

Discussion paper for the fifth information meeting covering the all Parts of the new Instream Flow Rules – January 10, 2018

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

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

- 17 (a) Designated river segments and their tributary drainage areas;
- 18 (b) Affected water users; and
- 19 (c) Affected dam owners and the associated water body.
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 unit time.
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 WMPA of a designated river.
31

32 Env-Wq 1902.03 “Affected water user” means a water user required to be registered under RSA
33 488:3 and having a withdrawal or discharge at any location in the WMPA of a designated river.
34

35 Env-Wq 1902.04 “Aggregate water use” means the total water use attributable to a point on the
36 designated river, namely the cumulative water use by affected water users upstream from any location on
37 a designated river, being the difference between the sum of water withdrawals and the sum of measured
38 water returns.
39

40 Env-Wq 1902.05 “Commissioner” means the commissioner of the New Hampshire department of
41 environmental services.
42

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1 Env-Wq 1902.06 “De minimis amount” means an aggregate water use equal to 5 percent of 7Q10
2 determined for any location on a designated river.

3
4 Env-Wq 1902.07 “Department” means the New Hampshire department of environmental services.

5
6 Env-Wq 1902.08 “Designated river” means a river or river segment that is designated under RSA
7 483:15.

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

12
13 Env-Wq 1902.10 “Instream public uses” means “instream public uses” as defined in RSA 483:4,
14 XI, as **reprinted in Appendix C**.

15
16 Env-Wq 1902.11 “Lakes management advisory committee (LMAC)” means the committee
17 established under RSA 483-A:6.

18
19 Env-Wq 1902.12 “Local river management advisory committee (LRMAC)” means a committee
20 established under RSA 483:8-a.

21
22 Env-Wq 1902. 13 “Protected instream flow” means “protected instream flow” as defined in a RSA
23 483:4, XVI, namely, a stream flow pattern which is established to maintain water for present and future
24 instream public uses.

25
26 Env-Wq 1902. 14 “Requester” means the person applying for a waiver under Env-Wq 1907.

27
28 Env-Wq 1902.15 “Rivers management advisory committee (RMAC)” means the committee
29 established under RSA 483:8.

30
31 Env-Wq 1902.16 “Water management planning area (WMPA)” means the tributary drainage area
32 to a designated river for which a water management plan is required.

33
34 **PART Env-Wq 1903 SEQUENCE AND PROCEDURES**

35
36 Env-Wq 1903.01 Sequence. The department shall conduct the actions below on each designated
37 river when establishing protected instream flows and adopting water management plans.

38
39 (a) The department shall prioritize and select designated rivers for next applying instream flow
40 protection and management following the procedures in Env-Wq 1903.02.

41
42 (b) The department shall hold a public hearing as required by RSA 483:9-c,II and as provided in
43 Env-Wq 1903.02(e)-(h).

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1
2 (c) The department shall conduct an instream flow study of the designated river to determine draft
3 protected instream flows following the procedures in Env-Wq 1904.01 and Env-Wq 1904.02.
4

5 (d) The department shall hold a public hearing to receive comments on each draft protected instream
6 flow study report following the procedures in Env-Wq 1904.04.
7

8 (e) The department shall establish and publish protected instream flows following the procedure in
9 Env-Wq 1904.05.
10

11 (f) The department shall coordinate with affected water users and affected dam owners and develop
12 draft water conservation plans and water use plans, or dam management plans, following the procedures
13 in Env-Wq 1905.01 through Env-Wq 1905.05.
14

15 (g) The department shall hold at least one public hearing to receive comments on a draft water
16 management plan following the procedures in Env-Wq 1905.06.
17

18 (h) The commissioner shall adopt and publish a water management plan that meets the criteria in
19 Env-Wq 1905.07.
20

21 Env-Wq 1903.02 Prioritization of Designated Rivers.
22

23 (a) The department, with the advice of the rivers management advisory committee and the lakes
24 management advisory committee, shall identify up to 5 designated rivers as the priority list for
25 establishing instream flow protection criteria and adopting water management plans.
26

27 (b) The criteria for factoring a designated river's priority shall include, but not be limited to:
28

29 (1) Location of the designated river upstream of other designated rivers without established
30 protected instream flows and water management plans;
31

32 (2) Availability of stream flow gages for applying management;
33

34 (3) Projected development pressure within the designated river WMPA; and
35

36 (4) Level of support from the local river management advisory committee and the public in
37 the WMPA.
38

39 (c) The department shall publish the priority list, and shall make updates to the list in a timely
40 manner as rivers are completed.
41

42 (d) The department shall hold a public hearing, as required by RSA 483:9-c, II, , and in accordance
43 with Env-C 205, no less than 60 days prior to commencing a designated river's instream flow study,

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1 specific to prioritizing of up to 5 designated rivers and to notify interested parties of the department's
2 intent to conduct an instream flow study for the designated river, and to gather public comments on:

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

10 (e) Prioritization 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

13 (f) The department shall notify by certified mail the affected water users and affected dam owners
14 within the WMPAs of the designated rivers on the list of priority rivers that the river is being considered
15 for an instream flow study, and request their participation in the prioritization process.
16

17 (g) The department shall send written notice of a prioritization public hearing to:

- 18
19 (1) The chair of the local river management advisory committee of the designated river;
20
21 (2) Affected water users in the WMPA;
22
23 (3) Affected dam owners in the WMPA;
24
25 (4) Lake associations on affected dams in the WMPA;
26
27 (5) Conservation commission chairs in the WMPA;
28
29 (6) Governing bodies in the WMPA;
30
31 (7) State senators representing the municipalities in the WMPA;
32
33 (8) State representatives representing the municipalities in the WMPA; and
34
35 (9) Any interested party who has provided contact information to the department and
36 requested notifications.
37

