

HB 138 Testimony

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ONRW – invited testimony on HB138

Feb. 17, 2020

Good Afternoon Co-Chairs and committee members,

Thank you for the opportunity to provide invited testimony to the Committee today. My name is Lindsay Layland, and I serve as Deputy Director at United Tribes of Bristol Bay, a tribal consortium working to protect the traditional way of life of the Yupik, Alutiiq, and Dena'ina people of Bristol Bay . UTBB represents 15 tribal governments, which make up over 80% of our region's population.

UTBB's tribal members continue to depend on a subsistence way of life, just as our ancestors have done for centuries, to sustain our cultural, physical, and spiritual wellbeing .Our way of life in is rooted in the clean and pristine natural environment that the Bristol Bay Watershed provides – which brings us to the absolute necessity of including “cultural significance” as a determining factor in designating water bodies as Outstanding National Resource Waters, or Tier 3.

Before I go into that, however, I'd like to share a brief account of the role that UTBB has played in the recent history of supporting the State's mandated duty to establish and implement a nomination and designation process for ONRW. In the late 2000's, prior to UTBB's inception, partner organizations and tribal ally Nunamta Aulukestai submitted a Nomination for a Tier 3 waterbody- the Kuktuli River in the Bristol Bay Watershed – a critical water body to the health & vitality of the Bristol Bay watershed & fishery. In 2016, UTBB submitted to the state a proposed Antidegradation Tier 3/ONRW Nomination and Designation Process, which provided for a process prioritizing scientific review, public-participation, and the consideration of ecological, recreational, economic, subsistence, and cultural factors for Tier 3 waters. In 2018, UTBB supported DEC's efforts during a trip to Bristol Bay to collect public input on the nomination and designation process, the outcomes for which once again revealed a need for cultural significance to be added to the existing regulatory definition of an ONRW and maintained that the DEC be the governing body in determining ONRW designations. We are no stranger to this issue, and find it pertinent that our collective tribal governments have a strong voice in helping determine a fair, culturally relevant, environmentally appropriate, and economically sensible ONRW designation process.

UTBB and others have been keenly aware and active throughout this process, and we are more than frustrated that after years of providing constructive suggestions and proposals for this important issue, we are now faced with a bill that would undermine the most vital elements of a Tier 3 criteria. We have had water body nominations *and* designation process proposals sitting dormant in the state's filing cabinet for years, and we expect a resolution to this process that is equitable to our people whose culture and livelihoods literally depend on the pristine waters that also happen to provide for a multi-billion dollar economy in the Bristol Bay commercial fishing industry. To omit “cultural significance” as a determining factor in designating ONRW's is to omit the survival, history, and thriving stewardship of the indigenous people across the state of Alaska. Alaska's clean water resources support our extraordinary wild salmon populations and the communities and regional economies that depend upon them.

Further, we would also like to comment on the bill's current proposal to establish a Water Advisory Commission, which in itself would be a politically motivated part of the process, as the make-up of the committee would be at the mercy of any partisan governor's appointed membership. One member-seat that we as sovereign tribal nations take particular issue with is

one that is held for "a tribal entity or Native Corporation." Native Corporations are not synonymous with Tribal Governments and placing them in an either/or category for this topic is an insult to tribes.. Rather, Native corporations serve as for profit-entities, and often have can have differing priorities and values than the tribe itself. In no way is it adequate or appropriate for tribes to continue to be tokenized on commissions with one seat on a politicized commission that limits tribes voices to be truly heard or considered.

It is also highly concerning that federally recognized tribes are excluded from being eligible ONRW nominating parties in the current bill. HB 138 states that a "resident of the state" can make a nomination. Under the law, resident of the state is defined as a "person," and current definition of person does not explicitly include "federally recognized tribe." Therefore, any future amendments to this bill *must* recognize tribal governments as entities that may nominate Tier 3 waters in addition to the corporations, companies, partnerships, firms, associations, organizations, and businesses who are currently eligible.

