

## Chapter 173-525 WAC

### WATER RESOURCES MANAGEMENT PROGRAM FOR THE GRAYS-ELOCHOMAN BASIN, WRIA 25

#### PART A GENERAL

#### NEW SECTION

**WAC 173-525-010 Authority, purpose and applicability.** (1) The department of ecology (ecology) adopts this chapter under the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water code (chapter 90.03 RCW), Regulation of public groundwaters (chapter 90.44 RCW), RCW 43.21A.064(9), and 43.21A.080.

(2) This chapter shall not affect existing water rights, including perfected riparian rights, or other appropriative right, unless otherwise stated in the conditions of the water right in question. An existing permit-exempt withdrawal is not subject to the rule to the extent it has been put to beneficial use on the subject property for the purpose of use in question. This chapter shall not affect federal Indian and non-Indian reserved rights.

(3) This chapter does not limit ecology's authority to establish flow requirements or conditions under other laws, including hydropower licensing under RCW 90.48.260.

(4) Ecology reserves the right to require new and existing water users to install, maintain, and report data from a measuring device (water meter) as indicated in chapter 173-173 WAC.

(5) The Grays-Elochoman and Cowlitz watershed management plan (plan) recommendations were approved in 2006 by the Grays-Elochoman and Cowlitz planning unit (planning unit) in accord with RCW 90.82.130. The planning unit is a group made up of Lewis, Wahkiakum, Cowlitz, and Skamania county commissioners and a broad range of water use interests. Ecology shall use the plan as the framework for making future water resource decisions in the Grays-Elochoman watershed. Ecology shall rely upon the plan as a primary consideration in determining the public interest related to such

decisions, including this rule adoption.

(6) Ecology shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. Ecology and the planning unit should periodically evaluate the effectiveness of this chapter.

#### NEW SECTION

**WAC 173-525-020 Definitions.** For purposes of this chapter, the following definitions shall be used:

"Allocation" means the designation of specific amounts of water for specific beneficial uses.

"Appropriation" means a beneficial use of waters of the state, authorized by and consistent with all applicable laws and regulations.

"Community water supplier" means an entity that supplies water for fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year.

"Consumptive use" means a use of water whereby there is diminishment of the amount or quality of the water source.

"Cubic feet per second (cfs)" means a rate of flow commonly measured or calculated in streams or rivers. One "cfs" is equal to 7.48 gallons of water flowing a distance of one foot in one second.

"Ecology" means the Washington state department of ecology.

"Environmental restoration project" or "ERP" means a project with a primary purpose of restoring salmonids, requiring a temporary use of water.

"Habitat-forming function" means a physical, chemical, or biological function that is necessary to create and maintain natural or desired habitat conditions that benefit fish and other aquatic life. Habitat forming functions include but are not limited to creating and maintaining the following: Channel migration, gravel and sediment transport, water quality, nutrients, large woody material recruitment, flood plain flows, and riparian habitat.

"Habitat-related action" means improving desirable riparian, stream, wetland, or flood plain functions and related biological, chemical, and physical processes.

"Instream flow" means a level of stream flow, established under chapters 90.03, 90.22, 90.54 and 90.82 RCW, necessary in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term instream flow is synonymous with "minimum flow" as used in chapters 90.03 and 90.22 RCW, "base flow" as used in chapter 90.54 RCW, and "minimum instream flow" as used in chapter 90.82 RCW.

"Interruptible use" means a type of water use that relies upon periodic or seasonal withdrawals that if interrupted would not cause substantial hardship or health or safety concerns, or that is highly unlikely to be interrupted during the expected period of use. For the purposes of this chapter, interruptible uses are subject to the instream flows set in WAC 173-525-060.

"Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source or where there is no diminishment of the amount or quality of the water source.

"Overall stream flow depletion" means the depletion of water from a subbasin without accounting for offsetting actions, as required under WAC 173-525-100(3).

"Permit-exempt withdrawal" or "permit exemption" means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but otherwise subject to surface and ground water statutes and other applicable laws.

"Planning unit" means the Grays-Elochoman and Cowlitz watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Grays-Elochoman and Cowlitz watershed planning initiating governments.

