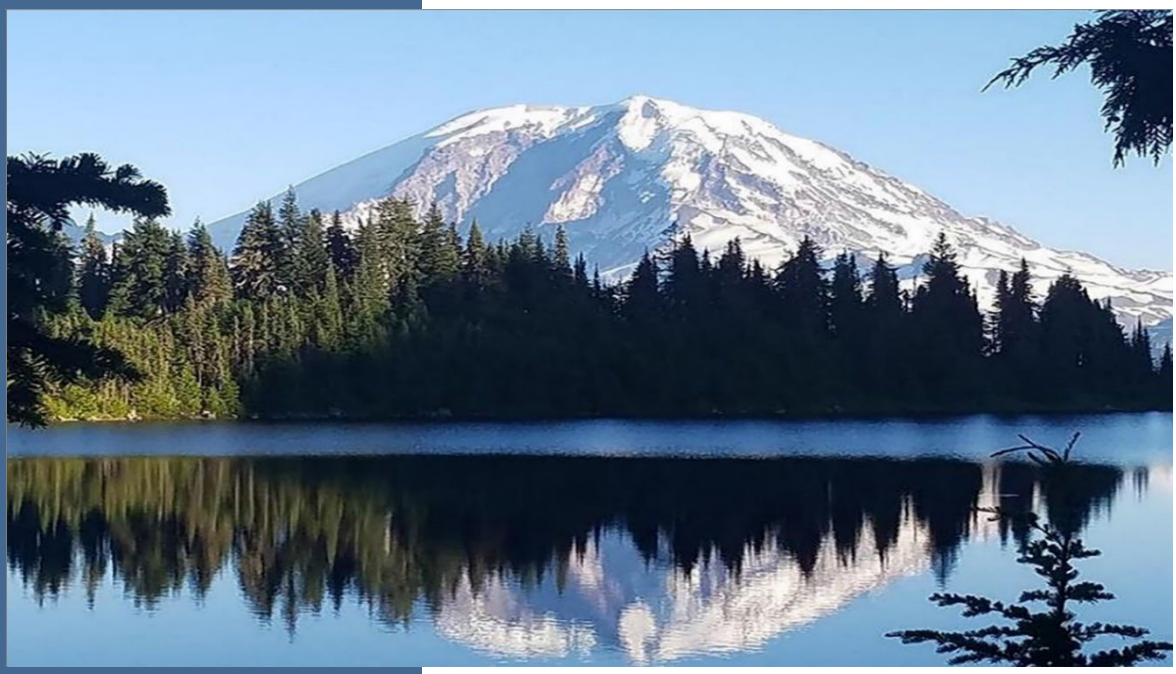

Report to the Legislature: **Statewide Progress on Setting Instream Flows**

Washington State Department of Ecology

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DEPARTMENT OF ECOLOGY
State of Washington

Introduction

In the Water Resources Act of 1971, the Washington Legislature identified the preservation and protection of instream resources for future generations as a fundamental value of the state's water resources policy. The Legislature further authorized Ecology to establish minimum instream flows for streams, lakes, and other public waters through the adoption of administrative rules under chapters 90.22 and 90.54 RCW. Since then, Ecology has adopted 29 instream flow rules in watersheds around the state.

Ecology has prepared this report to the Legislature on the progress of setting instream flows[1] as required by RCW 90.82.080(6), which states:

> *The department shall report annually to the appropriate legislative standing committees on the progress of instream flows being set under this chapter, as well as progress toward setting instream flows in those watersheds not being planned under this chapter. The report shall be made by December 1, 2003, and by December 1st of each subsequent year.*

Progress on Setting New Instream Flows

Ecology did not initiate rulemaking to set new instream flows in 2026, and no new instream flow rules are planned. Court decisions such as *Postema*, *Kittitas*, *Swinomish*, and *Foster* continue to make it challenging for Ecology to adopt new instream flow rules. While these cases do not restrict Ecology's authority to adopt instream flow protection in rule, they limit the available tools to balance water needs among diverse users.

Ecology completed rule amendments for five existing Instream Resource Protection Program rules (chapters 173-507, 173-508, 173-513, 173-514, and 173-515 WAC) as required by chapter 90.94 RCW (see below for more details).

Instream flows and streamflow restoration under chapter 90.94 RCW

In January 2018, the Washington State Legislature passed a law in response to the *Hirst* decision addressing streamflow protection and rural water availability. Chapter 90.94 RCW, Streamflow Restoration, provides tools to Ecology and local governments to protect and enhance streamflows while ensuring that water is available for new homes in rural Washington.

[1] Under chapters 90.22 and 90.54 RCW, Ecology establishes minimum flows. Minimum flows, also called instream flows, are streamflow levels set in rule that protect and preserve instream resources such as wildlife, fish, recreation, navigation, aesthetics, water quality, and livestock watering from future allocations of water.

The 2018 law required planning efforts in fifteen specific Water Resource Inventory Areas (WRIAs) that have existing instream flow rules adopted under chapters 90.22 and 90.54 RCW. The existing rules in these fifteen WRIAs established instream flows but did not regulate permit-exempt uses.

Chapter 90.94 RCW does not require setting new or modifying existing instream flow levels to address the impacts of groundwater withdrawals for new rural homes. The law requires rulemaking in certain circumstances (e.g., updating fees or water use restrictions).

On June 16, 2025, Ecology initiated rulemaking to update the existing instream flow rules for the five watersheds that did not meet the plan adoption deadline outlined in statute. These rule amendments were adopted on May 27, 2026. The adopted rule amendments incorporate statutory requirements for new permit-exempt wells currently defined in RCW 90.94.030(4). They do not change existing instream flow levels or establish any new instream flows.

More information on the rulemaking is available on our WAC 173-507-508-513-514-515 Watershed Restoration webpage.[2]

Next Steps

Ecology staff also continue to implement existing instream flow rules throughout the state. In all basins where instream flows are adopted, we condition new water right permits to protect the instream flow levels.

[2] https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/closed-rulemaking/wac-173-507-508-513-514-515-watershed-restoration

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