

Invitation to Comment



North Fork Smith River Outstanding Resource Water Rulemaking 2017

This document contains:

- Invitation to Comment
 - Notice of Rulemaking Hearing
 - Draft Rules in markup format
 - Draft Rules in final clean version
 - Supporting documents
-

The Oregon Department of Environmental Quality invites public input on proposed permanent rule amendments to Chapter 340 of the Oregon Administrative Rules.

DEQ proposal

DEQ proposes the following changes to OAR 340, Division 41 that will:

- Declare the North Fork Smith River in Oregon, and its tributaries and associated wetlands, as Outstanding Resource Waters under Oregon's antidegradation regulations under the Clean Water Act;
- Establish policies to ensure no degradation to the water quality or outstanding values and ecological characteristics of the North Fork Smith River and its tributaries and associated wetlands.

More information

Information about this rulemaking is on this rulemaking's web page: [North Fork Smith River 2017 Rulemaking](#).

Public Hearings

DEQ will hold two public hearings on this rulemaking.

Anyone can attend the public hearings, either in person or through a webinar or teleconference. The details are listed below.

3:00 p.m., Feb. 21, 2017

DEQ Headquarters, 3rd Floor
700 NE Multnomah St.
Portland, OR 97232

6:00 p.m., Feb. 22, 2017

Best Western Harbor Inn
16008 Boat Basin Rd.
Brookings, OR 97415

Same teleconference number, participant ID and webinar link for both hearings:

Teleconference call-in number: 888-363-4734

Teleconference participant ID: 1910322

Video webinar Link: [Webinar link](#)

Instructions for joining webinar or teleconference: [Webinar instructions](#)

What will happen next?

DEQ will include a written response to comments in a staff report DEQ will submit to the Environmental Quality Commission. DEQ may modify the rule proposal based on the comments.

Present proposal to the EQC

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ plans to present the proposed rules to the commission for a decision at its June 21-22 meeting.

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. The public can submit comments through an online web page, by regular mail or at the public hearings.

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m., on February 28, 2017.

Submit comment online

[NF Smith river rulemaking comment web page](#)

Note for public university students:

ORS 192.501(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student you may omit your email address when you complete the online form to submit a comment.

By mail

Oregon DEQ
Attn: Aron Borok
700 NE Multnomah Ave.
Portland, OR 97232

At hearings detailed above

Sign up for rulemaking notices

Get email updates about future DEQ rulemaking by signing up through: [NF Smith River GovDelivery sign-up](#), or on the rulemaking web site.

Accessibility information

You may review copies of all documents referenced in this announcement at:

Oregon Department of Environmental Quality
700 NE Multnomah Ave.
Portland, OR 97232

To schedule a review of all websites and documents referenced in this announcement, call Aron Borok, Portland, at 503-229-5050, or toll-free in Oregon: 800-452-4011, ext. 5622.

Invitation to Comment

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.



Oregon Department of Environmental Quality

Feb. 1, 2017

Notice of Proposed Rulemaking

North Fork Smith River Outstanding Resource Waters 2017

Overview

Short summary

The proposed rules would designate the North Fork Smith River and its tributaries and associated wetlands as Outstanding Resource Waters and establish policies to ensure that these waters are protected. Following public comment, DEQ expects to make recommendations on the proposed rules to the Environmental Quality Commission for their action in June 2017.

Brief history

On Jan. 4, 2016, Gordon Lyford of O'Brien, Oregon submitted a petition to the Environmental Quality Commission and DEQ on behalf of a group of conservation and fishing organizations to designate the North Fork Smith River as an Outstanding Resource Water. Mr. Lyford withdrew the petition a few weeks later and resubmitted it with changes on Feb. 23, 2016.

The petition proposes amendments to DEQ's antidegradation rule at OAR 340-041-0004 designating the North Fork Smith River and its tributaries and associated wetlands as Outstanding Resource Waters. In addition, the petition proposes amending the basin-specific criteria for the South Coast Basin at OAR 340-041-0300 to require that:

- 1) The North Fork Smith River and all of its tributaries and wetlands are ORW;
- 2) The high water quality, ecological values, and existing and designated uses of these waters shall be maintained;
- 3) DEQ shall not allow new or expanded NPDES permitted discharges to these waters, upstream waters, or tributaries to these waters;
- 4) No activities shall be allowed that would degrade the water quality, ecological characteristics or values of these waters;
- 5) Exceptions may be made to respond to public emergencies or for restoration or enhancement of water quality or ecological values.

DEQ provided an opportunity for the public to submit comments on the petition. DEQ received comments from more than 1000 people supporting the petition and from ten parties opposing the petition.

DEQ staff presented information to the EQC on April 20, 2016, about the petition and the public comment received. At the meeting, the EQC directed DEQ to conduct rulemaking on the proposed rule language in the petition. In addition, the EQC directed DEQ to use the technical analyses from

DEQ's June 1995 ORW Implementation Plan in evaluating the proposed ORW designation for the North Fork Smith River.

Regulated parties

The rules would affect any entity who wishes to obtain an NDPES permit to discharge wastewater into the North Fork Smith River in Oregon and anyone who wishes to engage in an activity that would degrade water quality in the North Fork Smith River watershed in Oregon.

Request for other options

During the public comment period, DEQ requests public comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

Statement of need

What need would the proposed rule address?

Oregon's antidegradation regulations at OAR 340-041-0004 allow the EQC to classify certain high quality water bodies as Outstanding Resource Waters in order to protect the special water quality values and ecological integrity of critical habitat that are vital to the unique character of those water bodies. In April 2016, EQC directed DEQ to conduct rulemaking proceedings on a Feb. 2016 petition requesting the Commission to designate the North Fork Smith River and its tributaries and associated wetlands as ORWs. EQC also directed DEQ to utilize the technical analysis in a 1995 Issue Paper in which DEQ considered a number of waterbodies for ORW nomination.

DEQ's analysis using the 1995 Issue Paper as a guide is included in the Issue Paper accompanying this Notice. In summary, DEQ finds that the waters described in the petition qualify as ORWs due to their exceptional water quality and valuable habitat for endangered populations of Coho salmon, several rare plant species, and other fish and wildlife. The waters are renowned for recreation use and provide economic benefit to businesses serving recreational users. They also provide water for consumption and agriculture to downstream users.

The effect of an ORW designation would be to provide added protections to these waters as stated in the proposed amendments to OAR 340-041-305. The proposed rules would prohibit new permitted point source discharges to the waters and would prohibit other activities that would degrade the current high water quality and exceptional ecological characteristics and values of the waters. Parties that have an interest and are potentially affected by the ORW designation include sport, tribal and commercial fishermen, rafters and kayakers, hikers, mountain bikers, researchers, recreation-related businesses, and individuals interested in maintaining pristine waters, recovering endangered fish populations, or protecting rare plants and biodiversity. The decision more directly affects people who fish or recreate on the NF Smith River, or downstream on the Smith River of Northern California. Potentially affected parties also include those who have an interest in the land being available for future economic use, such as logging, mining, or other economic development.

How would the proposed rule address the need?

The proposed rule would address the need by prohibiting DEQ from allowing any permitted discharges or allowing other activities that would degrade the water quality, other than for emergency or restoration purposes.

How will DEQ know the rule addressed the need?

DEQ would know the rule addressed the need if there are no activities in the watershed that would degrade the water quality of the affected area, other than for emergency or restoration purposes.

Rules affected, authorities, supporting documents

Lead division

Environmental Solutions

Program or activity

Water Quality Standards

Chapter 340 action

Amend - OAR

340-041-0004 340-041-0305

Statutory authority - ORS

468.020 468B.030 468B.035 468B.048

Documents relied on for rulemaking

Documents relied on for this rulemaking are cited in the Issue Paper that accompanies this notice or listed as part of the Fiscal Impact Statement of this document.

Fee Analysis

This rulemaking does not involve fees.

Statement of fiscal and economic impact

Fiscal and Economic Impact

DEQ anticipates that the proposed rules would likely have minimal to no fiscal impact. There is no economic activity occurring in this sub-basin that the proposed rules would negatively impact. Moreover, the proposed rules, by protecting water quality in the North Fork Smith River watershed, would have a positive impact on businesses relying on income from recreational users of the watershed, as well as downstream users in California who rely on the high quality water of the river for recreation, tourism and water supply.

The United States Forest Service almost fully owns the watershed. The Forest Service's management objectives and plans are consistent with the designation. There are no plans to conduct grazing, logging or development in the foreseeable future.

The exception to the USFS ownership in the basin is one parcel of 555 acres that the State of Oregon owns for the benefit of the Oregon Common School Fund. The Oregon Department of State Lands manages this parcel. DSL has no plans to harvest the parcel, and has placed it on a list of properties to sale to benefit the Fund. The value of the parcel is not known. It is reasonable to assume that the proposed rules could decrease the value of the parcel due to restrictions on harvest but it speculative to try to quantify the decrease in value.

Based on comments from the advisory committee, DEQ presents in this statement a scenario in which DSL would harvest the timber to generate revenue for the Oregon Common School Fund. If forest harvest would occur absent the proposed rules but is cost prohibitive due to the rules, the impact of the rule would be a decrease in revenue to the Fund of approximately \$684,000-\$912,000 in pond value based on the estimated harvest volume (*pers. comm.*, Ryan Greco, Oregon Department of Forestry, 12/8/16)¹. The proposed rules' impacts would be less than these values because some harvest could occur under the proposed rules. The lack of access roads, the status of much of the surrounding area as an Inventoried Roadless Area, and the remote location of the parcel make it uncertain that harvesting the area would be cost effective.

The proposed rule would have the potential to impact future mining in the area if current restrictions on mining expire and other proposed restrictions are not finalized. Mining is currently prohibited in the North Fork Smith River by a mineral segregation that expires on June 28, 2017. The Department of Interior has proposed a 20-year mineral withdrawal, but it has yet to be finalized. The Oregon Water Resources Commission is considering a rule on January 19, 2017, that would prohibit water right appropriations for mining in the watershed. Finally, current mining claims have not been validated, meaning they have not proven to be commercially profitable. This would be required in order for mining to occur. Nickel prices per metric ton are also approximately one third of their price ten years ago². Based on comments from the advisory committee, DEQ is including impacts that may result if the proposed rules limit future mining. In this scenario, the proposed rules would reduce an opportunity for the Red Flat Nickel Corporation, which holds unvalidated mining claims in the watershed to create jobs for local residents and temporary residents who would work in the mine. At the same time, mining would likely have a negative on recreation in the area and increase risks to downstream users for recreation, drinking water, agriculture and other uses. DEQ finds that

¹ Pond value is the amount a mill will pay for a log delivered to the mill location.
(<https://www.oregon.gov/ODF/Documents/WorkingForests/LogTermDefinitions.pdf>)

² <http://www.indexmundi.com/commodities/?commodity=nickel&months=120>

the scenario in which mining could occur absent the proposed rules highly uncertain given current and proposed restrictions to mining and local views about mining in the area.

The proposed rules would prohibit new wastewater discharges authorized under a National Pollutant Discharge Elimination System permit to the Oregon portion of the North Fork Smith River or its tributaries. DEQ data and anecdotal information indicates that there may be some limited suction dredgers in the area although Advisory Committee members suggested that none occurs. If suction dredging does occur, it is possible the proposed rule would restrict it from occurring in the future. However, it appears that suction dredging occurs very rarely, and thus the proposed rule would have limited fiscal impact on these users.

The proposed rules would not impact agricultural activity. No grazing has occurred in the watershed for at least 15 years. The Forest Service is uncertain whether grazing allotments exist in the watershed. However, if they do, the Forest Service would likely require best management practices to protect water quality and habitat for Coho salmon regardless of the ORW designation. Thus, the ORW designation would not be expected to significantly change the required grazing management practices if grazing were allowed in the future.

The proposed rules would benefit businesses relying on revenue from those recreating in the North Fork Smith River sub-basin by ensuring the waters are protected for continued recreation into the future. DEQ is unable to quantify these benefits with available information, but has provided supporting information in the discussion of impacts to the public included in this document.

The proposed rules would continue to provide economic benefit for researchers studying the area's fish population and habitat, rare plants and other natural resources, as well as to downstream recreation and fishing. DEQ does not have information to quantify these economic benefits. In addition, there are current and future economic benefits to the contributions of this sub-basin to Coho salmon recovery and the commercial and tribal salmon fisheries and to providing clean drinking water for downstream users.

