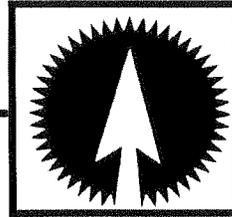


# **HB 77 Support Documents Index Passed Out to Committee Members on 3/12/2014**

- 1.) Alaska Forest Association – Graham Owen – March 12, 2014
- 2.) Council of Alaska Producers – Karen Matthias – March 12, 2014
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and Deantha Crockett – January 24, 2014

# Alaska Forest Association



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March 12, 2014

Alaska Senate Resources Committee,

The Alaska Forest Association (AFA) is a private non-profit business association formed in 1957. AFA has over 100 businesses who are directly involved in the timber industry in Alaska, including logging companies, logging and construction (including road construction) companies, log towing and barging companies, logging consultants, owners of forest land, and owners of sawmills and companies which provide goods and services and other support to the timber industry in Alaska. AFA's mission is to promote a viable, socially responsible forest products industry. As part of our mission, AFA sponsors the Sustainable Forestry Initiative program for Alaska.

AFA supports CSHB 77, which provides statutory changes that will improve many of the State's permitting processes. Greater use of general permits and less onerous land sales, leasing and exchange procedures will help establish a more business friendly environment. Similarly, the proposed changes to the Water Use Act will give the State more flexibility to issue temporary water use permits, will remove a nuisance provision that currently prohibits people from carrying minor quantities of water from one hydrologic unit to another and will prevent the abuse of water reservations by limiting those reservations to federal or state agencies or political subdivisions of the state.

CSHB 77 regulatory improvements will help to reduce the State's cost of managing our resources and will reduce the cost, time and uncertainty associated with businesses use of those resources.

Sincerely,

Owen Graham  
Executive Director  
Alaska Forest Association  
111 Stedman Street  
Ketchikan, AK 99901



Council of  
Alaska Producers

**Comments HB 77**  
**Land Use/Disposals/Exchanges; Water Rights**

March 12, 2014

Senator Cathy Giessel, Chair  
Senate Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Senator Giessel,

The Council of Alaska Producers (CAP) appreciates the opportunity to express our continued support for House Bill 77: Land Use/Disp/Exchanges; Water Rights.

CAP is a non-profit trade association formed in 1992 and serves as a spokesperson for the large metal mines and major metal developmental projects in the state. Bringing together mining companies with interest in Alaska, the Council represents and informs members on legislative and regulatory issues, supports and advances the mining industry, educates members, the media, and the general public on mining related issues, and promotes economic opportunity and environmentally sound mining practices.

In 2011, the Governor asked the resource agencies to review their permitting processes and propose ways to make them more efficient. This "permitting initiative" has included a significant outreach to stakeholders and a public process and CAP has been involved and supportive of this initiative since its inception. We have also supported the various bills passed in both 2012 and 2013 that have allowed the Alaska Department of Natural Resources to implement needed changes that allow for a timely and predictable permitting process for Alaskans while still maintaining rigorous science based protections for our environment. HB77 builds on these reforms that are already in place and we continue to support the bill as originally passed by the House in 2013.

On March 10, a Senate Resources Committee substitute for HB77 was introduced that makes several changes to the bill. While CAP does not object to these changes, we would like to make a few generalized comments regarding this version of the legislation.

This bill does not diminish the public process or remove Alaskans' ability to meaningfully comment in any way. By requiring participation at the initial stages of the process, when input is needed and can be practicably addressed, it ultimately strengthens Alaskans' ability to be heard.

General permits for small projects are common throughout the nation. Multiple states as well as the Corps of Engineers and the EPA utilize general permits for effective and efficient permitting of common activities that have minimal impact. The general permitting provisions in this bill will primarily benefit individual Alaskans who seek to do business on state land or water. This will also free up state resources to focus on larger development activities.

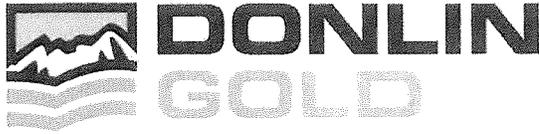
Finally, CAP strongly believes that the State should fulfill its constitutional mandate to manage our water for the maximum benefit of its people. Ensuring that in-stream water flow reservations are only held by state agencies allows them to properly balance needs for water while ensuring that sufficient flows remain for protecting fish and wildlife habitat, migration, and propagation; recreation and parks; navigation and transportation; and sanitation and water quality as required by statute.

CAP has always maintained that permitting in Alaska must be rigorous, science based, transparent and predictable and HB77 fulfills that expectation. We thank you for hearing this bill and urge you to pass it out of committee in its current form.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Matthias", with a stylized flourish at the end.

