

**HB 77 Opposition Documents Index Group #1**  
**Passed Out to Committee Members on 3/12/14**

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From: James Mackovjak

Sent: Wednesday, March 12, 2014 10:09 AM

To: Sen. Cathy Giessel

Subject: Please include the attached documents in the public record and distribute them to committee members.

Dear Senator Giessel,

The attached documents refer to the superficial and irresponsible process by which DNR granted a gold mining lease at Gustavus's gravel pit. If needed, I can provide additional documents.

James Mackovjak

P.O. Box 63

Gustavus, Alaska 99826



**City of Gustavus**  
P.O. Box 1  
Gustavus, AK 99826  
Phone: (907) 697-2451

September 20, 2013

H. William Cole  
Alaska Department of Natural Resources  
550 West 7<sup>th</sup> Ave., Suite 930  
Anchorage, AK 99501-3577

Re: your letter of September 4, 2013

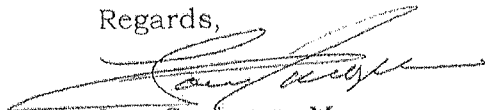
Dear Mr. Cole:

We take exception to your letter of September 4, 2013. In it, you stated that the "discovery" by Hammonds and Ward "likely qualifies under regulatory and legal parameters as a discovery." We have a big problem with the word "likely." In your attempt to grant Hammonds and Ward the right to mine on public property, you are transferring a public resource to private individuals. This is very serious business, and attempting to do so without absolute certainty that there is actually economic gold on the claim is doing a disservice to the City of Gustavus and damages the credibility of the Department of Natural Resources.

Based on the totally superficial "discovery" process witnessed by two members of the Gustavus City Council (their affidavits have been provided to DNR), it is obvious that, per Alaska statute, no ordinarily prudent person would expend further time, labor, and money upon the property with a reasonable expectation of developing a paying mine.

Again, "likely" discovery is not good enough. DNR needs to come to Gustavus and start anew with a responsible discovery process that complies with Alaska statute. We await your prompt reply.

Regards,



Lou Cacioppo, Mayor

Cc: Sen. Dennis Egan  
Rep. Beth Kerttula  
Paul Grant  
Steve Sorenson



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

## Department of Natural Resources

Division of Mining, Land & Water  
Mining Resources Section

550 West 7th Avenue, Suite 930  
Anchorage, Alaska 99501-3577  
Main: 907.269.8642  
TDD: 907.269.8411  
Fax: 907.269.8949

September 4, 2013

Mr. Lou Cacioppo, Mayor  
City of Gustavus  
P. O. Box 1  
Gustavus, Alaska 99826

**Re: Question of discovery on upland mining lease, ADL 716439**

Mayor Cacioppo;

This letter is in response to your inquiries concerning discovery on the Honey Hole #7 mining claim. The issue of discovery on the Honey Hole #7, subsequently mining lease ADL 716439, was investigated by Kerwin Krause, our previous Mineral Property Manager earlier this spring. In an email to Steve Sorensen dated April 3, 2013, Mr. Krause stated that after reviewing the lease application and relevant legal precedents he and David Wilfong, who witnessed the discovery process, both were of the opinion that "the processed alluvium that Mr. Hammond and Ms. Ward first sampled and declared as their 'discovery' in February last year likely qualifies under regulatory and legal parameters as a discovery." I share that opinion. The DNR, Mining Section does not believe that further analysis of the "discovery" issue will be productive.

At this time the DNR would prefer to focus on the task of writing an agreement for reparation of damages and/or bonding under AS 38.05.130 that is satisfactory to all parties. I encourage you to work with Mr. Hammond and Ms. Ward to come to an agreement on how gravel operators and the miners will accommodate each other's activities, the minimize any damages, and establish any bond that might be appropriate. Thank you for working with the DNR and the mining lessees on these issues.

Sincerely,

H. William (Bill) Cole  
Geologist, Mineral Property Manager  
(907) 269-8648



**City of Gustavus**  
P.O. Box 1  
Gustavus, AK 99826  
Phone: (907) 697-2451

July 17, 2013

Kerwin Krause  
Alaska Department of Natural Resources  
Division of Mining, Land & Water  
350 West 7<sup>th</sup> Ave., Suite 920  
Anchorage, Alaska 99501-3577

Dear Mr. Krause,

The City of Gustavus seeks further review by the Alaska Department of Natural Resources of the decision to issue an upland mining lease for the David Hammonds/Rhonda Ward Honey Hole #7 mining claim. The City believes that the procedure used for validating a "discovery" on the Hammonds/Ward claim did not prove the existence of valuable minerals of a concentration and extent that an ordinarily prudent person would invest in it.

Pursuant to 11 AAC 86.309, an application for a mining lease in Alaska requires a "showing of discovery." Alaska statute (11 AAC 86.105) provides the definition of *discovery*: "finding of valuable mineral as would justify an ordinarily prudent person in expending further time, labor, and money upon the property with a reasonable expectation of developing a paying mine."

The Gustavus foreland is a vast deposit of glacial outwash sand, gravel and silt. The Honey Hole #7 mining claim is located on the foreland, at the City of Gustavus's gravel pit. See attached statement of Greg Streveler, Chief Scientist, Icy Strait Environmental Services, on why the claim is "highly unlikely to host exploitable concentrations of gold."

The entire discovery process at the Honey Hole #7 claim took place on July 2, 2012. It was observed by David Wilfong, of the Alaska Department of Natural Resources, and two members of the Gustavus

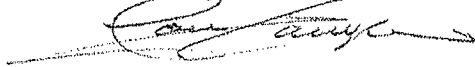
City Council (Karen Colligan-Taylor and James Mackovjak). In the entire process, only one small sample (five to ten gallons) of material was selected and processed (panned). The sample, selected by Mr. Hammonds, was comprised entirely of material that had fallen from the conveyor belt of a third-party (Fairweather Construction) screening operation.

Council member Mackovjak advised Mr. Wilfong of the obvious, that the sample wasn't random, and Mr. Wilfong agreed, stating that a random sample would require taking material from several locations on the claim and at varying depths, including on top of bedrock.

Mr. Hammonds panned the material taken from beneath the conveyor belt, and repeatedly insisted to Mr. Wilfong that there was color (gold) as well as garnets in the sample. Mr. Wilfong said he saw some low-grade garnet, but not much else. The panned material was not preserved.

Based on Alaska statute and the information provided above, what further administrative review process is available to challenge Division of Mining, Land & Water's assertion that discovery has been proven, that there exists on the claim valuable minerals of a concentration and extent that an ordinarily prudent person would invest in it?

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Lou Cacioppo", with a long horizontal flourish extending to the left.

Lou Cacioppo, Mayor

cc: Senator Dennis Egan  
Representative Beth Kertulla  
Commissioner Daniel Sullivan

**Denis Ransy Comments on Version H of HB 77**

***This bill still represents government overreach and bureaucratic tampering of citizen rights.***

I oppose H.B. 77. The amended version is not an improvement. It would pretty much remove Alaskans' rights to preserve adequate water for fish habitat. This administration obediently accommodates nearly every industrial interest that comes along. Well, what about sport and commercial fishing? They are or were large interests. But they depend on every feeder creek and tributary in Alaska that rears fish. Without these creeks, fishing dies, along with thousands of Alaskans' fish for the table, and this bill would endanger that much-needed food source.

H.B. 77 puts way too much power in the DNR Commissioner's hands. He would truly become the "Resource Czar", with unchallenged power to give away our resources to any industry he chooses.

All Alaskans own our waterways, not corporations. Large development projects have almost always had negative consequences: polluted waters, dried up creeks, large areas off-limits to citizens. Here are two examples of recent DNR mismanagement of our waters.

The Susitna Dam will completely change the River water flow. It will withhold millions of gallons of water from migrating salmon throughout the summer season. I see DNR doing nothing to reserve adequate water for the fishery.

A company wants to mine directly beneath the bed of the Chitna River near Cook Inlet. Groups attempting to keep the River and its salmon runs alive tried to get an instream flow reservation for years, but DNR never granted it. But the coal company got a temporary water use permit very quickly. This is not rational permitting. This is just favoring huge industry over fish and concerned citizens.

Version H does include public notice and public comment for General Permits. But there are no boundaries on nor definitions of when a general permit is necessary.

