

SB

26

<TARGET><BILL>SB 26</BILL><SUBJECT>SB
26</SUBJECT><COMM>SFIN28</COMM></TARGET>



American Fisheries Society

ALASKA CHAPTER

PO Box 672302

Chugiak, AK 99567-2302

March 22, 2013

Alaska State Legislature,

The Alaska Chapter of the American Fisheries Society (AFS-AK) supports protection of Alaska fish and fisheries; therefore, we are opposed to SB 26 / HB 77 as written because it is likely to be detrimental to Alaska fishes and fish habitat.

The AFS-AK represents fisheries scientists and biologists employed in government, academia, and the private sector throughout Alaska. It is one of the largest local professional fisheries chapters in the country. Reflective of the diverse program of professional activities and accomplishments, the Alaska Chapter received the Outstanding Chapter Award from the parent society in 1995 and 1999.

The parent American Fisheries Society (AFS), founded in 1870, is the oldest and largest professional society for fishery scientists and it represents more than 9,000 fisheries scientists, worldwide. The AFS promotes sound scientific research and enlightened scientific management of fishery resources and fish habitat for optimal use and enjoyment by the public. The mission of the AFS is to improve the conservation and sustainability of fishery resources and aquatic ecosystems by advancing fisheries and aquatic science and by promoting the development of fisheries professionals.

The AFS-AK is not an advocacy group but we occasionally bring important issues to the attention of policy makers and the public when deemed necessary. We advocate for fish, fisheries, and sustainability when our position is well grounded in science.

Alaska fisheries is one of our most important natural resource and requires knowledgeable, informed management and careful habitat protection. Protection of fish habitat and reservations of water are the primary means of ensuring the long-term health of our commercial, sport and subsistence fisheries.

While there are various aspects of SB 26 that are cause for concern, as AFS-AK interprets SB 26, it is likely that, with fewer groups eligible to apply for instream reservation, there will be fewer instream flow reservations to protect fish and fish habitat. The proposed changes would also relax requirements for the periodic reassessment of instream water needs, from a 10 year requirement to at the discretion of the commissioner. Watersheds regularly change, however, as do the distribution and spawning locations of anadromous fish such as salmon. Plus, as a result of ongoing climate change, these changes can happen suddenly. Periodic review ensures that up-to-date environmental

circumstances are taken into account when electing to continue or modify water reservations, with this maximizing the likelihood that streams important for anadromous fishes will be protected. As such, we urge you to reject the proposed changes to Section 40 AS 46.15.145 of SB 26.

Why is this important? Both anadromous and nonanadromous fishes depend on the quality and quantity of freshwater for reproduction, growth, and survival. Salmon and steelhead require good quality and quantity of fresh water to complete their life histories. In fact, some spend half or more of their lives in fresh water. Other fishes, such as Dolly Varden, cutthroat trout, and most whitefishes, can also have anadromous life histories, spending much more of their life in fresh water. Freshwater species, such as Arctic grayling and rainbow trout, of course, are entirely dependent on freshwater habitats. Nearly all of our fishes are valuable to Alaskans in some way through our recreational, commercial, or subsistence uses. These fishes and their fisheries will be sustained only if their habitat is preserved.

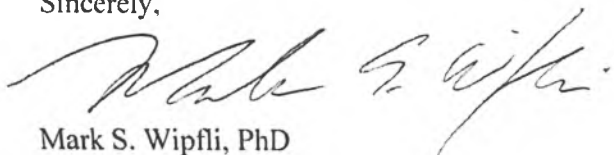
Why is water important for fish? Fish need ample, clean water for spawning so eggs will not desiccate, freeze, or become smothered by silt. After hatching, young fish need gentle habitat for living and cover and ample food supply. As they grow, most fish use deeper, faster moving waters with bigger food items. Interconnectivity is important— ample quantities of water must be available so fish of different sizes and swimming abilities can migrate between different parts of watersheds to take advantage of feeding, spawning, and overwintering habitats. In fact, most tributaries, even the very small fishless streams, are important in some way for the survival of fish populations because each tributary influences habitats downstream where fish rear and spawn. Tributaries also serve as critical corridors for fish movement throughout the year.

Ultimately, the surest way to protect fish and fish habitat would be to reserve flows in all state waters for fish as the first priority rather than applying for a reservation, one stream at a time. In lieu of that, it is very important that “persons” (e.g., private nonprofit organizations) continue to be allowed to apply for reservations of water as well as agencies because they are adept at acquiring grants and other funding to accommodate costs of personnel, logistics, analyses, reporting, and applications. Meanwhile, agencies are already faced with diminishing numbers of trained personnel and shrinking budgets and are likely to make fewer, rather than more, applications for reservations. No increased budget is included in this bill for state agencies to do additional reservations of water but would be needed to properly handle the increased workload.

Fish are important to Alaskans, to our economy, and to the structure and function of freshwater ecosystems throughout the state. Alaskans have a right to fish, and fish need sufficient water. The AFS-AK urges you to support fish, fish habitat, and fisheries for Alaskans. We urge you to not enact SB26 as written.

Thank you for your consideration.

Sincerely,



Mark S. Wipfli, PhD
President – Alaska Chapter of the American Fisheries Society
mwipfli@alaska.edu



Native Village of White Mountain

IRA TRIBAL COUNCIL

P.O. Box 84090

White Mountain, AK 99784

TELEPHONE: (907) 638-3651 & FAX: (907) 638-3652

Tuesday, March 12, 2013

Re: 28th Legislature – SB26 & CSHB77 – Water-Rights & In-Stream Flow Reservations

Dear Governor Sean Parnell:

The Native Village of White Mountain seeks to weigh in regarding SB26 which is currently under consideration by our State Senate by stating that we are against said bill as it is currently worded as we do not feel that it is in the best interest of Alaskans, or Industry, specifically with regard to its handling of in-stream flow reservations.

We believe that everyone would agree that enough water should be left in a given river system to support the aquatic life and habitat of that river system. If this point is agreed upon, then a water-right application made by any individual or entity for the purpose of maintaining this minimum flow would actually be a benefit to companies that require water to operate, such as those that deal with resource extraction, as those companies would not incur time and expense for the necessary research and documentation required to make an informed decision.

"Checks and Balances" have always been part of the American system of government. However, it would seem that SB26 and its companion CSHB77 seek to strip away all checks and balances between "progress" and "environmental stewardship." It would also seem to be an attempt to remove local decisions by local governments over local issues and centralize everything in a "Big Government" fashion.

These decisions have an impact on every Alaskan, Native and non-Native alike. If the temporary water-right permits issued to companies did not regard the environmental impact or the impact upon the people of that region who rely on that water source, priority is placed solely on profit-oriented resource extraction over the need of aquatic life or the citizens of the State. In this way CSHB77 & SB26 would violate basic moral principals by placing the value of one industry higher than the value of life and good stewardship of the land. Actions always have consequences. Those consequences could affect other industries such as tourism, commercial and sport-fishing as well as subsistence by our Native people, through the potential destruction of wetland habitat and draining of water that serves as the spawning beds for salmon and other fish.

If SB26 & CSHB77 were to become law in their current form, there is less assurance that water would remain available for aquatic life support due to potential development. The Native Village of White Mountain wants to ensure that adequate stream flow will remain available, and believes that water-rights help define what adequate stream flow is. We are aware that in the past the Alaska Fish & Game has attempted to create a blanket in-stream flow reservation for aquatic life

across the State. If this were enacted as a part of SB26, then there would be no need for entities such as the Native Village of White Mountain to invest time and resources to pursue such study.

The Native Village of White Mountain supports resource development for economic growth provided it is responsible growth. We therefore request that non-state, non-federal organizations such as the Native Village of White Mountain continue to have the right to have a say in those things that have direct implications on our lives, to be good stewards of our land and to be able, with the proper research and study, to determine and reserve the amount of in-stream flow required to support aquatic life and protect habitat.

Sincerely,

A handwritten signature in cursive script that reads "Willa Ashenfelter".

Willa Ashenfelter, President

Native Village of White Mountain

WA/rlm

Honorable Pete Kelly and Kevin Meyer
Co-Chairs, Senate Finance Committee
Alaska State Legislature

Dear Senators Kelly and Meyer,

Trout Unlimited is an organization of 140,000 conservation-minded anglers dedicated to protecting coldwater fisheries. We ensure that streams and rivers will still be there—cold, clean and fishable—for the next generation. We have helped protect over 10,000 miles of river nationwide. In Alaska, Trout Unlimited works to preserve, protect and restore wild salmon and trout populations. By using sound scientific data, strong grassroots outreach and advocacy, and hands-on involvement in conservation projects, Trout Unlimited Alaska protects some of the most pristine and prized rivers on the planet, restores those that need some help, and engages the next generation of coldwater stewards in Alaska's natural heritage.

Trout Unlimited opposes Senate Bill 26 because the bill would take Alaska backwards in the governance of our natural resources. At a time when the state should use the input of stakeholders to minimize dispute and delay over resource decisions, this bill would make it more difficult for the public—including tribes, commercial fishermen, sportsmen, and communities—to have input into state decisions regarding public resources. In excluding the public from important resource decisions, the bill also infringes Alaskans' rights to the resources of the state and to participate and receive due process in the adjudication of those rights. While this bill is called a "streamlining" bill, it will more likely lead to less-informed, unilateral decisions prone to controversy and challenge.

One of the worst components of the bill takes away the rights of people to apply for instream flow reservations. In fact, the bill goes further, seeking to retroactively extinguish the rights of persons whose applications have already been accepted, even those accepted more than 20 years ago. The change would affect not just individuals, but also the rights of organizations, Native tribes, commercial fishermen, sportsmen, and communities—all of whom currently may apply for water reservations.

Like water rights for domestic, agricultural, or industrial activities, instream flow reservations for fish or recreation are a form of water right allowing the holder a quantity of water for specific uses. An applicant for an instream flow reservation submits a detailed application establishing the need and appropriateness of the reservation. The agency reviews the application and either accepts it as filed or denies it. The acceptance conveys a priority date—the date the application was successfully filed. The applicant is then deemed an "appropriator of record." Because water is appropriated on a first-in-time basis, the priority date ensures that the appropriator of record is first in line over someone who comes later and wishes to use the water for a conflicting purpose. This first-in-time water appropriation principle is enshrined in the Alaska Constitution at Article VIII, section 13.

After an application has been accepted, appropriators of record invest tremendous resources, often hundreds of thousands of dollars, to obtain the scientific information supporting the

instream flow reservation. However, even once this information to perfect the applicant's right has been gathered, the Department of Natural Resources (DNR) rarely adjudicates instream flow applications. Generally there is no need to rush to adjudication until and unless there is a competing water right application filed. To date, Trout Unlimited understands that DNR has not adjudicated a single instream flow application not submitted by the state itself. This issue was recently addressed in superior court, because the state did not adjudicate the water rights application of a citizen group even when another entity applied for an upstream water right. In that case, the court ruled against the state and recognized that appropriators of record have a legal status and must be considered before DNR issues even a temporary water use permit that might conflict.¹

Trout Unlimited has filed, and has had accepted, more instream flow applications than any other non-agency entity in Alaska and has spent well over a million dollars to establish and defend our interests as appropriators of record. We hold twelve instream flow applications, dating back to 1993—none of which have been adjudicated. In addition to the \$1,500 application fee and significant staff time and organizational resources required to submit an application, we spend tremendous resources compiling the information to support the application. Each application requires one or more stream flow gauges and the monitoring of those gauges. In accessible spots this can cost \$30,000 per year. In inaccessible locations, each gauge can cost over \$100,000 per year. DNR prefers at least five years of data, sometimes from multiple gauges. We also pay for staff time, supplies, scientific experts, and legal fees. Based on these facts, we estimate that it has taken between one and two million dollars to support our accepted applications.

Supporters of this bill have wrongly suggested that there would be no harm in removing the rights of people to water reservations, because no applications from a person have been adjudicated. That explanation is at best disingenuous. The 35 instream flow reservation applications accepted from non-governmental entities are un-adjudicated primarily because DNR has declined to adjudicate them. That does not change the fact that the appropriators of record like Trout Unlimited have invested millions of dollars perfecting their rights and taken actions in reliance on the acceptance of their water rights application.

By repealing citizens' rights to secure instream flow reservations, Alaska would be acting contrary to the trend in other western states. Arizona and Nevada already allow citizens to apply for these rights. Eight other states allow people to obtain general water rights and then transfer those to instream flow reservations,² and the trend is toward greater protection for instream flows. Of course, Alaska is unique. We possess more pristine water resources than any other state and we have a constitution recognizing their value, but these qualities call for more, not less, protection of instream flows. Alaska's statutes providing instream flow reservations reflect constitutional provisions that reserve fish and waters for the common use of all Alaskans, subject appropriations of water to the general reservation of fish and wildlife, and require that those rights be uniformly applied.³

¹ See *Chuitna Citizens Coalition v. Sullivan*, 3AN-11-12095CI (Alaska Superior Court Feb. 25,

² The eight states are California, Colorado, Montana, New Mexico, Oregon, Texas, Washington, and Wyoming.

³ Alaska Constitution, Article VIII, sections 3, 13, and 17.

Requiring instream flow reservations to be filed by federal or state entities poses a severe limitation on applicants. Tellingly, although supporters of this bill have suggested that the state might collaborate to take over the existing applications, the fiscal note for this bill is zero, even though the cost of perfecting a single application can be as much as half a million dollars. The state can't have it both ways—if it will take over applications, the fiscal note should reflect that. Further, state collaboration to take over existing applications is only valuable if the state also adopts the priority date of the original filing.

Instream flow reservations are only one of many avenues for public participation that could be rolled back by Senate Bill 26. The bill also changes the definitions of who can take part in internal DNR appeals and requests for reconsideration. Trout Unlimited opposes such measures because they could make it more difficult for the agency to receive input from stakeholders or have a chance to address problems at the agency level, with agency expertise, and avoid litigation. If the state refuses to allow participation in internal appeals, the only remaining forum for disputes is the courts. Ironically, the impact would likely be more delay by pushing agency disputes to litigation. Even if a given dispute did not progress to court, this bill's changes could result in more disputes and conflict at the agency level, where this bill could create threshold questions about public input and the appropriateness of the parties—questions that would be disputed before the agency could ever address the merits of the issue before it.

Further, the bill's changes about who can appeal internally are not clear and threaten inconsistent application and extensive agency resources to interpret. For example, section 39 would allow appeals only by someone suffering "physical or financial detriment to the person's interests." This novel legal standard is undefined, creating substantial uncertainty. For example, it is not at all clear what it means to have a physical detriment to an interest. Further, DNR will be at pains to establish when an act upstream is traceable to a given "physical" impact downstream. The uncertainty created by this new standard risks excluding legitimate stakeholders from the process and will cause more controversy and more litigation.

Those impacts are magnified in the bill's changes suggesting that preliminary best interest findings, and the ability of the public to comment on them, are discretionary. Failure to allow public comment means problems are not identified early, and stakeholders have little opportunity to see their needs addressed. As with much of this bill, the impact of removing public input will be more disputes and less-informed permitting decisions.

For the above reasons, Trout Unlimited opposes Senate Bill 26. Although aimed at streamlining permitting decisions, the bill introduces significant new sources of controversy and excludes stakeholders from important steps in what should be a transparent process addressing the interests of all concerned Alaskans. The bill also threatens Alaskans' rights to protect the resources of the state and to participate and receive due process in the adjudication of those rights. We urge the legislature not to pass this bill.

