



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: November 19, 2019

TIME: 10:52 AM

WSR 19-23-084

Agency: Department of Ecology AO #19-03

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-04-091 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 173-501 WAC Instream Resources Protection Program - Nooksack Water Resource Inventory Area (WRIA) 1. We are amending the WRIA 1 rule to meet the requirements in RCW 90.94.020. We are proposing to amend the rule to 1) add flexibility for projects that retime high flows; 2) establish domestic permit-exempt groundwater withdrawal limits for new users; and 3) make technical updates.

We have developed draft documentation to support rulemaking. The supporting documentation for the rule includes: the estimated consumptive use of new domestic permit-exempt wells in the WRIA for the next 20 years, projects and actions to offset potential impacts to instream flows associated with the permit-exempt domestic water use, and an evaluation for Net Ecological Benefit to meet the requirements of the law.

For more information on this rulemaking visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-501>

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 7, 2020	6:00 pm	Fairhaven Middle School Commons Area 110 Parkridge Rd Bellingham, WA 98225	Presentation, question and answer session followed by the hearing.
January 8, 2020	3:00 pm	Lynden Middle School Commons Area 8750 Line Rd. Lynden, WA 98264	Presentation, question and answer session followed by the hearing.
January 9, 2020	10:00 am	Department of Ecology Padilla Bay Reserve 10441 Bayview Edison Rd Mt Vernon, WA 98273	Presentation, question and answer session followed by the hearing.

Date of intended adoption: May 4, 2020 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Annie Sawabini

Address: Send via US mail at:

Department of Ecology
Water Resources Program
PO Box 47600, Olympia, WA 98504-7600 (US mail).

Or,

Send parcel delivery services to:

Department of Ecology
Water Resources Program
300 Desmond Dr. SE, Lacey, WA 98503

Email: Submit comments by mail, online, or at the hearing(s).
Fax: N/A
Other: Online: <http://oth.ecology.commentinput.com/?id=fdG6m>
By (date) January 17, 2020 at 11:59 pm

Assistance for persons with disabilities:

Contact Ecology ADA Coordinator
Phone: 360-407-6831
Fax: N/A
TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.
Email: ecyADAcordinator@ecy.wa.gov
Other: N/A
By (date) December 30, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: RCW 90.94.020 established requirements for a WRIA 1 watershed management plan update to be adopted by Ecology by February 1, 2019. The statute directs Ecology to begin rulemaking to meet the requirements of RCW 90.94.020 if a locally-approved watershed plan update is not adopted by Ecology by the deadline. A plan update was not submitted to Ecology for review and adoption, so Ecology is working on the required rulemaking.

We are using the rulemaking process and supporting analysis to meet the requirements of the law to:
1) Estimate 20 years of projected consumptive water use of new permit-exempt domestic withdrawals in WRIA 1;
2) Develop a set of projects and actions that will offset the estimated consumptive water use and result in a Net Ecological Benefit in the WRIA; and
3) Amend and add regulations necessary for implementing these projects and actions.

Reasons supporting proposal: See answer to "Purpose of the proposal..."

Statutory authority for adoption: Chapter 90.94 RCW – Streamflow Restoration; Chapter 90.22 RCW – Minimum Water Flows and Levels; Chapter 90.54 RCW – Water Resources Act of 1971; Chapter 90.03 RCW – Water Code; Chapter 90.44 RCW – Regulation of Public Groundwaters; Chapter 43.27A RCW – Water Resources; Chapter 43.21B RCW – Environmental and Land Use Hearings Office – Pollution Control Hearings Board; RCW 43.21A.080 – Department of Ecology; Chapter 18.104 RCW – Water Well Construction

Statute being implemented: Chapter 90.94 RCW – Streamflow Restoration; Chapter 90.22 RCW – Minimum Water Flows and Levels; Chapter 90.54 RCW – Water Resources Act of 1971; Chapter 90.03 RCW – Water Code; Chapter 90.44 RCW – Regulation of Public Groundwaters; Chapter 43.27A RCW – Water Resources; Chapter 43.21B RCW – Environmental and Land Use Hearings Office – Pollution Control Hearings Board; RCW 43.21A.080 – Department of Ecology; Chapter 18.104 RCW – Water Well Construction

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: (person or organization) Department of Ecology

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Annie Sawabini, Kasey Cykler	Lacey, Bellingham	360-407-6878, 360-255-4386
Implementation:	Kasey Cykler	Bellingham	360-255-4386
Enforcement:	Ria Berns	Bellevue	425-649-7270

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name: N/A
Address: N/A
Phone: N/A
Fax: N/A
TTY: N/A
Email: N/A
Other: N/A

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Annie Sawabini
Address: Department of Ecology, Water Resources Program, PO Box 47600, Olympia, WA 98504-7600
Phone: 360-407-6878
Fax: N/A
TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711.
Email: annie.sawabini@ecy.wa.gov
Other: N/A

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

<input type="checkbox"/> RCW 34.05.310 (4)(b) (Internal government operations)	<input type="checkbox"/> RCW 34.05.310 (4)(e) (Dictated by statute)
<input type="checkbox"/> RCW 34.05.310 (4)(c) (Incorporation by reference)	<input type="checkbox"/> RCW 34.05.310 (4)(f) (Set or adjust fees)
<input type="checkbox"/> RCW 34.05.310 (4)(d) (Correct or clarify language)	<input type="checkbox"/> RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.030.

Explanation of exemptions, if necessary: While we identified potential costs of reduced property values as a result of the proposed amendments, we did not identify any costs that covered residential permit-exempt water users or project proponents would incur in order to comply with the rule. See the Regulatory Analyses for more information. In past rulemakings related to water resources, for example, compliance costs included the costs of metering and reporting. The

proposed amendments would only add the conservation standard and project allowance, but would not require any monitoring, reporting, or other additional compliance behavior. We are therefore not required to perform analyses under the RFA, per RCW 19.85.030.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>.

Email:

Other:

Date: 11/19/19

Name: Polly Zehm

Title: Deputy Director

Signature:

