

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4966 HRES HB 244 - HB 266

538

1                    Sections 25 - 26

2                    Sections 35 - 36 [25, 26, 35 AND 36]

3                    (7) [(6)] Township 8 South, Range 11 West, Seward Meridian

4                    Sections 1 - 8

5                    Section 9: N1/2

6                    Section 10: N1/2

7                    Section 11: N1/2

8                    Section 12: N1/2

9                    Sections 17 - 18 [17 AND 18]

10                   (8) [(7)] Township 8 South, Range 12 West, Seward Meridian

11                   (9) [(8)] Township 8 South, Range 13 West, Seward Meridian

12                   Sections 1 - 2 [1 AND 2]

13                   Sections 10 - 14

14                   Section 15: E1/2

15                   Section 18: Lot 10

16                   Section 23: N1/2 and SE1/4

17                   Sections 24 - 25 [24 AND 25]

18                   Section 26: E1/2

19                   Section 35: E1/2

20                   Section 36

21                   (10) Township 9 South, Range 8 West, Seward Meridian

22                   Sections 7 - 10

23                   Sections 15 - 22

24                   Sections 27 - 34

25                   (11) Township 9 South, Range 9 West, Seward Meridian

26                   Section 13

27                   Sections 24 - 25

28                   Sections 35 - 36

29                   (12) [(9)] Township 9 South, Range 12 West, Seward Meridian

1 Sections 1 - 6

2 Section 8: NE1/4

3 Sections 9 - 12

4 Section 13: N1/2

5 Section 14: N1/2

6 (13) [(10)] Township 9 South, Range 13 West, Seward Meridian  
7 Sections 1 - 2 [1 AND 2]

8 (14) Township 10 South, Range 8 West, Seward Meridian

9 Sections 4 - 8

10 Sections 17 - 19

11 (15) Township 10 South, Range 9 West, Seward Meridian

12 Sections 1 - 4

13 Sections 10 - 15

14 Sections 22 - 24

15 \* Sec. 3. AS 41.21.140(a) is amended to read:

16 (a) The presently state-owned land and water, and all that  
17 acquired in the future by the state, lying within the parcels describ-  
18 ed in this section are designated as the Kachemak Bay State Wilderness  
19 Park. In order to protect and preserve this land and water for its  
20 unique and exceptional wilderness value, the park is established and  
21 shall be managed as a wilderness park. The land and water lying  
22 within the following described parcels is reserved from all uses  
23 incompatible with its primary function as a wilderness park and is  
24 assigned to the department for control and maintenance:

25 (1) Township 8 South, Range 11 West, Seward Meridian

26 Section 9: S 1/2

27 Section 10: S 1/2

28 Section 11: S 1/2

29 Section 12: S 1/2

1 Sections 13 - 16

2 Sections 19 - 36

3 (2) Township 9 South, Range 8 West, Seward Meridian

4 Section 2: W1/2

5 Sections 3 - 6

6 (3) Township 9 South, Range 9 West, Seward Meridian

7 Sections 1 - 12

8 Sections 14 - 23

9 Sections 26 - 34

10 (4) Township 9 South, Range 10 West, Seward Meridian

11 Sections 1 - 3

12 Sections 10 - 15

13 Sections 22 - 27

14 Sections 34 - 36

15 (5) [(2)] Township 9 South, Range 12 West, Seward Meridian

16 Section 7

17 Section 8: S 1/2 and NW 1/4

18 Section 13: S 1/2

19 Section 14: S 1/2

20 Sections 15 - 36

21 (6) [(3)] Township 9 South, Range 13 West, Seward Meridian

22 Section 11: NE 1/4

23 Sections 12 - 13

24 (7) [(4)] Township 10 South, Range 9 West, Seward Meridian

25 Sections 5 - 7

26 (8) [(5)] Township 10 South, Range 10 West, Seward Meridian

27 (9) [(6)] Township 10 South, Range 11 West, Seward Meridian

28 (10) [(7)] Township 10 South, Range 12 West, Seward Meridian

29 (11) [(8)] Township 11 South, Range 10 West, Seward Meridian

(12) [(9)] Township 11 South, Range 11 West, Seward Meridian

(13) [(10)] Township 11 South, Range 12 West, Seward Merid-

ian

Sections 1 - 10

Section 11: W 1/2 and E 1/2

Sections 12 - 17

Sections 21 - 24.

\* Sec. 4. AS 41.21.140 is amended by adding a new subsection to read:

(c) The tide and submerged land within the Aurora Lagoon is assigned to the Department of Natural Resources to preserve its value as a scenic park and to the Department of Fish and Game to preserve its value as critical habitat.

\* Sec. 5. This Act does not prohibit the commissioner of natural resources from conveying 50 acres, more or less, on Nuka Island to the University of Alaska in accordance with the final finding of the commissioner of natural resources issued December 4, 1987, or its amendments. This Act does not apply to land conveyed to the University of Alaska under the commissioner's decision dated December 4, 1987.

HB

259

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

April 22, 1987

The Honorable Mike Miller  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99801

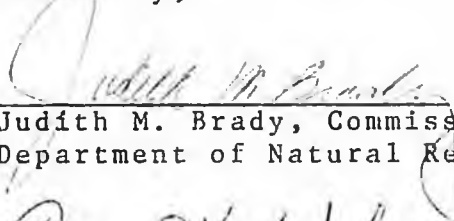
Dear Representative Miller:

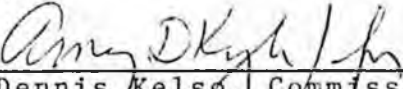
The Cowper Administration has no objection to reviewing the 1983 Department of Environmental Conservation report regarding state assumption of the United States Corps of Engineers Section 404 wetlands permitting process, as described in HJR 27. However, we suggest the following amendment to provide Governor Cowper with additional flexibility for reviewing the report. If this amendment is adopted HJR 27 would have minimal fiscal impact on our agencies.

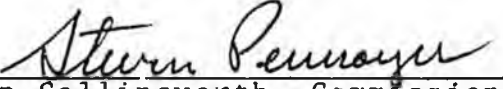
On page three, replace lines 11-16 with the following:

Further resolved that the Governor is respectfully requested to review the 1983 Department of Environmental Conservation report regarding state assumption and make recommendations regarding state assumption of the United States Army Corps of Engineers Section 404 wetlands permitting process.

Sincerely,

  
\_\_\_\_\_  
Judith M. Brady, Commissioner  
Department of Natural Resources

  
\_\_\_\_\_  
Dennis Kelsø, Commissioner  
Department of Environmental Conservation

  
\_\_\_\_\_  
Don Collinsworth, Commissioner  
Department of Fish and Game

cc: George Sullivan  
Rod Swope  
Rep. Steve Frank

MASTER

- NEW STATUTORY LANGUAGE
- EXISTING STATUTORY LANGUAGE
- TECHNICAL CHANGES TO EXISTING STATUTES

1 IN THE HOUSE BY MILLER  
 2 HOUSE BILL NO. 259  
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 4 FIFTEENTH LEGISLATURE - FIRST SESSION  
 5 A BILL

*appropriation*

DEC ✓

11 AAC 93.920

6 For an Act entitled: "An Act relating to the small scale use of water."  
 7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 46.15 is amended by adding a new section to read:  
 9  
 10 Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less  
 11 than a significant amount of water without a permit unless the commis-  
 12 sioner determines under AS 46.15.080(b) that the use of less than a  
 13 significant amount of water without a permit is not in the public  
 14 interest. A person using less than a significant amount of water  
 15 without a permit acquires no water right or priority unless an appli-  
 16 cation is filed and a permit or certificate is issued under AS 46.15.-  
 030 - 46.15.185.

17 \* Sec. 2. AS 46.15.133(f) is amended to read:  
 18 (f) The commissioner may, by regulation, designate additional  
 19 types of appropriations that [WHICH] are exempt from this section and  
 20 provide simplified procedures for ruling on the applications.

UFA ✓

11 AAC 93.100

21 \* Sec. 3. AS 46.15.133 is amended by adding a new subsection to read:  
 22 (g) An application to appropriate not more than <sup>1,000</sup> 5,000 gallons of  
 23 water a day is exempt from the notice provisions of this section  
 24 except that the commissioner shall notify the Department of Fish and  
 25 Game of each application to appropriate water from a stream designated  
 26 under AS 16.05.870; Notwithstanding this subsection, the commissioner  
 27 may require public notice under this section

3/0

28 (1) on a determination that the total amount of water  
 29 available in an area is limited considering the number of potential

1 users from the source of the water; or  
2 (2) on request of the municipality in which the area is  
3 located.  
4 \* Sec. 4. AS 46.15.260 is amended to read:  
5 Sec. 46.15.260. DEFINITIONS. In this chapter, unless the con-  
6 text otherwise requires,  
7 (1) "appropriate" means  
8 (A) to divert, impound, or withdraw a quantity of  
9 water from a source of water, for a beneficial use; or  
10 (B) to reserve water under [IN ACCORDANCE WITH]  
11 AS 46.15.145;  
12 (2) "appropriation" means  
13 (A) the diversion, impounding, or withdrawal of a  
14 quantity of water from a source of water for a beneficial use; or  
15 (B) the reservation of water under [IN ACCORDANCE  
16 WITH] AS 46.15.145;  
17 (3) "beneficial use" means a use of water for the benefit  
18 of the appropriator, other persons or the public, that is reasonable  
19 and consistent with the public interest, including, but not limited  
20 to, domestic, agricultural, irrigation, industrial, manufacturing,  
21 fish and shellfish processing, navigation and transportation, mining,  
22 power, public, sanitary, fish and wildlife, recreational uses, and  
23 maintenance of water quality;  
24 (4) "source of water" means a substantial quantity of water  
25 capable of being put to beneficial use;  
26 (5) "water" means all water of the state, surface and  
27 subsurface, occurring in a natural state, except mineral and medicinal  
28 water;  
29 (6) "commissioner" means the commissioner of natural

11 AAC 93.970. (14)

- 1 resources;
- 2 (7) "director" means the director of land and water manage-
- 3 ment [THE DIVISION OF LANDS], Department of Natural Resources;
- 4 (8) "person" includes an individual, partnership, asso-
- 5 ciation, public or private corporation, state agency, municipality
- 6 [POLITICAL SUBDIVISION] of the state, and the United States; [.]
- 7 (9) "mineral and medicinal water" means
- 8 (A) water of a hot spring or spring with curative
- 9 properties that [WHICH] has been reserved by the federal govern-
- 10 ment under Public Land Order No. 399; and
- 11 (B) geothermal fluid, as [THE TERM IS] defined in
- 12 AS 41.06.060;
- 13 (10) "significant amount of water" means
- 14 (A) a use of more than 5,000 gallons of water in a
- 15 single day from a single source;
- 16 (B) the regular daily or recurring seasonal use of
- 17 more than 500 gallons of water a day for 10 days or more a year
- 18 from a single source; or
- 19 (C) a water use that may adversely affect the water
- 20 rights of another appropriator or the public interest.

