

Note: this Department Order had no title or number assigned to it. This corrects that oversight.

Title: Townsite of the City of St. Paul: Critical Water Management Area  
Department Order #148

# MEMORANDUM

Dept. of Natural Resources

State of Alaska

Office of the Commissioner

**TO:** Department Order files,  
and the Aleutian Island Recorders Office      **DATE:** April 5, 2006

**TELEPHONE NO:** 269-8431  
**FAX NO:** 269-8918

**From:** Michael L. Menge      **SUBJECT:** Department Order #  
Commissioner

The Department of Natural Resources hereby determines that the area generally described as the town site of the City of St. Paul is a Critical Water Management Area (CWMA) with respect to the groundwater aquifer. The CWMA is located within Section 25, Township 35 South, Range 132 West, Seward Meridian. The boundary and properties involved are shown on Attachment "A" and made part hereof. As a result of a hydrologic study of the aquifer conducted over the past 3 years, it has been established that the quality of the groundwater in the area is deteriorating due to contamination by hydrocarbons. The construction of water wells within the boundary of the CWMA, and the associated pumping of water from these wells will cause this contamination to spread to non-contaminated sites or sites that are now less contaminated, and may become a threat to the public interest. The Decision of Record, on Attachment "B" and made part hereof, further describes the reasons for this CWMA designation.

Pursuant to AS 46.15.520 and 11 AAC 93, Michael L. Menge, Commissioner of the Department of Natural Resources, hereby designates the area depicted in Attachment "A" as a Critical Water Management Area with respect to the groundwater aquifer. This Department Order:

- A. Applies only to the groundwater aquifer within this specific area.
- B. Prohibits the acceptance of new water right applications and the establishment of new water wells after May 26, 2005, until such time as the designation of the CWMA is vacated by the Department.
- C. Establishes that the use of any amount of groundwater from this designated area without a valid permit or certificate of appropriation is a significant amount of water and is no longer exempt under 11 AAC 93.920.

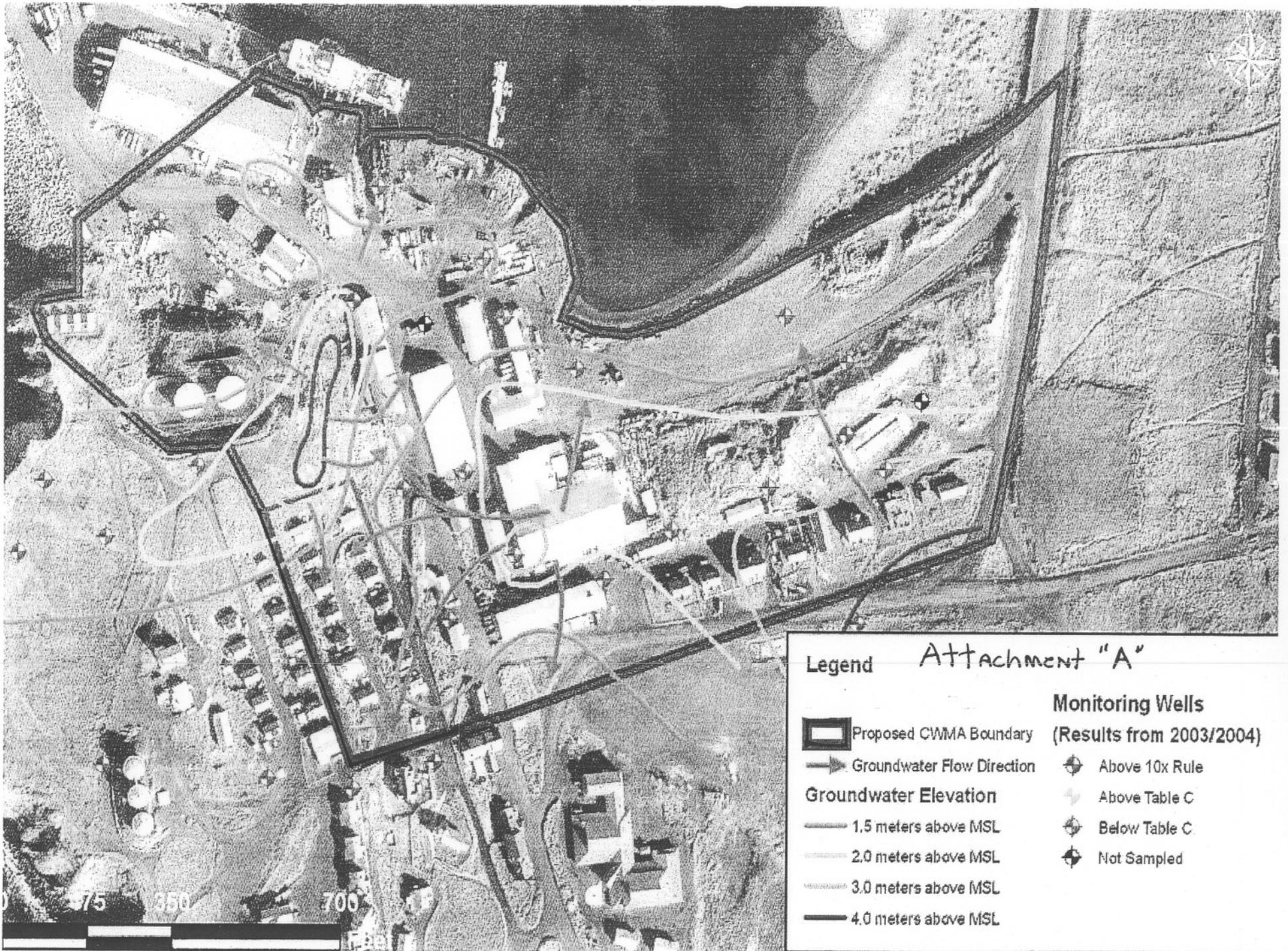
- D. Notifies anyone using groundwater within this designated area without a valid permit or certificate of appropriation, that they shall be prosecuted under AS 46.15.180 and immediately served with a cease and desist order pursuant to 11 AAC 93.290 (a) (4). If necessary to prevent further violation, a court order will be obtained pursuant to 11 AAC 93.290 authorizing seizure or removal of structures or works of appropriation.
  
