

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 9, 2020

1:04 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. 240

"An Act relating to pollutants; relating to perfluoroalkyl and polyfluoroalkyl substances; relating to the duties of the Department of Environmental Conservation; and relating to firefighting substances."

- HEARD & HELD

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 240

SHORT TITLE: REGULATE PFAS USE; FIRE/WATER SAFETY

SPONSOR(S): REPRESENTATIVE(S) HANNAN

02/07/20 (H) READ THE FIRST TIME - REFERRALS

02/07/20 (H) RES, FIN
03/09/20 (H) RES AT 1:00 PM BARNES 124

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
02/14/20 (H) Heard & Held
02/14/20 (H) MINUTE(RES)
02/17/20 (H) RES AT 1:00 PM BARNES 124
02/17/20 (H) Heard & Held
02/17/20 (H) MINUTE(RES)
02/24/20 (H) RES AT 1:00 PM BARNES 124
02/24/20 (H) Heard & Held
02/24/20 (H) MINUTE(RES)
03/06/20 (H) RES AT 1:00 PM BARNES 124
03/06/20 (H) <Bill Hearing Canceled>
03/09/20 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

TIMOTHY CLARK, Staff
Representative Sara Hannan
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Hannan, sponsor of HB 240, answered questions and presented the sectional analysis for the committee substitute for HB 240, Version M.

ROBERT BILOTT, Attorney
Taft Stettinius and Hollister
Cincinnati, Ohio

POSITION STATEMENT: Provided testimony during the hearing of HB 240.

KELLY MCLAUGHLIN, Spokesperson
Gustavus PFAS Action Coalition
Gustavus, Alaska

POSITION STATEMENT: Testified in support during the hearing of HB 240.

REPRESENTATIVE CHUCK KOPP
Alaska State Legislature
Juneau, Alaska

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

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

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

RANDY BATES, Director
Division of Water
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: 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.

ACTION NARRATIVE

[1:04:10 PM](#)

CO-CHAIR GERAN TARR called the House Resources Standing Committee meeting to order at 1:04 p.m. Representatives Tuck, Hannan, Talerico, Rauscher, Rasmussen, Hopkins, Lincoln, and Tarr were present at the call to order. Representative Spohnholz arrived as the meeting was in progress.

HB 240-REGULATE PFAS USE; FIRE/WATER SAFETY

[1:05:31 PM](#)

CO-CHAIR TARR announced the first order of business would be HOUSE BILL NO. 240, "An Act relating to pollutants; relating to perfluoroalkyl and polyfluoroalkyl substances; relating to the duties of the Department of Environmental Conservation; and relating to firefighting substances."

[1:06:13 PM](#)

CO-CHAIR LINCOLN moved to adopt the committee substitute for HB 240, labeled 31-LS1509\M, Marx, 3/6/20, [Version M], as the working document.

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE HANNAN explained the committee substitute (CS) for HB 240 is a bill to address drinking water standards for water that has been exposed to seven perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals. In Alaska, PFAS exposure is mostly linked to firefighting foam that has been used at airports and in the the oil and gas industry. She said PFAS chemicals can suppress fire in high intensity fires, such as an oil field fire, and also do not decompose, thus are known as forever chemicals; these characteristics allow PFAS to starve out the oxygen in fire but linger in water in perpetuity. Over the past 40 years, PFAS have been linked to low birth weights, thyroid disease and cancer; testing has shown PFAS contamination is in the water table of many Alaska communities. The Department of Environmental Conservation (DEC) has declared PFAS are hazardous substances and HB 240 establishes the standards by which PFAS would be regulated; currently, DEC is deferring to levels set by the U.S. Environmental Protection Agency (EPA); however, EPA levels do not keep Alaska's water safe. The bill incorporates standards developed by the Michigan PFAS Action Response Team (MPART) which has researched PFAS contamination from industry and firefighting foam. The bill would ensure that once a community is contaminated, the polluter would pay for an alternative source of drinking water, such as alternative water systems, extending existing water systems, or new filtration systems; in addition, the polluter would have to pay for three years of voluntary blood testing for those exposed. Representative Hannan said HB 240 would stop the use of PFAS in Alaska, with certain exceptions for federal agencies and for use by the oil and gas industry as a firefighting foam. Further, HB 240 holds the party responsible for igniting a fire also liable for the use of PFAS firefighting foam, not the fire department. Finally, the bill requires DEC to develop a plan to dispose of

PFAS firefighting foam and equipment at no cost to Alaska communities.

