

13 Nov 1986 Summary

MEETING SUMMARY
FEDERAL RESERVED WATER RIGHTS WORK GROUP
November 13, 1986

Federal and state members of the Work Group (WG) met at 8:30 A.M. in the third floor Frontier Building Conference Room. Work Group members present are checked on the attached Directory. Also present was Ray Corning of the U.S. Fish & Wildlife Service. Mary Lu Harle of DNR chaired the meeting.

Agency reports on the status of the federal reserved water rights inventory were presented.

- ADNR - Mary Lu Harle reported that inventory data has been submitted by NPS and USFS, and the information entered into the computer. BLM may get assistance to compile their information from their Denver Service Center. First Lt. Garner of Eielson Air Force Base called and was unable to attend the meeting but is sending information for the Base on current water use, projected use for the year 2000, and projected ultimate water use. John F. Martin, Elmendorf Air Force Base, also called and reported that he is the Base contact for water rights issues.
- USFWS - Keith Bayah reported that the USFWS inventory including all the refuges is complete and is at the Soliciter's Office for review. It must then be reviewed by the Regional Director, and will be submitted to DNR in several days.
- BIA - Larry Ethelbah reported that the BIA will not have any inventory information for a long time because many conveyances have not taken place. He will obtain some water quality data.

Agency representatives next reported on federal reserved water rights and instream flow work that is presently underway or being planned.

- NPS - Ross Kavanagh first reported on Indian River work. The fisheries instream flow report is being written. The recreational instream flow and administrative history draft reports are complete. The NPS is favorable to negotiating a settlement for Indian River, and will file a claim with DNR in December. Ann Puffer reported that USFS would be ready to participate in negotiations in December or January. Keith Bayah also reported that FERC will now require Sheldon Jackson College to file for a FERC license for their hydroelectric facility.

Ross next reported on the Nuka River. He handed out copies of the Alaska Power Authority - U.S. Department of Interior water use contract for water from the Nuka glacial pool. The NPS spent five days this summer on the upper Nuka River collecting data for modeling instream flows. A report is being written by Stan Ponce.

NPS has no other federal reserved water rights work planned.

- USFWS - Keith Bayah reported that seven stream gages (plus one ADF&G gage) have been installed on streams in the Kenai National Wildlife Refuge. Future high priority work will be on the Arctic Coastal Plain to quantify federal reserved water rights and to determine where available water is for oil and gas development. This will be a multi-year project; funding has not been obtained yet. General discussion followed on the need for agreement between agencies and USGS on how to collect and publish non-USGS stream gage data.
- USFS - Ann Puffer explained the present water rights controversy on Baranof Island near Sitka. The USFS concern is for federal reserved water rights for Baranof Lake. Another effort underway is to separate wilderness and monuments on USFS lands, and to identify primary purposes for these areas.
- BIA - Larry Ethelbah reported that he will research and supply water quality data for school sites.
- ADF&G - Christopher Estes reported that ADF&G will submit six instream flow reservation applications to DNR by June 30, 1987. Terror River has been filed, and additional information is being submitted. DNR hydrologists are assisting with Rabbit Creek, Little Rabbit Creek and Little Survival Creek. Existing data is being assembled for Willow Creek and the Little Susitna River.
- ADNR - Mary Lu Harle reported that all inventory information received from NPS and USFS has been stored on computer. The two main federal reserved water rights efforts underway in DNR are the Indian River adjudication and regulations to implement SB 150.

Keith Bayah, USFWS, next described the USFWS scheme to prioritize streams on refuges for instream flow determinations for federal reserved water rights. He provided two handouts (attached); one is a matrix with the criteria and weights for prioritizing streams, and another is an example of a completed matrix. The matrix is still in draft form. It is designed to be completed by refuge managers, and the data input into Multiplan on a personal computer. The program can rank streams by refuge, by area, statewide, by top prioritized streams, alphabetically, etc. A potential problem is bias in assigning the weight factors. The scheme is still being fine-tuned and will be used as a planning guide.

