



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: July 18, 2023

TIME: 8:05 AM

WSR 23-15-085

Agency: Department of Ecology AO # 22-06i

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 22-18-039 ; 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)

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

We propose adding a new section:

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

We propose amendments to 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

For more information on this rulemaking, please visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-201A-Outstanding-Resource-Waters>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
Thursday, Sept. 7, 2023	5:30 p.m.	Webinar – Join the Webinar	<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: https://waecy-wa.gov.zoom.us/j/83739082092</p> <p>For audio call US Toll number 1-253-205-0468 and enter access code 837 3908 2092. Or to receive a free call back, provide your phone number when you join the event.</p>
Tuesday, Sept. 12	2 p.m.	Kalama Community Building 216 Elm St. Kalama, WA 98625	<p>Presentation, question and answer session followed by the hearing.</p> <p>The presentation will focus on the proposed Cascade River ORW designation.</p>
Thursday, Sept 14	2 p.m.	Skagit County Public Utility District Aqua Room 1415 Freeway Dr. Mount Vernon, WA 98273	<p>Presentation, question and answer session followed by the hearing.</p> <p>The presentation will focus on the proposed Green River ORW designation.</p>
Tuesday, Sept. 19	5:30 p.m.	Soap Lake Senior Center 121 2nd Ave SE Soap Lake, WA 98851	<p>Presentation, question and answer session followed by the hearing.</p>

			The presentation will focus on the proposed Soap Lake ORW designation.
Wednesday, Sept. 20	2 p.m.	Bavarian Lodge Hintertux Room 810 US Hwy 2 Leavenworth, WA 98826	Presentation, question and answer session followed by the hearing. The presentation will focus on the proposed Napeequa River ORW designation.

Date of intended adoption: December 13, 2023 (Note: This is **NOT** the **effective** date)

<p>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</p> <p>Or Send parcel delivery services to: Department of Ecology Water Quality Program Email: Submit comments by mail, online, or at the hearing(s). Fax: N/A</p> <p>Other: Online at https://ws.ecology.commentinput.com/?id=sUiNmjf5V By (date) <u>September 27, 2023</u></p>	<p>Assistance for persons with disabilities: Contact Ecology ADA Coordinator Phone: 360-407-6831</p> <p>Fax: N/A TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711 Email: marla.koberstein@ecy.wa.gov</p> <p>Other: N/A By (date) Thursday, Aug. 31, 2023_____</p>
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Purpose of the proposal and its anticipated effects, including any changes in existing rules:

We propose 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 propose 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 propose 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 propose 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 proposed changes to Chapter 173-201A WAC are as follows:

- 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

Reasons supporting proposal:

This rule proposal is in response to nominations we received in 2021. On April 2, 2021, the Soap Lake Conservancy and the Confederated Tribes of the Colville Reservation submitted a nomination to designate Soap Lake as a Tier III(B) outstanding

resource water. On June 24, 2021, the Pew Charitable Trusts, American Rivers, Cascade Forest Conservancy, Wild Salmon Center, American Whitewater, Washington Wild, and Trout Unlimited submitted a nomination to designate portions of the three rivers as Tier III(A) outstanding resource waters.

The goal of designating waterbodies as ORWs is to protect and maintain our state's highest quality and most valued waters from actions that would lower water quality.

For each nomination, we reviewed the waterbody to determine if it met at least one of the eligibility requirements under WAC 173-201A-330(1). During this review, which must be completed within 60 days of when we receive the nomination, we contacted tribes in the geographic vicinity of each nominated waterbody, as well as local jurisdictions and other stakeholders, to notify them of the nominations. We determined that each waterbody submitted for consideration met one or more of the eligibility criteria.

We informed the public of our intent to conduct a public review of the nominations during the 2021 Triennial Review process, and we received a comment letter on behalf of over 50 organizations in support of formally reviewing the ORW nominations. During the rule development phase, we gathered more information on each nominated waterbody and conducted additional tribal and stakeholder outreach.

We are now holding a formal public review of each nomination before we consider adopting an ORW designation. After considering public comments and weighing public support for each proposed ORW, we will make a final decision on whether each waterbody should be adopted into chapter 173-201A WAC as an outstanding resource water, and whether that waterbody should be given Tier III(A) or Tier III(B) protection, as described under 173-201A-330(5).

Washington has yet to designate any waterbody as an ORW. If we adopt an ORW designation for any of the proposed waterbodies, it will be the first time Washington will assign this highest level of protection for a waterbody under our antidegradation section of the water quality standards.

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.

Statute being implemented: Chapter 90.48 RCW, Water Pollution Control t

Is rule necessary because of a:

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

If yes, CITATION:

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 XX, the draft Rule Implementation Plan, Ecology Publication XX, and the Preliminary Regulatory Analyses, Ecology Publication XX, available on our rulemaking webpage.

Type of proponent: Private Public Governmental

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

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Marla Koberstein	Headquarters - Lacey	360-628-6376
Implementation:	Chad Brown	Headquarters - Lacey	360-522-6441
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: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711

Email: swqs@ecy.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[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\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

We assessed the compliance costs of the proposed rule amendments (see the Preliminary Regulatory Analyses for this rulemaking, Ecology publication no. 23-10-031) and did not identify any necessary changes in compliance behavior by any identified business. We determined that Ecology is exempt from performing additional analyses under RCW 19.85.025(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." Similarly, the proposed rule amendments do not meet the criteria for the requirement to prepare a Small Business Economic Impact Statement under RCW 19.85.030(1)(a), which states, "In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry."

We examined the set of landowners around the proposed ORW-designated waterbodies, including nine business locations. We also identified a special permit holder for annual hydroplane races on Soap Lake. As these businesses have not been identified as affecting current qualities of the proposed ORWs, we do not expect their activities to be impacted by the proposed rule amendments. We expect any likely future business expansion or development to be regulated by baseline laws and rules, and similarly not incur additional compliance costs under the proposed rule amendments. The amendments would protect the exceptional qualities of the for proposed ORWs largely in cases of unexpected developments or changes to the regulatory baseline.

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>.

Email:

Other:

Date: July 18, 2023

Name: Heather Bartlett

Title: Deputy Director

Signature:

