

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

February 10, 2020

1:37 p.m.

**MEMBERS PRESENT**

Representative John Lincoln, Co-Chair  
Representative Geran Tarr, Co-Chair  
Representative Grier Hopkins, Vice Chair  
Representative Sara Hannan  
Representative Chris Tuck  
Representative Ivy Spohnholz  
Representative Dave Talerico  
Representative George Rauscher  
Representative Sara Rasmussen

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 138

"An Act requiring the designation of state water as outstanding national resource water to occur in statute; relating to management of outstanding national resource water by the Department of Environmental Conservation; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 138

SHORT TITLE: NATIONAL RESOURCE WATER DESIGNATION

SPONSOR(S): REPRESENTATIVE(S) KOPP

04/17/19	(H)	READ THE FIRST TIME - REFERRALS
04/17/19	(H)	RES, FIN
04/29/19	(H)	RES AT 1:00 PM BARNES 124
04/29/19	(H)	Heard & Held
04/29/19	(H)	MINUTE(RES)
05/03/19	(H)	RES AT 1:00 PM BARNES 124
05/03/19	(H)	Heard & Held
05/03/19	(H)	MINUTE(RES)
02/10/20	(H)	RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

REPRESENTATIVE CHUCK KOPP  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Speaking as the sponsor of HB 138, provided a PowerPoint presentation entitled, "HB 138 Outstanding Resource Water Designation," dated 2/10/20, presented the committee substitute for HB 138, and answered questions.

TREVER FULTON, Staff  
Representative Chuck Kopp  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** On behalf of Representative Kopp, sponsor of HB 138, answered questions during the hearing of HB 138.

MARIE MARX, Attorney  
Legislative Legal Counsel  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing of HB 138.

JONES PAUL HOTCH JR., Vice-President  
Chilkat Indian Village Tribal Council  
Haines, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138.

GUY ARCHIBALD  
Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138, Version K.

KONRAD SCHAAD  
Homer, Alaska

**POSITION STATEMENT:** Testified in strong opposition during the hearing of HB 138.

MARIO BENASSI  
Haines, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138.

JOE HOTCH

Haines, Alaska

**POSITION STATEMENT:** Testified during the hearing of HB 138.

DOUG WOODBY

Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138.

DAN HOTCH, Spokesperson

Chilkat Indian Village

Haines, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138.

DAN CANNON

Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138.

SKWEIT MORGAN

Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138.

ANDREA HERNANDEZ

Point Baker, Alaska

**POSITION STATEMENT:** Testified during the hearing of HB 138.

SARAH DAVIDSON

Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138, Version K.

EMILY ANDERSON, Alaska Program Director

Wild Salmon Center

Anchorage, Alaska

**POSITION STATEMENT:** Testified during the hearing of HB 138.

JESSICA PLACHTA, Executive Director

Lynn Canal Conservation

Haines, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138.

MEREDITH TRAINOR, Executive Director

Southeast Alaska Conservation Council

Juneau, Alaska

**POSITION STATEMENT:** Testified in opposition during the hearing of HB 138.

**ACTION NARRATIVE**

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**CO-CHAIR JOHN LINCOLN** called the House Resources Standing Committee meeting to order at 1:37 p.m. Representatives Talerico, Hannan, Hopkins, Rasmussen, and Lincoln were present at the call to order. Representatives Tarr, Tuck, Spohnholz, and Rauscher arrived as the meeting was in progress.

**HB 138-NATIONAL RESOURCE WATER DESIGNATION**

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**CO-CHAIR LINCOLN** announced the only order of business would be HOUSE BILL NO. 138, "An Act requiring the designation of state water as outstanding national resource water to occur in statute; relating to management of outstanding national resource water by the Department of Environmental Conservation; and providing for an effective date."

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**CO-CHAIR TARR** moved to adopt the committee substitute for HB 138, labeled 31-LS0811\K, Marx, 2/4/20, (Version K), as the working document.

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**CO-CHAIR LINCOLN** objected for discussion purposes.

