

November 2011

**PRELIMINARY DRAFT Chapter 173-518 WAC**

**WATER RESOURCES MANAGEMENT PROGRAM FOR THE DUNGENESS PORTION OF THE  
ELWHA-DUNGENESS WATER RESOURCE INVENTORY AREA (WRIA) 18**

The Department of Ecology has been in the process of developing a draft instream flow rule for the Dungeness Watershed since 2009. The rule, once adopted, would provide the framework for future water resources management in the watershed.

The following language is the most recent version of the draft rule, and was last worked on by Ecology in November 2010. This version incorporates changes that were made in response to comments Ecology received on the preliminary draft rule that Ecology posted online Nov. 2009 to Jan. 2010. We temporarily set aside the rule making process while work on other water management strategies within the basin was pursued. As we re-engage in the rule making process, we will employ and work from this preliminary draft rule.

In early November 2010 discussions began with local parties about moving beyond setting instream flows and working on local solutions to water quantity problems and restoring flows in the Dungeness River. A Cooperators Agreement among Clallam County, the Sequim-Dungeness Water Users Association and Ecology was signed and a group of local leaders are meeting to move this idea forward.

Gov. Chris Gregoire's Nov. 17, 2010 executive order 10-06 directed agencies to review all current and anticipated rule-making and decide what can be delayed for a year. In response to the executive order, Ecology reviewed all rules in development, and published an initial determination of rules that will be delayed, continued or will be determined later in 2011. Information on Ecology's overall response to the executive order is posted at: [http://www.ecy.wa.gov/laws-rules/rulemaking\\_suspension.html](http://www.ecy.wa.gov/laws-rules/rulemaking_suspension.html) In accordance with the executive order, and the Cooperators Agreement, work on the rule was suspended.

In February 2011 we announced that work on the instream flow rule will begin again in January 2012 or when sufficient progress has been made in achieving the agreement's goals – whichever comes first. Ecology's Director has announced that work on the rule will re-start in November 2011.

[ 1 ] November 2010 - preliminary draft rule language before rule making was suspended

## Chapter 173-518 WAC

### WATER RESOURCES MANAGEMENT PROGRAM FOR THE DUNGENESS PORTION OF THE ELWHA-DUNGENESS WATER RESOURCE INVENTORY AREA (WRIA) 18

#### NEW SECTION

**WAC 173-518-010 General provisions.** (1) This chapter applies to all surface and ground waters within the Dungeness River watershed of water resource inventory area (WRIA) 18, as defined in WAC 173-500-040, excluding the Elwha-Morse watershed basin. The rule covers the area from the Morse-Bagley watershed divide in the western portion of the basin, to the Bell-Johnson watershed divide on the eastern portion of the basin (the WRIA boundary). Please see WAC 173-518-140, Maps.

(2) The department of ecology (ecology) adopts this chapter under the authority of the Watershed planning (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Water code (chapter 90.03 RCW), Regulation of public groundwaters (chapter 90.44 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), and Water resource management (chapter 90.42 RCW); and in accordance with the Administrative Procedure Act (chapter 34.05 RCW).

(3) This chapter applies to the use and appropriation of surface and ground water in the Dungeness River watershed begun

after the effective date of this chapter. Unless otherwise provided for in the conditions of the water right in question, this chapter shall not affect:

✎ Existing water rights, including permit-exempt withdrawals where regular beneficial use for the purpose of use began before the effective date of this chapter;

✎ The ability to serve water to a parcel that is part of a group use, provided the new use begins within five years of the date water was first regularly and beneficially used by one or more parcels in the group, and the group use remains within the limit of the ground water permit exemption; and

✎ Federal and tribal reserved rights.

(4) In adopting this chapter, ecology generally enacts recommendations from the 2005 Elwha-Dungeness watershed management plan. The plan recommendations were approved on April 15, 2004, by the Dungeness River and Elwha-Morse management teams, groups composed of a broad range of local water interests. The Clallam County board of commissioners approved the plan on June 7, 2005. Ecology has used plan recommendations as the foundation for developing this rule.

