

Dear Senate Finance Committee Members:

Under SB 59, the Department of Natural Resources may approve exploration or development for all or part of an areawide lease sale area before specific lease activities are identified. The Alaska Supreme Court issued a decision on March 29, 2013, that affects how DNR intends to implement the proposed legislation. In light of this decision, it is appropriate that SB 59 be tabled and legislation developed to deal with the Court's ruling.

In *Sullivan, SOA, DNR vs REDOIL, et al*, the Court stated that the Alaska constitution requires DNR to "continue to analyze and consider all factors material and relevant to what is in the public interest after the lease sale phase, including the cumulative impacts of the project, and to provide the public with timely and meaningful notice of its cumulative impacts assessment..."¹

The decision indicates that the requirement to assess cumulative impacts and provide meaningful notice applies when specific projects are identified and permit decisions are being made.² Yet DNR has testified that part of their plan for implementation of SB 59 is to cease providing public notice and comment for plans of operation for projects – a time when more information about an on-the-ground project is known – leaving limited and less comprehensive public notice opportunities when the agency is making project permitting decisions.

Given the Court's ruling, DNR cannot implement SB 59 as proposed. While the legislation establishes what could be considered an optional tool for exploration and development approvals, why pass a statute that cannot be used as intended?

In addition, Article 8, section 2 of the Alaska Constitution gives the legislature the responsibility to create procedures to meet the constitutional requirements regarding resource development. Whatever procedures are needed to meet the Court's ruling should be developed through appropriate legislation and not through DNR regulations.

¹ Page 24. The entire Court decision can be viewed at <http://courts.alaska.gov/ops/sp-6769.pdf>

² On page 23, the Court states:

We agree with DNR that it would be unreasonable to speculate about possible future effects of the project before more information about the project is known. But this does not mean that these effects, once known, are not to be considered. At the lease sale phase, DNR cannot assess and make a meaningful final determination whether the maximum benefit of the people of Alaska will be achieved throughout the course of the project because many of the potential impacts of the project are not known. Therefore, these potential impacts must be considered by DNR in the future, at each subsequent phase, as more information becomes known, and particularly as DNR decides whether to issue permits for future activities. [Emphasis added]

SB 59 – Public Testimony – Lisa Weissler
March 30, 2013

I am commenting on this legislation because I have seen the opportunity for public and local community involvement in state resource permitting decisions diminish over the years. SB 59 is a step toward closing one more door on Alaska's citizens, a door that the Alaska Supreme Court has ruled must remain open. In light of this decision, it is appropriate that SB 59 be tabled and appropriate legislation developed to deal with the Court's decision.

Thank you for your consideration.

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