



Kachemak Bay Conservation Society
3734 Ben Walters Ln, Homer, AK 99603
907 235.8214
kbayconservation@gmail.com

February 4, 2013

Dear House & Senate Resources Committees,

RE: HB77 & SB26

Kachemak Bay Conservation Society (KBCS) opposes HB77 & SB26 for the following reasons:

1. Alaskans' Constitution-In order to comply with the Alaska Constitution, DNR must conduct a "best interest finding" (BIF) before it leases lands or gives other interests in state resources. Under the current law, Alaskans have an opportunity to comment on the possible impacts a proposal may have on water, fish, and human health. Governor Parnell's proposed changes would remove the requirement for public review and comment on BIFs, letting agencies and corporations dictate the scope and impacts of development throughout the state
2. Water Rights-Governor Parnell's proposal will give big corporations (not Alaskans) unlimited access to significant quantities of water through "temporary" water use permits, and severely limit Alaskans' right to challenge such permits.
3. Salmon Habitat: Fish need water to survive and the existing law allows Alaskans to secure "instream flow" rights to ensure there is enough water in streams for fish. Governor Parnell's proposal would strip Alaskans of the right to protect water quantity in salmon streams.
4. Cruise Ship Pollution-In 2006, Alaskans passed an initiative requiring cruise ships to meet water quality standards when they discharge pollutants to Alaskan waters. Governor Parnell's proposal would reverse the 2006 statewide vote, and allow cruise ships to dump sewage and other wastes in Alaska's marine waters.
5. Undefined Terms-Governor Parnell's proposal would allow a number of development projects to hide behind so-called "general permits," which do not require public notice and/or comments for specific projects. These permits will be issued to projects "unlikely to result in significant and irreparable harm to state land or resources," but the meaning of the terms "significant and irreparable harm" remains unclear and undefined.
6. Wetlands-Despite the fact almost all wetlands dredge and fill permits are currently granted by the U.S. Army Corps of Engineers, Governor Parnell's bill authorizes DNR and DEC to apply for delegation of this extremely costly regulatory program for which only Michigan and New Jersey have oversight-and Michigan is trying to give the program



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back. Despite the fact that Alaska is dealing with a permit backlog, Governor Parnell is proposing that the state take over the issuing of wetlands permits.

KBCS is dismayed that the legislature is also considering failed legislation (reintroduced by Representative Eric Feige from last session) that would require Alaskans to post a significant bond prior to challenging a decision in court. This bill would effectively *prevent* all but the wealthiest corporations and individuals from being able to challenge resource permitting decisions within the state. Feige's bill was introduced last session, but mercifully failed to pass in the Senate. KBCS considers this one more example of Governor Parnell opening new accesses for outside corporations to exploit Alaskan resources, while trampling on the rights of Alaskans to protect their fish and water resources.

KBCS believes HB77 & HB26 restrict citizen access to the judicial branch. This bill creates several significant barriers for Alaskans to participate in resource development decisions by eliminating a mandatory notice and comment period and makes it more difficult to use our right to appeal decisions.

Sincerely,

Roberta Highland, President
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CC:

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From: H Shepherd CWA

Sent: Wednesday, February 06, 2013 8:34 AM

To: Sharon Long

Cc: Cindy Smith; murray.emily57@yahoo.com; waterlaw@uci.net; nikospastos@hotmail.com; Carl Wassilie; Delice Alexander; Jessica Wenstaffer; Jennifer Harris

Subject: Re: !FW: Senate Bill 26 testimony

Governor Parnell has introduced a Bill into the legislature (HB 77 & SB 26) which threatens fishery resources in Alaska upon which Native Villages and other communities depend for subsistence uses and strips such communities and tribal governments of their rights to participate in state government decision making. Specifically, the Bill would deny tribes and individuals the right to file for "instream flow rights," to secure enough water in rivers and streams for healthy fisheries; limit the time period for public comment on issuance of water right permits; reduce restrictions on transferring water rights, increase the amount of water that can be obtained without applying for a permit; eliminate the right to appeal the state's granting of water right permits for the majority of individuals and entities that would be impacted by the water taken out of stream and other acts, which raise substantial constitutional and other legal concerns.

