

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

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over Indian lands in Arizona, the McCarran Amendment⁹⁴ gave the state courts jurisdiction in comprehensive water rights adjudications.⁹⁵ The Court also reiterated the *Colorado River* doctrine, which established state courts as the preferred fora for water adjudications involving federal reserved rights.⁹⁶

II

ANALYSIS: RECONCILING THE PRIOR APPROPRIATION DOCTRINE AND THE *WINTERS* DOCTRINE

The western states developed the prior appropriation doctrine to apportion their limited surface water supplies fairly and efficiently among competing users.⁹⁷ The prior appropriation system depends upon quantification and strict control of the rights of all users.⁹⁸ In contrast, the *Winters* doctrine awards water rights of uncertain dimension, thus injecting a large measure of uncertainty into the western states' water use schemes.⁹⁹ The courts can minimize the tension between the *Winters* doctrine and prior appropriation by treating federal reserved rights in the same manner as ordinary appropriative rights.¹⁰⁰

A. The Inherent Conflict Between Prior Appropriation and the *Winters* Doctrine

An ordinary appropriative right, once obtained, occupies a place in the state water system based on its relative seniority.¹⁰¹ A *Winters* right, however, does not fit so neatly into the state water systems. A federal reserved right differs in three important ways from an ordinary water

⁹⁴ 43 U.S.C. § 666 (1976); see *supra* note 47.

⁹⁵ 103 S. Ct. at 3212. The Court stated that "we are convinced that, whatever limitation the Enabling Acts or federal policy may have originally placed on state court jurisdiction over Indian water rights, those limitations were removed by the McCarran Amendment." *Id.* (footnotes omitted).

⁹⁶ *Id.* at 3212-16. The Court summarized the policy behind the *Colorado River* doctrine and applied it to the instant case:

The McCarran Amendment, as interpreted in *Colorado River*, allows and encourages state courts to undertake the task of quantifying Indian water rights in the course of comprehensive water adjudications. . . .

. . . [A]ssuming that the state adjudications are adequate to quantify the rights at issue in the federal suits, and taking into account . . . the expertise and administrative machinery available at the state courts, the infancy of the federal suits, the general judicial bias against piecemeal litigation, and the convenience to the parties, we must conclude that the District Courts were correct in deferring to the state proceedings.

Id. at 3214-15 (footnotes omitted); see also *supra* note 57 and accompanying text.

⁹⁷ See *supra* notes 11-19 and accompanying text.

⁹⁸ See *id.*

⁹⁹ See *infra* notes 101-21 and accompanying text.

¹⁰⁰ See *infra* notes 122-35 and accompanying text.

¹⁰¹ See Trelease, *supra* note 27, at 474.

right established under the prior appropriation doctrine.¹⁰²

First, the creation and maintenance of a *Winters* right does not depend on any use, beneficial or otherwise.¹⁰³ The reserved right may lie dormant for many years, set aside for some future use.¹⁰⁴ The priority of such a reserved right dates from the establishment of the federal reservation.¹⁰⁵ Junior holders of water rights may use this federally reserved water during "dormant" periods, but the federal government may exercise its reserved right and preempt these junior users at any time.¹⁰⁶ In contrast, holders of ordinary appropriative rights must maintain a beneficial use of their water or lose their rights.¹⁰⁷

Second, a *Winters* right, generally is not quantified.¹⁰⁸ To determine the quantity of a reserved right, a court must examine the purposes of the reservation of land set aside by Congress.¹⁰⁹ Until quantified in an adjudication, the size of a *Winters* right remains completely uncertain.¹¹⁰ Nevertheless, the right exists, with its priority dating from the establishment of the reservation of land.¹¹¹ Ordinary appropriative rights, however, are not legally recognized *until* they are quantified and adjudicated.¹¹²

Third, a federal reserved right need not be recorded.¹¹³ In the reserved rights cases, the Supreme Court has consistently recognized unrecorded federal reserved rights.¹¹⁴ Claimants of ordinary appropriative rights, by contrast, will lose their rights if they do not fix them in a water adjudication.¹¹⁵

Because of the striking differences between federal reserved rights and appropriative rights, the continuing coexistence of the two poses serious questions. The tension between federal reserved rights, which

¹⁰² *Id.*

¹⁰³ *Id.*; see also Abrams, *Reserved Water Rights, Indian Rights and the Narrowing Scope of Federal Jurisdiction: The Colorado River Decision*, 30 STAN. L. REV. 1111, 1113 (1978).

¹⁰⁴ See Trelease, *supra* note 27, at 474.

¹⁰⁵ Trelease, *supra* note 76, at 756; see Comment, *supra* note 15, at 560; Comment, *Federal Reserved Rights in Water: The Problem of Quantification*, 9 TEX. TECH L. REV. 89, 93 (1977) ("[M]ost reservations were created around the turn of the century and have that time as a priority date.").

¹⁰⁶ Trelease, *supra* note 76, at 756.

¹⁰⁷ See *supra* notes 12-13 and accompanying text.

¹⁰⁸ Trelease, *supra* note 27, at 474.

¹⁰⁹ See, e.g., *Cappaert v. United States*, 426 U.S. 128, 141 (1976) ("The implied-reservation-of-water-rights doctrine . . . reserves only that amount of water necessary to fulfill the purposes of the reservation, no more.").

¹¹⁰ Comment, *supra* note 105, at 93-94.

¹¹¹ Trelease, *supra* note 76, at 756; Comment, *supra* note 15, at 560; Comment, *supra* note 105, at 93.

¹¹² See *supra* notes 17-18 and accompanying text.

¹¹³ Trelease, *supra* note 27, at 474.

¹¹⁴ See, e.g., *Arizona v. California*, 373 U.S. 546, 598-600 (1963); *United States v. Powers*, 305 U.S. 527, 532-33 (1939); *Winters v. United States*, 207 U.S. 564, 577 (1908).

¹¹⁵ See *supra* notes 17-18 and accompanying text; see also Comment, *supra* note 15, at 551.

exist "in a state of uncorrelated mystery,"¹¹⁶ and appropriative rights, which are strictly quantified and controlled, is all too clear. *Winters* rights threaten the West in two ways: because they are not based on use, *Winters* rights allow water to go unused; because they are uncertain, they interfere with public and private decisions. The resulting uneasiness and frustration that western water users feel has led to melodramatic descriptions of the *Winters* doctrine as "'a first mortgage of undetermined and indeterminable magnitude'"¹¹⁷ and as a "'sword of Damocles' hanging over 'every title to water rights to every stream which touches a federal reservation.'"¹¹⁸ The reserved rights doctrine has not yet caused western appropriative water users any substantial harm.¹¹⁹ Nevertheless, future assertion of reserved rights may cause serious problems in the West, as more users compete for less available water.¹²⁰

The Supreme Court, demonstrating some sensitivity to the states' concerns over reserved rights, has begun to circumscribe the scope of the *Winters* doctrine. The Court's new decisions make federal reserved rights mesh more smoothly with the states' prior appropriation water law systems.¹²¹ These efforts have eased the tension between *Winters* rights and appropriative rights.

B. Reconciliation of Prior Appropriation and the *Winters* Doctrine in Western Water Law

Both the *Winters* doctrine and the doctrine of prior appropriation serve important functions in the West: federal reservations of land would be useless without sufficient water to fulfill their purposes, and prior appropriation has developed as a matter of necessity to provide for prudent and beneficial use of the West's most vital and scarce resource. Surely neither system is likely simply to vanish, thereby eliminating the conflict. Furthermore, the likelihood that Congress will enact comprehensive legislation to effect a reconciliation is small.¹²² Thus, a judicial compromise seems to be the only possible solution. The Court's efforts to make *Winters* rights inoffensive to western states' prior appropriation schemes have been a significant step in the right direction.

¹¹⁶ *United States v. District Court in and for the County of Eagle*, 169 Colo. 555, 560, 458 P.2d 760, 772 (1969), *aff'd*, 401 U.S. 520 (1971).

¹¹⁷ Address by Northcutt Ely to the National Water Commission (Nov. 6, 1969), *quoted in* Trelease, *supra* note 27, at 475.

¹¹⁸ *Id.*

¹¹⁹ *See* Trelease, *supra* note 27, at 474-75, 491-92.

¹²⁰ *See supra* note 1.

¹²¹ *See supra* notes 45-49, 56-96 and accompanying text.

¹²² Numerous bills have been proposed since 1955, but Congress has passed none of them. *See* Morreale, *Federal-State Conflicts Over Western Waters—A Decade of Attempted "Climate" Legislation*, 20 RUTGERS L. REV. 423 (1966); Trelease, *supra* note 27, at 475.

Federal reserved rights and appropriative rights conflict in three major areas: use,¹²³ quantification,¹²⁴ and adjudication and recordation.¹²⁵ By molding reserved rights to make them resemble ordinary appropriative rights as closely as possible, the Court can protect both the interests of the United States in supplying its reservations and the states' interest in controlling their water supplies.

The federal reserved rights doctrine and the prior appropriation doctrine clash most strikingly in the area of use.¹²⁶ Appropriative rights terminate if the appropriated water is no longer put to a continuous beneficial use. Appropriative rights, therefore, are concrete and ensure that water not go unused. *Winters* rights, however, exist independently of any use, present or future, beneficial or otherwise. In reserving land for a particular purpose, Congress may have contemplated the reservation of the water required to carry out that purpose. Therefore, the courts should limit *Winters* rights to the amounts of water required by the government or the Indians to carry out the *present* purposes of the reservation. Since the *Arizona I* case,¹²⁷ in which the Supreme Court last expressly stated that the quantity of a *Winters* reservation may accommodate future as well as present uses, the Court has limited this expansive interpretation of reserved rights by strictly construing the purposes of the federal reservations.¹²⁸ The Court's next step may be to limit reserved rights to those needed for immediate beneficial uses in the federal enclaves while eliminating *Winters* rights reserved for future purposes.

The prior appropriation doctrine and the *Winters* doctrine must be reconciled not only on the issue of use, but also on the issue of quantification. At present, the controlling standard for quantifying *Winters* rights is that of "minimal need" put forth in *Cappaert*.¹²⁹ This standard requires the examination of the purpose of the reservation whose "minimal need" must be met. Again, a court need determine only the present water needs of the federal enclave. The courts should eliminate such forward-looking standards as the "practicably irrigable acreage" measure employed by the Supreme Court in *Arizona I*, because they generate uncertainty and therefore hinder decisionmaking. In addition to avoiding forward-looking standards, courts should follow the Supreme

¹²³ See *supra* notes 103-07 and accompanying text.

¹²⁴ See *supra* notes 108-12 and accompanying text.

¹²⁵ See *supra* notes 113-15 and accompanying text.

¹²⁶ See *supra* notes 103-07 and accompanying text.

¹²⁷ *Arizona v. California*, 373 U.S. 546 (1963).

¹²⁸ See *United States v. New Mexico*, 438 U.S. 696, 705-13 (1978) (The Court noted that Congress intended to reserve water for "domestic, mining, milling, or irrigation purposes" but not for recreational purposes (quoting 16 U.S.C. § 481 (1976))).

¹²⁹ See *supra* note 66.

Court's lead in *Arizona II*¹³⁰ and *Truckee-Carson*,¹³¹ and invoke principles of strict finality to deny reopening the issue of quantification of *Winters* rights.

The final step is to decide how best to subject legitimate reserved rights to the states' systems of adjudication and recordation. Although various administrative¹³² and legislative¹³³ schemes have been suggested, the Court's instincts, in delegating this responsibility to the state courts through the *Colorado River*¹³⁴ doctrine and the *Eagle County*¹³⁵ interpretation of the McCarran Amendment, are correct. The best way to integrate reserved rights into the states' prior appropriation systems is to determine these reserved rights in the state systems. By means of water adjudications, reserved rights can be recorded and defined in the same manner as ordinary appropriative rights.

CONCLUSION

The doctrine of federal reserved water rights has the potential to greatly disrupt the prior appropriation systems of the western states. The Supreme Court, after allowing a steady expansion of the *Winters* doctrine up through the 1970s, has since shown increased solicitude for the rights of the states to determine how best to allocate their scarce waters. By strictly defining *Winters* rights, the Court has made the federal government's presence as a western water user much less disruptive. By continuing this trend and further circumscribing the scope of the reserved rights doctrine, the Court perhaps can largely eliminate this source of federal-state tension in the western states.

Todd A. Fisher

¹³⁰ 103 S. Ct. 1382 (1983).

¹³¹ 103 S. Ct. 2906 (1983).

¹³² See, e.g., Ranquist, *supra* note 12, at 710-24.

¹³³ See, e.g., U.S. Dep't of Justice, A Proposed Bill for the Inventorying and Quantification of the Reserved, Appropriative and Other Rights to the Use of Water by the United States (June 20, 1974 draft); see also Little, *Administration of Federal Non-Indian Water Rights*, 27B ROCKY MTN. MIN. L. INST. 1709, 1772-79 (1982) (discussing adjudication alternatives).

¹³⁴ 424 U.S. 800 (1976); see also *supra* notes 55, 58 and 96 and accompanying text.

¹³⁵ 401 U.S. 520 (1971); see also *supra* notes 47-49 and accompanying text.

WATER RESOURCES BOARD

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ANCHORAGE, ALASKA 99510-7005
PHONE (907) 561-2020

March 28, 1986

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Governor Bill Sheffield
Box A
Juneau, Alaska 99811

Dear Governor Sheffield:

The Water Resources Board is pleased to present you with the following eight resolutions, unanimously adopted at its last meeting held February 26-27, 1986, in Juneau. In particular, I want to draw your attention to Resolution 86-13. In light of declining state revenues and necessary budget tightening, the Board would like to discuss prioritization of the State's water resources programs with the Commissioners of the Departments of Natural Resources, Environmental Conservation, and Fish and Game at its next meeting.

- Resolution 86-8 Participation of Military Reservations in Water Resources Planning in Anchorage Bowl
- Resolution 86-9 Alaska to Administer Section 402(b) NPDES Permits
- Resolution 86-10 Placer Mining Water Quality Regulations
- Resolution 86-11 Resolution of Conflict in Effluent Requirements
- Resolution 86-12 Military Cooperation Regarding Federal Reserved Water Rights and Hazardous Waste Management and Disposal
- Resolution 86-13 Prioritization of Alaska's Water Resources Programs
- Resolution 86-14 Department of Natural Resources Water Management Staffing
- Resolution 86-15 Coordination of Instream Flow Protection Programs

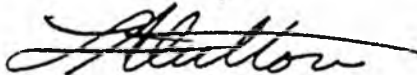
Copies of the resolutions have been distributed as shown on the enclosed distribution list. A summary of the minutes of the meeting is also enclosed.

Bill Sheffield
March 28, 1986
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Our next meeting has been tentatively scheduled for September 11-12,
1986, in Anchorage.

Sincerely,

Cyril R. Wanamaker
Chairman



by: L. A. Dutton
Chief, Water Management Section
Department of Natural Resources

Enclosures

cc: Esther C. Wunnicke
Bill Ross
Donald W. Collinsworth
Senator Arliss Sturgulewski
Representative Adelheid Herrmann
Representative Richard Shultz
The Honorable Ted Stevens
The Honorable Frank Murkowski
The Honorable Donald E. Young

Distribution List
Water Resources Board Resolutions

Resolution 86-8

Esther C. Wunnicke
Mayor Tony Knowles
Lieutenant General David L. Nickols, Elmendorf AFB
Major General Gerald Bethke, Fort Richardson

Resolution 86-9

Esther C. Wunnicke
Bill Ross
Senator Arliss Sturgulewski
Representative Adelheid Herrmann
Representative Richard Shultz
The Honorable Ted Stevens
The Honorable Frank Murkowski
The Honorable Donald E. Young

Resolution 86-10

Esther C. Wunnicke
Bill Ross
Donald W. Collinsworth

Resolution 86-11

Bill Ross

Resolution 86-12

Bill Ross
Lieutenant General David L. Nickols, Elmendorf AFB
Major General Gerald Bethke, Fort Richardson
Colonel Wallace Cox, Fort Wainwright
Colonel Philip Nuber, Eielson AFB
Colonel Richard Quinn, Fort Greeley

Resolution 86-13

Esther C. Wunnicke
Bill Ross
Donald W. Collinsworth

Resolution 86-14

Esther C. Wunnicke

Resolution 86-15

Esther C. Wunnicke
Donald W. Collinsworth

Meeting Summary
ALASKA WATER RESOURCES BOARD
Juneau, Alaska
February 26-27, 1986

Board members in attendance:

Cyril (Randy) Wanamaker, Chairman, Juneau
David Vanderbrink, Vice Chairman, Homer
Peg Tileston, Anchorage
Wayne Westburg, Anchorage
Tom Meacham, Anchorage
Alan (Mike) Niemeyer, Anchorage
Stan Rybachek, North Pole

February 26, 1986

Randy Wanamaker, Chairman, called the meeting to order.