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**REPRESENTATIVE CHUCK KOPP**, Alaska State Legislature, speaking as the sponsor of HB 138, said the committee substitute for HB 138 was the result of hearing public testimony about the unmet need for an administrative process, and a desire for a fair and balanced approach, to Tier 3 water designation. He directed attention to a PowerPoint presentation entitled, "HB 138 Outstanding Resource Water Designation," dated 2/10/20, in order to review for the committee the concept of Tier 3 waters, and the intent of the bill. He paraphrased from slide 2, which read:

### TIER 3 WATERS

- Defined by EPA as waters of "exceptional recreational or ecological significance" which shall be "maintained and protected" from degradation in perpetuity
- Since 1983, the Clean Water Act has required each state to establish a Tier 3 designation process - Alaska has yet to formalize a process
- Any water of the state (AS 46.03.900) can be designated a Tier 3 water, regardless of ownership of surrounding lands
- Five Tier 3 nominations (oldest dating to 2012) have been submitted to DEC - all five have been returned and the nominators have been referred to the legislative process, as per DEC policy

REPRESENTATIVE KOPP explained Alaska has no process for [the designation of] Tier 3 waters, which may violate the Clean Water Act (CWA), and thus the U.S. Environmental Protection Agency (EPA) may impose a process on the state, leaving stakeholders in Alaska uncertain of the process. Representative Kopp advised any water of the state can be designated Tier 3 water; water of the state is defined in AS 46.03.900(37) as follows:

"waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.

REPRESENTATIVE KOPP said there have been five Tier 3 water nominations submitted to the Department of Environmental Conservation (DEC), all which have been returned to the nominators and referred to the legislature - as per existing DEC guidance policy established by former DEC Commissioner Hartig - to comply with the Alaska State Constitution, Article 8, Sections 2 and 7, which read (slide 1):

Section 2: The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including

land and waters, for the maximum benefit of its people.

Section 7: The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

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REPRESENTATIVE KOPP pointed out the aforementioned sections of the state constitution direct that the legislature has a role in the designation process; HB 138 introduces an administrative process compatible with the legislative process to allow Tier 3 nominations to be reviewed and concluded. He directed attention to slide 3 and said [the intent of HB 138] - to codify the process - is consistent with DEC's request for legislative involvement, preceded by an administrative process. Representative Kopp stressed the designation process of nominating [a water body] to DEC currently does not exist [shown incorrect on slide 3], which explains why current nominations have been referred to the legislature [shown correct on slide 3]. At this time, 118 state lands and waters have been designated for special use protection by the legislature including state refuges and parks, preserves, sanctuaries, critical habitat areas, marine parks, and recreational rivers. Representative Kopp further explained establishing special use protection is a policy call that does not set "too high of a bar on anybody to carry a policy argument." Therefore, in order to satisfy the state constitution, the legislature must find a way to achieve a balance between administrative process and legislative direction so that state waters are managed to the maximum benefit of Alaskans. Slide 4 illustrated the committee substitute for HB 138 process: codifies Tier 3 designation process as a legislative process with an administrative element and establishes an advisory commission to review nominations for Tier 3 waters and make recommendations. He further explained nominations could also be facilitated through legislation introduced by a legislator; however, a bill introduced by a legislator would not benefit from a science-based determination, vetting, and recommendations from the advisory commission. In addition, [the committee substitute for HB 138] requires the governor to submit legislation consistent with the recommendation of the advisory commission; this requirement was

modeled on the Controlled Substances Advisory Committee, Department of Law.

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REPRESENTATIVE KOPP continued to slide 5 and said the proposed Outstanding Resource Water Advisory Commission would have seven members: the commissioners of the Department of Natural Resources, DEC, and the Alaska Department of Fish and Game; designated seats for a tribal entity or Native corporation, environmental or conservation nongovernmental agency (NGO), resource development NGO, and local government. Thus, the advisory commission would consist of experts and members with strong professional knowledge in order to determine whether a nomination would be accepted for review. Turning to the nomination, he paraphrased from slide 6, which read:

#### NOMINATION CRITERIA

- Description of the water
- Upstream/downstream boundaries
- Explanation of what makes it exceptional
- Description of existing water quality
- Cost-benefit analysis

REPRESENTATIVE KOPP remarked:

A cost-benefit analysis is based on policy. ... If your policy is that whatever project is out there in the future, whether it be a tourism project, an industry, natural resource project, whether it be any kind of development, is weighed against whatever we're trying to protect or conserve, that a, some type of cost-benefit analysis be put out there, but note that the commission has the discretion to either ask for more or less information. ... We do not look at this as someone has to be a millionaire to ... put together basically a report for the commission and, and, submit this. I think this is a pretty low threshold for such a significant thing ... but it is certainly not meant to be cost prohibitive. The bill does, in its current version, ask the nominator to bear at least this minimal upfront cost ....

