

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING AND WATER MANAGEMENT

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Dear Alaskan:

Progress Report and Request for Comments on the Alaskan Water Management Program

This past winter, spring and summer the Department of Natural Resources (DNR), Division of Mining and Water Management solicited public comment on an evaluation of the existing Alaskan water management program. We emphasized three basic concepts: (1) the water management program is not broken and, that in our opinion, the overall statutory framework is one of the best in the United States; (2) long-term funding for the existing program is not likely; and (3) there is a general perception that there is an abundance of water in Alaska and except for a few places there are no immediate significant water allocation problems.

Our sense of the comments from those who attended the various meetings, workshops and those who commented in writing is that the basic program is OK. However, there were areas within the overall program that streamlining of the existing process could result in some costs savings. At the same time there was no consensus on either how to continue the program without adequate funding or how best to change the management of water if no funding is available.

The long-term fiscal realities of declining oil revenue, combined with the commitment of the Legislature and the Knowles Administration to reduce the overall state budget, leaves little doubt that the existing water management program will have less funding over the long-term. If our prediction about a significant and continuing decline in available funding for the Alaskan water management program is valid, the questions are: 1) Should parts of the existing water management program be suspended as "unfunded mandates" or should these parts be abolished by changing the basic law and regulations? 2) Which parts of the Alaska water management program (or areas of the State) have the highest priority? 3) What is the appropriate methodology to deal with water rights if DNR is unable to adjudicate water rights?

The enclosure summarizes recommendations presented in our request for comment about the future of the existing Alaskan water management program. Each issue is followed by a discussion of that issue and then asks your opinion. Room for additional comment is provided. Some recommendations are dependent upon other recommendations, others are mutually exclusive.

As noted above, there was no consensus about what to do with an under funded program. Accordingly, the Division has subsequently created three "strawman" budget options that all have the common element of no appropriation from the General Fund. Each strawman option is intended to sharply focus attention on conceptual ways to deal with an Alaskan water management program without appropriations from the General Fund. This is because the combined streamlining recommendations presented in the public recommendations attached will not provide a significant budget or staffing savings to DNR.

The first strawman option incorporates the many recommendations and suggestions for better program efficiencies. This strawman option also requires legislative revisions to the existing water management laws and regulations. The other two strawman options require significant legislative and regulation change.

Please note that all three strawman options are for the total water management budget which in addition to the Water Management project, includes funding for the Alaska Hydrologic Survey and for the Dam Safety program.

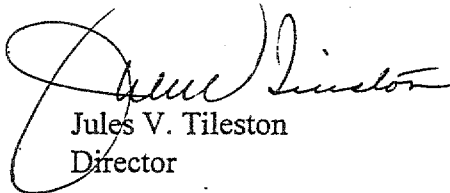
I emphasize the fact that the Department of Natural Resources has not yet determined what its budget recommendations to Governor Knowles and the Legislature will be for the Alaskan Water Resources Section component assigned to the Division of Mining and Water Management. Accordingly,

WE SINCERELY REQUEST YOUR THOUGHTS!

Comments should be to me no later than **October 25, 1996.**

I can be reached by

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Jules V. Tileston
Director

DRAFT RECOMMENDATIONS TO THE COMMISSIONER WATER RESOURCES MANAGEMENT

These recommendations were made by the public, local governments, state agencies, federal agencies, native villages, native corporations, and others during a series of public meetings, public workshops, and public written comments over the past nine months. These recommendations have not been adopted or accepted and should not be interpreted as the views of the Division of Mining and Water Management, or the Department of Natural Resources.

AMENDMENTS TO THE ALASKA CONSTITUTION

1. **Recommendation:** Replace the existing prior Appropriation system with a riparian water rights system in Alaska. **If you own the property, you should own the water that runs through it or is located under it.** **Analysis:** The essential differences between the existing appropriation system established by the constitution and a riparian system are:

RIPARIAN

Ownership of water goes to adjacent land owner.

Rights are land owners regardless of actual use.

Water is shared as common property, and no person has a fixed amount.

No loss of rights for non-use.

Water right remains with land.

No priority of use under water shortage.

Public interest values may not be considered, such as fish, wildlife, recreation, navigability.

Public Trust Doctrine applies.

Changing our water right system would require a constitutional amendment and the revocation of the 16,000 existing water rights in the State. DNR eliminated this alternative prior to starting the water management review process.

Agree _____ Disagree _____
Comments:

APPROPRIATION

Ownership of water based on "first-in time, first in right". The first person to apply for the water and put it to beneficial use has the prior right to the water.

Must put water to beneficial use to have the rights.