Esther C. Wunnicke, Commissioner, Department of Natural Resources and the Board's Executive Secretary, opened her remarks with a brief report on the budgetary impacts that the State's falling oil revenues will have on Division of Land and Water Management (DLWM) programs in FY'87. Under the Governor's proposed budget, funding for water rights adjudication will remain unchanged, the dam safety program will lose one position, and the Water Resources Development Project, which funds most of the Water Management Central Office, will be reduced substantially, with the elimination of five full time and one part time positions. Functions that will remain in the Central Office include staff support for the Water Board and statewide guidance and coordination on federal reserved water rights. Other Central Office functions will be transferred to the Regional Offices or be assumed by a new Policy and Procedures Unit. Funding for the Water Resources Section of the Division of Geological and Geophysical Surveys (DGGs) will remain at nearly the same level as this year's authorized budget. The Commissioner then reported that, by instituting "belt tightening" measures, DLWM has been able to make up a \$400,000 personnel services shortfall in the FY'86 budget.

Commissioner Wunnicke next reported on the status of the Board's resolutions, adopted at the September, 1985 meeting:

°Resolution No. 86-1: EPA National Placer Mining Standards
(Discussion deferred to Commissioner Ross, DEC)

°Resolution No. 86-2: Re-affirmation of Administrative Order No. 67
This order directs all state agencies to require compliance with the Water Use Act when awarding funding, letting contracts, or providing assistance on water development projects. Governor Sheffield has re-issued this order as Administrative Order No. 83.

- ° **Resolution No. 86-3: South Anchorage Groundwater Decline**
DNR has continued to monitor the groundwater situation in the middle and lower levels of Anchorage's Hillside area.
- ° **Resolution No. 86-4: Department of Natural Resources Fees for Water Rights Applications**
This resolution urged the Governor to waive the \$50 filing fee for single family domestic water rights applications. In light of the budgetary situation, the decision was made not to waive these fees.
- ° **Resolution No. 86-5: Federal Reserved Water Rights Adjudication**
This resolution supported passage of SB 150. The bill has received support from federal and state agencies and from the Water Resources Board. As a result, the bill has been passed out of the Senate Resources Committee.
- ° **Resolution 86-6: Advisement of Legislative Action**
DNR has made every effort to ensure that the Board is kept abreast of proposed legislation relating to water resources.
- ° **Resolution 86-7: Filing Fee Advertisement**
DNR ads urging that people file for their water rights, plus ads run by Senator Faiks and Representatives Boucher, Rieger, and Collins were quite effective. The Department received roughly 5,450 new applications in the two months before the new filing fees went into effect, and is now exploring ways of dealing with this backlog in a timely manner.

The Commissioner closed by stressing that she believed that the funding cuts proposed in the Governor's budget will still allow vital public services to continue.

QUESTIONS AND COMMENTS:

Peg Tileston expressed concern that the emphasis on "regionalization" within DNR will encourage reactive departmental responses to parochial issues rather than a consistent statewide policy. **A:** The Central Office will be retaining a position to provide oversight on water issues. Consistent policy direction will also come from the director of DLWM as well as from the commissioner.

Tom Meacham expressed concern that Central Office oversight on instream flow and federal reserve water rights issues will be lost during the budget cuts. **A:** The position that is being retained in the Central Office will perform these functions.

Tom Hawkins, Director, Division of Land and Water Management, opened his remarks with a status report of water resource related bills now pending before the legislature:

***CSSB 95 - Dam Safety**

This bill gives the Department a comprehensive dam safety program with clear authority to regulate non-federal dams. The bill was passed out of Senate Resources and is before the Senate Finance Committee.

***CSSB 150 - Basin-wide Adjudication**

This bill establishes procedures for conducting basin-wide adjudications of water rights administratively and in state court. A committee substitute acceptable to DNR has been passed out of Senate Resources.

***HB 627 - Amendment to the Water Use Act**

This bill was introduced February 17 by Representative Miller of North Pole. DNR is concerned that the bill would limit DNR's ability to require all water users to file for water rights in critical management areas, and that "domestic" water use must be defined so it cannot be expanded to include subdivision water supplies.

***CSHB 93 - Recreational Rivers**

This bill establishes a system of recreational rivers. The bill is in the House Finance Committee.

***SB 334 - Hatcher Pass Public Use Area**

This bill provides management guidelines for the Hatcher Pass Public Use Area and is in Senate Resources.

***CS for HJR 14 - Navigability**

This bill requests that further classification of federal Wild and Scenic Rivers in Alaska be suspended pending the outcome of litigation on navigability issues. The bill is in the House Rules Committee.

Director Hawkins discussed the Bradley Lake Hydroelectric Project and the status of ongoing negotiations between the State and the National Park Service (NPS) concerning the allocation of flows at the Nuka Glacier between the Nuka and Bradley rivers. DLWM is also encountering problems with the National Park Service concerning a NPS regulation (36 C.F.R. Sec. 9.8) which states that plans of operation for placer mining will not be approved unless the applicant has a perfected water right with a priority date prior to establishment of the park. NPS has advised DLWM that they are revising the regulations.

Director Hawkins expanded on Commissioner Wunnicke's discussion concerning the impacts that the Governor's FY'86 budget proposals will have on water management programs within DLWM. The Director assured the Board that the

new backlog of water rights casefiles can be dealt with by the Northern and the Southeastern Regional Offices with existing staff; however, DLWM may have to request funding for several temporary positions at the Southcentral Regional Office to cope with their backlog.

The Western States Water Council held their last meeting in San Antonio, Texas. The focus of the meeting was groundwater issues.

Bill Ross, Commissioner, Department of Environmental Conservation, opened his remarks with a discussion of DEC's FY'86 budget. Federal cuts due to the Gramm-Rudman Act and the possible elimination of 205(J) grants will produce a decrease in federal monies; however, the Governor's FY'86 proposed budget for DEC provides for increases in funding:

- °To monitor growing surface water quality problems in Anchorage,
- °To step up permitting activities for new construction,
- °To implement a regulatory program for hazardous waste disposal problems associated with industrial areas on the Kenai Peninsula, and
- °To continue research efforts on placer mining effluent problems.

Commissioner Ross next provided the Board with an update on Water Board resolutions:

°**Resolution No. 86-1: EPA National Placer Mining Standards**

Governor Sheffield has provided for review of the proposed EPA placer mining standards by a wide variety of state agencies, and has directed the Office of the Governor to prepare a coordinated state response.

°**Resolution No. 86-2: Reaffirmation of Administrative Order No. 67**

DEC standard procedure is to assist and encourage communities seeking grant monies to apply for water rights. Since the last Board meeting, 6 out of 6 communities have applied for water rights.

The Commissioner reported that the PEO (polyethylene oxide) flocculation study, jointly sponsored by DEC, University of Alaska, EPA, and the Bureau of Mines, is scheduled for this summer. Results of the study should be ready in November, 1986.

The Commissioner informed the Board that comments are due on the proposed EPA placer mining standards in mid-March. EPA will be revising the standards in the fall of 1986 to incorporate comments received and the results of the PEO flocculation study and Placer Mining Grant studies that will be performed this summer. The standards are due to be finalized in October, 1987. DEC's comments expressed concern that the subcategories selected to guide effluent standards fail to fully take into account site specific variables. Also, the draft standards fail to encourage water conservation or classification prior to sluicing.

The Commissioner next discussed DEC's hazardous waste management programs:

- °DEC is currently preparing regulations that will allow it to assume the management of hazardous waste from the federal government through the provisions of the Resource Conservation and Recovery Act (RCRA). The DEC program is scheduled to go into effect in July 1987.
- °The Spring Clean-up and Technical Assistance Program, which provides free disposal of small quantities of hazardous wastes, now limits eligibility to those with 200 pounds or less of waste material.
- °DEC has a waste disposal study underway to determine what types and how much hazardous waste is being generated within the state.
- °DEC, working closely with DNR, is in the process of identifying sites within Alaska suitable for hazardous waste disposal, and has prepared draft regulations to guide the site selection process.
- °Regulations affecting the transportation of hazardous wastes and the notification of communities are being prepared.
- °DEC is investigating existing disposal sites through federal Superfund grants to determine the extent and magnitude of danger from hazardous wastes posed by these sites. The military is also investigating and cleaning up some of their disposal sites and are coordinating their efforts with DEC. Pending legislation, HB 470 and SB 375, would set up a fund to perform remedial work on existing sites and to provide authorization and funding to clean up hazardous waste spills.

The Commissioner next briefly discussed the Underground Injection Program. The Alaska Oil and Gas Conservation Commission (AOGCC) has primacy over Class II wells (i.e., secondary recovery and waste injection wells). They are currently preparing regulations that will enable them to take over permitting for these wells from EPA. DEC handles permitting for annular reinjection of wastewater from drilling muds.

DEC is currently amending its water quality regulations (18 AAC 70) to bring its program into compliance with new federal regulations which require that use attainability studies be performed as a prerequisite for stream reclassification. DEC currently has no funding, however, to perform any use attainability studies.

DEC is reviewing its internal procedures and regulations for on site disposal and water and wastewater system review to streamline its permitting process.

DEC, in cooperation with DNR, has obtained a federal grant to develop a Groundwater Protection Strategy. Program steps include:

- °Inventorying existing water quality data,
- °Inventorying known and potential groundwater pollution,
- °Assessing the adequacy of the existing regulatory framework, and
- °Developing a groundwater protection strategy.

QUESTIONS AND COMMENTS:

Tom Meacham asked if DEC was looking at the economic analysis that EPA used to establish their placer mining effluent guidelines? A: DEC has not concentrated on responding to the economic analysis, but feels that EPA has received adequate input from other sources.

Wayne Westburg asked if DEC was going to pursue reclassification of streams? A: Regardless of reclassification efforts, the placer mining industry will, as a minimum, have to meet the effluent guideline standards.

Stan Rybachek asked if EPA will be adopting the state's water quality standards? A: EPA must look at the state's water quality standards when issuing permits.

Wayne Westburg commented that if a miner can't even comply with the effluent guidelines, then reclassification of stream to industrial standards is pointless. A: The miner must comply with the effluent guidelines, as a minimum. However, depending on the classification of the stream, stricter controls could be imposed during the permitting process.

Tom Meacham wanted to know the status of the federal study to determine whether drilling muds should be classified as a hazardous waste? A: The EPA is currently in litigation for their failure to perform this study. A schedule for the study will be set by the courts.

Dave Vanderbrink expressed concern that places like Homer and Juneau may not be able to comply with the draft hazardous waste siting regulations. A: Commissioner Ross said he welcomed all input.

Stan Rybachek asked if settling ponds using the PEO flocculants could be classified as hazardous wastes? A: No, PEO is an FDA approved substance.

Stan Rybachek also expressed concern with the adequacy of the EPA lab in Corvallis, Oregon to meet the requirements of section 104(E) of the Clean Water Act. A: The location of the lab shouldn't be a problem. Some of the work is subcontracted to University of Alaska-Fairbanks.

Wayne Westberg asked if the placer mining industry is going to have to live with drinking water standards? A: DEC's budget does not allow them to do any use attainability studies; however, under federal rules, DEC has to perform these studies prior to any reclassification of streams.

Tom Meacham expressed concern that some Anchorage homeowners are unable to get their septic systems recertified due to changing well-septic spacing requirements. A: The Municipality of Anchorage was, for several years, delegated the responsibility to certify septic systems and, on occasion, certified or granted waivers to some inadequate systems. DEC is unwilling to compromise its standards in recertifying these systems.

Wayne Westberg stressed that no relationship has been established between failing septic systems and surface water pollution in Anchorage, nor have any water wells been shown to have been contaminated by failing septic systems.

Peg Tileston asked if DEC had any input on selecting the water and sewer systems included in SB 335? A: Those decisions are made by the legislature. DEC provides technical analysis of proposed systems on request from the governor or legislators.

Wayne Westburg asked if a water rights permit is now a DEC requirement before a certificate of construction and operation for a new water system will be issued? A: The commissioner said he will look into it.

Charles Sloan, Hydrologist, U.S.G.S., addressed the Board on the technical aspects of the joint DEC-DNR Groundwater Protection Strategy. The program is funded through section 106 of the Clean Water Act. Tasks identified to be done by DGGGS are:

- ° Inventory of groundwater related organizations,
- ° Determine the availability, accessibility and useability of groundwater quality data, and
- ° Determine the known extent of groundwater pollution in Alaska.

Bill Barnwell, Deputy State Geologist, DNR Division of Geological and Geophysical Surveys (DGGGS), provided the Board with a brief update on the AWARE plan and discussed the necessity of technical geological and hydrologic input on decisions concerning hazardous waste disposal. DGGGS's new responsibilities concerning water quality issues and the AWUDS Program mean that they will have to reprioritize their existing programs and be "spread a little thinner."

QUESTIONS AND COMMENTS:

Peg Tileston asked how much interaction and cooperation DEC has with the military on hazardous waste issues? A: Not very much. The Air Force has been in contact with DEC concerning some of their plans for hazardous waste cleanup. Bill Leitch, DEC, commented that historically DEC has had difficulty in getting information from the military on spills occurring within military reservations.

Christy Miller, Department of Community and Regional Affairs (DCRA) addressed the Board on floodplain management in Alaska. The National Flood

Insurance Program is a federal program designed to provide low cost flood insurance, and to encourage flood plain management through zoning restrictions. Communities found to lie within flood prone areas are required to join the program to be eligible for disaster relief, and to join, those communities have to establish mandatory land use planning requirements. There are currently 20 cities and boroughs in Alaska participating in the program. One problem that the program has caused is that if a flood prone community can't or won't participate in the Flood Insurance Program, its citizens cannot get home loans financed.

DCRA provides technical assistance to communities in meeting the minimum federal requirements for eligibility in the Flood Insurance Program, provides advice to lending institutions to determine if Flood Insurance is required prior to closing on loans, and serves as a mediator between the communities and the federal government or lending institutions.

The State of Alaska has no existing floodplain management program per se.

QUESTIONS AND COMMENTS:

Peg Tileston asked if the intent of the program is to help people rebuild in the same floodplain or to discourage construction within the floodplain? **A:** The program has the effect of doing both.

PUBLIC COMMENT SESSION

Bruce Geraghty, Executive Director, Miners Advocacy Council and Vice President of the Livengood/Tolovana Mining District, stressed the importance of reclassifying Alaskan streams and having the state take over the NPDES permitting process from EPA to help relieve placer miners of unreasonable and duplicative bureaucratic water quality requirements. Thirty-seven states so far have taken over this permitting process.

QUESTIONS AND COMMENTS:

Mike Niemeyer asked if streams were reclassified as industrial, could placer miners meet those standards? **A:** Not the 25 NTU standard. They may be able to meet the settleable solids standards. The advantage of reclassification is that an industrial classification will allow more flexibility in water quality management of placer mining on a case by case basis.

Tom Meacham commented that Texas and Massachusetts were probably able to assume the NPDES permitting program easily from EPA because those states have very few federal lands.

Dave Vanderbrink asked if the reason DEC won't look farther at reclassification is because the cost of doing a use attainability study is prohibitive? **A:** Other states have been able to perform several use attainability studies within one year, so why can't DEC?

Rose Rybachek, President of the Alaska Miners Association, provided the Board with some literature about the economic contribution of placer mining to Alaska, and several Placer Miners Association position papers on land planning and classification and coastal zone management. Ms. Rybachek then gave the Board an update on the efforts to have the Tolovana/Livengood mining district reclassified. The petition was denied. The district asked for a judicial review. In 1983, EPA enacted the regulations requiring use attainability studies. In 1985, the judge decided that DEC had not followed the proper procedures, and ordered DEC to do the following before March, 1986:

- °Prepare regulations for performing use attainability studies,
- °Conduct a use attainability study on the Tolovana River, and
- °Hold a public hearing regarding reclassification of the Tolovana River.

