

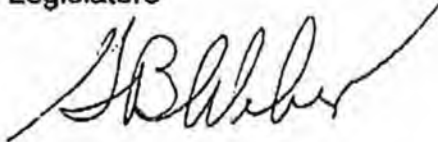
ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 0072

9984 HOUSE RESOURCES

further action" letter issued by the DEC and regulations continue to be rewritten to make it more difficult to close existing projects, resulting in more money spent.

As to the termination of the Board of Storage Tank Assistance, AUTOO simply draws the line that such action is totally unacceptable. We tank owner refuse to return to the pre 1990's era of a dominating enforcement department who treated the small tank owner as criminals and racked havoc throughout our ranks. Without the board, none of the small tank owners have a chance, as the board is the only link between us and the DEC to voice our grievances. I submit to you an article that appeared in the Alaska Business Monthly magazine that depicts only a small part of the misery that can fall on the small tanks owners without a solid program.

AUTOO respectfully suggest that any action on SB128 be delayed until a constructive dialogue be accomplished between the small tank owners and the Legislature



G. B. Weber  
Sec/Treas, AUTOO Alaska Underground Tank Owners and Operators Assoc.,  
Inc.

*Gas station owners realized new underground tank regulations were put in place to protect the land and its people. Most agreed the end-goal was a good thing and worth pursuing. But many found their lives ripped apart like the soiled land beneath them.*

## Casualties of a Good Cause



**Gary Weber** at his Wasilla Chevron Station. Weber has spent more than \$50,000 on upgrades and remedial work as required by the D.E.C.

Clark James Mehter

38 ALASKA BUSINESS MONTHLY March 1999

BY MELISSA MOORE

**T**en years ago, Gary Weber had a great life. He and his wife were the proud parents of three children. The Weber's gas station in Wasilla was somewhat profitable, even expanding. Their 30 employees were happy and loyal. Everything was OK.

Then the Webers, along with everyone else who owned or operated an underground tank across the nation, received word from the Environmental Protection Agency that new regulations for upgrades to underground storage tanks had been passed and everyone had to comply.

In Alaska, the Department of Environmental Conservation would be in charge of ensuring these regulations were met. In other cities and states nationwide, the DEC or similar environmental conservation departments held the reigns.

Weber attended his first DEC meeting in late 1988. There he learned that he had until Dec. 22, 1998 to properly register his tanks and to upgrade them to meet protection requirements for corrosion, spills and overflows of stored gasoline, diesel fuel or other petroleum products.

The upgrades weren't just for station owners. Government facilities and private owners who possessed or operated underground tanks also had to comply to the regulations.

If tank owners didn't conform to the new regulations within the 10-year deadline, they would face heavy fines and risk losing their fuel suppliers. Weber recognized the need to work with DEC, and understood that the changes were for the benefit of the environment, but even with a 10-year lead, the demands felt overwhelming to the small business owner. Upgrades would be expensive. Their property was now virtually worthless. Many stations would close doors forever.

"When they got through at that meeting, I felt like a cockroach," Weber recalled. "I felt so low and so bad. Like my wife and I had worked so hard for nothing. I stood there and wondered, 'What on earth am I going to do?'"

### Environmental Concerns

The main reason for the new requirements, and an indisputably good one

**ENVIRONMENT**

at that, is the nationwide concern for America's groundwater supply. The greatest potential hazard for underground tanks is the risk of unrealized leaks, slowly seeping into the groundwater, according to the EPA.

Groundwater is the source of drinking water for nearly half of all Americans, and the EPA reports that underground tanks are the most common source of groundwater contamination; petroleum is the most common contaminant. This presents risk factors to the public's health, to the environment, and creates the potential for fire and explosion, the EPA said.

While there is no sure-fire detection system to alert operators to leaks, some equipment is about 95 percent accurate, said DEC's Ben Thomas, who is overseeing Alaska's underground tank upgrade program. Alaska allows leaks that are less than .02 gallons per hour, which is about the amount in a shot glass.

**Price They Pay**

Costs to bring a facility to compliance vary depending on the size of the operation and the age and condition of the

tank. The minimal cost to upgrade a three-tank facility is approximately \$12,700, according to EPA documents. If replacements are needed, it will cost between \$80,000 and \$100,000 for three tanks and the connecting piping.

But as contractors started digging to upgrade existing tanks, they were finding greater problems than most owners and operators expected—soil contamination resulting from years of overflows, spills and carelessly discarding gasoline. Before the job could be completed, the contamination had to be cleaned up and the soil remediated.

The contamination from decades worth of this neglect is where many small tank owners, such as Weber, found their biggest problems. Whoever owned or operated the station was responsible for the damage and the cleanup cost—even if the damage was done long before their involvement.

"During the last century, everybody was busy doing their own thing, making a living," Weber said. "When you would have a spill, it would be 'outta sight, outta mind.' Now, you can't just sit and watch someone rinse

out a gas tank and dump it in the ditch. You have to take immediate action to clean it up."

Weber has been working steadily since 1991 to complete his upgrade, and said in January the work was nearly done.

**Personal Losses**

Though most tank owners recognize the necessity of the new regulations, the changes have come at a tremendous cost for many of the small business owners—both in monetary and personal losses.

Weber estimates he has paid more than \$500,000 for the upgrade and remedial work done to clean the land surrounding his gas station, Wasilla Chevron, located on the Parks Highway. The original bid from the contractor was \$285,000.

"I had so much invested that I had to make it work," he said.

Weber and his wife bought the station in 1976. Then, the station was bringing in about \$300,000 a year. The Webers borrowed money, expanded a little, and built the business up to a high point of grossing about \$4 million a year.



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They fought and survived the economic downfall of the 1980s, mostly by draining the family savings account, Weber said.

When the new regulations came about, money got tight as he had to put more and more into cleanup. He downsized, closed the tire shop, laid off most of his employees and opened a food mart to stay competitive.

"It destroyed us as far as our spirit and ability to grow," he said. "It made us sit back and look at real life. I did it for peace of mind. It alleviated a lot of pressure."

Before, Weber said, he would sometimes have to borrow money to pay the bills through the winter, and pay the money back in the summer, when business picked up. But the new regulations put a damper on that. Then his insurance rates shot through the roof—from ~~\$5,000~~ to ~~\$20,000~~ a year for environmental coverage.

The risk to banks soared, making his property, and virtually that of all other tank owners, worthless. He no longer had the collateral to borrow on. His previous \$250,000 line-of credit disappeared. It took several years before the banks figured out other loan options, such as using a personal home or other property, he said. He didn't want to risk losing all his assets, he said, but taking a loan against his home and property was the only way Weber could continue to finance the work needed at his station.

Still, Weber said, the monetary investment is nothing compared to his personal losses. After years of pressure, his wife of 27 years just couldn't take it anymore.

"I lost my family," he said. "I can't say it was all because of this, there may have been something else, but I think it helped a lot."

He's not alone.

Terry Renner also lost his wife to divorce which he, in part, attributes to tank remediation stress. Renner owned or was in partnership with his parents in five stations around Anchorage. Facing millions of dollars in cleanup costs, Renner claims the stress of the upgrades contributed to his mother having a stroke.

Others have had heart attacks and other stress-related health problems, Weber said.

During the first years of the regulations, Weber and Renner were traveling

to Juneau to lobby for a better way for the tank owners. For about seven years, calls from worried tank owners across the state came into Weber's station, calls his wife often took.

"For three or four years, we sat there taking calls from frantic people. Nothing but doom and gloom," Weber said. "Everybody was scared to death they were going to lose their livelihoods. And my wife sat and listened to that."

"I was gone a lot to Juneau. A lot of times when I'd talk to her on the phone, she was in tears."

Weber and Renner said they spent a lot of their own money on the watchdog organization, adding to the financial burden of the needed upgrades. But it was all necessary to get the job done in a way that would benefit tank owners across the state, Renner said.

"It was pretty tough on the small business people, and tough on the big companies, but they can put the price on the pump," Renner said. "The regulations pretty well wiped me out. But if it hadn't been for the program, most all small guys would have been gone already."

#### Steps to Survival

The program Weber and Terry Renner helped develop is the state advocacy group, Alaska Underground Tank Owners and Operators Association Inc.

In the last decade, AUTOO has been a lobbying force to speak to legislators and DEC officials so the laws and regulations are bearable for tank owners. AUTOO also works to lobby state government officials to ensure financial assistance for the upgrades will continue to get funded.

"Things have been pretty critical here in the last decade," Weber said. "The changes are absolutely a good thing. We've supported it all the way. We have had to lobby hard to ensure the regulations were written and enforced in a way we could handle it, though, in a way that was workable and environmentally sound."

Some tank owners and operators have also been eligible for state financial grants

and other assistance. Thomas said since 1991 Alaska has handed out \$20 million in grant money to tank owners and operators, half of which has gone to help with cleanup and remediation efforts.

When tank owners apply for grant money, they are placed on a list and rated on a scale based on their site's immediate danger to the environment. The higher the risk, the more likely one is to get expeditious funding.

Weber said he considers himself one of the "lucky/unlucky" ones. The land where his station sits is on an area where the groundwater level is high, about 12 to 14 feet below the ground, and at greater risk for contamination.

"The assistance has made it much easier for many of us to face the upgrades," Weber said. "Many of us were facing bankruptcy with these changes."

---

**"There were a lot of casualties. People came out with no business, poor health and their families ruined. But we have a stronger industry and a highly competitive business now. It's just like any other war."**

**The small tank owner took a real battering for about nine years. It's been a highly successful effort to clean up the state. Fortunately, both sides won."**

**Gary Weber  
Wasilla Chevron**

---

#### Work's Going Slow

But even with some assistance, and a decade to comply with the regulations, many facilities—government facilities included—have yet to complete, or even start the necessary work.

Nationally, about 60 percent to 65 percent of all underground tanks have completed all the necessary steps to comply with state and federal regulations, said Steve Crimardo. Crimardo, working out of Washington, D.C., serves as a facilitator between state and federal officials with regard to underground tanks.

While the national numbers are somewhat lacking, Alaska's compliance rates are about the same. Out of a total of nearly 7,200 tanks across the state, 615 still need upgrading. Of those initial 7,200 tanks, about 77 percent were

**ENVIRONMENT**

closed out and will no longer be used, Thomas said. Some of those, however, have been replaced.

Surprisingly, it's not only the small tank owner that has missed the deadline. The Alaska DEC lists facilities statewide that have not met with all the regulations (available on its Web site). Many on the list are federal, state and local government facilities.

Others, it seems, either can't come up with the money or just haven't gotten around to getting the work done.

"There is no excuse for tank owners

not to have met the deadline," Thomas said. "People know what they need to do. But we have a couple of tank owners who just can't figure out what's going on."

Most of the major fuel distributors have pulled the plug on those facilities that have not begun the work to meet the regulations. There is no federal rule stating distributors cannot deliver to the noncompliant, but a few court rulings declared a supplier delivering to a facility with a leaking tank can be held liable for cleanup costs, according to a letter from Exxon Corp. to its distributors.

**Deadline Extension**

Though the deadline's past, those who are left to upgrade their facilities have been granted a reprieve. If they live up to certain conditions, they can have a few more months to get the ball rolling on their upgrades. If owners sign a legally binding order with DEC, agreeing to begin work as soon as possible, they will get off lightly.

The owner must agree to pay a penalty of between \$1,000 to \$3,000, depending on the size of their facility, and must prove that their tanks and pipes are not leaking. They must also provide to DEC a signed, writ-

# FAX TRANSMITTAL

Page 1 of 2

TO: Representative Ogan

COMPANY: House Resource Committee

CITY: Juneau

FAX NO: 465-3265

FROM: JUDY CHADWICK  
Vice President  
Brady & Company  
1031 West Fourth Avenue, Suite 400  
Anchorage, Alaska 99501  
Telephone - 907/276-5617  
Facsimile - 907/276-6292 or 907/276-6304

Date: 5/12/1999

SUBJECT: SB 128

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Dear Representative Ogan,

You will be in a hearing this afternoon regarding SB128. I wish to point out some problems with this piece of legislation:

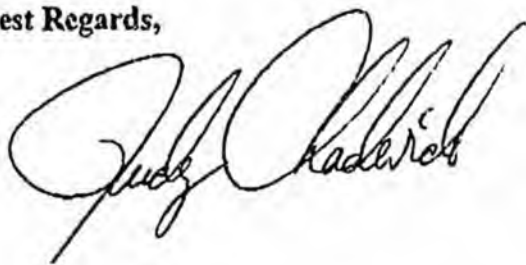
1. There are hundreds of businesses that have acted in good faith and reported contamination at their sites in response to the formation of the Alaska Storage Tank Assistance Programs. These people have been on a waiting list for assistance since 1991. For the State to suddenly pull the rug out from under them and leave them with no resources to clean-up their properties is and act of bad faith by the legislature.
2. This program has been called "Shameless Corporate Welfare" – Financial institutions will not lend money to an owner of a contaminated site for clean up due to the liability if the loan is defaulted – the bank won't take the land back because they would be responsible for the clean up. The State is the only resource for a business owner with a contaminated site to obtain funds. If this program is taken away, these businesses will go out of business and it will then become the sole responsibility of the state to under take the clean up of these properties. Of course this doesn't apply to the large oil companies that want to see all of the private business owners you are targeting here go out of business anyway. You are in effect creating another monopoly in the retail oil and gas industry. There will no

longer be any Alaskan Owned and Operated retail fuel sources. This is not welfare, it is keeping businesses in business!

