

SENATE FINANCE COMMITTEE

April 6, 2013

10:11 a.m.

[10:11:36 AM](#)

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 10:11 a.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

Daniel Sullivan, Commissioner, Department of Natural Resources; Wynn Menefee, Deputy Director, Division of Mining, Land and Water, Department of Natural Resources; Ed Fogels, Deputy Commissioner, Department of Natural Resources;

PRESENT VIA TELECONFERENCE

Ashley Brown, Department of Law, Anchorage; Cora Campbell, Commissioner, Department of Fish and Game, Anchorage; John Baker, Department of Law, Natural Resources Section Anchorage;

SUMMARY

CSHB 77(RES)

LAND USE/DISP/EXCHANGES; WATER RIGHTS

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

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Co-Chair Meyer remarked that he would distribute a letter to waive from committee HB 87, which extended the Special Education Service Agency. He explained that the committee had heard and passed HB 87, which subsequently was referred to the Senate Rules Committee. He recalled that the House version of HB 87 had come over to the Senate and that the Senate Finance Committee version of the bill did not make it to the floor. He explained that the Senate Education Committee changed the House version of HB 87 to be exactly the same as the Senate Finance Committee's version. He offered that there was not a need to hear the bill again because it was the same bill in the same format as the version that was previously passed out of the committee. He stated that the House version included an eight-year extension and an increase in funding; in contrast, the Senate Finance Committee's version gave a four-year extension and only supplied half of the requested funding. He added that the House version of HB 87 had extended the Special Education Service Agency, but had not provided any additional funding. He requested the committee members to sign the bill waver if they were comfortable with not hearing HB 87 again.

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AT EASE

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Co-Chair Meyer noted that the special education bill was identical to the bill that the committee had passed out about two weeks prior. He stated that Senator Stevens, who chaired the Senate Education Committee, had liked what the committee had done with HB 87. He noted that if the committee wanted to hear the bill they could, but opined that it should be waived from committee. He observed that the fiscal note before the committee was identical to the one that the committee had already passed out.

#hb77

"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."

Co-Chair Meyer noted that Commissioner Sullivan had some discussions since the last meeting on HB 77 and that maybe there would be follow-up information available.

DANIEL SULLIVAN, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, corrected a prior statement that the department had made and related that there was one other state that did not have public entities applying; that state was Arizona. He addressed an issue raised in the prior hearing of the bill and remarked that the Department of Law (DOL) was very confident regarding the constitutionality of the bill's provision. He discussed the strong record regarding using water reservations and related that it was not the only way of protecting fish habitat. He opined that the bill's most controversial provision actually insured that Alaskan's would have the right to get and use the water that they needed. He referenced the department's strong record of issuing water rights and temporary water-use permits on a consistent basis. He mentioned that the vast majority of the Department of Natural Resources'(DNR) work was in getting water use and water rights to Alaskans; furthermore, the department was making sure that people with expertise in "these" issues managed the public resources for the public's benefit rather than the courts or outside non-governmental organizations (NGO). He explained that outside NGOs did not always have Alaska's interest in mind and that the best way was to give the political entities and subdivisions that represented all Alaskans the ability to apply; furthermore, any entity, individual, or tribe could initiate "that process." He emphasized that the debate only strengthened the department's resolve, determination, and commitment to work with all Alaskans, particularly with the state's Native organizations and tribes, on "these important matters."

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Vice-Chair Fairclough wondered if the commissioner could expand on how the legislation, specifically regarding Section 40, was consistent with the state's constitution. She discussed the "maximum benefit for the people of Alaska," which was found in Article 8, Sections 1 and 2 of the Alaska State Constitution, as well as Article 8, Section 13, which dealt with water rights. She requested an explanation of the bill regarding its consistency with the state's constitution and noted that the committee had heard from many Alaskans who were fearful that their rights would be violated by the legislation. Commissioner Sullivan responded that he would like to get back to the committee with a response because he wanted the attorneys from DOL to speak to the question directly.

