

SENATE FINANCE COMMITTEE

April 3, 2013

1:42 p.m.

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CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 1:42 p.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Wynn Menefee, Chief of Operations, Division of Mining, Land & Water, Department of Natural Resources; Daniel Sullivan, Commissioner, Department of Natural Resources; Melanie Brown, Self, Bristol Bay; Paul Fuhs, Alaska Sea Farms; Lindsey Bloom, Alaska Independent Fishermen's Marketing Association; James Sullivan, Southeast Alaska Conservation Council; Jennifer Hanlon, Environmental Specialist, Central Council of the Tlingit & Haida Indian Tribes of Alaska; Rick Halford, Self.

PRESENT VIA TELECONFERENCE

Levi Hohl, Alaska Fly Anglers Inc., Kodiak; Gina Friccero, Self, Kodiak; Jody Malus, Self, Bethel; Harold Bhlem, Self, Valdez; Diann Darnall, Self, Fairbanks; Sylvia Panzarella, Self, Anchorage; Tim Troll, Executive Director, Bristol Bay Heritage Land Trust, Anchorage; Brian Kraft, Vice-President, Katmai Service Providers, Anchorage; Sam Snyder, Self, Anchorage; Melissa Heuer, Self, Anchorage; Katherine Huber, Self, Anchorage; Dorothy B. Larson, Tribal

Administrator, Curyung Tribal Council, Dillingham; Bill Maines, Self, Dillingham; Dan Dunaway, Self, Dillingham; Tom Tilden, Self, Dillingham; Mike Byerly, Self, Homer; Jessica Tenhoff, Self, Homer; Lee Tenhoff, Self, Homer; Hal Shepherd, Center for Water Advocacy, City of Elim, and Norton Bay Inter-Tribal Watershed Council, Kenai; Michele Martin, Self, Kenai; Nick Cassara, Self, Mat-Su; Jim Colver, Self, Mat-Su; Dave Atcheson, Self, Kenai; Nelli Williams, Trout Unlimited, Anchorage; Rachael Petro, President and CEO, Alaska State Chamber of Commerce, Anchorage; Katherine Carscallen, Self, Dillingham; Dwight Gurley, Self, Anchorage; Kristin Carpenter, Executive Director, Copper River Watershed Project, Cordova; Joy Huntington, Tanana Chiefs Conference, Fairbanks; Eric Nassuk, Native Village of Koyuk, Koyuk; Ronald Barnes, Indigenous Peoples & Nations Coalition, Dillingham; Ronni Burnett, Self, Anchorage; Nikos Pastos, Self, Seward; Andy Rogers, Self, Anchorage; Verner Wilson, Self, Dillingham; Kim Williams, Self, Dillingham; Jennifer Harrison, Executive Director, Chickaloon Native Village, Dillingham; Gayla Woods, Self, Dillingham.

SUMMARY

SB 18 BUDGET: CAPITAL

SB 18 was SCHEDULED but not HEARD.

CSHB 77(RES)

LAND USE/DISP/EXCHANGES; WATER RIGHTS

CSHB 77(RES) was HEARD and HELD in committee for further consideration.

#hb77

CS FOR HOUSE BILL NO. 77(RES)

"An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

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Co-Chair Meyer observed that the committee would take public testimony on HB 77 as soon as possible, but that he wanted to give the administration a chance to finish explaining the bill first. He added that the administration had agreed to come back for questions after the public testimony. He offered apologies to the public for the delay, but opined that the information would be useful to testifiers, as well as committee members.

WYNN MENEFEE, CHIEF OF OPERATIONS, DIVISION OF MINING, LAND & WATER, DEPARTMENT OF NATURAL RESOURCES, began to speak to the briefing paper (copy on file). He related that the previous presentation had left off on item 7.

Mr. Menefee began to speak to item 8 and stated that the current statutes specified that if water was moved from one hydrologic unit to another without authorization, the offender would be guilty of a misdemeanor. He clarified that the Department of Natural Resources (DNR) wanted to focus on a significant amount of water and pointed out that the item added "significant amount of water" to the language. He shared that there were only 6 hydrologic units in the state and that although there was not a lot of instances of this offense happening, the department wanted to clarify the issue to avoid confusion.

Mr. Menefee addressed item 9 of the briefing paper and stated that it addressed a part of the statutes that dealt with appeals. He explained that the item changed two things in the statutes. The first change required an entity to be involved upfront in the process in order to be eligible to appeal a decision that the department gave a 30-day notice on. He explained that the department was trying to get people to participate in the process so that concerns could be addressed while the process was still ongoing rather than doing so after the fact. He stated that currently the standard for being able to appeal was if someone was "aggrieved" by the decision and offered that this meant simply "upset" to most people. He related that people wrote appeals to the commissioner that expressed dislike of decisions, but that they did not offer any substantial reason as to why. He pointed out that the item changed the language from "aggrieved" to "substantially and adversely affected." He explained that the word "substantial" ensured that there would be enough information for the department

to be able to address concerns and that "adversely affected" was intended to make sure that someone was harmed or had experienced something that adversely affected them.

Mr. Menefee spoke to item 10 and stated that it clarified that the opening and closing of the right to file mineral or mining claims were noticed to the public. He pointed out that the current statute only referenced mineral closing orders and that the change would make it so that the department would also have to notify the public when it reopened the claim process.

Mr. Menefee discussed item 11 and explained that the state was the platting authority in the unorganized borough. He stated that currently DNR had to be approached to subdivide a parcel of land in the unorganized borough and expounded that if there were no public easements involved, there were no public comments because it did not have an effect on anyone; however, in these instances, the department still held 30 days of public review and charged the applicant for the process of notification. He stated that the department wanted to remove the statutory requirement of the 30-day public review and posting in the papers for instances in which there was a subdivision with no easements. He pointed out that the change would save the applicant costs and time.

Mr. Menefee addressed item 12, which dealt with DNR's land sales. He explained that the department conducted auctions for land sales, many of which were conducted online. He pointed out that the item clarified the definition of auction to include online public auctions and added that the department conducted many of its sales through the internet.

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Mr. Menefee addressed item 13 and stated that it dealt with best interest determinations for disposals of interest. He pointed out that currently, the department was only required to complete one written finding. He reported that the department often issued two written findings, which included a preliminary and a final decision. He explained that the department offered two findings when it thought that it was appropriate in order to give people an opportunity to comment on the preliminary decision. He stated that the change would add in statute that DNR "may"

include two written findings, which would reinforced a practice that the department was already using to be more inclusive of the public.

Mr. Menefee reported that there were minor statutory revisions throughout the bill that consisted of wording clarifications that were intended to make it easier to read and understand the statutes.

Co-Chair Meyer noted the committee's attendance.

