Chapter 173-152 WAC
WATER RIGHTS

WAC

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WAC 173-152-010 Purpose. This rule establishes the framework under which the department can:

(1) Provide for the organization of its work;

(2) Prioritize basins to be assessed;

(3) Conduct basin assessments;

(4) Prioritize investigations of water right applications by geographic areas; and

(5) Establish criteria for priority processing of applications for:

(a) New water rights; and

(b) Change or transfer of existing water rights.

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. WSR 11-01-126 (Order 09-05), § 173-152-010, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). WSR 98-06-042 (Order 97-14), § 173-152-010, filed 2/27/98, effective 3/30/98.]

WAC 173-152-020 Definitions. For the purposes of this chapter the following definitions apply:

(1) "Acquisition" means, for the purposes of WAC 173-152-035, buying or leasing water rights using the Columbia River account.

(2) "Application" means an application for a new water right, a change or transfer to an existing water right, or both made under chapters 90.03 and 90.44 RCW.

(3) "Applications to change or transfer" means applications made under RCW 90.03.380 or 90.44.100.

(4) "Columbia River account" means, for the purposes of the WAC 173-152-035, a fund that is created, funded, and spent as provided in chapter 90.90 RCW.

(5) "Columbia River basin" means, for the purposes of WAC 173-152-035, water resource inventory area (WRIA) 29, located in southwest Washington, and WRIAs 30 through 62 located in central or eastern Washington where water sources flow into the Columbia River upstream of Bonneville Dam. A map of the Columbia River basin by WRIA is shown on map A.

(6) "Columbia River mainstem" means, for the purposes of WAC 173-152-035, all water in the Columbia River within the ordinary high water mark of the main channel of the Columbia River between the border of the United States and Canada and the Bonneville Dam, and all groundwater within one mile of the high water mark. Water is within the mainstem if it is within a straight line drawn across the mouth of each tributary to delineate the mainstem channel. The mainstem channel does not include any of the backwater areas on tributaries nor does it include tributary surface water rights within one mile of the Columbia River.

(7) "Competing applications" means all existing applications for a water right from the same water source, whether for a new water right or for a change or transfer of an existing water right.

(8) "Department" means the department of ecology.

(9) "Lower Snake River mainstem" means, for the purposes of WAC 173-152-035, all water in the Lower Snake River within the ordinary high water mark of the main channel of the Lower Snake River from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark. Water is within the mainstem if it is within a straight line drawn across the mouth of each tributary to delineate the mainstem channel. The mainstem channel does not include any of the backwater areas on tributaries nor does it include tributary surface water rights within one mile of the Lower Snake River.

(10) "Mitigation" means measures that in perpetuity offset impacts on a water source to eliminate detriment to the public interest or impairment.

(11) "New application" means any application for a permit made under chapters 90.03 and 90.44 RCW.

(12) "Nonconsumptive" means water use where there is no diminishment of the amount or quality of the water source.

(13) "Pool" means, for the purposes of WAC 173-152-035, a reach of the Columbia or Lower Snake River mainstems inundated and under the downstream hydraulic control of dams operated by:

(a) U.S. Army Corps of Engineers.

(b) U.S. Bureau of Reclamation.

(c) Any mid-Columbia public utility district.

(14) "Public water system" means a water supply system as defined in RCW 70.119A.020.

(15) "Sources of supply developed under chapter 90.90 RCW" means, for the purposes of WAC 173-152-035, new storage, modification of existing storage, conservation, pump exchanges, acquisition or any other projects designed to provide access to new water supplies.

(16) "Transfer" means a transfer, change, amendment, or other alteration of a part or all of a water right authorized under chapters 90.03, 90.38, 90.42, and 90.44 RCW.

(17) "Voluntary regional agreement" or "VRA" means, for the purposes of WAC 173-152-035, an agreement entered into by the department with another entity for the purposes of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow.

(18) "Water budget neutral project" means a project where diversions or withdrawals of waters of the state are proposed in exchange for at least an equivalent amount of water from other water rights, the trust water program, a

water bank, relinquishment of other water rights, or other mitigation projects that result in no diminishment of the source.

(19) "Water source" means an aquifer, aquifer system, or surface water body, including a stream, stream system, lake, or reservoir and any spring water or underground water that is part of or tributary to the surface water body or aquifer that the department determines to be an independent water body for the purposes of water right administration.

