

Chapter 173-545 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—WENATCHEE RIVER BASIN, WATER RESOURCE INVENTORY AREA (WRIA) 45

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-545-095	Appeals. [Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. WSR 88-13-037 (Order 88-11), § 173-545-095, filed 6/9/88.] Repealed by WSR 08-01-045 (Order 07-06), filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW.
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WAC 173-545-010 General. These rules apply to waters within the Wenatchee River basin, WRIA 45, as defined in WAC 173-500-040. This chapter is adopted under chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), chapter 77.57 RCW (state fisheries code), chapter 90.82 RCW (Watershed Planning Act), and in accordance with chapter 173-500 WAC (water resources management program).

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-010, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-010, filed 6/3/83.]

WAC 173-545-020 Purpose. The purposes of this chapter are to retain perennial rivers, streams, and lakes in the Wenatchee River basin with instream flows and levels necessary to protect water quality, wildlife, fish, and other environmental values, as well as aesthetics, recreation, navigation; and to meet certain future out-of-stream water needs identified in the Wenatchee watershed management plan.

(1) The Wenatchee watershed management plan approved by the Wenatchee planning unit and the Chelan County commission under RCW 90.82.130 is the basis for amendments to the June 3, 1983 rule. The plan recommendations were approved on April 26, 2006, by the Wenatchee watershed planning unit, a group composed of a broad base of water use interests, and on June 26, 2006, by the Chelan

County commission. The plan recommendations are therefore considered an expression of the public interest.

(2) This chapter sets forth the department's policies to guide the protection, use and management of Wenatchee River basin surface water and interrelated groundwater resources. It protects existing water rights, establishes instream flows, and sets forth a program for the administration of future water allocation and use.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-020, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-020, filed 6/3/83.]

WAC 173-545-030 Definitions. For the purposes of this chapter, the following definitions shall be used:

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

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

(3) **"Beneficial uses"** means uses of water for domestic, stock watering, 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.

(4) **"Consumptive use"** means a use of water whereby there is a diminishment of the overall amount or quality of water in the water source.

(5) **"Closure"** means a finding by the department that no water is available for future appropriations. WAC 173-545-100 identifies the periods when, and in what quantities, water may be available for future appropriation. If the maximum allocation is zero, no water is available. Practically, it means a permit to appropriate water for a beneficial use will not be approved from a stream or aquifer that results in a diminishment of the stream or aquifer during any period of time that water is unavailable and, unless otherwise excepted, no water is available for new or expanded exempt withdrawals under RCW 90.44.050.

(6) **"Department"** means the Washington state department of ecology.

(7) **"Domestic water use"** means, for the purposes of the reservation of water in this chapter, use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental household uses.

(8) **"Existing water right"** includes perfected riparian rights, federal Indian and non-Indian reserved rights or other perfected and inchoate appropriative rights.

(9) **"Hydraulic continuity"** means the interrelation between groundwater (water beneath land surfaces or surface water bodies) and surface water (water above ground, such as lakes and streams).

(10) **"Instream flow"** as used in this chapter, has the same meaning as a minimum instream flow under chapter 90.82 RCW, a base flow under chapter 90.54 RCW, a minimum flow under chapter 90.03 or 90.22 RCW, or management flow in the Wenatchee watershed plan. The instream flow constitutes a water right under chapter 90.03 RCW.

(11) **"Irrigation associated with a residence"** means irrigation of not more than one-half acre of lawn or garden per dwelling.

(12) **"Nonconsumptive use"** means a type of water use where either there is no withdrawal from a water source or there is no diminishment in the overall amount or quality of water in the water source.

(13) **"Plan"** or **"watershed plan"** means the Wenatchee watershed management plan, approved by the Wenatchee watershed planning unit on April 26, 2006, and by the Chelan County commissioners on June 26, 2006.

(14) **"Planning unit"** means the Wenatchee watershed planning unit (WWPU), or a successor approved by the WWPU. The WWPU was established in 1999 in accordance with chapter 90.82 RCW, Watershed Planning Act. The WWPU presently consists of the main planning unit, the steering committee, several technical subcommittees (e.g., water quantity/instream flow, habitat, water quality, growth and land use, outreach), and other interested stakeholders.

(15) **"Public water system"** means any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. Water use shall be consistent with WAC 246-290-020 or as it may be recodified.

(16) **"Reservation"** means an allocation of water set aside for future domestic use, municipal use, and stock water use (except feedlots). For the purposes of this chapter, the reservation is not subject to the instream flows set in WAC 173-545-050 and 173-545-060. "Reservation" is the same as "reserve" and "reserved water" in the Wenatchee watershed management plan.

(17) **"Stock water"** means the use of water by animals consistent with the Chelan County Code, Section 11.88.030. It does not apply to feedlots and other activities which are not related to normal grazing land uses.

(18) **"Stream management unit"** means a stream segment, reach, or tributary used to describe the part of the relevant stream to which a particular use, action, instream flow level or reservation of water applies. Each of these units contains a control station. A map of the control points is included in this chapter (WAC 173-545-170).

(19) **"Withdrawal"** means the extraction of groundwater or diversion of surface water.

(20) **"WRIA"** means water resource inventory area. This term can be used interchangeably with "basin" and "watershed."

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-030, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-030, filed 6/3/83.]

WAC 173-545-040 Stream management units. Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township, and Range	Affected Stream Reach(es) including Tributaries
12-4570.00 Wenatchee River at Plain	46.2 Sec. 12, T. 26N., R. 17E. W.M.	From Beaver Valley Hwy, R.M. 46.2, to headwaters
12-4585.00 Icicle Cr. near Leavenworth	2.6 Sec. 23, T. 24N., R. 17E. W.M.	Headwaters of Icicle Creek to its mouth
12-4590.00 Wenatchee River at Peshastin	21.5 Sec. 8, T. 24N., R. 18E. W.M.	From confluence of Derby Creek to Beaver Valley Hwy, R.M. 46.2 excluding Derby Creek and Icicle Creek
12-4625.00 Wenatchee River at Monitor	7.0 Sec. 11, T. 23N., R. 19E. W.M.	From mouth to confluence of Derby Creek, including Derby Creek and excluding Mission Creek
12-4620.00 ¹ Mission Creek near Cashmere	1.5 Sec. 9, T. 23N., R. 19E. W.M.	From mouth to headwaters
ECY 453070 ² Mission Creek near Cashmere	0.2 Sec. 5, T. 23N., R. 19E. W.M.	From mouth to headwaters
12-4565.00 Chiwawa River near Plain	6.2 Sec. 13, T. 27N., R. 17E. W.M.	From the confluence of the Chiwawa River and the Wenatchee River upstream to the headwaters of the Chiwawa River
ECY 45J070 Nason Creek near mouth	0.2 Sec. 33, T. 27N., R. 17E. W.M.	From the confluence of Nason Creek and the Wenatchee River upstream to the Nason Creek headwaters
ECY 45F070 Peshastin Creek at Green Bridge Rd.	1.4 Sec. 28, T. 24N., R. 18E. W.M.	From the confluence of Peshastin Creek and the Wenatchee River upstream to the Peshastin Creek headwaters

¹This station is used for regulation of permits issued subject to the minimum instream flows listed in WAC 173-545-050.

²This station is to be used for regulation of any permits issued subject to the minimum instream flows in WAC 173-545-060.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-040, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-040, filed 6/3/83.]

