

# MODERNIZING ALASKA'S PERMITTING SYSTEM

## **Southeast Conference**

Wednesday, September 18, 2013

Sitka, AK

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**Deputy Commissioner**

Alaska Department of Natural  
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



# INTERSTATE MINING COMPACT COMMISSION (SB 2)

*The Commission provides a forum for interstate action and communication on issues of concern to member states. A significant portion of the Commission's work is dedicated to the environmental protection issues naturally associated with mineral development*



## Member States

"	Alabama	"	North Carolina
"	Alaska	"	North Dakota
"	Arkansas	"	Ohio
"	Illinois	"	Oklahoma
"	Indiana	"	Pennsylvania
"	Kentucky	"	South Carolina
"	Louisiana	"	Tennessee
"	Maryland	"	Texas
"	Missouri	"	Utah
"	New York	"	Virginia
		"	West Virginia

## Associate Member States

"	Colorado
"	Nevada
"	New Mexico
"	Wyoming

# ASSUMING WETLANDS PRIMACY (SB 27)



- “ SB27 authorized the State to evaluate assuming primacy of the permitting program under Section 404 of the Clean Water Act, which requires permits for dredge and fill activities in surface waters (ocean, lakes, rivers, streams) and wetlands
- “ Directs the State to study 404 primacy by evaluating costs, benefits and consequences of the state assuming primacy and to prepare an application for assumption of the program
- “ Provides resources to begin capacity building for the program
- “ Provides the authority for DNR and DEC to administer the program and provides the authority for DEC to apply to the EPA, the federal approval authority, for authorization for the state-run program

# HB 77/SB 26 PROVISIONS

## Land Exchanges

- “ HB 77 gives DNR more flexibility to exchange land or interests in land when found to be in the best interest of the State

## Leases

- “ HB 77 would allow an one-time renewal for an existing aquatic farm lease or tidelands leases, for a period of up to ten years, if determined to be in the best interest of the state and the lessee is in good standing with the state
- “ Allow an one-time extension for existing land or tidelands leases, for a period of up to two years, if determined to be in the best interest of the state

## Public Notice

- “ HB 77 clarifies that all mineral orders and leasehold location orders are subject to public notice requirements

## General provisions

- “ HB 77 clarifies the definition of “public auction” to include public oral outcry auctions and public on-line auctions

# HB 77/SB 26 PROVISIONS



## Water Use Act

- “ Amend statutes to limit the application for **water reservations** to federal or state agencies or political subdivisions of the state

## Other Provisions

- “ HB 77 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
- “ Limit the ability for persons to file an **administrative appeal** or request for reconsideration to persons who are substantially and adversely affected



**HB 77/SB 26**  
**Misconceptions**

# HB 77/SB 26

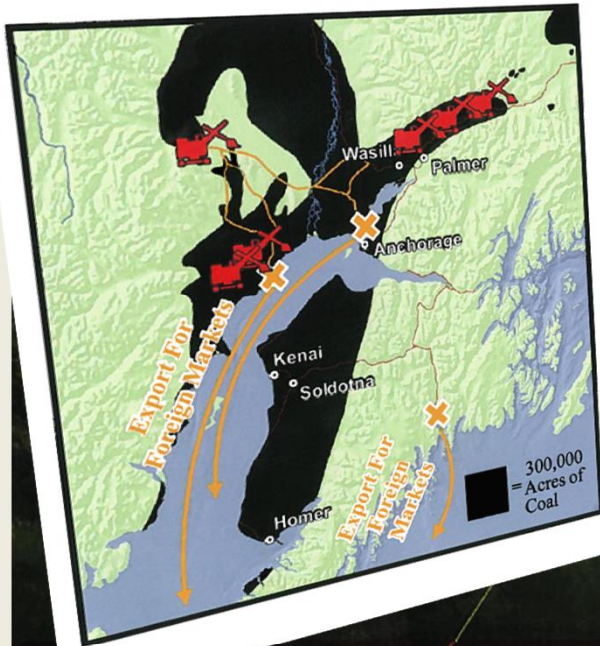
## MISCONCEPTIONS

**Criticism: By giving DNR authority to issue a general permit, DNR will then permit large projects with a single permit.**

“ A general permit is an efficiency tool that allows a group of similar activities to be authorized in advance, as long as the activity can be done in accordance with the terms of the general permit

- “ The DNR Commissioner already has the authority to issue general permits under AS 38.05.020(b)(1)—this provision is an efficiency measure that would specifically call out such authority by name of “general permit”
- The provision limits the ability of DNR to issue general permits to activities where “significant and irreparable” harm would not be caused
  - Language creates exclusions for state forests, parks, game refuges, and coal mining
- “ If the department proposed to issue a general permits, such a decision would be subject to appeal

# HB 77/SB 26 MISCONCEPTIONS



**6** coal mines proposed for Southcentral Alaska.

**1** bill allowing mining through salmon streams without public notice.

Let's not trade Alaska's way of life for coal to ship to Asia.

