

Testimony of Badlands Conservation Alliance
SB 2238
11 February 2021
Elizabeth Loos # 342

Chairman Kreun and Members of the Energy and Natural Resources Committee:

My name is Elizabeth Loos and I am the Executive Director of Badlands Conservation Alliance. We are a non-profit organization based in western North Dakota dedicated to the wise stewardship of public lands, including the approximately 70,000 acres of Theodore Roosevelt National Park (TRNP). Many of our members live in or originated in the small communities and rural landscapes surrounding these public lands. Members hold significant familiarity with these lands and value them for a host of ecological, heritage and personal reasons, frequently through multiple generations. I appear before you today in opposition to SB 2238.

As the only national park within North Dakota's borders, TRNP is a popular tourist destination, attracting nearly 600,000 tourists each year. The entirety of TRNP is designated a mandatory Class I federal area and, as such, has the strongest clean air protections in the country, mandated by the Clean Air Act (CAA). The Regional Haze Rule (RHR) requires federal and state agencies to work together with stakeholders to restore clear skies at Class I areas around the country (which in North Dakota also includes Lostwood National Wildlife Refuge). In order to meet that requirement, ND must submit its plan to the Environmental Protection Agency by July 2021. Section 1(5) in SB 2238 would require the ND Department of Environmental Quality to submit the Regional Haze State Implementation Plan (SIP) to the ND House and Senate Energy and Natural Resource Committees for review. If this review results in a late submission of ND's SIP – which is likely – the Environmental Protection Agency (EPA) is likely to issue a Federal Implementation Plan for North Dakota. As legislators, wouldn't it be better to trust the experts at the DEQ rather than attempt to review the technical and complicated SIP?

Another issue in SB 2238 that I would like to touch on appears in Paragraph 2(b). As background, the RHR requires states to set reasonable progress goals towards achieving natural visibility conditions in all Class I areas by 2064. A four-factor analysis is required to determine if there are reasonable controls available for reducing visibility-impairing emissions. The four factors considered are: cost of compliance, time necessary for compliance, energy and non-air quality environmental impacts, and remaining useful life of the source. Lines 21-22 on page 1 of SB 2238 require DEQ to consider whether individual controls "improve visibility by more than a de minimis amount, more than a humanly perceptible amount." This would effectively result in changing the definition of reasonable progress to include a "human perceptibility" factor, which is clearly not consistent with federal law.

As I noted above, cost of compliance is one of the four factors that must be analyzed. However, lines 3-9 on page 2 of this bill require DEQ to compare the total cost of controls at an *individual* facility with the visibility benefit at Class I areas. Although the RHR requires states to calculate the capital costs of controls, EPA has rejected that total cost be decisive factor. Of course the capital cost of reducing pollution will always be higher than doing nothing at all, but it is not the only factor in evaluating reasonable control costs. In determining the cost effectiveness of a given control, states must also analyze the total anticipated reduction in pollution in Class I areas. EPA has established its cost-effectiveness analysis through regulation and state law cannot federal requirements.

Thank you for the opportunity to testify this morning. BCA urges this committee to give SB 2238 a Do Not Pass recommendation.