




**Water Resources Program for the Walla Walla River Basin,  
Water Resources Inventory Area (WRIA 32):**

**Implementation Plan for the Adoption of Amendments to  
Chapter 173-532 WAC**

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## Implementation Plan for Amendment to Chapter 173-532 WAC Water Resources Program for the Walla Walla River Basin Water Resource Inventory Area (WRIA 32)

This implementation plan, per the requirements stated in RCW 34.05.328, describes how the agency intends to:

- (A) Implement and enforce the rule, including a description of the resources the agency intends to use;
- (B) Inform and educate affected persons about the rule;
- (C) Promote and assist voluntary compliance; and
- (D) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

The existing regulation, Chapter 173-532 WAC, had the following sections:

- WAC 173-532-010 Purpose
- WAC 173-532-020 Definitions
- WAC 173-532-030 Base flows
- WAC 173-532-040 Streams closed to further consumptive appropriations
- WAC 173-532-050 Protection of surface water rights from new appropriators of ground water
- WAC 173-532-060 Designation of ground water areas for specific uses
- WAC 173-532-070 Closure of ground water aquifer to further appropriation
- WAC 173-532-080 Evaluation of ground water applications
- WAC 173-532-090 Enforcement
- WAC 173-503-100 Appeals
- WAC 173-532-110 Regulation review

This amendment modifies or adds the following sections:

- WAC 173-532-010 Authority and purpose
- WAC 173-532-020 Definitions
- WAC 173-532-025 Establishment of stream management units
- WAC 173-532-030 Establishment of instream flows
- WAC 173-532-040 Surface and ground water closed to further consumptive appropriations
- WAC 173-532-045 Future permitting actions
- WAC 173-532-050 Protection of surface water rights from future permit-exempt ground water appropriations from the gravel aquifer
- WAC 173-532-055 Future surface water withdrawals for environmental enhancement projects
- WAC 173-503-090 Compliance and enforcement
- WAC 173-532-120 Map

This amendment repeals the following sections:

- WAC 173-532-060 Designation of ground water areas for specific uses
- WAC 173-532-070 Closure of ground water aquifer to further appropriation
- WAC 173-532-080 Evaluation of ground water applications
- WAC 173-532-110 Regulation review

## **A. How the Agency intends to implement and enforce the rule (RCW 34.05.328(3)(a))**

Implementation strategies will consist of:

- education and outreach,
- technical assistance,
- compliance and enforcement,
- data collection, and
- information management.

The work will be done primarily at the regional level with existing staff resources, with support from colleagues at Ecology's headquarters in Lacey. Staff resources for rule implementation are expressed in full time equivalents (FTEs). In implementing the rule, Ecology will cooperate, to the greatest extent possible, with Walla Walla and Columbia counties, the cities of Walla Walla and College Place, the Walla Walla Watershed Planning Unit, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and other basin stakeholders.

### **Education and outreach**

A key implementation component is outreach and communication. Ecology will continue to do outreach and communication with the counties, cities, water utilities, well drillers, existing water right holders, property owners, and interest groups, to inform and explain the rule amendment. Staff resources from headquarters and the region for rule-specific and general water law educational material, oral presentations, and media outreach are estimated to be 0.1 FTE for two months. Outreach efforts will also be made at the local level through ongoing work by the Walla Walla Watershed Planning Unit, Walla Walla Community College, and Walla Walla County.

Ecology believes that public access to up-to-date information is necessary to implement this rule amendment. Ecology anticipates making use of the internet for distributing information such as maps of the affected areas, details on permit-exempt well requirements, and answers to frequently asked questions. In addition to the Walla Walla rule webpage,<sup>1</sup> a more comprehensive watershed webpage is under development. It will provide links and data associated with other water management activities in the basin.

### **Implementation of specific provisions in the rule amendment**

The rule amendment has six main provisions that require implementation efforts. Some implementation strategies will be relevant to all six (primarily outreach and communication). Each provision will also require its own specific strategies; these are discussed below. The key elements of the rule amendment are:

- 1) Establishment of instream flow water rights.
- 2) Modification of the seasonal closure of surface waters.
- 3) Closure of the gravel aquifers.<sup>2</sup>

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<sup>1</sup> Webpage available at: <http://www.ecy.wa.gov/programs/wr/instream-flows/wallawallabasin.html>.

<sup>2</sup> The original rule (adopted in 1977) seasonally closed surface water and required protection of surface water rights from new ground water permits where there would be interference with existing rights. The rule amendment modifies the

- 4) Future permitting actions.
- 5) Control and management of future permit-exempt groundwater withdrawals from the gravel aquifer, in “high density areas.”<sup>3</sup>
- 6) Limitation on stock watering based on legal lot sizes.

### 1. Establishment of instream flow water rights

The rule amendment establishes instream flows for the Walla Walla River, Mill Creek, North Fork Touchet River, and Touchet River (WAC 173-532-030). Once the rule takes effect, instream flows become water rights with the priority date of the effective date of the rule. As water rights, instream flows must be protected from impairment by junior water rights and by all future changes and transfers of senior and junior water rights. The instream flows will be set for specific stream reaches or stream management units as follows:

**Table 1. Instream Flows in the Walla Walla River Basin**

<u>Month</u>	<u>(cubic feet per second)</u>			
	<u>Stream Management Unit</u>			
	<u>Mill Creek MP 1 (Mill Creek at Kooskooskie), USGS Gage No. 14013000</u>	<u>Walla Walla River MP 5a (Walla River at Detour Road), Department Gage No. 32A100</u>	<u>North Fork Touchet River, MP 6a (North Fork Touchet above Dayton), Department Gage No. 32E050</u>	<u>Touchet River MP 11 (Touchet River at Bolles), Department Gage No. 32B100</u>
<u>January</u>	<u>110</u>	<u>250</u>	<u>95</u>	<u>150</u>
<u>February</u>	<u>125</u>	<u>250</u>	<u>95</u>	<u>150</u>
<u>March</u>	<u>150</u>	<u>350</u>	<u>125</u>	<u>200</u>
<u>April</u>	<u>150</u>	<u>350</u>	<u>125</u>	<u>200</u>
<u>May</u>	<u>125</u>	<u>250</u>	<u>125 Closure</u>	<u>200 Closure</u>
<u>June</u>	<u>100 Closure</u>	<u>Closure</u>	<u>95 Closure</u>	<u>125 Closure</u>
<u>July</u>	<u>53 Closure</u>	<u>Closure</u>	<u>65 Closure</u>	<u>74 Closure</u>
<u>August</u>	<u>41 Closure</u>	<u>Closure</u>	<u>53 Closure</u>	<u>48 Closure</u>
<u>September</u>	<u>41 Closure</u>	<u>Closure</u>	<u>51 Closure</u>	<u>56 Closure</u>
<u>October</u>	<u>48 Closure</u>	<u>Closure</u>	<u>63 Closure</u>	<u>82 Closure</u>
<u>November</u>	<u>100 Closure</u>	<u>Closure</u>	<u>95 Closure</u>	<u>150 Closure</u>
<u>December</u>	<u>110</u>	<u>250</u>	<u>95</u>	<u>150</u>

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period of the surface water closure by extending it overall by one to two months. The rule also closes the gravel aquifers from future permitting. See WAC 173-532-040.

<sup>3</sup> Note: Outside of high density areas and the Burbank area, permit-exempt wells are allowed in accordance with RCW 90.44.050. See Figure 1 for map of “high density” areas.

For reaches that do not have instream flow levels, the flows established for the nearest management point or points (where a tributary with a management point contributes to such flow) apply to those reaches.

If over time the existing gage sites are determined insufficient for management and enforcement purposes, Ecology will work with the Walla Walla Planning Unit (or its successor) to develop recommendations to move or add to the existing sites. Any such changes would then be adopted into rule, through the same collaborative rulemaking used for the current rule amendments.

*Effect on new water rights.*

When adopting the 1977 rule, Ecology recognized that all streams in the basin were over-appropriated from late spring to early fall. In other words, more water had been granted in water rights than naturally occurs during that period. Because of this, Ecology deferred establishing instream flows until storage projects become a “reality.”

Although no instream flows have been set, Washington Water Code (Chapter 90.03 RCW) requires that Ecology make a finding of water availability before issuing new water rights.<sup>4</sup> Under this legal obligation, Ecology, in 1996, ceased issuing any new surface water rights in the basin to protect existing rights, and preserve and protect instream resources.

Any applications for new surface water rights would not meet the Water Code, Chapter 90.03 RCW, statutory tests because:

1. Water is not available.
2. Existing water rights may be impaired.
3. Approval of future withdrawals would not be in the public interest.

Setting instream flows does not change the current policy of not issuing new surface water rights, except for storage projects with environmental benefits.