Thank you again for hearing this testimony in today's hearing. Our tribes believe that a public process driven by Alaskans rather than politics should be the driving force when nominating and designating ONRW in this State. A science-based process that includes consideration of ecological and cultural values while incorporating public participation *and* places the decision making authority the Alaska Department of Environmental Conservation, the agency with the water quality expertise, is the most appropriate method for ONRW/Tier 3 water body designations. I'm re-submitting UTBB's recommended process to be apart of the record and look forward to working with you all. Qu yana.

Lindsay Layland

Deputy Director

United Tribes of Bristol Bay

Antidegradation Tier 3/Outstanding National Resource Waters Nomination and Designation Process

18 AAC 70.015. Antidegradation Policy.

...

(a)(3) if a high quality water constitutes an outstanding national resource, such as a water of a national or state park or wildlife refuge or a water of exceptional recreational, ecological, or cultural significance, the quality of that water must be maintained and protected; and

18 AAC 70.017. Tier 3 Outstanding National Resource Water.

(a) any water of the state may be designated as an outstanding national resource water by the commissioner.

(b) to be designated as an outstanding national resource water, the water must be of exceptional recreational, ecological, or cultural significance.

(c) exceptional recreational, ecological, or cultural significance shall be determined by considering the following:

(1) the ecological significance of the water, including but not limited to fish and aquatic species, wildlife use, migratory bird use, habitat, and unique scientific or educational opportunities;

(2) recreational use of the water, including but not limited to sport fishing, contact use, and unique scenic opportunities;

(3) economic importance of the water, including but not limited to drinking water supply, commercial and sport fishing, and water-dependent businesses;

(4) cultural and subsistence use of the water, including but not limited to fishing, water supply, and ceremonial uses and values;

(5) whether the water is an exceptional and rare example of its type regardless of whether the water is considered high quality; and

(6) any other relevant factors.

(d) the following waters are designated as outstanding national resource waters:

(1) waters in National and State Parks and Preserves, Wildlife Refuges, and Wilderness Areas.

(e) any person may provide a nomination to the department. For purposes of this section, "person" includes a corporation, company, partnership, firm, association, organization, business trust, society, or federally-recognized tribe, as well as a natural person.

(f) the nomination must include the following information about the water:

(1) the name, description, and geographic location;

- (2) the boundaries or extent of the water, including a map;
- (3) information explaining how the water meets applicable requirements of section (c);
- (4) reasonably available information about adjacent land owners and land use designations; and
- (5) other reasonably available information, including information on existing uses, water quality, technical data, or records.

(g) the department shall determine whether a nomination meets the information requirements established under (f) of the section within 60 days of receipt of a nomination. If the department determines that the nomination is incomplete, the department shall notify the person who submitted the nomination in writing and identify the information under section (f) that is lacking from the nomination and the person may resubmit the nomination.

(h) if the department determines that the information requirements of section (h) are met, within 30 days of that determination, the department shall issue a public notice and provide a copy of the public notice to adjacent land owners and the Department of Natural Resources. The department shall also hold one or more public hearings, accept public comments for a reasonable length of time of at least 60 days, and consult with the Department of Fish and Game, federally-recognized tribes in the area where the water is located, and relevant federal land managers.

(i) not more than 180 days after the end of the public comment period, the commissioner shall make a final decision in writing whether to designate the water as an outstanding national resource water consistent with the factors in section (c). A person aggrieved by the commissioner's decision may, within 90 days after receiving notice of a final decision, request an adjudicatory hearing under AS 44.62.330-.630.

(j) waters designated as Outstanding National Resource Waters shall be added to section (d).

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united
TRIBES OF BRISTOL BAY

October 4, 2016

Office of the Lt. Governor Byron Mallott
3rd Floor, State Capital
P.O. Box 110001
Juneau, Alaska 99811

Dear Lt. Governor Mallott,

Thank you for your willingness to consider our proposal to establish a process to nominate and designate Outstanding National Resource Waters (ONRWs) in Alaska. Our clean water resources support Alaska's extraordinary wild salmon populations and the communities and regional economies that depend on them. We appreciate the Administration's recognition that a public process driven by Alaskans rather than politics should be considered. We look forward to continuing the conversation we started with you in April in Dillingham.


