

Chapter 173-565 WAC

COLUMBIA RIVER MAINSTEM WATER MANAGEMENT PROGRAM

PART I

COLUMBIA RIVER MAINSTEM WATER MANAGEMENT PROGRAM

NEW SECTION

**WAC 173-565-100 What is the Columbia River mainstem water management program?** The Columbia River mainstem water management program (program) is a combination of actions taken by the state of Washington to manage the water resources of the mainstem of the Columbia River consistent with chapter . . . . . RCW (*Policy Bill: Management of water resources for the mainstem of the Columbia*) and other applicable water resource laws. These actions include the adoption of this chapter, and an ongoing investment of state resources to facilitate the timely and effective implementation of this chapter.

NEW SECTION

**WAC 173-565-110 What are the goals and objectives of the Columbia River mainstem water management program?** (1) As established in RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 2(1)*), the goals of the Columbia River mainstem water management program are to:

(a) Meet the water supply needs of growing communities and the local economies on which they depend by providing a timely and affordable supply of water from the Columbia River mainstem that will allow for new and reliable uses of water from the Columbia River mainstem; and

(b) Manage water to protect and enhance the quality of the natural environment, including stream flows necessary for the preservation of environmental values, by securing and dedicating water to improve stream flows in the Columbia River mainstem.

(2) As established in RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 2(2)*), the objectives of the Columbia River mainstem water management program are to:

(a) Improve the reliability of water rights issued by the department of ecology between 1980 and 2003 that are subject to minimum instream flows or other mitigation conditions to protect stream flows;

(b) Improve stream flows during the primary period of fish out migration on the Columbia River mainstem; and

(c) Mitigate for the stream flow impacts of future water right permits as provided by the program.

NEW SECTION

**WAC 173-565-120 What does this chapter do?** This chapter establishes the implementation requirements for the regulatory portion of the Columbia River mainstem water management program (program).

(1) As required by RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Sections 3 and 7*), to implement the program, the department must:

(a) Acquire water prior to, and in mitigation for, decisions to authorize new uses of water from the Columbia River mainstem and secure acquired water in a Columbia River mainstem account (mainstem account) under the state trust water right program;

(b) Allocate two-thirds of the water secured and deposited in the mainstem account as mitigation water for new water uses to be made available to qualified users through a state mitigation program; and allocate one-third of the water to be permanently retained in the mainstem account to improve stream flows for the benefit of fish;

(c) Authorize new uses of water from the Columbia River mainstem consistent with the requirements of RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia*) and other applicable requirements.

(2) To implement the statutory requirements, this chapter:

(a) Establishes the management guidelines for the mainstem account under the state trust water rights program, chapter 90.42 RCW. The mainstem account is a mechanism to manage water to mitigate for potential impacts from new uses of water from the Columbia River mainstem and to permanently dedicate water for instream uses;

(b) Establishes an administrator for the mainstem account;

(c) Sets priorities for allocation of water from the mainstem account;

(d) Establishes requirements and procedures for issuance of drought permits to complement existing interruptible rights on the Columbia River mainstem that are subject to the minimum instream flows set in WAC 173-563-040;

(e) Establishes requirements and procedures to secure a reliable supply of water for holders of water rights on the Columbia River mainstem issued in 2003 and for applications for new water rights to Columbia River mainstem surface waters that have been pending since 1991; and

(f) Establishes requirements and procedures for issuance of new surface and ground water rights from the Columbia River mainstem for applications currently on file with the department of ecology (department), and for any future water right applications affecting the Columbia River mainstem.

NEW SECTION

**WAC 173-565-140 Under what authority is this chapter adopted?** This chapter is adopted under the authority of chapters 90.03, 90.22, 90.54, 43.21A, 43.27A, and chapter . . . . RCW (*Policy Bill: Management of water resources for the mainstem of the Columbia*), and in relation to chapter 173-500 WAC.

NEW SECTION

**WAC 173-565-150 How are existing water rights and processes protected?** (1) Nothing in this chapter will be construed to lessen, enlarge, or modify existing rights acquired by appropriation or other means, including state authorized rights and federal reserved rights. Nothing in this chapter shall impair existing water rights.

(2) Nothing in this chapter affects the policies and procedures for water rights placed in trust on a short-term basis. Such rights will not be deposited into the mainstem account and will be managed separately within the state trust water rights program.

(3) This chapter will not be used to hinder or otherwise limit the existing water right change and transfer processes established under state law.

NEW SECTION

**WAC 173-565-160 How will the department achieve compliance with this chapter?** To ensure compliance with this chapter, the department may take such actions as appropriate within the compliance sequence established by RCW 90.03.605.

NEW SECTION

**WAC 173-565-170 What happens if part of this rule is successfully challenged? Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances shall not be affected.

**PART II  
THE COLUMBIA RIVER MAINSTEM WATER MANAGEMENT ACCOUNT**

NEW SECTION

**WAC 173-565-200 What is the Columbia River mainstem water management account and how is it established?** As required by RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 3(1)(b)*), the Columbia River mainstem water management account (mainstem account) is hereby established by the department within the state trust water rights program. The mainstem account provides a mechanism for holding, dedicating and obligating mitigation water for new out-of-stream water uses from the Columbia River mainstem and for holding and dedicating water permanently in trust to improve mainstem stream flows for the benefit of fish.