What is a single source?

NEW STATUTORY LANGUAGE  
- EXISTING STATUTORY LANGUAGE  
- TECHNICAL CHANGES TO EXISTING STATUTES

11 AAC 93.920

11 AAC 93.100

1 IN THE HOUSE

BY MILLER

2

HOUSE BILL NO. 259

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the small scale use of water."

7

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

8

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

9

Sec. 46.15.045. SMALL SCALE USE OF WATER. A person may use less than a significant amount of water without a permit unless the commissioner determines under AS 46.15.080(b) that the use of less than a significant amount of water without a permit is not in the public interest. A person using less than a significant amount of water without a permit acquires no water right or priority unless an application is filed and a permit or certificate is issued under AS 46.15.030 - 46.15.185.

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\* Sec. 2. AS 46.15.133(f) is amended to read:

18

(f) The commissioner may, by regulation, designate additional types of appropriations that [WHICH] are exempt from this section and provide simplified procedures for ruling on the applications.

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\* Sec. 3. AS 46.15.133 is amended by adding a new subsection to read:

22

(g) An application to appropriate not more than 5,000 gallons of water a day is exempt from the notice provisions of this section except that the commissioner shall notify the Department of Fish and Game of each application to appropriate water from a stream designated under AS 16.05.870. Notwithstanding this subsection, the commissioner may require public notice under this section

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(1) on a determination that the total amount of water available in an area is limited considering the number of potential

1 users from the source of the water; or

2 (2) on request of the municipality in which the area is  
3 located.

4 \* Sec. 4. AS 46.15.260 is amended to read:

5 Sec. 46.15.260. DEFINITIONS. In this chapter, unless the con-  
6 text otherwise requires,

7 (1) "appropriate" means

8 (A) to divert, impound, or withdraw a quantity of  
9 water from a source of water, for a beneficial use; or

10 (B) to reserve water under [IN ACCORDANCE WITH]  
11 AS 46.15.145;

12 (2) "appropriation" means

13 (A) the diversion, impounding, or withdrawal of a  
14 quantity of water from a source of water for a beneficial use; or

15 (B) the reservation of water under [IN ACCORDANCE  
16 WITH] AS 46.15.145;

17 (3) "beneficial use" means a use of water for the benefit  
18 of the appropriator, other persons or the public, that is reasonable  
19 and consistent with the public interest, including, but not limited  
20 to, domestic, agricultural, irrigation, industrial, manufacturing,  
21 fish and shellfish processing, navigation and transportation, mining,  
22 power, public, sanitary, fish and wildlife, recreational uses, and  
23 maintenance of water quality;

24 (4) "source of water" means a substantial quantity of water  
25 capable of being put to beneficial use;

26 (5) "water" means all water of the state, surface and  
27 subsurface, occurring in a natural state, except mineral and medicinal  
28 water;

29 (6) "commissioner" means the commissioner of natural

114AC 93.970. (14)

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resources;

(7) "director" means the director of land and water management [THE DIVISION OF LANDS], Department of Natural Resources;

(8) "person" includes an individual, partnership, association, public or private corporation, state agency, municipality [POLITICAL SUBDIVISION] of the state, and the United States; [.]

(9) "mineral and medicinal water" means

(A) water of a hot spring or spring with curative properties that [WHICH] has been reserved by the federal government under Public Land Order No. 399; and

(B) geothermal fluid, as [THE TERM IS] defined in AS 41.06.060;

(10) "significant amount of water." means

(A) a use of more than 5,000 gallons of water in a single day from a single source;

(B) the regular daily or recurring seasonal use of more than 500 gallons of water a day for 10 days or more a year from a single source; or

(C) a water use that may adversely affect the water rights of another appropriator or the public interest.

Use of Water

HOUSE BILL NO. 627, by Reps. M. W. Miller by request. Amends the Alaska Water Use Act (AS 46.15) by adding a new section stating "An individual who wishes to use water occurring in its natural state for domestic use is not required to obtain a water use permit for the use. An individual who fails to apply for a water use permit under this section acquires no rights protected under this chapter."

Introduced February 17 and referred to Resources, HESS.

Use of Water

HOUSE BILL NO. 627, (see page 238). Reported back to the House March 21 by Resources recommending it be replaced with a substitute and that it do pass. Concurring: Shultz (Co-Chair), Cato, Jenkins, Perace, Sund, M. W. Miller and Wallis. Thompson signed "do pass and don't throw cold water on this bill!" To HESS.

1986  
HOUSE  
ACTION

The Resources substitute contains none of the language of the original bill. It adds a new section to AS 46.15 (Water Use Act) relating to the small scale use of water, stating a person may use less than a significant amount of water without a permit unless the commissioner determines the use is not in the public interest. A person using less than a significant amount of water does not need a water right or priority unless an application is filed and a permit or certificate is issued. OBTAIN

Defines "significant amount of water" to mean use of more than 5,000 gallons in a single day from a single source, the regular daily or recurring seasonal use of more than 500 gallons a day for 10 days or more a year from a single source, or water use that may adversely affect the water rights of another appropriator or the public interest.

An application to appropriate not more than 1,000 gallons a day is exempt from notice provisions unless the commissioner determines the total amount of water available in an area is limited, or on the request of the municipality in which the area is located.

Use of Water

HOUSE BILL NO. 627, (see pages 238;371). HESS referral waived April 1, 1986. Referred to Rules.

Use of Water

HOUSE BILL NO. 627, (see pages 238;376;434). Reported back to the House April 7, 1986 by Rules with a committee substitute and do pass recommendation. Concurring were M.W. Miller (chair), Fuller, Martin, Grussendorf and Davis. To Rules.

The substitute added language on Page 1, Sec. 3 (g) requiring the commissioner of natural resources to notify the commissioner of fish and game about applications for appropriations of water under 1,000 gallons per day if the water is to be taken from an anadromous fish stream.

Use of Water

CS FOR HOUSE BILL NO. 627 (R1s), (see pages 238;371;374). The Rules substitute was adopted and the bill Passed the House April 8, 1986, 38-2. Nays: Clocksin, M. M. Miller. Rep. Frank gave notice of reconsideration, but it was not taken up on the next legislative day.

The House adopted floor amendment No. 1, a technical title change

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (507) 465-2400

April 21, 1987

The Honorable Adelheid Herrmann  
The Honorable Sam Cotten  
Co-Chairs, House Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Representatives Herrmann and Cotten:

Subject: HB 259, an act relating to the use of water.

Position: The Department of Natural Resources supports the exemption of small scale uses of water from the Title 46.15 permit and notice requirements as presented in this bill.

Background: Section 1 combined with Section 4 amends AS 46.15 to allow the use of less than 5,000 gallons of water in a single day or the recurring use of 500 gallons per day from a single source without a permit or certificate to appropriate, except when adverse impacts to existing water rights or the public interest are identified.

Sections 2 and 3 amend AS 46.15.133 to exempt applications to appropriate 5,000 gallons per day or less from the current notice requirements, subject to certain exceptions with respect to the number of users, the request of a municipality, or if the source of water is from a stream designated as anadromous.

Recommendation: The Department of Natural Resources supports the changes described above. In the experience of the department, the appropriation of such amounts of water has not caused significant problems. There are provisions in the proposed amendments which require public notice if the amount of water available is limited with respect to the number of users, or upon request of municipalities.

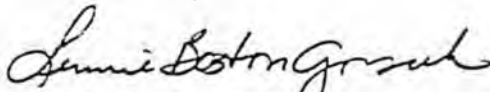
Additionally, there is a provision that the Alaska Department of Fish and Game shall be notified if the source of water is from a stream designated as anadromous.

April 21, 1987

We believe that the proposed changes will be cost-effective with respect to staff time and paperwork, yet not have significant impact on current policy.

As always, my staff and I are available to work with the committee and its staff regarding this legislation. If you would like any additional information or have any questions, please contact my office.

Sincerely,



for

Judith M. Brady  
Commissioner

cc: Committee Members  
Bill Sponsors  
Department of Fish and Game  
Department of Environmental Conservation  
Rod Swope, Governor's Office  
George Sullivan, Governor's Office

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 259

Publish Date: \_\_\_\_\_

Revision Date: 4/8/87

Title: An act relating to small scale use of water

Agency Affected: Natural Resources

BRU: Land and Water Management

Sponsor: Miller

Comments: \_\_\_\_\_

Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional expenditures with respect to this legislation.

Prepared by: Lawrence Z. Ostrovsky 110  
Division: Commissioner's Office

Phone: 465-2400  
Date: 4/21/87

Approved by Commissioner: *Kenice Bostrom Gornish*  
Agency: Natural Resources

Date: 4-22-87

Distribution (by preparer):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: HB 259  
Publish Date: \_\_\_\_\_

Revision Date: 4/8/87  
Title: An act relating to small scale use of water  
Sponsor: Miller  
Requestor: House Resources

Agency Affected: Natural Resources  
BRU: Land and Water Management  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional expenditures with respect to this legislation.