DEC is modifying their regulations and will be holding a public hearing in July 1986. The use attainability study has not yet been performed.

Wayne Westberg asked how much money do the placer miners have tied up in lawsuits. A: If a placer miner defends himself against a suit brought by EPA or DEC, it could cost up to a quarter of a million dollars. If you settle out of court, fines can range from \$14,000 to \$40,000. About \$120,000 has been paid in the water quality litigation against DEC. The Sierra Club-BLM suit will cost \$150,000 to get to the injunction stage.

Roger Burggraf, Chairman of the Fairbanks Branch of the Alaska Miners Association, emphasized that DEC and EPA water quality standards for placer mining discharge cannot be met with existing technology. Enforcement has been concentrated on politically active miners. Millions of dollars have been spent by government to study the effects of placer mining on the environment, but very little has been spent on researching new technology that will enable placer miners to meet water quality standards.

He recommended that:

- °The State should take over processing of the NPDES permits from EPA. Thirty-seven states have already done it.
- °DEC and EPA should "get their act together" and be consistent in their requirements and enforcement.
- °The State should fund studies to help miners develop technology to meet the water quality standards.
- °The State needs to aggressively pursue reclassification of streams.
- °The State should get involved in the BLM lawsuit.

QUESTIONS AND COMMENTS:

Peg Tileston asked what those miners who are able to meet the 0.2 ml/l standard for settleable solids were doing differently from those who couldn't? A: Site specific factors made the difference. No one can meet the turbidity standards.

Tom Meacham asked for clarification of the scope of the BLM lawsuit to affect miners who are not on BLM lands? A: About 10 percent of Alaskan miners would not be affected by this suit in some way.

Stan Rybachek asked if placer miners were going to comment on the EPA effluent guidelines? A: The miners are studying the supporting documents and will be responding to EPA.

Bob Amiller, Miners Advocacy Council, reported that they have approached the Alaska Department of Fish and Game (DF&G) with the proposal that if they are allowed to mine out a stream, they will put aside 2 percent of their profits to be used for mitigation and recovery of that stream. They were refused. DF&G maintains that Title 16 will not allow this sort of approach. Mr. Amiller also reported that enforcement actions are focused on politically active miners and that EPA has used a SWAT team approach to enforcement.

QUESTIONS AND COMMENTS:

Mike Neimeyer commented that EPA's economic analysis of placer mining in their supporting documentation for the placer mining effluent standards seemed, in his experience, to be completely unrealistic. A: Yes, EPA's economic analysis is not realistic for most mines in Alaska.

February 27, 1986

Jean Michou, General Manager, and Stephanie Koeniger, both of the Anchorage Water and Wastewater Utility (AWWU), gave the Board a report on AWWU's Water Master Plan Update and a discussion of how the Hillside groundwater situation fits into the larger problem of supplying adequate water for all of Anchorage. The Water Master Plan sets a schedule through the year 2020 for construction of improvements and additions to AWWU's water supply system. Some of the planned improvements include:

- ° Completion of the Eklutna Water Project and the construction of mains to serve communities north of Anchorage.
- ° Construction of a new 48-inch main from Eklutna to South Anchorage and Muldoon.
- ° Construction of a five million gallon reservoir in Russian Jack Park.
- ° Improving the delivery system to the Turnagain and Downtown areas.
- ° Construction of a 24-inch main along Jewel Lake.
- ° Construction of a 24-inch line along Lake Otis to a new reservoir at the proposed Turnagain View School site in South Anchorage.
- ° Construction of a 16-inch line with booster pumps to serve the Potter Creek area.
- ° Construction of new reservoirs at Hanshaw Junior High School and at Kincaid Park.
- ° Building new lines along 92nd, West Dimond, Raspberry, and Huffman Roads.

The cost of the improvements scheduled to be constructed between 1986 and 1991 is \$40.6 million. An additional \$73 million will be required to construct the long-term improvements scheduled for 1991 to 2020.

QUESTIONS AND COMMENTS:

Peg Tileston asked where conservation of water fits into the AWWU Master Plan? **A:** AWWU's policy has always been to encourage water conservation. AWWU is considering a recommendation to change the building code to require water efficient fixtures and meters in new construction.

Tom Meacham asked if some of the wells serving AWWU systems in the Lower Hillside area are physically outside of the service boundaries? **A:** No.

Wayne Westburg stressed that the wells that have failed on the Hillside were probably inadequate in the first place, and that all of those have been improved by deepening. Not enough data exists to substantiate the idea that the Hillside is experiencing a groundwater crisis.

Mike Neimeyer asked how much water is lost out of deteriorated AWWU water lines? **A:** The AWWU water system is fairly new and in good condition. There were leakage problems with some of the community systems that AWWU has taken over, but they have been corrected.

Mike Niemeier asked what relationship the city has with the military reservation? How much water are they using? **A:** That's a very good question. The military takes their water from Ship Creek and maintains the Ship Creek Dam. There is no military involvement with the Eklutna Project.

Tom Meacham asked if AWWU plans to increase pumping out of its Hillside wells? **A:** AWWU could increase pumping on the Hillside to serve areas with failed private wells and those new developments which ask to be served.

Randy Wanamaker asked if AWWU has a program to study groundwater recharge? **A:** Groundwater recharge was tried on the Hillside in Campbell Tract in the early 1970's and ran into trouble with lawsuits for flooded basements.

Wayne Westburg pointed out that the military has been very uncommunicative and uncooperative in divulging their water use. He also stressed the value of water rights and encouraged AWWU to not abandon wells that have established water rights. **A:** AWWU does not lightly abandon wells with water rights.

Dave Vanderbrink commented that the well density on the Hillside would make putting in a sewer system difficult. **A:** AWWU has encountered situations where they could not service areas because well-sewer separation distances could not be met.

Wayne Westburg pointed out that using a community sewer system in areas with on-site wells results in dewatering the area.

Gary Prokosch, Department of Natural Resources, provided the Board with an update on the Hillside situation from the DNR perspective. With the new influx of water rights applications from the Hillside area, the percentage of Hillside residents with existing or pending water rights has increased from 18 percent to 43 percent in one year. The new applications are a source of new data. The USGS has been monitoring the golf course well for six months, and the Alaska Zoo has started to meter its water use. This new information will also fill data gaps on water use on the Hillside. Currently, however, DNR has insufficient information to create a critical water management area on the Hillside.

Wayne Westburg asked what DNR is going to do about water rights for the golf course well? A: DNR is requesting that a pump test be performed so that the influence of the well on prior appropriators can be determined. The golf course is also investigating diverting water from Campbell Creek to use for irrigation.

Stan Rybachek asked about the status of the application for dewatering the Tri-con mine? Mary Lu Harle, Department of Natural Resources, reported that the project is on hold for economic reasons. A pump test has been performed by DSGS determine the impact on prior appropriators.

Don Shira, Alaska Power Authority (APA), discussed small scale hydropower development in Alaska. APA is currently studying or has recently completed studies of 11 small scale hydropower sites. Some of the problems in developing small scale hydropower sites are:

- °Lack of hydrologic data,
- °Lack of good hydropower sites near population centers, and
- °Difficulty in obtaining financing.

There is a real lack of transmission grids in Alaska. Several southeastern projects are not working at peak levels because energy demand has been less than anticipated. Also, British Columbia has large amounts of excess hydropower. With the development of a Southeastern power grid, this unused capacity could be put to use. Underwater direct current transmission could be used in Southeastern to avoid environmental problems associated with overhead transmission lines. HJR 55 was introduced this session to encourage development of a Southeast intertie. The advantages to constructing a Southeast intertie are:

- °Power can be transferred from areas of surplus to areas of energy deficit.
- °Allows communities to share facilities, thus reducing total costs.
- °Provides access to low cost Canadian power.
- °Provides power to the Quartz Hill Project.
- °Allows development of most economical hydropower sites regardless of the site's proximity to population centers.
- °Provides energy to small Southeastern communities currently dependent on oil fired generation.

Peg Tileston asked what an intertie between British Columbia and Southeastern would cost? A: The cost of an intertie from Whitehorse to Prince Rupert was estimated at \$250 million 1982. Present day costs would probably be \$400 million.

Tom Meacham asked if federal reserve water rights have caused problems in developing hydropower sites? A: Other than Bradley Lake, no.

Dick Logan, Director, Division of Sport Fisheries, Department of Fish and Game (DF&G), briefed the Board on the new DF&G Instream Flow Program. The Instream Flow Program will utilize staff expertise developed during the Susitna studies. The program will be funded by Dingell-Johnson federal funds.

DF&G plans to:

- ° Start applying for instream flow reservations on those streams that currently have adequate hydrologic and biologic data.
- ° Supply DNR with data they have requested on previously filed instream flow applications (i.e., Terror Lake).
- ° Apply knowledge gained in the Susitna studies to a large number of Alaskan streams.
- ° Participate in the joint federal-state federal reserve rights work group.
- ° If HB 93 (Recreational Rivers Bill) is passed, within two years file instream flow reservations on streams designated as Recreational Rivers.
- ° Participate on various management teams, such as the Kenai River Management team.
- ° Prioritize stream systems throughout the state for instream flow work.
- ° Encourage the installation of USGS gage stations on critical streams to ensure that baseline hydrologic data is available to the instream flow program.
- ° Refine hydrologic models to reflect Alaskan conditions.
- ° File for an instream flow reservation on Rabbit Creek near Anchorage.

QUESTIONS AND COMMENTS:

Tom Meacham encouraged DF&G to pursue an instream flow reservation in Potter Marsh. He also asked if DF&G had coordinated any of its plans for instream flow work with any of the native associations? A: DF&G will make its expertise available to anyone interested in instream flows.

Mike Neimeyer asked if there is a threat to the fisheries in Bristol Bay that necessitates instream flow reservations? A: DF&G is looking to the future in Bristol Bay.

Dave Vanderbrink asked for clarification on DF&G's plans for the Kenai River? A: DF&G, working cooperatively with the U.S. fish and Wildlife Service, will begin instream flow data collection on Kenai River tributaries. DF&G is also collecting data on key riparian habitats along the Kenai River itself.

Randy Wanamaker asked if any streams in Southeastern Alaska have been targeted for instream flow work? **A:** An ungaged basin flow modelling program has been tentatively scheduled for Southeast.

Mike Neimeyer expressed concern with DF&G's plan to file for instream flow reservations only on those streams which currently have adequate hydrologic data, rather than streams which actually need instream flow reservations. Peg Tileston provided clarification on the point that the Dinghall-Johnson monies are not only for instream flow reservations, but also to study the effect of pollution, habitat loss, over-fishing, etc. on sport fish populations. Thus, the studies proposed by DF&G for the Bristol Bay area were appropriate.

Bruce Baker, Department of Fish and Game, informed the Board that DF&G has a list of prioritized streams that need an instream flow study. The list was compiled in 1984 and is currently being revised. Criteria used to identify priority streams include:

- °Areas of current or anticipated conflicts involving water use
- °Availability of information from previous instream flow assessments
- °Availability of flow records,
- °Fisheries resources,
- °Wildlife resources,
- °Stream morphology, and
- °Extent of public recreational use.

Dave Vanderbrink asked if DF&G has plans to study any placer mining areas as part of its instream flow program? **A:** Placer mining has not been singled out as a criteria for study; however, some of the streams selected probably overlap placer mining areas.

Peg Tileston asked what kind of coordination occurs between DNR and DF&G on the various management plans? **A:** Habitat Division provides information on instream flows to DNR through DF&G's departmental comments.

Rick Reed, Department of Fish and Game, brought the Board up to date with the status of permitting the Green's Creek and the Quartz Hill projects. The 1984 DEIS on the Quartz Hill Project proposed a primary water source on Tunnel Creek with a well field on the Wilson River as a secondary source. An instream flow study on the Wilson River was performed by the U.S. Fish and Wildlife Service to determine the impact of a well field. It was found that the water withdrawals during low flow periods could severely impact the fisheries on Wilson River. Since that study, a pool near the mouth of Blossom River was identified as a possible alternate water source, and is being studied. The revised DEIS is coming out in the summer of 1986. Instream flow studies are also being performed by Noranda for the Green's Creek project.

QUESTIONS AND COMMENTS:

Randy Wanamaker asked about the effect of discharging tailing from the Green's Creek project directly into Hawk Inlet rather than into Chatham Straits? **A:** The effects of discharge into Hawk Inlet are being studied by Noranda. If they can demonstrate there will be little or no effect on the marine biota in the Inlet, then this discharge scheme will be permitted.

Fletcher Shives, Environmental Protection Agency (EPA), provided the Board with additional information on the Green's Creek and Quartz Hill projects. Studies on tailings discharge into Hawk Inlet indicate that the tidal surge in the narrow portion of the Inlet is very effective for mixing and dispersing tailings. EPA has issued permits to the Green's Creek project for the housing and construction portions of the project. A tailings monitoring program has been developed with DEC.

The Quartz Hill Project is still being evaluated. EPA concerns include:

- °Maintaining air and water quality,
- °Spill prevention and containment, and
- °Reporting and handling of hazardous wastes.

The revised draft DEIS will be available for public comment in April or May, 1986.

QUESTIONS AND COMMENTS:

Wayne Westburg asked if U.S. Borax still feels that the Wilson River well field is their preferred alternative water source? **A:** **John Paulsen**, U.S. Borax, informed the Board that the flow characteristics in the Wilson River make it a much more stable water source than some of the alternatives U.S. Borax has considered. The Blossom River pool is an alternative, but has not received adequate study as yet. Salt water intrusion will be a problem with the Blossom River pool.

Randy Wanamaker expressed concern that the tailings piles at the Greens Creek project will leach arsenic into the environment. **A:** An intensive monitoring program for tailings effluent has been devised. If deleterious effects are found, corrections to mine operations will be made.

Randy Wanamaker asked about the permitting status on both projects? **A:** The Greens Creek Project is in final stages of preparing the draft NPDES permit for a public notice and comment period. The Quartz Hill Project will receive its NPDES permit when the EIS is finalized.

Fletcher Shives pointed out that tailings from the Greens Creek Project will be disposed of in tailings dams on Zinc Creek. To compensate for the loss of habitat in Zinc Creek, Noranda will remove natural physical barriers on Greens Creek which currently prevent upstream migration of anadromous fish.

Mike Neimeyer asked about the advantages and disadvantages to the state in assuming the NPDES permitting process from EPA? A: Fletcher Shives said that it would relieve the placer miners of one layer of governmental interference, but DEC is so overburdened now, it would not be able to administer the program well. The federal government currently has a grant program to states taking over this function; however, federal budget cuts may eliminate those funds.



RECORDS CERTIFICATION



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James O. Smith
Signature of Camera Operator

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Prepared by:
Senator Coghill's
Office 2/19/85

Golden Valley Electric Assn.

Contract Extension

SB 152

Golden Valley and the State of Alaska negotiated an agreement in 1976 to sell 5,000 barrels per day of royalty oil. Golden Valley requested royalty oil so that crude oil might be used as turbine fuel for power generation if market conditions made the cost prohibitive.

Golden Valley did not exercise its option to purchase until 1981. It assigned its contract rights to Mapco in exchange for a price discount on the turbine fuel.

This price discount, over \$500,000 a year, is passed on to its 50,000 electric customers. The Department of Natural Resources has indicated that continued royalty oil sales to GVEA is in the best interest of the state because it offers maximum benefits to the citizens of the State.

The new Golden Valley contract with the State is a long-term noncompetitive bid contract for 10 years. It is still awaiting final approval. This contract will require legislative approval and will not be ready for that approval until March. It then must be signed by the governor. It becomes effective four months after signing.

The expiration date of the existing contract is June 30, 1985.

As part of the Prudhoe Bay Unit Agreement of April 1, 1971, 90 days notice must be given to the producers to switch from in kind taking to in value for a small volume. This is the nomination/denomination process.

Notice must be given to the producers by March 31, 1985 under the existing contract-- if it expires June 30--in order for the State to return to in value taking.

Essentially with no extension the royalty oil will stop coming to Golden Valley. There will be a gap between the old and new contract. There is a four month waiting period before the new contract takes effect so that the State may notify the producers of its desire to take in kind. In addition to these problems are the procedural requirements found in the bill relating to public notice. Each notice step takes a certain amount of time.

