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REVISION NOTE:

This part was formerly designated Env-Ws 1900. Document #7901, effective 5-29-03, adopted Env-Ws 1900. This chapter was subsequently redesignated editorially with a new subtitle as Env-Wq 1900 pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05. **The numerals of the rules remained unchanged**, and the source notes for the rules under Document #7901 refer to those numbers under the subtitle Env-Ws.

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

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

PART Env-Wq 1901 PURPOSE AND APPLICABILITY

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

Source. #7901, eff 5-29-03 (See Revision Note (RN) at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18

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

- (a) Designated rivers or river segments and their tributary drainage areas;
- (b) Affected water users; and
- (c) Affected dam owners and the associated water body impounded by the dam.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18

PART Env-Wq 1902 DEFINITIONS

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

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18

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

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18

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

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18

Env-Wq 1902.04 “Commissioner” means the commissioner of the New Hampshire department of environmental services.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18

Env-Wq 1902.05 “Department” means the New Hampshire department of environmental services.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1902.08)

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Env-Wq 1902.06 “Designated river” means “designated river” as defined in RSA 483:4, VIII, as reprinted in Appendix B. The term includes a river segment.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1902.09)

Env-Wq 1902.07 “Governing body” means the board of selectmen in a town, the board comprising the mayor and aldermen in a city, or the council in a city or town with a council, or the county commissioners in unincorporated towns and unorganized places.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1902.11)

Env-Wq 1902.08 “Instream public uses” means “instream public uses” as defined in RSA 483:4, XI, as reprinted in Appendix B.

Source. #12695, eff 12-22-18

Env-Wq 1902.09 “Lakes management advisory committee (LMAC)” means the committee established under RSA 483-A:6.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1902.12)

Env-Wq 1902.10 “Local river management advisory committee (LRMAC)” means a committee established under RSA 483:8-a.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1902.13)

Env-Wq 1902.11 “Protected instream flow” means “protected instream flow” as defined in RSA 483:4, XVI, as reprinted in Appendix B.

Source. #12695, eff 12-22-18

Env-Wq 1902.12 “Rivers management advisory committee (RMAC)” means the committee established under RSA 483:8.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1902.14)

Env-Wq 1902.13 “Water management planning area (WMPA)” means the tributary drainage area to a designated river for which a water management plan is required.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1902.16)

PART Env-Wq 1903 SEQUENCE AND PROCEDURES

Env-Wq 1903.01 Sequence. In order to establish protected instream flows and adopt water management plans the department shall:

- (a) Prioritize and select designated rivers in accordance with Env-Wq 1903.02;
- (b) Hold a public hearing as required by RSA 483:9-c, II in accordance with Env-Wq 1903.02(c)-(g);

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(c) Conduct a protected instream flow study of a designated river to determine proposed protected instream flows in accordance with Env-Wq 1904.02;

(d) Hold a public hearing to receive comments on each proposed protected instream flow study report in accordance with RSA 483:9-c, III and Env-Wq 1904.04;

(e) Establish and publish protected instream flows in accordance with Env-Wq 1904.05;

(f) Coordinate with affected water users, affected dam owners, lake associations, and property owners on any impoundments created by affected dams within a WMPA to develop water conservation plans, water use plans, or dam management plans, in accordance with Env-Wq 1905.01 through Env-Wq 1905.07;

(g) Hold at least one public hearing to receive comments on a proposed water management plan in accordance with RSA 483:9-c, IV and Env-Wq 1905.08; and

(h) Adopt and publish a water management plan that meets the criteria in Env-Wq 1905.09.

Source. #12695, eff 12-22-18

Env-Wq 1903.02 Prioritization of Designated Rivers.

(a) The department, with the advice of the RMAC and the LMAC, shall establish a priority list that includes up to 5 designated rivers for which protected instream flows shall be established and for which a water management plan shall be adopted.

(b) For purposes of determining a designated river's priority the department shall consider:

(1) The location of the designated river relative to other designated rivers for which protected instream flows and water management plans have not yet been established;

(2) The availability of stream flow gages for applying management;

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

(4) Level of support in the WMPA from the LRMAC(s) and the public

(5) Comments received from the parties specified in Env-Wq 1903.01(f);

(6) Public comments received at a public hearing held in accordance with Env-Wq 1903.01(b); and

(7) Comments received from the RMAC and the LMAC.

(c) In accordance with RSA 483:9-c, II, no less than 60 days prior to commencing a designated river's protected instream flow study, the department shall, jointly with the house and senate committees with jurisdiction over river management issues, hold a public hearing regarding prioritization of a designated river for establishment of protected instream flows and proposed adoption of a water management plan within the WMPA.

(d) The department shall notify each affected water user and affected dam owner within the WMPA of the each designated river on the priority list specified in (a), above, that the river is being considered for a protected instream flow study.

(e) Prior to the public hearing described in (c), above, the department shall post a notice of the date, time, and location of the hearing to its website and send written notice of the hearing to the following for each WMPA with a designated river on the priority list:

(1) The RMAC;

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- (2) The LMAC;
- (3) The chair of each LRMAC;
- (4) Lake associations on lakes with affected dams;
- (5) The chair of any conservation commission;
- (6) All governing bodies;
- (7) Each state senator representing the municipalities in the WMPA;
- (8) Each state representative representing the municipalities in the WMPA;
- (9) The New Hampshire rivers council;
- (10) The New Hampshire lakes association; and
- (11) Any interested party who has provided contact information, including an email address, to the department and requested in writing to be notified of the hearing.

