

HB

77

<TARGET><BILL>HB 77</BILL><SUBJECT>HB
77</SUBJECT><COMM>SFIN28</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 3/11/13

FURTHER:

DATE TURNED
IN TO OFFICE: 4/8/13

Finance Committee considered CS FOR HOUSE BILL NO. 77(RES)

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

"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."

and recommends:

- be replaced with SCS CSHB 77 (FIN) [] Same Title [] Technical Title Change
 [] adopt previous SCS _____) [] Same Title [] Technical Title Change
 [] attached amendment(s)
 [] adopt _____ Letter of Intent
 [] further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DNR			✓	

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DFG			✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Hoffman			/	x
	DUNLEAVY	X		⊗	
	BISHOP			X	
	FAIRCLOUGH	X			
	OLSON				
CO-CHAIR:	Kelly	✓			
CO-CHAIR:	Meyer	✓			

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 77
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB77SCSCS(FIN)-DNR-MLW-4-8-13
Title: LAND USE/DISP/EXCHANGES; WATER RIGHTS
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: Senate Finance Committee

Department: Department of Natural Resources
Appropriation: Land & Water Resources
Allocation: Mining, Land & Water
OMB Component Number: 3002

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

--	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 06/30/15

Why this fiscal note differs from previous version:

The Senate Finance Committee adopted changes that would allow for a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake. The Senate Finance committee also added a section that creates a new preference right to allow state lessees the option to purchase the land before it is conveyed to a municipality. Neither of these changes impact the fiscal note.

Prepared By:	Esther Tempel, Legislative Liaison	Phone:	(907)269-8400
Division	Department of Natural Resources	Date:	04/08/2013 09:00 AM
Approved By:	Daniel S. Sullivan, Commissioner	Date:	04/08/13
	Department of Natural Resources		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SCS CSHB77(FIN)

Analysis

This bill proposes to make changes to statutes that are intended to continue progress made to the State of Alaska's permitting processes to ensure projects are permitted in a more timely, predictable and efficient manner while safeguarding the environment.

These proposed changes are not anticipated to have a fiscal impact on the department or the State. The bill will either create efficiencies or prevent inefficiencies, which will allow the Division of Mining, Land, and Water to re-allocate staff time to other permits and authorizations thus helping to reduce the backlog.

Regulations will be amended to help implement certain new or substantially modified sections of the bill. The Department of Natural Resources will also amend regulations in order to conform to language changes. The Department would first focus on the regulations needed to implement the new or substantially modified sections. The department anticipates that it would take two years until all regulatory changes that might result from passage of this bill are adopted.

The Senate Finance Committee added two new provisions. The bill adds AS 41.21.167(e) stating that performance of a feasibility study for the development and operation of a hydroelectric site at Chikuminuk Lake is not considered an incompatible use in Wood-Tikchik State Park. The transition language states that DNR may not enforce or implement those provisions in the Wood-Tikchik State Park Management Plan, dated October 2002, and regulations applicable that are inconsistent with AS 41.21.167(e) as enacted by this bill. This bill does not require any change to the management plan or the regulations.

The committee substitute also creates a new preference right in AS 38.05.035 to allow state lessees the option to purchase the land before it is conveyed to a municipality. This provision will have no additional fiscal impact on the department as there are existing staff who can adjudicate applications to purchase.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 77
 Fiscal Note Number 2
 (H) Publish Date 1/18/13

Identifier (file name) LL0524-DFG-CO-01-14-13 Dept. Affected ADFG
 Title Relating to MLW permitting and lease reform, and Appropriation Administration and Support
general permitting Allocation Commissioner's Office
 Sponsor Governor
 Requester Rules by Request of the Governor OMB Component Number 2175

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY13) operating costs 0.0 (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs 0.0 (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Ben Mulligan, Legislative Liaison
 Division Commissioner's Office
 Approved by Cora Campbell, Commissioner
Department of Fish & Game

Phone 907-267-2311
 Date/Time 01/07/13 10:30AM
 Date 1/7/2013

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 77

Analysis

After consulting with the Sport Fish Division and Habitat Division the proposed legislation will have no fiscal impact upon ADF&G.

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning House Bill No. 77, relating to the Alaska Land Act, including**
3 **certain authorizations, contracts, leases, permits, or other disposals of state land,**
4 **resources, property, or interests; relating to authorization for the use of state land by**
5 **general permit; relating to exchange of state land; relating to procedures for certain**
6 **administrative appeals and requests for reconsideration to the commissioner of natural**
7 **resources; and relating to the Alaska Water Use Act.**

8 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
10 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
11 changes to the title of a bill, are suspended in consideration of House Bill No. 77, relating to
12 the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other
13 disposals of state land, resources, property, or interests; relating to authorization for the use of
14 state land by general permit; relating to exchange of state land; relating to procedures for

1 certain administrative appeals and requests for reconsideration to the commissioner of natural
2 resources; and relating to the Alaska Water Use Act.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 8, 2013

SUBJECT: Dedicated fund problem with Amendment No. 1; appraisal and survey costs - SCS CSHB 77(FIN)
(Work Order No. 28-GH1524\Y)

TO: Senator Kevin Meyer
Co-Chair of the Senate Finance Committee
Attn: Doniece Gott, Finance Committee Secretary

FROM: Donald M. Bullock
Legislative Counsel

I have prepared SCS CSHB 77(FIN) by deleting sec. 4 of the bill and adding a new section to add the new subsection to AS 38.05.035(o) in sec. 7 of the bill. However, new subsection (o) has a dedicated fund problem.

The third to the last sentence in the amendment read:

The revenue from the purchase of the parcel will be given to the municipality if the municipal entitlement is approved for that acreage.

This language is missing a phrase such as "subject to appropriation." In its current form, the language requires the state to pay the money it receives from the sale of state land to the municipality. Article 9, sec. 7, Constitution of the State of Alaska prohibits the dedication of funds in the manner stated in the amendment.

Also, I think the intention in the amendment is to have the applicant pay for the cost of the appraisal and survey that establishes the sales price. The language could be changed to make this point more clear.

DMB:ljw
13-264.ljw

Enclosure

**SENATE CS FOR CS FOR HOUSE BILL NO. 77(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION**

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Land Act, including certain authorizations, contracts,**
2 **leases, permits, or other disposals of state land, resources, property, or interests; relating**
3 **to authorization for the use of state land by general permit; relating to exchange of state**
4 **land; establishing that performance of a feasibility study for the development and**
5 **operation of a hydroelectric site at Chikuminuk Lake is not considered an incompatible**
6 **use of the Wood-Tikchik State Park; relating to procedures for certain administrative**
7 **appeals and requests for reconsideration to the commissioner of natural resources;**
8 **relating to the Alaska Water Use Act; and providing for an effective date."**

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 *** Section 1.** AS 38.05.020 is amended by adding a new subsection to read:

11 (c) Notwithstanding any other provision of law, the commissioner may
12 authorize an activity on state land by the issuance of a general permit if the

1 commissioner finds that the activity is unlikely to result in significant and irreparable
2 harm to state land or resources. This subsection does not apply to land designated
3 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21.

4 * **Sec. 2.** AS 38.05.030(c) is amended to read:

5 (c) **The** [IN ADDITION TO THE REQUIREMENTS SPECIFIED IN
6 AS 38.50.090, THE] agencies referred to in (b) of this section and other state agencies
7 with authority to acquire or dispose of land shall give written notification of the fact of
8 acquisition, lease, disposal, or exchange to the commissioner **not later than**
9 [WITHIN] three months after the date that they make the acquisition, lease, disposal,
10 or exchange.

11 * **Sec. 3.** AS 38.05.035(e) is amended to read:

12 (e) Upon a written finding that the interests of the state will be best served, the
13 director may, with the consent of the commissioner, approve contracts for the sale,
14 lease, or other disposal of available land, resources, property, or interests in them. In
15 approving a contract under this subsection, the director need only prepare a single
16 written finding. In addition to the conditions and limitations imposed by law, the
17 director may impose additional conditions or limitations in the contracts as the director
18 determines, with the consent of the commissioner, will best serve the interests of the
19 state. The preparation and issuance of the written finding by the director are subject to
20 the following:

21 (1) with the consent of the commissioner and subject to the director's
22 discretion, for a specific proposed disposal of available land, resources, or property, or
23 of an interest in them, the director, in the written finding,

24 (A) shall establish the scope of the administrative review on
25 which the director's determination is based, and the scope of the written
26 finding supporting that determination; the scope of the administrative review
27 and finding may address only reasonably foreseeable, significant effects of the
28 uses proposed to be authorized by the disposal;

29 (B) may limit the scope of an administrative review and finding
30 for a proposed disposal to

31 (i) applicable statutes and regulations;

1 (ii) the facts pertaining to the land, resources, or
2 property, or interest in them, that the director finds are material to the
3 determination and that are known to the director or knowledge of which
4 is made available to the director during the administrative review; and

5 (iii) issues that, based on the statutes and regulations
6 referred to in (i) of this subparagraph, on the facts as described in (ii) of
7 this subparagraph, and on the nature of the uses sought to be authorized
8 by the disposal, the director finds are material to the determination of
9 whether the proposed disposal will best serve the interests of the state;
10 and

11 (C) may, if the project for which the proposed disposal is
12 sought is a multiphased development, limit the scope of an administrative
13 review and finding for the proposed disposal to the applicable statutes and
14 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that
15 pertain solely to the disposal phase of the project when

16 (i) the only uses to be authorized by the proposed
17 disposal are part of that phase;

18 (ii) the disposal is a disposal of oil and gas, or of gas
19 only, and, before the next phase of the project may proceed, public
20 notice and the opportunity to comment are provided under regulations
21 adopted by the department;

22 (iii) the department's approval is required before the
23 next phase of the project may proceed; and

24 (iv) the department describes its reasons for a decision
25 to phase;

26 (2) the director shall discuss in the written finding prepared and issued
27 under this subsection the reasons that each of the following was not material to the
28 director's determination that the interests of the state will be best served:

29 (A) facts pertaining to the land, resources, or property, or an
30 interest in them other than those that the director finds material under (1)(B)(ii)
31 of this subsection; and

1 (B) issues based on the statutes and regulations referred to in
2 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
3 subsection;

4 (3) a written finding for an oil and gas lease sale or gas only lease sale
5 under AS 38.05.180 is subject to (g) of this section;

6 (4) a contract for the sale, lease, or other disposal of available land or
7 an interest in land is not legally binding on the state until the commissioner approves
8 the contract, but if the appraised value is not greater than \$50,000 in the case of the
9 sale of land or an interest in land, or \$10,000 [\$5,000] in the case of the annual rental
10 of land or interest in land, the director may execute the contract without the approval
11 of the commissioner;

12 (5) public notice requirements relating to the sale, lease, or other
13 disposal of available land or an interest in land for oil and gas, or for gas only,
14 proposed to be scheduled in the five-year oil and gas leasing program under
15 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

16 (A) before a public hearing, if held, or in any case not less than
17 180 days before the sale, lease, or other disposal of available land or an interest
18 in land, the director shall make available to the public a preliminary written
19 finding that states the scope of the review established under (1)(A) of this
20 subsection and includes the applicable statutes and regulations, the material
21 facts and issues in accordance with (1)(B) of this subsection, and information
22 required by (g) of this section, upon which the determination that the sale,
23 lease, or other disposal will serve the best interests of the state will be based;
24 the director shall provide opportunity for public comment on the preliminary
25 written finding for a period of not less than 60 days;

26 (B) after the public comment period for the preliminary written
27 finding and not less than 90 days before the sale, lease, or other disposal of
28 available land or an interest in land for oil and gas or for gas only, the director
29 shall make available to the public a final written finding that states the scope of
30 the review established under (1)(A) of this subsection and includes the
31 applicable statutes and regulations, the material facts and issues in accordance

1 with (1) of this subsection, and information required by (g) of this section,
 2 upon which the determination that the sale, lease, or other disposal will serve
 3 the best interests of the state is based;

4 (6) before a public hearing, if held, or in any case not less than 21 days
 5 before the sale, lease, or other disposal of available land, property, resources, or
 6 interests in them other than a sale, lease, or other disposal of available land or an
 7 interest in land for oil and gas or for gas only under (5) of this subsection, the director
 8 shall make available to the public a written finding that, in accordance with (1) of this
 9 subsection, sets out the material facts and applicable statutes and regulations and any
 10 other information required by statute or regulation to be considered upon which the
 11 determination that the sale, lease, or other disposal will best serve the interests of the
 12 state was based; **the director may make available to the public a preliminary**
 13 **written finding and provide opportunity for public comment on the preliminary**
 14 **written finding for a period of at least 30 days;** [HOWEVER,] a written finding is
 15 not required before the approval of

16 (A) a contract for a negotiated sale authorized under
 17 AS 38.05.115;

18 (B) a lease of land for a shore fishery site under AS 38.05.082;

19 (C) a permit or other authorization revocable by the
 20 commissioner;

21 (D) a mineral claim located under AS 38.05.195;

22 (E) a mineral lease issued under AS 38.05.205;

23 (F) an exempt oil and gas lease sale or gas only lease sale under
 24 AS 38.05.180(d) of acreage subject to a best interest finding issued within the
 25 previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under
 26 AS 38.05.180(w) of acreage subject to a best interest finding issued within the
 27 previous 10 years, unless the commissioner determines that substantial new
 28 information has become available that justifies a supplement to the most recent
 29 best interest finding for the exempt oil and gas lease sale or gas only lease sale
 30 acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage;
 31 however, for each oil and gas lease sale or gas only lease sale described in this

1 subparagraph, the director shall call for comments from the public; the
2 director's call for public comments must provide opportunity for public
3 comment for a period of not less than 30 days; if the director determines that a
4 supplement to the most recent best interest finding for the acreage is required
5 under this subparagraph,

6 (i) the director shall issue the supplement to the best
7 interest finding not later than 90 days before the sale;

8 (ii) not later than 45 days before the sale, the director
9 shall issue a notice describing the interests to be offered, the location
10 and time of the sale, and the terms and conditions of the sale; and

11 (iii) the supplement has the status of a final written best
12 interest finding for purposes of (i) and (I) of this section;

13 (G) a surface use lease under AS 38.05.255;

14 (H) a permit, right-of-way, or easement under AS 38.05.850;

15 (7) the director shall include in

16 (A) a preliminary written finding, if **issued** [REQUIRED], a
17 summary of agency and public comments, if any, obtained as a result of
18 contacts with other agencies concerning a proposed disposal or as a result of
19 informal efforts undertaken by the department to solicit public response to a
20 proposed disposal, and the department's preliminary responses to those
21 comments; and

22 (B) the final written finding a summary of agency and public
23 comments received and the department's responses to those comments.

24 * **Sec. 4.** AS 38.05.035(i) is amended to read:

25 (i) A person who is eligible to file an administrative appeal or a request for
26 reconsideration, as appropriate, under this subsection and who is **substantially and**
27 **adversely affected** [AGGRIEVED] by the final written finding of the director entered
28 under (e)(5) or (6) of this section may, **not later than** [WITHIN] 20 days after the
29 issuance of the final written finding, file an administrative appeal or request
30 reconsideration of the decision by the commissioner. A person is eligible to file an
31 administrative appeal or a request for reconsideration if the person

1 (1) meaningfully participated in the process set out in this chapter for
2 receipt of public comment by

3 (A) submitting written comment during the period for receipt
4 of public comment; or

5 (B) presenting oral testimony at a public hearing, if a public
6 hearing was held; or [AND]

7 (2) is the applicant [AFFECTED BY THE FINAL WRITTEN
8 FINDING].

9 * **Sec. 5.** AS 38.05.035(j) is amended to read:

10 (j) An administrative appeal or a request for reconsideration submitted under
11 (i) of this section must specify the written finding complained of and the specific basis
12 upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY
13 THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN
14 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the
15 commissioner to act on a [THE] request for reconsideration not later than 30 days
16 after issuance of the final written finding [WITHIN THIS PERIOD] is a denial of
17 the request for reconsideration and a final administrative decision for purposes of
18 appeal to the superior court.

19 * **Sec. 6.** AS 38.05.035(l) is amended to read:

20 (l) A person may appeal a final written finding issued under (e)(5) or (6) of
21 this section to the superior court, but only if the person was eligible to request, and did
22 request, an administrative appeal or reconsideration of that finding under (i) of this
23 section. The person shall initiate the appeal to the court not later than [WITHIN] 30
24 days from the date that the decision on administrative appeal or reconsideration is
25 mailed or otherwise distributed, or the date the request for reconsideration is
26 considered denied by the commissioner's failure to act on the request, whichever is
27 earlier. The points on appeal to the court are limited to those presented to the
28 commissioner in the person's administrative appeal or request for reconsideration.

29 * **Sec. 7.** AS 38.05.035 is amended by adding a new subsection to read:

30 (o) Where there is an active municipal entitlement selection on state land
31 under AS 29.65.010 - 29.65.030 that has a state-issued lease and before the decision to

1 approve the municipal entitlement, the director shall grant a preference right to
 2 purchase without competitive bid of up to five acres of the state land to an individual
 3 who has erected a building approved by a lease on the state land and used the land for
 4 bona fide business purposes for 10 or more years under a state lease, if the business
 5 produced not less than 25 percent of the total income of the applicant for the 10 years
 6 preceding the application to purchase the land. The director shall sell the land at a
 7 price determined by the director to represent the current fair market value of the
 8 unimproved land determined by appraisal and survey, if not already completed, at the
 9 cost of the applicant. If the director determines, in a written finding, that the purchase
 10 of the land would interfere with public use by residents of the area, the director may
 11 condition the purchase to mitigate the adverse effects on the public or may reject the
 12 application if those effects cannot be mitigated. The revenue from the purchase of the
 13 parcel will be given to the municipality if the municipal entitlement is approved for
 14 that acreage. In this subsection,

15 (1) "building" means a permanent type of structure with solid walls,
 16 foundation, and roof;

17 (2) "business purposes" means a purpose consistent with the
 18 classification of the land at the time the land was entered.

19 * **Sec. 8.** AS 38.05.065(a) is amended to read:

20 (a) **Unless the remainder of the purchase price is paid in full at the time of**
 21 **the sale, a** [THE] contract of sale for land **or property** sold [AT PUBLIC AUCTION
 22 OR BY SEALED BID] under **this chapter or former AS 38.05.078** [AS 38.05.055]
 23 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
 24 annual installments over a period of not more than 20 years, with interest at the rate
 25 provided in (i) of this section. Installment payments plus interest shall be set on the
 26 level-payment basis.

27 * **Sec. 9.** AS 38.05.065(c) is amended to read:

28 (c) The director shall, for **a contract that provides for installment payments**
 29 [CONTRACTS] under (a) [, (b),] or (h) of this section, set out in the contract [FOR
 30 EACH SALE] the period for the payment of installments and the total purchase price
 31 plus interest. The director, with the consent of the commissioner, may also include in **a**

1 contract [CONTRACTS] under this section conditions, limitations, and terms
2 considered necessary and proper to protect the interest of the state. Violations of any
3 provision of this chapter or the terms of the contract of sale subject the purchaser to
4 appropriate administrative and legal action, including but not limited to specific
5 performance, foreclosure, ejectment, or other legal remedies in accordance with
6 applicable state law.

7 * **Sec. 10.** AS 38.05.065(h) is amended to read:

8 (h) The commissioner, after consulting with the Board of Agriculture and
9 Conservation (AS 03.09.010),

10 (1) shall provide that, notwithstanding (a) [AND (b)] of this section, in
11 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural
12 uses, the interest rate to be charged on installment payments may not exceed 9.5
13 percent; and

14 (2) may declare a moratorium of up to five years on payments on land
15 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural
16 uses if

17 (A) the commissioner determines that the moratorium is in the
18 best interest of the state;

19 (B) the commissioner certifies and the contract purchaser
20 agrees to perform farm development, crop production, and harvesting, not
21 including land clearing or related activity, requiring the expenditure of
22 amounts equivalent to the payments that would otherwise be made during the
23 moratorium;

24 (C) the sale of the agricultural land takes place after July 1,
25 1979; and

26 (D) the contract purchaser is in compliance with the
27 development plan specified in the purchase contract at the time the purchaser
28 applies for a moratorium under this paragraph and remains in compliance with
29 the development plan during the moratorium; for the payments subject to the
30 moratorium declared under this paragraph, interest payments are subject to the
31 moratorium but interest continues to accrue during the moratorium.

1 * **Sec. 11.** AS 38.05.070 is amended by adding new subsections to read:

2 (f) A lease may be extended once for a period up to two years, if the director
3 determines it to be in the best interests of the state and the extension is necessary to
4 prolong the lease while the department considers

5 (1) a lessee preference application under AS 38.05.102;

6 (2) an application to renew the lease under (e) of this section; or

7 (3) an application to issue a new lease on the same site that, because it
8 substantially changes the purpose or operation of an existing lease, requires a new
9 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
10 is changed.

11 (g) An extension issued under (f) of this section is not subject to
12 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
13 lease.

14 * **Sec. 12.** AS 38.05.075(a) is amended to read:

15 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,
16 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,
17 when competitive interest has been demonstrated or the commissioner determines that
18 it is in the state's best interests, leasing shall be made at public auction or by sealed
19 bid, at the discretion of the director, to the highest qualified bidder as determined by
20 the commissioner. A bidder may be represented by an attorney or agent at a public
21 auction. In the public notice of a lease to be offered at public auction or by sealed bid,
22 the commissioner shall specify a minimum acceptable bid and the lease compensation
23 method. The lease compensation method shall be designed to maximize the return on
24 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
25 **A substantially and adversely affected** [AN AGGRIEVED] bidder may appeal **or**
26 **request reconsideration under AS 44.37.011; however, the appeal or request must**
27 **be made not later than** [TO THE COMMISSIONER WITHIN] five days **after**
28 **issuance of the determination of the highest qualified bidder** for a review of the
29 determination. The leasing shall be conducted by the commissioner, and the successful
30 bidder shall deposit at the public auction or with the sealed bid the first year's rental or
31 other lease compensation as specified by the commissioner, or that portion of it that

1 the commissioner requires in accordance with the bid. The commissioner shall require,
 2 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
 3 appraisal costs reasonably incurred by another qualified bidder acting in accordance
 4 with the regulations of the commissioner or incurred by the department under
 5 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
 6 costs is determined by the commissioner to be the highest qualified bidder under this
 7 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
 8 costs or to the department if the department incurred the costs. All costs for survey and
 9 appraisal shall be approved in advance in writing by the commissioner. The
 10 commissioner shall immediately issue a receipt containing a description of the land or
 11 interest leased, the price bid, and the terms of the lease to the successful qualified
 12 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
 13 commissioner may offer the land for lease again under this subsection. A lease, on a
 14 form approved by the attorney general, shall be signed by the successful bidder and by
 15 the commissioner.

16 * **Sec. 13.** AS 38.05.075(e) is amended to read:

17 (e) The commissioner may require prequalification of bidders for a lease to be
 18 issued under AS 38.05.070. If the commissioner determines to require
 19 prequalification, the procedures established by this section and the notice including
 20 prequalification requirements required to be given under AS 38.05.945 shall be
 21 completed **not later than** [WITHIN] 75 days **after** [OF] the receipt of the first lease
 22 application unless the commissioner grants additional time for the completion of the
 23 procedures. **During** [WITHIN] the 75-day period or the additional time granted by the
 24 commissioner, the commissioner shall complete

25 (1) classification under AS 38.05.300;

26 (2) the procedures required by AS 38.05.035(e);

27 (3) any other action required by law for the disposal of the lease to a
 28 bidder except survey, appraisal, and the auction or sealed bid.

29 * **Sec. 14.** AS 38.05.075(h) is amended to read:

30 (h) A person **substantially and adversely affected** [AGGRIEVED] by a
 31 decision of the commissioner under this section may appeal **or request**

1 reconsideration under AS 44.37.011; however, the appeal or request for
 2 reconsideration must be made not later than [TO THE COMMISSIONER
 3 WITHIN] five days after [OF] the prequalification decision. [THE DECISION OF
 4 THE COMMISSIONER UNDER THIS SUBSECTION MAY BE APPEALED TO
 5 THE SUPERIOR COURT.]

6 * **Sec. 15.** AS 38.05.082(b) is amended to read:

7 (b) The director may classify land as subject to leases for fisheries
 8 development and publicly invite applications for lease of the selected areas. Each
 9 application shall be accompanied by an affidavit to the effect that the applicant
 10 presently intends to personally utilize the leased area for fishing purposes the
 11 following season. If two or more applications are received for the same shore area, the
 12 director shall award the lease to the most qualified applicant. In determining the
 13 qualifications of applicants, the director shall consider the length of time during which
 14 the applicant has been engaged in set netting, the proximity of the past fishing sites of
 15 the applicant to the land to be leased, the present ability of the applicant to utilize the
 16 location to its maximum potential, and other factors relevant to the equitable
 17 assignment of the disputed area. If the director cannot determine a preference between
 18 conflicting applicants for the same lease site on the basis of qualifications, the director
 19 shall select between the applicants by lot. A substantially and adversely affected
 20 [AN AGGRIEVED] applicant may appeal to the commissioner under AS 44.37.011
 21 not later than 20 [WITHIN 30] days after issuance of the determination for a
 22 review of the director's determination.

23 * **Sec. 16.** AS 38.05.083(a) is amended to read:

24 (a) The commissioner may offer to the public for lease at public auction or by
 25 sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic
 26 farming or related hatchery operations. Before a final decision to issue [OR RENEW]
 27 a lease under this section, the commissioner shall give notice and allow opportunity
 28 for comment in accordance with AS 38.05.945 and may hold a hearing to take
 29 testimony. Before a final decision to issue [OR RENEW] a lease under this section,
 30 the commissioner shall consider all relevant comment or testimony submitted under
 31 this section, AS 38.05.945, or 38.05.946.

1 * **Sec. 17.** AS 38.05.083 is amended by adding new subsections to read:

2 (g) The director may renew a lease issued under this section before its
3 expiration if the lease is in good standing and the director determines the lease renewal
4 to be in the best interests of the state. A renewal issued under this subsection is not
5 subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer
6 than 10 years. The director shall provide notice of the decision to renew the lease.

7 (h) The director may extend the term of a lease issued under this section if the
8 lease is in good standing and the lease extension is determined to be in the best
9 interests of the state. A lease may be only extended once before its expiration for an
10 additional period of not more than two years. A lease extension may only be issued if
11 the director determines the extension is necessary while the department considers

12 (1) an application to renew the lease under (g) of this section; or

13 (2) an application to issue a new lease on the same site that, because it
14 substantially changes the purpose or operation of an existing lease, requires a new
15 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
16 is changed.

17 (i) An extension issued under (h) of this section is not subject to
18 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
19 lease.

20 * **Sec. 18.** AS 38.05.185(a) is amended to read:

21 (a) The acquisition and continuance of rights in and to deposits on state land
22 of minerals, which on January 3, 1959, were subject to location under the mining laws
23 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
24 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
25 mineral deposits owned by any other person or government. The director, with the
26 approval of the commissioner, shall determine that land from which mineral deposits
27 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
28 land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may
29 not be closed to location under AS 38.05.185 - 38.05.275 except as provided in
30 AS 38.05.300 and unless the commissioner makes a finding that mining would be
31 incompatible with significant surface uses on the state land. State land may not be

1 restricted to mining under lease unless the commissioner determines that potential use
 2 conflicts on the state land require that mining be allowed only under written leases
 3 issued under AS 38.05.205 or the commissioner has determined that the land was
 4 mineral in character at the time of state selection. The determinations required under
 5 this subsection shall be made in compliance with land classification orders and land
 6 use plans developed under AS 38.05.300. **A preliminary written decision under this**
 7 **subsection may be made available to the public and provide opportunity for**
 8 **public comment on the preliminary written decision for a period of at least 30**
 9 **days.**

10 * **Sec. 19.** AS 38.05.300(a) is amended to read:

11 (a) The commissioner shall classify for surface use land in areas considered
 12 necessary and proper. This section does not prevent reclassification of land where the
 13 public interest warrants reclassification, nor does it preclude multiple purpose use of
 14 land whenever different uses are compatible. **The commissioner may make available**
 15 **to the public a preliminary written classification decision and provide**
 16 **opportunity for public comment on the preliminary written decision for a period**
 17 **of at least 30 days.** If the area involved contains more than 640 contiguous acres, state
 18 land, water, or land and water area may not, except by act of the state legislature, (1)
 19 be closed to multiple purpose use, or (2) be otherwise classified by the commissioner
 20 so that mining, mineral entry or location, mineral prospecting, or mineral leasing is
 21 precluded or is designated an incompatible use, except when the classification is
 22 necessary for a land disposal or exchange or is for the development of utility or
 23 transportation corridors or projects or similar projects or infrastructure, or except as
 24 allowed under (c) of this section.

25 * **Sec. 20.** AS 38.05.945(a) is amended to read:

26 (a) This section establishes the requirements for notice given by the
 27 department for the following actions:

28 (1) **a preliminary decision, or final decision if a preliminary**
 29 **decision is not issued, regarding the** classification or reclassification of state land
 30 under AS 38.05.300 **or a mineral order or leasehold location order regarding**
 31 **[AND] the availability [CLOSING]** of land to mineral leasing or entry under

1 AS 38.05.185;

2 (2) **a preliminary decision, or final decision if a preliminary**
 3 **decision is not issued, regarding the** zoning of land under applicable law;

4 (3) issuance of a

5 (A) preliminary written finding under AS 38.05.035(e)(5)(A)
 6 regarding the sale, lease, or disposal of an interest in state land or resources for
 7 oil and gas, or for gas only, subject to AS 38.05.180(b);

8 (B) written finding for the sale, lease, or disposal of an interest
 9 in state land or resources under AS 38.05.035(e)(6), except

10 (i) **if a preliminary written finding is issued under**
 11 **AS 38.05.035(e)(6); or**

12 (ii) a lease sale described in AS 38.05.035(e)(6)(F) for
 13 which the director must provide opportunity for public comment under
 14 the provisions of that subparagraph;

15 (C) **preliminary written finding that the director issued**
 16 **under AS 38.05.035(e)(6);**

17 (4) a competitive disposal of an interest in state land or resources after
 18 final decision under AS 38.05.035(e);

19 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
 20 aquatic farms and related hatcheries;

21 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
 22 lease, or disposal of an interest in state land or resources.

23 * **Sec. 21.** AS 38.05.965(21) is amended to read:

24 (21) "state land" or "land" means all land, including **shoreland**
 25 **[SHORE]**, **tideland** **[TIDE]**, and submerged land, or resources belonging to or
 26 acquired by the state;

27 * **Sec. 22.** AS 38.05.965 is amended by adding a new paragraph to read:

28 (26) "public auction" includes a public oral outcry auction and a public
 29 online auction.

30 * **Sec. 23.** AS 38.50.010 is amended to read:

31 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the

1 requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE
 2 COMMISSIONER,] is authorized to exchange [DISPOSE OF] state land or interest in
 3 land [BY EXCHANGING IT] for land, interest in land, or other consideration when it
 4 is in the best interest of the state, including either or both the land estate or
 5 mineral estate. Land or an interest in land must be of approximately equal value;
 6 however, the director may accept cash from, or pay cash to, any other party to an
 7 exchange in order to equalize the value of the property or other consideration
 8 conveyed and received by the state. If the director determines that the property
 9 to be exchanged is not of approximately equal value or if the value cannot be
 10 ascertained with reasonable certainty, the director may enter into an exchange
 11 with a finding that the value of the property to be received, together with the
 12 value of other public benefits, equals or exceeds the value of the property that the
 13 state will relinquish. Exchange procedures must comply with applicable statutes
 14 and regulations and follow the decision and review procedures under
 15 AS 38.05.035(e). The director may include in any patent or the written decision
 16 stipulations necessary to promote or protect the public interest. If a land
 17 exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other
 18 than of an approximately equal value, the director shall forward the proposed
 19 exchange to the legislature for review under AS 38.50.140 not later than 10 days
 20 from the convening of the next legislative session. The notice provisions of
 21 AS 38.05.945 must be followed. [EXCHANGES SHALL BE FOR THE PURPOSE
 22 OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND
 23 OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE
 24 ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE
 25 OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES.]

26 * **Sec. 24.** AS 38.50.030(b) is amended to read:

27 (b) The director may negotiate an exchange involving more than one party [;
 28 HOWEVER, IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE
 29 REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR
 30 SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH
 31 THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE

1 EXECUTED].

2 * **Sec. 25.** AS 38.50.050 is amended to read:

3 **Sec. 38.50.050. Conveyance of mineral rights.** Subject to the requirements of
4 this chapter, the director is authorized to exchange mineral rights in state land to the
5 extent that the conveyance is authorized by the state constitution and applicable
6 federal law. [THE DIRECTOR MAY NOT EXCHANGE OR RECEIVE THE
7 SURFACE ESTATE OF LAND OR THE MINERAL RIGHTS IN IT, ONE
8 WITHOUT THE OTHER, UNLESS THE SEPARATION OF ESTATE IS
9 NECESSITATED BY A PRIOR SEPARATION OF OWNERSHIP OR BY
10 RESTRICTIONS IN APPLICABLE LAW, OR THE DIRECTOR OTHERWISE
11 FINDS THAT THE CONVEYANCE OR RECEIPT OF THE SURFACE OR
12 MINERAL ESTATES, ONE WITHOUT THE OTHER, IS NECESSARY TO
13 ACHIEVE A SIGNIFICANT PUBLIC PURPOSE.]

14 * **Sec. 26.** AS 38.50.070 is amended to read:

15 **Sec. 38.50.070. Valid existing rights.** Conveyances made by the state under
16 this chapter are subject to valid existing rights, including [, BUT NOT LIMITED TO,]
17 contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived,
18 the appropriate state agency shall continue to administer valid existing rights, and [AS
19 LONG AS] any revenues derived from the existing rights continue to accrue to the
20 state until state land has been conveyed under AS 38.50.150 [ARE DISTRIBUTED
21 AS PROVIDED IN THE EXCHANGE AGREEMENT].

22 * **Sec. 27.** AS 38.50.140 is amended to read:

23 **Sec. 38.50.140. Legislative review.** Not later than [WITHIN] 10 days from
24 [OF] the convening of a regular legislative session, the governor shall transmit to the
25 president of the senate and the speaker of the house of representatives any proposal for
26 a land exchange required to be submitted to the legislature for approval under
27 AS 38.50.010 [AS 38.50.020(a)] that is scheduled to occur before the next legislative
28 session. If exigent circumstances seriously affecting state interests so require, the
29 governor may submit the proposed exchange to the legislature at some other time. A
30 finding of exigent circumstances shall be carefully documented in the letter of
31 transmittal. The director is authorized to conclude a proposed exchange agreement

1 upon approval by the legislature of the proposed exchange agreement. A decision by
 2 the legislature to disapprove a proposed exchange shall be accompanied by a
 3 recommendation to the governor with respect to future actions which the director
 4 should take concerning the exchange.

5 * **Sec. 28.** AS 38.50.170(3) is amended to read:

6 (3) "state land" means all land including shoreland [SHORE],
 7 tideland [TIDE], and submerged land or unsevered resources belonging to or acquired
 8 by the state excluding interests in land severed or constructively severed from the
 9 land.

10 * **Sec. 29.** AS 40.15.305(e) is amended to read:

11 (e) A recorded plat may not be altered or replatted except on petition of the
 12 state, a municipality, a public utility, or the owner of a majority of the land affected by
 13 the proposed alteration or replat. The petition shall be filed with the commissioner and
 14 shall be accompanied by a copy of the existing plat showing the proposed alteration or
 15 replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or
 16 replat submitted under this subsection. The provisions of (d) of this section do not
 17 apply to an alteration or replat petition, but the commissioner shall state in writing
 18 reasons for disapproval of the petition. Alteration of a platted boundary is exempt
 19 from this subsection if all owners approve and no public easement or right-of-
 20 way is affected. A plat of the alteration remains subject to all other provisions of
 21 this section.

22 * **Sec. 30.** AS 41.21.167 is amended by adding a new subsection to read:

23 (e) Performance of a feasibility study for the development and operation of a
 24 hydroelectric site at Chikuminuk Lake is not considered an incompatible use.

25 * **Sec. 31.** AS 44.37.011(a) is amended to read:

26 (a) This section applies to administrative appeals or requests [PETITIONS]
 27 for reconsideration of a decision in an administrative appeal to the commissioner of
 28 natural resources, except for those administrative appeals or requests for
 29 reconsideration [PETITIONS] done under AS 38.35, [OR] AS 43.82, or a different
 30 procedure set out in AS 27.21 or its applicable regulations. If a conflict occurs
 31 between this section and other state law existing at the time of original enactment of

1 this section, the provisions of this section control.

2 * **Sec. 32.** AS 44.37.011(b) is amended to read:

3 (b) If a person is **an applicant, or substantially and adversely affected**
 4 [AGGRIEVED] by a decision of the Department of Natural Resources not made by
 5 the commissioner and is otherwise eligible to seek the commissioner's review of the
 6 decision, the person may appeal to the commissioner. The person may not file a
 7 **request** [PETITION] for reconsideration of the commissioner's decision on the
 8 appeal. The commissioner's decision on the administrative appeal is a final
 9 administrative order for purposes of filing an appeal of the administrative decision to
 10 the court.

11 * **Sec. 33.** AS 44.37.011(c) is amended to read:

12 (c) If a person is **substantially and adversely affected** [AGGRIEVED] by a
 13 decision of the department made by the commissioner and is otherwise eligible to seek
 14 the commissioner's review of the decision, the person may not appeal that decision to
 15 the commissioner; however, the person may **request** [PETITION THE
 16 COMMISSIONER FOR] reconsideration of the commissioner's decision. The
 17 commissioner's decision made upon reconsideration or the commissioner's failure to
 18 act on the **request** [PETITION] for reconsideration is a final administrative order for
 19 purposes of filing an appeal of the administrative decision to the court.

20 * **Sec. 34.** AS 44.37.011(d) is amended to read:

21 (d) If a person has a right to **appeal or request** [PETITION FOR]
 22 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]
 23 20 **calendar** days **after the date of issuance of a final department decision** [,
 24 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file **an**
 25 **appeal or a request** [PETITION] for reconsideration with the commissioner.

26 * **Sec. 35.** AS 44.37.011 is amended by adding new subsections to read:

27 (f) In this section, in order for a person to be adversely affected, a final
 28 decision made by the department must create or impose an adverse and direct effect or
 29 detriment on the person or the interests of that person.

30 (g) An appeal or request for reconsideration must include a statement that
 31 explains how the person is substantially and adversely affected by the department

1 decision. The statement must

2 (1) specifically describe the substantial and adverse effect on the
3 person that is a direct result of the decision; and

4 (2) explain how the decision caused the substantial and adverse effect
5 on the person.

6 (h) If the department gives public notice and allows a public comment period
7 of at least 30 days on a proposed action, the department may restrict eligibility to
8 appeal or request reconsideration to persons who have provided timely comment on
9 the proposed action by including notice of the restriction as part of its public notice
10 announcing the opportunity to comment.

11 (i) The commissioner may reject an appeal or request for reconsideration for
12 failure to meet the requirements of (f) - (h) of this section.

13 * **Sec. 36.** AS 46.15.035(a) is amended to read:

14 (a) **A significant amount of water, as determined by the department by**
15 **regulation,** [WATER] may not be removed from the hydrologic unit from which it
16 was appropriated to another hydrologic unit, inside or outside the state, without being
17 returned to the hydrologic unit from which it was appropriated nor may **a significant**
18 **amount of** water be appropriated for removal from the hydrologic unit from which the
19 appropriation is sought to another hydrologic unit, inside or outside the state, without
20 the water being returned to the hydrologic unit from which it is to be appropriated,
21 unless the commissioner

22 (1) finds that the water to be removed or appropriated for removal is
23 surplus to needs within the hydrologic unit from which the water is to be removed or
24 appropriated for removal, including fishing, mining, timber, oil and gas, agriculture,
25 domestic water supply, and other needs as determined by the commissioner;

26 (2) finds that the application for removal or appropriation for removal
27 meets the requirements of AS 46.15.080; and

28 (3) assesses a water conservation fee under (b) of this section.

29 * **Sec. 37.** AS 46.15.133(a) is amended to read:

30 (a) If the commissioner proposes a sale of water or receives an application for
31 appropriation or removal, the commissioner shall prepare a notice containing the

1 location and extent of the proposed sale, appropriation, or removal, the name and
 2 address of the applicant, if applicable, and other information the commissioner
 3 considers pertinent. The notice shall state that, not later than [WITHIN] 15 days
 4 after [OF] publication or service of notice, persons may file with the director written
 5 objections [,] stating the name and address of the objector [,] and any facts tending to
 6 show that rights of the objector or the public interest as described in AS 46.15.080(b)
 7 would be adversely affected by the proposed sale, appropriation, or removal.

8 * **Sec. 38.** AS 46.15.133(b) is amended to read:

9 (b) The commissioner shall publish the notice in one issue of a newspaper of
 10 general distribution in the area of the state in which the water is to be appropriated,
 11 removed, or sold. The commissioner shall also have notice served personally or by
 12 [CERTIFIED] mail upon an appropriator of water or applicant for or holder of a
 13 permit who, according to the records of the division of lands, may be affected by the
 14 proposed sale, appropriation, or removal and may serve notice upon any governmental
 15 agency, political subdivision, or person; notice shall also be served upon the
 16 Department of Fish and Game and the Department of Environmental Conservation.
 17 An applicant for an appropriation or removal shall pay the commissioner's costs in
 18 providing publication and notice under this subsection. The commissioner may require
 19 as a condition of a sale of water under AS 46.15.037, that a purchaser of water
 20 reimburse the department for the costs associated with providing notice of the
 21 proposed sale.

22 * **Sec. 39.** AS 46.15.133(c) is amended to read:

23 (c) Not later than [WITHIN] 15 days of publication or service of notice, an
 24 interested person may file an objection. The commissioner may hold hearings upon
 25 giving due notice and shall grant, deny, or condition the proposed sale or application
 26 for appropriation or removal in whole or in part within 30 days of receipt of the last
 27 objection or, if the commissioner elects to hold hearings, within 180 days of receipt of
 28 the last objection. Notice of the order or decision shall be served personally or mailed
 29 to any person who has filed an objection.

30 * **Sec. 40.** AS 46.15.133(d) is amended to read:

31 (d) If no objection is filed, the commissioner may proceed to make a final

1 determination upon the application for appropriation or removal or the proposal for
2 sale.

3 * **Sec. 41.** AS 46.15.133(e) is amended to read:

4 (e) A person adversely affected [AGGRIEVED] by the action of the
5 commissioner or by the failure of the commissioner to grant, deny, or condition a
6 proposed sale or an application for appropriation or removal in accordance with (c) of
7 this section may appeal to the superior court. In this subsection, to be adversely
8 affected, a person must be directly affected by a decision made by the department
9 either by a physical or financial detriment to the person's interests resulting from
10 the decision.

11 * **Sec. 42.** AS 46.15.145(a) is amended to read:

12 (a) The state, an agency or a political subdivision of the state, or an agency of
13 the United States [OR A PERSON] may apply to the commissioner to reserve
14 sufficient water to maintain a specified instream flow or level of water at a specified
15 point on a stream or body of water, or in a specified part of a stream, throughout a year
16 or for specified times, for

- 17 (1) protection of fish and wildlife habitat, migration, and propagation;
18 (2) recreation and park purposes;
19 (3) navigation and transportation purposes; and
20 (4) sanitary and water quality purposes.

21 * **Sec. 43.** AS 46.15.145(f) is amended to read:

22 (f) The [AT LEAST ONCE EACH 10 YEARS THE] commissioner may
23 [SHALL] review a [EACH] reservation under this section to determine whether the
24 purpose described in (a) of this section for which the certificate reserving water was
25 issued and the findings described in (c) of this section still apply to the reservation. If
26 the commissioner determines that the purpose, or part or all of the findings, no longer
27 apply to the reservation, the commissioner may revoke or modify the certificate
28 reserving the water after notice, hearing when appropriate, and a written determination
29 that the revocation or modification is in the best interests of the state.

30 * **Sec. 44.** AS 46.15.155(a) is amended to read:

31 (a) Notwithstanding any contrary provision of this chapter, the commissioner

1 may authorize the temporary use of a significant amount of water, as determined by
2 the department by regulation, for a period of time not to exceed five consecutive years
3 in each authorization, if the water applied for has not been appropriated in
4 accordance with this chapter. The commissioner may issue one or more new
5 temporary water use authorizations for the same project.

6 * **Sec. 45.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,
7 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

8 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITION: WOOD-TIKCHIK STATE PARK MANAGEMENT PLAN AND
11 REGULATIONS; ENFORCEMENT. To allow for a feasibility study for the development and
12 operation of a hydroelectric site at Chikuminuk Lake, the Department of Natural Resources
13 may not enforce or implement provisions in the Wood-Tikchik State Park Management Plan,
14 dated October 2002, and regulations applicable to the Wood-Tikchik State Park that are
15 inconsistent with AS 41.21.167(e), enacted by sec. 30 of this Act.

16 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 TRANSITION: PENDING APPLICATIONS FOR RESERVED WATER. The
19 Department of Natural Resources shall return any applications and fees for applications
20 pending as of the effective date of sec. 42 of this Act to persons no longer authorized to
21 reserve water under sec. 42 of this Act. The commissioner of the Department of Natural
22 Resources may refer applications that are no longer authorized to other state agencies for an
23 independent evaluation and consideration of submission of a similar application to request a
24 reservation to that agency.

25 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 TRANSITION: REGULATIONS. The Department of Natural Resources may
28 immediately adopt regulations necessary to implement the changes made by this Act. The
29 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
30 2013.

31 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
3 heading of AS 44.37.011 from "Additional procedures for administrative appeals and
4 petitions for reconsideration to the commissioner of natural resources" to "Procedures for
5 administrative appeals and requests for reconsideration to the commissioner of natural
6 resources."

7 * **Sec. 50.** Sections 30, 46, and 48 of this Act take effect immediately under
8 AS 01.10.070(c).

9 * **Sec. 51.** Except as provided in sec. 50 of this Act, this Act takes effect July 1, 2013.



UNITED FISHERMEN OF ALASKA

Mailing Address: PO Box 20229, Juneau AK 99802-0229

Physical Address: 410 Calhoun Ave Ste 101, Juneau AK 99801

Phone: (907)586-2820 **Fax:** (907) 463-2545

Email: ufa@ufa-fish.org **Website:** www.ufa-fish.org

March 11, 2013

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senate Finance Committee
State Capitol
Juneau, AK 99801-1182
Senator.Pete.Kelly@akleg.gov
Senator.Kevin.Meyer@akleg.gov

RE: SB 26/HB77, concerns relating changes to the Alaska Water Use Act.

Dear Senator Kelly, Senator Meyer, and members of the Senate Finance Committee;

United Fishermen of Alaska (UFA) is the largest statewide commercial fishing trade association, representing 36 commercial fishing organizations participating in fisheries throughout the state and its offshore federal waters. We appreciate the opportunity to address our concerns regarding SB 26 (HB 77) regarding the Alaska Water Use Act.

UFA had the opportunity to meet with DNR Deputy Commissioner Ed Fogels, Director of Division of Mining, Land and Water Brent Goodrum, and Deputy Director of DNR Wyn Menefee. While many of our questions were answered regarding the impacts of SB 26; the meeting raised additional questions. A follow-up with DNR was just recently answered and we are still working through the response. While UFA has a number of concerns regarding the impacts of SB 26/HB 77, our primary concern at this point is the speed in which the bill is moving through the Legislature. UFA would appreciate more time for thorough analysis of the impacts of this legislation which will allow the public to effectively weigh in before the full Senate takes a vote.

Although UFA recognizes the merits of streamlining Alaska's permitting processes, this bill has not been given an appropriate amount of time for affected Alaskans to understand and respond to the proposed changes. Alaska's reputation is built on sustainability of our resources and a strong belief in the public process. We appreciate the ability to discuss our concerns with DNR and legislators. However, we respectfully request that any bill that removes the ability of Alaskans to apply for a water right be fully noticed and that adequate opportunity for public participation is allowed.

UFA remains concerned with how some measures in the bill could affect the existing standards for protecting aquatic resources in Alaska. UFA is also concerned about how SB 26 changes the process for our members and member groups to engage in permitting decisions that impact fisheries. The proposed changes to the Water Use Act reduce the ability of Alaskan citizens to apply for water reservations to protect in-stream flow. Through

the changes in SB 26/HB 77, citizens would need to apply for water reservations through a public entity, borough, or municipality to submit an application to DNR therefore creating another layer to the permitting process as opposed to eliminating a layer. It is our understanding that under SB 26/HB 77, the statutes remain to require DNR to evaluate impacts to fish and their habitat in consultation with ADF&G when issuing any water authorizations. However, DNR continues to have the latitude to either accept or reject ADF&G comments. UFA respectfully requests that there be a stronger requirement for DNR to accept recommendations from ADF&G in protecting salmon streams.

Thank you for your time and attention to this important issue. We appreciate the Senate Finance committee's careful review and dedication to Alaska's resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Julianne Curry". The signature is fluid and cursive, with the first name being the most prominent.

Julianne Curry
Executive Director

WRITTEN TESTIMONY

Name: NANCY HILLSTRAND
Representing: PIONEER ALASKAN FISHERIES INC
Bill No./Subject: SB 77
Committee: Senate Finance
Date of Hearing: 4/3/13

WE ARE A 50 YEAR OLD ALASKAN
FISHERIES CORPORATION AGAINST HB 77

THE CONSTITUTION PROTECTS SALMON
PROTECTS CITIZENS
AND ABHORS SPECIAL INTERESTS THAT
GET SPECIAL PRIVILEGES OF OUR
NATURAL RESOURCES.

HB 77 HAS THE POTENTIAL TO
ALLOW FAST TRACK DECISION MAKING
AND ALLOW FAVORS GRANTED TO
SPECIAL INTERESTS IN THE MINING
INDUSTRY WHILE SACRIFICING
OUR SALMON HABITAT

PLEASE OPPOSE THIS IT DAMAGES
OUR RIGHTS SO DEAR TO THE
REPUBLICAN PARTY

THANK-YOU -
G
T. HILLSTRAND



ADOPTED 4/8/13

28-GH1524P
Bullock
4/7/13

SENATE CS FOR CS FOR HOUSE BILL NO. 77()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Land Act, including certain authorizations, contracts,
2 leases, permits, or other disposals of state land, resources, property, or interests; relating
3 to authorization for the use of state land by general permit; relating to exchange of state
4 land; establishing that performance of a feasibility study for the development and
5 operation of a hydroelectric site at Chikuminuk Lake is not considered an incompatible
6 use of the Wood-Tikchik State Park; relating to procedures for certain administrative
7 appeals and requests for reconsideration to the commissioner of natural resources;
8 relating to the Alaska Water Use Act; and providing for an effective date."

