



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Ecology AO # 04-02

- Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The adoption of this water management rule is needed to protect instream values within portions of the Quilcene-Snow watershed, to avoid injury to existing water rights from future appropriations of water, and implement recommendations of the WRIA 17 Quilcene-Snow Watershed Planning Unit. This rule sets instream flows, closes or seasonally closes sub-basins to future withdrawals, establishes reserves of water for future use, specifies conditions of use for access to the reserves, and requires metering for all new withdrawals. This rule helps the Washington State Department of Ecology meet statutory obligations to manage waters for public use and for the protection of instream flows.

Citation of existing rules affected by this order:

Repealed: NA
 Amended: NA
 Suspended: NA

Statutory authority for adoption: RCW chapters 90.54, 90.22, 90.82, 90.03, and 90.44.

Other authority : NA

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 09-11-095 on May 18, 2009 (date).
 Describe any changes other than editing from proposed to adopted version: see attached

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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EMERGENCY RULE ONLY

- Under RCW 34.05.350 the agency for good cause finds:
- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 - That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: 11-30-09

NAME (TYPE OR PRINT)
 Ted Sturdevant

SIGNATURE

TITLE
 Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: November 30, 2009
 TIME: 2:25 PM

WSR 09-24-080

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>19</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New _____ Amended _____ Repealed _____

The number of sections adopted in the agency's own initiative:

New 19 Amended 0 Repealed 0

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New _____ Amended _____ Repealed _____

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Adoption of Chapter 173-517, Water Resources Management Program for the Quilcene-Snow Watershed, WRIA 17

Appendix: Differences between the Proposed and Final Rule

There are a number of changes from the proposed rule published with the CR-102 and the rule adopted and published with the CR-103. The changes were made in response to comments, as well as upon Ecology's initiative. The changes made do not change the general subject matter or the intent of the rule as proposed.

A typographical error was corrected in the title.

WAC 173-517-010 Purpose and Introduction

In subsection (3) deleted last sentence that mentioned rainwater catchment provisions. The rainwater provisions in the proposed rule were deleted in response to publication of Ecology's Rainwater Policy Interpretive statement 1017. This policy states Ecology's interpretation that the on-site storage and/or beneficial use of rooftop or guzzler collected rainwater is not subject to the permit process of RCW 90.03.

In subsection (4)(b) deleted language that discussed setting limits on future ground water withdrawals in coastal management areas. Ecology did not adopt Section 173-517-130 of the proposed rule. Ecology chose to postpone rulemaking to address closures and water management requirements in the coastal management areas in light of recently issued Attorney General Opinion 2009 No 6. Eliminating these provisions has no effect on remaining elements of the rule. More time is needed to assess management approaches for the coastal areas.

WAC 173-517-020 Authority and applicability

In subsection (4) deleted the phrase "existing on the effective date of this chapter" to be consistent with other rules.

In subsection (4) added language clarifying the applicability of the rule to existing permit-exempt withdrawals. This clarification is consistent with original rule intent and was also made in response to comments.

WAC 173-517-030 Definitions

In subsection (8) clarified the definition of hydraulically connected to say "between" ground water sources. This change was made in response to a comment from the Jamestown S'Klallam Tribe.

WAC 173-517-040 Compliance and enforcement No changes were made.

WAC 173-517-050 Appeals No changes were made.

WAC 173-517-060 Regulation review

In subsection (3) changed "regularly" to "annually" for reviewing reserve quantities. This change was made in response to several comments requesting clarification of the review frequency.

WAC 173-517-070 Maps

Deleted Map C which showed the locations of three streams in the Coastal Management Areas. Ecology chose to postpone rulemaking to address closures and water management requirements in the coastal management areas in light of recently issued Attorney General Opinion 2009 No 6. Eliminating these provisions has no effect on remaining elements of the rule. More time is needed to assess management approaches for the coastal areas.

WAC 173-517-080 Establishment of stream management units No changes were made.

WAC 173-517-090 Instream flows

In subsection (3)(a) the word “on” was replaced with “before” making this provision more specific and consistent with rule intent. This change was made in response to comments.