38 (h) At the prioritization public hearing, the department shall specify a comment period which shall
39 close at least 30 days after the hearing date, during which time the department shall accept written
40 comments on the factors pertaining to that designated river's prioritization, instream flow study and water
41 management plan development.
42

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1 (i) The department shall consider the comments received at a prioritization public hearing and
2 publish a final determination on the river’s priority and a response to comments before commencing the
3 protected instream flow study.
4

5 PART Env-Wq 1904 PROCEDURE FOR ESTABLISHMENT OF PROTECTED INSTREAM FLOWS

6
7 Env-Wq 1904.01 Elements of Protected Instream Flows. To establish protected instream flows on
8 a designated river or designated river segment:

9
10 (a) The department shall:

- 11
12 (1) Conduct a protected instream flow study to propose protected instream flows, based on
13 scientific methods, as provided in Env-Wq 1904.02; and
14
15 (2) Publish the proposed protected instream flows in a protected instream flow study report
16 for public review, and conduct a public hearing to receive comment on the study report and the
17 proposed protected instream flows, as provided in Env-Wq 1904.03.
18

19 (b) The commissioner shall issue a written decision regarding establishing the protected instream
20 flows for the designated river, as provided in Env-Wq 1904.04.
21

22 Env-Wq 1904.02 Protected Instream Flow Study. The protected instream flow study for each
23 designated river shall:

- 24
25 (a) Identify designated river segments for defining protected instream flows;
26
27 (b) Identify and catalog all flow-dependent instream public uses on the designated river;
28
29 (b) Identify and quantify water use locations and monthly volumes for all affected water users in the
30 WMPA;

31
32 (c) Include a field assessment of flow-dependent instream public uses of the designated river or
33 designated river segment; and
34

35 (d) Apply scientific analyses, as described in the 2015 final report of Impact of Water Withdrawals
36 on Instream Flows Study Committee¹, to determine protected instream flows that conserve and protect the
37 flow-dependent instream public uses identified in (a) above.
38

39 Env-Wq 1904.03 Proposed Protected Instream Flow Study Report. The department shall prepare a

1 <http://des.nh.gov/organization/divisions/water/wmb/rivers/instream/report.htm>. This report was submitted as its final report by the legislative sub-committee SB330 created by Ch. 242:1, Laws of 2000, and will be incorporated by reference in this rule.]

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1 proposed protected instream flow study report containing the recommended, scientifically-based protected
2 instream flows based on application of the method(s) identified in Env-Wq 1904.02(d) above, and
3 applicable water quality standards, which describes:

- 4
- 5 (1) The methods applied to determine the protected instream flows;
- 6
- 7 (2) The protected instream flows proposed for the designated river; and
- 8
- 9 (3) The supporting information used to determine those flows.

10
11 Env-Wq 1904.04 Publication, Hearing, and Opportunity for Public Comment on the Proposed
12 Protected Instream Flows.

13
14 (a) Prior to the establishment of protected instream flows, the department shall hold an information
15 meeting to present the proposed protected instream flow study report prior to the public hearing that is
16 described in (b) below.

17
18 (b) Prior to establishment of protected instream flows, the department shall hold a public hearing, in
19 accordance with Env-C 205, to receive public comment on the proposed protected instream flow report.

- 20
- 21 (1) The hearing shall be held in a community in which the designated river flows.
- 22
- 23 (2) At least 30 days before the hearing, the department shall issue a notice of the public
24 hearing, including how a copy of the study report may be obtained.
- 25
- 26 (3) At least 30 days before the hearing, the department shall send notice of the public hearing
27 and study availability to, and solicit comment from, the following:
 - 28 a. Affected water users in the WMPA;
 - 29
 - 30 b. Affected dam owners in the WMPA;
 - 31
 - 32 c. Lake associations in the WMPA on lakes with affected dams;
 - 33
 - 34 d. The RMAC;
 - 35
 - 36 e. The LMAC;
 - 37
 - 38 f. The LRMAC for the designated river;
 - 39
 - 40 g. The governing body of each municipality in the WMPA;
 - 41
 - 42 h. State senators and representatives representing the WMPA;
 - 43
 - 44

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- i. The New Hampshire fish and game department;
- j. The governor of any state which shares a designated river;
- k. The United States Environmental Protection Agency;
- l. The United States Fish And Wildlife Service;
- m. The United States Geological Survey;
- n. Federal Energy Regulatory Commission, for each WMPA with a licensed or exempted hydropower site;
- o. The United States Forest Service, for each designated river inside the White Mountain National Forest;
- p. The National Park Service; and
- q. Persons who have requested in writing to be notified of the hearing.

(3) At the public hearing, the department shall specify a comment period which shall close at least 30 days after the hearing date, during which time the department shall accept written comments on the factors pertaining to the proposed protected instream flows.

(c) The department shall use the comments received during the public hearing and comment period to review the proposed protected instream flows relative to the following factors:

- (1) The flow-dependent instream public uses identified in RSA 483:9-c;
- (2) Water quality standards;
- (3) Flows established pursuant to existing Federal Energy Regulatory Commission licensing processes or state contracts;
- (4) Whether there are wastewater discharges that require a certain instream flow for permit compliance or maintaining water quality standards;
- (5) Whether the river contains flow-regulating structures such as dams, and if so, how such structures affect flow;
- (6) Information relevant to flow conditions that will conserve, protect, maintain, or restore aquatic life or habitat, or both;

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1 (7) Information relevant to flow conditions that will conserve, protect, maintain, or restore
2 recreational uses;

3
4 (8) Information relevant to flow conditions that will conserve, protect, maintain, or restore
5 resources for which the river is designated;

6
7 (9) Pertinent resource management plans including, but not limited to, fisheries management
8 plans, watershed management plans, and recreation management plans; and

9
10 (10) Other information relevant to the proposed protected instream flows.