Statement of Cost of Compliance

The cost of compliance with the rules is negligible, as there is no current activity in the affected area that would not comply with the rules. Forest harvest in the 555 acre DSL parcel and mining may be prohibited or incur additional expense in order to operate in a manner that would not require a discharge permit and ensure no impact on the water quality of the streams or wetlands in the sub basin. As noted above, DEQ finds that it is highly uncertain that timber harvest or mining would occur in this area absent the proposed rules.

State and federal agencies

DEQ

Direct impacts to DEQ should be minor to negligible, or may result in resource savings. The rules would prohibit any new National Pollutant Discharge Elimination system discharges to the NF Smith River and tributaries. Thus, DEQ staff would not need to spend time reviewing permit requests in this area. Because the rule prevents any activity that would degrade water quality and ecological characteristics and values of the NF Smith River, it would potentially reduce or preclude impairment listings or the need to develop water quality restoration plans, resulting in resource savings to the TMDL program.

U.S. Forest Service

Direct impacts to the Rogue River Siskiyou National Forest would be minor and may result in resource savings due to reduced applications for activities that could degrade existing water quality and ecological characteristics of the watershed. In addition, the Forest Service may receive additional fee revenue from companies who must get permits for commercial rafting or kayaking in the watershed. U.S. Forest Service staff may need to review existing management plans to ensure that activities meet the requirements of ORW designation. This would be a minor effort, as the protections are consistent with protections in the watershed and the forest service management objectives.

DOGAMI and Department of State Lands

The Oregon Department of Geology and Mineral Industries and the Department of State Lands regulate surface mining and small-scale placer mining, respectively. The proposed rule could have a minor decrease in resource needs for the agency if it results in fewer permit applications for mining in these areas. It could also result in a small decrease in fee revenues associated with mining applications.

Indirect Impacts

DEQ does not anticipate any indirect impacts to DEQ or other federal or state agencies.

Local governments and other state agencies

Direct Impacts

DEQ does not anticipate any direct impacts to local governments, as there are no towns or cities within the NF Smith River sub-basin in Oregon. In addition the county does not receive revenue from this land, nor does it provide infrastructure for this area. As a result, there would be no reduction in property taxes, nor any effect of the rules on local government operations.

Indirect Impacts

To the extent that the proposed rule would restrict or reduce planned economic activities in the North Fork Smith River watershed, such as grazing or mining, there could be a decrease in revenues to the state and local governments due to the proposed rule. On the contrary, there are more likely to be increases in business revenues, and associated taxes, from recreational users and tourism. The south Coast Markets itself for tourism as “The Wild Rivers Coast.”

As recommended by Advisory Committee members, DEQ is presenting a scenario in the Fiscal Statement in which mining could occur absent the proposed rule. As noted above, DEQ finds that this scenario is unlikely given other restrictions. Mining, if allowed absent the proposed rule, could benefit the local economy by providing jobs either to local residents or people who would move to region while the area was being mined. These jobs would benefit local residents through employment and by multiplier effects on the economy and on local and state tax revenue. It is speculative to estimate how many jobs would be provided or the economic benefits it would provide. On the other hand, mining would potentially degrade water quality and, potentially, the local landscape, making the area less desirable for recreational activities. This would potentially decrease revenue generated by tourists visiting the area, at least partially offsetting the benefits of mining.

If the proposed rule resulted in disallowing or decreased forest harvest of the 555 acre Oregon Common School Fund parcel, the impact to state tax revenues, based on current tax rates for the Forest Products Harvest Tax (\$3.7287/thousand board feet (MBF)), and an estimated harvest of 2,280 MBF, would be less than \$8,500. As noted earlier, the impact would be somewhat smaller, as some forest harvest could be allowed in this parcel as long as it did not degrade water quality of Cedar Creek, which flows through the parcel, and downstream waters. As noted above, there are no current plans to harvest this area, so this impact is uncertain.

If the Oregon Common School Fund parcel were sold, the proposed rules could negatively impact its sale value due to decreased ability to harvest the timber. This could negatively impact revenues to the state that benefits education.

Public

Direct Impacts

DEQ does not expect a direct fiscal impact to the public as a result of this rule. The rule could impact recreational suction dredge mining if the current moratorium is lifted. However, restricting these activities would have a minimal economic impact, as very little, if any, suction dredge mining occurs in the area, likely due to the lack of access because there are very few roads into the watershed.

Indirect Impacts

DEQ does not anticipate indirect fiscal impacts to the public as a result of this rule. See the discussion of impacts to small business below.

Large businesses - businesses with more than 50 employees

Direct Impacts

DEQ does not anticipate direct fiscal impacts to any large businesses currently operating in the area as a result of the rule, as there are none. The rule could prohibit future surface mining activity from the Red Flat Nickel Corporation, which owns unvalidated mining claims in the watershed. This business is owned primarily by a foreign mining corporation registered in Oregon. A number of restrictions already exist for mining. As a result, DEQ finds it highly uncertain whether mining would occur in the foreseeable future. At the request of advisory committee members, DEQ has contemplated a scenario in which mining would occur if the proposed rule were not finalized. In this case, the proposed rule could negatively impact the Red Flat Nickel Corporation. As mining claims have not been validated, the economic potential of the mine is unknown, so DEQ does not have information to estimate the extent of this impact.

Indirect Impacts

DEQ does not anticipate indirect impacts to large businesses as a result of this rule.

Small businesses – businesses with 50 or fewer employees

Direct Impacts

DEQ does not expect that the proposed rule would directly impact small businesses, as none currently operate in the area. No forest harvest occurs in the area the rule affects and none is currently planned. If DSL decided to open the Oregon Common School property for harvest via the Oregon Department of Forestry bidding process, the proposed rule would impact the amount of timber that could be harvested, as any harvest would be required to result in no degradation to water quality. This could, in turn, affect the value of harvest to a business that won the Oregon Department of Forestry's bidding process. If this occurred, the lost value may be less than the \$684,000-\$912,000 pond value of projected harvest for the parcel, as it is possible that some logging could still occur without degrading water quality. Alternately, if DSL sold the parcel, the lost value to the purchaser would be the same, unless the purchaser wished to use the parcel for a use that would not increase risk of degradation to water quality.

Indirect Impacts

Protecting the North Fork Smith River may provide indirect benefit to businesses relying on revenue from recreational users of the area. These include rafting companies or companies offering fishing trips or selling fishing gear, in addition to local hotels, gas stations, restaurants, and grocery stores, etc., that benefit from all types of recreation and tourism. DEQ is unable to quantify such impacts with available information, but available information does indicate some benefits are associated with recreation are expected. One small business participating in the advisory committee expects significant growth in clients for their tours on the NF Smith River over the next five years, from only 15 user-days in 2015 to more than 100 in five years (*pers. comm.*, Lori Turbes, Sundance Kayak School, Oct. 5, 2016). Another small business reported approximately \$30,000-\$35,000 of revenue in the last year from rafting on the North Fork Smith River. This business plans to increase trips on the river in the future. (*pers. comm.*, Dave Lacey, South Coast Tours LLC, Oct. 12, 2016) One report noted that the direct economic benefit from recreational fishing tours in the Smith River watershed in 1996 and 1997 was approximately \$250,000 per year, equivalent to about \$375,000 in current dollars (Waldvogel, 2008). While this covers a greater area than the proposed ORW in Oregon, the habitat and production in the NF Smith River contributes to the availability of a fish to catch downstream. Other popular recreation activities in the area include kayaking, mountain biking, birding and hiking. Thus total economic benefit from recreation overall is higher. An ODFW report noted that the economic benefit of recreation in all of Curry County in 2008 was approximately \$21 million, or \$23.7 million in current dollars (Dean Runyan Associates, 2009). A portion of that money results from recreation in the NF Smith River.

The rivers and streams within the basin provide support to the population of Coho salmon and contribute to recovery of the species, which will benefit commercial and tribal fishermen in addition to sport fishers. Finally, the proposed rule will benefit groups that research the unique and pristine natural resources of the watershed, providing additional benefit.

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

The proposed rule would not subject any small businesses operating in the area to new requirements. The proposed rule would potentially impact one foreign-owned large business with mining claims in the area if future mining activity would otherwise be permitted. In addition, if the DSL parcel is sold and logged, or would otherwise be logged, there could be an impact to small business in the area. Whether this would otherwise occur is uncertain.

b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

No additional activities are required to comply with the proposed rules.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

No additional resources are required for compliance with the proposed rules.

d. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included two small recreational businesses and associations representing mining and forestry interests on the North Fork Smith River Advisory Committee. DEQ also included a local landowner and tree farmer, as well as a representative of the Oregon Farm Bureau.

Documents relied on for fiscal and economic impact

Document title	Document location
Rogue River-Siskiyou National Forest. 2016. Environmental Assessment: 2015 Southwestern Oregon Mineral Withdrawal.	Rogue river environmental assessment
Waldvogel, J. 2008. Southern Oregon/Northern California Salmon and Steelhead Fishing Guides Use and Economic Analysis (1996 – 1997)	Southern Oregon fishing guides
Dean Runyan Associates <i>on behalf of</i> Oregon Department of Fish and Wildlife. 2009. Fishing, Hunting, Wildlife Viewing, and Shellfishing in Oregon, 2008.	Fishing, hunting, wildlife viewing in Oregon
Oregon Department of State Lands. 2006. Asset Management Plan.	ODL asset management plan
Lori Turbes, Sundance Kayak School. Personal Communication. October 5, 2016	On file at DEQ.
Ryan Greco, Oregon Department of Forestry. Personal Communication. December 8, 2016	On file at DEQ.
Dave Lacey, South Coast Tours LLC. Personal Communication. December 12, 2016	On file at DEQ.
Mike Wood, President, Red Flat Nickel Corporation. Personal Communication. March 31, 2016	On file at DEQ.

Document title	Document location
Pam Blake, DEQ. Personal Communication. December 8, 2016.	On file at DEQ.

Advisory committee

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses
- Whether, if there were a significant adverse impact on small business:
 - DEQ could reduce the economic impact of the rule on small business by:
 - Establishing differing compliance or reporting requirements or time tables for small business;
 - Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
 - Utilizing objective criteria for standards;
 - Exempting small businesses from any or all requirements of the rule; or
 - Otherwise establishing less intrusive or less costly alternatives applicable to small business.

The committee reviewed the draft fiscal and economic impact statement and its findings are stated in the approved summary of its December 1, 2016 meeting.

The advisory committee suggested that there could be an impact on the following types of businesses:

- Positive impact on recreational and tourism businesses and businesses serving recreational users of the area
- Positive impact on research organizations
- Potential negative impact on the Oregon Common School Fund due to potential restrictions on forest harvest in the 555 acre Common School Fund parcel
- Potential negative impact on forestry businesses who would harvest the Oregon Common School Fund parcel
- Potential negative impact on the Red Flat Nickel Corporation

DEQ agreed to expand its discussion in the fiscal impact analysis to include scenarios in which forest harvest and mining would happen absent the proposed rules. Although DEQ finds these scenarios uncertain and unlikely in the near term, DEQ has included this analysis as requested by the advisory committee.

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on

the development costs because the area affected by the rule is almost entirely U.S. Forest Service land and thus is not available for residential development.

Federal relationship

Relationship to federal requirements

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so. Federal regulations under the Clean Water require that waters constituting outstanding National resources, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, should be designated as Outstanding Resource Waters. DEQ adopted corresponding state regulations at OAR 340-041-0004 regarding designation of state waters as Outstanding Resource Waters. DEQ has concluded that the North Fork Smith River and its tributaries are outstanding national resources due to the outstanding clarity and exceptional recreational and ecological significance. Therefore, this proposal is consistent with federal requirements under the Clean Water Act.

Land use

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objectives or areas identified in the statewide planning goals, or
 - Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan, which describes the DEQ programs that have been determined to significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
9	Ocean Resources
11	Public Facilities and Services
16	Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

DEQ determined that these proposed rules do not affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program.

Stakeholder and public involvement

Background

DEQ convened the North Fork Smith River advisory committee. The committee included representatives from environmental and conservation groups, groups advocating for recreational fishers, agriculture, forestry, mining and local land owners and met 2 times. The committee's web page is located at: <http://www.deq.state.or.us/wq/standards/orwo.htm>.

