

Dear Senate Resources Committee Members:

Please consider the following comments as you deliberate on SB 59. For additional information, please see my comments submitted to the TTP Committee dated March 1, 2013.

I. SB 59 is premature.

A pending Alaska Supreme Court decision could affect how and when DNR conducts project reviews for the exploration and development phases of oil and gas projects.¹ Consequently, it is premature to make changes to the project review process at this time.

In 2011, in *REDOIL v. State of Alaska, DNR*, an Alaska superior court judge ruled that a statute allowing for just one written best interest finding issued at the lease disposal phase is unconstitutional. The court required DNR to provide a comprehensive written best interest finding at each phase of an oil and gas project, including the exploration and development phases. The Alaska Supreme Court accepted the state's petition of the superior court ruling and, according to the court system website, a draft decision is being circulated.

Since there is the potential that the Court decision could impact whether or how the proposed statute is implemented, it would be wise to wait for the decision before passing SB 59.

II. SB 59 is not ready for prime time.

During committee hearings on SB 59, DNR testified as to how they intend to implement the proposed statute. However, without specific language in statute, there is no guarantee DNR will follow through with the stated intentions described below. In addition, the proposed language may lack the necessary statutory authority for DNR to do some of what they propose.

- A. Though DNR testified they wouldn't necessarily do it, SB 59 specifically allows DNR to develop general approvals for exploration and development that cover an entire areawide sale area, an area that can range from 2 million to 7.6 million acres. The proposed statute contains no size criteria or limitations. Nor does the legislation specify what issues a general approval must address.
- B. DNR testified that they may decide there are sufficient site-specific public interest concerns regarding a particular exploration or development project to warrant providing for public notice and comment on a project plan of operations. There is no provision in the proposed statute to allow for such public notice and comment in areas covered by a

¹ See *Daniel S., Sullivan Commissioner, SOA, DNR vs REDOIL, Gwich'in Steering Committee, et al.* (Court system number: S14216).

general approval and no criteria to define the circumstances under which such notice should occur.

- C. DNR testified that if a plan of operations for a project does not comply with an approval for exploration or development that DNR would provide notice and an opportunity to comment on the project. However, there is no provision for public involvement or allowing a project to proceed if the general approval requirements are not met.
- D. In prior testimony, DNR suggested that they might conduct an annual public review of existing general approvals for exploration and development. Without a statutory requirement for such reviews, there is no way to know whether or how they will occur.

III. Alaskans' appeal rights are uncertain.

DNR testified that if SB 59 passes, Alaskans could still appeal project-specific plans of operation. However, most people do not have the time or expertise to access and understand DNR's permitting websites. Without public notice of an internal DNR decision on a plan of operations, most people will be unaware a decision has been made until the activity is actually taking place. By that time, the time for an appeal will have passed.

In addition, the potential passage of HB 77 would make citizen appeals of DNR decisions far more onerous for the average Alaskan.

IV. Opportunities for Alaskans to comment on oil and gas projects are diminishing.

The way things are going, Alaskans may be forced to rely on federal permitting processes to have their say on oil and gas activities that impact their communities.

With the elimination of public comment on plans of operation as proposed by SB 59, it is possible that no DNR project permit will be subject to public review and comment. Some DNR permitted activities are not subject to public notice and comment under current law and the remaining activities may be authorized through general permits as allowed under HB 77.

In addition, the Department of Environmental Conservation's authority is limited to air and water issues and several of their permits are general permits with limited site-specific public review and comment. And the Department of Fish and Game's authority is generally limited to anadromous fish waters.

Any remaining public review opportunities will be piecemeal and limited in scope. Only the DNR plan of operations provides a comprehensive review of activities and issues associated with oil and gas exploration and development.²

² See 11 AAC 83.158 (lease plan of operations) and 11 AAC 83.346 (unit plan of operations).

V. Consider alternatives to SB 59.

One alternative for speeding up the permitting process without limiting public comment on specific projects is to provide for coordinated project reviews, including joint public notices and comment periods. Rather than applicants and the public having to deal separately with each agency, and even divisions within the agencies, a coordinated review would offer a “one-stop shop,” making it easier for applicants and the public to get their questions answered and issues resolved.

DNR currently conducts coordinated reviews for large projects with most costs paid for by the applicant. With some statutory changes and sufficient funding, the state could provide coordinated reviews for all projects, large and small, benefitting both applicants and the public and making for more efficient and effective permitting.

Conclusion

The Alaska public generally favors development. Thousands of projects have moved forward successfully under existing state laws. A project with significant impacts to other resources and values may be slowed down in order to deal with those impacts and this is as it should be. SB 59 and other legislation that limits public involvement in state resource decisions are solutions in search of a problem. There are other, more effective ways to improve Alaska’s permitting process.

If the legislature is going to accept DNR’s proposal in SB 59, before considering passage of the bill, it would be wise to wait for the Alaska Supreme Court decision regarding best interest findings and phased reviews. Failing that, the bill should be amended to limit DNR’s power and ensure the act is implemented as intended.

Thank you for your consideration.

Sincerely,

Lisa Weissler
340 Highland Drive
Juneau, AK 99801
907-723-5902
lisaweissler@gmail.com
Business website: <http://changingtides.com>