Senator Hoffman stated that he had accessed the online report regarding water reservations that were pending and granted to a person. He observed that in the last 6 years, money had been given to DNR to address legislators' concerns regarding the department's lack of progress on "taking up" permits. He offered that the department had approved 4 permits in 2012, 11 permits in 2011, and 10 permits in 2010 and pointed out that the number of permits being issued seemed to be going down. He stated that the permits that were approved were from the Department of Fish and Game (ADFG), DNR, and the Bureau of Land Management (BLM) and opined that the vast majority of permits that still needed action by the department were from other entities.

Senator Hoffman inquired what was causing the holdup with the permits, why there was a downturn in the number being issued, and where the state was going with permitting. He further inquired if the state was reducing the number of permits being issued and wondered what the time frame was for permits that were pending. He related that there had been 61 permits approved and that there were 371 still outstanding, 200 of which were from the fish and wildlife service. He asked when the department would get caught up with the backlog of permits and how the legislation would help accomplish that. He wondered if the department needed additional funds to address the issue and pointed out that over the course of the last 4 years, the legislature had been giving the department money to address the backlog in the processing of applications.

DANIEL SULLIVAN, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, inquired if Senator Hoffman was referring to water reservation applications. Senator Hoffman replied in the affirmative.

Commissioner Sullivan responded to Senator Hoffman's questions and offered that the department had made good progress on reducing the overall backlog of permits, which mostly involved mining, land, and water. He stressed that Senator Hoffman was referring specifically to water reservation applications and conferred that the department had made quite a bit of progress on the significant backlog of those permits. He noted that he would let Mr. Menefee address the way that the department had prioritized the permits, but pointed out that most of the permits had been focused on fish and game and protecting habitat.

Mr. Menefee stated that the prioritization effort occurred yearly and examined all of the applications, which were primarily from ADFG; additionally, there were many applications from the federal government. He confirmed that there were 361 outstanding water reservation applications. He reported that the department prioritized the applications by the potential risk of not having the reservation, the quality of the data that was collected, and several other aspects. He stated that DNR conducted the prioritization with ADFG at an annual meeting in order to ensure that the applications that needed the prioritization for a water reservation were processed first. He stated that the department prioritized about 20 water reservation applications every year and observed that it had been issuing about 11 per year on average.

Mr. Menefee continued to address Senator Hoffman's questions and related that the backlog would take some time to go through. He pointed out that a primary issue was that it still took about 5 years of data gathering before a water reservation could be adjudicated and stressed that there was a time factor in the evaluation.

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Senator Hoffman inquired if the department was aware of a lawsuit that was filed by the Chuitna Citizens Coalition. He explained that the coalition had made an application to DNR for a temporary water permit, but were refused; the coalition had taken the case to court. He pointed out that the department had approved a temporary permit, which was for up to 305,000 gallons of water, for PacRim Coal in a "mere" eight days. He discussed the Chuitna case and pointed out that the Alaska Supreme Court had overturned the department's decision, upholding that it had to

consider the coalition's application for keeping water in the streams for fish.

Senator Hoffman wondered why the department had not taken action on the Chuitna Citizens Coalition's application and had instead decided to fight the lawsuit. He further inquired what the department's reasoning was for denying the request to protect the stream for salmon. Mr. Menefee replied that the primary issue in the lawsuit had been over when a water reservation had to be adjudicated versus issuing temporary water-use authorizations. He explained that because a temporary water-use authorization was a completely different type of authorization than a water reservation, was revocable, temporary, modifiable, as well as certain regulations that explained how to address a conflict, the department had felt that the appropriate protections were in place. He offered that the reason the coalition's reservation had not been dealt with yet was simply because it had not been prioritized at that point.

Mr. Menefee continued to address the points raised by Senator Hoffman and reported that the temporary water-use authorization that the department had issued for exploration was a need that had to be addressed at the time; the department had felt that through the fish and game authorizations and the temporary water-use authorizations, there were enough restrictions and considerations in place to protect fish habitat.

Senator Hoffman noted that after the Alaska Supreme Court had overturned the DNR decision, the Chuitna Citizens Coalition had made the following statement (copy not on file):

This decision makes it clear that the State of Alaska is not in the business of protecting salmon habitat and the countless families and jobs that salmon support throughout the state. Instead of following the rules and protecting salmon habitat, we expect Governor Parnell now to change the rules of the game or change the law completely so that Alaskans are prevented from protecting their salmon resources.

Senator Hoffman requested the department to respond to the above statement. Mr. Menefee replied that there were inaccuracies in the statement and that it overlooked the protections for salmon habitat in the current process. He

pointed out that the court decision did not require the department to change any laws, but that it did specify that there was "some requirement for us to look at" and consider the water reservation; it did not require the department to adjudicate the reservation fully or finish it.

Senator Hoffman inquired how the application of the Chuitna Citizens Coalition would be viewed under the bill. Mr. Menefee responded that the application would qualify as being from a "person" and that the legislation's change would require the coalition to find a different public entity or political subdivision to transfer the application to because it had not been adjudicated fully yet.

Senator Hoffman queried if the bill would make it harder for the coalition to get a permit. Mr. Menefee believed that it would not necessarily be harder because the application information was all there and related that ADFG worked with Native corporations and NGOs throughout the process. He opined that if all the data was gathered for an application, it was likely that the coalition would be able to get an agency to adopt the application and move forward with it.

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Co-Chair Meyer noted that there would be more questions for the administration, but wanted to start the public testimony because people were in queue to speak to the bill. He apologized to the public for the delay and explained that the committee wanted to understand the bill better.

MELANIE BROWN, SELF, expressed strong concerns about the bill, particularly regarding the section that pertained to water reservations. She shared that she was a commercial fishing permit holder in Bristol Bay and that her family had been fishing in the bay for five generations. She pointed out that her family subsisted off the lands and waters of Bristol Bay. She stated that after listening to comments of DNR, she became especially concerned with how the priorities were written in the bill. She shared that the chief of operations for DNR's Division of Mining, Land & Water "made it very clear" where the priorities of DNR were with the following statement:

...if it is in the state's best, we can put another priority over fish.

Ms. Brown opined that the above statement represented a misinterpretation of the Alaska State Constitution, which stated very clearly that the renewable resource of salmon should be protected for Alaskans. She urged the committee to seriously scrutinize the section of the bill that pertained to water reservations, as well as the other sections of the legislation.

Co-Chair Meyer observed that testimony should be limited to two minutes and explained that there were a lot of people signed up to testify on the bill.

PAUL FUHS, ALASKA SEA FARMS, spoke in support of HB 77. He stated that Alaska Sea Farms had been working with DNR to rationalize land-use regulations for shellfish, mariculture, and farming; over the course of this process, it had become clear that there needed to be a statutory clarification regarding the renewal of shellfish licenses. He explained that the reason the clarification was important was because of the types of species that shellfish licenses covered. He expounded that when it took three or four years to grow an oyster and seven to nine years to grow a geoduct, a lessee that was reaching the end its lease would be hesitant plant more stock if its license renewal was uncertain. He explained that the bill clarified the biology of the animals that Alaska Sea Farms dealt with. He pointed out that the currently, the issue caused instability for people who wanted to invest in this industry.

