

# **Southeast Conference**

## **Resolution 18-05**

### **A RESOLUTION SOUTHEAST CONFERENCE DRAFT RESOLUTION REGARDING THE DESIGNATION OF TIER 3/WILDERNESS WATERS IN ALASKA**

WHEREAS: The Tier 3 designation arises out of federal antidegradation rules, promulgated by the U.S. Environmental Protection Agency (EPA) under the Clean Water Act with the purpose to ensure that the nation's waters are not degraded; and

WHEREAS, The most stringent of these proposed rules is called "Tier 3" – which is reserved for Outstanding Natural Resource Waters (ONWR). Any waterbody that is designated an ONWR cannot, under the proposed Tier 3 rules, be degraded beyond its baseline conditions; and

WHEREAS, the proposed Tier 3 rules goes beyond enforcing current water quality regulations and prohibit any new activities and expansion of existing activities that impact water quality in any way—even if the discharges meet Alaska's water quality standards.; and

WHEREAS, This prohibition would apply even in situations in which a new discharger could show that its discharge meets applicable water quality standards, and fully protects fish, aquatic life and other water uses; and

WHEREAS, New or increased discharges into tributaries flowing into designated Tier 3/Wilderness waterbodies would be prohibited if they would result in lower water quality in the proposed Tier 3/Wilderness waterbody. (It is unclear how "lowering the water quality" would be defined or how or where it would be measured); and

WHEREAS, Degradation is commonly associated with point and nonpoint sources of pollution. Common nonpoint sources include urban runoff, domestic animals, road construction, timber harvests, off-road vehicles, boats, septic systems, agriculture, and damage to shorelines from activities, such as fishing, piers, and buildings. Common point source discharges include treated sewage, solid waste, chemical wastes, biological materials, seafood processing wastes, dredged soil, mining wastes, rock, sand, dirt, munitions, heat, garbage, discarded equipment, and runoff from construction or agricultural sites. The proposed Tier 3 program would apply to all potential sources even in situation where the activity may not be regulated under state and federal permits; and

WHEREAS, by prohibiting any discharge into adjacent water, a proposed Tier 3 designation made by DEC alone would effectively amend federal and state land-use plans on lands adjacent to the designated water body without any role in this regulation process for federal land management agencies, DNR, the Alaska Department of Fish & Game or affected communities; and

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WHEREAS, Because there are over three million waterbodies in Alaska, almost all of which are pristine, a Tier 3 designation as proposed could result in massive land set asides throughout the State – multiple groups will nominate a local waterbody for protection which will prohibit development of projects even if they meet Alaska’s water quality; and

WHEREAS, The Southeast Conference recognizes the need to finalize antidegradation regulations and to develop a process so that waterbodies nominated for Tier 3 status can be resolved; and

WHEREAS, DEC is providing three Tier 3/Wilderness Water Designation options to the Governor: 1) have such waters designated by the Legislature; 2) have such waters designated by an appointed board; and 3) have such waters designated by DEC; and

WHEREAS, Disappointed nominators could sue the board or DEC under Options 2 and 3, thereby holding up a project during the pendency of such litigation); and

WHEREAS, Once a Tier 3/Wilderness Waters designation process decision is made, some groups will nominate numerous waterbodies throughout Southeast in order to stop timber sales, mining development, renewable energy development, and community development; and

WHEREAS, During the 2016 Session of the Legislature the Governor introduced SB 163, a bill that gave the Legislature designation authority and resolved other Tier 3/Wilderness Waters problems.

NOW THEREFORE BE IT RESOLVED, that because of the land use and socio-economic implications of prohibiting a discharge into Tier 3/Wilderness Waters, and based on a report prepared by the Commissioners of DEC, DNR, and ADFG, the Southeast Conference urges the Governor to submit and the Legislature to enact legislation that would enable the Alaska State Legislature to be designating authority for Tier 3/Wilderness Water nominations.

BE IT FURTHER RESOLVED, that the Southeast Conference urges that such legislation provide that in order to submit a water body to the Legislature for its consideration of Tier 3/Wilderness Water designation, the Commissioners of DEC, DNR, and ADF&G must all agree that the water body is a ONWR.

**ADOPTED BY THE SOUTHEAST CONFERENCE BOARD OF DIRECTORS ON February 21, 2018.**

Witness:



Jan Hill - President

Attest:



Robert Venables – Executive Director