

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

10972 HOUSE RESOURCES

1 circulation and in newspapers of general circulation in the vicinity of the
2 proposed action at least once a week for two consecutive weeks;

3 (B) publication of a notice in display advertising form in the
4 newspapers described in (A) of this paragraph at least once a week for two
5 consecutive weeks;

6 (C) public service announcements on the electronic media
7 serving the area to be affected by the proposed action; and

8 (D) one or more of the following methods:

9 (i) posting in a conspicuous location in the vicinity of
10 the action;

11 (ii) notification of parties known or likely to be affected
12 by the action; or

13 (iii) another method calculated to reach affected parties;

14 (3) if the notice is of an action described in (a) of this section, other
15 than notice of an action under (a)(3)(A) or (a)(7) of this section, the department shall
16 give notice at least 30 days before the action by publication in newspapers of
17 statewide circulation and in newspapers of general circulation in the vicinity of the
18 proposed action and one or more of the following methods:

19 (A) publication through public service announcements on the
20 electronic media serving the area affected by the action;

21 (B) posting in a conspicuous location in the vicinity of the
22 action;

23 (C) notification of parties known or likely to be affected by the
24 action; or

25 (D) another method calculated to reach affected persons.

26 * Sec. 11. AS 46.03.100(f) is amended to read:

27 (f) This section does not apply to discharges of solid or liquid waste material
28 or water discharges from the following activities if the discharge is incidental to the
29 activity and the activity does not produce a discharge from a point source, as that term
30 is defined in regulations adopted under this chapter, directly into any surface water of
31 the state:

1 (1) mineral drilling, trenching, ditching, and similar activities;
2 (2) landscaping;
3 (3) water well drilling and [,] geophysical drilling [, OR COAL BED
4 METHANE DRILLING OR OTHER NATURAL GAS DRILLING TO RECOVER
5 GAS FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE
6 SURFACE]; or

7 (4) drilling, ditching, trenching, and similar activities associated with
8 facility construction and maintenance or with road or other transportation facility
9 construction and maintenance; however, the exemption provided by this paragraph
10 does not relieve a person from obtaining a permit under this section if

11 (A) the drilling, ditching, trenching, or similar activity will
12 involve the removal of the groundwater, stormwater, or wastewater runoff that
13 has accumulated and is present at an excavation site for facility, road, or other
14 transportation construction or maintenance; and

15 (B) a permit is otherwise required by this section.

16 * Sec. 12. AS 46.04.030(b) is amended to read:

17 (b) A person may not cause or permit the operation of a pipeline or an
18 exploration or production facility in the state unless an oil discharge prevention and
19 contingency plan for the pipeline or facility has been approved by the department and
20 the person is in compliance with the plan. This subsection does not apply to an
21 exploration or production facility used solely to explore for or to develop or produce
22 shallow natural gas resources, except that this exemption does not apply if the Alaska
23 Oil and Gas Conservation Commission determines under AS 31.05.030(j)(2)(C)
24 [AS 31.05.030(j)] that

25 (1) a well drilled for shallow natural gas may penetrate a formation
26 capable of flowing oil; and

27 (2) the volume of oil encountered will be of such quantities that a
28 contingency plan will be required.

29 * Sec. 13. AS 46.04.900(25) is amended to read:

30 (25) "shallow natural gas" means coal bed methane, natural gas drilled
31 for under a lease authorized by AS 38.05.177, or natural gas drilled for in a well the

1 true vertical depth of which is 3,000 [4,000] feet or less;

2 * Sec. 14. The uncodified law of the State of Alaska added by sec. 1, ch. 45, SLA 2003, is
3 amended to read:

4 LEGISLATIVE FINDINGS. The legislature finds that

5 (1) the development of shallow natural gas resources is in the best
6 interests of the State of Alaska;

7 (2) shallow natural gas is abundant and widespread in Alaska and
8 bears the promise of providing Alaskans, particularly Alaskans living in rural areas,
9 with an inexpensive and clean source of energy if those resources can be economically
10 developed;

11 (3) the development of shallow natural gas poses significantly fewer
12 risks and creates substantially less impact to the environment than traditional deep oil
13 and gas projects, which have served as the model for oil and gas industry and
14 environmental regulations to date in Alaska;

15 (4) the regulatory requirements developed and applied to traditional
16 deep oil and gas projects in Alaska are ill-suited and unduly onerous when applied to
17 shallow natural gas projects, threatening the economic viability of otherwise desirable
18 exploration and development projects;

19 (5) there is an immediate state and national need for the development
20 of clean and economical unconventional energy sources, such as shallow natural gas
21 resources;

22 (6) reform of existing laws and regulations is needed to remove
23 unnecessary regulatory burdens on the private sector to foster and encourage the
24 development in Alaska of these necessary resources;

25 (7) the legislature is acting in the interest of promoting the active
26 development of such resources, while ensuring that suitable measures are taken to
27 protect human health and safety and the natural environment,

28 (A) to remove impediments to the responsible development of
29 shallow natural gas; and

30 (B) to provide the proper state agencies with clear authority and
31 discretion to adopt regulatory practices appropriate to shallow natural gas

1 exploration and development projects, in recognition of the lower risks posed
2 by such projects to human health and safety and the natural environment [;
3 AND

4 (C) TO RESERVE ALL RIGHTS AND POWERS NOT
5 PREEMPTED BY FEDERAL LAW AND REGULATION IN ORDER TO
6 ASSERT STATE PRIMACY OVER THE REGULATION OF SHALLOW
7 NATURAL GAS].

8 * Sec. 15. AS 31.05.125 and AS 38.05.177(n) are repealed.

9 * Sec. 16. This Act takes effect July 1, 2004.

23-LS1314\O
Chenoweth
4/13/04

CS FOR HOUSE BILL NO. 395()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HARRIS, Gatto, Stoltze, Seaton, Kohring

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the recovery of shallow natural gas, to the regulation of shallow
2 natural gas or coal bed methane operations, and to oil and gas leasing operations
3 involving activities not governed under the Alaska Land Act; and providing for an
4 effective date."

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

6 * Section 1. AS 31.05.030(j) is amended to read:

7 (j) For exploration and development operations involving shallow natural
8 gas, the commission

9 (1) may not

10 (A) issue a permit to drill under this chapter if the well
11 would be used to produce gas from an aquifer that serves as a source of
12 water for human consumption or agricultural purposes unless the
13 commission finds that the well will not adversely affect the aquifer as a
14 source of water for human consumption or agricultural purposes; or

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(B) allow injection of produced water except at depths below known sources of water for human consumption or agricultural purposes;

(2) shall

(A) regulate hydraulic fracturing in shallow natural gas wells to assure protection of drinking water quality;

(B) regulate the disposal of wastes produced from the operations unless the disposal is otherwise subject to regulation by the Department of Environmental Conservation or the Environmental Protection Agency; and

(C) for the purposes of AS 46.04.030(b), [THE COMMISSION SHALL] determine whether a well drilled for shallow natural gas may penetrate a formation capable of flowing oil and, if so, whether the volume of oil encountered will be of such quantities that an oil discharge prevention and contingency plan will be required.

ok* Sec. 2. AS 31.05 is amended by adding a new section to read:

Sec. 31.05.098. Public forum process concerning shallow natural gas. (a)

For the purpose of resolving public health, safety, welfare, or environmental complaints about potential or actual shallow natural gas exploration and development operations, the commission shall, by regulation, develop and implement a public forum process by which to achieve informal resolution of the complaints within 60 days of the filing of the complaints. The commission may provide that, if resolution of the complaints is not achieved through the informal process established by regulation, a party may petition the commission to take action on the complaint under AS 31.05.060 - 31.05.085 as to a matter that falls within the commission's powers and duties under AS 31.05.030. For any other matter, the commission shall refer the complaint to other federal, state, or local agencies, as appropriate.

(b) The commission's regulations adopted under this section shall provide for scheduling a public forum at a location reasonably proximate to the land that is the subject of or that is affected by the complaint and reasonable public notice and opportunity to be heard. If the public forum is not personally convened and conducted

1 by a majority of the members of the commission, the person conducting the forum
 2 shall prepare and submit to the commission a report of the forum proceedings. The
 3 report prepared under this subsection is a public record. The commission may modify
 4 a rule or condition in a plan of development or operation for a field or pool to address
 5 an issue identified by the commission or the report.

6 * **Sec. 3.** AS 31.05.170(14) is amended to read:

7 (14) "shallow natural gas" means coal bed methane, natural gas drilled
 8 for under a lease authorized by AS 38.05.177, or natural gas drilled for in a well the
 9 true vertical depth of which is 3,000 [4,000] feet or less;

10 * **Sec. 4.** AS 34 is amended by adding a new chapter to read:

11 **Chapter 90. Mineral Interests.**

*38.05 same as 34.90.010
 not sure in fact
 earlier
 stop*

12 **Sec. 34.90.010. Notice of operations.** (a) Except for activities governed by
 13 AS 38.05, the developer shall give the surface owner written notice of the oil and gas
 14 operations contemplated at least 20 days before commencement of operations. The
 15 requirement of written notice may be waived by the parties.

16 (b) Unless notice has been waived by the parties, the developer shall give
 17 notice to the record surface owner at the owner's address as shown by the records of
 18 the state recorder at the time notice is given. The notice must sufficiently disclose the
 19 plan of work and operations to enable the surface owner to evaluate the effect of oil
 20 and gas operations on the surface owner's use of the property.

21 (c) If a developer fails to give notice as provided in this section, the surface
 22 owner may seek any appropriate relief in the court of proper jurisdiction and may
 23 receive actual damages.

24 **Sec. 34.90.020. Damages and posting of bond.** A developer may not
 25 exercise a right of entry until the developer makes provision to pay the surface owner
 26 full payment for all damages sustained by the surface owner by reason of entering
 27 upon the land. If the surface owner, for any cause, refuses or neglects to settle the
 28 damages, the developer may enter upon the land after posting a surety bond
 29 determined by the Department of Natural Resources using a procedure similar to the
 30 procedure used to administer AS 38.05.130, including notice and an opportunity to be
 31 heard. The bond must be sufficient as to form, amount, and security to secure to the

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surface owner payment for damages. The surface owner may institute legal proceedings in a court where the land is located as may be necessary to determine the damages that the surface owner may suffer.

Sec. 34.90.095. Definitions. In this chapter,

- (1) "developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals;
- (2) "mineral estate" means an estate in or ownership of all or part of the minerals underlying a specific tract of land;
- (3) "minerals" includes oil and gas;
- (4) "oil and gas operations" means an activity for which a permit is required by AS 31.05.090 that requires entry upon the surface estate;
- (5) "surface estate" means an estate in or ownership of the surface of a particular tract of land;
- (6) "surface owner" means any person who holds record title to the surface of the land as an owner.

* Sec. 5. AS 38.05.177(c) is amended to read: *repealed 2013*

(c) The director shall give notice under AS 38.05.945 of receipt of the lease application, [AND] call for comments from the public, and execute a lease as follows:

- (1) the [. THE] director's call for public comments must provide opportunity for public comment for a period of not less than 60 days;
- (2) if [. IF], after review of information received during the public comment period and consideration of public comments received, the director determines that the discovery of a local source of natural gas would benefit the residents of an area, the director may [SHALL] execute a lease for the area described in (b) of this section; the [. THE] director may [SHALL] execute the lease only after completion of a title search, the close of the public comment period, and, if review is required under AS 46.40, after the final consistency determination is made under AS 46.40;
- (3) a [. A] lease entered into under this subsection gives the lessee the exclusive right to explore for, develop, and produce, for a term of three years, natural

1 gas on the state land described in the lease; the right to explore for, develop, and
2 produce is limited to gas from a field if a part of the field is within 3,000 feet of the
3 surface.

4 * Sec. 6. AS 38.05.177(f) is amended to read: *Repealed in 531*

5 (f) A shallow gas lease must provide for

6 (1) payment to the state of annual rent in the amount of \$1 an [PER]
7 acre; the [. THE] rent is due and payable on the date determined in the lease; if [. IF]
8 the lease payment is not received by the due date, the director shall mail the lessee one
9 written notice, certified return receipt requested; if [. IF] the lessee fails to pay the
10 rent within 30 days after [OF] receipt of the notice, the director shall terminate the
11 lease;

12 (2) a water well testing requirement for each lease that contains
13 one or more wells that serve as a source of potable water; the testing requirement
14 of this paragraph applies to each water well that is located within a square that
15 bounds a circle with a radius of one-quarter mile around the drill site and the
16 sides of which are parallel or perpendicular to the four cardinal directions and
17 are tangent to the circle; under this paragraph, the lessee shall, before
18 commencement of production testing and production activities on the lease,

19 (A) test each well for dissolved contents, including methane,
20 and water flow; and

21 (B) provide a copy of the test results to the land owner, who
22 shall maintain the test record;

23 (3) appropriate setbacks governing the placement by the lessee or
24 the lessee's agent of compressor stations on the lease; setbacks developed under
25 this paragraph must be determined with reference to the population density of
26 the parcel or parcels subject to the lease, the size of the owner's parcels, and the
27 general character of the land subject to the lease; the terms of the lease must
28 require the lessee or lessee's agent to negotiate to meet the requirement of this
29 paragraph, but the owner may not unreasonably withhold agreement;

30 (4) reasonable and appropriate measures to mitigate the noise of
31 compressors, engines, and other equipment operated by the lessee or the lessee's

1 agent of compressor stations on the lease; noise mitigation measures developed
 2 under this paragraph must be determined with reference to the population
 3 density of the parcel or parcels subject to the lease, the size of the owner's
 4 parcels, and the general character of the land subject to the lease; the terms of
 5 the lease shall require the lessee or lessee's agent to negotiate to meet the
 6 requirement of this paragraph, but the owner may not unreasonably withhold
 7 agreement;

8 (5) action at the time of the termination or abandonment of the
 9 lease to require the lessee or the lessee's agent to restore, reclaim, or abate the
 10 adverse effects of the exploration and development operations using natural
 11 revegetation or reseeded using endemic plant species; the lease may require the
 12 lessee or the lessee's agent to consult with the director of the division of
 13 agriculture.

14 * Sec. 7. AS 38.05.177(k) is amended to read: *Revised in 53'*

15 (k) The commissioner [MAY]

16 (1) may adopt only the regulations that are reasonable and that are
 17 necessary to implement, interpret, or make specific the provisions of this section or to
 18 establish procedures to govern application of the provisions of this section; [AND]

19 (2) may, in addition to any requirement for a bond under
 20 AS 38.05.130, establish by regulation a form and amount for statewide, areawide,
 21 unit-wide, or per-lease bonds sufficient to secure damages that may be caused by the
 22 activities of a lessee, or the lessee's successors or assigns, related to a shallow natural
 23 gas lease entered into under this section; if the commissioner acts under this
 24 paragraph, the commissioner

25 (A) shall require a person applying for a lease under this
 26 section to post the bond as a condition for the director's executing the lease;

27 (B) may not require a bond posted under this paragraph from a
 28 person applying for a lease if the person has already posted a bond covering
 29 the person's statewide oil and gas leasing activities in an amount of at least
 30 \$500,000;

31 (3) shall, if a bond is sought under AS 38.05.130, before the

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amount of the surety bond to be posted is determined by the director, require as a condition for issuing the bond that the director, after notice and an opportunity to be heard, determine that, to exercise rights under the reservation as set out in AS 38.05.125 and the lease, the lessee has demonstrated that access and entry upon the land of the owner is reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the reserved rights; the lessee has the burden of demonstrating compliance with the requirement of this paragraph; and

(4) shall require the lessee to provide written advance notice to the owner of initial entry onto the property of the owner at least 30 days before initial entry.

* Sec. 8. AS 38.05.177 is amended by adding new subsections to read:

*Added
on 26.02.18(4)*

(p) Under AS 38.05.130 as applicable to shallow natural gas exploration and development that is authorized under this section, if

(1) the owner and the lessee enter into an agreement by which the lessee makes provision to pay the owner of the land for all damages, the parties shall incorporate in the agreement the provisions described in (f) of this section that are negotiated;

(2) the owner and the lessee do not enter into an agreement by which the lessee makes provision to pay the owner of the land for all damages, and the lessee proceeds to request the director to set the amount of a surety bond, the owner may, in conjunction with notice and the opportunity to be heard, provide the director with the owner's comments about the appropriate location of wells, roads, and other improvements that may be made by the lessee or the lessee's agent to secure the lessee's rights under the lease.

(q) In (f), (k)(3), and (p) of this section, "owner" means the property owner whose property is subject to the reservation described in AS 38.05.125(a).

* Sec. 9. AS 38.05.945(a) is amended to read:

(a) This section establishes the requirements for notice given by the department for the following actions:

(1) classification or reclassification of state land under AS 38.05.300

1 and the closing of land to mineral leasing or entry under AS 38.05.185;

2 (2) zoning of land under applicable law;

3 (3) issuance of a

4 (A) preliminary written finding under AS 38.05.035(e)(5)(A)
5 regarding the sale, lease, or disposal of an interest in state land or resources for
6 oil and gas subject to AS 38.05.180(b);

7 (B) [REPEALED

8 (C)] written finding for the sale, lease, or disposal of an interest
9 in state land or resources under AS 38.05.035(e)(6), except an oil or gas lease
10 sale described in AS 38.05.035(e)(6)(F) for which the director must provide
11 opportunity for public comment under the provisions of that subparagraph;

12 (4) a competitive disposal of an interest in state land or resources after
13 final decision under AS 38.05.035(e);

14 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
15 aquatic farms and related hatcheries;

16 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
17 lease, or disposal of an interest in state land or resources;

18 (7) a notice of receipt of a lease application and call for comments
19 under AS 38.05.177(c).