*Conditioning Permits for Environmental Enhancement Projects*

Newly amended WAC 173-532-040(3) limits future permits for surface withdrawals to Environmental Enhancement Projects (EEP). Therefore, the only future water rights that instream flows will affect are permitted rights for EEP. Authorization/permits issued by Ecology for EEPs are subject to extensive evaluation, strict conditions, and continuous monitoring. EEPs will be authorized for short-term—one to two years. Permanent rights will be issued only if the project’s intended benefits are realized (flows are enhanced) based on years of monitoring. EEPs are subject to protection of existing water rights, instream flows, salmonid migration, and ecological functions provided by high flows. Projects that impact any of these conditions will be ordered to stop temporarily or permanently. On-the-ground verification of compliance will be done by Ecology staff in consultation with biologists from the Department of Fish and Wildlife and the Confederated Tribes of the Umatilla Indian

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<sup>4</sup> In determining water availability, Ecology must first consider (1) whether sufficient water may be present to preserve and protect fish resources, and (2) whether a proposed appropriation would affect these resources and therefore must be denied.

Reservation (CTUIR). See page 7 for more information on the authorization/permitting process for EEPs.

*Effect on future water right changes and transfers*

In addition, instream flows set by rule are water rights protected from impairment caused by any future changes and transfers of senior and junior water rights (see WAC 173-532-030(3)). The Water Code requires Ecology to make a determination that changes and transfers would not impair senior and junior water rights, including instream flow rights. Future applications for a change or transfer of a water right will be denied if such change or transfer would result in impairment of an instream flow.

**2. Seasonal closure of surface water**

The rule amendment modifies existing surface water closures in the basin. All streams and rivers will be closed to new consumptive uses from either May 1 to November 30 or June 1 to November 30. Overall, the closure will be one to two months longer than under the original rule.

Future permits to withdraw surface water are limited to non-consumptive uses and storage projects providing environmental benefits (see pg. 9, future permitting, for details on processing applications). Withdrawals for storage projects are limited to where instream flows are established: the North Fork Touchet River, Touchet River, Walla Walla River, and Mill Creek. No withdrawal for storage projects or other consumptive projects will be authorized in any other stream or river in the basin.

The modification of the surface water closures will not change the current administration of water rights. This includes the restriction on issuing water rights for year-round uses or for uses from late spring to early winter, and on changes or transfers of existing water rights. Ecology has not issued water rights for storage projects for irrigation and commercial uses because the water supply is unreliable (usable flows occur only one in ten years). The only storage projects permitted are those that improve instream flows. Therefore, the modification of the surface water closures will not add any additional implementation responsibilities.

Future permits to withdraw surface water will be limited to non-consumptive uses and EEP (see WAC 173-532-040(3) and 045). The processing of applications for non-consumptive water rights will not add any additional implementation responsibilities.

*Permits for environmental enhancement projects (EEP)*

Permits for EEP will be for diverting surface water high flows during the non-closure periods. Water could be for surface or ground water storage projects that provide net environmental benefits, with particular emphasis on enhancing salmon production. We anticipate receiving two to three projects per year (most would be a renewal of existing projects).

The rule amendment defines:

- a. Who may sponsor a project.
- b. How projects qualify.
- c. What technical review is required.
- d. Conditions imposed on the projects.

a. EEP can only be sponsored by:

- The Confederated Tribes of the Umatilla Indian Reservation (CTUIR).
- A municipal governments (cities of Walla Walla and College Place) located within the Walla Walla or Columbia counties.
- An irrigation district or ditch company within the watershed.
- The Washington Department of Fish and Wildlife (WDFW).
- A non-profit organization within the watershed.

Individual landowners may qualify as a sponsor only if the landowner is a participant in a project sponsored by one or more of the qualifying sponsors.

b. Qualifying projects must:

- Receive consensus (unanimous or majority vote) recommendation from CTUIR, the Planning Unit, WDFW, Walla Walla and Columbia counties, City of Walla Walla, and Gardena Irrigation District (Planning Unit initiating governments).
- Be located on Mill Creek, Walla Walla River, the North Fork Touchet, or the Touchet rivers.
- Propose to divert during the non-closure periods (see table below).

c. Technical review required:

- Projects must receive technical advice and recommendations from the technical group representing CTUIR, WDFW, Governor's Salmon Recovery Office, Walla Walla Basin Watershed Council, Ecology, participating federal agencies (i.e., US Corps of Engineers, US Fish and Wildlife, National Marine Fisheries Service).

d. Requirements and conditions imposed on EEPs:

- Projects must be consistent with the specific management objectives for stream management reaches where EEPs are allowed.
- Projects must not interfere with the inward and outward migration of salmonids and the ecological function (i.e., channel and riparian zone maintenance, flushing of sediments and side channel storage).
- Water must be available above existing water rights and instream flows.
- Projects must be monitored to measure and evaluate their effectiveness in enhancing instream flows.
- Projects are authorized for short-term—one to two years, permanent permit are issued only if the projects provide net benefits to the streams.
- Projects are conditioned with instream flows and the requirement to manage the withdrawals consistent with salmonid migration and protection of high flows.

The review of an EEP must consider the cumulative effects of all environmental enhancement projects.

Permits for EEP will require annual renewal and monitoring from Ecology in consultation with the state Department of Fish & Wildlife (WDFW), and may only be made permanent if the project's intended benefits are being realized. Processing of EEP permits will require technical support from Ecology staff. Monitoring and analysis to be used for EEP evaluation is incorporated in Ecology's overall hydrologic monitoring plan for the basin (detail provided on p. 14).

### **3. Closure of the gravel aquifers**

Under the rule amendment, the gravel aquifers connected to surface waters are closed year-round.<sup>7</sup> Studies have shown the direct connection between the gravel aquifer and the surface water sources in the basin. In response, Ecology stopped issuing any groundwater rights from the gravel aquifer in 1996. Ecology will continue to deny applications for withdrawing water from the gravel aquifer. The gravel aquifer closure will not add any additional implementation responsibilities.

The amendment provides an exception for future non-consumptive uses (e.g., geothermal heat pump) and permit-exempt groundwater withdrawals, under specific conditions (see page 10, addressing management of future permit-exempt groundwater withdrawals from the gravel aquifer in "high density" areas).

### **4. Future permitting actions**

We anticipate that the rule amendments will help expedite the processing of pending rights. There are approximately 99 ground water and 18 surface water right applications currently pending. All applicants requesting new permits for surface water and ground water from the gravel aquifer will be provided the option to withdraw their application or receive a denial. Notice and information on the amended rule will be mailed to all pending application holders.

Existing staff will make water right permit decisions related to the rule amendments, respond to telephone calls for information, and provide technical assistance. Prioritization of work done by existing staff is not affected by this rule amendment.

In addition to the existing staff, an additional FTE with implementation responsibilities will be hired in the near future in the Walla Walla satellite office.

#### *Permits for ground water use from the basalt aquifer*

Future water uses from the basalt aquifer may only be permitted when it can be demonstrated that the proposed new use will not impair existing water rights (including instream flows established in rule), closed surface water sources, or the closed gravel aquifer (see WAC 173-532-045).

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<sup>7</sup> The original rule (adopted in 1977) seasonally closed surface water and required protection of surface water rights from new ground water permits where there would be interference with existing rights.

The amended rule allows for permit-exempt withdrawals from the basalt aquifer, as long as such withdrawals comply with RCW 90.44.050.

Ecology has requested funding, from the 2007/2009, budget to monitor and study the basalt aquifer (detail of future work provided on p. 14). Data from studies are expected to inform future management decisions and help identify potential water sources for future growth.

If data analyses indicate that new management strategies for the basalt aquifer are needed, Ecology will initiate a collaborative rule amendment process.

#### **5. Management of future permit-exempt groundwater withdrawals from the gravel aquifer, in “high density” areas (WAC 173-532-050)**

The amended rule does not allow new permit-exempt wells where connection to an existing municipal water supply can be made in a timely and reasonable manner. This requirement will not add any significant implementation requirements, since existing local requirements already restrict drilling of new wells. The City of Walla Walla requires hook-up to the public water system if the system is located within 300 feet of the structure’s property line. Also, any land division in the Urban Growth Area, which results in parcels smaller than five acres must connect to city water. The City of College Place has similar hook-up requirements in place.

Where connection to an existing municipal water supply cannot be provided in a timely and reasonable manner, permit-exempt wells can be put to use – subject to a number of limitations/requirements. All future permit-exempt well withdrawals from the gravel aquifer in high density areas<sup>8</sup> will be managed as follows:

- Water for combined domestic uses and irrigation of lawn and garden limited to 1,250 gallons per day (gpd) for one residence, and 5,000 gpd for multiple residences in one development.
- Use limited to only domestic uses and outdoor uses.
- Water-for-water mitigation required for outdoor watering from May 1 to November 30 beginning May 2008.
- Metering required for all permit-exempt uses.
- Reporting of monthly water use from May 1 – November 30 required annually.

Outreach and communication will emphasize that the rule restrictions on permit-exempt wells will not affect existing well uses. Water put to beneficial use prior to the effective date of the rule amendment will not be subject to the restrictions listed above.

For the purpose of the rule amendment, actual beneficial use shall not be considered to occur until water is used within a residential structure (see WAC 173-532-050(10)). In addition to regulating future permit-exempt withdrawals, Ecology will enforce existing statutory limitations under RCW 90.44.050 (e.g., the half-acre outdoor watering limitation).

