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May 9, 2023

Representative George Rauscher  
Alaska State House of Representatives  
*Submitted via email*

Re: Letter of Support for HB95, National Resource Water Nomination/Designation

Dear Representative Rauscher:

The Alaska Miners Association (AMA) writes to express our support for HB95, an Act relating to designation of state water as outstanding national resource water.

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, and major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry.

For several years, AMA has adopted strong policy positions that contend only the Legislature should hold the authority to designate a water as an Outstanding National Resource Water (ONRW) or a Tier 3 water.

EPA, under our nation's Clean Water Act, requires all states to have a policy against the degradation of waters and to maintain associated procedures that prohibit lowering of water quality under three categories of water protection, the most stringent of which is Tier 3. Tier 3 designation is for an Outstanding National Resource Water, which is described as having exceptional recreational or ecological significance, or waters within state parks or refuges. Tier 3 waters are required to be maintained to their baseline conditions, and effectively cannot have any new or expanded activities that have the potential to change the water quality in any way. This would apply even in situations where the activity meets the water quality and permitting standards and fully protects fish and other water uses. (See 18 AAC 70.016(d)).

Therefore, a Tier 3 designation would result in significant restrictions/prohibitions on land users as well as water users, and cause significant adverse social and economic impacts. Because a Tier 3 water designation applies "to a Tier 3 or tributary to a Tier 3 water," it would prohibit development in entire watersheds comparable to de-facto Wilderness. For that reason, the authority to designate a Tier 3 water should lie solely with representatives of Alaskans - the Legislature.

Because of the watershed wide land and water and socio-economic impacts of a Tier 3 designation, it is no different than the impacts of the 12 million acres of legislative designations of State refuges sanctuaries, critical habitat areas, ranges, special management areas, forests, parks, recreation areas, marine



sanctuaries etc. made by the Legislature. Just as the Legislature made those designation, so too should the Legislature make Tier 3 designations.

For many years the Alaska Department of Environmental Conservation has agreed that Tier 3 designations should be made by the Legislature. As stated by former DEC Commissioner Larry Hartig in a November 30, 2018 letter to a group of Senators:

*DEC recently updated its internal guidance to advise DEC employees who might receive a nomination of a water for Tier 3 designation on how to deal with that nomination. This guidance provides that the current process for nominating Tier 3 waters involves proposing the introduction of legislation to make the designation. Any such requests would need to go to a member or committee of the Legislature to be considered for introduction. DEC has reviewed this guidance with EPA and they confirmed what we have put in place satisfies Clean Water Act requirements for antidegradation implementation.*

HB95 would implement DEC policy and would meet EPA's Tier 3 designation process requirement and provide process certainty to the public.

Tier 3 water designations have the potential to become tools for anti-development interests to block or delay resource development projects. That is evident in the five nominations before DEC currently, which specify mining, oil and gas, federal land planning, and Alaska Native Corporation lands selections as threats to waterbodies.

But it is clear a Tier 3 designation goes much further. A Tier 3 designation would impact the users such as motorized vessels of any kind, residential and commercial septic systems, stormwater permits associated with road building, seafood processors, timber harvesting, and much more. This is why, in past Legislatures, letters have been submitted by diverse organizations which understand the impacts of a Tier 3 designation to all Alaskans and have urged for policies that give only the Legislature authority to designate. This position is consistent with the Alaska Constitution, the existing process for setting aside areas of State land and water from development, and existing DEC policy.

We thank you for introducing HB95 to adopt this policy, and will encourage the Legislature to support this bill to become law.

Sincerely,

A handwritten signature in blue ink, appearing to read "Deantha Skibinski".

Deantha Skibinski  
Executive Director