NEW SECTION

**WAC 173-565-210 How will the department manage the mainstem account? Water acquisition and allocation.**

(1) As required by RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 3(1)(a)*), the department will acquire water to be deposited into the mainstem account.

(2) As required by RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 3(2)*), water is eligible for deposit to the mainstem account only when it can be deposited in accordance with applicable state laws for water right changes, amendments, and transfers, or through government to government agreements, contracts, assignments, and other instruments that ensure a highly reliable and long-term supply of water, in sufficient quantity, is dedicated to the account. The department may secure water from Canada and other governments to be deposited in the mainstem account.

(3) As required by RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 3(3)*), as water is deposited into the mainstem account, the department will dedicate two-thirds of the deposited water to be available for mitigation for new out-of-stream consumptive uses and will dedicate one-third of the deposited water to be held permanently in trust solely for instream uses to benefit fish.

**Mainstem account in balance**

(4) The department will not obligate water from the mainstem account to mitigate for new uses of water where such obligation would exceed the amount of water available in the portion of the mainstem account dedicated to new out-of-stream consumptive uses.

**Water for new out-of-stream uses**

(5) This subsection applies to all new uses of water authorized under this chapter except where a mitigation proposal is approved under WAC 173-565-340 (5)(c) or 173-565-540 (3)(a). Except where a mitigation proposal is approved under WAC 173-565-340 (5)(c) or 173-565-540 (3)(a), no new out-of-stream consumptive uses occurring between April 1 and August 31 will be approved under this chapter unless:

(a) An amount of water sufficient to offset the consumptive portion of such out-of-stream use is available in the portion of the mainstem account dedicated to mitigation for out-of-stream uses; and

(b) The source of such mitigation water is coincident with or upstream from the proposed out-of-stream use.

(6) Water in the portion of the mainstem account dedicated to mitigation for out-of-stream consumptive uses will be obligated only for mitigation of out-of-stream consumptive uses that are:

- (a) Approved under this chapter; and
- (b) Occur between April 1 and August 31.

**Water for instream uses**

(7) This subsection is applicable to all new uses of water authorized under this chapter, including uses where a mitigation proposal is approved under WAC 173-565-340 (5)(c) or 173-565-540

(3)(b). Including uses where a mitigation proposal is approved under WAC 173-565-340 (5)(c) or WAC 173-565-540 (3)(b), no new out-of-stream water uses will be approved under this chapter unless:

(a) An amount of water that is greater than or equal to fifty percent of the consumptive portion of the out-of-stream uses, during the period of April 1 through August 31, is held in trust in the portion of the mainstem account dedicated to instream uses; and

(b) The source of such water is coincident with or upstream from the proposed out-of-stream use.

(8) Water in the portion of the mainstem account permanently dedicated to instream uses will be obligated only for instream uses and, as required by RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 3(4)*), will be managed in collaboration with the department of fish and wildlife, in consultation with natural resource managers in tribal governments and federal agencies to maximize the benefits of such water to fish.

**No upstream transfer of water**

(9) Water in the mainstem account may be obligated only for out-of-stream or instream uses that are coincident with or downstream from the original source of water deposited into the mainstem account.

**Processing water right applications**

(10) All applications for new water rights from the Columbia River mainstem will be processed in accordance with RCW 90.03.250 through 90.03.330 and other provisions of law, as applicable.

**New consumptive uses of water in the tributaries**

(11) The department will maintain a reserve of a sufficient quantity of water in the mainstem account to offset the estimated future consumptive uses that the department might approve within the Washington portion of tributary basins to the Columbia River after the effective date of this chapter. The source of this water may be any of the sources of water deposited in the account, as described in WAC 173-565-220.

(12) The department will estimate future consumptive uses in tributary basins, and thereby define the amount of water needed for the tributary reserve, by considering:

(a) The expected growth and development in the tributary watershed, on a ten-year rolling forecast basis;

(b) Any regulations related to minimum instream flows, reservations for out-of-stream consumptive uses, basin or stream closures, or other requirements related to use of water in tributaries;

(c) Existing watershed management plans and the views of watershed groups; and

(d) Other information appropriate to predicting future

water use within a tributary.

(13) When new consumptive water uses are approved by the department in the tributaries, the department will obligate water from the portion of the mainstem account reserved for tributary consumptive uses.

(14) As provided in RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia River, Section 3(5)*), the amount of water in the tributary reserve of the mainstem account shall not govern, be used to regulate, or be a determinative factor in the department's water management decisions for rivers that are tributary to the Columbia River mainstem. The purpose of this policy is to ensure that decisions in the tributaries related to watershed plans, water rights and water management projects are made based on the conditions and needs existing within the affected tributary.

**Mainstem account administration**

(15) The director will appoint a mainstem account administrator who will be responsible for managing the account. The mainstem account administrator must be an employee of the department.

