



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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WATER  
DIVISION

March 12, 2021

Mr. Justin Green  
Water Quality Administrator  
Oregon Department of Environmental Quality  
700 NE Multnomah Street, Suite 600  
Portland, Oregon 97232  
Justin.B.Green@state.or.us

Re: The EPA's Clean Water Act Action on Oregon's New and Revised Water Quality Standards Establishing Crater Lake and Waldo Lake and its Associated Wetlands as Outstanding Resource Waters Under the State's Antidegradation Policy, and Other Water Quality Standards Provisions

Dear Mr. Green:

The U.S. Environmental Protection Agency has completed the Clean Water Act (CWA) review of the new and revised water quality standards (WQS) at Chapter 340-041 of the Oregon Administrative Rules, submitted to EPA by the Oregon Department of Environmental Quality (ODEQ) by letter dated February 9, 2021. Under section 303(c) of the CWA, 33 U.S.C. § 1313(c), states must submit new and revised WQS to EPA for review and action, and EPA must ensure that those WQS are consistent with the CWA and its implementing regulations. EPA's action is outlined below and further described in the enclosed Technical Support Document. Notably, the new and revised WQS establish Outstanding Resource Water (ORW) protections for Crater Lake and Waldo Lake and its associated wetlands and identify conditions to protect the exceptional water quality and ecological and recreational characteristics of these waters.

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

**Summary of EPA's Action**

- I. Pursuant to EPA's authority under CWA section 303(c) and the implementing regulations at 40 CFR Part 131, EPA is approving the new and revised WQS at OAR 340-041:
  - OAR 340-041-0004(8)(d), including the non-substantive revisions to OAR 340-041-0004(8)(d) and OAR 340-041-0004(8)(d)(A), and new WQS at OAR 340-041-0004(8)(d)(B) and OAR 340-041-0004(8)(d)(C)
  - OAR 340-041-0185(6)
  - OAR 340-041-0345(7)

II. EPA is not taking action on the following new and revised provisions in OAR 340-041, because EPA has determined that they are not new or revised WQS that EPA has the authority to review and approve or disapprove pursuant to its CWA section 303(c) authority, 33 U.S.C. § 1313(c)(3).

- OAR 340-041-0185(5)(b)(B)(i)-(iii)

EPA commends Oregon for establishing ORW protections to Waldo Lake and its associated wetlands, and Crater Lake. EPA appreciates the efforts your staff have dedicated to providing new protections for Oregon waters and looks forward to continuing close collaborations with ODEQ. If you have any questions regarding this letter, please contact me at (206) 553-1855 or Rochelle Labiosa, the EPA staff lead, at (206) 553-1172 or Labiosa.rochelle@epa.gov.

Sincerely,

/s/ 3/12/2021

Daniel D. Opalski  
Director

Enclosure: Technical Support Document

cc (e-copy): Ms. Connie Dou, Water Quality Standards & Assessments Manager, ODEQ  
Ms. Debra Sturdevant, Water Quality Standards Team Lead, ODEQ

# Technical Support Document

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The EPA's Clean Water Act Action on Oregon's  
New and Revised Water Quality Standards of Chapter 340-  
041 of the Oregon Administrative Rules:  
The Establishment of Outstanding Resource Water Protections  
to Crater Lake, Klamath Basin, and Waldo Lake and its  
Associated Wetlands, Willamette Basin, and other Water  
Quality Standards Provisions

March 12, 2021

## I. Clean Water Act Requirements for Water Quality Standards

Under section 303(c) of the Clean Water Act (CWA) and federal implementing regulations at 40 CFR § 131.4, states (and authorized tribes) have the primary responsibility for reviewing, establishing, and revising water quality standards (WQS), which consist primarily of the designated uses of a waterbody or waterbody segment, the water quality criteria that protect those designated uses, and an antidegradation policy. This statutory and regulatory framework allows states to work with local communities to adopt appropriate designated uses (as required in 40 CFR § 131.10(a)) and to adopt criteria to protect those designated uses (as required in 40 CFR §131.11(a)).