"Public water system" means any system, 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, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

"Reservation" means a one time, finite allocation of water for future beneficial uses. For the purposes of this chapter, the reservation is not subject to instream flows set in WAC 173-525-060, nor to closures set in WAC 173-525-070. The reservation is senior to the instream flow water rights set in WAC 173-525-060.

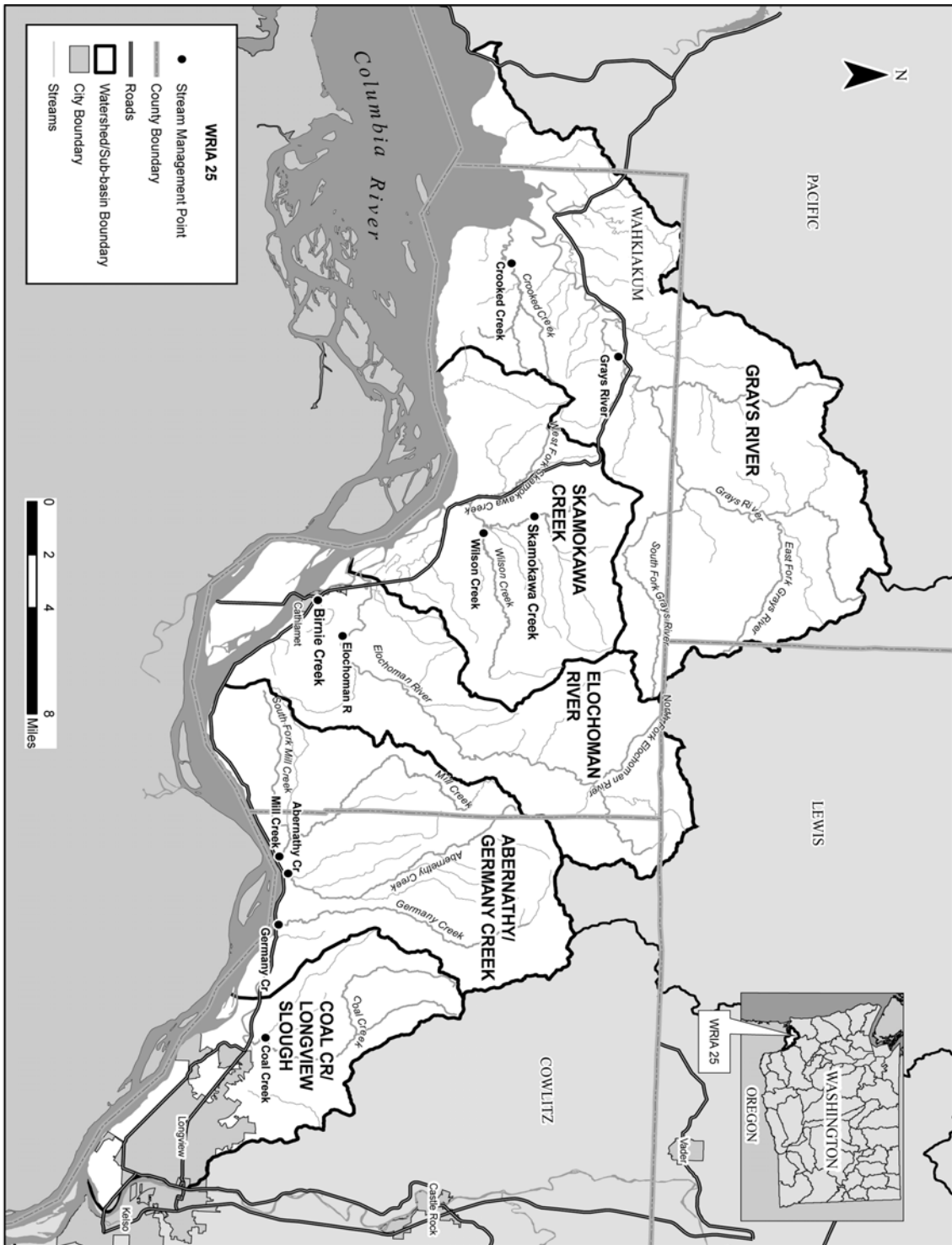
"Water-related action" means an offsetting activity that provides a quantity of water during certain times and at certain places that essentially replaces water at or upstream of where a proposed water right would impact surface flow. Water-related actions include but are not limited to acquiring an active water right or donating a water right to the trust water right program under chapter 90.42 RCW.

"Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes or a permit-exempt ground water withdrawal.

"Watershed plan" means the Grays-Elochoman and Cowlitz watershed management plan, adopted on July 21, 2006, by the Cowlitz, Lewis, Skamania, and Wahkiakum county commissioners.

"Withdrawal" means the extraction of ground water or the diversion of surface water for a beneficial use.

WRIA 25 Stream Management Subbasins and Control Points



Note to Map Users:  
 Map produced by Department of Ecology, Water Resources Program.  
 Map information was compiled from Department of Ecology GIS and other governmental sources.

WASHINGTON STATE  
 DEPARTMENT OF  
 ECOLOGY  
 WATER RESOURCES GIS 2/23/2010

NEW SECTION

**WAC 173-525-040 Compliance and enforcement.** (1) Ecology shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

(2) When ecology determines that a violation of this chapter has occurred:

(a) Ecology shall first attempt to achieve voluntary compliance, except in appropriate cases involving potential harm to other water rights or the environment. An approach to achieving voluntary compliance is to offer information and technical assistance to a violator. The information or technical assistance identifies, in writing, one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, ecology has the authority to issue a notice of violation, a formal administrative order under RCW 43.27A.190, assess penalties under RCW 43.83B.336 and 90.03.600, or may seek criminal enforcement under RCW 90.03.400, 90.03.410, and 90.44.120.

**PART B  
INSTREAM FLOWS AND CLOSURES**

NEW SECTION

**WAC 173-525-050 Stream management control points.** Ecology hereby establishes the following stream management control points shown in Table I. Management point locations are shown in WAC 173-525-030.

**Table I  
Stream Management Control Point Information**

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
Coal Creek (at Harmony Drive)	RM 0.9; 46°11'12"N, 123°2'9"W
Germany Creek (at Germany Creek Road)	RM 0.6; 46°11'46"N, 123°7'36"W
Abernathy Creek (at Abernathy Road)	RM 0.3; 46°11'43"N, 123°9'56"W

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
Mill Creek (at Mill Creek Road, past bridge)	RM 0.3; 46°11'26"N, 123°10'43"W
Birnie Creek (at SR 4)	RM 0.4; 46°12'17"N, 123°22'55"W
Elochoman River (at Highway 407 bridge)	RM 4.3; 46°13'7"N, 123°21'13"W
Skamokawa Creek (at Peterson Road)	RM 4.4; 46°18'51"N, 123°27'10"W
Wilson Creek (at East Valley Road)	RM 0.3; 46°17'20"N, 123°26'19"W
Crooked Creek (at Eden Valley Road)	RM 2.3; 46°17'51"N, 123°39'7"W
Grays River (at covered bridge)	RM 10.5; 46°21'17"N, 123°34'52"W

NEW SECTION

**WAC 173-525-060 Establishment of instream flows.** (1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the department of fish and wildlife, department of agriculture, and department of commerce; and public input received during the rule-making process. The planning unit recommended these instream flow levels by unanimous vote.

(2) Instream flows established in this chapter are water rights, which protect instream values and functions from future appropriations. The priority date of the instream flows is the effective date of this chapter. In accordance with RCW 90.82.080, this priority date received unanimous approval from the planning unit.

(3) Instream flow rights shall be protected from impairment by any new water rights put to beneficial use after the effective date of this chapter and by all future changes and transfers of senior and junior water rights, including both surface and ground water rights. The following water rights are not subject to the instream flows:

(a) A water right put to beneficial use before the effective date of this chapter, unless stated in the conditions of the water right or change authorization.

(b) Water rights appropriated from the reservation of water established in WAC 173-525-100.

(c) Water rights for environmental restoration purposes under WAC 173-525-120, unless included as a permit condition.

