

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 15, 2016

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Peter Micciche
Senator Bert Stedman
Senator Bill Stoltze
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING

Board of Game

Guy Trimmingham

- CONFIRMATION ADVANCED

SENATE BILL NO. 163

"An Act relating to the nomination and designation of state water as outstanding national resource water; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 163

SHORT TITLE: NATL. RES. WATER NOMINATION/DESIGNATION

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/29/16	(S)	READ THE FIRST TIME - REFERRALS
01/29/16	(S)	RES, FIN
02/15/16	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

GUY TRIMMINGHAM

Hope, Alaska

POSITION STATEMENT: Board of Game (BOG) nominee.

JOHN HOZEY, Director
Boards and Commissions
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Commented on SB 163.

MICHELLE HALE, Director
Division of Water
Department of Environmental Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: Commented on SB 163.

ACTION NARRATIVE

[3:30:35 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Coghill, Wielechowski, Costello, Stoltze, and Chair Giessel.

Confirmation Hearing: Board of Game

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CHAIR GIESSEL announced the Board of Game confirmation hearing for Guy Trimmingham. She asked Mr. Trimmingham to explain why he seeks this position and what qualifies him for it.

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GUY TRIMMINGHAM, Hope, Alaska, Board of Game Nominee, said he is well suited for this board appointment, because of his life-long background in guiding in Alaska and his subsistence-type life style. He also lives in a tourism community where non-consumptive users are very important to its income. He thought this background gave him a balanced perspective.

CHAIR GIESSEL asked how long he had lived in Alaska.

MR. TRIMMINGHAM answered that he was born and raised here and he is 62 years old.

SENATOR WIELECHOWSKI asked why he answered "no" to being willing to provide full disclosure of personal financial data on his disclosure document.

MR. TRIMMINGHAM answered that was a mistake; he has no reason to not file all of his financial data.

SENATOR STOLTZE asked his thoughts on intensive game management for abundance.

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SENATOR MICCICHE joined the meeting.

MR. TRIMMINGHAM answered other than intensive management being the law, without the intensive management strategy primarily for two major predator species, wolves and black bear, the state cannot hope to develop any type of a consumptive population for moose, sheep, goats, and caribou. On the other hand, intensive management is going to have to address both habitat and the user groups that are going to be harvesting the game. Title 16 is a many faceted problem with no easy answers. Intensive management is necessary and done correctly, it has proven to be very productive in producing more ungulates for both consumptive and non-consumptive users.

SENATOR STOLTZE asked for a couple of examples of how an intensive management decision would manifest in providing a greater opportunity for consumptive use. What could create a better balance for non-consumptive use?

MR. TRIMMINGHAM answered that wolves are very efficient, for instance. There are many cases on the Alaska Peninsula where caribou herds have been devastated by wolves down to almost three-digit numbers. With a little bit of wolf management, the herds have been coming back rapidly and calf survival rate is up tremendously. Local communities have been able to utilize the local caribou for livelihood and subsistence purposes.

He said that intensive management has also been effective with black bear populations to increase moose numbers around certain villages.

SENATOR STOLTZE thanked him for that very good example of providing for consumptive use and asked how he would make a different decision or philosophical change to provide for non-consumptive use.

MR. TRIMMINGHAM responded that non-consumptive users bring a tremendous amount of money into the state economy. Tourism is one of the state's greatest assets. Part of that is being able to view Dall sheep, moose, goats, bears, and some wolves. Wildlife viewing is a major part of the state's income that is also renewable and that is another very good reason to keep population numbers up.

SENATOR STOLTZE asked what other decisions he would make as a member of the Board of Game (BOG) that haven't been made.

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SENATOR STEDMAN joined the committee.

MR. TRIMMINGHAM answered that no one individual is going to control the board. He would use available current science and work with individual and other board members towards a common agreement that non-consumptive uses are just as important as consumptive uses. He didn't see any particular item that he could bring to the board that would sway it unequivocally in his favor at all times, but he can make a very good argument by using science for non-consumptive use across the board.

SENATOR COSTELLO asked Mr. Trimmingham to explain his understanding of managing Alaska's resources for maximum sustainable yield and if he thought the board and department had done a good job of it.

