

# Chapter 173-509 WAC

## INSTREAM RESOURCES PROTECTION PROGRAM —GREEN-DUWAMISH RIVER BASIN, WATER RESOURCE INVENTORY AREA (WRIA) 9

**WAC**

|             |   |
|-------------|---|
| 173-509-010 | Purpose.  |
| 173-509-015 | Background.   |
| 173-509-020 | General provision.  |
| 173-509-030 | Establishment of instream flows.  |
| 173-509-040 | Surface water source limitations to further consumptive appropriations. |
| 173-509-050 | Groundwater.  |
| 173-509-060 | Future rights.  |
| 173-509-070 | Exemptions.   |
| 173-509-080 | Enforcement.  |
| 173-509-085 | Appeals.  |
| 173-509-090 | Regulation review.  |
| 173-509-100 | Implementation.   |

**WAC 173-509-010 Purpose.** The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Green-Duwamish drainage basin with instream flows and levels necessary for preservation and protection of wildlife, fish, scenic, aesthetic and other environmental values, recreational and navigational values, and to preserve water quality. Nothing in this chapter shall preclude the future issuance of regulations and/or signing of intergovernmental agreements which attempt to optimize the total public use of the basin water resources, providing they are consistent with the intent of this chapter. The instream flow rules presented here are for preservation of the existing resources so that when future planning or development occurs on this river these resources will be available.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-010, filed 6/6/80.]

**WAC 173-509-015 Background.** The Green-Duwamish River basin has been modified significantly since settlement of the area. Urbanization in the lower basin has influenced water quality and diversions for municipal and industrial water supply have altered the stream flow of the Green-Duwamish River. Groundwater has been developed for consumptive use within the basin. The White River originally had a confluence with the Green River near Auburn but since 1906 it has been diverted into the Puyallup River. A dam on the Black River near Tukwila prevents water from the Green River from flowing into Lake Washington during periods of high flow. In 1913 the city of Tacoma commenced diversions for municipal and industrial uses. Since 1962 the Green-Duwamish River has been influenced by the operation of the Howard A. Hanson Dam, a Corps of Engineers flood control project with authorization to provide instream flow maintenance of at least 110 cfs for fisheries conservation purposes. The operation has also considered drinking water quality requirements of the city of Tacoma.

The Green-Duwamish River basin is a natural rearing and spawning area primarily for steelhead trout and chinook,

coho and chum salmon. Fish hatcheries are located on tributary streams and these contribute to total numbers of fish produced by the river system. The river itself and the shoreline also offer easily accessible recreational opportunities.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-015, filed 6/6/80.]

**WAC 173-509-020 General provision.** These rules apply to all waters within the Green-Duwamish River basin, WRIA 9 (see WAC 173-500-040). This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), and in accordance with chapter 173-500 WAC (water resources management program). The provisions of this chapter apply, as a matter of state law, to future water right authorizations issued pursuant to the state's water rights codes.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-020, filed 6/6/80.]

**WAC 173-509-030 Establishment of instream flows.** (1) Instream flows are established for stream management units with monitoring to take place at certain control stations as follows:

STREAM MANAGEMENT UNIT INFORMATION

| Control Station No.<br>Stream Management<br>Unit Name | Control Station<br>by River Mile and<br>Section, Township<br>and Range | Affected Stream<br>Reach Including<br>Tributaries   |
|---|--|---|
| 12.1130.00<br>Green River near Auburn,<br>WA          | 32.0<br>17-21-5  | From influence of mean annual high tide at low instream flow levels (approximately River Mile 11.0) to USGS Gage #12.1067.000 |
| 12.1067.00<br>Green River near Palmer,<br>WA          | 60.4<br>13-21-7  | From USGS Gage #12.1067.000 to headwaters.  |

The Palmer gage will be used to condition future water rights upstream from that gage. The Auburn gage will be used to condition future water right appropriations downstream from the Palmer gage. If it becomes necessary to change a control station location to improve measurement accuracy or management capability, the department shall do so under provisions in WAC 173-500-060(6).

