

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

March 14, 2016

3:47 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

**MEMBERS ABSENT**

Senator Bill Wielechowski

**COMMITTEE CALENDAR**

OVERVIEW: ALASKA OIL AND GAS CONSERVATION COMMISSION (AOGCC)

- HEARD

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
02/15/16	(S)	Heard & Held
02/15/16	(S)	MINUTE(RES)
03/07/16	(S)	RES AT 4:30 PM BUTROVICH 205
03/07/16	(S)	Heard & Held
03/07/16	(S)	MINUTE(RES)
03/14/16	(S)	RES AT 3:30 PM BUTROVICH 205

## WITNESS REGISTER

KATHY FOERSTER, Chair

Alaska Oil and Gas Conservation Commission (AOGCC)  
Anchorage, Alaska

**POSITION STATEMENT:** Presented an overview of the Alaska Oil and Gas Conservation Commission (AOGCC).

RAYMOND SENSMEIER, Council Member

Yakutat Tlingit Tribe  
Yakutat, Alaska

**POSITION STATEMENT:** Commented on SB 163.

DEBRA SCHNABEL, Executive Director

Haines Chamber of Commerce  
Haines, Alaska

**POSITION STATEMENT:** Commented on SB 163.

LOUIE FLORA, Legislative Liaison

Alaska Center for the Environment (ACE) and Alaska Conservation Voters (ACV), Juneau, Alaska

**POSITION STATEMENT:** Opposed SB 163 as written.

DEANTHA CROCKETT, Executive Director

Alaska Miners Association (AMA)  
Anchorage, Alaska

**POSITION STATEMENT:** Supported SB 163.

## ACTION NARRATIVE

[3:47:23 PM](#)

**CHAIR CATHY GIESSEL** called the Senate Resources Standing Committee meeting to order at 3:47 p.m. Present at the call to order were Senators Coghill and Chair Giessel. She expected a quorum as the meeting goes on.

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SENATOR COSTELLO joined the committee.

### Overview: Alaska Oil and Gas Conservation Commission (AOGCC)

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CHAIR GIESSEL announced the first order of business would be an Alaska Oil and Gas Conservation Commission overview. She noted

that the commission has been in existence since before statehood and invited Ms. Foerster to make the presentation.

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KATHY FOERSTER, Chair, Alaska Oil and Gas Conservation Commission (AOGCC), Anchorage, Alaska, introduced herself via teleconference.

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SENATOR STOLTZE joined the committee.

MS. FOERSTER said the AOGCC is responsible for ensuring protection of fresh groundwater and correlative rights, protection of human health and safety in the operations they oversee, greater hydrocarbon recovery, and prevention of hydrocarbon waste. By statute there are three commissioners: one must be a petroleum geologist (Dan Seamount), one must be a petroleum engineer (herself), and third commissioner must have training and experience relevant to the oil and gas industry, and that seat has been vacant for about one year.

She said people often get the AOGCC confused with the Department of Natural Resources (DNR) that as the state's landowner representative, it is their job to ensure the state's resources are developed for the maximum benefit of the state. AOGCC regulates the industry everywhere throughout the state doing the five things she mentioned earlier.

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SENATOR STEDMAN joined the committee.

She said the AOGCC gives the state no greater standing than anybody else, because the department has to come before the commission sometimes in adjudications. Also, for that reason the AOGCC is an independent agency. Once the governor appoints a commissioner he can only be removed for cause.

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The AOGCC provides regulatory oversight in Cook Inlet, on the North Slope, and in other remote areas of the state. New operators and changes of operators kept them pretty busy in 2015. They tried to take advantage of the industry downturn to fill their critical vacancies along with implementing hydraulic fracking regulations and subjecting them to federal review, working with the Bureau of Land Management (BLM) on Legacy well cleanup, and providing gas offtake allowables for Prudhoe Bay and Point Thomson for major North Slope gas sales.