MR. TRIMMINGHAM answered that given the board's resources, it had done a tremendous job. Financial constraints are always an issue for gaining the science that is needed to make good decisions. With the right resources at their disposal, the board can make reasonable and intelligent decisions for all user groups in Alaska.

SENATOR COSTELLO asked him to describe what he sees as the biggest challenges facing the board.

MR. TRIMMINGHAM replied that one of the biggest challenges is subsistence pressure on a relatively limited amount of resources. Any number of documents can show that the quality of hunts and number of game available for subsistence and other hunts is very limited. The Alaska environment is not conducive to tremendous pressure, because plants don't grow like they do in some other places of the U.S. where multiple species of game can live. Everything in Alaska eats its own separate part of the

habitat. The board can make very good decisions on consumptive and non-consumptive uses with the science it has.

SENATOR COSTELLO asked why he is interested in serving on the board.

MR. TRIMMINGHAM answered that he had spent his entire life living in the small community of Hope where his backyard is the outdoors. He hunts and fishes and has been a guide. He currently works in the oil industry. Basically, he has a broad and diverse range of information in those areas. He is not partisan to any one group and can represent everybody adequately. He is also at the right point in his life to do that.

SENATOR COGHILL thanked him for being available to serve on the board. He asked Mr. Trimmingham if he had ever worked with an Advisory Committee that went to the Board of Game for anything.

MR. TRIMMINGHAM answered no, but several years ago he sat through several sessions of the Subsistence Fisheries Board meetings in Soldotna.

SENATOR COGHILL said one of the issues in his Fairbanks Interior area is the tension between the Board of Game and the Advisory Committees on antlerless moose hunts and asked Mr. Trimmingham if he had any reservations or philosophical views on antlerless moose hunts.

MR. TRIMMINGHAM answered he has no philosophical view about it at all, but it would be foolish to take what amounts to hundreds of years of experience scattered across the state, and toss it out the window when it is so valuable for making wise decisions. Science takes you only so far; one still need eyes on the ground.

SENATOR COGHILL said he appreciated that, because it seems like it's a struggle to get it right in his area where moose hunts and access are the biggest issues. Advisory committees have some of the best access to information, but it's also true that two advisory committees right next to each other can have very different views.

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SENATOR MICCICHE thanked him for going through the confirmation process. He said when it comes to the results of active management, certain non-consumptive users don't even believe in any active management, and asked if he agrees that active

management in the form of predator control is necessary in certain cases.

MR. TRIMMINGHAM answered absolutely. He said Alaska is in a unique time with climate change. Southcentral is not getting cold dry winters anymore and that affects many of the game populations. Diseases never seen in Alaska are being introduced. Habitat is changing and active management must be used on predators to maintain some level of use for people of Alaska or people of the U.S. who come up to visit. The habitat-carrying capacity of an area is one of the primary limiting factors that needs to be addressed.

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CHAIR GIESSEL asked Mr. Trimmingham's thoughts on the buffer zones that exist around federal land units and the occasional suggestion that they be expanded.

MR. TRIMMINGHAM answered of the people who live along those buffer zones, some really like the fact that they live in an area where there is no hunting next door and others actually utilize hunting and trapping and think it's wonderful. He didn't know where the limit is for those buffer zones. As a science-based question it would be more in tune with what type of connecting habitat is needed for game species to move from one area to another.

CHAIR GIESSEL asked his opinion on the U.S. Park Service's adopted changes and the U.S. Fish and Wildlife Service (FWS) regulations. Are they policies by the federal government that overreach?

MR. TRIMMINGHAM answered that the last time he checked everyone is playing on the same ballfield. "We may have different names, but we're still part of the same government." It's a platform that deserves an open discussion to see if consensus can be reached.

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SENATOR STOLTZE asked Mr. Trimmingham to elaborate on why he said he wouldn't to be able to swing the rest of the board in his favor and what positions or agendas is he in the minority on.

MR. TRIMMINGHAM replied that being "the newest guy in town," it will take him time to build credibility with the other board members to where they trust his judgement and he trusts theirs.

SENATOR STOLTZE said knowing the members, he thought that the differences will arise not from backgrounds but from positions he will take.

MR. TRIMMINGHAM said he has a lot of passion about some of the current proposals. Sheep hunting is one on which he will bring a tremendous amount of knowledge to the board. He has strong feelings about guiding. But the dropping population of sheep is of concern.