WAC 173-545-050 Instream flows established on June 3, 1983. (1) The following instream flows were estab-

lished June 3, 1983. Water rights established after that date and prior to the effective date of this rule are subject to these instream flows. The June 3, 1983, instream flows for the following stream management units in WAC 173-545-040 are as follows:

1983 Instream Flows in the Wenatchee River
(instantaneous cubic feet per second)

Month	Day	12-4570.00 Wenatchee R. at Plain	12-4580.00 Icicle Cr. near Leavenworth	12-4590.00 Wenatchee R. at Peshastin
Jan	1	550	120	700
	15	550	120	700
Feb	1	550	120	700
	15	550	120	700
Mar	1	550	150	750
	15	700	170	940
Apr	1	910	200	1300
	15	1150	300	1750
May	1	1500	450	2200
	15	2000	660	2800
Jun	1	2500	1000	3500
	15	2000	660	2600
Jul	1	1500	450	1900
	15	1200	300	1400
Aug	1	880	200	1000
	15	700	170	840
Sep	1	660	130	820
	15	620	130	780
Oct	1	580	130	750
	15	520	130	700
Nov	1	550	150	750
	15	550	150	750
Dec	1	550	150	750
	15	550	150	750

1983 Instream Flows in the Wenatchee River
(instantaneous cubic feet per second)

Month	Day	12-4620.00 Mission Cr. near Cash- mere	12-4625.00 Wenatchee R. at Monitor
Jan	1	6	820
	15	6	820
Feb	1	6	820
	15	6	800
Mar	1	6	800
	15	11	1040
Apr	1	22	1350
	15	40	1750
May	1	40	2200
	15	40	2800
Jun	1	28	3500
	15	20	2400
Jul	1	14	1700
	15	10	1200

Month	Day	12-4620.00 Mission Cr. near Cash- mere	12-4625.00 Wenatchee R. at Monitor
Aug	1	7	800
	15	5	700
Sep	1	4	700
	15	4	700
Oct	1	4	700
	15	5	700
Nov	1	6	800
	15	6	800
Dec	1	6	800
	15	6	800

(2) Instream flow hydrographs, WAC 173-545-170, Appendix 1 to this rule, shall be used for identification of instream flows on those days not specifically identified in WAC 173-545-050(1).

(3) The instream flows in subsection (1) of this section shall retain their original priority date and quantities, except where the flows in WAC 173-545-060(7) are lower than the flows in subsection (1) of this section. In those instances, existing water rights subject to subsection (1) of this section will instead be subject to the lower flow in WAC 173-545-060(7). However, the priority date of the original right remains unchanged. If, at a future date, it is determined that the higher flows in subsection (1) of this section are required to retain flows necessary to preserve fish, wildlife, scenic, aesthetic, or other environmental values, the department will issue an order notifying the holders of the conditioned permits and certificates of such a decision and the justification.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-050, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-050, filed 6/3/83.]

WAC 173-545-060 Instream flows based on watershed planning. (1) The instream flows established in this section are based on the recommendations of the Wenatchee watershed planning unit and public input received during the rule-making process. These instream flows are established under RCW 90.82.080, and are necessary to meet the water resource management and ecosystem maintenance objectives of the Wenatchee watershed plan.

(2) Instream flows established in this section protect stream flows from future appropriations, and preserve flow levels that are necessary to protect wildlife, fish, water quality, aesthetic and other environmental values, recreation, and navigational values.

(3) Instream flows in subsection (7) of this section established at new locations or in larger amounts than the instream flows in WAC 173-545-050(1) are water rights with a priority date of November 2, 2001.

(4) All water rights (surface and groundwater) established after the effective date of this rule, and not covered under the reservation in WAC 173-545-090, are subject to these instream flows. Water rights junior to the instream flow may be exercised when flow or groundwater conditions will provide enough water to satisfy senior rights, including the instream flows. New appropriations which would conflict

with instream flows shall be authorized only in situations where it is clear that the overriding considerations of the public interest will be served.

(5) Based upon the department's determination of overriding considerations of public interest, the reservation of water established in WAC 173-545-090 is not subject to the instream flows in subsection (7) of this section or WAC 173-545-050(1).

(6) Instream flows are expressed in cubic feet per second (cfs). Instream flows are measured at the control stations identified in WAC 173-545-040.

(7) Instream flows are established for the stream management units in WAC 173-545-040, as follows:

Instream Flows in the Wenatchee River Basin
Based on Watershed Planning
 (instantaneous cubic feet per second)

Month	Day	12-4570.00 Wenatchee R. at Plain	12-4585.00 Icicle Cr. near Leavenworth	12-4590.00 Wenatchee R. at Peshastin	ECY 45J070 Nason Cr. near Mouth
Jan	1	550	267	1933	120
	15	550	267	1933	120
Feb	1	550	267	1933	120
	15	550	566	2800	160
Mar	1	550	518	2800	160
	15	700	518	2800	160
Apr	1	910	650	2800	160
	15	1150	650	2800	160
May	1	1500	650	2800	160
	15	2000	650	2800	160
Jun	1	2500	650	2800	160
	15	2000	550	1933	210
Jul	1	1500	550	1933	210
	15	1200	550	1933	210
Aug	1	880	400	1933	180
	15	700	343	1400	180
Sep	1	660	275	1311	165
	15	620	275	1311	165
Oct	1	580	267	1932	120
	15	520	267	2672	120
Nov	1	550	267	2900	120
	15	550	267	2900	120
Dec	1	550	267	1933	120
	15	550	267	1933	120

Instream Flows in the Wenatchee River Basin (cont'd)
 (instantaneous cubic feet per second)

Month	Day	12-4625.00 Wenatchee R. at Monitor	ECY 45F070 Peshastin Cr. at Bridge Rd.	Chumstick Cr. at North Road
Jan	1	1867	53	To be determined (tbd)
	15	1867	53	
Feb	1	1867	53	tbd
	15	2400	120	

Month	Day	12-4625.00 Wenatchee R. at Monitor	ECY 45F070 Peshastin Cr. at Green Bridge Rd.	Chumstick Cr. at North Road
Mar	1	2400	120	tbd
	15	2400	120	
Apr	1	2400	120	tbd
	15	2400	120	
May	1	2400	120	tbd
	15	2400	120	
Jun	1	2400	120	tbd
	15	1600	110	
Jul	1	1600	110	tbd
	15	1600	110	
Aug	1	1600	80	tbd
	15	900	80	
Sep	1	900	80	tbd
	15	1338	80	
Oct	1	1723	53	tbd
	15	2427	53	
Nov	1	2800	53	tbd
	15	2800	53	
Dec	1	1867	53	tbd
	15	1867	53	

(8) Instream flow hydrographs, WAC 173-545-170, Appendix 1 to this rule, shall be used for identification of instream flows on those days not specifically identified in WAC 173-545-060(7).

(9) Future consumptive water right permits issued hereafter for the withdrawal of surface and groundwater from the mainstem Wenatchee River and tributaries shall be subject to instream flows established in subsection (7) of this subsection, except for those withdrawals eligible for the reservation under WAC 173-545-090.

(10) Projects that would reduce the flow in a portion of a stream's length (e.g.: Hydroelectric diversion projects) are consumptive with respect to the bypassed portion of the stream and are subject to specific instream flow requirements for the bypassed reach. The department may require detailed, project-specific instream flow studies to determine a specific instream flow for the bypassed reach. The flows established in subsection (7) of this section shall apply to the bypassed stream reach unless the department, by order, determines that different flows may be maintained in the bypassed reach.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-060, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-060, filed 6/3/83.]

WAC 173-545-070 Lakes and ponds. In accordance with RCW 90.54.020(3), lakes and ponds in the Wenatchee watershed shall be retained substantially in their natural condition, including those in the Wenatchee National Forest. Water withdrawals from lakes and ponds for purposes eligible under the reservation in WAC 173-545-090 are not subject to instream flows. All other water withdrawals from lakes and ponds or storage projects sited within or upon exist-

ing lakes or ponds are subject to instream flows and maximum future allocations.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-070, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-070, filed 6/3/83.]

WAC 173-545-080 Interim closure. The Chumstick Creek subbasin shall be closed to all future appropriations other than those provided by the interim reservation in WAC 173-545-090 (1)(d)(vi) until the department adopts a rule establishing instream flows, closes Chumstick Creek permanently, or determines that instream flows or a closure are not required.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-080, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-080, filed 6/3/83.]

WAC 173-545-090 Reservation of water for certain future uses. (1) Using the watershed plan as a primary expression of public interest, and consistent with the authority under RCW 90.54.050(1) and 90.82.130(4), the department's director determines that it is an overriding consideration of the public interest to reserve an amount of surface and groundwater, up to 4 cubic feet per second, for future beneficial uses as follows:

(a) The priority date for uses under the reservation is the effective date of this chapter.

(b) The reservation is not subject to the instream flows established in WAC 173-545-050 and 173-545-060.

