

Section #	Sub-section	Sec Title	Rule Version	Who	Type	Comment	Suggested revisions (shown in <i>ITALIC</i>)	NEW requirement for applicant or Ecology	Fatal Flaw (in yellow)	Significant potential cost or risk to G/D/U	Needs clarity/minor fix	See Footnotes for Key
173-219-040		Compliance Deadlines	5/12/10	King County	Wordsmithing	Wording sounds like there are no more permit renewals and only new permits? Every five years it will require a "new" permit application?	2(a) May request a reasonable period of time to obtain compliance with any newly applicable requirements. The lead agency may issue a schedule of compliance in the new operating permit <i>or permit renewal</i> .				x	
173-219-005	1	Purpose and Scope	5/12/10	King County	General	We appreciate the revision and the inclusion of encouraging reclaimed water generation and use as within the rule's purpose.						
173-219-015	1a	Generator responsibilities	5/12/10	King County	Wordsmithing	The phrase "water right considerations" is vague. It sounds broader than water right impairment or water rights issues, which are the only topics covered in Part II.	Substitute " <i>water rights , as described in Subpart A of Part II</i> "				x	
173-219-015	2b	Generator responsibilities	5/12/10	King County	Wordsmithing	The phrase "inherent to" is not the way this phrase is usually constructed.	Change to " <i>inherent in</i> ." Similar changes should be made in other sections where the draft says "inherent to."				x	
173-219-015	3a	Generator responsibilities	5/11/10	King County	Policy/Legal	Suggest that Ecology approve a template instead of each distributor and end user contract so as not to involve Ecology in each negotiation. This is currently allowed.	The changed language is shown in italics: "Ensure through enforceable contracts or ordinances all applicable requirements in this chapter and the permit issued under this chapter are met. <i>A template contract may be approved by Ecology in lieu of review and approval of each individual contract.</i> "	x		x		A,C
173-219-020	2	Distributor responsibilities	5/12/10	King County	Policy/Legal	The relationship between the generator and distributor currently is defined in the sale and distribution agreement and may vary depending on method of reclaimed water system development and distributor resources. See suggested language change.	The changed language is shown in <i>italics</i> : "The distributor is directly responsible for all facilities and activities <i>described in the Sales and Distribution Agreement between the Generator and the Distributor related to reclaimed water distribution. These items may include, but not limited to, construction, operation, maintenance and monitoring systems, storage facilities, transport vehicles and other mean of conveyance for reclaimed water distribution facilities.</i> "				x	
173-219-030		Guidance available	5/12/10	King County	Wordsmithing	Words in the first sentence ("date, publication number") evidently are a placeholder or should be deleted.					x	

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173-219-030		Guidance available	5/12/10	King County	General	Suggest adding a sentence to make clear that guidance documents are not part of the rule, and are not requirements. When will the "Reclaimed Water Facilities Manual" be available for review?	Add sentence: <i>Guidance documents are not part of this rule and are not enforceable requirements.</i>				x	
173-219-040	2	Compliance deadlines	5/12/10	King County	Wordsmithing	Suggest changing "permitted," because it which could be confused with the operating permit language.	Change "permitted" to " <i>authorized</i> "				x	
173-219-040	2d	Compliance deadlines	5/12/10	King County	General	Subsection (a) says that existing permit holders may continue to operate under existing terms and conditions until permit renewal, but subsection (d) implies that there may be "newly applicable requirements." Which is it? Or is it at the discretion of the holder of the permit?	Delete subsection (d), and retain (a); retain (a) and modify subsection (d) as shown in Italics to state, " <i>Upon permit renewal, after existing permit has expired, the permittee may requested a reasonable period of time to obtain compliance with any newly applicable requirements included in a permit renewal . The lead agency may issue a schedule of compliance in the new operating permit.</i> "		x			
173-219-050	4 and 5	Regulatory Agency Responsibilities	5/12/10	King County	Policy	Ecology and the Department of Health continue to have the obligation under RCW 90.46.005 to encourage the use of reclaimed water, and Ecology should include that obligation in these subsections. All the other elements from the "purpose and scope" section of the draft rule--protecting public health, the environment, and water rights--appear in this section; Add language regarding encouragement of reclaimed water to these subsections.	Insert " <i>encourage the generation and beneficial use of reclaimed water</i> " in the obligations of both Ecology (subsection 4) and Health (subsection 5)				x	
173-219-050	5(a)i	Regulatory Agency Responsibilities	5/12/10	King County	General	"There is no discharge of reclaimed water to the environment..." When would this be the case? What is meant by environment (i.e. do you mean that for environmental uses Ecology is lead so DOH would cover irrigation uses)? Discharge implies a waste product. Suggest changing "discharge" to "use" depending on what the intended meaning for environment is.					x	

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173-219-060	2	Fees	5/12/10	King County	Legal/(No Suggestions)	The notion is that the project applicant may elect to enter into a cost-sharing agreement; existing wording makes it appear that Ecology may make that election	Swap the words "ecology" and "a project applicant"				x	
173-219-060	3	Fees	5/12/10	King County	Legal	Not clear whether DOH has the authority to collect fees for reclaimed water projects under RCW 43.70.250; those fees are limited to businesses, occupations, professions, none of which appear to apply to reclaimed water projects operated by local governments; this authority may need to be modified legislatively					x	A
173-219-070	1	Regulatory action	5/12/10	King County	Legal	As mentioned in earlier comments, the notice should state that the agency has reason to believe that a violation has occurred, and state the basis for it. The statute uses the phrase "in the opinion of the agency." The phrase "agency determines a person violates" should be modified.	Should read " <i>in the opinion of the agency,</i> " or " <i>has reason to believe that a person has violated</i> "				x	A

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173-219-070	3	Regulatory action	5/12/10	King County	Policy	These provisions on compliance schedules are confusing and unnecessarily detailed. At a minimum they could be shortened.	Shorten to: " <i>The lead agency may establish reasonable schedules and conditions to achieve compliance with applicable requirements within the shortest reasonable period of time. The compliance schedules shall (1) reflect the nature and complexity of the violation and the time necessary to remedy it; (2) if longer than a year, include interim milestones and reasonable reporting requirements; and (3) require written notice from the regulated entity to the lead agency within 30 days of having met the compliance schedule. Failure to comply with the compliance schedule or any of its milestones may be considered by the lead agency as a violation, and may subject the regulated entity to modification or revocation of a permit or other enforcement action .</i> "				x	C
173-219-070	3a	Regulatory Action for non compliance	5/12/10	King County		What will be the basis for compliance? Should it say "based on threat to public health, environmental degradation, etc"? How does this apply to existing facilities?	Notification. When the lead agency determines a person violates or creates a substantial potential to violate chapter 90.46 RCW, the lead agency must notify the person of its determination by registered mail <i>and include the basis for the violation or potential to violate.</i>			x		A
173-219-070	4b	Regulatory action	5/12/10	King County	Legal	The actions for which civil penalties may be levied exceed those authorized in statute--RCW 90.46.270-- where civil penalties are authorized only for distribution/use without a permit, violation of permit conditions, or violation of an order.	Conform the language to the statute RCW 90.46.270			x		A
173-219-070	4c and 4d	Regulatory action	5/12/10	King County	Legal	The scope of criminal sanctions appears to exceed those authorized in statute--RCW 90.46.260.	Conform the language to the statute RCW 90.46.270			x		A
173-219-090	1	Definitions	5/12/10	King County	Definitions	Thank you for identifying which definitions are in statute rather than repeating them.						