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<sup>8</sup> A “high density area” is defined as an area zoned for one residence in ten acres or denser, and includes areas zoned as Agriculture Residential 10 acres, Agriculture Rural 1 acre, Rural Agriculture 5 and 10 acres, and Rural Residential 2 and 5 acres. See Appendix 1 for map of the high density areas. Note: Outside of high density areas and the Burbank area, permit-exempt wells are allowed in accordance with RCW 90.44.050.

<sup>10</sup> See appendix 2 for more detail on the implementation of the mitigation requirement.

Outreach and communication will also focus on educating new water users on how rule restrictions apply, how to reach compliance, and how to meet projected water demands.

#### *Water Supplies for Non-domestic Users*

Future withdrawals shall be limited to domestic uses, and outdoor uses such as irrigation of lawn and noncommercial garden, outdoor washing (WAC 173-532-050(2)), or for limited stock watering (see pg. 13 for specifics). Therefore, businesses and other non-domestic users, located in the “high density” areas, may not develop new permit-exempt withdrawals from the gravel aquifer.

Effects from the rule on future non-domestic users will be addressed by the overall public outreach strategy. Information on how future non-domestic users may seek water supply, such as those listed below, will be included in focus sheets and informational brochures.

Future businesses and other non-domestic users will need to get water supply by one or more of the following options:

- Use an existing valid water right appurtenant to the user’s property.
- Acquire a valid water right and securing the transfer of the right.
- Drill a permit-exempt well from the basalt aquifer.
- Connect to a water supply purveyor.

#### *Outdoor use of water*

Outdoor uses include irrigation of lawn and non-commercial garden, outdoor washing, filling swimming pools, and so on. It does not include stock watering. Future water users will need to get outdoor water supply by one or more of the following options:

- Use an existing valid water right appurtenant to the user’s property.
- Acquire a valid water right and securing the transfer of the right.
- Drill a permit-exempt well from the basalt aquifer.
- Mitigate the withdrawals from the gravel aquifer (see below).

#### *Mitigation by individual water users<sup>10</sup>*

Water-for-water mitigation is required for outdoor use from May 1 to November 30 from those users that have no alternative water supply as described above. The effective date of the mitigation requirement is delayed until May 1, 2008. After this date, all withdrawals for outdoor use must be mitigated for in advance. This means a water user must:

- Purchase a valid surface water right and put it into the affected stream by working with Ecology to transfer the right to the trust water right program for instream flow. In exchange, Ecology will provide the water user with the right to use the same quantity of water from their permit-exempt well.

Mitigation may be done individually by offsetting future use with a permitted water right (via acquisition or proof of an existing right). Mitigation may also be done jointly with several water users working together to acquire mitigation water.

### *State assisted mitigation*<sup>11</sup>

To assist future permit-exempt users to offset the impacts of their proposed outdoor water use, Ecology is working with the Washington Water Trust (WWT) to develop a mitigation exchange for the basin. WWT and Ecology is consulting with Walla Walla County, the City of Walla Walla, the Walla Walla Watershed Planning Unit, and other basin stakeholders to develop a strategy / plan. The mitigation strategy / plan for the basin includes the following tasks:

- 1) Establish a proposed regulatory, administrative, and funding framework for the mitigation strategy and exempt well compliance.
- 2) Outline procedures for participation in mitigation for permit-exempt users from the gravel aquifer including any application and approval process.
- 3) Establish geographical limitations of the “water-for-water” mitigation strategy.
- 4) Research and summarize growth patterns and water needs throughout the basin including high and low density zones of development.
- 5) Incorporate the information from Task #4 into Tasks #1 and 2 and the development of the mitigation structure.
- 6) Identify needed outreach materials to be prepared prior to the May 2008 start date.

Ecology and WWT have also developed the *Mitigation Guide for Future Outdoor Water Use in the Walla Walla Basin* to guide implementation of the mitigation requirement (appendix 2).

By August 6, 2007 the following products will be available:

- Guide for the mitigation of outdoor water use (appendix 2).
- Agreement to set up state assisted water exchange.
- Outreach and informational resources on mitigation plan.
- FAQs, facts sheets, brochures, and news releases.

Products related to mitigation are attached.

### *Metering and Reporting*

All future appropriators from the gravel aquifer in the high density areas shall be required to install and maintain a water measuring device (water source meter) to measure how much water is being used. Users must report monthly water use from May 1 to November 30 to Ecology by December 31 of each year.

Implementation of the metering/reporting requirement will require public outreach, training, and support. Outreach materials, such as Q & As and informational brochures, will be provided at the local county office. Staff at the Ecology’s Eastern Regional Office will be keeping and maintaining a database in order to track reported exempt well uses.

### *Cooperative Administration of Permit-exempt Well Use*

The need for cooperation and support from local jurisdictions is twofold:

First, local governments have a role and responsibility in ensuring that new development has an adequate quantity of potable water. RCW 19.27.097(1) requires each applicant for a

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<sup>11</sup> Id.

building permit that requires potable water to provide evidence of an adequate water supply for the intended use of the building. RCW 58.17.110 requires a county or city to determine that provisions for potable water supplies are made prior to approving a subdivision or a dedication (e.g., community park).

Second, counties and cities -- by virtue of their existing role in reviewing and approving building permits and subdivisions -- are better equipped than Ecology to inform the public. Ecology intends to provide current information on the status of metered water use and mitigation to local governments so they can distribute this information to property owners and to inform local land use decisions. In turn, Ecology expects that local governments will provide periodic updates to Ecology on land use decisions involving new water use.

## **6. Limitation of stock watering based on legal lot sizes**

Future permit-exempt withdrawals from the gravel aquifer for stock watering will be limited as follows:

- 700 gpd on legal lot sizes of 10 acres or less.
- 2,500 gpd on legal lot sizes between 10 - 20 acres.
- 5,000 gpd on legal lot sizes of 20 acres and greater.

The above limitations on future stock water use will not significantly change the existing regulation of stock water use. The County of Walla Walla currently limits the number of stock kept for domestic purposes (see Walla Walla County Ordinance Chapter 17.26, Development Standards—Animals).

All rule outreach materials prepared for local distribution will discuss the new regulations on stock watering. Although future stock water users will not be required to mitigate, those within high density areas will be required to meter and report their water use. The metering program, discussed on page 13, will take into account future stock watering use in addition to all other exempt uses.

Just as other permit-exempt administration must be shared with local jurisdictions, there is also a need for the shared administration of future stock watering. Coordination with the county government is essential to successful implementation, since the rule limitations on stock watering are based on tax parcel information that is administered by the county auditor.

## **Compliance and enforcement**

Enforcement of amended Chapter 173-532 WAC will follow the procedures outlined in Water Resource Program Enforcement Policy (2005), (see policy at <http://www.ecy.wa.gov/programs/wr/rules/images/pdf/pol2005.pdf>.)

The Water Resources Program's goal is to work with individuals on voluntary compliance through education and technical assistance. If the goal of voluntary compliance cannot be met, enforcement responses will be escalated as provided for in agency and program policy and RCW 90.03.605. Ecology will issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 90.03.600.

Enforcement action will be taken immediately where risks to safety, public health, and environmental health are high, and/or where action is requested by other resource protection agencies.

Water users that develop water supplies from a permit-exempt well in the high-density areas from the gravel aquifer will be informed of the risk of being regulated if mitigation fails. Ecology will evaluate water measuring data, effectiveness of mitigation, and overall rule compliance on an annual basis. If withdrawals are not fully mitigated, as required by WAC 173-532-050(6), Ecology shall issue an order, and give public notice, stopping all such use until adequate and reliable mitigation is in place (see WAC 173-532-050(9)).

### **Data collection and information management**

Future water right determinations and management decisions in the basin will require ongoing monitoring and analysis. Despite the closure in rule, future withdrawals may still be approved for qualifying EEP and certain ground water withdrawals from the basalt aquifer.<sup>12</sup> Monitoring and analysis for all future water right decisions will be needed on both a basin-wide and project level scale. Ecology and other partners in the basin are developing a comprehensive monitoring network to implement water management decisions, including this rule amendment.

In support of the Walla Walla Basin Watershed Management Initiative (WMI), Ecology has funded a number of technical tasks through the Walla Walla Basin Watershed Foundation. These tasks will enhance our understanding of historical trends and current conditions in the basin, as well as provide information that will be used to make informed water management decisions into the future. Specific tasks include:

- Compile all available surface and ground water data from a wide variety of sources.
- Complete a report documenting the various data sources.
- Form a technical review team.
- Create a database and GIS data layers of the geology and monitoring locations.

In addition, the WMI technical team will develop a basin-wide (including portions of the basin in Oregon) surface and ground water monitoring work plan that will be used to guide on-going and long-term monitoring in the basin. In support of this effort, Ecology installed five permanent monitoring wells in the Spring of 2007 and is preparing to install at least six more wells in the summer of 2007.

Funding has also been provided to characterize and map the geologic units and aquifers that overlie the Columbia River Basalts. Future tasks may include:

- Stream temperature studies.
- Subsurface mapping of the Columbia River Basalt aquifers.
- Surface-ground water interactions modeling.
- Public outreach and education.
- Development of a web site containing maps, data, and other information.