(c) Beneficial uses of water eligible for the reservation are limited to:

(i) Permitted uses for domestic purposes, irrigation associated with a residence, potable domestic water requirements associated with municipal, commercial, and industrial purposes, and stock water (as defined in WAC 173-545-030(17)).

(ii) Permit-exempt uses for domestic purposes, irrigation associated with a residence, domestic water requirements associated with municipal, commercial, and industrial purposes, and stock water (as defined in WAC 173-545-030(17)).

(d) The reservation of water for future use is limited to the following locations and amounts:

(i) Chiwawa River near Plain (USGS 12-4565.00), up to 0.5 cfs.

(ii) Nason Creek near mouth, up to 0.16 cfs.

(iii) Wenatchee River at Plain (USGS Gage No. 12-4570.00), up to 1.0 cfs inclusive of actual water use associated with the subbasin reservations in (d)(i) and (ii) of this subsection.

(iv) Icicle Creek near Leavenworth: Up to 0.1 cfs. Reservation of an additional 0.4 cfs will be considered after completion of flow restoration efforts targeting habitat between the city of Leavenworth and Icicle Irrigation District's point of diversion and the U.S. Fish and Wildlife Service hatchery return. Rule making will be required to establish this additional reservation.

(v) Peshastin Creek at Green Bridge: Up to 0.1 cfs.

(vi) Chumstick Creek at North Road: Up to 0.043 cfs as an interim reservation to meet projected growth for the three years immediately following the effective date of this rule. At the end of three years, or sooner if the interim reservation is fully appropriated, allocation of any water remaining in the interim reservation and water above the interim reservation, up to a total of 0.13 cfs, is subject to additional conditions described in subsection (10) of this section.

(vii) Mission Creek near Cashmere: Up to 0.03 cfs for an interim reservation to meet projected growth for the two years immediately following the effective date of this rule. The interim reservation is subject to additional conditions described in subsection (11) of this section.

(viii) Wenatchee River at Monitor (USGS Gage No. 12-4625.00): Up to 4 cfs inclusive of actual water use associated with the subbasin reservations in (d)(i) through (vii) of this subsection.

(2) A water right permit allocating water from the reservation must be consistent with the requirements of RCW 90.03.290.

(3) All water uses from the reservation must implement water use efficiency and conservation practices, consistent with the watershed plan.

(4) This reservation of water is intended to meet needs identified for the basin within the Wenatchee watershed plan. The department shall deny all applications for water from this reservation for use not conforming to subsection (1)(c) of this section.

(5) All water uses relying on the reservation must be measured and reported. The manner and form of such measuring and reporting to support the accounting system for the reservation water uses may be specified by the department, Chelan County, or by a local government, utility, or other public water purveyor in a permit, approval, license, or order. An accounting of all appropriations from the reservation shall be maintained by the department and the Chelan County natural resource department. The accounting shall, at a minimum, include estimated and measured use in gallons per day.

(6) All permitted and permit-exempt uses from the reservation will have the same priority date. The following will guide water supply decisions in times of water shortage:

(a) Among the use categories: Domestic and stock-watering uses will be met first, followed by domestic water requirements associated with municipal, commercial and industrial use, and then residential irrigation.

(b) Within each use category, the date of first beneficial use will be used. The use with the earliest date will be satisfied first.

(7) The reservation will be evaluated by the department and the Wenatchee planning unit prior to 2010, 2015, 2020, and 2025. The allocated and unallocated amounts for each use will be reviewed, as well as the allocated and unallocated amounts for the entire reserve. Modifications to the program may therefore be established through rule making, if needed.

(8) The department shall notify both Chelan County and the planning unit or its successor, in writing, when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of the total reservation is appropriated. The department shall also issue a public notice in a newspaper of general circulation for the region at the same three junctures.

(9) The department shall require measuring and reporting for permitted surface and groundwater appropriation from the reservation. If more accurate water use data are needed, the department may, after consulting with the planning unit and Chelan County, require measuring and reporting for groundwater withdrawals otherwise exempted from permit requirements under RCW 90.44.050.

(10) For Chumstick Creek, allocation of the full 0.13 cfs reservation will be considered only after completion of an instream flow assessment and a cumulative impacts assessment. Rule making will be required to establish Chumstick Creek instream flows. A cumulative impacts assessment will be used to determine if outdoor water use associated with permit-exempt groundwater uses initiated after June 6, 1983, interferes with the instream flows in WAC 173-545-050. Rule making will also be required to either terminate the interim closure of the Chumstick Creek subbasin or to make it permanent.

(11) For Mission Creek, the interim reservation will terminate after two years. A cumulative impacts assessment will be used to determine if outdoor water use associated with permit-exempt groundwater uses initiated subsequent to June 6, 1983, interferes with the adopted instream flows in WAC 173-545-050.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-090, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. WSR 88-13-037 (Order 88-11), § 173-545-090, filed 6/9/88. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-090, filed 6/3/83.]

WAC 173-545-100 Maximum future allocation.

(1)(a) The department determines that there are certain times when there are surface waters above the instream flows, referred to as "high flows." These high flows provide critical ecological functions such as channel and riparian zone maintenance, flushing of sediments, and fish migration. In order to protect the frequency and duration of these higher flows, the department hereby establishes maximum amounts of water/flow that can be withdrawn from specific streams at specific times, subject to the flows in WAC 173-545-060.

(b) A maximum allocation shall be used to review future applications for beneficial uses from the mainstem Wenatchee and tributary rivers and creeks.

Maximum Allocations in the Wenatchee River Basin
(instantaneous cubic feet per second)

Month	Day	12-4570.00 Wenatchee R. at Plain	12-4585.00 Icicle Cr. near Leavenworth	12-4590.00 Wenatchee R. at Peshastin
Jan	1	82	21	113
	15	82	21	113
Feb	1	78	20	111
	15	78	0	111
Mar	1	96	0	147
	15	96	0	147
Apr	1	243	59	335
	15	243	59	335
May	1	525	149	711
	15	525	149	711

Month	Day	12-4570.00 Wenatchee R. at Plain	12-4585.00 Icicle Cr. near Leavenworth	12-4590.00 Wenatchee R. at Peshastin
Jun	1	604	175	800
	15	604	175	800
Jul	1	296	76	376
	15	296	76	376
Aug	1	102	28	122
	15	102	0	122
Sep	1	0	0	0
	15	0	0	0
Oct	1	0	0	0
	15	0	0	0
Nov	1	95	23	128
	15	95	23	128
Dec	1	92	25	122
	15	92	25	122

Maximum Allocations in the Wenatchee River Basin (cont'd)
(instantaneous cubic feet per second)

Month	Day	ECY 45F070 Peshastin Cr. near Green Bridge	12-4625.00 Wenatchee R. at Monitor	ECY 45E070 Mis- sion Cr. near Cashmere
Jan	1	6	132	0.6
	15	6	132	0.6
Feb	1	6	148	1.2
	15	6	148	1.2
Mar	1	7	192	1.4
	15	7	192	1.4
Apr	1	16	360	2.7
	15	16	360	2.7
May	1	38	710	3.1
	15	38	710	3.1
Jun	1	44	813	1.9
	15	44	813	1.9
Jul	1	20	373	0
	15	20	373	0
Aug	1	0	117	0
	15	0	117	0.3
Sep	1	0	72	0
	15	0	0	0
Oct	1	0	0	0
	15	0	0	0
Nov	1	7	139	0.4
	15	7	139	0.4
Dec	1	7	130	0.4
	15	7	130	0.4

Maximum Allocations in the Wenatchee River Basin (cont'd)
(instantaneous cubic feet per second)

Month	Day	ECY 45J070 Nason Cr. near Mouth	12-4565.00 Chiwawa R. near Plain
Jan	1	13	12
	15	13	12

Month	Day	ECY 45J070 Nason Cr. near Mouth	12-4565.00 Chiwawa R. near Plain
Feb	1	12	12
	15	12	0
Mar	1	15	0
	15	15	16
Apr	1	44	58
	15	44	58
May	1	99	139
	15	99	139
Jun	1	114	147
	15	114	147
Jul	1	54	71
	15	54	71
Aug	1	17	24
	15	17	0
Sep	1	0	0
	15	0	0
Oct	1	0	0
	15	0	0
Nov	1	15	16
	15	15	16
Dec	1	15	16
	15	15	16

(2) The designation of a maximum allocation limit does not constitute a determination by the department that a permit to appropriate public waters will be issued. RCW 90.03.290 and 90.44.060 require that a permit can be issued only upon a determination that: Water is available; the use will not impair existing rights; water will be applied to a beneficial use; and the use is not detrimental to the public interest. Establishment of a water right within the limit of the allocation occurs after proper authorization from the department and after the water is first put to beneficial use. The water rights are subject to the instream flows established in WAC 173-545-060, and other provisions established in statutory, administrative and case law.