Karen Matthias  
Managing Consultant



Tel: (907) 273-0200  
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Donlin Gold  
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Anchorage, AK 99503

March 12, 2014

Senator Cathy Giessel  
Senate Resources Committee

Dear Senator Giessel:

Thank you for the opportunity to comment on CSHB 77.

Donlin Gold supports changes in law that improve regulatory efficiency and add clarity to the permitting process. We also support efforts to cut unnecessary red tape without diminishing important environmental standards.

Donlin Gold believes that CSHB77 strikes an important balance that provides for a rational framework for permitting natural resource development projects while protecting the public's right to participate in that process.

Donlin Gold believes it is important to have a robust and efficient regulatory regime and understands the difficulty in striking a balance that protects all public interests while reducing unnecessary obstacles to responsible development.

The state currently has an excellent model for agency coordination with its Large Mine Permitting Team process. We support efforts to ensure that state agencies are able to efficiently issue and manage permits, while safeguarding Alaska natural resources.

Donlin Gold appreciates the effort by the administration and the legislature to develop this improved bill, and fully supports CSHB77.

Sincerely,

Stan Foo  
General Manager

## Fish Habitat Group Letter

Dear Senator Micciche,

Thank you for taking a leadership role on HB 77.

Over the past several years, we have seen a trend to remove Alaskan voices from decisions that affect our fisheries resources, and HB 77 makes it even tougher for Alaskans to engage on basic issues that impact our fisheries and our livelihoods.

While we truly appreciate efforts to amend HB 77 to address the many issues it raises, we remain concerned the proposed changes will not go far enough to protect fish habitat, or the rightful role of Alaskans in protecting it.

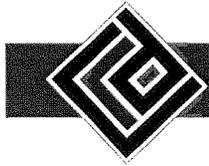
For example, Alaskans should be able to challenge bad or illegal government decisions without having to face new, higher bars to standing. Regarding so-called temporary water use permits, they should not be open-ended, and they should receive public notice, otherwise Alaskans have no idea how much water will be drained from our surface and ground waters. Finally, Alaskans should be able to keep water in our salmon streams without the government ignoring their requests for years and years.

These are but a few of the issues that recently publicized changes to HB 77 implicate, and we hope you will continue to press for amendments that will create the balance and fairness needed to sustain our fish resources for years to come.

Thank you again for your work on this vital issue, and please let us know if there is anything we can do to support your work.

Signed,

cc: Senator McGuire, Senator Geisel, DNR, Governor's Office



## HB 77 & Alaska's Instream Flow Permitting:

HB 77 addresses a number of permitting topics. This briefing paper focuses on only one of them: proposed changes to Alaska's instream flow water permitting.

### Background

The Alaska Department of Natural Resources manages the permitting system for water use. It issues three kinds of authorizations for use of water.

#### Out-of-stream authorizations

- **Water right.** A water right allows anyone - a person, agency, business, etc., -- to withdraw or divert water from a stream or lake, or from groundwater. Examples of uses that would require a water right might be a water well for your duplex, a dam for hydropower (diverts a stream), or a fish processing plant that withdraws water from a creek. A water right is a property right and it is for a long-term or permanent use. To grant a water right, DNR must evaluate effects, if any, on fish habitat and other water users.

HB 77 makes **no** changes to the law governing water rights. It does not change public notice requirements or change who may qualify for a water right.

- **Temporary Water Use Authorization.** A temporary water use authorization (commonly called a TWUP) is similar to water right. It covers the same uses - any withdrawal, or diversion from a stream, lake, or groundwater. But a water right is a permanent property right; a TWUP does not convey a property right. It is for short-term uses, or uses for which the agency does not wish to convey a property right. Examples include water taken from a stream for road construction or for testing a pipeline, or withdrawing water from a lake to construct an ice-road on the north slope.

HB 77 does not change public notice requirements or change who qualifies for a TWUP. It does allow TWUP's to be renewed, rather than apply for a new permit. But a renewed permit has the same requirements of a new one.

#### Instream Authorizations

- **Instream Flow Reservation.** DNR may grant a property right to keep the water within a stream. This right *prohibits* others from withdrawing or diverting some water from the stream. It's called an instream flow reservation (because it keeps the water in the stream). Under current law, anyone - a person, agency, environmental

organization, etc. - may apply to keep water in a stream (prohibit others from using that water) to protect fish habitat, water quality, recreation, or navigation. In Alaska, all instream flow applications focus on keeping water in the stream or lake to protect fish habitat.

HB 77 *does* change the law with respect to *who* can apply for an instream flow application. It does not change anything else - the criteria, public notice requirement, etc. Only who may apply.

