

**WAC 173-564-040 Withdrawal of unappropriated waters.** (1) The National Marine Fisheries Service (NMFS) listed Snake River sockeye salmon as endangered under the federal Endangered Species Act on December 20, 1991. NMFS listed Snake River spring/summer and fall chinook salmon as threatened under the act on May 17, 1992. Since then, new information and changing conditions continue to place into question whether sufficient information and data is available for making sound decisions on water availability and the public interest for additional appropriations from the main stem of the Snake River. In response to the petitions for listing, the Northwest governors directed the regional Northwest Power Planning Council to develop a plan for the recovery of the petitioned species and other weak fish stocks in the Columbia Basin, including the Snake River. In late 1992 the council finalized its strategy for salmon, which cautioned the states against continuing to allow new appropriations at the same time that there is a regional effort to acquire additional flows for imperiled fish stocks. This regional effort has greatly intensified as a result of additional petitions for Endangered Species Act listings in the basin, consecutive dry years and a 1994 federal court decision that the hydroelectric system operations plan approved by NMFS and the federal operating agencies was not adequate.

(2) Pursuant to subsection (1) of this section, the waters of the main stem of the Snake River that are unappropriated by water rights for which applications were accepted for filing by the department prior to December 20, 1991, are withdrawn from further appropriation, except that the department may issue a permit to withdraw water for:

(a) Nonrecurring temporary projects for up to six months duration, with a possible extension of no more than six additional months (applications for extensions must include adequate justification for the extension and must demonstrate that reasonable efforts are being made to use the water for the project as efficiently as possible);

(b) Nonconsumptive uses which, for the purposes of this section, are defined as uses where:

(i) There is no diversion from the water source; or

(ii) The water is diverted and returned immediately to the source at the point of diversion following its use, in the same quantity as diverted and with no degradation in water quality;

(c) Uses which are necessary for emergency public health and safety needs, when all other reasonable methods of obtaining water (e.g., conservation, efficiencies, etc.) have been exhausted; and

(d) Uses which are specifically intended to benefit weak fish stocks.

(3) All water right applications which the department accepted for filing prior to December 20, 1991, for diversion or pumping of surface water from the main stem of the Snake River, or for withdrawal of groundwater which is part of the main stem of the Snake River, shall be processed in accordance with existing policies and procedures and are not subject to this withdrawal of waters.

(4) With the exceptions specified in subsection (2) of this section, all water right applications which the department accepted or accepts for filing on or after December 20, 1991, which would result in the diversion or pumping of surface water from the main stem of the Snake River, regardless of the point of diversion specified in the water right application, are subject to this withdrawal of waters. These applications will be acted upon, without loss of priority date, after the expiration of the withdrawal of waters.

(5) With the exceptions specified in subsection (2) of this section, all water right applications which the department accepted or accepts for filing on or after December 20, 1991, which require a permit under RCW 90.44.050 and would result in the withdrawal of groundwater which is in direct hydraulic continuity with the main stem of the Snake River are subject to this withdrawal of waters. All applications will be evaluated on a case-by-case basis. Applications determined to be subject to the withdrawal will be acted upon, without loss of priority date, after the expiration of the withdrawal of waters.

(6) This section will expire on July 1, 1999, or upon adoption by the department of ecology of a new instream resources protection program for the main stem Snake River, whichever shall occur first. The instream resources protection program shall be established in accordance with chapter 173-500 WAC (Water resources management program).

[Statutory Authority: Chapter 173-500 WAC, chapters 34.05, 43.21A, 43.27A, 90.03, 90.44 and 90.54 RCW. WSR 95-02-066 (Order 94-18), § 173-564-040, filed 1/3/95, effective 2/3/95; WSR 93-01-010 (Order 92-21), § 173-564-040, filed 12/3/92, effective 1/3/93.]