

WSR 22-18-039

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF ECOLOGY

[Order 22-06—Filed August 30, 2022, 8:37 a.m.]

Subject of Possible Rule Making: Chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington.

We are considering amendments to WAC 173-201A-020 Definitions, 173-201A-330 Tier III—Protection of outstanding resource waters, and 173-201A-602 Use designations for fresh waters by water resource inventory area (WRIA), WRIs 4 and 26.

We may amend other sections of chapter 173-201A WAC as necessary to support any revisions to the sections noted above.

We received nominations to designate the following waterbodies as outstanding resource waters (ORWs): Soap Lake (Grant County), Napeequa River (Chelan County), Green River - upper watershed (Lewis and Skamania counties), and Cascade River - upper watershed (Skagit County).

An ORW has the highest level of protection assigned to a waterbody, under the Tier III antidegradation rule in our water quality standards.

We will review each nomination as described in WAC 173-201A-330 (3)(b). After considering public comments and weighing public support for each nomination, we will make a final decision on whether a nominated waterbody should be adopted into chapter 173-201A WAC as an ORW, and whether that waterbody should be given Tier III (A) or (B) protection, as described under WAC 173-201A-330(5).

In addition to considering ORW designations, we will also consider changes to WAC 173-201A-330 to improve rule clarity, 173-201A-020 to add a definition for outstanding resource waters, and 173-201A-602 to note where an ORW exists on waterbodies with specified use designations within Table 602.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 90.48.035 Water pollution control—Rule-making authority; and 40 C.F.R. 131.20 Water quality standards—State review and revision of water quality standards, requires states and tribes (with primacy for clean water actions) to periodically review and update the water quality standards.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: In 2021, we received nominations to designate waterbodies as ORWs.

The Soap Lake Conservancy and the Confederated Tribe of the Colville Reservation nominated Soap Lake in Grant County for ORW designation. The proponents nominated Soap Lake for Tier III(B) protection, which would limit future sources of pollution to those that cause only minor degradation. 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.

A group of organizations, including Pew Charitable Trust, American Rivers, Cascade Forest Conservancy, Wild Salmon Center, American Whitewater, Washington Wild, and Trout Unlimited, nominated the following waterbodies for ORW designation: Napeequa River (Chelan County), the upper watershed of the Green River (Lewis and Skamania counties), and the upper watershed of Cascade River (Skagit County).

The proponents requested we consider each of the three waterbodies for Tier III(A) protection. Tier III(A) is the highest level of protection, allowing no further actions that may contribute to degradation of the waterbody except in specific circumstances described in WAC 173-201A-330 (4) (a)-(d).

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 at least one 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 comments from over 50 organizations in support of formally reviewing the ORW nominations. The next step is to gather additional information on each nominated waterbody, conduct additional tribal and stakeholder outreach, and hold a formal public review of each nomination before we consider adopting an ORW designation.

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

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: We will work with tribes to discuss, and seek input on, this rule making. In addition, we will invite government-to-government consultation to tribes on this rule. We will also coordinate with the United States Environmental Protection Agency through rule development and approval.

Process for Developing New Rule: 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 Marla Koberstein, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-628-6376, for Washington relay service or TTY call 711 or 877-833-6341, email marla.koberstein@ecy.wa.gov, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-201A-Outstanding-Resource-Waters>. Sign up to receive email notices: https://public.govdelivery.com/accounts/WAECY/subscriber/new?topic_id=WAECY_61.

Additional comments: Interested parties can stay informed about the rule making 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.

August 30, 2022
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