



REGION 10
SEATTLE, WA 98101

March 8, 2024

Vince McGowan
Water Quality Program Manager
Washington State Department of Ecology
PO Box 47600
Olympia, Washington 98504

Dear Mr. McGowan:

The U.S. Environmental Protection Agency has completed the Clean Water Act review of the new and revised water quality standards at Chapter 173-201A of the Washington Administrative Code, submitted to the EPA by the Washington State Department of Ecology by letter dated January 4, 2024. Under section 303(c) of the CWA, 33 U.S.C. § 1313(c), states must submit new and revised WQS to the EPA for review and action, and the EPA must ensure that those WQS are consistent with the CWA and its implementing regulations. The details of the EPA's action are outlined below and are further described in the enclosed technical support document.

The EPA's action applies only to waters in the state of Washington and does not apply to waters that are within Indian Country, as defined in 18 U.S.C. § 1151. Nothing in this action shall constitute an approval or disapproval of a WQS that applies to waters within Indian Country. The EPA, or authorized Indian Tribes, as appropriate, retain the authority to establish WQS for waters within Indian Country.

Summary of the EPA's Action

- I. Pursuant to the EPA's authority under CWA section 303(c) and the implementing regulations at 40 CFR Part 131, the EPA is approving certain revisions to the following sections of Chapter 173-201A WAC:
 - WAC 173-201A-020: Definitions, "Outstanding resource waters."
 - WAC 173-201A-330: Tier III – Protection of outstanding resource waters; non-substantive revisions at provision 330(3)(a).
 - WAC 173-201A-330: Tier III – Protection of outstanding resource waters; provision 330(6).
 - WAC 173-201A-332: New section and Table 332 – Outstanding resource water designations by water resource inventory area (WRIA) in its entirety and "Notes for Table 332" provisions "a" and "b".
 - WAC 173-201A-602: Table 602 – Use designations for fresh waters by water resource inventory area (WRIA); non-substantive revisions.

II. The EPA is taking no action on certain parts of the new and revised provisions in the following sections of Chapter 173-201A WAC, because the EPA has determined they are not new or revised WQS that the EPA has the authority to review and approve or disapprove pursuant to CWA section 303(c), 33 U.S.C. § 1313(c)(3):

- Portions of WAC 173-201A-332: Table 332, “Notes for Table 332” provision “c.”

The EPA commends Ecology for its efforts to protect Washington’s waters, including the application of Tier III antidegradation protections that maintain and protect unique and high-quality waters. We look forward to continuing close collaborations with you and your staff. If you have any questions regarding this letter, please contact me at (206) 553-0171 or Shaw.Hanh@epa.gov or Lindsay Guzzo, the EPA staff lead, at (206) 553-0268 or Guzzo.Lindsay@epa.gov.

Sincerely,

HANH
SHAW

Digitally signed by HANH
SHAW
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Hanh Shaw, Manager
Standards, Assessment and Watershed
Management Branch
Water Division

ENCLOSURE:

1. Technical Support Document – The EPA’s Clean Water Act Action on the New or Revised Water Quality Standards at Chapter 173-201A of the Washington Administrative Code: Outstanding Resource Waters and Other Provisions

cc: Melissa Gildersleeve, Section Manager, Water Quality Program, Washington State
Department of Ecology

Technical Support Document

The EPA's Clean Water Act Action on
the New or Revised Water Quality Standards at Chapter
173-201A of the Washington Administrative Code:
Outstanding Resource Waters and Other Provisions

Submitted on January 4, 2024

March 8, 2024

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I. Introduction

This Technical Support Document provides the basis for the U.S. Environmental Protection Agency's action under section 303(c) of the Clean Water Act (CWA), 33 U.S.C. § 1313(c), and the federal water quality standards (WQS) regulations at 40 CFR Part 131, to approve certain WQS that the Washington State Department of Ecology (Ecology) submitted to the EPA on January 4, 2024.

