

REVIEW OF THE DIVISION OF MINING AND WATER MANAGEMENT,
WATER RESOURCE SECTION'S WATER RIGHT ALLOCATION SYSTEM,
WITH RECOMMENDATIONS TO THE COMMISSIONER OF THE
DEPARTMENT OF NATURAL RESOURCES



JANUARY 21, 1997

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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January 27, 1997

Dear Alaskans:

Over the past year the Division of Mining and Water Management has been evaluating the policy, procedures and cost of allocating water through existing water rights systems. This outreach program to our water customers started because (1) the downward budget trend over the past 15 years has reached the point where another major reduction will no longer make existing program goals and legislative mandates achievable and (2) a realistic look at future state revenues reveals no hint that the continued downward budget for the water management will change.

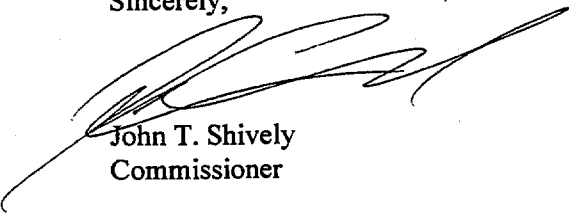
The attached report presents the results of a series of public meetings and workshops as well as an extensive outreach program to find out what water users and the public (state and federal agencies, state legislators, private sector, native interest, environmental interests, and the general public) consider important.

Based on strong and almost unanimous comments, it is the department's intention to make no major changes to the fundamental concept for water allocation established in the Alaska Constitution, prior appropriation doctrine (first in time = first in place). We do propose going to make the existing system more efficient and user-friendly with a series of streamlining regulation changes. It is important to note, however, that the basic water program will require a staff and budget somewhat near the current level, a minimum threshold. Significant changes, such as identified in the "strawman" scenarios would be very likely, if funding does not meet this assumption. A more detailed discussion of the proposed amendments and policy changes are discussed in this report.

The regulation formulation process will be a public process that involves all the parties that participated in the initial water management review process and anyone else who wants to participate.

I would like to take this opportunity to thank all of the people who participated over the past year in the evaluation of the water allocation decision process because this report reflects a lot of time and effort by reviewers. Thank you, and I hope you will continue to work with us as we proceed with the development of new regulations to better streamline the existing system.

Sincerely,



John T. Shively
Commissioner

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EXECUTIVE SUMMARY

The Water Resources Section of the Division of Mining and Water Management (DMWM) has seen a 78% reduction in general funds and a 73% reduction in staff over the past 15 years. During this same time period, the Water Management Unit (water rights adjudication) has seen a 100% increase in the number of water rights filed with the majority being filed for commercial, industrial, and public and community water supplies.

This continuing long term trend is expected to continue. Therefore, a review of the entire water allocation system was started. In January 1996 DMWM began a series of public meetings (Anchorage, Fairbanks, and Juneau), and public workshops (Anchorage, Fairbanks, Juneau, Delta Junction, and the Upper Susitna/Willow/Trapper Creek). In addition presentations were made to the Soil and Water Conservation District's (Natural Resources Conservation District's) annual meeting, Alaska Center for the Environment meeting, American Water Resources Association, Alaska Section's annual meeting (½ day panel discussion on the water management alternatives), and many individual and small group discussions. A series of progress reports, recommendation reports, and a recommendation questionnaire was sent to participants, interested individuals, organizations, and legislators.

During this public process, the following Vision Statement, Goal, and Objectives were developed.

VISION STATEMENT

Establish an affordable Water Right System that serves the public now and well into the future.

Assumptions:

- * Maintain the Constitutional Doctrine of Prior Appropriation, (First in Time- First in Right);
- * Everyone has the opportunity to obtain a water right, regardless of water quantity; and
- * The state should continue oversight for all water rights, including; federal reserve water rights, federal water rights, instream flows, and large out-of-basin withdrawals.

GOAL

A water right is a property right that is established in accordance with the Alaska Constitution, Water Use Act, and regulations. Review the system of allocating water rights and fees. Determine if it can be accomplished more efficiently, less costly, while continuing to protect the public's interest.

OBJECTIVES

Review current laws and regulations and determine if they need amending. If so, where, and for what purpose. Balance water management goals and objectives with budget and staffing.

To assure continuing opportunity for meaningful public input as changes are proposed to existing statutes and regulations, a public process will be initiated to review regulation and policy changes the department proposes to implement in order to archive the goals and objectives of the past year's work.

FINDINGS

1. No constitutional amendment.
2. No statutory changes necessary as long as budget and staffing levels' approximate FY97 budget.
3. Revise existing regulations and water allocation decisions to streamline and make the process more efficient and user friendly. These include:
 - a) Redefine 11 AAC 93.970(14) "significant amount of water" which will exempt water users of 5,000 gallons per day (gpd) or less from the requirement to apply for water rights. This proposed change would not preclude or hinder anyone from applying for water rights regardless of the quantity of water needed;
 - b) establish a single family domestic water right (500 gpd or less) through a single page registry;
 - c) establish a simplified water right application and a registry filing system for water uses under 5,000 gpd;
 - d) establish a general permit (GP) for temporary water use of 30,000 gpd or less associated with construction, mining, timber, and other temporary camps;
 - e) amend regulations to allow for a first or second class city or borough to obtain a long term permit (20 years) or certificate for current and identified future public water supplies; and
 - f) establish a procedure for "qualified" applicants and consultants to conduct the administrative portion of a certain water right adjudication for the department.
4. Work closely with local government and native interest through planning, zoning and platting and other existing authorities.
5. Review potential for an administrative merger of DMWM, Water Resources Section and Department of Environmental Conservations water programs, or administratively integrate cooperation in water resource permitting decision making between the two agencies.

BACKGROUND

The Water Resources Section (WRS) within DNR has had a number of names over the past 15 years. The WRS, regardless of the name it was using at the time, has always been responsible for allocation of Alaska's water resources, dam safety and for the collection of water resource data. The Water Resources Section has also been able to respond to the budget reductions by streamlining procedures, reducing field presence (monitoring and enforcement), reduce training, cutting staff, and initiating or increasing fees. However, as the budget continued to decrease the number and complexity of water right applications, and conflicting use issues increase causing a substantial backlog of water right applications, permits and certificates. Figure 1.

On January 1, 1996, the WRS initiated an eighteen-month priority project to eliminate the backlog of water right applications which at the time totaled 1,355 applications. As of December 1, 1996, only 500 applications remained of the original backlog of applications. Over the past eleven months the WRS received an additional 175 new applications and 1,157 permits and certificates require amending to extend permitted time frames, change water use locations, add water take points, decrease quantity, and change ownership.

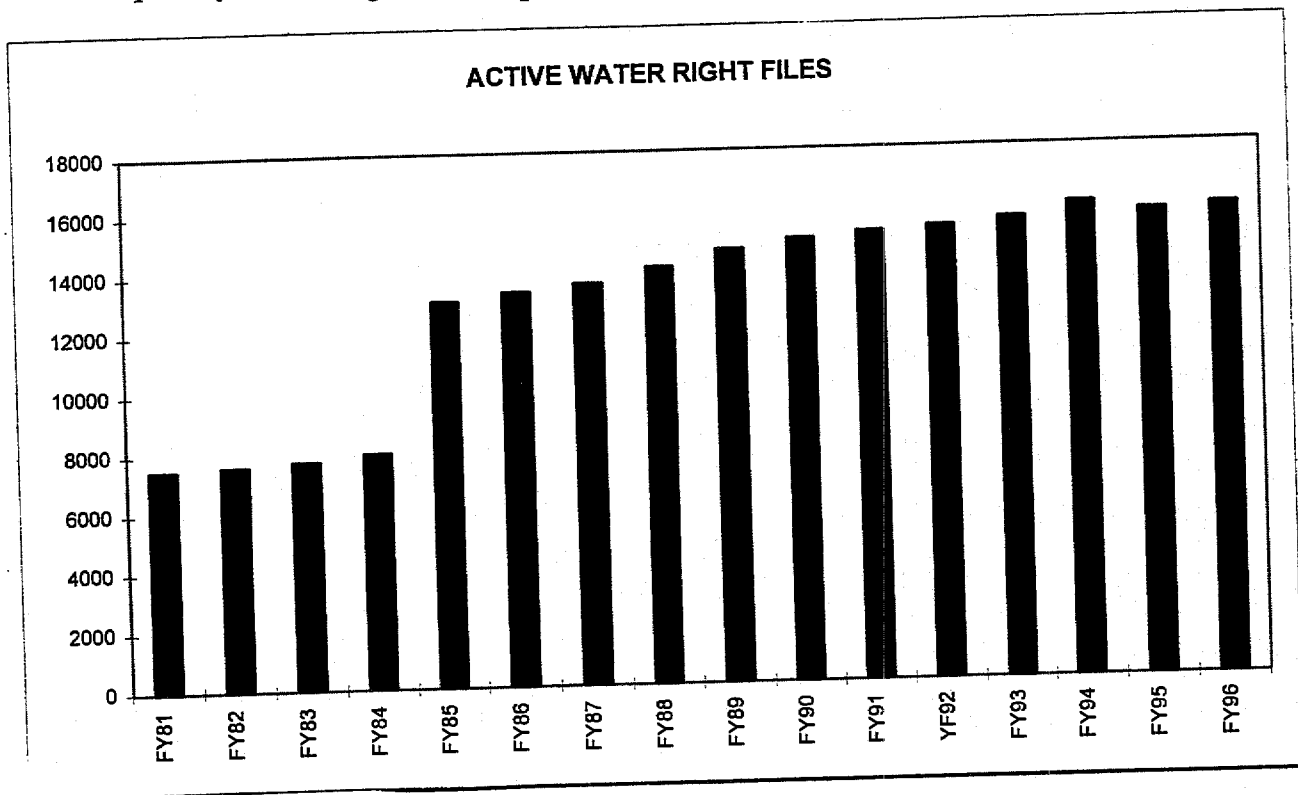


Figure 1

Table 1
WATER USERS

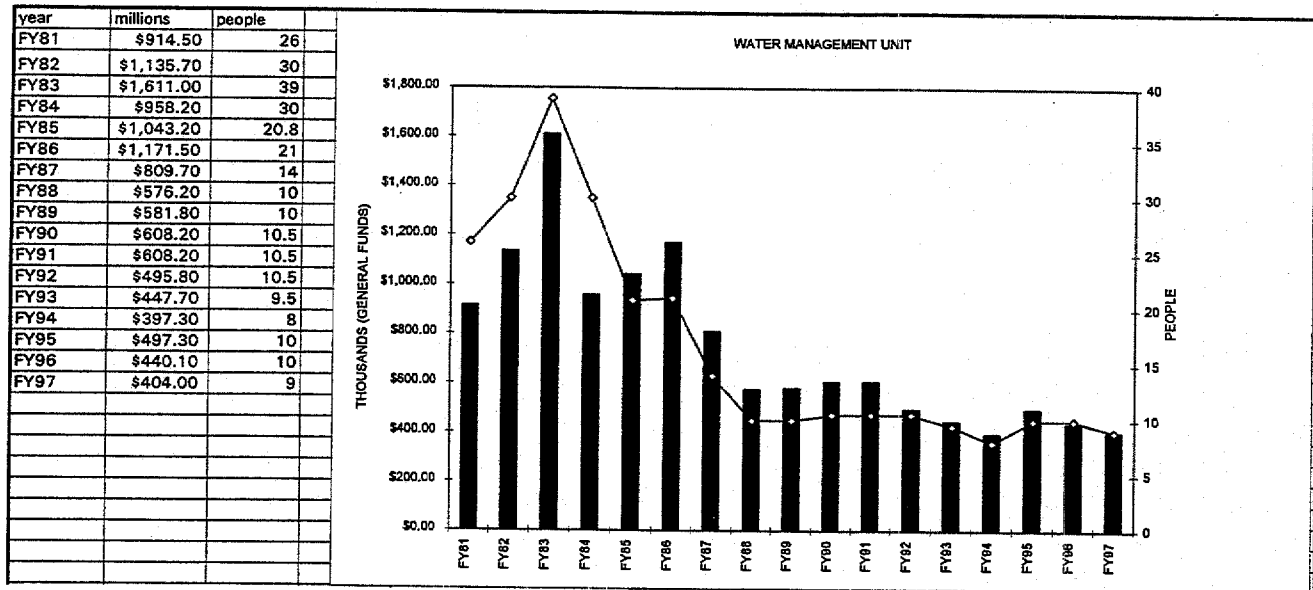
WATER USERS (in order by largest total volume water users)	NUMBER OF WATER RIGHTS	% OF WATER RIGHTS
1. Fish and wildlife conservation (man made habitat, instream flows)	105	.6%
2. Power generation (cooling water, steam, electric power, hydroelectric power)	175	1%
3. Mining (gold/silver load and placer, coal, sand and gravel, etc.)	754	5%
4. Fish hatcheries (salmon, trout, etc.)	99	.6%
5. Public water supply (municipalities, villages, towns, community, etc.)	465	3%
6. Forestry services (logging camps, pulp and saw mills, etc.)	30	.1%
7. Agriculture (irrigation, general farming, cattle, dairy, etc.)	625	4%
8. Single family homes (Trailers, includes lawn, garden, etc.)	11,326 *	71%
9. General commercial (stores, restaurants, office building, gas stations, etc.)	381	2%
10. Recreation (camper parks; state, federal and private parks; sports, hockey, golf)	473	3%
11. Petroleum (oil & gas development, refining)	87	.5%
12. Seafood processing (canned, fresh, etc.)	125	.7%
13. Public buildings (schools, government offices, libraries, etc.)	176	1%
14. Hotel/motel (includes boarding dorms)	166	.9%
15. Multi-family units (apartments, tri-plex and above)	761	5%
16. Bottle water (includes glacier ice harvest)	16	.09%
17. Transportation (trucking, marine cargo, etc.)	63	.4%
18. Private nonprofit buildings (churches, etc.)	49	.2%
TOTAL NUMBER OF WATER RIGHTS (APPLICATIONS, PERMITS, AND CERTIFICATES)		15,876

* Less than 20% of the total applications filed since 1986 have been for single family homes.

BUDGET AND STAFFING SUMMARY, WATER MANAGEMENT UNIT

The Water Management Unit within the Water Resources Section has seen a 75% reduction in general funds and a 77% reduction in staff over the past fifteen years. During this same time period Water Management Unit has seen a 100% increase in the number of water rights filed with the majority being filed for commercial, industrial, and public and community water supplies.

Figure 2



RISK:

The discussion here deals with the conflicts between water users under the existing water allocation program. It does not deal with the risks of changing the water right allocation system from its present day operation to a new system based on riparian rights or with abolishment of the Water Use Act or even with major changes to the Water Use Act.

At face value Alaska should never have a water shortage nor should there ever be conflicts between water users. The perception that Alaska is a water rich state in global terms or by hydrologic unit, as defined by USGS, is true, since 40% of the nations fresh water is in Alaska. Environmental conditions and technological problems limit the usability of Alaska's abundant supplies.

Alaska climates range from frozen desert in the Arctic Slope basin to maritime rain forest in the Southeast Alaska basin. Average annual precipitation and temperature range from 5 inches and 10-degree F in the Arctic Slope basin to about 300 inches and 45-degree F in the Southeast Alaska basin. Much of Alaska's yearly precipitation occurs as snow. Glaciers and icefields cover 5 percent of the land and affect the timing and quality of runoff. Many of the rivers in Alaska are silt laden, are affected by midwinter overflow icing or ice-jam flooding at spring breakup, or are ice covered much of the year. The occurrence and availability of ground water, in many areas, is limited by permafrost or bedrock at or near the land surface. Because of these conditions there is no certainty that either surface or ground water will be available at a given time and location when needed for a variety of uses ranging from a home to a seafood processing plant.

Locally, there is competition for limited surface water resources among individual home owners, industry, fish hatcheries, recreation, and fish and wildlife habitat demands. Ground water competition is evident wherever there are individual home water well and commercial development.

Surface waters make up about 82% of the water needs for consumptive uses; ground water provides the remaining 18%. Most of the surface and ground water use in Alaska occurs around the major population centers, although a random check of 37 small towns and villages throughout Alaska showed that more than 80% have obtained water rights. As commercial and industrial development, public water supplies, and sanitation facilities are built throughout Alaska, there will be an even larger allocation of water for basic human needs.

What are the risks of not having water rights? In most areas outside of the population centers or along the major highway system an individual's risk of not finding water in the quantity and quality needed is small. An individual taking the risk of not protecting the right to the use of that water and having that water use hindered or lost to other users is somewhat higher but still not a major risk at this time.

Risk of water use (non-consumptive) to public interest values such as recreation and fish and wildlife is a major concern due to the value Alaskans and the nation put on these unique Alaska resources. The Alaska economy is very dependent on tourism and tourism is one of the economic bright spots in Alaska's effort to diversify its economic base. A water rights system that recognizes these public interest values and balances the protection of these values with the need for water to diversify its economy in other areas (consumptive water uses) and allows for the maximum use of water for the benefit of the people of Alaska is important. Are these public interest values at risk? In most cases the answer is no. The quantity of water used in any location in Alaska is in general far less than the quantity of water available. There are areas where this is not the case, and in the future as Alaska population increases, and its economy grows, a water right system, such as the one Alaska has today, is necessary to balance the competing uses of water today and set the building blocks of good water management so that the system will hold up under the increased and more complicated decisions of the future.

In general, the current risk to water users and the public interest as it relates to water use and availability is small when considering Alaska as a whole. But, these same risks increase as one moves towards the population centers and along the major highway systems. So little is known about site specific hydrology (surface and ground water) in Alaska that a water right system used to evaluate the risk on an area-wide (watershed or basin) or case-by-case basis may still be the best way to manage the water resources of Alaska.

THE PUBLIC PROCESS

After 15 years of dealing with budget cuts to the water programs it was determined that a review of the entire water allocation system was needed. In January 1996, DMWM began a review of the current water right allocation system which involved a series of public meetings (Anchorage, Fairbanks, and Juneau), and public workshops (Anchorage, Fairbanks, Juneau, Delta Junction, and the Upper Susitna/ Willow/Trapper Creek). In addition presentations were presented to the Soil and Water Conservation District's (Natural Resources Conservation Districts) annual meeting, Alaska

Center for the Environment meeting, American Water Resources Association, Alaska Section's annual meeting (½ day panel discussion on the water management alternatives), and many individual and small group discussions. A series of progress reports, recommendation reports, and a recommendation questionnaire was sent to participants, interested individuals, organizations, and legislators.

This report is a result of comments, suggestions, and recommendations from the public on what the state should consider when dealing with the allocation of Alaska's water resources.

PERCEPTION

When the DMWM started this public process we presented at each of the public meeting and workshops a series of perceptions regarding the water right allocation system, fee structure and the management of Alaska's water resources. After the public process, the following perceptions were confirmed.

- * In Alaska water is not generally in short supply, but almost anywhere in Alaska a shortage can occur depending on location, precipitation, time of year, and actual water use.*
- * There is no specific public, user group, or industry support for the water allocation program, such as the Alaska Miners Association, or Trustees for Alaska. The DNR water allocation program has a wide range of support from all user groups.*
- * The State of Alaska is the responsible party for the management of Alaska's water resources and should maintain the authority for the management and allocation of water through the existing water rights system with appropriate modifications to improve coordination and cooperation with local governments and native interests.*
- * The Annual Administrative Service Fee (ASF) was not an issue in any of the meetings or workshops.*
- * If given a choice between a water use fee, based on quantity of water used, or the elimination of the Water Resources Program, there would be some support for the fees.*
- * The budget and technical staffing for the allocation of water should be maintained at a level to support an affordable Water Right System that serves the public now and well into the future.*
- * Water has economic value for commercial, industrial and domestic needs.*
- * Water has economic value for non-diversionary uses associated with tourism, recreation, transportation, fish and wildlife needs.*

VISION STATEMENT

Establish an affordable Water Right System that serves the public now and well into the future.

Assumptions:

- * Maintain the Constitutional Doctrine of Prior Appropriation, (First in Time- First in Right);
- * Everyone has the opportunity to obtain a water right, regardless of water quantity; and
- * The state should continue oversight for all water rights, including; federal reserve water rights, federal water rights, instream flows, and large out of basin withdrawals.

GOAL

Review the system of allocating water rights and fees. Determine if it can be accomplished more efficiently and less costly while continuing to protect the public's interest.

OBJECTIVES

Review current laws and regulations and determine if they need amending. If so, where, and for what purpose, including today's fee structure in an open public participation process.

- * Validate assumptions and perceptions.
- * Prepare and present recommendations to the Commissioner and Resource Cabinet.
- * As appropriate, present recommendations to the Legislature by January 1997.

LEGAL FRAMEWORK

The Constitution: Alaska ratified its constitution in 1959. The Alaska Constitution addressed water rights and water use in Section 3, 13, and 16.

SECTION 3, COMMON USE, Wherever occurring in their natural state, fish, wildlife, and waters are reserved for the people for common use.

SECTION 13, WATER RIGHTS- All Surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. **Priority** of appropriation shall give **prior right**. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

SECTION 16, PROTECTION OF RIGHTS- No person shall be involuntarily divested of his right to the use of waters, his interest in land, or improvements affecting either, except for superior beneficial use or public purpose and then only with just compensation and by operation of law.

ALTERNATIVES

The following alternatives were presented to the public throughout the public meetings and workshops.

- * *Status quo*: Keep the current system in place. Funding was not likely.
- * *Modified Status quo*: Some amendments to current statutes and regulations, more individual participation in the adjudication process with DNR oversight of large water projects. Funding questionable.
- * *Registry System*: Register water rights with DNR, Records Office. DNR, DMWM maintains oversight of large water projects, federal water rights, federal reserve water rights, instream flows, out of basin withdrawals, and water conflict and water competition areas.
- * *Local control*: Transfer water right authority to first and second class cities and boroughs. DNR, DMWM maintains oversight of large water projects, federal water rights, federal reserve water rights, instream flows, out of basin withdrawals, and water conflict and water competition areas.
- * *State court decree system*: All water rights handled through the court system.
- * *Some combination of 1-5*.

SELECTING THE APPROPRIATE ALTERNATIVE

After completing the public meeting and workshops, a final progress report was mailed to the participants with a summary of recommendations DMWM received during the public process. The progress report requested the participants to review the recommendations and add to or amend them.

In October 1996, a questionnaire was developed using the recommendations received throughout the public process and was sent to all the participants, city and borough mayors, public utility managers, special interest groups (environmental and resource development) and other interested parties. This questionnaire stated the recommendations by category (constitutional amendment, streamlining, management, who pays, and three strawman budget recommendations). Each recommendation was clearly stated and an analysis provided. The participants were asked if they agreed or disagreed with the recommendation and if they had comments, to provide them.

The responses to the questionnaire were tallied and comments summarized for each recommendation. See attached appendix. With the completed questionnaire and the information received through the public meeting and workshop process, the general alternatives were evaluated.

- * *Status quo*: Keep the current system in place. *Not recommended*. It was recognized that some procedural changes could be made to the status quo which would result in efficiencies and cost savings, while continuing to protect the public's interest.

* *Modified Status quo*: Some amendments to current statutes and regulations, more individual participation in the adjudication process with DNR oversight of large water projects. *Selected Alternative*.

* *Registry System*: Register water rights with DNR, Records Office. DNR, DMWM oversight of large water projects, federal water rights, federal reserve water rights, instream flows, out of basin withdrawals, and water conflict and water competition areas. *Not recommended. Although a single family registry application process and an application registry for water uses under 5,000 gallons per day through DMWM is being considered.*

* *Local control*: Transfer authority for water rights to first and second class cities and boroughs. DNR oversight of large water projects, federal water rights, federal reserve water rights, instream flows, out of basin withdrawals, and water conflict and water competition areas. *Not recommended. It was recognized that a better coordinated and cooperative working relationship with local governments and native interest was needed.*

* *State court decree system*: All water rights handled through the court system. *Not recommended.*

SELECTED ALTERNATIVE

MODIFIED STATUS QUO, recommended regulation and policy changes.

- * Redefine 11 AAC 93.970(14) "significant amount of water" which will exempt water users of 5,000 gallons per day or less from the requirement to apply for water rights.
- * Establish through regulation a single family domestic water right from a single page registry.
- * Establish a simplified water right application for water uses under 5,000 gpd.
- * Establish a registry filing system for water uses under 5,000 gpd.
- * Amend regulation to allow for a first or second class city or borough to obtain a long term permit (20 years) or certificate for current and future public water supplies.
- * Establish by regulation a general permit (GP) for temporary water use of 30,000 gpd associated with construction, mining, timber, and other temporary camps.
- * Amend regulations to eliminate the requirements to show legal R-O-W authorization from point of water take to point of use.
- * Establish a cooperative working relationship with local governments and native interest in the allocation and management of water within their boundaries. Work closely with existing planning, zoning and platting boards.

- * Review current application fees and increase if justified. Use existing regulations to cover excess cost of adjudication.
- * Establish by regulation a procedure for department qualified applicants and consultants to conduct the administrative portion of a water right adjudication.
- * Establish a water resource INTERNET site within DNR's homepage. Continue to participate in K-12 school programs.

See appendix for more details on these recommendations and DMWM recommendations to all the recommendations presented in the October questionnaire.

APPENDIX

The following table summarizes the results of a questionnaire regarding specific recommendations to the way the Department of Natural Resources allocates water rights and manages Alaska's water resources. The table also includes the recommendations the Division of Mining and Water Management has made to the Commissioner of DNR regarding changes to existing regulations and policy.

Note: The format follows the original questionnaire for consistency purposes. Please note that where one recommendation is similar to another, it is referenced. To assure that the reader is aware of these similarities the following guide may be useful.

Streamlining recommendations #1, 13, 18a, and 18b are tied to each other. These recommendation deal with changing the requirement for water users, using less than 5,000 gallons per day, from having to file for water rights. If a water user chooses to file for water rights, the recommendations outline simplified methods depending on if the water use is for single family domestic or other uses.

Streamlining recommendations #6, 7, and 8 are tied to each other. These recommendations deal with water management methods related to watersheds, basins or geographic areas.

SUMMARY OF WATER MANAGEMENT QUESTIONNAIRE RECOMMENDATIONS AND COMMENTS AND DMWM RECOMMENDATIONS

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
AMENDMENT TO THE CONSTITUTION 1. Replace Prior Appropriation system with Riparian system. DMWM RECOMMENDATION: Constitutional amendment not recommended.	11 18%	49 82%	<ul style="list-style-type: none"> * The waters of the state should be owned by the people and appropriated for beneficial use to the people of the State. * Let's not go back to the 19th century. * Current use or non-use should not be grounds for loss of a water use. Loss affects property value and requires land owner to jump through unnecessary "red tape" to get what was already his. * Do not change the constitution. * Somewhat disagree. A person purchasing State land for a private single family residence should also be entitled to the water for such use. The rights should remain with the land as long as it is put to this use. * Can't agree with either. I like parts of each. * This reduces cost, courts to settle disputes. * Move towards Riparian water rights is backward and does not protect or account for the public's interest in water. * Riparian rights makes more sense to me. However I believe public interest values should be considered. * Water is seldom where it is most needed. Appropriations as the system exists today should remain. * I agree with replacing the current system with riparian rights. Since the State will no longer fund/operate the current system, a permanency privileged class of water owners will be left in place, all others will have no protection nor opportunity to secure a right. * I believe if the water runs through your land you should be able to use it without the State charging you for that use. * Disagree, is there any in between system that would work. * The riparian system would certainly be cheaper. The existing water rights could be non-transferable and all or most would eventually lapse. * Not only would a constitutional amendment not be likely but <u>prior appropriation is clearly</u> in the public interest. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>STREAMLINING</p> <p>1. Redefine "significant amount of water" exempt water users of 5,000 gpd from the requirement to apply for water rights.</p> <p>DMWM RECOMMENDATIONS:</p> <p>A. Redefine "significant amount of water" under 11 AAC 93.970(14), and exempt water users of 5,000 gpd from the requirement to apply for water rights. No water rights granted unless application filed. Maintain DMWM's authority to require filing of an application in areas of concern associated with availability of water, effects on prior water right holders and the public interest.</p> <p>B. Establish a single family domestic water right (500 gpd) by filing a single page registry with DNR once water is in use. Priority date established on date of filing. Well log or description of well required. Adequate map to establish location. Create a new case type (SFD) in LAS for simplified basic information and location required. No public or agency notice, LAS entry limited, no water right document issued or sent. Recommend a \$25.00 filing and recording fee.</p> <p>ALSO SEE STREAMLINING RECOMMENDATIONS #13, 18a, and 18b.</p>	<p>44</p> <p>70%</p>	<p>19</p> <p>30%</p>	<ul style="list-style-type: none"> * Reducing the total number of applications seems like a good place to cut the budget, too bad the small consumer loses legal standing in a dispute or low flow event. * No great damage caused by this, applicants can still file for rights if they choose. * See Alaska Municipal League cover letter. Attached * Cuts paper work. * Sounds logical. * Disagree, depends on the size of the creek or river. 5000 gpd may be a significant amount. * But this indicates that private home and garden users are not significant amounts of water. * 5,000 gpd could be significant in a municipal aquifer. I would recommend language that said " up to 5,000 gpd if that use would not adversely affect availability for other appropriators or the public interest." * This is a sound step towards operating within fiscal constants. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>2. Amend regulations to allow a first, second class city or a borough to apply for current and future water needs for Public Water Supplies.</p> <p>DMWM RECOMMENDATION: Have the Department of Law review. Amend regulations to allow for a long term Permit to Appropriate Water (20 years) or Certificate of Appropriation (water right) for current and future use of water for Public Water Supply only. Single source, and reasonable quantity based on need.</p>	<p>51</p> <p>81%</p>	<p>12</p> <p>19%</p>	<ul style="list-style-type: none"> * Good idea to allow municipalities to plan for the future. * See Alaska Municipal League cover letter. Attached. * The public entity should identify the proposed sources of water, DOW must come up with criteria on which to judge "reasonableness" of future quantity. * Public Water Supply should be fostered as a <u>primary</u> use. * The volumes of water for reasonable public use should be identified (as a project) for all first class and home rule cities to ensure sources are in existence. * Disagree, no incentive to conserve or live within the carrying capacity. * Private businesses are already being affected by the power-hungry local governments attempting to tax and control whoever and whatever is located within their boundary. Do not give them any more preference. * If you are going to permit one exception then the process should be opened up to see how many other uses/users should be given an exception. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.
<p>3. Eliminate mandatory 10 year review of Reservations of Water (instream Flows)</p> <p>DMWM RECOMMENDATION: No change to current statutes or regulation. If and when a statutory change to the "Water Use Act" is undertaken, this recommendation will be reevaluated. (Policy) Reviews will be conducted as needed, but due to other priorities may not be every ten years.</p>	<p>29</p> <p>46%</p>	<p>34</p> <p>54%</p>	<ul style="list-style-type: none"> * All water right should be reviewed every 10 years. * See Alaska Municipal League cover letter. Attached. * I somewhat disagree, a 10 year review should be optional and not mandatory. * instream flow reservations should be issued as a default reservation, and need not be reviewed on a regular basis. Review could occur when any specific competing water right is requested, on a case-by-case basis. * More in line with riparian rights concept. * The present 10 year review is a good management practice and should be continued. * I agree, already not a high priority. * The 10 year review for instream uses should still be required. The 10 year review should not apply to other users. Other users are by definition consumptive and divert water from a stream, lake, or aquifer. It is apparent if a changes occur with these uses. With in stream uses it is not apparent and therefore the 10 year review is necessary. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>4. Develop a combined permitting process for DNR, DEC, and ADF&G.</p> <p>DMWM RECOMMENDATION: Although this was a popular recommendation it is a major item that is beyond the scope of this report. Attempting to evaluate the overall impact of water decisions in three agencies is not yet ripe for detailed evaluation. (See streamlining # 5)</p>	<p>52</p> <p>75%</p>	<p>17</p> <p>25%</p>	<ul style="list-style-type: none"> * Good idea, separating these agencies never made much sense. * One stop solutions for permits is usually considered as basic to good and efficient customer service. * Good idea, so long as mandates and authorities of each agency remain undiminished. * This would simplify the process. * The left hand should know what the right hand is doing. * No! Water rights are a property interest and must not be mixed or in anyway brought into the Title 16 or DEC requirements which are permitting issues. * I think combining the State process with local governments may be a bit cumbersome on the state regulators and on any water users who use water in more than one jurisdiction. * The consolidation of water permitting has already been recommended in two previous administrations. * These are very different permits with different mandates. Combining process is generally accomplished through ACMP/DGC reviews in many instances. What is needed is better cooperation and coordination among DNR, DEC and ADF&G to make application process less burdensome- one application that serves needs of all 3 agencies, for example. * Bad idea, F&G permit to withdraw water should be done away with as redundant. Should only permit activities such as conservation to protect habitat. Protection of flow should be through ACMP and DNR appropriation permit/certificate only. * Each agency is responsible for different parts of statute and regulations. An integrated process is a good idea, but each agency should be responsible for its own permit. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>5. Combine DEC water programs and DNR water programs. Have one Department responsible for water management (quantity and quality).</p> <p>DMWM RECOMMENDATION: Review with the Department of Law. The DMWM, Chief, Water Resources Section and the Director of DEC's Division of Air and Water Quality will evaluate this recommendation and report to the Commissioner's of DNR and DEC their suggestions/recommendations.</p>	<p>49</p> <p>77%</p>	<p>15</p> <p>23%</p>	<ul style="list-style-type: none"> * Quality and quantity are so interrelated it makes sense for just one agency to handle. * Approach under #4 is more appropriate and better able to preserve effectiveness of different mandates of development and protection. * One stop solutions for permits is usually considered as basic to good and efficient customer service. * This would simplify the process. * For management purposes a good idea. Would there be a cost savings to the state? * Give the program to DEC. * Do not locate in DEC, DEC is the most anti-growth, anti-industry agency in the state! * No! Water rights are a property interest and must not be mixed or in anyway brought into the Title 16 or DEC requirements which are permitting issues. * agree, if and only if the program is administered by DEC. * Ultimately we should be working towards integrating the resource laws and administration with the environmental laws and administration. This will allow the State and public to make decisions regarding the watershed in a holistic fashion. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>6. Base water right adjudication on risk, by major river/stream drainage.</p> <p><i>DMWM Recommendation: See # 8</i></p>	<p>41</p> <p>68%</p>	<p>19</p> <p>32%</p>	<ul style="list-style-type: none"> * It seems logical that the large, sensitive applications have priority in adjudication. * Doing the most important thing first seems unavoidable. Of course, any permit system must be designed and funded to deal with all legitimate applications. It seems from your question, this one isn't. * I Disagree, with decreased staff to process paper work the "low priority" applicants may never get served. * Its a logical, defensible approach. * This adjudication prioritization by needs (time sensitive, financing, etc) seems to violate the first appropriator concept. Why should one application prevail against a previous and competing application? This gives an appearance of special preference for those with influence. * Disagree, everyone should be in the same line. * This is a "policy" matter, not a regulation. This policy must be sufficiently flexible to allow changes as some water rights are higher priority. * Because DNR is administering a water right system, the first consideration should be to address water-short areas, since the appropriation system is supposed to resolve who gets how much water when there isn't enough to go around. If there is plenty to go around, then processing the application is not as critical. * The DMWM method for prioritizing should be spelled out, so all applicants are aware of it. This sounds pretty subjective, but if a policy were developed, everyone should be on notice. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>7. Base adjudication on watershed approach.</p> <p><i>DMWM Recommendation: See # 8</i></p>	<p>44</p> <p>69%</p>	<p>20</p> <p>31%</p>	<p>* A watershed approach makes a lot of sense.</p> <p>* Another "no brainer." Of course everything in a watershed is interrelated and the only way to evaluate an application properly is in a comprehensive way. The problem, I would guess is money.</p> <p>* If riparian rights adopted this would not be needed. If riparian rights are not adopted, I agree with recommendation.</p> <p>* Budget constraints may hinder this good management strategy.</p> <p>* We should get away from the "winner takes all" aspect of the first appropriator concept.</p> <p>* The watershed study group is still in outer space and does not appear to be getting any closer to earth.</p> <p>* This is a "policy" matter, not a regulation. This policy must be sufficiently flexible to allow changes as some water rights are higher priority.</p> <p>* Begin watershed management plans. Fund w/ w/d watershed improvement district which would encompass water users, existing and potential.</p> <p>* This was previously recommended by the Alaska Water Management Council and the Western States Water Council.</p> <p>* I think this is premature until State makes a serious commitment to the statewide watershed approach, currently in the final stage of development. I disagree that DNR should be agency doing watershed plan- multi-agency would be better.</p> <p>* Disagree, adjudication to issue a water right no. Issuing a water right involves looking at other water rights in the watershed. The Watershed process involves looking at all the uses in the watershed at some point in time, but it can't fore see what new rights will be applied for. So issuance of new permits will continue and new rights should be integrated into the watershed plan, but water rights can't be issued on a watershed by watershed basis.(e.g. - Yukon River 1998, Copper River 1999) which is my understanding of the watershed process.</p> <p>* See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.</p>