Carl Yanagawa also handed out copies of the ADF&G matrix to prioritize streams for instream flow work. It is also being revised and will be computerized.

Mary Lu Harle handed out recent Western States Water Council resolutions concerning sequestration of USGS cooperative funds under Gamma-Rudman and settlement of water rights claims through general adjudication. She also

provided copies of the Alaska Statute Supplement to the Alaska Water Use Act containing SB150 amendments. She described four areas of regulation revisions: new regulations for AS 46.15.165, new regulations for critical water management areas, revisions to the instream flow regulations, and housekeeping revisions. She reviewed draft regulations to implement new AS 46.15.165, Administrative Basin-wide Adjudication. There was consensus that a section on the process for agreement on a master may be needed. There was discussion concerning who to notify in the federal agencies because notice may vary between the Departments of Interior and Agriculture. The section specifying information to be submitted in a federal reserved water rights claim needs to be expanded and made more specific.

The meeting closed with the group agreeing to continue to meet two or three times per year.

Attachments

AGENDA

FEDERAL RESERVED WATER RIGHTS WORK GROUP

November 13, 1986, 8:30 AM

Frontier Building Conference Room, Third Floor
Frontier Building, Anchorage

- ✓1. Introductions
- ✓2. Review progress of Federal Reserved Water Rights Inventory
 - ✓A. Agency reports on inventory data yet to be submitted: USFWS, BLM, USD OA-COE, BIA
 - ✓B. Timetable for completing inventory data
3. Agency reports on federal reserved water rights work (on-going and planned) and instream flow determinations: BLM, NPS, USFWS, USFS, USD OA - COE, BIA, ADF&G
4. Keith Bayha, USFWS - FWS scheme to prioritize streams for federal reserved water rights quantification
5. Mary Lu Harle, DNR - Regulations for administrative basin-wide adjudications under new AS 46.15.165

NPS info in
FS hand

FWS put gauges in 8 streams on the Kenai Refuge - see Christopher Moore, Russian, Kelley, Nikolai, Fanny R.

Baranof Warm Springs - fish hatchery proposed by state. 200 CFS needed. Another group called Wilderness Acquisition is also planning to build a private hatchery.

* is this anodromous?

Water mgmt.

Mary Lou & Kyle Cherry - Central ofc.

○ - Northern Region

Gary Schulte, ~~Gary~~ Ed Cannon will do some

N. Slope of Placer

1st fact

- SC

1st fact

- SC

Nuka River

11/3/81

CONTRACT

This Contract between the Alaska Power Authority, a public corporation of the State of Alaska, (herein "APA") and the Department of the Interior (herein "DOI"), executed this 16th day of JUNE, 1986, sets forth the mutual agreements, rights, responsibilities and determinations of the parties regarding the use of the flow of waters from the Nuka Glacier into the Nuka River, a river partially contained within the boundaries of Kenai Fjords National Park (herein "Park"), and the diversion of Nuka River glacial headwaters upstream of the Park boundary by the APA for purposes of hydroelectric power generation by the Bradley Lake Project (herein "Project").

Whereas, the APA is proposing to commence construction of the Project, having received and accepted all federal and state permits and licenses necessary to initiate construction; and

Whereas, the resolution of the water uses of the parties in the Nuka River is important to the economic feasibility of the Project; and

Whereas, the Bradley Lake Power Site Classification Order No. 436 which was issued by the Interior Department in 1955, and subsequent actions of Congress, reserved, in the opinion of the APA, all lands described in the order, including the area of Nuka river glacial headwaters, for power site purposes; and

Whereas, Kenai Fjords National Park was established by Section 201 of the Alaska National Interest Lands Conservation Act of December 2, 1980, 16 U.S.C. 410hh, thereby establishing in the opinion of DOI, a federal reserved water right for the Park to that amount of water from the Nuka glacier headwaters reasonably necessary to fulfill the primary purposes of the Park; and

Whereas, the Nuka Glacier pool is an intermittent headwater source to the Nuka River of a shifting hydrologic nature, which arises outside of the Park boundary; and