The claim of "streamlining" permitting is frankly is just an excuse and not backed by hard evidence. H.B. 77 is the removal of meaningful participation in the permitting process.

I am a 38 year Alaskan resident. I spent 15 seasons in commercial fishing and tendering. I fish every year for personal use.

Sincerely,  
Denis Ransy

From: Jonathon Wooden

Sent: Wednesday, March 12, 2014 12:13 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday.

Jonathon Wooden

PO Box 244113

Anchorage, AK 99524



From: Gene Cornelius

Sent: Wednesday, March 12, 2014 12:49 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday.

This is just wrong - government skulking behind closed doors to hide from whom? The people? YOU  
WORK FOR US!

Knock it off, get your hands out of each others' pockets, and do some real work.

Gene Cornelius  
60990 Clarice Wy  
Homer, AK 99603

From: Gail Heineman

Sent: Wednesday, March 12, 2014 11:40 AM

To: Sen. Cathy Giessel

Subject: HB 77 - oppose

Senator Giessel,

I oppose HB 77. Please vote it down. The bill gives the Commissioner of DNR too much power, and would enable outside corporations to claim water rights ahead of Alaskans which is contrary to our Constitution. Please include this email in the records for this bill.

I am an Alaska resident, and have been since 1981.

Thank you.

Gail Heineman

2732 W 67th Ave

Anchorage, AK 99502

From: Eric Lantzman

Sent: Wednesday, March 12, 2014 12:04 PM

To: Sen. Anna Fairclough

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday.

Eric Lantzman

4501 Diplomacy Dr

Anchorage, AK 99508

From: Eric Booton

Sent: Wednesday, March 12, 2014 11:16 AM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Natural Resource committee members

Dear Senator Giessel and Natural Resource Committee,

As a young adult that has made my life in Alaska, as an avid angler, and as part of the future of this great state, I strongly oppose House Bill 77 in it's current form as well as the amendments that were presented Monday March 10, 2014.

House Bill 77 is clearly an effort by the Alaska Department of Natural Resources, supported by many of our Law Makers, to "streamline" the permitting process by effectively streamlining Alaskan voices from the process.

Alaskans currently have the right to file for in-stream flow reservations to protect the bodies of water that they rely on for food, travel, and their livelihood. HB77 is a clear attempt to first remove this right to protect the water and fish resources we rely on completely, and now with the amendments, make that process completely irrelevant by allowing the DNR to either never make a decision or prioritize the applications.

A current example of the importance of in-stream flow reservations to everyday Alaskans and our most valued natural resource, salmon, that I find relevant is the in-stream flow reservation filed by the Chuitna Citizens Coalition to protect the salmon stream that they rely on for subsistence from being destroyed by PacRim Coal. If HB77 passes with its current amendments, then the DNR will be given the green light to continue to kick the can down the road on addressing the Chuitna Citizens Coalitions in-stream flow reservation and will prioritize the water use permits that were submitted by PacRim Coal long after the Chuitna Citizen's Coalition had filed their in-stream flow reservation; this will effectively be trading the Chuitna river, home to all 5 Pacific Salmon Species, for low grade coal to be burned in foreign markets, and the sole profiteer will be an outside mining corporation.

If a development project cannot co-exist with the percentage of water that has been reserved by Alaskan citizens via an in-stream flow reservation for subsistence, transportation, or their livelihood, then there is no-way that that project can truly be "responsible development".

It is obvious that HB77 is too flawed to fix and it undermines the democratic process that this nation and state were founded on. For the reasons above I strongly oppose this bill.

Thank you for the opportunity to provide comment,

Eric Booton

3209 Wyoming Drive

Anchorage, AK 99517

From: Elizabeth Tachick

Sent: Wednesday, March 12, 2014 12:11 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday.

Elizabeth Tachick

PO Box 751186

Fairbanks, AK 99775

From: Elaine Hussen

Sent: Wednesday, March 12, 2014 1:00 PM

To: Sen. Cathy Giessel

Subject: Please send this to mebers of the Senate Resource Committee and make part of the public record.

Dear Senate Resource Committee members,

After reviewing the changes to HB 77 released Monday, I am still very concerned with the level of authority this bill gives to the DNR. It brings us to paternalistic "we know what's best for Alaska" thinking. This is America, not Russia. I'd expect this kind of action out of the Kremlin, not Juneau. No person or agency should have such limitless centralized authority over important and potentially contentious issues and resources. Decisions should be made with spirited public debate, in the light of day, with all parties coming to agreement for the greater good.

Of equal concern is the way decision, once made, are held to a ridiculous standard of "significantly and adversely affected" in order to reverse a decision. Sometimes the greater good is served by things being left alone. Would it significantly affect me if birds all died because of air pollution. No, I'd be sad and my interests would not be served. Not every interest or impact can be defined or defended using that model of redress.

I STRONGLY OPPOSE HB 77, again. Please defend the principals of participatory government, transparency in leadership and fair dealing. No changing the rules to suit the desired outcome. Please vote against this bill.

Elaine Hussen  
3747 Linnaea Wy  
Fairbanks, AK 99709

From: Carson Chavana  
Sent: Wednesday, March 12, 2014 12:55 PM  
To: Sen. Cathy Giessel  
Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday.

I have been following this bill for almost a year now. After hearing that hundreds of people gave testimony on HB77 at public forums last year and beginning of this year (with only 1 person in favor of the bill), it is incredibly to me that some Senators will still vote against their constituency. This bill and the process in which our state is letting Alaskans give feedback on it has undoubtedly shown that some of our government officials are less interested in hearing what citizens have to say and more interested in "streamlining" or "making efficient" mining or extraction processes.

So often our state government forgets they answer to us.

I so thank those Senators who've listened to their constituents and plan to vote the way that is true to Alaskan values. Protecting our way of life should always come before prioritizing the profits of outside companies.

It is undeniable that there is corruption in politics. An elected official wouldn't say otherwise unless corrupt himself/herself. But it is a phenomena that is easily changed by those in power. Vote with the people and you'll forever be supported.

Carson Chavana  
1055 W 27th Ave 514  
Anchorage, AK 99503



From: Constance Hoskins

Sent: Wednesday, March 12, 2014 12:39 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

Monday's additions do not change my opposition to HB77.

- Reducing the appeal process is wrong. Every citizen should be able to appeal DNR decisions interdependent of whether DNR thinks someone has been impacted. That undermines the purpose of an appeal. Citizens should always have a right to appeal actions of the government independent of what the government thinks it is justified or not. everyone deserves a hearing of their grievances. That is a constitutional right.

- This looks like a power grab by the DNR which is not warranted or needed. DNR seems to have forgotten that it serves as the pleasure of Alaskans not a particular administration or party.

- Why the secrecy? What is there to hide? Afraid what citizens would think? If it is such a good idea why was the process hidden?

- All permitting processes should be totally visible and transparent to citizens with proper notification and their participation in the process solicited and considered.

Constance Hoskins

1008 W 16th Ave

Anchorage, AK 99501

From: b kraft  
Sent: Wednesday, March 12, 2014 11:54 AM  
To: Sen. Cathy Giessel  
Cc: Sen. Fred Dyson; Sen. Peter Micciche; Sen. Click Bishop; Sen. Lesil McGuire; Sen. Anna Fairclough;  
Sen. Hollis French  
Subject: HB77

Senator Giessel,

I sent a list of questions, most asking for a legal opinion with regards to HB77. I have not received a response to any of the questions from any of the members of the Senate resource committee. This may underscore the fact that you are all very busy and that HB77 is a large wide sweeping bill with many drastic changes. Although these changes do not typically grab headlines or make for good talk radio, the changes genuinely seem to remove a person's ability to question a decision by the DNR and its commissioner as well as making it much more difficult for an Alaskan business owner to challenge a DNR decision. This is not "Streamlining" the permitting system. It is eliminating public participation and public notice.

Additionally, the language that the DNR must consult with ADF&G with regards to water rights, inflow stream reservations and other issues is misleading. After consulting with ADF&G (but not mandated to listen to what ADF&G says) DNR can make whatever decision it sees fit as long as the activity will not "likely" cause "significant and irreparable" harm to the habitat. How do you prove that something is irreparable before the activity is completed? It is impossible. Every permit application will claim that it will repair whatever it damages but the reality is that there is no guarantee that this will happen.