The committee members were:

Name	Representing
Lisa Brown	Waterwatch
Todd Confer	Oregon Department of Fish and Wildlife
Becky Crockett	Davy Crockett Tree Farms
Heath Curtiss	Oregon Forest & Industries Council
Dean Finnerty	Trout Unlimited
Dave Hunnicutt	Oregon Mining Association
Dave Lacey	South Coast Tours LLC
Gordon Lyford	Wild Rivers Water Rights
Kevin Mealue	Elk Valley Rancheria
David Moryc	American River
Mary Anne Nash	Oregon Farm Bureau
Chris Park	Rogue River-Siskiyou National Forest
Lori Turbes	Sundance Kayak School
Barbara Ullian	Friends of the Kalmiopsis

Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery email bulletins to the following lists:
 - Water Quality Standards
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee discussed the overall procedure used for the proposed ORW designation. Some committee members noted that Oregon's existing rule addressing ORW designation suggests that DEQ establish criteria for proposing waters for ORW designation and submit a list of proposed waters to the EQC. Other members noted that the State

Attorney General's office concluded that the current rule does not preclude the EQC from moving forward on a specific proposed ORW designation and that, in fact, the EQC has a legal obligation to respond in this case because the rule was proposed via citizen petition.

EQC prior involvement

The proposed rule was submitted as a petition to DEQ and EQC on February 23, 2016. Consistent with state regulations, the Commission had 90 days to act on the petition by either denying it, directing DEQ to initiate a rulemaking proceeding, or denying the petition and directing DEQ to take other action. DEQ invited public comment on the petition and received more than 1000 comments. DEQ discussed the proposed petition and public comments with the EQC at an April 20, 2016 meeting in Portland. After this discussion and an opportunity for members of the public to provide testimony on the petition, EQC voted to initiate rulemaking on the proposed rule.

Public notice and hearings

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing on January 13, 2017 by:

- Filing notice with the Oregon Secretary of State for publication in the Oregon Bulletin on February 1, 2017,
- Notifying the EPA by email,
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking: [NF Smith river rulemaking](#)
- Emailing 8757 interested parties on the following DEQ lists through GovDelivery:
 - Water quality standards
 - Rulemaking
 - DEQ public notices
- Posting notices on Facebook and Twitter
- Distributing a news release
- Emailing stakeholders and interested parties on the North Fork Smith River Advisory Committee Mailing List
- Emailing the following key legislators required under [ORS 183.335](#):
 - Senator Chris Edwards, Chair, Senate Interim Committee on the Environment and Natural Resources
 - Representative Jessica Vega Pederson, Chair, House Interim Committee and Energy and the Environment
- Emailing legislators representing the area affected by the rulemaking
 - Senator Jeff Cruse, Senate District 1
 - Representative David Brock Smith, House District 1.
- Posting on the DEQ event calendar: [DEQ Calendar](#)
- Publishing notice in the following newspapers:
 - *Curry Coastal Pilot (Brookings)*
 - *Daily Courier (Grants Pass)*
 - *Del Norte Triplicate (Crescent City, CA)*

Public hearings

DEQ plans to hold 2 public hearings. The details are listed below. Anyone can attend a hearing in person, or by webinar or teleconference.

DEQ will consider all written comments received at the hearings listed below before completing the draft rules. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

Hearing 1

Date	February 21, 2016
Time	3 p.m.
Street Address	DEQ Portland Offices, 3 rd Floor 700 NE Multnomah Blvd.
City	Portland, OR 97232
Presiding Officer	Debra Sturdevant
Staff Presenter	Aron Borok
Call-in Phone Number	888-363-4734
Participant ID	1910322
Webinar Link	Webinar Link
Instructions on how to access webinar and teleconference	Webinar instructions

Hearing 2

Date	February 22, 2016
Time	6 p.m.
Street Address	Best Western Harbor Inn 16008 Boat Basin Rd
City	Brookings, OR 97415
Presiding Officer	Pam Blake
Staff Presenter	Aron Borok
Call-in Phone Number	888-363-4734
Participant ID	1910322
Webinar Link	Webinar Link
Instructions on how to access webinar and teleconference	Webinar instructions

How to comment on the proposed rules:

Submit comment online at
[NF Smith river public comment page](#)

Note for public university students:

ORS 192.501(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student you may omit your email address when you complete the online form to submit a comment.

By mail

Oregon DEQ
Attn: Aron Borok
700 NE Multnomah Ave., Ste. 600
Portland, OR 97232

At the hearing

Close of public comment period

The comment period will close 4 p.m. on February 28, 2017

Accessibility Information

You may review copies of all documents referenced in this announcement at:

Oregon Department of Environmental Quality
700 NE Multnomah Ave.
Portland, OR 97232

To schedule a review of all websites and documents referenced in this announcement, call Aron Borok, 503-229-5050 (800-452-4011, ext. 5622 toll-free in Oregon).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.

Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

~~Text deleted from one location - and moved to another location~~

DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION

DIVISION 41

WATER QUALITY STANDARDS: BENEFICIAL USES, POLICIES, AND CRITERIA FOR OREGON

340-041-0004

Antidegradation

(1) Purpose. The purpose of the Antidegradation Policy is to guide decisions that affect water quality such that unnecessary further degradation from new or increased point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to ensure the full protection of all existing beneficial uses. The standards and policies set forth in OAR 340-041-0007 through 340-041-0350 are intended to supplement the Antidegradation Policy.

(2) Growth Policy. In order to maintain the quality of waters in the State of Oregon, it is the general policy of the Commission to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads except as provided in section (3) through (9) of this rule.

(3) Nondegradation Discharges. The following new or increased discharges are subject to this Division. However, because they are not considered degradation of water quality, they are not required to undergo an antidegradation review under this rule:

(a) Discharges Into Existing Mixing Zones. Pollutants discharged into the portion of a water body that has been included in a previous mixing zone for a permitted source, including the zones of initial dilution, are not considered a reduction in water quality, so long as the mixing zone is established in accordance with OAR 340-041-0053, there are no other overlapping mixing zones from other point sources, and the discharger complies with all effluent limits set out in its NPDES permit.

(b) Water Conservation Activities. An increase in a pollutant concentration is not considered a reduction in water quality so long as the increase occurs as the result of a water conservation activity, the total mass load of the pollutant is not increased, and the concentration increase has no adverse effect on either beneficial uses or threatened or endangered species in the water body.

(c) Temperature. Insignificant temperature increases authorized under OAR 340-041-0028(11) and (12) are not considered a reduction in water quality.

(d) Dissolved Oxygen. Up to a 0.1 mg/l decrease in dissolved oxygen from the upstream end of a stream reach to the downstream end of the reach is not considered a reduction in water quality so long as it has no adverse effects on threatened and endangered species.

(4) Recurring Activities. Since the baseline for applying the antidegradation policy to an individual source is the water quality resulting from the source's currently authorized discharge, and since regularly-scheduled, recurring activities remain subject to water quality standards and the terms and conditions in any applicable federal and state permits, certifications and licenses, the following activities will not be considered new or increasing discharges and will therefore not trigger an antidegradation review under this rule so long as they do not increase in frequency, intensity, duration or geographical extent:

(a) Rotating grazing pastures,

(b) Agricultural crop rotations, and

(c) Maintenance dredging.

(5) Exemptions to the Antidegradation Requirement. Some activities may, on a short term basis, cause temporary water quality degradation. However, these same activities may also have substantial and desirable environmental benefits. The following activities and situations fall into this category. Such activities and situations remain subject to water quality standards, and must demonstrate that they have minimized adverse effects to threatened and endangered species in order to be exempt from the antidegradation review under this rule:

(a) Riparian Restoration Activities. Activities that are intended to restore the geomorphology or riparian vegetation of a water body, or control invasive species need not undergo an antidegradation review so long as the Department determines that there is a net ecological benefit to the restoration activity. Reasonable measures that are consistent with the restoration objectives for the water body must be used to minimize the degradation;

(b) Emergency Situations. The Director or a designee may, for a period of time no greater than 6 months, allow lower water quality without an antidegradation review

under this rule in order to respond to public health and welfare emergencies (for example, a significant threat of loss of life, personal injury or severe property damage); and

(c) Exceptions. Exceptions authorized by the Commission or Department under (9) of this rule.

(6) High Quality Waters Policy: Where the existing water quality meets or exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses, that level of water quality must be maintained and protected. However, the Environmental Quality Commission, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, and with full consideration of sections (2) and (9) of this rule, and 340-041-0007(4), may allow a lowering of water quality in these high quality waters if it finds:

(a) No other reasonable alternatives exist except to lower water quality; and

(b) The action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality. This evaluation will be conducted in accordance with DEQ's "Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and section 401 water quality certifications," pages 27, and 33-39 (March 2001) incorporated herein by reference;

(c) All water quality standards will be met and beneficial uses protected; and

(d) Federal threatened and endangered aquatic species will not be adversely affected.

(7) Water Quality Limited Waters Policy: Water quality limited waters may not be further degraded except in accordance with section (9)(a)(B), (C) and (D) of this rule.

(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:

(A) The North Fork Smith River and its tributaries and associated wetlands, South Coast Basin. See OAR 340-041-0305(4).

(9) Exceptions. The Commission or Department may grant exceptions to this rule so long as the following procedures are met:

(a) In allowing new or increased discharged loads, the Commission or Department must make the following findings:

(A) The new or increased discharged load will not cause water quality standards to be violated;

(B) The action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality. This evaluation will be conducted in accordance with DEQ's "Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and section 401 water quality certifications," pages 27, and 33-39 (March 2001) incorporated herein by reference; and

(C) The new or increased discharged load will not unacceptably threaten or impair any recognized beneficial uses or adversely affect threatened or endangered species. In making this determination, the Commission or Department may rely upon the presumption that if the numeric criteria established to protect specific uses are met the beneficial uses they were designed to protect are protected. In making this determination the Commission or Department may also evaluate other State and federal

agency data that would provide information on potential impacts to beneficial uses for which the numeric criteria have not been set;

(D) The new or increased discharged load may not be granted if the receiving stream is classified as being water quality limited under sub-section (a) of the definition of “Water Quality Limited” in OAR 340-041-0002, unless:

(i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or

(ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs) load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream; and compliance plans under which enforcement action can be taken have been established; and there will be sufficient reserve capacity to assimilate the increased load under the established TMDL at the time of discharge; or

(iii) Effective July 1, 1996, in water bodies designated water-quality limited for dissolved oxygen, when establishing WLAs under a TMDL for water bodies meeting the conditions defined in this rule, the Department may at its discretion provide an allowance for WLAs calculated to result in no measurable reduction of dissolved oxygen (DO). For this purpose, "no measurable reduction" is defined as no more than 0.10 mg/L for a single source and no more than 0.20 mg/L for all anthropogenic activities that influence the water quality limited segment. The allowance applies for surface water DO criteria and for Intergravel dissolved oxygen (IGDO) if a determination is made that the conditions are natural. The allowance for WLAs applies only to surface water 30-day and seven-day means; or

(iv) Under extraordinary circumstances to solve an existing, immediate and critical environmental problem, the Commission or Department may, after the completion of a TMDL but before the water body has achieved compliance with standards, consider a waste load increase for an existing source on a receiving stream designated water quality limited under sub-section (a) of the definition of “Water Quality Limited” in OAR 340-041-0002. This action must be based on the following conditions:

(I) That TMDLs, WLAs and LAs have been set; and

(II) That a compliance plan under which enforcement actions can be taken has been established and is being implemented on schedule; and

(III) That an evaluation of the requested increased load shows that this increment of load will not have an unacceptable temporary or permanent adverse effect on beneficial uses or adversely affect threatened or endangered species; and

(IV) That any waste load increase granted under subparagraph (iv) of this paragraph is temporary and does not extend beyond the TMDL compliance deadline established for

the water body. If this action will result in a permanent load increase, the action has to comply with sub-paragraphs (i) or (ii) of this paragraph.

(b) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

(c) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. Unused assimilative capacity is an exceedingly valuable resource that enhances in-stream values and environmental quality in general. Allocation of any unused assimilative capacity should be based on explicit criteria. In addition to the conditions in subsection (a) of this section, the Commission or Department may consider the following:

(A) Environmental Effects Criteria:

(i) Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative. An example may be the potential degradation of groundwater from land application of wastes;

(ii) Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loadings during periods of low stream flow may be permitted an increased discharge load year-round or during seasons of high flow, so long as the loading has no adverse effect on threatened and endangered species;

(iii) Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase streamflow and assimilative capacity during otherwise low streamflow periods.

