

## Chapter 173-518 WAC

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

### WAC

173-518-010	General provisions.
173-518-020	Purpose.
173-518-030	Definitions.
173-518-040	Establishment of instream flows.
173-518-050	Closures.
173-518-060	Metering and reporting water use.
173-518-070	Future groundwater appropriations.
173-518-075	Mitigation plans.
173-518-076	Expedited processing.
173-518-080	Reserves of water for domestic use.
173-518-085	Maximum depletion amounts.
173-518-090	Future maximum allocation from the Dungeness River mainstem.
173-518-095	Storage projects.
173-518-100	Lakes and ponds.
173-518-110	Compliance and enforcement.
173-518-120	Regulation review.
173-518-130	Appeals.
173-518-140	Map.

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

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

(3) This chapter applies to the use and appropriation of surface and groundwater in the Dungeness River watershed begun after the effective date of this chapter. Unless otherwise provided for in the conditions of the water right in question, this chapter shall not affect:

(a) Existing surface and groundwater rights established prior to adoption of the state surface water and groundwater codes, or by water right permit issued under state law;

(b) Existing groundwater rights established under the groundwater permit-exemption where regular beneficial use began before the effective date of this chapter;

(c) The ability to serve water to a parcel that is part of a group domestic use under the groundwater permit exemption, provided the new use begins within five years of the date water was first regularly and beneficially used by one or more

parcels in the group, and the group use remains within the limit of the groundwater permit exemption; and

(d) Federal and tribal reserved rights.

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-010, filed 11/16/12, effective 1/2/13.]

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-020, filed 11/16/12, effective 1/2/13.]

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

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

**"Appropriation"** means the process of legally acquiring the right to use specific amounts of water for beneficial uses, consistent with the ground and surface water codes and other applicable water resource statutes.

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

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

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

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

**"Critical period"** means for a given stream the thirty-day period with the lowest stream flow available to support a critical life stage for fish, as determined by Washington state department of fish and wildlife, ecology, and tribes, typically during the late summer or fall.

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

**"Domestic use"** means use of water associated with human health and welfare needs, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental household uses. The incidental uses must minimize the consumptive use of water. Examples of incidental household uses include, but are not limited to: Washing windows, car washing, cleaning exterior structures, care of household pets, and watering potted plants. Domestic use does not include other uses allowed under the groundwater permit exemption: Outdoor irrigation of up to one-half acre of noncommercial lawn or garden, stockwatering, and industrial use.

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

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

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

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

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

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

**"Maximum depletion amount"** means a limit on how much impact to water resources resulting from groundwater withdrawals will be allowable under this rule before ecology declares water is not available.

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

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

**"Permit-exempt withdrawals" or "permit exemption"** means a groundwater withdrawal exempted from ecology water right permitting requirements under RCW 90.44.-

050, but which is otherwise subject to the groundwater code and other applicable regulations.

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

**"Public water system"** means any system that provides water for human consumption or municipal purposes through pipes or other constructed conveyances. This includes both systems that meet the definition of municipal water supplier in RCW 90.03.015(3) and Group B systems as classified by the Washington department of health, and excludes a system serving one single-family residence or a system with four or fewer connections serving residences on the same farm.

**"Reserve"** means a limited allocation of water for future new uses not subject to interruption when stream flows fall below the levels adopted in this rule.

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

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

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

**"Water budget neutral"** means either placement of other water rights into the trust water right program or stream flow improvement with appropriate assurances, that are at least equivalent to the amount of impact to surface water resulting from consumptive use of a proposed project.

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

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

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

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-030, filed 11/16/12, effective 1/2/13.]

#### **WAC 173-518-040 Establishment of instream flows.**

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

(2) Instream flows established in this rule are necessary to meet the water resource management objectives of the Elwha-Dungeness watershed plan.

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

(4) Instream flows are expressed in cubic feet per second (cfs), and are measured at the control stations identified in Table I. Tables II A and B identify instream flows set by this rule.