(f) The department shall provide a comment period of 30 days, during which time the department shall accept written comments on the factors pertaining to prioritization of the designated rivers and the proposed protected instream flow study.

(g) Prior to commencing a protected instream flow study, the department shall consider comments received at the public hearing and during the comment period, and publish a final determination on the order of priority of the rivers on the priority list.

Source. #12695, eff 12-22-18

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

Env-Wq 1904.01 General Procedure for Establishing Protected Instream Flows. To establish protected instream flows on a designated river that conserve and protect the flow-dependent instream public uses and that meet applicable water quality standards:

(a) The department shall:

- (1) Conduct a protected instream flow study and propose protected instream flows, as provided in Env-Wq 1904.02;
- (2) Publish the proposed protected instream flows in a proposed protected instream flow study report for public review, as provided in Env-Wq 1904.03; and
- (3) Hold a public hearing and receive comments on the study report and the proposed protected instream flows, as provided in Env-Wq 1904.04; and

(b) The commissioner shall issue a decision establishing the protected instream flows for the designated river, as provided in Env-Wq 1904.05.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18

Env-Wq 1904.02 Protected Instream Flow Study. The department shall, for each designated river, conduct a protected instream flow study that:

(a) Identifies and catalogs all flow-dependent instream public uses on the designated river listed under RSA 483:9-c, I, and all designated uses under the federal Clean Water Act (CWA);

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(b) Includes an on-the-water stream survey of all flow-dependent instream public uses and designated uses under the CWA that identifies and catalogs from direct observation:

- (1) Fish;
- (2) Wildlife;
- (3) Macroinvertebrates;
- (4) Plants; and
- (5) Recreational uses.

(c) Is based upon scientific analyses using methods described in the Report of the Instream Flow Pilot Program, dated December 1, 2015, and adopted as the final report of the Committee to Study the Impact of Water Withdrawals on Instream Flows, established pursuant to Chapter 242, Laws of 2000.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1905.02)

Env-Wq 1904.03 Proposed Protected Instream Flow Study Report. The department shall prepare a proposed protected instream flow study report that includes:

- (a) The recommended, scientifically-based, protected instream flows;
- (b) The methods applied to determine the protected instream flows; and
- (c) The supporting information used to determine those flows.

Source. #12695, eff 12-22-18

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

(a) Prior to the establishment of protected instream flows the department shall hold an informational meeting to present the proposed protected instream flow study report.

(b) At least 15 days after the informational meeting held in accordance with (a), above, the department shall hold a public hearing, in accordance with Env-C 205, to receive public comments on the proposed protected instream flow report.

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

(d) Prior to the public hearing, the department shall post a notice of the date, time, and location of the hearing to its website, including information about how a copy of the study report may be obtained, and shall send written notice of the hearing and study availability to, and solicit comment from, the following:

- (1) Affected water users in the WMPA;
- (2) Affected dam owners in the WMPA;
- (3) Lake associations in the WMPA on lakes with affected dams;
- (4) The RMAC;
- (5) The LMAC;
- (6) The LRMACs for the designated river and the LRMACs of upstream and downstream designated rivers, if any;

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- (7) The governing body of each municipality in the WMPA;
- (8) State senators representing municipalities in the WMPA;
- (9) State representatives representing municipalities in the WMPA;
- (10) The New Hampshire rivers council;
- (11) The New Hampshire lakes association;
- (12) The New Hampshire fish and game department;
- (13) The governor of any state which shares a designated river;
- (14) The United States Environmental Protection Agency;
- (15) The United States Fish and Wildlife Service;
- (16) The United States Forest Service, for each designated river inside the White Mountain National Forest;
- (17) The United States Geological Survey;
- (18) Federal Energy Regulatory Commission, for each WMPA with a licensed or exempted hydropower site;
- (19) The National Park Service; and
- (20) Any interested party who has provided contact information, including an email address, to the department and requested in writing to be notified of the hearing.

(e) 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.

(f) After the close of the comment period, the department shall consider 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 licenses 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 are used to manage flow;
- (6) Information relevant to flow conditions that will conserve, protect, maintain, or restore aquatic life or habitat, or both;
- (7) Information relevant to flow conditions that will conserve, protect, maintain, or restore recreational uses;
- (8) Information relevant to flow conditions that will conserve, protect, maintain, or restore resources for which the river is designated;

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- (9) Information relevant to flow conditions that will support the designated uses under the CWA;
- (10) Pertinent resource management plans including, but not limited to, fisheries management plans, watershed management plans, and recreation management plans; and
- (11) Other information relevant to the proposed protected instream flows.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1905.03)

Env-Wq 1904.05 Establishment of Protected Instream Flows.

(a) Following the public comment period, the commissioner shall issue a decision establishing protected instream flows for the designated river that meet the criteria in RSA 483:1, 483:2, and 483:9-c.

(b) The decision shall:

- (1) Be in writing;
- (2) State the scientific basis for the established flow(s);
- (3) Include an assessment of how the established flows will meet applicable water quality standards;
- (4) Include the assessment required by RSA 483:9-c, V;
- (5) Summarize the comments received; and
- (6) Explain how the comments affected the decision.