20 * Sec. 10. AS 38.05.945(b) is amended to read:

21 (b) When notice is required to be given under this section,

22 (1) the notice must contain sufficient information in commonly
23 understood terms to inform the public of the nature of the action and the opportunity
24 of the public to comment on it;

25 (2) if the notice is of a preliminary written finding described in
26 (a)(3)(A) of this section or a call for comments under (a)(7) of this section, the
27 department shall give notice at the beginning of the public comment period for the
28 preliminary written finding or call for comments, as appropriate, notifying the
29 public of the right to submit comments; the department shall give notice by

30 (A) publication of a legal notice in newspapers of statewide
31 circulation and in newspapers of general circulation in the vicinity of the

1 proposed action at least once a week for two consecutive weeks;

2 (B) publication of a notice in display advertising form in the
3 newspapers described in (A) of this paragraph at least once a week for two
4 consecutive weeks;

5 (C) public service announcements on the electronic media
6 serving the area to be affected by the proposed action; and

7 (D) one or more of the following methods:

8 (i) posting in a conspicuous location in the vicinity of
9 the action;

10 (ii) notification of parties known or likely to be affected
11 by the action; or

12 (iii) another method calculated to reach affected parties;

13 (3) if the notice is of an action described in (a) of this section, other
14 than notice of an action under (a)(3)(A) or (a)(7) of this section, the department shall
15 give notice at least 30 days before the action by publication in newspapers of
16 statewide circulation and in newspapers of general circulation in the vicinity of the
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27 or water discharges from the following activities if the discharge is incidental to the
28 activity and the activity does not produce a discharge from a point source, as that term
29 is defined in regulations adopted under this chapter, directly into any surface water of
30 the state:

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3 METHANE DRILLING OR OTHER NATURAL GAS DRILLING TO RECOVER
4 GAS FROM A FIELD IF A PART OF THE FIELD IS WITHIN 3,000 FEET OF THE
5 SURFACE]; or

6 (4) drilling, ditching, trenching, and similar activities associated with
7 facility construction and maintenance or with road or other transportation facility
8 construction and maintenance; however, the exemption provided by this paragraph
9 does not relieve a person from obtaining a permit under this section if

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11 involve the removal of the groundwater, stormwater, or wastewater runoff that
12 has accumulated and is present at an excavation site for facility, road, or other
13 transportation construction or maintenance; and

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17 exploration or production facility in the state unless an oil discharge prevention and
18 contingency plan for the pipeline or facility has been approved by the department and
19 the person is in compliance with the plan. This subsection does not apply to an
20 exploration or production facility used solely to explore for or to develop or produce
21 shallow natural gas resources, except that this exemption does not apply if the Alaska
22 Oil and Gas Conservation Commission determines under AS 31.05.030(j)(2)(C)
23 [AS 31.05.030(j)] that

24 (1) a well drilled for shallow natural gas may penetrate a formation
25 capable of flowing oil; and

26 (2) the volume of oil encountered will be of such quantities that a
27 contingency plan will be required.

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4 (1) the development of shallow natural gas resources is in the best
5 interests of the State of Alaska;

6 (2) shallow natural gas is abundant and widespread in Alaska and
7 bears the promise of providing Alaskans, particularly Alaskans living in rural areas,
8 with an inexpensive and clean source of energy if those resources can be economically
9 developed;

10 (3) the development of shallow natural gas poses significantly fewer
11 risks and creates substantially less impact to the environment than traditional deep oil
12 and gas projects, which have served as the model for oil and gas industry and
13 environmental regulations to date in Alaska;

14 (4) the regulatory requirements developed and applied to traditional
15 deep oil and gas projects in Alaska are ill-suited and unduly onerous when applied to
16 shallow natural gas projects, threatening the economic viability of otherwise desirable
17 exploration and development projects;

18 (5) there is an immediate state and national need for the development
19 of clean and economical unconventional energy sources, such as shallow natural gas
20 resources;

21 (6) reform of existing laws and regulations is needed to remove
22 unnecessary regulatory burdens on the private sector to foster and encourage the
23 development in Alaska of these necessary resources;

24 (7) the legislature is acting in the interest of promoting the active
25 development of such resources, while ensuring that suitable measures are taken to
26 protect human health and safety and the natural environment,

27 (A) to remove impediments to the responsible development of
28 shallow natural gas; and

29 (B) to provide the proper state agencies with clear authority and
30 discretion to adopt regulatory practices appropriate to shallow natural gas
31 exploration and development projects, in recognition of the lower risks posed

1 by such projects to human health and safety and the natural environment [;
2 AND

3 (C) TO RESERVE ALL RIGHTS AND POWERS NOT
4 PREEMPTED BY FEDERAL LAW AND REGULATION IN ORDER TO
5 ASSERT STATE PRIMACY OVER THE REGULATION OF SHALLOW
6 NATURAL GAS].

7 * Sec. 15. AS 31.05.125 and AS 38.05.177(n) are repealed.

8 * Sec. 16. This Act takes effect July 1, 2004.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
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Juneau, Alaska 99801-1182
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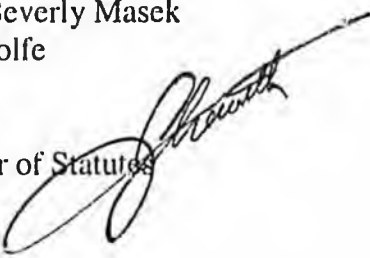
MEMORANDUM

April 15, 2004

SUBJECT: Conformance of CSHB 531(RES), draft version 23-LS1818\U, and CSHB 395(), draft version 23-LS1314\O

TO: Representative Beverly Masek
Attn: Eleanor Wolfe

FROM: Jack Chenoweth
Assistant Revisor of Statutes



For your 3:00 p.m. work session --

It seems to me that the work group should be prepared to decide whether both vehicles should be recommended for full committee report and referral or whether all changes recommended should be incorporated into just one bill.

1. If one bill

-- decide whether to retain the current usage and references to "shallow natural gas" [CSHB 395()] or drop that term and substitute "nonconventional gas" [CSHB 531(Res)];

-- decide whether shallow natural gas/nonconventional gas leasing should occur
-- generally under the current procedures outlined in AS 38.05.177 [CSHB 395()] with amendments to secs. 38.05.177(c), (f), and (k), addition of secs. 38.05.177(p) and (q), and repeal of sec. 38.05.177(n); or

-- as suggested by the Department of Natural Resources, in generally the same manner as conventional oil and gas leasing under AS 38.05.180 [CSHB 531(Res)], in which case a small number of provisions of existing AS 38.05.177 are retained and modified to meet specific circumstances, while the preponderance of those subsections in AS 38.05.177 are repealed.

2. If two bills, the same questions posed above should be addressed: whether to go with one term of reference ("shallow natural gas") or the other ("nonconventional gas"), and, more to the point, whether, and to what extent, shallow natural gas/nonconventional gas leasing should operate within the context of conventional oil and gas leasing under AS 38.05.180 or whether they should stand apart under AS 38.05.177 (largely or entirely separate from conventional oil and gas leasing). At that point, I guess the question is what provisions should be retained as to SNG/nonconventional leasing and whether the

Representative Beverly Masek
April 15, 2004
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retention or amendment of provisions (or deletion of inapplicable or contrary provisions) should be assigned to one bill or the other as the vehicle by which to accomplish your purpose.

Here are some specifics from my e-mail of yesterday --

AS 31.05.030(j) -- Amended by sec. 1 of CSHB 395() and by sec. 4 of CSHB 531(Res): The content of the two amendments is not inconsistent, can be harmonized, and would be harmonized in a way that retains reference to either "shallow natural gas" or "nonconventional gas" depending on the version of the bill that has the later effective date takes precedence. *As to this material, there is nothing that the work group needs to do.*

AS 31.05.125 -- Repealed by sec. 15 of CSHB 395() and amended by sec. 6 of CSHB 531(Res): This is the "waiver of local government land use authority" provision as applicable to the oversight of shallow natural gas/nonconventional gas by the Alaska Oil and Gas Conservation Commission. If both bills become law with the current language, the repeal of the section will trump the amendment of the section. If you do not want that to occur, reference to AS 31.05.125 should be deleted from sec. 15 of CSHB 395(). Then, if both provisions remain, they can be harmonized and would be harmonized in a way that retains reference to either "shallow natural gas" or "nonconventional gas" depending on the version of the bill that has the later effective date takes precedence. *The work group should at least determine whether the repeal made in sec. 15 of CSHB 395() should be given effect.*

AS 31.05.170(14) -- This is a definition of the term "shallow natural gas" for use in the chapter under which it is subject to regulation by the AOGCC. The provision is retained and amended by sec. 3 of CSHB 395() and repealed (as no longer necessary) by sec. 58 of CSHB 531(Res) (and replaced by reference to "nonconventional gas" in bill section 7). *The disposition of this item will turn on the work group's decision as to terminology and as to whether SNG will operate as part of, or separate and apart from, conventional oil and gas leasing.*

AS 38.05.177(c), (f), and (k) -- These provisions are amended by secs. 5, 6, and 7 of CSHB 395() but are repealed by sec. 58 of CSHB 531(Res). If both bills become law with the current language, the repeal of the subsections will trump the amendment of the section. *The disposition of this material will turn on the work group's decision as to terminology and as to whether SNG will operate as part of, or separate and apart from, conventional oil and gas leasing, for it is possible to carry over the concepts set out in these three subsections into nonconventional leasing provisions under AS 38.05.180.*

AS 38.05.177(n) -- This is the "waiver of local government land use authority" as applicable to the shallow natural gas leasing program set out in AS 38.05.177. CSHB 395() repeals it (bill section 15), while CSHB 531(Res) is silent and, by that silence, the provision continues to operate. If both bills become law with the current

language, the repeal of the section will trump the amendment of the section. If you do not want that to occur, reference to AS 38.05.177(n) should be deleted from sec. 15 of CSHB 395(). *As with AS 31.05.125 discussed above, the work group should at least determine whether the repeal of AS 38.05.177(n) made in sec. 15 of CSHB 395() should be given effect.*

AS 38.05.177(p) and (q) -- These subsections are added by sec. 8 of CSHB 395 (). Roughly comparable concepts set out in proposed AS 38.05.177(p) appear in CSHB 531(Res) in proposed AS 38.05.180(ff)(3), added by bill section 42 (at page 40, lines 8 - 19). If both bills become law using current language, subsection (p) could still operate, but there may be actual conflict with provisions of AS 38.05.180(ff)(3), and subsection (q) could operate but only to supply a definition of "owner" for (p) (references in (f) and (k)(3) would be unnecessary because these provisions are repealed in the other measure. *Again the disposition of this material will turn on the work group's decision as to terminology and as to whether SNG will operate as part of, or separate and apart from, conventional oil and gas leasing, for it is possible to carry over the concepts set out in these three subsections into nonconventional leasing provisions under AS 38.05.180.*

AS 38.05.945(a) -- Amended by sec. 9, CSHB 395() and by sec. 45, CSHB 531(Res). This is a modification of the general notice provision. If both bills become law with this language, the provisions can be harmonized. *The disposition of this item will turn on the work group's decision as to terminology and as to whether SNG will operate as part of, or separate and apart from, conventional oil and gas leasing.*

AS 46.03.100(f) -- Amended by sec. 10, CSHB 395() and by sec. 52, CSHB 531(Res). This amends an exclusion to an exception to the waste material/water discharge permit requirements and reflects the terms used ("SNG"/ "nonconventional gas") used in the respective bills. If both bills become law with this language, the provisions can be harmonized. *The disposition of this item will turn on the work group's decision as to terminology.*

AS 46.04.030(b) -- In sec. 12, CSHB 395(), this is a conforming amendment; in sec. 53, CSHB 531(Res), this makes a change based on the shift from "shallow natural gas" to "nonconventional gas." If both bills become law with this language, the provisions can be harmonized. *Again, the disposition of this item will turn on the work group's decision as to terminology.*

AS 46.04.900(25) -- This is a definition of the term "shallow natural gas" for use in the chapter under which it is subject to regulation by the Department of Environmental Conservation. The provision is retained and amended by sec. 13 of CSHB 395() and repealed (as no longer necessary) by sec. 58 of CSHB 531(Res) (and replaced by reference to "nonconventional gas" in bill section 55). *The disposition of this item will turn on the work group's decision as to terminology and as to whether SNG will operate as part of, or separate and apart from, conventional oil and gas leasing.*

Representative Beverly Masek
April 15, 2004
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*

There are a couple of issues in conflict that I would describe as "at the margin," including, notably, in CSHB 395(), whether references to the maximum depth at which gas recovery should be managed as shallow natural gas should be retained at "4,000 feet" or amended to read "3,000 feet" [CSHB 395(), bill sections 3 and 13] or, whether the approach used in CSHB 531(Res) that makes no distinction as to depth of recovery but only as to the nature of the product recoverable. Depending on how the work group decides that issue, there may be other provisions (not included in either version) that would deserve to be changed by conforming amendments.

*

The above outlines just the points of apparent conflict between the two versions.
There are substantive provisions, in one bill version or the other, that are not in conflict with the current text of the second bill and that the work group should deliberate and decide whether to retain, amend, or delete.

JBC:lmb
04-107.lmb

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB395-DNR-O&G-02-04-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title Shallow Natural Gas RDU Resource Development
Component Oil and Gas Development
Sponsor Harris, Gatto, Stoltze, Seaton
Requester House Oil and Gas Component No. 439

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	9.4	9.4	9.4	9.4	9.4	9.4
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	9.4	9.4	9.4	9.4	9.4	9.4

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

CHANGE IN REVENUES ()	**(Indeterminate Amount)**					
-------------------------------	-----------------------------------	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	9.4	9.4	9.4	9.4	9.4	9.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	9.4	9.4	9.4	9.4	9.4	9.4

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
HB 395 would make a number of changes to the state's shallow natural gas leasing program including additional public notice requirements; required surface use fees; setbacks, noise mitigation, and reclamation requirements; and a special provision for damages.

Under Section 4 of the bill, additional public notification beyond that already carried out by DNR would be required. Specifically, this would require DNR to publish notice in papers of general circulation in the affected area two additional times beyond what is currently done when giving notice of a shallow natural gas application and calling for public comments. In addition, the bill would require DNR to publish notice of intent to award the lease at least three times in at least two papers of general circulation in the area of the proposed action at intervals of not less than five days between publications.

Prepared by: Mark D. Myers Phone 269-8800
Division: Oil and Gas Date/Time 2/4/04
Approved by: Thomas Irwin, Commissioner Date 2/4/04
Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB395-DNR-O&G-02-04-04

ANALYSIS CONTINUATION

Total number of additional publications of notice: 5 x 2 papers.

The Anchorage Daily News has general circulation in all areas of the state. The cost for a legal notice is \$404 per day (weekday).
5 x \$404 = \$2020

Publication cost in a local paper is estimated at \$225 (Frontiersman was used as an estimate) per day. 5 x \$225 = \$1125

Combined total: \$3145

Last year, DNR processed three groups of applications in calendar year 2003 (DNR tries to group applications to cut down on noticing costs). 3 x \$3145 = \$9435

** Indeterminate Negative Amount: The wording in Section 8 may make the state liable for any damages that may occur to the surface owners property. If this is the case, it is impossible at this time to determine the negative fiscal impact to the state.

A MEMORANDUM OF AGREEMENT

Between

**The United States
Environmental Protection Agency**

And

**BJ Services Company,
Halliburton Energy Services, Inc., and
Schlumberger Technology Corporation**

**Elimination of Diesel Fuel in Hydraulic
Fracturing Fluids Injected into Underground
Sources of Drinking Water During Hydraulic
Fracturing of Coalbed Methane Wells**

12 December 2003

Memorandum of Agreement Between the United States Environmental Protection Agency and BJ Services
Company, Halliburton Energy Services, Inc., and Schlumberger Technology Corporation

Elimination of Diesel Fuel in Hydraulic Fracturing Fluids Injected into Underground Sources of Drinking
Water During Hydraulic Fracturing of Coalbed Methane Wells

Page 1 of 1

II COMMON AGREEMENTS AND PRINCIPLES

- A. The Companies and EPA acknowledge that only technically feasible and cost-effective actions to provide alternatives for diesel fuel will be sought. The determination of what is technically feasible and cost-effective will vary and it is at the discretion of each Company to make that determination.
- B. The Companies and EPA will exercise good faith in fulfilling the obligations of this Memorandum of Agreement (MOA).
- C. Nothing in this agreement constrains EPA or the Companies from taking actions relating to hydraulic fracturing that are authorized or required by law. Nothing in this agreement should be understood as an EPA determination that use by the Companies of any particular replacement for diesel fuel is authorized under the Safe Drinking Water Act (SDWA) or EPA's Underground Injection Control (UIC) Regulations, or that the elimination of diesel fuel or use of any replacement fluid constitutes or confers any immunity or defense in an action to enforce the SDWA or EPA's UIC regulations. Nothing in this Agreement shall, in any way, be considered a waiver of the Companies' right to challenge any subsequent regulations or limitations on the use of hydraulic fracturing or its components by any state or Federal agencies.
- D. All commitments made by EPA in this MOA are subject to the availability of appropriated funds and Agency budget priorities. Nothing in this MOA, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or other financial obligations. Any endeavor involving reimbursement or contribution of funds between EPA and the Companies will be handled in accordance with applicable laws, regulations, and procedures, and will be subject to separate agreements that will be effected in writing by representatives of the Companies and EPA, as appropriate.
- E. EPA and the Companies will bear their own costs of carrying out this agreement. The Companies agree that activities undertaken in connection with this MOA are not intended to provide services to the Federal government, and they agree not to make a claim for compensation for services performed for activities undertaken in furtherance of this MOA to EPA or any other Federal agency.
- F. Any promotional material that any Company develops may advise the public of the existence of this MOA and its terms, but must not imply that EPA endorses the purchase or sale of products and services provided by any Company.

