

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 12, 2014

3:31 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Fred Dyson, Vice Chair
Senator Peter Micciche
Senator Click Bishop
Senator Anna Fairclough
Senator Hollis French

MEMBERS ABSENT

Senator Lesil McGuire

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE 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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 77

SHORT TITLE: LAND USE/DISP/EXCHANGES; WATER RIGHTS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/13	(H)	READ THE FIRST TIME - REFERRALS
01/18/13	(H)	RES
01/30/13	(H)	RES AT 1:00 PM BARNES 124
01/30/13	(H)	Heard & Held
01/30/13	(H)	MINUTE(RES)
02/01/13	(H)	RES AT 1:00 PM BARNES 124
02/01/13	(H)	Heard & Held
02/01/13	(H)	MINUTE(RES)
02/06/13	(H)	RES AT 1:00 PM BARNES 124

02/06/13 (H) Heard & Held
 02/06/13 (H) MINUTE(RES)
 02/08/13 (H) RES AT 1:00 PM BARNES 124
 02/08/13 (H) Moved CSHB 77(RES) Out of Committee
 02/08/13 (H) MINUTE(RES)
 02/13/13 (H) RES RPT CS(RES) 4DP 3AM
 02/13/13 (H) DP: HAWKER, OLSON, FEIGE, SADDLER
 02/13/13 (H) AM: TUCK, SEATON, TARR
 03/04/13 (H) BEFORE HOUSE WITH AM NO 1 PENDING
 03/04/13 (H) TRANSMITTED TO (S)
 03/04/13 (H) VERSION: CSHB 77(RES)
 03/11/13 (S) READ THE FIRST TIME - REFERRALS
 03/11/13 (S) FIN
 04/03/13 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/03/13 (S) Heard & Held
 04/03/13 (S) MINUTE(FIN)
 04/03/13 (S) FIN AT 1:30 PM SENATE FINANCE 532
 04/03/13 (S) Heard & Held
 04/03/13 (S) MINUTE(FIN)
 04/04/13 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/04/13 (S) Heard & Held
 04/04/13 (S) MINUTE(FIN)
 04/06/13 (S) FIN AT 10:00 AM SENATE FINANCE 532
 04/06/13 (S) Heard & Held
 04/06/13 (S) MINUTE(FIN)
 04/08/13 (S) FIN RPT SCS 4DP 1DNP 1NR 1AM NEW
 TITLE
 04/08/13 (S) DP: KELLY, MEYER, DUNLEAVY, FAIRCLOUGH
 04/08/13 (S) DNP: OLSON
 04/08/13 (S) NR: BISHOP
 04/08/13 (S) AM: HOFFMAN
 04/08/13 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/08/13 (S) Moved SCS CSHB 77(FIN) Out of
 Committee
 04/08/13 (S) MINUTE(FIN)
 04/13/13 (S) BEFORE THE SENATE IN THIRD READING
 04/13/13 (S) BILL NOT TAKEN UP 4/13 - ON 4/14
 CALENDAR
 04/14/13 (S) BEFORE THE SENATE IN THIRD READING
 04/14/13 (S) RETURNED TO RLS COMMITTEE
 03/10/14 (S) RES REFERRAL ADDED AFTER RLS
 03/10/14 (S) RES AT 3:30 PM BUTROVICH 205
 03/10/14 (S) Heard & Held
 03/10/14 (S) MINUTE(RES)
 03/12/14 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

BOBBY ANDREW, representing Nunamta Aulukestai and
President of Aleknagik Natives Limited
Dillingham, Alaska

POSITION STATEMENT: Opposed HB 77.

LUKI AKELKOK, JR., Mayor
City of Ekwok
Chair, Ekwok Tribal Council and Ekwok Natives Ltd.
Ekwok, Alaska

POSITION STATEMENT: Opposed HB 77.

VICTORIA MCDONALD, representing herself
Ketchikan, Alaska

POSITION STATEMENT: Opposed HB 77.

HAL SHEPHERD, Director
Center for Water Advocacy
Seward, Alaska

POSITION STATEMENT: Opposed HB 77.

MIKE FRICCERO, representing himself
Kodiak, Alaska

POSITION STATEMENT: Opposed HB 77.

LAURIE DANIEL, representing herself
Homer, Alaska

POSITION STATEMENT Opposed HB 77:

GABRIEL SCOTT, Alaska Legal Director
Cascadia Wildlands
Cordova, Alaska

POSITION STATEMENT: Opposed HB 77.

DANIEL LUM, representing himself
Barrow, Alaska

POSITION STATEMENT: Opposed HB 77.

MATTHEW DONOHOE, representing himself
Sitka, Alaska

POSITION STATEMENT: Opposed HB 77.

GERALD BROOKMAN, representing himself
Kenai, Alaska

POSITION STATEMENT: Opposed HB 77.

ALBERT JUDSON, representing himself

Juneau, Alaska

POSITION STATEMENT: Opposed HB 77.

DAN DUNAWAY, representing himself
Dillingham, Alaska

POSITION STATEMENT: Opposed HB 77.