REPRESENTATIVE KOPP added the commission has one year to rule from the time the nomination is accepted. He restated a Tier 3 designation has the highest level of water quality protection

under CWA and is an important tool to balance human environmental health; however, the designation is a policy decision that in the future would restrict a significant range of activities. He concluded the committee substitute for HB 138 would create a designation process that is fair, evidence-based, and subject to legislative approval; the bill is also a solution between an administrative process and a political process, fulfills the federal mandate for Tier 3 water designation, and would give stakeholders certainty in this regard.

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CO-CHAIR TARR asked whether the nomination is accepted by the commission when the nomination application is complete.

REPRESENTATIVE KOPP said yes. In further response to Co-Chair Tarr, he clarified when the commission indicates the nomination packet is complete, the one-year time period begins.

CO-CHAIR LINCOLN removed his objection. There being no further objection, Version K was before the committee.

REPRESENTATIVE TUCK returned attention to slide 4 and asked for confirmation that [after the passage of HB 138, Version K, a nomination could still be advanced directly from a nominator to the legislature].

REPRESENTATIVE KOPP said correct.

REPRESENTATIVE HOPKINS asked whether DEC can currently designate water to [Outstanding National Resource Waters (ONRW) Tiers] 1, 2, or 3.

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TREVER FULTON, Staff, Representative Chuck Kopp, Alaska State Legislature, informed the committee current regulations allow DEC to designate Tier 1 and 2 waters, however, Tier 1 and Tier 2 waters are not ONRW; regarding Tier 3 waters, DEC guidance is that nominators nominate Tier 3 waters through the legislature.

REPRESENTATIVE HOPKINS suggested if the commission approves the nomination of a body of water to Tier 3 status, the commission and DEC should do so without needing duplicative legislation.

REPRESENTATIVE KOPP observed water quality designations are among the most sweeping actions taken by the state; in fact, to

not have such an action before the legislature would probably be in violation of the state constitution. The legislature should be provided with a professional application that has been vetted and that has garnered science-based recommendations from a panel of experts in order to make its decision. He restated HB 138 creates a process that would result in a nomination before the legislature that is complete with public testimony and a minority opinion. As the bill sponsor, he restated his support for combining administrative and legislative processes, in order to balance competing interests, and prevent subsequent challenges to legislation.

REPRESENTATIVE HANNAN asked for confirmation that the current five nominations have been offered by tribal entities.

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MR. FULTON said DEC has received the following nominations:

- Koktuli River, submitted 4/27/12, by Trout Unlimited, Alaska Alpine Adventures, Renewable Resources Coalition, Alaska Independent Fishermen, SnoPac Products, Nushagak-Mulchatna Wood-Tikchik Land Trust, and Nunamta
- [Draanjik River], submitted 11/7/17, by First Chief Woody Salmon, Chalkyitsik Village Council and First Chief Nancy James, Gwichyaa Zhee Gwich'in Tribal Government
- Chandlar River, submitted 7/23/16, by First Chief Jerry Frank, Venetie Village Council
- Yakutat Forelands, submitted 2/22/16, by the Yakutat Tlingit Tribal Council
- Chilkat River, submitted 2/13/16, by the Chilkat Indian Village

CO-CHAIR TARR directed attention to the bill on page 3, line 14, which read [in part]:

the commission shall provide public notice and an opportunity to comment on the nomination

CO-CHAIR TARR questioned whether the aforementioned language means the process would include a public comment period and public hearings.

REPRESENTATIVE KOPP confirmed the language is prescriptive thus hearings shall be held.

REPRESENTATIVE SPOHNHOLZ inquired as to whether HB 138 would prohibit the nomination of a Tier 3 water designation by a citizens' initiative.

REPRESENTATIVE KOPP said no. He pointed out a prior citizens' effort related to restrictions on natural resources was deemed unconstitutional by the court system and deferred the question to the Department of Law. He restated the intent of HB 138 is strictly to establish an administrative process for designating Tier 3 water designations.

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MARIE MARX, Attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, clarified HB 138 does not address the initiative process. She opined the initiative process could not be used to designate water as outstanding resource water without violating the Alaska State Constitution, Article 11, Section 7, because initiatives cannot make or repeal appropriations or restrict the legislature's authority to use an asset for a public purpose.

REPRESENTATIVE TUCK asked whether any of the aforementioned 118 water designations are Tier 3.

REPRESENTATIVE KOPP said he was unaware of any Tier 3 water designations in Alaska.

REPRESENTATIVE TUCK further asked whether EPA requirements allow the legislature to reverse a Tier 3 designation.