This bill will allow the Golden Valley contract to extend for three months, enough time for the new contract to take effect and keep the prices of turbine fuel down to help lower fuel costs to its customers. The legislation is temporary and expires October 1, a time fixed to coincide with the new contract start-up.

It is not practical at this time to treat the proposed extension as a new disposal due to numerous requirements which would be waived by the proposed CS for SB 152.

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HB 233

Letter of Intent

Passage of this legislation is in no way to be construed as tacit approval or endorsement having been given to the proposed ten-year royalty oil contract with GVEA. The ten-year contract shall be reviewed exclusively on its own merits at such time as this contract is presented to the Legislature.

A handwritten signature in cursive script, reading "Dick Shultz", written over a horizontal line.

Dick Shultz, Co-Chairman
House Resources Committee

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 485-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

To: Representative Mike Davis, Chairman
From: Jonathan Sperber, Committee Aide
Date: March 17, 1985
Re: CSSB 152

The present and proposed GVEA royalty oil contracts are both predicated on GVEA assigning its crude oil to MAPCO, in exchange for which MAPCO then sells a share of #4 turbine fuel to GVEA at a discounted price. Of the 5,000 b/d of crude oil presently being assigned to MAPCO, 625 b/d of #4 turbine fuel is in return sold to GVEA. This represents approximately one-third of GVEA's turbine fuel needs, and one-sixth of the utility's total energy needs.

The turbine fuel is sold to GVEA at a discount from MAPCO's standard price, and this \$550,000 annual discount is passed through to GVEA's members as a 1.57% savings on their electrical costs. This consumer benefit satisfies the best-interest requirements set forth in AS 38, and thus serves as the basis and justification for the state to sell royalty oil to GVEA.

The product breakdown of the 5,000 b/d of crude oil that MAPCO presently receives from GVEA is as follows:

625 b/d	#4 turbine fuel sold to GVEA at discount
1758 b/d	other refined products
2617 b/d	residual oil
5000 b/d	total

The residual oil is returned to the Trans-Alaska Pipeline at Fairbanks, and is then reclaimed by MAPCO as whole crude oil at Valdez. MAPCO may then exchange this oil for crude oil from the North Slope, thereby repeating the process of receiving, refining, returning, and exchanging oil. As a penalty for returning lower-quality oil into the pipeline, MAPCO pays a quality bank differential of 10¢ per API degree loss. At a 7 degree quality loss, MAPCO would pay a penalty of 70¢ per barrel.

Each barrel of crude oil refined by MAPCO produces approximately 5.25 gallons of turbine fuel and 11.18 gallons of jet fuel and diesel/heating oil. The remaining oil is reinjected into the pipeline as resid. MAPCO marks-up turbine fuel at about 9¢/gal. (from assignment agreement with MAPCO) and jet and diesel/heating oil at about 26¢/gal. (from Alaska Petroleum Product Pricing). This implies an annual gross profit of about \$2,170,000 based on 1758 b/d at a mark-up of \$3.38 per barrel. Operating and depreciation expenses would be deducted from this figure to arrive at MAPCO's annual net profit.

STATE OF ALASKA



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HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HB 233/CSSB 152

Passage of either HB 233 or its companion bill, CSSB 152, would provide for an emergency three-month extension of the present GVEA royalty oil contract. The best-interest finding of this bill is based on the royalty oil being assigned to MAPCO, and MAPCO in turn selling turbine fuel to GVEA at a discounted price. This discount results in a 1.57% savings to consumers on their electrical costs.

Because this legislation would bypass several procedures relating to the disposition of royalty oil, it is worthwhile to review the events that led to the introduction of this legislation.

- 1976 Negotiations take place between the Department of Natural Resources and GVEA
- 1977 GVEA contract is signed
- 1978 GVEA is eligible to begin receiving royalty oil; contract expires six years from date of first receipt
- 1981 GVEA elects to begin receiving royalty oil, at a rate of 5,000 b/d
- 1982 GVEA request 10-year extension of contract
- 1983 Negotiations take place between the Department of Natural Resources and GVEA; Royalty Board reviews the proposed contract
- 1984 The six-year contract expires, and an emergency one-year contract is signed
- 1985 HB 233 and CSSB 152 would provide for an emergency three-month extension

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HOUSE SPECIAL COMMITTEE ON OIL AND GAS

HB 233

Letter of Intent

Passage of this legislation is in no way to be construed as tacit approval or endorsement having been given to the proposed ten-year royalty oil contract with GVEA. The ten-year contract shall be reviewed exclusively on its own merits at such time as this contract is presented to the Legislature.

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SLA 1980)

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "If legislative approval is required by AS 38.06.055, a" for "No" at the beginning of the subsection, inserted "not" preceding "be made by" near the middle of the first sentence, deleted "the" following "AS 38.05.183 without" near the middle of the first sentence, substituted "review of the proposed sale, exchange, encumbrance or other disposition by" for "written approval of" in the first sentence, and added the second sentence; in subsection (b), deleted "not" following "oil or gas may," substituted "if" for "without the" preceding

"prior written," and substituted "notice of the proposed disapproval is given to" for "approval of"; in subsection (c), substituted "unless" for "without the" preceding "prior written," and substituted "notice of proposed waiver is given to" for "approval of"; and deleted former subsection (d), which read: "The board may require conditions relating to the sale, delivery, transportation, or refining or processing within the state to be included by the commissioner of natural resources in the offer of and sale by competitive bidding of oil or gas obtained by the state as royalty under AS 38.05.182."

NOTES TO DECISIONS

Stated in McKinnon v. Alpetco Co.,
Sup. Ct. Op. No. 2413 (File No. 5546), 633
P.2d 281 (1981).

Sec. 38.06.055. Legislative approval. (a) In addition to the recommendation by the board required under AS 38.06.050, the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature. The legislature may approve a sale, exchange, or other disposition of oil or gas or of the rights or of a waiver of the rights to receive future production of royalty oil or gas only by enacting legislation.

(b) The provisions of (a) of this section do not apply to

(1) the sale, exchange, or other disposition of oil or gas for one year or less if the sale, exchange, or other disposition is entered into to relieve storage or market conditions;

(2) contracts for the sale of state-owned royalty gas or oil that specify the sale and delivery of not more than

(A) 400 barrels of crude oil per day;

(B) 460 barrels of natural gas liquids per day; and

(C) 2,400 Mcf of natural gas per day.

(c) A sale, exchange, or other disposition of oil or gas made under (b)(1) of this section may not be continued after the end of one year or renewed with the same party to provide relief for market or storage conditions without the prior approval of the legislature under (a) of this section. (§ 2 ch 9 SSSLA 1974; am § 2 ch 146 SLA 1977; am § 1 ch 131 SLA 1978; am § 6 ch 112 SLA 1980)

Effect of amendments. — The 1980 amendment rewrote the section.

Opinions of attorney general. — The legislature may not conditionally approve a contract since such conditional accep-

tance is in law a rejection of the offer and the contract would have to be returned for renegotiation. February 23, 1977, Op. Att'y Gen.

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959 or to the heirs or devisees of the person; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner for its fair market value a remnant of land that the director considers unmanageable or a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) the director determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans;

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under this chapter if reasonable penalties and interest set by the director are paid;

(9) quitclaim land or an interest in land to the federal government on a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state.

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b) (7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.840. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land.

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. A contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the

commissioner approves the contract but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner. Before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based. A written finding is not required before the approval of

- (1) a contract for a negotiated sale authorized under AS 38.05.115;
- (2) a lease of land for a shore fishery site under AS 38.05.082;
- (3) a permit or other authorization revocable by the commissioner;
- (4) a mineral claim located under AS 38.05.195;
- (5) a mineral lease issued under AS 38.05.205; or
- (6) a production license issued under AS 38.05.207.

(f) The director shall grant a preference right to the purchase or lease without competitive bid of up to five acres of state land to an individual who has erected a building on the land and used the land for bona fide business purposes for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (§ 5 art II ch 169 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA 1978; am § 15 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am § 1 ch 61 SLA 1980; am §§ 9 — 13 ch 113 SLA 1981; am §§ 19, 20, 88 ch 152 SLA 1984)

Revisor's notes. — In 1981, in subsection (b) (7), the word "convey" was substituted for "dispose" at the beginning of the

paragraph and in subsection (d), the words "of land" were added following "parcel" under AS 01.05.031.

Effect of an amendment to AS 38.05.035: graph (a)(9)(D)

The 1981 "\$50,000" for "case of the s" "\$5,000" for "case of the ann" tuted semicolo "the written" "before a public finding is not re of" following " added subpara subsection (a)(1) amendment ad date of original price was not set "a price determ subsection (b)(5 tuted "on the d entered the lan preceding "as de The amendment and (8) of subsections (c) and (d).

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has expired as
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Overriding royalty as affected by
surrender, forfeiture, abandonment, or
loss of lease, 135 ALR 557.

What constitutes "royalty" on oil or gas
production within language of conveyance,
exception or reservation, 4 ALR2d 492.

Construction and effect of provision in
mineral lease excusing payment of mini-
mum rent or royalty, 28 ALR2d 1013.

Solid mineral royalty as real or personal
property, 68 ALR2d 728.

Solid mineral royalty under mining
lease as real or personal property for
purpose of payment of damages in con-
demnation proceedings, 68 ALR2d 735.

Expenses and taxes deductible by lessee
in computing lessor's oil and gas royalty or
other return, 73 ALR2d 1056.

Payment of stipulated minimum
royalties or annual rental under solid min-
eral lease as precluding lessor's claim of
forfeiture or abandonment, 87 ALR2d
1076.

"Shut-in royalty" payment provisions in
oil and gas leases, 96 ALR2d 345.

Rights of parties to oil and gas lease or
royalty deed after expiration of fixed term
where production temporarily ceases, 100
ALR2d 885.

Sec. 38.05.183. Sale of royalty. (a) The sale, exchange or other
disposal of a mineral obtained by the state as a royalty under AS
38.05.182, or the sale, exchange or other disposal in whole or in part
of a right to receive future mineral production under a state lease
under this chapter, shall be by competitive bid and the sale, exchange
or other disposal made to the highest responsible bidder, except that
competitive bidding is not required when the commissioner, after prior
written notice to the Alaska Royalty Oil and Gas Development
Advisory Board under AS 38.06.050, determines that the best interest
of the state does not require it or that no competition exists.

(b) When competitive bids are required, the commissioner, after
prior written notice to the Alaska Royalty Oil and Gas Development
Advisory Board, may reject all bids on a determination that because of
the amount of the bids, the lack of responsibility on the part of the
bidders, or for reasons consistent with the criteria set out in AS
38.06.070, the acceptance of the bids would not be in the best interest
of the state.

(c) If the commissioner determines that a sale, exchange or other
disposal of a mineral obtained by the state as a royalty under AS
38.05.182 or of a right to receive future mineral production under a
state lease under this chapter shall be made otherwise than by competi-
tive bid, and the Alaska Royalty Oil and Gas Development Advisory
Board has been notified in writing of that determination, the commis-
sioner shall make public in writing the specific findings and conclu-
sions upon which that determination is based.

(d) Oil or gas taken in kind by the state as its royalty share may not
be sold or otherwise disposed of for export from the state until the
commissioner determines that the royalty-in-kind oil or gas is surplus
to the present and projected intrastate domestic and industrial needs.
The commissioner shall make public, in writing, the specific findings
and reasons on which the determination is based and shall, within 10
days of the convening of a regular session of the legislature, submit a
report showing the immediate and long-range domestic and industrial
needs of the state for oil and gas and an analysis of how these needs are
to be met.

(e) When a sale, exchange or other disposal of oil or gas taken in kind by the state as its royalty share, or a sale, exchange or other disposal in whole or in part of a right to receive future royalty oil or gas, under a state lease under this chapter is made other than by competitive bid, the sale, exchange or other disposal shall be awarded by the commissioner to the prospective buyer whose proposal offers the maximum benefits to citizens of the state. The commissioner shall consider

(1) the cash value offered;

(2) the projected effects of the sale, exchange or other disposal on the economy of the state;

(3) the projected benefits of refining or processing the oil or gas in the state;

(4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and

(5) the criteria listed in AS 38.06.070(a).

(f) The commissioner may not enter into a contract for the sale of royalty oil unless the contract provides that any material amendment to the contract that appreciably reduces the consideration received by the state requires prior approval of the legislature. (§ 1 ch 56 SLA 1970; am § 3 ch 9 SSSLA 1974; am §§ 9, 10 ch 112 SLA 1980; am § 2 ch 68 SLA 1984; am § 2 ch 105 SLA 1984)

Revisor's notes. — Enacted as AS 38.05.363. Renumbered in 1970.

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "after prior written notice to" for "with the prior written approval of" and "under AS 38.06.050" for "where applicable," near the end of the subsection; in subsection (b), substituted "after prior written notice to" for "with the prior written approval of"; in

subsection (c), substituted "has been notified in writing of" for "where applicable has approved"; in subsection (d), deleted "with the approval of the Alaska Royalty Oil and Gas Development Advisory Board" following "until the commissioner"; and added subsection (e).

The 1984 amendments added an identical subsection (f).

NOTES TO DECISIONS

Waiver of competitive bidding. — An initial waiver of competitive bidding and a second waiver at the time of amendment removed any obligation to open the

contract to competitive bidding. *McKinnon v. Alpetco Co.*, Sup. Ct. Op. No. 2413 (File No. 5546), 633 P.2d 281 (1981).

Sec. 38.05.184. Limitation on oil and gas leases in certain areas, and reacquisition of leases. (a) The legislature finds that Kachemak Bay is an area of extraordinary abundance and diversity of marine life that has provided, and will continue to provide in the future, a basis for one of the state's most important commercial fisheries; that recent information discloses that even minute quantities of oil released into the marine environment may be harmful to the larval forms of crabs and other marine life and that the existence of

gyral current into contact and that this presents an

(b) No additional or any other production or mean higher the perimeter three mile line miles west of line of Anchorage

(c) The cost of purchase in the oil or gas lease which were is

(d) In lieu of interest, the cost plus interest: seller to be a permit fees, re new production and gas development reimburse in leasee to the state for expenses a

(e) For a period of the five year period is longer: state oil and gas shall suspend oil and gas lease exploration and Game and Game a re the living resource drilling activities to negotiate for The lease period shall be extended moratorium.

(f) In the event satisfactory price the commissioner development exploration leases through t

(B) the rights to receive future oil or gas production under state leases; and

(4) recommend to the commissioner of natural resources the conditions relating to the sale, delivery, transportation, refining or processing of oil or gas which the commissioner may include in the offer and sale of oil or gas obtained by the state as royalty under AS 38.05.182.

(b) The board may

(1) direct the commissioner of natural resources to solicit development plans or bids consistent with the criteria set out in AS 38.06.070 for

(A) the sale, exchange or other disposal of oil or gas obtained by the state as royalty under AS 38.05.182; or

(B) the sale, exchange or other disposal of all or a portion of the rights to receive future oil or gas production under a state lease;

(2) employ an executive director, and contract for the services of professionals, persons with knowledge of economics and other disciplines, and persons with technical skills who may be necessary to assist the board in the exercise of its powers and duties; and

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that are necessary for the exercise of its powers and duties. (§ 2 ch 9 SSSLA 1974; am § 4 ch 112 SLA 1980)

Effect of amendments. — The 1980 amendment rewrote the section.

Sec. 38.06.050. Board review and recommendation required.

(a) If legislative approval is required by AS 38.06.055, a sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas may not be made by the commissioner of natural resources under AS 38.05.183 without prior review of the proposed sale, exchange, encumbrance or other disposition by the board. A written recommendation of the board on the proposed sale, exchange, encumbrance or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas shall be submitted to the legislature at the time a resolution approving the proposed sale, exchange, encumbrance or other disposition is introduced in the legislature.

(b) Bids or applications for the purchase of royalty oil or gas may be rejected by the commissioner of natural resources if prior written notice of the proposed disapproval is given to the board.

(c) Competitive bidding in a sale, exchange or other disposition described in (a) of this section may not be waived by the commissioner of natural resources under AS 38.05.183 unless prior written notice of proposed waiver is given to the board.