11
12 Env-Wq 1904.05 Establishment of Protected Instream Flows.

13
14 (a) Following the comment period, the department shall:

15
16 (1) Review all comments received; and

17
18 (2) Revise the protected instream flow study report if the comments received demonstrate that
19 there are technical or factual errors.

20
21 (b) The commissioner shall issue a decision establishing protected instream flows for the designated
22 river that are consistent with the policy and intent in RSA 483:1, 483:2 and 483:9-c.

23
24 (c) The decision shall:

25
26 (1) Be in writing;

27
28 (2) State the scientific basis for the established flow(s);

29
30 (3) Include an assessment of how the established flows will meet applicable water quality
31 standards;

32
33 (4) Summarize the comments received; and

34
35 (5) Explain how the comments affected the decision.

36
37 (d) The department shall notify the following persons that a decision has been reached and how to
38 obtain a copy:

39
40 (1) Persons identified in Env-Wq 1904.04(b)(3);

41
42 (2) Persons who submitted written comments on the proposed flows; and

43
44 (3) Persons who requested to receive a copy of the notice of the established flows.

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1
2 Env-Wq 1904.06 Petition for Change to an Established Protected Instream Flow.

3
4 (a) An aggrieved person may file a petition with the commissioner for change to an established
5 protected instream flow.

6
7 (b) The petition shall be in writing.

8
9 (c) The petition shall include:

10 (1) The name, address, and daytime telephone number of the person or organization
11 requesting change;

12 (2) If the person requesting change is not an individual, the name of an individual who can be
13 contacted on behalf of the organization requesting the change;

14 (3) A clear and concise statement of the specific change requested to an established protected
15 instream flow;

16 (4) An explanation of how a change to the protected instream flows would meet water quality
17 standards;

18 (5) A full explanation of why protected instream flows should be changed on the designated
19 river;

20 (6) Data not available or not considered at the time the protected instream flow was
21 established.

22
23 (d) Within 30 days of receiving a petition for change to the protected instream flow, the department
24 shall:

25 (1) Deny the petition and affirm the established protected instream flow; or

26 (2) Grant the petition and begin reconsideration of the protected instream flow.

27
28 (e) The department shall grant the petition if the petition is complete as described in (c) above and if
29 the information in the petition or other information reviewed by the department indicates that the
30 established protected instream flows did not incorporate all applicable information.

31 (f) The department's decision shall:

32 (1) Be in writing;

33
34
35
36
37
38
39
40
41
42
43

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1 (2) Be sent to the person who petitioned for the change to the instream flow and to any other
2 person who has asked to be notified of the decision in writing;

3
4 (3) Be made available to the public; and

5
6 (4) State the reason(s) for the decision, whether the decision is to deny the petition or to
7 reconsider established protected instream flows.

8
9 (g) If the department grants the petition, the department shall establish revised protected instream
10 flows by the process set forth in Env-Wq 1904.03 and 1904.04.

11
12 (h) As specified in RSA 483:9-c, X, the commissioner's decision on the petition may be appealed in
13 accordance with RSA 541.

14
15 Env-Wq 1904.07 Department initiated change to protected instream flows. The department shall
16 initiate action to reconsider a designated river's protected instream flows if the department determines that
17 there are changed conditions in the WMPA that warrant re-evaluation of the flows.
18

19 **PART Env-Wq 1905 PROCEDURE FOR ADOPTION OF WATER MANAGEMENT PLANS**

20
21 Env-Wq 1905.01 Elements of a Water Management Plan.

22
23 (a) The department shall compile and adopt a water management plan for each designated river
24 which shall include:

25
26 (1) An individual water conservation plan, as provided in Env-Wq 1905.02, for each affected
27 water user;

28
29 (2) An individual water use plan, as provided in Env-Wq 1905.03, for each affected water
30 user; and

31
32 (3) An individual dam management plan, as provided in Env-Wq 1905.04, for each affected
33 dam owner.

34
35 (b) Prior to adoption of a WMPA's water management plan, the commissioner shall establish
36 protected instream flows for that WMPA.
37

38 (c) Prior to beginning development of a water management plan, the department will notify each
39 affected water user and affected dam owner within the WMPA by certified mail that the plan is under
40 development and that they will have a part in determining its outcome.

41
42 (d) Each water management plan shall:
43

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- 1 (1) Apply to the affected water users and affected dam owners in the WMPA,
2
3 (2) Describe the actions the affected water users and affected dam owners shall take in order
4 to maintain the established protected instream flows for a designated river or segment, and
5
6 (3) Result in the protection of flow-dependent instream public uses and designated uses by
7 maintaining the established protected instream flows and maintenance of water quality
8 standards.

9
10 (e) The department shall prepare an estimate of the cost to implement each affected water
11 user's and affected dam owner's proposed plan that considers:

- 12
13 (1) The implementation schedules of each plan; and
14
15 (2) For affected water users engaged in agriculture or public water supply:
16
17 a. Any local, state, or federal financial assistance programs that could provide funding
18 for plan implementation; and
19
20 b. The amount and timing of financial assistance available.

