ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

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forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

(5) A nonresident shall be allowed the credit under this section in the proportion provided in ORS 316.117.

(6) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(7) A husband and wife who file separate returns for a taxable year may each claim a share of the tax credit that would have been allowed on a joint return in proportion to the contribution of each.

(8) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

(9) If the taxpayer is a shareholder of a Subchapter S corporation that has elected to take the credit on behalf of its shareholders as provided in ORS 317.133, the credit shall be computed and afterwards apportioned to each shareholder on the basis of the shareholder's pro rata share of the corporation's cost of the fish habitat improvement project. In all other respects, the allowance and effect of the tax credit shall apply to the corporation as otherwise provided by law.

(10) The tax claim for tax credit shall be substantiated by submission, with the tax return, of the State Department of Fish and Wildlife notice of final project certification. [1981 c.720 §16; 1983 c.684 §10]

316.085 Personal exemption credit; recomputing credit annually. (1)(a) There shall be allowed a personal exemption credit against taxes otherwise due under this chapter. The credit shall equal $85 multiplied by the number of personal exemptions allowed under section 151 of the Internal Revenue Code.

(b) In the case of an individual with respect to whom a credit under paragraph (a) of this subsection is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to such individual for such individual's taxable year is zero.

(2)(a) A nonresident shall be allowed the credit provided under subsection (1) of this section computed in the same manner and subject to the same limitations as the credit allowed to a resident of this state. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(3) For each taxable year beginning on or after January 1, 1987, the Department of Revenue shall recompute the dollar amount of the personal exemption credit allowed for state personal income tax purposes. The computation shall be as follows:

(a) Divide the Portland Consumer Price Index for the average of the first six months of the current calendar year by the Portland Consumer Price Index for the average of the first six months of 1986.

(b) Recompute the dollar amount of the personal exemption credit by multiplying $85 by the appropriate indexing factor determined as provided in paragraph (a) of this subsection. Round off the amount obtained under this paragraph to the nearest $1.

(4) As used in subsection (3) of this section, "Portland Consumer Price Index" means the Consumer Price Index for All Urban Consumers (Portland - all items) as published by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of this subsection, the revision of the Consumer Price Index which is the most consistent with the Portland Consumer Price Index for 1986 shall be used. [1985 c.345 §12, 3; 1987 c.293 §13]

316.088 Credit for connection to geothermal heating system. (1) As used in this section:

(a) "Cost of connecting to a geothermal heating system" includes, but is not limited to, the cost of acquisition and installation of connecting pipe and other fixtures or equipment within a dwelling or between a dwell-

the owner shall within 60 days after the change in use notify the county assessor of the change in use. The assessor or assessors shall withdraw the land from designation and immediately give written notice of the withdrawal to the State Department of Fish and Wildlife. Thereafter, the land shall be assessed and taxed as other property similarly situated is assessed and taxed.

(2) The assessor, upon discovery of the change in use to a use other than that compatible with riparian or upon withdrawal by the owner of the land from designation, shall compute an additional tax equal to five times for such lesser number of times, corresponding to the number of years of exemption under sections 3 to 13 of this 1981 Act applicable to the property after its most recent change of ownership) the amount of taxes that would have been assessed against the land had it been valued without regard to sections 3 to 13 of this 1981 Act during the preceding tax year. [1981 c.720 §8]

Sec. 9. (1) The amount determined to be due under section 8 of this 1981 Act may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(2) The amounts under section 8 of this 1981 Act shall be added to the tax extended against the entire parcel of land of which the riparian land is a part on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property taxes. [1981 c.720 §9]

Sec. 10. (1) The assessor shall at all times be authorized to demand and receive reports by registered or certified mail from owners of land designated as riparian under sections 3 to 13 of this 1981 Act as to the use of the same. If the owner fails, after 90 days' notice in writing by certified mail to comply with such demand, the assessor shall give written notice to the State Department of Fish and Wildlife and to the landowner of the assessor's intention to withdraw the land from designation and apply the payments and penalties provided in section 8 of this 1981 Act not less than 30 days prior to automatic withdrawal of the riparian land from designation. If, prior to the expiration of the 30-day period, the landowner fails to file the requested report, the assessor immediately shall withdraw the land from designation and apply the payments and penalties provided in section 8 of this 1981 Act.

(2) If the assessor has reason to believe that land designated as riparian land no longer qualifies for designation and special assessment, the assessor shall request the State Department of Fish and Wildlife to determine if the land continues to qualify. The request shall be in writing. Upon receipt of the request, the State Department of Fish and Wildlife shall inspect the property and may take whatever steps are necessary to determine if the land continues to qualify for special assessment. The State Department of Fish and Wildlife shall notify the assessor of the determination made pursuant to the request of the assessor within 120 days after the request is received. A determination by the State Department of Fish and Wildlife that the property no longer qualifies shall constitute a discovery described in subsection (2) of section 8 of this 1981 Act. [1981 c.720 §10]

Sec. 11. (1) Land that is being assessed under any of the special assessment laws listed under ORS 308.025 (2)(a) to (d) and (f), including ORS 308.370 (1), may be designated as riparian upon application and approval of the application under sections 4 and 5 of this 1981 Act.

(2) Notwithstanding the provisions of any of the special assessment laws listed under ORS 308.025 (2)(a) to (d) and (f), including 308.370 (1), the additional taxes, penalties and interest that would be due as a result of a change of designation to riparian shall be abated and shall not be collected. [1981 c.720 §11]

Sec. 12. (1) For the assessment year beginning January 1, 1982, the State Department of Fish and Wildlife shall not approve for designation as riparian land under sections 3 to 13, chapter 720, Oregon Laws 1981, more than 100 miles of private streambank in any county.

(2)(a) For the assessment years beginning on and after January 1, 1983, and prior to January 1, 1995, the department may approve for designation as riparian land not more than 100 miles of private streambank in any county.

(b) The land approved for designation as riparian land under this subsection each year shall be in addition to, and not restricted by, the approval of designation of land as riparian during the previous year. However, the department may, in addition, approve for designation as riparian land each year an amount of land equal to the amount of land withdrawn from, or disqualified for, designation as riparian land during the previous year, and, an amount of land equal to the difference between the amount of land approved for designation as riparian land during the previous years and the maximum established under paragraph (a) of this subsection.

(3) If the department receives applications for designation of land as riparian in excess of the maximum established under subsection (2) of this section, preference shall be afforded according to the date the application was filed with the county assessor. Applications which are not approved because the maximum has been reached shall be held for consideration for approval for the next assessment year. [1981 c.720 §12; 1989 c.224 §3]

Sec. 13. The Department of Revenue and the State Department of Fish and Wildlife shall make such rules consistent with sections 3 to 13 of this 1981 Act as may be necessary or desirable to permit its effective administration. [1981 c.720 §13]

Sec. 13a. Sections 1 to 13, chapter 720, Oregon Laws 1981, are repealed on December 31, 1997. [1981 c.720 §13a; 1989 c.921 §7]

uses of lands incompatible with their protection as riparian lands and that tax exemption must be granted to permit the continued availability of riparian environments for these purposes, and it is the intent of sections 3 to 13 of this Act to so provide. [1981 c.720 §1]

Sec. 2. Sections 3 to 13 of this Act are added to and made a part of ORS chapter 308. [1981 c.720 §2]

Sec. 3. As used in sections 3 to 13 of this 1981 Act:

(1) "Owner" means the party or parties having the fee interest in land, except that where land is subject to a real estate sales contract, "owner" means the contract vendee under a recorded contract.

(2) "Designated riparian land" means the beds of streams, the adjacent vegetation communities, and the land thereunder which are predominantly influenced by their association with water, not to extend more than 100 feet landward of the line of nonaquatic vegetation, which are privately owned and which qualify for exemption under sections 3 to 13 of this 1981 Act.

(3) "Urban growth boundary" means an urban growth boundary contained in a city or county comprehensive plan that has been acknowledged by the Land Conservation and Development Commission pursuant to ORS 197.251 or an urban growth boundary that has been adopted by a metropolitan service district council under ORS 268.390 (3). [1981 c.720 §3]

Sec. 4. An owner of land desiring designation and exemption of that land from ad valorem taxation as riparian land under sections 3 to 13 of this 1981 Act shall make application to the county assessor upon forms prescribed by the Department of Revenue and supplied by the county assessor. The owner shall describe the land for which designation as riparian lands is requested and the current use of the land. The application shall include any other information as is reasonably necessary to properly designate an area of land as riparian land under sections 3 to 13 of this 1981 Act with a verification of the truth thereof. Applications shall be made on or before December 31, 1982, for designation for the assessment year commencing January 1, 1983, and thereafter applications to the county assessor shall be made during the calendar year preceding the first assessment year for which such designation is requested. The county assessor shall notify the State Department of Fish and Wildlife if a recorded sale or transfer of the land granted exemption under sections 3 to 13 of this 1981 Act occurs for the purpose of determining continued eligibility of the land for the exemption. The State Department of Fish and Wildlife shall notify the county assessor in writing of the finding within 120 days after the date the county assessor's notice is mailed or delivered. Failure of the assessor to notify the State Department of Fish and Wildlife shall not prevent the imposition of the penalty prescribed by subsection (2) of section 8 of this 1981 Act. [1981 c.720 §4]

Sec. 5. (1) The State Department of Fish and Wildlife shall develop standards and criteria for the designation of land as riparian. Upon the receipt of an application referred to it by the county assessor, the department shall determine if the land described in the application is qualified for designation as riparian.

(2) The department shall review riparian management plans submitted by applicants to assure compliance with the intent of section 1 of this 1981 Act. Standards and criteria to be used to determine consistency with the intent of sections 3 to 13 of this 1981 Act shall be developed by the department by July 1, 1982, and shall be reviewed by the department annually. These criteria shall be in addition to the following provisions limiting participation under sections 3 to 13 of this 1981 Act.

(a) Only lands planned and zoned as forest or agricultural lands, including rangeland, in compliance with the statewide planning goals adopted under ORS 197.240 and outside adopted urban growth boundaries shall qualify, and

(b) Land management activities permitted within designated riparian lands shall be consistent with the intent of sections 3 to 13 of this 1981 Act.

(3) Land that the State Department of Fish and Wildlife determines may qualify for designation as riparian shall be approved by the department for designation and exemption under sections 3 to 13 of this 1981 Act only if the owner of the land has developed and implemented, in accordance with the standards adopted under subsections (1) and (2) of this section, adequate measures for:

(a) The continued protection of the land; or

(b) Techniques for rehabilitation of the riparian land and those measures or techniques are approved by the department.

(4) The department may approve the application for designation of land as riparian with respect to only part of the land that is the subject of the application, but if any part of the application is denied, the applicant may withdraw the entire application. [1981 c.720 §5]

Sec. 6. (1) The State Department of Fish and Wildlife shall immediately notify the county assessor and the applicant of its approval or disapproval of an application which shall in no event be later than April 1 of the year following the year of receipt of the application. Subject to the mileage limitation of section 12 of this 1981 Act, an application not denied by April 1 shall be deemed approved, and the land that is the subject of the application shall be considered to be land that qualifies under section 5 of this 1981 Act.

(2) When the department approves land for designation as riparian under section 5 of this 1981 Act, it shall enter an order of approval and file a copy of the order with the county assessor within 10 days. Upon receipt of the order, the county assessor shall enter a notation on the assessment roll that the land described in the order is exempt from ad valorem taxation.

(3) On approval of an application filed under section 4 of this 1981 Act, for each year of designation the assessor shall indicate on the tax roll that the property is exempt from taxation as riparian land and is subject to potential additional taxes as provided by section 8 of this 1981 Act, by adding the notation "designated riparian land (potential add'l tax)."

(4) Any owner whose application for designation has been denied may appeal to the department under the provisions of ORS 183.310 to 183.550 governing contested cases. [1981 c.720 §6]

Sec. 7. (1) When land has once been designated as riparian under sections 3 to 13 of this 1981 Act, it shall remain under that designation and it shall not be applied to any use other than those specifically included in the management plan or consistent with the intent of sections 3 to 13 of this 1981 Act unless withdrawn from designation as provided in subsection (2) of this section.

(2) During any year after designation, notice of request for withdrawal may be given by the owner to the county assessor or assessors of the county or counties in which the land is situated. The county assessor or assessors, as the case may be, shall withdraw such land from designation as riparian and shall immediately give written notice of the withdrawal to the State Department of Fish and Wildlife. [1981 c.720 §7]

Sec. 8. (1) When land that has been designated as exempt from taxation under sections 3 to 13 of this 1981 Act as riparian is applied to some use other than that compatible with riparian use, as defined in the management plan, except through compliance with subsection (2) of section 7 of this 1981 Act, or except as a result of the exercise of the power of eminent domain,

Oregon Revised Statutes

Riparian Tax Incentive Statute

shall apply uniform depreciation or trending factors, if necessary to arrive at the true cash value of manufactured dwellings of a like class. [1971 c.529 §15]

308.890 Refund of taxes paid on certain manufactured dwellings moved to other states. Whenever a manufactured dwelling is moved to a state which does not honor the registration of the manufactured dwelling as evidence of payment of manufactured dwelling registration fees for the duration of the registration period, the taxpayer to whom the manufactured dwelling is registered may apply for a refund under ORS 311.806. Application shall be made to the county court of the county in which the manufactured dwelling had situs. The refund shall be in the amount of taxes paid, reduced by the taxes which were paid on the manufactured dwelling for the number of whole months that the manufactured dwelling was in the State of Oregon. [1973 c.31 §8; 1983 c.311 §2; 1983 c.338 §903; 1985 c.16 §473]

Note: See note under 308.865.

308.905 Special assessment on manufactured dwelling; collection; use. (1) A special assessment is levied upon each manufactured dwelling that is assessed for ad valorem property tax purposes as personal property. The amount of the assessment is $5.

(2) The county assessor shall determine and list the manufactured dwellings in the county that are assessed for the current assessment year as personal property. Upon making a determination and list, the county assessor shall cause the special assessment levied under subsection (1) of this section to be entered on the general assessment and tax roll prepared for the current assessment year as a charge against each mobile home so listed. Upon entry, the special assessment shall become a lien, be assessed and be collected in the same manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes in this state.

(3) Any amounts of special assessment collected pursuant to subsection (2) of this section shall be deposited in the county treasury, shall be paid over by the county treasurer to the State Treasury and shall be credited to the Mobile Home Parks Purchase Account to be used exclusively for the purposes described in ORS 456.582. [1989 c.919 §3]

Note: See note under 308.865.

PENALTIES

308.990 Penalties. (1) Violation of ORS 308.320 (3) or of ORS 308.330 is a misdemeanor. The judgment of conviction of any assessor for such a violation shall of itself work a forfeiture of the office of the assessor.

(2) Any taxpayer or managing officer thereof who fails to furnish, after written demand so to do by the assessor or the county board of equalization having jurisdiction or the Department of Revenue, any information or, upon like demand, fails to produce any books, records, papers or documents required by ORS 308.285 or 308.330 to be furnished by the taxpayer or managing officer to the county assessor, the county board of equalization or the Department of Revenue, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $25 nor more than $1,000. Circuit courts shall have jurisdiction in the trial of such offenses.

(3) Any person, firm, association or corporation, or agent or managing officer thereof, who presents or furnishes to the Director of the Department of Revenue any statement, required by ORS 308.335, or required by the director under the authority of ORS 308.335, which statement is wilfully false or fraudulent, is liable to a penalty of not less than $100 nor more than $1,000. The penalty shall be recovered by the Attorney General, in the name of the state, by action in any court of competent jurisdiction.

(4) Any person who wilfully presents or furnishes to the director any statement, required by ORS 308.505 to 308.660 or 308.705 to 308.730 which statement is false or fraudulent is guilty of perjury and, upon conviction, shall be punished as otherwise provided by law for such crime.

(5) Any wilful violation of ORS 308.413 or of any rules adopted under ORS 308.413 is punishable, upon conviction, by a fine not exceeding $10,000, or by imprisonment in the county jail for not more than one year, or by both. [Subsections (3) and (4) of 1989 Replacement Part enacted as 1955 c.688 §2; subsections (3) and (4) of 1989 Replacement Part renumbered as part of 321.991; subsection (7) enacted as 1969 c.605 §51; 1971 c.529 §33; 1977 c.894 §11; subsection (5) enacted as 1981 c.131 §4]

RIPARIAN HABITAT

Note: Sections 1 to 13a, chapter 729, Oregon Laws 1981, as amended by chapter 924, Oregon Laws 1983, provide:

Sec. 1. The Legislative Assembly declares that it is in the best interest of the state to maintain, preserve, conserve and rehabilitate riparian lands to assure the protection of the soil, water, fish and wildlife resources of the state for the economic and social well-being of the state and its citizens. The Legislative Assembly declares that riparian habitat maintained in a healthy condition is a legitimate land use that contributes to erosion control, improved water quality and prolonged streamflow. The Legislative Assembly further declares that it is in the public interest to prevent the forced conversion of riparian environments to more intensive uses as a result of economic pressures caused by the assessment of those lands for purposes of property tax

(2) The Commission may attach such terms and conditions to project approval as it deems necessary, including but not limited to:

(a) No project may commence without prior written approval by the Commission;

(b) The project sponsor shall agree to complete the project as approved by the Commission and within the time frame specified in the Grant Agreement;

(c) The project sponsor shall obtain all necessary water rights, access agreements, easements, use permits or any other permits needed to undertake the project. Copies shall be provided to the Commission prior to commencing the project;

(d) The project sponsor shall file a written request for permission to amend or expand the project construction or the construction time schedule including the rationale for the requested change. Proposed modifications shall be submitted to and approved by the Board and Commission prior to the beginning of any work proposed in the modification;

(e) The project sponsor shall submit a project report at the completion of the project describing the work done;

(f) The project sponsor shall monitor and report, as determined by the Commission, the long-term effectiveness of the project;

(g) The project sponsor shall allow Commission or Board members, or their designated representatives, access to the project to monitor and/or evaluate the project;

(h) The project sponsor shall account for funds distributed by the Department, using project expense forms provided by the Department;

(i) The project sponsor shall maintain the project for a period of time as deemed appropriate by the Commission.

Stat. Auth.: ORS Ch.
Hist.: FWC 86-1989, f. 8-31-89, cert. ef. 9-1-89

Revocation of Project Approval

635-09-235 (1) The Commission may revoke its approval of a project if, after consultation with the Board, it determines that:

(a) Implementation of the project has exceeded or is inconsistent with the approved project proposal; or

(b) The project sponsor has violated any term or condition imposed on the project; or

(c) Continued operation of the project may adversely affect fish populations in, above, or below the project site; or

(d) The project does not meet its proposed objectives; or

(e) The project is inconsistent with current Department goals, policies or management plans.

(2) Proceedings to revoke approval of a project shall be conducted in accordance with ORS 183.413 to 183.550.

(3) The revocation of a project's approval shall automatically invalidate any Department permits issued for such project as of the date of revocation.

(4) Revocation of approval for a project is in addition to, and not in lieu of, other penalties provided by law.

Stat. Auth.: ORS Ch.
Hist.: FWC 86-1989, f. 8-31-89, cert. ef. 9-1-89

Grant Agreement

635-09-240 (1) Project sponsors, other than the Department, shall enter into a Grant Agreement with the Department prior to undertaking the project.

(2) No funds shall be disbursed under a Grant Agreement until the Department receives satisfactory evidence that necessary permits and licenses have been granted and required documents submitted.

(3) Advance funds may be released upon presentation of a detailed estimate of expenses for a time period specified in the Grant Agreement. No additional funds will be released until all receipts for expenditures of a previous fund release are submitted.

(4) Funds may be released upon presentation of a completed Fund Release Request Form accompanied by proof of completion of specific work elements of the project as identified in the Grant Agreement. Proof of completion may be made through presentation of paid receipts of invoices for materials of contracted labor, or inspection reports.

(5) Except for grants of less than $2,000, the Department shall retain 10 percent of project funds until the report required in OAR 635-08-230(2)(e) has been submitted and the project has been evaluated for completion and compliance with the Grant Agreement.

