



Council of  
**Alaska Producers**

**Comments on SB72:  
Designation Process for Tier III Outstanding  
National Resource Water (ONRW)**

March 13, 2023

Senator Cathy Giessel, Co-Chair  
Senator Click Bishop, Co-Chair  
Senate Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Senator Giessel, Senator Bishop, and members of the Senate Resources Committee,

The Council of Alaska Producers (CAP) appreciates the opportunity to comment on SB72, "An Act relating to designation of state water as outstanding national resource water; and providing for an effective date."

Formed in 1992, CAP is a non-profit trade association that works to inspire Alaskans to realize a shared goal of sustainable mineral production, providing economic and social benefits to our communities and the people of Alaska. CAP represents the interests of Alaska's five large metal mines and several advanced projects, informing members on legislative and regulatory issues, supporting and advancing the mining industry, and educating members, the media, and the general public on mining related issues.

Designation of an Outstanding National Resource Water (ONRW), commonly called Tier 3 waters, arises from federal antidegradation rules set forth by the U.S. Environmental Protection Agency as mandated by the Clean Water Act. The rules, designed to ensure that the nation's waters are not degraded, have a three-tiered structure in which the most stringent level of protection, Tier 3, designates a water as an ONRW and prohibits new or expanded activities that change the water quality in any way. This prohibition would apply even in situations where the activity could show that it meets water quality standards and fully protects fish, aquatic life, and other water uses.

A Tier 3 designation replaces management and enforcement of science-based water quality standards and regulations with a total prohibition of any new or expanded discharges, even if the discharge meets state water quality standards and fully protects fish, aquatic life and other water uses. This would have wide impact, including for motorized vessels, residential and commercial septic systems, stormwater permits associated with road building, mining, seafood processors, timber harvesting, and much more.

Since a Tier 3 water body designation could severely restrict future resource development and community growth, it is appropriate that the Legislature take the responsibility for such serious, far-reaching determinations.

Thank you for hearing this bill. We encourage the Resources Committee to pass it from committee quickly.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Matthias", with a long horizontal flourish extending to the right.

Karen Matthias  
Executive Director



# Southeast Alaska Fishermen's Alliance

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March 13, 2023

Alaska State Legislature  
Senate Resources  
Juneau, AK 99811

RE: SB 72 – National Resource Water Nomination/Designation

Dear Senator Click Bishop, Co-Chair; Senator Cathy Giessel and Resource committee members,

Southeast Alaska Fishermen's Alliance (SEAFA) supports SB 72 to establish, as required by federal law, a process for designating outstanding waters (Tier III) by statute. We believe that the final decision in designating outstanding waters should be by the Legislature in statute.

What this legislation doesn't outline is the nomination process envisioned. Who is the nomination submitted to? Will the Legislature receive reports on the nomination before taking action from ADF&G, DNR and DEC about current uses in the area, and quality of the water in the proposed area.

SEAFA would like either as intent language or in the legislation itself to outline the process where any nominations have a report prepared by ADF&G, DEC and DNR either combined or separately that outlines what scientifically might make a water body special and outlines any activities that might be impacted as well as upstream or downstream activities that currently exist that might be impacted in the future. This is important information for the public to have access to during the public consideration of the nomination by the legislature.

Additionally, it should be made clear where a request for a nomination would originally be sent to. One method might be that requests be made to DNR by a date specific, the agencies prepare the report for the start of session for any nominations received and then the legislature can determine if they wish to develop legislation for any of the nominated water bodies. An alternative could be for the legislator for the district where the water body is located, receives the nomination and determines if the agencies should develop a report and then submits legislation if they believe a designation should be pursued.

We believe the final decision should be done by elected officials through a public process to balance out the science, economic and social aspects that would be impacted by designation of outstanding waters.

Thank you for considering our opinion on this legislation, please feel free to contact our office if you have any questions or wish to follow up on our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Hansen", followed by a long horizontal line extending to the right.

Kathy Hansen  
Executive Director



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SOUTHEAST ALASKA REGIONAL DEVELOPMENT ORGANIZATION

March 1, 2023

Honorable Members of the Senate Resources Committee

*Submitted via email*

Re: Support of SB72, Natural Resource Water Nomination/Designation

Dear Co-Chair Giessel and members of the Senate Resources Committee:

Southeast Conference is the state and federally recognized regional Economic Development District for Southeast Alaska. Our mission is to support activities that promote healthy communities, strong economies and a quality environment in the region. This letter is to express strong support from Southeast Conference for SB72, "An Act relating to designation of state water as Outstanding National Resource Water; providing for an effective date," as introduced in the Senate Resources Committee.

Designation of an Outstanding National Resource Water (ONRW), commonly called Tier 3 waters, arises from federal antidegradation rules set forth by the U.S. Environmental Protection Agency (EPA) as mandated by the Clean Water Act (CWA). The rules, designed to ensure that the nation's waters are not degraded, have a three-tiered structure in which the most stringent level of protection, Tier 3, designates a water as an ONRW and prohibit new or expanded activities that change the water quality in any way (See Tier 3 implementing regulations 18 AAC 70.016 (d)).

An unfortunate reality is that a Tier 3 water designation has become a potential tool against the development of resource or industrial development projects. This has already been the case in other states, and it is evident in many of the nominations before DEC currently. The intent may be to block or delay development, but the implications go much further. A Tier 3 designation replaces management and enforcement of science-based water quality standards and regulations with a **total prohibition of any new or expanded discharges, even if the discharge met state water quality standards and fully protected fish, aquatic life and other water uses**. This would impact the waterbody's users such as motorized vessels, residential and commercial septic systems, stormwater permits associated with road building, seafood processors, timber harvesting, and much more.

Given the significant restrictions that would be placed on waterbodies designated as such, and the significant social and economic impacts to Alaska, it is our position that the authority to designate an ONRW or Tier 3 water must lie solely with the Legislature as the elected representatives of Alaskans, consistent with the Alaska Constitution. We stand in support of SB72 and urge swift passage of this bill.

Sincerely,

Robert Venables  
Executive Director





# THE ALLIANCE

Linking Alaska's Resources to Alaska's People

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March 14, 2023

Senator Giessel:

As the CEO of the Alaska Support Industry Alliance (Alliance), a 44-year-old trade association representing Alaska's support companies for oil, gas, and mining, I am writing to you on behalf of our 485 members and their 35,000 employees.

I am writing to express our support for SB 72, "An Act relating to designation of state water as outstanding national resource water; and providing for an effective date."

The Alliance has long believed that Tier 3 water designations have the potential to become tools for anti-development interests to block or delay resource development projects.

We believe that given the significant water use implications of a Tier 3 designation, a Tier 3 water should be designated ONLY by a vote of the Legislature.

This is consistent with the Alaska Constitution, the existing process for setting aside areas of State land from development and existing DEC policy.

Thank you for introducing this bill and for your consideration of our comments,

Rebecca Logan  
CEO  
The Alliance