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

States are required by 40 CFR § 131.11(a) to adopt water quality criteria that protect their designated uses. In establishing such criteria, states should establish numeric values based on one of the following:

- 1) CWA 304(a) guidance;
- 2) CWA 304(a) guidance modified to reflect site-specific conditions; or,
- 3) Other scientifically defensible methods (40 CFR § 131.11 (b)(1)).

In addition, states should establish narrative criteria where numeric criteria cannot be determined or to supplement numeric criteria (see 40 CFR § 131.11 (b)(2)).

States are required to develop and adopt an antidegradation policy and implementation methods consistent with the 40 CFR §131.12. The antidegradation policy must include Outstanding National Resource Water protections for high quality waters and waters of exceptional recreational or ecological significance consistent with 40 CFR §131.12(a)(3):

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

Section 303(c) of the CWA requires states to submit new or revised WQS to EPA for review and action. EPA is required to review these changes to ensure revisions to WQS are consistent with the CWA and its implementing regulations.

EPA considers four questions (described below) when evaluating whether a particular provision is a new or revised WQS. If all four questions are answered "yes" then the provision would likely constitute a new or revised WQS that EPA has the authority and duty to approve or disapprove under CWA § 303(c)(3).<sup>1</sup>

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<sup>1</sup> What is a New or Revised Water Quality Standard under 303(c)(3)? Frequently Asked Questions, EPA No. 820F12017 (Oct. 2012). Available at <https://www.epa.gov/sites/production/files/2014-11/documents/cwa303faq.pdf>

1. Is it a legally binding provision adopted or established pursuant to state or tribal law?
2. Does the provision address designated uses, water quality criteria (narrative or numeric) to protect designated uses, and/or antidegradation requirements for waters of the United States?
3. Does the provision express or establish the desired condition (e.g., uses, criteria) or instream level of protection (e.g., antidegradation requirements) for waters of the United States immediately or mandate how it will be expressed or established for such waters in the future?
4. Does the provision establish a new WQS or revise an existing WQS?

Furthermore, the federal WQS regulations at 40 CFR § 131.21 state, in part, that when EPA disapproves a state's WQS, EPA shall specify the changes that are needed to assure compliance with the requirements of the CWA and federal WQS regulations.

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

## **II. Antidegradation Policies: Outstanding National Resource Waters Protections**

The current EPA-approved antidegradation policy in Oregon's WQS includes an Outstanding Resource Water (ORW) provision, OAR 340-041-0004(8), which is the State's equivalent of the federal antidegradation policy's Outstanding National Resource Water (ONRW) provision at 40 CFR 131.12(a)(3). The federal ONRW provision affords the highest level of protection in the antidegradation policy and provides that the water quality of ONRWs is to be maintained and protected. EPA has interpreted this prohibition on water quality degradation in ONRWs to mean no new or increased discharges to ONRWs and no new or increased discharges upstream of, or to tributaries to ONRWs, that would result in lower water quality in the ONRWs (Water Quality Standards Handbook, EPA-823-B-12-002, section 4.7; and 63 FR 36742, 36785-87). The only exception to this prohibition on degradation in ONRWs is for temporary and short-term changes in the water quality that are consistent with protecting existing uses and meeting water quality criteria that are applicable to the waters (Water Quality Standards Handbook, EPA-823-B-12-002, section 4.7; and 48 FR 51400, 51403).<sup>2</sup>

As explained in the supporting documentation submitted by the Oregon Department of Environmental Quality (ODEQ), the pristine waters of Waldo Lake and its wetlands, and Crater Lake, offer exceptional clarity and unique recreational and ecological character and value. Oregon's adoption of ORW protection adds to several existing protections in the watershed of Waldo Lake, such as those afforded by the adjacent Waldo Lake Wilderness and surrounding Willamette National Forest (Environmental Quality Commission (EQC) Item J: Waldo and Crater Lakes Outstanding Resource Waters Rulemaking January 21, 2021; and the Petition for Rule Amendments for Waldo Lake submitted to ODEQ by the Northwest Environmental Defense Center on April 22, 2019). Similarly, the State's adoption of ORW protections for Crater Lake will add to existing protections provided by its designation within Crater

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<sup>2</sup> U.S. Environmental Protection Agency (EPA). 2012. Water Quality Standards Handbook: Chapter 4: Antidegradation. EPA-823-B-12-002. EPA Office of Water, Office of Science and Technology, Washington, DC. Accessed January 2021. Available at <https://www.epa.gov/wqs-tech/water-quality-standards-handbook>

Lake National Park (ODEQ Support Documents for Waldo and Crater Lakes ORW Designations, July 1, 2020; Item J: Waldo and Crater Lakes Outstanding Resource Waters Rulemaking).