3. If the State forces EPA to take over all of the enforcement of UST regulations and all of the independent retail operations go out of business, the State of Alaska is going to be held responsible for all of the clean up. If you help these businesses, then they are contributing their time and their money, too. This has never been a 100% loan or grant from the State, the business owner must participate.
4. The definition of net worth in this legislation is ridiculous. You must adhere to some form of Standard Accounting procedure or Generally Accepted Accounting Principles to determine net worth.
5. If you sunset the Board of Storage Tank Assistance, there will be no medium for dispute resolution and all disputes will undoubtedly move in to the Court System.
6. Having an effective date of July 1, 1999 will eliminate all work during the 1999 construction season and will endanger public health. There are many clean up projects underway that would have to stop work and wait for the transition from one program to the next if they were to qualify for the next program.

Please reconsider passing this bill. Remember that the money for this program comes from the response fund and not the general account – by eliminating the program you are not adding anything to the budget. Thank you for taking the time to read my opinions!

Best Regards,

A handwritten signature in cursive script, appearing to read "Judge Kadrick". The signature is written in black ink and is positioned below the "Best Regards," text.

# Existing Net Worth Definitions in Alaska Statutes and Regulations

## 3 AAC 08.070

DEFINITIONS RELATING TO OPERATIONAL REGULATIONS OF BROKER-DEALERS.

For the purpose of sec. 20 of this chapter:

(a) The term "net capital" means the net worth of a broker-dealer (that is, the *excess of total assets over total liabilities*),

.....

## 8 AAC 46.900

DEFINITIONS.

In this chapter

(7) "tangible net worth" means the amount available after subtracting total liabilities from total assets less any intangible assets.

.....

## AS 21.90.900.

Definitions for title.

In this title, unless the context requires otherwise

(32) (C) for an insurer other than a stock or mutual insurer, the **net worth of the insurer**, *calculated as its recorded assets less its liabilities*, as determined by the accounting criteria set out in this title;

## Proposed Amendments to CSSB128 (FIN) am

**Amendment #1:** This amendment would modify the Transitional Regulations section of the bill in two respects.

- The first insertion would allow the Department of Environmental Conservation (ADEC) to begin the process of adopting regulations necessary for implementation of this bill prior to the effective date of the bill, July 1, 1999.
  - Without this provision, it will be impossible for ADEC and the Board of Storage Tank Assistance to put regulations into place before the end of the 1999 construction season.
    - Even an uncontroversial regulations project normally takes 4-6 months, and the fastest possible process under the Administrative Procedure Act is over two months. If regulations are not publicly noticed until July 1, 1999 they will not be effective before September and are unlikely to be effective before November.
    - If this amendment is adopted and ADEC and the Board issue a public notice for these regulations on May 30, 1999, Regulations could be in place in July or August, allowing over a month of UST cleanup and installation work prior to freeze-up.
- The second insertion simply reflects the fact that both the Board of Storage Tank Assistance and Department of Environmental Conservation have regulations that relate to the Storage Tank Assistance Fund. The current language suggests that existing regulations would remain in place until amended or repealed by the Board, but the regulatory authorities of the Board would not reach all of the regulations relating to the fund. While the Board has fairly broad authority to review and approve department regulations under AS 46.03.365(d) it has fairly limited authority for adoption of regulations under AS 46.03.360(e) and .360(g).
  - Without this amendment, it could be argued that some of the existing regulations at 18 AAC 78.500 - 18 AAC 78.550 are made permanent by this bill. Many of these provisions are adopted jointly by the Board and the department, and many of these regulations contain provisions that the Board arguably does not have authority to adopt under its own authority. While it is unlikely that a court would hold that the transition provision in the bill would make the existing regulations permanent, it is preferable to close the door to the argument and potential litigation.

**Amendment #2:** This amendment would modify the provisions relating to certification of net worth for purposes of obtaining a grant or loan under AS 46.03.420 or grant under AS 46.03.430, and would allow development of a certification form outside the normal Administrative Procedure Act process. This proposed amendment addresses two substantive problems and a timing problem:

- First, under the current language of the bill, the net worth of the operator is irrelevant, only the net worth of the owner is considered. The amendment would limit grant and loan eligibility under AS 46.03.420 (Cleanup Program) if either the owner or the operator has a net worth of over \$1,000,000 and grant eligibility under AS 46.03.430 (Upgrade and Closure Program) if either the owner or operator has a net worth of over \$250,000.
  - Without this amendment, an operator with a net worth of \$100,000,000 could qualify for a grant or loan under AS 46.03.420 or a grant under AS 46.03.430 so long as the tank

was owned by someone with a net worth of \$1,000,000 or less. Owners and operators who are watching this bill could transfer ownership of tanks prior to the effective date of this bill to prevent a facility from being disqualified from receipt of a grant or loan.

- Second, under the current language of the bill, the operators of USTs that are owned by the state or a municipality would not qualify for a grant or loan despite the fact that they are contractually and legally responsible for the USTs and contamination resulting from the USTs. As a result the operators may default on their obligations and the state or a municipality may end up paying for remediation of these sites. Under the amendment, where the owner is the state or a municipality, grant or loan eligibility would be tied to the net worth of the operator, not that of the state or municipal owner.
  - Without this amendment, many operators of USTs at airports will be unable to qualify for grants or loans and will be forced out of business. Many of these UST sites are leased from the state, and the state will end up paying the full costs of remediation rather than having the operator share in the costs through a grant or loan program. While the state may pursue the operators for cost recovery it is likely that most costs will not be recovered because the operators will be insolvent.
- The insertion of new subsection into the transition provisions would address a timing problem by allowing the department to develop a form for the certification of net worth without going through the APA process for regulation adoption.
  - Without this amendment, normal APA requirements would apply and the department would be unable to issue grants from the time this Act takes effect until regulations can be adopted.
  - If this amendment is adopted the Department could quickly develop a form, satisfy constitutional due process concerns by putting it out to a brief public notice, and adopt a form requirement in a non APA regulation that would become effective immediately or shortly after adoption. This would allow the grants to be issued to eligible applicants during the 1999 construction season with little or no delay following the effective date of the remainder of this Act.

**Amendment #3:** This amendment would modify the definition of "tangible net worth" to make it more consistent with the common meaning of the term as well as federal regulations at 40 C.F.R. 280.92.

- The current definition of tangible net worth in the bill is inconsistent with generally accepted accounting principles (GAAP) because it does not take into account normal liabilities such as mortgages, loan notes, or accounts payable. A person with an actual net worth under GAAP of negative \$15,000 could easily have a net worth of over 1.5 million dollars under the current definition in this bill. It would be difficult to verify net worth certifications submitted under this bill because the definition is unique. It would also be difficult to obtain a conviction for perjury where an individual with an actual net worth well under \$1,000,000, but a "tangible net worth," as defined in this legislation, of over 1,000,000, submits a certification indicating that they are eligible for a grant or loan because perjury is committed only if the individual does not believe the statement to be true.

- If this amendment is adopted, net worth will have the common meaning of "assets minus liabilities," and it would be possible to compare a certification of net worth against the net worth reported on financial statements or other loan applications.

AMENDMENT #1

OFFERED IN THE HOUSE

BY \_\_\_\_\_

TO: CSSB 128 (FIN) am

1 Page 9, line 1:

2 Following "The":

3 Insert "Department of Environmental Conservation or the"

4 Page 9, line 7:

5 Following "the":

6 Insert "Department of Environmental Conservation or the"

AMENDMENT #2

OFFERED IN THE HOUSE

BY \_\_\_\_\_

TO: CSSB 128 (FIN) am

1 Page 5, lines 9-12:

2 Delete all material and insert:

3 "(4) certifies under oath and subject to penalty for perjury, on a form required  
4 by the department, that the tangible net worth of the operator is \$1,000,000 or less as  
5 of the effective date of this section, and unless the tank is owned by the state or a  
6 municipality, that the net worth of the owner is \$1,000,000 or less as of the effective  
7 date of this section."

8 Page 7, lines 25-28:

9 Delete all material and insert:

10 "(2) unless the owner or operator certifies under oath and subject to penalty for  
11 perjury, on a form required by the department, that the tangible net worth of the  
12 operator is \$250,000 or less as of the effective date of this section, and unless the tank  
13 is owned by the state or a municipality, that the net worth of the owner is \$250,000 or  
14 less as of the effective date of this section;"

15 Page 9, following line 7:

16 Insert a new subsection to read:

17 "(c) AS 44.62 (Administrative Procedure Act) does not apply to the  
18 development of the form for certification of net worth required under AS 46.03.420(c)  
19 enacted by section 8 of this Act, and AS 46.03.430(c) enacted by section 11 of this  
20 Act"

AMENDMENT # 3

OFFERED IN THE HOUSE

BY \_\_\_\_\_

TO: CSSB 128 (FIN) am

- 1 Page 8, line 5:
- 2       Following "liabilities":
- 3             Insert ", including liabilities"

**S B**

**1 3 4**

# FISCAL NOTE

No. 3  
 Bill Version: CSRB 134 (RLS)  
 (S) Publish Date: 4-28-99

STATE OF ALASKA  
 1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) Revised 4/27/99 11:36am Dept. Affected \_\_\_\_\_ Dept. of Admin \_\_\_\_\_  
 Title Well Regulatory Cost Charge/Cons. Tax BRU AOGCC  
 Component AOGCC  
 Sponsor Senator Pearce  
 Requester Sen. Rules Component Serial No. 2010

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	1,832.9	1,832.9	1,832.9	1,832.9	1,832.9	1,832.9
Travel	139.0	139.0	139.0	139.0	139.0	139.0
Contractual	509.3	509.3	509.3	509.3	509.3	509.3
Supplies	23.0	23.0	23.0	23.0	23.0	23.0
Equipment	50.1	50.1	50.1	50.1	50.1	50.1
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>2,554.3</b>	<b>2,554.3</b>	<b>2,554.3</b>	<b>2,554.3</b>	<b>2,554.3</b>	<b>2,554.3</b>

CAPITAL EXPENDITURES	400.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	100.0	100.0	100.0	100.0	100.0	100.0
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 Stat Desig	2,454.3	2,454.3	2,454.3	2,454.3	2,454.3	2,454.3
<b>TOTAL</b>	<b>2,554.3</b>	<b>2,554.3</b>	<b>2,554.3</b>	<b>2,554.3</b>	<b>2,554.3</b>	<b>2,554.3</b>

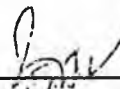
Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time	23	23	23	23	23	23
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 (See Attached)



Prepared by Sharon Barton, Director Phone 465-5654  
 Division Administrative Services Date/Time \_\_\_\_\_  
 Approved by Commissioner [Signature] Date 4/27/99  
 Agency \_\_\_\_\_

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## FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION  
Analysis

BILL NO. CSSB134(RLS)  
1LS0259\Y #2

This bill provides for the AOGCC to set and collect a regulatory cost charge from companies operating oil and gas wells in the State of Alaska, and to use the collections to fund the operating costs of the agency. This will change the primary AOGCC operating budget fund source from General Fund to Statutory Designated Program Receipts.

The AOGCC is the state oversight agency for all subsurface activity in the state and provides permits to drill, well workovers, reservoir management, data management, inspection of drilling activities, gas flaring, conservation measures, and protection of lessees rights. The proposed funding mechanism is a more representative way of allocating our costs among those who require our services. Our workload is directly related to industry activity and under this plan would be paid for directly by industry. It recognizes the long-term effort required of the Commission to follow the events that constitute the lifetime of a well and its reservoir. The expenditures are minimums required to execute the Commission's program and to comply with the Oil and Gas Conservation Act.

This fiscal note includes a FY2000 operating budget increment of \$664.1 and a one time capital budget request of \$400.0. The operating budget increment is based on the AOGCC's estimate of the total necessary to fund the agency's operations. The capital request is for funding necessary to relocate the AOGCC offices and to provide for necessary computer enhancements.

# FISCAL NOTE

No. 2  
 Bill Version: SR 134  
 (S) Publish Date: 4-22-99

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____	Dept. Affected	Revenue
Title <u>Well Regulatory Cost Charge/</u>	BRU	Oil and Gas Audit Div.
<u>Conservation Tax</u>	Component	Oil and Gas Audit Div.
Sponsor <u>Senator Pearce</u>		
Requester <u>Senate Finance</u>	Component Serial No.	_____

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>	(1,310.0)	(1,330.0)	(1,300.0)	(1,320.0)	(1,360.0)	(1,300.0)

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

The decrease in revenue would come from Section 6 of the legislation, which would repeal the Oil and Gas Conservation Tax that is collected by the division.