I can understand the desire to "streamline" a onerous system with regards to getting permits to conduct activity on state land. However, this HB77 does not accomplish that, it simply takes Alaskans out of the process and puts a tremendous amount of power and trust into the Commissioners sole discretion. I would hope that our elected officials will consider the adverse affects of this bill and not pass it.

Thank you,

Brian Kraft-Owner  
Alaska Sportsman's Lodge—Kvichak River  
Alaska Sportsman's Bear Trail Lodge—NakNek River  
Bristol Bay Lodge—Wood Tikchik State park area  
Kodiak Sportsman's Lodge—Kodiak Island  
[www.fishasl.com](http://www.fishasl.com)

THOMAS E. MEACHAM  
ATTORNEY AT LAW

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tmeacham@gci.net

March 14, 2014

**Testimony before Alaska Senate Resources Committee  
on  
2d Senate CS for CS for House Bill No. Bill 77**

Madam Chair and Members of the Committee:

My name is Tom Meacham. I am an attorney living in Anchorage, beginning in 1967-68, and continuously since 1971. I have practiced law in Anchorage for 43 years. During all of that time my law practice has concentrated almost exclusively on Alaska natural resources law: mining, oil and gas, water, federal and state public lands, ANCSA and ANILCA issues, and easements and rights-of-way.

I request that a written copy of this testimony be filed with the public comments on this Bill.

I was an appointed member of the Alaska Water Use Board (AS 46.15.190 - .220) from 1982 through 1990. Sadly, that Board exists in theory only, and no longer meets. The instream-flow reservation (IFR) provisions of existing Alaska law (AS 46.15.145) were enacted in 1980 and amended in 1986, and the Water Board assisted in that process.

I am confining my remarks today solely to the amendments proposed to the IFR statute by the HB 77 of 2013, and the proposed changes to those IFR amendments contained in the 2d Senate CS announced on March 12. I am gratified that the Dept. of Natural Resources (DNR) and the Governor have listened to the hundreds of Alaskans who have spoken out on this issue, and other issues, presented by the HB 77 of last year.

Nevertheless, I believe that the new proposed amendments would still turn the IFR program on its head – just perhaps not as drastically as before.

The concept of the IFR provision (AS 46.25.145) in 1980 was that an agency or a person could file for an IFR certificate to protect **certain specified public uses**, that a **priority date would be established** under Art. 8, Sec. 13 of the Alaska Constitution **as of the date of filing**, and that the IFR application would be processed to a conclusion (either denial, or issuance of a certificate) in much the same way that DNR processes an application for a water appropriation certificate.

Testimony of:  
Tom Meacham  
March 12, 2014  
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SCS CSHB 77 (2013) would have eliminated most of the intended and existing procedural parallels between IFRs and appropriative water rights, and would have extinguished many existing applications filed by non-governmental entities.

Sec. 42 of HB 77 of 2013 would also have extinguished the existing right of any non-public individual or entity to even file for an IFR. Thankfully, Sec. 42 of the 2d Senate CS will recognize that non-governmental “persons” will be able to apply for an IFR.

**However, I have several specific suggestions for amendments to the 2d Senate CS that I strongly urge the Committee to adopt, to clarify the law and to preserve the concept and intent of the IFR statute. These are:**

**1. Sec 42, p. 23, lines 15-17:** The IFR certificate applied for by a “person” (as “person” is newly defined in Sec 45) is to be issued to the “appropriate state agency”. However, the definition of “person” is now so broad in Sec. 45 that it covers public corporations, state agencies, political subdivision, and the United States. **It makes no sense that public entities’ IFR certificates should be held by another public agency, the “appropriate state agency.”** As I will show later, the definition of “person” is too broad.

As a compromise position, I believe that non-public entities and individuals should agree that an issued IFR certificate should be held by “the appropriate state agency.” **However, the IFR applicant should clearly have standing to defend the IFR in appropriate proceedings, if the IFR is later proposed to be altered or eliminated. To this extent, a non-governmental IFR applicant *must* be recognized as having a right, or interest, or legal standing in the continuation of the issued IFR certificate it had originally applied for, and had funded.**

The denial of any property interest in an IFR application, and in an issued certificate, appear to conflict with the Water Use Section of the Alaska Constitution Art. 8, Sec. 13). This Section recognizes that priority of application “shall give prior right.” **This amendment would purport to make an IFR application, when issued as an IFR certificate, as not a being a property “right” of any type. At the least, the amendment should clearly recognize the right of a person applying for the IFR legal standing to defend the wisdom of that reservation.**

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Tom Meacham  
March 12, 2014  
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**2. Sec. 42, p. 23, line 16:** An “approved certificate of reservation” has no legal meaning. It is either a pending “IFR application,” or a DNR-issued “certificate of reservation.” By its terms, an issued “certificate” has been “approved;” there is no such animal as a certificate that has not been “approved.”

**3. Sec. 42, p 23, line 18-20:** The case of *Chuitna Citizens Coalition and Cook Inletkeeper vs. Alaska Dept. of Natural Resources*, No. 3AN-11-12094CI (Superior Ct., Anchorage) has held that DNR’s long inaction on pending IFR applications has resulted in the denial of Constitutional due process to the applicant. Any grant of discretion to the Commissioner to “determine when and in what order” IFR applications are to be processed, **must be made “consistent with Constitutional due process considerations.”** I urge that this amendment be added.

**4. Sec. 42, line 23:** The appeal procedure cited as AS 46.15.133(e) does not, by its terms, apply to the appeal of IFR reservation applications. It applies only to an appeal of a Commissioner’s decision to “grant, deny or condition a proposed sale or an application for appropriation or removal in accordance with (c) of this section” [AS 46.15.133]. **It does not cover appeals from IFR decisions.** I recommend that the word “reservation” be added to AS 46.15.133(e), as follows: “a proposed sale or an application for an appropriation, **reservation** or removal...” Other subsections of AS 46.15.133 should be similarly amended to insure that the entire process established in this “Notices and objections” section also clearly covers the adjudication of IFR reservation appeals.

**5. Sec 42, p. 23, line 26:** The prohibition against the transfer or assignment of a right to appeal the subsequent administration by the commissioner of an issued IFR certificate appears to have no rational purpose. It could leave no one with standing to question a subsequent decision by the commissioner to reduce or eliminate an IFR certificate. (Perhaps that is DNR’s hidden purpose).

For example, if a city obtained an issued IFR, and it later merged with and became a unified borough, the borough would have no right to support the original IFR certificate if the commissioner later decided to reduce or eliminate it. All entities, both public and private, undergo legal changes during their existence. I do not object to a prohibition against assignment of the right to appeal an issued IFR certificate to an unrelated entity, but **the right to have standing to appeal and support an IFR certificate should lawfully pass to the “successor in interest” of an IFR applicant.** I urge that this change be made.

Testimony of:  
Tom Meacham  
March 12, 2014  
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6. **Sec. 42, p. 23, lines 27-29:** The requirement for “not less than five years of data” is onerous, and is far in excess of any data requirement imposed on an applicant for an appropriation of water under the Water Use Act. Further, it may pose a significant burden when submitting data for IFR reservations on lakes.

7. **Sec. 42, p. 23, line 29:** The phrase “nonproprietary public domain hydrologic data” is nonsensical. If it were “proprietary,” it could not be publicly disclosed or submitted in any event.

8. **Sec. 43, p. 23, line 31, p. 24, lines 1-6:** This section would permit the Commissioner to permit the temporary uses of “a significant amount of water” for five-year periods, one after the other. **This would be a complete evasion of the water-rights process specified in Art. 8, Sec. 13 of the Alaska Constitution.** The Commissioner would be granted this authority in all instances in which “the water applied for has not been appropriated.” This amendment should be changed to specify that a temporary water use authorization may be issued **only when the water applied for “has not been appropriated, or is not the subject of a pending application for appropriation or reservation.”**

Without this amendment, the Commissioner could “establish priorities” by delaying indefinitely DNR’s adjudication of a pending appropriation application or an IFR application (under authority he seeks elsewhere in HB 77), while continuing to issue serial temporary water use permits for “significant quantity of water” from the same water source. **This would be a complete perversion and evasion of the “first in time, first in right” requirement of Art. 8, Sec. 13 of the Alaska Constitution.** It should not be allowed to occur.

