ALASKA MINERS ASSOCIATION, INC.

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April 5, 2013

Senator Kevin Meyer, Co-Chair
Senator Pete Kelly, Co-Chair
Senate Finance Committee
Capitol Building
Juneau, AK 99801

Dear Senators Meyer and Kelly:

The Alaska Miners Association (AMA) writes to express its support for HB77, an Act on Land Disposals/Exchanges; Water Rights.

AMA is a non-profit membership organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,500 individual prospectors, geologists, engineers, vendors, suction dredge miners, small family mines, junior mining companies, and major mining companies. Our members look for and produce gold, silver, platinum, molybdenum, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, and other materials.

In the past year, the State of Alaska has embarked on an initiative to improve permitting statewide, and AMA believes HB77 is a giant step towards accomplishing that objective. In his transmittal letter, Governor Sean Parnell states, "The permitting functions of State government necessarily balance protecting the environment with utilization to provide the economic means for Alaskans to sustain themselves. This legislation encourages responsible development of our State land and water resources. An efficient permitting process with clear rules contributes to Alaskan economic growth and creates more Alaskan business opportunities."

In fact, the entire United States has been categorized as having the longest permitting delays in the world, and many states have begun reforming permitting to make the process more efficient and improve the business climate in their jurisdictions. Alaska has always been a leader in balancing the protection of our environment with the constitutional responsibility to develop our resources for the benefit of our people, and we too should make every effort to improve the way projects are permitted in the state.

In addition to being generally in favor of simplifying and streamlining Alaska's permitting process, we would like to specifically address Section 40 of HB77.

This section restricts "instream flow" water rights to public agencies. We believe a restriction is necessary because current law allows abuse of the permitting process, and because it is wrong to allow private groups, especially outside environmental groups, to hold Alaskans' public rights.

Instream flow water protects fish habitat and water quality. Protecting these public resources is a public responsibility. It should be exercised by public agencies.

Most water rights are intended to protect the economic interest of the person or group who holds them. That is, you can get a water right for your farm, your home, your hydroelectric project, etc. You need that water right to ensure the continued benefit of what you own—your home, farm, or business.

Instream flow rights are different. They are intended to protect the needs of fish, water quality, or recreation. These rights are not for a private individual or business; they are rights for the general public. For example, fish are a common resource belonging to all Alaskans. An instream flow reservation to protect the water they need should be held by the people, not by a private individual or an outside environmental group.

Why would we give this right over our fish to an outside environmental group, or even to a private person? If new information or other reasons show that an instream reservation needs to be revised for any reason – revised up, revised down, or even minor seasonal changes -- why should Alaska be forced to plead to an outside group, or even an individual? It is the Alaska Department of Fish and Game (ADF&G), in collaboration with the Department of Natural Resources (DNR), who should be making that decision for the people of our state.

No other state allows private groups to hold water rights. None. Why should Alaska? Other states recognize that instream reservations are a public responsibility and do not allow non-public groups to hold the rights for all the reasons described above. An example will illustrate the problem:

If the Susitna Dam is licensed, the federal government and the state agencies will require certain streamflows downstream of the dam. Imagine if Alaska gives the right to those flows — the instream flow reservation — to a private individual. Or to a group who then sells it to an anti-development organization. Imagine then, in several years and with new information, that we need to make some seasonal changes. Why would we want to go and beg said groups to allow us to regulate our project? That right should instead be held by the Department of Fish and Game. All other states think so. Alaska should too.

A *private* instream flow application is typically filed *not* to protect fish, but to stop a development project. Public agencies have filed hundreds of instream flow applications with DNR. Private "persons" have filed only 35. Of those 35 applications, 27 of them — over 75% — were only filed after a developer proposed a project.

Two examples illustrate this point:

- ***Chakachamna Hydro and Trout Unlimited.***
  When a company proposed the Chakachamna Lake Hydroproject west of Cook Inlet, the company was required to take flow measurements on the river downstream of the project. The company submitted the flow measurements to the state agencies. Trout Unlimited copied those measurements, adding no data of their own, and submitted them as an instream flow application. Trout Unlimited's submission added nothing to the science: ADF&G already had the data and had authority to require water in the stream to protect the fish. The application added nothing to the process; it only positioned Trout Unlimited for a likely challenge to the project if it went forward. The project was dropped (for other reasons) and Trout Unlimited then stopped pursuing their application.

