

HB 138 Letters of Opposition

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19. Susan Braun
20. Jones Hotch, Jr., Chilkat Indian Village
21. Southeast Alaska Conservation Council

From: [Emily Kane](#)
To: [Rep. John Lincoln](#)
Subject: HB 138
Date: Monday, April 29, 2019 9:09:01 AM

Pease put me on record for strongly opposing this ridiculous bill.
What is more precious than then
health of our citizens and our Planet?
Shame on you for pandering to polluting corporate interests.
Dr Emily Kane
Juneau AK 99801

www.DrEmilyKane.com
www.naturopathic.org
www.primarydoctor.org

Be good to yourself :)

From: [jeff budd](#)
To: [Rep. John Lincoln](#); [Rep. Geran Tarr](#)
Subject: House Bill138
Date: Monday, April 29, 2019 9:07:24 AM

Dear Representative Lincoln and Tarr, I am distressed by any act that would not protect our waters. More and more plastic is filling our oceans and streams - it is time to put a stop to this. My suggestion is send House Bill 138 to the Fisheries Committee and the Tribal Affairs Committee, as it will have a heavy impact on these stakeholders and possibly protect our water sources better. Thank you. Jeff Budd Sitka , AK

From: [Ms. Nelle](#)
To: [Rep. John Lincoln](#); [Rep. Geran Tarr](#); [Rep. Grier Hopkins](#); [Rep. Sara Hannan](#); [Rep. Ivy Spohnholz](#); [Rep. Chris Tuck](#); [Rep. David Talerico](#); [Rep. George Rauscher](#); [Rep. Sara Rasmussen](#)
Subject: Say NO to HB 138
Date: Sunday, April 28, 2019 9:16:04 AM

I understand that mining is a big part of the Alaska economy, but it should not come at putting any of our local waterways in potential peril. Accidents happen -- All.The.Time.

If the "National Resource Water Designation" bill (HB 138) introduced by Rep. Kopp passes, it would put the Chilkat River in Haines in a precarious position. The Chilkat has, for hundreds of years, been a source for pristine waters that provide wildlife and humans with an abundance of food. Any spoiling of the waters would likely take tens if not hundreds of years to reverse.

Several local tour companies responsibly guide thousands of guests each summer on the Chilkat so that too can look in awe at the natural beauty surrounding us. And partly because of the Chilkat River, the Haines Highway has a national designation from the Dept. of Transportation as a "Scenic Drive."

I am respectfully asking each of you to put this bill where it belongs: in the trash can.

Kind regards,
Nelle Jurgeleit-Greene



Haines, AK 99827

From: [Ryan Bunker](#)
To: [Rep. John Lincoln](#)
Subject: Stop House Bill 138 please
Date: Monday, April 29, 2019 9:04:39 AM

Dear John Lincoln,

Please stop the recently introduced House Bill 138 (HB 138), sponsored by Representative Kopp. Please show Alaska that you care about our ecosystem and way of life.

Sincerely,
Ryan Bunker

From: [Amy Roberts](#)
To: [Rep. John Lincoln](#)
Subject: Tier 3 designation
Date: Monday, April 29, 2019 9:07:10 AM

The Clean Water Act allows residents of Alaska to protect waters critical to their communities or culture from pollution under a **Tier 3 Designation**. HB 138 would require a Tier 3 nomination get passed as a law through the state legislature to exercise this right. The decision would be political rather than science-based and would make the approval process nearly impossible. Meanwhile, corporations only have to fill out a 6-page online form, through an administrative process managed by the Department of Environmental Conservation, to get permission to degrade our waters.

Corporations should not be granted rights denied to residents. **A Tier 3 designation process to protect waters should be no more onerous than the process to degrade our waters.**

Amy Roberts



From: [Bill Rotecki](#)
To: [Rep. John Lincoln](#)
Subject: hb138
Date: Monday, April 29, 2019 9:44:42 AM

As a man who made his living fishing, this bill is an affront to my making a living, and looks like an intentional gutting of the Clean Waters Act.