MR. FULTON said the designation of a Tier 3 waterbody could be reversed, and explained information from DEC and EPA indicated "anything that the legislature puts into statute, it can remove from statute, and thus undesignate."

REPRESENTATIVE TUCK surmised if the designation is DEC's role, DEC could also reverse its decision.

MR. FULTON deferred to DEC.

MS. MARX informed the committee federal regulation and policy do not allow or prohibit an action to reverse designation; further, nothing in the bill prevents a future legislature from repealing a designation. Similarly, she opined nothing would prevent DEC from undesignating a [waterbody] as national resource water, although EPA would address a change in policy.

[2:09:33 PM](#)

REPRESENTATIVE TUCK returned attention to slide 2 and read:

Defined by EPA as waters of exceptional recreational or ecological significance which shall be maintained and protected from degradation in perpetuity

REPRESENTATIVE TUCK surmised perpetuity is "as long as it's in statute."

MS. MARX advised to designate water there would be a finding that said certain water is of exceptional quality, which is a very high standard, therefore, [the standing to meet] a finding to undue the designation would also be high. She said without case law in this regard, a court's decision is unknown.

REPRESENTATIVE RAUSCHER asked whether the legislature could go around the [advisory commission].

REPRESENTATIVE KOPP said yes, by passing legislation.

REPRESENTATIVE HANNAN questioned how many states have adopted a process for designation and if states that have not complied with EPA have been litigated.

REPRESENTATIVE KOPP deferred to DEC and said he was unsure of the policies of other states.

REPRESENTATIVE TUCK directed attention to the bill on page 2, beginning on line 16, which read:

(D) one member who represents a statewide organization of local governments.

REPRESENTATIVE TUCK asked what statewide organizations of local governments exist.

REPRESENTATIVE KOPP said, in addition to the Alaska Municipal League, there is a conference of mayors.

REPRESENTATIVE HOPKINS directed attention to page 2, lines 25-27, which read [in part]:

(e) The commission shall  
(1) establish a process for a resident of the state to nominate water for designation ....

REPRESENTATIVE HOPKINS asked if a resident is defined as an individual or if an organization or group could bring forward a nomination.

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MR. FULTON explained the residency requirements applicable to the bill are found in AS 01.10.055; further, [AS 01.10.060(8)] defines person as a natural person and as corporations and other organizations of the state. Therefore, resident includes both people and corporations, organizations, and others.

REPRESENTATIVE HANNAN asked whether a tribe could bring forward a nomination if it were a federally recognized tribe that was not incorporated in the state.

REPRESENTATIVE KOPP supported action brought by any tribe in Alaska; he was unsure as to a tribe's standing as a person.

MR. FULTON read the definition of person [AS 01.10.060(8)] as follows:

Includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

REPRESENTATIVE HANNAN recalled the membership [of the advisory commission] established by the bill includes one member who represents a tribal entity or a Native corporation in the state. She pointed out tribal entities differ vastly from Native corporations and thus can have competing interests; in fact, tribes have been engaged as the primary nominators of water designations. She suggested the bill must specify that local, resident, tribal entities and citizens have authority to nominate, as do corporations and Native corporations.

REPRESENTATIVE KOPP, speaking as the bill sponsor, expressed his strong support for tribal citizens of Alaska "having a voice in the process ...." However, he deferred to Ms. Marx's legal opinion in this regard. He acknowledged a tribal entity may have a different interest than a Native organization, or may have a common interest, or may, or may not, have a common interest with an environmental nongovernmental organization.

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MS. MARX directed attention to the bill on page 2, lines [9-17], which read:

- (4) the following members appointed by the governor:
- (A) one member who represents a tribal entity or Native corporation in the state;
  - (B) one member who represents an environmental or conservation nongovernmental organization;
  - (C) one member who represents a resource development nongovernmental organization; and
  - (D) one member who represents a statewide organization of local governments.

MS. MARX agreed that a tribal entity and a Native corporation are separate and distinctive; a tribal entity - an Indian Tribe - is an independent entity and is a sovereign, and any member of an entity of the sovereign tribe could be a member of the commission. A Native corporation is not a sovereign tribe.

REPRESENTATIVE HANNAN returned attention to page 2, line 26 [text previously provided]. She remarked:

My question is on line 26 of page 2, the term resident - and then Representative Kopp's staff has given us a couple of statute citations using a legal definition of a resident, including that a corporation that was incorporated in the state is a resident because it's natural persons and other entities - and I am wondering whether a tribal entity is considered a resident of the state if it were incorporated and recognized by the federal government.