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MS. FOERSTER said that although Cook Inlet activity slowed, North Slope activity remained high. BP and ConocoPhillips continued their workovers and drillings. Hilcorp took over operatorship of Milne Point and fixed a lot of broken wells. She was anxious about all the activity because it takes a lot of time to assure that drilling is done right.

In 2016 with continuing low oil prices, there has been a slowdown in exploration activity, but drilling and well work continue at a healthy pace. Having said that, BP recently announced that they are going from six to two rigs and she expects other operators will slow down as well.

Some new activities are going to happen, she said, but probably at a cautious pace. BlueCrest and Furie will pursue developments at Cosmopolitan and Kitchen Lights in Cook Inlet. Armstrong will be doing something with the Repsol discovery on the North Slope, but she didn't know what the activities would look like and said it depends heavily on oil price.

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She said AOGCC has always had a tough time filling its engineering and inspector vacancies because they compete with the industry that they regulate for the same talent pool. However, a silver lining to the downturn cloud is that some good people have been freed up and the inspector and engineering vacancies have been filled. One inspector retired earlier this year and they were considering whether or not to replace him, but will wait and see what happens with industry activity. If Cook Inlet activity remains low, they won't have enough for that person to do. They have three people on the North Slope at all times and the only other vacancy is for the public commissioner.

MS. FOERSTER said the commission spent a lot of time over the last few years updating hydraulic fracturing regulations, making them easier for people to find and understand. After a number of hearings they feel they "have landed on a very good set of regulations." She explained that with all the bad press fracturing has been receiving in the last few years, the feds have been threatening to take over in any state that cannot demonstrate it has adequate regulations in place. That was one of the drivers behind updating those regulations. There were also technological advances. Implementing these regulations seems to be going well and they make sure that all goes well and will adjust them as needed.

A nationally recognized organization did a complete review of the hydraulic fracking regulations and gave them "really good marks," which will help stave off federal overreach. The feds have announced they will regulate hydraulic fracking on federal lands, which impacts Greater Moose's Tooth, but they will try to work with the Bureau of Land Management (BLM) folks to try to get primacy or something that will allow AOGCC to do the regulations.

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SENATOR MICCICHE joined the committee.

MS. FOERSTER said the BLM is in the process of spending the \$50 million that Congress allocated to them to clean up the Legacy Wells. At the end of this season they will have the worst "stinkers" cleaned up with one exception, which has mainly surface problems. The good news is that they started working on the "Whistling Well" that has been leaking hydrocarbon gas for years and were able to seal the leak in the initial prep work, so it is no longer leaking, which makes plugging it safer and less complicated.

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She thought they were all aware of what they decided for North Slope gas offtake allowables and skipped to the summary of rulings saying she would be happy to answer questions on any of those. She added that some triggers in the rulings allow review of progress in several areas. If the progress isn't made, they will revisit the rulings.

Point Thomson cycling startup will start soon, she said, and that will give them adequate information to affirm their decision to allow Point Thomson gas to be sold.

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MS. FOERSTER said staffing the AOGCC is important. It has a small and highly technical staff that makes important geologic and engineering decisions every day. Each day they have to answer questions such as: Is the proposed procedure for drilling this well safe? Does it use good oil field practices to ensure that hydrocarbons won't be wasted and people and the environment won't be in danger? Will this production plan ensure greater ultimate recovery of the valuable oil/gas and thermal resources it aims to extract? Will operation of this well in this manner create a threat to fresh ground waters? Will the proposed

variance from our rules still meet the protection requirements intended?

She said being fully staffed with engineers, geologists, and field inspectors is critical to addressing all of the issues they face daily in a timely fashion and ensuring that they are answering all the questions properly. The statute provides that the AOGCC has three commissioners with diverse and relevant qualifications. As commissioners, they make the final decision on all of those questions and that is why one of them must be an experienced petroleum geologist, one must be an experienced petroleum engineer and the third must have knowledge and skills relevant to the oil and gas industry, and specifically to the parts of that industry that the AOGCC regulates.