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>8. Establish a special water management area (SWMA) where there are existing water supply or public interest concerns.</p> <p>DMWM RECOMMENDATIONS:</p> <p>A. Wait for DEC to complete its watershed approach and have the approach adopted for all state agencies. Work within the DEC process when its to our benefit.</p> <p>B. DNR/DMWM can work with the many individual watershed projects now underway, and those in the future where water rights or public interest are a concern.</p> <p>C. Consider adopting procedures by regulation to establish a watershed adjudication process similar to the current administrative basin-wide adjudication process established for adjudication of federal reserved water rights. Where possible tie into DEC's watershed process. Provide for a general notice of intent within a watershed. Establish an application acceptance process with deadlines for inclusion in the adjudication. General adjudication by source or sources (GP process). SWMA funding through combination of legislature/local governments/special interest. Needs further discussion between Director, Section Chief, and Dept of Law.</p>	<p>36</p> <p>55%</p>	<p>29</p> <p>45%</p>	<p>* Good idea.</p> <p>* One stop solutions for permits is usually considered as basic to good and efficient customer service.</p> <p>* Not needed if recommendation #6 and #7 are implemented.</p> <p>* Even under a riparian system public interest need protection. This is a natural function of government and citizens should be willing to pay.</p> <p>* It may prove most effective by obtaining additional funding. Also it would focus legislative attention on the program.</p> <p>* State law speaks of use "in the public interest" yet I fail to see how the appropriation of an entire or majority of a water source for private profit (i.e. bottled water, etc) is in the public interest of the rest of the stream owners(i.e. the citizens of Alaska and or U.S.).</p> <p>* I disagree. No documentation that a problem currently exist within Alaska.</p> <p>* There is no rational given for the fees nor what the funds generated would do for the ratepayers. A tax on large hydroelectric facilities using a renewable resource should be a matter for the legislature to decide.</p> <p>* This is a "policy" matter, not a regulation. This policy must be sufficiently flexible to allow changes as some water rights are higher priority.</p> <p>* Combine with recommendation #7.</p> <p>* A long time recommendation of water professionals in Alaska.</p> <p>* If a SWMA is warranted it should be financed by user fees within the SWMA.</p> <p>* Agree. However, I don't believe you should revoke the SWMA status due to lack of funding, since the initial designation is based on existing water supply problems or public interest concerns, not on the availability of funding.</p> <p>* See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.</p>

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>9. Establish a reservation of water (instream flow) on all water bodies with anadromous fish.</p> <p>DMWM RECOMMENDATION: Take no action. Major support and opposition for this proposed statutory amendment. Continue to work with ADF&G on a case by case basis, providing technical support where needed. Continue to use existing authority in statute and regulation to condition permits and certificates of appropriation where necessary to protect an instream flow for fish, wildlife, recreation, transportation, navigability, and water quality purposes. Continue policy to adjudicate instream flow applications by groups within refuges, parks, or major river systems instead of on a case by case basis.</p>	<p>36</p> <p>60%</p>	<p>24</p> <p>40%</p>	<p>* Disagree, when the value of a fish drops to a penny, we may want to revise our water use priority.</p> <p>* Do we give fish priority over people? Would the Ship Creek fish hatcheries be shut down or precluded by an automatic instream flow reservation had this policy been in effect</p> <p>* NO !!!</p> <p>* I cannot comment because its not clear why the effort fail in 1990. There must be pros and cons.</p> <p>* Protection of instream flow should be a fundamental baseline against which other consumptive uses ought to be judged.</p> <p>* Fish are in the public interest. The existing system requires an application to reserve water for fish on all streams in Alaska. A lot of paper work. Just amend statutes and eliminate the paper work.</p> <p>* Does this represent a potential conflict between land development and sport fishing? These two should be allowed to co-mingle for tourism development.</p> <p>An assumed reservation of 50% maximum flows should be in place for any stream with <u>any</u> fish species.</p> <p>* Limit should be set on hydrologic/statistical basis. 10 year, 7 day low flow, or 5% (95% exceedence) flow for each month. State should establish these flow levels on a prioritized basis jointly by DNR/ADF&G.</p> <p>* Extend this to include all fish.</p> <p>Disagree, this means DEC and ADF&G will set % and eliminate all other uses.</p> <p>* No. Current statute is sufficient.</p> <p>* The legislature has already spoken on this issue. The regulation process should just be used as a vehicle to legislate policy only clarify and implement policy.</p> <p>* An environmentalist dream?! Wouldn't this possibly tie up the use of water? Could there at some point in the future be a human need that overrides the need of anadromous fish?</p> <p>* Why limit this to anadromous fish? Aren't other riparian life forms entitled to protection? Also, the U.S. Forest Service has been attempting to establish a federal-reserved right to instream flows for channel-maintenance purposes.</p> <p>* I generally agree that a reservation should be considered for anadromous streams, but how are needs determined? Universal percentage? Case by case? Where is money for this coming from.</p> <p>* Disagree. There needs to be more flexibility. Sometimes there is a choice - drinking water for people or habitat for fish. Sometimes the stream supports few fish but may be the sole source for lots of people. There must be common sense and flexibility.</p> <p>* See attached comments.</p>

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>10. Establish a general permit for temporary water use (30,000 gpd or less) associated with construction or other temporary camps.</p> <p>DMWM RECOMMENDATION: Establish by regulation a procedure to issue a TWUP through a general permit process for construction, mining, timber, and other temporary camps. Procedure should include: general notice statewide of intent, criteria, standard conditions, limitations, annual review and quantity needed (5,000 to 30,000 gpd).</p>	<p>48</p> <p>79%</p>	<p>13</p> <p>21%</p>	<ul style="list-style-type: none"> * It seems like a joint process with ADF&G and DEC is necessary. * I agree, so long as GP's for any project would not infringe upon instream flow reservations and public water supplies. * sunset is necessary, 90 days - 1 year. * Disagree, sounds like it would be ineffective to me. * This would only work if the watershed management plans were in place. A management plan would allow monitoring to understand the true or approximate impacts of such a permit. * What about water use greater than 30,000 gpd. * Even the need to regulate when the stream flow is more than ten times the expected temporary use withdrawals. Keep regulations no more than necessary. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>11. Establish a billing system where the administrative service fee is billed every 5 or 10 years rather than yearly.</p> <p>DMWM RECOMMENDATION: Continue annual billing.</p>	<p>26</p> <p>43%</p>	<p>35</p> <p>57%</p>	<ul style="list-style-type: none"> * Fee should be yearly based on the amount of water used. * You can set up a 5-year agreement, but bill annually. The work involved in an automated billing is trivial. * I fear that this would create more problems than it would solve. * 5 years or <u>two years</u>. * Annual accounting is likely the only way to maintain effective records. * With riparian rights the registered property owner is on file eliminating the problem. * I agree, if funds can be carried over from one year to the next. * I agree, it should be only 5 years not 10. * Does the resulting problem out weigh the solution? How about every two years, alternating, so revenues would still come in every year. * Providing a staggered billing system (schedule) could be implemented so yearly program receipts were not adversely affected. * Should be at the discretion of the water right holder with lower cost for longer period to provide incentive to use longer period. * Why not develop a system to bill local governments? Local governments could recover the cost as a portion of property taxes. * Every ten years would at the present rate be \$500 much more of a budget item for small users that at present. Annual recurring fees are easier to keep track of in annual budgets. * Maybe a 4 year cycle would be better. As long as renewals were staggered, income should remain fairly level. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>12. Establish a broader range of permit conditions, allowing the permit to be issued prior to the completion of studies and public interest finding.</p> <p>DMWM RECOMMENDATION: Review current requirements for issuance of permits (statutes and regulations). Review possibilities with the Department of Law. Currently a R-O-W is required to take water from lands not owned by the applicant or to transport water across lands not owned by the applicant. Amend the regulations to delete this requirement and issue a permit with condition that a R-O-W is required. <u>The permit notice is sent to landowner where water is to be taken from or transported across and if no objection is received, the water right can be issued</u> with the standard condition that the right to water rights carry no right-of-way privileges.</p>	<p>49</p> <p>74%</p>	<p>17</p> <p>26%</p>	<p>* If all the permits are necessary to proceed, how does this save money or increase efficiency?</p> <p>* This makes "giveaway" too easy and would offer no protection against irreparable harms.</p> <p>* Does this make sense in light of the Alaska Supreme Court's decision in Thane Neighborhood Assn. vs CBJ, where a municipal large mine permit was tossed out because it was based on conditions that the permit applicant obtain other federal and state permits.</p> <p>* Agree, but ownership of land where H2O is used must be reserved.</p> <p>* See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.</p>

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>13. Create a separate water right application for water use under 5,000 gpd.</p> <p>DMWM RECOMMENDATIONS:</p> <p>A. Review and where possible simplify our current application. If it saves time and effort for the applicant and DMWM, create a separate application for uses of water under 5,000 gpd. (depends on the change to the definition of significant amount of water)</p> <p>B. Establish a single family domestic water right (500 gpd) by filing a <u>single page registry</u> (Application) with DNR once water is fully established. Priority date established on date of filing. Well log or description of well required. Adequate map to establish location required. Create a case type (SFD) in LAS system for simplified basic information and location. No public or agency notice, LAS entry limited, no water right document issued or sent.</p> <p>ALSO SEE STREAMLINING RECOMMENDATIONS #1, 18a, and 18b.</p>	<p>43</p> <p>70%</p>	<p>18</p> <p>30%</p>	<p>* See Alaska Municipal League cover letter. Attached</p> <p>* All this paper work would be eliminated with riparian rights.</p> <p>* I agree with the concept not the process in the analysis.</p> <p>*What happens when there is insufficient water available or the public perceives there is a problem with water quantities? Maybe this would work if there were a watershed management plan in effect that could tell managers how much water is available.</p> <p>* Don't see the need for permit which would give away a natural resource for no benefit to citizens of Alaska. Let private uses of less than 5,000 gpd be at own risk.</p> <p>* See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.</p>

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>14. Status Quo, maintain the water rights program as it is currently administered.</p> <p>DMWM RECOMMENDATION: Make regulatory changes for streamlining as recommended.</p>	<p>21</p> <p>40%</p>	<p>31</p> <p>60%</p>	<ul style="list-style-type: none"> * This does not seem to be a politically acceptable option. * See Alaska Municipal League cover letter. Attached * All this paper work would be eliminated with riparian rights. * If it ain't broken don't fix it. * Some limited changes as noted in our comments would be acceptable. Not certain how else to reduce costs. Primary issue is establishment of and secure tenure to the right. * The idea of combining the water programs (ADF&G, ADEC, and DNR) may provide an attractive enough package to interest the legislature. * Why has water management been singled out for cutting? Water users do not currently feel the benefit from good water management. Because the users (the public) does not understand the importance of water management -you feel you can delete the program? You are responsible, as a public agency, to serve the public interest. * It would be nice to maintain the status quo, but DNR has an obligation to address the financial and administrative realities of the budget situation. * Push for funding through legislature. Water is a very important resource, our governor and legislature need to be educated. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>15. Modified Status Quo, minor amendments, and streamlining. No major changes to the Water Use Act.</p> <p>DMWM RECOMMENDATION: No major changes to the "Water Use Act". Make regulatory changes for streamlining as recommended.</p>	<p>44</p> <p>73%</p>	<p>16</p> <p>27%</p>	<ul style="list-style-type: none"> * Charge the water right holder according to how much water they use. * See Alaska Municipal League cover letter. Attached * I agree, streamlining means decrease costs doesn't it. * I agree, fund with user fees if general revenues won't handle it. * Agree in principle. However, it appears that above reference to public water supplies are not germane. We do not see need for these comments and public water supplies must have comparable treatment in the process. * I disagree with the "future public water supply users". It seems like a modified status quo could be adopted just as easy without this addition. * Disagree. The answer is <u>not</u> exemptions, the answer is to make the user pay. Alaskan mentality is a "free lunch" or have the State pay. What is needed is responsible oversight with sufficient staff to monitor the resource. * If no legitimate way to fund, I'd support modified status quo. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>16. Transfer authority to local governments.</p> <p>DMWM RECOMMENDATION: No transfer of authority under AS 46.15 (Water Use Act).</p> <p>Establish a more cooperative working relationship with local government and native interest in the allocation of water within their boundaries. Wherever possible coordinate decision making processes (planning and zoning, platting boards, community councils) concerning water and land uses where one use is dependent on the other, such as new subdivisions with community water systems; large track subdivisions where water concerns are a possible; commercial and industrial development in areas without public water; areas where water rights holders, individual wells, or the public interest (as recognized in AS 46.15.080) may be affected. This cooperative working relationship can and should benefit all parties and can result in savings to DNR, local governments, native interest, and the general public if cooperative agreements between the parties can be worked out.</p>	<p>3</p> <p>5%</p>	<p>59</p> <p>95%</p>	<ul style="list-style-type: none"> * Unfunded mandate, local government are even less able to do than DNR. * watershed boundaries usually do not agree with political subdivisions. * At some point the State needs to decide what its responsibility is. Protection of watersheds would likely be a statewide interest. * I don't think local governments in Alaska can handle this. * Unfunded mandate, simply transferring a problem to municipalities to "save money" <u>does not</u> save money because it increases local property taxes. Bad idea. I've been a victim of water supply programs turned over to local government, result = 0 action. * Water management is the responsibility of the State. However payment for mgmt. is a local responsibility. Users and beneficiaries should pay (that's all of us). * No, water is a State resource and should be treated that way. * Water rights historically are a matter of state law and administration. This is necessary for consistency and because the water body may be located outside municipal boundaries. * Increase fees to offset expenses. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.
<p>17. Transfer authority to the court system.</p> <p>DMWM RECOMMENDATION: Should not be considered.</p>	<p>3</p> <p>5%</p>	<p>62</p> <p>95%</p>	<ul style="list-style-type: none"> * Lawyers are much more expensive than DNR employees. This option would not save the State money. * Courts are not to <u>make laws</u>!! * Courts are highly inefficient now! * Never go to court if you don't have to. The lawyers will get rich on this one. * Sounds like attorney employment act. * Expensive, more time-consuming, and adversarial. You would simply be transferring costs to another branch of state government, plus the Department of Law, and increasing costs to the public/applicants. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>18a. Registry system in recorders office for individuals domestic water rights. No adjudication until a dispute arises and affected parties settle with the use of an arbitrator or the courts at their expense.</p> <p>DMWM RECOMMENDATION: Not recommended.</p> <p><i>SEE STREAMLINING RECOMMENDATIONS #1, 13, AND 18b.</i></p>	<p>17</p> <p>30%</p>	<p>39</p> <p>70%</p>	<p>* Why involve the Recorder's Office? This is just shifting the burden, is there any cost savings? State business is State business, regardless of who looks after it.</p> <p>* It may work , but maintaining the computer system and data base will cost as much as current system. Recording only at the Recorder's Office is a mistake.</p> <p>* I disagree, registry should be with DNR water not recorder's Office. Disputes should be handled administratively (DNR) where ever possible.</p> <p>* I agree, for residential, if it becomes commercial then they should have to get a permit.</p> <p>* This is a "policy" matter, not a regulation. This policy must be sufficiently flexible to allow changes as some water rights are higher priority.</p> <p>* There may be some merit to this approach, too much opportunity for third-party harassment. This could be from competitors or from groups simply wishing to stop projects, stop towns or villages from growing, etc.</p> <p>* This is simply another way of going to a court decree system.</p> <p>* I don't see why the registry is needed. Require that well drillers supply log and estimate water use. Place same for permit to draw water from stream as was done in the past did not work to bad. I see more regulations then necessary.</p> <p>* See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.</p>

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>18b. Registry system with DNR, Water Management where the use of water does not exceed 5,000 gpd, and adjudication takes place only when there is a conflict.</p> <p>DMWM RECOMMENDATION: Although we don't call are current system a registry system, it by definition is just that. When we amend the definition of a "significant amount of water" to exempt 5,000 gpd or less, these water appropriators will not be in violation of our statutes if they use water without a permit or certificate of appropriation. The applicant has established a priority date with his filing, and if his quantity and use of water remains the same the applicant will maintain that priority until the file is adjudicated. The adjudication can take place when there is a need or conflict. We stop calling these applications a backlog and call them a registry.</p> <p>SEE STREAMLINING RECOMMENDATIONS #1, 13, AND 18a.</p>	<p>30</p> <p>55%</p>	<p>25</p> <p>45%</p>	<ul style="list-style-type: none"> * Lets avoid disputes if at all possible. * This sounds like the simplest process. * There may be some merit to this approach, too much opportunity for third-party harassment. This could be from competitors or from groups simply wishing to stop projects, stop towns or villages from growing, etc. * OK, if DNR is simply postponing a basin-wide administrative adjudication. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>18c. Registry system with DNR, Water Management where the use of water does not exceed 100,000 gpd of groundwater and 30,000 gpd of surface water. The adjudication to take place only when there is a conflict, financing need, permit requirement. Consultants can be used to conduct procedural processing of notice. DNR would still adjudicate large water uses, federal water rights and instream flows.</p> <p>DMWM RECOMMENDATION: Not recommended.</p>	<p>13</p> <p>25%</p>	<p>38</p> <p>75%</p>	<ul style="list-style-type: none"> * Use a watershed approach, do not differentiate between surface and ground water. * Surface and ground water quantity too High. * Surface and ground water quantity OK. * Surface and ground water quantity too High. * The volume of groundwater is too high for restricted aquifers that serve constant use residential areas. Also large pumping activity can cause distant contamination plumes to be drawn to drinking water supplies, coordinate with ADEC. * Ground water (GW) equal or less than 50,000 gpd * There may be some merit to this approach, too much opportunity for third-party harassment. This could be from competitors or from groups simply wishing to stop projects, stop towns or villages from growing, etc. * Although it may be fair to require the applicant to absorb the cost of determining the technical merits of a proposed project, it is a little difficult for us to buy into a system that would require the applicant to pay for the "public interest" problems that can arise. This is not water management, nor is it planning. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>18d. Same as 18c except the registry would only apply in specific geographic areas designated by DNR. Large quantity water users that exceed 100,000 gpd of groundwater and 30,000 gpd of surface water and federal water rights and instream flows would be adjudicated by DNR.</p> <p>DMWM RECOMMENDATION: Not recommended.</p>	<p>12</p> <p>24%</p>	<p>39</p> <p>76%</p>	<ul style="list-style-type: none"> * Use a watershed approach, do not differentiate between surface and ground water. * Surface and ground water quantity too high. * Surface and ground water quantity OK. * There may be some merit to this approach, too much opportunity for third-party harassment. This could be from competitors or from groups simply wishing to stop projects, stop towns or villages from growing, etc. * GW equal or less than 50,000 gpd * With staff and monitoring reductions there would not be sufficient knowledge to meet the "availability" test. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.
<p>18e. The same as 18c except the adjudication would take place in the order the applications are received, and the applicant would be responsible for the procedural processing (public, agency and prior water rights holders notice, environmental and hydrologic studies). Large quantity water users that exceed 100,000 gpd of groundwater and 30,000 gpd of surface water and federal water rights and instream flows would be adjudicated by DNR.</p> <p>DMWM RECOMMENDATION: Not recommended.</p>	<p>12</p> <p>20%</p>	<p>37</p> <p>80%</p>	<ul style="list-style-type: none"> * I suspect you'd get rebellion from the public. The trend is towards one-stop shopping, not do-it-yourself bureaucracy. * Surface and ground water quantity too High. * Surface and ground water quantity OK. * Sounds fair, but slow. * There may be some merit to this approach, too much opportunity for third-party harassment. This could be from competitors or from groups simply wishing to stop projects, stop towns or villages from growing, etc. * GW equal or less than 50,000 gpd. * 18a-18e. Encumbers with implied right, access to source on others property. With source on State land and State certified by rubber stamp registry, encumbers state land with messy questioned right or access. State will look foolish. Not in State's best interest to allow blanket registry on state land. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>WHO PAYS</p> <p>1. Separate the cost of adjudication from the cost of public interest determinations. Charge applicant cost of actual adjudication and the state (responsible agency) for the public interest costs.</p> <p>DMWM RECOMMENDATION:</p> <p>Review all water program application fees. Although there was no consensus on the water user fee system most commenters had no problem with paying for the cost of adjudication, and if an increase in fees is justified then, we should increase the fees. I recommend that we also use our existing authority to charge an applicant for the real cost of the adjudication. Our current application fees may or may not cover the average cost of an adjudication, any cost over the application fee are now paid for out of general funds.</p> <p>It was apparent from those that responded to the questionnaire on this subject that the public interest determination or finding should be the responsibility of the State, not just the agency of the State that has the authority or responsibility to manage the resource, i.e. ADF&G, ADEC or another division in DNR, but the State. Its the same pot of money.</p>	<p>42</p> <p>71%</p>	<p>17</p> <p>29%</p>	<ul style="list-style-type: none"> * The state should protect the public interest while the applicant pays the fixed cost. * I agree, however cost to DNR of protecting the public interest should be absorbed by general funds in DNR's budget, not pro-rated out to various other agencies. * The public interest cost should be paid for by the public from general funds in the case of applicants for 5,000 gpd or less. For industrial use, the industry should pay all costs, as well as users of greater than 5,000 gpd. * I agree, assuming grandfather rights apply to existing permit/applications. * I Agree with the concept, but public interest should be covered by general fund money within DNR's budget since they have to make the final determination. * I agree with first part of recommendation, but not the second part. * A complicated scenario. Many public interest issues are non-tangible and costs have to be interpreted. * any attempt to make the State pay the costs it imposes on the private sector is good! * Simplify the existing system and costs will decrease significantly! * Other state agencies should also be responsible for the cost of adjudicating water rights. * Water rights and quality are intertwined for a small cafe or community agency with a well. The testing which is outrageously expensive should be some how combined with legislation so water quality of aquifers and bodies is under one agency. * The DEC makes the applicant pay the public interest cost as well, Which would be O.K. except they are not always protecting a legitimate public interest. * I believe it is appropriate to charge the applicant at least some portion of protecting the public interest- this goes along with the privilege of using and obtaining a right to a public resource. * Disagree. The applicant <u>should</u> pay some, if not all, of protecting the public interest. After all, if they had not applied, the issue would not be raised. The reason I disagree because the applicant should pay <u>more</u>, not less. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>2. Allow a consultant or the applicant to conduct the procedural portion of the adjudication (public notice, agency notice, prior water rights holders notice, environmental and hydrologic studies, and address state and federal agencies concerns).</p> <p>DMWM RECOMMENDATION: Establish by regulation a procedure by which a department qualified applicant or his or her consultant can conduct the administrative portion of a water right adjudication. The administrative process can include: public and agency notice, prior water right holder's notice, environmental and hydrologic studies, and addressing state and federal agency concerns. The public interest determination and final findings, prior to issuance of the permit, will still be the responsibility of DMWM. Currently we can and do require the applicant to do the necessary studies to address concerns of other agencies during our adjudication.</p>	<p>40</p> <p>65%</p>	<p>22</p> <p>35%</p>	<ul style="list-style-type: none"> * Seems like a good idea with adequate review by DNR. * This creates a two tiered system, one for people who can afford to pay and one for those who can not. * Shifting the burden of notice would be a problem? Seems DNR would have to prove notice occurred. * Somewhat agree, the applicant could conduct the public notice, etc, but not the evaluation or collection of environmental data. * I agree, but only for request of a substantial size; should not expect from small applicants. * I agree, if recommendation 1 above is adopted (industry and water users over 5,000 gpd pay all costs). * If DNR can adapt to giving up some of the preliminary control, time and effort can be saved. However, a process like this can involve the evolution of "permit Police" who spend more time checking permits than providing water supply solutions (like at ADEC). State should control hydrologic data collection and evaluation to avoid bad, and self-serving hydrology. * Not sure that the opposition or the public would buy into this with a conflicting use situation. * DNR will however incur additional costs in reviewing the applicants efforts- although there should be a net savings. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>3. Establish a system of state licensed water right examiners.</p> <p>DMWM RECOMMENDATION: Not recommended. Water right quantification, monitoring, and compliance should be done by DMWM. Applicants and consultants will be required, as always, to provide necessary field data, plans, specifications and other information required.</p>	<p>10</p> <p>17%</p>	<p>49</p> <p>83%</p>	<ul style="list-style-type: none"> * It's worth looking at but I am not sure of it value in light of other recommendations in this questionnaire. * I disagree as is, but this might have potential if better defined. * Seems unnecessary at current use levels in Alaska. * I agree, but I don't like to see more bureaucracy in the form of state licensing, but it might be desirable to establish some uniformity. * I disagree, State would have to administer exam program. Probably cheaper and more consistent to control process with staff. * We do not need another "special use" consultant with separate credentials. * Water management should be <u>management</u>. What you are recommending is an inspection system- not good planning. * DNR would need statutory authority to set up a licensing scheme. Then you would have the cost and burdens of maintaining that scheme, revocations, etc. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>4. Replace the Administrative fee with a water user fee.</p> <p>DMWM RECOMMENDATION: No user fee, continue collection of annual administrative service fee.</p>	<p>28</p> <p>47%</p>	<p>31</p> <p>53%</p>	<ul style="list-style-type: none"> * Fees based on use is a good Idea. * I suspect this would be counterproductive to your survival. If we want the legislature to eliminate you, this is the way to do it. * I disagree, keep the solution simple. * I disagree, may become an accounting nightmare. * Most equitable fee structure. * I disagree, I don't think domestic water users should pay a fee. Large municipalities and industrial users should pay some graduated fee based on volume used. * I agree but all current water rights holders should get to comment on this. Regulations should be proposed. * Have a fee for the amount of water used annually ,i.e. some amount per gallon regardless of amounts. The same fee for any use, or a consumptive use fee and a non-consumptive use fee. Neither should be a "cheeper by the dozen" fee. The same fee per gallon should apply to all users. Those that use more pay more. * Water is not free. We should pay for the administration, permitting, adjudication system completely through user fees. * NO USER FEES!!! * No to a "Water Use Fee" or anything that sounds like it. * Everyone benefits from water use, everyone should pay. * Every commercial use should pay a "per acre foot" fee. A fixed fee does not cover the cost of administering the program as detailed by statute. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
MANAGEMENT RECOMMENDATIONS 1. Allow for an water education program within DNR. DMWM RECOMMENDATION: Continue to participate in K-12 school programs, and profession and special interest organizations when invited to do so. Establish a water resource INTERNET site within the DNR Homepage. Continue to update and print water fact sheets, and if the budget allows, update and reprint the Water Users Handbook.	32 52%	29 48%	<ul style="list-style-type: none"> * I agree, but who does it and who pays? * The missing ingredient is municipal involvement. See Alaska Municipal League cover letter, attached on the State/Local Government Task Force chaired by Lt. Governor Fran Ulmer. * I agree, this could be improved upon without serious financial impact. * I disagree, people don't pay attention to issues like this. The bulk of humanity (tax payers) don't understand nor do they have an interest in finding out what its all about. We elect politicians who are suppose to process the collective wisdom to deal with and fund "natural" government functions and not just take a meat ax to all budget issues. * In the order of importance man's survival is dependent on (1)air, (2) water (3) food. In Alaska, adequate emphases (legislative, funding, etc) is being given to air and food resources. Water resources, due to plentiful supply and possibly to them not being a source of revenue to the State, are not perceived in the order of their importance - No. 2. * The public needs to know more about this issue. * Just do your job. The INTERNET is very overrated. * Establish a simple "how to" 8 1/2 by 11 handout for the public. * Education pays ! * Agree, not just for water, but DNR as a whole needs this, esp with legislators and lobbyists. Water needs to set true justified system political power as an ally, proponent of funding, they won't want the fallout! * Agree. A home page, describing the application process, and other functions and findings, is a public service that an administrative agency should provide. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>2. The state should consider the future cost of water rights and water management as it relates to the cost today.</p> <p>DMWM RECOMMENDATION: Pass on the recommendation to the legislature and see if its a priority for them to fund.</p>	<p>44</p> <p>77%</p>	<p>13</p> <p>23%</p>	<p>* I agree, but the state can do just so much. Planning for contingencies while desirable may not be possible in the present political climate.</p> <p>* I agree with concept, not analysis.</p> <p>* prioritize efforts through watershed approach, with SWMA's.</p> <p>* This is already being done-e.g. this questionnaire. The four minor changes will reduce cost.</p> <p>* Its the legislature's job to adequately fund agencies which regulate public resources. If funding is not forthcoming I guess the department takes a holding until adequate funding is approved.</p> <p>* As Alaska water becomes more valuable and competition causes conflicts this will happen.</p> <p>* agree, a fee should be adjusted accordingly.</p> <p>* absolutely essential.... common sense.</p> <p>* A study such as this is essential to making any more cuts in water administration budget in the State. Continual cuts, without regard for the long-term costs that will accrue as a result of those cuts, is not responsible government. The legislature needs to be aware of the long-term impacts of shortsighted cuts.</p> <p>* See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.</p>
<p>3. Hire an outside expert to review the existing water rights system in Alaska.</p> <p>DMWM RECOMMENDATION: Not recommended, during this ten month process we have been in touch with water resource managers in other states and have reviewed all western state's laws for any improvements in those states that would address the issues we are facing.</p>	<p>14</p> <p>24%</p>	<p>44</p> <p>76%</p>	<p>* Its usually a good idea to have an outside expert examine things too.</p> <p>* you need a credible outside evaluation. Self-evaluation does not have unbiased credibility.</p> <p>* Better to have Alaska review other states water rights mgmt. Plans.</p> <p>*It seems to me that "prior appropriation" is the big cost driver. I'd look at riparian rights.</p> <p>* your answer will be decided based on the bias of the "expert" and their view of private rights versus government control versus who knows what !</p> <p>* See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.</p>

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>4. Form an advisory committee or board to assist in the development of recommended changes to the Water Use Act. The Public Committee or Board to be appointed by the Governor or Commissioner.</p> <p>DMWM RECOMMENDATION: Budget constraints will not allow for the establishment of a new advisory board or to revive the current Water Resources Board. We will continue to work with existing boards in DEC, and DNR.</p>	<p>17</p> <p>29%</p>	<p>42</p> <p>71%</p>	<ul style="list-style-type: none"> * Won't do any more good than current Water Board. * The Alaska Water Board <u>already</u> exists. * I agree, if there is a primary partnership with municipalities instead of state appointees, regional municipal government appointees make real sense if the goal is partnership. * only makes for political ramifications that may not now exist. * I disagree, but if its necessary, use existing water board. * I disagree with the recommendation and agree with the analysis. * You could form a users group of professional volunteers. * Such boards have proven to be agenda driven with much wasted effort. * Not necessary cost, State Water Resources Board couldn't get funded. * The present method is better since it has remained fairly non-political with no dominance by people with private agendas. * With budget cuts and continued controversy, I am becoming convinced that boards are the way to go for resource programs. * Perhaps an advisory committee to help sort out <u>final</u> recommendations would be in order and less costly than one at this stage. * Board should include more than "water users." Recommend that it includes one or two "citizens at large" members. * Water board never was very effective. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
<p>DNR STRAWMAN #1 Eliminate all current funding for the Water Resources Section and replace it with a Water User Fee. At least ½ of the fee used as a 6i resource.</p> <p>DMWM RECOMMENDATION: Not recommended. This recommendation did better than the other two "STRAWMAN". If it becomes necessary, we should propose a water use fee based on quantity of water used, prior to the elimination of the Water Resources Section funding.</p>	<p>26</p> <p>51%</p>	<p>25</p> <p>49%</p>	<ul style="list-style-type: none"> * Good idea. * I can live with this in preference to #2 and #3. I think this new "tax" will be politically unpopular and may jeopardize your existence. * I agree, although legislative support for adequate general funding should still be pursued! * I agree, only if fees to large water users are adopted (category B & C), small domestic users should be exempt from the fee. * I disagree, fund water management with general funds. Its our future. User fees for most resource development is acceptable, water is of statewide public interest. * User fees are becoming a way of life, the NPS and USFS for example. Water user fees may not prove popular, but keep in mind, water is NO. 2. * Use water registry for small users outside of SWMA. Category A should be one time fee for non-commercial use. * The State should not be able to charge for something they don't even own! * If category C users return the water to the source are they still charged? Such as mining and hydro users. * Water users should pay. * Give me a break, the cons make me sick. Lets look at what other states are charging their commercial users. Get a Life, join the 21st century. * Need explanation of 6i and streamlining first, but user fees to meet status quo operating levels is needed. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.
<p>DNR STRAWMAN #2 Eliminate all general funds (\$800,000), eliminate all Water Resources Section programs except Dam Safety.</p> <p>DMWM RECOMMENDATION: Not recommended. Consider an administrative service fee for the Dam Safety program.</p>	<p>12</p> <p>20%</p>	<p>39</p> <p>80%</p>	<ul style="list-style-type: none"> * I disagree because of the cons in strawman #3. * Out of the question ! Not Feasible ! * I will work very hard to oppose this option in the Legislature. * Disagree, retain Dam Safety, also. * Chaos, not responsible thinking. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

RECOMMENDATION	AGREE	DISAGREE	COMMENTS
DNR STRAWMAN #3 Eliminate all current funding for the Water Resources Section. Abolish the Water Use Act and regulations for Dam Safety and the Alaska Hydrologic Survey. Enact legislation to create a water right registry system for beneficial consumptive uses of water. DMWM RECOMMENDATION: Not recommended	6 10%	55 90%	* Although I agree with many of the pros and cons I believe the cons are over whelming. Besides the 14,000 should not be the last to hold rights. * Out of the question ! All aspects must be retained. * It would be irresponsible to abandon supervision of water resources. It would be an open invitation for the feds to take over. It would probably be unconstitutional. * I will oppose this in the legislature. * disagree. However it would be nice to eliminate the multiple review and "parroting" positions in DFG, DGC, and ADEC. * Lets get real, "return to the dark ages" not a chance. * Chaos, not responsible thinking. * See attached comments from ADF&G, Center for Environmental Law and Policy, Alaska Miners Association, Tryck Nyman and Hayes Inc, Ketchikan Public Utilities, Stoch Anderson, Keith Bayha, Mary Lu Harle, Wayne Erickson, Steve Lyons, and Trustees for Alaska.

