

Partial State Summary of ONRW/Tier 3 Designations

March 2019

Western State	Outstanding National Resource Water/Tier 3 Process	Designator	Designations
Arizona	Process and criteria (section D) in regulations	Director	22
Nevada	Does not have an antidegradation policy, implementation methods, ONRW process or criteria in regulations or guidance; no designations to date, however, the Lake Tahoe watershed has been designated as "Water of Extraordinary Aesthetic or Ecological Value" with an associated approved TMDL.	Not applicable	Almost one
New Mexico	Process and criteria in regulations; numerous waters and wetlands designated	Commission	numerous
Oregon	Policy, process and criteria combined in antidegradation policy regulations	Commission	1
Utah	Policy in regulations; Process and criteria in guidance; has a process for recategorization	Board	numerous
Washington	Process and criteria in regulations	Department	none

Other States	Outstanding National Resource Water/Tier 3 Process	Designator	Designations
Iowa	Process and criteria in regulations	Board	None (35 Tier 2.5, Outstanding Iowa Waters)
Kansas	Process and criteria in regulations	Department	7
Pennsylvania	Process and criteria in regulations and guidance; redesignation of Exceptional Value Waters (Tier 3) possible	Department submits to Board	numerous
Tennessee	Process and criteria in regulations	Board	7
Virginia	Process and criteria in regulations	Board	30

I. **Arizona**

R18-11-112. Outstanding Arizona Waters

- A. The Director shall classify a surface water as an outstanding Arizona water (OAW) by rule.
- B. The Director may adopt, under R18-11-115, a site-specific standard to maintain and protect existing water quality in an OAW.
- C. Any person may nominate a surface water for classification as an OAW by filing a nomination with the Director. The nomination shall include:
1. A map and a description of the surface water;
 2. A written statement in support of the nomination, including specific reference to the applicable criteria for an OAW classification prescribed in subsection (D);
 3. Supporting evidence demonstrating that the criteria prescribed in subsection (D) are met; and
 4. Available water quality data relevant to establishing the baseline water quality of the proposed OAW.
- D. The Director may classify a surface water as an OAW based upon the following criteria:
1. The surface water is a perennial or intermittent water;
 2. The surface water is in a free-flowing condition. For purposes of this subsection, “in a free-flowing condition” means that a surface water does not have an impoundment, diversion, channelization, rip-rapping or other bank armor, or another hydrological modification within the reach nominated for an OAW classification;
 3. The surface water has good water quality. For purposes of this subsection, “good water quality” means that the surface water has water quality that meets or is better than applicable surface water quality standards. A surface water that is listed as impaired under R18-11-604(E) is ineligible for OAW classification; and
 4. The surface water meets one or both of the following conditions:
 - a. The surface water is of exceptional recreational or ecological significance because of its unique attributes, such as the geology, flora and fauna, water quality, aesthetic value, or the wilderness characteristic of the surface water;
 - b. An endangered or threatened species is associated with the surface water and the existing water quality is essential to the species’ maintenance and propagation or the surface water provides critical habitat for the threatened or endangered species. An endangered or threatened species is identified in “Endangered and Threatened Wildlife,” 50 CFR 17.11 (revised 2005), and “Endangered and Threatened Plants,” 50 CFR 17.12 (revised 2005). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality,
- E. The Director shall hold at least one public meeting in the local area of a surface water that is nominated for classification as an OAW to solicit public comment on the nomination.
- F. The Director shall consider the following factors when deciding whether to classify a surface water as an OAW:
1. Whether there is the ability to manage the surface water and its watershed to maintain and protect existing water quality;
 2. The social and economic impact of Tier 3 antidegradation protection;

3. The public comments in support of, or in opposition to, an OAW classification;
4. The timing of the nomination relative to the triennial review of surface water quality standards;
5. The consistency of an OAW classification with applicable water quality management plans; and
6. Whether the nominated surface water is located within a national or state park, national monument, national recreation area, wilderness area, riparian conservation area, area of critical environmental concern, or it has another special use designation (for example, Wild and Scenic River).