ASHLEY BROWN, DEPARTMENT OF LAW, ANCHORAGE (via teleconference), quoted from Article 8, Section 13 from the state's constitution as follows:

Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Ms. Brown spoke to Article 8, Section 13 and offered that although the waters of the state were subject to appropriation, other than public water supply, appropriations should be limited in its purposes; furthermore, the appropriation could not remove fish and wildlife from the general reservation to the people. She related that the section made clear that an appropriation would not cause fish and wildlife using the water to lose their status as a common-use resource. She related an example that fish using water that was impounded in a reservoir would not become the private property of the reservoir's water right holder.

Senator Hoffman discussed the two provisions that Vice-Chair Fairclough had mentioned and related that they were "crux" of the matter. He pointed out that the state was trying to make water accessible to the people of the Alaska and quoted from Article 8, Section 1 of the state's constitution:

...making them available for maximum use consistent with the public interest.

Senator Hoffman found it hard to believe that eliminating a person from the application process was consistent with the public interest. He pointed to Section 40 on Page 21, line 17 of the bill and offered that its only change was to amend and delete "a person." He added that a person was a citizen of the State of Alaska and that he did not think that the current system was broken; furthermore, if the system was not broken, it should be left alone to stay consistent with the state's constitution. He quoted Article 8, Section 13 of the state's constitution as follows:

"All surface and subsurface waters reserved to the people for common use..."

Senator Hoffman observed that the bill eliminated the "person," which was a citizen of Alaska. He opined that the legislation should be moved forward, but that Section 40 needed to be eliminated in order to protect the "person" or a citizen of the state. He recalled the prior statements of Commissioner Sullivan and reported that the citizens of Alaska should not have to go through an agency or some other entity to apply for water rights; he reiterated that this was the "crux" of the issue for him. He offered that if the interests of the citizens of State of Alaska could be protected, he would be able to support the legislation. He opined that many sections of the bill would serve the state's interests, but found it unbelievable that another step would be required of the people in order to get access to water. He furthered that under the bill, if an individual was denied access and could not convince another agency to represent them, their only recourse was to address the issue through the courts. He concluded that it was "unfathomable" that legislators would make the process more complicated. He acknowledged the need to streamline the process, but opined that the need should not be addressed at the expense of the rights of the citizens of the state for access to water rights. He fully supported the development and utilization of the resources of Alaska, but did not support "trampling on the rights of the people of the State of Alaska in order to get there."

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Commissioner Sullivan remarked that he had a number of discussions with Senator Hoffman on the issue, but clarified that in terms of "water use," the bill did not affect any tribes' or individuals' abilities to apply for "water use" activities such as temporary water use permits or water rights. He stated that DNR was trying to make "water use" more secure. He recalled that he had testified in a prior meeting that currently, "water reservation" issues needed to be adjudicated before the "water use" issues on the same body of water; he offered that this made it harder for Alaskans to use the water, which was not the intent. He related that the department was trying to make it so Alaskans could continue to access water. He related that the department was very good at issuing temporary water-use permits that went to villages, individuals, and miners and that it wanted to continue to enable all Alaskans to apply; He concluded that bill helped advance that goal.

Senator Hoffman observed that his concern was not only his own, but was also the concern of 95 percent of people that had testified before the committee. He opined that characterizing the concern as his concern only was misdirected. He offered that he represented the people of Alaska and that it was the people that were concerned with the bill. He added that the people of the state represented the "person" that would be eliminated on page 21, line 17 of bill. He stated that he would stand by the individual's right because he did not believe that the system was broken. He reiterated that he was speaking on behalf of 95 percent of people that had testified before the Senate Finance Committee and challenged the perspective that he was only person who was "of this opinion." Commissioner Sullivan replied that he did not mean to imply that it was Senator Hoffman's concern and apologized. He acknowledged and respected that Senator Hoffman was representing his constituents. He added that in the Alaska Statutes, "person" was not defined as an Alaskan resident. He pointed out that DOL could speak to the issue, but that a "person," in terms of the statutes, could be a New York City resident who wanted a water reservation in Alaska. He offered that a New York City resident wanting a water reservation in Alaska was probably not in the state's interest.

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Co-Chair Meyer noted that he would like Ms. Brown from DOL to weigh in the issue.

Ms. Brown stated that she agreed with Commissioner Sullivan and that she could not find anything in the statutes that further defined person. She was unable to recall if there was any case law that discussed the definition of person any further. She pointed out that she had failed to mention that there was a constitutional right to access navigable waters of the state; furthermore, in Section 13, there was a statement that all surface and subsurface waters were subject appropriation. She reported that an in-stream flow reservation was not necessary to be able to access water in Alaska.