MS. FOERSTER said their public seat has been vacant for over one year, and while she and Dan Seamount have continued to run the commission without the third member, it has not been easy and some of their critical work has been slowed. When they are delayed the industry is delayed and when the industry is delayed, revenues to the State of Alaska are delayed. A quorum of two commissioners is required for every decision. With only two commissioners in place, whenever one of them is gone the commission cannot act. Therefore, both she and Mr. Seamount do everything they can to remain accessible even when they are away. For example, while arranging and attending her mother's funeral in Texas, she was responding to many phone calls and emails so that commission work could continue. Since she wrote this up, Mr. Seamount's mom passed away and he had to do commission work while at her death bed with her. While he was out with her, she had to postpone a hearing that was critical to Hilcorp in a decision that would allow or not allow them to move forward on some important well work.

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As another example, they have a pending adjudication request before them that the operators requested they don't conduct without a third commissioner. They do everything they can to honor reasonable requests relative to due process, so that decision has been delayed for a year now.

On a positive note, Ms. Foerster said, she and Mr. Seamount tend to see eye to eye, so they haven't had any disputes with just the two of them making decisions, but a fresh set of eyes would provide a perspective they are missing. She is "the baby" in the group and she has been there 11 years. Mr. Seamount's term expires in less than one year. The statutes stagger their terms

so that one goes every two years. That is specifically so that they will never fall below two commissioners, which would render them incapable of acting on anything that comes before them, and so that they are not training two new people at once. And as time ticks along, they are at increased risk of having those problems.

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CHAIR GIESSEL asked if she thought the skill set required of the commissioner is very high.

MS. FOERSTER answered yes. She explained that a lot of people know something about the oil and gas industry, but it really needs to be something that is relevant to what the commission does. Last year a great guy was nominated, but he didn't know anything about what they do. That puts a strain on the staff and other commissioners and makes it difficult for him to make meaningful decisions.

CHAIR GIESSEL asked if the individual should have "down-hole" experience.

MS. FOERSTER answered yes, that and/or relevant oil and gas law experience. It might be an attorney in the private sector who represents a lot of oil and gas companies, and he wouldn't have down-hole experience, but he would hit the ground contributing, because he would be able to help with all their legal questions.

CHAIR GIESSEL asked if this is a full time job.

MS. FOERSTER answered yes.

CHAIR GIESSEL asked if consequently it is a paid position.

MS. FOERSTER answered yes.

CHAIR GIESSEL said she knows the governor is diligently looking for someone to fill that empty seat.

SENATOR MICCICHE asked if the exposure of having an inexperienced commissioner is that they would be relatively easier to convince to make a decision that is not in the best interests of the state.

MS. FOERSTER answered yes. An inexperienced commissioner would also slow the staff down in making recommendations and evaluating things.

SENATOR MICCICHE asked if the staff shortages had caused a backlog.

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MS. FOERSTER answered because of the industry slow-down they were able to fill the one engineering position with a fellow who has hit the ground contributing in a big way. The last inspector vacancy was filled late last year, but unfortunately one of their experienced inspectors retired early this year. However, with the slow-down in work they are keeping up. She said they will take a hard look at whether that that ninth inspector vacancy should be filled right now, because oil prices will rebound and things will get busy eventually.

CHAIR GIESSEL, finding no further questions, thanked Ms. Foerster for paying attention to cost savings and updating the committee on the commission's work.

**SB 163-NATL. RES. WATER NOMINATION/DESIGNATION**

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CHAIR GIESSEL announced consideration of SB 163. She limited testimony to about 10 minutes per group.

