

House Bill 138 Public Testimony

As of 2/13/2020

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Elle Ahkivgak

From: Mark Battaion [REDACTED]
Sent: Wednesday, February 12, 2020 4:49 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
Flag Status: Completed

Dear House Resources Committee,

I'm writing to ask that you join me in opposing HB 138. This bill strips Alaskans of the right to protect our waterways and our communities by creating an onerous political process designed to deny a Tier 3 water designation.

A Tier 3 designation is the only way for Alaskans to protect the waters on which we all depend. Currently, the Department of Environmental Conservation (DEC) has the authority to review Tier 3 nominations from Alaskan residents and designate a Tier 3 Water. HB 138 would remove authority from DEC to protect Alaskan waters through a science-based Tier 3 designation and make it a multi-step political process. If this bill passes, a Tier 3 water nomination would have to go through a 7-person committee appointed by the governor and then be passed by the legislature as law (which the governor can veto), making it nearly impossible.

Not only does this bill take away our right to protect clean water and fisheries, but it would require that the nominator cover all the costs of a nomination. This would mean that those facing the most difficult economic hardships would have the least access to protect their waterways. HB 138 is anti-democracy and anti-Alaskan.

I urge you to oppose HB 138.

Thank you,
Mark Battaion

[REDACTED]

Haines, AK
United States
99827

Elle Ahkivgak

From: Charlotte Tanner <[REDACTED]>
Sent: Wednesday, February 12, 2020 4:50 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
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Dear House Resources Committee,

I'm writing to ask that you join me in opposing HB 138. This bill strips Alaskans of the right to protect our waterways and our communities by creating an onerous political process designed to deny a Tier 3 water designation.

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I urge you to oppose HB 138.

Thank you,
Charlotte Tanner

[REDACTED]
Ketchikan, AK 99901
United States
99901

Elle Ahkivgak

From: Arthur Bloom <[REDACTED]>
Sent: Wednesday, February 12, 2020 4:49 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
Flag Status: Completed

Dear House Resources Committee,

I'm writing to state my opposition to HB 138. This bill would politicize what should be science based decisions. The intent is clearly to make Tier 3 designations difficult or impossible to achieve.

HB 138 would remove authority from DEC to protect Alaskan waters through a science-based Tier 3 designation and make it a multi-step political process.

Not only does this bill take away our right to protect clean water and fisheries, but it would require that the nominator cover all the costs of a nomination. HB 138 is anti-democracy, anti-fisheries and anti-Alaskan.

I urge you to oppose HB 138.

Thank you,
Arthur Bloom

[REDACTED]
Juneau, AK 99801
United States
99801

Elle Ahkivgak

From: Katie Craney <[REDACTED]>
Sent: Wednesday, February 12, 2020 1:02 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
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I urge you to oppose HB 138.

Thank you,
Katie Craney

[REDACTED]

Haines, AK 99827
United States
99827

Elle Ahkivgak

From: Janice Laxson [REDACTED]
Sent: Wednesday, February 12, 2020 11:58 AM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
Flag Status: Completed

Dear House Resources Committee,

I'm writing to ask that you join me in opposing HB 138. This bill strips Alaskans of the right to protect our waterways and our communities by creating an onerous political process designed to deny a Tier 3 water designation.

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I urge you to oppose HB 138.

Thank you,
Janice Laxson

[REDACTED]
Anchorage, AK 99516
United States
99516

Elle Ahkivgak

From: Sally Boisvert <[REDACTED]>
Sent: Wednesday, February 12, 2020 11:58 AM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

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I urge you to oppose HB 138.

Thank you,
Sally Boisvert

[REDACTED]

Haines, AK 99927
United States
99827

Elle Ahkivgak

From: Brenda Johnson <[REDACTED]>
Sent: Wednesday, February 12, 2020 11:58 AM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
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I urge you to oppose HB 138.

Thank you,
Brenda Johnson

[REDACTED]

Juneau, AK 99801
United States
99801

Elle Ahkivgak

From: Susan Pope [REDACTED]
Sent: Thursday, February 13, 2020 9:46 AM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
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I urge you to oppose HB 138.

Thank you,
Susan Pope

[REDACTED]
Anchorage, AK
United States
99507

Elle Ahkivgak

From: Andrew Cardella <[REDACTED]>
Sent: Thursday, February 13, 2020 8:45 AM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
Flag Status: Completed

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I urge you to oppose HB 138.

Thank you,
Andrew Cardella

[REDACTED]
Haines, AK 99827
United States
99827

Elle Ahkivgak

From: Rebecca Brewer <[REDACTED]>
Sent: Thursday, February 13, 2020 8:35 AM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
Flag Status: Completed

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I urge you to oppose HB 138.

Thank you,
Rebecca Brewer

[REDACTED]

Haines, AK 99827
United States
99827

Elle Ahkivgak

From: Autumn Simons [REDACTED]
Sent: Wednesday, February 12, 2020 11:58 AM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
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I urge you to oppose HB 138.

Thank you,
Autumn Simons

[REDACTED]
Juneau, AK 99801
United States
99801

Elle Ahkivgak

From: Mary Pat Schilly [REDACTED]
Sent: Wednesday, February 12, 2020 11:58 AM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

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I urge you to oppose HB 138.

Thank you,
Mary Pat Schilly

[REDACTED]

Juneau, AK 99801
United States
99801

Elle Ahkivgak

From: Barry Santana [REDACTED] >
Sent: Wednesday, February 12, 2020 12:00 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
Flag Status: Completed

Dear House Resources Committee,

We do not need to water down environmental protection for the waters in the state of Alaska. We need further action and protection. I have been waiting for years to see the Koktuli River given the highest designation, but nothing happens. I am sick of the way state government is moving to make Alaska "just like the L-48, in particular, Washington, Oregon, Idaho and Montana". I have been there and seen that. I don't want to see it happen in the state I have called home for 45 years.

I'm writing to ask that you join me in opposing HB 138. This bill strips Alaskans of the right to protect our waterways and our communities by creating an onerous political process designed to deny a Tier 3 water designation.

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I urge you to oppose HB 138.

Thank you,
Barry Santana

[REDACTED]

Wasilla, AK 99654
United States
99623

Elle Ahkivgak

From: Stacie Evans [REDACTED]
Sent: Wednesday, February 12, 2020 1:02 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

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I urge you to oppose HB 138.

Thank you,
Stacie Evans

[REDACTED]
Haines, AK

Elle Ahkivgak

From: Carolyn Weishahn [REDACTED]
Sent: Wednesday, February 12, 2020 4:49 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

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I urge you to oppose HB 138.

Thank you,
Carolyn Weishahn

[REDACTED]

Haines, AK 99827
United States
99827

Elle Ahkivgak

From: Sue Christiansen [REDACTED]
Sent: Wednesday, February 12, 2020 4:50 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

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I urge you to oppose HB 138.

Thank you,
Sue Christiansen

[REDACTED]
[REDACTED]
Homer, AK 99603
United States
99603

Elle Ahkivgak

From: Robert Vernon <[REDACTED]>
Sent: Wednesday, February 12, 2020 4:50 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

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I urge you to oppose HB 138.

Thank you,
Robert Vernon

[REDACTED]
[REDACTED]
Homer, AK 99603
United States
99603

Elle Ahkivgak

From: Kathleen Menke <[REDACTED]>
Sent: Wednesday, February 12, 2020 4:51 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

Follow Up Flag: Follow up
Flag Status: Completed

Dear House Resources Committee,

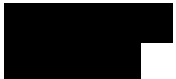
HB 138 is a corrupt bill would strip Alaskans of the right to protect their waterways and communities by creating an onerous political process designed to deny a Tier 3 water designation.

Currently, the Department of Environmental Conservation (DEC) has the authority to review Tier 3 nominations from Alaskan residents and designate a Tier 3 Water. The authority should remain with DEC.

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I urge you to oppose HB 138.

Thank you,
Kathleen Menke



Haines, AK
United States
99827

Elle Ahkivgak

From: Kathy Jakary [REDACTED]
Sent: Wednesday, February 12, 2020 4:51 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

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I urge you to oppose HB 138.

Thank you,
Kathy Jakary

[REDACTED]
Laguna Niguel, CA 92677
United States
92677

Elle Ahkivgak

From: Deborah Gravel [REDACTED]
Sent: Wednesday, February 12, 2020 4:52 PM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

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I urge you to oppose HB 138.

Thank you,
Deborah Gravel

[REDACTED] Haines AK 99827

Elle Ahkivgak

From: Michele Cornelius [REDACTED] >
Sent: Thursday, February 13, 2020 8:28 AM
To: House Resources
Subject: *****SPAM***** RE: Comment - Oppose HB 138!

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I'm writing to ask that you join me in opposing HB 138. This bill strips Alaskans of the right to protect our waterways and our communities by creating an onerous political process designed to deny a Tier 3 water designation.

A Tier 3 designation is the only way for Alaskans to protect the waters on which we all depend. Currently, the Department of Environmental Conservation (DEC) has the authority to review Tier 3 nominations from Alaskan residents and designate a Tier 3 Water. HB 138 would remove authority from DEC to protect Alaskan waters through a science-based Tier 3 designation and make it a multi-step political process. If this bill passes, a Tier 3 water nomination would have to go through a 7-person committee appointed by the governor and then be passed by the legislature as law (which the governor can veto), making it nearly impossible.

Not only does this bill take away our right to protect clean water and fisheries, but it would require that the nominator cover all the costs of a nomination. This would mean that those facing the most difficult economic hardships would have the least access to protect their waterways. HB 138 is anti-democracy and anti-Alaskan.

I urge you to oppose HB 138.

Thank you,
Michele Cornelius

[REDACTED]

Gustavus, AK 99826
United States
99826

Elle Ahkivgak

From: Lonna Richmond <[REDACTED]>
Sent: Monday, February 10, 2020 9:55 AM
To: House Resources
Subject: Fwd: House Bill 138

Follow Up Flag: Follow up
Flag Status: Completed

Gentlemen,

HB 138 is quietly making its way through the Alaska Legislature that, if passed, would further erode the already weak and corrupted permitting process by taking away our right to protect water quality in Bristol Bay and throughout the State of Alaska.

We shouldn't politicize protecting our clean water or undermine community efforts to protect important fisheries, resources that depend on healthy habitat.