Memorandum of Agreement Between the United States Environmental Protection Agency and BJ Services Company, Halliburton Energy Services, Inc., and Schlumberger Technology Corporation

Elimination of Diesel Fuel in Hydraulic Fracturing Fluids Injected into Underground Sources of Drinking Water During Hydraulic Fracturing of Coalbed Methane Wells

- G. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity against the Companies or EPA, their officers or employees, or any other person. Nothing herein shall be deemed to create any requirement under any existing law or regulation. This MOA does not direct or apply to any person outside the Companies and EPA.

III. EPA ACTIONS

- A. To the extent consistent with Agency authorities and policies governing recognition awards, EPA agrees to consider providing the Companies with recognition for their achievements in replacing diesel fuel in fracturing fluids injected into USDWs for CBM production and for their public service in protecting the environment. In addition, EPA agrees to provide appropriate information to the public, other Federal agencies and Congress, regarding actions taken by the Companies under this MOA. EPA agrees to obtain the Companies' approval on any specific language intended for public distribution that discusses the Companies' participation in this MOA and agrees to notify the Companies sufficiently in advance of EPA's intention to publicly use the Companies' name or release information, including press releases, concerning the Companies' participation in this MOA.
- B. EPA agrees to contact appropriate individuals representing states, industry, and the Department of Energy to inform them of progress in implementing the MOA and to solicit their cooperation, as appropriate, in implementation of the MOA.
- C. EPA agrees to issue a final version of the draft report entitled *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs* as soon as reasonably possible.
- D. The parties agree that nothing in this MOA is intended to affect, in any way, the existing criteria and process for identifying exempted aquifers under 40 C.F.R. Parts 144 and 146.
- E. EPA agrees to consider other measures as appropriate to aid implementation of the MOA, including measures to facilitate efforts undertaken by the Companies pursuant to this MOA.

Memorandum of Agreement Between the United States Environmental Protection Agency and BJ Services Company, Halliburton Energy Services, Inc., and Schlumberger Technology Corporation

Elimination of Diesel Fuel in Hydraulic Fracturing Fluids Injected into Underground Sources of Drinking Water During Hydraulic Fracturing of Coalbed Methane Wells

IV. THE COMPANIES' ACTIONS

- A. The Companies agree to eliminate diesel fuel in hydraulic fracturing fluids injected into CBM production wells in USDWs within 30 days of signing this agreement. If necessary, the Companies may use replacement components for hydraulic fracturing fluids that will not endanger USDWs.
- B. The Companies agree to notify the Assistant Administrator for EPA's Office of Water within 30 days after any decision to re-institute the use of diesel fuel additives in hydraulic fracturing fluids injected into USDWs for CBM production.
- C. The Companies and EPA may, upon unanimous consent of the signatories, include additional provisions in, or make modifications to, this MOA. Such additions or modifications must contribute to the goal of preventing the endangerment of USDWs. Nothing herein shall be construed as requiring the adoption of any such additional provisions or modifications.

V. DISPUTE RESOLUTION AND TERMINATION OF AGREEMENT

- A. Any Company or EPA may terminate its participation in this MOA by providing written notice to the other signatories. Such termination as to that Company (or, if EPA terminates the MOA, as to all) will be effective 30 days after the receipt of written notice and will result in no penalties or continuing obligations by the terminating Company (or, if EPA terminates the MOA, any signatory). If EPA or any Company terminates the MOA, EPA and/or that Company will refrain from representing that the Company is continuing to cooperate with EPA on replacing diesel fuel in hydraulic fracturing fluids injected in USDWs for CBM production, provided that they may continue to make reference to activities undertaken through the date of this termination. If its participation in this MOA is terminated by any Company, the MOA shall have no further force and effect for the terminating Company, and the terminating Company shall have no further obligation under the MOA.

Memorandum of Agreement Between the United States Environmental Protection Agency and BJ Services Company, Halliburton Energy Services, Inc., and Schlumberger Technology Corporation

Elimination of Diesel Fuel in Hydraulic Fracturing Fluids Injected into Underground Sources of Drinking Water During Hydraulic Fracturing of Coalbed Methane Wells

1 of 1 DOCUMENT

NORTHERN PLAINS RESOURCE COUNCIL, Plaintiff-Appellant, v. FIDELITY
EXPLORATION AND DEVELOPMENT COMPANY, Defendant-Appellee.

No. 02-35836

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

325 F.3d 1155; 2003 U.S. App. LEXIS 6852; 56 ERC (BNA) 1289; 2003 Cal. Daily Op.
Service 3072; 2003 Daily Journal DAR 3930

March 4, 2003, Argued and Submitted, Seattle, Washington
April 10, 2003, Filed

SUBSEQUENT HISTORY: US Supreme Court certiorari denied by *Fid. Exploration Co. v. N. Plains Res. Council*, 2003 U.S. LEXIS 7730 (U.S., Oct. 20, 2003)

PRIOR HISTORY: [**1] Appeal from the United States District Court for the District of Montana. D.C. No. CV-00-00105-SEH. Sam E. Haddon, District Judge, Presiding.

DISPOSITION: Reversed and remanded.

J. LexisNexis (TM) HEADNOTES- Core Concepts:

COUNSEL: Jack R. Tuholske, Missoula, Montana, for Appellant.

Ronald Waterman and Jon Metropoulos, Gough, Shanahan, Johnson & Waterman, Helena, Montana, for the appellee.

John B. Arum and Steven H. Chestnut, Ziontz, Chestnut, Varnell, Berley & Slonim, Seattle, Washington, for amicus curiae Northern Cheyenne Tribe.

Elizabeth A. Brennan, Rossbach Brennan, Missoula, Montana, for amicus curiae Tongue & Yellowstone Irrigation District.

Brenda Lindlief Hall, Reynolds, Motl & Sherwood, for amicus curiae Tongue River Water Users' Association.

Michael S. Kakuk and Palmer Hoovestall, Hoovestall, Kakuk & Fanning, Helena, Montana, for amicus curiae Western Environmental Trade Association.

JUDGES: Before: Stephen Reinhardt, William A. Fletcher, and Ronald M. Gould, Circuit Judges. Opinion by Judge Gould.

OPINIONBY: Ronald M. Gould

OPINION: [*1157] GOULD, Circuit Judge:

Defendant-Appellee Fidelity Exploration & Development Company ("Fidelity") extracts methane gas for commercial sale from coal seams located deep underground in the Powder River Basin, Montana. [**2] In the process of extracting coal bed methane (CBM), Fidelity pumps groundwater to the surface and discharges this water into the Tongue River. The water discharged is "salty," contains several chemical constituents identified as pollutants by Environmental Protection Agency (EPA) regulations, has characteristics that may degrade soil, and is unfit for irrigation. The Montana Department of Environmental Quality (MDEQ) advised Fidelity that no permit was required to discharge the coal bed methane groundwater because Montana state law exempts unaltered groundwater from state water quality requirements. Plaintiff-Appellant Northern Plains Resource Council (NPRC) filed a citizen suit under the federal *Clean Water Act (CWA)* in the District Court for the District of Montana, alleging that Fidelity unlawfully discharged pollutants into navigable waters of the United States. NPRC appeals the district court's grant of summary judgment to Fidelity.

On appeal, we decide (1) whether the CBM discharge water is a "pollutant" within the meaning of the CWA, and (2) whether Montana state law can exempt Fidelity from obtaining National Pollution Discharge Elimination System (NPDES) permits under the [**3] CWA. We hold that the unaltered groundwater produced in association with methane gas extraction, and discharged into the river, is a pollutant within the meaning of the CWA. We also hold that states cannot create exemptions [*1158] to the CWA, whether or not the EPA has delegated permitting authority to the state.

1

In 1997, Fidelity began exploring and developing natural gas from coal seams in the Powder River Basin, Montana. The coal reserves in Powder River Basin are several hundred feet below the ground and contain reservoirs of methane gas. The methane is trapped by groundwater that fills the interstitial areas of the coal reserves. To extract the methane, Fidelity drills a conventional well into the coal seam and pumps the trapped water to the surface to reduce water pressure. This pumping releases the trapped methane, which is captured at the surface and piped to market. Fidelity does not add chemicals to the pumped groundwater (CBM water). Fidelity discharges the unaltered CBM water into the Tongue River. Because CBM water comes from deep underground aquifers, it would not reach the Tongue River were it not for Fidelity's extraction process.

Though Fidelity does not add any [**4] chemicals to the CBM water before discharge, the water in its natural state contains suspended solids, calcium, magnesium, sodium, potassium, bicarbonate, carbonate, sulfate, chloride, and fluoride. The CBM water also contains measurable quantities of the following metals: aluminum, arsenic, barium, beryllium, boron, copper, lead, iron, manganese, strontium, and radium.

The CBM water is "salty," a characteristic measured by total dissolved solids or specific conductance. The mean total dissolved solids for the Tongue River is 475 mg/l as compared to 1,400 mg/l for the CBM water. Related to the "saltiness" of the CBM water is the water's high Sodium Absorption Ratio (SAR). SAR measures the ratio of sodium to calcium and magnesium in the water. The SAR of the CBM water discharged by Fidelity is on average 40 to 60 times greater than the background SAR of the Tongue River. For all these reasons, the CBM water is distinctly different from the Tongue River water to which it is added.

Farmers who use water from the Tongue River for irrigation are concerned with the "saltiness" and high SAR of CBM water because of the potential hazards these characteristics pose to soil structure. High [**5] SAR water, such as CBM water, causes soil particles to unbind and disperse, destroying soil structure and reducing or eliminating the ability of the soil to drain water. The Montana Department of Environmental Quality (MDEQ), in a Final Environmental Impact Statement analyzing coal bed methane extraction, warns that "clayey" soil, like that in the Tongue River Valley, is vulnerable to damage from high SAR water. Montana Statewide Final Oil and Gas Environmental Impact Statement and Proposed Amendment of the Powder River and Billings Resource Management Plans (hereinafter "Montana FEIS"), Soils Appendix SOI-1, available

at www.deq.state.mt.us/CoalBedMethane/finaeis.asp. Fidelity's soil expert concluded that "the SAR of CBM water creates a permeability hazard and precludes its use for irrigation without mixing, treatment or addition of soil amendments." The MDEQ cautioned that unregulated discharge of CBM water would cause "[s]urface water quality in some watersheds [to] be slightly to severely degraded, resulting in restricted downstream use of some waters." *Id.* 4-72. Some of the CBM water, however, is used by Fidelity's grazing lessee, CX Ranch, in livestock watering [**6] ponds and stock tanks.

In August 1998, Fidelity contacted the MDEQ about the possibility of discharging its CBM water into the Tongue River and Squirrel Creek. By letter, the MDEQ told [**1159] Fidelity that it did not need a permit from the MDEQ to discharge into the Tongue River because the discharge was exempt under *Montana Code section 75-5-401(1)(b)*, which provides:

Discharge to surface water of groundwater that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

(i) the discharge does not contain industrial waste, sewage, or other wastes; (ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

The MDEQ, however, warned Fidelity in the same letter that "the EPA, which provides state program oversight under the federal Clean Water Act, does not agree with the [Montana] *Water Quality Act* permit exclusion under *75-5-401(1)(b)*. Therefore, they may ask at some point that you obtain [**7] an [Montana] Pollution Discharge Elimination System (MPDES) permit from us, or an NPDES permit from them." n1 The EPA told MDEQ that *section 75-5-401(1)(b)* of the Montana Code conflicts with the CWA because it exempts some discharges otherwise subject to the CWA from NPDES permitting requirements. The EPA stressed that "the fact that a discharge does not increase the concentration of a particular parameter does not exempt it from permitting requirements." The MDEQ responded, resisting revocation of the *section 75-5-401(1)(b)* exemption and arguing that "the exemption is consistent with federal requirements governing NPDES programs because discharges of unaltered, natural groundwater do not contain 'pollutants' as that term is defined under the Clean Water Act." In a final

letter sent to the MDEQ by the EPA, the EPA reiterated its objection to *section 75-5-401(1)(b)* if applied to discharges that would otherwise require a permit under the CWA.

n1 Congress has authorized both the EPA and states to implement CWA permit programs. See 33 U.S.C. § 1342(a)-(b). The EPA issues NPDES permits, whereas Montana issues MPDES permits.

[**8]

Even though MDEQ informed Fidelity in August 1998 that Montana state law exempted the discharge of unaltered groundwater, Fidelity filed MPDES permit applications in January 1999. At that time, Fidelity was discharging into both Squirrel Creek and the Tongue River without a permit.

NPRC sent a 60-day Notice of Intent to Sue letter to Fidelity, the MDEQ, and the EPA on April 18, 2000. NPRC alleged unpermitted discharges of pollutants into Squirrel Creek and the Tongue River. On June 23, 2000, NPRC filed a citizen suit under the CWA in federal district court alleging unpermitted discharges into Squirrel Creek. An amended complaint was filed on June 26, 2000, to add allegations of unlawful discharges into the Tongue River from outfalls not covered by an MPDES permit. n2

n2 On June 16, 2000, the MDEQ issued Fidelity an MPDES permit authorizing Fidelity to discharge into the Tongue from seven specified outfalls. The MDEQ did not issue a permit to discharge into Squirrel Creek. Even though the MPDES permit allowed discharge into the Tongue River from seven outfalls, Fidelity discharged from twelve outfalls and continued to do so until the MDEQ amended the permit on July 3, 2000, to allow discharge from ten outfalls. Fidelity did not receive an amended permit allowing discharge from ten outfalls until after the amended complaint was filed.

[**9]

The parties filed cross-motions for summary judgment in district court. The parties stipulated that of the five elements [*1160] necessary to prove a violation of the CWA ((1) discharge, (2) pollutant, (3) from a point source, (4) to a navigable water, (5) without a permit), the only element at issue is whether the CBM water constitutes a pollutant; the other four elements are satisfied. The district court held that the CBM water was not a pollutant and granted summary judgment to Fidelity. NPRC appeals. n3

n3 Three amici briefs were filed in this case: (1) The Western Environmental Trade Association (WETA) filed a brief in support of Fidelity. WETA is an extraction industry advocacy group; (2) Tongue & Yellow-stone Irrigation District and Tongue River Water Users' Association (T&Y) filed a brief in support of NPRC. T&Y is a group of ranchers and farmers who depend on the Tongue River for irrigation; and (3) Northern Cheyenne Tribe (Tribe). The Tongue River forms the eastern boundary of the Tribe's Reservation.

[**10]

II

The CWA prohibits the discharge of any pollutant from a point source into navigable waters of the United States without an NPDES permit. 33 U.S.C. §§ 1311(a), 1342. See also *Ass'n to Protect Hammersley, Eld, and Totten Inlets (APHETI) v. Taylor Res., Inc.*, 299 F.3d 1007, 1009 (9th Cir. 2002). Fidelity and NPRC agree that Fidelity discharged CBM water from a point source into navigable water without an NPDES permit. Given this agreement, we need only decide whether the groundwater derived from CBM extraction is a "pollutant" within the meaning of the CWA.

The district court granted summary judgment to Fidelity based on two conclusions: (1) CBM produced water is not a pollutant within the meaning of the CWA, and (2) Montana state law exempted Fidelity from CWA permitting requirements. We have jurisdiction, 33 U.S.C. § 1365(a); 28 U.S.C. § 1331, we review the district court's grant of summary judgment de novo, see *Oliver v. Keller*, 289 F.3d 623, 626 (9th Cir. 2002), and we reverse.

To determine whether CBM water is a "pollutant" regulated by the CWA, we begin with the [*11] plain language of the statute. See *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 56, 98 L. Ed. 2d 306, 108 S. Ct. 376 (1987). The CWA defines "pollutant" broadly:

The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean . . . water, gas, or other material which is injected into a well to facilitate production of oil and gas, or water derived in association with oil or gas production and disposed of in a well, if the

well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

33 U.S.C. § 1362(6) (emphasis added). Because this definition does not literally list "unaltered groundwater" as a pollutant, Fidelity [*12] argues, and the district court held, that CBM water is not a "pollutant." Fidelity's argument and the district court's holding are untenable. The plain language of the CWA requires the conclusion that CBM water is a pollutant subject to regulation under the CWA.

The reasons for our conclusion are apparent from the statute's terms. First, CBM water is a "pollutant" because it is "industrial waste." Contrary to Fidelity's suggestion that "industrial waste" refers [*1161] to "sludge oozing from manufacturing or processing plants, barrels filled with toxic slime, and raw sewage floating in a river," industrial waste is not limited to only the most heinous and toxic forms of industrial byproducts. See *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*, 73 F.3d 546, 568 (5th Cir. 1996) (concluding "produced water" is encompassed in "industrial waste"); see also *Hudson River Fisherman's Ass'n v. City of New York*, 751 F. Supp. 1088, 1101 (S.D.N.Y. 1990) (holding that chlorine residues are pollutants), *aff'd*, 940 F.2d 649 (2d Cir. 1991); *Umatilla Waterquality Protective Ass'n, Inc. v. Smith Frozen Foods, Inc.*, 962 F. Supp. 1312, 1322 (D. Or. 1997) [*13] (holding that brine residues are industrial waste and therefore pollutants). "Industrial" means "of, pertaining to, or derived from industry." American Heritage Dictionary 672 (1979). "Industry," in turn, is defined as "the commercial production and sale of goods and services." *Id.* "Waste" is defined as "any useless or worthless byproduct of a process or the like; refuse or excess material." *Id.* at 1447. Combining these ordinary meanings, "industrial waste" is any useless byproduct derived from the commercial production and sale of goods and services. Because Fidelity is engaged in production of methane gas for commercial sale and because CBM water is an unwanted byproduct of the extraction process, CBM water falls squarely within the ordinary meaning of "industrial waste." Even Fidelity referred to CBM water as "wastewater" in its application to the EPA for an NPDES permit.

