

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 14, 2020

1:02 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative John Lincoln, Co-Chair
Representative Chris Tuck

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
02/10/20	(H)	Heard & Held

02/10/20 (H) MINUTE (RES)
02/14/20 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

JON LYMAN
Juneau, Alaska
POSITION STATEMENT: Testified in opposition during the hearing of HB 138.

KATHRIN MCCARTHY
Juneau, Alaska
POSITION STATEMENT: Testified in opposition during the hearing of HB 138.

ROBERT ARCHIBALD
Homer, Alaska
POSITION STATEMENT: Testified in opposition during the hearing of HB 138.

BOB SHAVELSON, Advocacy Director
Cook Inletkeeper
Homer, Alaska
POSITION STATEMENT: Testified in opposition during the hearing of HB 138.

LINDSAY LAYLAND, Deputy Director
United Tribes of Bristol Bay
Dillingham, Alaska
POSITION STATEMENT: Testified in opposition during the hearing of HB 138.

KATHERINE CARSCALLEN, Executive Director
Commercial Fishermen for Bristol Bay
Dillingham, Alaska
POSITION STATEMENT: Testified in opposition during the hearing of HB 138.

KATIE DAWSON
Homer, Alaska
POSITION STATEMENT: Testified in opposition during the hearing of HB 138.

MELISSA ARONSON
Haines, Alaska
POSITION STATEMENT: Testified in opposition during the hearing of HB 138.

KATI CAPOZZI, President and CEO
Alaska Chamber of Commerce
Anchorage, Alaska

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

MARLEANNA HALL, Executive Director
Resource Development Council for Alaska
Anchorage, Alaska

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

GERSHON COHEN PhD, Project Director
Alaska Clean Water Advocacy
Anchorage, Alaska

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

SHANNON DONAHUE
Haines, Alaska

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

DEANTHA CROCKETT, Executive Director
Alaska Miners Association
Anchorage, Alaska

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

ROBERT VENEABLES, Executive Director
Southeast Conference
Juneau, Alaska

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

JAN CONITZ
Fairbanks, Alaska

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

REPRESENTATIVE CHUCK KOPP
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor of HB 138, answered
a question and provided comments during the hearing of HB 138.

ERIC HOLLE

Haines, Alaska

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

LAURA FLEMING

Juneau, Alaska

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

RICHARD FARNELL

Juneau, Alaska

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

NANCY MORRIS LYON, Owner and Operator

Bear Trail Lodge

King Salmon, Alaska

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

JONATHAN WOOD

Juneau, Alaska

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

FREDERICK OLSEN JR

Sitka, Alaska

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

JOHN SONIN

Juneau, Alaska

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

LINDSEY BLOOM, Policy Director

Salmon State

Juneau, Alaska

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

MAKO HAGGERTY

Homer, Alaska

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

BRONK JORGENSEN, Chairman
Alaska Minerals Commission; Trustee
Fortymile Mining District
Tok, Alaska

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

HEATHER EVOY
Juneau, Alaska

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

MARK NIVER, Spokesperson
Commercial Fishermen for Bristol Bay
Wasilla, Alaska

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

ACTION NARRATIVE

[1:02:56 PM](#)

CO-CHAIR GERAN TARR called the House Resources Standing Committee meeting to order at 1:02 p.m. Representatives Hannan, Talerico, Spohnholz, Rauscher, Hopkins, and Tarr were present at the call to order. Representative Rasmussen arrived as the meeting was in progress.

HB 138-NATIONAL RESOURCE WATER DESIGNATION

[1:03:38 PM](#)

CO-CHAIR TARR 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."

[Before the committee was the committee substitute for HB 138, Version K, adopted as a working document during the bill hearing on 2/10/20 and held over with public testimony open.]

[1:06:45 PM](#)

JON LYMAN gave a brief history of his work with the Alaska Department of Fish and Game (ADFG) and his personal experience

living and working in Bush Alaska; he stressed the value of salmon and clean water to Alaskans living in villages. Mr. Lyman said similar to [the New England Fish Company], HB 138 guts Alaskans' right to clean water. He remarked:

One of the main reasons Alaskans voted for this state was to regain control of their fish and wildlife resources. New England Fish, in, in retribution for that, shut off virtually every run in the state for the last ten years before we became a state, and we went through twenty years of absolute hell with everyone from subsistence to commercial to personal use to sport, before the Alaska Department of Fish and Game finally got that resource back to health.

MR. LYMAN recalled discussions about protecting water and the environment and opined [the process written in HB 138] would prevent local groups from preserving their fisheries resource. For example, mining activities by the proposed Pebble Mine could affect the entire watershed and the affected communities could not respond. He concluded that fish are a billion-dollar resource in Alaska, but are not valued as such, and expressed his opposition to HB 138.

[1:10:17 PM](#)

KATHRIN MCCARTHY said she has been an Alaska resident since 1965 and expressed her deep opposition to HB 138, because it turns the process into a political process; for example, the bill grants the governor the discretion to appoint a nominating board and removes a right granted by the Clean Water Act. She said the process is deeply undemocratic and prevents people who don't have money to designate and protect pristine waters. She pointed out Alaska is the last state to have potable water on its land. Ms. McCarthy referred to the serious effects of a recent drought in Southeast Alaska. She concluded HB 138 is anti-subsistence and, from her experience in rural communities, does not reflect the needs of Alaska Native people.

[1:12:46 PM](#)

ROBERT ARCHIBALD said he has lived in Alaska since the '60s. He said outstanding national resource waters are national and he is troubled by the direction of the bill. Using seven subject matter experts, who are nominated by the governor and approved by the legislature, may take the science out of the spectrum.

He expressed his opposition to HB 138, which he said would politicize the issue and take science out.

1:14:25 PM

BOB SHAVELSON, Advocacy Director, Cook Inletkeeper, informed the committee Cook Inletkeeper is a nonprofit organization formed in 1995 that has over 8,000 members throughout Southcentral Alaska and that has been involved in salmon and salmon habitat issues and the Clean Water Act for over 25 years. Cook Inletkeeper is strongly opposed to HB 138, which has been amended and now adds more bureaucratic paralysis that would prevent nominations seeking to nominate important waters. Mr. Shavelson pointed out the Alaska Mining Association has paid a lobbyist \$120,000 over two years to promote the legislation and represent its interests; however, he opined the interests of the Alaska Mining Association are not the public's interests, and nonprofits and citizens' groups do not have equivalent funding.

1:16:17 PM

LINDSAY LAYLAND, Deputy Director, United Tribes of Bristol Bay (UTBB), said UTBB is a tribal government consortium, headquartered in Bristol Bay, which represents fifteen tribal governments and over 80 percent of the in-region population that depends on subsistence activities and clean waters for a traditional way of life. Along with other tribal governments, UTBB has submitted proposals to nominate and designate Tier 3 waters. These proposals have been blatantly disregarded and now would be directed to a politically motivated and politically driven process within HB 138. She expressed UTBB's opposition to HB 138 and said it is the responsibility of the Department of Environmental Conservation (DEC), as water quality experts, to designate Tier 3 waters because a decision by an appointed board or the legislature politicizes the process rather than utilizing sound science and other relevant factors. She strongly urged for the committee to consider major amendments to HB 138 that would eliminate the appointed commission and legislative approval or action in designating outstanding national resource waters or Tier 3 waters.

1:18:45 PM

KATHERINE CARSCALLEN, Executive Director, Commercial Fishermen for Bristol Bay, said she is a lifelong Bristol Bay resident and commercial fisherman. She expressed opposition to HB 138. Commercial Fishermen for Bristol Bay is a national coalition of

fishermen working to protect 14,000 jobs and \$1.5 billion in annual economic activity provided by Bristol Bay salmon. Alaska's fisheries management systems in Bristol Bay and Alaska are examples that prove large sustainable fisheries can operate with public participation and science-based decisions. Outstanding national resource water designations are critical to protect essential waterways. Ms. Carscallen said the committee can create a strong science-based process incorporating sound management and protection of Alaska's renewable resources; however, HB 138 creates a political process without science and public participation. She recalled Bristol Bay residents submitted an application ten years ago to designate portions of the Koktuli River as Tier 3 waters; since then, the state and proponents of the Pebble Mine stated [nominators of Koktuli River] should trust the state and federal processes to protect waters. At this time, [nominators] "face a fast track federal permitting process"; HB 138 seems to be a success for Pebble's lobbying efforts to erode the existing process. She said determining waters of ecological significance in Alaska should not be a policy decision; DEC and ADFG are the most qualified agencies to do so and the process should be open and public. She urged the committee to not rush to decision and ensure Alaska remains a leader in sustainable resource management.

[1:21:18 PM](#)

KATIE DAWSON expressed her opposition to HB 138 which is a tactic to push through the Pebble Mine project despite overwhelming evidence of the damage the mine would cause Bristol Bay. She said the bill is a bureaucratic maneuver that doesn't change the following facts: the Pebble Mine is a disaster for Alaska because it will pollute Bristol Bay and environs; Pebble Mine is an unrecoverable and unfixable ecological disaster; it will destroy the salmon fishery in Bristol Bay and its ecosystem; it will destroy a viable economy based on tourism, fishing, and bear viewing; it will destroy salmon streams, ecosystems, and fishermen; it will destroy bears who fish together on the McNeil River. Ms. Dawson cautioned against dredging a harbor that experiences stormy weather and other dangerous mining activities that would eventually lead to the death of wildlife, only to gain short-term profits for a few. She restated her opposition to HB 138.