HERMAN NELSON SR., Tribal President
Koliganek Tribal Council
Koliganek, Alaska

POSITION STATEMENT: Opposed HB 77.

PETER CHRISTOPHER, Vice President
Stuyahok Limited
New Stuyahok, Alaska

POSITION STATEMENT: Opposed HB 77.

ALEXUS KWACHKA, commercial fisherman representing himself
Kodiak, Alaska

POSITION STATEMENT: Opposed both HB 77 and the amendments.

MARY SADLER
Donlin Gold
Bethel, Alaska

POSITION STATEMENT: Read a letter from Stan Foo, General Manager
for Donlin Gold that supported HB 77.

PHIL GORDON, representing himself
Homer, Alaska

POSITION STATEMENT: Opposed HB 77.

ROSEMARY MCGUIRE, representing herself
Cordova, Alaska

POSITION STATEMENT: Opposed HB 77.

CALLEN CHRISTENSEN, representing Fairbanks Youth
Fairbanks, Alaska

POSITION STATEMENT: Opposed HB 77.

ERIC JORDAN, representing himself
Sitka, Alaska

POSITION STATEMENT: Opposed HB 77.

ROBERT RUFFNER, Executive Director
Kenai Watershed Forum
Soldotna, Alaska

POSITION STATEMENT: Opposed HB 77.

MELANIE BROWN, representing herself
Juneau, Alaska

POSITION STATEMENT: Wanted "customary users" to be included in the language of HB 77.

LAURA COMER, representing herself
Anchorage, Alaska

POSITION STATEMENT: Asked why they hadn't heard from the Matsu LIO and then passed off her time to Stuart Grenier.

STUART GRENIER, representing himself
Anchorage, Alaska

POSITION STATEMENT: Opposed HB 77.

DENNIS ANDREW, SR., Member
New Stuyahok Tribal Council and New Stuyahok Ltd. Board of Directors
Dillingham, Alaska

POSITION STATEMENT: Opposed to the HB 77, version H.

WARREN KEOGH, representing himself
Chickaloon, Alaska

POSITION STATEMENT: Opposed HB 77.

MARTHA ITTA, Vice President
Nuiqsut Tribal Council
Nuiqsut, Alaska

POSITION STATEMENT: Opposed HB 77.

SAM KUNKNANA, Member
Nuiqsut Tribal Council
Nuiqsut, Alaska

POSITION STATEMENT: Opposed HB 77.

ELI NUKAPIGAK, representing himself
Nuiqsut, Alaska

POSITION STATEMENT: Strongly opposed HB 77.

JOEL COOPER, representing himself
Homer, Alaska

POSITION STATEMENT: Opposed HB 77.

JACK HOPKINS, representing the Native Village of Eyak
Eyak, Alaska

POSITION STATEMENT: Opposed HB 77.

SARAH BARTHLOW, representing herself
Fairbanks, Alaska

POSITION STATEMENT: Opposed HB 77.

JAMES SWIFT, fisherman, representing himself
Sitka, Alaska

POSITION STATEMENT: Opposed HB 77.

STEVE SHOONMAKER, representing himself
Kasilof, Alaska

POSITION STATEMENT: Opposed HB 77.

JAMES SULLIVAN, lobbyist
Southeast Alaska Conservation Council (SEACC)
Juneau, Alaska

POSITION STATEMENT: Opposed HB 77.

MONICA MARSHALL, representing herself and 100 other Alaska
Pacific University (APU) students
Anchorage, Alaska

POSITION STATEMENT: Opposed HB 77.

KIMBERLY WILLIAMS, Executive Director
Nunamta Aulukestai, Dillingham, Alaska

POSITION STATEMENT: Opposed HB 77.

DODD SHAY, representing himself
Wasilla, Alaska

POSITION STATEMENT: Opposed HB 77.

MAKO HAGGERTY, representing himself
Homer, Alaska

POSITION STATEMENT: Adamantly opposed to HB 77 and its new
version.

ALEXIS COOPER
Cordova District Fishermen United (CDFU)
Cordova, Alaska

POSITION STATEMENT: Opposed HB 77.

PAMELA MILLER, representing herself
Fairbanks, Alaska

POSITION STATEMENT: Opposed HB 77.

LINDA BEHNKEN, Alaska Longline Fishermen's Association
Sitka, Alaska

POSITION STATEMENT: Opposed HB 77.

CLARK WHITNEY, JR., representing his children
Soldotna, Alaska

POSITION STATEMENT: Opposed HB 77.

MIKE SATRE, President
Council of Alaska Producers
Juneau, Alaska

POSITION STATEMENT: Supported HB 77 and the CS.

CEEZAR MARTINSON, representing himself
Anchorage, Alaska

POSITION STATEMENT: Opposed HB 77.

DOROTHY LARSON, Tribal Administrator
Curyung Tribal Council
Dillingham, Alaska

POSITION STATEMENT: Opposed HB 77.

PENNY WESTING, representing herself
Palmer, Alaska

POSITION STATEMENT: Opposed HB 77 in any form.