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

**Table I**  
**Subbasin Management Unit Information**

Subbasin Management Point Name	Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)	Stream Management Reach
Bagley Creek @ Hwy. 101	RM 1.4; 48°05'56"N, 123°19'47"W	From mouth to headwaters, including tributaries.

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

**Table II A**  
**Instream Flows in the Dungeness River Basin**  
**(cubic feet per second)**

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

**Table II B**  
**Instream Flows in the Dungeness River Basin**  
**(cubic feet per second)**

Month	Matriotti Creek	McDonald Creek	Meadowbrook Creek	Siebert Creek
January	14	36	12	36
February	10	24	8	24
March	27	63	24	63
April	27	63	24	63
May	18	42	16	42
June	18	42	16	42
July	5	15	5	15
August	5	15	5	15
September	5	15	5	15
October	5	15	5	15

Month	Matriotti Creek	McDonald Creek	Meadowbrook Creek	Siebert Creek
November	14	36	12	36
December	14	36	12	36

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-040, filed 11/16/12, effective 1/2/13.]

**WAC 173-518-050 Closures.** Surface water: Ecology determines that, based on recommendations in the watershed plan, historical and current low stream flows, and the need to protect existing water rights, water is not reliably available for new consumptive uses from the streams and tributaries in the Dungeness River watershed listed in Table III, with the exception of certain times of year in the Dungeness mainstem. Therefore, Bagley, Bell, Cassalery, Gierin, Matriotti, McDonald, Meadowbrook, and Siebert creeks, and unnamed tributaries to the Dungeness River, are closed year round. The Dungeness River mainstem is closed from July 15 until November 15 each year. Table III shows the closure periods and affected reaches. Exceptions to the surface water closures are provided in WAC 173-518-070, 173-518-080, and 173-518-085.

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

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-050, filed 11/16/12, effective 1/2/13.]

**WAC 173-518-060 Metering and reporting water use.** All future new surface and groundwater appropriations, other than rainwater collection, shall measure withdrawals.

(1) Water meters must meet specifications available through ecology.

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-060, filed 11/16/12, effective 1/2/13.]

**WAC 173-518-070 Future groundwater appropriations.** All new groundwater appropriations must comply with the provisions of this chapter.

[Ch. 173-518 WAC—p. 4]

(1) Based on the hydrogeology of the basin, ecology determines that surface water and groundwater sources within the Dungeness watershed are hydraulically connected.

(2) If connection to a public water supply is not available in a timely and reasonable manner, then a new withdrawal from another well is allowed. Written evidence that connection is not available must be provided to ecology or the county before another well may be used for a new withdrawal.

A new permit-exempt withdrawal may receive water from an existing group domestic water system operating under the groundwater permit exemption. The new withdrawal will be considered an additional and separate exemption.

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

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

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

(ii) As an alternative to acquiring mitigation through the Dungeness water exchange, the proponent may choose to submit a mitigation plan. Ecology must approve the mitigation plan prior to plan implementation. If ecology determines that the mitigation is no longer effective, the water use shall cease until an effective mitigation plan is put in place.

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

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

(4) All new wells drilled must comply with state well drilling requirements in chapter 173-160 WAC, in particular the provisions to prevent contamination between aquifers in WAC 173-160-241.

(11/16/12)

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-070, filed 11/16/12, effective 1/2/13.]

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

(1) The mitigation plan must:

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

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

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

(2) The mitigation plan must show that the proposed withdrawal, with mitigation in place, will not have any of the following impacts:

(a) Impair existing water rights;

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

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

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

(a) A bank letter of credit;

(b) A cash deposit;

(c) A negotiable security;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank;

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW; or

(g) Other financial assurance deemed adequate by ecology.

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-075, filed 11/16/12, effective 1/2/13.]

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

(1) Fully offset impacts to surface water;

(2) Benefit stream flows; or

(3) Otherwise substantially enhance or protect the quality of the natural environment.

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-076, filed 11/16/12, effective 1/2/13.]

**WAC 173-518-080 Reserves of water for domestic use.** (1) Ecology has weighed the public interest supported by providing a limited amount of water for domestic water supply against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by these limited reserves clearly overrides the potential for negative impacts on instream resources. (RCW 90.54.020 (3)(a).)