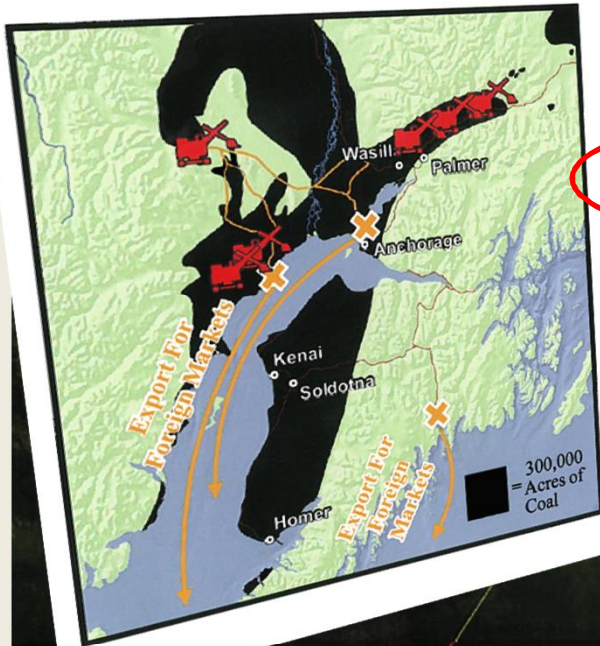
Learn More:  
[ALASKANSFIRST.ORG](http://ALASKANSFIRST.ORG)



**COAL COMPANIES WANT TO STRIP MINE THROUGH ALASKA'S SALMON STREAMS.**



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Alaskans  
**FIRST**

**COAL COMPANIES WANT TO STRIP MINE THROUGH ALASKA'S SALMON STREAMS.**



# HB 77/SB 26 MISCONCEPTIONS

**Criticism: HB 77 gives away Alaskan's water rights by removing an individual's right to apply for a water reservation**

**DNR has three principal tools to manage the State's water resources:**

1. Water Rights
2. Temporary Water Use Permits (TWUPs)
3. Water Reservations – preserve a specific quantity of water to remain in a water body, for public purposes

Allow the public to remove water from water bodies

- “ Nothing in HB 77 would prevent an Alaska Native Corporation, tribe, or person from applying for or acquiring a *water right/TWUP* for the use of water
- “ The proposed limitation on who can apply for *water reservations* will not diminish any individual rights to use water
  - Provision ensures that *water reservations*— which must be made in the public interest for the public good—are held by public agencies accountable to the public
  - Prevent an individual or organization from trying to use water reservations as a tool to stop any development by “locking up” water

# HB 77/SB 26 MISCONCEPTIONS

## **Criticism: Water reservations are the only tool to protect fish and fish habitat and HB 77 removes that protection**

- “ HB 77 does not amend any of the provisions that fall under the Alaska Department of Fish & Game (ADF&G), which has the statutory responsibility for protecting freshwater anadromous fish habitat under AS 46.15
- “ ADF&G will continue the proper protection of fish habitat by requiring fish habitat permits for:
  - Any proposed activity located within a designated anadromous waterbodies
  - When needed to ensure free fish passage
- “ ADF&G will continue to be able to apply for water reservations where it deems them necessary and appropriate
- “ DNR will continue to coordinate with ADF&G before issuing any water authorizations thus allowing DNR to put appropriate conditions and restrictions on water authorizations for the proper protection of fish habitat

# HB 77/SB 26

## MISCONCEPTIONS

**Criticism: DNR is seeking to remove the rights of an individual or organization from appealing DNR decisions, therefore taking away the public's right to publicly participate**

“ The intent of the provisions related to appeals is to encourage people to participate in the public review process before a decision is made so that the department can address their concerns as part of the final finding

“ HB 77 seeks to change the standard from **“aggrieved”** to **“substantially and adversely affected”** in order to get the appellant to provide some amount of information that clearly explains how they or their interests were directly, negatively affected by the decision and is defined as:

- General (AS 44.37): “adversely affected” means “a final decision made by the department must create or impose an adverse and direct effect or detriment on the person or the interests of that person”
- Water Use Act (AS 46.15): “adversely affected” means “a person must be directly affected by a decision made by the department either by a physical or financial detriment to the person’s interest resulting from the decision”

# NEXT STEPS

- “ HB 77 is currently in the Senate Rules Committee, awaiting a vote on the Senate floor
- “ Should the Senate vote to pass HB 77, the bill would then go to the House for concurrence
- “ If the House votes not to concur with the Senate’s changes, a conference committee will be appointed



THANK YOU!

