



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

As required by the Washington State Administrative Act, Chapter 34.05 RCW

IMPLEMENTATION PLAN FOR THE ADOPTION OF
Chapter 173-545 WAC, *Instream Resources Protection Program – Wenatchee River Basin,
Water Resource Inventory Area (WRIA) 45*

January 2008

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CHAPTER 173-545 WAC
Instream Resources Protection Program – Wenatchee River Basin
Water Resource Inventory Area (WRIA) 45

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Implementation Plan for Chapter 173 - 545 WAC, Instream Resources Protection Program – Wenatchee River Basin, Water Resource Inventory Area (WRIA) 45

Introduction

RCW 34.05.328 requires state agencies adopting rules to develop a rule implementation plan. The plan must describe 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 Department of Ecology is adopting revisions to Chapter 173-545 Washington Administrative Code (WAC) – Instream Resources Protection Program for the Wenatchee River Basin, WRIA 45. The amendment increased instream flows at existing management points, added new management points, provided a water reservation for 20 years of planned growth, and a maximum allocation for seasonal use and storage. The amended rule has the following sections:

- WAC 173-545-010 General
- WAC 173-545-020 Purpose
- WAC 173-545-030 Definitions
- WAC 173-545-040 Stream management units
- WAC 173-545-050 Instream flows established on June 3, 1983
- WAC 173-545-060 Instream flows based on watershed planning
- WAC 173-545-070 Lakes and ponds
- WAC 173-545-080 Interim closures
- WAC 173-545-090 Reservation of water for certain future uses
- WAC 173-545-100 Maximum future allocation
- WAC 173-545-110 Permitting actions
- WAC 173-545-120 Changes and transfers
- WAC 173-545-130 Compliance and enforcement
- WAC 173-545-140 Appeals
- WAC 173-545-150 Regulation review
- WAC 173-545-160 Map
- WAC 173-545-170 Appendix 1: Hydrographs

1. How the agency intends to implement and enforce the rule.

Implementation strategies will consist of:

- Education and outreach (see #2).
- Technical assistance.
- Compliance and enforcement.
- Data collection.
- Information management.

Technical assistance

Existing Ecology Central Regional Office (CRO) staff will provide technical assistance for state and local agencies, and those affected by the rule. Eight existing regional staff members and one project position (funded through June 30, 2009) will assist with permitting issues, including processing water right changes and transfers. Two other regional staff members hold primary responsibility for compliance and enforcement actions in the seven-county region, with support from headquarters staff in Lacey. This can also involve providing education and technical assistance to achieve voluntary compliance.

Compliance and enforcement

Forty-six water right permits and certificates subject to the 1983 instream flows can be regulated—shut off—when actual stream flows drop below the 1983 instream flow levels. Ecology has two water-masters that monitor compliance with the permit conditions by means of instructions given through the toll-free telephone message line, which provides river flow information. Where the instream flows are lower than those set in 1983, these minor changes, as identified in section -050 of the amended rule, will alter regulation of these 46 water rights. This will not affect the resources required to maintain the existing enforcement program.

Ecology may regulate future permits, issued outside the reservation, that are conditioned to the instream flows set in this amendment. We expect the existing enforcement program to be able to cover this added workload.

Enforcement of this amended rule will follow the procedures outlined in Water Resource Program Enforcement Policy (2005).¹ This policy is consistent with section -130 of the amended rule.

The Water Resources Program's goal is to work with individuals on voluntary compliance through education and technical assistance. When we are unable to obtain voluntary compliance, 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.

¹ See policy at <http://www.ecy.wa.gov/programs/wr/rules/images/pdf/pol2005.pdf>.

Ecology will take enforcement action immediately where risks to safety, public health, and environmental health are high. This may also occur when other resource protection agencies request we take action.

Data collection and information management

The establishment of a reservation in the rule will require ongoing monitoring and analysis in order to approve future withdrawals from the reserve. Ecology is funding the county and the planning unit to develop a monitoring and tracking tool (“accounting system”). This will ensure that water management decisions related to the reservation of water are accurately accounted. Ecology’s watershed lead will work with the planning unit and the CRO water resources staff to support the process of developing and managing the reservation through the accounting system.