Alaska's process to nominate and designate waters as Outstanding National Resource Waters (ONRWs) should be accessible and science-based not political. Requests for ONRW designations for important waters in Bristol Bay have been pending for over a decade, and deserve a fair process to consider these requests.

Sincerely,

Lonna Richmond

Elle Ahkivgak

From: Brenda Wright [REDACTED]
Sent: Monday, February 10, 2020 5:09 PM
To: House Resources
Subject: Fwd: House Bill 138

Follow Up Flag: Follow up
Flag Status: Completed

Thank you for adding this to the official record for this bill.

Begin forwarded message:

From: Brenda Wright [REDACTED]
Subject: House Bill 138
Date: February 10, 2020 at 11:58:57 AM AKST
To: Representative.John.Lincoln@akleg.gov, Representative.Geran.Tarr@akleg.gov
Cc: Representative.Bryce.Edgmon@akleg.gov

Dear Alaska representatives/Speaker,

As a fisheries biologist in Alaska for 24 years, I feel a very strong opposition to House Bill 138. I worked in both old growth and second growth forests throughout the Tongass & parts of the Chugach National Forests.

It has only been 65 years since the beginning of a huge clear cut forestry industry in SE Alaska. We do not have a good grasp on all the impacts on fresh water salmonid habitat. With ocean conditions changing rapidly to warm water 'blobs', we need to best conserve fresh water conditions for spawning and rearing. Salmon and forests are intricately intertwined. Now is not the time to weaken any laws that help keep our salmon habitat viable and strong.

Please let other scientists and native subsistence users more time to speak on the importance of clean water. Please get more information on effects on clean water before passing house bill 138.

Thank you,
Brenda Wright
[REDACTED]
Juneau, AK 99801

Elle Ahkivgak

From: Marina Lindsey <[REDACTED]>
Sent: Monday, February 10, 2020 9:10 AM
To: House Resources
Subject: Fwd: Opposition to House Bill 138

Follow Up Flag: Follow up
Flag Status: Completed

Please include my comments in the record. Thank you.

MARINALINDSEY
[REDACTED]

----- Forwarded message -----

From: Rep. John Lincoln <Rep.John.Lincoln@akleg.gov>
Date: Mon, Feb 10, 2020 at 9:03 AM
Subject: RE: Opposition to House Bill 138
To: Marina Lindsey [REDACTED]

Marina,

Thank you for emailing my office to share your thoughts. If you would like your comments included in the official record for this bill, please forward your message to House.Resources@akleg.gov

Thanks,

John Lincoln

From: Marina Lindsey [REDACTED]
Sent: Sunday, February 9, 2020 12:21 PM
To: Rep. Bryce Edgmon <Rep.Bryce.Edgmon@akleg.gov>; Rep. Geran Tarr <Rep.Geran.Tarr@akleg.gov>; Rep. John Lincoln <Rep.John.Lincoln@akleg.gov>
Cc: Rep. Sara Hannan <Rep.Sara.Hannan@akleg.gov>; Rep. Andi Story <Rep.Andi.Story@akleg.gov>
Subject: Opposition to House Bill 138

Dear Representatives,

I am writing in opposition to House Bill 138. It is absolutely essential that we maintain the ability to protect exceptional waters through the current science-based Department of Environmental Conservation Tier 3 Designation process. Replacing science with political appointees will allow industry unfair and unchecked access to pristine waterways, and in

turn will adversely impact fragile ecosystems and people that depend on them. We need to protect what few healthy ecosystems we still have, especially since Alaska is already showing the detrimental effects of a warming climate with fires, dwindling fish populations, and increasing invasive species.

Please refer this bill to the Fisheries Committee and the Tribal Affairs Committee, as it will have a substantial impact on the rights of subsistence users and the commercial fishing industry.

Thank you.

M A R I N A L I N D S E Y



Juneau, AK 99081

Elle Ahkivgak

From: Lois Munch [REDACTED]
Sent: Monday, February 10, 2020 1:08 PM
To: House Resources
Subject: Fwd: Opposition

Follow Up Flag: Follow up
Flag Status: Completed

Sent from my iPhone

Begin forwarded message:

From: Lois Munch [REDACTED]
Date: February 10, 2020 at 3:00:15 PM MST
To: "Rep. John Lincoln" <Rep.John.Lincoln@akleg.gov>
Subject: Re: Opposition

Thank you, and I will.
Lous

Sent from my iPhone

On Feb 10, 2020, at 2:53 PM, Rep. John Lincoln <Rep.John.Lincoln@akleg.gov> wrote:

Lois,

Thank you for emailing my office to share your thoughts. If you would like your comments included in the official record for this bill, please forward your message to House.Resources@akleg.gov.

Thanks,

John Lincoln

-----Original Message-----

From: Lois Munch [REDACTED]
Sent: Monday, February 10, 2020 12:35 PM
To: Rep. John Lincoln <Rep.John.Lincoln@akleg.gov>
Cc: Dan Ortiz [REDACTED]
Subject: Opposition

Dear Representative Lincoln,

I oppose House Bill 138.

I want this bill to go to both the fisheries committee and the tribal affairs committee.

Respectfully,

LOIS MUNCH

[REDACTED]

Ketchikan 99901

Sent from my iPhone

Elle Ahkivgak

From: Lin Davis <[REDACTED]>
Sent: Monday, February 10, 2020 11:03 AM
To: House Resources
Subject: Fwd: Urge No on new version of HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Thank you, House Resources, for turning down Rep Kopp's new version of HB 138. It does not serve the common good re: preservation of our community clean water.

Lin Davis
[REDACTED]
Juneau, AK 99801

Begin forwarded message:

From: "Rep. John Lincoln" <Rep.John.Lincoln@akleg.gov>
Date: February 10, 2020 at 10:44:08 AM AKST
To: Lin Davis [REDACTED]
Subject: RE: Urge No on new version of HB 138

Lin,

Thank you for emailing my office to share your thoughts. If you would like your comments included in the official record for this bill, please forward your message to House.Resources@akleg.gov.

Thanks,

John Lincoln

-----Original Message-----

From: Lin Davis [REDACTED]
Sent: Monday, February 10, 2020 10:01 AM
To: Rep. Geran Tarr <Rep.Geran.Tarr@akleg.gov>; Rep. John Lincoln <Rep.John.Lincoln@akleg.gov>; Rep. Bryce Edgmon <Rep.Bryce.Edgmon@akleg.gov>
Subject: Urge No on new version of HB 138

Dear Representatives:

Thank you for turning down Rep Kopp's new HB 138.

This is an extraction industry shortcut that is being paraded around the country. It undemocratically eliminates local community voice and choice in protecting our clean water.

Alaska's clean water does not need a drop of Kopp's effort to harm our waters.

Thank you for clear dismissal of this corporation ploy.

Lin Davis



Juneau, AK 99801

Elle Ahkivgak

From: Annie Mackovjak <[REDACTED]@[REDACTED].com>
Sent: Monday, February 10, 2020 1:40 PM
To: House Resources
Subject: HB 138 - Please include in official record

Follow Up Flag: Follow up
Flag Status: Completed



Annie Mackovjak [REDACTED] 12:35 PM (1 hour ago)

I am writing as a long-time Alaskan resident who is firmly in opposition to HB138. My husband and I were commercial fishermen, then started and owned Pt. Adolphus Seafoods for 20 years. Having clean water is essential to the fisheries, as well as to all humans who live here. Waste has no place in our rivers, lakes, or ocean. We've found out what a terrible situation the PFAs contamination has had in Gustavus and other areas around the state. This is extreme, but dumping many forms of waste is detrimental to us all including land and sea critters. DEC needs to be allowed to make science-based decisions on what is best for our waters, not political expediency which will come back to bite us.

Ann Mackovjak
[REDACTED]
Gustavus, AK 99826
[REDACTED]

Elle Ahkivgak

From: victoria mcdonald <[REDACTED]>
Sent: Monday, February 10, 2020 7:12 PM
To: House Resources
Subject: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Please include my comments into the record.

Victoria McDonald
[REDACTED]
Ketchikan, AK 99901

Elle Ahkivgak

From: russ@[REDACTED]
Sent: Monday, February 10, 2020 11:22 AM
To: House Resources
Subject: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

To the Alaska Legislative Resource Committee,

I am an Alaskan constituent residing in Haines, AK, and would like to submit my view regarding HB 138. I hope that you will reject this bill as it will make it too difficult for us citizens to take measures to ensure our public waters stay clean and healthy so that they can continue to support the subsistence and commercial fishing that we rely on.

It should not be easier for industry to pollute and degrade this precious resource than it is for the general public to protect it.

Please VOTE NO on HB 138.

Thank you for your consideration,

Russ Lyman

[REDACTED]
Haines, AK 99827

From: Luann McVey <[REDACTED]>
Sent: Monday, February 10, 2020 10:35 AM
To: House Resources
Subject: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Dear Representative Tarr, Representative Lincoln, and members of the House Resources Committee,

Thank you for considering public testimony about HB 138. **I am opposed to this bill.** I understand that, under the federal Clean Water Act, Alaskans can currently request the Department of Environmental Conservation to use a scientific process to assign Tier 3 status to exceptional waters, critical to our communities' economies and fisheries.

HB 138 transfers the classification of Alaskan waters from the DEC to a committee appointed by the governor, making this process subject to the influences of politics, rather than science. Under this bill, a person nominating a waterway for Tier 3 designation to pay for associated costs, requiring those who would be economically harmed by the degradation of the waterway to have to pay for its nomination. When considered by this political committee, if approved for protected status, the waterway would be referred to the governor, who introduce a bill to the legislature protecting that body of water. This makes it nearly impossible for any body of water to receive protected status.

The process outlined in this bill is ludicrous. It is standard practice for industry, in planning development, to study how a project affects other resources, including fish and wildlife habitat. In considering such a project the developer is rightfully required to specify how it will provide protection of other resources

I worked for the Department of Fish and Game as a biologist in the 1970s, inventorying fish habitat in areas slated for logging and mining. Pristine salmon spawning and rearing habitat, found in our old-growth Alaskan forests, are essential for salmon survival, and **it is the responsibility of our state agencies to exercise proper stewardship of salmon habitat.** Alaskans assume our water resources are protected. HB 138, by allowing a governor's committee to have its way with our waters, assigns greater power to industries than to citizens in the protection of our clean water. This is anti-democratic and it is wrong.