Director = Director of the Arizona Department of Environmental Quality

II. Idaho

Tier III - Outstanding Resource Waters (ORWs). ORWs are designated by the legislature. Subsection 052.09 describes the nomination, public notice and comment, public hearing, and board review process for directing the Department to develop legislation designating ORWs. Only the legislature may designate ORWs. Once designated by the legislature, the ORWs are listed in these rules.

a. Nominations. Any person may request, in writing to the board, that a stream segment be considered for designation as an Outstanding Resource Water. To be considered for ORW designation, nominations must be received by the board by April 1 or ten (10) days after the adjournment sine die of that year's regular session of the legislature, whichever is later, for consideration during the next regular session of the legislature. All nominations shall be addressed to: Idaho Board of Environmental Quality...

The nomination shall include the following information:

- i. The name, description and location of the stream segment;
- ii. The boundaries upstream and downstream of the stream segment;
- iii. An explanation of what makes the segment a candidate for the designation;
- iv. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports;
- v. A discussion of the types of nonpoint source activities currently being conducted that may lower water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and
- vi. Any additional evidence to substantiate such a designation.

b. Public Notice and Public Comment. The board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the board for a period of at least forty-five (45) days. Public comments may include, but are not limited to, discussion of socioeconomic considerations; fish, wildlife or recreational values; and other beneficial uses.

c. Public Hearing. A public hearing(s) may be held at the board's discretion on any stream segment nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria:

- i. One (1) or more requests contain supporting documentation and valid reasons for designation;
- ii. A stream segment is generally recognized as constituting an outstanding national resource, such as waters of national and state parks, and wildlife refuges;
- iii. A stream segment is generally recognized as waters of exceptional recreational or ecological significance;
- iv. The board shall give special consideration to holding a hearing and to recommending for designation by the legislature, waters which meet criteria found in Subsections 052.09.c.ii. and 052.09.c.iii.;
- v. Requests for a hearing will be given due consideration by the board. Public hearings may be held at the board's discretion.

d. Board Review. The board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in Subsection 052.09.a. and information from the hearing record or other written record concerning the impacts the designation would have on socioeconomic conditions; fish, wildlife and recreational values; and other beneficial uses. The Department shall then prepare legislation for each segment that will be recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these rules without the need for formal rulemaking procedures, pursuant to Sections 67-5201, et seq., Idaho Code.

III. **Montana**

17.30.617 OUTSTANDING RESOURCE WATERS -- DESIGNATION

(1) All state surface waters located wholly within the boundaries of designated national parks or wilderness areas as of October 1, 1995, are outstanding resource waters (ORWs) . Other state waters may be designated an ORW by the board following the procedures in 75-5-316 , MCA, subject to approval by the legislature.

75-5-315. Outstanding resource waters -- statement of purpose. (1) The legislature, understanding the requirements of applicable federal law and the uniqueness of Montana's water resource, recognizes that certain state waters are of such environmental, ecological, or economic value that the state should, upon a showing of necessity, prohibit, to the greatest extent practicable, changes to the existing water quality of those waters. Outstanding resource waters must be afforded the greatest protection feasible under state law, after thorough examination.

(2) The purpose of 75-5-316 and this section is to provide this protection, when necessary, and to provide guidance to the board in establishing rules to accomplish that level of protection.

75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure -- definition.

(1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify state waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.

(d) The written finding provided for in subsection (3)(c) must:

(i) identify the criteria provided in subsection (4) that the board believes serve as justification for the determination that the water is an outstanding resource;

(ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

(iii) specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) Before accepting a petition, the board shall:

(a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public. The cost of publication must be paid by the petitioner.

