control the Association do not want further development in their neighborhood and are effectively blocking responsible development by refusing to provide water via the existing facilities. If HB 185 passes, it is possible that Mr. Mellish will have to dedicate several lots to a well to draw from the same aquifer as the existing well and modify the existing distribution system, thereby increasing the cost of the development. This is not a case of a developer asking a neighboring subdivision for water, this is a case of homes within the existing subdivision being deprived of water.

### III. Mr. Mellish's Proposed Solution

- H.B. 185 appears to be intended to eliminate the APUC's authority to require homeowners associations to obtain certificates of public convenience and necessity, to impose rate regulation on homeowners associations and to require homeowners associations to pay the Regulatory Cost Charge. However, the APUC does not require homeowners associations to obtain certificates of public convenience, does not subject homeowners associations to rate regulation and does not require homeowners associations to pay the Regulatory Cost Charge. Rather, the APUC merely provides an accessible, user friendly and affordable forum for resolving disputes between homeowners associations and consumers.
- As a result, the Committee should adopt either one of two alternatives. First, the Committee should not pass this legislation to exempt certain small water utilities from regulation. As explained above, the APUC does not require homeowners associations to comply with most provisions in AS 42.05. Rather, the APUC only retains jurisdiction to resolve disputes such as the one between Mr. Mellish and the Association.
- Second, in the alternative, the Committee should add language providing that H.B. 185 will not become effective until January 1, 2000 to clarify that the APUC will have the authority and opportunity to resolve any pending complaints or other matters relating to small water utilities including the complaint filed by the Mellishes. This complaint has been pending since early last fall, the Mellishes have already expended a significant amount of time and resources before the APUC, and they are now only waiting for the APUC to issue a decision. In view of this investment of public and private resources, it would not be fair for the Alaska Legislature to completely and immediately eliminate the APUC's authority to resolve this and other pending complaints.
- Unlike telephone and electric where the homeowner has other means of obtaining service, water utilities maintain the ultimate natural monopoly. In small water utility situations, competition cannot protect the consumer. Therefore, as a public policy matter small water utility systems should not be deregulated leaving the consumer with no protection.

### IV. Conclusion

If HB 185 passes, consumers will be left with little recourse except to resort to the judicial system. A lawsuit is more expensive and takes longer than filing a complaint at the APUC. The Court staff is not statutorily required to protect the public interest. The APUC has the authority to resolve disputes relating to the provision of water service and is less expensive. Moreover, based upon Mr. Mellish's experiences with the Crimsonview Owners Association, without APUC intervention, homeowners associations will be able to frustrate further development in their areas by refusing to provide water service to certain property owners.

Thank you for the opportunity to provide these comments.

**SCOMM**

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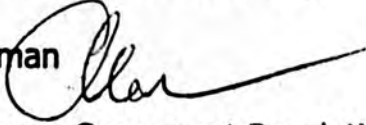
**REPRESENTATIVE ALAN AUSTERMAN** Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

MEMORANDUM

**DATE:** April 22, 1999

**TO:** Representative Bill Hudson, Chair  
House Special Committee on Utility Restructuring

**FROM:** Representative Alan Austerman 

**SUBJ:** Request for Scheduling - House Concurrent Resolution 10

I respectfully request the House Special Committee on Utility Restructuring schedule a hearing for HCR 10 at your earliest convenience.

The adoption of this resolution requests the Alaska Energy Authority to divest itself of its interest in the Four Dam Pool power projects.

The referral packet is attached for your information.

Please contact Cliff Stone of my staff at 6588 as needed.

Thank you for your consideration.



**REPRESENTATIVE ALAN AUSTERMAN** Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

**HOUSE CONCURRENT RESOLUTION NO. 10**  
**SPONSOR STATEMENT**

The State of Alaska acquired land and constructed four hydroelectric facilities in the mid 1980's. These projects are commonly referred to as the Four Dam Pool. The Alaska Energy Authority (AEA) owns these projects and is a party to a 40-year power sales agreement with local utilities serving the communities of Copper Center, Glennallen, Ketchikan, Kodiak, Petersburg, Port Lions, Valdez, and Wrangell.

Through AEA, the State of Alaska retains significant liabilities relating to these power projects because of the power sales agreement. These liabilities include responsibility for uninsured facility failure, substandard performance, deficiencies in the reserve and replacement fund and loss of power sales.

The adoption of House Concurrent Resolution 10 will request the AEA to divest itself of its interest in the Four Dam Pool.

This will be accomplished by preparing a request for proposals (RFP's) as soon as practicable for the sale of the power projects, open to the electric utilities in the communities served by the Four Dam Pool or to a consortium of electric utilities in those communities.

The terms of the RFP's will assure that the state receives a fair market value for the power projects and that the power projects will continue to provide adequate power to the respective communities.

## **RISK ASSESSMENT OF THE FOUR DAM POOL HYDROELECTRIC PROJECTS**

### **SUMMARY**

**Harza Engineering Company has carried out an assessment of the possible costs associated with the continued operation of the hydroelectric projects comprising the "Four Dam Pool." The projects are:**

- **Swan Lake Project;**
- **Solomon Gulch Project;**
- **Terror Lake Project; and**
- **Tyee Lake Project.**

**The following were carried out for each project:**

- 1. A condition assessment was performed to identify the needs for project improvements and associated costs.**
- 2. A schedule for replacements due to normal wear and tear was identified, along with associated costs.**
- 3. An assessment of the energy generation potential was made.**
- 4. An analysis of the risks was carried out, probable repair costs and outage duration were identified; the likely range was identified.**
- 5. Operation and maintenance costs were examined.**

**The costs were summarized to arrive at a composite annual cost in five-year increments over a 35-year future planning horizon (1996 to 2030).**

## Condition Assessment

As a result of the Condition Assessment, a number of items were identified at each project that merit attention in the future. In accordance with the Scope of Work, these items are classified as follows:

- **Deficient Design** - defined as a condition that does not meet the minimum generally accepted standards for safety and reliability. Only one item, the Tyee Lake Project transmission line, was determined to be deficient in design.
- **Deferred Maintenance** - defined as a condition where either regularly scheduled maintenance or maintenance to repair a damaged structure or malfunctioning component was not carried out in a timely manner. Only a few items of deferred maintenance were found.
- **Other Project Improvements** - project structures or equipment planned for replacement for reasons including obsolescence, unavailability of spare parts, premature failure, or changing operating conditions, equipment and structural repairs or modifications that have not been deferred, but are now required to correct a malfunction, or to improve functionality or safety. Other project improvements may also involve studies to address operational or design issues. In some cases, the implementation of these items is discretionary in nature.

summary of the condition of each plant is presented below.