MS. MARX advised not all are tribal entities may be incorporated, some are just organizations. The issue is who can bring the nomination forward, and any individual of a tribal entity or a corporation who is a state resident can bring a nomination forward. She was unsure whether an entity that is not incorporated would qualify as a state resident; however, an individual, who is a part of an organization, can bring forth a nomination, if they are a state resident.

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MS. MARX offered to research whether tribal organizations that are not incorporated in the state may bring forth a nomination on behalf of the organization.

CO-CHAIR LINCOLN suggested specifying a nonprofit regional tribal organization to clarify from individual federally-recognized tribes that are considered tribal governments.

REPRESENTATIVE RASMUSSEN asked whether appointees to the advisory commission would be subject to legislative confirmation.

REPRESENTATIVE KOPP said no, because the intent of the bill is to avoid politicizing the commission and the professional work of the commission.

REPRESENTATIVE RASMUSSEN said legislative approval eliminates some of the politics in a situation where the governor and the legislative majority represent different political parties. She directed attention to the zero fiscal note[s] [Identifier: HB 138 DNR-MLW-2-7-2020; Identifier HB 138-DEC-WIF-02-07-20; Identifier: HB 138-DFG-CO-2-8-20] and pointed out commission members are entitled to per diem and travel allowances. She questioned how the commission would begin meeting regularly with no funding.

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REPRESENTATIVE KOPP explained the commission is created within DEC; although there are five pending nominations, he suggested the commission will have limited meetings and "what that fiscal ultimately will be" is unknown.

REPRESENTATIVE SPOHNHOLZ directed attention to the bill on page 3, lines 3-4, and lines 7-9, which read:

(D) a description of the existing water quality and any technical data on which the description is based;

(F) an analysis of the economic cost and benefit of designating the water as outstanding national resource water, including the economic cost and benefit to communities and current or foreseeable projects; and

REPRESENTATIVE SPOHNHOLZ surmised [subparagraphs (D) and (F)] of the bill set a very high bar for certain nominators, such as individuals or small tribes or communities; she asked whether the sponsor considered tasking the commission with the in-depth analysis required to inform the legislature on the impact of a Tier 3 water designation.

[Discussion was directed to the bill beginning on page 2, lines 25-31, and continuing to page 3, lines 1 and 2, which read:]

(e) The commission shall

(1) establish a process for a resident of the state to nominate water for designation as outstanding national resource water; the process must at a minimum require that the nomination be submitted to the commission in writing and include

(A) the name, description, and location of the water;

(B) the boundaries upstream and downstream of the water;

(C) an explanation of what makes the water an outstanding national resource water, including a description of the recreational or ecological value that makes the water exceptional;

REPRESENTATIVE KOPP pointed out the determination of significant recreational or ecological qualities is more a policy than a scientific determination. He acknowledged a nominator needs to accurately describe the upstream and downstream boundaries of the water and indicate its existing water quality, which could cost several thousand dollars; for the cost-benefit analysis, which could vary in scope, he said many nominators work with partners that would help with the expense. He explained the bill does not specify facets of the analysis so the commission can request more information. Representative Kopp advised a nominator can research websites and he restated the intent is not to make the [expense of a nomination] prohibitive.

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REPRESENTATIVE TUCK directed attention to the bill on page 3, lines 5 and 6, which read:

(E) a discussion of any nonpoint source activity to be conducted in the foreseeable future that may affect water quality;

REPRESENTATIVE TUCK asked for the meaning of nonpoint source activity.

MR. FULTON directed attention to page 4, lines 21-23, which read:

(2) "nonpoint source activity" means an activity that does not produce a discharge from a point source, as that term is defined in regulations adopted under this chapter.

MR. FULTON further explained nonpoint source activities are generally runoff whereas a point source activity is [a substance] coming out of a discharge pipe.

REPRESENTATIVE TUCK said the nomination process would be a burden for any entity. He directed attention to Version K on page 2, lines 27-28, which read [in part]:

; the process must at a minimum require that the nomination be submitted to the commission in writing and include

REPRESENTATIVE TUCK questioned how a discussion of nonpoint activity in the foreseeable future [as provided in Version K, section 1, subsection (e), paragraph (1), subparagraph (E)], could be submitted to the commission in writing.

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REPRESENTATIVE KOPP remarked:

I would say that means simply what it appears to mean, is relaying to the nomination commission any nonpoint source activity that can be conducted in the foreseeable future ... writing it out on paper, this is, this is what we're aware of.