Waldo Lake is situated within Willamette National Forest, adjacent to the Waldo Lake Wilderness, while Crater Lake is located within a volcanic caldera in Crater Lake National Park, making each lake and respective natural area popular destinations for recreational hiking, boating, snow-shoeing, and camping within Oregon. Additionally, each lake exhibits low nutrient and algal productivity characteristics reflecting ultra-oligotrophic (Waldo Lake) and oligotrophic (Crater Lake) lake classifications, which provide exemplary water quality conditions making these lakes rare and ecologically valuable (ODEQ Support Documents for Waldo and Crater Lakes ORW Designations, July 1, 2020; EQC Item J, January 21, 2021).

### **III. The State of Oregon's WQS Submittal**

By letter dated February 9, 2021, ODEQ submitted revisions to various sections of the Oregon Administrative Rules chapter 340, division 041, to EPA for review and action under section 303(c) of the CWA. The revisions were adopted on January 21, 2021, were certified by the Oregon Attorney General on February 9, 2021 as duly adopted pursuant to state law, and the rules became effective under Oregon State law on February 9, 2021. Prior to adopting the revisions, ODEQ provided opportunity for public comment on the proposed rule, including the hosting of a webinar-based public hearing on August 18, 2020. 730 comments were received by Oregon, with 729 supportive of rule adoption.

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

- Cover letter from Justin Green, Oregon Department of Environmental Quality, Water Quality Administrator to Dan Opalski, EPA Region 10 Water Division Director, dated February 9, 2021.
- Letter from the Attorney General's Office certifying the standards were adopted pursuant to State law, February 9, 2021.
- Track-change version of Water Quality Standards for Surface Waters of the State of Oregon, Attachment A1: Proposed rules showing edits Jan. 21-22, 2021, EQC meeting.<sup>3</sup>
- Item J - staff report submitted to the Environmental Quality Commission, January 21-22, 2021.
- Copy of the Secretary of State Certificate of Filing, dated February 9, 2021, including the amended Water Quality Standards for Surface Waters of the State of Oregon, OAR 340-041-0004, 340-041-0185, and 340-041-0345, adopted by the EQC on January 21, 2021 and effective under State Law on February 9, 2021.
- Website links to the ODEQ's Crater Lake Outstanding Resource Waters Designation Support Document and Waldo Lake Outstanding Resource Waters Designation Support Document, dated July 1, 2020.

The WQS revisions ODEQ submitted to EPA for review and CWA action pursuant to section 303(c) include updates to the State's WQS ORW provisions at OAR 340-041-0004(8), the basin specific provisions for the Willamette Basin at OAR 340-041-0345, and the basin-specific provisions for the Klamath Basin at 340-041-0185.

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<sup>3</sup> Note that the provision numbering for 340-041-0185(6) and 340-041-0345(7) differs between the official SOS notice submitted to EPA on February 9, 2021 and the track-change version of those provisions that ODEQ submitted to EPA.

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

#### **IV. EPA's Action on Oregon's New and Revised Water Quality Standards**

The new and revised WQS submitted to EPA for review are identified in the Secretary of State's Certification (February 9, 2021) enclosure to DEQ's submittal letter, and are comprised of:

- New and revised provisions at OAR 340-041-0004(8)(d):
  1. The strikeout of text referring to the North Fork Smith River and its tributaries and wetlands at OAR 340-041-0004(8)(d) and the addition of subpart A, comprising the non-substantive change in re-locating/re-numbering the provision establishing ORW protection to the North Fork Smith River and its tributaries and associated wetlands, which was removed from the body of subpart d and placed into the new subpart A without substantive revision;
  2. The addition of a new provision, subpart B, comprising the establishment of ORW protection to Waldo Lake and its associated wetlands, Willamette Basin; and
  3. The addition of a new provision, subpart C, comprising the establishment of ORW protection to Crater Lake, Klamath Basin.
- New provisions at 340-041-0345 comprising:
  1. The addition of 340-041-0345(7) identifying Waldo Lake and its associated wetlands as ORWs and establishing that the exceptional water quality must be maintained and protected, except as altered by natural causes; and
  2. The addition of conditions 340-041-0345(7)(a)-(c) to ensure that the water quality is maintained and protected.
- New provisions at 340-041-0185 comprising:
  1. The addition of 340-041-0185(6) identifying Crater Lake as an ORW and establishing that the exceptional water quality must be maintained and protected, except as altered by natural causes or as authorized by conditions specified in the subparts;
  2. The addition of conditions 340-041-0185(6)(a)-(b) to ensure that the water quality is maintained and protected; and
  3. A statement at 340-041-0185(6)(c) acknowledging the mandate of Crater Lake National Park to provide public access and enjoyment.

Pursuant to section 303(c) of the CWA and 40 CFR Part 131, EPA is approving the revisions to OAR 340-041-0004(8)(d), the addition of OAR 340-041-0345(7), establishing ORW protections for Waldo Lake and its associated wetlands, and 340-041-0185(6), establishing ORW protections for Crater Lake, Oregon.

#### ***Rationale for EPA's Action***

In the below rationale, the excerpted text from Oregon's adopted rule provisions comprise red strikeout for text that the State has removed from its rules at OAR 340-041, and the red text (without strikeout) are the new or revised text included within OAR 340-041. Black text is unchanged.

OAR 340-041-0004(8)(d) revisions:

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

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

(B) Waldo Lake and its associated wetlands, Willamette Basin. See OAR 340-041-0345(7)

(C) Crater Lake, Klamath Basin. See OAR 340-041-0185(6)

The strikeout of text from OAR 340-041-0004(8)(d) and the re-location of that text to OAR 340-041-0004(8)(d)(A) is a non-substantive editorial change to the citation for the already effective provision comprising the establishment of ORW protections to the North Fork Smith River and its tributaries and associated wetlands. No substantive changes have been made to the provision.

Pursuant to section 303(c) of the CWA and 40 CFR Part 131, EPA approves the non-substantive editorial changes to the provision at OAR 340-041-0004(8)(d)(A). EPA's approval of these non-substantive editorial changes is to ensure public transparency as to which provisions are effective for purposes of the CWA. The scope of EPA's action in approving such changes extends only as far as the actual changes themselves. The non--substantive editorial changes in these provisions do not alter the underlying provisions that EPA previously approved and EPA is not acting on the previously approved provisions.

Regarding OAR 340-041-0004(8)(d)(B) and (C) which apply ORW levels of protection to Waldo Lake and its associated wetlands, and Crater Lake, respectively, as explained above in Section II, Oregon's ORW provision is the State's equivalent of the federal antidegradation policy's ONRW provision at 40 CFR 131.12(a)(3). Therefore, EPA approves OAR 340-041-0004(8)(d)(B) and (C) as being consistent with 40 CFR 131.12(a)(3), which provides for the maintenance and protection of high-quality waters that constitute an outstanding national resource.



340-041-0345(7) excerpted new text:

(7) Outstanding Resource Waters of Oregon (ORWs): Waldo Lake and associated wetlands (hereafter, "Waldo Lake"). The current high water quality and exceptional ecological and recreation values of Waldo Lake shall be maintained and protected, except as altered by natural processes or as authorized under (7)(a)-(c), below.

(a) No new NPDES discharge or increase of an existing NPDES discharge to Waldo Lake shall be allowed, except a construction stormwater permit may be authorized for projects that will not have more than a short-term water quality impact.

(b) No new NPDES discharge or increase of an existing NPDES discharge to waters upstream of or tributary to Waldo Lake shall be allowed if such discharge would degrade the water quality of Waldo Lake, except a construction stormwater permit may be authorized for projects that will not have more than a short-term water quality impact.