A. Clean Water Act Requirements for WQS

The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters with an interim goal, where attainable, to achieve water quality that provides for the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. Under section 303(c) of the CWA and federal implementing regulations at 40 CFR § 131.4, states and authorized Tribes¹ have the primary responsibility for reviewing, establishing, and revising WQS. These standards include the designated uses of a waterbody or waterbody segment, the water quality criteria necessary to protect those designated uses, and an antidegradation policy. This statutory and regulatory framework allows states to work with local communities to adopt appropriate designated uses (as required in 40 CFR § 131.10(a)) and to adopt criteria to protect those designated uses (as required in 40 CFR § 131.11(a)).

States are required to hold public hearings for the purpose of reviewing applicable WQS periodically but at least once every three years and, as appropriate, modifying and adopting standards (40 CFR § 131.20). Each state must follow applicable legal procedures for revising or adopting such standards (40 CFR § 131.5(a)(6)) and is required to submit a certification by the state's attorney general, or other appropriate legal authority within the state, that the WQS were duly adopted pursuant to state law (40 CFR § 131.6(e)). The EPA's review authority and the minimum requirements for state WQS submittals are described at 40 CFR §§ 131.5 and 131.6, respectively.

Section 303(c) of the CWA requires states and authorized Tribes to submit new or revised WQS to the EPA for review and action. The EPA reviews these changes and approves the WQS if they meet the requirements of the CWA and the EPA's implementing regulations.

The EPA considers four questions (described below) when evaluating whether a particular provision is a new or revised WQS. If all four questions are answered "yes" then the provision would likely constitute a new or revised WQS that the EPA has the authority and duty to approve or disapprove under CWA section 303(c)(3).²

1. Is it a legally binding provision adopted or established pursuant to state or Tribal law?
2. Does the provision address designated uses, water quality criteria (narrative or numeric) to protect designated uses, and/or antidegradation requirements for waters of the United States?

¹ The term "authorized Tribe" means a Tribe eligible under CWA section 518(e) and 40 CFR § 131.8 for treatment in a similar manner as a state (TAS) for the purpose of administering a water quality standards program.

² What is a New or Revised Water Quality Standard under 303(c)(3)? Frequently Asked Questions, EPA No. 820F12017 (Oct. 2012). Available at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>

3. Does the provision express or establish the desired condition (e.g., uses, criteria) or instream level of protection (e.g., antidegradation requirements) for waters of the United States immediately or mandate how it will be expressed or established for such waters in the future?
4. Does the provision establish a new WQS or revise an existing WQS?

If the EPA approves a state's WQS submission, such standard(s) shall thereafter be the applicable standard for CWA purposes. When the EPA disapproves a state's WQS, the EPA shall notify the state and specify why the WQS is not in compliance with the requirements of the CWA and federal WQS regulations and specify any changes that are needed to meet such requirements (40 CFR § 131.21).

Finally, the EPA considers non-substantive edits to existing WQS to constitute new or revised WQS that the EPA has the authority to approve or disapprove under CWA section 303(c)(3). While such edits and changes do not substantively change the meaning or intent of the existing WQS, the EPA believes it is reasonable to treat such edits and changes in this manner to ensure public transparency as to which provisions are applicable for CWA purposes. The EPA notes that the scope of its review and action on non-substantive edits or editorial changes extends only to the non-substantive edits or changes themselves. The EPA does not re-open or reconsider the underlying WQS that are the subject of the non-substantive edits or editorial changes.