(3) The department shall require the metering and reporting of all permitted surface and groundwater withdrawals for which a maximum allocation applies.

(4) The department will maintain a record of the amount of water appropriated from the Wenatchee River and tributaries specified above. Once the maximum amounts are fully appropriated, the department shall notify Chelan County and the planning unit in writing. The department shall also issue a public notice in a newspaper of general circulation for the region.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-100, filed 12/12/07, effective 1/12/08. Statutory Authority: Chapters 43.21B, 43.27A, 90.22 and 90.54 RCW. WSR 88-13-037 (Order 88-11), § 173-545-100, filed 6/9/88. Statutory Authority: Chapters 90.54, 90.22 and 75.20 RCW. WSR 83-13-016 (Order DE 83-8), § 173-545-100, filed 6/3/83.]

WAC 173-545-110 Permitting actions. (1) Surface and groundwater permits not subject to the instream flows established in WAC 173-545-060 may be issued if:

(12/12/07)

(a) The proposed use is nonconsumptive, and compatible with the intent of this chapter; or

(b) The water use qualifies for the reservation established in WAC 173-545-090.

(2)(a) Future applications for surface waters that are not part of the reservation established in WAC 173-545-090 may be approved subject to the instream flows established in WAC 173-545-060 and the maximum water allocation limits established in WAC 173-545-100, unless the source is closed to further appropriation.

(b) Future applications for groundwaters that are not part of the reservation established in WAC 173-545-090 may be approved subject to the instream flows established in WAC 173-545-060 and the maximum water allocation limits established in WAC 173-545-100 (except if there is a closure). Based upon existing data and the findings in the watershed plan, the department determines that there is a high likelihood of hydraulic continuity between surface water and groundwater sources within both the Wenatchee River management units and tributaries established in WAC 173-545-040. Therefore, water rights without instream flow limitations may be issued for groundwater only if the department determines that the withdrawal of groundwater with proposed mitigation in place would not adversely affect or impair the instream flows.

(3) No right to withdraw or store the public surface or groundwaters of the Wenatchee River basin that conflicts with the provisions of this chapter will hereafter be granted, except in cases where such rights will clearly serve overriding considerations of the public interest, as stated in RCW 90.54.020 (3)(a).

(4) All future surface and groundwater permit holders shall be required to install and maintain measuring devices and report the data to the department in accordance with permit requirements. In addition, the department may require the permit holder to monitor stream flows and groundwater levels.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-110, filed 12/12/07, effective 1/12/08.]

WAC 173-545-120 Changes and transfers. No changes to, or transfers of, existing surface and groundwater rights in the Wenatchee River basin shall hereafter be granted if they conflict with the purpose of this chapter. Any change or transfer proposal can be approved only if there is a finding that existing rights, including the instream flows established in WAC 173-545-050 and 173-545-060, will not be impaired.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-120, filed 12/12/07, effective 1/12/08.]

WAC 173-545-130 Compliance and enforcement. (1) To obtain compliance with this chapter, the department, with assistance from Chelan County, the planning unit or its successor and partners, shall prepare and distribute technical and educational information regarding the scope and requirements of this chapter to the public. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

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(2) When the department determines that a violation has occurred, it shall first attempt to achieve voluntary compliance. 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.

(3) To obtain compliance and enforce this chapter, the department may impose such sanctions as appropriate under authorities vested in it, including, but not limited to, issuing regulatory orders under RCW 43.27A.190; and imposing civil penalties under RCW 43.83B.336, 90.03.400, 90.03.-410, 90.03.600, 90.44.120 and 90.44.130.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-130, filed 12/12/07, effective 1/12/08.]

WAC 173-545-140 Appeals. All final written decisions of the department pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter can be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

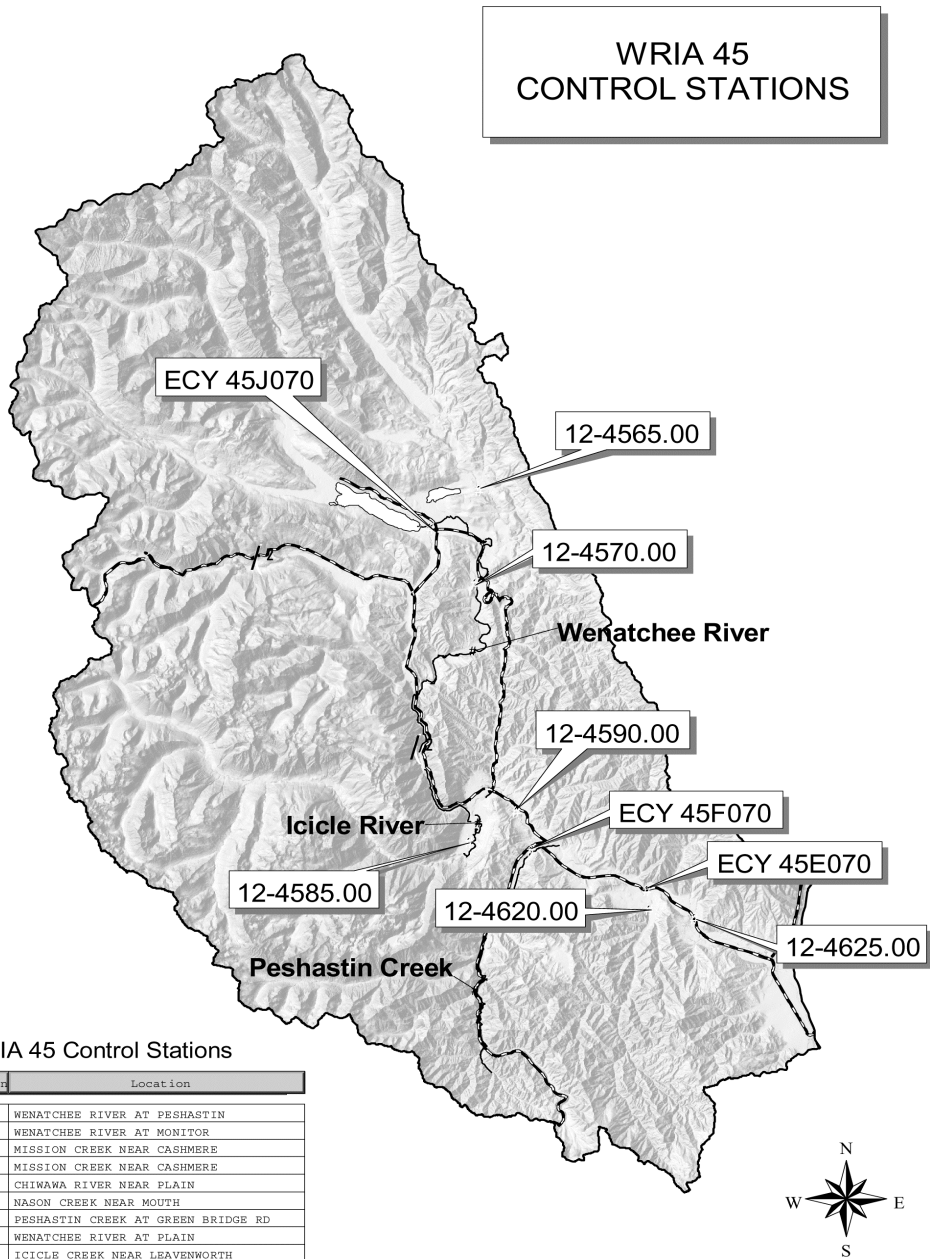
[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-140, filed 12/12/07, effective 1/12/08.]