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173-219-090	2	Definitions	5/12/10	King County	Policy	There is no general definition of "net environmental benefit," which had been requested at the last RAC meeting. There is only a definition in the wetlands section, implying that the term cannot be used for other environmental enhancement projects or objectives. However, in the past projects were allowed to move forward, based upon overall net environmental benefit--not just for wetlands.	Propose the following language adapted from 173-219-600(7)(g) be used for net environmental benefit in the definitions section and be an option for use environmental enhancement projects: "Net environmental benefit means that the use of reclaimed water in a particular project provides net positive gain for the environment by substantially protecting significant existing environmental beneficial uses in the project area and creating new or enhanced beneficial environmental uses in the project area that outweigh any environmental impacts or injuries." And add the following from Ecology's antidegradation WAC (chapter 173-201A-300: "Both temporary harm and permanent loss of existing uses may be allowed by the department where determined necessary to secure greater ecological benefits through major habitat restoration projects designed to return the natural physical structure and associated uses to a water body where the structure has been altered through human action."	x		x		A, B
173-219-090	2	Definitions	5/12/10	King County	Wordsmithing	The definition for agronomic rate includes "nutrient loading." Most Class A water, even from reclamation plants without nitrification, will not meet the nutrient loading needs of most plants, providing less nutrients. Additional nutrients will need to be added using fertilizers, compost, etc. Therefore, how the definition is structure, if you met the nutrient loading need the hydraulic loading would be exceeded. Suggested modifying definition.	Suggested changes in Italics, "refers to a specific rate of hydraulic loading and nutrient loading that <i>does not exceed</i> the agricultural crop or landscape plant requirements while avoiding over application. "				x	

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173-219-090	2	Definitions	5/12/10	King County	Wordsmithing	The proposed definition of "contaminant" differs from the existing definition in Ecology groundwater quality rules. In order to avoid confusion, the existing definition should be used. The proposed language is from WAC 173-200 (groundwater quality standards); there does not appear to be a definition in WAC 173-219-201A (surface water quality standards).	Use the following language from WAC 173-200-020: "Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in ground water or that occurs at concentrations greater than those in the natural levels.	x			x	A
173-219-090	2	Definitions	5/12/10	King County	Wordsmithing	The definition of "generator" does not include the statutory provision that only the owner of the wastewater facility where the reclaimed water is generated can be issued the permit. The proposed definitions are circular--the definition of "generator" is the person issued the reclaimed water permit, and the definition of "reclaimed water permit" is the permit issued to the generator.	Paraphrase language from RCW 90.46.120: The owner of a wastewater treatment facility that is reclaiming water, or proposing to produce reclaim water, with a permit issued under this chapter, and has the exclusive right to any reclaimed water generated by the wastewater treatment facility.				x	A
173-219-090	2	Definitions	5/12/10	King County	Wordsmithing	The definition of "potable or drinking water" is not the same definition as is in the state's drinking water rules (WAC 246-290). The definition in those rules should be used to avoid confusion.	Use the following language from WAC 246-290-010: "Potable water or drinking water" means water suitable for drinking by the public.	x			x	A
173-219-090	2	Definitions	5/12/10	King County	Wordsmithing	Why is the second sentence included in the definition of "natural wetlands." All statutory references to whether certain types of wetlands are, or are not, "waters of the state," were deleted at Ecology's request by its agency's reclaimed water request legislation in 2009. There is no explanation for why this language is here, and what its implications are.	Delete the second sentence. "Natural wetlands" means those wetlands that occur due to natural causes other than construction by human activities. Natural wetlands are typically classified as "waters of the state."				x	A
173-219-090	2	Definitions	5/12/10	King County	Wordsmithing	In the definition of "reliability assessment", "third party guarantor", and " plans and specifications", refers to "reclaimed water systems." There is no definition of "systems." Should the reference be to "facilities or plant," which is defined?	Change "systems" to "facilities or plant," or add a definition for reclaimed water systems.				x	

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173-219-090	2	Definitions	5/12/10	King County	Wordsmithing	The definition of "waters of the state" should be limited to the first sentence. Since the term and definitions of it exists in multiple places in state rules, the definition should not only reference the WAC definition referring to domestic wastewater facility discharge, which might imply that interpretations of that definition--as it applies to wastewater practices--is intended to apply to reclaimed water, which is not wastewater. Reclaimed water is not wastewater. You should use a broader definition that includes use of reclaimed water as a resource, not as a wastewater that needs to be eliminated. Domestic wastewater facility discharge standards.	Delete the second sentence. "Water of the state or state waters" refers to lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington. Term used is the same as defined in WAC 173-221-030.				x	A
173-219-090	2	Definitions	5/12/10	King County	Definitions	The definition for "wetland mitigation" is unclear. The first and second sentence conflict. Suggested is a simpler definition.	Wetland Mitigation A regulatory requirement to replace or enhance wetland areas destroyed or impacted by proposed land disturbances with artificially created or restored wetlands.				x	

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173-219-090	2	Definitions	5/12/10	King County	Definitions	The RW-WRAC recommended at its last meeting that the definition of impairment be placed in guidance, because (1) there is no definition in statute or WAC for "impairment," (2) this definition is an amalgam of pieces of other definitions, and in fact creates a higher standard for reclaimed water projects, and (3) there are some pieces of this definition (e.g., creation of the notion of water quality changes as a water right impairment) that could end up being a major barrier for reclaimed water, and go well beyond currently understood definitions within other programs. This definition also discourages reclaimed water use, and is therefore inconsistent with the purpose of the rule.	Move the definition of Impairment guidance, as the RW-WRAC recommended in March.	x	x			A, B, C

