



RULE-MAKING ORDER

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

Agency: Department of Ecology AO # 08-03

- 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: In accordance with the Watershed Planning Act, RCW 90.82, this water management rule adopts the recommendations of the local watershed management plan (2006). The rules also help the Washington State Department of Ecology meet statutory obligations to manage waters for public use and for the protection of instream flows. This adoption sets instream flows, closes sub-basins to future withdrawals, designates regional supply areas for future water supply, establishes reservations of water for future use, and specifies conditions of use for access to the reserves. The new rule will cause portions of water reserved under WAC 173-592 to be transferred to the management scheme in WAC 173-528.

Citation of existing rules affected by this order:

Repealed: WAC 173-592
 Amended:
 Suspended:

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

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 08-15-168 on July 23, 2008 (date).
 Describe any changes other than editing from proposed to adopted version: See attached appendix: Differences Between the Proposed and Final Rule, WAC 173-528.

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: 12/19/08

NAME (TYPE OR PRINT)

Jay J. Manning

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: December 19, 2008

TIME: 2:56 PM

WSR 09-01-127

**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	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>14</u>	Amended	_____	Repealed	<u>13</u>

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

New	<u>14</u>	Amended	_____	Repealed	<u>13</u>
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The number of sections adopted in the agency's own initiative:

New	<u>14</u>	Amended	_____	Repealed	<u>13</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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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 173-528, Salmon-Washougal River Watershed, WRIA 28
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. All changes made are for rule clarity to more precisely identify the rule requirements. The changes made do not change the substance or the intent of the rule as proposed.

WAC 173-528-010 Authority and purpose. No rule language changes made.

WAC 173-528-020 Definitions. The definition of "municipal water supplier" was omitted and replaced with a definition for "community water supplier." The change was made in order to remain consistent with the recent statutory repeal of the definition of "municipal water supplier" under RCW 90.03.015. The definition of "community water supplier" is consistent with the original intent of the rule; which is to have the timely and reasonable requirement, under WAC 173-528-110(6), apply to all suppliers servicing fifteen or more residential service.

In the definition of "reservation," it was further clarified that such allocations are "one time" and "finite." This clarification is consistent with original rule intent and was also made in response to comments.

WAC 173-528-030 Map. No changes were made.

WAC 173-528-040 Compliance and enforcement. No rule language changes were made.

WAC 173-528-050 Stream management control points. No changes were made.

WAC 173-528-060 Establishment of instream flows. Under subsection (2), additional language further clarified that instream flows are protected from instream flows and "functions." The word "consumptive" in subsection (2) was unnecessary and deleted. Both of these changes were made in response to comments from Washington State Department of Fish and Wildlife.

Under Subsection (3)(a), the word "commenced" was replaced with "put to beneficial use," making this provision more specific and more consistent with rule intent. The words "or change authorization" was added to the end of Subsection (3)(a) for better accuracy and consistency with RCW 90.03. These changes were also made in response to comments.

Under Subsection (4), the final sentence was rewritten for better clarity and in response to comments. The new language makes clear when and under what circumstance the combined flows of management points apply.

Table II was reorganized by naming the management control point in more logical sequence, starting at downstream locations and moving upstream. Reorganized in response to comments.

WAC 173-528-070 Surface and ground water closed to further consumptive appropriations. No rule language changes were made.

WAC 173-528-080 Future water rights—generally. For better consistency with terminology used in the rule the term "permit-exempt ground water withdrawal" was changed to "permit-exempt withdrawal." The new term is defined under section 020.

Under Subsection (2), language was changed for better readability.

Under Subsection (4), additional detail was added to the description of "mitigation plan." The additional language is intended to provide the reader with more upfront information about the types of information needed by the agencies for approval of a mitigation plan. The new text points out that in order to be successful; an applicant should provide a monitoring and reporting plan. The new language also provides upfront information that describes the consequence of ineffective mitigation. These changes were made in response to comments.

