

ALASKA LEGISLATURE COMMITTEE FILED, 2003-2004 HOUSE

10983 HOUSE RESOURCES

- Prevent Lake Dorothy brook trout from reaching their spawning habitat in some years.
- Allow brook trout to be entrained into the hydro facility's intakes, with potential high mortality;
- Seasonally remove all water from Lower Dorothy Creek between Bart Lake and Taku Inlet, eliminating an isolated population of brook trout

ADF&G has the duty to protect, maintain, enhance and extend fish and wildlife populations under the State Constitution, duties of the commissioner, and the Fishway Act (AS 16.05.840). These statutes also recognize that fish and wildlife values must be evaluated against other beneficial uses. ADF&G has always recognized that fish and wildlife and their users are only a portion of the beneficial uses that must be considered. Clearly, considerations such as the reduction in use of fossil fuels, economics and municipal needs for electricity are valid and important uses that must be considered as well.

The statutes do not differentiate between native species and non-native species (e.g. elk, bison, eastern brook trout, and rainbow trout) or species that have been extended into additional areas (e.g. black-tailed deer, coho, sockeye and Chinook salmon).

Under §10(j) of the Federal Power Act, Federal Energy Regulatory Commission (FERC) licensing statutes recognize the importance of state input, and give state fish and wildlife agencies such as ADF&G, along with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, special authority to make recommendations for terms and conditions for power projects.

ADF&G approaches all projects, including FERC licenses, in a routine, organized manner that includes: 1) Identification and analysis of fish and wildlife values (including both populations and habitat) along with the users of these resources; 2) Determination of the protection measures that would be required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project applicants and proposers, including economics and practical feasibility. (Note that although our staff are very experienced, and therefore able to ask pertinent questions and suggest possible alternative measures, we normally rely on the applicant for this information); and 4) Working with the applicant to identify and select appropriate and feasible mitigation actions to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

To obtain this information, FERC and resource agencies typically ask the applicant to conduct studies in order to assess environmental effects and to determine the resource protection, mitigation and enhancement measures. FERC must obtain adequate information on all aspects of the project, including effects on fish and wildlife and natural, cultural, recreational, and tribal resources, in order to perform its NEPA environmental analysis, to assess project economics and feasibility, and to carry out other regulatory responsibilities.

FERC also needs information from studies in order to make an informed decision as to the appropriate level and type of resource measures to include in licenses, and to ensure that their decisions are supported by substantial evidence. FERC recognizes that both state and federal

agency expertise in fish and wildlife is critical to maintaining the credibility and success of the licensing process, and ensuring that the needed studies are scientifically and professionally designed. FERC regulations provide several means of dispute resolution if a dispute arises between an applicant and a resource agency or Indian Tribe regarding the need to conduct studies or gather information.

At the time of the Governor's State of the State address, ADF&G and LDHI had completed steps 1 and 2 above, and we were in the process of working through steps 3 and 4. The entire timeline and schedule for FERC licensing is set in federal regulation. Delay of the project is not at the discretion of ADF&G or other reviewing agencies, and our recommendations are not intended in any way to block the project. ADF&G's comments to FERC were due on February 19<sup>th</sup>, and have been submitted.

As confirmed in LDHI's January 21, 2003 letter to Bill Hanson, H&R Regional Supervisor, ADF&G and LDHI have worked conscientiously and well to consider all aspects of this project and discuss various options for protection, economic feasibility and off-site mitigation.

The Governor's comments on this project suggest that parallels exist between the brook trout populations potentially affected by the Dorothy Lake project and brook trout in the Ward Lake system in Ketchikan. A comparison of the potential effects of a hydroelectric project on the Dorothy Lake brook trout population and the population in the Ward Lake system would not be valid. ADF&G Division of Sport Fisheries data indicate that brook trout in the Ward Lake system occur only in Perseverance Lake, the uppermost lake in the system, which is inaccessible to anadromous fish due to a natural barrier. Unlike Lake Dorothy, therefore, fish passage needed to maintain access to spawning habitat in Perseverance Lake was not put at risk by Connell Lake Dam, nor was the Perseverance Lake brook trout population ever affected by downstream water withdrawals associated with this dam. However, Connell Lake Dam, which was built to provide water for the Ketchikan Pulp Company in 1953, prior to any requirement for a federal NEPA review and prior to the existence of ADF&G, currently blocks several miles of stream and lake habitat that previously supported coho salmon, sockeye salmon, and steelhead.

**Falls Creek Hydroelectric Project** – The governor said, *"The Habitat Division, together with the US Park Service, has also contributed to the delays in moving forward in the Falls Creek Hydro project near Gustavus. Unending demands for more studies have become a hallmark for the way this division oftentimes does business, and having had a personal opportunity to pursue a FERC waiver for that particular project, which obviously would reduce dependency of Glacier Bay of power generation from diesel power, why I could never understand why everybody didn't get behind this and recognize it as a considerable contribution to the environment."*

#### H&R Region I Response

As noted under the Lake Dorothy comments, ADF&G approaches all projects in a four-step process: 1) Identification fish and wildlife values and uses; 2) Protection measures that would be

required to fully protect fish and wildlife and their users; 3) Consideration of the needs of project applicants and proposers, including economics and practical feasibility; and 4) Identification and selection of mitigation to minimize effects and compensate for damage to fish and wildlife or their users that cannot be prevented.

FERC licenses are issued for a 50-year period. Such a long-term project, which can essentially be renewed forever, deserves careful consideration, including studies sufficient to fully evaluate the short and long-term effects on fish and wildlife populations and their users. This commitment to making decisions on the basis of science, which includes both studies and the best judgment of highly professional biologists, is a fundamental goal and task of ADF&G.

For the Falls Creek project, ADF&G, the US Fish and Wildlife Service and the National Marine Fisheries Service have completed steps 1 and 2 above. During our most recent discussions with the applicant, he indicated that an instream flow license requirement to maintain an isolated Dolly Varden char population in the bypass reach would make the project economically unfeasible. Instream flow requirements to sustain fish production are among the basic conditions required at hydroelectric projects. Nearly all projects in operation are required to maintain instream flows if sport or commercial fish species are present.

**The applicant indicated that he would investigate alternatives for off-site mitigation in lieu of the instream flow reservation, but has not returned for any further discussions with ADF&G. ADF&G is simply waiting for his proposal.**

The National Park Service (NPS), which is currently the landowner, and FERC are completing an environmental impact statement (EIS) on the proposed Falls Creek project. The project also involves a complicated land swap of Glacier Bay National Park and Preserve wilderness area for state land. Under the Federal Power Act (FPA), FERC is not allowed to license a project in a national park. Therefore, legislation was enacted to change the status of land ownership contingent on agreement that the project will not adversely impact the purposes and values of the park and preserve. The Falls Creek project area will become state land only if the project is acceptable for licensing by FERC. Conservation groups provided some support for the enabling trade legislation. However, several national and Alaska groups now oppose either this land trade or the project. Locally, two neighboring Native Allotments, the Bear Track Lodge, and the Hoonah Indian Association have intervened with FERC opposing the hydroelectric project.

ADF&G has not delayed this project. Rather, we are waiting for the applicant's proposal for off-site mitigation and will be asked to comment on the EIS.

**Ketchikan Southeast Intertie** – In the State of the State address, the governor mentioned the southeast intertie as an example of his statement that "*On many occasions, the Habitat Division has been the sole agency opposing and delaying legitimate projects important to the state.*"

H&R Region I Response - Summary

**In no way did ADF&G oppose or delay this project.** In our 1995 scoping comments to the Forest Service on the Tyee-Swan Lake Intertie (the Ketchikan Southeast Intertie to which the Governor refers), ADF&G sought clarification of the extent of road construction associated with the intertie project, which would construct a transmission line to connect the electrical systems serving Ketchikan, Wrangell, and Petersburg. Although road construction was included in several of the original scoping alternatives, the Alaska Energy Authority (AEA) originally proposed using helicopters instead of constructing a road. This was based on an independent feasibility study (completely unrelated to ADF&G) that concluded road construction would not be cost-effective. In our scoping comments, ADF&G indicated "...a helicopter constructed transmission line should not significantly affect fish habitat". We also stated: "Construction of the transmission line only, in the absence of the road, would eliminate the majority of environmental impacts which would need to be considered in the EIS".

The ADF&G review of the 1996 Draft EIS acknowledged clarification of the issue and stated the reduction in road construction "... has resulted in significantly fewer stream crossings, the avoidance of wetlands and other sensitive areas, less cumulative impact, fewer secondary impacts, and an overall reduction in fish and wildlife habitat losses."

Following issuance of the FEIS, ADF&G did not provide any formal additional comments, but did indicate to DGC that the EIS adequately addressed protection of fish and wildlife. ADF&G told a consultant for the Forest Service that right-of-way clearing would **not** require Fish Habitat permits, provided nothing (equipment, trees, brush, etc.) entered fish streams. The DGC Final Consistency Determination included standard conditions necessary to protect water quality by minimizing the introduction of sediments and petroleum products into streams.

**Rather than delaying this project, ADF&G worked hard to ensure that it was reviewed and handled efficiently.**

**1996 Board of Forestry Report:** The Governor's statement that "*almost all of the allegations were proven to be unfounded*" is incorrect.

The Science and Technical Committee (S/TC) organized under the auspices of the Board of Forestry, and including both agency and industry representatives, evaluated the concerns raised by ADF&G in the 1996 Board of Forestry Report. The S/TC recommended that approximately 12 issues should be handled by staff training, monitoring, or informational pamphlets to timber operators, but did not require changes to the FRPA statutes or regulations, and that one issue,

yarding corridors through riparian buffers, should be remanded back to the three resource agencies for further discussion and resolution.

The S/TC and S/TC Implementation Group further dealt with the remainder of the issues directly, with important recommendations (among others) for improving implementation of FRPA concurrent with increased protection of the state's fish and wildlife resources relating to the following topics:

- Requests for variations to harvest timber in riparian areas and stream measurement techniques for small streamside zones (Issue 23)
- Ensuring that anadromous streams that didn't fit into the existing stream classification system received appropriate protection
- Removal of downed wood located more than 25 feet from a fish stream (Issue 31a)
- Recommendations for road construction in unstable or steep areas (Issue 3)
- Requiring a variation to remove trees within fish streams
- New definition of blockage to fish passage (Issues 6 and 16)
- Stream classification system and unclassified streams (Issue 17a)
- Improved slope stability standards encouraging retention of low-value and non-merchantable trees

Clearly, the concerns raised by ADF&G (which were not "allegations"), included many valid and important issues. The S/TC process was a difficult, but essential, means of handling these issues, and resulted in substantial improvements to the FRPA process.

cc: A. Ott, ADF&G  
L. Trasky, ADF&G  
E. Fritts, ADF&G

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

*Habitat and Restoration Division*

**FRANK MURKOWSKI, GOVERNOR**

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### MEMORANDUM

TO: Kerry Howard  
Acting Director  
Habitat and Restoration Division

FROM: Lance Trasky  
Regional Supervisor  
Region II  
Habitat and Restoration Division

DATE: February 11, 2003

SUBJECT: Response to Governor Murkowski's February 3, 2003, Press Conference Comments

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During his press conference on February 3, 2003, Governor Murkowski cited several projects in the Southcentral Region of Alaska that he viewed as examples showing that the Habitat and Restoration Division (H&R) had slowed the permitting process. He also stated that *“ . . . we have seen in the Habitat Division the development of a reputation on some major clearances, the reputation for delay, a reputation for inflexibility, and an input based on protection on the basis of personal viewpoint.”* We reviewed the examples cited in the governor's speech and found that there were significant errors and omissions that he was probably not aware of when he gave the speech. For example, it did not take 16 months before ADF&G issued a permit. The coastal consistency determination for the Glenn Parks Interchange was issued on March 19, 2002, not 2001 as stated by the governor. The examples the governor cited that are applicable to H&R Region II include (1) Tok Highway reconstruction projects, (2) Glenn Parks Highway interchange, (3) Sterling Highway stabilization project, and (4) the 1996 Habitat Division report to the Board of Forestry and subsequent scientific reviews and investigations. A summary of our response to each of the topics raised by the governor is provided below with more details of each project provided as attachments to this memorandum:

**TOK HIGHWAY** – The governor said, *“On the Tok Highway reconstruction project, the Habitat Division reversed its initial determination of no concern and is now insisting on several stipulations and mitigation measures. Habitat’s foot-dragging has caused a delay in obtaining the needed permits from the Corps of Engineers.”*

#### H&R Region II Response - Summary

Tok East 30 is an Alaska Department of Transportation and Public Facilities (ADOT&PF) project to upgrade the Tok Cutoff. The project includes replacement of bridges over the Chistochina River and Sinona Creek, filling approximately 28 acres of wetlands, and diverting a clear water tributary of the Copper River.

The ADF&G, in scoping comments provided on March 3, 2000, had no objection to the project concept, however, ADF&G’s comments noted that Fish Habitat Permits would be required for the Chistochina River and Sinona Creek bridges. In ADOT&PF’s project description there was no mention of a stream diversion, 28 acres of wetland fill, or placement of material below the ordinary high water line of fish bearing waters.

The ADF&G scoping response was provided initially to note resources of concern based on a general project concept, not specific details. ADF&G didn’t change its mind, ADOT&PF changed the project. When, over a year later during July 2001, the ADF&G learned that the project would require a stream diversion and 28 acres of wetland fill, we requested plans and specifications for the stream diversion, a copy of ADOT&PF’s alternatives analysis, their sediment and erosion control plan, and the mitigation plan.

On July 3, 2000, ADF&G received Fish Habitat Permit applications based on preliminary plans from ADOT&PF for bridge replacements on the Chistochina River and Sinona Creek. ADF&G issued a permit for the Chistochina River bridge on August 4, 2000 (ADF&G response time 32 days) and requested more information of the Sinona Creek crossing. On August 24, 2000, ADOT&PF provided the additional information and a permit was issued on November 13, 2000 (ADF&G response time 81 days). To date the work has not been completed

The project delays mentioned by the governor do not pertain the ADF&G. The U.S. Army Corps of Engineers (USACE) permit was not issued until April 15, 2002, and it does not go into effect until the applicant (i.e., ADOT&PF) signs the permit. However, as of February 10, 2003, ADOT&PF had not signed it. Instead, we are told, ADOT&PF is now in the process of upgrading their plans and will be submitting a revised proposal at some time in the future. In addition, final plans and specifications for the proposed stream diversion that were requested by ADF&G on August 30, 2001, and December 5, 2001, are being cooperatively developed.

A more detailed timeline of the above summary is founds in Attachment 1.

**Glenn Parks Highway interchange** – The governor said, *“On the Glenn Parks Highway interchange, we saw another example of the Habitat division ignoring the DGC consistency*

*process. The state DOT sought Title 16 permits to allow this vital infrastructure to be constructed. The final consistency determination was issued March 2001, but Habitat did not issue a permit until 2002, 16 months after the deadline for issuing permits after a consistency review becomes final. Furthermore, some of the needed Title 16 permits were held up until January 2003, nearly two years after the consistency review was finalized."*

#### H&R Region II Response - Summary

1. The ACMP Final Consistency Determination was issued on March 19, 2002 (not 2001). The project was scheduled to begin construction in the fall of 2002 (it began in August 2002).
2. All ADF&G permits have been issued in a timely manner. The Governor implied that ADF&G permits were to be issued concurrently with the Consistency Determination, however, that document specifically states that ADF&G permits would be issued within 30 days of our receipt of detailed plans for those specific portions of the project that required our authorization. Because this is a design-build project, the plans and specifications are not available until the contractor completes them and is ready to go to work. The design build contract was awarded to CH2M Hill/ Kiewitt Pacific August 1, 2002. Habitat and Restoration worked with the contractors to modify the conceptual design to both reduce impacts on fish habitat and reduce costs. The first permit application was received by ADF&G on September 19, 2002. To date, seven Fish Habitat Permits have been issued for the project in a very timely manner with an average of 4 business days between the receipt of the plans and specifications and permit issuance.

A more detailed description including the resources at risk, project chronology, and permitting timeline is provided in Attachment 2.