Each water rights holder has a clear statement to his or her rights, (amount, use, source, location of use, and priority date).

Water rights may be lost due to non-use.

Water right can be severed from the land, transferred, sold, or leased to other parties or uses.

Use of water under shortage condition based on priority.

Public interest values are considered.

Public Trust Doctrine applies.

STREAMLINING

1. Recommendation: Proposed Amendment to the definition of "significant amount of water" under 11 AAC 93. 970(14).

From: "significant amount of water" means any use of more than 5000 gallons of water in a single day from a single source, or the regular daily or recurring use of more than 500 gallons of water per day for more than 10 days per calendar year from a single source, or the non-consumptive use of more than 30,000 gallons of water per day (0.05cfs) from a single source, or any water use that might adversely affect the water rights of other appropriators or the public interest.

To: "significant amount of water" means the daily or recurring use of more than 5,000 gallons of water in a single day, from a single source, or the non-consumptive use of more than 30,000 gallons of water per day (0.05cfs) from a single source, or any water use that might adversely affect the existing water rights of other appropriators or the public interest.

Analysis: This change allows the use of up to 5,000 gallons per day (gpd) of water without a permit or certificate and without being in violation of AS 46.15.180(a)(1) CRIMES. Currently there are about 12,500 water rights that use 5,000 gpd or less or about 80% of all existing water rights. It should be noted that over the past five years the percent of new water right applications that use 5,000 gpd or less only makes up about 20% of the applications files. This amendment may result in fewer water right applications being filed, and will result in fewer temporary water use applications being filed. Note: The use of water without a water right gives the user no legal standing in the event of a dispute or should there not be enough water to meet existing or future needs.

Agree _____ Disagree _____
Comments:

2. Recommendation: Amend 11 AAC 93.130, Issuance of a Certificate of Appropriation of Water, to allow the Commissioner to issue a Permit and Certificate of Appropriation (Water Right) to a first class city, home rule city, or a borough for the quantity of water currently being used and for a quantity of water that can reasonably be put to use for "PUBLIC WATER SUPPLY" purposes within 20 years of the issuance of the Certificate of Appropriation.

Analysis: This change would establish some preference for future public water supplies as intended by the Alaska Constitution and by Statute (AS 46.15.090 & AS 46.15.150). Amendment to these statutes may also be required. The change will result in fewer applications from municipal public water suppliers and result in fewer amendments and extensions to existing and future permits to appropriate water. The amendment would also add additional security and certainty to a municipal public water supply water right.

Agree _____ Disagree _____
Comments:

3. **Recommendation:** Amend AS 46.15.145(f) and 11 AAC 93.146(d)(2) and eliminate 11 AAC 93.147. These statute and regulations require that a Reservation of Water (instream flow) be reviewed once every 10 years to determine if the purpose and findings for the reservation still apply.

Analysis: The elimination of the 10-year review of instream flow reservation is a valid option, but as water resource managers, it would be better to subject all water rights to a ten-year review to assure that the water is still being used in the quantity, for the stated purpose, and from the source it was originally granted. As a management tool, this would eliminate those water rights that had been abandoned, it would allow for ownership records to be updated, and where necessary assure that the water user has the rights to the quantity of water actually being used. In the long run, a review system that allows for management and upkeep of files would save the State money in the future. In reality, this would require additional work and funding which would be contrary to current management goals.

Agree _____ Disagree _____
Comments:

4. **Recommendation:** Develop a general permit that combines the permitting processes of the Department of Natural Resources (quantity), the Department of Fish and Game (habitat), and the Department of Environmental Conservation (quality).

Analysis: A process that combines the public review, public notice, adjudication, and permitting into one process has a lot of merit and should be considered in a joint process with all three agencies, and the public. This type of change is beyond the scope of what DNR can accomplish on its own regarding any statute or regulation changes. The Commissioners of DNR, DEC, ADF&G should establish a task force of the three agencies, and the public, to identify the major components of a combined water use decision process. This task force should also consider ways to integrate the state's process with the current authority of local governments (Title 29 authority).

Agree _____ Disagree _____
Comments:

5. **Recommendation:** Combine the water programs of the Department of Natural Resources with the water programs of the Department of Environmental Conservation and have one department be responsible for the management of water (quality and quantity).

Analysis: This type of change is beyond the scope of what DNR can accomplish on its own, regarding any statute or regulation changes. The Commissioners of DNR and DEC should establish a task force, that includes the public, to identify the major components of a combined water section.

Agree _____ Disagree _____
Comments

6. **Recommendation:** The adjudication of water rights should be based on priority of risk, by major river/stream drainage.