Prepared by: Lawrence Z. Ostrovsky 110 Phone: 465-2400  
Division: Commissioner's Office Date: 4/21/87

Approved by Commissioner: *Kenneth Bortner* Date: 4-22-87  
Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
  - Senate Secretary

MEMORANDUM

TO: Representative Mike W. Miller

FROM: Staff *Jens*

DATE: 4/22/87

RE: Analysis of House Bill 259

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Section 1

amends the Water Use Act (AS 46.15) by stating that a water use permit is not necessary for an individual who wishes to use an insignificant amount of water unless, such a use is against the public interest as determined by the Commissioner of DNR. A person using less than a significant amount of water, without a water use permit, who decides not to apply for a permit for the use, does not acquire a right or priority to the water resource.

Section 2

allows the Commissioner of DNR to promulgate regulations to exempt public notice of applications for water rights in addition to the exemption outlined in Section 3 of this bill.

Section 3

allows the Commissioner of DNR to issue a water use permit for up to 5000 gallons of water per day without providing public notice as outlined in AS 46.15.133. However, notice is given to DF&G of all applications to appropriate water from anadromous fish streams. The Commissioner of DNR may disregard this subsection if:

- (1) he or she determines the total amount of water available to an area is limited for the total number of possible users; or,
- (2) the application being filed is for an area that lies within the boundary of a municipality that has requested notification of all water appropriation within its boundaries.

Section 4

(I) rewrites the current statutory language of AS 46.15.260. definitions (1)-(9) to make technical language modifications as requested by the Division of Legal Services. These changes do not alter the affect of the current statutory language.

(II) adds an additional definition number 10 which defines "significant amount of water" as:

- a) a use of more than 5,000 gallons of water in one day from a single source; or,
- b) the recurring daily use of more than 500 gallons of water for 10 or more days, in a year, from a single source; or,
- c) a use that may adversely affect the water rights of others users or the public interest.

Use of Water

HOUSE BILL NO. 627, by Reps. M. W. Miller by request. Amends the Alaska Water Use Act (AS 46.15) by adding a new section stating "An individual who wishes to use water occurring in its natural state for domestic use is not required to obtain a water use permit for the use. An individual who fails to apply for a water use permit under this section acquires no rights protected under this chapter."

Introduced February 17 and referred to Resources, HESS.

Use of Water

HOUSE BILL NO. 627, (see page 238). Reported back to the House March 21 by Resources recommending it be replaced with a substitute and that it do pass. Concurring: Shultz (Co-Chair), Cato, Jenkins, Ferace, Sund, M. W. Miller and Wallis. Thompson signed "do pass and don't throw cold water on this bill." To HESS.

1986  
House  
Action

The Resources substitute contains none of the language of the original bill. It adds a new section to AS 46.15 (Water Use Act) relating to the small scale use of water, stating a person may use less than a significant amount of water without a permit unless the commissioner determines the use is not in the public interest. person using less than a significant amount of water does not <sup>OBTAIN</sup> ~~need~~ a water right or priority unless an application is filed and a permit or certificate is issued.

Defines "significant amount of water" to mean use of more than 5,000 gallons in a single day from a single source, the regular daily or recurring seasonal use of more than 500 gallons a day for 10 days or more a year from a single source, or water use that may adversely affect the water rights of another appropriator or the public interest.

An application to appropriate not more than 1,000 gallons a day is exempt from notice provisions unless the commissioner determines the total amount of water available in an area is limited, or on the request of the municipality in which the area is located.

Use of Water

HOUSE BILL NO. 627, (see pages 238;371). HESS referral waived April 1, 1986. Referred to Rules.

Use of Water

HOUSE BILL NO. 627, (see pages 238;376;434). Reported back to the House April 7, 1986 by Rules with a committee substitute and do pass recommendation. Concurring were M.W. Miller (chair), Fuller, Martin, Grussendorf and Davis. To Rules.

The substitute added language on Page 1, Sec. 3 (g) requiring the commissioner of natural resources to notify the commissioner of fish and game about applications for appropriations of water under 1,000 gallons per day if the water is to be taken from an anadromous fish stream.

Use of Water

CS FOR HOUSE BILL NO. 627 (R1s), (see pages 238;371;374). The Rules substitute was adopted and the bill Passed the House April 8, 1986, 38-2. Nays: Clocksin, M. M. Miller. Rep. Frank gave notice of reconsideration, but it was not taken up on the next legislative day.

The House adopted floor amendment No. 1. a technical title change

April 21, 1987

The Honorable Adelheid Herrmann  
The Honorable Sam Cotten  
Co-Chairs, House Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Representatives Herrmann and Cotten:

Subject: HB 259, an act relating to the use of water.

Position: The Department of Natural Resources supports the exemption of small scale uses of water from the Title 46.15 permit and notice requirements as presented in this bill.

Background: Section 1 combined with Section 4 amends AS 46.15 to allow the use of less than 5,000 gallons of water in a single day or the recurring use of 500 gallons per day from a single source without a permit or certificate to appropriate, except when adverse impacts to existing water rights or the public interest are identified.

Sections 2 and 3 amend AS 46.15.133 to exempt applications to appropriate 5,000 gallons per day or less from the current notice requirements, subject to certain exceptions with respect to the number of users, the request of a municipality, or if the source of water is from a stream designated as anadramous.

Recommendation: The Department of Natural Resources supports the changes described above. In the experience of the department, the appropriation of such amounts of water has not caused significant problems. There are provisions in the proposed amendments which require public notice if the amount of water available is limited with respect to the number of users, or upon request of municipalities.

Additionally, there is a provision that the Alaska Department of Fish and Game shall be notified if the source of water is from a stream designated as anadromous.

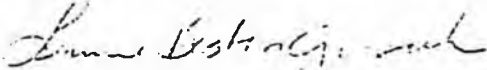
Representatives Cotten & Herrmann -2-

April 21, 1987

We believe that the proposed changes will be cost-effective with respect to staff time and paperwork, yet not have significant impact on current policy.

As always, my staff and I are available to work with the committee and its staff regarding this legislation. If you would like any additional information or have any questions, please contact my office.

Sincerely,



*for* Judith M. Brady  
Commissioner

cc: Committee Members  
Bill Sponsors  
Department of Fish and Game  
Department of Environmental Conservation  
Rod Swope, Governor's Office  
George Sullivan, Governor's Office

MEMORANDUM

TO: Mr. Ned Farquhar

FROM: Gene Therriault, Assistant  
Rep. Mike Miller

DATE: 4/23/87

RE: HB 259 - Discussion of concerns expressed over the preservation  
of instream flows

---

Section one of HB 259 allows the commissioner of DNR to preclude the unpermitted small scale use of water when it is not in the public interest. AS 46.15.080 (b) states "In determining the public interest, the commissioner shall consider (3) the effect on fish and game resources and on public recreational opportunities". Furthermore, AS 46.15.030. states that "Whenever occurring in a natural state, the waters are reserved to the people for common use and are subject to appropriation and beneficial use and to reservation of instream flows and levels of water, as provided in this chapter." The section of AS 46.15.030 that I have underlined above was inserted into the Alaska Statutes in 1980 to preserve adequate levels of instream flows to protect fish habitat and propagation.

In conjunction with the provisions of AS 46.15.030, protection of instream flows is allowed through an actual reservation of water. AS 46.15.145.(a) states "The state, an agency or a political subdivision of the state, an agency of the United States or a person may apply to the commissioner to reserve sufficient water to maintain a specified instream flow or level of water at a specified point on a stream or body of water, or in a specified part of a stream, throughout a year or for specified times, for (1) protection of fish and wildlife habitat, migration, and propagation".

HB 259

15 min  
55 —

TABLE:

number of gallons? can't say approximation?

note — ✓ w/ Sund —

Net rewrite

1/22 (# gallons)

any surface water (25/26)

instream flow - Gail

take to the committee

14/15

ask Mike (Bink)  
nothing needed

1/A

2/A

*Dennis Kelson*

House Resources Committee

Department of Environmental Conservation

1. Division of Environmental Quality

DEC's six basic environmental programs are air quality, water quality, drinking water, solid waste, oil pollution control and hazardous waste. In each of these programs DEC ensures that appropriate standards regulating the release of pollutants are met. The programs generally include an approval or permit process, inspections, and enforcement.

a) Air Quality Control Program

Federal air pollution control authority has been delegated to the State by the Environmental Protection Agency (EPA.) This program ensures that state and federal standards for air pollution emissions and ambient standards are met and issues permits for 127 emission sources. Program staff work closely with the regulated community to assist them in meeting requirements. In particular, permit requirements for major new sources, under the "Prevention of Significant Deterioration (PSD)" program established by federal law, require extensive technical expertise. The State also provides support and the regulatory structure for local vehicle inspection and maintenance programs in Anchorage and Fairbanks and woodsmoke control program in Juneau. A key objective during the last year has been to get all remaining emission sources that have had long-term variances from emission standards onto schedules for achieving full compliance.

b) Water Quality Management Program

This program includes several diverse functions: review and certification of federal wastewater disposal permits and other permits to ensure that the State water quality standards are met by effluent discharge sources; issuance of state wastewater disposal permits for facilities receiving no federal permit; regulation of domestic sewage disposal; and operation of the placer mining program. The objectives are to ensure that waters of the State are not polluted and that sewage disposal is proper. Federal authority for water pollution control permitting has not yet been delegated to the State.

c) Safe Drinking Water Program

The goal of the Safe Drinking Water Program is to ensure that approximately 1600 public drinking water systems supply healthful drinking water. The federal drinking water

program has been delegated to the State. The program provides technical assistance, responds to violations of drinking water standards, ensures that required monitoring is conducted, and reviews plans for drinking water systems to avoid structural problems. Challenges for this program include the barriers faced by remote systems in achieving adequate response to monitoring requirements, and the fact that many systems have structural deficiencies that need to be addressed.

d) Oil Pollution Control Program

The Oil Pollution Control Program reviews oil spill contingency plans for oil storage and transfer facilities, administers a program to ensure that facilities have the necessary financial resources to clean up any oil spills they cause, and responds to over 800 spills a year. DEC is also implementing a program to address underground storage tanks, which are a frequent source of petroleum products that contaminate drinking water. Extensive investigations of the source and extent of underground spills are often carried out. Legal action is taken to recover costs incurred.

e) Solid Waste Management

The Solid Waste Program reviews proposals for solid waste disposal sites to ensure that sites are properly designed, constructed, and operated to prevent groundwater contamination or nuisances such as odors or blowing debris. The department's solid waste program, one of the agency's smallest programs, regulates municipal and private solid waste disposal sites.

f) Hazardous Waste Management

The Department is developing a Hazardous Waste Program as mandated by state law in 1981 and 1984. Major elements include developing state capacity to assume the federal Resource Conservation and Recovery Act (RCRA) hazardous waste management program, notification to communities of hazardous waste shipments; annual collection and disposal of small businesses and households' hazardous waste; regulations governing siting of any in-state facility and providing for State approval of any site chosen for a facility; identification of preferred locations for potential in-state hazardous waste facilities; and participation in the federal "Superfund" site investigation and cleanup program. Tremendous progress has occurred in the development of this complex program. The RCRA and transportation notification regulations were recently signed by the Department. Siting regulations have been through

public review and will be completed this winter. Site identification work has begun, including the development of criteria and of generalized search areas. HB 470, which established a state hazardous substances response fund, was passed last session by the Legislature and is being utilized now.