Stat. Auth.: ORS Ch.
Hist.: FWC 86-1989, f. 8-31-89, cert. ef. 9-1-89

Riparian Lands Tax Incentive Program

Purpose

635-09-300 In accordance with Chapter 720, Oregon Laws 1981, the intent of this program is to protect or restore healthy riparian habitat on private lands adjacent to perennial and intermittent streams.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Eligibility

635-09-305 The following rules shall establish the eligibility criteria for riparian lands for tax exemption purposes.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Definitions

635-09-310 For the purpose of OAR 635-09-300 through 635-09-360:

(1) "Department" means the Oregon Department of Fish and Wildlife.

(2) "Stream" means the natural drainage of water from uplands to lower elevations and ultimately the ocean in a well defined channel.

(3) "Perennial Stream" means a natural waterway that ordinarily has running water on a year-around basis.

(4) "Intermittent Stream" means any natural waterway which flows during a portion of every year and which provides, or with restoration would

provide spawning, rearing or food-producing areas for food and game fish.

(5) "Non-aquatic Vegetation" means perennial vegetation adjacent to the edge of the stream channel, which may be submerged or partially submerged during periods of high streamflow, but spends the majority of the year completely out of surface water, although the soil may remain saturated.

(6) "Vegetation Restoration Potential" means the physical potential of a specific site to become revegetated if provided adequate protection and management.

(7) "Regular Cultivation" means the practice of tilling the soil, usually in conjunction with the production of various agricultural crops, produce or livestock.

(8) "Riparian" means of pertaining to or situated on the edge of the bank of a river or stream.

(9) "Riparian Vegetation" means the aquatic and nonaquatic vegetation adjacent to streams which is dependent upon freely available water or is at least water-tolerant.

(10) "Riparian Management Plan/Agreement" means a written plan which specifically describes a segment of stream corridor and protection or restoration measures required to meet the requirements of the riparian lands program.

(11) "Riparian Habitat/Land" means the zone of riparian vegetation and the adjacent lands necessary for conservation or management measures identified in the riparian management plan.

(12) "Critically Eroding Stream Bank" means stream banks and/or streambeds actively eroding to the extent that the erosion limits the ability of the area to meet the objectives of the program.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Eligibility Criteria

635-09-315 Streams and the associated riparian lands up to 100 feet landward (horizontal measurement) from the line of non-aquatic vegetation adjacent to the stream, or an area not exceeding 25 acres of riparian lands per mile of stream are eligible for the program, provided:

(1) The stream and associated riparian land is outside adopted urban growth boundaries and is zoned Agriculture (including Rangeland) or Forestry in a county with a land use plan acknowledged by the Land Conservation and Development Commission.

(2) The width of the riparian land proposed for tax exemption is sufficient to provide long-term stream bank stability, erosion control, water quality and fish and wildlife habitat protection or improvement.

(3) Streamside lands physically lacking adequate riparian vegetation having significant vegetation restoration potential within five years.

(4) The landowner has implemented measures, as approved by the Department, for the protection or restoration of riparian lands.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Tax Credit for Fish Habitat Improvement Projects

Purpose

635-09-316 In accordance with Chapter 720, Oregon Laws 1981 Section (22), the following criteria shall be used to evaluate fish habitat improvement projects. A Project Must:

(1) Be on streams as defined in OAR 635-09-310 of the Riparian Lands Tax Incentive Program.

(2) Be consistent with stream management plans as determined by ODFW.

(3) Be consistent with priorities of the Riparian Habitat Tax Incentive Program.

(4) Result in improved fish habitat in terms of:

(a) Pool/riffle ratio;

(b) Water temperature;

(c) Fish passage;

(d) Fish spawning/rearing habitat;

(e) Streambank stabilization.

Stat. Auth.: ORS Ch. 183 & 720
Hist.: FWC 18-1983, f. & ef. 5-20-83

Application for Project Certification

635-09-317 Application for project certification under Sections (16) - (24), Oregon Laws 1981, shall be in accordance with Oregon Department of Fish and Wildlife form number BS 1084 "Instream Habitat Improvement-Tax Credit".

Stat. Auth.: ORS Ch. 183 & 720
Hist.: FWC 18-1983, f. & ef. 5-20-83

Limitations on Designation of Riparian Lands

635-09-320 Department designation of riparian lands for inclusion in the program is subject to the following provisions:

(1) No more than 100 miles of private stream bank in any county shall be approved for designation as riparian land for the assessment year beginning January 1, 1983.

(2) No more than 100 miles of private stream bank per year in any county may be approved for designation as riparian lands for the assessment years beginning on and after January 1, 1984 and prior to January 1, 1990.

(3) The Department may, in addition, approve for designation as riparian land each year an amount of land equal to the amount of land withdrawn from, or disqualified for, designation as riparian land during the previous year, and, an amount of land equal to the difference between the amount of land approved for designation as riparian land during the previous years and the maximum allowed under section (2) of this rule.

Stat. Auth: ORS Ch. 720
Hist: FWC 40-1982, f. & ef. 6-29-82

Factors For Determining Width of Riparian Lands

635-09-325 The following factors will be utilized by the Department in determining the width necessary to achieve erosion control, long-term stream bank stability, water quality and fish and wildlife habitat protection or restoration:

(1) Stream size at various flows;

(2) Vegetation restoration potential;

(3) Stream bank slope;

(4) Adjacent land uses;
(5) Stream channel orientation; and
(6) Protection of riparian management structures.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Healthy Riparian Habitat

635-09-330 The Department shall consider the following as criteria for healthy riparian habitat on private lands adjacent to streams:

(1) Stream banks shall have 80 percent or more of their lineal distance in a stable, non-eroding condition, and shall have no areas of critically eroding stream bank.

(2) Vegetative cover shall be adequate to achieve and maintain stream bank stability.

(3) Stream surface shading on small to medium-sized streams, up to 50 feet in width, should have 60 to 100 percent of the stream surface shaded between the hours of 10 a.m. to 4 p.m. from June through September, except on those streams where the Department may determine that such level of shading was not a natural condition and cannot be reasonably achieved.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Applications/Management Plans

635-09-335 (1) Applications for enrollment in the riparian lands tax incentive program shall include a riparian management plan. The management plan shall contain:

(a) Map with a scale of 4-inch per mile or 8-inch per mile, which includes the following information:
(A) Legal description:
(i) Township;
(ii) Range;
(iii) Section;
(iv) Tax lot(s) number(s).
(B) Boundaries of proposed riparian lands;
(C) Stream name and location;
(D) Conservation or management measures implemented;
(E) Land use on area adjacent to the riparian lands;
(F) Property boundary and adjacent land owners.
(b) Acreage within the proposed riparian area;
(c) Inventory of existing vegetation;
(d) Soils description;
(e) Feet of unstable, eroding stream bank;
(f) Proposed and existing uses within riparian land;
(g) Vegetative objectives to be achieved.

(2) Applicants may wish to seek technical assistance for the development of the riparian management plan and implementation of management practices from the local Soil and Water Conservation District.

(3) Management plans developed by the applicant, which meet all eligibility requirements and contain adequate provisions (as determined by the Department) for the protection or restoration of riparian lands shall be approved for designation as riparian.

(4) The riparian management plan shall be considered approved and the party eligible for tax exempt status only at such time as the plan is signed by the landowner, Department, and any other participating party.

(5) The Department shall notify the county assessor and the applicant of its approval or disapproval of an application.

(6) An order of approval shall be filed with the county assessor within 10 days of Department approval of the completed plan.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Activities Generally Compatible with Riparian Lands

635-09-340 The following activities are generally compatible with the intent of the riparian lands tax incentive program when they are a part of an approved riparian lands management plan and agreement:

(1) Livestock watering and crossing areas when located at defined points.

(2) All existing irrigation and utility developments, including powerlines, water lines, pipelines, irrigation diversion dams, pump stations, pump intakes, irrigation ditches and other similar developments.

(3) New irrigation and utility developments, including powerlines, water lines, pipelines, irrigation diversion dams, pump stations, pump intakes, irrigation ditches and other similar developments.

(4) Stream bank stabilization and fish habitat restoration projects, when consistent with — valid Division of State Lands fill/removal permit, if required.

(5) Tree removal:
(a) When a tree threatens stream bank stability; and/or
(b) Threatens to obstruct streamflow in a manner that would cause erosion or be detrimental to irrigation systems, bridges, fishery resources, or other existing development.

(6) Debris removal:
(a) When organic debris threatens bank stability; and/or
(b) Threatens to obstruct streamflow in a manner that would result in stream bank erosion or be detrimental to irrigation systems, bridges, fishery resources, or other existing development.

(7) Equipment or vehicle crossings at fords and bridges.

(8) Recreational facilities (i.e., trails, boat ramps, and primitive camp sites).

(9) Timber harvest, when consistent with program objectives of tree, shrub, grass, and forb cover.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Activities Generally Incompatible with Riparian Lands Program

635-09-345 The following activities are generally incompatible with the protection or restoration of riparian lands. However, these activities may be conditional uses if specifically described and approved in the riparian lands management plan or plan amendment.

(1) Regular cultivation, seeding, and harvesting

of crops or other farming activities which preclude the development of permanent vegetative cover.

(2) Livestock grazing or feeding areas except at defined watering points or crossings, when the activity reduces the vegetative cover below the program objective level.

(3) Burning resulting from other than natural or accidental origin.

(4) Herbicide spraying, except for the spot control of noxious weeds.

(5) Channel or stream bank alterations other than those determined by the Department to be necessary for irrigation diversions or withdrawal and stabilization of critically eroding stream banks.

(6) Construction or relocation of buildings, other than irrigation related.

(7) Gravel, mineral or soil removal.

(8) Land clearing (vegetative removal).

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Natural Disasters

635-09-350 Acts of nature (i.e., floods, fire, wind and other natural disasters) that destroy or reduce the effectiveness of conservation measures necessary for participation in the program, as defined in the riparian management plan do not constitute a violation of the management plan and agreement if:

(1) The landowner notifies the Department within 30 days of occurrence; and

(2) The landowner or his representative and Department personnel tour the area and the Department personnel determine remedial or new conservation measures are required.

(3) If the Department determines that remedial or new conservation measures are needed:

(a) The landowner must revise or amend the riparian management plan and obtain Department concurrence; and

(b) The landowner must complete remedial measures consistent with the revised or amended management plan within 90 days of plan revision or amendment, or any extension thereof granted by the Department.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Sale or Transfer of Exempted Riparian Lands

635-09-355 The purchaser of lands in the riparian lands tax incentive program has 120 days after recording of the land sale to retain the property tax exemption or withdraw from the program without penalty.

(1) To retain the riparian tax exemption the new owner must:

(a) Agree to management provisions in the previous owners riparian management plan; or

(b) Amend the previous riparian management plan in a manner consistent with the program as approved by the Department; and

(c) Sign a riparian management agreement consistant with the program.

(2) To withdraw from the riparian tax exemption program, the new owner must provide the county assessor with a notice of request for withdrawal.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

Program Compatibility With Existing Laws or Ordinances

635-09-360 The Department approval of land use activities compatible with the riparian lands tax incentive program shall not exempt any proposed activity from state or federal law, or local ordinance.

Stat. Auth.: ORS Ch. 720
Hist.: FWC 40-1982, f. & ef. 6-29-82

(16)

SB

293

RECEIVED

NOV 01 1993

BRISTOL BAY
NATIVE CORPORATION
600 CORDOVA / P.O. BOX 100220 / ANCHORAGE, ALASKA 99510 / (907) 278-3602
TELECOPY (907) 276-3924

October 28, 1993

Honorable George Jacko
Alaska State Senate
716 W. 4th Avenue, #520
Anchorage, AK 99501-2133

Dear Senator Jacko:

Earlier this year, I wrote to you about allotments in Wood-Tikchik State Park. The log jam has broken and the paper has begun to move between BLM and the State Park Division. Cooperation between BBNA, BLM and Alaska State Parks got the ball rolling. Thank you for your interest in this matter.

Another matter deserves your current attention. Last year Congress authorized BLM to allow Native allottees to relocate their claims to avoid conflicts with legislatively designated State lands. Alaska Department of Natural Resources (ADNR) has determined that an amendment to Title 38.05.035b(9) will be necessary to authorize these relocations. The amendment will be offered along with a number of other Title 38 changes proposed by ADNR.

The ability to relocate a claim out of conflict with legislative designations could benefit many of your constituents. This amendment could also benefit allottees in conflict with the Haines Bald Eagle Preserve, Captain Cook Recreation Area, and other locations around the State. It could be legislation that you would introduce separately so that its fate is not connected to other Title 38 changes.

The language was drafted by the Attorney General's office. Proposed deletions are bracketed; proposed additions are underlined:

AS 38.05.035(b) The director may

xxxx

(9) quit claim land or an interest in land to the federal government on a determination that the land or interest in land was wrongfully conveyed by the federal government to the state [;] , or that it is in the best interest of

the state to reconvey the land or interest in land under terms authorized by 43 U.S.C. 1617(c)(Supp. 1993);

If you have questions or comments, please give me a call.

Sincerely yours,

Tom Hawkins
Senior Vice President

cc: Dugan Nielsen, BBNA Realty

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 3

To BRUCE	From DUCRAY
Co. SEN. GEORGE JACKO	Co. BBNA-REALTY
Dept.	Phone # 842-2743
Fax # 465-4997	Fax # 842-5939

FEB 01 1994

November 15, 1993

1~
2~
3~

Dear Wood/Tikchik Allottee,

As you are aware you have waited over 20 years for something to happen with the application you filed for land up in the Wood/Tikchiks. This has not only been frustrating, but too long to wait, as some of the applicants have passed on. Many attempts have been made to get the BLM to work on these applications. Recently the BLM started working on these, as some of you know, as you have received letters from the BLM regarding your application. It is important for you to read these letters and respond to them. BBNA-Realty will be sending you letters also. The letters that you receive from us further explain the letters you may have received from BLM, PLEASE, if we are asking you to contact our office do it. We can only help you if you help us. Anyway, as I said the BLM has started working on the Wood/Tikchik cases. There are a few different ways for these cases to go, you will have a say in how your claim goes by the action you take.

There are options that the State of Alaska is offering as a way for "win win" solutions to the situation of Native allotments in the Wood/Tikchik State Park. I will attempt to explain them.

RELOCATION of your Native allotment to an area outside the Park. The State of Alaska now has the ability to allow Wood/Tikchik allottees to select a piece of land that is presently in State ownership and relocate their allotment to that land, as long as the State agrees that you can move there. As you are aware the State of Alaska is concerned about all the allotments that are in the Park. The State is concerned that everyone who has a claim in the Park may develop their allotments in such a way as to make the Park appear as a village or an area of commercial development and not a Park. But the State would like to see "win win" situations where everyone at least gets a piece of land somewhere to call their own. The State understands people filed on these lands for a reason that is important to them. The State has the job of looking out for the States interest in these same lands, as the Federal government has given the title to the State already. The State has an obligation to manage State land for all the residents of the State of Alaska.

The other option is **CONSERVATION EASEMENTS.** These Conservation easements involve 3 different categories of land use within your Native allotment.

There is a **NON-DEVELOPMENT ZONE,** this area cannot be developed in anyway. You can utilize this area for your use but you cannot develop it by putting your cabin or any other improvements in that area.

The second category is the **SUBSISTENCE HERITAGE/DEVELOPMENT ZONE,** this area can be utilized for a cabin and other types of development, the size of these development zones may vary in size, depending on what you negotiate with the State.

The third category is for the **25 FOOT HABITAT PROTECTION/PEDESTRIAN EASEMENT,** this is to help insure that the public will have a way to walk along the shoreline of the lakes. These easements may cover any portion of your Native allotment that has shoreline.

These **CONSERVATION EASEMENTS** may vary from case to case depending on where your Native allotment is located within the Park. The State of Alaska will be traveling to the villages where the applicants who have claims in the Park live. They will be presenting you with information regarding the options we have mentioned. These are just for Native allotments presently within the Park boundaries. There may be some of you that are not interested in any of these options and you will just want to test the strength of your application and Use and Occupancy. Whatever you decide, it is in your best interest to at least hear the State out on this issue. You need to make your own decision about what will be best for you and your application.

I have been contacted by the State a couple of days ago, they called to inform me that the **RELOCATION** option is only being made available to Native allottees that have claims within a State park or a Wildlife refuge. This is not available to anyone or everyone that has a Native allotment claim that is in conflict with State lands.

Please contact our office with any questions you may have regarding this matter. You can contact us at 1-800-478-2743 or at P.O. Box 310, Dillingham, Ak. 99576.

Sincerely,
BRISTOL BAY NATIVE ASSOCIATION

Dugan C. Nielsen
Realty Officer

The "relocation" of Native Allotments from State Parks is an option to a problem that has been on-going for too long. There have been comments stating that this "relocation" is an unfair way to deal with the Native allotments located in the Wood/Tikchik State Park. It may be unfair from the point of view that an applicant has been waiting to receive Certificate to the piece of land that they used and wanted ownership to for 20 years only to hear that if you want to be guaranteed a piece of land, that you will need to consider moving to another piece of land located somewhere totally different from what you had originally used and applied for.

BBNA-Realty does not have a position for or against the option of relocation. BBNA-Realty does however have an obligation to see that any and all information about Native allotments is made available to our clients. Also BBNA-Realty's participation in any talks with the State of Alaska or any other agency again does not infer a positive or negative position on a particular Native allotment issue. Our job is to be involved with the best interest of our people and clients in mind. Our involvement will hopefully insure that the interests of Native allottee is represented, and that involvement would preclude anything from being forced upon allottees.

Each of you that have applications for Native allotments which are located in the Park have a duty to your own application, for that matter anyone who has a Native allotment application pending need to read and respond to correspondence you receive regarding your Native allotment application. Many times your playing a part in the activity with your application will actually help speed the process up. There are times we have to make many efforts to get a response from a client, this is time that could be spent on several applications rather than just one.

BBNA-Realty continues to pursue Certificate to every application for Native allotment in our Region. Please feel free to contact us at any time regarding your Native allotment or your pending application for a Native allotment. The folks at Realty are you friends and neighbors that many of you already know, we're not strangers, so you don't be one, check in with us.

BRISTOL BAY NATIVE ASSOCIATION

Dugan G. Nielsen
Realty Officer

cc: N.A. file
Reading file

MEMORANDUM State of Alaska

DIVISION OF PARKS AND OUTDOOR RECREATION
DEPARTMENT OF NATURAL RESOURCES

TO: Ron Swanson
Director
Division of Land

DATE: 9 December 1993

TELEPHONE: 762-2600
762-2535 FAX

FROM: Peter J. Panarese
Chief, Field Operations

SUBJECT: Native Allotments in Alaska State Parks

Below listed are the approximate numbers of Native Allotment Applications in units of the state park system. The numbers reported are for pending applications still to be adjudicated. Records on file in the Division of Land may be more accurate in units such as the Alaska Chilkat Bald Eagle Preserve and Denali State Park.

Alaska Chilkat Bald Eagle Preserve	35
Wood-Tikchik State Park	104
Kachemak Bay State Park	2
Captain Cook State Rec. Area	2
Denali State Park	12
Shuyak Island State Park	4
Total	159

Numerous allotment applications in state park units have been adjudicated and patent awarded. Developing detailed information one the number of pending or patented Native allotment claims will take more time. Please give me a call if I can be of further assistance.

Rick Thompson
Div. of Land

ALLOTMENT APPLICATIONS:
BREAKDOWN BY AREA (DNR)

BRISTOL BAY NATIVE ASSOCIATION

P.O. Box 310

DILLINGHAM, ALASKA 99576

(907) 842-5257

FEB 03 1994

Senator George Jacko
Rm. 125 State Capitol
Juneau, Ak. 99801-1182

Re: Amendments to Title 38

January 28,1994

Dear Senator Jacko,

As per your request I am forwarding to you information regarding the amendment to 38 that will have a direct effect on Native Allotments in the Wood/Tikchik State Park and other allotments in conflict with State Parks and Refuges. I am enclosing the amendment to ANCSA, amendment language from John Baker of the AGO, and a portion of the Legislative Digest. I hope that this will assist you in crafting a piece of legislation that will serve our needs and be passed by the legislature this season. If there is any way we can assist your efforts please do not hesitate to call upon us.