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 * **Section 1.** AS 38.05.020 is amended by adding a new subsection to read:

11 (c) Notwithstanding any other provision of law, the commissioner may
12 authorize an activity on state land by the issuance of a general permit if the

1 commissioner finds that the activity is unlikely to result in significant and irreparable
2 harm to state land or resources. This subsection does not apply to land designated
3 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21.

4 * Sec. 2. AS 38.05.030(c) is amended to read:

5 (c) The [IN ADDITION TO THE REQUIREMENTS SPECIFIED IN
6 AS 38.50.090, THE] agencies referred to in (b) of this section and other state agencies
7 with authority to acquire or dispose of land shall give written notification of the fact of
8 acquisition, lease, disposal, or exchange to the commissioner not later than
9 [WITHIN] three months after the date that they make the acquisition, lease, disposal,
10 or exchange.

11 * Sec. 3. AS 38.05.035(e) is amended to read:

12 (e) Upon a written finding that the interests of the state will be best served, the
13 director may, with the consent of the commissioner, approve contracts for the sale,
14 lease, or other disposal of available land, resources, property, or interests in them. In
15 approving a contract under this subsection, the director need only prepare a single
16 written finding. In addition to the conditions and limitations imposed by law, the
17 director may impose additional conditions or limitations in the contracts as the director
18 determines, with the consent of the commissioner, will best serve the interests of the
19 state. The preparation and issuance of the written finding by the director are subject to
20 the following:

21 (1) with the consent of the commissioner and subject to the director's
22 discretion, for a specific proposed disposal of available land, resources, or property, or
23 of an interest in them, the director, in the written finding,

24 (A) shall establish the scope of the administrative review on
25 which the director's determination is based, and the scope of the written
26 finding supporting that determination; the scope of the administrative review
27 and finding may address only reasonably foreseeable, significant effects of the
28 uses proposed to be authorized by the disposal;

29 (B) may limit the scope of an administrative review and finding
30 for a proposed disposal to

31 (i) applicable statutes and regulations;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(ii) the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and

(iii) issues that, based on the statutes and regulations referred to in (i) of this subparagraph, on the facts as described in (ii) of this subparagraph, and on the nature of the uses sought to be authorized by the disposal, the director finds are material to the determination of whether the proposed disposal will best serve the interests of the state; and

(C) may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that pertain solely to the disposal phase of the project when

(i) the only uses to be authorized by the proposed disposal are part of that phase;

(ii) the disposal is a disposal of oil and gas, or of gas only, and, before the next phase of the project may proceed, public notice and the opportunity to comment are provided under regulations adopted by the department;

(iii) the department's approval is required before the next phase of the project may proceed; and

(iv) the department describes its reasons for a decision to phase;

(2) the director shall discuss in the written finding prepared and issued under this subsection the reasons that each of the following was not material to the director's determination that the interests of the state will be best served:

(A) facts pertaining to the land, resources, or property, or an interest in them other than those that the director finds material under (1)(B)(ii) of this subsection; and

1 (B) issues based on the statutes and regulations referred to in
2 (1)(B)(i) of this subsection and on the facts described in (1)(B)(ii) of this
3 subsection;

4 (3) a written finding for an oil and gas lease sale or gas only lease sale
5 under AS 38.05.180 is subject to (g) of this section;

6 (4) a contract for the sale, lease, or other disposal of available land or
7 an interest in land is not legally binding on the state until the commissioner approves
8 the contract, but if the appraised value is not greater than \$50,000 in the case of the
9 sale of land or an interest in land, or \$10,000 [\$5,000] in the case of the annual rental
10 of land or interest in land, the director may execute the contract without the approval
11 of the commissioner;

12 (5) public notice requirements relating to the sale, lease, or other
13 disposal of available land or an interest in land for oil and gas, or for gas only,
14 proposed to be scheduled in the five-year oil and gas leasing program under
15 AS 38.05.180(b), except for a sale under (6)(F) of this subsection, are as follows:

16 (A) before a public hearing, if held, or in any case not less than
17 180 days before the sale, lease, or other disposal of available land or an interest
18 in land, the director shall make available to the public a preliminary written
19 finding that states the scope of the review established under (1)(A) of this
20 subsection and includes the applicable statutes and regulations, the material
21 facts and issues in accordance with (1)(B) of this subsection, and information
22 required by (g) of this section, upon which the determination that the sale,
23 lease, or other disposal will serve the best interests of the state will be based;
24 the director shall provide opportunity for public comment on the preliminary
25 written finding for a period of not less than 60 days;

26 (B) after the public comment period for the preliminary written
27 finding and not less than 90 days before the sale, lease, or other disposal of
28 available land or an interest in land for oil and gas or for gas only, the director
29 shall make available to the public a final written finding that states the scope of
30 the review established under (1)(A) of this subsection and includes the
31 applicable statutes and regulations, the material facts and issues in accordance

1 with (1) of this subsection, and information required by (g) of this section,
2 upon which the determination that the sale, lease, or other disposal will serve
3 the best interests of the state is based;

4 (6) before a public hearing, if held, or in any case not less than 21 days
5 before the sale, lease, or other disposal of available land, property, resources, or
6 interests in them other than a sale, lease, or other disposal of available land or an
7 interest in land for oil and gas or for gas only under (5) of this subsection, the director
8 shall make available to the public a written finding that, in accordance with (1) of this
9 subsection, sets out the material facts and applicable statutes and regulations and any
10 other information required by statute or regulation to be considered upon which the
11 determination that the sale, lease, or other disposal will best serve the interests of the
12 state was based; **the director may make available to the public a preliminary**
13 **written finding and provide opportunity for public comment on the preliminary**
14 **written finding for a period of at least 30 days;** [HOWEVER,] a written finding is
15 not required before the approval of

16 (A) a contract for a negotiated sale authorized under
17 AS 38.05.115;

18 (B) a lease of land for a shore fishery site under AS 38.05.082;

19 (C) a permit or other authorization revocable by the
20 commissioner;

21 (D) a mineral claim located under AS 38.05.195;

22 (E) a mineral lease issued under AS 38.05.205;

23 (F) an exempt oil and gas lease sale or gas only lease sale under
24 AS 38.05.180(d) of acreage subject to a best interest finding issued within the
25 previous 10 years or a reoffer oil and gas lease sale or gas only lease sale under
26 AS 38.05.180(w) of acreage subject to a best interest finding issued within the
27 previous 10 years, unless the commissioner determines that substantial new
28 information has become available that justifies a supplement to the most recent
29 best interest finding for the exempt oil and gas lease sale or gas only lease sale
30 acreage and for the reoffer oil and gas lease sale or gas only lease sale acreage;
31 however, for each oil and gas lease sale or gas only lease sale described in this

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

subparagraph, the director shall call for comments from the public; the director's call for public comments must provide opportunity for public comment for a period of not less than 30 days; if the director determines that a supplement to the most recent best interest finding for the acreage is required under this subparagraph,

(i) the director shall issue the supplement to the best interest finding not later than 90 days before the sale;

(ii) not later than 45 days before the sale, the director shall issue a notice describing the interests to be offered, the location and time of the sale, and the terms and conditions of the sale; and

(iii) the supplement has the status of a final written best interest finding for purposes of (i) and (I) of this section;

(G) a surface use lease under AS 38.05.255;

(H) a permit, right-of-way, or easement under AS 38.05.850;

(7) the director shall include in

(A) a preliminary written finding, if issued [REQUIRED], a summary of agency and public comments, if any, obtained as a result of contacts with other agencies concerning a proposed disposal or as a result of informal efforts undertaken by the department to solicit public response to a proposed disposal, and the department's preliminary responses to those comments; and

(B) the final written finding a summary of agency and public comments received and the department's responses to those comments.

* **Sec. 4.** AS 38.05.035(f) is amended to read:

(f) The director shall grant a preference right to the purchase or lease without competitive bid of up to five acres of state land to an individual who has erected a building on the land and used the land for bona fide business purposes for 10 [FIVE] or more years [UNDER A FEDERAL PERMIT OR WITHOUT THE NEED FOR A PERMIT] and, after selection by the state, under a state use permit or lease, if the business produced no less than 25 percent of the total income of the applicant for the 10 [FIVE] years preceding the application to purchase or lease the land. The director

1 shall sell or lease the land at a price determined by the director to represent the current
 2 fair market value of the unimproved land but in no event less than the cost of
 3 administration including survey if required. If the director determines in a written
 4 finding that the purchase or lease of the land would interfere with public use by
 5 residents of the area, the director may condition the purchase or lease to mitigate the
 6 adverse effects on the public use or may reject the application for the preference right.
 7 A lease granted under this subsection may not be for a period in excess of 50 years. In
 8 this subsection, "business purposes" means a purpose permitted under the
 9 classification of the land at the time the land was entered.

10 * **Sec. 5.** AS 38.05.035(i) is amended to read:

11 (i) A person who is eligible to file an administrative appeal or a request for
 12 reconsideration, as appropriate, under this subsection and who is **substantially and**
 13 **adversely affected** [AGGRIEVED] by the final written finding of the director entered
 14 under (e)(5) or (6) of this section may, **not later than** [WITHIN] 20 days after the
 15 issuance of the final written finding, file an administrative appeal or request
 16 reconsideration of the decision by the commissioner. A person is eligible to file an
 17 administrative appeal or a request for reconsideration if the person

18 (1) meaningfully participated in the process set out in this chapter for
 19 receipt of public comment by

20 (A) submitting written comment during the period for receipt
 21 of public comment; or

22 (B) presenting oral testimony at a public hearing, if a public
 23 hearing was held; **or** [AND]

24 (2) is **the applicant** [AFFECTED BY THE FINAL WRITTEN
 25 FINDING].

26 * **Sec. 6.** AS 38.05.035(j) is amended to read:

27 (j) An administrative appeal or a request for reconsideration submitted under
 28 (i) of this section must specify the written finding complained of and the specific basis
 29 upon which it is challenged. [THE COMMISSIONER SHALL GRANT OR DENY
 30 THE ADMINISTRATIVE APPEAL OR RECONSIDERATION REQUEST WITHIN
 31 30 DAYS AFTER ISSUANCE OF THE FINAL WRITTEN FINDING.] Failure of the

1 commissioner to act on a [THE] request for reconsideration **not later than 30 days**
2 **after issuance of the final written finding** [WITHIN THIS PERIOD] is a denial of
3 the request for reconsideration and a final administrative decision for purposes of
4 appeal to the superior court.

5 * **Sec. 7.** AS 38.05.035(*l*) is amended to read:

6 (l) A person may appeal a final written finding issued under (e)(5) or (6) of
7 this section to the superior court, but only if the person was eligible to request, and did
8 request, an administrative appeal or reconsideration of that finding under (i) of this
9 section. The person shall initiate the appeal **to the court not later than** [WITHIN] 30
10 days from the date that the decision on administrative appeal or reconsideration is
11 mailed or otherwise distributed, or the date the request for reconsideration is
12 considered denied by the commissioner's failure to act on the request, whichever is
13 earlier. The points on appeal **to the court** are limited to those presented to the
14 commissioner in the person's administrative appeal or request for reconsideration.

15 * **Sec. 8.** AS 38.05.065(a) is amended to read:

16 (a) **Unless the remainder of the purchase price is paid in full at the time of**
17 **the sale, a** [THE] contract of sale for land **or property** sold [AT PUBLIC AUCTION
18 OR BY SEALED BID] under **this chapter or former AS 38.05.078** [AS 38.05.055]
19 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
20 annual installments over a period of not more than 20 years, with interest at the rate
21 provided in (i) of this section. Installment payments plus interest shall be set on the
22 level-payment basis.

23 * **Sec. 9.** AS 38.05.065(c) is amended to read:

24 (c) The director shall, for **a contract that provides for installment payments**
25 [CONTRACTS] under (a) [, (b),] or (h) of this section, set out in the contract [FOR
26 EACH SALE] the period for the payment of installments and the total purchase price
27 plus interest. The director, with the consent of the commissioner, may also include in **a**
28 **contract** [CONTRACTS] under this section conditions, limitations, and terms
29 considered necessary and proper to protect the interest of the state. Violations of any
30 provision of this chapter or the terms of the contract of sale subject the purchaser to
31 appropriate administrative and legal action, including but not limited to specific

1 performance, foreclosure, ejectment, or other legal remedies in accordance with
2 applicable state law.

3 * **Sec. 10.** AS 38.05.065(h) is amended to read:

4 (h) The commissioner, after consulting with the Board of Agriculture and
5 Conservation (AS 03.09.010),

6 (1) shall provide that, notwithstanding (a) [AND (b)] of this section, in
7 a contract for the sale of land classified under AS 38.05.020(b)(6) for agricultural
8 uses, the interest rate to be charged on installment payments may not exceed 9.5
9 percent; and

10 (2) may declare a moratorium of up to five years on payments on land
11 sold under this section for land classified under AS 38.05.020(b)(6) for agricultural
12 uses if

13 (A) the commissioner determines that the moratorium is in the
14 best interest of the state;

15 (B) the commissioner certifies and the contract purchaser
16 agrees to perform farm development, crop production, and harvesting, not
17 including land clearing or related activity, requiring the expenditure of
18 amounts equivalent to the payments that would otherwise be made during the
19 moratorium;

20 (C) the sale of the agricultural land takes place after July 1,
21 1979; and

22 (D) the contract purchaser is in compliance with the
23 development plan specified in the purchase contract at the time the purchaser
24 applies for a moratorium under this paragraph and remains in compliance with
25 the development plan during the moratorium; for the payments subject to the
26 moratorium declared under this paragraph, interest payments are subject to the
27 moratorium but interest continues to accrue during the moratorium.

28 * **Sec. 11.** AS 38.05.070 is amended by adding new subsections to read:

29 (f) A lease may be extended once for a period up to two years, if the director
30 determines it to be in the best interests of the state and the extension is necessary to
31 prolong the lease while the department considers

- 1 (1) a lessee preference application under AS 38.05.102;
2 (2) an application to renew the lease under (e) of this section; or
3 (3) an application to issue a new lease on the same site that, because it
4 substantially changes the purpose or operation of an existing lease, requires a new
5 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
6 is changed.

7 (g) An extension issued under (f) of this section is not subject to
8 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
9 lease.

10 * Sec. 12. AS 38.05.075(a) is amended to read:

11 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,
12 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,
13 when competitive interest has been demonstrated or the commissioner determines that
14 it is in the state's best interests, leasing shall be made at public auction or by sealed
15 bid, at the discretion of the director, to the highest qualified bidder as determined by
16 the commissioner. A bidder may be represented by an attorney or agent at a public
17 auction. In the public notice of a lease to be offered at public auction or by sealed bid,
18 the commissioner shall specify a minimum acceptable bid and the lease compensation
19 method. The lease compensation method shall be designed to maximize the return on
20 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
21 A substantially and adversely affected [AN AGGRIEVED] bidder may appeal or
22 request reconsideration under AS 44.37.011; however, the appeal or request must
23 be made not later than [TO THE COMMISSIONER WITHIN] five days after
24 issuance of the determination of the highest qualified bidder for a review of the
25 determination. The leasing shall be conducted by the commissioner, and the successful
26 bidder shall deposit at the public auction or with the sealed bid the first year's rental or
27 other lease compensation as specified by the commissioner, or that portion of it that
28 the commissioner requires in accordance with the bid. The commissioner shall require,
29 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
30 appraisal costs reasonably incurred by another qualified bidder acting in accordance
31 with the regulations of the commissioner or incurred by the department under

1 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
2 costs is determined by the commissioner to be the highest qualified bidder under this
3 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
4 costs or to the department if the department incurred the costs. All costs for survey and
5 appraisal shall be approved in advance in writing by the commissioner. The
6 commissioner shall immediately issue a receipt containing a description of the land or
7 interest leased, the price bid, and the terms of the lease to the successful qualified
8 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
9 commissioner may offer the land for lease again under this subsection. A lease, on a
10 form approved by the attorney general, shall be signed by the successful bidder and by
11 the commissioner.

12 * **Sec. 13.** AS 38.05.075(e) is amended to read:

13 (e) The commissioner may require prequalification of bidders for a lease to be
14 issued under AS 38.05.070. If the commissioner determines to require
15 prequalification, the procedures established by this section and the notice including
16 prequalification requirements required to be given under AS 38.05.945 shall be
17 completed **not later than** [WITHIN] 75 days **after** [OF] the receipt of the first lease
18 application unless the commissioner grants additional time for the completion of the
19 procedures. **During** [WITHIN] the 75-day period or the additional time granted by the
20 commissioner, the commissioner shall complete

21 (1) classification under AS 38.05.300;

22 (2) the procedures required by AS 38.05.035(e);

23 (3) any other action required by law for the disposal of the lease to a
24 bidder except survey, appraisal, and the auction or sealed bid.

25 * **Sec. 14.** AS 38.05.075(h) is amended to read:

26 (h) A person **substantially and adversely affected** [AGGRIEVED] by a
27 decision of the commissioner under this section may appeal **or request**
28 **reconsideration under AS 44.37.011; however, the appeal or request for**
29 **reconsideration must be made not later than** [TO THE COMMISSIONER
30 WITHIN] five days **after** [OF] the prequalification decision. [THE DECISION OF
31 THE COMMISSIONER UNDER THIS SUBSECTION MAY BE APPEALED TO

1 THE SUPERIOR COURT.]

2 * Sec. 15. AS 38.05.082(b) is amended to read:

3 (b) The director may classify land as subject to leases for fisheries
4 development and publicly invite applications for lease of the selected areas. Each
5 application shall be accompanied by an affidavit to the effect that the applicant
6 presently intends to personally utilize the leased area for fishing purposes the
7 following season. If two or more applications are received for the same shore area, the
8 director shall award the lease to the most qualified applicant. In determining the
9 qualifications of applicants, the director shall consider the length of time during which
10 the applicant has been engaged in set netting, the proximity of the past fishing sites of
11 the applicant to the land to be leased, the present ability of the applicant to utilize the
12 location to its maximum potential, and other factors relevant to the equitable
13 assignment of the disputed area. If the director cannot determine a preference between
14 conflicting applicants for the same lease site on the basis of qualifications, the director
15 shall select between the applicants by lot. **A substantially and adversely affected**
16 **[AN AGGRIEVED]** applicant may appeal to the commissioner **under AS 44.37.011**
17 **not later than 20 [WITHIN 30] days after issuance of the determination** for a
18 review of the director's determination.

19 * Sec. 16. AS 38.05.083(a) is amended to read:

20 (a) The commissioner may offer to the public for lease at public auction or by
21 sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic
22 farming or related hatchery operations. Before a final decision to issue [OR RENEW]
23 a lease under this section, the commissioner shall give notice and allow opportunity
24 for comment in accordance with AS 38.05.945 and may hold a hearing to take
25 testimony. Before a final decision to issue [OR RENEW] a lease under this section,
26 the commissioner shall consider all relevant comment or testimony submitted under
27 this section, AS 38.05.945, or 38.05.946.

28 * Sec. 17. AS 38.05.083 is amended by adding new subsections to read:

29 (g) The director may renew a lease issued under this section before its
30 expiration if the lease is in good standing and the director determines the lease renewal
31 to be in the best interests of the state. A renewal issued under this subsection is not

1 subject to AS 38.05.035(e). A lease may be renewed only once for a term not longer
2 than 10 years. The director shall provide notice of the decision to renew the lease.

3 (h) The director may extend the term of a lease issued under this section if the
4 lease is in good standing and the lease extension is determined to be in the best
5 interests of the state. A lease may be only extended once before its expiration for an
6 additional period of not more than two years. A lease extension may only be issued if
7 the director determines the extension is necessary while the department considers

8 (1) an application to renew the lease under (g) of this section; or

9 (2) an application to issue a new lease on the same site that, because it
10 substantially changes the purpose or operation of an existing lease, requires a new
11 finding and decision under AS 38.05.035(e) before the purpose or operation of a lease
12 is changed.

13 (i) An extension issued under (h) of this section is not subject to
14 AS 38.05.035(e). The director shall provide public notice of the decision to extend the
15 lease.

16 * **Sec. 18.** AS 38.05.185(a) is amended to read:

17 (a) The acquisition and continuance of rights in and to deposits on state land
18 of minerals, which on January 3, 1959, were subject to location under the mining laws
19 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
20 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
21 mineral deposits owned by any other person or government. The director, with the
22 approval of the commissioner, shall determine that land from which mineral deposits
23 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
24 land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may
25 not be closed to location under AS 38.05.185 - 38.05.275 except as provided in
26 AS 38.05.300 and unless the commissioner makes a finding that mining would be
27 incompatible with significant surface uses on the state land. State land may not be
28 restricted to mining under lease unless the commissioner determines that potential use
29 conflicts on the state land require that mining be allowed only under written leases
30 issued under AS 38.05.205 or the commissioner has determined that the land was
31 mineral in character at the time of state selection. The determinations required under

1 this subsection shall be made in compliance with land classification orders and land
2 use plans developed under AS 38.05.300. A preliminary written decision under this
3 subsection may be made available to the public and provide opportunity for
4 public comment on the preliminary written decision for a period of at least 30
5 days.

6 * Sec. 19. AS 38.05.300(a) is amended to read:

7 (a) The commissioner shall classify for surface use land in areas considered
8 necessary and proper. This section does not prevent reclassification of land where the
9 public interest warrants reclassification, nor does it preclude multiple purpose use of
10 land whenever different uses are compatible. The commissioner may make available
11 to the public a preliminary written classification decision and provide
12 opportunity for public comment on the preliminary written decision for a period
13 of at least 30 days. If the area involved contains more than 640 contiguous acres, state
14 land, water, or land and water area may not, except by act of the state legislature, (1)
15 be closed to multiple purpose use, or (2) be otherwise classified by the commissioner
16 so that mining, mineral entry or location, mineral prospecting, or mineral leasing is
17 precluded or is designated an incompatible use, except when the classification is
18 necessary for a land disposal or exchange or is for the development of utility or
19 transportation corridors or projects or similar projects or infrastructure, or except as
20 allowed under (c) of this section.

21 * Sec. 20. AS 38.05.945(a) is amended to read:

22 (a) This section establishes the requirements for notice given by the
23 department for the following actions:

24 (1) a preliminary decision, or final decision if a preliminary
25 decision is not issued, regarding the classification or reclassification of state land
26 under AS 38.05.300 or a mineral order or leasehold location order regarding
27 [AND] the availability [CLOSING] of land to mineral leasing or entry under
28 AS 38.05.185;

29 (2) a preliminary decision, or final decision if a preliminary
30 decision is not issued, regarding the zoning of land under applicable law;

31 (3) issuance of a

1 (A) preliminary written finding under AS 38.05.035(e)(5)(A)
2 regarding the sale, lease, or disposal of an interest in state land or resources for
3 oil and gas, or for gas only, subject to AS 38.05.180(b);

4 (B) written finding for the sale, lease, or disposal of an interest
5 in state land or resources under AS 38.05.035(e)(6), except

6 (i) if a preliminary written finding is issued under
7 AS 38.05.035(e)(6); or

8 (ii) a lease sale described in AS 38.05.035(e)(6)(F) for
9 which the director must provide opportunity for public comment under
10 the provisions of that subparagraph;

11 (C) preliminary written finding that the director issued
12 under AS 38.05.035(e)(6);

13 (4) a competitive disposal of an interest in state land or resources after
14 final decision under AS 38.05.035(e);

15 (5) a preliminary finding under AS 38.05.035(e) concerning sites for
16 aquatic farms and related hatcheries;

17 (6) a decision under AS 38.05.132 - 38.05.134 regarding the sale,
18 lease, or disposal of an interest in state land or resources.

19 * **Sec. 21.** AS 38.05.965(21) is amended to read:

20 (21) "state land" or "land" means all land, including shoreland
21 [SHORE], tideland [TIDE], and submerged land, or resources belonging to or
22 acquired by the state;

23 * **Sec. 22.** AS 38.05.965 is amended by adding a new paragraph to read:

24 (26) "public auction" includes a public oral outcry auction and a public
25 online auction.

26 * **Sec. 23.** AS 38.50.010 is amended to read:

27 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the
28 requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE
29 COMMISSIONER,] is authorized to exchange [DISPOSE OF] state land or interest in
30 land [BY EXCHANGING IT] for land, interest in land, or other consideration when it
31 is in the best interest of the state, including either or both the land estate or

1 mineral estate. Land or an interest in land must be of approximately equal value;
2 however, the director may accept cash from, or pay cash to, any other party to an
3 exchange in order to equalize the value of the property or other consideration
4 conveyed and received by the state. If the director determines that the property
5 to be exchanged is not of approximately equal value or if the value cannot be
6 ascertained with reasonable certainty, the director may enter into an exchange
7 with a finding that the value of the property to be received, together with the
8 value of other public benefits, equals or exceeds the value of the property that the
9 state will relinquish. Exchange procedures must comply with applicable statutes
10 and regulations and follow the decision and review procedures under
11 AS 38.05.035(e). The director may include in any patent or the written decision
12 stipulations necessary to promote or protect the public interest. If a land
13 exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other
14 than of an approximately equal value, the director shall forward the proposed
15 exchange to the legislature for review under AS 38.50.140 not later than 10 days
16 from the convening of the next legislative session. The notice provisions of
17 AS 38.05.945 must be followed. [EXCHANGES SHALL BE FOR THE PURPOSE
18 OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND
19 OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE
20 ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE
21 OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES.]

22 * Sec. 24. AS 38.50.030(b) is amended to read:

23 (b) The director may negotiate an exchange involving more than one party [;
24 HOWEVER, IN ORDER TO ASCERTAIN WHETHER THE EQUAL VALUE
25 REQUIREMENTS OF THIS CHAPTER HAVE BEEN MET, THE DIRECTOR
26 SHALL CONSIDER ONLY THE LAND AND OTHER CONSIDERATION WHICH
27 THE STATE WOULD CONVEY AND RECEIVE IF THE EXCHANGE WERE
28 EXECUTED].

29 * Sec. 25. AS 38.50.050 is amended to read:

30 **Sec. 38.50.050. Conveyance of mineral rights.** Subject to the requirements of
31 this chapter, the director is authorized to exchange mineral rights in state land to the

1 extent that the conveyance is authorized by the state constitution and applicable
2 federal law. [THE DIRECTOR MAY NOT EXCHANGE OR RECEIVE THE
3 SURFACE ESTATE OF LAND OR THE MINERAL RIGHTS IN IT, ONE
4 WITHOUT THE OTHER, UNLESS THE SEPARATION OF ESTATE IS
5 NECESSITATED BY A PRIOR SEPARATION OF OWNERSHIP OR BY
6 RESTRICTIONS IN APPLICABLE LAW, OR THE DIRECTOR OTHERWISE
7 FINDS THAT THE CONVEYANCE OR RECEIPT OF THE SURFACE OR
8 MINERAL ESTATES, ONE WITHOUT THE OTHER, IS NECESSARY TO
9 ACHIEVE A SIGNIFICANT PUBLIC PURPOSE.]

10 * Sec. 26. AS 38.50.070 is amended to read:

11 **Sec. 38.50.070. Valid existing rights.** Conveyances made by the state under
12 this chapter are subject to valid existing rights, including [, BUT NOT LIMITED TO,]
13 contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived,
14 the appropriate state agency shall continue to administer valid existing rights, and [AS
15 LONG AS] any revenues derived from the existing rights continue to accrue to the
16 state until state land has been conveyed under AS 38.50.150 [ARE DISTRIBUTED
17 AS PROVIDED IN THE EXCHANGE AGREEMENT].

18 * Sec. 27. AS 38.50.140 is amended to read:

19 **Sec. 38.50.140. Legislative review.** Not later than [WITHIN] 10 days from
20 [OF] the convening of a regular legislative session, the governor shall transmit to the
21 president of the senate and the speaker of the house of representatives any proposal for
22 a land exchange required to be submitted to the legislature for approval under
23 AS 38.50.010 [AS 38.50.020(a)] that is scheduled to occur before the next legislative
24 session. If exigent circumstances seriously affecting state interests so require, the
25 governor may submit the proposed exchange to the legislature at some other time. A
26 finding of exigent circumstances shall be carefully documented in the letter of
27 transmittal. The director is authorized to conclude a proposed exchange agreement
28 upon approval by the legislature of the proposed exchange agreement. A decision by
29 the legislature to disapprove a proposed exchange shall be accompanied by a
30 recommendation to the governor with respect to future actions which the director
31 should take concerning the exchange.

1 * **Sec. 28.** AS 38.50.170(3) is amended to read:

2 (3) "state land" means all land including shoreland [SHORE],
3 tideland [TIDE], and submerged land or unsevered resources belonging to or acquired
4 by the state excluding interests in land severed or constructively severed from the
5 land.

6 * **Sec. 29.** AS 40.15.305(e) is amended to read:

7 (e) A recorded plat may not be altered or replatted except on petition of the
8 state, a municipality, a public utility, or the owner of a majority of the land affected by
9 the proposed alteration or replat. The petition shall be filed with the commissioner and
10 shall be accompanied by a copy of the existing plat showing the proposed alteration or
11 replat. The provisions of AS 29.40.130 and 29.40.140(a) apply to an alteration or
12 replat submitted under this subsection. The provisions of (d) of this section do not
13 apply to an alteration or replat petition, but the commissioner shall state in writing
14 reasons for disapproval of the petition. Alteration of a platted boundary is exempt
15 from this subsection if all owners approve and no public easement or right-of-
16 way is affected. A plat of the alteration remains subject to all other provisions of
17 this section.

18 * **Sec. 30.** AS 41.21.167 is amended by adding a new subsection to read:

19 (e) Performance of a feasibility study for the development and operation of a
20 hydroelectric site at Chikuminuk Lake is not considered an incompatible use.

21 * **Sec. 31.** AS 44.37.011(a) is amended to read:

22 (a) This section applies to administrative appeals or requests [PETITIONS]
23 for reconsideration of a decision in an administrative appeal to the commissioner of
24 natural resources, except for those administrative appeals or requests for
25 reconsideration [PETITIONS] done under AS 38.35, [OR] AS 43.82, or a different
26 procedure set out in AS 27.21 or its applicable regulations. If a conflict occurs
27 between this section and other state law existing at the time of original enactment of
28 this section, the provisions of this section control.

29 * **Sec. 32.** AS 44.37.011(b) is amended to read:

30 (b) If a person is an applicant, or substantially and adversely affected
31 [AGGRIEVED] by a decision of the Department of Natural Resources not made by

1 the commissioner and is otherwise eligible to seek the commissioner's review of the
2 decision, the person may appeal to the commissioner. The person may not file a
3 request [PETITION] for reconsideration of the commissioner's decision on the
4 appeal. The commissioner's decision on the administrative appeal is a final
5 administrative order for purposes of filing an appeal of the administrative decision to
6 the court.

7 * **Sec. 33.** AS 44.37.011(c) is amended to read:

8 (c) If a person is substantially and adversely affected [AGGRIEVED] by a
9 decision of the department made by the commissioner and is otherwise eligible to seek
10 the commissioner's review of the decision, the person may not appeal that decision to
11 the commissioner; however, the person may request [PETITION THE
12 COMMISSIONER FOR] reconsideration of the commissioner's decision. The
13 commissioner's decision made upon reconsideration or the commissioner's failure to
14 act on the request [PETITION] for reconsideration is a final administrative order for
15 purposes of filing an appeal of the administrative decision to the court.

16 * **Sec. 34.** AS 44.37.011(d) is amended to read:

17 (d) If a person has a right to appeal or request [PETITION FOR]
18 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]
19 20 calendar days after the date of issuance of a final department decision [,
20 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file an
21 appeal or a request [PETITION] for reconsideration with the commissioner.

22 * **Sec. 35.** AS 44.37.011 is amended by adding new subsections to read:

23 (f) In this section, in order for a person to be adversely affected, a final
24 decision made by the department must create or impose an adverse and direct effect or
25 detriment on the person or the interests of that person.

26 (g) An appeal or request for reconsideration must include a statement that
27 explains how the person is substantially and adversely affected by the department
28 decision. The statement must

29 (1) specifically describe the substantial and adverse effect on the
30 person that is a direct result of the decision; and

31 (2) explain how the decision caused the substantial and adverse effect

1 on the person.

2 (h) If the department gives public notice and allows a public comment period
3 of at least 30 days on a proposed action, the department may restrict eligibility to
4 appeal or request reconsideration to persons who have provided timely comment on
5 the proposed action by including notice of the restriction as part of its public notice
6 announcing the opportunity to comment.

7 (i) The commissioner may reject an appeal or request for reconsideration for
8 failure to meet the requirements of (f) - (h) of this section.

9 * Sec. 36. AS 46.15.035(a) is amended to read:

10 (a) A significant amount of water, as determined by the department by
11 regulation, [WATER] may not be removed from the hydrologic unit from which it
12 was appropriated to another hydrologic unit, inside or outside the state, without being
13 returned to the hydrologic unit from which it was appropriated nor may a significant
14 amount of water be appropriated for removal from the hydrologic unit from which the
15 appropriation is sought to another hydrologic unit, inside or outside the state, without
16 the water being returned to the hydrologic unit from which it is to be appropriated,
17 unless the commissioner

18 (1) finds that the water to be removed or appropriated for removal is
19 surplus to needs within the hydrologic unit from which the water is to be removed or
20 appropriated for removal, including fishing, mining, timber, oil and gas, agriculture,
21 domestic water supply, and other needs as determined by the commissioner;

22 (2) finds that the application for removal or appropriation for removal
23 meets the requirements of AS 46.15.080; and

24 (3) assesses a water conservation fee under (b) of this section.

25 * Sec. 37. AS 46.15.133(a) is amended to read:

26 (a) If the commissioner proposes a sale of water or receives an application for
27 appropriation or removal, the commissioner shall prepare a notice containing the
28 location and extent of the proposed sale, appropriation, or removal, the name and
29 address of the applicant, if applicable, and other information the commissioner
30 considers pertinent. The notice shall state that, not later than [WITHIN] 15 days
31 after [OF] publication or service of notice, persons may file with the director written

1 objections [,] stating the name and address of the objector [,] and any facts tending to
 2 show that rights of the objector or the public interest **as described in AS 46.15.080(b)**
 3 would be adversely affected by the proposed sale, appropriation, or removal.

4 * **Sec. 38.** AS 46.15.133(b) is amended to read:

5 (b) The commissioner shall publish the notice in one issue of a newspaper of
 6 general distribution in the area of the state in which the water is to be appropriated,
 7 removed, or sold. The commissioner shall also have notice served personally or by
 8 [CERTIFIED] mail upon an appropriator of water or applicant for or holder of a
 9 permit who, according to the records of the division of lands, may be affected by the
 10 proposed sale, appropriation, or removal and may serve notice upon any governmental
 11 agency, political subdivision, or person; notice shall also be served upon the
 12 Department of Fish and Game and the Department of Environmental Conservation.
 13 An applicant for an appropriation or removal shall pay the commissioner's costs in
 14 providing publication and notice under this subsection. The commissioner may require
 15 as a condition of a sale of water under AS 46.15.037, that a purchaser of water
 16 reimburse the department for the costs associated with providing notice of the
 17 proposed sale.

18 * **Sec. 39.** AS 46.15.133(c) is amended to read:

19 (c) **Not later than** [WITHIN] 15 days of publication or service of notice, an
 20 interested person may file an objection. The commissioner may hold hearings upon
 21 giving due notice and shall grant, deny, or condition the proposed sale or application
 22 for appropriation or removal in whole or in part within 30 days of receipt of the last
 23 objection or, if the commissioner elects to hold hearings, within 180 days of receipt of
 24 the last objection. Notice of the order or decision shall be served personally or mailed
 25 to any person who has filed an objection.

26 * **Sec. 40.** AS 46.15.133(d) is amended to read:

27 (d) If no objection is filed, the commissioner may proceed to make a **final**
 28 determination upon the application for appropriation or removal or the proposal for
 29 sale.

30 * **Sec. 41.** AS 46.15.133(e) is amended to read:

31 (e) A person **adversely affected** [AGGRIEVED] by the action of the

1 commissioner or by the failure of the commissioner to grant, deny, or condition a
2 proposed sale or an application for appropriation or removal in accordance with (c) of
3 this section may appeal to the superior court. In this subsection, to be adversely
4 affected, a person must be directly affected by a decision made by the department
5 either by a physical or financial detriment to the person's interests resulting from
6 the decision.

7 * Sec. 42. AS 46.15.145(a) is amended to read:

8 (a) The state, an agency or a political subdivision of the state, or an agency of
9 the United States [OR A PERSON] may apply to the commissioner to reserve
10 sufficient water to maintain a specified instream flow or level of water at a specified
11 point on a stream or body of water, or in a specified part of a stream, throughout a year
12 or for specified times, for

13 (1) protection of fish and wildlife habitat, migration, and propagation;

14 (2) recreation and park purposes;

15 (3) navigation and transportation purposes; and

16 (4) sanitary and water quality purposes.

17 * Sec. 43. AS 46.15.145(f) is amended to read:

18 (f) The [AT LEAST ONCE EACH 10 YEARS THE] commissioner may
19 [SHALL] review a [EACH] reservation under this section to determine whether the
20 purpose described in (a) of this section for which the certificate reserving water was
21 issued and the findings described in (c) of this section still apply to the reservation. If
22 the commissioner determines that the purpose, or part or all of the findings, no longer
23 apply to the reservation, the commissioner may revoke or modify the certificate
24 reserving the water after notice, hearing when appropriate, and a written determination
25 that the revocation or modification is in the best interests of the state.

26 * Sec. 44. AS 46.15.155(a) is amended to read:

27 (a) Notwithstanding any contrary provision of this chapter, the commissioner
28 may authorize the temporary use of a significant amount of water, as determined by
29 the department by regulation, for a period of time not to exceed five consecutive years
30 in each authorization, if the water applied for has not been appropriated in
31 accordance with this chapter. The commissioner may issue one or more new

1 temporary water use authorizations for the same project.

2 * **Sec. 45.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,
3 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

4 * **Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITION: WOOD-TIKCHIK STATE PARK MANAGEMENT PLAN AND
7 REGULATIONS; ENFORCEMENT. To allow for a feasibility study for the development and
8 operation of a hydroelectric site at Chikuminuk Lake, the Department of Natural Resources
9 may not enforce or implement provisions in the Wood-Tikchik State Park Management Plan,
10 dated October 2002, and regulations applicable to the Wood-Tikchik State Park that are
11 inconsistent with AS 41.21.167(e), enacted by sec. 30 of this Act.

12 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 TRANSITION: PENDING APPLICATIONS FOR RESERVED WATER. The
15 Department of Natural Resources shall return any applications and fees for applications
16 pending as of the effective date of sec. 42 of this Act to persons no longer authorized to
17 reserve water under sec. 42 of this Act. The commissioner of the Department of Natural
18 Resources may refer applications that are no longer authorized to other state agencies for an
19 independent evaluation and consideration of submission of a similar application to request a
20 reservation to that agency.

21 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 TRANSITION: REGULATIONS. The Department of Natural Resources may
24 immediately adopt regulations necessary to implement the changes made by this Act. The
25 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1,
26 2013.

27 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
30 heading of AS 44.37.011 from "Additional procedures for administrative appeals and
31 petitions for reconsideration to the commissioner of natural resources" to "Procedures for

1 administrative appeals and requests for reconsideration to the commissioner of natural
2 resources."

3 * **Sec. 50.** Sections 30, 46, and 48 of this Act take effect immediately under
4 AS 01.10.070(c).

5 * **Sec. 51.** Except as provided in sec. 50 of this Act, this Act takes effect July 1, 2013.

Doniece Gott

From: Sen. Pete Kelly
Sent: Saturday, April 06, 2013 1:49 PM
To: Doniece Gott
Subject: FW: Chuitna Citizens Coalition Clarifications on HB 77
Attachments: 2013 02 25 Decision.TWUP appeal.833.pdf; 20130404 CCC Senate Finance Committee.pdf

From: Bobbi Burnett [mailto:bx_ntrk@yahoo.com]
Sent: Saturday, April 06, 2013 1:41 PM
To: Sen. Mike Dunleavy; Sen. Click Bishop; Sen. Kevin Meyer; Sen. Anna Fairclough; Sen. Pete Kelly; Sen. Lyman Hoffman; Sen. Donny Olson
Subject: Chuitna Citizens Coalition Clarifications on HB 77

Dear Senate Finance Committee Members –

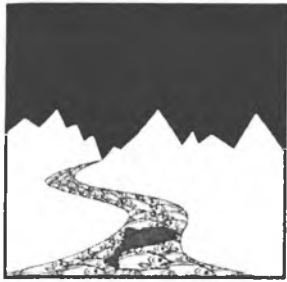
I am writing on behalf of the Chuitna Citizens Coalition to clarify some persistent misrepresentations surrounding HB 77.

1. The Chuitna Citizens Coalition (CCC) is comprised of LOCAL fishermen, hunters and property owners. We are Alaskans, and we take strong exception to anyone on the committee or elsewhere who states we are “Outside” interests. It should be noted, however, that the company seeking to remove water from our Alaskan salmon streams in the Chuitna watershed – PacRim Coal – is a Delaware corporation funded by Texas investors. PacRim wants to mine completely through our salmon streams to ship low grade coal to China; we are Alaskans looking to protect our salmon resources for current and future generations.
2. The Superior Court hearing our case concerning PacRim Coal’s temporary water use permit (TWUP) did NOT hold that DNR must fully adjudicate CCC’s instream flow reservation prior to issuing a TWUP. Rather, it held DNR must simply “consider” CCC’s instream flow reservation, which is a fairly low bar for DNR to meet if it truly wants to protect our salmon resources. Attached please find the court decision, and we hope this clarifies misinformation we have heard from DNR and others.
3. Finally, the Chuitna Citizens Coalition’s TWUP case is ongoing. The Superior Court recently denied DNR’s request for reconsideration, and DNR has until April 29 to appeal the decision. As a result, it’s inappropriate for the legislature to intervene while the final outcome of the case is still pending before the judicial branch.

Attached please find a letter we sent earlier in the week which adds additional clarification to the issues raised above. Please include this email and the attachments in the legislative record for HB 77.

Thank you for your attention to this important matter.

Barbara C. Burnett, Secretary/Treasurer
Chuitna Citizens Coalition, Inc.



CHUITNA CITIZENS COALITION

VIA US MAIL AND EMAIL
(Senator.Kevin.Meyer@akleg.gov)

April 4, 2013

Senator Kevin Meyer
Co-Chair Senate Finance Committee
State Capitol Room 518
Juneau AK, 99801

RE: HB 77

Dear Senator Meyer:

It is with great interest that we follow the discussion of HB 77 in the Senate Finance Committee. We are concerned with how passage of this bill as written would deny the public's right to secure in-stream flow (ISF) reservations which ensure salmon have enough water in their streams to survive. The bill also would strip away the ISF reservation applications we filed years ago.

Our members are residents, landowners, sport and commercial fishermen, who live, work and recreate in the Chuitna Watershed on the west side of Northern Cook Inlet. I've owned property in Beluga for nearly 20 years, that's where my wife and I plan to retire. When I first moved to Alaska I commercial fished off K Beach Road in Cook Inlet where my family has fished for decades.

Because the Chuitna and the salmon it supports are so important to local residents, the Chuitna Citizens filed for an in-stream flow reservation for Middle Creek in 2009. This common sense public water right is designed to assure sufficient water would always be maintained in a stream for the protection of wild salmon stocks. Middle Creek is one of the primary tributaries of the Chuitna and is important king and coho spawning and rearing habitat.

The Alaska Department of Natural Resources (DNR) has thus far failed to adjudicate our ISF

reservation application and now points the finger at us saying we are the problem. That we are somehow hurting Alaska, because we care enough about our local salmon stream to have gone to great personal expense to assure sufficient water for salmon migration, spawning and rearing. DNR is putting the rights of those who want to take water out of salmon streams, including outside interests, ahead of local Alaskans who are attempting to keep enough water in streams for the health of current and future salmon runs.

Commissioner Sullivan was not accurate when he said our lawsuit will force full adjudication of ISF applications before any TWUP can be issued. The Alaska Superior Court decision referenced by Senator Hoffman only requires that DNR consider pending water rights applicants when issuing Temporary Water Use Permits (TWUPS). Until the Court's ruling DNR's legal position was that it could ignore pending applicants completely when it awarded any amount of water out of a waterbody under a TWUP. Even if it took water that somebody else has applied for a decade before. The Court said DNR's regulations require that it consider all appropriators of record, including applicants, when it issues TWUPs.

DNR has not answered any questions about why it doesn't work on eliminating the backlog of in-stream flow requests. The 3-5 years of data isn't the problem, DNR hasn't devoted sufficient resources to the program to process the pending applications. Now that CCC is asking the Court to require DNR do its job, DNR is saying CCC is the problem. This morning the Commissioner basically said that people seeking to protect fish habitat are the ones blocking Alaskan's access to water. DNR made it clear, if you want to take water out of the stream, this bill doesn't impact you. If you want to keep water in the stream for fish, you are an obstructionist who should not have the right to directly petition the agency.

If HB 77 is passed in its current form citizens will have no avenue to require DNR to adjudicate or even process an ISF, it becomes unenforceable. Should DNR refuse to act, as they have since August of 2009 with the Chuitna Citizens Coalition ISF application, individuals and citizens groups will have no recourse, the citizens' rights will have been taken away.

Responding to Senator Hoffman, Wyn Menefee, DNR Chief of Field Operations, Division Mine, Land, and Water said "There are protections for salmon habitat." The most basic protection for salmon is assuring they have enough water to migrate, spawn and rear. If they don't have enough water nothing else matters, this is the essence of the ISF reservation.

With my long history in the Chuitna watershed I understand and appreciate the value the Chuitna holds for residents and visitors alike. The Chuitna is the lifeblood of the local residents. Salmon is a valued resource in both Beluga and the neighboring Village of Tyonek. The highest subsistence resource harvested in the area for both communities is wild salmon. In Tyonek, salmon is 70% of their average annual subsistence harvest.

It should also be noted that in 1996, Alaska Department of Fish & Game biologists applied for an in-stream flow reservation for the main stem of the Chuitna to protect the wild salmon run, but DNR has yet to process the ADF&G application.

In-stream flow reservations are about protecting future salmon runs. Our in-stream flow reservation application is to assure there is water left in the stream for wild Alaska salmon runs; we're not taking water out of the stream.

It's a reservation for our kids and grandkids. It's a reservation for sport fishermen. It's a reservation for the commercial fishing industry, the State's largest private employer. It's a reservation for every parent who wants to teach their child how to catch a salmon. It's a reservation for every Alaskan who wants to put a salmon on the dinner table and a few more in the freezer.

It's a reservation to protect the Wild Alaska Salmon brand as one of the best managed fisheries in the world.

The Alaska Seafood Marketing Institute proudly proclaims: "Alaska sets the standard for precautionary resource management." Nothing could be a better resource management target than assuring our streams have enough water for wild salmon spawning, rearing and migration.

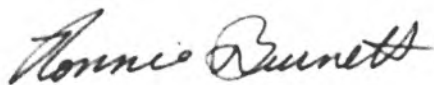
In-stream flow reservations are about the legacy we leave behind.

As you deliberate on the in-stream flow component (Section 40) of House HB 77, please note that a 2011 Alaska Department of Fish and Game report on the importance of in-stream flows, recommends, among other things: "Legislation should be enacted or regulations established that will guarantee a base level of in-stream flow protection for all fish bearing waters."

Requiring citizens to convince ADF&G or DNR to take on their petition, when the agencies already can't adjudicate the existing applications is not a solution. And people seeking to protect fish habitat is not the problem.

I encourage you to protect the rights of Alaska citizens to secure in-stream flow reservations to guarantee salmon have enough water in streams to survive, or assure a base level of in-stream flow protection for all fish bearing waters for future generations.

Sincerely,



Ron Burnett, Board Member
Chuitna Citizen Coalition

cc: (VIA EMAIL ONLY)

Senator Pete Kelly, Senator.Pete.Kelly@akleg.gov

Senator Anna Fairclough, Senator.Anna.Fairclough@akleg.gov

Senator Click Bishop, Senator.Click.Bishop@akleg.gov

Senator Mike Dunleavy, Senator.Mike.Dunleavy@akleg.gov

Senator Lyman Hoffman, Senator.Lyman.Hoffman@akleg.gov

Senator Donald Olson, Senator.Donny.Olson@akleg.gov

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CHUITNA CITIZENS COALITION,)
)
Appellant,)
)
vs.)
)
DAN SULLIVAN, COMMISSIONER,)
ALASKA DEPARTMENT OF)
NATURAL RESOURCES,)
)
Appellee.)

RECEIVED
FEB 26 2013

CASE NO. 3AN-11-12095CI

OPINION AND ORDER ON ADMINISTRATIVE APPEAL

I. Introduction

This case comes before the Court on appeal by Chuitna Citizens Coalition ("Chuitna") from a decision by the Commissioner of the State of Alaska Department of Natural Resources ("DNR"). The Commissioner's decision upheld the issuance by the DNR's Division of Mining, Land and Water, Water Resources Section, of a Temporary Water Use Permit ("TWUP") to PacRim Coal, LP ("PacRim"). The Commissioner found Chuitna's appeal moot due to the expiration of the TWUP, but nevertheless proceeded to find that Chuitna lacked standing to appeal and also that, in the alternative, their appeal lacked merit. Chuitna appeals all three bases for upholding the issuance of the TWUP and asks the Court to reverse the Commissioner's decision.

For the reasons stated below, the Court reverses the Commissioner's procedural denials for mootness and lack of standing, and reverses in part the

Commissioner's decision on the merits finding that the Commissioner should have, but did not, consider Chuitna to be an appropriator of record.

II. Facts and Proceedings

Chuitna is an association of community residents from Beluga (located across Cook Inlet from Anchorage), and fishermen who rely on the Chuitna River and its watershed. Appellant's Opening Brief, at 1. Sections of land in and around the Chuitna River watershed have been targeted for strip coal mining at various times since the 1980's, and most recently in 2007 by PacRim. *Id.*, and Excerpt of Record ("Exc") 0001-0005. The Alaska Legislature in enacting the Alaska Water Use Act (the "Act"), AS 46.15, delegated to the DNR the responsibility to uphold the water use policies stated in Article 8, § 13 of the Alaska Constitution, and to "determine and adjudicate rights in the water of the state, and in its appropriation and distribution." AS 46.15.010.

Chuitna and PacRim have competing interests in the same body of water: a tributary to the Chuitna River called Middle Creek, also known as Stream 2003. Chuitna seeks to keep water in Middle Creek to ensure specified flow rates in order to preserve salmon habitat, and PacRim seeks to temporarily withdraw water from Middle Creek in order to build and operate ground water monitoring wells. The Water Use Act contemplates both uses, and sets forth procedures for obtaining those uses, which are administered and regulated by DNR.

