

Mitigation Plan Review Protocol under WAC 173-503

Department of Ecology

Water Resources Program

Northwest Regional Office

April 17, 2009

Applicable RCW and WAC language

RCW 90.03.255

Applications for water right, transfer, or change — Consideration of water impoundment or other resource management technique.

The department shall, when evaluating an application for a water right, transfer, or change filed pursuant to RCW [90.03.250](#) or [90.03.380](#) that includes provision for any water impoundment or other resource management technique, take into consideration the benefits and costs, including environmental effects, of any water impoundment or other resource management technique that is included as a component of the application. The department's consideration shall extend to any increased water supply that results from the impoundment or other resource management technique, including but not limited to any recharge of groundwater that may occur, as a means of making water available or otherwise offsetting the impact of the diversion of surface water proposed in the application for the water right, transfer, or change. Provision for an impoundment or other resource management technique in an application shall be made solely at the discretion of the applicant and shall not otherwise be made by the department as a condition for approving an application that does not include such provision.

This section does not lessen, enlarge, or modify the rights of any riparian owner, or any existing water right acquired by appropriation or otherwise.

RCW 90.44.055

Applications for water right or amendment — Consideration of water impoundment or other resource management technique.

The department shall, when evaluating an application for a water right or an amendment filed pursuant to RCW [90.44.050](#) or [90.44.100](#) that includes provision for any water impoundment or other resource management technique, take into consideration the benefits and costs, including environmental effects, of any water impoundment or other resource management technique that is included as a component of the application. The department's consideration shall extend to any increased water supply that results from the impoundment or other resource management technique, including but not limited to any recharge of groundwater that may occur, as a means of making water available or otherwise offsetting the impact of the withdrawal of groundwater proposed in the application for the water right or amendment in the same water resource inventory area. Provision for an impoundment or other resource management technique in an application shall be made solely at the discretion of the applicant and shall not be made by the department as a condition for approving an application that does not include such provision.

This section does not lessen, enlarge, or modify the rights of any riparian owner, or any existing water right acquired by appropriation or otherwise.

WAC 173-503-060

Future water rights.

(1) Surface and ground water rights, including permit exempt uses under RCW [90.44.050](#), may be obtained that are not subject to the instream flows established in WAC [173-503-040](#) and closures established in WAC [173-503-051](#) if all statutory requirements are met and if any of the following situations apply:

(c) The applicant or governmental agency elects to submit a scientifically sound mitigation plan and it is approved by the department. A mitigation plan can be submitted to mitigate for an individual withdrawal or to mitigate for multiple withdrawals in a subbasin. A mitigation plan may be approved if the proponent can demonstrate to the department's satisfaction that when the mitigation is implemented the proposed withdrawal(s) will not impair senior water rights, including instream flow rights, adversely impact instream resources, or diminish water quality. An approved mitigation plan shall include a monitoring and reporting plan, including a quality assurance/quality control plan. It shall also include conditions that the plan be implemented as long as the associated water right is used and that any water provided for mitigation purposes be prohibited from being applied to any other purpose. Except for closed basins, if monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the use of water under the water right shall then be subject to the instream flows until the department finds the mitigation plan is effective. In the case of a closed basin, if monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the water use shall cease until the department approves a new or revised mitigation plan.

Mitigation Plans Related to a Specific Water Right Application or Applications:

1. After or with submittal of a water right application the applicant submits a proposed mitigation plan to Ecology, Water Resources Program, per RCW 90.03.255 or RCW 90.44.055 which also provides the information required in WAC 173-503-060 (1)(c).
2. Ecology reviews the proposed mitigation plan when reviewing the water right application request and sends comments back to the applicant, if any.
3. Applicant has opportunity to resubmit plan after addressing comments. Steps 2 and 3 can go through multiple iterations.
4. If the water right application can be approved because of the mitigation plan, the Report of Examination will contain a provision that references the mitigation plan and is consistent

with WAC 173-503-060(1)(c) in spelling out what happens if the mitigation plan is not implemented or effective.

5. Draft Report of Examination is posted on Ecology's website for 30 days for public comment, consistent with Ecology Water Resources Program Policy 1005.
6. Ecology will consider comments received.
7. Final Report of Examination is issued. This decision is appealable to the Pollution Control Hearings Board (PCHB) consistent with WAC 173-503-130.

Mitigation Plans Not Related to a Specific Water Right Application:

1. The governmental agency (entity) submits a proposed mitigation plan to Ecology, Water Resources Program, per WAC 173-503-060 (1)(c).
2. Ecology reviews plan for compliance with WAC 173-503-060(1)(c) and sends comments back to the entity, if any.
3. Entity has opportunity to resubmit plan after addressing comments. Steps 2 and 3 can go through multiple iterations.
4. Ecology tentatively decides if the mitigation plan can be approved.
5. If the mitigation plan cannot be approved, Ecology will issue an order denying the mitigation plan that will be appealable to the PCHB consistent with WAC 173-503-130.
6. If Ecology feels the mitigation plan is adequate it will be shared with interested stakeholders through the Skagit River Flow Management Committee and the Skagit River Water Resource Advisory Committee and 15 days will be given to review and provide comments back to Ecology.
7. Ecology will consider comments received.
8. If comments received make Ecology consider denying the proposed mitigation plan, those comments will be shared with the entity to allow them opportunity to respond or amend the plan to address the comments.
9. Ecology will issue a final decision either approving or denying the proposed mitigation plan through an appealable order that can be appealed to the PCHB consistent with WAC 173-503-130.
10. The final decision and mitigation plan will be posted on Ecology's Skagit River website:
<http://www.ecy.wa.gov/programs/wr/instream-flows/skagitbasin.html>