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173-219-090		Definitions	5/12/10	King County		The definition of water rights impairment includes the quality and quantity of water. This is a new concept, which does not exist in statute or any existing Ecology rule--either for reclaimed water or any other project reviewed for water rights by Ecology. It creates a potentially significant barrier to reclaimed water, and will cause substantial confusion and uncertainty. If left in, Ecology must include language concerning the scope and methodology of assessing and compensating/mitigating the impairment of quality in the rule and guidance. In particular, reclaimed water project proponents should not be penalized or precluded from pursuing a reclaimed water project if the existing wastewater discharge is producing, and discharging, water of higher quality than the receiving water. This issue was discussed at the last RW-WRAC meeting, and we believe that Ecology understood and would address the concern. At that meeting the RW-WRAC also recommended moving the definition to guidance, which we believed Ecology was planning to do.	Change language to "means an interruption or interference in availability of water, or degradation of the quality of water, caused by decreasing or ceasing a wastewater discharge in order to reclaim the water, that would..." Then move the definition to the guidance document.	x	xx			A, B, C

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173-219-100		Exclusive Right	5/12/10	King County	Legal	The last two lines of this section are contrary to the statute, which provides the exclusive right to the use of water generated by the reclaimed water facility. The law does not authorize Ecology to force a relinquishment of this right, or to convert reclaimed water back to wastewater and issue water rights for the water. The notion of relinquishment appears to have been imported from the water rights permitting process under the Water Code. Under RCW 90.46.120, the use, distribution, storage, and recovery from storage of reclaimed water are not subject to the permitting requirements of the Water Code. The RAC has discussed this issue and strongly opposed any attempt by Ecology to attempt to modify the law this way. We do not understand why Ecology wants to issue water rights for water owned by the reclaimed water facility owner. The last two sentences should be deleted.	Delete the last two sentences of this section. WAC 173-219-100 Exclusive Right The owner of a wastewater treatment facility that is reclaiming water with a permit issued under this chapter has the exclusive right to any reclaimed water generated by the treatment facility. The applicant must identify existing and proposed uses including their intent to retain the exclusive right to the water or plan to change the use at a future date in the documents submitted for ecology review and approval. If no intent is specified, the water will have the same status relative to further appropriation as a wastewater effluent discharge from that facility.	x	x (very big deal)			A, B, C
173-219-100		Exclusive Right	5/12/10	King County	Legal	The RAC requested language that would protect the reclaimed water project owner from any issuance of water rights by Ecology/future claims of impairment if uses of reclaimed water for environmental enhancement (streamflow/surface water augmentation; groundwater recharge; wetlands enhancement) were to be modified or ceased, and the facility owner put the water to other beneficial uses. We believe Ecology agreed with this. There is no such language.	Add sentence at the end of section 100: " <i>Ecology shall not issue any water rights for the use of reclaimed water, nor shall there be any impairment of any water rights issued after the commencement of any such use of reclaimed water where the generator changes the use ."</i>	x	x			A, B, C
173-219-100		Water Rights Considerations	5/12/10	King County	Wordsmithing	The phrase "water rights considerations" is vague. The subpart refers to only two issues: impairment and mitigation. The title should just use those terms.	Change "considerations" to " <i>impairment and mitigation ."</i>				x	

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173-219-105	2	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County		The rule should explicitly exclude reclaimed water projects where there is no existing discharge or the discharge is to marine waters. This was indicated as the content of the rule in the slide presentation for the Lacey RW rule workshop on 5/26/2010 however does not appear to be included in the draft rule. By making it explicit in the rule it will avoid unnecessary work by Ecology staff and the applicant.	Add "No application, evaluation, or determination is required for reclaimed water projects where there is no existing wastewater discharge or the existing discharge is to marine waters."				x	A, B, C
173-219-105	3	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Legal	Existing water rights: The "existing water rights" should be those at the time of the application for an impairment decision. This proposed language generates uncertainty as to whether Ecology's decision on impairment--which Ecology believes must be made sometime after plans and specs are submitted, but before construction--can be overridden by someone else making an impairment claim after that decision but before the reclaimed water permit is issued. This could be years. At a minimum, Ecology should provide the same protection that is afforded to people applying for new water rights, or water rights changes, which gives those people a priority date--i.e., protection against subsequent applicants for water rights--as of the date that they apply to Ecology. The draft rule proposal is inconsistent with the RW-WRAC recommendations.	Change "when the reclaimed water permit is issued" to " <i>at the time that the request for the impairment evaluation is submitted .</i> "	x	x			A, B, C
173-219-105	4	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Wordsmithing	See comment above: As written, this appears to make it Ecology's discretion to enter into a cost-reimbursement agreement, when it is actually the discretion of the applicant's under RCW 43.21A.690.	Change "Ecology" to "The applicant," and "the applicant" to "Ecology."				x	

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173-219-105	4	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Policy	The RAC has commented on the fact that applicants for water rights determinations should not be disadvantaged if they are unable to pay for Ecology work under a cost-reimbursement agreement. We believe that Ecology agrees, and that those applicants paying the costs should not get a priority in Ecology's processing.	Add a sentence: " <i>Applicants entering into a cost-reimbursement agreement with Ecology pursuant to this subsection shall not be given a priority in the processing of their impairment evaluation over an applicant that does not enter into such an agreement.</i> "				x	B
173-219-105	6	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Wordsmithing	There is no provision regarding Ecology not second-guessing any compensation or mitigation agreement with third parties. Ecology should be required to accept the agreement.	Add to (6)(b)(i): "Once sufficient documentation has been provided to Ecology, Ecology shall accept the agreement."		x			
173-219-105	7	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Legal	Precluding any appeals of water rights determinations is new. It was never identified as an issue before in current guidelines, in RAC/WRAC discussions or previous versions of the draft rule. Both advisory groups recommended that the water rights determination be made early if the applicant so chooses, and be appealable, in order for any reclaimed water projects to move forward. Allowing appeals only when permits are issued--which is after the facility is constructed--will be meaningless, because at that point the project owner will have entered into a compensation/mitigation agreement, which arguably would be an enforceable contract that could not be undone. We want to note that Ecology issued an appealable water rights determination for King County's Carnation plant before construction started--has the law changed?	Change "final permit decision is made" to " <i>written preliminary determination of impairment is issued by Ecology. Such a determination shall be considered an agency decision under RCW 43.21B, and appealable under relevant provisions of law to an adjudicative body.</i> " If additional legislative authority is needed, Ecology should seek it.	x	x			A, B, C

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173-219-105	5a.iii	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Policy	In discussions with the RW-WRAC, Ecology has agreed that the "project" to be evaluated for impairment could include, at the discretion of the applicant, a description of compensation or mitigation that would be part of the project. This should be explicitly authorized, similar to water rights applications where the applicant has the discretion to offer mitigation.	Add: "(F) A description of any proposed compensation or mitigation for any potential impairment that may be offered at the discretion of the applicant as part of the project ."			x		B
173-219-105	5a.iii	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Wordsmithing	It should be clear that there is no obligation on the applicant to separately submit this information if it has already been provided in other planning or technical documents.	Add at the end of subsection (iii):" <i>The applicant need not supply this information separately if it has already been provided to Ecology in planning, technical, or other submittals .</i> "				x	C
173-219-105	5b.ii	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Legal	The purpose of the impairment is to assess the water rights impacts to the freshwater into which the wastewater discharge has been going. The scope of the water rights review should be limited to existing water rights on which the change in the freshwater discharge has a physical and legal impact. Please clarify that for groundwater, this would only include groundwater rights that are in hydraulic continuity with the freshwater. (not all groundwater rights)	Current (ii) Determine the appropriate scope of the impairment evaluation and necessary information submittals after discussion with the applicant. The scope must include existing ground water and surface water rights downstream from any freshwater discharge point of the facility. Add a sentence: " <i>Only downstream groundwater rights that are in hydraulic continuity with the freshwater body into which the discharge is or has been made shall be within the scope of the analysis .</i> "	x	x			A