(b) provide for a 30-day written public comment period regarding whether the petition contains sufficient credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

(c) hold a public hearing regarding the petition and its contents and allow further written and oral testimony at the hearing;

(d) issue a proposed decision, including:

(i) the written finding provided for in subsection (3)(c); and

(ii) the board's acceptance or rejection of the petition;

(e) provide for a 30-day public comment period regarding the board's proposed decision; and

(f) issue a final decision on acceptance or rejection of the petition, which must include a response to comments that were received by the board, and make copies of this decision available to the public.

(6) (a) After acceptance of a petition, the board shall direct the department to prepare an environmental impact statement, as provided under Title 75, chapter 1, part 2, and this section.

(b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and information, and completing the environmental impact statement.

(ii) Before the department may initiate work on the environmental impact statement, the petitioner shall pay the estimated cost of completing the environmental impact statement, as determined by the department.

(iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any costs that exceeded the estimated cost. If the cost of the environmental impact

statement was less than the estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

(iv) The board may not grant or deny a petition until full payment for the environmental impact statement has been received by the department.

(7) The board shall consult with other relevant state agencies and county governments when reviewing outstanding resource water classification petitions.

(8) (a) After completion of an environmental impact statement and consultation with state agencies and local governments, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3)(c) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(c) If the board grants the petition, the board shall initiate rulemaking to classify the waters as outstanding resource waters.

(9) A rule classifying state waters as outstanding resource waters under this section may be adopted but is not effective until approved by the legislature.

(10) The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 based on pending:

(a) board action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters.

(11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association, or other private or public entity that petitions the board to adopt rules to classify waters as outstanding resource waters.

2-15-3502. Board of environmental review. (1) There is a board of environmental review.

(2) The board consists of seven members appointed by the governor. The members must be representative of the geographic areas of the state. One member must have expertise or background in hydrology. One member must have expertise or background in local government planning. One member must have expertise or background in one of the environmental sciences. One member must have expertise or background as a county health officer or as a medical doctor.

(3) A vacancy occurring on the board must be filled by the governor in the same manner and from the same representative area as the original appointment.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) The board is attached to the department of environmental quality for administrative purposes only as provided in 2-15-121.

IV. New Mexico

20.6.4.8 A. (3) No degradation shall be allowed in waters designated by the commission as outstanding national resource waters (ONRWs), except as provided in Subparagraphs (a) through (e) of this paragraph and in Paragraph (4) of this Subsection A.

20.6.4.9 OUTSTANDING NATIONAL RESOURCE WATERS:

A. Procedures for nominating an ONRW: Any person may nominate a surface water of the state for designation as an ONRW by filing a petition with the commission pursuant to the guidelines for water quality control commission regulation hearings. A petition to designate a surface water of the state as an ONRW shall include:

- (1) a map of the surface water of the state, including the location and proposed upstream and downstream boundaries;
- (2) a written statement and evidence based on scientific principles in support of the nomination, including specific reference to one or more of the applicable ONRW criteria listed in Subsection B of this section;
- (3) water quality data including chemical, physical or biological parameters, if available, to establish a baseline condition for the proposed ONRW;
- (4) a discussion of activities that might contribute to the reduction of water quality in the proposed ONRW;
- (5) any additional evidence to substantiate such a designation, including a discussion of the economic impact of the designation on the local and regional economy within the state of New Mexico and the benefit to the state; and
- (6) affidavit of publication of notice of the petition in a newspaper of general circulation in the affected counties and in a newspaper of general statewide circulation.

B. Criteria for ONRWs: A surface water of the state, or a portion of a surface water of the state, may be designated as an ONRW where the commission determines that the designation is beneficial to the state of New Mexico, and:

- (1) the water is a significant attribute of a state special trout water, national or state park, national or state monument, national or state wildlife refuge or designated wilderness area, or is part of a designated wild river under the federal Wild and Scenic Rivers Act; or
- (2) the water has exceptional recreational or ecological significance; or
- (3) the existing water quality is equal to or better than the numeric criteria for protection of aquatic life and contact uses and the human health-organism only criteria, and the water has not been significantly modified by human activities in a manner that substantially detracts from its value as a natural resource.