(16) The duties of the mainstem account administrator will include, but not be limited to:

(a) Securing water to be deposited into the mainstem account in accordance with WAC 173-565-210 (1) and (2);

(b) Dedicating water in the mainstem account for out-of-stream and instream uses in accordance with WAC 173-565-210 (3) and (4);

(c) Consulting with permit decision makers and certifying the availability of water in the mainstem account in accordance with WAC 173-565-330, 173-565-430, and 173-565-530;

(d) Obligating water from the mainstem account for out-of-stream and instream uses in accordance with WAC 173-565-210 (5) through (9);

(e) Accepting and depositing payments for mitigation water from the mainstem account into the Columbia River investment account established in RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 7*);

(f) Reporting on the status of the mainstem account, the investment account, and the program in accordance with RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 9*) and WAC 173-565-215(1); and

(g) Other duties as assigned by the director.

(17) The mainstem account administrator shall not be responsible for processing water right applications or for administering compliance activities. Department permit decision makers must consult the mainstem account administrator about the availability of water in the mainstem account prior to approving

new water rights from the Columbia River mainstem.

(18) The mainstem account administrator will maintain a current record of:

(a) The total quantity of water deposited into the mainstem account;

(b) For new out-of-stream uses:

(i) The amount of water currently available in the mainstem account to mitigate for new out-of-stream consumptive uses;

(ii) The sources of such water;

(iii) The amount of water in the mainstem account that has been obligated to mitigate out-of-stream consumptive uses; and

(iv) The location of each obligation;

(c) For instream uses:

(i) The total amount of water currently available in the mainstem account for dedicated instream uses;

(ii) The sources of such water; and

(iii) The amount of water in the mainstem account that has been obligated to supplement the mitigation for out-of-stream uses;

(d) The amount of water reserved to offset tributary needs.

NEW SECTION

**WAC 173-565-215 How will the program be monitored and evaluated?**

(1) As required by RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 9*), the department will submit to the Washington state legislature and to the governor, a biennial report on the status of the mainstem account, the investment account, and the program. At a minimum, the report will include:

(a) A summary of the status of the mainstem account including a summary of all the records required under WAC 173-565-210(17) and a statement of compliance with the mitigation requirements established in RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 3(3)*), and a summary of the anticipated future conditions of water supplies in the mainstem account and how those water supplies correspond to current and anticipated future water needs;

(b) A summary of the numbers, types and quantities of authorized new uses of water under the program, and a summary of reports of water use under the program;

(c) A summary of compliance monitoring and enforcement activities on the Columbia River mainstem, including an estimate of compliance with state water use measurement and reporting

requirements on the Columbia River mainstem, the stream flow conditions in the Columbia River mainstem and in the primary tributaries to the Columbia River;

(d) A summary of the number and amount of payments collected under the program, and a description of the status of funding for the program and any current or anticipated additional funding requirements; and

(e) A discussion of any known or potential regional and international changes in water supplies, management or obligations that could affect the long-term effectiveness of the program.

(2) Once every two years, the department will convene a meeting to formally consult with affected tribal governments on the status and effects of, and on needed improvements and potential changes to, the program. The department will summarize the results of the consultation in the report required in subsection (1) of this section.

(3) The department will conduct formal review of the program and this chapter every ten years pursuant to the procedures required by RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 10*).

NEW SECTION

**WAC 173-565-220 What are potential sources of water for the mainstem account?** Potential sources of water for the mainstem account include, but are not limited to:

(1) Implementation of water conservation measures that result in consumptive savings that can be credited to, and accounted for in, the Columbia River mainstem;

(2) The development of new or expanded multipurpose storage of water;

(3) Changes in management of existing storage projects and conveyance systems;

(4) Acquisition of existing water rights, in part or whole, through purchase or donation;

(5) Water contributed to the Columbia River as a result of water management actions taken within Columbia River tributaries; and

(6) Conserved water from consumptive savings returned to the state by water right holders who choose to implement best management practices under Part III of this chapter.

NEW SECTION

**WAC 173-565-230 What are the priorities for obligation of water in the portion of the mainstem account dedicated to mitigation for new out-of-stream consumptive uses?** (1) The department will obligate water from the out-of-stream portion of the mainstem account for the consumptive portion of new out-of-stream uses in the following priority order:

(a) First, issuance of drought permits to complement existing interruptible rights that are subject to the minimum instream flows set in WAC 173-563-040 (see Part III);

(b) Second, assuring a reliable supply of water for permits issued in 2003 and for premonitorium applications for new surface water rights to the Columbia River mainstem that have been pending since 1991 (see Part IV); and

(c) Third, processing new water rights for applications currently on file with the department, and for future water right applications (see Part V).

(2) In accordance with RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 6(3)*), the department may process applications on file for which mitigation water is secured ahead of previously filed applications for which mitigation water is not secured.

**PART III  
INTERRUPTIBLE WATER RIGHTS AND DROUGHT PERMITS**

NEW SECTION

**WAC 173-565-300 Who is covered under Part III?** Part III applies to water right holders with water rights issued after 1980 that are subject to regulation and interruption when minimum instream flows are not met on the Columbia River mainstem as determined in WAC 173-563-050. These rights are commonly referred to as "interruptible" water rights.