A committee appointed by the governor has no business determining the level of environmental protection afforded to any body of water in Alaska. Our state must protect our indigenous cultures, our fish and wildlife, and our communities from potential

industrial damage. The federal Clean Water Act reinforces protection of our exceptional waters. I am strongly opposed to this bill and I urge you to show your commitment to Alaskans by sending HB 138 on to the Tribal Affairs Committee and to the Fisheries Committee, whose stakeholders have rightful interest in the travesty of this preposterous bill.

Thank you for your consideration.

Sincerely,
Luann McVey, Retired Alaskan teacher
[REDACTED] Douglas, Alaska 99824

Elle Ahkivgak

From: Harropm [REDACTED]
Sent: Monday, February 10, 2020 10:29 AM
To: House Resources
Subject: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Dear Mr. Lincoln,

I'd like to submit my comments opposing HB 138. I am currently away from my home in Kupreanof, Alaska and am unable to testify.

Like many residents of Alaska, I earn a living as a commercial fisherman, personally, as a troller and longliner. I am also a subsistence and sport fisher. Clean water is critical for the economy and well being of all Alaskans, not just to me personally. Our waters are one of our greatest natural resources and should be managed conservatively through science, not politics. HB 138 removes the science and also the ability of residents to protect exceptional waters, critically important to our communities, our fisheries, and to our economy as a state. HB 138 makes this entirely a political process, in a time when our politics are discordant. Surely science, and more democratic means should remain. HB 138 will make a Tier 3 designation incredibly burdensome, far more than the process corporations, including foreign corporations, must apply to use our waters in their activities. We already have a nomination and designation process in place. This bill will remove the DEC's authority to protect our waters through science based and administrative processes, and virtually eliminates public involvement.

Please, do not support this bill. At the very least I would like to see involvement of the Fisheries Committee as well as Tribal Affairs Committee.

Thank you for your considerations,

Mary Harrop

[REDACTED]
[Petersburg, AK 99833](#)
[REDACTED]

Kupreanof, Alaska

Elle Ahkivgak

From: Cathy Conrad-rice <[REDACTED]>
Sent: Monday, February 10, 2020 9:20 AM
To: House Resources
Subject: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Please vote NO on HB 138.

Snow. Rain. Then creeks and rivers. All water flows to the sea. Then it goes up and falls again, to sustain us all.

Please act to process in to designation, the Chilkat River, along with the other Outstanding National Resource Waters Nominations.

Thankyou. Many voices of wisdom serve better than one.

Elle Ahkivgak

From: DC McGee [REDACTED]
Sent: Monday, February 10, 2020 2:48 PM
To: House Resources
Subject: HB 138 Comments
Attachments: AK Natural Resource Meeting HB 138 Plea.docx

Follow Up Flag: Follow up
Flag Status: Completed

10 February 2020

Dear House Resource Committee,

HB 138 would create the highest bar possible for a citizen to exercise their legal right to protect water in Alaska. It would give committee chairs in the House and Senate the ability to kill a nomination by burying a Tier III nomination bill in committee. HB 138 would give industrial, business and municipal interests - adept at working the levers of power in the legislature - an upper hand in water protection debates. It would codify a practice in Alaska that has proven in numerous other states to result in zero waters designated for Tier III protections.

DEC has the ability and the legal authority right now to establish a process for Tier III water nominations that would satisfy the requirement of the Clean Water Act. The agency should move forward in good faith.

Numerous Tribal entities have already submitted nominations for water protections in response to threats posed by different mining projects in their regions. A scarcity of trust exists in Alaska that large industrial projects will be held to any true accountability in the normal permitting process. With the Trump EPA about to authorize a regulation allowing wastewater pollution in freshwater spawning areas, who can fault this lack of trust?

Please hold HB 138 in committee. Legislative approval of Tier III water is a dead-end, disguised as a process. It is time for DEC to administratively create a true process for citizens to nominate waters for increased protection.

I was born and raised in Butte, Montana which has been mined extensively for over a century. Besides supplying beneficial copper wires that conduct electricity to most American homes, the watershed between Butte and Missoula was designated the largest Superfund site in our nation by EPA. My brothers, friends, additional family members, I and countless others continue to roll up our sleeves helping restore the riparian zone of Silver Bow Creek and the Clark Fork River. Believe it or not, salmon formerly left the Pacific Ocean and ran upstream in the Columbia River to it's headwaters on the Continental Divide near Butte, but have not for eons. The cost for the continual cleanup of the arsenic and lead deposits will be billions of dollars. Yet, it is doubtful salmon will return in our lifetime.

Bottom-line: Alaska is famous for its pristine rivers and streams, most chocked full of wild salmon because its waterways have been unadulterated by industry. I for one, experientially agree that is how the Greatest State in our Union should remain. Simply, look to the lower 48! Afterall, will anyone really care or remember about the minuscule amounts of copper, gold, or molybdenum that the Pebble Project might produce for our daily lives' "critical" conveniences? NO! Yet, most will remember intimately when things go south for Alaska's salmon after an earthquake or some Pebble Mine employee's negligence. Think Exxon Valdez! Thereafter, Alaska's precious economy will falter greatly because of less tourism, a major cog in this State's economic wheel!

Enough; please, just do the right thing!

Don McGee

Environmental Engineer

Qaluksiubayak Technical Services

Yakutat, Alaska

Elle Ahkivgak

From: [REDACTED]
Sent: Tuesday, February 11, 2020 5:27 AM
To: House Resources
Subject: HB 138 concerns

Follow Up Flag: Follow up
Flag Status: Completed

To whom it may concern,

I've recently purchased a commercial salmon fishing operation in Bristol Bay Alaska and in doing so, have placed my faith and future in the hands of those who continue to manage and protect such a precious watershed.

HB 138 was recently brought to my attention and it raises some serious concerns.

- It appears to lack scientific/expert purview by the 7 person committee that is appointed solely by the governor.
- The funding requirements (and lack of funding available) disincentivizes any further scientific inputs.
- The Alaskan resident requirement looks like a grey zone that may reduce or eliminate indigenous inputs.
- It lacks checks and balances via lack of appeals, among other things.

It's generally ambiguous and consolidates the power without much oversight, making it vulnerable to corruption.

Along with the removal of EPA protections and the revisions of NEPA, these efforts are obviously in favor of the Pebble Mine project, which will directly, negatively affect the living/livelihood of everyone in the Bristol Bay area (mine included).

I believe America is a democracy comprised largely of free, independent patriots, so it's disheartening to see some of these citizens (particularly in the state of Alaska) sell themselves out to entities like foreign corporations for short-term personal gains, against the will and to the detriment of so many. We removed this yoke over 200 years ago... seems we're forgetting what it feels like.

I hope you will do what is in the best interest of the future of Alaska and oppose HB 138.

Sincerely,

Dave Fehlhafer

Elle Ahkivgak

From: Kathrin McCarthy <[REDACTED]>
Sent: Monday, February 10, 2020 12:40 PM
To: House Resources
Subject: HB 138 tier 3 water

Follow Up Flag: Follow up
Flag Status: Completed

Dear Representatives: I am writing to let you know that I am adamantly opposed to Rep. Kopp (R Anch) bill HR 138 that will allow the pollution and degradation of our pristine Alaska water by assigning a Tier 3 designation and take away Alaskans rights to protect our own, pristine waters.. You should do everything in your power to kill this wretched bill. HB 138 would remove DEC and require that any nomination of Tier 3 waters by a review of 7 member committee appointed by the Governor who would then send the bill to the legislature. This bill blatantly disregards science and turns this into a purely political process and make it very difficult for residents of Alaska to designate protection for clean waters.. This is unAmerican and destructive. It would make it impossible for Alaska Native communities and groups to protect pristine waters on which these communities critically depend..

The environmental record of the current administration -the Governor's office and DEC - on protecting our environment is abysmal and worrying. This administration is failing Alaska. I am totally opposed to granting corporations rights that Alaskan citizens would not have under the Clean Water Act. Water is a critical resource and in trouble all over the world. We had drought designations up and down SE Alaska all last summer. Last summer was the hottest on record.

Sincerely, Kathrin McCarthy, [REDACTED] 99801. [REDACTED]

Elle Ahkivgak

From: Bonnie Demerjian [REDACTED]
Sent: Tuesday, February 11, 2020 8:34 AM
To: House Resources
Subject: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

We are concerned that HB 138 will lead to degradation of our most valuable resource, water. We ask you to oppose it and send it to the Fisheries Committee and the Tribal Affairs Committee.

Thank you,

Bonnie Demerjian
Haig Demerjian

[REDACTED]
Wrangell, AK 99929

Elle Ahkivgak

From: Joyanne Bloom [REDACTED]
Sent: Monday, February 10, 2020 4:08 PM
To: House Resources
Subject: HB138 NO GO!

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Committee Members,

Because of my teaching schedule, I am unable to testify in person . Please know that I am opposed to HB138 because of my children and grandchild, all of who live in Alaska.

I don't want to compromise our clean air and clean water and tamper with the balance of our precious, fragile ecosystems. Corporations don't drink the water and eat the fish. We do! We want to profit from our natural resources. Invest responsibly in us!

Thank you,
Joyanne Bloom

--

Joyanne Bloom
[REDACTED]
Juneau, Alaska 99801

[REDACTED]

Elle Ahkivgak

From: Jessica Plachta [REDACTED]
Sent: Monday, February 10, 2020 3:20 PM
To: House Resources
Subject: Lynn Canal Conservation testimony re: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Greetings, Honorable Members of the House Resources Committee,

My name is Jessica Plachta and I'm the Executive Director of Lynn Canal Conservation. LCC is based in the Chilkat Valley and represents over 300 local members. I oppose HB 138 and I support the Tier 3 designations put forth by Alaska Native tribes.

The Chilkat Valley is formed and fed by the Chilkat River, which is a pristine and salmon-rich river, and which has been recognized as one of America's top 10 most endangered rivers. Five years ago, the Chilkat River was nominated for Tier 3 protections by the Chilkat Indian Village, a federally recognized tribe here in the Chilkat Valley.

Alaska has done nothing.

This bill, HB 138, is worse than nothing. This bill takes the existing science-informed Tier 3 process authority from the DEC, politicizes it, and drowns it in red tape.