### Swan Lake

The Swan Lake Project is considered to be in excellent condition, with only one item of referred maintenance and several needed replacements and project improvement items. A major deferred maintenance item involves the need to paint the transformers at the Bailey substation and replace corroded cooling radiators. The major items of replacement involve The generator excitation system and replacement of the battery system. Present plans and budgets include the replacement of the draft tube bulkhead gates with stainless steel replacements and installation of a new intake gate feeder power supply cable is planned.

A continuing maintenance item is the collection and clearing of trash and debris that accumulates in front of the power intake. The possibility of improving the trash boom and

acquiring a tugboat and log skidder for handling trash and logs should be considered.

A portion of the transmission line is exposed to landslide risk, and is a major potential source of plant outage. A landslide stabilization study should be carried out to identify corrective measures, or alternatively, one to two miles of transmission line could be considered for relocation to eliminate this hazard.

### **Solomon Gulch**

The Solomon Gulch Project is considered to be in good condition. The only major area of concern is corrosion of the penstocks. The rate of corrosion is being monitored. Painting the exterior of the penstocks would be prudent to improve resistance to corrosion and extend the useful life. In general, the penstock is expected to perform satisfactorily for the next 36 years, but there may be a need for repair in local areas where corrosion is advancing at a higher rate.

The penstock valves are reportedly capable of closure against full turbine discharge, but cannot close against the flow that would result in the event of a penstock rupture. In view of the long portion of exposed penstock, and the corrosion problem that is being monitored, it would be prudent to replace the penstock valves to provide protection in the event of penstock rupture. Any deficiencies in the penstock intake bulkheads would need to be corrected to carry out this work.

The major source of plant outage is the 112 mile transmission line. The section between the Meals and P11 substations is particularly susceptible to avalanche outage. Consideration should be given to installation of buried cable in areas susceptible to avalanche outage.

Another source of concern is the settlement of the P11 substation building. Corrective measures should be implemented to prevent interruption of service if the settlement continues.

### **Terror Lake**

The Terror Lake Project is considered to be in generally good condition. However, there are some structural aspects that require maintenance and remedial repair measures. The major aspects that require attention involve the repairing excessive leakage at the intake gate,

performing tunnel repairs, and reinforcing the side channel spillway at the main dam.

The Rolling Rock diversion is believed to be a source of sediment that causes excessive turbine wear. The construction of a sand sluicing system was started, but was not finished because of problems with the contractor. More detailed study should be carried out to determine the most efficient way to resolve the sediment problem. Possible solutions could involve completion of the installation of the sediment discharge system or abandoning Rolling Rock as a diversion, while allowing it to remain in place to function as a surge facility.

The Terror Lake facility was recently affected by a large flood. Some of the project buildings at the powerhouse site are at-risk due to flooding from the Kizhuyak River. Permanent dikes and river training facilities should be designed and constructed.

#### **Tyee Lake**

Except for the transmission line, the Tyee Lake Project is considered to be generally in good condition. Some structural maintenance that is required involves shoring up housing and storage buildings at the site, and reinforcing the exposed rock face that forms the back wall of the powerhouse. An inspection of the unlined power tunnel by use of a remotely operated vehicle to evaluate its condition would be prudent.

The transmission line is the source of many outages. The transmission line is considered to be deficient in design since ground clearance criteria is not met under loading conditions that could have been reasonably foreseen at the time of design. Studies are underway (by others) to address corrective measures.

Electrical controls to the gate house for remote operation would improve operation and safety in the event of an emergency situation. Dredging of the harbor will improve access.

## **Energy Generation Potential**

Analysis of the energy generation potential results in the following estimates of average annual generation potential:

|                         |                    |
|-------------------------|--------------------|
| Swan Lake Project -     | 70.1 GWh per year  |
| Solomon Gulch Project - | 52.9 GWh per year  |
| Terror Lake Project -   | 117.0 GWh per year |
| Tyee Lake Project -     | 109.0 GWh per year |
| Four Dam Pool Total -   | 349.1 GWh per year |

The output of Tyee Lake is limited by the electrical demand in the areas served by the project. The proposed intertie with the Swan Lake Project would help better utilize the generation potential of the Tyee Project.

The Terror Lake powerhouse was designed to accommodate the addition of a third unit. A preliminary cost analysis indicates that the addition of a third 12.5-MVA generating unit at Terror Lake warrants additional feasibility level investigation. The third unit will not provide additional energy, but will provide additional peaking capacity that is needed in the system.

Additional expansion options at Tyee and Swan Lake projects do not appear warranted at this time. At Tyee, the operating capabilities are not fully utilized because of limited electrical demand. At Swan, increasing the storage or generation capacity appears to be expensive in comparison with other possible generation options that may be available, if the need does indeed exist.

The output of Solomon Gulch is limited by the electrical demand in the areas served by the project. An expansion of the storage capacity is not warranted or economically justified based on a detailed study performed in 1992.

## **Risk Related Costs**

The analysis described in the accompanying report included an analysis of cost to repair structures and components that might be damaged due to natural events, accidents and internal failures (an unknown failure due to design, construction or material deficiency). The

Associated outage duration was also investigated. The expected annual risk related cost, and an estimate of the outage that might be associated with the risk-related events, was estimated. The expected annual cost and outage duration is tabulated below:

|                       | Expected Risk-Related<br>Repair Cost<br>(1995 US\$ per year) | Expected Risk-Related<br>Outage Duration<br>(days per year) |
|-----------------------|--------------------------------------------------------------|-------------------------------------------------------------|
| Swan Lake Project     | 159,529                                                      | 13.4                                                        |
| Solomon Gulch Project | 291,464                                                      | 22.8                                                        |
| Terror Lake Project   | 349,308                                                      | 18.9                                                        |
| Tyee Lake Project     | 312,387                                                      | 23.5                                                        |

Figure 1 presents the cumulative distribution curves that result from the analysis, indicating the range of possible costs and outage duration for each project.

Although the graphs in Figure 1 illustrate the range and expected probabilities associated with the anticipated risk related cost and outage duration, there is a possibility of catastrophic events that will result in very large damage cost and a long outage duration. Financial planning for covering uncertain events must consider this possibility.