(2) Instream flows established for the stream management units in WAC 173-509-030(1) are as follows:

INSTREAM FLOWS FOR FUTURE WATER RIGHTS IN THE  
GREEN-DUWAMISH RIVER BASIN  
(in Cubic Feet per Second)

| Month | Day | 12,1130.00<br>Normal Year<br>Green River<br>Near Auburn | 12,1067.00<br>Normal Year<br>Green River<br>Near Palmer | 12,1067.00<br>Critical Year<br>Green River<br>Near Palmer |
|-------|-----|---|---|---|
| Jan.  | 1   | 650   | 300   | 300   |
|       | 15  | 650   | 300   | 300   |
| Feb.  | 1   | 650   | 300   | 300   |
|       | 15  | 650   | 300   | 300   |
| Mar.  | 1   | 650   | 300   | 300   |
|       | 15  | 650   | 300   | 300   |
| Apr.  | 1   | 650   | 300   | 300   |
|       | 15  | 650   | 300   | 300   |
| May   | 1   | 650   | 300   | 300   |
|       | 15  | 650   | 300   | 300   |
| June  | 1   | 650   | 300   | 300   |
|       | 15  | 650   | 300   | 210   |
| July  | 1   | 550   | 300   | 150   |
|       | 15  | 300   | 150   | 150   |
| Aug.  | 1   | 300   | 150   | 150   |
|       | 15  | 300   | 150   | 150   |
| Sept. | 1   | 300   | 150   | 150   |
|       | 15  | 300   | 150   | 150   |
| Oct.  | 1   | 300   | 190   | 150   |
|       | 15  | 350   | 240   | 150   |
| Nov.  | 1   | 550   | 300   | 190   |
|       | 15  | 550   | 300   | 240   |
| Dec.  | 1   | 650   | 300   | 300   |
|       | 15  | 650   | 300   | 300   |

(a) Future water right holders subject to regulation by the Palmer gage will not be allowed to continue diversions when flows fall below the normal year instream flows at the Palmer gage unless a critical condition is declared by the director. The director, or his designee, may authorize, in consultation with the state departments of fisheries and wildlife, a reduction in instream flows during a critical condition period. At no time will diversions subject to regulation by the Palmer gage be continued when flows fall below the critical year instream flows at Palmer. At no time will diversions subject to regulation by the Auburn gage be continued when flows fall below the normal year instream flows at Auburn. When a declaration of overriding considerations of public interest is made by the director, these requirements may be modified or waived. A declaration of overriding consideration because of drought conditions shall not be made when natural flows equal or exceed the one-in-fifty year low flow condition. The director shall consult with the directors of the state departments of wildlife and fisheries before making a declaration of overriding consideration. Any declaration of critical conditions or overriding considerations of public interest made by the director shall be communicated to all basin resource agencies, water purveyors, and local general purpose governments, and include the reason for such declaration and its expected duration.

(b) The director will consider declaring a critical period when:

(1) In the spring the basin runoff volume forecast of May 1 is not adequate to meet the sum of any rights which the city of Tacoma may have established through historical usage prior to the adoption of this regulation plus the normal year instream flows plus the volume required to replenish the conservation storage.