[1:24:46 PM](#)

MELISSA ARONSON expressed her opposition to HB 138. She said HB 138 proposes a political decision instead of a decision that

should be based on solid science and looking to a sustainable future that provides for a clean environment, social justice, Native and subsistence users, and salmon. The decision should also consider long-term economic wellbeing provided by industries such as the salmon fisheries; mining would be a short term disaster and Alaska's clean waters need to be protected from political influence.

REPRESENTATIVE RASMUSSEN pointed out an advisory commission would consist of the commissioners of the Department of Natural Resources, DEC, and ADFG, all of whom have science-backed teams to help make decisions; in fact, the current process with legislative approval was set by DEC and lacks science-based decision-making. She said adding the commission would strengthen science-based decisions.

[1:27:46 PM](#)

KATI CAPOZZI, president and CEO, Alaska Chamber of Commerce, said Alaska Chamber is an organization dedicated to improving the business climate in Alaska and represents hundreds of businesses that share a common goal to make Alaska a viable and competitive place to do business. She expressed support for HB 138, Version K, and said water designated outstanding national resource water could negatively impact responsible resource and industrial development in Alaska. According to DEC, approximately 175 million acres of land in Alaska are considered wetlands - which is over 43 percent of the total state acreage - and more than 50 percent of Alaska is occupied by water. There is a critical need to manage Alaska's water resources for responsible use and development for the present and future of the state's economy. Further, without a legislative designation and water management statute, Tier 3 designation could prohibit responsible and regulated development that could create new jobs, increase national security, and strengthen global competitiveness. Specifically, [Tier 3 status] could impact the waterbody's users such as motorized vessels, residential and commercial septic systems, stormwater permits, seafood processors, timber harvesting, and others. She directed attention to her previously submitted written testimony dated 4/28/19. The Alaska Chamber seeks a fair and balanced approach in this regard and fully supports HB 138 and that only the legislature is authorized to make a Tier 3 water designation.

[1:30:27 PM](#)

MARLEANNA HALL, executive director, Resource Development Council for Alaska (RDC), informed the committee RDC is a statewide trade association comprised of individuals and companies from fishing, forestry, mining, oil and gas, and tourism industries, and including twelve Alaska Native corporations. She said RDC is concerned that Tier 3 water nominations have been viewed by entities opposed to development as obstruction opportunities; without a proper designation process, unnecessary nominations will be made to target projects and will cause unnecessary expense in response to questionable and unwarranted nominations and resulting litigation. Unnecessary Tier 3 designations would replace existing water quality protections with total prohibition of new or expanded discharges, severely limiting activities; however, HB 138 would help protect land and access for communities, Alaska Native corporations, and rural development. Ms. Hall said HB 138 would put into law a proper mechanism, for nomination and designation, and would require proper vetting of all nominations; only the legislature should have the authority to designate Tier 3, consistent with the Alaska State Constitution, and she urged the committee to report HB 138, Version K, from committee.

[1:33:02 PM](#)

GERSHON COHEN PhD, project director, Alaska Clean Water Advocacy, said Alaska Clean Water Advocacy has been working for 28 years to keep Alaska's water clean and productive. He expressed his opposition to HB 138 and directed attention to his written comments that have been provided to the committee. Dr. Cohen, in response to Representative Rasmussen, said the proposed [advisory commission] supports a science-based decision; however, because the legislature has veto power over the commission's decision and that of DEC, the bill "makes this once again a completely political decision." Further, he said Tier 3 protection does not prohibit septic systems or running boats and offered to correct misinformation in this regard. Finally, he explained most states utilize a process that uses DEC or an equivalent agency, with or without an advisory committee, to make Tier 3 decisions [Due to technical difficulties, further testimony was lost. Additional testimony by Dr. Cohen was heard later in the meeting.]

[1:35:33 PM](#)

SHANNON DONAHUE said she lives at the mouth of the Chilkat River, which is a waterbody that has been nominated for Tier 3 status. She disclosed she works for the Southeast Alaska

Conservation Council and the Great Bear Foundation and is representing herself. Ms. Donahue expressed her opposition to HB 138, because it implements an onerous political process for the evaluation and designation of Tier 3 water nominations, and strips Alaskans of their right to protect important waters. She referred to a media report about the number of toxic releases in Alaska in 2018 and said it should not be easier to pollute waters than to protect them. She questioned the sponsor's statement, saying that instead HB 138 creates a political process to designate Tier 3 water nominations through the legislature, replacing the existing DEC process. Ms. Donahue observed there is significant opposition to HB 138, because Tier 3 nominations should be a fair and transparent process, and it is the only process available to Alaskans to protect valued waters. She stressed the designation protects all existing uses and short-term degradation of water, such as outboard motors, private septic systems, and fish cleaning, and only denies permits for long-term permanent degradation and thus protects normal use of the waterbody by Alaskans. An advisory commission would add a layer of politics to the evaluation process, and she opined residents with differing opinions on Tier 3 status for the Chilkat River all favor an apolitical administrative process by DEC to determine the ecological, cultural, and recreational value of a waterbody; she asked the committee to provide additional hearings for public testimony on HB 138, and to oppose the bill.