### **Operation and Maintenance Costs**

For this study, operation and maintenance costs are based on an analysis of historical costs, brought to a common 1995 price level, and averaged. Joint costs are allocated to projects by prorating on the basis of at-site costs in proportion to the at-site costs of all four projects. The estimated average annual operation and maintenance cost for all four projects, excluding fixed charges for debt service and equipment replacement fund contributions, is \$6.8 million at the 1995 price level.

### **Summary of Expected Costs**

Table 1 presents a summary of the expected annual costs, in five year increments, for the 35-year planning horizon considered in this study. All costs are presented in 1995 dollars.

Table 2 presents a summary of the expected costs for various items. Certain items included in Table 2 are based on expenditures to take place in the period 1996 to 2000, and are at 1995 price levels. In addition, Table 2 presents the annual costs on a levelized basis for two separate replacement funds, and the annual risk costs at 1995 price levels.

Table 1

**PROJECTED COSTS**  
(IN US DOLLARS, AT 1985 PRICE LEVELS, FOR FIVE-YEAR PERIODS INDICATED)

| Item                                            | Year              |                   |                   |                   |                   |                   |                   |
|-------------------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
|                                                 | 1985-2000         | 2001-05           | 2006-10           | 2011-15           | 2016-20           | 2021-25           | 2026-30           |
| <b>SWAN LAKE</b>                                |                   |                   |                   |                   |                   |                   |                   |
| Remedial Work for Items of Deficient Design     | -                 | -                 | -                 | -                 | -                 | -                 | -                 |
| Remedial Work for Items of Deferred Maintenance | 20,080            | -                 | -                 | -                 | -                 | -                 | -                 |
| Other Project Improvements                      | 2,067,000         | -                 | -                 | -                 | -                 | -                 | -                 |
| Replacements due to Normal Wear and Tear        | -                 | 264,480           | 2,143,680         | 2,846,600         | 2,676,800         | 4,836,128         | 386,800           |
| Allowances For Replacements After 2030          | 366,368           | 373,352           | 408,848           | 544,896           | 716,832           | 860,463           | 1,201,170         |
| Normal Operation and Maintenance Costs          | 8,643,730         | 8,643,730         | 8,643,730         | 8,643,730         | 8,643,730         | 8,643,730         | 8,643,730         |
| Risk Costs                                      | 787,866           | 787,866           | 787,866           | 787,866           | 787,866           | 787,866           | 787,866           |
| <b>TOTAL - SWAN LAKE</b>                        | <b>8,667,864</b>  | <b>8,689,027</b>  | <b>8,883,620</b>  | <b>10,832,670</b> | <b>16,734,801</b> | <b>13,336,866</b> | <b>9,129,143</b>  |
| <b>SOLOMON GULCH</b>                            |                   |                   |                   |                   |                   |                   |                   |
| Remedial Work for Items of Deficient Design     | -                 | -                 | -                 | -                 | -                 | -                 | -                 |
| Remedial Work for Items of Deferred Maintenance | -                 | -                 | -                 | -                 | -                 | -                 | -                 |
| Other Project Improvements                      | 2,067,708         | -                 | -                 | -                 | -                 | -                 | -                 |
| Replacements due to Normal Wear and Tear        | 87,808            | 208,088           | 2,461,800         | 3,188,808         | 4,371,860         | 13,676,008        | 87,000            |
| Allowances For Replacements After 2030          | 600,867           | 300,067           | 868,208           | 821,648           | 1,170,718         | 1,624,616         | 2,167,868         |
| Normal Operation and Maintenance Costs          | 6,616,088         | 6,616,088         | 6,616,088         | 6,616,088         | 6,616,088         | 6,616,088         | 6,616,088         |
| Risk Costs                                      | 1,467,320         | 1,467,320         | 1,467,320         | 1,467,320         | 1,467,320         | 1,467,320         | 1,467,320         |
| <b>TOTAL - SOLOMON GULCH</b>                    | <b>10,907,137</b> | <b>8,977,437</b>  | <b>11,442,196</b> | <b>12,383,184</b> | <b>13,816,016</b> | <b>23,172,189</b> | <b>10,467,188</b> |
| <b>TERROR LAKE</b>                              |                   |                   |                   |                   |                   |                   |                   |
| Remedial Work for Items of Deficient Design     | -                 | -                 | -                 | -                 | -                 | -                 | -                 |
| Remedial Work for Items of Deferred Maintenance | -                 | -                 | -                 | -                 | -                 | -                 | -                 |
| Other Project Improvements                      | 5,207,000         | -                 | -                 | -                 | -                 | -                 | -                 |
| Replacements due to Normal Wear and Tear        | 786,800           | 885,080           | 3,253,800         | 9,782,436         | 2,471,008         | 1,814,000         | 1,188,800         |
| Allowances For Replacements After 2030          | 245,868           | 245,868           | 287,868           | 622,968           | 1,085,622         | 1,363,830         | 1,766,867         |
| Normal Operation and Maintenance Costs          | 11,911,360        | 11,911,360        | 11,911,360        | 11,911,360        | 11,911,360        | 11,911,360        | 11,911,360        |
| Risk Costs                                      | 1,768,540         | 1,768,540         | 1,768,540         | 1,768,540         | 1,768,540         | 1,768,540         | 1,768,540         |
| <b>TOTAL - TERROR LAKE</b>                      | <b>18,895,678</b> | <b>14,886,878</b> | <b>17,207,978</b> | <b>20,982,914</b> | <b>17,214,842</b> | <b>18,895,450</b> | <b>18,564,577</b> |
| <b>TYEE LAKE</b>                                |                   |                   |                   |                   |                   |                   |                   |
| Remedial Work for Items of Deficient Design     | 17,800,000        | -                 | -                 | -                 | -                 | -                 | -                 |
| Remedial Work for Items of Deferred Maintenance | 583,000           | -                 | -                 | -                 | -                 | -                 | -                 |
| Other Project Improvements                      | 1,868,500         | -                 | -                 | -                 | -                 | -                 | -                 |
| Replacements due to Normal Wear and Tear        | 880,000           | 830,080           | 2,838,080         | 4,840,000         | 20,874,344        | 7,838,408         | 887,500           |
| Allowances For Replacements After 2030          | 408,582           | 405,562           | 988,318           | 780,337           | 1,536,548         | 2,788,928         | 3,163,308         |
| Normal Operation and Maintenance Costs          | 8,780,110         | 8,780,110         | 8,780,110         | 8,780,110         | 8,780,110         | 8,780,110         | 8,780,110         |
| Risk Costs                                      | 1,561,836         | 1,561,836         | 1,561,836         | 1,561,836         | 1,561,836         | 1,561,836         | 1,561,836         |
| <b>TOTAL - TYEE LAKE</b>                        | <b>30,854,137</b> | <b>11,847,637</b> | <b>13,889,391</b> | <b>16,062,363</b> | <b>32,431,837</b> | <b>20,724,379</b> | <b>14,312,653</b> |
| <b>ALL FOUR PROJECTS</b>                        |                   |                   |                   |                   |                   |                   |                   |
| Remedial Work for Items of Deficient Design     | 17,800,000        | -                 | -                 | -                 | -                 | -                 | -                 |
| Remedial Work for Items of Deferred Maintenance | 886,000           | -                 | -                 | -                 | -                 | -                 | -                 |
| Other Project Improvements                      | 11,007,200        | -                 | -                 | -                 | -                 | -                 | -                 |
| Replacements due to Normal Wear and Tear        | 1,732,000         | 2,394,400         | 10,716,880        | 17,847,836        | 28,886,694        | 27,548,638        | 2,446,180         |
| Allowances For Replacements After 2030          | 1,510,846         | 1,524,880         | 1,883,222         | 2,878,835         | 4,808,110         | 6,914,730         | 8,287,841         |
| Normal Operation and Maintenance Costs          | 34,130,388        | 34,130,388        | 34,130,388        | 34,130,388        | 34,130,388        | 34,130,388        | 34,130,388        |
| Risk Costs                                      | 5,563,440         | 5,563,440         | 5,563,440         | 5,563,440         | 5,563,440         | 5,563,440         | 5,563,440         |
| <b>TOTAL - ALL FOUR PROJECTS</b>                | <b>71,548,834</b> | <b>43,812,980</b> | <b>62,213,917</b> | <b>68,221,163</b> | <b>74,189,884</b> | <b>74,189,888</b> | <b>60,467,731</b> |