Sincerely,

Dugan G. Nielsen
Realty Officer

cc Reading file
W/T file

SENATOR GEORGE JACKO

STATE CAPITOL, ROOM 125 JUNEAU, ALASKA 99801-1182 (907) 465-4942 FAX: (907) 465-2997

COMMITTEE CHAIRMANSHIPS
Rules, Chair
Finance, Vice-Chair
Finance Subcommittees
DC&RA, Chair
DM&VA, Chair
Revenue, Chair

COMMITTEE MEMBERSHIPS
Judiciary
Legislative Council
Finance Subcommittees
Public Safety
Fish & Game
University

MEMORANDUM

TO: Senator Miller, Chair
Senate Resources Committee

FROM: Senator George Jacko, Sponsor
Senate Bill 293

DATE: February 28, 1994

RE: Scheduling request -- SB 293

This memo is to request the scheduling of Senate Bill 293 in the Senate Resources Committee at the earliest opportunity.

SB 293 gives the Commissioner of the Department of Natural Resources the authority to reconvey allotments within state land withholdings to another parcel of state land located elsewhere. The exchange is purely voluntary on the part of the allottee. This legislation resolves longstanding allottee/state conflicts over land situated in state parks and other legislatively designated lands.

In 1992, Congress authorized the Bureau of Land Management to allow Native Allotees to relocate their claims to avoid conflict with legislatively designated areas. In my district, there are 104 allotments within the Wood-Tikchik State Park that are in limbo due to inability to gain title. SB 293 will also benefit allottees in the Haines Bald Eagle Preserve, Captain Cook Recreation Area and other locations around the state.

If you need further information, please contact Bryce Edgmon at 465-4942.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 21, 1994

SUBJECT: Senate Bill 311 -- Sectional Analysis (Work Order No. 8-LS1317\K)

TO: Senator George Jacko
ATTN: Bryce Edgmon

FROM: Jack Chenoweth
Legislative Counsel

Ch. 67, SLA 1993, imposed the levy of a fishery resource tax of 3.3 percent on fishery resources brought into and first landed in the state, but allowed a credit to be claimed against the tax for contributions made by a taxpayer harvesting under a community development quota. This bill expands that credit to cover contributions by taxpayers not harvesting under a community development quota.

The principal provision of the measure is bill section 3. That section permits the claim of a credit for contributions by a taxpayer other than one harvesting the fishery resource under a community development quota **and** by a taxpayer harvesting under a CDQ if the taxpayer's contributions that are the basis of the claim of credit are made from the value of fishery resources not harvested under a CDQ. The maximum amount of the credit that these taxpayers may claim, as you explained to me, should be equal to 15 percent of the value of the fishery resource not harvested under a CDQ. However, just as last year's proposed 50 percent credit was reduced to 45.45 percent in order to avoid any loss of revenue available to support the Alaska Seafood Marketing Institute, section 3 of the bill proposes a like reduction in the 15 percent maximum, down to 13.65 percent (as set in this bill section) for non-CDQ-supported tax contributions. (The second page of my January 21 memo to you gives more detail as to how the 13.65 percent figure was derived.)

A related provision, bill section 4 splits the burden of the impact of the new non-CDQ based contribution credits evenly between the amount deposited as unrestricted state general fund and the amount separately accounted and available for payment of revenue sharing by the state with its municipalities.

Bill section 1 authorizes the Department of Revenue to expedite the review of contributions to contributions to nonprofit corporations in order to sidestep receipt and review of separate complete applications. For applications for approval of credits for contributions to nonprofit corporations that are once found to qualify under AS 43.77.040(b), the commissioner of revenue may establish an expedited review procedure on a nonprofit corporation-by-nonprofit corporation basis.

Bill section 2 extends the Department of Revenue's authority to revoke previous approval or to disallow a credit for contributions that do not qualify under the expanded provisions of AS 43.77.040(e), added by bill section 1.

Bill sections 5 and 6 give the amendments made by this Act a July 1, 1994, effective date.

JBC:gc
94-211.glc

U.S. Congress

Alaska Land Status Technical Corrections Act of 1992 - Referred to as the "ANCSA Technical Amendments Package," the bill contained twenty provisions at final passage, of which twelve were land related and worked on by the AFN Land Committee.

The process employed to generate the bill included an extensive list of proposed amendments by the Department of the Interior (Bureau of Land Management) and the State of Alaska. Since the rules laid down by Congress indicated that only amendments that were non-controversial would be included in the bill, there was a period of approximately eight months when AFN's Land Committee worked with federal and state representatives to forge agreement on proposed amendments.

The Land Committee focused on the following provisions that became law on October 14, 1992:

Section 2. Fort Davis Native Allotment - Legislatively approved Native allotment claims in the Fort Davis (Nome) area.

Section 3. Native Allotment Relocation - Provides an opportunity whereby an allotment applicant with a valid application as of December 18, 1971 and whose application remains pending as of October 14, 1992, may amend the applications land description, if said description describes land selected by the State of Alaska, to another parcel of State land elsewhere. The exchange is purely voluntary on the part of the allotee. This legislation resolves allotee/State conflicts over land primarily in State park areas.

Section 5. Shareholder Homesite - Extends indefinitely the time frame for village corporations to implement Shareholder Homesite Programs.

Section 6. Chugach National Forest Boundary Change - Modified the boundary of the National Forest to include an additional 9,300 acres. A review of the proposal concluded there would be no adverse impact to adjacent ANCSA corporations.

Section 12. Alaska Native Allotments - Provides an opportunity for the Secretary of the Interior to accept land relinquished by ANCSA corporations in NPRA in order that Native allotments in the respective areas may be certified.

Section 13. Point Hope Townsite - Provides a mechanism by which the Native residents of Point Hope may receive deeds to the lots within the village in accordance with the terms of the Alaska Native Townsite Act of 1926 and allows for reconveyance of lands from the regional and village corporation's to the Department of the Interior when necessary to convey lots to individual Natives.

PARKS AND OUTDOOR RECREATION
CONCEPTUAL CHANGES TO TITLE 38

• **Exchange of Native Allotments Within State Park Units.** AS 38.05.35 lists the powers and duties of the DNR Commissioner. We propose an addition. About 100 parcels of land in Wood-Tikchik State Park are claimed as Native allotments. These are also prime sites for public fishing and camping. Private development of these parcels could block public use and degrade the recreational and scenic resources that attract tourists and Alaskans to the park. We propose to authorize the Commissioner to allow allotment applicants to choose new sites outside park boundaries. Some allotment applications have been pending for 30 years. This authority would help applicants get title to good land, and solve park management problems. Most applicants who choose to move would probably pick new sites along the Nushagak and Mulchatna rivers.

State offers relocations for Native allotments in park

By Eric Fry
BayTimes Staff

To resolve long-standing Native allotment applications in Wood-Tikchik State Park, the state is proposing two options that will circumvent federal adjudication and quicken the process.

The state Department of Natural Resources is offering to relocate allotments in the state park to unencumbered parcels of equal size anywhere in the state.

And the state is seeking voluntary conservation easements from allottees in the park, in which some of the parcel is left undeveloped.

Dan Hourihan, district ranger for Wood-Tikchik State Park, recently visited villages near the park to explain the state's position.

There are now 127 allottees who claim 104 parcels of state-owned land in the 1.6 million-acre park. The average allotment is 80 acres, and they total about 9,600 acres of park land.

The state is concerned about large-scale commercial development and large-scale subdivision and sales within the park, Hourihan said at a Dec. 14 meeting in Dillingham.

"The concern is private lands being cut up into small parcels and subdivided and sold," Hourihan said. "And I don't think it's the people from Koliganek and New Stuyahok, Ekwok and Aleknagik who will be buying these lands."

There are now five sportfishing lodges in the park, four on five-acre parcels and one on a slightly larger parcel, Hourihan said.

Three years ago the Golden Horn Lodge was bought by a Japanese company that wanted to build a hotel that would handle 200 guests a week, he said.

"They wanted to lease more land. Local people were concerned. The

See Park, page 3

BAY TIMES 12/24/93

Park ...

From page 1

only reason that development isn't there is the five acre lot size. If they had even 10 acres, they would have built an airstrip," Hourihan said.

"Our concern is that in the 20-, 30-, 40-year time range, current use, traditional use, and habitat will be impacted severely."

The options are intended to diminish that threat yet see the certificate of allotment go to the allottee, Hourihan said.

The allotments originally came under the Native Allotment Act of 1906, which was sunseted in 1971 with the passage of the Alaska Native Claims Settlement Act.

As a result, many applications for allotments were filed in 1971. But in 1961 the state had selected the land that is now Wood-Tikchik State Park as part of its statehood entitlement.

The park itself was created in 1978 with the mandate to protect the area's fish and wildlife breeding and support systems, and to preserve the continued use of the area for subsistence and recreation.

Applicants for allotments in the state park must prove use and occupancy of their parcel to the potential exclusion of others prior to 1961.

Proof can include witnesses statements as well as physical evidence such as access roads, cabins, steambaths, wood stove remains, or fuel barrels, said Dugan Nielsen of Bristol Bay Native Association Realty.

Also considered is the presence of resources on site that support the user's claim, and the applicant's personal knowledge of the parcel, he said.

If an applicant can support the facts that establish a right to the allotment, Nielsen said, then the federal government has the responsibility to recover title to the land from any present landowner, including the state.

It has been 21 years since the applications were made, Hourihan said. "Nothing has happened it's still in the application phase. Little or no action has been taken in the Bureau of Land Management to adjudicate the applications and determine their validity."

The allotments in Wood-Tikchik State Park are just a small part of the total allotments to be reconveyed from the federal government to Natives.

"When we got ANCSA passed, there were about 15,000 Native parcels filed on," said Wayne Boden, BLM deputy state director for conveyance management.

"It costs a lot of money to get them surveyed and make sure the application is valid," he said. "The survey is the big thing. It costs quite a bit to get an aircraft and surveyor out and get all the approvals."

The allotments originally came under the Native Allotment Act of 1906

Boden said about 7,400 parcels remain to be certificated statewide. "We're trying to do it in a systematic blocking process so we can go in and do a whole area at one time. We're trying to close out a window at a time," he said.

Gusty Chythlook of BBNA Realty said at the meeting that 1994 is the window for the upper Nushagak and the Mulchatna area, but there is no window for Wood-Tikchik State Park.

This past summer, on the urging of Tom Hawkins, chief executive officer of the Bristol Bay Native Corp., a meeting was held with representatives of the state DNR, the federal BLM, BBNC and BBNA.

Out of that came an agreement that BLM would work on 10 case files a month during the winter, meaning that it would send out "90-day letters" for 10 applications each month.

The letters give notice to interested parties that they have 90 days to make comments for or against the application.

"What it does is start the process moving," Boden said. "They had been held up because of their status in the park over along period of time. There were controversies with the state over this process."

Last year, Rep. Don Young, R-Alaska, sponsored an amendment to ANCSA that allows valid allottees to relocate their parcel of state land to other state land. The relocation must be voluntary. The state DNR and Rep. Lyman Hoffman, D-Bethel, are seeking a similar amendment to state law.

"There's some debate on whether that is necessary," said Hourihan. "We're going to proceed with discussions with anybody who is interested. ...Relocation will appeal to some people, but many will want their original parcel."

Hourihan said that an applicant who wants to relocate should identify the desired land and contact BBNA Realty, which will notify Hourihan. He will do a title search.

"Once BLM is notified, there is no adjudication. There is no use and occupancy criteria associated with this," Hourihan said.

There are applications with use and occupancy that dates back as far as 1903 and 915, he said. "There are a lot of people who are elders in the community whose applications and the validity of them cannot be questioned."

But there are also allottees in their early 40s who claim use and occupancy when they were eight to 10 years old.

"I expect that there are a number of applicants that if the state decided to go to the ground would be defeated. What we're saying is, we don't want to go that way. We want to create a win-win situation," Hourihan said.

Conservation easements are another option the state is seeking for allotments in the state park. They are voluntary land use covenants that become part of the reconveyance process when the land goes from the state to the federal government and then to the allottee.

Hourihan said there are three basic zones the state likes to see used in a parcel that has a conservation easement: a non-development zone with no structures, a subsistence heritage zone that can include private homes and camps, and a development zone for any commercial purpose.

"We're open to discussions with anybody based upon what they'd like to do with their land. We can craft an agreement to fit individual needs," Hourihan said.

"We notify BLM if we reach agreement with an individual allottee for a conservation easement on an application in the park. We would notify BLM of our attempt to reconvey, and it would abrogate any further need for BLM to determine use and occupancy. So there's an incentive," Hourihan said.

Dugan Nielsen spoke in an interview of the importance of Native allotments.

"Native people's culture is based on the fact that we have land to exist from. Without that, what are we? Where does our identity go? What are we about, then?

"The issue of subsistence is way high in priority, obviously, for the Native people. Granted, you can't do your total subsistence off a 160-acre parcel of land. But you can to a certain degree," he said.

"Without that land base from which to exist on, what importance is subsistence? How much subsistence can you eke out of the sidewalk in Anchorage?

"We could win the subsistence issue, and I'll be forced to live in some metropolis or something larger than a village because we don't have a land base," Nielsen said.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB293

Revision Date: Original
Dept Affected: Natural Resources
Title: "An Act relating to the authority of the commissione
of natural resources to reconvey, or relinquish an interest in..."
BRU: Resource Development
Component: Land Development
Sponsor: Senator Jacko
Requestor: Senator Jacko
Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: $ None

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill authorizes the department to reconvey Native allotments that have been relocated on state land to a different location to avoid public interest conflicts. In order for a relocation to occur it must be with the consent of the department and the applicant. This bill allows Native allotment applicants to receive title to land that they can use while avoiding conflicts over public interest values such as access routes, heavy public use areas and important administrative sites.

Prepared by: (RS) Ron Swanson, Director
Phone : 762-2692
Division: Land
Date : 22-Mar-94
Approved by Commissioner:
(HB) Harry A. Noah
Date: 22-Mar-94
Agency: Natural Resources

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SB 295

UNDERGROUND PETROLEUM STORAGE TANK PROGRAM

Board of Storage Tank Assistance

410 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801
(907) 465-5219
FAX (907) 465-5218

Walter J. Hickel, Governor

POSITION PAPER

IN SUPPORT OF: Senate Bill 295 (SB 295)

SUBJECT: "An Act relating to financial assistance for certain owners or operators underground petroleum storage tank systems; and providing for an effective date."

The Board of Storage Tank Assistance supports Senate Bill 295.

Section 1: Presently, if an applicant is denied financial assistance completely, the applicant has no recourse if the applicant disputes the determination. Numerous applicants have been denied financial assistance by the Department of Environmental Conservation for a variety of determinations. Under existing law, when certain costs are denied, applicants may come before the Board of Storage Tank Assistance to help mediate the dispute. Applicants that have been determined completely ineligible cannot currently come before the Board. Applicants that are determined ineligible and have been denied any assistance whatsoever feel they should also have the right to present their case before the Board of Storage Tank Assistance since all of their eligible costs have in fact been denied. This change clarifies the authority of the Board to mediate disputes when all eligible costs have been denied.

Section 2: Currently, there are over 800 unfunded requests for financial assistance for testing, closure, upgrade or cleanup activities in the State of Alaska. Within that total there are currently over 400 unfunded requests for closure and upgrade assistance that will not receive funds or begin work until after the close of the application period for cleanup assistance. The last day to apply for cleanup assistance is June 30, 1994. Under existing law, should these closure or upgrade applicants who receive funds until FY 95 discover contamination while conducting upgrade or closure activities they will be unable to apply for assistance from the State of Alaska. Many of the applicants for closure and upgrade assistance originally applied in 1991 and have been waiting for funding for over three years. If these applicants discover contamination and cannot afford to undertake the high cost of cleanup and fail to receive financial assistance they will face fines, penalties and possible bankruptcy. Furthermore, if an owner cannot pay the cost of cleanup, the State actually undertakes the task using Response Funds.

Allowing applicants who have already applied for financial assistance to remain eligible for cleanup assistance from the Storage Tank Assistance Fund will further protect drinking water supplies for the State of Alaska and reduce further demands on the Spill Response Fund. Many of the facilities affected by the EPA requirements that are currently awaiting funding are in the outlying areas of the State, on the Alaska Highway, remote lodges, rural community airstrips and fishing villages. Although protecting drinking water supplies in urban areas such as Anchorage and Fairbanks is critical, maintaining essential fuel services for the State is undeniably an important consideration for stable economic growth, tourism and access.

Dated: 2-28-94

For and on behalf of the
BOARD OF STORAGE TANK ASSISTANCE,

John C. Barnett, Executive Director

POSITION PAPER:
BOARD OF STORAGE TANK ASSISTANCE

The Storage Tank Assistance Fund

Questions and Answers

Headlines are commonplace throughout the state concerning tank owner problems and pollution resulting from leaking underground storage tanks. Many tank owners are reducing their liability and cutting back on services while others have simply gone out of business altogether.

The Storage Tank Assistance Program was established to protect Alaska's drinking water supplies and to help Alaska's regulated tank owners and operators meet EPA's tough new environmental laws and regulations pertaining to underground petroleum storage tanks.

The goals of the program were simple.

* *cleanup existing leaks.*

* *prevent future leaks.*

* *help Alaska's tank owners and operators through educational, technical and financial assistance.*

Tank turmoil afflicts many Alaska firms

After-the-fact environment checks may ruin a business

vanishing gas pumps

Stations are getting fewer and larger — and snack foods are replacing service bays

High benzene levels found in subdivision's water wells

STORAGE TANK ASSISTANCE FUND
GENERAL INFORMATION

WHAT IS A REGULATED TANK?

* Regulated tanks are predominantly motor fuel tanks
* In general, gasoline, diesel and waste oil tanks greater than 110 gallons are regulated although there are exemptions.
* Heating oil tanks are NOT regulated.
* Residential motor fuel tanks less than 1100 gallons for farm or residential use are NOT regulated.
* Several other types of tanks are not regulated depending upon their use

WHO REGULATES UNDERGROUND STORAGE TANKS?

* EPA regulates tanks under 40 CFR 280 and 281.
* State of Alaska regulates tanks under 18 AAC 78 and 18 AAC 75
* Local governments may regulate tanks under the Uniform Fire Code and the National Fire Protection Association.

WHO IS ELIGIBLE FOR FINANCIAL ASSISTANCE?

* Any commercial or private owner or operator of tanks regulated by the Underground Storage Tank Regulations, 18 AAC 78, is eligible for financial assistance. Essentially, if a tank owner pays into the program, through a registration fee, then the tank is eligible for assistance.
* Village, City, Borough or municipally owned tanks are eligible.
* State and Federal owned tanks are NOT eligible.

WHAT KIND OF TANKS ARE ELIGIBLE?

* Industrial, Contracting, Auto Dealerships, Car Rental Agencies, Trucking and Transportation firms comprise 26% of the eligible tanks.
* Nearly 20% of the eligible tanks are used for aircraft refueling, both commercial and private
* Utilities, Fire Stations, Police and Ambulance services total another 19% of the eligible tanks.
* Less than 30% of the eligible tanks are fuel retailers such as gas and service stations.

WHAT KIND OF ASSISTANCE IS AVAILABLE?

* Technical assistance is available through the Department of Environmental Conservation. Staff provide guidance documents and technical assistance in the proper handling of stored products, system upgrading or closing and cleanup of contamination resulting from leaking tanks.

* Educational Assistance is provided by both the Department of Environmental Conservation and the Board of Storage Tank Assistance. Workshops are conducted annually and staff are provided to assist nationally recognized training courses for presentation in Alaska. A quarterly newsletter "Alaska Underground", is published by the Department to provide timely information on technical and regulatory aspects of tank ownership and maintenance, installation and closure as well as the latest developments in cleanup and remediation techniques. The newsletter also provides information to contractors and consultants actually conducting tank work.

* Financial Assistance is provided in the form of grants and loans to offset the high cost of upgrading to EPA standards, proper closure and release investigation, corrective action and cleanup.