NEW SECTION

**WAC 173-565-310 What is the purpose of Part III?** Part III describes the criteria, requirements, and procedures related to application for, granting, and use of drought permits under the Columbia River mainstem water management program (program).

NEW SECTION

**WAC 173-565-320 What are the benefits of Part III?** Part III provides for issuance of drought permits. Drought permits allow water right holders to use water during times when their current water rights would otherwise be interrupted. Drought permits issued under this chapter will not be subject to interruption in response to minimum instream flows set under chapter 173-563 WAC that are not being met.

NEW SECTION

**WAC 173-565-330 When may the department issue drought permits under Part III?** (1) Except in cases where an applicant elects to prepare a mitigation proposal under WAC 173-565-340 (5)(c), the department may issue a drought permit under Part III only when the mainstem account administrator certifies that the portion of the mainstem account dedicated to provide for mitigation for new out-of-stream consumptive uses holds an unobligated amount of water sufficient to fully offset the consumptive use to be authorized by the drought permit to avoid any reduction in stream flows, and the source of such mitigation water is coincident with or upstream from the proposed drought permit.

(2) Including in cases where an applicant elects to prepare a mitigation proposal under WAC 173-565-540 (3)(b), the department may issue permits under Part III only after the mainstem account administrator certifies that the portion of the mainstem account dedicated to provide water for instream uses holds an unobligated amount of water that is fifty percent or greater than the consumptive use to be authorized by the permit.

NEW SECTION

**WAC 173-565-340 What is required to obtain a drought permit?** To obtain a drought permit, a water right holder must:

(1) Hold a water right that was issued after 1980 and that is subject to regulation and interruption when minimum instream flows are not met on the mainstem of the Columbia River as determined in WAC 173-563-050.

(2) For all water rights on the Columbia River mainstem in which the applicant holds a controlling interest on lands adjoining or contiguous to the land irrigated by the interruptible water right or rights, and on lands served by a connected water distribution system that also provides the source water for the interruptible water right or rights, demonstrate that he or she is measuring and reporting water use in accordance with chapter 173-173 WAC.

(3) Submit to the department a complete drought water right permit application, in the form required by the department, on or before December 31, 2008, including records to document the quantity of water used under the water right.

(4) Maintain the application by notifying the department of any change in ownership of the water right, or change in mailing address, within thirty days of such change.

(5) Select one of three options below and indicate to the department which option is chosen:

(a) **Option 1, best management practices (BMPs):** The water right holder must implement best management practices (BMPs) for all of their existing water rights, in accordance with the requirements described in "*Best Management Practices for Securing a Drought Permit*" as published and periodically revised by the department, and, except as noted in WAC 173-565-354(2), must transfer any water saved through implementation of BMPs to the state. In addition, the water right holder must submit to the department for review and recalibration under WAC 173-565-352 all of the water rights on the Columbia River mainstem in which he or she holds a controlling interest on lands adjoining or contiguous to the land irrigated by the interruptible water right or rights, and on lands served by a connected water distribution system that also provides the source water for the interruptible water right or rights.

(b) **Option 2, mitigation payments:** The water right holder must enter into an agreement with the department to make annual mitigation payments to the department under WAC 173-565-360 and 173-565-364. In exchange for payment, the department will

obligate water from the mainstem account to mitigate for the consumptive portion of water used under the drought permit.

(c) **Option 3, mitigation proposal:** The water right holder must develop and submit to the department for review and approval a mitigation proposal that provides water to fully offset the consumptive portion of water authorized for use under the drought permit so that stream flows are not diminished by use under the new permit.

(6) Submit any additional information required to complete the application within the time frame specified within a written request from the department listing the information needed and the reasons for requesting that information. If the information is not available to the applicant, the applicant may respond to the department to explain why they will be unable to provide the information. The water right holder may request the department extend the specified time period if additional time is needed to compile this information. An application will not be considered complete until all information requested by the department is submitted.

(7) Sign the application. Signature must be by the owner of the interruptible water right or by an authorized representative of the owner.

#### NEW SECTION

**WAC 173-565-342 How will the department notify water right holders of the opportunity to apply for drought permits?** (1) Within six months of the effective date of this chapter, and once each year thereafter until December 31, 2008, the department will notify holders of interruptible water rights of their opportunity to apply for a drought permit. Notification will be made by public notice and by mail.

(2) Notices mailed under subsection (1) of this section will describe the drought permit program including:

(a) Eligibility requirements;

(b) BMPs, mitigation payments and mitigation proposal options;

(c) Directions for obtaining a copy of the drought permit application form;

(d) Availability of technical assistance; and

(e) Department contact information for the drought permit program.

NEW SECTION

**WAC 173-565-344 What help is available to water right holders who may wish to apply for a drought permit?** The holder of an interruptible water right who may wish to apply for a drought permit may request a technical assistance meeting with their local conservation district or with the department. Staff providing technical assistance may help the water right holder evaluate a decision whether or not to apply for a drought permit, evaluate the effects of the different options for receiving a permit, and assist in completing the necessary application forms at the direction of the water right holder.