[1:13:14 PM](#)

REPRESENTATIVE RAUSCHER questioned why the levels established by EPA are insufficient.

REPRESENTATIVE HANNAN said EPA uses standards that do not meet safe standards for drinking water, which will be fully explained by forthcoming expert testimony. In further response to Representative Rauscher, she said a fire department that uses PFAS foam to respond to an oil- and gas-fueled fire would not be liable for its use; however, a fire department testing PFAS foam would be liable for its use.

REPRESENTATIVE SPOHNHOLZ asked why the sponsor incorporated levels established by MPART instead of EPA.

REPRESENTATIVE HANNAN said the seven compounds addressed by the bill and identified by MPART have the most scientific research and conclusive data linking said compounds to disease causation.

REPRESENTATIVE SPOHNHOLZ restated her interest in the qualifications of MPART.

[1:16:10 PM](#)

TIMOTHY CLARK, Staff, Representative Sara Hannan, Alaska State Legislature, on behalf of Representative Hannan, sponsor of HB 240, informed the committee MPART assembled a working group of experts to analyze PFAS studies on the risks to health; after analysis, MPART determined prudent levels [for safe drinking water], which are the levels incorporated in the bill.

REPRESENTATIVE SPOHNHOLZ noted there is new science and information emerging on this issue and asked when MPART produced its recommendations.

MR. CLARK said MPART's working group recommendations for maximum allowable levels were reported in summer of 2019.

REPRESENTATIVE RASMUSSEN suggested putting the PFAS levels in statute may set a dangerous precedent because DEC has the authority to determine the levels, as evidenced by the "sulfolane" case in Fairbanks [State v. Williams Alaska Petroleum, Inc., Fairbanks Superior Court, 2020].

REPRESENTATIVE HANNAN said her constituents are dissatisfied by the actions taken by DEC to treat and provide remedies for communities and thus seek to set in statute levels that are safe for drinking water.

REPRESENTATIVE RASMUSSEN asked whether there is concern about the amount of time required to make changes in statute, when it is easier to make changes in regulations.

REPRESENTATIVE HANNAN was told in the fall of 2018, Gustavus was getting some resolution to its PFAS contamination; in January 2019, other communities discovering levels equal to Gustavus were no longer qualified for action. She explained DEC changed from using a cumulative total of six different compounds to two, before remediation. Without statutory guidance, DEC defaulted to EPA levels even though other communities suffered the same level of toxicity as Gustavus. The Department of Transportation and Public Facilities (DOTPF) has been delivering bottled water to much of Gustavus for almost two years; however, other communities in the state have no remedy because DEC has shifted its regulations to align with EPA.

REPRESENTATIVE RASMUSSEN asked whether individual communities are prohibited from establishing their own [safe water] levels by ordinance or policy.

REPRESENTATIVE HANNAN was unsure. However, she noted Gustavus does not have a community water system and residents depend upon well water.

[1:23:20 PM](#)

MR. CLARK pointed out the bill would not prohibit DEC from setting minimum allowable levels in the future should it be necessary to do so. He then paraphrased from a written sectional analysis which read [original punctuation provided]:

Sectional Summary
CSHB 240 (RES) PFAS in Drinking Water
Version M

Sec. 1 of the bill creates several new sections in AS 46.03: Sec. 46.03.340(a):

Directs the Department of Environmental Conservation to test drinking water near PFAS spills. Requires the department to make sure anyone with contaminated

drinking water gets clean drinking water and up to three years of voluntary blood testing for PFAS levels.

Sec. 46.03.340(b): Sets health-based maximum levels of contamination in drinking water for seven PFAS chemicals and maintains DEC's authority to set more protective thresholds.

Sec. 46.03.340(c): Requires DEC to make sure a responder exposed to PFAS contamination gets up to three years of voluntary blood testing for PFAS levels.

Sec. 46.03.345(a) states that a person who causes a fire that results in the release of PFAS-containing foams is liable for the costs of providing drinking water testing and blood testing under AS 46.03.340 of the bill.