LCC and our members are concerned that HB 138 would give the governor veto power on Tier 3 designations, that a governor-appointed committee would be vetting Tier 3 nominations, and that our right to clean water would be politicized by this major proposed change in the Tier 3 process.

Our health, our subsistence-based food security, and our economy depend on clean water and the fishing and tourism industries that our healthy salmon runs support.

When you endanger our right to clean water, you endanger our rights to health, wealth and well-being. You endanger the rights of the people who were here long before the Russians sold this piece of earth to Washington DC. You endanger the world's last few remaining healthy salmon runs— runs worth billions of dollars on the world's markets.

House Bill 138 creates more bureaucracy and expense, and politicizes our most valuable natural resource. It takes away the rights of Alaskans to protect and live out their traditional life-ways and risks Alaska's most sustainable and lucrative industries.

House Bill 138 is unnecessary, it's unjust, and it's scientifically unsound. Alaska needs some of its water bodies protected, so our traditional life ways and our salmon and tourism dependent economies are supported.

Alaska needs Tier 3, and Alaska needs our legislators to respect and empower the science-based process that is already in place.

At the very least, this bill should also be vetted by the Fisheries Committee and the Tribal Affairs Committee. Lynn Canal Conservation supports a robust scientific review of Tier 3 nominations. This would not be possible under HB 138.

Thank you for your service to the public.

--

Jessica Plachta
Executive Director

Lynn Canal Conservation

Phone: [REDACTED]

Cell: [REDACTED]

Check us out on [Instagram](#) and [Facebook](#).

Protect the wild watersheds of Lynn Canal. Text [CHILKAT](#) to [44321](#) to donate!

Elle Ahkivgak

From: Jill Jacob [REDACTED]
Sent: Monday, February 10, 2020 3:54 PM
To: House Resources
Subject: More Precious Than Gold

Follow Up Flag: Follow up
Flag Status: Completed

Representative John Lincoln,

I oppose HB 138 and it is critical that DEC retain the authority for designating Tier 3 Waters. Currently both the DEC and the legislature have authority to designate a Tier 3 as the statutes are written.

HB 138 would make Tier 3 designation a legislative, statutory process, dismissing the DEC's authority and threatening the rights of Alaskan residents to protect our shared waterways by removing the option for a public ballot initiative to designate a Tier 3 Water - the only way for the residents of Alaska to protect exceptional waters critically important to our communities, fish, and economies.

Currently an outside corporation can fill out a 6 page online form to dump waste into our shared waterways. Alaskans should have the right to protect our waterways just as easily.

A Tier 3 designation simply means that DEC does not approve permits to dump waste in the water body.

A Tier 3 designation protects all current uses of the water body and allows short term degradation by motor boats, fish cleaning, culture camps, private septic systems, temporary construction etc. The designation only denies new permits for long-term degradation.

This latest version of HB 138 should go before the Fisheries Committee and the Tribal Affairs Committee, as it will have a heavy impact on these stakeholders.

This issue is personal for myself and my family. Twenty five years ago we moved to Alaska with our three sons specifically because of Alaska's abundance of clean water after having been directly involved with dire drought and water contamination in the lower 48.

Thank you for considering my comments,

Jill Bohr Jacob

[REDACTED]
Ward Cove, AK
99928

Elle Ahkivgak

From: Sally Schlichting [REDACTED] >
Sent: Monday, February 10, 2020 11:51 AM
To: House Resources
Subject: Opposition to HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Dear committee members,

I oppose HB 138 as currently written. The tier 3 water designation process must be a science-driven and public process where Alaskans can nominate a water for Tier 3 status and the Department of Environmental Conservation designates Tier 3 status based on a thorough, science-based evaluation. Creating a multi-layered, politicized process that involves the governor, a governor-appointed commission, and the legislature is bad public policy and ensures that no waters in Alaska will ever be protected under Tier 3 status.

I urge you to acknowledge that Alaska is one of the last regions of our nation with pristine bays, lakes, rivers and streams that are valued for the clean water they provide and the fish and other species that call them home. We truly have something that other states don't have, which is why people from around the world visit Alaska every year. However, without protection, extractive industries pose irreversible risks to Alaska's highest value waters and we'll become just like any other state, battling polluters over the degradation of our once-great waters and the loss of our fisheries.

Alaskan communities that depend on these precious waters for subsistence and commercial fishing must be in the driver's seat in the Tier 3 process. Alaskans deserve to be heard by an objective, science-based agency, not obstructed by political interests and the short-term gains from non-renewable resource development with long-term environmental impacts.

I urge you to amend this bill and put the power for Tier 3 designations into the hands of Alaskans and ADEC.

Sincerely,

Sally Schlichting

Juneau, Alaska

Elle Ahkivgak

From: Larri Spengler [REDACTED]
Sent: Monday, February 10, 2020 9:03 AM
To: Rep. John Lincoln; House Resources
Subject: Re: I oppose HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Thank you. I am doing so.

Larri Spengler

Larri Irene Spengler
[REDACTED]
Juneau, Alaska 99801
[REDACTED]

On Feb 10, 2020, at 8:55 AM, Rep. John Lincoln <Rep.John.Lincoln@akleg.gov> wrote:

Larri,
Thank you for emailing my office to share your thoughts. If you would like your comments included in the official record for this bill, please forward your message to House.Resources@akleg.gov
Thanks,
John Lincoln

From: Larri Spengler [REDACTED]
Sent: Saturday, February 8, 2020 10:14 AM
To: Rep. John Lincoln <Rep.John.Lincoln@akleg.gov>; Rep. Geran Tarr <Rep.Geran.Tarr@akleg.gov>
Subject: I oppose HB 138

Greetings:

I oppose HB 138, which would make it extremely difficult for Alaskans to protect clean water.
Further, I'd like to see this bill go to the Tribal Affairs Committee and the Fisheries Committee.
Thank you.

Larri Spengler
Larri Irene Spengler
[REDACTED]
Juneau, Alaska 99801
[REDACTED]

Elle Ahkivgak

From: Marian Allen [REDACTED]
Sent: Monday, February 10, 2020 9:43 AM
To: House Resources
Subject: Testimony on HB 138
Attachments: Clean water is fundamental to life.docx

Follow Up Flag: Follow up
Flag Status: Completed

Please consider my testimony on HB 138, an Act Relating to National Resource Water

Testimony on HB 138

Clean water is fundamental to life. High quality water is fundamental to the fish in our rivers, to the whole ecosystem, and is a critical part of our planet's health; therefore it is critical to our lifestyles, our economies, our very lives. Leaving designation of the highest water quality to a political process makes absolutely no sense. This is an area in which it is crucial that we make decisions using science. Designation of water as an outstanding national resource has no place in a committee of non-scientists appointed by the governor or voted on by the legislature, but should be decided by scientists at DEC based on the water's importance to its ecosystem. Communities and concerned people should be able to nominate Tier III designation because they are the ones most familiar with that water, and that nomination should be evaluated solely By DEC using the best science available. This bill does not begin to address the process needed.

Thank you for considering my thoughts.

Marian Allen
[REDACTED]
Sitka, AK 99835
[REDACTED]

Testimony on HB 138

Clean water is fundamental to life. High quality water is fundamental to the fish in our rivers, to the whole ecosystem, and is a critical part of our planet's health; therefore it is critical to our lifestyles, our economies, our very lives. Leaving designation of the highest water quality to a political process makes absolutely no sense. This is an area in which it is crucial that we make decisions using science. Designation of water as an outstanding national resource has no place in a committee of non-scientists appointed by the governor or voted on by the legislature, but should be decided by scientists at DEC based on the water's importance to its ecosystem. Communities and concerned people should be able to nominate Tier III designation because they are the ones most familiar with that water, and that nomination should be evaluated solely By DEC using the best science available. This bill does not begin to address the process needed.

Elle Ahkivgak

From: Guy Archibald [REDACTED]
Sent: Monday, February 10, 2020 11:01 AM
To: House Resources
Subject: Written Testimony CS for HB 138
Attachments: Guy Archibald testimony on HB 138 2.10.2020.docx; 2010 Antidegradation Methods.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Please see attached and thank you for submitting it on the record.

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Southeast Alaska
Conservation Council

Guy Archibald
Staff Scientist
[REDACTED]

Southeast Alaska Conservation Council
2207 Jordan Ave, Juneau, Alaska 99801

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My name is Guy Archibald and I am the staff scientist for the Alaska Conservation Council. I am an environmental chemist and resident of Alaska. This testimony is submitted on my behalf only.

I am in opposition to the CS of HB 138.

I feel the need to respond to the information on Rep. Kopp's sponsor statement. It contains some misinformation.

The second paragraph states that Tier 3 "shall be maintained and protected from degradation in perpetuity." This is an oversimplification. A Tier 3 is protected only from long-term or permanent degradation. Every state that designated a Tier 3 has exceptions for short-term degradation such as road building, restoration and flood control work.

The third paragraph states that "Alaska has no formal process for designating ONRW's." Alaska does not have a process in statute, but it is not true that there is no process. The process is outlined in The State's Policy and Procedure (sic) Interim Antidegradation Implementation Methods dated July 14, 2010 also submitted. Page 5 states;

"[I]n the meantime, in addition to considering possible tier 3 designation as part of a permit action (by DEC), water could also be designated as a tier 3 through two other existing legal mechanisms, prior to a permitting action. A person could propose a tier 3 designation as part of the division's existing triennial review process, where the public is invited to suggest changes to the state's water quality standards." Parenthesis added.

Testimony in this very committee from Leg. legal and the Dept. of law confirmed this. The 2010 policy on Tier 3 was approved by the EPA and not superseded by recent legislation covering tier 1 and 2 methods.

The notion that EPA will impose their own designation process is false. As pointed out above, EPA has already approved the 2010 methods.

The Fourth paragraph also contains incorrect information. Rep Kopp states that "[I]n-and near water activates-like wastewater treatment plants, seafood processing, and motorized vessels-as well as upland activities, including residential and commercial septic systems, road construction, mining, and timber harvesting, could be impacted or prohibited by an ONRW designation."

This is not true. Every state that has a tier 3 process only limits new or expanded **point-source** discharges. The upland activities Rep Kopp refers to are non-point discharges. Temporary or activities that do not permanently degrade water quality are allowed.