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. WSR 11-01-126 (Order 09-05), § 173-152-020, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). WSR 98-06-042 (Order 97-14), § 173-152-020, filed 2/27/98, effective 3/30/98.]

WAC 173-152-030 Organization and management of workload except under chapter 90.90 RCW. The department will organize and manage its daily water rights workload as established in subsections (1) through (5) of this section, except for applications processed under WAC 173-152-035.

(1) The department may establish regions and maintain regional offices or field offices for the purposes of maximizing the efficiency of its work. Regional offices and their geographic jurisdictions as of the effective date of this rule are as follows:

(a) Northwest regional office serving Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom counties.

(b) Southwest regional office serving Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum counties.

(c) Central regional office serving Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima counties.

(d) Eastern regional office serving Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman counties.

(2) The department will make decisions on applications within a region or within a regional or field office's geographic area in the order the applications were received except as allowed under RCW 90.03.380 (5)(c), and except as provided for in subsection (3) of this section and WAC 173-152-050.

(3) The department may, based on the criteria identified in subsection (5) of this section, conduct investigations and make decisions on one or more applications for the use of water from the same water source. A regional office may investigate more than one water source at a time.

(4) When the department investigates multiple applications for water from the same water source, it will make decisions in the order in which the applications were received, except as allowed under RCW 90.03.380 (5)(c) or provided for under WAC 173-152-050. The department will consider each application individually under the requirements of chapters 90.03, 90.38, 90.42, and 90.44 RCW, as applicable.

(5) Criteria for selecting a water source include, but are not limited to:

(a) The number and age of pending applications, and the quantities of water requested.

(b) The ability to efficiently investigate applications because of the availability of data related to water supply and future needs, stream flow needs for instream values, and hydrogeology of the basin.

(c) The ability of the department to support implementation of local land use plans or implementation of water resource plans.

(d) The projected population and economic growth in the area.

(e) The completion of an initial basin assessment as provided for in WAC 173-152-040(5).

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. WSR 11-01-126 (Order 09-05), § 173-152-030, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). WSR 98-06-042 (Order 97-14), § 173-152-030, filed 2/27/98, effective 3/30/98.]

WAC 173-152-035 Organization and management of workload under chapter 90.90 RCW. The department will organize and manage the daily workload as established in subsections (1) through (6) of this section for applications processed under chapter 90.90 RCW.

(1) The department implements chapter 90.90 RCW in counties or portions of counties in the central, eastern, and southwest regional offices, as shown in the map by counties on map B.

(2) The department processes the following types of applications under chapter 90.90 RCW:

(a) New applications proposing to divert surface water from the Columbia River between the border of the United States and Canada and the Bonneville Dam.

(b) New applications proposing to divert surface water from the Lower Snake River downstream of Lower Monumental Dam.

(c) New applications associated with a voluntary regional agreement proposing to divert or withdraw water from the Columbia River mainstem or Lower Snake River mainstem.

(d) New applications proposing to divert surface water within the Columbia River basin for storage or net water savings funded in whole or in part by the Columbia River account.

(e) New applications proposing to withdraw groundwater within the Columbia River basin for storage or net water savings funded in whole or in part by the Columbia River account where the proposed well(s) and use(s) can be mitigated using the same source as that of the withdrawal.

(f) Applications for water rights and trust water within the Columbia River basin associated with a project funded by the Columbia River account.

(3) Criteria for selecting a water source for processing new applications from water supplies developed in whole or in part by the department include, but are not limited to:

(a) The priorities outlined in RCW 90.90.020(3).

(b) The funding agreements and environmental reviews used to develop a project.

(c) The number and age of pending applications, and the quantities of water requested.

(d) Existence of distressed or endangered fish stocks.

(e) The location of the source to be developed.

(f) Whether the place of use must stay within the WRIA as limited under RCW 90.90.010 (2)(a).

(4) The department may, based on the criteria identified in subsection (3) of this section, conduct investigations and make decisions on one or more applications for the use of water from the same water source. The department may investigate more than one water source at the same time.

(5) When numerous applications for water from the same water source are investigated, the department may make decisions on one or more water right applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in subsection (4) of this section and WAC 173-152-050.

(6) For purposes of chapter 90.90 RCW, if the water source developed is:

(a) On the Columbia River between Bonneville Dam and Canada, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new surface water applications within the same pool and downstream of the developed source of supply.