SENATOR STOLTZE asked if he had followed board activities and past board members.

MR. TRIMMINGHAM said he had followed Ron Somerville and Ted Spraker.

SENATOR STOLTZE asked if he were to look at past board members, is he closer to Doug Pope or Ted Spraker.

MR. TRIMMINGHAM answered that he is closer to Ted Spraker, because Mr. Spraker is a scientist at heart. But he also loves living at the base of his mountain and watching his goats every day, so he sees a little bit of himself in both.

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SENATOR MICCICHE asked, with the Sturgeon case in mind, how he felt about some of the controlled use area tools and how interaction would take place between federal and state areas. Did he believe in limiting access as a control mechanism for off-road vehicles and horses, the sort of access that may eliminate access for certain users?

MR. TRIMMINGHAM answered that a controlled use area is just that: you control its use for different user groups. Some bicyclers don't like seeing horse poop on the trail. Alaska is a big state and he thinks that using controlled use areas is a very viable solution to provide different user groups the experience they want and desire and that is their right.

SENATOR MICCICHE referenced the Sturgeon case that is currently in the Supreme Court and asked he see his role on managing wildlife in areas that are adjacent to federal lands.

MR. TRIMMINGHAM answered that the Board of Game is tasked with managing the state's resources and all federal lands still fall within the state, although they haven't turned over everything

that the state is owed. He hadn't followed the case closely, and he would leave who controls the buffer areas around national parks up to the courts.

CHAIR GIESSEL opened public testimony and finding no comments closed public testimony.

SENATOR STOLTZE asked what the governor is seeking with this appointment.

CHAIR GIESSEL invited the Boards and Commissions representative to the table.

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JOHN HOZEY, Director, Boards and Commissions, Office of the Governor, Juneau, Alaska, responded that the governor was trying to be responsive to a number of inputs he had received. One of them is consideration of someone who could bring a balance to consumptive versus non-consumptive use issues. A number of people were suggested that didn't strike the best balance and that weighed heavily in the decision process and follow up of individuals for this particular seat. In the end, the governor felt that Mr. Trimmingham represented a healthy balance between the two.

SENATOR STOLTZE said it is helpful having the administration's view on the record.

CHAIR GIESSEL, finding no further questions for Mr. Trimmingham, said in accordance with AS 39.05.080, the Resources Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration: Board of Game, Guy Trimmingham, Hope, appointed 7/1/2016; term expires 6/30/2019. This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals during any further sessions.

She added that Boards and Commissions should update his application as Senator Wielechowski had identified an error on it.

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At ease

SB 163-NATL. RES. WATER NOMINATION/DESIGNATION

[4:03:28 PM](#)

CHAIR GIESSEL called the meeting back to order and announced consideration of SB 163, a bill proposed by the administration related to water reservations.

MICHELLE HALE, Director, Division of Water, Department of Environmental Conservation (DEC), Juneau, Alaska, said SB 163 does two things. It makes it clear that only the legislature has the authority to designate what is known as an Outstanding National Resource Waters (ONRW) in the State of Alaska. Secondly, it describes the process that will be used to collect nominations for those waters and additional information, and then forward those for consideration to the legislature.

She explained that ONRWs receive the maximum level of protection under the federal Clean Water Act (CWA) that requires states to have two things: an anti-degradation policy and anti-degradation implementation methods. The State of Alaska has had an anti-degradation policy on the books since 1997. Its draft anti-degradation implementation methods were developed in 2010. Those are required by the implementing regulations of the CWA, but in part, the state also developed those because it was sued for not having them.

MS. HALE said the department had gone through a process to develop implementation methods in regulation and those were publically noticed in 2014. Due to the volume of comments received on those regulations, they went back out for further public meetings in 2015.

One element of those regulations is the requirement for a method to nominate and designate Tier 3 waters. She reiterated that Outstanding National Resource Waters are waters that receive the highest level of protection under the CWA. Once a designation of a Tier 3 or ONRW is made, no additional pollutants can be added to those waters, except for limited or temporary degradation. Limited or temporary might be construction storm water that is generated when someone is building a lodge on a river that received that designation.