The first sort of use---the one sought by Chuitna to ensure that a certain amount of water is kept in Middle Creek---is an instream flow reservation ("IFR") under AS 46.15.145. Exc. 0097. In order to receive State approval for an IFR

under AS 46.15.145, one must first submit an application to the Commissioner. The application process for this (and other) water rights is governed by DNR-promulgated water management regulations at 11 AAC 93.040 and 93.050. Once the application has been accepted, DNR is required to provide public notice and comment under AS 46.15.133, and proceed to adjudicate the application. If the Commissioner determines that an applicant meets the criteria contained in AS 46.15.145(c), then he or she grants the application and issues a certificate of reservation of water. AS 46.15.133(c); AS 46.15.145(c), (d). This water is then withdrawn from appropriation, and other applications to appropriate the reserved water are rejected. AS 46.15.145(d).

In June 2009, Chuitna applied for IFR permits for three discrete sections of Middle Creek, the applications being designated Land Administration System ("LAS") numbers 27340, 27436, and 27437. Exc. 0097. Chuitna applied for the IFR's along Middle Creek to protect fish habitat, and to maintain a specific flow of water necessary for salmon spawning, rearing, and growth. *Id.* The IFR applications seek to reserve 2.7 and 13.7 cubic feet per second ("cfs") of flow in Middle Creek for the months of March and April, respectively. Exc. 0101. All three applications have been accepted by DNR, with effective dates of June 3, 2009 (LAS 27340) and August 21, 2009 (LAS 27436 and LAS 27437). To date, DNR has not proceeded to provide notice under AS 46.15.133 (as required by AS 46.15.145(c)) in order to begin adjudicating the applications.¹

¹ Chuitna has a separate lawsuit against DNR directly for declaratory and injunctive relief for its alleged failure to act on applications for the reservation of water under AS 46.15.145. *Chuitna Citizens vs. DNR*, 3AN-11-12094CI.

The second sort of water use at issue in this case---the one sought by PacRim to use water to build monitoring wells required for a coal mining project-- -is a TWUP under AS 46.15.155. The Legislature amended the Act in 2001 to add this section, after DNR's practice of issuing TWUPs was affirmed in *State v. Greenpeace*, 96 P.3d 1056 (Alaska 2004). In so doing, the Legislature expressly stated the policy that "many construction, development, commercial, and private activities require an authorization for the temporary use of the state's water without the need to acquire a permanent right to appropriate water." § 2, ch.100, SLA 2001.

As its name implies, TWUPs are intended to be temporary. AS 46.15.155(a) ("not to exceed five consecutive years").² And, unlike IFR applications, a granted TWUP application does not establish a right to appropriate water, and water being 'used under a TWUP remains subject to appropriation. AS 46.15.155(c). TWUP applications do not undergo the same notice process as IFR applications and other appropriation applications, nor is granting a TWUP held to the statutorily enumerated criteria found in AS 46.15.080. The Commissioner is required to request comment on a TWUP application from the Departments of Fish and Game, and Environmental Conservation. AS 46.15.155(d). However, the Commissioner, in his or her discretion, may impose reasonable conditions or limits on a TWUP to protect water rights, habitat, health, or other public interests. AS 46.15.155(f). The

² By regulation, the Commissioner has discretion to authorize one extension, not to exceed five years. 11 AAC 93.210(c).

Commissioner also has discretion to modify, suspend, or revoke a TWUP if he or she deems it necessary to protect water rights or the public interest. AS 46.15.155(i). DNR has established corresponding regulations for temporary water use under this chapter at 11 AAC 93.210, and 11 AAC 93.220.

In March 2010, PacRim began installing supplementary monitoring wells as part of a required SEIS review process for the Chuitna Coal Project. Exc. 0018-0023. DNR granted PacRim's applications for TWUPs for water withdrawals from five sources (TWUP A2010-11, and TWUP A2010-17). Exc. 0024-0025. At that time, PacRim had authorization to install 10 monitoring wells, but only installed four prior to the expiration of the TWUPs. *Id.*, and Exc. 0114-0115. Completing the installation of the required ground water monitoring wells led to the application by PacRim on February 10, 2011 for a TWUP to install the six remaining wells. *Id.*, and Exc. 0063-0066. DNR initiated a review of the application and granted TWUP A2011-16 to PacRim on February 18, 2011. Exc. 0067-0085. TWUP A2011-16 allowed PacRim to withdraw up to a combined total of 5,000 gallons of water per day (subject to a project maximum of 305,000 gallons) from February 18, 2011 through April 30, 2011. Exc. 0079-0080. The five sources of water authorized for withdrawals in the TWUP included the same portions of Middle Creek where Chuitna's IFR requests are pending. Exc. 0079.

Chuitna appealed the issuance of TWUP A2011-16 to the Commissioner on March 4, 2011. Exc. 0096-0099. The basis of the appeal was that by issuing the TWUP, DNR had "illegally elevat[ed] a permitted use over an applied-for water right that was submitted well before the TWUP." *Id.* Chuitna maintained

that granting the TWUP without considering their concurrent use of Middle Creek was a violation of the Act, as well as the Alaska Constitution due to the priority of appropriation afforded them based on the pending IFR application. Chuitna submitted a technical memorandum by their own hydrologist with their notice of appeal showing potential impacts on flow rates in Middle Creek due to TWUP A2011-16. Exc. 0100-0102. The Commissioner acknowledged receipt of Chuitna's appeal on March 22, 2011. Exc. 0109-0112. TWUP A2011-16 expired by its own terms on April 30, 2011. Exc. 0081.

On October 11, 2011, the Commissioner issued his decision denying Chuitna's appeal. Exc. 0114-0120. The Commissioner found the appeal to be moot because TWUP 2011-16 had expired by its own terms, but nevertheless made findings that Chuitna lacked standing to appeal, and also that, in the alternative, their appeal lacked merit. *Id.*

Chuitna filed its Notice of Appeal of the Commissioner's decision with this Court on November 10, 2011. Exc. 0121-0124. Oral arguments were held on December 19, 2012.

III. Standard of Review

Courts in Alaska apply one of four standards of review when presented with an administrative appeal:

(1) the 'substantial evidence' test applies to questions of fact; (2) the 'reasonable basis' test applies to questions of law involving agency expertise; (3) the 'substitution of judgment' test applies to questions of law where no expertise is involved; and (4) the 'reasonable and not arbitrary' test applies to questions about agency regulations and the agency's interpretation of those regulations.

Lakloev, Inc. v. Univ. of Alaska, 157 P.3d 1041, 1045 (Alaska 2007) (citing Handlev v. State, 838 P.2d 1231, 1233 (Alaska 1992)).

The issues of mootness and standing raised in the instant appeal are subject to the substitution of judgment test because they involve questions of law where no agency expertise is involved. *Stevens v. State, Alcoholic Beverage Control Bd.*, 257 P.3d 1154, 1156 (Alaska 2011). The issues related to the merits of the appeal decision implicate statutory and regulatory interpretation and constructions. Where Chuitna has challenged the legality of DNR's actions under statutes in which DNR has been given expertise, the reasonable basis test applies, although for issues of statutory interpretation involving no agency expertise, the Court will substitute its own judgment. *Northern Alaska Environmental Center v. State, Department of Natural Resources*, 2 P.3d 629, 633-34 (Alaska 2000). An agency's regulations are reviewed under the reasonable and not arbitrary test, while the agency's interpretation of its own regulations is reviewed under the reasonable basis standard. *Simpson v. State, Commercial Fisheries Entry Comm'n*, 948 P.2d 605, 609 (Alaska 2004).

IV. Discussion

The Commissioner denied Chuitna's appeal of the DNR's authorization of PacRim's TWUP A2011-16 on the bases of mootness, lack of standing, and lack of merit.³

A. Merits of the Appeal

³ The posture of the Commissioner's decision was such that the issue of merits would properly be before this Court, regardless of its rulings on standing or mootness. Because the discussion of merits furthers an understanding of the remaining issues, they will be taken up in reverse order in this opinion.

The primary issue to resolve in determining if the Commissioner correctly found Chuitna's appeal to be without merit is whether Chuitna's pending IFR applications afford them any legal status. The Commissioner believes accepted water rights applications provide no legal status to the applicant, while Chuitna believes accepted water rights applications make the applicant an appropriator dating back to the date of the accepted application. As explained in more detail below, the Court finds water rights applicants are not "appropriators" as defined by the Act, but that they do have some status since the DNR's own regulations define water rights applicants as "appropriators of record."

The Commissioner determined that the DNR had not acted contrary to law in granting TWUP A2011-16 because Chuitna's pending IFR applications do not create water rights that are protected by the Act or Alaska Constitution, and, in addition, DNR had considered the potential impacts of the TWUP on fish and fish habitat as required under the Act.

Chuitna maintains that IFR applications such as theirs that have been accepted by the DNR and are awaiting adjudication makes the applicant a prior appropriator, giving the applicant "first in time" water rights.⁴ Chuitna relies on the following statutory language, "[a] right to appropriate water shall be obtained by first making application to the commissioner for a permit to appropriate." AS 46.15.040(b).

⁴ "First in time" is an important concept in Alaska water law because "[p]riority of appropriation shall give prior right." Alaska Constitution, Art. 8, Sec. 13, and AS 46.15.050(a) ("[p]riority of appropriation gives prior right"). Being a prior appropriator of water makes it more difficult for subsequent users to obtain a right to use the same water. See, e.g., AS 46.15.080(a)(1).

The Commissioner's position is that applications that have not been through the process proscribed by statute, which includes notice and comment, determination, and the issuance of either a permit and/or certificate, do not give rise to any legal status associated with being called an "appropriator" or "appropriation." The Commissioner found that Chuitna's pending application for a reservation of water under AS 46.15.145 did not give Chuitna a water right since, by definition, the water subject to their application has not yet been appropriated.

The Act defines "appropriate" as "to divert, impound, or withdraw a quantity of water from a source of water, for a beneficial use or to reserve water under AS 46.15.145." AS 46.15.260(1). Similarly, "appropriation" means "the diversion, impounding, or withdrawal of a quantity of water from a source of water for a beneficial use or the reservation of water under AS 46.15.145." AS 46.15.260(2). Chuitna has applied for a reservation of water under AS 46.15.145 and, according to the preceding definition, a "reservation of water" (not the application) is an "appropriation." Under AS 46.15.145(d), water is not "withdrawn from appropriation" until "after the issuance of a certificate." A certificate cannot lawfully be issued according to AS 46.15.145(b) before the notice and comment period set forth in AS 46.15.133 occurs.

Substituting its own judgment in interpreting these statutory provisions, this Court agrees that an IFR applicant does not have a vested appropriative

right under the Act.⁵ However, as explained below, based on DNR's own regulations, this Court concludes that IFR applicants are afforded some legal status that must be considered when reviewing TWUPs.

The Commissioner is required adopt regulations to carry out the provisions of the Act. AS 46.15.020(b)(1). The Commissioner's regulations relating to water management in general and the Act in particular are contained in Title 11, Chapter 93 of the Alaska Administrative Code ("11 AAC 93"). The Commissioner has defined the phrase "appropriators of record" in the regulations. 11 AAC 93.970 (25) provides: "'appropriators of record' means *applicants for, and permittees and certificate holders of, water rights,*" (emphasis added). Thus, while pending applicants may not be prior appropriators with vested water rights under the statute because they have not been granted a permit or issued a certificate, they are by regulation an "appropriator of record." Based on the plain language of this⁴ regulation then, the Court rules that an interpretation that fails to include applicants for water rights in the meaning of "appropriators of record" is without a basis in reason.

Most notably for purposes of this discussion, the expression "appropriators of record" is used in the regulations at 11 AAC 93.210, addressing temporary water use.⁶ Subsection (b) of 11 AAC 93.210 states:

⁵ Because the statute itself resolves the issue of whether Chuitna is a prior appropriator, it is not necessary to reach the issue of whether the determination violated the Alaska Constitution. See *Tulkisarmute Native Comm. Council v. Heinze*, 898 P.2d 935, 952, n.29 (Alaska 1995).

⁶ The phrase is also found at 11 AAC 93.035, which deals with the requirement to apply for the use of a significant amount of water. 11 AAC 93.035 reinforces the statutory requirements to make application for water uses, and sets forth the amounts of water that are considered "significant." Subsection (c) continues as follows:

A water right or priority is not established by a temporary water use authorization issued under 11 AAC 93.220. Authorized temporary water use is subject to amendment, modification, or revocation by the department if the department determines that amendment, modification, or revocation is necessary to supply water to lawful *appropriators of record* or to protect the public interest.

Emphasis added. This suggests that the DNR must be cognizant of other water rights --- including pending applications for water rights --- when dealing with TWUPs.

The regulations are consistent with the statutory language contained in AS 46.15.155(f) and 46.15.155(i), which places discretion to determine whether to modify TWUPs firmly with the DNR Commissioner. The regulations and statute are silent as to what degree of inquiry or review the Commissioner must make in weighing competing or potentially competing water uses, and the Court will not make any such determinations here.

Finally, Chuitna contends that DNR did not adequately undertake its duty under AS 46.15.155(f) to protect fish and wildlife habitat because it relied on a

A person using less than the amount of water described in (b) of this section acquires no water right or priority unless an application is filed and a permit or certificate is issued under 11 AAC 93.035 – 11 AAC 93.140. The use of water without a permit or certificate is subject to appropriation by others, and the use of water without a water right is subject to curtailment in order to supply water to lawful *appropriators of record* or to protect the public interest.

Emphasis added. As both the statute and regulation instruct, TWUPs do not establish a water right. AS 46.15.155(c); 11 AAC 93.210(b). Therefore, this regulation indicates that water being used pursuant to a TWUP is subject to curtailment in order to make sure that enough water will be available for those pending applications for water rights.

mere two-sentence email from the Alaska Department of Fish and Game ("ADF&G") in issuing TWUP A2011-16. Exc. 0058. The statute requires the Commissioner to request comments on TWUP applications from ADF&G. AS 46.15.155(d). The record shows that the Commissioner fulfilled this duty and that ADF&G gave a response. Exc. 0015-0017, 0057-0062. It is not the purview of this Court to comment on the sufficiency of the response, although the Court does note that the response references a technical document contained in the record called Generally Consistent Determination ("GCD")-8. Exc. 0010-0013. This is an area of DNR's expertise, and the Commissioner's reliance on GCD-8 is not unreasonable.

Nevertheless, because Chuitna's applications for IFRs under AS 46.15.145 had been accepted by the DNR, this Court finds Chuitna to be an appropriator of record under the regulations promulgated pursuant to the authority of the Act. This Court finds that the authorization for TWUP A2011-16 did not consider the amounts of water applied for by Chuitna.⁷ This Court further finds that the Commissioner made no meaningful determination about the quantity of water available in Middle Creek in the decision denying Chuitna's appeal of TWUP A2011-16.⁸ Accordingly, this Court concludes that the Commissioner interpretation of DNR's regulations was unreasonable.

⁷ The last page of the TWUP authorization includes the paragraph, "Pursuant to 11 AAC 93.210(b), authorized temporary water use is subject to amendment, modification, or revocation by the Department of Natural Resources if the Department of Natural Resources determines that amendment, modification, or revocation is necessary to supply water to lawful appropriators of record or to protect the public interest." Exc. 0084.

⁸ The Commissioner's decision on appeal states that Chuitna's "asserted potential impacts on the flow rate of Stream 2003 are based on conjecture." Exc. 0118. The decision points out that

B. Standing

As with the merits of the appeal, the Commissioner affirmatively found that Chuitna's lacked standing to appeal the issuance of TWUP A2011-16. Exc. 0114. As stated in the Commissioner's Decision:

Administrative appeals to DNR are governed by AS 44.37.011 and DNR's appeal regulations in 11 AAC 02. AS 44.37.011(b) states in relevant part, "If a person is aggrieved by a decision of the Department of Natural Resources not made by the commissioner . . . the person may appeal to the commissioner." AS 44.37.011(e) authorized DNR to adopt regulations to "implement and interpret" this statute. 11 AAC 02.010(a) states in part, "This chapter sets out the administrative review procedure available to a person affected by a decision of the department." 11 AAC 02.010(e) states in relevant part, "An eligible person affected by a decision of the department . . . may appeal the decision to the commissioner." Therefore, Alaska law requires that an appellant must be "aggrieved by" or "affected by" the DNR decision they are appealing in order to have standing to appeal that decision to the DNR Commissioner.

Exc. at 0116.

The Commissioner found that Chuitna failed to meet the "aggrieved by" or "affected by" standards because no showing was made that Chuitna or any of its members were actual users of the water subject to TWUP A2011-16. *Id.* In addition, the Commissioner determined that Chuitna had provided "no

A2011-16 authorized PacRim to "withdraw up to a combined total of 5,000 gallons of water per day . . . from unnamed pond (designated as WD#2), East Fork Middle Creek (aka Stream 2003), Middle Creek (aka Stream 2003), unnamed pond (designated as WD#5) and Lone Creek." Exc. 0115-0116. The decision does not point out the amount of water applied for from Middle Creek by Chuitna in LAS 27340, 27436, and 27437 (Chuitna's pending IFR's). The Commissioner writes that Chuitna "presumes that PacRim will withdraw water from Stream 2003 when TWUP authorized withdrawals from five sources, only two of which are Stream 2003 (Middle Creek and East Fork Creek)." Exc. 0119. This may be so, but the decision gives no affirmative indication that a quantitative analysis of concurrent water uses, or the possible effects of a temporary water use on a potential future use, was even considered.

information to show that Chuitna Citizens' pending instream flow applications for Stream 2003 are adversely affected" by issuing the TWUP. *Id.* Because Chuitna's application is "pending," the Commissioner found that Chuitna's appeal only asserted a "potential impact" that the temporary permit might have on Chuitna's application, if Chuitna's application were granted. *Id.*, at 0116-0117.

In response, Chuitna argues that its assertions in its March 4, 2011 letter of appeal should have been sufficient to establish standing under the law and regulations cited by the Commissioner, let alone the expansive view of standing provided by the Alaska Supreme Court.⁹ If the bare assertions contained in the appeal letter itself were not sufficient to establish standing, Chuitna contends that it should have been permitted to cure the defect because Chuitna was entitled to due process, as in *State v. Greenpeace*, 96 P.3d at 1063.

The Commissioner's position is that the standing issue being raised at this time is moot because the Commissioner alternatively denied Chuitna's appeal on its merits. Chuitna articulates a need for certainty in how to approach administrative appeals to this particular State agency.¹⁰ The Commissioner suggests that finding Chuitna has standing to appeal an issuance of a TWUP will be the same as ruling on the merits of Chuitna's disputed claim that they are a prior appropriator. Whether or not a pending IFR applicant is a prior appropriator

⁹ Chuitna cites to *Moore v. State*, 553 P.2d 8, 23 (Alaska 1976); *Ruckle v. Anchorage School District*, 85 P.3d 1030, 1040-41 (Alaska 2004); and, *Keller v. French*, 205 P.3d 299, 203 (Alaska 2009).

¹⁰ They comment, "DNR has developed a practice of denying standing in administrative appeals, and then deciding the merits anyway. Because DNR administrative appeals apply the same liberal standing requirements as Alaska Courts, these denials based on standing are causing parties unnecessary expense and confusion." Appellant's Reply Brief, at 16.

is not the same as whether a pending IFR applicant has standing to appeal the grant of a TWUP.

The statute contemplates that authorized TWUPs may be modified, suspended, or revoked. AS 46.15.155(i). This section gives the Commissioner discretion to review TWUPs if he or she "determines it necessary to protect the water rights of other persons or the public interest." *Id.* The plain language of the statute suggests that this discretionary review arises when TWUPs have already been granted.¹¹

The Commissioner's own regulation of this statutory section provides some support for this view as well. 11 AAC 93.210(b) reads:

A water right or priority is not established by a temporary water use authorization under 11 AAC 93.220. *Authorized* temporary water use is subject to amendment, modification, or revocation by the department if the department determines that amendment, modification, or revocation is necessary to supply water to lawful appropriators of record or to protect the public interest.

(Emphasis added). The regulation suggests that if Chuitna is either an appropriator of record, or protecting the public interest, then DNR must make a determination about the adequacy of the water supply. Since the regulations define "appropriators of record" as "*applicants for, and permittees and certificate holders of, water rights,*" it would be reasonable to conclude that persons or entities with agency-accepted, pending IFR applications would be appropriators

¹¹ This makes some sense because DNR is not required to provide public notice of TWUP applications. AS 46.15.155(d).

of record under these regulatory provisions. 11 AAC 93.970(25) (emphasis added); see also, Section IV (A), supra.

Because Chuitna's status as an appropriator of record (bolstered by its assertions of economic and environmental injury) should have been sufficient to invoke standing to appeal the issuance of the TWUP on the merits alone, the Commissioner's determination on standing is reversed.

C. Mootness

In his October 11, 2011, decision on Chuitna's appeal, the Commissioner states, "The TWUP A2011-16 permit you appealed on March 10, 2011, was effective from February 18, 2011 through April 30, 2011. Since the permit has now expired, this appeal is moot." Exc. 0114. Chuitna argues that this determination was erroneous, and that the public interest exception to the mootness doctrine should apply. The Commissioner argues that the statement was merely factual and not a basis for denying Chuitna's appeal, and therefore, any ruling by this Court on the mootness argument would be advisory.

It is true that TWUP A2011-16 had expired by its own terms by the time the Commissioner issued his ruling on Chuitna's appeal. Of course, the permit was being actively utilized at the time Chuitna provided the Commissioner with its notice of appeal on March 4, 2011. Exc. 0096. The decision of whether or not to review a moot question is left to the discretion of the court. *Tulkisarmute Native Comm. Council v. Heinze*, 898 P.2d 935, 940, n.7 (Alaska 1995). Although courts generally refrain from deciding issues that are moot, they will often determine whether a public interest exception exists to the mootness doctrine.

Id. As the Alaska Supreme Court explained in *Hayes v. Charney*, 693 P.2d 831, 834 (Alaska 1985):

- The public interest exception involves the consideration of three main factors: 1) whether the disputed issues are capable of repetition, 2), whether the mootness doctrine, if applies, may repeatedly circumvent review of the issues and, 3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine.

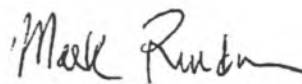
It appears that each prong of the test outlined above is satisfied. DNR has issued multiple TWUPs to PacRim for their coal mine project in Beluga, and the project is still ongoing. Thus, it is conceivable that TWUP's affecting Middle Creek will continue to be issued. Regarding the second prong, technical mootness could lead to circumvention of TWUPs. The Alaska Supreme Court has previously recognized this possibility in specific regard to TWUPs. *See State v. Greenpeace, Inc.*, 96 P.3d at 1063. The TWUP at issue in this case was only in effect for two and a half months. DNR's acknowledgement of Chuitna's appeal on March 22, 2011, came only 38 days before the TWUP expired on April 30, 2011. Exc. 0109-0112. The Decision on Appeal was issued October 11, 2011, nearly six months after the expiration of the TWUP. Given these timelines, technical mootness is almost certain. Lastly, because water is a key natural resource, recognized accordingly by the Alaska Constitution, the third prong of the public interest exception to mootness is implicated.

Accordingly, because Chuitna's appeal of the Commissioner's issuance of TWUP A2011-16 falls into the public exception doctrine to mootness, this ruling is reversed.


D. Conclusion

Based upon the above, the Court reverses the Commissioner's decisions on the issues of mootness and standing, and reverses in part the Commissioner's decisions regarding the merits, finding that the Commissioner should have, but did not, consider Chuitna to be an appropriator of record.

Dated this 25th day of February 2013, at Anchorage Alaska.



Hon . Mark Rindner
Superior Court Judge

I certify that on February 25, 2013 a copy of
the above was mailed to:
V. Brown A60-Baker

Administrative Assistant

ATTACHED to final naotion to move from ante

28-LS0748VA
Bailey
4/3/13

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Introduced:

Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning House Bill No. 77, relating to the Alaska Land Act, including**
3 **certain authorizations, contracts, leases, permits, or other disposals of state land,**
4 **resources, property, or interests; relating to authorization for the use of state land by**
5 **general permit; relating to exchange of state land; relating to procedures for certain**
6 **administrative appeals and requests for reconsideration to the commissioner of natural**
7 **resources; and relating to the Alaska Water Use Act.**

8 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
10 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
11 changes to the title of a bill, are suspended in consideration of House Bill No. 77, relating to
12 the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other
13 disposals of state land, resources, property, or interests; relating to authorization for the use of
14 state land by general permit; relating to exchange of state land; relating to procedures for

- 1 certain administrative appeals and requests for reconsideration to the commissioner of natural
- 2 resources; and relating to the Alaska Water Use Act.

ADOPTED

4/9/13
#1

AMENDMENT

DELETE Sec. 4

Create a new preference right under AS 38.05.035

(o) Where there is an active municipal entitlement selection on state land under AS 29.65.010 - 29.65.030 that has a state issued lease and before the decision to approve the municipal entitlement, the director shall grant a preference right to purchase without competitive bid of up to five acres of the state land to an individual who has erected a building approved by a lease on the state land and used the land for bona fide business purposes for 10 or more years under a state lease, if the business produced no less than 25 percent of the total income of the applicant for the 10 years preceding the application to purchase the land. The director shall sell the land at a price determined by the director to represent the current fair market value of the unimproved land determined by appraisal and survey, if not already completed, at the cost of the applicant. If the director determines in a written finding that the purchase of the land would interfere with public use by residents of the area, the director may condition the purchase to mitigate the adverse effects on the public or may reject the application if those effects can not be mitigated. The revenue from the purchase of the parcel will be given to the municipality if the municipal entitlement is approved for that acreage. In this subsection, "business purposes" means a purpose consistent with the classification of the land at the time the land was entered. In this subsection, "building" means a permanent type of structure with solid walls, foundation, and roof.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CHUITNA CITIZENS COALITION)
and COOK INLETKEEPER,)

Plaintiffs,)

v.)

Case No. 3AN-11-12094 CI

ALASKA DEPARTMENT OF)
NATURAL RESOURCES and DANIEL)
SULLIVAN, COMMISSIONER)

Defendants.)

**DEFENDANTS' MOTION AND MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants, State of Alaska, Department of Natural Resources and Daniel Sullivan, Commissioner ("DNR"), hereby move for partial summary judgment on plaintiffs' claims. By this motion, defendants seek to dismiss Cook Inletkeeper for lack of standing and for summary judgment in their favor dismissing Counts 2, 3, and 4 of plaintiffs' Complaint for Declaratory and Injunctive Relief ("Complaint"). This motion is supported by the points and authorities that follow.

I. INTRODUCTION

Chuitna Citizens Coalition ("CCC") submitted an application for an instream flow reservation ("IFR") in June 2009 and then, after communications with

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

1
2 DNR, re-submitted it along with two other applications in August 2009.¹ It has been
3 litigating over its IFR applications ever since. In October 2009, CCC administratively
4 appealed DNR's treatment of its applications to the commissioner, and in February 2010
5 it appealed the commissioner's decision to the superior court ("IFR appeal").² After the
6 superior court ordered the IFR appeal dismissed on March 15, 2011, CCC appealed to the
7 supreme court. By stipulation, the supreme court matter was dismissed on August 18,
8 2011, and then this action was filed on or about November 10, 2011, simultaneously with
9 a related administrative appeal from DNR's issuance of a temporary water use permit for
10 water from the same stream included in the IFR applications ("TWUP appeal").³ This
11 court has the TWUP appeal before it as well.
12

13 Count 1 of this original action overlaps with the TWUP appeal by claiming
14 that issuing the TWUPs without adjudicating the IFR applications is unconstitutional.
15 Count 5 of this original action seeks to have the court order DNR to begin adjudicating
16 CCC's IFR applications. Those two counts are not the subject of this motion. Rather,
17
18

19 ¹ Chuitna Citizens NO-COALition was the actual applicant for the IFRs in this case.
20 According to the public records located on the Alaska Department of Commerce,
21 Division of Corporations, Business and Professional Licensing website, Chuitna Citizens
22 NO-COALition, Inc. was originally incorporated as Chuitna Citizens Coalition on March
23 10, 2008, but changed its name to Chuitna Citizens NO-COALition shortly thereafter and
24 made its IFT applications under that name. It was not until January 10, 2010, after it filed
25 the IFR applications at issue, that Chuitna Citizens NO-COALition went back to its
26 original name. Because it is the current name of the entity, the applicant/plaintiff will be
referred to herein as "Chuitna Citizens Coalition" or "CCC."

² *Chuitna Citizens Coalition v. DNR*, Case No. 3AN-10-04918.

³ *Chuitna Citizens Coalition v. DNR*, Case No. 3AN-11-12095. Where necessary to
distinguish the instant case from the TWUP appeal, the instant matter will be referred to
as "this original action."

1
2 this motion first seeks dismissal of Cook Inletkeeper because it is not the applicant and it
3 lacks standing to bring any of the claims raised in this action. Second, this motion seeks
4 dismissal of Counts 2, 3, and 4.

5 In Count 2 of the Complaint, CCC challenges DNR's failure to adjudicate
6 the Alaska Department of Fish and Game's ("ADF&G's") application for an IFR on a
7 different water source. However, just as Cook Inletkeeper does not have standing to
8 require DNR to adjudicate CCC's IFR applications, CCC does not have standing to
9 require DNR to adjudicate ADF&G's IFR application. Count 2 should be dismissed.
10

11 Count 3 of plaintiffs' Complaint alleges that DNR's processing of IFR
12 applications violates the uniform application clause of the Alaska Constitution. As a
13 matter of law, because applicants for IFRs such as CCC are not similarly situated to
14 applicants for temporary water use permits, there can be no uniform application clause
15 violation. Count 3 should be dismissed.
16

17 Count 4 of the Complaint alleges that DNR's failure to adjudicate CCC's
18 IFR applications violates statutes and regulations governing water use. However, there
19 are no statutes or regulations that require DNR to begin adjudicating an application for an
20 IFR at any particular time. Therefore, as a matter of law, no statutory or regulatory
21 violation has occurred, and Count 4 should be dismissed.
22

23 DNR is entitled to partial summary judgment, dismissing Cook Inletkeeper
24 for lack of standing and dismissing Counts 2, 3, and 4, as a matter of law.
25
26

1
2 **II. BACKGROUND FACTS**

3 The facts provided here are not disputed, and are provided primarily for the
4 court's information and to put this matter in context.

5 On June 3, 2009, the Alaska Department of Natural Resources, Water
6 Resources Section ("DNR" or "state") received an application from Trustees for Alaska,
7 on behalf of CCC, for an IFR in Stream 2003.⁴ DNR sent CCC a letter on June 4, 2009,
8 acknowledging receipt of the application and indicating that DNR anticipated that its
9 hydrologists would review the hydrology and staff would review the application for
10 completeness within thirty days.⁵ On June 10, 2009, DNR hydrologist Roy Ireland sent a
11 memo to the chief of the Water Resources Section, Gary Prokosch, indicating that the
12 application did not contain enough information to be acceptable.⁶

13
14 Among other things, Mr. Ireland noted that a "different, and greatly
15 extended, view of the [hydrologic] data" was required, as was "[m]ore detailed,
16 informative and legible mapping."⁷ He also noted that the stream needed "to be
17 subdivided into discrete, measured reaches to which hydrologic data are attached."⁸ He
18 explained that the data presented was insufficient to cover the entire length of the
19 requested reservation (which covered virtually the entire length of the stream) because
20 single data points can account for hydrological factors such as channel morphology,
21 relative gradients, bed materials, and the contribution of tributary streams and adjacent
22

23
24 ⁴ Exh. A, attached (application, without attachments).

25 ⁵ Exh. B, attached.

26 ⁶ Exh. C, attached.

⁷ *Id.*

⁸ *Id.*

1
2 wetlands for only a limited distance upstream and downstream of the data point.⁹ As
3 described by the hydrologist: “It is incumbent on the applicant to identify and document
4 that a particular flow value is valid over a particular, described (river miles, etc) reach of
5 the stream. Where the flow value is no longer valid, a new reach must be developed and
6 similarly documented, and this would result in a second application for a reservation of
7 water, for which the same process would apply.”¹⁰ He concluded that “[t]his application
8 has no reach information and is unacceptable for the purposes of instream reservation of
9 water.”¹¹
10

11 On June 15, 2009, DNR sent a letter to CCC, indicating that the
12 departmental review of the application “found numerous issues that need to be resolved
13 before the Section can consider accepting this one application.”¹² The letter explained
14 that the extent of the requested reservation could not be covered under one reach, that the
15 request would need to be broken down into a minimum of two reaches, with a likelihood
16 of more than two reaches, and that each reach must have data to justify a reservation. It
17 also described what additional information was needed to make the application
18 acceptable, and gave the applicant 60 days to re-submit the corrected application.¹³ In the
19 alternative, the letter indicated that the application and fee could be returned, and CCC
20
21

22 ⁹ *Id.* CCC’s application indicated that its data was obtained from only two
23 continuous flow gauging stations on Stream 2003, one near the mouth of the stream, and
24 one at the other end of the stream, in the “upper reaches” of the stream.

25 ¹⁰ Exh. C. A “reach” is an identifiable section of a river or stream. *See City of*
26 *Aurora ex rel. Its Utility Enterprise v. Northern Colorado Water Conservancy Dist.*, 236
P.3d 1222, 1224 (Colo. 2010).

¹¹ *Id.*

¹² Exh. D, attached.

¹³ *Id.*

1
2 could have unlimited time to correct the application and re-apply. If CCC chose to re-
3 submit the original application along with additional applications, it would need to
4 submit additional fees as well.¹⁴

5 On August 21, 2009, Trustees for Alaska, again on behalf of CCC,
6 resubmitted the original application, but limited its scope to the “main stem reach” of
7 Stream 2003. It also submitted two other applications and the corresponding application
8 fees, for the “lower” and “middle” reaches of Stream 2003.¹⁵ On September 24, 2009,
9 DNR sent a letter to CCC verifying receipt of “your revised and additional applications
10 for Reservation of Water on August 21, 2009 for Stream 2003.”¹⁶ The letter indicated
11 that the two new applications had new DNR file numbers (“LAS” numbers) and were
12 given a provisional priority date as of the date the applications were received, August 21,
13 2009. It also indicated that the department was “not staffed at this time to further assess
14 the applications.”¹⁷

15
16
17 On October 14, 2009, Trustees for Alaska, on behalf of CCC, filed the
18 administrative IFR appeal from “the September 24, 2009 decisions . . . to require
19 subdivided applications and separate application fees for an instream flow reservation,
20 and to not extend the original application’s priority date of June 3, 2009 to the subdivided
21 applications.”¹⁸ The commissioner issued his decision on CCC’s IFR appeal on January
22
23

24 ¹⁴

Id.

25 ¹⁵

Exh. E, attached.

26 ¹⁶

Exh. F, attached.

¹⁷

Id.

¹⁸

Exh. G, attached.

1
2 5, 2010.¹⁹ The commissioner denied the appeal for the reason that the September 24,
3 2009, letter from which CCC purported to appeal was “not a department decision that is
4 subject to appeal.”²⁰ In deciding that there was not yet an appealable decision, the
5 commissioner correctly noted that “MLW’s Water Resources Section has not made a
6 decision on the applications in LAS 27340, LAS 27346 and LAS 27347. . . .

7 Accordingly, and until such time as MLW makes their decision regarding Trustees’ [sic]
8 applications for a reservation of water within Stream 2003 (tributary of the Chuitna
9 River), an administrative appeal would be premature and must be denied.”²¹

11 CCC appealed the commissioner’s decision to the superior court. As part
12 of that IFR appeal, CCC made many arguments that are similar to those raised in this
13 case. Among other things, it argued that DNR’s process violated the uniform application
14 clause of the Alaska Constitution, that DNR failed to allocate water rights in accordance
15 with a priority of appropriation, and that DNR failed to provide meaningful review of its
16 applications.²² In opposition, DNR argued that the matter was not ripe for appeal. The
17 superior court agreed with DNR and dismissed the IFR appeal.²³ CCC appealed the
18 superior court decision to the supreme court, but subsequently agreed by stipulation to
19 dismiss it. It then brought this original action along with the TWUP appeal.
20
21
22

23 ¹⁹ Exh. H, attached.

24 ²⁰ *Id.* at p. 1.

25 ²¹ *Id.* at p. 4.

26 ²² Notice of Appeal/Statement of Points on Appeal, Case No. 3AN-10-04918,
attached as Exhibit I.

²³ Decision dated 3/15/11, Judge Spaan, Case No. 3AN-10-04918, attached as
Exhibit J.

1
2 **III. ARGUMENT**

3 The party moving for summary judgment has the burden of making a prima
4 facie showing that there are no genuine issues of material fact and that it is entitled to
5 judgment as a matter of law.²⁴ Upon this initial showing, the burden shifts to the non-
6 moving party, who then must identify specific facts showing genuine issues; they cannot
7 rest on mere allegations.²⁵ The parties can submit affidavits based upon personal
8 knowledge supporting or opposing a motion for summary judgment.²⁶ In this case, DNR
9 is entitled to judgment as a matter of law on plaintiff CIK's lack of standing and on
10 Counts 2, 3, and 4 of the Complaint.
11

12 **A. Cook Inletkeeper must be dismissed because it has no connection to the**
13 **IFR applications at issue in this case and has no standing to**
14 **participate.**

15 Standing to sue is a question of law.²⁷ "Whether a party has standing to
16 obtain judicial resolution of a controversy depends on whether the party has a sufficient
17 personal stake in the outcome of the controversy."²⁸ A person must have suffered some
18 "injury-in-fact" that can be remedied by the action; in other words, they must have a
19 direct stake in the outcome of the litigation, *as opposed to a mere interest in the*
20 *problem.*²⁹ Under Alaska law, general standing is a judicial rule of self-restraint. "We
21 adhere to this rule because the very nature of our judicial system renders it incapable of
22

23 ²⁴ *Hoendermis v. Advanced Physical Therapy, Inc.*, 251 P.3d 346, 352 (Alaska
2011).

24 ²⁵ *Id.*

25 ²⁶ *Id.*

26 ²⁷ *Keller v. French*, 205 P.3d 299, 302 (Alaska 2009).

27 ²⁸ *Moore v. State*, 553 P.2d 8, 23 (Alaska 1976).

28 ²⁹ *Wagstaff v. Superior Court*, 535 P.2d 1220, 1225 (Alaska 1975).

1
2 resolving abstract questions or of issuing advisory opinions which can be of any genuine
3 value. The adversity requirement ensures that a question presented for our review is one
4 that is appropriate for judicial determination.”³⁰ In order to establish standing in Alaska,
5 the burden of proving standing is on the party bringing the action: “[A] party must
6 demonstrate that he has or will suffer some ‘injury in fact’ from the contested action or
7 proceeding.”³¹ While Alaska liberally construes the judicial limitation of standing, it
8 nevertheless requires that standing be proven by the plaintiff and will dismiss an action
9 where no standing exists.³²
10

11 This case presents a specific challenge to DNR’s treatment of three IFR
12 applications filed only by Chuitna Citizens Coalition. It is a challenge based on DNR’s
13 issuance of TWUPs for the same stream on which CCC applied for the IFRs, before the
14 IFR applications were adjudicated; it is an action intended to force DNR to adjudicate
15 CCC’s IFR applications. CIK is not an applicant on those IFR applications and does not
16 have any personal stake in the outcome of this particular litigation. CIK has no right to
17 require that the application be adjudicated at all, much less in any particular time frame.³³
18

19
20 ³⁰ *Moore*, 553 P.2d at 23 n.25.

21 ³¹ *Sisters of Providence in Washington, Inc. v. Department of Health and Social*
22 *Services*, 648 P.2d 970, 974 (Alaska 1982) (quoting *Wagstaff v. Superior Court*, 535 P.2d
23 1220, 1225 (Alaska 1975)).

24 ³² *Fuhs v. Gilbertson*, 186 P.3d 551 (Alaska 2008); *Sisters of Providence in*
25 *Washington, Inc.*, 648 P.2d at 974; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555,
26 561, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992) (“Since they are not mere pleading
requirements but rather an indispensable part of the plaintiff’s case, each element [of
standing] must be supported in the same way as any other matter on which the plaintiff
bears the burden of proof . . .”).

³³ This is most easily shown by the fact that if CCC chose to withdraw or modify its
IFR applications, CIK would have absolutely no recourse. CIK cannot force CCC to

1
2 While CIK may be interested in the problem, it does not have any "injury-in-fact" that
3 can be remedied by an adjudication of CCC's IFR application; it does not have standing
4 to participate in this case.³⁴ Cook Inletkeeper should be dismissed from this case for lack
5 of standing.

6 CIK alleges generally in paragraph 8 of the Complaint that it has "citizen-
7 taxpayer" standing. CIK never even alleges that it actually is a taxpaying entity.³⁵
8
9 However, even assuming it can establish its taxpayer status, CIK cannot meet the
10 standard for citizen-taxpayer standing in this case. In order to establish citizen-taxpayer
11 status, three factors must be proven: the case must be one of great public significance,
12 the plaintiff must be appropriate, and the plaintiff must be capable of competently
13

14
15 maintain its applications, and it cannot force DNR to adjudicate CCC's applications. If
16 CIK wanted an interest, it should have applied for the IFRs itself.

17 ³⁴ Allegations of CIK's standing are found in paragraphs 5-10 of the Complaint.
18 None of CIK's allegations concerning its members' use of the waters and area are
19 relevant to this action because CIK is not the applicant for the IFR. The only allegation
20 that could be relevant is the last sentence of paragraph 5, in which CIK alleges that it "has
21 sought to establish an instream flow reservation for the protection of fish and wildlife
22 since 2009." Notably, CIK does not allege, nor could it, that it has a pending IFR
23 application on the same waterbody that CCC has applied for, Stream 2003. Nor has it
24 alleged that DNR has issued TWUPs on any stream for which it may have a pending IFR
25 application, such that it would have similar interests as CCC. Certainly, nothing within
26 the Complaint is a claim that DNR is not properly handling any IFR application that CIK
may have pending. In fact, there are no factual allegations about CIK at all, beyond
paragraphs 5-10.

³⁵ Without actually proving its status as a citizen-taxpayer, CIK cannot claim
standing on this basis. *See Greater Anchorage Area Borough v. Porter & Jefferson*, 469
P.2d 360 (Alaska 1970) (holding that partnership that paid no taxes and did not appear on
assessment rolls of borough had no standing to bring an action challenging the existence
of the borough). Regardless, this issue probably does not have to be decided because
CIK is not a proper plaintiff in this action under the standard for citizen-taxpayer
standing.

1
2 representing the position.³⁶ First, this case is not one of great public significance. It is a
3 dispute over the appropriate handling of Chuitna Citizens Coalition's applications for
4 instream flow reservations on a stream where there are also applications for TWUPs.
5 While this may be important to CCC, it is not a matter of great public significance and it
6 is not the type of case where citizen-taxpayer standing generally has been granted,
7 especially since CCC is pursuing the case.³⁷
8

9 Further, under the second factor, CIK is not an appropriate plaintiff. CCC
10 is the applicant, who has a direct interest in how and when its applications are
11 adjudicated.³⁸ On the other hand, CIK does not have any legally protectable interest in
12 CCC's applications and is not affected by the status of CCC's applications. CIK's
13 participation is not only unnecessary, it is inappropriate. Even if CIK had some remote
14 interest in CCC's applications, where one party is more directly affected by the outcome
15 of a particular case, and is actually pursuing the case, then a less affected plaintiff should
16
17
18

19 ³⁶ *Fannon v. Matanuska-Susitna Borough*, 192 P.3d 982, 985 (Alaska 2008).

20 ³⁷ *See State v. Lewis*, 559 P.2d 630, 633-634 (Alaska 1977) (citizen-taxpayer
21 standing granted regarding land exchange involving the state relinquishing thousands of
22 acres of selected lands, including mineral interests, in exchange for other lands and
23 concessions, all in order to augment CIRI's ability to select its lands under ANCSA).

24 ³⁸ CCC has standing to seek a finding that DNR has unreasonably failed to act on its
25 IFR applications; CIK does not. It is not clear (and DNR does not admit) that CCC has
26 standing to challenge DNR's issuance of a TWUP on the same stream as its IFR
applications (the TWUPs appeal) or, as it is characterized in Count 1 of this original
action, to challenge DNR's failure to adjudicate its IFR applications before it issues a
TWUP on the same stream. That issue is not addressed by this motion. However, whether
or not CCC has standing on that issue, CIK has less of an interest than CCC and,
therefore, CIK does not have standing.

1
2 be denied citizen-taxpayer standing.³⁹ Allowing CIK citizen-taxpayer standing in this
3 case would be improper where it is not a matter of great public significance and where
4 CCC already is pursuing it as the actual applicant on the IFR applications.

5 CIK does not have either interest-injury standing or citizen-taxpayer
6 standing. CIK should be dismissed from this action.

7
8 **B. Count 2 must be dismissed because Chuitna Citizens Coalition does not**
9 **have standing with respect to any IFR application filed by another**
10 **entity.**

11 Count 2 of the Complaint is based on the existence of an IFR application
12 filed by ADF&G on the Chuitna River, to which Stream 2003 is a tributary.⁴⁰ CCC
13 alleges that DNR's failure to adjudicate ADF&G's IFR application on the Chuitna River
14 somehow harms it and asks this court to find that DNR has "unreasonably delayed
15 adjudication of . . . ADF&G's instream flow reservation application[]" and to "[e]nter an
16 order requiring DNR to publish notice of ADF&G's application . . . within 30 days."⁴¹

17 This presents the same situation discussed in Section A, above, where one
18 party (in Section A it was CIK) is seeking to have another party's (in Section A it was
19 CCC's) applications adjudicated. For the same reasons that CIK does not have standing
20 to have CCC's applications adjudicated, CCC does not have standing to have ADF&G's
21 application adjudicated. CCC simply cannot show that it has any personal stake in
22 whether or not an IFR application by ADF&G gets adjudicated by DNR or not; it does
23

24
25 ³⁹ *Fannon*, 192 P.3d at 986; *North Kenai Peninsula Road Maintenance Service Area*
v. Kenai, 850 P.2d 636, 640 (Alaska 1993).

26 ⁴⁰ See Complaint, ¶¶ 24-27, 54-58.

⁴¹ Complaint, ¶ 58; Complaint, Request for Relief, ¶¶ 3, 6.

1
2 not have any “injury-in-fact” that can be remedied by an adjudication of ADF&G’s IFR
3 application. If ADF&G sought to modify its application or concluded that it no longer
4 required the IFR at all, CCC would have no basis to force ADF&G to maintain its
5 application.⁴² CCC simply has no standing to ask this court to force DNR to adjudicate
6 ADF&G’s application for an IFR. Count 2 should be dismissed as a matter of law.
7

8 **C. Count 3 must be dismissed because CCC is not similarly situated to**
9 **applicants for TWUPs or other water rights, and the uniform**
10 **application clause of the Alaska Constitution does not apply to this**
11 **matter.**

12 Article VIII, section 17, of the Alaska Constitution states that “[I]aws and
13 regulations governing the use or disposal of natural resources shall apply equally to all
14 persons similarly situated with reference to the subject matter and purpose to be served
15 by the law or regulation.” The Alaska Supreme Court has explained how to interpret this
16 constitutional provision:

17 In recognition of the importance of citizens' equal access to natural
18 resources, we interpret the Uniform Application Clause to require
19 legislation dealing with natural resources to satisfy a heightened
20 level of equal protection scrutiny. . . . The protections of the
21 Uniform Application Clause, however, extend only to persons
22 similarly situated with respect to the subject matter and purpose of
23 the legislation. . . . “*Concluding that two classes are not similarly
24 situated necessarily implies that the different legal treatment of the
25 two classes is justified by the differences between the two classes.*” .
26 . .Not all persons in the state with an interest in a resource are
similarly situated for purposes of the Uniform Application Clause.⁴³

24 ⁴² Requiring DNR to adjudicate ADF&G’s application may also require ADF&G to
25 take actions and present data that it may not be in a position to take or present. CCC
26 simply cannot interfere in ADF&G’s application process.

⁴³ *Baxley v. State*, 958 P.2d 422, 429 (quoting *Shepherd v. State*, 897 P.2d 33, 44
n.12 (Alaska 1995) (emphasis added)).

1
2 In Count 3 of the Complaint, CCC claims that DNR violated the uniform
3 application clause because “DNR’s processing of applications for instream flow
4 reservations is more expensive, takes longer, and is subject to a heightened level of
5 scrutiny as compared to applications for out-of-stream uses.”⁴⁴ CCC’s concern appears
6 to be that applications for temporary water uses are processed fairly quickly, while
7 applications for IFRs take much longer. However, applicants for IFRs (or other
8 appropriations) are not, as a matter of law, similarly situated to applicants for TWUPs.
9

10 In 2001, the legislature specifically recognized the need for DNR to be able
11 to authorize the temporary uses of water without the need to grant a more permanent right
12 to appropriate water.⁴⁵ In enacting laws providing for the temporary use of Alaska’s
13 water, the legislature specifically recognized the difference between temporary users and
14 permanent appropriators. It specifically found that “many construction, development,
15 commercial, and private activities require an authorization for the temporary use of
16 state’s water without the need to acquire a permanent right to appropriate water” and
17 confirmed the authority of DNR to issue authorizations for the temporary use of water.⁴⁶
18 Different treatment of different types of water users reflects a legislative decision
19 regarding allocation and resource management that is specifically committed to the
20 legislature to prescribe.⁴⁷
21
22
23

24 ⁴⁴ Complaint, ¶ 61.

25 ⁴⁵ Ch. 100, sec. 2, SLA 2001.

26 ⁴⁶ Ch. 100, secs. 2 and 6, SLA 2001; AS 46.15.155.

⁴⁷ “Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or

1
2 CCC is an applicant for an IFR. If CCC's application is granted, it will be
3 entitled to receive a certificate of reservation giving it a permanent limited property right
4 in the appropriation.⁴⁸ It will have a priority date that entitles it to seniority over more
5 junior water rights holders. On the other hand, applicants for TWUPs never receive a
6 permanent property right. Statutorily, TWUPs holders do not obtain a right to
7 appropriate water and the water they use remains subject to appropriation by others.⁴⁹
8 This difference in the interest sought establishes, as a matter of law, that applicants for
9 IFRs are not similarly situated to applicants for TWUPs. Therefore, there can be no
10 violation of the uniform application clause as a result of different treatment of
11 applications for these different rights.⁵⁰ CCC, as an applicant for an IFR, is not similarly
12 situated to an applicant for a TWUP on the same stream and, as a matter of law, there can
13 be no violation of the uniform application clause. Count 3 must be dismissed.⁵¹
14
15

16 otherwise, *as prescribed by law*, and to the general reservation of fish and wildlife.”
17 Alaska Constitution, art. VIII, sec. 13 (emphasis added).

