

Discussion paper for the second information meeting covering the first three Parts on developing new Instream Flow Rules – August 2, 2016

1 CHAPTER Env-Wq 1900 RULES FOR THE PROTECTION OF INSTREAM FLOW ON
2 DESIGNATED RIVERS
3

4 Statutory Authority: RSA 483:9-c; RSA 483:11, IV;
5

6 PART Env-Wq 1901 PURPOSE AND APPLICABILITY
7

8 Env-Wq 1901.01 Purpose. The department shall establish protected instream flows for the
9 designated rivers described in RSA 483:15 and adopt water management plans for the WMPAs of the
10 designated rivers. The purpose of these rules is to specify standards, criteria, and procedures by which
11 these protected instream flows shall be established and enforced for each designated river segment in
12 order to maintain water for instream public uses and to protect the resources for which the river or river
13 segment is designated.
14

15 Env-Wq 1901.02 Applicability. The requirements set forth in Env-Wq 1900 shall apply to:
16

- 17 (a) Designated river segments, under RSA 483:15, and their tributary drainage areas;
- 18 (b) Affected water users in the designated river watersheds; and
- 19 (c) Affected dam owners and the associated water body in the designated river watersheds.
20
21
22

23 PART Env-Wq 1902 DEFINITIONS
24

25 Env-Wq 1902.01 “7Q10” means the lowest average flow rate for a period of 7 consecutive days on
26 an annual basis with an expected recurrence interval of once in every 10 years, determined at a fixed
27 location on a river or stream, and expressed in terms of volume per time period.
28

29 Env-Wq 1902.02 “Affected dam owner” means an owner of a dam with an impoundment with a
30 surface area greater than 10 acres in the watershed area of a designated river.
31

32 Env-Wq 1902.03 “Affected water user” means a water user required to be registered under Env-
33 Wq 2102 and having a withdrawal or return location in the watershed area of a designated river.
34

35 Env-Wq 1902.04 “Aggregate water use” means the total water use by all affected water users at,
36 and upstream from, any location on a designated river, being the difference between the sum of water
37 withdrawals and the sum of measured registered water returns.
38

39 Env-Wq 1902.05 “Commissioner” means the commissioner of the New Hampshire department of
40 environmental services.
41

42 Env-Wq 1902.06 “De minimis amount” means an aggregate water use at any river location equal
43 to 5 percent of 7Q10 at that location.
44

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1 Env-Wq 1902.07 “Department” means the New Hampshire department of environmental services.

2
3 Env-Wq 1902.08 “Designated river” means a river or river segment that is designated under RSA
4 483.

5
6 Env-Wq 1902.09 “Governing body” means the board of selectmen in a town, the board of mayor
7 and aldermen in a city or the council in a city or town with a council, or the county commissioners in
8 unincorporated towns and unorganized places.

9
10 Env-Wq 1902.10 “Lakes management advisory committee (LMAC)” means the committee
11 established under RSA 483-A:6.

12
13 Env-Wq 1902.11 “Local river management advisory committee (LRMAC)” means a committee
14 established under RSA 483:8-a.

15
16 Env-Wq 1902.12 “Protected instream flow” means a stream flow pattern which is established to
17 maintain water for present and future instream public uses.

18
19 Env-Wq 1902.13 “Rivers management advisory committee (RMAC)” means the committee
20 established under RSA 483:8.

21
22 Env-Wq 1902.14 “Segment” means a portion of a designated river assigned to one of the
23 classifications identified in RSA 483:7-a.

24
25 Env-Wq 1902.15 “Water management planning area (WMPA)” means the tributary drainage area
26 to a designated river for which a water management plan is required.

27
28 **PART Env-Wq 1903 SEQUENCE AND PROCEDURES**

29
30 1903.01 Sequence. The department shall conduct the actions below on each designated river when
31 establishing protected instream flows and adopting water management plans.

32
33 (a) The department shall select a designated river for next applying instream flow protection and
34 management following the procedures in 1903.02 Prioritization of Designated Rivers.

35
36 (b) The department shall hold an initial public hearing as required by RSA 483:9-c,II and as
37 provided in Env-Wq 1903.04 Initial public hearings.

38 [Legislative language for reference - No less than 60 days prior to commencing a protected instream flow
39 study on any designated river, the department shall hold a public hearing jointly with the senate committee
40 with jurisdiction over river management issues and the house committee with jurisdiction over river
41 management issues and provide a public comment period of 30 days. The department shall consider the public
42 comments received before commencing the study.]

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1 (c) The department shall conduct an instream flow study of the designated river to determine draft
2 protected instream flows, as provided in Env-Wq 1904 Procedure for Establishment of Protected Instream
3 Flows.

4
5 (d) The department shall hold a public hearing to receive comments on each draft protected
6 instream flow study, as provided in Env-Wq 1904.03 Publication, Hearing, and Opportunity for Public
7 Comment on Protected Instream Flows.

8
9 (e) The department shall establish the protected instream flows if they meet the criteria in Env-Wq
10 1904.04 Establishment of Protected Instream Flows.

11
12 (f) The department shall publish the established protected instream flows, as provided in Env-Wq
13 1904.04 Establishment of Protected Instream Flows.

14
15 (g) The department shall coordinate with the affected water users and affected dam owners and
16 develop a draft water management plan, as provided in Env-Wq 1905.01 Elements of a Water
17 Management Plan.

