



STATE OF WASHINGTON
CHELAN COUNTY
BOARD OF COMMISSIONERS
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September 26, 2023

Ms. Laura Watson, Director
Washington Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

RE: Rulemaking - Outstanding Resource Waters, Chapter 173-201A WAC

Dear Ms. Watson:

Chelan County submits the following comments regarding Ecology's rule proposal to designate outstanding resource waters (ORW) and to update rule language in Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. In general, neither the implications of nor the justification for the proposed ORW rule amendment appear to be well thought out or understood by either the proponents or Ecology. We strongly oppose the rule amendment as proposed and request that Ecology suspend the rule-making effort until we can better understand the impacts of the current and future ORW designations.

We appreciate that Ecology recently held public meetings in communities where ORWs are being proposed and has posted proposal information on its website. Unfortunately, we cannot find adequate answers to address our concerns in the materials provided, and we left the public meetings with more questions than answers. We summarize our questions and concerns as follows:

1. ***What is the practical purpose and function of the Napeequa River ORW status given its location in the Glacier Peak Wilderness?*** Ecology and the proponents appear to be concerned that the wilderness protections afforded by the Glacier Peak Wilderness will somehow be lifted or removed, which would then leave ORW rules as the backstop for Napeequa water quality protections. It seems far-fetched to us that the Glacier Peak Wilderness will be undone by Congress, and even if it were undone, federal land use designations administered by the US Forest Service would still provide the highest levels of water quality protections. We note that water quality in the Upper Wenatchee River basin, likely including the Napeequa River, is known to have high levels of phosphorus that can exceed state water quality parameters, which is likely due to a combination of both natural conditions and historic land uses. Why did Ecology not collect

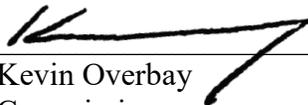
any water samples in the Napeequa River as part of the rule-making effort? How would Ecology apply ORW rules in a waterbody managed by the US Forest Service that may already exceed state water quality standards?

2. ***What triggers the application of ORW rules?*** It is unclear what activities are governed by ORW rules, the permitting nexus for ORW rules, and who is responsible for determining when or how ORW rules apply. Do the ORW rules apply when there is an Ecology permit or funding involved, do the rules also apply to federal and local activities and permitting, and who makes this determination? We can think of many new and ongoing activities which may be subject to ORW rules, depending on their interpretation, and a scenario where Ecology would determine, on a case-by-case basis, how the rules apply. We believe that Ecology must do more work to understand and clarify how and when the rules apply before adopting these new rules.

3. ***Which waterbodies will be proposed next?*** It appears that Ecology and the proponents have selected certain waterbodies for ORW protections as a first step towards broader application of ORW status to more waterbodies across Washington. The Napeequa River was likely selected because it does not contain private property, wilderness in-holdings or other uses and activities which would confound the rule-making process. We note that the proponents requested a modification to their Green River proposal to exclude private property and avoid an analysis of ORW impacts to private property during this rule-making. We are concerned that the current ORW proposal simply lays the foundation for future and far more complex proposals. The primary ORW proponent, Pew Charitable Trust, commissioned a study, available on their website, that lists likely future ORW waterbody proposals as well as Wild and Scenic River designations which may have significant impacts to local communities. We are deeply concerned about these future ORW proposals for waterbodies in Chelan County. In Chelan County, Icicle Creek, upper Lake Chelan and the Stehekin River are included on these lists. What is the impact of an Icicle Creek ORW status on the Icicle and Peshastin irrigation district and Leavenworth National Fish Hatchery reservoirs in the Alpine Lake Wilderness? What is the impact of a Lake Chelan or Stehekin River ORW status to the Chelan County Public Utility District Lake Chelan FERC-licensed hydropower facilities? It is difficult to answer these complex questions given the significant uncertainty of ORW rules and their application.

We look forward to your response and reiterate our request that you suspend further efforts toward rule adoption until our questions and concerns can be addressed.

Sincerely:


Kevin Overbay
Commissioner


Shon Smith
Commissioner


Tiffany Gering
Commissioner