NEW SECTION

**WAC 173-518-020 Purpose.** The purpose of this chapter is to manage water to better satisfy both present and future human needs; to retain natural surface water bodies in the Dungeness River watershed planning area with stream flows at levels necessary to protect instream values and resources; and to implement ecology's obligations under the Elwha Dungeness watershed plan. Instream resources include: Wildlife, fish, scenic, aesthetic, recreation, water quality, and other environmental values; navigational values; and stock water needs.

NEW SECTION

**WAC 173-518-030 Definitions.** The definitions provided in this section apply only to this chapter.

**"Allocation"** means the designation of specific amounts of water for beneficial uses.

**"Appropriation"** means the process of legally acquiring the

right to use specific amounts of water for beneficial uses, consistent with the ground and surface water codes and other applicable water resource statutes.

**"Beneficial use"** means uses of water as defined in chapters 90.03 and 90.54 RCW and WAC 173-500-050.

**"Closure"** means that water is no longer available for future appropriations without mitigation to offset the use. This is due to a finding by ecology that further appropriations from the closed stream(s) or hydraulically connected ground waters would impair senior water rights or cause detriment to the public interest.

**"Consumptive use"** means use of water that diminishes the volume or quality of the water source.

**"Control station"** means a specific location where stream flows and water levels are measured.

**"Critical period"** means for a given stream the thirty-day period with the lowest stream flow available to support a critical life stage for fish, typically during the late summer or fall.

**"Cubic foot per second"** or **"cfs"** means the rate of flow representing a volume of one cubic foot passing a given point during one second.

**"Domestic use"** means use of water associated with human health and welfare needs, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental household uses. Domestic use does not include

outdoor irrigation such as lawn or garden watering.

**"Dungeness water exchange"** means a water bank pursuant to the Water Resources Management Act, chapter 90.42 RCW.

**"Ecology"** means the Washington state department of ecology.

**"Existing water right"** includes perfected riparian rights, federal Indian and non-Indian reserved rights, or other perfected and inchoate appropriative rights, including water rights established under RCW 90.03.260 through 90.03.290 and 90.44.050.

**"Hydraulically connected"** means saturated conditions exist that allow water to move between two or more sources of water, either between surface water and ground water or between ground water sources.

**"Instream flows"** means a stream flow level set in rule to protect and preserve fish, wildlife, scenic, aesthetic, recreational, water quality, and other environmental values; and navigational values. The term "instream flow" means "base flow" under chapter 90.54 RCW, "minimum flow" under chapters 90.03 and 90.22 RCW, and "minimum instream flow" under chapter 90.82 RCW.

**"Interruption"** means a temporary halt or reduction in the rate and volume of withdrawal under water rights issued after the effective date of this rule during periods when the flow in the river or stream falls below the instream flow levels set in WAC 173-518-040.

**"Maximum depletion amount"** means a limit on how much impact to water resources resulting from ground water withdrawals will

be allowable under this rule before ecology declares water is not available.

**"Mitigation"** means action taken to offset impacts from future water appropriations on closed surface water bodies or senior water rights, including the instream flow levels set in WAC 173-518-040, as provided in WAC 173-518-070.

**"Nonconsumptive use"** means a type of water use where either there is no diversion from a water source, or where there is no diminishment of the amount or quality of the water source.

**"Permit-exempt withdrawals"** or **"permit exemption"** means a ground water withdrawal exempted from ecology water right permitting requirements under RCW 90.44.050, but which is otherwise subject to the ground water code and other applicable regulations.

**"Proponent"** means the person or entity that seeks a new appropriation of surface or ground water, including through a permit exempt withdrawal.

**"Public water system"** means any system that provides water for human consumption or municipal purposes through pipes or other constructed conveyances. This includes systems classified by Washington department of health to be either Group A or B, and excludes a system serving one single-family residence or a system with four or fewer connections serving residences on the same farm.

**"Reservation"** means a limited allocation of water for future new uses not subject to interruption when stream flows

fall below the levels adopted in this rule.

