



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)

(Implements RCW 34.05.310)

Do **NOT** use for expedited rule making

Agency: Department of Ecology

AO# 05-04

This rulemaking will create Chapter 173-526 WAC Cowlitz Instream Resources Protection and Water Management Program which will establish the amount of water ("instream flow") that would protect and preserve flow-dependent resources such as fish, wildlife, recreation, water quality, navigation and aesthetics. Instream flows set in rule become water rights with priority dates of the effective date of the rule. The established flow levels will serve as benchmarks to determine whether additional water is available for future allocation beyond the needs of existing water rights, including the instream flows once adopted by rule.

Instream flows will be proposed for the Coweeman. Instream flows also may be proposed for a number of other tributaries within the watershed where habitat studies exist. This rule will establish reservations for future water supply for specific purposes and geographical areas, closures, and the administration of future water allocation and use. A maximum allocation limit will be set to determine the amount of water available for appropriation from streams within the watershed when flows in these streams exceed the instream flows set in rule.

Statutes authorizing the agency to adopt rules on this subject:

- The Watershed Planning act (RCW 90.82.080) directs the department to undertake rule making to adopt instream flows recommended by the Planning Unit.
- The 1917 Water Code act (Chapter 90.03 RCW) and The Minimum Water Flows and Levels (Chapter 90.22 RCW) give Ecology authority to establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife, or recreational or aesthetic values.
- The Water Resources Act of 1971, Chapter 90.54 RCW, especially RCW 90.54.020 and RCW 90.54.050(1), are the basis for protecting and preserving instream resources, providing uninterrupted supply of water, and sets the authority to set aside/reserve water for future uses.
- Regulation of Public Ground Waters (Chapter 90.44 RCW) sets forth the exemption from permit application, and requires protection of surface water from any ground water withdrawals in hydraulic continuity with those surface waters.
- Water Well Construction (Chapter 18.104 RCW) gives Ecology the authority to regulate the design and construction of wells.
- Water Resource Management (Chapter 90.42 RCW) creates a voluntary mechanism to acquire water rights that can be transferred to the trust water rights program for instream purposes.

Reasons why rules on this subject may be needed and what they might accomplish:

In 1998, the Washington legislature passed the Watershed Planning act, Chapter 90.82 RCW, to provide a framework for citizens, interest groups, and government organizations to recommend instream flow levels and water resources provisions in their watersheds, known as Water Resource Inventory Areas (WRIAs). Watershed planning for the Grays-Elochoman (WRIA 26) started in 1999 and the Lower Columbia Fish Recovery Board was selected to serve as the lead agency. The Planning Unit approved a Water Management Plan for the drainage basin, achieving planning unit agreement on instream flows and submitting their recommendations to Ecology, on December 9, 2004. The planning unit also voted unanimously to make the effective date of the instream flows the effective date of the rule in accordance with RCW 90.82.080(2)(a). Therefore, in accordance with 90.82.080(1)(b), the department of Ecology (Ecology) is undertaking rulemaking to set instream flows for several streams within WRIA 26.

Instream flows set in rule become water rights with priority dates of the effective date of the rule. The established flow levels will serve as benchmarks to determine whether additional water is available for future allocation beyond the needs of existing water rights, including the instream flows once adopted by rule.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

RCW 90.03.247 states, *"the department shall, during all stages of development by the department of ecology of minimum flow proposals, consult with, and carefully consider the recommendations of, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the affected Indian tribes"* in the Lewis River Watershed. Ecology will also coordinate with the Department of Health, IAH, and other appropriate federal Tribal agencies.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe)

During rulemaking, draft language will be shared with the local Watershed Planning Unit; WA Departments of Fish and Wildlife, Community, Trade & Economic Development, and Agriculture; Tribes; and other interested parties. Ecology will hold at least one open house prior to filing the CR-102 and proposed rule language. A focus sheet, web page, and public notice will be developed to explain the elements of the proposed rule and announce the date(s) of the open house(s). A press release, mailing and email will be used to distribute the information. At the open house(s), staff will be available to discuss the proposal and answer questions. Informational displays and handouts will also be available.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

(List names, addresses, telephone, fax numbers, and e-mail of persons to contact; describe meetings, other exchanges of information, etc.)

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For the latest updates on Water Resources issues, including the Lewis watershed rulemaking process, sign up for the Department of Ecology Water Resources email list: <http://listserv.wa.gov/archives/water-resources.html> or check out the Water Resources website at: <http://www.ecy.wa.gov/programs/wr/wrhome.html>

DATE
March 1, 2005

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