



DIVISION OF MINING AND WATER MANAGEMENT

3601 C St., Suite 800
Anchorage, AK 99503-5935
Phone: (907) 762-2163 OR
(907) 762-2575

FAX TRANSMITTAL MEMO

DATE: 10/5/95

TIME: 1:40 PM

PHONE: _____

FAX #: _____

PHONE: ~~907~~ 762-2571

TO: Nico Bus

CO/DEPT: DWR

FROM: Pro Kosch

DIVISION OF MINING AND WATER MANAGEMENT FAX #: (907) 553-1853 OR (907) 562-1384

NUMBER OF PAGES INCLUDING COVER SHEET: 3

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL THE SENDER AS SOON AS POSSIBLE

COMMENTS: Update of ASF Impacts —

we will try to system you a copy also.

*2,200 water rights
2,300 backlog*

Impact Statement, Elimination of the Annual Administrative Service Fee

Background: The Annual Administrative Service Fee (ASF) was established by regulation 4 years ago. The establishment of this fee was in response to the direction of the Legislature in the preparation of the FY93 operating budget. "It is the intent of the Legislature that the Department of Natural Resources review its statutes and regulations to identify opportunities to raise state revenue." DMWM, Water Resource Section, reviewed our laws and promulgated regulations to raise application fees, amendment fees, and other fees associated with the adjudication of water rights and temporary water use permits. In addition, we found that we were providing a service in the administration of water rights once those rights were issued, but were not collecting any funds for these administration duties. The ASF was established by regulation, with many other amendments to our current fee structure, and increased our fee income from less than \$50.K a year to over \$200.K a year. We took a \$300.K cut in FY93 to our operating budget that year and, as required, passed a portion of those costs on to the users of the water resources, *which was the Legislative intent.*

The ASF is charged to partially compensate the Division of Mining and Water for numerous services it provides in developing, maintaining, updating, and administering the State water rights system to those who take advantage of it. The ASF is a classic case consistent with the larger trend in which the users of a resource who benefit from government services pay their way. The ASF is an acceptable means to pass the cost on to the user. In February 1996, DNR will send the ASF bills out for the fourth year. This fee has generated over 90.K dollars per year with very little conflict. DMWM bills about 2200 water rights holders each year; of these, less than 4% of the bills in any given year go unpaid. Our records indicate that only one legislator is opposed to a portion of the ASF because there is no exemption for small-scale agricultural water users. We have received less than 20 letters objecting to the ASF over the past three years. The computer system for billing, monitoring, and tracking the ASF has been developed and in operation for the past four years.

If the ASF is eliminated, the DMWM will receive approximately \$100,000.00 less in GF/PR. This cut to our budget will not provide any additional funds to the State and the Legislature to allocating for other purposes. There is no benefit to the State's general funds or its budget shortfall from the elimination of the fee. The elimination of the ASF cuts necessary public services, for which the users are paying via the ASF. Elimination of the ASF will not provide any benefits to the State.

Impacts on the Public: If the program receipt authority for the ASF is eliminated it would impacts the administration of the water rights program because the administrative tasks, overhead, and tracking of the water rights within the State's system is necessary to maintain the integrity and statutory requirements of the water rights program. The results of the loss of the ASF revenues will result in the layoff of two water adjudicators, one in Fairbanks and one in Anchorage. The Water Resources Section currently has a water rights permitting backlog of over 2300 case files. Through a special backlog processing effort in FY96 we don't expect to see an increase in this backlog but, we also don't anticipate much of a reduction in the overall backlog. A \$100.K reduction will result in further permitting delays and will also expose the state to unnecessary litigation for failure to protect the rights of current water rights holders, the public, and failure to issue permits within a reasonable time. DNR has the constitutional and statutory mandate to determine and adjudicate rights to the use of waters of the State and to administer the Water Use Act. No person may appropriate and use water in excess of 500 gallons per day for more than ten days a year without a permit. Delays in permitting directly result in project development delays and increased cost to the public and private sector. This reduction will also result in delays in the processing of approximately 170 Temporary Water Use Permits issued for water needed for road construction, oil and gas exploration and development, and large mine development and many other economic ventures.

Impact on economic stimulation: Water right and temporary water use permitting delays affect industrial development across the board. Any commercial or industrial development currently operating or proposed to operate in the state does or will require the use of water. The appropriation and use of water without a permit or certificate of appropriation is a class A misdemeanor. More important than this legal requirement is the security of use rights in water necessary to launch the venture and to attract capital.

The Alaska Water Use Act has been in place since 1966. This appropriation system has endured even as society, government, and laws became increasingly complex. The reason for the endurance of the appropriation system is found in the economic goals that the system serves. The system promotes investment by giving security of water use.

Election Districts Impacted: ALL. Water is needed and used throughout the State for public water supplies, tourism, recreation, fish and wildlife; Arctic Slope, oil and gas exploration and development; Interior, agriculture and mining; Southcentral, oil and gas development, seafood processing, mining, and hydroelectric power generation; Southeast, seafood processing, mining, timber production, aquaculture, and hydroelectric power generation. These are all major water uses that require water rights to protect property investment, maximize use for development, and protect the public interest.

Alternatives Considered: Authorization to use a significant quantity of water is constitutionally and statutorily mandated; there are no alternatives but to manage the states water for the maximum benefit of the people. If this budget reduction takes effect, then DMWM could prioritize its water right case file backlog to simply date and file away all applications for water use under 5000 gallons per day. The adjudication of pending applications will be based on location of use, expected conflicts, and quantity requested. This would allow those persons who applied for water rights to use a significant amount of water (as defined by regulation), but, they will not receive a permit or certificate of appropriation and would be considered in violation of state law. DMWM could attempt to amend the definition of "significant amount of water" to exempt water uses of less than 5000 gpd from the application requirement. This would reduce the number of applications being filed and would allow the use of 5000 gpd without violation of the statute. However, the reality of the situation is that many people will continue to file water right applications in order to protect their investment by securing the rights to their use of water and establishing a senior priority date.

Funding Alternatives: The ASF receives approximately \$100.K in GF/PR each year. These funds are used to provide technical service and support to 16,000 water right holders, local governments, and the private sector. DMWM proposes that, in place of decreasing the GF/PR by \$100.K by eliminating the ASF, consideration be given to cutting the GF/PR in the USGS matching funds by \$100.K. This would allow the state's core water right adjudication program to continue, but would decrease the amount of funds available for support and matching programs with USGS. The budget bottom line would be that water right and temporary water use permit backlogs would not substantially increase.