(d) *[Repealed.]* (§ 2 ch 9 SSSLA 1974; am § 5 ch 112 SLA 1980)

Effect of an amendment, in "If legislative approval is required by AS 38.06.055, a sale, exchange, encumbrance, or other disposition of oil or gas or of the rights to receive future production of royalty oil or gas may not be made by the commissioner of natural resources under AS 38.05.183 without prior review of the proposed sale, exchange, encumbrance or other disposition by the board. A written recommendation of the board on the proposed sale, exchange, encumbrance or other disposition of oil or gas or of the rights to receive future production of royalty oil or gas shall be submitted to the legislature at the time a resolution approving the proposed sale, exchange, encumbrance or other disposition is introduced in the legislature." (AS 38.06.050, a) of this section may not be waived by the commissioner of natural resources under AS 38.05.183 unless prior written notice of proposed waiver is given to the board.)

Stated in M Sup. Ct. Op. No. P.2d 281 (1981).

Sec. 38.06.055. Board review and recommendation required.
 (a) If legislative approval is required by AS 38.06.050, a sale, exchange, encumbrance, or other disposition of oil or gas or of the rights to receive future production of royalty oil or gas may not be made by the commissioner of natural resources under AS 38.05.183 without prior review of the proposed sale, exchange, encumbrance or other disposition by the board. A written recommendation of the board on the proposed sale, exchange, encumbrance or other disposition of oil or gas or of the rights to receive future production of royalty oil or gas shall be submitted to the legislature at the time a resolution approving the proposed sale, exchange, encumbrance or other disposition is introduced in the legislature.
 (b) Bids or applications for the purchase of royalty oil or gas may be rejected by the commissioner of natural resources if prior written notice of the proposed disapproval is given to the board.
 (c) Competitive bidding in a sale, exchange or other disposition described in (a) of this section may not be waived by the commissioner of natural resources under AS 38.05.183 unless prior written notice of proposed waiver is given to the board.
 (d) *[Repealed.]* (§ 2 ch 9 SSSLA 1974; am § 5 ch 112 SLA 1980)

Effect of amendment rewrote section. Opinions of attorney general may not be used to enforce a contract since s

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 152
Title: Royalty Oil, GVEA

Sponsor: Coghill
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: _____

NRMEC
BRU, Program or Subprogram(s) Affected: Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar
Division: Commissioner's Office

Phone: 465-2400
Date: 15 February 1985

Approved by Commissioner: *E. W. Wunniche*
Agency: Natural Resources

Date: 18 February 1985

Distribution (by Agency preparing fiscal note):

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

7/1/84

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 4, 1985

SUBJECT: Constitutionality of HB 233

TO: House Special Committee on Oil and Gas

FROM: Randall J. Moen 
 Legislative Counsel

You have asked whether section 1 of HB 233 violates Article II, section 19 of the Alaska Constitution. In my opinion it does not.

Section 1 of HB 233 temporarily waives certain provisions of law relating to a particular type of sales of state royalty oil. It states:

The following provisions of law do not apply to an extension or renewal of not more than three months of a sale of oil subject to approval by the legislature under AS 38.06.055(c): (1) AS 38.05.035(e); (2) AS 38.05.183(a), (c), and (e); and (3) AS 38.06.050.

Article II, section 19 of the Alaska Constitution reads in part, "The legislature shall pass no local or special act if a general act can be made applicable." Two questions emerge: Is the language of section 1 of HB 233 of a special or local nature, and if so, can a general act be made applicable? I will only address the first question.

The two leading Alaska cases regarding Article II, section 19 of the Alaska Constitution are State v. Abrams, 534 P.2d 91 (1975) and State v. Lewis, 559 P.2d 630 (1977). Abrams, supra, dealt with a law giving Eagle River special incorporation privileges. In Lewis, supra, the court was faced with a law waiving other laws for a particular three way land exchange agreement. Both cases are similar in that they dealt with acts which on their face were applicable to only one entity or party or locale. This can be distinguished from section 1 of HB 233 which may apply to anyone or anywhere in general. It is not limited to any one entity or

Representative Mike Davis
March 4, 1985
Page 2

party or locale. Therefore, section 1 is not a "special or local" act under Article II, section 19 of the Alaska Constitution.

RJM:ojb
J12/051

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

February 18, 1985

Senator Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Ak 99811

Dear Senator Sturgulewski:

The attached Extension Amendment has been drafted to accommodate a proposed extension of the current royalty oil contract between the State and Golden Valley Association, Inc., as contemplated by the proposed Committee Substitute for Senate Bill 152. Upon enactment of the legislation (including approval by the Governor), I am prepared to execute the amendment.

Sincerely yours,



Esther C. Wunnicke
Commissioner
Department of Natural Resources

Attachment as stated

cc: Mike Kelly, Golden Valley Electric Assoc., Inc.

1574K

Extension Amendment

The following language amends the agreement for the sale and purchase of royalty oil dated May 9, 1984 between the State of Alaska and Golden Valley Electric Association, Inc.:

ARTICLE VI

TERM

6.1 Term. This Agreement shall become effective upon execution by the parties. Subject to the other provisions contained in this Agreement, Seller's obligation to sell and Purchaser's obligation to buy Royalty Oil shall begin July 1, 1984 and end June 30, 1985.

6.2 Extension of Term. Upon enactment on or before March 28, 1985 or legislation approving and ratifying a three-month extension of this Agreement, Seller's obligation to sell and Purchaser's obligation to buy Royalty Oil shall not end until September 30, 1985, or until the date of first delivery under the agreement for the sale and purchase of Royalty Oil conditionally entered into by Seller and Purchaser on February 8, 1985, whichever comes first. As used in this article, "enactment of legislation" is as defined in AS 01.10.070(f)(4).

6.3 Security for Extension of Term. Seller shall not be obligated to deliver Royalty Oil to Purchaser under any extension of the term of this Agreement if Purchaser fails by March 28, 1985 to deliver to Seller evidence that Seller may issue drafts against Purchaser's Article XV Security instrument up to and including November 30, 1985.

Date: _____

Commissioner
Department of Natural Resources

Date: _____

Golden Valley Electric
Association, Inc.

From
GVEA
2/19/85

GVEA ROYALTY OIL CONTRACT

FACT SHEET

TITLE: Agreement for Sale and Purchase of Royalty Oil

TERM: 3 months

MAJOR FACTS/BENEFITS:

- a. This is a renewal or continuation of GVEA's 1977 royalty oil contract which was the first royalty contract. GVEA is presently receiving oil and has been receiving continuously since 1981.
- b. The contract has specific "In State Processing Requirement".
- c. Guaranteed Benefits:
 - (1) Directly benefits more than 50,000 Interior residents who are consumers of GVEA by providing GVEA a lower price for turbine generator fuel.
 - (2) GVEA's fuel derived from the royalty oil agreement costs 9.4% less than next best competitive alternative.
 - (3) GVEA saves in excess of \$550,000 a year which is passed on directly to the consumer via GVEA's "Cost of Power Adjustment (CPAC)" tariff and has been a credit adjustment on the last 33 monthly electric billings.
- d. Fairbanks area electric consumers are the only major group in Alaska who do not presently benefit from hydro development, power cost assistance, or availability of economical natural gas fuels.
- e. Although approval now seems within our grasp, there have been several delays in the approval of GVEA's contract. We are in a position at this late date where even if the proposed contract is approved immediately, we will lose our oil supply because of the crude oil denomination and re-nomination requirements associated with the lapse of our current contract and implementation of the new contract. When DNR granted our present one year contract, they pledged their best efforts to insure that GVEA would suffer no crude flow interruption. Passage of S.B. 152 will insure that the commitment is kept.
- f. The 3 month lapse would result in \$125,000 to \$135,000 higher electric bills to the GVEA consumer via GVEA's CPAC.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA, 99811
(907) 485-4807

Senate

Committee on Resources

MEMORANDUM

February 19, 1985

TO: All Members
Senate Resources Committee

FROM: Staff *MSM*
Senate Resources Committee

RE: SB 152 "An Act relating to extension and renewal of certain sales of state royalty oil; and providing for an effective date."

SB 152 is designed to cover a time lapse between the expiration of the state's royalty oil contract with GVEA (Golden Valley Electric Association) and the effective date of a new contract. The current contract is due to expire June 30, 1985. This bill would extend that date to September 30, 1985.

A bill approving a new royalty oil contract with GVEA is scheduled to be introduced at the request of the Governor on March 8, 1985. Royalty oil contracts become effective four months after they are signed which means that the new contract could not become effective before the original expiration date.

When the state is taking its royalty oil in kind rather than in value, State regulations require 90 days written notice when the amount of oil taken is going to change. (See attached copy of 11 AAC 82.700[2]) If the contract lapsed, the state would have to give 90 days notice that it was decreasing the amount of oil taken in kind and then, when the contract was signed, would have to give another 90 days notice that the amount was going to go back up. These notice requirements, together with the actual lapse in the contract would cause a substantial interruption in the supply of oil to GVEA.

The Department of Natural Resources has issued findings that the GVEA contract is in the best interest of the state. It appears that the issue of whether the GVEA contracts are a good or bad deal for the state is an issue that would more properly be addressed when the new contract is before this body. Nothing in this bill would commit the state in any way to the new contract.

In this packet is a sectional analysis of the committee substitute proposed by Sen. Coghill's office; a memo from Sen. Coghill's office on this issue; a copy of the relevant regulations; a chart showing the current distribution of the state's royalty oil; and a copy of GVEA's current contract.

STATE OF ALASKA
THE LEGISLATURE

POUCH • STATE CAPITOL
BUREAU ALASKA 995
307 100 1000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 18, 1985

SUBJECT: Sectional Analysis for CS for HB 152
(Resources)

TO: Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

FROM: Randall J. Moen
Legislative Counsel

Section 1 The following need not occur if a sale of state royalty oil subject to legislative approval is extended or renewed for not more than three months and the extension or renewal relates to a one year or less prior sale of oil with the same party to relieve market or storage conditions:

1. A written finding to the public by the director of the division of lands for the Department of Natural Resources that a sale of oil will serve the best interests of the state. (AS 38.05.035(e))
2. Competitive bidding by the commissioner of natural resources or prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board of reasons for waiver of competitive bidding. (AS 38.05.183(a))
3. Prior written notice to the public and the Alaska Royalty Oil and Gas Development Advisory Board of the reasons why the commissioner of natural resources intends to sell royalty oil other than by competitive bid. (AS 38.05.183(c))
4. A requirement of the commissioner of natural resources to sell royalty oil to a prospective buyer whose proposal offers maximum benefits to the state. (AS 38.05.183(e))

Senator Arliss Sturgulewski
February 18, 1985
page 2

5. Review and written recommendation to the legislature by the Alaska Royalty Oil and Gas Development Advisory Board. (AS 38.06.050(a))

6. Prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board by the Commissioner of natural resources of rejection of a bid or application for the purchase of royalty oil. (AS 38.06.060(b))

7. Prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board by the commissioner of natural resources before the waiver of competitive bidding. (AS 38,06.050(c))

Section 2 The legislature approves and ratifies a three month extension of a royalty oil contract between the State of Alaska and Golden Valley Electric Association, Inc.

Section 3 On October 1, 1985 the provisions of law noted in section 1 will apply to an extension or renewal of not more than three months of sale of oil that is subject to approval by the legislature under AS 38.96.055(c).

Section 4 Immediate effective date.

RJM:csh
c3/004

(2) state location and status of all past and present activities on the lease;

(3) include a detailed report of all production during the six months preceding the filing of the application;

(4) contain a detailed statement covering the entire life of the lease showing all expenses and costs of operating the lease including all royalties and overriding royalties and all income from all produced minerals from the lease; and

(5) include an agreement by the applicant to defray the cost of publishing a notice as provided in (b) of this section.

(b) Upon receipt of an application complying with (a) of this section, the commissioner will cause to be published a notice of public hearing if required on the application. The notice must

(1) state the time and place of hearing;

(2) describe the lands involved; and

(3) state the name of the applicant and the nature of the relief applied for.

(c) The notice must be published at least once a week for at least two consecutive weeks in advance of the hearing date, which must be at least 15 days after the last date of publication, in at least one newspaper of general circulation in the vicinity of the principal office of the department, and must be posted at that office for the same period.

(d) At the time and place specified in the published notice, the commissioner will hear evidence offered by the applicant and any other interested party.

(f) The commissioner must give notice of the findings and determination to the lessee and to any other person who has filed a written request for it. The action taken is effective on the date specified in the notice. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.145(a)

11 AAC 82.670. SUSPENSION OF

PRODUCTION OR OPERATIONS. (a) Applications for suspension of production or operations under AS 38.05.140 must comply with 11 AAC 88.105 and must contain complete information showing the necessity or justification for the suspension.

(b) Whenever the commissioner takes an action under AS 38.05.140, he will give notice to the lessee, specifying the action taken, the effective date of it, and the duration of any suspension, and note the action in the status record.

(c) No lease expires because operations or production or both are suspended under any order or with the assent of the commissioner. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.145(a)

11 AAC 82.675. EFFECTIVE DATE OF LEASES AND PERMITS. The effective date of a lease or permit is the first day of the month following the date on which the lease or permit was signed on behalf of the state or upon prior written request on the first day of the month in which it was signed on behalf of Alaska. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 7.
ROYALTY PRODUCTS

Section

- 700. Taking royalty in kind
- 705. Bidding method
- 710. Notice of sale
- 715. Qualifications

11 AAC 82.700. TAKING ROYALTY IN KIND. Royalty products taken in kind as provided by AS 38.05.182 must be taken pursuant to the provisions of the lease which reserves the royalty to the state. If no provision is made in the lease or in the regulations dealing with the products to be taken, all or any portion of the state's share may, at the option of the commissioner, be taken in kind in accordance with the following:

(1) 90 days' written notice will be given to

each lessee of the state's election to take the royalty products in kind; however, if the proportion of the state's share to be taken in kind exceeds 50 percent of the state's share, 180 days' notice will be given;

(2) after taking has actually commenced, the amount to be taken in kind may be increased or decreased from time to time by not more than 10 percent upon 30 days' written notice to each lessee of record, from 10 percent to 50 percent upon 90 days' written notice, and over 50 percent upon 180 days' written notice;

(3) the products must be delivered to the state or its designated purchaser free of charge at the point provided in the lease for determination of the value of the royalty product if the production to be taken were paid in money rather than taken in kind; the condition of the product must be the same as the non-royalty share at the point of taking; the lessee shall, if necessary, furnish safe storage for the royalty share free of charge for the same duration and in the same manner as storage is provided for the non-royalty share; when all or part of the royalty product to be taken consists of gas, the commissioner will take into consideration the effect this taking may have on the long-term gas supply contracts that the lessee has entered into. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.182

11 AAC 82.705. BIDDING METHOD. Royalty products which the commissioner determines are to be sold by competitive bid will be offered for sale by sealed bid or at public auction. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.183

11 AAC 82.710. NOTICE OF SALE. If the commissioner determines that royalty products will be offered for competitive sale, notice of the sale will be given as provided by AS 38.05.345. The notice must specify all the terms and conditions of the sale, including the royalty products to be sold, bidding method, bond requirements, sale place and time, minimum bid, if prescribed, and any other term or condition which the commissioner determines necessary

to carry out the purposes of AS 38.05.183. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 3/18/83, Reg. 85; am 3/30/83, Reg. 85)

Authority: AS 38.05.020(b) AS 38.05.145
AS 38.05.135(b) AS 38.05.180

11 AAC 82.715. QUALIFICATIONS. A purchaser of the state royalty products must comply with the qualification requirements of 11 AAC 82.200 and must supply the showing of qualification required of mineral permittees and lessees by 11 AAC 82.205. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 8. RECORDS AND REPORTS

Section

- 800. Production records
- 805. Test results
- 810. Confidentiality of data
- 815. Cross-referencing

11 AAC 82.800. PRODUCTION RECORDS. (a) Mineral lessees of state land shall keep in their possession accurate books and records showing the production and disposition of all minerals produced from the leased land and shall permit the commissioner or his agents at all reasonable hours to examine them.