2. Division of Environmental Health

a) Sanitation in Public Facilities

DEC's Sanitation Program inspects all public facilities in Alaska, (except in the Municipality of Anchorage and the City of Fairbanks, where local officials take on or assist DEC in the responsibility) to ensure that basic principles of sanitation are observed. This includes restaurants, hot tub spas, day care centers, schools, and so on. Due to low staffing, inspection frequency is currently less than what is considered desirable.

b) Seafood Inspection

DEC inspects all seafood processing facilities to ensure that proper procedures are followed to produce wholesome, unadulterated product. The program protects the consumer and enhances the industry by decreasing the probability that unwholesome or even dangerous products will reach the market. The program has succeeded during the last three years in decreasing the amount of unacceptable product as measured by FDA in Seattle, the point of entry into the market for much of Alaska's seafood.

c) Meat/Poultry/Dairy Inspection

The State has primacy for the federal meat inspection program, which requires a high level of inspection of all meat processing facilities. DEC also provides inspection support for the State's fledgling dairy industry.

3. Facility Construction and Operation

The Department has a small division responsible for three facility construction grant programs, providing operator training and certification, and assisting in facility maintenance.

a) Federal Grant Program for Municipal Plants

DEC administers the federal construction grants program authorized and funded under the federal Clean Water Act. Grants are passed through to eligible municipalities.

Extensive oversight requirements are established by federal law and regulation. Thirty projects are now receiving federal dollars. Eighty-five million dollars has been distributed within the state through this program.

b) State Fifty Percent Grants

DEC administers a state grant program to provide grants to municipalities for up to 50 percent of nonfederal costs for water, wastewater and solid waste projects. DEC's skilled engineers and managers reduce state funding needed to build projects under this program. Sixty-six projects currently have these state grant funds.

c) Village Safe Water Program

For smaller cities or unincorporated villages, the Village Safe Water (VSW) program offers extensive technical and managerial assistance, and provides funds of 100 percent of project costs for water, wastewater, and solid waste projects. The program stresses fiscal accountability, and the importance of informed local decision-making in the selection of projects, and focuses on assuring that operation and maintenance costs can be paid for by the local village. The program has shown remarkable success in difficult circumstances and has enjoyed a high degree of support from rural villages. Forty projects are currently being managed by the VSW program.

d) Operator Training and Certification

Operators of water and wastewater facilities are required to be certified at the proper level. DEC maintains the Certification Testing Program for hundreds of operators and provides training. Program receipts were identified as a major funding source for training in FY 87. The success of this approach will need to be evaluated.

e) Facility Maintenance

Maintenance of rural sanitation facilities, once constructed, can be difficult. DEC employs one remote maintenance mechanic who travels constantly to keep systems running and prevent the need for extensive repairs or system reconstruction. DEC also provides grants to three regional health corporations for this purpose.

# Organization Chart

## Department of Environmental Conservation

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Oil Pollution  
Control

Air Pollution  
Control

Solid Waste  
Management

Hazardous Waste  
Management

Laboratory Support

Hazardous Waste  
Management

Laboratory Support

Thank you for opportunity to discuss program and issues  
I. Introduce Amy Kyle

II Overall direction and orientation

A. Legal mandate from Legislature

1. More of ten programs result directly

B. Mission: an active, positive working relationship with industry, small business, communities, and individuals Alaskans

1. Legislature has assigned responsibility to enforce state laws

2. Also a service function

a. Technical assistance in meeting legal requirements

b. Helping businesses ~~to~~ do their projects right

c. Individual attention to tightest budget allows

3. Avoid problems if possible

a. Cooperative approach to solving problems if problems occur

b. Readiness to respond in emergencies

c. Fire department analogy

## II.

C. Alaskans believe they are entitled to

1. Safe drinking water
2. Wholesome meat, dairy and seafood products
3. ~~Healthy neighborhoods~~
4. Protection from hazardous substances
5. Environmental quality ~~that~~ ensuring that their neighborhoods are healthy, that ~~streams~~ ~~are~~ their children can wade in the streams

D. Several environmental <sup>programs</sup> ~~activities~~ also benefit business in Alaska

1. Builds Alaskans' confidence that public health and environment are being protected properly
2. Helps strengthen support for economic development
3. Avoids litigation by private parties that can block projects
4. Example: Fox refinery (EX 5)

### III. Programs overview

#### A. Six basic environmental quality programs

1. Air quality
2. Water quality
3. Safe drinking water
4. Oil pollution control
5. Solid waste management
6. Hazardous waste management

#### B. Two of these programs delegated to state by federal government: air quality, safe drinking water

1. State must have standards as rigorous as the federal standards
2. But programs can be tailored to Alabian conditions  
(<sup>and local communities</sup>)
3. DEC can work with industry, provide technical assistance, and take account of site specific problems
4. Not possible if EPA is running them out of Seattle or Washington, D.C.

#### C. The water quality and hazardous waste programs reflect ~~the~~ the state's commitment in these areas, but unlike the NPDES, nor the RCRA program has been delegated

III.

D. Air quality

1. Description from narrative

2. Examples:

a. Anchorage and Fairbanks Inspection and maintenance programs (EX 9)

b. Alada Pulp Corporation (EX 6)

E. Water quality

1. Description from narrative

2. Priority issue: placer mining

a. Example (EX B)

3. National Pollution Discharge Elimination System (NPDES)

F. Safe drinking water

1. Description from narrative

2. Priority issue: leaking underground storage tanks

a. Example - Peters Lake (EX 7)

3. Continuing program priority

G. Oil pollution control

1. Description from narrative

2. Oil Spill Response Fund (HB 470)

a. Governor's capital budget (250K)

b. Mitigation account

H. Solid waste management

1. Description from narrative

2. Example: Recreational garbage in Bristol Bay

III.

I. Hazardous waste management

A. Description from narrative

B. Priority issue

- 1. Importance to <sup>general</sup> business, industry communities
- 2. Legislative direction
- 3. ~~State~~ DEC has adopted initial regs
- 4. Budget increment to implement reg and lay foundation

IV. Environmental Health

A. Sanitation in Public Facilities - visitor industry importance

1. Description from narrative

2. Program priorities

- a. Standardization ~~of~~ inspections
- b. Develop enforcement policy for all parts of DEC operations (not just public facilities)

B. Food Inspection

1. Description from narrative

2. Strengthen basic ~~from~~ quality assurance

3. Priority areas

- a. More attention to floating processors
  - (1) new regs. get it off roll
- b. Standardization and consistency
- c. New Alaska ~~of~~ market opportunities

X  
5X2

IV.

C. Meat/Poultry/Dairy Inspection

- 1. Description from narrative
- 2. Assistance to fledgling dairy and red-meat industries
  - a. Matamesha Maid and farmers
  - b. Reinder (EX 3)
- 3. Assistance to farmers: pesticide consultation, (grasshoppers & fungus)

II. Facilities Construction and operation ~~etc~~

- 1. Description from narrative
- 2. Budget
  - a. Remote maintenance worker program (existing budget reduction 15% across the board)
  - b. Capital projects (10 million requested: 6 for M6, 4 for 15)
- 3. (EX 8)

III. Issues (some have already been mentioned)

A. Budget

- 1. ~~the~~ Narrative
- 2. Technical assistance, service depend upon ~~budget~~ having adequate staffing & fiscal resources

B. ANWR

THE PRECEDING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

START

→ 1. Air Quality Control Program -- The Air Quality Control Program ensures that state and federal standards for air pollution emissions and ambient standards are met and issues permits for 127 emission sources. The Clean Air Act mandates these federal standards. DEC also provides support and the regulatory structure for local vehicle inspection and maintenance

programs in Anchorage and Fairbanks and for woodsmoke control in Juneau.

2. Safe Drinking Water Program -- The goal of this program is to ensure that approximately 1500 public drinking water systems supply healthful drinking water. The program provides technical assistance, responds to violations of drinking water standards, ensures that required monitoring is conducted, and reviews plans for drinking water systems to avoid structural problems.

3. Water Quality Management Program -- Federal authority for water pollution control permitting has not yet been delegated to the State. The water quality management program ensures that State water quality standards are met by federal permits for effluent discharge sources. This program also protects water quality and public health through State wastewater disposal permits for facilities receiving no federal permit and through regulation of domestic sewage disposal. The program also operates the placer mining program.

4. Oil Pollution Control Program -- This program reviews oil spill contingency plans for oil storage and transfer facilities, ensures that

facilities have the necessary financial resources to clean up any oil spills they cause, and responds to over 800 spills a year. DEC is also implementing a program to address underground storage tanks, which are a frequent source of petroleum products that contaminate drinking water. Extensive investigations are often required to determine the source and extent of underground spills.

5. Solid Waste Management -- This program reviews proposals for solid waste disposal sites to ensure that sites are properly designed, constructed, and operated to prevent groundwater contamination or nuisances such as odors or blowing debris. This is one of the department's smallest programs, yet is responsible for regulating municipal and private landfills and solid waste disposal sites.