4:10:00 PM

RAYMOND SENSMEIER, Council Member, Yakutat Tlingit Tribe, Yakutat, Alaska, said he was born and raised in Yakutat and thanked them for this time "to speak from my heart" on behalf of the Tier 3 status of the forelands of Yakutat. He represents Yakutat on the Transboundary Commission and said that many mines in Canada are at the headwaters of fishing rivers; one is the Alsek, which is 40 miles from Yakutat. The forelands, according to scientists, Park Service and Alaska Department of Fish and Game (ADF&G), is the "most pristine, cleanest waters of drinkable water quality in Alaska and the nation."

He said there are approximately 90 streams with all five species of salmon, char, cut throat, hooligan, seals and sea lions. This area is covered with old village sites, old summer fish camps, shaman's graves, and the bones of his ancestors. There is no controversy involved in claiming this status.

MR. SENSMEIER digressed saying he is a veteran and asked if there were any other veterans in the house. A number of people stood.

CHAIR GIESSEL thanked them for their service.

MR. SENSMEIER said he served two tours in Vietnam; it haunts him still and he suffers from PTSD. He is now fighting for his country once again. Two men in a foxhole ask each other: Do we have your back? The people in Yakutat have the same plea. He asked that everyone today put their minds together and see what life they can make for their children.

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CHAIR GIESSEL thanked Mr. Sensmeier for his testimony and recognized Representative Kreiss-Tomkins present in the audience.

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DEBRA SCHNABEL, Executive Director, Haines Chamber of Commerce, Haines, Alaska, said the mission of the Greater Haines Chamber of Commerce is promotion of economic growth that contributes positively to the quality of life in Haines. A household survey undertaken in 2011 by the McDowell Group as a basis for developing their 2025 Comprehensive Plan concluded that 72 percent of Haines' residents rate quality of life as high. Sixty-six percent named natural beauty and outdoor opportunities as what they like most about Haines. The following is a summary of her comments:

Haines is a community in transition. Their century-long economic history includes simultaneous operation of four salmon canneries, growth and the demise of Porcupine (a mining town supporting over 5,000 people), simultaneous operation of two sawmills manufacturing wood products for export, and a cruise ship schedule that brought three to four vessels into port weekly seasonally. So, Haines is a typical Alaskan community that has prospered or not depending on resource extraction, technological overhauls, global market conditions, and politics. Today's demographics describe a community of retirees, craftspeople who renovate or construct their homes, small business entrepreneurs, tour operators, fishermen and health care providers.

Much of Haines' economic history has been decided by the state because of land-granting by the state for funding the Mental Health Trust and the University of Alaska. The state owns and manages 32 percent of all land in the Haines Borough. The Haines State Forest

and the Chilkat Bald Eagle Preserve fill out the inventory. The Haines' State Forest, once an economic engine for defining the timber industry, is now being defunded by the state. The Chilkat Bald Eagle Preserve is still an economic development opportunity with 77 percent of respondents supporting increased commercial use. To the extent that their economy is still resource dependent, the Chilkat River is the lifeblood of commerce.

The Chamber views the nomination of the Chilkat River as a Tier 3, outstanding national resource water, as specified in 40 C.F.R. Part 131.12 as a strategy to direct energy away from mineral resource development in the tributaries of the Chilkat River and to focus energy on preservation of wild salmon stock for subsistence and commercial use in the development of recreational tourism. It is the politics of defining quality of life.

Some would say that a Tier 3 designation is necessary to preserve cultural values including subsistence lifestyles, necessary to preserve wild stock salmon fisheries, necessary to maintain a semblance of pristineness that attracts photographers, artists and tourists seeking wilderness recreation. Those would say it is necessary because it is impossible to otherwise guarantee that there will never be a mishap, an accident that could introduce toxins or pollutants in the river, that it is impossible for a mining operation to create a method of waste disposal that would not pollute ground water or tributary or the Chilkat River directly. Those who support a Tier 3 designation can envision a healthy economy that restricts large scale resource extraction to fisheries and an economy built on tourism.