Senator Olson inquired what the legal definition of "person" was regarding the bill and added that he assumed there was a definition. Ms. Brown replied that she would have to get back to committee with an answer. Senator Olson noted that the lack of an answer was very concerning. Mr. Brown relayed that there was another attorney who had assisted on the bill, but that she was unable to attend the meeting. She added that she would consult with the other attorney and return to the committee with a response.

Vice-Chair Fairclough noted that by looking that the past applicants, the committee would have an idea of who was being considered a "person." She noted Trout Unlimited, as well as different NGOs outside of Alaska were considered a "person." She related that a person could be many different types of entities. She stated that "this" was a case in which two reasonable people could see things differently. She found that, with respect to all viewpoints, it was interesting that a response was more likely promoted by planting fear. She opined that sometimes people did not have all of the information, but that they were fearful that what they had heard was correct. She offered that probably 99 percent of the testimony in committee had shared Senator Hoffman's concern and thought that only two people had testified in favor of the proposal. She offered that the 99 percent of testifiers had been motivated by fear rather than facts. She added that she respected the fear of Alaskans and that legislators represented the people of the state. She stated that she had been elected by a region that was described as a boundary to represent all of Alaskans and not just people who voted in her district. She mentioned that there were several issues

regarding defining who a "person" was. She explained that she had asked the questions in the prior meeting because a "person," whether they were inside Alaska or outside of the state, could not accomplish the task of reserving the water reservation without the consultation of the federal government, which was still an option under the bill, ADFG, or DNR. She offered that according to the testimony the prior day, individuals could not currently get water reservations without talking to a government agency or a political subdivision. She stated that if ADFG did not act on behalf of the people of Alaska to protect the resource, the federal government would not allow Alaska to continue with those rights. She related the concerns with the "dredge and fill" issues with the federal government and offered that the federal government and its constitution were the answer and "end all" to everything the state did. She furthered that if there was a violation, the federal government would hold the state accountable through the court systems, which was currently the way that disputes were settled. She reiterated that currently, a "person" would not be able to reserve water because they would have to go through ADFG or DNR; furthermore, an individual would not be able to reserve water because they could not provide the required tests to the appropriate entities. She discussed Commissioner Sullivan's previous comments regarding having to adjudicate water reservations in their entirety before water rights could be issued to people from the same body of water. She expressed concerns that currently non-Alaskans could stop an Alaskan from accessing water and warned that Alaska could be "hijacked" by people who did not have the best benefits of Alaskan citizens in mind. She was inclined to support Section 40 of the bill not only for reasons that Commissioner Sullivan had discussed, but primarily because other people were trying to take control of Alaska.

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Senator Olson commented on a situation where someone from New York was "weighing in" on issues in Alaska and offered that sometimes the only avenue of recourse for some of the smaller tribes was to bring in outside entities that had the resources and expertise. He opined that the bill would push "those people" further into a corner, so that that the only choice was bring in outside interests to represent them. He discussed how the development on the North Slope had changed the conditions and lifestyles of people in the

region. He shared that until his recent death, Hugo Chavez had one of best names in Rural Alaska because he was supplying oil at affordable rates and that the state had not been addressing the situation to "that extent." He offered that while the commissioner had the best intentions, he had mischaracterized that people in New York were instigating issues in Alaska. He added that the people in New York were taking the side of the people "up here."

Vice-Chair Fairclough acknowledged that Senator Olson's comments were valid. She recalled Deputy Commissioner Fogels and Commissioner Campbell stating that they helped anyone through the process. She inquired if anyone had been "turned down, so that we are forcing them to go somewhere based on money." She reiterated that Commissioner Campbell had indicated that the state helped people through the process. Commissioner Sullivan replied that under the statutes, a "person" included an individual, partnership, association, public or private corporation, state agency, political subdivision of the state, and the United States; he added that the definition was broad. He addressed the comments by Senator Olson and related that he did not specifically say that there was a situation involving someone from New York, but that there could be under the definition of person.

Senator Olson requested the site for the definition of "person."