REPRESENTATIVE RASMUSSEN asked if Ms. Donahue was aware the current process through DEC was implemented by the previous administration and requires legislative approval.

MS. DONAHUE offered to review her documents.

[1:39:25 PM](#)

DEANTHA CROCKETT, executive director, Alaska Miners Association (AMA), informed the committee AMA is a trade association that represents all aspects of the mining industry. She expressed AMA's support of HB 138 in its original version that contains two key provisions: the Tier 3 designation process is to be in statute and by a vote of the legislature; requires that a waterbody that has been nominated for Tier 3 designation may not be managed as a Tier 3 waterbody until so designated by the legislature. Further, AMA believes HB 138 allows for individual participation because any individual could request a legislator to propose a bill to nominate Tier 3 water. Speaking from her experience, she pointed out legislative committees that hear

proposed environmental legislation routinely request testimony from relevant resource agencies to debate the merits of a proposed bill, as would be the case related to a Tier 3 water nomination. Ms. Crockett said a coalition of local governments, Alaska Native corporations, and members of the oil and gas and mining industries are worried about the economic implications placed on a waterbody that has been designated Tier 3. She directed attention to the proposed committee substitute to HB 138, [Version K], beginning on page 2, line 29, and continuing through page 3 line 9 which read:

- (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;
- (D) a description of the existing water quality and any technical data on which the description is based;
- (E) a discussion of any nonpoint source activity to be conducted in the foreseeable future that may affect water quality;
- (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 project; and

MS. CROCKETT said AMA finds value in the criteria required to be considered a complete nomination and in particular [subparagraph (F)] that requires an economic analysis. She remarked:

... a Tier 3 water designation has really become a tool for antidevelopment groups to use and you can see that in some of the existing nominations. There's five nominations currently, none of which have been designated and of three of those, two of those literally specify the threat of either large scale development or a family-run placer mine in the Brooks Range as a threat to the water. They don't take into consideration existing water quality protections and they don't take into consideration the other water quality dischargers.

MS. CROCKETT advised the aforementioned issues are already regulated through existing statutes thus additional Tier 3 water designations need to be in the hands of the legislature as is

consistent with the Alaska State Constitution. She said AMA will further evaluate the committee substitute and expressed support for HB 138.

[1:42:35 PM](#)

REPRESENTATIVE HANNAN asked for clarification of the difference between point source permitting and nonpoint source permitting.

MS. CROCKETT offered to provide a written explanation.

REPRESENTATIVE HANNAN further questioned whether any of the five major mines operating in Alaska currently have nonpoint source activity permits or if all their permitting regulations are under point source. She remarked:

It is an element of the bill that we haven't delved into too much, but one of the things, as I read more, all of our minds are [on mines that are] ... regulated mostly in discharge by point source, meaning the mine is letting this water source go, as opposed to nonpoint source - there's a[n] outboard running on the river - and to some degree we're distracted by the idea of talking about outboards being the issue, but the vast majority of people who nominate rivers, what they're talking about is, concern over point source discharges. ... The five operating mines have probably the largest plethora of permits, [and are] familiar with that process.

MS. CROCKETT said she would provide a document that describes the mining industry and community wastewater treatment systems.

CO-CHAIR TARR inquired as to whether Ms. Crockett was familiar with Tier 3 processes in other states and the reaction of mining associations in other states.

MS. CROCKETT advised there is a wide range of processes in other states and state constitutions differ; she pointed out Alaska's constitution requires that certain decisions must be before the legislature. She offered to provide written information on the policies of other states.

CO-CHAIR TARR expressed interest information about Minnesota's Tier 3 designations that are located in mining districts.

MS. CROCKETT said she would provide the requested information.

1:46:56 PM

DR. COHEN said in most states an agency similar to DEC makes Tier 3 decisions, some states have a water quality board or a commission that does so, and a minority of states require legislative approval. He pointed out Alaska Statutes Title 46 grants DEC the authority to set water quality standards and the U.S. Environmental Protection Agency (EPA) recognizes that the agency that sets water quality standards can be responsible for antidegradation protections; therefore, nothing indicates DEC is not capable of making a Tier 3 designation.

CO-CHAIR TARR surmised some consider Tier 1 and Tier 2 designations as designations that allow permissible activities, and that Tier 3 designations are equated with those of a refuge or a very restrictive status. She expressed her understanding Tier 3 restrictions do not apply to short-term activities, but that water quality cannot be reduced over a long term. She noted when waters are designated as a refuge, the designation is through legislation.

