



SIERRA PACIFIC INDUSTRIES

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September 26, 2023

Ms. Marla Koberstein
Washington Department of Ecology
1111 Washington St SE
PO Box 47696
Olympia, WA 98504-7696

also at: <https://ws.ecology.commentinput.com/?id=sUiNmjf5V>

Re: Outstanding Resource Waters rulemaking (WAC 173-201A)

Dear Ms. Koberstein:

Sierra Pacific Industries is a third generation, family-owned company in the forest products business. We built and now operate four state-of-the-art sawmills in Washington which manufacture dimension lumber and other products for domestic consumption. Our direct employment is over 900, predominantly in rural communities and predominantly in well-paying jobs. We sustainably manage 300,000 acres of forestland for a supply of raw materials and we also source logs from a wide variety of other small and large landowners, public and private. Our manufacturing facility in Burlington, Washington, historically has relied upon and continues to source raw materials from the Cascade River and neighboring watersheds, including timber harvested from private, State, and federal lands.

The Forest and Fish Agreement, its science-based Adaptive Management Program, and the carefully structured balance between resource goals and industry viability which is embedded in State law, were the foundation for choosing Washington to expand our business. Starting in 2001 we have invested over \$1B in this State. Among these resource goals is compliance with the Washington Water Quality Standards for Surface Waters, as embodied in WAC 173-201A. We are committed to meeting or exceeding the standards therein for the benefit of the citizens of the State of Washington with respect to public health, public enjoyment, and aquatic life. We write today to express concerns, both procedural and substantive, with the proposed designation of four specific waterbodies as Tier 3 Outstanding Resource Waters (ORW) and to oppose changes to WAC 173-201A-332 – Table 332 (as described in the CR 102 filed July 18, 2023). Although the comments below focus on the Cascade River, the procedural issues extend to any current or future proposed ORW designation. These comments are intended to supplement the oral testimony Sierra Pacific provided September 14 at the Skagit County Public Utility District hearing.

The proposal is likely to have significant effects on the ability to conduct land and road management activities, the production of raw materials from resource lands, and rural employment and economies. Washington Department of Ecology's (WDOE) Preliminary Regulatory Analysis and State Environmental Policy Act Checklist acknowledge but do not adequately address the consequences of the proposed action, the costs thereof, nor identify appropriate mitigation. Furthermore, WDOE does not explain what resources are inadequately protected under current designation and therefore what the need for the proposed rule is. We are concerned that without explicit identification and analysis, WDOE's determination that benefits of the proposed rule exceed the costs is arbitrary and would fail the requirement to select the least burdensome alternative.

ORW designation must be based on unambiguous data. Washington water quality standards are based on attainment of specific numeric criteria for pollutants, including but not limited to temperature, dissolved oxygen, turbidity, bacteria, and toxic substances, to protect designated uses. Neither the proponents nor the WDOE has disclosed actual water quality monitoring data demonstrating compliance with numeric standards. Without an objective measurement of water quality parameters, it would be arbitrary to designate a given waterbody as belonging in Tier I, Tier II, or Tier III, much less to formally designate it as “outstanding”. Simply asserting that a waterbody is “relatively pristine” or has “high water quality” does not make it so. In accordance with RCW 90.48.580, please provide all credible data demonstrating attainment of numeric criteria with respect to all pollutants listed in WAC 173-201A-200, WAC 173-201A-240, and WAC 173-201A-600, upon which WDOE is relying to make its determination.

By definition, Tier III waterbodies must have higher water quality than similarly situated waterbodies which are not Tier III. The proponents have asserted that various aquatic life are documented or are otherwise known to utilize the Cascade River but this is insufficient to distinguish a waterbody as belonging Tier III: these same species occur in numerous waterbodies throughout the State designated as Tier I and Tier II, not to mention segments which have been identified as impaired under Section 303(d) of the federal Clean Water Act. Please provide a comparative analysis of quantitative water quality criteria in the Cascade River versus other, comparable fifth order rivers in the North Cascades physiographic province upon which WDOE is relying to make its determination.

Tier III waterbodies must have a lower level of anthropogenic disturbance than other waterbodies. There are numerous features of the Cascade River which suggest that potential sources of water quality impairments are actually *higher* than similarly situated watersheds which do not contain Tier III waterbodies. Consider the following comparison of the Cascade River watershed with its neighboring watersheds:

	Upper Cascade River	Thunder Creek	Upper Stehekin River	Upper Suiattle River
watershed area (miles ²)	143	109	246	186
location relative to Cascade River	subject	borders to northeast	borders to east	borders to south
% wilderness or National Park	80%	91%	94%	98%
existing public roads (miles)	19	0	5	0
existing resource roads (miles)	36	0	2	2
road density (mile/miles ²)	0.39	0.00	0.03	0.01
vehicle-accessible recreation campgrounds	Mineral Park (21 sites) and Marble Creek (23 sites)	0	0	0
hard rock mining activity	20+ claims	yes	yes	yes