6. HAZARDOUS WASTE -- The department is developing a Hazardous Waste Program as mandated by the Legislature in 1981 and 1984. Major elements include developing state capacity to assure the federal hazardous waste management program; notification to communities of hazardous waste shipments; annual collection and disposal of hazardous waste from Alaska households and small businesses; regulations governing siting of any in-state facility and state approval of sites for hazardous waste facilities; identification of preferred locations for potential in-state facilities; and participation in the federal "Superfund" site investigation and cleanup program. [SEE ALSO CLEAR THIS DOES NOT REPRESENT FULL TAXONOMIC OF THE PROGRAMS]

C. ENVIRONMENTAL HEALTH: In the area of Environmental Health, three major programs are operated: Sanitation in Public Facilities, Seafood Inspection, and Meat/Poultry/Dairy Inspection.

1. Sanitation in Public Facilities -- This program inspects all public facilities in Alaska, except in Anchorage and Fairbanks, where local governments either take on or assist DEC in the responsibility. The goal is to protect the public health by ensuring that basic principles of sanitation are maintained. This includes restaurants, hot tub spas, day care centers, schools, and so on. The program also works closely with the Food and Drug Administration on food recalls when necessary.

2. Seafood Inspection -- DEC inspects all seafood processing facilities to ensure that proper procedures are followed to produce wholesome, unadulterated product. The program protects the consumer and enhances the industry by decreasing the probability that unwholesome products will reach the market. Alaska's share of the seafood market substantially depends upon the public's confidence in the quality of our products. DEC works closely with the seafood industry in order to achieve effective inspection.

3. Meat/Poultry/Dairy Inspection -- The State has primary responsibility for the Federal meat and poultry inspection program, which requires a high level of inspection of all meat processing facilities. DEC also provides inspection support for the State's fledgling dairy industry.

D. FACILITY CONSTRUCTION AND OPERATION (FCRO)-- The Facility Construction and Operation division helps protect public health through properly constructed water and sewage facilities, and also protects the State's capital investment in these facilities through proper engineering, maintenance, and operation. The department conducts three facility construction grant programs, provides operator training and certification, and assists in facility maintenance.

1. Federal Grants -- The division administers the federal construction grants program, under which thirty Alaska projects are now receiving federal dollars. \$65 million has been distributed within Alaska through this program.

2. Construction Grants -- DEC administers State grants to municipalities for up to 50% of nonfederal costs for water, wastewater and solid waste projects. DEC's engineering and management staff helps reduce State funding needed to build projects under this program. Sixty-six projects currently have these state grant funds.

3. Village Safe Water Program -- This program provides extensive technical and managerial assistance and provides funds of 100% of project costs for water, wastewater, and solid waste for smaller cities or unincorporated villages. The program has shown remarkable success and has enjoyed a high degree of support from rural communities. This confidence is reflected in the fact that some communities have asked for

DEC assistance in ensuring successful project completion--even on projects fully funded outside the program. Other communities have turned to DEC to help them salvage projects or to correct problems in projects originally undertaken outside the Village Safe Water Program. Forty projects are currently being managed.

4. Operator Certification and Remote Maintenance -- The department also trains local operators in proper operation of facilities and maintains a remote maintenance mechanic who travels constantly to keep systems running and prevent deterioration.

Water, sewer, or solid waste projects administered by DEC are selected by the Legislature in the capital budget process. Through the DEC Grant Program, the State can make use of the planning, engineering, and fiscal management expertise provided in the Construction Grants or Village Safe Water Programs, when they are designated as the funding authority.

SUMMARY OF PROGRAMS: These, then, are the ten major programs protecting public health and the environment provided by DEC. "Ten major programs for \$10 million." Alaska residents are receiving an impressive amount of protection for the money expended, especially when DEC's budget is considered in relation to the State's total operating budget.

III. ISSUES -- In meeting the challenge to continue the protection and services we face several immediate issues.

A. Budget -- The budget, as for all State functions this year and over the forthcoming years, is the biggest problem we face. The situation is this: DEC's overhead, support, and management costs are among the lowest in State government. The agency has virtually no discretionary functions; all programs are statutorily mandated except for the facility maintenance program. The agency has no discretionary contractual or other funds. Because about 75% of DEC's operating budget goes to personnel costs, the only way that substantial savings can be generated is through staff reductions. But staffing in the agency is extremely thin, and in many program areas, the agency has little or no backup expertise. Consequently, layoff of even one person with expertise in a program could mean the total loss of the program.

← END

[\*\*\*POSSIBLY DELETE\*\*]: DEC's budget has taken a series of reductions. For FY 1987, the budget was originally reduced about \$600,000 from FY 1986. The only program eliminated at that time was the litter program, with three positions eliminated. In July 1986, another 15% of FY 87 funds was deleted. Roughly \$1,400,000 of this was taken from personal services. Employees elected to take this reduction, for the most part, through voluntary agreements for reduced work hours equivalent to 15% of their compensation. DEC management strongly encourage this approach since it kept workers employed and retained the broad range of expertise. Cooperation among workers was outstanding. \*\*\*]

B. Hazardous Waste -- The Legislature has twice mandated DEC to develop

ENVIRONMENTAL HEALTH: NMFS PILOT PROJECT AND NMFS EXPORT INSPECTIONS

I. NMFS PILOT PROJECT

A. DEC completed first phase of pilot program to develop a state inspection program which would be accepted by the National Marine Fisheries Service as equivalent to federal inspection. The federal inspection is required before any federal government purchases of Alaska seafood can be made. Project aimed at lowering processors' costs for meeting requirements for federal purchases of Alaska seafood. Accomplished by substituting initial inspections and standards for full-time in-plant inspector that processor had to pay for.

B. Two phases to the program:

- 1. Whitefish filets, produced by International Seafood of Alaska in Kodiak, sold to Department of Defense.
- 2. Canned pink salmon, produced by Farwest Fisheries in Ketchikan, sold to the federal School Lunch Program.

C. Result: State has ~~gotten~~ a foothold through an equivalent program, succeeded in selling the first fish under the program, and thus developed the potential for broadening the program throughout the industry and opening up this federal market which many processors used to forgo because of the high cost of the in-plant inspector.

①

EX 2

ENVIRONMENTAL HEALTH: SHELLFISH HARVESTING

I. Increasing certified harvest areas within budget

DEC has had increasing requests for certifying shellfish harvest areas, thus pointing to growth in an Alaska industry that requires government inspection to assure products are safe from paralytic shellfish poisoning and other dangers. Increased inspections and sampling would ordinarily mean increased DEC budget to handle the load. Instead, we worked out a procedure whereby the requestor assumes some of the costs of the inspections, such as transportation of the inspector, sample shipments, etc. We can thus expand our certified shellfish harvest areas at lower costs.

II. Exporting shellfish to other states

Paralytic shellfish poisoning is prevalent in Alaska waters, but can be guarded against by shellfish harvest area certification and sampling. In order for shellfish to be shipped interstate, the State must belong to the National Shellfish Sanitation Program. DEC, in order to meet its obligations under this program and thus protect our shellfish industry, does all PSP testing in Alaska.

ENVIRONMENTAL HEALTH: REINDEER

I. Regulatory crisis in the reindeer industry

A. New federal requirements: Last year, USDA informed DEC of a new federal requirement that, in order for reindeer to be used in sausage products, reindeer slaughter inspections must be performed that meet USDA requirements. DEC went to work with USDA in an effort to work out special inspection guidelines for reindeer that would meet the federal requirements yet still take into consideration the special needs of a uniquely Alaskan industry.

B. Results: We were successful in quickly working out the guidelines, and the first test inspection of a reindeer slaughter will take place this month at Shishmaref.

C. Existing stock: We interceded on behalf of the meat industry to reach an agreement with USDA that would allow existing reindeer stocks to be utilized and slaughters to continue while the new guidelines were being worked out.

D. New development for surimi: USDA has said they will accept pollock surimi in certain meat products, under the condition that they have NMFS seafood inspection. So possibly the next phase of the pilot project will be to concentrate on surimi inspection. We should be able to provide the same kind of equivalency inspection program, plus microbiological sampling in our Palmer lab, to enable Alaska processors to enter this new surimi market at a lower cost.

## II. NMFS EXPORT INSPECTIONS

Under a different agreement with NMFS, we perform "export inspections" which enables a van to be loaded with fish in Ketchikan and be shipped directly to a foreign country. Before we worked out this arrangement with NMFS, the van would have to be unpacked in Seattle, inspected by NMFS there, reloaded and then shipped. Our export inspections save the industry money, and provide product that has been handled much less and is therefore both fresher and safer for Alaska's seafood customers.

ENVIRONMENTAL QUALITY: WATER/SEWER PROBLEMS IN KETCHIKAN

I. Development and soils

A. In order for residential development to occur in an orderly manner the water and sewer needs for the homes must be met in a way that protects public health. DEC is responsible for approving these systems. Monitoring of water runoff in ditches in high-density neighborhoods in Ketchikan Borough, outside of the City sewer system, revealed high contamination, indicating a problem we have in other communities also. The soil in southeast areas, often muskeg over rock and high water tables, makes on-lot sewage disposal undesirable.

B. Water and Sewer Task Force - We initially requested that the borough form this task force to get citizens more involved in finding solutions to this problem. We are members of the task force, and provide technical information and work through them to develop our own policies in regulating water and sewer in these areas. This participation has resulted in more involvement by local citizens, and a cooperative working relationship with the Planning Commission and the borough government. The process has helped to define the problem, but more than that, has helped the community take a more positive attitude in developing solutions. Several resolutions by the Planning Commission and movement toward the borough assuming water/sewer powers are indications of positive movement. [In recent election, issue for borough to take on water/sewer powers was defeated. Staff considers even having it on the ballot as a positive step.]