(c) Any other new discharge to Waldo Lake is prohibited if such discharge would degrade the water quality or ecological or recreation values of Waldo Lake, except in the following circumstances:

(A) As needed to respond to a public health or safety emergency, including but not limited to wildfire response. The water quality impacts from such responses shall be short term and will be mitigated to the extent practicable.

(B) As needed in connection with ecological restoration or water quality improvement activities where short term water quality impacts are necessary to obtain long-term restoration or water quality improvements.

Similar to OAR 340-041-0004(8)(d)(B), EPA is approving OAR 340-041-0345(7) which specifies that Waldo Lake and its associated wetlands, Willamette Basin, are ORWs. EPA is approving the text at OAR 340-041-0345(7) specifying that the current high water quality and exceptional ecological and recreation values of Waldo Lake shall be maintained and protected, as it is consistent with the requirement at 40 CFR 131.12(a)(3) that the high water quality of ONRWs be maintained and protected.

The exception at OAR 340-041-0345(7) for natural processes is consistent with 40 CFR 131.12(a)(3) because water quality that is natural is consistent with the CWA's objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (CWA section 101(a)). "Maintained and protected" at 40 CFR 131.12(a)(3) is intended to protect water quality from degradation due to anthropogenic activities, rather than manage changes that may occur due to natural causes. EPA is approving the additional provisions at OAR 340-041-0345(7)(a)-(c) for the reasons described below.

OAR 340-041-0345(7)(a) specifies that no new or increased National Pollutant Discharge Elimination System (NPDES) discharges to Waldo Lake shall be allowed, with the exception that construction stormwater permits may be allowed so long as impacts to water quality are short-term in nature. Similarly OAR 340-041-0345(7)(b) specifies that no new or increased NPDES discharges upstream of or tributary to Waldo Lake shall be allowed, with the exception that construction stormwater permits may be allowed so long as impacts to water quality are short-term in nature. Lastly, OAR 340-041-0345(7)(c) prohibits any other new discharge unless, per OAR 340-041-0345(7)(c)(A), it is needed to respond to a public health or safety emergency and limited to short-term<sup>4</sup> water quality impacts, or, per OAR 340-041-0345(7)(c)(B), it is limited to short-term water quality impacts needed to obtain long-term restoration or water quality improvements.

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<sup>4</sup> EPA interprets short-term to mean weeks or months and not years. Oregon WQS define the term "short term disturbance" to mean 6 months or less (OAR 340-041-0002(58)). Oregon's Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and Section 401 Water Quality Certifications (2001) indicates that Oregon's exception is limited in scope and time (e.g., "The Director or designee may grant exceptions for short-term lowering of water quality during emergencies or to protect human health and welfare. Activities that lower water quality for one month or less will generally be considered to have temporary effects." (emphasis added)).

The provisions at OAR 340-041-0345(7)(a)-(c) specify Oregon's method of ensuring that the water quality of Waldo Lake is "maintained and protected," by prohibiting discharges and other activities to Waldo Lake, or upstream to or tributary to Waldo Lake that would degrade the existing water quality and exceptional ecological and recreation values of these waters. As explained above in Section II, EPA has interpreted the prohibition on degradation at 40 CFR 131.12(a)(3) to mean no new or increased discharges to ONRWs and no new or increased discharge to tributaries to ONRWs that would result in lower water quality in the ONRWs (Water Quality Standards Handbook, EPA-823-B-12-002, section 4.7; and 63 FR 36742; 36785-87). EPA recognizes an exception to this prohibition on degradation in ONRWs for temporary and short-term changes in water quality, as is also explained above in Section II.

For the reasons discussed above, the EPA approves OAR 340-041-0345(7)(a)-(c) as consistent with 40 CFR 131.12(a)(3). Similarly, OAR 340-041-0345(7)(c) including subparts (A) and (B) only allow short-term degradation to water quality, for emergency response or for ecological restoration and water quality improvement purposes. These provisions are consistent with Oregon's EPA-approved ORW policy at OAR 340-041-0004(8).

340-041-0185(6) excerpted new text:

(6) Outstanding Resource Waters of Oregon (ORWs): Crater Lake. The current high water quality and exceptional ecological and recreation values of Crater Lake shall be maintained and protected, except as altered by natural processes or as authorized under (6)(a)-(b), below.