Sec. 46.03.345(b) states that persons who use PFAS-containing substances to extinguish a fire (i.e. fire departments) are not liable for drinking water testing and blood testing costs.

Sec. 46.03.345(c) states that the liability for this costs is in addition to other liability existing in areas of state law relevant to the release of PFAS substances.

Sec. 46.03.350(a) exempts oil & gas businesses from the prohibition from using PFAS-containing firefighting foams unless the state fire marshal publishes notice that an alternative firefighting substance must be used.

Sec. 46.03.350(b) states that if the state fire marshal determines that a safe and effective alternative firefighting substance is available for use by the oil & gas businesses, the fire marshal must immediately publish notice that the alternative substance must be used by the industry.

Sec. 46.03.350(c): DEC must take up to 25 gallons per year of PFAS-containing firefighting foam from Alaskans for disposal.

Sec. 46.03.350(d): With the exception of oil & gas businesses, this subsection prohibits the use of PFAS-containing firefighting substances by persons in the state unless the uses is required by federal law. (Sec. 5 of the bill provides an effective date for this prohibition of October 4, 2021.)

Sec. 46.03.359: Lists the PFAS compounds covered by this bill and maintains DEC's authority to list more.

Sec. 2 of the bill addresses the retroactive applicability of the liability sections of the act.

Sec. 3 adds transition language regarding the adoption of regulations for implementing the act and the effective date of those regulations.

Sec. 4 gives an immediate effective date to sections 2 and 3 of the act.

Sec. 5 provides an effective date of October 4th, 2021 to the prohibition on the use of PFAS in section 1 of the bill.

Sec. 6 provides for an effective date of January 1, 2021, except for those sections of the bill provided an immediate or other effective date.

[1:29:55 PM](#)

REPRESENTATIVE RAUSCHER asked whether there is data on firemen exposed to PFAS who have contracted diseases, or if the bill is directed to communities that have contaminated water leaching into wells.

REPRESENTATIVE HANNAN deferred to forthcoming expert testimony.

REPRESENTATIVE RASMUSSEN asked why the voluntary blood testing would be administered through DEC instead of the Department of Health and Social Services (DHSS).

REPRESENTATIVE HANNAN advised DEC would facilitate, but not necessarily administer, all of the components of response, such as blood testing, water sampling, or water delivery.

REPRESENTATIVE RASMUSSEN inquired as to the criteria for comparing blood tests to baseline samples.

REPRESENTATIVE HANNAN acknowledged the Centers for Disease Control and Prevention (CDC) have not set blood sample risk for diseases, such as testicular cancer, because there are no baseline blood samples; however, in Alaska, most exposure to PFAS has not been through industrial waste, but through household goods or a water system, so [blood samples from] Alaskans can provide statistics on waterborne exposure.

CO-CHAIR TARR removed her objection to adopting the committee substitute for HB 240. There being no further objection, Version M was before the committee.

[1:35:10 PM](#)

ROBERT BILOTT, attorney, Taft Stettinius and Hollister, gave brief background information. Through a legal case involving dead cattle in West Virginia that were exposed to chemicals, he said he learned about the existence of PFAS chemicals, in particular, perfluorooctanoic acid (PFOA), that was used in the manufacture of Teflon. The class of PFAS chemicals are synthetic and when found in water, soil, and blood, they can be traced to their source of manufacture. After litigation in West Virginia and Ohio, it is now known that decades of toxicology studies and research show what the chemicals were and how they behaved in the environment and in humans. Mr. Bilott said PFAS are chemicals that are persistent in the environment, in the blood of humans and animals, in water, and in air, throughout the world. Also made clear in the research was that PFAS chemicals are toxic, persistent, bio-accumulative, and present serious threats to public health.

[1:40:07 PM](#)

MR. BILOTT said in 2001, he provided the research information to EPA and requested EPA set appropriate drinking water standards and safety guidelines. When the case was settled, an independent panel of scientists was selected to study what the chemical would do to people drinking it in their water over time. The study looked at a group of people drinking 50 parts per trillion, for one year or more, and was a comprehensive human health study involving 69,000 participants. After seven years, the panel linked PFOA with six different diseases: kidney cancer, testicular cancer, ulcerative colitis, thyroid disease, preëclampsia, and high cholesterol. In 2012, with additional information and nationwide use of PFOA in consumer products, EPA was again asked to provide a safe drinking water

standard, and EPA began to require PFAS/PFOA testing in public water supplies. In 2013/2014, data began to show - and the outcome of three lawsuits against DuPont De Nemours Inc. (DuPont), proved - that DuPont caused plaintiffs' cancer, and DuPont had acted with conscious disregard of the risk from the chemicals. Mr. Bilott said the data also showed the chemicals were present in water across the country; in fact, in 2016, communities began to ask for the safe level of PFAS/PFOA in water and EPA issued a guideline of 70 parts per trillion.