MS. HALE said the real crux of the ONRW issue is that no permanent additional pollutants can be added to those waters, which means, for example, if there is a town on a river that becomes an ONRW and they discharge waste water into the river, they can continue to discharge waste water, but if the town grows, the discharge can't be increased. A seafood processor on that river would not be able to start seafood processing if they discharge waste into the river. Similarly, mining operations on

the river or on tributaries to the river would not be able to discharge waste water into that river if it increased the pollutant load at all. So, the designation of an ONRW, in a sense, almost becomes a defacto land use decision.

MS. HALE said the requirement of the CWA is not that states designate ONRWs, but just that they have a process for doing so. That is what she is here today to talk about. This bill says simply that the legislature will make that designation, not the agency.

During the regulatory process when they were working on draft regulations, in addition to receiving a lot of comments on the regulations, one thing was revealed as somewhat of an ambiguity in terms of who has the authority to make that designation. In looking at the Constitution, it appears that the legislature makes land use designations. AS 46.03.080 gives the agency the authority to make water quality standards decisions including water classifications. Because of that potential ambiguity, they believe it is very important to make it very clear that it is the legislature, and the legislature alone, that will make that designation.

In addition, the legislature has a much broader authority to do far more than just Tier 3 designations; it can create special management areas and state parks. If DEC were to make that designation, they would make the Tier 3 designation but not have the ability to do other things. DEC does have the ability to make sure that water quality is maintained through applying water quality standards to discharge permits.

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She said that DEC has received ONRW application for three different waters in the State of the Alaska: one is the Chilkat River near Haines, another is the Kaktuli River west of Lake Iliamna, and the other is the entire Bristol Bay Watershed. The department is not acting on those right now because of the ambiguity in authority, but a process is required at some point for designating those whether they are designated or not.

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SENATOR WIELECHOWSKI asked if the language the department was relying on was Article 8 of the Constitution, Section 7, Special Purpose Sites.

MS. HALE answered yes, along with Section 2.

SENATOR WIELECHOWSKI asked if she had an opinion from the department's attorneys.

MS. HALE answered that they don't have a formal opinion, but bits of different opinions from different attorneys that have viewed this.

SENATOR WIELECHOWSKI said he thought this issue hinges on the question of whose authority it is, is it the legislature's, or the DEC's. It would be a good idea to get a final decision on what that is.

CHAIR GIESSEL said they will follow up on that.

SENATOR STEDMAN remarked that if something as broad as the Bristol Bay Watershed or the watershed of Southeast Alaska is designated ONRW one could virtually shut down the entire state.

MS. HALE responded that there are broad implications to an actual designation. The concern is not just the water bodies themselves, but the tributaries to those water bodies. The C.F.R. reads that the water quality in a Tier 3 or ONRW must be maintained and protected. So, if there was an activity on a tributary that then impacted the water that becomes designated so that it's not maintained, then that activity would also not be allowed.

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SENATOR STEDMAN said the Chena River in Fairbanks, as an example, has some fish in it and a hatchery. If it had that particular designation, would that designation flow all the way down to the ocean?

MS. HALE answered that it is possible to nominate and designate segments of waters, and he didn't think that just because a segment of a river is nominated that the nomination would then flow downstream. Of more concern would be the upriver activities that might result in the water quality in that segment not being maintained and protected.

SENATOR STEDMAN asked her how this designation would be removed by whoever has final authority.

MS. HALE replied that Code of Federal Regulations (C.F.R.) Part 131.12 that talks about the necessity of having a process for designating these waters does not describe any process for removing a designation, and she couldn't find an example of one.

The idea is that this is a permanent designation. She hadn't found any court cases where somebody tried to remove the designation. She emphasized that they are not talking about actually doing designations; the requirement is to have a process for designating.

SENATOR MICCICHE said he had just read through AS 46.03.080 that talks about the department having the authority to classify waters, and asked if he misunderstood something in her initial statement about the statute.

MS. HALE answered the department has always read that segment of its statutory authority as having the ability to classify waters, which they do under water quality standards. They do not believe the intent when that statute was passed was to actually classify them in terms of an ONRW.

SENATOR MICCICHE said he didn't look at the legislative intent and asked if the department thinks there is a bar it couldn't reach and suddenly the responsibility shifted to the legislature.