In addition, because under this amendment temporary water uses could involve “significant quantities of water,” the issuance of temporary use permits should be required to undergo the public notice and comment procedures that are routinely required of DNR for other disposals of state lands and resources.

9. **Sec. 44, p. 24, lines 7-9:** An applicant for an IFR reservation should be recognized as having a “property right” in the IFR application and certificate **to the extent that this person has legal standing to seek issuance of the certificate, to assert its priority, and to defend it** if the Commissioner later takes steps to reduce or extinguish it.

*Testimony of:*  
Tom Meacham  
March 12, 2014  
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**This denial of any “property right” in an IFR application would also include all state-agency IFR applicants.** Would there remain no entity -- public or private -- with legal standing to seek issuance of an IFR certificate, to assert its priority, and to defend it? Without the statutory recognition of this minimal legal standing, all IFR certificates become meaningless. **The denial to all IFR applicants of any “property right” in the application or certificate is simply the denial of the “first in time, first in right” requirement for water management under Art. 8, Sec. 13 of the Alaska Constitution.**

**10. Sec. 45, p. 24, lines 10-13:** This definition of “person” is sloppy drafting. The existing AS 46.25.145(a) already permits “an agency or political subdivision of the state, [and] an agency of the United States” to file an IFR application. **There is no need to also define these entities as “persons,” as the amendment would do.** This would only add confusion to the definition of “person.”

The remaining non-public entities in the proposed definition of “person” (“individual, partnership, association, federally recognized tribe, public or private corporation”) are appropriate, and should be included in this definition.

Thank you for this opportunity to present this testimony regarding 2d SCS CSHB 77.

/s/ Thomas E. Meacham  
9500 Prospect Drive  
Anchorage, Alaska 99507

tmeacham@gci.net

From: John Schandelmeier

Sent: Wednesday, March 12, 2014 11:26 AM

To: Sen. Cathy Giessel

Subject: HB 77

The Paxson Fish and Game Advisory Committee opposes this bill. Our committee feels that there may be unforeseen consequences should this bill pass. It adds one more layer of government to water access. Individuals and entities such as our committee would have to go through another government agency in the advent of a conflict over water useage. Our Advisory committee is very involved in habitat and access issues as we feel these items are at the crux of fish and game management in our state.

Thank you, John Schandelmeier, chair Paxson F&G Advisory



From: Mark Hieronymus

Sent: Wednesday, March 12, 2014 12:53 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday. I believe that omitting water reservations and eliminating public input on the permitting process is a breach of trust between the citizenry and government.

Mark Hieronymus

Juneau, AK 99801

From: Mark Dickson

Sent: Wednesday, March 12, 2014 12:29 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday. Stop and think about our permanent renewable resources.

Mark Dickson

58987 Deitz Ln

Homer, AK 99603

From: Maddy Rafferty

Sent: Wednesday, March 12, 2014 11:11 AM

To: Sen. Cathy Giessel

Subject: Please Include This in Public Record and Distribute to Natural Resource Committee Members

Please Include This in Public Record and Distribute to Natural Resource Committee Members

Testimony for House Bill 77 hearing:

My name is Madeline Rafferty, my residential address is 5340 Anderson Road, Fairbanks Alaska, 99709. I am testifying here today because I'm a student here in Juneau at University of Alaska Southeast.

I spent my summer talking with Alaskans about HB 77. I can tell you first hand, that when most people understood what the bill was, they were not in favor of it.

The addition of amendments to House Bill 77 is a completely inadequate response to the flood of opposition it has received. No amendment can fix the core of this bill; Alaskans are being denied the basic right to participate in the public permitting process.

We Alaskans are being given ONE public comment opportunity for amendments that have been 10 months in the making. I can't help but notice how painfully reflective this is of the silence HB77 is trying to achieve.

Are these amendments really the best alternative? No, the best alternative is to vote down this bill. I'm asking House members to adhere to the rights of their community members and say "No" to HB77.

Thank you.

Madeline Rafferty

March 12, 2014

Testimony of Lance Trasky

3941 Truro Drive

Anchorage, Alaska 99507

Subject: Testimony on HB 77 to be included in public record

The Senates changes to HB77 are cosmetic and do nothing to fix the fundamental problems with this bill which effectively eliminates public review and appeals of ADNR actions by allowing ADNR to write general permits for any type of activity no matter how controversial or destructive. ADNR's assurance that ADF&G fish habitat permits would not be affected is cynical because everyone knows ADF&G permits are written by Parnell appointees, have no public notice and only allow applicants to appeal. HB77 excludes the public which depends on state lands for many purposes by limiting appeals of ADNR disposals of state lands and resources to permit holders and persons with a financial or property interest in the disposal. HB77 allows ADNR to give away state lands without any assurances that there would be any benefit to the citizens of Alaska. HB77 takes away the public's right to apply for and hold water rights to maintain adequate in stream flows for fish and wildlife production. Allowing ADNR to hold in stream flow reservations is a travesty, since ADNR could give them away to the next out of stream applicant.

The changes to HB77 actually made it worse and deceive the general public by claiming the original problems have been fixed. It needs to be rewritten. If the legislature is going to depend on ADF&G fish habitat and refuge, critical habitat, and sanctuary permits to protect the public interest in state lands then you need to require that these permits provide public notice and appeals. The Senate should also follow the Alaskan Constitutional lead and enact a separate statute which would establish a baseline in stream flow reservation for fish, wildlife, water quality, recreation and transportation. Out of stream users could appropriate water above what is necessary to support those uses.

Thank you for the opportunity to comment.

From: Kyle Jefferies

Sent: Wednesday, March 12, 2014 12:19 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday.

Kyle Jefferies

1200 W Dimond Blvd Spc 523

Anchorage, AK 99515

From: Krista Justice  
Sent: Wednesday, March 12, 2014 12:50 PM  
To: Sen. Cathy Giessel  
Subject: HB 77

I continue to oppose HB77, even with the changes presented on Monday.

It's time to start listening to what citizens have to say. This bill will be detrimental to our democracy.

Krista Justice  
33085 Gas Well Rd  
Soldotna, AK 99669

From: Kelsi Swenson

Sent: Wednesday, March 12, 2014 1:03 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday. This bill takes away the rights of all Alaskans, who deserve to keep their water rights, health and safety, and subsistence lifestyle. It makes me sick to live under an administration that caters to non renewable resources instead of the longevity and health of its citizens.

Kelsi Swenson

Anchorage, AK 99508

From: Kevin Barksdale

Sent: Wednesday, March 12, 2014 12:57 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

Thank you for the opportunity to testify in opposition to HB 77. My name is Kevin Barksdale life long Alaskan. I am a third generation commercial fisherman, land owner, and sportsman of this exact area being discussed for these water rights.

The State of ALASKA is showing neglect to its people who it serves in regards to water rights in particular to the Middle Creek and Chuit River.

We as Alaskans still get to enjoy the natural beauty of this state by seeing or eating the tasty resources this state reproduces year after year. Direct mining threw a active salmon stream would not allow this. This is why I am against this bill for allowing this avenue to open for the first time in state Alaska to open mining in a active salmon stream.

Its wrong

Thanks for your time on this important matter in state history

Kevin Barksdale

4161 Birch view

wasilla, AK 99654



From: Kathleen Shoop [mailto:kathleenshoop@yahoo.com]

Sent: Wednesday, March 12, 2014 12:08 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday.

Kathleen Shoop

Kathleen Shoop

20052 Birch Hill Dr

Palmer, AK 99645

From: Katherine McLaughlin

Sent: Wednesday, March 12, 2014 12:32 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

After re-reading HB77 in its entirety as it was re-submitted, I fail to see that the major issues that Alaskans had on the original wording of this bill have been addressed. In some cases, the changes have made the problems even worse. IF this bill is necessary, then it should have been discussed and written with the assistance of the stakeholders and citizen's whose concerns need to be heard and met, not in secret meetings held by the Parnell Administration alone.

HB77 fails to provide for Alaskan's right to fair and adequate decision making, resource allocation and the Constitutional mandate to preserve and protect our natural resources for the benefit of its citizen's in perpetuity.