For example, Arizona, a state that values clean water designated tier 3's (called Outstanding Arizona Waters or OAW's) through the Arizona Code Title 18, Chapter 11 at in R18-11-112(C). "Tier 3 antidegradation protection. 1. Tier 3 antidegradation protection applies only to an OAW listed in R18-11-112(G). 2. **A new or expanded point-source discharge directly to an OAW is prohibited.** 3. A person seeking authorization for a regulated discharge to a tributary to, or upstream of, an OAW shall demonstrate in a permit application or in other documentation submitted to the Department that the regulated discharge will not degrade existing water quality in the downstream OAW." Available at: https://apps.azsos.gov/public_services/Title_18/18-11.pdf.

This example also goes to the point that non-point source discharges are not expressly prohibited by EPA. Alaska could adopt the same language in granting agency authority in statute.

This is not a land-use decision. It is a water use decision. I own land. I have examined my deed thoroughly. Nowhere in the deed do I see that my land ownership gives me some right to pollute an adjacent waterway.



The last paragraph. Rep Kopp state that this process outlined in the CS for HB 138 is consistent with the way the state has handled all other similarly restrictive reservations of state waters. This, again is simply not true. The state routinely establishes mixing zones where the fishable and swimmable standards are exceeded prohibiting those uses. The State has issued dozens of permits to dump waste into mixing zones even prior to having statutory authority (makes one wonder why they refused to process tier 3 nominations without statutory authority). The state allows claims to be registered on land and water such as water use permits, mining claims, etc. without any legislative action or any notification or recourse to appeal.

There is nothing in current law that prohibits DEC from designating ONRWs. DEC's authority to regulate water resources is broad and the agency is vested with authority to adopt water quality standards and implement the CWA. See, AS 46.03.020(10)(A), .080; see also *Kelso v. Rybachek*, 912 P.2d 536, 540–41 (Alaska 1996) (nothing that "the State has broad discretion in developing water quality regulations").

The agency sets water quality criteria that restrict the amount and concentration of water allowed without legislative action. The agency creates site specific criteria without legislative action. The state regulates the amount and timing of fish harvested without legislative action. The state does this based on an administrative process based on science, not politics.

HB 138 is designed to never allow a tier 3 to be designated in Alaska. That is clear. HB 138 would codify the right to pollute Alaska's waters given to outside corporations while restricting residents the right to protect waters. That is the sound of wealth leaving our state. Alaska contains 40% of the nation's clean water resources as compared to only 20% of the nation's oil. Clean water is Alaska's most valuable natural resource and there should be a completely science-based administrative procedure to protect some of it.

Passing HB 138 admits that you do not think that any of Alaska 40,000 waterbodies that there is not one that is so special for a community, for food security, for culture or lifestyle, for habitat that it should not be permeably degraded from a point source discharge of industrial waste.

State of Alaska Department of Environmental Conservation		POLICY AND PROCEDURE NUMBER 05.03.103	PAGE 1 of 12
 Policy and Procedure Procedure		EFFECTIVE DATE July 14, 2010	
SUBJECT Interim Antidegradation Implementation Methods		SUPERCEDES Previous Edition dated June 28, 2010	
SECTION Division of Water	CHAPTER Permits/Authorizations	APPROVED BY  Lynn J. Tomich Kent, Director	

PURPOSE AND SCOPE

The purpose of this *Interim Antidegradation Implementation Methods* is to provide staff with a framework to implement the state's antidegradation policy. This serves as interim guidance to be used while the Division works with other agencies, permittees, and the public to develop more detailed procedures. The Division expects to develop the final implementation methods through a rule-making process.

PROCEDURE

See attached.

AUTHORITY

To prevent unnecessary lowering of water quality, 40 CFR §131.12 requires states to develop and adopt an antidegradation policy, as well as to identify methods to implement the policy. Alaska's antidegradation policy is established at 18 AAC 70.015. This guidance serves as the interim implementation methods.

IMPLEMENTATION RESPONSIBILITY

Division of Water staff that develop water quality standards regulations or develop and issue permits, or certify federal permits, for discharges to waters of the U.S are responsible to implement the attached methods.

Interim Antidegradation Implementation Methods
July 14, 2010

Introduction.

Federal law requires that each state, as part of its program to protect water quality, adopt a statewide antidegradation policy and also identify methods for implementing the policy. 40 CFR § 131.12(a). The State of Alaska, acting through ADEC, has adopted an antidegradation policy at 18 AAC 70.015, and EPA has approved that policy. The purpose of this guidance document is to describe the methods that ADEC staff should follow to implement the existing policy.

Staff should understand that the policy, having been adopted as a regulation, is part of state law, and compliance with that policy is required. In contrast, this guidance has not been adopted as a regulation, and is designed simply as a tool to help staff implement the policy itself. In the event of any conflict between this guidance and the policy, or any question about the proper interpretation of this guidance, the terms of the policy itself always govern. Also, there may be particular situations where ADEC staff must depart from the terms of this guidance in order to fully comply with state and/or federal law. If such situations arise, compliance with any governing laws will always take precedence over this guidance.

When the policy applies.

The general purpose of the antidegradation ("AD") policy is to protect the quality of the state's waters. Thus, any time someone proposes an operation or activity that could have the effect of lowering the quality of a waterbody, ADEC staff should presume that the AD policy applies, and should comply with it. While this could arise in a variety of contexts, by far the most common is the permitting of proposed discharges into state surface water. Thus, this guidance focuses on that common scenario.

When a permit application, or an application for state certification of a federal permit under Section 401 of the Clean Water Act, is received, staff should evaluate it to see if issuing the requested permit or certification would allow activities that would degrade the quality of a water body. If the application is for a new operation, the answer will usually be 'yes', because most discharges will add some pollutant at levels that exceed the natural condition of the receiving water. And that is what is meant by 'degradation': increasing the concentration of a pollutant in a receiving water. Even a discharge that meets the water quality standards may have the effect of

increasing the concentration of a pollutant in a receiving water. Again, most new discharges would have this effect.

An application for a permit renewal would also trigger analysis under the AD policy if the renewed permit would allow an increase in discharge of pollutants from what had previously been permitted. Thus, staff should compare the effluent limits of the old permit with the proposed renewed permit, to see if the applicant is asking for permission to degrade any state water. Even if the proposed degradation is only for one particular pollutant, analysis under the AD policy would be triggered for that pollutant.

The permitter must document the anti-degradation analysis in the draft and final permit fact sheet or the draft and final state certification of a federal permit. The anti-degradation analysis is not a substitute for the need to document the permitter's rationale for authorizing exceptions to the water quality standards (18 AAC 70.200.240) such as zones of deposit or mixing zones - these must also be documented in the permit fact sheet or state certification of a federal permit.

If the permit renewal would not relax any of the effluent limits or allow a reduction of water quality, no tier 2 or tier 3 AD analysis is required. However, a tier 1 analysis is still triggered, as discussed below. You should document in the permit fact sheet or permit certification that no lowering of water quality will occur and no further tier 2 or 3 analysis is required.

If staff have any doubt about whether AD analysis is triggered by a particular circumstance, they should consult with more experienced peers or with supervisors to answer that threshold inquiry.

How the policy works.

There are three ascending levels of protection offered by the AD policy. These are commonly referred to as "tiers," even though the regulation itself does not use that term. The level of protection afforded to a particular water body depends upon which tier applies to it.

The lowest level of protection, or tier 1, applies to water bodies whose existing quality is no better than the state-wide water quality criteria for the designated uses of "growth and propagation of fish, shellfish, other aquatic life and wildlife" [see 18 AAC 70.020(a)(1)(C)] and contact recreation [see 18 AAC 70.020(a)(1)(B)(i)]. These two uses are often referred to together as the "fishable/swimmable" uses, entitled to particular protection under the federal Clean Water Act.

The next level of protection is tier 2, and it applies to water bodies whose quality is better than the criteria applicable to the fishable/swimmable uses.

See 18 AAC 70.015(a)(2). Most water of the state will fall into this category, because the quality of most of our surface waters is higher than the statewide criteria for those two designated uses. Among other things, the quality of tier 2 waters must be protected by ensuring that all statutory and regulatory requirements are met for all new and existing point sources and all cost-effective and reasonable best management practices are used to control nonpoint sources.

The highest level of protection is reserved for tier 3 waters, which are also referred to as outstanding national resource waters, or ONRWs. ONRWs are entitled to the highest level of protection because they are special for one reason or another. See 18 AAC 70.015(a)(3).

When you begin your AD analysis under the policy, figuring out what tier of protection applies to your case is the first step.

How to decide what tier applies.

For reasons explained below, as a practical matter, for most waters the question will be whether tier 1 or tier 2 applies. You need to evaluate the available information about the existing quality of the water in question, to determine which of those two tiers applies. Finding water quality data showing the current condition of the water body may be a challenge. The permit application may include ambient monitoring data for the proposed receiving water, and you should research whether ADEC, the U.S. Geological Survey, or another agency has any other useful water quality data on that water body. In some circumstances, regional water quality may be appropriate to consider. If you can't locate sufficient data to make a determination about the water quality, you should presume that it is of high quality, and subject to at least tier 2 protection.

One question will quickly arise: what water quality parameters should you focus on? The permit process will normally identify parameters for which effluent limits will be established through a "Reasonable Potential Analysis" or some other process. At a minimum, you need to consider each parameter for which a permit effluent limit will be established. For each parameter that has a corresponding water quality criterion (as listed at 18 AAC 70.020(b)), such as TDS, metals, fecal coliform, etc., you need to decide whether the quality of the receiving water exceeds (i.e. is of higher quality than) the criteria for the fishable/swimmable uses. If it does not, then the water is tier 1 for that parameter. If it does, then it is tier 2.

This decision is made on a parameter-by-parameter basis. So, for example, the same water body could be tier 1 for arsenic, if it already has arsenic levels equal to or above levels allowed under the fishable/swimmable criteria for arsenic, but tier 2 for everything else that the applicant proposes to

discharge into it.¹ As you make these determinations for the various parameters, you need to document your reasoning, so you can include it in your ultimate AD analysis and findings.

