



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Environmental
Conservation

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The Honorable Cathy Giessel
Chair, Senate Resources Committee
State Capitol Room 427
Juneau, AK 99801

Dear Senator Giessel,

Thank you for hearing Senate Bill 163: National Resource Water Nomination/Designation on February 15th. Below, I have provided supplemental responses to some of the questions that came up during that hearing.

Do you have a formal opinion from an attorney describing the ambiguity in authority over who designates a water as an Outstanding National Resource Water (ONRW)? (Sen. Wielechowski)

DEC obtained the following response from the Department of Law:

EPA's regulations directing each state to develop and adopt a statewide antidegradation policy and implementation methods includes a requirement (40 C.F.R. § 131.12(a)(3)) that:

"Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected."

These "Outstanding National Resources Waters" are also referred to as "ONRWs" and "Tier 3" waters. There are three levels of water quality protection described in EPA's regulations with Tier 3 being the water getting the highest level of protection. No new pollution may be discharged into a Tier 3 water with very limited and temporary exceptions. Tier 3 waters are essentially preserved in their existing state much like land that is being managed as a park or refuge.

The argument that DEC does have statutory authority to designate Tier 3 waters stems from DEC's water quality and purity standards authority, AS 46.03.080, and its general authority under AS 46.03.020(9) to act as the official agency to deal with federal environmental laws. Under that authority, DEC is arguably the agency that complies with the EPA regulatory requirement for the state to have the equivalent of a Tier 3 protected waters category (40 C.F.R. § 131.12(a)(3)), and

therefore to develop an implementation process for designating Tier 3 waters. This is the position the state's Legislative Affairs Agency took in 2014.¹

The argument that DEC does not have statutory authority stems from two sections of Article VIII of the Alaska Constitution. First, Article VIII, § 7, holds that, “the legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.”² Second, Article VIII, §2, holds that “the Legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of the people.”³ As the highest level of protection afforded a water of the state and in conjunction with the language of 40 CFR 131.12(a)(3), the Department of Law has advised DEC that a Tier 3 water could be a “state natural resource.” As such, Article VIII § 7 would seem to apply to the designation of a Tier 3 water. Similarly, since development and utilization of a water is significantly restrained once a Tier 3 designation is applied, Article VIII §2 would seem to apply as well. Supporting this interpretation is the fact the Legislature, not any state agency, has designated parks, refuges and other protected areas in the state in other instances.

In summary, the uncertainty stems from whether a Tier 3 designation is more appropriately classified as a reservation of a public area for preservation purposes, or is simply a water quality and purity standard. The Legislature has delegated a general authority to DEC under AS 46.03.080 and AS 46.03.020(9) to establish water quality and purity standards. However, it is arguable that this designation would extend to the irrevocable reservation of a water body from essentially all development.

This uncertainty is partly related to public policy as well as legal authority. Since a Tier 3 designation has far reaching consequences, and is possibly irreversible, it may make for better public policy to put such a decision in the hands of the elected representatives rather than appointed officials. Doing this would also provide the opportunity for the Legislature to craft specific measures to protect special waters of the state without having to necessarily limit other activity or uses that would be precluded under a Tier 3 designation by DEC.

Can an entire watershed be designated? If so, the consequences of that concern me. (Sen. Stedman)

There are no provisions in the federal antidegradation requirements that preclude a state from designating an entire watershed as a Tier 3 water. If a state did this, it could significantly limit uses of that watershed in the future that could result in any pollution being released, at least from point sources, into the waters within the watershed. This is why the department believes a decision of this magnitude would more appropriately reside with the Legislature. Under the current version of SB 163, while a watershed may be nominated, the Legislature would have the sole authority to designate

¹ Proposed Regulations Relating to State Water Quality Antidegradation Policy (18 AAC 70.015), State of Alaska Legislative Affairs Agency, Div. of Legal and Research Services, March 3, 2014.

² Alaska Const. art. VIII, §7.

³ Alaska Const. art. VIII, §2.

and therefore assign Tier 3 (ONRW) protection. The public, local governmental agencies and interested agencies would, of course, have the opportunity to weigh in during the legislative process on any nomination the Legislature took up in the form of a bill.

What kind of stakeholder input are you getting? I've heard some are reticent to be involved because DEC hasn't listened. (Sen. Stoltze)

The Division of Water has been conducting public outreach for some time on the development of Clean Water Act antidegradation implementation methods including the designation process for ONRWs in Alaska; this is a complex subject with many facets to consider. Feedback from DEC's 2013 public Antidegradation Workgroup process recommended that state legislative action was needed to clarify who has the authority to designate an ONRW. That workgroup also recommended a more robust, up-front evaluation process for nominations by state agencies than is currently included in the proposed legislation (The workgroup's report can be found on the DEC website at: http://dec.alaska.gov/water/wqsar/Antidegradation/docs/WorkgroupRpt_01_24_13_Final.pdf).