HB77 weakens existing regulations, places undo permitting and decision making authority with DNR, and further restricts citizens rights to comment and apply on water use and allocation.

HB77 should be stopped in its tracks. I am asking you to please ensure that it is.

Kate McLaughlin, President & Executive Director Prince William Soundkeeper

Katherine McLaughlin

PO Box 1368

Cordova, AK 99574

From: Martha Holden

Sent: Wednesday, March 12, 2014 12:45 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday.

My husband and I vote as often as there is an election in our precinct, and I am an Election Worker for all elections.

Our biggest concern over HB 77 is the overview that looks like our ELECTED officials, who we put into office to serve and PROTECT our interests, are being purchased by the interests of either BIG OIL or BIG MINING. Nowhere does it say that you are in office to serve YOUR interests. We will be going over the contribution lists of each of you before next voting, and if there is ANY hint of being purchased by anyone but your constituents, we will put on a campaign to ruin any chance(s) you might have to seek further office.

We don't care what pants pockets you have your hands in. but even a hint will bring on our wrath. Removing or lessening our input into ANY bill before you, or presenting ANY bill that changes or removes our interests will NOT be tolerated. We working class people have had it with your activities behind closed doors, contrary to our interests, or against the Constitution we all voted on before Statehood.

BEWARE, your voting public is on notice.....

Martha Holden

5001 E Brumage Dr Apt 2

Wasilla, AK 99654

From: Michele Cornelius

Sent: Wednesday, March 12, 2014 12:23 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday. The process to amend the bill should have been done with the participation of those who will be affected by the bill. DNR is given too much power to determine what will cause harm and it could be difficult to appeal a bad decision even if there is good cause. Alaskans need to be able to protect our streams and keep the water flowing for healthy fish runs, and HB77 is moving in the wrong direction.

Michele Connelius

Michele Cornelius

PO Box 739

Homer, AK 99603

**T. Henry Wilson  
4830 Sportsman Drive  
Anchorage, AK 99502**

March 12, 2012

Senator Lesil McGuire  
Senate Resources Committee

Via email

Re: Opposition to HB 77, 2d SCS CSHB 77 (RES), Sections 29 and 47  
Chikuminuk Lake hydroelectric dam

Dear Senator McGuire and Committee members:

I am writing in opposition to the latest version of HB 77, which I believe to be a work draft captioned 2d Senate CS for CS for House Bill No. 77 (RES). I am a resident of Anchorage, and have lived in Alaska for approximately 29 years. I am opposed to the bill for a number of reasons, but these comments focus on Sections 29 and 47, relating to the construction of a hydroelectric dam at Chikuminuk Lake.

Section 29 of the bill would add a new subsection (e) to AS 41.21.167, to provide that a feasibility study for a hydroelectric power dam at Chikuminuk Lake is not an incompatible use of the Wood-Tikchik State Park. Section 47 provides that the DNR Division of Parks may not enforce or implement provisions in the Wood-Tikchik State Park Management Plan, and regulations applicable to the Wood-Tikchik State Park that are inconsistent with AS 41.21.167(e).

The Chikuminuk dam project has been studied enough. It is not feasible from an economic standpoint, without getting into debates about the value of the wilderness, or conservation versus development. Further studies are not necessary or appropriate.

For background, when the Wood-Tikchik State Park was created, several potential hydroelectric projects were under consideration. Two of them, at Grant Lake and at Elwa Lake, were designated for further study,<sup>1</sup> while Chikuminuk was not. The area around Chikuminuk Lake was designated as wilderness in the Wood-Tikchik State Park Management Plan, after an extensive public process.<sup>2</sup> Sections 29 and 47 would amount

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<sup>1</sup> The Nushagak Electric & Telephone Cooperative recently announced that it was halting work on the Grant and Elwa Lake hydro projects because they are not cost effective. <http://kdllg.org/post/nushagak-cooperative-halting-work-proposeed-hyrdo-projects-nearby-state-park>

<sup>2</sup> <http://dnr.alaska.gov/parks/plans/woodt/woodtpln.htm>

to an end run around that public process, and would nullify the Plan and Park regulations to benefit one special group.

Sections 29 and 47 of the bill are supposedly needed to allow the Nuvista Light and Electric Cooperative (“Nuvista”) to conduct feasibility studies in order to determine whether a dam at Chikuminuk Lake is a good idea or not. This begs the question of what feasibility studies have already been done, and what is known about the Chikuminuk dam project.

It turns out that a lot of studies have been done. According to Nuvista’s website, there have been eleven studies between 1978 and 1982 examining hydroelectric power in the Bethel area, all of which found that the Chikuminuk project is not economically viable.<sup>3</sup> Yet another feasibility study was completed in 2011. It is entitled *Kisaralik and Chikuminuk Lake Reconnaissance and Preliminary Hydropower Feasibility Study* (MWH, 2011). The Colorado-based engineering firm MWH conducted this study for the Association of Village Council Presidents Regional Housing Authority. The cost of \$222,952 was paid with a grant from the Alaska Renewable Energy Fund.<sup>4</sup> The 2011 feasibility study covers both the proposed hydroelectric project at Chikuminuk Lake, and three other potential hydroelectric projects in the Kisaralik River drainage (Kisaralik Upper Falls, Lower Falls and Golden Gate Falls). There is a link to the final MWH report on Nuvista’s website.<sup>5</sup>

The 2011 study did not find the Chikuminuk project to be feasible, and Nuvista does not claim that it is feasible. Instead, Nuvista claims that the 2011 study found that current oil prices increased the likelihood of a Chikuminuk Lake project being feasible.<sup>6</sup> That might be one way to spin it, but that is not what I see as important points to take away from the 2011 study.

The 2011 study includes an opinion of the probable construction costs. The Chikuminuk Lake project was the most expensive of the four projects studied, with a total project cost of \$507 million.<sup>7</sup> The 2011 feasibility study also includes an economic

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<sup>3</sup> <http://nuvistacoop.org/initiatives/chikuminuk-lake-hydroelectric-project/history/>

<sup>4</sup> See Appendix to Alaska Renewable Energy Fund Status Report (Alaska Energy Authority, 2013) at 100: [http://www.akenergyauthority.org/re-fund-6/4 Program Update/FinalREFStatusAppendix2013.pdf](http://www.akenergyauthority.org/re-fund-6/4%20Program%20Update/FinalREFStatusAppendix2013.pdf)

<sup>5</sup> <http://nuvistacoop.org/wp-content/uploads/2014/02/Final-Kisaralik-and-Chikuminuk-Hydro-Study-Report-20110322.pdf>

<sup>6</sup> <http://nuvistacoop.org/initiatives/chikuminuk-lake-hydroelectric-project/history/>

<sup>7</sup> Final Report at 12-4 (MWH, 2011).

valuation, in which the net present value (NPV), or the cost in today's dollars, of the four dam projects was compared to a diesel fuel alternative over a 50-year period. The diesel only alternative had the lowest NPV, meaning that it is the preferred choice from an economic standpoint. The report states: *"In all three demand scenarios, the diesel only future has the lowest NPV and from an economic viewpoint, would be the preferred lowest cost choice."*<sup>8</sup>

The difference in cost between the diesel alternative and the Chikuminuk project is significant. The 2011 feasibility study includes the following table in the Executive Summary, which that shows a 50-year NPV of \$909 million for the diesel only scenario, and \$1,104 for Chikuminuk.<sup>9</sup> This table indicates that Chikuminuk would cost \$195 million more than diesel over the life of the project (\$1,104 - \$909 = \$195M). The same table also shows that 22% of the project costs would have to be subsidized by grants, with no repayment obligation, to bring the cost down to a level equivalent to the diesel only scenario. Assuming a total project cost of \$507 million, that means a subsidy of approximately \$111.5 million. So, it is not even a close call from a financial standpoint.

The 2011 feasibility study does find that the Chikuminuk dam would have some advantages over the Kisaralik dams, including less potential impact on salmon runs, but that is beside the point. The fact that the Chikuminuk dam would not be as bad a project as the Kisaralik dams does not make it a good project. It is more like the lesser of two evils. The important point is that the power generated by any of these dams would cost hundreds of millions of dollars more than the power generated by diesel. That cost would be borne by the State and passed along to consumers.