CO-CHAIR LINCOLN asked when the first waterbody was nominated.

REPRESENTATIVE KOPP said in 2012.

CO-CHAIR LINCOLN questioned whether there is any risk to the state because it does not have an established process.

REPRESENTATIVE KOPP said yes; the risk is, if the state fails to act, EPA could act unilaterally which could lead to litigation.

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CO-CHAIR LINCOLN opened public testimony on HB 138.

[2:37:48 PM](#)

JONES PAUL HOTCH JR., vice-president, Chilkat Indian Village Tribal Council, expressed Chilkat Indian Village Tribal Council's opposition to HB 138. He informed the committee Chilkat Indian Village of Klukwan is a federally recognized tribe that believes the Alaska National Interest Lands Conservation Act (ANILCA) Title VIII is vital to it. He described the legislative process as a lengthy process to designate Tier 3 water. Klukwan has lived a traditional subsistence lifestyle village since time immemorial and seeks to continue its lifestyle, with life close to food, which is important to village culture. The Chilkat River is a natural spawning ground for all five species of Pacific salmon and is the second largest producer of coho salmon in Southeast, and the largest producer of sockeye and chum salmon. Mr. Hotch questioned the requirement of a cost analysis because one cannot submit a cost analysis on the value of salmon and berries.

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GUY ARCHIBALD disclosed he is a staff scientist for Southeast Alaska Conservation Council and is testifying on his own behalf. He expressed opposition to HB 138 [Version K] and questioned how a process that has to go through the legislature would not be a political process. In response to previous statements, he explained protecting Tier 3 waters "in perpetuity" refers to protection from permanent or long-term degradation; in fact, all Tier 3 designations in other states have exemptions for short-term degradation from activities such as such as roadbuilding, flood control, and river restoration. Mr. Archibald referred to the sponsor's statement, that Alaska does not have a formal process for Tier 3 designations, and said Alaska has two other mechanisms for designating Tier 3 water included in [DEC's] 2010 policy and procedures guidance that have been approved by EPA. Further, in response to statements that Tier 3 designations would impact upland activities including motorized vessels, residential and commercial septic systems, and road construction, mining, and timber harvesting, he said the aforementioned are nonpoint source discharges and almost every state that regulates Tier 3 water only limits new or expanded point source discharges. He directed attention to his written testimony [previously submitted] explaining Arizona water quality policy related to mixing zones. Mr. Archibald concluded Alaska has permitted many point source discharges and making a process easier for a corporation to pollute water, and harder for residents to protect water, is a violation of the state constitution.

REPRESENTATIVE HANNAN asked for clarification of Mr. Archibald's reference to EPA [approval].

MR. ARCHIBALD said the information can be found in his written testimony.

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KONRAD SCHAAD informed the committee he has lived in Homer for 40 years and has fished commercially in Bristol Bay since 1985 with his sons. He said Alaskans are proud of their fish management that has resulted in the last great salmon runs on Earth; however, management is not effective without clean water. He has heard Alaska has the strongest protection for its salmon streams but cautioned that the passage of HB 138 would create a carte blanche for mining companies that seek [mining] permits. Mr. Schaad said more science and less politics are needed to ensure state waters stay clean. He cautioned if the nomination for Tier 3 designation becomes cumbersome and burdensome, few, if any, will achieve designation, and urged the committee to not weaken the existing process. Mr. Schaad expressed his strong opposition to HB 138.

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MARIO BENASSI expressed his opposition to HB 138. He said he assumed that currently DEC designates Tier 1 and Tier 2 waters, which are issued permits allowing the pollution of rivers. In a fair process, it would be as easy to designate rivers that would not be polluted as it would be to designate rivers that are going to be polluted; once a river is polluted, the pollution is in perpetuity. Mr. Benassi opined HB 138 would further politicize the process through legislative approval. Because DEC already makes decisions based on policy and criteria, he urged that the designation of Tier 3 water remain with DEC.

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JOE HOTCH said Alaska National Interest Lands Conservation Act [Title VIII] Section 804 is related to Tlingit traditional use for his children and grandchildren. Also, [Title VII, Section 12 of the Alaska State Constitution] disclaims right and title to land held by Indian, Eskimo, or Aleut. He urged the committee to adhere to the state constitution, and said he was speaking for all children.

