



WASHINGTON FOREST PROTECTION ASSOCIATION  
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September 26, 2023

Department of Ecology  
Water Quality Program  
Marla Koberstein  
PO BOX 47600  
Olympia, WA 98504-7600

**Re: Outstanding Resource Water Designations**

Dear Marla Koberstein:

Washington Forest Protection Association (WFPA) is a forestry trade association representing large and small forest landowners and managers of more than four million acres of productive working forests, including timberland located in the coastal and inland regions of the state. Our members support rural and urban communities through the sustainable growth and harvest of timber and other forest products for U. S. and international markets. For more information about WFPA, please visit our website at [www.wfpa.org](http://www.wfpa.org). WFPA respectfully submits the following comments regarding Outstanding Resource Water (ORW) designations for segments of the Cascade, Napeequa, and Green Rivers.

Ecology should not designate these waters until Ecology has provided the public with clear and specific information about how it is making these designations, the costs of designations, the implications for local communities, and considered the resulting public comments. These designations will have major impacts on the public. Taking the time to conduct such an objective and meaningful rulemaking process is necessary.

WFPA is concerned that there are little to no water quality data available to determine the baseline condition and objectively assess if the criteria in WAC 173-201A-330(1) are satisfied in these river segments. The lack of data also means no quantitative water quality benefit can be identified for designating these waters and essentially preventing human uses adjacent to them. WFPA notes that Ecology's Preliminary Regulatory Analyses could not quantify the degree to which designation would improve water quality, increase recreational visits, or increase fish and wildlife populations. Water quality standards are presumably already being met in these waters and they are also subject to existing state and federal protections. Therefore, what benefit is derived from these proposed designations?

While this is not a proposed listing decision, Ecology is making an enormously consequential water quality protection decision without the "credible water quality data" expected by the Legislature. RCW 90.48.570. What data demonstrates this rule making process prioritizes the financial resources of the state so we can address our most important water quality issues? See RCW 90.48.570(1)(c). Is Ecology relying on credible water quality data to propose a new classification for these river segments? See RCW 90.48.580(2)(c). Given the lack of specific water quality data and the largely narrative analysis supporting designation, it's unclear Ecology meets the requirements of RCW 90.48.570 - 585 and Water Quality Policy 1-11 for a decision of far greater significance than an impairment listing.

Additionally, the Preliminary Regulatory Analyses suggests the designations may have significant economic impacts but does not disclose any specifics. Since this proposed rulemaking will significantly impact current and future human activities adjacent to protected waters in public spaces, potentially preventing public use and access, those impacts should be quantified and disclosed. While the analyses acknowledge potentially major implications on economies of the state, and that designation will prevent large-scale development and may increase costs for small-scale development, it does not discuss economic impacts on adjacent communities or acknowledge the square miles affected. Further, the analyses indicate Ecology will require activities to use "all applicable structural and nonstructural best management practices," but does not identify what those are or what they will cost. If neither benefits nor costs can be specified and disclosed, how can Ecology determine "... the probable benefits of the rule are greater than its probable costs..." RCW 34.05.328(1)(d)?

Ecology has also not disclosed the environmental impacts of these designations. The State Environmental Policy Act (SEPA) requires impacts on land and shoreline use to be disclosed. RCW 43.21C.030, WAC 197-11-060. Yet, the SEPA analysis and threshold decision does not acknowledge the proposed designation may prevent roads and public access or other activities adjacent to these waters. It also does not discuss potential impacts on forest management activities to prevent catastrophic wildfires.

Given this is the first time Ecology is proposing to designate ORWs in the 20+ years since its rules were adopted, we strongly urge the department to establish a high standard, at least equal to, if not better than, the standards required of other significant agency actions related to water quality. Promoting a recommendation absent public review and input, a lack of site-specific data and quantitative analysis, failure to identify and disclose specific benefits, costs, and land or shoreline impacts does not inspire confidence or provide for meaningful public participation in the rulemaking process.

Finally, in the Forest Practices arena Ecology has been misusing its "Tier II" regulation to disallow temperate change greater than 0.3 °Celsius in water bodies which are exceeding designated use standards. Ecology took that novel position before specifying any new or expanded action, consideration of necessity, or overriding public interest analysis and it is inconsistent with the plain language of WAC 173-201A-320. Now, Ecology is using a vague and subjective process to propose ORWs which will have a similar restriction as that resulting from Ecology's position on Tier II waters in the Forest Practices arena. This means there is no practical difference between how Tier I, II, and III of the Antidegradation Policy is being administered, yet that is clearly not the intent of the rules. Taken to the extreme, these proposed designations could prevent human activity in large portions of the state from headwaters to the ocean without any express approval by the Legislature, demonstrable benefit for water quality or listed aquatic species, or support in affected communities.

We strongly urge Ecology to pause this proposed rulemaking; conduct transparent, objective, and robust analysis informed with site specific data; quantify as much as possible, the costs, benefits, and environmental impacts for public review and comment; make a recommendation after fairly considering all public input and determining the probable benefits exceed the probable costs. Most importantly, Ecology should return to fairly, and honestly interpreting the applicable laws/rules in order to rebuild public confidence in the agency and its rule-making process.

Sincerely,

*Darin D Cramer*

Sr. Director of Forest Policy