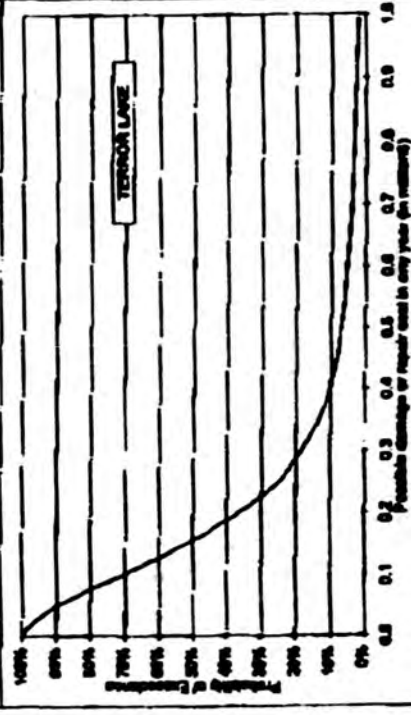
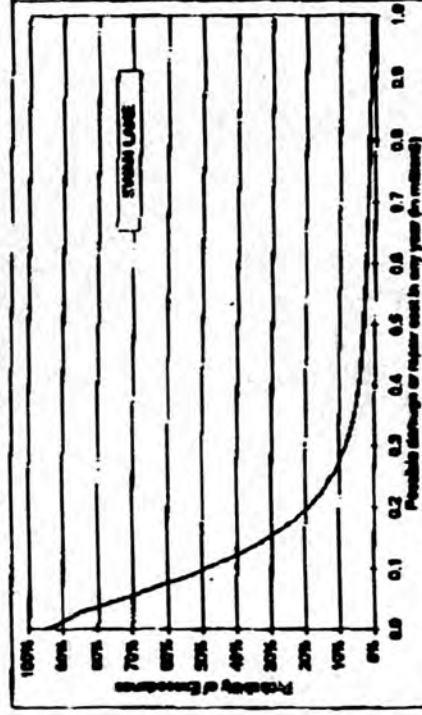
**Table 2**  
**SUMMARY OF EXPECTED COSTS**  
**(IN US DOLLARS, AT 1995 PRICE LEVELS)**

| Item                                                | Project          |                  |                  |                  | Total Per Item    |
|-----------------------------------------------------|------------------|------------------|------------------|------------------|-------------------|
|                                                     | Swan Lake        | Solomon Gulch    | Terror Lake      | Tyee Lake        |                   |
| Period 1996-2000 (Total Cost)                       |                  |                  |                  |                  |                   |
| Remedial Work for Items of Deficient Design (1)     | -                | -                | -                | 17,000,000       | 17,000,000        |
| Remedial Work for Items of Deferred Maintenance (1) | 20,000           | -                | -                | 585,000          | 585,000           |
| Other Project Improvements (1)                      | <u>2,067,000</u> | <u>2,047,700</u> | <u>5,207,000</u> | <u>1,845,500</u> | <u>11,007,200</u> |
| Subtotal                                            | 2,087,000        | 2,047,700        | 5,207,000        | 19,250,500       | 28,592,200        |
| Period 1996-2030 (Annual Cost)                      |                  |                  |                  |                  |                   |
| Replacements due to Normal Wear and Tear (2)        | 400,687          | 885,113          | 606,114          | 1,175,440        | 2,847,334         |
| Allowances For Replacements After 2030 (2)          | <u>144,524</u>   | <u>233,409</u>   | <u>158,939</u>   | <u>283,024</u>   | <u>797,897</u>    |
| Subtotal                                            | 545,192          | 898,522          | 763,053          | 1,438,464        | 3,645,231         |
| Period 1996-2030 (Annual Cost, not escalated)       |                  |                  |                  |                  |                   |
| Risk Costs (3)                                      | 159,529          | 291,464          | 349,308          | 312,387          | 1,112,688         |