## The Problem With the Current System

1. **The current system focuses on who gets paperwork in first — not what's the right thing to do.** Under the current system, when you have a large project that is multiple years in the planning, the decision on how to withdraw water, protect the fish, and promote economic development should be made with all the data, and with an understanding of all the environmental and social effects. It should not be based on who gets their paperwork in first. It should not be a paperwork race between an environmental group and the developer. But, recent court decisions and environmental groups' legal claims are making it a paperwork race. Two examples:

- ***Greenpeace, oil development, and the Kuparuk River.*** Water in a reservoir constructed adjacent to the Kuparuk River is used by the oil companies for oil exploration on the North Slope. They use it for ice roads and drilling. During the late 1990s, Greenpeace applied for an instream reservation for all of the water in the River (which they said was connected to the reservoir). They copied data from the Department of Fish and Game (Greenpeace didn't gather any new data), and applied to DNR for all of the winter water in the river. They wrote DNR saying essentially: "We have our application in first. Therefore, we have some rights, and until you adjudicate our application — which typically takes years — you cannot legally give any permits to allow oil companies to take water from the water reservoir. So please cancel all winter oil exploration on that part of the North Slope for a few years."

If DNR had accepted Greenpeace's legal argument, it would have stopped all winter oil exploration on that part of the North Slope. Instead, DNR and DF&G's hydrologists proved that the Reservoir (where the oil industry water take was located) was not connected to the Kuparuk River and wouldn't affect the fish - so Greenpeace's legal argument was irrelevant and the fish were protected. DNR avoided the paperwork race only by proving that the reservoir and river were not hydrologically connected. (After losing that fight to stop oil exploration, Greenpeace dropped their instream flow application).

- ***Chuitna Coal Project and a tributary to the Chuit River.*** A coal company is applying for permits to construct a coal mine on the west side of Cook Inlet. They cannot get permits unless DF&G and DNR determine that company has an appropriate method to protect the fish. But a coalition of environmental groups has asked to reserve the water that would otherwise be used by the mine. (They didn't gather any data - only copied data supplied by the mine developer to the agencies as background data for mine permitting).

Obviously, the right thing to do is to adjudicate the water and the mine permit together - to use all the data and the environmental impact statement process to determine the public interest, whether to allow the mine, and the best way to protect fish. Unfortunately, the environmental groups don't see it that way. They got their paperwork in first, and they believe their rights to the water should be determined first - even though there will be much more data available

later. If the environmental groups win, there will be no water available for the mine, and mine permitting will have to stop. The mine would not be permitted — not because it cannot protect the fish, but because the environmental groups got their paperwork in first. That is not good public policy.

2. **Why Give a Public Right to a Private Group?** An instream flow reservation is a right to keep water in the stream - to prohibit anyone else from withdrawing that water. It is typically a right designed to protect fish habitat. The right to protect fish habitat should be managed by the Department of Fish and Game - not by an individual, no matter how pure his motives or whether he's your friend. And an environmental group headquartered or funded from outside Alaska should not own the right. Or even one inside Alaska. It should be owned by the people and managed by our government for us.

Using one of the examples above, can you really imagine Alaska having to ask permission of Greenpeace to build an ice road on the North Slope? Giving Greenpeace an instream flow right to the Kuparak River would give them property rights to protect Alaska's fish, and to prohibit certain water withdrawals on the North Slope. If new data, hydrologic changes, or new methods to protect fish come along, should DF&G, DNR, and the state or oil companies be required to ask Greenpeace's permission to use a different way to protect fish? That's ridiculous. The keeper of the instream water rights should be the state agency funded and staffed to protect fish habitat: the Alaska Department of Fish and Game (or for federal land, a federal agency).

A private person has applied for the instream flow rights downstream of the proposed Susitna Dam. Do you really think that if the dam is constructed and DF&G and other state agencies determine that we should adjust flows from the dam, that we should have to go ask a private individual? These are public rights and they should be managed by a public agency.

Similarly, an outside environmental group applied for the instream flow rights downstream of the proposed Chakachamna Lake Hydro Project. If we gave those groups the instream water rights, we are giving them the right to block the proposed hydro project. Now, maybe the hydro project is a good idea; maybe it is a bad one. But why should the State of Alaska have to ask an outside environmental group for permission to build or modify it? Agency permit processes should be what determines the decision and should be what is used to protect our fish.

From these examples, one can see that an instream flow right effectively includes a portion of the development rights to major projects. Why would Alaska give the right to decide about Alaska's major resource projects to a multi-national environmental organization? Or even an individual Alaskan? Rather, decisions should be made through a transparent, rigorous permitting process that can involve all Alaskans.

