

Southwest Washington Watershed Protection & Planning

Recent Legislation Addressing October 2016 Hirst v Whatcom County Supreme Court Decision



Mike Gallagher

Water Resources Section, Southwest Regional Office

Washington State Department of Ecology

June 6, 2018

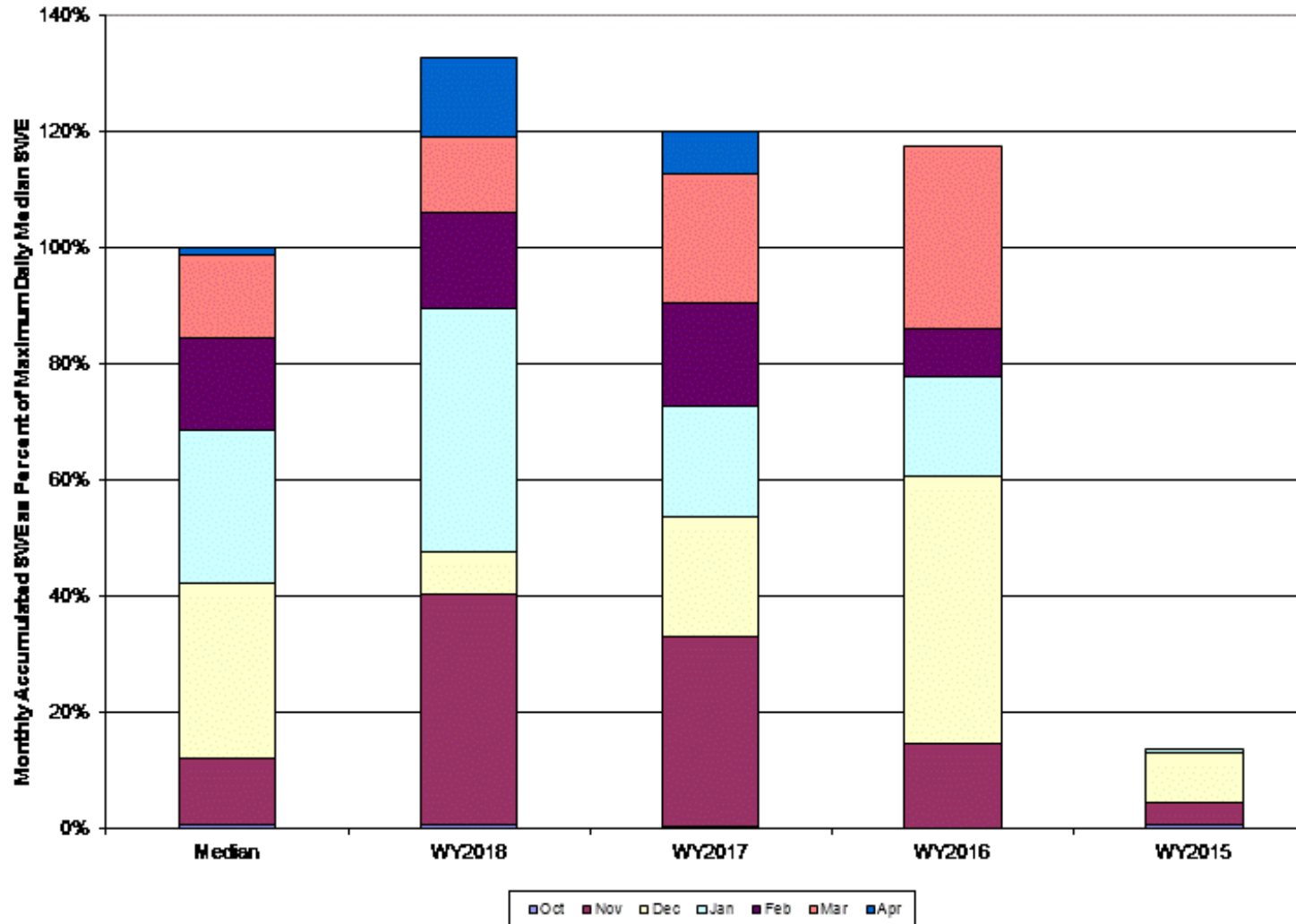
Presented to

Central Coast Washington Source Water Protection Workgroup

@ Raymond, WA

Snowpack Summary for WA 2015 - 2018

*OLYMPIC Time Series Monthly Snowpack Summary
Based on Provisional SNOTEL data as of May 23, 2018*