18 ⁴⁸ Certificates of reservation are “permanent” in the sense that they are a limited
19 property right subject to due process. They can, however, be revoked or modified if
20 circumstances warrant. AS 46.15.145(f).

21 ⁴⁹ AS 46.15.155(c).

22 ⁵⁰ In its decision in the IFR appeal, the superior court, Judge Spaan, recognized that
23 IFR applicants and TWUP applicants were not similarly situated: “The fact that a
24 different type of permit, a TWUP, was issued for a different purpose does not, in the view
25 of this Court, violate the ‘first in time first in right’ statutory scheme.” Exh. J, p. 10; *see*
26 *also* Exh. J, p. 12 (TWUPs and IFRs “are different permits with different purposes and
requirements . . .”). The superior court also recognized that “the statutory scheme keeps
those who apply for water rights first at the front of the line” and that CCC’s priority for
its water right, if issued, had not been violated by the fact that a TWUP had been issued
for a purpose different from the IFR application. Exh. J, p. 10.

⁵¹ CCC may be arguing that the different fees charged for an IFR application and a
TWUP application violate the uniform application clause. Again, the difference in what
is being applied for, a temporary water use versus a permanent water right, establishes

1
2 **D. Count 4 must be dismissed because there is no statutory or regulatory**
3 **violation.**

4 In Count 4 of its Complaint, CCC alleges that DNR's failure to adjudicate
5 its IFR applications "violates the provisions of AS 45.15.145, 45.15.133 and 11 AAC
6 93.141-.146."⁵² However, nothing in the statutes cited by CCC requires DNR to
7 adjudicate applications within a particular time. Only after DNR publishes notice under
8 AS 46.15.133(a), are there statutory deadlines that apply to its adjudication.⁵³ DNR does
9 not contend that it can simply refuse to adjudicate water rights applications because the
10 statutes do not set a deadline for its adjudication. However, there are many factors that
11 can affect the timing of adjudication of a water rights application, including agency
12 funding, staff availability, state resource allocation priorities, and data acquisition
13 necessary to justify the application.⁵⁴

14
15 In fact, the regulations specifically contemplate that an IFR application may
16 not be adjudicated immediately. 11 AAC 93.142 (b)(4) allows an applicant to "specify

17
18 that the applicants are not similarly situated and the difference in fees does not violate the
19 uniform application clause. Further, the legislature specifically found that fees for
20 different water uses "should reflect the reasonable direct cost of providing the service."
21 Ch. 100, sec. 1, SLA 2001. There is substantially less agency time necessary to
22 adjudicate a temporary use of the state's water than is necessary to determine whether or
23 not an IFR is needed or is in the public interest. A difference in fees cannot be a basis for
24 a violation of the uniform application clause.

25 ⁵² Complaint, ¶ 66.

26 ⁵³ *E.g.*, persons may file written objections within 15 days of publication; the
application must be ruled on within 30 days of receipt of the last objection if no
discretionary hearing is held or within 180 days of receipt of the last objection if a
discretionary hearing is held. AS 46.15.133.

⁵⁴ In the IFR appeal, the superior court recognized that agency funding and staff
availability issues could affect the adjudication of an IFR application. The court stated
that it "has no authority over the hiring budget and work allocation at DNR, nor can it
force DNR employees to work faster than they do." Exh. J, p. 10.

1
2 the time period required to fully quantify the proposed reservation, which may be no
3 longer than three years after the date the application is accepted by the department for
4 filing.” (Emphasis added.) 11 AAC 93.142(d) also provides for an extension of this time
5 period, up to another two years for good cause. Under these provisions, it could be five
6 years before an adjudication really would be started, assuming that other considerations
7 then did not prevent it. As a matter of law, DNR’s treatment of CCC’s IFR applications
8 does not violate any existing state water use statute or regulation, and Count 4 must be
9 dismissed.
10

11 Furthermore, CCC has a statutory cause of action for testing whether or not
12 DNR has unreasonably delayed adjudication of its applications, and it has attempted to
13 assert it in this case. Although CCC has relied on the wrong statutory provision, CCC
14 brought a cause of action asking this court to determine that “DNR has unlawfully and
15 unreasonably withheld action on Chuitna Citizens and ADF&G’s instream flow
16 reservation applications.”⁵⁵ While CCC relies on AS 44.62 560(e) for this claim, that
17 reliance is misplaced.⁵⁶
18

19 Instead, AS 44.62.305 provides that “a person may obtain judicial relief in
20 an administrative matter from the superior court before the state agency handling the
21 administrative proceeding on the matter issues a final administrative decision if” four
22 criteria are met, one of which is that “the state agency has unreasonably delayed the
23

24 ⁵⁵ Complaint, Count 5, ¶70, relying on 44.62.560(e).

25 ⁵⁶ *McCarrey v. Comm’r of Nat. Resources*, 526 P.2d 1353 (Alaska 1974) (the
26 adjudicatory provisions of the Alaska Administrative Procedure Act found in
AS 44.62.330-44.62.630 do not apply to DNR’s decisions unless adopted by the agency).

1
2 progress of the administrative proceeding.” If the statutory criteria are met, the court
3 may, among other remedies, “establish a deadline for the state agency to issue a final
4 administrative decision.”⁵⁷ The question of whether or not CCC has satisfied the four
5 statutory criteria or is entitled to any relief under the statute is not at issue in this
6 motion.⁵⁸ What is important to this motion is that AS 44.62.305 provides the exclusive
7 basis for CCC’s challenge to the reasonableness of DNR’s processing of its IFR
8 applications. CCC does not have a cause of action for statutory violations under the
9 Water Use Act because there are no provisions in those statutes that require DNR to
10 adjudicate the applications within a particular time. DNR is entitled to have Count 4 of
11 the Complaint dismissed.
12

13 IV. CONCLUSION

14 For the reasons stated above, DNR asks the court to dismiss Cook
15 Inletkeeper from this action because it does not have standing, to dismiss Count 2
16 because Chuitna Citizens Coalition does not have standing to bring it, and to dismiss
17
18
19
20
21
22

23 ⁵⁷ AS 44.62.305(c)(3).

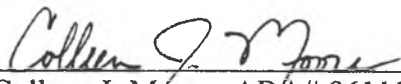
24 ⁵⁸ Similarly, whether or not CCC has satisfied the requirement of giving DNR
25 written notice at least 30 days prior to filing this action is not at issue in this motion. *See*
26 AS 44.62.305(b). What is relevant is that, if the facts warrant it, CCC has a statutory
cause of action to determine whether or not DNR is acting reasonably in connection with
processing its IFR applications. The court should not condone a fictitious cause of action
based on non-existent statutory deadlines.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Counts 3 and 4 as a matter of law on the undisputed facts.

Respectfully submitted on this 11th day of June, 2012.

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By: 
Colleen J. Moore, ABA# 8611126
Senior Assistant Attorney General
Attorney for Defendants

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Natural Resources

Office of the Commissioner
550 West 7th Avenue, Suite 1400
Anchorage, Alaska, 99501-3650
Phone: 907.269.8431
Fax: 907.269.8918

April 7, 2013

Senator Kevin Meyer
State Capitol Building, Room 518
Juneau, AK 99801

Dear Senator Meyer,

Thank you for the opportunity to provide the Senate Finance Committee a response to several questions that arose from yesterday morning's committee hearing on House Bill 77. Senator Hoffman requested that DNR provide a written response to NANA's March 30, 2013 letter and to the Memorandum from Rick Halford of April 5, 2013. In addition, we would like to provide the committee some information on the two pending court cases, and also some clarification on the constitutional issues, that are relevant to water reservations and HB77.

Before responding to those questions, I would like to take the opportunity to clarify some of the issues that have arisen with respect to how the Department of Natural Resources (DNR) manages Alaska's water resources. We have three principal tools that we use in managing our water resources. The first two, water rights and temporary water use permits (TWUPs), allow the public to remove water from waterbodies. These are the principal ways that Alaskans are authorized to use water, and the vast majority of our water authorizations are in these two categories. We receive hundreds of TWUP applications each year, for all manner of water uses (such as ice-bridge crossings, ice roads, ski resort snowmaking, village sewer and water projects, etc.), and these are critical to our economy and our communities. We work hard to process these so that Alaskans can have timely access to our water resources. I reiterate again, HB77 does nothing to reduce the ability of Alaskans to apply for, or obtain, either water rights or TWUPs for water removal.

HB77 only affects the third tool available, which is a water reservation. Water reservations preserve a specific quantity of water to remain in a water body, for public purposes. The water reservation process is lengthy and requires considerable data which can take from 3-5 years to collect and process. Because the reserved water is for a public use, we believe that a water reservation should be held by a public entity that is accountable to the public. We do not believe it appropriate for an industrial concern for example, an outside non-governmental organization (NGO) or even a person, to hold a reservation for the public benefit.

We are now being challenged on our ability to allow other uses of water (TWUPS and water rights) while we are adjudicating an application for a water reservation. We believe this will undermine the ability of Alaskans to use water. By putting the application process in the hands of public agencies, we believe that we will be better able to

ensure that Alaskans will have access to the water they need. In fact, we believe that HB77 will enhance Alaskan's access to water resources by removing a potential block to their use of water.

Nothing in HB77 diminishes the state's commitment to the protection of fish habitat. The Department of Fish and Game's (ADF&G) authorities are not being amended in any section of this bill, and ADF&G will continue protecting fish habitat by requiring fish habitat permits for proposed activities located within a resident fish stream or anadromous water body to ensure free fish passage and/or the proper protection of anadromous fish habitat. ADF&G will still coordinate with DNR before issuing any water authorizations, allowing DNR to put appropriate conditions and restrictions for the proper protection of fish habitat.

Moreover, DNR has demonstrated its commitment to protecting fish habitat. In the last three years, DNR has certificated 33 water reservations, over half of the reservations issued since statehood, and all but a few of these were for the protection of fish habitat. DNR continues to strive to eliminate the backlog of water reservation applications.

NANA Letter

NANA Regional Corporation, in their letter to the Governor, dated March 30, 2013, does not support or oppose the bill, but requests changes to HB77 that would continue to allow Alaska Native Corporations and Federally Recognized Tribes to apply for reservations of water. NANA also expresses concern in their letter that Section 40 of HB77 would eliminate the ability Alaska Native Corporations and other entities from reserving water rights.

I want to reiterate again that nothing in HB77 would prevent an Alaska Native Corporation, tribe, or other "person" from applying for or acquiring a water right for the use of water. We believe, in fact, that the proposed changes in HB77 would protect and further enhance the rights of all Alaskans to timely acquire water rights in an efficient way.

A Native Corporation or federally recognized tribe or other NGO will still be able to work with a public agency to gather the data necessary for submitting a thorough and supportable application for a water reservation. ADF&G has demonstrated that they are willing to work in this type of cooperation with NGOs. The only difference is that the NGO, tribe or Native Corporation would not be the applicant. Instead, ADF&G or some other governmental agency or political subdivision, such as the Northwest Arctic Borough, would be the applicant, and when a reservation certificate is issued, it would be issued to that public agency. The same data has to be collected and used to support the reservation. The same adjudication process and considerations are used to determine whether to grant the reservation.

There appears to be concern that a person would not be able to convince an agency to support an application, or to apply on their behalf. ADF&G has demonstrated their willingness to partner and to work toward the protection of fish habitat. Many of the non-governmental applicants already work closely with DNR and ADF&G to ensure that the data collection is done correctly, and all that work and effort is and will not be wasted.

NANA also expressed concern that the changes in HB77 would not result in efficiencies. Our concern is that reservations may become a tool for some to block other water uses (such as TWUPS and water rights) that are

necessary for types of development, such as the Red Dog Mine. We must look at this in the light of the recent court challenges, and the implications if the courts would rule that DNR must issue reservations before allowing any other water uses. This could substantially reduce our efficiency in issuing other beneficial uses of water while the longer water reservation process is completed. We believe such an outcome would be a significant detriment to NANA and other Native Corporations.

Rick Halford Memorandum

In his April 5, 2013 memorandum, Rick Halford points out that in the justification documentation for Mineral Closing Order 393, which closed 64 streams in the Bristol Bay region to mineral entry, DNR acknowledges that mining within these active stream channels could “jeopardize the commercial, sport, and subsistence harvest of salmon and the overall economic and sociocultural structural structure of the Bristol Bay region.” Mr. Halford continues, “The suggestion that the water reservations are a threat to mining operation fails to acknowledge that the mineral claimant does not have the rights to the waters or minerals underneath these streams because the Department closed these streams and a 100-foot buffer on either side to mineral entry many years ago.”

I must point out that a mineral closing order does not prevent the appropriation of water. The mineral closing order only closes the subsurface mineral estate to mineral entry, and prevents the staking of mining claims. Mining claims only provide for the exclusive right to the locatable minerals. Someone can still apply for a water reservation on a water body that is on a mineral closing order. What we are trying to address in HB77 is the possibility that someone could file such a reservation, and challenge us to prohibit any other use of that water while we are adjudicating that reservation application.

We certainly acknowledge that these streams are closed to mineral entry, that these streams are important fish habitat, and are important to the Bristol Bay region and the state. Nothing in HB77 changes this, nor does it diminish whatsoever our ability to protect these waters.

Mr. Halford also makes the point that none of the reservation applications we have received have “stopped anything.” While that is true, we are seeing challenges based on prior water reservation applications that could significantly impact our ability to issue authorizations.

Court Cases and Challenges

The Chuitna Citizens Coalition filed two challenges in Anchorage Superior Court – an administrative appeal and an original action – challenging DNR’s issuance of TWUPs under AS 46.15.155 and processing of applications for water reservations (referred to as in-stream flow reservations, or IFRs, in the court documents) under AS 46.15.145.

In the administrative appeal, Chuitna Citizens argued that DNR could not issue a TWUP for temporary water use by PacRim Coal, LLC, because Chuitna Citizens had “appropriated” the water under AS 46.25.155(a) by applying to reserve it under AS 46.15.145. The court agreed with DNR that Chuitna Citizens had not appropriated the water because they have filed a reservation application, but have not received a certificate of reservation under AS 46.15.145. The Court agreed with DNR that “an IFR applicant does not have a vested appropriative right under the Act”. The court found, however, that one of DNR’s regulations, 11 AAC 93.210, requires DNR to consider a

reservation application before issuing a TWUP on the same stream and that DNR had failed to do so. The Court said that the regulation “suggests that DNR must be cognizant of other water rights—including pending applications for water rights – when dealing with TWUPs.” The decision was based on a regulation, not statutory or constitutional grounds. I have attached a copy of the decision. DNR recently moved for reconsideration of this decision and the issue is currently pending before the court.

In the original action, also in Anchorage Superior Court, Chuitna Citizens asks the court to declare that DNR has a duty to adjudicate a pending reservation application before issuing any TWUP for the same water body, and to order DNR to adjudicate Chuitna Citizens’ reservation application before issuing any further TWUPs. We believe such a determination would have a detrimental and significant impact on the ability of Alaskans to access and use their water resources throughout the state in a timely and efficient way.

This case remains pending in the court. I have attached a copy of the state’s motion for the committee’s reference.

Constitutionality

Since there was confusion about the constitutionality of this bill, I want to offer this clarification. Department of Law has advised DNR that Section 40 of this bill does not violate the Constitution. The Legislature does not have a Constitutional duty to provide instream reservations of water to individuals. In fact, the statutory provision doing so has only been in existence since 1980.

Article VIII, Section 3 of the Alaska Constitution declares that “[w]henver occurring in their natural state, fish, wildlife and waters are reserved to the people for common use.” The legislature implements this “Common Use Clause” through multiple statutes setting rules for the harvesting of fish and game and access to and use of water.

Article VIII, Section 13 of the state constitution addresses water rights, declaring that (except for mineral and medicinal waters) surface and subsurface waters are subject to appropriation, subject to preferences among beneficial users (as determined by the legislature), “and to the general reservation of fish and wildlife.” During the Alaska Constitutional Convention deliberations in December, 1955, the section commentary by the Committee on Resources explained the intent that appropriations of water “are subject to the general reservation of fish and wildlife provided in Section 3 *so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.*” Constitutional Convention, Appendix V, p. 64 (emphasis added). Therefore, the language “and to the general reservation of fish and wildlife” -- the last phrase of Article VIII, Section 13 -- was intended to ensure that if water is appropriated and impounded in a reservoir, fish and wildlife using that water will remain a public resource under the Common Use Clause, rather than becoming the private property of the water right holder who appropriated the water. The language was not intended to create a constitutional requirement or right for in-stream reservations of water.

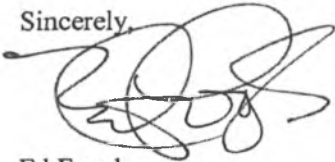
Conclusion

I would like to emphasize that the changes proposed in HB77 do not diminish whatsoever a person’s right to apply for water rights or temporary water use authorizations for the extraction or use of water. The proposed limitation of who can apply for water reservations will not diminish the protection of fish habitat, but rather would

Senate Finance Committee
April 7, 2013
Page 5

ensure that these reservations made in the interest of the public good are held by public agencies accountable to the public. These changes will provide ways for DNR to ensure projects are permitted in a timely, predictable and efficient manner while safeguarding the environment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Fogels', with a stylized flourish extending to the left.

Ed Fogels
Deputy Commissioner



ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., Ste. 105, Anchorage, Alaska 99503 (907) 563-9229 www.alaskaminers.org

April 5, 2013

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

Dear Senators Meyer and Kelly:

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

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

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

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

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

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

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

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

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

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

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

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

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

Two examples illustrate this point:

- ***Chakachamna Hydro and Trout Unlimited.*** When a company proposed the Chakachamna Lake Hydroproject west of Cook Inlet, the company was required to take flow measurements on the river downstream of the project. The company submitted the flow measurements to the state agencies. Trout Unlimited copied those measurements, adding no data of their own, and submitted them as an instream flow reservation application. Trout Unlimited's submission added nothing to the science: ADF&G already had the data and had authority to require a certain amount of water in the stream to protect the fish. The application added nothing to the process; it only positioned Trout Unlimited for a likely challenge to the project if it went forward. The project was dropped (for other reasons) and Trout Unlimited then stopped pursuing their application.
- ***North Slope Oil Exploration and Greenpeace.*** ADF&G has been gathering information for an instream flow reservation application on the Kuparuk River on the North Slope. Ten years ago, Greenpeace copied ADF&G's data, adding none of their own, and submitted ADF&G's data as a Greenpeace instream flow reservation application for the Kuparuk River. They then sued DNR. They argued that DNR could not allow any oil company to have a temporary water use from a side channel to the river until DNR adjudicated Greenpeace's application, which was expected to take years. If Greenpeace had prevailed, winter oil exploration in that part of the North Slope would have been stopped for years. DNR and ADF&G together defended the lawsuit and proved that the side channel was not connected to the Kuparuk River during the time that the oil companies needed to withdraw water. Once Greenpeace lost the agreement, they stopped pursuing their application.

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

to the permitting process. We believe it only positions these groups for a lawsuit if DNR/ADF&G approves a project's permits.

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

The Nightmare Scenario: any private group can stop oil exploration, mining exploration, or any other project for years just by applying for a water reservation.

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

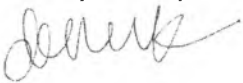
Unfortunately, this is not a far-fetched scenario: it is being argued right now in court. The coalition against the proposed Chuitna Coal Mine has made exactly this argument. Even though DNR and ADF&G have determined that the minimal water required for exploration has no adverse affect on the fish, those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

Contrary to the arguments taking place recently: there is a place for private groups to help, and that is working with ADF&G and DNR.

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

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

Thank you for your consideration,



Deantha Crockett
Executive Director



RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

Founded 1975

Executive Director

Rick Rogers

2012-2013 Executive Committee

Phil Cochrane, President

L.F. "Len" Horst, Sr. Vice President

Ralph Samuels, Vice President

Eric Fjelstad, Treasurer

Lorna Shaw, Secretary

Tom Maloney, Past President

Bob Berto

Patty Bielawski

J.B. "Bill" Brackin

Pat Carter

Steve Denton

Ella Ede

Stan Foo

Paul Glavinovich

Bill Jeffress

Scott Jepsen

Wendy Lindsnoog

Lance Miller

Kara Moriarty

Ethan Schutt

John Shively

Jeanine St. John

Scott Thorson

Cam Toohey

Directors

Todd Abbott

Greg Baker

John Barnes

Dave Benton

Jason Bergerson

Allen Bingham

Rick Boyles

Dave Chaput

Steve Connelly

Bob Cox

Dave Cruz

Allan Dolyunny

Paula Easley

Brad Evans

Corri Feige

Jeff Foley

Carol Fraser

Tim Gallagher

Ricky Gease

Matt Gill

Dan Graham

Chuck Greene

Scott Habberstad

Karl Hanneman

Rick Harris

Paul Henry

Steve Hites

Larry Houle

Teresa Imm

Mike Jungreis

Frank Kelty

Thomas Krzewinski

John Lau

Tom Lovas

Thomas Mack

John MacKinnon

Stephanie Madsen

Karen Matthias

Sam Mazzeo

Ron McPheters

James Mery

Denise Michels

Hans Neidig

Lisa Parker

Judy Patrick

Charlie Powers

Glenn Reed

Mike Satre

Keith Silver

Lorali Simon

John Sturgeon

Jan Trigg

Ex-Officio Members

Senator Mark Begich

Senator Lisa Murkowski

Congressman Don Young

Governor Sean Parnell

April 5, 2013

The Honorable Pete Kelly, Co-Chair
The Honorable Kevin Meyer, Co-Chair
Senate Finance Committee
Alaska State Legislature
State Capitol Room 532
Juneau, AK 99801

Re: Support of CS HB 77 - An Act relating to the Alaska Land Act (LAND USE/DISP/EXCHANGES; WATER RIGHTS)

Dear Senator Kelly and Senator Meyer:

The Resource Development Council for Alaska, Inc. (RDC) is writing in support of CS HB 77, 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.

RDC is a statewide, non-profit, membership-funded organization founded in 1975. The RDC membership is comprised of individuals and companies from Alaska's oil and gas, mining, timber, tourism, and fisheries industries, as well as Alaska Native corporations, local communities, organized labor, and industry support firms. RDC's purpose is to link these diverse interests together to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources.

It is a top legislative priority of RDC to encourage the state to promote and defend the integrity of Alaska's permitting process and advocate for predictable, timely, and efficient state and federal permitting processes based on sound science and economic feasibility.

The Alaska Legislature, to its credit, has provided the Department of Natural Resources (DNR) with additional resources to address what had become an untenable backlog of permits and authorizations. Such backlogs negatively affect our resource industries as well as individual Alaskans seeking required state authorizations. While a backlog still exists, DNR has made real progress in catching up on that work.

Ramping up staff to adjudicate the backlog is addressing the symptom, however systemic improvements to what has become a very complex set of statutes authorizing DNR's work is also needed to help prevent future backlog and delays. Governor Sean Parnell,

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503

Phone: 907-276-0700 • Fax: 907-276-3887 • Email: resources@akrdc.org • Website: akrdc.org

with support from DNR Commissioner Sullivan and his staff, has identified specific means of improving the efficiency of our complex permitting system. RDC applauds the administration for proposing numerous changes to the DNR enabling statutes in order to make their processes more timely and efficient. Adapting our key DNR statutes to ensure we are adjudicating our land and resource authorizations in a more timely and efficient manner is overdue.

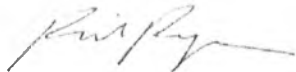
Furthermore, an improved permitting process could lead to more investment and job creation in Alaska. Alaska has some of the highest standards in the world for resource development projects. RDC does not believe this bill negatively impact those standards.

Specific to the issue of in-stream water reservations, State and Federal agencies should be the only entities that can reserve water for in-stream flow. When any "person" is allowed to apply for such reservations, such applications can be used as a tool to delay and frustrate the development of public and private resources. Restricting such reservations to the agencies ensures reservations are made for a legitimate public purpose, such as important habitat or navigability considerations.

RDC encourages members of the Senate Finance Committee to support the administration's efforts to more efficiently manage DNR's tremendous workload as the reach of the department affects a broad cross section of Alaska businesses, resource industries, and individuals. We encourage the passage of this legislation with an immediate effective date.

Thank you for the opportunity to comment.

Sincerely,



Rick Rogers
Executive Director

Doniece Gott

From: Jeanine St. John <JJOHN@llog.lynden.com>
Sent: Friday, April 05, 2013 11:23 AM
To: Sen. Pete Kelly; Sen. Kevin Meyer
Subject: Support of CS HB 77

Lynden completely supports HB77, and its immediate effective date. In stream flow should only be granted to state or regulatory agencies. This is not something to cower to the environmental lobby about.

Jeanine M. St. John

Vice President - Lynden Logistics

6400 S. Airpark Place Suite 1

Anchorage, AK 99502

(907)249-0215

Mobile (907)250-4038

Email: jjohn@lynden.com



Doniece Gott

From: Gould, Sherri L <Sherri.Gould@bp.com>
Sent: Friday, April 05, 2013 11:23 AM
To: Sen. Pete Kelly; Sen. Kevin Meyer
Subject: Please support CS HB 77

Dear Senator Kelly and Senator Meyer,

I am writing to you to encourage you to please support CS HB 77 – An Act relating to the Alaska Land Act.

I believe it is important for the State of Alaska to be open for business. A key component for any investment opportunity is permitting. An improved, efficient, and predictable permitting process could lead to more investment and more jobs. This is critical for the economic future of our great state.

Please support CS HB 77.

Sincerely,

Sherri Gould

18700 Upper Skyline Drive

Eagle River, AK 99577

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 11:14 AM
To: Senate Finance Committee
Subject: FW: Letter of Support HB77

From: Alicia Amberg [<mailto:alicia.amberg@hotmail.com>]

Sent: Friday, April 05, 2013 11:08 AM

To: Sen. Click Bishop; Sen. John Coghill; Sen. Mike Dunleavy; Sen. Fred Dyson; Sen. Dennis Egan; Sen. Johnny Ellis; Sen. Anna Fairclough; Sen. Hollis French; Sen. Berta Gardner; Sen. Cathy Giessel; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Pete Kelly; Sen. Lesil McGuire; Sen. Kevin Meyer; Sen. Peter Micciche; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Bill Wielechowski

Subject: Letter of Support HB77

Dear Senators:

Please accept this letter in **support of HB77**, an Act on Land Disposals/Exchanges; Water Rights. In the past year, the State of Alaska has embarked on an initiative to improve permitting statewide, and I believe HB77 is a giant step towards accomplishing that objective.

My family owns and operates a small placer mining operation in the Interior of Alaska, and if HB77 does not pass, this can tie up the permitting process even worse than it already is—in turn, compromising our livelihood.

This bill will streamline the permitting process so family operations like ours can stay in business. HB77 contains many elements that are good for Alaska's economy while protecting our environment, including the unnecessarily controversial water rights aspect.

I urge you to pass this bill as written, and ensure our permitting process is transparent, predictable, and is truly what is best for Alaska. Thank you for your consideration in this matter.

Alicia Amberg

3140 W. 34th Ave

Anchorage, AK 99517

907-230-1292

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 10:38 AM
To: Senate Finance Committee
Subject: FW: Hb77

-----Original Message-----

From: John MacKinnon [<mailto:John@agcak.org>]
Sent: Friday, April 05, 2013 9:49 AM
To: Sen. Kevin Meyer
Subject: Hb77

On behalf of the Associated General Contractors of Alaska on our 660 members, I offer the following comment in support of HB 77

The provisions proposed in HB77 will allow reasonable streamlining of a permitting process that has been identified on just about every occasion as cumbersome and overly restrictive. Where once the biggest obstacle to a development was getting financing, today the biggest obstacle is getting permission.

We do not believe this bill restricts legitimate rights and access. We believe it does help prevent preemptive actions by entities, lacking a nexus or standing, that could restrict others' legitimate rights to access or development. This specifically includes water reservation statutes, and the need for applicants to have a specific nexus and standing, and not a "global" representation. Clear distinction is made between those adversely affected versus aggrieved - those with standing or a nexus and those with a more global concern.

John MacKinnon
Executive Director

Sent from my iPad

This message has been scanned for malware by Websense. www.websense.com

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 2:07 PM
To: Senate Finance Committee
Subject: FW: Support of CS HB77

From: Anna Atchison [<mailto:Anna.Atchison@Kinross.com>]
Sent: Friday, April 05, 2013 1:40 PM
To: Sen. Pete Kelly; Sen. Kevin Meyer
Subject: Support of CS HB77

The Honorable Pete Kelly, Co-Chair
The Honorable Kevin Meyer, Co-Chair
Senate Finance Committee
Alaska State Legislature
State Capitol Room 532
Juneau, AK 99801

Re: Support of CS HB 77

Dear Senator Kelly and Senator Meyer,

I am writing in support of CS HB 77, 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.

An improved permitting process would lead to more investment and job creation in Alaska- a state with some of the highest standards in the world for resource development projects. I urge you to support HB77 in its current form.

Thank you,

Anna

Anna Atchison

Manager, Community and Government Relations

phone: (907) 490-2218

mobile: (907) 388-0044

fax: (907) 490-2290

anna.atchison@kinross.com

Fairbanks Gold Mining, Inc

A Kinross company

#1 Fort Knox Road, Fairbanks, AK, USA 99712

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 1:25 PM
To: Senate Finance Committee
Subject: FW: HB77 - Please pass as written

From: Renee Schofield [<mailto:renee@tss-safety.com>]

Sent: Friday, April 05, 2013 1:16 PM

To: Sen. Click Bishop; Sen. John Coghill; Sen. Mike Dunleavy; Sen. Fred Dyson; Sen. Dennis Egan; Sen. Johnny Ellis; Sen. Anna Fairclough; Sen. Hollis French; Sen. Berta Gardner; Sen. Cathy Giessel; Sennator.Lyman.Hoffman@akleg.gov; Sen. Charlie Huggins; Sen. Pete Kelly; Sen. Lesil McGuire; Sen. Kevin Meyer; Sen. Peter Micciche; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Bill Wielechowski

Subject: HB77 - Please pass as written

Dear Senators:

Regarding HB77, I am hopeful that you will support this bill. As a small business owner in SE Alaska, I have had some experience with the permitting process. Several years ago, my husband and I purchased property from the Ketchikan Gateway Borough as an investment. The 100 acre piece sits in Carroll Inlet, surrounded by Forest Service lands. Three years ago we began to develop that land and started the process to permit a hydro in Marble Creek, which transits the property. It took two years to get through the state process. Less than one year to do the Federal Energy Regulatory Commission process for the hydro. We have completed our permitting processes and are now moving forward with our project, but my point is this: ANYTHING that can help Alaskans grow a business, add a job, live the life of their dreams, should be done. HB77 does not rubber stamp anything, as I am hearing the environmental groups state. It simply gets us more efficiency in our current permitting process. I hope you will pass as written.

Thank you all for your service to all Alaskans. It is valuable work and very much appreciated.

~Renee

Start Saving with Safety.

Renee Schofield, CEO

TSS, Inc

Ketchikan, Juneau, Craig, Alaska

Keokuk, Iowa

TOLL FREE 877-225-1431

907.247.1431 V

907.247.1432 F

renee@tss-safety.com

www.tss-safety.com

The information contained in this e-mail is confidential material. It is intended only for the use of the designated recipient. If you are receiving this document in error, please contact our office immediately. Do understand that any review, dissemination, distribution, or copying of this material is strictly prohibited and may result in legal liability.

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 12:59 PM
To: Senate Finance Committee
Subject: FW: CS HB 77

-----Original Message-----

From: giones@gci.net [mailto:giones@gci.net]

Sent: Friday, April 05, 2013 12:38 PM

To: Sen. Click Bishop; Sen. John Coghill; Sen. Mike Dunleavy; Sen. Fred Dyson; Sen. Dennis Egan; Sen. Johnny Ellis; Sen. Anna Fairclough; Sen. Hollis French; Sen. Berta Gardner; Sen. Cathy Giessel; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Pete Kelly; Sen. Lesil McGuire; Sen. Kevin Meyer; Sen. Peter Micciche; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Bill Wielechowski

Cc: dave@kfqd.com

Subject: CS HB 77

Please do not do to the oil industry what the US Government did to the timber industry in SE Alaska! The Forest Service removed the resource from that industry. Our current tax structure removes the profit incentive from the oil industry. In both cases, we are seeing the industrial infrastructure diminish until the industry cannot recover. We are there in SE Alaska. The timber industry will not be back. Once the oil field support companies and facilities fade away and the pipeline is shut down, the oil industry will not be rebuilt. Believe it!

Please approve CS HB 77.

Thank you.

//Greg Jones

PO Box 670

Willow, AK 99688

Sent from my BlackBerry® smartphone

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 12:59 PM
To: Senate Finance Committee
Subject: FW: Support and Pass CS HB-77

From: Greg Beischer [<mailto:gbeischer@millrockresources.com>]

Sent: Friday, April 05, 2013 11:58 AM

To: Sen. Click Bishop; Sen. John Coghill; Sen. Mike Dunleavy; Sen. Fred Dyson; Sen. Dennis Egan; Sen. Johnny Ellis; Sen. Anna Fairclough; Sen. Hollis French; Sen. Berta Gardner; Sen. Cathy Giessel; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Pete Kelly; Sen. Lesil McGuire; Sen. Kevin Meyer; Sen. Peter Micciche; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Bill Wielechowski

Cc: resources@akrdc.org; deantha@alaskaminers.org

Subject: Support and Pass CS HB-77

Senators,

Our company Millrock Resources explores for metallic mineral deposits all over the State of Alaska. We have attracted significant investment from major mining companies by developing exploration projects or merit. Millrock has created jobs and brought business opportunity to rural and urban areas alike.

Project permitting that is predictable and timely in schedule would make Alaska more attractive to industry, and consequently our ability to attract venture capital funding for the exceptionally high-risk business of mineral exploration could be significantly enhanced. Jurisdictions throughout the world compete for mineral exploration investment. Alaska must do everything it can to compete. Streamlining the permitting system helps make Alaska more competitive.

On behalf of myself as a private citizen and on behalf of Millrock Resources I encourage you to pass CS HB-77.

Gregory A. Beischer

President & CEO

Millrock Resources Inc.

907-677-7479

907-350-9791 cell

gbeischer@millrockresources.com

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 12:59 PM
To: Senate Finance Committee
Subject: FW: CS HB 77

From: Scott Spickler [<mailto:sspickler@gmail.com>]

Sent: Friday, April 05, 2013 11:55 AM

To: Sen. Click Bishop; Sen. John Coghill; Sen. Mike Dunleavy; Sen. Fred Dyson; Sen. Dennis Egan; Sen. Johnny Ellis; Sen. Anna Fairclough; Sen. Hollis French; Sen. Berta Gardner; Sen. Cathy Giessel; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Pete Kelly; Sen. Lesil McGuire; Sen. Kevin Meyer; Sen. Peter Micciche; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Bill Wielechowski

Subject: CS HB 77

Dear Senators,

I would like to urge you to pass this bill this session. The in stream water reservation system as it is currently in place needs to be fixed. State and Federal agencies should be the only agencies to allowed to apply for such reservations.

It is painfully obvious that the environmental extremist's will continue to abuse the system to halt and delay responsible development of any kind in Alaska and this bill would help rectify that problem.

Thank you,

Scott Spickler
10754 Horizon Dr.
Juneau, AK. 99801

907-789-3780

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 1:01 PM
To: Senate Finance Committee
Subject: FW: CSHB 77 (RES)

From: Steve Denton [<mailto:dcandm@mtaonline.net>]
Sent: Friday, April 05, 2013 12:52 PM
To: Sen. Pete Kelly; Sen. Kevin Meyer
Cc: Sen. Peter Micciche; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Click Bishop; Sen. John Coghill; Sen. Mike Dunleavy; Sen. Fred Dyson; Sen. Dennis Egan; Sen. Johnny Ellis; Sen. Anna Fairclough; Sen. Hollis French; Sen. Berta Gardner; Sen. Cathy Giessel; Sen. Lyman Hoffman; Sen. Charlie Huggins
Subject: CSHB 77 (RES)

Honorable Senators Kelly and Meyer,

Please enter my comments as follows into the record for the Finance Committee with respect to your deliberations on CSHB 77 (RES).

I am a lifelong Alaskan and have spent a significant portion of my career acquiring or assisting others acquire permits for development projects for general economic development and resource extraction. I have experienced firsthand the long path often required to obtain relatively straight forward authorizations. Commonly, the delays are the result of clever manipulation of the permitting process by entities that have only tangential, if any, meaningful connection to the proposed project or the area where it is proposed. HB77 takes a very positive step towards making Alaska's permitting process more effective and responsive to delivering the benefits of our natural resources to its citizens and reducing the burden of permitting low impact activities by residents. There are three provisions of the bill that I believe will be particularly effective at improving our permitting process.

1. It authorizes the State to issue general permits for routine and common activities. General permits are a concept that has worked well for a variety of activities, such as issuance of firewood cutting permits, and should be expanded in a broad sense to cover any activity that would have insignificant impact on State land and resources.
2. It requires that parties be "substantially and adversely affected" by a proposed action to appeal a decision by a State agency. Too often, parties with little or no connection to a proposed activity but have a broad philosophical objection to such activity are able to frustrate and delay the permitting process. These "aggrieved" parties inject significant expense and delay into the process with no meaningful benefit to the State,

local residents or the party requesting the authorization. HB77 appropriately sets a little higher and appropriate standard for standing in the appeals process.

3. Removes the ability of a "person" to initiate water rights reservation action. Water is a major State resource and it supports a broad array of purposes and uses, from fish habitat to industrial processes. Any permitting action which requires use of State waters will go through a rigorous examination of competing uses and if the proposed action would negatively impact an existing important use, such as for fish passage or habitat, appropriate mitigation provisions will be included or the activity will not be permitted. The close coordination between State agencies responsible for management of Alaska's resources and the public involvement in any significant permit action, make it highly unlikely any meaningful use of a water resource will be overlooked in the permitting process. For the reasons noted above, it is necessary to limit the opportunity for mischievous use of the water reservation process by "persons" who have little vested interest, except on a broad philosophical level.

The State's permitting agencies are universally committed to conducting their permitting actions in a manner that protects the interests of residents in proximity to a proposed development, balances multiple use concepts for State resources and protects the interests of the State as a whole. It is in everyone's best interest to remove roadblocks to efficient and effective management of Alaska's resources by our State agencies and HB77 makes important steps in that direction. I urge you to approve and pass the bill out of the Senate Finance Committee, as presented, for passage by the Senate so it may become law this year.

Sincerely,

Steve Denton

PO Box 149

Healy, Alaska 99743

Phone 907-683-2492

Cell 907-322-5972

dcandm@mtaonline.net

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 2:14 PM
To: Senate Finance Committee
Subject: FW: SJR9/HJR1 Concerns
Attachments: SJR9-HJR1 Concerns.pdf

From: Debbie Tressler [<mailto:DTressler@KPBSD.k12.ak.us>]

Sent: Friday, April 05, 2013 2:10 PM

To: Sen. Click Bishop; Sen. John Coghill; Sen. Gary Stevens; Sen. Cathy Giessel; Sen. Peter Micciche; Sen. Anna Fairclough; Sen. Bert Stedman; Sen. Berta Gardner; Sen. Bill Wielechowski; Sen. Charlie Huggins; Sen. Donny Olson; Sen. Johnny Ellis; Sen. Kevin Meyer; Sen. Lesil McGuire; Sen. Lyman Hoffman; Sen. Pete Kelly;
Senator Mike Dunleavy@legis.state.ak.us; Sen. Johnny Ellis; Sen. Fred Dyson; Sen. Dennis Egan

Subject: SJR9/HJR1 Concerns

Dear Legislator,

Please see the attached letter from Steve Atwater, Ph.D., superintendent of schools, regarding HJR 1 and SJR 9.

Note: This letter was originally sent as a merged email but was blocked or not delivered. I apologize if you have received this letter twice. Sending it to you in this format was the only way to guarantee that you received the information in a timely and correct manner.

Thank you.

Debbie Tressler

Administrative Secretary

Superintendent/School Board

Kenai Peninsula Borough School District

148 N. Binkley St.

Soldotna, AK 99669

April 5, 2013
Senator Kevin Meyer
Co-Chair Senate Finance Committee
State Capitol Room 518
Juneau AK, 99801

RE: HB 77

Dear Senator Meyer:

There are a number of bills being considered this legislative session that change the process for development throughout the state, including HB 77 in the Senate Finance Committee. The changes proposed in this bill will have sweeping effects across the state and villages like mine will be greatly impacted. Specifically, this bill will sacrifice Alaskan's rights to participate in natural resource decisions with less public oversight and input.

I am writing on behalf of the Nuiqsut Tribal Council, a federally recognized tribe and the governing body in the Native Village of Nuiqsut. In just a short period of time our entire village has transformed because of oil and gas development on state lands. Once already we have had to relocate, and drill rigs are placed closer and closer to the community. The nearest drill rig is just 4 miles from town. This has severely impacted my village's traditional hunting grounds, which extended in all directions including beyond Alpine through Prudhoe Bay, also because oil and gas activities are allowed to occur during summer and winter seasons during critical subsistence harvesting times. The public should continue to have a voice in future development projects, as we have to fight for our subsistence rights, land, and even clean air and water while these projects occur.

This bill, if passed, will weaken meaningful opportunities for public participation in natural resource decision making by eroding standards within the state's regulatory process. Most notably, this bill would remove mandatory notice and comment periods for preliminary Best Interest Findings (BIF). Taken with another bill being considered, SB 59, which would remove necessary BIFs from later phases of oil and gas projects, the public input on projects gets disregarded. This bill also limits who can participate in the administrative process to challenge flawed decisions.

This bill would also deny the public's right to in-stream flow reservations that protect salmon habitat. The Native Village of Nuiqsut is home to rich and diverse fisheries, including king salmon, silver salmon, white fish, chum salmon, geryling, bering cisco, broad white fish, arctic char, arctic cisco, burbot, and more. DNR routinely processes water use applications for mining, oil, and gas corporations but almost never processes in-stream flow applications to keep water in the streams for fish. The legislature should recognize that Native Villages, local governments, and all Alaskans have the right to healthy salmon by keeping the right to in-stream flow reservations.

In order to protect the rights of our tribes and the public to have required and meaningful input, I urge the Senate Finance Committee to vote against HB 77. Protect the rights of Alaskans.

Sincerely,

Martha A. HAA

Cc:

Senator Pete Kelly, Senator.Pete.Kelly@akleg.gov
Senator Anna Fairclough, Senator.Anna.Fairclough@akleg.gov
Senator Click Bishop, Senator.Click.Bishop@akleg.gov
Senator Mike Dunleavy, Senator.Mike.Dunleavy@akleg.gov
Senator Lyman Hoffman, Senator.Lyman.Hoffman@akleg.gov
Senator Donald Olson, Senator.Donny.Olson@akleg.gov

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 4:53 PM
To: Senate Finance Committee
Subject: FW: CS HB 77

From: Michael N Jespersen [<mailto:iespersen@clearwire.net>]
Sent: Friday, April 05, 2013 4:49 PM
To: Sen. Click Bishop; Sen. John Coghill; Sen. Mike Dunleavy; Sen. Fred Dyson; Sen. Dennis Egan; Sen. Johnny Ellis; Sen. Anna Fairclough; Sen. Hollis French; Sen. Berta Gardner; Sen. Cathy Giessel; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Pete Kelly; Sen. Lesil McGuire; Sen. Kevin Meyer; Sen. Peter Micciche; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Bill Wielechowski
Subject: CS HB 77

Senators,

Please pass CS HB 77.

Many people have incorrectly stated that this bill will “rubber stamp” or “automatically approve” large mines. **This is simply not true!**

CS HB 77 simply forces agencies to take action on a permit without undue delay.

When the proper documentation is presented to the regulatory agencies there is no reason to delay a permitting decision. Deny, approve, or request additional information in a timely manner. The simple improvements provided for in CS HB 77 will help speed investment, and thus tax revenue in our state.

Respectfully,

Michael Jespersen

Anchorage, AK

907.3173.4313

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 4:53 PM
To: Senate Finance Committee
Subject: FW: Support CS HB 77

From: Heinold, Wesley J [<mailto:Wesley.J.Heinold@conocophillips.com>]

Sent: Friday, April 05, 2013 4:41 PM

To: Sen. Click Bishop; Sen. John Coghill; Sen. Mike Dunleavy; Sen. Fred Dyson; Sen. Dennis Egan; Sen. Johnny Ellis; Sen. Anna Fairclough; Sen. Hollis French; Sen. Berta Gardner; Sen. Cathy Giessel; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Pete Kelly; Sen. Lesil McGuire; Sen. Kevin Meyer; Sen. Peter Micciche; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Bill Wielechowski

Subject: Support CS HB 77

HB77 was introduced by the Governor to address concerns about permit backlogs and delays, and was proposed to create efficiencies within regulatory agencies. Alaska desperately does not need further delays.

The US rates with Papua New Guinea for project approval timelines. When was the last time we competed with underdeveloped Nations? As a resident of the state, I ask for your support in approving HB 77

Wes Heinold - Anchorage



The Honorable Sean Parnell
P.O. Box 110001
Juneau, AK 99811-0001

March 30, 2013

Dear Governor Parnell:

NANA Regional Corporation neither supports nor opposes House Bill 77/Senate Bill 26, introduced at your request; however we would like to express a concern with a proposed change in the bill.

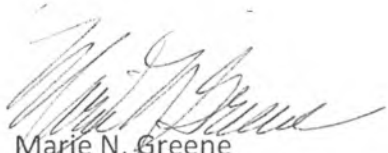
Section 40 would eliminate the ability of "a person" to reserve water rights. Under the existing statute (AS 46.15.145(A)), Alaska Native Corporations ("ANCs") created pursuant to the Alaska Native Claims Settlement Act, as well as other entities and individuals, are eligible to apply for reserved water rights as "a person." We respectfully urge you to either revoke Section 40 or seek to amend it in a manner that would continue the eligibility of ANCs and Federally Recognized Tribes to apply for water reservations.

Eliminating the eligibility of ANCs to apply for water reservations will not result in the efficiencies HB77 and SB26 are intended to create. According to the document "Water Reservations Quantity by Applicant," available in the legislative record, there are 371 pending reservation applications, 37 of which were submitted by non-governmental entities. With the vast majority of pending applications submitted by public agencies, eliminating the ability of "a person" to apply for water rights would not solve the existing back-log in processing the applications. While no ANCs have applied for a water reservation to date, NANA is active in responsible resource development, and therefore opposed to eliminating the opportunity to utilize this avenue in the future.

NANA would support an amendment to Section 40 that adds ANCs and Federally Recognized Tribes to the list of entities that may apply for water reservations. NANA would also support the deletion of Section 40 of the bill, which would leave in place the ability of "a person" to apply for water reservations.

Thank you for considering our concern, and thank you again for the efforts of DNR to create efficiencies in the State permitting processes.

Sincerely,



Marie N. Greene
President & CEO

CC:

Senator Donny Olson

Representative Ben Nageak

Doniece Gott

From: Sen. Kevin Meyer
Sent: Saturday, April 06, 2013 9:12 AM
To: Senate Finance Committee
Subject: FW: HB 77

From: George Matz [<mailto:geomatz@alaska.net>]
Sent: Saturday, April 06, 2013 7:32 AM
To: Sen. Kevin Meyer
Subject: HB 77

Dear Senator Meyer

You were mentioned in a news article that you didn't want to send HB 77 to review by a subcommittee because you don't want to kill the bill. Nevertheless, HB 77 has significant flaws that need further study and should be held over till the next session. From the public perspective there is no rush to pass this significant and far reaching legislation, although some pending permit applications might be pleased with quick action so they can have a more lax permitting system. I really encourage you to look at these issues more closely and to seek input beyond what DNR says. I have reviewed a few of their permits lately and have found that their analysis can not be trusted. Please hold HB 77 off to the next session to give more time for review.

George Matz

Kevin Greenfield
3300 North Shore Drive
Anchorage, Alaska 99502

April 5, 2013

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

Dear Senators Meyer and Kelly:

I am writing you in support of HB77. I am a Placer miner in the interior of Alaska. Having a stable predictable permitting system is critical to our business.

Section 40 restricts "instream flow" water rights to public agencies. It is critical that you keep this section as it is currently written. This section will prevent special interests from reserving in stream water rights for the only purpose of obstructing development in the State. I urge you to support HB77 as written with no amendments to this section.

I think it is unnecessary to have a 2 year waiting period for this bill to take effect. Environmental groups and others have already made applications to tie up the instream water rights of the State. It is important to return this right only to State Agencies as soon as possible.

HB77 has many things that are good for our business and other businesses in Alaska. I urge you to support and pass this legislation.

Thank you for your consideration.

Sincerely,
Kevin Greenfield

CS HB77(RES): LAND DISPOSALS/EXCHANGES; WATER RIGHTS

BRIEFING PAPER

FOR THE SENATE FINANCE COMMITTEE • MARCH 13, 2013

In 2010, the Governor of Alaska and the Department of Natural Resources (DNR) embarked on an initiative to improve the State of Alaska's permitting processes in order to advance the public interest by ensuring projects are permitted in a timely, predictable and efficient manner while safeguarding the environment.

During the 2012 Legislative session, the Governor introduced HB 361, which included the highest priority changes related to leasing and disposal programs that would help reduce the permitting burden on the applicant and free more time for staff to work on processing applications. The Division of Mining, Land and Water (DMLW) in DNR has identified additional statutory changes that would help streamline permitting requirements for the public to use and enjoy Alaska's land and resources.

The bill would accomplish the following primary objectives:

- 1) Gives the Commissioner the ability to issue a general permit for activity on state land if the activity is unlikely to result in significant and irreparable harm to state land or resources. (Section 1)
 - Standardizes the permitting of certain types of activities on state land so that the agency may issue individual permits for that activity without being required to adjudicate each permit separately.
 - Although there is arguably the authority in statute to do general permits, it is not explicitly called out.
 - As part of the Governor's Permitting Efficiency Initiative, the department will be doing general permits for certain activities that can have standardized authorizations.
- 2) Give the Division more flexibility in its authority to exchange land or interests in land when it is in the best interest of the State. (Sections 22, 23, 24, 25, 27 and 43)
 - Enables DNR to resolve land management issues with other entities, such as a government agency, a native corporation or other organization, on a timelier basis.
 - Currently, the process for a land exchange takes years to occur and is rarely successful due to the complexity of the current process, the long lead times to complete some of the current statutory requirements, and unique timing requirements involving public noticing, survey, and appraisal. Continuation of the current approach will result in unresolved land ownership patterns and the inability to make state land patterns more efficient.