- E. Allows the Department to establish additional conditions on diversions, withdrawals or use of groundwater to insure against the further deterioration of this public water resource.



Michael L. Marge  
Commissioner, Department of Natural Resources

4/10/06

Date



Alaska Department of Natural Resources  
Division of Mining Land and Water  
Water Resources Section  
550 W. 7<sup>th</sup> Avenue, Suite 1020  
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CRITICAL WATER MANAGEMENT AREA  
CITY OF SAINT PAUL

RECORD OF DECISION  
Attachment "B"

**BACKGROUND:** On January 23, 2004 the National Oceanic and Atmospheric Administration (NOAA) requested that the Department of Natural Resources (DNR) establish a critical water management (CWMA) under 11 AAC 93.500. The CWMA would cover only the groundwater aquifer under a portion of the town site of the City of St. Paul. In cooperation with the Department of Environmental Conservation (DEC), NOAA has conducted extensive studies of the area groundwater and found significant petroleum contamination making the water unsuitable as drinking water or for other beneficial uses. The creation of the CWMA will facilitate the transfer of lands from the federal government to private parties on the island. DEC consulted with the public and agreed with NOAA that a non-drinking water, groundwater use determination is appropriate for this area. This determination allows for an adjustment to the groundwater cleanup levels. The CWMA is necessary to establish institutional controls to limit inadvertent future use of the contaminated groundwater in order to protect public health, and the environment.

**PROCEDURES:** In accordance with 11 AAC 93.500 – 11 AAC 93.530 have been followed in order to establish a CWMA.

In preparation for the designation, and in cooperation with DEC and NOAA, a public meeting was held in St. Paul on June 18, 2004. This meeting invited anyone interested in learning about what a CWMA is and how it might affect an individual. Seventeen individuals attended this meeting.

#### 11 AAC 93.500. Initiating Designation Proceedings

The commissioner will, in his or her discretion, initiate proceedings to designate a particular geographic or hydrologic area, including surface and ground water, as a critical water management area if

(1) the commissioner determines that there is or might be an imminent water shortage in the area, for all or part of the year, affecting a substantial number of permittees or certificate holders of record so that their ability to reasonably acquire water has been or will be affected by existing or potential over appropriation, drought, saltwater intrusion, or a chemical or toxic contamination rendering the water source unusable;

*Extensive water quality and hydrologic studies were conducted for NOAA that clearly show the area under the town site is highly contaminated with petroleum making the water unsuitable as drinking*

water or for other beneficial uses. The placement of and use of water wells in this area has the potential of causing the contaminated water to move from sites with heavy contamination to areas that are not as contaminated or uncontaminated areas. The only prior appropriator of record near the CWMA is the City of St. Paul who obtains water from a well field that is not hydrologically connected to the contaminated groundwater within this CWMA. The City of St. Paul's water right will not be unduly affected by this CWMA designation. The water from the City of St. Paul's well field does serve the CWMA area through a buried distribution system. The water distribution system is located where contaminated soils exist and areas not currently contaminated. The establishment of the CWMA will protect the public water distribution system by controlling the movement of contamination water within the CWMA from moving to areas where the distribution line currently exist or may be expanded to in the future. The movement of contaminated water, by pumping of water from wells in the area, to other areas where little or no contamination exists will affect the ability of that water to be used now and in the future.