STATEWIDE PERMITTING REFORM

SB 26: LAND DISPOSALS/EXCHANGES; WATER RIGHTS

Senate Finance Committee

February 26, 2013

Department of Natural Resources

- Dan Sullivan, Commissioner
- Wyn Menefee, Chief of Field Operations, DMLW



IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Permitting reform has bipartisan, national and local recognition and support

- Permitting reform is a bipartisan effort as policymakers realize the economic benefits of allowing large-scale development projects to proceed in a responsible, timely manner
- States as politically diverse as California, Massachusetts, Indiana, and Kansas are fully engaged in modernizing their permitting processes
- The Federal government also recognizes the issues and has undertaken initiatives to reduce costs, simplify the system, and eliminate redundancy and inconsistency
- Last year (February 2012), *The Economist* ran a cover story called “Over-regulated America” in which it concluded that “America needs a smarter approach to regulation” that will “mitigate a real danger: that regulation may crush the life out of America’s economy”
- In *Newsweek* (June 2011), President Bill Clinton lamented that it can take three years or more to permit major economic development projects. One of his top recommendations to put Americans back to work was to speed up the regulatory approval process and grant state waivers on environmental rules to hasten start times on construction projects



IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Permitting reform is a national issue affecting U.S. competitiveness

- Potential investors sometimes express reluctance to pursue projects in the U.S. and Alaska because of the ever-present risk of permitting delays and litigation
- In 2012, the investment firm Behre Dolbear Group, which undertakes an annual global survey of mineral sector investment, ranked the United States last (tied with Papua New Guinea) out of 25 countries in the category of “permitting delays”
 - “Permitting delays are the most significant risk to mining projects in the United States”
 - States are negatively impacted by federal rules that they are bound to enforce resulting in a 7- to 10-year waiting period before mine development can begin
 - Australia is one of the countries with the fewest permitting delays
- Contrast Alcan Highway construction



*“Permitting delays
are a global issue.”*

– Behre Dolbear, 2012 Ranking of
Countries for Mining Investment:
Where “Not to Invest”

IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Jobs and the Environment are Undermined by Permitting Delays and Overregulation

- While an overly burdensome regulatory system can discourage investments and job creation, it can also undermine, not enhance, environmental protection
- When companies forgo investing in places like Alaska and the U.S.—places with very high environmental standards—because of regulatory delays, it can result in passing energy and mineral investment to nations with substandard environmental regulations and little capacity or desire to protect the environment
 - Last year the Associated Press estimated that 5 to 20 million tons of oil leaked a year in Russia. At even the lower end, that would be the equivalent of a Deepwater Horizon blowout about every two months
 - Russia experienced approximately 18,000 oil pipeline ruptures in 2010 – the figure in the U.S. for the same year was 341
- The global environment would be much better off if hydrocarbons and other natural resources were produced in countries with the highest environmental standards rather than some of the lowest



IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Timely, predictable, and efficient permitting is critical to other statewide strategies

Secure Alaska's Future: Oil

- I. Increase production by making Alaska more competitive
- II. Ensure the permitting process is structured and efficient
- III. Facilitate and incentivize the next phase of North Slope development
- IV. Promote Alaska's resources and positive investment climate to world markets

Secure Alaska's Future: Strategic & Critical Minerals

- I. Undertake a statewide assessment of Alaska's strategic mineral potential—millions budgeted for this project
- II. Provide support for the development of known or highly prospective strategic mineral occurrences throughout Alaska through infrastructure partnerships and incentives
- III. Improve the structure and efficiency of permitting processes in order to expedite mineral development, including strategic minerals
- IV. Deepen partnership and cooperation with the federal government, local governments, Native corporations, and other potential new entrants to encourage domestic exploration, development, and processing of REEs and other strategic minerals
- V. Attract new investment and markets for Alaska's abundant mineral resources

STATEWIDE PERMITTING REFORM

- STRATEGY -

Objective:

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.

DNR has been working with a team from DEC, ADF&G, and LAW to develop and advance strategies that aim to:

- I. Improve agencies' internal permitting structure to create a more efficient, timely, and certain process
- II. Enhance coordination within different state departments and with different entities and stakeholders throughout the state
- III. Seek input from the public about the permitting process including input from municipalities, industry and non-governmental organizations
- IV. Improve coordination between the state and the federal government—federal permitting issues have a strong influence on state projects
- V. Anticipate and plan for permitting the next phases of resource development, e.g. the Shale Oil Task Force



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

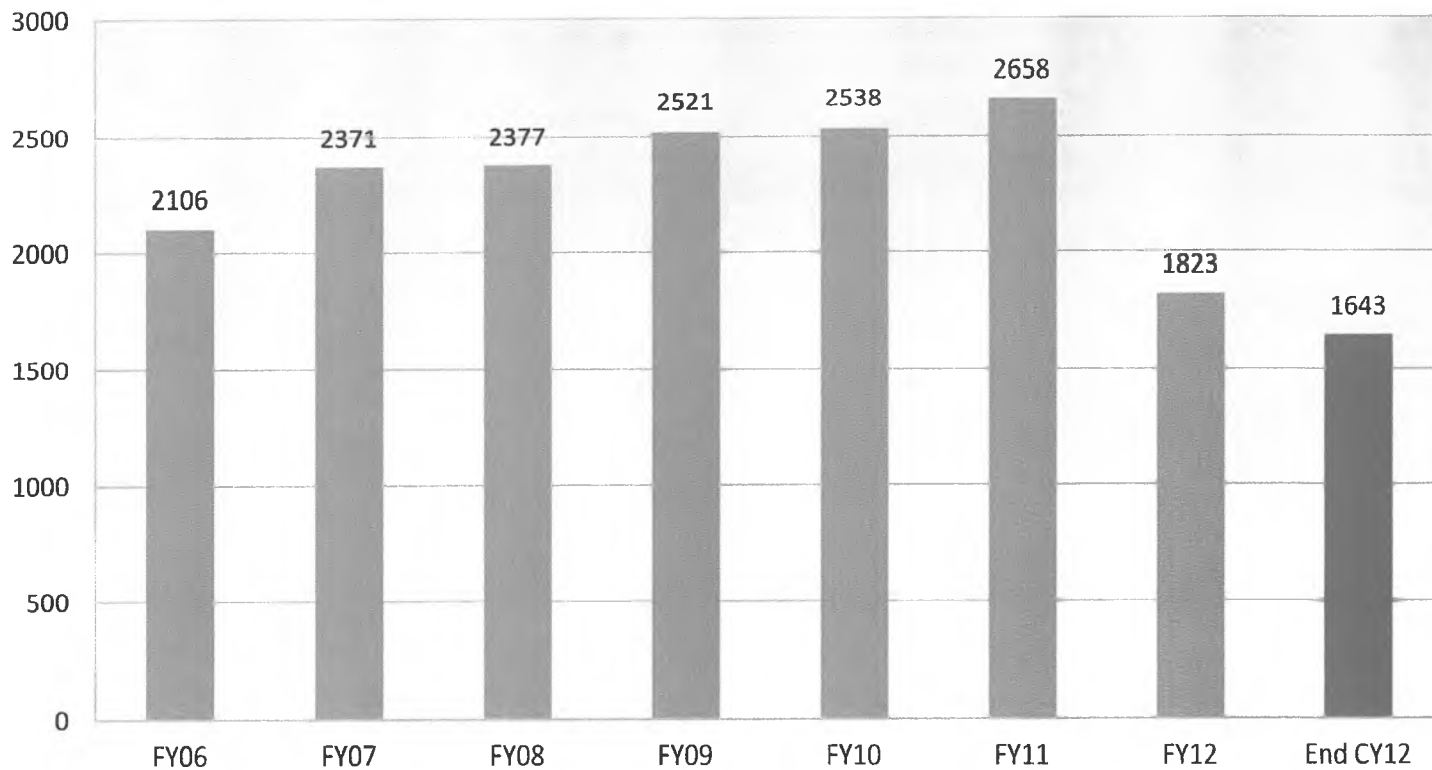
- In FY12, the Legislature provided approximately \$2.7 million in operating funds for the Division of Mining, Land & Water to create efficiency, timeliness and certainty in the permitting process
- We utilized capital funding from FY12 (\$2.5M for the Unified Permit Project and Document Management) to focus on business management software and services
- In FY13, the Legislature approved the continuation of FY12 operating funds as part of the ongoing base for permitting and an additional \$950.0 to cover increased personnel costs and fill vacant positions focused on permitting
 - FY13 capital budget included \$3.3M to continue work on the Unified Permit Project, including the continuation of IT strategies and Business Process Management
- We reclassified and updated over 50 position descriptions
- Since the beginning of FY12, the backlog has been reduced by 38.2% (1,015 authorizations)
- We have conducted public meetings statewide for input on state permitting processes
- We are evaluating internal processes to identify and fix inefficiencies



