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May 22, 1992

Walter Stieglitz
Regional Director
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Stieglitz:

The State of Alaska has reviewed U.S. Fish and Wildlife Service Fisheries Management Plans (FMPs) for several refuges, most recently the Arctic National Wildlife Refuge. The State has had difficulty achieving consistent treatment of state land and water ownership and water rights in these FMPs. We therefore request that these subjects be appropriately addressed in all remaining plans. This letter reiterates comments submitted on the Arctic FMP, and includes language for use in all FMPs.

The FMPs should acknowledge State ownership of shorelands, tidelands, submerged lands, and water within the refuge; and acknowledge the role of the State regarding water rights.

The plan should include the same language that is included in other FWS management plans that outlines State ownership and management over certain land and waters within the refuge. An example of appropriate language may be found on pages 26-29 of the Togiak National Wildlife Refuge Public Use Management Plan, (pages attached).

In addition, a section addressing water rights should be added as follows:

"Federal reserved water rights are created when federal lands are withdrawn from entry for federal use. They are created for the minimum amount of water reasonably necessary to satisfy both existing and reasonable foreseeable future uses of water for the primary purposes for which the land is withdrawn. The priority date is the date the land is withdrawn for the primary purposes.


"Federal reserved water rights in Alaska can be claimed and adjudicated in basin-wide adjudications in conformance with the McCarran Amendment under state law, AS 46.15.165-169 and 11 AAC 93.400-440, either administratively or judicially. Alternatively, federal water rights may be applied for and granted under state law for either out-of-stream or instream water rights. In any case, water claimed or requested must be quantified.

"The FWS will work cooperatively with the State of Alaska to inventory and quantify its federal water rights under state law. Water resources of the _____ refuge will be managed to maintain the primary purposes for which the refuge was established."

In addition to federal reserved water rights, each plan should note that a federal agency can apply for water rights through the existing state water rights system. Applying for water rights through the state will, in many cases, provide the USFWS with the senior water rights and save both the State and federal government the cost of a federal reserved water rights adjudication. Application of state water rights will not preclude a federal agency from applying for its federal reserved water rights in the future if the need arises. The Alaska Water Use Act also allows public agencies to apply for reservations of water for instream uses including fisheries, recreation, and water quality purposes.

Thank you for considering these comments on Fisheries Management Plans. Please make this information available to those who are working on the remaining plans. If there are any questions, please call me at 561-6131; or Rob Walkinshaw, Department of Natural Resources, at 762-2660.

Sincerely,



Sally Gibert
State CSU Coordinator

Attachment

cc:

Carl Rosier, Commissioner, Department of Fish and Game
Harold Heinze, Commissioner, Department of Natural Resources
John Sandor, Commissioner, Department of Environmental
Conservation
Randy Bailey, Supervisor, Fisheries Management Services, FWS
Leslie Kerr, Chief of Planning, FWS

State CSU Coordination Distribution List

March 27, 1992

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