WHAT TYPE OF FINANCIAL ASSISTANCE DOES THE PROGRAM PROVIDE?

* The Storage Tank Assistance fund provides grants for upgrading or closing at 60% of the eligible costs up to a maximum combined grant of $60,000 per facility.

* Grants for cleanup of petroleum contamination are provided to a maximum of $1 million per occurrence. The owner is responsible for 10% of the cost up to a maximum of $25,000.

* Loans are available for the 10% not covered by the cleanup grant up to a maximum of $25,000. Owners receiving loans must pay back the loan to the state over five years.

DOES THE PROGRAM ENCOURAGE PRIVATE PARTICIPATION?

* Most upgrades involve multiple tanks and usually range from $120, 000 to well over $200,000. Typically a grant from the Storage Tank Assistance Fund actually covers only 30% to 40% of the owners cost. The owner must pay the majority of costs involved.

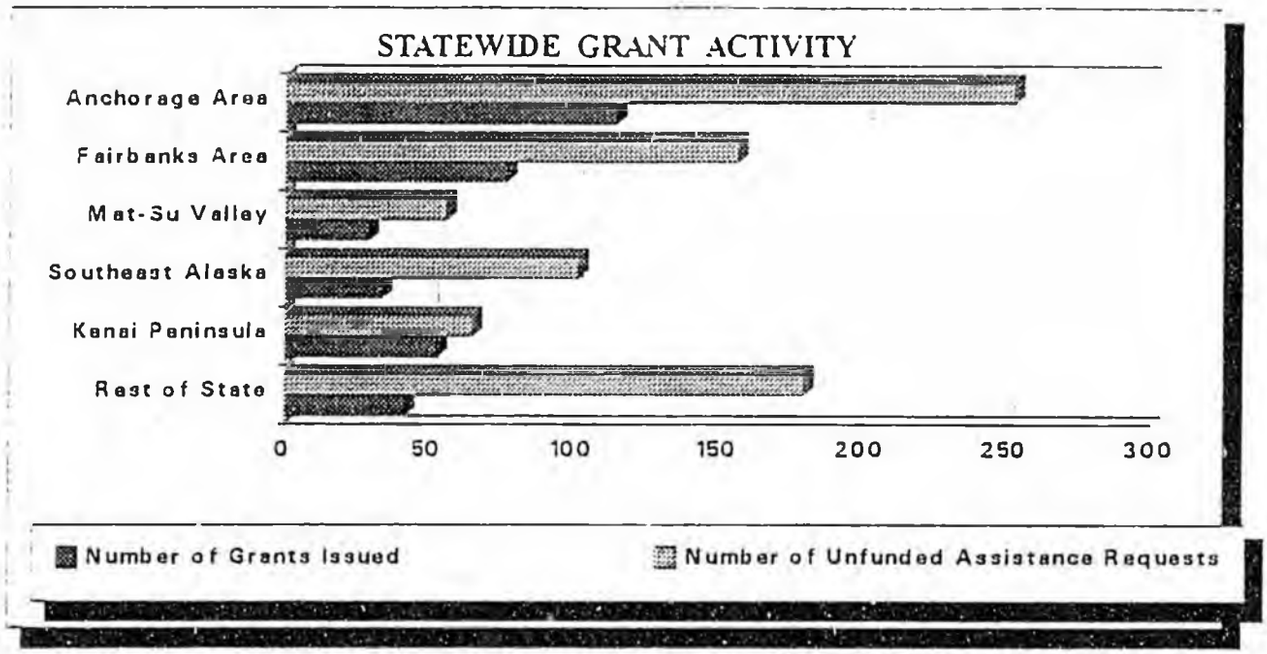
* The balance of the upgrading cost is provided by banks in the form of direct loans to the tank owner or operator. Many banks require that an owner or operator be eligible to receive funds from the Storage Tank Assistance Fund and that a letter be provided from the Department stating that the owner will be receiving financial assistance. The banks are then assured that the work will be conducted according to standard practice and in compliance with applicable laws and regulations.

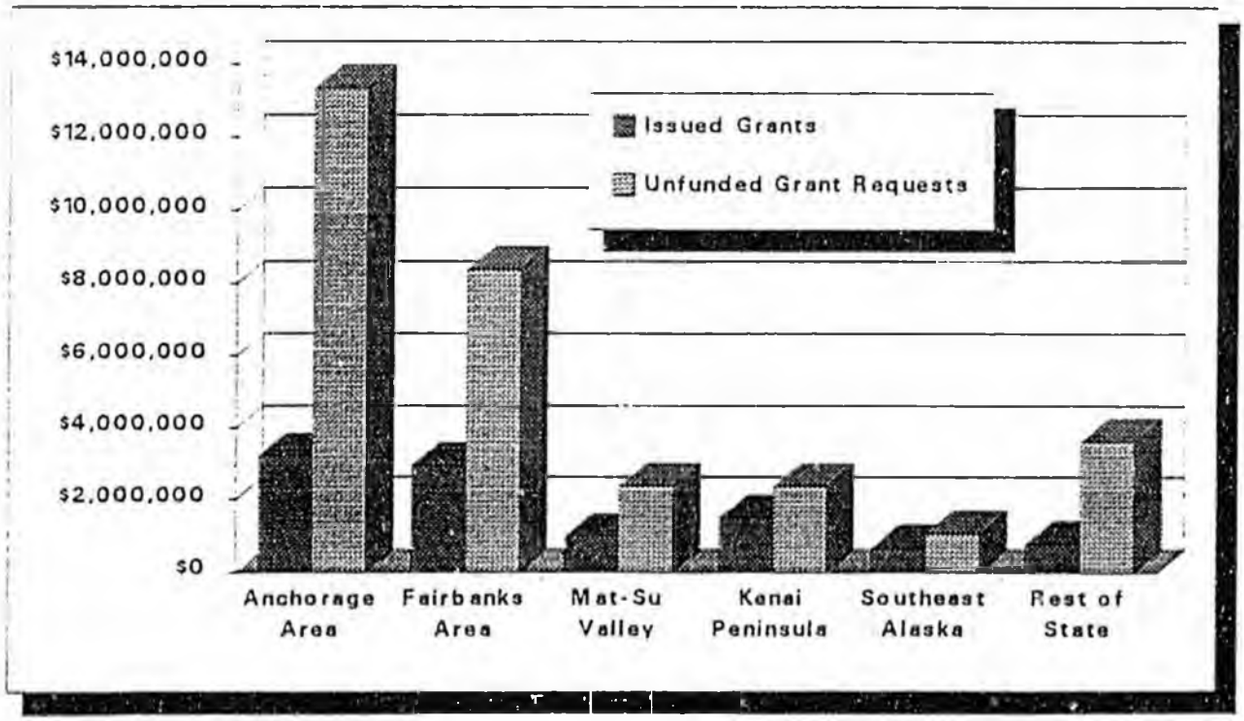
* The tank owner or operator actually receives the funds and is directly responsible for supervising the funded activity and insuring the work is co[illegible]ucted in accordance with applicable laws and regulations. The Department of Environmental Conservation only provides guidance and oversight to insure all work is completed properly and consistent with customary practice and costs.

* Private sector firms that are approved by the Department or certified by the State conduct work for the owners and operators. The owner or operator contracts directly with the contractors and consultants.

ARE THE GRANT REQUESTS JUST FROM INTERIOR ALASKA?

* The problems associated with underground petroleum storage tanks are statewide. Currently, the program has received 368 applications for assistance from the Anchorage area, of which 115 have already been funded. In the Fairbanks area, 234 requests have been received and 77 grants have already been issued. The Kenai Peninsula has made 118 requests, of which 53 have been funded. Southeast Alaska has submitted 136 grant applications while only 34 have been funded to date. The DEC has received 85 assistance requests from the Mat-Su Valley area and 29 applicants have received grants. The rest of the State has accounted for 222 requests and 42 of those requests have been funded.

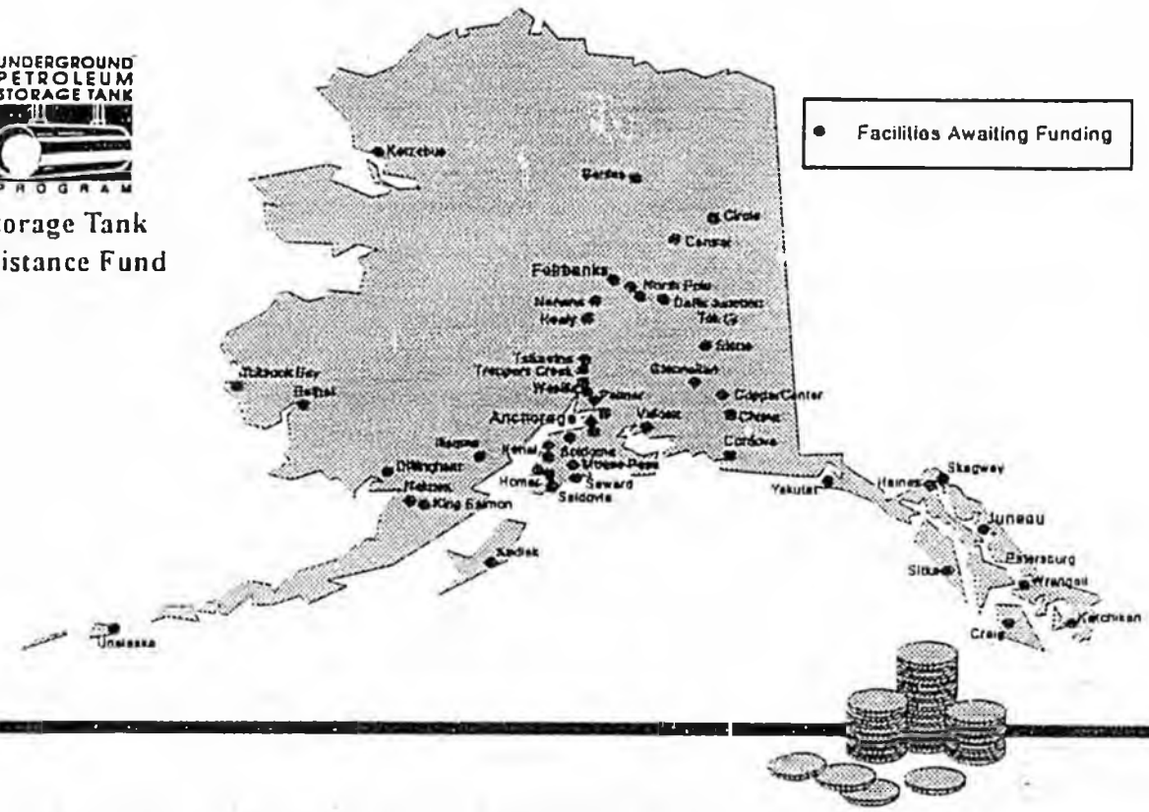




Statewide Distribution of UST Closure, Upgrade and Cleanup Assistance Requests

UNDERGROUND PETROLEUM STORAGE TANK PROGRAM

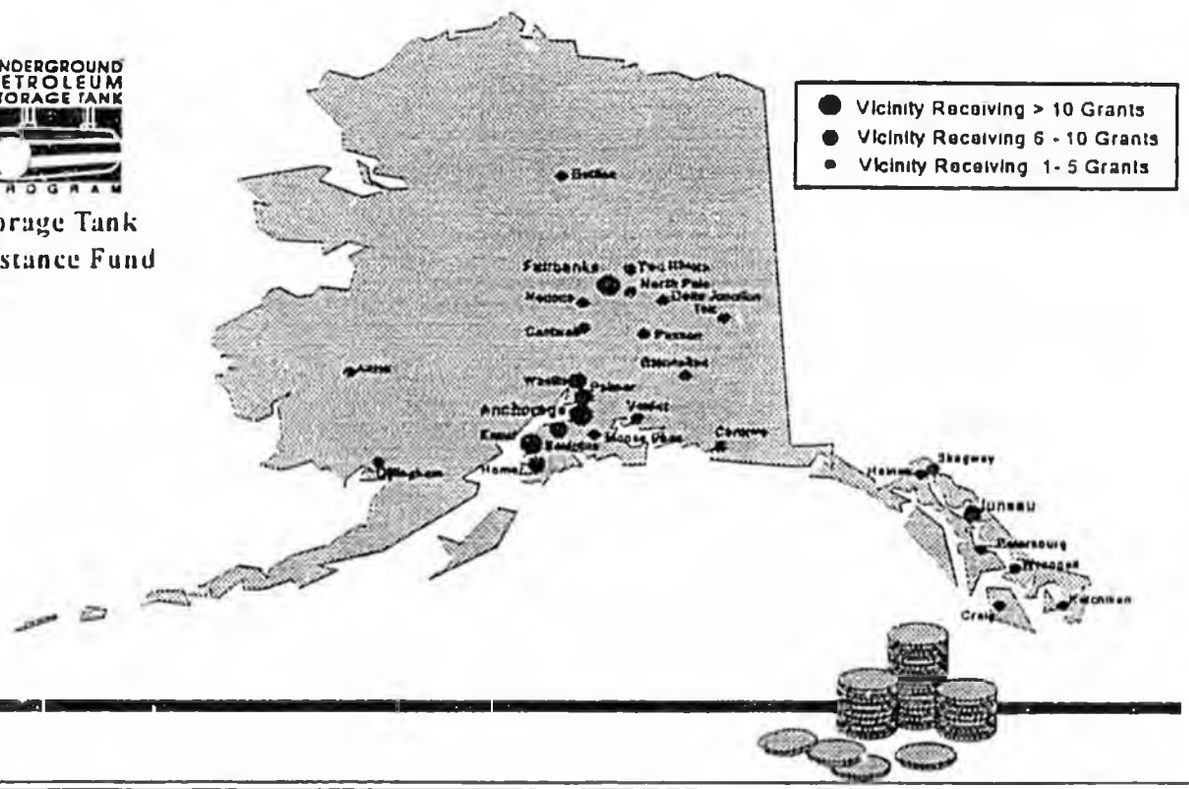
Storage Tank Assistance Fund



Statewide Distribution of UST Closure, Upgrade and Cleanup Grants

UNDERGROUND PETROLEUM STORAGE TANK PROGRAM

Storage Tank Assistance Fund



DON'T LARGE FIRMS GET MOST OF THE FUNDS THAT ARE AVAILABLE?

* Although all regulated tank owners and operators are eligible, all applicants are priority ranked for funding according to regulations and criteria established by the Board of Storage Tank Assistance. The ranking system emphasizes public health threat foremost followed by numerous other considerations such as size of business, i.e. number of tanks owned, whether the company is too small to be self-insurable, nearest alternative fuel source and whether the facility is in a rural location. Several other criteria are used to rank applications with an emphasis on small rural tank owners that pose an imminent public health threat and have acted in good faith to undertake as much of the work as possible on their own. This usually means that unless an imminent public health threat exists, larger companies tend to rank lower on priority ranking lists.

* All regulated tanks must pay a registration fee, except state and federal tanks, and are therefore eligible for assistance. Although large companies do not normally rank very high on the annual priority ranking lists, it should be noted that larger companies do tend to pay their share of the cost of the program. Registration fees of up to $500 per tank per year are paid by several large firms with dozens of tanks. Many of these firms consistently rank very low for funding but continue to pay large annual registration fees. Several large firms pay registration fees in excess of $10,000 annually. When a large company does receive funds, it may have already paid or will eventually pay the State more than it will receive.

WHY CAN'T OWNERS AND OPERATORS JUST GET A BANK LOAN?

* Banks do provide loans for certain activities such as closure or upgrading of a facility. The cost of an upgrade ranges from $120,000 to $200,000 or more to meet the federal standards. Banks will provide loans to cover that portion of the upgrade that is not covered by a grant from the Storage Tank Assistance Fund. Without assistance from the state, many small tank owners would not have sufficient resources to undertake an upgrade even with bank financing.

* Banks do not generally provide loans for cleanup purposes. The total cost of a cleanup is not known until the actual cleanup is complete and extremely difficult to estimate. Most Alaska tank owner's principal asset is the actual property that requires cleanup. A parcel of land that is contaminated essentially has no value until clean and actually represent a significant liability. Since collateral is required for nearly all loans, tank owners with contaminated sites normally cannot provide sufficient collateral to back a loan large enough to undertake the cleanup. The average cost of cleanup in Alaska is presently $140,000 per site although some cleanups are currently approaching $500,000. These very high cleanup costs are virtually impossible to cover for the average Alaska tank owner.

* Joint and several liability laws also provide a detriment to bank financing for cleanup activities. Banks that foreclose on property that is contaminated become liable for completion of the cleanup. Many times the cost of the cleanup will be 3 or 4 times the clean site value of the property. Banks also will not provide a loan to a tank owner if the business itself must be shutdown to conduct the cleanup. If a business has no income, it cannot repay a loan. Many businesses have been closed for a year or more while cleanup activities are completed. In numerous cases, the loss of revenues have caused bankruptcy and foreclosure, a fact that banks understand all too well.

WHY DO TANK OWNERS HAVE TO UPGRADE THEIR TANKS?

* In 1984, federal law (Subtitle I of the Resource Conservation and Recovery Act) mandated that owners of certain kinds of underground storage tanks (UST) containing petroleum products and other regulated substances meet standards which would prevent leaks and assure adequate cleanup where leaks occurred. That law was followed by federal UST regulations in December of 1988.

* Over 4,400 underground storage tanks have been identified in the State of Alaska. Other tanks probably exist which have not been reported. Most of these tanks are not protected from leaks and spills. These tanks may be unknowingly damaging the State's drinking water supplies. Since groundwater provides drinking supplies for nearly 70% of the population in Alaska, any contamination that reaches groundwater could cause a serious public health threat. Additionally, the vapors from leaks may seep into basements of homes and buildings and cause other safety and health hazards.

WHY DO WE HAVE ALL THIS CONTAMINATION FROM TANKS?

* Piping leaks, overfills and spillage during deliveries are common problems.

* A leaking tank can be nearly impossible to detect without special equipment. A considerable number of leaks occur due to failed fittings between the tank and piping, spillage during filling or overfilling, or corrosion.

* Corrosion holes in steel tanks cannot be seen until the tank or piping has been removed or exposed. A corrosion hole that causes a tenth of a gallon per hour leak would release over 800 gallons of fuel per year into the lands of the state. The leak could go unnoticed for years, slowly percolating through the soil and possibly into the water table. This leaking fuel can eventually migrate toward a private or municipal drinking water well.

AREN'T THESE PROBLEMS THE TANK OWNERS FAULT?

* Although the leak originates from an owner's facility, the leak is very rarely caused by negligence on the owners part. The facility was usually installed and operated to a standard of practice that was considered sound and conscientious at the time of installation. Many times the facility owner or operator is treated as a criminal, when in fact the leak or spill might have been caused by natural processes such as corrosion over time or by an accident caused by a passerby. Just a simple case of pouring old fuel or waste oil on the ground or repeated overfilling of vehicle gas tanks by customers can add up to a serious contamination problem for a facility owner.

* It is worth noting that petroleum contamination was not considered a serious health hazard until just a few years ago, long after these facilities had been installed. The State of Alaska only recently halted routine oiling of roads, now considered dangerous to public health and critical habitats. The underground storage tank rules imposed by EPA are "after the fact" environmental regulations that have caused a notable and detrimental economic impact to small businesses.

AREN'T THESE PROBLEMS JUST THE "COST OF DOING BUSINESS"?

* The requirements to clean up contamination from leaking tanks are new "after the fact" regulations from EPA that did not exist when these businesses started nor during most of their existence. Many businesses acquired facilities with old contamination that are now faced with the formidable task of "making right what wasn't a problem before". The cost to clean these contaminated sites has skyrocketed beyond the reach of an average business in Alaska. The cost can easily reach several hundred thousand dollars per site. Investigating the extent of contamination, soil and water sampling, excavation, contaminated soil disposal, total tank and piping system replacement, interim business shutdown, loss of revenues and threats of penalties regarding contamination that occurs through natural corrosion, customer negligence and accidents was not a consideration when these businesses began.