**Sterling Highway stabilization project** – The governor said, "*Another example is the stabilization project on the Sterling Highway, where Anchor River scouring has been threatening the stability of the highway for several years. The Habitat Division has contributed to the delays in addressing this major safety issue because it would not agree to several proposals to install riprap. DOT was told that the Department of Fish and Game would deny any permits that proposed riprap despite assertions by DOT hydrologists that vegetated stabilization would be less effective and more expensive. Last October's flooding, however, proved the vegetation stabilization would have been much more effective. The Habitat Division has been unwilling to work with experienced highway engineers to develop alternatives that balance the interest of the traveling and public and instream habitat. I think we all agree that Alaska is entitled to safe highways.*"

### H&R Region II Response - Summary

The Sterling Highway Mile 161.4 project included armoring the Anchor River bank adjacent to the highway. On April 30, 2001, the Alaska Department of Transportation proposed to armor 1,000 linear feet of Anchor River streambank with riprap to protect the area from erosion. A week later resource agencies (i.e., ADF&G, EPA, USFWS) and the Kenai Peninsula Borough inspected the site with ADOT&PF representatives. In June 2001, resource agencies suggested changes to the plan that would better protect/enhance the nearshore fish habitat and simultaneously retain the riprap foundation desired by ADOT&PF. Six months later, during January 2002, ADOT&PF requested a meeting to discuss the hybrid designs. The final designs were being completed by ADOT&PF and USFWS when on April 29, 2002, high waters created by an undersized culvert on an Anchor River tributary stream caused water to overtop the road and weaken the road embankment. Under an ADF&G emergency authorization, issued immediately upon notification of the situation during the evening of April 29, 2002, the riverbank was armored on April 30, 2002, to protect the highway embankment.

A more detailed description including the resources at risk, project chronology, and permitting timeline is provided in Attachment 3.

**1996 Board of Forestry Report** – The governor said, *“In 1996 the Habitat Division delivered a report to the Board of Forestry alleging dozens of problems of implementing the forest resources and practices act, and after more than a years of scientific reviews and investigations, that consumed vast amounts of state time and state money, virtually all of the allegations were proven to be unfounded.”*

### H&R Region II Response - Summary

The Forest Resources and Practices Act (FRPA) requires that ADF&G submit an annual report to the Board of Forestry (BOF) on the effectiveness of the FRPA statutes and regulations in protecting fish and wildlife resources. The law also requires that the department offer recommendations to correct any procedural or substantive problems. On January 16, 1996, ADF&G submitted its annual report pursuant to AS 41.17.047. The report was titled *1995 Report to the Board of Forestry*. The report discussed ADF&G frustrations and concerns about (1) inadequate funding, (2) interagency coordination, and (3) administration of FRPA. The report also identified a number of technical, biological, and economic issues that related to the implementation and effectiveness of FRPA. The department was simply fulfilling its responsibilities according to the statute.

The BOF then requested the formation of a Science/Technical Committee (S/TC) to review all of the concerns and issues and make recommendations to the BOF for statutory and regulatory changes. The S/TC consisted of approximately 25 state and federal scientists, state field personnel, and scientist-representatives of the fishing and timber industries. As a result of work completed during the S/TC review process, a bill (HB 373) amending parts of FRPA based upon S/TC recommendations was crafted and submitted to the state legislature. The bill was adopted and the FRPA statutes and regulations were improved.

A more detailed description of the work completed and issues addressed, as well as forest industry and agencies comments concerning the process that resulted from ADF&G's original report is provided in Attachment 4.

Should you have any questions or if I can provide addition information please do not hesitate to let me know.

cc: A. Ott, ADF&G  
B. Hanson, ADF&G  
E. Fritts, ADF&G

## **Tok Cut Off Milepost 30-38**

### Timeline:

- 1) January 26, 2000, ADF&G received a request for scoping comments from the ADOT&PF for Tok Cut Off MP 30-38. The request was based on the project concept, not specific details. It did not include mention of 28 acres of wetland fill or a stream diversion. On March 3, 2000, the ADF&G responded to the request for scoping comments with a letter of non objection stating that permits would be required for the new bridge at Sinona Creek, and the replacement bridge at the Chistochina River. (ADF&G review time 36 days)
- 2) On July 3, 2000 the ADF&G received permit applications for the Chistochina River and Sinona Creek bridge replacements based on preliminary plans and specifications. (see 4, 5, and 6 below for response information).
- 3) On July 17, 2001, the ADF&G received a notice from the Corps of Engineers that the project would involve the placement of fill in 28 acres of wetlands adjacent to the Copper River and would divert an unnamed tributary stream of the Copper River. This information had not been previously provided to the ADF&G. (see 7 below for response information)
- 4) On August 3, 2000 the ADF&G requested additional information on bridge replacement at Sinona Creek. (ADF&G response time 31 days)
- 5) On August 4, 2000, the ADF&G issued a Fish Habitat for the bridge replacement at the Chistochina River. (ADF&G response time 32 days) To date no construction work has been done.
- 6) On August 24, 2000, the ADF&G received the additional information requested about the Sinona Creek Bridge. On November 13, 2000, the ADF&G issued the Fish Habitat Permit. (ADF&G response time 81 days) To date no construction work has been done.
- 7) On August 30, 2001 the ADF&G provided comments to the Corps of Engineers, with a copy to the ADOT&PF, expressing concerns about the wetland fill, stream diversion, the lack of plans for the stream diversion, and the lack of mitigation. This was not a change of ADF&G's previous position, but a revision based on new project information (approximately 28 acres of wetland fill and a stream diversion). (ADF&G response time 44 days)
- 8) On September 21, 2001 the ADOT&PF provided additional information regarding sediment and erosion control and wetland impacts. Plans and specifications for the stream diversion were not included.

- 9) On November 30, 2001, requests for a permit amendments were received from DOT&PF for the Sinona Creek and Chistochina River bridges. (see 10 and 11 below for response information)
- 10) On December 4, 2000, a permit amendment was issued for Bridge Replacement at the Chistochina River. (ADF&G response time 4 days)
- 11) On December 4, 2001 a permit amendment was issued for Bridge Replacement at Sinona Creek. (ADF&G response time 4 days)
- 12) On December 5, 2001, the ADF&G again requested plans and specifications for the stream diversion because the September 21, 2001 information was not sufficient (ADF&G response time 75 days)
- 13) On June 5, 2002, the ADOT&PF provided preliminary plans for the stream diversion. (ADOT&PF response time 172 days)
- 14) On August 13, 2002, the ADF&G conducted site inspections of the Chistochina River Bridge and the unnamed stream that the ADOT&PF plans to divert. Fish (i.e., burbot and salmonids) were found in the unnamed stream.

The Corps of Engineers permit for the project was issued on April 15, 2002. According to Jan Stuart (personal communication on February 7, 2003), of the U. S. Army Corps of Engineers Regulatory Branch, the ADOT&PF has not yet signed that permit.

According to ADOT&PF, Melissa Parker (personal communication on February 7, 2003) the ADOT&PF is upgrading plans and specifications for the entire project and will be submitting those plans in the near future.

## Glenn Park Highway Interchange

### Resource Concerns

The project affects approximately 30 acres of high value wetlands within the boundary of the Palmer Hay Flats State Game Refuge and two anadromous fish streams – Spring Creek and Liepitz Creek. Both these streams and their connected wetlands support very high densities of rearing and overwintering coho salmon. Spring Creek has been documented to support over 600 juvenile coho salmon per acre. Cook Inlet coho salmon stocks have been declining for many years. During the regular meeting cycle in a 1999 and then during in a special meeting in 2000, the Board of Fish (BOF) implemented changes to the commercial fishery and reduced the bag limit for coho salmon in the sport fishery in an attempt to increase escapement to Upper Cook Inlet spawning areas. The BOF reaffirmed its actions during meetings in 2002 when proposals were reviewed that would have relaxed the changes made in 1999 and 2000. Because young coho salmon spend a year or more in freshwater systems before going to the sea, it is critically important to maintain their freshwater habitat, particularly streams and wetlands like Spring Creek and Liepitz Creek that are so extremely productive.

### Project Information

The Glenn Parks Interchange is a Department of Transportation and Public Facilities (ADOT&PF) “design-build” project. “Design-build” means that the ADOT&PF provides the project concept and the “design-build” team subsequently develops the specific construction plans. The ADOT&PF project concept was reviewed for consistency with the ACMP, and found consistent, with alternative measures, on March 19, 2002, not March 2001 as the Governor stated. The “Design-Build” team (CH2M Hill/Kiewitt Pacific) was selected in June 2002.

### Chronology

1. February 14, 2002: The ADOT&PF issues the Request for Proposals for the Glenn – Parks Interchange Project.
2. March 19, 2002: The ACMP Final Consistency Determination was issued.
  - The Determination included Alternative Measure number 10, which reads as follows: *“Sufficient construction installation plans and specifications for all work or activities affecting the bed, banks, or waters of Spring Creek and stream number 247-50-10260-2019-3030 shall be provided to the ADF&G for review and approval at least 30 days prior to beginning construction. All work or activities affecting the bed, banks, or waters of Spring Creek and stream number 247-50-10260-2019-3030 (including springs, seeps, backwaters, sloughs, distributaries, or surface waters connected to these creeks) is prohibited without the prior written approval of the ADF&G.”* Since, at that time the “design-build” team had not been selected, and plans had not been submitted, the ADF&G could not issue a permit.

3. April 16, 2002: The US Army Corps of Engineers issued its Department of the Army Permit. This permit was later modified with an effective date of September 16, 2002 to accommodate design changes made by the contractor.
4. June 24, 2002: Anticipated date of ADOT&PF's announcement of Notice of Intent to Award the primary contract for the project.
5. August 2002: Anticipated date of award of primary contract for the project.

#### ADF&G Permits

**Note:** Project designs and specifications often changed after the design materials had been submitted to the ADF&G for review. The dates provided below refer to the dates that final plans were received.

6. On Thursday, September 19, 2002, the ADF&G received an application for the placement of temporary and permanent fill below the OHW mark of Spring Creek. On Wednesday, September 25, 2002, the contractor notified the ADF&G of their desire to begin placing fill materials the following morning. A Habitat Biologist drove to the project site and a field permit was issued to allow the work. **Time to issuance: 2 hours.**
7. On Thursday September 26, 2002, Fish Habitat Permit FG 02-II-0617 was issued authorizing and addressing all aspects of the placement of temporary and permanent fill below the OHW mark of Spring Creek. **Time to issuance: 4 business days.**
8. On Thursday September 19, 2002, the ADF&G received an application for initial construction activities associated with the replacement of the undersized 4-foot culvert. Work begins before the permit was issued. On Tuesday October 1, 2002, Fish Habitat Permit FG 01-II-0458 was issued. **Time to issuance: 8 business days.**
9. On Monday, September 30, 2002, the ADF&G received an application to place permanent fill below OHW of Spring Creek. On Monday, October 14, 2002, Fish Habitat Permit FG 02-II-0624 was issued. **Time to issuance: 10 business days.**
10. On Tuesday, November 5, 2002: ADF&G receives application for the placement of temporary fill below OHW of Spring Creek. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review details of construction. On Monday, November 25, 2002, the Field Permit FG 02-II-0658 was issued (Later changed and recorded as FG 02-II-0692). **Time to issuance: less than 1 business day.**
11. On Thursday, November 7, 2002, the ADF&G received an application for final construction activities associated with replacement of undersized 4-foot culvert. On Friday, November 22, 2002, the ADF&G met with Kiewit Pacific Company to review

details of construction. On Wednesday, November 27, 2002, Fish Habitat Permit FG 02-II-0622 issued. **Time to issuance: 3 business days.**

12. On Monday, January 6, 2003, the ADF&G received an application for the placement of additional temporary fill below OHW of Spring Creek. On Thursday, January 13, 2003, Fish Habitat Permit FG 02-II-0692 amended to allow additional fill. **Time to issuance: 5 business days.**

13. On Friday, January 24, 2003, the ADF&G received an application to conduct pile driving below the OHW of Spring Creek. On Monday, January 27, 2003, Fish Habitat Permit FG 03-II-0028 was issued. **Time to issuance: 1 business day.**

## STERLING HIGHWAY MILE 161.4

1. Resource and Statutory Concern:
  - A. High value salmon, steelhead, and Dolly Varden rearing habitat and salmon spawning habitat within this section of the Anchor River.
  - B. Anchor River chinook salmon is presently a "stock of management concern" based on chronic inability to meet escapement goals.
  - C. Anchor River supports a very popular sport fishery for chinook salmon, coho salmon, Dolly Varden, and steelhead. This sport fishery is extremely important to the local economy.
  
2. Was the project delayed by Title 16 permitting actions delay the project? NO
  - a. The ADF&G received a request from ADOT&PF for scoping comments in April 30, 2001.
  - b. The ADF&G, US Fish and Wildlife Service (USFWS), Kenai Peninsula Borough (KPB) and EPA conducted a site inspection with ADOT&PF on May 8, 2001.
  - c. ADOT&PF sent revised plans to ADF&G on May 23, 2001.
  - d. ADF&G sent formal recommendations on June 8, 2001, prior to ADOT&PF's comment deadline. ADF&G recommended the addition of bioengineering components to the riprap along the streambank.
  - e. ADOT&PF formally responded to ADF&G recommendations: "We (ADOT&PF) expect to have firm design drawings during winter 2001/02."
  - f. January 7, 2002, ADOT&PF requested a meeting with EPA, KPB, USFWS and ADF&G to discuss new proposal. Agencies and ADOT&PF conceptually agreed to new "hybrid" design incorporating bioengineering into riprap above the ordinary high water level.
  - g. March 28, 2002, USFWS provided ADOT&PF with a sketch of what they believed was agreed to at the January 7<sup>th</sup> meeting.
  - h. During late April 2002, spring meltwater caused a small tributary to the Anchor River to inundate an undersized culvert, overtop the Sterling Highway and damaged the road embankment. ADOT&PF placed riprap armor to stabilize roadway after consultation with ADF&G.
  
3. If the project was delayed, why? Our files indicate that the ADF&G responded to ADOT&PF inquiries prior to their deadlines. We were also available to meet with ADOT&PF on several occasions. The ADF&G, KPB, USFWS, NMFS and EPA all recommended ADOT&PF incorporate habitat components to the original design during initial project scoping.
  
4. Did the issuance of Anadromous Fish Act (AS 16.05.870) or Fishway Act (AS 16.05.840) delay the project? NO

On Monday April 29, 2002, an ADOT&PF representative contacted the ADF&G representative at home at approximately 7:00 pm concerning the flow across the road. Emergency authorization was immediately given to complete the work necessary to protect the Sterling Highway from damage resulted from an undersized culvert causing water to flow across the highway. The riverbank was stabilized on April 30, 2002 with riprap armor.

## 1996 Board of Forestry Report

Issues from the ADF&G report ultimately were addressed by the Science/Technical Committee (S/TC) through the following actions:

1. Approximately 12 issues addressed by the S/TC recommendation to the Board of Forestry (BOF) were that staff training, monitoring, or informational pamphlets to timber operators would be a more appropriate actions to take, rather than changing the FRPA statutes or regulations.
2. The 'yarding corridors through riparian buffers' issue was remanded back to the three resource agencies by the S/TC for resolution.
3. The S/TC and S/TC Implementation Group ultimately addressed the remaining (approx. 20) issues. The three resource agencies (i.e., ADNR, ADEC, and ADF&G) concurred with the recommendations reached by the S/TC and the S/TC Implementation Group and the BOF. A sample of the more important recommendations for improving implementation of FRPA concurrent with increased protection of the state's fish and wildlife resources include:

- requests for variations to harvest timber in riparian areas and stream measurement techniques for small streamside zones (Issue 23)
- ensuring that anadromous streams that didn't fit into the existing stream classification system received appropriate protection
- removal of downed wood located more than 25 feet from a fish stream (Issue 31a)
- recommendations for road construction in unstable or steep areas (Issue 3)
- requiring a variation to remove trees within fish streams
- new definition of blockage to fish passage (Issues 6 and 16)
- stream classification system and unclassified streams (Issue 17a)
- improved slope stability standards encouraging retention of low-value and non-merchantable trees

The Governor's statement that "*almost all of the allegations were proven to be unfounded*" is incorrect. As a result of the work done by the S/TC and the S/TC Implementation Group, amendments to improve the FRPA were promulgated in the form of HB 373 that was passed by the legislature in 1999. If the ADF&G had not fulfilled its agency responsibility under FRPA, the bill amending parts of FRPA based upon S/TC recommendations (i.e., HB 373) would never have occurred.