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

DMLW Backlog Authorizations



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

2012 Statutory Changes – HB361

- The Division of Mining, Land and Water identified over 30 statutory changes that would help reduce applicant costs, create efficiencies, reduce redundancies, and reduce opportunities for legal challenges
- 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 Legislature passed HB 361 and it has been signed by the Governor



STATEWIDE PERMITTING REFORM

- 2013 LEGISLATURE -

2013 Statutory Changes – HB77 & SB26

- Building on the success of 2012, the Division of Mining, Land and Water has identified additional statutory changes that would help streamline permitting requirements for the public to use and enjoy Alaska's land and resources
- Governor Parnell has introduced HB 77, which would reform and streamline procedures for obtaining, issuing, and appealing permits, leases, best interest findings, and other DNR authorizations
- It would allow DNR to establish a general permit for an activity on state land unlikely to cause significant and irreparable harm to the State
- It would prevent non-agency entities from being able to apply directly for a reservation of water; this does not affect holders of, or applicants for, standard water rights, temporary water use permits or water removals



STATEWIDE PERMITTING REFORM

- 2013 LEGISLATURE -

2013 Statutory Changes – HB78 & SB27

- Section 404 of the Clean Water Act (CWA) requires a permit from the Corps of Engineers for discharge of dredged or fill material into waters of the U.S.
- Purpose is to provide the State authority to evaluate and, potentially, assume primacy for permitting of dredge and fill activities in waters and wetlands in the State, as provided for in the CWA
- State primacy would still be subject to federal oversight and must be as stringent as the current federal program, but should help ensure funding and staffing for the program, provide greater state participation and control, enable the State to focus resources where most needed, and better insulate the program from national politics



FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 26
Fiscal Note Number 2
(S) 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. SB 26

Analysis

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

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 26
Fiscal Note Number 1
(S) Publish Date 1/18/13

Identifier (file name) LL0524-DNR-MLW-1-14-13 Dept. Affected Natural Resources
Title Relating to MLW Permitting and Lease Reform, and Appropriation Land & Water Resources
General Permitting Allocation Mining, Land and Water
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 3002

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							
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? Yes
If yes, by what date are the regulations to be adopted, amended, or repealed? 6/30/2015 Discuss details in analysis section.

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

Initial version.

Prepared by Brent Goodrum, Director
Division Division of Mining, Land and Water
Approved by Daniel S. Sullivan, Commissioner
Department of Natural Resources

Phone 269-8400
Date/Time 1/14/13 5:00 PM
Date 1/14/2013

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 26

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.

SB 26: LAND DISPOSALS/EXCHANGES; WATER RIGHTS

BRIEFING PAPER

FOR THE SENATE FINANCE COMMITTEE • FEBRUARY 20, 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 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 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 beyond the initial five year period of the 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, state public agencies or political subdivisions of the state and reduces 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
- No other state allows private persons to reserve and hold reservations to public water;
- 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;
- 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 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.

SB 26: LAND DISPOSALS/EXCHANGES; WATER RIGHTS

SECTIONAL ANALYSIS

FOR THE SENATE FINANCE COMMITTEE • FEBRUARY 20, 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 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 all land and property sales to be purchased by contract instead of 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.

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, state public 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 revokes pending applications for reserved water if they do not meet the new qualifications established in Section 40, and provides that the commissioner of DNR may refer pending applications no longer authorized under Section 40 to other state agencies so that the agency may consider submitting a similar application to request a reservation to that agency.

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.

SB 26 BRIEFING POINTS REGARDING WATER

FOR THE SENATE FINANCE COMMITTEE • FEBRUARY 20, 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.

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 SB 26 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 SB 26 removes that the commissioner shall review water reservations every 10 years and instead that he may review the reservation at any point.*

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.**



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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



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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,

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CC:

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From: H Shepherd CWA

Sent: Wednesday, February 06, 2013 8:34 AM

To: Sharon Long

Cc: Cindy Smith; murray.emily57@yahoo.com; waterlaw@uci.net; nikospastos@hotmail.com; Carl Wassilie; Delice Alexander; Jessica Wenstaffer; Jennifer Harris

Subject: Re: !FW: Senate Bill 26 testimony

Governor Parnell has introduced a Bill into the legislature (HB 77 & SB 26) which threatens fishery resources in Alaska upon which Native Villages and other communities depend for subsistence uses and strips such communities and tribal governments of their rights to participate in state government decision making. Specifically, the Bill would deny tribes and individuals the right to file for "instream flow rights," to secure enough water in rivers and streams for healthy fisheries; limit the time period for public comment on issuance of water right permits; reduce restrictions on transferring water rights, increase the amount of water that can be obtained without applying for a permit; eliminate the right to appeal the state's granting of water right permits for the majority of individuals and entities that would be impacted by the water taken out of stream and other acts, which raise substantial constitutional and other legal concerns.

Already. DNR routinely processes water use applications for mining, oil and gas corporations, but it almost never processes the instream flow applications needed to keep water for fish. The "No Human Right to Water Bill", therefore, represents nothing more than an attempt to limit, even further, the rights of Native Alaskan Tribal Governments and the public to challenge the Governor's, current, policy of unlimited corporate access to Alaska's water, regardless of the impacts to human health and fishery and subsistence resources. Among other laws, therefore, the Bill is contrary to the Alaska Constitution which expressly states that water appropriations shall not have precedence over "general uses for fish and wildlife."

Alaskans have a right to healthy salmon and an obligation to protect them. The Center for Water Advocacy, therefore, urges the Committee not to strip away the rights of citizens to keep water in our streams for healthy fish. Please reject any legislation that strips away Constitutional and other rights of the majority of Alaskans who are impacted by the use of water by corporate and municipal users to protect water quality and instream uses of water. Any legislation related to state water rights should put the human right to water first. Finally, when allocation decisions are made in streams, subsistence uses, aquatic habitat and the constitutional rights of all Alaskans should take priority over other out of stream uses.

I request that these comments be read during the February 4 Resources Committee Hearing on SB-26. Please contact me if you have any questions regarding these comments or this request.

Thank you.