(c) The department shall provide copies of the decision to:

- (1) Persons identified in Env-Wq 1904.04(d);
- (2) Persons who submitted written comments on the proposed flows; and
- (3) Persons who requested to receive a copy of the notice of the established flows.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1905.05)

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

(a) A person may file a petition with the commissioner for a change to an established protected instream flow.

(b) The petition shall be in writing.

(c) The petition shall include:

- (1) The name, address, email address, and daytime telephone number of the person requesting change;
- (2) If the person petitioning for a change is not an individual, the name of an individual who can be contacted on behalf of the organization requesting the change;
- (3) A clear and concise statement of the specific change being requested;

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- (4) A list of the flow-dependent outstanding characteristics identified in RSA 483:1, the flow-dependent resources identified in RSA 483:6, IV (a), and the flow-dependent instream public uses identified in RSA 483:9-c applicable to the river segment for which change of a protected instream flow is being requested;
  - (5) An explanation of how change of protected instream flows would conserve and protect the factors identified under (4) above;
  - (6) An explanation of how a change of protected instream flows would meet water quality standards;
  - (7) A full explanation of why protected instream flows should be changed on the designated river; and
  - (8) Identification of any data that was not available to the petitioner or that was presented by the petitioner but not considered at the time the protected instream flow was established.
- (d) Within 30 days of receiving a petition for change of the protected instream flow, the commissioner shall:
- (1) Deny the petition and affirm the established protected instream flow; or
  - (2) Grant the petition and begin reconsideration of the protected instream flow.
- (e) The commissioner shall grant the petition if the petition is complete as described in (c) above and if the information in the petition or other information reviewed by the department indicates that the established protected instream flows were based on incomplete or erroneous information.
- (f) The commissioner's decision shall:
- (1) Be in writing;
  - (2) Be sent to the person who petitioned for the change of the instream flow and to any other person who has asked to be notified in writing of the decision; and
  - (3) State the reason(s) for the decision and whether the decision is to deny the petition or to reconsider established protected instream flows.
- (g) If the commissioner grants the petition, the department shall establish revised protected instream flows by the process set forth in Env-Wq 1904.01.
- (h) The commissioner's decision on the petition may be appealed in accordance with RSA 541.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1905.05(a)-(h))

Env-Wq 1904.07 Department Initiated Changes to Established Protected Instream Flows. The department shall initiate action, in accordance with Env-Wq 1904.01, to reconsider a designated river's established protected instream flow if the department determines that the protected instream flows were based on incomplete or erroneous information.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1905.05(i))

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

Env-Wq 1905.01 Elements of a Water Management Plan.

(a) The department shall prepare a water management plan for each designated river that sets forth how the protected instream flows established under Part Env-Wq 1904 for a designated river or segment shall be maintained.

(b) The water management plan shall include an individual:

- (1) Water conservation plan, as provided in Env-Wq 1905.03 for each affected water user;
- (2) Water use plan, as provided in Env-Wq 1905.04, for each affected water user; and
- (3) Dam management plan, as provided in Env-Wq 1905.05, for each affected dam owner.

(c) The department shall establish scientifically-supported protected instream flows prior to adoption of the water management plan for a WMPA.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1906.01(a)-(b))

Env-Wq 1905.02 Water Management Plan Development.

(a) The department shall:

(1) Prior to beginning development of a water management plan, notify each affected water user and affected dam owner in the WMPA by certified mail that:

- a. A water management plan is being prepared;
- b. The plan will be enforceable; and
- c. They will have opportunities to propose components of the water management plan, participate in a public hearing, and submit comments relative to the water management plan prior to its adoption;

(2) Contact each affected water user and affected dam owner in the WMPA to discuss their individual water management plans;

(3) Make the proposed water management plan available for public review;

(4) Conduct a public hearing and receive comments as provided in Env-Wq 1905.08; and

(5) Issue a written decision as provided in Env-Wq 1905.09.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1906.01(c))

Env-Wq 1905.03 Water Conservation Plans.

(a) Each affected water user in a WMPA required to have a water management plan under Env-Wq 1905.01 shall have an individual water conservation plan that is prepared by the affected water user and approved by the department in accordance with this section.

(b) Each individual water conservation plan shall be incorporated into the water management plan for the WMPA.

(c) This section shall not apply to a hydropower dam facility that is an affected water user and has no withdrawal other than water used for hydropower production.

(d) A water conservation plan approved under Env-Wq 2101 shall be accepted by the department as an affected water user's water conservation plan for purposes of this chapter.