The updates to the FRPA and the process used to evaluate the issues and make changes were supported by the timber industry. In testimony before the BOF on January 13, 1998, the then Executive Director of the Alaska Forest Association (AFA), Jack Phelps (currently Environment/Natural Resources Advisor to Governor Murkowski) pointed out that "*The cooperative effort between the agencies and affected industries has led to refinements in the way forest practices are performed in Alaska, and will help ensure that Alaska continues to lead the nation in both fisheries and forest management*" (see <http://www.akforest.org/fishpro.htm>). During testimony concerning HB 373 (a bill amending parts of FRPA and based upon S/TC

recommendations) on February 19, 1998, before the House Resources Committee, Mr. Phelps reaffirmed that position and stated "*In summary, House Bill 373 addresses a real need, and represents a balanced approach to resolving an important issue affecting Alaska's forest products sector. When this bill becomes law, it will be a model for broad-based cooperation between affected industries, the agencies, the Governor's office and the legislature. This bill can and should enjoy full, bi-partisan support. I urge its speedy passage.*" (see <http://www.akforest.org/2-19-98.htm>). On March 6, 1998, the Alaska State House of Representatives passed HB 373 and Mr. Phelps on behalf of AFA issued a press release stating, "*This legislation, which has the strong support of the timber industry, is good for fish, it is good for the industry, and it is good for all Alaskans.*" (see <http://www.akforest.org/3-6-98.htm>) In the Final Report on Resolution of S/TC Issues (June 17, 1998), ADNR, ADF&G, ADEC, and the BOF concluded that, "the S/TC review was a positive, constructive process."

S B

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## SENATOR FRED DYSON

### ***SB 56***

#### ***Sponsor Statement***

#### **"An Act relating to Fishing Licenses for Yukon Residents"**

*Updated: April 7, 2003*

*Contact: Senator Fred Dyson's office at (907) 465-2199*

The Yukon Territory and its residents have a great deal in common with Alaska and Alaskans. SB 56 extends a small, but important, gesture of good will to our closest neighbor. Yukoners have no coast on the Pacific Ocean and several hundred of them buy Alaska Fishing Licenses each year to fish in Alaskan salt waters. They spend thousands of dollars in our local economies on their fishing expeditions.

When Representative John Harris and former Senator Phillips introduced similar legislation in April of 2000, the Yukon Legislative Assembly immediately passed laws that will give reciprocity to Alaskans. They not only give us resident fishing license rates for the fresh water fish that are under territorial jurisdictions, but they have worked through an agreement with their Federal Department of Oceans and Fish to allow Alaskans to catch Salmon in Yukon rivers. Yukon has some wonderful fishing opportunities including in world record Lake Trout and Pike.

The people and government of Yukon Territory are going through difficult times with a decreasing population now under 30,000 people and a stifled economy. Regardless, they are supporting our efforts to build our gas pipeline, connect our railroad to the North American Railroad System, and upgrade the Alaska Highway. This bill is a small but significant step to further enhance our good relationship with our Canadian neighbors.



## SENATOR FRED DYSON

### MEMORANDUM

May 12, 2003

To: Representative Hugh Fate

From: Senator Fred Dyson

*Fred Dyson*  
(1026)(L)

RE: Hearing Request, SB 56

I respectfully request the scheduling of SB 56, "An Act Related to Yukon Fishing Licenses" at your earliest convenience. Thank You.



SENATOR FRED DYSON

## ***SB 56***

### ***Sponsor Statement***

#### **"An Act relating to Fishing Licenses for Yukon Residents"**

*Updated: April 7, 2003*

*Contact: Senator Fred Dyson's office at (907) 465-2199*

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The people and government of Yukon Territory are going through difficult times with a decreasing population now under 30,000 people and a stifled economy. Regardless, they are supporting our efforts to build our gas pipeline, connect our railroad to the North American Railroad System, and upgrade the Alaska Highway. This bill is a small but significant step to further enhance our good relationship with our Canadian neighbors.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 56  
 (S) Publish Date: 5/1/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title Fishing Licenses for Yukon Residents BRU Administration  
 Component Administration  
 Sponsor Senator Dyson  
 Requester Resources, Finance Component No. 479

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1024 )</b>	<b>(46.0)</b>	<b>(46.0)</b>	<b>(46.0)</b>	<b>(46.0)</b>	<b>(46.0)</b>	<b>(46.0)</b>
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Fiscal note reflects estimated change in revenues to the Fish and Game Fund from revenues that were received from license sales to Yukon Territory residents in 2002.

It is difficult to predict numbers of license sales as the 2002 numbers likely reflect multiple sales of short term (one day, three day, etc) licenses to the same individuals. This number may offset a potential increase in the number of annual participants with the passage of SB 56. Also, king salmon tag sales are not tracked by licensee. Revenue projections are based on an estimate that 50% of licensees also purchase a king tag.

Prepared by: Kevin Brooks, Director Phone 465-5999  
 Division Administration Date/Time 4/28/03 1:54 PM  
 Approved by: Commissioner Kevin Duffy Date 4/28/2003  
 Agency Department of Fish and Game

### Sport Fishing License Sales to Yukon Territory Residents

Fishing Licenses Sold in 2002							
Class	Number of Licenses Sold	Fee for License	Total License Revenue	Number of King Salmon Stamps Sold*	Fee for King Salmon Stamp	Total King Salmon Stamp Revenue	Total Revenue
07	226	\$100.00	\$22,600.00	113	\$100.00	\$11,300.00	\$33,900.00
09	1	\$100.00 **	\$100.00	1	\$100.00	\$50.00	\$150.00
6A	30	\$50.00	\$1,500.00	15	\$50.00	\$750.00	\$2,250.00
6B	1358	\$20.00	\$27,160.00	679	\$20.00	\$13,580.00	\$40,740.00
6C	896	\$10.00	\$8,960.00	448	\$10.00	\$4,480.00	\$13,440.00
6D	228	\$30.00	\$6,840.00	114	\$30.00	\$3,420.00	\$10,260.00
9C	2	\$30.00***	\$60.00	1	\$30.00	\$30.00	\$90.00
<b>Total</b>	<b>2,741</b>		<b>\$67,220.00</b>	<b>1371</b>		<b>\$33,610.00</b>	<b>\$100,830.00</b>

NR 1/2  
NR 1/2 F  
NR 1/4 D  
NR 3 D  
NR 1 D  
NR 7 D  
NR 7 D H F

Fishing Revenues with SB 56 license fee							
Class	Number of Licenses Sold	Fee for License	Total License Revenue	Number of King Salmon Stamps Sold*	Fee for King Salmon Stamp	Total King Salmon Stamp Revenue	Total Revenue
01	2741	\$15.00	\$41,115.00	1371	\$10.00	\$13,705.00	\$54,820.00
<b>Total</b>	<b>2741</b>		<b>\$41,115.00</b>			<b>\$13,705.00</b>	<b>\$54,820.00</b>
							<b>\$46,010.00</b>

NR 51

\*King Salmon Stamp sales are not tracked by licensee. The Department is assuming that 50% of the licensees are purchasing a king salmon stamp.  
 \*\*Sport fishing portion of license is \$100.00. Total license cost includes hunting license of \$85.00 for a total license cost of \$185.00.  
 \*\*\*Sport fishing portion of license is \$30.00. Total license cost includes hunting license of \$85.00 for a total license cost of \$115.00.

## Valid License Types

Type Code	Description
AA	Sport fishing hunting and trapping licenses
BB	Crewmember licenses

## Valid License Classes

Type Code	Class Code	Class Description
AA	01 —	Resident Sport Fishing
AA	02	Resident Hunting
AA	04	Resident Sport Fish & Hunt
AA	05	Resident SF, Hunt & Trap
AA	07 —	Nonresident Sport Fish
AA	08	Nonresident Hunting
AA	09 —	Nonresident Hunting-Sport Fish
AA	10	Nonresident Hunting-Trapping
AA	12	Nonres Military Sport Fish
AA	13	Nonres Military Small Game
AA	14	Nonres Military SF, Small Game
AA	15	Nonres Alien Hunting
AA	18	Duplicate Sport License
AA	1A	Resident Blind Sport Fishing
AA	2A	Resident Blind Hunting
AA	3A	Resident Hunt & Trap
AA	3B	Resident Trapping
AA	5A	Res Low Income SF/Hunt/Trap
AA	5B	Res Low Income Duplicate Lic
AA	6A —	Nonresident 14 Day Sport Fish
AA	6B —	Nonresident 3 Day Sport Fish
AA	6C —	Nonresident 1 Day Sport Fish
AA	6D —	Nonresident 7 Day Sport Fish
AA	8A	Nonresident Small Game Hunting
AA	9C —	Nonres Hunt/7 Day Fish
AA	UN	Unknown Class
AA	VD	Voided Sport Licenses
AA	YF	9-11 Free Nonres Sport Fish
BB	30	Resident Crewmember License
BB	31	Nonresident Crewmember License
BB	32	Duplicate Crewmember License
BB	34	Residents Child Crew License
BB	35	Nonresident Child Crew License
BB	VD	Voided Crewmember Licenses

**Headquarters:**  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323 FAX 463-5515

**Regional Office:**  
601 West 5<sup>th</sup> Ave., Suite 600  
Anchorage, Alaska 99501  
(907) 278-2722 FAX 278-6643



April 28, 2003

Senator Fred Dyson  
Alaska State Capitol  
Juneau, Alaska

Dear Senator Dyson:

The Alaska State Chamber of Commerce, representing approximately 700 member businesses and 35 local chambers of commerce, supports Senate Bill 56, sport fishing fees for Yukon residents.

Senate Bill 56 will allow residents of the Yukon Territory to purchase fishing licenses at the in-state rate, in order to encourage them to visit Alaska. The Yukon Territory has no Pacific coastline, and we believe it is eminently fair and reasonable to extend to its residents the less-expensive alternative of purchasing a fishing license as Alaskans themselves can do. Moreover, it is clearly an excellent opportunity to send a message of friendship and cooperation to this part of Canada. The Yukon Legislative Assembly has already acted to extend the benefits of fishing licenses enjoyed by locals to Alaskans, and the spirit of reciprocity calls for us to do the same.

We wish you the success in securing passage of SB 56 by the State Legislature this year, and we stand ready to assist you in this endeavor.

Sincerely,

A handwritten signature in cursive script that reads "Pamela La Bolle".

Pamela La Bolle  
President



## CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"

P.O. BOX 415, SKAGWAY, ALASKA 99840

(PHONE) (907) 983-2297

(FAX) (907) 983-2151

May 1, 2003

To: Senator Georgianna Lincoln

Fax: (907)-465-2652

From: Bob Ward, City Manager

Re: SB 56

Dear Senator Lincoln:

I understand that you will be hearing SB 56 today, which deals with a reciprocal arrangement between Alaskan and Yukon residents for resident fishing license fees, without conferring resident status for bag limits.

I believe this to be a desirable, if not important, "cross border handshake" that recognizes the close economic, social and historical ties between the residents of Yukon and Alaska.

While this is a new issue for us and has not enjoyed any public debate, cursory discussion indicates favor for this legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Ward", written over a horizontal line.

Robert W. Ward Jr.,  
City Manager



## HAINES BOROUGH, ALASKA

P.O. BOX 1209 • HAINES, ALASKA 99827

Administration (907) 766-2231 • Fax (907) 766-3179

Tax Office/Assessor (907) 766-2711 • Fax (907) 766-2716

Tourism (907) 766-2234 • Tourism Fax (907) 766-3155

May 2, 2003

Senator Georgianna Lincoln  
Alaska State Legislature  
M/S 3100  
State Capitol  
Juneau, AK 99801-1182

Re: SB 56

Dear Senator Lincoln:

At the request of your staff I have polled the Borough Assembly members and Mayor to get their feelings on the above-referenced bill. I have not been able to reach them all, but the majority of them think this is a great idea.

The people of the Yukon Territory have always been good neighbors with Haines -- allowing us to hunt and fish in their back yard and welcoming us with open arms.

We can't do anything about the exchange on their money - the least we can do is try to help them out with resident licenses so that a fishing trip to Alaska's waters can be affordable once again. Not only will this be to their benefit, but the money they spend in Haines will help our flagging economy.

Please do all you can to see that this bill is successful.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Troll". The signature is written in a cursive style.

Tim Troll  
Manager  
HAINES BOROUGH

SB

79

# Senator Ben Stevens

Senate Majority Leader



## Sponsor Statement

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### **Senate Bill 79, "An Act extending the termination date of the Alaska Minerals Commission."**

The Alaska Minerals Commission is set to expire on February 1, 2004. SB 79 seeks to extend the Commission until the year 2014.

The Alaska Minerals Commission was first created in 1986 and charged with making recommendations to the Governor and Legislature on ways to mitigate constraints on the development of minerals in Alaska. The commission consists of 11 members. Each member must have at least five years experience in the minerals industry. Five members are appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House. At least one member must reside in a rural community.

The Commission must report its recommendation to the Governor during the first ten days of the regular session.

The Alaska Minerals Commission has had numerous recommendations implemented since 1987. Recommendations that were implemented include:

- Passage of Alaska Minerals Policy Act (1988)
- Funding for airborne geophysical surveys (1992-2002)
- Creation of a task force for RS2477 trail inventory (1993)
- Assertion of RS2477 rights-of-way (1997)
- Legislative Resolution 31 was passed opposing International Parks, World Heritage Sites, and Marine Biosphere Reserves in Western Alaska, and supporting the federal American Lands Sovereignty Protection Act (1997)
- Extending terms of permits when legal impediments prevent use (1994)

Senator Ben Stevens  
State Capitol  
Juneau, Alaska 99801  
907-465-4993  
Fax: 907-465-3872

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 79  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction):  
 Title Extend Alaska Minerals Commission

Dept. Affected: DCED  
 BRU Community Assist & Econ. Dev. (405)  
 Component Community & Business Development

Sponsor Senator Stevens  
 Requester Senate Resources

Component No. 2486

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel	8.0	8.0	8.0	8.0	8.0	8.0
Contractual	1.5	1.5	1.5	1.5	1.5	1.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>9.5</b>	<b>9.5</b>	<b>9.5</b>	<b>9.5</b>	<b>9.5</b>	<b>9.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	9.5	9.5	9.5	9.5	9.5	9.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>9.5</b>	<b>9.5</b>	<b>9.5</b>	<b>9.5</b>	<b>9.5</b>	<b>9.5</b>

Estimate of any current year (FY2003) cost: 9.5

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation would extend the existing Alaska Minerals Commission for an additional 10 years. Costs are expected to continue at current levels, \$9,500 per year. These costs consist of travel by Commission members to attend Commission meetings (\$8,000) and publication of the statutorily required annual Minerals Commission Report (\$1,500).

Prepared by: Gene Kane, Acting Director  
 Division: Community & Business Development  
 Approved by: Edgar Blatchford, Commissioner  
 Agency: Department of Community & Economic Development

Phone 907-269-4580  
 Date/Time 2/27/03 3:12 PM  
 Date 2/27/2003

# Senator Ben Stevens

Senate Majority Leader



## Memorandum

**Date:** 3/19/03

**To:** Representative Hugh 'Bud' Fate, Chair  
Senate Resources Committee

**From:** Senator Ben Stevens

**Subject:** SB 79 – Extending the Alaska Minerals Commission

---

The Alaska Minerals Commission was created in 1986 with the charge of making recommendations to the governor and legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals in the state.

The Minerals Commission is set to expire on February 1, 2004. Senate Bill 79 seeks to extend the Commission until the year 2014.

As sponsor of SB 79, I respectfully request a hearing in the House Resources Committee at your earliest convenience. Please contact my aide, Phelan Straube, or me if I may provide any additional information.

Attachments: Senate Bill 79  
Fiscal Note  
Sponsor Statement  
Letter from Commissioner Edgar Blatchford  
Letter from Rich Heig, President of the Council of Alaska Producers  
Alaska Minerals Commission 2003 Report

Senator Ben Stevens  
State Capitol  
Juneau, Alaska 99801  
907-465-4993  
Fax: 907-465-3872

Frank H. Murkowski, Governor

# Alaska Department of Community and Economic Development

## Office of the Commissioner

P.O. Box 110800, Juneau, AK 99811-0800

Telephone: (907) 465-2500 • Fax: (907) 465-5442 • Text Telephone: (907) 465-5437

Email: [questions@dced.state.ak.us](mailto:questions@dced.state.ak.us) • Website: [www.dced.state.ak.us/](http://www.dced.state.ak.us/)

28 February 2003

The Honorable Ben Stevens  
Alaska State Senate  
State Capitol, Room 119  
Juneau, AK 99801-1182

FEB 28 2003

Dear Senator Stevens:

In 1986, the Legislature established the Alaska Minerals Commission (AMC). The Commission recommends to the Governor and Legislature ways to mitigate constraints, including governmental constraints, on the development of minerals.

The Governor, President of the Senate, and Speaker of the House appoint AMC members. Current membership is representative of placer, hard rock and coal mining industries from diverse areas of the state. Each year since 1987, the Commission has held public meetings in Fairbanks and Anchorage to develop recommendations put forth in an annual report.