ACTION NARRATIVE

[3:31:26 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators Bishop, French, Micciche, and Chair Giessel.

HB 77-LAND USE/DISP/EXCHANGES; WATER RIGHTS

[3:32:05 PM](#)

CHAIR GIESSEL announced HB 77 to be up for consideration [2d SCS CSHB 77(RES), version 28-GH1524\H, was before the committee]. She said the committee had received many emails and letters of both support and opposition and noted a written letter from the Department of Natural Resources (DNR) in answer to questions Senator Donny Olson had posed, which she thought it would be beneficial for committee members to see. She opened public testimony on the H version of HB 77 and explained that some of the major changes include:

- Individual person and federally recognized tribes can apply for water reservations (page 24)

- General permits are now limited to activities the department can already authorize through statute or regulations (examples are private docks or mooring buoys in a river or offshore)
- Large resource development projects would need much more than a general permit for their activities.
- The requirement for public notice and public comment are found throughout the bill
- DNR is also required to consider seven points in determining whether to grant a water reservation and whether that is in the public's best interest (found on page 22 of the bill).

[3:33:57 PM](#)

These criteria include:

1. Benefit to the applicant
2. Effect of the economic activity
3. Effect on fish and game resources and on public recreation opportunities
4. Effect on public health
5. Effect of loss or alternate use of water
6. Harm to other persons
7. Effect on access to navigable or public waters

[3:35:46 PM](#)

CHAIR GIESSEL said she would take names in the order of signing up and from all the LIOS to get a geographic distribution of public testimony. She said people could also e-mail their testimony to her office.

BOBBY ANDREW, Nunamta Aulukestai, Dillingham, Alaska, said he is president of Aleknagik Natives Limited, and opposed HB 77. He said Monday's changes do not go far enough to warrant its passage. The general permit provisions still grant too much authority to the commissioner. The extensive nature of the general permit still allows too many important decisions and activities to take place without the public eye, without public notice, and without the public's right to appeal a decision - and also without consulting with the current water reservation applicants, which he thought should be grandfathered in.

He said the short general permit comment period of 30 days almost ensures that an application won't get the type of review that it should before its approval. Automatic approval of all legal activities within the general permit area without public review denies the public the opportunity to address the decision that might have the greatest effect on it; for instance, stream crossings and water rights.

[3:38:53 PM](#)

LUKI AKELKOK, JR., Mayor, City of Ekwok, and Chair, Ekwok Tribal Council and Ekwok Natives Ltd., Ekwok, Alaska, opposed HB 77. He said the committee needs to define "significant," "irreparable harm," and "substantial and adversely impact." The entire newly written section on water reservations for persons or tribes seems like water lock-up, but those who live in rural Alaska on a river must do everything they can to make sure they have adequate water in it for fish and wildlife.

[3:39:34 PM](#)

SENATOR DYSON and SENATOR FAIRCLOUGH joined the committee.

MR. AKELKOK said in a letter dated on February 28, 2014, to Senator Hoffman, that the Chikuminuk dam project and feasibility project will be dropped. He also asked that the entire Section 47 (lines 16-23) be deleted.

[3:41:02 PM](#)

VICTORIA MCDONALD, representing herself, Ketchikan, Alaska, opposed HB 77 for many reasons. First, the Alaska Constitution states that out of stream uses are subject to "the general reservation of fish and wildlife" in recognition that access to fish and wildlife is for all residents.

Secondly, this version allows foreign corporations to obtain rights to a water body. Alaskans cannot allow water rights to fall into private hands. Next, the DNR commissioner is granted the authority to issue general permits on state land, allowing an override of DNR's own laws and statutes. These general permits allow a range of activities over large areas of land, possibly prior to a specific activity. Activities that relate to this permit will be authorized under this permit and do not require public notice.

Finally, HB 77 fails to define "likely, significant, or irreparable harm." This is a subjective phrase and needs a specific definition. Also, in order to appeal a DNR decision, a citizen has to be "substantially and adversely impacted." Once again, there is no objective definition.

[3:43:04 PM](#)

HAL SHEPHERD, Director, Center for Water Advocacy, Seward, Alaska, opposed HB 77. He said 41 tribal resolutions, a record number, opposing HB 77 were passed last year and there were three or four hearings all over the state in which 700 people appeared on record against HB 77; one person favored the bill.

He said he had submitted written testimony from two Elim tribal members who could not attend the meeting and that mostly people don't favor this bill not because of its impact on the environment or water resources, but mostly because of its impacts on the state's civil rights and democracy. The cosmetic amendments pretty much amount to nothing more than rearranging the deck chairs on the Titanic.

[3:45:36 PM](#)

MIKE FRICCERO, representing himself, Kodiak, Alaska, opposed HB 77. He said the recent amendments didn't help resolve any of the major issues. They represent expanded power to the DNR commissioner and diminished public participation and due process. The CS endows radical changes to existing water rights regulations and limits his legal right to challenge the DNR. It only represents the interests of extractors and resource developers, not the general public, and diminishes the rights of tribal organizations. It cancels and avoids due process and protections and reduces the state's ability to protect water sources; it eliminates public oversight of DNR activities and removes protections for fish and wildlife habitat.