NEW SECTION

**WAC 173-565-350 If the best management practices (BMPs) option is chosen, what is required to make an application?** In addition to compliance with WAC 173-565-340, if the BMP option is chosen, the water right holder must:

(1) Submit to the department a completed and signed BMP checklist on a form provided by the department. Where the form provides different options for BMPs, the checklist must indicate which BMP is being selected;

(2) Submit to the department documentation of all water rights on the Columbia River mainstem for which the applicant holds a controlling interest on lands adjoining or contiguous to the land irrigated by the interruptible water right or rights, and on lands served by a connected water distribution system that also provides the source water for the interruptible water right or rights;

(3) For all water rights identified by subsection (2) of this section, submit to the department documentation of water use each year for the past five years through metering data, documentation of crops and acres irrigated, or other appropriate measure of water use as approved by the department. If a water right identified by subsection (2) of this section, or any portion thereof, has not been put to use in the last five years, the water right holder may submit information about the reasons for lack of use, and may describe future plans that might require use of the water right or portion thereof.

NEW SECTION

**WAC 173-565-352 If the best management practices (BMPs) option is chosen, how will water rights be recalibrated?** (1) If the BMPs option is chosen, water right holders must submit to the department for review and recalibration all of their existing water rights, for the mainstem of the Columbia River for which they have a controlling interest on lands adjoining or contiguous to the land irrigated by the interruptible water right or rights, and on lands served by a connected water distribution system that also provides the source water for the interruptible water right or rights. This includes all surface water rights from the Columbia River mainstem and all ground water rights within one mile of the Columbia River mainstem.

(2) The department will review all water rights submitted by the water right holder under subsection (1) of this section. As required by application of current state laws and established procedures for water right changes, transfers, and amendments, the department will evaluate each water right based on the legal extent and validity of the right.

(3) The department will provide a draft copy of its evaluation of existing water rights to the water right holder for a sixty-day period for review and comment. During this time, the water right holder can provide any additional information that might further inform the department's review.

(4) After the sixty-day period, and after review of any comments or additional information provided by the water right holder, the department may issue a drought permit to the water right holder in accordance with the requirements of Part III of this chapter and other applicable requirements of this chapter. Together with any drought permit issued, the department will issue any superseding water right documents that result from the review and recalibration of water rights described in WAC 173-565-352 (1) through (3).

NEW SECTION

**WAC 173-565-354 If the best management practices (BMPs) option is chosen, what conditions will be placed upon the drought permit?** If the BMPs option is chosen, drought permit conditions will require the water right holder to:

(1) Implement and maintain the BMPs within the time frame and conditions as specified in the drought permit. The water right holder must certify implementation of the BMPs within five years of the date of the drought permit on a certification form provided by the department, and must request a field visit from either their local conservation district or the department to inspect the installed BMPs and to sign the certification form;

(2) Transfer to the state any water saved as a result of implementing the BMPs. Transfers must be made upon submittal of the BMP certification form and are subject to current laws governing water conservation and water right transfers. This subsection does not apply to water rights for municipal water supply; and

(3) Measure and report water use in accordance with chapter 173-173 WAC.

#### NEW SECTION

**WAC 173-565-360 If the mitigation payment option is chosen, what is required to make an application?** If the mitigation payment option is chosen, the water right holder must comply with WAC 173- 565-340, including the selection of the mitigation payment option under WAC 173-565-340 (5)(b).

#### NEW SECTION

**WAC 173-565-362 If the mitigation payment option is chosen, what conditions will be placed upon the drought permit?** If the mitigation payment option is chosen, drought permit conditions will require the water holder to:

(1) By January 31st of each year, submit to the department an annual mitigation payment in the amount of ten dollars per acre foot for the volume of water authorized by the drought permit. This payment must be made every year, regardless of whether the drought permit was exercised. The amount of this payment will be adjusted annually by the implicit price deflator. The department will provide annual notice by November 1st of each year of the rate to be applied for that year in the following January's payment; and

(2) Measure and report any water use under the drought permit in accordance with chapter 173-173 WAC.

NEW SECTION

**WAC 173-565-364 How are mitigation payments made?**  
Mitigation payments must be made by check or money order payable to the department of ecology, and sent to the following address:

Department of Ecology  
Columbia River Mainstem Water Management Program  
P.O. Box 47600  
Olympia, WA 98504-7600

NEW SECTION

**WAC 173-565-370 If the mitigation proposal option is chosen, what is required to make an application?** (1) In addition to compliance with WAC 173-565-340, if the mitigation proposal option is chosen, the water right holder must submit a detailed mitigation proposal to the department for review and approval. The mitigation proposal must describe how the water right holder will gain permanent access to mitigation water, and how use of mitigation water will ensure that consumptive uses under the new permit will be fully offset so that stream flows are not diminished by use under the new permit. At a minimum, mitigation proposals must include:

- (a) The proposed source of mitigation water;
- (b) Identification of the water rights associated with the proposed source of mitigation water;
- (c) An engineering analysis demonstrating that consumptive uses under the new permit will be fully offset by the mitigation water so that stream flows are not diminished.