DR. COHEN explained Tier 1 waters are waters that have a problem meeting some water quality standards, such as waters that need improvement; Tier 2 waters are defined as waters that meet or exceed all water quality standards and thus permits may be issued to lower water quality to a certain standard. Tier 3 waters are waters where expanding or new point source discharges are not allowed. He remarked:

I don't know where folks are getting this idea about the septic systems and the motor and the boats because if you are not having to get a point source discharge permit, there will be no Tier 3 evaluation of your activity. So, it's really not so much about what they allow or what they don't allow as a group - Tier 1, Tier 2, Tier 3 - it's really just three definitions of, of, it's three ways of describing the waters of the state, and the federal government requires Alaska to, to a look at all of its waters and decide whether or not they are Tier 1, Tier 2, or if they should be considered Tier 3 water. ... And you mentioned, that the issue of temporary versus long-term ... even in Tier 3 waters Army Corps of Engineers can authorize activities in those waters that would create sedimentation for some period of time, you know, if you had to build a bridge or you had to repair a

culvert ... that would be allowable in a Tier 3 water. What the Tier 3 waters do not allow is that you can have an expanded or a new discharge of pollutants into that public water because the goal is to maintain the quality of the water where it is now. In fact, there are also, there are waters around the country that are considered impaired waters, they're listed under [section 303(d)] of the Clean Water Act, as impaired waterbodies, and yet they are Tier 3 waters, because they're considered to be of some great importance in some way or another that their water quality should be maintained where it is, and that's what Tier 3 would do, it would maintain water quality where it is today.

[1:53:53 PM](#)

ROBERT VENEABLES, executive director, Southeast Conference, said Southeast Conference is the regional development organization for Southeast Alaska; its mission is to support and promote activities for healthy communities, strong economies, and a quality environment. Mr. Venebles said Southeast Conference members are concerned about the aforementioned issue and urged the committee to focus on creating a process that meets federal requirements. He noted in February 2018, Southeast Conference passed a resolution in support of a process in which the executive branch performs scientific research and the legislature authorizes the final Tier 3 designation. He said Version K would ensure voices are heard and would meet federal mandates.

REPRESENTATIVE RASMUSSEN asked whether Southeast Conference is in support of the bill.

MR. VENEABLES said the bill is consistent with the aforementioned resolution passed by the Southeast Conference board.

CO-CHAIR TARR asked how smaller communities in Southeast understand the impact of the allowable activities on Tier 3 water.

MR. VENEABLES acknowledged Southeast Conference has members on both sides of the issue, which explains why it is in support of the process established by the bill. Waters in Southeast are pristine, and the membership of Southeast Conference is comfortable with the legislature providing a process.

[1:58:27 PM](#)

JAN CONITZ said she has been a fisheries biologist for 20 years and worked in marine biology and as a commercial fisherman. She opined the problem with the bill is it is intended to provide a better process for the public nomination of outstanding national resource waters (ONRW); however, the bill creates unnecessary and unreasonable burdens to public nominators. She inquired as to why there are several ONRW nominations in the state, but none have been designated. Ms. Conitz pointed out Alaska has special waters that deserve some form of protection. She said the nomination process contrasts with the simple administrative process in place to apply for a permit to discharge pollutants into waterways; it should not be easier to discharge pollutants than to protect waterways from discharges. Further, once water is impaired at a significant level, the waterbody will not function in its natural state; in fact, restoration is rarely possible. She urged the committee to consider the value of water that provides living resources such as salmon.

REPRESENTATIVE RASMUSSEN asked the bill sponsor for clarification as to whether any member of the public could bring forth a nomination through a bill before the legislature and avoid the cost factor [of a submission through the commission].

[2:02:00 PM](#)

REPRESENTATIVE CHUCK KOPP, speaking as the sponsor of the bill, said correct, any member [of the public] may pursue the nomination of a Tier 3 water directly through the legislature.

[2:02:34 PM](#)

ERIC HOLLE expressed his opposition to [HB 138, Version K], and his support for keeping the Tier 3 process with DEC. He described his personal history of living near the Cuyahoga River in Cleveland, Ohio, that burst into flames because it was polluted with inflammable products, and chlorinated hydrocarbons, that are harmful to humans. Later, living in Colorado, he found miles of streams and rivers were biologically dead from acid mine drainage, molybdenum pollution, and naturally occurring radon. Three decades ago, he came to Alaska to find the state was lowering water quality standards to allow mixing zones for mines. [Lower Slate Lake located in the Tongass National Forest] is now a dumping ground for toxins and the proposed mines all across the state threaten history to repeat itself. Mr. Holle asked the committee to keep the Tier 3

process - as much as possible - under the control of citizens and stop [HB 138] from advancing.