(2) an agency or political subdivision of the state, or an agency of the United States, petitions for the designation of the area as a critical water management area and demonstrates that a condition in (1) of this section exists; or  
*NOAA is an agency of the United States.*

#### **11 AAC 93.510. Public Notice and Hearing**

Before the commissioner designates a geographic or hydrologic area as a critical water management area, or revokes or amends a designation, the department will

(1) publish a notice of the proposed designation, revocation, or amendment in a newspaper of general circulation in the area affected once a week for four consecutive weeks, soliciting public comment and announcing the date, time, and place of a public hearing;

*Public notice addressing the proposed designation of the CWMA and announcing a public hearing were published on April 8, April 14, April 21, and April 28, 2005 in newspapers of general circulation.*

(2) solicit comments on the proposed designation, revocation, or amendment by certified mail, return receipt requested, from appropriators and property owners of record within the area; affected federal, state, and local agencies, including the Departments of Fish and Game and Environmental Conservation; and any affected regional or village corporation; and

*On April 8, 2005 a public notice and maps of the proposed CWMA was mailed to every post office box (149) in the City of St. Paul. This included all landowners in the area of the CWMA and all other residents in St Paul. In addition the public notice and map were posted at the St. Paul Post Office, and the City of St. Paul office. Public Notice was also posted on the DNR web site from April 11, 2005 through May 23, 2005. Notice was sent to the Departments of Fish and Game and Environmental Conservation; and any affected regional or village corporation.*

(3) hold a public hearing in the affected area to take written and oral comments on the proposed designation, revocation, or amendment; the department will accept additional written comments submitted up to 30 days after the hearing date.

*A public hearing was held at the St. Paul Island School in the Video Conference Room from 9:00 AM through Noon. Eleven individuals signed in, a short presentation on the proposed CWMA was given. The opportunity to testify was opened at 9:30 AM; no one took advantage of this opportunity. The hearing ended at Noon.*

#### **PUBLIC INTEREST DETERMINATION:**

To determine if the proposed CWMA is in the public interest the criteria set out in

AS 46.15.080(b). Criteria For Issuance of Permit, will be used as stated in 11AAC 93.520 with the understanding that these criteria are set up to evaluate the appropriation and use of water and that the establishment of a CWMA will preclude the construction of water wells and the use of groundwater within the boundary of the CWMA.

AS 46.15.080(B) In determining the public interest, the commissioner shall consider

- (1) the benefit to the applicant resulting from the proposed appropriation;  
*The applicant in this case is NOAA who requested the designation in order to receive permission from DEC in the establishment of the 10X rule for contamination clean up. The CWMA establishes an institutional control over the removal of groundwater from the contaminated area, which is required under the 10X rule. This is a benefit to the applicant in that a more intensive and expensive clean up would not be required. It should be noted that the additional clean-up effort would not result in a significant difference in contamination levels in this area.*
- (2) the effect of the economic activity resulting from the proposed appropriation;  
*There is not expected to be any increase or decrease in economic activity as a result of the establishment of this CWMA. The establishment of the CWMA will facilitate the transfer of lands from the federal government to the native corporation. Land use due to the establishment of this CWMA is not expected to be different from the current pattern or established uses. Public water serves the CWMA and there is not apparent need to drill a well or use the groundwater within the boundaries of the CWMA.*
- (3) the effect on fish and game resources and on public recreational opportunities;  
*The establishment of the CWMA will not effect any fish and game resources or hinder in anyway public recreational activities. The CWMA simply prohibits the development, diversion, and use of groundwater located within the boundaries of the CWMA.*
- (4) the effect on public health;  
*The establishment of the CWMA prohibits the development, diversion and use of groundwater located within the boundaries of the CWMA. In cooperation with the Department of Environmental Conservation, NOAA has conducted extensive studies of the area groundwater and found significant petroleum contamination making the water unsuitable as drinking water or for other beneficial uses. Restricting access to this water now and into the future is a health benefit. The City of St. Paul provides an abundant and clean source of water to the homes and businesses within the boundary of the CWMA.*
- (5) the effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation;  
*Once established, the CWMA will preclude the use of groundwater from the aquifer within the boundary of the CWMA. The City of St. Paul provides an abundant and clean source of water to the homes and businesses within this area. The monitoring of the water quality in the CWMA will continue into the future, when and if the water quality improves to the point where it can be used, the designated CWMA can be revoked or amended to allow for full or limited use.*
- (6) harm to other persons resulting from the proposed appropriation;  
*The extensive public notice and hearing process required to establish a CWMA resulted in no adverse comments to DNR's designating the proposed area a CWMA. The establishment of the CWMA will keep current and future landowners within the CWMA from drilling, digging a well or otherwise removing groundwater from the CWMA.*
- (7) the intent and ability of the applicant to complete the appropriation; and