Other states do not allow private individuals or multi-national environmental groups to own these rights. Alaska also should not.

### **HB 77's Solution: Only Public Agencies Should Hold Public Rights**

HB 77 makes one change to the instream flow system: it limits instream flow applications to state or federal agencies. It makes no change in DNR's instream flow decision process or to public notice requirements. HB 77 solves the problems with the current system.

- **No longer a paperwork race.** Agencies are involved in the permitting process. They are deeply involved with environmental impact statements. They make the decisions when all the data is gathered, and during the permitting process. If agencies are the instream flow applicant, an instream flow process is not a paperwork race. It is done at the right time with all the data. HB 77 changes a paperwork race into a more intelligent permitting process.
- **The public holds the rights to public resources.** Agencies represent all the people, not just one sector. They should hold private rights used by all of us (i.e., rights to fish habitat). HB 77 eliminates the problem of having to ask a well-funded environmental group based elsewhere whether we can develop our resources, or whether we can change the methods to protect fish.

With respect to the water-permitting portion of HB 77, the bill makes minimal changes. It keeps most of the system the same as it is today but solves the problems with Alaska's instream flow permitting system. No other state tolerates the problems our instream flow system causes — Alaska shouldn't either.

### Who is Affected?

#### ***85% of non-agency applications are intended to block projects***

DNR has received over 300 applications for an instream flow reservation. The vast majority are from public agencies - mostly DF&G and the US Fish and Wildlife Service. These applications are unaffected by HB 77.

In contrast to the almost 300 agency applications, DNR has received 34 applications from other groups. Of the 34 applications, over 85% (29 applications) were from groups opposed to a development projects. Applications are below:

<b>Waterbody/Development Project</b>	<b>Year</b>	<b>Number of Aplns</b>	<b>Type of Group</b>
Tanana River	1992	1	Non-profit
Duck Creek (nr Juneau)	1993	1	Env NGO
Lower Talarik Creek	2000	1	Env NGO
<b>Eklutna River, AWWU Water Supply</b>	<b>2003</b>	<b>3</b>	<b>Tribe</b>
Sinona Creek	2007	1	Tribe
<b>Pebble-area Streams</b>	<b>2007-2009</b>	<b>20</b>	<b>Env NGO &amp; Tribe</b>
<b>Chakachamna Hydro Project</b>	<b>2009</b>	<b>1</b>	<b>Env NGO</b>
<b>Wishbone Hill Coal Mine</b>	<b>2009</b>	<b>1</b>	<b>Tribe</b>
<b>Chuitna Coal</b>	<b>2010</b>	<b>3</b>	<b>Env NGO</b>
<b>Susitna Hydro</b>	<b>2011</b>	<b>1</b>	<b>Individual</b>
Eyak Lake	2012	1	Env NGO

<b>Applications re: development projects</b>	<b>29</b>
<b>Applications unrelated to projects</b>	<b>5</b>
<b>Total NGO Applications</b>	<b>34</b>

It is worth emphasizing this record: over 85% of non-agency instream flow applications are only made after a major development project is proposed, and are made by groups

opposed to the project. Their purpose is at least partially to use the application to change or stop the agency permitting process.

**Plagiarizing data.** Of the 34 applications focused on development projects, most applicants did not gather any actual data. In most cases, they copied data gathered by the developer. Some of the Pebble-area applications included new data but most did not. Plagiarizing a developer's data, gathering no additional data on the ground, then asking for an environmental group to effectively hold some of the development rights for a project is not good public policy.

**What happens to existing applications?** Water rights and temporary water use authorizations are unaffected by HB 77. The vast majority of instream flow applications are made by agencies and are therefore unaffected by the bill. But non-agency groups have made 34 applications. Under HB 77, these 34 applications will not go away. DF&G said that it will take on those applications. DF&G will look at the application and the data, and evaluate whether the application is worth pursuing. Those that are valuable will become DF&G rather than NGO applications.

**Conclusion.** Some Alaskans favor Susitna Hydro, the Pebble Mine or the Wishbone Hill mine. Others oppose them. But decisions about these projects should be made by Alaskans through their government - not by environmental groups based outside Alaska, nor even by individual Alaskans. The permitting process should not be a paperwork race. And the rights to public resources — water for fish — should be held by agencies for the public, not by privately motivated individuals or groups, no matter how much we like them. HB 77 solves the problem with the current instream flow permitting system. It solves the problem with minimal changes - without affecting public notice or any other part of the process. With respect to instream flow permitting, HB 77 is a simple solution to a very real problem.

**Contacts:**

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