

**WAC 173-528-080 Future water rights, generally.** A new surface or groundwater appropriation (including any permit-exempt withdrawal) may be commenced only if consistent with the surface and groundwater 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 173-528-070, Table III.

(3) The proposed groundwater withdrawal is located where it would not affect any of the surface waters closed in WAC 173-528-070, Table III by either meeting condition (a) or (b) of this subsection:

(a) The person or entity seeking to commence a proposed groundwater use shows, through scientifically sound studies and technical analysis, that the groundwater use would not affect any of the closed surface waters identified in WAC 173-528-070, Table III.

(b) The proposed groundwater withdrawal occurs in a regional supply area designated in WAC 173-528-090 or by order of ecology.

(4) The person or entity seeking to commence the new appropriation submits a scientifically sound mitigation plan, and such plan is approved by ecology. A mitigation plan may 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, departmental approval of the mitigation plan shall be suspended and the water use shall cease until the department approves a new or revised mitigation plan.

(5) The proposed water use qualifies as an interruptible use as defined in WAC 173-528-020, and meets the criteria in WAC 173-528-100.

(6) The proposed water use qualifies for the reservation established and as conditioned in WAC 173-528-110.

(7) The proposed use is for an environmental restoration project and meets the criteria in WAC 173-528-140.

[Statutory Authority: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW. WSR 09-01-127 (Order 08-03), § 173-528-080, filed 12/19/08, effective 1/19/09.]