WHY DID THE STATE GET INVOLVED?

* During the years 1986 through 1990, increased federal regulations and aggressive EPA enforcement action forced numerous Alaska tank owners out of business. Many of these tank owners could not afford the high cost of cleanup of contamination from their leaking tanks. If an owner cannot pay the cost of cleanup, the State actually undertakes the task using Response Funds. The 1990 Legislature determined that the State should have an assistance-based tank program to keep these affected businesses "in business" as productive members of the Alaska economic community.

* Many of the facilities affected by the EPA requirements are in outlying areas of the State, on the Alaska Highway, remote lodges, rural community airstrips and fishing villages. Although protecting drinking water supplies in urban areas such as Anchorage and Fairbanks is critical, maintaining essential fuel services for the State is undeniably an important consideration for stable economic growth, tourism and access.

* After December 31, 1993, most tank owners will be required to demonstrate $1 million of financial responsibility per occurrence and $2 million aggregate. Failure to comply may result in $10,000 daily fines from EPA. Alaskan tank owners can meet the financial responsibility requirement by purchasing pollution liability insurance. Pollution liability insurance is available but very expensive for most small tank owners. The problem still involves the question of eligibility for insurance. Is a facility actually insurable? Many insurance plans call for a clean site to be demonstrated. However, most of these facilities have had numerous incidents of overfilling and spillage during fuel deliveries or in some cases, actual leaks. The Storage Tank Assistance Fund helps owners help themselves by assisting owners of contaminated sites to undertake proper cleanup and become insurable. Insurance policies can then be purchased from the private sector thereby allowing a tank owner to meet the federal financial responsibility requirement.

* Developing an assistance-based program was considered to be the best way to promote strong pollution prevention practices to avoid future contamination of drinking water supplies. By providing assistance to tank owners to cleanup contamination and to promote the upgrade of their facilities to federal standards, the regulated community was more willing to step forward and report old spills or leaks without the fear of fines and penalties from the EPA. Although the "big stick" approach from EPA got attention, the State's "white hat" approach got results.

* Alaska was not the only state that recognized the problem tank owners were facing with the new federal requirements. Currently, forty-five states have a financial assistance program for underground storage tanks. Seventeen of those states have recently expanded their programs to include aboveground tanks as well.

AREN'T MOST OF THE LEAKING TANKS OWNED BY BIG COMPANIES?

* Just because a facility is named "Alaska Chevron" does not mean its owned by Chevron. The name signifies just the brand of product sold in most cases. Most businesses covered by the EPA's underground storage tank regulations are small, "Mom-and-Pop" businesses who cannot afford to meet the financial responsibility requirements, pay the fines or clean up contaminated sites. DEC estimates that of the over 4,000 tanks that are in the ground in Alaska, there are over 3,000 presently in use of which nearly 2,000 are privately owned. It is estimated that over two-thirds of the privately owned tanks in Alaska are owned by small, independent companies.

IS THERE MUCH DEMAND FOR FINANCIAL ASSISTANCE?

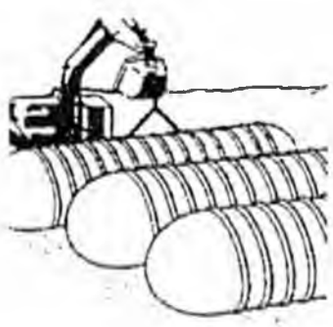
* Presently, there are 813 unfunded requests for financial assistance for testing, closure, upgrade or cleanup activities in the State of Alaska. The unfunded requests total in excess of $31 million. Not counted in the total are another 158 requests for reimbursement of work completed between December 22, 1988 and September 5, 1990 that totals $3.4 million. These requests are eligible for reimbursement after all other requests have been funded.

* Over $10.6 million has been expended or encumbered to date on previous requests. Another $4.5 million is obligated for projects that will begin work in the spring of 1994. It is estimated that an additional 400 applications will be received during fiscal year 94.

HOW MUCH MONEY HAS THE PROGRAM RECEIVED SO FAR?

* The Storage Tank Assistance Fund had received an initial capitalization of $6 million in fiscal year 1991. In fiscal year 1992, no new monies were appropriated to the Fund. For fiscal year 1993, the Alaska Legislature appropriated $5 million to the Storage Tank Assistance Fund. The Alaska Legislature has appropriated $4.5 million to the UST Financial Assistance Program for fiscal year 1994 which began July 1, 1993.

* Funds appropriated by the Alaska State Legislature to the Storage Tank Assistance Fund are allocated annually by the Board of Storage Tank Assistance to different financial assistance programs, the tank cleanup program, the tank upgrading and tank closure program. The Board of Storage Tank Assistance makes the annual allocations after taking into consideration the amount of money in the Fund, the money required to meet the needs for each program, as supported by approved applications and the requirement that the greatest priority be given to funding UST's that present the greatest threat or potential threat to human health.



WHAT AGENCY ADMINISTERS THE STORAGE TANK ASSISTANCE FUND?

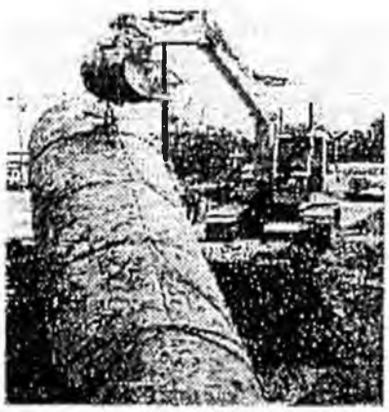
* The Department of Environmental Conservation administers the Storage Tank Assistance Fund. The Department is responsible for advertising the application periods, receiving the applications, processing the requests, administering the grants and auditing project costs. The Division of Investments in the Department of Commerce and Economic Development works in partnership with the DEC to provide cleanup loans for eligible UST owners and operators.

* The Department of Environmental Conservation has a staff of two Environmental Specialists in Anchorage to process the actual grant applications. A Grants Administrator, Environmental Technician and a Clerk Typist provide additional support for the program. A Project Manager supervises the activities and provides application and project guidance to UST owners and operators, contractors and consultants.

* The 1990 Legislature established the seven-member Board of Storage Tank Assistance with two government members and five public members. Members are appointed by the Governor and serve without compensation other than per diem and expenses when traveling. They have an Executive Director, who is their sole employee. The first duty of the Board was to write regulations relating to financial assistance for UST owners and operators. The Board also jointly developed regulations with DEC pertaining to cleanup standards and allowable technologies to be used in the cleanup of contamination resulting from leaking tanks.

* The Board is an Appeal Board to mediate disputes between the Department of Environmental Conservation and regulated underground petroleum storage tank owners and operators. In regard to disputes arising over priority rankings and eligible costs, the Board's decisions are binding upon the department and the owner or operator. For corrective action plan disputes, or denials for payment under the retroactive reimbursement program (sec. 7, ch.96, SLA 1990), the board may only issue recommendations.

* Although the Board developed the financial assistance regulations, the Department of Environmental Conservation actually implements those regulations by physically processing each applicant's request for financial assistance. This enables the Board to remain objective and unbiased when a dispute arises. The Board is then tasked with resolving the matter in a prompt and conscientious manner.



For Further Information Contact the Board of Storage Tank Assistance at (907)465-5219 or the Department of Environmental Conservation, UST Program, at (907) 465-5200.
The UST Financial Assistance Office Can Be Contacted at (907) 273-4342.

UNDERGROUND PETROLEUM STORAGE TANK PROGRAM

THE STORAGE TANK ASSISTANCE PROGRAM

The Storage Tank Assistance Fund -- What is it all about?

- AN ENVIRONMENTAL CLEANUP PROGRAM RESTORING ALASKA'S DRINKING WATER SUPPLIES.

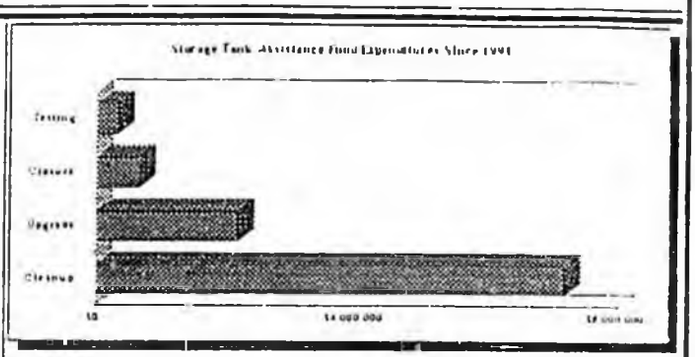
- Providing grants and loans to Alaskan businesses to offset the high cost of environmental cleanups to keep Alaskan businesses in business.

- A POLLUTION PREVENTION PROGRAM FOR UNDERGROUND PETROLEUM STORAGE TANKS.

- Providing incentives and grants to tank owners and operators to upgrade or close their tanks to prevent future leaks.

- AN ALASKAN BUSINESS ASSISTANCE PROGRAM.

- Providing relief to Alaskan businesses and private individuals faced with the high cost of environmental compliance.



Since Program Inception in 1991

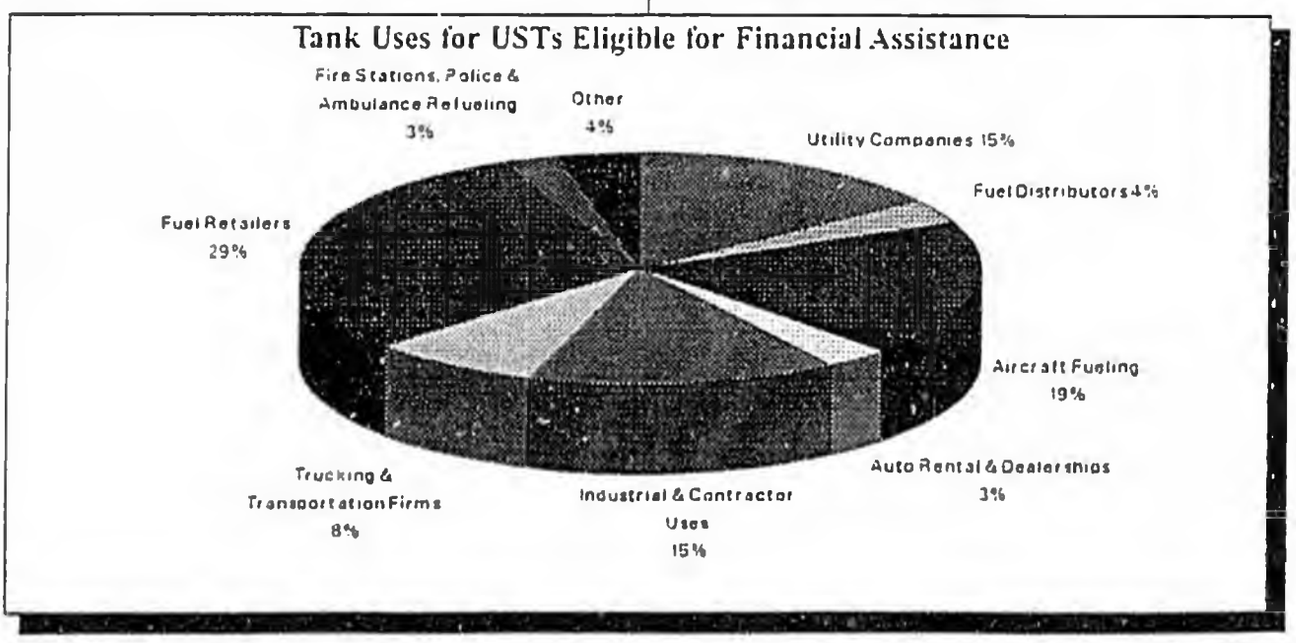
- Over $ 10.6 Million has been expended or encumbered for financial assistance grants and loans.

- A total of 386 financial assistance requests for tank tightness testing or site assessments have been funded.

- 75 financial assistance requests for soil or groundwater cleanup have been funded.

- 52 financial assistance requests to upgrade tanks to new EPA standards and prevent future leaks have been funded.

- 83 financial assistance requests to close out old or unused tanks have been funded.



The Storage Tank Assistance Fund

Board of Storage Tank Assistance
410 Willoughby Ave.
Juneau, Alaska 99801

Phone (907) 465-5219
Fax (907) 465-5218

Department of Environmental Conservation
UST Financial Assistance Unit
3601 "C" Street, Suite 398
Anchorage, Alaska 99503

Phone (907) 273-4342
Fax (907) 563-6032

FISCAL NOTE

STATE OF ALASKA

1994 LEGISLATIVE SESSION

BILL NO. SB295

Revision Date:

Title: Grants/Loans for Storage Tank Owners

Department Affected: Environmental Conservation

BRU: Spill Prevention and Response

Sponsor: Senate Labor and Commerce Committee

Requestor: Senate Resources Committee

Component: Underground Storage Tank

COMPONENT SERIAL NO. 1207

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						
FUND SOURCE						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: $ 0.0

POSITIONS:

FULL-TIME	0.0					
PART-TIME	0.0					
TEMPORARY	0.0					

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Bob Poe, Director

Phone: 465-5010

Division: Information & Administrative Services

Date: 2/25/94

Approved by Commissioner: For

Agency: Department of Environmental Conservation

Date: 2/25/94

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SB 299

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

May 28, 1993

Gary C. Newman
1083 Esro Road
Fairbanks, Alaska 99712

Dear Mr Newman:

Thank you for your letter of May 4, 1993, concerning the newly adopted Annual Water Administrative Service Fee. I appreciate your taking the time to contact me about this new fee and wish to take this opportunity to address your concerns.

This fee, in addition to many other new or recently increased fees within the Department, has become necessary as the state legislature has mandated that other sources of revenues be found to replace the reliance of government's programs on general funds which continue to be reduced by the legislature. Specifically, the Division of Water has seen a general fund revenue decline of 66% in the last 10 years, causing the division to streamline its processes and move from a program heavily dependent on general funds for operation to one relying on program receipts to make up a portion of its operating costs. Program receipts are collected from the beneficiary of a program and the funds collected are used to administer that program.

In your letter you questioned why the Administrative Service Fee was set at $50.00. The $50.00 fee is viewed as reasonable for the services provided and the revenues generated will allow us to continue to improve the administration and management of Alaska's water resources,. It has been determined that the collection of a fee of less than $50.00 is not economical due to the cost of computer programming, sending the bill, and processing the payment received. It is also a fact that of the 3200 permits and certificates subject to this fee not all of them will receive $50.00 worth of work each and every year. Some of the files will require hundreds or thousands of dollars worth of work while others may require only minimal work. However, due to the incremental activity of the service provided and the infeasibility of charging for each activity, we have chosen a flat fee at the minimum level.

You also inquired about the exemptions to the fee. Exemptions were created because there is no benefit to the state to impose this fee on other state agencies nor is it in the state's best interest to impose the fee on an individual or group that has reserved water for instream flows to protect fish and wildlife and public recreational opportunities for the public benefit. The exemption to the fee for domestic water use of less than 1500 gallons per day (gpd) is based on the fact that time spent on administrative work associated with domestic water use of less than 1500 gpd is, on the average, a lot less than on permits and certificates

DIV. OF WATER CORRESPONDENCE

issued for any large water use or water used for commercial and industrial purposes. Domestic water use is a very stable water use, owners don't change as often, type of use doesn't change, location of water use doesn't change, and the source of water is normally uncontroversial due to the small quantity of water required and the fact that domestic water users are not normally located in areas where larger water uses for commercial and industrial purposes take place. We purposely structured this exemption to include other associated domestic water uses such as lawn and garden watering, domestic livestock, poultry, dogs, cats, greenhouses, and other water-related household amenities.

In short, The Division of Water has structured this fee to be fair to the water users of the state, and has taken into account the economics of collecting a fee and exemptions to the fee that are justified. In fact, of the 15,800 active water rights files approximately 12,600 fall under the domestic exemption.

Prior to the actual billing for the Administrative Service Fee, the Department mailed a notice to every water user that was subject to the fee in order to obtain address corrections and to give the water user the opportunity to amend his or her permit or certificate to show current water use, which in many cases changed since the water right was issued as long as 20 years ago. Of the 3200 notices sent, over 600 individuals have taken advantage of the opportunity to amend their water rights or to notify the Department that they are no longer using water or are using a public or community water source.

Based on your Certificate of Appropriation, your water use would be exempted from the fee except for the fact that it includes 2 acre-feet of water per year for irrigation of up to 4 acres of land. Your certificate gives you the right to use 651,702 gallons of water from May through September or 4287.5 gallons per day. In your case, we will be glad to grant a stay of payment until we can cooperatively review your water use and determine if your use falls under the exemption. I will have Jack Kerin, Division of Water, Fairbanks Office, contact you to make arrangements for the review.

You claim that the Administrative Service Fee is inequitable, discriminatory, and unsubstantiated by the departments justification. I believe that the fee is not discriminatory and has been equitably charged to those water users who are not exempted. The reason for the examption was previous explained, and all other permit and certificate holders pay the same $50.00 fee based on average administrative cost to the Division of Water.

With respect to the $25 late fee, this fee was not written specifically as part of the Administrative Service Fee regulations; it has been an existing regulation for years under 11 AAC 93.05.010(a)(16). If the Division of Water has the opportunity to amend regulations in the future, it will consider an amendment to add a specific late fee for the Administrative Service fee. The fee will then be based on the cost to the department to administer and process the late fee as recommended by the Department's Financial Services Section.

Thank you again for your letter.

Cordially,

Glenn A. Olds

Glenn A. Olds
Commissioner

cc: Ric Davidge, Division of Water, Anchorage
Gary Prokosch, Division of Water, Anchorage
Jack Karin, Division of Water, Fairbanks

93-500505WA

WATER MANAGEMENT FEES

WHY A WATER MANAGEMENT FEE ?

The State of Alaska is considering a water management fee for a number of reasons, not the least being a method for the state to recover the cost of managing Alaska's water resources from the users of that resource. A water management fee has a few other benefits that the Department feels make the overall management fee proposal a complete management package. The management fee concept in addition to management cost recovery, promotes the idea that water is a valuable natural resource that is required by all Alaskans to fulfill their basic needs, such as for drinking and bathing, but is also used for the generation of power (hydroelectric, natural gas and oil), food (agriculture, seafood and other processing), timber, other petroleum products, mining, and many other products and services used on a day-to-day basis. These same water resources are used in their natural state to protect fish and wildlife and their habitat, recreation, transportation and water quality. The management fee concept may also promote water conservation. There are a number of studies that show, as the cost of water increases, the use of water decreases. The management of Alaska's water resource will also benefit the state's water rights program by providing the opportunity to update many of its water right files by eliminating those water rights no longer in use or by decreasing those water rights where the total quantity of water is no longer being used. The holders of these water rights will let the Department of Natural Resources know when they stopped using water or are using less water than what was originally granted to them when they receive their management fee notice each year. The updating of the water rights system will help the water manager better understand the water use requirements for specific commercial and industrial water users, sources of water in specific areas, where water is used and what it's used for.

WHO PAYS ?

Individuals and commercial and/or industrial businesses who use Alaska's water resources. In reality, it's not cost effective or feasible to charge all water users a fee. It has been estimated to cost the state $50.00 to send and receipt a bill, so the lower limit of a management fee would have to be $50.00. If the management fee is set at $1.00 per acre foot of water used, no water user using less than 50 acre feet per year would be charged. 50 acre feet of water is equal to about 44,600 gallons of water per day. The homeowner using an individual water system (well, stream, or lake), most small businesses, community water systems (serving less than 90 homes), and placer miners using a suction dredge smaller than 6 inches would not be subject to a management fee. The larger water users (50 acre feet per year or more) would be subject to the management fee. These could include commercial and industrial businesses, seafood processors, public water supply, agriculture, mining, pulp mills, oil and gas development, oil and gas processing and other large water users.

STATE

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

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

OFFICE OF THE COMMISSIONER

February 18, 1994

Senator Mike Miller
State Capitol, Room 423
Juneau, Alaska 99801-1182

Dear Senator Miller:

The Department of Natural Resources, in response to Senate Bill Number 299 must oppose the amendment to AS 46.020(b) limiting the Commissioner's authority to charge fees for services rendered. The following information is presented in support of our position.