21
22 Env-Wq 1905.02 Water Conservation Plans.

23
24 (a) Each affected water user in a WMPA subject to a water management plan under Env-Wq
25 1905.01 shall have an individual water conservation plan as part of the water management plan.

26
27 (b) For the purposes of this section, an affected water user shall be considered the owner of a
28 conservation system as defined in Env-Wq 2101 and subject to those rules, notwithstanding Env-Wq
29 2101.05, Env-Wq 2101.23, Env-Wq 2101.24(a), and Env-Wq 2101.26(b)(2) and shall have water
30 conservation provisions in their plan that apply to their water use type as described in Env-Wq 2101.

31
32 (c) Notwithstanding subsection (a) above, a hydropower dam facility who is an affected water user
33 and has no other withdrawal than water used for hydropower production, shall not have a water
34 conservation plan, but instead shall have only a dam management plan developed as provided under Env-
35 Wq 1905.04.

36
37 (d) Each affected water user subject to a water management plan shall complete the implementation
38 of their final water conservation plan within 5 years of the date of adoption of the water management
39 plan.

40
41 (e) Each water conservation plan for an affected water user shall be developed in steps according to
42 the following process:
43

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1 (1) Each affected water user, in consultation with the department, initially shall develop an
2 interim, individual water conservation plan that identifies a target date for adopting a final
3 water conservation plan;
4

5 (2) The target date for adopting a final water conservation plan shall be within 2 years of the
6 adoption date of the water management plan; and
7

8 (2) Before the target date, each affected water user, in consultation with the department, shall
9 submit their proposed water conservation plan to the department's drinking water and
10 groundwater bureau for approval.
11

12 (f) The proposed water conservation plan for each affected water user in the WMPA shall include
13 an implementation plan schedule, as provided in Env-Wq 1905.05.
14

15 (g) All water conservation plans under these rules for affected water users in the WMPA shall, at
16 minimum, follow best management practices for the affected water user's water use type.
17

18 Env-Wq 1905.03 Water Use Plans.
19

20 (a) Each affected water user, in a WMPA subject to a water management plan under Env-Wq
21 1905.01 shall have an individual water use plan as part of the water management plan.
22

23 (b) Notwithstanding subsection (a) above, a hydropower dam facility who is an affected water user
24 and has no other withdrawal than water used for hydropower production, shall not have a water use plan,
25 but instead shall have only a dam management plan under Env-Wq 1905.04.
26

27 (c) The department shall identify all affected water users within the WMPA and shall prepare a
28 water use plan for, and with the assistance of, each affected water user in the WMPA.
29

30 (d) Each water use plan shall:
31

32 (1) For each affected water user in the WMPA, include a report of water use patterns and
33 anticipated needs based on specific water-use data and information from department records, site visits,
34 and meetings, which includes the following information:
35

- 36 a. The name of the affected water user facility;
- 37
- 38 b. The name of the town where the facility is located;
- 39
- 40 c. The name, address, and telephone number of owner, operator or both;
- 41
- 42 d. The emergency contact person and phone number; and
- 43
- 44 e. A description of current and projected water use.

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1
2 (2) Describe the affected water user’s potential for water use modification to meet protected
3 instream flows, including water use patterns and needs as determined in (1) above;
4

5 (3) Apply management actions to affected water users only to the extent that their water use
6 affects the designated river stream flow, considering the magnitude, location and timing of the
7 affected water user’s withdrawal(s) and return(s);
8

9 (4) For each affected water user in the WMPA, include an individual water use plan so that
10 the net effect of implementation of all individual plans, in coordination with implementation of
11 the dam management plan, is maintenance of the protected instream flows; and
12

13 (5) For each affected water user in the WMPA, include an implementation plan schedule, as
14 provided in Env-Wq 1905.05.
15

16 (e) As a part of the water use plan, the de minimis amount at any location on the designated river
17 shall always be available for use.
18

19 (f) The department shall:
20

21 (1) Determine the de minimis amounts for the designated rivers and publish the results.
22

23 (2) Determine the distribution of the de minimis amount among the affected water users in
24 order to best maintain the protected instream flows while supporting water use needs.
25

26 (3) Review, and revise as needed, the distribution of the de minimis amount if there are
27 changes in water use in the WMPA.
28

29 Env-Wq 1905.04 Dam Management Plan.
30

31 (a) Each affected dam owner in a WMPA that is subject to a water management plan under Env-Wq
32 1905.01 shall have an individual dam management plan as part of the water management plan.
33

34 (b) A hydropower facility who is an affected water user shall have a dam management plan.
35

36 (c) The department shall identify all affected dam owners within the WMPA and shall prepare an
37 individual dam management plan for, and with the assistance of, each affected dam owner in the WMPA.
38

39 (d) Each individual dam management plan shall:
40

41 (1) Include data and information from department sources, site visits, and interviews with
42 each affected dam owner or their operator on characteristics and operational procedures of
43 affected dams within the WMPA consisting of:
44