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

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

**Table IV  
Reserved Quantities**

Subbasin Management Unit	Cubic Feet Per Second	Gallons Per Day
Bagley Creek	0.01	6,463
Bell Creek	0.0023	1,486
Cassalery Creek	0.0013	840
Dungeness River and Matriotti Creek	0.76	491,201
Gierin Creek	0.0109	7,045
McDonald Creek	0.003	1,939
Meadowbrook Creek	0.026	16,804
Siebert Creek	0.022	14,219

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

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

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

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

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

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

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

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

(c) Impacts to the closed surface waters listed in Table III will be calculated using the 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009), unless, in the future, ecology determines a better method is available.

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-080, filed 11/16/12, effective 1/2/13.]

#### **WAC 173-518-085 Maximum depletion amounts. (1)**

All unmitigated impacts from the consumptive use of water from the reserves and impacts from implementation of ecology approved mitigation plans shall be debited against the maximum depletion amount for each affected subbasin.

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

(3) No new use that would result in impacts to closed surface waters exceeding the maximum depletion amounts during the critical period shall be allowed. If the cumulative impact calculated for a subbasin exceeds the maximum depletion amount, additional mitigation must be achieved before new uses impacting that subbasin can be authorized.

(4) Ecology shall maintain a record of all appropriations that result in deductions against the maximum depletion amounts. Ecology will account for water use from the maximum depletion amounts by debiting the calculated impact to each closed surface water. The impacts to surface water are calculated as a percentage of the consumptive portion of estimated or measured water use. The deductions from the maximum depletion amounts will be determined after consideration of any implemented mitigation.

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

(b) For parcels served by a sanitary sewer system, one hundred percent of indoor water use is assumed consumptive.

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

(d) Impacts to the closed surface waters listed in Table III will be calculated using the 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009), unless, in the future, ecology determines a better method is available.

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

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

**Table V**

#### **Maximum Depletion Amounts Due to New Groundwater Appropriation**

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

[Ch. 173-518 WAC—p. 6]

Subbasin Management Unit	Cubic Feet Per Second	Gallons Per Day
Cassalery Creek	0.0013	840
Dungeness River and Matriotti Creek	0.76	491,201
Gierin Creek	0.0109	7,045
McDonald Creek	0.003	1,939
Meadowbrook Creek	0.026	16,804
Siebert Creek	0.022	14,219

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-085, filed 11/16/12, effective 1/2/13.]

#### **WAC 173-518-090 Future maximum allocation from the Dungeness River mainstem. (1)(a)**

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

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

**Table VI**

#### **Maximum Allocations on the Dungeness River Mainstem (cubic feet per second)**

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

(2) Ecology may issue a permit under RCW 90.03.290, 90.44.050, or 90.03.370 within the maximum allocation limit after consultation with the Washington department of fish and wildlife and the Jamestown S'Klallam Tribe.

The water rights from the maximum allocation are subject to the instream flows set in WAC 173-518-040, and other provisions in statute, administrative rules, and case law.

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

(11/16/12)

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-090, filed 11/16/12, effective 1/2/13.]

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

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

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-095, filed 11/16/12, effective 1/2/13.]

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-100, filed 11/16/12, effective 1/2/13.]

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

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

(a) First attempt to achieve voluntary compliance, except in egregious cases involving potential harm to other water rights or to the environment. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

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

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

(11/16/12)

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-110, filed 11/16/12, effective 1/2/13.]

**WAC 173-518-120 Regulation review.** (1) Ecology, after consultation with local, tribal, and state governments, may initiate a review, and if necessary amend this rule under chapter 34.05 RCW, if significant new information becomes available.