Hal Shepherd, Director

Center for Water Advocacy

P.O. Box 2903

Seward, AK 99664

(907)299-8821

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

Dear Senate Resources Committee members:

I am an attorney with over twenty years experience in Alaska natural resource law and policy, including three years adjudicating administrative appeals for the Department of Natural Resources. I have the following questions and comments on SB 26 for consideration by the Senate Resources Committee:

- **Page 1, Section 1.** This section gives the DNR commissioner broad authority to authorize activities on state land through issuance of a general permit, “if the commissioner finds that the activity is unlikely to result in significant and irreparable harm to state land or resources.”
 - How will the commissioner determine what is or is not a “significant and irreparable harm?” The terms are highly subjective and open to multiple interpretations. If general permits are to be allowed, the commissioner’s authority should be limited to activities specifically identified in legislation as being suitable for a standardized authorization.
 - What opportunities will be provided for the public to be involved in the establishment of a general permit?
 - What appeal rights will be provided for a decision to issue a general permit?
- **Appeal Rights.** Currently, a person “aggrieved” by a DNR decision generally has a right to appeal the decision to the agency. The proposed legislation changes this standard so that a person must be “substantially and adversely affected” in order to appeal a department decision.
 - How will the commissioner determine whether a person is “substantially and adversely affected?” Again, these terms are subjective and open to interpretation.
 - Because the standard is so subjective, it could result in an inequitable or inconsistent application of the appeal right.
- **Page 21, Section 40.** This section removes the ability of organizations and individuals (“persons”) to apply for a reservation of water to maintain sufficient water flow for protection of various public interests.
 - Alaska may be unique in allowing persons to apply for reservations, but we are also unique in our vast size. With limited government resources, it is a benefit to the state to allow persons to apply for reservations that can protect valuable water resources and uses. This is in keeping with the Alaska constitution’s requirement that water is reserved to the people for common use (Article 8, Section 3).

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

- State regulations have stringent data requirements for applying for a reservation of water, thus already limiting the number of individuals and organizations that can submit a qualified application.
 - This provision has been in place since 1980. Is there really a problem that warrants making this change?
 - Retaining water within rivers and lakes to benefit fisheries and wildlife, recreation, navigation, transportation and water quality is as important to the state as water use appropriations. The legislature should provide DNR with sufficient funding to efficiently adjudicate reservation applications.
- **Page 22, Section 42.** The proposed language gives the DNR commissioner the authority to issue an infinite number of new temporary water use authorizations for the same project.
 - Public notice is not required for a temporary water use authorization. With unlimited authority to issue new authorizations for the same project, the use of a significant amount of water may be permitted for decades without the public ever having an opportunity to comment on the use.
 - For a temporary water use, it is within the commissioner's discretion whether to impose conditions to protect other water rights or resources. Shouldn't there be some statutory criteria that must be met for a person to use state water for more than five or ten years?
 - At what point does temporary water use stop being "temporary?" Who makes that determination and when?

I urge the committee to request that DNR provide a response to these questions and comments, and that any changes to existing statutes be done with due regard for the interests of all Alaskans.

Thank you.

Sincerely,

Lisa Weissler
340 Highland Drive
Juneau, AK 99801
lisaweissler@gmail.com
Business website: <http://changingtides.com>

City of Elim

Resolution #13-03

A Resolution of the City of Elim,

WHEREAS, the City of Elim and nearby areas are primary sources of subsistence food for the people of Norton Bay and its neighboring native communities, and

WHEREAS, the City of Elim and nearby areas include traditional living places, birthplaces and burial grounds and other areas of cultural significance, and

WHEREAS, the City of Elim is home to a rich and diverse fishery including King Salmon, Pink Salmon, Chum Salmon, Silver Salmon, and Dolly Varden as well as white fish and other valuable subsistence species, and

WHEREAS, uranium exploration and development activities in areas surrounding the City of Elim permitted by the State of Alaska have been allowed to occur during the summer 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 rights 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,

WHEREAS, Alaska salmons streams are warming, and salmon are becoming more vulnerable to pollution, predation and disease; that’s why it’s more important than ever to keep water in streams to ensure healthy fish,

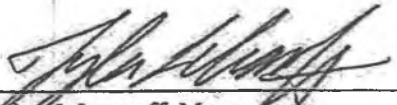
THEREFORE BE IT RESOLVED, that the State of Alaska proposed Road to Ambler for the purpose of furthering mining activity in this area, the City of Elim, hereby:

1. Strongly objects to the consideration or approval of SB 26 and HB 77 in their present form;

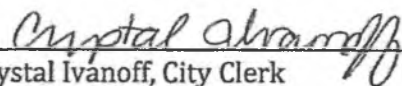
2. Any legislation related to state water rights should recognize that Native Villages, local governments, and other Alaskans have a right to healthy salmon, and an obligation to protect them and should not strip away the rights of Alaskans to keep water in-stream rights for healthy fish.
3. Any legislation related to state water rights should 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

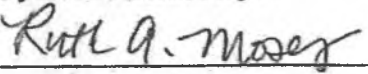
We the undersigned officers and members of the City Council for the City of Elim hereby certify that the council, which is made up of 7 members, of whom (4) constitutes a quorum, were present at the meeting held February 4, 2013, that this Resolution has passed by the affirmative vote of 7 members and that this Resolution has not been rescinded or amended in any way.



Tyler L Ivanoff, Mayor



Crystal Ivanoff, City Clerk



Ruth Moses, Secretary/Treasurer

From: Darrell & Cindy Birkhimer

Sent: Monday, February 04, 2013 11:49 AM

To: Darrell & Cindy Birkhimer; Sen. Cathy Giessel; Sen. Fred Dyson; Sen. Peter Micciche; Sen. Click Bishop; Sen. Lesli McGuire; Sen. Anna Fairclough; Sen. Hollis French

Subject: Re: SB26 Comments

Dear Senate Resource Committee,

RE:Alaska Senate (SB 26)

Please consider the following comments and vote against SB26:

Who was it that said "Every time a new law or regulation is passed, citizens have a little less freedom"? No truer is that than the present. Governor Parnell has introduced Bill SB26, which cuts the citizen right to appeal a number of agency decisions on development issues. By prohibiting a comment period, this bill would restrict Alaskans' right to participate in the public process. Governor Parnell has appointed sycophants who implement his dogmas and now he is preventing citizens from expressing objections to his policies. Whether you are for or against an issue, public participation in these decisions is a right that we must preserve!

Respectfully
Cindy Birkhimer

Senate Resources Committee on SB 26, Feb. 6, 2013
Testimony of Rick Rogers, Executive Director,
Resource Development Council

Good evening, Madam Chair Giessel 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 SB26. 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.



Council of
Alaska Producers

SB26: Land Disposals/Exchanges; Water Rights
February 7, 2013

Senator Giessel
Chair - Senate Resources Committee
Capitol Building
Juneau, AK 99811

Chair Giessel,

The Council of Alaska Producers (CAP) appreciates the opportunity to comment on SB26: 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.

SB26 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 efficient 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

SENATE BILL NO. 26

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/18/13

Referred: Resources, Finance

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; relating to procedures for certain administrative appeals and requests for
5 reconsideration to the commissioner of natural resources; relating to the Alaska Water
6 Use Act; and providing for an effective date."

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

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

9 (c) Notwithstanding any other provision of law, the commissioner may
10 authorize an activity on state land by the issuance of a general permit if the
11 commissioner finds that the activity is unlikely to result in significant and irreparable
12 harm to state land or resources. This subsection does not apply to land designated
13 under AS 16.20, AS 27.21, AS 41.17, or AS 41.21.

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

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

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

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

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

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

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

(i) applicable statutes and regulations;

(ii) the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the

1 determination and that are known to the director or knowledge of which
2 is made available to the director during the administrative review; and

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

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

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

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

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

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

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

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

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

1 subsection;

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

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

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

14 (A) before a public hearing, if held, or in any case not less than
15 180 days before the sale, lease, or other disposal of available land or an interest
16 in land, the director shall make available to the public a preliminary written
17 finding that states the scope of the review established under (1)(A) of this
18 subsection and includes the applicable statutes and regulations, the material
19 facts and issues in accordance with (1)(B) of this subsection, and information
20 required by (g) of this section, upon which the determination that the sale,
21 lease, or other disposal will serve the best interests of the state will be based;
22 the director shall provide opportunity for public comment on the preliminary
23 written finding for a period of not less than 60 days;

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

1 the best interests of the state is based;

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

14 (A) a contract for a negotiated sale authorized under
 15 AS 38.05.115;

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

17 (C) a permit or other authorization revocable by the
 18 commissioner;

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

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

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

1 comment for a period of not less than 30 days; if the director determines that a
 2 supplement to the most recent best interest finding for the acreage is required
 3 under this subparagraph,

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

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

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

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

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

13 (7) the director shall include in

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

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

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

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

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

1 (A) submitting written comment during the period for receipt
2 of public comment; or

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

5 (2) is the applicant [AFFECTED BY THE FINAL WRITTEN
6 FINDING].