ADDITIONAL COMMENTS

- * See attached letter and comments from Stosh Anderson (comments to all recommendations).
- * See attached letter and comments from Steve Lyons (comments to all recommendations).
- * See attached letter and comments from Mary Lu Harle (comments to all recommendations)
- * See attached letter and comments from the Center for Environmental Law and Policy, Seattle Washington (comments to all recommendations).
- * See attached letter and comments from Trustees for Alaska (comments to all recommendations).
- * See attached letter and comments from the Alaska Department of Fish & Game, Division of Habitat and Restoration (comments to all recommendations).
- * See attached letter and comments from the Ketchikan Public Utilities.
- * See attached letter and comments from the Division of Governmental Coordination.
- * See attached letters from Mark Premo, Anchorage Water and Wastewater Utility, Kevin Ritchie, Alaska Municipal League, Tryck Nyman Hayes, Inc, Keith Bayha, Mel Langdon, J. Wayne Erickson, North Slope Borough, and the Alaska Miners Association.

- * Have we come too far in the prior appropriation mode to switch to riparian right? The 14,000 existing holders would have to be compensated somehow, that may be cheaper than continuing the paper work volume generated by prior appropriation. While I don't fully understand riparian rights it certainly looks better than prior appropriation, especially after I went through this questionnaire, as how most of the bureaucratic problems stem from the prior appropriation doctrine.
- * Allocation of the State's water resources is a fundamental responsibility of State government. Shifting those responsibilities to another department does not decrease state government. In fact, it may increase costs, since a department other than DNR has less experience in water right matters.
- * In a State blessed with abundance of water supply sources, it appears the public, and the government funding agencies are taking water for granted. If the population centers continue to grow, the value of potable drinking water supplies will increase. The stress to the surface land use, and the increases in drinking water contamination will require strong cooperation among the DNR, ADEC, land developers, and water users. Forfeiting wise management today to gain budget cuts, may well sacrifice the drinking water supplies of the future citizens.
- * I question whether you need a review process. If you cannot formulate to the legislature why they cannot cut your budget, and trot out any political support from satisfied users, perhaps your budget should be cut. I have heard it said that Alaska has the best water rights system in the U.S.. Don't try to fix what ain't broke!
- * These positions (strawman) don't anticipate any success in your efforts (to combine ADEC, ADF&G, and DNR or DNR,s and ADEC's water programs). I would like to see those possibility explored before you take your straw poll.
- * Let the public review all State activities with the scrutiny we are reviewing water. Then, there might be money to fund the management of water .
- * Being a small water user of domestic water- 2 rental units and a small stock farm and for irrigation all this boggles my mind. My use does not affect the level of the body of water I draw from any more than a warm windy summer day or two or three. But I'd be highly irate if a big user moved in and drained the ground water which my well taps, or if an excavation lowers the water table.
- * It would be bad form to charge domestic users fees when their wells often cost around \$10,000 while town systems users have little or no up front costs but only a monthly charge which may not be as much as the independent water system operator pays per month in operating and maintenance (electricity, for pump conditioning, heat, etc.).
- * I have been impressed with this process. DNR gets 5 stars! It is a little hard to tell what the final outcome will be but it seems like the general direction is: 1. Minimal regulatory interference or participation except when necessary. 2. User should pay the greater share of the cost. 3. There should not be regulatory procedures in which the principal thrust is to generate income.
- * I think you are doing a very good job of trying to sort through these questions. Do you have any reviewers/commentors from the University of Alaska? They might be able to provide you with good insight.
- * I question the base premise that DNR should shrink. Look for ways to foster public discontent and outrage at the prospect of further cuts to basic public resource stewardship and management. Grind things to a HALT and turn up the heat on the hair brained legislators.



*Carried
11/5/96*

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

October 25, 1996

Mr. Jules Tileston
Director
Division of Mining
3601 C Street, Suite 800
Anchorage, AK 99503-5935

*PTJ
Carried
11/5/96*

RE: Management of Water Rights

Dear Mr. Tileston,

Thank you for the opportunity to comment on the possibility of changing management of water rights in Alaska. Water rights are extremely important. We appreciate the need to reduce costs but nothing can be allowed that would jeopardize establishment of or secure tenure to water rights.

We have some general comments in addition to the answers included on the enclosed DOM questionnaire:

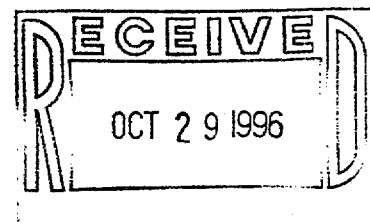
1. Water rights must continue to be established based on 1) filing a notice of appropriation, and 2) beneficial use of the water.
2. Water rights are a form property right and must not be commingled with or in any way associated with permitting functions such as ADF&G Title 16 or NPDES discharge permits. Those areas are sufficiently complex on their own and water rights must be kept separate from them.
3. None of the three "strawman" alternatives are workable.
4. Some modifications to the existing water rights system can be made to reduce costs of administration but the underlying principles must not be changed.

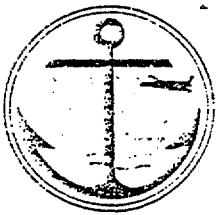
Thank you for this opportunity to comment. The issue of water rights is a very grave issue and any changes must be carefully considered. We appreciate your efforts to raise this topic in this non-regulatory format.

Sincerely,

Steven C. Borell, P.E.
Executive Director

enclosure

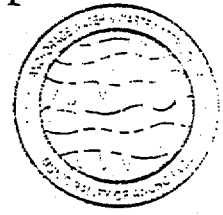




Rick Mystrom,
Mayor

ANCHORAGE WATER & WASTEWATER UTILITY

3000 Arctic Boulevard
Anchorage, Alaska 99503-3898



Owned by the
Municipality of Anchorage

July 15, 1996

Hon. John T. Shively, Commissioner
Department of Natural Resources
State of Alaska
400 Willoughby Avenue
Juneau, Alaska 99801-1796

Subject: Water/Water Rights Management Program

Dear Commissioner Shively:

We understand that there is a proposal to change DNR's administration of the water rights program within the State of Alaska. AWWU does not support this proposal. The Department of Natural Resources appropriately administers this important program as set forth in the State Constitution. Historically, DNR has and should continue to administer the adjudication of water rights and, as the custodian of the program, maintain the historical water rights data base.

AWWU has followed closely the developments that may lead to a change in how the allocation of water rights within the State is administered, and by whom. Robert LeVar, Manager of the Utility's Treatment Division, has represented the Utility at the most recent public meetings and as a panelist discussing the potential impacts of modifying the water rights process. Of the four options offered at the last public hearing, clearly only Option No. 1 - maintaining the program as it is currently administered - is acceptable.

Every public agency has a twofold mission of acting as an agent for the public interest at the lowest possible cost. In particular, the State of Alaska has an obligation to manage specific programs target statewide, rather than regional or local, interests. Water rights and public drinking water are just a few of the programs in which the State has a vested interest to maintain a quality of life within Alaska. Although the public process is still ongoing and continuing information is forthcoming, AWWU feels that its position should be made clear regarding this important decision, based on the facts at hand.

AWWU has enjoyed a long and beneficial working relationship with the Department of Natural Resources. Like the State of Alaska, we as a utility within the Municipality of Anchorage have experienced the need to reduce operations costs, which is assumed to be the motivation behind the present review of how the State should deal with the allocation of Alaska's water resources. Clearly, DNR has performed admirably in the face of declining resources. We do not support the concept that this program can be

Hon. John T. Shively, Director
Department of Natural Resources
June 13, 1996
Page 2

delegated to local governments or anyone else without potential conflicts to other water users and public interests regarding water rights adjudications. Also, local municipalities do not have the geological and scientific expertise to make informed water rights decisions.

Assuredly, a duplication of efforts to administer water rights at the local level as an unfunded mandate from the State will be inefficient and expensive. Public comments make it clear that no one in local government is interested in taking over the management responsibility for DNR's water rights programs. It is the State's responsibility to protect the public's interest and natural resources. As a public utility, our first responsibility is to our customers. The public interest and the Utility's ratepayers' interests may not always be one and the same. The State is rightfully the champion of the public's interest.

To date, none of the alternatives being discussed is more cost-effective than the current process. Changes would simply move the cost from one agency to another or from state to local governments (already dealing with less funding), or to the applicants and public. Additionally, the present system has withstood the test of time. Any changes will have to be carefully reviewed and may require amending current laws and regulations or result in costly litigation. Any change to the current system will likely be more complicated and more expensive for the State and applicants. It could be argued that the cost of carrying out a public discussion on the matter is itself expensive, and the funds and time expended would be better invested in discharging the backlog of water rights adjudication.

Demands for pure water will increase as the availability of drinkable water decreases throughout the world. And who is better positioned than the State to insure that water exported from Alaska is distributed equitably because of its global view of the state's resources and requirements, as contrasted with local self-interest? Careful stewardship of our water resources could result in the next "boom" for Alaska...if there is in place a proven administrative mechanism to administer that precious resource.

AWWU will continue to participate in the ongoing dialogue in the hope that a reasonable, effective solution will evolve. If you have any questions, please contact Robert LeVar at 267-4510.

Sincerely,


Mark Premo, P.E.
Manager, AWWU

cc: Hon. Tony Knowles, Governor of Alaska
Hon. Rick Mystrom, Mayor, Municipality of Anchorage
Jules Tileston, Director, Div. of Mining and Water Management, DNR
Gary Prokosch, Water Resources Section, DNR

CLERK'S OFFICE

AMENDED AND APPROVED

Date: 11-12-96

Submitted by: Assemblymembers CLEMENTSON,
Abney, Begich, Bell, Carlson, Meyer, Von Gemmingen,
Wohlforth, Murdy, and Wuerch
Prepared by: Assembly Policy and Budget
For reading: November 12, 1996

ANCHORAGE, ALASKA
AR NO. 96- 316

A RESOLUTION OF THE ANCHORAGE ASSEMBLY REQUESTING THE GOVERNOR, LEGISLATURE, AND THE ALASKA STATE DEPARTMENT OF NATURAL RESOURCES TO CONTINUE ITS ADJUDICATION OF WATER RIGHTS, CONTINUE ITS ROLE AS THE CUSTODIAN OF THE PROGRAM, AND TO CONTINUE MAINTENANCE OF THE HISTORICAL WATER RIGHTS DATA BASE

WHEREAS, with few exceptions, water in the State of Alaska is managed and appropriated exclusively by the State, and the Water Act was designed to manage the water for the benefit of all Alaskans according to State management objectives; and

WHEREAS, it is the State's responsibility to protect the public's interest and natural resources; and

WHEREAS, historically, the Department of Natural Resources (DNR) has, and should continue to administer the adjudication of water rights, and as custodian of the program, maintain the historical water rights data base; and

WHEREAS, the State of Alaska is considering ending DNR's administration of the Water Rights program and turning over its responsibility to individual municipalities, instead, to adjudicate water rights within the State of Alaska; and

WHEREAS, the Water Rights program cannot be delegated to local governments without potential conflicts to other water users and public interests regarding water rights adjudications. This delegation of authority and responsibility is not in the public interest, since local governments are themselves participants in such adjudication; and

WHEREAS, local municipalities do not have the management, hydrological or scientific expertise to make informed water rights decisions; and

WHEREAS, a duplication of efforts to administer water rights at the local level constitutes an unfunded mandate from the State, and will be inefficient and expensive to administer; and

WHEREAS, the State's Water Rights program is the cornerstone of water resource management in Alaska and includes the issuance of permits in accordance with AS 46.15 and serves other important purposes such as the coordination of water appropriations to assure that the proposed use of water and its associated effects are in the public interest; and

RECEIVED
NOV 22 1996

1 WHEREAS, Article 8, Section 1 of the Constitution of the State of Alaska clearly state:
2 "It is the policy of the State to encourage the settlement of its land and the development of its
3 resources by making them available for maximum use consistent with the public interest"; and
4

5 WHEREAS, Article 8, Section 2 of the State Constitution states: "The legislature shall
6 provide for the utilization, development, and conservation of all natural resources belonging to
7 the State, including land and waters, for the maximum benefit of its people"; and
8

9 WHEREAS, Article 8, Section 3 of the State Constitution states: "Wherever occurring
10 in their natural state, fish, wildlife, and waters are reserved to the people for common use"; and
11

12 WHEREAS, Article 8, Section 4 of the State Constitution states: ". . . all other
13 replenishable resources belonging to the State shall be utilized, developed and maintained on
14 the sustained yield principle, subject to preferences among beneficial uses"; and
15

16 WHEREAS, Article 8, Section 16 of the State Constitution states: "No person shall be
17 involuntarily divested of his right to the use of waters. . . except for a superior beneficial use or
18 public purpose and then only with just compensation and by operation of law"; and
19

20 WHEREAS, Article 8, Section 17 of the State Constitution states: "Laws and regulations
21 governing the use or disposal of natural resources shall apply equally to all persons. . . "; and
22

23 WHEREAS, the summary of Water Rights meetings indicates that there is not public
24 support for the proposed change in the adjudication of water rights.
25

26 NOW, THEREFORE, the Anchorage Assembly resolves:
27

28 Section 1: That the State of Alaska, Department of Natural Resources is respectfully
29 requested by the Municipality of Anchorage to continue the administration of the Water Rights
30 program as set forth in the State of Alaska Constitution/and Water Use Act.
31

32 Section 2: That this resolution is effective immediately upon passage and approval.
33

34 PASSED AND APPROVED by the Anchorage Assembly this ____ day of
35 _____, 1996.
36

37
38 
39 _____
40 Chair

41 ATTEST:
42
43
44

45 _____
46 Municipal Clerk
47

PARADISE VALLEY

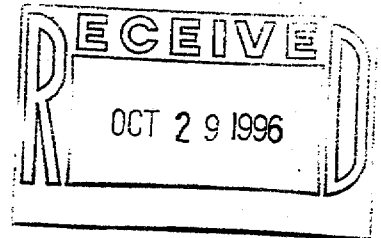


Bettles, Alaska 99726
Phone (907) 479-5704

Mick & Cee Manns

Water Rights

10-25-96



Dear Sirs & Mrs

We Generally feel the Existing
and Historical System is Best.

If LT isnt Brake. Dont
Mess with LT.

Leave us alone & dont mess
with our traditional rights
were always Had.

(Much More time & Hearings)

would be needed to make any change
if changes are needed

Sincerely Mick & Cee Manns - associated.
Paradise Valley Mining Inc.

FAIRBANKS GOLD MINING, INC.

(a subsidiary of Amax Gold Inc.)

PO Box 73726

Fairbanks, AK 99707-3726

(907) 488-4653 phone

(907) 490-2290 fax

*Completed
11/15/96
Comments
11/17/96*

FAX COVER SHEET

To: Jules Tileston, Director, Div. of Mining & Water Mgmt
fax (907) 563-1853

From: Bob Tsigonis, Environmental Engineer/Land Coordinator *RET*

Date: October 25, 1996

Subject: October progress report and request for comments

No. of pages including cover: 2

With mill startup imminent, we are unable to provide anything but a very brief review of the "Progress Report and Request for Comments on the Alaskan Water Management Program" at this time. However, we do have the following responses and comments to that document which we received in early October. As you consider these responses please bear in mind that we generally do not totally agree nor totally disagree with any given recommendation:

Agree Disagree Comments

Amendments to the Alaska Constitution

1 X

Streamlining

1 X

2 X (issuing a water right for an amount likely to increase over the next 20 years by an unknown amount violates the concept of priority use upon which our existing water appropriation system is based)

3 X

4 X

5 X

Jules Tileston
 October 25, 1996
 Page 2

	<u>Agree</u>	<u>Disagree</u>	<u>Comments</u>
6		X	
7		X	
8		X	
9		X	
10	X		
11		X	
12	X		
13	X		
14		X	
15	X		
16		X	
17		X	
18a)	X		
18b)	X		
18c)	X		
18d)	X		
18e)		X	
<u>Who pays?</u>			
1		X	
2	X		
3		X	
4		X	
<u>Management recommendations</u>			
1		X	
2	X		
3	X		
4	X		
<u>Strawman</u>			
1		X	
2	X		(keep the dam safety program to avoid any potentially inadequate dams in the state)
3		X	

We appreciate this opportunity to comment and look forward to assisting in this way in the future as changes to the state's water rights program are considered.

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

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,

Agree

*cc: Mary McDowell
Michelle Brown*

Oct. 15, 1996

Tony Knowles, Governor
3601 C. Street, Suite 800
Anchorage, Alaska 99503-5935

Jules V. Tileston, Director
State of Alaska, Dept. of Natural Resources
Division of Mining and Water Management

Dear Director:

As you requested, I have reviewed the Progress Report and Request for Comments on Alaskan Water Management Program. I find it alarming that serious consideration appears to have been given to grossly limit the funding for the Department of Natural Resources (DNR) water division.

You may recall that I did donate several weeks of my time to this department and the state of Alaska back in 1992 (as I have done for the Department of Fish and Game). I did so for I wanted to gain a better understanding of just how this department functioned. The motivation being that I believe that fresh water resources development is of vital economic importance to the state. Unfortunately, before I could begin to wrap up my work with the Department, I suffered a toxin induced stroke. I now feel that I have substantially recovered from its affects and welcome this opportunity to comment.

With world population and economic trends, the only question about the real value of this tremendous natural resource, fresh water, is "when" not "if" it becomes a real economic factor in Alaska's future. It can and will, if properly handled, be a major economic force for both the Alaska Native society as well as the state itself. It also has to show an attractive economic return for those who are willing to provide the capital for both developing the markets and to perfect the source of supply.

It is not inconceivable that the export of fresh water for both potable use and industrial applications will generate income on the scale of the oil industry at its zenith.

The question is not whether we need or must have a water division, for we do, but rather how do we structure and fund the effort needed to

develop this major economic resource while protecting and assuring supplies to existing users and potential in-state demands.

The ultimate objective should be that a program be established from the sale of this renewable asset which is self sustaining . The most environmentally and sociologically acceptable methods possible should be employed. The joint effort between the Ak Fish and Game, (ADF&G), the Department of Environmental Conservation (DEC) and the Department of Natural Resources (DNR) as envisioned in your report on the Alaska Water Management Program is an excellent beginng. I believe that this should be expanded to include representation from the Alaska Native contingency. Ultimately their participation will be of vital interest to them as well as the balance of the state. Perhaps by doing so now we could avoid many of the problems and issues which now tend to divided our state.

Unfortunately, my personal health problems did not allow me to pursue the thought of concentrating the development of markets of fresh water for industrial or commercial users first. In much of the world it appears that potential potable water resources are being diverted to industrial uses. If this could be reduced through the use of Alaska Fresh Water, it would decrease the cost of water treatment and distribution systems needed to put Alaska Water to use.

Even though we have some of the best fresh water sources in the world, it does not mean that we can market this as potable water without extensive quality control. The state can not afford to have a serious health problem develop from contaminated water sold originating from Alaska. Eagles still fly, fish do swim and the bears and moose will continue to do their thing in the woods. Factors which could affect the use of water for drinking or cooking purposes but would not affect its value for use in the oil refinery, or other industrial applications.

The potential use of such water facilities at places such as Adak, where the military base is being closed, should be given serious consideration. This may well be a place where potable water could be accumulated and marketed from. The proceeds could then be used to fund this state water development program.

Before such schemes are seriously considered an operating Water Resource division must be maintained. It will be the key to maintaining the required balance needed between domestic needs and water rights and those of the water export business. Without it, the ultimate development

of this potential major economic force will be deferred - possibly even lost to the technology of converting sea water to fresh water.

It would appear that a cooperative joint undertaking by the State of Alaska, with the Native corporation and limited grant funding from the Federal Government would be in order. Certainly this should be pursued before any major changes in the Water Division considered. Those changes designed to increase efficiency thus decrease cost and the steps needed to enhance income should be considered immediately . Steps which would not place the Water Division it self in jeopardy

From my viewpoint, I believe it imperative that we protect the water rights of Alaskan Citizens first, whether Native or non Native. We must have a system and a plan that allows for the orderly development of this major resource.

I also believe that this system must take into consideration that the best of plans made today will have to be continually modified and updated to meet the rapidly changing conditions of Alaska, the nation and the world we are facing. A consideration not made with many of the government agencies. As a result the objectives and purposes of the agency are forgotten and the system itself become omnipotence. When this happens the preservation of the bureaucracy dominates over the objectives and purpose for which it was created.

If I can be of any assistance to you or the state in this effort, please feel free to call on me. While working on an analysis of the "Why's , How come, what for's" of the use of toxins and hazardous chemicals in our foods, I became aware of the following list of publications pertaining to water put out as part of the World Bank Technical papers that pertain to water. Thinking it may be of interest to you, I am including it here.

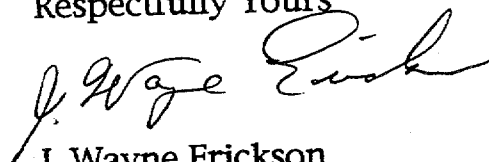
A Review of RECENT WORLD BANK TECHNICAL PAPERS Pub 1994

Document #	Title
#189	Frederic, <u>Balancing Water Demands with Supplies:</u> <u>The Role of Management in a World of Increasing Scarcity</u>
#191	Frederiksen, <u>Water Resources Institutions: Some</u> <u>Principles and Practices</u>

- #198 Teerink and Nakashima, Water Allocation, Rights, and pricing: Example from Japan and the United States.
- #205 Xie, Kuffner, and Le Moigne, Using Water Efficiently: Technological Options
- #212 Frederiksen, Berkoff, and Barber, Water Resources Management in Asia, Volume 1: Main Report
- #215 Umali, Irrigation-induced salinity: A Growing Problem for Development and the Environment.
- #223 Frederikson, Berkoff, and Barber, Principle and Practises for Dealing with Water Resource Issues.
- #249 Le Moigne, Easter, Ochs, and Giltner, Water Policy and Water Markets: Selected Papers and Proceedings from the World Bank's Annual Irrigation and Drainage Seminar, Annapolis Maryland, December 8-10, 1992

I thank you again for being given this opportunity to comment.

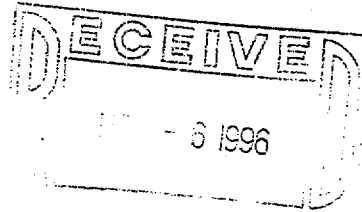
Respectfully Yours


J. Wayne Erickson
Safety Engineer - Author



November 5, 1996

Division of Mining and Water Management
DNR
3601 C Street Suite 800
Anchorage, AK 99503-5935



Attention: Mr. Jules Tileston

Counted
11/12/96

Comments
11/13/96

Re: Recommendations to the Commissioner

Thank you for the opportunity to comment on the proposed recommendations changes in water management in Alaska. You have done a commendable job in trying to get information out to and feedback from the water community. However, there are many ideas here that deserve more of a hearing than this process can accommodate. A water management board may be more suited to the end of policy setting, such as are suggested by the recommendations in the survey. A board can air these types of ideas and concerns in an on-going manner.

An even greater concern, over re-establishing a board, is the funding situation. Recommendations to the commissioner should not include any more cuts in water rights administration. They should include ways to generate fees. The legislature needs to hear that there are certain services the government must provide, and these services must be funded.

Please include me in future mailings and meetings concerning water management.

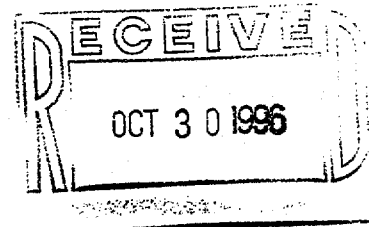
Sincerely,

A handwritten signature in cursive script, appearing to read "Mel Langdon".

Mel Langdon
2621 Redwood St.
Anchorage, AK 99508

TRYCK NYMAN HAYES, INC.

ENGINEERS/SURVEYORS/LANDSCAPE ARCHITECTS
TRANSPORTATION and COMMUNITY PLANNING



October 28, 1996

State of Alaska
Department of Mining & Water Management
3601 C Street, Suite 800
Anchorage, Alaska 99503-5935

Gentlemen:

We have very briefly reviewed your "Draft Recommendations to the Commissioner Water Resources Management" and your questionnaire is returned herewith with comments. I have not reviewed your organization structure and thus my responses are intuitive rather than based upon knowledge of your staffing, work load etc.

Generally, it is my belief that DNR, DEC and other state agencies believe that they have such a heavy work load that they cannot properly administer their assignments. I believe that the regulators and permit issuers should priorities the requests for services and simplify procedures. DNR could require that well drillers, placer miners, and others that withdraw water should be required to provide well logs and an estimate of the water use resulting. Similar data could be required from persons who withdraw water from streams. There should be minimum filing (computerized) recording of data and there would not be required activity from DNR unless there is an apparent conflict or complaints filed by persons affected. The computerized record of the filings of water withdrawals should be able to be accessed by anyone interested.

My intuition is that DNR's mission should concentrate on being the recorder of water use information and not try to be a policeman, unless there are conflicts that require resolution. Even for structures such as dams, DNR should require that applicants provide the necessary information, including an environmental assessment (in no more detail than absolutely necessary) to show that the fishery in the stream is protected. DNR would publish the application but not be involved in judging the merits of the application. The applications should be prepared in electronic media, suitable for entering directly into DNR's electronic files. Applications should be prepared by licensed, qualified professionals and, unless there are complaints from persons or public agencies affected, would simply file the information, make it public, and not be further involved. I foresee DNR's permitting processing of information as similar to the Corps of Engineers processing of permits for construction in tidal waters.

Sincerely

A handwritten signature in dark ink, appearing to read "Frank Nyman". The signature is fluid and cursive, with a prominent "F" and "N".

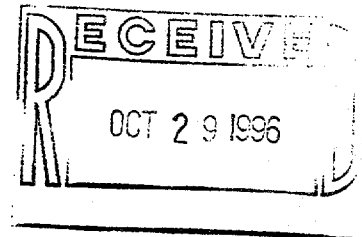
Frank Nyman, P.E.

Over 40 Years Serving Alaska

911 West Eighth Avenue • Anchorage, Alaska 99501-3497 • (907) 279-0543/FAX (907) 276-7679

Stosh Anderson
Box 310
Kodiak, AK 99615
24 Oct. 1996

*Comments
11/5/96
Comments
11/7/96*



Department of Natural Resources
Div. of Mining & Water Management

Re: Alaska Water Management Program

Dear Sir:

Thank you for the opportunity to comment on the Department's and public's proposed solutions to water management in Alaska. Enclosed are comments on the 21 page document that you have distributed along with comments I forwarded to the Governor's Transition Team in Dec. of 94 that DNR was provided a copy of.

I would like to address the three "basic concepts" as outlined in your opening paragraph.

- 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;"

It is my opinion that Alaska's Constitution, Alaska Water Use Act, Instream Flow legislation and export of water legislation is the most progressive water management framework in the United States. The problems DNR is having in implementing this framework is the basis for these proposals and strawman. This begs the question is the management system broken. The past priorities and responsibilities undertaken by Water Management Div. or section has led to the back log in water rights adjudication. The assumption that this back log justifies changes in the Constitution, Water Use Act or other legislative fixes is presumptuous. The previous administration's political decision to have water managers prioritize the promotion of the export of water added to the back log as did prioritizing water managers to spent time on navigability, a land tile issue. To the credit of Governor Hickel he had the vision of the importance of our state water and how it will play in the future of Alaska and its global implications, but the day to day work of water management was neglected. The State needs to restructure its management of water to protect the public interest, implement existing statutory framework with the vision to the value of our water. It may be a valuable exercise to audit the expenditures of water management division and / or section and determine how much was spent on adjudication and how many water rights were issued. The cost of the different types or amounts of a water in an application may help define future action.

- 2) "long-term funding for the existing program is not likely;"

It is the State's responsibility to provide for the management of our water resource, this can be funded with general fund money or user based. The general reservation for fish and wildlife, as outlined in Alaska's Constitution, and other public interests mandate the state will not appropriate water that would infringe on these priority rights. This implies a management responsibility and system to be implemented by the State. The question is how will the State government fund this responsibility. General fund expenditures are appropriate to protect public interest water, margins in excess of expenses on revenues generated for the export of water would also be appropriate to fund public interest water adjudication, data base gathering and general overhead. User fees, except for the domestic use of less than 1500 gallons per day, for consumptive use may be appropriate.

DNR has dropped the ball on the promulgation of regulations as required by the legislation that addressed the export of the State's water. The fee structure that was adopted is inappropriate as the proposed revenues from the Sitka export contracts exemplifies. The documentation I have seen details the city of Sitka will generate \$30 - \$60 million and the maximum the state will receive is \$80,000. The entire budget for water management is in the \$1 million range. It was brought to DNR's attention when these fees were put into place that they were inadequate to provide the funding required to administrate the State's water responsibilities. It is time to revisit this fee structure if general funds are not available to fund the management of water.

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."

We are fortunate to have our bountiful water resource. The statement " except for a few places" and the accumulative affect the expansion of our developing economy will have on this resource is what is in question. It is the desire of most people is the State to live the good life, have economic opportunity for our selves and children. To live the "Alaska Dream", whatever that means to you, you need abundant clean water in our streams, lakes and aquifers to provide for our economies and lifestyles.

The costs and revenue sources for managing our water resources needs to be identified and a management organization empowered to implement our statutes. DEC may be well suited as is the Division of Land in DNR to house water management, but managing water in the Division of Mining is not appropriate.

Sincerely,


Stosh Anderson

cc: Tony Knowles, Governor
Frank Rue, ADF&G
Michele Brown, ADEC
file: DNR_96-1.sam

Proposals:

Amendments To Alaska Constitution:

1. Disagree - If its not broke don't fix it.

Streamlining

1. Disagree - The accumulative effect of use whether appropriated or not needs to be recorded in a LAS water right data base. This is poor advice to give the citizens of the state as it would not give a user a water right and may leave them without access to water in the future.

2. Disagree - The potential cost saving is insignificant and the potential litigation to individual water users without a water right is significant.

3. This isn't the question. Watersheds should be evaluated on a regular basis (10 years or other period) by taking a random audit of a percentage or each class user to screen for potential over or under use of our water supplies.

4. Disagree - This has been evaluated and does not protect the publics interest.

5. Agree - This does not address the commitment, the State needs to define revenues.

- 6.-7-8- If a basin or watershed approach was used a more comprehensive adjudication of the areas resource and an evaluation of the hydrological parameters would be accomplished. This could be rotated around the state with a orderly backlog managed as each area was adjudicated. Montana may use a concept like this.

9. Agree A cost savings would be realized by this concept for several agencies and the public. This would coordinate well with a watershed approach (6-7-8).

10. Disagree General consumptive permits will leave managers with no data base to evaluate other water rights adjudication.

11. Agree The period of two or three years with a rotation of 1/x each year so the income for any one year is not substantially different from year to year may address the down side. If a fee payer wants to pay on a yearly basis this could be allowed for an added fee.

- ✓ 12. Disagree When you get the cart before the horse litigation and its related costs will exceed any possible savings.

13. Disagree As stated this portion of applications are less than 20% of total and many only take an hour to process. This is not where the burden is. The cost saving is negligible and the accumulative data lost significant. (see comments on 1)

14. Preserve the current framework and change management practices to address problems. (see opening two pages)

15. Disagree (see comments on 1,13,14,)
16. Disagree This does not save money and losses any attempt to maintain a coordinated water management system or data base.
17. Disagree Colorado has proven this to be not cost affective.
- 18a-e. Disagree All concept addressed above. The statement " at the affected parties expense, to settle " is another way of saying who ever has the most money wins.

Who Pays?

1. If DNR is not capable of managing the water resource and obtaining the funding necessary to protect the public interest than possibly another agency should administrate this resource.
2. Agree The assumption is that the private sector can do this more cost effectively than government, this may be true of a large project but a cost analysis of small water rights should be made to see if government of the private sector is the most cost effective method.
3. Heeds more details.
4. Disagree Citizens need access to domestic water without a direct yearly charge. It is not a cost effective way to collect revenue on the states water resource. Large water users and exporters are the most logical place to raise revenues.

Management Recommendations

1. Disagree Spend the Departments time on the backlog.
2. Agree Right On!
3. Disagree We know we have a good framework. Now implement it.
4. Disagree It is not the problem.

Strawman

1. Disagree You do not need legislative action to address the revenue authority and fees you can currently charge and collect. A possible example is what was the cost to adjudicate Sitka's export water right and how much was collected to cover the cost of that priority adjudication.
- 2,3. Disagree Dam Safety, needs to be self supporting where ever it is administrated. If water management can benefit from this program than retain it. If DEC with its field network would be a better place than it should be relocated.

Note date
Stosh Anderson
Box 310
Kodiak, AK 99615
907-486-3673

21 December 1994

Knowles / Ulmer Transition Team
240 Main St.
Juneau AK 99801
907-465-5077 FAX 907-465-6525

Re: Papers for Fisheries and Natural Resources Policy Transition Teams

Dear Sir,

I am making the following recommendations for changes in how the state of Alaska administers its water management responsibilities. Clean and abundant water is a critical ingredient for Alaska citizens' quality of life and economic stability. For the fishstocks and its many users the management of the water in our lakes, streams, estuaries and ground water tables is of fundamental importance. Without clear and consistent management policies and government structure to carry them out, our water sheds will be at risk and subsequently our fishstocks will be depleted. The elusion of enlightenment and not making the mistakes of other states and nations has in the past been lost in complacency and focusing on short term interests. The necessity of government to focus on its citizens' immediate problems is fundamental but it is governments' responsibility to provide the framework to look at the long term impacts of our actions. The following outlines some of the existing problems and alternatives as to how our water resource should be managed.