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173-219-105	5b.vi	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Legal	This is the provision that provides no deadline for Ecology to make a determination on water rights. If it cannot make a determination within 180 days, then there should be alternatives, including: (1) a presumed determination of no impairment; (2) an extension of time with a fixed duration (for instance, this draft rule has a number of provisions that allow extensions of time for applicants for only fixed periods of time). Providing no deadline for a decision creates uncertainty, risk, and discourages reclaimed water projects.	Add a sentence: " <i>Ecology may extend the deadline for determination for a maximum of an additional 180 days; if no written determination has been issued by Ecology by the expiration of this extension, the project shall be deemed to not impair any existing water rights, and Ecology shall not modify this conclusion at any point in the future, including permit renewals .</i> "		x			B, C
173-219-105	6b.iii	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Wordsmithing	The last phrase of this subsection implies that any mitigation or compensation accepted by Ecology regarding instream flows is only good for the 5 year life of the permit rather than life of the facility or project, and will be renegotiated with each permit. We believe that this is a misstatement on Ecology's part, and suggest that it be clarified. If mitigation and compensation were to endure for 5 years rather than the life of the project then it will leave facility owners in defense of unknown risk and claims every 5 years.	Change "of the permit" to " <i>life of the project and the proposed use under the impairment determination .</i> "	x	x			
173-219-105	6d	Water Rights	5/12/10	King County		The rule states"6d- Where ecology accepts mitigation for an impaired in-stream flow right, ecology may condition the reclaimed water permit as appropriate to ensure that mitigation is in place for the life of the project." Comment- under existing rules and practice, Ecology does not condition the permit. The applicant receives a letter with the water rights determination but RW permit does not have any conditions in it for water rights (Carnation RW permit 2008). By conditioning the permit, you are making the water rights analysis and the mitigation/compensation good for only 5 years instead of the life of the project. Please delete 6d as written and replace with proposed language.	<i>(d) Where ecology accepts mitigation or compensation for an impaired in-stream flow right, ecology will send a letter of acceptance and the acceptance of mitigation and compensation is for the life of the project.</i>	x	x			A, B

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173-219-105		Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Policy	Conform to the language recommendations of the RW-WRAC. In particular, (1) applicants should be able to make their own decisions on when to ask for an impairment evaluation, up to the time of permit issuance; (2) applicants should be entitled to an appealable decision on impairment early in the process; (3) applicants should be able to request a determination at multiple points in the process, including at the time it submits plans to Ecology (e.g., a reclaimed water plan, or a general sewer plan). The proposed approach to the impairment issue is too rigid and doesn't fit with capital project planning/permitting processes. The draft rule does not reflect key recommendations provided by the RW-WRAC over a 2+ year period, and with specific recommendations made to Ecology at the last RW-WRAC in March 2010	Specific wording is suggested for each section but this comments requires more than re-wording. It requires a review of the approach.	x	x			A, B, C
173-219-105		Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County	Policy	There are a number of key elements missing from the proposed language, including: (1) a requirement for "final determination" by Ecology on an impairment determination; and (2) a deadline for a final determination of impairment by Ecology (it appears that Ecology is only required to provide an "estimated decision time" if it can't complete the impairment decision within 180 days; this could bring projects to a halt for years while waiting for an Ecology decision).	Provide for final determinations, and a deadline for them. suggest- 5b(vi) <i>Promptly take action to make a preliminary determination on impairment within 180 days of receipt of the completed evaluation. If circumstances prevent review within a 180-day period, ecology may extend the period to make the preliminary determination by a reasonable amount of time, not to exceed an additional 90 days, and must notify the applicant of the reason for the delay and an estimated decision time. A final determination must be made by Ecology no later than 30 days after the preliminary determination. If Ecology does not issue a written final determination within 30 days, the preliminary determination shall be considered the final determination. The final determination may be appealed by the applicant, or any interested party, pursuant to the procedures under RCW 43.21B.</i>	x	x			A, B, C

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173-219-105		Evaluation of Potential Impairment of Existing Water Rights		King County		If Ecology does not believe that there is current legal authority in the statute to provide an appealable decision for water rights impairment that is separate from the decision to issue or deny a RW permit, then Ecology should go get the authority from the legislature. For Carnation, we received a final letter of determination before the permit because we were told by Ecology that it needed to be done by the time we submitted the RW permit application. Has state law changed since 2008?	Go get legislative authority to make it appealable.	x	x			A, B, C
173-219-105	b.viii and 6	Evaluation of Potential Impairment of Existing Water Rights	5/12/10	King County		The rule needs to include who is involved or consulted in the negotiation for compensation or mitigation (tribes? potential impaired rights holders?). The rule needs to define boundaries for the mitigation and compensation calculations and agreements. This could be a big ticket item and needs to be described in enough detail so there is a clear sense of intent and purpose for the calculation.	compensation and or mitigation will be determined based on the following....			x		B, C
173-219-110	2	Water Right Mitigation	5/12/10	King County	Wordsmithing	This section should simply be called "Requirements." Calling it "minimum requirements" implies that there are other requirements somewhere.	Delete "Minimum" from title.				x	
173-219-110	1b	Water Right Mitigation	5/12/10	King County	Wordsmithing	The RAC, and Ecology agreed at the last meeting that the existing draft rule should explicitly provide for reclaimed water to be used for mitigation by third parties (i.e., persons who are not the generators). The proposed language "or supply" does not make that clear. It should be made clear. This is consistent with water resources staff intent and goals of the northwest DOE office with regards to the Sammamish River Valley.	Add at the end of subsection (b): " <i>The water may be supplied by the generator to any third party for use as mitigation by or for the third party's water rights mitigation purposes .</i> "			x		B