Already. DNR routinely processes water use applications for mining, oil and gas corporations, but it almost never processes the instream flow applications needed to keep water for fish. The "No Human Right to Water Bill", therefore, represents nothing more than an attempt to limit, even further, the rights of Native Alaskan Tribal Governments and the public to challenge the Governor's, current, policy of unlimited corporate access to Alaska's water, regardless of the impacts to human health and fishery and subsistence resources. Among other laws, therefore, the Bill is contrary to the Alaska Constitution which expressly states that water appropriations shall not have precedence over "general uses for fish and wildlife."

Alaskans have a right to healthy salmon and an obligation to protect them. The Center for Water Advocacy, therefore, urges the Committee not to strip away the rights of citizens to keep water in our streams for healthy fish. Please reject any legislation that strips away Constitutional and other rights of the majority of Alaskans who are impacted by the use of water by corporate and municipal users to protect water quality and instream uses of water. Any legislation related to state water rights should put the human right to water first. Finally, when allocation decisions are made in streams, subsistence uses, aquatic habitat and the constitutional rights of all Alaskans should take priority over other out of stream uses.

I request that these comments be read during the February 4 Resources Committee Hearing on SB-26. Please contact me if you have any questions regarding these comments or this request.

Thank you.

Hal Shepherd, Director

Center for Water Advocacy

P.O. Box 2903

Seward, AK 99664

(907)299-8821

Dear Senate Resources Committee members:

I am an attorney with over twenty years experience in Alaska natural resource law and policy, including three years adjudicating administrative appeals for the Department of Natural Resources. I have the following questions and comments on SB 26 for consideration by the Senate Resources Committee:

- **Page 1, Section 1.** This section gives the DNR commissioner broad authority to authorize activities on state land through issuance of a general permit, “if the commissioner finds that the activity is unlikely to result in significant and irreparable harm to state land or resources.”
 - How will the commissioner determine what is or is not a “significant and irreparable harm?” The terms are highly subjective and open to multiple interpretations. If general permits are to be allowed, the commissioner’s authority should be limited to activities specifically identified in legislation as being suitable for a standardized authorization.
 - What opportunities will be provided for the public to be involved in the establishment of a general permit?
 - What appeal rights will be provided for a decision to issue a general permit?
- **Appeal Rights.** Currently, a person “aggrieved” by a DNR decision generally has a right to appeal the decision to the agency. The proposed legislation changes this standard so that a person must be “substantially and adversely affected” in order to appeal a department decision.
 - How will the commissioner determine whether a person is “substantially and adversely affected?” Again, these terms are subjective and open to interpretation.
 - Because the standard is so subjective, it could result in an inequitable or inconsistent application of the appeal right.
- **Page 21, Section 40.** This section removes the ability of organizations and individuals (“persons”) to apply for a reservation of water to maintain sufficient water flow for protection of various public interests.
 - Alaska may be unique in allowing persons to apply for reservations, but we are also unique in our vast size. With limited government resources, it is a benefit to the state to allow persons to apply for reservations that can protect valuable water resources and uses. This is in keeping with the Alaska constitution’s requirement that water is reserved to the people for common use (Article 8, Section 3).

SB 26 – Public Testimony – Lisa Weissler
2/4/2013

- State regulations have stringent data requirements for applying for a reservation of water, thus already limiting the number of individuals and organizations that can submit a qualified application.
- This provision has been in place since 1980. Is there really a problem that warrants making this change?
- Retaining water within rivers and lakes to benefit fisheries and wildlife, recreation, navigation, transportation and water quality is as important to the state as water use appropriations. The legislature should provide DNR with sufficient funding to efficiently adjudicate reservation applications.
- **Page 22, Section 42.** The proposed language gives the DNR commissioner the authority to issue an infinite number of new temporary water use authorizations for the same project.
 - Public notice is not required for a temporary water use authorization. With unlimited authority to issue new authorizations for the same project, the use of a significant amount of water may be permitted for decades without the public ever having an opportunity to comment on the use.
 - For a temporary water use, it is within the commissioner's discretion whether to impose conditions to protect other water rights or resources. Shouldn't there be some statutory criteria that must be met for a person to use state water for more than five or ten years?
 - At what point does temporary water use stop being "temporary?" Who makes that determination and when?

