



THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Environmental  
Conservation

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TO: Representative Geran Tarr, Co-Chair  
House Resources Committee

FROM: Earl Crapps, Manager for the Domestic & Industrial Utilities Section of the  
Wastewater Discharge Authorization Program, Division of Water

RE: Review of other states' approach to Tier 3

At the April 29 House Resources Committee hearing on House Bill 138, National Resource Water Designation, members of the Committee asked for examples of the process and criteria other states use to designate Tier 3 waters, and if any other states only allow them to be designated in statute. The short answer is yes, but certainly not all. The department has not done a complete review of other states but offers the following background:

The Environmental Protection Agency (EPA), under the Clean Water Act and federal regulations (40 CFR 131.12), requires states to have an "anti-degradation policy" and a process (implementation method) for designating Outstanding National Resource Waters (ONRW)/Tier 3 waters. The EPA does not prescribe the method states must use for making designations, nor at what level the designation authority should rest.

There are two issues regarding Tier 3 waterbody designations that are left up to the state to decide:

1. Who has authority to make a Tier 3 waterbody decision? (Legislature? Board? Commission? Agency? Governor?)
2. How is that authority granted/identified? (Statute? Regulation? Policy? Guidance?)

Individual states are responsible for developing methods that are, at a minimum, consistent with that state's policy and federal regulations. Implementation methods (including where a state describes who has the authority to make a Tier 3 designation) may be statutory, regulatory or guidance. States operate under individual constitutional frameworks, statutes, and regulatory requirements that vary widely (and differ from the State of Alaska). Because of this, there are a variety of approaches where states may put the authority to designate in guidance, regulation, or statute and that authority rests at different levels of government – with boards, commissions, directors, or legislative bodies. Currently, the department is aware of four states: Idaho, Indiana, Maine and Montana, where the authority for Tier 3 designation resides with the Legislature.