B. Regulatory Requirements for Outstanding Resource Waters

The antidegradation policy of Washington's WQS includes an Outstanding Resource Waters (ORW) provision, WAC 173-201A-330, which is Washington's equivalent of the federal antidegradation policy's Outstanding National Resource Water (ONRW) regulations at 40 CFR § 131.12(a)(3). The federal ONRW regulations afford the highest level of protection in the antidegradation policy and provide that the water quality of ONRWs be maintained and protected. The EPA has interpreted this prohibition on water quality degradation in ONRWs to mean no new or increased discharges to ONRWs and no new or increased discharge upstream of, or to tributaries to ONRWs, that would result in lower water quality in the ONRWs.^{3,4} The only exception to this prohibition on degradation in ONRWs is for temporary and short-term changes in the water quality that are consistent with protecting existing uses and meeting water quality criteria that are applicable to the waters.^{5,6}

Washington's Tier III(A) antidegradation provisions at WAC 173-201A-330(5)(a), are the state's equivalent rules for assigning federal Tier III protections to waterbodies. These rules provide the highest level of protection in the state's antidegradation policy and prohibit degradation of current water quality for Tier III(A) waters. The state's Tier III(B) antidegradation provisions at WAC 173-201A-330(5)(b), are the state's equivalent rules for assigning federal "Tier 2.5" protections to waterbodies, affording the second highest level of protection in the state's antidegradation policy. As described in Chapter 4 of the EPA's Water Quality Standards Handbook,³ the implementation requirements for Tier 2.5 are more stringent than those of Tier II (high-quality waters), but less stringent than the prohibition against any lowering of water quality in Tier III (ONRWs). "[The] EPA accepts this additional Tier in state

³ Available at <https://www.epa.gov/wqs-tech/water-quality-standards-handbook>

⁴ Available at <https://www.govinfo.gov/content/pkg/FR-1998-07-07/pdf/98-17513.pdf>, 36785-87

⁵ Available at <https://www.epa.gov/wqs-tech/water-quality-standards-handbook>.

⁶ Available at https://archives.federalregister.gov/issue_slice/1983/11/8/51391-51423.pdf#page=10, 51403

antidegradation policies because it is a more stringent application of the Tier II provisions of the antidegradation policy and, therefore, permissible under section 510 of the CWA”.⁷ Washington’s antidegradation provisions assigning Tier III(B) protections limit any potential impacts to water quality to “de minimis” (non-measurable) amounts. Antidegradation provides a higher level of protection beyond those provided by designated uses and water quality criteria. As such, any de minimis changes to water quality allowed by Washington must not result in exceedances of applicable water quality criteria nor result in the violation of Tier II antidegradation requirements for the protection and maintenance of existing uses and the water quality to protect those uses.

The EPA approved WAC 173-201A-330(5)(a) and WAC 173-201A-330(5)(b) in 2007 as consistent with the CWA and its implementing regulations at 40 CFR § 131.12 and confirmed in that action that the Tier III(B) designation at WAC 173-201A-330(5)(b) allows de minimis degradation. Pursuant to WAC 173-201A-330(5)(b), the state’s rules conditionally allow minor degradation to occur due to highly controlled actions, with sources of pollution considered individually and cumulatively not to cause measurable degradation of the water body.

II. Washington’s WQS Submittal

By letter dated January 4, 2024, Ecology submitted revisions to various sections of WAC 173-201A, to the EPA for review and action under section 303(c) of the CWA. The revisions were adopted on December 18, 2023, were certified by the Attorney General of Washington on January 2, 2024, as duly adopted pursuant to state law, and became effective under state law on January 18, 2024. Prior to adopting the revisions, the state provided the opportunity for public comment on the proposed rule from July 18, 2023 through September 27, 2023, and held a webinar-based public hearing on September 7, and in-person public hearings on September 12, September 14, September 19 and September 20, 2023.

Ecology submitted the following documents via electronic transmission to the EPA in accordance with the minimum requirements of a WQS submittal at 40 CFR § 131.6:

- Cover letter from Vince McGowan, Water Quality Program Manager, to Caleb Shaffer, EPA Region 10 Water Division Acting Director, dated January 4, 2024.
- Attachment A: Memorandum from the Attorney General’s Office certifying the standards were duly adopted pursuant to state law, January 2, 2024.
- Attachment B: Track-changes version of the Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A WAC, as revised and adopted on December 18, 2023.
- Attachment C: Clean copy of the Water Quality Standards for Surface Waters of the State of Washington, Chapter 173-201A WAC, effective January 18, 2024.
- Attachment D: Concise Explanatory Statement. Chapter 173-201A WAC, Outstanding Resource Waters: Summary of Rulemaking and response to comments. Dec. 2023. Ecology Publication no. 23-10-047.
- Attachment E: Final Rule Implementation Plan: Outstanding Resource Waters. Amendments to Chapter 173-201A WAC. Dec. 2023. Ecology Publication no. 23-10-045.