(4) Instream flows, expressed in cubic feet per second (cfs),

are measured at the stream management control points in WAC 173-525-050. Stream management points apply to stream reaches as follows:

(a) Instream flows apply to all stream reaches that contribute to flow at stream management control points, as shown in Table II of this section;

(b) For reaches that are downstream of all management points, the flows established for the nearest upstream management control point shall apply; and

(c) If a point of withdrawal is downstream of the confluence of two or more branches, each having a designated management point, both management points shall apply to that withdrawal.

**Table II**  
**Instream Flows in the Grays-Elochoman Basin (cubic feet per second)**

Month	Stream Management Control Point				
	Coal Creek, RM 0.9	Germany Creek, RM 0.2	Abernathy Creek, RM 0.3	Mill Creek, RM 0.3	Birmie Creek, RM 0.4
January	76	81	97	105	13
February	98	103	123	132	13
March	98	103	123	132	25
April	98	103	123	132	25
May	98	103	123	132	25
June	65	68	81	87	17
July	65	68	81	87	17
August	25	28	35	38	5
September	114	121	145	157	5
October	114	121	145	157	13
November	114	121	145	157	13
December	76	81	97	105	13

Month	Stream Management Control Point				
	Elochoman River, RM 4.3	Skamokawa Creek, RM 4.4	Wilson Creek, RM 0.3	Crooked Creek, RM 2.3	Grays River, RM 10.5
January	237	71	33	9	344
February	283	71	44	19	401
March	283	91	44	19	401
April	283	91	44	19	401
May	283	91	44	19	401
June	189	61	29	13	267
July	89	61	29	13	267
August	65/72*	24	10	3	147
September	155	106	49	3	227/516**
October	355	106	49	9	516
November	355	106	49	9	516
December	355	71	33	9	516

\* The Elochoman River, RM 4.3 instream flow right is for 65 cubic feet per second (cfs) from August 1 to August 14, and 72 cfs from August

15 to August 31.

\*\* The Grays River, RM 10.5 instream flow right is for 227 cfs from September 1 to September 15, and 516 cfs from September 16 to September 30.

NEW SECTION

**WAC 173-525-070 Surface and ground water closed to further consumptive appropriations.** (1) Based on historical and current low flows and the water withdrawals by existing water right holders, ecology has determined that no waters are reliably available for new consumptive uses from certain surface water sources in the basin. Therefore, all surface waters listed in Table III are closed to any further consumptive appropriation, except as provided in WAC 173-525-080.

**Table III  
Surface Water Closures**

Subbasin Name*	Affected Reach
Abernathy/Germany Creek	Abernathy Creek from mouth at Columbia River to headwaters, including tributaries. Germany Creek from mouth at Columbia River to headwaters, including tributaries. Mill Creek from mouth at Columbia River to headwaters, including tributaries.
Elochoman River	Elochoman River from river mile 2.2 (46°13'35"N, 123°22'41"W) to headwaters, including tributaries.
Skamokawa Creek	Skamokawa Creek from river mile 0.5 (46°16'34"N, 123°27'34"W) to headwaters, including tributaries.
Grays River	Grays River from river mile 5 (16°20'8"N, 123°37'54"W) to headwaters, including tributaries.

\* Subbasin boundaries are shown in WAC 173-525-030, and are consistent with the boundary descriptions used in the watershed plan.



(2) Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, there is a high likelihood that future ground water withdrawals would capture water that affects closed surface waters. Therefore, the basin is closed to new withdrawals of ground water (including any new permit-exempt withdrawals) that would affect closed surface waters, except as provided in WAC 173-525-080.

(3) Applications for a withdrawal that would not affect the closed reaches, listed in Table III, shall be evaluated on a case-by-case basis under applicable law.

### **PART C FUTURE WATER RIGHTS**

#### NEW SECTION

**WAC 173-525-080 Future water rights, generally.** A new surface or ground water appropriation (including any permit-exempt withdrawal) may be commenced only if consistent with the surface and ground water statutes and other applicable requirements of law and if any one of the following seven conditions (subsections (1) through (7) of this section) apply:

(1) The proposed water use is nonconsumptive.

(2) The proposed surface water diversion is not located on any of the surface waters closed in WAC 173-525-070, Table III.