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Those who do not support a Tier 3 designation believe that traditional resource development undertaken with modern methods and under the scrutiny of state agencies responsible for protecting the state's waters do not threaten water quality. They also think that a mining operation, specifically, the Palmer Deposit, is the sort of economic development that would improve quality of life because it would create jobs and open up more land. These people believe that there is

adequate regulation in place to preserve water quality in the Chilkat River. Those who oppose a Tier 3 designation see it as an imposition on their lifestyle and a threat to potentially meaningful economic development.

In the 2011 survey, more than 50 percent of households supported potential economic development opportunities utilizing agriculture (95 percent) value-added wood products (92pc), winter tourism (83 percent), promotion of the Chilkat Bald Eagle Preserve (77 percent) and large scale timber harvesting (65 percent). Fifty percent of households supported large scale mining such as the Constantine Mineral deposit in the Chilkat Valley, the Palmer Project.

Being for or against Tier 3 for economic reasons is only one aspect of this issue. The issue is more broadly political. Some think it would take government regulation of local life too far. We have been told at a Q&A session held by the Department of Environmental Conservation (DEC) in Haines on February 22 that any activity currently undertaken in state waters would be allowed to continue, but there is concern that a Tier 3 designation would prohibit infrastructure development that may be deemed important to the support of subsistence lifestyles and outdoor recreation such as boat launches, docks, and operation of machines that raise turbidity levels in the river.

MS. SCHNABEL said the political aspects of the proposed process for designation of Tier 3 designation as outlined in SB 163 is of concern to her membership according to a recent survey.

Governor Walker's assessment of "far-reaching consequences" for economic development supports his opinion that the basis for Tier 3 designation ought to be political and not scientific. As written, SB 163 calls for legislative action on the designation. Membership favors slightly a scientific basis, because they realize that votes on issues affecting local economies can easily be traded among legislators with different constituent loyalties.

Another concern about SB 163 is the provision that any single resident may nominate a Tier 3 designation. Generally, consideration of a designation of far-

reaching consequence out to have a larger political buy-in at the time of application. It needs scientific buy-in and nominating applications must be vetted.

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In considering the process for designating state waters as an outstanding national water resource, the Chamber looks to the State Constitution, Article 8, Natural Resources. The legislature has constitutional authority for utilization, development and conservation of all natural resources including water, which is subject to appropriation, with priority to prior rights and preference among beneficial uses and the general preservation of fish and wildlife. Constitutionally, the legislature may provide for the administration and preservation of special use sites for the use, enjoyment and welfare of the people as it did with the formation of the Chilkat Bald Eagle Preserve. The Constitution also provides that mineral rights hold a priority right for extraction.

Nature offers us phenomenal choices that require good judgement and a crystal ball. Decisions have consequences. Reflecting on the potential impact of a Tier 3 designation seems similar to the impact that consideration of habitat for various species of wildlife had in the management of our national forests. A Tier 3 designation would change the course of economic development for Haines, but in what direction and characterization remains the purview of those who remain to accept that challenge.

CHAIR GIESSEL asked when the DEC did their briefing if they talked about the impact a Tier 3 designation would have on fishing and use of boats in the river.

MS. SCHNABEL answered that she wasn't present for first 15 minutes and it was a question and answer briefing, but the DEC representative did a very good job of maintaining that because they didn't have any scientific baseline data about this entire river system there were no answers at this time.

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CHAIR GIESSEL said the survey results were interesting.

MS. SCHNABEL explained that she was talking about two surveys. One was the household survey done by McDowell group for 2011

about the broad questions of where they want the economy to go. The Chamber survey was specific to the Tier 3 designation.

CHAIR GIESSEL went with the second survey and asked if 29 percent of the Chamber members supported the legislature making that decision and 40 percent favored the administration, implied that they thought the DEC bureaucracy would be less political, because their decision would be based on science. She added that many on the Resource Committee base their evaluation of the things that come before them on the data and the science that is presented.