(ii) All new groundwater applications where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iii) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(b) On the Snake River downstream of Lower Monumental Dam, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new surface water applications within the same pool and downstream of the developed source of supply.

(ii) All new groundwater applications where the proposed well(s) can be mitigated by the developed source of supply.

(iii) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(c) On the Columbia River mainstem or Lower Snake River mainstem under a voluntary regional agreement, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new surface water applications within the same pool and downstream of the developed source of supply.

(ii) All new groundwater applications within one mile of the high water mark where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iii) Applications for change or transfer to trust water applications associated with development of the source if funded by the Columbia River account.

(d) On a tributary in the Columbia River basin for a source of supply developed using Columbia River account funds, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new downstream tributary surface water applications.

(ii) All new surface water applications on the Columbia River within the same pool and downstream of the developed source of supply.

(iii) All new groundwater applications within the Columbia River basin where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iv) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(e) Upstream of Lower Monumental Dam or on a tributary to the Lower Snake River for a source of supply developed using Columbia River account funds, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new downstream tributary surface water applications.

(ii) All new surface water applications on the Lower Snake and Columbia rivers within the same pool and downstream of the developed source of supply.

(iii) All new groundwater applications within the Lower Snake and Columbia river basins where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iv) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(f) In the Columbia River basin using funds from the Columbia River account through acquisition or transfer of water rights in accordance with RCW 90.90.010 (2)(a), the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new downstream tributary surface water applications within the same WRIA.

(ii) All new surface water applications on the Lower Snake or Columbia rivers within the same WRIA.

(iii) All new groundwater applications where the proposed well(s) can be mitigated using the same source as that of the withdrawal within the same WRIA.

(7) The department will consider each application individually under the requirements of chapters 90.03, 90.38, 90.42, and 90.44 RCW.

(8) Before expediting an application for new storage pursuant to WAC 173-152-050(3), the department shall provide written notification to:

(a) County legislative authorities.

(b) Watershed planning groups with jurisdiction in the location of the reservoir.

(c) The department of fish and wildlife.

(d) Affected tribal governments and federal agencies.

(9) Any notified entity identified in subsection (7) of this section may raise concerns, either verbally or in writing, to the department about the department's decision how to prioritize an application. The concern must be raised within thirty calendar days of receiving the department's notification. The department will consider the concerns as it processes the application.

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. WSR 11-01-126 (Order 09-05), § 173-152-035, filed 12/20/10, effective 1/20/11.]

WAC 173-152-040 Basin assessments. (1) The department may conduct assessments to assemble and compare information related to:

(a) Water use;

(b) Water availability;

(c) The quantity of water allocated to existing rights;

(d) Known or potential water rights not recorded within the state water right record, and claims to water rights including those recorded within the water rights claims registry;

(e) Instream flow; and

(f) The hydrology of a basin.

(2)The department may also enter into agreements or contracts with public or private parties to conduct assessments.

(3) In cooperation with federal, state, tribal, and local jurisdictions and other interested parties, each regional office and the department in processing applications under chapter 90.90 RCW will consider assessing a geographic area or water source within its service area using criteria such as:

(a) The number and age of pending applications, and the quantities of water requested.

(b) The projected population, growth and off-stream needs for water in the area.

(c) Known water quality problems.

(d) Existence of distressed or endangered fish stocks.

(e) Risk of impairment to senior rights (including instream flow rights).

(f) Availability of data related to water supply and future need, stream flow needs for instream values, and hydrogeology of the basin.

(g) The number of claims to water rights submitted pursuant to chapter 90.14 RCW.

(h) The ability of the department to support local land use activities.

(4) Each regional office and the department in processing applications under chapter 90.90 RCW may conduct multiple basin assessments at the same time. When the department determines conducting a basin assessment is in the public interest, it will:

(a) Publish notice of the intent to conduct a basin assessment once a week, for two consecutive weeks in a newspaper of general circulation within the geographic area.

(b) Notify any Indian tribe with potential interest in the basin of the intent.

(c) Temporarily cease making decisions on all competing water right applications in the basin proposed for assessment until the initial basin assessment is complete and published except for applications prioritized pursuant to WAC 173-152-050.

(d) Make decisions on competing applications after the initial basin assessment is complete and published to the extent sufficient information is available.

(5) Initial basin or water source assessments will be conducted to assemble the following existing information:

(a) Physical characterization of the watershed related to:

(i) Climatic impacts to water resources.