(b) The commissioner will, in his discretion, require copies of sales contracts and other agreements with the first bona fide purchaser affecting produced minerals which are subject to royalties. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020(b)(1)
AS 38.05.145(a)

11 AAC 82.805. TEST RESULTS. The lessee of a state-issued mineral lease shall furnish, upon request of the commissioner, a copy of all geological, geophysical, engineering, and other factual data obtained from the lease, including all pertinent tests, records, surveys, and analyses conducted on or pertaining to the leased land or products from it, but not including interpretations of these items or proprietary research data

JUL 14, 1985

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

ESTIMATED PRODUCTION FOR PRUDHOE BAY AND KUPARUK RIVER UNITS

YEAR	ESTIMATED TOTAL PRODUCTION (BARRELS PER DAY)			ESTIMATED ROYALTY (BARRELS PER DAY)			ESTIMATED SALES OF ROYALTY OIL (BARRELS PER DAY)							
	TOTAL PRUDHOE	(1) TOTAL KUPARUK	TOTAL	PRUDHOE ROYALTY	KUPARUK ROYALTY	TOTAL ROYALTY	MAPCO	(2) SVER (OLD)	(3) SVER (PROPOSED)	(4) TESORO (OLD)	(5) TESORO (NEW)	(6) CHEVRON	(7) COMPETITIVE SALE	ROYALTY IN VALUE
1984	1,522,000	120,000	1,642,000	187,500	15,000	202,500	35,000	5,000		29,765		18,000		124,725
1985	1,522,000	180,000	1,702,000	187,500	22,500	210,000	35,000		5,000	45,999	25,001	18,000	35,000	15,300
1986	1,522,000	180,000	1,702,000	187,500	22,500	210,000	35,000		5,000	45,999	25,001	18,000		30,000
1987	1,472,000	160,000	1,632,000	184,375	22,500	206,875	35,000		4,917	45,223	25,557	17,700		70,450
1988	1,322,000	200,000	1,522,000	165,625	25,000	190,625	35,000		4,417	43,633	22,957	15,900		71,700
1989	1,172,000	200,000	1,372,000	146,875	25,000	171,875	35,000		3,917	36,223	22,367	14,100		52,450
1990	1,022,000	200,000	1,222,000	131,250	25,000	156,250	35,000		3,500	32,300	19,200	12,500		54,750
1991	950,000	200,000	1,150,000	118,750	25,000	143,750	35,000		3,167	29,133	16,467	11,400		49,550
1992	850,000	200,000	1,050,000	106,250	25,000	131,250	35,000		2,833	25,866	14,734	10,200		42,410
1993	750,000	200,000	950,000	93,750	25,000	118,750	35,000		2,500	22,000	13,000	9,000		36,250
1994	652,000	170,000	822,000	81,250	21,250	102,500	35,000		2,167	19,933	11,257	7,500		31,250
1995	572,000	145,000	717,000	71,875	18,125	90,000	35,000							28,750
1996	510,000	120,000	630,000	63,750	15,000	78,750	35,000							25,750
1997	462,000	100,000	562,000	57,500	12,500	70,000	35,000							23,000
1998	420,000	80,000	500,000	52,500	10,000	62,500	35,000							20,500
1999	380,000	70,000	450,000	47,500	9,375	56,875	35,000							18,375
2000	340,000	60,000	400,000	42,500	8,125	50,625	35,000							16,625
2001	300,000	50,000	350,000	37,500	7,000	44,500	35,000							14,750
2002	270,000	50,000	320,000	33,750	6,250	40,000	35,000							13,250
2003	240,000	40,000	280,000	30,000	5,000	35,000	35,000							11,750
2004	210,000	35,000	245,000	26,250	4,375	30,625	35,000							10,375
2005	190,000	25,000	215,000	22,500	3,750	26,250	35,000							9,125
2006	160,000	20,000	180,000	18,750	3,125	21,875	35,000							8,000
2007	140,000	20,000	160,000	17,500	2,500	20,000	35,000							7,250
2008	110,000	20,000	130,000	13,750	2,500	16,250	35,000							6,250
2009	80,000	10,000	90,000	10,000	1,250	11,250	35,000							5,250
2010	50,000	10,000	60,000	6,250	1,250	7,500	35,000							4,250

(1) OUR ESTIMATE OF FIELD PERFORMANCE, OCTOBER 1984.

(2) [REDACTED]

(3) [REDACTED]

(4) TESORO'S CURRENT CONTRACT CALLS FOR A MAXIMUM QUANTITY OF 24,536X OF DAILY PRUDHOE ROYALTY OIL LESS COOK INLET ROYALTY PRODUCTION. THE QUANTITY IS 21,288X IN 1984, AND WILL BE 21,326X STARTING JAN 1, 1985. THIS CONTRACT WILL BE INCREASED TO ITS MAXIMUM QUANTITY ON OCTOBER 1, 1985 DUE TO CANCELLATION OF THE COOK INLET CONTRACT ON THAT DATE. THE CONTRACT EXPIRES JANUARY 1995.

(5) MOST OF THIS VOLUME (ABOUT 25,000 BPD), WHICH IS CURRENTLY BEING TAKEN "IN VALUE," WAS SOLD COMPETITIVELY FOR DELIVERY APRIL 1, 1985 THRU SEPT. 30, 1985. ON OCTOBER 1, 1985 IT IS ANTICIPATED THAT TESORO WILL COMMENCE DELIVERIES UNDER ITS 12/9/83 PRUDHOE CONTRACT, WHICH HAS A MAXIMUM QUANTITY OF 13.86% OF DAILY PRUDHOE ROYALTY OIL AND EXPIRES JAN. 1, 1995.

(6) CHEVRON'S CONTRACT CALLS FOR A MAXIMUM QUANTITY OF 3.6% OF DAILY PRUDHOE ROYALTY OIL. THE CONTRACT EXPIRES JANUARY 1, 1995.

(7) DELIVERIES WILL COMMENCE APRIL 1, 1985 FOR 50,000 BPD OF PRUDHOE BAY UNIT ROYALTY OIL AND 15,000 BPD OF KUPARUK RIVER UNIT ROYALTY OIL, AND WILL CONTINUE FOR ONE-YEAR, AND SIX-MONTH PERIODS, RESPECTIVELY. AS A RESULT OF THE DEC. 11, 1984 COMPETITIVE SALE, PRIOR TO THAT TIME THIS OIL REMAINS "IN VALUE."



MAPCO PETROLEUM INC.
A SUBSIDIARY OF MAPCO INC.

480 NORTH BELT
SUITE 111
HOUSTON TEXAS 77060
(713) 931-7860
TELEX 794655

February 15, 1985

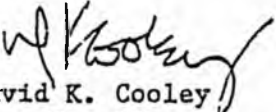
Senator John B. (Jack) Coghill
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Coghill:

Mapco would support legislation introduced by yourself and co-sponsored by Senators Bennett and Fahrenkamp, that would extend for three months the term of the royalty oil sale contract between the State of Alaska and Golden Valley Electric Association, Inc. This extension would ensure a steady supply of oil available for processing for Golden Valley's account until the new long term contract is in place.

We appreciate the efforts of the Alaska legislature in this regard.

Very truly yours,


David K. Cooley
Vice President

DKC:jr

jr

Introduced: 2/25/85
Referred: House Special Committee
on Oil & Gas, Resources and Finance

BY M.W. MILLER, FRANK, KOPONEN,
RINGSTAD, SHULTZ AND DAVIS

1 IN THE HOUSE

2 HOUSE BILL NO. 233

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to extension and renewal of certain
7 sales of state royalty oil; and providing for an
8 effective date."

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

10 * Section 1. The following provisions of law do not apply to an exten-
11 sion or renewal of not more than three months of a sale of oil that is
12 subject to approval by the legislature under AS 38.06.055(c):

13 (1) AS 38.05.035(e);

14 (2) AS 38.05.183(a), (c), and (e); and

15 (3) AS 38.06.050.

16 * Sec. 2. A three-month extension of the "Agreement for the Sale and
17 Purchase of Royalty Oil between the State of Alaska and Golden Valley
18 Electric Association, Inc.," dated May 9, 1984, is hereby approved and
19 ratified.

20 * Sec. 3. Section 1 of this Act is repealed October 1, 1985.

21 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

9/5/89
Date

SB

1944

HOUSE
COMMITTEE REPORT

2/17

Rules

(9)
Date referred: 2/3/86

FURTHER REFERRALS:

DATE: 1/17/86

The RESOURCES Committee has considered CSSB 194(Res)

"An Act relating to certification of water and wastewater systems and facilities operators; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- replace with _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Herrmann Adelheid Herrmann

Cato Bette Cato

Jenkins Roger Jenkins

Wallis Ray Wallis

David W. Thompson - NO REC

Dick Shultz No Rec

Shultz

Dick Shultz
Co-Chairman Shultz

the requirements for the specified operator classification of the certification program;

(2) "department" means the Department of Environmental Conservation;

(3) "potable water supply system" means the system of pipes, structures, and facilities through which water is obtained, treated and sold, distributed or otherwise offered to the public for household use or any use by humans;

(4) "wastewater system" means the system of pipes, structures, equipment and processes required to collect, carry away and treat domestic and industrial wastewater and dispose of the effluent.



LAWS OF ALASKA

1976

Source

Chapter No.

CSHB 407 am

244

AN ACT

Requiring certification of water and wastewater operators; and providing a program for the training of water and wastewater operators.

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

* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 30. CERTIFICATION OF OPERATORS.

Sec. 46.30.010. CLASSIFICATION. The department shall classify all potable water systems and facilities actually used or intended for use by the public, and all wastewater systems and facilities which discharge into publicly owned wastewater systems, or to receiving bodies of water, or on land used by others. The classification shall take due regard to size and type, character of water or wastewater to be treated, and other physical conditions affecting the systems and facilities, and according to the skill, knowledge and experience required of an operator.

Sec. 46.30.020. WATER AND WASTEWATER WORKS ADVISORY BOARD. There is created the Water and Wastewater Works Advisory Board composed of the commissioner of environmental conservation and eight additional members appointed by the governor. The Water and Wastewater Works Advisory Board shall advise and assist the department in the administration of the training and certification program. Appointments to the board shall be for a period of five years. The initial term of office of two of the members is for one year, the initial term of three of the members is three years, and the initial term of three of the members is five years. Vacancies shall be filled in the same manner as the original appointments.

Sec. 46.30.030. TRAINING. The department shall, with the assistance and advice of the Water and Wastewater Works

Advisory Board, provide a water and wastewater works operator training program. The purpose of this program is to provide mechanisms for water and wastewater works operators to become certified under the provisions of this chapter and for certified operators to maintain and improve their competency in operating water and wastewater systems or facilities. The department shall coordinate and cooperate with educational institutions and other organizations or individuals in the administration of this section.

Sec. 46.30.040. CERTIFICATION REQUIREMENT. Two years following the effective date of this chapter, all potable water supply and wastewater systems and facilities, whether publicly or privately owned, which serve 100 or more service connections or are used or intended for use by 500 or more persons, must at all times be under the supervision of an operator whose competency is certified to by the department in a classification corresponding to the classification of the system or facility to be supervised.

Sec. 46.30.050. EXAMINATIONS. Examinations shall be held at least annually at times and places set by the department. Separate examinations shall be given for each operator classification. Applicants who fail to pass an examination may repeat the examination at subsequent regularly scheduled examinations.

Sec. 46.30.060. CERTIFICATION. The department shall issue certification entitling those persons who successfully complete the required examinations to supervise the operation of potable water supply and wastewater systems and facilities after considering the recommendations of the advisory board. The certificate will designate the class of system for which the operator is qualified in accordance with the classification system of the department. The certificate shall be valid for three years unless revoked for cause, replaced by one of a higher grade, or the operator for a continuous period of one year has not been actively engaged in the duties authorized by the certificate. An operator whose certificate has been invalidated for not having been actively engaged in the duties authorized may be issued a new certificate upon proof of competency as prescribed by regulations.

Sec. 46.30.070. CERTIFICATES WITHOUT EXAMINATION. Certificates may be issued without an examination to persons employed as water or wastewater works operators on the effective date of this chapter who request such a waiver. The examination waiver shall be printed on the certificate. An operator certified under this section may request to have his certificate transferred to another facility of the same general class and type or to another facility of lower class. The request shall be granted if, in the opinion of the department, the transfer would not adversely affect the health and safety of the public or the environment. The department shall consider the recommendations of the Water and Wastewater Works Advisory Board before granting or denying a request under this section.

Sec. 46.30.080. REGULATIONS. The department, with the advice of the advisory board, shall issue regulations for administration of this chapter. The regulations shall include

(1) the basis for classification of potable water supply and wastewater systems and facilities, including the type and size of lesser systems and facilities, if any, to which the provisions of this chapter do not apply, as required by sec. 10 of this chapter;

(2) criteria for the qualification of applicants for operator certification corresponding to each of the classifications referred to in sec. 10 of this chapter;

(3) procedures for examination of candidates and renewal of certificates;

(4) procedures for the revocation of certificates;

(5) determination as to which additional personnel shall be certified when certification is required for more than the operator in direct responsible charge.

Sec. 46.30.090. GUIDELINES. The department, to the extent it determines feasible, shall be guided by the standards recommended by the Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities.

Sec. 46.30.100. RECIPROCITY. Certificates may be issued without examination in the comparable classification to an applicant who holds a certificate in a state, territory, or possession of the United States, if its certification requirements and examinations are comparable to those of this state and if reciprocal privileges are granted to operators certified in this state.

Sec. 46.30.110. TEMPORARY CERTIFICATION. In the event of unusual or emergency circumstances or following the hiring of new employees, temporary certificates may be issued to an operator until such time as he may be examined and certified. Within two weeks after employment of such an operator, the department shall be notified in writing and information shall be provided, including the operator's name, background, experience, training, education, and references. Thereafter, the operator may be issued a temporary certificate which shall remain valid only for that time required for next routine examination and evaluation.

Sec. 46.30.120. PROHIBITED ACTS. On or after two years following the effective date of this chapter, it shall be unlawful

(1) for any potable water supply or wastewater system or facility subject to AS 46.30.040 to be operated unless the operator is certified under the provisions of this chapter;

(2) for any person to perform the duties of an operator without being certified under the provisions of this chapter.

Sec. 46.30.130. DEFINITIONS. In this chapter

(1) "certificate" means certificate of competency issued by the department stating that the operator has met

TITLE 18. ENVIRONMENTAL CONSERVATION

18 AAC 74.010

Chapter 74. Water and Wastewater Operator Certification and Training

Section

10. General provisions
20. Certification requirements
30. Certification without examination
40. Examination requirements
50. Experience and education requirements
60. Display of certificates
70. Certificate term and renewal
80. Lapsed certificates
90. Canceled certificates
100. Revocation of certificate
110. Temporary certification
120. Classification of water supply systems and wastewater systems
130. Training
140. Duties of the water and wastewater works advisory board
150. Composition of the water and wastewater works advisory board
160. Appeals
900. Definitions

18 AAC 74.010. GENERAL PROVISIONS. After September 24, 1978, all water supply systems and wastewater systems, whether publicly or privately owned, which serve 100 or more service connections or are used or intended for use by 500 or more persons per day, must be under the supervision of an operator certified by the department as follows:

(1) An operator in responsible charge of a system must be certified at a level corresponding to the classification of the system under his responsibility.

(2) An operator in responsible charge of an operating shift of a system must be certified at no less than one level below that corresponding to the classification of the system under his responsibility.

(3) An operator in responsible charge of more than one system must be certified at a level corresponding to the highest individual classification of the systems under his responsibility. (Eff. 8/21/78. Reg. 67).

Authority AS 46.30.080(1)
AS 46.30.080(3)
AS 46.30.080(5)
AS 46.30.040

TITLE 18. ENVIRONMENTAL CONSERVATION

18 AAC 74.020

18 AAC 74.040

18 AAC 74.020. CERTIFICATION REQUIREMENTS. (a) No person will be certified under this chapter unless an appropriate application has been submitted to the department on forms provided by the department.

(b) The department will certify an applicant if it finds that the applicant has either met the conditions of sec. 30 of this chapter, or has satisfied the examination requirements of sec. 40 of this chapter and the experience and education requirements of sec. 50 of this chapter. (Eff. 8/21/78. Reg. 67).