Sincerely,


Stosh Anderson

cc: file DNR-POS.sam

Dec 1991
Dec 1994
R.L.C.
Baker

WATER RESOURCE MANAGEMENT

Over the past four years, the Department of Natural Resources (DNR) water resources programs have continuously declined in effectiveness. These comments will present a view of the programs, identify accomplishments and problems, suggest ideas to improve effectiveness, and suggest options for reorganization of the DNR water programs.

The present DNR Water Management Section is a section of the recently combined Division of Mining and Water Management. The Water Management Section is composed of four functional program areas: water rights adjudication, hydrologic survey, dam safety, and title navigability. Most Section staff work in the central Anchorage office, however, some of the water rights and hydrology staff work in the DNR regional offices in Juneau and Fairbanks.

Accomplishments over the past four years have been few. Water export legislation was enacted by the Legislature at the request of DNR, however the legislation has many technical problems that need to be addressed. Except for conservation fees, regulations to implement the law have not been written. Regulations were implemented to collect an annual administrative fee from water right holders to generate revenue, however DNR staff indicate that administering the fee collection consumes a large amount of revenue. An interagency Water Management Council was established, but did not function. The number of stream gages maintained by the Section continue to decline and the hydrology unit continues to conduct much work on a contractual basis. The dam safety unit has worked with major mining projects to permit major dams for those projects. The State gave notice to the federal government of its intention to file quiet title actions on approximately 193 rivers, and litigation was filed on three of those rivers. Most recently, a state/federal navigability task force was established.

The water programs continue to struggle with declining budgets. Over the last four years, at least five positions have been eliminated, including the former Director of the Division of Water, the former Chief of the Hydrologic Survey, one clerk-typist, and three hydrologists. During this time, major emphasis was placed on marketing water for export. A large backlog of water right applications has developed as staff focused on water exports and efforts to raise revenue to support the water programs. No instream flow applications have been processed or granted since 1991. The Water Resources Board was de-funded and has not met since 1992. The Western States Water Council, the state's primary means to interact with other western states on water issues, was de-funded and the state is now an associate non-voting member. After two years in this status, the state will be dropped from Council membership. Hydrologic data collection continues to decline and the number of stream gaging stations is declining. Communication and trust between the state and other agencies has become strained. There is a lack of leadership to guide the water programs, and the programs are foundering. Most water rights staff are not trained in legal and technical aspects for water rights and hydrology. There is a lack of effective interaction and integration of existing technical hydrologic staff and management staff. There is a long standing and continuing lack of program emphasis from DNR leadership. The water program staff lack impartiality in their management of work priorities and in decision making. This has only increased by the recent combining of the water division with the mining division.

The pervasive problems of lack of leadership, declining funds, unfocused staff, poor communication with other agencies and the public, and the often times adversarial position of staff, show that organizational, programmatic, and staffing changes are needed.

Three reorganization options are presented below. Under all three options, the following are recommendations to improve the overall functioning and effectiveness of the DNR water programs.

- * Tap new leadership to direct the DNR water programs, including water rights, hydrology, and dam safety.
- * Return the title navigability project to the Division of Land; this is a land title function.
- * Move field staff in Juneau and Fairbanks to the Anchorage central office to improve accountability and streamline work.
- * Transfer staff into and out of the water rights program to bring a fresh and more impartial perspective.
- * Integrate the hydrology and water rights staff to process backlogged water rights, improve the technical evaluation of applications, and process backlogged instream water rights applications.
- * Provide technical and legal training to increase staff effectiveness.
- * Streamline water rights processing and means to protect instream flows, initiating or revising legislation, regulations, policies, and procedures when necessary.
- * Evaluate the effectiveness of the Water Management Council as a way to improve state and federal agency coordination.
- * Strengthen interagency coordination with the Department of Environmental Conservation (DEC) and evaluate ways to coordinate water quantity and quality management and opportunities to use federal funds and grants in the water rights and hydrology programs.
- * Investigate ways to reactivate the State Water Resources Board to provide citizen involvement and oversight of water programs.
- * Investigate interagency funding opportunities between DNR, DEC, and the Department of Fish and Game (DFG) to re-fund full voting membership in the Western State Water Council.

The following prioritized reorganization options are suggested. As stated above, housing the water programs with the mining division is inappropriate. The mining division functions as an advocacy agency, while the nature of water resources management requires impartial decision making.

1. **Reinstate the Division of Water** - Reestablishing the Division of Water under new leadership is recommended. The existing statutory authorization is already in place. The budget for the water programs has been maintained as a separate unit. It is suggested however, that the title navigability function be returned to the Division of Land. Reestablishing the Division of Water would require reestablishing and funding of a division director. Under this alternative, the water rights, hydrology, and dam safety units should report directly to the director. The division director should take responsibility for developing and managing the division budget. Field staff in Juneau and Anchorage should be moved to the Anchorage office.
2. **Integrate the Water Programs with the Division of Land** - The water rights, dam safety, and navigability programs were part of the Division of Land and Water Management prior to establishing the Division of Water. The Division of Land is a good place for the water programs to be if a separate Division of Water cannot be funded. The navigability project should be moved to the title section of the present Division of Land. The hydrology program should stay with the water rights program to integrate technical and management staff. The water rights, dam safety, and hydrology units should be retained in a Water Management Section under new leadership. It is recommended under this option that field staff still be returned to the Anchorage office rather than remain in the regional offices for reasons mentioned above. This option would easily allow transfer of staff between the water and land programs to provide "new blood" to both programs.
3. **Move the DNR Water Programs to the Department of Environmental Conservation** - This third option would require a major realignment water programs in state government. The goal here would be to better integrate the water quantity and water quality programs. Under this option, it is recommended that the DNR water programs be incorporated as a new division within DEC, to include the water rights, dam safety, and hydrology programs. As above, it is recommended that the navigability program be returned to the DNR Division of Land. This option would again require establishing and funding a division director. It has the advantage of potentially improving funding in the water rights and hydrology programs from federal and grant monies that come into the DEC water quality programs. How effective the DNR water programs could be under the umbrella of DEC is questionable. Such a major reorganization would require the enthusiasm and dedication of both departments in order to succeed.

It is clear that water resources management in the Department of Natural Resources is foundering. Indeed, water management within many of the state and federal agencies is suffering from budget cuts, agency streamlining, and a general lack of interest in proactive management of water resources. The State needs to take a hard look at where and how its water programs can function best, make those changes, and provide leadership in statewide water management.

NORTH SLOPE BOROUGH

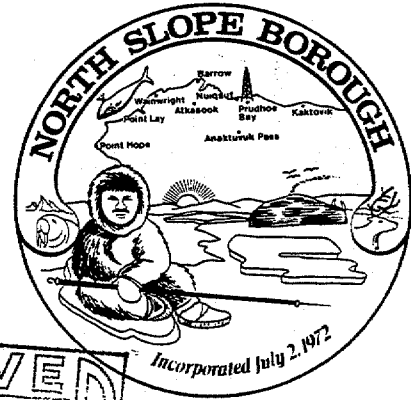
DEPARTMENT OF MUNICIPAL SERVICES

P.O. BOX 69, BARROW, ALASKA 99723

TELEPHONE: (907) 852-0340

FAX: (907) 852-0341

Jacob Kagak, Director



October 17, 1996

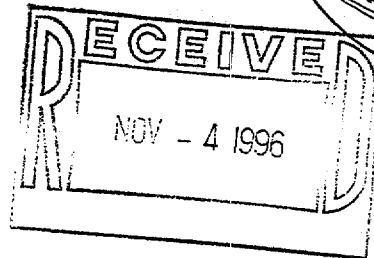
State of Alaska

Department of Natural Resources

Division of Mining & Water Management

3601 C Street, Suite 800

Anchorage, Alaska 99503-5935



RE: Alaskan Water Management Program

ATTN: Jules V. Tileston

I have solicited comments from my staff on *Alaskan Water Management Program* request for comments. Since we all seem to agree that the present language on the report is appropriate, we therefore submit no comments. Thank you for allowing us to participate in this important process.

Respectfully,

Jacob Kagak, Director

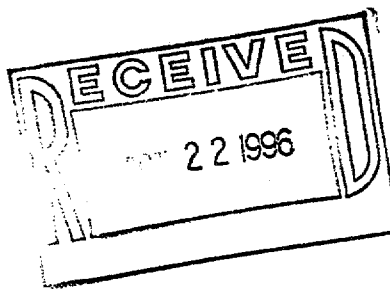
Department of Municipal Services

North Slope Borough

cc: Gene Young, Deputy Director, DMS Operations
Ben Frantz, Deputy Director, DMS Administration
Harry Okpik, Program Coordinator, DMS
Roy Nageak, Technical Assistant, DMS
Files

Barry
1702 Aleutian Street
Anchorage, Alaska 99508
October 18, 1996

*Counted
11/5/96
attach comments*



Jules Tileston, Director
Division of Mining and Water Management
Alaska Department of Natural Resources
3601 C Street, Suite 800
Anchorage, Alaska 99503-5935

Dear Mr Tileston: *[Handwritten initials]*

I recently received the progress report and request for comments on the Alaska Water Management Program proposals to streamline the water resources program, eliminate funding, and/or repeal laws. The following are my personal comments on these proposals.

I could go on at length regarding the need for an effective water resources program within the State of Alaska, and the strengths of Alaska's water rights and dam safety laws. However, I think these topics have been well addressed and documented in previous public meetings, workshops, and comments. In spite of consistent public comment favoring the present laws and water right system, it appears as though DNR is choosing to ignore the public's concerns and desires, and eliminate funding and possibly the statutory basis for the water rights, hydrologic survey, and dam safety programs. This is, in my opinion, an abrogation of the State's basic responsibility to manage its water resources, to protect the public safety of its citizens, and to carry out the State's public trust responsibilities. Given those general comments, my specific comments on the proposals follow.

Amendments to the Alaska Constitution - I do not favor or agree with any constitutional amendments related to water resources.

Streamlining

1. **Proposed amendment to change the definition of "significant amount of water" (11 AAC 93.970(14))** - Agree. However, DNR should strongly encourage small water users to file for water rights. In Alaska, many of the water management problems have involved these small users, often domestic water users such as those in Eagle River, the Anchorage Hillside, and Juneau's Auke Nu/Indian Cove.
2. **Proposed amendment to 11AAC 93.130 to allow appropriation of water for public water supply purposes for future uses (within 20 years)** - Agree, as long as the amended regulation makes it clear that water reserved for public water supply in the future cannot be sold or exported.

3. **Proposal to delete in statute and regulation ten year review of instream flow appropriations** - While I agree with the recommendation, I do not believe this is the best time to initiate statutory changes to the Water Use Act. I do believe that out-of-stream and instream water rights should be treated equally. A regulatory change could likely simplify the ten year review process.
4. **Proposal to develop a general permit for DNR, DFG, and DEC** - Agree; the proposed task force should also be charged with evaluating a restructuring of the water resources programs within these three agencies, with a possible goal of combining the DEC and DNR water programs.
5. **Proposal to combine DNR and DEC water programs** - Agree; see comment above.
6. **Proposal to process and adjudicate water rights by risk and by watershed** - Agree that processing and adjudicating water rights by watershed has merit. However, within a watershed water rights should be processed and adjudicated by priority date, not by risk, by industry, by major employer, or by some other criteria. Water right applications should be treated equally, and applications should be processed in order of priority date.
7. **Proposal to process and adjudicate water rights on a watershed approach and/or give priority where there is a watershed evaluation or plan in progress** - This may have some merit. DNR already has regulations for critical water management areas.
8. **Proposal to establish special water management areas for water supply problems or public interest concerns** - Disagree. DNR already has regulations for critical water management areas and this would be a duplication of effort with the CWMA regulations and the DEC statewide watershed process.
9. **Proposal to amend the Water Use Act to include instream flow reservations in all anadromous fish streams** - Agree, but I do not think it is a good time to propose amendments to the Water Use Act.
10. **Proposal to establish a process in regulation to issue general permits for temporary, short term uses** - Strongly agree.
11. **Proposal to establish a 5-10 year Administrative Service Fee billing system** - Agree if it is the State's intent to continue the administrative service fee. A five year period is recommended since this corresponds with the statutory abandonment period. To provide a more stable cash flow, the billings could be staggered over the 5 year period.
12. **Proposal to use general conditions rather than those customized to specific permits or certificates** - Agree
13. **Proposal to create a separate water right application for small water uses** - Strongly agree. I further recommend the application be designed for quick LAS computer entry. I

also recommend application forms be devised for other common types of water uses, such as public water supply, hydroelectric, and others. The instream water right application should be simplified and revised as well.

14. **Proposal to maintain status quo water right program - Disagree; see comments above.**
15. **Proposal for modified status quo water right program - Agree; see comments above.**
16. **Proposal to transfer water right program to local governments - Strongly disagree.**
17. **Proposal to establish court decree system - Strongly disagree.**
- 18a-e. **Various proposals for registry systems - Disagree with all registry systems.**

Who Pays

1. **Proposal to separate costs of water right adjudication, cost of protecting the public interest, and cost of adjudication - This proposal is so confusing that an evaluation is not possible.**
2. **Proposal to amend regulations to allow applicants or consultants to conduct some of the processing steps - Disagree. I believe this will lead to conflict of interest problems.**
3. **Proposal to establish a system of State licensed water right examiners - Disagree; this would require some professional society or state board to develop and oversee the licensing process. No such entity now exists. Such a state board would incur additional funding. Also see comment above.**
4. **Proposal to replace administrative service fee with a water user fee - Disagree, if replaced with Straw man number 1. See comments below.**

Management Recommendations

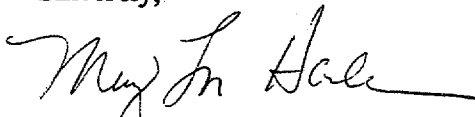
1. **Proposal to spend time for education and outreach program - Agree with recommendation; disagree with analysis.**
2. **Proposal to consider future costs for water rights management as they relate to costs today - Agree with proposal; disagree with analysis.**
3. **Proposal to hire a water rights expert to review the present water rights program and make recommendations - Agree with proposal; disagree with analysis**
4. **Proposal to form an advisory board to develop recommendations for changes to water rights program - Agree with recommendation; disagree with analysis.**

Straw man Proposals

1. **Disagree with the assumption that high Alaskan employment sectors should receive discounts.** Instream water rights, which protect high value public resources, should be exempt from user fees. All water uses and water right applicants should be treated equally and applications processed in order of priority dates.
2. **Strongly disagree with eliminating general funds for water rights and hydrologic survey; agree with retaining the dam safety program to protect public safety.** Water resource management is a basic responsibility of state government. To abrogate this responsibility is a failure to protect the public trust as required by the constitution.
3. **Strongly disagree with proposal to eliminate general funding and program receipt authority and repeal statutes and regulations for the water rights, hydrology, and dam safety programs.** If the state fails to conduct its public trust responsibilities in these programs by not funding them, do not repeal the statutes and regulations. These laws are some of the best in the United States. When sufficient crises arise that demand a higher level of water resource management, good laws will be needed. It is very doubtful that statutes as good as these are will ever be enacted again. It is better to have an unfunded mandate than to repeal good laws.

Thank you for the opportunity to participate in the public meetings and workshops and review and comment on these proposals. As a citizen of the State of Alaska who has worked in water resource management in this state for eighteen years, I strongly urge the Department of Natural Resources to accept its responsibility to manage the State's water resources, which are the most basic and essential of the State's natural resources. As stated above, it is the State's responsibility to manage its water resources, protect the public safety of its citizens and property, and to carry out the public trust responsibilities set out in the Constitution. Please keep me apprised of decisions, both policy and budgetary, that relate to the water rights, hydrologic survey, and dam safety programs and their laws.

Sincerely,



Mary Lu Harle

cc: Governor Tony Knowles
Commissioner John Shively

Counted
11/15/96

Barry

TRUSTEES FOR ALASKA

A NonProfit, Public Interest, Environmental Law Firm

725 Christensen Drive, Suite 4

Anchorage, Alaska 99501-2101

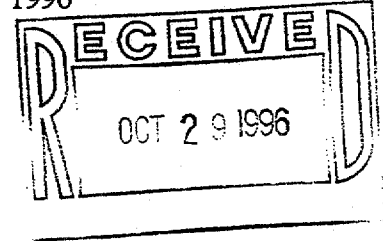
(907) 276-4244

(907) 276-7110 Fax

yes

Mr. Jules V. Tileston
Division of Mining and Water Management
Alaska Department of Natural Resources
3601 C. Street, Suite 800
Anchorage, AK 99503-5935

October 25, 1996



Re: Alaska Water Management Program

Dear Mr. Tileston:

We wish to respond to your "Progress Report and Request for Comments on the Alaskan Water Management Program" document for which an invitation to comment was published on October 2, 1995 in the *Anchorage Daily News*. These comments are submitted on behalf of Trustees for Alaska, a non-profit public interest law firm, Alaska Center for the Environment, Northern Alaska Environmental Center, the Southeast Alaska Conservation Council, and the Alaska Wilderness Recreation and Tourism Association.

The State of Alaska has one of the best overall statutory frameworks for water rights in the United States -- and it should be kept in place with adequate funding. Alaska's far-sighted water laws were established to avoid the mistakes made in the lower 48. This is a good program. Keep it!

We strongly support the existing water rights program. The public benefits from this pro-active program to protect water vital to salmon streams, critical to wildlife and recreation, to ensure human health and safety, and for other beneficial uses. We have a good system laid out in Alaska's Water Use Act, as amended in 1980. In-stream flow water uses are included as beneficial uses, it provides for reservations of instream water use as appropriative water rights, and it lays out procedures for obtaining water rights for instream uses. The existing "prior appropriation" water rights system should not be changed through a Constitutional Amendment to the "riparian" water rights system because the current system has been shown to better uphold the public interest.

Abolishing the program would violate the public trust.

The Department of Natural Resources should not consider wholesale elimination of its water management program through legislative or Constitutional changes -- or its evisceration with budget cuts. In fact, partially or completely abolishing the entire state water management program without an acceptable substitute, through legislative action, or by de-funding would violate the Public Trust Doctrine and the Alaska Constitution. Public interest criteria are established which embody the Public Trust Doctrine in the Alaska Constitution Article VIII, Sections 1, 2, 3, 4, 13, 16, and 17. In addition, through passage of an initiative in 1983 and incorporation into statute, Alaska's public trust umbrella statute at AS 38.05.502, enlarges the scope and purposes of the public trust in Alaska as expressed by its Constitution. Furthermore, the Water Use Act (AS 46) and its regulations provide a strong framework for implementing the water management responsibilities laid out in the state constitution.

A pro-active program is essential for Alaska.

There may be a general impression of an abundance of water in Alaska, but this is a false and short-sighted view. We should not take water for granted; we have the chance to do it right and manage our water resources wisely. Otherwise, Alaska will have crises like in the rest of the west with over-appropriation of water and inadequate flows for fish and wildlife habitat, water quality, recreation, navigation, and other needs.

Adequate water is critically important to the basic industries of our state, especially those employing the most people (fishing and tourism), for maintaining the subsistence way of life, and for the quality of life for all Alaskans. In some areas, the Department may be able to achieve greater efficiency through minor regulatory changes, but the water rights program deserves increased funding --not to be starved out of existence. Therefore, proper management of water for the public's beneficial uses is a basic function of government which should have top priority for funding through the State's general funds, and which should be supplemented if necessary by increased fees.

Adequate funding is essential.

We challenge the basic assumption outlined in the Report that long-term funding for the Alaska Water Management Program is likely to be unavailable. What cost/benefit information or justification does the State have for eliminating this entire program compared with other alternatives? Stream gage data collection by DNR has already been drastically cut back which has inhibited plans for development and assessments of flood risks and water availability. As well, there is no evidence provided in the report to substantiate the claims of savings to the State.

The Alaska Department of Fish & Game (ADF&G) would still be required under the Fish and Game Act to "manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the state in the interest of the economy and general well-

being of the state" (AS 16.05.020). Therefore, it would have to assume greater responsibility for considering water allocation issues in conjunction with its Title 16 permitting and monitoring roles. The Department of Environmental Conservation is mandated to protect water quality and could end up with increased costs if DNR abolishes its system of water allocation. Furthermore, ADF&G will still be required to address water quantity issues through application of the Fish and Wildlife Coordination Act, federal assertions of Federal Reserved Water Rights, Federal Energy Regulatory Commission licensing actions, and other federal actions.

An independent analysis reviewing the costs of the existing program and alternatives for increasing fees should be conducted. This is particularly crucial because the relatively new legislation allowing water exports could quickly lead to situations where there are shortages and conflicts with the public's beneficial uses of water. We are concerned that the DNR, especially during the Hickel Administration, appears to have emphasized promotion of water export instead of timely processing of water rights applications, including processing Federal Reserve Water Rights and this may have led to the current situation. An outside review of past costs for various aspects of the water management program could elucidate this issue.

In conclusion, we find that the existing water management program should remain fully funded and should not be changed legislatively because it is in the best interests of the state to have a strong, proactive water rights and dam safety program. Once adequate information is provided about the existing fee structure and costs of processing water rights permits, adjudications of reservations, and water exports (including conservation fees), we would be able to comment on appropriate changes in the fees so that the program's existing budget is maintained or increased.

We appreciate this opportunity to comment on the state's water management system. We have provided detailed answers to the questionnaire on the following pages, and also our answers on the attached questionnaire.

Sincerely,



Ann Rothe
Executive Director

cc: Governor Tony Knowles
Commissioner John Shively, ADNR
Marty Rutherford, ADNR
Frank Rue, ADF&G

Specific Comments on Questionnaire (also see attachment).**INTRODUCTORY LETTER:**

We are extremely troubled by this progress report as it does not clearly lay out the Department's recommendations regarding the program so that we know exactly what is being proposed, nor does it reflect our understanding of the public comment generated at the public meetings on this program. We cannot understand why the Department is still asking the question, "Should parts of the existing water management program be suspended ... or abolished by changing the basic law and regulation" when most participants at the public meetings said not to change the system because it is not broken.

AMENDMENTS TO THE ALASKA CONSTITUTION

1. Strongly Disagree. Alaska should keep its existing system of Prior Appropriation and not change to Riparian water rights.

Why was this recommendation kept in the packet when "DNR eliminated this alternative prior to starting the water management review process"? No evidence was provided about the legality of this idea, nor were the true costs to the state and the public assessed.

STREAMLINING

1. Disagree. Inadequate information is provided about how this change in definition of "significant amount of water" would reduce the State's costs. How would it affect fees collected? Would citizens know that if they don't file for a permit or certificate they are not protected later on if a competing use files? Are there geographic areas where this would not be appropriate because there is already inadequate water for personal drinking water?
2. Disagree. We oppose this idea because there are no restrictions on what a municipal public water supply can be used for; during a twenty year period many other competing uses may arise. If the city or borough chooses to sell water for export the conflicts could be greatly increased. The municipal public water supply water rights should not be allowed to be sold or used for exports.
3. Disagree. Do not support changes in the statute. Some regulatory changes could be made that would simplify the process of reviews. These in-stream flow reservations are a small proportion of the total water rights processed each year. This idea does not appear to save money.
4. Disagree. Insufficient information to determine how it would work. We may be able to support if there is a real sign-off process for each agency. Typically such task forces or

reorganization of responsibilities take additional staff time, not less. By what mechanism would various stakeholders of the public interest be involved? The priority should be on eliminating the backlog.

5. Disagree. We oppose changes in the statute. The idea of combining some programs has merit and we expect there are some possibilities for regulatory changes that would streamline processing so that the quality and quantity programs are better integrated. We oppose DNR having the responsibility for water quality. A task force for reorganization would likely cost more than the status quo.

6. Disagree. Water rights should be processed in order of priority dates. This is the fairest system. If DNR puts off processing applications which have been filed for a long time, then other uses could be competing for that water and more shortages could result. We agree that for personal use domestic water supplies, geographic areas where there are already existing problems should be processed quickly. But the DNR should be fair in processing all water rights-- from the small water users, the public's benefit from in-stream flow water rights, to larger projects. So-called "less important" applications are important to those who filed them!

7. Disagree. In general we may support watershed approaches to environmental planning. However, not enough information is provided here on the EPA funded framework document. It is unclear how you would maintain the priority dates for water rights under this system, and therefore we would oppose it because the idea is so vague.

8. Disagree. There is already an existing system for designating critical water management areas in the regulations. Instead of spending scarce funds to develop a method for designating Special Water Management Areas, focus on those areas with known problems of shortages or toxic contamination.

9. Disagree. We believe that it is a good idea to include a reservation of instream flows for all water bodies with anadromous fish, but this could be done through the existing regulations if the State believed it to be a high enough priority. At this time when the Department is contemplating elimination of the entire water management program--either by de-funding or changing the laws-- it is not wise to even consider this type of positive change. Implementation of such a law would require on-going mapping and review efforts by ADF&G, as well as quantification of flows-- and therefore such costs must be considered. This proposal does not consider the costs or work involved with site specific factors which must be taken into account when determining minimum instream flows or lake level water rights.

10. Disagree. There may be some merit to certain, specific types of general permits, but we oppose this blanket proposal. This does not define what is "temporary," what kinds of purposes would be allowed; temporal restrictions that might be required for over-wintering fish areas, certain spawning sites, other sensitive wildlife areas or times; wilderness qualities and other aesthetic factors. We agree that a general permit covering all resource agency permits and the

requirements of the Coastal Zone Management Program should not be considered.

11. Unsure. Because there is no information about the existing fee structure, number or nature of fee payers, or length of time most water users need water for, it is impossible to evaluate the cost/benefit of this proposal. Individuals and small businesses might have a harder time paying one big fee infrequently.

12. Strongly disagree. This proposal for issuing a broad, general water right prior to receiving detailed project information is too open ended, too vague. It could lead to permits to appropriate water being issued for extremely speculative projects and uses that are not in the public interest. This could also lead to speculative projects using such permits in an inappropriate way to leverage their claims for a taking later on. Furthermore, this idea defeats the purpose of the State having an integrated permit process. If general permits were considered at all, they should not apply to any anadromous fish streams.

13. Unsure. It may be possible to design a newer form for all water rights applications that has a simple way to fill it out if you are seeking less than 5,000 gpd. It would be better to keep the same system for all users. It seems that this proposal puts more burden on the applicant for filing paperwork and that it may not be simpler. Any system must insure that ADF&G is still involved, as the cumulative effects of many such filings could result in water shortages in certain places. A change such as this would take staff time for designing forms and updating computer databases.

14. Strongly agree. Keep the existing, strong water rights program. We strongly disagree with the assumption of lack of funding. It is the State's responsibility to maintain adequate water for beneficial uses and to prevent crises. This basic governmental function should be maintained with general funds. Increased fees could also play an important part, but the State should not completely rely on fees because this creates more pressure to sell-- and export-- more water and therefore puts more pressure on water supplies and existing beneficial uses, such as salmon streams.

15. Oppose. However, we agree there should be no changes at this time to the Water Use Act. Certain, very specific changes in regulations might be appropriate to improve the efficiency of the program while still upholding the public interest, but we cannot support the modifications listed because they are vague and open-ended as described here. We disagree with the analysis that funding will not be available.

16. Strongly Disagree. It would be a terrible mistake to transfer authority to local governments. It would lead to more litigation, inadequate consideration of the public interest, and conflicts between upstream and downstream users. Furthermore, it would be impossible to have a coherent statewide system that would adequately consider Federal Reserved Water Rights.

17. Strongly Disagree. The existing water management program should be kept intact.

18.a. Disagree. Keep the existing system. No information is provided about how data is currently maintained and estimated costs for upgrading computerized data bases, application procedures, or mapping. No information is provided about the costs or benefits of using the recorder's office for a registry system. What evidence is there that the public interest would indeed be served anywhere, at any time of the year by such a system.

18.b. Disagree. Keep the existing system. We do not support changes in the statute at this time. It would be difficult to evaluate cumulative impacts. It is difficult to evaluate changes since no information was provided about the number of water rights typically granted each year in each category.

18.c. Disagree. Keep the existing system. We do not support changes to the statute at this time. See answers to 18 a&b. It seems that this system would favor appropriated, consumptive uses to other beneficial uses, such as in-stream flows or federal reserved water rights. How would ADF&G be involved in the reviews?

18.d. Disagree. Keep the existing system. We do not support changes to the statute at this time. See 18 a,b,&c. It makes sense to assure that the system is improved so that processing in geographic areas where there are already problems is improved to minimize conflicts. But the system is not broken.

18.e. Disagree. Keep the existing system; see comments for 18 a,b,c,&d above. We do not support changes in the statute at this time. An applicant shouldn't be able to get a priority date for water rights without knowing whether there is enough water for all uses, especially for instream flows for fish and wildlife and other beneficial uses.

WHO PAYS?

1. Strongly Disagree. This sounds like DNR wants to pass the funding buck for protecting the public's interest in beneficial uses of water for fish, or other purposes, to ADF&G or other agencies, and this doesn't seem proper given DNR's statutory responsibilities. No evidence is provided that the state is taking advantage of the existing fee system, or in consideration of what changes could be made to increase those funds. However, the system should not be changed so that only the big companies or rich individuals can afford to get water. If the legislature ends up having to pay for the public benefits, instead of the applicant who may be proposing uses that consume or degrade the public resource, this is not fair and you can bet that the public interest will get the short end of the funding stick in these times of declining budgets. Who would decide what a healthy salmon stream is worth?

2. Strongly Disagree. Having consultants or the applicant perform the procedural parts of the adjudication invites conflict of interest, and the potential exists that negative comments or harmful information would not be preserved as part of the complete public record. It is important for the state to keep its own expertise in water rights.

3. Disagree. This idea of a state water examiner is not well defined or justified. Who would pay for it? Currently a suitable professional society or state board does not exist.

4. Disagree. Because larger water users are likely to result in more conflicts with existing beneficial water uses, they should be required to pay higher fees. It is impossible to evaluate the proposed fees listed because the report fails to provide an overall analysis of fees, funding, and costs of the program. We believe the true costs to the public should be incorporated into the fees charged for public-owned hydro-electric and "non-consumptive" placer mining water use. The rationale for discounting large water consumers should be given. We believe all water users should pay fair costs and that discounted water prices for large volumes is a disincentive for water conservation practices.

MANAGEMENT RECOMMENDATIONS

1. Agree. We support public education about water and water rights. However, we disagree with the analysis that only outside interests could conduct this program.

2. Unsure. This recommendation is not written clearly. We believe that the existing system is fine --although under funded to meet its mandate-- and disagree with the assumption that there is inadequate funding. We cannot support spending funds for a risk assessment or cost/benefit analysis if the purpose is to eliminate this program.

3. Agree. An independent audit would be useful if the public truly believes the system is broken-- but if the goal is to justify abolishing the system we cannot support it. We prefer a focused audit on improving efficiency in the existing system.

4. Disagree. The purpose for the advisory board is unclear -- we oppose a board whose purpose is to justify ending the current system. We recommend an independent audit to review costs and benefits, and give solutions for increased efficiency while maintaining the public's interest in all beneficial uses, and then an advisory board might be useful.

STRAWMEN

Why is there no strawman for improving the efficiency of the existing program, or for increasing its funding base?

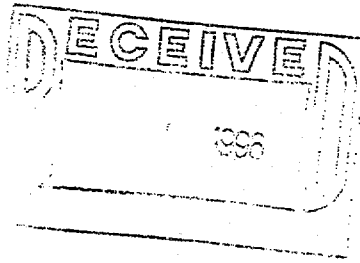
1. Strongly Disagree. We believe that maintaining the existing, strong pro-active water rights program is a basic function of government that should be supported by general funds. There was inadequate information to evaluate changes to the fee structure; fees should augment, not totally replace general funds. We do not support legislative changes at this time.

2. Strongly Disagree. See Strawman #1 above. We understand that the dam safety program is necessary to meet federal requirements and is only one staff FTE.

3. Strongly Disagree. This is an absurd proposal. Water is essential for the quality of life in Alaska. It is imperative that Alaska not repeat the mistakes made in the rest of the west which have resulted in overallocation of water to the detriment of salmon streams, recreation, navigation, wildlife, and other beneficial uses.

Completed
11/5/96

Gail



October 8, 1996

Jules V. Tileston, Director
Division of Mining and Water Management
Department of Natural Resources
3601 C Street, Suite 800
Anchorage, Alaska 99503-5935

Dear Mr. Tileston:

I want to thank you for the opportunity to review the Alaskan Water Management Program. I am a water professional with 25 years experience, and a Masters of Wildland Hydrology degree. I have worked as a water professional in Colorado and Alaska. All of this time, I have directed the water resource inventories and water rights quantification programs for the Bureau of Land Management, U.S. Forest Service, and U.S. Fish and Wildlife Service.

Water is a primary natural resource. Without water, all biological resources (including man kind) would perish. A prime example in the United States at this very moments is the Everglades. The general attitude of people across America, is that water is plentiful and easily obtainable. All one must do is turn on the faucet. This attitude only exists because governments have worked hard to make this necessary resource available.

The above attitude is falsely derived, primarily because of the efforts and hard work of local and state governments. Good quality water in quantities necessary to supply the people of America is becoming limited. Many cities across the United States purchase and transport water from great distances to supply the industries and residents in their areas. Many within the State Department of Natural Resources know this and have tried to promote and sell Alaska water. Within the next 20 to 50 years, people across the United States will wake up one morning and find their faucets dry. The cost of supplying industrial and domestic water will increase expediential over the next 50 years.

It is extremely short sighted of the Department of Natural Resources to consider eliminating the State water management program and recommend abolishing the State water right laws and regulations. Most will agree that the water management program needs reorganization. Nevertheless, the State cannot ignore its stewardship responsibilities because there is no apparent "significant water allocation problems." To consider waiting until there are "allocation problems" before instituting water management regulations is ludicrous. It has taken 100 years of legislative and adjudicative actions for the western states to implement their water management control. The Division of Mining and Water Management can testify to the fact that this is a very big job and that they are severely backlogged with water right application adjudication. This is a major program without "significant water allocation problems."

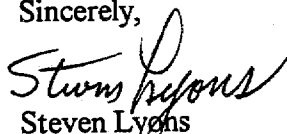
The existing backlog of water right adjudications is testimony that the water management program cannot absorb any additional funding reductions. Funding reductions of the past 10

years in the Department of Natural Resources has inequitably been born by the water management staff. The number of hydrologist and water rights management personnel has been reduced radically. During the same period, the number of personnel and volume of work within my agency has increased in the water management area. We are actively quantifying available water and water needs for habitat protection, and the fish and wildlife needs. The results of our efforts are water rights applications to the State of Alaska for state appropriate instream water rights. The Federal government has learned a hard lesson in the lower 48 states. Without water rights on federal lands, natural habitats for fish and wildlife, and recreation opportunities cannot be maintained. Degradation of the habitats, and the resulting loss of fish and wildlife, have significant impacts to all Americans, business, and local economies. In many states, the tax payers are paying millions of dollars more today to rehabilitant these lost habitats than they would have spent originally to manage their water resources properly. It may seem that water is plentiful and no allocation problems exist, but most of the surface water we all see is not good quality water. Good quality water, requiring little purification, thus cheap in cost to the residents of the State of Alaska, is very limited. This good quality water requires intense management and regulations to control economic use. As an example, the Yukon River is the largest producer of water in the State. Beside being extremely silty, it contains high levels of arsenic, fecal pollutants, etc., requiring extensive treatment before human consumption is possible. The purest water is in Southeast Alaska, but available is not dependable. A week without rain results in drought condition in this part of Alaska.

