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**Testimony: SRES Senate Resources Committee  
SB51: Tier 3 Waters  
March 20, 2019**

Good afternoon. My name is Deantha Crockett, and I am Executive Director of the Alaska Miners Association. AMA is a membership trade association that represents not only the large mines in Alaska, but also our small placer mining operations, many family-owned, sand, gravel and rock quarry operations, exploration projects, and the vendors and contractors that make their living from a healthy mining industry.

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 standards and fully protects fish and other water uses.** (You can find this at 18 AAC 70.016(d)).

Therefore, a Tier 3 designation would result in significant restrictions and/or 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 designations of State refuges sanctuaries, critical habitat areas, ranges, special management areas, forests, parks, recreation areas, marine sanctuaries etc. made by the Legislature. These have been detailed in the Division of Mining, Land & Water September 2014 Fact Sheet that I believe is on the record. Just as the Legislature made those designations, so too should the Legislature make Tier 3 designations.

The Alaska Department of Environmental Conservation agrees 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.*

In short, SB 51 is a housekeeping measure to implement DEC policy. Enactment of SB 51 would meet EPA's Tier 3 designation process requirement and to 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. It 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 designation goes much further. For a waterbody to be designated as Tier 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 you will see in your packet a letter authored by 11 diverse organizations which understand the impacts of a Tier 3 designation to all Alaskans.

We believe that, given the significant, adverse, watershed wide land and water use impacts and socio-economic impacts of Tier 3 designation, a Tier 3 water should be designated ONLY by a vote of the Legislature. This is consistent with the Alaska Constitution, the existing process for setting aside areas of State land from development and existing DEC policy. For these reasons, we urge you to move this bill from committee and support this version on the Senate Floor.

Thank you for the opportunity to testify today in support of SB51.