**"Stream flow"** means the amount of water flowing down a stream.

**"Subbasin management unit"** means a stream segment, reach, or tributary basin where a particular instream flow level, reservation, water diversion, or withdrawal limit applies.

**"Timely and reasonable"** means the timing and cost involved in providing potable water service by a public water system to a property consistent with Washington department of health guidance and local coordinated water system plan definitions.

**"Water budget neutral"** means an appropriation for a project where withdrawals of ground water are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use for the project.

**"Water resource inventory area (WRIA)"** means one of the sixty-two areas designated by the state of Washington through chapter 173-500 WAC to delineate area boundaries within the state for water management purposes.

**"Water right change or transfer"** means a change in the place of use, point of diversion or withdrawal, number of points of diversion or withdrawal, or purpose of use (including season of use), of an existing water right. A water right change application must be filed with ecology for approval. If approved, the modified water right will carry the priority date of the original water right.

**"Water right permit"** means a permit that represents approval by ecology to appropriate water for a beneficial use.

**"Withdrawal"** means the extraction and beneficial use of ground water, or the diversion and beneficial use of surface water.

NEW SECTION

**WAC 173-518-040 Establishment of instream flows.** (1) The instream flows established in this section are based on recommendations in the 2005 Elwha-Dungeness watershed plan, consultation with the Jamestown S'Klallam Tribe, the departments of fish and wildlife, agriculture, and commerce; and public input received during the rule-making process.

(2) Instream flows established in this chapter are necessary to meet the water resource management objectives of the Elwha-Dungeness Watershed Plan.

(3) Instream flows established under this rule are water rights and will be protected from impairment by any new water rights commenced after the effective date of this chapter and by future water right changes and transfers.

(4) Instream flows are expressed in cubic feet per second

(cfs), and are measured at the control stations identified in Table I. Table II identifies instream flows set by this chapter.

(5) Exceptions to the instream flow requirements are provided in WAC 173-518-070, 173-518-080, and 173-518-085. Any other new water uses established after the effective date of this rule will be subject to interruption when stream flows drop below the instream flow levels set in Table II.

**Table I**

**Subbasin Management Unit Information**

<b>Subbasin Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>	<b>Stream Management Reach</b>
Bagley Creek @ Hwy. 101	RM 1.4; 48°05'56"N, 123°19'47"W	From mouth to headwaters, including tributaries.
Bell Creek @ Schmuck Rd.	RM 0.2; 48°05'01"N, 123°03'25"W	From mouth to headwaters, including tributaries.
Cassalery Creek @ Woodcock Rd.	RM 1.8; 48°06'59"N, 123°06'31"W	From mouth to headwaters, including tributaries.
Dungeness River @ Schoolhouse Bridge	Ecology Gage 18A050 RM 0.8; 48°08'37"N, 123°07'43"W	From mouth to headwaters, including tributaries, except Meadowbrook and Matriotti creeks.
Gierin Creek @ Holland Rd.	RM 1.7; 48°06'05"N, 123°04'40"W	From mouth to headwaters, including tributaries.
Matriotti Creek @ Lamar Ln.	RM 1.3; 48°07'54"N, 123°09'46"W	From mouth to headwaters, including tributaries.
McDonald Creek @ Old Olympic Hwy.	RM 1.6; 48°06'20"N, 123°13'17"W	From mouth to headwaters, including tributaries.
Meadowbrook Creek @ Sequim-Dungeness Way	RM 1.2; 48°08'41"N, 123°07'27"W	From mouth to headwaters, including tributaries.
Siebert Creek @ Old Olympic Hwy.	Ecology Gage 18L060 RM 1.3; 48°06'24"N, 123°16'42"W	From mouth to headwaters, including tributaries.