The 2011 feasibility study identified many other technical and logistical obstacles with the Chikuminuk project, including the difficulty of accessing the site. Either a road from Dillingham or Bethel, or a large airstrip, would be required. The risk of cost overruns would be high.<sup>10</sup> The project would also require the construction of

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<sup>8</sup> Final Report at 14-11 (MWH, 2011) (Emphasis added).

<sup>9</sup>

<b>Power Supply Option</b>	<b>50-Year NPV (\$millions)</b>	<b>% Grant Funding Required</b>
Diesel Only	\$909	NA
Chikuminuk Lake	\$1,104	22
Kisaralik - Upper Falls	\$1,312	47
Kisaralik - Lower Falls	\$1,117	28
Kisaralik - Golden Gate Falls	\$1,155	26

Final Report, ES-4 (MWH, 2011).

<sup>10</sup> "The Chikuminuk Lake site is viewed as the most difficult to access of the four sites evaluated. Given that the site is located in a remote part of a State park, construction of access roads are expected to be challenging to permit. In addition, site access roads would

approximately 115 miles of electrical transmission lines to Bethel, at a projected cost of over \$141 million. The power lines would have to go through mountain passes subject to avalanches, and across the extensive wetlands of the Kuskokwim River drainage.<sup>11</sup>

An additional complication is the fact that the power lines would cross the Yukon Delta National Wildlife Refuge for approximately 60 miles. The U.S. Department of Interior, acting through the U.S. Fish and Wildlife Service, would have to authorize the construction on Refuge lands, and there is no guarantee that would be allowed. At a hearing on Alaska energy costs in Fairbanks, U.S. Representative Don Young predicted that getting permission to build a transmission line across the Yukon Refuge from Chikuminuk Lake would be a major hurdle that could require an act of Congress to overcome.<sup>12</sup>

If all of that were not enough, the site plan of the Chikuminuk dam would encompass approximately 160 acres of private land, a former Native allotment now owned by the Bristol Bay Heritage Land Trust.<sup>13</sup> It is unclear how Nuvista proposes to deal with the rights of this private landowner.

To sum up, we already know that the Chikuminuk dam has been the subject of at least a dozen feasibility studies, all of which have found that the project is not economically viable. The most recent study was funded by the State at a cost of \$222,952, and concluded that it would be hundreds of millions of dollars less expensive to generate electricity with diesel fuel only. We know that there are numerous technical and logistical hurdles, which could significantly increase the project costs. We know that federal land managers can effectively veto the project. We know that the project would

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cross extensive wetland area, soft soil and rugged mountains, making access road construction technically challenging as well. Alternatively, the site could be accessed entirely by air. Both alternatives are expected to have significant financial and scheduling impacts on the project.” Final Report at 6-3 (MWH, 2011).

<sup>11</sup> “The path of the transmission line would transect rugged portions of the Kilbuck Mountains, and extensive swamps and bogs of the Kuskokwim River lowlands. Mountainous portions of the alignment, most notably the mountain pass crossing west of Chikuminuk Lake could potentially be exposed to landslides and avalanche hazards. The Kuskokwim River lowland will pose extensive constructability challenges as the lakes and bogs will make overland travel of construction equipment impractical during non-winter months. Discontinuous areas of permafrost may also be encountered within unconsolidated Quaternary deposits along the alignment. A detailed evaluation of permafrost areas and how they may impact transmission line support systems should be conducted during more detailed phases of design.” Final Report at 6-4 (MWH, 2011).

<sup>12</sup> [http://www.newsminer.com/alaska-energy-woes-fuel-hearing-with-rep-don-young/article\\_493d4fc1-9396-5c54-ac7d-7fd12298230a.html](http://www.newsminer.com/alaska-energy-woes-fuel-hearing-with-rep-don-young/article_493d4fc1-9396-5c54-ac7d-7fd12298230a.html)

<sup>13</sup> <http://www.bristolbaylandtrust.org/land-conservation/>



adversely affect the property rights of a private landowner. We know that the project, if approved, would change forever the wilderness character of the Wood-Tikchik State Park. Is it really necessary to spend another \$10 million to determine whether a dam at Chikuminuk Lake is a good idea or not?

The high cost of energy in the Bethel area is a genuine problem, and alternatives to diesel fuel are needed. However, the Chikuminuk dam is not the solution. Further studies are not going to change the practical realities. It is time to face the facts, and start looking at other alternatives to provide power for the Yukon-Kuskokwim and Bristol Bay regions. With the current fiscal outlook, the State cannot afford to simply throw money in the general direction of a problem like high cost of energy in rural Alaska, and hope that something sticks. Someone needs to run the numbers, ask hard questions and set priorities. So far that has not happened in the case of the Chikuminuk dam.

The Chikuminuk dam has been studied enough - more than enough - in order to know that it is an exceptionally bad idea. Sections 29 and 47 should be deleted from the most recent version of HB 77. Further bills to advance the Chikuminuk dam project should not be entertained.

Yours truly,

Henry Wilson

From: Teresa Sundmark  
Sent: Wednesday, March 12, 2014 12:59 PM  
To: Sen. Cathy Giessel  
Subject: Please include this in public record and distribute to Senate Resource Committee members

To whom it may concern:

I would like to express my opposition to HB77, even with the changes presented on Monday. I believe Governor Parnell has not shown respect for Alaskan's while drafting this bill, and while proposing the amendments.

The power structure of the DNR is based largely on politics, and by giving the DNR power without having to consider the people's input, a biased administration could wreak tremendous damage on public lands and waterways without regard to the wishes of the citizens. If passed, this bill could and will slant the permitting process to always favor industry.

The structure of the bill as it is written not only disregards citizen input, it makes it difficult for the public to appeal decisions that the DNR makes. This is wrong, not just from a democratic standpoint, but also from an environmental stewardship standpoint. Alaskans should have the ability to make their concerns heard in regards to public land.

Thank you for considering my standpoint on this issue. I value living in a society where my concerns can be expressed and recognized.

Teresa Sundmark  
36800 Maria Rd  
Homer, AK 99603

From: Susan Olsen

Sent: Wednesday, March 12, 2014 12:50 PM

To: Sen. Cathy Giessel

Cc: Susan Olsen

Subject: HB 77

Dear Senator Giessel:

Please include these comments in the public record; I am unable to testify in person today.

Making public the amendments to this highly controversial bill on Monday afternoon for public testimony on Wednesday afternoon is simply emblematic of the contempt being shown by the governor and legislature for the public process in this bill. These late-arriving amendments do not resolve the difficulties expressed by the public.

I am delighted to see that the DNR Commissioner may no longer ignore existing law but I certainly object to the elimination of "first in time" processing for water reservations. I also question whether having the state hold, and thereby control, water reservations, now obtainable by individuals and NGOs, defeats the purpose for filing for a reservation if the state can subsequently manage the same on its own terms. And finally, changing the standard for appeal without defining the terms in the legislation doesn't solve the issues raised by the public: making certain that the Commissioner cannot decide arbitrarily if the appeal can be accepted and, even more, making certain that the public has a right to challenge capricious decisions by the Commissioner.

This bill needs more work before going to a full vote of the Senate. Please hold in Committee and amended it to reflect the valid issues previously raised by the public.

Susan Olsen

8601 Sultana Drive

Anchorage, AK 99516

From: Susan Hall

Sent: Wednesday, March 12, 2014 12:18 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday which were done behind closed doors which counteracts the government initiative to make processes clear and transparent to the public.

The expansion of DNR power, reduced rights to appeal DNR decisions, and reducing the public's right to reserve water in streams for fish and other public uses does not sit well with me.

The General Permits section places all the power in the hands of the DNR, allowing them sole rights to determine who (private or public entity) is issued a permit and makes the appeal process cumbersome and time consuming potentially allowing ongoing pollution or destruction of Alaska's rivers and streams.

I disagree wholeheartedly with HB77.

Sincerely, Susan Hall - Alaskan Resident

Susan Hall

4424 Taku Blvd

Juneau, AK 99801

From: Sam Wright

Sent: Wednesday, March 12, 2014 12:53 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

Sam and Donna oppose HB77 even with changes presented on Monday.