WYNN MENEFFEE, DEPUTY DIRECTOR, DIVISION OF MINING, LAND AND WATER, DEPARTMENT OF NATURAL RESOURCES, replied that the definition was found in AS 46.15.260, Section 7.

ED FOGELS, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, responded to Vice-Chair Fairclough's previous question regarding if DNR had ever turned anyone away and believed that answer was no. He related that the department wanted people to come to them early to work through the issues with the reservation and that it did not want someone to spend a lot of money and effort to collect data and still have a problematic application. He opined that ADFG had spent a lot of time working with NGOs on water reservations. He offered that it might be good if Commissioner Campbell weighed in on the issue.

Vice-Chair Fairclough noted that Senator Olson raised a valid point. She explained that the application had a cost

of \$1,500, which would probably represent a burden to a person. She requested Commissioner Campbell to comment.

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CORA CAMPBELL, COMMISSIONER, DEPARTMENT OF FISH AND GAME, ANCHORAGE (via teleconference), agreed with the comments of Mr. Fogels. She related that it was the department's practice to assist people who wanted to work their way through the process and not to turn them away.

Senator Olson discussed a recent court decision involving the Chuitna project, in which a decision was made against the "coalition that was there." [The comment was made in reference to the Chuitna Citizens Coalition]. He noted that the decision was later overturned by the trial court. He pointed out the recent Chuitna case and expressed concerns that DNR was claiming that no one was turned away. He observed that the department was, in some ways, violating its own rules by denying Alaskans the right to keep their natural resources up. He challenged the department to tell him where he was wrong in his assumption. He opined that it appeared as though the state had not just turned the coalition away, but had "downright" denied their application, which was the reason why there was such a passionate constituency regarding the issue. He inquired where the department's dedication to the tribes was when there was so much resistance to an amendment that removed "person" and added an entity like a tribal organization. He offered that DNR's comments about working with the tribes seemed disingenuous given that they were unwilling to add an amendment that recognized people "that are out there, that are on the short end." He offered that DNR had been "found wanting" and requested Mr. Fogels to correct him if he was wrong. Mr. Fogels stated that the department had before it two lawsuits on the Chuitna project and that one of the lawsuits was the one that Senator Olson was referring to. He explained that the lawsuit illustrated why the bill was needed and expounded that the department was being challenged on its ability to issue any other person water from that water system until the in stream flow reservation had been adjudicated. He pointed out that the department was being challenged because it was going to issue the mining company temporary water use permits for exploratory drilling. He mused that the department could have been challenged if a village or any other Alaskan wanted to take water out of "that river." He shared that

the lawsuit that Senator Olson was referencing shined a spotlight on the issue before the committee.

Commissioner Sullivan observed that they had laid out in "their own press release" that they had had applied in 2009 for an in stream flow reservation ["They" was made in reference to the Chuitna Citizens Coalition.]. He relayed that the department had accepted the in stream flow reservation, but had not processed it yet due to a large backlog; however, he noted that DNR was doing "way better than anyone else has ever done" dealing with the backlog, which was in part because of the support from the legislature. He stated that the reservations were primarily focused on protecting fish habitat and offered that the argument that DNR was not protecting fish habitat with regard to water reservations was "completely incorrect." He stated that "they" claimed in their press release that DNR had issued a temporary water-use permit on the same body of water, without consideration of their pending request for an in stream flow reservation, after they had applied for the reservation["They" was made in reference to the Chuitna Citizens Coalition.]. He reported that DNR did not think that it should be required to adjudicate a three-year to five-year in stream flow reservation before it could adjudicate water rights in order to get water to Alaskans; he stated that this was their argument, which DNR had "big issues" with ["Their" was made in reference to the Chuitna Citizens Coalition.].

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Senator Hoffman remarked that DNR had been overturned in the case in question and that the courts had agreed with them, which was the "main difference"["Them" was made in reference to the Chuitna Citizens Coalition.]. He offered that the department had been wrong.

Senator Dunleavy inquired what department a person would apply to first for a water reservation. Commissioner Sullivan responded that ultimately, any application went through DNR.

Senator Dunleavy further inquired how long a reservation was for once it was granted. Commissioner Sullivan replied that assuming the water reservation was granted, it would possibly be held in perpetuity; however, the reservations were reviewed every ten years. Senator Dunleavy noted that

a water reservation would last at least ten years and possibly forever. Commissioner Sullivan observed that Senator Dunleavy was correct.