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LINDSEY BLOOM, ALASKA INDEPENDENT FISHERMEN'S MARKETING ASSOCIATION, expressed concerns about HB 77 and suggested amending the bill. She pointed out that there were several measures in the legislation that took away the public's ability to comment and testify during DNR's decision making process. She explained that the bill would create a general permitting system in which the commissioner would have the discretion to issue general permits, without giving public notice, which he/she determined were unlikely to result in significant and irreparable harm. She furthered that the legislation would remove the requirement of public notice for best-interest findings. She explained that the bill

also "liberalized" the number of temporary water-use permits and specified that they could be issued to a single project multiple times and renewed without public notice. She related that the legislation would change the eligibility of a person to file an appeal or request reconsideration with DNR and would change the law's language so that someone had to be "substantially and adversely impacted or affected" in order to be a participant in those processes. She related a hypothetical example that illustrated her concerns regarding the difficulty of fisherman proving that they were "directly impacted" by upstream waster use.

Ms. Bloom pointed out that the zero fiscal note did not provide additional funds for ADFG and DNR to work with individuals, tribes, and organizations to apply for instream-flow reservations. She was unsure how the administration could ensure that it would be able to deal with the increased caseload of having to apply on behalf of the Alaskans without additional resources. She stated that the primary issue for fisherman was that the bill took away their rights to protect water, fisheries interests, to be notified by DNR on actions that might affect fisheries, and to appeal decisions that could impact fisheries. She urged the committee to take its time with the bill and offered that amendments could address some of the concerns.

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LEVI HOHL, ALASKA FLY ANGLERS INC., KODIAK (via teleconference), spoke against HB 77. He related that clean water and healthy salmon stocks were requisite for his Alaska-based company to be successful. He shared that the bill removed the right for citizens to petition for water rights and denied Alaskans a voice in managing the state's resources.

GINA FRICCERO, SELF, KODIAK (via teleconference), expressed strong concerns about HB 77 and stressed that it should not be passed as it was written. She discussed her family's long-standing history of fishing in Alaska and expressed concerns that the legislation limited people's ability to participate in a meaningful way. She felt that the bill diminished DNR's process, took away citizens' ability to ensure protection for fish and game, and removed the right of the public, tribes, or other entities to apply for water reservations to maintain sufficient flow for public

interests. She opined that the most concerning provisions eliminated an individual's and organization's ability to secure instream reservations of water, removed a mandatory notice and comment period for preliminary best-interest findings, and limited who could participate in the administrative process to challenge flawed decisions.

Ms. Friccero pointed out that a corporation's goal was to make profits, but reminded the committee that the state's goal should be to protect Alaska's environment from being ruined for the sake of corporate profits. She shared that coastal communities were "once again staring down the barrels of big guns who are willing to ruin what we have in order to get what they want, which is more money." She offered that the state had a responsibility to communities to make decisions based on the viability of sustaining resources and opined that there had never been a mine that had not polluted the ground or water. She urged for the consideration of fish, citizens, and animals and stressed that the bill should not be passed as written.

JODY MALUS, SELF, BETHEL (via teleconference), spoke against HB 77. She stated that it undermined the standards for fish and wildlife and the ability of Alaskans to participate in the management of their resources. She explained that the bill eliminated an individual's or an organization's ability to request the reservation of water in a stream, river, or lake for the benefit of fish, wildlife, recreation, transportation, as well as other economic and cultural uses. She pointed out that the legislation also removed mandatory public notice and public comment periods for preliminary best-interest findings; it also limited who could participate in challenging "flawed decisions" that undermined Alaska's hunting and fishing resources. She urged the committee to fix the bill and uphold the rights of Alaskans to apply to DNR to reserve water in rivers, creeks, and streams throughout the state, including the waters of Bristol Bay. She related that it was disturbing that the state government was taking an increasingly lax attitude towards the actions of large companies and their negative effects; meanwhile, some legislators favored laws and rules that were becoming more restrictive towards the rights of individuals.

HAROLD BHLEM, SELF, VALDEZ (via teleconference), testified in opposition to HB 77. He opined that the bill appeared to be "another industry power grab" and offered that there had

been too many bills of this type recently. He opined that some of Alaska's elected and appointed officials felt only responsible to their "cronies" or whoever appointed them. He stated that Alaskans needed more opportunities to preserve salmon and the unique way of life of Rural Alaskans. He shared that the wording in the bill raised the possibility of fast tracking a project that had irreversible and or irremediable consequences. He urged the committee to fix the bill and concluded that people need more opportunities to represent themselves and their point of view rather than fewer opportunities to do so.

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DIANN DARNALL, SELF, FAIRBANKS (via teleconference), expressed opposition to HB 77. She related that the bill was not in the best interest of the residents of the state, particularly with respect to Rural Alaskan's. She offered that bill limited input and gave too much power to the commissioner of DNR. She discussed the use of the word "may" in the bill regarding the commissioner's responsibilities. She pointed out that a notice in the newspaper would not be an adequate notice for some "bush" communities. She offered that the legislation had too many "maybes" and did not have enough substance. She talked about the requirement of having to be in on the original process in order to be eligible to appeal a decision by DNR and pointed out that people might not have been available at the time of the original process for legitimate reasons. She opined that the wording change within the legislation regarding who could appeal was unfair. She pointed out that the bill needed more work to protect resources for all citizens of the state and concluded that all Alaskans should have the right to appeal or give input.

SYLVIA PANZARELLA, SELF, ANCHORAGE (via teleconference), testified in opposition to HB 77 and opined that the governor was continuing to take the rights of the public away by eliminating their ability to speak against the Pebble Mine and the Pebble Partnership. She explained that the Pebble Mine's tailings dam would be large enough to cover downtown Seattle and encompass the Space Needle. She furthered that the mine would require the monitoring of 1 billion gallons of acid tailings water in perpetuity and pointed out that even nuclear waste had a half-life. She applauded people who were not "yes men and yes women" to the governor or the large corporations that were taking

over Alaska's oil, fish, and state. She warned against taking away the people's right to speak.

TIM TROLL, EXECUTIVE DIRECTOR, BRISTOL BAY HERITAGE LAND TRUST, ANCHORAGE (via teleconference), expressed concerns about HB 77 and encouraged the committee to take its time with the legislation. He pointed out that over the last 5 years, he had help raise over \$1 million to help fund instream-flow reservations for fish in his capacity as executive director. He offered that it was ironic that much of the trust's efforts were targeted for retroactive cancellation by the State of Alaska, which had encouraged them to do the work in the first place. He urged the committee not to rush to approve the bill, but to pause and make an effort to understand Alaskan law. He discussed the benefit of private instream-flow reservations to the state. He explained that the land trust's work was a perfect example of a public-private partnership. He acknowledged that ADFG followed most of the instream flow reservations, but could not be everywhere; the trust assisted in this effort by raising more than \$1 million and collecting the necessary hydrologic data that ADFG did not have the resources to collect. He pointed out that the trust did this at no cost to ADFG.