**Table II**

**Instream Flows in the Dungeness River Basin**

(cubic feet per second)

Month	Bagley Creek	Bell Creek	Cassalery Creek	Dungeness Mainstem	Gierin Creek
January	15	11	5	575	10
February	10	7	3	575	7
March	29	22	12	575	20
April	29	22	12	475	20
May	20	14	8	475	13
June	20	14	8	475	13
July	6	4	2	475	4
August	6	4	2	180	4
September	6	4	2	180	4
October	6	4	2	180	4
November	15	11	5	575	10
December	15	11	5	575	10

**Instream Flows in the Dungeness River Basin**

(cubic feet per second)

Month	Matriotti Creek	McDonald Creek	Meadowbrook Creek	Siebert Creek
January	14	36	12	36
February	10	24	8	24
March	27	63	24	63
April	27	63	24	63
May	18	42	16	42

[ 11 ] November 2010- preliminary draft rule language before rule making was suspended

June	18	42	16	42
July	5	15	5	15
August	5	15	5	15
September	5	15	5	15
October	5	15	5	15
November	14	36	12	36
December	14	36	12	36

NEW SECTION

**WAC 173-518-050 Closures.** Surface water: Ecology determines that, based on historical and current low stream flows and the need to protect existing water rights, no water is reliably available for new consumptive uses from the streams and tributaries in the Dungeness River watershed listed in Table III, with the exception of certain times of year in the Dungeness mainstem. Therefore, Bagley, Bell, Cassalery, Gierin, Matriotti, McDonald, Meadowbrook, and Siebert creeks are closed year round. The Dungeness River mainstem is closed from July 15 until November 15 each year. Table III shows the closure periods and affected reaches.

Exceptions to the surface water closures are provided in WAC 173-518-070, 173-518-080, and 173-518-085.

**Table III**  
**Surface Water Closures**

<b>Stream Management Unit Name</b>	<b>Affected Reach</b>	<b>Timing</b>
Bagley Creek	From mouth to headwaters, including tributaries.	All year
Bell Creek	From mouth to headwaters, including tributaries.	All year
Cassalery Creek	From mouth to headwaters, including tributaries.	All year
Dungeness Mainstem	From mouth to headwaters, including tributaries, except Meadowbrook and Matriotti creeks.	From July 15 - November 15
Gierin Creek	From mouth to headwaters, including tributaries.	All year
Matriotti Creek	From mouth to headwaters, including tributaries.	All year
McDonald Creek	From mouth to headwaters, including tributaries.	All year
Meadowbrook Creek	From mouth to headwaters, including tributaries.	All year
Siebert Creek	From mouth to headwaters, including tributaries.	All year

NEW SECTION

**WAC 173-518-060 Metering and reporting water use.** All future new surface and ground water appropriations, other than rainwater collection, shall measure withdrawals from the source, and report water use to ecology.

(1) Water meters must meet ecology's specifications.

(2) Water meters must be read and reported in accordance with chapter 173-173 WAC or as directed by ecology.

NEW SECTION

**WAC 173-518-070 Future ground water appropriations.** No appropriation to withdraw, divert, or store ground waters of the Dungeness River basin that conflicts with the provisions of this chapter will hereafter be allowed.

(1) Based on the hydrogeology of the basin, ecology finds that new ground water withdrawals have a high likelihood of capturing water that would result in impacts to stream flows in one or more streams in the basin.

(2) No new permit exempt withdrawal can occur without

written evidence that connection to a public water supply is not available in a timely and reasonable manner.

(3) New ground water rights, including permit-exempt withdrawals under RCW 90.44.050, may be obtained that are not subject to the instream flows established in WAC 173-518-040 and closures established in WAC 173-518-050 if all statutory requirements are met and any of the following situations apply:

(a) A proposed use that would impact any surface water sources listed in Table III is mitigated through an ecology-approved mitigation plan, as defined in WAC 173-518-075.

