



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Environmental
Conservation**

OFFICE OF THE COMMISSIONER

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November 30, 2018

The Honorable Pete Kelly
The Honorable John Coghill
The Honorable Bert Stedman
The Honorable Natasha von Imhof

The Honorable Cathy Giessel
The Honorable Kevin Meyer
The Honorable Click Bishop

Dear Senators:

Thank you for the April 25 letter to Governor Walker, Attorney General Lindemuth and me from members of the Senate majority detailing their understandings, questions, and policy concerns relating to potential "Tier 3" designations. The Alaska Department of Environmental Conservation (DEC or department) is the state agency primarily responsible for implementing the federal Clean Water Act (CWA) in Alaska, and I have been asked to respond on behalf of the Administration.

The CWA and U.S. Environmental Protection Agency (EPA) regulations implementing it require each state to have an Antidegradation Policy and implementation methods as part of the state's water quality standards. I believe, with the regulations DEC has adopted over the last several years and the guidance DEC recently put in place, Alaska now meets these federal requirements. This is important because permits issued under Section 402 and 404 of the Clean Water Act could be vulnerable to challenges if we aren't meeting these requirements.

DEC's regulations do not address whether a tribe or Alaskan citizen may nominate a water for possible Tier 3 designation. Nor do they address how nominations would be vetted or whether a water can be given a Tier 3 designation through an administrative process. As you will recall from the public testimony in 2016 in the Senate Resources and House Fisheries committees on SB 163/HB 283, there were organizations and members of the public who had strong and diametrically opposed positions on several of these questions. DEC held a series of public discussions around the state in 2017 to try to identify an option more agreeable to all interests but was unsuccessful.

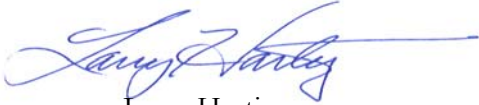
As important as these questions are for many Alaskans, it hasn't been necessary for us to address them in order to satisfy federal requirements relating to our Antidegradation Policy and implementation methods. It appeared prudent for the department to get the federally-required regulations in place without further delay and we completed this work. EPA approved the last set of our regulations on July 26, 2018 making them effective for purposes of the CWA.

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.

The April 25 letter you provided poses a number of legal questions, many involving interpretations of the Alaska Constitution and federal laws. It didn't become necessary for us to address any of these legal questions in satisfying federal requirements.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry Hartig", with a long horizontal flourish extending to the right.

Larry Hartig
Commissioner