- Existing statutes (AS 29.65.090) include a land exchange provision between DNR and boroughs and municipalities, which takes only months and have always been successful. This change in statute is patterned after this approach.
- 3) Amend statutes to allow all land and property sales to be purchased by contract instead of by payment in full up-front. (Sections 7, 8 and 9)
- Currently, DMLW issues contracts for any customer requesting financing for any purchase of state land; however, this practice could be subject to a legal challenge because the law only mentions sales at auction. If successful, a challenge would force DMLW to require all land purchases, except for those by auction, to be paid in full at the time of purchase, which would significantly lower land sales as most people would be unable to fully finance the cost up-front. An estimated one-third of all land sold is by auction. This puts two-thirds of the state's sales at risk if the state cannot finance the purchase. The monetary loss is estimated at over \$2 million a year.
 - This revision clarifies DMLW's ability to issue installment contracts or accept payment in full up-front to a majority of land sales sold through preference right cases; Public and Charitable cases; Initial Over-the-Counter Sales; Over-the Counter sales; and Remote Recreation Cabin Sites.
- 4) Allow the director of the Division of Mining, Land and Water to extend, one-time, for a period of up to two years in duration, an existing land or tidelands lease if it is determined to be in the best interest of the state. (Sections 10 and 16)
- Allows leases to remain active for two years while DMLW adjudicates a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where a new best interest finding and decision must be issued under AS 38.05.035(e).
 - Preserves the lessee's rights from being extinguished while the state is actively working to issue a new lease or move to a purchase contract.
 - This statute change covers both regular leasing (e.g. shoreland, tideland, or submerged land) and aquatic farm and hatchery site leases.
- 5) Allow the director of the Division of Mining, Land and Water to renew, one-time, for a period of up to ten years in duration, an existing aquatic farm lease if it is determined to be in the best interest of the state. (Sections 15 and 16)
- Allows leases to be renewed for up to another ten years if the lease operations remain the same and the lessee is in good standing with the state.
 - Preserves the lessee's rights from being extinguished at the end of the lease and provides the department with the flexibility to maintain a productive aquatic farm in place rather than having to offer a new lease through a competitive process.

6) Clarify that the commissioner may issue one or more new temporary water use permits for the same project. (Section 42)

- Under current statutes, a Temporary Water Use Authorization (TWUP) permit may be authorized “...for a period of time not to exceed five consecutive years...”
- The proposed change would clarify that successive Temporary Water Use Authorizations may be applied for, adjudicated and issued for the same project.
- TWUPs are not permanent water rights. The division may change or revoke TWUP as necessary to protect water right holders or the public interest, and TWUPs are mainly used by exploration projects and construction projects that are not conducive to permanent water rights because the water use is of a temporary nature and because water sources, water uses, water use quantities and water use locations frequently change.

7) Amend water reservation statutes to limit the application for reservations of water related to maintaining instream flow to federal or state agencies or political subdivisions of the state and reduce the mandate to re-evaluate water reservations (Section 40 and 41)

- This revision would prevent non-agency entities from being able to apply for the reservation of water; this does not affect holders of, or applicants for, standard water rights, temporary water use permits or water removals
- A “person” was added to the statute to allow miners to apply for and receive a water reservation for sanitary and water quality purposes; usually associated with mixing zones. However, no applications for these reservations have ever been filed. Mining interests can still receive TWUPs or water rights for sanitary and water quality purposes from the department
- No other state allows private persons to reserve and hold reservations to public water;
- The removal of the word “person” does not preclude an organization or individual from working with a municipal government, state or federal agency, so that the agency can apply for a reservation. In this manner, the appropriate policy level review and criteria for each agency or governmental entity are used. In addition, these agencies will be able to identify the funding and technical expertise needed to perfect these applications
- As of December 31, 2012, there were 371 applications pending for instream water reservations. Out of those, 35 are applications that have been applied for by a person (non-agency). Within one year, if requested by an applicant who is no longer authorized to apply, DNR shall transfer pending applications to an entity identified by a state, Federal agency or a political subdivision of the state. If, within, two years, DNR does not receive notice that an entity intends to pursue the same or smaller reservation, then the application and fee will be returned to the original applicant. If a certificate of reservation is issued, the certificate will carry the priority date of the original application.

- Of the 61 issued certificates for Water Reservations, all are issued to government entities (DNR, ADF&G, and BLM). No certificates for Water Reservations have ever been issued to “persons” in the state of Alaska.
 - The commissioner is currently required to review all reservations of water every ten years to determine whether the statutory purpose for which the reservation was issued still apply to the reservations. Due to the number of existing and future reservations, and the limited resources available to the department, this is beyond the capacity of the department.
- 8) Allow people to carry small quantities of water from one hydrologic unit to another without violating the law. (Section 34)
- Currently there is no de minimis amount of water that is exempt from the provisions of AS 46.15.035 and thus any person that transports water out of a hydrologic unit without returning the water back to that same hydrologic unit would be in violation of statute.
 - Amends the statute to prevent a technical violation of the statute governing water removal from a hydrologic unit for even small amounts of water while still maintaining a requirement for an application for water rights or temporary water use for a significant amount of water. The phrase “significant amount of water” is already defined in Alaska Administrative Code section 11 AAC 93.035.
- 9) Amends various statutes related to appeals, requests for reconsideration and best interest findings to clarify administrative review process and rights to allow only a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of a decision, and establishes a requirement that an appellant must demonstrate their standing to appeal or request reconsideration. (Sections 4, 5, 11, 13, 14, 29, 30, 31, 32, 33, 38 and 39)
- Aims to allow only appellants who have a vested interest or who will be harmed by a decision to appeal and prevent the public from using appeals as a method to block permitting of projects on what is later found to be groundless claims or casual objection.
 - Allows the department to require a person’s participation in the public review process in order to be eligible to appeal or request reconsideration.
 - Amends the statute so that failure of the commissioner to act on the request for reconsideration for a decision not made under AS 38.05.035(e) within 30 days of the final written decision is a denial of the request and would stand as a final administrative decision for purpose of appeal to the superior court.
 - Clarifies that review procedures under the coal regulatory program (Alaska Surface Mining Control and Reclamation Act – ASMACRA) are not subject to AS 44.37.011.

- 10) This bill clarifies that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945 not just mineral closing orders. (Section 19)
- Amends the statute to reflect the need for the public to be aware of actions that limit the use of the mineral estate on state lands. This is inclusive of both closing and opening of areas and limitations placed through leasehold location orders.
- 11) This bill revises statutes to eliminate public notice for alterations of platted boundaries if owners approve and no public easements or rights-of-way are affected. (Section 28)
- For example, if a person owns two lots and wishes to remove the boundary line or change the configuration of the two lots, the re-platting process with public notice is required, which adds months to the subdivision process without any added benefit or effect on the public.
 - This will save at least 30 days of review and speed up adjudication of plat reviews in the unorganized borough.
- 12) Clarify the definition of “public auction” to include public oral outcry auction and public on-line auctions. (Section 21)
- Addition of this definition of “public auction” in statute would verify that outcry auctions and online competitive auctions are “public auctions” under the state’s land sale statutes;
 - Allow DMLW to use a web auction process that would accelerate and simplify the process for over the counter land sales;
 - DMLW anticipates creating an “eBay-style” process for selling land, making it easier for the public to bid on land thus enhancing land sales and creating more income for the Land Disposal Income Fund (LDIF).
- 13) Amend AS 38.05.035(e) (Best Interest Finding) and AS 38.05.945(a) (Public Notice) to clarify that the director of the Division of Mining, Land and Water has the authority and discretion to issue preliminary decisions and public notice for non-oil and gas related decisions. (Sections 3, 17, 18 and 19)
- Clarifies how preliminary decisions can be used for non-oil and gas related decisions in order to have consistency between several portions of the bill.
- 14) Miscellaneous minor statutory revisions (Sections 2, 3, 6, 12, 20, 35, 36, and 37)
- Provides minor wording revisions to make statutes more readable and understandable.
 - Provides clarification of statutory intent.

CS HB 77(RES): LAND DISPOSALS/EXCHANGES; WATER RIGHTS

SECTIONAL ANALYSIS

FOR THE SENATE FINANCE COMMITTEE • MARCH 13, 2013

Section 1 adds a new subsection (c) to AS 38.05.020 to allow the Commissioner the ability to issue a general permit for activity on state land if the activity is unlikely to result in significant and irreparable harm to state land or resources except for land covered in: fish and game habitats (AS 16.20), the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21), forest resources (AS 41.17) and parks and recreational facilities (AS 41.21).

Section 2 removes the reference to the additional requirement that the director of the division of Mining, Land and Water shall consult with other departments during the negotiation of a land exchange (AS 38.50.090), as this provision is deleted in Section 43 of the bill. This provision is replaced in Section 22 with the addition of language referring to decision and review procedures established in AS 38.05.035(e).

Section 3 allows the director to execute a contract for the sale, lease, or other disposal of land or an interest in land without commissioner approval if the annual rental is not greater than \$10,000 (rather than \$5,000). This section also clarifies that the director of DMLW may provide a preliminary written best interest finding and public notice for non-oil and gas related land disposals.

Section 4 clarifies that only a person who is substantially and adversely affected by a final written best interest finding related to the sale, lease, or disposal of land may appeal a director's decision. It also adds that the applicant may also appeal the decision.

Section 5 clarifies that it is considered a denial if the Commissioner does not act on a request for reconsideration 30 days after issuance of the final written finding.

Section 6 states in an administrative appeal to court, a court can only deal with points presented to the commissioner in the appeal or request for reconsideration.

Sections 7 through 9 amend statutes to allow land and property sales to be purchased by contract or by payment in full up-front. Sections 8 and 9 remove references to AS 38.05.065(b) related to sale of land by lottery, which is repealed in Section 43 as the newly created Section 7 now includes all land sales.

Section 10 adds a new subsection (f) to AS 38.05.070 that allows a one-time extension by the director of DMLW for a period of up to two years for an existing land lease if in the best interest of the state. This section allows leases to remain active while DMLW adjudicates a request to renew the lease, a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 11 amends AS 38.05.075(a) so that only a bidder who is substantially and adversely affected by the issuance of a determination of highest bidder in a lease sale may appeal for a review of the determination.

Section 12 amends language related to prequalification of bidders for a lease to make the time constraints more easily understood.

Section 13 amends AS 38.05.075(h) so that only a person substantially and adversely affected by the department's prequalification decision may appeal or request reconsideration no later than 5 days after the decision is released.

Section 14 clarifies that only an applicant substantially and adversely affected by the department's decision related to leases for fisheries development may appeal or request reconsideration no later than 20 days after the decision is issued. This section also clarifies that appeals to DNR and superior court would now be addressed under AS 44.37.01 and therefore the sentence providing appeal to superior court is deleted.

Section 15 and 16 relate to aquatic farming leases. Section 15 removes the reference to lease renewals as Section 16 adds a new subsection related specifically to renewal of aquatic farm leases. Section 16 allows the director of DMLW to issue a one-time renewal, for a period of up to ten years in duration, of an existing aquatic farm lease if it is determined to be in the best interest of the state. Section 16 also provides that the director may extend aquatic farm leases for up to two years while a renewal application is pending or where the lessee plans to substantially change the purpose or operation of an existing lease such that a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 17 amends AS 38.05.185(a) to allow the director of DMLW to make a preliminary written decision for a mineral order or leasehold location order regarding availability of land to mineral leasing or entry. This conforms to amendments made in Section 19.

Section 18 amends AS 38.05.300(a) to allow the director of DMLW to make a preliminary written decision regarding the classification or reclassification of state land. This conforms to amendments made in Section 19.

Section 19 amends the public notice statute AS 38.05.945(a) to include public notice for various preliminary decisions or final decisions if a preliminary decision is not issued. This section clarifies that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945, not just mineral closing orders.

Section 20 clarifies the definition of "state land" includes shoreland and tideland in AS 38.05.965(21). Previous definition included "shore" and "tide."

Section 21 adds a definition to include that "public auction" includes a public oral outcry auction and a public online auction.

Sections 22 through 27 give DMLW more flexibility in its authority to exchange land or interest in land when it is in the best interest of the State. Section 22 is modeled after AS 29.65.090 which provides for exchanges between DNR and boroughs and municipalities. Subsequent sections make conforming amendments.

Section 28 revises the statute to exclude the requirements of AS 38.05.305(e) for alterations of platted boundaries if all owners approve and no public easements or rights-of-way are affected.

Sections 29 through 33 amend statutes to allow only either an applicant or a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of DNR decisions. Section 29 clarifies when the requirements of AS 44.37.011 is applicable. Section 32 clarifies that a person has 20 calendar days after the issuance date of a final department decision in which to file an appeal or request for reconsideration. Section 33 adds new subsections to define what it means to be adversely affected and outlines additional requirements in the DNR administrative appeal process.

Section 34 would allow people to carry small quantities of water from one hydrologic unit to another without violating the law.

Sections 35 through 37 make minor wording revisions related to water statutes that preserve the original intent of the statute.

Sections 38 and 39 continue the changes made to statutes related to appeals including a requirement that a person be "adversely affected" as defined in Section 39 in order to appeal a decision regarding a proposed sale or application for appropriation or removal of water.

Sections 40 and 41 amend water reservation statutes to limit the application for reservations of water to federal or state agencies, or political subdivision of the state. Section 41 removes the requirement that the commissioner review all reservations of water at least once every ten years and provides that the commissioner may review reservations of water at any time.

Section 42 amends AS 46.15.155(a) to clarify that the commissioner may issue one or more new temporary water use permits for the same project.

Section 43 repeals certain statutes that have been modified in other sections of this bill related to land sale contracts, land exchanges, and water reservations.

Section 44 provides one year for applicants with pending applications who do not meet the new qualifications established in Section 40 to request the commissioner of DNR to transfer their pending applications to an entity of their choice that is authorized to reserve water. If, within two years, the entity notifies the Department that it will not pursue the reservation or does not indicate whether it intends to pursue the same or smaller reservation, DNR will return the application fee to the original applicant. If the entity pursues the reservation of water, DNR will consider the application and if a certificate of water is issued, the priority date will be retained.

Section 45 allows the Department to adopt regulations necessary to implement changes to take effect after July 1, 2013.

Section 46 instructs the Revisor to change the heading of AS 44.37.011.

Section 47 establishes an immediate effective date for Section 45.

Section 48 establishes an effective date of July 1, 2013 for the remainder of the act.

CSHB 77(RES): LAND DISPOSALS/EXCHANGES; WATER RIGHTS

SUMMARY OF CHANGES

FOR THE SENATE FINANCE COMMITTEE • MARCH 13, 2013

This is a summary of changes between HB77\A and CSHB 77(RES)\N.

In the House Resources committee, two amendments were made to HB77.

In Sections 7 and 8 beginning on page 7, line 27, language was added to clarify that the Department of Natural Resources (DNR) had the authority to allow land and property sales to be purchased by payment in full up-front as well as by contract.

In Section 44 on page 22, line 12, the transition language applying to existing pending applications by a "person" for water reservations was amended. HB 77 initially stated that the DNR may refer existing applications to other state agencies for an independent evaluation and consideration of submission of a similar application. In the House Resources committee, the language was amended so that DNR shall transfer the pending application to an entity identified by the applicant, if the applicant requests, and that entity must notify DNR if it intends to pursue the same or smaller reservation within two years. Furthermore, if the entity pursues the reservation and a certificate of reservation is issued, the certificate will carry the priority date of the original application.

CSHB 77(RES) BRIEFING POINTS REGARDING WATER

FOR THE SENATE FINANCE COMMITTEE • MARCH 13, 2013

Hydrologic Units

Hydrologic Units are essentially large watershed boundaries. The USGS established and depicted the 6 Hydrologic Units of Alaska on the Hydrologic Unit Map created and published in 1987.

Significant Amount of Water

11 AAC 93.035. Requirement to apply for the use of a significant amount of water

(a) A significant amount of water is that amount of water for which an application for a water right or an application for a temporary water use authorization is required, as described in (b) of this section.

(b) A person shall file an application for a water right under 11 AAC 93.040 or for a temporary water use authorization under 11 AAC 93.220 before

(1) the consumptive use of more than 5,000 gallons of water from a single source in a single day;

(2) the regular daily or recurring consumptive use of more than 500 gpd from a single source for more than 10 days per calendar year;

(3) the non-consumptive use of more than 30,000 gpd (0.05 cubic feet per second) from a single source; or

(4) any water use that may adversely affect the water rights of other appropriators or the public interest.

(c) A person using less than the amount of water described in (b) of this section acquires no water right or priority unless an application is filed and a permit or certificate is issued under 11 AAC 93.035 - 11 AAC 93.140. The use of water without a permit or certificate is subject to appropriation by others, and the use of water without a water right is subject to curtailment in order to supply water to lawful appropriators of record or to protect the public interest.

Water Reservation

Water reservations do not prevent individuals from obtaining water rights or temporary water use authorizations. Water Reservations reserve a portion of water from flowing water or a lake that is necessary for:

- the protection of fish and wildlife habitat, migration, and propagation;
- recreation and park purposes;
- navigation and transportation purposes; or
- sanitary and water quality purposes.

The division can still authorize water rights or temporary water use authorizations if there is a surplus quantity of water in addition to the reservation. No water rights or temporary water use authorizations can be issued for quantities greater than the cumulative use of the surplus above the water reservation. An issued water reservation would not have priority over an existing or later issued water right that has an earlier priority date than the priority date of the water reservation.

Water Right versus Temporary Water Use Authorizations

Water Rights are a right to the beneficial use of the state owned water determined by priority appropriation based on time of application. DMLW requires site control or land ownership before issuing a water right. The right attaches to the land and transfers with the ownership of the land. In essence it is permanent except where the water right is issued for a large project that at some point in time ends and site control is no longer in place and thus does not require the water right. Water right requires the development and use of the water.

Temporary Water Use Authorization is an approval for use of water. It is not a permanent right and does not attach to the land. It is revocable or can be modified and gives no priority of appropriation. The authorization is not issued for longer than 5 years.

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500
fax: 907-465-3532



550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450
fax 907-269-7461
www.Gov.Alaska.Gov
Governor@Alaska.Gov

Governor Sean Parnell
STATE OF ALASKA

January 17, 2013

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault,

Alaskans deserve more timely, consistent permitting decisions, and the bill I transmit today is designed to better accomplish those ends. Under the authority of Article III, Section 18 of the Alaska Constitution, I am transmitting a bill 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 Department of Natural Resources; and relating to the Alaska Water Use Act.

The permitting functions of State government necessarily balance protecting the environment with utilization to provide the economic means for Alaskans to sustain themselves. This legislation encourages responsible development of our State land and water resources. An efficient permitting process with clear rules contributes to Alaskan economic growth and creates more Alaskan business opportunities.

The bill reforms and streamlines procedures for obtaining, issuing, and appealing permits, leases, best interest findings, and other authorizations issued by the Department of Natural Resources (DNR), particularly concerning land and water. Below is a list of key provisions of the bill.

Except for the surface coal program, in order to retain primacy, the bill explicitly authorizes the Commissioner of the Department of Natural Resources to allow an activity on State land through the issuance of a general permit if the commissioner finds that the activity is unlikely to cause significant and irreparable harm to State land or resources. Providing explicit authority for the issuance of a general permit streamlines the permitting process for activities on State land by clearly making it unnecessary for each individual to receive a separate permit for the allowed activity.

The bill reforms the current land exchange statutes to simplify the procedure for DNR to authorize land exchanges.

The Honorable Mike Chenault

January 17, 2013

Page 2

It modifies the procedures for appeals from DNR decisions, clarifying who has standing to appeal and providing for a more streamlined appeals process. The bill would modify the Alaska Water Use Act to improve administration of the act.

In addition to these changes, the bill modifies and clarifies public notice and comment procedures for certain best interest finding decisions and small changes that otherwise streamline existing procedures of DNR.

The bill is consistent with the State's ongoing efforts to streamline permitting requirements for the public to use and enjoy Alaska's land and resources.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell". The signature is written in a cursive style with a large, sweeping initial "S".

Sean Parnell
Governor

Enclosure

Division of Mining, Land and Water Current Water Authorization Process

Temporary Water Use Authorization

- Someone applies for a Temporary Water Use Authorization for a specific significant amount of water and location of draw.
- No public notice is required.
- DMLW requests comments from DEC and ADFG as required, and frequently from other government agencies that may have jurisdictional involvement in the proposed project.
- DMLW insures that the TWUA will not impact prior appropriators.
- DMLW will place reasonable conditions or limitations to protect other water rights, fish and wildlife habitat, human health, or other public interests.
- The TWUA does not establish a right to appropriate water and the water under a TWUA remains subject to appropriation.
- TWUA issued for period of time required not to exceed 5 years. *Section 42 of CSHB77(RES) seeks to clarify this provision to allow DMLW to issue a new TWUA for a period of 5 years for the same project.*
- DMLW may modify, suspend, or revoke a TWUA at any point.

Water Right

- Someone applies for a water right with specific quantity and location specified.
- DMLW evaluates and makes a finding on the four main criteria under AS 46.15.080 before issuing a permit to begin using the water.
 1. Rights of a prior appropriator will not be unduly affected;
 2. The proposed means of diversion or construction are adequate;
 3. The proposed use of water is beneficial; and
 4. The proposed use is in the public interest (considering the following points).
 - The benefit to the applicant resulting from the appropriation
 - The effect of the economic activity resulting from the appropriation
 - The effect on fish and game resources and on public recreational opportunities
 - The effect on public health
 - The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation
 - Harm to other persons resulting from the proposed appropriation
 - The intent and ability of the applicant to complete the appropriation
 - The effect on access to navigable or public water
- The permit holder then has from two years to ten years (not including extensions) to complete the construction of the works and commencement of use of water in accordance with the permit and notify the department of the use.
- Once beneficial use has commenced, the DMLW then issues a water right certificate that perfects the water right. This can include conditions prescribed by regulation or to protect prior rights of other persons and the public interest.
- Public notice of this process is governed by AS 46.15.133.

Water Reservation

- An application is received under AS 46.15.145 for the reservation of water to maintain a specified instream flow or level of water at a specified point or specified part of a stream or body of water throughout the year or for a specific time of year.
- Proceed with public notice in accordance with AS 46.15.133
- Decide to issue reservation if
 1. The rights of prior appropriators will not be affected
 2. The applicant has demonstrated the need exists for the reservation
 3. There is unappropriated water in the body of water sufficient for the reservation
 4. The proposed reservation is in the public interest
- There usually is at least three to five years of water data collection required to evaluate the application
- There is a need to demonstrate the existence of the resource that the reservation is seeking to protect and the amount of water required to support that resource.
- DMLW is required to review each reservation once each 10 years to determine whether the purpose described in the reservation still apply to the reservation. The reservation can be modified or revoked if part or all of the purpose no longer apply to the reservation. *Section 41 of CSHB77(RES) removes that the commissioner shall review water reservations every 10 years and instead that he may review the reservation at any point.*



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Natural Resources

Division of Mining, Land and Water

550 W. 7th, Suite 1260
Anchorage, Alaska 99501
Main: 907-269-8400

February 7, 2013

The Honorable Eric Feige, Co-Chair
The Honorable Dan Saddler, Co-Chair
House Resources Committee
State Capitol
Juneau, AK 99801

Dear Representatives Feige and Saddler and members of the House Resources Committee:

During the January 30 and February 1 House Resources hearings on HB 77, the following questions were raised. Please find below the responses from the Division of Mining, Land and Water (DMLW) along with the original questions were asked in bold. All references to the bill are based upon version 28-GH1524A.

Q: With regard to Section 7, do the proposed changes affect the ability of DNR to accept cash payments in full?

When selling land, every purchaser must sign a declaration of intent to purchase at point of auction or lottery. This declaration states that they will follow through with a few steps so DNR can complete the sale; however, this is not an enforceable contract. If a person pays off their parcel, they technically do not enter into a contract. Therefore, this statute does not prevent someone from paying in full. It also does not prevent a partial payment because the statute refers to the "remainder of the purchase price". The statute obviously envisions that one can pay a portion up front. What becomes less clear in the current statutes is that people can at any time during the life of the contract pay off the remainder. The language in existing contracts state that there is no penalty for early or extra payments or full pay off at any time.

Q: What is a preference right?

A preference right regarding leasing in AS 38.05.102 is a non-competitive opportunity to purchase or issue a long-term lease for land if the state determines it is in its best interest. There are other non-competitive preference rights for other purposes under AS 38.05.35. All preference rights come with qualifications that must be met in order to be granted the preference.

Q: Is a water right revocable after certification because the entity is not using it?

Normally a water right cannot be revoked once DMLW has certificated the water right. In certain circumstances, DMLW can revoke a water right in certain cases where the entity holding the

water right no longer has site control. For example, there may be a case where someone holds a long term lease and has obtained a water right. When the lease expires and no other authorization (such as a lease renewal or purchase) continues for the site, the water right can be revoked. Also, under AS 46.15.140, if an appropriator does not use all or part of the appropriated water for a period of five years, the department may declare a partial or total abandonment of the water right and revoke or amend the certificate of appropriation. For reservations of water, under AS 46.15.145(e) a certificate of reservation may be revoked or modified if the purpose for which the certificate was issued or the findings made no longer apply.

Q: Does a water reservation have a higher priority right than a water right, especially in the situation where the water levels drop due to drought or other factors?

To clarify, a water reservation is a type of water right that protects specific instream water uses that are outlined in AS 46.16.145(a) [Section 40 of the bill]. The priority of either an instream or out-of-stream water right is determined by the date the application was filed. Once either type of water right is perfected, either by completing the appropriation for an out-of-stream use or by receiving a certificate of reservation for the instream use, the priority date relates back to the date the application was filed. If an instream reservation application is filed prior to an out-of-stream application and then perfected, it would have priority over the later filed application. Conversely, if the out-of-stream application is filed first and then perfected, it will have priority over the instream reservation.

Scenario 1 - A water reservation is established, and subsequently other water rights are granted for the remaining water.

If there is a drop in water levels, the instream reservation would have priority and the other water right holder would have to reduce water use if there was insufficient water for both.

Scenario 2 - A water right exists and a water reservation is later requested for more than the remaining water in the water body.

The instream reservation would only be issued for the remaining water available beyond that water already granted to the original water right, even if the instream reservation application supports the need to reserve more water than that granted initially. In a shortage, the initial water right would have priority because it was filed first and subsequently perfected.

Q: Has a TWUA (Temporary Water Use Authorization) been trumped by a later water right, i.e., we had to cancel the TWUA because a water right was filed that pre-empted the TWUA use?

DMLW can't think of a specific example where a temporary water use authorization has been revoked due to a later-issued permit to appropriate water or a water right (certificate of appropriation or certificate of reservation). However, DMLW has denied a TWUA for issuance for a source because the source was fully allocated by a Water Right Certificate issued on the North Slope.

Because a temporary water use authorization does not have a priority date, a temporary water use authorization will be trumped by a later issued permit to appropriate water or water right (certificate of appropriation or certificate of reservation). Furthermore, the mere filing of a water

right application does not establish a water right and it would only be necessary to revoke the previously issued temporary water use authorization if there was insufficient water for both the newly issued permit or certificate for the water right and the existing temporary water use authorization.

Q: Can DMLW later reduce a water right if conditions change?

DMLW generally can't reduce a certificate of appropriation once it has been issued, but there is a provision that a person cannot use more than the available water. A reservation of water may be revoked or modified if the purpose of the reservation or the findings made no longer applies. See AS 46.15.145(f). An appropriation may also be declared wholly or partially abandoned for non-use under AS 46.15.140, if it is shown that the appropriator intended to abandon the right. An exception to this would be if the certificate of appropriation holder voluntarily relinquishes a portion of the certificated water right. This would be known as a partial relinquishment. Also see AS 46.15.040(d), which basically states that issuance of a permit to appropriate water or a certificate of appropriation does not represent a guarantee by the state that water will be available for appropriation at a certain volume, quality, artesian pressure, or cost.

Q: Isn't there some sort of authority for the state to require the placement of easements along water bodies while DNR is approving subdivision plats under the Unorganized Borough platting authority or some other law?

AS 38.05.128 provides for "to and along" easements along water bodies; however, this provision only applies in areas where the state owns the land. We have not found any other provision that addresses the statement that there is some sort of provision for the state to place easements along waters when we take any action on privately owned lands.

Q: May individuals petition other agencies to create an instream flow reservation, and does the agency have an obligation to consider such a petition?

The bill does not create the right for a person to petition an agency. The bill also does not create any affirmative duty for any agency to consider an individual petition requesting that they apply for a water reservation. However, in Section 44, the commissioner of the Department of Natural Resources may refer applications to other state agencies for an independent evaluation and consideration of submission of a similar application.

Sincerely,



Wyn Menefee

Chief Operations Officer, Division of Mining, Land and Water

Non-Governmental Water Reservation Applications by Year Application Received

	Year	Applicant	Potential Project Impacted	Requested stream reach or lake
1	1992	ARCTIC UNIT, AK CHPT, AMERICAN FISH ERIES SOCIETY	none known	Tanana River
2	1993	TROUT UNLIMITED,	none known	Duck Creek near Juneau
3	2000	THE NATURE CONSERVANCY,	KAS and/or Kaskanak claim blocks - located southwest and west, respectively, of Pebble project	Lower Talarik Creek
4	2003	EKLUTNA VILLAGE OF,	none known	Thunderbird Creek
5	2003	EKLUTNA VILLAGE OF,	AWWU public water supply, & the hydroelectric plant. Depends on relative priority dates.	Eklutna River
6	2003	EKLUTNA VILLAGE OF,	AWWU public water supply, & the hydroelectric plant. Depends on relative priority dates.	Eklutna River
7	2007	CHEESH-NA TRIBAL COUNCIL,	none known	Sinona Creek
8	2007	CURYONG TRIBAL COUNCIL,	Pebble	Koktuli River, upper
9	2007	CURYONG TRIBAL COUNCIL,	Pebble	Koktuli River
10	2008	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 6
11	2008	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 5
12	2008	TROUT UNLIMITED,	Possible impact on projects in KAS claim block - located southwest of Pebble project	Kaskanak Creek, reach 2
13	2008	TROUT UNLIMITED,	Possible impact on projects in KAS claim block - located southwest of Pebble project	Kaskanak Creek, reach 1
14	2008	TROUT UNLIMITED,	Possible impact on projects in KAS claim block - located southwest of Pebble project	Kaskanak Creek, Reach 3
15	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 1
16	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 2
17	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 3
18	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 4
19	2009	TROUT UNLIMITED,	Pebble	Upper Talarik Creek, reach 7
20	2009	TROUT UNLIMITED,	Chakachamna Lake Hydroelectric project	Chakachatna River
21	2009	CHICKALOON NATIVE VILLAGE,	Wishbone Hill?	Moose Creek
22	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 1
23	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 2
24	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 3
25	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 4
26	2009	CURYONG TRIBAL COUNCIL,	Pebble	North Fork Koktuli River, reach 5
27	2009	CURYONG TRIBAL COUNCIL,	Pebble	South Fork Koktuli River, reach 1
28	2009	CURYONG TRIBAL COUNCIL,	Pebble	South Fork Koktuli River, reach 2
29	2009	CURYONG TRIBAL COUNCIL,	Pebble	South Fork Koktuli River, reach 3
30	2009	CURYONG TRIBAL COUNCIL,	Pebble	South Fork Koktuli River, reach 4
31	2010	CHUITNA CITIZENS NO-COALITION,	Chuitna Coal	Stream 2003 (also known as Middle Creek)
32	2010	CHUITNA CITIZENS NO-COALITION,	Chuitna Coal	Stream 2003 (also known as Middle Creek)
33	2010	CHUITNA CITIZENS NO-COALITION,	Chuitna Coal	Stream 2003 (also known as Middle Creek)
34	2011	DIXSON, WILLIAM	Watana/Susitna Dam	Susitna River (below the proposed Watana Dam site)
35	2012	COPPER RIVER WATERSHED PROJECT,	none known	Eyak Lake (lake water level proposed reservation)

*** Note: There are approximately 371 Water Reservation applications within the state of Alaska as of 31 Dec 2012.**



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Natural Resources

Office of the Commissioner
550 West 7th Avenue, Suite 1400
Anchorage, Alaska, 99501-3650
Phone: 907.269.8431
Fax: 907.269.8918

March 3, 2013

Representative Bryce Edgmon
State Capitol Building
120 East 4th Street
Juneau, AK 99801

Dear Representative Edgmon,

Thank you for your letter regarding HB 77. Deputy Commissioner Ed Fogels and Chief of Operations Wyn Menefee have appreciated the opportunity to brief you and your staff on this bill, and I hope that this letter provides context to those discussions and answers your questions.

The Department of Natural Resources (DNR) has been making good progress across many fronts of the Governor's Permitting Initiative and has been focused on implementing the strategy and the work plan it provided to the Legislature in 2011. The goal of this comprehensive initiative is to modernize our permitting system to make it more timely, efficient, and certain. This will benefit all Alaskans, from Tribal members to municipalities and businesses of all sizes. HB 77 is part of this broader effort and will help accomplish these goals in many areas of permitting, by, among other things, reducing costs and time delays for applicants.

As you point out, one component of HB 77, the proposed change to the water reservation statutes, is causing some concern among your constituents as well as other Alaskans. I believe that the core of this concern is rooted in a misunderstanding that a water reservation is the only tool to protect fish habitat from too much water being withdrawn, and that somehow the proposed changes would lessen the protections for fish habitat. This is not the case.

As you know, a water reservation sets a specific amount of water to be retained in a water body. A key reason for a water reservation is to ensure that a water body has enough water to maintain healthy fish populations and habitats. Water reservations can also be used for other public purposes such as navigability, recreation, and water quality. The State frequently uses and seeks water reservations to protect fish habitat. For example, the Alaska Department of Fish and Game (ADF&G) has submitted 33 water reservation applications in the last two years and has 116

water reservations pending. In just the past three years, DNR has issued 32 water reservations to ADF&G.

The other two water management tools in Alaska statutes and regulations are water rights and temporary water use permits (TWUPs). These are commonly used throughout Alaska for almost all activities that require water.¹ Each authorizes the removal of a specific amount of water from a water body, and each requires DNR to work with ADF&G to ensure adequate water remains to protect fish habitat.

With regard to water reservations, HB 77 only affects the statutory responsibilities of DNR to manage the State's land, water and resources. This bill does not change any provisions relating to ADF&G, which has the statutory responsibility for protecting freshwater anadromous fish habitat. Moreover, DNR must evaluate impacts to fish and their habitat in consultation with ADF&G when issuing any water authorizations (AS 46.15.080 and AS 46.15.155). The State's commitment to maintaining healthy fish habitat does not change under HB 77.²

Under current law, any entity – a person; business; non-governmental organization; or local, state, or federal government agency – wishing to obtain water reservations, water rights, or TWUPs must apply to DNR for such authorizations. The goal of the proposed change to the water reservation statute is certainly not to stop the placement of water reservations on Alaskan water bodies, or to diminish the protection of fish habitat. Rather, the goal of this change is to ensure that water reservations are issued to and held in perpetuity by public agencies for the protection of public resources, rather than to enable private organizations and individuals to manage the State's public resources. HB 77 does not prevent private organizations, individuals, or tribes from pursuing water reservations, but, if passed, would require them to work with a

¹ Examples of the types of projects that utilize TWUPs that have been granted by the State include: village landfills; village sewer expansions; airport expansions; river crossings for ice bridge construction; Department of Transportation road and bridge construction and maintenance; pipeline and railroad projects; placer mining operations; mining, oil and gas exploration activities; Alaska Native Heritage Tribal Consortium construction; the Koniag quarry; the AK Railroad storm damage restoration; Alyeska Resort's snowmaking; the UAA's sports arena's aquifer analysis; the Igiagik village hydro project; the Kenai tank farm expansion; the White Alice military site cleanup; the Bradley Lake hydro project; the Kincaid Chalet; the Hatcher Pass ski resort; and the Eva Creek Wind farm. This list is by no means exhaustive.

² This also relates to water rights and TWUPs. State statutes specifically require DNR to evaluate impacts to fish and their habitat in consultation with ADF&G before issuing any water authorizations. AS 46.15.080 requires DNR to consider the effect on fish and game resources and on public recreational opportunities before issuing water rights. AS 46.15.155 requires DNR to request comment from the Department of Environmental Conservation and ADF&G before issuing TWUPs, including on issues of the protection of fish and their habitat. Restrictions and conditions are placed in water use authorizations to protect resources and other public interests. For example, restrictions are placed on the use of water collection devices, water volumes, and the timing of water use to prevent harm to fish and their habitat. This can include requirements for a Title 16 permit from ADF&G.

public entity, whether a state or federal agency, a borough, or municipality, to submit that application to DNR.³

An application for a water reservation takes significant agency time and resources to adjudicate, and also can add complications to public decision making for other uses of that water as the application is adjudicated. We believe that it is sound public policy to make sure that such significant decision-making processes for our public resources are led by public agencies – whether local, state, or federal. While the State strongly disagrees, some have asserted that an individual should be able to file for a reservation on an Alaskan water body and prevent others from obtaining a water right or TWUP from that water body until the application for the reservation is fully adjudicated (a process that can take three to five years due to data gathering). Under such a scenario, an individual or group could create significant delay for all manner of temporary water uses authorizations throughout the State and affect a wide range of activities related to such use simply by submitting an application for a water reservation.⁴ Such a result could have negative impacts across a broad spectrum of Alaska's citizens, communities and economic activities.

Answers to your specific questions are provided below:

- 1. Please provide us a description of the requirements included in a water flow reservation application and the typical costs associated with those amendments when the application is being made in a region of the state where little or no stream gauge data has been gathered.*

An application for a reservation of water must be made per stream segment or water body and for the purposes listed in AS 46.15.145(a) and 11 AAC 93.141. Per 11 AAC 93.142, a water reservation application submission requires the following:

- Completed application for each stream segment or water body with:
 - Location description
 - Map of those segments or water body
 - Location of permanent, temporary, or planned locations of water measurement devices

³ HB 77 focuses on water reservations. It does not change the ability of an entity to apply directly to DNR to obtain water rights or TWUPs authorizations. See footnote 1 for examples of activities utilizing TWUPs for their operations.

⁴ All of the examples of projects and activities listed in footnote 1 require TWUPs, and under the scenario described above these TWUPs could be put on hold for potentially years if an entity submitted an application for a water reservation for the water body associated with the TWUP and that water reservation had to be adjudicated prior to any other water use authorization moving forward.

- Description of purpose of reservation with specifics of the resource you are seeking to protect
- The quantity of water requested to be reserved
- Description of the methodology and monitoring that either was or will be completed over the next three years
- Times of the year and purposes for which the reservation is proposed
- Payment of \$1500 application fee (ADF&G does not pay this fee as a state agency but does contribute to staff costs for reviewing applications)
- Once under review, the applicant is responsible for payment of the public notice

The water gauging and species studies (if for habitat protection) or water quality review (if for water quality) must be completed over the course of three years if the data does not already exist. The cost of the studies and monitoring will vary depending on location and availability of access. DNR does not track the actual costs that applicants expend on data gathering. ADF&G often does its fish monitoring with in-house staff as part of their other work. In very rough figures, it might cost between \$14,000 and \$95,000 to install and monitor a water gauge for a year.

2. *Please provide us a list of the 61 water flow reservations that the state has granted, including a description of each reservation (in particular, its purpose) and the entity to which it was granted.*
- *Please provide us a similar list of the 37 pending applications that have been applied for by persons.*
 - *Please provide a similar list of the 401 pending applications that have been applied for by what we assume are government entities.*

In our initial briefing paper to the House Resources committee, we had incorrectly stated that there were 37 pending applications by persons and 401 total pending applications. In the materials submitted to House Rules, we corrected our material to state that there are 35 pending applications by “a person” and 371 total pending applications.

Attached to this letter are lists of the 61 water flow reservations that the State has granted, the 35 pending applications from “persons,” and a list of all pending applications. We have included the stated purpose for each of the 61 issued and 35 pending “person” applications in the spreadsheet. We have also included a summary list of the pending applications by applicant. Please note that the dates that appear on the lists are the “case status date” reflecting the last action taken by the Department and not the date the application was received.

3. *If, for example, a water flow reservation is prudent in order to guarantee adequate flow volume for a mixing zone required for an industrial concern, will that industrial concern then have to approach the state to request that the state apply for a water reservation on their behalf? If so, who pays for gathering the data and other costs associated with the application?*

If the change as proposed in HB 77 passes, then yes, businesses that desire a water reservation would have to request that a state or federal agency, or a political subdivision of the state, apply for the reservation. The costs for that application would likely be borne by the business.

However, it is more likely that a business would apply for a water right rather than a water reservation to have a certain quantity of water available for a mixing zone. Mixing zones are established with quantities of water necessary to dilute the outfall. If a business needs a certain quantity to be used for their benefit, such as for the mixing and dilution, that fits within the water rights statutes and regulations. When DNR grants a water right, it must consider the impact on fish habitat along with seven other criteria spelled out in AS 46.15.080. A water right application does not require the same three years' worth of monitoring.

4. *It is reasonable to assume that if the state takes away the right of persons to pursue water flow reservations, a significant number of individuals and non-governmental entities who have been shouldering the costs of applications to protect fish and wildlife habitat will approach DNR, F&G, and other state agencies with requests that they file applications for in-stream flow.*
- *Has DNR consulted itself and these other agencies regarding the significant additional costs of taking up applications that under present law would not burden the state's treasury?*
 - *Do DNR's and F&G's zero fiscal notes mean that those departments have already decided that they will not agree to any water flow reservation requests brought to them by Alaskan citizens or non-governmental organizations?*

As noted above, HB 77 does not take away the right of persons to pursue water flow reservations. The proposed change does not prevent private groups, individuals, or tribal entities from working with a public agency to apply for a reservation. In fact, this already occurs.

It is true that reservation requests to federal and state agencies and political subdivisions of the state may increase if the provision in statute that allows a person to apply directly to DNR for a water reservation is removed. However, the change in statute would in no way prevent private groups, individuals, or tribal entities from doing the same research they are conducting now. It would only mean that they would need to work with an agency to submit the applications.

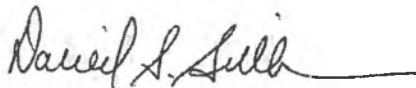
Currently, ADF&G works with non-governmental groups on certain water reservation applications and that would be expected to continue.⁵ With its existing funding, ADF&G has filed 33 applications during the last two calendar years (2011 and 2012) and DNR currently has 116 applications from ADF&G pending adjudication. Most of the existing 61 water reservations that have been certificated since statehood were done so for ADF&G. With the Legislature's funding of DMLW to streamline our permitting process, and financial assistance from ADF&G, DNR has certificated 32 of those water reservations in the last 3 years.

The zero fiscal notes from DNR and ADF&G were submitted because there are not expected to be additional costs from the change. There is no predetermination that ADF&G will or will not submit applications on any given reaches of water bodies. ADF&G does a yearly plan and prioritizes its reservation applications to accomplish habitat protection goals.

I would like to say that the point in your letter about Alaska being unlike any other state in the Nation is a valid one, and I agree that we should not be striving to make all of our laws identical to those of the other states. The broader reason why DNR officials have referenced what other states have done is not to make the case that we should blindly follow other states, but that there is an important policy reason underlying the proposed water reservation changes of HB 77. Alaska is blessed with a huge abundance of clean water resources, and has far less pressure on those resources than most of the other states in the nation. Many of the other states have weathered decades of difficult battles over water appropriations, and have designed their laws accordingly. Given the importance and multiple uses of water, they have all found that the management of public water resources is more appropriately the province of public agencies.

In closing, I'd like to underscore that the proposed changes to state law regarding water reservations contained in HB 77 do not weaken Alaska's ability to protect fish habitat. HB 77 is intended to ensure that water reservation certificates are issued to public agencies for the protection of public resources. We have a steadfast commitment to working with all entities interested in water use authorizations. This will continue. Please let me know if you have any additional questions on HB 77 or any of our other bills before this legislature.

Sincerely,



Dan Sullivan
Commissioner

⁵ More specifically, as the Commissioner of DNR, a priority of mine has been to deepen and strengthen cooperation with Alaska Native organizations, regional and village corporations, and Tribes. Such a commitment certainly extends to and includes work on water authorization issues.

Representative Bryce Edgmon
March 3, 2013
Page 7

Enclosures

cc: Cora Campbell, Commissioner, Alaska Department of Fish & Game
Heather Brakes, Legislative Director, Office of Governor Sean Parnell

Water Reservations Quantity by Applicant

Issued Water Reservations	
Customer	Total
ALASKA DEPARTMENT OF NATURAL RESOURCES	4
DFG ADMIN SERVICES DIV	35
DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	21
USDI BUREAU LAND MANAGEMENT FAIRBANKS	1
Grand Total	61

Pending Water Reservation Applications	
Customer	Total
ALASKA DEPARTMENT OF NATURAL RESOURCES	1
AUACAFS - ARCTIC UNIT, AK CHPT, AMERICAN FISHERIES SOCIETY	1
CHEESH-NA TRIBAL COUNCIL	1
CHICKALOON NATIVE VILLAGE	1
CHUITNA CITIZENS NO-COALITION	3
COPPER RIVER WATERSHED PROJECT	1
CURYONG TRIBAL COUNCIL	11
DFG ADMIN SERVICES DIV	49
DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	65
DIXSON, WILLIAM	1
EKLUTNA VILLAGE OF	3
SOUTHWEST ALASKA SALMON HABITAT PARTNERSHIP	2
THE NATURE CONSERVANCY	1
TROUT UNLIMITED	12
U.S. BUREAU OF LAND MANAGEMENT	2
UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	9
USDI BUREAU LAND MANAGEMENT ALASKA STATE OFFICE	7
USDI BUREAU LAND MANAGEMENT FAIRBANKS	1
USDI FISH AND WILDLIFE SVC	200
Grand Total	371

Total Water Reservations Issued and Applied for as of 31 Dec 2012: 432

Note: 35 of the 371 applications are from non-governmental entities

Water Reservations Granted

Source: Alaska Department of Natural Resources, Information Resource Management, DNR Business Reporting System

File Type	File Number	Case Status Date	Customer		Source Name	Purpose(s) Requested
LAS	27980	9/28/2011	ALASKA DEPARTMENT OF NATURAL RESOURCES	CERTIFICATE ISSUED	Adak, Lake between Lake Demerie & Shagak Lake	FWH
LAS	28265	9/28/2011	ALASKA DEPARTMENT OF NATURAL RESOURCES	CERTIFICATE ISSUED	Adak, Lake DeMarie	FWH
LAS	28266	9/28/2011	ALASKA DEPARTMENT OF NATURAL RESOURCES	CERTIFICATE ISSUED	Adak, Lake Connecting Lake Bonnie Rose to Lake DeMarie	FWH
LAS	28267	9/28/2011	ALASKA DEPARTMENT OF NATURAL RESOURCES	CERTIFICATE ISSUED	Adak, Lake Bonnie Rose	FWH
LAS	11488	2/19/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Little Survival Creek	FWH
LAS	11489	2/19/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Little Rabbit Creek	FWH
LAS	11490	2/19/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Rabbit Creek	FWH
LAS	11562	7/8/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Willow Creek	FWH
LAS	11561	11/1/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Little Susitna River, Upper Reach	FWH
LAS	11981	6/29/1990	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Campbell Creek, Lower Segment	FWH
LAS	11972	5/15/1991	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Cottonwood Creek	FWH
LAS	11973	5/15/1991	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Campbell Creek, Upper Segment	FWH
LAS	13228	12/18/2003	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Talkeetna River	FWH
LAS	13652	12/18/2003	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Deception Creek	FWH
LAS	21272	8/11/2004	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Salmon River	FWH
LAS	13226	9/21/2004	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Montana Creek	FWH
LAS	13654	1/25/2005	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Deshka River	FWH
LAS	12681	11/21/2005	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Campbell Creek, North Fork	FWH
LAS	13222	11/21/2005	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Campbell Creek, South Fork	FWH
LAS	11977	8/3/2006	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Little Susitna River, Middle Reach	FWH
LAS	12685	8/21/2006	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Buskin Lake	FWH
LAS	13808	1/18/2007	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Auke Lake	FWH
LAS	21289	3/7/2007	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Lake Creek	FWH
LAS	21243	11/2/2009	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Klehini River	FWH
LAS	12676	2/1/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Kenai River, Upper Reach	FWH
LAS	12677	2/1/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Kasilof River, Lower Reach	FWH
LAS	21291	2/1/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Situk River	FWH
LAS	12680	12/28/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Anchor River, Reach B	FWH
LAS	12683	12/28/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Anchor River, Reach A	FWH
LAS	22405	12/28/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Copper River, Reach B	FWH
LAS	22407	12/28/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Copper River, Reach A	FWH
LAS	21292	3/8/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Stikine River	FWH
LAS	14315	8/16/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Eagle River	FWH
LAS	21275	9/6/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Taku River	FWH
LAS	13223	11/16/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Ninilchik River	FWH
LAS	22408	11/16/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Klutina River	FWH
LAS	12236	8/3/1990	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Indian River	FWH
LAS	20334	11/22/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED	Kasilof River	FWH
LAS	1824	5/20/1987	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Terror River	FWH
LAS	20526	2/14/2001	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Blue Lake, Sawmill Creek	FWH
LAS	20895	12/18/2003	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Glacier Creek	FWH

LAS	12675	12/6/2005	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Salcha River	FWH
LAS	11998	8/21/2006	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Chena River	FWH
LAS	13577	1/23/2007	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Clearwater Creek	FWH
LAS	20646	12/21/2009	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Kuparuk River	FWH
LAS	24383	4/14/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Kvichak River	FWH
LAS	20644	5/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Sagavanirtok River, Lower Reach	FWH
LAS	20645	5/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Sagavanirtok River, Upper Reach	FWH
LAS	20277	8/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Nenana River, Reach C	FWH
LAS	20283	8/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Nenana River, Reach B	FWH
LAS	20285	8/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Nenana River, Reach A	FWH
LAS	27904	4/8/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Old Situk River	FWH
LAS	27488	9/1/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Situk River, West Fork	FWH
LAS	20067	11/18/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Wulik River	FWH
LAS	20068	11/18/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Snake River	FWH
LAS	24381	11/22/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Wood River	FWH
LAS	21125	2/15/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Kobuk River, Reach A	FWH
LAS	21134	2/15/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Kobuk River, Reach B	FWH
LAS	25881	3/1/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Shelokum Creek	FWH
LAS	24379	4/23/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED	Newhalen River	FWH
LAS	11997	5/26/1989	USDI BUREAU LAND MANAGEMENT FAIRBANKS	CERTIFICATE ISSUED	Beaver Creek/lower reach	FWH

Codes under purpose are: FWH (Fish and Wildlife Habitat), RP (Recreational and Park), NT (Navigation and Transportation), SQ (Sanitary and Water Quality)

Water Reservations by Person

Source: Alaska Department of Natural Resources, Information Resource Management, DNR Business Reporting System

File Type	File Number	Case Subtype	Case Status Date	Customer	Status Description	Source Name	Purpose(s) Requested
LAS	13897	RES	11/18/1992	AUACAFS - ARCTIC UNIT AK CHPT AMERICAN FISHERIES SOCIETY	APPLICATION RECEIVED	Tanana River	FWH
LAS	21290	RES	6/28/1993	TROUT UNLIMITED	APPLICATION RECEIVED	Duck Creek	FWH
LAS	23051	RES	2/7/2000	THE NATURE CONSERVANCY	APPLICATION RECEIVED	Lower Talarik Creek	FWH,RP,SQ
LAS	24334	RES	6/2/2003	EKLUTNA, VILLAGE OF	APPLICATION RECEIVED	Eklutna River, Thunderbird Creek, Segment 2	FWH
LAS	24335	RES	6/2/2003	EKLUTNA, VILLAGE OF	APPLICATION RECEIVED	Eklutna River, Segment 1	FWH
LAS	24336	RES	6/2/2003	EKLUTNA, VILLAGE OF	APPLICATION RECEIVED	Eklutna River, Segment 3	FWH
LAS	26216	RES	2/26/2007	CHEESH-NA TRIBAL COUNCIL	APPLICATION RECEIVED	Sinona Creek, Lower Tribute to Copper	FWH, SQ
LAS	26543	RES	7/10/2007	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, Middle Reach	FWH
LAS	26544	RES	7/10/2007	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, Upper Reach	FWH
LAS	26821	RES	3/3/2008	TROUT UNLIMITED	APPLICATION RECEIVED	Upper Talarik Creek, Reach 6	
LAS	26822	RES	3/3/2008	TROUT UNLIMITED	APPLICATION RECEIVED	Upper Talarik Creek, Reach 5	
LAS	27067	RES	10/10/2008	TROUT UNLIMITED	APPLICATION RECEIVED	Kaskanak Creek, Reach 2	FWH
LAS	27068	RES	10/10/2008	TROUT UNLIMITED	APPLICATION RECEIVED	Kaskanak Creek, Reach 1	FWH
LAS	27069	RES	10/10/2008	TROUT UNLIMITED	APPLICATION RECEIVED	Kadkanak Creek, Reach 3	FWH
LAS	27134	RES	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED	Upper Talarik Creek, Reach # 1	FWH, RP
LAS	27135	RES	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED	Upper Talarik Creek, Reach # 2	
LAS	27136	RES	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED	Upper Talarik Creek, Reach # 3	
LAS	27137	RES	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED	Upper Talarik Creek, Reach # 4	
LAS	27138	RES	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED	Upper Talarik Creek, Reach 7	FWH
LAS	27139	RES	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED	Chakachatna River	
LAS	27142	RES	2/27/2009	CICKALON NATIVE VILLAGE	APPLICATION RECEIVED	Moose Creek, N of Palmer	FWH
LAS	27174	RES	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, North Fork, Reach 1	FWH
LAS	27175	RES	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, North Fork, Reach 2	FWH
LAS	27176	RES	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, North Fork, Reach 3	FWH
LAS	27177	RES	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, North Fork, Reach 4	FWH
LAS	27178	RES	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, North Fork, Reach 5	FWH
LAS	27179	RES	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, South Fork, Reach 1	FWH
LAS	27180	RES	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, South Fork, Reach 2	FWH
LAS	27181	RES	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED	Koktuli River, South Fork, Reach 3	FWH
LAS	27310	RES	1/5/2010	SOUTHWEST ALASKA SALMON HABITAT PARTNERSHIP	APPLICATION RECEIVED	Stuyahok River	FWH

LAS	27436	RES	1/5/2010	CHUITNA CITIZENS NO-COALITION	APPLICATION RECEIVED	Chuitna River tributary, Stream 2003 (Lower)	FWH
LAS	27437	RES	1/5/2010	CHUITNA CITIZENS NO-COALITION	APPLICATION RECEIVED	Chuitna River tributary, Stream 2003 (Middle)	FWH
LAS	27340	RES	1/5/2010	CHUITNA CITIZENS NO-COALITION	APPLICATION RECEIVED	Chuitna River, Main Stem	FWH
LAS	28330	RES	11/17/2011	DIXSON, WILLIAM	APPLICATION RECEIVED	Susitna River	FWH,RP,NT
LAS	28732	RES	9/4/2012	COPPER RIVER WATERSHED PROJECT	APPLICATION RECEIVED	Eyak Lake	FWH
LAS	27182	RES	12/21/2012	CURYONG TRIBAL COUNCIL	APPLICATION COMPLETE	Koktuli River, South Fork, Reach 4	
LAS	27309	RES	12/21/2012	SOUTHWEST ALASKA SALMON HABITAT PARTNERSHIP	APPLICATION COMPLETE	Mulchatna Reach A	FWH

Note that lines 35 and 36, applications from Southwest Alaska Salmon Habitat Partnership is partnership with ADF&G and thus can be carried forward as a agency applications.