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173-219-120	1	Submission of Documents for Review and Approval Required	5/12/10	King County	Technical	The draft rule indicates that before constructing or modifying a reclaimed water facility , an operation and maintenance manual is required. For many reasons, operation an maintenance manuals are developed near the end of the construction period and include manufacturer information along with design information. This requirement should be changed to the appropriate timing. In addition it is my understanding the Ecology only plans to review and approve significant changes to existing facilities this should be reflected in the language. Also the definition for reclaimed water facility says it may include wastewater collection systems and reclaimed water distribution and use sites. Currently submittal of engineering reports, and detailed plans and specifications for individual use area connections, with the exception of major infrastructure for environmental uses, are not required. Language should be changed accordingly.	Modify language as shown with changes in Italics, "Before constructing or <i>significantly</i> modifying reclaimed water facilities, reclaimed water plans, engineering reports, construction plans and specifications, and operation and maintenance manuals applicable to the project must be submitted to the lead agency for review and approval. An operations and maintenance manual shall be submitted to the lead agency for review and approval after construction is complete. Engineering reports and plans and specifications will not be required for the use area with the exception of environmental enhancement use area infrastructure. "	x		x		A, B, C
173-219-120	3	Submittal docs	5/12/10	King County	General	What happens to permit approval cycle if Lead or non-lead agency causes a delay? Provide timeframe.	Please add a sentence to provide a timeframe if the Lead or non-lead agency causes a delay.				x	
173-219-130	2d	Agency Review Standards	5/12/10	King County	Technical	The list of docs is for guidance purposes (according to Bill Moore and Kathy) so take out of rule and move to guidance document. Please move list to guidance and list on your website and make the following changes: Need to add "and agricultural" to (a) since the documents are more than engineering references. Instead of listing versions , just write most current version so this list makes sense in 10 years.	(a) Meet standard engineering <i>and agricultural</i> criteria and practices used in the planning, design and construction of all reclaimed water facilities, such as those set out in the most current edition of the:This list is for guidance purposes only and does not limit the applicant's use of other standard practice documents.				x	B, C

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173-219-130		Agency Review Standards - exceptions	5/12/10	King County	Technical	To encourage reclaimed water use in environmental projects that have multiple benefits, Ecology needs to (and does now) take into full consideration the overriding public interest. Make it explicit in the rule so it is a clear review standard and it is a tool available to Ecology when conducting it's review. Using references is not enough. This tool is critical to the flexibility of permitting and addresses the uniqueness of some projects.	<i>4(b) The reviewing agencies may consider overriding public interest (chapter 90.54 RCW)for exceptions to the requirements in this chapter on a case by case basis.</i>	x		x		A, B
173-219-130		Agency Review Standards - exceptions	5/12/10	King County	Policy	The application of net environmental must be expanded to more than wetlands. Restricting it to only wetlands is an artificial boundary that does not encourage reclaimed use to it's fullest.	<i>4(c) The reviewing agencies may consider net environmental benefit for exceptions to the requirements in this chapter on a case by case basis. The benefits may include but are not limited to wetlands, habitat, surface and groundwater.</i>	x		xx		A, B, C
173-219-140		Planning	5/12/10	King County	Policy	We appreciate the considerable rewriting and cleaning up of this section, and believe that the revisions have addressed our concerns and considered our suggestions.						

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173-219-160	5	Engineering Report Site management plan	5/12/10	King County	Technical	New time-consuming and costly requirement. Content and timing of information requested: The requirements go far beyond what is currently required in the RW permit and are too detailed for the engineering report phase which is well before the contracts with users and distributors. Types of crops, irrigation systems, and other user defined elements WILL change over time and should be the responsibility of the generator to make sure the system is in compliance with the user agreement and RW permit. REQUIRE this information as part of the RW permit instead of a separate site plan for each and every user. For large systems such as Brightwater, hundreds of site plans will developed. For Bothell's 9 mile distrubtion system (off of Brightwater), Ecology would need to review 90 plans,adding great cost to each RW owner and Ecology must review each one. Instead, use the RW permit to condition the sites as you do now and require the agreements to conatin the enforceable site management requirements as required now.	Move Site management plan requirements to Permit terms and conditions. Agreements must include ability to enforce the site management requirements. Ecology need s to request the site management info at the permit stage, not engineering stage.	x		x		A, B, C
173-219-160	5	Engineering Report Site management plan	5/12/10	King County	Technical	In subsection c vi- parameters to be monitored to assure water quality is within acceptable limits for ag use. Sounds like the user must do the monitoring at each site. That is beyond current monitoring requirements. Any monitoring of water quality should be done prior to use sites.	delete c vi	x		x		A, B, C

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173-219-160		Engineering Report	5/12/10	King County	Technical	Information required and approvals tied to the engineering plan do NOT jive with how the process works in real life. Any work with customers to get to an agreement to use RW and understand their needs/systems comes after the engineering report. Ecology needs to allow submittals later than the engineering report to accommodate the timing of working with customers.	Supplements to the engineering report will be allowed.	x		x		A,B
173-219-200	6	Groundwater recharge	5/12/10	King County	Legal and Policy	This section seems to imply that the lead agency—likely Ecology—can choose between either drinking water standards or some of the other standards under the groundwater WAC (173-200). This creates ambiguity and uncertainty, and is inconsistent with current state law. The section should be modified to establish drinking water contaminant standards as the default water quality standard, and allowing more stringent standards only where the need for higher levels of protection exist.	Insert after “(b),” and before the existing text in (b): <i>“Where the groundwater has been formally designated by the Director of Ecology for special protection, or clearly articulated and site-specific conditions warrant a higher level of protection, the...”</i>	x	x	x		A, C
173-219-200	6	Groundwater recharge	5/12/10	King County	word smithing	It is not clear whether the drinking water standards are intended to include Maximum Contaminant Level Goals (MCLG’s), or State Action Levels (SAL’s). Simply referring to state drinking water standards and state groundwater standards—which include these additional criteria—imply that these may become enforceable standards, when they are not enforceable standards for drinking water systems, although they may trigger additional monitoring under health regulations. Reclaimed water projects could reasonably be required to do such monitoring, but should not be subjected to having these imposed as enforceable standards.	Add a subsection (3): <i>“For contaminants for which DOH, or the State Board of Health, has established a Maximum Contaminant Level Goal, or a State Action Level, a reclaimed water project may be required to do such additional monitoring as would otherwise be required for those contaminants, but neither the lead agency nor the nonlead agency may impose them as enforcement limits for the reclaimed water project.”</i>				x	