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- 1 a. The name of the dam;
- 2
- 3 b. The name of the town where the dam is located;
- 4
- 5 c. The name, address, and telephone number of owner, operator or both;
- 6
- 7 d. The emergency contact person and phone number;
- 8
- 9 e. The dam's state ID number;
- 10
- 11 f. A description of any annual operations of the dam, such as fall drawdown and spring
- 12 refilling.
- 13
- 14 g. The name of the water body impounded by dam and the downstream river;
- 15
- 16 h. The designated use(s) and primary use of the impoundment;
- 17
- 18 i. The elevation, in feet, of the recreational pool;
- 19
- 20 j. The elevation, in feet, of the invert of all spillways or outlets;
- 21
- 22 k. The height of the dam, in feet, from toe to the highest point on the dam;
- 23
- 24 l. The volume of water in the top 2 feet of the lake at full pool.
- 25
- 26 m. The type and dimensions of spillway control(s) or outlet works;
- 27
- 28 n. The surface area, in acres of impoundment at recreational pool impoundment;
- 29
- 30 o. The drainage area, in square miles;
- 31
- 32 p. The normal storage, in acre-feet, which is the volume of water impounded above the
- 33 natural pond or stream elevation when the water level is at the spillway crest;
- 34
- 35 q. The maximum unoperated discharge, in cubic feet per second (cfs);
- 36
- 37 r. The design storm discharge, in cfs;
- 38
- 39 s. The estimated 50-year flood flow, in cfs;
- 40
- 41 t. The estimated 100-year flood flow, in cfs;
- 42
- 43 u. Any contractual obligations, minimum flow requirements and flowage rights;
- 44

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1 v. A description of any water quality standards issues related to the impoundment.

2
3 (2) Include a section describing:

4
5 a. The potential water available for release to maintain protected instream flows;

6
7 b. Any effects of proposed management on riparian property owners to the
8 impoundment;

9
10 c. The ecological and other impacts to the impoundment and downstream river reaches
11 which might restrict the use of such waters for augmentation flows; and

12
13 d. The potential for dam management to meet instream flow requirements, considering
14 dam operation patterns, physical structure, and needs as determined in Env-Wq 1905.04
15 (d)(1) above.

16
17 (3) Include an implementation plan schedule to implement the water management plan within
18 5 years, as provided in Env-Wq 1905.05.

19
20 Env-Wq 1905.05 Implementation Plan Schedule.

21
22 (a) Each water conservation plan, water use plan and dam management plan shall have an
23 implementation plan with a schedule to complete the its provisions.

24
25 (b) Implementation plan schedules shall begin upon adoption of the water management plan.

26
27 (c) An affected water user or an affected dam owner shall have up to 5 years to complete the actions
28 under their implementation plan.

29
30 (d) Any affected water users or affected dam owners with implementation plan schedule longer than
31 3 years shall make periodic progress reports to the department after the water management plan is
32 adopted.

33
34 (1) The affected water users or affected dam owners shall annually submit written progress
35 reports to the department by the anniversary of the adoption of the water management plan on
36 a form provided by the department.

37
38 (2) If the implementation plan schedule is longer than 4 years, or if the implementation plan is
39 not completed in 4 years, the affected water user shall submit an additional written progress
40 report to the department at the 4½-year anniversary of the adoption of the water management
41 plan.

42
43 (3) In each the progress report, the affected water user or affected dam owner shall describe:
44

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- a. The actions remaining to be carried out under their implementation plan;
- b. The progress made on each action in the previous year, and
- c. A schedule to complete the actions under the implementation plan.

(e) Affected water user in a WMPA subject to a water management plan under Env-Wq 1905.01 shall meet their implementation schedules.

Env-Wq 1905.06 Publication, Hearing, and Opportunity for Public Comment on the Proposed Water Management Plans.

(a) Prior to adoption of a water management plan for a designated river or designated river segment, the department shall:

- (1) Prepare a proposed water management plan document containing the initial water conservation plans, water use plans, and dam management plans of the affected water users and affected dam owners in the WMPA.
- (2) Make the proposed water management plan document available for public review and comment at least 30 days before the public hearing described in (4) below.
- (3) Hold a public information meeting to present the proposed water management plan document prior to the public hearing described in (4) below.
- (4) Hold a public hearing, in accordance with Env-C 205, to receive public comment on the water management plan.

(b) The department shall consider the comments received during the public hearing and comment period relative to the following factors:

- (1) The outstanding characteristics identified in RSA 483:1;
- (2) The resources identified in RSA 483:6, IV(a);
- (3) Instream public uses identified in RSA 483:9-c;
- (4) Water quality standards;
- (5) The extent to which implementation of the water management plan will maintain the established protected instream flows;

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1 (6) Whether there are affected water users or affected dam owners in the WMPA that have
2 failed to provide information or participate in good faith in negotiations for development of the
3 plan;

4
5 (7) The reasons affected water users or affected dam owners object to provisions of the
6 proposed plan;

7
8 (8) Information relevant to conservation, water use, or dam operation which had not been
9 considered in preparation of the proposed plan;

10
11 (9) Information relevant to implementation of the proposed plan; and

12
13 (10) Other information relevant to the proposed plan.
14

15 (c) The hearing shall be held in a community in which the designated river flows.

16
17 (d) At the public hearing, the department shall specify a comment period which shall close at least
18 30 days after the hearing date, during which time the department shall accept written comments on the
19 factors pertaining to the proposed water management plan.
20

21 Env-Wq 1905.07 Adoption of Water Management Plans.

22
23 (a) Following the close of the comment period, the department shall:

24
25 (1) Review all comments received; and

26
27 (2) Revise the plan if testimony received shows that the plan does not meet the criteria in (b)
28 below.

