

**WAC 173-505-110 Future permitting actions.** (1) Surface and groundwater permits not subject to the instream flows and closures established in WAC 173-505-050 and 173-505-070 may be issued if any of the following situations apply:

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

(b) The applicant elects to submit a scientifically sound mitigation plan, as defined in WAC 173-505-030(7), and it is approved by the department. If monitoring of a mitigation plan shows the mitigation is not effective, use of water under the permit shall then be subject to the instream flows. In the case of a closed stream, the use shall cease until a more effective mitigation plan is put in place.

(c) The proposed groundwater use will not impair senior water rights. Based on the hydrogeology of the basin, and the location and depth where groundwater withdrawals generally occur, future groundwater withdrawals have a high likelihood of capturing water that would result in impacts to surface water flows and levels in the Stillaguamish River basin. Therefore, a groundwater permit that is not subject to the instream flows or closures may be approved only if an applicant can demonstrate, through studies and technical analysis, and to the satisfaction of the department, that the proposed use will not cause impairment to existing water rights, including the instream flows set in this chapter.

(d) Before the department can approve a water right application for a new public water supply under (b) or (c) of this subsection, the applicant must also demonstrate that there are no other municipal water suppliers in the same proposed retail service area that can provide water. If domestic potable water can be provided by another municipal supplier, the department shall reject the water right application.

(e) The proposed use is for a salmon recovery project recommended for approval by the department of fish and wildlife.

(2) All water right permits approved by the department for a consumptive use from a water source with instream flows established by this chapter and during open periods are subject to those instream flows, as established in WAC 173-505-050. In addition, the total appropriation cannot exceed the maximum allocation limits described in WAC 173-505-100.

(3) No right to withdraw, divert or store the public surface or groundwaters of the Stillaguamish 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, in accordance with specifications provided by the department, and report the data to the department in accordance with the permit requirements. In addition, the department may require the permit holder to monitor stream flows and groundwater levels.

[Statutory Authority: Chapters 43.27A, 90.54, 90.22, and 90.82 RCW. WSR 05-18-016 (Order 02-17), § 173-505-110, filed 8/26/05, effective 9/26/05.]