(ii) Geology.

(iii) Stream flow trends.

(iv) Groundwater elevation trends and the contribution of groundwater to stream flows.

(v) Surface and groundwater quality in the basin or water source.

(b) Out-of-stream water use characterization related to:

(i) Water rights, federal rights, and claims to water rights.

(ii) Estimated use of water pursuant to water rights and claims to water rights.

(iii) Water use pursuant to RCW 90.44.050.

(iv) Extent of unauthorized water use.

(v) Potential future demands for out-of-stream water use in the basin.

(c) Instream water use characterization related to:

(i) National Pollution Discharge Elimination System permits and the need for instream flow for pollution assimilation;

(ii) Fish stocks and habitat requirements, including existing, defined or engineered, or approved restoration projects;

(iii) Wildlife habitat requirements;

(iv) Recreational requirements; and

(v) Water rights and claims to water rights.

(6) Upon completion and publication of the initial basin assessment, the department will consult with the public and federal, state, tribal, local jurisdictions and interested parties to evaluate the basin assessment. The evaluation will assess the data, analysis, and presentation of information in the basin assessment in terms of quality, adequacy, and utility to make decisions on future water resource allocation and use.

(7) The department will make decisions on competing applications for water from a water source within the basin where sufficient information for water resource allocation exists. If the department determines that the information assembled and compared is not sufficient, the department may withdraw the water source from appropriation pursuant to RCW 90.54.050(2). The department in consultation with the public, federal, state, tribal, local jurisdictions and interested parties will design and conduct additional investigations, to the extent resources allow, to obtain the information necessary to make future decisions on water allocation and use.

(8) The department shall make available online information obtained and compiled during an initial basin assessment of the water resources in a basin or water source.

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. WSR 11-01-126 (Order 09-05), § 173-152-040, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). WSR 98-06-042 (Order 97-14), § 173-152-040, filed 2/27/98, effective 3/30/98.]

WAC 173-152-050 Criteria for priority processing of competing applications. At ecology's discretion, the department may approve an application for priority processing that addresses one of the criteria below:

(1) Within each regional office and among applications processed under chapter 90.90 RCW, the department may prioritize an application ahead of competing applications if the application resolves or alleviates a situation under either (a) or (b) of this subsection.

(a) A public health or safety emergency exists for a public water system currently providing potable water to existing users.

Inadequate water rights for a public water system to serve existing hook-ups or to accommodate future population growth or other future uses do not constitute a public health or safety emergency. The application must specifically propose to correct the actual or anticipated cause(s) of the emergency. An emergency must meet one or more of the following conditions:

(i) A public water system has failed to meet state board of health standards for the delivery of potable water to existing water system users in adequate quantity or quality to meet basic human drinking, cooking and sanitation needs.

(ii) The current water source has failed or will fail within one year so that the public water system is or will become incapable of exercising its existing water right to meet existing needs for drinking, cooking and sanitation purposes after all reasonable water use efficiency and conservation efforts have been implemented.

(iii) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is or will become unacceptable for human use.

(b) Any emergency exists, other than for a public water system, for which immediate action is necessary for preservation of public health or safety.

(2) Within each regional office and among applications processed under chapter 90.90 RCW, the department may prioritize an application ahead of all competing applications, but only after those applications prioritized in subsection (1) of this section, if the department determines the application:

(a) Is for a public water system or source in danger of failing within five years, and priority processing by the department may correct the anticipated cause(s) of the emergency prior to actual system failure.

(b) Was filed by claimants participating in an adjudication, and the court requires a prompt decision.

(c) Is for a proposed water use that is nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment, such as:

(i) Donations to the trust program intended to enhance instream flows or groundwater preservation.

(ii) A change or transfer of water into the state trust water right program in accordance with chapter 90.38 or 90.42 RCW, if that transfer provides a substantial environmental benefit.

(d) Is for a change or transfer and, if approved, would result in providing for public water supplies including, but not limited to, consolidation of two or more public water systems, to meet general public needs for the regional areas.

(e) Is for a seasonal water right change effective for a term of one year or less.

(f) Proposes temporary water use for an identified period such as:

(i) A public project such as road building.