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<sup>12</sup> Future permits to withdraw surface water during non-closure periods are limited to EEP. WAC 173-532-040(3). Future ground water use from the basalt aquifer may not (a) impair existing water rights, (b) affect any closed surface source where instream flows have not been established, and (c) affect any closed gravel aquifer. WAC 173-532-045(2).

### *Tracking and accounting systems*

Implementation of the permit-exempt limitations in rule will require the development of tracking or accounting systems. Staff resources of 0.1 FTE at the regional office will be dedicated to develop and implement GIS mapping and data sets to account for permit-exempt uses. The rule requires that Ecology keep records of all future permit-exempt appropriations, including those out of the basalt aquifer (WAC 173-532-050(7)). Ecology will need to partner with local jurisdictions and other affected parties such as well drillers, water systems, farmers, irrigation districts, and tribal governments to collect and distribute information on permit-exempt uses in the Walla Walla River basin.

Agency staff will also be responsible for maintaining a record of all diversions for EEP in order to determine if a stream segment is nearing the maximum allocation, prescribed in WAC 173-532-055, Table III.

## **B. How the Agency intends to inform and educate affected persons about the rule (RCW 34.05.328(3)(b)).**

### **Informational meetings**

We are proposing a series of informational sessions, geared to different affected groups. First, of course, is the general public, especially those who are considering permit-exempt withdrawals for the development of their property. Ecology staff is currently communicating with the agricultural community members, well drillers, local and tribal governments, major water purveyors, and the local health districts to inform them about the amendments to the Walla Walla amended rule.

### **Written materials**

In addition to face-to-face sessions, we will prepare various written materials, such as Q & As and Focus sheets. This information will be distributed through our electronic Listserv and through distribution lists provided locally, and be made available in various public places (e.g., libraries and county offices) and on our internet site. One or more press releases/articles will be submitted to local papers. We will also supplement various existing Ecology materials, such as the Homeowners Packet which is used by the public for well-drilling information and guidance.

### **Websites**

Ecology sees a need to provide the public with implementation-related information in a timely manner. Ecology intends to post information about the rule amendment on the internet, such as the status of outdoor watering mitigation plans. In addition to a website that features information related to the new rule amendment, there will be a comprehensive Walla Walla webpage which provides links and data associated with other water management activities in the basin.

**C. How the Agency intends to promote and assist voluntary compliance for this rule (RCW 34.05.328(3) (c)).**

The Program will focus its efforts to achieve voluntary compliance with the Walla Walla rule amendment through technical assistance, education, outreach, training, and well driller licensing activities. Education and outreach efforts concurrently promote voluntary compliance. For example, a dialogue promoting voluntary compliance of future permit-exempt well use starts at the time water users apply for a building permit. County and Ecology staff will work with the applicant to ensure a common understanding of the rules on permit-exempt withdrawals from the gravel aquifer in the high density areas (e.g., requirement to mitigate).

Outreach and communication will be the key tools here. The Water Resources Program is preparing a Q & A on the rule amendment generally and on issues specific to permit-exempt well use. The Program will develop additional materials as needs are identified. Water Resources staff will work with the county and others to provide informational sessions for the general public and/or specifically affected groups such as the well-drillers. Information on the rule amendment will be on the Ecology website, and will be distributed through a Listserv.

Also, the internet will eventually provide state-wide, real-time, and historical surface water flows in order to help inform provisional water right holders when water is available. Ecology is developing this informational tool for the entire state in order to assist the public in making water management decisions and to promote voluntary compliance in watersheds with instream flow requirements.<sup>13</sup>

**D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted, including to the maximum extent practicable, the use of interim milestones to assess progress, and the use of objectively measurable outcome (RCW 34.05.328(3)(d)).**

The adoption of the Walla Walla rule amendment is needed to protect instream values within the Walla Walla River basin and to avoid injury of existing water rights from future appropriations of water. While setting instream flows is a major component of the rule, there is also a fundamental objective to ensure that “adequate and safe supplies shall be preserved and protected to satisfy future human domestic needs.” RCW 90.54.020(5).

The Walla Walla River basin poses unique water management challenges. The basin is over-appropriated. That is, more water has been legally allocated, through water rights issued, than is naturally available. The water supply is unreliable for water users. Many adjudicated water right holders with senior rights (as early as the 1890s) are unable to exercise their rights from July to October. Most of the summer flows in the Walla Walla have been diverted for irrigation, and for about 100 years, parts of the Walla Walla River were seasonally dry.

Restoration and protection of ESA species in the Walla Walla Basin will require continued cooperation with all involved agencies and stakeholders. The rule amendment alone will not achieve overall restoration goals. Rather, success is contingent upon a number of water management projects

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<sup>13</sup> Maps and information on the pilot project for WRIAs 7, 22, 23, 45, and 55 available online at [http://www.ecy.wa.gov/programs/wr/instream-flows/irpp\\_wrp.html](http://www.ecy.wa.gov/programs/wr/instream-flows/irpp_wrp.html).

and efforts in the basin; such as irrigation efficiency, conservation programs, Bi-State HCP, Walla Walla Watershed Planning, Salmon Recovery, and water management initiative.

Ecology, the Conservation Commission, and the Walla Walla and Columbia conservation districts have been working with several irrigators and irrigation districts and canals to improve conveyance and on-farm systems. Efforts are made to ensure “saved water” is transferred to instream flows as trust water rights. Stakeholders in the basin are very committed to conservation and efficiency, and are very proud of their achievements. Ecology recognizes that, through voluntary mechanisms and financial incentives, water users in the Walla Walla River basin are implementing conservation and efficiency measures and are further advancing flow restoration to help recover ESA-listed species.

Ecology will continue to employ an adaptive management scheme in the Walla Walla River basin in order to meet long-term goals. At this time, not much is known about

- 1) The viability/sustainability of the basalt aquifer.
- 2) The cumulative impacts of future permit-exempt well withdrawals.
- 3) Whether EEP projects in the basin will result in providing net benefits.

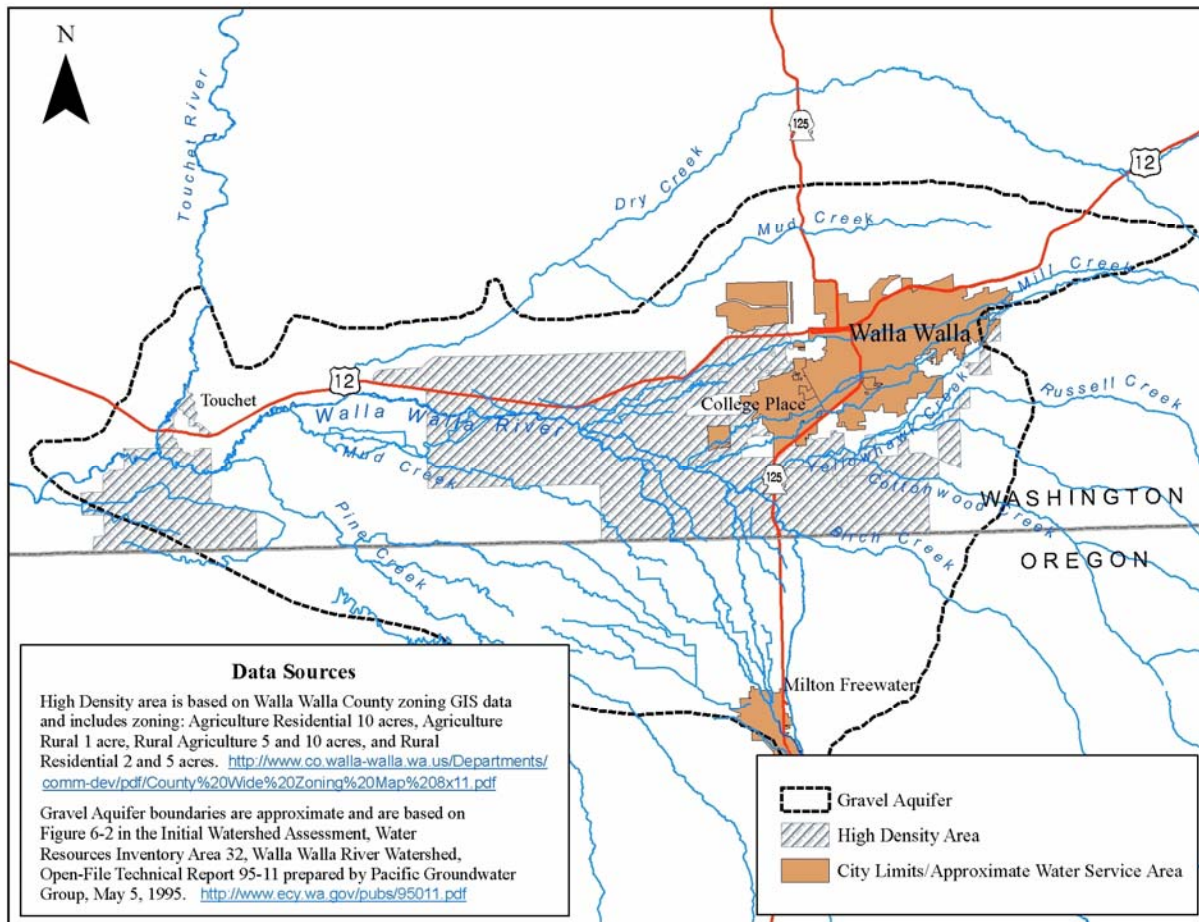
Monitoring and analysis of the watershed are critical to addressing these management issues (see page 14 for description of monitoring plan). If known conditions change in the future, Ecology will initiate a collaborative rule amendment process to address new management needs.