One of the fundamental goals of the Department of Natural Resources, Division of Water is to have the use of water pay for its management. To use limited General Funds to pay for services provided to just more that 1,964 citizens who then receive a direct economic benefit from the service, seems inconsistent with good public policy especially during thin fiscal times.

In the mean time, the Division of Water, facing over a 2,000+ water rights casefile backlog and declining General Fund authorizations, is challenged to generate Program Receipts from administrative services provided to water users. We have increased water right application fees, as appropriate, and a number of other fees directly tied to the cost of services provided. We continue to operate under the philosophy that the state is providing a unique service to a limited number of Alaskans and that those who directly benefit from this service, including the enhancement of the economic value of their business and/or property, should compensate the state for at least a portion of the cost of these services. In the face of serious economic stress we believe this a prudent public policy.

During the second session of the 17th legislature, at our request, the Governor introduced legislation that clarified the Commissioner's existing authority in assessing fees related to water. The legislation introduced basically authorized the Commissioner to assess fees for the use of water and to sell water. The authority to assess fees for administrative services is already well established in statute and regulation. During a Senate Resource Committee hearing, Senator Steve Frank made a very important point that was generally supported by members of the committee. Senator Frank stated that if the Division of Water were providing administrative services, consistent with existing authority in Title 46, appropriate fees should be assessed for those services.

In light of the reductions in Division of Water General Fund authorizations in FY93, and the apparent consensus of the Senate Resources Committee on better applying administrative service fees, the Division of Water initiated an intensive review of all administrative services provided and identified those that did not have an administrative fee assessed under current regulations (See Attached, Administrative Service Fee Fact Sheet). The purposes of this fee were many. First, it would provide significant new revenue for the state from the use of water that would, in part, pay for water management. Second, it would encourage conservation. Third, it would establish a direct relationship between the use of water and the cost of meeting the extensive statutory and regulatory

10-J9LH

POSITION PAPER: DNR

mandates applicable to water adjudication and management. Fourth, it would provide a mechanism, with a monetary motive, to ensure the correctness of our water management records.

Out of over 550,000 citizens in Alaska the Division of Water maintains about 16,000 active water right case files. Out of these 16,000 active files only 2,164 use water in excess of 1,500 gallons per day. The average single family dwelling in Alaska uses far less than 500 gallons per day. These 2000+ water users represent the following commercial sectors:

Fish processing
Public water supplies
Hydroelectric
Agriculture
General Commercial
Industrial/retail/wholesale
Lodges
Timber
Mining
Oil and Gas

In reviewing the specific services provided to these water users, it became apparent that administratively it would be costly to assess a fee for every incremental service provided. The alternative was to pool these service costs and assess a flat minimal annual administrative services fee. This approach recognized that some could pay for services not received during the billing period while others could receive services that cost more than the $50 annual fee. This pooling approach did lower the administrative cost of assessing the fee, and we believe it is fair. A commercial business being supplied water from the Municipality of Anchorage, City of Sitka, City of Fairbanks, or the City of Juneau, using 1500 gallons per day would pay an annual water bill of between $1200.00 and $1800.00 per year. We realize that this fee includes the cost of the water system infrastructure but it also includes the cost of water management.

In promulgating the fee regulations, the Division of Water exceeded the standard public notice and public hearing processes stipulated in the Alaska Administrative Procedures Act. In light of our concern that legislative leaders be directly contacted during this process, the Division of Water notified each legislator before and after the 1992 election (including those newly elected) of the effort to establish an annual Administrative Services Fee for water uses in excess of 1,500 gpd. Additionally, the Division presented the Administrative Services Fee to the State Water Resources Board, which discussed it in some depth and detail. Direct interaction between the Division and the Alaska Miners Association, environmental groups, state and federal agencies, and other groups took place during the regulatory process.

In summary, the Division of Water received very few objections to the assessment of an annual Administrative Services Fee for all significant water uses (1,500 gallons a day or greater). As a result the regulations were finalized, adopted, and put into effect on April 18, 1993. In an effort to notify each water rights holder authorized to use 1,500 gallons a day or more, the Division of Water sent out a direct notice of the possibility of them being billed $50 year. We specifically asked if they were in fact the holder of the water right and if they used 1,500 gallons a day or more. This notice resulted in about 1,500 responses resulting in over 1,000 case file updates (ownership changes, new addresses, and changes in the quantity of water being used).

To date we have received 351 voluntary relinquishments with a total of 91.3 million gallons a day being given back to the state for reappropriation. This "new" availability of water to appropriation is important in those increasing number of drainages in Alaska facing water supply limitations.

During the pre-billing process, we did receive some calls from legislative offices about the fee and what we were doing, however in every case, to our knowledge, once we provided the material there were no further questions. In addition to two legislative staff inquiries, a small number of citizens raised substantive objections to the assessment of a fee for services they had not paid for in the past, did not understand they were receiving, or just refused to pay. Again, in the great majority of cases, out of the 2,164 assessed, when the information was provided, most water users agreed to pay the fee.

Following corrections from the initial notice, the Division of Water issued its first billing for the $50 annual Administrative Services Fee. As anticipated, most large water users paid without comment or concern as they have a pretty good idea of the level of service received for this nominal fee. Some water users who failed to notify the Division of changes in water use during the pre-billing notice and review came forward at this point with use changes and were removed from the billing file. Other water users who initially objected continued to object although a few did pay in protest. At this point less than 5% of the initial billing are in default and we expect many involve old ownership or address data problems in our water files.

Total revenue, to date, from the assessment of the Administrative Services Fee in FY93 was $84,000 and is estimated to exceed $100,000 in FY94. These revenues provide the funding for almost two adjudicators out of a total of seven. These funds are used as intended, to offset General Fund reductions in water management programs and support our effort to reduce the 2,000+ permitting case file backlog which is causing project permitting delays.

If additional information is required please contact Ric Davidge, Director, Division of Water at 762-2294.

Sincerely,

Harry A. Noah
Commissioner

Fact sheet:

Alaska Department of NATURAL RESOURCES

WATER RIGHTS ADMINISTRATIVE SERVICE FEE

Division of Water • August, 1993

Why an Annual Administrative Service Fee ? The Annual Administrative Service Fee applies to all permit (including temporary permit) and certificate holders except state agencies and those domestic water users who use less than 1500 gallons per day (0.0046 acre-feet/day) and instream flow certificate holders where the reservation is for a public benefit. The annual administrative fee will help pay for the following administrative services:

* Update water rights on the state's status plat system for use by the public.

* Respond to complaints from the public, state, federal, and local government agencies regarding water use and misuse.

* Administrative handling of complaints and appeals regarding the protection of prior water rights.

* Tracking of permits and certificates and the collection of specific data such as water use records, stream gage data, well level records, well logs, and as-built plans and specification data base maintenance for public and private use.

* Assist the Department of Law with appeals to the Superior Court on water resource management issues and water rights.

* Pre-project review and assistance prior to the submittal of a water right application (examples: AJ Mine, Kensington, Fort Knox, Beluga coal, Silver Lake Hydro, Grant Lake Hydro, Tazimina Hydro, Viewpoint Ventures Subdivision, Allison Lake Hydro, Golden View Subdivision, etc.). Work with the developer to assure that water rights holders are not harmed by the proposed development.

* Coastal zone management reviews for consistency determinations, to assure that the appropriation and use of water is consistent with the Alaska Coastal Management Program.

Participate in site specific water resource planning and review (state area and management plans; federal land management plans; wildlife refuge plans; recreation plans; Kenai Peninsula Groundwater Task Force; Fairbanks Groundwater Task Force, etc.).

* Conduct or assist in hydrologic and water use data collection for specific areas not related to a water right request but to an area of water management concern (Anchorage Hillside, Mat-Su Borough, Eagle River Valley, Chena Ridge, Auk Nu/Indian Cove, Nikiski, Anchor Point, etc.).
* Water rights permit and certificate computer database maintenance and updates for use by governmental agencies and general public.

* Water rights permit and certificate record maintenance.

The fee has become necessary as the state legislature has directed the department to find other sources of revenues to replace general funds. The Division of Water has seen a general fund revenues decline of 66% in the last 10 years which has caused the Division of Water to streamline its processes and move from a general fund operation to a program receipt operation. Program receipts are collected from the individual beneficiary of a program and the funds collected are used to administer that program for the benefit of the water rights holder and the general public.

Why a $50.00 fee for the work listed above ? The $50.00 fee is not unreasonable and the revenues generated will allow us to continue and to improve the administration and management of Alaska's water resources. It has been determined that the collection of a fee of less than $50.00 is not economical due to the cost of sending and receiving a bill. It is also a fact that of the 3200 permits and certificates subject to this fee not all of them will receive $50.00 worth of work each and every year. Some of the files will require hundreds of dollars worth of work while others may require only minimal work. The fee helps pay for the administrative, management, and technical assistance that the Division of Water can provide if and

when their assistance is required.

Why the Exemptions to the fee ? There is no benefit to the state to impose this fee on other state agencies nor is it in the state's best interest to impose the fee on an individual, or group that has reserved water for instream flows to protect fish and wildlife and public recreational opportunities.

The exemption to the fee for domestic water use of less than 1500 gpd is based on the fact that time spent on administrative work associated with domestic water use, of less than 1500 gpd, is on the average a lot less than on permits and certificates issued for larger domestic uses and any commercial or industrial water use. Domestic water use is a very stable water use, owners don't change as often, the type of water use doesn't change, location of water use doesn't change, and the source of water is normally uncontroversial due to the quantity of water required. The Division purposely structured this exemption to include other associated domestic water uses such as lawn and garden, domestic livestock, poultry, dogs, cats , greenhouses, and other water-related household amenities. In addition, the water well log data obtained from the many domestic water users is a valuable source of hydrologic information that is incorporated into a statewide data base shared by state, federal and municipal agencies and used by the public and private sector. The cost of this type of data collection, if it were not collected through the water right applications, would cost many times more than what would be collected through an administrative service fee. The additional cost to the domestic water user might cause the water user to not file for water rights, and the source of this valuable data would not be made available as cost efficiently as under this approach.

In short, The Division of Water has structured this fee to be fair and responsible to the large water users of the state and has taken into account the economics of collecting a fee, with exemptions to the fee as justified.

Where can I get more information? More information about water rights is available in the Department of Natural Resources' "Water User's Handbook", and from fact sheets on Glacier Ice Harvesting, Instream Water Reservations, Dam Safety, Federal Reserved Water Rights and the Water Resources Board. Copies of this information and application forms are available at the offices listed below. Applications should be submitted to the regional office located in the area of the proposed water use.

Department of Natural Resources

Public Information Center
3601 C Street, Suite 200
P.O. Box 107005
Anchorage, AK 99510-7005
(907) 762-2261
FAX: 762-2236

Division of Water
Southcentral Region
3601 C Street, Suite 822
P.O. Box 107005
Anchorage, Ak 99510-7005
(907) 762-2575
FAX: 562-1384

Southeast Region
400 Willoughby Avenue, 4th Floor
Juneau, AK 99801
(907) 465-3400
FAX: 586-2954

Northern Region
3700 Airport Way
Fairbanks, AK 99706-2703
(907) 451-2700
FAX: 451-2751

Mat-su/Copper Basin Area
1800 Glenn Hwy., Suite 12
Palmer, AK 99645

3/10/94

Sen. Mike Miller
State Capitol
Room 423
Juneau, AK. 99801

re: Bill # 299

Dear Senator Miller:

I have a small trailer park in Anchorage with my own well. Last year and again this year I received statements for $50 "Water Right Service Fee". When I called DNR and asked for justification, I received the run around. This year I decided to fight it. I am aware of your bill designed to rescind the original legislation.

CONSTITUENT CORRESPONDENCE

03-10-94 11:57 SY 2229 P.02

(2)

As a small business owner who has been hit in the last 3 years with a multitude of water quality tests, this fee was the last straw. From my point of view it looks like a capricious revenue producer without benefit of service. I strongly support your bill.

Sincerely

Skip Seeman
Green Acres Trailer Park
561-2229

Gary C. Newman
1083 Esro Road
Fairbanks, Alaska 99712
(907) 488-2001

June 9, 1993

Glenn Olds, Commissioner
Department of Natural Resources
State of Alaska
Juneau, Alaska 99801

Dear Commissioner Olds,

Thank you for your letter of May 28 regarding the water rights administrative fee (93-500503WA). I appreciate the additional clarification and the willingness to have the Fairbanks DNR office (Jack Kerin, Div. of Water) contact me regarding how we might alternately structure our permit. I also appreciate the willingness to consider the modification of the amount of the $25 late fee.

I must say that, after reading your letter, I thought your letter helped make my point that the $50 fee was inequitable. You stated in part:

"It has been determined that the collection of a fee of less that $50 is not economical due to the cost of computer programming, sending the bill, and processing the payment received."

This sounds that the bulk of the $50 charge is just for accounting for the $50 charge. If this is the case, it defeats the purpose.

You further stated:

"It is also a fact that of the 3200 permits and certificates subject to this fee not all of them will receive $50.00 worth of work each and every year. Some of the files will require hundreds of thousands of dollars worth of work while others may require only minimal work. However, due to the incremental activity of the service provided and infeasibility of charging for each activity, we have chosen a flat fee at the minimum level."

If you have 3200 permits at $50 each, you will receive $160,000 income. Apparently, with some or much of that income used up in just billing for the fee, the net income is much less. If some permits can cost substantial sums in the hundreds of thousands of dollars, as you state, you don't come close to recovering what you spend. However, logic would suggest that it ought to be fairly easy to differentiate between the large permit users and those that require only minimum activities. For example, if you have a new permit for the Ft. Knox gold mine, there will obviously be substantial work for the Division of Water, as opposed, in my case, to the water use from irrigation of a small farm. This is where I must raise the issue of equity.

While some folks decry government as wasteful, senseless and unnecessary, I have always believed in the public good that government can and should offer. However, this particular issue of which I became aware can only reinforce those who support the former view. I have also wanted to believe that an individual voice of reason can make a difference, which keeps me involved in issues of my community, our state and country.

Thank you for once again considering this issue. I wish you luck in your future endeavors when you leave Alaska.

Sincerely,

Cary C.

FROM:

DEPT. OF NATURAL RESOURCES
DIVISION OF WATER
PO BOX 107005
ANCHORAGE AK 99510-7005

ADL 402770

NCDONF

YOUR WATER RIGHT, ADL 402770, IS SUBJECT TO AN ANNUAL ADMINISTRATIVE SERVICE FEE, UNDER ADNR REGULATIONS 11 AAC 05.010 (a)(6)(B). BEGINNING THIS YEAR, YOU WILL RECEIVE AN ANNUAL BILL FOR $60.00 FOR MAINTENANCE OF YOUR WATER RIGHT. SMALL DOMESTIC USES OF 1500 GALLONS/DAY OR LESS ARE EXEMPT. IF YOU NO LONGER OWN THIS WATER RIGHT, FILL OUT THE REQUESTED INFORMATION ON THE BOTTOM OF THIS FORM AND RETURN IT IN THE ENCLOSED ENVELOPE. ANNUAL BILLS WILL BE MAILED WITHIN THREE WEEKS. IF YOU WISH TO RELINQUISH ALL OR PART OF YOUR WATER RIGHT, OR IF YOU HAVE OTHER QUESTIONS, CALL (907) 451-2736.

PLEASE PRINT

YOUR NAME:_____

DAYTIME PHONE:_____

NEW OWNER NAME:_____

DAYTIME PHONE:_____

ADDRESS:_____

GARY C NEWMAN
1083 ESRU ROAD
FAIRBANKS AK 99712

KEEP THIS COPY FOR YOUR RECORDS

Alaska State Legislature

SENATOR
MIKE MILLER
P.O. Box 55094
North Pole, Alaska 99705
(907) 488-0862

Senate District Q

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4976

Senate

SPONSOR STATEMENT
SB 299 - Repeal of Administrative Service Fee for Water

Senate Bill 299 would repeal the statutory authority of the Department of Natural Resources' Division of Water to charge an annual administrative services fee for water permit and water certificate holders.

The statutory authority for *administrative service fees* and for *water rights application fees* has been in existence since the 1960's. Implementation of that authority began approximately two years ago. The Department also received statutory authority from the Legislature in 1992 to charge a *water conservation fee*, for which regulations are being proposed. The draft regs for the *water conservation fee* (charged for removal of water from a hydrologic unit) propose a graduated scale based on the level of acre-feet of water to be removed. The *water rights application fee* is a one time charge, and is also on a sliding scale based on the amount of water to be used. The *administrative services fee* is a flat $50, charged annually. Users of 1500 gallons per day or less are exempt as well as state agencies and non-profits.

Approximately 2000 users are currently being charged the administrative services fee, generating about $100,000. Preliminary research into the reasons for this fee has prompted the introduction of SB 299. While $50 can be considered nominal by most standards, the justification is questionable. Administrative services that result in some tangible benefit to the user, such as adjudication of a water right, may be legitimate and in certain cases would probably warrant a fee significantly higher than $50. But for water rights holders either not yet using their water or not receiving a specific service, the fee appears unjustified. I would bring into question the appropriateness of charging an annual fee of each water user (of over 1500 gallons) when, according to the Department, the fee is covering substantial services for some while not providing any services in particular for others.

I appreciate the committee's consideration of Senate Bill 299.

SPONSOR STATEMENT

FISCAL NOTE

STATE OF ALASKA **BILL NO.** SB299

1994 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources

Title: "An Act providing that the commissioner of natural resources may not charge or assess a general administrative..." BRU: Resource Development

Component: Water Development

Sponsor: Senator Miller

Requestor: Senator Miller **Component Serial No.** 916

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	(90.0)					
TRAVEL	(5.0)					
CONTRACTUAL	(5.0)					
SUPPLIES	(5.0)					
EQUIPMENT	(5.0)					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(110.0)	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)	(110.0)	(120.0)	(130.0)	(140.0)	(150.0)	(160.0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	(110.0)					
1006 GF/MHTIA						
Other						
TOTAL	(110.0)	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: $ None

POSITIONS

FULL-TIME	-2	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

If this bill is enacted, the reduction to the FY95 operating budget is outline above. There would be no further reductions to the operating budget in future fiscal years, however, there would continue to be a lost revenue stream. See attachment for further analysis.

Prepared by: Ric Davidge, Director Phone : 762-2575

Division: Water Date : 18-Feb-94

Approved by Commissioner:

Harry A. Noah Date: 18-Feb-94

Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

FISCAL NOTE: DNR

SB 308

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

December 20, 1993

Duncan C. Fowler
State of Alaska Ombudsman
P.O. Box 113000
Juneau, Alaska 99811-3000

Dear Mr. Fowler:

I appreciate the opportunity to comment on your Preliminary Finding and Recommendations concerning Ombudsman Complaints AO93-4506 et al. about the state's Oil and Gas Lease Sale 78. I consider the oil and gas leasing program to be of critical importance for the economic well being of Alaska. The Division of Oil and Gas's current lease sale preparation process demonstrates that the division is very interested in obtaining public input prior to making a decision whether or not to hold a sale.

From the time an area is proposed for leasing there are no less than three calls for comments (designated C1, C2 and C3) issued by the division to those on its mailing list, for the sole purpose of obtaining data and information about the area. These calls for comments are mailed to government agencies, legislators, the media, and organizations and individuals who have expressed a desire to be on the division's mailing list. Information received by the division as a result of these calls for comments is used in preparing the best interest finding, in accordance with AS 38.05.035. In addition to these calls for comments, a preliminary best interest finding is issued for public comment three months prior to the final finding. The public is then given 30 days to comment on this document. Concurrent with the issuing of the final finding, the division mails out a sale announcement, which is given the widest possible distribution. These five public notifications of proposed sales take place over at least a two year period. Additionally, supplemental calls for comments and notices are sent out when necessary.

This is why I am most troubled by your report. Division staff have gone well beyond what the law requires; this you acknowledge in your report. But you also go on to say that the division is being "unfair" to the public. It is apparent to me that what this report is really saying is that the law is unfair. In all fairness, this report should make it very clear to the reader that it is the legislature, not the division, that is responsible for establishing and funding a fair public notification procedure.