Analysis: When there is a backlog of applications DNR has sometimes prioritized the adjudication of water right applications by balancing the applicants need (financing, the status of other permit decisions needed before the water can be used, expected conflicts over quantity, and other reasons for expediting an adjudication) within it's existing funding. This method of prioritization allowed DNR to process the applications for larger projects, environmentally sensitive projects, and time sensitive projects, but results in a backlog of less important applications. There are very few areas with current water availability problems or conflicts that the risk associated with the adjudication of a water right is high. Only in areas such as Anchorage hillside, Eagle River Valley, Ship Creek, Chena Ridge in Fairbanks, Gold Creek in Juneau, and a few others around the state would the risk be high, and these areas already receive special attention as described above.

Agree _____ Disagree _____
Comments:

7. **Recommendation:** The adjudication process should be based on a watershed approach. The adjudication of water right applications should be given priority where there is an existing watershed evaluation or plan in progress. In areas of high risk due to limited water supply or public interest concerns, DNR should start the watershed plan.

Analysis: There are no DNR watershed plans and none are currently funded. However, DNR has been working with ADEC, and other state and federal agencies to develop a state watershed approach and framework document under a federal funding grant from EPA. This document describes how DNR can identify watersheds it feels would be good candidates for a watershed plan, and if appropriate, with public participation start the watershed process, including the water right adjudication process. The concept is very good but state and federal funding to complete comprehensive watershed management plans for significant parts of Alaska may be a problem.

Agree _____ Disagree _____
Comments:

8. **Recommendation:** Establish a special water management area (SWMA) where there are existing water supply problems or public interest concerns.

Analysis: Document public concerns and water supply problems and coordinate with interested public, municipal, state and federal agencies. Present the concerns to the legislature with a specific funding request to address the situation. If problems are significant enough for specific legislative funding, the hydrology and water rights concerns would be addressed. If funding is not granted, the SWMA designation is revoked. Although this recommendation has merit, it would be an additional cost to DNR to establish the SWMA and document the problems and concerns. A method to designate an SWMA could be developed by DNR for use by the public, municipalities, special interest groups, and others to document the problems and concerns prior to involving DNR or requesting legislative funding. This concept could tie in closely with the watershed and major river drainage recommendations found in numbers 6 & 7.

Agree _____ Disagree _____
Comments:

9. Recommendation: Amend the Statutes to include an instream flow reservation on all water bodies with anadromous fish.

Analysis: Amending the statute would create a reservation of water (instream flow or lake level water right) in all water bodies of the state with anadromous fish, and in doing so, establish a priority date which would be senior to all future water users. This would eliminate the need to spend any effort to document or adjudicate the quantity of water needed for anadromous fish streams, assuming a percent of the stream flow is specified in the amendment. An applicant requesting to appropriate water from an anadromous stream would have to quantify the reservation of water in order to determine if there would be water available for the new proposed use. With this amendment, the reservation of water and the priority date, all future water needs would be subject to the senior water rights established by the reservation of water for all anadromous streams. If the ten year review of reservations is eliminated as proposed in Recommendation 3 there would be no way to determine if a reservation is still necessary. In 1990, the State Legislature failed to pass a similar bill to create a reservation of water for all anadromous streams. Under current Statute (AS 46.15.145) the state, an agency or a political subdivision of the state, an agency of the United States or a person may apply to reserve sufficient water to maintain an instream flow. If an instream flow for a specific stream is important enough to obtain the water rights, then an existing process is already in place.

Agree _____ Disagree _____
Comments:

10. Recommendation: Establish a process in regulation that allows the Department of Natural Resources to issue general permits (temporary water use permits) for construction and other temporary camps where the water use is 30,000 gpd or less.

Analysis: The general permit (GP) under the authority of a temporary water use permit (TWP) could be granted for statewide or regional use of water and would include the necessary conditions to protect current and future water right holders and the public interest (fish and wildlife, recreation, aesthetics, navigation, etc.). A TWP could be established through a regulation amendment under 11 AAC 93.210 and 11 AAC . 93.220. This amendment would require public and agency notice of the proposed GP and finding under the public interest criteria AS 46.15.080(b). The GP would not be binding on ADF&G or ADEC. The user of the GP would still be required to obtain the necessary authorizations from these two agencies and if the proposed camp is in the Coastal Zone a consistency determination may still be required. The establishment of a GP that covers all resource agency permits and the requirements of the Alaska Coastal Management Program is out of the scope of these recommendations.

Agree _____ Disagree _____
Comments:

11. **Recommendation:** Establish a billing system where the Administrative Service Fee is billed every five or ten years rather than yearly.