C. Pursuant to a petition filed under Subsection A of this section, the commission may classify a surface water of the state or a portion of a surface water of the state as an ONRW if the criteria set out in Subsection B of this section are met.

D. Waters classified as ONRWs: The following waters are classified as ONRWs:

- (6) "Commission" means the New Mexico water quality control commission.

V. Oregon

(8) Outstanding Resource Waters Policy. Where existing high quality waters constitute an outstanding State or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values must be maintained and protected, and classified as "Outstanding Resource Waters of Oregon."

(a) The Commission may specially designate high quality water bodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those water bodies. The Department will develop a screening process and establish a list of nominated water bodies for Outstanding Resource Waters designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority water bodies for nomination include:

- (A) Those in State and National Parks;
- (B) National Wild and Scenic Rivers;
- (C) State Scenic Waterways;
- (D) Those in State and National Wildlife Refuges; and
- (E) Those in federally designated wilderness areas.

(b) The Department will bring to the Commission a list of water bodies that are proposed for designation as Outstanding Resource Waters at the time of each triennial Water Quality Standards Review; and

(c) When designating Outstanding Resource Waters, the Commission may establish the water quality values to be protected and provide a process for determining what activities are allowed that would not affect the outstanding resource values. After the designation, the Commission may not allow activities that may lower water quality below the level established except on a short term basis to respond to public health and welfare emergencies, or to obtain long-term water quality improvements.

(d) The following are Outstanding Resource Waters of Oregon: The North Fork Smith River and its tributaries and associated wetlands, South Coast Basin. See OAR 340-041-0305(4).

(11) "Commission" or "EQC" means the Oregon Environmental Quality Commission.

VI. Pennsylvania

§ 93.4a. Antidegradation.

(a) *Scope.* This section applies to surface waters of this Commonwealth.

(b) *Existing use protection for surface waters.* Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(c) *Protection for High Quality Waters*—The water quality of High Quality Waters shall be maintained and protected, except as provided in § 93.4c(b)(1)(iii) (relating to implementation of antidegradation requirements).

(d) *Protection for Exceptional Value Waters*—The water quality of Exceptional Value Waters shall be maintained and protected.

§ 93.4b. Qualifying as High Quality or Exceptional Value Waters.

(a) *Qualifying as a High Quality Water.* A surface water that meets one or more of the following conditions is a High Quality Water.

(1) *Chemistry.*

(i) The water has long-term water quality, based on at least 1 year of data which exceeds levels necessary to support the propagation of fish, shellfish and wildlife and recreation in and on the water by being better than the water quality criteria in § 93.7, Table 3 (relating to specific water quality criteria) or otherwise authorized by § 93.8a(b) (relating to toxic substances), at least 99% of the time for the following parameters:

dissolved oxygen	aluminum
iron	dissolved nickel
dissolved copper	dissolved cadmium
temperature	pH
dissolved arsenic	ammonia nitrogen
dissolved lead	dissolved zinc

(ii) The Department may consider additional chemical and toxicity information, which characterizes or indicates the quality of a water, in making its determination.

(2) *Biology.* One or more of the following shall exist:

(i) *Biological assessment qualifier.*

(A) The surface water supports a high quality aquatic community based upon information gathered using peer-reviewed biological assessment procedures that consider physical habitat, benthic macroinvertebrates or fishes based on *Rapid Bioassessment Protocols for Use in Streams and Rivers: Benthic Macroinvertebrates and Fish*, Plafkin, et al., (EPA/444/4-89-001), as updated and amended. The surface water is compared to a reference stream or watershed, and an integrated

benthic macroinvertebrate score of at least 83% shall be attained by the referenced stream or watershed.