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

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

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

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

27 * Sec. 7. AS 38.05.065(a) is amended to read:

28 (a) The contract of sale for land or property sold [AT PUBLIC AUCTION
29 OR BY SEALED BID] under this chapter or former AS 38.05.078 [AS 38.05.055]
30 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
31 annual installments over a period of not more than 20 years, with interest at the rate

1 provided in (i) of this section. Installment payments plus interest shall be set on the
2 level-payment basis.

3 * **Sec. 8.** AS 38.05.065(c) is amended to read:

4 (c) The director shall, for contracts under (a) [, (b),] or (h) of this section, set
5 out in the contract for each sale the period for the payment of installments and the total
6 purchase price plus interest. The director, with the consent of the commissioner, may
7 also include in contracts under this section conditions, limitations, and terms
8 considered necessary and proper to protect the interest of the state. Violations of any
9 provision of this chapter or the terms of the contract of sale subject the purchaser to
10 appropriate administrative and legal action, including but not limited to specific
11 performance, foreclosure, ejectment, or other legal remedies in accordance with
12 applicable state law.

13 * **Sec. 9.** AS 38.05.065(h) is amended to read:

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

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

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

23 (A) the commissioner determines that the moratorium is in the
24 best interest of the state;

25 (B) the commissioner certifies and the contract purchaser
26 agrees to perform farm development, crop production, and harvesting, not
27 including land clearing or related activity, requiring the expenditure of
28 amounts equivalent to the payments that would otherwise be made during the
29 moratorium;

30 (C) the sale of the agricultural land takes place after July 1,
31 1979; and

1 (D) the contract purchaser is in compliance with the
 2 development plan specified in the purchase contract at the time the purchaser
 3 applies for a moratorium under this paragraph and remains in compliance with
 4 the development plan during the moratorium; for the payments subject to the
 5 moratorium declared under this paragraph, interest payments are subject to the
 6 moratorium but interest continues to accrue during the moratorium.

7 * Sec. 10. AS 38.05.070 is amended by adding new subsections to read:

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

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

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

13 (3) 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 (g) An extension issued under (f) 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. 11. AS 38.05.075(a) is amended to read:

21 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, 38.05.082,
 22 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section,
 23 when competitive interest has been demonstrated or the commissioner determines that
 24 it is in the state's best interests, leasing shall be made at public auction or by sealed
 25 bid, at the discretion of the director, to the highest qualified bidder as determined by
 26 the commissioner. A bidder may be represented by an attorney or agent at a public
 27 auction. In the public notice of a lease to be offered at public auction or by sealed bid,
 28 the commissioner shall specify a minimum acceptable bid and the lease compensation
 29 method. The lease compensation method shall be designed to maximize the return on
 30 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).

31 A substantially and adversely affected [AN AGGRIEVED] bidder may appeal or

1 request reconsideration under AS 44.37.011; however, the appeal or request must
 2 be made not later than [TO THE COMMISSIONER WITHIN] five days after
 3 issuance of the determination of the highest qualified bidder for a review of the
 4 determination. The leasing shall be conducted by the commissioner, and the successful
 5 bidder shall deposit at the public auction or with the sealed bid the first year's rental or
 6 other lease compensation as specified by the commissioner, or that portion of it that
 7 the commissioner requires in accordance with the bid. The commissioner shall require,
 8 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
 9 appraisal costs reasonably incurred by another qualified bidder acting in accordance
 10 with the regulations of the commissioner or incurred by the department under
 11 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
 12 costs is determined by the commissioner to be the highest qualified bidder under this
 13 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
 14 costs or to the department if the department incurred the costs. All costs for survey and
 15 appraisal shall be approved in advance in writing by the commissioner. The
 16 commissioner shall immediately issue a receipt containing a description of the land or
 17 interest leased, the price bid, and the terms of the lease to the successful qualified
 18 bidder. If the receipt is not accepted in writing by the bidder under this subsection, the
 19 commissioner may offer the land for lease again under this subsection. A lease, on a
 20 form approved by the attorney general, shall be signed by the successful bidder and by
 21 the commissioner.

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

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

31 (1) classification under AS 38.05.300;

- 1 (2) the procedures required by AS 38.05.035(e);
 2 (3) any other action required by law for the disposal of the lease to a
 3 bidder except survey, appraisal, and the auction or sealed bid.

4 * Sec. 13. AS 38.05.075(h) is amended to read:

5 (h) A person substantially and adversely affected [AGGRIEVED] by a
 6 decision of the commissioner under this section may appeal or request
 7 reconsideration under AS 44.37.011; however, the appeal or request for
 8 reconsideration must be made not later than [TO THE COMMISSIONER
 9 WITHIN] five days after [OF] the prequalification decision. [THE DECISION OF
 10 THE COMMISSIONER UNDER THIS SUBSECTION MAY BE APPEALED TO
 11 THE SUPERIOR COURT.]

12 * Sec. 14. AS 38.05.082(b) is amended to read:

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

29 * Sec. 15. AS 38.05.083(a) is amended to read:

30 (a) The commissioner may offer to the public for lease at public auction or by
 31 sealed bid under AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic

1 farming or related hatchery operations. Before a final decision to issue [OR RENEW]
2 a lease under this section, the commissioner shall give notice and allow opportunity
3 for comment in accordance with AS 38.05.945 and may hold a hearing to take
4 testimony. Before a final decision to issue [OR RENEW] a lease under this section,
5 the commissioner shall consider all relevant comment or testimony submitted under
6 this section, AS 38.05.945, or 38.05.946.

7 * **Sec. 16.** AS 38.05.083 is amended by adding new subsections to read:

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

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

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

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

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

26 * **Sec. 17.** AS 38.05.185(a) is amended to read:

27 (a) The acquisition and continuance of rights in and to deposits on state land
28 of minerals, which on January 3, 1959, were subject to location under the mining laws
29 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
30 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
31 mineral deposits owned by any other person or government. The director, with the

1 approval of the commissioner, shall determine that land from which mineral deposits
 2 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
 3 land that shall be closed to location under AS 38.05.185 - 38.05.275. State land may
 4 not be closed to location under AS 38.05.185 - 38.05.275 except as provided in
 5 AS 38.05.300 and unless the commissioner makes a finding that mining would be
 6 incompatible with significant surface uses on the state land. State land may not be
 7 restricted to mining under lease unless the commissioner determines that potential use
 8 conflicts on the state land require that mining be allowed only under written leases
 9 issued under AS 38.05.205 or the commissioner has determined that the land was
 10 mineral in character at the time of state selection. The determinations required under
 11 this subsection shall be made in compliance with land classification orders and land
 12 use plans developed under AS 38.05.300. **A preliminary written decision under**
 13 **this subsection may be made available to the public and provide opportunity for**
 14 **public comment on the preliminary written decision for a period of at least 30**
 15 **days.**

16 * Sec. 18. AS 38.05.300(a) is amended to read:

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

31 * Sec. 19. AS 38.05.945(a) is amended to read:

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

3 (1) a preliminary decision, or final decision if a preliminary
4 decision is not issued, regarding the classification or reclassification of state land
5 under AS 38.05.300 or a mineral order or leasehold location order regarding
6 [AND] the availability [CLOSING] of land to mineral leasing or entry under
7 AS 38.05.185;

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

10 (3) issuance of a

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

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

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

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

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

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

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

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

29 * Sec. 20. AS 38.05.965(21) is amended to read:

30 (21) "state land" or "land" means all land, including shoreland
31 [SHORE], tideland [TIDE], and submerged land, or resources belonging to or

1 acquired by the state;

2 * **Sec. 21.** AS 38.05.965 is amended by adding a new paragraph to read:

3 (26) "public auction" includes a public oral outcry auction and a public
4 online auction.