(i) Water use may be mitigated through the purchase of credits available through the Dungeness water exchange. The exchange will identify methods and means of mitigation, including the use of water resources management techniques and water banking authorized under RCW 90.03.255 and chapter 90.42 RCW. The 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009) will be the basis for determining credits for offsetting the consumptive use associated with the proposed water use. At the time of rule adoption the 2008 Dungeness Groundwater Flow Model represents the best available method for calculating mitigation credits. If ecology determines a better method is available in the future, then ecology will apply the new method. Drilling to the middle or deep aquifer, where available, will be encouraged; or

(ii) The proponent may choose to submit a mitigation plan. Ecology must approve the mitigation plan prior to plan

implementation. If ecology determines that the mitigation is no longer effective, the water use shall cease until an effective mitigation plan is put in place.

(b) The proposed use is nonconsumptive, and is compatible with the intent of this chapter.

(c) The proponent shows, through scientifically sound studies and technical analysis, and to the satisfaction of ecology, that the proposed use will not adversely affect any of the surface waters closed in WAC 173-518-050.

(4) New permits for ground water withdrawals may include a provision requiring that the permittee allow ecology employees access to the well and any associated measuring device upon request at reasonable times.

#### NEW SECTION

**WAC 173-518-075 Mitigation.** New water users choosing to mitigate must submit a mitigation plan to ecology to demonstrate how they will offset the impacts of their proposed consumptive use (see WAC 173-518-070 (3) (a)). The plan must receive ecology approval and be implemented before the proposed water use begins.

(1) The mitigation plan must:

[ 16 ] November 2010- preliminary draft rule language before rule making was suspended

(a) Ensure mitigation measures remain effective as long as the water use occurs.

(b) Include affirmative measures to prevent water provided for mitigation under the plan from being appropriated for any other purpose or by another person or entity.

(c) Include a monitoring and reporting plan, with a quality assurance/quality control plan.

(2) The mitigation plan must show that the proposed withdrawal with mitigation in place will not:

(a) Impair existing water rights, including instream flow rights;

(b) Be detrimental to the public interest, including consideration of projected domestic use in the area, the projected stream depletions within affected subbasins, the likelihood that mitigation to offset such projected stream depletions can be obtained or effected, water budget neutrality with respect to the Dungeness River watershed, and maximizing instream benefits during the critical period; or

(c) Result in a net loss of water from a closed source greater than the applicable maximum depletion amounts.

(3) The plan must include financial assurance for implementing the plan. Ecology may, for any reason, refuse any performance security ecology does not deem adequate. Financial assurances may include:

(a) Bank letters of credit;

(b) A cash deposit;

- (c) Negotiable securities;
- (d) An assignment of a savings account;
- (e) A savings certificate in a Washington bank;
- (f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW; or
- (g) Another financial assurance deemed adequate by ecology.

NEW SECTION

**WAC 173-518-076 Expedited processing.** Ecology may expedite the processing of an application for a change or transfer of an existing water right, a water budget neutral determination, or issuance of a water right permit if the application or request is expected to:

- (1) Fully offset impacts to surface water;
- (2) Benefit stream flows; or
- (3) Otherwise substantially enhance or protect the quality of the natural environment.

NEW SECTION

**WAC 173-518-080 Reserves of water for domestic use. (1)**

Ecology has weighed the public interest supported by providing a limited amount of water for domestic water supply against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by these limited reserves clearly overrides the potential for negative impacts on instream resources. (RCW 90.54.020 (3)(a).)

Based on this finding, ecology hereby reserves specific quantities of ground water for future domestic supply only. These reserves of water are not subject to the instream flows established in WAC 173-518-040 or closures established in WAC 173-518-050.

Consumptive water use that would impact surface water sources listed in Table III must be mitigated in accordance with this chapter. Reserves shall be debited when mitigation water is not available. Table IV shows the reserve quantities for each subbasin management unit.

**Table IV**

**Reserved Quantities**

<b>Subbasin Management Unit</b>	<b>Cubic Feet Per Second</b>	<b>Gallons Per Day</b>
Bagley Creek	0.01	6,463
Bell Creek	0.0023	1,486

Cassalery Creek	0.0013	840
Dungeness River and Matriotti Creek	0.76	491,201
Gierin Creek	0.0109	7,045
McDonald Creek	0.003	1,939
Meadowbrook Creek	0.026	16,804
Siebert Creek	0.022	14,219

(2) Conditions for use of the ground water reserves are as follows:

(a) Access to the reserves shall be only for the purpose of domestic water use as defined under WAC 173-518-030.