(B) Economic Effects Criteria. When assimilative capacity exists in a stream, and when it is judged that increased loadings will not have significantly greater adverse environmental effects than other alternatives to increased discharge, the economic effect of increased loading will be considered. Economic effects will be of two general types:

(i) Value of Assimilative Capacity. The assimilative capacity of Oregon's streams is finite, but the potential uses of this capacity are virtually unlimited. Thus it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. In-stream uses that will benefit from reserve assimilative capacity, as well as potential future beneficial use, will be weighed against the economic benefit associated with increased loading;

(ii) Cost of Treatment Technology. The cost of improved treatment technology, non-discharge and limited discharge alternatives may be evaluated.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 2-2007, f. & cert. ef. 3-15-07

340-041-0305

Water Quality Standards and Policies for this Basin

(1) pH (Hydrogen ion concentration) pH values may not fall outside the following ranges:

(a) Estuarine and fresh waters: 6.5-8.5.

(b) Marine waters: 7.0-8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0300: 100.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control;

(b) During the period of high stream flows (approximately November 1 to April 30) and for direct ocean discharges: A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

(4) Outstanding Resource Waters of Oregon (ORWs)

(a) The North Fork Smith River and all of its tributaries and associated wetlands (HUC 1801010101) in Oregon. These streams include but are not limited to the North Fork Smith River, Chrome Creek, Spokane Creek, Fall Creek, Cedar Creek, Horse Creek, Packsaddle Creek, Baldface Creek, Taylor Creek, Biscuit Creek, Wimer Creek, McGee Creek, Cabin Creek, Diamond Creek, and the North Fork Diamond Creek.

(b) The current high water quality, exceptional ecological values, and existing and designated uses of the ORWs identified in this rule (“these waters”) shall be maintained and protected except as altered by natural causes.

(c) No new NPDES discharge or expansion of an existing discharge to these waters shall be allowed.

(d) No new NPDES discharge or expansion of an existing discharge to waters upstream of or tributary to these waters shall be allowed if such discharge would significantly degrade the water quality within these waters.

(e) No activities shall be allowed that would degrade the existing water quality and ecological characteristics and values of these waters.

(f) DEQ may allow an exception to 340-041-0305 (b) through (e) for a defined limited duration if an activity or discharge:

(A) Is needed to respond to a public health or welfare emergency; or

(B) Is expected to result in the restoration or enhancement of the water quality or ecological integrity of these waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION

DIVISION 41

WATER QUALITY STANDARDS: BENEFICIAL USES, POLICIES, AND CRITERIA FOR OREGON

340-041-0004

Antidegradation

(1) Purpose. The purpose of the Antidegradation Policy is to guide decisions that affect water quality such that unnecessary further degradation from new or increased point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to ensure the full protection of all existing beneficial uses. The standards and policies set forth in OAR 340-041-0007 through 340-041-0350 are intended to supplement the Antidegradation Policy.

(2) Growth Policy. In order to maintain the quality of waters in the State of Oregon, it is the general policy of the Commission to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads except as provided in section (3) through (9) of this rule.

(3) Nondegradation Discharges. The following new or increased discharges are subject to this Division. However, because they are not considered degradation of water quality, they are not required to undergo an antidegradation review under this rule:

(a) Discharges Into Existing Mixing Zones. Pollutants discharged into the portion of a water body that has been included in a previous mixing zone for a permitted source, including the zones of initial dilution, are not considered a reduction in water quality, so long as the mixing zone is established in accordance with OAR 340-041-0053, there are no other overlapping mixing zones from other point sources, and the discharger complies with all effluent limits set out in its NPDES permit.

(b) Water Conservation Activities. An increase in a pollutant concentration is not considered a reduction in water quality so long as the increase occurs as the result of a water conservation activity, the total mass load of the pollutant is not increased, and the concentration increase has no adverse effect on either beneficial uses or threatened or endangered species in the water body.

(c) Temperature. Insignificant temperature increases authorized under OAR 340-041-0028(11) and (12) are not considered a reduction in water quality.

(d) Dissolved Oxygen. Up to a 0.1 mg/l decrease in dissolved oxygen from the upstream end of a stream reach to the downstream end of the reach is not considered a reduction in water quality so long as it has no adverse effects on threatened and endangered species.

(4) Recurring Activities. Since the baseline for applying the antidegradation policy to an individual source is the water quality resulting from the source's currently authorized discharge, and since regularly-scheduled, recurring activities remain subject to water quality standards and the terms and conditions in any applicable federal and state permits, certifications and licenses, the following activities will not be considered new or increasing discharges and will therefore not trigger an antidegradation review under this rule so long as they do not increase in frequency, intensity, duration or geographical extent:

(a) Rotating grazing pastures,

(b) Agricultural crop rotations, and

(c) Maintenance dredging.

(5) Exemptions to the Antidegradation Requirement. Some activities may, on a short term basis, cause temporary water quality degradation. However, these same activities may also have substantial and desirable environmental benefits. The following activities and situations fall into this category. Such activities and situations remain subject to water quality standards, and must demonstrate that they have minimized adverse effects to threatened and endangered species in order to be exempt from the antidegradation review under this rule:

(a) Riparian Restoration Activities. Activities that are intended to restore the geomorphology or riparian vegetation of a water body, or control invasive species need not undergo an antidegradation review so long as the Department determines that there is a net ecological benefit to the restoration activity. Reasonable measures that are consistent with the restoration objectives for the water body must be used to minimize the degradation;

(b) Emergency Situations. The Director or a designee may, for a period of time no greater than 6 months, allow lower water quality without an antidegradation review under this rule in order to respond to public health and welfare emergencies (for example, a significant threat of loss of life, personal injury or severe property damage); and

(c) Exceptions. Exceptions authorized by the Commission or Department under (9) of this rule.

(6) High Quality Waters Policy: Where the existing water quality meets or exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and

recreation in and on the water, and other designated beneficial uses, that level of water quality must be maintained and protected. However, the Environmental Quality Commission, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, and with full consideration of sections (2) and (9) of this rule, and 340-041-0007(4), may allow a lowering of water quality in these high quality waters if it finds:

- (a) No other reasonable alternatives exist except to lower water quality; and
- (b) The action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality. This evaluation will be conducted in accordance with DEQ's "Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and section 401 water quality certifications," pages 27, and 33-39 (March 2001) incorporated herein by reference;
- (c) All water quality standards will be met and beneficial uses protected; and
- (d) Federal threatened and endangered aquatic species will not be adversely affected.

(7) Water Quality Limited Waters Policy: Water quality limited waters may not be further degraded except in accordance with section (9)(a)(B), (C) and (D) of this rule.

(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:

(A) The North Fork Smith River and its tributaries and associated wetlands, South Coast Basin. See OAR 340-041-0305(4).

(9) Exceptions. The Commission or Department may grant exceptions to this rule so long as the following procedures are met:

(a) In allowing new or increased discharged loads, the Commission or Department must make the following findings:

(A) The new or increased discharged load will not cause water quality standards to be violated;

(B) The action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality. This evaluation will be conducted in accordance with DEQ's "Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and section 401 water quality certifications," pages 27, and 33-39 (March 2001) incorporated herein by reference; and

(C) The new or increased discharged load will not unacceptably threaten or impair any recognized beneficial uses or adversely affect threatened or endangered species. In making this determination, the Commission or Department may rely upon the presumption that if the numeric criteria established to protect specific uses are met the beneficial uses they were designed to protect are protected. In making this determination the Commission or Department may also evaluate other State and federal agency data that would provide information on potential impacts to beneficial uses for which the numeric criteria have not been set;

(D) The new or increased discharged load may not be granted if the receiving stream is classified as being water quality limited under sub-section (a) of the definition of "Water Quality Limited" in OAR 340-041-0002, unless:

(i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or

(ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs) load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream; and compliance plans under which enforcement action can be taken have been established; and there will be sufficient reserve capacity to assimilate the increased load under the established TMDL at the time of discharge; or

(iii) Effective July 1, 1996, in water bodies designated water-quality limited for dissolved oxygen, when establishing WLAs under a TMDL for water bodies meeting the conditions defined in this rule, the Department may at its discretion provide an allowance for WLAs calculated to result in no measurable reduction of dissolved oxygen (DO). For this purpose, "no measurable reduction" is defined as no more than 0.10 mg/L for a single source and no more than 0.20 mg/L for all anthropogenic activities that influence the water quality limited segment. The allowance applies for surface water DO criteria and for Intergravel dissolved oxygen (IGDO) if a determination is made that the conditions are natural. The allowance for WLAs applies only to surface water 30-day and seven-day means; or

(iv) Under extraordinary circumstances to solve an existing, immediate and critical environmental problem, the Commission or Department may, after the completion of a TMDL but before the water body has achieved compliance with standards, consider a waste load increase for an existing source on a receiving stream designated water quality limited under sub-section (a) of the definition of "Water Quality Limited" in OAR 340-041-0002. This action must be based on the following conditions:

(I) That TMDLs, WLAs and LAs have been set; and

(II) That a compliance plan under which enforcement actions can be taken has been established and is being implemented on schedule; and

(III) That an evaluation of the requested increased load shows that this increment of load will not have an unacceptable temporary or permanent adverse effect on beneficial uses or adversely affect threatened or endangered species; and

(IV) That any waste load increase granted under subparagraph (iv) of this paragraph is temporary and does not extend beyond the TMDL compliance deadline established for the water body. If this action will result in a permanent load increase, the action has to comply with sub-paragraphs (i) or (ii) of this paragraph.

(b) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

(c) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. Unused assimilative capacity is an exceedingly valuable resource that enhances in-stream values and environmental quality in general. Allocation of any unused assimilative capacity should be based on explicit criteria. In addition to the conditions in subsection (a) of this section, the Commission or Department may consider the following:

(A) Environmental Effects Criteria:

(i) Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative. An example may be the potential degradation of groundwater from land application of wastes;

(ii) Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loadings during periods of low stream flow may be permitted an increased discharge load year-round or during seasons of high flow, so long as the loading has no adverse effect on threatened and endangered species;

(iii) Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase streamflow and assimilative capacity during otherwise low streamflow periods.

(B) Economic Effects Criteria. When assimilative capacity exists in a stream, and when it is judged that increased loadings will not have significantly greater adverse environmental effects than other alternatives to increased discharge, the economic effect of increased loading will be considered. Economic effects will be of two general types:

(i) Value of Assimilative Capacity. The assimilative capacity of Oregon's streams is finite, but the potential uses of this capacity are virtually unlimited. Thus it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. In-stream uses that will benefit from reserve assimilative capacity, as well as potential future beneficial use, will be weighed against the economic benefit associated with increased loading;

(ii) Cost of Treatment Technology. The cost of improved treatment technology, non-discharge and limited discharge alternatives may be evaluated.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 2-2007, f. & cert. ef. 3-15-07

340-041-0305

Water Quality Standards and Policies for this Basin

(1) pH (Hydrogen ion concentration) pH values may not fall outside the following ranges:

(a) Estuarine and fresh waters: 6.5-8.5.

(b) Marine waters: 7.0-8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0300: 100.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control;

(b) During the period of high stream flows (approximately November 1 to April 30) and for direct ocean discharges: A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

(4) Outstanding Resource Waters of Oregon (ORWs)

(a) The North Fork Smith River and all of its tributaries and associated wetlands (HUC 1801010101) in Oregon. These streams include but are not limited to the North Fork Smith River, Chrome Creek, Spokane Creek, Fall Creek, Cedar Creek, Horse Creek, Packsaddle Creek, Baldface Creek, Taylor Creek, Biscuit Creek, Wimer Creek, McGee Creek, Cabin Creek, Diamond Creek, and the North Fork Diamond Creek.

(b) The current high water quality, exceptional ecological values, and existing and designated uses of the ORWs identified in this rule (“these waters”) shall be maintained and protected except as altered by natural causes.

(c) No new NPDES discharge or expansion of an existing discharge to these waters shall be allowed.

(d) No new NPDES discharge or expansion of an existing discharge to waters upstream of or tributary to these waters shall be allowed if such discharge would significantly degrade the water quality within these waters.

(e) No activities shall be allowed that would degrade the existing water quality and ecological characteristics and values of these waters.