⁷ Id.

- Attachment F: Final Regulatory Analyses for Chapter 173-201A WAC, Water Quality Standards for Surface Waters of the State of Washington. Dec. 2023. Publication no. 23-10-048.
- Attachment G: Adopted Outstanding Resource Water Designations for Soap Lake and Portions of the Cascade, Napeequa, and Green Rivers: Final Technical Support Document. Dec 2023. Publication no. 23-10-046.
- Attachment H: SEPA Determination of Nonsignificance and Environmental Checklist.

The new or revised WQS submitted to the EPA for review and action pursuant to CWA section 303(c) include updates to Washington’s WQS provisions at:

- WAC 173-201A-020: Definitions.
- WAC 173-201A-330: Tier III – Protection of outstanding resource waters.
- WAC 173-201A-332: Table 332 – Outstanding resource water designations by water resource inventory area (WRIA).
- WAC 173-201A-602: Table 602 – Use designations for fresh waters by water resource inventory area (WRIA).

Ecology also submitted provisions that do not constitute new or revised WQS actionable under section 303(c) of the CWA because they do not establish the desired condition or instream level of protection for any waters to which the EPA’s authorities under CWA section 303(c) and 40 CFR Part 131 apply. These non-WQS provisions are discussed below in the section titled “Provisions that the EPA is Not Taking Action On.”

III. The EPA’s Action on Washington’s New and Revised WQS

The EPA has completed its review and is acting on the Ecology’s January 4, 2024 submittal, as described below.

This action applies only to water bodies under the jurisdiction of Washington and does not apply to waters within Indian Country, and nothing in this letter and Technical Support Document shall constitute an approval or disapproval of a WQS that applies to waters within Tribal jurisdiction.

A. The EPA’s Approval Action on New and Revised Water Quality Standards

The EPA’s action and rationale on the new and revised WQS submitted by Ecology are provided below.

i. WAC 173-201A-020: Definitions

Washington added the definition of “outstanding resource waters” at WAC 173-201A-020. The underlined text indicates the new and/or revised language.

"Outstanding resource waters" are high quality waters designated by the state due to their exceptional water quality, ecological or recreational significance, unique habitat, or cold water refuge. Outstanding resource waters are given the highest level of protection under the state antidegradation policy.

The EPA Action and Rationale

In accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131, the EPA approves this new definition.

The definition explains the term “outstanding resource waters” as it is used in Washington’s WQS, and provides information needed for the application and implementation of the WQS. The definition is consistent with section 303(c) of the CWA and its implementing regulations at 40 CFR § 131.12(a)(3), which describe Outstanding National Resource Waters as high-quality waters that constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance. Washington’s Tier III antidegradation policy at WAC 173-201A-330(5) includes two categories for Outstanding Resource Waters designation, Tier III(A) at WAC 173-201A-330(5)(a), and Tier III(B) at WAC 173-201A-330(5)(b). Because the state’s new definition of Outstanding Resource Waters is consistent with federal Outstanding National Resource Water regulations at 40 CFR § 131.12(a)(3), it is an appropriate definition for the state’s highest tiers of protection under its antidegradation policy.

ii. WAC 173-201A-330: Tier III – Protection of outstanding resource waters

Washington revised WAC 173-201A-330(3)(a) to make a minor grammatical change and to clarify the Tribal consultation process. The clarification of Tribal consultation for ORWs aligns with the state’s current consultation practices. The underlined text indicates the new and/or revised language, and strikeout text indicates language which has been removed from the state’s WQS.