WAC 173-528-090 Regional supply areas for future ground water withdrawals. Under subsection (1), sentences were restructured for improved grammar. For more clarity and consistency with other subsections in 090, the word "potentially" was added to the statement about water availability. Clarifying language added according to comments.

Under Subsection (3), language was added to clarify that the department of fish and wildlife will be consulted in the establishment of future water supply areas for future ground water withdrawals. This change made in response to comments and also further reflects the relationship between Ecology and fish and wildlife under existing authorities in RCW 90.03.247 and other water resource statutes. Change made according to comments.

Under Subsection (4), the word "creek" was replaced with "streams." Change made according to comments.

WAC 173-528-100 Future appropriations for interruptible use. No rule language changes were made.

WAC 173-528-110 Reservation of surface and ground water for future uses. Under Subsection (1), the following language was added, “The reservations are a one time, finite resource. When and if water is fully appropriated from the reservation, all remaining waters in closed areas are hereby appropriated for instream flow use.” This language was added in response to comments and in order to further clarify the original rule intent of making reservation allocations a discrete and finite allocation of water. After the reservations are used up, closures to future appropriation are intended to apply without any reservation in place. New reservations are not meant to be established in the future, nor any other type of allowance for any additional stream impacts that were not anticipated at the time of this rule-making.

Under Subsection (2)(a)(i), the word “municipal” was replaced with “existing” for further consistency with RCW 90.03.015, and according to comments.

Under Subsection (2)(a), new provision (iv) was added to include considerations for conservation techniques, such as reuse of waste water. This provision was added in response to comments and is consistent with the adopted watershed management plan (2006) that requires conservation techniques to be considered in the alternatives analysis. New provision (iv) was added to cross-reference changes made under Subsection 2(d), see below.

Under Subsection (2)(d), language describing the “impact analysis” was modified to better reflect current agency water right permitting practices. The newly prescribe language better reflects the needs of permit writers in Ecology’s regional office. It also better meets the original intent of the rule. The RCW 90.82 watershed planning unit approved the modification prior to its adoption. The modification to this section was made in response to comments received.

Under Subsection (5)(a), the citation to the section in the rule with detail on mitigation plans, WAC 173-527-080(4), was inserted where “mitigation plan” is referenced. Change made for better clarity and in response to comments.

Under Subsection (6), the words “permit-exempt ground water uses” was replaced with “permit-exempt withdrawals.” This change was made for better consistency with terminology used in other provisions of the rule. The term “permit-exempt withdrawals” is defined under section 020.

Under Subsection (6)(a), the citation to WAC 246-290 was added to provide current Department of Health regulations in regard to “timely and reasonable” connections to municipalities. This citation was added in response to the Department of Health’s comment. The term “municipal” was replaced with “community” for consistency with the definition changes made under Section 020 (see description above).

In Table IV, a typographical error was corrected.

WAC 173-528-120 Priority dates of reservation and repeal of chapter 173-592 WAC. No rule language changes made.

WAC 173-528-130 Accounting for use under the reservation. Under Subsection (3), the words “maximum daily use,” describing standard debit amounts for permit-exempt ground water use, was deleted. The provision now reads, “the standard amount will be adjusted periodically to reflect actual use during low flow conditions.” The change was made in order to provide more accurate information and make consistent with the method used to establish the original standard deduction of 240 gallons per day (gpd). The new language is consistent with original plan and is made in keeping with the original assumptions used in accounting for use under the reservation. The term “at a well site” was deleted to avoid redundancy.

Under subsection (5), the word “subbasin” was replaced with “water user in Table IV.” This language refers to Ecology’s notification process to identify when certain percentages of a reserve have been appropriated. Rather than notify according to subbasin totals, Ecology will notify for each user within a subbasin. Change was made in response to comments.

WAC 173-528-140 Future surface water withdrawals for environmental restoration. No changes made.