Though the Oil and Gas Conservation Tax would be eliminated from the division's job duties, the division's operating budget would not change. The Conservation Tax is simply an add-on to the state's severance tax and does not require additional direct staff time to administer.

Prepared by Mary Marshburn  
 Division Commissioner's Office  
 Approved by Wilson L. Condon  
 Commissioner  
 Agency Department of Revenue

Phone 465-2301  
 Date/Time April 14, 1999  
 Date April 14, 1999

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**Senator Drue Pearce**

## Sponsor Statement

### Senate Bill 134 Alaska Oil & Gas Conservation Commission

The Alaska Oil and Gas Conservation Commission (AOGCC) was created to protect the public interest through enforcement of the Alaska Oil and Gas Conservation Act. The commission's primary goal is to ensure that no hydrocarbons are wasted and that operations are conducted in manner that provides maximum recovery of the resource. SB 134 repeals the existing Oil & Gas Conservation Tax and institutes a stable funding source to assure that the commission is capable of carrying out their objectives.

The original intent of the Legislature was to have the oil & gas industry pay for the function of the commission through the Oil & Gas Conservation Tax. While this system may have been adequate in the past, it no longer is sufficient to cover the costs associated with the operation of the commission. This conservation tax is directly proportional to production with a 4 mils per barrel fee rate. The work of the commission, however, is not proportional to the production of oil and gas. Production is declining but the work of the commission is not.

SB 134 creates a program receipt system in which the regulatory cost charge is directly associated with the total volume of fluids produced or injected. This type of system more accurately reflects the factors directly associated with the workload of the commission. This approach would only assess costs where there is production or injection. Therefore, exploratory wells would not have a burden until they began production. SB 134 also contains a provision to provide for recovery of costs associated with an investigation or hearing. These costs would be allocated to the parties involved.

The commission experienced budget difficulties in the past, even when tax proceeds exceeded annual appropriations. The AOGCC is currently encountering budget difficulties that are directly related to the decline in oil production. SB 134 creates a stable funding source that will enable the AOGCC to provide the monitoring services necessary to protect the future of Alaskan interests.

# LEGAL SERVICES

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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

April 6, 1999

**SUBJECT:** Senate Bill 134, relating to the Alaska Oil and Gas Conservation Commission -- sectional analysis (Work Order No. 1-LS0259\I)

**TO:** Senator Drue Pearce

**FROM:** Jack Chenoweth  
Assistant Revisor of Statutes 

The measure amends various provisions of the chapter establishing the Alaska Oil and Gas Conservation Commission (AS 31.05), adding provisions that relate to the commission's recovery of its regulatory costs and expenses through calculation and imposition of a regulatory cost charge and to allowing the commission to allocate the costs of its hearings and investigations. The bill also repeals the oil and gas conservation tax (AS 43.57.010); though the revenue from the tax is deposited into the general fund and may be used for various state purposes, the tax is commonly regarded as a source of money for the work of the commission.

**Bill section 1:** The provision adds a new section, AS 31.05.085, under which the commission is authorized to allocate costs of investigations and hearings among the parties--the lessees subject to the commission's jurisdiction and the commission itself. The provision prescribes the basis for allocation of the costs.

**Bill section 2:** The provision adds a new section, AS 31.05.093, under which the commission is authorized to determine, by regulation, the amount of a regulatory cost charge. Under subsection (a), the charge is to be levied on "[e]very person operating a well for which a permit to drill has been issued under AS 31.05" and from which oil or gas is produced or into which oil, gas, water, or other fluids are re-injected. Subsection (b) specifies a formula by which the commission's regulatory cost charge shall be determined. Subsection (c) directs the commission to adjust the amount of the regulatory cost charge so that, when added to other fees, the charges and fees equal the amount appropriated for the work of the commission. Subsection (d) speaks to the collection and allocation of the amounts recovered from the regulatory cost charges. Subsection (e) authorizes adoption of implementing regulations.

**Bill section 3:** The subparagraph adds the amounts recovered by the Alaska Oil and Gas Conservation Commission under its regulatory cost charge authority to the list of non-general fund agency program receipts in the Executive Budget Act.

Senator Drue Pearce

April 6, 1999

Page 2

**Bill section 7:** This transitional provision sets the initial regulatory cost charge of the Alaska Oil and Gas Conservation Commission at \$1,000 per well.

\*

The repeal of AS 43.57.010 by **bill section 6** repeals the state's oil and gas conservation tax-- currently calculated at four mills per barrel of oil or per 50,000 cubic feet of natural gas.

**Bill sections 4 and 5:** The amendments eliminate references to the oil and gas conservation tax in the chapters levying and collecting state severance (AS 43.55) and pipeline property (AS 43.56) taxes.

The repeal of AS 43.82.210(a)(3) by **bill section 6** eliminates a reference to the oil and gas conservation tax in the "Alaska Stranded Gas Development Act," AS 43.82.

\*

**Bill section 8** proposes to give the measure a July 1, 1999, effective date.

JBC:jdr

99-192.jdr

**SB**

**171**

Alaska State Legislature

Senate

**RICK  
HALFORD**

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Official Business

MEMORANDUM

TO: Representative Scott Ogan, Chairman  
House Resources Committee

FROM: Senator Rick Halford *Rick*

DATE: May 12, 1999

SUBJECT: Request to Schedule SB 171  
Fishery Data; McNeil River Refuge

---

I request that you schedule SB 171 for a hearing in the House Resources Committee at the earliest possible date. The Senate passed SB 171 by a vote of 20-0. Please do not hesitate to contact me, or my staff, if you have any questions.



Official Business

# Alaska State Legislature

## Senate

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## Sponsor Statement

### Senate Bill 171

Senate Bill 171 was introduced at the request of the Alaska Department of Fish and Game (ADF&G). SB 171 amends AS 16.05.815 to allow the ADF&G to share records documenting commercial fishery landings, fish buying and processing activities within Alaska. These amendments allow transfer of this information to the Commercial Fisheries Entry Commission (CFEC), Alaska Fisheries Information Network (AKFIN), National Marine Fisheries Service (NMFS) and National Oceanic and Atmospheric Administration (NOAA).

In addition, provisions included in the bill would ensure that state selected land within the McNeil River Wildlife refuge be free of encumbrance or unauthorized use at time of transfer.

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB171

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: Fishery Data; McNeil River Refuge BRU: Land Development  
 Component: Land Development  
 Sponsor: Sen. Halford  
 Requestor: (S) RES Component Serial No. #431

Expenditures/Revenues (Inflation not included unless otherwise noted below) (Thousands of Dollars)

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES (fund code)</b>	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						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) 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)

No fiscal impact associated with implementation of this legislation.

Prepared by: Jane Angvik, Director *Jane Angvik* Phone: 269-8501  
 Division: Land Date: 10-May-99  
 Approved by Commissioner: John Shively *John Shively* Date: 5-10-99  
 Agency: Natural Resources

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 171

Revision Date: \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title: Relating to the release of certain records and reports r BRU: Commercial Fisheries (Limited) Entry Commission  
ADF&G; transfer of land within McNeil River State Gam Component: Limited Entry Program Administration  
 Sponsor: Senator Halford  
 Requester: Senate Resources COMPONENT SERIAL NO. 0471

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE**

(Thousands of Dollars)

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

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared By: Roger Kolden Phone: 790-6950  
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 05/07/99

Approved by Commissioner: Mary McDowell Date: 5/8/99  
 Agency: Commercial Fisheries (Limited) Entry Commission

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# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB 171

Revision Date/Time (Note if correction)	Dept. Affected <u>Fish and Game</u>
Title <u>FISHERY DATA; MCNEIL RIVER REFUGE</u>	BRU <u>Commercial Fisheries</u>
Sponsor <u>Senator Halford</u>	Component <u>Headquarters Fisheries Management</u>
Requester <u>Senate Resources</u>	Component Serial No. <u>2171</u>

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

<b>CHANGE IN REVENUES ( )</b>	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						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

Prepared by <u>Doug Mecum, Director</u>	Phone <u>465-4210</u>
Division <u>Division of Commercial Fisheries</u>	Date/Time <u>05/10/99</u>
Approved by Commissioner <u>Frank Rue</u> <i>Frank Rue</i>	Date <u>5/10/99</u>
Agency <u>Alaska Department of Fish and Game</u>	

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**NEED FOR AND PURPOSE OF AMENDMENTS TO AS 16.05.815**  
**Alaska Department of Fish and Game**  
**May 4, 1999**

The Department of Fish and Game (ADF&G) has been advised by the Department of Law (DOL) to amend *AS 16.05.815, Confidential nature of certain records*. The records subject to these amendments are individual records documenting commercial fishery landings (fish tickets) and records documenting fish buying and processing activities within Alaska.

The amendments accomplish four purposes.

- First, they clarify the authority of the ADF&G to release confidential fish data to the Commercial Fisheries Entry Commission (CFEC.)
- Secondly, the amendments clarify that the CFEC may also release confidential data to entities listed in this statute.
- Thirdly, the Alaska Fisheries Information Network (AKFIN) is added to the list of entities with which the ADF&G and the CFEC may share confidential fish ticket and fish purchasing data.
- Fourthly, the amendments authorize CFEC and ADF&G to release confidential data to the National Marine Fisheries Service (NMFS) and the National Oceanic and Atmospheric Administration (NOAA) for use in the enforcement of state and federal fisheries laws.

It has been assumed until the recent advice from DOL that the individual records referred to earlier could be provided to AKFIN, NMFS and NOAA. Subsequent to receipt of the opinion from DOL, ADF&G and CFEC have stopped providing data to these agencies pending a resolution of the confusion.

The NMFS is currently required to seek court orders to release confidential data into the court record. NMFS is now requesting authorization by statute to use confidential data in court cases regarding fisheries violations without the administrative burden of securing a court order for the use of the data.

### **COMMERCIAL FISHERIES ENTRY COMMISSION:**

CFEC is the biggest user of ADF&G's fish ticket information collected under AS 16.05.815. However, CFEC is not named in the statute as an organization authorized to receive the confidential records.

CFEC takes the ADF&G computerized fish ticket data and adds several enhancements for their needs. These include a gross earnings estimate for each item on the fish ticket file and the vital information on the permit holder who recorded the landing (name, address, residency, etc.). They can also add information on the vessel and vessel owner

from their vessel license files when needed for particular analyses or reports. In addition, CFEC takes fish ticket information on the halibut fishery that are processed by the International Pacific Halibut Commission, converts these data to a common format, and merges the data into ADF&G's fish ticket data, adding other enhancements.

CFEC's enhanced fish ticket files are sometimes called "gross earnings" files. These enhanced files allow the commission to produce a wide range of reports on the participants in a fishery, the vessels used, and the earnings of participants. The data can also be used to estimate the number of participants and the commercial fishing gross earnings of persons from different Alaska communities. Such reports (in non-confidential formats) are requested by communities and are used for economic assessments of different fishery projects. Examples of such reports can be viewed by visiting the CFEC Internet site at [www.cfec.state.ak.us](http://www.cfec.state.ak.us).

In the past, CFEC has provided confidential data to the North Pacific Fishery Management Council and its staff, and the extended jurisdiction section of ADF&G. ADF&G have also used CFEC's data files for analyses of commercial fishing histories and dependencies of persons fishing in Glacier Bay National Park. CFEC has also provided data to the Alaska Department of Public Safety and the Alaska Department of Revenue so that they can perform their auditing and enforcement duties.

CFEC also uses other ADF&G confidential data collected under AS 16.05.815 such as the Commercial Operators Annual Reports. CFEC is not aware of providing such data to any authorized users under AS 16.05.815.

#### **ALASKA FISHERIES INFORMATION NETWORK:**

AKFIN is the Alaska region fisheries data collection arm of the Pacific States Marine Fisheries Commission (PSMFC). The PSMFC is an interstate commission authorized by Congress in 1947. It does not have regulatory or management authority, but serves as a forum for discussion on fisheries issues that affect its member states. These include Alaska, Idaho, Washington, California, and Oregon. PSMFC also provides data collection and processing and other contractual services to its member states.

The governing body of PSMFC is composed of three voting representatives from each member state. Alaska's three seats have traditionally been held by a member of the Alaska Legislature, a representative of the commercial fishing industry, and a representative of ADF&G. Presently the individuals holding these respective seats are Senator Georgianna Lincoln, Dale Kelley from the Alaska Trollers Association, and David Benton, Deputy Commissioner of ADF&G. Senator Loren Leman has also been an Alaskan representative on the PSMFC.

The National Marine Fisheries Services provides funding for AKFIN. AKFIN in turn contracts with the ADF&G to collect and provide data to AKFIN. The AKFIN contract with ADF&G is approximately \$1.3 million annually. This funding supports the

following activities: analysis of information on the bycatch in groundfish fisheries of prohibited species such as salmon; management of the fish ticket database for state harvests of groundfish and crab; dock sampling of state groundfish catches; modernization of old databases of groundfish and crab catch data; and dock sampling of Bering Sea crab fishery. In order for ADF&G to share the information collected under the terms of its contract with AKFIN, statutory authority to share fish ticket data with AKFIN is needed.