MS. HALE answered the DEC has never read that statute to mean it would be able to designate ONRWs. They have read it to mean that the department can set water quality standards, which it does, and can classify waters, which it does through a regulatory process. By "classifying waters" she means classifying a water for a certain use, for example, this water can be used for drinking and swimming, and not doing this designation of ONRW. That was pointed out and that is where lies part of the ambiguity. Draft regulations that were publically noticed in 2014 culminated with the legislature actually making the designations. So, even at that time the agency wasn't proposing to make that designation.

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SENATOR STOLTZE asked if any vendors had been consulted in developing this legislation and if they have an opinion.

MS. HALE answered yes; they have been doing considerable outreach to affected industries and to some of the NGOs that have a lot of interest in the subject, and it's fair to say that some are very supportive of this and others think the bill needs more clarification. Of the environmental NGOs, while some are worried about the legislature being the body that makes the designations, others are very pleased to see the transparency and the public process that would be involved.

SENATOR STOLTZE said he has tried to get the normal up or down response from industry, but he was just getting a lot of caution, "an amber alert."

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MS. HALE responded that the department has done outreach and had some conversations "wondering if we should add more clarifying language to the legislation" and it is working with those members of industry now.

SENATOR COGHILL said it looks like she is talking about the state's authority on national parks, wildlife refuges, and water that are protected and how they would be nominated under this C.F.R. It really becomes a land use decision, which properly should involve the legislature. He asked if DNR's Division of Mining, Land and Water has had any input.

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MS. HALE answered that DEC had been communicating quite a lot with DNR, because one of the questions that has arisen is if water rights are being considered when they look at this possible designation.

SENATOR COGHILL said they should get DNR's perspective and that maybe this is a co-management issue. He didn't understand the criteria for the designation part, but it could be one of the key elements of that issue, and all managers should be a part of it.

MS. HALE agreed that the criteria for ONRW designation are very broad and if an attempt is made to define what they are, it would be very hard to satisfy all the possibilities. One of the things the bill does in the definition of an ONRW is says water that "the legislature decides is important, unique, or ecologically significant."

She said Washington, Oregon, Idaho, and Nevada have not designated any ONRWs; Montana has designated all waters in national parks as ONRW. California has two ONRWs: Lake Tahoe and Mono Lake (an alkaline hypersaline lake in a closed basin). So, in talking about criteria, one can't mention high water quality for example, because Mono Lake is very saline. It doesn't really meet any kind of easy criteria for defining. That is one reason the criteria are kept quite broad and language gives the legislature the authority to actually make that decision.

SENATOR COGHILL said he was concerned the department will come to the legislature and say you have to do this because federal law requires it. He is just suspicious.

MS. HALE assured him that the department would not do that. It's their responsibility to make sure a process is there, and then it is up to the legislature to follow that process or not.

CHAIR GIESSEL said page 2 of the DNR fiscal note states that their fiscal impact could be significant should an ONRW be nominated.

SENATOR WIELECHOWSKI said that is his point. The fourth paragraph on that page of the fiscal note says: "Under the bill, the land or water use application adjudication processes could become more complicated." And the first paragraph says: "could be significant should an ONRW be nominated and subsequently designated by the legislature and later signed into law." The department's interpretation is that it's for the legislature to decide, which he assumed would mean they would pass a resolution, which would not be signed by the governor. Because if the constitution says it's up to the legislature, he didn't know that they would involve the executive branch at that point.

MS. HALE responded that she didn't have that level of knowledge of the exact process the legislature would go through.

SENATOR WIELECHOWSKI requested that in writing, because if their interpretation is it's the legislature's authority, it seems that would be said in a resolution as opposed to a bill.

MS. HALE said she will follow up on that.

SENATOR WIELECHOWSKI asked her to flesh out the fiscal impact more as well as how the Mining, Land, and Waste Use application process could become more complicated.

MS. HALE said she would work with the DNR on that. There are certainly potential fiscal consequences to a designation and that is different than a nomination. They have three nominations now.

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SENATOR COSTELLO said her concern has to do with how the bill was written. The most public deliberative process is the legislative process, and it is the only public process. She thinks of it in terms of how her constituents come to her with

bill ideas without any pre-legislative process. She sees the nomination process and reporting as adding a layer that may easily become politicized. She also wanted to know the rationale for everything beyond line 8 in the bill.