Analysis: A five or a ten-year billing cycle would save both the water right holder and the State money in the administration of the bills. One problem DNR would likely face is keeping up with address changes; after five years, finding the correct address or in many cases the new owner of the water right, if the property changes hands, could be very time consuming. For public and industrial water users it could result in a savings of time and effort. The other problem is the fact that these funds are considered program receipts which DNR is allowed to use for its water program only in the year they are received. If the receipt received in year one was for five years of bills, there is no current method to carry over the funds for use during the following four years.

Agree _____ Disagree _____
Comments:

12. **Recommendation:** Use the permit condition authority of the Water Use Act to issue a permit to appropriate water with general, or broader range of conditions instead of holding up a permit to appropriate water for such things as land use authorizations, rights-of-way, detailed engineering and environmental studies. If the proposed project falls through due to other agency permits, or adverse feasibility studies, the water permit can be closed.

Analysis: Currently DNR issues a Permit to Appropriate Water when it's been determined that the proposed use of water is in the public interest and meets all the requirements of the existing statutes. A review of the regulations and DNR's condition authority to determine if streamlining the permit process, without putting the issued permit in a limbo type situation is possible.

Agree _____ Disagree _____
Comments:

13. Recommendation: Create a separate water rights application for water uses under 5,000 gpd.

Analysis: If the use of 5,000 gpd is exempt from applying for water rights (*See recommendation number 1 regarding the definition of a significant amount of water*), a simplified water right application could be developed that would serve as the permit or certificate of appropriation by simply signing (by DNR) the application after it has been accepted for completeness, date stamped (priority date), assigned a LAS identification number, and the data entered into the water rights computer system. The signed application would be returned to the applicant and serve as a Permit to Appropriate Water with an expiration date and an attachment of standard conditions. If the water was already perfected (in use) the applicant would sign a "Statement of Beneficial Use" which would be part of the application. The application would be signed by DNR, notarized, and would serve as the Certificate of Appropriation (water right). The applicant would be required to record the document in the appropriate recording district. If the applicant was first issued a permit, once the permit had been perfected, the application is returned to DNR with the signed "Statement of Beneficial Use" and DNR would sign and notarize the permit and it would then serve as the Certificate of Appropriation (water right). The water rights holder would be responsible for recording the document in the appropriate recording district. DNR would update the water rights computer system.

Agree _____ Disagree _____
Comments:

Of the original five alternative management proposals presented at the public meetings the following recommendations were received:

14) Recommendation: Status Quo. Maintain the water rights program as it is currently administered.

Analysis: Due to budget restrictions DNR is not currently able to fully comply with the requirements of the Water Use Act. Given the increasing demand for reducing general fund expenses, how would this be funded?

Agree _____ Disagree _____
Comments:

15) **Recommendation: Modified Status Quo.** Minor amendments to exempt the use of up to 5,000 gpd of water for filing for water rights; amendment to allow first and second class cities to obtain water rights for current and future public water supply uses; and closer coordination with cities and boroughs in the issuance of water rights and general water management. (See recommendation number 1 about the definition of a significant amount of water and recommendation number 2, water rights for public water supplies). Adopt other house keeping amendments to the regulations that could streamline the adjudication process. No major changes to the Water Use Act.

Analysis: As with the status quo, the long range funding will likely not be available. How would this be funded given increasing demands for reducing general fund expenses? SEE STRAWMAN #1

Agree _____ Disagree _____
Comments:

16) **Recommendation: Transfer Authority to Local Governments**

Analysis: Turn over water rights authority and responsibility to the local governments for all water rights except those involving federal government applications, federal reserve water rights, instream flow reservation, and request for water use greater than 30,000 gpd from a surface source and 100,000 gpd from a groundwater source. This was a very unpopular alternative with local governments that participated because they felt it was an unfunded mandate and the responsibility of the State. Others commented that many local jurisdictions share watersheds with other local, state, federal jurisdictions.

Agree _____ Disagree _____
Comments:

17) **Recommendation: Court Decree System**

Analysis: Transfer all water rights authority to the Alaska Court System. The courts would have the authority to determine water rights and make the best interest findings. DNR would have staff for technical support only. This was a universally unpopular alternative.

Agree _____ Disagree _____
Comments:

18) **WATER RIGHT REGISTRY SYSTEMS:** The following five registry systems are similar, the major differences have to do with the quantity of water. 18a and 18b only address uses of less than 5,000 gpd and 18c, 18d, and 18e address water quantities of 100,000 gpd groundwater and 30,000 gpd surface water. Other differences deal with adjudication by geographic location or statewide, administrative processing (applicants or DNR responsibility), and public interest determinations.

