



**Alaska Department of
NATURAL
RESOURCES**

Briefing Paper
HB 77: Land Disposals/Exchanges; Water Rights
Division of Mining, Land and Water
March 10, 2014

Background:

In late 2010, the Department of Natural Resources (DNR) identified a backlog of more than 2,600 pending applications for DNR permits and authorizations. Recognizing that inefficiencies in the permitting system were harming businesses and individual Alaskans seeking to access state land and resources, DNR committed to drive down the backlog. In return, Governor Parnell and the Legislature supplied additional personnel and resources to DNR. All parties understood funding alone would not eliminate the backlog and DNR committed to an in-depth review of its permitting system.

Working with other state resource agencies, DNR in 2011 launched a permitting initiative to ensure its decisions are issued in a timely, predictable and efficient manner – without compromising environmental standards. DNR hosted eight forums around the state in 2011 to gather public input on the permitting initiative, and in 2012, through HB 361, secured a first set of statutory reforms improving DNR's process for land leasing and material sales. In 2013, DNR and legislators secured additional statutory reforms to support timelier decisions for oil and gas projects. Also during the 2013 legislative session, Governor Parnell introduced HB 77, which sought to increase the efficiency of DNR's land and water-use authorization processes.

Since 2011, DNR has cut its backlog of permits and authorizations by more than 50 percent. This has been accomplished through a variety of actions, including investing in our staff, new business process management tools and permit reform legislation.

Summary of HB 77:

HB 77 is an omnibus bill that seeks to improve DNR's timeliness and efficiency in issuing land and water use authorizations. The bill focuses on agency process and does not seek changes in environmental standards or laws protecting Alaska's fish and wildlife habitat. In 2013, some provisions of HB 77 drew opposition, and as a result, HB 77 remained in the Senate Rules Committee without proceeding to the Senate floor.

Following the 2013 legislative session, DNR staff and legislators met with the public to look for ways to alleviate their concerns about HB 77. As a result of this outreach, proposed amendments have been developed and introduced in the Senate Resources Committee. These include changes that: limit DNR's authority to issue a general permit; define the process for issuing a general permit to include public comment; allow individuals, tribes and others to be able to apply for water reservations but clarifies that the certificate will be issued to an appropriate state agency rather than a "person." DNR is pleased to support these amendments, *which are shown in italics* in the bill overview provided in the Appendix to this briefing paper.

Appendix – Provisions of HB 77

General permits

DNR may establish general permits for activities on state land unlikely to result in significant *or* irreparable harm to state land or resources *and that already can be authorized by a permit under AS 38.05 or AS 38.95.*

- General permits cannot be used for decisions on easements, oil and gas or mineral leasing, coal leases, material sales, or other disposals of state land, nor can a general permit be issued in State Forests, Game Refuges or State Parks, or for coal mining.
- DNR's creation of a general permit will require public notice and comment.

Land exchanges

DNR will generally adopt the process for municipal land exchanges (AS 29.65.090) for the purposes of land exchanges with private entities and the federal government.

- The process for land exchanges between DNR and private parties or federal agencies is so cumbersome that it effectively blocks transactions that are beneficial to the state.

Lease extensions and renewals

DNR may extend a land or tidelands lease on a one-time basis for a period of up to two years. DNR also may renew an aquatic farm lease on a one-time basis for a period of up to ten years. Best interest findings will be required to support these extensions and renewals.

- These provisions provide relief to businesses that have difficulty securing financing under DNR's existing lease terms.

Water use

A person is allowed to use small amounts of state water and not return it to the same hydrologic unit.

- A person who wants to use a "significant amount of water" – defined by regulation as more than 5,000 gallons of water in a single day – must secure a permit or water right (11 AAC 93.035)
- Without this amendment, a person who uses less than 5,000 gallons of water in a single day without returning it to the same hydrologic unit is technically in violation of AS 46.15.035.

A separate provision clarifies that DNR may issue one or more new temporary water use authorizations therefore allowing successive authorizations for the same project.

Water reservations

A person may apply for a reservation of water but the reservation must be issued to an appropriate state agency, not a person. All applications, including pending applications filed before the immediate effective date of Sections 35-45 of this Act, will be processed using the provisions of this Act.

- This amendment does not apply to applicants for traditional water rights, temporary water use authorizations or water removals.

An applicant under the Water Use Act (including applications for reservations, other water rights, and temporary water use authorizations) does not have a property right in the application. For proposed sales or

applications for appropriation or reservation of water, DNR will issue public notice regarding the proposal or application when sufficient information is available to adjudicate the decision. A minimum of five years of hydrologic data collection is required for a certificate of reservation of water to be issued. DNR will determine the order in which applications for reservation of water will be processed.

DNR may review a water reservation to determine if the statutory purpose of, and findings that support, the reservation still apply. It will no longer be required to do so every 10 years.

Appeals and public notices

Only a person who is substantially and adversely affected may appeal or request reconsideration of a decision. Furthermore, DNR may require a person to participate in the public comment process to be eligible to appeal or request reconsideration.

- The intent of these changes is to limit use of the appeals process to people who can demonstrate how a DNR decision poses some substantial and adverse effect on their interests.

DNR's creation of a general permit can be appealed but a general permit cannot be appealed based on subsequent activities conducted in compliance with the permit after the initial appeal period has run.

An applicant for a reservation of water may appeal DNR's decision on the application. DNR's subsequent decisions involving the certificate for reservation of water may only be appealed by the certificate holder or the original applicant.

All mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945.

- This ensures that the public is aware of DNR decisions involving the mineral estate on state lands. Currently, only mineral closing orders require public notice.

Alterations of platted boundaries in unorganized boroughs do not require public notice if no public easements or rights-of-way are affected.

- Existing law requires public notice if a person who owns two lots wishes to remove the boundary line or change the configuration of the two lots. This adds months to the subdivision process without impacting anyone other than the applicant.

“Public auction” is redefined to include public oral outcry auction and public on-line auctions.

- By using online auctions for state land sales, DNR is seeking to accelerate and simplify the process for bidding on state land sales, and to increase income to the Land Disposal Income Fund.

DNR has the authority and discretion to issue preliminary best interest findings for non-oil and gas-related decisions.

- Existing law does not explicitly provide for preliminary best interest findings for non-oil and gas-related decisions. This change supports and defends DNR's current practice of seeking public input on such decisions.

Miscellaneous

The performance of a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake is not an incompatible use of Wood-Tikchik State Park.