We believe that a strong ONRW process should be science-based, include consideration of ecological and cultural values, and incorporate public participation. We also support a process that places the decision-making authority with the Alaska Department of Environmental Conservation (DEC), the agency that has water quality expertise. For those reasons, the attached proposal:

1. Adds cultural significance to the existing regulatory definition of an ONRW;
2. Allows the Commissioner of DEC to designate ONRWs, which ensures that the decision is made by the agency with water quality and Clean Water Act expertise;
3. Identifies a holistic and inclusive list of factors to consider when determining if a water should be designated as an ONRW, including ecological, recreations, economic, and cultural and subsistence uses;

4. Designates waters in National and State Parks, Wildlife Refuges, and Wilderness areas as ONRWs, consistent with the definition on an ONRW;
5. Allows any person, including Alaska Native tribes, to nominate a water for ONRW designation;
6. Sets out comprehensive information requirements that must be included in a nomination; and
7. Outlines a robust agency and public review process to processing a nomination and making a final decision.

We look forward to working with the Administration to finalize an ONRW process that enables Alaskans and communities to safeguard our exceptional waters for future generations.

Regards,

A handwritten signature in black ink, appearing to read "Alannah Hurley", written in a cursive style.

Alannah Hurley
Executive Director

Attachments

From: [REDACTED]
To: [House Resource](#) [REDACTED]
[REDACTED] 138
Date: Saturday, February 22, 2020 12:53:04 PM

Representative,

I oppose HB 138 & support Tier 3 designations that will help keep Alaskan waters clean. Clean water is a right of all people & corporations should be held accountable not to pollute our clean fresh water.

Thank you for your consideration, Mark Kistler Haines,AK

COMMERCIAL FISHERMEN FOR BRISTOL BAY

Wednesday, February 12' 2020

Honorable Members of the House Resources Committee;

Submitted Via Email

RE: HB 138 National Resource Water Nomination/Designation

Dear Chairs Tarr, Lincoln, and Members of the Resources Committee,

Commercial Fishermen for Bristol Bay is a national coalition of fishermen, working to protect Bristol Bay, Alaska and the 14,000 jobs, \$1.5 billion in annual economic activity that Bristol Bay's salmon provide. We write to express our opposition of **HB 138**.

Bristol Bay's sustainable fishery, and Alaska's fishery management system as a whole are an example to the nation, proving sustainable fisheries can operate on a large scale, with public participation and science based decisions paramount to our management.

ONRW designations are critical to protect essential waterways and our State has been in dire need of a system to designate Tier 3 waters. Your committee has the opportunity to craft a strong science based process keeping sound management and Alaska's renewable resources central. HB 138 accomplishes the opposite of this, creating a politicized process that cuts out science and public participation.

It is hard to ignore the timing of this bill given the context we are facing with the proposed Pebble Mine. A decade ago Bristol Bay residents put in an application to designate essential salmon and trout waters at the Kaktuli River Tier 3 waters. In the years since this application went in we have heard from the State and Pebbles proponents that we need to trust State and Federal process to protect our waters.

Now, as we face a fast-tracked federal permitting process, this new draft bill seems to be just another success story for Pebble's lobby efforts aimed at eroding the very processes we've been told to count on.

CFBB opposes the bill's proposal disagree with the bill sponsor's statements last Wednesday - that Tier 3 determinations should fall on the legislature and worse, a politically appointed commission with no checks and balances. Determining waters of ecological significance to our State are NOT simply a policy decision.

Our States DEC and ADFG agencies are undeniably the most qualified entities to make these distinctions - which should be in line with our already existing management systems. The process should be open and accessible to members of the public.

Please do not rush this bill out of committee. Bristol Bay and others have waited over a decade to see some of our states' most essential waters designated Tier 3 and afforded the protections they deserve. We can wait a little longer and your committee has the responsibility to ensure Alaska remains a leader in sustainable management of our resources.

Thank you,

A handwritten signature in black ink, reading "Katherine Carscallen", written in a cursive style. The signature is positioned above a light gray rectangular background.

Katherine Carscallen
Director, Commercial Fishermen for Bristol Bay
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fishermenforbristolbay.org