(b) Water use shall meet all applicable local or state conservation standards and be consistent with the watershed plan.

(c) All water uses from the reserves must be measured and reported to ecology.

(3) If a use from a reserve does not comply with all conditions of the reserves, ecology may take action under WAC 173-518-110.

(4) Ecology shall maintain a record of all appropriations from the reserves and will make this information available on ecology's web page.

(5) Ecology will account for water use from the reserves by debiting the calculated impacts to closed surface waters which are a percentage of the consumptive portion of estimated or measured water use. The debits to the reserves will be determined after consideration of any implemented mitigation.

(a) For a new domestic use served by an individual or community on-site septic system, ecology will use a standard consumptive amount of fifteen gallons per day.

(b) For a new domestic use served by a sanitary sewer, ecology will use a standard consumptive amount of one hundred fifty gallons per day.

(c) Impacts to the closed surface waters listed in Table III will be calculated using the 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009). At the time of rule adoption, the 2008 Dungeness Groundwater Flow Model represents the best available method for evaluating impacts to surface waters from ground water use. If, in the future, ecology determines a better method is available, then ecology will use the new method to evaluate impacts to surface waters.

(d) Ecology may periodically adjust the amounts deducted from the reserves based on the best information available on actual water use.

NEW SECTION

**WAC 173-518-085 Maximum depletion amounts.** (1) All impacts from the consumptive use of water from the reserves and impacts from implementation of ecology approved mitigation plans shall be debited against the maximum depletion amount for each subbasin.

(2) The maximum depletion amounts shall not be exceeded.

(3) No new use that would result in impacts to closed surface waters exceeding the maximum depletion amounts during the critical period shall be allowed. If cumulative impacts on a stream reach the relative maximum depletion amount, additional mitigation must be in place, either through the Dungeness water exchange or an individual mitigation plan, before new uses can be authorized.

(4) Ecology shall maintain a record of all appropriations that result in deductions against the maximum depletion amounts. Ecology will account for water use from the maximum depletion amounts by debiting the calculated impact to closed surface waters which is a percentage of the consumptive portion of estimated or measured water use. The calculations shall consider all in place mitigation.

(a) For parcels served by an individual or community septic system, ten percent of indoor water use is assumed consumptive.

(b) For parcels served by a sanitary sewer system, one

hundred percent of indoor water use is assumed consumptive.

(c) Ninety percent of outdoor water use is assumed to be consumptive.

(d) Impacts to the closed surface waters listed in Table III will be calculated using the 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009). At the time of rule adoption, the 2008 Dungeness Groundwater Flow Model represents the best available method for evaluating impacts to surface waters from ground water use. Another method to evaluate impacts to surface waters may be used in the future if ecology determines a better method is available.

(e) The amounts deducted against the maximum depletion amounts may be adjusted periodically by ecology, to reflect actual use based on the best information available.

(5) Maximum depletion amounts are associated with, and not in addition to, the reservation amounts listed in WAC 173-518-070. Table V shows the maximum depletion amounts for each subbasin management unit.

**Table V**

**Maximum Depletion Amounts Due to New Ground Water Appropriation**

<b>Subbasin Management Unit</b>	<b>Cubic Feet Per Second</b>	<b>Gallons Per Day</b>
Bagley Creek	0.01	6,463
Bell Creek	0.0023	1,486
Cassalery Creek	0.0013	840
Dungeness River and Matriotti Creek	0.76	491,201

Gierin Creek	0.0109	7,045
McDonald Creek	0.003	1,939
Meadowbrook Creek	0.026	16,804
Siebert Creek	0.022	14,219

NEW SECTION

**WAC 173-518-090 Future maximum allocation from the Dungeness River mainstem.** (1) (a) Ecology determines that there are certain times of the year when there are stream flows in the Dungeness River mainstem above the instream flows, which provide critical ecological functions such as channel and riparian zone maintenance, sediment flushing, and fish migration. To protect the frequency and duration of these higher flows, this chapter limits the total amount of water available for withdrawal from the Dungeness River mainstem by setting maximum allocations from November 16 - July 14.