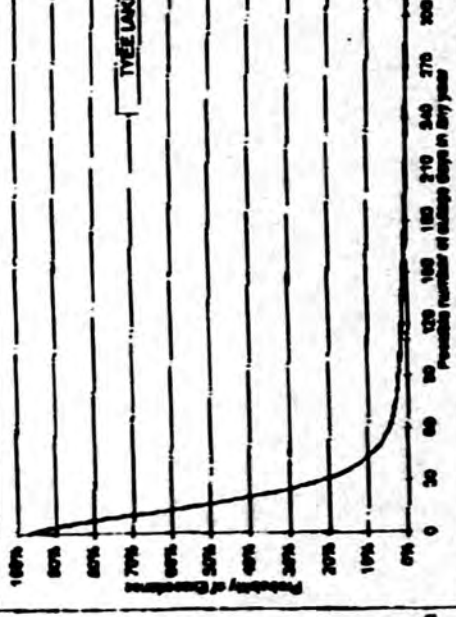
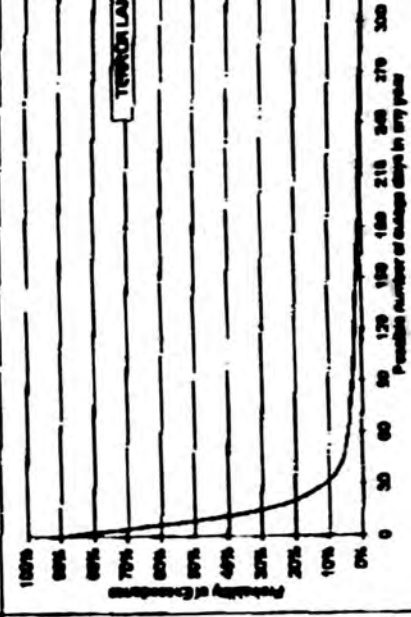
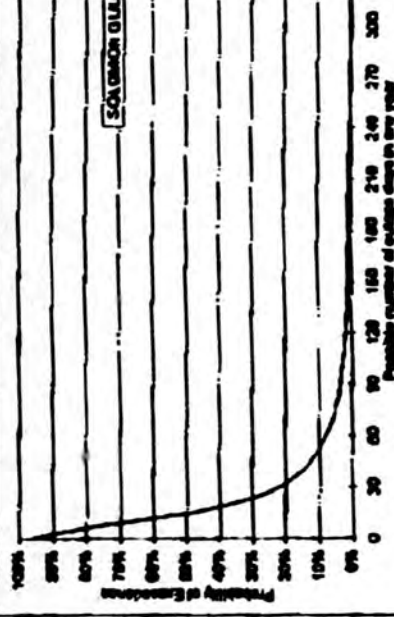
- (1) Based on several expenditures to take place in the period 1996-2000, at 1995 price levels  
 (2) Annual levelized cost (actual cost remains constant throughout the entire 35-year planning horizon)  
 (3) Annual cost at a 1995 price level

Figure 1 - Range of Expected Annual Costs and Outage Days

Range of Expected Annual Costs



Range of Expected Number of Outage Day



# MEMORANDUM

State of Alaska

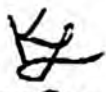
Department of Law

TO: D. Randy Simmons  
Executive Director  
Alaska Industrial Development  
and Export Authority

DATE: January 27, 1997

FILE NO:

TEL. NO: 269-5135

FROM: Keith A. Laufer   
Assistant Attorney General  
Governmental Affairs Section, Anchorage

SUBJECT: Four Dam Pool

## I. INTRODUCTION

Recently there have been developments with respect to the Four Dam Pool projects owned by the Alaska Energy Authority ("AEA"). This memorandum will provide a background with respect to the projects and the existing power sales agreement between the State and the purchasing utilities. In addition, this memorandum will discuss the proposal received from former United States Senator Mike Gravel on behalf of a group of investors, the Energy Group, to purchase the projects.

## II. BACKGROUND

### A. The Projects and the Power Sales Agreement

The State constructed and acquired the projects constituting the Four Dam Pool in the mid 1980's. The cost of the projects to the State was approximately \$483 million. The Four Dam Pool is owned by AEA and consists of four hydroelectric projects serving five communities. Power from the Tyee Lake project is sold through Thomas Bay Electric Association to the communities of Wrangell and Petersburg. Power from the Swan Lake project is sold to Ketchikan Public Utilities. Power from the Solomon Gulch project is sold to the Copper Valley Electric Association serving the Glennallen and Valdez areas. Finally, power from the Terror Lake project is sold to Kodiak Electric Association. The power from all the projects is sold under the terms of a Long Term Power Sales Agreement (the "PSA") between the purchasing utilities and the AEA. The projects are operated by the individual utilities pursuant to operating agreements between the utilities and AEA.

The PSA was executed in October, 1985 and has an initial term of 45 years; terminating October, 2030. Under the PSA, to the extent the purchasing utilities require power, they are required to first purchase the power produced from the Four Dam Pool. The price of the power is established by a formula in the PSA. Under the formula, the power rate has two components. The first component covers the operating cost of the four projects. For this purpose, operation costs of the four projects are pooled to determine one operating cost component for the entire

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Four Dam Pool

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Four Dam Pool. The second component of the rate is the "debt service component." The debt service component is somewhat a misnomer as no debt was issued by the State to finance the projects (although funds were loaned from the Department of Commerce and Economic Development to AEA to partially finance the projects). The debt service component is the payment to the State in partial repayment of the State's investment in the projects. The debt service component is determined by reference to a debt service schedule contained in the agreement. The debt service component provides for rate "re-openers" in certain events based on the cost of power in the railbelt. In AEA's view, the likelihood of the next rate re-opener significantly altering the current rate is unlikely.

In fiscal year 1996, the power rate for energy produced by the Four Dam Pool was 6.4 cents per kWh. This rate consists of an operating cost component of 2.4 cents and a debt service component of 4.0 cents. For fiscal year 1996, the debt service component produced a debt service payment of about \$11 million dollars. AEA has estimated that the present value of the debt service payments to the State over the remaining term of the PSA is approximately \$165 million dollars. This amount assumes a discount rate of 7%.

Under the PSA, AEA retains significant liabilities related to the projects. In particular, AEA is responsible for uninsured facility failures, substandard performance, and deficiencies in the reserve and replacement fund. Moreover, the utilities obligation to purchase power is not a "take or pay" obligation. Rather, the utilities only pay for power actually purchased from the projects. While the utilities are required to purchase power first from the Four Dam Pool projects to the extent they require power, if the projects are not producing power for some reason, there is no obligation for the utilities to continue to pay.

The PSA also creates a "self-help right" on the part of the utilities. Under that provision of the PSA, if AEA does not fulfill its obligations regarding repairs to the projects, the utilities may withhold their debt service payment to the State and utilize the funds withheld to perform the necessary repairs.

As part of the 1993 legislation that re-organized AEA, the legislature has pre-allocated the debt service payments that are received from the Four Dam Pool to specific funds. Pursuant to AS 42.45.050, debt service payments made by the Four Dam Pool utilities are to be appropriated by the legislature as follows: 40% to Power Cost Equalization and Rural Electric Capitalization Fund; 40% to the Southeast Energy Fund; and 20% to the Power Project Fund to be used for Statewide energy projects. None of the Four Dam Pool debt service payment has been allocated to AEA to fulfill any of its repair obligations under the PSA, nor has AEA been appropriated any other funds to perform such obligations.

