



RULE-MAKING ORDER

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

Agency: Department of Ecology AO# 04-08

Permanent Rule
 Emergency Rule

Effective date of rule:

Permanent Rules

31 days after filing.
 Other (specify) September 5, 2007 (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 these rule amendments is needed to protect instream values within the Walla Walla River basin and to avoid injury of existing water rights from future appropriations of water. The amendment establishes instream flow water rights; modifies seasonal surface waters closures; closes the gravel aquifers, which are directly connected to surface waters; limits future withdrawals during high flow periods to projects resulting in net environmental benefits; manages future permit-exempt groundwater withdrawals from the gravel aquifer, in "high density" areas; and limits stock watering based on parcel sizes. Outside of high density areas and in the basalt aquifer, permit-exempt wells are allowed in accordance with RCW 90.44.050.

Citation of existing rules affected by this order:

Repealed:
Amended: Chapter 173-532 WAC
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 07-04-114 on February 7, 2007.

Describe any changes other than editing from proposed to adopted version: See attached appendix: Differences Between the Proposed and Final Rule.

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:

8/2/07

NAME (TYPE OR PRINT)

Jay J. Manning

SIGNATURE

TITLE

Director, Department of Ecology

CODE REVISER USE ONLY

CODE REVISER USE ONLY
CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED
AUG 2 2007
TIME 3:40
WSA 07-17-007
AM
PM

**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>6</u>	Amended	<u>4</u>	Repealed	<u>5</u>

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

New	<u>6</u>	Amended	<u>4</u>	Repealed	<u>5</u>
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The number of sections adopted in the agency's own initiative:

New	<u>6</u>	Amended	<u>4</u>	Repealed	<u>5</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	_____

Amendment to Chapter 173-532 WAC, Walla Walla Watershed, WRIA 32
Appendix: Differences Between the Proposed and Final Rule

There are a number of changes from the proposed rule amendment published with the CR 102, and the rule amendment 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 amendment or requirement. The changes made do not change the substance or the intent of the rule as proposed.

WAC 173-532-010 Authority and purpose. No rule language changes were made.

WAC 173-532-020 Definitions. Language was added to the definitions of "consumptive use" and "nonconsumptive use" in order to clarify that if a use resulted in the diminishment of either "amount or quality of the water source," such use would be considered consumptive.

The definition of "domestic use" was modified to clarify that watering for gardens under RCW 90.44.050 is permissible only for "non-commercial" gardening. Clarification was made for consistency with the Court of Appeals Decision, *Kim v. Pollution Control Hearings Bd.*

The definition of "withdrawal" was modified for clarity and simplification. The words "for a beneficial use" were added for consistency with RCW 90.03.290, and the words "or use" were deleted for simplification. This change was also made in accordance to suggestions made in comments.

WAC 173-532-025 Establishment of stream management units. The stream management unit descriptions were changed for better accuracy. The description of Mill Creek MP 1 was changed to clarify that MP 1 covers segments of Mill Creek that are upstream from the Oregon portion of stream, rather than only being inclusive of the portion up to the state line. The revised description of MP 1 is consistent with the original intent.

WAC 173-532-030 Establishment of instream flows. Grammatical changes were made in this section to correct capitalization errors.

In subsection (2), language was modified to acknowledge that the instream flow recommendations submitted by the planning unit received a unanimous vote. This change was also made in accordance to suggestions made in comments.

WAC 173-532-040 Surface and ground water closed to further consumptive appropriations. In subsection (2), the reference to RCW 90.44.100 (2) and (3) was changed to refer only to section 100 and not to specific subsections. The change was made to more accurately reference the statute.

New subsection (4) was added to clarify that any unappropriated surface water and ground water from the gravel aquifer is unavailable for consumptive uses. New subsection (4) clarifies the original intent of the rule, which is to appropriate such water for instream purposes only.

WAC 173-532-045 Future permitting actions. Language added to clarify that future permitting decisions must also be consistent with existing statutes and other applicable requirements of law. This change was also made in accordance with suggestions made in comments. Other language was added for clarity and better readability.

In subsection (2), the words "is" and "and" were added for clarity and better readability. In subpart (2) (b), "or" was deleted and was replaced with "and" to correct previous error. This change was also made in accordance with suggestions made in comments.

In subsection (3), “only” was added to stress that this condition is not open to uses other than those intended for environmental enhancement projects. This change is consistent with changes made in WAC 173-532-040 and within original intent.