In the short-term, Ecology will evaluate future permits for EEP as well as the effectiveness of mitigation for future permit-exempt well uses. Both of these evaluations will be done on an annual basis and will help ensure that the purposes of the rule are being met. Ecology will also be working in close coordination with local jurisdictions to ensure that adequate and reliable public supplies are satisfying domestic needs.

**E. Supporting documents that need to be developed because of new rule.**

- Q & A(s)
- Brochure, for distribution at county building departments, focused on requirements for drilling permit-exempt wells in high density areas
- Press releases
- Web updates/information

# Appendix 1. Walla Walla High Density Areas



## Appendix 2.



# Mitigation Guide for Future Outdoor Water Use in the Walla Walla Basin

Prepared by: **Washington Water Trust and Department of Ecology**  
**August 2, 2007**

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*If you require this publication in an alternate format, please contact the Water Resources Program at (360) 407-6600. Persons with a hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

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# Mitigation Guide for Future Outdoor Water Use in the Walla Walla Basin

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## INTRODUCTION

Effective September 5, 2007, mitigation is required for outdoor uses for new residential developments withdrawing ground water from permit-exempt wells<sup>14</sup> drilled in the gravel (shallow) aquifer, in high density areas. This document provides guidance to home builders, developers, well drillers, land owners, Walla Walla County and Department of Ecology staff and others regarding the mitigation requirement prescribed in WAC 173-532-050 of the “Water Resources Program for the Walla Walla River Basin” rule.

“Mitigation” refers to replacing the amount of water being used with an equal amount of water, bucket for bucket. The quantity of water withdrawn from a well in the gravel aquifer, during low flow conditions, must be replaced or exchanged with the same quantity of water, in proximity to the stream, aquifer or drainage zone impacted.

Mitigation can be secured either on one’s own, or through a state-assisted mitigation plan. This document provides general information on the mitigation requirement, what is required of individual water users, and what assistance will be provided by the state to help individual water users who seek state assistance to meet the mitigation requirement.

Refer to the flow chart on page 15 for an overview of outdoor water use options for new home builders in high density areas.

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<sup>14</sup> RCW 90.44.050, commonly referred to as “the ground water exemption,” allows for small amounts of ground water to be used without going through the regular permitting process (“permit-exempt”). No ground water permit is required for single or group domestic use not to exceed 5,000 gallons per day (gpd), industrial use not to exceed 5,000 gpd, stock watering, or watering a lawn of noncommercial garden that is a half-acre or less in size.

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## SECTION I

### GENERAL GUIDANCE

#### **WHY IS MITIGATION NEEDED FOR FUTURE OUTDOOR WATER USE?**

*Water resources are limited in the Basin. The cumulative impact of ground water withdrawals from the gravel aquifer is impacting stream flows and affecting existing water rights in high growth areas, during low flow conditions. Impairment to existing water rights is prohibited by law, unless acceptable mitigation is implemented.*

- The Walla Walla River basin is over-appropriated, that is, more water has been legally allocated, through water rights, than is naturally available. The surface water supply, especially from late spring to early fall, is unreliable for most water uses.
- Most of the summer flows in the Walla Walla basin have been diverted for irrigation. For about one hundred years, parts of the Walla Walla River and its tributaries were seasonally dried up, seriously impacting salmon and other fish, resulting in the listing of two species under the federal Endangered Species Act.
- Water users and governmental entities in the basin are improving flows for fish in a variety of ways, including negotiated settlement agreements, irrigation management improvements, aquifer recharge and water acquisition. Significant investment has already been committed to restoring flows and increasing water reliability for users during low flow conditions.
- 8
- Since 1977, rivers and streams in the Walla Walla basin have been closed to any new appropriations from late spring to early fall. In addition, the 1977 rule and the Water Code require protection of surface water rights from new ground water withdrawals where there is connection between the ground water and surface waters.
- Hydrogeologic studies show that shallow gravel aquifers are hydraulically connected to surface waters in the basin. New withdrawals from ground water therefore have the potential to impair existing surface water rights, including those water rights acquired for instream flow purposes. Ecology has not issued ground water rights in the basin since 1996. However, no restrictions have been imposed to-date on permit-exempt ground water withdrawals from the gravel aquifers.
- For the past ten years, water supply issues and challenges have intensified due to population growth and residential development in the urban growth areas and rural residential areas in Walla Walla County. Cumulatively, the withdrawals for residential development using gravel permit-exempt wells are impacting stream flows and impairing existing water rights in high growth areas, during low flow conditions.
- Impairment to existing water rights is prohibited, unless acceptable mitigation is implemented. The mitigation must be bucket for bucket. This means the quantity of water withdrawn from a well in the gravel aquifer, during low flow conditions, is replaced or

exchanged with the same quantity of water in the stream, aquifer or drainage zone impacted.

## **WHO NEEDS TO MITIGATE AND WHO DOES NOT?**

*In high density areas, outdoor water uses must be mitigated from May 1 to November 30 if the water is withdrawn from a permit-exempt well. Indoor uses do not need to be mitigated, and water for outdoor use can be secured from other sources.*

- In high density areas, future water uses from gravel-wells that do not require mitigation are allowed only for:

<p><b>“High-density areas”</b> are those zoned for one or more residences per ten acres.</p>
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- 1) In-house domestic uses, which include water for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental household uses (outdoor water use such as irrigation of lawn and garden is not considered in-house use), and
- 2) Stock watering.

- In the high-density areas, a future water user will not have to mitigate for outdoor uses, such as irrigation of lawn and non-commercial gardens, filling swimming pools, and outdoor washing, only if the user has/chooses one or more of the following:

- 1) Use an existing valid water right on the user’s property,<sup>15</sup> or
- 2) Acquire a valid water right and secure Ecology’s approval of its transfer, or
- 3) Withdraw water from a permit-exempt well developed in the basalt aquifer.

- Existing water rights on the property or acquired water rights must provide an uninterrupted supply of water from May-November annually. (Staff at Ecology’s Walla Walla field office can help determine whether the existing water right on the property can satisfy outdoor demands.) Any transfer or change must be approved by Ecology’s field office and must cover outdoor withdrawals from May 1 to November 30.
- If future water users do not use one or more of the three options above, then they will be required to secure mitigation water to offset the withdrawal from the gravel aquifer. This can be done on either an individual basis (see section II), or as part of the state-assisted mitigation plan (see section III).
- Mitigation is required for the water used outdoors from May 1 to November 30.
- Mitigation must be approved by Ecology regional/field staff prior to using water outdoors. The approval will be in the form of a letter authorizing outdoor water use.

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<sup>15</sup> Assistance in determining the details and validity of a water right is provided by Ecology. Water rights must be beneficially used at least once every five years.

## **WHEN IS THE MITIGATION REQUIREMENT EFFECTIVE?**

*Outdoor water use from permit-exempt wells must be mitigated for between May and November, beginning May 1, 2008.*

- The effective date of the mitigation requirement is delayed to May 1, 2008 for those in the process of building homes after the effective date of the rule, which is September 5, 2007.
- Beginning May 1, 2008, mitigation water must be secured before using water outdoors.
- If the outdoor water use begins after the effective date of the rule but before May 1, 2008, the water user is still responsible for mitigation, which must be in place by May 1, 2008.

## **HOW MUCH OUTDOOR WATER NEEDS TO BE MITIGATED?**

*Persons withdrawing water from a permit-exempt well for outdoor watering must mitigate for 1,000 gallons per day per residence, from May 1 to November 30. For multiple residences that are part of a group, the same individual limits apply as well as a combined 4,000 gallons per day limit allowed for outdoor use, and the area to be mitigated cannot exceed 1/2 acre.*

- All persons required to mitigate for outdoor water use must mitigate for one thousand (1,000) gallons per day. This amount was determined as follows:
  - To encourage conservation and minimize the loss of irrigated agricultural lands to irrigation of lawns, a total maximum of 1,250 gallons per day is allowed for each residence for all uses.
  - Based on water use information from the cities of Walla Walla and College Place, and from the U.S. Geological Survey, about 250 gallons per day is used for indoor-domestic purposes.
  - Therefore, the outdoor water use from May 1 to November 30 for each individual lot is estimated at 1,000 gallons per day. This amount can irrigate about 1/12th of an acre, or 3,630 square feet of lawn.
- For multiple residences that are part of a group, the same individual limits on domestic uses apply as well as a combined 5,000 gallons per day limit. That means for a cluster of four homes, 4,000 gallons per day is allowed for outdoor use, and the area to be irrigated cannot exceed 1/2 acre.
- The total number of days from May 1 to November 30 is 180 days (this accounts for the limited irrigation days in October and November). Therefore, the total amount of mitigation water is 180,000 gallons per year per residence or **.55 acre feet /year per residence.**
- Future water users with a time-limited water right (for example, a water right that is interruptible or can be exercised only in May and June) will still be required to mitigate for the full period of May 1 to November 30.