Mr. Troll opined that if it was the policy of Alaska not to sacrifice one resource for another, then private instream-flow reservations could help accomplish that. He wondered how it could be determined whether fish and mining could coexist in a particular place and explained that fish and mines both needed water. He expounded that if the mine took too much water, the fish died. He pondered how the amount of water that fish needed to live was determined and explained that instream-flow reservations required 5 years of data collection that would be used to calculate how much water must be left in a lake or river to support fish. He furthered that an instream-flow reservation let DNR and the mining permit applicant design a mine according to how much water would be available. He pointed out that a water reservation would not necessarily stop the mine and explained that a mining company could ask DNR to vacate or modify the water reservation; if a greater public interest favored the mine, fish could be sacrificed, or if a greater public interest favored fish, the company would make other plans. He offered that all a private instream-flow reservation really did was provide private applicants with standing in the adjudication process to ensure that the

public interest in fish was represented, that the commissioner was considering the best available data, and that if there was choice between fish and another resource, it would not be made arbitrarily.

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BRIAN KRAFT, VICE-PRESIDENT, KATMAI SERVICE PROVIDERS, ANCHORAGE (via teleconference), testified that HB 77 needed changes and opined that it was an opportunity for the governor to push forward the agenda of the mining industry. He offered that the bill was not a streamlining of the process to help get permits through quicker and opined that the backlog was due to a lack of personnel. He discussed a Fraser Institute annual survey of mining companies that was sent to over 4100 exploration, development, and other mining related companies worldwide. He reported that the survey reflected responses from 742 of those companies and that the data was sufficient to evaluate 96 jurisdictions. He explained that the survey's responses were tallied and that it ranked provinces, states, and countries according to the extent that the public policy factors encouraged or discouraged investment; Alaska was in the top 15 worldwide in terms of being favorable through its permitting system and other factors as being open for business. He related that the bill took away the public's opportunity to participate at a level where it could give input and have the state consider the public's best interest. He stated that it was essential for business owners who depended on water quality to have the opportunity to be notified and comment on potential water uses that could have an effect on their industries. He concluded that the committee should take a close look at HB 77 and be very cautious before passing it.

SAM SNYDER, SELF, ANCHORAGE (via teleconference), expressed opposition to HB 77. He related that he was raised in the desert where water and fish habitat were scarce and stated that he was an avid sportsman who had been involved in the community and industry nationwide. He pointed out that he also had a doctorate in environmental studies with a focus on water and fisheries related issues. He observed that Alaska was defined, in large part, by its world class fisheries. He furthered that anglers from around the world came to Alaska and envied the state of its fisheries. He related that Alaska's residents took pride in not only the robust nature of the state's fisheries, but also in their

ability to have a voice in the management process. He offered that while other salmon fisheries had been declining around the world, Alaska remained "above them all," in part, because of the existing protections and the ability of the community to engage in the process. He pointed out that the legislation not only put healthy salmon runs and fisheries at risk, but also removed the ability of Alaskan citizens, who were stakeholders that were dependent on healthy rivers and habitat, to have a voice in the management and conservation of those resources.

Mr. Snyder opined that the bill represented an undercutting of the democratic ideals of the U.S. and a point of pride for Alaskans, whose constitution mandated the conservation of fish and habitat for the best interest of state and its citizens. He pointed out that Section 40 of the bill removed the ability of individuals and groups to apply for an instream-flow reservations, which would be a blow to interests that depended on fisheries; moreover, it put the protection of fish and habitat at risk. He observed that DNR had stated that very morning that if it was in the state's best interest, other priorities could be placed over fish. He wondered how the state's best interest was defined if it was not for its citizens and issues like fisheries. He furthered that Section 40 also gave the commissioner of DNR "unwarranted" authority to grant temporary water-use permits at his/her own discretion as often as needed, as well as general use permits without necessarily having public input; additionally it reduced the public's access to the administrative appeal processes by changing the standard to "substantially and adversely affected." He was unsure how substantially and adversely affected" would be defined and defended. He wondered why the system needed streamlining if it was already robust.

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MELISSA HEUER, SELF, ANCHORAGE (via teleconference), expressed strong concerns with HB 77, especially regarding the sections of the bill that limited the rights of individuals. She offered that Sections 4, 40, and 41 removed the rights of individuals and organizations to apply for and appeal water rights. She pointed out that it was a constitutional right of Alaskans to be able to protect their fishing resources and opined that the bill stripped the state's citizens of their ability to

participate in the process, which was unacceptable. She offered that healthy water ways were an invaluable resource to a number of individuals and industries in Alaska. She did not support any language that removed the individual rights of Alaskans and placed those rights in the hands of the commissioner of DNR with little or no say from local residents. She pointed out that Alaska ranked in the top third of states in terms of its relaxed policies for mining development. She opined that Alaska's permitting process needed more protection for the public and not less. She requested that the bill be held in committee until its long-term implications on the permitting system and the future health of Alaska's waterways could be determined.

KATHERINE HUBER, SELF, ANCHORAGE (via teleconference), voiced concern regarding HB 77. She related that multiple portions of the bill would limit the rights of Alaskans to be involved in resource-use decisions, including those that impacted salmon resources and fisheries. She offered that the public needed more opportunities to be involved in decisions related to the state's resources. She pointed out that Section 40 of the bill eliminated individuals' and organizations' ability to request that water remain in a stream, river, or lake for the benefit of fish, wildlife, recreations, and/or transportation. She furthered that Section 42 of the bill gave the commissioner of DNR the ability to issue temporary water-use authorizations without public comments. She opined that the legislation's proposed changes would lessen the public's ability to take part in managing its resources. She pointed out that she relied on the state's fish and game resources, particularly on salmon fisheries and explained that she lived in Alaska because of the opportunities provided by the land and its abundant natural resources.

Ms. Huber stated that the Alaska State Constitution and ADFG regulations mandated the sustainability of Alaska's resources. She asked the committee to consider Alaska's Policy for the Management of Sustainable Salmon Fisheries, which stated that "the Board of Fisheries and ADFG recognizes that Alaska's salmon fisheries are healthy and sustainable largely because of abundant pristine habitat and the application of sound, precautionary conservation-management practices." She opined that the regulations clearly stated that public support and involvement for sustained use and protection of salmon resources should be

sought and encouraged. She urged the committee to fix the bill to include more public oversight and involvement.

Co-Chair Kelly addressed comments of testifiers that were made in reference to statements by DNR during the previous committee meeting. He explained that testifiers had claimed that DNR had said that the state would prioritize something over fish if it was in the state's best interest. He pointed out that the discussion had been under the context of whether the state would prioritize eight fish over a project that might be in the best interest of the State of Alaska. He opined that the headlines would read that DNR would prioritize projects over fish, but offered that this was not true.