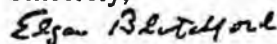
Recommendations from the Commission have ranged from those that come from family-owned placer mines, to recommendations impacting international mining operations. A sampling of successful Commission recommendations include:

- Changes in the Water Quality Standards
- Funding of Airborne Geophysical Surveys
- Accelerated Transfer of State Selected Lands
- Exemption of Minerals from In-Place Taxation
- Changes to the Alaska Mineral Policy Act (more flexible work hours for underground miners)
- Changes to the Exploration Incentives Act

Significant constraints remain to be addressed in order for Alaska's mining industry to reach its growth potential. The AMC has demonstrated itself to be an effective body in making positive changes to support on-going mineral development in Alaska. Such actions are consistent with the Murkowski Administration's promise to work toward opening up new areas to mining through providing access to major mining projects, reducing permitting time, lowering development costs, and encouraging value-added processing of minerals.

Thank you for sponsoring legislation to reauthorize the Alaska Minerals Commission. We look forward to continuing our partnership with the Alaska Minerals Commission.

Sincerely,



Edgar Blatchford,

Commissioner

Department of Community & Economic Development

*"Promoting a healthy economy and s*

DCED Comm. Support



*Council of Alaska Producers*

---

P.O. Box 22653 Juneau, Alaska 99802

March 12, 2003

Senator Ben Stevens  
State Capitol, Room 119  
Juneau, Alaska 99801

Dear Stevens:

On behalf of the Council of Alaska Producers, I would like to thank the sponsor for introduction of SB 79, a bill to extend the term of the Alaska Minerals Commission. Although I am relatively new to Alaska, having been appointed in October 2002 to the position of General Manager of the Greens Creek Mine, the previous manager briefed me well on the track record of the Minerals Commission. The Minerals Commission has demonstrated the ability to produce a concise annual report that serves to focus the legislative and administrative branches on ways to remove constraints on mineral development in Alaska. The Commission draws on the experience of a wide cross-section of industry professionals and completes its work and prepares the report at minimal cost to the State.

I have observed this myself in the 2003 Minerals Commission report, which sets forth a number of issues that need to be addressed and which would help improve the business climate for the operations of our Council of Alaska Producers members. Our organization certainly supports passage of SB 79, so that we can continue to capitalize on the potential of the mining industry in Alaska.

Thank you,

Rich Heig, President  
Council of Alaska Producers

REPORT OF THE 2003

# Alaska Minerals Commission



The Alaska Minerals Commission was created by the 14<sup>th</sup> Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

# ALASKA MINERALS COMMISSION

JANUARY 2003

## MEMBERS

Chairman	Irene Anderson	<b>Sitnasuak Native Corporation</b> P.O. Box 905, Nome, Alaska, 99762 Phone (907) 443-4023, Fax (907) 443-3063 E-mail ianderson@snc.org
Vice-chairman	Eric Neil MacKinnon	<b>Hyak Mining Co.</b> 1114 Glacier Avenue, Juneau, Alaska, 99801 Phone (907) 586-1254, Fax (907) 463-3433 E-mail nmackinn@ptialaska.net
	Del Ackels	<b>Goldust Mines</b> P.O. Box 61520, Fairbanks, Alaska, 99706 Phone (907) 474-0971, Fax (907) 474-0966 E-mail golddustmines@gci.net
	Greg Beischer	<b>Bristol Environmental &amp; Engineering</b> 2000 West Int'l Airport Rd., #C1, Anchorage, Alaska 99502-1116 Phone (907) 563-0013, Fax (907) 563-6713. E-mail gbeischer@beesc.com
	Charles B. Green	<b>Usibelli Coal Mine, Inc.</b> P.O.Box 71805, Fairbanks, Alaska, 99707-1805 Phone (907) 479-2489, Fax (907) 451-6543 E-mail cgreen@usibelli.com
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## FOREWORD

The Alaska Minerals Commission again wishes to thank the Governor and the Legislature for implementing some of our recommendations during 2002. Highlights include substantial positive proposed changes in the Water Quality Standards, funding to study assumption of water quality primacy, continued funding of geophysical surveys and AMEREF, and accelerated transfer of State-selected lands. Partly as a result of the responsive actions of the Governor and the Legislature over the last few years, mining development opportunities are improving in Alaska as demonstrated by the recent growth in the industry.

However, there are still significant obstacles to overcome for Alaska to reach its growth potential and to gain a reputation as a predictable and favorable place to do business.

The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

The Commission has presented reports to the Governor and Legislature annually since January 1987, and is authorized to do so until January 2004. Commission members are appointed by the Governor, the President of the Senate, and the Speaker of the House. The current members are representatives of placer, hard rock, and coal mining industries and come from diverse areas of the state.

During 2002, the Commission held meetings in Fairbanks and Anchorage. The recommendations in this report are the result of input at these meetings. All Commission meetings are open to the public, and members encourage comments from all interested parties at any time.

Following the list of recommendations in the executive summary, this report contains background information, or "findings", on each issue, followed by the related recommendation. These have been separated into Part A, which deals with issues mainly of State concern, and Part B that includes federal issues affecting the State that can be influenced by State participation.

On behalf of the members of the Commission, I would like to express our appreciation to those members of the public, the Alaska Miners Association, the Resource Development Council, and the many government agencies and private organizations that contributed to the preparation of the report. The Commission wishes to thank Commissioner Deborah B. Sedwick of the Department of Community and Economic Development and Dick Swainbank and Frankie Pillifant of the Division of Community & Business Development who have provided excellent administrative and professional support to the Commission.

Irene Anderson, Chair

**ALASKA MINERALS COMMISSION  
2003 REPORT TO THE GOVERNOR  
AND ALASKA STATE LEGISLATURE**

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## EXECUTIVE SUMMARY

### CURRENT RECOMMENDATIONS

The commission encourages the Governor and Legislature to act on the following recommendations in 2003:

- Eliminate frivolous litigation by limiting "public interest litigant" status;
- Increase the efficiency of mine project permitting;
- Update water quality standards;
- Assist in infrastructure development that benefits mining and other industries;
- Resolve land tenure, navigability and right of way access issues;
- Acquire baseline geological and environmental knowledge statewide;
- Promote industry education through support of relevant university programs and the Alaska Minerals & Energy Resource Education Fund.

### INDUSTRY OVERVIEW

The mineral industry is one of three base industries of Alaska to show real growth since 1991. The industry currently has a gross value of approximately \$1 billion dollars, a milestone first reached in 1996. By virtue of several cornerstone operations, the industry has maintained this respectable level despite challenging economic conditions and depressed commodity prices. In the past year, exciting new discoveries have been made, the price of gold and platinum-group elements has risen, and a general feeling of optimism is starting to develop. Unfortunately over the same period the price of copper and zinc has fallen, and taken a toll on the base metal mines in Alaska.

However, while mining has shown growth over the past decade, the industry has been static in recent years. Exploration for new mines has diminished. Smaller hard-rock operations are absent, and placer mining is stagnant. Other countries, states, and provinces continue to surpass Alaska in the global competition for exploration dollars.

Red Dog, Fort Knox, Greens Creek, Usihelli Coal, Illinois Creek, and Anchorage Sand & Gravel are outstanding operations that contribute significantly at the local level. These mines are providing rewarding, long-term, high-paying careers in urban and remote areas alike. These operations have a profound, positive impact on their respective local communities, and serve as shining examples of what could be achieved in other regions of the state.

As the premier producing mine in the state, Red Dog continued to improve its efficiency in 2002 through its Mill Optimization Project, which translated to increased production through superior recovery and product grade. The increased production has been helpful in offsetting some of the financial impact related to decreased zinc prices, however the impact remained significant with a loss of \$10 million in the third quarter of 2002.

Three development projects, Pogo, Donlin Creek, and Kensington are poised to become viable mining operations in the near future.

Activity at the Pogo gold deposit near Delta Junction included surface geotechnical drilling and definition drilling of the lower ore zone. The major focus of this project in 2002 was the permitting process and the development of an Environmental Impact Statement.

Exploration at Donlin Creek has resulted in a dramatic expansion of the size and grade of the gold resource. The project is on the verge of becoming a major mine. This development has the potential to change the face of southwest Alaska, bringing prosperity and promise to a depressed region desperate for alternatives. Transportation infrastructure and energy development are key.

A revised mining plan has been submitted at the Kensington project in southeast Alaska, which may allow the project to proceed to development.

Grass roots exploration programs were limited, and largely reduced in scope from previous years. One bright spot was the area northwest of Iliamna, where several significant copper-gold prospects were discovered. Drill programs for gold and silver were reported near Tok, Northway, Rock Creek north of Nome, and in the Wulik Valley on the north flank of the Brooks Range. In southeast Alaska exploration continued for platinum-group elements at Union Bay and Duke Island, and for polymetallic targets on Woewodski Island. On the south flank of the Alaska Range, exploration for platinum-group elements was curtailed due to continuing uncertain land status. The state must do what it can to finalize land conveyance, so that land tenure in the state is clear to developers.

The State Division of Geological & Geophysical Surveys continued to do outstanding work on a minimal budget. Airborne geophysical surveys were flown at Council near Nome, and the Bureau of Land Management contracted for surveys within the Denali Block and at Sleetmute. Geologic mapping continued in 2002 in the Salcha and Goodpaster River areas that had airborne surveys flown in past years. Alaska continues to lag far behind the remainder of the continent in geological knowledge of its land base. Indeed, many third world countries supercede Alaska in this regard. The importance of baseline data acquisition for the state cannot be overstated.

The mining industry in Alaska has maintained the status quo over past years in the face of challenging conditions. Several development projects, if brought to fruition, will provide outstanding benefits in remote regions, and formulate the critical mass the industry requires to sustain itself over the long term. Given the proper support, the industry has the ability to make a tremendous difference in Alaska.

# FINDINGS AND RECOMMENDATIONS

## PART A: ISSUES REQUIRING STATE ACTION

### 1) REGULATORY REFORM

#### 1a) LITIGATION REFORM

**FINDING:** A critical component to resource development in the State of Alaska is insuring that development projects, once permitted by the appropriate State Agencies, can proceed without delay. Unfortunately, groups opposed to development routinely file litigation with the sole objective of either preventing or delaying permitted development. Often, the basis for the litigation is without merit. Under Alaska's current law, such groups, regardless of financial resources or membership composition, can routinely qualify as "public interest litigants", in which case there is absolutely no financial downside to them if they lose the litigation. The net result is that there is no disincentive to these groups not to pursue litigation. As a consequence, the State of Alaska as well as industry and developers are forced to defend themselves in lengthy and costly litigation with little chance of recovering any costs or attorney fees even when they prevail in the litigation.

The groups that regularly oppose resource development are not simply concerned citizen groups but more often special interest groups supported financially by national and/or international organizations whose stated mission is resource preservation. The result of these systematic and orchestrated lawsuits filed by purported "public interest litigants" is inhibiting development by escalating development costs, both in terms of real dollars spent on litigation and lost dollars due to delays. Modifying Alaska's existing rules and regulations for proposals where public input and administrative appeal was afforded by eliminating "public interest litigant" status in Administrative appeal decisions and awarding fees and costs to the prevailing party in litigation ensures a level playing field. Likewise, requiring disclosure of funding sources by those who seek to qualify as litigants and/or who seek to file an Administrative Appeal allows those defending the litigation to know the identity of those who are actually supporting the litigation and the amount of that financial support.

Modification of Alaska's existing "public interest litigant" rules and regulations is not aimed at preventing litigants from pursuing administrative appeals, rather the intent is one of fundamental fairness — ensuring that the identity of those who initiate the litigation are known and that the potential negative consequences of such litigation are borne equally by all parties to the litigation. The objective is not to inhibit meritorious litigation, but rather to inhibit frivolous litigation by ensuring that there is a consequence to those who file and support such litigation.

If responsible resource development is to be promoted and achieved, it is imperative that once development projects are permitted they are not delayed, by individuals, or entities that choose to pursue frivolous litigation. Modifying Alaska's existing rules and regulations regarding "public interest litigants" is critical to promoting and achieving responsible resource development in the State of Alaska.

**THE COMMISSION RECOMMENDS THAT:**

- 1a.1) Public Interest Litigant Status needs to be limited. The Legislature should modify existing State Statutes to specifically provide for any party bringing a civil action seeking judicial review of Administrative Agency decisions, in which they were afforded an opportunity for public input and administrative appeal, not be awarded "public interest litigant" status. Furthermore, the prevailing party in such civil action shall be entitled to an award of attorney fees and costs as in other civil actions.
  
- 1a.2) Funding Sources need to be disclosed. The Legislature should modify existing State Statutes to require that a condition of obtaining litigant status and/or of filing an Administrative Appeal, under regulations, is the initial and supplemental disclosure of the identity of those who provide funding to the entity who seeks litigant status and/or initiates an Administrative appeal and the amount of such funds during the past two years and during the term of the Administrative Appeal.

**1b) PERMIT EFFICIENCY**

**FINDING:** A key element in marketing Alaska as an attractive and competitive place to do business is the ability to process permit applications in a responsible, consistent and expeditious manner.

In the 2001 legislative session, funding was provided for the Alaska Department of Environmental Conservation (ADEC) to reconstitute the qualified core of water quality permitting staff. Equally important to adequate funding, the agencies need the flexible management tools necessary to provide responsive, effective, and efficient management of permitting issues.

Permitting delays negatively impact business in Alaska. Delays are often due to staffing shortages which creates backlogs for industry project permit review.

To help resolve this problem, ADEC has recently utilized the Department of Natural Resources (DNR) authority for third party contracting through the Large Mine Permit process, and has contracted directly with third party contractors to assist with permit review. ADEC is also planning to select one or more individuals/firms that would be available on-call to provide technical assistance to a permitting team regarding risk assessments and monitoring requirements for National Pollutant Discharge Elimination System (NPDES) discharges, and mixing zones for placer miners.

Supplementing permanent staff during permit development is a positive step that will allow agencies to respond more readily to the intermittent demands associated with industry growth. Further, it will support the limited number of permanent staff personnel via access to the varied technical and scientific expertise required for responsible permitting.

In some circumstances, permitting delay has been characterized by industry as "procedural duress." Industry recognizes that permitting review is an iterative process through discussion and supplementing of relative information, public review, comment and response to comment. However, an unreasonable extension of any of these elements can lead to costly and unnecessary delay. At present there are instances where State requests for additional information, and subsequent time extensions, appear to be based on a partial or cursory review. This results in additional time delay through multiple information requests. Further concern is often

raised regarding extension of public review and comment periods. This practice is detrimental to the agency, to the industry, and ultimately to economic development within Alaska, potentially leading to the loss of millions of dollars in revenue, and related monetary losses in taxes and royalties.

Permitting agencies need to ensure that the permitting process is not unnecessarily extended. Initial permit review should result in a single and complete list of information deficiencies. Additional requests for information should be limited to questions arising out of new information.

The Alaskan industries, agencies, Administration, and Legislature can work together to provide responsible and reliable permitting that ensures the protection of the environment and a sound future. For this to happen, we cannot be complacent in trying to improve permitting efficiency through funding alone. All of the recommendations provided must occur in concert for Alaska to fulfill its potential for sustainable and attractive resource development.

#### THE COMMISSION RECOMMENDS THAT:

- 1b.1) The Administration must continue to aggressively search for and find means to accommodate the use of third-party contractors who will work under the core managers to provide permit development support on an as-needed basis and extend these efforts to all types of environmental and resource permitting. The Legislature needs to encourage and support the Administration in this effort.
- 1b.2) The Legislature should require a periodic permitting status report accounting for agency staff and management.
- 1b.3) Salary scales for public workers must be improved relative to the private sector in order to retain competent staff.

### 1c) WATER QUALITY STANDARDS

**FINDING:** When municipal water treatment plants or industrial projects require water discharge permits, the Department of Environmental Conservation must insure that the proposed discharge will meet the State of Alaska water quality standards for various parameters. Due to the rapidly advancing science on both the potential environmental effects of these parameters and the changing technology for detecting the very low concentrations, the most appropriate numerical criteria for these parameters keeps advancing.

In 1999, the U.S. Environmental Protection Agency (EPA) approved a new list of water quality criteria that updated many of the numerical criteria. The EPA also responded to the environmental science that had developed over the years and replaced the old total recoverable values with new dissolved criteria.

in recognition of this advancing science, the Department of Environmental Conservation proposed revisions to the Alaska water quality standards on August 2, 2002. The public comment period on these proposed changes was completed in October, 2002. These revisions need to be adopted by the State immediately, and forwarded to the EPA for review and approval.

**THE COMMISSION RECOMMENDS THAT:**

The Governor should instruct the Department of Environmental Conservation to adopt the revisions to the Alaska water quality standards as proposed on August 2, 2002.

