

1 **WATER RIGHTS**

2 **463-XX-XXX**

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4 **1. Introduction**

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6 This rule describes the water rights required for energy facility siting.

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8 **2. Policy**

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10 Water is a finite and valuable natural resource and its prudent management is necessary
11 to promote the health and welfare of all citizens. It shall be EFSEC’s policy to promote
12 the use of the state’s water resources in a manner that maximizes the net benefits to the
13 natural environment and the state’s need for energy facilities. Consistent with this policy,
14 EFSEC encourages applicants to conserve water during the construction and operation of
15 their proposed energy facilities.

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17 **3. Purpose**

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19 The purpose of this rule is to set forth how applicants proposing to use water resources
20 for an energy facility may request and receive authorization for such intended use.

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22 **4. Procedures for water use authorization**

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24 **a) Submission of Water Rights**

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26 Applicants proposing to use water for an energy facility must do one of the
27 following: (i) submit water rights or other water use authorizations suitable for use by
28 the proposed energy facility without change, (ii) submit water rights which are
29 approvable to be changed to meet the points of withdrawal, place of use and purpose of
30 use identified in the application, or (iii) submit water rights from both categories
31 sufficient to meet the needs of the proposed facility. Submitted water rights or other
32 authorizations to use water must be specifically identified in the application. In no event
33 will EFSEC authorize the use of a larger quantity of water than authorized by the water
34 rights or water use authorizations submitted by the applicant and identified in the
35 application.

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37 **b) Beneficial Use Requirement**

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39 Water rights submitted by the applicant and identified in the application shall
40 have been beneficially used and not subject to relinquishment for nonuse.

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42 **c) Water Use Authorizations**

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44 The term “water use authorization,” as used herein, is any right to use water for a
45 proposed energy facility that is not based directly upon a water right permit or certificate
46 issued by the State. It is anticipated that such an authorization will usually consist of a

1 contractual right to use water supplied by a municipal corporation or other water
2 purveyor, but it may consist of any lawful right to use water for an energy facility.

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4 **d) Water Rights Suitable for Use Without Change**

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6 In its site certification application, an applicant may identify water rights or water
7 use authorizations sufficient to meet the requirements of the proposed energy facility that
8 do not require any change to a water right permit or certificate issued by the State. In
9 such event, EFSEC shall determine whether the applicant holds, or will hold, sufficient
10 legal authority to water in a quantity sufficient to meet the requirements of the proposed
11 energy facility.

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13 **e) Water Rights That Require Changes**

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15 (i) If the applicant submits water rights that require changes to: (A) the points of
16 withdrawal and/or diversion; (B) the place of use; and/or (C) the purpose and time of use,
17 in order to make the water rights suitable for use by the proposed energy facility, then
18 EFSEC shall determine whether to authorize water use incorporating the requested
19 changes.

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21 (ii) EFSEC's determination shall be based on the substantive law applicable to a
22 water rights change application, including but not limited to RCW 43.21A, 90.03, 90.14,
23 90.44 and 90.54 or their successors, together with implementing regulations and judicial
24 decisions, but not including requirements for priority processing of applications.

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26 (iii) (A) As part of its application, the applicant must provide EFSEC with a
27 report of examination, identifying the water rights changes to be made, the quantities of
28 water (both in gallons per minute and acre feet per year) that are eligible to be changed,
29 together with any limitations on the use, including time of year. The report of
30 examination shall also include comments by the Department of Fish and Wildlife with
31 respect to the proposed changes. (B) Ordinarily, the report of examination shall be
32 prepared by the Department of Ecology and submitted to EFSEC. The applicant shall
33 pay the Department of Ecology to prepare the report. (C) At least six months prior to
34 submitting an application, the applicant shall notify the Department of Ecology of its
35 intent to submit an application and the water rights changes that will be necessary.
36 Within fifteen calendar days, the Department of Ecology shall notify the applicant in
37 writing whether it will be able to complete a report of examination for inclusion in the
38 application. The applicant and the Department of Ecology shall work together to develop
39 a schedule and exchange information needed to complete the report of examination. The
40 Department of Ecology's preparation of a report of examination shall not make it a
41 sponsor of the proposal or preclude it from taking a position with regard to the proposed
42 energy facility. If the Department of Ecology notifies the applicant that it is unable to
43 prepare a report of examination for submittal with the application, or the Department
44 does not notify the applicant within fifteen calendar days as described in this subsection,
45 the applicant may retain a consultant to prepare the report. If a consultant prepares the

1 report of examination, the Department of Ecology may provide EFSEC with any
2 comments related to any requested changes.

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4 (iv) If EFSEC authorizes the applicant's requested water use in the site
5 certification agreement, it may specify the terms and conditions of water use. EFSEC
6 will not change the water rights submitted by the applicant. Rather, those water rights
7 will be identified in the site certification agreement and form the basis for the water use
8 authorized by EFSEC. No other use shall be made of those water rights during the life of
9 the site certification agreement.

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11 **f) Options for Applicant**

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13 Nothing in this section shall prevent an applicant from seeking to obtain new
14 water rights from the Department Ecology, or from applying to the Department of
15 Ecology or a Water Conservancy Board to change a water right, but any such application
16 shall be separate and distinct from an application for site certification.