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DOROTHY B. LARSON, TRIBAL ADMINISTRATOR, CURYUNG TRIBAL COUNCIL, DILLINGHAM (via teleconference), testified against HB 77. She expressed the council's desire to be able to protect its wildlife and renewable resources for subsistence, commercial, and residential use, pointed out that it took that responsibility very seriously. She stated that habitat protection was a means for people to protect their resources and opined that it would be a fatal flaw to eliminate tribal governments' right and authority to apply for water reservations. She explained that the tribe had become increasingly critical for all kinds of government services and that it could continue to assist the state in growing, prospering, and serving the public uses of Alaska's resources. Additionally, the council was concerned that the bill seemed to take away tribal governments' ability to work with the state government. She offered that tribal governments had already been limited in their ability to work with the government, but that the legislation completely stripped that ability away from the public. She expressed concerns with the "government running amuck," especially when it related to DNR and the protection of the state's resources.

BILLY MAINES, SELF, DILLINGHAM (via teleconference), urged opposition to HB 77 and offered that it was not constitutional. He discussed Article 8 of the Alaska State Constitution and opined that the legislation went against that article. He stated that the legislation also took away his right as an Alaskan citizen to petition for water

rights and that it would not even allow him to comment on the issues that were being proposed in the bill.

DAN DUNAWAY, SELF, DILLINGHAM (via teleconference), spoke against HB 77. He offered that one of the great "underpinnings" of forming the State of Alaska was the demand for citizen participation in the management of their resources and saw the bill as disenfranchising citizens from the process. He discussed previous comments that stated that Alaska's permitting was different from other states and wondered when being different had ever bothered Alaska. He supported the comments of Tim Troll. He recalled a situation where, through working as an ADFG biologist, water reservations had needed to be worked out, but that the state had been unable to do so in this particular case. He explained that the Nature Conservancy had stepped in to help with the situation, the water reservations were worked out, and the state had finished the process; he offered this was an excellent example of cooperation that had saved the state a lot of money. He acknowledged that there were some parts of the legislation that cleaned up the language and made it more specific, which he supported. He added that he did not want to see a reduction in public participation or information and offered that Senator Hoffman was correct that requiring a local group to find a government agency to work with was another obstacle to a group being able to participate.

[2:41:17 PM](#)

TOM TILDEN, SELF, DILLINGHAM (via teleconference), testified against HB 77 and believed that it sacrificed salmon to other interests in the state. He remarked on the previous comments of DNR that other resources might be prioritized over salmon for the good of the state and offered that it was a "bad comment"; furthermore, the same statement had probably been made in California, Oregon, and Washington. He discussed how California, Oregon, and Washington had prioritized timber, mining, and hydro interests over salmon and shared that there were not many fish left in those states. He pointed out that there were still significant fish populations in Alaska that needed to be protected and offered that it was in the best interest of the state to protect the renewable resources that it had. He observed that if you looked at the history of the Alaska before the oil, gas, and mining companies had arrived, it had been salmon that supported the state. He

opined that it would be salmon that again supported the state after all the oil and mining was done because tourists would come to the state to catch salmon and see Alaska Natives live a subsistence lifestyle. He urged the protection of salmon and hoped that the governor would not sacrifice one resource over another.

MIKE BYERLY, SELF, HOMER (via teleconference), voiced strong opposition to HB 77. He opined that the only reason the bill existed was the Pebble Mine and other similar projects. He offered that you did not "throw the baby out with the bathwater" if you did not like the way a policy worked. He opined that DNR routinely processed water-use application for mining, oil, and gas development, but rarely processed the instream-flow applications that were needed to keep water in the rivers for fish. He shared that salmon needed enough water to reach their spawning grounds upstream. He explained that often spawning grounds were nothing more than a trickle of water, but that in aggregate, those trickles over an entire watershed could produce a very large run. He relayed that the state was founded on fish and that subsistence fishing continued to play a large role in the fabric of Alaska. He pointed out that Alaska's commercial fishing industry was alive and thriving due to its habitat; most of the state's streams remained un-dammed and its watersheds were mostly intact.

Mr. Byerly offered that the instream-flow reservations were essential to ensure that the state left enough water in its streams for the basic needs of fish. He asserted that the governor had stated more than once that he would never trade one resource for another. He stated that if the water was left in the rivers and the watersheds kept intact, salmon would continue to return and offered that it was the "best" and "cheapest" investment the state could make. He warned against trading fish and the jobs that were associated with them for a one-time development. He urged the committee not to pass the bill in any form.

[2:46:14 PM](#)

JESSICA TENHOFF, SELF, HOMER (via teleconference), spoke in opposition to HB 77 and noted that she was against anything that diminished the ability of citizens to give input on issues that affected their sustainable life. She relayed that the legislation altered her ability to affect change and pointed out that a representative government's first

responsibility should be to protect the right of citizen participation. She opined that if \$10 billion could be "given away" to oil companies for tax incentives, then someone else was "owning" the government. She felt that her voice was being continually diminished and asserted that it was the legislature's responsibility to strengthen the citizens' ability to guide their own future.

LEE TENHOFF, SELF, HOMER (via teleconference), expressed opposition to HB 77 and related that the bill gave too much power to an elected official. He discussed the bill's use of the wording "best interest of the state" and opined that the term was getting away from the "public interest." He expressed a desire to have his voice heard.

[2:48:49 PM](#)

HAL SHEPHERD, CENTER FOR WATER ADVOCACY, CITY OF ELIM, AND NORTON BAY INTER-TRIBAL WATERSHED COUNCIL, KENAI (via teleconference), spoke in opposition to HB 77. He stated that the Norton Bay Native communities and tribal government were concerned that tribal governments would be excluded from the processes of protecting and managing instream-flow reservations as far the application process was concerned. He pointed out that the bill left out tribal governments, many of which had already submitted applications for instream flows; others were currently in the process of collecting the five years of data required to apply for an instream flow reservation. He pointed out that pending applications of these tribal governments would be "dropped" by the bill. He relayed that the bill would also eliminate important tribal environmental knowledge, contemporary data, and a tribe's experience with area. He shared that he was currently working with tribes to collect data for an instream-flow reservation. He requested the committee to oppose the bill in its entirety.

MICHELE MARTIN, SELF, KENAI (via teleconference), spoke in opposition to HB 77 in its current form. She thought that the bill, as written, would represent a fast track for corporations that were largely based out-of-state, which wanted to use the resources for their own financial gain. She believed that the money these corporations earned would not go back into the state's economy. She related that the state needed water in its streams for fish and that it was in the state constitution to do so. She discussed the importance of the fish to the local economy, way of life,

and future sustainability of the Alaska. She pointed out that other states were spending large amounts of money to rebuild fisheries that had been destroyed by loss of habitat and observed that Alaska could learn from the past and not make the same mistake. She stated that it took a significant amount of money and resources to rebuild fisheries after they had been hampered by habitat degradation and offered that the runs almost never came back fully after that had occurred.