(2) As part of their review of a mitigation proposal, the department will request a review of the mitigation proposal from the department of fish and wildlife, and from natural resource managers in affected tribal governments and federal agencies.

NEW SECTION

**WAC 173-565-372** If the mitigation proposal option is chosen, what conditions will be placed on the drought permit? If the mitigation proposal option is chosen, permit conditions will require the water right holder to:

(1) Implement measures appropriate to the proposed water use to ensure a reasonable efficiency of water use considering up-to-date conservation practices and water delivery system technologies;

(2) Implement his or her mitigation proposal according to the approved terms and conditions; and

(3) Measure and report any water use under the drought permit in accordance with chapter 173-173 WAC.

NEW SECTION

**WAC 173-565-380** What are the procedures for appealing the department's decisions about drought permit applications? The department's decisions about drought permit applications may be appealed to the pollution control hearings board as specified in chapter 43.21C RCW.

**PART IV  
PROVIDING RELIABILITY FOR COLUMBIA RIVER MAINSTEM SURFACE WATER  
PERMITS ISSUED IN 2003 AND PREMORATORIUM APPLICATIONS FOR NEW  
MAINSTEM SURFACE WATER RIGHTS PENDING SINCE 1991**

NEW SECTION

**WAC 173-565-400 Who is covered by Part IV?** Part IV applies to the following water right application numbers: S4-29956, S4-30052, S4-30465, S4-30584, S4-31083, S4-30976P, and S4-31106P. These are commonly referred to as 2003 permits and premonitorium applications.

NEW SECTION

**WAC 173-565-410 What is the purpose of Part IV?** Part IV describes the requirements and procedures that allow persons described in WAC 173-565-400 to request and secure use of mitigation water from the Columbia River mainstem water management account.

NEW SECTION

**WAC 173-565-420 What are the benefits of Part IV?** Part IV provides persons identified by WAC 173-565-400 access to a reliable and affordable source of mitigation water from the mainstem account.

NEW SECTION

**WAC 173-565-430 When may the department provide access to water from the account under Part IV?** The department may provide access to water from the account for 2003 permits only after the mainstem account administrator certifies that the portion of the mainstem account dedicated to provide for mitigation for new out-of-stream consumptive uses holds an unobligated amount of water sufficient to fully offset the amount of water requested, and the source of such mitigation water is coincident with or upstream from the 2003 permit or premonitorium application water use.

NEW SECTION

**WAC 173-565-440 What is required to obtain mitigation water for 2003 permits and premonitorium applications?** To obtain mitigation water, the persons described in WAC 173-565-400 must:

- (1) Submit a letter of request for mitigation water from the mainstem account to the department;
- (2) For permits issued in 2003, demonstrate current compliance with the applicable terms of the permit; and
- (3) Enter into formal agreement with the department to obligate mitigation water from the mainstem account for the 2003 permit or premonitorium application. The agreement will require annual mitigation payments for the amount of water used by the right holder.

NEW SECTION

**WAC 173-565-450 What is the amount of the mitigation payment for the 2003 permits and premonitorium applications, and how is payment made?** (1) The amount of the mitigation payment is ten dollars per acre foot of mitigation water required to offset use in the preceding water year. The payment amount will be adjusted annually by the implicit price deflator. The department will provide annual notice by November 1st of each year of the rate to be applied for that year, in the following January's payment.

(2) Payments must be submitted to the department by January 31st of each year, and made by check or money order payable to the department of ecology and mailed to the following address:

Department of Ecology  
Columbia River Mainstem Water Management Program  
P.O. Box 47600  
Olympia, WA 98504-7600

**PART V  
APPLICATIONS FOR NEW WATER RIGHTS FROM THE COLUMBIA RIVER**

NEW SECTION

**WAC 173-565-500 Who is covered under Part V?** Part V applies to existing and new applications for new water rights on the Columbia River mainstem that are not covered by Part IV.

NEW SECTION

**WAC 173-565-510 What is the purpose of Part V?** Part V describes the criteria, requirements, and procedures that the department will apply when processing applications for new water rights described in WAC 173-565-500.

NEW SECTION

**WAC 173-565-520 What are the benefits of Part V?** (1) Applicants that meet the requirements of this chapter will be eligible to receive a new water right for use of water from the Columbia River mainstem.

(2) Applicants have the option of securing affordable and reliable mitigation water from the Columbia River mainstem water management account (mainstem account).

(3) New water right permits issued under this chapter will not be subject to interruption in response to minimum instream flows set under chapter 173-563 WAC that are not being met.

NEW SECTION

**WAC 173-565-530 When may the department issue permits under Part V?** (1) Except in cases where an applicant elects to prepare a mitigation proposal under WAC 173-565-540 (3)(b), the department may issue permits under Part V only after the mainstem account administrator certifies that the portion of the mainstem account dedicated to provide for mitigation for new out-of-stream consumptive uses holds an unobligated amount of water sufficient to fully offset the consumptive use to be authorized by the permit to avoid any reduction in stream flows from April 1 to August 31, and the source of such mitigation water is coincident with or upstream from the proposed permit.