MS. SCHNABEL noted that SB 163 provides for the development of a process and it's hard to know how seriously that would be taken, because she has heard that DEC is thinking of only collecting the nominations and putting them forward to the legislature without vetting the application or creating baseline data for consideration. People are highly concerned about a political body making such important decisions.

CHAIR GIESSEL said the committee is looking at the process language carefully.

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SENATOR MICCICHE noted that a majority didn't favor a Tier 3 designation, but thought that the administration would be a better choice than the legislature. He asked if her question explained some sort of a process, because if the designation decision would go to a commissioner, it would likely have a scientific basis. However, the commissioner is appointed by a governor who has very real political ties. In a legislative body political feelings can be averaged out. If a body of water shouldn't be designated, it shouldn't really matter which body makes the decision. Commissioners can fluctuate dramatically.

MS. SCHNABEL said the Chamber survey followed the February 22 meeting when DEC information on existing regulations was distributed. Haines has a section of citizenry who believe there is a lot of exchanging of votes in the legislative process.

SENATOR MICCICHE said that may happen with some lower level things, but it is less likely to occur on important issues, and it can happen on both sides. He personally feels that a really sound process would be the data processed by the administration and forwarded to the legislature. That is generally how they make most key decisions and he has a tendency to believe the process works.

MS. SCHNABEL said she would take that information back with her.

CHAIR GIESSEL said she appreciated that comment and had never traded a vote in her six years in the legislature. "I vote on what I believe is the best thing for our state as a lifelong Alaskan," she said.

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SENATOR STOLTZE commented that he was just confused about the political judgment in Haines after 2012.

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LOUIE FLORA, Legislative Liaison, Alaska Center for the Environment (ACE) and Alaska Conservation Voters (ACV), Juneau, Alaska, read from prepared text opposing SB 163 as written. He appreciated all the hard work that all legislators are doing this year on the fiscal dilemma.

He said ACE/ACV supports a clear and transparent process to designate Outstanding National Resource Water (ONRW). They support an inclusive process that highlights local input that creates compromise and a working relationship between stakeholders. They are disappointed that Governor Walker would see fit, out of all the options, to punt this Tier 3 determination responsibility to the legislature. Establishing the legislature as the final arbiter of this big decision puts a lot of pressure on committee chairs and individual legislators. It also places the designation in a kind of chutes and ladders game which some people and groups are better equipped to play than others.

The primary problem that they see with having the legislature making the final Tier 3 designation is that it creates a white hot political debate, instead of a stakeholder discussion. Additionally, a 90-day session is dominated by generally one, two, or three major issues and may not provide enough time to fully and fairly vet and decide on a Tier 3 nomination.

The DEC, with input from ADFG and DNR would yield better results for Alaska in the long run and would foster better public dialogue. The Office of the Governor is powerful enough to absorb the shock of opposition from whomever is opposed to the final outcome.

It is their understanding that all the western states have adopted some method of designating Tier 3 waters as required by

the Clean Water Act, but only a small handful of states put the onus of approving a Tier 3 designation on the state legislature. Some western states like Montana that require legislative approval of Tier 3 also automatically designate all waters in national parks and protected areas as Tier 3 waters. Idaho requires legislative approval and has no Tier 3 waters. Other western states like Wyoming, Washington and Oregon leave the designation process up to their equivalent of a DEC. Per capita, there is a larger constituency for salmon and clean water in Alaska than any other state in the Lower 48. So comparisons to any of these states are tough.

MR. FLORA said ACE/ACV recognizes that a Tier 3 designation might seem awkward in Alaska that has a superabundance of high value rivers, wetlands, lakes and streams. However, there are numerous reasons why it's important to have a science-based, transparent and inclusive ONRW process that allows Alaskans to seek Tier 3 protections for important waterbodies. For one thing, the planet keeps breaking records; 2015 was the hottest year in recorded history. January 2016 was the warmest January in human record. Climate change is likely going to change a lot of things for water in Alaska. Perhaps the stress of low snow pack and increasing water temperature on our fish habitat will engender more and more pressure to protect fish habitat from additional stressors. At some point, likely soon, a whole lot of people might be looking for a whole lot of answers on how to protect our fish. A science-based determination process may be more appropriate than a legislative process as people begin to examine and judge the impacts of climate change on all of our waters.