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## SECTION II

### GUIDANCE TO INDIVIDUAL WATER USERS SECURING THEIR OWN MITIGATION WATER

Water mitigation is required for outdoor watering by future water users who are withdrawing ground water from permit-exempt wells drilled in the gravel aquifer, in populated areas, who:

- 1) have no valid water right on the property, or
- 2) are unable to acquire and transfer existing valid water rights, or drill a well in the basalt aquifer.

Water users can pursue mitigation on their own, or participate in the state-assisted mitigation plan. This section covers guidelines for those water users who wish to pursue mitigation on their own. (The state-assisted mitigation plan is covered in section III.)

#### HOW WILL INDIVIDUAL WATER USERS MITIGATE FOR OUTDOOR WATER USE ON THEIR OWN?

*To meet the mitigation requirement, a water user must acquire a valid surface water right and work with Ecology regional/field staff to transfer the right to the trust water rights program.*

- The right purchased or acquired must have a consumptive quantity equal to or greater than .55 acre feet.
- In exchange for putting water in the trust water rights program, Ecology will provide the water user with a legal right to use the same quantity of water (up to 1,250 gallons per day) from the permit-exempt well. The right will be tied to the property and can't be sold or transferred.
- Water users must secure water for mitigation in the proximity of their property, unless otherwise informed in writing by Ecology.
- The mitigation must be approved by the Ecology regional office or Walla Walla field office, before the water is put to use.

<p>A <b>trust water right</b> is a right secured through transfer of an existing right. It retains the same priority as the original right and it is held by the state for instream flows and other purposes, such as mitigation.</p>
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## **WHAT WILL IT COST NEW HOME BUILDERS TO MITIGATE ON THEIR OWN?**

*The mitigation costs include the cost of purchasing water, associated transaction costs and transfer costs, which is estimated to total a one-time fee of approximately \$2,000.*

- New permit-exempt well users without a source for outdoor water use will be required to mitigate for the full .55 acre feet/year.
- Ecology, based on recent transactions in the Walla Walla Basin, estimates that one acre foot of water can be purchased for between \$600 and \$1,000, with an average of \$800/acre foot. Using the average, the one-time cost of purchasing mitigation water for one household would be about \$440 per residence (.55 acre feet x \$800).
- In addition to the cost of water, there are other costs associated with the transaction and the transfer of the right. These costs are:
  - Ecology's transfer application processing fee of \$50. If the transfer is processed by the Walla Walla Conservancy Board, the application fee is \$500.
  - Transaction costs associated with the purchase of the water right, such as fees for research, consultant, and legal services. These costs are difficult to accurately estimate, given a number of uncertainties in acquiring a portion of a water right for mitigation in the appropriate area. Those costs can average about \$1,500.
- Until actual purchases are made and total costs are calculated, **an estimated one-time cost of \$2,000 for mitigation water per household is anticipated.**
- It may be difficult for an individual home builder to purchase such a small quantity of water. Future home builders are encouraged to jointly mitigate or participate in the state-assisted mitigation plan.

## **HOW WILL A NEW HOME BUILDER FIND OUT ABOUT THE MITIGATION REQUIREMENT?**

*There will be several opportunities for the new home builder to learn more about the mitigation requirements during the process of applying for a building permit. In addition, Ecology staff are available, and explanatory materials prepared.*

- Walla Walla County has a role in ensuring that new development has an adequate quantity of potable water. RCW 19.27.097(1) states that each applicant for a building permit that requires potable water must provide evidence of an adequate water supply for the intended use of the building. RCW 58.17.110 requires a county or city to determine that provisions for potable water supplies are made prior to approving a subdivision.
- Home builders pursue building permits through the Walla Walla County Community Development Department, and water quality and quantity approvals through the Walla Walla County Health Department. The County Health Department requires a well log and a pump test that demonstrates a capacity of at least 5 gallons/minute as well as water

quality testing to approve the well for residential use. Once the County Health Department has approved water availability for the building (residence), a building permit can be issued from the Community Development Department. The County does not require evidence of outdoor water availability. The evidence is limited to in-house water, which does not require mitigation under the amended rule.

- Educating new home builders about the outdoor water mitigation requirement will necessitate the involvement of the County. Home builders applying for or receiving building permits and sub-division approvals after the effective date of the rule will be provided a notice from Ecology informing them of the requirement and the steps they need to take to comply with the requirement (see attached sample).
- Ecology will also provide Walla Walla and Columbia Counties, Cities of Walla Walla and College Place, local drillers, realtors, developers, builders and mortgage companies with fact sheets, frequently asked questions (FAQ), maps, an Ecology web site and Ecology contacts to share with those affected or interested.
- New home builders will be informed by Ecology and the County that the mitigation must be approved by Ecology prior to any outdoor water use.

## **WHAT STEPS MUST A NEW HOME BUILDER TAKE TO MEET THE MITIGATION REQUIREMENT?**

*The step-by-step procedure for new home builders using a permit-exempt well from the gravel aquifer in high density areas is as follows:*

1. Submit a well start card and fee to Ecology, drill the well and submit well log to Ecology.<sup>16</sup>
2. Apply for Building Permit and submit proof of water availability -- well log and a pump test to Walla Walla County.
3. Receive information and Ecology's notice on the new requirements for outdoor water use.
4. Determine or confirm, with assistance from County staff or Ecology, that the property is within the high density areas. Maps will be available at the County, on the web and at Ecology's regional office.
5. Contact Ecology to discuss options to meet outdoor water needs, if it is determined that mitigation water must be secured.
6. Securing mitigation water will involve:
  - purchasing a water right,

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<sup>16</sup> For more information about well-drilling procedures for the property owner, refer to Ecology's website: <http://www.ecy.wa.gov/programs/wr/wells/owner.html>

- getting it transferred by Ecology to the trust water rights program, and
  - receiving legal authorization from Ecology to use the permit-exempt well for outdoor water use, for the equivalent amount of the water in the water right.
7. Install a meter as part of the plumbing system. (The cost of a meter and its installation is about \$500.) Ecology may inspect the water use meter to ensure that it is properly installed and functioning. (See pages 13-14 for more information on metering.)
  8. Report monthly water use to Ecology every year by December 31.

(Refer also to the flow chart on page 15, “Outdoor Water Use Options for New Home Builders in High Density Zone.”)

Note: A home builder’s water use may be subject to inspection by Ecology’s staff and subject to enforcement action if outdoor water use occurred prior to Ecology’s determination of the validity of an existing right or approval of the transfer or mitigation.

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## SECTION III

### STATE-ASSISTED MITIGATION PLAN

To assist future permit-exempt users in offsetting the impacts of their proposed outdoor water use, Ecology has committed to developing a mitigation plan using the trust water rights program to establish a water exchange. The water exchange will be administered by the Washington Water Trust.<sup>17</sup>

A trust water right is a right secured through the transfer of an existing right. It retains the same priority as the original right and it is held by the state for instream flows and other purposes, such as mitigation. Once water is placed in trust, a water exchange (or “water bank”) will be set up as the mechanism for keeping track of “credits” (more water acquired) and “debits” (water that will be used to mitigate for outdoor use) for the purpose of mitigating outdoor water use from permit-exempt wells in high-density areas of the Walla Walla Basin.

#### GOALS OF STATE-ASSISTED MITIGATION PLAN

The goals of state-assisted mitigation plan are to:

- Have sufficient water in the exchange by May 2008 so that new home builders are able to mitigate for their new water use.
- Assist future home builders in meeting their mitigation requirement in a timely manner and at a reasonable cost, by pooling resources and reducing transaction costs.
- Design the mitigation plan to avoid additional localized impacts to surface waters and springs.
- Prevent impairment to existing surface water rights and instream flows in high-density areas, while allowing future outdoor uses through new permit-exempt well withdrawals.
- Ensure that mitigation requirements are efficient and straightforward for new permit-exempt well users.
- Minimize workload on Ecology generated by the mitigation process.
- Allow for future adaptation and possibly broader application of the mitigation process.

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<sup>17</sup> Washington Water Trust is a non-profit organization with a mission to restore flows in rivers and streams.

