Chapter 173-563 WAC

INSTREAM RESOURCES PROTECTION PROGRAM FOR THE MAIN STEM COLUMBIA RIVER IN WASHINGTON STATE

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-563-015 Withdrawal of unappropriated waters. [Statutory Authority: Chapter 173-500 WAC, chapters 34.05, 43.21A, 43.27A, 90.03, 90.44 and 90.54 RCW. 95-02-066 (Order 94-18), § 173-563-015, filed 1/3/95, effective 2/3/95. Statutory Authority: Chapters 34.05, 43.21A, 43.27A, 90.03, 90.44 and 90.54 RCW and chapter 173-500 WAC and WAC 173-563-075. 93-01-009 (Order 92-20), § 173-563-015, filed 12/3/92, effective 1/3/93.] Repealed by 98-08-062 (Order 97-15), filed 3/30/98, effective 4/30/98. Statutory Authority: Chapter 90.54 RCW, WAC 173-563-090 and ESHB 1110 (1997).

WAC 173-563-010 Background and purpose. The Columbia River is an international as well as an interstate river with its waters subject to laws of seven western states, the Province of British Columbia, Canada and the federal governments of the United States and Canada. The flows and levels of the river are in a state of continuous change through the operation of numerous federally owned or federally licensed dams located within the river. The waters of the Columbia River are operated to support extensive irrigation development, inland navigation, municipal and industrial uses, and hydroelectric power development. Among all these uses, the anadromous fisheries of the Columbia River, which are dependent on clean flowing water, require for their survival the establishment of minimum flows of water and special actions by all agencies sharing in the management of the Columbia River.

The provisions of this chapter apply, as a matter of state law, to water right permits issued pursuant to the state's water rights code. The provisions hereof shall provide the department of ecology the basic state policy relating to minimum flows and levels for the Columbia River, for submission to various federal, interstate and state agencies having jurisdiction over the river. Further, the department of ecology of the state of Washington recognizes that, under our federal constitutional system, regulatory powers over the river are shared powers between the United States and the state of Washington and that by various federal actions the state's powers may, and in some cases have been superseded through the mandates of the Supremacy Clause of the United States Constitution.

This chapter is adopted under state legislation, to promote the proper utilization of the water resources of the Columbia River and to protect and insure the viability of the instream resource values associated with the main stem of the Columbia River in the future through (1) the establishment of minimum flows on the main stem Columbia River in Washington state, and (2) the establishment of conservation and efficiency fundamentals relating to out-of-stream and instream uses and values.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 80-08-021 (Order DE 80-2), § 173-563-010, filed 6/24/80.]

WAC 173-563-020 Applicability. (1) This chapter applies to public surface waters of the main stem Columbia River in Washington state and to any groundwater the withdrawal of which is determined by the department of ecology to have a significant and direct impact on the surface waters of the main stem Columbia River.

The extent of the "main stem" Columbia River shall be the Columbia River from the upstream extent of tidal influence (Bonneville Dam-River Mile 146.1) upstream to the United States-Canada border (River Mile 745) and including those areas inundated by impounded waters at full pool elevations.

(2) Chapter 173-500 WAC, the general rules of the department of ecology for the implementation of the comprehensive water resources program mandated by RCW 90.54.040, applies to this chapter.

(3) Nothing in this chapter shall affect existing water rights, riparian, appropriative, or otherwise, existing on the effective date of this chapter, including existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir, or related facilities. This exemption includes rights embodied in all water right permits and certificates existing on the effective date of this chapter.

(4) The instream flows established and implemented by this chapter for instream and out-of-stream uses, and the average weekly flows applied by this chapter to out-of-stream uses do not apply to any application for water from the main stem Columbia River on which a decision is made by the department of ecology on or after July 27, 1997. Any water right application considered for approval or denial after that date will be evaluated for possible impacts on fish and

existing water rights. The department will consult with appropriate local, state, and federal agencies and Indian tribes in making this evaluation. Any permit which is then approved for the use of such waters will be, if deemed necessary, subjected to instream flow protection or mitigation conditions determined on a case-by-case basis through the evaluation conducted with the agencies and tribes.

(5) Waters withdrawn by the United States pursuant to RCW 90.40.030 prior to the effective date of this rule relating to the second half of the Columbia basin project, and water right permits and certificates hereafter issued by the department of ecology pertaining to such withdrawn waters, are not subject to the provisions of this chapter.