(3) The proposed ground water withdrawal is located where it would not affect any of the surface waters closed in WAC 173-525-070, Table III. A person or entity seeking to commence such a withdrawal must show, through scientifically sound studies and technical analysis, that the proposed withdrawal would not affect any of the closed surface waters identified in WAC 173-525-070, Table III.

(4) The person or entity seeking to commence the new appropriation submits a scientifically sound mitigation plan, approved by ecology. A mitigation plan shall be approved if the proponent can demonstrate to ecology's satisfaction that when the mitigation is implemented the proposed withdrawal(s) will not impair senior water rights, including instream flow rights, adversely impact instream resources, or diminish water quality. A mitigation plan can be submitted to mitigate for an individual withdrawal or to mitigate for multiple withdrawals in a defined region.

An approved mitigation plan shall include a monitoring and reporting plan. It shall also include conditions that the plan be

implemented as long as the associated water right is used and that any water provided for mitigation purposes be prohibited from being applied to any other purpose. If monitoring of a mitigation plan shows the mitigation is not effective, ecology's approval of the mitigation plan shall be suspended and the water use shall cease until ecology approves a new or revised mitigation plan.

(5) The proposed water use qualifies as an interruptible use as defined in WAC 173-525-020, and meets the criteria in WAC 173-525-090.

(6) The proposed water use qualifies for the reservation established and as conditioned in WAC 173-525-100.

(7) The proposed use is for an environmental restoration project and meets the criteria in WAC 173-525-120.

NEW SECTION

**WAC 173-525-090 Future appropriations for interruptible use.**

(1) Ecology finds there may be water available above existing water rights and instream flows, which may be captured for interruptible use. This water is only available from such water sources and during periods as specified in Table IV.

(2) Prior to commencing use, the person or entity seeking a new interruptible appropriation must demonstrate a seasonal need and provide assurances that any effects on surface water that may result from withdrawals will be limited to the periods and locations specified in Table IV.

(3) Ecology shall deny an appropriation for interruptible use if such use, or the cumulative effects of such uses, would compromise habitat-forming functions provided by high flows. In no case shall new individual or cumulative allocations exceed the values indicated in Table XX as specified for each water source. However, ecology may lower these allocation limits on a case-by-case basis whenever more protection of habitat-forming functions is needed.

(4) Interruptible uses are subject to existing water rights and instream flows set in WAC 173-525-060.

**Table IV  
Interruptible uses - periods and limits on future allocation**

Water Source Name	Period Available (date)	Allocation Limit* (cubic feet per second)
Grays River	November 16 to April 30	50
Elochoman River	November 16 to April 15	50

\* Due to case-by-case determinations of flow for habitat forming function needs, the maximum allocation may be less.

NEW SECTION

**WAC 173-525-100 Reservations of surface and ground water for future uses.** (1) Ecology has weighed the public interest that supports the reservation of a limited amount of water for future consumptive uses against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by limited reservations clearly overrides the small potential for negative impacts on instream resources.

(2) Based on this finding, ecology hereby allocates an amount and rate of water withdrawal for specific water users and subbasins, as indicated in Table V. The reservations are a one time, finite resource. When and if water is fully appropriated from the reservations established in this section, all remaining waters in closed areas are hereby appropriated for instream flow use.

A reservation is available to a user only if the conditions set forth in subsection (3) or (7) of this section are met, as well as any applicable requirements of law, including but not limited to all water resource laws and regulations. Prior to the appropriation of a water right from a reservation, ecology must receive written confirmation from the county with jurisdiction where a reservation applies. Such confirmation must provide assurances that the county will issue building permits and subdivision approvals consistent with this chapter, including rule provisions affecting permit-exempt ground water supplies.

The designation of specific municipal suppliers in a reservation does not create a right for these entities to use such water. Such a right will arise only if a permit is applied for by such municipal suppliers to use water under the reservation and approved by ecology after applying the legal tests for a new appropriation. With respect to any water for which a permit has not been granted, ecology reserves the right to modify in all respects or rescind a reservation by future rule making.