My comments on your report consist of four sections: the first corrects factual errors and notes what I believe to be important omissions of information; the second discusses misconceptions I see in the three allegations; the third is my response to the eight recommendations, and their

effect on the division's budget; and the fourth, general conclusions. In addition, as an appendix to this letter, I am including an analysis of your report that was done at my request by the Attorney General's Office.

Before proceeding I would like to make a general comment about the report's structure. It appears to be criticizing the division instead of the framework within which the division has been given to work. Throughout, the division is criticized for not meeting your subjective standard of fairness, yet in the *Special Comments* section it is applauded for its efforts to go beyond the letter of the law. I would like to see this section placed at the beginning of the final report so that the reader will understand, up front, that the division in fact did exceed its statutory requirements in all cases, and that it has adopted policies, at its own initiative, which are intended to increase the scope of its public notices and to engender greater public participation in the lease sale planning process.

I. Factual Errors and Omissions:

P. 2; *Legal Authority*, Paragraph 4: The last sentence states that: "In other words, statutes require the department to give public notice only once prior to holding a lease sale -- 30 days before it issues the best interest finding." The statute actually requires two public notices for each lease sale -- one at least 30 days before it issues the best interest finding and a second at least 30 days before the lease sale itself is held.

Paragraph 5: The five-year plan does not state the location of tracts to be offered in a proposed lease sale, only the general area proposed for leasing. Specific tracts are identified much later in the evaluation process once land title, environmental and socioeconomic factors relative to the potential sale area have been evaluated.

P. 3; *Call two and the supplemental call*, Paragraph 2: The date for the close of the comment C2 period was stated to be September 1, 1991. The comment period was extended to April 30, 1992 in the supplemental Call for Comments dated October 22, 1991.

P. 4; *Compliance with the statutory notice requirement*: The division also published a copy of its public notices in the Alaska Administrative Journal.

P. 5; *Public Hearing*: Approximately 80 people attended the hearing; 27 testified against the lease sale, two testified in favor.

The final consistency determination and best interest finding: It should also be mentioned that there was no request for elevation to the director of the final consistency determination by any of the affected boroughs, municipalities or state resource agencies.

The director and the commissioner do not issue final findings concurrently. The director issued the final finding and the commissioner concurred with that finding.

The Complaints, Paragraph 1: The division did not hold a public hearing; the Kenai Peninsula Borough held its own hearing and, under AS 38.05.946, the commissioner's designee (in this case, personnel from the division) attended the hearing. Again, of the 80 in attendance, 27 testified in opposition to leasing, two testified in favor.

P. 7; *Oil and Gas Director Jim Eason*, Paragraph 1: Letters to industry

requesting nominations are sent every two years. Industry comments are evaluated with the division's own geological and geophysical data.
The statement that the division never increases the sale area unless the acreage is exempt is not, strictly speaking, accurate. Exempt additions are made only within the two year window prescribed under AS 38.05.180(c). Nonexempt acreage can be added at any time prior to the two year cutoff.

Paragraph 3: The commissioner has 10 days in which to act on a request for reconsideration, if filed on the 20th day after the release of the decision. According to 11 AAC 02.020, a decision for reconsideration must be made within 30 calendar days after the date of delivery of the decision.

Paragraph 6: For one of the two sales cited in this statement, Sale 75A, the entire surface estate was owned by the Kuukpik Village Native Corporation. This private land owner was on the division's mailing list and was notified of each step of the lease sale preparation process.

Paragraph 7: The statement that "the division is sued over nearly every lease sale" is inaccurate. Since September 1985, the division will have held 28 oil and gas lease sales (including Sale 78). Of these, the division has been sued over only six-- Sales 50, 55, 74, 57, 75A and 78, roughly a quarter of the sales. The litigant for Sale 74 was a private individual, and the case was eventually dismissed by the Court. The litigants for Sales 57 and 75A are attempting to reach an out-of-court settlement with the state.

P. 8; *Division sale manager Jim Hansen*, Paragraph 2: There has been only one division director since 1986. Commissioner Heinze added two tiers of townships south of the Seward Base Line. Division staff prevailed upon Commissioner Heinze to add three additional township tiers below this line, not at industry's urging, but based on industry nominations of acreage to be included in a lease sale.

Paragraph 3: A set of maps was also sent to the Mat-Su Borough and the Municipality of Anchorage.

P. 11: *Comments from the environmental community*, Paragraph 7: It should be clarified that the legislature only designated the offshore portion of Kachemak State Park in its determination of lands which may not be offered for oil and gas leasing. The onshore portions, originally included in the sale, do not carry any provisions that prohibit leasing.

P. 15: *Fairness*, Paragraph 2: The 48 tracts withdrawn included both private and state-owned land.

II. Allegations:

Your report addresses only the period after issuance of the preliminary best interest finding for Sale 78, and concentrates on the fact that the division did not individually notify each property owner who might be affected. However, the division solicited public comment numerous times during the years preceding this proposed sale. The sale was added to the five-year leasing program in 1990. In October 1989 the division asked for comments on this proposed addition. In February 1991 a call for general comments was issued, a supplemental call for comments was issued in October 1991 when the lower Kenai peninsula acreage was added, and a request for specific socioeconomic and environmental information was issued in October 1992. All of these requests for public comment went to the individuals and groups who had previously requested to be on the mailing list for Cook Inlet sales, or who had been added to the list at the division's behest, such as Kenai Peninsula fishing organizations. After issuance of the preliminary best interest finding in July 1993, division staff attended a public hearing in Homer and a meeting in Ninilchik. Additionally, Director Eason and I held informal meetings with residents of Homer and Kenai. At the request of Kenai

Peninsula Borough Mayor Don Gilman, staff from the division as well as the Attorney General's office met with concerned property owners in Nikiski in December. The division believes that its efforts to obtain public comment on Sale 78 were extensive.

The division has instituted the policy of distributing its large tract maps free of charge to municipalities and boroughs within sale areas. These maps will then be available to members of the general public who desire more detailed information on the land being offered for lease than can be shown on the 8-1/2 by 11 inch maps included with notices of sale.

III. Recommendations

Your report has been useful from the standpoint that it has caused us to review the division's leasing procedures to determine what steps can be taken now to increase public awareness. Operating within today's fiscal restraints, the division has already begun scheduling public hearings in local communities and will be utilizing display ads in statewide and local newspapers announcing calls for comments and notices for upcoming sales. In addition, the department has recommended modification of Title 38 that will allow for more flexibility in the sale schedule.

Recommendation 1; Placing the five-year plan notice and comment process into statute: This would lock the division into procedures that it may need to change in the future, particularly if declining oil revenues result in budget/staff cuts. Typically, the early notices given by the division draw few comments. Substantive comments are generally given only after the preliminary best interest finding has been published, and mitigation measures have been proposed. The mailing list for each sale area is extensive, and includes the names of people who have commented on earlier sales. Everyone on the list is sent all notices, including the early notices.

Recommendation 2; Publishing notices as display ads: The division's contractual services budget for the Leasing/Evaluation project was $163,800 in FY '93. The amount of money actually allocated for advertising oil and gas lease sales was roughly $12,000, or 7% of the total. In FY '93, the division's leasing staff worked on 13 oil and gas lease sales and publication of the five-year oil and gas leasing program. The division issued 21 separate informational mailings including two C1s, two C2s, five C3s (including supplementals), three preliminary notices, and nine sale notices (including supplementals). With the reality of the division's current allocated funding or contractual money, it will not be possible to run display ads to the extent recommended in your report. In order to adopt this recommendation in its entirety, the division would be required to seek a substantial increase in its annual contractual services budget from the legislature. Considering the economic realities, it is unlikely an increase in funding will be granted.

Within the constraints dictated by allocated funding, the division will be able to increase its level of public notification. Publications of public notices for calls for comments or a limited number of display ads running concurrently with legal notices in local papers can be accomplished by stretching existing financial resources. These additional advertisements would only be accomplished when and where the division deemed it necessary and prudent, and if funds are available. The division will also strongly encourage local governments to advertise proposed lease sales in an effort to gather comments and to identify concerns of local residents for the formulation of their official response to the proposed sale.

Recommendation 3; With respect to your recommendation that the preliminary finding comment period be extended to 90 days, a more flexible and preferable

alternative would be passage of the department's bill to allow a lease sale to be postponed longer than 90 days after the quarter in which it is scheduled. While an extended comment period might be advisable for controversial sales, it may not be necessary for non-controversial sales. Passage of this legislation will give the division the ability to extend public comment periods without fear that a sale will have to be postponed for two years. Amending the statute to extend the comment period would apply to all lease sales, even those that do not generate public opposition.

Recommendation 4; Individual letters to all private landowners of record: The considerations in responding to this recommendation are similar to those raised in response to the second recommendation, in that the legislature is the only body that can change state law and allocate sufficient funds for the associated costs.

You should be made aware, however, that the costs of even a bare bones program may still be prohibitive. As referenced in your report, the division has already performed an analysis which assesses costs for sending notices via certified mail, at each step of the lease sale process, to all land owners "affected" by a sale. For Sale 78, this analysis indicated that the personal notification costs would have been close to $2.9 million[1]. The division currently holds from three to seven oil and gas lease sales per year. Even adjusting for the fact that not all sales involve the complex land ownership issues found in the Cook Inlet basin, the annual costs would still be significant, and would likely exceed the division's entire operating budget.

If, as your report suggests, the division were to send all notifications by regular mail[2] and limit personal notification to known affected property owners at the time of the third call for comments, notice of intent to issue a best interest finding and the notice of sale, anticipated costs could be reduced by approximately 77%. However, this would still require an estimated expenditure of at least $690,000 in FY '95 in addition to the division's existing notice costs.

Even if the legislature were to authorize and fund this recommended notification procedure, the ability of the division to accurately identify affected landowners and effectively notify them is still questionable. The division's capability to know who is to be notified is limited by the accuracy and accessibility of records at local municipal platting and recorders offices. Currently, only the Kenai Peninsula Borough has the computer capability to sort land records by legal description to determine the corresponding property owners. Because of this limitation, the manual effort to determine who should be a recipient would be Herculean at best. Property ownership changes on a daily basis; the only way to ensure that notification is sent to those who need it would be to notify everyone within affected borough or municipality service areas.

Aside from the legislature's responsibilities and costs for personal notification, I have several concerns with this recommendation. First, it appears to confuse the public's right to notice regarding disposal of publicly owned natural resources and the legal relationship between the surface and the subsurface land owners. The state clearly fulfills its responsibility under the

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[1]These costs were determined assuming that the title information would be supplied by the municipalities and boroughs. Additional land research by the department would significantly increase costs.

[2]certified mail was the preferred method of the two members of the legislature who originally proposed the requirement.

constitution and state law in providing the public notice of its planned oil and gas lease sales. This recommendation, however, suggests that because the state is the lessor of the underlying mineral estate, it owes some higher standard of notification to overlying surface estate owners than to other, private landowners. Nowhere in state, federal or common law is this right to extra notification, expressed or implied. The intent of the public notice clause of the state constitution is to provide all state residents with an equal opportunity to become involved in the decision making process regarding publicly owned resources. To allow certain property owners a separate and additional personal right of notification would give them inequitable influence in the process and may violate Article Eight, Section 17, of the state constitution.

Second, this recommendation lacks a clear or realistic definition of to whom personal notifications are to be sent. It makes several statements attempting to define groups of property owners that should receive notice, though each effort defines a potentially different group. The recommendation did appear to limit itself to property owners who had property directly over the oil and gas estate to be leased. However, it could be argued that owners of property adjacent to, or even in close proximity to, lease tracts might be affected by an oil and gas lease. Then it would also be reasonable to argue that these property owners have a similar right of notification. Therefore, if personal notifications are to be sent, the only prudent and fair position would be to err on the side of caution and send notification to the largest set of potentially affected property owners within the leasing area, rather than the smallest.

Lastly, local municipalities and boroughs, the most obviously qualified and prepared organizations to be involved in any personal notification effort, are in no way addressed in the recommendation. These local governments possess all the information regarding the existence of private property within their boundaries, as well as the ownership, use, and existence of sensitive issues that might exist within the communities. They were also organized as political subdivisions of state government with the responsibility of providing local services, including the assessment of local citizens' concerns regarding government actions within the municipality and borough borders. Any program to provide personal notification to local property owners must involve these governmental bodies in order to be economical and effective.

Recommendation 5: Require department to hold public hearings: AS 35.05.946 requires municipalities, boroughs, or regional corporations to hold hearings on DNR disposals, and the commissioner of DNR is required to attend those hearings. There is a concern within the division that requiring the department to also hold public hearings could result in unnecessary multiple hearings in certain communities. To alleviate this possibility the department will be contacting the local governing bodies to propose a jointly-held public hearing prior to each lease sale.

Recommendation 6; Revision of mailing list: The division rarely revises its mailing list and does so only to remove recipients who are no longer interested in receiving information or whose addresses are no longer valid. The division's budget is limited and this is done periodically in order to be fiscally responsible.

No recipients are removed from the mailing list until after the division has first sent a letter asking whether they wish to remain on the list. If they decline or if no response is received, then the name is reviewed for possible removal. If the unresponsive recipient has been actively involved in the sale review process then that name remains on the list.

Also, the division works year-round preparing for a number of oil and gas lease sales. Calls for comments, notices or supplemental mailings are sent to recipients on a regular basis. One could argue that any time during the year is always right before an important mailout. That being said, the division will, to the best of its ability, avoid editing its mailing lists immediately prior to

what it considers to be important information mailings.

Recommendation 7: Ensure comment period does not fall during major commercial or subsistence harvest period: The division has taken the step of scheduling future Cook Inlet sales in July. The preliminary best interest finding (PBIF) would then be available in January, with the public comment period ending in February. There are three lease sales per year scheduled for the months of April, July and November. These months were selected in order to spread out over a number of months the staff workload involved with administering state leases, which includes such actions as collection of rental fees, approval of assignments and others.

Since the PBIF is made available approximately six months prior to each sale, comment periods for the April and November sales would occur during September/October and May/June. For the North Slope and Beaufort Sea sales, these time periods coincide with the subsistence harvest of bowhead whales, caribou and seals. The only times Natives on the North Slope are not involved in some form of subsistence harvest is from December through February. Therefore, if the division accommodates commercial fishermen in Cook Inlet, it will not be possible to schedule sales around subsistence activity in other regions of the state.

Recommendation 8: Provide tract maps to affected communities: This recommendation asks that the division make every effort to see that tract maps are easily available in affected communities. The division has already implemented a program of providing local boroughs and municipalities with preliminary and final copies of protraction diagrams (small scale tract maps). The $50 fee for these maps will continue to be waived under 11 AAC 05.010(c)(3). Additional funding would need to be provided by the legislature before the division would be able to provide these maps to every potentially affected community.

Further, the division has contacted local boroughs regarding the possibility of providing tract location information early in the leasing process so that the platting offices can incorporate tract boundaries on their computer databases. Local governments with platting authority would then have the capability of producing composite maps showing oil and gas tracts in comparison to local land use and ownership patterns. This would also provide the local governments with the information needed to effectively gather residents' comments for formulation of the borough's response to the division.

IV. Conclusion:

A major consideration which this report fails to address is the role local government should have in informing its residents of proposed leasing activity. the boroughs and municipalities are fully informed of lands to be included in a lease sale, and are involved throughout the decision making process. Both have easy access to vast amounts of cultural information such as local landmarks, roads, platting and ownership that would presently be difficult, if not impossible, for the division staff to acquire in order to produce maps. And, as the local land management experts, their staffs are aware of sensitive local issues and of land status. It should be remembered that borough and municipal governments were, in part, established in order to act as an intermediary between the local residents and state government.

In summary, I believe the complainants', as well as your recommendations are misdirected. The division has gone beyond the statutory requirements and is making every effort to involve the public. It has consistently sought to increase public participation, notwithstanding a declining budget, and it has on its own initiative expanded the types of notice given, as well as the frequency of those notices and sale-related findings. Those facts do not support findings of unfairness. However, should they be found to be unfair, the conclusion that

must follow is that the law is unfair. You cannot have it both ways. You cannot find that the division has exceeded the requirements of the law, but that it must do yet more in your view to be fair, without concluding that the legislature is unfair. Necessarily, that result would lead to your redirecting your recommendations to the legislature, where they properly belong. As Representative Kay Brown said, "In determining what is 'fair' look first to the statute. It establishes the legislature's policy. If people don't like it, they should complain to the legislature."

As to whether the division's notice and comment process provides for meaningful public participation in the lease sale process, the facts speak for themselves. The notice was certainly effective in generating the requests for the Ombudsman review; it was equally effective in mobilizing 30 local residents to attend the hearing held in Homer, as well as a greater number of residents at the later hearing in Ninilchik; and it was effective in eliciting the numerous letters and phone calls to date to the division, the Commissioner and the Governor's office. It was also effective in that those comments led to the withdrawal of numerous uplands tracts near Homer, the adoption of additional mitigation and Terms of Sale provisions in the Final Finding, and other outreach efforts in response to public concern. Under the circumstances, it is difficult to make the case that the process has not encouraged public participation in the lease planning process.

By its own admission, the Ombudsman's Policy and Procedures Manual at 3040(3) defines unfair as:

"...implies that the act was violative of some principle of justice..." Nevertheless, the report characterizes the division's actions as "unfair" without defining the principle(s) of justice supposedly violated.

In its discussion of fairness, the Report notes "...Until the division released its preliminary finding, all but one of the complainants was unaware of the division's plans to hold Sale 79. This suggests that the division's efforts at broad public notice, however much it exceeded the statutory minimum, failed to reach a large segment of the public." Based upon this premise, the Ombudsman then determined the division's notice to be inadequate, and therefore, unfair. However, the premise is imply unfounded. Unless the Ombudsman can demonstrate that it received complaints from a "large segment of the public", it cannot infer that a large segment was uninformed. The 21 complaints received by the Ombudsman cannot be characterized as a "large segment" relative to the total number of private landowners throughout the sale area. Unless it can demonstrate such a relationship, it cannot support the conclusory statement that "...surface owners were therefore deprived of an opportunity to comment on the proposed action."

In discussing whether the division acted "fairly" in encouraging public participation in the lease sale planning process, the Report considered the statutory provisions governing the holding of hearings, noted that requiring an affected community to request a hearing indicates a bias in favor of the state over the public and concluded "This is improper." The propriety of that requirement is a matter of legislative policy. The legislature explicitly chose that scheme when it enacted the statutes governing oil and gas leasing. The Ombudsman cannot sustain a finding that the division is unfair for implementing the statutory scheme which the legislature has adopted.

Sincerely,

Harry A. Noah
Commissioner

enc.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

December 20, 1993

Duncan C. Fowler
Ombudsman
P.O. Box 113000
Juneau, AK 99811-3000

Re: Investigative Report Oil & Gas Lease Sale 78

Dear Mr. Fowler:

At the request of the Department of Natural Resources (DNR), the Department of Law has reviewed your preliminary investigative report concerning Oil and Gas Lease Sale 78 (Lower Cook Inlet) and DNR's response to your report. After reviewing these documents, we concur with DNR's evaluation and comments. We also feel, however, that it is necessary for us to address further your preliminary report's discussion of the Title 38 notice requirements. Overall, the structure of your preliminary report is misleading. Your report obscures the fact that not only did DNR fully comply with the notice requirements as set out in the statutes, but that DNR in fact went far beyond those requirements.

Pursuant to Alaska Statute 38.05.945(b), DNR is obligated to provide notice of its intent to lease lands for oil and gas exploration and development at least 30 days before the lease sale by "publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action." AS 38.05.945(b). Additionally, DNR must provide notice in one or more of the following methods:

> (1) publication through public service announcements on the electronic media serving the area affected by the action;
>
> (2) posting in a conspicuous location in the vicinity of the action;
>
> (3) notification of parties known or likely to be affected by the action; OR
>
> (4) another method calculated to reach affected persons. A notice shall contain sufficient information in commonly understood terms to inform public of the nature of the action and the opportunity of the public to comment on the action.

AS 38.05.945(b) (Emphasis added).