[1:45:18 PM](#)

MR. BILOTT stressed the EPA guideline is not an enforceable standard, so communities and water providers that find PFAS/PFOA levels in their water supplies are incurring the cost of remediation because it is not an official government regulation. In 2009, EPA issued its first action plan and in 2019 another action plan, to move forward, was issued, but there is not an enforceable federal standard, thus states are forced to set enforceable standards to protect their residents. He noted as more research is released, the concern is focused on long-term exposure; in fact, in 1988, DuPont set an internal drinking water standard for PFAS at the detection level and he cautioned safe levels will continue to be lowered. In Michigan, and at the Agency for Toxic Substances and Disease Registry, U.S. Department of Health and Human Services, standard levels are much lower than issued by EPA. Mr. Bilott concluded PFAS/PFOA are chemicals that impact everyone, and more contaminated water will be found, therefore, communities need a way to recoup the cost of remediation.

[1:50:00 PM](#)

REPRESENTATIVE TUCK asked whether PFAS/PFOA chemicals can be removed from blood.

MR. BILOTT said the chemicals have a long half-life and stay in the body circulating in the blood; even though the use of the chemicals has been phased out years ago, exposure is ongoing.

REPRESENTATIVE TUCK questioned whether DuPont reduced its liability by participating in the scientific study of the chemicals.

MR. BILOTT said DuPont was conducting studies on animals, monitoring the blood levels of employees, and conducting health

studies of workers. As early as 1984, DuPont was aware the chemicals were in the water; the drinking water guideline set by DuPont was for the community. DuPont provided the funding for the aforementioned independent panel, but was not represented on the panel of scientists.

CO-CHAIR TARR asked how the chemicals affect people differently and for the cost of research.

[1:55:18 PM](#)

MR. BILOTT said in addition to the six diseases linked by the panel, other health effects have been found, such as inhibited vaccine response and inhibited immune systems in children. The cost of epidemiology research is incredibly expensive and other states are using litigation to recoup expenses from chemical manufacturers for the cost of testing, sampling, and providing clean water. In further response to Co-Chair Tarr, Mr. Bilott reported in West Virginia \$70 million from a class action settlement was used to collect raw data from 70,000 people, and \$33 million to \$35 million was spent to analyze the data. He cautioned research on each individual chemical would be futile; the research should be applied to the class of chemicals and action taken.

REPRESENTATIVE TUCK asked whether research on PFAS/PFOA is known by the medical community and by medical laboratories in general.

MR. BILOTT acknowledged the information has not been made readily available to the medical community; as part of the legal settlement, a panel of independent medical doctors made recommendations for appropriate responses to exposure, and he gave a website that provides information to any medical doctor: C-8MedicalMonitoringProgram.com.

[1:58:43 PM](#)

KELLY MCLAUGHLIN, Spokesperson, Gustavus PFAS Action Coalition (GPAC), informed the committee the Gustavus PFAS Action Coalition was formed about 18 months ago after Gustavus residents learned their property was contaminated and residents wanted their blood and breast milk tested. At that time, DEC was hearing public comment on a regulation package that set the action level at 65 parts per trillion, and GPAC provided comments that the level was too high and recommended 20 parts per trillion; however, after the change from the Walker Administration to the Dunleavy Administration, "that regulation

package disappeared." In addition, the standards changed; in fact, her neighbors bought property that they understood was "clean" because of the higher standard of 70 parts per trillion. She said the scope of the issue is broad, with many questions unanswered, and urged the committee to look at the problem. Her organization is asking the state to test residents' blood to provide needed data; to make changes in statute to establish regulations; to require DOTPF to provide information to all residents living near airports who may be drinking contaminated water; to support HB 240; to immediately stop the use of PFAS in Alaska, under the existing Federal Aviation Administration (FAA), U.S. Department of Transportation, exception for Index A airports. She said Gustavus and other Alaska communities could have been using sodium bicarbonate firefighting equipment - and thus avoid contamination - as these products are used effectively throughout the world. Ms. McLaughlin displayed eggs from chickens raised on her property that were contaminated by PFAS at a level of 13,000-25,000 parts per trillion.