Authority AS 46.30.080(2)

18 AAC 74.030. CERTIFICATION WITHOUT EXAMINATION. The department, in its discretion, will issue certificates without regard to the requirements of sections 40-50 of this chapter if the applicant:

(1) has been verified by the owner of the system or by the Alaska Water Management Association to have been an operator of a water supply system or wastewater system on September 24, 1978; certificates issued under this subsection will have "examination waiver" printed on the certificate, and will authorize the holder to continue operation of the system for which verification was made under this subsection; an operator certified under this section may request to have the certificate transferred to another system of the same classification or to a system of lower classification; the department, in its discretion, will grant the request if the system for which the transfer is sought is substantially similar to the system from which the transfer is being made; the department will consider the recommendation of the board before making a determination on a request under this subsection;

(2) holds a valid certificate issued under the Alaska Water Management Association voluntary certification program on or before September 24, 1978; or

(3) holds a current certificate issued by any state, territory or possession of the United States, if that jurisdiction's certification requirements and examinations are comparable to those of the State of Alaska and that reciprocal privileges are granted by that jurisdiction to operators certified by the State of Alaska. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.070
AS 46.30.080(3)
AS 46.30.100

18 AAC 74.040. EXAMINATION REQUIREMENTS. (a) Applications for certification must be submitted to the department at least 60 days before the date set for an examination.

(b) An application must be filed for the level of certification requested.

TITLE 18. ENVIRONMENTAL CONSERVATION

18 AAC 74.040

18 AAC 74.050

(c) The department will notify the applicant regarding eligibility for examination.

(d) An applicant who fails to appear for a certification examination must file a new application to be eligible for another scheduled examination.

(e) Examinations will be held at least annually at times and locations announced by the department. The department will, in its discretion, designate representatives to act as proctors in administering the examinations.

(f) The department, in its discretion, will conduct oral or practical examinations instead of, or to augment, the written examination. Before conducting oral or practical examinations, the department will notify the board, which must have one or more members present during the oral or practical examination. A certificate issued following an oral or practical examination will apply only to the system which the applicant is operating at the time of examination.

(g) Examinations will be graded by the department and each applicant notified of the results within 60 days. Examinations will not be mailed to the applicant; however, the applicant may review the examination results with the department.

(h) Applicants who fail an examination may reapply and retake the examination at another scheduled examination date. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.050

AS 46.30.080(3)

18 AAC 74.050. EXPERIENCE AND EDUCATION REQUIREMENTS. (a) Criteria used by the department to evaluate experience and education qualifications of operators are contained in Table A.

TABLE A - MINIMUM PERSONNEL EDUCATION AND EXPERIENCE REQUIREMENTS (IN YEARS)

Operator Level												
System Type	Operator in Training		I		II		III			IV		
	Educ.	Op. Exp.	Educ.	Op. Exp.	Educ.	Op. Exp.	Educ.	Op. Exp.	Resp. Charge Exp.	Educ.	Op. Exp.	Resp. Charge Exp.
Wastewater Collection	12	*	12	1	12	4	-	-	-	-	-	-
Wastewater Treatment	12	*	12	1	12	3	14	4	(2)	16	4	(2)
Water Distribution	12	*	12	1	12	4	-	-	-	-	-	-
Water Treatment	12	*	12	1	12	3	14	4	(2)	16	4	(2)

*Three months operating experience or satisfactory completion of a basic training course approved in writing by the department.

Abbreviations

Educ. - Education

Op. - Operator

Exp. - Experience

Resp. - Responsible

(1) For level I certification, the minimum experience requirement is one year of experience in the appropriate type of system, without substitution;

(2) For levels II, III, and IV certification, substitutions under (b) of this section may be made for up to 50 percent of the minimum experience requirements (both operating and responsible charge). The remainder of the experience requirements must be met by actual on-site operating experience in the appropriate type of system;

(3) Experience requirements must be met under the supervision of a certified operator or through an organized on-the-job training program;

(4) The department will issue a conditional level III certificate to allow a level II operator to accumulate responsible charge experience, if an application has been submitted to the department and the applicant has satisfied the level III examination and operating experience requirements. A certificate issued under this paragraph is valid for one year and is renewable for a maximum of one year upon approval by the department. The certificate will be valid only for the system which the applicant is operating at the time of application;

(5) At least half of the operating experience requirement for level III certification must be achieved through operating experience with a level II or higher system;

(6) At least half of the operating experience requirement for level IV certification must be achieved through operating experience with a level III or higher system;

(7) In smaller systems without shift operation, responsible charge experience is active, daily, onsite charge and performance of operation duties in a system in the next lower classification; and

(8) In larger systems with shift operation, responsible charge experience is both daily, onsite technical direction and supervision of operation duties in a system in the next lower classification, and active, daily, onsite charge of an operating shift, or a major segment of a system, in the same or next lower classification.

(b) Substitutions under (a)(2) of this section may be made under following criteria:

(1) High school education may not be substituted for experience

TITLE 18. ENVIRONMENTAL CONSERVATION

18 AAC 74.050
18 AAC 74.060

(2) Relevant postsecondary education as approved by the department may be substituted for operating or responsible charge experience. The rate of exchange or education for experience is one year of experience for each year of relevant full time postsecondary education successfully completed by the applicant.

(3) Education used to substitute for an operating experience requirement may not also be applied to the education requirement.

(4) One year of operating or responsible charge experience may be substituted for either two years of elementary school education with no limitation, or one year of high school education with no limitation.

(5) A maximum of one year of responsible charge experience in a class II or higher system may be substituted for one year of the postsecondary educational requirement for level III certification.

(6) A maximum of one year of responsible charge experience in a class III or higher system may be substituted for one year of the postsecondary educational requirement for level IV certification.

(7) Experience substituted for an educational requirement may not also be applied toward meeting the operating or responsible charge experience requirements.

(8) Forty five continuing education units (CEU's) in relevant specialized operator training or education may be used to satisfy one year of the educational requirement or one year of operating or responsible charge experience. Ten hours of department approved course work equals one CEU. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.080(2)

18 AAC 74.060. DISPLAY OF CERTIFICATES. Certificates must be displayed in the plant or utility office of the operator. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.060 -

18 AAC 74.070. CERTIFICATE TERM AND RENEWAL. (a) The term for certificates and renewals will be from the first of January of the year of issuance until December 31 three years later.

(b) The department will send each holder of a certificate a renewal notice at least 60 days before the expiration date of the certificate. Notice will be mailed to the last address of record. Failure to receive notice does not relieve the holder of his responsibility to renew the certificate.

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18 AAC 74.100

(c) Upon receipt of a valid and timely request for renewal, the department will issue a renewal certificate. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.060
AS 46.30.080(3)

18 AAC 74.080. LAPSED CERTIFICATES. (a) The department will renew certificates for which timely application for renewal was not made under sec. 70 of this chapter, if an application for renewal is received within 180 days after the expiration of the certificate.

(b) The department will, in its discretion, require reexamination of an operator if a renewal application is received more than 180 days after the expiration of the certificate. The department will consider the recommendations of the board in determining the need for examination of an operator whose certificate has lapsed under this section. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.080(3)

18 AAC 74.090. CANCELED CERTIFICATES. Repealed, (Eff. 2/21/80, Reg. 77).

18 AAC 74.100. REVOCATION OF CERTIFICATES. (a) The department will, in its discretion, revoke the certificate of an operator upon a finding of fraud or deceit in obtaining the certificate; fraud or deceit in plant record keeping; gross negligence in the operation of a system; or violation of the requirements of this chapter. The department will consider the recommendations of the board in determining whether to revoke a certificate.

(b) If a certificate is revoked, the operator may not apply again for certification for 365 days following revocation. An application received under this subsection will be treated as an initial application. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.060
AS 46.30.080(4)

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18 AAC 74.110. TEMPORARY CERTIFICATION. The department will, in its discretion, issue a temporary certificate for good cause shown. The temporary certificate will be valid until the earliest opportunity at which the operator may be examined and certified under this chapter. A temporary certificate will apply only to the system which the applicant is operating at the time of application. Temporary certificates are not renewable. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.110

18 AAC 74.120. CLASSIFICATION OF WATER SUPPLY SYSTEMS AND WASTEWATER SYSTEMS. (a) For the purposes of this chapter, water supply systems and wastewater systems are classified as follows:

TABLE B - CLASSIFICATION RATING SYSTEM

Collection and Distribution Systems

System Type	Units	I	II
Wastewater Collection System	Population Served	500 to 15,000	15,001 and greater
Water Distribution System			

TABLE C - CLASSIFICATION RATING SYSTEM

Treatment Systems

System Type	Units	I	II	III	IV
Wastewater Treatment System	Range of Points	30 and less	31-55	56-75	76 and greater
Water Treatment System					

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(b) The department will, in its discretion, and after considering the advice of the board, modify the classification rating system in (a) of this section if the department finds that there are unusual factors affecting the complexity of unit processes, quality of raw water sources, users of water downstream of wastewater system discharges or potential health hazards.

(c) In classifying water treatment systems under (a) of this section, the following point system will be used:

<u>Item</u>	<u>Points</u>
<u>Size^a</u>	
Maximum population served, peak day	1 point per 10,000 or part
Design flow (average day) or peak month's production (average day) whichever is larger	1 point per 1.0 million gallons per day or part
<u>Water Supply Source</u>	
Groundwater.....	3-5 ^b
Surface water.....	4-7 ^b
<u>Adjustment</u>	
pH adjustment, stability, corrosion control.....	7
<u>Treatment</u>	
Aeration	3
Ion exchange, catalytic adsorption ^c	10
Chemical precipitation, coagulation-flocculation..	20
Sedimentation.....	5
Filtration.....	10
Reverse osmosis, electro dialysis, etc.....	20
Activated carbon.....	10
On-site treatment of system sludge.....	15
Ozonation.....	8
<u>Fluoridation</u>	5
<u>Disinfection</u>	5-8 ^b
<u>Laboratory Control by Plant Personnel</u>	
Bacteriological (complexity).....	3-10 ^b
Chemical/physical (complexity).....	1-10 ^b

(d) In classifying wastewater treatment systems under (a) of this section, the following point system will be used:

- a Limit 10 points each, or maximum of 20 points for size
- b Range of points determined by raw water quality, disinfection scheme, and complexity of on-site laboratory analysis.
- c Includes potassium permanganate greensand.

<u>Item</u>	<u>Points</u>
<u>Size^a</u>	
Maximum population served, peak day.....	1 point per 10,000 or part
Design flow (average day) or peak month's flow (average day), whichever is larger.....	1 point per 1.0 million gallons per day or part
<u>Pretreatment</u>	
Screening, comminution.....	1-3 ^b
Mechanically cleaned grit chamber.....	3
Plant pumping of main flow.....	3
Pre-aeration.....	1
Flow equalization.....	2
<u>Primary Treatment</u>	
Primary clarifiers.....	5
Combined sedimentation/digestion.....	5
Chemical addition	4
Dissolved air flotation.....	5
<u>Secondary Treatment</u>	
Trickling filter	10
Activated sludge	10-15 ^b
Stabilization ponds without aeration.....	5
Aerated lagoon.....	8
Rotating Biological Surface.....	10
Activated Bio-filter with aeration.....	15
Activated Bio-filter without aeration.....	10
Pure Oxygen.....	20
Secondary Clarifiers.....	5
<u>Advanced Waste Treatment</u>	
Polishing pond.....	2
Chemical/physical-without secondary.....	15
Chemical/physical following secondary.....	10
Ion exchange.....	10
Reverse osmosis, electrodialysis.....	15
Chemical recovery, carbon regeneration.....	4
Adsorption.....	10
Filtration.....	10
<u>Solids Handling</u>	
Thickening.....	5
Anaerobic digestion.....	10
Aerobic digestion.....	6
Evaporative sludge drying.....	2
Mechanical dewatering.....	8
Solids reduction (incineration, wet oxidation).....	12
Residual disposal.....	1-4 ^b

a Limit 10 points each, or maximum of 20 points for size

b Range of points determined by complexity of unit process operation, effluent discharge scheme, and complexity of on-site laboratory analysis.

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Disinfection.....5-8^b
 Chemical or mechanical dechlorination.....3

Effluent Discharge

 Receiving stream.....2-6^b
 Land application.....2
 Subsurface disposal.....4

Laboratory Control by Plant Personnel

 Bacteriological (complexity).....3-10^b
 Chemical/Physical (complexity).....1-10^b

- a Limit 10 points each, or maximum of 20 points for size
- b Range of points determined by complexity of unit process operation, effluent discharge scheme, and complexity of on-site laboratory analysis. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.010
AS 46.30.030(1)
AS 46.30.090

18 AAC 74.130. TRAINING. The department will, with the assistance of the board, develop a program for the training of water and wastewater operators. To the extent practicable, the training program will use the facilities of higher educational institutions in the state. The plan will include, at a minimum, training through seminars, workshops, classroom instruction, correspondence, and on-the-job programs. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.030

18 AAC 74.140. DUTIES OF THE WATER & WASTEWATER WORKS ADVISORY BOARD. The duties of the board include:

- (1) advising and assisting the department in certifying operators and classifying water and wastewater systems;
- (2) reviewing qualifications of applicants for examination and/or certification in cooperation with the department or at the request of the applicant;
- (3) advising the department in the preparation and administration of examinations;
- (4) making recommendations to the department on issuance, cancellation, invalidation, or revocation of certificates;
- (5) assisting the department in the determination of the number of certified operators necessary for the successful operation of a system;

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(6) making recommendations to the legislature and the governor proposing new or modified legislation concerning operation and maintenance or public water supply and wastewater systems;

(7) assisting and advising the department in the development and administration of a training program; and

(8) other assistance as may be requested from time to time by the department. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.020
AS 46.30.030
AS 46.30.060

18 AAC 74.150. COMPOSITION OF THE WATER AND WASTEWATER WORKS ADVISORY BOARD. A minimum of three members of the board will be operators certified pursuant to this chapter. (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.020
AS 46.30.090

18 AAC 74.160 APPEALS. Any person aggrieved by an action of the department taken under this chapter may ask the board to hear the grievance, and to make a recommendation to the department. Use of this procedure does not diminish any right the aggrieved person may have under the Administrative Procedure Act (AS 44.62). (Eff. 8/21/78, Reg. 67).

Authority AS 46.30.080

18 AAC 74.900. DEFINITIONS. (a) Unless the context indicates otherwise in this chapter

(1) "applicant" means any person who desires to obtain a certificate under this regulation;

(2) "board" means the Water and Wastewater Works Advisory Board established by AS 46.30.020;

(3) "certificate" means a certificate of competency issued to an operator by the department stating that the operator has met the requirements for the specified operator level of the certification program;

(4) "department" means the Alaska Department of Environmental Conservation;

(5) "on-site" means present at a system for an amount of time and at intervals considered acceptable by the department based upon the complexity of the treatment process, and available and on-call within two hours of the system at all times, unless there is a back-up operator who is certified at no less than one level below the classification of the system and who is designated to assume the responsibilities of the operator in responsible charge in his absence;

(6) "operating experience" means the time spent at a system in satisfactory performance of operation duties;

(7) "operator" means anyone who is engaged in the onsite operation of a water supply system or wastewater system; "operator" does not ordinarily apply to an official exercising only general administrative supervisions, such as the city engineer or public works superintendent;

(8) "operator-in-training" means any person receiving on-the-job training under the supervision of a certified operator or through an organized training program, who desires to obtain a certificate and who is, or can show probable employment as, an operator of a water or wastewater system;

(9) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, partnership, association, or any other entity whatsoever;

(10) "responsible charge" means the active, daily, on-site supervision of system operations.

(11) "service connection" means a pipe, with its appurtenances, that connects a water or sewer main with building plumbing;

(12) "systems" means water supply system or wastewater system;

(13) "wastewater collection system" means pipelines or conduits, pumping stations and force mains, and all other appurtenant constructions, devices, and appliances used for conducting wastewater to a wastewater treatment system;

(14) "wastewater system" means the system of pipes, structures, equipment and processes required to collect, carry away and treat domestic and industrial wastewater and dispose of the effluent;

(15) "wastewater treatment system" means devices, structures, and appurtenances used for treating, neutralizing, stabilizing, or disposing of wastewater and residuals;

(16) "water distribution system" means post treatment storage facilities, conduits, mains, lines and appurtenances, pumping stations or other devices used to transport water to the consumer;

(17) "water supply system" means any source of water, intake works, collection system, treatment works, storage facility, or distribution system from which water is available for human consumption; and term includes, but is not limited to, systems providing water to more than one residential dwelling unit, or to a factory, office building, restaurant, school, and other similar facilities, but does not include a system serving only a single family residence; and

(18) "water treatment system" means devices, structures and appurtenances, used to condition, purify, or refine water for human consumption. a groundwater supply with only chlorination is considered a water distribution system and not a water treatment system. (Eff. 8/21/78, Reg. 67, am 2/21/81, Reg. 77).

