

# Resource Development Council

31<sup>st</sup> Annual Conference

"Balancing the Risk Between Developers and NGOs"

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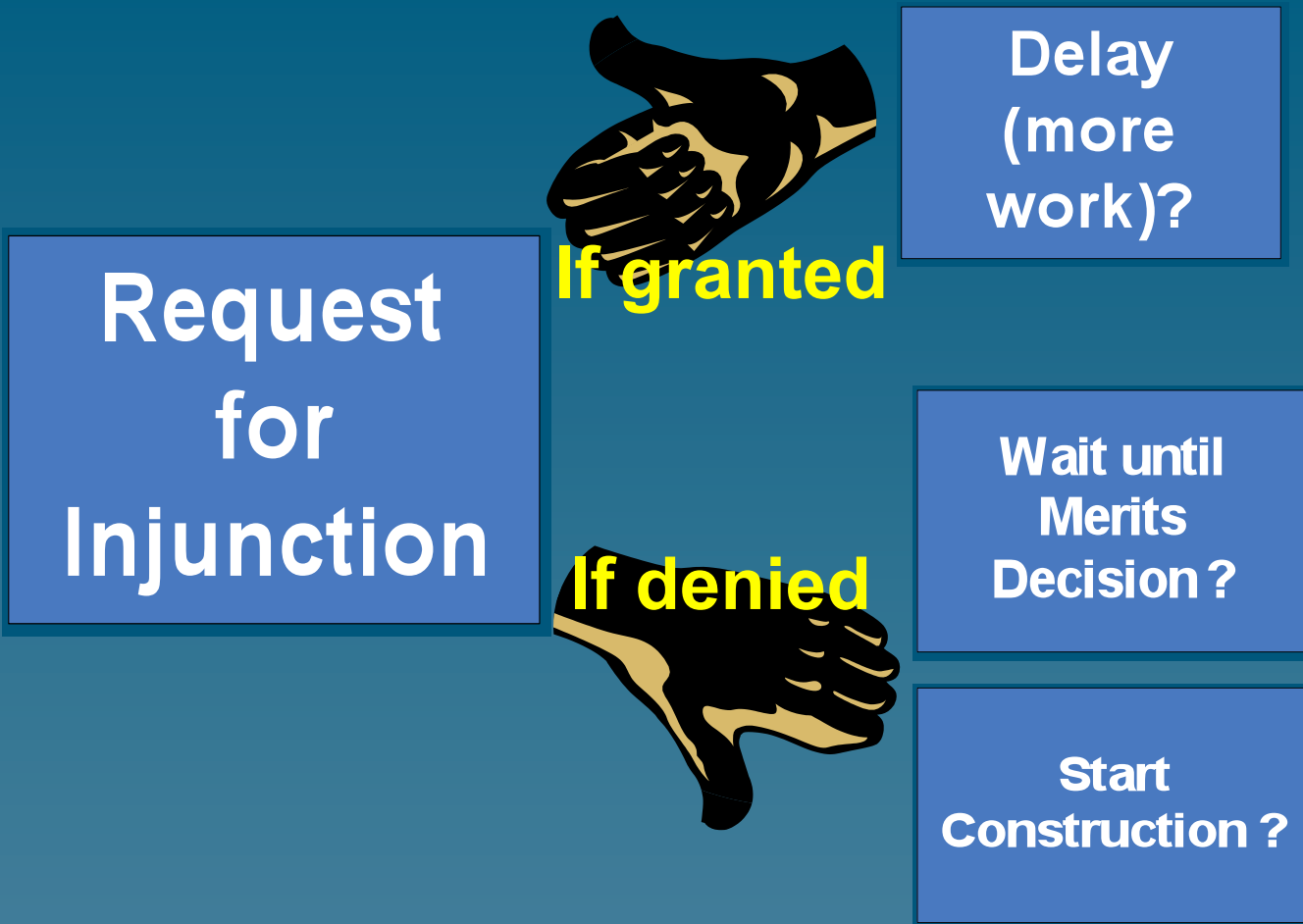
## 2 Types of Lawsuits

- Category 1 – Build a Better Mousetrap
- Category 2 - Stop the Project at Any Cost

# Environmental Litigation – Key Parties and Process



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# Big Problems – The 6 Steps

- 1) Enthusiasm
- 2) Disillusionment
- 3) Panic
- 4) Search for the guilty
- 5) Praise and honor for non-participants
- 6) Punishing the innocent

# Enthusiasm – Passage of Environmental Laws

- Late 1960s/early 1970s
  - National Environmental Policy Act
  - Endangered Species Act
  - Clean Water Act
  - Clean Air Act
- State law legislation

# Disillusionment/Panic

- Scope of Laws – Very Broad
- Industry-Wide Ramifications
- Frustration/Can't Fix the Problem



# Who is to Blame?

- Congress/Legislatures
  - make the laws
  - created third party right to sue
- Administrative Agencies
  - direction/philosophy
  - quality of project approvals
    - Project Applicant's Role – baseline/permit applications + social license
- Courts
- Third Parties/eNGOs

# Trends For Alaska

- Major Changes in Federal Approach Unlikely
  - 40 years of History
  - Stimulus Funding Experience
- More "Stop the Project" Litigation
  - Alaska is Unique
    - Public Land/Public Resources
    - Big Projects
  - Role of \$

# What Can be Done?

- Elections Matter
  - Federal Court Appointments
  - Direction of Executive Branch Agencies
- Agency Support
- Broaden Economic Benefits

# What Can Be Done

- Risk Sharing for Litigants
  - Attorneys Fees?
  - Bonding?

# Score Card

- Major Mines
- Major Oil & Gas