Codes under purpose are: FWH (Fish and Wildlife Habitat), RP (Recreational and Park), NT (Navigation and Transporation), SQ (Sanitary and Water Quality)

All Water Reservations Received by DNR

Source: Alaska Department of Natural Resources, Information Resource Management, DNR Business Reporting System

File Type	File Number	Case Status Date	Customer	Status Description
LAS	11996	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	12678	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	12679	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	12682	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	12684	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	13225	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	13231	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	20335	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	21245	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	21258	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	21260	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	21261	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	26030	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	26359	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	26362	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	26363	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	26386	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	26462	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	27516	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	28230	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	28231	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	28235	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	28236	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	28237	12/21/2012	DFG ADMIN SERVICES DIV	APPLICATION COMPLETE
LAS	27349	12/21/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION COMPLETE
LAS	27485	12/21/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION COMPLETE
LAS	27487	12/21/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION COMPLETE
LAS	27786	12/21/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION COMPLETE
LAS	28656	12/21/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION COMPLETE
LAS	28771	12/21/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION COMPLETE
LAS	28772	12/21/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION COMPLETE
LAS	27309	12/21/2012	SOUTHWEST ALASKA SALMON HABITAT PARTNERSHIP	APPLICATION COMPLETE
LAS	27310	12/21/2012	SOUTHWEST ALASKA SALMON HABITAT PARTNERSHIP	APPLICATION COMPLETE
LAS	27979	7/1/1992	ALASKA DEPARTMENT OF NATURAL RESOURCES	APPLICATION RECEIVED
LAS	13897	11/18/1992	AUACAFA - ARCTIC UNIT, AK CHPT, AMERICAN FISHERIES SOCIETY	APPLICATION RECEIVED
LAS	26216	2/26/2007	CHEESH-NA TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27142	1/30/2009	CHICKALOON NATIVE VILLAGE	APPLICATION RECEIVED
LAS	27340	1/5/2010	CHUITNA CITIZENS NO-COALITION	APPLICATION RECEIVED
LAS	27436	1/5/2010	CHUITNA CITIZENS NO-COALITION	APPLICATION RECEIVED
LAS	27437	1/5/2010	CHUITNA CITIZENS NO-COALITION	APPLICATION RECEIVED
LAS	28732	9/4/2012	COPPER RIVER WATERSHED PROJECT	APPLICATION RECEIVED
LAS	26543	7/10/2007	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	26544	7/10/2007	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27174	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27175	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27176	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27177	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27178	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27179	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27180	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27181	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	27182	2/27/2009	CURYONG TRIBAL COUNCIL	APPLICATION RECEIVED
LAS	11974	7/14/1988	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED

LAS	11975	7/14/1988	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	11976	7/14/1988	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	11995	7/14/1988	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	12719	2/5/1990	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	13805	4/10/1992	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	13806	4/10/1992	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	13807	4/10/1992	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	19476	2/3/1995	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	21287	12/27/1995	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	22406	12/31/1998	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	25693	5/11/2006	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	25692	5/25/2006	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	25694	5/25/2006	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	25695	5/25/2006	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	25696	5/25/2006	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	26357	3/29/2007	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	26358	3/29/2007	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	26360	3/29/2007	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	26385	4/12/2007	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	26387	4/12/2007	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	26388	4/12/2007	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	26460	6/1/2007	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	26461	6/1/2007	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	26817	3/17/2008	DFG ADMIN SERVICES DIV	APPLICATION RECEIVED
LAS	13578	10/28/1991	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	13700	5/15/1992	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	24380	7/28/2003	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	25879	10/12/2006	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	25880	10/16/2006	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	25882	10/16/2006	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	25883	10/16/2006	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	25884	10/16/2006	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27351	7/14/2009	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27352	7/14/2009	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27353	7/14/2009	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27486	12/11/2009	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27843	9/30/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27844	9/30/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27855	10/13/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27863	10/25/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27864	10/25/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27865	10/25/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27866	10/25/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27867	10/25/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27868	10/25/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	27903	12/15/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28059	4/27/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28113	6/16/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28162	7/6/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28241	8/25/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28250	8/29/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28275	9/26/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28276	9/26/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28277	9/26/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28278	9/26/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28344	12/7/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28345	12/7/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28372	1/6/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED

LAS	28373	1/6/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28374	1/6/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28375	1/6/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28376	1/6/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28388	1/24/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28389	1/24/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28390	1/24/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28391	1/24/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28392	1/24/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28402	2/2/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28404	2/2/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28405	2/2/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28406	2/2/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28418	2/10/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28417	2/13/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28484	4/13/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28485	4/13/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28486	4/13/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28487	4/13/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28657	8/2/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28658	8/7/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28727	9/28/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28750	10/24/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28751	10/24/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	APPLICATION RECEIVED
LAS	28330	11/17/2011	DIXSON, WILLIAM	APPLICATION RECEIVED
LAS	24334	6/2/2003	EKLUTNA VILLAGE OF	APPLICATION RECEIVED
LAS	24335	6/2/2003	EKLUTNA VILLAGE OF	APPLICATION RECEIVED
LAS	24336	6/2/2003	EKLUTNA VILLAGE OF	APPLICATION RECEIVED
LAS	23051	2/7/2000	THE NATURE CONSERVANCY	APPLICATION RECEIVED
LAS	21290	6/28/1993	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	26821	3/3/2008	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	26822	3/3/2008	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27067	10/10/2008	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27068	10/10/2008	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27069	10/10/2008	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27134	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27135	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27136	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27137	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27138	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27139	1/30/2009	TROUT UNLIMITED	APPLICATION RECEIVED
LAS	27529	2/2/2010	U.S. BUREAU OF LAND MANAGEMENT	APPLICATION RECEIVED
LAS	27530	2/2/2010	U.S. BUREAU OF LAND MANAGEMENT	APPLICATION RECEIVED
LAS	27071	8/20/2008	UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	APPLICATION RECEIVED
LAS	27070	8/25/2008	UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	APPLICATION RECEIVED
LAS	27073	9/25/2008	UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	APPLICATION RECEIVED
LAS	27140	1/30/2009	UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	APPLICATION RECEIVED
LAS	27141	1/30/2009	UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	APPLICATION RECEIVED
LAS	27916	12/16/2010	UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	APPLICATION RECEIVED
LAS	27917	12/17/2010	UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	APPLICATION RECEIVED
LAS	27939	1/18/2011	UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	APPLICATION RECEIVED
LAS	28731	9/25/2012	UNITED STATES OF AMERICA, DEPART. OF THE INTERIOR, BLM	APPLICATION RECEIVED
LAS	20502	7/10/1996	USDI BUREAU LAND MANAGEMENT ALASKA STATE OFFICE	APPLICATION RECEIVED
LAS	20503	7/10/1996	USDI BUREAU LAND MANAGEMENT ALASKA STATE OFFICE	APPLICATION RECEIVED
LAS	20504	7/10/1996	USDI BUREAU LAND MANAGEMENT ALASKA STATE OFFICE	APPLICATION RECEIVED
LAS	24386	1/11/2001	USDI BUREAU LAND MANAGEMENT ALASKA STATE OFFICE	APPLICATION RECEIVED
LAS	23861	3/19/2001	USDI BUREAU LAND MANAGEMENT ALASKA STATE OFFICE	APPLICATION RECEIVED
LAS	26428	5/14/2007	USDI BUREAU LAND MANAGEMENT ALASKA STATE OFFICE	APPLICATION RECEIVED

LAS	23660	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23661	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23662	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23665	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23666	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23667	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23668	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23669	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23670	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23671	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23672	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23673	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23674	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23675	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23676	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23677	9/13/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23806	9/27/2001	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23997	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23998	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	23999	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	24000	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	24001	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	24003	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	24004	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	24005	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	24006	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	24007	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	19961	9/20/2002	USDI FISH AND WILDLIFE SVC	APPLICATION RECEIVED
LAS	27980	9/28/2011	ALASKA DEPARTMENT OF NATURAL RESOURCES	CERTIFICATE ISSUED
LAS	28265	9/28/2011	ALASKA DEPARTMENT OF NATURAL RESOURCES	CERTIFICATE ISSUED
LAS	28266	9/28/2011	ALASKA DEPARTMENT OF NATURAL RESOURCES	CERTIFICATE ISSUED
LAS	28267	9/28/2011	ALASKA DEPARTMENT OF NATURAL RESOURCES	CERTIFICATE ISSUED
LAS	11488	2/19/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	11489	2/19/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	11490	2/19/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	11562	7/8/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	11561	11/1/1988	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	11981	6/29/1990	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	12236	8/3/1990	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	11972	5/15/1991	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	11973	05/15/1991	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	13228	12/18/2003	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	13652	12/18/2003	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	20895	12/18/2003	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	21272	8/11/2004	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	13226	9/21/2004	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	13654	1/25/2005	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	12681	11/21/2005	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	13222	11/21/2005	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	11977	8/3/2006	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	12685	8/21/2006	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	13808	1/18/2007	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	21289	3/7/2007	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	21243	11/2/2009	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	12676	2/1/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	12677	2/1/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	21291	2/1/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	12680	12/28/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED

LAS	12683	12/28/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	22405	12/28/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	22407	12/28/2010	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	21292	3/8/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	14315	8/16/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	21275	9/6/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	13223	11/16/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	22408	11/16/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	20334	11/22/2011	DFG ADMIN SERVICES DIV	CERTIFICATE ISSUED
LAS	1824	5/20/1987	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	20526	2/14/2001	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	12675	12/6/2005	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	11998	8/21/2006	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	13577	1/23/2007	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	20646	12/21/2009	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	24383	4/14/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	20644	5/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	20645	5/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	20277	8/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	20283	8/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	20285	8/5/2010	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	27904	4/8/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	27488	9/1/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	20067	11/18/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	20068	11/18/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	24381	11/22/2011	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	21125	2/15/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	21134	2/15/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	25881	3/1/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	24379	4/23/2012	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CERTIFICATE ISSUED
LAS	11997	5/26/1989	USDI BUREAU LAND MANAGEMENT FAIRBANKS	CERTIFICATE ISSUED
LAS	13803	5/2/2007	DFG ADMIN SERVICES DIV	CLOSED
LAS	13804	5/2/2007	DFG ADMIN SERVICES DIV	CLOSED
LAS	25847	5/15/2007	DFG ADMIN SERVICES DIV	CLOSED
LAS	11999	7/22/1997	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CLOSED
LAS	14308	7/23/1997	DFG SPORT FISH DIV INSTREAM FLOW COORDINATOR	CLOSED
LAS	22553	4/12/2012	USDI FISH AND WILDLIFE SVC	CLOSED

JAMES SULLIVAN, SEACC

Mr. Chairman and members of the committee,

Thank you for the opportunity to testify.

There has been much discussion, within this committee and with our organization and with our friends, about the issue of water reservations and revoking personal use reservations. We find this issue problematic and want to make sure that our environment is being protected and that anadromous streams have the highest priority when permits are being issued.

We would like to propose that amend this bill so that when any entity applies for a water right on any anadromous body of water that DNR issue a water reservation on behalf of the fish. DNR can simply refer to the Anadromous Waters Catalog to see if the waterway is on there, then put in an appropriate reservation.

This would align DNR with our state constitution and its public trust responsibility. It would ensure the protection of our salmon
It would enhance sustainable economic development across our state.

Salmon is our greatest renewable resource, it is in our legislature's best interest to put in a mechanism, in statute, that protects that resource as other entities apply for water rights.

Alaska Constitution Article 8 § 3. Common Use

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

SEACC FRASER INST Summary
DAVEN HAFEY 2-7-13

Summary of the Results of the Fraser Institute Annual Survey of Mining Companies, 2011/2012

These factors are ranked from least to most deterring to investment. A lower number indicates positive outlook for investment outlook in Alaska.

Factor	Alaska's Ranking (out of 93 regions surveyed)
Current Mineral Potential assuming current regulations and land use restrictions	6
Policy/Mineral Potential assuming no land use restrictions in place and assuming industry "best practices"	1
Room for improvement	40
Uncertainty concerning the administration, interpretation, and enforcement of existing regulations	35
Uncertainty concerning environmental regulations	49
Regulatory duplication and inconsistencies	56
Legal processes that are fair, transparent, non-corrupt, timely, and efficiently administered	32
Taxation regime	8
Uncertainty concerning disputed land claims	20
Uncertainty concerning which areas will be protected as wilderness areas, parks, or archeological sites	66
Infrastructure (includes access to roads, power availability, etc)	70
Socioeconomic agreements/ community development conditions	34
Trade barriers- tariff and non-tariff barriers, restrictions of profit repatriation, currency restrictions, etc.	11
Political stability	8
Labor regulations, employment agreements, and labor militancy or work disruptions	13
Geological Database (includes quality and scale of maps, ease of access to information, etc.)	20
Security (includes physical security due to the threat of attack by terrorists, criminals, guerilla groups, etc.)	29
Supply of labor/ skills	32
Corruption	20
Growing (or lessening) uncertainty on mining policy and implementation	38

These are the rankings where all of the above factors are taken into consideration.

Composite policy and mineral potential	4
Policy Potential Index	25

COPY ARCHIVALD

Seacc

HB 77 is a solution in search of a problem.

HB 77 seeks to streamline the permitting process in Alaska in order to make projects such as mines receive permits quicker. Currently, Alaska is the number one producer of toxic waste in the nation and metal mining is responsible for 99.9% of that waste.

Doug Haight Department of Commerce Development Manager stated on January 31, 2013 that "Alaska has a very favorable environment for the mining industry."

But Alaska DNR Commissioner Dan Sullivan's statement to the legislature was that Alaska is next to last in the world for permitting? Who is right? Answer: Doug Haight.

The evidence?

The Fraser Institute Annual Survey of Mining Companies was sent to approximately 5,000 exploration, development, and other mining-related companies around the world. Over 800 mining companies responded. They evaluated over 90 separate mining areas in the world. These companies reported exploration spending of \$6.3 billion in 2011.

Here is the result of the survey:

Overall, Alaska ranked number 4 in the entire world in combined policy and mineral potential.

Additional results from the Survey:

- Alaska ranks 24th in the world with a 73% positive rating. In the U.S. only Nevada and Wyoming ranked higher.
- 64% of the respondents rated the certainty of developing a mine in Alaska as either encouraging investment or not discouraging investment. #1 in the U.S.
- Only 1% of the respondents thought the tax regime (all taxes plus the complexity of the tax system) was a deterrent.
- Only 12% of the respondents thought that the regulatory duplication and inconsistencies (includes federal, state, inter-departmental overlap, etc.) in Alaska was a mild or strong deterrent.
- Only 1% cited environmental regulations as being a mild or strong deterrent in Alaska
<http://www.fraserinstitute.org/publicationdisplay.aspx?id=18045&terms=mining+survey+2011+2012>

The issue of the time involved in getting a permit is easily solved without HB77

The problem with the backlog of permit applications is because all applications are considered regardless of the actual potential for the result to be a productive mine. A large majority of the mine applications are filed by junior mining companies who have no intention of actually mining. They are speculators. They buy the rights to claims, do some exploration, and then apply for permits for the sole purpose of increasing the value of the claims. Most of these projects have not even done enough exploration to certify if there is an economical ore body to exploit. Very few of these mines will reach production, not because of the length of the

permitting process, but because they were not viable projects to start with. This burns state resources padding the speculation.

A simple solution would be to require the ore body be certified as a proven reserve prior to submitting an application. This would weed out projects that would never produce anyway and free up DNR's resources to focus on legitimate projects decreasing the wait.

Alaska has tried a streamlined permitting process. The story of the Rock Creek Mine.

The Rock Creek Gold mine near Nome was permitted in less than two years through an "expedited" permitting process and only operated for six months in 2008. No EIS was produced despite concerns about acid mine drainage, cyanide, arsenic, dust, and effects on bird and fish populations in the area. During construction, multiple failures of the water management system resulted in over \$800,000 in fines to the owner for violations of the Clean Water Act.

In 2007 the mine posted a \$6.8 million reclamation bond, which would be used to finance closure costs at the Rock Creek site if operations do not restart.

After numerous problems the company decided to end operations in 2011. The tailings pond almost immediately began to fill with rain water and threatened to overflow. ADEC had to take emergency actions to prevent an environmental catastrophe. The total cost to close down and reclaim the site is expected to be just under \$30 million, The \$22 million difference between the reclamation bond and the actual clean up costs will, most likely be paid for by taxpayers..

<http://groundtruthtrekking.org/Issues/MetalsMining/RockCreekMine.html#ixzz2JWg0qdnb>

HB77 should be rejected.

Laura Stats
418 Seventh St.
Juneau, Alaska 99801
laurastatsdaugherty@gmail.com

Mr. Chairman, thank you for this opportunity to speak with you.

~~I come to you with an open heart, a strong mind and hopefully a persuasive voice. I am here to speak against the passage of HB77.~~

I come to you on behalf of my family and all the people who hunt, fish and gather food from this great land we call Alaska. Most importantly, I come on behalf of my grandson, Huck Daugherty, who is 4 years old and who at his tender age has already gone out with his parents and uncles to harvest salmon taller than he is and prawns bigger than his own hands, for him there is a magic in that; and in that magic lies an honest reality which must be protected in perpetuity. And you have the responsibility to protect our lands, streams and oceans.

Please look to our Alaska Constitution when making your decision on voting for HB 77. It states in Article 8 section 3

Titled: Common Use

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

*It explains in the Citizen Guide of the Alaska Constitution and I quote:
This section enshrines in the Alaska Constitution the common law doctrine that natural resources must be managed by the state as a public trust for the benefit of the people as a whole, rather than for the benefit of the government, corporations, or private persons.*

Who will HB 77 be protecting and representing, will it be protecting the common use clause of our constitution and the rights of the citizens of Alaska or does it protect a corporation which has it's own special interest not consistent with that of preserving the tender balance of the streams and waterways where our food arises from?

Please vote against the passage of this bill.

Thank you for hearing me with your open hearts and strong minds.



Kachemak Bay Conservation Society
3734 Ben Walters Ln, Homer, AK 99603
907 235.8214
kbayconservallon@gmail.com

February 4, 2013

Dear House & Senate Resources Committees,

RE: HB77 & SB26

Kachemak Bay Conservation Society (KBCS) opposes HB77 & SB26 for the following reasons:

1. **Alaskans' Constitution**-In order to comply with the Alaska Constitution, DNR must conduct a "best interest finding" (BIF) before it leases lands or gives other interests in state resources. Under the current law, Alaskans have an opportunity to comment on the possible impacts a proposal may have on water, fish, and human health. Governor Parnell's proposed changes would remove the requirement for public review and comment on BIFs, letting agencies and corporations dictate the scope and impacts of development throughout the state
2. **Water Rights**-Governor Parnell's proposal will give big corporations (not Alaskans) unlimited access to significant quantities of water through "temporary" water use permits, and severely limit Alaskans' right to challenge such permits.
3. **Salmon Habitat**: Fish need water to survive and the existing law allows Alaskans to secure "instream flow" rights to ensure there is enough water in streams for fish. Governor Parnell's proposal would strip Alaskans of the right to protect water quantity in salmon streams.
4. **Cruise Ship Pollution**-In 2006, Alaskans passed an initiative requiring cruise ships to meet water quality standards when they discharge pollutants to Alaskan waters. Governor Parnell's proposal would reverse the 2006 statewide vote, and allow cruise ships to dump sewage and other wastes in Alaska's marine waters.
5. **Undefined Terms**-Governor Parnell's proposal would allow a number of development projects to hide behind so-called "general permits," which do not require public notice and/or comments for specific projects. These permits will be issued to projects "unlikely to result in significant and irreparable harm to state land or resources," but the meaning of the terms "significant and irreparable harm" remains unclear and undefined.
6. **Wetlands**-Despite the fact almost all wetlands dredge and fill permits are currently granted by the U.S. Army Corps of Engineers, Governor Parnell's bill authorizes DNR and DEC to apply for delegation of this extremely costly regulatory program for which only Michigan and New Jersey have oversight-and Michigan is trying to give the program



Kachemak Bay Conservation Society
3734 Ben Walters Ln, Homer, AK 99603
907 235.8214
kbayconservation@gmail.com

back. Despite the fact that Alaska is dealing with a permit backlog, Governor Parnell is proposing that the state take over the issuing of wetlands permits.

KBCS is dismayed that the legislature is also considering failed legislation (reintroduced by Representative Eric Feige from last session) that would require Alaskans to post a significant bond prior to challenging a decision in court. This bill would effectively *prevent* all but the wealthiest corporations and individuals from being able to challenge resource permitting decisions within the state. Feige's bill was introduced last session, but mercifully failed to pass in the Senate. KBCS considers this one more example of Governor Parnell opening new accesses for outside corporations to exploit Alaskan resources, while trampling on the rights of Alaskans to protect their fish and water resources.

KBCS believes HB77 & HB26 restrict citizen access to the judicial branch. This bill creates several significant barriers for Alaskans to participate in resource development decisions by eliminating a mandatory notice and comment period and makes it more difficult to use our right to appeal decisions.

Sincerely,

Roberta Highland, President
Kachemak Bay Conservation Society
3734 Ben Walters Lane
Homer, AK 99603
907-235-8214
kbayconservation@gmail.com
www.kbayconservation.org

CC:

Sen.Cathy.Giessel@akleg.gov
Sen.Fred.Dyson@akleg.gov
Sen.Peter.Micciche@akleg.gov
Sen.Click.Bishop@akleg.gov
Sen.Lesil.McGuire@akleg.gov
Sen.Anna.Fairclough@akleg.gov
Sen.Hollis.French@akleg.gov

representative.eric.feige@legis.state.ak.us
representative.mike.hawker@legis.state.ak.us
representative.craig.johnson@legis.state.ak.us
representative.kurt.olson@legis.state.ak.us
representative.paul.seaton@legis.state.ak.us
representative.geran.tarr@akleg.gov
representative.chris.tuck@legis.state.ak.us
representative.peggy.wilson@legis.state.ak.us

Dear House Resources Committee members:

I am an attorney with over twenty years experience in Alaska natural resource law and policy, including three years adjudicating administrative appeals for the Department of Natural Resources. I have the following comments on HB 77 for consideration by the House Resources Committee:

- **General Permits. Page 1, Section 1.** This section gives the DNR commissioner broad authority to authorize activities on state land through issuance of a general permit “if the commissioner finds that the activity is unlikely to result in significant and irreparable harm to state land or resources.”
 - According to DNR, decisions about what constitutes a significant and irreparable harm will be made on a case-by-case basis, creating the potential for inconsistency and uncertainty in decisions made by this commissioner and future commissioners.
 - Laws should help establish consistency and predictability in agency decisions. If general permits are to be allowed, DNR should identify in law the activities that qualify for a general permit and the process for establishing the permits.
 - DNR currently has a regulation that specifically identifies uses and activities that do not require a permit (11 AAC 96.020). It’s not unreasonable to ask that DNR provide the same level of clarity here.
- **Appeal Rights.** Currently, a person “aggrieved” by a DNR decision generally has a right to appeal the decision to the agency. The proposed legislation changes this standard so that a person must be “substantially and adversely affected” in order to appeal a department decision.
 - Whether a person is substantially and adversely affected in a way that is sufficient to grant an appeal right will be determined on a case-by-case basis, possibly by different people – whether it’s the commissioner, a director or an appeals officer who makes the decision is not clear. This creates the potential for an inequitable or inconsistent application of the appeal right.
 - Most people are not well versed in the state’s resource laws and already struggle to make their appeals effective. Now DNR is asking that people describe how they are substantially affected without any definition of what that means, even DNR does not know what it means. This is an undue and unnecessary burden on the Alaska public.
- **Instream Flow Reservations. Page 21, Section 40.** This section removes the ability of organizations and individuals (“persons”) to apply for a reservation of water to maintain sufficient water flow for protection of various public interests.

HB 77 – Public Testimony – Lisa Weissler
2/7/2013

- With limited government resources, it is a benefit to the state to allow persons to apply for reservations that can protect valuable water resources and uses. This is in keeping with the Alaska constitution's requirement that water is reserved to the people for common use (Article 8, Section 3).
- State regulations have stringent data requirements for applying for a reservation of water, thus already limiting the number of individuals and organizations that can submit a qualified application.
- This provision has been in place since 1980. Is there really a problem that warrants making this change?
- Retaining water within rivers and lakes to benefit fisheries and wildlife, recreation, navigation, transportation and water quality is as important to the state as water use appropriations. Rather than changing the law, the legislature should provide DNR with sufficient funding to efficiently adjudicate reservation applications.
- **Temporary Water Uses. Page 22, Section 42.** The proposed language gives the DNR commissioner the authority to issue an infinite number of new temporary water use authorizations for the same project.
 - While it is possible to make adjustments whenever a new permit for the same project is issued, under the temporary use permit statute, applying conditions to the permit is discretionary on the part of the commissioner. In addition, there is no public notice requirement where the public could identify issues the department may not know about. The temporary water use statute is so minimal because the use is meant to be temporary.
 - If DNR wants to authorize a more than temporary use, a use that goes past five or ten years, but is something less than a right to appropriate water, they should develop a permit that includes public notice and sufficient criteria to protect the public interest.

I urge the committee to ensure that any changes to existing statutes be done with due regard for the interests of all Alaskans.

Thank you.

Sincerely,

Lisa Weissler
340 Highland Drive
Juneau, AK 99801
lisaweissler@gmail.com
Business website: <http://changingtides.com>



Council of
Alaska Producers

HB77: Land Disposals/Exchanges; Water Rights
February 7, 2013

Representative Eric Feige
Representative Dan Saddler
Co-Chairs, House Resources Committee
Capitol Building
Juneau, AK 99811

Co-Chairs Feige and Saddler,

The Council of Alaska Producers (CAP) appreciates the opportunity to comment on HB77: Land Disposals/Exchanges; Water Rights. CAP is a non-profit trade association formed in 1992 and serves as a spokesperson for the large producing metal mines and major metal developmental projects in the state.

Recently the State of Alaska has begun implementation of a strategy of statewide permitting reform in order to accomplish their stated objective of *"Improve the State of Alaska's permitting processes in order to advance the public interest by ensuring projects are permitted in a timely predictable and efficient manner while safeguarding the environment."*

One method of accomplishing this reform was to have the Division of Mining, Land and Water identify statutory changes that help reduce applicant costs, create efficiencies, reduce redundancies, and reduce opportunities for legal challenges in order to ensure the public can use and enjoy Alaska's lands and resources.

HB77 accomplishes this through a variety of mechanisms including allowing general permits, clarifying the appeals process, and simplifying leases and water permits. While the resource development industry is certain to be affected by this legislation, it is important to keep in mind that these provisions benefit everyone in Alaska including cabin owners, aquatic farmers, home developers and any individual who seeks to do business on state land or water.

From a CAP perspective, the State's permitting reform efforts and this legislation fits our position that permitting in Alaska must be rigorous, science based, transparent and predictable. We urge the committee members to support this bill and move it out of committee in an expeditious fashion.

Thank you for your consideration in this matter,

Michael Satre, Executive Director
Council of Alaska Producers
PO Box 33499
Juneau, Alaska 99803
907-957-2149

Alaska State Chamber of Commerce
Testimony
HB 77- Land Disposals/Exchanges: Water Rights
Wednesday, February 6, 2013

Good afternoon co-chairmen Feige and Saddler and members of the committee. For the record, my name is Rachael Petro and I am the president and CEO of the Alaska State Chamber of Commerce. The Alaska Chamber is a statewide membership organization made up of all sizes and types of businesses from across Alaska.

The Alaska Chamber's primary mission is to advocate for policies that improve Alaska's business climate. Efficient, predictable and common sense regulations and permitting processes are integral to creating an environment in which businesses, new and old, can succeed. Each Fall Alaska Chamber members gather to set its legislative agenda for the following year.

For the past several years in a row, including this year, Alaska Chamber members have expressed strong support for Alaska's policies and regulations that guide development of Alaska's natural resources while protecting Alaska's environment. At the same time, we have also advocated for streamlining those same regulations and policies where bureaucratic and business efficiencies can be gained.

In regard to the Fraser Institute's study, referenced earlier today in testimony, internationally, Alaska ranks just below Kazakhstan and just above Columbia in regard to uncertainty concerning environmental regulations. In regard to regulatory duplication and inconsistencies Alaska ranks below Honduras and just above Niger. Alaska Chamber members believe Alaska can do better!

The Alaska Chamber supports the provisions within HB 77/SB26 because they provide clarity, eliminate unnecessary processes, and modernize statutes based on the experience gained over many years from the professional staff within the Department of Natural Resources.

It is our belief that HB 77 is a common sense piece of legislation that should receive broad bipartisan support. Thank you for the opportunity to testify this afternoon.

House Resources Committee on HB 77, Feb. 6, 2013
Testimony of Rick Rogers, Executive Director,
Resource Development Council

Good afternoon co-chairs Feige, Saddler and members of the committee. My name is Rick Rogers, Executive Director of the Resource Development Council. RDC is a statewide business association representing forestry, oil and gas, mining, tourism, and fishing industries. Our mission is to grow Alaska through responsible resource development.

A top legislative priority of RDC is to encourage the state to promote and defend the integrity of Alaska's permitting process and advocate for predictable, timely, and efficient state and federal permitting processes based on sound science and economic feasibility.

RDC is in support of HB77. The Alaska Legislature, to its credit, provided DNR with additional resources to address what had become an untenable backlog of permits and authorizations. Such backlogs negatively affect our resource industries as well as individual Alaskans seeking required state authorizations. We understand that while a backlog still exists, DNR has made real progress in catching up on that work.

Ramping up staff to adjudicate the backlog is addressing the symptom, however systemic improvements to what has become a very complex set of statutes authorizing DNR's work is also needed to help prevent future backlog and delays.

The Governor, with support from DNR Commissioner Sullivan and his staff, has identified specific means of improving the efficiency of our complex permitting system. The administration should be applauded for proposing numerous changes to the DNR enabling statutes in order to make their processes more timely and efficient. Adapting our key DNR statutes to ensure we are adjudicating our land and resource authorizations in a more timely and efficient manner is overdue.

We encourage this committee to support the administration's efforts to more efficiently manage DNR's tremendous workload as the reach of the department affects a broad cross section of Alaska businesses, resource industries and individuals.

Thank you for the opportunity to comment.

Constitutional Convention
X/Resources/8/A
January 16, 1956

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 8/A

Introduced by Committee on Resources

STATE LANDS AND NATURAL RESOURCES

RESOLVED, that the following be agreed upon as part of
the Alaska State Constitution:

ARTICLE ON STATE LANDS AND NATURAL RESOURCES

Statement
of Purpose

1 It is the policy of the State to foster
2 and encourage settlement and development through the
3 maximum use and availability of its natural resources
4 consistent with the public interest and the avoidance
5 of waste. To that end it is the intent of this Article
6 to extend to all peoples the opportunity of participa-
7 tion in Alaska's heritage.

State
Boundaries

8 Section 1. The State of Alsaka shall consist
9 of all the territory, together with the territorial
10 waters appurtenant thereto, now included in the
11 territory of Alaska.

State's
Proprietary
Interest

12 Section 2. The State of Alaska shall provide
13 for the utilization, conservation and development of
14 all of the natural resources, including land and waters
15 belonging to the State, in accordance with provisions
16 of applicable acts of Congress, including the act
17 admitting Alaska to the Union, this Constitution, and

1 the laws of the State, for the maximum benefit of its
2 people.

Sustained Yield 3 Section 3. Forests, fish, wildlife, grasslands
4 and other replenishable resources belonging to the
5 State shall be administered, utilized and maintained
6 on the sustained yield principle.

General Reservations 7 Section 4. Fish, wildlife, and waters, wherever
8 occurring in their natural states, are reserved to the
9 people for common use.

Fish and Game Management 10 Section 5. Regulation and administration
11 of the commercial fisheries and of the wildlife, in-
12 cluding game fish, shall be delegated to a commission,
13 or to separate commissions, under such terms as the
14 legislature shall prescribe.

General Authoriza- tion for Facilities, Improve- ments and Services 15 Section 6. Facilities, improvements and
16 services may be provided to assure greater utilization,
17 development, reclamation and settlement of lands, and
18 fuller utilization and development of the fisheries,
19 wildlife and waters.

Uniform Application 20 Section 7. Laws and regulations governing
21 the use or disposal of natural resources shall apply
22 equally to all persons similarly situated with reference
23 to the subject matter and purpose to be served by the
24 law or regulation.

Special
Acquisitions
and Purposes

1 Section 8. Sites, objects, and areas of
2 natural beauty or of historic, cultural, recreational
3 or scientific interest may be acquired, preserved, and
4 administered for the use, enjoyment and welfare of the
5 people, under the laws of the State, and may be re-
6 served from the State public domain.

State
Public
Domain

7 Section 9. Lands and interests therein, in-
8 cluding submerged and tidal lands, possessed or
9 acquired by the State, and not used or intended
10 exclusively for governmental purposes, constitute
11 the State public domain.

12 The Legislature shall make provision for the
13 selection and administration of lands in the State
14 public domain.

Leases

15 Section 10. The Legislature may provide for
16 the leasing of any part of the public domain, or
17 interests therein, subject to reasonable concurrent uses.

18 Leases shall provide, among other conditions,
19 for payment by the party at fault for damage or injury
20 arising from noncompliance with terms governing con-
21 current use, for forfeiture in the event of breach of
22 conditions and, generally, for enforcement of terms.

Sales and
Grants

23 Section 11. The Legislature may provide for
24 the sale or grant of State lands or interests therein,
25 and establish sales procedures subject to the following
26 conditions;

1 All sales or grants of State land or interests
2 therein shall contain such reservations to the State
3 of all mineral or water resources as are required by
4 the Congress, or the State, and shall provide for
5 access thereto, and to all other resources reserved
6 to the people; except that the reservation of access
7 shall not impair the owners' beneficial use, prevent
8 the control of trespass, nor preclude compensation for
9 damage.

Public
Notice and
Other
Safeguards

10 Section 12. Disposals or leases of state
11 lands or interests therein shall be preceded by such
12 public notice and other appropriate safeguards of the
13 public interest as the Legislature shall prescribe.

Mineral
Rights

14 Section 13. Discovery and appropriation shall
15 be the basis for establishing a right in those minerals
16 subject to location under the Federal mining laws in
17 the year 1955 and now reserved to the State, as well as
18 to all other metallic minerals reserved to the State.
19 Prior discovery, location and filing shall, as pres-
20 cribed by law, give prior right to such minerals and
21 to issuance of permits, licenses, leaseholds, deeds, or
22 patents if authorized by the Congress, and by the State,
23 for the extraction thereof. Except as title to mineral
24 lands shall have been conveyed by the State, continuance
25 of such right shall depend upon performance of annual

1 labor, on payment of fees, rents, or royalties, or such
2 other requirements as may be prescribed by the Legislature.

3 Surface use of such lands, by the **mineral**
4 claimant, shall be limited to those necessary to the
5 extraction and basic processing of mineral deposits.

6 The Legislature shall provide for the issuance,
7 type, and terms of leases for coal, oil, gas, oil shale,
8 sodium, phosphate, potash, sulphur, pumice, and other
9 minerals as may be prescribed by law.

10 Leases and prospecting permits giving exclusive
11 right of exploration for specific periods and areas may
12 be authorized for exploration conducted for coal, oil,
13 gas, oil shale, sodium, phosphate, potash, sulfur,
14 pumice, and other non-metallic minerals as may be
15 prescribed by law; and for the use of geophysical,
16 geochemical and similar methods of prospecting for all
17 **minerals**.

Water
Rights

18 Section 14. All waters reserved to the
19 people for common use shall be subject to appropriation.
20 Priority of appropriation shall give prior right. An
21 appropriation of water, except for public water supply,
22 shall be limited to stated purposes and subject to
23 preferences of beneficial uses, concurrent or otherwise,
24 as prescribed by the Legislature, and to the general
25 reservation of fish and wild life.
26

Access to Navigable Waters 1 Section 15. Free access to the navigable or
2 public waters of the State shall not be denied any
3 resident of Alaska or citizen of the United States,
4 except that the State may by general law regulate and
5 limit such access for other beneficial or public purposes.

No Exclusive Right of Fishery 6 Section 16. There shall be no exclusive right
7 or special privilege of fishery created or authorized
8 in the natural waters of the State.

Divestment of Rights 9 Section 17. No person shall be involuntarily
10 divested of his right to use of waters, his interests in
11 lands, or improvements affecting either, except for a
12 superior beneficial or public use and then only by
13 operation of law.

Private Ways of Necessity 14 Section 18. Proceedings in eminent domain
15 may be undertaken for private ways of necessity to
16 permit essential access for extraction or utilization
17 of resources.

Residual Powers 18 Section 19. The enumeration of specified
19 powers shall not be construed as limitations on other
20 implied powers of the State in relation to the utiliza-
21 tion, development and conservation of natural resources,
22 except as specifically provided herein.

Constitutional Convention
X/Resources/8/A
January 16, 1956

ALASKA CONSTITUTIONAL CONVENTION

Commentary on Article on State Lands and
Natural Resources

(Sec. 1 State Boundaries)

This is the same boundary statement set forth in H.R. 2535.

(Sec. 2 States' Proprietary Interest)

This section is a general grant of authority to the State for the utilization and development of all resources over which the State has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the State through grants from the United States or by other means. Authority over private lands and resource interests is not provided in this Article except as that authority is generally reserved in Section 18.

(Sec. 3 Sustained Yield)

Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory organisms destructive of more beneficial plant and animal life. The

reference of this section is to the State of Alaska, and not to any particular parcel of land or any particular body of water.

(Sec. 4 General Reservations)

Game fish, wildlife, fisheries, and water are recognized as belonging to the State so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition within the law. This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law. The ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of water.

(Sec. 5 Fish and Game Management)

Management of fish and game resources, and the regulation thereof, are by this section to be the responsibility of a commission, or commissions. Composition and tenure of commissions is not mentioned, because the Committee did not wish to fix membership rigidly in the Constitution, and because the "staggered term" concept is firmly established in Alaska's Board system.

(Sec. 6 General Authorization for Facilities, Improvements and Services)

This general authorization is made to facilitate the development of the State's natural resources. In localities where lands

are susceptible to general agricultural development, the State would have authority to undertake improvements by providing roads or improvements on the land in preparation for settlement. Where improvements or facilities may be essential to the development of fisheries and water resources, the state would have the authority to undertake those developments. Such developments could require the services of technical specialists and advisors who can assist citizens of the State on technical problems involving the improvement of production and resource utilization in much the same way that the farm agent has worked on problems of agricultural production and the Forest Service has rendered aid to private owners of standing timber. The section is not, however, intended as an authorization for the State's entering business in competition with private industry.

(Sec. 7 Uniform Application)

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to **disposition by the State.**

(Sec. 8 Special Acquisition and Reservations)

General authority is granted the State to acquire special sites, objects or areas of scenic, historic, cultural or scientific or recreational interest, to reserve similar sites, objects or areas in the state public lands and to administer these special sites, objects, and areas for general public use. These sites, objects or areas might ultimately become state monuments or parks.

(Sec. 9 State Public Domain)

The State public domain is defined to include all lands and interests therein that are acquired by the State except for (1) lands used or intended to be used exclusively for governmental operations, and (2) those sites and areas that have been acquired or reserved for special scenic, historic, cultural, recreational, or scientific interest. The lands, and interests therein, in the State Public Domain may be disposed of in accordance with provisions of federal law, the State Constitution and State Law. Should terms of enabling legislation covering grants of lands to the State be modified before passage, the language of this section would avoid necessity of amending the Constitution.

General authority is granted to the Legislature to provide for the selection and administration of the State Public Domain. The Enabling Bill provides for State selection of granted lands. The Legislature is given general authority to provide for the general administration of the State public domain in order to assure maximum use and public benefit in the several uses of those lands.

(Sec. 10 Leases)

The Legislature is authorized to lease State lands or interests therein. In granting leases, the potential uses of the land are to be considered so that maximum benefit can be derived. Each lease shall state the particular use or uses to be made of the lands as well as the conditions of the use and the term or tenure of the lease in order to facilitate reasonable concurrent use by others if occasion arises. "Reasonableness" of concurrent uses

implies that possibilities of conflict in use should be kept to a minimum. Provisions of liability, forfeiture and other means of enforcement of the lease are to be provided in the instrument.

(Sec. 11 Sales and Grants)

Sales and grants of State lands and interests therein are generally authorized with provision for reservation of mineral rights and for reservations of access. The reservation of mineral rights is prompted by provisions of H.R. 2535, the current Enabling Bill.

Reservation of access is required on all grants or sales of state land so as to assure access to reserved mineral rights and to those resources generally reserved to the people by Section 3 of the proposal. While reserving access, the section explicitly provides that these rights of access shall not impair the owner's beneficial use, shall permit the control of trespass and allow for compensation for damages done to the owner of the land.

(Sec. 12 Public Notices and Safeguards of the Public Interest)

Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration can become hopelessly ensnarled in red tape. As a result this section of the Constitution provides for the Legislature to establish public notice, and other safeguards to protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the Constitution itself.

(Sec. 13 Mineral Rights)

With the restrictions on the sale, grant or patent of mineral lands as provided in the proposed Enabling Bill and in Section 9 of the proposal, this section recognizes the established pattern of mining rights whether applied to a system of leaseholds or patents. This established system of mining law recognizes the preferential right of a prospector to a mineral deposit on the basis of discovery and appropriation. Appropriation involves both location and filing. All mining law requires continued beneficial use (assessment work) to maintain a mining claim.

These elements of mining law were described by Costigan in his standard works on American Mining Law when he stated, "They (mining laws) all recognize discovery followed by appropriation, as the foundation to the possessor's title and development by working as the condition of its retention". This conception underlies the statement of mineral rights contained in Section 13.

Exceptions to these general rules applicable to mineral rights have become recognized through the Federal Mineral Leasing Act of 1920, as amended, and other special legislation for Alaska. The fuel minerals of oil, gas, oil-shale, and coal and phosphates, potash and other non-metallic minerals have been developed under a lease system which involves exclusive right to prospect certain areas over a given period of time subject to payment of certain royalties if commercial development is undertaken. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise the

right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit, license, lease or patent if possible, for the extraction of these mineral deposits. The prospector's preferential right would presumably be transferable in the same manner that a claim can be conveyed today.

Section 13 is so phrased as to permit patenting of claims on state land should Congress remove the anticipated restrictions and the Legislature so provide. However in adapting the ideas behind the Act of July 23, 1955 to Alaskan conditions, restrictions are placed upon claims and patents so that the surface uses of the land shall be limited to those uses necessary to the extraction and basic processing of mineral deposits. The land will be available for construction of mining works, the disposition of mining wastes and for the timber necessary in mine construction. However, forests on these lands would not be generally available to the mineral claimant. The further requirement of assessment work, operation, or payments is to assure that the lands claimed for mineral purposes will revert to public control when for example, mining has ceased, the mineral deposits have been exhausted or the property abandoned.

(Sec. 14 Water Rights)

This section provides for the prior appropriation system of water rights generally used in the western states and in Alaska. The prior appropriation system recognizes the principle of "first come; first served", or "first in time; first in right" which is also

the basic principle of mining law. Here again the concept of appropriation involves filing an application for stated quantities of water for stated uses at specific locations. The preservation of a prior appropriation right to water requires continued beneficial use. Concurrent use is recognized to assure maximum utilization. Water used for the generation of hydro-electric power, for example, is also subject to appropriation for domestic consumption or other uses that do not conflict with those for which prior appropriations have been made. Appropriations are subject to the general reservation of fish and wildlife provided in Section 3 so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.

Preference among beneficial uses is a basic provision found in the resource codes and constitutions of several of the Western States. Orders of preference are usually made for water uses such as domestic or industrial consumption, irrigation, fisheries, mining, hydro-electric power production, etc.

The provision for divestment of right allows eminent domain proceedings to be used in permitting a higher use only. As among users of the same order of priority, the power of condemnation cannot be used. Under this type of provision the state may have granted a mining lease for placer mining in a river bed. If the stream had important hydro-electric potentialities a power company might desire to use a site, which would cause the flooding of the mine. If the hydro-electric development was determined to be a higher beneficial

use, the mining properties might be acquired by appropriate legal action with just compensation for the interests and improvements of the conflicting mining use.

(Sec. 15 Access to Navigable Waters)

This section assures free access to the navigable waters of the state for "any person resident of Alaska or citizen of the United States." However, such access may be limited by other beneficial purposes such as the construction of dam or other water-works. Since the control of navigable waters is a Federal question within the province of Congressional authority, any actions taken by the Federal government would supersede this constitutional provision.

(Sec. 16 No Exclusive Right of Fishery)

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State.

(Sec. 17 Divestment of Rights)

This section, protecting any person from involuntary divestment of property rights and interests, is generally applicable to any established right and might be relied upon to protect persons who claim possessory rights to tidelands in coastal areas where substantial improvements have been made in docks, wharves or other waterfront facilities and homes.

(Sec. 18 Private Ways of Necessity)

This provision was borrowed from the Wyoming Constitution and modified to meet Alaskan conditions. The Wyoming provision states, "Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, domestic or sanitary purposes, nor in any case without due compensation." In that arid state this provision was developed to assure access to water supply even though it might be necessary for a private person to secure easement across adjoining private lands. Since the adoption of the Wyoming Constitution, a number of western states have included a similar provision in their constitutions. . Since the problem of essential access in Alaska is not limited to water supply as in Wyoming, this article makes only a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

(Sec. 19 Residual Powers)

The Article on State Lands and Natural Resources is primarily concerned with the State's proprietary interests in the State public lands, waters, wildlife and fisheries. This section explicitly states that the other provisions in the Article on State Lands and Natural Resources shall not limit the exercise of the general police powers of the State to provide for the utilization, development and conservation of natural resources in general, including those in private ownership.

Regulation of stream pollution, the prohibition of fish-traps and fire control in timber areas are illustrations of action taken under general public police powers to provide for public health, safety or the general welfare which may affect resource development, utilization or conservation on both public and private lands.