(e) An affected water user without an approved water conservation plan under Env-Wq 2101 shall:

(1) For the purposes of this section, be considered the owner of a conservation system as defined in Env-Wq 2101 and shall comply with all requirements specified therein except:

a. Any requirements specified in Env-Wq 2101.02, Env-Wq 2101.05 (a) through (f), Env-Wq 2101.13, Env-Wq 2101.24(a), and Env-Wq 2101.26(b)(2); and

b. Any deadlines specified in Env-Wq 2101; and

(2) Submit a proposed water conservation plan that demonstrates compliance with Env-Wq 2101.05 through Env-Wq 2101.22 as applicable, specifically:

a. The water conservation plan for a large community water system shall demonstrate compliance with Env-Wq 2101.06 through Env-Wq 2101.12;

b. The water conservation plan for a small community water system active prior to May 15, 2005 or for a landlord-owned conservation system in which the landlord supplies water only to tenants and includes water service in a rental fee shall demonstrate compliance with Env-Wq 2101.15 through Env-Wq 2101.17, except that any deadlines specified therein shall not apply;

c. The water conservation plan for an agricultural user shall demonstrate compliance with Env-Wq 2101.18; and

d. The water conservation plan for an industrial, commercial, or institutional water users shall demonstrate compliance with Env-Wq 2101.19 through Env-Wq 2101.20 and Env-Wq 2101.22.

(f) An affected water user under (e), above, shall develop a water conservation plan as follows:

(1) Each affected water user shall develop an interim water conservation plan that includes a narrative explanation of the steps necessary to develop a final water conservation plan and include:

a. A reference to the section of Env-Wq 2101 applicable to the affected water user's type of water use; and

b. A target date for completing a final water conservation plan;

(2) The target date for completing a final water conservation plan shall not be later than 2 years after the adoption date of the water management plan; and

(3) On or before the target date, each affected water user shall submit to the department a proposed final water conservation plan.

(g) The proposed final water conservation plan for each affected water user in the WMPA shall include an implementation schedule that complies with Env-Wq 1905.07.

(h) The department shall approve a final water conservation plan submitted in accordance with (f)(3), above, if it satisfies the requirements in (e)(2), above.

(i) Each affected water user subject to a water management plan shall complete implementation of its final water conservation plan within 5 years of the date of adoption of the water management plan.

Source. #12695, eff 12-22-18

Env-Wq 1905.04 Water Use Plans.

- (a) Each affected water user in a WMPA subject to a water management plan under Env-Wq 1905.01 shall:
- (1) Have an individual water use plan that is prepared by the department in consultation with the affected water user; and
  - (2) Submit to the department the information specified in (e), below.
- (b) Each individual water use plan shall be incorporated into the water management plan for the WMPA.
- (c) This section shall not apply to a hydropower dam facility that is an affected water user and has no withdrawal other than water used for hydropower production.
- (d) The department shall identify all affected water users within the WMPA and shall prepare an individual water use plan for each affected water user in the WMPA.
- (e) Each individual water use plan shall:
- (1) Include a report of water use patterns and the anticipated needs of each affected water user in the WMPA that:
    - a. Is based on specific water-use data and information from department records, site visits, and information received from affected water users; and
    - b. Includes the following information:
      1. The name of the affected water user facility;
      2. The name of the town where the facility is located;
      3. The name, address, email address, and telephone number of owner, operator or both;
      4. The emergency contact person and phone number;
      5. A description including the locations of the facility's water withdrawals and discharges;
      6. The monthly and annual historical water use for each source of water used by the facility;
      7. The monthly and annual historical water discharged by the facility; and
      8. A description of patterns of current and projected water use;
  - (2) Describe the affected water user's potential for water use modification to meet protected instream flows, including water use patterns and needs as determined in (1) above;
  - (3) Be developed so that the net effect of implementation of all individual plans, in coordination with implementation of the dam management plan, is maintenance of the protected instream flows; and
  - (4) Include an implementation schedule that complies with Env-Wq 1905.07.
- (f) Notwithstanding any rule to the contrary, in order to help support the water use needs of affected water users during periods when stream flows are below the protected instream flows, the department shall:

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- (1) Determine the index amount of water equal to 5% of the 7Q10 at one or more of the designated river's stream flow gages;
- (2) Use the amount in (1) above to determine the derivative amount of water equal to 5% of the 7Q10:
  - a. At the impact point on the designated river of each affected water user's withdrawal; and
  - b. Where the designated river exits the WMPA;
- (3) Apportion among affected water users for withdrawal such amounts that in the aggregate do not exceed the amounts calculated in (2), above, giving priority to affected water users who:
  - a. Withdraw water directly from the designated river or its tributary; and
  - b. Have a water use pattern less than the amount in (2)a., above; and
  - c. Have limited alternatives to meeting their water withdrawal needs from their surface water source;
- (4) Specify in the water use plan of each affected water user the amount apportioned pursuant to (3), above, if applicable; and
- (5) Revise the apportionments in water use plans in accordance with Env-Wq 1905.12 if water use conditions in the WMPA have changed.

Source. 12695, eff 12-22-18

Env-Wq 1905.05 Dam Management Plans.