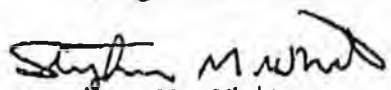
#### **NMFS LAW ENFORCEMENT:**

Marine fisheries law enforcement personnel in Alaska are vastly overextended. To alleviate this problem, state and federal law enforcement personnel are cross-deputized enabling them to enforce each other's regulations. This increases the state's ability to manage its resources while incurring no additional costs. While state officers have easy and complete access to confidential federal fisheries information for enforcing fisheries law, federal officers are not extended that same privilege. Whenever federal officers need to present confidential state fish ticket information in court in order to make a case; they must first get a court order approving the release into the public domain of confidential data. This requires excessive staff time and drains agency resources. Authorizing NMFS law enforcement personnel access to use of this data helps prevent criminals from illegally harvesting Alaskan resources.

**MEMORANDUM****State of Alaska**  
**Department of Law**

TO: Earl Krygier  
Alaska Department of Fish and Game  
Division of Commercial Fisheries Management and Development

DATE: May 6, 1999  
FILE NO.: 663-90-0126  
TELEPHONE NO.: 465-3600

FROM:   
Stephen M. White  
Assistant Attorney General  
Natural Resources Section  
Department of Law

SUBJECT: Release of  
confidential info  
for federal  
enforcement actions

You have asked us to review the advice given by Assistant Attorney General Larri Spengler concerning the Department of Fish and Game's release of confidential information to the National Marine Fisheries Service ("NMFS") or to staff of the North Pacific Fishery Management Council ("NPFMC"). You stated that Ms. Spengler's advice appears to restrict those federal agencies and employees from using that information in enforcement actions.

In a 1989 memorandum, Ms. Spengler advised that fish ticket data, and other information that is made confidential by AS 16.05.815, may be released to NMFS and NPFMC professional staff if they agree to maintain the confidentiality of that information. She stated, however, that if those federal agencies or staff members wish to use confidential information in a public enforcement action, they would need to obtain the information through a court order.

After reviewing Ms. Spengler's advice, we conclude that it is correct.

Earl Krygier  
Alaska Department of Fish & Game

May 6, 1999  
Page 2

There are two ways that NMFS and NPFMC professional staff may obtain fish ticket and other information made confidential by AS 16.05.815. First, under subsection (a) (1) of AS 16.05.815, they may be given the information if it is required for preparing and implementing NPFMC fishery management plans within the exclusive economic zone. However, before the information may be given under that subsection, the federal agencies must enter into an agreement with ADF&G under which the agencies agree to maintain the confidentiality of the information. AS 16.05.851(a).

Several months ago, we helped ADF&G draft a confidentiality agreement that would allow it to release fish ticket data to NMFS and NPFMC professional staff. It is my understanding that the federal agencies have not yet signed the agreement. In the meantime, any release of fish ticket data or other information made confidential by AS 16.05.815 to the federal agencies or their staff would be violation of law and would create potential liability for the state. The ADF&G employees who release the information would be violating the law, not the federal agencies or employees who receive it.

Even if the confidential information were given to the federal agencies under a signed confidentiality agreement, we do not believe that it could be used in a public enforcement action. We assume that, to use the information in that manner, the federal agencies would be introducing it as evidence in a criminal prosecution. The information would become a public record, and its

Earl Krygier  
Alaska Department of Fish & Game

May 6, 1999  
Page 3

confidentiality would be compromised. In other words, the federal agencies' use of the information in an enforcement action would violate the confidentiality agreement under which it was obtained.

The second way that the federal agencies or their staff may obtain confidential information is through the filing of a legal action that results in a court order directing ADF&G to release the information. We believe that a court would not issue such an order until persons who have an interest in keeping the information confidential are notified and given an opportunity to advocate that result.

Information gained through a court order would not be bound by a confidentiality agreement. That is because the subsection which allows for court orders - AS 16.05.815(a)(4) - is not one of the subsections that is covered by the requirement for a confidentiality agreement. See AS 16.05.815(a). Therefore, information gained in this manner could be introduced as evidence in a criminal enforcement action. Indeed, this is the only way that the federal agencies may obtain fish ticket or other information covered by AS 16.05.815 and, without violating a confidentiality agreement, use it for that purpose.

Please contact me if you have any questions about this advice.

SMW:prm

z:\whites\memos\krygier-confidentiality

CHENIK RIVER INHOLDING - MCNEIL RIVER STATE GAME REFUGE

SENATE RESOURCES COMMITTEE SUMMARY

- On November 10, 1998 the Department of Natural Resources (DNR) issued a notice finding and decision, ADL 225906, regarding the issuance of concurrence to the US Bureau of Land Management (BLM) for a lease of state selected lands at Chenik Head within the boundaries of the McNeil State Game Refuge.
- The Senate Resources Committee received numerous copies of letters sent to DNR objecting to the proposed issuance of a lease for a commercial enterprise within the Refuge.
- The Senate Resources Committee held two hearings concerning this issue on February 17 and March 3, 1999.
- The Committee was advised that BLM will not issue a lease unless the State agrees and the decision to approve the lease issued by DNR has not been finalized.
- The Alaska Department of Fish and Game (ADF&G) has, in the past, consistently opposed the issuance of a lease for this commercial facility within the Refuge. ADF&G has not conducted the assessment and findings required by the existing Management Plan for the refuge which is required before any commercial facility can be approved within the Refuge.
- On March 11, 1999 Committee Chair Senator Halford wrote a letter to DNR and ADF&G expressing concern about the proposed approval of the lease and the potential bad precedent set by this action which would essential reward an illegal trespasser.
- On April 14, 1999 Senator Halford received a letter from ADF&G Commissioner Rue stating that the Department was going to initiate a needs assessment for a commercial facility within the refuge.
- On April 26, 1999 BLM sent a letter to Michael McBride and an official Notice to Cease and Desist and advised him that he was continuing an unauthorized use of public lands in violation of the law and that he should immediately cease commercial recreational use of the land.
- The Committee also received a copy of an April 23, 1999 internal BLM memo which outlines their indicated course of action regarding the lease. This memo indicated that no final action would be taken until the state declared its position.

- The Committee also received a copy of a BLM briefing memo for the Alaska Congressional delegation dated April 21, 1999.
- The Senate Resources Committee is advised that DNR is waiting for a final recommendation from ADF&G after which time a final decision will be made concerning the state's position regarding the proposed lease.
- Public concerns have been expressed that this lease will eventually be issued once the legislature adjourns despite clear opposition from the field staff within the Alaska Department of Fish and Game.



Official Business

# Alaska State Legislature

## Senate

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March 11, 1999

Commissioner Frank Rue  
Alaska Department of Fish and Game  
P.O. Box 25526  
Juneau, Alaska 99802-5526

Commissioner John Shively  
Alaska Department of Natural Resources  
400 Willoughby Avenue  
Juneau, Alaska 99801-1724

Dear Commissioners,

This letter is in follow up to the Senate Resources Committee review of the proposed Bureau of Land Management (BLM) lease of state selected land within the McNeil State Game Refuge. After thorough examination of the history of the long-term unauthorized use of the land in question and complete review of the substantial documentation provided by both of your agencies, I find no reason or procedural allowance on which to base a best interest finding for the required 906k concurrence.

The following is a summary of the facts presented to the Resources Committee:

- Mr. McBride has been in trespass on the land since 1978.
- During that time there was no permission granted for the use of the land.
- Mr. McBride improved the facilities on the land over time, including the building of multiple permanent structures.
- Mr. McBride used the land for a commercial enterprise and derived substantial personal gain without compensating any state or federal agency for its use.
- The BLM classified Mr. McBride's use of the land as unauthorized.
- ADF&G staff repeatedly advised against the creation of a private in-holding within the refuge.
- DNR previously denied a 906k concurrence requested by the BLM.

- DNR departmental orders #134 and 137 advise against the acceptance of any land transfer with an outstanding unauthorized use.
- BLM has specific remedies to deal with unauthorized use as outlined in 43 CFR, Chapter 2.

While I appreciate your departments' participation and candor in the hearings we conducted, I am greatly discomforted that this issue was allowed to progress as far as it had. The circumstances surrounding this issue seem to warrant your examination of the motives and methods employed and how they can be justified within your departmental policy and procedures.

I have enclosed the minutes from the Senate Resources Committee hearings conducted on February 17 and March 3, 1999, for your review. It was apparent in the committee discussion that final issuance of the DNR, Division of Land Finding and Decision ADL 225906 would be in violation of the regulations governing the management of the refuge, the statutory obligations for competitive bid and the Constitutional obligation to equal access.

The facts point out only one fair and responsible remedy to this glaring unauthorized use of state selected land. I urge you to deny the requested 906k lease concurrence, formally request that BLM remove the facility in trespass and then accept transfer of the land to the state free of encumbrance.

As the McNeil State Game Refuge is a legislatively designated area, I am formally requesting that you keep me informed of any further action or decisions regarding this matter; including any consideration of a change in the management plan or of a finding pertaining to commercial facilities. Seeing the issue through to a fair and responsible conclusion remains a priority of the Senate Resources Committee.

Sincerely,



RICK HALFORD

RH:bwh

cc Senate Resource Committee members  
Pat Pourchot, Legislative Director  
Bruce Botelho, Attorney General

enclosures

LEGISLATIVE REFERENCE LIBRARY

LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3808  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 400  
Juneau, Alaska 99801-2105

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

SRES	2/17/99	3:07 p.m.
SRES	3/3/99	3:15 p.m.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

APR 20 1999

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 25526  
JUNEAU, ALASKA 99802-5526  
PHONE: (907) 465-4100  
FACSIMILE: (907) 465-2332

April 14, 1999

The Honorable Rick Halford  
Chairman, Senate Resources Committee  
Alaska State Legislature  
State Capitol, Room 121  
Juneau, AK 99801-1182

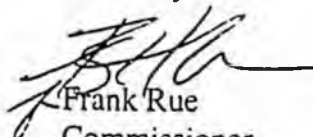
Dear Senator Halford:

In response to your March 11 letter concerning the proposed Bureau of Land Management lease of state selected land within the McNeil River State Game Refuge, I am providing the following information. Prior to making a final recommendation to the Department of Natural Resources, the Alaska Department of Fish and Game plans to conduct a needs assessment for a commercial facility in the refuge. In accordance with the Refuge Management Plan, the assessment will determine (1) whether a need exists for a permanent commercial facility in the refuge to facilitate the department's brown bear viewing program, and (2) whether the refuge and sanctuary management goals are better served with a commercial facility than without.

The needs assessment will be conducted with ample opportunity for the public to participate. In addition to the questions listed above, other topics to be addressed during the process will include siting and operational criteria for any type of commercial facility in the refuge. If our assessment determines that there is ample justification for the brown bear viewing program to be supplemented by a commercial facility, I will issue the required finding of fact and the department will develop appropriate terms and conditions for a commercial facility. At that point the Department of Natural Resources would develop and implement a competitive process to select a vendor.

I share your concern about legalizing unauthorized use of state selected lands with after-the-fact approvals. I will keep you informed of our progress.

Sincerely,

  
Frank Rue  
Commissioner

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### OFFICE OF THE COMMISSIONER

APR 23 1999

TONY KNOWLES, GOVERNOR

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

3601 C STREET, SUITE 1210  
ANCHORAGE, ALASKA 99503-5921  
PHONE: (907) 269-8431  
FAX: (907) 269-8918

April 21, 1999

The Honorable Rick Halford  
Alaska State Legislature  
State Capitol, Room 121  
Juneau, Alaska 99801-1182

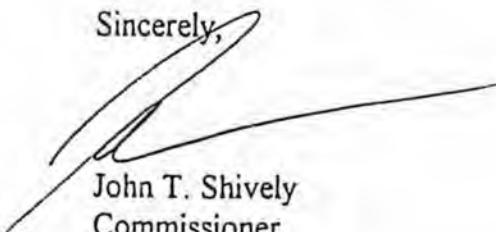
Re: Chenik Institute

Dear Senator Halford:

Thank you for providing me a copy of the meeting notes from the two committee hearings regarding the Chenik Institute. I appreciate your taking the time to provide me with your thoughts and recommendations on the proposed letter of concurrence for this use of state selected land. At the present time my staff is reviewing public comments on this topic and working with personnel in the Department of Fish and Game to coordinate our response to the Federal Bureau of Land Management.

I believe Commissioner Rue has written you regarding the process we are using to reach a decision. I will provide you with a copy of this decision as soon as it is available. Please feel free to contact me if you wish to discuss this matter further in the interim.

