



"Yee gu.aa yax x'wan."

**An Indian Reorganization Act Village
Under Act of Congress June 15th 1935**

32 Chilkat Avenue Klukwan, Alaska

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Re: House Bill 138: National Resource Water Designation

The Chilkat Indian Village (CIV) is a Federally Recognized Indian Tribe representing the Village of Klukwan, 22 miles north of the community of Haines. The Tribal Council is the governing body and is mandated by our Tribal Constitution to protect and maintain the lands and waterways of the Jilkaat Kwaan (people of the Chilkat Valley) Territory, and for the Tribal Members of Klukwan. The Chilkat Indian Village would like to bring your attention to HB 138. Written below are some of our voiced concerns and ideas.

Background:

In 2008, the State of Alaska Department of Environmental Conservation began considering a process to designate Tier 3 water bodies under the Clean Water Act. 11 years later there is still not a process to determine if a nomination qualifies for a Tier 3 designation.

In 2016- the Chilkat Indian Village nominated the Chilkat River to be considered for Tier 3 designation under the Clean Water Act. This nomination was one of the original Tier 3 nominations in Alaska. These nominations insighted a considerable effort over the past few years by DEC and the legislature to develop a process for approving Tier 3 nominations.

During the 2016 legislative session, the Governor introduced legislation (SB163 and HB283) to establish a statutory process for nominating waters for Tier 3 status, vetting the nominations and making a decision. In the proposed legislation, the Legislature would have had the final authority for making all Tier 3 designations. The bills received considerable public interest. Ultimately, the Governor requested the bills be set aside and committed the administration to more dialog with Tribes and stakeholders before offering another proposal. SB 51 and HB 138 are ultimately the same bill that caused so much concern from the public in 2016.

Considerations:

- The current bills both in the House and Senate on the ONRW should **NOT** be passed. There are significant shortcomings:
 - o Designation should not be a statutory process.
 - Inviting the legislature to make such a determination politicizes a process that is best left to professionals with natural resource/science expertise. These people are best suited to assess merits of nominations for waters being, in the case of Tier 3 waters, "exceptional, important, unique, or sensitive ecologically..."
 - o There is no criteria for Tier 3 Waters, therefore there is no way for the legislature to know how to make this determination.
 - If designation is a statutory process there needs to be a criteria developed so that the legislature understands how it is determining whether or not to designate. With no criteria HB 138 will waste time and money and continue to erode public trust in the legislative body as a whole.
 - o The bill lacks specifics- including an appeal process, length of time to process nomination, etc.
 - o By making this designation a legislative process the Govern maintains the right to veto. This will likely contribute to the nominations being caught up in a political debate while the determination should not be based on politics but on the ecological, recreational, and other criteria demonstrating an "outstanding" waterbody.



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- A new bill should be introduced. Below are a considerations for the new bill:
 - o Designation is an administrative action- authority for designation lies with DEC
 - o There is a public process
 - o There is a definition of "exceptional waters"
 - o There is a criteria for Tier 3 waters
 - o There is a process to appeal
 - o Nominations can be made by Alaskans only
 - o Any bill relating to ONRW should be heard by House Tribal Affairs and House Fisheries Committees
- The current nominated waterbodies should be dealt with as soon as possible:
 - o In lieu of a new bill being approved, the authority resides with DEC through the interim antidegradation implementation guidance and triennial review (EPA 2018, letter. See attached).
 - <https://dec.alaska.gov/water/water-quality/triennial-review/>
 - Scroll down and see PDF's under Fact Sheets
 - o DEC should be required to process the nominations and determine designation status.

Why has it been so difficult to come to agreement on the approval process for the State of Alaska:

"At both the 2017 and earlier workshops, there were two main groups with two distinct voices. One group is generally pro-regulation and pro-fishery and favored a science-based regulatory approach to Tier 3 nomination, with DEC or a Board as the designating authority. The other group is more pro-development and pro-resource extraction, preferring the ultimate designation authority to be in the hands of the legislature." (DEC. 2017).¹

Of course pro industrial development stakeholders and the construction industry are not going to like the idea of Tier 3 but this has to be okay. Similarly, the pro environment and pro public health people along with many Tribes working to protect subsistence resources do not like the idea of development special interests being able to degrade waterbodies. The Clean Water Act – like all regulation- in the United States works to find a balance. Right now in Alaska there is no balance to the current system. Why in Alaska do we provide entities a process to pollute our waters but we do not provide Alaskan's a process to protect our waters?

"In 1983, DEC was required by the Federal Clean Water Act to "develop, adopt, and retain a statewide antidegradation policy regarding water quality standards and establish procedures for its implementation through the water quality management process." (EPA WQS Handbook) Over the intervening 34 years, DEC has implemented a procedure allowing for the lowering of water quality through the issuance of discharge permits, but it has resisted the legal requirement to develop a process for the protection of high quality waters, known as Outstanding National Resource Waters (ONRW) or Tier 3 waters." (ULCAC.2017).²

The Chilkat Indian Village asks you to reject HB 138 and SB 51 and to support legislation that promotes the protection of exceptional water bodies in Alaska. CIV is reaching out to you and offering to work with you and other representatives to create a process to designate Tier 3.

¹ Developing a Tier 3 Water Nomination and Designation Process in Alaska. Outreach Report. DEC. September 2017.

² Upper Lynn Canal Fish and Game Advisory Committee. Tier 3 Designation. March 2017.

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Thank you for listening to our concerns and for working to represent the Tribal Members of Klukwan.

Sincerely

Jones Hotch, Jr.

Chilkat Indian Village

Tribal Council Vice President

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