WAC 173-545-150 Regulation review. Review of this chapter may be initiated by the department whenever significant new information is available, a significant change in conditions occurs, statutory changes are enacted that are determined by the department to require review of the chapter, or if modifications are necessary based on the reviews described in WAC 173-545-080 and 173-545-090. Chelan County, the planning unit, or other interested citizens with standing may request that the department initiate a review at any time. If the department initiates a review, it will consult with Chelan County and the planning unit or its successor. If necessary, the department will modify the appropriate provisions of this chapter by rule.

The reservation will be evaluated by the department and the Wenatchee planning unit prior to 2010, 2015, 2020, and 2025. The allocated and unallocated amounts for each use will be reviewed, as well as the allocated and unallocated amounts for the entire reserve. Modifications to the program may therefore be implemented by rule, if needed.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-150, filed 12/12/07, effective 1/12/08.]

WAC 173-545-160 Map. For the purposes of administering this chapter, the boundaries of the Wenatchee River basin identified in the figure below are presumed to accurately reflect the basin hydrology.

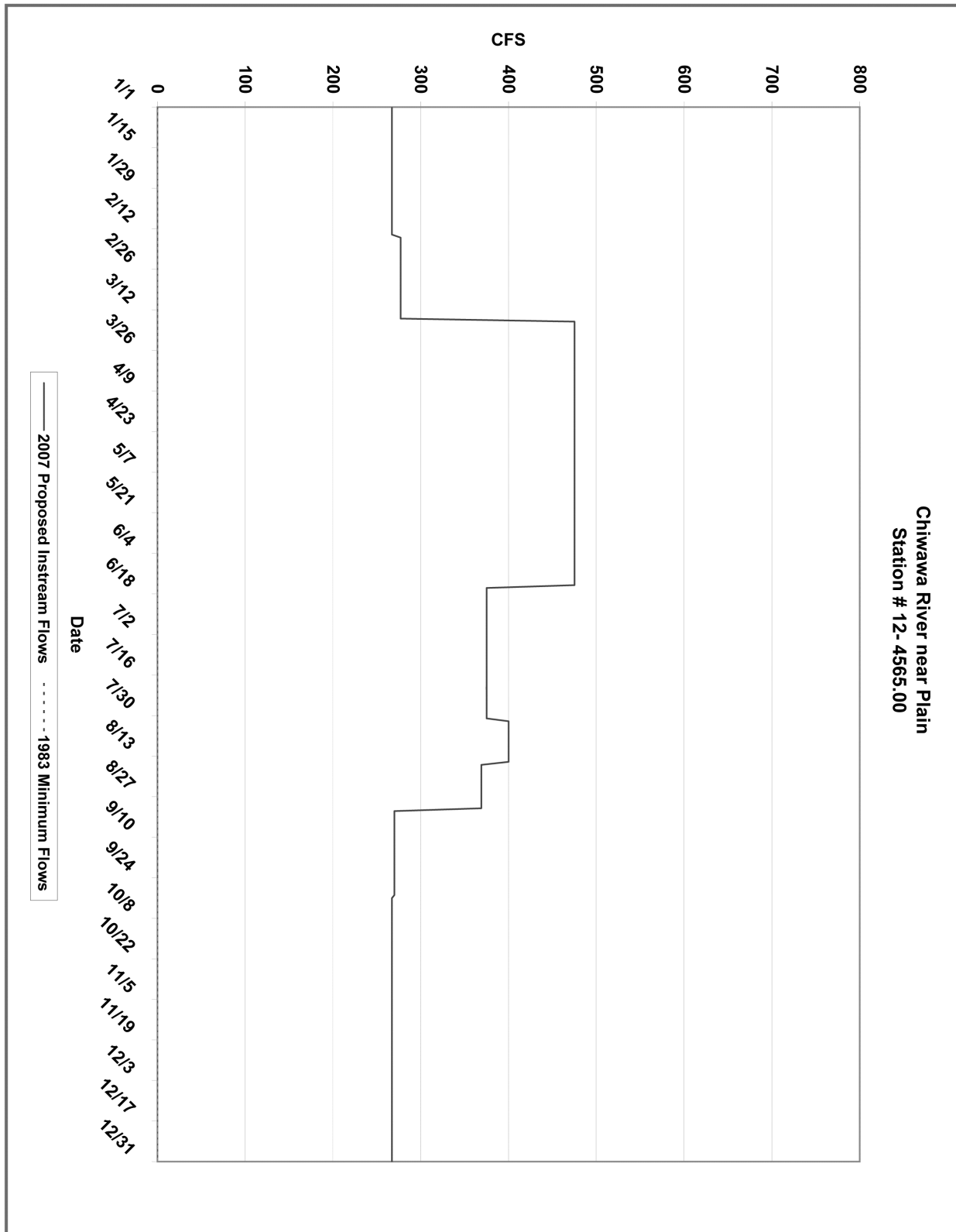


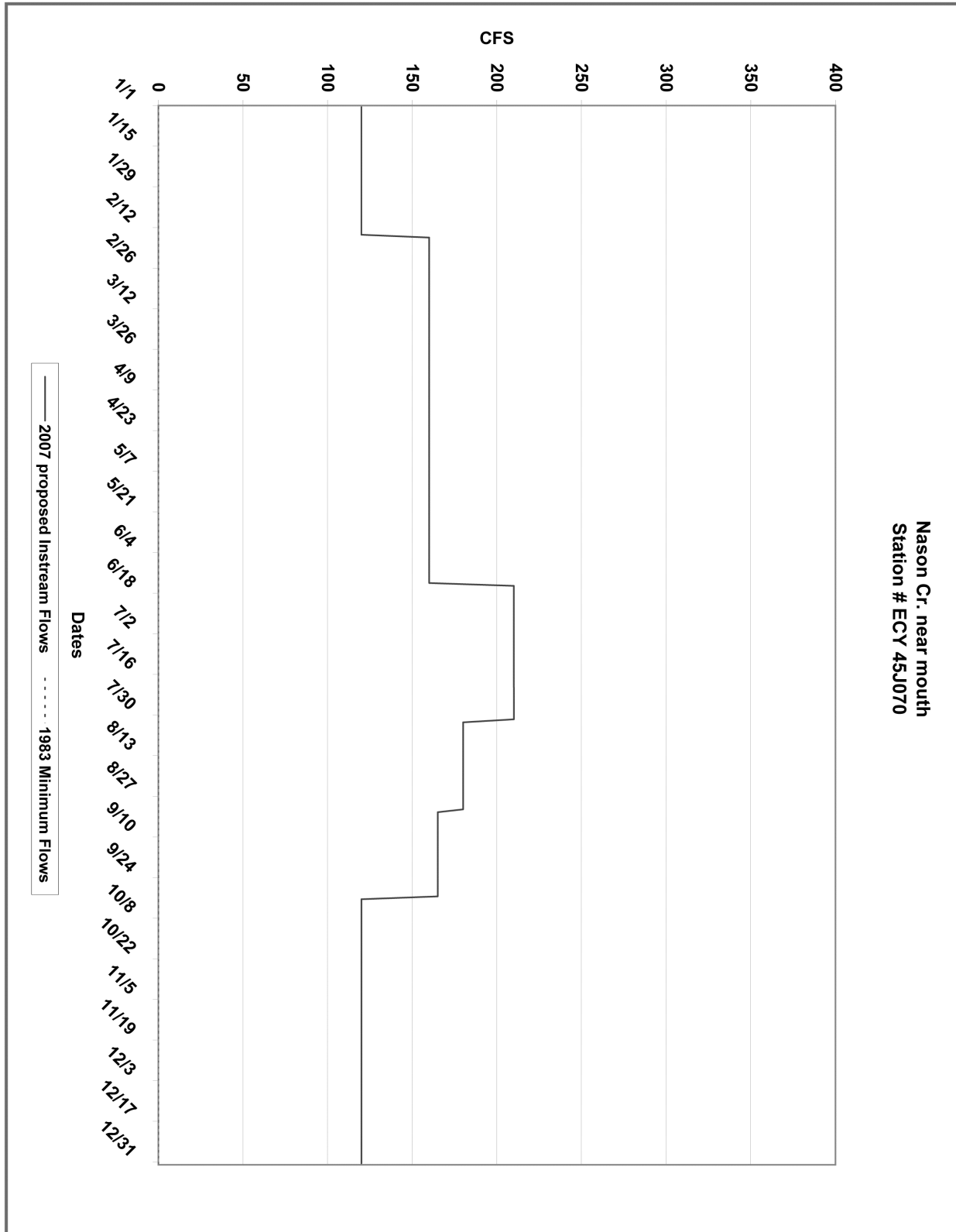
WRIA 45 Control Stations

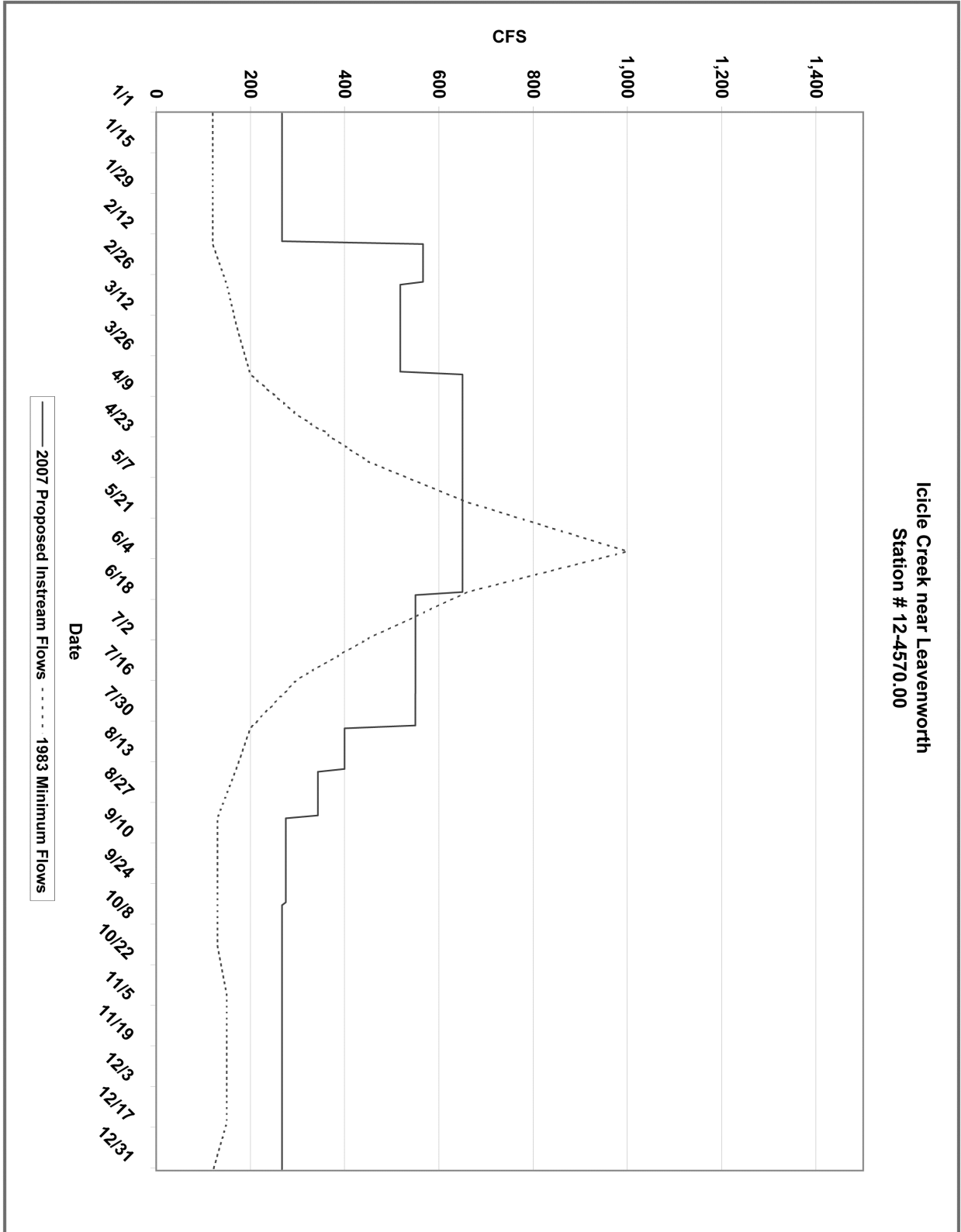
Control Station	Location
12-4590.00	WENATCHEE RIVER AT PESHASTIN
12-4625.00	WENATCHEE RIVER AT MONITOR
12-4620.00	MISSION CREEK NEAR CASHMERE
ECY 45E070	MISSION CREEK NEAR CASHMERE
12-4565.00	CHIWAWA RIVER NEAR PLAIN
ECY 45J070	NASON CREEK NEAR MOUTH
ECY 45F070	PESHASTIN CREEK AT GREEN BRIDGE RD
12-4570.00	WENATCHEE RIVER AT PLAIN
12-4585.00	ICICLE CREEK NEAR LEAVENWORTH

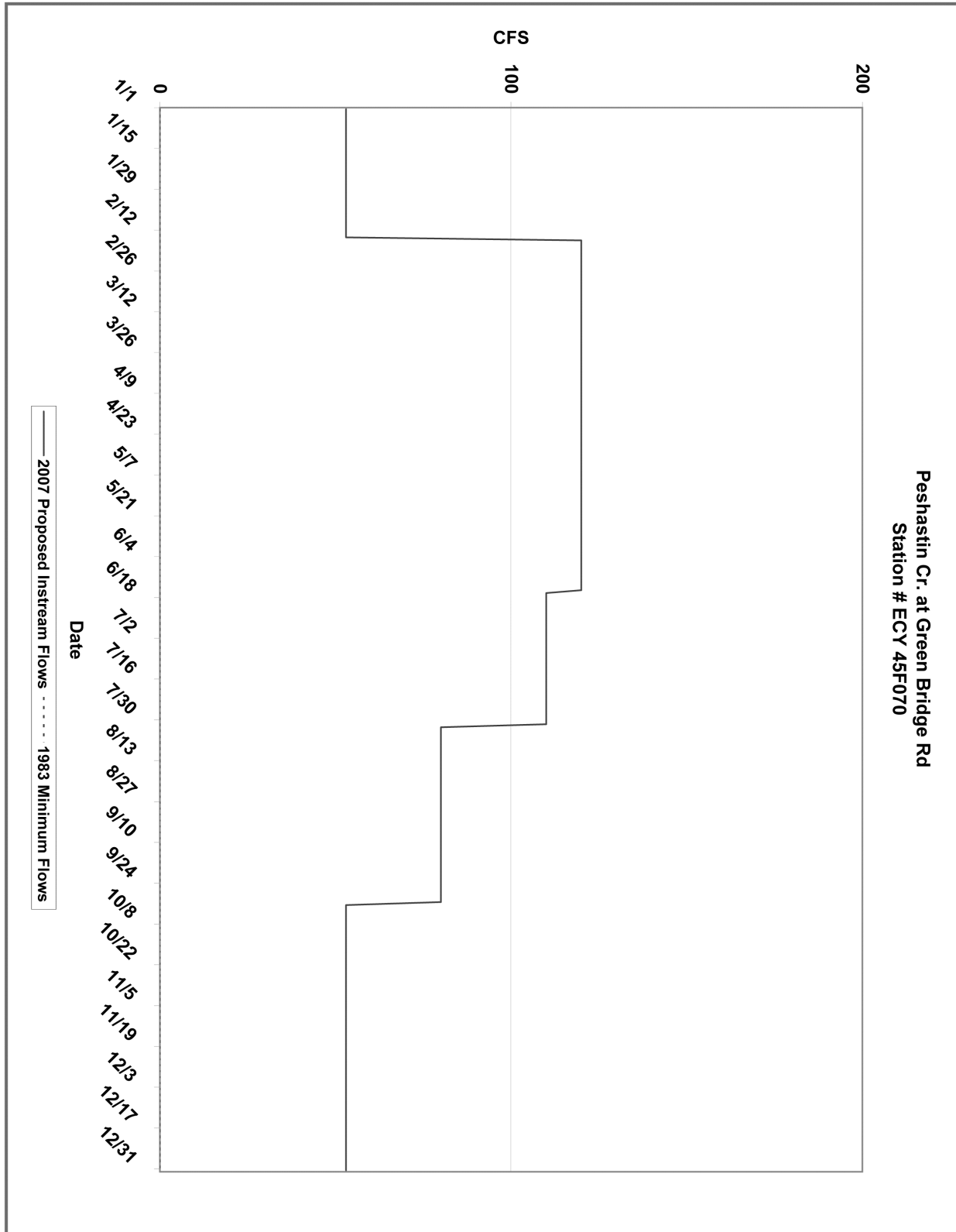
[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-160, filed 12/12/07, effective 1/12/08.]