- (a) Each affected dam owner within a WMPA that is subject to a water management plan under Env-Wq 1905.01, and each hydropower facility that is an affected water user, shall have an individual dam management plan that is prepared by the department in consultation with the affected dam owner or hydropower facility owner.
- (b) Each individual dam management plan shall be incorporated into the water management plan for the WMPA.
- (c) Each individual dam management plan shall:
  - (1) Include data and information from department sources, site visits, and interviews with each affected dam owner or their operator on characteristics and operational procedures of affected dams within the WMPA including:
    - a. The name of the dam;
    - b. The name of the town where the dam is located;
    - c. The name, address, email address, and telephone number of owner, operator or both;
    - d. The emergency contact person and phone number;
    - e. The dam's state ID number and Federal Energy Regulatory Commission exemption or license number, if applicable;
    - f. A description of the dam's typical annual operational schedule, including any routine drawdown and refilling events;
    - g. The name of the water body impounded by dam and the downstream river;
    - h. The primary use(s) of the impoundment;

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- i. The elevation, in feet, of the normal full pool;
  - j. The elevation, in feet, of the invert of all spillways and outlets;
  - k. The volume of water in the top 2 feet of the lake at full pool;
  - l. The elevation, in feet, of the top of the dam or dam height relative to the lowest spillway;
  - m. The height of the dam, in feet, from toe to the highest point on the dam;
  - n. The type and dimensions of spillway control(s) or outlet works;
  - o. The surface area of the impoundment at the normal full pool, in acres;
  - p. The drainage area, in square miles;
  - q. The normal storage, in acre-feet, which is the volume of water impounded above the natural pond or stream elevation when the water level is at the spillway crest;
  - r. The maximum unoperated discharge, in cubic feet per second (cfs);
  - s. The design storm discharge, in cfs;
  - t. The estimated 50-year flood flow, in cfs;
  - u. The estimated 100-year flood flow, in cfs;
  - v. Any contractual obligations, minimum flow requirements and flowage rights; and
  - w. A description of any expected water quality impacts to the impoundment as a result of implementing the dam management plan;
- (2) Include a section describing:
- a. The potential water available for release to maintain protected instream flows;
  - b. The ecological and other impacts to the impoundment and downstream river reaches which might restrict the use of such waters for augmentation flows; and
  - c. The potential for dam management to meet instream flow requirements, including dam operation patterns, physical structure, and needs as determined in (c)(1) above;
- (3) For each affected dam in the WMPA, include an individual dam management plan so that the net effect of implementation of all individual dam management plans, in coordination with implementation of the water use plans, is maintenance of the protected instream flows;
- (4) For each affected dam in the WMPA for which dam releases are specified in a dam management plan, include an assessment of how such releases could affect lakefront properties, recreational interests and lake ecology; and
- (5) For each affected dam in the WMPA, include an implementation schedule, as provided in Env-Wq 1905.07.
- (d) The department shall:
- (1) Meet with each affected dam owner to discuss potential water management plan requirements necessary to protected instream flows; and

(2) Coordinate negotiations among affected dam owners, affected water users, and other applicable interests toward water use and dam management that will meet protected instream flows and support the primary uses of the impoundment.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1906.04)

Env-Wq 1905.06 Water Management Plan Document.

(a) The department shall prepare a proposed water management plan document specifying the conservation and operational measures required for each affected water user and affected dam owner in the WMPA to meet the protected instream flows.

(b) The proposed plan shall include an implementation schedule for each affected water user and affected dam owner in the WMPA in accordance with Env-Wq 1905.07.

(c) The proposed water management plan document shall include an assessment of the effect of protected instream flows upon existing hydroelectric power generation, water supply, flood control, and other riparian users, as specified RSA 483:9-c, V.

(d) The department shall make the proposed water management plan document available for public review at least 30 days before the hearing and provide opportunity for public comment as specified in Env-Wq 1905.08.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1906.05)

Env-Wq 1905.07 Implementation Schedule.

(a) Each individual water conservation plan, water use plan, and dam management plan shall include an implementation schedule establishing the timeframes within which an affected water user or affected dam owner shall complete any approvals, plans, property or equipment acquisitions, construction, or other activities necessary to perform the ongoing operational requirements in the plan.

(b) Subject to Env-Wq 1906.04, requirements or activities specified in an implementation schedule shall be completed within 5 years after adoption of the water management plan.

(c) Any affected water users or affected dam owners with an implementation schedule longer than 3 years shall make periodic progress reports to the department beginning the year after the water management plan is adopted, as follows:

(1) Progress reports shall be submitted to the department annually on or before the adoption date of the water management plan;

(2) If the implementation schedule is longer than 4 years, or if implementation of a shorter schedule is not completed within 4 years, an affected water user or affected dam owner shall submit an additional written progress report to the department no later than 4.5 years after the adoption of the water management plan; and

(3) A progress report shall include:

a. Identification of the facility, its address, the authorized person submitting the report and that person's contact information;

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- b. Identification of the incomplete approvals, plans, property or equipment acquisitions, construction, or other requirements or activities necessary to conduct the operational requirements of the water management plan;
- c. A description of progress made in the previous year on approvals, plans, property or equipment acquisitions, construction, or other requirements or activities necessary to conduct the operational requirements, including those that were completed;
- d. For approvals, plans, property or equipment acquisitions, construction, or other activities necessary to conduct the operational requirements that have not been completed in accordance with the implementation schedule, a supplementary schedule proposing revised timeframes within which such requirements or activities in the plan shall be completed; and
- e. The signature of the authorized representative of the facility submitting the report.

(d) Any affected water users or affected dam owners with implementation schedules shorter than 3 years who have not met their implementation schedule goals after three years shall make periodic progress reports as specified in (c), above.

