

Focus on New Domestic Groundwater Withdrawals Exempt from Permitting: Limits Under Chapter 90.94 RCW

Why it matters

In 2018, the Washington Legislature passed ESSB 6091, now primarily codified in chapter 90.94 RCW, Streamflow Restoration. This includes new limits in certain watersheds for new domestic groundwater withdrawals exempt from permitting. These new limits apply to building permit applicants relying on a permit-exempt well for a new home permitted after January 19, 2018. The new water use restrictions remain in place unless Ecology changes the limits in individual watersheds through rulemaking.

In July 2019, Ecology published Water Resources Policy 2094 ([POL-2094](#)), which ensures transparency, consistency, and conformity in implementing the law. Section 6 of the policy provides information on withdrawal limits under two existing groundwater laws, RCW 90.44.050, and the new 2018 law chapter 90.94 RCW:

RCW 90.44.050 establishes the following permit-exempt withdrawal limits:

- **Domestic** - 5,000 GPD limit
- **Non-commercial lawn or garden** – ½ acre limit (no GPD limit)
- **Stockwater** - no GPD limit
- **Industrial** - 5,000 GPD limit

Chapter 90.94 RCW further restricts withdrawal limits:

- **Domestic**
- **Non-commercial lawn or garden**

Collectively, the amounts for both of these are a maximum annual average of 950 or 3,000 GPD per connection

Chapter 90.94 RCW includes restrictions for new permit-exempt domestic withdrawals for “domestic use” to a maximum annual average of up to 950 GPD per connection in basins planning under RCW 90.94.030, and a maximum annual average of up to 3,000 GPD per connection in basins planning under RCW 90.94.020.

Maximum Annual Average

Chapter 90.94 RCW established a new type of withdrawal limit, as noted in Policy 2094, called a maximum annual average (MAA) that limits some new domestic groundwater withdrawals that are exempt from permitting:

Acronyms

- ESSB:** Engrossed Substitute Senate Bill
- GPD:** Gallons per Day
- MAA:** Maximum Annual Average
- POL-2094:** Water Resources Policy 2094; Streamflow Restoration Policy and Interpretive Statement
- RCW:** Revised code of Washington
- WRIA:** Water Resource Inventory Area

- RCW 90.94.020 established the MAA withdrawal limit at 3,000 gallons per day (GPD) per connection for new domestic use in Water Resource Inventory Areas (WRIAs) 1 (Nooksack); 11 (Nisqually); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); and 59 (Colville).
- RCW 90.94.030 established the MAA withdrawal limit at 950 GPD per connection for new domestic use in WRIAs 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); and 15 (Kitsap).

Table 1. Summary of new permit-exempt domestic water use limits per connection.

Citation	WRIAs	MAA per Connection
RCW 90.94.020	1, 11, 22, 23, 49, 55, and 59	3,000 GPD
RCW 90.94.030	7-10 and 12-15	950 GPD

Excerpts from Policy 2094

- In the context of chapter 90.94 RCW, “domestic use” and the GPD withdrawal limits include both indoor and outdoor home uses, and watering of a lawn and noncommercial garden up to ½ acre in size.
- Water restrictions are based on a maximum annual average withdrawal. Ecology interprets this to mean that a home’s withdrawals cannot exceed 950 or 3,000 GPD as the daily average over the entire year.
- Homes are still limited to a 5,000 GPD maximum limit for domestic use and ½ acre non-commercial lawn or garden, as set forth in RCW 90.44.050. As an example, under RCW 90.94.020 and RCW 90.94.030, a home could withdraw 4,000 gallons on a summer day, so long as the home did not do so often enough that their annual average exceeds the 950 or 3,000 GPD limit.

In RCW 90.94.030 during drought emergencies issued pursuant to RCW 43.83B.405, domestic withdrawals may be curtailed to no more than 350 GPD per connection, for indoor use only. Notwithstanding the drought restriction to indoor use, a fire control buffer may be maintained.

A rule adopted pursuant to chapter 90.94 RCW for a specific WRIA may change the withdrawal limit(s) in that WRIA, but those limits cannot exceed limits in RCW 90.44.050.

Ecology v. Campbell & Gwinn, LLC, et al (2002) specifies that a development project, such as a residential subdivision, is considered to be supplied with water by a single withdrawal of groundwater. Well(s) supplying water for all the homes in the project are subject to the withdrawal limits under RCW 90.44.050 in aggregate. Though the withdrawal restrictions in chapter 90.94 RCW are specified as “per connection,” the limits under Campbell & Gwinn also apply. Thus, while an individual home within a subdivision may withdraw a maximum annual average of 950 GPD or 3,000 GPD under chapter 90.94 RCW, the entire project is still restricted to no more than 5,000 GPD for all domestic use for all the homes in the project, and irrigation of no more than ½ acre of lawn or non-commercial garden, collectively, in the subdivision.

Modifying limits under chapter 90.94 RCW

Chapter 90.94 RCW states that in order for the new limits to be changed, Ecology must make that change through rulemaking. Ecology will generally avoid rulemaking if an adopted watershed plan does not recommend it. Rules adopted under chapter 90.94 RCW cannot authorize water use that exceeds the limits in RCW 90.44.050, the state's Groundwater Permit Exemption law.