**1d) MIXING ZONES**

**FINDING:** State water quality regulations that became effective in November 1997 contain a prohibition against mixing zones in anadromous or resident fish spawning areas. This language makes it more difficult to consider site specific conditions, such as the productivity of the spawning area compared to the potential benefit of a municipal waste treatment plant or industrial project that might require a mixing zone. Without flexibility in the regulation, many projects that could significantly improve the health and welfare of people throughout Alaska may be precluded due to the widespread presence of spawning fish, including resident fish. Prior to promulgation of the latest mixing zone regulations, the Alaska Department of Environmental Conservation (ADEC) considered language that could have allowed mixing zones, if either the discharge had no adverse effect on spawning or if all reasonably anticipated adverse impacts were mitigated to the satisfaction of the Department of Fish and Game (ADF&G). This type of discretionary flexibility needs to be incorporated in the regulations so future projects that may be beneficial are not automatically prohibited.

**THE COMMISSION RECOMMENDS THAT:**

The Governor should direct the Alaska Department of Environmental Conservation and the Alaska Department of Fish & Game (ADF&G) to work with user groups to develop mixing zone regulations that will, at the department's discretion, authorize mixing zones in spawning areas if:

- (a) The discharge is not reasonably anticipated to adversely affect the capacity of the area to support present or future spawning activities; or
- (b) The discharge is reasonably anticipated to adversely affect the capacity of the area to support present and future spawning activities and the ADF&G has approved a plan to mitigate all reasonably anticipated adverse impacts.

**1e) ALASKA'S CLEAN WATER ACTIONS**

**FINDING:** In 2001 the Alaska Division of Governmental Coordination (ADGC) began an initiative called the Alaska's Clean Water Actions (ACWA). Members of the Commission expressed concern that ACWA was a new state regulatory program without basis in Alaska law. Further, members were concerned that this 'new program' overlapped other agency programs as well as creating new obligations. Industries or other users of water could be seriously and adversely affected if their business-based use of waters, such as placer mining, became restricted via the ADGC listing of water bodies as "polluted" or "at risk".

Through meetings with ADGC, other resource agencies, miners, and recently with the Minerals Commission, it was clarified that the ACWA initiative is a collaboration among the resource agencies. The collaboration is important to prioritize its water based management functions, to better align the priority work of the state agencies, and to use a ranking mechanism to prioritize

external grant or contract funded in-water field projects. In addition, the agencies report that they refined their ranking and decision making process in response to concerns raised by Commission members about how waters get listed or de-listed as "polluted" or "at risk". Although, the Commission remains cautious until the day-to-day practice becomes more evident, it appears ADGC and the other resource agencies have been responsive to concerns that have been raised. If ACWA actually works as the agencies intend - resulting in cohesive prioritization of water related functions among Fish & Game, Natural Resources and Environmental Conservation - the Minerals Commission would applaud this effort as long overdue efficiency building within state government.

#### THE COMMISSION RECOMMENDS THAT:

The Governor's office conduct a review of the Alaska's Clean Water Action initiative to ascertain if it can deliver on the promises the Alaska Minerals Commission heard from the agencies. Those promises were to improve efficiency and build a common agreement on the water management priorities of the resources agencies and Alaska Division of Governmental Coordination.

## 2) ACCESS & INFRASTRUCTURE

The lack of infrastructure, including roads, airports, and power transmission networks, increases the costs of exploration, development, and operation of mineral deposits and limits the potential for this industry to grow and help diversify Alaska's economy.

Many regions of Alaska have experienced significant improvements in their economic opportunities and standard of living when infrastructure improvements were completed.

If there is to be no development in the extensive areas of Alaska that have already been set aside as parks and refuges, then the other areas of Alaska that are not designated as wilderness constitute the land base that must support our society. Even though these non-wilderness areas are often beautiful or wild in their own right, they were not the crown jewels that justified prior withdrawal. Infrastructure development in these areas must be supported and projects that have the potential to significantly enhance the viability of local communities should be encouraged first.

### 2a) ROADS TO RESOURCES

**FINDING:** Many of the major mineral and coal deposits in Alaska are "stranded" because there is no road access to the major rivers or to tidewater. The last major road built in the state was the 52-mile road from the Red Dog Mine to the DeLong Mountain Transportation System port near Kivalina in 1988.

Notable areas that could benefit from road access include the Ambler mineral belt, the north-west Arctic and Beluga coalfields, the area around and west of Iliamna, the Flat-Iditarod area, and the Goodpaster mining district.

Although Alaska Statutes AS 19.30.020 and 19.30.030 address development access roads, the funding available, even if inflation adjusted, would probably not even cover the costs of permitting.

During the next few years it is possible that significant funding for access improvement might be available through GARVEE (Grant Anticipation Revenue Vehicle) bonds, the Denali Commission, and special federal appropriations similar to those used in Appalachia.

THE COMMISSION RECOMMENDS THAT:

The Governor direct the Department of Transportation & Public Facilities to prepare a prioritized list of potential "Roads to Resources", and investigate mechanisms whereby funds can be made available in a long-term program to link potential resource development to tidewater.

## 2b) RESTRICTING THE USE OF MINING AIRSTRIPS

**FINDING:** In many remote mining camps, the only feasible summer access is by use of an airstrip on, or adjacent to, the mining operation. Unauthorized use of these strips, often by commercial operations, can result in potentially unsafe conditions, and the attendant threat of liability, both to the miner and to the State.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should direct the Division of Mining, Land & Water to amend the mining regulations so that when an airstrip is required for access to a specific mining operation, the Plan of Operations will allow the permit holder to restrict the use of the airstrip.

## 2c) POWER SUPPLIES

**FINDING:** Major mines require substantial power supplies, in the order of 20-50 megawatts (Mw). Any additional processing will increase that demand manyfold.

Many remote mines choose to generate their own power using modular diesel generating sets, but as evidenced by Red Dog, the permitting of on-site generation can become a limiting factor.

An alternative would be to use mines as a "base-load" to justify extending interties and/or building new off-site power plants to slowly extend power-by-wire to many of the remote villages that presently rely upon the Power Cost Equalization funds to reduce the high cost of electrical energy.

Activity at Donlin Creek, Shotgun, and Pebble Copper might justify an intertie from the Cook Inlet area to Bethel and the villages of the Yukon-Kuskokwim Delta. Likewise in southeast Alaska planned interties from Tyee to Ketchikan and from Juneau to Hoonah could provide affordable power to mines and communities.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should continue to support the Alaska Industrial Development & Export Authority/Alaska Energy Authority, Alaska Village Electric Cooperative, and the Southeast Intertie in extending electrical grids into areas where mineral development is occurring or anticipated.

### 3) STATE'S RIGHTS ISSUES

These issues have been separated because although they are also about ownership and access, both of which are fundamentally important in mineral investment decisions, two of them are not exclusively Alaskan issues, and allow for cooperative efforts with other states at the federal level.

RS 2477 trails may offer the only access across lands in Alaska where ownership patterns have changed and become more complex since statehood. Similarly, navigable waterways can provide the cheapest form of transportation for some mineralized areas, and some are inherently important gold placer deposits.

Western States have as much of a vested interest in RS 2477 access as does Alaska, and all states have an interest in ownership of the riverbeds and watercolumns of navigable rivers and lakes.

#### 3a) RS 2477 TRAILS

**FINDING:** In 1993 the Legislature appropriated funds for a task force to create an RS2477 trail inventory. Since 1993 there has been no funding to pursue Alaska's RS2477 trails through 'quiet title' action. The Alaska Division of Land has researched 1,950 trails proposed as RS2477 rights-of-way. Of these, 620 routes appear to qualify, about 250 need more information, and the remainder may not qualify due to circumstances such as lack of evidence, duplication of existing rights-of-way, or failure to meet the requirements of the RS2477 law.

The State has achieved Quiet Title to the Harrison Creek – Portage Creek Trail (RST 8) in the Circle Mining District. Because the original trail has been moved many times to accommodate active mining since 1976, (the deadline for identification of existing rights-of-way), the State has entered into a consent decree accepting a mutually agreeable 60-foot right-of-way to substitute for abandonment of portions of the existing trail.

This was one of 11 of the 620 "Qualified" trails that was "Certified" as a test case, and was selected for litigation because it had the broadest potential for setting precedent.

The Department of Law and the Division of Mining, Land & Water require funds for this legal effort to file "quiet title" actions in court to determine the validity of the routes.

#### THE COMMISSION RECOMMENDS THAT:

- 3a.1) The Legislature should fund a multi-year, multi-agency Capital Project of \$300,000 annually for the Division of Mining, Land & Water to work with the Department of Law and other agencies to aggressively pursue precedent-setting "quiet title" actions, and to preserve the State's rights.
- 3a.2) The Governor should aggressively assert "quiet title" to the routes with the best documentation. Furthermore, the State should assert an access route pursuant to Title XI of the Alaska National Interest Lands Conservation Act to test the process and set a precedent.

#### 3b) NAVIGABILITY

**FINDING:** State ownership of the beds of navigable waters is an inherent attribute of State sovereignty protected by the United States Constitution.

The State of Alaska owns all watercolumns and the land under most navigable waterways in Alaska. The Submerged Lands Act of 1953, the Alaska Statehood Act of 1958, and the Alaska State Constitution establish State ownership of watercolumns (actual water that is in a lake or river) and shorelands (the beds of navigable rivers). The courts have defined navigable waters as those used or susceptible to use for travel, trade, and commerce at the time of statehood." (Emphasis added).

This interpretation would include not only the obviously navigable waterways such as the Yukon, Kuskokwim, Tanana, Fortymile, and Kobuk Rivers, but many smaller rivers used for travel. Some of the rivers that could be considered navigable, such as Birch Creek and the Fortymile River, contain important placer gold deposits.

While title to the beds of navigable waters vested in the state at Statehood, the federal courts have only ruled on the navigability of 13 waterways in Alaska. Alaska faces two types of legal hurdles in establishing its ownership of lands under navigable waters. The first is to determine what rivers and lakes are navigable under federal law. The second is to establish that the United States did not defeat the state's title to navigable waters through pre-statehood federal reservations. The state has used the court action (quiet title) to address both of these hurdles by defining the types of rivers and lakes that are navigable under federal law, and to determine whether or not certain pre-statehood federal reservations defeated the state's title.

In 1980, the State established a comprehensive navigability program within the Department of Natural Resources (DNR). This program was designed to respond to federal land conveyances and land management activities under the Alaska Statehood Act, the Alaska Native Claims Settlement Act, and the Alaska National Interest Lands Conservation Act. The basic purpose of the program was to protect the public rights associated with navigable waters, including the State's title to the submerged lands. The program also included monitoring of federal land conveyance and management programs to identify navigability disputes, seeking cooperative resolution of navigability problems through negotiation and legislation, and preparing for navigability litigation.

Budget cuts have greatly reduced the ability of State agencies to respond to navigability issues, and to pursue assertions of State ownership of navigable waters.

#### THE COMMISSION RECOMMENDS THAT:

The Legislature should make funding available to reinstate a centralized, systematic navigability program within the Department of Natural Resources. Additionally, funding should continue to be made available to the Department of Law to support any "quiet title" actions necessary to secure ownership of submerged lands. Further, the state and federal governments should establish more efficient methods for determining what waterbodies are navigable and therefore are state owned.

### 3c) EXPEDITED LAND TRANSFERS

FINDING: Because of the high mineral potential proximal to existing transportation, in 1994 the Commission recommended that the State should seek expedited transfer of State-selected lands along the Denali Highway.

Subsequently, about 3,000 mining claims have been staked in this area during the last five years for the copper, nickel, and platinum-group element potential, and over \$3 million has been spent in exploration, including detailed airborne geophysical surveys and limited drilling. However, because of the uncertain ownership of State-selected land, the companies involved cannot justify further expensive evaluation of the area.

On October 4<sup>th</sup>, 2000, the Division of Mining, Land & Water (DMLW) recognized the potential of this block, and requested that 235,000 acres of State-selected land between the Richardson Highway and the Maclaren River be added to the Land Conveyance Priority List (CPL). In June 2002 the State received final Tentative Approval (TA) to 6 of the 10 Townships selected, and the TA to the final 4 Townships was received in December, 2002.

Furthermore, on September 9, 2002, a request was made to add an additional 25 Townships to the CPL. These 576,000 acres are predominantly north of the Denali Highway between the Maclaren and Susitna Rivers.

#### THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should direct the Division of Mining, Land & Water to aggressively pursue expedited transfer of State-selected lands along the Denali Highway where there is demonstrated potential for mineral development.

## 4) DATA ACQUISITION

Many potential investors in Alaska's mineral industry are discouraged by the lack of detailed geologic information, and choose to invest in areas that have more public data to guide grassroots exploration. Those companies that have been successful in exploration, and identified prospects worthy of development, find that they are expected to fully define the baseline data of the whole area surrounding their discovery, because no such database exists.

### 4a) GEOPHYSICAL AND GEOLOGICAL MAPPING

**FINDING:** Since 1993, State-funded airborne geophysical surveys have covered approximately 8,500 square miles of the State of Alaska's 162,500 square mile land entitlement, at a total cost of \$ 3.69 million. Additional funding has been invested by the State to complete the geologic mapping on the ground that is necessary to allow interpretation of the airborne surveys.

An additional \$1.57 million has been invested by the Bureau of Land Management (BLM) and other entities to survey about 3,800 square miles of predominantly federal land in the state.

During this same period, the mining industry has invested \$367 million in exploration in the state, and has staked thousands of new claims based on the results of the surveys.

This increased activity was the intent of the surveys and will accelerate discovery of new Alaskan mineral deposits. However, with a land base of 162,500 square miles, much of it chosen for its mineral potential, it will take the State of Alaska another 150 years to survey its land endowment at the present rate of funding.

The costs for the surveys have increased in recent years due to consolidation in the industry, and increased fuel and insurance costs.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should invest \$5 million per year (approximately 21% of what industry spent on exploration in 2001) for the next decade, preferably through foundation funding, in airborne geophysical surveys and complementary geological and geochemical surveys.

#### 4b) BASELINE DATA

**FINDING:** Water quality regulation in Alaska is growing increasingly complex. Often, the Alaska Department of Environmental Conservation (ADEC) is required to make decisions about water quality regulations without Alaska-specific data. Many Alaskans recognize the need to develop sound environmental baseline information. This research should extend to development of appropriate aquatic life criteria for acute and chronic toxicity under Alaska conditions.

THE COMMISSION RECOMMENDS THAT:

The Governor should direct the Alaska Department of Environmental Conservation to work with industry to develop priorities for basic research on topics important to Alaska, such as total dissolved solids and pH.

### 5) REGIONAL ECONOMIC DEVELOPMENT

**FINDING:** In many regions of Alaska, mineral development is one of the few sectors that might offer the opportunity for a sustainable economy, to provide family wage jobs, and add significantly to the local tax base (e.g. Red Dog in the Northwest Arctic Borough, Usibelli Coal Mine in the Denali Borough, Fort Knox in the Fairbanks North Star Borough, and Greens Creek in the City & Borough of Juneau).

The following is a specific regional project, which is recommended to stimulate mineral development. If successful, such an integrated approach will have application throughout Alaska.

To stimulate investment by the private sector, the mineral potential, land status, infrastructure, and the constraints on development such as archeological sites or essential fish habitat, should be clearly identified in a GIS (Geographic Information System) database. In addition, communities in southeast Alaska which have been severely impacted by the decline in the timber industry have expressed interest in how they might be able to benefit from the minerals industry.

Based upon the economic deterioration in the region, excellent potential for mineral discovery, and a well-developed infrastructure, good candidates would be Prince of Wales Island, the Duncan Canal/Stikine mining districts, and the Haines region.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should appropriate \$250,000 for a two-year Capital Improvement Project. This project, administered by the Department of Community & Economic Development, would make relevant information available regarding mineral development opportunities in the economically depressed areas around the Porcupine district near Haines, the Duncan Canal and Bradfield regions in the Stikine mining district, and Prince of Wales Island, in a marketing format.

## 6) EDUCATION AND RESEARCH

### 6a) AMEREF

**FINDING:** The "Alaska Resource Kit" which is being used in the statewide public school system, is an excellent program for educating Alaska's students in the issues and fundamentals of resource development. The Kit incorporates technical, economic, and environmental aspects into a balanced program that addresses mineral, timber, and energy development. Future kits will be developed to address our fishing resources as well.

The Program is a cooperative and successful effort between the Department of Education, and the Alaska Minerals and Energy Resource Education Fund (AMEREF).

The Department of Education develops the curriculum and is responsible for its implementation into the school system through funding provided for teacher training.

AMEREF is presently supported by the resource industries. AMEREF funds the production and replacement of teaching materials, ensures the technical accuracy of the material, and organizes and distributes the education kits. AMEREF is looking to expand the program by incurring additional funding through various grant programs.