Whereas, these waters originating outside the Park boundary contribute to the physical features within the Park; and

Whereas, it is important to the National Park Service (NPS) to receive releases of water at the Nuka River diversion structure rather than a guaranteed flow at the Park boundary to ensure receipt of sufficient glacial headwater flows into the Nuka River; and

Whereas, the parties wish to resolve mutually the water use issues without litigation, in part because water rights litigation is time consuming as well as costly; and

Whereas, the parties consider the problems associated with establishing the water use agreement for the Park and APA as unique to this Project only; and

Whereas, the parties do not consider this Contract as precedential in possible other future water issues between NPS, and APA, and consider and agree that the Contract is inadmissible in any future litigation or discussion over water rights in Alaska, except for the Nuka River.

Now, therefore, the APA and DOI agree as follows:

1. The APA agrees that:

(a) It will construct a diversion structure(s) outside the boundary of the Park at the outlets of the Nuka Glacier Pool, and will maintain and operate the structure(s) at no cost to the United States.

(b) No Park lands will be used during construction, operation or maintenance of the diversion structure(s) except as necessary to measure Nuka river flows.

(c) The structure(s) will be constructed so as to guarantee the release of a minimum weekly average flow of 5 cubic feet per second of water, as long as releases from the diversion structure(s) do not go below a minimum daily average of 3 cfs, into the Nuka River measured at the Nuka River diversion structure(s) site from June 1 through September 30 annually, to the extent adequate water is available in the Nuka glacier pool to provide such releases without pumping or redesign of the diversion structure(s).

(d) As soon as the diversion structure(s) is in place, the minimum release guarantee contained in this agreement will be implemented. The APA will notify the NPS at the time that Nuka Glacier flows commence being diverted. During construction of the diversion structure(s) releases will be made into the Nuka river which, measured at the Nuka River diversion structure(s) site, will not be less than 5 cfs on a weekly average basis to the extent that adequate water is naturally available in the Nuka glacier pool to reasonably provide such releases.

(e) If the Project is abandoned or ceases to generate power for 8 consecutive years after the structure has been completed, natural flows will be reestablished in the Nuka River by adjustment or removal of the structure(s). Provided, however, if APA decides to recommence the generation of power, this agreement will be revived and in full effect.

(f) It will install a gage at a mutually agreed location at or near the diversion structure(s) to monitor releases from the structure(s). The gage installation and operation will be at no cost to the United States. Said gage will be removed upon abandonment of the Project.

(g) It will amend its water rights application before the Alaska Department of Natural Resources to reflect the terms of this contract.

(h) It will survey the Park boundary up to 200 yards on either side of the Upper Nuka River and post boundary notices at the Park boundary below the Nuka Diversion, and will make available NPS-provided Park information to visitors gaining access to the Park from the Project area.

(i) The DOI will be provided 60 days to review and comment on the design specifications of the diversion structure(s). The APA agrees to consider fully the comments on these plans, and respond in writing to the comments, setting forth the rational basis for why any recommendation was not accepted. APA agrees that the diversion structure(s) will be designed to meet the release requirements provided for in this contract, including those releases that may be provided by 1(j) and 2(c).

(j) In the event there are waters excess or surplus to the needs of APA, such as spilling or releasing water from the project unrelated to power generation, reservoir maintenance on fisheries releases, APA agrees to notify DOI that further water releases are available from the diversion structure(s) and to provide those flows if requested by NPS.

2. The DOI agrees that:

(a) A minimum weekly average release of 5 cfs, as long as releases from the diversion do not go below a minimum daily average of 3 cfs, into the Nuka River measured at the diversion structure(s) during June 1 through September 30, annually, to the extent adequate water is available in the Nuka glacier pool to provide such releases without pumping, or redesign of the diversion structure(s), is sufficient to meet the primary purposes for which the Park was established.

