March 19, 2019

Honorable Members of the Senate Resources Committee
Submitted via email

Re: Support of SB51, Natural Resource Water Nomination/Designation

Dear Chair Birch and members of the Senate Resources Committee:

The undersigned broad coalition of organizations, representing diverse interests write to share comments in support of SB51, "An Act requiring the designation of state water as Outstanding National Resource Water to occur by law, relating to the authority of the Department of Environmental Conservation, the Department of Fish and Game, and the Department of Natural Resources to nominate water for designation as outstanding national resource water; relating to management of outstanding national resource water by the Department of Environmental Conservation; and providing for an effective date," as introduced in the Senate Resources Committee.

Designation of an Outstanding National Resource Water (ONRW), commonly called Tier 3 waters, arises from federal antidegradation rules set forth by the U.S. Environmental Protection Agency (EPA) as mandated by the Clean Water Act (CWA). The rules, designed to ensure that the nation's waters are not degraded, have a three-tiered structure in which the most stringent level of protection, Tier 3, designates a water as an ONRW and prohibit new or expanded activities that change the water quality in any way (See Tier 3 implementing regulations 18 AAC 70.016 (d). **This prohibition would apply even in situations where the activity could show that it meets water quality standards and fully protects fish, aquatic life, and other water uses.**

EPA, under the CWA requires States to have a process in place by which nominations for Tier 3 waters can be submitted, contemplated, and designated (See 40 C.F.R. 131.12(a)(3)). In order to comply, the Alaska Department of Environmental Conservation (DEC) has established policy in which decisions on nominations are made by the Legislature, consistent with Article 8 of the Alaska Constitution. *(See November 30, 2018 letter from DEC Commissioner Larry Hartig to Senators).* To meet EPA's Tier 3 designation process requirement and to provide certainty to the public, SB51 moves the DEC policy into statute.

An unfortunate reality is that a Tier 3 water designation has become a potential tool for special interests to use against the development of resource or industrial development projects. This has already been the case in other states, and it is evident in many of the nominations before DEC currently. The intent may be to block or delay development, but the implications go much further. A Tier 3 designation replaces management and enforcement of science-based water quality standards and regulations with a total prohibition of any new or expanded discharges, even if the discharge met state water quality standards and fully protected fish, aquatic life and other water uses. This would impact the waterbody's users such as motorized vessels, residential and commercial septic systems, stormwater permits associated with road building, seafood processors, timber harvesting, and much more.

Given the significant restrictions that would be placed on waterbodies designated as such, and the significant social and economic impacts to Alaska, it is our position that the authority to designate an ONRW or Tier 3 water must lie solely with the Legislature as the elected representatives of Alaskans, consistent with the Alaska Constitution. We stand together in support of SB51 and urge swift passage of this bill.

Sincerely,

Albert Fogle, Vice President
Alaska Chamber of Commerce

Deantha Crockett, Executive Director
Alaska Miners Association

Nils Andreassen, Executive Director
Alaska Municipal League

Kara Moriarty, President/CEO
Alaska Oil and Gas Association

Rebecca Logan, CEO
Alaska Support Industry Alliance

Karen Matthias, Executive Director
Council of Alaska Producers

Joseph Kahklen, President
First Things First Alaska Foundation

Marisa Sharrah, President/CEO
Greater Fairbanks Chamber of Commerce

Marleanna Hall, Executive Director
Resource Development Council for Alaska

Jaeleen Kookesh, VP General Counsel
Sealaska Corporation

Robert Venables, Executive Director
Southeast Conference