The program provides a broad-based resource education for Alaska's student's which is critical to their future ability to make well reasoned decisions about the use and protection of Alaska's wealth of natural resources.

#### THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should appropriate \$50,000 to the Division of Teaching and Learning Support, Minerals and Energy Education Program, as the State's share of supporting the Alaska Mineral and Energy Resource Education Fund.

### 6b) SCHOOL OF MINERAL ENGINEERING

**FINDING:** The University of Alaska Fairbanks' School of Mineral Engineering offers accredited degree programs for educating mining, geological, and petroleum engineers and conducts applied research through the Mineral Industry Research Laboratory and Petroleum Development Laboratory.

These professional degree and research programs are vital to the continued development of the State's mineral and energy industries, to the jobs and incomes of its residents, and to the public revenues used to support education and other public services.

#### THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should provide adequate budgetary support to the UAF School of Mineral Engineering.

## 7) EXTENDING THE LIFE OF THE MINERALS COMMISSION

**FINDING.** The charge of the Alaska Minerals Commission is to make recommendations to the Governor and Legislature on ways to mitigate the constraints on the development of the minerals industry in Alaska. The 1986 Act creating the Alaska Minerals Commission has been amended twice to extend its life through February 1, 2004.

Since 1986, several pieces of legislation have passed that have helped foster the recent growth of this important industry (see Executive Summary of this report).

Now more than ever, it is important to diversify the Alaskan economy. The Commission serves to focus the ideas of the many industry volunteers who contribute recommendations, and the annual budget of \$10,000 is a good investment for the State.

### THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should extend the term of the Alaska Minerals Commission and provide funding through February 1, 2014.

## PART B. FEDERAL ISSUES OF STATE CONCERN

### B1) MARINE TRANSPORTATION TASK FORCE

**FINDING:** Requirements of the Jones Act continue to impede reasonable resource development opportunities in Alaska. Originally the Merchant Marine Act of 1920, the Jones Act requires that ships operating within the United States be built at U. S. shipyards, and that they be owned and crewed by Americans. Drafted shortly after World War I, this legislation grew out of the belief that a strong U.S. merchant marine was essential to maintaining the security of our country.

Several recent studies have concluded that the Jones Act impedes commerce in the U.S. and hampers the development of an efficient intermodal transportation system. However, overwhelming support by Congress and carrier industry as recently as 2000 to maintain the Act in its present form resulted in a collapse of any organized efforts to change the law.

The one sector that is clearly under-served due to the Jones Act is bulk carriage. Bulk shipping by ocean is a service practically nonexistent in the domestic market, and commodity shippers such as mineral companies in Alaska seeking new markets for their products are especially affected.

### THE COMMISSION RECOMMENDS THAT:

The Governor and Alaska Legislature fund a marine transportation task force. The task force will identify and provide recommendations on key coastwise shipping questions related to transporting bulk resources like rock, sand, and gravel, coal, and other Alaska resources to regional and domestic markets. Associated infrastructure issues would include West Coast port facility support; markets (local, national and international); backhaul opportunities, a listing of available vessels in compliance, and potential solutions within the constraints of the Jones Act.

## **B2) DETAILED GEOLOGICAL MAPPING**

**FINDING:** Although the U. S. Geological Survey (USGS) has produced many regional geologic maps at the 1:250,000 scale, there have been very few bedrock and surficial geologic maps, and almost no engineering geologic maps, produced at the 1:63,360 (1 inch = 1 mile) scale for Alaska. Given that the regional maps are compiled from 1:63,360 maps, it would be very useful if the USGS published more detailed maps, and supplemented existing data with more field mapping programs including surficial and engineering geologic maps

### **THE COMMISSION RECOMMENDS THAT:**

The Governor and Legislature should encourage the Congressional delegation to seek funding for the U. S. Geological Survey specifically for detailed mapping, including surficial and engineering, as well as bedrock geological mapping of the State of Alaska. Such funding should include cooperative programs between the University of Alaska, the Alaska Division of Geological & Geophysical Surveys and the U. S. Geological Survey.

## **B3) RESOLUTION OF OUTDATED SEGREGATIONS**

**FINDING:** Large tracts of land in Alaska that were "temporarily" withdrawn from public entry more than 30 years ago remain unnecessarily closed. These Outdated Segregations preclude mineral development, deny access to other lands and resources, and prohibit transfer of land selections to the State of Alaska and Alaska Native Claims Settlement Act (ANCSA) corporations.

The land segregations were originally set aside for three primary purposes:

1. Selection and conveyance to ANCSA corporations;
2. Possible inclusion within federal conservation units; and
3. Industrial developments such as alternate candidates for a Trans-Alaska Pipeline corridor.

Until recently, the Bureau of Land Management (BLM) was not motivated or funded to create the land management plans that are required before the land withdrawals can be removed by Congressional action.

In its January 2002 report, the Commission recommended that the Legislature urge the Congressional Delegation to expedite the process of removing the Outdated Segregations. House Joint Resolution No. 48 was drafted for this purpose, and it was passed on June 21, 2002. This resolution appears to have accomplished its intended purpose. The BLM has expressed its support for an accelerated program to address this issue. On November 18, 2002, the BLM Resources Advisory Council (RAC) unanimously passed Resolution 03-01. As a result the BLM RAC will form a working group that will prioritize pilot areas for fast-track resolution. The group will prepare findings and recommendations by May of 2003. The Alaska Minerals Commission applauds the Legislature for its action on this issue.

**THE COMMISSION RECOMMENDS THAT:**

The Governor and Legislature should direct the Department of Natural Resources to participate, monitor, encourage, and assist the BLM, to the extent necessary and possible, as the federal agency goes about the process of creating land management plans, removing outdated segregations, and completing conveyance of lands to the State and ANCSA corporations.

#### **B4) ESSENTIAL FISH HABITAT**

**FINDING:** Protection of "Essential Fish Habitat" (EFH) is a key component of the 1996 Sustainable Fisheries Act (SFA), which amended the 1976 Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA).

Under the SFA, eight Regional Fisheries Management Councils develop Fisheries Management Plans for important fish species, and provide this information to the National Marine Fisheries Service (NMFS). The NMFS has defined essential fish habitats very broadly, and throughout the western states has included all waters currently accessible to salmon. All federal agencies involved in any kind of development are required to consult NMFS if their actions "may adversely affect EFHs."

This broad mandate will, at best, slow permitting with a complex consultative process, or in the worst case result in project denial or modifications that effectively prohibit resource development. Thus "Essential Fish Habitat" has the potential to be at least as onerous as the Corps of Engineers 404 "Wetlands" permitting.

**THE COMMISSION RECOMMENDS THAT:**

The Governor and Legislature should work with the Congressional Delegation to limit the authority of the National Marine Fisheries Service to marine waters, and leave management of anadromous fish within state waters to the Alaska Department of Fish & Game.

#### **B5) ANILCA PROVISIONS**

**FINDING:** In order to assure passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, there were several sections included to protect pre-existing rights. Several provisions would allow mineral development on or near otherwise withdrawn land. Title XI addressed access across the Conservation System Units (CSU). Sections 101d and 1326b assured that no more land in Alaska would be considered for new CSU or similar designations. Sections 103b and 1302h provided mechanisms for the Secretary of the Interior to adjust the boundaries of CSU or to exchange lands within them to exclude mineralized areas.

**THE COMMISSION RECOMMENDS THAT:**

The Governor and Legislature, through the Attorney General's office, the State's Washington D.C. office, and the Congressional Delegation should insist that the federal administration:

- B5a) Provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest Lands Conservation Act (ANILCA);
- B5b) Prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA; and
- B5c) Exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.

# APPENDIX A ENABLING LEGISLATION

## CHAPTER 98 SESSION LAWS OF ALASKA, 1986 AS AMENDED BY CHAPTER 12 SESSION LAWS OF ALASKA, 1998

### AN ACT

Relating to the Alaska Minerals Commission; and providing for an effective date.

Section 1. (a) The legislature finds that the minerals industries, including metallic minerals, industrial minerals, and hydrocarbons, have traditionally and continue to be the major source of wealth and income in the state.

(b) The legislature further finds that there are major constraints on the continued development of a diverse mineral industry in the state, including the Environmental Protection Agency's effluent guidelines, state water quality standards and improperly classified streams and rivers, restriction on surface access, complex and numerous permitting requirements, and limited access to minerals through mineral closing orders and restrictions on multiple use through state and federal land use plans.

Section 2. ALASKA MINERALS COMMISSION ESTABLISHED. (a) The Alaska Minerals Commission is established in the Department of Commerce and Economic Development.

(b) The Commission is composed of 11 members. The Commission shall be composed of individuals who have at least five years' experience in the various aspects of the minerals industries in the state. The Governor shall appoint five members of the Commission, one of whom must reside in a rural community. The President of the Senate shall appoint three members of the Commission. The Speaker of the House of Representatives shall appoint three members of the Commission. Each member serves at the pleasure of the appointing authority.

(c) The Commission shall make recommendations to the Governor and to the Legislature on ways to mitigate the constraints, including governmental constraints, on development of minerals, including coal, in the State.

(d) The Commission shall report its recommendations each year to the Governor and the Legislature during the first 10 days of the regular session of the Legislature.

Sec. 3. This Act is repealed February 1, 1994.\*

Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c)

\*Note: The Act was amended to extend the life of the Commission to February 1, 2004.

## APPENDIX B

### ALASKA MINERALS COMMISSION STATEMENT OF PURPOSE

The Alaska Minerals Commission was created by the 14th Legislature in Chapter 38 of the Session Laws of 1986 and was established to make recommendations to the Governor and to the Legislature on ways to mitigate constraints on the development of minerals in the State.

The minerals industry offers the greatest potential of any Alaska industry for expanding and diversifying the State's economic base; for increasing Statewide employment; and for generating new wealth to create businesses and provide revenues for State and local governments.

However, Alaska has a complex pattern of land ownership and management; has overlapping and uncertain regulatory requirements; has unique geographic, geologic and climatic conditions; and has an undeveloped transportation system.

To attract the capital necessary for the exploration and development of new mines; to ensure that mines can be developed feasibly and in a timely fashion; and to ensure that producing mines remain viable—constraints on the industry must be mitigated.

The Alaska Minerals Commission will prepare reports for the First and Second Sessions of the 15th Legislature and the First Session of the 16th Legislature, recommending to the Governor and to the Legislature the adoption of legislation and the implementation of administrative policy that will best accomplish the statement of policy found in Article VIII, of the Constitution of Alaska:

"It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest."

And the statement of policy found in the President's National Materials and Minerals Report to Congress of April 5, 1982:

"It is the policy of this administration to decrease America's mineral vulnerability by taking positive action that will promote our national security, help ensure a healthy and vigorous economy, create American jobs, and protect America's national resources and environment."

The goals and recommendations of the Alaska Minerals Commission are to assure that the Legislature and the State administration endorse and promote development of a viable mining industry in the State.

## APPENDIX C

### MINERAL POLICY ACT

Sec. 44.99.110. Declaration of state mineral policy. The Legislature, acting under art. VIII, sec. 1 of the Constitution of the State of Alaska, in an effort to further the economic development of the state, to maintain a sound economy and stable employment, and to encourage responsible economic development within the state for the benefit of present and future generations through the proper conservation and development of the abundant mineral resources within the state, including metals, industrial minerals, and coal, declares as the mineral policy of the state that

- (1) mineral exploration and development be given fair and equitable consideration with other resource use in the multiple use management of state land;
- (2) mineral development be encouraged through reasonable and consistent non-duplicative regulations and administrative stipulations;
- (3) mineral development and the entry into the marketplace of mineral products be considered in developing a statewide transportation infrastructure system;
- (4) mineral development be encouraged through appropriate public information and education, scientific research, technical studies, and the University of Alaska program involvement;
- (5) economic development with respect to the state mineral industry be encouraged with Pacific Rim nations (Sec.1 Ch. 138 SLA 1988).

## APPENDIX D

### RECOMMENDATIONS IMPLEMENTED

During 2002 several of the recommendations from the January 2002 Alaska Minerals Commission report were effected, or substantial progress was made in their implementation.

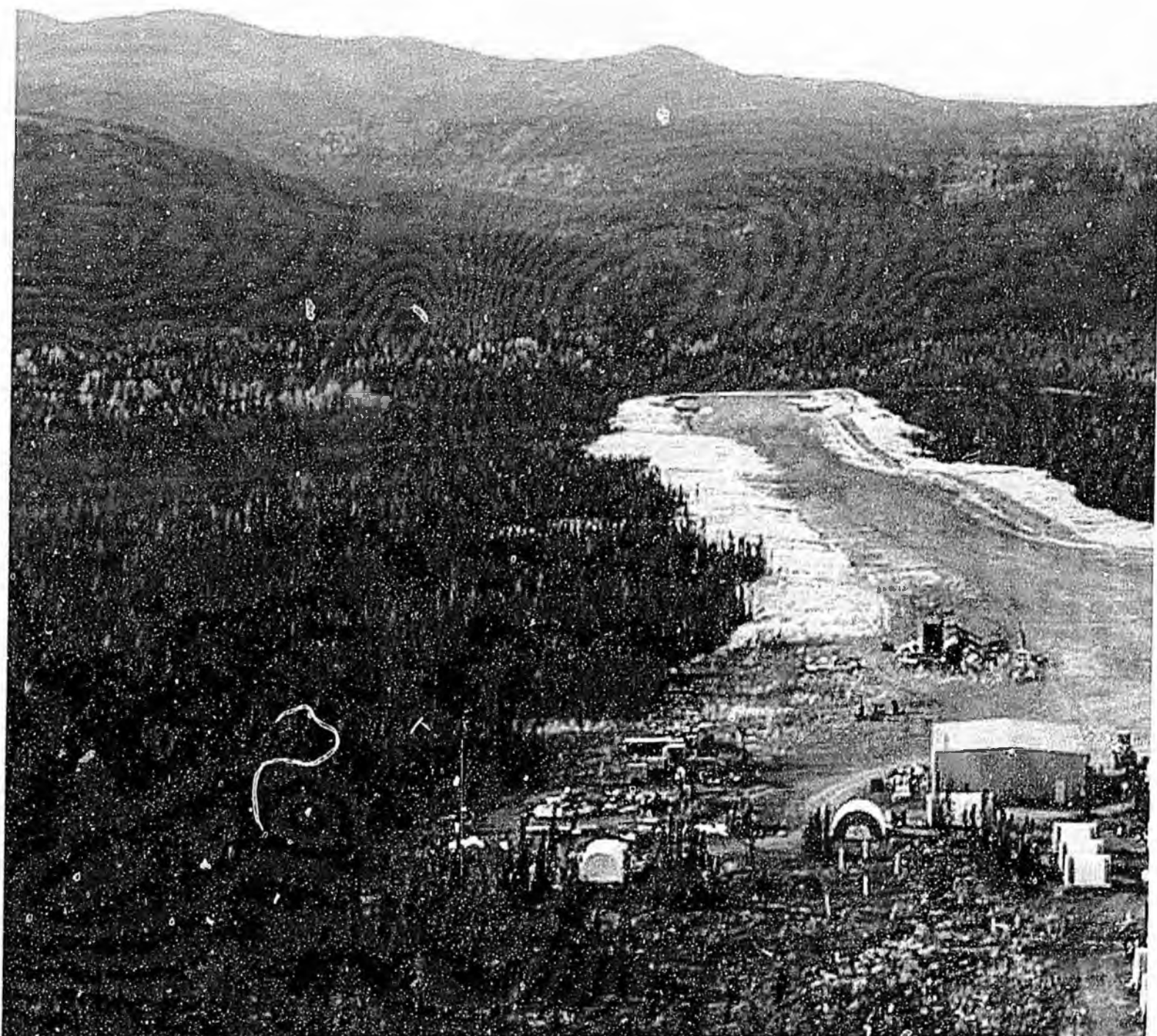
- Funding was provided for the airborne geophysical surveys and for Alaska Mineral and Energy Education Fund (AMEREF).
- Several changes in the Water Quality Standards were proposed for implementation by the Department of Environmental Conservation.
- Funding was provided to study the effects of the State assuming primacy for the NPDES (National Pollutant Discharge Elimination System) process.
- Parts of the "Denali Block" were tentatively approved for State ownership.