MS. HALE answered the implementing regulations of the CWA require that citizens are able to nominate waters. That is where the nomination comes from. The idea of DEC then forwarding a report to the legislature would just be providing that information to the legislature, and the idea of DEC having a public notice period of those nominations is so that people who are in the area of a nominated water body have the ability to provide additional information and opinions to the legislature. That is the idea behind the report.

SENATOR COSTELLO said thinking through how this would play out, it sounds like the nomination, itself, would begin a community input process and then the legislature may or may not introduce a resolution or some bill to make that so.

MS. HALE answered that is correct.

SENATOR COSTELLO said it sounds like they are actually starting the legislative process early and that a bureaucracy would be required to manage all of these comments. She asked if other states have just simply given the legislature this authority.

MS. HALE answered that the proposed process is actually a very light process in terms of bureaucracy. The agency would not be reviewing this material; it would collect the material and forward it on to the legislature. Two other western states have the legislature making the decision: she believes they were Idaho and Montana. In both of those cases there is more process before the information comes to the legislature. A lot of states have a board or a commission actually review the material and then make a recommendation; some states have a board or commission actually make the designation.

SENATOR COSTELLO asked if the Bristol Bay Watershed is nominated, if the department would get much comment from the public.

MS. HALE responded that yes, the department may get a lot of comments, but unlike comments they receive on draft regulations or on a permit, they would not be putting together a response to comment. They would pull the comments together and forward them

to the legislature. The idea is for minimal bureaucracy being attached to that.

SENATOR STOLTZE said he would really like to hear someone of DNR Commissioner Myers' stature explain the consequences. He knows a lot about what constitutes "light processes of bureaucracies" in trying to promote economic development.

CHAIR GIESSEL said he should not worry; this is not the only hearing of SB 163.

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SENATOR MICCICHE continued on with Senator Costello's questions and said there is a process today for nomination. If DEC were to process the nomination for designation, the bureaucratic process wouldn't change. It's just that instead of the department adjudicating a designation, the legislature would be the final say in adjudication. Is that correct?

MS. HALE responded that the department doesn't have a process for adjudicating a decision on a nomination. They don't have a process for the nomination; they just receive nominations.

SENATOR MICCICHE remarked that he found it interesting that states that have become increasingly more environmentally active like Washington, Oregon, and Idaho, do not have any designated ONRWs.

MS. HALE said that is correct and added that Nevada also has no ONRWs designated yet, although they have special statuses for waters. One of the reasons they don't have any ONRWs is because of the magnitude of the consequences of the decision.

SENATOR MICCICHE said another state that is less environmentally active has 22 ONRWs and asked what types of water they have designated.

MS. HALE asked if he was talking about Arizona.

SENATOR MICCICHE answered yes.

MS. HALE said she didn't know the precise nature of the waters that have been designated there, but in Montana, all National Park waters are designated ONRWs.

SENATOR MICCICHE asked if Washington, Oregon, and Idaho have a process and have just not used it and what bodies of water

Arizona has designated. He also asked what the criteria would look like for the legislature to use in designating a Tier 3 water body.

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MS. HALE answered that Washington, Oregon and Idaho do have processes for designating waters; they just haven't done it. She will follow up on the 22 Arizona water bodies. The criteria can be very broad; for instance, a special hot spring could be designated as an ONRW and then it becomes very difficult to come up with precise criteria. That is why the criteria is left to the legislature.

SENATOR MICCICHE said he is interested in reviewing the criteria and process in Washington, Oregon and Idaho, and the Arizona water bodies.

MS. HALE said she would get that information to him.

SENATOR COGHILL asked how the Environmental Protection Agency (EPA) views nominations under C.F.R. Part 131.12. Does it put an immediate restriction on anything?

MS. HALE answered that a nomination doesn't put any restrictions on that water, but a designation does. She said that comment was received on draft regulations in 2014, and they planned on putting some clarifying language in the final regulations that will be publically noticed in 2016.

SENATOR COGHILL said Section 2 of C.F.R. Part 131.12 talks about how water quality shall be maintained unless the state finds "after full satisfaction of the inter-governmental coordination and public participation provisions of the state's continuing planning process," and asked if the legislature would get overruled if they do a statute.

