

# Streamflow Restoration under Chapter 90.94 RCW

## **WRIA 1 rulemaking**



### Definitions

**RCW**—Revised Code of Washington. Denotes a Washington State law passed by the Legislature and signed into law by the governor.

**WAC**—Washington Administrative Code. Ecology adopts WACs (also called “rules”) to implement state or federal laws. Rules are developed or amended by a state agency through a public process.

**Permit-exempt well**—wells that provide water where a community supply is not available; serving single homes, small developments, irrigation of small lawns and gardens, small industrial uses, and stock watering.

### Special accommodations

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-6872 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

In the Nooksack watershed, also known as Water Resource Inventory Area (WRIA) 1, a new law codified as 90.94 RCW (Streamflow Restoration) required a watershed management plan update be adopted by February 1, 2019. Despite hard work and commitment from participants, the local planning groups were unable to approve a plan update.

Since a plan update was not adopted, 90.94 RCW requires Ecology to undertake a rulemaking. This focus sheet highlights the rulemaking process, key upcoming milestones, and provides background on why rulemaking is required.

### Rulemaking

In response to the Washington State Supreme Court “*Hirst* decision,” the Legislature passed Chapter 90.94 RCW *see sidebar*, (Streamflow Restoration), in 2018. The law allows rural development of homes using permit-exempt wells to continue, while protecting streamflows and fish. The law directed local watershed planning groups to develop and approve a plan to address and offset the water resource effects from new development. If a plan was not adopted during the provided timeframe, the law requires us to undertake a rulemaking *see sidebar*, to offset the effects as the next step.

On February 5, 2019, we announced the start of rulemaking to amend the instream flow rule for WRIA 1. During this focused rule amendment, we are considering the following:

- Changing current regulations to increase flexibility for projects that retime high flows.
- Modifying regulations to establish domestic permit-exempt groundwater withdrawal limits for new users.
- Making minor technical corrections.

On April 8, 2019 we published preliminary draft language for the rule amendment on our webpage for the public to read and provide feedback. The informal comment period on the preliminary draft language will close May 10, 2019. Comments will be reviewed and considered for incorporation in the rule proposal that we plan to release in November of 2019.

In early 2020, we plan to hold public hearings and open a formal comment period on the language published in November. The law requires us to adopt a final rule amendment no later than August 1, 2020.

## Open houses

Stakeholder and public input is vital to success. We are hosting three public open houses on the *preliminary* draft language. These open houses are an opportunity for *informal* conversations on the proposed WRIA 1 rule amendment.

### Ferndale Library

2125 Main Street  
Ferndale, WA 98248  
1–3 p.m.  
Monday, April 22, 2019

### Lynden Library

216 4th Street  
Lynden, WA 98264  
6–8 p.m.  
Monday, April 22, 2019

### Ecology's Padilla Bay Reserve

10441 Bayview Edison Rd  
Mt Vernon, WA 98273  
9:30–11:30 a.m.  
Tuesday, April 23, 2019

## WRIA 1

WRIA 1 covers the western portion of Whatcom County, as well as smaller portions of Skagit County and British Columbia, Canada. It begins in the Cascade Mountain range and empties into Bellingham Bay and the Strait of Georgia.

The watershed includes the Nooksack River and its numerous tributaries, the Sumas River (tributary to the Fraser River in Canada), and several coastal drainages. The WRIA contains a mix of urban, agricultural, and rural land uses.



## How we got here

In 1985, Ecology adopted an instream flow rule for the Nooksack watershed in Washington Administrative Code (WAC) 173-501. This rule closed many streams in the watershed to new water rights for all or part of the year, but allowed new permit-exempt wells. Whatcom County's development regulations followed the instream flow rule and issued building permits for new homes using permit-exempt wells.

On October 6, 2016, the Washington State Supreme Court issued the "*Hirst*" decision. The decision stated that Whatcom County failed to comply with the Growth Management Act requirements to protect water resources. The decision limited landowners' ability to get a building permit for a new home when the proposed source of water was a permit-exempt well. 90.94 RCW (Streamflow Restoration) was passed in response to the *Hirst* decision.

## Comments

We will be accepting comments on the preliminary draft documents from April 8 to May 10, 2019. The feedback will help us develop the rule amendment proposal. You can [share feedback online](#) or by mail:

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

Mail: Annie Sawabini, Department of Ecology, Water Resources Program  
PO Box 47600, Olympia WA 98504-7600

## Questions?

Kasey Cykler, Watershed Lead  
360-255-4386  
[kasey.cykler@ecy.wa.gov](mailto:kasey.cykler@ecy.wa.gov)

Annie Sawabini, Rulemaking Lead  
360-407-6878  
[annie.sawabini@ecy.wa.gov](mailto:annie.sawabini@ecy.wa.gov)