ENVIRONMENTAL HEALTH: ANCHORAGE & FAIRBANKS AIR QUALITY

I. Carbon monoxide problem: A few years ago, the federal government announced that federal construction funds for Anchorage and Fairbanks were in danger of being with-held because those cities had some of the highest levels of carbon monoxide, under certain weather conditions, of any U.S. cities. We went to work with the Municipality of Anchorage and the Fairbanks North Star Borough to develop "Inspection and Maintenance" programs, whereby private vehicles would be kept within emission limits to protect the air quality, protect public health, and maintain those federal funds. Two weeks ago, EPA announced that Anchorage and Fairbanks had ~~some~~ *two* of the most effective programs to be found anywhere in the U.S.

II. DEC air quality expertise: To provide this level of technical assistance to the municipal governments and help them build I & M programs from scratch, required much expertise in our air program. Our air quality engineers had the technical knowledge, the understanding of federal regulations and the Clean Air Act, and the ability to work with their counterparts in the municipal governments to help bring it off.

III. Resource development requires environmental confidence: The Anchorage and Fairbanks airsheds are a point of real concern for any industry that has air emissions and is considering locating in either of our two largest cities. They must feel confident that we have the ability to deal with federal regulations, and local residents must have the confidence that their health and property values will be protected before they will support such development.

TESTIMONY FOR SENATE RESOURCES COMMITTEE

Resource Development Example (1/26/87 RB)

Alaska Pulp Corporation, Sitka

Summary: DEC was able to negotiate a settlement with environmental groups and the pulp mill to allow the pulp mill to come into compliance with the air pollution standards.

Background:

- 1.) In Sep' 85, EPA began legal action against APC for air pollution violations.
- 2.) By aggressively asserting the states' role in pollution control, DEC was able to wrestle the lead position in enforcement away from EPA.
- 3.) DEC began a negotiated settlement with APC to bring the mill equipment into compliance with pollution standards.
- 4.) Various environmental and citizen's groups joined the legal proceedings in order to accelerate the schedule of compliance.
- 5.) DEC met with lawyers from the environmental groups and, through detailed technical explanations of the engineering requirements, convinced them that the schedules were appropriate.
- 6.) Giving the environmental groups an oversight role in the process, the Judge agreed and ruled that DEC's proposed compliance schedule was appropriate.

4

EX B

## TESTIMONY FOR SENATE RESOURCES COMMITTEE

### Resource Development Example (1/26/87 RB)

#### Placer Mining Technical Assistance

Summary: The State has based its future regulation of placer mining industry upon a basic premise: better, more advanced mining methods will result cleaner water, more gold recovery, and less environmental damage. After two years in field testing, this premise has been validated.

#### 1.) State Grant Program

- twenty miners tested thirty innovative ideas
- grants totaled \$2,800,000
- DEC administered the grants, with cooperation from DNR
- many grants show promising results, especially those using tailings filtration, chemically-assisted settling ponds, and recycling to reduce water use
- a contractor is evaluating program accomplishments, reports will be distributed this spring
- EPA will use information from the grant programs to establish treatment requirements for placer miners in upcoming EPA permits

#### 2.) "PEO" Flocculent Studies

- PEO is a chemical tested in the Lower 48 to treat various

EX B

mine wastes

-- last summer, PEO was tested at four mine sites in Alaska to remove fine sediments from placer mines, the same fine sediments that cause "turbidity problems"

-- in three of four mines tested, fine sediments were removed well down to concentrations certifiable as acceptable with the water quality standards

-- in cooperation with and assisted by EPA and DEC, the Bureau of Mines conducted the PEO testing

-- more PEO testing at Alaskan placer mines will be done this summer

### 3.) The best example: Chatanika River 1986 Cleanup

Since 1984, DEC has focused upon the Chatanika. In 1986, DEC monitoring showed success -- water quality standards were met throughout the basin. Here's how:

-- one "entrepreneur" miner, using a new mining technology developed by him, used recycling to cut water use, and tailings to filter his wastewater, met the turbidity standard and had no discharge;

-- another miner, using a State grant, added chemicals to his effluent and met the turbidity standard;

-- a third miner, operating as he had for several years, routed his discharge overland through several muskeg ponds and met the turbidity standard; and

-- another miner, who failed to install proper settling ponds, receive sufficient enforcement pressure that he did not operate.

5

EX 7

ENVIRONMENTAL HEALTH: PETERS CREEK BENZENE CONTAMINATION

I. Residential development requires protection of drinking water supplies and solutions to contamination when it occurs. Where people draw drinking water from wells, we may see incidents of contamination of a whole aquifer underlying a subdivision. This can pose major threats to not only the value of existing homes but the potential for further development in an area.

II. Our most dramatic incident last year is now referred to as "Peters Creek", after one of the subdivisions in the Chugiak area near Anchorage that suffered from this contamination. In April, benzene (found in association with petroleum products) was detected in private wells, and a major aquifer was threatened that had the potential of affecting eight subdivisions. A health alert was ~~issued~~<sup>issued</sup>, temporary water supplies ~~provided~~<sup>provided</sup>, the State and Municipality ultimately provided a new water system for the area. DEC traced the contamination to leaking tanks at a local service station. Cleanup is underway, funded for now by the State's Oil Spill Reserve Account. The responsible party will ultimately be required to pay for the cleanup.

III. This kind of problem has obvious major implications for residential subdivision development, home ownership, insurance, as well as public health and environmental damage. It requires quick response, working with local residents when contamination occurs, <sup>and</sup> intergovernmental coordination. DEC took considerable pride in our success in dealing with

the problem at Peters Creek, even while staffed and funded at a relatively low level. With a federal grant, we are developing a preventive program that will register underground storage tanks and raise the consciousness of owners of such tanks regarding the need for good maintenance and regular self-inspections.

[ Safe drinking water supplies are necessary for potential purchasers of homes and potential businesses to develop in any area. ]

HB

263



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3715

## MEMORANDUM

March 21, 1988

TO: The Hon Ben Grussendorf, Speaker  
FROM: Rep. Sam Cotten, C-Chair *SC*  
Rep. Adelheid Herrmann, Co-Chair *AH*  
SUBJECT: HB 263, Agency Program Receipts

1

Last year the Resources Committee was asked to review the Senate's changes to HB 263. Our committee recently reviewed the bill and recommends that the House vote not to concur in the Senate's amendments. In particular, new language in Sections 104, 105, and 134 should be removed.

If the Senate asks for the bill back before the House votes on concurrence, we would recommend that these changes be made by the Senate.

cc: Rep. Mike Navarre, Rules Committee  
Chief Clerk



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

POUCH V  
JUNEAU, ALASKA 99911  
(907) 465-3715

## M E M O R A N D U M

February 29, 1988

TO: Rep. Sam Cotten, Co-Chair  
Rep. Adelheid Herrmann, Co-Chair  
FROM: Ned Farquhar, staff *Ned*  
SUBJECT: HB 263

The Committee has HB 263 on the calendar today. This bill contains program receipts authorizations and cleanup for agencies throughout state government. The Administration considers the bill a high priority.

Last year the House and Senate passed different versions of HB 263. The Senate added several sections late during the first session that relate to energy development in Alaska. For this reason the bill was referred to the Resources Committee for its consideration. However, the only action that the House may formally take on the bill is to concur or not concur in the Senate's changes.

Jay Hogan will be at today's meeting to describe changes made by the Senate and to answer other questions about the bill.

cc: Committee staff





Number 228

Representative Navarre: I recommend we send this back with a recommendation that we not concur until sections 104, 105, and 134 are taken out.

He states that is his motion.

Number 230

Chairman Cotten repeats the motion: The motion is to return the bill to the speaker and recommend that the additional language in sections 104, 105, and 134 be deleted before the House can concur.

He asks if anyone is opposed to the motion. Representative Shultz objects, however, the vote is 5 to 1. The motion passes.

Number 279

Chairman Cotten adjourns the House Resources Committee meeting at 8:57 a.m.

HB

266

# HOUSE COMMITTEE REPORT

(9)

Date referred: 4/10/87

FURTHER REFERRALS: Judiciary

DATE: 5/9/87

The Resources Committee has considered HB 266

"An Act relating to the recording of documents."

**RECOMMENDS:**

- replace with CS HB 266 (Res)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

\_\_\_\_\_  
*Mike Narayne*  
 \_\_\_\_\_  
*Tom Hoff*  
 \_\_\_\_\_  
*Cliff Davidson*  
 \_\_\_\_\_  
*Dick Stentz*  
 \_\_\_\_\_  
*Keith Spry*  
 \_\_\_\_\_  
*Adelheid Herrmann*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
*Issue Peace - No Rec*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
*Sam G. ...*  
 \_\_\_\_\_  
 Chairman's signature



*Hearing*  
*SAT AT 1:30*

5-0521B ✓  
Bannister  
5/8/87

Original sponsor: Ulmer

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 266 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the recording of documents."

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

8 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the

9 (1) recording of legal documents of the kind customarily re-  
10 corded throughout the United States is an essential state function;

11 (2) time and place of the recording of a document can be more  
12 important than the underlying legal sufficiency of the document;

13 (3) recording offices exist primarily for the benefit and conve-  
14 nience of the general public;

15 (4) business community, commercial institutions including banks,  
16 and private individuals cannot function effectively without the public  
17 notice protection afforded by recording their documents; and

18 (5) policy of the state is to maintain a convenient means of  
19 regularly recording legal documents relating to property and obtaining  
20 information concerning existing recorded documents.

21 \* Sec. 2. AS 34.15 is amended by adding a new section to read:

22 Sec. 34.15.343. RECORDING CRITERIA. When determining whether a  
23 document may be recorded, the recorder

24 (1) may not consider whether the contents of the document  
25 are legally sufficient to achieve the purposes of the document;

26 (2) shall resolve reasonable doubts about whether the  
27 document is eligible for recording in favor of recording the document;

28 (3) may not reject a document because the document

29 (A) does not satisfy the current requirements for

1 recording, if the document satisfied the requirements for record-  
2 ing that existed at the time the document was executed;

3 (B) serves more than one purpose;

4 (C) does not state the name of the recording district,  
5 if the name is given to the recorder at the time the document is  
6 offered for recording, or if the name is contained in a cover  
7 letter accompanying the document;

8 (D) references an attached exhibit that is not la-  
9 belled;

10 (E) is a certified copy of an official document from a  
11 governmental office in this or another state; or

12 (4) may not require that a document that serves more than  
13 one purpose be recorded separately for each of the purposes; this  
14 paragraph does not prevent the multiple recording of the document if  
15 the person offering the document requests that the document be re-  
16 corded for more than one of its purposes.