Sincerely,



John T. Shively  
Commissioner

cc: Frank Rue, Commissioner, ADF&G  
Jane Angvik, Director, Division of Land  
Rick Thompson, Division of Land

CTS# A99031701LA

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



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
ANCHORAGE FIELD OFFICE  
6881 Abbott Loop Road  
ANCHORAGE, ALASKA 99507

AA-74592 (2920)  
(041) ks

NOTICE TO CEASE AND DESIST APR 26 1999

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Michael P. McBride  
Kachemak Bay Wilderness Lodge  
P. O. Box 956  
Homer, AK 99603

Dear Mr. McBride:

The Bureau of Land Management has investigated and concluded that you are using the public lands located in Seward Meridian, T. 11 S., R. 29 W., Secs. 22 and 23 without authorization. You have constructed permanent structures and have been using the public lands for commercial purposes. This is in violation of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the Alaska National Interest Land Conservation Act (58 USC note prec. 21). In addition, you are in violation of the following regulations: Title 43 CFR §2920.1-2 and §9262.1 (copies attached). You will be advised of future action as a consequence of these acts. If the allegations are correct, you must immediately and permanently cease and desist from the violations charged.

Failure to comply with this notice may result in trespass penalties and citation for your appearance before a designated United States magistrate who may impose a fine of not more than \$1,000 or imprisonment of not more than 12 months, or both, under Title 43 CFR §9262.1.

  
Nick Douglas  
Field Manager

cc: State of Alaska  
Southcentral Region Office  
3601 C Street, Suite 1080  
Anchorage, Alaska 99503-5947

United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
ANCHORAGE DISTRICT OFFICE  
6881 Abbott Loop Road  
ANCHORAGE, ALASKA 99507

8372(AK-040)

APR 26 1999

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Michael McBride  
Kachemak Bay Wilderness Lodge  
P.O. Box 956  
Homer, Alaska 99603

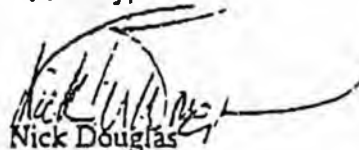
Dear Mr. McBride,

We are aware that you have been conducting recreational use on Public Lands near Chenik Head in T.11S., R.29 W., Seward Meridian. These lands are selected by the State of Alaska and BLM is required to receive concurrence from the State before authorizing recreation activities. The State of Alaska has not given their concurrence to your recreation use. Therefore, we are not able to consider issuing you a Special Recreation Permit for your operations at Chenik Head.

Your continued unauthorized use of the said public lands is in violation of the Code of Federal Regulation (CFR) 43 8372.0-7 (a) (1). You must immediately stop all commercial recreation use of this area. Continued commercial recreation use may result in penalties described under 43 CFR 8372.0-7 (b) and 9268.3 (e) (1).

Please contact Clint Hanson at (907) 267-1206 if you have questions or comments regarding this issue.

Sincerely,

  
Nick Douglas  
Field Manager

CC. Richard Thompson  
Alaska Department of Natural Resources  
Division of Land  
3601 C Street, Suite 1080  
Anchorage, Alaska 99503-5947



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
ANCHORAGE FIELD OFFICE  
6881 Abbot Loop Road  
ANCHORAGE, ALASKA 99507-2599  
<http://www.anchorage.ak.blm.gov/>



AA-74592 (2920)

April 23, 1999

Memorandum

To: Field Manager (040)  
From: Group Manager REM (041)  
Subject: McBride - Recommended Course of Action

Clinton Hanson, Jake Schlapfer, Kathy Stubbs, Dave Stimpson, and David Dorris developed and recommend the following actions on the McBride case.

Conditions or Givens

Two processes must be followed; those dealing with Special Recreation Permits and those for leasing. Final actions should not be taken until the State has declared its position.

Action Recommended

Special Recreation Use Permit	Lease
1. Letter - stop commercial use	1. Letter - cease and desist using site
2. Monitor compliance	2. Monitor compliance
3a. McBride complies with stop letter	3a. McBride complies with Cease & Desist
BLM holds further action until State responds on 906k	BLM holds further action until State responds on 906k
State agrees, BLM issues permit and collects back fees	State agrees to lease, BLM issues lease and collects back rent
State does not concur, BLM continues to monitor.	State does not concur, BLM determines if State wants the land with or without the structures and follows existing process, including collecting back fees
3b. McBride fails to comply	3b. Mc Bride fails to comply
Ranger issues citation, BLM follows existing process to shut down and collect back fees	Issue trespass considering State's recommendation about building removal and collecting back fees.

DATE: April 21, 1999

BRIEFING FOR THE CONGRESSIONAL DELEGATION

PREPARED BY: Anchorage Field Office

FROM: State Director, Alaska

SUBJECT: Michael McBride Occupancy at Chenik Head near McNeil River

PURPOSE OF THE BRIEFING DOCUMENT:

Provide information about McBride's extensive unauthorized use of the public land on Chenik Head.

ISSUES:

- Unauthorized construction of permanent structures (9)
- Unauthorized use of public lands for commercial recreation purposes
- Operating a hunting and bear viewing/photography and guiding service without an SRP ( Special Recreation Permit)

BACKGROUND:

McBride has operated a hunting, bear viewing/photography and guiding service on Chenik Head near McNeil River on the west side of Cook Inlet since the mid-1970's. He has developed the site to accommodate clients whose main goals are to observe and photograph brown bears and other wildlife. McBride's development has grown to include a lodge, sauna, three guest cabins - with outhouses, a shower/storage shed, and two tent platforms.

In February 1979, the State of Alaska filed a selection application for the lands in the area, including those occupied by McBride's business.

McBride contends that applications for an SRP were submitted several times over the years. BLM has no record of applications received in the 1970s as 1970's-era permit documents, by regulation, were destroyed 3 years after termination. An SRP application submitted in 1989 was returned to McBride because the lands had been tentatively approved for conveyance to the State.

On May 30, 1991, McBride submitted an application to lease lands where he conducted his operation. Because the lands had been selected by the State, approval of the application was subject to State concurrence under Sec. 906(k) of ANILCA. On February 25, 1994, the State notified BLM that it could not approve the proposal since the land would become part of the McNeil River Game Refuge upon conveyance to the State. According to DNR (Department of Natural Resources) "...

this activity is not in the best interest of the State. . ." and ". . . is in conflict with the use planned for the area. . . ." ✓

To the best of our knowledge, McBride has not held a legal authorization to use the lands for any purpose.

**BUREAU PERSPECTIVE:**

AFO Field Manager and staff members met with DNR managers and staff on February 12, 1999, to explore ways to address the situation that would make conveyance of the land acceptable to the State. All available options were discussed and sent to the State in writing. The options provide a platform for BLM and the State to work together to resolve the issue and permit the State to take conveyance. As of this date, the State has not responded or indicated that any option is agreeable. In the meantime, BLM can not continue to ignore this ongoing unauthorized use.

**POSITIONS OF INTERESTED PARTIES:**

The State is determined to resolve the matter in a way that does not create a property interest for McBride or an in-holding that conflicts with management goals of the McNeil River Wildlife Refuge. State policy requires that trespass cases be resolved before title will be accepted. Current controversy over McBride's operation, newspaper articles, letters to the editor and other correspondence, has indicated some public opposition to McBride's use. Senator Rick Halford of the Alaska State Senate held a public hearing on the matter. BLM has received two letters of objection.

**CONTACT:**

Nick Douglas, Field Manager (040) 907-267-1246.

**SB**

**175**



Official Business

# ALASKA STATE LEGISLATURE

## SENATE RESOURCES COMMITTEE

State Capitol  
Juneau, AK 99801

Chairman: Senator Rick Halford  
Vice Chair: Senator Robin Taylor  
Senator Lyda Green  
Senator Pete Kelly  
Senator Jerry Mackie  
Senator Sean Parnell  
Senator Georgianna Lincoln

### Sponsor Statement

#### Senate Bill 175

#### "Amendments to State Mining Law"

Senate Bill 175 proposes changes to the Alaska State Mining Law that reduce the mining claim processing time and cost for the State, while improving the accuracy and accessibility of the claim location data. These changes affect methods of locating mining claims, rental payments and other related items; they have no effect on the rights established by claims.

The Department of Natural Resources currently has a substantial backlog of claims that have been filed but are not yet on the land status plats. Changes proposed by SB 175 will greatly improve this situation by allowing DNR to use a format whereby mining claim corners conform to an aliquot part legal description and can then be electronically entered onto (or removed from) the State land status plats.

The changes proposed by SB 175 incorporate several years of work between the mining industry and the Alaska Department of Natural Resources. The primary concern for DNR is the amount of manpower, time and cost that are now required to process the paperwork for mining claims.

From the viewpoint of the mining industry, the changes will simplify the process of staking mining claims and reduce errors during the staking, recording and filing process. One change will make it simpler and more feasible to utilize Global Positioning Systems (GPS) to establish claim corners in the field. Another change will allow the location of a larger size of mining claim, which will decrease the number of stakes in the field and reduce the amount of paperwork by 75%. The existing claim location system will continue to be available for those situations where the new positioning method is not practical.

Other changes regard prospecting sites, including the establishment of a rental charge, repeal of the limitation of the number of sites that can be held, and clarification of the terms.

Senate Bill 175 is supported by the Alaska Miners Association and the Department of Natural Resources.



Official Business

# ALASKA STATE LEGISLATURE

## SENATE RESOURCES COMMITTEE

State Capitol  
Juneau, AK 99801

Chairman: Senator Rick Halford  
Vice Chair: Senator Robin Taylor  
Senator Lyda Green  
Senator Pete Kelly  
Senator Jerry Mackie  
Senator Sean Parnell  
Senator Georgianna Lincoln

### Sectional Analysis

#### Senate Bill 175

#### "Amendments to State Mining Law"

**Section 1.** Establishes an additional method for locating (staking) mining claims called "MTRSC" (Meridian, Township, Range, Section, Claim); allows claims to be located as 160 acres each, in addition to the current size of 40 acres per claim; specifies a grid system for placing claim corners; and reduces the period of time allowed for a person staking a claim to record the certificate of location from 90 days to 45 days.

**Section 2.** Establishes that the annual labor requirement for the new 40 acre MTRSC claims will be the same as existing 40 acre non-MTRSC claims and that the annual labor requirement for 160 acre MTRSC claims will be equal to four (4) times that of the 40 acre claims.

**Section 3.** Establishes a rental rate for prospecting sites and clarifies the rental rates for MTRSC claims.

**Section 4.** Provides an incentive to use the MTRSC method and to convert existing non-MTRSC claims into the MTRSC format.

**Section 5.** Defines "MTRSC system."

**Section 6.** Requires that all new prospecting sites be located by the MTRSC system and reduces the period of time allowed for a person establishing a prospecting site to record the certificate of location from 90 days to 45 days.

**Section 7.** Repeals the limitation on the number of prospecting sites that can be held in a township, increases from one year to two years the term of a prospecting site, removes the extension procedure for prospecting sites, and specifies that the rent must be paid within 45 days for a prospecting site to be valid.

**Section 8.** Removes the requirement that claim lines be marked and clarifies the terms of abandonment of a prospecting site.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

## 4. MTRSC Claim Position Notation

The concept of MTRSC claim position notation was developed after reviewing the simplicity of land area designations by UTM coordinates as in Labrador, and the graticule or graticular section (latitude-longitude) system used in Australia. The present system of describing the location of a mining claim by Meridian, Township, Range, Section, and quarter section or quarter of a quarter section is a cumbersome method of describing small portions of a section and does not lend itself readily to computerized data base management systems. It is very prone to error, is tedious to use in describing property locations and is at its worst when a single mining claim is located in several different sections or even as many as four different townships. The current State Mining Claim Location Notice/Certificate form provides four lines on which to record the location of a single mining claim. The answer seems to be a system that predetermines the position of a claim, and then to develop a simple notation system to identify that claim position.

### 4.1. Pre-Determined Positions for Mining Claims

This method would have mining claims positioned in pre-determined locations, just as sections are in predetermined positions in a township. A 640 acre section can contain 16 forty acre mining claims, each 1,320 feet on a side (See Figure 1). Under MTRSC, no claim could straddle the boundary between two sections. Even now, large claim blocks are often staked so that the description of each claim is the simplest possible, (using only one line on the State Mining Claim Location Notice/Certificate) which means 16 full size state claims per section. Using the current description terminology, a claim would occupy the exact space describable as "the certain quarter of a certain quarter of a section."

All claim lines must be oriented in the cardinal directions with no exceptions. Where a claim staked under this system overlapped onto preexisting federal or state claims, it would be made clear that the senior locator prevails.

The western-most tier of sections in a township actually have less than 640 acres each because that is where the adjustment occurs to compensate for the fact that parallel north-south lines at the equator get closer together northward and southward as they converge at the geographic poles. Thus the western-most tier of claims in the western-most sections will similarly be smaller than 40 acres and in a few townships the northern-most tier of claims would also be less than 40 acres.

### 4.2. MTRSC = Meridian, Township, Range, Section, Claim

MTRSC stands for Meridian, Township, Range, Section, and Claim. The addition of the Claim designator is what makes this system work in describing the location of mining claims when combined with predetermined claim positions. Under the present system, mining claims can be physically positioned without respect to any of the land description boundaries. Thus it is possible to have a single 40 acre mining claim that is situated in sections of 4 different townships, which is a descriptive nightmare and a problem for accurate maintenance of status plats and data base management records.