18a) **Recommendation:** Establish domestic water rights by individuals recording (Registry) a standard form (DNR provided) at the state recorder's office. No adjudication is needed until a dispute arises. A court or arbitrator can be used, at the affected parties expense, to settle.

Analysis: Do you support a registry system for individual domestic water rights where there is no adjudication and the individual domestic use of water is assumed to be in the public interest? Currently the process to issue a domestic water right takes about an hour unless there is a water availability shortage or the use is controversial. Most of this time is spent establishing the water rights record on the Land Administrative System, Water Subsystem. This electronic data system allows for fast retrieval of water rights information (source of water, quantity, water use, locations of water use, take points, priority dates, status of the water rights, water right holders name and address) and is used to locate senior water right holders when notice is required. The recorder's office is not tied into the Water computer system. If a registry system is established through the **recorders office**, a computer link to the water subsystem will need to be established. Note: If the recommendation to amend the definition of a significant amount of water is changed and the use of 5,000 gpd is exempt from obtaining a permit or certificate, the current process now used on applications for 500 gpd or less can be used on applications up to 5,000 gpd.

Agree _____ Disagree _____
Comments:

18b) **Registry System:** Do you support a system that allows for a registry of an application for water rights, with the Water Management Section, where the use dose not exceed 5,000 gpd and when the water rights are adjudicated only when a conflict between users arises or when a water right is needed for financing or other purposes? DNR would conduct the adjudication and make the final finding prior to issuance or denial of the water right. A Statute amendment (AS 45.15.180) would be required to allow for a registry water right to use water without a permit or certificate of appropriation unless the definition of a significant amount of water is amended to include only the use of water more than 5,000 gpd. (*See recommendation number 1 about the definition of a significant amount of water*) This is similar to recommendation number 18a, except that DNR would try to address disputes prior to any court action.

Agree _____ Disagree _____
Comments:

18c) **Registry System:** Do you support a system that allows for a registry for all water uses under 100,000 gpd from a groundwater source and 30,000 gpd from a surface water source regardless of the use and geographic location? A registry would be conducted through DNR, Division of Mining and Water Management. All water right information, (quantity, point of water use, point of water take, purpose of use, applicants name and address, and other pertinent information) would be entered by DNR and stored in the existing water rights computer system. The adjudication would take place **only at the request of the applicant for financing purposes, other permit requirements (federal, state, local), or when a conflict arises.** The total adjudication cost would be the responsibility of the applicant. Use of consultants to conduct the procedural processing (notice to agencies, prior appropriators notice, public notice, hydrologic data collection and pertinent studies) would be allowed. A final finding would be completed by DNR. Where no adjudication is conducted due to lack of conflicts or applicants need, no public interest or public trust determination is made. A Statute amendment (AS 45.15.180) would be required to allow for a registry water right to use water without a permit or certificate of appropriation if the adjudication of the actual water rights are not conducted until a need arises. DNR would still be responsible for the adjudication of federal government applications, federal reserve water rights, instream flow reservation, and request for water use greater than 30,000 gpd from a surface source and 100,000 gpd from a groundwater source. Is the surface or groundwater quantity too low or too high?

Agree _____ Disagree _____
Comments:

18d) **Registry System:** The same as 18c above, except the registry system would only apply to areas outside of specific geographic areas where water availability problems may become a reality or where there currently exists water availability problems or where a critical management area is established by DNR in accordance with 11 AAC 93.500-540. DNR would be responsible for all adjudications within the special designated areas and for the adjudication of federal government applications, federal reserve water rights, instream flow reservations, and request for water use greater than 30,000 gpd from a surface source and 100,000 gpd from a groundwater source. Is the surface or groundwater quantity too low or too high?

Agree _____ Disagree _____
Comments:

18e) **Registry System:** The same as 18c above, except the water right adjudication would take place in the order the application was received, and the applicant would be responsible for the procedural processing (notice to agencies, prior appropriators notice, public notice, hydrologic data collection and appropriate studies) of the application. Upon DNR's receipt of the procedural processing information and if no adverse comments were received the appropriation of water would be found to be in the public interest and the permit or certificate would be issued. If adverse comments were received, the adjudication would be completed by DNR staff and a final finding would be issued prior to the issuance or denial of the permit or certificate. DNR would still be responsible for the adjudication of federal government applications, federal reserve water rights, instream flow reservation, and request for water use greater than 30,000 gpd from a surface source and 100,000 gpd from a groundwater source. Is the surface or groundwater quantity too low or too high?

