



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: March 24, 2021

TIME: 9:34 AM

WSR 21-07-144

Agency: Department of Ecology AO #20-01

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 20-22-036 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject)

The Department of Ecology (Ecology) proposes to amend the Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A Washington Administrative Code (WAC).

We propose the following changes:

- Amending WAC 173-201A-440 (Definitions)
- Amending WAC 173-201A-440 (Use attainability analysis)
- Changing the designated use for the Chelan River in WAC 173-201A-602
- Changing water quality criteria for temperature and dissolved oxygen levels in the water, to go along with the change in aquatic life designated use in WAC 173-201A-602

For more information on this rulemaking visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-Chelan-UAA>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 11, 2021	1:30 pm	Webinar - <a href="https://watech.webex.com/watech/onstage/g.php?MTID=ea8ccc727dbcd9540b136e892291526b7">https://watech.webex.com/watech/onstage/g.php?MTID=ea8ccc727dbcd9540b136e892291526b7</a>	<p>Presentation, question and answer session followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online and see instructions:</p> <p><a href="https://watech.webex.com/watech/onstage/g.php?MTID=ea8ccc727dbcd9540b136e892291526b7">https://watech.webex.com/watech/onstage/g.php?MTID=ea8ccc727dbcd9540b136e892291526b7</a></p> <p>For audio call US Toll number 1- 415-655-0001 and enter access code 133 517 6336.</p>
May 13, 2021	5:30 pm	Webinar - <a href="https://watech.webex.com/watech/onstage/g.php?MTID=e83ed47fc65fd51f269ddf583197f035">https://watech.webex.com/watech/onstage/g.php?MTID=e83ed47fc65fd51f269ddf583197f035</a>	<p>Presentation, question and answer session followed by the hearing.</p> <p>We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.</p> <p>Join online and see instructions:</p>

<https://watech.webex.com/watech/onstage/g.php?MTID=e83ed47fcc65fd51f269ddf583197f035>

For audio call US Toll number 1- 415-655-0001 and enter access code 133 215 6435. \

**Date of intended adoption:** 8/4/2021 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Marla Koberstein

Address: Send US mail to:

Department of Ecology

Water Quality Program

PO Box 47600, Olympia, WA 98504-7600

Or

Send parcel delivery services to:

Department of Ecology

Water Quality Program

300 Desmond Dr. SE, Lacey, WA 98503

Email: Submit comments by mail, online, or at the hearing(s).

Fax: N/A

Other: Online: <https://wq.ecology.commentinput.com/?id=NGpTD>

By (date) May 21, 2021

**Assistance for persons with disabilities:**

Contact Ecology ADA Coordinator

Phone: 360-407-6831

Fax: N/A

TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.

Email: [ecyADAcordinator@ecy.wa.gov](mailto:ecyADAcordinator@ecy.wa.gov)

Other: Visit <https://ecology.wa.gov/accessibility> for more information.

By (date) May 6, 2021

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

We are proposing changing the aquatic life designated use in the Chelan River from “salmonid spawning, rearing, and migration,” which currently applies to all sections of the river, to “migration for naturally limited waters” in the upper reaches of the river, and to “salmonid spawning, rearing, and migration for naturally limited waters” to the lower part of the river.

We have added definitions of the new proposed designated uses to WAC 173-201A-020 Definitions.

We are also proposing corresponding site-specific criteria (SSC) for temperature and dissolved oxygen, to align with the highest achievable water quality.

We are proposing these changes to the aquatic life designated use of salmonid spawning, rearing, and migration on the Chelan River using a use attainability analysis (UAA). A UAA is an approved water quality tool in Washington’s surface water quality standards (WAC 173-201A-440) and is used for removing or revising a designated use for a water body only if that use is not existing or attainable. A UAA is a scientific assessment of the physical, chemical, biological, and economic factors that may affect the attainment of the use.

**Reasons supporting proposal:**

On December 20, 2019, Public Utility District No. 1 of Chelan County (Chelan PUD) submitted a proposal for a UAA for the aquatic life designated use on the Chelan River to better reflect current and historical uses. The current use designation includes salmonid spawning, rearing and migration for the entire river.