TERMS

APPROPRIATION - mining

The term "appropriation" in mining law means the posting of notice at or near the point where the ledge is exposed; next the marking of the boundaries. (Ricketts, Am. Mining Law)

APPROPRIATION - water

An appropriation of water consists in the capture, impounding, or diversion of it from its natural course or channel and its actual application to some beneficial use private or personal to the appropriator, . . . exclusion to the extent of the water appropriated of all other persons, to constitute a valid appropriation, there must be an intent to apply the water to some beneficial use existing at the time or contemplated in the future, a diversion from the natural channel by means of a ditch or canal, or some other open physical act of taking possession of the water, and an actual application of it within reasonable time to some useful or beneficial purpose. (Black's Legal Dictionary)

Elements of valid appropriation of water are:

- (1) an intent to apply it to some beneficial use, existing or contemplated,
- (2) a diversion from a natural stream (or source),
- (3) an application of it within a reasonable time to some useful ends. (long line of Western cases).

BENEFICIAL USE

In both water and mining law a condition of the retention of a right is continued beneficial use. Beneficial use involves

making use, continuing active utilization or work.

In the laws of many states certain uses of water including the disposal of wastes and the preservation of scenic features are not recognized as beneficial uses and therefore not subject to appropriation for those purposes. Those uses that are beneficial and subject to appropriations may then be ordered in their importance so that a higher use can prevail over a lower use through eminent domain proceedings allowing for just compensation to the lower user for his rights and improvements. (V.O.)

Federal grazing permit on natural forests held to be sufficient "beneficial use" to support condemnation of defendants' land for access thereto (126 P2d 481)

Reservoir to hold water in reserve for use only if necessary held a sufficient beneficial use to defeat forfeiture through non-use and that Company could recover from U. S. for construction of the Friant Dam on San Joaquin River which cut off its reservoir source. (76 Fed Sup 836)

Summer resorts' use of a waterfall for its esthetic purposes in attracting patronage has been held a beneficial use sufficient to preclude diversion from above for purposes of generating electric power.

Cases hold irrigation and the generation of electric power to be among the many instances of the beneficial use of water. Where legal title is in one person and the right to beneficial use is in another (as in the case of a homesteader who has complied fully with requirements for patent) he is deemed the beneficial owner of the property pending issuance of patent.

CLASSIFICATION OF LANDS

Classification is characterization through the selection of some quality or feature, and therefore lands may be classified as pasture, grazing, timber, arable or mineral. It is determined by surface indications. Minerals may be hidden under any surface but a surveyor is not expected to explore for them that he may include or exclude reference to them in his reports. (8F Sup 407).

A surveyor's report that lands if cleared should be suitable for grazing, but at the time of the report were more valuable for timber, is, when accepted by the land office, a classification of the lands as non-mineral. (16 USCA 91 244 US 90).

GAME

Migratory fish in navigable waters of a state, like game within

its borders, are classified as animals ferae naturae, the title to which so far as susceptible to assertion before possession is obtained, is held by the state in its sovereign capacity, in trust for all its citizens. As an incident of the assumed ownership the state may protect the species from extinction by exhaustive measures of capture. (95 P 808)

INTEREST IN LAND

An interest in land is the legal concern of a person in the thing or property or in the right to some of the benefits or uses from which the property is inseparable. (273 Nw121)

An appropriator's right pending determination of his application to use public lands was an "interest in real property" which he could protect by suit to determine conflicting claims. (119 P234)

A right to take water from a well by reason of occupation of a dwelling house, and for the more convenient occupation thereof, is an interest in land. (22 WP)

Most cases hold a mortgage not to be an interest in land but mere security until foreclosure.

A conveyance of an interest in the oil, gas and minerals in and under a tract of land is a conveyance of an interest in the land. (220 SW623)

Whether such right resides in lessee or lessor, as royalty, it is an interest in land (49F (2nd) 76)

Fractional mineral rights constitute an interest in land (78 P692)

A leasehold interest constitutes an interest in land; a contract for sale of land has been held an interest in land,

as has been a written option to purchase; standing timber is an interest in the land which the state may convey, but upon conveyance of stumpage, to be removed at once, such stumpage becomes personal property as distinguished from an interest in land. An agreement to sell forest products is an interest in land.

NATURAL WATERS

Navigable waters within the meaning of 5 Stat. 726 giving District Courts jurisdiction over contracts and torts pertaining to vessels navigating between different ports in different states and ports upon the lakes and waters connecting said lakes is not to be understood in the same sense as natural waters but includes artificial waterways as well. (21 Fed Cas. 851, No. 12549)

NAVIGABLE WATERS

Actually navigable in fact.

Capacity for navigation or capable of being navigated to float boats, ships, or produce of the country.

RESERVED TO THE PEOPLE FOR COMMON USE.

Ancient traditions in property rights have never recognized that a private right and title can be acquired by a private person to wildlife in their natural state or to water in general. The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition. Rather rights to use are secured by the general laws of the state. In all

English and American legal systems ownership of water cannot be asserted, rights acquire only to the use of water. Once wildlife is captured and removed from their natural state possessory right accrues to the captor, provided that the wildlife was captured in conformity with provisions of law. (V.O.)

SEVERAL RIGHT

A several fishery is an exclusive right to fish which is derived from the owner of the soil. (39 W&P 89)

The right may attach as well to an arm of the sea where the tide ebbs and flows as to fresh water. (60 NY 56)

"Sole and exclusive fishery" were, after verdict, equivalent to a description of a several fishery. (3QB 426)

SUSTAINED YIELD PRINCIPLE

As to forests, timber volume, rate of growth, and acreage of timber type can be determined with some degree of accuracy. For fish, for wildlife, and for some other replenishable resources such as huckleberries, as an example, it is difficult or even impossible to measure accurately the factors^{by} which a calculated sustained yield could be determined. Yet the term "sustained yield principle" is used in connection with management of such resources. When so used it denotes conscious application insofar as practicable of principles of management intended to sustain the yield of the resource being managed. That broad meaning is the meaning of the term as used in the Article.

WHITE ACT PROVISION 48 U.S.C.A. 222

That every such regulation made by the Secretary shall be of general application within the particular area to which it applies, and that no exclusive or general right of fishery

shall be granted therein, nor shall any citizen of the U. S. be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary.

With respect to traps, applications for sites within areas which the Secretary finds consistent with proper conservation, should be allotted in order of priority of time in applications among qualified applicants.

The word "exclusive" forbids not only a grant to a single person or corporation, but to any special group or number of people. (Hynes-Grimes Karluck Reservation)

Constitutional Convention
Committee Proposal 8/a
Date: January 16, 1956

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON RESOURCES

Hon. William A. Egan, President
Alaska Constitutional Convention

Your Committee on Natural Resources submits for consideration of the Convention the attached proposed Article No. 8, as a Committee Substitute for tentative committee Proposal No. 8 earlier submitted. Accompanying said Proposal is a revised Commentary.

The Committee has considered the following Delegate Proposals and reports on them as follows:

Sections 1 & 2 of Proposal 5 have been incorporated in part in the Committee Proposal.

Section 3 was not incorporated in the Committee Proposal and, in the Committee's opinion, might properly be considered by the Committee on Resolutions.

Section 13, Proposal No. 6 is believed to be more properly the concern of Finance, Ordinances and Transitional Matters.

In the Committee proposal matters proposed in delegate Proposal No. 7 are touched upon in part and the way left clear for such future Legislative action as may be desired.

The Committee recommends for reference to the Resolutions

Committee and to the next Territorial Legislature the proposition that the Territorial Legislature put in motion, through its Legislative Council or otherwise, a comprehensive study of necessary legislation in the resources field to implement this proposed Article. It is recognized that in most respects Legislation based on such study will be the province of the State Legislature, yet the Committee feels that the undertaking will be of such scope and magnitude that early attention should be given it.

Sections 5 & 6 of Proposal No. 9 are in part incorporated in Section 6 of the Committee Proposal.

Sections 6 & 7 of Proposal 17 are in substance incorporated in this Proposal.

Proposal 18 is in part incorporated in Section 10 of this Proposal.

Proposal 26 was considered beyond the province of the Committee and without the scope of the Constitution. However, the Committee recommends that the Convention adopt a suitable resolution addressed to appropriate Federal agencies now in position to remedy the situation which Proposal 26 seeks to reach.

Sections 1, 3, 4, and 5 of Proposal 30 are covered generally in this Proposal, while Sections 2 and 6 are not.

Proposal 32 is merged in this proposal.

Both before and since the submission of Proposal 33, the abolition of fishtraps received the Committee's searching attention. While the Committee Proposal does not mention traps, the Committee urges an expression in this respect by the Convention, and recommends that the Convention adopt an appropriate Resolution or Ordinance as a means of hastening the abolition of traps.

Respectfully submitted,

W. O. Smith, Chairman

Burke Riley

John C. Boswell

Ada B. Wien

Leonard King

B. D. Stewart

Peter L. Reader

Barrie M. White, Jr.

Truman C. Emberg

Doniece Gott

From: Sen. Kevin Meyer
Sent: Wednesday, April 03, 2013 8:14 AM
To: Senate Finance Committee
Subject: FW: Please oppose HB 77!

Testimony HB 77

From: Konrad Schaad [<mailto:schaad@gmail.com>]
Sent: Wednesday, April 03, 2013 8:05 AM
To: Sen. Kevin Meyer
Subject: Please oppose HB 77!

Please consider this an official written testimony and add this to the public records.

I strongly oppose HB 77. This bill would strip the citizens right to weigh in on crucial decisions about Salmon streams. We must have the right to apply for water rights to keep water in our Salmon streams. In a true democracy we will not limit the power of the people. A democracy where the peoples rights are curtailed is nothing but a joke!

Salmon is the mainstay for Alaska, and our greatest renewable resource. But it will only remain renewable if we take care of the salmon streams. The world is full of examples of how not to do it. Alaska is the only state left with healthy natural Salmon runs, worth hundreds of millions of Dollars. In a world where the mining giants of this planet use so much money to lobby for their claims, the least we can do is keep the residents rights to apply to DNR for water rights to keep Salmon in our streams.

We must never trade our Salmon for a finite resource. Water in our Salmon streams is money in the bank.

Please oppose this biased and unnecessary HB 77.

sincerely

Konrad Schaad
53200 N Mc Neil Pt
Homer Ak 99603

--

Konrad Schaad
907 299 2790

Doniece Gott

From: Sen. Kevin Meyer
Sent: Wednesday, April 03, 2013 8:15 AM
To: Senate Finance Committee
Subject: FW: HB77

From: Milli [<mailto:millimom@xyz.net>]
Sent: Wednesday, April 03, 2013 8:14 AM
To: Sen. Kevin Meyer
Subject: HB77

Dear Senator Meyer and Members of the Senate Finance Committee,

Because I am unable to phone in to comment this afternoon, please consider these comments as part of the public record.

As important as salmon streams are to the Kenai Peninsula, as it is our economic engine, it is in my view imperative that the Senate restore the language that the House removed from this bill, and allow Alaska's residents the continued right, as needed, to protect their precious waters.

Please, please put fish first. When allocation decisions are made in streams, considering our state history, wild salmon should get a priority over other out of stream uses.

Alaskans have a right to healthy salmon and an obligation to protect them. Don't strip away our rights to keep water in our streams for healthy fish. It's wrong!

Thank you for listening.

Milli Martin
PO Box 2652
Homer, AK 99603

Doniece Gott

From: Sen. Pete Kelly
Sent: Tuesday, April 02, 2013 1:33 PM
To: Doniece Gott
Subject: FW: HB 77 Testimony

From: George Matz [mailto:geomatz@alaska.net]
Sent: Tuesday, April 02, 2013 11:49 AM
To: Sen. Pete Kelly; Sen. Kevin Meyer
Cc: Sen. Anna Fairclough
Subject: HB 77 Testimony

I would like to submit the letter below to the Senate Finance Committee with regards to its consideration of HB 77

Please distribute to other committee members.

Thank you.

George Matz



<http://kachemakbaybirders.org/>

March 7, 2013

Senator Peter Micciche

Senator Gary Stevens

Representative Paul Seaton

Re: West Eagle #1 Drilling Program and HB 77

Dear Legislators:

Following is a copy of comments submitted today by the Kachemak Bay Birders to the Department of Natural Resources (DNR) Division of Oil and Gas (DO&G) regarding the permit application by Buccaneer Alaska Operations to begin drilling operations in their West Eagle lease east of Homer. This permit is instructional in terms of what might be expected from HB 77.

As you can see from our letter, the Kachemak Bay Birders has serious concerns about the lack of information in the Buccaneer's Plan of Operations and the risk this presents to local birds that nest in the area. An acceptable permit application would recognize this risk and acknowledge that they may need to obtain a Migratory Bird Treaty Act permit. But neither Buccaneer nor DO&G seem aware of this.

Our purpose in writing is to point out that a weak DNR permitting process may become even weaker, some would claim functionally nonexistent, if HB 77 is approved by the Senate. Accordingly, we ask that you vote against this bill unless there are significant amendments.

With regards to West Eagle, the sections of HB 77 that we think need to be deleted are;

Section 1. AS 38.05.020 is amended by adding a new subsection to read:

(c) Notwithstanding any other provision of law, the commissioner may authorize an activity on state land by the issuance of a general permit if the commissioner finds that the activity is unlikely to result in significant and irreparable harm to state land or resources.

Sec. 39. AS 46.15.133(e) is amended to read:

(e) A person **adversely affected** [AGGRIEVED] by the action of the commissioner or by the failure of the commissioner to grant, deny, or condition a proposed sale or an application for appropriation or removal in accordance with (c) of this section may appeal to the superior court. **In this subsection, to be adversely affected, a person must be directly affected by a decision made by the department either by a physical or financial detriment to the person's interests resulting from the decision.**

If Section 1 becomes law it appears as if the Temporary Water Use Permit that may be needed by Buccaneer will become just a general permit that would have even less rigorous review by DNR and no public process. Significant impacts to local breeding birds will be more likely with little expended to mitigate

losses. This is not acceptable. This is not streamlining but selective deregulation favoring extractive industries over local residents who seek to protect their opportunity to benefit from common use resources.

Section 39 is disturbing because it significantly raises the bar in terms of what qualifies for an appeal to a permit. Someone trying to unselfishly protect common use resources, particularly for nonconsumptive uses, will have a hard time demonstrating “physical or financial detriment” loss if their resource is damaged by use of another because of a permit. For instance, how would a birder demonstrate a physical or financial loss if they were no longer able to enjoy a favorite birding spot because water withdrawals damaged the habitat? In essence, Section 39 discriminates between consumptive use (where harvest or extraction of a resource is usually a taking with ownership and monetary value) and nonconsumptive use (where there usually is no taking or ownership, hence no monetary value). Our Constitution which says resources should be available for “maximum use consistent with the public interest” does not make this distinction.

There are other aspects of HB 77 which need to be amended, but we will limit our comments to just how this bill might affect the West Eagle permits.

We would like to know your view about the concerns being raised in this letter?

Sincerely,

George Matz,

geomatz@alaska.net

Kachemak Bay Birders Chair

March 7, 2013

Alaska Department of Natural Resources

Division of Oil and Gas

550 West 7th Avenue, Suite 800

Anchorage, Alaska 99501

dog.permitting@alaska.gov

Re: LOCI 12-004 West Eagle #1 Drilling Program

Dear Division of Oil and Gas:

The Kachemak Bay Birders, a group of birders who reside in the Homer area, would like to submit the following comments and information regarding West Eagle #1 Drilling Program. Our comments concern the possible impact on birds.

The Plan of Operations submitted by Buccaneer Alaska Operations gives only token recognition of the presence of birds in the area and nothing more than loose speculation as to possible impacts from drilling and traffic to the drilling site. To quote in part;

11.3 Wildlife Interaction Plans

The usual wildlife that could be in the area during the winter include owls, ravens, foxes, porcupines, moose, and brown and black bears. Encounters with wildlife are expected to be minimal.

The brief section on wildlife is not only inadequate but seriously inconsistent with other parts of the plan. It speaks of the presence of wildlife “during the winter” yet the plan proposes drilling during “May to July 2013-Prepare site and mobilization” and “June to August 2013-Drill and test the West Eagle #1 Well. So in effect, the plan does not address wildlife impacts at all.

The bird species that use this area during breeding season are well documented. For instance, as pointed out in *A Birder's Guide to Alaska*, “There is a large bog on the left where Least Sandpipers, Parasitic Jaegers, Mew Gulls and Arctic Terns nest....Keep alert for the call of Aleutian Terns that have been seen flying over the bog.” The bog being referred to is next to the gravel pad that is being proposed as a drilling site and runs along

the access road. The access road crosses a small stream that feeds into the bog. The Aleutian Tern is on the Alaska WatchList (<http://ak.audubon.org/alaska-watchlist>).

Not far from the gravel pit, but not road accessible, is Eagle Lake which is a local gem for nesting birds. *A Birder's Guide to Alaska* mentions that "there is a nesting pair of Pacific Loons, and in the spring Mallard, Lesser Yellowlegs, Least and Pectoral Sandpipers, dowitchers, Red-necked Phalarope, Boreal and Black-capped Chickadees, and sometimes warblers, such as Townsend's and Redpoll."

In addition to this reference, a review of eBird will clearly demonstrate that many observations have been recorded from this area. In fact, for the past few years the Kachemak Bay Birders has lead summer field trips to the area to view the nesting Parasitic Jaegers and Arctic Terns at the bog and nesting Pacific Loons at Eagle Lake.

A concern we have in terms of potential impacts that the West Eagle project may have on these nesting areas is the need for water. While it is clear that there is a need for water, the Plan of Operations fails to provide any specifics to let us know if the bog or Eagle Lake might be impacted. All the plan says is quoted below.

5.4 Water Requirements and Sources

Fresh water is needed primarily for drilling operations. Normal water requirements are expected to be less than 1,000 gpd except when mixing new drilling mud in which case 10,000 to 30,000 gpd may be required (depending on the well design and mud system used). An additional 5,000 to 20,000 gpd may be required for associated uses including potable water uses, dust control, wash water, and other uses associated with the drilling operations. Ice road construction, if required, could require up to 1 mgd and ice road maintenance could be as much as 0.1 mgd. Water will be provided from available local sources. These include water wells near several ponds inside of the Material Site and public/commercial water sources in the local area. A Temporary Water Use Permit (TWUP) may be required from ADNR for use of water from new wells and/or local lakes.

Any intent to use as a water source the nearby stream that crosses the access road before it drains into the bog needs to clearly demonstrate that any water withdrawal will not impact the bog. The disturbance from any attempt to build access to Eagle Lake for water will unquestionably affect the solitude of nesting waterbirds. If any of these intrusions were to occur it would be a violation of the Migratory Bird Treaty Act (see <http://alaska.fws.gov/mbsp/mbm/index.htm>). This law says "Destruction of active bird nests, eggs, or nestlings that can result from spring and summer vegetation clearing, grubbing, and other site preparation and construction activities would violate the MBTA."

All in all, the lack of specificity in this permit application leads us to question whether Buccaneer Alaska Operations has the necessary local knowledge and awareness needed to drill in the West Eagle site without damaging bird life. The Plan of Operation seems oblivious to impacts on birds. Furthermore, in their section

on federal permits there is no acknowledgement that that their water withdrawal could violate the Migratory Bird Treaty Act. Nor do they seem to be aware of the importance of these areas to local residents. Accordingly, we think the appropriate action for the Division of Oil and Gas to take is to return the permit application and ask that it be amended so that risks to other resources can be more appropriately assessed.

Sincerely,

George Matz,

geomatz@alaska.net

Kachemak Bay Birders Chair

cc U.S. Fish and Wildlife Service

Doniece Gott

From: Kerry MacLane <maclanekerry@yahoo.com>
Sent: Tuesday, April 02, 2013 2:26 PM
To: Senate Finance Committee
Subject: SE take on the Alaska Association of Soil and Water Conservation Districts

Dear Members of the Senate Finance Committee,

As the Chair of the newly formed Southeast Soil and Water Conservation District I wanted to express my appreciation for the work done by the Alaska Association of Conservation Districts. The AACD helped us pull together a Board of Supervisors that includes experts in the fields of agriculture, mariculture, aquaculture and forestry. With the AACD's assistance we fully expect to create jobs in Southeast Alaska around food security including commercial greenhouses and shellfish farms.

Mr. Kerry E. MacLane
Chair, Southeast Soil and Water Conservation District
P.O. Box 1665, Sitka, Alaska 99835
907.752.0654, cell
907.747.7888, home

MEMORANDUM

TO: Senate Finance Committee Members

FROM: Rick Halford

DATE: April 5, 2013

I want to point out to the Committee that the applications for water reservations by the local native organizations of western Alaska, Trout Unlimited and The Nature Conservancy are on the same anadromous streams previously closed to mineral entry by the Department of Natural Resources. The Department's justification includes these statements:

- *"The Bristol Bay salmon fishery is, and historically has been, the most valuable economic resource in the Bristol Bay region; providing a major portion of all the salmon harvested in the State of Alaska and the world annually..."*
- *Effects of Instream Mining: The development of mining claims within the active stream channel of an anadromous stream creates a serious use conflict and could jeopardize the commercial, sport, and subsistence harvest of salmon and the overall economic and sociocultural structural structure of the Bristol Bay region."*
- *Existing state and federal water quality regulations and standard were considered inadequate to guarantee the continued propagation and production of the salmon and other fish resources in the stream waters in the Bristol Bay area."*
- *Within the 64 streams designated for closure in the order, sufficient protection of fish and game resources (as required in AS 16.05.87(d)) would likely preclude mining in these areas after a mining claim has already been filed. Actual stream closings more effectively and efficiently achieves the level of fisheries protection required on these 64 streams. The result of these analyses was to close to new mineral those streams where highest conflict between the salmon and mining would occur."*

Source: DNR, Justification for Stream Closures, MCO 393

Mineral Closing Order 393 precedes the Pebble and related mining claims or leases, was restated Bristol Bay Area Plan revisions of 2005 and remain in effect. The suggestion that the water reservations are a threat to mining operation fails to acknowledge that the mineral claimant does not have rights to the waters or minerals underneath these streams because the Department closed these streams and a 100-foot buffer on either side to mineral entry many years ago.

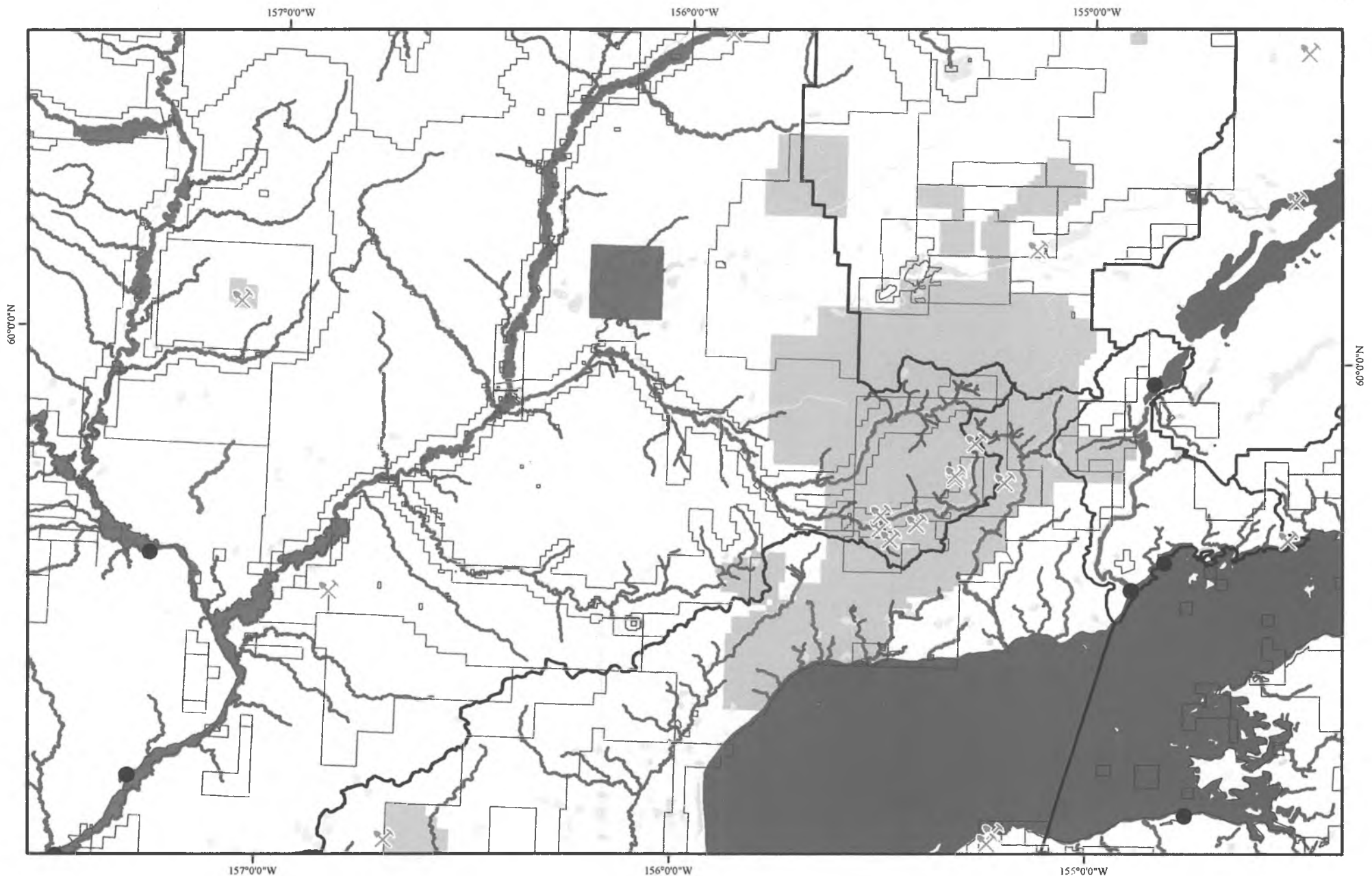
The last application filed in western Alaska was about 4 years ago and since then only a total of 4 or 5 applications have been filed in the rest of the state. None of the applications have stopped anything or been adjudicated and the Pebble related ones are on streams closed to mining for almost 30 years.

original (1984) Bristol Bay Area Plan closed a large number of streams to mineral entry; Mineral Closing Order 393 closed a large number of streams in the Nushagak-Mulchatna river drainage as well as some on the Alaska Peninsula. A number of other mineral closing and opening orders affect settlement lands in the Dillingham, Aleknagik, and the Nunavaugaluk Lake area. Mineral Leasehold Location Order 1 affects large acreages of state land in the upper Mulchatna drainage as well as state lands around the eastern portion of Lake Iliamna. As of the date of this plan, the following mineral orders are in effect:

Table 2.1: Mineral Closing, Opening, and Leasehold Location Orders

<i>Mineral Order</i>	<i>General Vicinity</i>	<i>Acreage</i>
Mineral Closing Order 393	Nushagak-Mulchatna R. and AK Peninsula	213,697
Mineral Closing Order 562	Aniak River portion of this plan	-----
Mineral Closing Order 304	Nunavaugaluk Lake	2,360
Mineral Closing Order 305	Weary R.-Snake River Settlement Area	13,393
Mineral Closing Order 196	Warehouse Mountain Area	10,386
Mineral Closing Order 443	East Side of Aleknagik Road	2,368
Mineral Closing Order 570	Nelson Lagoon Reconveyance	3,840
Mineral Closing Order 249	Jack Rabbit Hills	22,831
Mineral Closing Order 552	Various University Lands in Alaska	N/A
Mineral Closing Order 754	Ekuk	5
Mineral Closing Order 650	King Cove	185
Mineral Closing Order 598	Balboa Bay (north of Sand Point)	52
Mineral Closing Order 644	Sand Point	59
Mineral Closing Order 622	Sand Point	2
Mineral Closing Order 521	Morzhovoi Bay	4
Mineral Closing Order 642	False Pass	27
Mineral Closing Order 239	North end of Upper Ugashik Lake (Univ.)	N/A
Mineral Closing Order 733	Egegik	3
Mineral Opening Order 702	Warehouse Mountain Area	1,112
Leasehold Location Order 1	Upper Mulchatna R.-East Iliamna Lake	1,920,327
Leasehold Location Order 6	Aniak River portion of this plan	-----

Leasehold Location Order 1 (1984) restricted mining over large areas of Regions 7, 8, and 9 to leasing. Rights to locatable minerals on lands owned by the State of Alaska are obtained by making a mineral discovery, staking the boundaries of the location, and recording the certificate of location in the designated time period. In most areas, such a location is a “mining claim”, which gives the owner an immediate property right to mine the deposits. However, in areas of the state that have been restricted to leasing, the location is a “leasehold location”, not a mining claim. The leasehold location must be converted to an upland mining lease before mining begins. No mining of minerals on leasehold locations may take place, except for limited amounts necessary for sampling or testing until a mining lease has been obtained. The leasing process includes the exclusive right to convert the leasehold location to a noncompetitive lease. There is no lease sale or open bidding.



Mineral Closure Orders

- State Mining Claims
- Areas Closed to Mineral Entry by Mineral Closure Order
- Mining Prospect
- Plan Boundary
- Region Boundaries
- Unit Boundaries
- 2012 Anadromous Waters Catalog

Map 3.###

The data presenting state mining claims and areas closed to mineral entry by mineral closure order is provided by ADNR. The 2012 anadromous waters catalog is provided by ADFG.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
BRISTOL BAY AREA PLAN
MINERAL ORDER NO. 393

___ - - Opening Lands to Mineral Entry
XX - - Closing Lands to Mineral Entry

Pursuant to authority granted to the Director, Division of Lands, State of Alaska, by AS 38.05.185 thru AS 38.05.280, and in accordance with applicable regulations, the Director does hereby XX close ___ open the following described lands to entry under the locatable mineral leasing and mining laws of the State of Alaska:

SEE ATTACHMENT #1

Subject to valid existing rights.

This mineral order is based on written justification contained in Land Planning Report C-SC-84-008 and the BBAP.

Submitted:

Rick Austin for
District Classification Officer

Concur:

Margaret J. Hayes
District Manager

Mineral Order
Recommended:

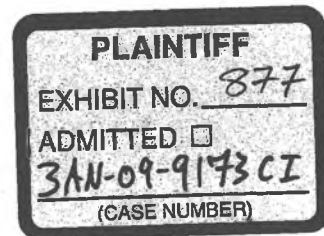
RVG 9/12/84
Division Classification Officer

Concur:

Tom Hawkins 9-12-84
Director,
Division of Land and Water Management

Approved by:

Esther C. Wunniche
Commissioner
Department of Natural Resources



9-13-84
Effective
Date

SOA 015320

ATTACHMENT 1

BRISTOL BAY AREA PLAN TOWNSHIP
INDEX OF STREAM MINERAL CLOSURES

TOWNSHIP/RANGE	RIVER(S)	ANADROMOUS STREAM IDENTIFICATION NUMBER	CLOSED ACREAGE
* T.1N., R.32W. S.M.	Chulitna River	324-10-10150-2207-3173	100
T.1N., R.41W. S.M.	Mulchatna River	325-30-10100-2202	2,462
T.1N., R.43W. S.M.	Old Man Creek	325-30-10100-2202-3075	288
T.1N., R.46W. S.M.	Nushagak River	325-30-10100	1,981
T.2N., R.37W. S.M.	Keefe Creek	325-30-10100-2202-3338	69
T.2N., R.38W. S.M.	Keefe Creek	325-30-10100-2202-3338	288
T.2N., R.39W. S.M.	Keefe Creek	325-30-10100-2202-3338	251
T.2N., R.40W. S.M.	Mulchatna River	325-30-10100-2202	1,221
T.2N., R.41W. S.M.	Mulchatna River	325-30-10100-2202	1,012
T.2N., R.46W. S.M.	King Salmon River Nushagak River	325-30-10100-2435 325-30-10100	1,733
T.2N., R.47W. S.M.	Nushagak River King Salmon River	325-30-10100 325-30-10100-2435	4,389
T.2N., R.48W. S.M.	King Salmon River Tributary to King Salmon	325-30-10100-2435 325-30-10100-2435-3100	2,683
T.2N., R.49W. S.M.	King Salmon River Tributary to King Salmon	325-30-10100-2435 325-30-10100-2435-3100	76
T.2N., R.50W. S.M.	King Salmon River	325-30-10100-2435	380
T.3N., R.35W. S.M.	Nikadavna Creek	325-30-10100-2202-3446-4052	153
T.3N., R.37W. S.M.	Tributary to Mulchatna	325-30-10100-2202-3420	248
T.3N., R.39W. S.M.	Mulchatna River Keefe Creek	325-30-10100-2202 325-30-10100-2202-3338	3,197
T.3N., R.40W. S.M.	Mulchatna River	325-30-10100-2202	1,714
T.3N., R.46W. S.M.	Nushagak River	325-30-10100	630
T.3N., R.48W. S.M.	Tributary to King Salmon	325-30-10100-2435-3100	127
T.3N., R.49W. S.M.	King Salmon River Tributary to King Salmon Tributary to King Salmon Tributary to King Salmon Tributary to King Salmon	325-30-10100-2435 325-30-10100-2435-3100 325-30-10100-2435-3116 325-30-10100-2435-3116-4011 325-30-10100-2435-3130	1,589
T.3N., R.50W. S.M.	King Salmon River Tributary to King Salmon Tributary to King Salmon	325-30-10100-2435 325-30-10100-2435-3116-4011 325-30-10100-2435-3130	566
T.3N., R.51W. S.M.	King Salmon River	325-30-10100-2435	338
T.3N., R.52W. S.M.	King Salmon River	325-30-10100-2435	314
T.4N., R.33W. S.M.	Chilchitna River	325-30-10100-2202-3446	94

SOA 015321

TOWNSHIP/RANGE	RIVER(S)	ANADROMOUS STREAMS IDENTIFICATION NUMBER	CLOSED ACREAGE**
T.4N., R.34W. S.M.	Chilchitna River	325-30-10100-2202-3446	418
T.4N., R.35W. S.M.	Nikadavna Creek Chilchitna River	325-30-10100-2202-3446-4052 325-30-10100-2202-3446	386
T.4N., R.36W. S.M.	Chilchitna River Nikadavna Creek	325-30-10100-2202-3446 325-30-10100-2202-3446-4052	324
T.4N., R.37W. S.M.	Mulchatna River Tributary to Mulchatna	325-30-10100-2202 325-30-10100-2202-3420	1,110
T.4N., R.38W. S.M.	Mulchatna River	325-30-10100-2202	1,372
T.4N., R.39W. S.M.	Mulchatna River	325-30-10100-2202	34
T.4N., R.42W. S.M.	Nushagak River	325-30-10100	51
T.4N., R.43W. S.M.	Nushagak River	325-30-10100	919
T.4N., R.45W. S.M.	Nushagak River	325-30-10100	1,061
T.4N., R.46W. S.M.	Nushagak River	325-30-10100	193
T.4N., R.48W. S.M.	Tributary to King Salmon	325-30-10100-2435-3100	94
T.4N., R.49W. S.M.	Tributary to King Salmon	325-30-10100-2435-3116	193
T.5N., R.30W. S.M.	Chilikadrotna River	325-30-10100-2202-3510	129
T.5N., R.31W. S.M.	Chilikadrotna River	325-30-10100-2202-3510	207
T.5N., R.32W. S.M.	Chilchitna River	325-30-10100-2202-3446	178
T.5N., R.33W. S.M.	Chilchitna River	325-30-10100-2202-3446	105
T.5N., R.35W. S.M.	Chilchitna River Mulchatna River	325-30-10100-2202-3446 325-30-10100-2202	308
T.5N., R.36W. S.M.	Mulchatna River Chilchitna River	325-30-10100-2202 325-30-10100-2202-3446	1,806
T.5N., R.37W. S.M.	Mulchatna River	325-30-10100-2202	19
T.5N., R.42W. S.M.	Nushagak River	325-30-10100	401
T.5N., R.43W. S.M.	Nushagak River	325-30-10100	466
T.5N., R.44W. S.M.	Nushagak River	325-30-10100	673
T.6N., R.30W. S.M.	Chilikadrotna River	325-30-10100-2202-3510	233
T.6N., R.31W. S.M.	Chilikadrotna River	325-30-10100-2202-3510	173
T.6N., R.32W. S.M.	Chilikadrotna River	325-30-10100-2202-3510	668
T.6N., R.33W. S.M.	Chilikadrotna River	325-30-10100-2202-3510	298
T.6N., R.34W. S.M.	Mulchatna River Chilikadrotna River	325-30-10100-2202 325-30-10100-2202-3510	594
T.6N., R.35W. S.M.	Mulchatna River Chilikadrotna River	325-30-10100-2202 325-30-10100-2202-3510	1,273
T.6N., R.39W. S.M.	Nushagak River	325-30-10100	244
T.6N., R.40W. S.M.	Nushagak River	325-30-10100	379

TOWNSHIP/RANGE	RIVER(S)	ANADROMOUS STREAMS IDENTIFICATION NUMBER	CLOSED ACREAGE**
T.6N., R.41W. S.M.	Nushagak River	325-30-10100	424
T.6N., R.42W. S.M.	Nushagak River	325-30-10100	229
T.7N., R.33W. S.M.	Mulchatna River	325-30-10100-2202	238
T.7N., R.34W. S.M.	Mulchatna River	325-30-10100-2202	609
T.7N., R.39W. S.M.	Nushagak River	325-30-10100	29
T.8N., R.32W. S.M.	Mulchatna River	325-30-10100-2202	215
T.8N., R.33W. S.M.	Mulchatna River	325-30-10100-2202	313
T.9N., R.30W. S.M.	Mulchatna River	325-30-10100-2202	897
T.9N., R.31W. S.M.	Mulchatna River	325-30-10100-2202	538
T.9N., R.32W. S.M.	Mulchatna River	325-30-10100-2202	263
T.1S., R.41W. S.M.	Mulchatna River	325-30-10100-2202	2,544
T.1S., R.43W. S.M.	Old Man Creek	325-30-10100-2202-3075	342
T.1S., R.44W. S.M.	Old Man Creek	325-30-10100-2202-3075	98
T.1S., R.47W. S.M.	Nushagak River	325-30-10100	2,627
* T.2S., R.29W. S.M.	Chekok Creek	324-10-10150-2267	25
T.2S., R.40W. S.M.	Koktuli River	325-30-10100-2202-3080	600
T.2S., R.41W. S.M.	Koktuli River Mulchatna River	325-30-10100-2202-3080 325-30-10100-2202	527
T.2S., R.42W. S.M.	Mulchatna River Old Man Creek	325-30-10100-2202 325-30-10100-2202-3075	3,269
T.2S., R.43W. S.M.	Old Man Creek	325-30-10100-2202-3075	198
T.2S., R.45W. S.M.	Harris Creek	325-30-10100-2280	182
T.2S., R.46W. S.M.	Harris Creek	325-30-10100-2280	324
T.2S., R.47W. S.M.	Harris Creek Nushagak River	325-30-10100-2280 325-30-10100	3,931
* T.3S., R.26W. S.M.	Pile River Tributary to Iliamna River	324-10-10150-2341 324-10-10150-2402-3025	123
T.3S., R.29W. S.M.	Chekok Creek	324-10-10150-2267	211
* T.3S., R.30W. S.M.	Chekok Creek	324-10-10150-2267	58
* T.3S., R.32W. S.M.	Newhalen River	324-10-10150-2207	107
* T.3S., R.33W. S.M.	Newhalen River	324-10-10150-2207	1,120
T.3S., R.34W. S.M.	Upper Talarik Creek	324-10-10150-2183	153
T.3S., R.35W. S.M.	Upper Talarik Creek Tributary to Koktuli R.	324-10-10150-2183 325-30-10100-2202-3080-4083	116
T.3S., R.36W. S.M.	Tributary to Koktuli R.	325-30-10100-2202-3080-4083	379
T.3S., R.37W. S.M.	Tributary to Koktuli R.	325-30-10100-2202-3080-4083	72

TOWNSHIP/RANGE	RIVER(S)	ANADROMOUS STREAMS IDENTIFICATION NUMBER	CLOSED ACREAGE**
T.3S., R.38W. S.M.	Koktuli River	325-30-10100-2202-3080	344
T.3S., R.39W. S.M.	Koktuli River Tributary to Koktuli R.	325-30-10100-2202-3080 325-30-10100-2202-3080-4058	961
T.3S., R.40W. S.M.	Koktuli River	325-30-10100-2202-3080	21
T.3S., R.41W. S.M.	Koktuli River	325-30-10100-2202-3080	168
T.3S., R.42W. S.M.	Mulchatna River Koktuli River Old Man Creek	325-30-10100-2202 325-30-10100-2202-3080 325-30-10100-2202-3075	2,384
T.3S., R.43W. S.M.	Mulchatna River	325-30-10100-2202	342
T.3S., R.45W. S.M.	Cranberry Creek	325-30-10100-2214	280
T.3S., R.46W. S.M.	Cranberry Creek	325-30-10100-2214	10
* T.3S., R.47W. S.M.	Nushagak River Harris Creek	325-30-10100 325-30-10100-2280	1,473
* T.3S., R.48W. S.M.	Nuyakuk River	325-30-10100-2249	1,047
T.3S., R.49W. S.M.	Nuyakuk River	325-30-10100-2249	1,117
T.3S., R.50W. S.M.	Nuyakuk River	325-30-10100-2249	764
* T.4S., R.25W. S.M.	Tributary to Iliamna River Iliamna River	324-10-10150-2402-3025 324-10-10150-2402	421
* T.4S., R.26W. S.M.	Pile River Iliamna River Tributary to Iliamna River	324-10-10150-2341 324-10-10150-2402 324-10-10150-2402-3025	1,448
* T.4S., R.27W. S.M.	Pile River	324-10-10150-2341	340
* T.4S., R.29W. S.M.	Canyon Creek	324-10-10150-2273	238
* T.4S., R.30W. S.M.	Chekok Creek	324-10-10150-2267	278
* T.4S., R.33W. S.M.	Newhalen River	324-10-10150-2207	725
* T.4S., R.34W. S.M.	Pete Andrews Creek Upper Talarik Creek	324-10-10150-2195 324-10-10150-2183	236
T.4S., R.35W. S.M.	Koktuli River Upper Talarik Creek	325-30-10100-2202-3080 324-10-10150-2183	386
T.4S., R.36W. S.M.	Koktuli River	325-30-10100-2202-3080	413
T.4S., R.37W. S.M.	Koktuli River Tributary to Koktuli R.	325-30-10100-2202-3080 325-30-10100-2202-3080-4083	595
T.4S., R.38W. S.M.	Koktuli River Tributary to Koktuli R.	325-30-10100-2202-3080 325-30-10100-2202-3080-4083	496
T.4S., R.39W. S.M.	Tributary to Koktuli R.	325-30-10100-2202-3080-4058	10
T.4S., R.42W. S.M.	Mulchatna River	325-30-10100-2202	91
T.4S., R.43W. S.M.	Mulchatna River	325-30-10100-2202	1,052
T.4S., R.44W. S.M.	Mulchatna River	325-30-10100-2202	2,432
T.4S., R.46W. S.M.	Cranberry Creek	325-30-10100-2214	374

TOWNSHIP/RANGE	RIVER(S)	ANADROMOUS STREAMS IDENTIFICATION NUMBER	CLOSED ACREAGE**
* T.4S., R.47W. S.M.	Nushagak River	325-30-10100	740
* T.4S., R.48W. S.M.	Nushagak River Nuyakuk River	325-30-10100 325-30-10100-2249	3,278
* T.5S., R.27W. S.M.	Iliamna River Chinkelyes Creek	324-10-10150-2402 324-10-10150-2402-3014	599
* T.5S., R.28W. S.M.	Iliamna River	324-10-10150-2402	301
* T.5S., R.33W. S.M.	Newhalen River	324-10-10150-2207	678
* T.5S., R.34W. S.M.	Newhalen River Pete Andrews Creek	324-10-10150-2207 324-10-10150-2195	512
* T.5S., R.35W. S.M.	Upper Talarik Creek	324-10-10150-2183	349
T.5S., R.36W. S.M.	Lower Talarik Creek	324-10-10150-2167	87
T.5S., R.38W. S.M.	Tributary to Iliamna Lake	324-10-10150-2159	25
T.5S., R.44W. S.M.	Mulchatna River	325-30-10100-2202	1,467
* T.5S., R.45W. S.M.	Mulchatna River	325-30-10100-2202	4,386
* T.5S., R.46W. S.M.	Mulchatna River Cranberry Creek Nushagak River	325-30-10100-2202 325-30-10100-2214 325-30-10100	1,079
* T.5S., R.47W. S.M.	Nushagak River	325-30-10100	3,638
* T.5S., R.48W. S.M.	Nushagak River	325-30-10100	2,438
* T.6S., R.31W. S.M.	Tommy Creek	324-10-10150-2320	32
* T.6S., R.34W. S.M.	Pete Andrews Creek	324-10-10150-2195	116
* T.6S., R.35W. S.M.	Upper Talarik River Tributary to Iliamna Lake	324-10-10150-2183 324-10-10150-2175	280
T.6S., R.36W. S.M.	Tributary to Iliamna Lake Lower Talarik Creek	324-10-10150-2175 324-10-10150-2167	335
T.6S., R.37W. S.M.	Lower Talarik Creek Tributary to Lower Talarik Tributary to Iliamna Lake Tributary to Iliamna Lake	324-10-10150-2167 324-10-10150-2167-3003 324-10-10150-2163 324-10-10150-2159	461
T.6S., R.38W. S.M.	Tributary to Iliamna Lake Tributary to Iliamna Lake Tributary to Iliamna Lake	324-10-10150-2159 324-10-10150-2155 324-10-10150-2149	306
* T.6S., R.45W. S.M.	Mulchatna River	325-30-10100-2202	1,219
* T.6S., R.46W. S.M.	Mulchatna River Nushagak River	325-30-10100-2202 325-30-10100	6,693
T.6S., R.49W. S.M.	Klutuk Creek	325-30-10100-2141	50
T.6S., R.50W. S.M.	Klutuk Creek	325-30-10100-2141	720
T.6S., R.52W. S.M.	Tributary to Kukwuk	325-30-10100-2129-3046-4110	127
T.6S., R.53W. S.M.	Kukwuk River	325-30-10100-2129-3046	438
* T.7S., R.29W. S.M.	Copper River	324-10-10150-2280	65

TOWNSHIP/RANGE	RIVER(S)	ANADROMOUS STREAMS IDENTIFICATION NUMBER	CLOSED ACREAGE**
* T.7S., R.30W. S.M.	Copper River Tommy Creek	324-10-10150-2280 324-10-10150-2320	276
* T.7S., R.31W. S.M.	Tommy Creek Copper River	324-10-10150-2320 324-10-10150-2280	228
T.7S., R.38W. S.M.	Tributary to Iliamna Lake Tributary to Iliamna Lake	324-10-10150-2149 324-10-10150-2145	123
* T.7S., R.46W. S.M.	Nushagak River	325-30-10100	2,229
* T.7S., R.48W. S.M.	Klutuk Creek	325-30-10100-2141	174
T.7S., R.49W. S.M.	Klutuk Creek	325-30-10100-2141	404
T.7S., R.50W. S.M.	Klutuk Creek	325-30-10100-2141	25
T.7S., R.51W. S.M.	Kenakuchuk Creek	325-30-10100-2129-3040	127
T.7S., R.52W. S.M.	Kenakuchuk Creek Kukwuk River Tributary to Kukwuk	325-30-10100-2129-3040 325-30-10100-2129-3046 325-30-10100-2129-3046-4110	535
T.7S., R.53W. S.M.	Kukwuk River Kokwok River	325-30-10100-2129-3046 325-30-10100-2129	389
* T.8S., R.30W. S.M.	Kokhanok River Copper River	324-10-10150-2240 324-10-10150-2280	178
* T.8S., R.31W. S.M.	Kokhanok River Copper River	324-10-10150-2240 324-10-10150-2280	119
* T.8S., R.33W. S.M.	Tributary to Iliamna Lake	324-10-10150-2196	14
* T.8S., R.46W. S.M.	Nushagak River	325-30-10100	1,247
* T.8S., R.47W. S.M.	Nushagak River	325-30-10100	3,585
T.8S., R.51W. S.M.	Kokwok River	325-30-10100-2129	160
T.8S., R.52W. S.M.	Kokwok River Kenakuchuk Creek Kukwuk River	325-30-10100-2129 325-30-10100-2129-3040 325-30-10100-2129-3046	833
* T.8S., R.53W. S.M.	Kokwok River	325-30-10100-2129	119
T.8S., R.54W. S.M.	Pike Creek	325-30-10100-2031-3118-4062	36
* T.8S., R.55W. S.M.	Pike Creek	325-30-10100-2031-3118-4062	91
* T.9S., R.33W. S.M.	Tributary to Iliamna Lake	324-10-10150-2196	14
T.9S., R.34W. S.M.	Dennis Creek	324-10-10150-2182	171
T.9S., R.35W. S.M.	Tributary to Iliamna Lake Tributary to Belinda Creek	324-10-10150-2162 324-10-10150-2156-3005-4007	101
T.9S., R.36W. S.M.	Tributary to Iliamna Lake Belinda Creek	324-10-10150-2162 324-10-10150-2156	204
* T.9S., R.48W. S.M.	Nushagak River	325-30-10100	1,979
* T.9S., R.49W. S.M.	Nushagak River	325-30-10100	461
* T.9S., R.50W. S.M.	Kokwok River	325-30-10100-2129	530
* T.9S., R.51W. S.M.	Kokwok River	325-30-10100-2129	468

TOWNSHIP/RANGE	RIVER(S)	ANADROMOUS STREAMS IDENTIFICATION NUMBER	CLOSED ACREAGE*
T.9S., R.52W. S.M.	Kokwok River	325-30-10100-2129	120
T.9S., R.53W. S.M.	Iowithla River ✓	325-30-10100-2101	109 ✓
* T.9S., R.54W. S.M.	Iowithla River Muklung River	325-30-10100-2101 325-30-10100-2031-3028	221
T.9S., R.55W. S.M.	Muklung River	325-30-10100-2031-3028	178
* T.9S., R.57W. S.M.	Agulowak River	325-30-10100-2031-3118	138
T.10S., R.31W. S.M.	Dream Creek	324-10-10150-2196-3033	113
* T.10S., R.32W. S.M.	Tributary to Iliamna Lake	324-10-10150-2196	94
T.10S., R.35W. S.M.	Tributary to Belinda Creek Tributary to Belinda Creek Belinda Creek	324-10-10150-2156-3005-4007 324-10-10150-2156-3005 324-10-10150-2156	371
T.10S., R.36W. S.M.	Belinda Creek Tributary to Belinda Creek	324-10-10150-2156 324-10-10150-2156-3005	247
* T.10S., R.37W. S.M.	Pecks Creek	324-10-10150-2136	193
* T.10S., R.38W. S.M.	Pecks Creek	324-10-10150-2136	262
* T.10S., R.39W. S.M.	Pecks Creek Kvichak River	324-10-10150-2136 324-10-10150	490
* T.10S., R.40W. S.M.	Kvichak River Pecks Creek Kvichak River	324-10-10150 324-10-10150-2136 324-10-10150	1,250
* T.10S., R.41W. S.M.	Kvichak River	324-10-10150	727
* T.10S., R.49W. S.M.	Nushagak River Kokwok River	325-30-10100 325-30-10100-2129	4,236
* T.10S., R.50W. S.M.	Nushagak River Kokwok River	325-30-10100 325-30-10100-2129	1,636
T.10S., R.53W. S.M.	Iowithla River ✓	325-30-10100-2101	295
* T.10S., R.54W. S.M.	Muklung River	325-30-10100-2031-3028	171
* T.10S., R.55W. S.M.	Muklung River Wood River	325-30-10100-2031-3028 325-30-10100-2031	163
* T.11S., R.41W. S.M.	Kvichak River	324-10-10150	394
T.11S., R.42W. S.M.	Kvichak River	324-10-10150	816
* T.11S., R.43W. S.M.	Kvichak River	324-10-10150	494
* T.11S., R.44W. S.M.	Kvichak River	324-10-10150	987
* T.11S., R.49W. S.M.	Nushagak River	325-30-10100	28
* T.11S., R.50W. S.M.	Nushagak River	325-30-10100	2,504
* T.11S., R.55W. S.M.	Wood River	325-30-10100-2031	1,046
* T.12S., R.44W. S.M.	Kvichak River	324-10-10150	1,421
* T.12S., R.45W. S.M.	Kvichak River	324-10-10150	2,220

TOWNSHIP/RANGE	RIVER(S)	ANADROMOUS STREAMS IDENTIFICATION NUMBER	CLOSED ACREAGE**
* T.12S., R.50W. S.M.	Nushagak River	325-30-10100	10,441
T.12S., R.55W. S.M.	Wood River	325-30-10100-2031	2,876
* T.13S., R.45W. S.M.	Kvichak River	324-10-10150	1,329
* T.13S., R.46W. S.M.	Kvichak River	324-10-10150	2,672
* T.13S., R.50W. S.M.	Nushagak River	325-30-10100	980
* T.13S., R.51W. S.M.	Nushagak River	325-30-10100	1,250
* T.13S., R.53W. S.M.	Nushagak River	325-30-10100	2,935
* T.13S., R.54W. S.M.	Nushagak River	325-30-10100	5,850
* T.13S., R.55W. S.M.	Nushagak River Wood River	325-30-10100 325-30-10100-2031	9,700
* T.13S., R.56W. S.M.	Nushagak River	325-30-10100	112
* T.14S., R.46W. S.M.	Kvichak River	324-10-10150	4,603
* T.14S., R.50W. S.M.	Nushagak River	325-30-10100	809
* T.14S., R.51W. S.M.	Nushagak River	325-30-10100	1,600
* T.14S., R.52W. S.M.	Nushagak River	325-30-10100	1,337
* T.14S., R.53W. S.M.	Nushagak River	325-30-10100	5,151
* T.15S., R.51W. S.M.	Nushagak River	325-30-10100	1,425
* T.15S., R.52W. S.M.	Nushagak River	325-30-10100	2,364
* T.15S., R.53W. S.M.	Nushagak River	325-30-10100	1,002
T.45S., R.69W. S.M.	Sandy River	315-12-10100	193
T.45S., R.70W. S.M.	Sandy River	315-12-10100	562
T.45S., R.71W. S.M.	Sandy River	315-12-10100	468
T.46S., R.68W. S.M.	Sandy River	315-12-10100	588
T.46S., R.69W. S.M.	Sandy River	315-12-10100	254
T.46S., R.70W. S.M.	Sandy River	315-12-10100	135
T.46S., R.71W. S.M.	Sandy River Tributary to Bear River Bear River	315-12-10100 315-11-10200-2009 315-11-10200	419
T.46S., R.72W. S.M.	Bear River	315-11-10200	54
T.47S., R.70W. S.M.	Tributary to Bear River	315-11-10200-2009	87
T.47S., R.71W. S.M.	Tributary to Bear River Bear River	315-11-10200-2009 315-11-10200	381
T.47S., R.72W. S.M.	Bear River	315-11-10200	36
T.48S., R.70W. S.M.	Bear River	315-11-10200	3
T.48S., R.71W. S.M.	Bear River	315-11-10200	102
T.49S., R.70W. S.M.	Bear River	315-11-10200	156

TOWNSHIP/RANGE	RIVER(S)	ANADROMOUS STREAMS IDENTIFICATION NUMBER	CLOSED ACREAGE**
T.49S., R.71W. S.M.	Bear River	315-11-10200	3
* T.49S., R.78W. S.M.	Sapsuk River Caribou River	313-30-10140-2013 313-30-10140	467
* T.49S., R.79W. S.M.	Caribou River	313-30-10140	43
T.50S., R.76W. S.M.	Lefthead River	313-30-10140-2013-3007	94
T.50S., R.77W. S.M.	Sapsuk River Lefthead River	313-30-10140-2013 313-30-10140-2013-3007	345
* T.50S., R.78W. S.M.	Sapsuk River Peterson Creek Caribou River	313-30-10140-2013 313-30-10140-2013-3006 313-30-10140	796
* T.50S., R.79W. S.M.	Caribou River	313-30-10140	171
T.51S., R.76W. S.M.	Lefthead River	313-30-10140-2013-3007	247
T.51S., R.77W. S.M.	Sapsuk River	313-30-10140-2013	338
T.51S., R.78W. S.M.	Peterson Creek Caribou River	313-30-10140-2013-3006 313-30-10140	309
T.51S., R.79W. S.M.	Caribou River	313-30-10140	276
T.51S., R.80W. S.M.	Caribou River	313-30-10140	3
T.52S., R.76W. S.M.	Sapsuk River	313-30-10140-2013	14
T.52S., R.80W. S.M.	Caribou River	315-30-10140	368
T.52S., R.81W. S.M.	Caribou River	315-30-10140	76
TOTAL ACREAGE ENCOMPASSED BY STREAM MINERAL CLOSURE			213,697*

* Acreage totals for townships include some acreage of Native selected or conveyed lands.