(B) The surface water supports a high quality aquatic community based upon information gathered using other widely accepted and published peer-reviewed biological assessment procedures that the Department may approve to determine the condition of the aquatic community of a surface water.

(C) The Department may consider additional biological information which characterizes or indicates the quality of a water in making its determination.

(ii) *Class A wild trout stream qualifier.* The surface water has been designated a Class A wild trout stream by the Fish and Boat Commission following public notice and comment.

(b) *Qualifying as an Exceptional Value Water.* A surface water that meets one or more of the following conditions is an Exceptional Value Water:

(1) The water meets the requirements of subsection (a) and one or more of the following:

(i) The water is located in a National wildlife refuge or a State game propagation and protection area.

(ii) The water is located in a designated State park natural area or State forest natural area, National natural landmark, Federal or State wild river, Federal wilderness area or National recreational area.

(iii) The water is an outstanding National, State, regional or local resource water.

(iv) The water is a surface water of exceptional recreational significance.

(v) The water achieves a score of at least 92% (or its equivalent) using the methods and procedures described in subsection (a)(2)(i)(A) or (B).

(vi) The water is designated as a “wilderness trout stream” by the Fish and Boat Commission following public notice and comment.

(2) The water is a surface water of exceptional ecological significance.

§ 93.4c. Implementation of antidegradation requirements.

(a) *Existing use protection.*

(1) *Procedures.*

(i) Existing use protection shall be provided when the Department’s evaluation of information (including data gathered at the Department’s own initiative, data contained in a petition to change a designated use submitted to the EQB under § 93.4d(a) (relating to processing of petitions, evaluations and assessments to change a designated use), or data considered in the context of a

Department permit or approval action) indicates that a surface water attains or has attained an existing use.

(ii) The Department will inform persons who apply for a Department permit or approval which could impact a surface water, during the permit or approval application or review process, of the results of the evaluation of information undertaken under subparagraph (i).

(iii) Interested persons may provide the Department with additional information during the permit or approval application or review process regarding existing use protection for the surface water.

(iv) The Department will make a final determination of existing use protection for the surface water as part of the final permit or approval action.

(2) *Endangered or threatened species.* If the Department has confirmed the presence, critical habitat, or critical dependence of endangered or threatened Federal or Pennsylvania species in or on a surface water, the Department will ensure protection of the species and critical habitat.

(b) *Protection of High Quality and Exceptional Value Waters.*

(1) *Point source discharges.* The following applies to point source discharges to High Quality or Exceptional Value Waters.

(i) *Nondischarge alternatives/use of best technologies.*

(A) A person proposing a new, additional or increased discharge to High Quality or Exceptional Value Waters shall evaluate nondischarge alternatives to the proposed discharge and use an alternative that is environmentally sound and cost-effective when compared with the cost of the proposed discharge. If a nondischarge alternative is not environmentally sound and cost-effective, a new, additional or increased discharge shall use the best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies.

(B) A person proposing a new, additional or increased discharge to High Quality or Exceptional Value Waters, who has demonstrated that no environmentally sound and cost-effective nondischarge alternative exists under clause (A), shall demonstrate that the discharge will maintain and protect the existing quality of receiving surface waters, except as provided in subparagraph (iii).

(ii) *Public participation requirements for discharges to High Quality or Exceptional Value Waters.* The following requirements apply to discharges to High Quality or Exceptional Value Waters, as applicable:

(A) The Department will hold a public hearing on a proposed new, additional or increased discharge to Exceptional Value Waters when requested by an interested person on or before the termination of the public comment period on the discharge.

(B) For new or increased point source discharges, in addition to the public participation requirements in §§ 92a.81, 92a.82, 92a.83 and 92a.85, the applicant shall identify the antidegradation classification of the receiving water in the notice of complete application in § 92a.82 (relating to public notice of permit applications and draft permits).