Authority AS 46.30.130

18 AAC 74 is repealed and readopted to read:

CHAPTER 74. WATER AND WASTEWATER OPERATOR CERTIFICATION

Section

- 10. General provisions
- 20. Certification requirements
- 30. [Repealed]
- 40. Examination requirements
- 50. Experience and education requirements
- 60. Display of certificate
- 70. Certificate term and renewal
- 80. Lapsed certificate
- 90. [Repealed]
- 100. Revocation of certificate
- 110. Temporary certification
- 120. Classification of water supply and wastewater systems
- 130. [Repealed]
- 140. Water and Wastewater Works Advisory Board
- 150. [Repealed]
- 160. Appeals
- 170. Fees
- 900. Definitions

18 AAC 74.010. GENERAL PROVISIONS. Public or private water supply and wastewater systems with 100 or more service connections, or which are used or intended for use by 500 or more persons per day, must be supervised by an operator certified by the department. An operator in responsible charge of

(1) a system must be certified at a level equal to the classification of the system under that operator's control;

(2) an operating shift of a system must be certified at no less than one level below that level equal to the classification of the system under that operator's control;

(3) more than one system must be certified at a level equal to the highest individual classification of the systems under that operator's control. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.040
AS 46.30.080
AS 46.30.120

18 AAC 74.020. CERTIFICATION REQUIREMENTS. (a) A person seeking certification under this chapter shall submit an application to the department on a form approved by the department.

(b) The department will certify an applicant who has met the examination requirements of 18 AAC 74.040 and the experience and education requirements of 18 AAC 74.050 and the fee requirements of 18AAC 74.170. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.080

18 AAC 74.030. CERTIFICATION WITHOUT EXAMINATION. Deleted 8/24/85.

Editor's note: Under AS 44.62.060(b) and 44.62.125(b), 18 AAC 74.030 was deleted by the regulations attorney / / because it lacked statutory authority.

18 AAC 74.040. EXAMINATION REQUIREMENTS. (a) An application for certification must be received by the department at least 45 days before the date set for an examination, and must be filed for the level of certification sought.

(b) The department will notify the applicant of eligibility for an examination, which will be held at least annually at a time and place announced by the department. The department will, in its discretion, designate a person to act as proctor at the examination.

(c) The department will, in its discretion, conduct oral or practical examinations instead of, or to augment, written examinations. Before giving oral or practical examinations, the department will notify the board, which may have one or more members present during the examination. A certificate issued after an examination applies only to the system the applicant is operating when examined.

(d) Examinations will be graded by the department, and each applicant will be notified of the results within 60 days. Examinations will not be mailed to the applicant; however, the applicant may review the examination results with the department.

(e) An applicant who fails an examination or who fails to appear for an examination may submit a written request for rescheduling at least 45 days before a scheduled examination date. A requests received after the deadline will be scheduled for the next examination. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.050
AS 46.30.080

18 AAC 74.050. EXPERIENCE AND EDUCATION REQUIREMENTS. (a) Criteria used by the department to evaluate qualifications of operators are set out in this section in Table A, subject to the following provisions:

(1) for level I certification, a minimum of one year of experience in the appropriate type of system is required, without educational substitution;

(2) for levels II, III, and IV certification, educational substitutions under (b) of this section may be made for up to 50 percent of the minimum experience requirements; the remaining experience requirements must be met by actual on-site operating experience in the appropriate type of system; experience may be substituted for education; there can be no substitution for the responsible charge requirement;

(3) for levels III and IV, transcripts from colleges or trade schools attended are required; certificates of completion for training courses taken are also required; maximum certified education units (CEUs) allowed for one year of trade school is 45; any school time spent as on-the-job training will count toward the experience requirement instead of the education requirement;

(4) a total of 1,950 work hours is counted as one year of experience; however, hours in excess of 1,950 accrued during a 12-month period are not counted as more than one year of experience;

(5) experience requirements must be met under the supervision of a certified operator or through an organized on-the-job training program;

(6) the department will issue a conditional level III certificate to allow a level II operator to accumulate responsible charge experience if the operator meets the level III examination and operating experience requirements and submits an application to the department; a conditional certificate is valid for one year and may be renewed for a maximum of one year with department approval; the certificate is valid only for the system the applicant is operating at the time of application;

(4) for a degree in a nonrelated field, any approved coursework, as described in (3) of this subsection, completed under that degree, will be treated as follows:

(A) the approved coursework will be applied toward certification requirements as calculated under (10) of this subsection; and

(B) 25 percent of the amount arrived at under (10) of this subsection will then be added to that amount, to reach the total amount of coursework that will be applied under this paragraph;

(5) approved coursework, such as that described in (10) of this subsection, completed without receiving a degree will be applied toward certification requirements as calculated under (9) of this subsection;

(6) one year of operating or responsible charge experience may be substituted for either two years of elementary school education or one year of high school education;

(7) a maximum of one year of responsible charge experience in a level II or higher system may be substituted for one year of the postsecondary educational requirement for level III certification;

(8) a maximum of two years of responsible charge experience in a level III or higher system may be substituted for two years of the postsecondary educational requirements for level IV certification;

(9) experience substituted for an educational requirement may not also be applied to the operating or responsible charge experience requirements; and

(10) 45 CEUs in relevant specialized operator training or education may be used to meet one year of the educational requirement or one year of operating experience; 10 hours of approved coursework equals one CEU.

(c) A certificate will be issued only to a person employed in a water/wastewater system in the state. Applicants not yet employed will be issued a letter that states they have passed an exam and that the department will issue a certificate upon employment. Records will be kept on file for one year. If employment is not obtained within the one-year period, the certificate will be returned and the person must reapply for certification.

TABLE A - MINIMUM OPERATOR EDUCATION AND EXPERIENCE REQUIREMENTS (IN YEARS)

System Type	Operator Level											
	Operator In Training		I		II		III			IV		
	Educ	Op Exp	Educ	Op Exp	Educ	Op Exp	Educ	Op Exp	Resp Charge Exp	Educ	Op Exp - Resp Charge Exp	
Wastewater Collection	12	0	12	1	12	4	12	6	0	12	8	0
Wastewater Treatment	12	0	12	1	12	3	14	4	(2)	16	4	(2)
Water Distribution	12	0	12	1	12	4	12	6	0	12	8	0
Water Treatment	12	0	12	1	12	3	14	4	(2)	16	4	(2)

*Three months operating experience or satisfactory completion of a basic training course approved, in writing, by the department.

Abbreviations

Educ - Education

Op - Operator

Exp - Experience

Resp - Responsible

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(7) at least half of the operating experience requirement for level III certification must be achieved through operating experience with a level II or higher system;

(8) at least half of the operating experience requirement for level IV certification must be achieved through operating experience with a level III or higher system;

(9) in systems without shift operation, responsible charge experience is active on-site charge and performance of duties in a system in the same or next lower classification;

(10) in systems with shift operation, responsible charge experience is both on-site technical direction and supervision of duties in a system in the same or next lower classification, and active on-site charge of an operating shift, or a major segment of a system, in the same or next lower classification; and

(11) experience is verified only by the current employer's signature on the last page of the application; the department will, in its discretion, contact previous employers if there are questions or if further verification is needed; an applicant with experience in both water and wastewater systems may apply for certification in both areas; in substituting one type of experience for the other, the following applies:

(A) at least 25 percent of the required experience must be in the requested classification; up to 90 percent of the experience in the other classification may be used to complete the requirement;

(B) water treatment and wastewater treatment experience are interchangeable;

(C) water distribution and wastewater collection experience are interchangeable;

(D) lab personnel will not be certified under this chapter; a maximum of one year of lab experience may be applied toward the experience requirement for certification in water treatment or wastewater treatment; and

(E) swimming pool operators will not be certified under this chapter; however, pool experience will be counted as water treatment level I experience toward fulfilling the experience requirement.

(b) Substitutions referred to in (a)(2) of this section may be made as follows:

(1) approved postsecondary education as described in (3) of this subsection may be substituted for up to one-half the required operating experience; the rate of exchange of education for experience is one year of experience for each year of relevant full-time postsecondary education successfully completed;

(2) education substituted for an operating experience requirement may not also be applied to the educational requirement;

(3) an approved technical degree in a related field, such as physical science, biology, chemistry, physics, engineering, mathematics, water treatment, wastewater treatment, electronics, electricity, welding, and hydraulics, will be applied toward certification requirements; for example, a four-year biology degree will substitute for four years of experience toward the certification requirement, but a four-year English degree would not;

18 AAC 74.060. DISPLAY OF CERTIFICATE. The certificate must be displayed in the operator's plant or utility office. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.060

18 AAC 74.070. CERTIFICATE TERM AND RENEWAL. (a) A certificate and renewal is valid for a three-year period beginning on January 1 of the year of issuance.

(b) The department will send each certificate holder a renewal notice at least 60 days before the certificate lapses. Notice will be mailed to the last address of record. Failure to receive notice does not relieve the holder of the responsibility to renew the certificate.

(c) For a certificate issued after January 1, 1987, an operator shall complete approved courses equal to three CEUs as a condition for renewal of the certificate. An operator holding more than one certificate need only complete the courses required to satisfy renewal requirements for one of the certificates, but shall complete the required courses at least every three years.

(d) The department will renew a certificate only if an operator has actively and continuously performed the duties authorized by the certificate for more than two years of the certificate period and has complied with 18 AAC 74.170(d). (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.060

18 AAC 74.080. LAPSED CERTIFICATES. (a) An operator who seeks renewal of a lapsed certificate shall submit a request for renewal within 180 days after the certificate lapses. Upon receipt of a valid request for renewal, including proof of compliance with 18 AAC 74.070 (c) and (d) and 18 AAC 74.170(d), the department will renew a certificate.

(b) The department will, in its discretion, require reexamination of an operator whose renewal application is received more than 180 days after the certificate lapses. The department will consider board recommendations in determining the need for re-examination under this subsection of an operator whose certificate has lapsed. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.080

18 AAC 74.090. CANCELED CERTIFICATE. Repealed 2/21/81.

18 AAC 74.100. REVOCATION OF CERTIFICATE. (a) The department will, in its discretion, revoke a certificate upon a finding of fraud or deceit in obtaining the certificate; fraud or deceit in plant recordkeeping; gross negligence in the operation of a system; or violation of the requirements of this chapter. The department will consider board recommendations in deciding whether to revoke a certificate.

(b) An operator whose certificate is revoked may not apply for certification for 365 days after revocation. An application received under this subsection will be treated as an initial application. (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

Authority: AS 46.30.060
AS 46.30.080

18 AAC 74.110. TEMPORARY CERTIFICATION. The department will, in its discretion, issue a temporary certificate for good cause shown. The temporary certificate is valid until the earliest date when the operator may be examined and certified under this chapter. A temporary certificate applies only to the

system which the applicant is operating at the time of application, and will not be renewed. The certificate will be issued upon compliance with 18 AAC 74.170(e). (Eff. 8/21/78, Register 67; am 8/24/85, Register 95)

AUTHORITY: AS 46.30.110

18 AAC 74.120. CLASSIFICATION OF WATER SUPPLY AND WASTEWATER SYSTEMS.
 (a) In this chapter, water supply and wastewater systems are classified as set out in this subsection in Tables B and C.

TABLE B - CLASSIFICATION RATING SYSTEM COLLECTION AND DISTRIBUTION SYSTEMS (By Range of Points)				
System Type	I	II	III	IV
Wastewater Collection System	1-34	35-58	59-77	78 and above
Water Distribution System	1-34	35-58	59-77	78 and above

TABLE C - CLASSIFICATION RATING SYSTEM TREATMENT SYSTEMS (By Range of Points)				
System Type	I	II	III	IV
Wastewater Treatment System	1-30	31-55	56-75	76 and above
Water Treatment System	1-30	31-55	56-75	76 and above

(b) The department will, in its discretion, and after considering advice of the board, modify the rating system in (a) of this section as applied to a particular system if the department finds that there are unusual factors affecting the complexity of unit processes, quality of raw water sources, users of water downstream from wastewater system discharges, or potential health hazards.

(c) To classify water treatment systems under (a) of this section, the department will use the following point system:

<u>Size^a</u>	<u>Item</u>	<u>Points</u>
	Maximum population served, peak day	1 point per 10,000 or part
	Design flow (average day) or peak month's production (average day) whichever is larger	1 point per 1.0 million gallons per day or part
<u>Water Supply Source</u>		
	Groundwater	3-5 ^b
	Surface water	4-7 ^b

<u>Adjustment</u>	
pH adjustment, stability, corrosion control	7
<u>Treatment</u>	
Aeration	3
Ion exchange, catalytic adsorption	10 ^c
Chemical precipitation, coagulation, flocculation	20
Sedimentation	5
Filtration	10
Reverse osmosis, electrodialysis, etc.	20
Activated carbon	10
On-site treatment of system sludge	15
Ozonation	8
<u>Fluoridation</u>	5
<u>Disinfection</u>	5-8 ^b
<u>Laboratory Control by Plant Personnel</u>	
Bacteriological (complexity)	3-10 ^b
Chemical/physical (complexity)	1-10 ^b

^aLimit 10 points each, or maximum of 20 points for size.
^bRange of points determined by complexity of unit process operation, effluent discharge scheme, and complexity of onsite laboratory analysis
^cIncludes potassium permanganate greensand.

(d) To classify wastewater treatment systems under (a) of this section, the department will use the following point system:

<u>Size^a</u>	<u>Item</u>	<u>Points</u>
	Maximum population served, peak day	1 point per 10,000 or part
	Design flow (average day) or peak month's production (average day), whichever is larger	1 point per 1.0 million gallons per day or part
<u>Pretreatment</u>		
	Screening, comminution	1-3 ^b
	Mechanically cleaned grit chamber	3
	Plant pumping of main flow	3
	Pre-aeration	1
	Flow equalization	2
<u>Primary Treatment</u>		
	Primary clarifiers	5
	Combined sedimentation/digestion	5
	Chemical addition	4
	Dissolved air flotation	5
<u>Secondary Treatment</u>		
	Trickling filter	10
	Activated sludge	10-15 ^b
	Stabilization ponds without aeration	5
	Aerated lagoon	8
	Rotating biological surface	10
	Activated bio-filter with aeration	15
	Activated bio-filter without aeration	10
	Pure oxygen	20
	Secondary clarifiers	5

<u>Item</u>	<u>Points</u>
<u>Advanced Waste Treatment</u>	
Polishing pond	2
Chemical/physical without secondary	15
Chemical/physical following secondary	10
Ion exchange	10
Reverse osmosis, electro dialysis	15
Chemical recovery, carbon regeneration	4
Adsorption	10
Filtration	10
<u>Solids Handling</u>	
Thickening	5
Anaerobic digestion	10
Aerobic digestion	6
Evaporative sludge drying	2
Mechanical devatering	8
Solids reduction (incineration, wet oxidation)	12
Residual disposal	1-4 ^b
<u>Disinfection</u> 5-8 ^b	
Chemical or mechanical dechlorination	3
<u>Effluent Discharge</u>	
Receiving stream	2-6 ^b
Land application	2
Subsurface disposal	4
<u>Laboratory Control by Plant Personnel</u>	
Bacteriological (complexity)	3-10 ^b
Chemical/Physical (complexity)	1-10 ^b

^aLimit 10 points each, or maximum of 20 points for size.
^bRange of points determined by complexity of unit process operation, effluent discharge scheme, and complexity of on-site laboratory analysis.

(e) To classify water distribution systems under (a) of this section, the department will use the following point system:

<u>Size^a</u>	<u>Item</u>	<u>Points</u>
	Maximum population served, peak day	1 point per 10,000 or part
	Finished water storage tank(s)	4
	Circulating loops	
	1 loop	10
	2- 4 loops	15
	5-10 loops	20
	Fire hydrants	4
	Standby generators	6
	Miles of water line	
	0-2	2
	2-10	4
	10-100	6
	Over 100	10