(3) Ecology will approve a water right application for water from a reservation if all of the following conditions in (a), (b), (c), and (d) of this subsection are met:

**Alternatives analysis**

(a) The applicant demonstrates that no practicable supply alternatives to the reservation are available. In order to satisfy this condition, an applicant must demonstrate consideration of other regional water sources to supply water for the same use now being proposed, including:

- (i) Existing public water system supply;
- (ii) Water from a ground or surface water source, which may be withdrawn without affecting any of the surface waters closed in WAC

173-525-070, such as water from a hydraulically disconnected deep aquifer source or tidally influenced areas near the Columbia River;

(iii) Supply options from surface and ground water storage;

(iv) Water savings from conservation techniques, such as reuse of waste water; and

(v) Mitigation and minimization considerations to the extent required in (d) of this subsection, impact analysis.

#### **Water-related offset**

(b) The applicant demonstrates it will offset the overall streamflow depletion(s) through water-related actions to the maximum extent practicable. Applicants should offset at least one-half of the overall streamflow depletion(s) through water-related actions.

(i) In evaluating the adequacy of water-related actions to offset depletions, ecology will evaluate the action based on the degree of aquatic benefit it would provide. A water-related offset may have a greater or lesser benefit due to the timing, location, or quality of water provided. The level of benefit will be used to determine if any additional offsets will be required of the applicant.

(ii) Ecology will consider water-related offsets only to the extent that reasonable assurance exists that such offsets will be successfully delivered, such as a donation to the trust water right program under chapter 90.42 RCW where delivery is legally guaranteed.

#### **Habitat-related offset**

(c) After satisfying the water-related offset requirement in (b) of this subsection, an applicant must offset any remaining streamflow depletion through habitat-related actions that create or improve habitat. Habitat-related offsets must compensate for the habitat loss or degradation that will result from the streamflow depletion permitted from the reservation.

An applicant must provide adequate assurances that a habitat-related action in fact occurs. Ecology, as appropriate, shall condition use of the reservation with performance standards and monitoring requirements, or require financial assurance mechanisms prior to reservation use.

#### **Impact analysis**

(d) In keeping with the findings of the watershed plan, ecology finds that the public interest supports avoidance and minimizing impacts to tributaries. The applicant must demonstrate one of the following:

(i) The proposed withdrawal does not impact tributaries to subbasin mainstems; or

(ii) An impact to a tributary to a subbasin mainstem is unavoidable, as demonstrated by an impact analysis, included as part of the alternatives analysis under (a) of this subsection. In addition to demonstrating the necessary considerations under (a) of this subsection, the impact analysis must demonstrate consideration of water supply options that avoid and minimize the impact to the tributary.

Ecology, in consultation with the department of fish and

wildlife, may require an applicant to monitor effects of a ground water withdrawal as a condition of water use.

**Application review and permitting**

(4) In determining practicability in subsection (3) of this section, ecology will consider both economic and logistic considerations, as well as guidance from the watershed plan.

(5) Ecology, in consultation with the department of fish and wildlife, will evaluate the adequacy of proposed offsets and alternatives analysis in subsection (3) of this section. The evaluation shall be consistent with the watershed plan and guidance documents approved by ecology. Ecology will also consider recommendations and technical advice received from the planning unit or by an advisory committee, formally designated by the planning unit.

(6) Ecology will issue a permit for use of water equal to the amount it determines from a reservation after applying the conditions of this subsection, and such amount will be debited from the total reservation amount. The total quantity of water appropriated shall not exceed the amount and rate listed under the subtitle "Streamflow Depletion" in Table V. However, ecology will issue a permit for a quantity beyond the amount debited from the reservation for the following:

(a) Water-related offsets to the extent such offsets are water-for-water, to the satisfaction of RCW 90.03.380 or 99.44.100, any other applicable laws, and terms of an approved mitigation plan under WAC 173-525-080(4); and

(b) Water use to the extent closed water sources are not affected and to the satisfaction of applicable requirements of law, including but not limited to all water resource laws and regulations.

(7) In keeping with the findings of the watershed plan and in order to implement this rule, ecology may prioritize its decision making for a water right application for a new appropriation from a reservation under this subsection. Ecology will only approve such applications ahead of others when the new appropriation would not diminish the water available to earlier pending applicants for an appropriation from the same source of supply. Ecology's decision to prioritize an application under this subsection shall be made in conjunction with other priority processing decisions made by ecology under chapter 173-152 WAC.