(6) For the purposes of this chapter, average weekly flows shall be the average of the daily average flows reported in the Columbia River operational hydromet and management system (CROHMS) for a seven-day period beginning at 12:01 a.m. Monday and ending at midnight on Sunday. When the beginning of the seven-day period defined in this section does not correspond to the dates on which flows are established in WAC 173-563-040, the flow requirements for that week shall be the arithmetic average of the required flows listed in WAC 173-563-040 for each of the seven days, rounded to the nearest 1,000 cfs.

[Statutory Authority: Chapter 90.54 RCW, WAC 173-563-090 and ESHB 1110 (1997). 98-08-062 (Order 97-15), § 173-563-020, filed 3/30/98, effective 4/30/98. Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-020, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-020, filed 6/24/80.]

WAC 173-563-030 Authority. These rules are adopted under the authority of chapters 90.54, 90.22, and 90.03 RCW, and in relation to chapter 173-500 WAC.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 80-08-021 (Order DE 80-2), § 173-563-030, filed 6/24/80.]

WAC 173-563-040 Establishment of instream flows for instream uses. (1) In order to protect the quality of the natural environment and provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values, minimum instantaneous flows and minimum average weekly flows are established for instream uses at the following project locations on the main stem Columbia River in Washington state:

CONTROL STATION	RIVER MILE	MANAGEMENT UNIT
The Dalles Dam	191.5	John Day Dam to Bonneville Dam (Lake Bonneville and Celilo Lake) (River Mile 146.1-215.6)
John Day Dam	215.6	John Day Dam to McNary Dam (Umatilla Lake) (River Mile 215.6-292.0)
McNary Dam	292.0	McNary Dam to Priest Rapids Dam (Lake Wallula and the Hanford Reach) (River Mile 292.0-397.1)
Priest Rapids Dam and upstream (Wanapum, Rock Island, Rocky Reach, Wells, Chief Joseph, and Grand Coulee Dam)	397.1+	Priest Rapids Dam upstream to Canadian Border (River Mile 397.1-745.0)

(2) Minimum instantaneous flows at the locations listed in WAC 173-563-040(1) are established for instream uses as follows:

MINIMUM INSTANTANEOUS FLOWS - COLUMBIA RIVER PROJECTS
(1,000 cubic feet/second)

		Chief* Joseph	Wells & Rocky Reach Rock Island & Wanapum*	Priest Rapids	McNary & John Day	The Dalles
Jan		10	10	50	20	20
Feb		10	10	50	20	20
Mar		10	10	50	50	50
Apr	1-15	20	20	50	50	70
	16-25	20	30	50	70	70
	26-30	20	50	50	70	70
May		20	50	50	70	70
June	1-15	20	50	50	70	70
	16-30	10	20	50	50	50
Jul	1-15	10	20	50	50	50
	16-31	10	50	50	50	50
Aug		10	50	50	50	50
Sep		10	20	36	50	50
Oct	1-15	10	20	36	50	50
	16-31	10	20	50	50	50
Nov		10	10	50	50	50
Dec		10	10	50	20	20

* As provided in WAC 173-563-050(1), the minimum instantaneous flows set forth in this subsection are subject to a reduction of up to twenty-five percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs. For the reach from Grand Coulee through Wanapum, minimum instantaneous flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff adjustment) at Priest Rapids, whichever is higher.

(3) Minimum average weekly flows for instream uses are established at the locations listed in WAC 173-563-040(1) as follows:

MINIMUM AVERAGE WEEKLY FLOWS - COLUMBIA RIVER PROJECTS
(1,000 cubic feet/second)

		Chief Joseph*	Wells & Rocky Reach*	Rock Island & Wanapum*	Priest Rapids	McNary	John Day	The Dalles
Jan		30	30	30	70	60	60	60
Feb		30	30	30	70	60	60	60
Mar		30	30	30	70	60	60	60
Apr	1-15	50	50	60	70	100	100	120
	16-25	60	60	60	70	150	150	160
	26-30	90	100	110	110	200	200	200
May		100	115	130	130	220	220	220
Jun	1-15	80	110	110	110	200	200	200
	16-30	60	80	80	80	120	120	120
Jul	1-15	60	80	80	80	120	120	120
	16-31	90	100	110	110	140	140	140
Aug		85	90	95	95	120	120	120
Sep		40	40	40	40	60	85	90
Oct	1-15	30	35	40	40	60	85	90
	16-31	30	35	40	70	60	85	90
Nov		30	30	30	70	60	60	60
Dec		30	30	30	70	60	60	60

* For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are subject to a reduction of up to twenty-five percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-040, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-040, filed 6/24/80.]