There is a long history of mining for valuable resources in the proposed Cascade River ORW watershed with numerous placer and patented claims in the headwaters of the North Fork Cascade and Middle Fork Cascade Rivers, Sections 1 and 11, Township 34 North, Range 13 East, and Sections 24, 25, 26, 35, and 36, Township 35 North, Range 13 East (see, for example, https://www.nps.gov/parkhistory/online_books/noca/hbd/chap5.htm (last accessed September 25, 2023) or, HUNTING, M. T., 1956, INVENTORY OF WASHINGTON MINERALS-PART II, METALLIC MINERALS: WASHINGTON DIVISION OF MINES AND GEOLOGY BULLETIN 37, V. 1, 428 P.; V. 2, 67 P.). According to these and other sources there are exposed deposits of lead, silver, zinc, gold, copper, and arsenic (all pollutants with specific numeric criteria in WAC 173-201A-240) and some occur in close proximity to surface waters. What monitoring data did WDOE rely upon to determine if these pollutants 1) exceed background levels in natural waters 2) meet the criteria for protection of aquatic life and human health 3) require mitigation to meet the obligation to reduce discharges through AKART ? How do the current level of these toxic pollutants comport with the WDOE characterization of the subject waterways as “without multiple sources of pollution”, “pristine”, and “relatively pristine” ? If current criteria are not being met: where are the ongoing sources of pollution located; what mitigation measures would be necessary to maintain “outstanding” water quality in the future; how much would implementation of such measures cost; and, would such measures be permissible under WAC 173-201A-330 (4) ?

Nearly 20 % of the Cascade River watershed is designated Late Successional Reserve (LSR) under the Northwest Forest Plan and has a legacy of clearcut timber harvest and forest roads. Under USFS management guidelines, timber harvest and other active forest management is permissible on LSR lands to achieve a variety of objectives. Please provide an analysis of lands available for timber harvest before and after ORW designation. What effect will this have on regional timber supply, forest health, and rural employment ? Are road maintenance, road abandonment, road improvement activities considered “new” activities and if not would each be allowable under WAC 173-201A-330 (4)? What would be the potential consequences of reduced road maintenance on existing USFS forest roads to achieving or maintain turbidity criteria in WAC 173-201A-200 ? What would be the consequences of reduced miles of drivable, maintained roads to non-commodity uses such as dispersed recreation and exercise of tribal treaty rights? Are fire suppression, salvage harvest, and post-wildfire treatments (e.g., BAER) considered “new” activities and if not would each be allowable under WAC 173-201A-330 (4)? What would be the potential consequences of reduced pre- and post-fire activities on existing USFS lands to achieving or maintain turbidity criteria in WAC 173-201A-200 ?

The Cascade River watershed is unique in the sense that it is one of few in western Washington to have a public road from its mouth to headwaters, miles of which is a paved two-lane road: construction of the Cascade River Road began in 1895. What length of this road is within the riparian zone of the Cascade River and its tributaries and how many stream crossings exist ? Are there features of this road (e.g., stream crossing structures) which reduce the ability of native salmonids and other aquatic organisms to access and/or utilize historic habitat and how does this comport with the WDOE characterization of the subject waterways as “having exceptional ecological value”, “pristine”, and “relatively pristine” ? What monitoring data did WDOE rely upon to determine if pollutants originating from existing roads 1) exceed background levels in natural waters 2) meet the criteria for protection of aquatic life and human health 3) require mitigation to meet the obligation to reduce discharges through AKART ? If current criteria are not being met: where are the ongoing sources of pollution located; what mitigation measures would be necessary to maintain “outstanding” water quality in the future; how much would implementation of such

measures cost and what part(ies) will bear these costs; and, would such measures be permissible under WAC 173-201A-330 (4) ? Are road maintenance, road abandonment, road improvement (specifically including road improvement designed to improve fish passage) activities considered “new” activities and if not would each be allowable under WAC 173-201A-330 (4)?

The Cascade River watershed is also unique in the sense that it is one of few in western Washington to have large, developed, drive-in campgrounds high in the watershed. Both of these USFS campgrounds are located within the riparian zone of the Cascade River. In addition, the Cascade River Road is a primary point of access for dispersed recreation to the North Cascades National Park with some estimates that during peak season there may be in excess of 1,000 unique visits per day by motor vehicle. What monitoring data did WDOE rely upon to determine if *E. coli* concentrations 1) exceed background levels in natural waters 2) meet the criteria for protection of human health in WAC 173-201A-200 (2) (b), 3) require mitigation to meet the obligation to reduce discharges through AKART ? How do the current level of these pollutants comport with the WDOE characterization of the subject waterways as “without multiple sources of pollution”, “pristine”, and “relatively pristine” ? If current criteria are not being met: where are the ongoing sources of pollution located; what mitigation measures would be necessary to maintain “outstanding” water quality in the future; how much would implementation of such measures cost; and, would such measures be permissible under WAC 173-201A-330 (4) ?