[2:05:17 PM](#)

LAURA FLEMING said the bill is well-intentioned but offers a solution to a problem that does not exist. According to the sponsor statement, the EPA mandates the state designate ONRWs; however, 40 years ago EPA offered formal guidance on ONRW designations, and along with federal regulations, EPA guidelines recommend each state include a listing of ONRWs in its water quality standards, and that certain types of waters should be considered and that each state should provide notice of possible ONRW designations in water quality standards. Ms. Fleming opined ONRWs are not mentioned in the Clean Water Act; further, in 1979, legal opinion said EPA cannot demand or create state ONRWs through a federal process. As of 1983, neither revised water quality standards, rulemaking, nor preamble, stated that states have a mandatory duty to designate eligible waters as ONRWs or that EPA will do so. Ms. Fleming concluded in 1997, when Alaska gained primacy in water quality, the state assumed responsibilities it has not fulfilled, such as the process for designating Tier 3 waters. She related, in 2018, the DEC commissioner stated there is no process for designating Tier 3 waters and EPA has requested the state to develop a process, but EPA's expectation is that Alaska needs to identify implementation procedures for antidegradation and mixing zone policy; however, nowhere has EPA said the state needs to designate ONRWs. She said the state has responsibilities and rights related to Alaska waters; DEC, DNR, and ADFG need the resources to complete a publicly supported and transparent effort to establish criteria procedures and a process for implementing Alaska's antidegradation policy as required by the Clean Water Act, and no new legislation is needed.

[2:09:53 PM](#)

RICHARD FARNELL expressed his opposition to HB 138. He said there is a need to keep the Tier 3 water designation process free from politics, however, HB 138 would create a very politicized process for Tier 3 designation. He stressed the process to nominate important waterbodies should be available to the public, unimpeded by politics. Keeping the process a science-based process would provide the objectivity that is needed.

[2:10:54 PM](#)

NANCY MORRIS LYON, owner and operator, Bear Trail Lodge, said she was not in favor of HB 138, which turns maintaining the health of water into a political event that can sway opinion; protection of waters should never be controlled by the whims of political administrators, but should be left to sound science and consideration of the wisdom of individuals who depend upon the waters. She expressed her opposition to the bill and said she would prefer to see the process within DEC through a process that would include sound science, local knowledge, and other factors, which would be a more reliable and defensible process to protect waters. In addition, the process should use standards that can be evaluated and measured; although science-based entities would be placed on the [commission], Ms. Morris Lyon said it is dangerous for the final decision to be left in the hands of the current political party, whichever party that may be. She noted the utmost importance of the health of water to the state.

[2:13:07 PM](#)

JONATHAN WOOD said he has lived in Alaska for 12 years and noted his time spent on many rivers in Southeast Alaska, and in British Columbia and Yukon, Canada. He said the Chilkat River, which has been nominated for Tier 3 status, has significant cultural value to the Chilkat Tlingit and the village of Klukwan. Mr. Wood said he is strongly opposed to HB 138, Version K, and feels that DEC should be the primary authority to determine and designate Tier 3 waters; taking authority from DEC equates with taking from Alaskans the ability to participate in the process, and would leave communities faced with an insurmountable gauntlet of obstacles to protecting vital watersheds. Mr. Wood opined designating a Tier 3 waterway should be a science-based administrative process and not a political process conducted by a committee appointed by the governor without legislative oversight. He pointed out a nomination recommended by the committee still needs legislation passed by legislature and could be vetoed by the governor. Mr. Wood said an outside corporation can file a six-page form in order to discharge waste into a shared waterway; the process to protect shared waterways should be similar. He characterized the process as undemocratic, un-Alaskan, and virtually impossible; Alaskans deserve the right to protect waterways of economic, cultural, and environmental significance, and he said he strongly opposed HB 138.

REPRESENTATIVE RASMUSSEN asked whether Mr. Wood was opposed to legislative oversight or the [commission] that would be created by HB 138. She pointed out DEC regulations that delegate legislative approval were in effect during the prior administration, which was represented by a governor from a different political party than the current administration.

MR. WOOD restated the process should be an administrative process not solely in the hands of the legislature, regardless of the prevailing political party; further, the commission places too many hurdles to the designation of Tier 3 water. Because none of the current nominees have been successful, there must already be significant hurdles in place.

REPRESENTATIVE RASMUSSEN concluded Mr. Wood was opposed to the existing process, through DEC, which gives the legislature final approval.

MR. WOOD said an administrative process in combination with a legislative process makes more sense than a solely political process.

[2:18:38 PM](#)

FREDERICK OLSEN JR said he is a lifelong Alaskan living in Sitka. He said a natural resource extraction state is another term for a colony and Alaska acts like a colony in many ways, especially related to its environment: some outsiders profit and residents are left with their messes. Polluters fear environmental protections, such as Tier 3 designations, and seek to evade or prevent restrictions on their operations; Alaska has no Tier 3 water designations, however, Tier 3 designations are needed. Nominations include the Chilkat River, which has been recognized in the top ten of America's most endangered rivers. Governments need to look out for residents' health, and not promote rich individuals or companies at the people's expense, and to protect clean water. He observed the bill plays into the hands of industry and is an example of state overreach. Mr. Olsen asked whether Alaska wants to be the last frontier or another tailings storage facility.