WAC 173-563-050 Critical flow adjustment to, and waivers of, minimum instantaneous and average weekly flows. (1) The director of the department of ecology, when he deems it to be an overriding public interest requirement, may reduce the minimum instantaneous and/or average weekly flows for the Columbia River established in this chapter up to twenty-five percent during low flow years, except that in no case shall the outflow from Priest Rapids be less than 36,000 cfs. The amount of the reduction (from zero to twenty-five percent) shall be: (a) Based on the March 1 forecast for April through September runoff at The Dalles, Oregon, as published by the National Weather Service in Water Supply Outlook for the Western United States, and (b) determined from Figure 1 in WAC 173-563-900.

(2) Prior to implementing the critical flow adjustment to minimum flows in a low water year, the department of ecology shall conduct a public hearing to announce its intentions and to solicit public and agency comment on the proposed action.

(3) The department has determined that some damage to instream values may be incurred at flow values equivalent to eighty-eight million acre-feet or less. Therefore, the reduced flows shall be referred to as critical flows and shall be authorized by the director of the department of ecology under the critical flow adjustment only when the March 1 forecast of April through September flow at The Dalles is below eighty-eight million acre-feet (MAF). The critical flows shall, in no case, provide less than 39.4 MAF (seventy-five percent of 52.5 MAF for the April through September period).

(4) The director of the department of ecology may waive the state's minimum flow requirements delineated in this chapter for a defined period of time for the purpose of studying the impacts of various flow levels on the river system and its operation when such studies are to be conducted in consultation with the Washington departments of fisheries and/or wildlife and when said exemption is requested by the departments of fisheries and/or wildlife. Such a request shall be made by letter to the director of the department of ecology. This waiver may include the Federal Energy Regulatory Commission studies to be conducted under Docket No. E-9569 and any operational change which does not allow the flows under this chapter to be met, but which, in the opinion of the director, still provides a commensurate level of protection for instream resources.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-563-050, filed 6/9/88. Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-050, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-050, filed 6/24/80.]

WAC 173-563-052 Establishment of instream flows for out-of-stream uses. In order to protect the quality of the natural environment and provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values, the minimum average weekly flows listed in WAC 173-563-040(3) are established for out-of-stream uses.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-052, filed 10/7/82 and 10/8/82.]

WAC 173-563-056 Application of minimum average weekly flows to out-of-stream uses. (1) For the first 4,500 cfs of water rights issued subject to this program, the following conditions shall apply:

(a) When the March 1 forecast of April-September runoff at The Dalles, Oregon (as published by the National Weather Service in Water Supply Outlook for the Western United States) is equal to or greater than 88 million acre-feet (MAF), no regulation of out-of-stream diverters shall occur, regardless of the gaged flow of the Columbia River.

(b) When the flow forecast is less than 88 MAF but greater than 60 MAF, the department shall encourage voluntary water conservation through appropriate notification of water users in an attempt to foster efficient resource use.

(c) When the flow forecast is 60 MAF or less, the department shall regulate out-of-stream diverters on the basis of first-in-time is first-in-right whenever it is predicted that gaged flows will fall below the minimum average weekly flows as established by this chapter.

(2) For any water allocations issued in excess of the first 4,500 cfs defined in WAC 173-563-056(1), the following conditions shall apply:

(a) When the March 1 forecast of April-September runoff at The Dalles, Oregon (as published by the National Weather Service in Water Supply Outlook for the Western United States) is equal to or greater than 88 million acre-feet (MAF), no regulation of out-of-stream diverters shall occur, regardless of the gaged flow of the Columbia River.

(b) When the flow forecast is less than 88 MAF, the department shall regulate out-of-stream diverters on the basis of first-in-time is first-in-right whenever it is predicted that gaged flows will fall below the CRIRPP minimum average weekly flows as established by this chapter.

(3) The department shall utilize the Bonneville Power Administration (BPA) 30-day power operation plan in predicting specific periods of anticipated flow conditions.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-056, filed 10/7/82 and 10/8/82.]

WAC 173-563-060 Establishment of conservation and efficiency fundamentals. (1) The department, having determined that public water is available from the main stem of the Columbia River in Washington and that continued issuance of water right permits and certificates therefrom is in the public interest, does acknowledge and is concerned that, cumulatively, the projected future diversions from the main stem Columbia River in Washington state may, under certain flow conditions, have a detrimental effect on instream values.

(2) Also, it is in the public interest that the state's water resources be conserved and that the burden of water shortages in low water years should be shared by the various users to the greatest extent practicable.

(3) Notwithstanding the constraints on pro rata water-sharing under existing state water laws, the department shall,

in projected low water years, utilize all reasonable measures of influence to achieve the goal of this section.

