

Commentary

Legislation protects Alaska's clean waters -- and Alaskans' right to keep them that way

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March 31, 2016

Text Size: A+ A



OPINION: House, Senate bills confirm Legislature's authority to designate Alaska waters for protection, and citizens' rights to be part of the process. *Marc Lester / ADN*

As commissioners of the state's three resource agencies, we often see debates over how Alaska's natural resources -- including its wildlands, waters and fish, should be managed and used for public benefit. There are concerns pending legislation (Senate Bill 163/House Bill 283) might weaken protections for salmon and other aquatic life. We would not support SB 163 and HB 283 if that were the case.

Each of our departments has an important role in protecting salmon and other aquatic life. The state Department of Environmental Conservation sets and enforces water quality standards limiting when and how much pollution may be discharged into any water of the state. These standards are set through a rigorous public process. Alaska has some of the most stringent water-quality standards in the nation, and we are proud of our clean waters.

What you might not know is that all but a handful of waters in the state are classified as “Tier 2” waters. These high-quality waters must meet all water quality standards. This includes the “aquatic life” standards set by DEC specifically to protect the “propagation and development” of all aquatic species. These standards have been in place for decades and are the cornerstone for the protection of water quality for salmon and other species.

In response to EPA requirements, the state is now developing the process it will follow to designate “Tier 3” waters. Tier 3 waters are referred to in EPA regulations as “Outstanding National Resource Waters” found by the state to be “high quality waters ... such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance.” EPA regulations do not require a state to designate any Tier 3 waters, only to have a process to do so. Currently, there are no waters designated as Tier 3 waters (ONRWs) in Alaska, Washington, Oregon, Idaho or many other states. Some states have designated Tier 3 waters (ONRWs); for example, there are two in California, and New Mexico has many.

Once a state designates a body of water as Tier 3, the Environmental Protection Agency's regulations require the water quality in that water body to not only be protected but also “maintained,” meaning no new or additional discharges into the water may be authorized. This is the case even if there is no risk that the discharges could result in an aquatic life water-quality standard being compromised. The Tier 3 designation preserves the water quality in its present state without regard to other factors.

Gov. Bill Walker introduced SB 163 and HB 283 this session to confirm the Legislature holds the power to designate Tier 3 waters in the state. This is consistent with how lands and waters of the state have always been designated for preservation or conservation in the past. To date, the Legislature has designated approximately 12 million acres of state lands as refuges, sanctuaries, critical habitat areas, forests, parks, public-use areas and recreational rivers. No such designations have been made exclusively by an agency. According to the state Department of Law, Article VIII of the Alaska Constitution may well require Tier 3 designations be made by the Legislature.

Another key purpose of SB 163 and companion HB 283 is to provide the opportunity for any resident of Alaska to nominate a body of water for legislative designation as Tier 3. We believe Alaska residents expect and should have this right. We are also committed to seeing the final bill and any implementing regulations by our agencies provide for meaningful public involvement by all interested Alaskans in the review and consideration of all nominations.

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