[2:20:50 PM](#)

JOHN SONIN said he represents civilized humanity and said nothing is more equalizing in a democracy than water. An attempt to represent the will of the people through a board of commissioners with a political agenda is destructive to the

purpose in life, which is to produce. He characterized water as the equalizer because everything needs water. A representative democracy is a way to express multiple and varied opinions through a republic form of government. Mr. Sonin pointed out the republic form of government is now political; for example, an administration-appointed commission makes the commission political, which is undemocratic, however, the process of a republic is to reflect the personal opinion of its constituents.

REPRESENTATIVE RASMUSSEN asked Mr. Sonin whether his opposition to the bill is to the commission or the legislative approval process.

MR. SONIN said his opposition is to the addition of a commission; the legislative approval process is closer to representing the democratic will of [constituents].

[2:26:48 PM](#)

LINDSEY BLOOM, policy director, Salmon State, informed the committee Salmon State is an Alaska initiative working to defend salmon habitat and to promote policies that guarantee Alaska will remain a salmon state and home to a healthy and abundant salmon resource which provides culture, food, income, employment, and recreation to all. Salmon State is opposed to [HB 138, Version K] as written because the addition of a commission makes the process less balanced or fair. She noted as a previous member of the board of the Alaska Independent Fishermen's Marketing Association, she was part of a group that nominated the Kaktuli River, and so has followed the nomination process under several administrations. Ms. Bloom pointed out the issue is not an extreme prohibition on [access to] water; as defined in the Clean Water Act, a Tier 3 water designation would maintain the long-term quality of a waterbody and does not prohibit any activities. She opined this does not differ than authorizing a permit for a mixing zone; therefore, if [the state] issues a permit to discharge and degrade the water quality in waterbodies, the standard should be equal to the process to protect water quality, which is what her organization seeks. She recalled it was many years before the nominators of the Kaktuli River were notified by DEC that the nomination was denied because Alaska does not have a process to make the Tier 3 determination; further, DEC has no regulations that address the process, only guidance documents. In fact, Salmon State believes legislation is not needed; all that is needed are DEC regulations to clarify the standards of Tier 3 waters and the criteria for a Tier 3 designation. Ms. Bloom concluded [Version

K] adds bureaucracy and red tape to the process and creates additional hurdles to nominators. She offered to submit additional written testimony.

REPRESENTATIVE RAUSCHER surmised Ms. Bloom is in support of neither the current process nor the bill.

MS. BLOOM said correct; she added there is no current process and for the last 15 years the issue has been passed between DEC, the administration, and the legislature. Speaking from her experience, she said the current guidance from DEC is, "Until there's a process you can go to the legislature"

[2:33:40 PM](#)

REPRESENTATIVE TALERICO asked what is meant by long-term [when related to water degradation].

MS. BLOOM said the term is defined in the Clean Water Act, which she would provide; as related to the Bristol Bay fishery, she said state permits for the proposed mining project at the headwaters of Bristol Bay would allow for contamination of water in perpetuity, which to her means for generations to come.

REPRESENTATIVE RASMUSSEN opined the state makes lengthy and fair decisions related to resource development; she has heard testimony that the permitting process for proposed mines can cover decades. She said she understands the frustration of those waiting for a Tier 3 water designation and also the frustration with the mining permitting process.

MS. BLOOM stated Alaska has issued hundreds, if not thousands, of authorizations and permits for discharges in mixing zones but has never issued a Tier 3 protection of a waterbody.

[2:36:57 PM](#)

MAKO HAGGERTY expressed his opposition to HB 138 and his agreement with previous opposing testimony. He said he is an enthusiastic fisherman who drinks water and HB 138 does not serve the citizens of Alaska.

[2:38:06 PM](#)

BRONK JORGENSEN, chairman, Alaska Minerals Commission (AMC), and trustee, Fortymile Mining District, said he is lifelong Alaskan living in Tok. Speaking as chairman of AMC, he said the role of

AMC is to recommend strategies to the governor and legislature to mitigate constraints on mineral development in Alaska. In its 2020 report to the legislature, AMC noted governance of Tier 3 water is one of its top priorities and it supports the bill and urges the committee to work with industry and other parties to assure that designation of Tier 3 waters resides with the legislature. Speaking as trustee for the Fortymile Mining District, and as a family placer miner, he said having a river designated as a Tier 3 water would shut down his family placer mine and others. The designation of Tier 3 waters must be well-vetted to not unduly harm family placer miners and other users. Mr. Jorgensen cautioned he has been harmed by minor federal designations, which have had a dramatic effect on family placer miners and small business operators. The mining district has some concerns about the proposed advisory committee, however, ultimately the decision to designate Tier 3 water should reside with the legislature. He stated this is a democratic process. In response to Co-Chair Tarr, he said the 2020 AMC report was finished and offered to provide copies to the committee.