WAC 173-517-100 Closures

Deleted subsection (2) of this section, deleted reference to subsection (2) and renumbered remaining sections. The deleted language would have closed surface and ground water in coastal management areas. Ecology chose to postpone rulemaking to address closures and water management requirements in the coastal management areas in light of recently issued Attorney General Opinion 2009 No 6. Eliminating these provisions has no effect on remaining elements of the rule. More time is needed to assess management approaches for the coastal areas.

WAC 173-517-110 Future new water use—Generally

In subsections (2), (3), and (3)(a) eliminated references to subsection WAC 173-517-100(2) which has been deleted.

In subsection (3)(b) eliminates reference to WAC 173-517-130, and instead refers to Map B of WAC 173-517-070 for designating coastal management areas. This change was made to maintain internal consistency in light of Ecology’s decision to not adopt section 173-517-130 of the proposed rule.

Language changes in subsection (4) to clarify submittal and approval of mitigation plans. These changes were made in response to comments from the Jamestown S’Klallam Tribe, American Rivers, and the Washington Environmental Council.

Deleted subsection (8) and edited introductory paragraph of WAC 173-517-110 for internal consistency. The rainwater provisions in the proposed rule were deleted in response to publication of Ecology’s Rainwater Policy Interpretive statement 1017. This policy states Ecology’s interpretation that the on-site storage and/or beneficial use of rooftop or guzzler collected rainwater is not subject to the permit process of RCW 90.03.

WAC 173-517-120 Conservation standard

Added language to subsection (1)(b) to clarify that the provisions of this rule may not be modified by County ordinance. The change was made in response to a comment from American Rivers and Washington Environmental Council.

Added language to subsection (2) clarifying that uses associated with a group domestic system may also mitigate for water use above the conservation standard. This change is consistent with original rule intent.

WAC 173-517-130 Designated coastal management areas

Ecology chose to postpone rulemaking to address closures and water management requirements in the coastal management areas in light of recently issued Attorney General Opinion 2009 No 6. Eliminating these provisions has no effect on remaining elements of the rule. More time is needed to assess management approaches for the coastal areas.

WAC 173-517-140 Maximum future allocations for interruptible use

No changes to this section.

WAC 173-517-150 Reserves of water for future use

Subtitles were added to subsections (4), (5), (6), (7), and (8) to aid in readability.

In subsections (5), (6), and (7) the “or” was replaced with “and” to clarify that all the listed uses are allowed in the named reserve management areas. This change is a grammatical correction and consistent with original intent.

In subsection (8) clarified the use allowed in the Chimacum reserve management area by adding reference to the applicable definition in WAC 173-517-030. This change provides clarification and is consistent with original intent.

In subsection (8)(a) modified language for internal consistency with clarification in subsection (8) of this section.

In subsection (8)(b) added clarifying language to state this provision applies “within the Chimacum subbasin.” This language is consistent with the original intent.

In Subsection (10) added reference to WAC 173-517-110 and modified language for consistency with section -110. The change clarifies the applicability of the provisions in section -110 and was made in response to a comment from the Jamestown S’Klallam Tribe.

WAC 173-517-160 Accounting for use under the reserves

In subsection (5) modified language to allow any water to be credited to a reserve if a water user permanently ceases use. This change allows more flexibility for managing reserves and was made in response to a comment from Jefferson County.

In subsection (6) added an Ecology commitment to publish a public notice about remaining quantities in the reserves. This change was made in response to comments received about section -060, Regulation review.

WAC 173-517-170 Lakes and ponds No change to this section.

WAC 173-517-180 Measuring water use

Modified language to require “each” new appropriation to meter water use, and deleted the word “source” to clarify that meters may be required for each connection. This change was made in response to a comment from the Department of Commerce.

Add the word “or” to the last sentence to clarify reporting requirements.

WAC 173-517-190 Conveying stock water away from streams

Ecology did not adopt Section 173-517-190 of the proposed rule. This section of the proposed rule was not adopted because existing Ecology Policy number 1025, *Conveying Stockwater Away from Streams to Protect Water Quality*, contains the same provisions as the proposed rule language.

WAC 173-517-200 Future surface water withdrawals for environmental restoration No change to this section

WAC 173-517-210 Out of subbasin water use No change to this section.