Agree _____ Disagree _____
Comments:

WHO PAYS?

1. **Recommendation:** Determine a method of separating the cost of a water right adjudication (computer entry, notice to other water right holders, public notice, and issuance of the permit or certificate) from the cost of protecting the public interest (fish and wildlife, recreation, aesthetics, navigation, parks, etc.). Once done, the applicant pays the cost of adjudication and the State (general funds) pays the cost of protecting public interests.

Analysis: The acceptance of an application, computer entry, notice to other water right holders, public notice, and issuance of the permit or certificate are fixed cost. Public interest determination depends on the water right request and the potential effects of that appropriation on the public interest. The fixed costs are the application costs, and existing application fees were determined based on the average cost of an adjudication with the quantity of water being the variable. In all cases a public interest determination is made prior to the issuance of the permit or certificate of appropriation. For water uses less than 5,000 gpd the public interest determination is done without public or agency notice. The actual adjudication cost often exceeds the application fee, but more often the location not the water quantity of the proposed appropriation is the reason for higher cost. DNR currently receives about \$45,000 in application fees a year which covers only a portion of the actual cost of the water right adjudication function. All applicants, except other state agencies, are required to pay an application fee. State agencies apply for about 15 water use authorizations a year. Most water right applications are from areas without a water shortage or competition for high value water uses. Currently DNR has the authority to charge an additional water right application fee if the actual cost of an adjudication exceeds the original application fee. At present this authority is used only for large mining projects. This still doesn't address who pays the cost of protecting the public interest? Should it be the state agency responsible for the management of the public interest in question? An option would be to collect the full cost of the adjudication and have the responsible state agency absorb the cost for public interest determinations as part of that agencies permitting decision. For example, ADF&G could do the public interest aspect for fish, game and subsistence use as part of its existing Title 16 (Habitat) permit.

Agree _____ Disagree _____
Comments:

2. **Recommendation:** Amend the regulations to allow a consultant or applicant to conduct the procedural portion of the adjudication (conduct public notice, conduct prior appropriators notice, notify the appropriate state and federal agencies, collect and evaluate all necessary hydrologic data, conduct appropriate environmental studies to address state and federal agencies concerns) and file the completed package with DNR for review, public interest determination, and issuance or denial of the Permit to Appropriate Water.

Analysis: This process was recommended as an alternative to DNR conducting the full adjudication. For large projects, most of what is included in this recommendation currently is already required of the applicant. Under this recommendation the consultant would access electronically the DNR water rights databases to obtain prior water rights holder's name and address, and the consultant or applicant could prepare and mail out all required notices, prepare draft responses. The adjudication process by DNR, Water Management Section would then involve the review of the project data, studies, comments, and recommendations from the public and agencies, and the final public interest determination. Shifting the burden of notice to the applicant would save DNR time in the long run. Some water right applicants may not be willing or able to incur the added cost or to undertake the task.

This process would require DNR involvement in pre-application meetings, and the one time development of an instruction packet regarding appropriate notice requirements. The LAS, water subsystem is designed to locate prior water right holders, and would have to be protected to allow for public use without the ability to change existing information. Keeping the current system updated and accurate would be essential to ensure proper notice is given.

Agree _____ Disagree _____
Comments:

3. **Recommendation:** Establish a system of State licensed water right examiners.

Analysis: It was not clear from this recommendation what a state water right examiner would do. The State of Washington has water right examiners that conduct field inspections and document the actual use of water and the adequacy of diversion works, prior to the permit holder being allowed to apply for the certified water right. This could also relate to recommendation number 2 above, which would allow the applicant or a consultant to conduct the procedural portion of the adjudication. This type of non-state examiner might also be used to resolve disputes under any of the proposed registry options.

Agree _____ Disagree _____
Comments:

4. **Recommendation:** Replace the Administrative Service Fee (ASF) with a water user fee. The ASF is not a fair way to collect revenue from water users, only the larger water users are required to pay a fee for water management. Everyone should pay the \$50.00 yearly fee, or no one should pay the fee.

Analysis: The ASF was never meant to be a water user fee, it was established to recover funds spent on administrative tasks associated with existing permits and certificates of appropriations. For this reason, the domestic water use of less than 1,500 gallons per day was exempted from the fee, as the administrative tasks associated with domestic files on a yearly basis was minimal. It has been suggested in the meetings and workshops that the ASF fee be eliminated in favor of a Water User Fee based on the quantity of water permitted or certificated. A water user fee would require all water rights holders regardless of the quantity of the water right to pay a user fee based on the quantity of water used. An example would be that a use of water less than 5,000 gpd would pay \$25.00 per year, and a water use of between 5,001 gpd and 45,000 gpd would pay \$50.00 per year, any water use over 45,000 gpd would pay \$1.00 per acre foot (1 acre foot equals 325,851 gallons of water), public owned hydroelectric water use \$.25 per acre foot, and nonconsumptive placer mining water use \$0.25 per acre foot. SEE STRAWMAN # 1.