(f) DEQ may allow an exception to 340-041-0305 (b) through (e) for a defined limited duration if an activity or discharge:

(A) Is needed to respond to a public health or welfare emergency; or

(B) Is expected to result in the restoration or enhancement of the water quality or ecological integrity of these waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

Issue Paper

Designation of the North Fork Smith River as an Outstanding Resource Water

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Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.

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1. Background

Objectives of the Rulemaking

The Oregon Department of Environmental Quality is conducting a rulemaking process for rules proposed by a petition to amend the state's water quality standards. Specifically, the proposed rules would designate the Oregon portion of the North Fork Smith River, its tributaries and associated wetlands¹ as Outstanding Resource Waters under the Clean Water Act. The proposed rules also contain provisions to ensure that the current high water quality and ecological values and existing beneficial uses of these waters are maintained.

Petition to Designate the North Fork Smith River an Outstanding Resource Water

On Jan. 4, 2016, Gordon Lyford submitted a petition to the Environmental Quality Commission and DEQ on behalf of a group of conservation and fishing organizations to designate the North Fork Smith River as an Outstanding Resource Water. Mr. Lyford withdrew the petition a few weeks later and resubmitted it with changes on Feb. 23, 2016. State regulations require that the Environmental Quality Commission consider the petition within 90 days and either deny the petition, direct DEQ to initiate rulemaking proceedings, or deny the petition and direct DEQ to take other action.

The petition proposed amendments to DEQ's antidegradation rule at OAR 340-041-0004 designating the North Fork Smith River and its tributaries Outstanding Resource Waters. In addition, the petition proposes amending the basin-specific criteria for the South Coast Basin at OAR 340-041-0305 as follows:

- 1) The North Fork Smith River and all of its tributaries and wetlands are ORWs.
- 2) The high water quality, ecological values, and existing and designated uses of these waters shall be maintained;
- 3) DEQ shall not allow new or expanded National Pollutant Discharge Elimination System permitted discharges to these waters, upstream waters, or tributaries to these waters;
- 4) No activities shall be allowed that would degrade the water quality, ecological characteristics or values of these waters;
- 5) Exceptions may be made to respond to public emergencies or to restore or enhance water quality or ecological values.

DEQ provided an opportunity for the public to submit comments on the petition² and received comments from more than 1000 people supporting the petition. These comments noted the qualities and values of the North Fork Smith River including its exceptional water quality and clarity, pristine nature, and lack of dams. Commenters also noted the river's valuable fisheries, including the Coho salmon, a threatened species in the Southern Oregon and Northern California

¹ Unless otherwise noted, references in this paper to the "NF Smith River" refers to the portion of the North Fork Smith River within Oregon and its tributaries.

² OAR 137-001-0070(3)

coastal region, unique geology, rare wetland plants, recreational opportunities, and natural beauty. Some commenters also noted the importance of the North Fork Smith River to downstream users including tribes and as a source of drinking water to several communities. Commenters also stated that the ORW designation was needed to protect the river from potential mining and logging impacts and to protect it for future generations.

DEQ also received comments from more than 10 parties opposing the petition. In summary, the comments stated that:

- The ORW designation is unnecessary to protect water quality of the North Fork Smith River;
- The petition bypasses the ORW screening process outlined in DEQ's antidegradation regulations;
- The ORW designation is inconsistent with the management plan for the Rogue River National Forest;
- The designation may restrict timber harvest and grazing and prevent economic opportunity;
- The designation creates impediments to mining, eliminates the ability to obtain new water rights, eliminates activities with minor impacts that would not violate water quality standards; and
- The activities of dredge miners, which might be restricted, do more environmental good than harm.

DEQ staff presented information to the EQC on April 20, 2016, about the petition and the public comment received. At the meeting, the EQC directed DEQ to conduct rulemaking on the proposed rule language in the petition. In addition, the EQC directed DEQ to use the technical analyses from DEQ's June 1995 ORW Implementation Plan (DEQ 1995) in evaluating the proposed ORW designation for the North Fork Smith River. Section 3 of this issue paper contains DEQ's evaluation of this proposal relative to the 1995 ORW Implementation Plan.

What is an Outstanding Resource Water?

Oregon's water quality standards define three classifications of state waters: water quality limited waters, high quality waters and ORWs. ORWs are defined under OAR 340-041-0022(44) as, "high quality waters that have extraordinary or unique character or ecological value, or are critical habitat areas, such that they constitute an outstanding state or national resource."³ DEQ's antidegradation policy requires that the special water quality and ecological values of ORWs must be protected.⁴ The petition proposes to designate the North Fork Smith River as an ORW and to add rules to ensure that these waters are protected.

DEQ has never proposed to designate any water as an ORW. In the 1990s, DEQ received a petition from several entities proposing to designate several water bodies as ORWs. Although DEQ prepared an analysis to determine whether these water bodies qualified as ORWs, the agency did not move forward with rulemaking.

³ OAR 340-041-0002(44)

⁴ OAR 340-041-0004(8)

The U.S. Environmental Protection Agency has acknowledged that certain waters may have unique water quality characteristics that go above and beyond what is considered a “high quality” (or Tier 2) water under federal antidegradation requirements. For these unique waters, federal antidegradation regulations requires that water quality be maintained. Examples of such waters mentioned in federal regulations include “waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance.”⁵ Oregon’s antidegradation policy notes that priorities for ORW designation could include National and Scenic Rivers, State Scenic Waterways and waters in federally designated wilderness areas, in addition to those mentioned in federal policy.

The rules proposed in the petition are similar to those of other states. The rules would require that the existing water quality and ecological values of the North Fork Smith River, its tributaries and associated wetlands, be maintained and protected. The proposed rules also prohibit any new or expanded permitted discharge under the National Pollutant Discharge Elimination System. As DEQ currently has not assigned any NPDES coverage in the North Fork Smith River or its tributaries, this requirement would restrict any NPDES discharges if the rule is adopted. In addition, the rule restricts any activities “that would degrade the existing water quality and ecological characteristics” of the waters of the North Fork Smith River watershed. This restriction would cover activities not otherwise covered by an NPDES permit, including grazing. These activities may be allowed under the ORW designation as long as best management practices are used to prevent the activity from degrading the existing water quality or ecological values. The U.S. Forest Service is the primary landowner in this area. Under its existing Memorandum of Understanding with DEQ, the U.S. Forest Service would be responsible for ensuring that such activities do not lower water quality. Finally, the rule would allow some temporary exceptions to prohibiting lowering water quality for emergency purposes or activities that would enhance water quality, such as restoration activities.

2. Existing Protections and Related Processes

The North Fork Smith River watershed already is subject to a number of existing protections that limit activities there. Moreover, in addition to designating the Oregon portion of the North Fork Smith River as an ORW, other processes are underway that may also provide protections to the Smith River in the future.

Existing Protections

Wild and Scenic River

In 1988 the U.S. Congress added the North Fork Smith River in Oregon to the Wild and Scenic River System. That designation was based on the river’s nationally outstanding water quality, fisheries, and scenic values. According to the U.S. Forest Service’s Wild and Scenic River

⁵ 40 CFR 131.12(3)

Management Plan for Oregon’s North Fork Smith River, the outstanding water quality of the river in Oregon is, “an integral part of the Smith River system overall.”⁶ The plan also found that the North Fork Smith River in Oregon is outstandingly remarkable “due to its substantial contribution to the world-class fishery of the greater Smith River.” (U.S. Forest Service 2003). The purpose of the Wild and Scenic River Act is to preserve rivers, “in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.”⁷

Kalmiopsis Wilderness Area

In 1964, Congress designated the Kalmiopsis Wilderness Area in southern Oregon. The area includes the headwaters of the North Fork Smith River. About one third of the North Fork Smith River watershed in Oregon lies within the Wilderness Area. Within the area of the watershed classified as wilderness, use or caching of motorized equipment and equipment used for mechanical transport is prohibited, including motor vehicles and motorboats. In addition, possessing or storing hay in the area is prohibited and overnight use of the area by more than 12 persons in a group is prohibited.

Late Successional Reserves under the 1994 Forest Plan

Under the 1994 Northwest Forest Plan, all of the North Fork Smith River watershed outside of the Kalmiopsis Wilderness Area and the area designated as a Wild and Scenic River was designated as a Late-Successional Reserve. The purpose of LSRs is to protect and enhance conditions of late-successional and old-growth forest ecosystems that serve as a habitat for late-successional and old-growth forest related species⁸. Stand management and silviculture in LSRs are geared toward encouraging development of old growth characteristics through thinning and managing understory to encourage growth of large trees, underplanting and understory vegetation removal to encourage multi-story stands, killing trees to make stands and large woody debris, reforestation, and prescribed fire (U.S. Forest Service and Bureau of Land Management 2001). Programmed timber harvest is not allowed in these areas.

Roadless Area

About 55 percent of the area of the North Fork Smith River watershed in Oregon, about 81 percent of the area outside of the Kalmiopsis Wilderness, is classified as a Roadless Area by the Siskiyou National Forest.⁹ In these areas, the 2001 Roadless Rule prohibits road construction and reconstruction.¹⁰ In addition, timber harvest is prohibited from these areas with limited exceptions.¹¹

Suction Dredge Mining Moratorium

In 2013, the Oregon Legislature passed Senate Bill 838, finding that motorized mining in and directly adjacent to the beds and banks of Oregon's rivers and streams can pose significant risks to Oregon's natural resources and cultural resources. Based on these concerns, SB 838 imposed a

⁶ <https://www.rivers.gov/rivers/smith-nf.php>

⁷ Public Law 90-542; 16 U.S.C. 1271 et seq.

⁸ http://www.reo.gov/general/definitions_i-m.htm#L. Accessed October 25, 2016.

⁹ http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsmrs_072581.pdf

¹⁰ 66(9) Fed. Reg. 3244

¹¹ 36 CFR §294.13

moratorium on motorized mining for gold, silver and other precious metals that went into effect on Jan. 2, 2016, and lasts until Jan. 2, 2021. The moratorium covers the North Fork Smith River, a portion of Chrome Creek near its mouth, Baldface Creek and Cedar Creek.¹²

Rogue River-Siskiyou National Forest Management Goals

Consistent with the Wilderness Area, Wild and Scenic and Roadless Area designations in the North Fork Smith River watershed, the Rogue River-Siskiyou National Forest has established management goals in the area. (U.S. Forest Service 2003.) These management goals prohibit mineral extraction and tree harvest other than for trail maintenance and public safety. The goals also limit road development to that needed for maintenance. Boating use also is limited to two trips per day with no more than six people per trip.

Proposed Restrictions or Restrictions in Process

Federal Legislation and Proposed Mineral Withdrawal

The Southwestern Oregon Watershed and Salmon Protection Act of 2015, S. 346 and H.R. 682, was introduced to Congress on February 3, 2015. It proposes to withdraw certain lands from all forms of mineral entry, appropriation, or disposal, including all areas of the North Fork Smith River watershed in Oregon not already designated as a wilderness area. Congress has yet to move forward on the legislation. Meanwhile, the Assistant Secretary of the Interior for Land and Minerals Management published a Notice of Proposed Withdrawal and Notification of Public Meetings in the Federal Register on June 29, 2015.¹³ In September 2016, the Assistant Secretary of the Interior proposed amending the withdrawal to a period of 20 years (81 Fed. Reg. Vol. 190, page 67377). The withdrawal was signed and finalized on January 13, 2017. It's possible that mining could occur in the area if: 1) the withdrawal expires after 20 years or is rescinded; 2) mineral claims are validated; and 3) mining isn't otherwise restricted by the proposed ORW designation and the proposed rulemaking by the Oregon Water Resource Department described below.

Oregon Water Resources Department Rulemaking

The Oregon Water Resources Commission received a petition from the same group that petitioned the EQC. The petition asked for a rulemaking to withdraw all of the unappropriated waters of the North Fork Smith River watershed, including groundwater and surface water, from further appropriations including exempt uses, except for instream uses. The Water Resources Commission directed the Water Resources Department to move forward to propose rules that classify the surface waters in the North Fork Smith River Watershed for human consumption, livestock, and instream public uses including pollution abatement, fish life, wildlife, and recreation. The proposed classification has the effect of restricting new water rights to those uses that are specified by the classification. No other uses are allowed, except water uses that do not require a water right, alternative reservoirs, and other uses as allowed by law or the Water Resources Commission approves.