[2:04:44 PM](#)

REPRESENTATIVE HOPKINS surmised none of the eggs from Ms. McLaughlin's property are edible and asked about contamination in other products grown on properties in Gustavus.

MS. MCLAUGHLIN said GPAC conducted testing through a grant from Alaska Community Action on Toxics (ACAT) and contamination has been found in other eggs, kale, and mint, was undetectable in potatoes, rhubarb, and mushrooms, and was found in the Salmon River.

CO-CHAIR TARR offered to provide the committee a report from ACAT [document not provided].

[2:07:02 PM](#)

[HB 240 was held over.]

[2:07:12 PM](#)

The committee took an at-ease from 2:07 p.m. to 2:11 p.m.

HB 138-NATIONAL RESOURCE WATER DESIGNATION

[2:11:17 PM](#)

CO-CHAIR TARR announced the final 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.]

CO-CHAIR TARR reviewed the committee's previous action on Version K, and forthcoming amendments.

[2:13:18 PM](#)

REPRESENTATIVE HANNAN moved to adopt [Amendment 6, K.13, labeled 31-LS0811\K.13, Marx, 2/20/20, identified on the audio recording as Amendment 5] which read [original punctuation provided]:

Page 3, line 4, following "based;":
Insert "and"

Page 3, lines 7 - 10:
Delete all material.

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE HANNAN explained [Amendment 6, K.13] removes language in Version K on page 3, lines 7-10, which read:

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

(G) other information required by the commission;

REPRESENTATIVE HANNAN said the amendment would remove the language that requires a person nominating an outstanding national resource water (ONRW) to include a cost benefit analysis of the designation, and other information required by the commission. She advised a cost benefit analysis is likely to be costly and burdensome for nominators and it is best left to the commission, or an affiliated state agency, to obtain a thorough cost benefit analysis. In addition, the request for other information is too broad.

REPRESENTATIVE RASMUSSEN cautioned the responsibility to provide a cost benefit analysis would be an additional burden for the state; she expressed opposition to the amendment.

[2:15:02 PM](#)

The committee took an at-ease from 2:15 p.m. to 2:16 p.m.

CO-CHAIR TARR pointed out similar issues are addressed in a forthcoming amendment labeled, 31-LS0811\K.18, Marx, 2/20/20.

[2:16:58 PM](#)

REPRESENTATIVE CHUCK KOPP, Alaska State Legislature, speaking as the sponsor of HB 138, said the amendment would restrain the commission from asking for more information beyond the minimum criteria in the bill. He noted the drafters kept the bill simple and straight forward; however, the commission is balanced and should not be restrained from requesting additional information or criteria, if necessary, to reach a decision. In addition, a cost benefit analysis affects future development in the affected community, such as new roads and subdivisions, and the discussion of these factors in a cost benefit analysis shows the nominator is aware of economic and growth activities in the affected area around the nominated waterbody. Representative Kopp surmised these are questions the commission would raise and providing a cost benefit analysis is not a high hurdle, but a reasonable hurdle.

CO-CHAIR TARR noted certain forthcoming amendments were drafted after discussion with the bill sponsor that changed the language from explanation, description, discussion, and analysis, to "general description," which a member of the public could provide without professional assistance.

[2:21:01 PM](#)

REPRESENTATIVE HANNAN said placing a cost analysis in the criteria of ability to nominate places a burden on small, rural communities and entities that may not have the technical expertise to provide a cost analysis. She acknowledged a cost benefit analysis would be an element of the commission's decision process; however, it should not be included in the criteria that is required to forward a nomination.

REPRESENTATIVE TUCK read from a document identified as 18 AAC 70.017 [document not provided], which he characterized as parallel to the language in the bill, with the exception of subparagraph (F) [text previously provided]. He said the goal is to facilitate ONRW water designations - not to hinder them - and expressed his support for [Amendment 6, K.13].