(b) Maximum allocations are established in Table VI for use in reviewing applications for interruptible water rights during times when stream flows exceed the instream flows for the Dungeness River mainstem from November 16 - July 14. Cumulative allocations must not exceed the numbers listed in Table VI, and must not impair instream flows.

**Table VI**

**Maximum Allocations on the Dungeness River Mainstem**

**(cubic feet per second)**

January	25
February	25
March	25
April	25
May	35
June	35
July 1 - 14	35
July 15 - 31	0
August	0
September	0
October	0
November 1 - 15	0
November 16 - 30	25
December	25

(2) Ecology may issue a permit under RCW 90.03.290 or 90.44.060 within the maximum allocation limit after consultation with the department of fish and wildlife and the Jamestown S'Klallam Tribe.

(a) To establish a water right within the limit of the maximum allocation, the water use must be for storage and uses pursuant to RCW 90.03.370, or for Dungeness River mitigation or flow restoration.

(b) The water rights from the maximum allocation are subject to the instream flows set in WAC 173-518-040, and other

provisions in statute, administrative rules, and case law.

(3) Ecology will track the amount of water appropriated from the Dungeness River from the maximum allocation. When the maximum allocations are fifty percent, seventy-five percent, and fully appropriated, ecology shall notify Clallam County in writing. Once fully and permanently appropriated, no more maximum allocation water may be appropriated.

NEW SECTION

**WAC 173-518-095 Storage projects.** (1) Notwithstanding other provisions of this chapter, ecology, after consultation with Tribes, Clallam County, Washington department of fish and wildlife, and NOAA fisheries may, on a case-by-case basis, authorize storage projects for environmental enhancement and other beneficial uses consistent with the Dungeness Watershed Plan. Such decisions shall consider the following:

- ✎ The management objectives of the storage project;
- ✎ The effect of the project on salmonids;
- ✎ The effect of the project on ecological functions provided by high stream flows;
- ✎ The cumulative effects of all such projects weighed against the public benefit the stored water would provide.

(2) The application for the storage project must include a monitoring and adaptive management component and show the ability to implement such a program. All other applicable

permits must be obtained.

NEW SECTION

**WAC 173-518-100 Lakes and ponds.** RCW 90.54.020 (3) (a) requires, in part, that the quality of the natural environment shall be protected, and where possible, enhanced; and lakes, ponds, and other small bodies of water shall be retained substantially in their natural condition. Future withdrawals must be consistent with this requirement.

NEW SECTION

**WAC 173-518-110 Compliance and enforcement.** (1) In accordance with RCW 90.03.605, in order to obtain compliance with this chapter, ecology shall prepare and make available to the public technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

(2) When ecology determines that a violation has occurred, it shall:

(a) First attempt to achieve voluntary compliance, except in egregious cases involving potential harm to other water

rights or to the environment. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, ecology shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess civil penalties under RCW 90.03.600.

(3) Nothing in this section prevents ecology from taking immediate action to stop a violation if in the opinion of ecology the nature of the violation is causing harm to other water rights or to public or tribal resources.

NEW SECTION

**WAC 173-518-120 Incorporating new hydrologic investigations and information in rule.** If further scientific investigations or changing conditions indicate the findings and conditions of this chapter should be updated, ecology, after consultation with local, tribal, and state governments, may amend the rule as necessary under chapter 34.05 RCW.