(2) Including in cases where an applicant elects to prepare a mitigation proposal under WAC 173-565-540 (3)(b), the department may issue permits under Part V only after the mainstem account administrator certifies that the portion of the mainstem account dedicated to provide water for instream uses holds an unobligated amount of water that is fifty percent or greater than the consumptive use to be authorized by the permit during the period of April 1 through August 31st.

NEW SECTION

**WAC 173-565-540 What is required to obtain a new water right from the Columbia River mainstem?** To obtain a new water right from the Columbia River mainstem, an applicant must:

(1) Have a complete water right application for the Columbia River mainstem on file with the department or submit a complete water right application for the Columbia River mainstem to the department;

(2) For all water rights on the Columbia River mainstem in which the applicant holds a controlling interest, demonstrate that she or he is measuring and reporting water use in accordance with chapter 173-173 WAC;

(3) Maintain the application by notifying the department of any change in ownership of the water right, or change in mailing address, within thirty days of such change;

(4) For uses that would consume water between April 1st and August 31st, select one of two options below and indicate to the department which option is chosen:

(a) **Option 1, mitigation proposal:** The applicant must develop and submit to the department for review and approval a mitigation proposal that provides water to fully offset the consumptive portion of water used between April 1st and August 31st of each year so that stream flows are not diminished by use under the new permit;

(b) **Option 2, mitigation payment:** The applicant must enter into an agreement with the department to make annual mitigation payments to the department under WAC 173-565-560 through 173-565-564. Subject to annual payments, the department will obligate water from the mainstem account to mitigate for the consumptive portion of water used during the April 1st through August 31st period;

(5) Submit any additional information required to complete the application within the time frame specified within a written request from the department listing the information needed and the reasons for requesting the information. If the information is not available to the applicant, the applicant may respond to the department to explain why they will be unable to provide the information. The applicant may request the department extend the specified time period if additional time is needed to compile this information. An application will not be considered complete until all information requested by the department is submitted;

(6) Sign the application. Signature must be by the owner

of the application or by an authorized representative of the owner.

#### NEW SECTION

**WAC 173-565-550 If the mitigation proposal option is chosen, what is required to make an application?** (1) In addition to compliance with WAC 173-565-540, if the mitigation proposal option is chosen, the applicant must submit a mitigation proposal to the department for review and approval. The mitigation proposal must describe how the applicant will gain permanent access to the mitigation water, and how use of the mitigation proposal will ensure that between April 1st and August 31st of each year, consumptive uses under the new permit will be fully offset so that stream flows are not diminished by use under the new permit. At a minimum, mitigation proposals must include:

- (a) The proposed source of mitigation water;
- (b) Identification of the water rights associated with the proposed source of mitigation water;
- (c) An engineering analysis demonstrating that between April 1st and August 31st of each year consumptive uses under the new permit will be fully offset by the mitigation water so that stream flows are not diminished.

(2) As part of their review of a mitigation proposal, the department will request a review of the mitigation proposal from the department of fish and wildlife, and from natural resource managers in affected tribal governments and federal agencies.

#### NEW SECTION

**WAC 173-565-552 If the mitigation proposal option is chosen, what conditions will be placed on the permit?** If the mitigation proposal option is chosen, permit conditions will require the water right holder to:

- (1) Implement measures appropriate to the proposed water use to ensure a reasonable efficiency of water use considering up-to-date conservation practices and water delivery system technologies;
- (2) Implement his or her mitigation proposal according to the approved terms and conditions; and
- (3) Measure and report water use in accordance with chapter

173-173 WAC.

NEW SECTION

**WAC 173-565-560** If the mitigation payment option is chosen, what is required to make an application? If the mitigation payment option is chosen, the applicant must comply with the requirements of WAC 173-565-540.

NEW SECTION

**WAC 173-565-562** If the mitigation payment option is chosen, what conditions will be placed on the permit? If the mitigation payment option is chosen, permit conditions will require the permittee to:

(1) Implement measures appropriate to the proposed water use to ensure a reasonable efficiency of water use considering up-to-date conservation practices and water delivery system technologies;

(2) By January 31st of each year, submit to the department an annual mitigation payment in an amount not to exceed forty dollars per acre foot for the volume of consumptive use between April 1st and August 31st. To meet the cost recovery requirements of RCW . . . . . (*Policy Bill: Management of water resources for the mainstem of the Columbia Section 5(3)*), the department may reduce the amount of the annual payment to better reflect the actual cost of acquiring the mitigation water. The amount of this payment will be adjusted annually by the implicit price deflator. The department will provide notice by November 1st of each year of the rate to be applied for that year in the following January's payment; and

(3) Measure and report water use in accordance with chapter 173-173 WAC.