(4) During proof of appropriation of water under RCW 90.03.330 and before issuing a certificate of water right, the department shall assure that the quantities of water shown on the certificate accurately reflect the perfected usage consistent with up-to-date water conservation practices and water delivery system efficiencies.

(5) The department shall continue to seek effective methods to better achieve the goal of this section.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-060, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-060, filed 6/24/80.]

WAC 173-563-070 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under the 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. 88-13-037 (Order 88-11), § 173-563-070, filed 6/9/88. Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 80-08-021 (Order DE 80-2), § 173-563-070, filed 6/24/80.]

WAC 173-563-075 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.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-563-075, filed 6/9/88.]

WAC 173-563-080 Overriding considerations. Future authorizations for the use of water which would conflict with the provisions of this chapter shall be authorized by the director only in those situations when it is clear that overriding considerations of the public interest will be served. Such decisions shall be made in consultation with the directors of the Washington state department of fisheries, the Washington state department of wildlife, the Washington state department of agriculture, and the Washington state commissioner of public lands.

Consideration of the public interest by the director of the department of ecology shall include an evaluation of all uses of the river and its impact on the state of Washington. The uses to be considered include, but are not limited to, uses of water for domestic, stockwatering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, thermal power production, and preservation of environmental and aesthetic values and all other uses compatible with the enjoyment of the public waters of the state.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-563-080, filed 6/9/88. Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-080, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-080, filed 6/24/80.]

WAC 173-563-090 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.

[Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. 88-13-037 (Order 88-11), § 173-563-090, filed 6/9/88. Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 80-08-021 (Order DE 80-2), § 173-563-090, filed 6/24/80.]

WAC 173-563-100 Implementation. (1) All water right permits and certificates subject to this chapter or issued subject to chapter 173-531A WAC shall be issued subject to the department's minimum flow requirements. (The minimum average weekly flows established in WAC 173-563-040 and 173-563-052 are equivalent to a flow of 52.5 MAF at The Dalles for the April through September period.)

(2) All water rights for instream uses subject to the minimum flows established in this chapter shall contain the following provision:

This permit/certificate is subject to the minimum flow provisions contained in chapter 173-563 WAC and is subject to regulation by the department of ecology to insure protection of instream resources.

(3) All water rights for out-of-stream uses subject to the flows established in this chapter shall contain the following provisions:

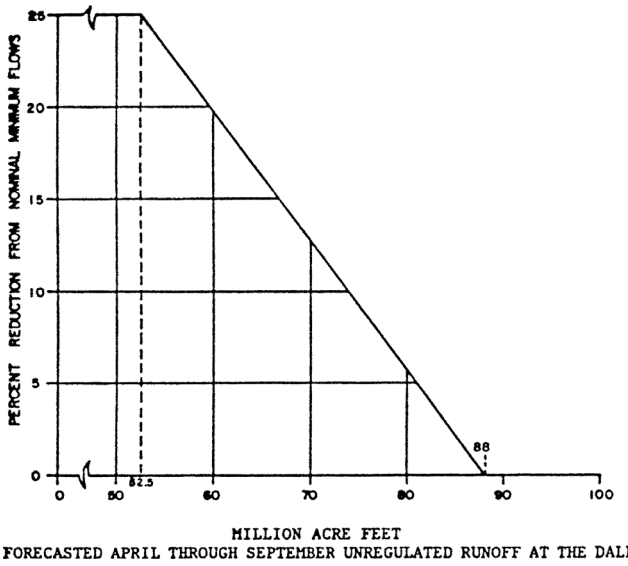
(a) This permit/certificate is subject to the minimum flow provisions contained in chapter 173-563 WAC and is subject to regulation by the department of ecology to insure protection of instream resources.

(b) Use of water under this authorization shall be contingent upon the water right holder's utilization of up to date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.

[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-100, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-100, filed 6/24/80.]

WAC 173-563-900 Critical flow adjustment—Minimum instantaneous and weekly average flows—Columbia River.

FIGURE 1
CRITICAL FLOW ADJUSTMENT MINIMUM INSTANTANEOUS AND WEEKLY AVERAGE FLOWS COLUMBIA RIVER



[Statutory Authority: RCW 90.54.040, 90.54.050, chapters 90.03 and 90.22 RCW. 82-21-001 and 82-21-007 (Orders DE 82-35 and DE 82-35A), § 173-563-900, filed 10/7/82 and 10/8/82; 80-08-021 (Order DE 80-2), § 173-563-900, filed 6/24/80.]