(3) After receiving a request for outstanding resource water designation, the department will:

(a) Respond within ~~((sixty))~~ 60 days of receipt with a decision on whether the submitted information demonstrates that the water body meets the eligibility requirements for an outstanding resource water. If the submitted information demonstrates that the water body meets the eligibility requirements, the department will schedule a review of the nominated water for designation as an outstanding resource water. The review will include a public process and consultation with ~~recognized tribes in the geographic vicinity of the water.~~

The EPA Action and Rationale

In accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131, the EPA approves these non-substantive editorial changes as they provide useful clarifying information regarding Tribal consultation during future ORW reviews and to make an additional grammatical revision to the text (i.e. replacing “sixty” with “60”).

The EPA’s approval of these non-substantive edits and editorial changes to previously approved WQS at WAC 173-201A-330(3)(a) ensures public transparency as to which provisions are effective for purposes of the CWA. The scope of the EPA’s review and action on non-substantive edits or editorial changes extends only to the edits or changes themselves. The EPA’s action here does not constitute an action on the underlying previously approved WQS.⁸

⁸ What is a New or Revised Water Quality Standard under 303(c)(3)? Frequently Asked Questions, EPA No. 820F12017 (Oct. 2012). Available at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>

- iii. **WAC 173-201A-330(6): Tier III – Protection of outstanding resource waters and WAC 173-201A-332, Table 332 – Outstanding resource water designations by water resource inventory area (WRIA).**

Washington added a new provision at WAC 173-201A-330(6) and a new section at WAC 173-201A-332. The underlined text indicates the new language. The purpose of this language is to identify the waterbodies to which Tier III protections apply in Washington’s rules, as well as other pertinent information for the designation.

WAC 173-201A-330(6)

(6) Waterbodies designated as outstanding resource waters are listed under WAC 173-201A-332.

WAC 173-201A-332 Table 332 – Outstanding resource water designations by water resource inventory area (WRIA). (1) Table 332 lists waterbodies designated as Tier III(A) or Tier III(B) outstanding resource waters. Waterbodies are designated in accordance with WAC 173-201A-330.

(2) The coordinates listed in Table 332 are defined in the North American 1983 Datum High Accuracy Reference Network (NAD83 HARN).

Table 332

<u>WRIA</u>	<u>County or Counties</u>	<u>Waterbody Name</u>	<u>Designation Boundary</u>	<u>Tier III(A) or III(B)</u>
<u>4 - Upper Skagit</u>	<u>Skagit</u>	<u>Cascade River and tributaries within the designation boundary.</u>	<u>Upstream from the west boundary of Mount Baker Snoqualmie National Forest (latitude 48.5324, longitude - 121.3078) at the west section line of Section 07, Township 35 North, Range 12 East, to headwaters, including tributaries.</u>	<u>Tier III(A)</u>
<u>26 - Cowlitz</u>	<u>Skamania</u>	<u>Green River and tributaries within designation boundary.</u>	<u>Upstream from the boundary of the Gifford Pinchot National Forest (latitude 46.3484, longitude -122.0938) at the west section line of Section 17, Township 10 North, Range 06 East, to headwaters, including tributaries.</u>	<u>Tier III(A)</u>
<u>42 - Grand Coulee</u>	<u>Grant</u>	<u>Soap Lake</u>	<u>Latitude 47.4068, longitude -119.4969.</u>	<u>Tier III(B)¹</u>

<u>WRIA</u>	<u>County or Counties</u>	<u>Waterbody Name</u>	<u>Designation Boundary</u>	<u>Tier III(A) or III(B)</u>
45 - Wenatchee	Chelan	Napeequa River and tributaries within the designation boundary.	Upstream from the boundary of the Okanogan-Wenatchee National Forest and private land near river mile 1 (latitude 47.9269, longitude -120.8870) within Section 17, Township 28 North, Range 16 East, to headwaters, including tributaries.	Tier III(A)

Notes for Table 332

¹ Notes for Soap Lake:

a. Soap Lake measurable change is defined as a decrease in salinity as measured by conductivity of 639 microsiemens per centimeter ($\mu\text{S}/\text{cm}$) or greater.

b. In addition, human actions must not cause lake conductivity to decrease below 19,843 $\mu\text{S}/\text{cm}$ as calculated as a seasonal average more than once in 10 years.

c. Seasonal average conductivity is calculated as the arithmetic average of seven or more samples collected April through October. Sampling should be distributed throughout this period.