(a) No new NPDES discharge or increase of an existing NPDES discharge to Crater Lake shall be allowed, except a construction stormwater permit may be authorized for projects that will not have more than a short-term water quality impact.

(b) Any other new discharge to Crater Lake is prohibited if such discharge would degrade the water quality or ecological or recreation values of Crater Lake, except in the following circumstances:

(A) As needed to respond to a public health or safety emergency, including but not limited to wildfire response. The water quality impacts of such responses shall be short term and will be mitigated or rehabilitated to the extent practicable.

(B) As needed in connection with ecological restoration or water quality improvement activities where short term water quality impacts are necessary to obtain long-term restoration or water quality improvements.

(c) The Environmental Quality Commission acknowledges the mandate of Crater Lake National Park to also manage the park for the purpose of providing public access and enjoyment, as directed by the National Park Service Organic Act

Similar to OAR 340-041-0004(8)(d)(C), OAR 340-041-0185(6) specifies that Crater Lake, Klamath Basin, is an ORW of Oregon. EPA is approving the text at OAR 340-041-0185(6) specifying that the current high water quality and exceptional ecological and recreation values of Crater Lake shall be maintained and protected, as it is consistent with the requirement at 40 CFR 131.12(a)(3) that the high water quality of ONRWs be maintained and protected.

The exception at OAR 340-041-0185(6) for natural processes is consistent with 40 CFR 131.12(a)(3) because water quality that is natural is consistent with the CWA's objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (CWA section 101(a)). "Maintained and protected" at 40 CFR 131.12(a)(3) is intended to protect water quality from degradation due to anthropogenic activities, rather than manage changes that may occur due to natural causes. EPA is approving the additional exceptions at OAR 340-041-0185(6)(a)-(b) for the reasons described below.

OAR 340-041-0185(6)(a) specifies that no new or increased NPDES discharges to Crater Lake shall be allowed, with the exception that construction stormwater permits may be allowed so long as impacts to

water quality are short-term in nature. Similarly, OAR 340-041-0185(6)(b) prohibits any new discharge unless, per OAR 340-041-0185(6)(b)(A), as needed to respond to a public health emergency and limited to short-term water quality impacts, and, OAR 340-041-0185(6)(b)(B), limited to short-term water quality impacts needed to obtain long-term restoration or water quality improvements. Lastly, OAR 340-041-0185(6)(c) is an acknowledgement of the National Park Service’s statutory mandate to manage Crater Lake National Park for the purpose of providing public access and enjoyment.

The provisions at OAR 340-041-0185(6)(a)-(b) specify Oregon's method of ensuring that the water quality of Crater Lake is "maintained and protected," by prohibiting discharges and other activities to Crater Lake that would degrade the existing water quality and exceptional ecological and recreation values of these waters. As explained above in Section II, EPA has interpreted the prohibition on degradation at 40 CFR 131.12(a)(3) to mean no new or increased discharges to ONRWs and no new or increased discharge to tributaries to ONRWs that would result in lower water quality in the ONRWs (Water Quality Standards Handbook, EPA-823-B-12-002, section 4.7; and 63 FR 36742; 36785-87). EPA recognizes an exception to this prohibition on degradation in ONRWs for temporary and short-term changes in water quality, as is also explained above in the Section II.

For the reasons discussed above, EPA approves OAR 340-041-0185(6)(a) which limits water quality impacts in Crater Lake to short-term degradation from construction stormwater permits as being consistent with 40 CFR 131.12(a)(3).<sup>5</sup> Similarly, OAR 340-041-0185(6)(b) including subparts (A) and (B), allow for short-term degradation to water quality in Crater Lake for emergency response or for ecological restoration and water quality improvement purposes. These provisions are consistent with Oregon’s EPA-approved ORW policy at OAR 340-041-0004(8), and for the aforementioned reason that the provisions limit water quality impacts to short-term<sup>6</sup> degradation, EPA approves these provisions as being consistent with 40 CFR 131.12(a)(3).