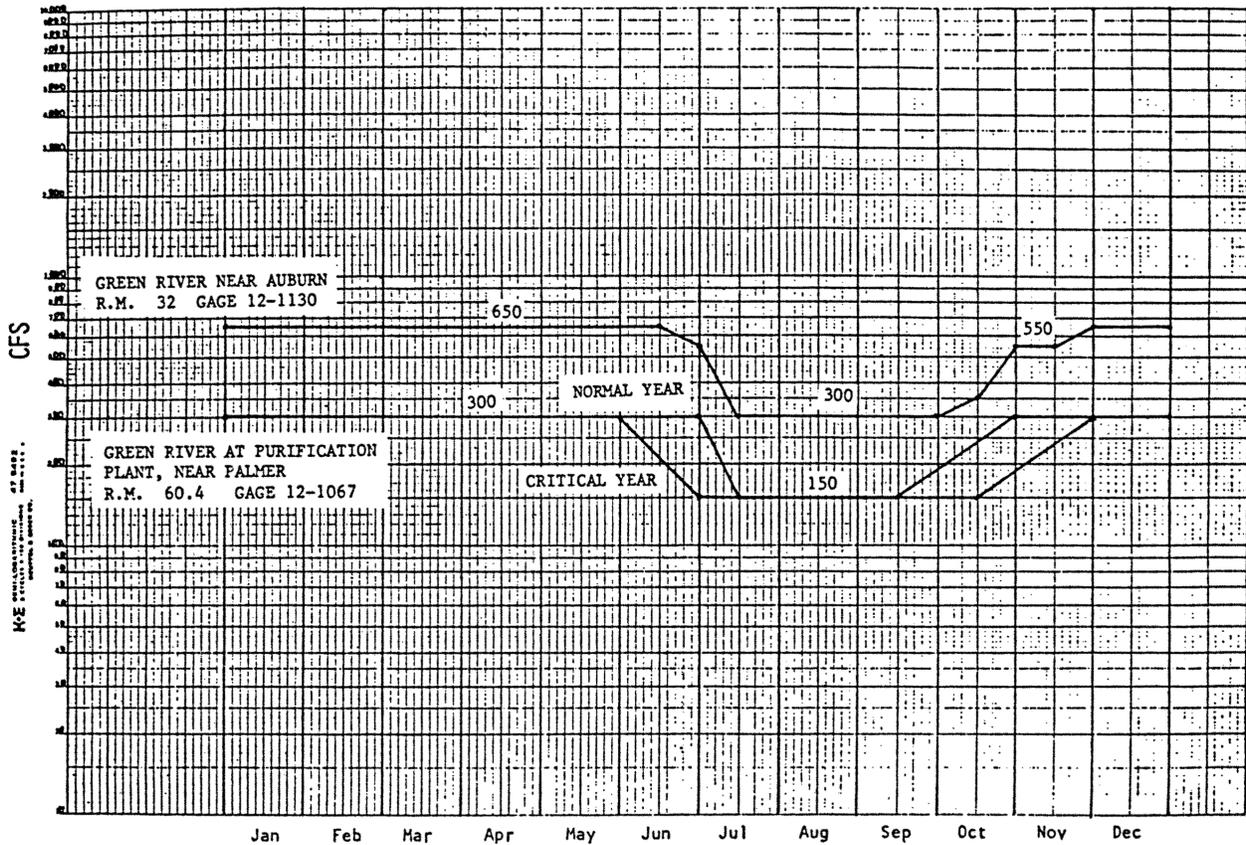
(2) In the summer and fall the sum of the reservoir inflows extrapolated from current observations plus the volume of water in storage at Howard A. Hanson Dam is not adequate to meet the sum of any rights which the city of Tacoma may have established through historical usage prior to the adoption of this regulation plus the normal year instream flows. Within five days the director will inform the major affected water right holders of the extent of the allowed deviation from the normal year instream flows. Once a deviation from normal year instream flows is allowed, the water resources shall be evaluated at least every seven days to see if additional deviation is warranted. Before allowing deviation from the normal year instream flows, water conservation practices and use of other sources shall be considered.

(c) In addition to other necessary provisions, any diversion of the natural flow, including diversion to storage under future water rights shall cease (or be regulated to the extent necessary) when the flow at the applicable control station falls below (or is less than) the instream flows established by this regulation and made a condition of said future water right. Said future water rights are subject to the rights and authority of the Corps of Engineers to utilize for storage and conservation flows, the natural inflow to the Howard A. Hanson reservoir and to all other prior water right holders' authorized use of natural flows, including any rights that the city of Tacoma may have established through historical usage. The use of stored waters is not to be impaired, limited, or diminished by this regulation.

The department recognizes that from time to time the Corps of Engineers may establish a minimum reservoir level which is necessary to provide conservation flows with a high measure of assurance. When the reservoir falls below this level it may be necessary for the Corps of Engineers to replenish conservation storage. When this occurs, water rights subject to the provisions of this chapter may be temporarily regulated or diminished and the actual stream discharge diminished.

(3) Instream flows, as represented in Figure 1, shall be used for definition of instream flows on those days not specifically identified in WAC 173-509-030(2).

FIGURE 1 - PROPOSED INSTREAM FLOWS FOR FUTURE WATER RIGHTS IN THE GREEN-DUWAMISH RIVER BASIN



(4) All consumptive water rights hereafter established shall be expressly subject to the instream flows established in WAC 173-509-030 (1) through (3). However, nothing in this section shall prohibit the release or diversion of stored water or the use of any water course as a means for its conveyance in accordance with RCW 90.03.030.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. WSR 88-13-037 (Order 88-11), § 173-509-030, filed 6/9/88. Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-030, filed 6/6/80.]

**WAC 173-509-040 Surface water source limitations to further consumptive appropriations.** (1) The department, having determined there are no waters available for further appropriation through the establishment of rights to use water consumptively, closes the following streams to further consumptive appropriation for the periods indicated. These closures confirm surface water source limitations previously established administratively under authority of chapter 90.03 RCW and RCW 75.20.050.