He said we are on the eve of a resource extraction and exploratory boom and the DNR will be inundated with an unprecedented volume of permitting applications and this is not the time to streamline the permitting process and making it less rigorous. It is time to increase funding and staff at DNR to make sure there is adequate oversight. It is time to require mandatory baseline water volumes in all fish bearing waterways.

[3:48:00 PM](#)

LAURIE DANIEL, representing herself, Homer, Alaska, opposed HB 77 saying it was also known as the "Silencing Alaskans Act." The amendments in the revised version do not address the major problems with this legislation; the administration took 10 months to develop it behind closed doors and is "allowing a bare two days for public review."

She said the revised version still eliminates opportunities for the Alaska public to weigh in on statewide land, water, and natural resource development decisions; it impacts almost any activity or use on state land that requires a permit. It takes away the power from the people and puts it in the hands of state government by granting broad powers to the DNR and makes it difficult to challenge its decisions. It still takes water reservation rights away from tribes, Native corporations, non-profit organizations and individuals, and the text uses

ambiguous undefined terminology like "unlikely to cause significant or irreparable harm" and "substantial and adversely affected."

[3:50:16 PM](#)

GABRIEL SCOTT, Alaska Legal Director, Cascadia Wildlands, Cordova, Alaska, opposed HB 77. He said they are a non-profit conservation organization and don't see any problem to solve; legitimate development is not being blocked by public participation. He couldn't think of one project that had been stopped through a state appeal. In fact, he said the only time development is slowed down is when an agency has flagrantly broken the law; so, therefore the interests this bill protects are agencies getting away with flagrantly breaking the law.

Secondly, this bill doesn't streamline development; it codifies the idea that rather than having a democracy where regular citizens participate through the process into forcing confrontation and litigation for every appeal or public notice right.

[3:52:39 PM](#)

DANIEL LUM, representing himself, Barrow, Alaska, opposed HB 77. He said they should hear by now that an overwhelming majority of Alaskans are against HB 77. Industry is pressuring them into pushing this bad bill into law. If this legislation passes, people's right will be silenced. The commissioner has too much power and there is no appeal process.

[3:53:56 PM](#)

MATTHEW DONOHOE, representing himself, Sitka, Alaska, opposed HB 77. He is on the board of the Alaska Trollers Association and was concerned about the protection of habitat in some of the language in the bill; for instance, the lack of definition of "irreparable harm." It was also worrisome that the arbitrator of that is the DNR commissioner who isn't an elected official.

He said the language for this bill came out only two days ago and that is not enough time for his group to discuss it and they opposed it as originally written. He mentioned that there were 20 other people in the room, a lot of whom wouldn't be able to testify because there is only an hour and a half for the hearing.

[3:56:23 PM](#)

GERALD BROOKMAN, representing himself, Kenai, Alaska, opposed HB 77. The only way it can be improved is to deep-six it even with

the changes. It gives too much power to the DNR commissioner to the detriment of the state's people, fish and wildlife.

[3:57:34 PM](#)

ALBERT JUDSON, representing himself, Juneau, Alaska, opposed HB 77. He was testifying to ask one question: "When and how the mission statement for the Department of Natural Resources was changed and whether anybody on the committee knows."

[3:58:50 PM](#)

DAN DUNAWAY, representing himself, Dillingham, Alaska, opposed HB 77. He said he would like to see the Chikuminuk Lake study language purged if they don't just throw away the whole bill. The one privately-owned piece of land in that area belongs to the Bristol Bay Area Heritage Land Trust and it is the only likely site for any hydro-electric development. The Land Trust selected that site to make sure development didn't occur there and KDLG Radio just said that Nuvista had shelved that project.

He also shared Senator French's concern that DNR had not processed any completed applications and that they should not be allowed to sit on them for 22 years without some sort of response from the applicant. And like others said, a 30-day public comment period for people in the Bush subsisting is not enough time for them to respond. It's inevitable that these things show up in the middle of June or salmon season when they are all spread out and subsisting.

[4:01:25 PM](#)

HERMAN NELSON SR., Tribal President, Koliganek Tribal Council, Koliganek, Alaska, opposed HB 77. It would make it more difficult for an individual Alaskan to challenge DNR's decision, especially in the 200-300 small tribal communities. It would give too much power to the DNR commissioner to disregard its own laws and statutes that have taken years to develop through public participation. He said they applied for their water reservations to protect the water needed for salmon and other wildlife resources. The Woodtikchik Lakes are part of Chikuminuk area and it's one of the most beautiful places you can go; you wouldn't want to build a dam there.

[4:03:46 PM](#)

PETER CHRISTOPHER, Vice President, Stuyahok Limited, New Stuyahok, Alaska, opposed HB 77. He supported the folks who spoke on the Chikuminuk Lake issue. They live within the natural resources and that is why they are concerned.