MS. HALE replied that she didn't fully explain all of the three different tiers; she talked mostly about Tier 3 waters. Item 2 that he is talking about really describes Tier 2 waters, which are waters that are of higher quality than the water quality criteria. Most of the waters in the State of Alaska are already high quality waters. When doing a permitting action, the department has to make certain conclusions to satisfy anti-degradation, and that is what item 2 refers to.

In terms of being overruled, Ms. Hale said the EPA is watching the process Alaska is going through in developing its anti-

degradation implementation methods, as it is following other states. EPA has worked very closely with DEC and is pleased overall with where department is going.

SENATOR COGHILL said his confusion was that he read all of C.F.R. Part 131.12 and didn't make the connection between Sections 1, 2, and 3. He suggested putting Section 3 on line 7 when they look at the law.

MS. HALE said she should have made it clearer.

SENATOR WIELECHOWSKI asked her to explain what would happen if the Kenai River was designated. What would that mean for the users and would that impact the ability to have boats on it?

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MS. HALE answered that question has come up a lot, as the Chilkat River in Haines has been nominated. In general, it does not mean that boats can't go up and down the river; people can keep fishing. When the river is frozen, one can still snow machine on it. Specifically, it means that pollutants from a point source discharge into the river cannot be increased.

SENATOR WIELECHOWSKI asked her to define an increase in pollutants. Would drops of fuel from a boat be an increase in discharge?

MS. HALE said a "point source discharge" is one from a waste water treatment plant, for instance. The type of pollution Senator Wielechowski is referring to - little drops of gasoline from an engine - is a "nonpoint source discharge" and the department wouldn't be regulating those. But if there was a problem with water quality on that river and the state, including all the resource agencies, wanted to address that problem, they might do something like the two-stroke ban that went in place on the Kenai River, but that is not part of the Tier 3 process. It would be part of the department's overarching water quality management process.

SENATOR COSTELLO asked her to point to where she, as a state legislator, has the authority to vote on a measure that would create an ONRW. Isn't that the power of Congress?

MS. HALE answered that it is a matter of semantics. EPA calls them Outstanding National Resource Waters. Some have suggested that rather than using that term they use Outstanding State Resource Waters, and some states do. Other states use

Outstanding Resource Waters. So, it really is a matter of semantics. The language in this bill is from the implementing regulations of the Clean Water Act, but they don't have to use that term.

SENATOR COSTELLO asked if one legislature can't bind another, why is there such an importance placed on the process to get into the Tier 3 category, and no provision for a future legislature to rethink and perhaps take one off. Why would the legislature tie its hands in that regard?

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MS. HALE responded that the C.F.R. paragraph 3 describes the need for a process to designate; it's silent on a process for un-designating and she is not aware of any ONRW that has been undesignated.

SENATOR COGHILL said they should consider having a process for un-designating in this law. He also pointed out that "any resident may" could mean any resident of Alaska or any citizen of the United States.

MS. HALE replied that their intent is a resident of the State of Alaska.

SENATOR COGHILL asked if that should be a PFD-qualified resident.

MS. HALE responded that a statute actually describes "resident" and "person," and "person" can include an organization if it is within the state. Those terms could be clarified if needed.

SENATOR COGHILL asked if the requirement is "you shall under this law accept the nomination" follows through with the C.F.R.

MS. HALE answered yes; a process is needed for nomination and a process is needed for designation.

SENATOR COGHILL said they should at least test the EPA on having a process for un-designating.

CHAIR GIESSEL agreed. She wondered what would happen if they designate a particular water way and then a community forms upstream and they have no ability to put in a waste water treatment plant or a mine.

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SENATOR MICCICHE said it looks like this process is being set up to significantly reduce the likelihood that an ONRW would ever be formed in the State of Alaska. It would be far less likely with legislative approval than with agency approval. He asked if that is a fair assumption.

MS. HALE said she had heard that, but didn't know if it is a fair assumption.

SENATOR WIELECHOWSKI asked if the legislature or the administration doesn't do anything, does the EPA have a penalty.

MS. HALE replied that she was not aware of a penalty, but the greater risk might be of additional litigation. It's a requirement that the state needs to meet at some point.

CHAIR GIESSEL said that three water ways or watersheds had been discussed, and all can identify development opportunities that exist on them and this is of great concern. She held SB 163 in committee for later discussions.

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CHAIR GIESSEL adjourned the Senate Resources Standing Committee at 4:55 p.m.