

**WAC 173-219-090 Water rights protection.** (1) Compliance with RCW 90.46.130. Any person applying to ecology or health for a reclaimed water permit, permit renewal, or permit modification under this chapter must demonstrate compliance with RCW 90.46.130.

(2) Determining compliance. Ecology is responsible for determining whether a proposed reclaimed water facility would comply with RCW 90.46.130. Ecology's determination must be consistent with the provisions of chapter 90.03 RCW, the state water code, chapter 90.44 RCW, regulation of public groundwaters, RCW 90.46.130, and applicable case law.

(3) Existing water rights. Existing water rights include any permits, certificates, instream flows established by rule pursuant to chapters 90.22 and 90.54 RCW, vested water rights asserted by a water right claim, and all federally reserved water rights in existence when ecology accepts a submitted water rights impairment analysis.

(4) Impairment analysis. The applicant must prepare and submit an impairment analysis of potentially impaired water rights as part of the feasibility analysis under WAC 173-219-180. The impairment analysis must be stamped by an engineer or hydrogeologist licensed in Washington. A preliminary proposal for compensation or mitigation as allowed under RCW 90.46.130 may be included with the feasibility analysis. The generator must submit a detailed description of the compensation or mitigation plan as part of the engineering report submitted under WAC 173-219-210, if necessary to demonstrate compliance with RCW 90.46.130.

(5) Permit renewals or modifications. Permit renewals and modifications must demonstrate compliance with RCW 90.46.130.

(6) Notification and consultation. Ecology and the applicant will jointly notify and consult with affected tribes and the Washington state department of fish and wildlife (WDFW) before ecology makes its final determination of compliance with RCW 90.46.130.

(7) Final determination. Ecology will make the final determination of compliance with RCW 90.46.130 as part of the decision to issue or deny the reclaimed water permit.

(8) Cost reimbursement. The applicant may request assistance from ecology through a cost reimbursement agreement, based on resource availability, during any stage of scoping or conducting an analysis to demonstrate compliance with RCW 90.46.130. Cost reimbursement agreements must meet the requirements of RCW 43.21A.690.

[Statutory Authority: RCW 90.46.015. WSR 18-03-166 (Order 06-12), § 173-219-090, filed 1/23/18, effective 2/23/18.]