



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 18, 2023

TIME: 7:49 AM

WSR 24-01-088

Agency: Department of Ecology AO #22-06

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: This rulemaking adopts changes to Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington.

We added a new section:

- WAC 173-201A-332 Table 332 —Outstanding Resource Water designations by water resource inventory area (WRIA).

We amended the following sections:

- WAC 173-201A-020 Definitions
- WAC 173-201A-330 Tier III – Protection of Outstanding Resource Waters
- WAC 173-201A-602 (Use designations for fresh waters by water resource inventory area (WRIA) – WRIAs 4 and 26

We are designating four waterbodies as Tier III(A) or Tier III(B) outstanding resource waters (ORWs). Outstanding resource waters are identified as having exceptional water quality, ecological and recreational values, or unique attributes that distinguish them among state waterbodies and warrant special protection. An ORW has the highest level of protection assigned to a waterbody under the Tier III Antidegradation rule in our water quality standards.

We are designating the following waterbodies as Tier III(A) ORWs:

- Portions of the Napeequa River and tributaries (Chelan County)
- Upper watershed of the Green River and tributaries (Skamania County)
- Upper watershed of the Cascade River and tributaries (Skagit County)

A Tier III(A) designation is the highest level of protection. Proposed activities that would result in new or expanded sources of pollution in an ORW are prohibited, except in limited cases.

We are designating the following waterbody as a Tier III(B) ORW:

- Soap Lake (Grant County)

Any new or expanded source of pollution to a Tier III(B) ORW cannot cause a measurable change in water quality. This level of protection would place extra requirements on new or expanded point source discharges to ensure pollution from wastewater is kept to a minimum. For nonpoint sources, this designation would require that certain Best Management Practices are used to limit pollution from runoff to below measurable levels where total elimination is not feasible.

We also adopted changes to WAC 173-201A-330 to revise our review process. The rule currently states that Ecology will consult with federally-recognized tribes in the geographic vicinity of the water (WAC 173-201A-330(3)(a)). We have revised this to state that the public review process will include "consultation with Tribes." We will not limit Tribal consultation only to those within the geographic vicinity of the proposed waterbody, nor will we limit consultation to only those Tribes that are federally recognized.

Other adopted changes to chapter 173-201A WAC include:

- WAC 173-201A-020 to add a definition for outstanding resource waters
- WAC 173-201A-602 to note where an ORW exists on waterbodies with specified use designations within Table 602

Citation of rules affected by this order:

New:

Repealed:

Amended: Chapter 173-201A WAC

Suspended:

Statutory authority for adoption: Water Pollution Control, Chapter 90.48 RCW, which provides Ecology the authority to revise the surface water quality standards. The federal Antidegradation Policy and Implementation Methods at 40 CFR 131.12 require states to adopt an antidegradation policy that includes protection of outstanding resource waters.

Other authority: N/A

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 23-15-085 on July 18, 2023 (date).

Describe any changes other than editing from proposed to adopted version:

We edited the Notes for Table 332 in WAC 173-201A-332 Table 332—Outstanding resource water designations by water resource inventory area (WRIA). Specifically, we made the following edits in response to a comment noting that based on our requirement to collect samples between April through October, this essentially constitutes a seasonal average, rather than an annual average:

Notes for Soap Lake:

- Soap Lake measurable change is defined as a decrease in salinity as measured by conductivity of 639 microsiemens per centimeter (µS/cm) or greater.
- In addition, human actions must not cause lake conductivity to decrease below 19,843 µS/cm as calculated as a ~~annual average~~ seasonal average more than once in 10 years.
- ~~Annual~~ Seasonal average conductivity is calculated as the arithmetic average of seven or more samples collected April through October. Sampling should be distributed throughout this period.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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

Phone: 360-407-6600

Fax: N/A

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

Email: swqs@ecy.wa.gov

Web site: <https://apps.ecology.wa.gov/publications/SummaryPages/2310048.html>

Other: N/A

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New 1 Amended Repealed

The number of sections adopted on the agency's own initiative:

New Amended 3 Repealed

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New Amended 1 Repealed

The number of sections adopted using:

Negotiated rule making:	New <u> </u>	Amended <u> </u>	Repealed <u> </u>
Pilot rule making:	New <u> </u>	Amended <u> </u>	Repealed <u> </u>
Other alternative rule making:	New <u> </u>	Amended <u> </u>	Repealed <u> </u>

Date Adopted: December 18, 2023	Signature: 
Name: Laura Watson	
Title: Director	