In conclusion, I support the present water management system. It is a good system. The problem is the continued and long term funding reductions to the program, and the lack of knowledgeable professionals in the upper management positions that direct and oversee the program. As other states have found, this program needs to be a Division of its own, managed by a water professional. In most states this manager is called the State Water Engineer. The water management program will never achieve stability or credibility until this occurs. Within the present water management program I can count the number of "water professionals" easily on one hand, and none are managers. Poor management and numerous reorganizations have driven most of the hard working and dedicated employees out of the water management program, leaving the present group of inept employees to float to the top. The State of Alaska water laws and regulations are very good and should be maintained as they are.

Attached are specific comments to the Draft Recommendations to the Commissioner Water Resources Management.

Sincerely,



Steven Lyons

12965 Lindsey Dr.

Anchorage, Alaska 99516

DRAFT RECOMMENDATIONS TO THE COMMISSIONER WATER RESOURCES MANAGEMENT

AMENDMENTS TO THE ALASKA CONSTITUTION

- 1. Recommendation: Replace the existing prior Appropriation system with a riparian water rights system in Alaska.**

Disagree!! The development of the Appropriation system was based around mining in the western U.S. Mining is a major industry in Alaska. The riparian water rights system would devastate the mining industry because does not allow for diverting water from a water source, across other properties with right of ways, to supplement mining and processing water needs. This would also be true with other land owners not on water ways. In either case, the riparian water rights system propagates water wars. In dry years, downstream water users will not receive what they feel is their fair share, though they are senior to upstream users. The riparian water rights system is no "system" at all. It may save funding of a water management staff, but it will increase the costs and work loads in the State courts. The latter being at much greater expense to the State than the cost of funding the former.

In the long term, this recommendation will not save the State money, but would create other sources of income for attorneys.

STREAMLINING

- 1. Recommendation: Proposed Amendment to the definition of "significant amounts of water" under 11AAC 93.970(14).**

Disagree! The final note of the analysis for this recommendation says it all. To implement this change would significant affect the small property owner or homeowner. If under the recommendation, the homeowner is not required to file for water rights, then they would not. If they have no legal use to the water that they have spent money to develop, and another larger water consumer upstream impacts the small users' development, then the small users would have no recourse or means to defend his need.

Under this recommended change, the individual rights of Alaskans would be jeopardized.

- 2. Recommendation: Amend 11AAC93.130, 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, homerule 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.

Agree with comment. As long as “Public Water Supply” means for use by the residents of the city or borough obtaining the certificate of Appropriation, and excludes sell for export. This water should not be sold by the city or borough for purposes of water export. Water intended for export should be obtained through separate.

2. **Recommendation: Amend AS46.15.145(f) and 11AAC93.146(d)(2) and eliminate 11ACC93.147. These statute and regulations require that a Reservation of Water (instream flow) be reviewed once every 10 years to determine if the purposes and findings for the reservation still apply.**

Agree! Land managers have long argued that having a 10 review of “instream flow” reservations is not equitable to laws and regulations governing out of stream diversions. Instream flows are for the purposes of fish and wildlife, and their habitats. The water right provides legal and unaltered uses of water and in no way impact other down stream users. So why the 10-year review? The water users divert water out of the natural environment that should be occasionally reviewed. The out-of-stream diversion water rights potentially impact other water users.

The purpose of reviewing the instream water rights is to assure that the water is still being used in the quantity, for the stated purpose, and for the source it was originally granted. The normal purpose for instream water rights is for fish and wildlife, and protection of their habitats. Why would this use change in 10 years? The fish and wildlife, and their habitats have been here much longer than we have.

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

Agree: The review process for all water rights applications should include all State and federal agencies, if they request to be included in such a review. Two times during the past 10 years, my agency has sent DNR a written request to receive copies of water rights applications so we could review and make comment concerning potential impact to refuge purposes. Either there have been no water rights applications since 1986, or DNR has failed to comply with our request and provide adequate public review of water rights applications throughout the State of Alaska.

The above recommendations is to coordinate the review process with DNR, ADFG, and DEC. Coordination should not be limited to only these agencies. Coordination should include all agencies with land managements and wildlife management responsibilities, including the Fish and Wildlife Service, Bureau of Land Management and U.S. Forest Service.

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.**

Agree! Both water quantity and quality affect public use. A single agency of water professionals would strengthen the management of water within the State of Alaska. It is equally important that management of such an agency also be a water professional and not a political appointee. This is important not only for technical oversight and knowledge, but to develop credibility of the agency. It should be noted that my professional peers do not consider current management of the water program in DNR to be "water professionals."

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

Disagree! Adjudication of water rights should be in order of application and be required to be completed within a given time, e.g., 90 days, 120 days, etc. Priority or importance is dependant on what side of the fence one is on. The State water management program should be funded at the basic level to have sufficient staff to review and respond to all applications within a short and reasonable time. Exception to the time limit should only be authorized for large complex projects requiring large quantities of water. These exceptions should only be permitted if significant public comment is received. The private citizen and commercial projects should all be treated equally and without prejudice. All should receive timely review so their loan applications and financial responsibilities are not adversely affected by the process.

The year of backlog and review that are currently the rule of DNR is not acceptable and attests to the ineptness of current management and funding deficiencies.

7. **Recommendations: 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.**

Disagree! A watershed, or closed drainage basin, should receive a "General Adjudication" when the watershed is believed to be full appropriated (including instream needs for fish and wildlife). If it is found during the General Adjudication that the watershed is fully appropriated, then the watershed should be closed to any further water appropriation.

Adjudicating it on a watershed approach for each individual water right application is not efficient. Using computer databases and knowledge of the general water yield of a given watershed, the water management agency should be able to easily monitor the total quantity of water appropriated at any given time. When the total appropriation approaches 85 or 90 percent (including instream needs for fish and wildlife), a watershed study should be conducted by professional hydrologist, to

assess additional water availability for appropriation. DNR must keep in mind that watershed studies cannot be completed in weeks or months. If stream discharge gaging data are not available, then gaging will need to be completed to assess water availability. Five years of stream discharge data is a minimum for this kind of assessment.

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

Agree

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

Agree with comment. Fish and wildlife are important Alaska resources and will become even more important to the Nation in the future. These resources bring a lot of money to the State from hunting, fishing, and tourism. It should be the number one priority of DNR to preserve a healthy environment (habitat) for these resources.

An across-the-board instream reservation is a good first step. However, any law and regulations should preserve the reservation date if any State or federal agency should conduct an instream water right analysis. That is, should a specific instream water right analysis determine the quantity of water required to maintain fish habitats be greater or less than the fixed reservation percentage identified by law, then the new quantified amount should be accepted with the old reservation date.

The 1990 bill that was not passed specified 50 percent of the annual flow. Natural systems would be degraded if only 50 percent of the annual flow was available over the long term. Infrequent high flows are required to flush fine sediments from spawning gravels. If flow was limited to 50 percent of the annual flow, riparian vegetation would begin growing and vegetate much of the stream channel and spawning beds. To maintain a healthy ecosystem, an instream reservation must include a high flow each year to flush fine sediments from the gravel, and a very high flow on the average of once every three years to wash away invading riparian vegetation. These high flows need not last long, 48 hours, but their existence must be considered in any complete instream flow analysis. Any new law for making instream flow reservation should recognize possible deviations from an assumed set percentage.

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

Agree. I am surprised that there is not already such a process.

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

Disagree!! Billing and enforcement is an expensive effort for any government. It requires a good computer system and method of tracking payments. I am suspicious if this is a cost-effective approach to generating money for DNR. Once a water right has been granted and a certificate issued, what expenses are there? Application fees should be increased to generate these revenues. The law and regulations should allow for recovery of expenses for reviewing existing certificates if there are suspected changes in actual water use. However, an annual billing for the sole purpose of raising operating revenue is not cost effective when considering additional employees are required to generate and mail the bills, receive, log, and manage the receipts. I would be surprised if DNR realizes \$0.05 on the dollar received.

- 12. Recommendation: Use the permit condition authority of the Water Use Act to issue permit to appropriate water with general, or broader range of conditions instead of holding up a permit ...**

Disagree Refer back to number 6 above. The State must fund the water management program at a level where water right applications can be process in three or four months. This is not an unreasonable amount of time for any agency to respond to any permit application. Given this requirement, a general permit as recommended is not necessary.

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

Disagree DNR need not create hardships on their selves for small water users, but the public still needs the opportunity to comment on applications. If I had a neighbor who was applying to take water from a spring on my property, I would like to know this and have the opportunity to contest this, if I so desire. Most of the times there are few problems with these small water users and DNR can process these applications as described, with the addition of public notice. A separate application and process are not necessary. DNR has become its own-worst-enemy with respect to processing applications. Again, this is because of their inept management.

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

Agree!!! Maintain the current laws and regulations in general, few modifications previously noted. It is the responsibility of the Legislature to provide adequate funding to support the States stewardship of its natural resources. Without a good water management program, the natural resources of the State will significantly degrade. Water is a fundamental resource that all plants and animal life depend. To ignore the necessity to manage the water resources is to ignore the future of Alaska. This is an easy concept

that the simplest legislator should understand. Consider Oregon and Washington, they once had great salmon runs. Not anymore. Because of poor water management policies, and failing to consider the needs for water by their fish, wildlife, and habitats, their fishing industry is now looking to Alaska for jobs. The Everglades is another example. Due to the lack of foresight, the federal government is spending millions of dollars today to return once diverted water back to the wetlands in an effort to save this unique environment. Let our Legislature be advised to learn from these mistakes and not follow their paths.

15. Recommendation: Modified Status Quo...

Disagree, see previous comments.

16. Recommendation: Transfer Authority to Local Governments.

Disagree!! This is not a solution. This only shifts the responsibility. States own the water, not local governments. It is therefore the States responsibility for management of their resource.

17. Recommendation: Court Decree System.

Disagree!! Courts could decree or not a water application. However, courts do not administer or manage programs. This is not the proper use of our court system, which also are overworked. This is no solution.

In Colorado, they have a Water Court administered by a Magistrate. The Magistrate makes decrees only when a water application is contested by another water user. If no other water user contest the application, and the quantity requested is reasonable, then the application is approved with little staff work other than recording the application.

18a. Recommendation: Establish domestic water rights by individuals recording (Registry) a standard form (DNR provided) at the state recorder's office.

Disagree!! The current system is the same as described here. This only shifts the work to another State office.

18b. Recommendation: 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 does 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?

Disagree!! Under the existing law and regulations, the Water Management Section can expedite the process by following the same procedures as described in this recommendation. If there is no response to the public notice, then the application should be granted, and recorded (assuming the quantity requested is consistent with the use).

A registry for water rights required for financing would create a "Loophole" in law and regulation for large water users. All industrial water users require financing. Thus, would be allowed to operate within the "registry" system.

18c. Recommendation: Registry System... Do you support a system that allows for a registry for all water uses under 100,000 gpd...

Disagree!!! These Registry System proposals are a waste of time. None will save the State any real money and open the door for mismanagement. The system in place is a good system. All water right applications should go through the public review process and adjudicated is contested or granted if the amount requested is reasonable for the identified use and no comments are received.

18d. Recommendation: Registry System...Same as 18c above, except the registry system would only apply to areas outside of specific geographic areas...

Disagree!!! See comments above...existing system is the best possible for the citizens of the State.

18e. Recommendation: Registry System...Same as 18c, except the water right adjudication would take place in the order the application was received, and the application would be responsible for the procedural processing of the application.

The process should function as described under existing regulations.

WHO PAYS?

- 1. Recommendation: Determine a method of separating the cost of a water rights adjudication from the cost of protecting the public interest. Once done, the applicant pays the cost of adjudication and the State pays the cost for protecting public interest.**

Agree!!! The being the accepted role of government.

- 2. Recommendation: Amend the regulations to allow a consultant or applicant to conduct the procedural portion of the adjudication....**

Disagree!!! Results could be biased by special interests. Who is to know if the consultant or

applicant did not throw away, or loose, any concerns received that would adversely affect the applications.

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

Disagree!!! What ever you call them, they are still consultants and the concern raised in #2 above would apply.

4. **Recommendation:** Replace the Administrative Service Fee with a water user fee.

Disagree!! The collection and processing of any fee system only costs the State more money. The actual amount received, after expenses for processing, is very small. A good recommendation for creating government jobs. I do not think this is in the best interest of the State.

MANAGEMENT RECOMMENDATIONS

1. **Recommendation:** Allow for time and effort to be spent doing education and PR for the water right program....

Disagree!! To educate, one must want to learn, there must be an interest. The main problem is that the Water Management Section is seen as inept and ineffectual due to poor managements. Past administrations have redirected the work effort and directed the staff to not process water right applications. Because of these political manipulations, the good and knowledgeable employees left government service. Unfortunately, the inept employees did not leave and have inherited management control. IT IS NOW A PROBLEM OF CREDIBILITY AND ALL THE EDUCATION IN THE WORLD WILL NOT CORRECT THIS.

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

Agree!! The State, as Stewart of this State resource (water), must continue the water management program at what ever cost. Government for the people, should be paid for by the people. The cost of the program must be funded, and the expenses have to be known.

3. **Recommendation:** Hire an outside expert on water rights to recommend how we can improve the current system.

Disagree! There is nothing wrong with the current system, only the management of the system. The Water Management Sections has been misused for too many years. They have

been shifted from one place to another. The constant upheaval has driven the knowledgeable and good employees out of government service. The Water Management Sections only requires a good shakeup and major management changes, adequate funding to do the job necessary, and time to build credibility of the program. The laws and regulations are very good as they are, with minor exceptions.

4. Recommendation: Form an advisory committee or board to assist in the development of recommended changes to the Water Use Act.

Agree with comment! A group of professional water managers already exists that could review and recommend changes to the Water Use Act. This group is the Interagency Hydrology Committee. This is an organization of State and federal agency hydrologist and water rights coordinators who coordinate and review water policies and making recommendations to the Legislature and Commissioners. This committee once functioned as advisors to the State Water Board. This organization would, if asked, form a committee to review and recommend changes to the Water Use Act, at no cost to the State.

STRAW MAN 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.

Disagree! I do not agree that annual user fees are cost-effective. The collection and processing of user fees are another expense. Also, the majority of the water users do not require annual review or management by the Water Management Section. They are merely a line item on a database. A fee for filing for and modifying a water rights should be charged. Also, if for some reason, a water user comes under review, then some costs should be borne by the user. I recommend increasing the filing fees.

STRAWS MAN 2--- (A) Eliminate all General Funds: (B) Retain Dam Safety.

Disagree!! The State is responsible for managing state resources. General funding must be made available for this program. Dam Safety is mandated by federal law.

STRAWS MAN 3-- (A) No General Fund appropriation or program receipts authority: (B) Abolish Water Use Act, Dam Safety and Alaska Hydrological Survey legislation and regulations: © Enact legislation for a water right registry system for beneficial consumption uses of water.

Strongly Disagree! Water is a primary natural resource. Without water, all biological resources

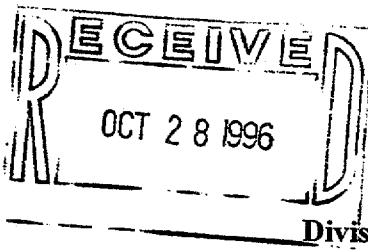
(including man kind) would perish. The general attitude of people across America, is that water is plentiful and easily obtainable. All one must do is turn on the faucet. This attitude only exists because governments have worked hard to make this necessary resource available.

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9/24/96
MEMORANDUM



STATE OF ALASKA

Office of the Governor

Division of Governmental Coordination

TO: Jules Tileston
Director, Div. of Mining and Water Mgmt
Dept. Natural Resources

DATE: October 24, 1996

FROM: Kerry Howard
Project Analyst

TELEPHONE: 907-465-8794

FAX: 907-465-3075

E-MAIL: Kerry_Howard@gov.state.ak.us

SUBJECT: Alaska Water Management Program

The Division of Governmental Coordination has briefly reviewed the September 1996 *Progress Report and Request for Comments on the Alaska Water Management Program*. We offer the following comments.

- 1) **Page 1, Recommendation 1, Replace the prior appropriation system with a riparian water rights system.** Although this recommendation was apparently based on input received at various public forums, we doubt if most Alaskans would support a water rights system which did not include consideration of public values.
- 2) **Page 3, Recommendation 3, Review of instream flow reservations.** We recommend keeping the requirement to review instream flow reservations, as this is an important tool to protect anadromous fish resources.
- 3) **Page 3, Recommendation 4, Develop a General Permit that combines the DNR, ADF&G, and DEC permitting processes.** In concept, DGC supports streamlining permit processes whenever it results in faster adjudication and less cost to the public and governments, while still providing adequate environmental safeguards and public notice. The Resource Agency Coordinating and Streamlining Taskforce (RACST), of which DNR is a member, is reviewing several ways to accomplish these objectives.
- 4) **Page 4, Recommendation 5, Combine the DNR, DEC and ADF&G water programs into one department.** See comments on Recommendation 4, above.
- 5) **Page 6, Recommendation 10, Allow DNR to issue general permits for water use less than 30,000 gpd.** This idea needs more discussion. Perhaps some of the recommendations from the RACST would obviate the necessity for this.

Thank you for the opportunity to comment. If you have any questions, please call me at 465-8794.

cc: Janet Burleson-Baxter, DNR

**CENTER FOR ENVIRONMENTAL LAW & POLICY****2366 Eastlake, Suite 415
Seattle, WA 98102****Prof. Ralph W. Johnson, President****Rachael Paschal, Director****8 November 1996**

Gary Prokosch
Alaska Department of Water Resources
Division of Mining and Water Management
3601 C Street, Suite 800
Anchorage Alaska 99503-5935

BY FAX: 907/562 1384 (9 pages)

Dear Gary,

Thank you for the opportunity to submit comments on your departmental recommendations for changes in the implementation of the Alaska water code. You have developed several interesting and even provocative recommendations and appear to have done a good job in your public outreach.

As you know, the Center is a public interest organization actively working on water rights issues in Washington state, with a focus on the protection of surface and ground water quality and instream resources. We also participate in water resource issues elsewhere in the western states, and I believe the commonality of the prior appropriation doctrine throughout the west provides an important basis for evaluating differing water right systems. Hence, my comments provide information regarding how similar issues are being dealt with in Washington state.

I appreciate the opportunity and look forward to reviewing the results of your efforts. Please do not hesitate to call if I can provide further information or assistance.

Yours very truly,

Rachael Paschal

attachment

**Center for Environmental Law & Policy's
Comments to
Draft Recommendations to the Commissioner
Water Resources Management**

Amendments to the Alaska Constitution

Replace Prior Appropriation with Riparian System.

No Comment.

Streamlining

1. *Amend definition of "significant amount of water" under 11 AAC 93.970(14) to allow a 5,000 gallons per day exemption*

Based upon a similar exempt well provision in Washington statutes, the Center does not support this recommendation. In Washington, many river basins have been closed to further appropriation. Nevertheless, because of the lack of state resources for monitoring, the exempt well provisions allow additional appropriations in basins that have critical low stream flows and declining aquifers. The exemption has created a perception on the part of real estate developers that domestic wells may be drilled notwithstanding impacts to senior right holders, the environment, or water supply coordination efforts by municipal utilities and public purveyors.

Finally, unregulated wells also hold potential to introduce contaminants into groundwater. Exempt well failure occurs much more frequently than with municipal and commercial wells, and their contamination potential becomes a problem for utilities extending service into previously unserved areas. The Center does not recommend enlarging the statutory exemption from permit requirements. Although this proposal may initially relieve pressure on the permitting agency, it will compound problems of water management in the future.

If enlargement of the exemption is deemed appropriate, we urge you to consider why the exemption exists and tie its upper limit to a rational determination of the amount of water necessary to fulfill its purposes. If the exemption exists to enable single domestic users to obtain water with a minimum of bureaucratic interface, then the quantity of the exemption should be that amount of water, on average, that single domestic users require. This quantity will be significantly less than 5,000 gpd.

2. *Amend 11 AAC 93.130 to establish a preference for future public water supplies to meet twenty-year growth prospects.*

While water for public water supplies should be accorded some preference, that preference must always be weighed against the public interests of preserving instream flow values. Therefore, any public supply reservation should incorporate language that subordinates public use to environmental requirements. Also a public supply water right should include a date certain by which water will be put to actual use or forfeited, should indicate non-transferability of unperfected quantities, and should explicitly clarify how the public supply service area is to be defined.

In Washington, past issuance of open-ended water rights for municipal use have caused great confusion about the nature of the right granted to public purveyors. It is critical that

the state define the duration, quantity, place of use and other elements in order to retain and exercise control over the right in the future.

3. *Amend AS 46.15.145(f) and 11 AAC 93.146(d)(2) and eliminate 11 AAC 93.147, to eliminate the 10-year review of instream flow reservation.*

Once a biologically credible instream flow reservation has been established, it seems redundant and costly to the agency to re-visit that flow determination every decade. The Center recommends that the review be eliminated and that the agency substitute a mechanism for initiating review if it is determined that a particular instream flow is inadequate or for other reasons set forth in review criteria.

The DNR analysis of this recommendation discussed the question whether all water rights should be subject to 10 year review. The Center agrees that such a review would provide an excellent data source as a basis for regulation and management of water resources, including abandonment or forfeiture proceedings. Inadequate information about water usage is a significant problem for Washington's water rights program. However, a review of every water right in the state every 10 years would probably require financial resources in excess of what is available to the agency. In the alternative, we would recommend that water users be required to meter their diversion or withdrawal devices and report usage information to the state on a regular basis.

4. *Develop a general permit that combines the permitting process of DNR, ADF&G and DEC to jointly evaluate quantity, habitat and water quality.*

The Center supports the concept of a process that combines public review, public notice, adjudication and permitting, so that concerns regarding water quantity, water availability, habitat, the public interests and water quality may be evaluated on a comprehensive basis. The Center supports the establishment of a task force consisting of DNR, DEC ADF&G and the public to identify concerns which must be addressed in the water management decision process. Public involvement is an essential component of such a task force.

5. *Combine the water programs of DNR with DEC and have one department be responsible for the management of water quality and quantity.*

Increasingly, the requirements of the Clean Water Act and other federal environmental statutes are coming to bear on water quantity issues. Section 303(d) listings, TMDLs, 401 certifications, 404 permits, and ESA listings for anadromous fish and CERCLA cleanup activities have each been used at some time to influence water allocation decisions in Washington state. Lack of coordination between the state water resources program and the water quality and other environmental and regulatory programs hampers effective and efficient management. The Center supports any initiative designed to coordinate the functions of these various activities and programs in Alaska.

6. *Adjudicate water rights based on priority of risk, by major river/stream drainages.*

Batch processing of applications is a rational approach to water management, particularly where multiple applications could have cumulative effects on the same basin. However, prioritization for water use should be based on considerations of the public interests to serve instream flow values -- preservation of groundwater that discharges to critical

instream flows, preservation of water quality and consideration of the beneficial use of water. Prioritization should not be based solely or primarily on the financial needs of the applicant to advance development.

7. *The adjudication process should be based on a watershed approach and watershed plans should be developed in areas of high risk or public interest concerns.*

The Center supports proposals for agency and public evaluation of watersheds on a basin-by-basin basis and supports proposals to prioritize development of watershed plans. The long term goal of developing comprehensive watershed management plans to address water quality, availability, habitat, hydraulic continuity, and existing uses, among other concerns, will provide a highly useful tool for future water management.

In Washington, the state has determined that watershed approach is the only logical way to approach its water management duties, ranging from determining whether water is available for new appropriation to determining how to return water to streams in basins which are over-allocated to the detriment of fisheries and other instream flow purposes. Watershed planning and management does, however, require consistent collection and compilation of high quality data, a time consuming and expensive task. Poor data undermines the credibility of water management decisions based on that data. Washington's Dept of Ecology recently developed protocols, guidelines and a peer review process for watershed assessment studies in order to bring consistency to the process.

8. *Establish a special water management area where there are existing water supply problems or public interest concerns.*

This proposal should be a part of recommendation number seven, above, providing for the development of watershed management plans. Areas of existing water supply problems or public interest concerns should receive priority in the watershed management plan development process. Input from the public must be obtained in the selection of priority areas.

9. *Amend the statutes to include an instream flow reservation on all water bodies with anadromous fish.*

Establishment of instream flow reservations is essential to the preservation of instream flow values which accompany protection of fish and wildlife habitat. The Center strongly supports this recommendation, provided that the instream flow reservations are established with the participation of the Native American community and the public. Instream flow reservations could be employed in tandem with public water reservations discussed in Recommendation No. 2, above. In any event, such reservations should be utilized in all basins where water right permitting of any significance is occurring.

10. *Establish a process in regulation that allows DNR to issue temporary water use permits for construction and other temporary camps where the water use is 30,000 gallons per day or less.*

Temporary permits serve a useful function, however 30,000 gpd is a substantial volume of water that can have long-term adverse impacts, although these impacts may not be felt by senior water right holders during the period of the temporary use. It is also important to minimize the risk that issuance of the temporary permit gives rise to an expectation of

entitlement to a full water right. Temporary permits should not be allowed to escape the full evaluation that any other water right application would receive, particularly with respect to impacts to senior right holders and environmental values, and should contain adequate conditions to safeguard against unexpected adverse impacts.

11. *Provide for Administrative Service Fee billing every five or ten years, rather than yearly.*

No comment.

12. *Use the permit condition authority to issue a permit to appropriate water with a broad range of conditions, rather than hold up a permit on land use authorizations, rights of way, detailed engineering and environmental studies.*

The Center does not support the issuance of a water right upon incomplete information, particularly without detailed engineering or environmental studies. Water should not be appropriated where there is a risk that it will harm the watershed or be contrary to land use requirements or the public interest. For example, it may take several years for detailed engineering or environmental studies to be completed. Under the proposal, water can be appropriated in advance of completion of necessary studies, which may result in permanent damage that could have been avoided by thorough evaluation. The interests of administrative streamlining do not justify the serious risks presented by this proposal.

13. *Create a separate water rights application for water uses under 5,000 gallons per day.*

The Center opposes creation of a 5,000 gpd exemption, and therefore does not support programs designed to advance processing the exemption requests outside the existing permit system. The cumulative adverse effects of wells under the exemption are likely to be great. In Washington, the exempt well system is subject to abuse, particularly by developers who are not willing to proceed through the lengthy permitting process, and instead string exempt wells together to service large residential developments. Under the short-form permitting, DNR would not have adequate control over permitting in areas where water availability or other public interest values are at risk. Further, DNR would lose its ability to prevent degradation to the water resource through the authorization of such uses.

- 14, 15. *Maintain the water rights program as it is currently administered.*

Water resources programs with inadequate funding and a backlog of water right applications appear to be a fairly common phenomenon in the western United States. In examining options to address these problems, it is important to identify the benefits and detriments of efficiency measures.

Changes in the fee structure that would impose higher fees for permit processing or increased demand is an option, albeit politically unpalatable, that could increase revenue and foster conservation behavior. Several of the changes recommended in this document could be used to more efficiently manage Alaska's resources, but few of them will provide a "quick fix" to the backlog.

16. *Transfer authority to local governments.*

The Center does not support this proposal. Local governments are not equipped to make the comprehensive basin-wide evaluations that are required in water management nor evaluate and protect statewide interests in water resources. This approach could result in inconsistent water right management decisions and will frustrate efforts to account for water use across the State.

17. *Transfer all water right authority to the Alaska court system.*

The Center does not support this alternative in recognition that judicial adjudication is lengthy and not prone to development of comprehensive solutions.

18. *Water Right Registry System Options*

The primary benefit of a registry system seems to be its elimination of DNR's duty to determine whether a proposed water right meets the statutory tests for issuance. This would reduce the backlog and significantly limit the agency's responsibilities. A system to determine water availability and impairment of senior and public rights to water is, however, critical to water management. Water usage based on registry can be predicted to deteriorate into a self-help scenario in which it becomes impossible for the state to control or protect either instream resources or legitimate out-of-stream uses. The fact is, once development has occurred, that development is there to stay.

Registry of the state's current exempt rights is an essential mechanism to track those rights. It is not a substitute, however, for state oversight and management to protect water quality, instream resources, and senior rights. The larger the rights subject to exemption from water rights evaluation, the larger is the state's abdication of its duties to protect public interests.

We encourage you to consider watershed planning and "batch processing" of permits, reservations of water for instream uses, and reservation of municipal supply with adequate safeguards for future regulation as a way to deal more efficiently and effectively with water resources backlogs.

With respect to Recommendation No. 18e the Center urges you not to adopt a policy or guideline that would find a proposed water use to be in the public interest if no adverse comments are received. It is a primary function of the state to protect public interests in water resources. Your independent evaluation of the effects of proposed water uses is your reason for existence.

III. WHO PAYS

1. *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 pays the cost of protecting public interests.*

The Center supports proposals that increase the filing fees for water right applications that may defray the administrative costs of processing applications.

2. *Amend the regulations to allow a consultant or applicant to conduct the procedural portion of the adjudication and file the completed package with DNR for review, public interest determination, and issuance or denial of the permit.*

Consultants commonly perform hydrologic analysis for water right applications in Washington, usually where the proposed use is large and the applicant has a significant economic stake in the process. This creates a dichotomy. The consultant's work clearly eases the agency's workload. But, incentives exist to conclude that water is available and adverse impacts unlikely. Typically, small scale water right applicants do not have the resources to hire consultants to handle their applications.

Hence, use of consultants to perform "procedural" tasks under the water code will still require supervision by DNR staff to ensure that notice and information is adequate and credible. DNR will need to independently evaluate whether studies submitted by applicants are reliable and complete. It is possible that this proposal will not save the agency significant resources.

3. *Establish a system of state-licensed water right examiners.*

Because it is unclear what this recommendation involves, we have no comment.

4. *Replace the Administrative Service Fee with a water user fee.*

The Center supports fees related to the use or proposed use of water. Fees promote conservation and encourage applicants to request only the amount of water they will realistically put to use.

IV. MANAGEMENT RECOMMENDATIONS

Allow for time and effort to be spent conducting education and outreach programs for the water right program.

The waters of Alaska are a public resource and their allocation and management are a matter of significant public concern. At a minimum, access to information about the water code and its implementation should be readily available. Public participation in water rights processes provides a good litmus test for evaluating DNR's own work and agenda. However, the public must be educated in order to participate, which requires demystifying the process. This responsibility should go to DNR. If not you, then who?

If changes to the current system are implemented, a public education program should precede the effective date of the implementation. If watershed management is improved through additional analysis on a basin-by-basin basis, public education should also continue and focus attention on the need to preserve and protect the State's water resources. Outreach to members of the public who are affected by water resource decisions, but who do not typically participate should be an obligation on the agency. Public accountability should be your goal.

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

No comment.

Hire an outside expert on water rights to review the existing water rights system in Alaska and recommend improvements to the current system.

No comment.

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.

The Washington state water resources program has benefitted from the research and advice of various advisory committees over the years. The current Water Rights Advisory Committee is making non-binding recommendations regarding water supply study protocols and reviewing Ecology's proposed administrative rules. The benefit of this function is twofold. It provides Ecology with a variety of ideas and perspectives prior to the agency taking action to change its procedures. Also, the Committee, composed of a variety of water user and other interested parties receives education about the problems and pitfalls of water resources management. The detractor of this approach is that the committee is not entirely representative of all parties interested in water resource management (e.g., tribes are invited but not present) and, because it is a diverse group, consensus is not possible. Nonetheless, it serves an important function by keeping the agency publicly in touch with its multiple constituencies. Although it requires staff time and some expense, the agency believes the costs are justified. We urge DNR to consider whether, particularly in times of proposed alterations to the existing approaches to water management, a non-binding advisory group might not assist you in your work.

STRAW MEN RECOMMENDATIONS

STRAWMAN 1: (A) Legislatively create a sliding scale for water user fees; (B) provide the legislative and regulatory streamlining features that come out of ongoing Division outreach programs. [Status quo system with greater funding through revised user fees.]

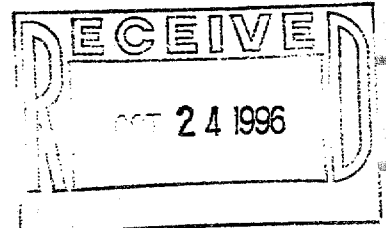
The Center supports consumption-based fee structures. Such fee structures add incentives to conserve water use. Water is a limited resource and should be treated as such. Additional incentive to conserve water at the front end of the application process will likely encourage behavioral changes or design changes that will provide long-term benefits such as, providing water for future allocation for beneficial uses, preventing waste in the system, and preserving groundwater levels and instream flows.

STRAWMAN 2: (A) Eliminate all General Funds; (B) retain dam safety.

The Center does not support this proposal. It deprives DNR of funding and eliminates conservation incentives at a time when adequate funding is not available for DNR to fulfill the requirements of the Water Use Act.

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.

The Center opposes elimination of use-based fee structures. The Center strongly opposes abolishment of the Water Use Act and Alaska Hydrological Survey legislation, for the reasons expressed in comments to proposals above. The Center very strongly opposes establishment of a water right registry system that allows exempt water uses, as discussed above. The Center also opposes the establishment of a water right registry system that fails to provide public notice of proposed exempt water uses.



October 22, 1996
10443 High Bluff
Eagle River, AK 99577

Barry
Commented 11/5/96
Comments 11/12/96
[Signature]
Jules Tileston
Department of Natural Resources
Division of Mining and Water Management
3601 C Street, Suite 800
Anchorage, AK 99503-5935

Dear Jules:

Thank you for the opportunity to comment on the options being reviewed by you and your staff for managing water resources in Alaska. I am responding as a citizen. There will be no official response from my agency. Several of my staff are also responding as individuals.

I made my review while on vacation in the early morning hours before everyone else woke up. I had planned to type up my responses to improve their readability. But alas, there hasn't been time to do it. So I'm sending them as is, in hopes that you will find them useful.

You are to be commended for this effort to search for ways to improve the water resources program. Unfortunately, I think most of the ideas here, if implemented, would be steps in the wrong direction. We need more investment in water resources inventory and management, not less.

If I were you, I would offer one more option, that I have sketched out on the last page. It calls for an aggressive appeal for increased budget so that water resources management might be retained within state government and not follow the path of marine mammals and subsistence management. Your commissioner might not like it. But to present only scale back options is tantamount to dereliction of duty.