[4:06:38 PM](#)

ALEXUS KWACHKA, commercial fisherman, representing himself, Kodiak, Alaska, opposed both HB 77 and the amendments.

[4:07:18 PM](#)

MARY SADLER, Donlin Gold, Bethel, Alaska, read a letter from Stan Foo, General Manager for Donlin Gold that supported HB 77, because it improved efficiency in permitting.

[4:08:58 PM](#)

PHIL GORDON, representing himself, Homer, Alaska, opposed HB 77. He said an entire roomful of people there would not be able to testify in the limited time allowed. That represents the kind of anti-democracy they are getting from their administration and government. Public opinion is not something that should be avoided; rather it should be emphasized. The streamlining in HB 77 is short-sighted and ignores the need to protect resources for future generations of Alaskans.

[4:10:37 PM](#)

ROSEMARY MCGUIRE, representing herself, Cordova, Alaska, opposed HB 77. She said it's absolutely ludicrous that they are not getting enough time to comment on a bill that removes their ability to comment. It gives too much authority to the commissioner. She is a commercial fisherman and her livelihood depends on a healthy watershed and this does not necessarily make it possible.

[4:11:49 PM](#)

CALLEN CHRISTENSEN, representing Fairbanks Youth, Fairbanks, Alaska, opposed HB 77. He said a number from his group had traveled to Juneau to testify that the Alaska Constitution explicitly reserves natural resources to the people of Alaska for common use and offers safeguards to protect them. He implored them to not pass this bill in any form.

[4:13:08 PM](#)

ERIC JORDAN, representing himself, Sitka, Alaska, opposed HB 77. He said he was a 64-year old Southeast Alaska fisherman and thanked them for taking the time to hear his comments on rewritten HB 77, which it's clear the governor and sponsors have made clear they don't want to hear or be considered in the future.

[4:14:44 PM](#)

ROBERT RUFFNER, Executive Director, Kenai Watershed Forum, Soldotna, Alaska, opposed HB 77. He said they have worked

extensively with the resource agency since their incorporation in 1997 and had budgets in excess of \$3 million, much of which has been spent on stream restoration-type work. The restoration work they focus on is mostly culverts and fish passage, but they have also tackled much more complex projects that involve diverting sections of the Anchor River for more than a quarter of a mile. Anyhow, they are very familiar with the regulatory requirements for permitting in a multi-jurisdictional environment and they have maintained a stellar relationship with the permitting staff that oversee those permits. So, he didn't see the problem that needs to be fixed by this bill.

They applaud Senator Micciche's efforts to gather more input and address the concerns, and he wanted to focus his comments on Section 42(h) in the CS, page 23, line 18. This section consolidates discretionary authority in the DNR commissioner with no transparency or certainty of fair consideration. They don't think every water right or reservation should be granted, but there needs to be a fair process for consideration and a clear pathway to reach a decision.

[4:17:22 PM](#)

MELANIE BROWN, representing herself, Juneau, Alaska, wanted them to include customary users in the language. She goes to the Naknek River district in Bristol Bay every summer to commercial fish and gather subsistence foods for her family. Others in her family help her fill her freezer with game and fish, which offsets the cost of feeding her family. The reason she brought this up is because she was really concerned with how "traditional and customary use" fits in with the definition of "standing." In more than seven sections she noted "substantially and adversely affected" is used to define who has the right to appeal a DNR land use decision. It's only defined once in Section 39 and she fears that definition excludes traditional and customary users (commonly known as subsistence users). The language states that physical or financial detriment to the person's interest is what defines whether or not they have the right to stand in front of DNR to appeal a decision and it's really difficult to quantify the value of subsistence or traditional and customary food for a family who relies heavily on those activities into dollars and cents. If that was not the original intent, she asked them to please revisit this language to make sure that they include traditional and customary users.

[4:19:39 PM](#)

LAURA COMER, representing herself, Anchorage, Alaska, asked why they hadn't heard from the Matsu LIO and then passed off her time to Stuart Grenier.

STUART GRENIER, representing himself, Anchorage, Alaska, opposed HB 77. He said at a Muldoon Constituent meeting with Representative Gruenberg, Representative LaDoux, and Senator Wielechowski, Representative Gruenberg pointed out that across the board the public was being cut out of the process on very important decisions involving resources. This is something they really need to be concerned about.

He also mentioned that some changes in technological allow corporations unbelievable abilities to police their areas. They might be seeing the "third-worlding" of Alaska.

[4:21:32 PM](#)

DENNIS ANDREW, SR., Member, New Stuyahok Tribal Council and New Stuyahok Ltd. Board of Directors, Dillingham, Alaska, opposed HB 77 and version H. He was opposed to any limiting of any public participation or notice and said more should be done to encourage sharing of information and working together for the benefit of Alaskans who seem to be aligning along two sides: resource development versus environmental protection. This bill further divides them. Rural Alaskans can't just go to Carrs or Safeway; they rely on the waters for their fish and the land for their game, but they use the water to gain access in the harvest of the game. "The water is our dinner table," he said.

