



DEPARTMENT OF
ECOLOGY
State of Washington

Rule Implementation Plan

Chapter 173-518 WAC

Water Resources Management Program for the Dungeness Portion of the Elwha- Dungeness Water Resource Inventory Area (WRIA) 18

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Contact Information

This report is available on the Department of Ecology's Web site at <https://fortress.wa.gov/ecy/publications/SummaryPages/1211040.html>

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Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.328)

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Purpose

Ecology provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

Introduction

The purpose of this rule implementation plan is to inform those who must comply with Chapter 173-518 WAC, Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA) 18, and how the Department of Ecology (Ecology) intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance for the rule.
- Evaluate the rule.
- Train and inform Ecology staff about the new rule.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the new rule or any amendments to the rule in the future.
- Other resources where more information about the rule is available.
- Contact information of Ecology employees who can answer questions about the rule implementation.

Implementation and Enforcement

Implementation will occur through Ecology's Southwest Regional Office.

Implementation strategies consist of:

- Technical assistance
- Water budget neutral determinations and permitting
- Compliance and enforcement
- Data collection and management
- Education and outreach (see next section).

Technical Assistance

Existing Ecology Southwest Regional Office (SWRO) staff will provide technical assistance for state and local agencies, and those affected by the rule. Specifically:

Existing SWRO Water Resources Program regional staff will help provide technical assistance to the Clallam County's SEPA and land development processes, as well as provide informational education and outreach materials and assistance to citizens, developers, and water right holders.

Designated SWRO Water Resources Program regional staff, who currently have primary responsibility for compliance and enforcement action in the 12 counties of the southwest regional office, can provide education and technical assistance to achieve voluntary compliance.

Water Budget Neutral Determinations and Permitting

- **Dungeness Water Exchange (DWE)**

Once the rule is adopted, Ecology anticipates that the Dungeness Water Exchange (DWE) will begin sale of mitigation certificates so that new groundwater users, particularly new residential users, have an affordable means of meeting the mitigation requirement in the rule. The DWE's mitigation program will operate in accordance with a mitigation plan that must be approved in advance by Ecology. Ecology's review of the mitigation plan will be performed by one staff member of the Water Resources Program's Program Development and Operations Support section and another at the SWRO. Potential residential water users, as well as SWRO's implementation costs, will be affected by the extent of cooperation between Ecology and Clallam County.

Ecology and Clallam County are considering a Memorandum of Understanding (MOU) outlining the fundamental roles and responsibilities of each with respect to rule implementation. A key element of such an MOU is working together to support implementation of the DWE and accepting mitigation certificates issued by the DWE to satisfy the provisions of this rule and the Growth Management Act's requirements regarding the adequacy of water supply (RCW 19.27.097).

- **New domestic water uses relying on the groundwater permit exemption**

With the MOU in place, developers, homebuilders, or lot owners seeking to build new homes would work primarily with the Clallam County development review processes and either directly or indirectly with the DWE.

Without the MOU, those developers, homebuilders, or lot owners seeking to build new homes using the groundwater permit exemption would need to submit a request to Ecology for a determination that the proposed permit-exempt use would be water budget neutral. Ecology will assign staff to review the applications and requests for determination. Once Ecology determined the new use to be water budget neutral, the County development review process would proceed to completion.

To ease the transition to a new water management framework, the County will cover the new cost to mitigate domestic water use until June 30, 2013 using funds from their Watershed Implementation grant, funded by Ecology. Additionally, Ecology is requesting funds for the 2013-15 biennium for water supply projects that support mitigation, flow restoration and to

offset the cost of mitigating new domestic water use. These decisions do not alter the rule's requirements, nor would they alter the responsibility of new water users in the future to bear the cost of mitigation for new domestic water use if the legislature decides not to fund it.

- **New groundwater uses relying on the groundwater permit exemption for purposes that do not include domestic water use**

New or current lot owners who would begin or expand a non-commercial irrigation, industrial, or stock water use would need to submit a request to Ecology for a determination that the proposed permit-exempt use would be water budget neutral. *Ecology will assign staff to review the applications and requests for determination.* Once Ecology determined the new use to be water budget neutral, the lot owner could proceed with the proposed new or expanded use.

- **New surface water or groundwater uses requiring a water right permit**

All new water right permitting (which excludes permit-exempt uses) requires processing by SWRO Water Resources permitting staff. As with permit-exempt new uses, if the consumptive use associated with a water right application is offset by credits purchased from the DWE, the review process is simplified, accounting for the new permit is accomplished, and the accounting would be communicated among the DWE, Clallam County, and the SWRO.

Additionally, the work associated with water right application processing includes: communicating with the applicants and their representatives; conducting a site investigation; evaluating the application against the 4-Part Test specified in the water code review of the mitigation plan (if the applicant proposes his/her own mitigation plan, that plan needs to be reviewed and approved based on criteria in the proposed rule); and consideration of any technical studies submitted by the applicant. Processing will be conducted by water right permitting staff at SWRO or through a cost reimbursement agreement funded by the applicant.

There are approximately 45 pending water right applications in the Dungeness watershed. It is expected that mitigation will be required for all these applications.

With the MOU in place, Ecology will be able to work with applicants in processing permit applications.

Without the MOU, Ecology will spend more time reviewing individual water budget neutral determination requests, and expects fewer resources to be available to work on the pending water right applications in the Dungeness watershed.