Good luck.

Sincerely,

Keith Bayha
Keith Bayha

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

HABITAT AND RESTORATION DIVISION

TONY KNOWLES, GOVERNOR

P.O. BOX 25526
JUNEAU, AK 99802-5526
PHONE: (907) 465-4105
FAX: (907) 465-4759

November 1, 1996

Mr. Jules Tileston
Director
Alaska Department of Natural Resources
Division of Mining and Water
3601 C Street, Suite 800
Anchorage, AK 99503-5935

Dear Jules:

This letter and accompanying materials represent the Alaska Department of Fish and Game's (ADF&G) responses to a request by the Alaska Department of Natural Resources Division of Mining and Water (ADNR) for public comments on draft proposals for modifying the State of Alaska's water management program.

The ADF&G's responses are incorporated in this cover letter and added to the attached amended ADNR document, "*Draft Recommendations to the Commissioner - Water Resources Management (with ADF&G's Comments Added - November 1, 1996)*" (attachment one). The ADNR letter requesting this public review is also attached (attachment two).

Many of these ADF&G comments were presented during your and my December 14, 1995 meeting in Juneau with Leonard Verrelli (Alaska Department of Environmental Conservation), Gary Prokosch (ADNR), and Christopher Estes (ADF&G), by Christopher at five of the six ADNR public meetings held earlier in 1996 (Juneau-2, Anchorage-2, and Fairbanks-1), and in correspondence to you of September 18, 1996 (attachment three).

General Comments

The ADNR proposals reviewed by this letter and attachments represent a summary of the first nine months of an eleven month public process initiated by the ADNR in January 1996. The purpose of this process is to explore options for reducing or eliminating the state's costs for administering water allocation programs in Alaska. Proposals by the ADNR range from eliminating the water management program (and its enabling legislation) to maintaining the status quo. These proposals are represented as a series of ADNR recommendations and analyses in the attached version of the ADNR document. As noted above, ADF&G's review comments are presented in this cover letter and integrated into this ADNR document.

These and previous ADF&G comments reflect the views that the current water allocation system administered by ADNR, and its basic legal framework, should not be reduced or eliminated. Alaskans cannot afford the long-term liability/risk and costs that would be associated with piecemeal and multi-jurisdictional approaches for managing water, as proposed by some of the options under consideration. Water management is subject to natural hydrologic variability. To be cost effective and equitable to all citizenry, it must be performed as an integrated process, irrespective of geographical and political boundaries.

Retention of the current water allocation system is essential for avoiding overappropriation of Alaska's water resources, and for sustaining the health of fish and wildlife resources and the overall future economic well-being of Alaskans. Accordingly, sufficient funding is also required to administer the various elements of the program.

Many of the individuals at the ADNR public meetings, attended by the ADF&G, urged the ADNR to maintain the status quo system. Participants recommended the ADNR consider charging additional fees, if expended to cover the costs of maintaining the existing water program. It was also suggested that the ADNR better utilize its existing authorities to generate revenues, and if necessary, add to its authority to assess sufficient user and administrative fees to cover its costs of maintaining the current system as provided by 11 AAC 005.010 (8) (L) to (P).

Although ADF&G has commented on each proposal, there is currently insufficient information presented by the ADNR to fully and accurately assess the merits and cost effectiveness of the current ADNR water management program and alternative options under consideration. That is, criteria and data presented by the ADNR do not identify prior, current, and projected costs of maintaining a portion or all of a particular program function, whether and how well ADNR has or is meeting objectives of individual program functions, the basis for those functions, benefits of those program functions, and costs and liabilities for not implementing a particular function under the various options or combinations of options being considered.

Also lacking in the ADNR draft document, are sufficient explanations for all of the assumptions used, and whether costs and liabilities will vary over time. For example, it is unknown whether one course of action will cost "\$x" and another "\$y" over a 50-year period; and, whether a

particular program element should be judged as essential or optional, and why.

A comprehensive risk analysis and cost/benefit assessment of the past and current ADNR program functions and each alternative to the current program will be essential before one can truly identify if and what types of changes are or should be made. This type of assessment should be completed by a qualified independent entity. It would evaluate the state's long-term liability for costs and other impacts passed onto its citizenry as part of the DNR evaluation process for selecting specific and combinations of options for reducing or eliminating elements of or complete functions. Cost estimates should be based on existing, short, and long-term projections. Both direct and indirect costs should be included.

Without this critical information, the majority of proposals under consideration may produce the opposite of the desired effect and add to operating costs with no perceived gain to water administration. This may lead to irreversible water allocation decisions that are detrimental to the long-term economy of the state.

As stated at public meetings, the ADF&G also remains concerned formal notices describing this process were not distributed to all water rights holders and water right applicants. We are supportive of the efforts by ADNR to advertise public meetings in newspaper announcements and through hundreds of select mailings. However, many of the proposals under consideration have the potential to affect existing water rights holders, those with pending applications, and future applicants. Thus, we again suggest ADNR formally notify these stake holders.

In summary, the ADF&G, at a minimum, favors the status quo water management program, including retention of the Doctrine of Prior Appropriation system. The ADF&G also supports the concept of automated instream flow protection proposed by Recommendation 9 in the attached ADNR document.

Accordingly, the ADF&G recommends against any changes to the ADNR Water Management program and Water Use Act (AS 46.15) that will diminish the ability of the ADNR and other state agencies to fulfill their duties to manage water to serve the best public interests of Alaskans. These criteria are established by the Alaska Constitution (Article VIII, Sections 1, 2, 3, 4, 13, 16, and 17), Alaska Statutes (AS 46.15), Regulations (11 AAC 05.010 and 11 AAC 93), and through common law, in the form of the Public Trust Doctrine.

The ADF&G would like a copy of all written comments received by the ADNR related to this important evaluation process. Please also send us copies of tapes or transcripts produced from tape recordings of the public meetings.

If you desire additional information and are unable to reach me, please feel free to contact Christopher Estes, Statewide Instream Flow Coordinator (267-2142), or Lance Trasky, Southcentral Regional Supervisor of the Habitat and Restoration Division (267-2335).

Mr. Jules Tileston

-4-

November 1, 1996

Thank you for the opportunity to comment on the attached public document. I hope this information will be useful.

Sincerely,

Janet Kowalski
by C.E.

Janet Kowalski
Director

cc: Marilyn Heiman, Governor's Office
John Shively, ADNR
Marty Rutherford, ADNR
Frank Rue, ADNR
ADF&G Division Directors
Christopher Estes, ADF&G
Lance Trasky, ADF&G
Al Ott, ADF&G
Lana Shea, ADF&G
Tina Cuning, ADF&G

Enclosures (3)

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING AND WATER MANAGEMENT

November 1, 1996

TONY KNOWLES, GOVERNOR
3601 C Street, Suite 800
Anchorage, ALASKA 99503-5935
Phone: (907) 269-8624
FAX: (907) 562-1384

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.

November 1, 1996

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.

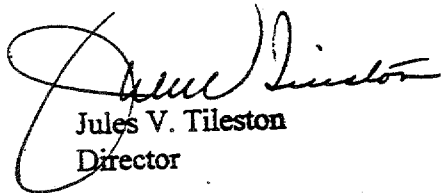
I emphasize the fact that the Department of Natural Resources has not yet determined what its budget recommendations to Governor Knowles and the Legislature will be for the Alaskan Water Resources Section component assigned to the Division of Mining and Water Management. Accordingly,

WE SINCERELY REQUEST YOUR THOUGHTS!

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

I can be reached by

Phone at: (907) 269-8625,
FAX at: (907) 563-1853, or by
E-mail at: julest@dnr.state.ak.us.



Jules V. Tileston
Director

November 1, 1996

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

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MEMORANDUM

TO: Jules Tileston, Director
Division of Mining and Water Management

FROM: Janet Kowalski
Habitat and Restoration Division

DATE: September 18, 1996

SUBJECT: ADNR Proposal To Reduce Water Management Program

This memo is in response to your phone call to me of August 30, 1996 regarding an analysis of projected impacts related to the elimination of Division of Mining & Water's water program. You asked us to share with you the impacts of this proposal on our budget. I apologize it took this long to respond to you. If you come up with any additional or alternative proposals for changes to the program, we'd like to see them so that we can assess the impacts, if any, to our programs here at ADF&G. After our telephone conversation, I asked staff to respond to the following three questions:

1. What savings would we experience if ADNR cut the water management program?
2. What additional costs would we have? i.e. a new project is proposed which would require water from a previously untapped highly productive salmon stream.
3. What does this mean for fish?

Attached you will find a response to the three questions. We understand that you are considering options, and that no formal proposals are being made at this time. I hope you find this information helpful.

cc: John Shively, ADNR
Marty Rutherford ADNR
Frank Rue ADF&G
ADF&G Division Directors
Lance Trasky ADF&G
Christopher Estes ADF&G
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ADF&G Comments on Water Management Reduction Scenario

GENERAL COMMENTS

We are available to review various options for improving the efficiency of the water management program, and we appreciate the opportunity to share our thoughts with you. During last year's meeting with ADF&G and DNR representatives, DNR shared that they were considering eliminating the water program as one of the options addressed as part of an 11-month public process (January -November 1996). The purpose of this public review was to evaluate cost-savings alternatives to the existing water management program. We were also informed of a plan to eliminate the backlog of water rights applications (filed through December 1995) by June 1997. At that time, we strongly advised DNR that an option for increasing their budget should receive equal consideration. We also urged DNR to perform a risk analysis and cost/benefit assessment of the state's long-term liability for costs and other impacts passed onto its citizenry as part of the DNR evaluation process for reducing or eliminating their program.

1. What savings would we experience if ADNR cut the water management program?

The short answer is none— without an acceptable alternative, this proposal would result in cost increases to others. Costs associated with poor resource planning would be high. DNR's consideration for eliminating the administration of the Water Use Act AS 46.15 will not result in savings for the Alaska Department of Fish and Game (ADF&G). The same will probably hold true for other state and federal agencies and the private sector.

The Fish and Game Act (AS 16) requires the Alaska Department of Fish and Game (ADF&G) to, among other responsibilities, "manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state" (AS 16.05.020). Definition of, acquisition and protection of, sufficient water is integral to accomplishing this mandate.

Regarding the effect of the DNR proposal on ADF&G (see also discussion below for question 2), AS 16 would necessitate the ADF&G attempt to accomplish some of the functions provided by DNR. Thus, the ADF&G would require additional resources to expand its existing instream flow and water permit review functions to compensate for the loss of the state water allocation system to insure adequate water is available for sustaining fish and wildlife regardless of land ownership. The Fish and Wildlife Coordination Act, other federal laws, and actions such as the Federal Energy Regulatory Commission licensing process, federal assertions of Federal Reserved Water Rights, Navigability, access and other water allocation related issues also require ADF&G

participation, with or without the DNR. The ADF&G also has a need for water withdrawals for domestic and operational functions for its hatcheries, etc.

DNR should not assume ADF&G's need to expend resources to define and protect water needs would be diminished if DNR's water management activities were reduced or eliminated. AS 16 does grant ADF&G authority to define and (with limitations) protect the quantity and quality of water needed to sustain fish and wildlife and perform other mandated Title 16 functions. There are limitations to expanded implementation, however. Although it would provide some of the needed protection, this authority would not substitute for the current DNR water allocation system or DEC's role of protecting water quality. Accordingly, ADF&G, at present, does not fully use this portion of our authority based on interagency agreements with DNR and DEC which provide expanded protection through their statutory functions. This in itself is a cost savings and avoids unnecessary duplication where authorities are perceived to have an overlap.

GENERAL CONSIDERATIONS APPLICABLE TO ADF&G, OTHER AGENCIES AND THE PUBLIC

If funding were eliminated for the DNR water management program without an acceptable substitute, it would ultimately result in an irreversible increasing debt load placed on future generations of Alaskans, and limit future developmental opportunities. The elimination of the program would be a recipe for disaster. It is one that unfortunately would not become apparent until conflicts and/or damage were intense (based on the experiences of western states water development over the past 150-years).

According to DNR, present costs for the administration of water rights are covered by an annual appropriation of \$400,000 in general funds and approximately \$123,000 in fees. If these program costs are accurate, how can anyone, who is familiar with our country's water development, equate the wholesale elimination of a \$523,000 program (required to administer existing and new water allocations) as a savings? Without a water allocation system, Alaska will eventually experience a future colored by over-appropriation of water with inadequate water for: fish and wildlife production, navigation, recreation, water quality, and sustaining commercial and municipal needs. Are these the desired results?

DNR WATER PROGRAMS AFFECTED BY THIS PROPOSAL

The current DNR water management program includes: management of the state's surface and subsurface waters (not including medicinal and mineral waters) for common use and is subject to appropriation for appropriation and beneficial use (AS 46.15.030). Appropriations include withdrawals, diversions, and impoundments of surface and subsurface waters, and reservations of water levels and instream flows. A dam safety program is also integrated into the water management program. Resolution of Federal Reserved Water Rights claims and participation in the Federal Energy Regulatory Commission licensing process are other DNR water management functions. The Hydrologic Unit of the DNR water program contributes to water quantity and quality data

collection. A program to match state and U.S. Geological Survey funds has (until recently) been one of the primary sources of funding for needed stream gage data. The stream data collection portion of the DNR program has already been reduced and will limit the ability to identify water availability, plan for developments, assess flood risks, etc.

PROJECTED LIABILITY

Partial or complete elimination of the state water management process, without establishing an acceptable alternative, would be subject to litigation as a violation of the Public Trust Doctrine. That is the state would be abandoning its role as the trustee for the management of and protection of public uses of navigable waters of the state, and (in many instances) non-navigable waters that are tributary to navigable waters and subject to this doctrine. These public trust responsibilities are an obligation accepted by the state when it was granted statehood and ownership of navigable waters and their beds.

The state constitution embraces the Public Trust Doctrine by establishing public interest criteria established by the Alaska Constitution Article VIII, Sections 1, 2, 3, 4, 13, 16, and 17 and provides another basis for challenging the current and similar proposals. Therefore, partial or complete elimination of the state water management process, without establishing an acceptable alternative, would be subject to litigation as a violation of the state constitution.

AS 46, the Water Use Act and associated regulations, provide a basis for implementing the water management responsibilities express by the state constitution. The elimination or reduction of this program without the ability to fully execute this statute would also be subject to litigation based on the Public Trust Doctrine and the state Constitution. Elimination of the Water Use Act without providing for an acceptable alternate would also be subject to litigation.

2. What additional costs would we have? i.e. a new project is proposed which would require water from a previously untapped highly productive salmon stream.

Approximately an estimated additional \$350,000 would initially be required for expanding Title 16 permitting and monitoring to include water allocation considerations for fish and wildlife. We would also have to generate and analyze our own hydrology. This cost could add up considerably. Unfortunately, this alternative form of protection would still have limitations based on not knowing how far Title 16 authority could be expanded upstream and the effectiveness of using Title 16 as the sole basis for protecting instream flow or other ADF&G water needs. And, what if a competitor wants water for the same purpose as ADF&G? Who resolves the dispute—the courts?

ADF&G would also have to access the existing DNR LAS data base to research and incorporate prior appropriations for affected Title 16 permit applications. And, who would update the DNR data base?

ADF&G, as would other agencies and the public also have increased time consumed in matters of litigation based on resolving water disputes if an administrative solution were unavailable. It is also likely ADF&G would gradually assume other state responsibilities related to water management if no other entity had a program related to water quantity. These added duties would increase our costs. Without an umbrella comprehensive state water management program there would undoubtedly be an unknown cost resulting from losses of fish and wildlife for water uses that cannot be managed through Title 16.

The bottom line: these costs are an estimate - a best guess with limited information for analysis. Further, no funds are currently available for ADF&G to do this work.

ALTERNATIVE SOLUTIONS

It would be more cost effective for the ADF&G or another agency to take over the entire DNR water program, if accompanied with the existing budget. This is especially true if DNR has no interest in working to insure they meet their mandates and public interest and trust responsibilities associated with water management. The current DNR water management program is already suffering from insufficient funding.

3. What does this mean for fish?

One of the AS 16 provisions enables the ADF&G to acquire water rights to further its objectives or purposes (AS 16.05.050). Other provisions such as AS 16.05.840 and .870 establish permitting authority to insure that fish passage and anadromous fish habitat are protected. Without water this can't be accomplished. Our existing authority provides some capability to compensate for elimination of a state water management system. But as discussed above it would not be cost effective as we would have less protection with added expenses.

Without establishing replacement programs, elimination of the DNR water rights program would mean that DNR would not be able to adjudicate existing or accept new water right applications. It also means they would not monitor existing water rights and resolve disputes. It would affect our Department's existing and pending instream flow water rights, hatchery and fish pass water allocations.

This is bad decision for fish and wildlife protection without an acceptable alternative and sufficient funding, and the overall negative impacts of the DNR proposal on water allocation for other agencies and the private sector cannot be ignored.

Counted
12/13/96

November 1, 1996

**Amended Version "Draft Recommendations to the Commissioner - Water Resources Management" prepared by the Alaska Department of Natural Resources
with the
Alaska Department of Fish and Game's Comments Added**

The Alaska Department of Fish and Game's (ADF&G) positions and comments on the Alaska Department of Natural Resources' (ADNR) "Draft Recommendations" follow the ADNR analysis for each recommendation presented by ADNR. All ADNR information is shaded.

ADNR RECOMMENDATIONS CATEGORY - AMMENDMENTS TO THE ALASKA CONSTITUTION

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.

- 1. Recommendation Under Consideration by ADNR:** 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.

ADNR 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. right".

Rights are land owners regardless of actual use.

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

No loss of rights for non-use.

Water right remains with land.

No priority of use under water shortage. priority.

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

Public Trust Doctrine applies.

APPROPRIATION

Ownership of water based on "first-in time, first in

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 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

Public interest values are considered.

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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The Alaska Department of Fish and Game (ADF&G) disagrees with this proposal to amend the Alaska Constitution. It would replace the existing water rights system (based on the Doctrine of Prior Appropriation) with a Riparian Doctrine system.

Under the Riparian system, water can only be withdrawn from a water body by adjacent land owners. Unquantified amounts of water, defined as "reasonable amounts of water", can be withdrawn. There are no provisions for allocating water for instream uses, and to share water with those who do not own land adjacent to a water body. The Riparian system favors those who are located furthest upstream, because it does not address impacts associated with cumulative water uses on past, current, or future downstream water users. The lack of recognition for instream flow water uses is a major concern to the ADF&G.

The Riparian system met the water allocation needs for eastern states during their early years of settlement because of the limited competition for water. There was also no recognition of the need to protect instream uses, including placer mining. Today, eastern states are amending their Riparian systems by adopting permitting provisions associated with the Doctrine of Prior Appropriation system. The resulting hybrid Riparian system provides a basis for accommodating multiple water users, instream flow protection, and the Public Trust Doctrine.

The western United States initially developed the Doctrine of Prior Appropriation system (used by Alaska) to provide a basis for equitable distribution of water when water was in short supply and to enable individuals to use water for beneficial purposes, even if they didn't own land adjacent to the water (e.g. placer miners). Unlike the original Riparian system, the Prior Appropriation system provides a basis for conditioning or denying a portion or all of a water use request by weighing the affect of a proposed water use on other future, existing, and past beneficial water uses. It also provides a basis for accommodating existing and future downstream water users.

The framers of the Alaska Constitution understood the historical evolution of water law in our country and the need for a system that places an equal value for instream water needs as it does for out of stream or diversionary water uses. They knew that the future of Alaska's economy was dependent on instream uses such as fish, navigation, recreation, placer mining, hydropower generation, etc. in addition to water withdrawal uses. Both instream and out-of-stream water uses are dependent on adequate water supply that is properly managed. Thus, the Doctrine of Prior Appropriation system was embodied in Article 8, Sections 2, 3, 4, and 13 of the Alaska Constitution.

In summary, a Riparian system would enable owners of lands adjacent to waterbodies to have exclusive use of a public resource with no consideration of greater public interests. An upstream land owner would have the ability to use the majority of water from a water source and prevent water from being delivered downstream. This would be a major step backwards, would threaten past, existing, and future water users, and the production of fish and wildlife resources. implementation of this proposed recommendation would be accomplished by eliminating references to the Doctrine of Prior Appropriation and current "common use" protections currently extended to all citizens of Alaska in the Alaska Constitution. It would negatively impact industries and economies based on resources under Article VIII sections 4 and 13 of the Alaska constitution, including instream flow protection for fish and wildlife.

Please also note the ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short

and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

ADNR RECOMMENDATION CATEGORY - STREAMLINING

1. Recommendation Under Consideration by ADNR: 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 (0.05 cfs) 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.

ADNR 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The ADF&G disagrees with the proposal to amend the definition of a significant amount of water under 11AAC 93.970 (14) to allow users to remove up to 30,000 gallons of water per day without a permit or certificate. This recommendation would result in two or more adverse impacts on fish production in Alaska. The first impact relates to screening and other potential physical impacts associated with a water withdrawal, and the second to instream flow protection.

Implementation of this recommendation would encourage the removal of water with little or no oversight or opportunity to insure rearing fish were protected through the use of proper screening when water is withdrawn. The elimination of the requirement to file a water right for this quantity of water, may result in a water user being unaware of the continued need to obtain a Title 16 permit from the ADF&G if the withdrawal is from fish bearing waters. Thus, there would be no opportunity for ADF&G to review plans for withdrawing the water and insure that anadromous and resident fish are protected.

The second problem is related to elimination of the consideration of whether an individual withdrawal or cumulative withdrawals for several uses would negatively impact instream flows needed by fish. This would be a particularly serious problem in small to moderate sized stream systems, where most coho and chinook salmon rearing occurs.

Exempted water users would be unable to protect their water use if competing water users filed a water right to withdraw water from the same source and insufficient water were available to all users.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

2. Recommendation Under Consideration by ADNR: 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.

ADNR 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: This proposal defeats the purpose of the current appropriation system and is not needed. Public water supplies currently have guaranteed preference and security under the State Constitution (Article VIII, Section 13) and the Water Use Act (AS 46.15). The current

system also protects the general public by requiring mitigation for senior water users who lose all or a portion of a prior water right in the event preference is subsequently established by a government entity.

It is doubtful implementation of this recommendation would result in significant cost savings. Negative impacts to ADF&G, associated with this recommendation, could be minimized or eliminated by integrating automatic instream flow protection for fish and wildlife into this proposal.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

3. Recommendation Under Consideration by ADNR: 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.

ADNR 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.

ADF&G Position: The ADF&G Agrees with this Recommendation if assumptions in our comments apply.

ADF&G Comments: According to the above ADNR assumption, reviews of water withdrawals and diversions will not become mandatory. Under this scenario, the ADF&G would agree to amending AS 46.15.145 (f) and 11 AAC 93.146 (d) (2) and eliminating 11 AAC 93.147. This would remove the requirement that instream flow reservations be reviewed every 10-years and would result in a cost savings.

It is unlikely there would be impacts to other resources or users. Instream flow reservations are calculated and prepared at considerable cost to ADF&G and not likely to change over the 10-year time. Costs savings would accrue over time because ADNR would not expend

resources to reevaluate an existing instream flow without justification. Expenses for ADF&G staff would also be reduced. The impacts of inadvertently protecting instream flows that are later identified as no longer being required do not compare with what may be irreversible negative impacts resulting from inadvertent overappropriations for water withdrawals or diversions.

However, we also concur with the ADNR analysis that it would be preferable to establish mandatory periodic reviews for all classes of water rights instead of only instream flows. We disagree with the ADNR statement that the costs associated with a mandatory review process for all water rights would be contrary to management objectives. Instead, we believe it would be more accurate to state that a required review of all water rights would be contrary to their agency's objectives to achieve cost reductions. It is therefore likely a mandatory review would instead improve the ability of the ADNR to execute management objectives that comply with the Alaska Constitution.

Costs of the mandatory review option could be minimized by randomly sampling various thresholds and classes of water rights appropriations. Over time, it is predicted that the benefits of a mandatory review would negate, if not exceed, the added costs of implementation.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation (including the recommendation in the ADNR analysis); and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

4. Recommendation Under Consideration by ADNR: 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).

ADNR 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).

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The ADF&G disagrees with the recommendation to develop a general permit that combines the permitting processes of ADNR, Alaska Department of Environmental Conservation (ADEC), and ADF&G. There is no evidence that the present permitting system

does not meet the public need as long as there are adequate staff to process the applications in a reasonable amount of time.

This concept has been reviewed by several administrations. The final conclusion reached from each analysis has been to maintain the status quo.

A coordinated permitting process already exists for multi permit projects in the coastal zone; and, there is no reason to believe that a new or alternative generalized system is needed and would be any better or more efficient.

ADF&G takes pride in its permitting efficiency and the tracking of its permit process. The average time for review of permit applications and issuance of a fish habitat permit by the ADF&G is 18-days. On the other hand, both ADNRR and ADEC can take months or years to issue similar authorizations. Combining the processes would simply delay the issuance of ADF&G permits.

One of our most significant concerns is that a general permit for water appropriations would not enable the ADF&G to comply with its statutory mandates to protect fish habitat if it couldn't assess the specific biologic and hydrologic impacts and site conditions for a proposal.

A general permit is likely to be so complicated that it would be difficult to understand. A combination of the three current permit systems would create an unnecessarily cumbersome, and inefficient system, with little corresponding public benefit.

Often overlooked when discussing general permit ideas, is that delays in the decision making process related to water permits are often due to the dearth of stream gage data for Alaska's water bodies. With less than 1% of all water bodies gaged, water availability (needed to process a water right and insure sufficient water is available for the intended uses) must be estimated or new data collected.

Since 1908, less than 600 stream gages have been operated in Alaska. And only 80 gages operate today. This equates to an average of 1 gage per ~8,000 square miles as opposed to the lower 48 average of 1 gage per 400 square miles.

The U.S. Geological Survey recommends 20-years of data collection are required to establish a reliable stream flow data base for estimating water availability over time. Most sites in Alaska have no flow data and 20-years are uncommon. Often agencies will therefore be required to settle for 5-years of flow data collection, despite the greater error in predicting water availability. Thus, it is important to remember when an application is filed to withdraw water, it is often unknown whether a sufficient amount of water will actually be available on a year to year basis (due to natural variability), even if the applicant were granted 100% of the water. This adds to the difficulty for permittees to assess the amount of water available for allocation, and can often frustrate a developer.

One solution to improve the overall permitting process would be to implement the multi-year stream gage program recommendations of the ADNRR/U.S. Geological Survey stream gage network evaluation, previously funded by the Alaska legislature and federal government. Funding for implementation has also been endorsed by the Interagency Hydrology Committee for Alaska during 1995 and 1996.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this

recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

A thorough review of prior analyses of similar recommendations is also recommended.

5. Recommendation Under Consideration by ADNR: 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).

ADNR 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The ADF&G questions the utility of combining ADEC and ADNR water programs without a comprehensive evaluation of both programs and specific cost savings, if any, that would be achieved. Water programs in both agencies are based on different statutory objectives.

ADNR is responsible for allocating public water resources between competing user groups (with consideration of impacts to water quality based on input from the ADEC, other agencies, and the public), and maintaining data records.

ADEC is responsible for enforcing state and federal water quality statutes to maintain public health. These are two different missions. Each requires different types of expertise for management staff. Combining them may not save much money, if both types of staff have to be employed.

However, both agencies overlap in their need for water quantity and quality data collection and analyses to perform their respective duties. Perhaps there is an opportunity to combine some of those functions with less staff and share some expenses for data collection and analysis. ADEC is presently funded to perform water quality related functions. Thus, if the water related functions of these two agencies were combined, water allocation work would still have to be funded through general funds or program receipts.

In the past, it has also been recommended that agencies with some overlapping functions review past interdepartmental memorandums of understanding to identify if they are currently being implemented, implemented effectively, or require modification.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

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

ADNR 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 its 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The ADF&G opposes this recommendation to establish priorities for adjudication based on the limited information provided. More specifics are required. Risk assessment processes and guidelines should be defined, including how the priorities would be selected and by whom. Also, how will other pending water rights be treated? How will needed hydrologic data be acquired? Not adjudicating a water right within a reasonable time period (and out of sequence) may be a disadvantage to an applicant if it were to result in a reduced allocation.

The public criticized the current ADNR reprioritization process for expediting adjudications out of sequence at the second ADNR public meeting held in Anchorage. Those concerns should be addressed and included in the discussion of this recommendation.

The ADF&G is unable to evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to

adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

7. Recommendation Under Consideration by ADNR: 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.

ADNR 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.

ADF&G Position: Agree

ADF&G Comments: The ADF&G agrees that a watershed management plan (WMP or basin) is a logical approach for adjudicating both instream flow reservations and out-of-stream appropriations of unappropriated waters, particularly where there are limited water supplies and substantial public interests. Adjudication of Federal Reserved Water Rights, navigability, and access determinations could also be integrated into this type of approach.

The state's current WMP, under development by ADEC and EPA, does not address data related problems for appropriating water and reserving instream flows for fish and wildlife. The current WMP is unfortunately limited to addressing water quality and public participation. A true watershed process should include a complete interdisciplinary assessment, similar to the Level B studies performed in the late 1970s.

To implement this recommendation, state, federal, and local agencies would have to formally commit to a valid watershed approach. A commitment would also be required to expand Alaska's limited stream gaging data collection and analysis program to generate essential flow data prior to initiating the adjudication process for a basin. Collection of biologic, recreational use, socioeconomic, and water quality data may also be needed. These data would be required to identify water quantity and instream flow requirements for the entire basin (rivers, tributaries, and lakes). Subsurface waters and water allocations for wells would also be addressed. Data collection would likely require 5-years of time before a basin could be adjudicated.

Under this process, applications pending adjudication should not be processed until the needed data were available. It is recommended that all water bodies qualifying for instream flow protection (not previously granted an instream flow reservation) would receive an automatic priority date for instream flow protection equivalent to date the 5-years of coordinated data collection began. Once a 5-year data collection process (for a targeted basin) began, it would be recommended that applications for new water rights would not be accepted until the data processes were completed. New applications should also not be accepted until all pending

water rights applications (filed for water uses in the basin prior to initiating the data collection process) had been adjudicated.

A watershed approach has been used in Montana, for the Yellowstone River Basin. The Yellowstone River has a length of 678 miles and is the longest free-flowing river remaining in the lower-48 states. During the 1970s, the Montana Legislature established a process for placing a moratorium on accepting new water rights for this river basin until all water rights were adjudicated for the basin.

An equitable process for defining the priority for basin adjudications in Alaska would also be required. The Interagency Hydrology Committee for Alaska is a logical choice for making these recommendations with public input. It is likely a process for addressing prior water rights applications and water rights considerations in other portions of the state would still be required to supplement this basin by basin approach. This process would also require a solution.

Although, there are a host of associated benefits to a valid watershed approach, it is assumed it would initially require a substantial increase in funding for water data collection and management programs. However, based on reviews of lower-48 water allocation problems, it is likely the benefits of this integrated approach would help avoid overappropriations of water and result in a more equitable water management scheme for all Alaskans. This would provide long-term cost savings for Alaskans. This savings would be based on avoiding the hundreds of millions of dollars in costs presently incurred by other states who are attempting to correct poorly made water management decisions that were made when their stage of water allocation was equivalent to that of Alaska's today.

Unfortunately, there does not seem to be a readily available source of state or federal funding for implementing the watershed type of approach. Nonetheless, this recommendation deserves further consideration.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

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

ADNR 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: A critical water management process already exists under AS 46.15. Establishing a special water management area would not necessarily include an entire watershed and may even include portions of several watersheds. This would not be an improvement over the status quo.

The same concerns expressed for the preceding ADF&G response to recommendation number 7 apply, except number 7 is the preferred alternative for this type of approach.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

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

ADNR 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.

ADF&G Position: Agree

ADF&G Comments: The ADF&G supports this recommendation to amend State Statutes to guarantee an automatic instream flow water right to reserve sufficient water in all anadromous fish bearing waters to sustain anadromous fish production. This amendment would be consistent with Article 8, Section 13 of the Alaska Constitution, which (among varying opinions) can be interpreted to require an instream flow reservation of water for fish and wildlife. The water export portion of the Water Use Act includes similar provisions (AS 46.15.035-7). It is clear this recommendation would reduce unnecessary labor expended on adjudications, result in cost savings, provide a basis for knowing how much water is available for diversionary or withdrawal purposes, and greatly improve the state's ability to address public trust and interest considerations.

This proposal also deserves serious consideration based on the history and current status of instream flow protection in Alaska. The present requirements for developing an instream flow reservation are time consuming and costly. In many instances, stream gage data are limited or non existent. Instream flow protection is also not on equal footing as an out-of-stream appropriation.

It is assumed few Alaskans would disagree that, second to the oil industry, the health of Alaska's fishery resources can significantly impact the state's economy throughout Alaska. Sufficient instream flows are essential to fish production and one of the primary factors dictating whether the state will be able to sustain or enhance the present level of fish production.

To date, 15,000 anadromous fish bearing water bodies and several thousand resident fish bearing waters have been documented in Alaska. One may thus question why less than 100 applications for instream flow water rights have been filed since passage of enabling legislation in 1980. And, why have only 11 of these applications been adjudicated with the remainder pending adjudication by the ADNRR?

The average annual ratio of new water rights filed for instream flow reservations versus those filed for water withdrawals (out-of-stream appropriations) during the past 10-years is approximately 150:8 and adds to this dilemma. This 10-year trend equates to 1,500 out-of-stream appropriations versus 80 instream flow reservations, assuming all applications will be granted. Over the next 50-year period, this same trend would result in an additional 7,500 water rights for water withdrawals versus 400 instream flow reservations. This does not take into consideration plans by the federal government to reserve water for refuge lands using the state water allocation system.

It is obvious that instream flow protection for fish and wildlife is not keeping pace with out-of-stream appropriations under the present system. According to the ADNRR Analysis for Recommendation 1 above (constitutional amendment), there are 16,000 ADNRR water rights. Of these, less than 100 are for instream flow protection. Without positive changes, this gap will only increase. These concerns are detailed and expanded upon in: Estes, C. C. 1995. *"Annual Summary of Department of Fish and Game Instream Flow Reservations Applications, Fishery Data Series No. 95-39"*.

Part of this problem can be traced to the history of water development and the outdated, but not forgotten, water philosophy of the early European settlers in the West, "use it or lose it". This phrase was used to imply that unregulated water (which remains in a river or lake) is wasted

water because it will evaporate or flow downstream for someone else to use or complete its journey to the ocean. This rationale failed to acknowledge instream values and was short sighted. Eventually, this philosophy led to the overappropriation and regulation of most western waters. This in turn, resulted in the decimation of fish and wildlife resources, and habitat degradation. It had resulted in short-term gains with immense long-term expenses. These experiences demonstrated the earlier approach for water allocation had been incorrect.