The Lake Chelan hydroelectric project was relicensed by the Federal Energy Regulatory Commission (FERC) in 2006. As part of the relicensing, Ecology issued a 401 Water Quality Certification (401 Certification). The FERC license required Chelan PUD to rewater the river from which flows had been diverted for hydropower for over 80 years.

The returned waters now flow year-round through the four miles of the Chelan River to the confluence with the Columbia River. The Chelan River travels through a naturally steep canyon that acts as a barrier to salmonid migration to most of the river. However, salmonids now return to spawn in the lowest half-mile reach near the confluence with the Columbia.

In response to new license conditions, the Chelan PUD implemented a series of fishery studies as well as habitat and flow improvement projects to meet salmonid spawning, survival, and habitat use objectives in the lower reach of the river, and to assess the potential for resident fish habitat in the upper reaches. After ten years of monitoring, adaptive management, and consultation with the Chelan River Fishery Forum, Chelan PUD reported on what biological objectives were met and why some other objectives were not met. The final report proposed changes to the Chelan River aquatic life designated uses, including corresponding temperature and dissolved oxygen criteria, to align with the highest achievable water quality. Ecology's 401 Certification of Chelan's FERC license provides that Ecology make a determination, based on the outcome of the evaluation of the monitoring and adaptive management program, to modify the water quality standards to reflect the objectives achieved.

Based on the previous research and consultation with Ecology and the Environmental Protection Agency (EPA), Chelan PUD submitted a UAA proposal. We responded to the UAA request on February 18, 2020, and confirmed that the information provided is sufficient to proceed toward rulemaking in accordance with WAC 173-201A-440. We have considered the UAA submittal to assign more accurate aquatic life designated uses to the Chelan River and evaluated the SSC for temperature and dissolved oxygen.

In addition to Washington State rules, the process to amend the uses must be consistent with federal EPA regulations on designating and protecting uses under 40 CFR 131.10. The results of a UAA and SSC will not be in effect for federal Clean Water Act actions until they have been incorporated into the water quality standards (WAC 173-201A) and approved by EPA.

**Statutory authority for adoption:** RCW 90.48.035 provides clear and direct authority to Ecology to revise the Surface Water Quality Standards (SWQS). Additionally, 40 CFR 131.20 requires states and tribes with Federal Clean Water Act authority to periodically review and update the SWQS.

**Statute being implemented:** Chapter 90.48 RCW - Water Pollution Control

**Is rule necessary because of a:**

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If yes, CITATION: FEDERAL WATER POLLUTION CONTROL ACT - 33 U.S.C. 1251 et seq and 40 CFR Part 131 - WATER QUALITY STANDARDS

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** For more information, see the Technical Support Document, Ecology Publication 21-10-008, and the Preliminary Regulatory Analyses, Ecology Publication 21-10-005.

**Name of proponent:** (person or organization) Department of Ecology

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Bryson Finch	Headquarters - Lacey	(360) 407-7158
Implementation:	Chad Brown	Headquarters - Lacey	(360) 407-6128
Enforcement:	Vincent McGowan	Headquarters - Lacey	(360)-407-6405

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name: N/A  
Address: N/A  
Phone: N/A  
Fax: N/A  
TTY: N/A  
Email: N/A

Other: N/A

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Marla Koberstein

Address: Department of Ecology  
Water Quality Program  
PO Box 47600, Olympia, WA 98504-7600

Phone: 360-628-6376

Fax: N/A

TTY: For Washington Relay Service or TTY call 711 or 877-833-6341

Email: marla.koberstein@ecy.wa.gov

Other:

No: Please explain:

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(4).

Explanation of exemptions, if necessary: The proposed rule affects only one covered party: Public Utility District No. 1 of Chelan County (Chelan PUD). The Chelan PUD is the only discharger on the river, and employs between 250 and 499 employees. The proposed rule is therefore exempt from the Regulatory Fairness Act (chapter 19.85 RCW) under RCW 19.85.020(4), which states, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses.

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax: N/A

TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.

Email:

Other:

**Date:** March 24, 2021

**Name:** Heather Bartlett

**Title:** Deputy Director

**Signature:**

A handwritten signature in black ink that reads "Heather R. Bartlett". The signature is written in a cursive style with a large, stylized 'H' and 'B'.