

HB 77 Will Strip Alaskans of Our Right to Keep Water in Streams for Our Salmon

BACKGROUND: We've all heard the expression "like a fish out of water." Everybody knows fish need water. But Governor Parnell and some politicians in Juneau seem confused. Last session, House Bill 77 (HB 77) got rammed through the Alaska House of Representatives without serious scrutiny. Now it sits in the Alaska Senate, ready to be taken up when the Legislature reconvenes in January 2014.

HB 77 will undermine fish habitat protections and cut Alaskans out of decisions affecting our water and wildlife resources. **One provision is especially bad – it would deny Alaskans the right to keep enough water in our streams for salmon to migrate, spawn and rear.**



PROTECTING WATER FOR SALMON: Alaska operates under a water law system called the prior appropriation doctrine. Under prior appropriation, anyone can get a right to use water by withdrawing or reserving it from a ground or surface waterbody, then putting that water to a beneficial use, such as for drinking water, crop irrigation or even industrial use (e.g., cooling water for an engine).

The key behind the prior appropriation doctrine is that it's based on the notion of "first in time, first in right" – which means the first person to appropriate water from a specific waterbody has a superior right to that water than anyone who appropriates water afterward. Appropriating water, however, does not always mean the water must be removed from the system. In fact, in Alaska there is a specific law (Alaska Statute 46.15.145) allowing residents to "reserve" water in streams and lakes to support salmon. It's called an [instream flow reservation](#) and it carries the same legal weight as an out-of-stream diversion.

So, under Alaska water law, if someone files for an instream flow reservation, that water right is superior to any proposed water uses that may come later in time. If Alaska is going to allow out-of-stream uses and diversions, it's only logical to make sure we leave enough water in the stream for fish.

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DNR ROUTINELY IGNORES FISH: But there's a catch. The state actually has to "adjudicate" – or process – an application for an instream flow right before it can have any legal effect. That job is left to our resource development agency, the Alaska Department of Natural Resources (DNR), which has dragged its feet for decades. For example, there are over 350 instream flow applications currently pending; DNR failed to process any instream flow applications in 2008, and only 2 in 2009. Clearly, salmon protection is not a priority for DNR.

In the meantime, DNR issues temporary water use permits at the drop of a hat, allowing corporate users to obtain out-of-stream withdrawals for "significant" withdrawals of 30,000 gallons per day and more. DNR makes no effort to understand if these water withdrawals will undermine a previously filed instream flow reservation, and the result is a misguided public policy

that's blind to salmon protection. To compound matters, DNR doesn't provide public notice on upcoming water use permits, so Alaskans have no opportunity to weigh in.



All five species of wild Pacific salmon – caught July 25, 2013, near the proposed Chuitna coal strip mine on the West side of Cook Inlet. HB 77 would eliminate the right of Alaskans to keep water in the streams these fish need.

In 1996, the state's own biologists applied for an instream flow reservation for the Chuitna River in Upper Cook Inlet, to protect the River's five species of wild, Pacific salmon. But DNR has not lifted a finger to process the application. Instead, it has issued water use permits to a coal company to extract tens of thousands of gallons of water from the same stream.

In October 2013, a state court found DNR violated the constitutional rights of Alaskans trying to keep water in their streams for fish. Now, instead of complying with the law, Governor Parnell simply wants to change it.

TAKE ACTION TO PROTECT OUR FISH: The state's policy favoring out-of-stream water withdrawals over salmon is wrongheaded. Fish must come first when it comes to water allocation decisions. Because if they don't, it won't be long before we're in the same boat as Oregon, Washington and other places that once supported vibrant salmon runs.

Contact your legislators. Tell them HB 77 grants sweeping new powers to DNR that cut Alaskans out of decisions that affect our fish and wildlife. Tell them HB 77 needs careful review. And tell them Alaskans have a right to keep water in our streams for fish. For more info & to take action:

www.standforsalmon.org