## HOW WILL THE MITIGATION PLAN WORK?

*Water users must have arrangements in place to meet the mitigation requirement prior to using water outdoors. To assist affected water users in meeting this requirement, a mitigation plan which establishes an acquisition fund and a “water exchange” will be established prior to May 1, 2008, the date by which outdoor water users must secure mitigation water.*

- The first step of the mitigation plan is for the Washington Water Trust, under contract with Ecology, to acquire water rights in targeted mitigation zones, on a willing seller basis.
- Ecology will review water rights proposed for acquisition and transfer them to the trust water right program for the purpose of restoring instream flows and mitigating outdoor water use. The trust water will seed a “water exchange” and will be available to future domestic well water users requesting mitigation water for outdoor water uses.
- New home builders requesting mitigation water will be required to pay a fee based on the total cost of the water acquired in the exchange. Based on the proportionate cost of .55 acre foot of water per year, the fee is estimated to be approximately \$2,000. **This one-time flat fee of approximately \$2,000 will be paid to the Washington Water Trust (WWT). WWT will use the money received to acquire water for instream flows.**
- A new home builder must provide evidence of fee payment to Ecology and demonstrate that a meter was installed in accordance with Ecology’s specifications.
- Ecology will then issue a legal document certifying that the home builder fulfilled the mitigation requirement (see attached example). The document is tied to the property. It cannot be sold or transferred to another property.
- Once the documentation is completed, the home owner/builder can use up to 1,000 gallons per day to water outdoors.

## HOW WILL THE MITIGATION PLAN WORK FOR THE HOME BUILDER?

*Refer to the step-by-step procedure on page 7, steps 1-5. If the home builder chooses state-assisted mitigation to secure water for outdoor water use, the home owner will:*

6. Submit the fee (estimated at about \$2,000) to the Washington Water Trust.
7. Install a meter as part of the plumbing system (meters cost \$250-\$350).
8. Provide evidence of fee payment and proper meter installation to Ecology. Ecology issues a legal mitigation certification.
9. Report monthly water use to Ecology every year by December 31.

Refer also to the flow chart on page 15, “Outdoor Water Use Options for New Home Builders in High Density Zone.”

## **HOW WILL THE MITIGATION PLAN BE FUNDED?**

*Ecology has committed to provide the initial funding for the purchase or lease of water and to transfer the acquired water to the trust water right program. Through a "water exchange" the amounts of water bought and sold, by whom, and fees paid, will all be tracked. The water exchange will be administered by the Washington Water Trust, under contract with Ecology.*

- Ecology's commitment is limited to setting-up the mitigation exchange to meet future outdoor water needs for the next **2 years**. Starting the water acquisition in phases will be the most feasible (i.e., purchase or lease a two-year supply at a time).
- The amount of water to be permanently acquired will be at least **55 acre feet of consumptively used water** (.55 acre foot per household x 50 households x 2 years). If there is opportunity to acquire more Ecology will do so, with most additional water going to instream flows.
- Funding will cover the cost of the water and associated transaction costs.
- WWT will collect fees from water users using the state-assisted mitigation program. The fees will be used to acquire water for instream flows in the Walla Walla basin.

## **WHERE WILL THE WATER FOR MITIGATION COME FROM?**

*The water will be either purchased or leased from existing water right holders.*

- A permanent transfer -- as in the case of a sale of a water right -- usually requires time for the water right holder to consider as well as increased negotiation and transaction time. Typically, it takes four months to a year to identify willing sellers, agree on a price and transfer water to the trust water rights program.
- To help prepare the mitigation plan for a May 2008 start date, the Washington Water Trust will pursue short-term leases of two to five years with an option to negotiate a purchase at the end of the lease. Alternatively, WWT may pursue long-term leases (five years or more).
- Given that gravel aquifer is connected with surface waters in the basin, mitigation requirements must reflect this. New homes will fall into one of several drainage zones (a map illustrating the mitigation zones is in production). In order to fulfill the mitigation requirements, mitigation water must preferably originate upstream of any impacts.
- The geographic area of new growth is being estimated so that the appropriate amount of mitigation water can be acquired and transferred to trust as instream flow and mitigation outdoor water, prior to outdoor water uses. However, given that the impact of each new exempt well is minimal (~.55 acre feet/yr) Ecology with WWT assistance will acquire a block of water in a drainage zone(s) where there will be a direct benefit to instream flows.

## **HOW WILL THE MITIGATION PLAN BE INTEGRATED WITH EXISTING WATER MANAGEMENT EFFORTS IN THE WALLA WALLA BASIN?**

*Watershed management in the Walla Walla Basin is among the most comprehensive in the state, and there are many watershed and planning groups simultaneously working towards balance in water management throughout the basin. It will be critical to tie implementation of the mitigation requirement into existing processes.*

- A water exchange created to assist future water users meet the mitigation requirement in high-density areas can be designed to ultimately serve a broader range of purposes for water right exchange and conservation. An expanded water exchange framework could eventually serve a larger range of transactions such as water for new industry, agriculture, development, fish or the environment.
- It is the intent of Ecology to help Basin entities explore and pursue the establishment of a local entity that would take on the financial and administrative responsibility for a mitigation exchange. Legislative authorization will likely be needed to ensure the local entity is able to operate as a “water bank.”

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## SECTION IV

### EDUCATION, MONITORING AND COMPLIANCE

For both individuals mitigating on their own and those working within the state-assisted mitigation plan, certain common issues exist with regards to education and outreach, monitoring and metering, and enforcement.

#### **HOW WILL PEOPLE KNOW ABOUT THE REQUIREMENTS?**

*There will be a variety of printed materials and an Ecology web site, as well as Ecology and County staff available to talk with home builders and others.*

- Outreach is a key part of a successful mitigation strategy. Inevitably there will be a lot of questions such as:

*“Why do I have to mitigate and conserve and my neighbor who has been pumping from the shallow gravel aquifer for years doesn’t have to? How much water can I use? How much will it cost and how long will it take to get approval for my mitigation requirement? What happens if I exceed my allotted water use?”*

- Considerable effort will be made to educate and dialogue with new home builders about the water use limitations and mitigation requirements — while emphasizing the long-term benefits to the basin.
- Other key outreach groups include: land owners with undeveloped land, developers, realtors, well drillers, lenders and the general public.
- FAQs, fact sheets, maps and an Ecology web site will be available to answer questions and outline the process that future water users will need to follow.
- Walla Walla and Columbia Counties will assist with outreach to home builders, developers, and owners of undeveloped land.
- The Walla Walla County Conservation District and the Walla Walla Community College will be provided with information and may be asked to assist with outreach and education, particularly with meter education and low-water use landscaping. There is also a recognized need for water conservation education and outreach to all users throughout the basin, not just with permit-exempt well users.

## **WHEN AND HOW WILL MONITORING AND METERING OCCUR?**

*New permit-exempt well users in high density areas are required to install a meter to record their water use. Water use must be recorded monthly and sent to Ecology by December 31 of each year.*

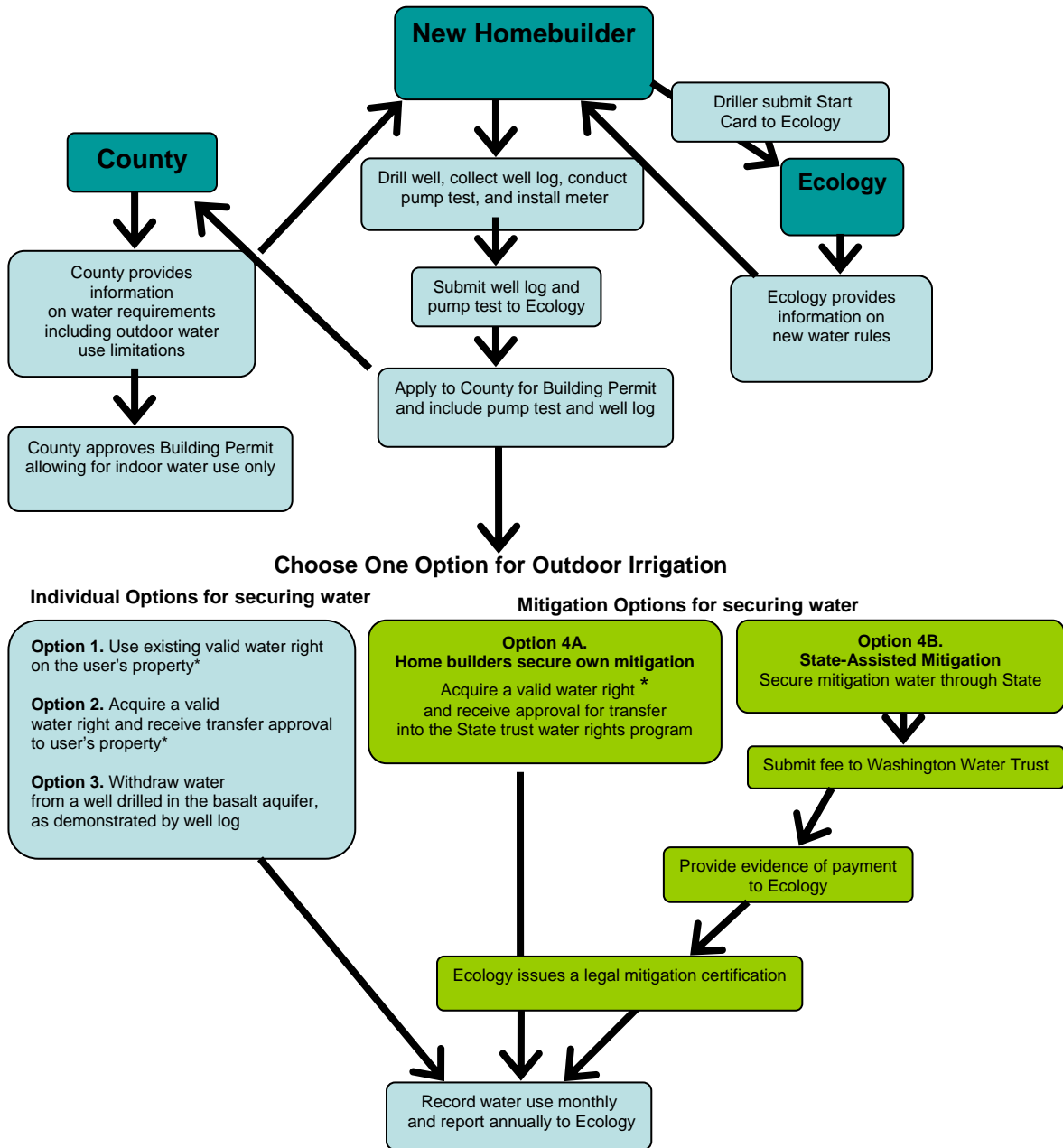
- Reporting will be done electronically on Ecology's web site with an option of mail-in for those without internet access. Meters must be equipped with a totalizer to record the total amount of water used.
- Meter installation will be completed by the contractor or plumbing contractor for the home builder in accordance with Ecology-specified standards (see separate hand-out on metering equipment specifications). Inspection will be required to ensure proper installation and functioning. Ecology will handle meter inspections on a case-by-case basis. Ongoing maintenance of meters will be the responsibility of the home owner.
- Ecology will track how much water is allocated from the trust water rights program to mitigate for outdoor water uses. With the assistance of the County, Ecology will keep track on an annual basis of the number of new residential developments approved by the County within high density areas.
- Information on water use, number of new developments, amounts of water provided for mitigation, and ground and surface water monitoring data will be analyzed by Ecology and shared with the Planning Unit, Counties, Cities, the Confederated Tribes of the Umatilla Indian Reservation, and others.