The latest version of HB 77 still gives the DNR commissioner too much authority to decide what is good for the state, and that adds politics into the decision making which is influenced by who has the money to pay that high-priced lobbyist. This bill uses terms such as "sustainability" and "harmed" and those are not defined. Based on Nuvista's letter, dated February 28, 2014, to Senator Hoffman, the Chikuminuk dam project will be dropped and Section 47, lines 16-23, should be deleted.

[4:24:32 PM](#)

WARREN KEOGH, representing himself, Chickaloon, Alaska, private land owner and water right holder of both surface and subsurface water and former water rights coordinator for the Fish and Wildlife Service in Alaska, opposed HB 77. He said he was one of 20 people in the Matsu LIO who were glad to have the time to speak.

MR. KEOGH said he has a stream running through his property and that HB 77 is a "Medusa-like" bill that is fundamentally flawed. He had hoped the public outcry in several meetings over the past few months would result in significant changes to the bill, but unfortunately the meager DNR changes are more superficial than substantive.

He said he would address two aspects of the many problems in this bill regarding changes to Alaska's Water Use Act:

First, in regard to temporary water use permits, the language added to Section 43 explicitly allows repeated issuance of five-year long temporary use permits for projects that may go on for decades while the DNR commissioner avoids adjudicating a water reservation application for the same water body.

Second, the term "person" has been rightfully returned to the bill's language in terms of water reservations. However, he had a problem with not allowing an applicant to hold the water reservation but instead mandating transfer of the reservation to a public agency.

He said the amended language is an exercise in semantic smoke that disenfranchises the applicant and disincentives anyone from applying for an in-stream flow reservation in the first place. For instance, what is his incentive for expending time, effort and money to reserve a small amount of water in the stream that flows through his property for the purposes of protecting fish passage, spawning, and rearing habitat in perpetuity if he can't hold that water reservation? Transferring that right to a state agency makes no sense.

[4:27:05 PM](#)

MARTHA ITTA, Vice President, Nuiqsut Tribal Council, Nuiqsut, Alaska, opposed HB 77 for a lot of reasons. They heavily depend on their subsistence food and silencing their voices is a big concern, because they are heavily surrounding by oil and gas development. Experiencing a well blow-out was really bad; they had no help, whatsoever. So, it is very important that their voices be heard.

Another reason she opposed HB 77 was to protect her children from cancer and from any kind of illness caused by the chemicals they breathe in. They have already lost two babies. Her family and community have the right to live a healthy life; this bill will take that all away.

[4:29:03 PM](#)

SAM KUNKNANA, Member, Nuiqsut Tribal Council, Nuiqsut, Alaska, opposed HB 77 for reasons that give certain people the right to change the way they do their traditional way of life.

[4:30:08 PM](#)

ELI NUKAPIGAK, representing himself, Nuiqsut, Alaska, strongly opposed HB 77. He had the same concerns over preservation of the subsistence and rural lifestyle.

[4:31:36 PM](#)

JOEL COOPER, representing himself, Homer, Alaska, opposed HB 77. He was also disappointed in the amount of time allowed for people to testify, as there were 18 more people at the LIO in Homer who all opposed the bill. He said it would substantially and adversely impact him, the people of Alaska, and the fish and wildlife of Alaska. It would likely cause significant or irreparable harm. He didn't support giving more authority to the DNR commissioner for large geographic projects that could impact people who would not know what was going on. He was also disappointed in how the filing for in-stream water rights was revamped.

[4:33:24 PM](#)

JACK HOPKINS, representing the Native Village of Eyak, Eyak, Alaska, opposed HB 77. He said Eyak has a tribal membership of 536 members and they oppose HB 77 in any form. He said allowing a government agency that much power is not a benefit to the public or the tribes.

[4:34:10 PM](#)

SARAH BARTHLOW, representing herself, Fairbanks, Alaska, opposed HB 77. She said she is an environmentally-minded wife of a North Slope oil field worker and HB 77 excludes many Alaskans regardless of how they choose to interact with the landscape from having any say about it at all. Regarding her legal right to challenge DNR permitting and decisions, she deserves the right to argue against misalignment of priorities and a dismissal of regulations if DNR unintentionally or purposely decides not to play by the rules.

In regards to general permitting, the ambiguous language on activities and end games versus the narrowing of public engagement to those adversely affected elevates the hostility of citizens they will deal with and only invites negativity into the process. This is not how she wants to interact with lawmakers and she feels they don't want that either.

[4:35:55 PM](#)

JAMES SWIFT, fisherman, representing himself, Sitka, Alaska, opposed HB 77. He had always been involved in politics in Alaska and had always felt he's had a voice, but this bill will take his voice away. He had met too many people who didn't get involved in politics, because they felt so powerless and this doesn't help. The reason Alaska became a state is because it didn't want large companies and Outside people dictating what to do with our resources.

[4:37:24 PM](#)

STEVE SHOONMAKER, representing himself, Kasilof, Alaska, opposed HB 77 as he has before. He stated: "Listen up to the tidal wave of opposition to this bill." The public wants to continue to have a say in the interests of management of its collective commons; this includes their rights and responsibilities as citizens in the stewardship of our waterways and salmon runs.