¹² <http://geo.maps.arcgis.com/apps/webappviewer/index.html?id=dc4dc06dbaa4435aaf62ff948cc226a4>

¹³ [80 Fed. Reg. 37015](#) (June 29, 2015).

The Water Resources Department published a Draft Notice of Proposed Rulemaking on Sept. 2, 2016. WRD plans to present final rules to the Water Resources Commission later in 2017.

3. Analysis of Proposed ORW Designation

Summary of Overall Findings

The following section describes DEQ's analysis of the petitioners' proposed designation of the North Fork Smith River as an ORW. The state antidegradation policy outlines requirements for such designations and DEQ's 1995 ORW Implementation Plan provides an example for evaluating proposed designations. As described below, DEQ has concluded that the North Fork Smith River, its tributaries and associated wetlands constitute an outstanding state and regional resource that should be classified as Outstanding Resource Waters and that the proposed rule language in the petition to DEQ and EQC would protect these waters.

DEQ's antidegradation policy specifically highlights that priorities for ORW nomination include National Wild and Scenic Rivers and waters in federally designated wilderness areas.¹⁴ The entirety of the North Fork Smith River in Oregon is designated as either wild or scenic and much of the upper watershed lies within the Kalmiopsis Wilderness Area.

In summary, DEQ finds that the analysis supports the proposed designation of the North Fork Smith River, and its tributaries and associated wetlands as ORWs for the following reasons:

- Outstanding values of the North Fork Smith River include its outstanding clarity and pristine habitat for Coho salmon, listed as threatened under the Endangered Species Act, and other species. Moreover, its Darlingtonia wetlands support five rare species of plants protected by a U.S. Fish and Wildlife Service Conservation Agreement.
- The waters of the North Fork Smith River in Oregon are critical to supporting unique botanical ecosystems, fisheries, drinking water supplies in California, and recreational and tourism activities. In particular, DEQ finds that the North Fork Smith River is a river of exceptional recreational significance.
- The remote location and lack of access to the North Fork Smith River watershed, as well as management plans by the U.S. Forest Service, makes protecting the outstanding water quality and habitat value of the area technically feasible.
- ORW designation, in addition to other processes underway by Oregon, California and the U.S. Forest Service, will ensure protection of the watershed into the future.
- Proposed mining in the area has the potential to discharge pollution to the waters proposed for ORW designation, which could impact water quality, endangered species, and recreational use in the watershed, as well as drinking and agricultural water supplies downstream.

¹⁴ OAR 340-041-0004(8)(a)(B) and (E)

- Under current restrictions, there are likely to be no near-term impacts of ORW designation for grazing, mining and forestry, as these activities do not currently occur in the watershed, and the designation would likely benefit recreational businesses and users.

1995 ORW Issue Paper

In 1995, DEQ developed an Issue Paper with an Implementation Plan for designating several Oregon waterbodies as ORWs. The issue paper included an evaluation of each of the nine waterbodies considered. The technical analyses included the following elements:

- Setting. A general description of the water body.
- Outstanding values. Values, such as water quality and the presence of threatened, endangered, or unique species.
- Significant water quality parameters. Special water quality information, such as clarity, temperature, etc.
- Adequacy of limnological data. The extent of available water quality data.
- Technical feasibility. Is it technically feasible to maintain and protect the significant water quality parameters given current standards and protections?

In addition, the Issue Paper included a policy analysis with the following information for each waterbody:

- Need. Description of any risks to the waterbody.
- Ramifications. General impacts of the ORW designation.
- Managerial feasibility. Description of the feasibility of protecting the area given the management and ownership of the land

As EQC directed, in the following sections, DEQ has included the same types of analyses for the North Fork Smith River as those used in the 1995 Issue Paper.

Technical Analysis

Setting

The headwaters of the North Fork Smith River emerge from the west side of Chetco Peak (elevation 4,672). From the headwaters, the North Fork Smith flows south, joining the Middle Fork Smith River at Gasquet, California, about 10 miles south of the state line, then joins the mainstem Smith River at Hiouchi. The mainstem Smith River winds through Del Norte County, California, and flows into the Pacific Ocean near the community of Smith River, approximately 13 miles north of Crescent City and 3.5 miles south of the Oregon border. Gasquet, California uses the North Fork Smith River as a drinking water source. Hiouchi and Crescent City, California, as well as Redwood State and National Parks, use the mainstem river for municipal drinking water.

The North Fork Smith River watershed in Oregon includes 57 percent (comprised of 57,990 acres/91 square miles) of the entire North Fork Smith River watershed. With the exception of 555 acres of Oregon Common School Trust lands, this entire portion of the watershed lies within the Rogue River-Siskiyou National Forest. Only 1 percent of the watershed lies in the snow pack zone, with 46 percent of the watershed in the transient snow zone, 2,500 to 4,000 feet. The North Fork Smith River watershed receives high rainfall with 100 to 150 inches of annual precipitation. In addition to the mainstem North Fork Smith River, the watershed includes approximately 42 miles of tributaries. Main tributaries include Baldface Creek, which drains much of the eastern portion of the North Fork Smith River watershed, and Chrome Creek, which drains much of the northern portion of the watershed.¹⁵

The remoteness, difficult access, and the absence of arable farm or grazing land in the North Fork Smith River watershed has limited extensive development. There are no residences. Much of the watershed lies within the Kalmiopsis Wilderness and another large portion is roadless area. The remainder of the watershed on U.S. Forest Service land has been designated as Late-Successional Reserve under the 1994 Northwest Forest Plan (USFS and BLM 1994, as cited in Maiyo and Morneau 2015). Road development and timber harvest is very scattered and minimal throughout the lower portion of the watershed and outside of this wilderness.

Erosion and landslide activity in the watershed is primarily natural. Cedar Creek, Chrome Creek and Baldface Creek all have numerous natural failures and highly unstable inner gorges. There are also several large, ancient landslide forms in all these drainages (Siskiyou National Forest 1995). The U.S. Forest Service predicted higher rates of erosion for five to 15 years following the Biscuit Fire (Rogue River-Siskiyou National Forest 2004), followed by increased stability.

Outstanding Values

Water quality

The North Fork Smith River and its tributaries are reported to have exceptionally high water quality by users and by the U.S. Forest Service, which has identified it as a Key Watershed under the Aquatic Conservation Strategy. The entire stretch of the North Fork Smith River was designated as wild and scenic in 1988. The two wild sections extend from the headwaters to Horse Creek and from Baldface Creek to the Oregon/California state line. The portion between Horse Creek and Baldface Creek is classified as scenic. The waters are often reported as having outstanding clarity and color.

Water quality data for the North Fork Smith River is scarce. A few samples taken by DEQ show clear water and a healthy biological community. Monitoring in Chrome Creek, a major tributary, and downstream in the Middle Fork Smith River, shows very low levels of turbidity, dissolved solids and nutrients. There are no pollutant sources, as the area is undeveloped and largely inaccessible. As a result, DEQ finds that it is reasonable to conclude that the water quality is outstanding and essential to protecting the ecology and recreational values of the watershed.

¹⁵ The Baldface Creek watershed includes Biscuit Creek, namesake of the 2002 Biscuit Fire, which burned 500,000 acres of the surrounding area, including much of the NF Smith River watershed.

The waters of the North Fork Smith River in Oregon are critical to supporting unique botanical ecosystems, fisheries, drinking water, and recreation and tourism.

Fisheries and wildlife

The North Fork Smith River and its tributaries support salmon and steelhead fisheries. The river provides habitat for Chinook salmon, Coho salmon, steelhead, sea-run cutthroat trout and resident rainbow and cutthroat trout. It is recognized as a highly productive salmon habitat, particularly for anadromous cutthroat trout (Siskiyou National Forest 1995). Because of the high fisheries value, the North Fork Smith River watershed, including Baldface Creek, is designated a Tier-One Key Watershed under the Northwest Forest Plan. It is also identified as an important watershed for the recovery of Coho salmon listed as threatened under the Endangered Species Act in the Southern Oregon and Northern California unit. The North American Salmon Stronghold Partnership, a coalition of federal, state, and tribal governments and private groups, identified the Smith River as a salmon stronghold for Coho, steelhead, and Chinook salmon.¹⁶

The North Fork Smith River watershed also supports rare and unique plant species that grow in wetland areas such as wet meadows, riparian areas, fens, springs and seeps, and are dependent on the hydrologic regimes of these wetlands. One example is the rare serpentine *Darlingtonia*. The U.S. Forest Service, Bureau of Land Management, and U.S. Fish and Wildlife Service have entered into a Conservation Agreement to identify, inventory and protect the unique wetland habitats that support five rare plant species of concern that live in the *Darlingtonia* wetlands in the North Fork Smith River (Hoover, et al. 2006).

Protected, threatened, or endangered terrestrial species in the area include spotted owls, wolverines and common and California mountain king snakes (Siskiyou National Forest 1995). Other species listed on Oregon's sensitive species list that are likely present in the North Fork Smith Watershed include fisher, American marten, ringtail, Townsend's big-eared bat, California myotis, fringed myotis, long-legged myotis, hoary bat, silver-haired bat, pallid bat, coastal tailed frog, Western toad, northern red-legged frog, foothill yellow-legged frog, Southern torrent salamander, Del Norte salamander, clouded salamander, and black salamander (Oregon Department of Fish and Wildlife 2008).

Recreation

The North Fork Smith River is part of a river system that provides water-related recreation and tourism activities, including fishing, whitewater kayaking and rafting, hiking, swimming and camping. The North Fork Smith River is viewed as a challenging and remote kayak run (U.S. Forest Service 2003). Although lack of access limits use, one recreational business has noted that their kayak tours are expanding from 15 user-days in 2015 to 34 in 2016 and they plan to expand to 100 user-days within five years. The river also attracts naturalists and researchers due to the unique geology and rare plants. The Smith River is known regionally and nationally for these recreational and research opportunities.

Significant Water Quality Parameters and Adequacy of Limnological Data

¹⁶ <https://www.wildsalmoncenter.org/content/uploads/2016/02/CA-Stronghold-map-June-2010-Approved.pdf>. Accessed October 5, 2016.

Water quality data

The North Fork Smith River is particularly noted for its outstanding clarity and light blue color. The U.S. Forest Service has noted that the amount of fine sediment and organic matter is low and that turbidity clears quickly following storms and landslides (Siskiyou National Forest, 1995).

DEQ has collected few water samples from the North Fork Smith River. One turbidity reading taken in 2007 was reported as less than 1 Nephelometric Turbidity Units. Two samples taken in 1999 and 2007 from Chrome Creek, a tributary within the area being proposed for ORW designation, also were reported as less than 1 NTU.

In addition, turbidity on two dates collected from the Middle Fork Smith River 1.9 miles south of the mouth of the North Fork Smith River were less than 0.2 NTU (Table 1). A 1983 Environmental Impact Statement related to mining of Gasquet Mountain indicated that turbidity of the mainstem Smith River near Crescent City ranged from 0 to 200 NTU, with high values associated with heavy rainfall. The report also characterized water quality of the Smith River as “very good.” (Six Rivers National Forest and County of Del Norte 1983). The data reported here are far downstream of the North Fork Smith River in Oregon, but are included to provide insight into the clarity of waters upstream.

The Gasquet Mountain Mining Environmental Impact Statement also presented data on concentrations of metals at the mouth of the North Fork Smith River, which is located in California approximately 10 miles from where it leaves Oregon. These data are included in Table 2.

DEQ conducted stream surveys from the North Fork Smith River upstream of Chrome Creek in July 1993 and September 2007. DEQ used a data logger to measure temperature near the mouth of Chrome Creek throughout summer and early fall, 1999. That data showed temperatures at the higher range of that being supportive of salmonids. However, during times of higher temperatures, juvenile coho salmon and steelhead, and cutthroat trout would primarily rear in tributaries with cooler water and juvenile Chinook salmon have mostly migrated downstream to the North Fork Smith River estuary (*pers. comm.*, Todd Confer, ODFW, 10/21/2016).