WDOE is inconsistently treating Tier II and Tier III waterbodies. In the context of State Forest Practices Regulation, WDOE has recently been misusing its Tier II regulation to preclude measurable change in waters which have been demonstrated to meet numeric criteria in state standards. This appears indistinguishable from requirements under Tier III (such as proposed for the Cascade River) implying there is no practical difference between how Tier I, II, and III of the Antidegradation Policy is being administered: this is clearly not the intent of the rules and a departure from the plain language therein. Please clarify the present antidegradation policy and requirements under Tier II and contrast with the policy and requirements under Tier III. Which specific land management activities that are currently permissible within a Tier II water would be precluded under a Tier III designation?

WDOE has erred in applying the requisite criteria in WAC 173-201A-330 (1) (a)¹ with respect to the Cascade River. The plain language of the regulation indicates that to be eligible for designation as an ORW, all of the elements within one or more of the subsections (a) through (e) must be satisfied. The Cascade River is not “largely absent human sources of degradation” and has not been shown in any objective, transparent, or repeatable manner to “possess exceptional water quality”. Further, approximately 20 % of the Cascade River Watershed is USFS ownership designated LSR: this area is not one of the enumerated land use categories (federal park, state park, monument, preserve, wildlife refuge, wilderness) and thus would be ineligible for designation. (In addition, private parcels included within the proposal are similarly not one of the enumerated land uses.) If it is to designate relying upon these (1) (a) criteria, we suggest that WDOE modify the proposed extent to exclude private properties and USFS ownership designated LSR.

¹ The water is in a relatively pristine condition (largely absent human sources of degradation) or possesses exceptional water quality, and also occurs in federal and state parks, monuments, preserves, wildlife refuges, wilderness areas, marine sanctuaries, estuarine research reserves, or wild and scenic rivers.

WDOE has erred in applying the requisite criteria in WAC 173-201A-330 (1) (c)² with respect to the Cascade River. The plain language of the regulation indicates that to be eligible for designation as an ORW, all of the elements within one or more of the subsections (a) through (e) must be satisfied. WDOE has not shown in any objective, transparent, or repeatable manner that all 149.8 miles of the proposed designation “has high water quality” and has disregarded readily available information to the contrary. Further, WDOE has not provided evidence that all 149.8 miles of the proposed designation has “regionally unique recreation value”. Proponent American Whitewater indicates that the Cascade River has two segments suitable for kayaking, totaling 17.6 miles (approximately 5 miles of which is downstream of (outside) the proposed designation segments). This is how American Whitewater publicly describes the 10 mile reach (approximately 79 % of the total length of segments suitable for kayaking) “Mineral Park to Marble Creek Campground (upper)”:

People are often tempted to do this run because it is listed as class II and it has good flows in the summer. Do not make this mistake! The Upper Cascade is full of wood and the portages are horrendous.³

Presumably the remaining 2.6 miles of kayaking opportunity is better than “horrendous” and may in fact constitute “regionally unique recreation value”. However, it is incumbent on WDOE to 1) make an explicit assessment of recreation values in the Cascade River with respect to available opportunities in other waterbodies and 2) offer justification why designation of 149.8 miles is justified as “least burdensome” if only 2.6 miles are unique. Please provide this information and assessment. If it is to designate relying upon these (1) (c) criteria, we suggest that WDOE modify the proposed extent to include only the 2.6 mile reach containing a demonstrably unique recreation opportunity.

WDOE has erred in applying the requisite criteria in WAC 173-201A-330 (1) (d)⁴ with respect to the Cascade River. The plain language of the regulation indicates that to be eligible for designation as an ORW, all of the elements within one or more of the subsections (a) through (e) must be satisfied. The proponents’ nomination proposal assert it meets requisite conditions under this subsection. However, their characterization relies on subjective, circular logic that because the Cascade River 1) supports many species of fish (as do many waterbodies that are far from pristine), 2) has recreation value (as do many other waterbodies that offer better recreational opportunity), and 3) small portions are already designated under the Wild & Scenic Rivers Act (16 USC, Sections 1271-1287, as amended), that a *de facto* proclamation of exceptional significance should be assumed regarding the entire 149.8 miles (plus the unknown length of tributaries and associated wetlands). This is not an appropriate approach to designating a Tier III river. It is worth noting that even a cursory comparison to widely available databases (such as <https://geo.nwifc.org/swifd/>) indicate that only a small fraction of the proposed stream length is even accessible to fish and/or contains fish habitat. Please provide a comparative analysis of quantitative biological, habitat, and geomorphic data for the Cascade River versus other, comparable fifth order rivers in the North Cascades physiographic province upon which WDOE is relying to make its determination that the proposed segments are of exceptional significance.

² The water has both high water quality and regionally unique recreational value.

³ <https://www.americanwhitewater.org/content/River/view/river-detail/3489/main> (last accessed September 25, 2023)

⁴ The water is of exceptional statewide ecological significance.

We strongly urge WDOE to apply its criteria correctly, to remedy its incomplete and inaccurate analyses, conduct a thorough and explicit cost-benefit analysis, and make a revised recommendation after considering public comment.

Respectfully,

A handwritten signature in black ink, appearing to read "John D. Gold". The signature is stylized with a large initial "J" and "D".

John D. Gold,

Burlington District Manager