At the time this guidance is issued, ADEC has not yet designated any tier 3 waters. Designation of a waterbody as tier 3 is a significant decision with far reaching effects on future use of a waterbody as well as nearby land use. To qualify as a tier 3, or "outstanding national resource" water, one of two criteria must be met. The water must either be in a national or state park or wildlife refuge or be a water with exceptional recreational or ecological significance. The department's past practice has been to consider a water's potential tier 3 designation as part of the public notice and comment process on a draft wastewater discharge permit. However, EPA has recently recommended that the state establish a stand-alone tier 3 designation process, outside the permit process. As a consequence, the department will consider whether and how to establish a separate procedure for designating tier 3 waters, as it develops the final AD guidance.

In the meantime, in addition to considering possible tier 3 designation as part of a permit action, waters could also be designated as tier 3 through two other existing legal mechanisms, prior to any permitting action. A person could propose a tier 3 designation as part of the division's existing triennial review process, where the public is invited to suggest changes to the state's water quality standards. Tier 3 nominations made this way would be handled in conjunction with the rest of the triennial review, and any final decision would likely be held in abeyance until the final AD implementation guidance establishes the procedures to be used for formal tier 3 designations.² Given the public policy and land management implications, ultimate decisions on tier 3 nominations may even end up before the legislature, as some other states have opted to do. Of course, people seeking tier 3 designations during this interim period may also pursue that goal before the state legislature in the first instance, by advocating for a bill recognizing an ONRW water. In either case, the criteria that the division, and presumably the legislature, would use in considering tier 3 nominations would be those already contained in 18 AAC 70.015(a)(3). Any designation of tier 3 waters reached through either of these other legal mechanisms will be conveyed to permitting staff so they will be able to incorporate those decisions into future permitting actions. *reviewing every 3 years.*

How to do a "tier 1" analysis.

¹ While ADEC is following this "parameter-by-parameter" approach for purposes of this interim guidance, it is still considering the relative advantages of both this approach and the alternative "waterbody-by-waterbody" approach as it develops its final guidance.

² Further details on how the tier 3 nomination process will be integrated with the on-going triennial review process will be posted on DEC's website, at <http://dec.alaska.gov/water/wqsar/trireview/index.htm>.

If you decide that a water body is tier 1 for a given parameter, then the tier 1 protection that applies to it under the AD policy is simply that the existing uses, and the level of water quality necessary to support them, are maintained and protected. See 18 AAC 70.015(a)(1). Note that "existing uses" is a defined term, meaning "those uses actually attained in a water body on or after November 28, 1975." So, under a tier 1 AD analysis, you need to document in the draft and final permit fact sheet or the draft and final state certification of a federal permit that those existing uses, and the water quality necessary to protect them, are maintained and protected. Often protecting existing uses will amount to specifying effluent limits in a permit or certification that are based on the corresponding water quality criteria for those uses or other information that relates to how good water quality must be to protect the specific "existing uses." Note that some degradation may be allowed, as long as it won't harm any existing uses. Tier 1 applies regardless of whether the proposed discharge would allow lower water quality (i.e., Tier 1 is not limited, as Tiers 2 and 3 are, to situations where the new or increased discharge would lower water quality).

If you find that you don't have sufficient information to make a tier 1 determination, you may require the applicant to provide any information you deem to be reasonably necessary. See 18 AAC 70.015(b). You may also consider asking other state, local or federal agencies for information on existing uses of the particular water body. Use your judgment about how much information you need. The greater the level of degradation proposed by the applicant, the more information you may consider necessary and appropriate to inform your tier 1 determination.

How to do a "tier 2" analysis.

Tier 2 AD analysis is much more complicated than tier 1. Just compare 18 AAC 70.015(a)(1) with .015(a)(2). For a tier 2 analysis, you can only allow degradation of water quality if you first make five findings. This guidance will discuss the five findings in the order they are listed in the policy. See 18 AAC 70.015(a)(2)(A)-(E).

- (A)** Lowering water quality is necessary to accommodate important economic or social development in the area.

You should evaluate the economic and social consequences of the proposed project. For example, for a new operation, will it provide jobs for a community? For an on-going operation whose permit renewal triggers AD analysis: how important is its continued operation to the regional economy? Will the facility treat and dispose of sewage and reduce risk to public health? The essence of this prong is to force the department to consciously evaluate whether the proposed degradation is justified by the economic and social benefits the project would bring. Degradation of a tier 2 parameter for

purposes other than those that have associated social and economic benefits is prohibited.

Again, the depth and rigor of your evaluation should be appropriate to the level of degradation contemplated. A large new project may well deserve more thorough scrutiny than minor changes in a permit renewal for an on-going operation. Remember, you can always ask the applicant for more information you think is necessary for your evaluation, under 18 AAC 70.015(b). Use your judgment, and ask for help if you're not sure what level of analysis a given project requires.

- (B)** The reduced water quality won't violate applicable water quality criteria except as allowed under 18 AAC 70.015(a).

If the applicant proposes a discharge that would violate the state-wide criteria in 18 AAC 70.020, site-specific criteria established under 18 AAC 70.235, or the whole effluent toxicity limit in 18 AAC 70.030, then you must determine whether such an exceedance is allowed under 18 AAC 70.015(a). Common examples of exceedances are associated with mixing zones, short-term variances and zones of deposit, all of which are allowed exceptions to the state-wide standards. See 18 AAC 70.240 (mixing zones), 18 AAC 70.200 (short-term variances), and 18 AAC 70.210 (zones of deposit). If you encounter an applicant who seeks permission to violate criteria in some other context, seek advice from your supervisor and/or experienced peers. Most authorized exceedances of criteria fall into those three categories and are governed by additional regulatory requirements. The AD policy does not preclude use of these other regulatory tools. Rather, it is best understood as an analytical overlay, requiring its own evaluations and findings. Under a tier 1 AD analysis, you need to document in the draft and final permit fact sheet or the draft and final state certification of a federal permit that those existing uses, and the water quality necessary to protect them, are maintained and protected.

- (C)** Resulting water quality will fully protect existing uses.

This finding, while worded slightly differently in the regulation, is functionally equivalent to the tier 1 analysis discussed above. Just as for tier 1 waters, the existing uses of tier 2 waters must also be fully protected.

- (D)** The most effective and reasonable methods of pollution prevention control and treatment will be applied to all wastes and other substances to be discharged.

and

- (E) Wastes and other substances discharged will be treated and controlled to achieve the highest statutory and regulatory requirements.

These two required findings are closely related and should be considered together. They address the level of pollution prevention, control and treatment that ADEC should require before allowing degradation of water quality.

The first finding, .015(a)(2)(D), requires use of "the most effective and reasonable" methods. Note that this is not a defined term. This finding requires you to use your best professional judgment to evaluate the adequacy of the proposed methods. You must find a reasonable balance between the effectiveness of the possible technologies and their cost, as requiring the most effective methods may place an unreasonable economic burden on the applicant. For a larger project, you may choose to ask the applicant to perform and submit a "treatability study" that evaluates the effectiveness and cost of the various candidate technologies that could be used to treat their wastes and discharge. If you do not feel qualified to make a judgment as to which methods are "most effective and reasonable," you should consult with other staff on what we have required at comparable operations.

Implementing the related finding, that operations follow "the highest statutory and regulatory requirements" in the control and treatment of their wastes/discharge, is more complicated. The phrase "highest statutory and regulatory requirements" was defined at 18 AAC 70.990(30) until the 2006 revision of the standards, when ADEC dropped that definition. But because EPA has not yet approved ADEC's deletion of that definition, the former definition still remains in effect for purposes of the federal Clean Water Act. See 40 CFR § 131.21(e).

What this means is that if you are doing an AD analysis for a state certification of an EPA-issued NPDES permit, or for an ADEC-issued APDES permit, you need to retrieve and implement the definition formerly found at 18 AAC 70.990(30). That definition reads as follows:

- (30) "highest statutory and regulatory treatment requirements" means
- (A) any federal technology-based effluent limitation identified in 40 C.F.R. 125.3 and 40 C.F.R. 122.29, as amended through August 15, 1997, adopted by reference;
 - (B) minimum treatment standards in 18 AAC 72.040; and
 - (C) any treatment requirement imposed under another state law that is more stringent than a requirement of this chapter;

So, for you to make the fifth finding required by the AD policy for tier 2 waters, the treatment and control methods to be used must satisfy all three prongs listed in this definition. Prong (A) refers to the technology-based effluent limitation guidelines (ELGs) that EPA promulgates for specific industries. You will find these at 40 CFR Parts 400-471. If you are certifying a NPDES permit, EPA will have already identified the ELGs that apply to the operation in question. If you are issuing an APDES permit, it has to comply with applicable ELGs in any case. See 18 AAC 83.430(a) and 18 AAC 83.010(g).

The other two prongs in the definition refer to state law requirements. Prong (B) cites to the "minimum treatment standards in 18 AAC 72.040" which appears to be an incorrect reference, since the "minimum treatment" standards are found at 18 AAC 72.050 instead.³ Note that those treatment standards only apply to domestic wastewater. The final prong, (C), is a generic reference to other state law requirements that may be more stringent than the requirements of the water quality standards chapter, 18 AAC 70. You should consider whether any such requirements may exist, consulting with your peers as needed.

As you can see, the AD analysis for a tier 2 water is considerably more exhaustive than for tier 1. Since most state waters are relatively pristine, tier 2 AD analysis is the norm, and tier 1 the exception. Again, the level of rigor that you bring to your tier 2 analysis should be commensurate with the degradation to be caused by the proposed operation. Different degrees of degradation will deserve different levels of analysis. But all degradation of tier 2 waters must be evaluated under the framework outlined above, and the required findings must be made, supported and documented in writing.

How to do a "tier 3" analysis.

If the waterbody at issue in your case is in a state or federal park, or in a wildlife refuge, or may have exceptional recreational or ecological significance you should bring this fact to the attention of management early in the project design or permit application review process to consider the appropriateness of making a tier 3 designation as part of the permitting process itself. In considering whether to make a tier 3 designation, ADEC will, at a minimum, coordinate with other state and federal resources agencies with jurisdiction and/or expertise in parks, refuges, and waters that may have exceptional recreational or ecological significance. ADEC will public notice any draft decision to make a tier 3 designation for a minimum 30-day public comment period which may occur independently or in conjunction with the public notice for a draft permit.

³ ADEC corrected this mistake in its mixing zone regulations, also awaiting EPA approval. See 18 AAC 70.240(c)(1)(B).

