

# MODERNIZING ALASKA'S PERMITTING SYSTEM: *DISPELLING THE MYTHS*

## **Alliance Breakfast**

Thursday, October 24, 2013

Anchorage, AK

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Resources



# OUTLINE

## **Part I:**

Importance of Permitting Reform for  
Alaska's Competitiveness

## **Part II:**

HB 77/SB 26 Misconceptions

## **Part III:**

Next Steps

# PART I



## Importance of Permitting Reform for Alaska's Competitiveness

# 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 -

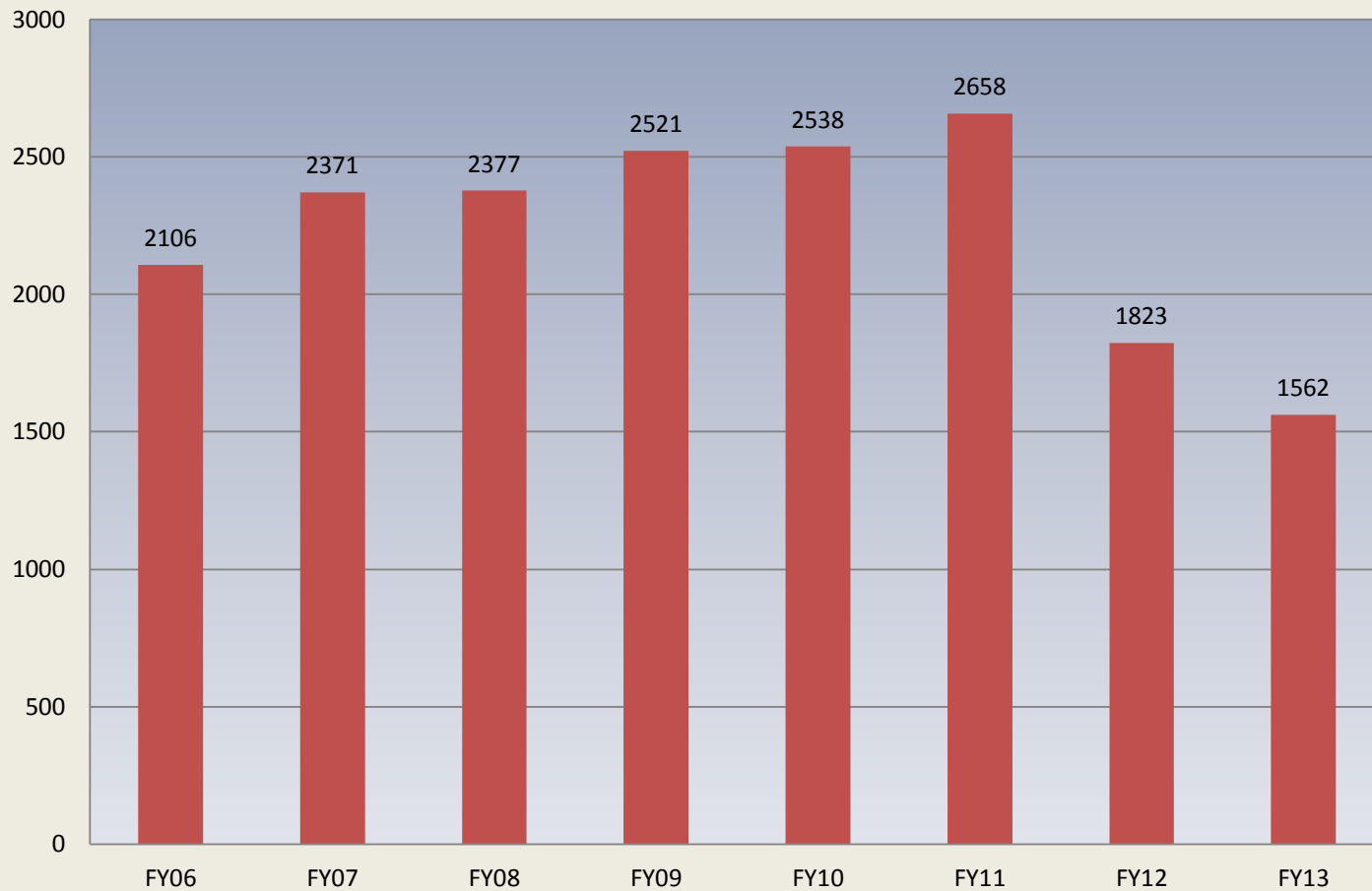
- In FY12, the Legislature provided approximately \$2.7 million in operating funds for the Division of Mining, Land & Water to create efficiency, timeliness and certainty in the permitting process
- We utilized capital funding from FY12 (\$2.5M for the Unified Permit Project and Document Management) 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 41.2% (1,096 authorizations)
- We have conducted public meetings statewide for input on state permitting processes
- We are continually 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 into law.



# HB 129 & 198: STREAMLINING OIL & GAS APPROVALS

## HB 129

- Consolidates the Division of Oil and Gas's exploration or development phase approvals and streamlines its plan of operations approval process
- Ensures predictable project approvals for subsequent exploration or development activity
- Provides for a comprehensive review of types of oil and gas activities before exploration or development begins on a holistic basis over a broader geographical area (rather than lease by lease)

## HB 198

- Provides the Commissioner with the ability to grant a one-time lease extension to the primary term of an oil and gas or gas only lease (for a total lease period of no more than 10 years) if it is found to be in the best interest of the state



# SB 27:

## EVALUATION OF STATE ASSUMING PRIMACY OF PERMITTING UNDER SECTION 404 OF CWA

- A bill related to the evaluation of the State of Alaska 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



# PART II



## 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)

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:**

- Water Rights
- Temporary Water Use Permits (TWUPs)
- 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): “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): “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”

# PART III



## Next Steps

# 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