The Rogue River-Siskiyou National Forest, as the primary land manager in the watershed, published a watershed analysis in 1997, which was updated in 2004 after the Biscuit Fire. Data on turbidity or water clarity is generally summary in nature. The U.S. Forest Service has reported temperature data from the North Fork Smith River, noting that the 7-day Average Daily Maximum temperature in 1994 was 78°F at the mouth of Baldface Creek and 72°F in the North Fork Smith River upstream of Baldface Creek. This temperature is near the thermal tolerance of salmonids, however the water quality was deemed unaffected by human activities. Despite the temperatures at the upper range of optimal for salmonids, the watershed still supports a robust salmonid population.

Table 1. Water Quality Data, Middle Fork Smith River, 1.9 miles below mouth of North Fork Smith River. (Source: California Data Exchange Network)

Analyte	Units	5/24/02 Results	7/23/03 Results	Notes
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Analyte	Units	5/24/02 Results	7/23/03 Results	Notes
pH	pH	8.3	8.52	
Specific Conductivity	uS/cm	117.8	132.8	
Total Dissolved Solids @ k=0.64	mg/l	75.4	85	<300 = Excellent
Turbidity, total	NTU	0.16	0.17	<1 = Pristine
Suspended Solids, total	mg/l	0.12	0.4	
Organic + Inorganic Carbon	mg/l	13.44	16.38	
Silica as SiO2	mg/l	14.11	15.72	
Calcium	mg/l	4.26	4.58	
Magnesium	mg/l	11.56	13.31	
Sodium	mg/l	1.99	2.78	
Potassium	mg/l	0.18	0.27	
Phosphorus	mg/l	0.003	<0.002	ND
Chloride	mg/l	2.38	N/A	
Sulfate	mg/l	2.05	2.17	
Nitrogen, total	mg/l	0.017	0.053	

Table 2. Estimate of average ambient surface water concentrations of metals, ug/l and associated Oregon toxics criteria (Source: Six Rivers National Forest and County of Del Norte, 1983)

Analyte	Avg. Ambient Surface Water Concentration at Mouth	Most Stringent Oregon Criterion	
Cadmium	below measurable level	0.17 ^a	Freshwater Chronic Aquatic Life
Chromium	5.8	51.23 ^a	Freshwater Chronic Aquatic Life
Cobalt	below measurable level	n/a	
Copper	5.0	2.1	Freshwater Chronic Aquatic Life ^b
Iron	47.0	1000	Freshwater Chronic Aquatic Life
Lead	5.0	1.42 ^a	Freshwater Chronic Aquatic Life
Manganese	40	100	Human Health (Organism Only)
Mercury	below measurable level	0.012	Freshwater Chronic Aquatic Life
Nickel	18.0	30.5 ^a	Freshwater Chronic Aquatic Life
Zinc	25	70 ^a	Freshwater Chronic Aquatic Life

a – Calculated hardness-dependent criterion using hardness of 53 mg/l based on calcium and magnesium data

b – Regional estimate using existing data and BLM-based calculation

Fish data

Data on the presence of salmonid species is more robust than water quality data. The Rogue River- Siskiyou National Forest has documented Chinook and Coho Salmon habitat in most of the North Fork Smith River in Oregon, as well as most of Baldface Creek, a major tributary. In a survey of a 1300 meter stretch of Baldface Creek, Coho salmon were found in 14 of 21 pools surveyed, cutthroat trout in 10 of 21 pools and steelhead in every pool (California Department of Fish and Wildlife 2013). More recent data also indicates the presence of coho salmon in the upper reaches of Baldface Creek and throughout much of the North Fork Smith River upstream of Chrome Creek (Figure 1). The Smith River Alliance notes that the low gradient and gravel of Baldface Creek provides ideal spawning and rearing habitat for coho salmon, providing critical habitat for this population of a species in decline (*pers. comm.*, Grant Werschull, Smith River Alliance, November 30, 2016). In areas where migration passage is blocked, resident trout have been found (Figure 2). Distribution maps prepared by ODFW differ slightly from those in Figure 1 and include slightly more coho habitat in Cedar and Baldface creeks, and less Chinook habitat in Chrome and Baldface creeks (*pers. comm.*, Todd Confer, ODFW, 10/21/2016).

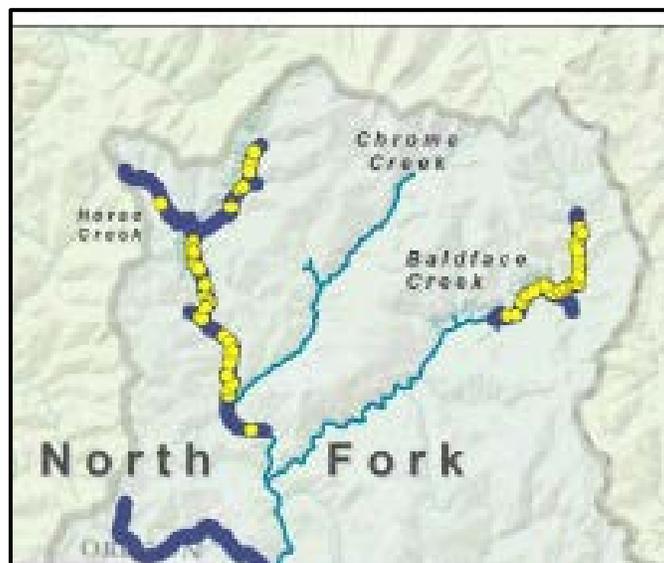


Figure 1. Distribution of pools with juvenile Coho salmon, North Fork Smith River, Oregon. Adapted from Walkley and Garwood, 2016.

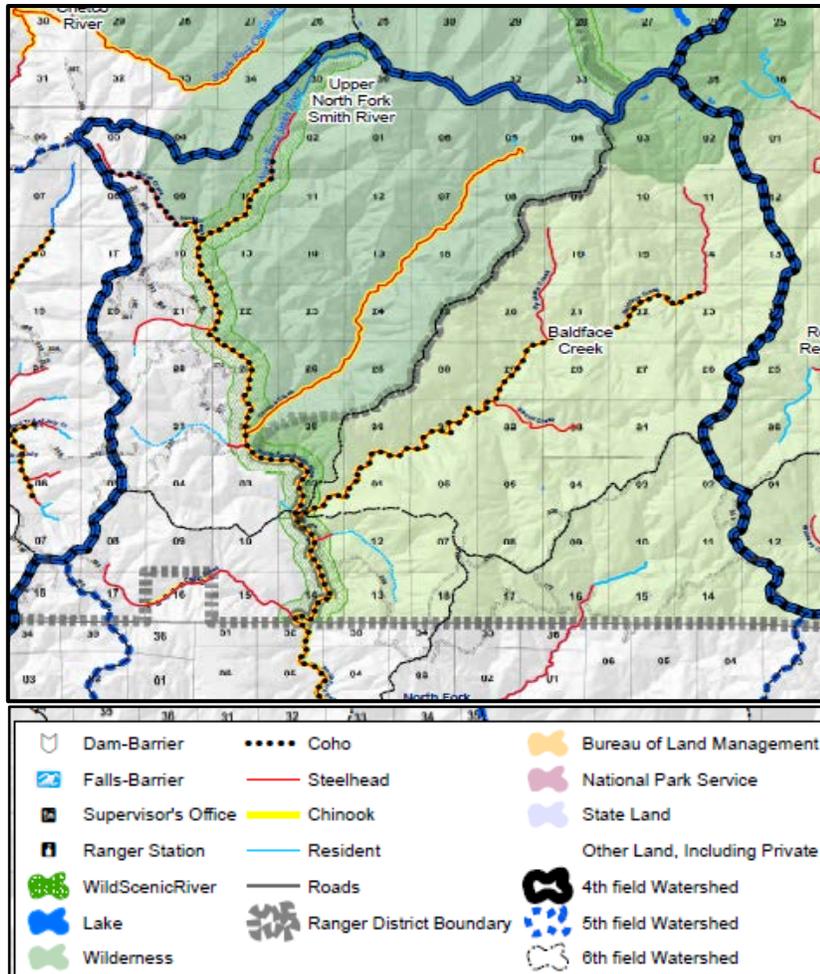


Figure 2. Fish Distribution in North Fork Smith River Watershed (source: Siskiyou-Rogue River National Forest 2016)

Technical Feasibility

The lack of development and access to the North Fork Smith River watershed, as well as the management goals of the U.S. Forest Service of no logging and limited grazing promote protection of the outstanding clarity and habitat values of the North Fork Smith River. The U.S. Forest Service has noted that nearly all watershed habitat indicators of the North Fork Smith are properly functioning, with the exception of “riparian reserves” (forest cover), which is somewhat naturally limited by soil type, but which also should improve over time through natural regrowth and restoration (Maiyo and Morneau 2015).

Policy Analysis

Need for the designation

Oregon's antidegradation policy authorizes the EQC to "designate high quality water bodies as Outstanding Resource Waters in order to protect the water quality parameters that affect the ecological integrity of critical habitat or special water quality values that are vital to the unique character of those waterbodies." The policy also specifically says that priority water bodies include, among others, National Wild and Scenic Rivers and water bodies in federally designated wilderness areas.¹⁷ The entire stretch of the North Fork Smith River in Oregon is designated as either wild or scenic and approximately one third of the watershed in Oregon lies within the Kalmiopsis wilderness. Moreover, the watershed serves as a critical habitat area for Endangered Species Act-listed coho salmon. As a result, DEQ concludes that the North Fork Smith River should be nominated for designation as Outstanding Resource Waters. Federal Clean Water Act regulations require that water quality standards provide for the attainment and maintenance of water quality standards of downstream waters.¹⁸ As a result, it also makes sense to include all tributaries to the North Fork Smith River in Oregon, as well as associated wetlands, in the ORW designation to ensure that water is not degraded in the North Fork Smith River. Moreover, these upstream waters also provide habitat for ESA-listed coho salmon and sensitive wetland species. The tributaries also provide for outstanding recreation.

The proposed ORW designation was initiated by recreational and environmental groups who wish to protect the North Fork Smith River watershed from future activities that could degrade the outstanding quality of the watershed. The immediate concern of the petitioners was the proposed exploratory drilling by the Red Flat Mining Corporation, which currently holds 139 mining claims for nickel, primarily in the sub-watershed for Baldface Creek, a tributary to the North Fork Smith River that provides habitat for ESA-listed coho salmon. The claims cover approximately 2800 acres total and are within the South Kalmiopsis Roadless Area.

Although there currently are limitations on surface and subsurface mining in the region (see subsection on surface and subsurface mining below), it is uncertain whether these limitations will be in place in the future. If the various proposed limitations to mining are not finalized, it is possible that the ORW designation would reduce degradation to water quality that could otherwise result from mining in the region.

Ramifications of an ORW designation

This section sets out ramifications of the ORW designations. Activities in most of the watershed already are limited due to current designations and protections described in Section 2 of this document. As a result, the ORW designation would not impact current uses of the watershed. At the same time, the designation could preclude future use of areas within the watershed for some activities, as described below.

¹⁷ OAR 340-0410-0004(a)

¹⁸ 40 CFR 131.10(b)

Surface and Subsurface Mining

The proposed ORW designation would prohibit any activities that would degrade water quality. Surface and subsurface mining has the potential to degrade water quality and, as a result, would likely be restricted or prohibited in the area of designation. A mining segregation is currently in place in the watershed until June 28, 2017. The Assistant Secretary of Interior has signed a 20-year withdrawal of surface mining as a use within the watershed. The U.S. Congress is discussing legislation that would place a permanent withdrawal on mining. Finally, the Oregon Water Resources Commission is considering a rule to prohibit appropriations of water except for instream uses and agriculture. Due to the withdrawal and potential future WRC rule adoption, it is possible that the designation would not have additional impact to surface mining. However, if Red Flat Nickel Corporation's mining rights are validated, the mineral withdrawal is reversed or expires, and appropriation isn't necessary, or the OWRC doesn't pass its rule, it's possible that the ORW designation would prohibit surface and subsurface mining that would otherwise result in degradation to water quality.

Suction Dredge Mining

The proposed ORW designation would prohibit DEQ from authorizing discharges under the National Pollutant Discharge Elimination System to the designated water bodies. As a result, DEQ would not assign coverage in the Smith River watershed under the NPDES 700PM permit for suction dredge mining. Currently, suction dredge mining is subject to a moratorium in Oregon until 2021, so the designation would not have an immediate impact. If the moratorium was lifted, the designation would impact those wishing to gain coverage under the permit in the watershed. In addition, suction dredge mining is not be permitted in the wilderness area portion of the watershed.

