

JAMES SULLIVAN, SEACC

Mr. Chairman and members of the committee,

Thank you for the opportunity to testify.

There has been much discussion, within this committee and with our organization and with our friends, about the issue of water reservations and revoking personal use reservations. We find this issue problematic and want to make sure that our environment is being protected and that anadromous streams have the highest priority when permits are being issued.

We would like to propose that amend this bill so that when any entity applies for a water right on any anadromous body of water that DNR issue a water reservation on behalf of the fish. DNR can simply refer to the Anadromous Waters Catalog to see if the waterway is on there, then put in an appropriate reservation.

This would align DNR with our state constitution and its public trust responsibility.
It would ensure the protection of our salmon
It would enhance sustainable economic development across our state.

Salmon is our greatest renewable resource, it is in our legislature's best interest to put in a mechanism, in statute, that protects that resource as other entities apply for water rights.

Alaska Constitution Article 8 § 3. Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

SEACC FRASER INST Summary

DAVEN HAFEY 2-7-13

Summary of the Results of the Fraser Institute Annual Survey of Mining Companies, 2011/2012

These factors are ranked from least to most deterring to investment. A lower number indicates positive outlook for investment outlook in Alaska.

Factor	Alaska's Ranking (out of 93 regions surveyed)
Current Mineral Potential assuming current regulations and land use restrictions	6
Policy/Mineral Potential assuming no land use restrictions in place and assuming industry "best practices"	1
Room for improvement	40
Uncertainty concerning the administration, interpretation, and enforcement of existing regulations	35
Uncertainty concerning environmental regulations	49
Regulatory duplication and inconsistencies	56
Legal processes that are fair, transparent, non-corrupt, timely, and efficiently administered	32
Taxation regime	8
Uncertainty concerning disputed land claims	20
Uncertainty concerning which areas will be protected as wilderness areas, parks, or archeological sites	66
Infrastructure (includes access to roads, power availability, etc)	70
Socioeconomic agreements/ community development conditions	34
Trade barriers- tariff and non-tariff barriers, restrictions of profit repatriation, currency restrictions, etc.	11
Political stability	8
Labor regulations, employment agreements, and labor militancy or work disruptions	13
Geological Database (includes quality and scale of maps, ease of access to information, etc.)	20
Security (includes physical security due to the threat of attack by terrorists, criminals, guerilla groups, etc.)	29
Supply of labor/ skills	32
Corruption	20
Growing (or lessening) uncertainty on mining policy and implementation	38

These are the rankings where all of the above factors are taken into consideration.

Composite policy and mineral potential	4
Policy Potential Index	25

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HB 77 is a solution in search of a problem.

HB 77 seeks to streamline the permitting process in Alaska in order to make projects such as mines receive permits quicker. Currently, Alaska is the number one producer of toxic waste in the nation and metal mining is responsible for 99.9% of that waste.

Doug Haight Department of Commerce Development Manager stated on January 31, 2013 that "Alaska has a very favorable environment for the mining industry."

But Alaska DNR Commissioner Dan Sullivan's statement to the legislature was that Alaska is next to last in the world for permitting? Who is right? Answer: Doug Haight.

The evidence?

The Fraser Institute Annual Survey of Mining Companies was sent to approximately 5,000 exploration, development, and other mining-related companies around the world. Over 800 mining companies responded. They evaluated over 90 separate mining areas in the world. These companies reported exploration spending of \$6.3 billion in 2011.

Here is the result of the survey:

Overall, Alaska ranked number 4 in the entire world in combined policy and mineral potential.

Additional results from the Survey:

- Alaska ranks 24th in the world with a 73% positive rating. In the U.S. only Nevada and Wyoming ranked higher.
- 64% of the respondents rated the certainty of developing a mine in Alaska as either encouraging investment or not discouraging investment. #1 in the U.S.
- Only 1% of the respondents thought the tax regime (all taxes plus the complexity of the tax system) was a deterrent.
- Only 12% of the respondents thought that the regulatory duplication and inconsistencies (includes federal, state, inter-departmental overlap, etc.) in Alaska was a mild or strong deterrent.
- Only 1% cited environmental regulations as being a mild or strong deterrent in Alaska

<http://www.fraserinstitute.org/publicationdisplay.aspx?id=18045&terms=mining+survey+2011+2012>

The issue of the time involved in getting a permit is easily solved without HB77

The problem with the backlog of permit applications is because all applications are considered regardless of the actual potential for the result to be a productive mine. A large majority of the mine applications are filed by junior mining companies who have no intention of actually mining. They are speculators. They buy the rights to claims, do some exploration, and then apply for permits for the sole purpose of increasing the value of the claims. Most of these projects have not even done enough exploration to certify if there is an economical ore body to exploit. Very few of these mines will reach production, not because of the length of the

permitting process, but because they were not viable projects to start with. This burns state resources padding the speculation.