We can not be present on Wednesday but are very concerned with the concentration of power this bill gives the Department of Natural Resources. We are not the only Alaskan's concerned with this bill but we were never consulted as a public and feel this bill will limit our rights to appeal decisions made by DNR. As this bill is written, any Alaskan must show that they are "significantly and adversely affected" in order to appeal. Having to demonstrate direct financial or physical harm from the government's decision is too high a bar. And, DNR gets to decide what is "significant and irreparable harm". We're sure our interpretation and DNR's interpretation of those words would differ. Do they get to define those terms? What time frame would DNR be using to decide "significant and irreparable"?

This is an ill-advised bill. We oppose it.

Sincerely,

The Rev. Sam Wright and Donna Lee

PO Box 1193

Chickaloon, AK 99674

From: Robert Howard

Sent: Wednesday, March 12, 2014 12:24 PM

To: Sen. Cathy Giessel

Subject: Please include this in public record and distribute to Senate Resource Committee members

I continue to oppose HB77, even with the changes presented on Monday.

Having served as Chair of Knik River Watershed Group, and having a solid decades long record of trying to save salmon habitat in the rich Jim Swan Wetlands, I have witnessed first hand a verifiably errant DNR process and astounding irresponsible attention to habitat supposedly protected by law. Lawmakers need look no further than the Knik process and record for an exceedingly egregious example demonstrating the utter folly of HB77.

A legislative hearing on the errant application of HB307, Knik R. Public Use Area, would prove extremely enlightening and a far more productive endeavor.

Please stop HB77!

Robert Howard

240 N Independence

Palmer, AK 99645

**TESTIMONY OF THE CHUITNA CITIZENS COALITION**  
**BEFORE THE ALASKA SENATE RESOURCES COMMITTEE**  
**ON HOUSE BILL 77**  
**MARCH 12, 2014**

Thank you for the opportunity to testify. My name is Judy Heilman. I live in Beluga, and I represent the Chuitna Citizens Coalition. We're a group of Alaskan property owners, hunters and fisherman concerned about protecting salmon habitat in the vicinity of the proposed Chuitna coal strip mine in Upper Cook Inlet.

The Chuitna coal strip mine would set a dangerous precedent for every fish stream in Alaska, because it would be the first permit issued by the state to allow mining completely through 25 miles of a wild salmon stream.

Our group is uniquely affected by this legislation because it will essentially take our application to reserve water for salmon in a tributary of the Chuitna River – called Middle Creek – and allow DNR to ignore it.

We think it's wrong to mine through our salmon streams. We have seen what ill-planned development has done to salmon runs in the Lower 48, and we think Alaska can and should do better.

We filed applications to keep water in Middle Creek, to protect the King salmon, Silver salmon and other fish runs it supports. The State took our \$4500 in application fees but refused to act on our request. The State also had refused to act on a similar water reservation on the main stem of the Chuitna, filed by the state's own habitat biologists at ADFG in 1996.

In the meantime, the State issued permits to the coal company to take water from the same streams for exploratory work.

Because DNR would not process our application, we were forced to ask a court to decide, and the court found the State violated our constitutional rights by failing to process our water reservations.

Now, the coal company has submitted a water right application to take 100% of Middle Creek so it can mine down 350 feet or more through the salmon habitat. Enclosed please find a summary of that application.

No one has ever built new salmon habitat after such intensive impacts, and the best science shows it's impossible.

We support responsible development, and our water reservations do not stop the coal company from mining. They would simply ensure enough water remains in the stream to support salmon. If HB 77 goes through as drafted, the State can simply ignore our applications, and process only the water withdrawal for coal strip mining.

We think our Constitutional framers wanted Alaskans to play an active role in protecting our fish and game resources. That's why we Alaskans are the owners of our fish and game and water resources under the Constitution. But Monday was the first time we ever saw the revisions to the water reservations section. This process has taken place behind closed doors, and it's the wrong way to go about making such important policies.

We urge you to reject the current language on water reservations, and to convene a working group of Alaskans to develop a fair and open process for protecting the water our salmon need to thrive.

Sent: Tuesday, March 11, 2014 8:49 AM

To: Sen. Cathy Giessel

Subject: HJR 1 & HB 77

Dear Senator Giessel:

As one of your constituents, I ask you to NOT support HJR 1, the constitutional amendment which would allow public funding to support private schools. We have raised two children who attended public schools in Juneau, Fairbanks, and Anchorage. We have now lived in Anchorage for 20 years and both of our children graduated from Service High School and have earned bachelors and graduate degrees. We believe that public schools form the bedrock of our American democracy and urge you NOT to support HJR 1.

I also encourage you NOT to support HB 77. This bill will place at risk public water rights, public access to natural resource management decisions, and the ability to maintain safeguards on our important and sustainable salmon spawning streams throughout Alaska. Please do NOT support HB 77. I spent 20 years as a biologist for the Alaska Department of Fish and Game and I believe this bill is not in the best long-term interest of the Alaskan public.

As your constituent, I appreciate your willingness to consider my concerns.

Sincerely,

John W. Schoen

13240 Mountain Place

Anchorage, AK 99516



**From:** precisionboat  
**Sent:** Tuesday, March 11, 2014 10:33 AM  
**To:** Sen. Cathy Giessel  
**Subject:** Please include this in the public record- HB 77 testimony

Dear Senator Giessel

I am writing to express my strong opposition to HB 77. It is bad legislation for several reasons:

First, it gives too much decision-making power to the Commissioner of the Dept. of Natural Resources. One individual should not be able to approve projects that may have a significant harmful effect on Alaskan communities, without the due process and protections which are presently in law.

Second, it eliminates the ability of people and organizations to apply for in-stream reservations, and exalts the ability of outside corporations to receive rights to the same water, so the ability to protect water sources is diminished. This will be bad for Alaskans who depend on healthy fish and wildlife habitat for their livelihood.

Third, it is undemocratic- it severely diminishes the rights of people to protect the resources they depend on. It is wrong to take away citizen's due-process rights. The ability to challenge a decision of the DNR administratively, or ask for a court review is an important check on the power of the government.

In sum, HB 77 would remove protections for fish and wildlife habitat at a time when they need maximum protection from mining and other threats. I am the owner of a commercial fishing boat repair business which provides a livelihood for 9 families here in Sitka. The health of Alaska's waters and fish habitat is critically important to me, my employees, and their families.

For these reasons I urge you to fight against HB 77.

Thank you,

--

Michael Litman  
Precision Boatworks  
222 Smith Street  
PO Box 1971  
Sitka, Alaska 99835

Senate Resource Committee

CHAIR: Senator Giessel Sen.Cathy.Giessel@akleg.gov

VICE-CHAIR: Senator Dyson Sen.Fred.Dyson@akleg.gov

MEMBER: Senator Micciche Sen.Peter.Micciche@akleg.gov

MEMBER: Senator Bishop Sen.Click.Bishop@akleg.gov

MEMBER: Senator McGuire Sen.Lesil.McGuire@akleg.gov

MEMBER: Senator Fairclough Sen.Anna.Fairclough@akleg.gov

MEMBER: Senator French Sen.Hollis.French@akleg.gov

Honorable Senators,

March 11, 2014

I appeal to the Senate Resource Committee to reject or revise HB77 for the following reasons:

1. This bill expands the power of the Department of Natural Resources (DNR) by preventing Alaskans rights to appeal DNR decisions and gutting the process for water reservations.
2. Once a general permit is in place, the public will never know about specific projects authorized by it because public notices would no longer be required.
3. By requiring you to be "significantly adversely affected" in order to weigh in or challenge decisions, direct financial, or physical harm from the government decision (a very high bar indeed) will limit Alaskans rights and asks the question whether subsistence users could challenge DNR decisions ever, even if DNR break the rules.
4. Despite some revisions, the new HB 77 provisions on water reservations give DNR autonomous discretion to put water reservations filed by Alaskans on the shelf, indefinitely. This strips the existing law which allows Alaskans to reserve water in streams for wild fish, recreation or other uses.

HB77 gives unprecedented power to the DNR while stepping all over the rights of Alaskans and impeding Alaskans from public comments, even the very knowledge of DNR activities. Please do not allow this appalling bill to proceed in trampling our democratic system of government.

Sincerely,

Cindy Birkhimer  
4264 Kramer Lane  
Homer, AK 99603

Dear Senator Giessel and Senate Resources Committee:

Regarding: House Bill 77 General Permits under the Alaska Land Act

Please include these comments in the public record.