Second, CBM water is also a "pollutant" by virtue of being "produced water" derived from gas extraction. See *Cedar Point Oil Co.*, 73 F.3d at 568 (addressing whether discharge of water "produced" during the extraction of oil and gas without an NPDES permit violated the CWA and concluding [*14] that produced water is an "in-

dustrial waste" regulated by the CWA). The EPA defines "produced water" as "water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemical added downhole or during the oil/water separation process." 40 C.F.R. §§ 435.41(bb), 435.11(bb) (emphasis added). Fidelity argues that the CBM water is not "produced water" because Fidelity adds no chemicals to the water. Whether CBM water is "produced water," however, does not turn on the addition of chemicals or any other alteration. The EPA regulations provide that "produced water" can include added chemicals, but the definition does not require it. See *id.* CBM water is "produced water" because it is brought up from the coal seams underlying Powder Basin to extract methane gas.

The CWA contemplates that produced water, as defined by EPA regulations, is a pollutant within the meaning of the Act. The CWA only exempts water derived from gas extraction from regulation when the water is disposed of in a well and will not result in the degradation of other water bodies. 33 U.S.C. § 1362(6)(B). [*15] Cf. *Cedar Point Oil*, 73 F.3d at 568 ("produced water" is a pollutant if its discharge does not meet exemption criteria). Fidelity disposes of the CBM water by direct discharge to the Tongue, not by reinjection into a state-approved well. Because Fidelity discharges "produced water" and does not meet § 1362(6) exemption criteria, the CBM water discharged by Fidelity is a pollutant within the plain meaning of the CWA and is subject to NPDES permitting requirements.

Third, concluding that CBM water is a pollutant is consistent with the CWA's definition of "pollution." Cf. *APHETI*, 299 F.3d at 1017 (considering the definition of [*1162] "pollution" to determine whether biological materials emitted by mussels are "pollutants"). "Pollution" is the "man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." 33 U.S.C. § 1362(19). By discharging CBM water into the Tongue River, Fidelity alters the water quality of the Tongue River. In particular, the MDEQ, in the Montana Environmental Impact Statement analyzing the impact of CBM production on Montana waterways, cautions that the resulting [*16] alteration may degrade, and limit uses of, the receiving water: "Surface water quality in some watersheds would be slightly to severely degraded, resulting in restricted downstream use of some waters." Montana FEIS at 4-72. And, unregulated discharge of CBM water to the Tongue River threatens to make the water unfit for irrigation. *Id.* at 4-138.

Because Fidelity's discharges of CBM water alter the water quality of the Tongue River, those discharges cause "pollution" as defined by the CWA. See *PUD No. 1 of*

Jefferson County v. Wash. Dep't of Ecology, 511 U.S. 700, 705, 128 L. Ed. 2d 716, 114 S. Ct. 1900 (1994) (citing 33 U.S.C. § 1313(d)(4)(B) and recognizing CWA's "antidegradation policy" requiring state water quality standards to prevent further degradation of the Nation's waters); 40 C.F.R. § 131.12 (antidegradation policy regulation). Were we to conclude otherwise, and hold that the massive pumping of salty, industrial waste water into protected waters does not involve discharge of a "pollutant," even though it would degrade the receiving waters to the detriment of farmers and ranchers, we would improperly "undermine [**17] the integrity of [the CWA's] prohibitions." *APHETI*, 299 F.3d at 1016.

The district court determined that the CWA's definition of "pollution" supports a conclusion that CBM water is *not* a pollutant because Fidelity does not alter the CBM water before discharging it. We disagree with the district court's interpretation of the definition. The requirement that the physical, biological, or chemical integrity of the water be a "man-induced" alteration refers to the effect of the discharge on the receiving water; it does not require that the discharged water be altered by man. See *Miccosukee Tribe v. S. Fla. Water Mgmt. Dist.*, 280 F.3d 1364, 1368 (11th Cir. 2002) ("[I]n determining whether pollutants are added to the navigable waters for purposes of the CWA, the receiving body of water is the relevant body of navigable water."). A contrary reading of the definition is illogical because the goal of the CWA is to protect receiving waters, not to police the alteration of the discharged water. See 33 U.S.C. § 1251 (The objective of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the [**18] Nation's waters"). Here, the alteration of the chemical integrity of the Tongue River is "man-induced," as the CBM water would not flow into the Tongue River but for Fidelity's methane extraction processes, and that must be a focus of our concern under the CWA. Contrary to the district court's conclusion, the definition of "pollution" supports a finding that CBM water is a pollutant.

In arguing that CBM water is not a pollutant, Fidelity makes much of the fact that the CBM water is "unaltered," "naturally occurring," and that it is only water. Fidelity relies on *APHETI* to argue that only those substances "transformed by human activity" can be pollutants under the CWA. See *APHETI*, 299 F.3d at 1017. Fidelity misapplies *APHETI*.

In *APHETI*, we clarified the meaning of "biological materials," a term included in the CWA's definition of "pollutant." *Id.* at 1016; see also 33 U.S.C. § 1362(6). In considering whether excrement from mussels [*1163] suspended from rafts in Puget Sound was a pollutant under the CWA, we distinguished between biological ma-

terials that naturally occur in receiving waters, such as mussel feces, [**19] and biological materials that result from human activity, such as the "heads, tails, and internal residuals" of fish dumped back into the waters after processing. *APHETI*, 299 F.3d at 1017. Because one purpose of the CWA is to protect shellfish, we concluded that shellfish are not pollutants under the CWA unless human activity transforms them. *Id.* This conclusion was necessary to preserve the "integrity of the [CWA's] prohibitions." *Id.* at 1016.

APHETI cannot sensibly be read to require human transformation of all materials identified in the CWA's definition of "pollutant." For one thing, the CWA definition of "pollutant" includes such terms as "rock," "sand," and "heat." See 33 U.S.C. § 1362(6). It is the introduction of these contaminants, not their transformation by humans, that renders them pollutants. Also, by allowing the degradation of the quality of receiving waters, the consequences of Fidelity's interpretation of *APHETI* would upset the integrity of the CWA, a result that *APHETI* was careful to avoid. Fidelity's interpretation of *APHETI* is not correct, for it would allow someone to pipe the [**20] Atlantic Ocean into the Great Lakes and then argue that there is no liability under the CWA because the salt water from the Atlantic Ocean was not altered before being discharged into the fresh water of the Great Lakes. Or, water naturally laced with sulfur could be freely discharged into receiving water used for drinking water simply because the sulfur was not added to the discharged water. Such an argument cannot sensibly be credited.

Even though Fidelity argues that CBM discharges are "only water," other circuits have held that transporting water from one water body to another can violate the CWA. See *Miccosukee Tribe*, 280 F.3d at 1367 (affirming the district court's grant of summary judgment to the plaintiffs where the defendant discharged already polluted water into a navigable water even though the defendant did not introduce additional pollutants into the discharged water but only rerouted the discharged water into the receiving water); *Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York*, 273 F.3d 481, 492-93 (2d Cir. 2001) (concluding that the transfer of water containing pollutants from one body of water to another requires [**21] an NPDES permit); *Dubois v. U.S. Dep't of Agric.*, 102 F.3d 1273, 1299 (1st Cir. 1996) (holding that the transfer of water from one body of water to another distinct body of water requires a NPDES permit where the discharged water contains pollutants).

Fidelity attempts to distinguish these cases because they addressed the issue of whether there was an "addition" of a pollutant under the CWA, not whether there was a pollutant. This distinction is inapposite. The issue

of whether CBM water is a pollutant is practically indistinguishable from the issues considered by these cases. Fidelity is transporting water from the deep aquifers of the Powder Basin and discharging that unaltered water into the surface water of the Tongue River. Similarly, each of the cases cited above involve transport of water that could degrade the water quality of receiving waters. The cases apply insofar as they reject the argument that discharge of water cannot be a pollutant simply because the discharged water is unaltered and transported from one body of water to another.

In light of the CWA's definition of pollutant and pollution, our precedent in *APHETI*, and the conclusions of other [**22] circuits in analogous cases, we reject Fidelity's arguments and hold that CBM water is a pollutant pursuant to the CWA.

[*1164] III

Having concluded that Fidelity's discharge of CBM water is subject to the CWA, we next consider whether Fidelity nevertheless can be relieved of permitting under the CWA by Montana state law. *Section 75-5-401(1)(b)* of the Montana Code provides:

Discharge to surface water of groundwater that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:

- (i) the discharge does not contain industrial waste, sewage, or other wastes; (ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and (iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

Based on *Montana Code section 75-5-401(1)(b)*, the MDEQ advised Fidelity that no permit was needed to discharge CBM water into the Tongue River. The district court agreed, reasoning that the EPA implicitly approved of Montana's groundwater exemption because the EPA did not revoke [**23] Montana's authority to operate the EPA-approved state permitting program despite *section 75-5-401(1)(b)*. Giving deference to the EPA's "approval" of Montana's permitting program, the district court concluded that discharge of CBM water does not require a permit under Montana state law and thus does not violate the CWA. We disagree with the district court's conclusion for several reasons.

First, though the district court reasoned that the EPA

approved of *section 75-5-401(1)(b)*, the EPA does not have the authority to exempt discharges otherwise subject to the CWA. Only Congress may amend the CWA to create exemptions from regulation. *See Am. Mining Congress v. E.P.A.*, 965 F.2d 759, 772 (9th Cir. 1992) (citing *Natural Res. Def. Council v. Costle*, 186 U.S. App. D.C. 147, 568 F.2d 1369, 1374 (D.C. Cir. 1977)). The EPA could not have approved of the MDEQ's exemption of CBM water discharges under *section 75-5-401(1)(b)* even if the EPA wanted to do so. n4

n4 Judicial deference to agency action is not warranted where the agency had no authority to act. *See United States v. Mead*, 533 U.S. 218, 226-27, 150 L. Ed. 2d 292, 121 S. Ct. 2164 (2001) (*Chevron* deference applies only when Congress explicitly or implicitly gave the agency authority to fill certain gaps left by Congress). Therefore, the district court erred in giving judicial deference to the EPA's implicit "approval" of Montana's groundwater exemption. Congress did not grant the EPA the authority to create such exemptions.

[**24]

Second, Montana has no authority to create a permit exemption from the CWA for discharges that would otherwise be subject to the NPDES permitting process. *See 33 U.S.C. § 1370* (states may not adopt or enforce standards that are less stringent than federal standards). Just as the EPA does not have the authority to create an exemption for unaltered groundwater, neither does the State of Montana, as the EPA cannot delegate to a state more authority than the EPA has under the CWA. n5

n5 Even if the EPA could have approved of the MDEQ's application of *section 75-5-401(1)(b)*, the EPA did not do so here. In a letter sent to the MDEQ, the EPA disapproved of the application of *section 75-5-401(1)(b)* to discharges that would otherwise be regulated under the CWA. The MDEQ, however, maintained that the exemption was consistent with the CWA because "discharges of unaltered, natural groundwater do not contain 'pollutants' as that term is defined" in the CWA. In a subsequent letter to the MDEQ, the EPA stated that revocation of *Montana Code section 75-5-401(1)(b)* would not be necessary if the MDEQ does not interpret that provision to authorize "any point source discharge of any pollutant to any water of the United States without an NPDES permit."

[**25]

[*1165] Moreover, absent statutory authority in the

325 F.3d 1155, *1165; 2003 U.S. App. LEXIS 6852, **25;
56 ERC (BNA) 1289; 2003 Cal. Daily Op. Service 3072

CWA for Montana to create such exemptions, it cannot possibly be urged that Montana state law in itself can contradict or limit the scope of the CWA, for that would run squarely afoul of our Constitution's *Supremacy Clause*. *U.S. Const. art. VI, cl. 2*. See also *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 851 (9th Cir. 2002) (recognizing that the *Supremacy Clause* "invalidates state laws that 'interfere with, or are contrary to,' federal law").

We hold that Montana state law cannot exempt CBM water from being subject to the CWA when the Act does not provide the EPA or the State of Montana the authority

to create such exemptions.

IV

Because CBM water is a pollutant subject to regulation by the CWA and because Montana cannot create an exemption for CBM water that is otherwise subject to the CWA, we reverse the district court's grant of summary judgment to Fidelity and remand with instructions to enter summary judgment for NPRC.

REVERSED and REMANDED.

House Oil & Gas Committee
Re: HB 395

February 4, 2004

Dear Representatives Kohring, Heinze, Holm, McGuire, Rokeberg, Crawford, and Kerttula:

Since I won't be able to attend tomorrow's hearing I'm sending these comments ahead. Please make them part of the official record. I'm pleased to see that the Legislature is considering reform of legislation governing coalbed methane/shallow gas leasing. The whole shallow gas leasing program has proven itself to be a fiasco that has raised the ire of citizens -- particularly owners of the surface estate. It's difficult to imagine anything that would do more to make it difficult for the oil and gas industry to conduct future business than this bungled program. HB 395 "An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations," with its elimination of the DNR Commissioner's power to override local planning is a beginning. With proper amendment it could serve as one of several necessary actions that might undo the damage so far caused by the present, ill conceived coalbed methane/shallow gas leasing program. I hope you will support modification of HB 395 to include:

Notice to individual surface landowners prior to offering the subsurface estate for leasing.

Natural resource surface use baseline studies prior to exploration and development.

Regulations and standards to guide acceptance or rejection of lease requests relevant to regional characteristics and public comment.

Clear language establishing that exploration and development are subject to local land use regulations.

Clear guidelines governing requirements for negotiation of surface/subsurface user agreements assuring equity between the parties.

Increased bond amounts sufficient to protect the surface estate and community drinking water and which reflect data from baseline studies.

Required use of non-toxic fracturing fluids for coalbed methane development.

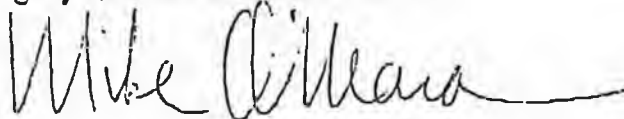
Required reinjection of produced waters.

A formal and fair dispute process with the appropriate state agencies (DNR, DEC, AOGC) to help resolve violations of law, regulations, or surface/subsurface user agreements.

An additional, special fund supported by with lease revenues to provide for third party mediation in cases of agency failure to resolve disputes.

Thank you for taking my comments into consideration.
Sincerely,

Mike O'Meara
P.O. Box 361
Homer, Alaska 99603



Work Phone: 907-235-8635

February 5, 2004

Dear Representative Kohring:

I am writing as a property owner in the Mat-Su Valley living on 120 acres of land that has already been leased under the Coal Bed Methane Shallow gas program. I was born in Palmer, lived here for 45 years and intend remain in the Mat-Su valley. The outcome of the CBM issue will certainly dictate whether or not this is possible for me and my family. We have no intention of watching our sole asset, our land and house, devalue as a result of the state's poor oversight of CBM program. The legislature must act quickly to put regulatory restrictions that protect the landowners and assure public safety. The profit - driven actions of our representatives thus far are despicable and require swift action to undo the mistakes already made by the legislature in regards to CBM industry regulation. Landowners have been betrayed by the actions of our local representatives with the passage of HB69 and the fasttracking of the CBM program without regard to landowners concerns. This line of action shall not be allowed to continue.

I am very disturbed by the actions that my local legislators have been involved with in pushing this program upon the landowners of the Mat-Su with complete disregard for the hazards of conducting drilling activities in close proximity to densely residential areas. CBM development was never intended for implementation in densely populated residential areas of the state such as the Mat-Su area.

I am writing specifically today to comment on bills before the legislature. It is my hope that you as our elected representative will act responsibly to protect the property rights and safety of your constituents and all residents of the Mat-Su Valley. These actions will be reflected by your response to the bills currently before you.

As an over-riding comment for all bills and in particular House Bill 395, my family and I strongly support a buy-back bill to include the Mat-Su Valley. This is the only viable option that we see that will adequately regulate the industry and thus protect local landowners.

Please consider the following additions to the bill.

Comments on HB 395:

HB 395 "An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations" falls far short of full protection for property owners.

The bill needs to insist that DNR develop regulations and standards to review and reject leases if the community situation and public comments warrant it.

The bond amounts listed are insufficient to protect private property and community drinking water.

There is insufficient protection for water supplies. The bill should include a requirement for use of non-toxic fracturing fluids and should

require protection of water supplies.

The suggested complaint process is too informal. A formal complaint process with Department of Natural Resources (DNR), Department of Environmental Conservation, and the Alaska Oil and Gas Conservation Commission should be established.

The pending bills do not help the private property owner. They don't provide for adequate notice before property is leased. Neither bill provides standards for regulating noise, setbacks, surface restoration and other qualities that would protect water resources, quality of life, and the environment for property owners.

Property owners need more help and protection so that they could insist on these protective provisions to preserve their quality of life.

The bill should require third party mediation to resolve disputes, paid by a fund established by the Legislature. Mediation must remain a fair process not one under complete control by state agencies.

The bill should require that Alaska Oil and Gas Conservation Commission regulate the industry properly and require re-injection of produced water at the well-site.

The contents of fracturing fluid contents must not be held confidential by the drilling company and must be fully disclosed to the public.

Public notice in the newspaper is not enough. Individual land owners need written actual notice before their land is leased. This should apply to privately owned leases as well.