I strongly oppose HB138
please do not pass this bill or anything like this

--

Bill Rotecki

office [REDACTED]

cell [REDACTED]

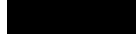
From: [Joan McBeen](#)
To: [Rep. John Lincoln](#)
Subject: HR138
Date: Monday, April 29, 2019 9:48:25 AM

Dear Representative Lincoln

I oppose hr138 because protecting Alaska water should be based on science not on politics. It should not be any more difficult to get protection than it is to get permits for development.

Thank you for the opportunity to comment.

Joan McBeen



Tenakee Springs, AK

Sent from my iPhone

From: [Kendra Zamzow](#)
To: [Rep. John Lincoln](#); [Rep. Geran Tarr](#)
Subject: Re HB138
Date: Monday, April 29, 2019 10:00:58 AM

Dear Representatives Lincoln and Tarr:
I oppose HB 138.

Alaska very likely has more water bodies that could be considered Outstanding National Resource Waters (ONRWs), also called Tier 3 waters, than any other state. Our happy abundance should not be a reason to make nominations of these waters more difficult.

We are also a sparse population -- this is directly correlated with the abundance of high quality waters. As we grow -- more roads, railroads, housing, manufacturing and extractive industries -- the risks to the waters increases. Instead of handing over the rights of high protection for waters to legislators, the waters that deserve the highest protections -- even in the face of economic challenges -- should go to the agencies with a mission to protect waters and wildlife -- DEC, in conference with ADFG.

This is already allowed under Alaskan regulations. In July 2018, the EPA approved the process of allowing DEC to designate Tier 3 waters through the triennial review process; this is similar to Montana where I believe DEQ designated Tier 3 water bodies. In some states, waterways in wildlife refuges or other protected areas may be designated Tier 3.

As a scientist, I have more trust in a science-based decision making than political-decision making. The science around the benefits of a waterway may change some as the populations and landscape (with climate change) change, but the political view of the benefit of a water body will constantly flip around.

Please oppose HB138. Instead, request specific items that DEC should require for nomination prior to designating a water body. These should include the reason for designation (it may be cultural or historical and not necessarily based on water chemistry purity) and documentation to back up the reason. If the reason is that the water is pure and supports a diversity of fish, plant, and animal species, water chemistry documenting purity and data on biodiversity should be supplied. If it is for cultural reasons, cultural history should be provided.

Although I prefer the bill be dropped entirely, if it is to remain in play it should be referred to the Fisheries Committee and Tribal Affairs Committee, to balance the views of the House Resources Committee.

We are blessed with an abundance of pure, clear, productive, and cool waterways used for everything from transportation to supporting fish-eating birds. As more of the US loses freshwater habitat - due to drought, heat, human activity -- Alaska's becomes even more important. Even here in Alaska we are seeing some streams warm, as documented in the Susitna Valley. Identifying waters that will remain cool

and continue to provide habitat is a crucial scientific endeavor, not a political one. Scientists will not ignore the human needs of waterways for transportation, subsistence, and recreation, but consider them in recommendations.

Thank you,

Kendra Zamzow, PhD
Chickaloon, AK



From: [Thomas Ely](#)
To: [Rep. John Lincoln](#)
Subject: HB 138
Date: Monday, April 29, 2019 9:57:16 AM

Representative Lincoln,

I oppose this bill as it turns a scientific decision into a political decision. Protecting our waters should be based on science not politics.

Sincerely,
Thomas Ely
Haines, AK

From: [Art Bloom](#)
To: [Rep. John Lincoln](#)
Cc: Representative.Geran.Tarr@akleg.gov
Subject: HB138
Date: Monday, April 29, 2019 10:33:27 AM

1. I am opposed to HB138 and would like to see it go to the Fisheries Committee and the Tribal Affairs Committee, as it will have a heavy impact on these stakeholders.
2. The Clean Water Act allows residents of Alaska to protect waters critical to their communities or culture from pollution under a **Tier 3 Designation**. HB 138 would require a Tier 3 nomination get passed as a law through the state legislature to exercise this right. The decision would be political rather than science-based and would make the approval process nearly impossible.