- ***North Slope Oil Exploration and Greenpeace.*** ADF&G has been gathering information for an instream flow application on the Kuparuk River on the North Slope. Ten years ago, Greenpeace copied ADF&G's data, adding none of their own, and submitted ADF&G's data as a Greenpeace instream flow application for the Kuparuk River. They then sued DNR. They argued that DNR could not allow any oil company to have a temporary water use from a side channel to the river until DNR adjudicated Greenpeace's application, which was expected to take years. If Greenpeace had prevailed, winter oil exploration in that part of the North Slope would have been stopped for years. DNR and ADF&G together defended the lawsuit and proved that the side channel was not connected to the Kuparuk River during the time that the oil companies needed to withdraw water. Once Greenpeace lost the agreement, they stopped pursuing their application.

AMA understands that of course not every application is intended to stop a project. But over 75% are filed only after a project is proposed. These applications have been filed to stop the Susitna Dam, Chakachamna Hydro, the Pebble Project, and the proposed Chuitna Coal Mine. In each of these situations, ADF&G and DNR have the authority they need to review data and determine what must be left in the stream to protect fish habitat. Applications from environmental groups (or individuals) add nothing to the permitting process. We believe it only positions these groups for a lawsuit if DNR/ADF&G approves a project's permits.

In addition to adding no data or science to the scenario, many of the applications submitted by environmental groups use copies of other group's data – typically either DF&G's or the applicant's data. Why do we allow this environmental group harassment strategy? Other states do not allow it, and Alaska should join them.

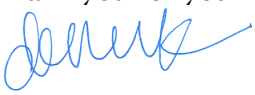
The Nightmare Scenario: any private group can stop oil exploration, mining exploration, or any other project for years just by making an application.
Instream flow applications are extremely complicated. They take years of data, and years of analysis before the final decision can be made. Here's the nightmare scenario. If an environmental group (or anyone) makes an instream flow application for all of the water in the stream, then any even temporary withdrawal anywhere in the watershed potentially infringes on the water they applied for. They may claim that all temporary water use applications must therefore stop until their instream flow application is adjudicated, which can take years. If this occurs, all mineral exploration in the watershed stops. All ice roads must stop, building roads, making cement, etc.

Unfortunately, this is not a far-fetched scenario: it is being argued right now in court. The coalition against the proposed Chuitna Coal Mine has made exactly this argument. Even though DNR and ADF&G have determined that the minimal water required for exploration has no adverse affect on the fish, those opposing the mine are arguing that Chuitna must stop all exploration for the years it takes DNR to adjudicate their application. They claim that their application alone, based on data taken by Chuitna, requires DNR to adjudicate the instream flow needs before allowing any other water withdrawal – even the minimal withdrawal required for exploration. Greenpeace made this same argument against water withdrawals for ice roads. Why should Alaska tolerate this anti-development strategy? Why should we leave it up to the whims of a judge? Rather, Alaska should follow the strategy of the other 49 states and just disallow it. Only public agencies should apply for water rights to protect public resources – fish, recreation, or water quality.

Contrary to the arguments taking place recently: there is a place for private groups to help, and that is working with ADF&G and DNR.
Private groups can help identify the instream water needs. They can work with ADF&G and DNR to provide data needed to assess fisheries' instream flow needs. The agencies would welcome help doing the work – but the final property right should be held by a public agency, not the private organization. And copying the work of others into an application is of no help to anyone. This year, DNR has completed 33 instream flow decisions, and has 21 more almost ready to go. This is the largest number of instream flow reservations approved during any one year since Alaska became a state! The agencies are using real data and completing real work to protect Alaska's waters for fish and other instream flow needs. Private groups can help them if they really wish to protect water for fish. But the current law allows most of the private work to focus instead on anti-development work that adds nothing to the process. Other states do not allow it. Alaska should not allow it either.

HB77 contains many elements that are good for Alaska's economy while protecting our environment, including the unnecessarily controversial water rights aspect. AMA urges you to pass this bill as written, and ensure our permitting process is transparent, predictable, and is truly what is best for Alaska.

Thank you for your consideration,



Deantha Crockett
Executive Director