Today, overappropriation of water in the west and attempts to purchase or lease back a portion of this water (to restore a fraction of needed instream flows) are costing federal and local taxpayers hundreds of millions of dollars every year. Unfortunately, the results of these efforts have achieved limited success. Only a fraction of the fishery and other instream flow values, that once existed and contributed to our nation's economy, are being restored. Many resource managers believe these costs will continue increasing, regardless of the limited success associated with restoration.

We prefer to describe an instream flow reservation as being the equivalent of saving money in an interest earning savings account. It is very rare for the value of an instream flow not to increase over time. Thus, in the event more water were inadvertently protected instream than would later be demonstrated as being needed, the excess instream flow would still be available for withdrawal, without harming instream flow uses.

One may therefore conclude the old adage of "*use it or lose it*", promoted living beyond ones means, and in some cases resulted in a form of bankruptcy for our natural resources and instream flow uses. One might also logically question whether the ADNR would better serve its citizenry to allocate its limited operating resources on placing a greater emphasis on preventing too much water from being allocated for water withdrawals and diversions, versus their high expenditure of effort to verify instream flow requests. This logic also supports the recommendation to establish automatic instream flow protection. After all, an instream flow is a form of a "permanent fund for fish, wildlife, and the state's water based economy".

We disagree with the assumption in the ADNR analysis that elimination of the 10-year review would provide instream flow protection where none may be required. Instream flow uses would be documented when a future applicant for water rights performed the analyses outlined in the ADNR scenario.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors. We do however, believe implementation of this recommendation would result in one of the greatest cost savings actions taken by the state that will lead to significant socioeconomic gains for current and future generations of Alaskans.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

10. **Recommendation Under Consideration by ADNR:** 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.

ADNR 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.

ADF&G Position: ADF&G does not support recommendation (if all conditions below cannot be met).

ADF&G Comments: We are skeptical about this proposal based on reviews of similar recommendations in the past. However, there may be geographic regions where the ADF&G would not object to ADNR issuing a general permit for construction and temporary camps provided that ADNR abided by all of the elements in their analysis above for this recommendation. ADNR (with ADF&G input) would also have to determine (in advance) that the water source could support a 30,000 gpd withdrawal without negatively impacting fish and wildlife, other instream uses, and other existing water users. The permit would also have to contain stipulations requiring intake screening etc., and a notice that a Title 16 fish habitat permit was required in fish bearing streams. Thus with the general permit, there would still be a need to evaluate cumulative impacts of multiple permits for withdrawals from the same water source, monitoring the water use, etc.

Under this process, the ADNR would still be required to consult with the ADF&G to identify how much water is needed for fish and wildlife and to coordinate permitting. Hydrological and biological data needs would also still have to be addressed to make the determination whether the general permit is warranted. Another concern is related to how one insures the applicant will contact the other appropriate agencies for the respective permits.

Agencies should evaluate whether this general permit approach would lead to interagency differences instead of a coordinated cooperative review. If there were conflicting agency positions at the end of this process, implementation would possibly be more expensive than the current status quo. Disagreements under this process would also confuse and irritate the public.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information

will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

A review of earlier interagency and administration evaluations of general permit proposals would also benefit this evaluation.

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

ADNR 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.

ADF&G Position: No Position

ADF&G Comments: This recommendation was presented by some of the participants at the ADNR public meetings. Some of the water rights holders expressed opinions that paying an annual administrative fee is inconvenient. Others didn't want to pay any fee and were not sure how the fee related to their water right and the water right process. Larger water users didn't object to paying a fee, but didn't want to carry the full burden of fees. Perhaps, there are other alternatives to this recommendation that can be addressed in another forum.

According to the above ADNR analysis for this recommendation, the ADNR is dependent upon annual receipts for funding a portion of its operations. Without a portion or all of these fees, the ADNR would be forced to find an alternative source of funding or further reduce its program. In light of the overwhelming support (at the majority of the ADNR public meetings) for maintaining the status quo of the current water allocation system, the resistance to retaining the administrative fee may be eliminated with more public involvement and improved customer service.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants

waiting for the completion of the adjudication of a pending water right or temporary water use permit.

12. Recommendation Under Consideration by ADNR: 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.

ADNR 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The ADF&G disagrees with this recommendation, because it is inconsistent with the coordinated permitting requirements of the ACMP in the coastal zone where most water appropriations are issued. This proposal would pit one agency against the other, confuse the general public, and result in chaos. It is a proposal that defeats the checks and balances designed to insure public interest and public trust considerations are fully addressed.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

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

ADNR 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: There are no cost/benefit and comprehensive risk assessment analyses provided by the ADNR to evaluate this proposal and the ADNR analysis. See comments above for related Recommendation 1. We do not believe this quantity of water should receive an automatic exemption and granted formal status as a water right without a review process.

This proposal would enable a combination of related or non related individuals to each acquire 5,000 gpd water rights to be appropriated without identifying water availability and other public interest criteria. The magnitude of the impact of this size of withdrawal or combinations of this amount of withdrawal will reflect on the time of the year and the hydrologic characteristics of the water source. In some instances, there may be a possibility to simplify the review process for this quantity of water; but, the details would have to be evaluated and a mutual agreement reached. And, how much time and money would be required to administer these adjudicated rights on an annual basis?

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

ADNR RECOMMENDATIONS CATEGORY - RECOMMENDATIONS BASED ON PUBLIC DISCUSSIONS OF THE ORIGINAL FIVE ALTERNATIVE MANAGEMENT PROPOSALS PRESENTED BY ADNR AT THE SERIES OF PUBLIC MEETINGS

14. **Recommendation Under Consideration by ADNR: Status Quo. Maintain the water rights program as it is currently administered.**

ADNR 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?

ADF&G Position: Agree

ADF&G Comments: At a minimum, the ADF&G recommends maintaining the existing ADNR water rights program. The current program is designed to serve the best public interest, adheres to the Public Trust Doctrine, Doctrine of Prior Appropriation, and Constitutional mandates. If however, a comprehensive evaluation identified cost savings without sacrificing the public trust and public interest, we would be pleased to review those recommendations.

It is important to note that the ADNR has stated that resource limitations prevent staff from performing all of their duties required by the current program. Duties, routinely not being performed, include: onsite monitoring of existing water rights, onsite inspections to identify whether applications for water rights and temporary water uses have been perfected and comply with conditions established by the ADNR, and participation in hydroelectric project reviews.

A current 18-month process for eliminating the ADNR's 8-year plus backlog of water rights is slated for completion in June 1997. It further diminishes the ADNR staff's ability to perform the preceding and following other important duties. The ADNR's ability to place more effort into this evaluation process is also limited. Once the backlog process is completed, it is assumed ADNR may be able to redirect some of its limited resources to the above and following duties.

Under current law, findings of fact and conclusion of law for out-of-stream-appropriations are optional. This can and has lead to potential gaps in historical information for subsequent reviews of past water allocations. The small number of ADNR hydrologists and limited stream gaging data for Alaska's water bodies are often insufficient to provide information needed for timely and better water allocation decisions. Lastly, as noted above, instream flow reservation protection mechanisms require improvement to provide more instream flow protection (Recommendation 9).

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus adoption of other recommendations. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: a comprehensive breakdown of ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to maintain the status quo on an objective by objective and in some instances task by task basis, and detailed costs incurred by other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit. Comparisons of costs from previous individual years versus productivity for each function performed would also benefit and improve this analysis.

<p>15) Recommendation Under Consideration by ADNR: 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</p>

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.

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

ADF&G Position: ADF&G does not support recommended modifications to the status quo presented above and recommends modifications. We have also added others which are supported.

ADF&G Comments: The ADF&G's comments for each of the following recommended modifications to the "status quo" ADNR program are addressed below:

- a. The ADF&G does not support exempting water appropriations of less than 5000 gpd, from review.
- b. The ADF&G would be willing to reevaluate the proposal for municipal water entitlements, if it guaranteed adequate instream flow protection. The instream flow protection would have to be on equal footing with the diversionary, impoundment and other withdrawals resulting from this entitlement.
- c. Based on a comprehensive independent assessment of the past, current, and projected ADNR water rights program, the ADF&G would be willing to consider new alternatives.
- d. The ADF&G would support an automatic reservation for instream flows required to sustain instream uses, etc.
- e. The ADF&G would support increases in fees assessed by ADNR for water export. These fee increases are warranted based on experiences gained from the Blue Lake water export project. Whereas the owner of the water source to be exported, the City and Borough of Sitka, will earn between \$30 million to \$80 million per year for water sales (if the water project is fully developed), the State of Alaska will only earn a maximum of \$80 thousand annually based on the current conservation fee structure for water exports. According to the City of Sitka's contract with the water purchaser, the purchaser will also pay the \$80 thousand annual conservation fee to the State.

We suspect the gap between Sitka's and the state's annual income from this export of water will help support a reassessment of the ADNR fee schedule, especially when ADNR and other agencies are attempting to reduce operating costs and find alternative sources of revenues.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of these recommendations versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment, the following information will be needed for each recommendation: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt a recommendation; and the detailed costs of implementation incurred by ADNR, other

agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

16) Recommendation Under Consideration by ADNR: Transfer Authority to Local Governments

ADNR 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The ADF&G disagrees with the proposal to transfer water rights authority and responsibility to local governments. This system creates a mosaic of management and would confuse all participants. It would also be very difficult and very costly for the ADF&G to meet its statutory mandate to protect fish and wildlife resources if staff had to deal with 50 to 100 local governments, rather than ADNR. It is also assumed local governments do not have the resources or expertise to administer the water rights system.

This recommendation does not provide a basis for addressing prior rights and pending applications for water rights in existence. Under this proposed scenario, treatment of Federal Energy Regulatory Commission licensed projects, Federal Reserved Water Rights, and other elements of water allocation would be chaotic and costly.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

17) Recommendation Under Consideration by ADNR: Court Decree System

ADNR 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The ADF&G does not believe that a Court operated water rights program would be in the public interest or a cost savings even without the benefits of formal cost/benefit and risk assessment analyses.

This would be an expensive, cumbersome, and inefficient system without any corresponding public benefit. Lawyers would be required to resolve any all issues; and, water litigation often takes years for reaching a decision. According to statements by individuals (familiar with Colorado) at the ADNR public meetings, Colorado has one of the most costly systems in the nation using this process. One of the public participants commented that Colorado currently has more than 500 water attorneys, or approximately 90% of the nation's water rights attorneys.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

18. RECOMMENDATION UNDER CONSIDERATION BY ADNR: 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 Under Consideration by ADNR: 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.

ADNR Question Related to this Recommendation: 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?

ADNR Analysis: 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The ADF&G cannot support this type of process. There are no safeguards, to insure water would not be overappropriated. ADNR discusses labor expended for this type of water right adjudication under the current program (see above ADNR analysis). The ADNR analysis should also identify risks that may result from not informing other affected agencies and existing water rights holders before these new water rights are processed.

A review of past disputes and the associated costs to the state related to resolution of the backlog for single family water rights disputes for the Anchorage Hillside area during the 1980s should provide a warning about the long-term negative impacts of this type of process.

The dearth of hydrologic data to make a preliminary judgment is another reason for opposing this recommendation.

As an alternative to this domestic water rights related recommendation, we suggest ADNR consider performing a comprehensive review to identify opportunities to expedite the process under the current system. One idea may be to provide a discount for water application fees for applicants who are willing to enter required application information directly into designated computer terminals at the ADNR state offices and various libraries. This type of electronic filing should, in theory, also facilitate transferring information to the ADF&G, and ADEC when applicable. Mark sense forms also provide opportunities for greater efficiency and cost savings.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

In summary, the unanswered questions of how much money would be saved by this and the associated proposals, and at what risk of overappropriation, future conflicts, and long-term costs based on short term and possibly negligible savings, form the basis of our opposition.

18b) Recommendation Under Consideration by ADNR - 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 does 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?

ADNR Analysis: 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: Waiting until a conflict arises to resolve disputes mimics the earlier mistakes of the western states that lead to the economic burden associated with their respective water allocation systems. A solution that provides cost savings today by burdening others in the future is unwise. Please also refer to our comments for the previous recommendation and the comments in our September 18, 1996 correspondence (attached).

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

18c) Recommendation Under Consideration by ADNR - 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?

ADNR Analysis: 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?

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: All of the previous comments above for the other registry program recommendations apply (18a and 18b). The additional quantities of water in this recommendation add to our concerns and hence opposition. The mixture of treatments for adjudicating different types of water rights would add to the challenge and complexity to avoid overappropriations and conflicts. How would ADNR know what levels of staffing to maintain to support this type of process? This is one of the recommendations that truly merits a thorough long-term risk assessment.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

18d) Recommendation Under Consideration by ADNR - 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.

ADNR Analysis: 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?

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: All of the previous comments above for the other registry program recommendations in 18a, 18b, and 18c apply. Accordingly, we oppose this recommendation. Similar to 18c, the mosaic of management approaches makes this another of recommendation that requires a thorough long-term risk assessment.

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

18e) Recommendation Under Consideration by ADNR - 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.

ADNR Analysis: 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?

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: All of the previous comments above for the other registry program recommendations in 18a, 18b, and 18c apply. Accordingly, we oppose this recommendation. Similar to 18c, and 18d, this is another of the recommendations that truly merits a long-term risk assessment. It is also unclear whether this adjudication would only be triggered when requested by the applicant (similar to 18c).

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use

permit.

ADNR RECOMMENDATION CATEGORY - WHO PAYS?

1. **Recommendation Under Consideration by ADNR:** 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.

ADNR 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.

ADF&G Position: ADF&G does not support recommendation.

ADF&G Comments: The ADF&G disagrees with this recommendation to charge an applicant for water rights for a portion of the cost of adjudication. Why should the state be burdened with the costs associated with protecting the public's interests and complying with its Public Trust responsibilities when a private individual will derive personal economic benefits from private use of a public resource? It is reasonable, in a time of declining revenue, to charge applicants, who will benefit from receiving title to utilize a public resource (i.e. water), for the cost of providing and administering that benefit. However, the purpose of any review and management system is to determine if that transfer is in the public interest and when applicable the Public Trust. Therefore, it would seem reasonable to charge an applicant the real cost of reviewing a water rights application, which includes a public interest review.

More cost/benefit and risk assessment related information was provided in this recommendation and accompanying ADNR analysis than most recommendations under consideration. However, this information is still insufficient for the ADF&G to fully evaluate the potential economic

impacts for implementation of this recommendation versus maintaining the status quo. This is because comprehensive short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following additional information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

2. Recommendation Under Consideration by ADNR: 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.

ADNR 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.

ADF&G Position: ADF&G is neutral without more information

ADF&G Comments: The ADF&G does not object to allowing a consultant or applicant to conduct the procedural portion of the water rights adjudication process; however, it is not clear how much time and cost this will save the applicant or ADNR. ADNR would still be obligated to review and verify that the notice, studies, data, etc. meet legal requirements. It is also assumed ADNR would be liable if there were some type of procedural error.

Another concern would be based on whether this approach would preclude those with limited resources from applying and acquiring water rights. Would those who couldn't afford to

perform all of the procedural functions be more likely to have their water right application placed in a backlog situation? And, would these costs and requirements be passed on for water allocations requested for public interest purposes?

The ADF&G is unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

3. Recommendation Under Consideration by ADNR: Establish a system of State licensed water right examiners.

ADNR 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.

ADF&G Position: ADF&G is neutral without more information

ADF&G Comments: It is not clear why a State licensed water rights examiner would be needed as opposed to hiring a qualified consultant. The ADF&G would not object to this proposal as long as examiners were limited to pre-application activities and had no involvement in actually allocating water or adjudicating disputes. However, more specific information is needed to evaluate the merits of this recommendation.

The ADF&G was unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

4. **Recommendation Under Consideration by ADNR:** 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.

ADNR 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.

ADF&G Position: ADF&G supports recommendation

ADF&G Comments: The ADF&G agrees that all users (that derive economic benefits by acquiring the right to use a public resource) should pay a reasonable amount for the use of public waters. This should cover the cost of administering the program as well as the cost of protecting other public interests. Sufficient research should be conducted to insure the fee structure is equitable and actually serves its purposes.

The ADF&G was unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit.

ADNR RECOMMENDATIONS CATEGORY - MANAGEMENT RECOMMENDATIONS

1. **Recommendation Under Consideration by ADNR:** 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.

ADNR 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.

ADF&G Position: ADF&G supports recommendation

ADF&G Comments:

Public involvement is critical to the success of every program. It will especially be important to help explain why fees are being imposed and the risks for eliminating the ADNR water programs.

However, based on the current financial concerns to fund the ADNR program, public involvement will have to be prioritized among other ADNR water allocation functions.

The ADF&G was unable to fully evaluate the potential economic impacts for implementation of this recommendation versus maintaining the status quo. This is because short and long-term cost/benefit and risk assessment analyses were not provided. We assume analyses of this recommendation by other respondents will also be limited by these factors.

Therefore, to expand upon our assessment of this recommendation, the following information will be needed: ADNR's current staffing and associated operating costs for implementing the various elements of the existing status quo program; estimates of the costs and time required to adopt this recommendation; and the detailed costs of implementation incurred by ADNR, other agencies (state, federal, and local), and the public. Similar cost analyses should address impacts on those who currently possess water rights or temporary water use permits, and applicants waiting for the completion of the adjudication of a pending water right or temporary water use permit. This type of analysis will be essential for a public involvement program to succeed.

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

ADNR 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.

ADF&G Position: ADF&G supports recommendation

ADF&G Comments: ADF&G agrees with this recommendation as well as the ADNR analysis of the likelihood of obtaining funding for this study. However, the ADF&G also believes that the ADNR and citizens of Alaska cannot afford to risk revising the current system without this

type of analysis. Please also refer to our September 18, 1996 comments (attached).

Implementation of this recommendation would result in an evaluation of the potential economic impacts for implementing all of the recommendations under consideration versus maintaining the status quo. It would assess short and long-term cost/benefits and provide a detailed risk assessment analysis for each option. Perhaps, the first step needed is to develop a request for proposal and identify the estimated cost and time to complete this analysis.

As a separate recommendation, we suggest that the Western States Water Council and International Association of Fish and Wildlife Agencies be among those that are consulted, but not as a substitute for this risk assessment.

3. Recommendation Under Consideration by ADNR: 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.

ADNR Analysis: See Management Recommendation number 2.

ADF&G Position: ADF&G supports combining this recommendation with Management Recommendation 2.

ADF&G Comments: Hiring an "outside expert or experts" would be the best approach to implement Management Recommendation 2. However, sufficient funding and time would have to be allotted to perform this evaluation. This was the approach taken by the state when it hired Frank Trelease in the 1960s to draft the initial recommendations for a water code for Alaska. It still serves as the basis for the present Water Use Act (AS 46.15).

To insure this type of evaluation will be objective, individuals from several water related agencies in the state should serve on an oversight committee for this contract. See also Management Recommendation 4). The ADF&G would be willing to assign an individual to this oversight committee.

4. Recommendation Under Consideration by ADNR: 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.

ADNR 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.

ADF&G Position: ADF&G does not support recommendation as proposed.

ADF&G Comments: The formation of an Advisory Committee or Board, as proposed, would duplicate the work which has been achieved through the ADNR public meeting process. As an alternative, we recommend a committee/board could serve as part of an oversight group for the contractors who perform Management Recommendations 2 and 3. Participants should include

an ADNR representative, ADF&G representative, private sector individuals, and other state, federal, and local agency representatives (see ADF&G comments for previous recommendation).

ADNR RECOMMENDATION CATEGORY - OTHER RECOMMENDATIONS OR COMMENTS THAT WE MAY HAVE OVER LOOKED OR THAT YOU FEEL WOULD BENEFIT THE OVERALL REVIEW PROCESS.

ADF&G Comments: Please refer to the ADF&G's September 18, 1996 comments (attached).

ADNR RECOMMENDATION CATEGORY - STRAWMEN

The last three recommendations (STRAWMAN 1, 2, & 3) on the next three pages 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.*

**ADF&G POSITION: ADF&G OPPOSES
STRAWMAN OPTION 3**

ADF&G Comments: The ADF&G is opposed to all parts of STRAWMAN 3 A, B, and C.

Without suitable alternatives, abolishing the Water Use Act would eliminate protection for existing water rights. A host of water allocation related disputes would lead to judicial challenges. Long-term consequences would result in harm to the state's economy (see also attachment 3).

Federal Reserved Water Rights (FRWR). FRWR would have to be resolved in the federal court system.

The ADF&G disagrees with the above STRAWMAN 3 Pro statement that "two ADF&G positions would be eliminated" if this STRAWMAN package were adopted. This contradicts information provided in ADF&G's September 18, 1996 correspondence (attachment 3).

The ADF&G addresses other elements of STRAWMAN 2, 3A and B in earlier comments presented in this attachment 1 to our November 1, 1996 cover letter.

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

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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).

**ADF&G POSITION: PREFERABLE OF 3
STRAWMAN OPTIONS**

ADF&G Comments: The ADF&G supports the concept for STRAWMAN 1. However, funding should be requested from the legislature to establish a stream gage network required for allocation and management of water resources.

Funding to upgrade the data base for improving the Land Administrative System should also be provided if water resources begin generating revenue for the Permanent Fund.

Levels of fees should be carefully evaluated. ADF&G believes current water conservation fees are too low to achieve objectives.

Independent program review still needed for improving efficiency of existing process.

Better options for instream flow protection are needed.

continued-

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.

ADF&G POSITION (continued)

ADF&G disagrees with the concept of charging anyone a fee for water uses that benefit the general public, such as instream flow reservations. This fee is proposed under Category C.

It is acknowledged that the ADF&G reservations would be exempt from fees. Reservations filed by the public and other agencies should also be exempt.

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ADDITIONAL COMMENTS



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

January 22, 1997

COMMISSIONER'S OFFICE
JUNEAU

JAN 27 1997

DEPARTMENT OF
NATURAL RESOURCES

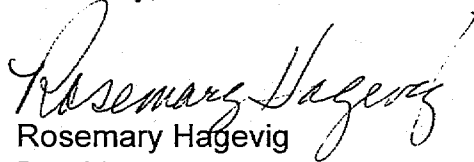
The Honorable John T. Shively
Commissioner
Alaska Department of Natural Resources
400 Willoughby Avenue
Juneau, Alaska 99801-1724

Dear Commissioner Shively:

At its recent annual meeting, the Alaska Municipal League passed **Resolution 97-14**, Requesting the Governor, Legislature, and the Alaska State Department of Natural Resources to Continue Adjudication of Water rights, Continue as the Custodian of the Program, and to Continue Maintenance of the Historical Water rights Data Base. It is enclosed for your review.

I hope we can count on your support on this issue; I assure you that members of the Alaska Municipal League are ready to help in any way we can. If you have questions, you may contact me directly at 364-2154 or through the Alaska Municipal League at 586-1325.

Sincerely,


Rosemary Hagevig
President

Enclosure as stated

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A Resolution of the Alaska Municipal League

Resolution 97-14

**A RESOLUTION REQUESTING THE GOVERNOR, LEGISLATURE, AND
THE ALASKA STATE DEPARTMENT OF NATURAL RESOURCES TO
CONTINUE ADJUDICATION OF WATER RIGHTS, CONTINUE AS THE
CUSTODIAN OF THE PROGRAM, AND TO CONTINUE MAINTENANCE
OF THE HISTORICAL WATER RIGHTS DATA BASE**

WHEREAS, with few exceptions, water in the State of Alaska is managed and appropriated exclusively by the State, and the Water Act was designed to manage the water for the benefit of all Alaskans according to State management objectives; and

WHEREAS, it is the State's responsibility to protect the public's interest and natural resources; and

WHEREAS, historically, the Department of Natural Resources (DNR) has, and should continue to administer the adjudication of water rights, and as custodian of the program, maintain the historical water rights data base; and

WHEREAS, the State of Alaska is considering ending DNR's administration of the Water Rights program and turning over its responsibility to individual municipalities, instead, to adjudicate water rights within the State of Alaska; and

WHEREAS, the Water Rights program cannot be delegated to local governments without potential conflicts to other water users and public interests regarding water rights adjudications. This delegation of authority and responsibility is not in the public interest, since local governments are themselves participants in such adjudication; and

WHEREAS, local municipalities do not have the management, hydrological or scientific expertise to make informed water rights decisions; and

WHEREAS, a duplication of efforts to administer water rights at the local level constitutes an unfunded mandate from the State, and will be inefficient and expensive to administer; and

WHEREAS, the State's Water Rights program is the cornerstone of water resource management in Alaska and includes the issuance of permits in accordance with AS 46.15 and serves other important purposes such as the coordination of water appropriations to assure that the proposed use of water and its associated effects are in the public interest; and

WHEREAS, Article 8, Section 1 of the Constitution of the State of Alaska clearly state: "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest"; and

WHEREAS, Article 8, Section 2 of the State Constitution states: "The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters are reserved to the people for common use"; and

WHEREAS, Article 8, Section 3 of the State Constitution states: "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use" and

WHEREAS, Article 8, Section 4 of the State Constitution states: "...all other replenishable resources belonging to the State shall be utilized, developed and maintained on the sustained yield principle, subject to preferences among beneficial uses"; and

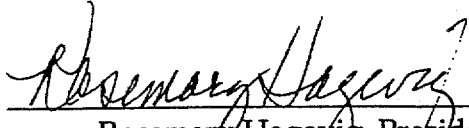
WHEREAS, Article 8, Section 16 of the State Constitution states: "No person shall be involuntarily divested of his right to use of the waters...except for a superior beneficial use or public purpose and then only with just compensation and by operation of law"; and

WHEREAS, Article 8, Section 17 of the State Constitution states: "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons..."; and

WHEREAS, the summary of Water Rights meetings indicates that there is not public support for the proposed change in the adjudication of water rights.


NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League respectfully requests the State of Alaska Department of Natural Resources to continue the administration of the Water Rights program as set forth in the State of Alaska Constitution and Water Use Act. This resolution is effective immediate upon passage and approval.

PASSED and APPROVED November 22, 1996.



Rosemary Hagevig, President

ATTEST:



Kevin C. Ritchie, Executive Director

THOMAS E. MEACHAM
ATTORNEY AT LAW

ALASKA BAR NO. 7111032
1971

9500 PROSPECT DRIVE
ANCHORAGE, ALASKA 99516-1062

TELEPHONE: 907/346-1077
FACSIMILE: 907/346-1028

January 13, 1997

Mr. Gary Prokosch, Chief
Water Resources Section
Division of Mining and Water Management
Alaska Department of Natural Resources
Suite 800
3601 C Street
Anchorage, Alaska 99503-5935

Re: Regulatory changes to water management program
Our file no.: 1-1

Dear Gary:

I want to thank you for keeping me informed of the policy options and deliberations within your Division and with the public during the past year, regarding the Division's budget problems and possible options to meet these problems. I regret that following my initial responses as a public forum panel member, I have not been able to devote the necessary time or effort, in a timely fashion, to respond to your various mailings as your review has progressed. It seems that "the press of business" has kept me from spending the necessary time on these issues.

However, I want to assure you that I remain interested in the results of this project, and I definitely do want to continue to receive your mailings, including any draft regulations that may be circulated for review.

Regarding your most recent mailing of December 10, 1996, I have one or two questions which might be considered. First, what is a "registry" or a "single page registry"? I am not certain that the general public (or I) know exactly what the concept of a "registry" is, or what the Division's relationship to it is expected to be. Is a "registry" simply an "application" with no adjudication or agency approval required?

Second, I think that even with a "registry" system, it is imperative that the "registered" single-family domestic water use (for example) be required to be recorded by the owner in the applicable recording district, in order to become effective as a priority right. The district recorder's office is the single location where all valid encumbrances on land title, boundaries, and restrictions are of record. It can be searched effectively on computer, and is the kind of "record notice" which is legally recognized by courts in litigation.

Finally, I am not certain why the prior evidence of a valid right-of-way across a third party's land should not be the pre-requisite to a valid water right to water not within the appropriator's property. Is this requirement proposed to be dropped just to simplify the Division's processing and adjudication efforts in a "registry" system? If so, then the prior notice to the landowner of a third party's water right "registration," by itself, may not be adequate to put

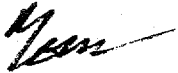
Mr. Gary Prokosch, Chief
January 13, 1997
Page 2

the landowner on notice that his property is being burdened with a water right (regardless of whether the water right does or does not imply that a right-of-way exists).

This situation is another reason why the water right "registration" should also be required to be recorded in the recorder's office, in order to put a landowner on record notice of the third party's water right within and across his property. Without it, the simple failure of a landowner to timely respond to a notice from the Division of a third party's water right on his land may leave the property rights situation in limbo. I agree that the issuance or registration of a water right should not imply the existence of a right-of-way under any circumstance, but the existence of the water right itself is a burden on a landowner's land title, and should be documented as effectively as possible (i. e., in the recorder's office).

I look forward to receiving future mailings from your Division on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Meacham", with a stylized flourish at the end.

Thomas E. Meacham

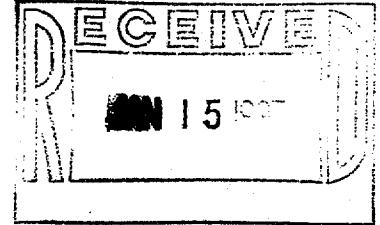
TRUSTEES FOR ALASKA

A NonProfit, Public Interest, Environmental Law Firm

725 Christensen Drive, Suite 4 Anchorage, Alaska 99501-2101 (907) 276-4244 (907) 276-7110 Fax

Mr. Gary Prokosch
Chief, Water Resources Section
Division of Mining and Water Management
Alaska Department of Natural Resources
3601 C. Street, Suite 800
Anchorage, AK 99503-5935

January 15, 1997



Re: Alaska Water Management Program

Dear Mr. Prokosch:

We wish to respond to your document on the Alaskan Water Management Program, "Recommendation: Modified Status Quo," dated December 10, 1996. Trustees for Alaska is a non-profit public interest law firm.

Trustees is pleased that the Governor's proposed budget contains funding for this vital program again this year and that the Department has chosen not to seek any legislative or Constitutional changes to one of the best overall statutory frameworks for water rights in the United States.

However, we are disappointed that the Department is considering any regulatory changes in the water management program at this time. At a time when the public faces State legislature proposals as extreme as abolishing the entire Coastal Zone Management Program, it seems foolhardy to consider a regulatory overhaul that will undoubtably be very controversial.

Even the status quo budget is inadequate for adequately dealing with Alaska's water and we see no justification in these documents that the proposed changes in regulations will actually save the State any money. The Alaska Department of Fish and Game, to the contrary, provided documentation in its comments dated November 1, 1996 that there would be no cost savings to a regulatory overhaul. Instead, a regulatory effort will again divert the precious time of agency personnel from dealing with the "backlog" of out-of-stream water rights applications. The public would be much better served if the legally-mandated work of the Department was simply getting accomplished; we would rather have the time to devote to that process ourselves.

We are concerned that the Department is giving further consideration of combining the Department of Environmental Conservation (DEC) water quality and Department of Natural Resources (DNR) water quantity programs. Instead of providing better

integration, it is likely this will result in weakening of the entire water program. Each agency's programs are based on different statutory objectives and this plan would result in further erosion of the water program. First, the water quality program needs to stay in DEC because its mission is more conservation oriented than DNR's. The water management program at DNR already has been demoted from its own division to a step-child with the mining program. Therefore, we would oppose merging the DEC water programs into DNR. We wish to be informed of any meetings concerning this vital issue. Finally, the continuous reorganization efforts at the DEC over many years have already seriously compromised the effectiveness of the Department.

Trustees believes that the proposed regulatory changes in the water management program will seriously weaken implementation of Alaska's far-sighted water laws. Your proposal is called "Modified Status Quo" but many of the changes are major. There is no evidence that money will be saved in the process. We do not believe the Department's proposals will result in better water regulations to protect this vital resource. We have concerns in six major areas:

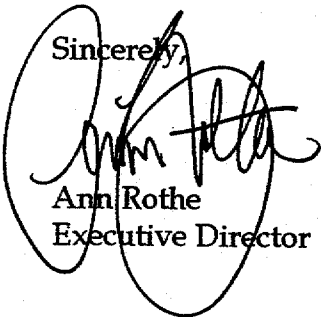
- 1) The various proposed changes in the filing system exempting users of 5,000 gpd or less are not wise. We believe the only exemption should be for users of 500 gpd or less for single family domestic water—even then, there are risks of over appropriation in certain residential areas and rearing fish in small salmon streams could be harmed where there are many users. Notice should still be required to ADF&G for all proposed water uses that may affect fish and wildlife production (as is currently required under AS 46.15.080 (b)(3)). Most water rights covered by the existing definition of "significant amount of water" are not controversial and therefore should not take much time for the Department to process under the existing system.
- 2) Any system for issuing long-term permits or certificates for municipal water supplies must insure that adequate instream flows for fish and wildlife are maintained, that reservations are not speculative, and that this water may not be sold or exported.
- 3) We oppose new regulations for watershed adjudication processes or a general permit process for certain sources of water users within watersheds. No information has been provided about how this idea would save money, how the public trust would be upheld, and how it would preserve the rights of those who had filed first. Instead, it invites abuse by speculative and large industrial water consumers and risks lack of scrutiny to the site-specific effects of out-of-stream allocations.
- 4) We oppose general permits for temporary use of up to 30,000 gpd because there may be sensitive sites or competing uses where this would harm the public interest and could prevent adequate consideration for protection of anadromous fish habitat under Title 16 permit requirements by ADF&G.

5) Eliminating the requirement for having a legal Right-of-Way authorization from point of water to water use will encourage speculative filing of water rights and make piecemealing of project permitting and the public process even more common. This will further diminish the capacity of the State to fulfill its public trust. It seems surprising that the State would not be interested in making sure that project proponents obtain land use authorizations, conduct adequate engineering and environmental studies, and gain an approved right-of-way to access the water prior to issuing a permit to appropriate water.

6) In order to be fair and unbiased, and to avoid significant tampering with data or comments in the public process, the State needs to conduct all phases of the administrative portion of a water right adjudication, not allow consultants or those industries able to pay to do this work themselves. It may be possible to modify the current fee structure so that large water users are paying more of the State's actual costs of processing their permits, but further information on costs and fees is needed from the Department prior to our making further suggestions on the best way of doing this (see specific comments). It is necessary for the state to conduct this process to maintain high standards for evaluation of data and a system that produces fair results which uphold the public trust. We do recommend that all DNR water rights decisions and the rationale for granting, conditionally granting, or denying diversionary, withdrawal, and impoundment water rights (i.e. findings of fact and conclusion of law) should be in writing, as recommended by ADG&F in its November 1, comments. This requirement is mandatory for instream flow water rights, but only optional for out-of-stream water rights.

We appreciate this additional opportunity to comment on the state's water management system. Our detailed comments on each recommendation are provided in the attached document. In conclusion, we urge you to refrain from proposing new regulations or major reorganizations at this time and instead, get caught up with issuing instream flow and other water right requests.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ann Rothe", is written over a circular stamp. The signature is fluid and cursive.

