

Proposed Legislation

Ensuring that the current Columbia River Rules Washington Administrative Code (WAC) 173-563 and 173-531A can be implemented

The Problem

The Office of Columbia River implements the law governing Columbia Basin Water Supply, [Chapter 90.90 RCW](#), which was adopted in 2006. Following legislative directive, Ecology promotes water supply development and takes permitting actions to ensure that water will be available for fish, farms, and growing communities in the Columbia River basin.

The existing regulatory framework, provided in the Columbia River rules, has been in place since July 1997, when the Legislature passed a law that directed Ecology to process pending applications for Columbia River water supplies (ESHB 1110). Recent Washington State Supreme Court cases involving disputes in other parts of the state have caused uncertainty about the rules that apply to water right permits issued from the Columbia River and connected groundwater bodies.

If legislation is not passed, this uncertainty over the status of rules governing the processing of new water right permit applications will stymie important water supply projects that also include important fish habitat protection and enhancement components.

Ecology's Proposal

Ecology is proposing that the legislature amend Chapter 90.90 RCW to clearly state that the Columbia River rules WAC 173-563, adopted by Ecology in 1980 and amended in 1998, and WAC 173-531A are consistent with legislative intent and are specifically authorized to be maintained and implemented by Ecology.

If passed, the bill would affirm the state's existing authority to manage water consistent with rules that have been in place for 20 years. It would provide certainty for water right applicants and promote environmental improvements in the Columbia River basin.

WHY IT MATTERS

By clearing up uncertainties brought about by recent court decisions, the legislation will remove barriers to the timely issuance of water rights from the Columbia River. The added certainty will allow the state to more efficiently issue permits. The public will benefit by having a clearer set of requirements for obtaining permits.



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How it will benefit Washington

As population grows, the climate changes, and regulatory flow requirements increase, managing these increasing and competing demands for freshwater resources is a challenge. Providing clarity and certainty around the status quo of the Columbia River water management and permitting requirements will allow the Office of Columbia River to continue to deliver integrated water solutions and to develop additional instream flow opportunities for healthy fish and wildlife.

Established instream flows for the Columbia River are inapplicable to new permit applications under rule sections WAC 173-563-020(4) and WAC 173-531A-060 and instead direct Ecology to follow a process during evaluation of an application to consult with appropriate local, state, and federal agencies and tribal governments on possible impacts to fish and existing water rights. Based on consultation, Ecology then decides on whether to deny or approve the application and any permit that is approved may include instream flow protection or mitigation conditions.

Reaffirming the legislative intent to perform consultation under the Columbia River rules would not change the agencies and tribal governments that Ecology consults with into the future. This consultation list would remain the same for the evaluation of Columbia River water right permit applications. Additionally, the Columbia River Policy Advisory Group assists the Office of Columbia River with policy development and implementation of the Columbia River rules. It is composed of a diverse stakeholder group which includes representatives from federal, state, local, and tribal governments, business, environmental groups, and water users.

WAC 173-563-020 (4)

(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.

Special accommodations

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