Once ADEC establishes tier 3, or ONRW, waters, then degradation of those waters is not allowed under the AD policy. Because of the high level of protection afforded to tier 3 waters, a tier 3 designation could have significant public policy consequences, by limiting potential future development. The permitting approaches for tier 3 waters include zero discharge (denial of wastewater discharge permit applications); a permit limited to activities that result in short term and temporary changes in the water quality; or a permit with effluent limits that mirror the natural condition or otherwise do not allow for any change from the existing water quality.

Public notice and comment.

Just like a state-issued permit or a certification of a federal permit, your AD analysis must go through public notice and comment. Typically you simply include draft AD analysis and findings in the draft permit fact sheet or certification that goes out to public notice. For projects that also require federal permits, ADEC's public notice process is sometimes combined with the federal agencies' process. Either of these approaches will comply with the AD policy. See 18 AAC 70.015(c). Your job is simply to ensure that, one way or another, the public has the opportunity to review and comment upon ADEC's AD analysis before it becomes final.

General permits.

Doing AD analysis for general permits (GPs) presents unique challenges. For example, until you know what specific operations may apply for coverage under the GP, it may be difficult to evaluate whether a particular receiving water parameter is tier 1 or tier 2, and to determine existing uses. Lacking information about potential discharges to specific waters, you should assume that the waterbodies are Tier 2. Also, evaluating the economic and social impacts of permitted activity may be difficult at the time the GP is first issued. Other AD findings, such as the appropriate methods for pollution control and treatment, may be more amenable to analysis at the time of GP issuance, since GPs are typically used to authorize very similar operations.

Due to the variety of circumstances in which GPs are used, it is difficult to generalize about how to complete an AD analysis for one. In some cases you may be able to complete the AD analysis at the time the GP is issued, while in other cases you may have to complete the analysis when you authorize particular operations under the GP. Again, this is an area where consultation with peers may be necessary, as ADEC has issued many GPs in recent years, for various industry sectors and geographical areas. Reviewing some of those examples may help you tailor the required AD analysis and findings to your situation. Also, as a general rule, you should do your best to ensure that no tier 3 waters are covered under a GP. So you should evaluate the scope of the

GP to identify potential tier 3 waters, and make sure to exclude from coverage any that you can identify or reasonably anticipate.

Resources.

Attached is a list of resources, examples, and sources of factual information that may assist you with the AD analysis. ADEC will amend the resources list over time.

Conclusion.

This interim guidance will hopefully help you to understand and comply with our AD policy. But as you engage in AD analysis in particular cases, questions are sure to arise that this guidance doesn't address. Conferring with your supervisor and peers on such questions will yield dual benefits. First, it will give you the benefit of greater experience and collective expertise. Second, it will alert ADEC management about the kinds of questions and issues that can arise in the AD context. As mentioned above, ADEC plans to issue more comprehensive AD implementation guidance in the future. Keeping track of the AD issues that arise in the interim will help ADEC management make the final guidance both useful to staff and consistent with the AD policy itself.

ATTACHMENT [UNDER DEVELOPMENT]

Antidegradation Resources

- Current unemployment rate (available from Department of Administration)
<http://almis.labor.state.ak.us/?PAGEID=67&SUBID=188>
- ADEC's *Reasonable Potential Procedure for Water Quality-Based Effluent Limits*, APDES Permits, January 2009.
- *Alaska Water Quality Criteria Manual for Toxic and Other Deleterious Organic and Inorganic Substances*, ADEC, December 12, 2008
- *Antidegradation Policy Implementation, Internal Management Directive for NPDES Permits and Section 401 Water Quality Certifications*, Oregon Department of Environmental Quality, March 2001
- APDES Permit Fact Sheet template: *Mixing Zone Analysis Checklist*
- *U.S. EPA NPDES Permit Writers' Manual*, EPA, December 1996
- EPA's *Technical Support Document for Water Quality-Based Toxics Control*
- *Interim Economic Guidance for Water Quality Standards*, US EPA, Office of Water, EPA-823-B-95-002, March 1995
<http://water.epa.gov/scitech/swguidance/standards/economics/index.cfm>
- *Water Quality Standards Handbook: Second Edition*, EPA, August 1994 with revisions July 2007.
<http://water.epa.gov/scitech/swguidance/standards/handbook/index.cfm>
- *Evaluation of Options for Antidegradation Implementation Guidance*, Tetra Tech, Inc. October 6, 2008
- *Log Transfer Facility – Notice of Intent Checklist*
- §401 Certification of NPDES Permit No. AKG-31-5000 Cook Inlet Oil and Gas Exploration, Development and Production Facilities Located in State and Federal Waters, ADEC, May 18, 2007. *401 Certification for AKG-31-5000*
- Ketchikan Gateway Borough, Ward Cove Log Storage Facility, Wastewater Disposal Permit, *Decision Document*, ADEC, May 14, 2004.

Elle Ahkivgak

From: Emily Kane [REDACTED]
Sent: Monday, February 10, 2020 9:13 AM
To: House Resources
Subject: CS for HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Subject: CS for HB 138

Dear Representative Edgmon, Representative Lincoln and Representative Tarr

I strongly oppose this CS for HB 138.

Do you want your drinking water to be polluted? Do you want our salmon to die?

I mean no disrespect for your hard work but I'm somewhat incredulous that a resource as precious and VITAL to all life as our clean Alaskan water would be up for sale. Corporations do not get to wreck my life.

The governor may have declared that Alaska is open for business but let's please do this sustainably. Global population is finally declining. People are buying less. The ponzi scheme has been revealed.

It's time to pull back. Progress does not always mean pushing for more and more. Let's preserve what we have, please.

I appreciate your consideration.
Dr Emily Kane
Juneau

www.tri.ps/DSR
www.DrEmilyKane.com
www.NaturopathicMedicineInstitute.org
www.naturopathic.org
www.primarydoctor.org

Join with me in
Cultivating Exuberance

Elle Ahkivgak

From: melissa [REDACTED]
Sent: Monday, February 10, 2020 10:05 AM
To: House Resources; John.Lincoln@akleg.gov; Rep. Geran Tarr; Rep. Bryce Edgmon
Cc: Rep. Sara Hannan
Subject: CS for HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Dear Representative Tarr
Dear Representative Lincoln
Dear Representative Edgmon

I strongly oppose this CS for HB 138 and would like to see it go to the Fisheries Committee and the Tribal Affairs Committee. Corporations should NOT be granted rights denied to residents!

With all do respect, gutting the rights of Alaskans to protect the pure waters our lives depend to make it easier for corporations to pollute? This makes no sense! A resource as precious as our Alaskan waters should not be up for sale! The governor says Alaska is open for business, but we must have the diligence and common sense to do this sustainably. Do you want your drinking water polluted? Do you want our precious salmon to die? It's time to draw the line and preserve our precious waters and the rights, livelihood and health of every Alaskan citizen.

Sincerely,
Melissa Senac
Gustavus, AK. 99826

Elle Ahkivgak

From: Elise LaBonte <[REDACTED]>
Sent: Monday, February 10, 2020 2:55 PM
To: House Resources
Subject: CS138 Written Testimony

Follow Up Flag: Follow up
Flag Status: Completed

Hello,

My name is Elise LaBonte. I have lived in Juneau, Alaska for five years and I am a deck officer with the Alaska Marine Highway System. In my time here I've seen first hand how important it is for communities to have access to and control over the water and the resources that it provides.

Especially now with the reduction in ferry services, it is more crucial than ever for Alaskan people to have the ability to use the land and water for subsistence living. Without a more direct line to protecting the land and water that provides such a wealth of resources, Alaskans are even more at risk of having their food and water stolen or poisoned for big business profits. Don't forget that fishing, tourism, and recreation make up 25% of South East Alaska's economy, and that number is only going up over time. To threaten the environment that all of these industries depend on will guarantee that South East Alaska, and ultimately Alaska as a whole, will feel a thinning economy over time.

The process for protecting our waterways must be scientific, not political, in order to assure that Alaskans can continue our current way of living.

I oppose House Bill 138 and CS138 because the invaluable sustainability of South East Alaska's environment must not be threatened by bureaucratic processes.

Elle Ahkivgak

From: LIO Anchorage
Sent: Monday, February 10, 2020 10:26 AM
To: House Resources
Subject: FW: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

From: cameron livingstone [REDACTED]
Sent: Monday, February 10, 2020 10:05 AM
To: LIO Anchorage <Lio.Anchorage@akleg.gov>
Subject: HB 138

Hi,

I am strongly opposed to HB138.

HB 138 takes away the rights of Alaskans to protect our water. It's critical that the authority for designating Tier 3 Waters remain with DEC.

A Tier 3 designation is the only way for the residents of Alaska to protect exceptional waters, critically important to our communities, fish, and economies. HB 138 removes access to this democratic process established by the federal Clean Water Act, by setting up a multi-step political process, rather than a science-based process, designed to prevent a designation. HB 138 forces the nominating individual or group to pay for associated costs. This means that those facing the most difficult economic hardships will have the least access to protect their waterways. HB 138 makes a Tier 3 designation nearly impossible, taking away our right to protect clean water.

HB 138 is anti-democracy and anti-Alaskan.

If corporations have a right to dump waste in our waters, surely Alaskans have a right to protect our waters. The process for protecting waterways should be no more onerous than the process to degrade them.

I am strongly opposed to HB138. Please, do not allow this to go through.

Sincerely,

Cameron Livingstone
Anchorage, AK

Elle Ahkivgak

From: Lulu Powers [REDACTED]
Sent: Monday, February 10, 2020 8:58 AM
To: House Resources
Subject: Fw: HB138

Follow Up Flag: Follow up
Flag Status: Flagged

Sent from ProtonMail mobile

----- Original Message -----

On Feb 10, 2020, 8:56 AM, Rep. John Lincoln <Rep.John.Lincoln@akleg.gov> wrote:

Laura,

Thank you for emailing my office to share your thoughts. If you would like your comments included in the official record for this bill, please forward your message to House.Resources@akleg.gov

Thanks,

John Lincoln

From: Lulu Powers [REDACTED]
Sent: Saturday, February 8, 2020 8:11 AM
To: Rep. John Lincoln <Rep.John.Lincoln@akleg.gov>
Subject: HB138

Dear Representative Lincoln,

Please vote against HB138 as it takes the science based evidence out of decision making. I urge you to refer the bill to the Fisheries and Tribal committees.