#### **B. Funding of Required Repairs**

In March, 1994, it became apparent that significant repairs were required to be made to the Tyee Transmission Line which is a part of the project. In addition, required repairs were identified for

the Terror Lake and Swan Lake projects and for spill prevention controls at the projects. Under the PSA, these repairs were the obligation of the State. Because AEA had no funds with which to make the repairs, the purchasing utilities filed suit against AEA in an effort to invoke their self-help rights under the PSA to withhold their debt service payments and utilize those funds to conduct the required repairs. In settlement of that lawsuit, the State agreed with the utilities that limited self-help would be invoked for fiscal year 1996. Funds withheld by the utilities were used for engineering studies to determine the proper scope of the repairs which were required to the projects. As part of the settlement AEA agreed to enter into discussions with the purchasing utilities regarding the possible transfer of ownership of the projects to the utilities.

In fiscal year 1996, the Administration proposed legislation that would have altered the allocation of revenues from the Four Dam Pool. Under the Administration's proposal, debt service payments would have first been allocated to AEA to pay debt service on debt that would have been issued by AEA to fund the required repairs. The legislature, however, failed to pass the proposed legislation and, as was expected, the utilities elected to utilize their self-help rights to withhold the entire debt service payments for fiscal year 1997 and 1998 in order to fund the necessary repairs. Because of the disruption in the debt service payments, no contributions from the Four Dam Pool will be made in either fiscal year 1997 or 1998 to the Power Cost Equalization and Rural Capitalization Fund, the Southeast Energy Fund, or the Power Project Fund.

### C. Divestiture Discussions with Purchasing Utilities

In August 1994, the utilities and AEA agreed to mutually explore the possibility of transferring ownership of the Four Dam Pool projects to the utilities. As part of the settlement of the 1995 litigation with the utilities, AEA agreed that it would continue these discussions with the utilities. Chief of Staff Ayers sent a letter to the utilities which described certain requirements which must be met for the Administration to support a transfer of the projects to the utilities. The requirements were that (1) the PSA remain in effect through the transfer, (2) AEA's duties and obligations under the PSA be completely transferred to a joint utility entity and AEA be fully released from those obligations and duties, (3) the State receive adequate value (to be determined) for the projects, and (4) the transfer be subject to review by the legislature.

Authority staff met with the utilities in several meetings over the course of the period from August, 1995 to February, 1996. Ultimately, these discussions broke down over the proper value to be paid by the utilities for the projects. AEA proposed that the reasonable value of the facilities, assuming the utilities completed, at their own cost, the repairs to the Tye Transmission Line, was \$84 million. AEA arrived at this purchase price by first discounting to present value the payment stream of the debt service payments that would be made to the State over the remaining term of the PSA. The present value of the payment stream utilizing a 7% discount rate was approximately \$165 million dollars. From this amount, AEA subtracted the estimated cost of AEA's continuing repair and risk obligations under the PSA. To arrive at this number, AEA utilized the results of an engineering and risk analysis prepared for the projects by

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Four Dam Pool

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Harza Engineering Corporation. This study was jointly directed and funded by the purchasing utilities and AEA.

The utilities rejected AEA's proposal. The utilities indicated that, if they were to be required to complete the Tyee repairs, they believed the value of the projects to be somewhere between \$0 - \$20 million. The primary differences between the State and utility values were that the utilities perceived a high risk that energy loads for the region could significantly decline and that inflation could significantly increase the costs of ownership. In addition, the utilities stated that they believed that any transfer of the project would have to result in an immediate significant rate reduction in the wholesale power rate. The utilities factored in a 1 cent per kWh reduction in rates as part of their review of value.

Because the utility and AEA opinions of value were so disparate, the parties agreed to take a hiatus in the discussions to determine if other approaches were possible. Recently, AEA sent a letter to the utilities indicating that divestiture discussions could be reopened if the discussions looked promising and requesting that the utilities bring forth a new proposal in which to open discussions. The purchasing utilities are meeting in February, 1997 and will be preparing a response and counter proposal to AEA.

### **III. PROPOSAL FROM FORMER U.S. SENATOR GRAVEL**

In September, 1996, the Authority received an unsolicited proposal from Former United States Senator Mike Gravel indicating a desire on behalf of the Energy Group to purchase the Four Dam Pool projects from the State for \$84 million plus additional funds to repair the projects up to a cap of \$100 million. The Authority indicated to Mr. Gravel that AEA was in discussions with the purchasing utilities regarding divestiture and, pending the conclusion of those discussions, that the Authority would not entertain discussions regarding other options. Mr. Gravel took his proposals to the communities themselves and began preliminary due diligence with respect to the projects. To our knowledge, the purchasing utilities, while not receptive to the proposal, have nonetheless been courteous and cooperated with Mr. Gravel's due diligence. In December, 1996, at Mr. Gravel's request AEA staff met with Mr. Gravel. Once again, Mr. Gravel was informed that the Authority would not open discussions or entertain proposals regarding the purchase of the Four Dam Pool until and unless the utilities agreed that AEA entertain such discussions.

Mr. Gravel nonetheless went on to explain his proposal. Under Mr. Gravel's proposal, a new entity would acquire the Four Dam Pool Projects from the State. Ownership of the new entity would be comprised of two ownership groups. The first group would be the lower 48 utility investor group that Mr. Gravel represents. The second group would be a community stock ownership plan ("CSOP") under which utility purchasers in the various communities served by the Four Dam Pool would gain ownership shares. As proposed, the utility investor group would obtain financing for one half of the project purchase price while the trustee of the CSOP would obtain financing for the other half of the purchase price. Under the proposal, the community

stock ownership plan trustee would obtain a guarantee or other financial assistance from the State in order to facilitate the CSOP financing.

An important element of Mr. Gravel's proposal is the termination of the PSA. According to Mr. Gravel, the sale would not be viable unless the PSA were terminated and a new power sales agreement or agreements were entered into. The Energy Group proposal calls for a rate of return to the Energy Group investors of between 12% and 15%. Mr. Gravel indicated that under his proposal the communities would be guaranteed a wholesale power rate of 6.5 cents per kWh for 30 years, the period of the anticipated financing necessary to consummate the purchase. The operational component of that rate, however, would be subject to regular adjustments utilizing an index such as the Consumer Price Index.

