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December 4, 2020

Ms. Kimberly Sager  
Alaska Department of Natural Resources  
500 W 7<sup>th</sup> Ave Suite 1020  
Anchorage, AK 99501  
Submitted via email to [kimberly.sager@alaska.gov](mailto:kimberly.sager@alaska.gov)

Re: Reviews of Potter Marsh Area Reservations of Water

Dear Ms. Sager:

The Alaska Miners Association (AMA) appreciates the opportunity to comment on the review of three instream flow reservations near Potters Marsh: Little Survival Creek – LAS 11488; Little Rabbit Creek – LAS 11489; and Rabbit Creek – LAS 11490.

We believe that these streams are excellent examples of an appropriate instream flow reservation (IFR). The waters of these streams support important resources for Anchorage. They flow through an area with significant population growth and water use, but where there is no other regulatory mechanism for protecting instream water resources and fish habitat. We appreciate that the Department of Natural Resources (DNR) is undertaking the statutory IFR review, and we appreciate the opportunity to comment.

The existence of a reservation, by itself, does not protect habitat. Rather, the streamflow must be measured, compared to the certificated flows, and if appropriate, the Alaska Department of Fish and Game (ADF&G) and DNR take action. Otherwise, the program lacks meaning. We would like to take this opportunity to explain.

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry.

**These IFRs pass the statutory needs test.** In previous letters to DNR, we have observed that AS 46.15.145(c) requires that DNR take a hard look at whether a need exists for a proposed reservation. To accomplish that hard look, AMA has consistently recommended that DNR divide situations into three categories:

- 1) *In a situation where a robust permitting process that involves water rights is reasonably foreseeable, there is no need for an instream flow reservation of water.*

Our previous letters have used the examples of the Susitna Dam or a large mine process where the development's permitting process has better data, greater expertise, and better tools to regulate the withdrawal of water than does the IFR process.

- 2) *When a publicly owned watershed is in wilderness or effectively near-wilderness status, or subject to a land use regime such that nothing will happen that is likely to affect fish habitat, there is no need for a reservation of water.*

This reflects the basic point that if a waterbody is likely to never see any development or activities, agency resources should not be spent establishing and managing instream flow reservations.

- 3) *Where activities can occur without a robust permitting process and can have unregulated effect on water withdrawals, there is a need for a reservation of water.*

In these cases, an instream flow protects the fish from over-withdrawal of water. The most obvious case where this occurs is urban or suburban sprawl which occurs with little or no permitting oversight for water use.

The three streams DNR is now reviewing are excellent examples of the third category.

There is significant population growth on private land in the watershed. The three IFRs were certificated in 1988. Since then, the population of Anchorage has grown by a third. Much of the growth is in south Anchorage within the watershed of these streams. The growth has mostly occurred in single-family homes which may legally appropriate water without a water right. While single family homes have the option of applying for a water right, they may also withdraw water without one.

The mechanism by which increased population, urban sprawl, and suburban development affects stream hydrographs is well known. Academic literature documents potential impacts on streams caused by urban growth.

In south Anchorage, there is no permitting process with authority to curtail junior appropriators' water use other than DNR's water resource section using IRFs. If the streams were in a mining area rather than in south Anchorage, there would be much better data, and powerful permitting tools to regulate water use and protect fish habitat. But in this case, those tools do not exist, and the IFRs are a tool to accomplish that protection.

**An IFR without management is meaningless.** The existence of an IFR, if no one measures the streamflow, has little meaning. If no one knows if the adequate water remains in the stream, then there is no purpose to the IFR. These three streams provide the best opportunity in Alaska to use the IFR for its stated purpose. First, there is a threat to the streamflow – increased population growth, unregulated water withdrawal, and urban sprawl. Second, these locations are probably the least expensive locations to monitor in Alaska – they are easily accessed and therefore less costly to monitor than other, remote, IFRs. Finally, there is no other regulatory method of addressing the problem.



**Recommendation.** For these reasons, we recommend that DNR require that continuous stream gages be installed on these streams to compare streamflow with the certificated reservation. If water is unavailable in the stream for much or part of the year, then DNR should take appropriate action.

We note that many of our members believe that IFRs are used solely by NGOs to pre-empt a robust, detailed and protective permitting process, and as a lever to stop development. The review of these IFRs provide an opportunity to use the IFRs for a valid purpose. It provides an opportunity to show the value of the program in a situation where the reservations are appropriate.

Thank you for the opportunity to comment on these three IFR reviews.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Skibinski".

Deantha Skibinski  
Executive Director