

Dear House Resources Committee Members:

HB 129 undercuts a legal commitment made to Alaskans through legislation passed in 2001 – that they would have the opportunity to review and comment on oil and gas exploration and development project activities in or near their communities before exploration or development could proceed.

The 2001 legislation was passed in response to an Alaska Supreme Court decision that required the Department of Natural Resources (DNR) to prepare a comprehensive best interest finding for each phase of a project. For oil and gas projects, the phases are lease sale disposal, exploration, development and transportation. The legislation amended AS 38.05.035(e) with the stated intent of making it clear that no best interest finding is required after the lease disposal phase but that “public notice and the opportunity to comment shall be provided at each phase of the project.”<sup>1</sup>

Under AS 38.05.035(e)(1)(C), a best interest finding may be limited in scope to those facts and issues that pertain solely to the disposal phase of a project. This is known as a “phased review.” At the lease sale disposal phase in a phased review, the potential future effects of oil and gas project activities are discussed in general terms and for the entire disposal area. Project specific effects are addressed later when details of an activity and its location are known.

DNR may do a phased review for an oil and gas disposal when “before the next phase of the project may proceed, public notice and the opportunity to comment are provided under regulations adopted by the department...”<sup>2</sup>

The best interest findings issued for DNR’s five areawide oil and gas lease sale disposals are done as phased reviews. As stated in a 2011 areawide lease sale best interest finding, “In the case of oil and gas, DO&G cannot determine with any specificity or definition at the lease sale phase if, when, where, how, or what kind of exploration, development or production might ultimately occur as the result of a lease sale.”<sup>3</sup>

The finding explains that the public notice and comment condition for a phased review of the oil and gas disposal is met because “before the next phase of the project may proceed, ADNR provides public notice and the opportunity to comment on proposed plans of operations in the lease sale area.” [Emphasis added]. The finding further states, “The effects of future exploration, development, and production will be considered at each subsequent phase, when various government agencies and the public review applications for specific proposed activities at specific locations.”

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<sup>1</sup> Section 1, Legislative Purpose, CSSB 156(RES) 2001

<sup>2</sup> AS 38.05.035(e)(1)(C)(ii)

<sup>3</sup> North Slope Foothills Areawide Sale Best Interest Finding – excerpt attached.

Under HB 129, Alaskans will no longer have the opportunity to comment on proposed plans of operation for specific project activities that may occur in or near their community. They will be required to comment on oil and gas exploration and development without knowing the “when, where, how, or what kind of exploration, development or production might ultimately occur” in a potentially vast sale area – from 2 million acres in the Beaufort Sea region to 7.6 million acres in the North Slope Foothills.<sup>4</sup>

In addition, HB 129 provides that a general exploration or development approval is good for ten years and an approved lease activity that is initiated during that ten years is authorized for the entire lease term, a term that could extend for decades. Decades without an official means for Alaskans to convey to state regulators the site specific concerns they may have with an oil and gas exploration or development project that affects their community.

People may still be able to comment on site-specific permits issued for an oil and gas activity. However, such permits address only a particular part of a project and are more limited in scope than a plan of operations that provides comprehensive details on the entire project and its effects. It should also be noted that other legislation is being proposed that will limit public involvement for site-specific permits. SB 26/HB 77 authorizes the commissioner to issue general permits for a broad range of activities that may include oil and gas exploration and development project activities. Like the general approvals proposed in HB 129, a general permit has broad application and limits the opportunity for people to comment on concerns specific to their community. They may not even have notice that an activity is about to occur.

For example, in September 2012, Homer residents were surprised to learn about a company’s plans to drill in the midst of their community because the leases had been issued ten years ago. Fortunately, the people of Homer will still have opportunities to provide input about their local concerns as the company applies for various state authorizations, including plans of operation.

Now imagine how surprised, and upset, people will be when drilling rigs show up in their neighborhood and learn that their opportunity to comment on the activity is long gone, that the only time for public involvement was back when a general exploration or development approval was issued, potentially a decade earlier. This is what will happen if HB 129 is enacted – with even more consequences if the administration’s other permitting bill, SB 26/HB 77, passes.

There is a reason for public notice. It is to let people know that there will be activity in their area. There is a reason for public comment. It is so state regulators can learn about issues of concern to an affected community that may be located far from where the regulator is based, and so those concerns are addressed through the authorization process. With Alaska’s vast

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<sup>4</sup> The other three areawide lease sale areas are: Alaska Peninsula, 5.8 million acres; Cook Inlet, 4.2 million acres; North Slope, 5.1 million acres.

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March 1, 2013

size, DNR should welcome local involvement, rather than trying to limit public participation in project reviews.