Mr. Gravel indicated that the new entity could obtain operational savings by consolidating operational responsibility in the new entity. Mr. Gravel stated that this would likely result in the elimination of a number of jobs. Under the proposal, the new entity would be responsible for compensating those employees whose jobs are eliminated.

Mr. Gravel has commenced efforts in the local communities to increase knowledge about his proposal and has met with various community groups. Mr. Gravel has indicated to AEA that, unless the communities or the utilities come up with some sort of fatal flaw with his proposal, he intended to pursue the proposal with the legislature. I understand that Mr. Gravel has begun his legislative efforts in earnest by engaging several lobbyists on behalf of his investor group.

#### **IV. PURCHASING UTILITY POSITION ON GRAVEL PROPOSAL**

The purchasing utilities have sent a letter advising AEA of the utilities' continuing interest in pursuing divestiture discussions with the State. A copy of that letter is attached as Exhibit A. In addition, the utilities have asked AEA to reject the Gravel group's proposal and that AEA negotiate a sale with the utilities. The utilities have indicated that they have numerous objections to the proposal provided by Senator Gravel. It is our understanding that the principle objections are that any savings or profits that could be created by the projects would be shared 50% with Outside investors and that the Energy Group would be a "limited liability" company. In the utilities view, all savings or profits should benefit the communities. In addition, the utilities have stated that it would be difficult, if not impossible to gain the consent of all the communities to any change in the current PSA.

#### **V. CONCLUSION**

The proposal submitted by former Senator Gravel focuses attention on the existing structure of the Four Dam Pool and the need to develop a long term plan to put the projects on a sound economic footing. Should you require any additional information, please let me know.

## **PMC RESOLUTION TO RESUME DIVESTITURE NEGOTIATIONS WITH AEA**

### **RESOLUTION 99-51**

**WHEREAS**, the State of Alaska, through the Alaska Energy Authority (AEA) is the owner of four hydroelectric facilities commonly known as the Four Dam Pool (Lake Tyee, Swan Lake, Solomon Gulch and Terror Lake); and

**WHEREAS**, in 1985 the AEA and Kodiak Electric Association, Copper Valley Electric Association, and the municipal utilities in Wrangell, Petersburg and Ketchikan ("Purchasing Utilities") entered into the Long-Term Power Sales Agreement (PSA) providing for the sale of energy from the projects to the Purchasing Utilities; and

**WHEREAS**, the PSA identifies each of the projects as a "Dedicated Facility" for the respective utility or utilities taking delivery of energy from such project; and

**WHEREAS**, each of the projects is the principle source of electricity for each of the Purchasing Utilities and has a substantial impact on the economic welfare of each community; and

**WHEREAS**, the Purchasing Utilities and AEA have devoted substantial resources to the negotiation of transfer of project ownership from AEA to the Purchasing Utilities; and

**WHEREAS**, to assist in developing ownership transfer terms, the Purchasing Utilities and AEA jointly funded a detailed study of project conditions and risks; and

**WHEREAS**, in July 1997, the Purchasing Utilities presented to AEA a proposal for the purchase of the facilities; and

**WHEREAS**, AEA ended transfer negotiations in December 1997 and no negotiations have occurred since that time; and

**WHEREAS**, the Purchasing Utilities have been and remain willing to resume good faith negotiations of an ownership transfer;

**NOW, THEREFORE BE IT RESOLVED:**

The Purchasing Utilities of the Four Dam Pool desire to resume negotiations with AEA for the transfer of ownership of the Four Dam Pool projects to the Purchasing Utilities.

DATED this 5<sup>th</sup> day of APRIL, 1999.

**PROJECT MANAGEMENT COMMITTEE**

By: *Donald E. Lewis*

Chairman

Approved at the PMC meeting held March 31, 1999.

# **PROJECT MANAGEMENT COMMITTEE**

## **THE STATE ENERGY PROGRAM**

Following the dramatic increase in oil prices in 1979-1980, the State was in a financial position to pump massive amounts of money into the development of energy projects.

During the early 1980s, the Alaska Energy Authority constructed or acquired four projects — Tyee Lake, Terror Lake, Swan Lake, and Solomon Gulch. The costs for constructing or acquiring the projects was initially paid by bond financing. Eventually, the bonds were replaced with money lent to the Authority by the Department of Commerce and Economic Development, from the Power Development Revolving Loan Fund.

In an effort to equalize power costs for the communities served by the four projects, the Alaska legislature provided that these four projects would be considered as one project — the Initial Project. Together they would be operated and managed jointly and the wholesale power rate for power sales would be the same for all four projects.

Between May and October of 1985, the parties engaged in intense negotiations. The Memorandum of Understanding between the Authority and the Representatives of the Four Dam Pool communities (signed on May 8, 1985), forged the basic tenets of what was to become the Long-term Power Sales Agreement for the Four Dam Pool.

## **THE POWER SALES AGREEMENT**

On October 28, 1985, the Alaska Power Authority (now the Alaska Energy Authority), the Cities of Ketchikan, Wrangell and Petersburg, the Copper Valley Electric Association and the Kodiak Electric Association entered into a Long-term Power Sales Agreement.

- |             |                                                                                                                                                                                                                                |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>WHO</b>  | The long term power sales contract is between the City of Petersburg, the City of Ketchikan, the City of Wrangell, Kodiak Electric Association, Copper Valley Electric Association and the Alaska Energy Authority.            |
| <b>WHAT</b> | There are four operating hydroelectric projects owned by the State of Alaska: Lake Tyee, serving Petersburg and Wrangell; Swan Lake, serving Ketchikan; Terror Lake, serving Kodiak; and Solomon Gulch, serving Copper Valley. |
| <b>WHY</b>  | Energy from the projects displaces energy formerly generated by diesel plants in each community. Electricity costs no longer depend upon diesel fuel prices and were projected to be lower than diesel-generated               |

power. The contract provides a long term resource with a relatively stable cost and predictable economic future.

## **HOW**

**Term:** The contract is for 45 years (1985 to 2030), renewable for a period up to the useful life of the projects.

**Power:** Each purchasing utility is entitled to receive, as needed, all the power available from its project and can benefit directly and indirectly from the sale of any surplus power from its project. The utility pays the agreed upon rate for the power it requires. No minimum amount or minimum payment is required.

**Wholesale Power Cost:** Each community pays the AEA a "postage stamp" rate for energy from the projects. The rate is established at the start of each fiscal year to cover estimated operating costs and agreed contributions toward debt retirement.