Source. #12695, eff 12-22-18

Env-Wq 1905.08 Publication, Hearing, and Opportunity for Public Comment on 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 draft water conservations plans, water use plans, and dam management plans of the affected water users and affected dam owners in the WMPA;
- (2) Post on the department's web page a notice of the availability of the proposed water management plan report and send notice to the persons identified in Env-Wq 1904.04(d);
- (3) Hold a public informational meeting to present and describe the proposed water management plan; and
- (4) At least 15 days after the informational meeting held in accordance with (3), above, hold a public hearing to receive public comment on the proposed water management plan in accordance with Env-C 205 and the following requirements:
  - a. The hearing shall be held in a community through or past which the designated river flows;
  - b. The hearing shall be held at least 30 days after the notice required in (2), above is posted;
  - c. At least 30 days before the hearing, the department shall post on the department's web page a notice of the hearing and send written notice of the public hearing to and solicit comment from the persons identified in Env-Wq 1904.04(d); and
  - d. 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 water management plan.

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

- (1) The outstanding characteristics identified in RSA 483:1;
- (2) The resources identified in RSA 483:6, IV(a);

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- (3) The flow-dependent 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;
- (6) Whether there are affected water users or affected dam owners in the WMPA that have failed to provide information or participate in good faith in negotiations for development of the plan;
- (7) Any objections to the proposed plan; and
- (8) Other information relevant to the proposed plan that was not considered during the preparation of the proposed plan.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1906.06)

Env-Wq 1905.09 Adoption of Water Management Plans.

- (a) Following the close of the comment period, the department shall:
  - (1) Review all comments received; and
  - (2) Revise the plan if testimony received shows that the plan does not meet the criteria in (b) below.
- (b) The commissioner shall adopt the plan if:
  - (1) The plan contains the 3 elements described in Env-Wq 1905.01(a);
  - (2) Each of the individual plans in Env-Wq 1905.01(a) has an implementation schedule;
  - (3) Implementation of the water management plan will result in maintenance of the established protected instream flows; and
  - (4) Implementation of the water management plan supports the policy and intent of RSA 483:1, RSA 483:2, and RSA 483:9-c.
- (c) The commissioner shall issue a written decision adopting or denying the water management plan for the designated river.
- (d) The adopted water management plan decision shall:
  - (1) Be in writing;
  - (2) Summarize comments received by the department; and
  - (3) Explain how the comments affected the adopted plan.
- (e) The department shall provide copies of the adopted plan to:
  - (1) Persons identified in Env-Wq 1904.04(d);
  - (2) Persons who submitted written comments on the proposed plan; and

- (3) Persons who requested a copy of the adopted plan.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1906.07)

Env-Wq 1905.10 Petition for Changes to an Adopted Water Management Plan.

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

- (1) There is a new affected water user in the WMPA; or  
(2) There are proposed changes in water use or operating conditions by an affected water user or affected dam owner that potentially impact stream flow conditions.

- (b) A petition shall be in writing and include:

- (1) The name, address, email address, and daytime telephone number of the person petitioning for a change;  
(2) If the person petitioning for a change is not an individual, the name of an individual who can be contacted on behalf of the organization petitioning for change;  
(3) A clear and concise statement of the specific change being sought;  
(4) A description of the new water use's impact on stream flow, including the mechanism for water withdrawal and the withdrawal rate;  
(5) An explanation of how the proposed change to the adopted plan is consistent with maintenance of established protected instream flows and water quality standards;  
(6) Documentation that all affected water users and affected dam owners to whom the change applies have agreed to the change, or if all have not agreed, an explanation of the reasons for failure to agree;  
(7) If applicable, any factors the petitioner believes the department should reevaluate; and  
(8) Identification of any data that was not available to the petitioner or that was presented by the petitioner but not considered by the department at the time the plan was adopted.

- (c) If a petition contains all the information required in (b), above, the department shall accept the petition as administratively complete and:

- (1) Notify affected water users and affected dam owners in the WMPA that the department:  
a. Has received a petition for a change to the water management plan;  
b. Will accept written comments on the petition from the affected water users and affected dam owners for 30 days after the date of the notice; and  
c. Will hold a public hearing if it receives requests for a public hearing from at least 25% of affected water users or affected dam owners within the WMPA during the comment period;  
(2) Upon receipt of a sufficient number of requests specified in (c)(1)c., above, hold a public hearing in accordance with Env-C 205, to receive comments on the changes proposed in the petition; and  
(3) Complete a review of the changes proposed in the petition and any comments received in accordance with (1) and (2), above.

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- (d) If the petition does not contain all the information required in (b) above:
  - (1) The department shall notify the petitioner that the petition is administratively incomplete and that additional information must be submitted within 45 days of the date of the notification;
  - (2) The petitioner shall submit the information identified in (1), above, within 45 days of the date of the notification; and
  - (3) If the petitioner does not respond to a request for additional information as specified in (1) and (2), the department shall reject the petition without further review.
- (e) The department shall deny an administratively complete petition if it determines that:
  - (1) The petition is based on information that was available to petitioner when the water management plan was prepared, but not previously submitted to the department;
  - (2) The proposed change in water use will not impact the protected instream flow conditions in such a manner as to necessitate a change to the adopted plan; or
  - (3) The proposed change in the water management plan is inconsistent with maintenance of established protected instream flows and water quality standards.
- (f) The department shall grant an administratively complete petition if it determines that:
  - (1) The petition is based on new information that was not available to petitioner when the water management plan was prepared;
  - (2) The proposed change in water use will impact the protected instream flow conditions in such a manner as to necessitate a change to the adopted plan; and
  - (3) The proposed change in the water management plan is consistent with maintenance of established protected instream flows and water quality standards.
- (g) The department's decision to grant or deny a petition shall:
  - (1) Be in writing;
  - (2) Be sent to the petitioner and to any other person who has asked to be notified of the decision in writing; and
  - (3) State the reason(s) for the decision.
- (h) If the department grants the petition, the department shall amend the adopted water management plan to reflect any changes approved in the decision.
- (i) The department's decision on the petition may be appealed in accordance with RSA 541.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1906.08)

Env-Wq 1905.11 Routine Updates of Water Management Plans by the Department.