[2:54:19 PM](#)

NICK CASSARA, SELF, MAT-SU (via teleconference), spoke against HB 77. He discussed his 30 years of work history protecting and enhancing the fish and wildlife populations with ADFG. He recalled that Commissioner Sullivan had indicated that no other state currently allowed individuals to file for water rights and offered that Alaska's laws and regulations were better than those of the other states. He wondered if there was any state in the country that someone would rather be working in than Alaska. He relayed that the rest of the country was trying undo damage that had been done to their watersheds and fisheries, and queried why Alaska would want to be more like the other 49 states. He quoted from Article 8, Section 3 of the Alaska State Constitution as follows:

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

Mr. Cassara opined that the state's constitution clearly set out the rights of the people and communicated those rights to water. He urged the committee not to make shortsighted changes to the state's regulations.

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JIM COLVER, SELF, MAT-SU (via teleconference), stated that HB 77 needed to be amended. He pointed out that DNR was the platting authority for unorganized areas in Alaska and stated that Section 28 of the bill streamlined the process for the vacation of property lines; he offered that this section could use a lot more streamlining. He relayed that his firm was working on a plat for a school and village in Western Alaska and that DNR was the platting authority. He explained that the plat would vacate some property lines

and a portion of several streets to accommodate a village office and a school septic system. He pointed out that the petitioners owned most of the surrounding land, the plat had been submitted for 2 months, and that after repeated requests, there was still no confirmed schedule for a hearing and decision on the right-of-way vacation. He pointed it was expected that it would be another 20 weeks before a decision was finalized, which may be too late to conduct field work in the upcoming summer.

Mr. Colver shared that in municipalities, the vacation of a street or easement was a straightforward process that did not exceed 75 days for approval, including a 45-day period until the plat is heard and 30-period that was designated in statute. He offered that Section 28 needed to be amended to streamline the process of vacating right-of-ways and easements to be similar to the process that municipalities used. He pointed out that the problem was that DNR handled street vacations similarly to section-line vacations, which took a lot more agency coordination. He offered that he could help on an amendment to the bill and that he had just re-written the Mat-Su Borough platting code. He concluded that the section of law that Section 28 dealt with could be addressed in the bill.

DAVE ATCHESON, SELF, KENAI (via teleconference), testified that HB 77 needed to be abandoned or rewritten. He pointed out that Alaska was proud of its commercial and sport fishing, but warned that the same thing that happened in the Lower-48 could happen in Alaska. He opined that in his 30 years of living in the state, he had seen the beginnings of what happened in the Lower-48 in Alaska. He opined that HB 77 was one factor that was leading Alaska towards the direction of the Lower-48's fisheries. He stated that the bill eliminated the ability for entities to obtain instream-flow reservations, which allowed for the sustainability of a variety of activities, while also protecting fish and wildlife habitat. He noted that removing the mandatory notice and comment period for best interest filings was concerning and offered that it was not good policy or government to exclude the public from this process. He opined that the reason the state had great fisheries was their inaccessibility, and expressed that the state needed to be careful with its fisheries.

NELLI WILLIAMS, TROUT UNLIMITED, ANCHORAGE (via teleconference), spoke against HB 77. She related that the

legislation undermined sound management, salmon and trout habitat, and inhibited or removed the public's ability to help shape land-management decisions. She pointed out that Trout Unlimited had 15 staff and over 800 members in Alaska and that it worked to protect fish or fix rivers where people fished. She offered that the legislation would harm the fish and rivers that Trout Unlimited's members depended on to run businesses, for recreation, and to put food on the table. She pointed out that the bill would eliminate the ability of an individual Alaskan, a business, or an organization to keep water in a stream for fish habitat, economic purposes, and cultural reasons. She opined that the legislation would put every day Alaskans at a disadvantage to industry.

Ms. Williams shared that Trout Unlimited had spent tens of thousands of dollars over the past several years to establish instream-flow reservations and that those efforts would be nullified by the bill. She offered that Alaska's permitting process already helped pave the way for industry in Alaska and that the bill took steps to make the process even easier at the expense of the public. She reported that the Fraser Institute ranked Alaska in the top third among states and countries with the most relaxed policies for mineral development. She asserted that several DNR employees had publicly stated that the Alaska permitting system was "basically a cake walk" and was set up to say yes to resource development projects. She concluded that the legislation would cut out public involvement in decisions that affected public resource management and would make it harder for Alaskans to voice concerns about a project in a meaningful way.

[3:04:48 PM](#)

RACHAEL PETRO, PRESIDENT & CEO, ALASKA STATE CHAMBER OF COMMERCE, ANCHORAGE (via teleconference), spoke in support of provisions within HB 77. She related that the chamber's primary mission was to advocate for policies that improved Alaska's business climate and pointed out that efficient, predictable, and common sense regulations and permitting processes were integral to creating an environment in which businesses could succeed. She stated that the chamber's members had expressed strong support for Alaska's policies and regulations that guided the development of Alaska's natural resources while still protecting the environment. She pointed out that the chamber had also advocated for

streamlining the regulations and policies in which bureaucratic and business efficiencies could be gained. She referenced the Fraser Institute's study that had been addressed by earlier testifiers and related that internationally, Alaska ranked just below Kazakhstan and just above Columbia regarding uncertainty with environmental regulations; furthermore, with regard to regulation duplication and inconsistencies, Alaska ranked below Honduras and above Niger. She concluded that the bill was a common sense piece of legislation that should receive broad support.

3:07:12 PM

KATHERINE CARSCALLEN, SELF, DILLINGHAM (via teleconference), testified against HB 77. She stated that Section 40 of the bill took away the ability of a person, tribal government, city, or other group to apply for instream-flow reservations. She pointed out that Alaska had sustainable fisheries and management that were the envy of the rest of the country, which were driven by public participation and a precautionary approach to management. She stated that the regulations that applied to upstream of the fisheries were lacking and pointed out that there were already no automatic instream-flow requirements for salmon. She opined that the burden of protecting fish was already on the public and that removing the right of individuals to apply for instream-flow reservations was a move in the wrong direction. She pointed out that it was easy to see how trading fish "here or there" or a few thousand acres of wetlands for the greater good of Alaska could be justified by the state, which was a reality Bristol Bay was being faced with. She was not willing to give up her personal rights to keep tabs on water applications, apply for instream flow-reservations, and contest decisions by DNR.

Ms. Carscallen concluded that as Bristol Bay was being faced with new development prospects, the people were seeing their priorities diverge from those of the state and offered that Alaskans needed to keep their ability to look out for the best long-term interests of their region and state.

DWIGHT GURLEY, SELF, ANCHORAGE (via teleconference), testified against HB 77. He offered that part of the intent of the bill was to exclude an individual's application for instream-flow reservations. He thought that the state

needed more participation from individuals who had vested interests that were smaller than the corporate interests. He pointed out that Alaska's pristine habitat was a treasure that relied on abundant, clean water and offered that building a fishery that would be as sustainable as the ones that Alaska currently had would be a complex and gargantuan project.