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173-219-210	2	Individual permit appl.	5/12/10	King County	Technical	The rule states: (2) Upon receipt and review of a complete and accurate application, the lead agency makes a draft determination to issue or deny the operating permit and prepares a fact sheet or statement of basis under WAC 173-219-230. It is unclear what is the timeframe for the determination?	The rule states: (2) Upon receipt and review of a complete and accurate application, the lead agency makes a draft determination in <i>90 days</i> to issue or deny the operating permit and prepares a fact sheet or statement of basis under WAC 173-219-230.				x	
173-219-295	18	Adding new users	5/12/10	King County	Technical	The current draft rules does not have a defined, simple and flexible way to add new users AFTER a RW permit has been issued. The current rule language does not identify how users can be added by the permittee. Instead, it describes what Ecology needs to do. In addition, the wording indicates that to add users "the permit must specify the locations where uses may be authorized." This wording doesn't work because the permittee may not be able to provide the info listed at the time the permit is written. For big systems like Brightwater, we may add 100 users <u>after</u> the permit is issued. The current draft rule would prohibit new locations and users because we would not know the info at the permit application stage. Please use wording similar to that in the existing south plan RW permit. It works well and provides the flexibility needed as systems grow.	Replace current language and use this taken from the South Plant RW permit. " <i>Authorization for New Direct Non-potable Uses of Reclaimed Water</i> <i>The Permittee may provide reclaimed water for direct beneficial uses at locations not listed in the Permit in accordance with the terms and conditions of this permit provided the following conditions are met:</i> <i>1. Direct beneficial uses and requirements for use are as listed in the Washington State Water Reclamation and Reuse Standards. The class of reclaimed water provided meets or exceeds the minimum requirements for the proposed use.</i> <i>Irrigation uses do not exceed agronomic rates of application.</i> <i>2. The use area is located within jurisdiction of the Permittee or other nearby jurisdictions. The water reclamation facility and use areas must comply with local permitting and land use requirements.</i> <i>3. The reclaimed water meets all applicable requirements of this permit for the approved class of reclaimed water, including source control, treatment, water quality limits, monitoring, reporting, record keeping,</i>	x	XX need to fix			A, B, C
173-219-295	1a	Renewal of a permit	5/12/10	King County	Policy	In order to be less burdensome on both Ecology and the facility owner, we recommend that RW permits be issued for 10 years rather than 5 years. This would give certainty to users who sign agreements and make infrastructure investments assuming 10 years or longer.	WAC 173-219- 295 Specific Permits Conditions (2) Permit duration. Permits may be issued for up to five <i>ten</i> years. The permit must specify the dates of issuance, effectiveness and expiration of the permit.				x	C

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173-219-295	6	monitoring requirements	5/12/10	King County	Technical	The rule states: The permit must allow the lead agency to increase monitoring parameters or frequency for cause including but not limited to significant, recurrent permit violations or where determined necessary to protect public health and the environment. Comment: The permit must also allow the lead agency to decrease monitoring parameters or frequency based on compliance history or operational changes.	<i>The permit must allow the lead agency to decrease monitoring parameters or frequency based on compliance history.</i>				x	C
173-219-295	7	influent monitoring	5/12/10	King County	Technical	If the influent is monitored as part of an NPDES permit (such as an MBR plant), the NPDES monitoring should meet this requirement as well.	<i>..... If the influent to the reclaimed water treatment plant is effluent from a wastewater treatment plant, the Permittee may use monitoring data collected for the wastewater discharge permit to fulfill all or part of influent monitoring requirements. If the influent is monitored as required under and existing NPDES permit, the monitoring may be used to meet the influent monitoring of the RW permit.</i>				x	C
173-219-320	3	Class A Reclaimed Water Virus Study	5/12/10	King County	Technical	These proposed rules and other supporting documents define approved methods and technologies for producing Class A RW. A virus study should only need to be conducted when a new method or technology is proposed. Otherwise, reliable, tested and proven, approved technologies for filtration and coagulation and detention time, cl2 res. or UV dose requirements already built into the rule should be appropriate.	<i>As part of a proposed non-approved technology as part of an engineering design a challenge study.....</i>			x		B, C

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173-219-320	4	Class A Reclaimed Water - membrane filtration performance standards	5/12/10	King County	Technical	The 0.5 NTU standard not to be exceeded at any time is a performance measure for the membranes. The actual water quality standard for turbidity for class A is 5 NTU at any time. From time to time the turbidity of a membrane train exceeds 0.5 NTU for less than a minute due to air entrainment during backflushing or cleaning the algae off the UV lights. This does not indicate a failure of the membranes. A failure of a membrane is the consistent increase in turbidity (according to Zenon). In addition, the disinfection system provides another level of protection in case of any small failures of a membrane. Allowing a few minutes duration above 0.5 NTU would reduce O&M costs due to "exceedances" from non- membrane failure situations.	(4) Membrane filtration performance standards. (a) Turbidity must be continuously measured following filtration and must not exceed a monthly average of 0.2 NTU or exceed 0.5 NTU at any time. <i>for more the 5 minutes per day, or 0.35% of the day.</i>			x		B, C
173-219-340	2b	Disinfection Process Standards	5/12/10	King County	Technical	Treatment plants that do not nitrify will not be able to meet the CT identified in 340(2) measuring free chlorine. They will hit breakpoint chlorination first. South Plant's existing permit allows for CT=30 using total chlorine. What is the basis for the change? Why do plants that measure the CT based on total chlorine need special approval when it has been a common practice for over 10 years.	Delete 2c and modify the general language for 2 language as follows with changes in italics: "Chlorination disinfection processes must at a minimum meet a disinfectant concentration (C) of 1 mg/L measured as <i>free or total</i> chlorine..."	x		x		B, C

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173-219-410	2	Maintenance of Chlorine Residual	5/12/10	King County	Technical	Currently a chlorine residual or the need to request a waiver for this type of use area storage is not required. I assume that this only applies to distribution system impoundments/storage and that use area storage (such as a storage pond at a golf course for irrigating)?	Modify language as shown with changes in Italics, " Chlorine residual waiver. Exceptions. Maintenance of a chlorine residual may be waived for <i>distribution system</i> reclaimed water impoundments, storage ponds, and storage tanks unless the type of beneficial use or distribution system following storage requires a chlorine residual to prevent biological growth, prevent deterioration of water quality, or is necessary to protect public health. <i>Maintenance of a chlorine residual is not required for use area storage ponds.</i> "	x		x		B, C
173-219-420	1	Distribution System Requirements	5/12/10	King County	Technical	Thank you for modifying the labeling/color-coding language to account for distribution system conversions.						
173-219-435	2	Conveying RW in surface waters of the state		King County	Wordsmithing	This subsection appears to be incorrectly labeled and confusing. The subsection indicates it is about engineering report requirements but mixes in Ecology requirements instead. The primary goal is that the water taken out of the surface water body on any given day should not exceed the amount discharged in the water body minus expected losses and that the discharge should not result in water body flooding.	Suggested changes as follows with new text in Italics: " Water resource protection. The approved engineering report must include a conveyance report addressing how the following requirements are met: a) The quantity of water withdrawn for beneficial use must equal the amount discharged minus evaporation, seepage, and other losses as determined by Ecology., b) Ecology shall also specify the time period between discharge and withdrawal, c) The total volume of water discharged and conveyed must not raise the intervening surface water body above the ordinary high water mark of that body of water. Conveyance requirements. Ecology may establish conveyance requirements to address the following: a) Ensure that the daily quantity of water does not exceed the amount discharged minus evaporation, seepage, and other losses as determined by ecology, b) Ensure that the total volume of water discharged and conveyed do not raise the water surface between the discharge and withdrawal area above the ordinary high water mark of that body of water."				x	C