Regarding OAR 340-041-0185(c), 40 CFR 131.12(a)(3) specifically identifies waters such as those located in or adjacent to state parks or national parks, like Crater Lake, as potential ONRWs (“Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected”). EPA understands this provision to be bound by the requirement to maintain and protect the water quality of ORWs/ONRWs, except for temporary and short-term degradation. Such an understanding is supported by ODEQ’s Crater Lake Outstanding Resource Waters Designation Support Document, dated July 1, 2020, and EQC Item J, January 21-22, 2021, which state that the proposed rule language for Crater Lake is intended to recognize that current levels of recreation and tourism activity are part of the baseline and co-exist with the existing high water

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<sup>5</sup> Unlike the Waldo Lake provisions, there is no provision specifically prohibiting new or increased discharges to tributaries or upstream areas included the Crater Lake ORW Klamath Basin-specific provisions. Per the rule package submitted to the EQC, Item J (January 21, 2021) and other materials included in the submittal, the EPA understands this to be because there are no tributaries or upstream areas that contribute to Crater Lake. “All water entering the lake is from direct precipitation and snowmelt, and is eventually lost through evaporation or subsurface seepage,” (EQC Item J, Subsection B1: Crater Lake support document, Page 8 of 18).

<sup>6</sup> EPA interprets short-term to mean weeks or months and not years. Oregon WQS define the term “short term disturbance” to mean 6 months or less (OAR 340-041-0002(58)). Oregon’s Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and Section 401 Water Quality Certifications (2001) indicates that Oregon’s exception is limited in scope and time (e.g., “the Director or designee may grant exceptions for short-term lowering of water quality during emergencies or to protect human health and welfare. Activities that lower water quality for one month or less will generally be considered to have temporary effects” emphasis added).

quality. Therefore, the policy goal is to prevent degradation of current water quality due to additional activity or development and is consistent with the National Park Service mandate.

Further, as described in Oregon’s rule package submitted to the EQC (Item J, January 21, 2021), ODEQ acknowledges that the ORW designation for Crater Lake will reinforce the importance of management planning and monitoring by the Park Service to ensure the lake is protected over time. This acknowledgement is additionally consistent with the National Park Service Organic Act mandate pursuant to which the National Park Service has a mission to both conserve park resources and also to provide for their use and enjoyment in such a manner and by such means as will leave them unimpaired for future generations. Therefore, EPA is approving 340-041-0185(6)(c), which acknowledges the mandate of National Park Service to provide for public access and enjoyment of Crater Lake National Park, as consistent with 40 CFR 131.12(a)(3).

## **V. Provisions in OAR 340-041 that EPA is Not Taking Action on**

Oregon included in its submittal non-substantive revisions to the provisions at OAR 340-041-0185(5)(b)(B)(i)-(iii) (see excerpted revised text, below) comprising the capitalization of the first word (from will to Will) in the provision:

- | (i) ~~W~~ill be performed in accordance with interim milestones and a time schedule specified in the certification;
- | (ii) ~~W~~ill be performed in a manner that, to the maximum practicable extent, minimizes adverse impacts to water quality, threatened and endangered species, and beneficial uses of the Klamath River (including the use of best practices and interim and post-removal protection, mitigation, and monitoring measures); and
- | (iii) ~~W~~ill not cause an exceedance of a water quality standard set forth in this Division by the end of the maximum period for meeting standards specified in the certification.

EPA is not taking action on OAR 340-041-0185(5)(b)(B)(i)-(iii) since these provisions are not WQS. The provisions explain the conditions that must be included in any future 401 certification for the removal of the JC Boyle dam, including: (i) interim milestones and a time schedule for dam removal; (ii) measures to minimize adverse impacts to water quality, threatened and endangered species, and designated uses; and (iii) compliance with WQS at the end of the certified dam removal schedule. The first provision merely establishes a schedule with interim milestones for completion of dam removal and does not pertain to designated uses or criteria or establish a desired condition or instream level of protection. The second and third provisions are not WQS as they merely express the need to comply with existing WQS and to conduct dam removal in a manner that minimizes impacts to water quality and uses. The provisions do not establish a separate or distinct desired condition that is different from the already applicable WQS, but rather focus on the need for measures to protect such uses and water quality criteria during and after dam removal for waters of the United States (see Section I).