The State considered the workgroup's recommendation, but ultimately proposed a simpler approach to collecting nominations and forwarding them to the Legislature. The current proposal would avoid the risk that agencies and the public could spend a lot of limited resources studying nominations and compiling reports on nominated waters that the Legislature might never choose to take up in a bill. Instead, under the current proposal, the Legislature, if it wanted a particular water analyzed by the agencies for possible consideration as an ONRW, could direct the agencies to do that while providing the fiscal resources needed to do this work.

DEC is continuing to reach out to stakeholders on the proposed legislation, including members of the Antidegradation Workgroup, industry, tribes, communities, government agencies, and NGOs. We continue to respond to questions and are listening to suggestions that are being raised with respect to the process for nominating and designating ONRWs. Division of Water Director Michelle Hale recently held an informational town hall meeting in Haines where the Chilkat River has been nominated, attended by over 100 people. In general, DEC is hearing support for establishing a clear process to designate an ONRW in Alaska; individual stakeholders may have specific thoughts on the process and what might be useful to include in a final bill. DEC is listening to these suggestions and understands that amendments to the bill may be needed to provide for more clarity on the ONRW designation authority and process.

What have been your discussions with DNR's Division of Mining, Land and Water? (Sen. Coghill)

DNR initially had concerns regarding whether a court might stay DEC's or DNR's issuance of a permit or other authorization for activity on land (with drainage to a water) or in a water where that activity would add pollutants to that water, when there is a nomination to designate that water as an ONRW and pending a final action on that nomination. That concern has been raised to the Department of Law who responded as follows:

In general, a person with standing may always petition a court for a temporary restraining order or an injunction staying the issuance of a permit upon showing that there would be irreparable harm if

such relief were not granted.⁴ Plausibly, a person could argue that a discharge of pollution into a water body would irreparably harm that water to the extent that a Tier 3 designation would become meaningless. However, a petition for a Tier 3 designation would not create any new rights or avenues for an injunction beyond that which already exist. For example, a person could just as easily request an injunction until an Environmental Impact Statement is completed, or a census of local endangered species is completed for purposes of the Endangered Species Act.

In comments DEC has seen from stakeholders, there has been a suggestion the proposed bill should be modified to explicitly provide that no water may be treated as an ONRW until designated as an ONRW by the Legislature.

DNR's fiscal note says that the bill will be "signed into law," but if the executive branch is ceding authority to the legislative branch, would the governor sign a bill? Or would it be a resolution? (Sen. Wielechowski)

There is a constitutional requirement that the Legislature make the determination, based on Article 8, secs. 2 and 7 of the Alaska Constitution. Those provisions are read to mean that the Legislature must pass a bill that would need to go through the normal process of obtaining the governor's signature to become law.

Why does the bill include a nomination process in addition to the legislative process? What's the rationale for the bill beyond line 7? (Sen. Costello)

DEC does not believe section 1 (b) through (e) of the current bill is likely required to meet EPA's requirement in 40 C.F.R. § 131.12(a)(3). However, the department believes these subsections would provide both a clear and helpful means to take in nominations from the public and a place interested members of the public could go to start getting information about any nominations.

What is the nature of the 22 bodies of water designated in Arizona? And what is the process and criteria in WA, OR, and ID? (Sen. Micciche)

See the enclosed 'Outstanding Arizona Waters' and 'Process and Criteria for ONRW in WA, OR, and ID.'

How does EPA view the CFR for ONRW; does a nomination put restrictions on a water body? Could we clarify on line 7 that we're talking about 131.12 paragraph 3? (Sen. Coghill)

A nomination should not put restrictions on a water body as the protection level would only be in effect upon actual designation. The CFR only requires states have a method for designation of ONRWs. It does not require states to designate any ONRWs. Again, DEC has received comments from stakeholders suggesting the proposed bill be modified to explicitly provide that no water may

⁴ See, e.g., *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011) (holding that Environmental group was likely to suffer irreparable harm in absence of preliminary injunction against proposed logging and timber sale by United States Forest Service in area damaged by fire; members of group would be denied use and enjoyment of the area.); Cf. *Friends of the Wild Swan v. Weber*, 767 F.3d 936 (9th Cir. 2014) (holding that Environmental organizations seeking preliminary injunction to halt logging projects approved by United States Forest Service (USFS) on both sides of Flathead River in Montana's Flathead National Forest did not establish a likelihood of irreparable harm to bull trout and westslope cutthroat trout fisheries in the absence of an injunction.)

be treated as an ONRW until designated as an ONRW by the Legislature. It would also be possible to modify the bill to clarify the regulatory citation in line 7.