29
30 (b) The commissioner shall adopt the plan if:

31
32 (1) The plan contains the 3 elements described in Env-Wq 1905.01(a);

33
34 (2) Each of the elements in Env-Wq 1905.01(a) has a implementation plan schedule;

35
36 (3) Implementation of the water management plan results in maintenance of the established
37 protected instream flows; and

38
39 (4) Implementation of the water management plan supports the policy and intent of RSA
40 483:1, RSA 483:2, and RSA 483:9-c.
41

42 (c) The commissioner shall issue a written decision regarding the adoption of the water
43 management plan for the designated river.
44

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1 (d) The adopted water management plan shall:
2

3 (1) Be in writing;
4

5 (2) Summarize comments received by the department; and
6

7 (3) Explain how the comments affected the adopted plan.
8

9 (e) The department shall provide notice that the adopted plan is available to:
10

11 (1) Persons identified in Env-Wq 1904.04(b)(3);
12

13 (2) Persons who submitted written comments on the proposed plan; and
14

15 (3) Persons who requested notification of the adoption of the plan.
16

17 Env-Wq 1905.08 Petition for Change to an Adopted Water Management Plan.
18

19 (a) A person may file a petition with the department for change to an adopted water management
20 plan when:

21 (1) There is a new affected water user in the WMPA; or
22

23 (2) There are proposed changes in water use by an affected water user or affected dam owner
24 that impact stream flow conditions.
25

26 (b) The petition shall be in writing.
27

28 (c) The petition shall include:
29

30 (1) The name, address, and daytime telephone number of the person petitioning for change;
31

32 (2) If the person petitioning for change is not an individual, the name of an individual who can
33 be contacted on behalf of the organization petitioning for change;
34

35 (3) A clear and concise statement of the specific change being sought to the plan;
36

37 (4) An explanation of how the change to the adopted water management plan is consistent
38 with maintenance of established protected instream flows and water quality standards;
39

40 (5) Documentation that all affected water users and affected dam owners to whom the change
41 applies have agreed to the change, or if all have not agreed, an explanation of the reasons for
42 failure to agree;
43
44

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1 (6) If applicable, any factors the petitioner believes the department should reevaluate and an
2 explanation of why a reevaluation is important; and
3

4 (7) Data not available or considered at the time the plan was adopted.
5

6 (d) The department shall grant the petition if the petition is complete as described in (c) above, and
7 if the information in the petition indicates that criteria in (a) above for changes to a water management
8 plan are met.
9

10 (e) The department may deny a petition that is:
11

12 (1) Based on information available to the requesting party when the water management plan
13 was prepared, but not submitted to the department in a timely fashion; or
14

15 (2) Has not demonstrated that a change in water use has an impact on the protected instream
16 flow conditions.
17

18 (f) Within 45 days of receiving a petition for change, the department shall:
19

20 (1) Deny the petition and affirm the adopted plan; or
21

22 (2) Grant the petition and begin reconsideration of the provisions of the plan requested in the
23 petition.
24

25 (g) The department's decision shall:
26

27 (1) Be in writing;
28

29 (2) Be sent to the person who requested the change to the water management plan and to any
30 other person who has asked to be notified of the decision in writing;
31

32 (3) Be made available electronically to the general public; and
33

34 (4) State the reason(s) for the decision, whether the decision is to deny the petition or to grant
35 the petition and reconsider the specified provisions of the water management plan.
36

37 (h) If the department grants the petition, the department shall initiate actions to reconsider a water
38 management plan by the processes described in Part Env-Wq 1905.
39

40 Env-Wq 1905.09 Process for Routine Updates of Water Management Plans.
41

42 (a) The department may make changes to an affected water user's or an affected dam owner's water
43 management plan without a public hearing to update the following parts of a plan:
44

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- 1 (1) Records of the monthly and annual water use data;
- 2
- 3 (2) Contact information for the affected dam owner or affected water user;
- 4
- 5 (3) Corrections to or additions of measurements or technical information; or
- 6
- 7 (4) Other updates that do not affect operational management.
- 8

9 (b) The department shall make a public notice of its intent to make routine changes at least 10
10 business days prior to finalizing those changes to the water management plan.

11
12 Env-Wq 1905.10 Changes to the Water Management Plan as a Result of Changes in the WMPA.
13 The department shall initiate action to reconsider and amend a water management plan by the processes
14 described in Part Env-Wq 1905 if there are changed conditions in the WMPA that warrant re-evaluation
15 of the plan.

16
17 Env-Wq 1905.11 Changes to the Water Management Plan as a Result of a Waiver. The department
18 may initiate action to reconsider and amend a water management plan if a waiver under Env-Wq 1907 is
19 granted. The department shall conduct such a reconsideration and amendment of a water management
20 plan by the processes described in Part 1905.

21
22 PART Env-Wq 1906 ADMINISTRATION OF WATER MANAGEMENT PLANS

23
24 Env-Wq 1906.01 Protected Instream Flows and Water Quality Criteria. Protected instream flows
25 established by the commissioner shall serve as water quality criteria for the purpose of administration of
26 water quality standards by the department under the federal Clean Water Act and RSA 485-A.

27
28 Env-Wq 1906.02 Compliance.

29
30 (a) Affected water users and affected dam owners shall comply with the provisions of an adopted
31 water management plan and its implementation plan schedule.

32
33 (b) Each affected water user and affected dam owner shall document the actions they have taken to
34 comply with their water management plan.

35
36 (c) The department shall conduct periodic audits of the affected water user and affected dam owner
37 records described in (b) above to ensure compliance with the adopted water management plans.

38
39 (d) Any affected water user or affected dam owner who complies with the provisions of an adopted
40 water management plan shall be deemed to be in compliance with water quality standards, with respect to
41 stream flow, established in RSA 485-A and Env-Wq 1700.

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1 (e) Within 3 months of completing the actions described in their implementation plan schedule, an
2 affected water user or affected dam owner shall submit a final progress report to the department
3 documenting that they have completed their implementation plan.