Agree _____ Disagree _____
Comments:

MANAGEMENT RECOMMENDATIONS

1. **Recommendation:** Allow for time and effort to be spent doing education and PR for the water right program. In order for people to become interested in the management of the State's water resources DNR needs to do a much better job of educating the public and the legislature. Make sure the public knows about the successes and failures of the program; if the public never hears anything they assume there is nothing to get excited over and everything is working well. Use the technology available through the INTERNET system, establish a home page. Seek support from municipalities and industry. Comment made in Anchorage, Juneau, and Susitna workshops.

Analysis : A good education program has to be done from outside the department to really be effective. Not only would this appear to be "self serving," but would take time away from adjudicating water rights and would cost additional funds.

Agree _____ Disagree _____
Comments:

2. **Recommendation:** The State should consider the future cost of water rights and water management as it relates to the cost today.

Analysis: The essential objective of this ongoing outreach project by the Department is to identify risks to water users in Alaska and to the public interest. A primary assumption by the Department was that the existing water rights and management system was OK; DNR just does not foresee adequate funding to meet its requirements. Comments to date have not disputed that assumption. Funding for a study of the risks involved in changes to the "Water Use Act" and the economic consequences of the proposed changes on the current and future economy of Alaska is not anticipated.

Agree _____ Disagree _____
Comments:

3. **Recommendation:** Hire an outside expert on water rights and have him or her review the existing water rights system in Alaska and make recommendations on how we can improve the current system.

Analysis: See Management Recommendation number 2.

Agree _____ Disagree _____
Comments:

4. **Recommendation:** Form an advisory committee or board to assist in the development of recommended changes to the Water Use Act. This board should be made up of public members, appointed by the governor/commissioner, who represent water users of the State.

Analysis: Developing recommendations for changes to the Water Use Act is what DNR has been doing over the past 10 months. Funding for such an advisory committee or board is questionable. Staffing such an organization would take time away from the application backlog and streamlining.

Agree _____ Disagree _____
Comments:

**OTHER RECOMMENDATIONS OR COMMENTS THAT WE MAY HAVE OVER LOOKED OR
THAT YOU FEEL WOULD BENEFIT THE OVERALL REVIEW PROCESS.**

These last three recommendations (STRAWMAN 1, 2, & 3) were subsequently developed by DNR as discussion documents regarding various ways of delivering DNR's water management responsibilities while also recognizing the State's overall revenue forecast.

NOTE: We emphasize the fact that the Department of Natural Resources has not yet determined what its budget recommendations to Governor Knowles and the Legislature will be for the Alaskan Water Resources Section component assigned to the Division of Mining and Water Management.

FY 1998 Water Resources Section's Budget: **STRAWMAN 1** -- *(A) Legislatively create a water user fee as a 6i resource; and (B) Provide the legislative and regulatory streamlining features that come out of the ongoing Division outreach program. This is basically a modified Status Quo System except the operating funds would be generated through user fees.*

Legislative concept is a sliding scale similar to that developed for water exports. Total estimated revenue to the General Fund (GF) is \$3 to \$7 million annually excluding state entities and whether there are discounts for uses such as hydroelectric power and high Alaskan employment sectors when deemed in the public interest.

Category A annual fees -- \$25/year for all water rights under 5,000 gpd. (12,500 water rights = approx. \$305,000 annually to the GF.)

Category B annual fees -- \$50/year for all water rights between 5,001 and 44,600 gpd. (1,100 water rights = approx. \$55,000 annually to the GF.)

Category C annual fees -- \$1/acre foot of water. (1,100 water rights with 16.8 million acre feet = approx \$6.7 million to the GF if state entities, such as Fish and Game, are exempt. If \$0.50/acre foot then \$3.4 million.)

The individual home or lodge owner with a water right from a well stream or lake and most small businesses would be under category A. Community water systems serving a combination of less than 90 homes and/or small businesses, and most placer mines using a suction dredge or small sluice box system would be under Category B. Whereas, businesses such as seafood processors, large fish hatcheries, large in-stream flows, large municipal water supply, hydroelectric projects, large agricultural enterprise, pulp mills, oil and gas development and processing would be under Category C. Water export fees would remain essentially as they now exist for large exports.