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KRISTIN CARPENTER, EXECUTIVE DIRECTOR, COPPER RIVER WATERSHED PROJECT, CORDOVA (via teleconference), testified against HB 77 in its current form. She pointed out that the Copper River region supported commercial, subsistence, and sport salmon fishing economies and discussed her experiences on the Cordova City Council. She loved that Alaska had a history of keeping decision making accessible to citizens. She felt the bill had the potential to injure fisheries resources by severely limiting public participation and pointed out that the fishing sector of the state's economy employed more people than any other sector; it did not generate more revenue, but employed more people. She related that the Copper River Watershed Project had submitted an application to maintain enough water in Eyak Lake for salmon and pointed out that the lake generated over \$1 million per year in Sockeye and Coho ex-vessel seafood sales. She offered that the bill was intended to benefit certain projects, but that it would have significant potential for unintended consequences. She concluded that the bill needed more analysis.

JOY HUNTINGTON, TANANA CHIEFS CONFERENCE, FAIRBANKS (via teleconference), supported adding an amendment to Section 40 of HB 77 that included federally recognized tribes and/or tribal organizations. She appreciated Commissioner Sullivan's efforts to work with tribal entities and indicated that he was very responsive to correspondences. She pointed out that water reservations were not the only way to protect fish and game, but that the matter involved local government inclusion. She relayed that in over half of Alaska's communities, the tribe was the only local government and public agency; they provided healthcare, public safety, family services, and helped with certain judicial aspects. She stated that excluding tribal governments left many communities out of the process and offered that tribes often had more capacity than cities. She relayed that tribes were not inherently anti-

development and opined that allowing tribes to submit applications did not represent an anti-development effort. She concluded that the state should recognize tribes as local governing bodies and trust the local process; furthermore, including federally recognized tribes and/or tribal organizations was logical.

[3:17:04 PM](#)

ERIC NASSUK, NATIVE VILLAGE OF KOYUK, KOYUK (via teleconference), expressed opposition to HB 77 and related that it concerned the village. He relayed the importance of subsistence and commercial fishing around Koyuk and offered that the bill would negatively affect the village's efforts to continue its lifestyle. He stated that Koyuk was opposed to the bill because instream water-right issues occurred at the headwaters where the fish spawned. He concluded that the village lived a lifestyle that reaped benefits for future generations and that the legislation did not reflect that.

RONALD BARNES, INDIGENOUS PEOPLES & NATIONS COALITION, DILLINGHAM (via teleconference), testified in opposition to HB 77. He discussed a recent United Nations reports by the Special Rapporteur on the Rights of Indigenous Peoples, who had recently visited Alaska. He stated that the special rapporteur had asserted in his report that the indigenous peoples of Alaska had not consented to the creation of a federal state, which was a violation of an indigenous people's right to self-determination. He relayed that the report had also stated that the Alaska Native Claims Settlement Act was in question, which was supported by an earlier report by Erica-Irene Daes. He offered that the 1867 Treaty of Cession did not provide ownership or jurisdiction to the Unites States of America. He opined that HB 77 and the history of law and legislation that created the State of Alaska were in violation of the constitution of the United States. He pointed out that, based on the constitution, adopting or rendering legislation that libeled those who held title and jurisdiction could result in liabilities for public officials or enforcers of the violations in the form of physical and economic damages.

RONNI BURNETT, SELF, ANCHORAGE (via teleconference), testified in opposition to HB 77. He offered that the bill stripped Alaskans of the rights for clean water and healthy

fisheries. He related that the Chuitna Citizens Coalition's intention in filing for the instream-flow reservation for Middle Creek was to ensure that those fish always had enough water to grow and return to the ocean. He opined that PacRim Coal had no reason to believe that the fish were needed and related the importance of the Chuit River watershed to a nearby village. He believed that people should have the right to be heard regarding situations that concerned thousands of people and offered that the bill should be scrapped. He opined that the governor was using the legislation to fight against the Chuitna Citizens Coalition's instream flow reservation.

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NIKOS PASTOS, SELF, SEWARD (via teleconference), expressed opposition to HB 77 and offered that it violated humans' right to water; specifically, it took away the right to public participation by individuals, communities, and tribal governments or tribal organizations. He offered that the legislation was not a good way to create a healthy democracy and related that water was a resource that must be shared by everyone. He opined that limiting public participation and review, as well as alienating half of the communities in Alaska was not a good way to share water. He pointed out that removing instream-flow reservations made it much easier for development projects to be streamlined or hurried, and opined that federally recognized tribal governments had every right reserved under federal statutes, especially regarding the Clean Water Act. He stated that it was a problem that the state did not want to share water with half of the communities in Alaska. He pointed out that federal agencies had duties to tribal communities to uphold water quality and quantity standards. He opined that the bill was bad legislation.

ANDY ROGERS, SELF, ANCHORAGE (via teleconference), testified in support of the HB 77. He was pleased that DNR was looking for efficiencies and ways to improve and streamline its processes. He agreed with the comments of an earlier testify that had discussed the challenges in the platting process and stated that there was a lot frustration and delay associated with some of the current regulations.

JAMES SULLIVAN, SOUTHEAST ALASKA CONSERVATION COUNCIL, expressed the council's opposition to HB 77. He offered

that the legislation had been presented as a simple streamlining bill that was intended to help Alaska with its permitting problems, but opined that this was not the case. He offered that the bill presented a very important policy question to the legislature regarding value. He asserted that the issue was whether the legislature valued the rights and lifestyles of individuals within Alaska and whether those who lived a subsistence lifestyle had the right to apply for an instream-flow reservation. He acknowledged the value of water uses for the activities of different corporations, but asked the legislature to take time to recognize the unique value that Alaskan Native organizations and tribes had. He opined that that Alaskan Native organizations and tribes should have the opportunity to apply for instream-flow reservations to enable them to live their lifestyle.

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JENNIFER HANLON, ENVIRONMENTAL SPECIALIST, CENTRAL COUNCIL OF THE TLINGIT & HAIDA INDIAN TRIBES OF ALASKA, expressed the council's opposition to HB 77. She explained that the bill removed that council's ability to apply for instream-flow reservations and would affect its traditional subsistence economies. She stated that many tribal citizens depended on water rights for commercial fisheries and other industries that relied on sufficient amounts of water. She pointed out that the legislation would also limit tribal governments' ability to participate in the decision making process regarding issues that affected the habitat of traditional hunting and fishing resources. She reported that DNR had asserted that tribes would be able to solicit different agencies to apply for water rights on their behalf, but expressed concerns regarding assurances that state agencies would properly represent tribal interests. She felt that although there were currently no instream-flow reservations for tribes in Southeast Alaska, the legislation would affect the council's ability to apply for water rights in the future. She expressed concerns that the bill would make it more difficult for tribes to be notified and comment on development projects. She stated that Tlingit and Haida traditional values included environmental stewardship and consideration for how actions affected future generations. She continued that given DNR's removal of "conservation in future generations" from its mission statement, there were concerns whether its threshold of

significant and irreparable harm would be similar to that of the tribes.