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DOUG WOODYBY informed the committee he retired from ADFG as chief fisheries scientist for the commercial fisheries division, and during his career, worked in all regions of the state. He opined the primary reason the state is successful in managing its renewable fish resources is that the state began with pristine conditions; the state cannot afford to lose its pristine conditions, which are central to Alaska. He expressed his concern the bill removes access to a democratic process and creates a more policy-based process that will not provide science-based solutions or protect pristine waters. Mr. Woodby said he opposed the bill.

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DAN HOTCH, Spokesperson, Chilkat Indian Village, expressed his opposition to the bill. He informed the committee he comes from Klukwan. Klukwan means "the eternal village" and he told a story of a long-ago person who was discovered with salmon remains, which illustrates that salmon existed 10,000 years ago. He reported elders and others in Klukwan are donating moose and fish for school lunches to replace the school lunch program that was not funded. Mr. Hotch asked for the committee's help in protecting rivers, streams, cultural foods, and cultures; the impact of HB 138 on the village would be irreparable because the eternal village cannot be sustained with polluted water: there could be no salmon, no bears, no eagles, nor an intact ecosystem. Mr. Hotch surmised some people do not understand the land - or want to protect the land - as do the residents of Klukwan.

[2:55:29 PM](#)

DAN CANNON pointed out a Tier 3 designation denies new permits for long-term degradation and does not address cleaning fish, motorboats, culture camps, or private septic systems. Speaking hypothetically as a nominator, he opined the governor's seven-person committee would not accept a cost-benefit analysis based on information from websites, and he could not afford a professional analysis, thus he would not be able to bring a nomination. If his nomination were accepted, he described the multi-step process that would follow, and concluded HB 138 creates a maze of bureaucracy, which would be extremely hard for Alaskans to overcome in order to protect their waters. Mr. Cannon observed the committee's vote to move HB 138 out of committee will indicate to constituents whether a legislator is

voting on the side of the people and science, or on the side of unnecessary government bureaucracy and corporate polluters. He urged the committee to oppose HB 138.

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SKWEIT MORGAN began her testimony in her Native language. She said her English name is Jessie Morgan and she is a child of the Eagle/Killerwhale and is Raven/Sockeye from Haines. Speaking as Tlingit, and an Alaskan, she said she opposes HB 138; the bill does not create a nomination or designation process, because both already exist, but is intended to increase barriers to tribal governments who seek to restore sovereignty over their land and waters. Ms. Morgan said the Chilkat Indian Village and Klukwan are owned by the Tlingit people, and because of their respect for salmon and the knowledge of their ancestors, Alaska still has salmon; however, the mismanagement of the fishery has impacted communities that depend on the Chilkat River and its salmon. She said salmon returns are unpredictable and the government should not remove the right to protect clean waters. Ms. Morgan said Alaska is not open for business and restated her opposition to HB 138.

[3:00:07 PM](#)

ANDREA HERNANDEZ said she is a 46-year resident of Southeast Alaska. She expressed her understanding that rivers have been nominated for Tier 3 designation, but nominations are waiting for a specific process with which to officially designate the rivers. Ms. Hernandez urged the committee to hear further public testimony if the legislation is necessary. She spoke in opposition to HB 138 because she does not want to take science out of the process and thereby make the process more political, which would not work. She said all Alaskans value clean water and need to be assured there is a fair and science-based process in place to protect water resources; as a resident who relies on commercial salmon fishing for her livelihood, nothing is more important. Ms. Hernandez agreed with previous testimony that it should be easier to protect waterways than to pollute them.

[3:02:42 PM](#)

SARAH DAVIDSON disclosed she manages the water program at the Southeast Alaska Conservation Council and is speaking on her own behalf. She expressed her opposition to HB 138, [Version K], noting the committee substitute, like the previous version of the bill, does not provide an adequate pathway for Alaskans to

protect the waters on which they depend. A three-step political process, rather than an administrative science-based process, ensures there will never be a Tier 3 water designation in Alaska. Further, requiring that the nominator pay all costs puts the onus on local communities that have fewer resources to prevent, mitigate, and respond to contaminated water and food sources. She said by continuing to permit pollution without the consent of - or response from - the most affected communities, the state puts profit over public health and safety. Water is a common good that belongs to all and must be actively managed for the good of all; local knowledge and local experts should have a place and a voice in protecting waters. A Tier 3 designation is the only way for Alaskans to protect their pristine waters, and the designation process must be accessible, affordable, and science-based, in order to meet the purpose of EPA's antidegradation mandate. Ms. Davidson strongly urged the committee to oppose the bill.