Pros

Cons shown in STRAWMAN 2 & 3 are not appropriate.

If treated as a 6i concept the Permanent Fund revenue is increased.

Most other water application, admin. service fees and other water right related fees would be abolished.

Promotes water conservation and leaves water available for future allocation for beneficial uses that today are speculative.

Spreads the costs as a small increment to secondary users such as customers of large municipal water supplies and hydroelectric generation facilities.

Would be similar to the existing fee structure for water exports under 11 AAC 05.010(a)(8)(P).

Cons

Category B and C users will pass costs on to customers. Increased costs may affect ability to market the particular service for large water users in some export fields.

Increased fees by oil and gas producers and transportation companies such as Alyeska Pipeline Service Company will be deducted as a cost that also will reduce the revenue stream to the Permanent Fund. The extent of any such reduction is not known, but is expected to be small.

Category C users will urge Legislature to exempt or significantly reduce any fees.

Annual fees are onerous unless there is a recognized benefit; fees = taxes.

Results in an increased fee for low volume and low income water users who are now exempt from additional fees if water right is less than 1,500 gpd.

No defined interest group to support legislation, especially if the result is an annual cost to all water users.

Agree _____ Disagree _____
Comments

FY 1998 Water Resources Section's Budget: STRAWMAN 2 -- (A) Eliminate all General Funds (\$800,000); (B) Retain Dam Safety.

Pros

Pros identified in STRAWMAN 3 apply except as noted below.

All work will be done on the basis of user pays within the existing authority to collect \$437,700 in funds other than GF (GF/Program Receipts, Interagency Authorization, and Federal funds). All dam safety work will be on basis of user pays through increased fees for processing Dam Safety applications and inspections. This is estimated to be \$130,000 for FY 97.

Staff of one professional.

Public safety elements of all existing and future jurisdictional dams continue.

Projects involving new dams will have a definitive decision process that reduces potential litigation and delay.

Cons

Cons identified in STRAWMAN 3 apply except as noted below.

Clerical/admin. support absorbed into existing funded positions in other programs.

Responsible parties for the existing jurisdictional dams and for future jurisdictional dams will have to pay the full costs of the dam safety position.

Agree _____ Disagree _____
Comments

Water Resources Section's Budget: STRAWMAN 3(A) No General Fund appropriation or program receipt authority; (B) Abolish Water Use Act, Dam Safety and Alaska Hydrological Survey legislation and regulations; (C) Enact legislation for a water right registry system for beneficial consumptive uses of water

Pros

DNR budget authority for \$1.2 million; and the estimated funding of \$260,000 by other state agencies not required.

\$800,000 DNR's GF available for reallocation.

Costs shifted from State to local government, courts, and user.

17 full time occupied positions abolished in DNR and two positions in DFG that now make instream flow applications and review water use applications would no longer be needed. Reduced work load in DGC, AG, and ADEC from water right application and coastal zone consistency reviews.

LAS water right data base and other water data bases entries/revisions and updates not needed.

Adjudication of available water and any public interest goes to court or arbitrator, with losing party paying.

Fees eliminated.

14,000 existing holders of water rights have significant value since there will be no more water rights with both an adjudication and a public interest finding.

Costs associated with periodic technical reports for 80 jurisdictional dams eliminated.

Cons

Federal Reserved Water Rights (ANWR, Federal Refuges and Parks especially) can only be challenged by the State in court. Other litigation where the Constitutional mandate for "public interest" is an issue will involve the State. Lawyers are expensive and must have technical support from hydrologists and biologists that are no longer available. There is no one to evaluate or supervise consultant reports.

\$170,000 water/dam applications and administrative service fees not available for appropriation.

Refund of estimated \$30,000 one time refund for pending applications on July 1, 1998.

Estimated long-term annual loss of \$500,000 from water exports to the general fund.

ADF&G estimates an additional cost of \$350,000 for expanded Title 16 permitting and monitoring.

Any controversial future road, airport, port, mining, forestry, hydroelectric, flood control, food processing, fish hatchery, water export or municipal/domestic water supply project not in the existing 14,000 approved water right category will be subject to litigation and project delay on basis of no public interest determination which is required by the Constitution.

Instream flow reservations to protect high value public resources are eliminated.

No comprehensive data base for existing and future water use or hydrological surface and ground water information.

Safety requirements for 80 existing and all future "jurisdictional" dams left to responsible party associated with the dam.

Approximately 20-50% cost increase to DNR, DFG, DOT and DEC for water lab work and for private hydrologic and dam safety consultants.

Agree _____ Disagree _____
Comments