The bills should address the need for baseline studies, especially for surface and ground water, to help assess impacts resulting from any future development. Furthermore, companies should be required to establish a compensation fund to pay property owners whose water is impacted.

HB 395 does eliminate the DNR Commissioner's capacity to waive local planning requirement. However, the bill should clearly spell out that local land use regulations can govern coal bed methane development.

As property owners we are looking for checks and balances to protect private property owners and community water resources and provide a good, fair public process.

I trust that these comments will be heard and would appreciate swift and aggressive action on your part to accomplish these as part of the legislation and would also urge you to support a buyback of the Mat-Su leases until such time that the CBM industry can be properly regulated to assure that it can be implemented in a safe and fair manner.

Sincerely,
Julie Michaelson Roger Bowen *Julie Michaelson*
Landowners of the Mat-Su 746-0959

LEGAL SERVICES

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MEMORANDUM

April 7, 2004

SUBJECT: Draft CSHB 395(), an Act relating to natural resources --
sectional analysis (Work Order No. 23-LS1314J)

TO: Representative Beverly Masek,
Co-Chair of House Resources Committee

FROM: Jack Chenoweth
Assistant Revisor of Statutes

Eleanor Wolfe has requested preparation of a sectional analysis for the above-captioned bill.

Changes to the section authorizing shallow natural gas leasing (AS 38.05.177) --

Bill section 5 amends AS 38.05.177(c) relating to requirements of notice. The insertions made at page 4, lines 19 and 20 and line 24 acknowledge that the director of the division of land should actually consider public comment that may be received before executing a lease. The substitution of "may" for "shall" at page 4, line 26 and again at line 27, alters the scope of the director's authority to act, changing it from an act that is mandatory if the leasing standard is met ("[if] the director determines that the discovery of a local source of natural gas would benefit the residents of an area") to one as to which the director may exercise discretion.

Bill section 6 amends AS 38.05.177(f) to add a series of additional requirements that must be inserted in a shallow natural gas lease, to include (in paragraph (2)) required water well testing requirements in an area roughly within one-quarter mile around a drill site, (in paragraph (3)) appropriate setbacks applicable to compressor stations that are appropriate to the lease; (in paragraph (4)) required and appropriate noise mitigation measures; and (in paragraph (5)), at termination or conclusion of the lease, surface restoration requirements if the surface is disturbed by exploration or development operations.

Bill section 7: This bill section amends AS 38.05.177(k). In instances in which an owner and a lessee cannot reach agreement for the latter's entry on to property to explore for and develop shallow natural gas and the lessee seeks to post a bond to permit entry, the first amendment (beginning at page 7, line 1) adds a further requirement that the lessee demonstrate "that access and entry upon the land of the owner is reasonably necessary or convenient" to secure the lessee's rights, and the second amendment (beginning at page 7, line 10) requires the lessee to provide 30 days' advance notice of initial entry on to an owner's property.

Bill section 8 adds two new subsections.

The language of subsection (p) expands upon the procedures currently applicable to securing protection against damages insofar as those procedures relate to shallow natural gas exploration and development activities:

-- Under paragraph (1), if the owner and lessee come to an agreement as to the lessee's entry, the terms of the agreement are to incorporate the requirements spelled out in AS 38.05.177(f), amended earlier in the bill.

-- Under paragraph (2), if the parties can't agree and the lessee seeks determination of the amount of a surety bond in order to proceed, in conjunction with the director's determination, the owner may provide comments about the appropriate location of improvements to be made on the owner's property.

Subsection (q) supplies a definition for "owner" for relevant subsections in which the term is used.

Bill sections 9 and 10: This pair of bill sections amends the notice requirements generally applicable to activities to be taken under the Alaska Land Act, AS 38.05. The amendment made to AS 38.05.945(a) in bill section 9 adds to the section's notice requirement the "receipt of a [shallow natural gas] lease application and call for [public] comments [on the application]," as required by AS 38.05.177(c). The amendment made to AS 38.05.945(b) in bill section 10 directs the department to adhere to the general notice requirements of that subsection when issuing that call for public comments for a lease application submitted under AS 38.05.177(c).

Bill sections 14 and 15: The amendment made by bill section 14 and the repealers set out in bill section 15 eliminate provisions by which the commissioner of natural resources may, if the Department of Natural Resources clearly demonstrates an overriding state interest, "approve a waiver of local planning authority approval and requirements relating to compliance with local ordinances and regulations."

Changes relating to shallow natural gas activity oversight by the Alaska Oil and Gas Conservation Commission --

Bill section 1: The amendment to AS 31.05.030(j) made by this bill section alters the authority of the Alaska Oil and Gas Conservation Commission as that authority may be exercised with respect to shallow natural gas exploration and development. Paragraph (1) imposes a prohibition against the commission's issuing a permit to drill under AS 31.05 "if . . . operations . . . would involve producing gas from an aquifer that serves as a source of drinking water . . . or . . . for agricultural purposes" and a conditional prohibition against the reinjection of produced water. Paragraph (2) expands the authority of the commission to regulate hydraulic fracturing associated with exploration for and the disposal of wastes produced by those operations.

Representative Beverly Masek
April 7, 2004
Page 3

Bill section 2: In conjunction with shallow natural gas exploration and recovery, this section adds a new provision directing the Alaska Oil and Gas Conservation Commission to initiate a public forum process to resolve informally of public health, safety, welfare, and environmental complaints. The provision sets out the minimal procedural requirements for informal resolution of complaints. Language was added (page 2, lines 21 and 22) requiring the informal resolution of complaints within 60 days of the filing of the complaints. If informal resolution of a complaint is unsuccessful, the commission may schedule and act on petition concerning the complaint under procedures in place for commission review of matters subject to its jurisdiction. The commission is to act on matters within its jurisdiction and may refer complaints not within its jurisdiction to other appropriate agencies.

Standardized references relating to maximum depth of shallow natural gas recovery --

Bill sections 3 and 13: The amendments made in each of these sections eliminate, in the respective definitions of or references to "shallow natural gas," the reference to recovery of natural gas from a depth of up to 4,000 feet and replace it with a reference to 3,000 feet. Recovery at greater depths requires treatment of the operation under conventional oil and gas lease requirements.

Other matters --

Bill section 4: The bill section adds provisions to the title in the Alaska Statutes generally dealing with Property that guide the interaction between a "developer" and a "surface owner" relating to mineral interest operations. This material would apply only to the extent the operations constitute activities that are not otherwise governed by the Alaska Land Act (AS 38.05). See page 3, lines 12 and 13 ("Except for activities governed by AS 38.05, . . .").

Bill section 11: AS 46.03.100 imposes permit requirements that relate to operations resulting in disposal of waste materials on state land and water. Existing AS 46.03.100(f)(3) exempts from the section's permit requirement certain surface water discharges that arise out of, among other activities, "coal bed methane drilling or other natural gas drilling to recover gas from a field if a part of the field is within 3,000 feet of the surface." The amendment made in this bill section deletes that exception.

Bill section 12: The amendment made is a conforming change necessitated by the renumbering of provisions in bill section 1.

Bill section 16 gives the measure a July 1, 2004, effective date.

JBC:med
04-381.med



ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 505 JUNEAU, ALASKA 99801-1182 (907)465-4859

**COMMITTEE SUBSTITUTE FOR HOUSE BILL 395 (O&G)
SPONSOR STATEMENT**

HB 395 was designed to resolve concerns many Alaskans have with coal bed methane development in the areas of property rights, water quality assurance, and local involvement of residents.

This bill accommodates language from HB 420 which sets the framework for a water well fund in the event of damage to a resident's water supply.

Many concerns have been raised recently by residents of the Mat-Su Borough and Homer area through a series of public forums. All sponsors worked diligently, listening to public input from numerous community hearings and comments received during the first hearing within the Special Committee on Oil & Gas

This bill requires that:

- 1) Public comment and other routes of access be considered prior to executing a lease.
- 2) The integrity of the affected water supply is protected.
- 3) Public notice be given prior to the award of a lease via newspapers and direct mail.
- 4) The lessee provide a contingency for dry wells due to CBM operations.
- 5) A shallow gas lease must provide for a water testing requirement by the lessee.
- 6) The owner's surface property be restored in the event of damage.
- 7) Noise from field operation is mitigated.

Finally, language is proposed to close current regulatory loopholes allowing the operators to extract natural gas deeper than the 3,000 foot definition of shallow natural gas without administrative approval for a depth no greater than 4,000 feet. This clarification is necessary to provide Alaskans the guarantee that conventional natural gas resources will not be extracted without going through the competitive bid process.

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

ALASKA OIL AND GAS CONSERVATION COMMISSION

333 W. 7TH AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501-3539
PHONE (907) 279-1433
FAX (907) 276-7542

March 5, 2004

VIA E-Mail, Fax and Mail

Representative Vic Kohring
Chair, House Special Committee
on Oil and Gas
State Capitol Room 24
Juneau, Alaska 99801

Re: HB 395

Dear Chair Kohring:

At your committee's recent hearing on HB 395, we promised to provide you with written comments on that bill from the Alaska Oil and Gas Conservation Commission. This letter contains our comments.

As you know, HB 395 would make several changes in the statute that the Commission administers, AS 31.05, the Alaska Oil and Gas Conservation Act. These changes relate to shallow natural gas operations.

Section 1. Section 1 of the bill would add to the list of the Commission's regulatory powers certain new language concerning protection of drinking water sources. We believe the proposed language in its present form needs clarification as it mixes two different issues: (1) hydraulic fracturing; and (2) reinjection of water produced from coal seams.

We understand there are concerns about possible contamination of drinking water sources from hydraulic fracturing fluids, and that there are also concerns about the possible contamination of drinking water sources from reinjection of produced water, but these two subjects should be dealt with separately. The bill appears to assume that requiring reinjection of produced

Representative Vic Kohring
Chair, House Special Committee
on Oil and Gas
March 5, 2004
Page 2 of 3

water at depths below sources of drinking water is a way of regulating hydraulic fracturing. This is not the case.¹

The language regarding reinjection also needs to be clarified because it is susceptible of two different interpretations. It could be read as prohibiting any disposition of produced water other than by reinjection at depths below water supplies. It could also be read as restricting reinjection to depths below water supplies but not ruling out surface disposal or other use of produced water. As to the former interpretation: while in most cases reinjection of produced water will be the preferable method of disposal, we are not sure it is good public policy to entirely eliminate surface disposal or beneficial use of produced water as an option in those instances where the water is of sufficiently high quality. As to the latter interpretation: we see no harm in adding this explicit restriction to the statute, but we believe the Commission's existing regulatory authority governing underground injections is already adequate to allow us to protect water supplies.

Under AS 31.05.030(h), the Commission exercises primary responsibility for the control of underground injections related to the recovery and production of oil and natural gas, including underground disposal of produced water. To obtain Commission approval for the underground disposal of produced water, an applicant must show, among other things, that an injection well will be cased and cemented so as to completely isolate the disposal zone and protect all freshwater sources. The applicant must also show that the proposed disposal method will not allow waste fluids to migrate into sources of freshwater. 20 AAC 25.252.

Section 2. Section 2 of HB 395 directs the Commission to develop and implement a "public forum process" for the purpose of "resolving public health, safety, welfare, or environmental complaints about potential or actual shallow natural gas exploration and development operations." This provision expands the subject matter under the Commission's purview beyond our historical focus and our current expertise. At this time the Commission deals primarily with subsurface issues. Although our responsibilities certainly involve public health, safety, welfare, and environmental concerns in specific and limited ways – such as preventing wasteful oil and gas production practices, protecting underground water supplies, and avoiding well blowouts – there are many

¹ Commission approval is already required for hydraulic fracturing, which is encompassed within what our regulations call "stimulation", at 20 AAC 25.280; and, we believe that AS 31.05.030(e)(1)(E) already gives the Commission the authority to ensure that hydraulic fracturing will not cause "the contamination or waste of underground water."

Representative Vic Kohring
Chair, House Special Committee
on Oil and Gas
March 5, 2004
Page 3 of 3

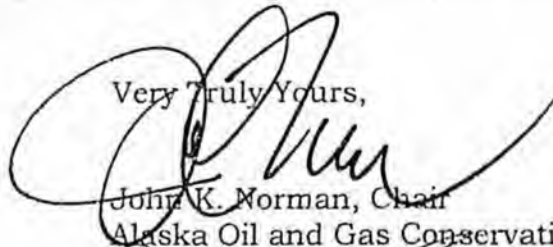
potential surface related health, safety, welfare, and environmental concerns (noise for example) that currently fall outside of the Commission's responsibilities and which have historically been within the jurisdiction of other agencies such as DEC and local regulatory agencies.

Section 2 of HB 395 contemplates that, beyond providing a public forum for informal resolution of complaints, the Commission would "take action" on complaints if they are not informally resolved. However, the bill does not clearly give the Commission the necessary additional statutory authority to address complaints on the new subjects that the bill would allow to be raised. We encourage this committee in its consideration of section 2 of this bill, to ensure that new mechanisms to deal with public concerns about shallow natural gas operations are workable, clearly defined, and consistent with an appropriate allocation of functions and authority among relevant agencies.


Section 3. Section 3 of HB 395 would amend the definition of "shallow natural gas" to reduce the allowable depth of a qualifying well from 4,000 to 3,000 feet true vertical depth. As you will appreciate, the depth limitation in this definition is somewhat arbitrary, and we do not have an opinion one way or the other on whether it should be changed as proposed. We note, however, that a bill introduced in the Senate, SB 312, would comprehensively change the scope of existing statutes dealing with "shallow natural gas" to deal instead with "nonconventional gas," which would be defined as "coalbed methane, shales containing gas, or gas hydrates." From a geological and regulatory point of view, such a change may be worth considering.

We thank you for giving us this opportunity to submit these comments. Please feel free to contact me if you or other members of the committee have any questions or would like further information concerning the points discussed in this letter.

Very Truly Yours,



John K. Norman, Chair
Alaska Oil and Gas Conservation Commission



Daniel T. Seamount, Jr., Commissioner
Alaska Oil and Gas Conservation Commission

JKN:\jjc

February 5, 2004

Dear Representative Kohring:

I am writing as a property owner in the Mat-Su Valley living on 120 acres of land that has already been leased under the Coal Bed Methane Shallow gas program. I was born in Palmer, lived here for 45 years and intend remain in the Mat-Su valley. The outcome of the CBM issue will certainly dictate whether or not this is possible for me and my family. We have no intention of watching our sole asset, our land and house, devalue as a result of the state's poor oversight of CBM program. The legislature must act quickly to put regulatory restrictions that protect the landowners and assure public safety. The profit - driven actions of our representatives thus far are despicable and require swift action to undo the mistakes already made by the legislature in regards to CBM industry regulation. Landowners have been betrayed by the actions of our local representatives with the passage of HB69 and the fasttracking of the CBM program without regard to landowners concerns. This line of action shall not be allowed to continue.

I am very disturbed by the actions that my local legislators have been involved with in pushing this program upon the landowners of the Mat-Su with complete disregard for the hazards of conducting drilling activities in close proximity to densely residential areas. CBM development was never intended for implementation in densely populated residential areas of the state such as the Mat-Su area.

I am writing specifically today to comment on bills before the legislature. It is my hope that you as our elected representative will act responsibly to protect the property rights and safety of your constituents and all residents of the Mat-Su Valley. These actions will be reflected by your response to the bills currently before you.

As an over-riding comment for all bills and in particular House Bill 395, my family and I strongly support a buy-back bill to include the Mat-Su Valley. This is the only viable option that we see that will adequately regulate the industry and thus protect local landowners.

Please consider the following additions to the bill.

Comments on HB 395:

HB 395 "An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations" falls far short of full protection for property owners.

The bill needs to insist that DNR develop regulations and standards to review and reject leases if the community situation and public comments warrant it.

The bond amounts listed are insufficient to protect private property and community drinking water.

There is insufficient protection for water supplies. The bill should include a requirement for use of non-toxic fracturing fluids; and should

require protection of water supplies.

The suggested complaint process is too informal. A formal complaint process with Department of Natural Resources (DNR), Department of Environmental Conservation, and the Alaska Oil and Gas Conservation Commission should be established.

The pending bills do not help the private property owner. They don't provide for adequate notice before property is leased. Neither bill provides standards for regulating noise, setbacks, surface restoration and other qualities that would protect water resources, quality of life, and the environment for property owners.

Property owners need more help and protection so that they could insist on these protective provisions to preserve their quality of life.

The bill should require third party mediation to resolve disputes, paid by a fund established by the Legislature. Mediation must remain a fair process not one under complete control by state agencies.

The bill should require that Alaska Oil and Gas Conservation Commission regulate the industry properly and require re-injection of produced water at the well-site.

The contents of fracturing fluid contents must not be held confidential by the drilling company and must be fully disclosed to the public.

Public notice in the newspaper is not enough. Individual land owners need written actual notice before their land is leased. This should apply to privately owned leases as well.

The bills should address the need for baseline studies, especially for surface and ground water, to help assess impacts resulting from any future development. Furthermore, companies should be required to establish a compensation fund to pay property owners whose water is impacted.

HB 395 does eliminate the DNR Commissioner's capacity to waive local planning requirement. However, the bill should clearly spell out that local land use regulations can govern coal bed methane development.

As property owners we are looking for checks and balances to protect private property owners and community water resources and provide a good, fair public process.

I trust that these comments will be heard and would appreciate swift and aggressive action on your part to accomplish these as part of the legislation and would also urge you to support a buyback of the Mat-Su leases until such time that the CBM industry can be properly regulated to assure that it can be implemented in a safe and fair manner.