A simple solution would be to require the ore body be certified as a proven reserve prior to submitting an application. This would weed out projects that would never produce anyway and free up DNR's resources to focus on legitimate projects decreasing the wait.

Alaska has tried a streamlined permitting process. The story of the Rock Creek Mine.

The Rock Creek Gold mine near Nome was permitted in less than two years through an "expedited" permitting process and only operated for six months in 2008. No EIS was produced despite concerns about acid mine drainage, cyanide, arsenic, dust, and effects on bird and fish populations in the area. During construction, multiple failures of the water management system resulted in over \$800,000 in fines to the owner for violations of the Clean Water Act.

In 2007 the mine posted a \$6.8 million reclamation bond, which would be used to finance closure costs at the Rock Creek site if operations do not restart.

After numerous problems the company decided to end operations in 2011. The tailings pond almost immediately began to fill with rain water and threatened to overflow. ADEC had to take emergency actions to prevent an environmental catastrophe. The total cost to close down and reclaim the site is expected to be just under \$30 million, The \$22 million difference between the reclamation bond and the actual clean up costs will, most likely be paid for by taxpayers..

<http://groundtruthtrekking.org/Issues/MetalsMining/RockCreekMine.html#ixzz2JWg0qdnb>

HB77 should be rejected.

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Mr. Chairman, thank you for this opportunity to speak with you.

~~I come to you with an open heart, a strong mind and hopefully a persuasive voice. I am here to speak against the passage of HB77.~~

I come to you on behalf of my family and all the people who hunt, fish and gather food from this great land we call Alaska. Most importantly, I come on behalf of my grandson, Huck Daugherty, who is 4 years old and who at his tender age has already gone out with his parents and uncles to harvest salmon taller than he is and prawns bigger than his own hands, for him there is a magic in that; and in that magic lies an honest reality which must be protected in perpetuity. And you have the responsibility to protect our lands, streams and oceans.

Please look to our Alaska Constitution when making your decision on voting for HB 77. It states in Article 8 section 3

Titled: Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

*It explains in the Citizen Guide of the Alaska Constitution and I quote:
This section enshrines in the Alaska Constitution the common law doctrine that natural resources must be managed by the state as a **public trust** for the benefit of the people as a whole, rather than for the benefit of the government, corporations, or private persons.*

Who will HB 77 be protecting and representing, will it be protecting the common use clause of our constitution and the rights of the citizens of Alaska or does it protect a corporation which has it's own special interest not consistent with that of preserving the tender balance of the streams and waterways where our food arises from?

Please vote against the passage of this bill.

Thank you for hearing me with your open hearts and strong minds.



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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,

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Dear House 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 comments on HB 77 for consideration by the House Resources Committee:

- **General Permits. 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.”
 - According to DNR, decisions about what constitutes a significant and irreparable harm will be made on a case-by-case basis, creating the potential for inconsistency and uncertainty in decisions made by this commissioner and future commissioners.
 - Laws should help establish consistency and predictability in agency decisions. If general permits are to be allowed, DNR should identify in law the activities that qualify for a general permit and the process for establishing the permits.
 - DNR currently has a regulation that specifically identifies uses and activities that do not require a permit (11 AAC 96.020). It’s not unreasonable to ask that DNR provide the same level of clarity here.
- **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.
 - Whether a person is substantially and adversely affected in a way that is sufficient to grant an appeal right will be determined on a case-by-case basis, possibly by different people – whether it’s the commissioner, a director or an appeals officer who makes the decision is not clear. This creates the potential for an inequitable or inconsistent application of the appeal right.
 - Most people are not well versed in the state’s resource laws and already struggle to make their appeals effective. Now DNR is asking that people describe how they are substantially affected without any definition of what that means, even DNR does not know what it means. This is an undue and unnecessary burden on the Alaska public.
- **Instream Flow Reservations. 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.

2/7/2013

- 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).
- 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. Rather than changing the law, the legislature should provide DNR with sufficient funding to efficiently adjudicate reservation applications.
- **Temporary Water Uses. 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.
 - While it is possible to make adjustments whenever a new permit for the same project is issued, under the temporary use permit statute, applying conditions to the permit is discretionary on the part of the commissioner. In addition, there is no public notice requirement where the public could identify issues the department may not know about. The temporary water use statute is so minimal because the use is meant to be temporary.
 - If DNR wants to authorize a more than temporary use, a use that goes past five or ten years, but is something less than a right to appropriate water, they should develop a permit that includes public notice and sufficient criteria to protect the public interest.

I urge the committee to ensure that any changes to existing statutes be done with due regard for the interests of all Alaskans.

Thank you.

Sincerely,

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