The EPA Action and Rationale

In accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131, the EPA approves the new provision at WAC 173-201A-330(6) and the entirety of WAC 173-201A-332, with the exception of provision “c” under Notes for Table 332, which the EPA has determined is not a WQS.

These provisions were added to identify Washington’s ORW designations in rule.

As described above, Washington’s Tier III(A) antidegradation designation provision at WAC 173-201A-330(5)(a) is the state’s equivalent of the federal antidegradation policy’s ONRW assignment detailed at 40 CFR § 131.12(a)(3). The state’s Technical Support Document⁹ describes the unique ecological and recreational significance of the waters designated with Tier III(A) protections, the Cascade, Green, and Napeequa Rivers, within the geographic bounds identified by the state and including all headwaters and tributaries that discharge to these rivers within the designated geographic boundaries. The below rationale in support for the application of Tier III(A) protections to these waters is sourced from the state’s Technical Support Document.

The outstanding resource water boundary for the mainstem Cascade River falls within existing protected areas, and the entire boundary is under U.S. Forest Service or National Parks Service jurisdiction. The Cascade River is also identified as a wild and scenic river and a shoreline of statewide significance to Washington state. Likewise, the majority of the Green River ORW boundary identified for ORW Tier III(A) protections overlaps with Mount St. Helens National Volcanic Monument and the

⁹ Available at <https://apps.ecology.wa.gov/publications/documents/2310046.pdf>

upper Green River watershed has experienced little human disturbance. Similarly, the majority of the Napeequa River within the boundaries designated for ORW Tier III(A) protections is within the Glacier Peak Wilderness Area and also overlaps Okanogan-Wenatchee National Forest in some locations. The waters within the Napeequa River ORW boundary are absent of human development and is a renowned recreational area in the state. Therefore, Ecology's designations of the Cascade, Green and Napeequa Rivers and their associated tributaries within the boundaries identified as ORWs are consistent with 40 CFR § 131.12(a)(3), which provides for the maintenance and protection of high-quality waters that constitute an outstanding national resource.

Washington's Tier III(B) antidegradation designation provisions at WAC 173-201A-330(5)(b) allow for de minimis degradation to the waterbody and require that sources of pollution to Tier III(B) waters cannot cause measurable degradation of the waterbody. Washington's designation of Soap Lake is a more stringent application of the federal Tier 2 regulations at 40 CFR § 131.12(a)(2), "Tier 2.5" described earlier in this document, and is therefore permissible under section 510 of the CWA.

As described in Ecology's Technical Support Document,¹⁰ Soap Lake is a unique waterbody in Washington state that is naturally salty and alkaline, with a deep layer of extremely salty water that never mixes with the surface layer of the lake, and research has shown that the Lake has retained this stratification for a thousand or more years. It has been identified as a unique habitat for the microbial community and for shorebirds and other fowl. Soap Lake is also of cultural interest to Tribes and is sought out as a recreational waterbody for its unique properties. For these reasons, the designation of Soap Lake as a Tier III(B) water is consistent with state regulations at WAC 173-201A-330 and federal regulations at 40 CFR § 131.12.