### 4.3. Claim Designation Procedure

If these claim positions are numbered in the same pattern as sections are numbered in a township describing the location of any claim is easy. Using the established pattern for

numbering sections in a township, claim number 1 would be located in the northeast corner of the section. Claim number 2 would be the next claim position to the west, etc. with the "snaking" pattern similar to the sequence used in numbering the sections in a township. Claim number 16 would be in the southeast corner of the section. See Figure 1.

The format for a typical description of a mining claim using MTRSC would be:

- M Mersidian choices are K, F, S, or C for Kateel River, Fairbanks, Seward, or Copper River.
- T Township need 3 digits followed by N or S.
- R Range need 3 digits followed by E or W.
- S Section a number from 1 through 36.
- C Claim a number from 1 through 16.

A blank space should be placed between each of these location descriptors. A claim location could thus be F 002N 005E 30 10. This notation gives the exact position of the mining claim located there. It is a unique description describing only one Alaska claim site.

If the 160 acre claim size discussed later in this report, were adopted, there would be only four claims per section. These claims could be numbered in the same pattern, 1 through 4. The Claim designator for MTRSC position notation would then be only one digit.

#### 4.4. Advantages

The MTRSC notation and layout of claims has the following benefits:

- The exact description of the location of a claim would never take more than one line of text on a document.
- The notation for each claim is very easy to handle in computerized data base management systems and would make claim location recording and research much easier, both at the Recording Office and with the DMWM Land Administration System.
- The predetermined position for claims would make accurate land status plats much faster to produce.
- The MTRSC notation could be used as the serial numbers for mining claims since each such location is unique and the notation is easy to decode. This would eliminate one step for DMWM when mining claims are filed. The MTRSC notation could also be the name and number of mining claims. The MTRSC notation also provides the location of the claim. Thus three pieces of information required on every location certificate (name, serial number, and location) could be provided by the MTRSC notation.
- MTRSC notation could reduce the number of conflicts between rival claimants because of the increase in the accuracy of the description of the position of a claim.
- MTRSC claim positioning makes it much easier to locate claim posts in the field. With GPS or a topographic map you know about where the claim post is supposed to be.

- MTRSC notation can be easily implemented with a change in the regulations.
- MTRSC would make indexing of the important historic Kardex file data easier

#### 4.5. Disadvantages

The MTRSC notation and positioning of claims would have the following disadvantages:

- Placer locations would probably require more claims than the present system because the streams meander while the claim positions are fixed. Similarly along a coastline not oriented in the cardinal directions, additional claims may be required to hold the same area
- The physical staking of claims has to start from a known point in the field. This is not a trivial matter sometimes. The ground location of section lines or section corners would have to be known either by inspection of physical features on the topographic map, by location of the section corner marker or other survey control point, or by differential GPS methods or any other low cost surveying method where the level of accuracy is sufficient to allow reasonably accurate location of the section corners and lines.
- The predetermined position of a claim means that you could not adjust the claim position to avoid or capitalize on topographic features. This could cause a situation where the #1 best position was inaccessible.
- Since the MTRSC notation pre-determines the physical location of mining claims, the descriptive location would have legal precedence over the field location if there were a conflict between the two

The MTRSC claim position notation appears to offer significant benefits that can be easily implemented with changes in the regulations. For this reason, and because this notation could be used with all the alternatives presented below, it was presented as a separate topic and not included in the Alternatives

Fairbanks Meridian

			TSN				
			T4N				
			T3N				
			T2N				
			T1N				
R3W	R2W	R1W	R1E	R2E	R3E	R4E	R5E
			T1S				
			T2S				
			T3S				

Notation by Township and Range

	6	5	4	3	2	1	
	7	8	9	10	11	12	
	18	17	16	15	14	13	
	19	20	21	22	23	24	
	30	29	28	27	26	25	
	31	32	33	34	35	36	

Notation of sections in a Township

	4	3	2	1	
	5	6	7	8	
	12	11	10	9	
	13	14	15	16	

Notation for claims in a section under MTRSC

MTRSC Position Notation for shaded section and claim = F 002N 005E 30 10

Figure 1. Explanation of MTRSC claim position notation



# ALASKA MINERS ASSOCIATION, INC.

3305 Arctic #202, Anchorage, Alaska 99503 • (907) 563-8229 • FAX (907) 563-8225 • www.alaskaminers.org

March 14, 2000

Honorable Bill Hudson ✓  
Honorable Beverly Masck  
Co-Chairs, House Finance Committee  
Alaska State House of Representatives  
State Capitol  
Juneau, AK 99801

RE: Senate Bill 175, Amendments to the Alaska State Mining Law

Dear Representatives Hudson and Masck,

Thank you for scheduling a hearing on Senate Bill 175 which will make some amendments to the Alaska State Mining Law. The changes proposed in SB-175 are the result of several years of work between the mining industry and the Alaska Department of Natural Resources. They affect only the process required for locating (staking) mining claims and do not increase or decrease the rights established by mining claims. These changes have been developed very carefully to ensure that they accomplish only what is intended and that they clarify some points in the existing law that could otherwise contribute (and in the past have contributed) to paperwork and records errors.

The current State budget challenges were the primary catalyst for our work to develop these amendments. Also, technological advances in electronic land records, on-line access, and Global Positioning Systems (GPS) have developed to a level where they now provide new ways to address the problems and post data onto the State land status plats in a timely and efficient manner.

The primary issue for DNR is the amount of manpower, time and cost that is now required to process the paperwork for mining claims. SB-175 greatly improves this situation by placing mining claims into a format that can be electronically entered onto (or removed from) the State land status plats. This will decrease the amount of time for DNR to process the claims and at the same time greatly improve the accuracy and accessibility of the dates. DNR now has about six months backlog of claims that have been located and filed with the Department, but are not yet entered on the land status plats.

For the mining industry, the changes will simplify the process of staking mining claims and reduce errors during the staking, recording and filing process. One change will make it simpler and more feasible to utilize Global Positioning Systems (GPS) to establish claim corners in the field. Another change will allow use of a larger size mining claim which will decrease the amount of paperwork by 75%, for both the miner and DNR. The existing claim location system will continue to be available for those situations where the new position method is not practical.

We urge the SB-175 be enacted and become law at the earliest feasible date.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

# FISCAL NOTE

**STATE OF ALASKA**  
**2000 LEGISLATIVE SESSION**

No. 2  
 Bill Version: SB 175  
 (S) Publish Date: 2-29-00

Revision Date/Time: 28-Feb-00 Dept Affected: Natural Resources  
 Title: STATE MINING LAW BRU: Minerals, Land & Water Development  
 Component: Claims, Permits and Leases  
 Sponsor: S RES  
 Requestor: S FIN Component No: 2460

Expenditures/Revenues (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES	75.0	75.0	75.0	75.0	75.0	75.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>75.0</b>	<b>75.0</b>	<b>75.0</b>	<b>75.0</b>	<b>75.0</b>	<b>75.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES (fund code)</b>	<b>150.0</b>	<b>150.0</b>	<b>150.0</b>	<b>150.0</b>	<b>150.0</b>	<b>150.0</b>

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	75.0	75.0	75.0	75.0	75.0	75.0
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>75.0</b>	<b>75.0</b>	<b>75.0</b>	<b>75.0</b>	<b>75.0</b>	<b>75.0</b>

Estimate of any current year (FY2000) cost: \$ n/a

**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)

**Conclusion.** This bill makes the mineral location process more efficient for the state and for the locator. Thus, it may, especially in the longer run, actually lower costs for the state. Currently, the state does not provide a reasonable level of service for the mineral industry: a four to six month backlog before mineral locations are processed. That level of service creates confusion in land tenure. This can be a significant problem for the industry.

The bill also creates a new revenue source that the state estimates will be at least \$150K. That is, the industry will pay the state an additional \$150K as a result of this bill. The funds requested in the fiscal note would allow the state to lower processing times to 4-6 weeks --a much more reasonable level of service for the industry.

Prepared by: Robert M. Loeffler Phone: 907-269-8625  
 Division: Mining, Land and Water Date: 28-Feb-00  
 Approved by Commissioner: John Shively Date: 28-Feb-00  
 Agency: Natural Resources

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**Background.** Alaska is experiencing a boom in mineral locations. The number of new claims has increased from 3,000-4,000 per year in the early 1990s to over 15,000 last year. Because of this increase, each year it takes longer and longer for DNR to process all the new locations. DNR is currently experiencing a 4-6 month lag time, more than a full mining season, for DNR to process new claims. (DNR expects the lag time to decrease to 12 weeks as a result of automation efforts this summer -- but this lag time is still longer than the industry has ever experienced and is approaching the length of the mining season).

**What the Bill Does.** The major change is that the bill allows locators to stake claims according to aliquot parts (referred to as Meridian, Township, Range, Section Claims, or MTRSC, in the bill). It also allows miners to stake 160-acre rather than 40-acre claims. These changes will reduce DNR's processing requirements, though there may be some additional work the first year to set the process up. In addition, it would allow locators to stake their locations in a manner that allows DNR to automate a significant part of the process. Thus, the bill is necessary to ensure that DNR's level of service does not deteriorate further if, as expected, 10,000 new claims are staked in the next few years. Finally, the bill would also save the mineral locator money in being able to locate fewer mineral locations to cover the same area, which will result in less staking and recording.

**New Revenue Source.** Despite a one-time discount in rent for new or converted MTRSC locations, this bill will result in industry paying an additional \$150K to the state. That is, this bill provides a one-time 50% reduction in rental for new MTRSC mineral locations and previous mineral locations converted to MTRSC as an incentive to locate the new MTRSC locations provided in this bill. The one-time incentive-induced reduction in rental will cost the State an estimated \$50K in reduced rentals. This bill also provides a new, previously untapped source of rental revenue from requiring rental for prospecting site locations at the same rental amount as for new mining locations. Requiring rental for prospecting site locations, which had no rental requirement previously, will result in fewer prospecting site locations (estimated 75% reduction) and more mining claims or leasehold locations being staked in their place. This "switching" by the mining industry will result in an estimated net rental increase of \$200K annually. Thus, the net effect of the bill is to increase revenues from the mineral industry by approximately \$150K annually, approximately half of which would go to the permanent fund.

**Effect on DNR Workload and Processing Time.** Currently, DNR puts prospecting site locations in the state's computerized public land records, but not on the status plats. DNR does, however, put new mining claims and leasehold locations in the public land records as well as on the status plats. Thus, the "new rental revenue" needs to be used to process the additional locations, set up the new system, and to reduce the processing time of new locations expected. Without the bill, the claim processing time will, in future years, climb to 14 or 16 weeks or longer (i.e., it would take longer than a full mining season to process the claims). This is a much lower level of service than the mining industry deserves. This bill, without the fiscal note, will allow the processing time to stay at the relatively poor service level of approximately 12 weeks. The bill plus the funds in the fiscal note would allow DNR to lower processing times to approximately 6 weeks.

**SB**

**194**

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**SENATOR JERRY MACKIE**

SENATE MAJORITY LEADER

SPONSOR STATEMENT

SB 194, Survey Error Correction.

Although the bill status lists SB 194 as concerning the Chilkat Bald Eagle Preserve, the substance of the this legislation is to correct a land ownership problem caused by a survey error.

Mr. David Pahl of Haines, Alaska purchased a piece of property near the Klehini River in 1995. Originally, the property was part of a state land disposal that had been subdivided and surveyed. Unfortunately, one of the parcels had been mis-monumented.

Mr. Pahl relied on the errant survey markers to define the location of his property. Right-of-way requirements of a state highway project revealed that the recorded plat of Mr. Pahl's property was an adjacent parcel, which had largely been taken by the Klehini River. Mr. Pahl appealed to the Department of Natural Resources to rectify the situation by giving him title to the piece of property he always thought was his. This solution is not available because an earlier action had placed the subject property within the Chilkat Bald Eagle Preserve.

SB 194 would allow the Commissioner of Nature Resources and the director of the Division of Lands to reclaim the property from the Preserve and give title to Mr. Pahl in exchange for the largely submerged parcel.

575

## STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

## OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

400 WILLOUGHBY AVENUE  
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 PHONE: (907) 269-8431  
 FAX: (907) 269-8918

July 15, 1999

David Pahl  
 P.O. Box 702  
 Haines, Alaska 99827

Re: Land problem, ADL 101410

Dear Mr. Pahl:

I am responding to Mr. Goll's summary of your land problem. Your situation is unique and I understand why you thought that the land you bought from a previous state land purchaser was an intact parcel next to the Klehini River. In fact, only a small remnant remains from Tract 2 of ASLS 79-232, the parcel you actually bought in 1995 from Sarah Kavasharov. The rest was eroded away by the river after the state issued the land sale contract to Ms. Kavasharov in 1981.