- (a) The department shall periodically make administrative revisions to an affected water user's or an affected dam owner's water management plan to reflect the following:
  - (1) Updates to records of monthly and annual water use data;
  - (2) Updates to contact information for the affected dam owner or affected water user;

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- (3) Corrections to or addition of measurements or technical information; and
- (4) Other updates that do not affect operational requirements of a water use plan, water conservation plan, or dam management plan.

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

Source. #12695, eff 12-22-18

Env-Wq 1905.12 Changes to the Water Management Plan as a Result of Changes in the WMPA. If the department determines that conditions in the WMPA have changed in such a manner and extent that the existing water management plan no longer supports the protected instream flows, the department shall:

(a) Prepare findings of changed circumstances and amendments to the water management plan proposed to address those changed circumstances;

(b) Notify affected water users and affected dam owners within the WMPA that the department;

(1) Proposes to amend the water management plan;

(2) Will accept written comments on the proposal to amend the water management plan from affected water users and affected dam owners within the WMPA for 30 days after the date of the notice; and

(3) Will hold a public hearing if it receives requests for a public hearing from at least 25% of affected water users or affected dam owners within the WMPA during the comment period;

(c) Upon receipt of a sufficient number of requests specified in (b)(3), above, hold a public hearing in accordance with Env-C 205, to receive comments on the proposed amendments; and

(d) Complete a review of the proposed amendments and any comments received in accordance with (b) and (c), above.

(e) Adopt the proposed amendments if it determines, based on the evidence of changed circumstances and any public comments received that:

(1) The changed circumstances impact the protected instream flow conditions in such a manner as to necessitate a change to the adopted plan; and

(2) The proposed amendments are consistent with maintenance of established protected instream flows and water quality standards.

(f) Upon adoption of the proposed amendments, send a written notice to the affected water users and affected dam owners within the WMPA, and to any other person who has asked to be notified, stating the reasons for adoption of the amendments.

Source. #12695, eff 12-22-18

Env-Wq 1905.13 Changes to the Water Management Plan as a Result of a Waiver. If a waiver under Env-Wq 1907 is granted, the department shall amend the water management plan to reflect any changes approved in the decision granting the waiver.

Source. #12695, eff 12-22-18

PART Env-Wq 1906 ADMINISTRATION OF WATER MANAGEMENT PLANS

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

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1907.01)

Env-Wq 1906.02 Public Water Supply Emergencies. If the commissioner determines that a public water supply emergency exists that affects the health and safety of those dependent on water supply from an affected water user, the commissioner shall suspend implementation of any requirements in a water management plan to the extent and duration reasonably necessary to alleviate the effects on public health and safety for the duration of the emergency.

Source. #12695, eff 12-22-18

Env-Wq 1906.03 Compliance.

(a) Affected water users and affected dam owners shall comply with the adopted water management plan and its implementation schedule.

(b) Each affected water user and affected dam owner shall maintain records of the actions taken to comply with a water management plan.

(c) Each affected water user and affected dam owner shall allow the department to review the records specified in (b) above upon request.

(d) Any affected water user or affected dam owner that complies with the adopted water management plan shall be deemed to be in compliance with the water quality standards relative to stream flow established in RSA 485-A and Env-Wq 1700.

(e) Within 3 months of completing the implementation schedule, an affected water user or affected dam owner shall submit a final progress report to the department documenting that approvals, plans, property or equipment acquisitions, construction, or other requirements or activities necessary to conduct the operational requirements in the implementation schedule have been completed.

(f) The department shall review the final progress report and notify the affected water user or affected dam owner that the department has:

(1) Confirmed that the activities necessary to comply with the management plan has been completed; or

(2) Identified deficiencies in completing the activities necessary to comply with the water management plan.

(g) No dam owner shall operate a dam in such way as to attenuate the effects of a dam management plan being implemented within the WMPA.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (formerly Env-Wq 1907.02)

Env-Wq 1906.04 Time Extension for Implementation Schedules.

(a) An affected water user or affected dam owner may request one 5-year extension to an implementation schedule on the basis of unsustainable economic consequences or other circumstances that prevent compliance with the implementation schedule.