(iii) *Social or economic justification (SEJ) in High Quality Waters.* The Department may allow a reduction of water quality in a High Quality Water if it finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. A reduction in water quality will not be allowed under this subparagraph unless the discharger demonstrates that the High Quality Water will support applicable existing and designated water uses (other than the high quality and exceptional value uses) in § 93.3, Table 1 (relating to protected water uses).

(2) *Nonpoint source control.* The Department will assure that cost-effective and reasonable best management practices for nonpoint source control are achieved.

(c) *Special provisions for sewage facilities in High Quality or Exceptional Value Waters.*

(1) *SEJ approval in sewage facilities planning and approval in High Quality Waters.* A proponent of a new, additional, or increased sewage discharge in High Quality Waters shall include an SEJ impact analysis as part of the proposed revision or update to the official municipal sewage facilities plan under Chapter 71 (relating to administration of sewage facilities planning program). The Department will make a determination regarding the consistency of the SEJ impact analysis with subsection (b)(1)(iii). The determination will constitute the subsection (b)(1)(iii) analysis at the National Pollutant Discharge Elimination System (NPDES) permit review stage under Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), unless there is a material change in the project or law between sewage facilities planning and NPDES permitting, in which case the proponent shall recommence sewage facilities planning and perform a new social or economic justification impact analysis.

(2) *SEJ for sewage facilities in High Quality Waters correcting existing public health or pollution hazards.* A sewage facility, for which no environmentally sound and cost-effective nondischarge alternative is available under subsection (b)(1)(i)(A), proposed to discharge into High Quality Waters, which is designed for the purpose of correcting existing public health or pollution hazards documented by the Department, and approved as part of an official plan or official plan revision under § 71.32 (relating to Department responsibility to review and act upon official plans), satisfies the SEJ requirements in subsection (b)(1)(iii).

(3) *Public participation requirements for official sewage facilities plans or revisions to official plans in High Quality or Exceptional Value Waters.* A proponent of a sewage facility in High Quality or Exceptional Value Waters seeking approval of an official plan or revision shall comply with the public participation requirements in § 71.53(d)(6) (relating to municipal administration of new land development planning requirements for revisions).

§ 93.4d. Processing of petitions, evaluations and assessments to change a designated use.

(a) *Public notice of receipt of petition, or assessment of waters, for High Quality or Exceptional Value Waters redesignation.* The Department will publish in the *Pennsylvania Bulletin* and by other means designed to effectively reach a wide audience notice of receipt of a complete petition which has been accepted by the EQB recommending a High Quality or Exceptional Value Waters redesignation, or notice of the Department's intent to assess surface waters for potential redesignation as High Quality or Exceptional Value Waters. The assessments may be undertaken in response to a petition or on the Department's own initiative. The notice will request submission of information concerning the water quality of the waters subject to the evaluation, or to be assessed, for use by the Department to supplement any studies which have been performed. The Department

will send a copy of the notice to all municipalities containing waters subject to the petition or assessment.

(b) *Combined public meeting and fact-finding hearing.* As part of its review of an evaluation or performance of an assessment, the Department may hold a combined public meeting and fact finding hearing to discuss the evaluation or assessment, including the methodology for the evaluation or assessment, and may solicit information, including technical data, to be considered in the Department's evaluation or assessment.

(c) *Submission to EQB to alter designated use.* Upon the completion of its assessment or review of a complete evaluation, and the satisfaction of the other applicable requirements of this section, the Department will submit the results of its assessment or review to the EQB for proposed rulemaking following review and comment by the petitioner, if applicable, in accordance with Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy).

VII. Utah

R317-2-3

3.2 Category 1 Waters

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the rules for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

(3) "Board" means the Water Quality Board created in Section 19-1-106.

Guidance:

2.0 ANTIDEGRADATION PROTECTION CATEGORIES

2.1 Assigning Protection Categories

Utah's surface waters are assigned to one of three protection categories that are determined by their existing biological, chemical and physical integrity, and by the interest of stakeholders in protecting current conditions. Antidegradation procedures are differentially applied to each of these protection categories on a parameter-by-parameter basis.