[3:05:46 PM](#)

EMILY ANDERSON, Alaska Program Director, Wild Salmon Center, informed the committee she is an attorney who specializes in natural resource law and who has followed the outstanding national resource water (ONRW) issue for ten years. She pointed out the process to establish Tier 3 waters in the state is a mandate of the Clean Water Act. The legislature has delegated to DEC the authority to set water quality standards and to classify Alaska waters into tiers; DEC has established a process to regulate Tier 1, 2, and 3 waters, but has refused to establish an administrative process to nominate and designate Tier 3 waters. She urged for the committee to question whether the process drafted in HB 138 is fairly balanced and accessible to the public. She opined the decision should be based on whether Alaskans can act to protect clean water and fisheries; furthermore, decisions to protect water should be science-based and not based on political policy. Ms. Anderson said DEC is in the best position to make a science-based decision, rather than the legislature. In addition, the proposed nominations do not need to be processed twice, and HB 138 establishes a highly political process in doing so. If the legislature chooses to establish an advisory commission, it should include parameters for members of the commission and delegate nominating authority to the commission; in addition, commission members should have minimum subject matter qualifications. She concluded the state constitution reserves fish, wildlife, and water for its citizens.

REPRESENTATIVE SPOHNHOLZ asked for the meaning of science-based.

MS. ANDERSON explained if the nomination process is not based in an understanding of the value of the waterway to residents, fisheries, water quality, and other scientific aspects, the process becomes political; if so, the reasons to pollute the water could outweigh the other values.

CO-CHAIR TARR recalled there is disagreement between legislative and executive branch attorneys as to whether DEC is authorized by the state constitution to independently make a Tier 3 designation.

MS. ANDERSON expressed her support for the opinion put forth by legislative legal services, because the legislature has broad authority to delegate appropriation powers to the executive branch, and thereby through DEC. The issue addresses water quality standards, and DEC holds the authority to create water quality standards and thus antidegradation policy.

[3:11:53 PM](#)

JESSICA PLACHTA, Executive Director, Lynn Canal Conservation, informed the committee Lynn Canal Conservation (LCG) is based in the Chilkat Valley and represents over 300 local members. She spoke in opposition to HB 138 and in support of Tier 3 nominations put forth by Alaska Native Tribes. The Chilkat Valley was formed by the Chilkat River which has been recognized as one of America's top ten most endangered rivers, and that five years ago was nominated by the Chilkat Indian Village for Tier 3 designation. She opined HB 138 is worse than nothing because it would drown DEC's informed science-based authority in red tape. Further, HB 138 would give the governor veto power over Tier 3 designations, the governor's appointed commission would vet nominations, and the right to clean water would be politicized. Health, subsistence-based food security, and economies depend upon clean water, as do the fishing and tourism industries. Endangering water quality also endangers health, wealth, well-being, the rights of indigenous people, and one of the world's last valuable and healthy salmon runs. The bill also takes away the rights of Alaskans and risks Alaska's most sustainable and lucrative industries; HB 138 is unnecessary, unjust, and scientifically unsound. She suggested the bill should be referred to the House Special Committee on Fisheries and the House Special Committee on Tribal Affairs.

[3:14:51 PM](#)

MEREDITH TRAINOR, Executive Director, Southeast Alaska Conservation Council (SEACC), informed the committee SEACC is a regional conservation nonprofit based in Juneau. She said she was speaking on behalf of over 2,500 Alaskan SEACC supporters and 530 supporters who have signed a petition rejecting a political process for evaluating Tier 3 nominations. In its current form, HB 138 would make it nearly impossible that any Tier 3 waterbody would ever be designated in Alaska. The ability of a citizen to nominate waters for Tier 3, or ONRW, status is a necessary complement to the ability of private citizens and industry to pollute some of Alaska's waters. Further, if some of Alaska's waters are of exceptional significance, there must be a mechanism to achieve Tier 3 designation. She said the appropriate body for evaluating nominations is DEC; DEC's mission is to protect human health and the environment, which aligns with the purpose of a Tier 3 designation. However, DEC's ability to fulfil its mission has been diminished in recent years by funding cuts and changes in leadership. Ms. Trainor stressed sufficient funding must be restored to DEC in order that it may evaluate the type of projects that impair or damage state waters, and using the best science available, evaluate nominations of Tier 3 waters. She pointed out it is the responsibility of the legislature to do no additional harm to Alaska's natural environment and to ensure residents have the ability to identify parts of the environment that are truly exceptional and should be protected. She concluded SEACC opposes HB 138 as written.

[HB 138 was held over with public testimony open.]

[3:18:45 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:18 p.m.