**Operating Costs:** Payments cover actual on-site costs, project-specific costs incurred by the AEA and utility management personnel, maintenance, and a fixed annual contribution of \$500,000 to an equipment renewals and replacement fund.

**Debt Service:** A schedule of debt service rates is agreed in advance for successive 15-year periods during the contract. The 1986 rate started at 2.6 cents per Kwh, rising in steps to four cents per Kwh for the years 1990-2000. Prior to 2000, a "rate opener" mechanism will establish the basis for rates between the years 2000-2015.

**Risks:** As owner of the four projects the AEA bears certain risks throughout the term of the contract and any renewals. These risks are:

- Uninsured project failures;
- Substandard project performance;
- Inadequacies in the funds for renewal and replacement of components;
- Failure of any of the participating utilities to pay their share.

**Operation and Maintenance:** The five utilities operate and maintain the four projects through a combination of local control and oversight by a Project Management Committee. The Committee consists of representatives from each of the five utilities and the AEA, and operating decisions are subject to management procedures adopted by the Committee (see *Four Dam Pool Policies and Rules of Procedure Handbook*).

## **"UNUSUAL" PROVISIONS OF THE POWER SALES AGREEMENT**

1. **Construction financing - substantial State grant**
  - no bonds (loan from general fund)
  - rate not tied to actual debt service
2. **Requirements obligation, no "take or pay" obligation**
3. **Pooling of costs - concept of "Initial Project"**
4. **Division of risks between Authority and Purchasing Utilities**
5. **Use of the PMC for contract implementation**

## **OBLIGATIONS OF THE AEA, PURCHASING UTILITIES AND PMC**

The Long-Term Power Sales Agreement creates a number of duties and responsibilities. Some, such as the financial obligations, rest on the individual parties (the AEA and purchasing utilities). Other responsibilities are vested in the group jointly through the PMC.

### **A. Financial Obligations of AEA and Purchasing Utilities**

The Long-Term Power Sales Agreement imposes certain financial responsibilities on both the Alaska Energy Authority, as seller, and the five utility signatories, as buyers.

Generally speaking, the obligations of the utilities are for regular, recurring expenses that are funded through the rates paid by the utilities to buy power from the AEA. The obligations of the AEA, on the other hand, are for the coverage of various contingencies.

#### **1. AEA Financial Obligations**

The agreement requires the AEA to pay for any of the following items:

- a. Any costs associated with damage to or premature failure of any Four Dam Pool equipment that is not covered by insurance (Sections 4(d) and 6(b)(ii));
- b. Any costs associated with substandard performance of any of the Four Dam Pool facilities (Sections 4(d) and 6(b)(ii));
- c. Any costs of necessary renewals or replacements of equipment at any of the Four Dam Pool facilities to the extent there are any unexpended proceeds from the loan used to finance the Initial Project (Section 6(b)(iii)(D));
- d. Any costs of necessary renewals or replacements of equipment at any of the Four Dam Pool facilities that exceed the amounts then available in the Renewals and Replacements Fund (Section 4(d)); and
- e. Any costs associated with the failure of any purchasing utility to make its required payments (Section 4(d)).

## **2. *Purchasing Utility Financial Obligations***

The agreement requires the purchasing utilities to pay for the following items:

- a. The total costs of operating the Four Dam Pool facilities, including the costs of insurance (Sections 5(b)(i)(A) and (B)(I));
- b. The specific administrative and general costs of the AEA required for administration of the Four Dam Pool facilities (Section 5(b)(i)(B)(11));
- c. The costs associated with the Project Management Committee (Section 5(b)(i)(B)(III));
- d. The annual contributions to the Renewals and Replacement Fund (Section 5(b)(i)(C)); and
- e. An agreed-upon contribution to the debt service on the loan from the Alaska Department of Commerce that financed construction of the Four Dam Pool facilities (Section 5(b)(ii)).

## **B. *Other Duties and Responsibilities***

In addition to financial obligations, the Long-Term Power Sales Agreement imposes duties and responsibilities for the operation and protection of the Initial Project:

### **1. *AEA Duties***

- a. To sell power to each Purchasing Utility up to the full capability of each dedicated facility (Section 3(a));
- b. To make power continuously available to each Purchasing Utility and subject to certain rights of interruption (Section 4(a));
- c. To construct, maintain and repair any AEA owned facilities in accordance with Prudent Utility Practice (Section 4(b)); and
- d. To maintain records necessary for purposes of the agreement and of FERC licensing requirements (Section 10).

**2. *Participating Utility Duties***

- a. To purchase and pay for power needed for utility loads in excess of loads served by pre-existing hydro facilities (Sections 3(a), 3(b) and 3(c));
- b. To construct, maintain and repair any utility owned facilities in accordance with Prudent Utility Practice (Section 4(b));
- c. To maintain records necessary for purposes of the agreement and of FERC licensing requirements (Section 10); and
- d. To take actions necessary to maintain the integrity of the agreement (Section 12).

**3. *PMC Duties***

- a. To establish and deposit funds in the Initial Project Revenue Fund (Section 5(e));
- b. To establish, administer and approve expenditures from the R&R Fund (Sections 6(b)(i), 6(b)(iii)(C) and 7(e)(ii));
- c. To disburse funds to pay operating costs and debt service and to make the R&R contribution (Section 5(f));
- d. To meet at least quarterly (Section 7(c));
- e. To adopt rules to govern the Committee's affairs (Sections 7(d) and 7(e)(iv));
- f. To develop annual budgets (Section 7(e)(i));
- g. To arrange for insurance for Initial Project facilities, including determination of coverage limits, choice of insurers and disposition of insurance claim proceeds (Section 7(e)(iii));
- h. To adopt standards and arrange for the annual audit of all power production costs (Sections 7(e)(iv) 7(e)(v) and 7(g));
- i. Develop and adopt technical, operating and maintenance standards for the Initial Project equipment and facilities (Section 7(e)(vi));

- j. Establish an annual rate that is sufficient to pay for all costs under the contract (Sections 7(e)(vii) and 5(f));
- k. Develop load estimates as necessary for the Agreement (Section 7(e)(viii));
- l. Develop standards for capital asset acquisition and accounting (Section 7(e)(ix));
- m. Develop standards for expenditures which acquire unanimous agreement (Sections 7(e)(x) and 1(f));
- n. To adjudicate disputes, or adopt procedures for the adjudication of disputes between parties, prior to litigation (Section 8(a)); and
- o. Various duties relative to rate reopener, the first such duty being to provide a load forecast by 1998 (Section 9(c)).