Senator Olson inquired what Tim Troll's views were on the issues surrounding the bill. He commented that Co-Chair Meyer was going a very good job of keeping the mode and decorum professional. He inquired if Mr. Troll could comment on the proceedings.

Co-Chair Kelly inquired who Mr. Troll was.

Co-Chair Meyer queried what the intent in having Mr. Troll speak was. Senator Olson stated that Mr. Troll had expertise in the area of fishing and land issues. He offered that he did know Mr. Troll very well, but that he had expertise in "this" area and had been involved in the process.

Co-Chair Meyer noted that Mr. Troll was with the Bristol Bay Heritage Land Trust and inquired if there was a specific question for him. Senator Olson responded that he wanted Mr. Troll to comment on bill and inquired why someone online would not be allowed to speak. Co-Chair Meyer noted that public testimony had already been held on the bill. Senator Olson interjected that he was not asking for public testimony, but wondered what Mr. Troll's thoughts and ideas were regarding the issue in from of the committee. Co-Chair Meyer queried what Mr. Troll's expertise was and how he was different than anyone else who wanted to testify on the bill.

Co-Chair Meyer noted that he was trying to limit the current meeting's testimony to answering questions with the administration and related that it was administration's legislation. He concluded that public testimony had been closed on the bill.

Co-Chair Kelly agreed with the comments of Co-Chair Meyer.

Senator Dunleavy requested a brief at ease.

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AT EASE

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Senator Bishop commented that he had received numerous emails from constituents in his district that lived on creeks. He offered that he would give examples and requested the administration to comment on how the individual in his example would apply if the legislation passed in its current form. He stated that he could support the intent of the legislation, but that there had been a lot of comments of concern. He offered that part of the confusion was regarding a fear of the unknown because the department had not shown clear lines on how it would implement the bill; He inquired if this was a fair assessment. Commissioner Sullivan replied in the affirmative.

Senator Bishop related a hypothetical example of someone who lived on Goldstream Creek in Fairbanks that wanted to reserve water because of a mine that was upstream. He inquired how the aforementioned person would apply for the water reservation "under this bill, if it passed as is." He further inquired whether the individual would have to go to the North Star Borough for help with the application process. Commissioner Sullivan replied that the person would have a choice of whatever political entity they chose to initiate that process. He added that the North Star Borough, ADFG, and DNR would help work through the data collection and that "one of those entities" would actually apply to DNR.

Mr. Fogels interjected that a person would have to do what Commissioner Sullivan had indicated if they wanted a water reservation; however, a water right would be probably be applied for on a creek for water use. He explained that the bill did not, in any way, diminish the ability of any Alaskan to get water rights or temporary water-use permits. He furthered that individuals could apply directly to DNR for a water rights. Commissioner Sullivan interjected that DNR thought that the bill enhanced the ability of Alaskans to get water rights or temporary water-use permits.

Co-Chair Meyer noted that Commissioner Sullivan would probably have to educate the general public on this process because it was confusing. He observed that John Baker from DOL was online and queried what his position was with the department. Mr. Menefee replied that Mr. Baker was familiar

with the recent lawsuits involving the Chuitna Project, water-use law, and numerous other aspects of the laws that DNR worked under.

JOHN BAKER, DEPARTMENT OF LAW, NATURAL RESOURCES SECTION ANCHORAGE (via teleconference), noted that he had only been online for 15 minutes and inquired if there was a question.