As noted in your preliminary report on page four, DNR fully complied with the requirements set out in AS 38.05.945(b). DNR complied with the statutory notice requirements by publishing notice in local and statewide newspapers, in addition to the Alaska Administrative Journal. Additionally, DNR chose to provide notice by not only sending a public service announcement to statewide and local electronic media, but by: (1) providing local postmasters and libraries with notices for conspicuous display; (2) sending notice of its intent to lease the Sale 78 acreage to all government agencies in the affected area including the mayors, borough representatives, and legislators; and (3) sending notice of its intent to state and federal agencies, companies, groups and individuals on its mailing list maintained pursuant to 11 AAC 88.150, in addition to those requesting a copy or responding to previous calls.

As your preliminary report tacitly acknowledges, DNR fully complied with the statutory notice requirements. We feel, however, that the structure of your report obscures this reality and, in fact, blames DNR for any perceived problems, by continually criticizing DNR for being "unfair." This is the fundamental problem with your report, and to correct it we recommend that you restructure the report to: (1) identify the concerns raised by the complainants; (2) outline the legislatively enacted notice requirements; (3) explain that DNR fully complied with those requirements and give DNR credit for fulfilling its obligations under the law; and (4) present your "recommendations" as suggested legislative initiatives which the complainants are free to direct to their legislators.

Your final report should make it clear that the legislature, not DNR, is responsible for establishing statutory notice requirements and providing the funding to fulfill those requirements. Your preliminary report, as written, misleads by suggesting that DNR has some control over the creation of statutory requirements and allocation of money. In the interest of fairness, we trust you will correct this problem in the final report.

Finally, we must respond to a misquote of Barbara Fullmer, one of the Assistant Attorneys General with whom your investigator consulted. On page nine of your preliminary report you quote Ms. Fullmer as saying that "the subsurface's dominant status allows the state not to give notice to surface owners about actions affecting the subsurface. 'The issue of notice is so moot it doesn't come up.'"

Ms. Fullmer specifically recalls telling your investigator that when the estates are severed, no need exists to notify the other estate owner about transactions that do not affect

the other estate. For example, leasing or selling of mineral rights does not affect the surface estate. Ms. Fullmer provided a copy of an article discussing surface/mineral estate owner disputes, showing the type of issues which require notice (leasing or title transfers not being one) and even referred your investigator directly to AS 38.05.130, which provides that when rights are exercised (i.e., when dirt is moved and the surface estate is actually affected), the surface owner must not only be notified, but reasonably compensated for all damages sustained by reason of entering upon the surface estate. Your report fails to discuss with any significance the surface/mineral estate relationship with respect to leasing or transfer of title to either estate. Moreover, although Ms. Fullmer acknowledges telling your investigator that the issue is so moot that it does not even come up in oil, gas or mining law, the "it" Ms. Fullmer clearly was referring to was LEASING or title transfers, not just any action affecting the mineral estate.

We hope you will consider seriously our suggestions, as well as those submitted by DNR, when preparing your final report. If the Department of Law can provide any further assistance in this matter, feel free to contact the attorneys in the Oil, Gas, and Mining section in Anchorage.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

CEC/KWP.sb

cc: Harry Noah, Commissioner, Department of Natural Resources

State of Alaska
Ombudsman
Duncan C. Fowler

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January 18, 1994

Senator Rick Halford, Senate President
Capitol Building, Room 111
Juneau, Alaska 99801

RE: Final Investigative Report on Ombudsman Complaints A093-4506 et al.

Dear Sen. Halford:

I released the final investigative report about several complaints received against the Division of Oil and Gas today. The investigation found that state laws and division informal procedures governing public notice and opportunity to comment on proposed lease sale 78, which is in the Kenai Peninsula area, did not provide adequate and reasonable notice to those most likely to be affected. The report cites as unfair the lack of notice to individual landowners most likely to be affected by eventual oil development, the short 30-day comment period following issuance of the preliminary best interest finding and the difficulty of obtaining tract maps in the lease sale area, among other features.

You need to know the division not only complied with the law, but it went further than what the law required it to do in giving public notice. But those efforts, as commendable as they were, shortchanged the public's ability to participate in a meaningful way in the oil lease sale planning process. State statutes need to be changed to provide better notice.

This letter summarizes the investigation and provides the highlights of the report's analysis and my recommendations. The enclosed report contains the details of the sale, legal background and my investigation. Because the department has declined to request changes in statutes governing public notice on oil lease sales, I am making several recommendations directly to the legislature.

Twenty-one individuals critical of the way the Division of Oil and Gas was handling proposed lease sale 78 contacted my office in mid-August 1993. They alleged:

Allegation 1: The division has unfairly failed to give notice to private owners of land in the proposed lease sale 78 area.

Allegation 2: The division unfairly failed to provide public notice of the proposed lease sale 78 by failing to make its published maps of the affected area broadly and easily available to the public and by failing to provide sufficient information in commonly understood terms on its published maps to inform the public of the action and the opportunity of the public to comment on the action.

Allegation 3: The division unfairly failed to provide for meaningful public participation in the lease sale planning process.

It was clear from the outset of the investigation that the division met or exceeded statutes for providing notice and the opportunity for public comment on proposed oil lease sales. However, the ombudsman is empowered by statute to review the fairness of agency administrative acts. For that reason, the three allegations were analyzed first to determine the division's conformity with the law and, second, to determine the overall fairness of those acts even though the informal notice and comment process the division uses complies with the law and expands upon it.

Analysis of allegation 1: The division has unfairly failed to give notice to private owners of land in the proposed lease sale 78 area.

Conformity with the law

AS 38.05.945(b)(3), which provides that the division given notice to "parties known or likely to be affected" by a proposed action, is not mandatory. Rather, it is only one of the division's notice options. In the case of sale 78, the division published notices in local and statewide newspapers more than 120 days before the director released his final decision. It also sent public service announcements to radio stations and notices to all area post offices for posting. Division Director James Eason said the division sought to reach other affected persons by mailing notices to persons on its mailing list and to all local, borough and state elected representatives. The division met the legal requirements of notice in AS 38.05.945(b).

Fairness

Until the division released the preliminary finding, all but one of the complainants was unaware of the division's plans to hold sale 78. This suggests that the division's efforts at broad public notice, however much this exceeded the statutory minimum, failed to reach a large segment of the public. As a consequence, affected surface owners were unaware that leasing might take place under their property. The complainant surface owners were therefore deprived of an opportunity to comment on the proposed action. Many did comment after the release of the preliminary finding when press accounts and local government action raised the level of public awareness about the proposed sale. However, up to that point, the surface owners were deprived of an opportunity to affect the division's decision making. Perhaps more than any other segment of the public, the surface owners had a personal stake in the division's decision. It was therefore essential that the division notify persons in this group about the proposed action.

It is true that the commissioner withdrew 48 tracts, including both private and state-owned land, where leasing was proposed under private land. However, had the commissioner decided differently, the complainants could be facing the real prospect of having to allow lessees entry onto their land to drill for oil without having had notice or the opportunity to comment at a point where they could still affect the department's actions. Good public policy would accord surface owners notice and an opportunity to be heard during the decision-making phase of a proposed state action.

Conclusion

The department and the division's actions complied with common law and statute. However, both the statute and informal process under which they acted were unfair because they did not provide a method of giving adequate and reasonable notice to the complainants. On balance, I find the equities lie with the complainants. Because I find that the division exceeded the statutory requirement but the statutory and informal process were unfair in not providing adequate and reasonable notice to the complainants, I find this allegation partially justified.

Analysis of allegation 2: *The division unfairly failed to provide public notice of the proposed lease sale 78 by failing to make its published maps of the affected area broadly and easily available to the public and by failing to provide sufficient information in commonly understood terms on its published maps to inform the public of the action and the opportunity to comment on it.*

Conformity with the law

Under AS 38.05.945(b), "[a] notice shall contain sufficient information in commonly understood terms to inform the public of the action and the opportunity to comment on it." Some complainants objected that the small-scale tract maps the division published failed to meet this standard because they were hard to read and did not show proposed tracts in relation to common landmarks such as roads.

The division met the notice requirements of AS 38.05.945(b) before it published the tract maps. Thus it was not legally obligated to give additional notice "calculated to reach affected persons" under AS 38.05.945(b)(4). Because the division's maps contained the statutorily required information and because it exceeded the notice requirements by publishing the maps, the division clearly met the legal standard.

Fairness

The division is under no legal obligation to provide detailed maps of a proposed sale area to the public. Fairness, however, dictates that the division make an effort to inform the public exactly where leasing may occur so individuals can offer informed comment. The first time south Kenai peninsula residents saw a detailed map of the sale area was at the August 12 public hearing in Homer. Until then, the division had published large-scale maps of the initial sale area and a large-scale map that showed the general location of the proposed tracts. The division made small-scale tract maps and tract legal descriptions available at a cost of $50 plus $3 postage on July 15.

Complainants who attended the public hearing reported seeing the maps and learning for the first time that the subsurface under their land was proposed for leasing. Other complainants reported trying to find out whether their land might be affected by drilling and being unable to find a map set in Homer. Many were affronted at the high cost of the maps.

Both the commissioner and the director said they rely on specific public comments in considering whether to proceed with a sale. All published maps of the sale area

available before July 15 are so vague as to be useless. Absent access to a map that conveys meaningful information, the public cannot hope to offer the division the specific comments it values.

Conclusion

The division gave "sufficient information in commonly understood terms" to inform the public of tract locations, but it failed to make the information widely and easily available to the public. As a result, complainants who stood to be most affected by the proposed action could not find out whether the land under their property was proposed for leasing. While the division's actions exceeded statutory requirements, the statute and informal process were unfair in not providing adequate and reasonable notice to the complainants because the maps were not widely and easily available. I therefore find this allegation partially justified.

***Analysis of allegation 3:** The division unfairly failed to provide for meaningful public participation in the lease sale planning process.*

Conformity with the law

The legislature requires public notice of a proposed lease sale at least 30 days before a best interest decision under AS 38.05.035(e). That notice must be published in local and statewide newspapers. The division must also give notice in one or more ways set out in AS 38.05.945(b)(1-4). Since 1979, the division has on its own initiative established a more far-reaching notice and comment process. This process, set out in the five-year plan, commits the division to giving notice via a series of calls for comments and publication of the preliminary best interest finding. The process commonly takes as long as four years. In the case of sale 78, the process took a year and 10 months from the time the lower peninsula acreage was added until the complaints were filed.

It is indisputable that the division exceeded its statutory mandate in providing notice and soliciting comment on proposed sales. The division is to be commended for its initiative in instituting the notice and comment program.

Fairness

Despite the division's best efforts, problems exist with the notice and comment process. Interviews with individual complainants reveal that few complainants heard about the sale before the preliminary finding's release. This suggests that the division was unsuccessful in notifying the general public in an affected area of the proposed sale.

Certain features of the informal process developed and currently in use by the division are barriers to meaningful public participation in the lease sale process. One is the reliance on publishing the calls for comments in the legal notice section of the newspaper. Another problem is the length of the comment period. As one complainant said, 30 days is insufficient for the media and word of mouth to spread the news before comments are due. Another weakness in the process is the statutory requirement that affected communities request a public hearing before one will be held in their community. This assumes that local representatives will respond to public demand, and division personnel

will coordinate with local representatives to schedule a hearing early in the 30-day comment period. Since the burden is on the community to request a hearing, one may not be held until near the end of the 30-day period. The hearing held in Homer took place only five days before the end of the comment period, and public pressure to extend the period was so intense the commissioner extended it a week.

Conclusion

The division far exceeded the statutory notice requirement and has, on its own initiative, instituted a notice and comment process that encourages public participation in the lease sale process. Certain features of the process, however, were unfair to the complainants. These features limited adequate and reasonable notice or limited adequate opportunity for complainants to comment on the proposed action. Because neither statute nor the division's informal process required publication of display advertisements, the public comment period was limited to 30 days, tract location maps were only limitedly available during the initial 30-day comment period and the burden fell on affected communities to request a public hearing, I find this allegation partially justified.

FINAL RECOMMENDATIONS

(1) The division's existing informal notice and comment process should be placed in statute.

Section VIII, article 1 of the Alaska Constitution gives the public an interest in the development of state resources. A public notice and comment process allows the state agency to communicate with the public and the public to express opinions on the proper development of state resources. The division has followed its notice and comment process since voluntarily instituting it in 1979. Placing the process in statute will lend credibility to the agency's public interest decisions.

(2) The new statutory notice and comment process should require concurrent publication of notices in the newspapers as display advertisements and as legal notices. The new process should require publication of display ads for seven days.

(3) The new statutory notice and comment process should extend the preliminary finding comment period to 90 days.

(4) The department should contact representatives of local governments to schedule jointly held public hearings in affected communities prior to each lease sale.

This recommendation was modified at the department's suggestion after it proposed the new program of organizing public hearings on lease sales.

(5) The division should time the release of its preliminary finding so that the comment period does not fall during a major commercial or subsistence harvest period.

The entire sale 78 comment period came during the peak fishing season. This put commercial and subsistence fishers at a considerable disadvantage in filing comments.

(6) The division should make every effort to see that tract maps are easily available in affected communities. The division is allowed by 11 AAC 05.010(a)(16)(H)(c) to waive the $50 tract map fee for federal, state or municipal agencies. The division should send tract map sets free of charge to state and local agencies in a sale area, especially when the division proposes to lease under private land. The division should make tract map sets available to the public as soon as the maps are prepared.

Because the department declined to ask the legislature to amend the notice and comment statutes and has already implemented or agreed to consider further some of the recommendations made in this report, the investigation will be closed as partially rectified. I agreed with the division that many practical, financial and possible legal consequences make giving direct notice to affected landowners unworkable. I therefore withdrew an earlier recommendation that the division give owners of property overlying known tracts direct notice. A revised statutory notice process that incorporates many of the features of the division's existing informal notice and comment process remains a goal.

I recommend the legislature enact final recommendations 1, 2 and 3 into law.

If I can be of any assistance to you or your staff in answering questions about the report or my recommendations, please call me at 465-4970.

Sincerely,

Duncan C. Fowler
Ombudsman

DCF:JFC:pjc
Enclosure: Investigative report

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
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January 19, 1994

The Honorable Mike Miller
Alaska State Legislature
Room 423
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Miller:

The Alaska State Ombudsman recently issued his final Investigative Report related to a number of complaints regarding the procedures used by the Division of Oil and Gas for public notice, comment and participation in Lease Sale 78. The Ombudsman noted, "The Division not only complied with the law, but went further than what the law required it to do in giving public notice...but those efforts, as commendable as they were, have short-changed the public's ability to participate in a meaningful way in the oil and gas lease sale planning process. State statutes need to be changed to provide better notice." The Ombudsman provided six specific recommendations which he believes should be implemented "...to enhance the public's ability to participate in lease sale planning."

As the substance of the Ombudsman's investigation and its recommendations are likely to be the subject of hearings and potentially new legislation affecting the state's oil and gas leasing program this session, I believe it is important that you have a full understanding of the basis for the Ombudsman's conclusions, as well as the Departments of Natural Resources' and Law's written responses to the draft report which preceded the final Investigative Report. Accordingly, I have enclosed a number of documents which I urge you to read in their entirety. They include:

1. State of Alaska Office of the Ombudsman Investigative Report of Department of Natural Resources Division of Oil and Gas, Ombudsman's Complaints A 093-4506 et al. dated January 18, 1994.

2. January 18, 1994 letter from Duncan C. Fowler, State of Alaska Ombudsman, to Senate President Rick Halford regarding Final Investigative Report on Ombudsman's complaints A 093-4506 et al.

3. January 18, 1994 press release from the Office of the Ombudsman, subject: Division of Oil and Gas Lease Sale 78 Investigation.

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4. December 20, 1993 letter from Commissioner Harry Noah to Duncan Fowler responding to the draft Ombudsman's report on the Sale 78 investigation.

5. December 20, 1993 letter from then-Attorney General Charlie Cole to Ombudsman Duncan Fowler regarding the draft Ombudsman's report on the Sale 78 investigation.

I would be happy to discuss any of the Ombudsman's conclusions and recommendations, as well as our responses to those, at your convenience. Please feel free to call.

Sincerely,

James E. Eason
Director, Division of Oil and Gas

Enclosures

cc: Harry A. Noah, Commissioner, DNR
Bruce Botelho, Attorney General, DOL

Marathon
Oil Company

P.O. Box 3128
Houston, Texas 77253
Telephone 713/629-6600

February 7, 1994

Mr. Howard Weaver
Editor
Anchorage Daily News
1001 Northway Drive
Anchorage, AK 99508

Dear Mr. Weaver,

The court decision staying oil and gas Lease Sale 78 in the Cook Inlet is disappointing for Marathon Oil Company and our Alaska-based employees and contractors. Marathon helped pioneer Alaska's oil industry, and, excluding the North Slope, we have been one of the leading producers of oil and natural gas in Alaska for nearly four decades. Our future in Alaska hinges on our ability to prolong and extend our operations on the Kenai Peninsula and Cook Inlet.

During the past several years, we have completed major capital investments which will enable us to increase sales of natural gas. We have also added personnel in Alaska. The aim is to extend and expand the potential of our existing production operations and evaluate the exploration potential of the Cook Inlet. We believe that increasingly sophisticated technology will allow the industry to compensate for the natural production declines as long as new lands are made available. It is vital then, to have a consistent, predictable leasing schedule.

Without the opportunity to replace existing production with new reserves, our industry will become no more than liquidators of a declining production base. This will obviously influence our thinking related to both staffing and investment levels. With nearly 85 percent of the state's revenues coming from a declining petroleum resource base, the State of Alaska has a significant stake in the future of our industry. To deny industry access to state lands today, is to curtail Alaska's greatest source of potential revenues tomorrow.

I do not question the legitimate concerns of fishing and environmental interests. But I believe that reasonable people and sound regulation can accommodate the interests of the petroleum industry, the fishing industry and the people of Alaska in an environmentally sound way.

Governor Hickel is to be commended for his condemnation of the delay of Sale 78 and for his aggressive actions to seek possible legislative solutions. Every citizen who supports sound, responsible development of Alaska's oil and gas resources, should join the governor in seeking a quick legislative solution by calling or writing Alaska's representatives and senators and giving them your perspective.

Yours truly,

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-2105

MEMORANDUM February 9, 1994

SUBJECT: Draft bill relating to modification of certain administrative procedures (Work Order No. 8-LS1689\A)

TO: Senator Mike Miller, Chair
Senate Resources Committee
ATTN: Teresa Sager-Stancliff

FROM: Jack Chenoweth
Legislative Counsel

Enclosed is my redraft of the material provided. Even broadening the title, I believe that inclusion of the material in the draft's section 3--modifying oil and gas lease sale schedules--and section 4--requiring an "annual" review of the content of the Alaska coastal management program--may be enough to make the measure subject to a successful "single subject violation" challenge under the first sentence of article II, section 13 of the state constitution. The current court test is this:

> To determine if a bill is confined to one subject, [a]ll that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be part of, or germane to, one general subject.

Citing Gellert v. State, 522 P.2d 1120, 1123 (Alaska 1974), quoting Johnson v. Harrison, 50 N.W. 923, 924 (Minn. 1891); the material is quoted in State v. First Nat'l Bank of Anchorage, 660 P.2d 406 (Alaska 1982), at 415, and appears in 1993 Manual of Legislative Drafting, at page 12. I am hard pressed to find in this measure the "one general subject" or "one general idea" that interconnects all parts of the bill. Not prevailing in the recent litigation over proposed Lease Sale 78 doesn't do it, and I was told that inserting "things that have gotten in the way of the administration" into the bill title wouldn't be acceptable.

In addition, to the extent this contemplates "separate standards" for separate projects, having separate standards of review for each decision (proposed AS 38.05.035(e)-(1)(A)) may violate the Equal Protection Clause of the state constitution.

I don't even know whether I've captured what the bill's sponsor(s) were intending. The serious "single subject" and possible equal protection problems notwithstanding, you may want to ask them to review the draft and respond critically.

JBC:pl
94-116.plm

Enclosure