2.1.1 Category 1 Waters

Category 1 waters (as listed in R317-2-12.1) are afforded the highest level of protection from activities that are likely to degrade water quality. This category is reserved for waters of exceptional recreational or ecological significance, or that have other qualities that warrant exceptional protection. Once a waterbody is assigned Category 1 protection, future discharges of wastewater into these waters are not permitted. However, permits may be granted for other activities (e.g., road construction, dam maintenance, pesticide/herbicide application) if it can be shown that water quality effects will be temporary and that all appropriate Best Management Practices (BMPs) have been implemented to minimize degradation of these waters. Discharges that were permitted prior to February 1994, when the rule establishing Category 1 waters was promulgated, are considered grandfathered.

2.1.2 Category 2 Waters

Category 2 waters (as listed in R317-2-12.2) are also afforded a high level of protection, but discharges to these waters are permissible, provided no degradation of water quality will occur or where pollution will result only during the actual construction activity and where BMPs will be employed to minimize pollution effects. In practice, this means that all wastewater parameters should be at or below background concentrations of the receiving water for activities that are not temporary and limited. As a result of this stipulation, the Level I and Level II ADR provisions discussed in these implementation procedures are not required for Category 2 waters.

2.1.3 Category 3 Waters

All surface waters of the State are Category 3 waters unless otherwise designated as Category 1 or 2 in UAC R317-2-12. Discharges that degrade water quality are permitted for Category 3 waters provided that 1) existing uses are protected, 2) the degradation is necessary, 3) the activity supports important social or economic development in the area where the waters are located, and 4) all statutory and regulatory requirements are met in the area of the discharge. Antidegradation rules also apply for any proposed new or expanded discharge that is likely to degrade water quality. ADRs require that these proposed actions demonstrate that such proposed projects are documented as necessary to accommodate social and economic development, and that all reasonable alternatives to minimize degradation of water quality have been explored. These 4 implementation procedures provide details about how ADRs are implemented to meet these requirements.

2.2 Procedures for Reassigning Protection Categories

The intent of Category 1 and Category 2 protection classes is to protect high quality waters. Any person, entity, or DWQ may nominate a surface water to be afforded Category 1 or 2 protections by submitting a request to the Water Quality Board. Although any third party may directly petition the Water Quality Board, it is recommended that nominations follow DWQ's recategorization procedures described below. DWQ generally considers nominations during the triennial review of surface water quality standards. The nominating party has the burden of establishing the basis for reclassification of surface waters, although DWQ may assist, where feasible, with data collection and compilation activities.

2.2.1 Material to Include with a Recategorization Nomination

The nomination may include a map and description of the surface water; a statement in support of the nomination, including specific reference to the applicable criteria for unique water classification, and available, relevant and recent water quality or biological data. All data should meet the minimum quality assurance requirements used by DWQ for assessing waters of the State, per the requirements in *Utah Division of Water Quality: Quality Assurance Program Plan for Environmental Data Operations* (DWQ, 2014) and associated Standard Operating Procedures (SOP). It is strongly recommended that a petition for recategorization have the support of the local water quality planning authority and watershed advisory group.

2.2.2 Factors Considered to Increase Protection of Surface Waters

The Water Quality Board may recategorize a waterbody to a more protected category, following appropriate public comment. Evidence provided to substantiate any of the following justifications that a waterbody warrants greater protection may be used to evaluate the request:

- The location of the surface water with respect to protections already afforded to waters (e.g. on federal lands such as national parks or national wildlife refuges).
- The ecological value of the surface water (e.g., biological diversity, or the presence of threatened, endangered, or endemic species).
- Water quality superior to other similar waters in surrounding locales.
- The surface water is of exceptional recreational or ecological significance because of its unique attributes (e.g., Blue Ribbon Fishery).
- The surface water is highly aesthetic or important for recreation and tourism.
- The surface water has significant archeological, cultural, or scientific importance.
- The surface water provides a special educational opportunity.
- Any other factors the Board considers relevant as demonstrating the surface water's value as a resource.