Sincerely,
Arthur Bloom



Juneau 99801

From: [Santa Claus](#)
To: [Rep. Geran Tarr](#); [Rep. John Lincoln](#)
Cc: Sarah@seacc.org
Subject: Please OPPOSE HB 138 and FORWARD it to the Fisheries Committee and Tribal Affairs Committee
Date: Monday, April 29, 2019 10:28:35 AM
Importance: High

Dear Representatives Tarr and Lincoln:

Please OPPOSE HB 138 and FORWARD it to the Fisheries Committee and Tribal Affairs Committee.

Note that I have signed SEACC's Tier 3 Petition that calls for equal processes for protecting and degrading water.

Thank you,

Santa

Santa Claus
PO Box 55122
North Pole, AK 99705
www.SantaClausNorthPoleAlaska.com

From: [Luann McVey](#)
To: [Rep. John Lincoln](#); [Rep. Geran Tarr](#)
Cc: [Rep. Sara Hannan](#); [Sen. Jesse Kiehl](#); [Rep. Andi Story](#)
Subject: Written Testimony Regarding HB 138
Date: Monday, April 29, 2019 10:41:48 AM

Dear Representative Lincoln and Representative Tarr,

As Co-Chairs of the House Resources Committee, I urge you to take a stand against HB 138. I understand that this bill would allow communities to nominate state waters for Tier 3 protections only through statutory means.

This bill would make a Tier 3 Clean Water decision a political rather than science-based process and would make the approval process nearly impossible for communities. In contrast, corporations would only be required to complete a short form, through an administrative process managed by the Department of Environmental Conservation, for permission to degrade our waters.

I oppose this bill and I urge you to do everything in your power to prevent its passage. Corporations should not be granted rights denied to residents. **A Tier 3 designation process to protect waters should be no more onerous than the process to degrade our waters.** . If it goes anywhere, please ensure it goes to the Fisheries Committee and the Tribal Affairs Committee, as it will have a heavy impact on these stakeholders.

Please prevent the passage of HB 138.

Sincerely,

Luann McVey



Douglas, Alaska 99824



VIA EMAIL ONLY

(Representative.John.Lincoln@akleg.gov
Representative.Geran.Tarr@akleg.gov)

April 26, 2019

Representative John Lincoln, Co-Chair
Representative Geran Tarr, Co-Chair
Alaska House Resources Committee
Capital Building Room 124
Juneau, Alaska 99801

Re: House Bill 138 – Outstanding National Resource Waters

Dear Co-Chairs & Members of the Committee:

Please consider these brief comments on HB 138 behalf of Cook Inletkeeper and its more than 8000 members and supporters throughout Alaska.

Alaska boasts some of the last wild and pristine waterbodies in the world. Yet rather than protect these resources that make Alaska unique, we have witnessed time and again efforts to rollback protections for some of our most important water resources.

For example, the EPA recently announced it is moving ahead to approve a rule promulgated by the Frank Murkowski Administration and pushed forward by the Alaska mining industry to allow polluting mixing zones in salmon spawning habitat. Mixing zones embrace the long-discounted notion that dilution is the solution to pollution, and they have no place in the sensitive habitats encompassing our spawning areas.

The Alaska Miners Association and its member groups also spent millions of dollars this past year to stop Alaskans from updating our 60-year-old, one-sentence-long fish habitat protection law. Now, with large projects such as the Pebble and Donlin mines moving forward, Alaskans have no opportunity to know about, let alone comment on, permits that will impact or destroy our wild fish habitat.

House Resources Letter

April 26, 2019

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HB 138 is yet another effort to hamstring water quality protection for some of Alaska's most important water resources. So-called Tier 3 waters – also known as Outstanding National Resource Waters – are Alaska's most pristine waters, and the state of Alaska has dragged its feet for decades under the Clean Water Act protecting them.

By pushing Tier 3 nominations to the Legislature, rather than allowing the experts in ADEC to consider them, the practical effect of HB 138 will be to ensure Alaska does not protect its most important waters. The Alaska Legislature does not have the expertise, nor the time, to consider the complexities of Tier 3 nominations.

Not surprisingly, the Alaska Miners Association is paying lobbyist Kent Dawson \$60,000 this session just to work on this issue – because they do not want to see our most pristine waters protected.