New domestic use: interpreting chapter 90.94 RCW

In Policy 2094, Ecology states how we interpret new domestic groundwater withdrawals exempt from permitting since the term "domestic use" is not defined in the law. In the context of chapter 90.94 RCW, and in Policy 2094, we interpret "domestic use" in the MAA withdrawal per connection limits to include indoor and outdoor household uses, and watering of a lawn and noncommercial garden up to ½-acre in size. Ecology's interpretation is based on the following:

- RCW 90.94.020 and RCW 90.94.030 set MAA limits for new permit-exempt domestic well withdrawals at 950 or 3,000 GPD per connection, respectively, depending on which basin.
- RCW 90.94.030 goes on to specify that during a drought, Ecology may curtail water use to 350 GPD per connection for "indoor use only" and to "maintain a fire control buffer" in selected basins.

It is Ecology's position that in light of these statutory provisions, the larger MAA quantities for "domestic use" authorized in non-drought years includes indoor and outdoor uses for a household, including watering of a lawn and noncommercial garden. This is because if watering of a lawn and noncommercial garden was not included in the quantities specified for "domestic use," Ecology sees no need for the Legislature to have defined the drought use limit as "indoor use only."

Additionally, we believe the limits of 3,000 GPD MAA per connection would very rarely come into play if they provided for indoor domestic use only. Recent studies indicate that 60 gallons of water per person per day is a reasonable estimate for indoor domestic water use, and generally with larger households average per person water use is lower (Ecology Pub. #18-11-007; June 2018). It would take a household of 50 people using the full 60 gallons of water per person per day to achieve a yearly average of 3,000 gallons per day.

More information

<https://ecology.wa.gov/Water-Shorelines/Water-supply/Streamflow-restoration>

Contact information

Water Resources Program
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ADA accommodations

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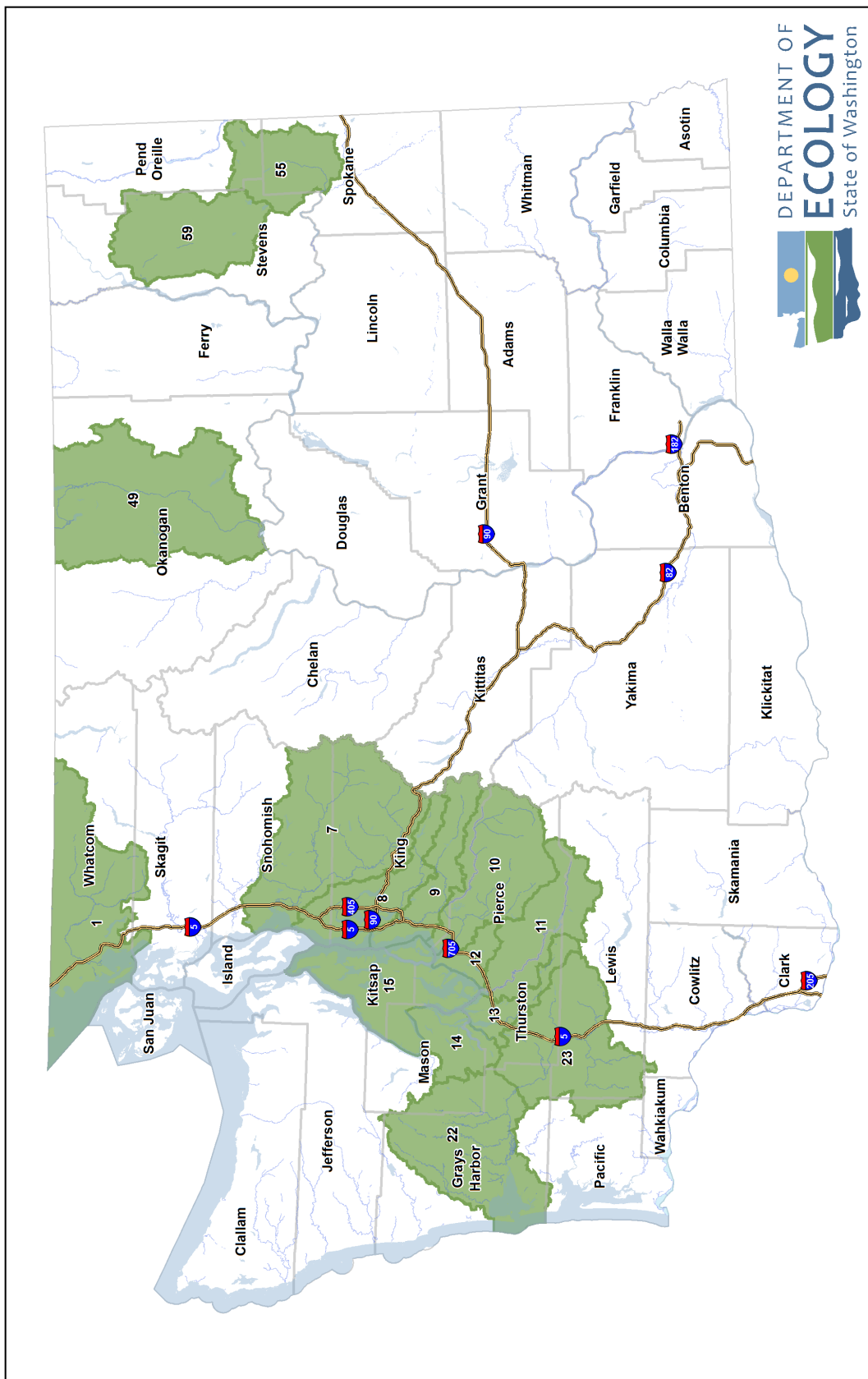


Figure 1. Map of the 15 WRIAs with restrictions for domestic withdrawal limits for connections to new permit-exempt wells, as per RCW 90.94.020 and 90.94.030.