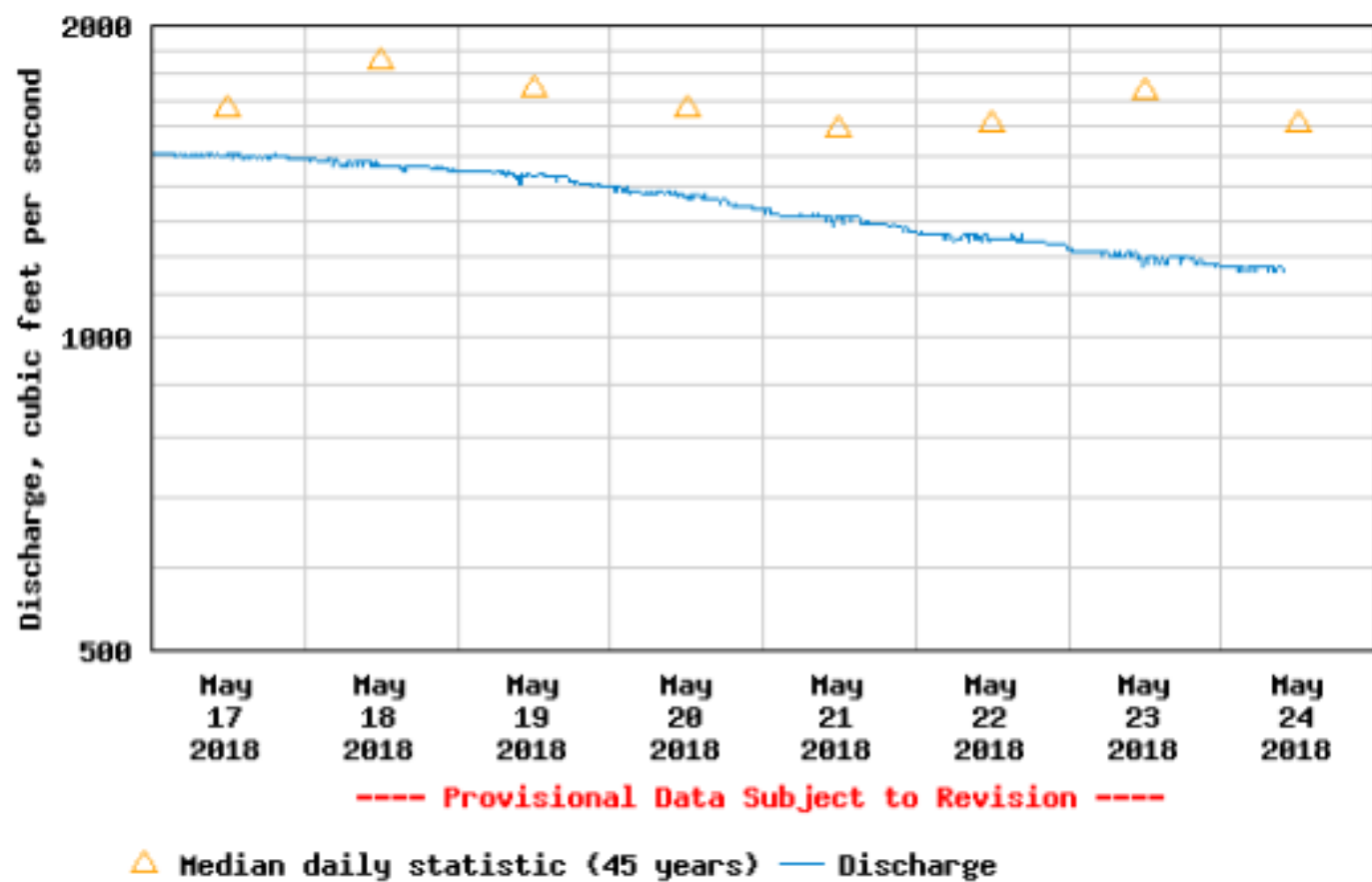
Chehalis Basin Curtailments



HOWEVER, we have had a very warm and dry month of May and for the 4th year in a row, Ecology has issued Curtailment Notices/Orders to 93 junior water right holders in the Upper (WRIA 23) and Lower (WRIA 22) Chehalis Watersheds



USGS 12031000 CHEHALIS RIVER AT PORTER, WA



Based on streamflow levels as shown in several stream gage graphs in the Chehalis Watershed, Ecology's SWRO Water Resources Section issued curtailment notices again in 2018 to 93 water right holders of surface water diversion irrigation water rights that are "junior" in priority date to the Chehalis Instream Flow regulation, which was adopted in 1976.

(Any junior surface water rights for indoor domestic purposes are not curtailed.)



