

Discussion paper for the second information meeting covering the first three Parts on developing new Instream Flow Rules – October 19, 2016

1 CHAPTER Env-Wq 1900 RULES FOR THE PROTECTION OF INSTREAM FLOW ON
2 DESIGNATED RIVERS
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4 Statutory Authority: RSA 483:9-c; RSA 483:11, IV;
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6 PART Env-Wq 1901 PURPOSE AND APPLICABILITY
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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.
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15 Env-Wq 1901.02 Applicability. The requirements set forth in Env-Wq 1900 shall apply to:
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- 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.
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23 PART Env-Wq 1902 DEFINITIONS
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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.
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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.
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32 Env-Wq 1902.03 “Affected water user” means a water user required to be registered under Env-
33 Wq 2102 and having a source, withdrawal or return location in the watershed area of a designated river;
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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.
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42 Env-Wq 1902.06 “De minimis amount” means an aggregate water use equal to 5 percent of 7Q10.
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1 Env-Wq 1902.07 “Department” means the New Hampshire department of environmental
2 services.

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4 Env-Wq 1902.08 “Designated river” means a river or river segment that is designated under RSA
5 483.

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

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

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

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

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

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

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

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29 **PART Env-Wq 1903 SEQUENCE AND PROCEDURES**

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

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

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

39 [Legislative language for reference - No less than 60 days prior to commencing a protected instream flow
40 study on any designated river, the department shall hold a public hearing jointly with the senate committee
41 with jurisdiction over river management issues and the house committee with jurisdiction over river
42 management issues and provide a public comment period of 30 days. The department shall consider the public
43 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.

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

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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.

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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.

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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.

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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.

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37 (b) The criteria for factoring a river's priority shall include, but not be limited to:

38
39 (1) Location of the designated river upstream of other designated rivers without established
40 protected instream flows and water management plans;

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42 (2) Availability of stream flow gages for applying management;

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44 (3) Projected development pressure within the designated river watershed;

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2 (4) Level of support from the local river management advisory committee and the public in the
3 watershed;

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5 (5) Availability of data describing flow-dependent, instream public uses: and

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7 (6) Other factors related to the need for instream flow protection.

8
9 (c) The department shall publish the priority list and make any revisions in a timely manner.

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

14
15 (e) The department shall hold an initial public hearing in accordance with Env-C 205 no less than
16 60 days prior commencing an instream flow study on a designated river in order to notify interested
17 parties of the department's intent to conduct an instream flow study for the designated river, and to gather
18 public comments on:

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20 (1) the designated river's selection priority;

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22 (2) the instream flow study; and

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24 (3) the water management plan development.

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26 (f) The initial public hearings shall be held jointly with the senate committee with jurisdiction
27 over river management issues and the house committee with jurisdiction over river management issues.

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

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31 (1) Chair of the local river management advisory committee of the designated river;

32
33 (2) Affected water users in the WMPA;

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35 (3) Affected dam owners in the WMPA;

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37 (4) Lake associations on affected dams in the WMPA;

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39 (5) Conservation commission chairs in the WMPA;

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41 (6) Governing bodies in the WMPA;

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43 (7) State senators representing the municipalities in the WMPA;

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1 (8) State representatives representing the municipalities in the WMPA; and
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3 (9) Any interested party who has provided contact information to the department and
4 requested notifications.
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6 (h) At the initial public hearing, the department shall specify a comment period which shall close
7 at least 30 days after the hearing date, during which time the department shall accept written comments on
8 the factors pertaining to that designated river's selection, instream flow study and water management
9 plan.

10 (i) The department shall consider the comments received at an initial public hearing and publish a
11 response to comments before commencing the protected instream flow study.
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