Sincerely,
Julie Michaelson Roger Bowen *Julie Michaelson*
Landowners of the Mat-Su 746-0959

House Oil & Gas Committee
Re: HB 395

February 4, 2004

Dear Representatives Kohring, Heinze, Holm, McGuire, Rokeberg, Crawford, and Kerttula:

Since I won't be able to attend tomorrow's hearing I'm sending these comments ahead. Please make them part of the official record. I'm pleased to see that the Legislature is considering reform of legislation governing coalbed methane/shallow gas leasing. The whole shallow gas leasing program has proven itself to be a fiasco that has raised the ire of citizens -- particularly owners of the surface estate. It's difficult to imagine anything that would do more to make it difficult for the oil and gas industry to conduct future business than this bungled program. HB 395 "An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations," with its elimination of the DNR Commissioner's power to override local planning is a beginning. With proper amendment it could serve as one of several necessary actions that might undo the damage so far caused by the present, ill conceived coalbed methane/shallow gas leasing program. I hope you will support modification of HB 395 to include:

Notice to individual surface landowners prior to offering the subsurface estate for leasing.

Natural resource surface use baseline studies prior to exploration and development.

Regulations and standards to guide acceptance or rejection of lease requests relevant to regional characteristics and public comment.

Clear language establishing that exploration and development are subject to local land use regulations.

Clear guidelines governing requirements for negotiation of surface/subsurface user agreements assuring equity between the parties.

Increased bond amounts sufficient to protect the surface estate and community drinking water and which reflect data from baseline studies.

Required use of non-toxic fracturing fluids for coalbed methane development.

Required reinjection of produced waters.

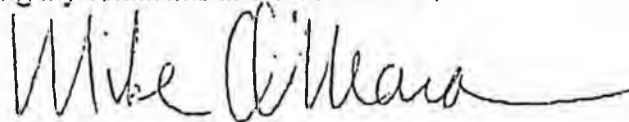
A formal and fair dispute process with the appropriate state agencies (DNR, DEC, AOGC) to help resolve violations of law, regulations, or surface/subsurface user agreements.

An additional, special fund supported by with lease revenues to provide for third party mediation in cases of agency failure to resolve disputes.

Thank you for taking my comments into consideration.

Sincerely,

Mike O'Meara
P.O. Box 361
Homer, Alaska 99603



Work Phone: 907-235-8635

HB

409

Alaska State Legislature

Co-Chair
House Finance Committee
Subcommittee Chair
Environmental Conservation
Courts



Representative William K. Williams

During Session
State Capitol
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Fax (907) 465-3793

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Ketchikan, AK 99901
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Fax (907) 225-8546

SPONSOR STATEMENT

House Fisheries Committee Substitute for House Bill 409

“An Act relating to the maximum length of salmon seine vessels; and providing for an effective date.”

House Bill 409 removes the statutory prohibition for the length of salmon seine vessels and leaves the authority to the Alaska Board of Fisheries. The bill **does not** remove the 58-foot length limit; it simply gives the Board of Fisheries the authority to go through its normal public process to consider such a change.

This bill will put salmon seine vessels on the same footing as all other commercial fishing boats in the state. At present, the 58-foot limit on salmon seiners is the only length limit for salmon fisheries that is enshrined in statute. The length and size of all other fishing boats can be changed by the Board of Fisheries.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

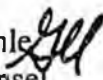
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 17, 2004

SUBJECT: Sectional Summary of CSHB 409(FSH); An Act relating to the maximum length of salmon seine vessels (Work Order No. 23-LS1328\Q)

TO: Representative Bill Williams
Attn: Tim Barry

FROM: George Utermohle 
Legislative Counsel

You have requested a sectional summary of CSHB 409(FSH); an Act relating to the maximum length of salmon seine vessels.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 16.05.835(a) to provide that the maximum length of a vessel that may be used in a salmon seine fishery in the state is 58 feet overall length (except for certain grandfathered vessels that fished in the state prior to January 1, 1962) unless the Board of Fisheries has authorized by regulation the use of a larger vessel in the fishery.

Section 2 of the bill provides that the bill takes effect January 1, 2005.

If I may be of further assistance, please advise.

GU:mdr
04-050.mdr

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Juneau, Alaska 99801-1182
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MEMORANDUM

December 3, 2003

SUBJECT: Approval of commercial fishing regulations by affected commercial fishermen

TO: Representative Bill Williams
Chair, Production Subcommittee
Joint Legislative Salmon Industry Task Force

FROM: George Utermohle *GU*
Legislative Counsel

The purpose of this memorandum is to inform you of a potential constitutional issue of unknown significance associated with certain legislation that is being considered by the Production Subcommittee of the Joint Legislative Salmon Industry Task Force.

The Production Subcommittee is considering a number of draft bills relating to the regulation of commercial fishing that contain a requirement for approval of proposed or adopted regulations of the Board of Fisheries by the permit holders in the affected fishery before the regulations could take effect.

The legislature may delegate quasi-legislative regulation-making powers to the Board of Fisheries, because the board is an agency of the state consisting of public officers appointed by the governor and confirmed by the legislature. However, allowing the permit holders in a fishery to vote to approve a proposed regulation raises the issue of improper delegation of legislative power to private parties in violation of the nondelegation doctrine. The nondelegation doctrine basically holds that the legislature may not delegate its lawmaking powers to a private organization.

Although the nondelegation doctrine is virtually dead in the federal courts, state courts adhere to this doctrine, although not uniformly. See, Northern Lights Motel, Inc. v. Sweeney, 561 P.2d 1176, 1181 (1977). At issue in the Northern Lights Motel case was a statute that adopted the uniform building code, and future amendments to the code, as drafted by a private association of building officials as the official building code in Alaska. The adoption of future versions of the building code raised an issue under the non-delegation doctrine. The primary reason for the prohibition against delegation of regulation-making authority to private groups is that the public does not necessarily receive notice of, or have an opportunity to comment on the regulations, as it does when regulations are adopted by the legislature or a state agency. *Id.* However, due to the

Representative Bill Williams
December 3, 2003
Page 2

particular fact situation in the case, the court did not explain whether and to what extent the nondelegation doctrine applies in this state. Id.

The source of concern for the court in the Northern Lights Motel case, lack of notice and opportunity to comment on a proposed regulation, would be less of an issue when the parties affected by the regulation are given the opportunity to vote on the proposed regulation.

The delegation of agency authority to a private person is an invalid use of agency authority, if the agency does not have the authority to make the delegation. For example, without statutory or constitutional authorization, an agency may not make the issuance of a boat-mooring permit contingent upon the written approval of an adjacent upland landowner. Anderson v. Grand River Dam Authority, 446 P.2d 814 (Ok. 1969). Likewise, an agency may not make the granting of a radio-operator's license contingent upon the written approval of the operator of the local airport, unless the legislature has authorized such a scheme. New Jersey Dept. of Transportation, Division of Aeronautics v. Brzoska, 354 A.2d 650 (N.J. 1976). Such standardless delegations of authority to private persons or groups are not subject to public accountability and are fundamentally suspect. However, delegations of authority such as those struck down in these two cases appear to be possible, if the legislature authorizes the delegation and appropriate standards for the exercise of the delegated authority are established by statute.

Though the delegation of authority to affected individuals to approve regulations adopted by a state agency may be inherently unsettling, there are no cases in this state, or in other states that I could find, that have addressed the validity of delegating authority to affected persons to control whether certain regulations may take effect. It is far from clear whether an Alaska court would find such a delegation to private parties to be an improper delegation of legislative power and thus invalid.¹

Consultation with the Department of Law on this issue would be advisable.

If I may be of further assistance, please advise.

GU:mdr
03-214.mdr

¹ However, the delegation of the legislative taxing power to private parties by allowing them to approve the imposition of taxes is clearly prohibited by the Alaska Constitution under art. IX, sec. 1. See, Alex v. State, 646 P.2d 203 (Alaska 1982).

Alaska State Legislature

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Representative William K. Williams

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Fax (907) 225-8546

SPONSOR STATEMENT

House Bill 409

“An Act relating to the maximum length of salmon seine vessels; and providing for an effective date.”

House Bill 409 removes the statutory prohibition for the length of salmon seine vessels and leaves the authority to the Alaska Board of Fisheries. It requires that a regulation of the Board of Fisheries to change salmon seine vessel length must be approved by at least 66 percent of the entry permit holders in the affected fishery. If the board adopts a new regulation, and in subsequent years they amend this regulation, fishermen who registered vessels under the previous rule will be grandfathered into the fishery.

This bill will put salmon seine vessels on the same footing as all other commercial fishing boats in the state. At present, the 58-foot limit on salmon seiners is the only length limit enshrined in statute. The length and size of all other fishing boats can be changed by the Board of Fisheries.

If the Board of Fisheries amends the regulation and lengthens the overall seine vessel length, owners of 58-foot vessels would not be required to purchase larger boats. The upgrade to a larger vessel would be optional.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: H.B. 409
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title: Relating to the Maximum Length of Salmon Seine Vessels RDU: Commercial Fisheries
 Sponsor: Representative Williams Component: _____
 Requester: House Fisheries Component No.: _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1097 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson Phone: 465-6137
 Division: Legislative Liaison Date/Time: 2/5/04 1:26 PM
 Approved by: Commissioner Kevin Duffy Date: 2/5/2004
 Agency: Alaska Department of Fish & Game



Cordova District Fishermen United

P.O. Box 939
Cordova, Alaska 99574
(907) 424-3447 FAX (907) 424-3430

Feb. 11th, 2004

House Special Committee on Fisheries
Representative Paul Seaton, Chair
Cc: Representative Bill Williams

RE: HB 409, "relating to the maximum length of salmon seine vessels"

Dear Representative Seaton,

My name is John Paul Wiese; I am Chair of the Seine Division of Cordova District Fishermen United. I am writing to state our opposition to HB 409. The seine fleet of Prince William Sound does not need bigger vessels; we need a consistent stable market for our product. We feel this bill will not help in the revitalization of the salmon industry but could actually be a detriment to the Prince William Sound Seine fishery by encouraging fishermen to over capitalize.

Respectfully,

A handwritten signature in cursive script, appearing to read "John Paul Wiese".

John Paul Wiese
Chair, Seine Division
Cordova District Fishermen United

Subject: HB 409

Date: Thu, 5 Feb 2004 18:21:24 EST

From: Scooski@aol.com

To: Rep_Paul_Seaton@legis.state.ak.us

CC: Rep_Bill_Williams@legis.state.ak.us

Dear Represe Seaton:

I support **HB, 409**. Meeting the challenges of today's markets requires modernizing our seine fleets. For the following reasons **HB, 409** the **58 foot limit bill** is good legislation at the right time.

Abstract:

Alaska's salmon net fisheries were tooled for a canned salmon industry that developed at the turn of the last century. Due to complex market conditions beyond the control of fishermen, old regulations such as the 58 foot seine boat limit, limits the potential of Alaska's seine fishermen to maximize the earning power of their operations. Providing for larger vessels will increase individual capacities for volume and improve quality.

Specifically:

HB, 409 will provide fishermen enough deck space for primary processing -- sorting, grading and bleeding to improve quality for fresh and frozen salmon products. As seiners harvest the majority of Alaska's pink salmon, this bill will help move Alaska's pink salmon production out of cans and into other more modern product forms.

Thank you for your considerations in this matter.

Scott McAllister.
Alaskan purseiner.
316 Ave.
Juneau, Alaska, 99801

State of Alaska
Commercial Fisheries Entry Commission
Permit Statistics For Alaska's Limited Entry Salmon Fisheries: 1993 - 2002

October 9, 2003

Fishery Description	Year	Permit Residency	Permits Issued	Permits Fished	Permits		Total Pounds Harvested	Estimated Gross Earnings	Per Val
					Not Fished	% Not Fished			
S 01A Salmon, Purse Seine, Southeast	2002	Resident	187	128	59	31.6	171,333,401	\$14,801,459	\$22,80
		Nonresident	228	145	83	36.4			
	Year Totals	415	273	142	34.2				
	2001	Resident	188	148	40	21.3	251,156,915	\$48,762,119	\$34,70
		Nonresident	227	197	30	13.2			
	Year Totals	415	345	70	16.9				
	2000	Resident	189	161	28	14.8	141,311,987	\$38,060,724	\$39,30
		Nonresident	227	195	32	14.1			
	Year Totals	416	356	60	14.4				
	1999	Resident	191	165	26	13.6	295,817,046	\$58,401,967	\$40,40
		Nonresident	225	194	31	13.8			
	Year Totals	416	359	57	13.7				
	1998	Resident	189	163	26	13.8	221,502,553	\$45,509,746	\$49,50
		Nonresident	227	214	13	5.7			
	Year Totals	416	377	39	9.4				
1997	Resident	188	160	28	14.9	157,593,151	\$40,819,353	\$50,00	
	Nonresident	228	191	37	16.2				
Year Totals	416	351	65	15.6					
1996	Resident	183	154	29	15.8	278,605,774	\$42,813,455	\$61,20	
	Nonresident	234	203	31	13.2				
Year Totals	417	357	60	14.4					
1995	Resident	182	169	13	7.1	197,982,775	\$55,806,812	\$75,90	
	Nonresident	236	204	32	13.6				
Year Totals	418	373	45	10.8					
1994	Resident	180	168	12	6.7	217,313,218	\$61,164,454	\$73,60	
	Nonresident	238	222	16	6.7				
Year Totals	418	390	28	6.7					
1993	Resident	178	167	11	6.2	203,684,672	\$52,893,456	\$79,60	
	Nonresident	241	215	26	10.8				
Year Totals	419	382	37	8.8					
S 01E Salmon, Purse Seine, Prince William Sound	2002	Resident	198	89	109	55.1	44,257,033	\$5,137,401	\$20,00
		Nonresident	69	31	38	55.1			
	Year Totals	267	120	147	55.1				
	2001	Resident	196	106	90	45.9	63,790,245	\$12,862,182	\$21,40
		Nonresident	72	41	31	43.1			
	Year Totals	268	147	121	45.1				
	2000	Resident	198	95	103	52	107,917,787	\$18,003,064	\$22,00
		Nonresident	70	35	35	50			
	Year Totals	268	130	138	51.5				
	1999	Resident	195	99	96	49.2	107,365,300	\$16,942,605	\$23,10
		Nonresident	72	39	33	45.8			
	Year Totals	267	138	129	48.3				
	1998	Resident	192	106	86	44.8	74,839,276	\$11,334,626	\$36,60
		Nonresident	75	42	33	44			
	Year Totals	267	148	119	44.6				

State of Alaska
Commercial Fisheries Entry Commission
Permit Statistics For Alaska's Limited Entry Salmon Fisheries: 1993 - 2002

October 9, 2003

Fishery Description	Year	Permit Residency	Permits Issued	Permits Fished	Permits		Total Pounds Harvested	Estimated Gross Earnings	Permit Value
					Not Fished	% Not Fished			
S 01E Salmon, Purse Seine, Prince Wm Sound (cont.)		Resident	195	84	111	56.9			
		Nonresident	74	30	44	59.5			
	1997	Year Totals	269	114	155	57.6	63,022,228	\$9,841,935	\$36,400
		Resident	190	66	124	65.3			
		Nonresident	77	24	53	68.8			
	1996	Year Totals	267	90	177	66.3	67,529,747	\$5,188,891	\$33,800
		Resident	191	137	54	28.3			
		Nonresident	77	50	27	35.1			
	1995	Year Totals	268	187	81	30.2	39,047,930	\$7,832,685	\$64,300
		Resident	198	129	69	34.8			
		Nonresident	72	42	30	41.7			
	1994	Year Totals	270	171	99	36.7	79,927,295	\$14,752,481	\$35,300
		Resident	196	108	90	45.9			
		Nonresident	74	38	36	48.6			
	1993	Year Totals	270	144	126	46.7	9,490,558	\$1,706,858	\$88,900
S 01H Salmon, Purse Seine, Cook Inlet		Resident	75	23	52	69.3			
		Nonresident	7	2	5	71.4			
	2002	Year Totals	82	25	57	69.5	4,800,042	\$715,976	\$11,500
		Resident	75	21	54	72			
		Nonresident	8	4	4	50			
	2001	Year Totals	83	25	58	69.9	1,896,155	\$721,111	\$15,800
		Resident	76	32	44	57.9			
		Nonresident	7	4	3	42.9			
	2000	Year Totals	83	36	47	56.6	2,384,579	\$1,029,272	\$15,800
		Resident	75	40	35	46.7			
		Nonresident	8	3	5	62.5			
	1999	Year Totals	83	43	40	48.2	2,272,370	\$1,912,728	\$17,200
		Resident	78	37	41	52.6			
		Nonresident	5	2	3	60			
	1998	Year Totals	83	39	44	53	2,851,252	\$1,069,729	\$24,100
	Resident	78	23	55	70.5				
	Nonresident	7	0	7	100				
1997	Year Totals	85	23	62	72.9	1,619,433	\$768,043	\$32,000	
	Resident	78	33	45	57.7				
	Nonresident	7	1	6	85.7				
1996	Year Totals	85	34	51	60	1,798,149	\$1,740,062	\$37,400	
	Resident	78	44	32	42.1				
	Nonresident	8	2	6	75				
1995	Year Totals	84	46	38	45.2	5,875,728	\$1,982,432	\$90,800	
	Resident	78	29	49	62.8				
	Nonresident	8	1	5	83.3				
1994	Year Totals	84	30	54	64.3	2,506,111	\$768,850	\$134,500	
	Resident	79	49	30	38				
	Nonresident	5	2	3	60				
1993	Year Totals	84	51	33	39.3	2,109,936	\$842,496	\$134,500	

State of Alaska
Commercial Fisheries Entry Commission
Permit Statistics For Alaska's Limited Entry Salmon Fisheries: 1993 - 2002