I urge the committee to request that DNR provide a response to these questions and comments, and that any changes to existing statutes be done with due regard for the interests of all Alaskans.

Thank you.

Sincerely,

Lisa Weissler
340 Highland Drive
Juneau, AK 99801
lisaweissler@gmail.com
Business website: <http://changingtides.com>

City of Elim

Resolution #13-03

A Resolution of the City of Elim,

WHEREAS, the City of Elim and nearby areas are primary sources of subsistence food for the people of Norton Bay and its neighboring native communities, and

WHEREAS, the City of Elim and nearby areas include traditional living places, birthplaces and burial grounds and other areas of cultural significance, and

WHEREAS, the City of Elim is home to a rich and diverse fishery including King Salmon, Pink Salmon, Chum Salmon, Silver Salmon, and Dolly Varden as well as white fish and other valuable subsistence species, and

WHEREAS, uranium exploration and development activities in areas surrounding the City of Elim permitted by the State of Alaska have been allowed to occur during the summer season that is critical importance to the subsistence harvesting of fish and wildlife, berries, roots, plant leaves, and a wide range of mammals and birds, and

WHEREAS, Governor Parnell has introduced bills (HB 77 & SB 26) designed to expand government power and strip Alaskans of their rights to clean water and healthy fisheries. One proposal is especially damaging – it would deny Alaskans the right to keep water in streams for salmon. Under current law, Alaskans can file for “in-stream flow rights”, to secure enough water in salmon streams for healthy fisheries. Large corporations, however, want unfettered access to Alaskan waters – regardless whether they support wild salmon. So Governor Parnell is cutting everyday Alaskans from the loop,

WHEREAS, DNR routinely processes water use applications for mining, oil and gas corporations, but it almost never processes the in-stream flow application needed to keep water for fish,

WHEREAS, Alaska salmon streams are warming, and salmon are becoming more vulnerable to pollution, predation and disease; that’s why it’s more important than ever to keep water in streams to ensure healthy fish,

THEREFORE BE IT RESOLVED, that the State of Alaska proposed Road to Ambler for the purpose of furthering mining activity in this area, the City of Elim, hereby:


1. Strongly objects to the consideration or approval of SB 26 and HB 77 in their present form;

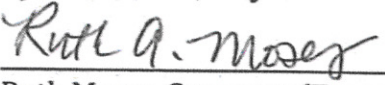
2. Any legislation related to state water rights should recognize that Native Villages, local governments, and other Alaskans have a right to healthy salmon, and an obligation to protect them and should not strip away the rights of Alaskans to keep water in-stream rights for healthy fish.
3. Any legislation related to state water rights should put the human right to water first. When allocation decisions are made in streams, subsistence uses, aquatic habitat and constitutional rights of all Alaskans should take priority over other out of stream uses.

CERTIFICATION

We the undersigned officers and members of the City Council for the City of Elim hereby certify that the council, which is made up of 7 members, of whom (4) constitutes a quorum, were present at the meeting held February 4, 2013, that this Resolution has passed by the affirmative vote of 7 members and that this Resolution has not been rescinded or amended in any way.


Tyler L Ivanoff, Mayor


Crystal Ivanoff, City Clerk


Ruth Moses, Secretary/Treasurer

From: Darrell & Cindy Birkhimer

Sent: Monday, February 04, 2013 11:49 AM

To: Darrell & Cindy Birkhimer; Sen. Cathy Giessel; Sen. Fred Dyson; Sen. Peter Micciche; Sen. Click Bishop; Sen. Lesil McGuire; Sen. Anna Fairclough; Sen. Hollis French

Subject: Re: SB26 Comments

Dear Senate Resource Committee,

RE:Alaska Senate (SB 26)

Please consider the following comments and vote against SB26:

Who was it that said "Every time a new law or regulation is passed, citizens have a little less freedom"? No truer is that than the present. Governor Parnell has introduced Bill SB26, which cuts the citizen right to appeal a number of agency decisions on development issues. By prohibiting a comment period, this bill would restrict Alaskans' right to participate in the public process. Governor Parnell has appointed sycophants who implement his dogmas and now he is preventing citizens from expressing objections to his policies. Whether you are for or against an issue, public participation in these decisions is a right that we must preserve!

Respectfully

Cindy Birkhimer