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

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).

- 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