The attachment is a discussion of facts related to the issue. Because the existing monument caps are mismarked and Tract 2 has substantially eroded away, a layperson inspecting it in the field could be misled into thinking that the remaining parcel is Tract 2. Unfortunately, that is not the case. The survey plat shows that the remaining parcel is actually Tract 1, which was never sold and was designated by the legislature as part of the Alaska Chilkat Bald Eagle Preserve in 1982.

You apparently relied on the mismarked monuments when you purchased the tract. The department knew before originally offering the land that the surveyor had mislabeled the monuments; and it should have foreseen that the mislabeling could mislead purchasers. It proceeded with the sale without making the surveyor correct the monument labels or even warning potential buyers that the labels had been reversed. I regret that this series of errors occurred, and I am looking for remedies for you.

Because Tract 1 was withdrawn by the legislature in 1982 as part of the Alaska Chilkat Bald Eagle Preserve, it is no longer subject to my land disposal powers under Title 38. Therefore the department does not have the authority to consider conveyance of Tract 1 at this time.

I think a fair resolution of this matter would be a refund of the original purchase price to you in exchange for you deeding Tract 2 back to the State. If this solution is not acceptable, the restrictions of Title 38 leave me without any alternative means to compensate you for this situation absent litigation. If you were to file legal action against the state, I could recommend that the Department of Law use its authority to settle the litigation by

*Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans*

David Pahl  
July 15, 1999  
Page 2

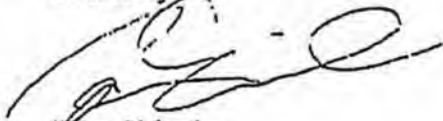
offering you a substitute parcel from the departments' 1999 land offering that is equal in value to the original purchase price (adjusted for time). This solution would also require you to deed Tract 2 back to the state.

Under current law, Tract 1, ASLS 79-232 is not available as a substitute parcel and could not be offered to you in any settlement. In order for Tract 1 to be available as a substitute parcel under the option stated in the previous paragraph, it would be necessary for the legislature to remove Tract 1 from the Alaska Chilkat Bald Eagle Preserve.

I realize that this has been a very frustrating experience for you. I want to find an equitable solution to our problem.

I understand you may be considering building on this site. I would advise you against building until this situation is resolved, as such action would cause you more expense and possible loss of the property constructed. I look forward to continuing to work with you to resolve this matter.

Sincerely,



John Shively  
Commissioner

Attachment

cc: Bob Loeffler, Director, Division of Mining, Land and Water  
Jim Stratton, Director, Division of Parks and Outdoor Recreation  
Peter Goll

J99052101LA

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## **ALASKA CHILKAT BALD EAGLE PRESERVE ADVISORY COUNCIL**

MAILING ADDRESS:  
400 Willoughby Avenue  
JUNEAU, ALASKA 99801-1381  
PHONE: (907) 465-4563  
FAX: (907) 465-5330

January 4, 2000

The Honorable Senator Jerry Mackie  
State Capitol Room 427  
Juneau, AK 99801-1182

Dear Senator Mackie:

The Alaska Chilkat Bald Eagle Preserve Advisory Council respectfully requests legislative action to correct a clerical platting error affecting an inholding in the Alaska Chilkat Bald Eagle Preserve. The Council stipulates that such legislation be strictly limited in the title and content to the specific correction outlined below.

The property in question is owned by Mr. David Pahl of Haines. Title to the property was transferred to Mr. Pahl by the State of Alaska on April 4, 1997.

Mr. Pahl inspected the property prior to purchase. It was marked as Tract #2 of ASLS 79-232. Due to a surveyor's error, identified and acknowledged as an error by the Department of Natural Resources, the tract shown to the public with identifying markers as Tract #2, was represented on plat maps as Tract #1.

Consequently, Mr. Pahl, in purchasing Tract #2, received title to an adjacent lot, which then and now is partially covered by the Chilkat River, a resource whose protection is of considerable importance to the Council.

The Council, grateful for the support given by the Commissioner of Natural Resources in seeking a just resolution, is hereby requesting that the clerical error be corrected such that Mr. Pahl have title to the upland parcel he believed he had purchased in good faith referred to on plat maps as Tract #1, and that the riverfront parcel shown on plats as Tract #2 and currently deeded to Mr. Pahl be returned to the Preserve.

This correction will permit two parcels in question to be used in the future as they have in the past by Mr. Pahl and the preserve. It will ensure that the uses of the riverfront parcel are consistent with purposes of the preserve, and will protect the valid claim by Mr. Pahl to the property he inspected, purchased in good faith which was represented by State survey markers as the parcel offered to him for sale.

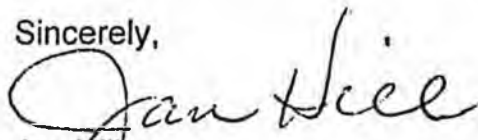
In summary, the Council wishes to thank Senator Mackie and Representative Kookesh for their interest and advocacy for the interests of Mr. Pahl and the Preserve.

We have attached some information which we hope will be of use to the Division of Legislative Services in drafting language which will return Mr. Pahl's title to his property, establish the Preserve's title to it's riverfront parcel, and preclude establishment of any precedent suggesting that the integrity of the Preserve may be compromised by executive action.

We do not consider this to be a land trade, but rather a legislatively-mandated correction of a clerical error impacting both the Preserve and Mr. Pahl's interests.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Jan Hill". The signature is written in dark ink and is positioned above the typed name.

Jan Hill  
Co-Chair

Alaska Chilkat Bald Eagle Preserve Advisory Council

Historical Notes on Tracts 1 & 2, ASLS 79-232.

The property claimed by Mr. Pahl was displayed for sale, marked on the ground as property not in the Preserve, and sold to the public prior to the creation of the Preserve.

During the intervening period the property was used by Mr. Pahl and others as private property. The members of the Board and residents of the area have understood the property to be Mr. Pahl's for many years, and a legal correction will simply state the facts as they exist: That the lot claimed by Mr. Pahl is his, and the lot stated to be his by the State is in fact part of the preserve.

The Council affirms that the land historically used by Mr. Pahl is more appropriate to private use than the land which the State, due to the clerical error in platting the survey, deeded to him. The land used historically by the preserve, and deeded to Mr. Pahl due to a platting and survey error, is best used by the Preserve for its purposes.

Both the council and Mr. Pahl agree that all interests are best served through the error correction. Mr. Pahl is willing to forgo any rights to the riverfront parcel (Tract #2). And the Council recommends the State convey its interest in the upland parcel (Tract #1) to Mr. Pahl.

We wish to stress that this approval and request is for these specific pieces of property only; and that this approval and request for action is based upon a unique set of facts; and that this approval and request is being made specifically because of the State's error in marking the property for public inspection. Neither the public nor the council had any prior reason to believe the property claimed by Mr. Pahl was ever in the preserve at all. It has been used as private land prior to the creation to the Preserve, and the Board supports Mr Pahl's claim to title to the upland parcel. Mr. Pahl supports the council's recommendation that the State regain title to the river front parcel.

# FISCAL NOTE

**STATE OF ALASKA**  
**2000 LEGISLATIVE SESSION**

**BILL NO. SB194**

Revision Date/Time: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: An Act relating to the Alaska BRU: Parks and Recreation Mgt.  
Chilkat Bald Eagle Preserve Component: Parks Management  
 Sponsor: Mackie  
 Requestor: (S) RES Component No #452

Expenditures/Revenues (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES (fund code)</b>	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						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: \$ n/a

**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)

There is no anticipated fiscal impact associated with implementation of this legislation.

Prepared by: Jim Stratton, Director *Jim Stratton* Phone: 269-8701  
 Division: Parks Date: 17-Feb-00  
 Approved by Commissioner: John Shively *John Shively* Date: 17-Feb-00  
 Agency: Natural Resources

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**SENATOR JERRY MACKIE**  
SENATE MAJORITY LEADER

February 28, 2000

MEMORANDUM

To: Representative Masek, Co-chair  
Representative Hudson, Co-chair  
House Resources Committee

From: Senator Mackie 

Re: Schedule for SB 194, Chilkat Bald Eagle Preserve.

I would appreciate a Resources Committee hearing on SB 194 at your earliest convenience. Although the title emphasizes the Preserve, it is more about correcting the results of a surveying error. Attached is a sponsor statement and some back up information.

Thank you for your consideration of this request.

**SB**

**255**

# Alaska State Legislature

SENATOR

PETER KELLY

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Senate District #

## Sponsor Statement

### Senate Bill 255

#### **“An Act regarding best interest findings and land use permits issued by the Department of Natural Resources”**

Senate Bill 255 is intended to clarify the fact that permits issued by the Department of Natural Resources (DNR) pursuant to AS 38.05.850 are exempt from the best interest finding requirement imposed by AS 38.05.035 (e) which applies to disposals of State land.

AS 38.05.850 authorizes the director of the Division of Lands, without the DNR Commissioner’s consent and without the necessity of a best interest finding, to issue permits, rights-of-way, and easements on State land for such purposes as roads, field gathering lines, or transmission and distribution pipelines, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities. All permits issued by DNR are issued pursuant to AS 38.05.850

Recently the Alaska Supreme Court ruled that a conditional right-of-way permit issued by DNR for construction of an electric transmission line required a best interest finding. The Court’s decision jeopardizes the status of permits previously issued by DNR under AS 38.05.850 as each of those permits may, under the Court’s logic, constitute a disposal of State land for which a best interest finding was required. The court’s decision has potentially dramatic implications for the oil, gas, mining, timber, utility and transportation industries. In order for DNR to comply with the Court’s ruling and to survive legal challenges to the permits which it issues, DNR will likely have to issue best interest findings for almost every permit issued under AS 38.95.850.

Sponsor Statement SB 255

Page two.

The consequences of such an approach would (1) strain DNR's budget, (2) substantially delay the permitting process and, (3) negatively impact development and use of State land resources.

SB 255 confirms by clarification and amendment that permits, right-of-way and easements issued under AS 38.05.850 are exempt from the best interest finding requirement of AS 38.05.035(e). SB 255 allows DNR to continue managing State lands cost effectively. There are no negative monetary implications to this Bill.

The request that SB 255 be applied retroactively to all DNR permits issued since July 27, 1981 coincides with the effective date of the permit exception in AS 38.05.035 (e)(6)(C). Retroactive application will eliminate challenges to DNR permits that were issued without a best interest finding and that may still be subject to challenge.

Examples of Rights-of-Way issued under AS 38.05.850  
without a best interest finding under AS 38.05.035(e)

**SOUTHEAST REGION**

- ADL 30442 **Snettisham Power Project** -- Issued to the Corps of Engineers  
Power transmission and related facilities from Snettisham to  
Juncau
- ADL 106314 **Municipal Sewage Outfall Line** -- Issued to City of Klawock  
Forced main and marine outfall line

**SOUTHCENTRAL REGION**

- ADL 226847 **Whittier Access Road Project** -- Issued to Dept of Transportation &  
Public Facilities  
Roadway and bridges on state-owned land
- ADL 22701 **Whittier Access Road Project** -- Issued to Dept of Transportation &  
Public Facilities  
Shoreline fill placement at Portage Lake
- ADL 226756 **Communication Line** -- Issued to Matanuska Telephone Association Inc.  
1200 foot buried communication line on the bottom of Willow  
Lake
- ADL 227360 **Electric Distribution Line** -- Issued to Matanuska Electric Association  
Inc.  
250 foot power line on the south edge of Locke Lane and across  
Willow Creek Road

**NORTHERN REGION**

- ADL 412401 **Access Road** -- Issued to SOHIO (now known as BP Exploration Alaska)  
11 mile permanent gravel road for access to the Duck Island Unit  
in conjunction with the Endicott Pipeline
- ADL 413263 **Natural Gas Distribution Line** -- Issued to Norgasco Inc.  
Gas distribution lines in Deadhorse (industrial leased area at  
Prudhoe Bay)

Pete

Here is some info that  
will be helpful for Friday.  
Mita

12/11/97

## Benefit-Cost Analysis

The benefits of this project were evaluated in the 1991 AEA Railbelt Intertie Feasibility Study, a 1989 study by Decision Focus, Inc. (DFI, 1989), and a draft study on the benefits of a battery energy storage system (BESS) prepared by Chugach Electric Association for the Electric Power Research Institute (EPRI, 1997). The DFI report estimated benefits of a limited upgrade of the existing Anchorage-Fairbanks line and a new transmission line between Healy and Fairbanks at \$105.8 million in several different categories. The AEA study added an additional benefit of savings during reconstruction of the existing line. The present value of this benefit was estimated at about \$29.6 million. The EPRI study estimated benefits of a BESS in Fairbanks at \$49.6 million under the assumption that a second transmission line is in place between Healy and Fairbanks.