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Senator Hoffman observed that the Red Dog Mine was a project that "everyone says is a wonderful project," which employed hundreds of people and brought millions of dollars into the economy. He pointed out that the Nana Regional Corporation had written the legislature to oppose the water right reservation exclusion in the bill. He shared that about a third of the land in Alaska was privately held, but that the citizens of the state owned less than 1 percent that; furthermore, the rest of the privately held land in Alaska was owned by the Native corporations. He offered that the bill represented a very key element to the development of the resources that the Native corporations owned. He stated that the Nana Regional Corporation was not taking a position on HB 77, but that they were opposed to the language in Section 40 of the bill. He inquired if the Nana Regional Corporation would be allowed to apply for water rights under the legislation if the Red Dog mine opened or whether they would have to go to another agency to apply for water rights. Mr. Baker replied that the legislation did not affect the Nana Regional Corporation or any other private corporation or entity that wanted to use water to make a withdrawal, impoundment, or diversion of water for beneficial use. He added that the only thing that would be affected by the proposed legislation was application for a reservation to leave a certain volume of water in the stream. Senator Hoffman interjected that this was exactly his point. Mr. Baker stated that unless Nana, or whatever entity, was trying to leave water in a stream through an in-stream flow reservation, nothing would be affected by the bill. Senator Hoffman surmised that the answer to his question was that an entity like the Nana Regional Corporation would not be able to reserve water rights under the bill and inquired if this was correct. Mr. Baker stated under the bill, an entity like the Nana Regional Corporation would have to go through a different process for reserving in stream water; however, diverting water for industrial use, drinking, or any out-of-stream

use of the water would not be affected by the bill. Senator Hoffman asserted that the answer to his previous question was no and that the Nana Regional Corporation would not be able to apply directly to the state to reserve water rights. He stated that under the proposed legislation, the rest of the Native corporations that owned 33 million acres would not be able to reserve water rights without going through a third entity and requested a yes or no answer to his assertion. Mr. Baker replied that in order to reserve water in the stream, a Native corporation would have to go through the appropriate agency in order to apply. He added that for traditional water rights, which made up the vast majority of all water rights applied for under AS 46.15, there would be no change under the bill.

Senator Hoffman offered that under current law, Native corporations could reserve water rights in order to enable the majority private land holders in the state to adequately develop the economic resources that they owned. Co-Chair Meyer interjected that Senator Hoffman was leading the testifier.

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Co-Chair Kelly noted that Senator Hoffman was continuing to say "reserve water rights" and offered that this was the source of the confusion. He reported that someone either "reserved water" or received "water rights." He pointed out that Senator Hoffman had used the wording "reserve water rights," which caused confusion in the testifier.

Senator Bishop noted that "water rights" were off the table in this discussion and queried if that was correct. Commissioner Sullivan replied that Senator Bishop was correct, but added that water rights could possibly be enhanced. Senator Bishop inquired if "enhanced" meant "made better." Commissioner Sullivan replied in the affirmative.

Senator Bishop relayed that the "crux" of the discussion was regarding the reservation of water. Commissioner Sullivan replied in the affirmative and shared that the only issue regarding water authorization that was affected by the legislation was the more lengthy water reservation process, which was a request to keep water in a body for habitat, recreational use, navigation, etc.

Senator Bishop continued to discuss the hypothetical example involving private-property owner living on Goldstream creek that was downstream from a mine; furthermore, this person wanted to make sure that there was enough water in the creek to run in stream hydro, catch the "occasional grayling," and maintain his/her lifestyle downstream from a mine. He surmised that under the bill, the person would have to approach the Fairbanks North Star Borough to apply for a water reservation on his/her behalf and inquired if he was right or wrong in that assumption. Mr. Menefee replied that Senator Bishop was correct in most of his statements, but that "water rights" would be applied for instead of a "water reservation" in order to get water for an in stream hydro. Senator Bishop requested Mr. Menefee to forget the hydro issue for the moment and inquired what recourse a person would have if the borough denied their application. Mr. Menefee replied that the options included ADFG, the borough, or the city and that if one group said no, a person could go to another agency. He added that if there was a legitimate reason for a reservation, ADFG was supportive of working with individuals and NGOs through the process.

Commissioner Sullivan stated that he had to leave to attend another meeting and apologized. Co-Chair Meyer replied that the he understood and thanked the commissioner for his time.

Senator Dunleavy noted that a clarification had been made that differentiated between a water "right" and a "reserve" and offered that the discussion was furthered by continuing to keep those concepts separate.

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Senator Olson discussed the Water Resources Board and inquired if the department was familiar with that board. He noted that the board was appointed by the governor and was established under AS 46.15.222. Mr. Fogels replied that he was not very familiar with the board and would have to return to the committee with more information. He noted that Mr. Menefee was also not familiar with the board.

Senator Olson assumed that the department did not have an opinion of the bill from the Water Resources Board. Mr. Fogels replied that it did not.