Since the first report in 1987 there have been numerous implemented recommendations of the Alaska Minerals Commission, including:

- Passage of Alaska Mineral Policy Act (1988);
- Funding for the AMEREF program (1987-2002);
- Funding for the Citizen's Advisory Commission on Federal Areas (1991-1998);
- Addition of the Department of Commerce to the Resource Cabinet (1992);
- Exemption of minerals from municipal in-situ taxation (1992);
- Funding for airborne geophysical surveys (1992-2002);
- Creation of a task force for RS2477 trail inventory (1993);
- Restriction of Mineral Closing Orders (1993);
- Protection for claimants on state-selected land (1994);
- Extending terms of permits when legal impediments prevent use (1994);
- Selection of lands with high mineral potential (1994);
- Passage of the Exploration Incentives Act (1995);
- Passage of the Diminutive Discharge Bill (1995);
- Providing more flexible work hours for miners (1996);
- Allowing coal mines access to the state bonding pool (1996);
- Assertion of RS2477 rights-of-way (1997);
- Legislative Resolution 31 was passed opposing International Parks, World Heritage Sites, and Marine Biosphere Reserves in western Alaska, and supporting the federal American Lands Sovereignty Protection Act (1997);
- Resolution of the Mental Health Lands issue (1997);
- Funding was provided to update equipment in the Recorders Offices (1998);
- Establishment of a rational State water quality standard for arsenic (1998);
- The Alaska Minerals Commission was authorized to continue until February 2004 (1998);
- Baseline water quality studies by the U. S. Geological Survey and the Division of Mining, Land and Water continued in the Fortymile and Goodpaster watersheds (1998-2001);

- The Department of Environmental Conservation (DEC) received funds for a core permitting team (2001);
- Some State-selected lands in the Denali Highway area were tentatively approved for State ownership (2002);
- The DEC proposed necessary changes to the State's Water Quality Standards (2002);
- Funds were appropriated to study the desirability of the State assuming primacy for the NPDES (National Pollutant Discharge Elimination Discharge System) process (2002).
- Funding was provided for the airborne geophysical surveys and for Alaska Mineral and Energy Education Fund (AMEREF), and
- Several changes in the Water Quality Standards were proposed for implementation by the Department of Environmental Conservation (2002).

Obviously the Commission cannot take sole credit for the resolution of many of these issues, but it is encouraging to note the success of Commission recommendations, thanks to the efforts of the Legislators and Governors in recent years.



This publication was released by the Department of Community and Economic Development. Its purpose is to report the findings and recommendations of the Alaska Minerals Commission to the Governor and to the Legislature of Alaska. It was produced at a cost of \$1.40 per copy and printed in Juneau, Alaska. This publication is required by Chapter 98, Session Laws of Alaska, as amended by Chapter 4, Session Laws of Alaska, 1993.

**Photo Credit: NovaGold**

SB

86

# ALASKA STATE LEGISLATURE

## House of Representatives

Representative Hugh (Bud) Fate

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Co-Chair Resources  
Member:  
*Military & Veterans Affairs*  
*Oil & Gas*  
*Transportation*

### Sponsor Statement

#### House Bill 86

**“An Act relating to permits issued by the state.”**

House Bill 86 is a very brief piece of legislation that will be a major step in getting Alaska going. The language is an addition to the Permit Coordination and Extension statute giving some finality to that established and accepted process.

Many of Alaska’s projects are stopped, or don’t ever start, even though all of the permits are in place or issued. These projects are on hold because our current system allows individuals or entities to stop a project without a truly legitimate reason.

Adding this section to the existing language means that projects cannot be stopped without grounds. These ground include new scientific information or newly recognized local traditional knowledge. This means that this information must be new or completely different than what was presented during the permitting process.

For Alaska to move forward we must have the ability to get projects started. Once permits are issued, the talk is over and it is time for the work to begin. HB 86 will assure that that happens.

## Forest Oil's Gary Carlson, on inlet's prospects

With pipeline to Redoubt Shoal now complete, Forest looks to begin production

**Q&A on O&G Editor's Note:** Gary Carlson, Alaska senior vice president for Forest Oil Corp., is interviewed by the Alaska Oil and Gas Reporter on the status of Forest's development of the Redoubt Shoal, the first new Cook Inlet oil field in years, and other issues.

Forest's Osprey platform was fabricated and put in place in the inlet to support exploration drilling into the Redoubt Shoal prospect. The platform is now being converted to a production facility. Pipelines to the platform from shore-based oil processing facilities have just been completed.

Forest has recently been the target of environmental lawsuits aimed at stopping drilling on Redoubt Shoal. The first suit involved the state's interpretation of Best Available Technology requirements in oil spill contingency plans. The Legislature passed a law last spring mooting the litigation.

In a second lawsuit, environmental groups challenged a state decision to rely on approval of a federal permit for discharges, instead of following a duplicate state procedure. For the second time last spring, the Legislature passed a law to moot the lawsuit.

**Q** What's the status of the lawsuits affecting the project?

**A** With the completion of the work on the remand from the Supreme Court, the ruling of the objection against our exploratory drilling is no longer in effect. We're drilling our fifth exploration well now. It's at 12,000 feet today, scheduled to go to 16,000 feet.

What is ironic is that at the time the injunction was granted to Cook Inlet Keeper (litigants), we were not disposing of the water-based cuttings overboard. We were grinding and injecting the drilling cuttings into our disposal well on the Osprey. Forest Oil had already agreed to inject all the drill cuttings during the development phase of Redoubt Shoal, and we were testing the system in the last exploratory well. This court action was not about the environment but legal process. But the injunction caused us to lay people off and send them home. It caused some real hardships.

**Q** Are they going to stop suing?

**A** We eventually reached an agreement with Cook Inlet Keeper on future

litigation on the exploration program. They asked us to inject our rainwater runoff rather than let that go overboard. Their concern, they said, was that there might be some toxins in the rainwater runoff. So, we applied for a permit and installed the necessary equipment, and we are set up to inject rainwater. However, they have already filed suit against the state for granting the permits to develop the field.

**Q** Do other Inlet operators do these things?

**A** The other operators are held to high standards by federal and state agencies' permits, which allow water-base cutting to be disposed overboard, along with produced water, once it had been conditioned. Forest decided early on, however, to design our facilities to inject our produced water. We're quite willing to spend money to deal with the real environmental issues, but we would also like to be treated like the rest of the industry. It may be because we're doing the newest development that we're attracting this attention.

**Q** What's the status of construction?

**A** We're working on final installation of the pipeline now. It was a challenge to drill the boreholes through the bluff, but the pipelines have been pulled through the boreholes and on to the platform.

**Q** How was this done?

**A** We used a large barge that was well anchored. The pipe string, which was previously welded, was pulled with winches on the barge. It took three long pulls to get the pipe to the platform. It was then jacked up to the platform itself. The contractors Conam Construction and Crowley Maritime, its subcontractor -- have done a superb job on it.

**Q** What are the dimensions of the pipe?

**A** There are three pipelines, two eight-inch diameter and one six-inch diameter. This is very heavy steel. Of the eight-inch pipelines, one has a wall thickness of  $7/8$  of an inch and the other is  $3/4$  of an inch. The pipe is intended to be heavy enough to remain stable on the inlet floor. Previous Cook Inlet pipelines, built in the 1960s and 1970s, had a concrete coating to keep them stable. We felt in this case, a concrete coating would have created a wider cross-section for the current to act against. Heavier steel is more expensive but creates a lower profile for the current to act against. We think



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## Environmental Law

*Alaska Oil & Gas Association*

We represented Alaska Oil & Gas Association (AOGA), a consortium of national and multi-national companies involved in the exploration and development of oil and gas resources in Alaska, in the drafting and submission of comments to the National Marine Fisheries Service (NMFS) opposing designation of critical habitat in the Alaskan Beaufort Sea for the Western Arctic stock of the bowhead whale.

We represent AOGA in connection with an ongoing effort to comprehensively reform the Alaska Coastal Management Program (ACMP). The ACMP implements the provisions of the federal Coastal Zone Management Act (CZMA) and plays a direct and significant role in permitting processes throughout Alaska. We have drafted extensive comments to proposed revised regulations, facilitated related discussions with key state agencies and participated in development of legislative initiatives.

We represent AOGA and the Resource Development Council of Alaska, two consortiums of businesses active in the development of natural resources in Alaska, as intervenors in federal court litigation brought by environmental advocacy groups seeking to reverse the decision of NMFS that a listing of the Cook Inlet, Alaska population of beluga whales under the Endangered Species Act (ESA) is not warranted. Consistent with the intervenors' position, the Washington, D.C. federal court sustained NMFS' decision, and the litigation is now on appeal to the federal Court of Appeals for D.C. Circuit. This case is the first to consider the statutory exemptions in the ESA and in the Marine Mammal Protection Act that address Native Alaskan subsistence hunting. The district court's decision is also the first time NMFS' decision not to list a species has been sustained under challenge.

*Blue Heron Paper Company*

We defended Blue Heron Paper Company against two citizen suits under the Clean Water Act and the Endangered Species Act regarding the temperature and turbidity of the mill's wastewater discharge. At the same time, we negotiated with the Oregon Department of Environmental Quality (DEQ) the terms of a new National Pollutant Discharge Elimination System permit that is the first in Oregon to use a temperature management plan and the first to comprehensively regulate turbidity. This case shaped DEQ's current policies on temperature and turbidity and was closely watched throughout the Northwest. Blue Heron Paper Company is an integrated producer of newsprint and specialty papers using more than 50% recovered fiber and is located in Oregon City, Oregon.

*Dry Creek Rancheria Band of Pomo Indians*

We advised the Dry Creek Rancheria Band of Pomo Indians on their economic development and litigation strategies, primarily concerning their rights to use an easement for purposes of developing a casino. The Dry Creek Rancheria Band of Pomo Indians is a federally recognized tribe with tribal lands located north of San Francisco Bay in Sonoma County.

*Gate-King Properties*

We represent the owner of a proposed 500-acre industrial park development in Santa Clarita, California. The project involves the preparation of an environmental impact report, a development agreement, subdivision approval, conditional use permits, Section 404 approval and compliance with new SB 610 (water supply planning for large-scale projects).

*Greenfield Monterey Park, LLC*

We represent Greenfield Monterey Park, LLC, the master developer of a portion of the OII Superfund site in Monterey Park, California, on which will be developed a 510,000 square-foot shopping center. The matter includes negotiations of agreements between our client and the landowner, the steering committee, the retail developer and the City of Monterey Park, as well as agreements and the negotiation of a 200-page consent decree with the Department of Justice and the Environmental Protection Agency.

*Hawaii Longline Association*

We represent the Hawaii Longline Association, a trade association representing Hawaii tuna and swordfish fisheries, in pending litigation in Washington, D.C. federal court challenging a biological opinion issued by the National Marine Fisheries Service concerning effects of these fisheries on pelagic sea turtle species. Our representation also includes nonlitigation representation in the ongoing ESA consultation processes concerning effects of the Hawaii fisheries on various species protected under the ESA.

*Keenan Land Company*

We provide litigation and land use counseling for Keenan Land Company, a high-end developer involved in residential and hotel development in Half Moon Bay, Scotts Valley and Hayward, California. The issues include compliance with the California Environmental Quality Act, the Subdivision Map Act, ESA, the California Coastal Act and the Clean Water Act (CWA).

*L.D. McFarland Company, Ltd.*

We assisted L.D. McFarland Company, Ltd. in developing and implementing a strategy to cost-effectively clean up and redevelop a former wood treating site in Milwaukie, Oregon. Through a comprehensive risk assessment and the application of an Oregon law that we helped develop, we were able to convince DEQ to accept a cost-effective remedial action. The site will be redeveloped for commercial and multifamily residential use. L.D. McFarland Company is a wood treatment and preservation company with operations throughout the Northwest.

*The Newland Group*

We represented The Newland Group in obtaining a Section 404 authorization from the U.S. Army Corps of Engineers for fill-in wetlands associated with a residential development. We also obtained approval from the Washington Department of Ecology and the local government, as well as concurrence from the federal government of compliance with ESA. The Newland Group is a developer of residential communities and is based in Vancouver, Washington.

*Oregon Water Resources Congress*

We worked with Oregon Water Resources Congress, a trade organization representing irrigation districts and water-delivery organizations throughout Oregon, to develop an agreement with DEQ that enabled irrigation districts to continue their use of aquatic herbicides while providing protection for natural waterways. The Ninth Circuit Court of

Appeals had issued an opinion requiring irrigation districts to obtain permits under CWA in order to use aquatic herbicides in irrigation ditches. Without the use of herbicides, many Northwest irrigation districts would have been unable to deliver water, thereby putting the irrigated agricultural users at serious risk. The groundbreaking agreement reached between Oregon Water Resources Congress and the DEQ has become a model for subsequent permits and similar agreements.

*Outside In*

We represented Outside In in obtaining final approvals for its youth shelter located in Portland, Oregon. The unusual architecture of the building raised many issues, including constitutional issues under the City of Portland Sign Code, that required careful discussion and negotiation with the city. The building has been identified as "one of the unique and notable buildings in Portland."

*Phillips Alaska, Inc.*

We represented Phillips Alaska, Inc., a subsidiary of Phillips Petroleum Company, in a successful defense against administrative petitions filed under ACMP regarding five North Slope oil development and exploration projects. Prevailing on these petitions in a quick manner was essential to allow the projects to proceed during the limited window of frozen ice/tundra winter conditions.

*Portland General Electric*

We represented Portland General Electric (PGE) in successfully negotiating an administrative settlement with NMFS and the Oregon Department of Fish & Wildlife arising out of the accidental killing of ESA-listed Chinook salmon at a PGE hydroelectric facility. Oregon's largest utility, PGE serves more than 730,000 customers in Portland, Salem and nearby communities.

*Port of Oakland*

We provide ongoing advice and consultation to the Port of Oakland, California in connection with public trust, land title and a variety of water-quality issues arising from Port operations and construction at marine terminals, real estate developments and the Oakland International Airport. The Port owns and operates the airport and the fourth largest container seaport facilities in the United States.

*Port of Seattle*

We successfully defended the Port of Seattle in ESA litigation brought by local organizations concerning construction of a third runway at Seattle-Tacoma International Airport. We likewise assisted the Port in obtaining federal approvals required under the ESA to permit construction of this project. The Third Runway Project is one of the largest public construction projects in the state of Washington.

*Public Water District*

We have advised a large public water district in Washington on developing an ESA compliance strategy. Our work has helped the district avoid potential liability under the ESA as a result of private lawsuits or governmental actions.

*Sabroso, Inc.*

We represented Sabroso, Inc., a Medford, Oregon fruit processor, in obtaining rights to dispose of industrial rinse water on exclusive farm use land. The process contributes to the full use of the water both for fruit processing and as irrigation for a farm crop. Approval was gained through

Jackson County and, in order to confirm the appropriateness of the process, we represented Sabroso in persuading the Oregon legislature to adopt Senate Bill 212, allowing for reuse of such water for crop irrigation.

*SBA Communications Corporation*

We represented SBA Communications Corporation, a leading developer of wireless communications structures, in successfully arguing that conditional land use permits could be issued to infrastructure providers with appropriate conditions. Deschutes County had consistently taken the position that conditional use permits for wireless communications facilities would be issued only to the providers of cellular service. We obtained a conditional land use permit for SBA's LaPine, Oregon site.

*Snohomish River Regional Water Authority*

We represent Snohomish River Regional Water Authority in a water rights appeal before the Washington Pollution Control Hearings Board. The Snohomish River Regional Water Authority is an entity consisting of the Woodinville Water District, the Northshore Utility District and the City of Everett.

*Snowbird Ski and Summer Resort*

On behalf of Snowbird Ski and Summer Resort, we successfully defended a citizen suit challenging the construction of a new ski lift connecting Snowbird with Alta Ski Resort. The suit was filed during the construction phase to block the installation of the interconnecting chairlift. We represented the client to the Tenth Circuit Court of Appeals, which subsequently denied the injunction. Snowbird installed the chairlift and implemented a joint-lift pass program with Alta, making the combined terrain the third largest ski area in North America. Snowbird owns and operates a ski and summer resort in the Wasatch mountain range outside of Salt Lake City, Utah.

*South San Francisco Scavenger Company*

We successfully represented South San Francisco Scavenger Company in zoning and environmental review matters for its development of a 100,000 square-foot solid-waste materials recycling and transfer facility to serve the communities of South San Francisco and Millbrae and the San Francisco International Airport. We were also successful in defeating a subsequent referendum raised against the project.

*Trans-Alaska Pipeline System Owners*

We represent the six direct operating companies of the Trans-Alaska Pipeline System (TAPS), regarding Alaska coastal zone consistency review, ESA consultation with NMFS and the U.S. Fish & Wildlife Service, and essential fish habitat consultation pertaining to a unique renewal process for the federal grant and state lease authorizing the existing TAPS right-of-way. TAPS transports approximately 17% of domestic U.S. crude oil production and 100% of Alaska North Slope crude oil to refineries via an 800-mile crude oil transportation system running from Prudhoe Bay on the North Slope of Alaska to the Port of Valdez. The TAPS owners are pipeline transportation subsidiaries of Amerada Hess, BP, ExxonMobil, Phillips Petroleum, Unocal and Williams.