As you deliberate on HB 138, I hope you will agree the interests of the Alaska Miners Association and its members stand in stark contrast to most Alaskans, who want to see Alaska's most precious waters – and the world-class fisheries they support - protected for current and future generations.

Don't let the Alaska Miners Association buy HB 138.

Yours for Cook Inlet,

A handwritten signature in black ink, appearing to read 'Bob Shavelson', with a stylized, cursive script.

Bob Shavelson

Inletkeeper

Cc: (VIA EMAIL ONLY)
Representative.Grier.Hopkins@akleg.gov
Representative.Sara.Hannan@akleg.gov
Representative.Ivy.Spohnholz@akleg.gov
Representative.Chris.Tuck@akleg.gov
Representative.Dave.Talerico@akleg.gov
Representative.George.Rauscher@akleg.gov
Representative.Sara.Rasmussen@akleg.gov

From: [Gershon Cohen](#)
To: [House Resources](#)
Subject: HB 138
Date: Monday, April 29, 2019 1:04:17 PM

Dear Chairwoman Tarr,

Please accept this email as part of the official testimony for today's hearing on the "Tier 3 bill (HB 138) you will be discussing in committee.

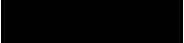
I am adamantly opposed to the bill, which is not only unnecessary, but if passed would virtually guarantee that Alaska, of all places, would never have a water designated as an Outstanding National Resources Water (Tier 3).

Title 46 gives more than enough legal latitude to DEC to evaluate Tier nominations. The fact that they have failed to do so for decades does not reflect a deficiency in the law, only in their willingness to apply the law that exists. If DEC has the authority to designate waters as Tier 1 and Tier 2, which it clearly does, there is no reason it should not be able to designate Tier 3 waters as well without requiring legislative approval. The Legislature has enough on its plate every session and doesn't need the added burden of evaluating Tier 3 nominations. Requiring the passage of a bill means that any one committee chair, or House Rules, etc., can effectively kill any nomination. Tier 3 nominations should be evaluated by DEC on the basis of what is best for the local community, and not be subject to the will of a legislator who may live on the other side of the State.

Please do not allow this bill to leave your committee.

Sincerely,

Gershon Cohen

Gershon Cohen PhD
Project Director
Alaska Clean Water Advocacy
gershon@aptalaska.net
www.acwa-alaska.org


From: [Terry Cummings](#)
To: [Rep. John Lincoln](#)
Subject: HB 138
Date: Monday, April 29, 2019 4:19:33 PM

I strongly oppose this bill and the attempt to degrade out pristine waters. This bill is totally political and should be based on science and how it would affect many Alaskans and not wealthy corporations that want to exploit our waters for their greed.

Thank you.

Ms. Terry Cummings

[REDACTED]

Anchorage, AK 99504

[REDACTED]

From: [Shannon Donahue](#)
To: [Rep. John Lincoln](#); [Rep. Geran Tarr](#)
Subject: Testimony in opposition to HB 138
Date: Monday, April 29, 2019 3:25:19 PM
Attachments: [HB138 - Tier 3.docx](#)

Dear Representatives Lincoln and Tarr,

Thank you for the opportunity to testify in opposition to HB 138 today. Attached, please find the written text of the testimony I delivered today over the phone, for the record.

Thank you,

Shannon Donahue

[REDACTED]

Haines, AK 99827

[REDACTED]

www.linkedin.com/in/shannon-kelly-donahue

My name is Shannon Donahue, and I am calling from the mouth of the Chilkat River in opposition to HB 138. The Chilkat River has been nominated for Tier 3 protection under the Clean Water Act, because of its exceptional ecological and cultural significance.

Everyone and every living thing in the Chilkat Valley depends on this river for sustenance. This bill would deny Alaskans our right to protect our most valued waterways by creating a complicated, political process for designation through the legislature, making it nearly impossible to achieve the protections that we have a right to as Alaskans and as Americans.

Meanwhile, mines and mineral exploration companies go through a simple permitting process if they want to degrade these waters. This doesn't make any sense. Everyone in Alaska depends on our clean, life-giving waterways, but it's easier to get permission to pollute our waterways than to protect them. Tier 3 designation should be a transparent, reasonable, non-political process, based on clear criteria, ecological, cultural, or recreational value, and the will to protect our waterways. This process should remain with the DEC through the triennial review process. Please kill this bill and defend our right as Alaskans to protect our water and our home.