October 9, 2003

Fishery Description	Year	Permit Residency	Permits Issued	Permits Fished	Permits		Total Pounds Harvested	Estimated Gross Earnings	Permit Value
					Not Fished	% Not Fished			
S 01K Salmon, Purse Seine, Kodiak		Resident	288	115	171	59.8			
		Nonresident	98	34	62	84.8			
	2002	Year Totals	382	149	233	61	74,367,756	\$9,851,159	\$9,900
		Resident	289	139	150	51.9			
		Nonresident	95	43	52	54.7			
	2001	Year Totals	384	182	202	52.6	81,678,742	\$17,058,329	\$17,100
		Resident	292	163	124	42.5			
		Nonresident	91	55	36	39.6			
	2000	Year Totals	383	223	160	41.8	49,917,005	\$16,714,285	\$20,400
		Resident	286	163	123	43			
		Nonresident	97	57	40	41.2			
	1999	Year Totals	383	220	163	42.6	57,076,457	\$23,969,293	\$29,800
		Resident	285	160	125	43.9			
		Nonresident	99	57	42	42.4			
	1998	Year Totals	384	217	167	43.5	86,375,226	\$25,898,030	\$33,000
	Resident	286	188	98	34.3				
	Nonresident	98	73	25	25.5				
1997	Year Totals	384	261	123	32	45,375,982	\$14,339,237	\$41,700	
	Resident	290	196	94	32.4				
	Nonresident	94	65	29	30.9				
1996	Year Totals	384	261	123	32	32,962,614	\$18,551,849	\$46,900	
	Resident	291	228	63	21.6				
	Nonresident	95	84	11	11.6				
1995	Year Totals	386	312	74	19.2	160,194,850	\$42,359,845	\$50,400	
	Resident	288	213	75	26				
	Nonresident	99	72	27	27.3				
1994	Year Totals	387	285	102	26.4	42,502,786	\$19,250,419	\$45,400	
	Resident	285	240	45	15.8				
	Nonresident	102	84	18	17.6				
1993	Year Totals	387	324	63	16.3	117,723,913	\$30,756,361	\$61,600	
S 01L Salmon, Purse Seine, Chignik		Resident	84	38	46	54.8			
		Nonresident	16	3	13	81.3			
	2002	Year Totals	100	41	59	59	8,163,535	\$4,611,512	\$186,600
		Resident	83	78	5	6			
		Nonresident	15	14	1	6.7			
	2001	Year Totals	98	92	6	6.1	17,710,986	\$8,411,090	\$185,800
		Resident	64	84	0	0			
		Nonresident	15	15	0	0			
	2000	Year Totals	99	99	0	0	16,772,396	\$12,629,695	\$200,000
		Resident	83	78	5	6			
		Nonresident	16	12	4	25			
	1999	Year Totals	99	90	9	9.1	27,111,731	\$22,966,602	\$158,800
		Resident	84	73	11	13.1			
		Nonresident	16	12	4	25			
	1998	Year Totals	100	85	15	15	10,987,587	\$8,617,756	\$185,500

State of Alaska
Commercial Fisheries Entry Commission
Permit Statistics For Alaska's Limited Entry Salmon Fisheries: 1993 - 2002

October 9, 2003

Fishery Description	Year	Permit Residency	Permits Issued	Permits Fished	Permits Not Fished	% Not Fished	Total Pounds Harvested	Estimated Gross Earnings	Permit Value
S 01L Salmon, Purse Seine, Chignik (cont.)		Resident	83	82	1	1.2			
		Nonresident	17	16	1	5.9			
	1997	Year Totals	100	98	2	2	9,567,631	\$5,125,222	\$188,300
		Resident	81	80	1	1.2			
		Nonresident	20	20	0	0			
	1996	Year Totals	101	100	1	1	17,730,842	\$13,150,294	\$194,500
		Resident	80	80	0	0			
		Nonresident	20	20	0	0			
	1995	Year Totals	100	100	0	0	23,797,500	\$14,561,281	\$228,300
		Resident	82	82	0	0			
		Nonresident	18	17	1	5.6			
	1994	Year Totals	100	99	1	1	15,216,337	\$10,944,066	\$238,300
		Resident	83	83	0	0			
		Nonresident	19	19	0	0			
	1993	Year Totals	102	102	0	0	17,974,603	\$9,952,323	\$349,800
S 01M Salmon, Purse Seine, AK Peninsula/Aleutian Islands		Resident	90	42	48	53.3			
		Nonresident	31	0	31	100			
	2002	Year Totals	121	42	79	65.3	15,050,720	\$1,884,225	\$39,600
		Resident	90	60	30	33.3			
		Nonresident	31	4	27	87.1			
	2001	Year Totals	121	64	57	47.1	22,030,942	\$2,942,906	\$48,800
		Resident	91	64	27	29.7			
		Nonresident	30	12	18	60			
	2000	Year Totals	121	76	45	37.2	21,479,610	\$5,988,400	\$48,800
		Resident	92	66	26	28.3			
		Nonresident	29	8	21	72.4			
	1999	Year Totals	121	74	47	38.8	35,289,133	\$11,325,415	\$74,300
		Resident	91	70	21	23.1			
		Nonresident	31	9	22	71			
	1998	Year Totals	122	79	43	35.2	32,819,068	\$8,448,356	\$166,000
	Resident	92	69	23	25				
	Nonresident	30	13	17	56.7				
1997	Year Totals	122	82	40	32.8	14,157,801	\$4,677,464	\$166,000	
	Resident	94	80	14	14.9				
	Nonresident	30	21	9	30				
1996	Year Totals	124	101	23	18.5	15,358,080	\$4,139,174	\$166,000	
	Resident	97	93	4	4.1				
	Nonresident	27	25	2	7.4				
1995	Year Totals	124	118	6	4.8	75,301,389	\$20,927,345	\$182,800	
	Resident	96	93	3	3.1				
	Nonresident	28	26	2	7.1				
1994	Year Totals	124	119	5	4	52,663,227	\$13,522,327	\$193,400	
	Resident	97	93	4	4.1				
	Nonresident	29	29	0	0				
1993	Year Totals	126	122	4	3.2	51,649,673	\$16,155,304	\$197,500	

State of Alaska
Commercial Fisheries Entry Commission
Permit Statistics For Alaska's Limited Entry Salmon Fisheries: 1993 - 2002

October 9, 2003

Fishery Description	Year	Permit Residency	Permits Issued	Permits Fished	Permits		Total Pounds Harvested	Estimated Gross Earnings	Permit Val
					Not Fished	% Not Fished			
S 02K Salmon, Beach Seine, Kodiak		Resident	28	0	28	100			
		Nonresident	6	0	6	100			
	2002	Year Totals	34	0	34	100	0	\$0	\$16,400
		Resident	29	0	29	100			
		Nonresident	5	0	5	100			
	2001	Year Totals	34	0	34	100	0	\$0	\$16,400
		Resident	29	2	27	93.1			
		Nonresident	5	0	5	100			
	2000	Year Totals	34	2	32	94.1	47,159	\$30,502	\$16,400
		Resident	31	4	27	87.1			
		Nonresident	3	0	3	100			
	1999	Year Totals	34	4	30	88.2	34,807	\$29,267	\$16,400
		Resident	30	2	28	93.3			
		Nonresident	4	0	4	100			
	1998	Year Totals	34	2	32	94.1	47,454	\$7,297	\$16,400
	Resident	31	5	26	83.9				
	Nonresident	3	0	3	100				
1997	Year Totals	34	5	29	85.3	188,756	\$42,093	\$16,400	
	Resident	31	6	25	80.6				
	Nonresident	3	0	3	100				
1996	Year Totals	34	6	28	82.4	20,881	\$17,723	\$16,400	
	Resident	31	8	23	74.2				
	Nonresident	3	0	3	100				
1995	Year Totals	34	8	26	76.5	576,637	\$115,100	\$18,000	
	Resident	31	5	26	83.9				
	Nonresident	3	0	3	100				
1994	Year Totals	34	5	29	85.3	91,507	\$46,961	\$20,300	
	Resident	31	9	22	71				
	Nonresident	3	0	3	100				
1993	Year Totals	34	9	25	73.5	427,759	\$74,073	\$39,000	
S 03A Salmon, Drift Gillnet, Southeast		Resident	359	295	64	17.8			
		Nonresident	123	93	27	22			
	2002	Year Totals	482	391	91	18.9	23,660,931	\$7,638,394	\$27,900
		Resident	359	327	32	8.9			
		Nonresident	123	106	17	13.8			
	2001	Year Totals	482	433	49	10.2	27,397,365	\$12,489,834	\$41,300
		Resident	344	302	42	12.2			
		Nonresident	136	120	16	11.8			
	2000	Year Totals	480	422	58	12.1	31,170,137	\$11,738,149	\$33,000
		Resident	346	309	37	10.7			
		Nonresident	135	121	14	10.4			
	1999	Year Totals	481	430	51	10.6	31,888,683	\$11,489,118	\$33,900
		Resident	338	297	41	12.1			
		Nonresident	141	125	16	11.3			
	1998	Year Totals	479	422	57	11.9	30,431,908	\$11,345,286	\$35,400

Purse Seiner

Purse seiners catch salmon (primarily pink salmon) and herring by encircling them with a long net and drawing (pursing) the bottom closed to capture the fish. The net is first stacked on the stern of the boat and then payed into the water while the boat travels in a large circle around the fish. The far end of the net is attached to a "power skiff," which helps the operation by holding the net while the seiner completes the circle. The top of the net stays on the surface of the water because of its "float line" that runs through thousands of colorful floats, and the bottom of the net falls vertically because of its weighted "lead line." As a result, the net hangs like a curtain around the school of fish. The vessel crew then purses its bottom with a "purse line." The lines, and thus the net, are retrieved through a hydraulic power block (winch). Once most of the net has been retrieved, with the remainder of it lying in a "bag" alongside the vessel, the fish are dipped from the bag and into the vessel's hold. For large catches of herring, a buying vessel or "tender" comes alongside the fishing vessel and lowers the end of a fish pump into the bagged purse seine. The herring are then pumped aboard the tender and into its hold without ever going aboard the seiner. Sometimes referred to as "limit seiners," purse seiners are sleek, cabin-forward vessels that are limited by Alaska law to 58' in order to more precisely manage their fishing effort. They are recognized by their long, clean decks, the boom with its power block, the net stacked on the back, and the power skiff that is often seen riding "piggyback" aboard the vessel's stern while it is traveling. When fishing, of course, the circle of floats on the surface of the water, and the power skiff assisting with the operation, are sure giveaways. Seine-caught salmon are delivered "in-the-round" (whole) to buying stations and canneries where they end up as canned and frozen products. Herring are delivered to processing plants where they are either stripped of their roe (eggs), or packaged as bait for other commercial fisheries; e.g., the longline fisheries

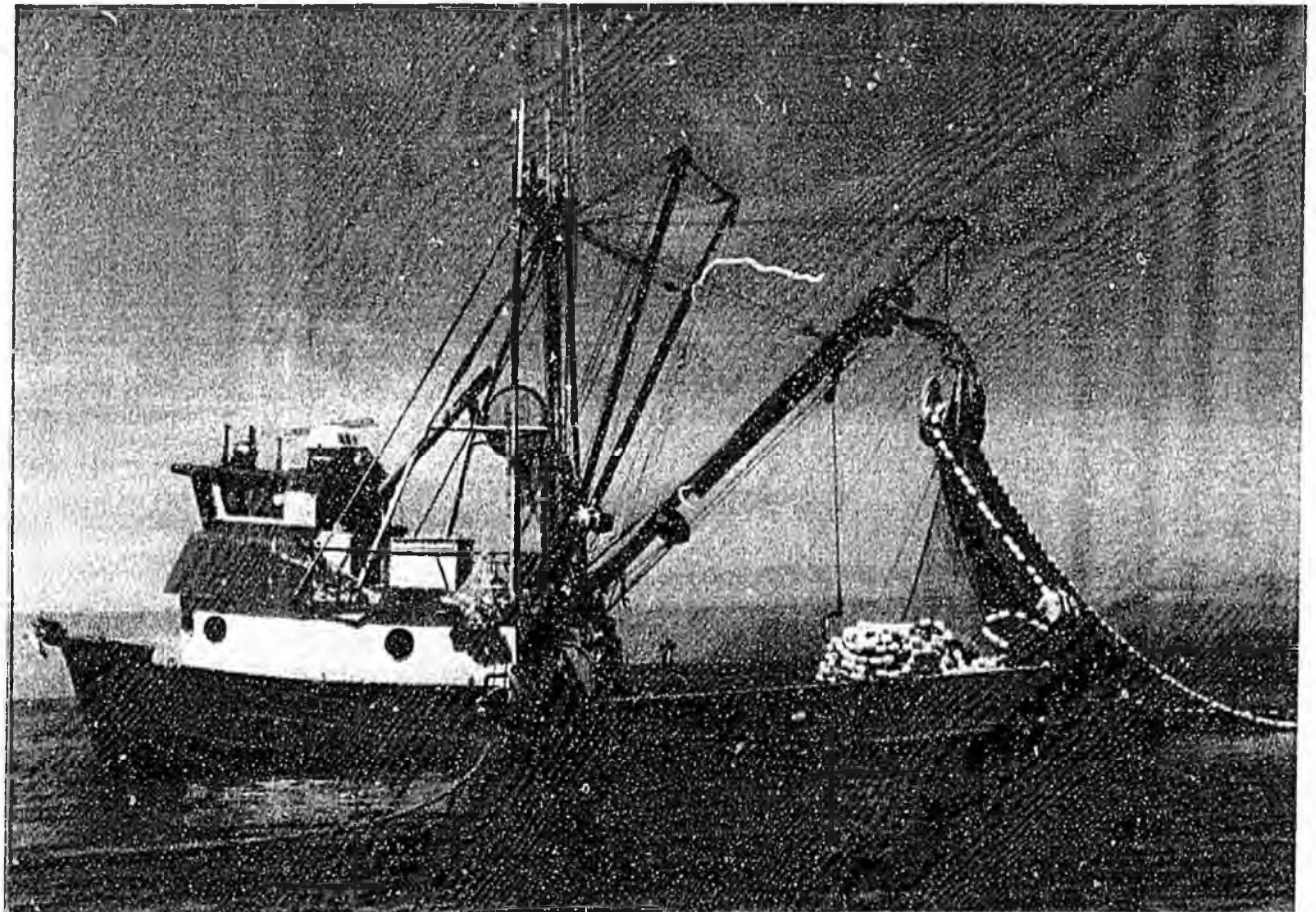
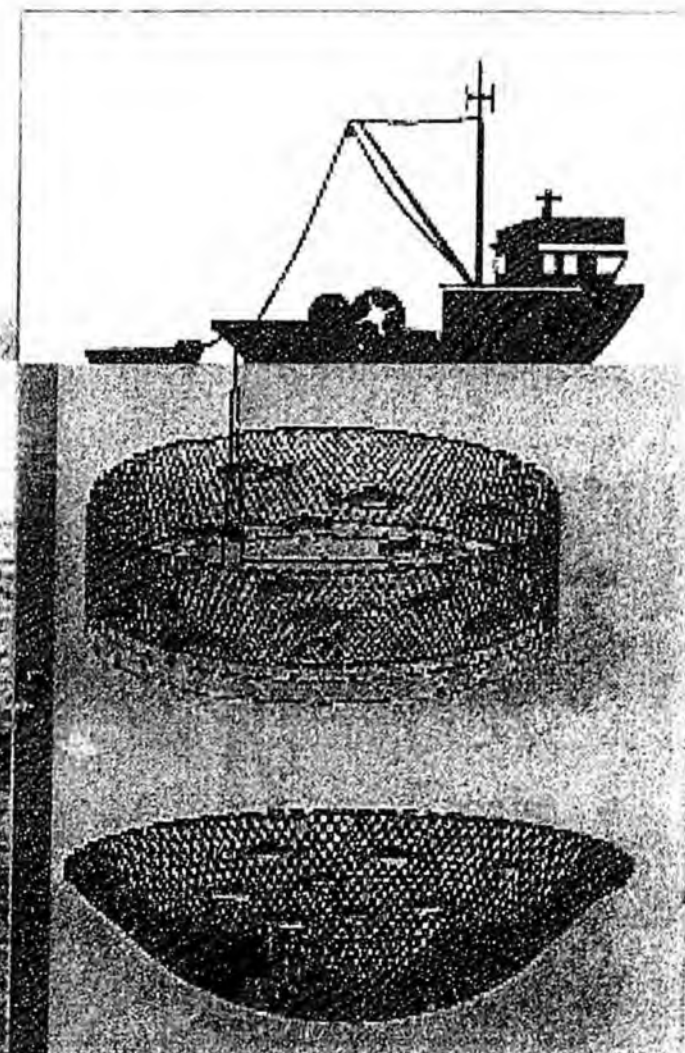


Photo by Jana M. Suchy



Purse Seine

A purse seine is a net which is set in the water and then pulled into a circle, as it surrounds the salmon. The bottom of the net is closed (pursed) and drawn towards the fishing vessel where the salmon are landed aboard the seine boat. Approximately 50% of all salmon commercially harvested are caught by means of purse seining.

What kind of fishing boat is that?