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It is conceivable though that Alaskans will submit applications to protect waterbodies as a response to perceived policy and decision making shortcomings. Of course everyone has their own view of whether the balance is tilted too far one way or the other. ACE/ACV believes that many current permitting processes have structural deficiencies that prevent compromise or that adequately protect our fish and water, such that ONRW designation may be sought.

For example, since losing the Coastal Zone Management Program which brought Alaskans to the table in major permit reviews, there is no ability to comment on temporary water use permits which are used as a proxy for major industrial water rights. Public interest litigation has been stripped to bare bones and public comment on oil and gas leasing has been consolidated.

Reasonable water quality measures to prohibit wastewater mixing zones in salmon spawning habitat has been halted, the citizens initiative to make cruise ships not dump sewage into state waters has been rolled back. There is no requirement for interagency consultation on major water withdrawal permits and there is no law on the books to prevent dewatering of a salmon stream.

MR. FLORA continued that under the Clean Water Act, the state is not required to designate Tier 3 waters, it is only required to have a process in place for citizens to make nominations. There are various options for what that process could look like. ACE/ACV does not think that a legislative process is the right one for Alaska. SB 163 is merely a path to more shrill debate. Alaska is uniquely dependent on fish and clean water so there is going to be a lot of noise surrounding this issue.

There is obviously an interest in the legislature in mitigating against Tier 3 nominations. Instead of creating a process where Tier 3 nominations dominate the legislative conversation, the Walker Administration should use the tools at its disposal to build a public conversation around why Alaskans would seek Tier 3 nominations in the first place.

To summarize in closing, he said, Alaska is overdue for the adoption of a clear, inclusive, science-based ONRW process. While there is no requirement to designate waters, only to have a process, whatever process is adopted should be workable for the people of Alaska, and allow them to make nominations and have the nominations considered. The decision should be science-based, inclusive, and transparent. ACE/ACV believes that the process that makes the most sense is to have DEC, the agency with the water quality and permitting expertise, be in charge of the decision.

SENATOR STOLTZE recalled that the governor suggested that the legislative branch make the designations and he assumed that DEC would be responsible for making the policy recommendations. DEC Commissioner Hartig has been at the helm through three administrations and has helped direct a lot of that traffic that has been so inimical in Alaska. And he asked: "Why would you want to trust a dirty guy like him?"

MR. FLORA replied that the commissioner has a long familiarity with the process and he could create a fair process for analyzing Tier 3 water nominations working with the administration. Part of the issue now is that Alaskans didn't

know about Tier 3 waters before the governor introduced this bill. Using science and having stakeholder involvement builds a lot more cooperation and can bring Alaskans together in a larger way than a potentially partisan legislative debate.

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SENATOR MICCICHE said in looking at the list of designated waters in western states, the State of California is arguably the most environmentally active state in the union and it has only two bodies of water designated as Tier 3. California has a robust process; it has a state agency or ten for just about every decision that has to be made.

He struggles with Mr. Flora's logic, because he envisions a process where DEC and DNR make a recommendation to the legislature, a body that changes slowly but is relatively consistent. The body has been deliberative even if they don't all agree with every decision. But there is really the potential for dramatic swings in the administration: you have no idea who the next governor will be.

SENATOR MICCICHE opined that the beauty of our system is that if legislators are not responsive, they often go away and get replaced with other legislators that are more responsive. He was open to discussing these things, but he didn't follow Mr. Flora's logic. He hoped that if there is a waterway that should be designated as Tier 3 that it would be successful with the legislature. If it shouldn't be, neither the department nor the legislature would likely support it either way.