** Acreage figures are estimates only, though care was taken to make them as accurate as possible. See Attachment B for the methodology of this acreage estimation.

ATTACHMENT 1.1

BRISTOL BAY AREA PLAN
STREAM CLOSURE ACREAGE ESTIMATION

The Bristol Bay Area Plan (BBAP) calls for selected stream closures to new mineral entry. The total acreage encompassed by these stream closures is estimated at 213,697 acres. This acreage estimation was arrived at through the following methods.

The active stream channels (as defined by the BBAP) of designated anadromous streams identified for closure by the BBAP were mapped at 1:63,360.

Acreage estimations for large and braided streams (i.e. Nushagak, Mulchatna, Nuyakuk and Kvichak rivers, etc.) were calculated on a CALCOMP 9000 digitizer. Area was calculated in square miles and converted to acres.

Acreage estimations for smaller streams were determined by calculating stream length on a CALCOMP 9000 digitizer and multiplying length by an average stream width of 100' plus a 100' buffer on either side of the stream for a total 300' stream corridor. Area was calculated in square miles and converted to acres.

Acreage was compiled by individual township/range and also totaled by USGS quad map.

Native selected and conveyed lands within the active stream channel and upland buffer areas were separated out from the total acreage figure compiled for each township by manual calculation of the affected acreage at a 1:63,360 scale. An asterisk (*) is placed next to those townships that contain native selected and conveyed lands.

ATTACHMENT 2

JUSTIFICATION FOR STREAM CLOSURES

BACKGROUND:

FISH AND WILDLIFE USE

The Bristol Bay salmon fishery is, and historically has been, the most valuable economic resource in the Bristol Bay region; providing a major portion of all the salmon harvested in the State of Alaska and the world annually. Bristol Bay area residents rely heavily on this salmon resource to support their livelihood and economy through commercial, sport, and subsistence fishing activities. The existence and future success of the Bristol Bay salmon fishery depends on the maintenance of anadromous stream habitat for salmon spawning and rearing. Essential conditions for successful salmonid spawning, egg, and fry development are clear, cool, well-oxygenated water, and gravel that is free of sediment, highly permeable, and stable. Salmon are a renewable resource and the continued propagation and production of Bristol Bay salmon for commercial, sport, and subsistence harvest constitutes a significant surface use of stream waters and stream bed gravel in the Bristol Bay area. Through maintenance of water quality, stream habitat, and fishery management practices, the Bristol Bay salmon fishery should continue to prosper in the future and contribute to the regional and state economy. Other fish, primarily rainbow trout, arctic char, and grayling, are of major importance to the region's sport fishery.

COMMERCIAL SALMON HARVEST

The Bristol Bay commercial salmon fishery dates back to 1884, and remains today as the basic factor in the culture and economy of the area. The Bristol Bay Area Plan study area includes all of the Bristol Bay, Alaska Peninsula, and Chignik fishery management units (ADF&G).

Five species of Pacific salmon are indigenous to the Bristol Bay study area with sockeye salmon being most important commercially. The average ex-vessel value for salmon catches (all species) in the entire Bristol Bay study area (1977-1982) have exceeded \$150 million annually with the first wholesale value surpassing \$250 million in 1982. In 1983, a record commercial catch of more than 39 million sockeye salmon from the Bristol Bay fisheries management unit and the north side of the Alaska Peninsula was recorded with an ex-vessel value in excess of \$145 million for that species alone.

An estimated 3,000 limited entry fishing permits were issued for the Bristol Bay and Alaska Peninsula purse seine, drift gill net, and set gill net salmon fisheries in 1982. Approximately 67% of these licensed gear holders are Alaska residents, and 70% of these are Bristol Bay residents. More than 7,700 commercial fishermen are employed in the fishery during the season. In addition, twelve shore-based canneries in Bristol Bay employ more than 2,000 cannery workers each season with floating processors employing an additional 700 workers. In addition, air freighting of fresh salmon, for

SOA 015331

processing elsewhere, is also a substantial enterprise, particularly during high production years. On the average, more than 10,000 people are seasonally employed by the Bristol Bay salmon fishery.

RECREATION/SPORT FISHING

The Bristol Bay study area ranks among the finest sport fishing and hunting areas in the world. Recreation, including sport fishing, has been recognized as a component of the Bristol Bay economy for over 50 years. In recognition of the region's exceptional rainbow trout fishery, the Alaska Board of Fisheries has designated the Kvichak River (from the mouth of the Alagnak River) and the Iliamna Lake drainage as a Wild Rainbow Trout Area. Within this drainage, Lower Talarik Creek, Upper Talarik Creek, Pete Andrew Creek, Newhalen River, Copper River, Gibraltar River, Dream Creek, and Belinda Creek are world-renowned rainbow trout streams. At present, the recreational industry in the Bristol Bay area is comprised of three components: lodges, guides, and air taxi operators. Most air taxi operators draw their business from the lodges and guides. Approximately 50 to 60 lodges operated in Bristol Bay during 1983. Most of these lodges are geared for sport fishing activities. Approximately two-thirds of the lodge clients were foreign, with the majority of the remaining clients being non-Alaskans. The estimated cost for lodging and fishing at a typical Bristol Bay fishing lodge ranges from \$1,500 to \$3,500 per person, per week (Nebesky 1984). The 1982 State Guide Register recorded 189 sport fishing and hunting guides in the Bristol Bay area. About 50 registered fishing guides work for the lodges and another 25 operate fly-out float fishing trips on Bristol Bay rivers. Guided fishing trips in Bristol Bay are estimated to average \$1,400 per person, per trip (Nebesky 1984). Nonguided independent fishing trips are becoming increasingly popular in Bristol Bay. An estimated 750 to 1,000 persons (mostly Alaskans) take nonguided float-fishing trips in Bristol Bay each year. The majority of the float trips are taken on the Mulchatna, Nushagak, Nuyakuk, Kaktuli, Chilikadrotna, Copper, Alagnak (Branch), and Gibraltar rivers, and the Wood River-Tikchik River System. The local economic affect of nonguided fishing tours accrues primarily to air taxi operators (Nebesky 1984). Overall, the Bristol Bay recreation industry, of which sport fishing is a major component, produces in excess of \$25 million annually. Of this amount, an estimated \$6.7 million is earned by Bristol Bay residents, \$16.3 million is earned by Alaskans outside of Bristol Bay, and \$2 million is tied to nonresident wages (Nebesky 1984).

SUBSISTENCE SALMON HARVEST

The subsistence harvest of fish and wildlife is essential to the way of life in Bristol Bay communities, regardless of the birthplace, ethnic origin, or economic status of the area residents. Salmon are the most important fish and wildlife resource harvested for subsistence by the region's residents. The subsistence harvest of salmon (all species) in the Bristol Bay study area averages about 176,000 salmon per year (1973-1982). In 1982, an estimated 1,000 subsistence permit holders harvested more than 169,000 salmon for personal consumption in the Bristol Bay study area. Taking into consideration the average weights of the different salmon species and the

percentage of usable food weight per salmon, the 1982 subsistence harvest figures translate into approximately 821 pounds of dressed out salmon per family or subsistence permit holder in the Bristol Bay study area.

The behavioral, social, and cultural values associated with the subsistence harvest cannot be measured in standard monetary terms. However, an estimation can be made of the local food replacement cost of the subsistence salmon harvest if the harvest had to be replaced with similar food or a protein equivalent purchased and shipped in from Anchorage or Dillingham. Methodology used in determining the local food replacement cost of the subsistence harvest is still being refined. Preliminary estimates for the local food replacement cost of the 1982 subsistence salmon harvest range from \$2 to \$4 million.

INSTREAM MINING

At present, instream placer mining, when compared with fishery resources, is a minor component of the Bristol Bay economy. Annual operating permits were granted for only eight placer operations within the entire Bristol Bay study area in 1983. Only one of these eight placer operations (Bonanza Creek) is located within the general area encompassed by the proposed stream closures. The Bonanza Creek drainage is not closed to new mineral entry. The estimated 1982 gold production of the eight placer operations within the Bristol Bay study area is 9,500 ounces, valued at approximately \$3.8 million (T. Bundtzen, DGGG, 1983, Pers. Comm.). Nebesky et al. (1983) estimates that placer mining operations in the Bristol Bay study area seasonally employed about 100 persons in 1982, a peak year for mining and gold prices. Most all of the mining activity occurred in the northwestern portion of the BBAP study area.

Historically, many areas in the Bristol Bay region have been subject to placer mining exploration and mineral discovery. The majority of this placer activity has occurred on the rivers and streams around the eastern half of Iliamna Lake, the upper Nushagak and Mulchatna river drainages, the south side of the Alaska Peninsula, and west of the Ahklun Mountains. Many deposits have been recorded. (Cobb, 1972 and Cobb et.al., 1972).

The likelihood of renewed interest in placer deposits in the Nushagak and Mulchatna river drainages and the streams around the eastern half of Iliamna Lake is good. As more of Alaska's mineral resources are explored and the readily road accessible mineralized areas are developed, these areas in Bristol Bay are likely to be re-explored. Re-newed interest would probably occur here due to knowledge of the historic deposits, favorable geology and mineral terranes. Recently, Anaconda Minerals Company announced a new precious metal hardrock mineral discovery at Johnson River, east of Iliamna Lake in the Cook Inlet drainage. Native corporations in the region, particularly Bristol Bay Native Corporation, have been assessing the mineral resources of their lands in these areas. This and other mineral activity in the area is likely to draw additional activity due to these favorable results.

EFFECTS OF INSTREAM MINING

The development of mining claims within the active stream channel of an anadromous stream creates a serious use conflict and could jeopardize the commercial, sport, and subsistence harvest of salmon and the overall economic and sociocultural structure of the Bristol Bay region. In general, instream placer mining can seriously degrade anadromous stream habitat by producing excessive sediment, increasing turbidity, changing pH, adding toxic heavy metals to stream water, and altering stream channels and stream flows. The effects of placer mining immediately adjacent to streams are similar to other land disturbance activities (i.e., logging, agriculture, vegetation removal, road construction) that can introduce unnaturally high levels of sediment into stream environments. Existing literature contains many studies, reports, and documents on the effects of increased sediment loads on salmonids, food chain components, and on aquatic ecosystems. Properly designed and maintained settling ponds and recycling systems when utilized, may minimize some impacts of sedimentation on aquatic life. The major conclusions reached by investigators studying the effects of placer mining and sedimentation on aquatic life and stream systems are summarized by Madison (1981) as follows:

1. Effects on Fish Life

- Temporary or permanent destruction or modification of spawning beds that can result in failure to spawn or complete or partial mortality of eggs, alevins, or fry. The primary causes are: Reduction of dissolved oxygen, increase in the percentage of silt and sand in the spawning gravel, reduction in intergravel flow rates, scouring of the spawning gravels subsequent to spawning, removal of stream gravels, or complete covering of the spawning beds with sediment;
- Loss of available food supply due to reductions in production at the lower trophic levels (plant life and benthic invertebrates);
- Interference with the sight-dependent feeding habits of salmonids;
- Obliteration of hiding or living areas in gravel by clogging of the interstices with fine sediment, or by reduction of pool areas;
- Short-term exposure to very large concentrations of suspended sediment that can cause fish mortality through damage to the gill structure; and
- Avoidance of normal spawning areas (even at relatively low turbidity) and displacement to cleaner tributaries or other sections of a stream.

2. Effects on Aquatic Plant Life

- Reduction in photosynthetic activity and consequent reduction in growth of algae and macrophytes which form the basis of the food chain for salmon and other freshwater fish;

- Smothering of plant life inhabiting the stream bottom; and
 - Increase in the mobility of the substrate.
3. Effects on Benthic Invertebrates
- Reduction in the abundance and diversity of benthos as a result of reduction in available food supply (plant life), increased drift and susceptibility to predation, clogging of the feeding apparatus by fine sediments, and loss of available or suitable substrate habitat; and
 - Changes in community composition from clean-water species to species more adaptable to higher sediment levels but possibly less suitable as fish-food organisms.
4. Physical Effects on the Hydrologic System
- Increased turbidity and resultant reduction in light penetration;
 - Alteration of channels, including changes in slope, stream velocity, discharge, depth and width, scouring characteristics, stream length, pool-riffle ratio, ground-water/surface-water relationships, ground-water recharge characteristics, and water temperature; and
 - Changes in the stream bottom material, including changes in the particle-size composition which may change the rate of intergravel water flow, deposition of fine material and gravel on riffle areas, and changes in bedload movement.

Recent studies completed by researchers at the University of Alaska, Fairbanks (LaPerriere et al., 1983 and Van Nieuwenhuysse, 1983) have substantiated many of these same effects on freshwater habitats in Alaska. In brief, Alaskan researchers have found that mining-induced sedimentation and turbidity results in reduced light penetration, reduced production of plant material, and ultimately a decrease in the production and abundance of fish. In Birch Creek, on anadromous stream heavily impacted by mining, all fish, insect life, and even most algae had been eliminated as a result of mining. Mining-induced turbidity also adversely effects the human use of clear-water habitat for sport fishing, river floating, canoeing, and other recreational activities.

JUSTIFICATION FOR MINERAL CLOSING ORDER:

Title 38 of the Alaska Statutes addresses the management of public lands of the State of Alaska. Section 38.05.185 states:

"State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that the potential use conflicts on state land require

that mining be allowed only under written lease issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection."

Section 38.05.185 provides further:

"The determination required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300."

A land use plan such as the Bristol Bay Area Plan is an appropriate forum for classifying state lands and designating specific areas for mineral closures or leasehold locations when these areas meet the criteria set forth in Section 38.05.185. (See also 11 AAC 55, Land Planning and Classification Regulations)

The Bristol Bay Area Plan recognizes continued salmon propagation and production as a significant surface use of state lands in Bristol Bay. The plan also recognizes instream placer mining as conflicting with the continued propagation and production of Bristol Bay salmon and therefore requires closure of selected anadromous streams to new mineral entry. The plan specifically states the following:

The designated anadromous portion of the following streams (designated pursuant to AS 16.05.870) and any state uplands 100 feet from the ordinary high watermark (on both sides of the stream) including islands which are state selected, patented or tentatively approved and excluding islands of other ownership will be closed to new mineral entry in accordance with AS 38.05.185:

Nushagak River Drainage

Nushagak River
Wood River
Muklung River (Upper 15 Miles)
Iowithla River (Upper 15 Miles)
Kokwok River
Kenakuchuk Creek
Kukwuk River
325-30-10100-2129-3046-4110 tributary to Kukwuk River
Klutuk Creek
Cranberry Creek
Harris Creek
Nuyakuk River
King Salmon River
325-30-10100-2435-3100 tributary to King Salmon River
325-30-10100-2435-3116 tributary to King Salmon River
325-30-10100-2435-3116-4011 tributary to King Salmon River
325-30-10100-2435-3130 tributary to King Salmon River
Mulchatna River
Old Man Creek
Koktuli River

SOA 015336

325-30-10100-2202-3080-4058 tributary to Koktuli River
325-30-10100-2202-3080-4083 tributary to Koktuli River
Keefer Creek
325-30-10100-2202-3420 tributary to Mulchatna River
Chilchitna River
Nikadayna Creek
Chilikadrotna River

Kvichak/Naknek Drainage

Kvichak River
Pecks Creek
324-10-10150-2145 tributary to Iliamna Lake
324-10-10150-2149 tributary to Iliamna Lake
324-10-10150-2155 tributary to Iliamna Lake
324-10-10150-2159 tributary to Iliamna Lake
324-10-10150-2163 tributary to Iliamna Lake
Lower Talarik Creek
324-10-10150-2167-3003 tributary to Lower Talarik Lake
324-10-10150-2175 tributary to Iliamna Lake
Upper Talarik Creek
Pete Andrews Creek
Newhalen River
Chulitna River
Chekok Creek
Canyon Creek
Pile River
Iliamna River
324-10-10150-2402-3025 tributary to Iliamna River
Chinkelyes Creek
Tommy Creek
Copper River
Kokhanok River
324-10-10150-2196 tributary to Iliamna Lake
Dream Creek
Dennis Creek
324-10-10150-2162 tributary to Iliamna Lake
Belinda Creek
324-10-10150-2156-3005 tributary to Belinda Creek
324-10-10150-2156-3005-4007 tributary to Belinda Creek

North Alaska Peninsula Drainages

Sandy River
Bear River
315-11-10200-2009 tributary to Bear River
Caribou River
Sapsuk River
Lefthead River
Peterson Creek

These streams are further depicted in Attachment 3, "An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes, 64 Anadromous Streams Closed to New Mineral Entry."

Mining has been previously found to be incompatible with several different types of land uses determined to be significant surface uses of state land. State park and recreation areas, residential subdivisions, river corridors, agricultural areas, and disposal of state land for remote settlement are some examples where mining has been determined to be incompatible with a significant surface use of state land. The propagation and production of salmon is also a significant use of state lands in Bristol Bay. This surface use activity is the mainstay of the Bristol Bay economy and is also a substantial contributor to the state economy. Instream placer mining would create serious use conflicts in anadromous streams and jeopardize the overall productivity of anadromous streams in Bristol Bay, and ultimately, the economy of the Bristol Bay region and the livelihood of area residents.

The conflict between fisheries and mining was recognized by both the state legislature and the U.S. Congress when they established parks and refuges in the region. Mineral entry is incompatible with the fish, wildlife, subsistence, and recreation use of Wood-Tikchik State Park (see AS.41.21.161). All federal public lands in Togiak, Becharof, and Alaska Peninsula National Wildlife Refuges, Lake Clark National Park and Preserve, Katmai National Park and Preserve and Aniakchak National Monument and Preserve are closed to new mineral entry under the Alaska National Interest Lands Conservation Act (or earlier federal legislation) as it was viewed as incompatible with protection of fish and wildlife habitats and populations. Many of the streams to be closed by this order originate within these parks and refuges. Providing sufficient protection to these fishery resources on state lands outside the parks and refuges is critical to protection of these resources within them.

Only the anadromous streams and any islands contained therein, which would be in highest conflict with instream placer mining activities, are to be closed to new mineral entry. High conflict was determined by a streams' juxtaposition to known and verified mineral terranes within the Bristol Bay study area. Existing mining claims are not affected by the stream closures. The closure of the above mentioned anadromous streams encompass an estimated 213,697 acres of state lands. Native conveyed lands within the active stream channel of an anadromous stream designated by this order are not subject to the mineral closure, as these lands are privately owned.

The 1982 and 1983 commercial sockeye salmon harvest and escapement data for the Bristol Bay and North Alaska Peninsula Fishery Management District show that approximately 75% of the commercial sockeye salmon harvest and 72% of the sockeye salmon escapement originates or spawns in the Nushagak/Mulchatna, Kvichak/Iliamna, Sandy, Bear, or Caribou River drainages where mineral closures have been recommended by the Bristol Bay Area Plan. By closing that portion of the Bristol Bay study area to new mineral entry where the most conflict between fishery production and instream mining would occur, through other plan provisions requiring leasehold location mining,

and through enforcement of existing statutes and regulations, protection can be provided to a large portion of the Bristol Bay sockeye salmon run.

Existing state and federal water quality regulations and standards were considered inadequate to guarantee the continued propagation and production of the salmon and other fish resources in the stream waters in the Bristol Bay area. The past and present lack of compliance with and enforcement of these water quality standards in this area and other areas in the state were some of the factors considered during the development of the Bristol Bay Area Plan. The existing standard for turbidity, a measure of suspended sediment, allows for levels of sediment which some experts indicate is detrimental to salmon and their eggs and fry. Also, these levels create conditions which make adequate and effective fishery management extremely difficult due to the inability to visually determine escapement. Alaska Statute 16.05.870 gives the Commissioner of Fish and Game authority to regulate activities within designated anadromous streams. Within the 64 streams designated for closure in this order, sufficient protection of fish and game resources (as required in AS 16.05.870 (d)) would likely preclude mining in these areas after a mining claim has already been filed. Actual stream closings more effectively and efficiently achieves the level of fisheries protection required on these 64 streams. The result of these analyses was to close to new mineral entry those streams where highest conflict between the salmon fishery and mining would occur.

In closing, the best interest of the State of Alaska and its residents are served by the closure of the anadromous streams, as identified in the Bristol Bay Area Plan and further depicted in Attachment 3, titled "An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes, 64 Anadromous Streams Closed to New Mineral Entry," to new mineral entry under the locatable mineral leasing and mining laws of the State of Alaska.

SOA 015339

JUSTIFICATION FOR STREAM CLOSURES
REFERENCES

- Alaska Department of Fish and Game. [no date]. Bristol Bay, Alaskan Peninsula, Aleutian Islands sport fisheries. Alaska Dept. of Fish and Game, Division of Sport Fish, Anchorage, Alaska.
- Alaska Department of Fish and Game. [1978-1982]. Annual fishery management reports for AYK, Bristol Bay, Alaska Peninsula, Aleutian Islands, and Chignik and Kodiak Management Areas. Alaska Dept. of Fish and Game, Division of Commercial Fisheries, Anchorage, Alaska.
- Alaska Department of Fish and Game. 1983. Fishery productivity and instream mining: implications for the Bristol Bay region, draft manuscript. Prepared for the Bristol Bay Study Group by Alaska Department of Fish and Game, Habitat Division, Anchorage, Alaska.
- Alaska Department of Natural Resources. 1984 Bristol Bay Area Plan. Alaska Department of Natural Resources, Division of Land and Water Management, Anchorage, Alaska.
- Bundtzen, Thomas. 1983. Personal Communication. Alaska Department of Natural Resources, Division of Geological and Geophysical Survey, Fairbanks, Alaska.
- Cobb, E.J. 1972. Miscellaneous Field Studies Map (1:250,000-scale) U.S. Dept. of the Interior, U.S. Geological Survey.
- MF-362, Metallic Mineral Resources Map of the Hagemeister Island Quadrangle, Alaska.
- MF-374, Metallic Mineral Resources Map of the Chignik Quadrangle, Alaska.
- MF-375, Metallic Mineral Resources Map of the Dillingham Quadrangle, Alaska.
- MF-378, Metallic Mineral Resources Map of the Lake Clark Quadrangle, Alaska.
- MF-384, Metallic Mineral Resources Map of the Taylor Mountains Quadrangle, Alaska.
- MF-441, Metallic Mineral Resources Map of the Cold Bay Quadrangle, Alaska.
- MF-442, Metallic Mineral Resources Map of the Naknek Quadrangle, Alaska.

- MF-443, Metallic Mineral Resources Map of the Port Moller Quadrangle, Alaska.
- MF-456, Metallic Mineral Resources Map of the Bristol Bay Quadrangle, Alaska.
- MF-461, Metallic Mineral Resources Map of the Mount Katmai Quadrangle, Alaska.
- Cobb E. H. and W.H. Condon. 1972. Miscellaneous Field Studies Map (1:250,000-scale) U.S. Dept. of the Interior, U.S. Geological Survey.
- MF-447, Metallic Mineral Resources Map of the Goodnews Quadrangle, Alaska.
- Cobb E.H. and R.L. Detterman. 1972. Miscellaneous Field Studies Map (1:250,000-scale) U.S. Dept. of the Interior, U.S. Geological Survey.
- MF-364, Metallic Mineral Resources Map of the Iliamna Quadrangle, Alaska.
- Eakins, G.R., T.K. Bundtzen, M.S. Robinson, J.G. Clough, C.B. Green, K.H. Clautice, and M.A. Albanese. 1983. Alaska's mineral industry 1982. Alaska Dept. of Commerce and Economic Development, Office of Mineral Development and Alaska Dept. of Natural Resources, Division of Geological and Geophysical Surveys, Special Report 31, 63 pp.
- Hall, J.E. and D.O. McKay. 1983. The effects of sedimentation on salmonids and macroinvertebrates - a literature review. Habitat Division, ADF&G, Anchorage, 31 pp.
- LaPerriere, J.D., D.M. Bjerklie, R.C. Simmons, E. Van Nieuwenhuysse, S.M. Wagener, and J.B. Reynolds. 1983. Effects of gold placer mining on interior Alaskan stream ecosystems. In: Proc. of First Annual Meeting of Alaska Chapter American Water Resources Association, Nov. 1983, Fairbanks, 34 pp.
- Lloyd, Denby S. 1984. Turbidity in freshwater habitats of Alaska - a review of published and unpublished literature, draft manuscript. Alaska Department of Fish and Game, Habitat Division, Anchorage, Alaska.
- Madison, R.J. 1981. Effects of placer mining on hydrologic systems in Alaska -- status of knowledge. U.S. Dept. of the Interior, Geological Survey, Open-file Report 81-217, 25 pp.
- Middleton, Kenneth R. 1983. Bristol Bay salmon and herring fisheries status report through 1982. Alaska Dept. of Fish and Game, Division of Commercial Fisheries, Informational Leaflet No. 211, 81 pp. Anchorage, Alaska.

Nebesky, Will, Steve Langdon, and Teresa Hull. 1983. Economic, subsistence, and sociocultural projections in the Bristol Bay region. Vol. I and II. Bristol Bay Cooperative Management Plan and Refuge Comprehensive Plans. Institute of Social and Economic Research, University of Alaska, Anchorage, Alaska.

Nebesky, William. 1984. Change in the Bristol Bay economy 1970-1980. Vol. I. Institute of Social and Economic Research, University of Alaska, Anchorage, Alaska.

TOWNSHIP 5S RANGE 35W OF THE SEWARD MERIDIAN, ALASKA

LEGEND

BASE INFORMATION

- HYDROGRAPHY
- SURVEY LINE
- SURVEY LOT LINE
- TOWNSHIP SECTION GRID
- 1/4 SECTION LINE
- HIGHWAY
- ROAD
- TRAIL
- RAILROAD
- ELECTRICAL POWER LINE
- TELEPHONE LINE
- PIPELINE
- AIRPORT/LANDING STRIP
- HORIZONTAL CONTROL
- CONTROL MONUMENT

STATUS INFORMATION

- TITLE
- BOUNDARY
- CLASSIFICATION
- DISPOSAL
- MUNICIPAL
- RESTRICTION
- FEDERAL ACTION
- MENTAL HEALTH TRUST
- LIMITS OF ACTION
- NAVIGATIONAL AID
- CABIN PERMIT
- TRAPPING CABIN PERMIT
- TRESPASS LOCATION
- SURFACE WATER RIGHTS**
 - APPLICATION
 - PERMIT
 - CERTIFICATE
- SUB-SURFACE WATER RIGHTS**
 - APPLICATION
 - PERMIT
 - CERTIFICATE
- IN-STREAM FLOW RESERVATION**
 - APPLICATION
 - CERTIFICATE
- DAM, WEIR, BARRIER**
 - APPLICATION
 - PERMIT
 - CERTIFICATE

VICINITY MAP

5	6	7	8	9	10	11	12
13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28
29	30	31	32	33	34	35	36



STATUS PLAT

THE STATE OWNS ALL LAND UNDER WATERS THAT ARE NAVIGABLE IN-FACT, ARE SUBJECT TO THE EBB AND FLOW OF THE TIDES, OR ARE RIPARIAN OR LITTORAL TO UPLANDS OWNED BY THE STATE.

BASED ON

COORDINATES:
ALASKA STATE PLANE ZONE 5
SE CORNER OF TOWNSHIP:
X = 20917.142
Y = 20174.624
LAT = 59 41 36.914 N
LONG = 155 08 31.314 W

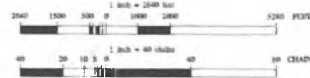
HYDROGRAPHY:
USGS HAMMA ACE (C7), (D6) & (D7) REVISED BY BLM FROM AERIAL
PHOTO ALTIMETER PHOTOGRAPHY (1974-1984)

LAND NET:
BLM FIELD ACTION ORDER 516-8, APPROVED 09/12/1990

OTHER ACTIONS AFFECTING DISPOSAL OR USE OF STATE LANDS:
SEE THE LAS CASEFILE ON OREGON, SOURCE DOCUMENTS FOR
ADDITIONAL INFORMATION.

ENTIRELY WITHIN HAMMA RECORDING DISTRICT
SUBJECT TO BRETIG BAY AREA PLAN
WCO 301.041315 AFFECTS THE DESIGNATED ANADROMOUS
PORTION OF THE STREAMS ANNUAL AND ANY STATE
UPLANDS WITHIN OF THE ORDINARY HIGH WATER MARK ON
HIGH TIDES OF THE STREAMS INCLUDING ISLANDS WHICH ARE
STATE SELECTED, TEMPORARILY APPROVED OR PATENTED
EXCLUDING ISLANDS OF OTHER OWNERSHIP. THE STREAMS AND
LANDS AFFECTED ARE FURTHER DEPICTED ON AN ATLAS TO
THE CATALOG OF WATERS, IMPORTANT FOR SPawning, REARING
OR MIGRATION OF ANADROMOUS FISHES, IN ANADROMOUS STREAMS
CLOSED TO NEW MINERAL ENTRY". ATTACHMENT 3 OF SAID ORDER
AND RESPONSE IS MADE TO IT.

SCALE



ATTENTION STATUS PLAT USERS: ON THIS PLAT, ALL STATUS
LINES CLOSE FOR ACTIONS THAT EXTEND INTO ADJACENT TOWNSHIPS.
THIS INCLUDES STATUS LINES SUCH AS DISPOSAL, MUNICIPAL, TITLE,
CLASSIFICATION, ETC. PLEASE REFER TO ADJACENT TOWNSHIPS OR LAS
TO DETERMINE IF ACTIONS EXTEND BEYOND THE BOUNDARIES SHOWN ON
THIS PLAT. REMEMBER TITLE, CLASSIFICATION AND RESTRICTION LINES
ALWAYS CLOSE ON ALL PLATS.

	A PRODUCT OF THE STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES LAND RECORDS INFORMATION SECTION	SP
	PLAY CURRENT TO 10/10/2005. REFER TO THE ENR STATUS PLAT TRACKING SYSTEM (05/05/2002) FOR OTHER PENDING ACTIONS ON THIS TOWNSHIP PLAT	TWP 5S RNG 35W SM
CHECKED BY: DAVE LUCK		ARC Update

Management Guidelines

A. Access. Access to and across public lands for mineral exploration and development is to be ensured. Land disposals and other authorizations are to be cognizant of access and road corridors proposed by the DNR and ADOT/PF and should not be allowed where such disposals or authorization would conflict with access considerations.

B. Mineral Exploration. By statute, exploration for locatable minerals is allowed on all state lands except those specifically closed to location. A land use permit is required under most circumstances. Hand prospecting and exploration activities which involve no significant surface disturbance generally do not require a permit. The DNR may determine that some forms of access will not be allowed in specific areas to avoid resource damage.

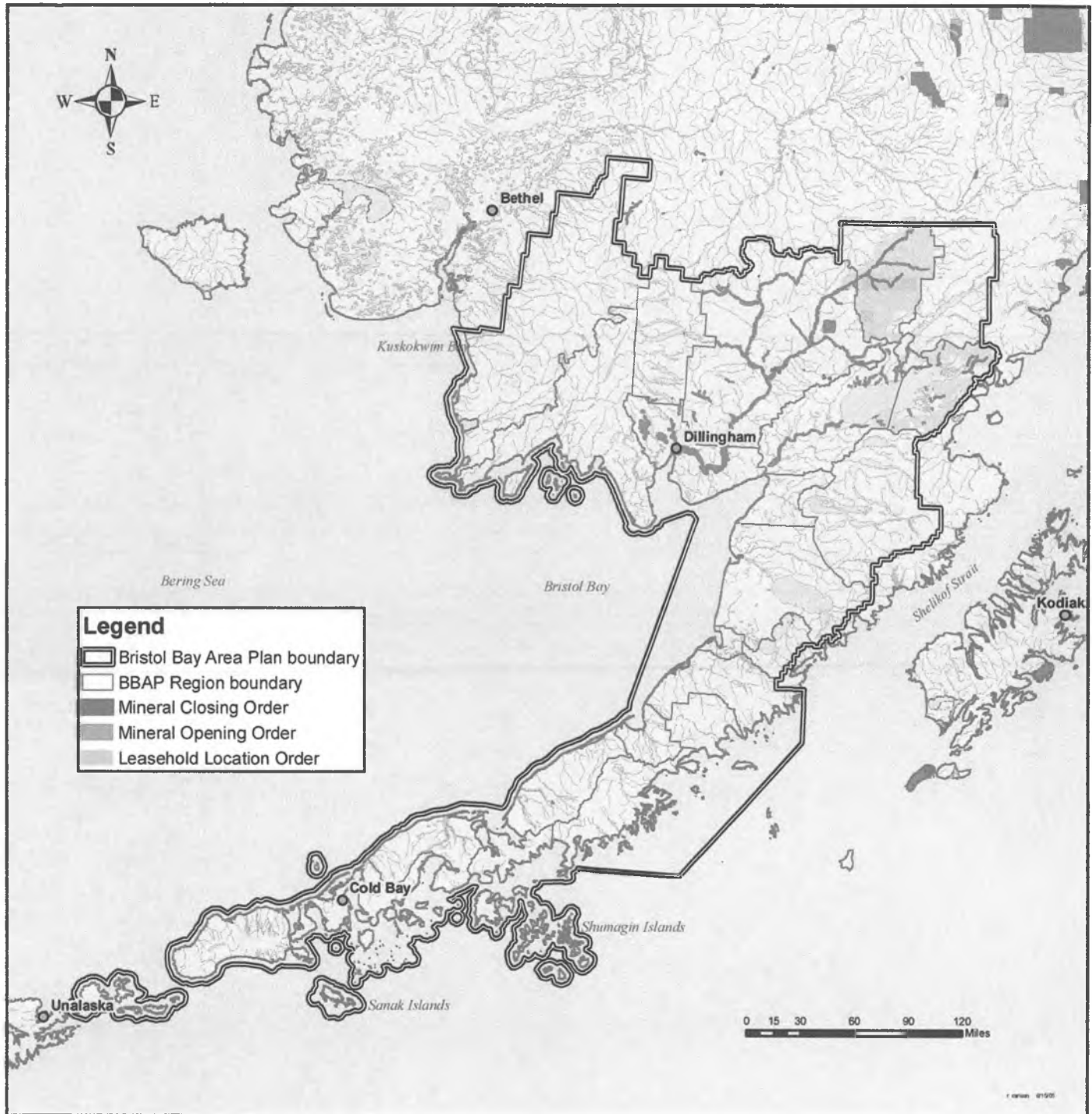
C. Open to Mineral Location. By statute, all state lands are open to mineral location unless specifically closed. Where an area is open to mineral location, a miner has the right to stake a mining location regardless of the surface use designation or classification. Any adverse effects of mining on surface resources or uses will be managed through compliance with state laws and regulations and borough ordinances and management intent and guidelines in this plan. Reclamation activities are regulated under the Mining Reclamation Act (AS 27.19) and state regulations (11 AAC 97).

D. Mining in Fish Habitat. When the DNR issues a permit for mining in or adjacent to a fish stream, conditions of the permit will require any necessary measures such as levees, berms, seasonal restriction, and settling ponds that will allow the operation to meet water quality standards, and statutes and regulations governing the protection of fish. Mining in fish streams requires permits from the ADEC and DNR's Office of Habitat Management and Permitting (OHMP). OHMP permits are not required in tide and submerged lands or estuarine areas outside of the intertidal channel exposed at mean low water. The intertidal channel is that portion of the bed and banks below the mean high water level. However, a Special Area Permit issued by ADF&G is required if the project is located within a legislatively designated area, including uplands, estuaries or tidelands.

E. Offshore Prospecting Permits (OPP). Under AS 38.05.250 an exclusive right to prospect for deposits of minerals offshore may be granted through authorizations issued by DNR. DNR determines what areas will be offered for offshore prospecting. No areas within the plan boundary are currently open for permits. If workable mineral deposits are found offshore, the permittee must apply for a lease in order to develop the mineral deposit. Units designated Habitat because of high fish or wildlife habitat values are areas of significant surface use by fish or wildlife. The ADF&G has stated that it has initially determined mining in estuarine areas designated Habitat to be a nonconforming use under the ACMP. The ACMP procedures will be used to determine whether mining can be made a conforming use and if mitigation is possible, impose the appropriate mitigating measures needed to protect fish and wildlife resources.

F. Mineral Closing and Leasehold Location Orders. No new mineral closing orders have been adopted as part of this plan. Users should check for any closure orders that may be in effect for areas in which they intend to work. One mineral closing order, adopted with the

**Figure 2.2 Bristol Bay Area Plan -
Mineral Closure Orders, Leasehold Location Orders, & Mineral Opening Orders**



Thank you Members of the Finance Committee for taking my testimony

April 3, 2013

I am writing about HB 77, SB26, SB27.

Comment made by Eric Feige, Chickaloon, "theme of the bill... more efficiency, bring better service to the public and streamline our permitting system."

If the theme is to bring better service, why are we proposing to eliminate the requirement of public notification of proposed actions that will affect our water, both in the ability to apply for its use and to comment on its use by others?

Does streamline mean leaving the public out? Is that in OUR best interest?

Further the bill proposes that the commissioner decides on which permit applications won't cause irreparable damage?

Does this signal the end of public process here?

If we have a backlog of permit applications, wouldn't it be possible to temporarily hire people to review these applications, or get an independent reviewer to get us caught up?

Thank you for your time and holding the hearing. I apologize for dropping off of the list, unfortunately I had another appointment.

Respectfully,

Betsey Burdett

Ketchikan

NVN
Native Village of Nuiqsut
2205 2nd Avenue
P.O. Box 89169, Nuiqsut Alaska 99789
PHONE (907) 480-3010 FAX (907) 480-3009 EMAIL tanvn@astacalaska.net

RESOLUTION NO. 13-01 of
The Native Village of Nuiqsut
OPPOSING THE (HB 77 & SB 26) LEGISLATION BILLS

WHEREAS: the Native Village of Nuiqsut (hereinafter) is a federally recognized tribe;
and

WHEREAS: the Nuiqsut Tribal Council is the governing body of the Native Village of Nuiqsut, and

WHEREAS: the Native Village of Nuiqsut and areas include traditional living places, birthplaces and burial grounds and other areas of cultural significance, and

WHEREAS: the Native Village of Nuiqsut is home to a rich and diverse fishery including king salmon, silver salmon, white fish, chum salmon, broad white fish, arctic char, arctic cisco, burbot, humpback whitefish, grayling, bering cisco, as well as other valuable subsistence species, and

WHEREAS: oil and gas exploration and development activities in areas surrounding the Native Village of Nuiqsut permitted by the State of Alaska have been allowed to occur during summer and winter season that is critical importance to the subsistence harvesting of fish and wildlife, berries, roots, plant leaves and a wide range of mammals and birds, and

WHEREAS: Governor Parnell has introduced bills (HB 77 & SB 26) designed to expand government power and strip Alaskans of their right to clean water and healthy fisheries. One proposal is especially damaging-it would deny Alaskans the right to keep water in streams for salmon. Under current law, Alaskans can file for "in stream flow rights", to secure enough water in salmon streams for healthy fisheries. Large corporations, however, want unfettered access to Alaskan waters- regardless whether they support wild salmon. So Governor Parnell is cutting everyday Alaskans from the loop,

WHEREAS: DNR routinely processes water use applications for mining, oil and gas corporations, but it almost never processes the in-stream flow application needed to keep water for fish, and

WHEREAS: Alaska salmon streams are warming, and salmon are becoming more vulnerable to pollution, predation, and disease: that is why it is more important than ever to keep water in streams to ensure healthy fish,

NOW, THEREFORE BE IT RESOLVED: that the State of Alaska proposed Road to Umiat for the purpose of oil and gas exploration and development in this area, the Native Village of Nuiqsut, hereby:

1. Strongly objects to the consideration or approval of SB26 and HB 77 in their present form;
2. Any legislation related to state water rights should recognize that Native Villages, local governments, and other Alaskans have a right to healthy salmon, and obligation to protect them and should not strip away the rights of Alaskans to keep water in-stream rights for healthy fish.
3. Any legislation related to state water rights put the human right to water first. When allocation decisions are made in streams, subsistence uses, aquatic habitat and constitutional rights of all Alaskans should take priority over other out of stream uses.

CERTIFICATION:

It is hereby certified that on the 21st day of Feb., 2013, a quorum of the Native Village of Nuiqsut Tribal Council was formed, and did pass and adopt the preceding resolution by a vote of 6 in favor, 0 opposed, and 0 abstaining.

Margaret Pauline
Tribal Council President

Hazel Kurakone
Tribal Council Secretary

2/21/13
Date

2-21-13
Date

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 8:22 AM
To: Senate Finance Committee
Subject: FW: HB77

Importance: High

From: b kraft [<mailto:bkraft@alaskasportsmanslodge.com>]
Sent: Thursday, April 04, 2013 1:54 PM
To: Sen. Kevin Meyer
Subject: HB77
Importance: High

Senator Meyer-

My wife and I live in your district in Anchorage. We employ over 140 people in six different businesses that we own in Alaska. Although there may actually be parts of HB77 that are necessary, all of the language and proposed changes having to do with water rights and in flow stream reservations are way out of line. I will not take up a bunch of your time here today. I testified at the Anchorage LIO yesterday on the issue. I just wanted to email you directly and tell you that I hope you make efforts to remove the sections dealing with eliminating the public's need to be notified or comment on water issues as well as removing the language that eliminates a citizen's right to apply for in flow stream reservations to ensure enough water remains in the system to sustain fish at their present abundance.

Thank you,

Brian Kraft - Owner
Alaska Sportsman's Lodge "2008 Sporting Classics Best Lodge"
Alaska Sportsman's Bear Trail Lodge
Kodiak Sportsman's Lodge
907.276.7605 Office
907.227.8719 Cell
www.fishasl.com

Join Trout Unlimited — Help preserve our fisheries! www.tu.org

Doniece Gott

From: Sen. Kevin Meyer
Sent: Friday, April 05, 2013 8:59 AM
To: Senate Finance Committee
Subject: FW: HB 77

From: lorraine lopez [<mailto:rosalincharles@yahoo.com>]
Sent: Thursday, April 04, 2013 4:34 PM
To: Sen. Kevin Meyer
Subject: HB 77

Dear Senator Meyer,

This is my written testimony that I oppose HB77 bill and I further request that this be added to public record.
Lorraine Lopez
I apologize that this is a little late.

WRITTEN TESTIMONY

Name: NANCY HILLSTRAND
Representing: PIONEER ALASKAN FISHERIES INC
Bill No./Subject: SB 77
Committee: Senate Finance
Date of Hearing: 4/3/13

WE ARE A 50 YEAR OLD ALASKAN
FISHERIES CORPORATION AGAINST HB 77

THE CONSTITUTION PROTECTS SALMON
PROTECTS CITIZENS
AND ABHORS SPECIAL INTERESTS THAT
GET SPECIAL PRIVILEGES OF OUR
NATURAL RESOURCES.

HB 77 HAS THE POTENTIAL TO
ALLOW FAST TRACK DECISION MAKING
AND ALLOW FAVORS GRANTED TO
SPECIAL INTERESTS IN THE MINING
INDUSTRY WHILE SACRIFICING
OUR SALMON HABITAT

PLEASE OPPOSE THIS IT DAMAGES
OUR RIGHTS SO DEAR TO THE
REPUBLICAN PARTY

THANK-YOU -
T. Gray

Doniece Gott

From: Sen. Anna Fairclough
Sent: Wednesday, April 03, 2013 5:21 PM
To: Christine Marasigan; Doniece Gott
Subject: FW: HB 77

Please see the attached email from a constituent of Senator Fairclough's asking to make his comments part of the public testimony record.

Thank you,

Susan Wallen
Legislative Assistant
Senator Anna Fairclough
907-465-3777
susan.wallen@akleg.gov

From: Stan Blodgett [<mailto:stanbiker@gmail.com>]
Sent: Wednesday, April 03, 2013 5:57 AM
To: Sen. Anna Fairclough
Subject: HB 77

Senator,

I have read that the finance committee is holding hearings on HB 77 this afternoon.

I am against the bill and would like my comments to be considered official written testimony on the bill.

Our salmon runs have been struggling statewide in recent years, and efforts to help have not been entirely successful. It seems counterintuitive to pass laws that have the potential to damage salmon streams, especially when they are already struggling.

Additionally, any bill that removes public input from any process to protect streams in the interest of resource extraction cannot be supported. The resources of Alaska belong to the citizens of Alaska. This bill is not consistent with protecting the rights of the citizens of Alaska, and I hope you will not support the bill.

We already have laws that are designed to allow responsible development that does not destroy our streams and salmon. Please do not allow this bill to circumvent the protections in place, and deny citizens of Alaska a voice.

Sincerely,

Stan Blodgett