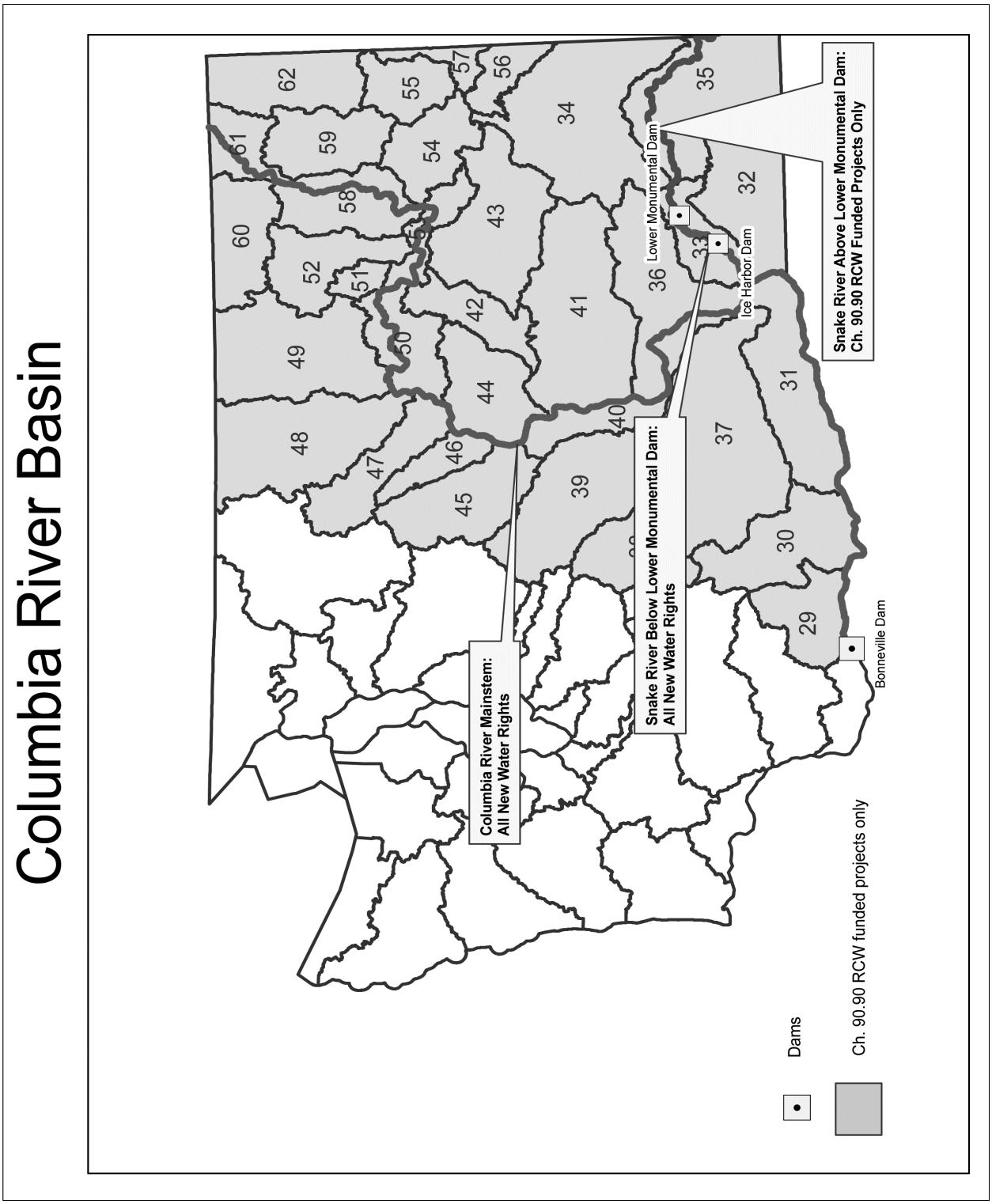
(ii) A private project directly related to renewable energy or environmental enhancement.