## **HOW WILL THE MITIGATION BE ENFORCED?**

*Presently, Ecology has regulatory authority and responsibility over water rights and changes to water rights and enforcement of the following requirements:*

- Enforcing the requirement to mitigate prior to using new permit-exempt wells for outdoor uses.
- Enforcing compliance of the 1,250 gallons/day limit for new exempt well users in the high-density areas.
- Ensuring reporting compliance for metered well users.
- Ensuring meters are properly installed and functioning.
- Assuring compliance with other limitations associated with permit-exempt wells such as irrigation restrictions and gallon per day limits.

# Outdoor Water Use Options for New Home Builders in High Density Zone



\* The water right must provide an uninterrupted supply of water from May-November annually. If there are any questions, it is advisable to contact Ecology.



**NOTICE**  
**Effective September 5, 2007**  
**New rule affecting new ground water uses for residential developments in the Walla Walla Basin**

The Washington State Department of Ecology (Ecology) has adopted new water management provisions to better protect and manage the current condition of Basin's water supplies. Effective **September 5, 2007**, there will be new conditions on water use for new residences for which all the following apply:

- ↔ ***You are planning to withdraw ground water under the permit exemption;***
- ↔ ***The well is in the gravel (shallow) aquifer,***
- ↔ ***The aquifer is in a high density area, (zoned for one or more residences per ten acres), and***
- ↔ ***The water is for domestic uses.***

### **Conditions of water use**

1. Water use by new development is limited to a maximum of **1,250 gallons per day per residence**, and a cumulative total of **5,000 gallons per day for multiple residences**.
  - These maximum amounts of water cover in-house uses as well as outdoor uses such as irrigating a lawn or noncommercial garden.
  - Irrigation is limited to a cumulative maximum of ½ acre of lawn and non-commercial garden per development.
2. Water users must **install and maintain a water measuring device** (water source meter) and report to Ecology their monthly water use from May 1 to November 30, by December 31 of each year. (See separate hand-out on metering equipment specifications.)
3. If you are going to use permit-exempt well water for outdoor uses, you must **mitigate the impact of outdoor water use from May 1 to November 30**. Arrangements for mitigation must be in place by May 1, 2008.

### **Mitigation for outdoor water use from permit-exempt wells**

If you will be using water from a permit-exempt well in the gravel aquifer in a high density area for outdoor water use, you must arrange for mitigation: that is, to replace the amount of water being used with an equal amount of water before using the water outdoors.

The amount of water for mitigation is based on 1,000 gallons per day of outdoor use per residence or .55 acre feet of water per year per residence. Mitigation may be done on your own or through the state mitigation program. For a detailed description of both processes, refer to the Mitigation Guide and Ground water use brochure included in this packet.

### **Mitigation for outdoor water use not required if:**

You do not need to mitigate if you can secure water by any of the following:

- ***Existing valid water right.*** Water may be used outdoors on the land in question if there is an existing valid right on the property that covers such withdrawals from May 1 to November 30.

- *Acquire a valid water right.* Water may be used outdoors if supplied by a transferred or changed water right that can be used from May 1 to November 30.
- *Permit-exempt well drilled in the basalt aquifer.*
- *Public water purveyor.*

## For more information

Please contact Ecology's Walla Walla field office to assist you in determining the availability of water for outdoor use, or for other questions:

Walla Walla Field Office  
 1815 Portland Avenue, Suite 1  
 Walla Walla, WA 99362  
 Phone: (509) 527-4546

To review the amended rule language, go to: [www.ecy.wa.gov/programs/wr/instream-flows/wallawallabasin.html](http://www.ecy.wa.gov/programs/wr/instream-flows/wallawallabasin.html).

## Glossary

**Aquifer:** Aquifers are underground geological water systems that store and/or transmit ground water, such as to wells, springs and streams. The Walla Walla Basin has two primary aquifers:

- Gravel, or shallow – underlies the central part of the Basin
- Basalt, or deep – underlies the entire Basin.

**Ground water:** Ground water is water located under the ground. Studies show a direct connection between the gravel aquifer and the surface waters in the Walla Walla basin.

**High density area:** Populated areas, specifically zones with a density of one or more residences per ten acres, that have been designated as “high density areas” by Walla Walla County.

**In-house domestic uses:** Water for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental household uses.

**Mitigation:** Mitigation must be bucket for bucket. This means that the quantity of water withdrawn from a well in the gravel aquifer, during low flow conditions, is replaced or exchanged with the same quantity of water in proximity to the river, stream or drainage area impacted.

**Outdoor domestic uses:** Irrigation of lawn and non-commercial gardens, filling swimming pools and outdoor washing, and other incidental outdoor water uses.

**Permit-exempt well:** RCW 90.44.050, commonly referred to as “the ground water exemption,” allows for small amounts of ground water to be used without going through the regular permitting process (“permit-exempt”). No ground water permit is required for: 1) single or group domestic use not to exceed 5,000 gallons per day (gpd); 2) industrial use not to exceed 5,000 gpd; 3) stock watering; or 4) watering a lawn of noncommercial garden that is a half-acre or less in size.

**Trust water right:** A trust water right is a right secured through transfer of an existing right. It retains the same priority date as the original right, and it is held by the state for instream and other purposes, such as mitigation.

**ATTACHMENT**

**DRAFT**

Dear "Name":

RE: Future outdoor water use for land parcel No.--

The Washington State Department of Ecology (Ecology) acknowledges that the addressee has produced evidence of mitigation for outdoor water use in accordance with WAC 173-532-050. Addressee has secured mitigation water for outdoor use from May 1 to November 30 on the subject property by paying all applicable fees to Washington Water Trust for the State-assisted mitigation program. The property in question is located at [legal description] (land parcel No. ---).

Outdoor water use is allowed on the subject property under the following conditions:

- (1.) For each residence, total water withdrawals (i.e., indoor and outdoor combined) put to use shall not exceed one thousand two hundred and fifty gallons a day (1,250 gpd) per residence, and irrigation is limited to a maximum of one-half (1/2) acre of lawn and non-commercial garden per lot;
- (2.) For combined group use, total water withdrawals (i.e., indoor and outdoor combined) put to use shall not exceed five thousand gallons per day (5,000 gpd) per well, and irrigation is limited to a maximum of one-half (1/2) acre of lawn and non-commercial garden per development;
- (3.) Water users must install and maintain a water measuring device (water source meter), meeting Ecology's specifications, and report to Ecology their monthly water use from May 1 to November 30, by December 31 of each year; and
- (4.) Mitigation for outdoor water use is approved from May 1 to November 30 on the subject property, and is not transferable for use on other locations or other exempt uses.

For more information or assistance please contact:

Watermaster Bill Neve  
Walla Walla Field Office  
1815 Portland Avenue, Suite 1  
Walla Walla, WA 99362  
Phone: (509) 527-4546

The Water Resources Program for the Walla Walla River Basin, Chapter 173-532 WAC, may be viewed at: <http://www.ecy.wa.gov/programs/wr/instream-flows/wallawallabasin.html>