(b) It will act consistent with the terms and conditions of this agreement in asserting rights to water from the Nuka glacier headwaters, and will not assert additional water rights for the Nuka glacier headwaters in any water rights adjudication or other proceeding except as provided in (c) of this section. Therefore, the APA may rely on this Contract for bonding, licensing, construction, and operation of the project.

(c) Over the next 10 years, it may study, at no expense to the APA, the effects of the flow releases on the Park in relation to the primary purposes of the Park that are served by the Nuka Glacier headwaters.

(i) At the end of the 10 year period, if it is demonstrated that the releases are inadequate to maintain primary park purposes served by the Nuka glacier headwaters, the NPS may propose to the APA an amended flow release, which proposal will set forth the rational basis for the amended flow release, and provide all accompanying studies regarding the necessity for an amended flow release.

(ii) At the end of the 10 year period, if it is demonstrated that the release of 5 cfs at the diversion structure is not necessary to maintain primary Park purposes served by the Nuka Glacier headwaters, the APA may propose to the NPS an amended flow release, which proposal will set forth the rational basis for the amended flow release.

(iii) If the parties cannot mutually agree on an amended flow release within 120 days of the NPS submission to the APA, the NPS may propose and initiate a hearing on the record before an administrative law judge designated by the Secretary. In the event that the Secretary concludes, upon recommendation of the administrative law judge, and based upon the hearing record, and the preponderance of the evidence, that an increased release is necessary to maintain the purposes served by Nuka glacier flows to the Park and will mitigate or avert significant injury or damage to park resources served by those purposes, the APA will abide by this decision of the Secretary unless that decision is reversed by a final order of a court of competent jurisdiction. Provided, however, the Secretary of the Interior may not require an increase in the flow release into the Nuka River to an amount which exceeds a minimum weekly average flow of 10 cfs, measured at the diversion structure(s), to the extent adequate water is available in the Nuka glacier pool to provide such release without pumping or redesign of the diversion structure(s). In the event that the Secretary concludes, upon recommendation of the administrative law judge, and based upon the hearing record, and the preponderance of the evidence, that a release of 5 cfs at the diversion structure(s) is not necessary to maintain the purposes served by Nuka Glacier flows to the Park, the NPS will abide by the decision of the Secretary unless that decision is reversed by a final order of a court of competent jurisdiction.

3. General Provisions:

(a) This agreement is binding on the parties, their successors and assigns.

(b) The obligations of the APA, DOI and United States are contingent upon the availability of appropriated or other applicable funds.

(c) This Contract may be executed by the parties in duplicate originals and the date of the later signature will be the effective date of the agreement.

(d) This Contract may not be introduced in a court of law, cited as precedent or used in any future discussion between the DOI and APA over the water rights of any area in Alaska, except for the Nuka River.

Notary: In & For the State of Alaska

Theresa J. Ottaway Keyes
Commission Expires: 8/31/86

Alaska Power Authority

Lee Nunn

By: Lee Nunn
Chairman of the Board

Date: June 16, 1986

Notary: June 12, 1986

Richard R. Lee

Notary Public
District of Columbia
My commission expires April 14, 1987

Department of the Interior

Susan E. Rice

By: William P. Horn
for Assistant Secretary
for Fish and Wildlife
and Parks

Date: June 12, 1986

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Federal Reserved Water Rights Work Group