In addition:

1. Ecology will continue supporting an instream flow assessment and the cumulative impacts assessment for the Chumstick Creek sub-basin. These studies will allow us to adopt instream flows for the sub-basin, as stated in WAC 173-545-060(7) and potentially allow the full allocation of the sub-basin reservation.
2. If a restoration project for the area between the City of Leavenworth and Icicle Irrigation District's point of diversion and the U.S. Fish and Wildlife Service hatchery return (see WAC 173-545-090(1)(d)(iv)), is completed Ecology will propose a modification to this rule to allow access the full reservation in the Icicle sub-basin.
3. Ecology will support or perform a cumulative impacts analysis of outdoor water use within the Mission creek basin. This assessment must be completed to determine whether the cumulative impact of outdoor water use associated with permit-exempt ground water uses initiated after adoption of the June 6, 1983 instream flows interfere with the 1983 instream flow and should be subject to interruption. Currently, this work is being performed under contract with oversight by the watershed planning unit. The reservation in the Mission sub-basin will expire two years from the date of the rule amendment adoption. It is expected that a mitigation bank will be established to provide a reliable supply of domestic water for new uses within the basin.

Setting instream flows in the Chumstick Creek sub-basin and allowing full use of the reserves in the Chumstick and Icicle creek sub-basins will require rule making to further amend the rule.

2. How the agency intends to inform and educate affected persons about the rule.

Ecology and the planning unit share the responsibility for informing and educating the public. Section 11 of the Wenatchee Watershed Management Plan outlines public outreach activities recommended and supported by the planning unit partners.

The planning unit will continue to work through public forums to inform and to address public questions concerning the rule implementation. Public forum groups are already operating in the Mission and Chumstick sub-basins. Ecology and the planning unit members will integrate the rule requirements and the reservation accounting system into the materials and training given to:

- Well-drillers.
- County employees who issue building permits.
- Public water system operators.
- Other groups that request information or are identified as playing a role in rule implementation.

Various written materials will be prepared, such as focus sheets with Frequently Asked Questions (FAQ). This information will be available on the Web and in various public places, and sent to local distribution lists,

3. How the agency intends to promote and assist voluntary compliance for this rule.

The Water Resources Program's goal is to work with individuals on voluntary compliance through education and technical assistance. The Water Resources Program is preparing a focus sheet on the rule generally, and will develop more specific materials as needs are identified. Water Resources staff will work with the watershed lead and planning unit members to provide one or more local informational sessions for the general public and specifically affected groups, such as the well-drillers. Information on the rule will be on the Ecology website, and will be emailed through a distribution list (Listserv).

4. How the agency intends to evaluate whether the rule achieves the purpose for which it was adopted.²

Ecology staff, in conjunction with the planning unit and initiating governments, will contribute to the design and maintenance of the accounting system. Permits, whether issued locally or by Ecology, will be reviewed and compared to metering reports to track the amounts of water remaining in the reservation and the maximum allocations. Ecology will work with the planning unit to develop alternative actions to address issues identified during the adaptive management process.

², This includes, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes (RCW 34.05.328(3)(d))

The rule includes a provision that the reservation will be evaluated by Ecology and the planning unit no less than every five years (2010, 2015, 2020 and 2025). Modifications to the program may be implemented as a result, in rule if needed. Ecology will work with the planning unit to compile a record of the amounts debited and still available from the reservation. The estimates used for accounting for each use will be reviewed and revised if necessary. Ecology and the planning unit will consider the need for more accurate information if there is too much uncertainty or disagreement regarding accounting of water related to the reservation

5. How the agency intends to train and inform Ecology staff regarding the rule amendment.

Additional training(s) specific to this rule will be held at CRO for permit writers, water masters, and well construction staff, as needed, since their work will be directly affected by the rule. We may also schedule information sessions for other staff from Ecology and other agencies, if requested.

6. Documents that may need to be revised or developed because of the rule amendment.

There are no documents identified that must be revised due to this amendment. In addition to the reports related to the Chumstick Creek and Mission sub-basins, Ecology will develop the following education and outreach documents:

- Focus sheet(s)
- Conditions of use for reserve
- Press releases
- Web updates/information