5 * **Sec. 22.** AS 38.50.010 is amended to read:

6 **Sec. 38.50.010. Authorization for exchange of state land.** Subject to the
7 requirements of this chapter, the director [, WITH THE CONCURRENCE OF THE
8 COMMISSIONER,] is authorized to exchange [DISPOSE OF] state land or interest in
9 land [BY EXCHANGING IT] for land, interest in land, or other consideration when it
10 is in the best interest of the state, including either or both the land estate or
11 mineral estate. Land or an interest in land must be of approximately equal value;
12 however, the director may accept cash from, or pay cash to, any other party to an
13 exchange in order to equalize the value of the property or other consideration
14 conveyed and received by the state. If the director determines that the property
15 to be exchanged is not of approximately equal value or if the value cannot be
16 ascertained with reasonable certainty, the director may enter into an exchange
17 with a finding that the value of the property to be received, together with the
18 value of other public benefits, equals or exceeds the value of the property that the
19 state will relinquish. Exchange procedures must comply with applicable statutes
20 and regulations and follow the decision and review procedures under
21 AS 38.05.035(e). The director may include in any patent or the written decision
22 stipulations necessary to promote or protect the public interest. If a land
23 exchange exceeds \$5,000,000 in the value of state land, or if the exchange is other
24 than of an approximately equal value, the director shall forward the proposed
25 exchange to the legislature for review under AS 38.50.140 not later than 10 days
26 from the convening of the next legislative session. The notice provisions of
27 AS 38.05.945 must be followed. [EXCHANGES SHALL BE FOR THE PURPOSE
28 OF CONSOLIDATING STATE LAND HOLDINGS, CREATING LAND
29 OWNERSHIP AND USE PATTERNS WHICH WILL PERMIT MORE EFFECTIVE
30 ADMINISTRATION OF THE STATE PUBLIC DOMAIN, FACILITATING THE
31 OBJECTIVES OF STATE PROGRAMS, OR OTHER PUBLIC PURPOSES.]

1 * **Sec. 23.** AS 38.50.030(b) is amended to read:

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

8 * **Sec. 24.** AS 38.50.050 is amended to read:

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

20 * **Sec. 25.** AS 38.50.070 is amended to read:

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

28 * **Sec. 26.** AS 38.50.140 is amended to read:

29 **Sec. 38.50.140. Legislative review.** Not later than [WITHIN] 10 days from
30 [OF] the convening of a regular legislative session, the governor shall transmit to the
31 president of the senate and the speaker of the house of representatives any proposal for

1 a land exchange required to be submitted to the legislature for approval under
 2 AS 38.50.010 [AS 38.50.020(a)] that is scheduled to occur before the next legislative
 3 session. If exigent circumstances seriously affecting state interests so require, the
 4 governor may submit the proposed exchange to the legislature at some other time. A
 5 finding of exigent circumstances shall be carefully documented in the letter of
 6 transmittal. The director is authorized to conclude a proposed exchange agreement
 7 upon approval by the legislature of the proposed exchange agreement. A decision by
 8 the legislature to disapprove a proposed exchange shall be accompanied by a
 9 recommendation to the governor with respect to future actions which the director
 10 should take concerning the exchange.

11 * **Sec. 27.** AS 38.50.170(3) is amended to read:

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

16 * **Sec. 28.** AS 40.15.305(e) is amended to read:

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

28 * **Sec. 29.** AS 44.37.011(a) is amended to read:

29 (a) This section applies to administrative appeals or requests [PETITIONS]
 30 for reconsideration of a decision in an administrative appeal to the commissioner of
 31 natural resources, except for those administrative appeals or requests for

1 **reconsideration** [PETITIONS] done under AS 38.35, [OR] AS 43.82, **or a different**
 2 **procedure set out in AS 27.21 or its applicable regulations.** If a conflict occurs
 3 between this section and other state law existing at the time of **original** enactment of
 4 this section, the provisions of this section control.

5 * **Sec. 30.** AS 44.37.011(b) is amended to read:

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

14 * **Sec. 31.** AS 44.37.011(c) is amended to read:

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

23 * **Sec. 32.** AS 44.37.011(d) is amended to read:

24 (d) If a person has a right to **appeal or request** [PETITION FOR]
 25 reconsideration under [AS 44.62.540 OR] this section, the person has [A TOTAL OF]
 26 20 **calendar** days **after the date of issuance of a final department decision** [,
 27 INCLUDING THE TIME AVAILABLE UNDER AS 44.62.540,] in which to file **an**
 28 **appeal or a request** [PETITION] for reconsideration with the commissioner.

29 * **Sec. 33.** AS 44.37.011 is amended by adding new subsections to read:

30 (f) In this section, in order for a person to be adversely affected, a final
 31 decision made by the department must create or impose an adverse and direct effect or

1 detriment on the person or the interests of that person.

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

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

7 (2) explain how the decision caused the substantial and adverse effect
8 on the person.

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

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

16 * **Sec. 34.** AS 46.15.035(a) is amended to read:

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

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

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

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

1 * **Sec. 35.** AS 46.15.133(a) is amended to read:

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

11 * **Sec. 36.** AS 46.15.133(b) is amended to read:

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

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

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

1 to any person who has filed an objection.

2 * **Sec. 38.** AS 46.15.133(d) is amended to read:

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

6 * **Sec. 39.** AS 46.15.133(e) is amended to read:

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

14 * **Sec. 40.** AS 46.15.145(a) is amended to read:

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

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

24 * **Sec. 41.** AS 46.15.145(f) is amended to read:

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

1 that the revocation or modification is in the best interests of the state.

2 * **Sec. 42.** AS 46.15.155(a) is amended to read:

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

9 * **Sec. 43.** AS 38.05.065(b); AS 38.50.020, 38.50.040, 38.50.080, 38.50.090, 38.50.100,
10 38.50.110, 38.50.120, 38.50.130; and AS 46.15.145(e) are repealed.

11 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 TRANSITION: PENDING APPLICATIONS FOR RESERVED WATER. The
14 Department of Natural Resources shall return any applications and fees for applications
15 pending as of the effective date of this Act to persons no longer authorized to reserve water
16 under sec. 40 of this Act. The commissioner of the Department of Natural Resources may
17 refer applications that are no longer authorized to other state agencies for an independent
18 evaluation and consideration of submission of a similar application to request a reservation to
19 that agency.

20 * **Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

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

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

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

1 resources."

2 * **Sec. 47.** Section 45 of this Act takes effect immediately under AS 01.10.070(c).

3 * **Sec. 48.** Except as provided in sec. 47 of this Act, this Act takes effect July 1, 2013.



ALASKA INTER-TRIBAL COUNCIL

555 W. Northern Lights Blvd., Suite 211 ~ Anchorage, Alaska 99503

Phone: 907-563-9334 ~ Fax: 907-563-9337

Date: February 25, 2013

To: All members of the State of Alaska Senate Finance Committee

From: Alaska Inter-Tribal Council
Executive Director: Delice Calcote

RE: Analysis of the Impact of House Bill 77 & Senate Bill 26 on Healthy Watersheds

Essentially what these two bills are designed to do is to expand government power and strip Alaskans of their rights to *clean water* and *healthy fisheries*. There will be a enormous economic impact to subsistence fisheries, commercial fisheries, tourism and tribal economies if instream flow water reservations and wetland permitting are streamlined to benefit industrial activities and prioritizing local communities and the human right to water with a robust permitting process. Streamlining permitting will not be efficient, will be costly in ineffective management of water bodies, watersheds, wetlands and will probably cause dysfunctional and expensive litigation.

