

Opposition to HB 138 and SB 51

TALKING POINTS

**PUBLIC MEETING: MONDAY, APRIL 29TH . 1:00PM . BARNES 124, CAPITOL BUILDING
TO CALL IN, SEE <http://akleg.gov/lios.php> FOR YOUR LOCAL LEGISLATIVE INFO OFFICE**

It's critical that the **authority** for designating Tier 3 Waters **remain with DEC** and that the **process remain administrative**, equal to that of permitting water degradation

CONTEXT

Tier 3 Designation:

- Tier 3 or Outstanding National Resource Waters (ONRW) are provided the highest level of protection under the Federal Clean Water Act and the State of Alaska.
- The Department of Environmental Conservation (DEC), implements the protection of Tier 3 Waters by simply not approving permits to dump waste in the designated waterbody.
- Tier 3 designation is the only way for the residents of Alaska to protect exceptional waters, critically important to their communities and can be nominated by any resident or group in Alaska.
- A Tier 3 designation protects all current uses of the waterbody and any short-term degradation (motor boats, cleaning fish, culture camps, private septic systems, temporary construction, etc.). The designation only denies permits for long-term degradation, such as large-scale industrial plants dumping waste into the waterway.
- So far, 5 waterbodies have been nominated (the Chandalar River, the Yakutat Forelands, the Chilkat River, the Kaktuli River, and the Draanjik River), the oldest of the which was nominated 10 year ago (the Kaktuli River).
- The state of Alaska has been out of compliance with the Clean Water Act for over 20 years by not implementing a process to designate Tier 3 nominations.
- Although it hasn't been used, **Alaska does have a process for designating Tier 3 Waters.** There are currently three ways to designate a Tier 3 Water:
 1. DEC has the authority to review nominations and designate Tier 3 waters through the triennial review process
 2. Waterways in national parks, state parks, or wildlife refuges can be designated as Tier 3 waters by default
 3. The legislature has always had the authority to designate Tier 3 waters at any time, in addition to the above avenues designation
- This process was approved by the Environmental Protection Agency (EPA) in July, 2018, as meeting all federal regulations.

House Bill 138 and Senate Bill 51:

- SB 51 was introduced by the Senate Resources Committee in February and despite several meetings, public testimony, and drastic amendments, hasn't yet moved out of the resources committee.

- HB 138 was introduced last week and will have its first hearing on Monday, April 29th, which will include public testimony.
- The bill is not about creating a nomination and designation process - both already exist and will remain in place if the bill is defeated.
- It is intended to remove DEC's authority to protect our shared waterways (via a Tier 3 designation) through a science-based, administrative process – the process in place for polluting our waterways, and replace it with a political process that will require a law to be passed by the state legislature to designate a Tier 3 Water, making it nearly impossible.
- Making Tier 3 designation a legislative, statutory process would:
 - Make this about politics, not science or community/cultural/economic importance, ultimately undermining the purpose of Tier 3 designations
 - Allow the Governor to veto a designation
 - Remove the option for a public ballot initiative to designate a Tier 3 Water
 - Make it even more difficult to protect water in the state of Alaska than pollute it
- This bill threatens the rights of Alaskan residents to protect our shared waterways. 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 process to protect waters should be no more onerous than the process to degrade our waters.**

TALKING POINTS FOR ORAL AND WRITTEN TESTIMONY

1. **Address your position on the bill.** Clearly state your opposition to the bill and mention any changes you'd like to see.
2. **State why this is important to you.** Make sure to include your personal perspective on why this matters and how you or your community would be impacted if the bill were to pass.
3. **A Tier 3 process should be conducted by the same administrative process, based on sound science,** and conducted by the same Department responsible for protecting our crucial waters.
4. **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.
5. **It should include a transparent public process with identified timelines** for ensuring the Department conducts its review and makes a decision on each nomination in a reasonable timeframe.
6. Since Alaskan residents share a stake in clean water and healthy aquatic resources, the **nomination process should contain an inclusive list of factors the Department will consider when deciding whether a particular water qualifies for Tier 3 designation,** including cultural, ecological, economical, and recreational values.
7. **The Tier 3 process should utilize the Department's existing authority** to adopt regulations necessary to conserve and protect Alaska waters.
8. **Human health and clean water are inseparable.** Access to the right to protect clean water, and therefore human health, is not political and the process should not be either.

