

Thank you for the opportunity to participate in this discussion on SB 163. I appreciate the time that you are taking to understand and discuss this bill. I appreciate also the hard work that you are putting in this session on our fiscal dilemma.

The Alaska Center for the Environment and Alaska Conservation Voters (ACE/ACV) opposes SB 163.

We support a clear and transparent process to designate Outstanding National Resource Water (ONRW also known as tier 3 waters) under the Clean Water Act. We support an inclusive process that highlights local input, and that creates compromise and a working relationship between stakeholders. We are disappointed that Governor Walker would see fit, out of all the options, to punt this tier 3 determination responsibility to the legislature.

It is an important decision; designating a section of a waterbody as an ONRW protects the water from new sources of water pollution. Establishing the legislature as the final arbiter of this big decision puts a lot of pressure on committee chairs and individual legislators. It also places the designation in a kind of chutes and ladders game which some people and groups are better equipped to play than others.

We recognize that the legislature could make tier 3 designations. The primary problem that we see with having the legislature call the final shot on tier 3 designation is that it creates a white hot political debate, instead of a stakeholder discussion. Additionally, a 90-day session is dominated by generally one or two or three major issues and may not provide enough time to fully and fairly vet and decide on a tier 3 nomination.

We believe that DEC, with input from ADFG, and DNR, would yield better results for Alaska in the long run, and would foster better public dialogue. We also believe that the office of the Governor is powerful enough to absorb the shock of opposition from whomever is opposed to the final outcome.

In the western lower 48, it is our understanding that all states have adopted some method of designating tier 3 waters as required by the clean water act. Only a small handful of states put the onus of approving a tier 3 designation on the state legislature.

Some western states like Montana that require legislative approval of tier 3 also automatically designate all waters in national parks and protected areas as tier 3 waters. Idaho requires legislative approval and has no tier 3 waters. Other western states like Wyoming and Washington and Oregon leave the designation process up to their equivalent of a DEC. Per capita, there is a larger constituency for salmon and clean water in Alaska than any other state in the lower 48. So comparisons to any of these states are tough.

ACE/ACV recognizes that tier 3 designation might seem awkward in Alaska where we do have a superabundance of high value rivers, wetlands, lakes and streams. However, there are numerous reasons why it's important to have a science based, transparent and inclusive ONRW process that allows Alaskans to seek tier 3 protections for important waterbodies.

For one thing, we keep breaking records. In Alaska and the US and the World. 2015 was the hottest year in recorded history. January 2016 was the warmest January in human record. Climate change is likely going to change a lot of things for water in Alaska. Perhaps the stress of

low snow pack and increasing water temperature on our fish habitat will engender more and more pressure to protect fish habitat from additional stressors. At some point likely soon a whole lot of people might be looking for a whole lot of answers on how to protect our fish. A science based determination process may be more appropriate than a legislative process as we begin to examine and judge the impacts of climate change on all of our waters and the need to protect or not protect them.

I do not speak for any of the entities that have submitted tier 3 applications to date. It is conceivable though that Alaskans will submit applications to protect waterbodies as a response to perceived policy and decision making shortcomings. Of course we all have our own view of whether the balance is tilted too far one way or the other. ACE/ACV believes that many current permitting processes have structural deficiencies that prevent compromise or that adequately protect our fish and water, such that ONRW designation may be sought.

For example: We have lost the Coastal Zone Management Program which brought Alaskans to the table in major permit reviews, we have no ability to comment on temporary water use permits which are used as a proxy for major industrial water rights, we have stripped public interest litigation to bare bones, we have consolidated public comment on oil and gas leasing, we have halted reasonable water quality measures to prohibit wastewater mixing zones in salmon spawning habitat, we have rolled back an citizens initiative to make cruise ships not dump sewage into state waters. We have no requirement for interagency consultation on major water withdrawal permits, we have no law on the books to prevent dewatering of a salmon stream.

Under the Clean Water Act, the state is not required to designate tier 3 waters, it is only required to have a process in place for citizens to make nominations. There are various options for what that process could look like. ACE/ACV does not think that a legislative process is the right one for Alaska. SB 163 is merely a path to more shrill debate. Alaska is uniquely dependent on fish and clean water so there is going to be a lot of noise surrounding this issue.

There is obviously an interest in the legislature in mitigating against tier 3 nominations. Instead of creating a process where tier 3 nominations dominate the legislative conversation, the Walker Administration should use the tools at its disposal to build a public conversation around why Alaskans would seek tier 3 nomination in the first place.

To summarize in closing, Alaska is overdue for the adoption of a clear, inclusive, science-based ONRW process. While there is no requirement to designate waters, only to have a process, whatever process is adopted should be workable for the people of Alaska, and allow them to make nominations and have the nominations considered. The decision should be science-based, inclusive, and transparent. ACE/ACV believes that the process that makes the most sense is to have DEC, the agency with the water quality and permitting expertise, be in charge of the decision.

Thank you,

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