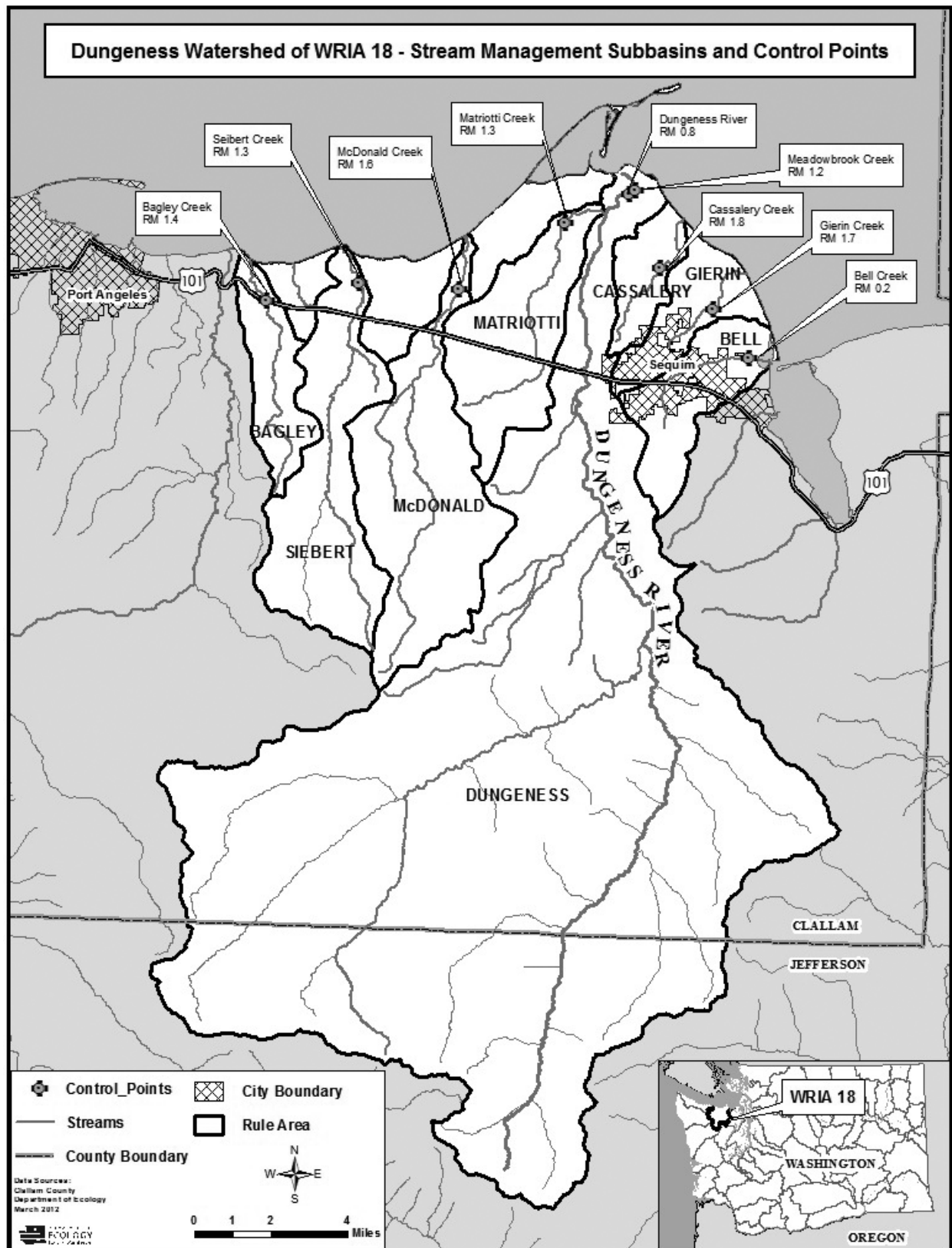
(2) If flow in the Dungeness River, calculated at river mile 4.2, attains an average daily flow of 105 cfs during the thirty-day critical period for eight out of ten consecutive years, then ecology will assess whether new instream flow or other technical studies are warranted for the Dungeness River.

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-120, filed 11/16/12, effective 1/2/13.]

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

[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-130, filed 11/16/12, effective 1/2/13.]

## WAC 173-518-140 Map.



[Statutory Authority: Chapters 90.54, 90.22, 90.82, 90.03, 90.42, and 90.44 RCW. 12-23-054 (Order 07-17), § 173-518-140, filed 11/16/12, effective 1/2/13.]