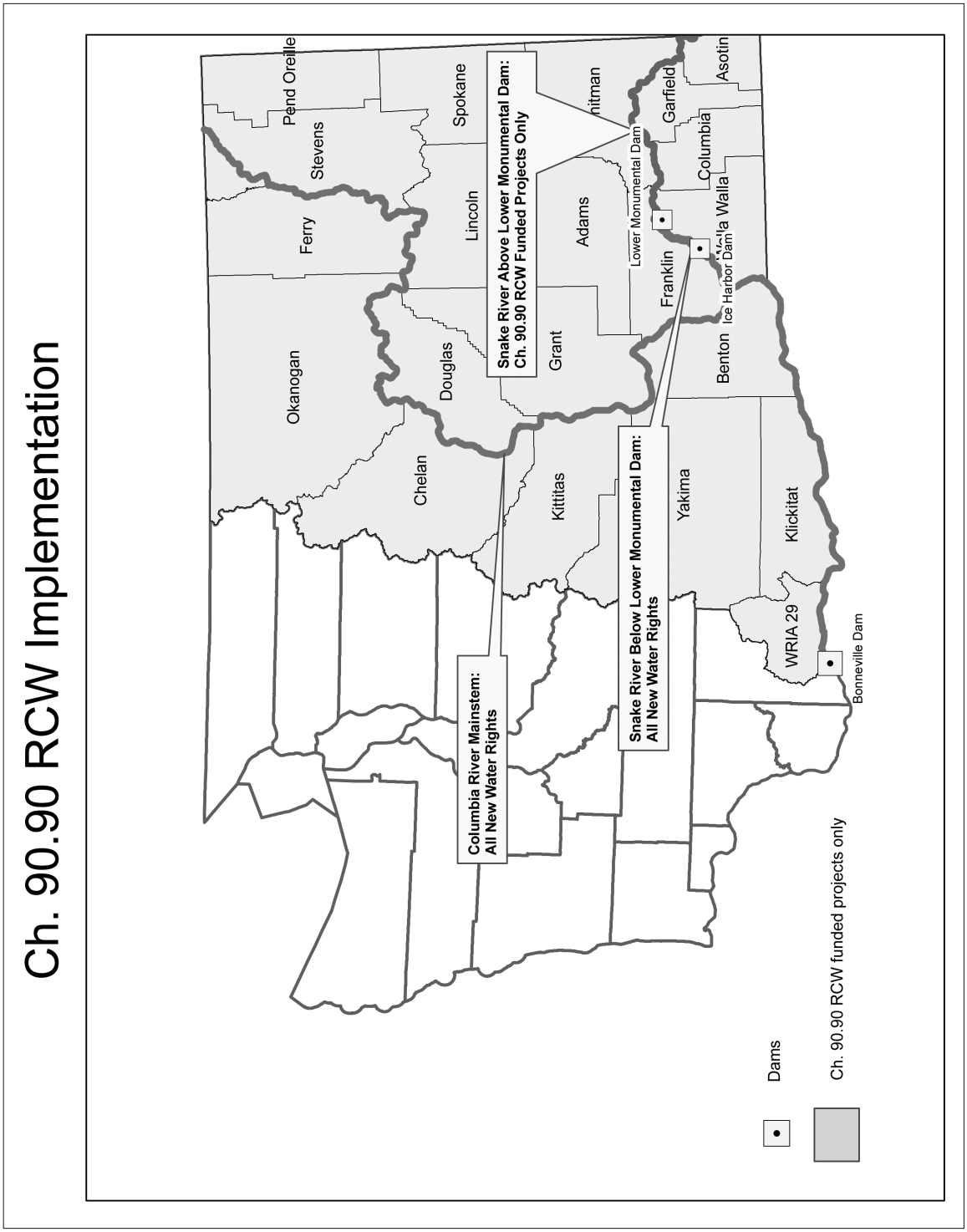
(g) Proposes a water budget neutral project as defined in WAC 173-152-020(18).

(3) The department may prioritize ahead of competing applications, except as prioritized in subsections (1) and (2) of this section, a new application for diversionary rights into reservoirs that, if approved, would not conflict with adopted state instream flow rules, federal flow targets, or federal biological opinions, and is funded or supported pursuant to chapter 90.90 RCW.

[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. WSR 11-01-126 (Order 09-05), § 173-152-050, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). WSR 98-06-042 (Order 97-14), § 173-152-050, filed 2/27/98, effective 3/30/98.]

WAC 173-152-060 Exceptions. Nothing in this chapter precludes the department from processing an application filed for a project where the law provides a specific process for evaluation of the application and issuance of a decision, or where the law provides or allows for expedited processing of an application.





[Statutory Authority: RCW 43.21A.064(9), 43.27A.090(11), chapters 90.03, 90.44, 90.54, and 90.82 RCW. WSR 11-01-126 (Order 09-05), § 173-152-060, filed 12/20/10, effective 1/20/11. Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). WSR 98-06-042 (Order 97-14), § 173-152-060, filed 2/27/98, effective 3/30/98.]