HB 77 – Public Testimony – Lisa Weissler
2/7/2013

Dear House Resources Committee members:

I am an attorney with over twenty years experience in Alaska natural resource law and policy, including three years adjudicating administrative appeals for the Department of Natural Resources. I have the following comments on HB 77 for consideration by the House Resources Committee:

- **General Permits. Page 1, Section 1.** This section gives the DNR commissioner broad authority to authorize activities on state land through issuance of a general permit "if the commissioner finds that the activity is unlikely to result in significant and irreparable harm to state land or resources."

    - According to DNR, decisions about what constitutes a significant and irreparable harm will be made on a case-by-case basis, creating the potential for inconsistency and uncertainty in decisions made by this commissioner and future commissioners.

    - Laws should help establish consistency and predictability in agency decisions. If general permits are to be allowed, DNR should identify in law the activities that qualify for a general permit and the process for establishing the permits.

    - DNR currently has a regulation that specifically identifies uses and activities that do not require a permit (11 AAC 96.020). It's not unreasonable to ask that DNR provide the same level of clarity here.

- **Appeal Rights.** Currently, a person "aggrieved" by a DNR decision generally has a right to appeal the decision to the agency. The proposed legislation changes this standard so that a person must be "substantially and adversely affected" in order to appeal a department decision.

    - Whether a person is substantially and adversely affected in a way that is sufficient to grant an appeal right will be determined on a case-by-case basis, possibly by different people – whether it's the commissioner, a director or an appeals officer who makes the decision is not clear. This creates the potential for an inequitable or inconsistent application of the appeal right.

    - Most people are not well versed in the state's resource laws and already struggle to make their appeals effective. Now DNR is asking that people describe how they are substantially affected without any definition of what that means, even DNR does not know what it means. This is an undue and unnecessary burden on the Alaska public.

- **Instream Flow Reservations. Page 21, Section 40.** This section removes the ability of organizations and individuals ("persons") to apply for a reservation of water to maintain sufficient water flow for protection of various public interests.

- With limited government resources, it is a benefit to the state to allow persons to apply for reservations that can protect valuable water resources and uses. This is in keeping with the Alaska constitution's requirement that water is reserved to the people for common use (Article 8, Section 3).

- State regulations have stringent data requirements for applying for a reservation of water, thus already limiting the number of individuals and organizations that can submit a qualified application.

- This provision has been in place since 1980. Is there really a problem that warrants making this change?

- Retaining water within rivers and lakes to benefit fisheries and wildlife, recreation, navigation, transportation and water quality is as important to the state as water use appropriations. Rather than changing the law, the legislature should provide DNR with sufficient funding to efficiently adjudicate reservation applications.

- **Temporary Water Uses. Page 22, Section 42.** The proposed language gives the DNR commissioner the authority to issue an infinite number of new temporary water use authorizations for the same project.

  - While it is possible to make adjustments whenever a new permit for the same project is issued, under the temporary use permit statute, applying conditions to the permit is discretionary on the part of the commissioner. In addition, there is no public notice requirement where the public could identify issues the department may not know about. The temporary water use statute is so minimal because the use is meant to be temporary.

  - If DNR wants to authorize a more than temporary use, a use that goes past five or ten years, but is something less than a right to appropriate water, they should develop a permit that includes public notice and sufficient criteria to protect the public interest.

I urge the committee to ensure that any changes to existing statutes be done with due regard for the interests of all Alaskans.

Thank you.

Sincerely,

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