The final recategorization decision will be based on all relevant information submitted to or developed by DWQ.

2.2.3 Factors Considered to Decrease Protection of Surface Waters

The intent of Category 1 and Category 2 protections is to prevent future degradation of water quality. As a result, downgrades to surface water protection categories are rare. However, exceptional circumstances may exist where downgrades may be permitted to accommodate a particular project. For instance, in Utah most surface waters in the upper portions of National Forests are afforded Category 1 protection, which may not be appropriate in specific circumstances. Project proponents may request a categorization with lower protection; however, it is their responsibility to provide sufficient justification. Examples of situations where a recategorization with less stringent protections might be appropriate are:

- Failure to complete the project will result in significant and widespread economic harm.
- Situations where the surface water was improperly categorized as a Category 1 or Category 2 water because the surface water is not a high quality water (as defined by the criteria outlined in 2.2.2).
- Water quality is more threatened by not permitting a discharge (e.g., septic systems vs. centralized wastewater treatment).

Requests for downgrades to protection should provide the most complete and comprehensive rationale that is feasible. The request for a reduction in protection may also be considered in concert with the alternatives evaluated through an accompanying Level II ADR. Proposed projects affecting high quality waters may require more comprehensive analysis than projects affecting lower quality waters.

2.2.4 Public Comment for Proposed Recategorizations

All data and information submitted in support of recategorization will be made part of the public record. In addition to public comment, the DWQ will hold at least one public meeting in the area near the nominated water. If the issues related to recategorization are regional or statewide or of broader public interest, the Division will consider requests for public meetings in other locations. Comments received during this meeting will be compiled and considered along with the information submitted with the nomination.

2.2.5 Recategorization Decision Making Process

The final recategorization decision will be based on all relevant information submitted to or developed by the DWQ. All data will be presented and discussed with the Water Quality Standards Workgroup. DWQ will then submit its recommendation regarding recategorization to the Water Quality Board, who will make a formal decision about whether to proceed with rulemaking to recategorize the waterbody. The proposed recategorization is a rule change, and as such will trigger public notice and comment procedures.

VIII. Washington

(1) To be eligible for designation as an outstanding resource water in Washington, one or more of the following must apply:

- (a) 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;
- (b) The water has unique aquatic habitat types (for example, peat bogs) that by conventional water quality parameters (such as dissolved oxygen, temperature, or sediment) are not considered high quality, but that are unique and regionally rare examples of their kind;
- (c) The water has both high water quality and regionally unique recreational value;
- (d) The water is of exceptional statewide ecological significance; or
- (e) The water has cold water thermal refuges critical to the long-term protection of aquatic species. For this type of outstanding resource water, the nondegradation protection would apply only to temperature and dissolved oxygen.

1. Process:

(2) Any water or portion thereof that meets one or more of the conditions described in subsection (1) of this section may be designated for protection as an outstanding resource water. A request for designation may be made by the department or through public nominations that are submitted to the department in writing and that include sufficient information to show how the water body meets the appropriate conditions identified in this section.

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

- (a) Respond within sixty 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.
- (b) In determining whether or not to designate an outstanding resource water, the department will consider factors relating to the difficulty of maintaining the current quality of the water body. Outstanding resource waters should not be designated where substantial and imminent social or economic impact to the local community will occur, unless local public support is overwhelmingly in favor of the designation. The department will carefully weigh the level of support from the public and affected governments in assessing whether or not to designate the water as an outstanding resource water.
- (c) After considering public comments and weighing public support for the proposal, the department will make a final determination on whether a nominated water body should be adopted into this chapter as an outstanding resource water.