[4:38:31 PM](#)

JAMES SULLIVAN, lobbyist, Southeast Alaska Conservation Council (SEACC), Juneau, Alaska, opposed HB 77. He thanked them for taking the time to reexamine it saying it is a poor piece of legislation even though improvements have been made since last year. It still empowers DNR to issue general permits for an activity over broad geographic areas of state land; once the general permit is in place, the public will never know about the specific projects authorized by it, because they would not be noticed to the public. The power is too broad considering that the threshold for these general permits is that they not cause "significant or irreparable harm;" the bar should be higher here in Alaska.

Also, Mr. Sullivan said, the issue of "standing" had not been fixed. DNR says they need this language to stop outside groups from stopping DNR's permits, but the solution in this legislation will only punish Alaskans. The length that DNR will go to not acknowledge the rights of individuals with water reservations is shameful.

[4:40:47 PM](#)

MONICA MARSHALL, representing herself and 100 other Alaska Pacific University (APU) students, Anchorage, Alaska, opposed HB 77. As an Alaskan, she believed it's her right to have a say in what happens to its resources. HB 77 removes public notice and a comment period, leaving Alaskans out of the decision-making process.

4:41:51 PM

KIMBERLY WILLIAMS, Executive Director, Nunamta Aulukestai, Dillingham, Alaska, opposed HB 77. Her organization is comprised of 10 village corporations and 10 tribal governments in Bristol Bay. Her board opposes HB 77 even with the changes brought to the committee from DNR.

She said their organization gets criticized because their funding for advocacy specifically to make sure there is enough water in their streams and rivers for fish and to support wildlife comes from outside of Alaska. "How is that any different that the resource development side, which our developers from outside Alaska and many of them foreign owned corporations?" she asked.

Furthermore, to say the duty to protect fish and wildlife belongs to the ADF&G, they agree, however they believe that since 2003, the agency's voice has been silenced by the continued development mandate coming out of DNR. It is their duty to listen to Alaskans and to have an open and transparent process to ensure that all voices are heard for resource development. HB 77 eliminates this important right.

The current version does nothing to address standing, which was one of the main concerns with the original bill. Define what it means to be "substantially and adversely impacted" in order to appeal a DNR decision, as there is no definition, she said. Define "likely significant or irreparable harm." Does this mean the commissioner of DNR can issue a general permit if they are 51 percent certain that the harm can be repaired and in what timeframe? They don't know and that needs to be defined.

Finally, DNR heard the outcry from the tribes and people across Alaska and added them back into the water reservation section, but it is worse now. Section 42 needs major revisions and section 47 needs to be deleted given the latest announcement by Nuvista that they are moving away from Chikuminuk.

4:44:01 PM

DODD SHAY, representing himself, Wasilla, Alaska, opposed HB 77. He said there are about 30 people waiting to testify in Wasilla. He said in 1983 he woke up incorporated into an 850 square-mile city of Afognak where all his rights had been taken away by development. The City Council was appointed by Governor Hammond from a list submitted by the major developer. He had a real problem with any resource being developed without the people

living there having their public rights. If all the land and commerce is owned by multi-national corporations, they are privileged and the residents have no voice.

He felt that any development should be mapped out with a tremendous amount of land set aside for public housing, cities, and public development.

[4:46:02 PM](#)

MAKO HAGGERTY, representing himself, Homer, Alaska, adamantly opposed to HB 77 and its new version. He said it's just a bad idea and he wondered where it came from. No one is in favor of it except for the Donlin people.

[4:47:28 PM](#)

ALEXIS COOPER, Cordova District Fishermen United (CDFU), Cordova, Alaska, opposed HB 77. She appreciated the opportunity to testify on the new draft, but the 48 hours provided for public consideration was too little to fully comprehend and meaningfully testify on the issue. Changes had been made, but in her initial reading the primary areas of concern with the original bill persist: the lack of definition for several key terms and phrases leaves far too much interpretation by future administrations and commissioners; there remain gaps between the stated intent and the actual language of this bill and they remain uncomfortable with the expansion of the DNR power and the erosion of concerned and affected Alaskan's ability to have a voice in the process. For these reasons, they ask to slow the process and continue the public dialogue in order to provide clarity before it moves further forward.

[4:49:04 PM](#)

PAMELA MILLER, representing herself, Fairbanks, Alaska, opposed HB 77. She said there are three others in the room who wished to testify and one who had to leave early. She reviewed DNR's changes to HB 77 and found the bill is still not balanced and remains flawed. This 25 page bill makes sweeping complex changes to the Alaska Land Act and Water Use Act, but its effect is simple: it silences the voices of Alaskans and their ability to speak up to protect healthy fish runs, animals, lands and the waters across the state.