SURFACE WATER CLOSURES

| Stream  | Date of Administrative Closure | Period of Administrative Closure |
|---|--------------------------------|----------------------------------|
| All tributaries of Green River SE1/4SE1/4 sec. 14, T.32 N., R.4E. | 8/19/53                        | All year                         |

SURFACE WATER CLOSURES

| Stream   | Date of Administrative Closure | Period of Administrative Closure |
|--|--------------------------------|----------------------------------|
| Deep Creek (including Hyde Lk.), tributary to Deep Lake NW1/4SE1/4 sec. 18, T.21N., R.7E.                  | 4/17/53                        | All year                         |
| Unnamed stream (Des Moines Creek, Tributary to Puget Sound SW1/4SW1/4 sec. 8, T.22N., R.4E.                | 8/22/52                        | All year                         |
| Unnamed stream (Garrison Creek), Tributary to Black River (indirect) NW1/4NW1/4NW1/4 sec. 6, T.22N., R.5E. | 10/18/51                       | All year                         |
| Unnamed stream (Miller Creek) (Maybrook Creek), Tributary to Puget Sound NE1/4NE1/4 sec. 36, T.23N., R.3E. | 1/7/46                         | All year                         |
| Unnamed stream (Springbrook Creek), Tributary to Black River NE1/4SE1/4SW1/4 sec. 13, T.23N., R.4E.        | 11/14/45                       | All year                         |

(2) The department, having determined that maximum lake levels have been established by court decree for certain lakes in WRIA 9, adopts the following lake levels. These

maximum lake levels confirm lake levels previously established by order of the superior court for King County.

MAXIMUM LAKE LEVELS

| Lakes  | Lake Level Established | Date of Order |
|--|------------------------|---------------|
| Angle Lake                                       | 349.27 ft. at MSL      | 4/21/75       |
| Star Lake 077                                    | 324.46 ft. at MSL      | 9/20/50       |
| Lake Sawyer<br>(Tributary to<br>Covington Creek) | 518.94 ft. at MSL      | 8/5/52        |

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-040, filed 6/6/80.]

**WAC 173-509-050 Groundwater.** Future groundwater withdrawal permits will not be affected by this chapter unless such withdrawal would clearly have an adverse impact upon the surface water system contrary to the intent and objectives of this chapter.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-050, filed 6/6/80.]

**WAC 173-509-060 Future rights.** No right to divert or store public waters of the Green-Duwamish River basin, WRIA 9, shall be granted which shall conflict with the purposes of this chapter: Provided however, Withdrawals of water which would conflict with said purposes may be authorized in those situations where it is clear that overriding considerations of the public interest will be served.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-060, filed 6/6/80.]

**WAC 173-509-070 Exemptions.** (1) Nothing in this chapter shall affect water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric or water storage reservoir or related facilities, including but not limited to: (a) Howard Hanson Dam storage and operation as authorized in the Flood Control Act of May 17, 1950; (b) any existing right the city of Tacoma may have.

(2) Domestic inhouse use for a single residence and stock watering, except that related to feed lots, shall be exempt from the provisions of this chapter.

(3) Storage projects may be approved if they are not in conflict with the purposes of this chapter.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-070, filed 6/6/80.]

**WAC 173-509-080 Enforcement.** In the enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. WSR 88-13-037 (Order 88-11), § 173-509-080, filed 6/9/88. Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-080, filed 6/6/80.]

**WAC 173-509-085 Appeals.** All final written decisions of the department of ecology pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. WSR 88-13-037 (Order 88-11), § 173-509-085, filed 6/9/88.]

**WAC 173-509-090 Regulation review.** The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. The director shall initiate a review of the rules by appointing a committee of major affected water right holders, basin resource management interests, and governmental agencies.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. WSR 88-13-037 (Order 88-11), § 173-509-090, filed 6/9/88. Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-090, filed 6/6/80.]

**WAC 173-509-100 Implementation.** In the event the COE is authorized to change the operation of Howard Hanson Dam in order to meet the stream flows established in this chapter and so advises the director, these regulations shall be reviewed by the department within one hundred eighty days of the COE authorization to determine, what, if any, amendments are required to maintain the integrity and purpose of this chapter.

[Statutory Authority: RCW 90.22.020, 90.54.020 and 90.54.040. WSR 80-07-005 (Order DE 79-32), § 173-509-100, filed 6/6/80.]