I am retired from the Department of Natural Resources, Division of Mining, Land and Water, Southeast Regional Office, having served there in various capacities, including Land Use Authorization Manager and briefly as the acting Regional Manager.

I am well aware of DNR's interest to address its overwhelming backlog of pending permit applications and spent many hours with staff discussing various ways to increase efficiencies and reduce adjudication times without sacrificing our constitutional responsibilities to uphold the Public Trust. Indeed, we found there are no easy answers.

Most adjudicators would agree that each application for a use of state land or resources has some aspect to it that presents a unique situation, or is different in some manner that hasn't been specifically addressed before. Does a personal dock impair an adjacent landowner's ability to access their personal dock? Will a rarely, if ever, used log storage site preclude another long-term beneficial use? It is difficult, if not impossible, to anticipate and address all the potential situations that will be presented under the authority of a general permit. Not all applications for an activity addressed in a General Permit will, nor should, be covered by the General Permit. Some proposed activities, because of their unique situation, should be individually reviewed under standard review procedures.

I believe General Permits can help address the application backlog and increase efficiency to some extent, but not as proposed in this bill. General Permits should only apply to de-minimis activities. For instance, in the southeast region intertidal ground source heat pumps and mooring buoys could likely have a streamlined authorization process without much risk to adverse impacts to other people, landowners, or the environment. The proposed standard of DNR having to determine an activity is "likely" to cause significant impacts and irreparable harm is way too high. In my experience, it would be a very rare occurrence for DNR to find that an activity would likely cause significant impacts and irreparable harm even in the face of substantial evidence to the contrary; especially if the public and other interests are left out of the decision-making process. Please note that efficiency for DNR may not result in overall efficiency for the State of Alaska if this results in an increase in litigation due to DNR's inability to

consider all the mitigating factors of a situation and therefore unintentionally issue authorizations that conflict with other laws or jurisdictions.

I believe the appeal process for developing a General Permit should be open to any party that participates in its development and review. Further, I do not believe DNR, or any agency or individual, can meet its Public Trust responsibilities in isolation of other agencies and affected parties. That is why I believe an application for an activity under a General Permit must still be sent to other state and federal agencies, local governments, Native corporations, and interested parties listed on the General Permit for a short, expedited review (such as five business days with possibility for a short extension upon request) so that these potentially interested parties have an opportunity to concur under their authorities or interests that the proposed activity complies with the standard stipulations on the permit and does not present unique circumstances that are not adequately addressed in the General Permit. Hopefully, a mutual agreement would be found between the parties and a special stipulation addressing the unique situation could be added to the permit. I understand there may be resistance to this suggestion but I believe it is necessary to fulfill DNR's Public Trust obligations.

A General Permit should be publicly reviewed every 3-5 years to evaluate the department's, other agencies', and the public's experience in how well it has worked and make necessary adjustments. A ten year review period is too long, especially in the first few years of each General Permit.

Thank you for considering these comments.

Chas Dense  
427 West 11th Street  
Juneau, AK 99801

From: bee long

Sent: Wednesday, March 12, 2014 10:44 AM

To: Sen. Cathy Giessel

Subject: SCS CS HB 77 Testimony

Dear Senator Giessel, Chair, and Senator Fred Dyson, Vice Chair, Senate Resources:

I would hope that you would include the below testimony, also in an attachment, in the public record as I may not be able to testify today. Thanks a lot. Becky Long

Becky Long Comments SCS CS HB 77 Version H to Senate Resources Committee

As an active participant in commenting on this omnibus bill, I am angry that this amended version was crafted behind closed doors without regular Alaskans sitting at the table with DNR, ADFG, and industry. Now the amendments only became public March 10. We have less than 48 hours to try and understand this huge bill. The administration and the state legislature seem to be fearful of public participation. The reasons for this bill, a backlog of unprocessed permit applications, have been solved by DNR itself. Thus the reason for this bill has been made moot and unnecessary.

I still don't support this bill. None of the amended changes have convinced me otherwise. One particular amendment shakes me up. My husband and I own water rights for the creek by our residence. A new section says a person can take up to 5000 gallons of water out of a hydrologic unit without a water right or a permit. That is a lot of water. I am fearful that someone could impinge on my water rights by appropriating that much water in the small creek we use without me being able to know or comment about it. The reason given in DNR's documents is so someone taking water out for their canteen would not be illegal. This is illogical to make 5000 gallons the bar for getting no permit.

I object to the definition of standing for administrative and court appeals. I have participated in such appeals. The Alaskan public has used the current standing responsibly. There is absolutely no proof that they have not. But even beyond that fact, this standing section is unnecessary because the courts have the ability to throw out frivolous lawsuits. DNR can merely refuse to act on a request for reconsideration.

Many times appeals occur because what DNR has decided is an illegal action. This standing bar would prevent the public from holding DNR to accountability. Why should we the public have to prove physical harm or direct financial liability? This would eliminate an appeal based on subsistence rights. Is this what this state has come to?

I am opposed to the whole concept of general permits. The new sections of public notice and comment do not assuage those feelings. There are no perimeters or definitions as to what would be generally permitted. It is totally up to the discretion of the unelected Commissioner. There is no definition of significant harm or irreparable harm. So how will DNR determine what can be permitted? Such a general permit after issued would give blanket approval over a wide range of activities in a large area for ten years without public notice or the ability to comment on later activities. For instance, DNR could grant a general permit for cross country travel across roadless state land for ten years with no control or knowledge of the public about the number of trips, the number of applicants and subcontractors traveling, and no way to protect the environmental integrity of state lands.

In conclusion, this omnibus bill is going to guarantee future land use conflict which the legislature will have to adjudicate. Why vote for something that is going to create future problems for your constituency.

Becky Long

P. O. Box 155  
Talkeetna, AK 99676  
03-11-14

Senate Resources Committee  
Alaska State Capitol  
Juneau, AK

Dear Senators:

RE: HB 77 Amendments

The amendments to HB 77 did not repair the major problems with this bill. This bill still denies Alaskans their voices. I have to ask why Alaskans are being given such a short amount of time to comment on such a disastrous piece of legislation that, if passed, would so profoundly affect every one of us? Major areas of concern follow:

Under the area of **General Permits**, HB 77 would give DNR the power to issue a general permit for an "activity" over broad geographic areas of State land. Once this permit would be issued, the public would never know about specific projects it would authorize, as the public would not receive notification. The new version indicates that the DNR commissioner must consider ADF&G laws, *but they can still override their own laws and regulations*. This gives the DNR commissioner too much power. THERE ARE NO CHECKS AND BALANCES.

HB 77 would **Limit Legal Rights**. HB 77 would make it more difficult for an individual Alaskan to challenge DNR decisions, *even if DNR didn't follow their own rules*. Alaskans would be punished by DNR's attempt to "keep outsiders from slowing the permitting process in the state." Having used this process responsibly, Alaskans' voices should not be silenced. We should have a voice in our natural resource development. Alaskans should be respected and our input should be welcomed. That is the democratic process. When I have written legislators in the past, they have thanked me for taking the time to take part in the legislative process. DNR should do the same. There were NO CHANGES MADE in this area on the new version of HB 77. This was one of the areas that caused a public outcry...and NO CHANGES WERE MADE IN THIS AREA. It will be more difficult for Alaskans to challenge poor or illegal government decisions.

**Water Reservations:** HB 77 would gut the law that allows Alaskans to reserve water in streams for wild fish, recreation or other uses. Even though there were some revisions, the new version of HB 77 provisions on water reservations give DNR free rein to put water reservations filed by Alaskans at the bottom of the stack of things to be considered, indefinitely. No timeline has to be given to the applicants. Alaskans could spend a lot of time and money to file an application to reserve water in a stream and still not have the right to actually be considered by the State. Now that is *lip service*. And that is all it is. Do you think that Alaskans are buying that? Local governments, tribes, and individuals could no longer hold their own certificates for a reservation...only ADF&G could hold the reservation.

I sincerely hope that none of you approve of this unbelievably poorly written legislation. It is an affront to all Alaskans. It takes away our rights. It could destroy our resources. Please do not pass HB 77.

Respectfully,

Cathy Teich  
907-733-2155  
[cathyt@mtaonline.net](mailto:cathyt@mtaonline.net)

cc: Senator Mike Dunleavy