General permits allow agencies to issue one permit for a wide range of activities over broad geographic areas, as much as a million acres or more for over 10 years, potentially before an application is even submitted. While DNR removed the sweeping phrase "notwithstanding any other provision of law" in Section

1, this permitting authority still has a flaw in that it lets DNR preapprove many kinds of activities from mining, exploration and mine development to forest timber, water use, and things that affect animals and fish, which could be done before the public has any idea exactly when or where the activity might be approved, who is doing the activity, and so on. The addition of a public notice provision for general permits doesn't fix the problem, because there is no opportunity for comment once a specific project application is put in place.

DNR's reliance on ADF&G to protect fish doesn't ensure that DNR is carrying out its legal responsibility to conserve the state's resources. DNR protects only a fraction of the stream flow for fish and other wildlife and navigation reasons.

[4:51:27 PM](#)

LINDA BEHNKEN, Alaska Longline Fishermen's Association, Sitka, Alaska, opposed HB 77. She said they appreciate the committee's work on HB 77, but was disappointed with the amendments that fell far short of expectations. She thanked Senator McGuire for her comments this week relative to the amendments.

She said this bill still does not define many terms such as "adversely affected by a DNR decision," which significantly raises the bar for Alaskans to comment or object to DNR permitting decisions that affect important habitat and waterways. The bill still vests DNR with expansive discretionary powers to evaluate water use requests, both in terms of scope with general permits and timing with renewal of temporary permits, and the elimination of assigned application processing priorities.

It also adds seven new issues that a DNR commissioner must consider before deciding if an in-stream flow is in the public interest, all couched in a tone suggesting that water simply left in a lake or river is somehow being wasted. This concerns the association and they hope the committee, too. She hoped the committee would consider alternative strategies for addressing the DNR permitting backlog.

[4:53:39 PM](#)

CLARK WHITNEY, JR., representing his children, Soldotna, Alaska, opposed HB 77, because there is no need to further streamline the permitting process in Alaska. Over the last 20 years it had already been severely streamlined, and there were at least 25 other people in the Kenai LIO most of whom also opposed HB 77. He said the rewrite of the bill was rushed on Monday and then

only 90 minutes were allotted to hundreds of Alaskans who care deeply about Alaska to testify. He asked for more time for testimony.

[4:55:01 PM](#)

MIKE SATRE, President, Council of Alaska Producers, Juneau, Alaska, supported HB 77 and the CS. He said the Council had supported HB 77 since its introduction and passage by the other body. However, they understand the public concerns and don't object to the current CS. They believe this bill strengthens Alaskan's ability to participate in the public process during permitting. Section 4 encourages involvement during the early stages of the process when input and concern can most practically be addressed.

He said general permits are used throughout the country by federal and state agencies to regulate common activities that are deemed to have minimal impact. The general permits envisioned in section 1 will be subject to public review, but once complete will be of great benefit to individuals and small businesses who seek to do business on state land by simplifying permitting while still maintaining rigorous standards for protecting Alaskans.

Finally, he said, they wholeheartedly support the state agencies holding in-stream water flow reservations, because the state is constitutionally mandated to manage the water for the maximum benefit of the people. Holding these reservations allows the state to properly balance demands for water while ensuring flows remain for the reserved purpose, including fish and wildlife habitat.

[4:57:16 PM](#)

CEEZAR MARTINSON, representing himself, Anchorage, Alaska, opposed HB 77. He refers to it as "Let's Shred Our Constitution Act." It is completely unnecessary. The permitting process in the state already is good, he said. This bill houses power in the executive branch, particularly in the hands of the commissioner of DNR and takes away the ability of the public to be engaged and involved in resource development issues. This bill strengthens the ability of Outside foreign corporations in terms of making decisions about our resources. We need to be doing all that we can to strengthen the public process, not restrict it. It's unfortunate they were not given more time today to testify on this legislation given what it does.

[4:59:15 PM](#)

DOROTHY LARSON, Tribal Administrator, Curyung Tribal Council, Dillingham, Alaska, opposed HB 77. She said she was born and raised there and practiced hunting and fishing activities her entire life and will continue to work diligently to assure there are protections for this way of life into perpetuity. The Curyung Tribal Council and over 40 Alaska tribes and Native groups passed resolution opposing HB 77, and DNR's proposed changes revealed less than 48 hours ago failed to address their concerns. DNR has again worked behind closed doors without public consultation and process to revise this dangerously flawed bill.

[5:01:34 PM](#)

PENNY WESTING, representing herself, Palmer, Alaska, opposed HB 77 in any form. She is a registered voter and a homeowner with a small stream on her property and a tribal citizen of Chickaloon Native Village.

CHAIR GIESSEL asked LIO staff to count the hands of people opposed and in support of HB 77 who had not yet spoken to the committee and send those numbers to her office.

SENATOR FRENCH said he thought there were plenty of people who are in favor of the bill who want to have their chance to be heard, as well.

CHAIR GIESSEL said they would get their chance and closed oral public testimony. She said anyone could send public testimony in at any time to her office and those written comments will be gladly taken and entered into the record. She had printed out the ones from today and given them to all committee members.

[HB 77 was held in committee.]

[5:04:04 PM](#)

CHAIR GIESSEL adjourned the Senate Resources Committee meeting at 5:03 p.m.