Since the DFI study and the AEA report were completed a number of factors related to the energy situation in Alaska and Fairbanks changed. These include seven years of time, increased electrical energy demand in the Fairbanks area, construction of the 50 MW Healy Clean Coal Project (HCCP), lower fuel prices, and the inclusion of a BESS system to the proposed project, among others. DFI recently prepared an update of the economic feasibility of the southern intertie between Kenai and Anchorage that addressed similar items.<sup>1</sup>

The previous studies provided benefits for projects with different parameters than proposed here so the analyses are not directly transferable to this project. Certain categories of benefits described in the EPRI report can be used directly but using total benefits from the EPRI, DFI, and AEA studies is not appropriate for this analysis. This evaluation uses appropriate information from the BESS study and additional information provided by GVEA to generate potential estimates of benefits and costs. The methodology for calculating benefits other than those directly derived from the EPRI study is described in this section. Benefits from the EPRI study are summarized and the net present value from the report is also presented.

Benefit-cost analysis is a method of evaluating competing uses of resources in a comprehensible fashion. This methodology assesses the benefits and costs of a project and reduces them to a common dollar denominator. As such, benefit-cost analysis may appear to not address the possible alternative uses of resources in other projects. Costs are defined relative to their opportunity cost, which is the "benefit foregone by not using these resources in the best of the available alternative investments that cannot be undertaken if the resources are used in the project."<sup>2</sup> In theory, the use of a discount rate employed in benefit-cost analysis also reflects the opportunity cost, or next best use of capital. The cost of capital in the financial markets is frequently used as a proxy for the opportunity cost of capital.

<sup>1</sup> Decision Focus, Inc. *Review and Update of Economic Feasibility of Southern Intertie Project (DRAFT)*. Prepared for Power Engineers, Inc. August 1997.

<sup>2</sup> Squire, Lyn and Herman G. van der Tak. *Economic Analysis of Projects*. Published for the World Bank by the Johns Hopkins University Press. 1975.

This evaluation focuses on the traditional efficiency evaluation of investments and does not attempt to measure all potential benefits and costs. Such a task would be beyond the resources available for this effort. With the exception of air quality benefits described in the EPRI study, environmental and social benefits and costs are not included in this analysis for several reasons:

1. Information to address these issues is not readily available from existing sources.
2. Resources are not available to undertake such a comprehensive study.
3. There are significant differences of opinion within the economics profession on the proper manner to measure many of the social and environmental parameters.

Economic analysis differs from financial analysis in several ways:

- A primary difference is that capital costs are not amortized over time in economic analysis. Costs are incurred in the year of expenditure, and not in the year in which payments are made. The time value of funds is accounted for by discounting expenditures in any given year back to the current year with the use of an appropriate discount rate.
- Another difference is that the economic analysis evaluates benefits and costs throughout the entire economy, not just the firm or organization undertaking the project. These economic costs and benefits may differ substantially from the financial costs and revenues of the entity operating the project.
- Lastly, the basic criterion for measuring the economic benefits of an investment is the "with and without" test: what will costs be with the investment, and what would they have been without it? The often mistakenly applied "before and after" test: what were the costs before the facility was built and what will they be afterward, usually leads to a serious underestimate of economic benefits.<sup>3</sup>

Net present value calculations for this analysis are based on a 50-year life for the transmission line and BESS system. No residual value is claimed for any project components at the end of that time period. The EPRI study assumed a 20-year life so annual benefits for the BESS system have been extended through the 50<sup>th</sup> year and battery replacement costs have been included on a 20-year cycle. The time period extension projects the benefits for the 20-year period through the 50<sup>th</sup> year without adjusting for load growth or other factors that would occur in years 21 through 50. As a result, the benefits shown here are less than could be achieved if the EPRI analysis was redone and, subsequently, this report presents a conservative estimate of the potential BESS benefits.

The EPRI study used a 9 percent nominal, and a 6 percent real discount rate. The same discount rate is employed in this analysis to permit use of the BESS benefits calculated by EPRI where possible. Information is not readily available, nor are there adequate resources for this analysis to provide an estimate of the BESS benefits using a lower discount rate. GVEA's opportunity cost of capital is unknown but the organization's financial cost of capital is 7.5 percent.<sup>4</sup> The average annual inflation rate for the U.S. Consumer Price Index (All

<sup>3</sup> Hans A. Adler. *Economic Appraisal of Transport Projects*. Economic Development Institute Series in Economic Development. Published for the World Bank by Johns Hopkins University Press. 1987.

<sup>4</sup> Haegenson, Steve. Manager of Engineering Services, Golden Valley Electric Association. Personal communication. October 14, 1997.

Urban Consumers) was 3.0 percent from 1990 through 1996.<sup>5</sup> This suggests that the real financial cost of capital for GVEA is about 4.5 percent. If the discount rate used in this analysis were lowered to 4.5 percent net benefits from the proposed Northern Intertie would increase. Conversely, a higher discount rate would lower the net benefits.

## 1 Estimated Benefits by Category

### 1.1. ECONOMICAL ENERGY FROM INCREASED TRANSMISSION CAPABILITY

The greatest benefit of this project would be the value of increased transfer of economical energy. GVEA's most economical power sources are its Healy # 1 coal-fired generation plant in Healy and natural gas-fired generation from the Cook Inlet area. These southern power sources are less expensive than the oil-fired generation units in the Fairbanks area. Currently there is not enough transmission capacity from Healy to Fairbanks for GVEA to transfer all of the power that will be generated in Healy and economical power purchases from southcentral Alaska sources. By increasing the transfer capacity between Healy and Fairbanks, the proposed transmission line allows economic benefits to be realized by GVEA members as a result of substituting locally produced energy with lower priced energy from southcentral Alaska.

Table 1-1 presents an example for one year of the type of benefit that the additional capacity offered by the Northern Intertie project provides to the Fairbanks area. This example uses the total system requirements projected for GVEA and FMUS in 2001.<sup>6</sup> With the proposed project, GVEA can replace more expensive electricity from oil-fired units with less expensive electricity from gas-fired generating plants in southcentral Alaska.

<sup>5</sup> Bureau of Labor Statistics data. Consumer Price Index-All Urban Consumers (<http://stats.bls.gov/cgi-bin/survey/most>). Extracted on 10/13/97. Annual average calculated by Northern Economics.

<sup>6</sup> R.W. Beck, Inc. 1997 *Power Requirements Study Final Report*. Prepared for Golden Valley Electric Association, Inc.

• Table 1-1  
*Example Benefits from Increased Transmission Capability*

	Capacity (MW)	Plant Factor	Annual Hours	Energy (MWh)	Cost/kWh	Annual Costs
<b>Without Project</b>						
Healy # 1	25	0.85	7,446	186,150	\$ 0.018	\$ 3,350,700
HCCP	53	0.85	7,446	394,638	\$ 0.045	\$ 17,758,710
Bradley Lake (37% of time)	20	0.37	3,241	64,824	\$ 0.050	\$ 3,241,200
Anchorage gas units	22	0.66	5,813	127,896	\$ 0.022	\$ 2,813,706
Subtotal						\$ 27,164,316
Fairbanks generation	82	0.50	4,403	361,017	\$ 0.034	\$ 12,274,587
Aurora Energy	18	0.85	7,446	134,028	\$ 0.040	\$ 5,361,120
<b>Total</b>				1,268,553		\$ 44,800,023
<b>With Project</b>						
Healy # 1	25	0.85	7,446	186,150	\$ 0.018	\$ 3,350,700
HCCP	53	0.85	7,446	394,638	\$ 0.045	\$ 17,758,710
Bradley Lake (37% of time)	20	0.37	3,241	64,824	\$ 0.050	\$ 3,241,200
Anchorage gas units	62	0.90	7,886	488,913	\$ 0.022	\$ 10,756,094
Subtotal						\$ 35,106,704
Fairbanks generation	82	0.00	-	-	\$ 0.034	\$ -
Aurora Energy	18	0.85	7,446	134,028	\$ 0.040	\$ 5,361,120
<b>Total</b>				1,268,553		\$ 40,467,824
<b>Annual Benefits</b>						\$ 4,332,199

The load requirements for 1997 through 2006 are taken directly from the R.W. Beck study, and a straight-line interpolation is used between the R.W. Beck projections for 2006 and 2016. Fifty-year projections were extrapolated beyond 2016 using the average annual increase in system requirements between 2006 and 2016. Assuming constant price differentials between generating units, fixed utilization factors for the coal plants, the same order of dispatch as the listing of generation units in Table 1-1, and employing the annual electrical requirements described above results in a net present value for this benefit of \$57.3 million. This relatively simple model provides an estimate of current 1997 benefits that is comparable to that estimated in the 1989 DFI study and the 1991 AEA study, after adjusting for the HCCP and other factors that have changed since the early 1990s. The economical energy benefit identified in the Railbelt Intertie Feasibility Study was about \$43 million in 1991 dollars (AEA, 1991), or about \$51.6 million in 1997 dollars.

## 1.2. REDUCTION OF TRANSMISSION LOSSES

Currently, approximately 13.1 MW of electricity is lost to GVEA and its members during the transfer of power from Healy to Fairbanks over the existing intertie, operating at 105 MW. By constructing another intertie and splitting the electric load between the two interties, the loss between Healy and Fairbanks on both lines would be reduced to 4.3 MW, for a loss reduction of 8.8 MW. Table 1-2 shows the calculations for estimating transmission losses over the 50-year life of the transmission line.

• Table 1-2  
Savings From Transmission Losses

Current losses, Healy-Gold Hill	13.1 MW
Losses with project	
Northern Intertie and Healy-Gold Hill	4.3 MW
Loss reduction from second line	<u>8.8 MW</u>
Typical load level - 78 to 113.8 MW	
Load factor (LF)	0.835
Loss factor $0.84(LF)^2 + 0.16(LF)$	0.72
Annual Savings from Loss Reductions	
(LF)*(reduced losses)*hours/year*(cost of power)	
$(0.72)*(8,800 \text{ kW})*(8,712)*(\$0.035/\text{kWh})$	\$ 1,930,012
Net Present Value	\$25,541,701

The system load factor (LF) shown in Table 1-2 is computed by dividing the energy in megawatt-hours produced by all generating units (adjusting for maintenance and other factors) by the peak system demand in megawatts times the hours in a year. Losses on a line are non-linear so the loss factor equation adjusts the load factor to account for losses. Transmission losses do increase with the length of the transmission line but losses for each alternative are not addressed here because of the relatively small differences in distance between each alternative and the effect of other factors in addition to distance on line losses.

### 1.3. RECONSTRUCTION SAVINGS

The existing 138 kV transmission line between Healy and Fairbanks was constructed in 1967. Reconstruction of the existing intertie is expected to include an upgrade from 138 kV to 230 kV and could include realignment of the route in limited areas, such as near the Nenana Airport, where the existing line is close to the landing strip and float plane takeoff/landing area. With a second intertie in place, the existing intertie could be taken out of service for periods of time with the new intertie supplying power from the Healy generation units and southcentral Alaska sources. The existing line would be reconstructed over a period of five years, with the old intertie out of service for 7 months during each year.<sup>7</sup>

Reconstruction of the existing line without the proposed Northern Intertie would prevent Fairbanks area utilities from importing lower priced power from Healy and southcentral Alaska during the reconstruction period. Reconstruction would still take place over a five-year period with the existing line being taken out of service only during low demand periods. Portions of the line between Healy and Rex, and between Nenana and Gold Hill, would need to be constructed during summer periods. The portion between Rex and Nenana, crossing the Tanana Flats, would need to be reconstructed during short periods of the winter (November-December and March-April) when the Tanana Flats are frozen and electric demand is lower.

<sup>7</sup> Alaska Energy Authority, 1991. Railbelt Intertie Feasibility Study Final Report.

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Table 1-3 calculates the benefits provided by the Northern Intertie during reconstruction of the existing 138 kV transmission line. The benefit analysis incorporates the benefits and costs for Anchorage and Fairbanks during normal operations and the reconstruction period. The table uses the same energy requirements for the with- and without-project scenarios to avoid double counting the benefits from increased capacity.

Under the existing situation GVEA would sell its HCCP and Bradley Lake power to southcentral utilities during the reconstruction period since these sources are "take or pay" contracts. The economic costs of this situation are the higher costs incurred by the economy by displacing lower cost power with higher cost power. The financial costs to GVEA would be the production or purchase price for this generation less the sales price to southcentral utilities. However, southcentral utilities would benefit from this transaction to the extent that their purchase price is less than their cost of production.

Replacing the Healy and Anchorage generation units with Fairbanks oil-fired units does not appreciably increase the total generation costs, but replacement of the Anchorage gas-fired generation with the HCCP and Bradley Lake results in substantial economic costs to the Railbelt utilities, with GVEA incurring substantial financial losses.

The value of having the new intertie in service during reconstruction of the existing intertie was estimated at \$29.6 million in 1991 dollars (AEA, 1991). The current estimate of benefits, \$25.4 million, is smaller than the 1991 estimate at least partly because of the "take or pay" contracts for HCCP and Bradley Lake that motivate GVEA to sell the higher cost power from these generating sources into Anchorage markets to capture any sort of revenue. In the economic analysis this results in the displacement of low cost energy with higher cost energy.