Agency	Representative	Title	Telephone	Address
✓ AK DNR	Mary Lu Harle	Water Res Mgr	762-4352	P.O. Box 7-005 Anchorage, AK 99510
✓ AK DEC	Dan Wilkerson	Resource Planner	274-2533	437 E Str., Suite 200 Anchorage, Alaska 99501
✓ AK DF&G	Carl Yanagawa	Regional Supervisor Habitat Division	267-2283	333 Raspberry Road Anchorage, Alaska 99503
✓ AK DF&G	Christopher Estes	Statewide Instream Flow Coordinator	267-2142	333 Raspberry Road Anchorage, Alaska 99503
AK AGO	Mike Frank	Assistant AG	276-3550	1031 W. 4th Ave. Suite 200 Anchorage, Alaska 99501
BLM	Ron Huntsinger	Physical Scientist	271-3363	701 C Street Anchorage, Alaska 99501
✓ NPS	Ross Kavanagh	Fishery Biologist Alaska Regional Off	271-2637	2525 Gambell Street Room 107 Anchorage, Alaska 99503
USNPS	Stan Ponce	Chief, Water Rights Branch	(303) 221-5341	U.S. Nat. Park Ser. Federal Bldg., Room 343 301 S. Howes Street Ft. Collins, CO 80521
✓ USF&W	Keith Bayha	Chief, Alaska Investigations	786-3537	1011 E. Tudor Rd. Anchorage, Alaska 99503
✓ USFS	Ann Puffer	Regional Hydrologist	586-7847	P.O. Box 1628 Juneau, Alaska 99802
U.S. Corp of Engrs	Ernest Woods, Jr.	Chief, Real Estate Division	753-2856	P.O. Box 898 Anchorage, Alaska 99506
U.S. Corp of Engrs	Bob Gilliland	Assist. Dist. Counsel NPAOC	753-2532	P.O. Box 898 Anchorage, Alaska 99506
USAF	1st Lt. Garner	Environ. Engr.		Eielson Air Force Base Anchorage, Alaska 99702
USAF	John F. Martin		552-4157	21 CSG/DEEV Elmendorf Air Force Base, Alaska 99506
✓ US BIA	Larry Ethelbahn	Environ. Specialist	586-7616	Box 3-8000 Juneau, Alaska 99802
US GS	Raymond George	Assoc. Dist. Chief U.S. Geological Survey Water Resources Div.	271-4138	4230 University Drive Suite 201 Anchorage, Alaska 99508
✓ US GS	Robert Lamke	Sur. Water Specialist U.S. Geological Survey Water Resources Div.	271-4138	4230 University Drive Suite 201 Anchorage, Alaska 99508
US DOJ	Bruce Landon	Attorney General's Ofc Dept. of Justice Federal Bldg	271-5452	Box 69 701 C Street Anchorage, Alaska 99513

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

BILL SHEFFIELD, GOVERNOR

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October 16, 1986

Carl Yanagawa
Regional Supervisor
Habitat Division
Department of Fish and Game
333 Raspberry Road
Anchorage, Alaska 99518-1599

Dear Carl,

A meeting of the Federal Reserved Water Rights Work Group has been scheduled for Thursday, November 13, at 8:30 AM in the third floor Frontier Building Conference Room, 3601 C Street, Anchorage.

Enclosed is the tentative agenda for this meeting. Please review the agenda and contact me at 762-4352 if you have suggestions or changes. We look forward to seeing you at the meeting.

Sincerely,



Mary Lu Harle
Water Resources Manager

cc: Tom Hawkins
Gary Gustafson
Regional Managers

Enclosure



TENTATIVE AGENDA

Federal Reserved Water Rights Work Group

November 13, 1986, 8:30 AM

Frontier Building Conference Room, Third Floor
Frontier Building, Anchorage

1. Introductions
2. Review progress of Federal Reserved Water Rights Inventory
 - A. Agency reports on inventory data yet to be submitted:
USFWS, BLM, USDOA-COE, BIA
 - B. Timetable for completing inventory data
3. Agency reports on federal reserved water rights work (on-going and planned) and instream flow determinations: BLM, NPS, USFWS, USFS, USDOA - COE, BIA, ADF&G
4. Keith Bayha, USFWS - FWS scheme to prioritize streams for federal reserved water rights grantification
5. Mary Lu Harle, DNR - Regulations for administrative basin-wide adjudications under new AS 46.15.165

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Regarding
Sequestration of USGS Federal/State Cooperative Program Funds
Under Gramm-Rudman-Hollings Legislation
October 10, 1986

WHEREAS, Gramm-Rudman-Hollings deficit reduction measures are designed to eliminate the gap between federal expenditures and federal revenues; and