17 \* Sec. 3. AS 44.37.025(a) is amended to read:

18 (a) The Department of Natural Resources shall adopt regulations  
19 [,] establishing, modifying, or discontinuing recording districts or  
20 precincts and prescribing the records to be maintained and the instru-  
21 ments to be recorded. A regulation may not impose a restriction on  
22 document recording unless the restriction is required by statute or  
23 further a legitimate administrative need of the recorder; a "legiti-  
24 mate administrative need" includes ensuring the legibility of the  
25 documents and identifying the parties, the capacity of each party, and  
26 the affected property.

STATE OF ALASKA



REPRESENTATIVE  
FRAN ULMER

P.O. Box V  
JUNEAU, ALASKA 99811  
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

May 2, 1987

TO: House Resources Committee

FROM: Representative Fran Ulmer

SUBJECT: HB 266, An Act relating to the recording of documents

---

House Bill 266 was introduced at the request of the Juneau Bar Association. The bill adds a new section to AS 34.15 and amends AS 44.37.025.

After the Department of Natural Resources adopted regulations during the past year, the requirements for recording documents have become increasingly more onerous for Alaskans who need these services. These regulations have not been uniformly interpreted or applied by the staff in the various recording offices throughout the state.

My aide and I have had several meetings with staff from the Division of Management, Department of Natural Resources to discuss this bill. In addition to numerous communications favorable to the bill, these meetings have confirmed the need for legislative policy to address the recording of documents.

As you know from public response to the proposed budget cuts that would have closed some of the recording offices, Alaskans need and want the services provided by these recording offices. HB 266 proposes to clarify the requirements for recording documents and to make these services more equitable throughout the state.

I am hopeful that we can work together to pass a bill that will address the problems associated with the recording of documents and will improve these public services.

ULMER

ANALYSIS - HOUSE BILL 266

"An Act relating to the recording of documents".

Section 1 is a statement of facts explaining the underlying purpose of the bill.

Section 2 adds a new section to AS 34.15 outlining recording criteria. When determining whether a document may be recorded, the recorder could not consider whether the contents of the document are legally sufficient to achieve the purposes of the document. The recorder would have to resolve reasonable doubts about whether the document is eligible for recording in favor of recording the document.

The recorder could not reject a document because: it does not satisfy the current requirements for recording, if it satisfied requirements for recording that existed at the time it was executed; serves more than one purpose; does not have a title that reflects the overall contents of the document; does not state the name of the recording district if the name is given to the recorder by the person offering the document, or if the name is contained in a cover letter; references an attached exhibit that is not labelled; is a certified copy of an official document from a governmental office in this or another state.

The recorder could not require that a document that serves more than one purpose be recorded separately for each of the purposes. This would not prevent the multiple recording of a document, if the person offering the document requests that it be recorded for more than one of its purposes.

Finally, in Section 3, the bill amends AS 44.37.025 so that a regulation of the department could not impose a restriction on document recording unless the restriction is required by statute, or furthers a legitimate administrative need of the recorder.



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347

April 17, 1987

RECEIVED APR 21 1987

Honorable Fran Ulmer  
Alaska State Legislature  
P.O. Box (MS 3100)  
Juneau, Alaska 99811

Re: House Bill No. 266

Dear Rep. Ulmer:

The Alaska Miners Association supports House Bill No. 266 and its passage this session of the legislature.

Since the majority of mining operations in Alaska are conducted by "small miners", in remote and unsurveyed areas of the state, and since the penalty for failure to timely file or record documents relating to mining claims can be loss of the claims, it is imperative that procedural or technical niceties do not preclude their recordation, as long as the intent of the documents is fairly stated.

We believe that House Bill No. 266 goes a long way toward accomplishing those objectives, and congratulate you for introducing that bill.

Sincerely,

ALASKA MINERS ASSOCIATION

Curtis V. McVee  
Executive Director

**TIA** TITLE  
INSURANCE  
AGENCY

Main Office  
201 N. Franklin St.  
Juneau, AK 99801  
(907) 586-6445

Valley Branch  
9110 Glacier Hwy.  
Juneau, AK 99801  
(907) 789-1671

April 17, 1987

Representative Fran Ulmer  
Pouch V  
Juneau, AK 99811

Dear Fran:

Your introduction of House Bill 266 is commendable. This type of legislation is long overdue.

The recording system has been kind of a step child for as long as I can remember, being administered according to the whims of various departments it has been in. It's encouraging to see an attempt to stabilize the system.

Sincerely,



Glen A. Prince  
Executive Vice President

GAP:bjk

RECEIVED APR 21 1987

DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION

ATTORNEY-AT-LAW

130 SEWARD STREET, SUITE 417.

JUNEAU, ALASKA 99801

January 28, 1987

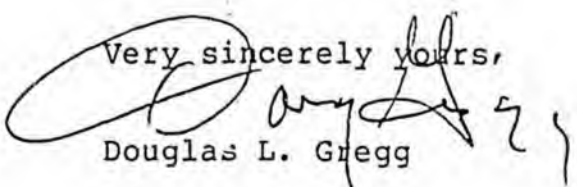
Honorable Fran Ulmer  
State Representative  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Fran:

I learned today that you may not have received a copy of the Juneau Bar letter and enclosures of January 7th. Here is a copy. The issue at hand may well relate to the budget in that the host of regulations which have been implemented in the last year or two cannot help but have added substantially to the work load of the recorder's offices around the state. In any event, we appreciate your assistance. We'd like to see a bill drafted to add a few amendments to the existing statute. Thank you.

Very sincerely yours,

  
Douglas L. Gregg

ENCLS:

cc: James E. Fisher, President  
Juneau Bar Association

RECEIVED  
RECEIVED APR 6 1987

DORIS LOENNIG  
A PROFESSIONAL CORPORATION  
ATTORNEY AT LAW

SUITE 120, 515 SEVENTH AVENUE - FAIRBANKS, ALASKA 99701  
907 452-2005

April 1, 1987  
(Dictated 3-31-87)

Representative Fran Ulmer  
P.O. Box V  
Juneau, Alaska 99811

Dear Mrs. Ulmer:

I received a memorandum March 9, 1987 from members of the Natural Resources and Real Estate Sections of the Alaska Bar Association asking me to review a proposed amendment to the Recording Act. I apologize for not responding more promptly, but I do want to advise you that I am strongly in favor of the amendment.

As is so often the case as governmental bodies develop, there is a tendency to draft laws and regulations that benefit the bureaucrats while not particularly serving the public. The Recorder's Office has become extremely stringent in what they will accept for recording with the result that vital documents are being denied recording. For instance, I am involved in a situation where a Deed necessary to the chain of title was damaged by flood water. It is readable, but the Recorder's Office will not record it because the microfilm record would not be readable. The solution would be to type an exact copy of the deed, certify it as a copy of the original and then record both the original and the certified copy. By the Recorder's Office refusal to record the document, there is a break in the chain of title which will require an expensive suit to quiet title.

Also, recently I had a very difficult time getting a certified copy of an Alaska State Patent recorded. The original Patent had not been

Mrs. Fran Ulmer  
Re: Recording of Documents


April 1, 1987  
Page two

recorded when issued, and had been lost. The present owner of the property was required to convey a marketable, insurable title, which he could not do without completing the chain of title by the recording of the Alaska State Patent. There should never have been raised any objection to the recording of the certified copy.

Very truly yours,

DORIS LOENNIG, P.C.

By:

  
\_\_\_\_\_  
DORIS LOENNIG

DL:dcm

## HUGHES THORSNESS GANTZ POWELL &amp; BRUNDIN

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 TELEPHONE (907) 835-2989

OF COUNSEL  
 JOHN C. HUGHES  
 RICHARD D. GANTZ

March 10, 1987

REPLY TO ANCHORAGE

Honorable Fran Ulmer  
 State Representative  
 P. O. Box V  
 Juneau, Alaska 99811

Dear Representative Ulmer:

I received the enclosed memorandum from the Alaska Bar Association, as I am a member of the Natural Resources Section Executive Committee of the Bar Association.

I support the language of the attached (proposed) House Bill, "An Act relating to the recording of documents", in its entirety. I wholeheartedly support the bill and the reasoning behind it. I urge you to introduce it, and not by request.

If for no other reason, I object to the current recording regulations and support the proposed bill on the grounds that the Department of Natural Resources has no business placing unreasonable and cumbersome limitations on the public's right to record documents. If it is to be done at all, it should be done by the legislature through elected representatives and not subject the right to record documents to the discretionary, often petty and whimsical "legal" interpretations of clerks. I have personally had the experience of the Fairbanks Recording Office (initially) refusing to record documents that are required by federal mining claim regulations to be recorded with the recording district; only after strenuous argument (the clerks adjourned to a private conference on the matter while I waited an hour) was the document accepted. If the documents had not been recorded, my clients' mining claims could have been declared invalid by the United States Bureau of Land Management.

Most of my practice consists of representing small miners. As a group, these people are bright, but have little formal education; they are literally overwhelmed by the legal and regulatory climate in which they are struggling to survive. As a user group, I would wager that miners use Alaska's recording

Honorable Fran Ulmer  
March 10, 1987  
Page 2

offices more than any other single group of people. They do so for a very good reason: they must annually file documents with recording offices to preserve their possessory rights, upon pain of losing the claims to rival claimants or the government.

Unlike persons wishing to record documents who are seeking to place themselves prior in time to the interest of another party, the failure to timely record a document for a miner does not simply place that miner's interest in a position subordinate to someone who has filed ahead of him. Instead, the failure to timely file various mining documents can, and usually does, result in a total loss of the miner's rights--e.g., by an administrative declaration from BLM to the fictional effect that their claims have been "abandoned". This abandonment penalty has been sustained as lawful by the United States Supreme Court recently and BLM may take such action, despite abundant evidence that the miner did not intend to abandon the claim.