4
5 (f) The department shall review the final progress report and either:

6
7 1) Confirm the implementation plan has been completed and reply to that effect to the affected
8 water user, or

9
10 2) Identify deficiencies in completing the implementation plan and notify the affected water
11 user of actions remaining to be completed.

12
13 Env-Wq 1906.03 Time Extension for Implementation Plan Schedules.

14
15 (a) An affected water user or affected dam owner may request a 5-year extension to their
16 implementation plan schedule on the basis of unsustainable financial consequences or other difficulties.

17
18 (b) A request for a 5-year extension of an implementation plan schedule shall be submitted in
19 writing on a form provided by the department by the affected water user or affected dam owner to the
20 department and shall contain the following:

21
22 (1) Name of the facility, and name and contact information for the person requesting the
23 extension;

24
25 (2) Copies of annual progress reports submitted to the department;

26
27 (3) A description of recent progress since the previous annual progress report and a
28 description of the plans for the remainder of the initial implementation period;

29
30 (4) Documentation of financial or other difficulties that preventing the affected water user or
31 affected dam owner from meeting their implementation schedule; and

32
33 (5) A plan for completing the implementation schedule within the 5-year extension period.

34
35 (c) The department shall grant the extension request if:

36
37 (1) The extension request demonstrates financial or other difficulties preventing the affected
38 person from meeting their implementation schedule;

39
40 (2) The affected water user's or affected dam owner's reporting demonstrates by its content
41 and regularity that the affected party is working in good faith, within their capability, to
42 complete the implementation plan on schedule; and
43

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1 (3) The affected water user or affected dam owner has provided a plan which the department
2 determines will result in implementation of their water management plan within the 5-year
3 extension period.
4

5 PART Env-Wq 1907 WAIVERS

6
7 Env-Wq 1907.01 Purpose of Waivers. The purpose of these waiver rules is to identify the
8 procedural requirements for waivers specific to the contents of an affected water user’s conservation plan
9 or water use plan; or an affected dam owner’s dam management plan.
10

11 Env-Wq 1907.02 Waiver Applicability. The requirements set forth in Part Env-Wq 1907 shall
12 apply to any affected water user or affected dam owner who is or would be adversely affected by the
13 application of a water management plan, or its implementation schedule, undertaken pursuant to RSA
14 483:9-c and the rules for the protection of instream flow on designated rivers.
15

16 Env-Wq 1907.03 Pre-request Meeting. Prior to submitting a waiver request, a prospective
17 requester shall meet with the department to identify possible amendments to the water management plan,
18 or its implementation schedule, which might eliminate the need for a waiver.
19

20 Env-Wq 1907.04 Waiver Requests.

21
22 (a) An affected water user or an affected dam owner may request a waiver of specific provisions of
23 an adopted water management plan developed under Env-Wq 1905, or of its implementation schedule, on
24 the grounds of unsustainable financial consequences, or grounds of negative impacts to public health or
25 safety.
26

27 (b) A waiver request shall:

28
29 (1) Be submitted in writing to the department on a form provided by the department by
30 certified mail, return receipt requested;
31

32 (2) Include in the request:

33
34 a. The name and water user or dam identification number of the facility to which the
35 request relates;
36

37 b. The name of the designated river to which the waiver request relates; and
38

39 c. A full explanation of why a waiver is being requested including:
40

41 1. Specific reference to, and description of, the water management plan
42 provision(s) for which a waiver is being sought;
43

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- 1 2. For a waiver for unsustainable financial consequences, documentation of the
2 practicable extent to which the affected party has met or is able to meet their water
3 management plan; and, either:
4
5 3. Documentation of the negative consequences on either public health or safety
6 resulting from complying with the specified water management plan provision(s);
7 or
8
9 4. Documentation of the operational or economic consequences on the affected
10 water user's or affected dam owner's facility, resulting from complying with the
11 specified water management plan provision(s), or both.
12

13 Env-Wq 1907.05 Waiver Review.

14
15 (a) The department shall, within 60 days of its receipt, make an initial review to determine
16 completeness of a waiver request.
17

18 (b) If the department's initial review finds that the waiver request does not contain the elements
19 required by Env-Wq 1907.04 (c)(2) above, or if the department requires additional information in order to
20 make a decision, the department shall notify the person requesting the waiver and request that the person
21 submit specific, additional information.
22

23 (c) If the department's initial review finds that the waiver request contains the elements required by
24 Env-Wq 1907.04 (c)(2) above, the department shall:
25

- 26 (1) Notify the requester that the department shall conduct a waiver review;
27
28 (2) Publicize the waiver request on the department's website;
29
30 (3) Notify the other affected water users and affected dam owners within the WMPA that a
31 waiver has been requested; and
32
33 (4) Begin the waiver review and publish a waiver decision by the process in Env-Wq 1907.06.
34

35 (d) For a waiver request from an affected water user concerning unsustainable financial
36 consequences, the requester shall address the conditions constituting unsustainable financial consequences
37 by demonstrating that:
38

- 39 (1) The water use is necessary for sustaining their business;
40
41 (2) No feasible alternatives exist to reducing their water use to meet the water management
42 plan provisions ; and, either
43

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1 (3) No feasible alternative sources for water supply are available or might be developed to
2 meet the water management plan provisions; or
3

4 (4) The implementation schedule for the water management plan is too short to allow for
5 sustainable funding.
6

7 (e) For a waiver request from an affected dam owner concerning unsustainable financial
8 consequences, the requester shall address the conditions constituting unsustainable financial consequences
9 by demonstrating that:

10 (1) Their hydropower or other operations would be reduced to an unprofitable condition; and
11 either:
12

13 (2) No feasible management alternatives exist; or
14

15 (3) The implementation schedule for their water management plan is too short to allow for
16 sustainable funding alternatives.
17
18

19 (f) For a waiver request concerning public health and safety, the requester shall address the
20 conditions constituting negative impacts to public health or safety by demonstrating that:

21 (1) The implementation of the water management plan would result or has resulted in a public
22 safety concern; or
23

24 (2) The implementation of the water management plan would result or has resulted in a
25 violation of water quality standards.
26
27

28 Env-Wq 1907.06 Waiver Decisions.

29 (a) The department shall evaluate the waiver request as to whether:

30 (1) The requester has demonstrated by clear and convincing evidence that compliance with
31 their water management plan would result in a negative impact on public health or safety; or
32
33

34 (2) The requester has demonstrated by clear and convincing evidence that compliance with
35 their water management plan, or its implementation schedule, would result in unsustainable
36 financial consequences.
37
38

39 (b) If the department finds that the requester has demonstrated by the criteria in Env-Wq
40 1907.05(d), (e) or (f) that implementation of the specified provision(s) of the water management plan, or
41 its implementation plan, have resulted or would result in unsustainable financial consequences, or in
42 negative impacts to public health or safety, the department shall grant the waiver and shall waive
43 compliance with the specified provisions of the water management plan, or its implementation schedule,

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1 until the department amends these to alleviate the negative impacts to public health or safety or undue
2 financial hardship .
3

4 (c) If the department grants the waiver, the department may include conditions to the water
5 management plan, or its implementation schedule, in the written decision, as necessary to support
6 protected instream flows so long as those conditions do not create unsustainable financial consequences or
7 negative impacts to public health or safety.
8

9 (d) The department shall issue a written decision in response to a request for a waiver. The written
10 decision shall amend the applicable water management plan.
11

12 (e) The department shall notify the requester of the decision by certified mail, return receipt
13 requested, and shall post the decision on its website.
14

15 (f) Any affected water user or dam owner granted a waiver shall comply with the conditions set
16 forth in the waiver’s written decision.
17

18 (g) If the department denies the waiver request, the department shall specify the reason(s) for the
19 denial in the written decision.
20

21 (h) A waiver granted to an affected water user or affected dam owner shall not obviate the
22 management actions of the water management plans of other affected water users in the WMPA.
23

24 (i) A waiver shall be in effect until the department amends the water management plan by the
25 process described in Part Env-Wq 1905.
26

27 (j) Any person aggrieved by a waiver decision may appeal to the N.H. Water Council by filing an
28 appeal that meets the requirements specified in RSA 21-O:14 and the rules adopted by the Council, Env-
29 WC 100-200.
30
31
32

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1 STATUTORY REFERENCES

2 <http://www.gencourt.state.nh.us/rsa/html/L/483/483-4.htm>

3 TITLE L

4 WATER MANAGEMENT AND PROTECTION

5 CHAPTER 483

6 NEW HAMPSHIRE RIVERS MANAGEMENT AND PROTECTION PROGRAM

7 **Section 483:4**

8
9 XI. "Instream public uses" means those uses which comprise the state's interests in surface waters
10 including, but not limited to: navigation; recreation; fishing; storage; conservation; maintenance and
11 enhancement of aquatic and fish life; fish and wildlife habitat; wildlife; the protection of water quality and
12 public health; pollution abatement; aesthetic beauty; and hydroelectric energy production.

13
14
15 <http://www.gencourt.state.nh.us/rsa/html/L/488/488-3.htm>

16 TITLE L

17 WATER MANAGEMENT AND PROTECTION

18 CHAPTER 488

19 WATER MANAGEMENT

20 **Section 488:3**

21 **488:3 Registration Required. –**

22 I. No person shall withdraw or discharge a cumulative amount of more than 20,000 gallons of water per
23 day, averaged over any 7-day period, or more than 600,000 gallons of water over any 30-day period, at a
24 single real property or place of business without registering the withdrawal or discharge with the
25 department. Transfers of such volume of water shall also be registered. Registration shall be in addition to
26 any required permits.

27 II. No registration shall be transferred to another person without written notification to the
28 commissioner.

29 **Source.** 2005, 240:1, eff. Jan. 1, 2006.

30 <http://www.gencourt.state.nh.us/rsa/html/L/483/483-9-c.htm>

31 TITLE L

32 WATER MANAGEMENT AND PROTECTION

33 CHAPTER 483

34 NEW HAMPSHIRE RIVERS MANAGEMENT AND PROTECTION PROGRAM

35 **Section 483:9-c**

36
37 II. No less than 60 days prior to commencing a protected instream flow study on any designated river, the department shall
38 hold a public hearing jointly with the senate committee with jurisdiction over river management issues and the house
39 committee with jurisdiction over river management issues and provide a public comment period of 30 days. The department
40 shall consider the public comments received before commencing the study.

41 **FOR DISCUSSION PURPOSES ONLY**

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1
2 TITLE L
3 WATER MANAGEMENT AND PROTECTION
4 CHAPTER 483
5 NEW HAMPSHIRE RIVERS MANAGEMENT AND PROTECTION PROGRAM

6 **Section 483:9-c**
7

8 X. Any party who is aggrieved by a determination establishing such protected instream flows may
9 petition the commissioner for a hearing to review such determination within 30 days of the date the
10 determination is issued. The filing of such petition shall stay the implementation of the determination
11 until a final decision has been rendered on the petition or an appeal taken pursuant to RSA 541.

DRAFT