*NOAA has the intent and ability to meet the requirements required by DEC to establish a 10X rule for contamination clean up in the area of the CWMA . The CWMA establishes an institutional control over the removal of groundwater from the contaminated area, which is required under the 10X rule. This is a benefit to the applicant in that a more intensive and expensive clean up would not be required. The applicant has no need to remove water other than for water quality testing from a series of monitoring wells.*

(8) the effect upon access to navigable or public water.

*The establishment of the CWMA will in no way effect the ability of the public to access navigable or public waters.*

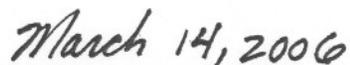
FINDING OF FACTS: As a result of the water quality and hydrologic studies of the aquifer with the boundary of the CWMA conducted over the past 3 years, it has been established that the quality of the groundwater in the area is contamination by hydrocarbons. Water well construction, and use of water will likely contribute to the spread of contamination to areas within the CWMA that are not currently contaminated or sites that are now less contaminated. The movement of contamination by pumping water from wells may become a threat to the public interest as described above. The requirements in accordance with 11 AAC 93.500 – 11 AAC 93.530 have been followed in order to establish a CWMA.

DECISION: The Department of Natural Resources hereby determines that the area generally described as the town site of the City of St. Paul is a Critical Water Management Area (CWMA) area with respect to the groundwater aquifer. The boundaries of the CWMA and the properties involved are described on Attachment "A" attached hereto and made part hereof. Pursuant to AS 46.15.520 and 11 AAC 93, Michael L. Menge, Commissioner of the Department of Natural Resources, should designate the area depicted in Attachment "A" as a Critical Water Management Area with respect to the groundwater aquifer. This Department Order:

1. Applies only to the groundwater aquifer within this specific area.
2. Prohibits the acceptance of new water right applications and the establishment of new water wells after May 26, 2005, until such time as the Department vacates the designation of the CWMA.
3. Establishes that the use of any amount of groundwater from this designated area without a valid permit or certificate of appropriation is a significant amount of water and is no longer exempt under 11 AAC 93.920.
4. Notifies anyone using groundwater within this designated area without a valid permit or certificate of appropriation, that they shall be prosecuted under AS 46.15.180 and immediately served with a cease and desist order pursuant to 11 AAC 93.290 (a) (4). If necessary to prevent further violation, a court order will be obtained pursuant to 11 AAC 93.290 authorizing seizure or removal of structures or works of appropriation.



Gary J. Prokosch, Chief, Water Resources Section



DATE

# MEMORANDUM

## State of Alaska

### DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF MINING LAND, AND WATER, WATER RESOURCES SECTION

**TO:** Michael L. Menge  
Commissioner

**DATE:** April 5, 2006

**THRU:** Richard Mylius  
Director

**TELEPHONE NO.:** 269-8645

**FROM:** Gary J. Prokosch  
Chief, Water Resources Section

**SUBJECT:** CWMA St. Paul Island

Attached are a Commissioner's Order (to be signed) and a Record of Decision concerning the creation of a Critical Water Management Area (CWMA) with respect to the groundwater aquifer located under the town site of the City of St. Paul. This aquifer has been contaminated with hydrocarbons and is no longer suitable for use. NOAA in cooperation with ADEC requested that DNR establish the CWMA in order to facilitate the transfer of lands to private parties (native and regional corporations) and to put an end to the clean-up effort under ADEC's 10X rule. The CWMA restricts the use of water wells to obtain groundwater from this area. This restriction will assist in keeping the contaminated groundwater from moving from contaminated areas to less or uncontaminated areas inside or outside of the CWMA boundaries.

The record of decision was written after fulfilling the requirements of AS 11 AAC 93.500 through 11 AAC 93.530. The decision was based on public meets, public notice, and a hearing held at St. Paul. No comments or objections of the proposed CWMA were received during this process. Robert Nauheim, Assistant Attorney General has reviewed the Decision of Record.

Also attached is a Public Notice, announcing the Commissioner's decision, that is required to be published in a newspaper of general circulation in the affected area once a week for four consecutive weeks.