*Walla Walla River Irrigation District, Hudson Bay District*

We assisted three irrigation districts in the Walla Walla basin in Oregon and Washington in reaching a settlement agreement with the U.S. Fish & Wildlife Service involving alleged violations of the ESA. The agreement enabled the districts to continue to deliver water to irrigators in the basin and put in place a process for ensuring long-term compliance with the

ESA.

*Washington Public Utility Districts Association*

We represented the Washington Public Utility Districts Association as amicus curiae in PUD No. 1 of Pend Oreille County v. Dept. of Ecology, a water rights appeal before the Washington Supreme Court. Washington PUD Association represents 28 nonprofit, community-owned utilities that provide electricity, water and sewer services and broadband telecommunications.

*Client Name Withheld*

We defended an undisclosed client in a federal criminal investigation involving an employee's falsification of monitoring records under a National Pollutant Discharge Elimination System permit. We conducted a comprehensive internal investigation that resulted in the U.S. Attorney declining to prosecute the company. We assisted the company in self disclosure of the matter and in settling a companion civil enforcement action. Based on the company's self disclosure and cooperation, we negotiated an 80% reduction in DEQ's penalty and convinced the agency to drop its economic benefit penalty.

*Client Name Withheld*

We advise the nation's largest luxury motor coach manufacturer on environmental issues at its five Oregon plants. One of these plants was the focus of a multimillion-dollar nuisance and trespass suit brought by its neighbors. We assisted the company in crafting a settlement that satisfied the neighbors' concerns and allowed the manufacturer to maintain its operational levels.

*Client Name Withheld*

We represented a major industrial client with manufacturing operations in Oregon that determined that a change in feedstock unexpectedly resulted in a substantial increase in sulfur dioxide emissions. This triggered the need to submit a joint Title V and new source review permit application and respond to state and federal information requests. As part of this effort, the facility was required to perform a complex best available control technology determination. DEQ initially proposed multimillion-dollar penalties related to the higher emissions. We assisted this client in preparing the application, responding to the information requests, addressing the control technology determination and ultimately negotiating a reasonable penalty.

*Client Name Withheld*

We successfully defended a petroleum refining company in two CWA citizen suits brought in the U.S. District Court for the Northern District of California. The cases presented the question of whether the sale of the facility met the test for "mootness" under recent U.S. Supreme Court precedent on the basis that there was no reasonable possibility that any CWA violations could be committed by the refining company at the sites. We prevailed on motions for summary judgment. The case is now on appeal and is a case of first impression in the Ninth Circuit.

*Client Names Withheld*

Many parts of the Northwest suffered from severe drought conditions during 2001. We assisted a number of clients, including industries, municipalities and private businesses such as golf courses and nursery operations, in obtaining water right diversion point changes, securing back-up sources of water and firming up existing water supplies. We also represented water suppliers in contract negotiations with water users to

address the many unique water supply needs created by the drought.

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# ALASKA STATE LEGISLATURE

Rep. Beverly Masek, Vice-Chair  
Rep. Kelly Wolf  
Rep. Carl Gatto  
Rep. Cheryl Heinze  
Rep. Bob Lynn  
Rep. David Guttenberg  
Rep. Beth Kerttula



State Capitol, Room 124  
Juneau, AK 99801-1182  
Co-Chairs  
Rep. Hugh "Bud" Fate  
(907) 465-2338 fax: 465-3883  
Rep. Mike Chenault  
(907) 465-3779 fax: 465-2833

## House Resources Committee

### MEMO

**To: House Leadership**  
**Fm: Representative Hugh Fate, Chair**  
**Date: February 21, 2003**  
**Re: The Rules in reference to Action on HB 86**

Despite my excused absence at the House Resources Committee Meeting of the above referenced date, it has been brought to my attention that the legal action by the Resources Committee on HB 86, has been rescinded and remanded back to the Committee for further action.

#### Statement of Facts

On Friday, February 21, 2003, the House Resources Committee meet in the assigned room and at the appointed time as noticed and did following an agenda all in accordance to *Rule 23, Legislative Uniform Rules*.

The meeting was called to order and a quorum was established by role call vote with six members present. The first committee action was SJR 4. Following testimony and allowing for public comment the public section of the Resolution was closed. The Committee acted, approving to move the resolution out of committee with attached fiscal notes and individual recommendations by unanimous consent.

Next on the agenda HB 86, which was presented, allowed for public comment, which was closed. Toward the end of that portion of the meeting one member left the committee room because on another obligation. That member had expressed support for the bill. A quorum remained and a motion was made with unanimous consent to move HB 86 out of Committee. There was one objection. A role call vote was taken and a majority of the quorum present voted in the affirmative (4-1). HB 86 was moved from the House Resources Committee with individual recommendations. It is staff's understanding that the one dissenting vote has and continues to refuse to sign and attest to his vote on the question and thereby his presence at the committee hearing, as required.

We're available 24 hours a day to assist you; simply give us a call at 1-800-ALASKAAIR (1-800-252-7522) for Alaska Airlines or at 1-800-547-9308 for Horizon Air. (If calling from Mexico, precede these telephone numbers with 001.) For all changes please refer to your confirmation code.

Refunds for qualifying tickets may be obtained by calling the appropriate toll-free number listed above or by applying at any ticket counter location.

Please review U.S. Department of Transportation Consumer Notices regarding your consumer rights and limitations of liability at: [www2.alaskaair.com/help/faqs/ConsumerNotices.asp](http://www2.alaskaair.com/help/faqs/ConsumerNotices.asp) or simply obtain a copy when checking in.

# ALASKA STATE LEGISLATURE

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Rep. Kelly Wolf



State Capitol, Room 124  
Juneau, AK 99801-1182

**Chair**

**Rep. Hugh "Bud" Fate**  
(907) 465-2338 fax: 465-3883

**Vice-Chair**

**Rep. Beverly Masek**  
(907) 465-2679 fax: 465-4822

## House Resources Committee

### MEMO

**To: Committee Members**  
**Fm: Staff**  
**Date: March 6, 2003**  
**Re: Friday, Mar 7 Meeting**

**Please bring your packets for these two previously heard bills.**

**HB 24 AGREEMENTS ON MANAGEMENT OF FISH AND GAME**

**HB 86 INJUNCTIONS AGAINST PERMITTED PROJECTS**

The plan is to rescind action taken on HB 86. and consider the attached CS.

The information attached to this memo is **CONFIDENTIAL** and/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memo is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

Move and ask unanimous consent the HB 24 (as amended) be moved from the House Resources Committee with individual recommendations.

# ALASKA STATE LEGISLATURE

## House of Representatives

Representative Hugh (Bud) Fate

State Capitol, Room 128  
Juneau, AK 99801  
Phone: (907) 465-4976  
Fax: (907) 465-3883  
Toll Free: (866) 465-4976



Co-Chair Resources  
Member:  
*Military & Veterans Affairs*  
*Oil & Gas*  
*Transportation*

### Sponsor Statement

#### CS for House Bill 86

**"An Act relating to permits issued by the state."**

House Bill 86 will be a major step in getting Alaska going. The language is an addition to the Permit Coordination and Extension statute giving some finality to that established and accepted process.

Many of Alaska's projects are stopped, or don't ever start, even though all of the permits are in place or issued. These projects are on hold because our current system allows individuals or entities to stop a project without a truly legitimate reason.

Adding this section to the existing language means that projects cannot be stopped without grounds. These ground include pertinent new scientific information or newly recognized local traditional knowledge. This means that this information must be new or completely different than what was presented during the permitting process. The only exception will be for Commissioners of the permitting department, who will still be able to put a project on hold for a valid appeal or due to an error in the process.

For Alaska to move forward we must have the ability to get projects started. Once permits are issued, the talk is over and it is time for the work to begin. HB 86 will assure that that happens.

23-LS0349\S  
*Katharine* Kurtz  
3/6/03

**CS FOR HOUSE BILL NO. 86( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE FATE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to permits issued by the state."**

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

3 **\* Section 1.** AS 46.35 is amended by adding a new section to read:

4 **Article 3. Permit Challenges.**

5 **Sec. 46.35.400. Permit challenges.** (a) Work on a project for which a permit  
6 has been issued may be enjoined in a judicial or administrative proceeding only if the  
7 challenge is based on pertinent new scientific information or newly recognized local  
8 traditional knowledge.

9 (b) Nothing in this section shall be construed to prevent the commissioner of a  
10 department that has issued a permit from enjoining, on the department's own initiative  
11 or in response to a valid appeal under (a) of this section, work on a project for which  
12 the department has issued a permit in error.

13 (c) In this section, "permit" means a permit, lease, authorization, license, or  
14 another determination necessary for or related to a construction project or to resource  
15 extraction or removal that is issued by the Department of Environmental

1  
2

Conservation, the Department of Fish and Game, the Department of Natural Resources, or the Department of Transportation and Public Facilities.

While I remain open to other suggestions for improving the Board system, I ask that you remain open to this idea. Bear in mind that since the last time the regional board concept was discussed the salmon crisis has only grown in complexity and intensity.

**4) Balance between sustainable fisheries and environmental lock up of the resource? How will you deal with competing points of view? What about Marine Protected areas?**

Alaska has the best sustainable fisheries management in the United States, perhaps in the world, and we should be proud advocates of our strong record of protecting water quality and essential fish habitat. We should never forget that or let outside interest with extreme viewpoints misrepresent our management accomplishments. That doesn't mean we cannot improve. Indeed, it is the innovative drive of Alaskans that has constantly looked to strengthen and improve our management that has brought us to where we are today.

Sustainable fisheries and environmental protection go hand in hand. It need not be an either/or situation. As your Governor, I can credibly deliver this message to well meaning but misinformed environmental groups who may not know how responsibly we've managed our resources. The first part of delivering this message would be to ensure that Alaska gets credit for all the protective measures enacted since statehood. Many of these measures, such as stream buffers, reduced harvest levels, and no-trawl zones were initiated by fishermen. Just because we didn't call them marine protected areas does not mean that we should not get credit for being proactive and environmentally responsible. We've been doing it right all along and we will continue to do so.

There are some today who advocate setting aside certain waters as the preferred tool for protecting the marine environment, but I don't see it that way. We have many tools to protect the health of Alaska's fish and their habitat. Marine protected areas are only one tool, and often the last, that should be used. Given Alaska's strong environmental track record and sustainable fishery management techniques, it is rarely warranted here.

Anyone advocating more marine protected areas in Alaska must be able to demonstrate convincing scientific evidence that such an extreme action is necessary and not be driven by a simplistic desire to limit commercial fishing.

Paid for by Fran Ulmer for Governor

PO Box 200890, Anchorage, AK 99520-0890 • 907-569-FRAN (3726) • 907-569-1003 (fax)  
Jay Hammond & Janie Leask, Co-Chairs •

**Gubernatorial Candidate Ulmer  
On Convincing Scientific Evidence**

My experience has shown that if we can foster dialogue away from issue positions and toward goals and objectives, the competing points of view begin to fade. Protecting unique ecosystems vital to the productivity of multiple species, such as the Sitka pinnacles, is a goal we share. Sound science and coordinated research can point us in the right direction toward this goal.

We have the best-run commercial fisheries in the world. In fact, our salmon management is certified as sustainable. We should listen to competing points of view, of course, but we don't need to apologize or suffer from wrongheaded lawsuits. Alaska fishermen can be proud of their record as stewards of the resource, and I will work with you to continue to build on that record for the good of the fishery.

**5) What will you do to continue the contribution of hatcheries to the Alaska economy?**

Most Alaskans probably don't realize that in the year 2000, hatcheries produced 34 percent of the statewide commercial harvest of salmon, a total of some 40 million fish.

State supported hatcheries contribute another 7 million fish to the annual sport catch. Hatcheries are particularly important to the Kodiak area, Cook Inlet, Prince William Sound and Southeast. As a Southeast sport fisher, I know about the contribution that hatcheries make to many Alaskans first hand, and I have frequently spoken in support of the hatchery program.

Alaska has learned from problems in the Northwest and elsewhere, and has in place strong scientifically tested techniques for addressing salmon disease and conserving genetic diversity and vigor. Indeed Alaska hatcheries are a model of how to do the job responsibly.

I support legislation such as SB 266 to help hatchery operators weather tight financial times. The ability to refinance loans at lower rates is a good way to free up needed cash for hatcheries and continue their viability.

## ALASKA: MORE THAN JUST A PRETTY FACE?

by Paula Easley, Senior Policy Analyst, Resource Development Council for Alaska

*Is there more to the 49<sup>th</sup> State than incomparable scenery? With much of Alaska federally controlled, non-residents greatly influence decisions affecting it. The U.S. senate will decide whether to tap petroleum resources in ANWR's coastal plain or declare it wilderness.*

Alaska's bigness is mind-boggling. Superimposed, it would cover 20% of the 48 contiguous states. Its Alaska Range boasts 23 peaks over 10,000 feet high, with Mount McKinley reaching nearly four miles high. America's largest glaciers—the Bering and Malaspina, each bigger than Delaware—are here, plus 5,000 others. Bordered by two oceans and three seas, there's plenty of water, with 3,000,000 lakes and 3,000 rivers.

America's largest national forests, the Tongass and the Chugach, are also here. The state is virtually all wilderness. However, if a new state were formed with just the 58 million acres of federal Wilderness, it would be larger than Minnesota, Idaho or Utah—with no roads, structures or development. As it is, Alaska is home to 62% of all federal Wilderness, 70% of national parks, 17% of national forests, and 85% of national refuge lands.

All told, 152 million acres of the state are federal parks, preserves, forests, scenic rivers, recreation and military lands, refuges, and national monuments. Most were withdrawn in the massive 1980 land reclassification. Millions more acres are managed as Wilderness. The legislature withdrew another 8.5 million acres, reflecting Alaskans' concerns for special places. Much remaining land is mountains, icefields or wetlands, unsuitable for development.

Roads access but 12,000 of the state's 586,412 square miles, a railroad crosses 500 miles, and state ferries link primarily Southeastern communities. It has more coastline than all the other states combined, and 80% of the people live on the coasts. Individuals own far less than one percent of the land.

Alaska's tiny population (620,000) discourages instate manufacturing. Most materials, food and equipment come from other states or countries.

Development is hard to come by. Distances from markets, limited infrastructure, high operating costs and other roadblocks daunt most ventures. To be economic, projects must generally be world-class, like Prudhoe Bay. Others are ruled out because they are in, near, or blocked by federal conservation units. Transportation routes affecting key conservation units are forbidden without an Act of Congress.

Natural resources are bountiful: 29% of the nation's proved oil reserves; 20% of natural gas reserves, (excluding ANWR and NPR-A). Possibly half the nation's coal resources, some six trillion tons, are in Alaska. There's gold, silver, zinc, copper, lead, barite, iron, platinum, nickel, uranium, antimony, titanium, chromium, etc., but only the very wealthy

can outlive the "process" of trying to extract them. Many valuable deposits are in areas closed to development.

Through the efforts of countless "Save Alaska" fundraising groups, traditional fishing, forestry and mining opportunities have radically declined. New proposals, even recreation facilities, attract national opposition and environmental lawsuits. With little success diversifying Alaska's economy, unemployment rates remain higher than national averages. High-paying resource industry jobs are replaced with low-paying service jobs, ranking Alaska second-from-last in state growth rates.

Two projects could jumpstart the national and Alaska economies—(1) a natural gas pipeline from Prudhoe Bay to the Midwest, and (2) ANWR development. Yet preliminary studies of a gas line indicate its \$15-20 billion cost is too high. That leaves ANWR.

Prohibiting ANWR development means denying huge economic benefits and jobs to every state. It means more imports, a growing trade deficit, and a major blow to national security. It means putting un-elected special interest groups in charge of Alaska's economy.

Three-fourths of Alaska residents say they live here because of its pristine environment. Three-fourths of its residents also support opening ANWR. They know that, using 21<sup>st</sup> century arctic technology and great caution, ANWR's resource treasures and a pristine environment are compatible. More than 60% of Americans have now reached the same conclusion.

Here's the situation: Unless Americans convince the U.S. Senate to open ANWR, it will become Wilderness, and the greens will have seized control over national energy policy.

If special interests can gang up to prevent development of America's single-most promising oil and gas prospect, in remote Alaska, imagine how difficult it will be to develop energy projects in any other state.

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Permission is granted by the author to reprint this article.

Easley Associates, January 2002

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