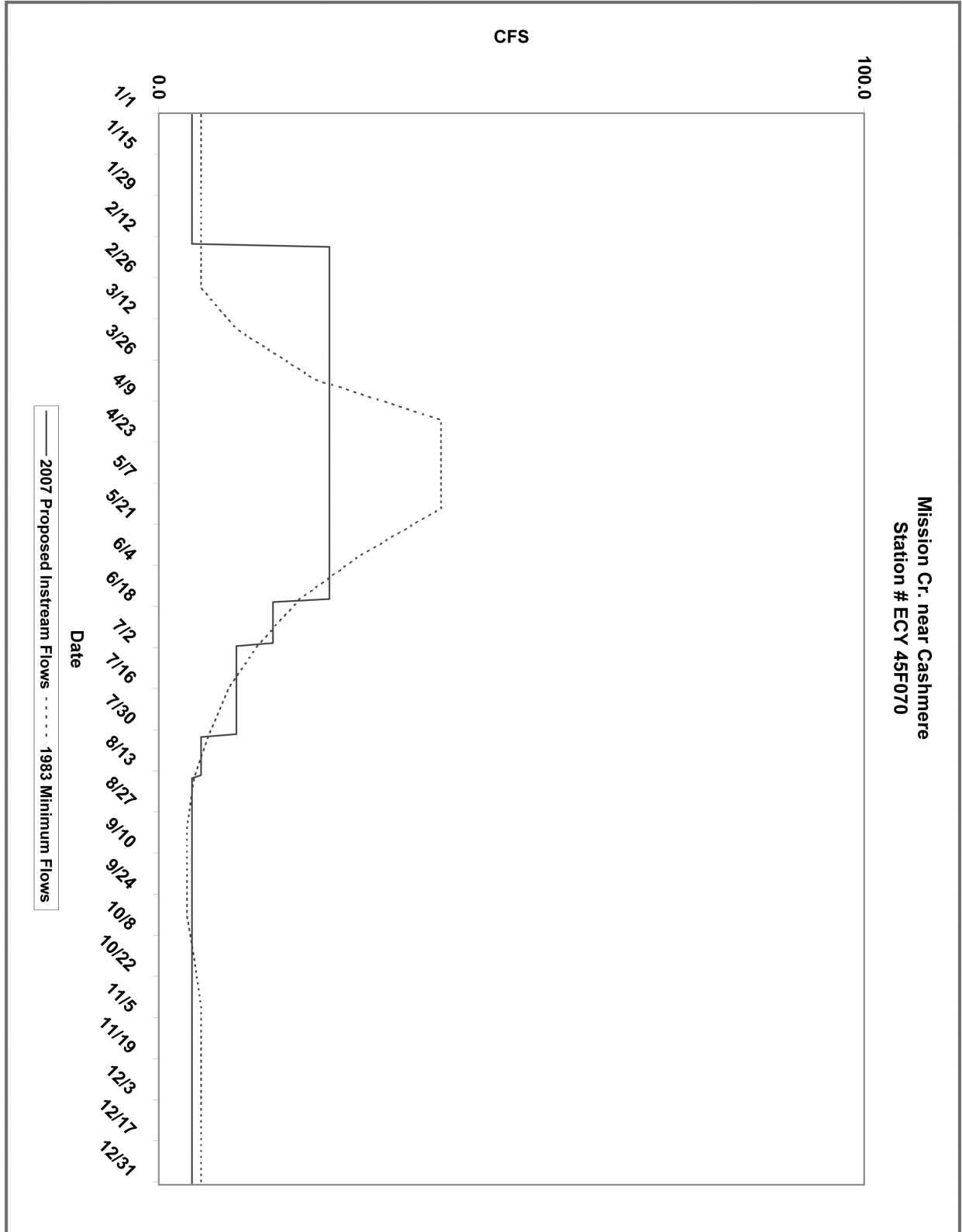
WAC 173-545-170 Appendix 1: Hydrographs.

