



# PREPROPOSAL STATEMENT OF INQUIRY

## CR-101 (October 2017) (Implements RCW 34.05.310) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: February 05, 2019

TIME: 9:32 AM

WSR 19-04-091

**Agency:** Department of Ecology AO #19-03

**Subject of possible rule making:** Amendment to Chapter 173-501 Instream Resources Protection Program - Nooksack Water Resource Inventory Area (WRIA) 1 to implement Chapter 1, Laws of 2018 (ESSB 6091) and Chapter 90.94 RCW. The limited amendment will update the WRIA 1 rule to meet the requirements under RCW 90.94.020.

We will consider amending 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 minor technical corrections.

We will develop technical findings and documentation to support rulemaking. We anticipate that supporting documentation for the rule would include: the estimated consumptive use of new domestic permit-exempt wells in the WRIA for the next 20 years, and projects and actions to offset potential impacts to instream flows associated with the permit-exempt domestic water use. The supporting documentation would include an evaluation for Net Ecological Benefit to meet the requirements of the law.

**Statutes authorizing the agency to adopt rules on this subject:** 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

**Reasons why rules on this subject may be needed and what they might accomplish:** 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 proceeding with the required rulemaking.

We intend to use the rulemaking process and supporting analysis to meet the requirements of the law to 1) estimate 20 years of projected consumptive water use for 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.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:** Ecology has exclusive statutory authority under Chapter 90.94 RCW, RCW 90.03.247 and Chapter 90.22 RCW. RCW 90.03.247 directs Ecology to consult with the Department of Fish and Wildlife, the Department of Community Trade and Economic Development (now Commerce), the Department of Agriculture, and representatives of the affected Indian tribes. RCW 90.22.020 directs Ecology to serve notice of the public hearing to the administrators of the Departments of Social and Health Services, Natural Resources, Fish and Wildlife and Transportation. Consultation and notifications will occur with the Washington state agencies and affected Tribes. We will also coordinate with appropriate federal agencies.

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

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW).

**Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:**

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Email: Kasey.Cykler@ecy.wa.gov

Web site: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-501>

Other: Sign up for the WRP ListServ:

Other:


<http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?A0=WATER-RESOURCES>

Additional comments: Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

**Date:** February 5, 2019

**Signature:**

**Name:** Mary Verner



**Title:** Water Resources Program Manager