WAC 173-532-050 Protection of surface water rights from future permit-exempt ground water appropriations from the gravel aquifer. Overall, the structure of this section was modified for better readability and clarity. The numbering of subsections was changed to accommodate structural modifications.

New section 050 now begins with a threshold sentence, which provides that all exemptions described herein will only be applicable when connection to an existing municipal water supplier is not possible. This language was originally included in subpart (1) (a) and has been moved to the front for clarity.

~~New subsection (1) addresses the area that drains to the Snake and Columbia rivers (Burbank area). As stated in the CR-102 draft language, permit-exempt withdrawals may occur in these areas as long as they are consistent with the requirements set in RCW 90.44.050. The CR-102 draft language addressed the same subject in numerous subsections. The provision addressing the Burbank area was moved to the front for added clarity and in accordance with suggestions from comments.~~

New subsection (2) addresses limitations of withdrawals from the gravel aquifer in the high density areas. The substance is the same as previously included in subpart (1) (a). Examples of “outdoor uses” were added for clarity, and stockwatering was specifically mentioned as a use that is not included as an “outdoor use” under this subsection. These changes are consistent with original intent.

New subsection (3) addresses withdrawals in areas outside of the high density areas. The substance is the same as previously included in subpart (1) (b). The new language now refers to withdrawals for purposes “other than stockwatering.” This language was added for clarity and consistency with the body of section 050. Rules on stockwatering are addressed in new subsection (4).

New subsection (4) addresses withdrawals for stockwatering. The substance is the same as previously included in subpart (1) (c). The new language now clarifies that feedlots “are not considered stockwatering for the purpose of this chapter.” The language was changed to clear up any possible inference that watering for feedlots may otherwise be established without a permit. The term “tax parcel” was replaced with the term “legal lot of record.” These changes were made in accordance with suggestions from comments.

New subsection (5) addresses metering requirements. The substance is the same as what was previously included in subpart (1) (d). After mention of “all future appropriation” the new rule version adds “from the gravel aquifer” in order to remind readers that this section applies only to withdrawals made from the gravel.

New subsection (6) addresses mitigation requirements. The CR-102 version of the proposed rule addressed mitigation in subsection (2). Both the final and CR-102 version require water-for-water mitigation for any outdoor water use from May 1 to November 30. In response to comments, the new version has added details on how the mitigation requirement will be implemented and enforced. The final rule provides that the mitigation requirement shall be delayed until May 1, 2008, and that the department may order illegal water users to cease and desist immediately.

New subsection (7) addresses recordkeeping of all future permit-exempt ground water appropriations. This subsection is identical to subsection (3) of the CR-102 version of the proposed rule.

New subsection (8) addresses how Ecology will assist future permit-exempt users in identifying means to offset impacts. The substance is the same as that previously included in subsection (4). The new language adds that Ecology will “develop a mitigation plan” to identify “methods and means” to offset impacts of proposed water use. This language was added to further clarify how Ecology and other entities will provide assistance.

New subsection (9) addresses enforcement actions in the event that Ecology and other entities determine that the impacts of outdoor water use are not fully mitigated. The substance is the same as previously included in subsection (5). New subsection (9) was modified only to clarify that full mitigation refers to what is required in WAC 173-532-050 (6).

New subsection (10) addresses issues related to what does and does not fall under the rule (grandfathering) and beneficial use of permit-exempt wells. This subsection was added to clarify how the rule will be implemented, and is in accordance with comments requesting clarity on these issues. The new subsection provides that the priority date of a permit-exempt withdrawal is the date that water is first put to actual beneficial use. The language also clarifies that “beneficial use shall not be considered to occur until water is used within a residential structure.”

WAC 173-532-055 Future surface water withdrawals for environmental enhancement projects.

Subsection (4) addresses how a short-term permit for an Environmental Enhancement Project (EEP) may become a permanent water right. The new language now references RCW.90.03.290 to stress that EEP must also be consistent with statutory requirements for new appropriations. This new language was added to recognize existing law.

Subsection (10) addresses maximum allocations for EEP. The word “allowable” was deleted before the words “allocation for EEP.” The deletion was made for added clarity and consistency with the body of this section of the rule. This change is also in accordance with suggestions made in comments.

The title and subtitles of Table III were modified for consistency with the changes made in subsection (10) (see above).

WAC 173-503-090 Compliance and enforcement. No changes made.

WAC 173-532-120 Map. No changes made.