**Permit-exempt ground water use**

(8) The requirements in subsection (3) of this section do not apply to permit-exempt withdrawals. However, permit-exempt withdrawals under RCW 90.44.050 are subject to both of the following conditions in order to occur under the reservation:

(a) Future permit-exempt well use may not occur where connection to an existing community water supplier can be provided in a timely and reasonable manner. Determinations of timely and reasonable shall be consistent with public water system plans, local ordinances, and state laws.

(b) Water use from a permit-exempt ground water well must be consistent with the allocation limits of a reservation, applicable

county and municipal codes, and other applicable laws, including the statute on permit exemptions, RCW 90.44.050. Single or group domestic uses under the permit exemption shall not exceed five thousand gallons per day. Irrigation of lawn and noncommercial garden under the permit exemption shall not exceed one-half acre.

**Table V  
Allocation of Reservation**

Subbasin Name*	Water User**	Streamflow Depletion (cfs)
Abernathy/Germany Creek	Permit-exempt ground water wells in Wahkiakum County	0.07
	Permit-exempt ground water wells in Cowlitz County	0.36
Elochoman River	Other public water systems in Wahkiakum County	0.37
	Permit-exempt ground water wells in Wahkiakum County	0.02
Skamokawa Creek	Permit-exempt ground water wells	0.20
Grays River	Wahkiakum Public Utility District	0.30
	Other public water systems in Wahkiakum County	0.75
	Permit-exempt ground water wells in Wahkiakum County	0.20

\* Subbasin boundaries are shown in WAC 173-525-030, and are consistent with the boundary descriptions used in the watershed plan.  
 \*\* In the Grays-Elochoman and Cowlitz watershed management plan, the term "domestic wells" has the same meaning as "permit-exempt ground water wells" and the term "small community water systems" has the same meaning as "public water systems."

NEW SECTION

**WAC 173-525-110 Accounting for use under the reservation.**

(1) Ecology shall maintain a record of all appropriations from the reservation.

(2) For an appropriation under a permit, ecology will account for water use under the reservation based on authorized quantities under water right permits or certificates, and according to WAC 173-525-100(6).

(3) For permit-exempt ground water appropriations, ecology will deduct a standard amount of two hundred forty gallons per day for each well. For a group domestic water system under the permit-exemption, the standard amount will be applied for each domestic or residential service connection. The standard amount will be adjusted periodically to reflect actual use during low flow conditions. The standard amount assumes a rate of septic recharge from an on-site septic system. In the event that on-site septic recharge is known not to occur, ecology will deduct an additional

five hundred sixty gallons per day. Additionally, ecology reserves the right to account for water use based on the best available information contained in well logs, approvals issued by local jurisdictions, or other documents.

(4) If a water user under the reservation subsequently abandons or relinquishes the withdrawal, ecology will credit back to the reservation the actual amount of water used and/or debited from the reservation, upon demonstration to ecology that the well or surface water diversion has been decommissioned through written certification.

(5) Ecology shall notify the affected county and the planning unit, when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of the reservation is appropriated for a water user in Table IV.

#### NEW SECTION

**WAC 173-525-120 Future surface water withdrawals for environmental restoration.** In keeping with the findings of the watershed plan, ecology finds that the public interest advanced by future withdrawals for environmental restoration projects (ERPs), as defined and conditioned in this section, clearly overrides the minimal negative impacts on instream flows.

(1) A future withdrawal for an ERP may be approved only if it meets all the following:

(a) The proposed water use is for a bypass flow for salmonid restoration or riparian planting project, and the primary purpose of the project is to restore salmonids.

(b) The proposed project will result in aquatic habitat benefits, and such benefits will exceed any detriment the reduced flow may have on aquatic habitat during the times and location of withdrawal(s) for the project.

(c) The proposed use qualifies for a temporary permit.

(2) Ecology, in consultation with the department of fish and wildlife, will evaluate proposed ERPs. ERPs approved by ecology are not subject to closures or instream flows set in this chapter, unless otherwise conditioned by the permit.