



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)

Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 27, 2020

TIME: 9:10 AM

WSR 20-22-036

Agency: Department of Ecology AO # 20-01

Subject of possible rule making: The Department of Ecology (Ecology) is beginning a rulemaking to consider amending the Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A Washington Administrative Code (WAC).

The proposed amendments include:

- Amending WAC 173-201A-440 (Use attainability analysis)
- Changing the designated use for the Chelan River in WAC 173-201A-602 and potentially created a new section in WAC 173-201A-630 and WAC 173-201A-632

Other sections of Chapter 173-201A WAC may be amended, as necessary, to support any revisions to the sections noted above.

We are considering a change 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 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.

We are also considering including corresponding temperature and dissolved oxygen criteria, to align with the highest achievable water quality.

Statutes authorizing the agency to adopt rules on this subject: RCW 90.48.035 provides clear and direct authority to Ecology to revise the Surface Water Quality Standards (SWQS).

Reasons why rules on this subject may be needed and what they might accomplish:

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 re-water 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 will consider using the UAA submittal to assign more accurate aquatic life designated uses to the Chelan River.

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 will not be in effect until they have been incorporated into the water quality standards (WAC 173-201A) and approved by EPA.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: We will work with the federal Environmental Protection Agency (EPA) to ensure that the adopted water quality standards meet Clean Water Act requirements. We will consult with tribes during all stages of rule development. We will work with the Chelan River Fisheries Forum, which includes the National Oceanic and Atmospheric Administration, National Parks Service, US Fish and Wildlife Service, Washington Department of Fish and Wildlife, the US Forest Service, the Confederated Tribes and Bands of the Yakima Nation, the Confederated Tribes of the Colville Reservation, and the Confederated Tribes of the Umatilla Indian Reservation. We will also work with city and county governments, public utility districts, and entities noted above, to discuss and seek input on rulemaking language development.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW)

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

Name: Marla Koberstein	(If necessary) Name:
Address: Department of Ecology Water Quality Program PO Box 47600 Olympia, WA 98504-7600	Address:
Phone: 36-407-6413	Phone:
Fax: N/A	Fax:
TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.	TTY:
Email: swqs@ecy.wa.gov	Email:
Web site: www.ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-Chelan-UAA	Web site:
Other: Sign up to receive email notices at http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=ECOLOGY-WATER-QUALITY-INFO&A=1	Other:

Additional comments: Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

Date: October 26, 2020	Signature: 
Name: Vincent McGowan	
Title: Program Manager	