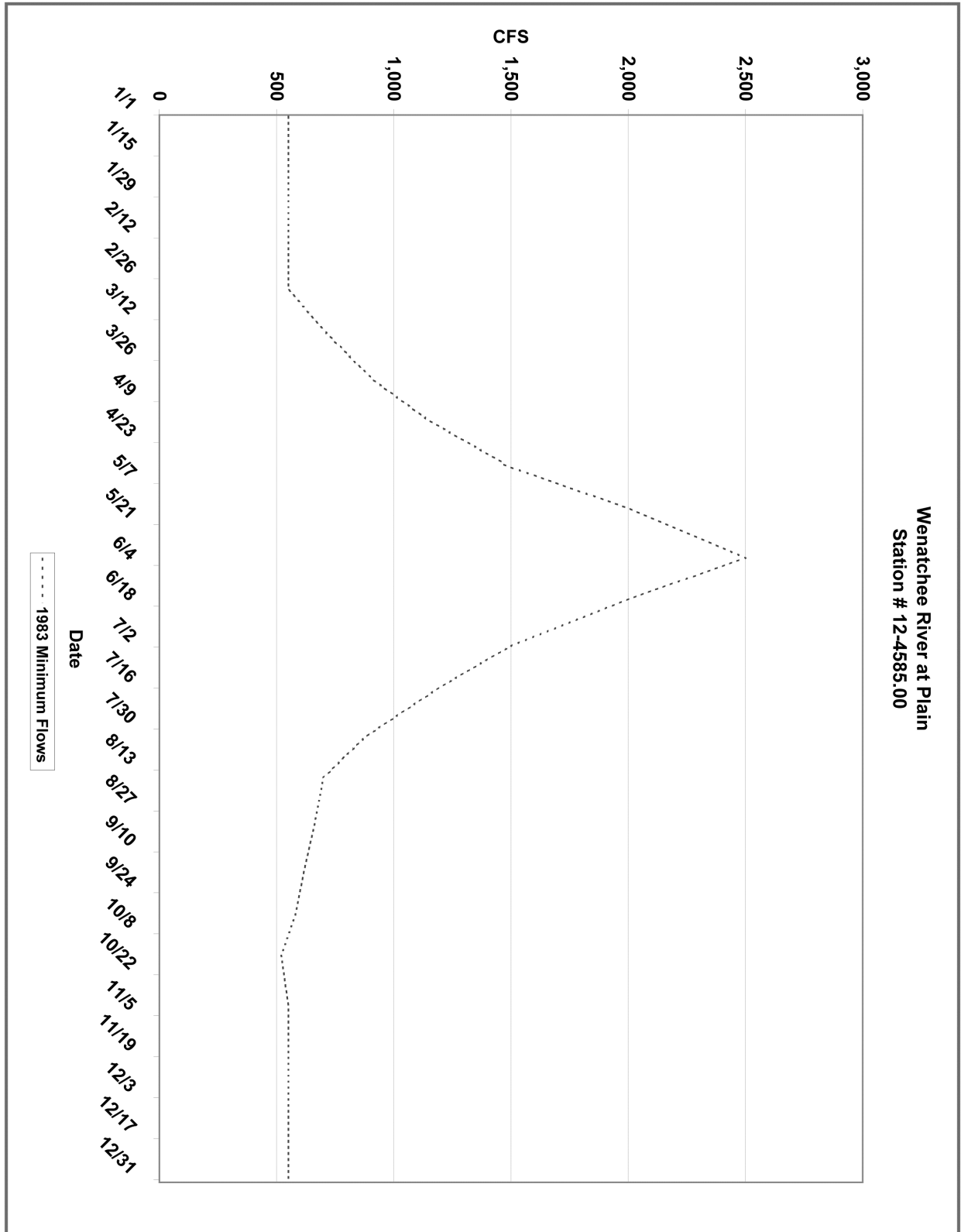


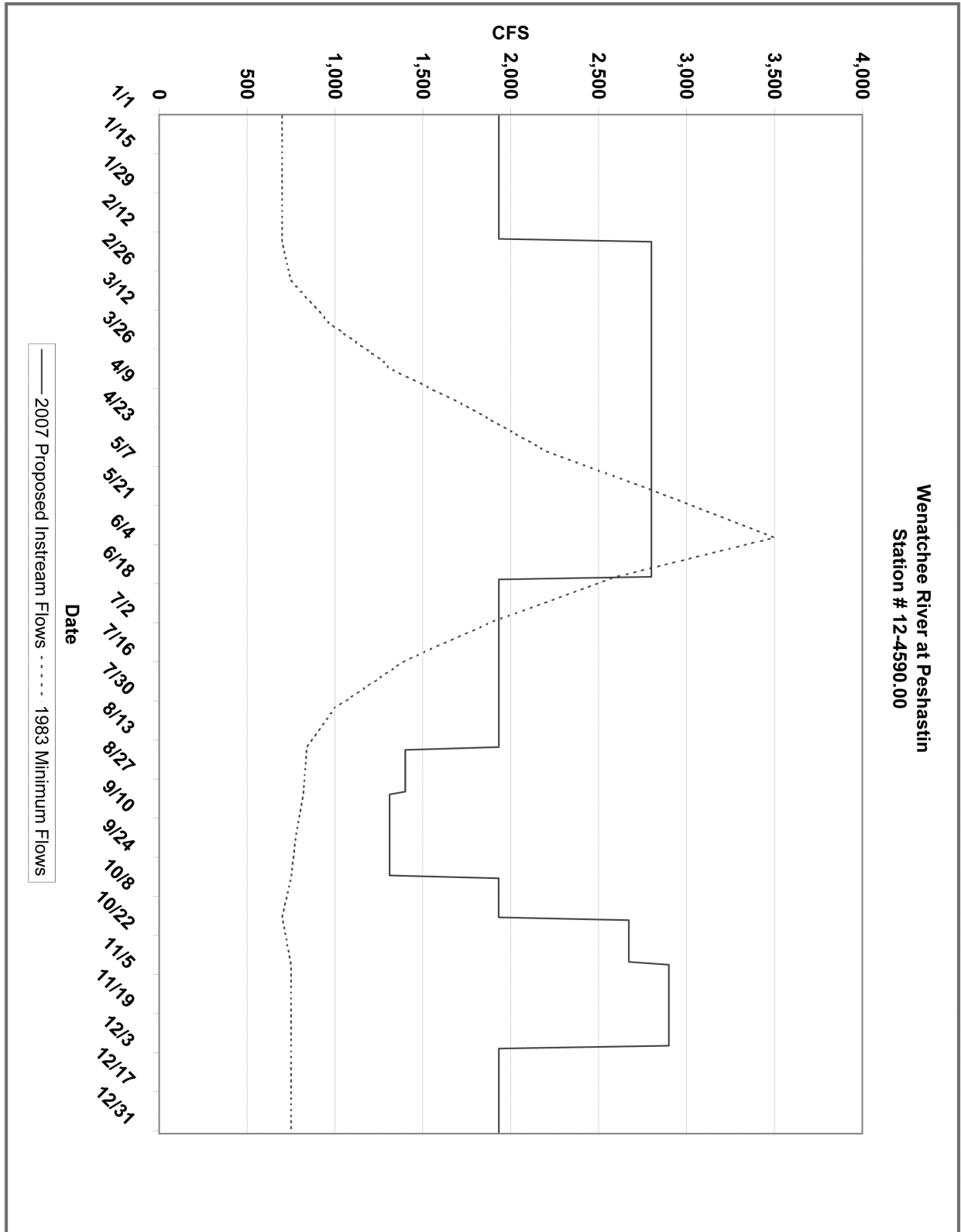


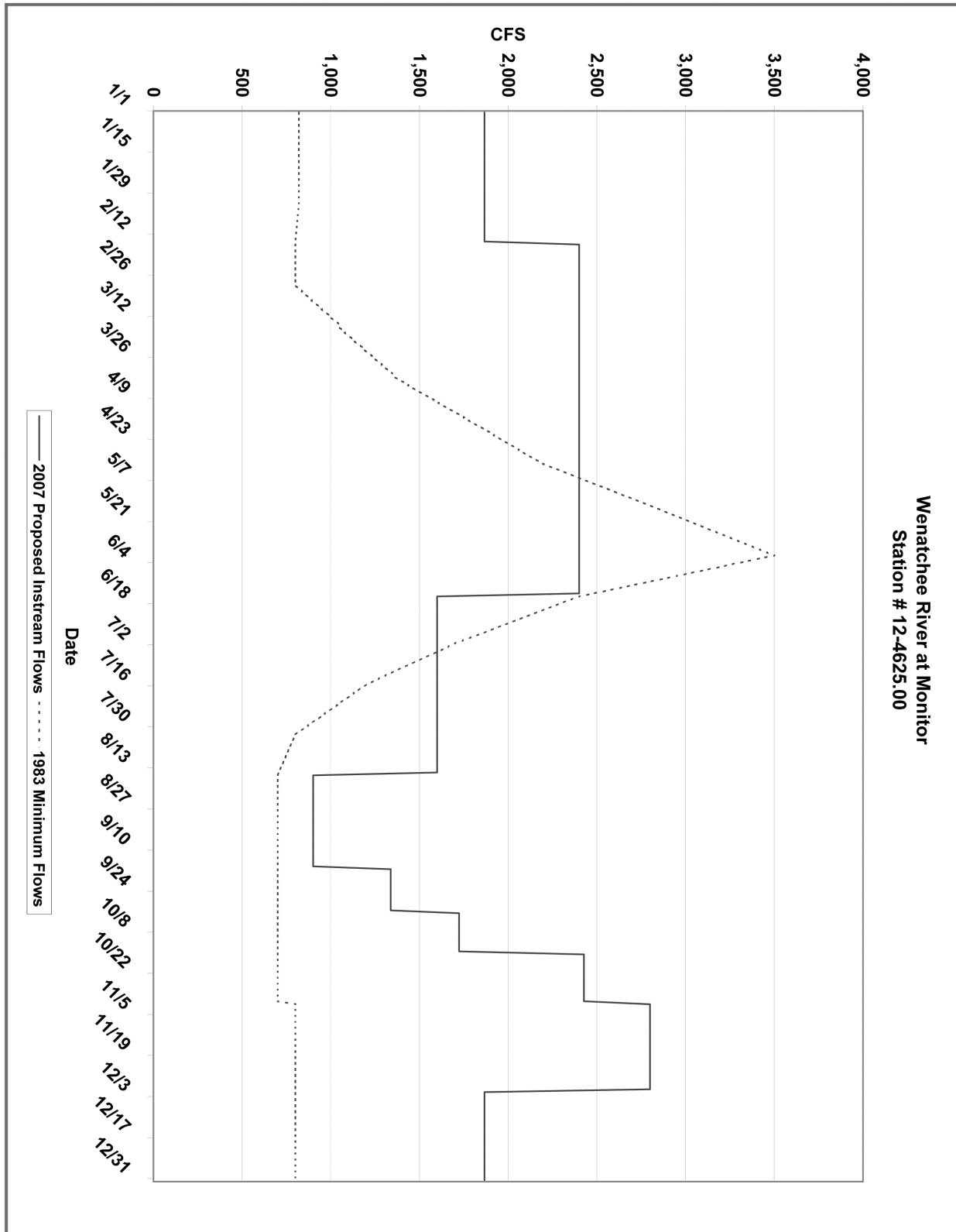












[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 08-01-045 (Order 07-06), § 173-545-170, filed 12/12/07, effective 1/12/08.]