



March 20, 2013

The Honorable Cathy Geissel
Chair, Senate Resources Committee
State Capitol Room 427
Juneau AK 99801

Re: Senate Bill 59

Dear Sen. Geissel:

The Wilderness Society (TWS), a national conservation organization with membership in Alaska and an office in Anchorage, is writing to express its concerns with proposed legislation to change the process for oil and gas, and gas only exploration and development approvals (SB 59). Our primary concern is that an approval of exploration or development plans across a large geographic area for up to ten years would be unable to account for changes in the environment, the economy, and development during that time period. Additionally, we are concerned about the public's ability to provide input on operator-specific exploration or development plans, which can differ greatly. We urge you to oppose SB 59 or amend it to ensure that each phase of drilling (i.e., exploration or development) by each operator retains a public comment period.

Effect of the Bill

The proposed changes would end review of project-specific plans for both exploration and development. Rather, once in a decade, the Department of Natural Resources (DNR) would establish general conditions for exploration and development that operators must meet in a large region (as large as 7.6 million acres in the North Slope Foothills sale). This one-size-fits-all method of review would not account for unique project conditions or parcels of land. Nor would it account for changes that could take place over a decade, including changes in the economy, technological progress, and climate-related changes. Further, the bill lacks any standards under which DNR would make a decision to approve exploration or development on an areawide scale.

As the committee knows, the state develops a five-year program of proposed oil and gas or gas-only lease sales. A primary reason these sales are offered in five year intervals is that things change during that time period. For example, a company's interests in drilling in a particular

area could change, new development could occur, or climate change could affect coastlines and the amount of water in lakes and creeks. By allowing exploration and development plan approvals for periods as long as ten years, SB 59 ignores these types of important changes.

As stated in a 2011 areawide lease sale best interest finding describing the need for phased review, “In the case of oil and gas, [the Division of Oil and Gas] cannot determine with any specificity or definition at the lease sale phase if, when, where, how, or what kind of exploration, development or production might ultimately occur as the result of a lease sale. Although advances in technology, unpredictable market changes, and specific infrastructure requirements for possible production cannot be foreseen, new developments or improvements in any or all of these areas may occur.”¹ The same reasoning applies to SB 59—a review of all the exploration and development that could take place in the next decade would completely lack specificity and definition and fail to take into account potential changes.

Value of Public Input

The current exploration and development approval process allows affected communities and individuals to evaluate and comment on proposed exploration and development plans for each operator. This provides input on site-specific and cumulative impacts before each phase of operations begins. It also provides operator-specific input, which is important because operators differ in their proposed plans. This input can help evaluate issues such as the following:

- Will an operator have long or short-distance multi-phase pipelines? i Will DNR add additional requirements to ensure these pipelines do not have releases?
- Will an operator use multiple drilling pads or practice directional drilling from fewer pads?
- Where will an operator obtain gravel for pad construction?
- What are the effects of drilling noise near caribou calving and feeding habitat?

The input of the public and local communities on these issues can be critical in shaping DNR’s approvals.

Senate Bill 59 would reduce public involvement to a degree that would be counterproductive. It would be extremely difficult for local residents to identify and comment upon potential impacts to fisheries and subsistence resources at the beginning of a ten year period without site-specific, operator-specific details. DNR would lose a valuable source of information, including local and traditional knowledge related to subsistence resources and the environment—knowledge that is continually evolving as the climate warms.

¹ North Slope Foothills Areawide Final Best Interest Finding, pp. 2-3—2-4 (2011), *available at* http://dog.dnr.alaska.gov/Leasing/Documents/BIF/North_Slope_Foothills/North_Slope_Foothills_Final_BIF_20110526.pdf.

Need for Public Involvement

Natural resource development is important to Alaska's economy, and legislation to improve the oil and gas approval process should be considered seriously. At the same time, it is important to consider the overall public interest. These two important values—resource development and public interest—are intertwined in the Alaska Constitution. Article VIII, Section 1 states that “[i]t is the policy of the State to encourage the ... development of its resources by making them available for maximum use *consistent with the public interest*.” Section 2 further provides that “[t]he legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the *maximum benefit of its people*.” [Emphasis added.]

The Alaska Supreme Court recognized the importance of the public interest in *Kachemak Bay Conservation Soc. v. State, Dept. of Natural Resources*.² The court held that under AS 38.05.035(e)(1)(C), DNR was obliged to issue a best interests finding at each phase of development.³ In response to this case, the Alaska Legislature amended AS 38.05.035(e) to make clear, among other issues, that “public notice and the opportunity to comment shall be provided at each phase of the project.”⁴

To be consistent with the public interest, resource development needs to involve the public through public comment periods. Without plans of operation to review, local residents could only guess what the potential impacts to fisheries, wildlife, and other subsistence resources across millions of acres would be over the next ten years. Likewise, agency officials would be ill-suited to predict impacts without knowing what future operations may occur and how changes in technology or the environment could affect these operations. What's more, local residents would not even know when exploration or development would occur in their area, as they would no longer receive notice of these operations.

While the public could still comment on site-specific permits if SB 59 passed, such permits only address a particular part of a project and are more limited in scope than a comprehensive plan of operations. Also, the public's ability to weigh in on permits could be limited by SB 26/HB 77, which would authorize DNR to issue general permits for a broad range of activities on state lands,⁵ and allow temporary water use permits to be continually approved without public notice.⁶

² 6 P.3d 270, 276 (Alaska 2000) (citing Article VIII, Sections 1-2 of the Alaska Constitution and noting that “In Title 38, Chapter 5 of the Alaska Statutes, the legislature delegated to DNR much of its authority to ensure that such leasing of state land or interests in land is consistent with the public interest.”).

³ *Id.*

⁴ AK LEGIS 101, §1(f)(3) (2001).

⁵ HB 77 at §1.

⁶ *Id.* at §42.

Because SB 59 would not adequately protect the public interest and obstruct sound decision-making on natural resources, we ask you to vote against the bill or amend it with the language included above. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Whittington-Evans". The script is cursive and fluid, with the first name "Nicole" being more prominent and the last name "Whittington-Evans" following in a continuous line.

Nicole Whittington-Evans
Alaska Regional Director