[2:42:12 PM](#)

HEATHER EVOY began her testimony in her Native language. She said she is Tsimshian from the Eagle Clan and was born and raised in Ketchikan. Ms. Evoy expressed her opposition to HB 138, stating her agreement with testimony by Ms. Bloom in that it should not be more onerous to protect Alaska waters than to pollute them. She characterized the [HB 138] process as politicized and - speaking as an indigenous person - said she does not support sacrificing water to a political process; in fact, the definition of equity is freedom from bias or favoritism and she pointed out all of the current five nominations are from tribal bodies. Ms. Evoy suggested the lack of DEC's progress to designate the aforementioned nominations is a denial of tribal sovereignty. Noting there has been support for the bill from Native corporations, she said corporations have a fiduciary responsibility to maximize their shareholders' benefits. She restated her opposition to the bill and urged for public participation in the process.

REPRESENTATIVE RASMUSSEN asked if Ms. Evoy supports legislative approval of Tier 3 water designation.

MS. EVOY said she did not due to the influence of industry.

REPRESENTATIVE RASMUSSEN asked Ms. Evoy to suggest how to incorporate public participation in the designation process.

MS. EVOY opined DEC could implement a process and not ignore nominations for another decade.

[2:47:33 PM](#)

MARK NIVER, spokesperson, Commercial Fishermen for Bristol Bay, said he is a 42-year Alaska resident, retired from BP, and a 40-year commercial fisherman in Bristol Bay. He said he represents 1,400 fishermen in Bristol Bay and expressed their opposition to HB 138. Mr. Niver surmised the nomination of the Kaktuli River system for Tier 3 designation has waited eight years because of its proximity to the Pebble Mine prospect. He questioned the trustworthiness of Alaska's political system and pointed out the commissioner of DEC was confirmed by the legislature, although a large majority of public testimony opposed his nomination, and then related a prior conversation with U.S. Congressman Don Young of Alaska. Mr. Niver said, "Alaska has the best government that money can buy." He opined [Article 8, section 2 of the Alaska State Constitution] does not give big business permission to "tear up the countryside." He said Commercial Fishermen of Bristol Bay want to take care of Alaska's waterways for future generations.

REPRESENTATIVE RASMUSSEN asked what process for Tier 3 water designation Mr. Niver would support.

MR. NIVER suggested legislation should be proposed that grants more authority so only DEC would make the decision. He noted the commissioner of DEC is a miner, and members of the public could contract their legislators directly without using a committee and without influence.

REPRESENTATIVE RASMUSSEN has heard extensive public comment that "the power should lie within DEC and I've heard your ... distaste towards [DEC] Commissioner Brune." She pointed out the administration appoints commissioners and their confirmations by the legislature are a political process; further, a decision by one person does not provide as much participation by Alaskans as a body with representation from different regions of the state. She questioned how DEC having the ultimate authority to designate is a less political process than legislative approval.

MR. NIVER said nominations would be mired by a committee and business interests could coerce votes. He gave an example of business influence on U.S. Senator Lisa Murkowski of Alaska.

REPRESENTATIVE RASMUSSEN observed Commissioner Brune received overwhelming support from her constituents; she said she and her colleagues make their decisions based upon public comments heard in committees and on opinions voiced by the constituents in their districts.

REPRESENTATIVE RAUSCHER stated the problem may be systemic and not the fault of one person.

[2:55:07 PM](#)

CO-CHAIR TARR, after ascertaining no one further wished to testify, closed public testimony on HB 138.

REPRESENTATIVE KOPP acknowledged the bill addresses a very important and longstanding problem. He briefly gave his personal background as a commercial fisherman in Bristol Bay and growing up at Lake Iliamna. With respect to administrative agencies and fishing, he cautioned the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, seeks to establish fish farms in Alaska waters; however, the elected representatives of the state legislature and the Alaska congressional delegation have successfully prevented this. There has been testimony supporting a depoliticization of the process, and more open and transparent citizen involvement, and he opined DEC commissioners do not support [the current] process because the DEC process is very limited in this regard and is not as open and transparent with public accountability as is practiced by the legislature. Therefore, DEC decisions would always be litigated. He said the advisory commission created by HB 138 is not litigable and every existing nomination would finally have a pathway to review and decision. Representative Kopp urged for decisions informed by Alaskans and their elected representatives.

REPRESENTATIVE RAUSCHER asked for a description of the current process.

REPRESENTATIVE KOPP explained the commissioner [of DEC] returns nominations to the nominator with direction to take the nomination to the legislature; however, the commissioner could deny the nominations and the bill would make the process more predictable.

[HB 138 was held over.]

[3:00:41 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:00 p.m.