The EPA's 2007 approval of Washington's antidegradation policy provisions at WAC 173-201A-330(5)(b) further affirmed that the state regulations allow de minimis degradation in Tier III(B) waters with measurable change defined generally for this purpose at WAC 173-201A-320(3) as a measurable change in the physical, chemical, or biological quality of a water body. The state has defined measurable change for the purposes of this Tier III(B) designation to Soap Lake in provision "a" of the Notes for Table 332. This definition of a measurable change to Soap Lake is based upon a defining feature of Soap Lake's water quality, its high salinity, measured via a proxy, the conductivity of the water body, which is a commonly measured property of ambient waters. The state has reasonably identified a conductivity value of 639 microsiemens per centimeter ($\mu\text{S}/\text{cm}$) as a measurable change and has provided an interpretation for measurable change based upon the sensitivity of the instruments commonly used to measure conductivity in natural waters.¹¹

In addition, the state prescribes that human actions must not cause lake conductivity to decrease below 19,843 $\mu\text{S}/\text{cm}$ as calculated as a seasonal average more than once in 10 years in provision "b" in the Notes for Table 332. Ecology's Technical Support Document indicates that this conductivity value represents a 10th percentile value of the April-October seasonal averages of the long-term dataset (from the period 1968-2021) for conductivity. The state focused on a derivation based on the seasonal average for April-October to represent the period of highest evaporation and highest salinity, the defining feature of Soap Lake. Provision "b" provides for maintenance of the seasonal average

¹⁰ Id.

¹¹ Id.

conductivity (as a proxy for salinity) except for infrequent events (once in every ten years). The state has provided a reasonable justification for the derivation of the chosen percentile of seasonal average values, reflecting the expected typical minimum seasonal average baseline water quality value for conductivity, with the anticipated once in ten years frequency of exceedance of that 10th percentile value. Together with the “measurable change” definition in provision “a,” which protects Soap Lake water quality from instantaneous measurable changes in conductivity, provision “b” provides a baseline, or floor, for the seasonal average water quality to be maintained and protected from this point forward.

The EPA considers provisions “a” and “b” in the Notes for Table 332 to be independently applicable as WQS for CWA purposes.

iv. WAC 173-201A-602: Table 602 – Use designations for fresh waters by water resource inventory area (WRIA)

The underlined text indicates the new and/or revised language, and strikeout text indicates Ecology’s previous text, which has been replaced by the new or revised text.

Table 602: WRIA 4 - Upper Skagit	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Cascade River and Boulder Creek: All waters above the confluence (latitude 48.5177, longitude -121.3643), including tributaries.	Char Spawning/Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv); <u>173-201A-332</u>

Table 602: WRIA 26 - Cowlitz	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Green River: Upstream from the mouth (latitude 46.3717, longitude -122.586), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv); <u>173-201A-332</u>

The EPA Action and Rationale

In accordance with its CWA authority, 33 U.S.C. § 1313(c)(3) and 40 CFR Part 131, the EPA approves these non-substantive editorial changes as providing useful clarifying information for purposes of transparency regarding waterbodies listed at WAC 173-201A-602.

The EPA’s approval of these non-substantive editorial changes to previously approved WQS at WAC 173-201A-602 ensures public transparency as to which provisions are effective for purposes of the CWA. The scope of the EPA’s review and action on non-substantive edits or editorial changes extends only to the edits or changes themselves. The EPA’s action here does not constitute an action on the underlying previously approved WQS.¹²

¹² What is a New or Revised Water Quality Standard under 303(c)(3)? Frequently Asked Questions, EPA No. 820F12017 (Oct. 2012). Available at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>

B. Provisions that the EPA is Taking No Action On

The underlined text indicates the new and/or revised language, and strikeout text indicates Ecology's previous text, which has been replaced by the new or revised text.

WAC 173-201A-332: Table 332 – Notes for Table 332, provision “c”

c. Seasonal average conductivity is calculated as the arithmetic average of seven or more samples collected April through October. Sampling should be distributed throughout this period.

Rationale

The EPA is not acting on this new provision at WAC 173-201A-332 Table 332, Notes for Table 332, provision “c,” as it is not a WQS that the EPA has the authority to review and approve or disapprove under section 303(c) of the CWA.¹³ This provision is related to data sufficiency for assessing the status of water quality in Soap Lake in compliance with provision “b” for protection of water quality for this ORW.

¹³ Id.