Senator Bishop summarized for his constituents and constituents around the state that the bill was something new and that people were confused. He acknowledged that people were rightfully confused because he himself was sometimes confused about the issue. He opined that there needed to be some "clear, bright" lines and hypotheticals. He added that the bill needed to be more broadly defined so that people were clear on what was being discussed.

Senator Hoffman stated that he had two requests of DNR. He noted that there was a letter written by the Nana Regional Corporation and inquired if the corporation's concerns regarding water reservations were valid. He opined that the Nana Regional Corporation was not confused, was "right on point," and fully understood the question. He requested a written answer from the department that addressed the Nana Regional Corporation's concerns, particularly its concerns about Section 40 of the bill. He noted that he had received a memorandum earlier that morning from Rick Halford, who had testified on the legislation (copy on file). He relayed that the department had stated that it acknowledged Mr. Halford's expertise and valued his opinion. He requested the department to issue a written response to Mr. Halford's memo. He remarked that he was not confused on the issue, but was looking at the reserve of water for the development of resources on 99 percent of the privately held land in Alaska. He pointed out that if Alaska wanted to assure that the development of the resources were made available to "those private individuals," who could potentially provide the development of "millions, maybe billions" of dollars in resources, then the state was "moving in the wrong direction." He expressed great concerns about the Donlin Creek area. He discussed the Fort Knox Mine, which created millions of dollars and "potentially" provided over 10 percent of the economy to Fairbanks; he offered that Donlin Creek's scope could be multiplied by ten times in relation to the Fort Knox Mine. He shared that the rights to the Donlin Creek resource was owned by the Calista Corporation, of which he was a shareholder. He explained that under the bill, the Calista Corporation would not be able to go directly to the state for a water reservation. He stated that the committee was not discussing something that was of little consequence, but that bill would impact 99 percent of the private lands that were in Alaska.

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Co-Chair Meyer inquired if the DNR had a copy of the letter from the Nana Regional Corporation. Mr. Fogels responded in the affirmative. Co-Chair Meyer thought that the Nana Regional Corporation's concerns had been addressed, but requested the department to address the concerns in writing. He additionally requested the department to address the Donlin Creek situation that Senator Hoffman had made reference to.

Co-Chair Meyer stated that if Mr. Halford was a lobbyist, the department did not have to respond to his memo. Senator Hoffman interjected that Mr. Halford was not a registered lobbyist. Co-Chair Meyer interjected that perhaps Mr. Halford should be a registered lobbyist, but requested written comments from administration regarding the memo. Mr. Fogels addressed the Calista Corporation's recent project and stated that it could potentially provide a huge economy to the region for many generations. He relayed that the department thought a "water right" or multiple water rights, which would not be affected by the bill, would be applied for on Donlin Creek rather than a "water reservation" for the mine. He added that the appropriate mechanism for a project like the Calista Corporation's Donlin Creek project was a "water right" and not a "water reservation." Co-Chair Meyer requested the comments in writing. Mr. Fogels replied in the affirmative and added that the department could reply to Mr. Halford's letter if the committee desired. Co-Chair Meyer directed the department to respond to Mr. Halford's memo at the request of Senator Hoffman.

Vice-Chair Fairclough observed that while the focus of the discussion in the current meeting was on the "person," there was an issue with the state having to adjudicate the water reservations before water rights on the same body of water could be issued. She inquired if there was a "brief" or a location where the issue of adjudication was being raised; she requested that the information be supplied to the committee. Mr. Fogels responded in the affirmative.

Co-Chair Meyer noted that this morning's meeting was helpful and provided the committee with additional information that would help them contemplate the bill.

Senator Dunleavy requested a clarification and inquired if the issue was with water reserves on private land. Senator

Hoffman replied that his concern was regarding the access that private land holders would have. He furthered that his question was tied to the department's response to the letter from the Nana Regional Corporation regarding whether the corporation's concerns, as a private land owner, were valid or not.

Senator Hoffman remarked that the Nana Regional Corporation was, by far, the largest private land owner in the state.

Co-Chair Meyer discussed the following meeting's agenda.

[11:20:29 AM](#)

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

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ADJOURNMENT

The meeting was adjourned at 11:20 a.m.