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AMA Testimony
Deantha Crockett, Executive Director
SB163: National Resource Water Nomination/Designation

Thank you. For the record, my name is Deantha Crockett and I am the Executive Director of the Alaska Miners Association. AMA appreciates the invitation to provide testimony today on SB163.

The Alaska Miners Association is a professional trade association established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,800 members that come from seven statewide branches: Anchorage, Denali, Fairbanks, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. AMA is an umbrella association, representing the large mining operations in Alaska but also small family mines, coal, sand, quarry rock and gravel mining, and the vendor and contracting sector that supports the mining industry.

SB163 addresses the process in which an outstanding national resource water (ONRW) is designated. The Federal Clean Water Act includes antidegradation rules, the most stringent of which is called “Tier 3.” Any waterbody that is designated as an ONRW would fall under Tier 3 rules and cannot be degraded beyond the baseline conditions. This means that any new activities or expansion of existing activities in the waterbody that would change the water quality in any way would be prohibited, even if the discharge could prove it meets applicable water quality standards and fully protects fish, aquatic life, and other water uses. To this end, I have a white paper that outlines the implications of a Tier 3 designation on watershed uses that I will submit with my testimony today.

Designation of an ONRW and subsequent Tier 3 water protection would, without doubt, be a barrier to resource development, economic development, and some crucial municipal projects. Conceptually, the AMA would prefer that the State of Alaska request that Alaska be exempted from the provision within the Clean Water Act (CWA) that requires the State to have a designation process in place. However, it may not be possible to secure this exemption, and in that case, AMA believes the best avenue in which the State of Alaska can establish a process in which waterbodies can be nominated for ONRW designation is through an Act of the Legislature. Therefore, we support the passage of SB163 this session, provided amendments are made to ensure the process is credible and done in a way that truly evaluates waterbodies with science and data prior to the pursuit of a designation.

While there may be cases in which nomination of an ONRW is warranted, AMA believes the process and any designation could be used by some anti-development individuals or organizations to stop responsible development projects. To prevent this process from being used as a tool to stop the next mine, timber sale, fish processing plant, or oil and gas development, we propose the following amendments. Please note that these amendments are cited in section in our letter to this Committee dated March 4.

One, language should be included in this bill to ensure that water of the state that is nominated for ONRW designation should absolutely NOT be managed as such until an Act of the Legislature confirms the designation. Actions and requirements to dischargers that manage the water prior to an official designation would be inappropriate.

Two, the bill should be specific in that nomination of a waterbody should be a specific segment of the waterbody and not extend to tributaries and other adjacent waters. Parties that nominate waters for ONRW designation must be required to be specific as to the portion of the waterbody that is being nominated, and designations cannot go further or be applied to any waters outside the intended designation area. Therefore, should the nomination be confirmed and designated by the Legislature, DEC's management of the water body as an outstanding national resource water shall be limited solely to that portion of a waterbody designated by the legislature.

Three, AMA believes the bill should include language to provide the ability for DEC to reject nominations that fail to satisfy specific criteria and requirements for information that the department would establish in regulation. In our March 4 letter, we provided an appendix that outlines suggested criteria for any submission of an ONRW nomination. In an attempt to be brief, this summarized criteria and suggested requirements includes:

1. Information that proves the waterbody has exceptional unique characteristics relative to other State of Alaska waters including being in a pristine condition; largely absent of sources of human degradation; being of exceptional ecological, economical, or recreational significance; being an exceptional or rare example of its type; and accompanied by data that demonstrates these criteria.
2. DEC shall conduct a completeness review of all applications and be able to request additional information as necessary to process the application, even if it necessitates the nomination being held over to the next nomination period as outlined in the bill.
3. DEC should have the authority to require reimbursement from the applicant for DEC's costs of processing an application, including the required evaluations and reports. DEC shall begin processing the application and the required evaluations and reports after a satisfactory reimbursable services agreement has been received from the applicant.
4. DNR shall prepare a report evaluating the land use implications of any waterbody proposed for Tier 3 nomination that DEC submits to the Legislature. The report shall include the social and economic impacts arising out of any change in land use that would result from a Tier 3 designation. Before preparing the report DNR shall also enter a satisfactory reimbursable services agreement with the applicant for the costs of preparing the report.
5. DEC's final evaluations and determinations and findings regarding a waterbody or segment thereof shall constitute a final department decision that may be administratively appealed. The Department shall not forward any waterbody to the Legislature until all administrative and judicial appeals have been resolved. Should there be an administrative and/or judicial appeal the decisions and records thereof shall be forwarded to the Legislature. Should there be an administrative and/or judicial appeal the Department of Law shall prepare a report summarizing the contentions of the parties and the decision of the administrative hearing officer or the judge as the case may be.

Again, these criteria are much more thoroughly described in our March 4 letter and I would be happy to re-distribute these in more detail with my testimony.



Our fourth proposed change is to organize the timeline in which DEC collects nominations and forwards them to the Legislature. We suggest language stating that within 10 days after the convening of each Legislature, the commissioner shall transmit to the Legislature for consideration a list of nominations and related material that were received ***by the department within the 24 month period preceding*** September 1 of the previous year. Nominations of ONRW waters should be done constructively; therefore, AMA believes the agency should start each nomination period with a clean slate, ensuring that previously nominated waters that the Legislature declined to act on aren't forwarded to the Legislature repeatedly. Requiring new nominations every two years will help to mitigate the duplicative and outdated nominations of waters already having been addressed as being inappropriate for an ONRW designation. A list of nominations should only be forward to the Legislature once per session. Nominations received by the agency after the September 1 deadline should be considered in the nomination period for the following Legislature.

Our last recommendation for SB163 is that language be included that provides a mechanism in which the process can be reversed if the stream no longer needs tier 3 protection. An ONRW designation shouldn't be a final decision, it should be made only if absolutely necessary with a goal of restoring the waterbody to a condition in which multiple uses can return to it. DEC and perhaps the Legislature will need the authority and process to change the designation if and when applicable.

Even with our lengthy comments and suggestions I've outlined today, AMA believes SB163 is the start of a good bill with the potential to be good policy for Alaska. we are hopeful that inclusion of our suggestions will be incorporated into this bill. AMA greatly appreciates the opportunity to submit our comments for the record before your Committee, and stands ready to work on this bill with your committee and DEC to ensure the goals for water quality and economic development are not mutually exclusive. Thank you.