Ann Rothe
Executive Director

cc: Governor Tony Knowles
Commissioner John Shively, ADNR
Marilyn Heiman, Governor's Office
Marty Rutherford, ADNR
Frank Rue, ADF&G

Specific Comments on "Recommendations" dated December 10, 1996**AMENDMENT TO THE CONSTITUTION**

1. *Replace prior appropriation system with riparian system. Not Recommended by DNR.*

We agree with recommendation to keep existing law.

The public benefits from this pro-active program to protect water vital to salmon streams, critical to wildlife and recreation, to ensure human health and safety, and for other beneficial uses. We have a good system laid out in Alaska's Water Use Act, as amended in 1980. In-stream flow water uses are included as beneficial uses, it provides for reservations of instream water use as appropriative water rights, and it lays out procedures for obtaining water rights for instream uses. The existing "prior appropriation" water rights system should not be changed through a Constitutional Amendment to the "riparian" water rights system because the current system has been shown to better uphold the public interest.

In fact, partially or completely abolishing the entire state water management program without an acceptable substitute, through legislative action, or by de-funding would violate the Public Trust Doctrine and the Alaska Constitution. Public interest criteria are established which embody the Public Trust Doctrine in the Alaska Constitution Article VIII, Sections 1, 2, 3, 4, 13, 16, and 17. In addition, through passage of an initiative in 1983 and incorporation into statute, Alaska's public trust umbrella statute at AS 38.05.502, enlarges the scope and purposes of the public trust in Alaska as expressed by its Constitution. Furthermore, the Water Use Act (AS 46) and its regulations provide a strong framework for implementing the water management responsibilities laid out in the state constitution.

STREAMLINING

1. *Redefine "significant amount of water" and exempt water users of 5,000 gpd from the requirement to apply for water rights.*

A. Redefine under 11 AAC 93.970(14); no water rights granted unless application filed. Maintain DMWM's authority to require filing of an application in areas of concern associated with availability of water, effects on prior water right holders and the public interest.

Disagree. Inadequate information is provided about how this change in definition of "significant amount of water" would reduce the State's costs. How would it affect fees collected? How would citizens know that if they don't file for a permit or certificate they are not protected later on if a competing use files? Are there geographic areas where this would not be appropriate because there is already inadequate water? The public may not still be aware of the requirement to file a Title 16 permit if the withdrawal is from fish bearing waters. According to ADF&G (November 1, 1996 comments), cumulative withdrawals in small or moderate streams could be a serious problem by negatively impacting the necessary instream flows in these areas where most coho and chinook salmon rearing occurs. There are already risks of over-appropriation in certain residential areas. Without the mandatory filing, the notice currently required to be filed with

ADF&G for all water appropriations could mean that some salmon streams receive inadequate scrutiny.

B. Establish a single family water right (500 gpd) registry once water is in use...

Disagree. It does not make sense to set up a different system and a separate data base for domestic water uses, although there could be some simplification of the same forms for the single-family users. This proposal only makes it more likely that water will be over-appropriated in the future and that salmon streams will be inadvertently harmed because agency notices would no longer be required (see comments under A). Furthermore, some geographic areas may already have limited water supplies, but there is no acknowledgment of how this situation would be addressed.

2. Amend regulations to allow and first, and second class city or borough to apply for current and future Public Water Supplies. Have Department of Law review. Amend regulations to allow for a 20-year permit to appropriate water or water right for current and future use of for public water supplies.

Disagree. This proposal is not needed because public water supplies already have guaranteed preference and security under the State Constitution (Article VIII, Section 13) and the Water Use Act (AS 46.15) and it would contravene the current appropriation system. How many local entities in the state could this cover? We oppose this idea because there are no restrictions on what a municipal public water supply can be used for; during a twenty year period many other competing uses may arise. If the city or borough chooses to sell water for export the conflicts could be greatly increased. The municipal public water supply water rights should not be allowed to be sold or used for exports. There is no information in the DNR proposal why this change is needed or how it will save money. This should not be a backdoor way to get cheap water for export.

3. Eliminate mandatory 10-year review of reservations of water (instream flow). DMWM Recommends no change to current statutes or regulations.

Agree with DMWM recommendation.

4. Develop a combined permitting process for DNR, DEC, and ADF&G. DMWM recommended this major item was beyond the scope of this report and not yet ripe for detailed evaluation.

Agree with recommendation that it is best not to do combined permitting. However, "streamlining #5" fails to recognize the key role of ADF&G in decisions regarding water resources. Any combined permitting process should have a real sign-off process for each agency. Typically such reorganization of responsibilities takes additional staff time, not less.

5. Combine DEC and DNR water programs, having one department for water quality and quantity. DMWM Recommendation: Review with Department of Law; DEC and DNR further evaluate it.

Disagree. We oppose DNR having the responsibility for water quality and oppose further consideration of combining the DEC water quality and Department of Natural Resources (DNR) water quantity programs. Each agency's programs are based on different statutory objectives

and this plan would result in further erosion of the water program. First, the water quality program needs to stay in DEC because its mission is more conservation oriented than DNR's. The water management program at DNR already has been demoted from its own department to a step-child within the mining program. Therefore, we would oppose merging the DEC water programs into DNR. A task force for reorganization would likely cost more than the status quo.

6. *Base water right adjudication on risk, by major river/stream drainage.*
7. *Base adjudication on watershed approach.*
8. *Establish a special management area where there are existing water supply or public interest concerns. DMWM Recommendations: a) wait for DEC watershed approach; b) work with individual watershed projects where water rights or public interest are a concern; c) Change regulations to establish a watershed adjudication process similar to the current administrative basin-wide adjudication process established for adjudication of federal reserved water rights including notice of intent with deadlines within a watershed for inclusion in the adjudication and general adjudication by source or sources (general permit process) (needs further discussion between Director, Section Chief and Dept. Of Law).*

Disagree. Water rights should be processed in order of priority dates. This is the fairest system. If DNR puts off processing applications which have been filed for a long time, then other uses could be competing for that water and more shortages could result. We agree that for personal use domestic water supplies, geographic areas where there are already existing problems should be processed quickly. But the DNR should be fair in processing all water rights -- from the small water users, the public's benefit from in-stream flow water rights, to larger projects. So-called "less important" applications are important to those who filed them! Furthermore, those filing for federal reserved water rights have made their own decisions about the importance of getting these submitted and should not be subject to an arbitrary timetable.

Proposal C is extreme and was not raised at all in the earlier questionnaire. We question the existing authority under which the "current administrative basin-wide adjudication process established for the adjudication of federal-reserved water rights" is being carried out. This proposal does not deserve further discussion because there is no evidence that it would be fair or how it would save money. Changes are not needed because there is already an existing system for designating critical water management areas exists under AS 46.15. Instead of spending scarce funds to develop a method for designating Special Water Management Areas, focus on those areas with known problems of shortages or toxic contamination.

9. *Establish a reservation of water (instream flow) on all water bodies with anadromous fish. DMWM Recommendation: Take no action.*

We agree that an automatic instream flow water right to reserve sufficient water in all anadromous fish bearing waters to sustain fish production makes sense and could save costs and labor but at this time we do not believe it is wise to try to amend the statute. However, we are concerned because ADF&G has documented 15,000 anadromous fish-bearing water bodies and several thousand resident fish bearing waters in Alaska, but to date, less than 100 applications for instream flow water rights have been filed since passage of enabling legislation in 1980 and only 11 have been adjudicated. By contrast, there have been 1,500 out-of-stream water appropriation applications. Thus, so we are concerned that instream flow protection is not getting enough priority to prevent the over allocation problems that have plagued the west.

10. *Establish a general permit for temporary water use (30,000 gpd or less) associated with construction or other temporary camps. DMWM Recommendation: Change regulations to issue a general permit for construction, mining, timber, and other temporary camps.*

Disagree. This does not define what is "temporary," what kinds of purposes would be allowed; and if it is envisioned that there would be one permit for all types of camps and for the entire state. What evidence does ADNR have that this level of water withdrawal, and the cumulative effects of many such uses in the same drainages, will not harm fish and wildlife productivity? What monitoring would be done to ensure that uses were not harmful, or that users were not exceeding the limitations (especially if they were not required to provide advance notification of use each year). Temporal restrictions or prohibitions might be required for over-wintering fish areas, certain spawning sites, other sensitive wildlife areas; wilderness qualities and other aesthetic factors would be ignored under this proposals. How would DNR evaluate whether the public trust was being served?

11. *DMWM Recommendation: Continue annual billing.*

Agree. Because there is no information about the existing fee structure, number or nature of fee payers, or length of time most water users need water for, it is impossible to evaluate the cost/benefit of this proposal. Individuals and small businesses might have a harder time paying one big fee infrequently.

12. *Establish a broader range of permit conditions allowing the permit to be issued prior to completion of environmental and engineering studies and public interest findings. DMWM Recommendation: review possibilities with Department of Law; amend regulation to delete the requirement that a Right-of-Way is needed; the permit notice is sent to landowner where water is to be taken from or transported across and if no objection is received, the water right can be issued.*

Strongly disagree. This proposal for issuing a broad, general water right prior to receiving detailed project information or environmental review is too open ended. It could lead to permits to appropriate water being issued for extremely speculative projects and uses that are not in the public interest. Use of the state's water is as much an issue of the public interest as are other issues. This could also lead to applicants of speculative projects using such permits inappropriately to leverage their claims for a taking later on. Furthermore, this idea is inconsistent with the coordinated permitting requirements in the Alaska Coastal Management Plan in the coastal zone where most appropriations are issued.

It is ludicrous not to require affirmative approval for a landowner to authorize access to a water source. A permit notice could easily get lost in the mail and therefore, no response would not be conscious approval. Furthermore, it defies the concept that landownership means anything. The right-of-way requirement prior to issuance of a water appropriation makes sense because it is a good threshold which can prevent a barrage of speculative requests.

13. *Create a separate water right application for water use under 5,000 gpd. DMWM Recommendations: A) Further review. B) Establish single page registry for single family domestic users (up to 500 gpd).*

Disagree. See comments under #1. It may be possible to design a newer form for all water rights

applications that has a simple way to fill it out if you are seeking less than 500 gpd – but will this save the state money? It is best to keep the same system for all users. It seems that this proposal puts more burden on the applicant for filing paperwork and that it may not be simpler. Any system must insure that ADF&G is still involved, as the cumulative effects of many such filings could result in water shortages in certain places which harm fish and wildlife productivity.

14. *Status Quo - maintain the water rights program as it is currently administered.*

15. *Modified Status Quo - minor amendments and streamlining*

DMWM Recommendations: Make regulatory changes for streamlining as recommended.

We disagree with the recommendations to make regulatory changes because many of these proposals are far more extreme than it would seem at first glance, as we have commented. We are pleased the state has chosen not to seek legislative or Constitutional changes to the Water Use Act. The proposed regulatory changes are not described sufficiently to conduct full analysis of their effects on the existing, strong water rights program. Although this review was intended to promote cost savings to the State, there is virtually no analysis of the costs or financial benefits of the proposals. Therefore, at this time we see no need for the proposed changes in order to meet the Department's stated goals.

16. *Transfer authority to local governments. DMWM Recommendation: No transfer of authority under AS 46.15 (Water Use Act).*

We agree with recommendation that there should be no transfer of authority to local governments because would lead to more litigation, inadequate consideration of the public interest, and conflicts between upstream and downstream users. Furthermore, it would be impossible to have a coherent statewide system that would adequately consider Federal Reserved Water Rights. It is unclear exactly what changes the Department intends for "a more cooperative working relationship with local government and native interest in allocation of water within their boundaries," especially if there are also overlapping jurisdictions of State or Federal public lands.

17. *Transfer authority to the court system. DMWM Recommendation: should not be considered.*

We agree with recommendation to keep the existing water management program intact.

18.a. *Registry system in recorders office for individual domestic water rights. DMWM Recommendation: Not recommended.*

We agree a new procedure with a registry in the recorders office should not be set up, but disagree with the proposed procedures for single family domestic water rights because there would be inadequate scrutiny of cumulative effects (see comments for #1).

18.b. *Registry system with DNR where the water use does not exceed 5,000 gpd and adjudication only when conflict. DMWM Recommendation: Amend definition of "significant amount of water" so appropriators below 5,000 gpd would not be in violation if use water without permit or certificate of appropriation; call old applications a registry, not a backlog.*

Disagree. There are no safeguards to insure that water is not over appropriated or to prevent future conflicts, for example as happened in the Anchorage Hillside area. Waiting for a conflict to arise will not assure long-term water needed for salmon and other critical state resources. This constitutes abdication of the state's duties to protect public interest for water quality and instream resources. If most of the "backlog" of water permits are in areas with little conflict among out-of-stream water users and instream flow needs for fish and wildlife production, then it should not be difficult to conduct brief, but thorough reviews of each instead of simply rubber stamping the applications. This would be the responsible way to catch up with a "backlog".

18c. Registry system with DNR for water uses up to 100,000 gpd groundwater and 30,000 gpd surface water; consultants can conduct procedural processing of notice.

18d. Use such registry for specific geographic areas.

18e. Registry system with adjudication in order the applications are filed and applicant responsible for procedural processing (public, agency and prior water rights holders notice, environmental and hydrologic studies) except for large water uses, federal water rights, and instream flows would be adjudicated by DNR. DMWM Recommendation: Not recommended.

Agree with recommendation not to change to registry system. See our general comments opposing use of applicant consultants to conduct a public process involving the public trust because there are serious risks the process could be flawed and unfair and self-serving to the applicant.

WHO PAYS?

1. Separate the costs of adjudication from the cost of public interest determinations. Charge applicant cost of actual adjudication and the responsible agency for the public interest costs. DMWM Recommendation: Review all water program application fees, charge applicant real cost of adjudication, public interest finding is responsibility of the State, not just the agency that has the authority or responsibility to manage the resource.

Strongly disagree because DNR has only considered some of the issues relevant to program costs and fees. The DNR should commission an independent analysis to review the entire issue of fees for water, including export conservation fees and water users fees, and alternatives to increasing fees because the process to date has been flawed by a lack of financial information.

This is crucial because the relatively new legislation allowing water exports could quickly lead to situations where there are shortages and conflicts with the public's beneficial uses of water-- and huge private or local gains at the State's expense. It seems ludicrous that the State will earn a maximum of \$80,000 annually based on the current conservation fee structure for water exports from the Blue Lake water export project, whereas the City and Borough will earn \$30-80 million if the project is fully developed (ADF&G November 1, 1996 comments).

Charging fees related to the consumptive use or proposed use of water could promote conservation and encourage applicants to request only the amount of water they will realistically put to use. However, the system should not be changed so that only the big companies or rich individuals can afford to get water. It is not fair if the legislature ends up having to pay for the public benefits, instead of the applicant who may be proposing uses that consume or degrade the

public resource.

It seems reasonable to charge an applicant for the full costs of reviewing a water rights application, including the full public interest review. However, it does not make sense to charge state agencies or others filing for instream flow reservations to protect the public interest in fish and wildlife production, or to charge Federal agencies filing for Federal reserved water rights because those claims are also in support of protecting the public interest.

We are concerned that the DNR, especially during the Hickel Administration, appears to have emphasized promotion of water export instead of timely processing of water rights applications. Proper management of water for the public's beneficial uses is a basic function of government which should have top priority for funding through the State's general funds, and which should be supplemented if necessary by increased fees.

Once adequate information is provided to us about the existing fee structure and costs of processing water rights permits, adjudications of reservations, and water exports (including conservation fees), we would be able to comment on appropriate changes in the fees so that the program's existing budget is maintained or increased. Furthermore, the Water Resources budget should be put in perspective with the costs of other parts of the Department.

2. Allow consultants to conduct procedural portion of adjudication. DMWM Recommendation. Allow this through new regulations.

Strongly disagree (see general comments). Having consultants or the applicant perform the procedural parts of the adjudication invites conflict of interest, and the potential exists that negative comments or harmful information would not be preserved as part of the complete public record. It is important for the state to keep its own expertise in water rights. The impartial review of water management costs could elucidate where additional staff is necessary for upholding the State's public trust obligations.

3. Establish system of state licensed water right examiners. DMWM Recommendation: Not recommended.

Agree with recommendation not to establish this board at this time.

4. Replace the administrative fee with a water user fee. DMWM Recommendation: No user fee, keep annual administrative fee.

Disagree. Because larger water users are likely to result in more conflicts with existing beneficial water uses, they should be required to pay higher fees. It is impossible to evaluate the proposed fees listed because the report fails to provide an overall analysis of fees, funding, and costs of the program (see Who Pays #1). We believe the true costs to the public should be incorporated into the fees charged for public-owned hydro-electric and "non-consumptive" placer mining water use. The rationale for discounting large water consumers should be given. We believe all water users should pay fair costs and that discounted water prices for large volumes is a disincentive for water conservation practices.

MANAGEMENT RECOMMENDATIONS

1. *Allow for a water education program within DNR. Recommendation: Continue such programs and establish Internet site.*

Agree.

2. *State should consider the future cost of water rights and water management as related to the cost today. DMWM Recommendation: Pass to the legislature and see if its a funding priority.*

What does this mean? The Department should have as a priority promoting the need for a strong water management program to protect the public trust and the water resources so critical to the State's industries of the future -- tourism, fishing, and recreation.

3. *Hire an outside expert to review the existing water rights system in Alaska. DMWM Recommendation: Not recommended.*

We are concerned that the Department is proposing major regulatory changes with an inadequate understanding of why its work is not getting done (e.g. focus on promoting water exports and Departmental reorganizations) and without considering the full ramifications of abdicating its full oversight authorities by proposing registries, general permits, and applicant consultant adjudication processes. An independent audit overseen by a State oversight committee with participation of all relevant agencies, including ADF&G, might be helpful for the State to keep from making the same mistakes of over allocating water as has happened throughout the west. However, at this time we do not believe funding another study is the priority -- getting the work done (processing applications) is more critical.

4. *Form ad Advisory Board for changes in Water Used Act. DMWM: Not Recommended.*

Agree with recommendation because you have dropped the bad proposal to change the law.

STRAWMEN

1. *Eliminate all current funding for the Water Resources Section and replace with Water User Fee. DMWM: Prior to elimination of the Water Resources Section Funding we should propose a water use fee based on quantity of water.*

Disagree. The Department should advocate that maintaining a strong pro-active water rights program is a basic function of government which should be supported by general funds. There was inadequate information to evaluate changes to the fee structure; fees should augment, not totally replace general funds.

Although DMWM says that "this recommendation did better than the other two "strawmen," it should be obvious that this was merely the lesser of evils. Why was there no recognition of comments requesting a "strawman" for improving the efficiency of the existing program, or for increasing its funding base?

2. *Eliminate all general funds and all Water Resources Section programs except dam safety.*
 3. *Eliminate all general funding; abolish Water Use Act, regulations for Dam Safety, and the Alaska Hydrologic Survey; establish water right registry for beneficial consumptive users.*
- DMWM: Not Recommended.*

Agree with recommendation. We are glad to see that DMWM is not recommending these misguided ideas which did not even deserve to be listed on the first round of proposals. It is imperative that Alaska not repeat the mistakes made in the rest of the west which have resulted in over allocation of water to the detriment of salmon streams, recreation, navigation, wildlife, and other beneficial uses.



PUBLIC WORKS DEPARTMENT
CITY/BOROUGH OF JUNEAU
★ ALASKA'S CAPITAL CITY

RECEIVED

JAN 13 1997

January 7, 1997

Gary J. Prokosch
Chief, Water Resources Section
Department of Natural Resources
Division of Mining and Water Management
3607 C Street, Suite 800
Anchorage, AK 99503-5935

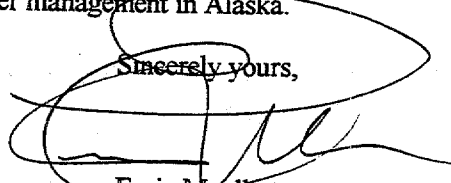
Dear Mr. Prokosch:

Thank you for the opportunity to review the results of the Water Management Program questionnaire in your letter of December 10, 1996. After review of this material, the City and Borough of Juneau has the following comments:

- Water is a primary natural resource of the State of Alaska. It needs to be protected and regulated to assure future generations of people, fish and wildlife an ample and clean supply of water. It would be extremely short sighted to eliminate the State water management program. The State's stewardship responsibilities are mandated by the constitution.
- The existing system seems to be working. The problem seems to be in the backlog of water right adjudications and other duties. Funding for this program is a major problem. Perhaps this could be solved by combination of streamlining the program, redefining the minimum quantity requiring filing, and adjusting the application and yearly fees to be more commensurate with the amount of water used. Consumptive versus non-consumptive uses would have different fee schedules.
- Combining the DNR program with DEC makes some sense, as does having a one-stop permit process including DF&G. The present combination of the Divisions of Mining and Division of Water does not seem logical since the two group's focuses are different.
- Since the present system mandates beneficial use as one of the criteria for water rights, a review every ten years make sense, to ensure this policy is upheld. The beneficial use seems the fairest for all the residents of the State.
- First and second class cities and boroughs definitely need to be able to apply for present and future public water supplies. The preference for municipal water supplies in the State constitution is also a good idea.

Please keep us informed of future plans for water management in Alaska.

Sincerely yours,

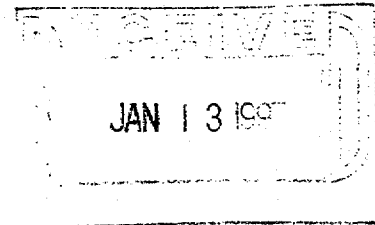


Ernie Mueller
Director of Public Works

cc: John Dunker
Bill Joiner
Barbara Craver

January 9, 1997

Mr. Gary J. Prokosch
Chief, Water Resources Section
Alaska Department of Natural Resources
Division of Mining and Water Management
3601 C Street, Suite 800
Anchorage, Alaska 99503-5935



Dear Mr. Prokosch:

Today, January 9, 1997, I was given a copy of the document summarizing the results of the Water Management Program questionnaire. The cover letter of this document was dated, December 10, 1996. I am disappointed that the Alaska Department of Natural Resources, Division of Mining and Water Management did not send me a copy of these results. Particularly because I provided comments to the original questionnaire. Because I was not included in this second comment period, I hope the Department will accept this, even though I have not met the submittal date.

Again, I would like to preference my qualifications as a water manager. I am a registered professional hydrologist (Cert. # 555, American Institute of Hydrology). I have 25 years experience in water law and water rights issues, both in the States of Colorado and Alaska. I have been an instructor for water law training for both the Bureau of Land Management and the Fish and Wildlife Service. It is my professional opinion that the State of Alaska has in place, as good a law and regulations as any in the United States.

The problem is not the law or the regulations, but the administration of these laws and regulations. A large part of the problem is the Legislature's reluctance to provide funding to support its' basic public trust responsibilities. Changes to laws or regulations should only be considered if these proposed changes improve the protection and management of resources or citizens. The recommendations below are proposed to reduce the workload to meet reduced funding levels. For the most part, the recommended changes identified in the December 10, 1996 document reduce the protection of the small water user and management of the water resources. In general, the recommendations will move the State of Alaska in the wrong direction with respect to its' public trust responsibilities.

Specific comments:

1. *Redefine 11AAC 93.970(14) "significant amount of water" which will exempt water users of 5,000 gallons per day or less from the requirement to apply for water rights.*

Comment: In Paragraph A, 5,000 gpd is a "significant amount of water." The purpose of the appropriative water right system is to allow management of the resource and provide protection to the users of the resource. Senior users have first right. DNR's ability to manage the water resources of a watershed with 10, 15, or more unregistered water users, each diverting 5,000 gpd

could easily tax the system causing damage to the aquatic habitat, the riparian habitat, and create disputes between the users. In order to properly manage the resource, DNR needs to know how many users there are and how much water is being used. Also, in order to protect the water user, a water right should be on file. Theoretically, all water users should file for a water right for the purpose of protecting their interest. Practically, if not required to file by law, no one would file and the resource would someday become over used and disputes will erupt. All of this directly affects other State resources, namely the fish and wildlife. A "significant amount of water" by definition should not be more than 1,000 gpd.

Comment: In Paragraph B, 500 gpd for family domestic water is significantly small. To enable management by DNR, a registration system would be justified. A registration of these small water uses would also continue to protect the users by establishing a priority date. The problem with a true registration system is the existing competing water users would not have the opportunity to oppose or question the water use.

2. *Amend regulation to allow for a first or second class city, or borough to obtain a long term permit (20 years) or certificate for current and future public water supplies.*

Comment: I agree, as long as the regulations require DNR to consider potential impacts to prior water right holders, the water use is reasonable and foreseeable needed by the residents, and excludes sell for export.

7. *Establish a cooperative working relationship with local governments and native interest in the allocation and management of water within their boundaries. Work closely with existing planning, zoning and platting boards.*

Comment: A strange concept. It was my opinion that DNR was a State agency, in place to serve the people of Alaska. As such, should be working cooperatively with everyone, including private citizens, corporations, Federal agencies, etc. This recommendation supports my original statement that the problem with Water Resources Section, DMWM, is the administrators. Existing attitudes of the administrators do not align with the concept of public service.

8. *Establish by regulation a registry filing system for water uses under 5,000 gpd.*

Comment: Disagree. The problem with a registry filing system, is that other water users would not be given the chance to identify potential impacts to their water right. Their rights should always be considered. If the application is reasonable, no other water user contests the application, and the water resource is not overly appropriated, the permit should be immediately issued. Given the above conditions, there is no justifiable reason why the application review period should take longer than 45 days. A registry system is not needed. Eliminate the micro managers, have faith that your employees are competent and will do their jobs, and allow the system to operate.

9. *Review current application fees and increase if justified. Use existing regulations to cover excess cost of adjudication.*

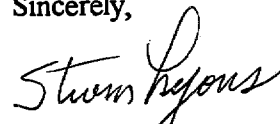
I am not convinced that the current cost structure is inadequate. An independent study would need to be completed. I do agree that the existing cost structure is not adequate to support the present inefficiencies. There is an administrative problem which has caused the extreme backlog in processing water rights applications. It is my opinion that the present administration is very ineffective and inefficient. This entire process of recommending major changes in the law and regulations further erodes their ability to do the jobs that they have been hired to do. That is to administer the water resources by documenting and processing water rights applications. The water rights applicants are not getting their monies worth now.

10. *Establish by regulation a procedure for department qualified applicants and consultants to conduct the administrative portion of a water right adjudication.*

Comment: I do not understand how this would save time or money. The "department qualified applicants and consultants" would have to be monitored, requiring about as much time as doing the job in the first place. The only thing these consultants could do is to file public notice, and the Water Resources Section already has the process computerized. The job of the adjudicators in the Water Resources Section is to 1) check to see if the quantity requested is reasonable and available, 2) file public notice, 3) resolve disputes from other users who oppose the application, 4) modify, deny, or approve the application. What exactly would a consultant do? The only time consuming part is step number 3, and only state employees with the Water Resources Section should adjudicate. This should not be delegated to a private concern.

In conclusion, the State of Alaska has a very good water law, and for the most part the regulations are reasonable. I do not support any major overhaul of the law or regulations. Existing problems are in legislative funding of the program and micro management within DNR, which has brought the system to a stop. The present Water Resources Section, DMWM, is not user friendly and are not servicing the people of Alaska.

Sincerely,



Steven Lyons
12965 Lindsey Dr
Anchorage, AK 99516

cc: Jules V. Tileston



United States Department of the Interior

NATIONAL PARK SERVICE

Water Resources Division
1201 Oak Ridge Drive, Suite 250
Fort Collins, Colorado 80525-5596

IN REPLY REFER TO:

January 8, 1997

L54(2380)
Water Rights/General

Mr. Gary J. Prokosch
Chief, Water Resources Section
Alaska Department of Natural Resources
Division of Mining and Water Management
3601 C Street, Suite 800
Anchorage, AK 99503-5935

Dear Mr. Prokosch:

The National Park Service (NPS) received your December 10, 1996, letter addressed to "Alaskans and others" reporting the results of the Water Management Program Questionnaire. Enclosed are comments prepared in response to a request by the National Park Service Alaska System Support Office for assistance in reviewing the Division of Mining and Water Management's recommended changes to the water management program which are provided with your memo. The comments, which have been coordinated with the NPS Alaska Field Office, are offered for your consideration in preparing final program recommendations to the commissioner.

We appreciate the opportunity to comment and wish to be kept informed of all future decisions regarding changes in the Alaska water rights program.

Sincerely,

Charles W. Pettee, Acting Chief
Water Rights Branch

Enclosure

cc: AKFA - Barbee (w/enclosure)
AKSO - Deschu "
2380 - Kimball, Flora, Jackson, Walker, McGlothlin, Hansen, w/enclosure

National Park Service, Water Rights Branch
Comments on Recommendations Proposed by the Alaska Division of Mining and
Water Management for Changes in the Water Management Program

General comments

The Division of Mining and Water Management (DMWM) proposals represent significant changes to the Alaska water management program. These changes, as stated in the "*Draft Recommendations to the Commissioner - Water Resources Management*" (in undated letter to Alaskans requesting comments on the Alaskan Water Management Program), are necessary due to anticipated reductions in funds for the current program. The National Park Service, Water Rights Branch (NPS-WRB) agrees with the many commenters who have stated that such downsizing should not be undertaken in a haphazard manner, if at all. From the documents provided the NPS, it would appear that DMWM intends to reduce the water resources program despite a significant showing of support by the commenters for the continuation of an effective state water resources program. We also agree with the DMWM's decision, as stated in the December 10, 1996, letter to Alaskans and others, to delay pursuing changes to the "Water Use Act".

We believe that significant modifications to the existing system of water rights should only be considered if such changes will improve the protection and management of Alaskan water resources. Further, cutbacks in funding and staffing of this program will potentially result in additional disputes over water resources and rights issues and public trust responsibilities. With the final recommendations, we suggest that DMWM provide 1) statements that explain the rationale for each recommendation and 2) an assessment (pros and cons) of DMWM's ability under the current and modified programs to protect Alaska's water resources.

Specific comments (refer to pages 2 - 7 of Recommendations)

(Recommendation is cited in quotes)

AMENDMENT TO THE CONSTITUTION

1. "Replace prior appropriation system with riparian system".

Comment: The NPS-WRB agrees with the DMWM decision to not recommend this change. A riparian water rights system may reduce water rights management burdens for the State, but such a system, if adopted, likely would create greater uncertainty for rightholders, increase the burden on the courts for resolving disputes, and result in higher costs to water users.

STREAMLINING

1. "Redefine significant amount of water use and exempt water users of 5,000 gpd from the requirement to apply for water rights".

Comment: In Paragraph A., DMWM recommends exempting water users of 5,000 gallons per day (gpd) from the requirement to apply for water rights. This amount is about 5.6 acre-feet per year, a fairly significant amount. Note that, in other states, the amount for exempted uses is typically from 3-5 acre-feet per year. The NPS-WRB recommends that DMWM require applications for any water use between 500 and 5,000 gpd (see comment for Recommendation 13.)

Comment: In the third sentence of paragraph A., it is stated that DMWM will "Maintain [DMWM] authority to require filing of an application in areas of concern associated with availability of water, effects on prior water right holders and the public interest". We agree with this approach. We recommend that applications be required, as a matter of public interest, where the water use potentially impacts water resources within NPS units. We further recommend that the DMWM establish policy, or amend regulations (under 11 AAC 93.970(14) or other appropriate regulation) to require that the NPS be notified of all water uses proposed within Alaska's NPS units.

Comment: In Paragraph B., it is stated that a single family domestic right should be established for 500 gpd. This amount is sufficiently small that it could be considered a *de minimus* amount (either ground or surface water) for which no water right application is needed. If this type of use is exempted from water rights administration, the DMWM could require a registration of use (or other form of simple notification) to have this information for other management purposes.

2. "Amend regulations to allow a first, and second class city or a borough to apply for current and future Public Water Supplies".

Comment: We agree with DMWM's statement (last sentence) that this right apply to a single source and for a reasonable quantity for Public Water Supplies, only. The amended regulations should provide definitions for "reasonable" and "need". For these applications, the amended regulations should require DMWM to consider effects on prior water right holders and the public interest. We also recommend that the regulations provide a time frame for the development of these rights, that allows for review and continuation or modification of the rights.

6. "Base water right adjudication on risk, by major river/stream drainage".

Comment: We agree that a watershed approach should be taken for the adjudication of rights. However, this recommendation does not indicate whether

such approach would take into account all water users including Federal interests.

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

Comment: It is unclear whether the SWMA is the area designated for adjudication, or if this designation would result from the adjudication of rights. The recommendations should specify the purpose(s) for a designation, what restrictions, if any, there would be on water users within an "SWMA", and what the State's role would be in managing such area(s).

10. "Establish a general permit for temporary water use (30,000 gpd or less) associated with construction or other temporary camps".

Comment: We agree that taking this approach would streamline water rights processed for temporary uses. However, in considering applications for a temporary permits, the DMWM should consider possible effects on existing rights and provide opportunity for water right holders (including Federal agencies) to protest applications. Permits should be issued on a case-by-case basis.

12. "Establish a broader range of permit conditions allowing the permit to be issued prior to the completion of studies and public interest findings".

Comment: We agree that the permit notice, as a matter of State law, should be sent to the landowner (and/or published through local news media, if this is appropriate) where water is to be taken. We assume this recommendation includes all landowners, including the United States. However, we are concerned that a permit, if issued prior to the completion of studies and public interest findings, could result in adverse impacts to water-related resources within NPS units and to the economic viability of the water development. We believe it wise to require completion of studies and public interest findings prior to issuance of the water rights permit. Perhaps the DMWM should evaluate procedures that may expedite studies and public interest findings.

13. "Create a separate water right application for water use under 5,000 gpd".

Comment: It is stated in Paragraph A. that a streamlined application may simplify processing of water rights applications. The NPS-WRB recommends that DMWM require applications for any water use between 500 and 5,000 gpd. Such applications could be streamlined, but sufficient information should be provided to determine, as a matter of public interest, if there is potential for injury to water-related resources within NPS units.

Comment: The creation of a single family domestic water right, as proposed in

Paragraph B., for uses under 500 gpd should simplify water rights administration. However, it is unclear in this paragraph whether this recommendation would result in less administrative burden on the DMWM. We suggest that it may be more efficient (in terms of cost savings and management efficiency) if the State declared this level of use as "de minimus" under the law (i.e. the law would not take notice of this level of use), and remove these rights from State administration.

17. "Transfer authority to the court system".

Comment: We concur with the recommendation to not consider this further.

DNR STRAWMAN #1

"Eliminate all current funding for the Water Resources Section and replace it with a Water User Fee."

Comment: The DMWM recommendation states "If it becomes necessary, we should propose a water use fee based on quantity of water used . . ." It is unclear if this proposal would extend to non-consumptive, i.e. instream flows, uses. If a fee would become necessary, the NPS-WRB would recommend the exemption of instream flows or in situ uses from such fee.