[2:25:04 PM](#)

TREVER FULTON, Staff, on behalf of Representative Kopp, sponsor of HB 138, suggested the document referred to by Representative Tuck contains either regulations that have been adopted to address discharges into a body of water that has already been designated a Tier 3 water, or is a draft implementation document that has been rescinded by the 2018 publication of the Department of Environmental Conservation (DEC) guidance memorandum deferring the designation process to the legislature.

REPRESENTATIVE TUCK questioned whether a cost benefit analysis should be a relevant factor in the designation of Tier 3 water.

[2:27:37 PM](#)

The committee took a brief at-ease.

[2:28:46 PM](#)

RANDY BATES, director, Division of Water, DEC, said he did not find the aforementioned document in existing regulations thus it either could be a draft or has been replaced.

REPRESENTATIVE RASMUSSEN read from the Alaska State Constitution as follows:

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.

REPRESENTATIVE RASMUSSEN said a cost benefit analysis would be required to determine the cost to a community of designating a Tier 3 body of water, which may lead to a loss of the benefit from a mine, or to the cost of not designating a body of water,

which may lead to a loss of access to salmon or other renewable resources. She restated her opposition to the amendment.

CO-CHAIR LINCOLN agreed that the burden of acquiring a cost analysis is too great for a nominator, but said he prefers to support a forthcoming amendment.

REPRESENTATIVE TALERICO expressed opposition to the amendment and his interest in forthcoming amendments. He said a nominator who provided a general description would include local knowledge of the area.

[2:32:43 PM](#)

REPRESENTATIVE SPOHNHOLZ, speaking as co-maker of a forthcoming amendment, said she supported the intent of [Amendment 6, K.13], but preferred the balance provided by a forthcoming amendment.

REPRESENTATIVE HOPKINS noted his concern about the objective nature of the recommendations made by the commission. He directed attention to Version K, on page 2, line 25, subsection (e), which listed seven factors that are required to submit a nomination, and agreed there should be a general description of cost benefits and effects on communities. He said he would support a forthcoming amendment.

REPRESENTATIVE HANNAN withdrew [Amendment 6, K.13]. She restated a cost benefit analysis that is required to be provided by the nominator would place a cost benefit analysis at the wrong point in the nomination process.

[2:36:11 PM](#)

REPRESENTATIVE SPOHNHOLZ moved to adopt [Amendment 7, K.18, labeled 31-LS0811\K.18, identified on the audio recording as Amendment 10], which read [original punctuation provided]:

Page 3, line 6, following "quality;":
Insert "and"

Page 3, lines 7 - 17:
Delete all material and insert:
"(F) a general description of the foreseeable impacts of designating the water as outstanding national resource water, including any impacts on cultural and subsistence uses and any anticipated costs and benefits to the community;

(2) by an affirmative vote of a majority of the members of the commission,

(A) make a finding of whether the nomination complies with the requirements under (1) of this subsection; and

(B) within one year after finding a nomination in compliance, decide whether to recommend the designation of the nominated water as outstanding national resource water;"

Page 4, lines 3 - 7:

Delete all material and insert:

"(f) Before deciding whether to recommend a designation of a nominated water as outstanding national resource water, the commission shall obtain any additional information considered necessary by the commission to make the recommendation and provide an opportunity for public notice and comment on the nomination. A member who votes against a recommendation approved by the commission may provide a written summary of the member's dissenting opinion."

Page 4, line 8:

Delete "(e) or (f)"

Insert "(e)"

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE SPOHNHOLZ explained [Amendment 7, K.18] provides a compromise position in the issue of the description of the costs and benefits of a Tier 3 water designation. The amendment proposes a general description of the foreseeable impacts - including costs and benefits - and the impacts on cultural and subsistence uses, which are important in Alaska; also, that within one year of finding the nomination compliant, the commission would issue a decision on the nomination.

REPRESENTATIVE HOPKINS directed attention to the amendment on page 2, lines 4-6, which read:

Page 4, line 8:

Delete "(e) or (f)"

Insert "(e)"

REPRESENTATIVE HOPKINS asked whether the deletion of subsection (f) would make the recommendation a final decision by the commission.

[2:38:11 PM](#)

The committee took an at-ease from 2:38 p.m. to 2:40 p.m.

REPRESENTATIVE SPOHNHOLZ explained on page 2, lines 4-6, the amendment contains conforming changes recommended by Legislative Legal Services.