Under current state law, Alaskans and Tribal Governments can file for “in-stream flow rights”, to secure enough water in salmon streams for healthy fisheries. Essentially large corporations want unfettered access to Alaskan waters, regardless of whether they support salmon.

We strongly believe we have a *right* to protect our streams to keep healthy fish and clean water for ourselves and for our children up to seven generations. A violation of the Constitution of the State of Alaska, Article XII General Provisions, Article 12, Disclaimer and Agreement exists when the habitat that is critical to our wild salmon fisheries is not being protected. The State has a compact with the United States, see the Statehood Act, Section 4.

The State of Alaska cannot supercede the water that the Tribes have used and relied on since time immemorial.

Article 19 of the United Nations Declaration on the Rights of Indigenous People says that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

In short, the rights of indigenous people are being violated due to HB 77 & SB 26. We believe the indigenous tribes in Alaska were not properly consulted and notified of HB 77 & SB 26 to voice their valuable opinion on these Bills. Without documentation of healthy streams for salmon, HB 77 & SB 26 would nullify control by indigenous people over developments affecting

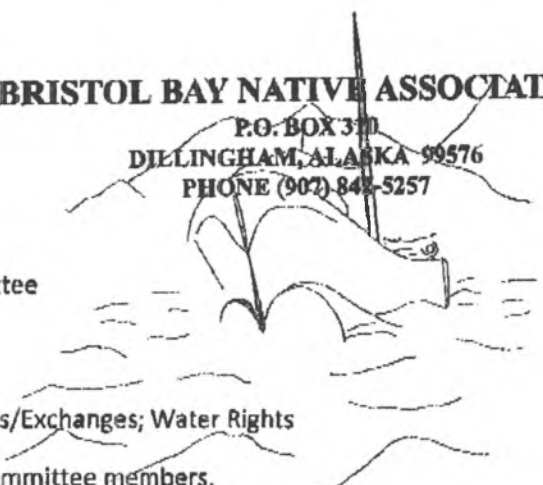
them and their lands. By securing "in stream flow rights" indigenous people will continue to maintain and strengthen their governments and institutions, cultures and traditional practices, which contributes to sustainable and equitable development and proper management of their environment.

Alaska Inter-Tribal Council urges the legislature not to strip away the rights of citizens and tribes to keep water in our streams for healthy fish and ask it to reject any legislation that ignores Constitutional and other rights for the majority of Alaskans who depend on water resources for health and welfare.

Alaska Inter-Tribal Council opposes SB 26 and SB 27 as written. A harder look at the needs of individuals and communities and tribal peoples must occur first.

BRISTOL BAY NATIVE ASSOCIATION

P.O. BOX 311
DILLINGHAM, ALASKA 99576
PHONE (907) 842-5257



February 25, 2013

Senate Finance Committee
Alaska Legislature
Juneau, Alaska

RE: SB 26 Land Disposals/Exchanges; Water Rights

Tribal Councils
Served by BBNA:

- Aleknagik
- Chignik Bay
- Chignik Lagoon
- Chignik Lake
- Clarks Point
- Curyung
- Egegik
- Ekwok
- Igiugig
- Iliamna
- Ivanof Bay
- Kaniak
- King Salmon
- Kokhanok
- Kolliganek
- Levelock
- Manokotac
- Naknek
- New Stuyahok
- Newhalen
- Nondalton
- Pedro Bay
- Perryville
- Pilot Point
- Port Heiden
- Portage Creek
- South Naknek
- Togizk
- Twin Hills
- Ugashik

Dear Senate Finance Committee members,

As the President and Chief Executive Officer of the Bristol Bay Native Association, I am writing to convey the serious concerns we have with SB 26 and ask that you take into consideration our comments when the bill comes before the Senate Finance Committee.

The Bristol Bay Native Association is an Alaska Native regional non-profit corporation and a consortium of the 31 federally recognized tribes of the Bristol Bay region. The watershed of the Bristol Bay region supports the world's most prolific wild salmon runs. Harvesting this resource is essential to the continued cultural and economic viability of the diverse Alaska Native cultures of our region, and to the economic well-being of the State of Alaska.

Bristol Bay Native Association has worked hard to secure over \$500,000 to support water reservation applications by member tribes and other non-governmental entities for the protection of fish and wildlife habitat, migration, and propagation. These funds have been used to pay for field work by USGS and qualified hydrologists as well as the technical expertise needed to perfect (finalize) these applications. To date, this includes fourteen (14) stream reservation applications for which data is still being collected and final applications being worked on in accordance with current water reservation statutes and regulations.

Section 40 in SB 26 is especially troublesome as it removes the ability of organizations such as BBNA to apply for a reservation of water to maintain sufficient water flow for protection of fish and wildlife. In addition to affecting the fourteen stream reservation applications referenced above, this provision would also eliminate the right of tribes and others to file future applications to ensure valuable water resources and uses are protected. Furthermore, there is no fiscal note associated with this bill. Does DNR, ADF&G and DEC have an existing surplus of funding and expertise on hand to take on sole responsibility for reserving water when and wherever needed in the State of Alaska?

Thank you for your consideration. Please contact Courtenay Gomez, Natural Resources Director at 907-842-6244 or cgomez@bbna.com if the committee has questions or would like additional information regarding our initial comments.

Sincerely,

Ralph Andersen, President and CEO
Bristol Bay Native Association

Cc: Senator Stevens
Representative Edgmon
Representative Herron

Doniece Gott

From: heiades@aol.com
Sent: Tuesday, February 26, 2013 12:06 PM
To: Senate Finance Committee; Sen. Lyman Hoffman; russell.stigall@juneauempire.com; letters@adn.com; info@seacc.org
Subject: HB78/SB26

Greetings Honorable Members,

This email is in reference to the following statement I just read:

"HB78/SB26 is the 404 Permitting Bill that intends to dissolve the Army Corps of Engineers' involvement in wetlands permitting and associated dredge, fill, or development activity in Alaska. Similar to the above bill, this bill would effectively hand over all permitting responsibilities to the Alaska Department of Natural Resources."

I am extremely shocked and dismayed that a bill like this would be introduced, much less enacted.

I was a federal government regulator working in Alaska until just recently. I have worked for the Federal government in the same field for greater than 20 years, in 3 different states. I consider myself a knowledgeable, fair and objective regulator. I worked closely with the State of Alaska in reviewing environmental impacts to Alaska's water resources and was working there during the 'death' of Alaska's Coastal Management Program. I can tell you for a fact that many, if not all of the staff at Alaska's DNR feel as if their hands are completely tied and they cannot do the jobs they were hired for or educated for due to political or in-house pressures. It was very sad to see such good people who want to do a good job so beaten-down!

There is a huge sentiment amongst the developers that the State "rubber stamps" all their authorizations. The Corps of Engineers is also so understaffed in the state that the system is almost completely broken. And this is the most tragic set of circumstances considering the Natural Treasure that is Alaska! During my travels outside of AK since I left, I speak to so many people who still hold Alaska on a pristine natural wonder pedestal and I encourage them to visit! During my travels around SE Alaska I could not help but think how eco-tourism is how the State/local communities should consider investing in for economic return!

The passage of this bill, or any action at all to weaken the protection of the waters of the State of Alaska would be a shame! The exact opposite measure - to further enhance protection of those resources is what is in order!

I have a 19-year old daughter who is in college and trying to figure out what to do with her future. The best advice I can give her is what I have heard over and over again during my lifetime - advise from all political parties, all economic classes - that when you are at a point where most of your living is in the past and not in the future, will you be able to rest comfortably knowing that while here, you contributed to making a better life somehow for those that will come after you? Please, I know you will have these same thoughts some day - do what's best.

Respectfully,

Heidi Firstencel
former (and hope to be again) resident, Juneau, AK