WHEREAS, this goal is accomplished by reducing all federal expenditures by a certain percentage in each year that objectives for reducing those expenditures are otherwise unmet; and

WHEREAS, some federal agencies have cooperative programs with states and spend state funds to perform certain functions in carrying out these programs, one such being the United States Geological Survey (USGS) Federal/State Cooperative program; and

WHEREAS, an arbitrary application of the Gramm-Rudman provisions by the Comptroller General to all federal agency expenditures including state funds transferred to federal agencies results in either using state funds to reduce the federal deficit - or imposes an inordinate reduction in associated programs of the federal agency; and

WHEREAS, such an interpretation is contrary to Congressional intent in enacting Gramm-Rudman-Hollings legislation and violates principles of federalism embodied in the Constitution;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council urge the Comptroller General to issue a ruling excluding from the application of Gramm-Rudman-Hollings deficit reduction measures non-federal sources of funding expended by federal agencies' programs, such as the USGS/State Cooperative program; and

BE IT FURTHER RESOLVED that, if such a ruling is not made by the Comptroller General, the Western States Water Council request Congress to specifically exclude such non-federal sources of funding from the operation of the Gramm-Rudman-Hollings Deficit Control Act.

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Supporting
Settlement of Water Right Claims Though General Adjudication
October 10, 1986

WHEREAS, states have the responsibility to manage and allocate water in the West and, as an essential element thereof, to determine and define water rights in state proceedings; and

WHEREAS, in order to properly regulate and administer water resources and rationally plan for further allocation, all rights to water from a given source must be quantified; and

WHEREAS, many rights to use water throughout the West remain unquantified; and

WHEREAS, all states have in place general adjudication procedures to accomplish quantification of water rights and most states are actively implementing these procedures; and

WHEREAS, general adjudication procedures should be effective, efficient and, where possible, include the least costly methods of carrying out the adjudications; and

WHEREAS, new and improved techniques for implementation of general adjudications, including, for example, revised procedural forms and procedures and, at times, use of physical solutions to bring about quantification by settlement as part of the general adjudication, are being utilized by various member states; and

WHEREAS, such techniques may make general adjudications more efficient, effective, and less costly;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council urges its member states to consider and implement techniques and procedures that will encourage or continue efficient and effective general adjudications of water rights;

BE IT FURTHER RESOLVED that the Western States Water Council endorses the policy of encouraging the settlement of water right claims by negotiation as part of the general adjudication process where such an approach is appropriate; and

BE IT FURTHER RESOLVED that the Western States Water Council calls upon each of its member states to share with its sisters, those general adjudication procedures that have improved the implementation of its general adjudication programs.

Federal Reserved Water Rights Work Group

<u>Agency</u>	<u>Representative</u>	<u>Title</u>	<u>Telephone</u>	<u>Address</u>
AK DNR	Mary Lu Harle	Water Res Mgr	762-4352	P.O. Box 7-005 Anchorage, AK 99510
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USF&W	Keith Bayha	Deputy Asst.Reg.Dir	786-3537	1011 E. Tudor Rd. Anchorage, Alaska 99503
USFS	Ann Puffer	Regional Hydrologist	586-7847	P.O. Box 1628 Juneau, Alaska 99802
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U.S. COE	Bob Gilliland	Assist. Dist. Counsel NPAOC	753-2532	P.O. Box 898 Anchorage, Alaska 99506
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US BIA	Nettie Peratrovich	Rights Protection Off.	586-7205	Box 3-8000 Juneau, Alaska 99802
USGS	Raymond George	Assoc. Dist. Chief U.S. Geological Survey Water Resources Div.	271-4138	4230 University Drive Suite 201 Anchorage, Alaska 99508
USGS	Robert Lamke	Sur. Water Specialist U.S. Geological Survey Water Resources Div.	271-4138	4230 University Drive Suite 201 Anchorage, Alaska 99508
US DOJ	Bruce Landon	Attorney General's Ofc Dept. of Justice Federal Bldg	271-5452	Box 69 701 C Street Anchorage, Alaska 99513