DEQ examined recent 700PM permit issuance in the region prior to the moratorium. Beginning in 2011, when DEQ started keeping records of primary mining locations, DEQ has issued permit coverage five times that indicated the primary location of mining was in the North Fork Smith River watershed. This occurred once 2011, 2012 and 2015 and twice in 2014. However, members of the advisory committee for this process, including a representative of the U.S. Forest Service, stated that they were unaware of any suction dredge mining in the watershed. The proposed ORW designation would likely have little ramification on suction dredge mining, as little or none occurs in the area, perhaps because road access is very limited.

Pan Mining

The proposed ORW designation would prohibit activities that would degrade existing water quality or ecological values. DEQ has found no evidence that pan mining degrades water quality or ecological values. As a result, DEQ does not expect that pan mining would be prohibited due to the proposed ORW designation.

Grazing

The Forest Service examined grazing allotments in the area and has found that there are no active permitted grazing allotments. In addition, while there may be some vacant allotments in the area,

the Forest Service would require that the applicant conduct documentation under the National Environmental Policy Act to accept the application. The Forest Service does not currently have capacity to complete National Environmental Policy Act documentation itself, so it would be up to the applicant to pay for such documentation. Moreover, because no one has shown any interest in grazing for over 15 years, the Forest Service expects to close any vacant allotments during the next Forest Plan revisions (*pers. comm.*, Mark Hocken, Oct. 20, 2016). Given this information, DEQ concludes that the proposed ORW designation will not impact grazing in the watershed; no grazing currently occurs and the Forest Service does not expect grazing will occur in the future. Moreover, even if grazing could occur, any best management practices required by the Forest Service to protect water quality would likely be required to protect Coho habitat and water quality notwithstanding the ORW designation.

Forest Harvest – Lands managed by U.S. Forest Service

The vast majority of lands in the North Fork Smith River watershed are managed by the U.S. Forest Service. Forest harvest is already limited as a result of the various designations in place in the area, including the Kalmiopsis Wilderness designation, Roadless Area rules, Wild and Scenic River designation, and management under the 1994 Northwest Forest Plan. These limitations are described in Section 2 of this paper. Therefore, the proposed ORW designation is not expected to impact forest harvest activity.

Forest Harvest – Oregon Common School Fund Lands

The watershed includes 555 acres that is Oregon Common School Fund land (Figure 3). The purpose of the Oregon Common School Fund land is to obtain “the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.” Money from the Common School Fund is distributed to all Oregon public school districts. Forestlands in the Oregon Common School Fund, such as the parcel within the North Fork Smith River, are designated to be managed for timber harvest.¹⁹ However, the Oregon Department of State Lands has stated that it has no plans to conduct harvest in the parcel and DSL’s 2006 Asset Management Plan listed the parcel for evaluation for potential disposal (DSL, 2006). The plan estimates that total parcel volume for harvest is 2,280 thousand board feet (ODL 2006) and estimated its value as \$1.4 to \$1.7 million.

As proposed to the EQC, the ORW designation would include portions of Cedar Creek, and a few small tributaries to Cedar Creek, that run through this parcel (Figure 4). It is uncertain if logging the parcel is economically feasible given limitations on road building surrounding the parcel, including roadless areas in Oregon to the east, north and west of the area and management plans in the Recreation Area to the south in Oregon. If it were feasible to log this parcel, the proposed rule would preclude the degradation of water quality and, therefore, would likely require the use of protective forest practices and reduce the volume of wood that could be harvested. As a result, if it were feasible and economically viable to log this parcel in the future, the ORW designation could result in reduced future revenue for the Oregon Common School Fund because of lower harvest value or lower land valuation.

¹⁹ Oregon Department of State Lands website. <https://www.oregon.gov/dsl/DO/Pages/aboutcsf.aspx>. Accessed October 26, 2016.

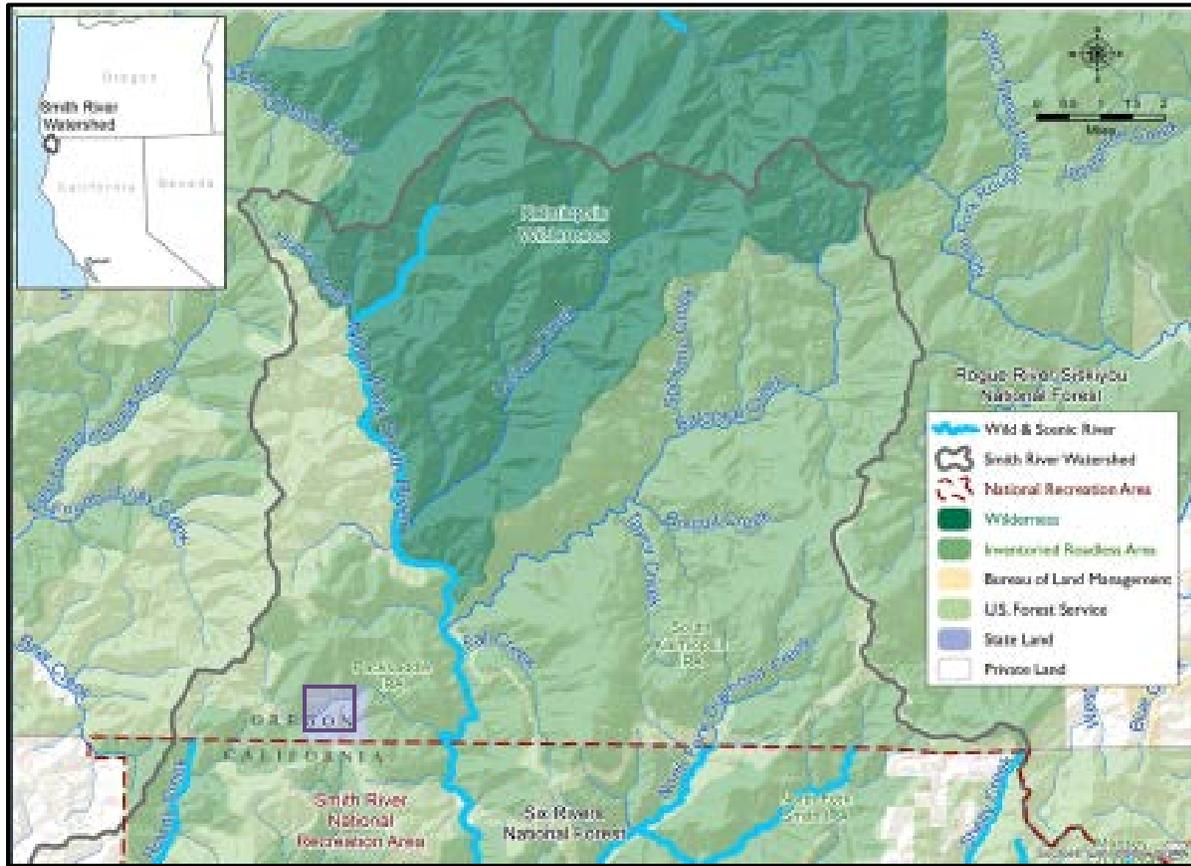


Figure 3. North Fork Smith River Watershed, Oregon with Oregon Common School Lands highlighted.

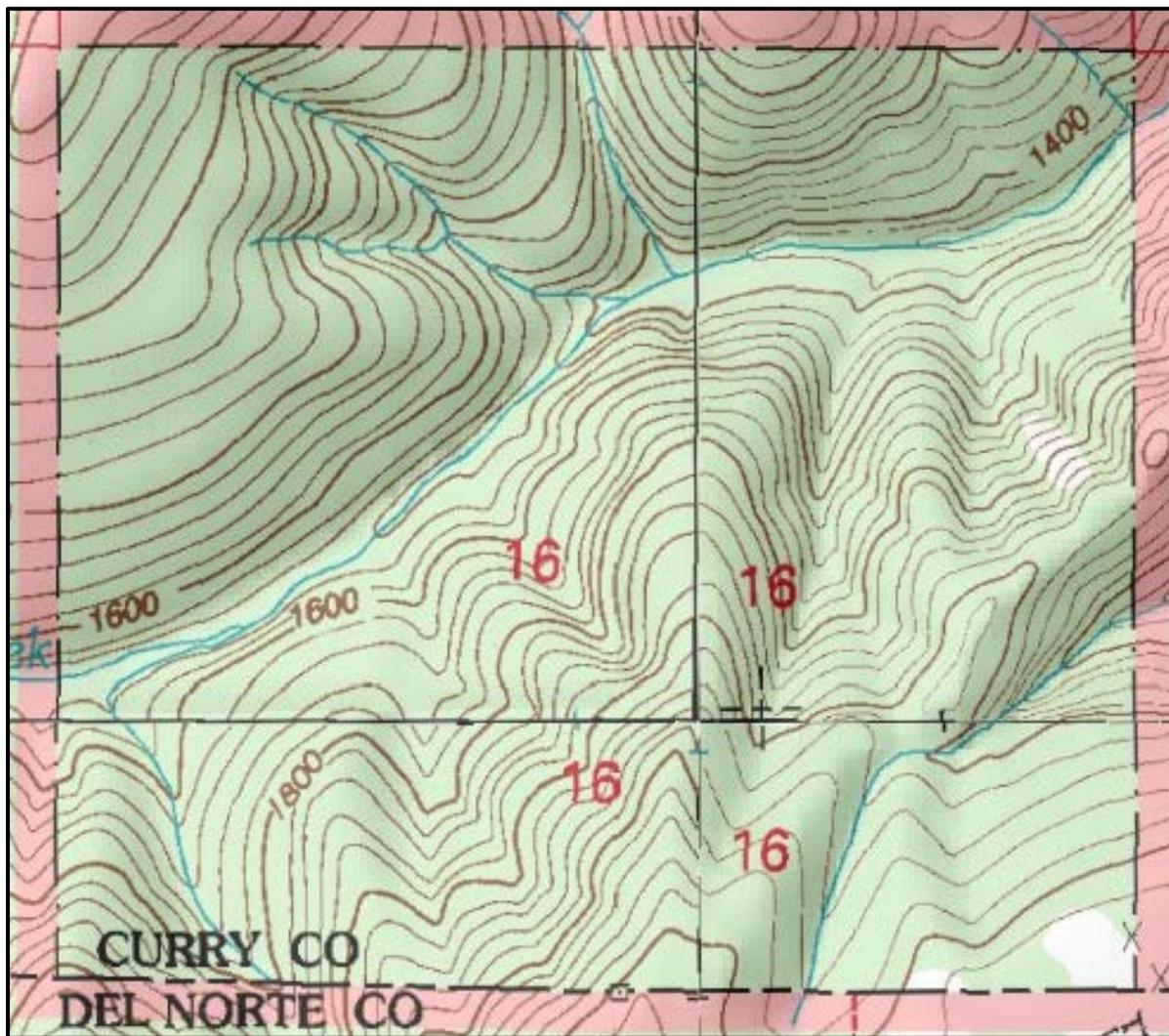


Figure 4. Close-up of Oregon Common School Lands. Cedar Creek runs from west to east through the parcel.

Current Harvest Plans

Managerial Feasibility

The U.S. Forest Service is the sole landowner of the entire North Fork Smith River watershed in Oregon, with the exception of 555 acres of Oregon Common School Trust Lands managed by the Oregon Department of State Lands. ORW designation is consistent with U.S. Forest Service management plans in the North Fork Smith River, which calls for no forest harvest and limited grazing. Much of the watershed is in the Kalmiopsis Wilderness and all of the river is designated as a Wild and Scenic River, which already limits activities within the watershed. DEQ has a Memorandum of Agreement with the U.S. Forest Service to meet federal and state water quality standards in federal forest lands, which would include the proposed standards to protect the ORWs (USDA and DEQ 2013). This memorandum would have to be examined to determine if anything needs to be modified in light of an ORW designation; however, this effort would likely be minimal, particularly given the lack of current activities in the watershed that result in degradation of water quality.

Conclusion

Based on the analysis, DEQ concludes that the North Fork Smith River and its tributaries and associated wetlands constitute an outstanding resource due to its pristine nature, outstanding clarity, critical habitat for endangered coho salmon and other anadromous and resident salmonid species, and importance to recreationalists in the state and in the larger region. In addition, DEQ concludes that the proposed rule provides the necessary protections to maintain and protect the existing water quality and ecological values of the ORWs and that there would be very limited if any fiscal or economic impact caused by the designation.

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