Shannon Donahue
Haines, Alaska

From: [Doug Woodby](#)
To: [Rep. John Lincoln](#); [Rep. Geran Tarr](#)
Subject: HB 138
Date: Monday, April 29, 2019 11:59:45 AM

Dear Representatives Tarr and Lincoln,

I am writing to oppose HB 138. I have read the one page text of the bill and conclude that it is a thinly veiled attempt to prevent the protection of our pristine waters. The bill aims to take what is now a public and science-based process and makes it political.

Thank you for the opportunity to comment.

Doug Woodby
Retired Chief Scientist for Commercial Fisheries, ADF&G
Juneau, AK

From: [Kip Kermoian](#)
To: [Rep. John Lincoln](#); [Rep. Geran Tarr](#)
Date: Monday, April 29, 2019 11:41:32 AM

Dear Representatives,

We are as opposed to HB138 - as we are to SB51 - and would like to see it go to the Fisheries Committee and the Tribal Affairs Committee.

Industry should not be provided an avenue to pollute our waters while the citizen most vested in the health and welfare of their communities are muzzled from participating in the most vital component of thriving and sustainable ecosystems and thus, local economies.

Any consideration to protect watersheds should be science based, and therefore vetted by the Department of Environmental Conservation, not by a political body, with transient short term interests.

Sincerely,

Kip and Patricia Kermoian



Haines, AK 99827

From: [Susan Braun](#)
To: [Rep. John Lincoln](#); [Rep. Geran Tarr](#)
Subject: HB 138
Date: Monday, April 29, 2019 11:30:03 AM

Dear Co-Chairs of the House Resources Committee:

I oppose House Bill 138. I want clean water for myself, my family, and future generations of Alaskans. It should not be harder for citizens to protect their waters than for corporations to degrade and pollute them. This bill should go to the Fisheries Committee and the Tribal Affairs Committee so the people most impacted can have a say.

I want a science-based, not a political, process for making decisions about Alaska's waters.

Susan Braun

[REDACTED]

Healy, AK 99743

[REDACTED]



"Yee gu.aa yax x'wan."

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

32 Chilkat Avenue Klukwan, Alaska

HC60 Box 2207 Haines, Alaska 99827

Phone: (907) 767-5505

Fax: (907) 767-5518

Email: klukwan@chilkat-nsn.gov

Re: House Bill 138: National Resource Water Designation

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

Background:

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

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

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

Considerations:

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



"Yee gu.aa yax x'wan."

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

32 Chilkat Avenue Klukwan, Alaska

HC60 Box 2207 Haines, Alaska 99827

Phone: (907) 767-5505

Fax: (907) 767-5518

Email: klukwan@chilkat-nsn.gov

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

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

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

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

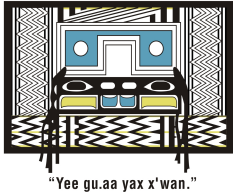
"In 1983, DEC was required by the Federal Clean Water Act to "develop, adopt, and retain a statewide antidegradation policy regarding water quality standards and establish procedures for its implementation through the water quality management process." (EPA WQS Handbook) Over the intervening 34 years,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

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

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

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

CHILKAT INDIAN VILLAGE



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

32 Chilkat Avenue Klukwan, Alaska

HC60 Box 2207 Haines, Alaska 99827

Phone: (907) 767-5505

Fax: (907) 767-5518

Email: klukwan@chilkat-nsn.gov

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

Sincerely

Jones Hotch, Jr.

Chilkat Indian Village

Tribal Council Vice President

jhotchjr@chilkat-nsn.gov

907-767- 5505



May 1, 2019

Dear Alaska House Resources Committee,

Thank you for the recent opportunity to testify on HB 138. There were a number of important questions raised during the testimony, including the four questions below that are key to making a decision on this bill. We're writing today with additional information from ADEC and EPA to fill the gaps that were exposed. Please also find attached the referenced documents for your records.