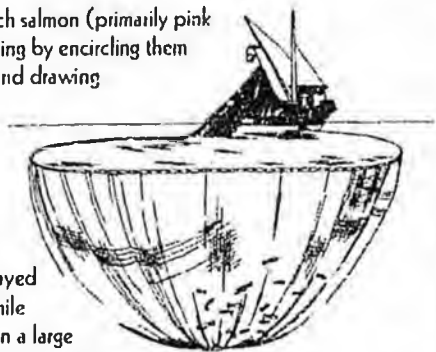
== Purse Seiner ==

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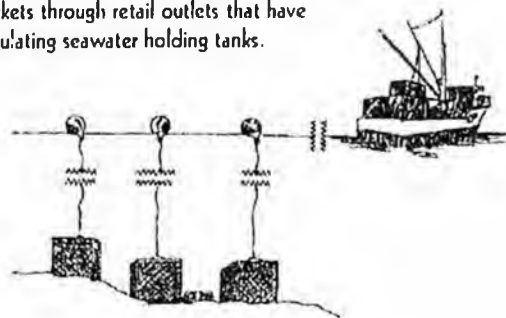


== Crabber ==

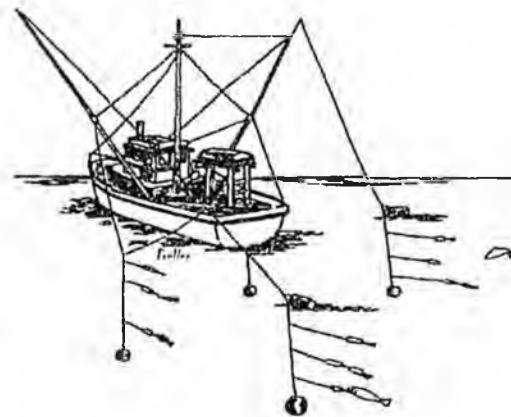
Crabbers target Dungeness, king, and Tanner crabs using twine or wire-meshed steel pots (traps). Baited with herring or other fresh bait, the pots are left to "soak" for several days. A line extends from each pot to a surface buoy that marks its location. There are several configurations for the pots, though in general, the smaller round pots are fished for Dungeness in shallow bays and estuaries, and the large, heavy, rectangular pots are fished in waters deeper than 100' for king and Tanner crab. A power winch is used to retrieve the pots. Once aboard, a pot is opened and the catch sorted. Females and undersized males are discarded (alive) over the side and legal-sized males are retained in aerated seawater tanks.

Crab boats come in a variety of shapes and sizes, from aluminum skiffs with outboard motors that fish the inside waters for Dungeness, to seagoing vessels of 100' or more that ply the Bering Sea and the Gulf of Alaska for king crab. Unless one happens to see a crabber headed for the fishing grounds with its decks stacked with pots, identification of a vessel as a crabber might be difficult for the casual observer.

Crabs are delivered live to shore stations where they are cooked and then either canned or sold as a fresh or frozen product. A small number are sold live in local markets through retail outlets that have circulating seawater holding tanks.



== Troller ==



Troll vessels catch salmon, principally chinook, coho, and pink salmon, by "trolling" bait or lures through feeding concentrations of fish. The word "troll" comes from a medieval German word, "trollen," and refers to the revolving motion of the bait or lures used in this type of fishing.

Typically, four main wire lines are fished, each of which has a large (40 lb), lead sinker ("cannon ball") on its terminal end, and 8-12 nylon leaders spaced out along its length, each of which ends in either a lure or baited hook. To retrieve hooked fish, the main lines are wound about small, onboard spools via hand crank (hand trollers) or with hydraulic power (power trollers), and the fish are gaffed when alongside the vessel. The leaders are then rebaited and let back down to the desired depth(s).

Troll vessels come in a variety of sizes and configurations, ranging from small, hand troll skiffs to large, ocean-going power troll vessels of 50' or more in length. Troll salmon fishermen operate throughout Southeast Alaska in both state and federal waters.

The troll salmon fishery produces a low-volume, high-quality product. Troll-caught salmon are dressed at sea and sold either as a fresh or frozen product. Public markets and fine restaurants are the final destination.

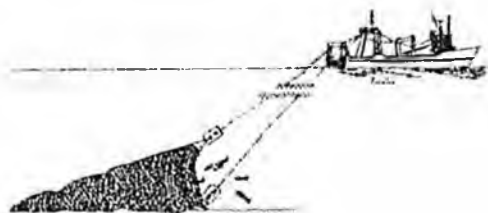
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==== Trawler ====

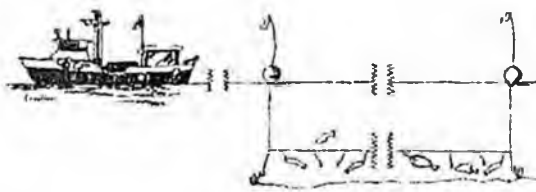
Trawlers are sometimes confused with trollers due to their similar sounding names, though there are few similarities. Trawlers typically catch large quantities of midwater species, such as pollock or pink shrimp, and bottomfish, such as flounder, by towing a large, cone-shaped net. Most trawl nets have "doors" on either side of the net's opening to help hold it open, and some, that are fished near the bottom, have a heavy chain strung along the bottom of the opening to hold it close to the sea floor. The net is retrieved via the use of huge winches and a power drum upon which the net is rolled as it is brought aboard. The end of the net, the "bag" or "cod end," holds the fish and is usually pulled right up into the back of the vessel on a slanting stern ramp.

Trawlers are generally large vessels; the largest in the ocean pollock fishery are factory trawlers that possess onboard processing facilities. These can be up to 600' in length. Catches are often enormous, with a 2-hour tow of the net yielding up to 100 tons or more, depending on the fishery, the size of the vessel, and the concentration of fish in the area.

The trawl fishery may process its catches into fillets, as in the case of flounder destined for the fresh and frozen market, or minced fish called "surimi," which is manufactured into fish sticks and similar products such as artificial king crab. Shrimp fishermen sort their catches by size and species and sell the product as either a whole, frozen product, or as a headed, frozen product.



==== Longliner ====



Longliners catch bottomfish (primarily halibut, blackcod, lingcod, and rockfish) via a long line that is laid on the bottom. Attached are leaders (called gangions) with baited hooks. Each longline can be up to a mile in length and have thousands of baited hooks. The lines are anchored at each end of each "set." Lines at the ends run to the surface and are marked with a buoy and flag. A longline vessel typically sets several lines for a 24-hour "soak." The lines are retrieved over a side roller with a power winch, and the fish caught are bled or dressed and then packed in ice in the vessel's hold.

Longliners are typically large vessels, 50' to 100' in length, with a weather cover on the stern to protect the crew. The longlines are coiled and stacked on deck in tubs when not in use. Most vessels in this fishery can pack 20 to 40 tons, or more, of iced product before returning to port. Longliners are readily identified by their weather cover and, when not fishing, by the numerous orange buoys and flags that are tied along their rails.

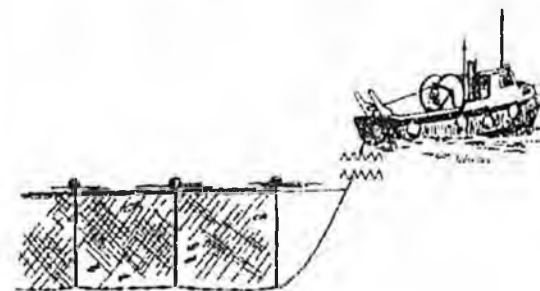
This fishery delivers its catch whole and bled (rockfish), or whole and gutted (halibut), or headed and gutted (blackcod and lingcod) for subsequent sale to fresh and frozen markets.

==== Gillnetter ====

Gillnetters catch salmon, primarily sockeye, chum, and coho, by setting curtain-like nets perpendicular to the direction in which the fish are travelling as they migrate along the coast toward their natal streams. The net has a float line on the top and a weighted lead line on the bottom. The mesh openings are designed to be just large enough to allow the male fish, which are usually larger, to get their heads stuck ("gilled") in the mesh. Much larger fish and the smaller females are not so readily gilled. Gillnets work best in silty or turbid water which makes them difficult for the fish to see.

Gillnet vessels are usually 30' to 40' long. They are easily recognized by the drum on either the front ("bow picker") or the stern ("stern picker"), on which the net is rolled. Net retrieval is by hydraulic power which turns the drum. Fish are removed from the net by hand "picking" them from the mesh as the net is reeled onboard.

Gillnet-caught salmon are usually iced and delivered to buyers and cold storages. Historically, their ultimate destination was the canned market, though a growing market for frozen product has developed overseas.



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HB

410



MAR 11 2004

UNITED FISHERMEN OF ALASKA

March 11, 2004

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Representative Nancy Dahlstrom, Co-Chair
Representative Beverly Masek, Co-Chair
House Resources Committee
Alaska State Legislature
State Capitol (Mail Stop 3100)
Juneau, AK 99801-1182

Dear Madam Chair,

United Fishermen of Alaska supports HB 410 relating to the administration of commercial fishing entry permit buy-back program. This bill modifies existing law governing buy-back programs by allowing the Commercial Fisheries Entry Commission to "front-fund" a buy-back program if an appropriation were received. The commission would then continue to collect funds through the designated rate of assessment in the buy-back program to repay the indebtedness.

United Fishermen of Alaska represents 32 Alaska Commercial fishing organizations and hundreds of individual fishermen and fishing related businesses, altogether representing over 10,000 Alaska fishermen. We support HB 410 which will make the buy-back statute easier to administer by accepting grants or loans from other sources. Thank you for your time and consideration on this matter.

Sincerely,

Mark Vinsel
Executive Director

CC: Representative Bill Williams

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Driggers Association • Alaska Longline Fishermen's Association • Alaska Trollers Association • Armstrong Keta • At-sea Processors Association
Bristol Bay Reserve • Chignik Regional Aquaculture Association • Chignik Seiners Association • Concerned Area "M" Fishermen • Cordova District Fishermen United
Crab Rationalization and Buyback Group • Douglas Island Pink and Chum • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
Kodiak Seiners Association • North Pacific Fisheries Association • Northern Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association
Seafood Producers Cooperative • Southeast Alaska Regional Diver Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters • Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

Alaska State Legislature

Co-Chair
House Finance Committee
Subcommittee Chair
Environmental Conservation
Courts



Representative William K. Williams

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SPONSOR STATEMENT

House Bill 410

“An Act relating to the administration of commercial fishing entry permit buy-back programs.”

House Bill 410 modifies existing law governing buy-back programs. It would allow the Commercial Fisheries Entry Commission to “front fund” a buy-back program if an appropriation were received. The commission would then continue to collect funds through the designated rate of assessment in the buy-back program to “pay back” the indebtedness.

When the optimum number of permits is reached in a buy-back *and* the reasonable costs of the program have been met, the Commission will terminate the assessment in the affected fishery. HB 410 will make the administration of a buy-back program more workable.

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: H.B. 410
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title Relating to the Administration of RDU Commercial Fisheries
Commercial Fishing Entry Permit Component _____
 Sponsor Representative Williams Component No. _____
 Requester House Fisheries

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson Phone 465-6137
 Division: Legislative Liaison Date/Time 2/5/04 1:20 PM
 Approved by: Commissioner Kevin Duffy Date 2/5/2004
 Agency: Alaska Department of Fish & Game

HB

417

REPRESENTATIVE
MIKE CHENAULT

Interim:
145 Main St. Loop, Second Floor
Kenai, Alaska 99611
(907) 283-7223
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STATE OF ALASKA



HOUSE OF REPRESENTATIVES

Official Business

Session:
Capitol Building, Room 432
Juneau, Alaska 99801-1182
(907) 465-3779
Toll Free: (800) 469-3779
Fax: (907) 465-2833

House Bill 417

An Act Amending the definition of project in the Act establishing the Alaska Natural Gas Development Authority

House Bill 417 amends the definition of project to include all options for a terminus of the Alaska Natural Gas Pipeline. This specifically identifies Cook Inlet as a possibility for a terminus.

Revised 02/10/04

STATE OF ALASKA

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February 26, 2004

TO: House Resources
Rep. Dahlstrom Co Chair
Rep. Masek Co Chair

FROM: Rep. Mike Chenault

RE: House Bill 417 "An act amending the definition of 'Project' in act establishing the ANGDA and providing an effective date."

Please consider this a request to schedule House Bill 417 for a hearing before the House Resources Committee. As I will be excused until March 2, please put it on the schedule as soon as possible after that date.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 417
 (H) Publish Date: 2/23/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Natural Gas Dev Auth Initiative RDU AK Natural Gas Dev Authority
 Component AK Natural Gas Dev Authority
 Sponsor Representative Chenault
 Requester House Oil & Gas Committee Component No. 2708

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	****	****	****	****	****	****
-----------------------------	------	------	------	------	------	------

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 **** This legislation would change the responsibility of the Alaska Natural Gas Development Authority from reviewing the economic viability of a gas pipeline from Prudhoe Bay to Valdez and a spur from Glennallen to the Southcentral gas distribution grid to including the review of the economic viability of a gas line to tidewater at a point on Cook Inlet.

 Since the Alaska Natural Gas Development Authority is already reviewing the economic viability of a spur to the Southcentral gas distribution grid, it is uncertain if additional funds will be necessary to expand that review to include to tidewater at a point on Cook Inlet.

Prepared by: Steve Porter, Deputy Commissioner Phone (907) 465-2365
 Division Department of Revenue Date/Time 2/15/04 8:18 PM
 Approved by: Steve Porter, Deputy Commissioner Date 2/15/2004
 Agency Department of Revenue

LEGAL SERVICES

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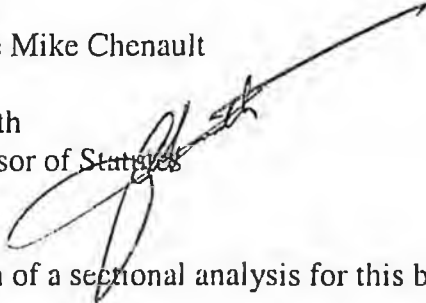
MEMORANDUM

February 3, 2004

SUBJECT: House Bill 417, amending the definition of "project" in the Act establishing the Alaska Natural Gas Development Authority -- sectional analysis (Work Order No. 23-LS1424\A)

TO: Representative Mike Chenault

FROM: Jack Chenoweth
Assistant Revisor of Statistics



Chris Koski has asked for preparation of a sectional analysis for this bill.

The 2002 initiative that establishes the Alaska Natural Gas Development Authority and defines its powers and duties directs the Authority to evaluate and develop a North Slope natural gas pipeline project. The initiative supplies a definition of the term "project" to include delivery of the gas to a point on tidewater on Prince William Sound. **Bill section 1** amends that definition to add the alternative of delivery to tidewater at a point on Cook Inlet.

Bill section 2 gives the measure an immediate effective date.

JBC:med
04-129.med

Cook Inlet Gas Supplies & Prices

- Current Cook Inlet gas prices have been low because the large gas reserves found over 30 years ago were “stranded”
- Cook Inlet gas reserves need to and can be replenished, but exploration for today’s \$2.50 gas will not attract at-risk investors
- Over the next several years all local gas consumers will see the average gas price double as contracts indexed to higher L-48 gas markets dominate newly found on-going gas supplies

Potential Cook Inlet Gas Pricing with North Slope Spur Line



Gas Price in Chicago	\$4.00 / Mbtu
Tariff from North Slope	-\$3.00

Net-Back Gas Price on North Slope	\$1.00
Tariff to Cook Inlet	+\$1.50

Gas Price in Cook Inlet	\$2.50 / Mbtu

- Cook Inlet price of North Slope gas will be approximately \$1.50 less than the gas price in the Mid-West (the difference in the tariff down the AICan highway vs the tariff to Cook Inlet)
- State can consider legislating additional discounts on royalty gas for Alaskan households and/or businesses

ANGDA Business Model

- Achieve lowest cost of service for NS gas transportation using unique bonding and tax status
- Assure maximum benefits to all Alaskans
- Borrow commercially in market & avoid State funding mistake
- Work cooperatively and supportively with other public or commercial entities to get Alaska gas to market

New ANGDA Base Case Investment (Notional)

	Old Base	New Base	Basis	
Treatment Plant	\$2 B	\$1.0 B	$(\$2.3B) * (2/4.5)$	Prod
Pipeline	\$4 B	\$3.5 B	$(\$4.4B) * (800/740) * (36/52)$	Prod
Liquefaction Plant	\$4 B	\$3.0 B	$(15 \text{ Mtons}) * (\$150/\text{ton}) * (1.3)$	BP
LNG Tankers	\$2 B	\$2.25 B	$(9) * (\$150M) + (3) * (\$300M)$	Less US
Spur Line	-	\$0.25 B	$(20") * (125\text{miles}) * (\$100k/"\text{mile})$	
WC Regas	-	\$0.3 B	0.5 BSCFPD WC facility	
NGL Plant	-	\$0.2 B	$(\$0.4B) * (2/4.5)$	Prod
TOTAL	\$12 B	\$10.5 B	Net of $-\$2.25B$ & $+\$0.75B$	

ANGDA Financing & Tax Alternatives

<u>CASES</u>	Debt to Equity Ratio	Return on Equity	Debt Interest Rate	Taxable Status ?	Cost of Service
High Return Business	70 / 30 %	15 %	8 %	YES	2.83
Attractive Investment	70 / 30 %	12 %	8 %	YES	2.51
Low Interest Debt	80 / 20 %	12 %	5 %	YES	1.94
No Return & Highway Bonds	All Debt	Zero	3.5 %	NO	1.36

Wellhead Value NOT Included in Cost of Service (\$/million BTU)

Comparison of Projects

Notional Cost of Service (\$/Mbtu)

	ANGDA LNG	AlCan Highway
Attractive Investment	2.51	2.27
Low Interest Debt	1.94	1.79
THROUGHPUT	2 BSCFPD	4.5 BSCFPD
CAPITAL COST	\$10.5 B	\$19 B

Wellhead Value NOT Included in Cost of Service