



USIBELLI COAL MINE, INC.

P.O. Box 1000 ■ Healy, AK 99743
(907) 683-2226 ■ fax (907) 683-2253

January 26, 2018

Representative Louise Stutes
State Capitol #406
Juneau, Alaska 99801

Sent Via Email: Representative.Louise.Stutes@akleg.gov

RE: House Bill 199 Fish/Wildlife Protection; Permits (HB 199)

Dear Representative Stutes:

Thank you for taking time to meet with members of the Resource Development Council's board of directors in Juneau earlier this week. I appreciated your statement that you do not intend HB 199 to be the cause of stopping community and resource development projects in Alaska. I believe, however, that you heard from many involved in development activities that HB 199 would do just that.

Usibelli Coal Mine, Inc. (UCM) is the only operating coal mine in Alaska. UCM has mined coal in Healy, Alaska since 1943, and remains a family owned and operated company. The six coal-fired power plants in Interior Alaska rely on Usibelli Coal Mine for a stable supply of fuel. Nearly 30 percent of the Interior's energy needs are met by the coal fleet. With approximately 100 year-round employees, UCM is the largest, private, year-round employer in the Denali Borough.

In 2015, the Obama administration undertook a rulemaking process to redefine Waters of the United States (WOTUS) under the Clean Water Act (CWA). That rule, much like HB 199, attempted to create a solution to an unknown problem. Rather than provide clarity and guidance, WOTUS re-wrote the Clean Water Act (CWA). Similarly, HB 199 does not provide simple guidance on the protection of fish habitat - it completely rewrites Title 16 and creates a new and ambiguous regulatory scheme with unattainable standards.

Shortly after the WOTUS rule was finalized in 2015, a very diverse group of farmers, road and transportation builders, forest owners, home builders, manufacturers, cattlemen, public land councils, as well as oil and gas and mining organizations filed suit against WOTUS stating that it redefined the scope of federal jurisdiction as unlawful under the Clean Water Act, Administrative Procedure Act, and United States Constitution. The U.S. Court of Appeals for the Sixth Circuit issued a nationwide stay of the rule shortly after it had gone into effect. As of today, the EPA has proposed a two year delay of the WOTUS implementation while at the same time the agency undertakes a re-write of the 2015 WOTUS rule.

Earlier this week, the US Supreme Court upheld the decision that federal district courts, not courts of appeals, have the ability to initially review legal challenges to the 2015 WOTUS rule. The decision provides clarity with respect to the proper venue for WOTUS litigation. The Environmental Protection Agency and the Army Corps of Engineers have announced their intention to finalize their proposed rule adding a new applicability date to the 2015 rule which will effectively delay implementation of the rule nationwide by two years.

I believe your understanding of WOTUS as well as the implementation and litigation process is warranted as many of the components in HB 199 parallel the rejected WOTUS rule.

Alaska's permitting system already sets high standards for the protection of public health and the environment, including fish habitat. By definition, a permitting process is intended to *permit* an activity. The opposite of permitting an activity would be *denial* of an activity. Alaska does not have a *denial system* – it has a *permitting system*. However, HB 199 creates a denial system.

When the argument is made that “very few, if any, projects have been denied through the current permitting process,” I argue that the permitting process is designed to provide clear expectations and standards. Therefore, if a project cannot meet the expectations and standards included in existing law and regulation, then the project should not be permitted to advance. In practice in Alaska, many projects never get to the decision stage because the project proponents drop out along the way. This is due to market factors as well as the fact that Alaska's rigorous permitting standards weed out projects that will not ultimately pass muster.

In summary, Usibelli Coal Mine is concerned with many aspects of HB 199 including many of the similarities in WOTUS, such as jurisdictional reach, the expansion of regulatory oversight, and ambiguity over the definition of a water body, untenable agency discretion in interpretation, and increased uncertainty for community and resource development projects.

Sincerely,



Lorali M. Simon
Vice President, External Affairs

CC: Members of the House Special Committee on Fisheries
Representative Tarr
Representative Fansler
Representative Kreiss-Tomkins
Representative Eastman
Representative Neuman
Representative Chenault