Exceptional State Water

U.S. law allows for the extra protection of waters that have exceptional qualities. This protection can be applied to Virginia waters under the Exceptional State Water or Tier III section of Virginia's water quality regulation. A *regulation* is a rule established by state agencies and citizen boards.

Virginia citizens may nominate a segment of a river, stream, lake, wetland or estuary (*waters*) for this protection. After the nomination goes through a process that includes public comment opportunities, the citizen board in charge of adopting water regulations (*the State Water Control Board*) may give the nominated water an Exceptional State Water designation.

The Exceptional State Water designation maintains high water quality in select waters. It prohibits permanent new or increased discharges from pipes or other point sources into the protected water. *Point sources* are fixed locations from which pollutants are emptied into a water. A point source can be any single source of pollution, such as a pipe from a sewage treatment plant or a ditch.

The Virginia Department of Environmental Quality is responsible for determining if the nominated water qualifies for the Exceptional State Water designation, announcing public comment opportunities and carrying out the day-to-day activities of the nomination process.

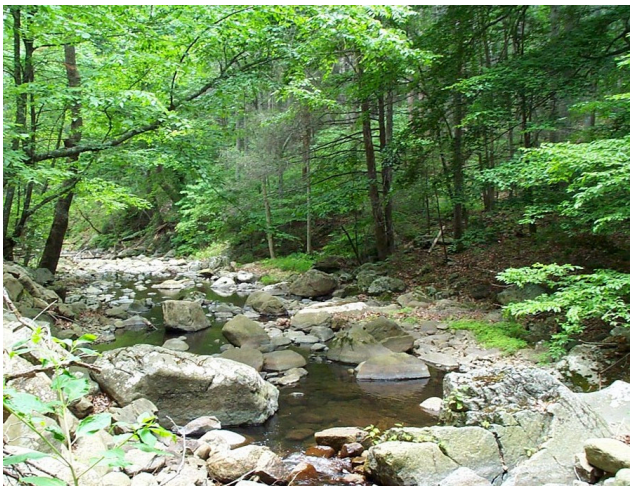
How do waters qualify for an Exceptional State Water nomination?

To qualify as an Exceptional State Water, it must be in a location of outstanding scenic beauty ***and*** either have exceptional aquatic communities ***or*** superior recreational opportunities. Some waters may have all three characteristics.

To be considered appropriate for the designation, the water could support wild fish such as trout or suitable recreational activities such as hiking, fishing, camping or rafting. After a water is nominated, DEQ staff will conduct a site visit to determine if it meets the qualifications.

What are the benefits?

From the beach to the mountains, the state's natural environment is a source of enjoyment for Virginians and is an important part of our heritage. For decades industrial, residential and agricultural growth has affected many Virginia waters, reducing the number of high-quality waterways.



A citizen-nominated section of North Creek in Botetourt County became the first exceptional state water in 1997.

While growth is necessary for a productive society, it must be balanced with the conservation of natural resources, like clean water, as a part of sound environmental management practices. The Exceptional State Water designation maintains the current quality of the water and protects it in the future.

How does an Exceptional State Water designation affect land adjacent to the protected water?

Activities that involve the release of pollutants from a point source into water protected with the designation will not be allowed. If a point source already exists, then an increase in the discharge to the protected water will not be allowed.

The *discharge* (or the release of pollution into a water) from a point source upstream will be allowed if it does not affect water quality in the protected water. In most cases, this effect is determined by the mixing zone. The *mixing zone* is a segment of a water where pollution from a point source mixes with water and may exceed the recommended concentrations for some pollutants.

Activities that involve the addition of pollution into a stream from nonpoint sources are not regulated, meaning there are no laws that enforce the control of nonpoint sources. However, citizens are encouraged to implement practices that limit nonpoint pollution. Water runoff from temporary construction and land-

clearing activities will be allowed on a case-by-case basis.

Nonpoint means a pollution source without a single point of origin. Pollution is carried off the land from nonpoint sources by rain. Examples of nonpoint sources include urban areas and city streets, and activities related to agriculture (cattle farming) and forestry (timber harvesting).

The Exceptional State Water designation also does not provide public access to the water body through private property or compensation for property owners.

Point source examples	Nonpoint source examples
sewage treatment plants (city or residential), storm water drains, industrial discharges of wastewater	Septic tanks and fields, cattle, agricultural activities, timber harvesting

Are short-term or temporary changes in water quality allowed in the protected water?

Yes. Short-term or temporary changes to water quality in water protected with an Exceptional State Water designation are allowed on a case-by-case basis. Examples of temporary activities include construction of a facility, road or bridge, and replacement and repair of boat ramps or docks.

How many waters have been nominated and how many have received the Exceptional State Water designation?

Virginia citizens, environmental organizations and DEQ staff are very active in the nomination process, and in the past three years more than 20 waterways have been considered. A citizen-nominated section of North Creek in Botetourt County became the first exceptional state water in 1997. There are now 18 exceptional state waters. More information is available at www.deq.virginia.gov/wqs/homepage.html.

How does the public comment on the Exceptional State Water nominations?

Citizens have four opportunities to comment during the Exceptional State Water nomination process:

1. During the 21-day petition comment period for the public that is conducted after a nomination is received. Localities and owners of land adjacent to the nominated segment of water are notified during this period and provided a 60-day comment period.

2. During a 60-day comment period, including a public meeting, related to the notice (called the Notice of Intended Regulatory Action) provided by DEQ and the State Water Control Board of the intention to consider the designation.

3. During a 60-day comment period and public hearing related to the notice (called the Notice of Public Comment) announcing the public comment opportunities on the proposed designation.

4. During the final State Water Control Board meeting where members will decide on the nomination. Addressing the board during this meeting is limited to citizens who submitted written or oral comments during the Notice of Public Comment period.

People may comment in writing during public comment periods by e-mailing Jean Gregory, water quality standards manager, at jwgregory@deq.virginia.gov or by sending a letter to her at P.O. Box 1105, Richmond, Va., 23218. Written comments may also be submitted at public hearings or meetings, and the public may address citizen board members at public hearings. Public hearings are different from public meetings because a State Water Control Board member chairs the public hearing.

Public comment opportunities are available on the DEQ web site at www.deq.virginia.gov/wqs/notice.html.

Quick Reference

Exceptional State Waters or Tier III designation – regulation that prohibits permanent new or increased discharges from pipes or other point sources into a protected segment of a river, stream, lake, wetland or estuary to maintain a high quality of water

point sources – fixed locations (a pipe from a plant or ditch, for example) from which pollutants are emptied into a river or other waters

regulations – rules established by state agencies and citizen boards

State Water Control Board – board composed of Virginia citizens who adopt water-related regulations

nonpoint sources – pollution sources (agriculture, forestry, urban areas, construction, dams and city streets) without a single point of origin. Pollution is carried off the land from nonpoint sources by rain.

mixing zone – a segment of a river or stream where pollution from a point source mixes with water and may exceed the recommended concentrations for some pollutants

discharge – the release of pollutants into a water

waters – rivers, streams, lakes, wetlands or estuaries