RICK HALFORD, SELF, testified against HB 77. He pointed out that the state's constitution was clear that, other than public water supply, the first priority of water use was for fish and wildlife, and opined that DNR had been making the issue seem smaller than it really was. He relayed that Alaska had 23 years of history of private instream-flow applications and that millions of dollars had been spent based on those applications, most of which were done with the help of ADFG and DNR. He pointed out that the system had been working without problems and that the administration had not adjudicated any of "those." He added that the administration had the ability to say no and stated that tribal groups would go to the federal government for help if they were unable to participate in the process. He pointed out that the federal government would still be able to apply for instream-flow reservations and that involving them would bring back other arguments that were unnecessary to get into. He observed that although the water right unperfected was not a property right, the priority of its application date may be a property right under new case law; there was a priority for adjudication based on the date of the application. He thought that a retroactive repeal after hundreds of thousands of dollars had been spent would end up in court and offered that the repeal was not necessary.

Mr. Halford related an additional concern that the bill changed the standard for standing, appeal, and notification within the agency; however, the standard was still the same under the court system. He expounded that an individual could not appeal to DNR for a decision that they felt aggrieved by, but that the standard in the court system was still "aggrieved"; therefore, an individual could go directly through the court system instead of DNR. He explained that the court system wanted someone to use the administrative process first in order to build a record and that the bill only passed a convenience to DNR at the expense of the court system and court cases; furthermore, if the rule was being changed, there would need to a court rule change. He added that the ultimate rule would be the court's determination and opined that the bill would cause problems with the court system and the state system in general.

Mr. Halford stated that the notice provision for the disposal of land or an interest in land, in which water was included, was a clear constitutional requirement that did not depend on statute. He opined that trying to avoid that part of the constitution was a fallacy. He offered that some of bill's changes to land disposal and other clarifications made the system better, but that they were combined with aspects that changed balances that had taken a long time to formulate and were not a problem. He offered that the bill should be sent to a subcommittee for further study and opined that there was no emergency. He stated that the land disposal, auction, and survey questions were much simpler and could be worked out; however, legal questions should not be worked out in a bill that had never been in either the House or Senate Judiciary Committee and which had been given to the committee in the last ten days of session.

[3:39:27 PM](#)

VERNER WILSON, SELF, DILLINGHAM (via teleconference), expressed disappointment that there was only a one-day notice on public testimony for HB 77 and stated that the bill should not be passed. He believed that DNR did not provide the public proper notice regarding public hearings on the Bristol Bay Area Plan and opined that it was a shame that he trusted interests in the Lower-48 to listen to his concerns more than fellow Alaskans. He stated that the legislation should not be rushed and that it invited federal intervention on important Alaskan issues. He offered that the bill was not needed and believed that it was unconstitutional. He urged the committee not to shut the public out of important issues and stated that people should have the right to speak up and petition the government to protect the great salmon fishery in Bristol Bay and the clean water thousands of people depended on.

KIM WILLIAMS, SELF, DILLINGHAM (via teleconference), testified in opposition to HB 77 in its current form and suggested making amendments to the bill. She discussed earlier comments by the administration that mentioned a bi-partisan effort across the country to serve the public better, but offered that the legislation affected that effort. She recalled serving on the Curyung Tribal Council and pointed out that the legislation would impact her tribe. She stated that DNR and ADFG had not sat down with her tribe in a bi-partisan effort to address what the tribe

saw as critical to maintain water in streams for salmon, nor did they consult the tribe regarding the drafting of the bill. She relayed that pending Curyung Tribal Council applications would be impacted by Section 40 of the legislation and pointed out that the council had filed for instream-flow reservations on the Nushagak River very selectively; the council had looked at the Kuktuli, Mulchatna, and Stuyahok rivers because they had King Salmon. She offered that the legislation went against the common sense of people in Rural Alaska and stated that it impacted the temporary-use water permits that extractive industries needed for mineral development in Bristol Bay. She added that the streams that had water, salmon, and wildlife would be impacted because the bill would take away her tribe's ability to file for instream-flow reservations. She requested the committee to add an amendment that allowed tribal governments to hold standing so that they could protect salmon and subsistence resources into the future.

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JENNIFER HARRISON, EXECUTIVE DIRECTOR, CHICKALOON NATIVE VILLAGE, DILLINGHAM (via teleconference), opposed HB 77 in its current form, but supported adding amendments that added federally recognized tribes or tribal entities to the list of government agencies. She requested the committee to take action to protect salmon habitat and not destroy existing salmon protections. She relayed that the village had relied on plentiful Moose Creek salmon for centuries, but stated that since the 1920s, coal mines, railroads, and industrialization had created several waterfalls, including one impassible fall that limited salmon to the lower three miles of the creek. She reported that between 2005 and 2007, the village had been working with U.S. Fish and Wildlife Service, the National Atmospheric and Oceanic Administration (NOAA), and ConocoPhillips to realign Moose creek to its historic, pre-mining location by bypassing the impassible waterfall. She relayed that immediately salmon had been photographed swimming upstream to habitats that had been unutilized for many generations.

Ms. Harrison stated that in 2007, Chickaloon Village had hired the U.S. Geological Survey (USGS) to gauge Moose Creek's stream flow in an effort to collect the necessary data for an application. She stated that with funding support from USGS, the U.S. Fish and Wildlife Service,

ADFG, and the Bureau of Indian Affairs the gauge data had been collected. She continued that in 2009, the village had submitted an application for an instream-flow reservation to ensure that there would be enough water for salmon. She reported that the village and its partners had spent nearly \$200,000 compiling the mandatory data and submitting the application, but that the passage of the bill would strip away the village's efforts to restore and protect the salmon of Moose Creek. She pointed out that the village had taken on the responsibility of the restoring the creek when no one else would. She discussed the numerous threats globally to salmon and offered that protecting instream flows was one way Alaskan citizens could help salmon. She concluded that the bill would take away the existing rights of Alaskan citizens to protect instream flows and requested the committee to fix the language in order maintain the current levels of protection for fish habitat.

GAYLA WOODS, SELF, DILLINGHAM (via teleconference), expressed opposition to HB 77. She stressed the importance of giving the residents of Alaska a voice.

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AT EASE

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RECONVENED

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Co-Chair Meyer CLOSED public testimony.

Senator Olson noted that there were a lot more people opposed to the bill than for it during the public testimony and expressed concerns regarding the legislation. He offered that the bill could be assigned to a subcommittee in order to work on it and address concerns that were raised by Alaskans during public testimony.

Co-Chair Meyer noted that a subcommittee referral could be an option, but that he wanted to give the sponsor of the bill a chance to defend, discuss, and elaborate on the issues that had been raised.

Senator Olson pointed out that it was a sensitive issue that was engendering a lot of concerns and that there had been a lot of testimony against the bill. He added that he

would not necessarily want to be on the subcommittee, but wanted it to be known as an option.

CSHB 77(RES) was HEARD and HELD in committee for further consideration.

SB 18 was SCHEDULED but not HEARD.

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ADJOURNMENT

3:52:24 PM

The meeting was adjourned at 3:52 p.m.