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173-219-435	3	surface water	5/12/10	King County	Technical	Do not limit monitoring location to surface water. It will be determined by the point of compliance.	(3) Monitoring. The generator is responsible for any monitoring in the surface water necessary to demonstrate that the requirements of the permit are being met and shall provide that data to ecology upon request.				x	
173-219-435	5b	Conveying RW in surface waters of the state	5/12/10	King County	Technical	The metering requirement for the withdrawal should not be more burdensome than the metering requirement under the water code. As currently written the requirements are greater and more detailed than what is required by Ecology for other types of water users.	Suggested new language indicated in italics "Measure and record the location, rate, frequency, timing and duration of each diversion, <i>date, and volume of use on a daily basis</i> and provide the data to ecology upon request."				x	A, C
173-219-435		Conveying RW in surface waters of the state	5/12/10	King County	Wordsmithing	The table of contents calls this section 173-219-440	Fix the table of contents				x	
173-219-500	1	General Use Area Requirements	5/12/10	King County	Technical	This subsection applies the distribution system requirements for labeling and pipe separation to the use areas. The issues for a distribution system versus a use area can differ greatly. During the conversion of a golf course they have numerous (1000's) sprinkler heads. The cost of converting every sprinkler head to purple and labeling it could be prohibitive. Another issue is applying the pipe separation document intended for distribution systems to use areas where the dual plumbing may be running in a structure to connect with a toilet. The separation requirements would work in this situation and the remedies to not lend themselves to a use area. Exceptions should be allowed if proper cross connection control has occurred or other associated use area specific limitations have been met.	The labeling, pipeline separation, cross-connection control, and other design requirements of WAC 173-219-420 apply to all general use areas except as approved by the lead agency. Such exceptions may include items like above grade sprinkler heads only being changed to purple upon repair or replacement and changes to pipe separation requirements for dual plumbing inside structures or for different irrigation systems given proper cross connection control."	x		x		A, C

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173-219-520	also apply to 173-219-200	plant use	5/12/10	King County	Technical	Wastewater effluent can be used within the plant bounds and it is not required to be reclaimed water under current practice. The definition in this subsection 520 and 200(4) indicates that "reclaimed water" may be used without a permit for these uses. Wastewater effluent and reclaimed water are not the same thing. The correct language should be wastewater effluent as identified in 173-219-010(2). The definition is a bit confusing and suggest using the language in the 3/19/10 draft rule	Delete current language and replace with language from the 3/19/10 draft rule from 173-219-500(3)(a): "When under the direct control of responsible maintenance personnel, reclaimed water not meeting the Class B total coliform standards may be used (i) within the bounds of the reclaimed water plant for treatment plant purposes such as wash down water, yard hydrants, and highly restricted site irrigation and (ii) at other restricted locations within the sanitary sewer collection system for flushing of the sanitary sewers and pump station maintenance."	x		x		A, B, C
173-219-540	540(3) and 560(9)	Commercial, Industrial and Institutional Uses and Land Application - Landscape Irrigation	5/12/10	King County	Wordsmithing	The title "Uses or storage with environmental impact" assumes that the Class A water will have an environmental impact which the requirements under this section are intended to prevent. Change to something like "Uses or storage with unrestricted access" or "Requirements for Uses with public contact"	Change language is in italics: " Uses or storage with environmental impact. <i>Uses or storage with unrestricted access</i> ".				x	
173-219-600	1	Natural wetlands	5/12/10	King County	Wordsmithing	Why repeat the definition of "natural wetlands" if it is included in the definitions?	Delete this language.(1) Applicability. Reclaimed water use in natural wetlands is subject to the following additional requirements. "Natural wetlands" means swamps, marshes, bogs, and similar areas inundated or saturated by naturally occurring surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions.				x	

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173-219-600	5	Natural wetlands	5/12/10	King County	Technical	Please add a sub bullet under 5 to clarify that you can use smaller annual loads than described in (a) and you don't need an environmental benefit. It is written now as if you can only apply the higher rates and you must have an environmental benefit.	<i>(a) Reclaimed water may only be used at an annual hydraulic load < or equal to < than or equal to 2 cm/day in Category II wetlands or 3 cm/day in Category III or IV wetlands. (b) Reclaimed water may only be used at increased loadings of an annual hydraulic load > 2 cm/day in Category II wetlands or > 3 cm/day in Category III or IV wetlands when a net environmental benefit to the wetland has been clearly demonstrated in the approved engineering report.</i>	x		x		A, B
173-219-600	2, 7e	Natural wetlands	5/12/10	King County	Technical	The requirements to evaluate the potential for degradation of existing groundwater and be consistent with groundwater management standards in the wetlands section (and surface water section also) leads one to interpret the rule that all wetland projects will be required to meet groundwater standards. What would the point of compliance be?	Modify the language to include only wetland pertinent water quality requirements and not groundwater quality requirements.	x	x			A, B, C
173-219-600	3b	Natural wetlands	5/12/10	King County	Technical	What is the basis for the nutrient limits for natural wetlands? Carnation would be required to add three new chemical systems to attempt to meet the nitrogen and phosphorus limit and it likely would have difficulty reliability meeting the total nitrogen limit. The current RW permit requires monitoring but does not specify limits for nutrients. It would cost several million dollars to add the new systems.	Propose new nutrient limits that take into account the nutrient uptake ability of wetlands so limits can be higher than surface water standards.	x	xx	XX		A, D

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173-219-620	3	mitigation wetlands	5/12/10	King County	Technical	Please include buffer vegetation in allowable locations for mitigation irrigation	(1) Use to establish vegetation for mitigation wetlands. Class A reclaimed water may be used to establish wetland vegetation <i>or its buffer</i> during construction of a mitigation wetland.				x	
173-219-620	5	Mitigation wetlands	5/12/10	King County	Policy	Reclaimed water should be allowed to be used as a primary source for mitigation wetlands. Ecology should take the same approach as for use of reclaimed water for mitigation of water rights (see - 110), where the reclaimed water may be replaced in the future by a different water source, provided that Ecology approves it. This language could prevent some good wetland projects from being pursued	Use language from the draft rule that currently exists in subsection 110 to allow replacement sources of supply. <i>The reclaimed water generator or water right permittee may change the mitigation water to another type of use if;</i> <i>(i) a replacement source of water is provided,</i> <i>(ii) the reclaimed water permit is modified, and</i> <i>(iii) a water right change is approved by ecology</i>	x		x		A, B, C
173-219-660	6	Streamflow and surface water augmentation	5/12/10	King County	Policy	The draft rule says: "Use for indirect augmentation of surface water via groundwater. Requirements for indirect augmentation of surface water by ground water recharge shall be established by ecology on a case-by-case basis. In establishing requirements, ecology shall consider whether specific requirements in sections 700, and 720 of this chapter are appropriate." Comments- It is not clear what the basis for these decisions will be. Given that Ecology is supposed to be encouraging reclaimed water use, we suggest that the language be more supportive, but allow Ecology to attach appropriate conditions.	Delete the first sentence, and insert: Requirements for indirect augmentation of surface water by ground water recharge shall be established by ecology on a case-by-case basis. <i>"Reclaimed water may be used for indirect augmentation of streamflows or surface water provided that it meets surface water standards. Ecology may consider establishing any other requirements where there is a substantial risk that the use of reclaimed water may have a significant adverse effect on groundwater, and may establish requirements to address those risks on a case-by-case basis."</i>	x	x			A, B, C