On March 26, 2013, in a Senate TTP committee hearing on SB 59 (companion to HB 129), DNR described industry applicants as “customers.” But Alaska is not a business that serves industry. Alaska is a sovereign state whose government has a duty to regulate industry and represent the public interest. While there may be a need to simplify the permitting process, it should not be done at the expense of public involvement in state government decision-making. Alaskans are the state’s true customers and should be treated as such. Honor the commitment made to Alaskans in 2001. Please say “no” to HB 129.

Thank you for your consideration.

Sincerely,

Lisa Weissler

340 Highland Drive

Juneau, AK 99801

907-723-5902

[lisaweissler@gmail.com](mailto:lisaweissler@gmail.com)

Business website: <http://changingtides.com>

ATTACHMENT

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Excerpt: North Slope Foothills Areawide Final Best Interest Finding, 2011 – pages 2-3 to 2-5:

### D. Phased Review

Phased review recognizes that some disposals of oil and gas, or of gas only, may result in future development that cannot be predicted or planned with any certainty or specificity at the initial lease sale phase, and that any future development will be subject to detailed review before it takes place. In the case of oil and gas, DO&G cannot determine with any specificity or definition at the lease sale phase if, when, where, how, or what kind of exploration, development or production might ultimately occur as the result of a lease sale. Although advances in technology, unpredictable market changes, and specific infrastructure requirements for possible production cannot be foreseen, new developments or improvements in any or all of these areas may occur.

Phasing allows the review and finding for a lease sale to focus only on the issues pertaining to the lease sale phase and reasonably foreseeable, significant effects of a lease sale. Additional authorizations are required for exploration, development, production, and other phases. When a project is multi-phased, review of issues that would require speculation about future factors may be deferred until permit authorization is sought at the exploration, development, and production phases. A discussion of governmental and public involvement at these later phases can be found in Chapter Seven.

Under AS 38.05.035(e)(1)(C), the Director may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified above that pertain solely to the disposal phase of the project when:

- (i) the only uses to be authorized by the disposal are part of that phase;
- (ii) the disposal is a disposal of oil and gas, or of gas only, and, before the next phase of the project may proceed, public notice and the opportunity to comment are provided** unless the project is subject to a consistency review under AS 46.40 and public notice and the opportunity to comment are provided under AS 46.40.096(c);
- (iii) the department's approval is required before the next phase may proceed; and,
- (iv) the department describes its reasons for a decision to phase. [Emphasis added]

The conditions under which phasing may occur have been met in this best interest finding for the North Slope Foothills areawide oil and gas lease sales. Accordingly, the review of activities in the lease sale area is of a multi-phased development. The Director, in making this finding, has limited the scope of the finding to the applicable statutes and regulations, facts, and issues that pertain solely to the lease sale phase of oil and gas activities and the reasonably foreseeable significant effects of a lease sale.

Condition (i) is met because the only uses authorized are part of the lease sale phase. The lease gives the lessee, subject to the provisions of the lease, the right to conduct geological and geophysical exploration for oil, gas, and associated substances within the leased area and the right to drill for, extract, remove, clean, process, and dispose of any oil, gas, or associated substances that may underlie the lands described by the lease. While the lease gives the lessee the right to conduct these activities, the lease itself does not authorize any exploration or development activities by the lessee on leased tracts.

Condition (ii) is met because the lease sale is of oil and gas or gas only, and before the next phase of the project may proceed, ADNR provides public notice and the opportunity to comment on proposed plans of operations in the lease sale area. Additionally, any plan of operations in the lease sale area that is within the coastal zone is subject to consistency with the ACMP standards, including public notice and opportunity to comment under AS 46.40. [Emphasis added]

Condition (iii) is met because ADNR's approval is required before the next phase (in this case exploration) may proceed. See Chapter Six for a discussion of post-leasing phases. Before exploration activities can occur on leased lands, the lessee must secure all applicable authorizations. Additional authorizations must also be secured for any subsequent development or production on the lease.

The plans of operation must identify the specific measures, design criteria, construction methods, and standards that will be employed to meet the provisions of the lease. A plan of operations is subject to extensive technical review by a number of local, state, and federal agencies. Oil and gas exploration, development, or production-related activities will be permitted only if proposed operations comply with all local, state, and federal laws and the provisions of the lease.

Condition (iv) is met because ADNR describes above the reasons for its decision to phase. The effects of future exploration, development, and production will be considered at each subsequent phase, when various government agencies and the public review applications for specific proposed activities at specific locations. However, this finding does discuss, in general terms, the potential effects that may occur with oil and gas exploration, development, production, and transportation within the lease area as well as proposed measures to be imposed as terms of the lease, subsequent permits, and plan of operations to mitigate possible adverse effects. [Emphasis added]