Compliance and Enforcement

Enforcement of this rule will follow the same procedures used in other water management rules and as outlined in Water Resources Program Enforcement Policy (<http://www.ecy.wa.gov/programs/wr/rules/images/pdf/pol2005.pdf>).

This policy is consistent with WAC 173-518-110 of the new rule which emphasizes voluntary compliance except in egregious cases involving potential harm to other water rights or the environment.

The rule does not include a limit on the amount of water allowed for each household's domestic use. Ecology anticipates that the average essential indoor domestic use will be approximately 150 gallons per day and that a large household might use approximately 300 - 350 gallons per day.

A mitigation certificate holder for domestic use only may be contacted if metering data shows:

- a substantial increase in water use during the irrigation season each year, or
- a sudden spike in water use.

Inquiries will be made about whether their use has changed, whether a pipe is broken, or if additional water is desired and whether additional mitigation is needed.

Data Collection and Information Management

Mitigation, domestic reserves, maximum depletion amounts for each subbasin, and maximum allocations from the Dungeness River all require monitoring and tracking to ensure accurate accounting.

Under the MOU, Clallam County staff would tabulate building permit information on a spreadsheet, and submit this information to Ecology and the DWE on a quarterly basis.

Ecology SWRO staff will collaborate with the DWE to track, enforce, and regularly make available to the public the status of the reserves and maximum depletion amounts.

Ecology SWRO staff will track maximum allocation amounts through water right permitting activity.

Ecology staff will initially debit the reserve based on estimated average consumptive use from new residences.

Ecology staff at SWRO will ultimately be responsible for ensuring that appropriate meters have been properly installed for all new water right holders and exempt well users in the basin. Ecology may work with a local agent on this project, but the collection and management of metering data is Ecology's responsibility. Ecology has a metering data base and metering data will be entered into the data base as staff time permits. Ecology and the DWE will review metering data to evaluate the adequacy of mitigation and status of the reserves and maximum depletion amounts.

Informing and Educating Persons Affected by the Rule

Staff of the Public Information Section at Ecology headquarters, with the aid of the rule writer and staff of SWRO, will prepare various focus sheets and other written materials. This information will be sent to interest parties on our local distribution lists and also be available from Ecology, Clallam County, and on Ecology's Web site. Ecology expects to make use of the internet for on-going distribution of information on rule requirements and related water management issues.

We anticipate using 0.5 FTE from the HQ Public Information Section staff for six months for outreach and communication following rule adoption.

Promoting and Assisting Voluntary Compliance

With the MOU in place, Ecology will focus efforts to achieve voluntary compliance with this rule through technical assistance, training, and complaint response. Our experience is that the vast majority of water users will come into compliance voluntarily when they know what they are required to do. We will provide training opportunities to well drillers, County staff, conservation district staff and other stakeholders.

It is important to make the affected public aware of the limits under the rule at the earliest possible time. Prospective applicants will be given information and technical assistance when they apply for a plat approval or building permit. Ecology and County staff will work with applicants to ensure they understand what they can or must do to access water supplies for their proposal.

Ecology will maintain informational material on the rules, related water management and current conservation practices, and current maps, at the SWRO as well as with Clallam County, Clallam Public Utility #1, and other relevant agencies. This information will also be available on Ecology's Web site.

Absent the MOU, Ecology will rely on the following process to promote and assist voluntary compliance with the rule:

As part of a permit application to appropriate public groundwater or a request for a determination of water budget neutrality, applicants or requesters will provide the following information to Ecology SWRO:

- Identification of one or more water rights to be placed in the trust water right program or other water management projects to offset the consumptive use associated with the proposed new use of groundwater.
- A site map.
- A map of the area to be irrigated and the number of acres.
- A soil report, if proposed household discharge is to a septic system and the applicant or requestor proposes to deviate from the values in WAC 173-518-080(5).

- A permanent property covenant that restricts or prohibits trees or shrubs over the septic drain field.
- A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.

Applications to appropriate public groundwater or requests for determination of water budget neutrality that do not include this information will be rejected and returned to the applicant.

No new permit-exempt withdrawals of groundwater under RCW 90.44.050 may be commenced unless Ecology has approved a request for determination that the proposed exempt use would be water budget neutral. This can be accomplished either through the DWE or by consulting with the SWRO.

Evaluating the Rule

The adoption of the Water Resource Management Rule for the Dungeness basin is intended to protect in-stream flow levels and existing water rights, while allowing for economic development in the community.

A measure of rule effectiveness will be a self sustaining mitigation program through the DWE, and annual assessment of the adequacy of mitigation provided to offset new uses of water.

Ecology will maintain ongoing monitoring of stream flow levels in basin streams to the extent resources are available. We will consult with Washington Department of Fish and Wildlife regularly on the effectiveness of mitigation plans and the health of the streams and surrounding ecosystems. We will also seek input from other local biologists.

Training and Informing Ecology Staff

Ecology's water resources management and staff will be briefed on the rule through direct communication by the Water Resources Program Leadership Team and subsequent staff meetings, Web site, email notification and regional office visits as may be necessary to educate and inform those staff dealing with applicants wanting to withdraw groundwater in the Dungeness watershed.

List of Supporting Documents that May Need to be Written or Revised

- Overview of the Dungeness Water Resources Management Rule.
- Brochures for distribution by the County's building and planning departments.
- Web updates and information.
- Metering specification sheet.
- Mitigation guidance for the Dungeness Water Exchange (funded through a grant to Clallam County).

More Information

<http://www.ecy.wa.gov/programs/wr/instream-flows/dungeness.html>

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