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173-219-660		Streamflow and surface water augmentation	5/12/10	King County	Policy and legal	There is no language protecting the use of reclaimed water as surface/streamflow augmentation from subsequent impairment claims, should the generator cease the use of reclaimed water for that purpose. The RAC has strongly recommended this, and we believe Ecology has agreed.	Add a new subsection 8: " <i>Any reclaimed water used as surface water or streamflow augmentation, except where used as water rights mitigation, shall not be required to be continued by Ecology beyond the duration of any permit, and shall not create any water right impairment if its use for this purpose is modified or ceased .</i> "			x		B, C
173-219-660		Streamflow and surface water augmentation	5/12/10	King County	Technical	Please include a section on net environmental benefit for surface water	Propose the following language adapted from 173-219-600(7)(g) be used for net environmental benefit in the definitions section and be an option for use in environmental enhancement projects: " <i>Net environmental benefit means that the use of reclaimed water in a particular project provides net positive gain for the environment by substantially protecting significant existing environmental beneficial uses in the project area and creating new or enhanced beneficial environmental uses in the project area that outweigh any environmental impacts or injuries.</i> " And add the following from Ecology's antidegradation WAC (chapter 173-201A-300: " <i>Both temporary harm and permanent loss of existing uses may be allowed by the department where determined necessary to secure greater ecological benefits through major habitat restoration projects designed to return the natural physical structure and associated uses to a water body where the structure has been altered through human action.</i> "	x		x		A, C
173-219-700	3	Groundwater recharge	5/12/10	King County	Legal and Policy	Section 3 is too prescriptive. It is inconsistent with WAC 173-200 and the general antidegradation policy of the state, and existing RCW 90.46.080. Please explain your rationale.	Delete	x	x	x		A

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173-219-700	5	exceptions	5/12/10	King County		Great addition. Does sub section 5 apply to unlined irrigation ponds such as those on a golf course that will infiltrate reclaimed water to a flow impaired river? Put in guidance some direction on how the reviewing agency can determine "aquifers of naturally low quality" without requiring monitoring wells and sampling for small systems such as the one described above. For example, guidance could avoid well installation because a typical monitoring well (50 ft) is \$5000 plus sampling and analysis, total costs could be \$8-10,000 per well.	In guidance, the agency can determine " <i>aquifers of naturally low quality</i> " through existing and past land uses, previous water quality studies or professional judgment based on current uses.					
173-219-700	6	Groundwater recharge	5/12/10	King County	Policy	This language is an improvement. King County would likely agree with it, provided that the change is made that is suggested in the previous comment.	Delete language after "meet," and insert "the state drinking water contaminant standards, as required under RCW 90.46.080. Where Ecology believes that there are special circumstances requiring unique protections for the groundwater aquifer being recharged, it may require that other criteria be met by the reclaimed water recharge."					

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173-219-700	7	Groundwater-point of compliance	5/12/10	King County	Technical	Needs some wording fixes to show you don't need to meet ALL these requirements. When a,b,c or d apply?	(1) Point of Compliance. For each parameter, the lead agency establishes the point of compliance at a location where the enforceable limit for each parameter must not be exceeded. The point of compliance must be established by the lead agency <i>and could be</i> : (a) In the reclaimed water prior to recharge. (b) Within the groundwater as near the source as technically, hydrogeologically, and geographically feasible. (c) At an alternative point some distance from the source up to but not exceeding the property boundary. (d) At an alternative point in the surface water beyond the property boundary, if necessary, for the purpose of compliance with chapter 173-201A WAC.			x		B, C
173-219-700	7	Groundwater recharge	5/12/10	King County	Technical	The treatment process selected is dependent on the expected water quality requirements at a point of compliance. If the point of compliance is not determined until the permit negotiations, then it will be difficult to know what treatment process to build. Suggest indicating that point of compliance can be determined at the engineering report phase for environmental enhancement uses.	Suggest adding language that <i>"the point of compliance can be established at the engineering report phase, if desired by the applicant."</i>			x		C

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173-219-700	(2)(a)	Groundwater recharge	5/12/10	King County	Legal and Policy	Reclaimed water act (RCW 90.46.005) now says that meeting state drinking water standards meets the state's antidegradation standard for water quality. For surface percolation to groundwater, the Legislature in RCW 90.46.080 said that meeting the state's drinking water standards provided adequate protection for health and the environment. This approach is recognized in WAC 173-200-040(1)(a) as the standard to be followed, since drinking water is the highest beneficial use for groundwater. Simply referencing the groundwater standards, provides no guidance, no certainty, and would likely increase costs. As written, WAC 173-200 could require any of the following standards be applied to a rw project: (1) nondegradation of existing water quality; (2) meeting drinking water contaminant standards; (3) meeting drinking water contaminant goals (not standards); (4) meeting detection limits (any contaminant detected would not be allowed to be discharged); or (5) meeting even higher standards for waters designated as needing higher levels of protection. This provides no certainty for any projects, and could authorize Ecology to require levels of treatment that are costly and unnecessary to protect existing water quality. The rule should be clear and sensible.	The following language is a combination of existing statutory language, and a portion of the groundwater standards (WAC 173-200-040(1)(a)): <i>(a) Because drinking water is the beneficial use generally requiring the highest quality of ground water, and would otherwise protect other beneficial uses, reclaimed water used for groundwater recharge shall meet drinking water standards established by the State Board of Health. For ground waters of the state that support environmental systems with existing and future beneficial uses requiring more stringent protection than that provided by human health based criteria, and have been designated by Ecology as a special protection area in accordance with WAC 173-200-090, the lead agency may establish enforcement limits as close to the natural ground water quality as possible for activities that may adversely affect those ground waters in accordance with WAC 173-200-050. Where existing ground water quality does not meet drinking water contaminant standards, reclaimed water may be used to recharge the ground water, provided it does not degrade the existing water quality. Where degradation of existing water quality may occur, the lead agency may allow the use of reclaimed water when there are overriding considerations of the public interest that would allow such use of reclaimed water.</i>	x	x	x		A, B, D