18
19 (h) The department shall hold at least one public hearing to receive comments on a draft water
20 management plan, as provided in Env-Wq 1905.06 Hearing and Opportunity for Public Comment on
21 Water Management Plans.

22
23 (i) The commissioner shall adopt a water management plan if it meets the criteria in Env-Wq
24 1905.07 Adoption of Water Management Plans and the department shall make the adopted water
25 management plan available to the public.

26
27 (j) The affected water users and affected dam owners shall implement the provisions of the water
28 management plan, as provided in Env-Wq 1906 ADMINISTRATION OF WATER MANAGEMENT
29 PLANS.

30
31 1903.02 Prioritization of Designated Rivers

32
33 (a) The department, with the advice of the rivers management advisory committee and the lakes
34 management advisory committee, shall prioritize designated rivers as the next objectives for establishing
35 instream flow protection criteria and adopting water management plans.

36
37 (b) The department shall publish the priority list and make any revisions in a timely manner.

38
39 (c) Within the watersheds of the designated rivers on the priority list, the department shall notify
40 potential Affected Water Users and Affected Dam Owners by certified mail that the river is being
41 considered for an instream flow study and to strongly encourage their participation in the process.

42
43 (d) The department shall hold an initial public hearing in accordance with Env-C 205 no less than
44 60 days prior commencing an instream flow study on a designated river in order to notify interested

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1 parties of the department’s intent to conduct an instream flow study for the designated river, and to gather
2 public comments on:

- 3
- 4 (1) the designated river’s selection priority;
- 5
- 6 (2) the instream flow study; and
- 7
- 8 (3) the water management plan development.
- 9

10 (e) The initial public hearings shall be held jointly with the senate committee with jurisdiction
11 over river management issues and the house committee with jurisdiction over river management issues.

12 (f) The department shall send written notice of an initial public hearing to the following:

- 13
- 14 (1) Chair of the local river management advisory committee of the designated river;
- 15
- 16 (2) Affected water users in the WMPA;
- 17
- 18 (3) Affected dam owners in the WMPA;
- 19
- 20 (4) Lake associations on affected dams in the WMPA;
- 21
- 22 (5) Conservation commission chairs in the WMPA;
- 23
- 24 (6) Governing bodies in the WMPA;
- 25
- 26 (7) State senators representing the municipalities in the WMPA;
- 27
- 28 (8) State representatives representing the municipalities in the WMPA; and
- 29
- 30 (9) Any interested party who has provided contact information to the department and
31 requested notifications.
32
- 33

34 (g) At the initial public hearing, the department shall specify a comment period which shall close
35 at least 30 days after the hearing date, during which time the department shall accept written comments on
36 the factors pertaining to that designated river’s selection, instream flow study and water management
37 plan.
38

39 (h) The department shall consider the comments received at an initial public hearing and publish a
40 response to comments before commencing the protected instream flow study.
41

42 [End of the sections to be discussed at the second meeting – August 2, 2016.]

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1 [Parts to be discussed at third meeting]
2 PART Env-Wq 1904 PROCEDURE FOR ESTABLISHMENT OF PROTECTED INSTREAM FLOWS
3 Elements to establish protected instream flows.
4 Protected Instream Flow Study.
5 Publication, Hearing, and Opportunity for Public Comment on Protected Instream Flows.
6 Establishment of Protected Instream Flows.
7 Petition for Change of an Established Protected Instream Flow.
8

9 PART Env-Wq 1905 PROCEDURE FOR ADOPTION OF WATER MANAGEMENT PLANS
10 Elements of a Water Management Plan.
11 Conservation Plan.
12 Water Use Plan.
13 Dam Management Plan.
14 Water Management Plan Document.
15 Hearing and Opportunity for Public Comment on Water Management Plans.
16 Adoption of Water Management Plans.
17 Petition for Changes to an Adopted Water Management Plan.
18 Process for routine updates of Water Management Plans.
19 Changes to the Water Management Plan as a result of changes in the watershed.
20

21 [Parts to be discussed at fourth meeting]
22 PART Env-Wq 1906 ADMINISTRATION OF WATER MANAGEMENT PLANS
23 Protected Instream Flows and Water Quality Criteria.
24 Compliance with Water Quality Standards.
25 Enforcement of Water Management Plans.

26 [Legislative language for reference - Water management plans implementing instream flow protections shall be effective and
27 enforceable upon adoption. The department shall allow a period of up to 5 years for any party subject to the instream flow
28 program to implement the provisions of their water management plan. The department shall adopt rules, pursuant to RSA 541-
29 A, to allow for one 5-year extension for any party who files ongoing progress reports for and is working in good faith on their
30 water management plan but is unable to implement the provisions of their water management plan due to financial or other
31 hardship.]
32

33 Implementation of water management plans.
34 [Legislative language for reference - The department shall allow a period of up to five years for any party subject to the
35 instream flow program to implement the provisions of their water management plan.]
36 Criteria for an additional time extension.
37

38 PART Env-Wq 1907 WAIVERS
39 [Legislative language for reference - The department shall adopt rules, pursuant to RSA 541-A, to allow for waivers from the
40 provisions of a water management plan. Such rules shall specify the waiver criteria based on negative impacts to public health
41 or safety or an undue financial hardship on a party subject to a water management plan. Should a party meet the criteria for a
42 waiver, and notwithstanding RSA 483:9-c, VI, the department shall waive, in whole or in part, the enforceability of those
43 components of the party's water management plan until the department amends such plan to alleviate the negative impacts to
44 public health or safety or undue financial hardship.]