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- (b) An extension request under this section shall be submitted in writing to the department and include:
- (1) Identification of the facility, and the name and contact information for the authorized person requesting the extension;
  - (2) Dates of annual progress reports previously submitted to the department;
  - (3) A description of progress made since the previous annual progress report and a description of the plans for the remainder of the original implementation period;
  - (4) Documentation of the economic consequences or other circumstances that prevent compliance with the implementation schedule;
  - (5) A plan for completing the implementation schedule within the extension period; and
  - (6) The signature of the authorized representative of the facility submitting the request.
- (c) The department shall grant an extension if:
- (1) The request demonstrates that due to economic consequences or other circumstances the affected water user or affected dam owner is unable to comply with the implementation schedule;
  - (2) The affected water user's or affected dam owner's annual progress reports demonstrate a good faith effort to comply with the implementation schedule; and
  - (3) The affected water user or affected dam owner has provided a plan which the department determines is likely to result in compliance with the water management plan within the 5-year extension period.
- (d) The department's decision to grant or deny an extension request shall:
- (1) Be in writing;
  - (2) State the reasons for the decision and whether the decision is to grant or deny the request.

Source. #12695, eff 12-22-18

### PART Env-Wq 1907 WAIVERS

Env-Wq 1907.01 Purpose. The purpose of this part is to accommodate the variety of conditions and circumstances to which this chapter applies.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (from Env-Wq 1908.01)

#### Env-Wq 1907.02 Waiver Request.

- (a) Any person affected by this chapter may request a waiver of specific rules or specific requirements of an applicable water use plan, water conservation plan, or dam management plan, in accordance with this section.
- (b) A request for waiver shall:
- (1) Be submitted in writing to the department; and
  - (2) Include the information specified in (c), below.

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- (c) The information required to be submitted in support of request for waiver shall be as follows:
- (1) The name of the facility, and the name and contact information of the authorized person requesting a waiver;
  - (2) A description of the designated river and water use, instream public use or resource to which the waiver request relates;
  - (3) A specific reference to the section of an applicable water use plan, water conservation plan, or dam management plan for which a waiver is being sought;
  - (4) A full explanation of the following, as applicable:
    - a. The operational or economic consequence, or both, of complying with the individual water management plan, as written; or
    - b. The public health or safety consequences, or both, of complying with the individual water management plan, as written; and
  - (5) A full explanation of the alternatives to be implemented in lieu of complying with the applicable requirements as written; and
  - (6) A full explanation of how the proposed alternatives are consistent with the purpose and intent of RSA 483:9-c, and would adequately protect public health, safety and the environment.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (from Env-Wq 1908.01)

Env-Wq 1907.03 Waiver Criteria; Decisions.

- (a) The department shall grant a waiver if the department finds that the alternatives proposed:
  - (1) Are consistent with the purpose and intent of RSA 483:9-c;
  - (2) Meet water quality standards; and
  - (3) Would adequately protect public health, safety, and the environment.
- (b) The department shall not grant any waiver that contravenes the intent of any rule or conflicts with any statute.
- (c) The department shall issue a written response to a request for a waiver.
- (d) If the waiver is denied, the department shall specifically set forth the reason(s) for the denial.
- (e) Any person aggrieved by a waiver decision may appeal to the New Hampshire water council in accordance with RSA 21-O:14 and the rules adopted by the council, Env-WC 100-200.

Source. #7901, eff 5-29-03 (See RN at p. ii); ss by #9936, eff 5-28-11; ss by #12695, eff 12-22-18 (from Env-Wq 1908.01)

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APPENDIX A: STATE AND FEDERAL STATUTES IMPLEMENTED

Rule	State Statute(s) Implemented	Federal Statute Implemented
Env-Wq 1901.01	RSA 483:9-c, I; RSA 483:11, IV	
Env-Wq 1901.02	RSA 483:9, IV; RSA 483:9-a, V; RSA 483:9-aa, V; RSA 483:9-b, V	
Env-Wq 1902	RSA 541-A:7	
Env-Wq 1903	RSA 483:9-c, I-IV; RSA 483:11, IV	
Env-Wq 1904	RSA 483:9-c, I & III; RSA 483:11, IV	
Env-Wq 1905.01 - 1905.05	RSA 483:9-c, I; RSA 483:11, IV	
Env-Wq 1905.06 (a), (b), (d) & (e)	RSA 483:9-c, I & VI; RSA 483:11, IV	
Env-Wq 1905.06 (c)	RSA 483:9-c, V	
Env-Wq 1905.07	RSA 483:9-c, I & VI; RSA 483:11, IV	
Env-Wq 1905.08	RSA 483:9-c, I & IV; RSA 483:11, IV	
Part 1905.09 - 1905.13	RSA 483:9-c, I; RSA 483:11, IV	
Env-Wq 1906.01	RSA 483:1; RSA 483:9-c, I; RSA 483:11, IV; RSA 485-A:4, V; RSA 485-A:8, I, II, III & VI	33 U.S.C. 1251 <i>et seq.</i>
Env-Wq 1906.02	RSA 483:9-c, VIII	
Env-Wq 1906.03	RSA 483:9, IV; RSA 483:9-a, V; RSA 483:9-aa, V; RSA 483:9-b, V; RSA 483:9-c, I & VI; RSA 483:11, IV	
Env-Wq 1906.04	RSA 483:9-c, VI	
Env-Wq 1907	RSA 483:9-c, I & VII; RSA 483:11, IV	

APPENDIX B: STATUTORY DEFINITIONS

**RSA 483:4:**

VIII. “Designated river” means that portion of a perennial river which has been specifically designated by the general court pursuant to RSA 483:15.

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

XVI. “Protected instream flow” means a stream flow pattern which is established to maintain water for present and future instream public uses.