1. Is there currently a Tier 3 designation process in place?

- Yes. Alaska has three pathways to designate a Tier 3 Water, but has not used them.
- In the absence or defeat of HB 138, they remain "present and available".
- They are defined in ADEC's 2010 Interim Antidegradation Implementation Guidance as follows:
 - i. Waterways in national parks, state parks, or wildlife refuges or waterways considered to have exceptional recreational or ecological significance can be designated as Tier 3 waters, during the consideration of wastewater discharge permit
 - ii. DEC has the authority to review nominations and designate Tier 3 waters through the triennial review process
 - iii. The legislature has always had the authority to designate Tier 3 waters at any time, in addition to the above avenues designation
- From ADEC's Interim Antidegradation Implementation Guidance, p. 5):
 - "...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."
 - "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."
- On March 9, 2018, ADEC submitted new antidegradation guidance to the EPA to replace their interim antidegradation implementation guidance. The new guidance only address Tiers 1 and 2, failing to address Tier 3. In the absence of new guidance for Tier 3 designation methods, the methods in the 2010 interim guidance stand.
- The three designation methods outlined in the 2010 interim guidance have been acknowledged and approved by the EPA in a letter dated July 26, 2018: *"The implementation methods section at 18 AAC 70.016 is new, represents the*



majority of ADEC's submittal, and generally replaces Alaska's 2010 interim antidegradation implementation guidance. However, in its response to comments when addressing a concern that Alaska's rule making did not include a process for nominating and designating waters for Outstanding National Resource Water protection, ADEC referred to the interim antidegradation implementation guidance. ADEC stated that Tier 3 designation methods are still present and available, and that ADEC will continue to work with all stakeholders on a final nomination and designation process (see "Antidegradation Implementation Methods Regulations Responsiveness Summary," ADEC, November 2017, Comment Summary 51)." (p.1)

- The referenced Comment Summary 51 is also attached.

2. Does a Tier 3 designation impact everyday uses of the waterbody, such as running a boat and private septic tanks?

- No. Tier 3 designations only deny permits for long-term degradation, such as a large-scale industrial plants dumping waste into the waterway. Short-term uses, such as motor boats, cleaning fish, culture camps, and private septic systems, are not impacted by a Tier 3 designation.
- From ADEC's Tier 3 Fact Sheet: "In general, activities that do not require Alaska point source discharge permits (APDES permits) are not affected by a Tier 3 designation. A Tier 3 designation would not impact normal activities not currently regulated by the state . . . Individual septic systems discharging to a leach field are considered a land application that does not require an APDES permit. . . Outboard motors, road run-off and road plowing, salting, sanding are considered nonpoint source discharges." (p. 3)
- There is also an exception for any temporary point source impacts: " . . there is an exception to allow activities that result only in temporary, short-term, and limited change in the water quality of a Tier 3 water, for example, for construction activities." (ADEC's Tier 3 Fact Sheet, p. 1)

3. Is a Tier 3 process reversible?

- Yes. It would be easier, however, to do so through an administrative process via ADEC than through a legislative-only process.
- From ADEC's Tier 3 Fact Sheet: "Currently, there is no precedent for removing an ONRW once in place; neither is there federal regulation or policy prohibiting such an action." (p. 2)
- From an email to ADEC from EPA, dated 1/26/16: " . . a state has discretion to remove ONRW protection from a water, if it chooses to do so consistent with state law, and the action is done consistent with the federal WQS rules for revising water quality standards (including public participation of course)." (p.1)

4. Is a Tier 3 designation a land-use issue?

- No. A Tier 3 designation is nothing like establishing a park and does not impact how the adjacent land is used. Owners of land adjacent to a waterbody have no inherent right to degrade waters of the state. If this were true, then an



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upstream landowner authorized to discharge and degrade a waterbody would be taking something of value from downstream landowners. This 'taking' of the ability of a downstream landowner to further degrade the water is not recognized under state law or guidance.

- From ADEC's Tier 3 Fact Sheet: "Land uses, such as logging or mining, would not be impacted as long as the ONRW water quality was maintained and protected." (p. 4)

Please don't hesitate to contact us for further information.

Thank you,

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