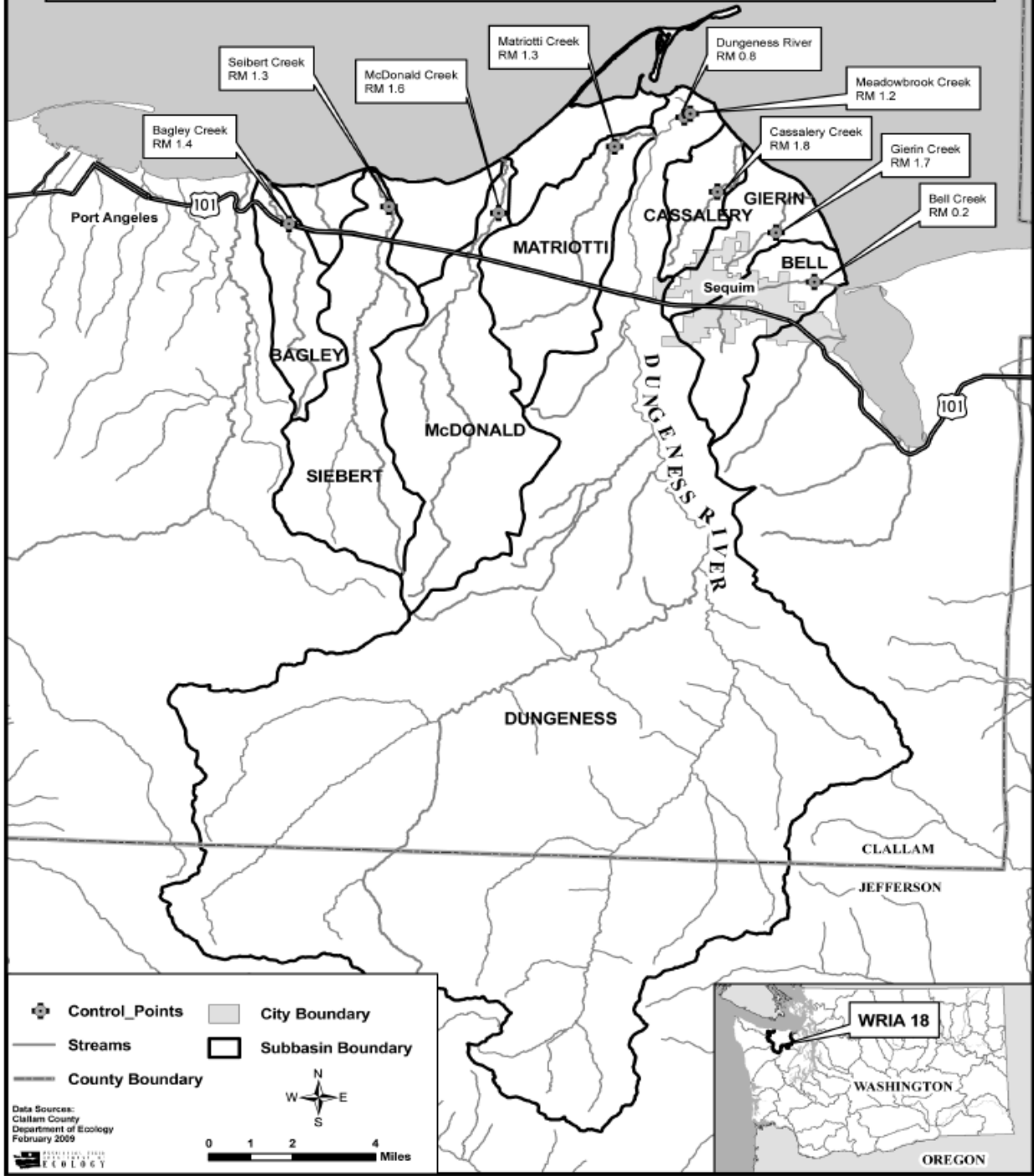
NEW SECTION

**WAC 173-518-130 Appeals.** All final written decisions of ecology pertaining to water right permits, regulatory orders, and related water right decisions made pursuant to this chapter are subject to appeal to the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

**WAC 173-518-140 Maps.**

# WRIA 18 Stream Management Subbasins and Control Points



PRELIMINARY

[ 31 ] November 2010- preliminary draft rule  
language before rule making was suspended