As a group, miners stand to lose more than any other group under these current recording regulations, because miners typically wait until near the annual deadlines to file their documents. At that time, should a clerk narrowly or adversely interpret any one of the host of regulatory obstacles to recording with which DNR is now armed, it will be too late for the miner to correct the situation; in many instances, the miner will simply lose his rights. Often, the failure to record cannot be cured by filing another mining claim location certificate, because the ground upon which the claim was located is now in one of Alaska's many national parks or other areas now closed to mineral entry.

Long before there were recorder's offices, there were mining districts. Each mining district (many of which were established shortly after acquisition of Alaska from Russia) had a district recorder, whose job was almost exclusively to accept mining claim recordings. It is sad and ironic that State of Alaska recorder's offices, which succeeded to the duties of mining district recorders, now seek to limit the public's right to record.

Finally, I will conclude by suggesting that some teeth be placed in the bill proposed; otherwise, even though the intention of the legislation is clear, it could still be frustrated, without penalty, by State employees. You are probably aware of the fact that some Alaska statutes provide for penalties to be assessed against an employee who violates the statute. For example, I believe there is a statutory prohibition against Department of Revenue employees divulging confidential information about taxpayers; penalties are provided for releasing the information. I can say from personal experience that this penalty provision is

Honorable Fran Ulmer  
March 10, 1987  
Page 3

terribly effective, because I have sought to obtain seemingly unrelated and harmless information and the Attorney General's Office has always advised the employee to err on the side of caution by refusing to release it. The fear of this penalty is so great that I have even had cases wherein the Attorney General gave this same advice, even though the information was requested pursuant to a lawfully issued subpoena (I was able to obtain the information, but only after persuading the taxpayer to authorize its release).

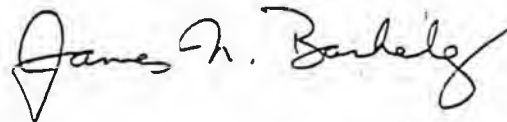
Thus, assuming a reasonable definition of "wrongful refusal to record" could be arrived at, I respectfully submit that penalties should be provided for under those circumstances--which penalties should include all losses proximately caused by the wrongful refusal--e.g., the loss of mining claims or other valuable property rights.

This is not a matter involving a particularly crusty, obstructionist clerk in one recording district; this is a matter of paramount importance and is of state-wide concern.

One last note: my opinions in this letter are conveyed to you from me as an individual, and they do not necessarily constitute the opinions of the Alaska Bar Association nor of Hughes, Thorsness, Gantz, Powell & Brundin.

Very truly yours,

HUGHES, THORSNESS, GANTZ,  
POWELL & BRUNDIN



By:

James N. Barkeley

JNB/mt  
2793i

cc: Linda Nordstrand, Alaska Bar Association  
CLE Director

## DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION  
ATTORNEY-AT-LAW  
130 SEWARD STREET, SUITE 417  
JUNEAU, ALASKA 99801

March 4, 1987

Honorable Fran Ulmer  
Representative District 4B  
State House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to Recording Statute AS 34.15  
My File G-1579  
Dear Representative Ulmer:

Thank you for having our bill drafted. It seems to cover all the bases. I am not certain my schedule will allow me to attend Friday's bar luncheon. As a committee member I certainly hope that you will get a bill in as quickly as possible. I keep hearing horror stories. Fred Baxter is currently having a problem getting a certified copy of a court order from Anchorage recorded down here. The reason for refusal: "It is not an original." Can you believe this?

Very truly yours,

  
DOUGLAS L. GREGG

DLG

cc: Fred J. Baxter, Esq.  
Larry Weeks, Esq.  
James E. Fisher, Esq.

## DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION  
ATTORNEY-AT-LAW  
130 SEWARD STREET, SUITE 417.  
JUNEAU, ALASKA 99801

January 28, 1987

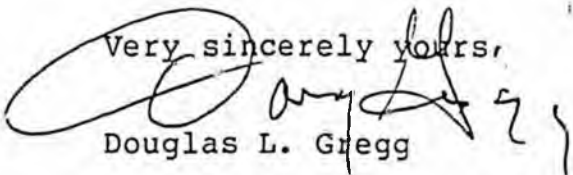
Honorable Fran Ulmer  
State Representative  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Fran:

I learned today that you may not have received a copy of the Juneau Bar letter and enclosures of January 7th. Here is a copy. The issue at hand may well relate to the budget in that the host of regulations which have been implemented in the last year or two cannot help but have added substantially to the work load of the recorder's offices around the state. In any event, we appreciate your assistance. We'd like to see a bill drafted to add a few amendments to the existing statute. Thank you.

Very sincerely yours,

  
Douglas L. Gregg

ENCLS:  
cc:James E. Fisher, President  
Juneau Bar Association

J U N E A U B A R A S S O C I A T I O N

6645 N. Douglas Highway  
Juneau, Alaska

January 7, 1987

Honorable Jim Duncan  
State Senator  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Honorable Fran Ulmer  
State Representative  
State Capitol  
P.O. Box V  
Juneau, Alaska 99811

Honorable Bill Hudson  
State Representative  
P.O. Box V  
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Juneau Legislative Delegation:

There is a need for new legislation to correct a serious problem with recording documents in Alaska. In recognition of that difficulty, the Juneau Bar Association, at its regular meeting on December 5, 1986, adopted the recommendation of its Committee on the Office of the Recorder, copy enclosed. The committee was formed as the result of numerous complaints about the many new restrictions on the right to record documents that were imposed through the rule-making power of the Department of Natural Resources, which has jurisdiction over the Office of the Recorder.

In addition to amending existing legislation, we are requesting that new regulations be adopted by DNR. However, we request that a bill be drafted to provide guidelines restricting future rule-making power to those matters of legitimate concern to the Office of the Recorder. Such an amendment to the statute should make it clear that the public has a right to record legal documents and that the Office of the Recorder is not to judge the internal legal integrity of documents but simply to record them

if they meet certain minimum requirements.

As to the rule-making power of the department, six recommendations are contained within the committee's report. However, the department might well consider several other changes in its current regulations. The committee restricted itself to the most obvious areas of needed change. The regulations could be further amended to provide that the Recorder may not refuse to record or file a document because:

- it lacks a title reflecting its overall content;
- it does not contain a "return to" address;
- the individual who incurred an assessment is not named (even though the property against which the assessment is placed is described and the party claiming the assessment is identified).

The Juneau Bar Association is not opposed to all regulation of the right to record. The new regulations are, however, onerous. More importantly, they are constituting a substantial restriction on the right to place a document on the record as public notice. Many times a document serves that purpose even though the document could admittedly be improved in its context and could be more complete than it is. But the right to record and create the public notice for the protection of parties is of paramount importance. Perfection in legal documents is desirable but many people making use of the Recorder's Office are not lawyers or skilled title examiners. Failure to successfully record can have dire results when intervening filings place a party in a secondary position.

We will appreciate your assistance in correcting the problem through the amendment of AS 44.37.025 to insure that future regulations will not contravene public policy. Thank you for your cooperation in this matter.

Very sincerely yours,

*JEF*

James E. Fisher, President  
Juneau Bar Association

ENCL

COPY

REPORT OF COMMITTEE ON OFFICE OF THE RECORDER

The Committee met on August 22nd. The work of the Committee was assigned to its members, Larry Weeks, Fred J. Baxter, and Douglas Greag. Bruce Hansen of Title Insurance Agency was invited to attend that meeting as an ex-officio member. He was requested to make inquiries of other title companies in an effort to obtain their viewpoints on the current difficulties in recording documents in Alaska. Fred Baxter spent some time outlining the essentials of a hypothetical complaint for damages. Larry Weeks explored the question whether the Office of the Recorder can, under the language of the statute requiring him to record instruments, refuse to record in reliance on the new regulations. Fred concluded that a person suffering damages by reason of the recorder's refusal to record an instrument could frame a good cause of action in many instances. Larry concluded that there would be a good chance, in a declaratory judgment action, to secure a judgment invalidating many of the regulations in question.

Your chairman met with Mr. Hansen on November 7th, at which time Mr. Hansen had received and compiled the results of an informal poll conducted among title insurance offices throughout the state. There were over 35 written responses (some did not answer every question.) Mr. Hansen had posed 15 questions in the poll. A simple "yes" or "no" was solicited to these questions.

The top of the poll asked whether the recipient felt that the Recorder should refuse to record or file a document when the document had certain attributes. These attributes were described in the 15 questions he selected. (Poll and results annexed.) There was near unanimity on several of the 15 items, with a more or less equal division of other items. Comments of respondents are omitted from this report. Several respondents sent letters praising Mr. Hansen for taking a personal hand in the difficulty.

A summary of the poll results shows general dissatisfaction with the system currently being employed by the Recorder in rejecting documents offered for recording.

Your committee's proposed amendments to the statute would help ensure that when new rules and regulations are adopted they will be circumscribed in such manner as to prevent unreasonable or unnecessary restrictions.

The Committee agrees that there is a need for modification in the existing regulations entirely apart from our proposed amendment to AS 44.37.025 which grants rule making power to the Department of Natural Resources. It may adopt regulations "... prescribing the records to be maintained and the instruments to be recorded." The statute currently lacks any restrictions or guidelines as to the scope of that power. An amendment would

help ensure that over-zealous rule-making will not in the future impair the ability of the public to make reasonable use of the Recorders' Offices.

Such an amendment to the statute could articulate a public policy. For example, it might state something along these lines:

PREAMBLE. The Legislature recognizes and therefore finds as follows:

1. The recording of legal documents of the kind customarily recorded throughout the United States is an essential State function.
2. The time and place that a document was placed of record may well be more important than the underlying sufficiency of that document from a strictly legal standpoint.
3. The Recorder's Office exists primarily for the benefit and convenience of the general public.
4. Commercial institutions, the business community, banks, and private individuals cannot safely function without the protections afforded by the right to give public notice through the ability to record their legal documents.