There's been no consideration of tying hands of future legislatures. (Sen. Costello)

If SB 163 is amended to include criteria for designation of a Tier 3 water while leaving decision-making authority to the Legislature, future legislatures would not be bound by those criteria. "It is a well-established principle that one legislature cannot abridge the power of a succeeding legislature," or "bind a future legislature to act in a particular manner."⁵ It is DEC's understanding, based on advice we have received from the Department of Law, the legislature can use its inherent powers under Article VIII of the Alaska Constitution to designate a Tier 3 water for any reason it so chooses or create a new category of protected water than Tier 3. Future legislatures can also choose to amend the statutory criteria in the same bill they use to designate a water body.

We should have a process for reversing a designation. (Sen. Coghill)

There is no federal regulation or guidance specifically addressing whether or how a state's designation of an ONRW can be reversed or modified. DEC knows of no ONRWs in the United States that have had their designation reversed. It is assumed that the justification necessary would be extensive; however, the proposed removal of an ONRW designation would presumably be similar to the process used to originally designate the ONRW, here, the legislative process.

Does the EPA penalize us if we don't establish a process? Please brief us on ramifications of not establishing a process. (Sen. Wielechowski)

The federal Clean Water Act requires states to adopt water quality standards that include an antidegradation policy and implementation methods.⁶ Alaska adopted its antidegradation policy, which mirrors requirements in federal regulations, in 1997.⁷ The policy establishes requirements that must be met to authorize a reduction in existing water quality. To facilitate its decision-making process, DEC relies on interim antidegradation implementation methods that were adopted in 2010.⁸ At that time, EPA recommended that the state establish a stand-alone Tier 3 designation process, outside the permit process.⁹ Alaska has so far not promulgated a standard that has been submitted to EPA for approval.

Alaska is required to establish an antidegradation implementation policy that includes Tier 3 waters.¹⁰ This implementation policy is subject to review and approval by EPA.¹¹ If EPA disapproves of a state's implementation policy, they will first notify the state of what changes are required to attain approval, and if the state does not adopt the specified changes, the Regional EPA Administrator

⁵ *Weiss v. State*, 939 P.2d 380, 397 (Alaska 1997) (citing 73 Am.Jur.2d Statutes § 34 (1974); *State v. Lewis*, 559 P.2d 630, 643 (Alaska 1977); *Applications of Herrick & Irish*, 82 Hawai'i 329, 922 P.2d 942, 951 (1996).) See also Re: SCS CSHB 268(FIN) am S (reengrossed) -- Making and amending appropriations, 1995 Alaska Op. Atty. Gen. (Inf.) 225 (Alaska A.G.), 1995 WL 790770.

⁶ 40 C.F.R. 131.12.

⁷ 18 AAC 70.015.

⁸ Interim Antidegradation Implementations Methods, State of Alaska, Dept. of Env'tl Cons., Policy and Procedure Number 05.03.103, July 14, 2010.

⁹ *Id.*, at 5.

¹⁰ 40 C.F.R. 131.10, 40 C.F.R. 131.12(a).

¹¹ 40 C.F.R. 131.21.

may propose and promulgate a water quality standard that complies with federal law.¹² Alaska would then be required to incorporate EPA's promulgated water quality standard in issuing permits, and EPA could formally object to a permit if Alaska does not incorporate EPA's promulgated standard. If the objection is not resolved, EPA may issue the permit.¹³ In other words, if EPA does not approve of Alaska's implementation policy with regard to the designation of Tier 3 waters, they can overrule the state and create a federal policy that complies with their interpretation of the Clean Water Act.

We hope these responses prove useful to the Committee. If there are further questions or follow up on these issues, please feel free to contact us.

Sincerely,



Larry Hartig
Commissioner

Enclosures: Outstanding Arizona Waters
Process and Criteria for ONRW in WA, OR, and ID

¹² 40 C.F.R. 131.22(a).