Thank you for your service.

Laura Powers
Juneau, Ak.

Sent from ProtonMail mobile

Elle Ahkivgak

From: Patricia white [REDACTED] >
Sent: Monday, February 10, 2020 10:37 AM
To: House Resources
Subject: Fwd: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Begin forwarded message:

From: Patricia white [REDACTED]
Date: February 10, 2020 at 10:33:05 AM AKST
To: Rep.John.Lincoln@akleg.gov
Cc: Rep.Geran.Tarr@akleg.gov
Subject: HB 138

Dear Representative Lincoln and Representative Tara:

I am opposed to House Bill 138.
This bill is far too lax on water pollution regulation.
We need to protect our waterways, not pollute them.

Governor Dunleavy wants to open Alaska for business, which I read to mean mineral extraction. Coupled with this bill, in my opinion, would be a set up for disaster.

Thank you,

Respectfully,

Patricia White
Juneau

Elle Ahkivgak

From: Margo Waring [REDACTED]
Sent: Monday, February 10, 2020 9:22 AM
To: House Resources
Subject: Fwd: CSHB138

Follow Up Flag: Follow up
Flag Status: Completed

----- Forwarded message -----

From: Margo Waring [REDACTED]
Date: Sun, Feb 9, 2020 at 1:06 PM
Subject: CSHB138
To: <Representative.John.Lincoln@akleg.gov>, Rep. Geran Tarr <rep.geran.tarr@akleg.gov>, <Rep.Bryce.Edgemon@akleg.gov>

Dear Representatives,

CSHB 138 will eliminate the rights of Alaskans to protect Alaska's best water quality essential to our fisheries and communities.

While corporations need only to fill out a 6 page online form in order to get permission from DEC to pollute our water, CSHB will make it near impossible for individuals and communities to protect clean water, inserting a 7 member committee appointed by the governor who then send a bill to the legislature. And then the legislature would have to pass the bill. Science as a basis for decision making will be replaced by politics. This is not the Alaska Constitution philosophy that I remember us structuring our laws around: we were to end corporate fisheries grabs and substitute science as a basis for decisions about fisheries (and environment).

Please refer CSHB138 to the Fisheries Committee and the Tribal Affairs Committee.

Sincerely,
Margo Waring

[REDACTED]
Juneau, AK 99801

Elle Ahkivgak

From: Deb Kemp [REDACTED]
Sent: Monday, February 10, 2020 6:46 PM
To: House Resources
Subject: Fwd: HB 138

Follow Up Flag: Follow up
Flag Status: Completed

Sent from my iPhone

Begin forwarded message:

From: "Rep. John Lincoln" <Rep.John.Lincoln@akleg.gov>
Date: February 10, 2020 at 4:32:32 PM AKST
To: Deb Kemp [REDACTED]
Subject: RE: HB 138

Debra,

Thank you for emailing my office to share your thoughts. If you would like your comments included in the official record for this bill, please forward your message to House.Resources@akleg.gov.

Thanks,

John Lincoln

-----Original Message-----

From: Deb Kemp [REDACTED]
Sent: Monday, February 10, 2020 3:41 PM
To: Rep. John Lincoln <Rep.John.Lincoln@akleg.gov>
Subject: HB 138

Dear Rep. Lincoln,

I am opposed to HB 138 and would like it to go to the fisheries committee and Tribal Affairs committee instead. I am very concerned about keeping our waters as clean as possible.

Sincerely,

Debra Kemp

[REDACTED]
Haines, AK
99827

Sent from my iPhone



2/12/2020

Re: CSHB 138

To: Alaska House Resource Committee Co-Chairs, Representatives Tarr and Lincoln,

I am writing today to urge you to not pass CSHB 138 out of the House Resources committee. I was on line to testify for over two hours last Monday but time ran out before I could speak. I hope to testify this Friday, but in case that is not possible, please consider the following written comments.

As nearly every commenter noted at your last hearing, this bill would effectively remove any possibility of a Tier 3 Outstanding National Resource Water (ONRW) from ever being designated in Alaska; a remarkable fact given the importance of Alaska waters and fisheries to the people of this State. If Tier 3 nominations are required to get Legislative approval, none will ever be approved. As you well know, a single committee Chair, the Rules Chairs, the Speaker of the House, the President of the Senate, or the Governor could table or veto every bill.

There were a number of statements/issues/questions made by the sponsor and his staff, or members of the public during last Monday's hearing that I would like to specifically address:

1. Does Alaska currently have a policy for designating Tier 3 waters?

Alaska adopted interim Antidegradation Policy (ADP) implementation guidance in 2010 in response to a court order by which it can evaluate and decide on Tier 3 nominations. ADEC has never acted through the policy with regards to a Tier 3 nomination to my knowledge. While I believe the policy should have more specificity with respect to process, and many of us have been trying to get ADEC to move this issue forward for literally a decade, to state that we have no mechanism in place for Tier 3 designation is inaccurate.

2. If we don't act soon, will EPA take over the process?

EPA has approved the State's interim ADP implementation policy, and given no indication of any intention to take over the Tier 3 designation process should Alaska not act further in the short term to adopt a more complete protocol.

3. Does ADEC have the authority to make Tier 3 designations?

Federal regulation at 40CFR 131.4 establishes Alaska's authority to review, establish, and revise its Water Quality Standards (WQS) under section 303(c) of the Clean Water Act (CWA.) The requirement

for every state to adopt an ADP, which is part of a state's WQS, is found at 40CFR 131.12, which requires not only the adoption of the policy itself, but of regulations necessary to implement the policy. Alaska Title 46.03.020 authorizes ADEC to adopt WQS, and ADEC has been administering Tier 1 and Tier 2 ADP designations for years. Regardless of the difference in terms of the level of protection for waters designated Tier 3 from other Tiers, there can be no question that ADEC has the authority to make such determinations.

Most states administer Tier 3 ADP and other WQS issues through their state environmental conservation agency. A few have established Water Quality Boards or Commissions for specific WQS-related actions such as Tier 3 designations. How it is done is up to each individual state; it is simply required that the policy exist, and be implementable. Again, we have had the capacity to make such decisions for a decade and there have been nominations before the department for eight years. The fact that no decisions have been made speaks to the unwillingness of the agency to do its job, not whether it has had the necessary authority. Finally, there is no need to clarify whether a state legislature has the power to designate a Tier 3 designation.

4. Can a Tier 3 designation be removed?

There is no law, regulation, or case law supporting the notion that once made, a Tier 3 designation remains in perpetuity. If the agency that made the designation wishes to remove it, it can do so, and certainly a state legislature would have the authority to remove a Tier 3 designation regardless of how it was adopted.

5. Will legislative Tier 3 determinations be less political?

It is hard to imagine a rule-making process that would be more political than bringing a Tier 3 bill before the State Legislature. Tier 3 decisions should be made on the merits of the situation in question, not the politics of one or more members of the Legislature. Note: Tier 3 ADP was never intended to be limited to waters of exceptional quality from a chemical or physical perspective. While pristine waters may be worth considering, Tier 3 protection could be assigned to a water that is legally "impaired". For example, Lake Tahoe in California is an impaired water body under section 303(d) of the CWA because it violates turbidity standards, yet it has been designated a Tier 3 water because of its overall importance to the local community.

6. What criteria should be applied when considering Tier 3 decisions?

You heard from many commenters that the decision should be based on "science." I would agree with that to a point: the evaluation needs to be objective. However, that shouldn't mean that the only consideration is water chemistry or some other physical parameter, as I mentioned above. A water that is of significant cultural importance should also be given serious Tier 3 consideration; there should be a subjective component to the decision that should lean heavily towards the wishes of the people in closest proximity or dependence on that water and therefore those most affected by the decision. Objective and subjective criteria should both apply to the decision. A designation shouldn't be denied for political or private financial reasons.

7. Should an applicant be required to submit a cost/benefit economic analysis?

As several commenters noted on Monday, a cost/benefit analysis is in fact a very complicated undertaking, and one that typically requires substantial funds. Even so, it is unlikely to be an accurate metric for a Tier 3 evaluation, since the benefits of a designation or its denial are often impossible to quantify. What monetary “benefit” could one assign to the Chilkat River, nominated for Tier 3 status five years ago by the Tlingit Village of Klukwan? How do you assign a numerical value to a river that has sustained a village for thousands of years?

8. Would this bill make the path to a Tier 3 decision more straightforward?

This bill would require a nominee to work through the Commission process, only to be followed by having to work the issue again through a full legislative process. ADEC or a Commission composed of qualified individuals should have the professional capacity and integrity to evaluate the importance or quality of a waterbody for such a discussion. I mean no disrespect, but the Legislature by comparison would have the least expertise in such matters, and only contribute to the politicization of the decision. Furthermore, the State Legislature has its hands full every session fulfilling the duties it has now, such as adopting a budget within a ninety-day term. Who would be undertaking this evaluation at the Legislative level? House and Senate offices would have to go out to the broader community for advice, people who would already be able to weigh in at the Commission or agency level. Nothing of value would be added to the process.

The current high quality of our waters and the health of our fisheries cannot be matched anywhere else in the country. I sincerely doubt the supporters of this bill are driven to see that Tier 3 nominations get a fair, comprehensive, apolitical evaluation. It would certainly be unfair for the State to facilitate the interests of would-be polluters, often international corporations, through an easier path via our state agencies towards an allowance to degrade a public water, while the road our own citizens must navigate to protect a water body critical to the needs and quality of life of our own communities becomes more and more difficult.

One final comment: missing from this discussion so far has been what a Tier 3 ONRW designation would or wouldn't do. The impact of designating a Tier 3 ONRW is often greatly exaggerated. A Tier 3 designation would not impact having a septic system near a waterbody, or the use of motorized boats on a river or lake, since in neither case is a point source discharge permit required. The fundamental change upon Tier 3 designation is that new or expanded discharge permits for point sources of pollution would not be allowed. The objective of a Tier 3 designation is to maintain the water at its present level of quality, whatever that may be.

This bill will not establish a procedure that matches the stated intent of the sponsor. Please do not pass this bill out of this committee.

Sincerely,

Gershon Cohen Ph.D.

Gershon Cohen PhD
Project Director