

**HYDROELECTRIC PROJECTS: WATER RIGHTS PERMITTING AND ESTABLISHING
INSTREAM FLOWS**

Resource Contact: Policy and Planning Section Effective Date: 02/12/10

References: CWA Section 401; Chapter 172-201A WAC; Chapter 90.48 RCW;
Chapter 90.03 RCW; Chapter 90.22 RCW; Chapter 90.54 RCW

Purpose: Identify roles; improve and maintain coordination within the Water
Resources Program regarding hydropower permitting.

Procedures for WR Regions: Water Rights

- Minimum Instream Flows will be established either through a condition of a water right or through the rule process (90.22 & 90.54) prior to issuing a water right; or by a change to a water right for existing projects.
- Minimum flows will be included as a condition or provision on water rights issued for a project that would reduce the flow of a perennial river or stream by bypassing flows around all or part of the stream or by manipulation of storage.
- Evaluate and define minimum instream flow requirements for all accepted water right applications after consulting with the departments of Fish and Wildlife, Tribes, and the Water Resources Program headquarters.
- Consult and coordinate with WDFW as needed and appropriate in connection with the evaluation of hydropower projects, including providing notice to WDF&W as required by RCWs 90.03.280 and 77.57.020 in a manner consistent with normal water right application notification procedures.
- Provide notification of water right applications to tribes with interests in the area of the project.
- Review applications for FERC licenses and Exemptions and provide comments to the Water Resources Program for incorporation by HQ into agency comment letters.

Procedures for WR HQ: Instream Flows

- Timely review and evaluation of hydropower project flow related activities and proposals under Ecology jurisdiction.
- Evaluate and define minimum instream flow requirements for all the accepted water right applications after consulting with WDFW, tribes and others as necessary. Give final flow conditions to 401 writer for incorporation into the 401. 401 conditions below hydropower facilities will always have minimum flows, usually have process flows and ramping flows, and may have other types of flows such as recreational, aesthetic,

temperature conditioning. Other flow-related conditions may be included such as gravel augmentation, stream channel design, and other environmental values.

- Identify hydropower-related FTEs in the Annual Program Plan.
- No project will be approved that will by nature of its operation cause a perennial stream or river to be dewatered at any time during the year, except where it is clear that overriding considerations of the public interest will be served.
- If instream flows are needed for the protection of fish, wildlife, recreation, scenic/aesthetic values, navigation, or water quality, instream flow conditions must be included in the water quality certification. An instream flow conditions in a 401 certification is placed in a federal license and preempts a state water right instream flow condition and an instream flow rule.
- Participate in settlement agreements when flow conditions are negotiated.
- Participate in adaptive management groups that deal with hydropower-related flows and flow-related issues.
- Keep abreast of hydropower activities in Washington through FERC service lists and communication with the industry and fish agencies.
- Work closely with the WDFW habitat group to evaluate correct flows for hydropower use and instream flow use.



Ken Slattery
Program Manager
Water Resources Program

Special Note: These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.