¹³ 40 C.F.R. 123.44

OUTSTANDING ARIZONA WATERS (OAWs)

A.A.C. R18-11-112(G)

1. West Fork of the Little Colorado River, from its headwaters at 33°55'02"/109°33'30" to Government Springs at 33°59'33"/109°27'54" (approximately 9.1 river miles);
2. Oak Creek, from its headwaters at 35°01'30"/111°44'12" to its confluence with the Verde River at 34°40'41"/111°56'30" (approximately 50.3 river miles);
3. West Fork of Oak Creek, from its headwaters at 35°02'44"/111°54'48" to its confluence with Oak Creek at 34°59'14"/111°44'46" (approximately 15.8 river miles);
4. Peeples Canyon Creek, from its headwaters at 34°23'57"/113°19'45" to its confluence with the Santa Maria River at 34°20'36"/113°15'12" (approximately 8.1 river miles);
5. Burro Creek, from its headwaters at 34°52'46.5"/113°05'13.5" to its confluence with Boulder Creek at 34°37'4.5"/113°18'36" (approximately 29.5 miles);
6. Francis Creek, from its headwaters at 34°54'38"/113°20'30" to its confluence with Burro Creek at 34°44'29"/113°14'37" (approximately 22.9 river miles);
7. Bonita Creek, from its boundary of the San Carlos Indian Reservation at 33°03'08"/109°33'41" to its confluence with the Gila River at 32°53'36"/109°28'43" (approximately 14.7 river miles);
8. Cienega Creek, from its confluence with Gardner Canyon and Spring Water Canyon at 31°47'38.5"/110°35'21.5" to the USGS gaging station at 32°02'09"/110°40'34" (approximately 28.3 river miles);
9. Aravaipa Creek, from its confluence with Stowe Gulch at 32°52'10"/110°22'03" to the downstream boundary of the Aravaipa Canyon Wilderness Area at 32°54'23"/110°33'42" (approximately 15.5 river miles);
10. Cave Creek, from its headwaters at 31°50'30"/109°17'04.5" to the Coronado National Forest boundary at 31°54'38"/109°08'40" (approximately 10.4 river miles);
11. South Fork of Cave Creek, from its headwaters at 31°50'20"/109°16'33" to its confluence with Cave Creek at 31°53'04"/109°10'30" (approximately 8.6 river miles);
12. Buehman Canyon Creek, from its headwaters at 32°52'0.5"/110°39'54.5" to its confluence with unnamed tributary at 32°24'31.5"/110°32'08" (approximately 9.8 river miles);
13. Lee Valley Creek, from its headwaters at 33°55'49"/109°31'34" to its confluence with Lee Valley Reservoir at 33°56'28"/109°30'15.5" (approximately 1.6 river miles);
14. Bear Wallow Creek, from its headwaters at 33°35'54"/109°26'54.5" to the boundary of the San Carlos Indian Reservation at 33°37'52"/109°29'44" (approximately 4.25 river miles);
15. North Fork of Bear Wallow Creek, from its headwaters at 33°34'47.5"/109°21'59.5" to its confluence with Bear Wallow Creek at 33°35'54"/109°26'54.5" (approximately 3.8 river miles);
16. South Fork of Bear Wallow Creek, from its headwaters at 33°34'38.5"/109°23'58" to its confluence with Bear Wallow Creek at 33°35'54"/109°26'54.5" (approximately 3.8 river miles);
17. Snake Creek, from its headwaters at 33°37'21.5"/109°26'11" to its confluence with the Black River at 33°40'31.5"/109°28'58.5" (approximately 6.2 river miles);
18. Hay Creek, from its headwaters at 33°51'00"/109°28'48" to its confluence with the West Fork of the Black River at 33°48'30"/109°25'19" (approximately 5.5 river miles);
19. Stinky Creek, from the White Mountain Apache Indian Reservation boundary at 33°52'36.5"/109°29'45" to its confluence with the West Fork of the Black River at 33°51'21.5"/109°27'09.5" (approximately 3.0 river miles);
20. KP Creek, from its headwaters at 33°34'03"/109°21'19" to its confluence with the Blue River at 33°31'44"/109°12'04.5" (approximately 12.7 river miles);
21. Davidson Canyon, from the unnamed spring at 31°59'00"/110°38'46" to its confluence with Cienega Creek; and
22. Fossil Creek, from its headwaters at the confluence of Sandrocks and Calf Pen Canyons above Fossil Springs at 34°26'48.7"/111°32'25" to its confluence with the Verde River at 34°18'21.8"/111°40'31.6" (approximately 17.2 river miles).

Process and Criteria for ONRW in WA, OR, and ID¹

I. Washington

1. Status: Process and criteria in regulations; no designations to date
2. Criteria:
 - (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.
3. 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.

¹ This summary by DEC staff is an interpretation of other states' criteria and processes.

II. Idaho

1. Status: Process and criteria (section c) in regulations; no designations to date
2. Process/Criteria:

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. Oregon

1. Status: Policy, process and criteria combined in antidegradation policy regulations; no designations to date, however, the state does have current nominations
2. Regulations:
 - (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.
 - (11) "Commission" or "EQC" means the Oregon Environmental Quality Commission.