[4:46:25 PM](#)

DEANTHA CROCKETT, Executive Director, Alaska Miners Association (AMA), Anchorage, Alaska, said they support SB 163. She said SB 163 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 on 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 provisions within the Clean Water Act 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 the state can establish a process is one in which waterbodies can be nominated for ONRW designation through an act of the legislature. Therefore, we support the passage of SB 163 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:

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1. A nomination can't be enacted unless the legislature confirms the designation.
2. The nomination should be specific to sections of water and can't go further or be applied to any waters outside the intended ONRW designation area.
3. Language should be included 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. Vetting is a good word to use for this process.

She read suggested criteria that was in a March 4 letter for any nomination. Information that proves the waterbody has exceptional unique characteristics relative to other state of Alaska waters including:

- being in pristine condition, largely absent of human sources of degradation,

- being of exceptional ecological, economical or recreational physical appearance,
- being exceptional or rare example of its type,
- accompanied by data that demonstrates these criteria.

Further she suggested that DEC shall conduct a completeness review of all applications and be able to request additional information as necessary to process it even if it necessitates the nomination being held over to the next nomination period as outlined in the bill. DEC should have ability to require reimbursement for processing applications including the required evaluations and reports. DEC shall begin processing the application after a satisfactory reimbursable services agreement has been received from the applicant.

DNR shall prepare a report evaluating the land use implications of any waterbody proposed for Tier 3 nomination that DEC submits to the legislature. It shall include the social and economic impacts arising out of the changes as a result of the designation. Before preparing the report DNR shall also enter into a satisfactory reimbursable service agreement with the applicant.

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Finally, she said, DEC's final evaluations and determinations and findings regarding a waterbody or segment shall constitute a final department decision that could be administratively appealed. The department shall not forward any waterbody nomination to the legislature until all administrative and judicial appeals have been resolved. And should there be an administrative and/or judicial appeal, the decisions and records of that should be forwarded to the legislature at the time of decision.

MS. CROCKETT said a fourth proposed change is to organize a timeline in which DEC collects nominations and forwards them to the legislature. Suggested language states 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 both duplicative and outdated nominations of waters already having been addressed as being inappropriate for designation.

A list of nominations should only be forwarded 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.

Her last recommendation for SB 163 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. Ms. Crockett said an ONRW designation shouldn't be a final decision; it should be made only if absolutely necessary with the 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 a designation if and when applicable.

She concluded saying that even with their lengthy comments and suggestions, AMA believes that SB 163 is the start of a good bill with the potential of being good policy for Alaska.

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SENATOR MICCICHE commented on the legislature versus administration discussion that Idaho has no ONRWs. Montana has a Board of Environmental Review and has designated waters of the National Parks and Federal Wilderness Areas but no Tier 3 waters. Oregon and Washington both have an administrative process and both are more environmentally active on water quality than folks in Alaska. Neither has a single Tier 3 waterbody in their states. Wyoming seems to be the only western state that has an Environmental Quality Control Council appointed by the governor that has 15 other waters plus adjacent wetlands that have been designated other than National Parks and Wilderness Areas. It's interesting, because nothing today prohibits DEC from designating Tier 3 waters and nothing indicates that more waters would be designated under a board process in western states. He wondered what the Governor's thought process was.

CHAIR GIESSEL said DEC opined that Article 8 of the Constitution says the legislature shall provide for the "utilization, development, and conservation of all natural resources falling into the state including land and waters." Therefore she

believed that was the foundation on which the governor opines that it falls under legislative authority.

SENATOR STOLTZE commented that there were some assertions that the legislature is a partisan political body and asked if the commissioner would talk about the governor's motivation before the bill leaves committee.

CHAIR GIESSEL said "absolutely."

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Finding no further business to come before the committee, Chair Giessel adjourned the Senate Resources Committee meeting at 5:00 p.m.