NEW SECTION

**WAC 173-565-564** How are mitigation payments made? Mitigation payments must be made by check or money order payable to the department of ecology, and sent to the following address:

Department of Ecology  
Columbia River Mainstem Water Management Program  
P.O. Box 47600  
Olympia, WA 98504-7600

NEW SECTION

**WAC 173-565-570 What are the procedures for appealing the department's decision on a new water right?** The department's decision to approve, condition, or deny an application for a new water right from the Columbia River mainstem may be appealed to the pollution control hearings board in accordance with chapter 43.21C RCW.

**PART VI  
WATER METERING AND REPORTING REQUIREMENTS**

NEW SECTION

**WAC 173-565-600 Is water measurement required for uses of water from the Columbia River?** (1) Consistent with state law and chapter 173-173 WAC, all state water right holders are required to install and maintain devices to measure their use of water, and must report their diversions and withdrawals as required by the department.

(2) As part of the Columbia River mainstem water management program, the department will secure and commit the compliance resources necessary to achieve compliance for water use measurement and reporting for eighty percent of the annual volume of water authorized for diversion via state water permits, certificates and claims from the Columbia River mainstem within four years of the effective date of this chapter.

**PART VII**

## DEFINITIONS

### NEW SECTION

**WAC 173-565-800 What special terms and definitions are used in this chapter?** "Applicant" is any individual, government agency, company, or corporation applying for a water right under this chapter.

"Application" is a form provided by the department used to comply with the application requirements in Part III and Part V.

"Best management practices" are the irrigation practices described in "*Best Management Practices for Securing a Drought Permit*" as published and periodically revised by the department.

"Columbia River mainstem" includes all surface water between the border of the United States and Canada to the Bonneville Dam and, for purposes of this chapter, includes the surface waters of the Snake River from the Ice Harbor Dam to the confluence with the Columbia River, and all ground waters within one mile of the ordinary high-water line of the affected surface waters.

"Conservation measures" are measures that reduce water loss in transportation or distribution, or improve water use efficiency resulting in a reduction in water diversion or withdrawal. It does not generally include reduction in farmed acreage or changing to crops with reduced water needs.

"Conserved water" is water that is no longer diverted or withdrawn as a result of the implementation of conservation measures.

"Controlling interest" means a property interest that can be transferred to another person, the percentage interest so transferred being sufficient to effect a change in control of the landlord's rights and benefits. Ownership of property held in trust will not be deemed a controlling interest where no part of the trust has been established through expenditure or assignment of assets of the beneficiary of the trust and where the right is a part of the trust that cannot be transferred to another by the beneficiary of the trust under terms of the trust. Each trust of a separate donor origin will be treated as a separate entity and the administration of property under trust will not represent a controlling interest on the part of the trust officer.

"Department" refers to the Washington state department of ecology.

"Director" is the director of the Washington state department of ecology.

**"Drought permit"** is a permit to put water to beneficial use that is limited solely to periods when interruptible water rights are curtailed because minimum stream flows set under chapter 173-563 WAC are not being met.

**"Interruptible water right"** means a water right that was issued subsequent to 1980 that is subject to regulation or interruption when minimum instream flows set in WAC 173-563-050 are not met.

**"Mainstem account"** is the Columbia River mainstem water management mainstem account.

**"Mainstem account administrator"** is the person or persons designated by the director to manage the Columbia River mainstem water management mainstem account.

**"Mitigation payment"** is a payment made to the state in exchange for access to mitigation water to offset a new use of water from the mainstem of the Columbia River.

**"Obligate"** means dedicating a portion of the water deposited into the Columbia River mainstem water management account to mitigate for decisions to allocate water from the mainstem of the river by issuing permits for beneficial use out-of-stream.

**"Person"** is any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual or any other entity whatsoever.

**"Premoratorium"** means applications for water rights that have been on file with the department prior to the moratorium on the issuance of new water rights in 1991 (WAC 173-563-015 repealed).

**"Program"** means the Columbia River mainstem water management program.

**"Recalibrate"** means to reissue a water right permit or certificate based on an evaluation of the legal extent and validity of the beneficial uses of water under the permit or certificate.

**"Storage"** is the use of a natural or man-made formation that is able to hold water, typically from periods of high to moderate availability, for retrieval or release at some later time. Examples include: On and off stream reservoirs, and aquifer storage. Storage does not typically refer to water within natural water bodies, including aquifers, which are not recharged, increased, or retained by man-made intervention.

**"Storage water"** or **"stored water"** is water that has been purposely diverted, withdrawn, or captured for retrieval or release at a later time, and includes water in on and off stream reservoirs, and aquifer storage and recovery systems.

**"Tributary"** means all waters hydrologically associated with the Columbia River mainstem within Washington state above the Bonneville Dam, including all streams flowing into rivers,

ground water hydraulically connected to streams, and hydraulically connected ground water more than one mile distant from the Columbia River. For the purposes of this chapter, tributaries include water resource inventory areas numbered twenty-nine through sixty-two as defined in WAC 173-500-040.

**"Water right"** means a right to make beneficial use of public waters, as established under state or federal law. Water rights include interruptible and noninterruptible rights.

**"Water right holder"** is any person that holds a water right.