REPRESENTATIVE KOPP expressed support for [Amendment 7, K.18]. He directed attention to the amendment on page 1, lines 7-9, which read [in part]:

including any impacts on cultural and subsistence uses and any anticipated costs and benefits to the community;

REPRESENTATIVE KOPP suggested following "community;" adding "and current or foreseeable projects;" in order to be fully inclusive of possible ongoing projects in the area.

[2:43:06 PM](#)

MARIE MARX, attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, stated the deletion of subsection (f) is a conforming change due to the restructuring of the bill.

REPRESENTATIVE HOPKINS directed attention to Version K on page 4, lines 8-11, and asked whether [Amendment 7, K.18] would make any change to whether the recommendation by the commission is, or is not, subject to appeal.

MS. MARX said the amendment would not make any substantive change because the recommendation or action of the commission does not constitute a final agency decision or action. In further response to Representative Hopkins, she clarified subsection (f) was changed, and is no longer applicable.

REPRESENTATIVE TUCK asked whether water that has been designated Tier 3 could have changes, within a certain range, when subjected to the construction of a bridge or a port.

REPRESENTATIVE KOPP advised for Tier 3 water the baseline data must be intact; however, if there is an ongoing project in place, those activities can continue. For example, if the construction of an access road or infrastructure is foreseeable,

or ongoing, the cost of the project should be included in the discussion of the Tier 3 water designation.

REPRESENTATIVE TUCK recalled Tier 1 water does not have all water quality standards met; Tier 2 water has water quality standards met; Tier 3 water requires that the water maintain its current status. He expressed his understanding Tier 3 [water standards] have no requirement to improve the water quality.

REPRESENTATIVE KOPP indicated correct.

[2:49:28 PM](#)

CO-CHAIR LINCOLN gave a description of Mono Lake in California that is designated Tier 3, not because it is of high water quality, but because it is rare and unique.

REPRESENTATIVE TUCK noted at Red Dog mine, due to proper mining techniques, the zinc concentrations were reduced and now there are trout in "that stream." He questioned whether improving the water quality in water designated Tier 3 would be a violation.

REPRESENTATIVE KOPP said improving water quality is not a violation of a Tier 3 water designation.

REPRESENTATIVE TUCK asked for more information on the example in California.

CO-CHAIR LINCOLN said he assumed the intent is for the water quality at Mono Lake to remain unchanged.

MR. BATES stated DEC would only disallow an activity in a Tier 3 waterbody that degrades the current water quality standard; he said he would provide an answer related to projects that clean up water and release water in a better form.

[2:54:22 PM](#)

REPRESENTATIVE RAUSCHER gave an example of water that had many sources of pollution, but the overall water quality was improved, and asked whether a new [or increased] source of pollution would be allowed.

MR. BATES said the existing water quality would be tested at the time a Tier 3 waterbody was established; any new project that would degrade the water, below the level at the time of designation, would be disallowed.

REPRESENTATIVE KOPP, in further response to Representative Rauscher, explained a baseline is established for each pollutant individually, so a higher level of degradation from an existing pollutant would be disallowed.

There followed discussion related to the effects of activities by polluters new to - or upriver of - Tier 3 waters that create mixing zones. Mr. Bates was asked to provide clarity on this issue after further review by DEC staff.

[2:58:29 PM](#)

REPRESENTATIVE HANNAN directed attention to Version K, on page 4, lines 8-11, which read:

(g) A recommendation or action of the commission under (e) or (f) of the section does not constitute a final agency decision or action, and the recommendation or action is not subject to appeal, including appeal or review under AS 44.62 (Administrative Procedure Act).

REPRESENTATIVE HANNAN questioned whether said [recommendation or] action is not subject to appeal because the action of the commission is finalized by legislative process.

MS. MARX explained recommendations by advisory bodies are not generally subject to judicial appeal or review, because the recommendations of advisory boards or commissions are not enforceable, until the recommendations are implemented by a further agency, or legislative action, and therefore do not govern the conduct or the rights of the public.

[3:03:08 PM](#)

CO-CHAIR TARR withdrew her objection to [Amendment 7, K.18] and there being no further objection, Amendment 7, K.18 was adopted.

HB 138 was held over.

[3:04:17 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:04 p.m.