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

May 31, 2018

Re: Notification to Curtail Surface Water Use

Dear Junior Water Right Holder:

You are receiving this notification letter because our records show that you have a surface water right within the Chehalis River Watershed that was issued with provisions/restrictions to protect river flows, including existing senior water right holders. These restrictions are in accordance with Chapter 173-522 of the Washington Administrative Code – Water Resources Program in the Chehalis River Basin, WRIA's 22 and 23. This instream flow regulation requires that all water right holders with surface water rights that are junior to the 1976 adoption date of the regulation will need to cease diverting water from the following rivers:

- Chehalis River
- Newaukum River
- Satsop River
- Wynoochee River

This also includes any junior water rights that divert and use water from tributaries to these rivers as long as flows are below the minimum instream flow levels set in the regulation. Currently, minimum instream flows are not being met for the Chehalis River, Newaukum River, Satsop River and the Wynoochee River.

This notification to curtail junior water rights does not include curtailing water use associated with domestic supply for homes or for stock watering. Those water rights issued for domestic supply should only be using water indoors – no outdoor water use. Most of the junior water rights that are to be curtailed were issued for irrigation.

Managing our state's water resources, including instream flows in rivers and streams, is a critical part of preparing for and solving water resources emergencies. We have to ensure that as river flows decrease as much as they have, and we expect flows to drop even further as the summer continues, people, farms and migrating fish have adequate water supplies as possible under these conditions.

We are sending this notification letter to all junior water right holders in the areas potentially impacted by these restrictions. If you do not use water under a water right or think you received

this letter in error, please contact Vicki Cline of our Water Resources Program at 360-407-0278 or by email at vicki.cline@ecy.wa.gov

We expect the junior water right holders to self-regulate their water use. The Department of Ecology's Water Resources Program has a web site that will help you determine **each day** when you can use water legally and when you must stop diverting and using water. Most junior water rights are conditioned to only use water from May 1 through October 1, unless minimum instream flows are not being met.

Below are web site pages. Click on either the Lower Chehalis or the Upper Chehalis sites and you will see the most recent USGS gage flows for each river referenced in this letter and whether the minimum instream flows are being met.

- Lower Chehalis WRIA 22 <https://fortress.wa.gov/ecy/eap/flows/irpp-wria.asp?id=22>
- Upper Chehalis WRIA 23 <https://fortress.wa.gov/ecy/eap/flows/irpp-wria.asp?id=23>

You can also contact Vicki Cline directly in Olympia by calling 360-407-0278 or by email at vick.cline@ecy.wa.gov for information on current daily instream flows or if you have any questions.

Vicki will be out in the Chehalis Watershed this summer and into the fall keeping a field presence. If you observe water use that does not seem to fit within a water right or the laws, feel free to contact Vicki at the phone number and email address above.

Sincerely,

Michael J. Gallagher, Section Manager
Water Resources Program
Southwest Regional Office

Overview of Water Rights in SW Washington



What is a water right?

A water right is the legal authorization to use a certain amount of public water for a designated purpose. The water must be put to a “beneficial use”.

3 kinds of water rights:

- **Claim**: A “claim” that water was used prior to 1917 Surface Water Law or 1945 Ground Water Law (Can no longer can apply for)
- **Permit**: A “permit” is permission by the state to develop a water right – but is not a final water right
- **Certificate**: Once all the permit conditions are met, a Water Right Certificate is issued as a legal record of the water right and is recorded with the County Auditor. A water right certificate is considered a property right.

How do you get a water right?

“Four Part Test”

The answer must be “yes” to all four of the following questions for each application for a water right:

1. Is the proposed **use beneficial**?
2. Is water **available, physically and legally**?
3. Will existing water users **not be** impaired (including streamflow)?
4. Is the proposed use **not detrimental to public welfare**?



What does a Water Right Give You?

If the Four Part Test is met and there are no appeals, then Ecology may issue a water right permit, which specifies:

- Source of water
- How much can be used
- Purpose of use
- Place of use
- Conditions of use - (e.g., seasonal, minimum flow restrictions, metering)

And this use is at the exclusion of everyone else....



Stages of a Water Right *(Which takes several years between application, permitting and final Certificate)*

Stage	Purpose
Application	Establishes intent to appropriate
Permit	Authorization to develop
Proof of Appropriation	Water put to beneficial use
Certificate	Perfection of water right

Groundwater vs. Surface Water

For Groundwater:

- The withdrawal of the first 5000 gallons per day is exempt from needing a water right *[There are actually 4 separate “exemptions” – more detail in a few slides]*
- Measured in Gallons per Minute (GPM)

For Surface Water:

- **ANY** amount of withdrawal (diversion) needs a water right
- Measured in Cubic-feet per second (CFS)



Four Recent Supreme Court decisions have *drastically changed the water availability landscape in Washington*

1) Postema v. PCHB

October 19, 2000

Law does not allow for the “de-minimus” impairment of existing water rights. Any effect (even modeled) on the flow or level of surface water in closed streams means impairment.

2) Swinomish Tribe v. Ecology

October 3, 2013

Overriding Consideration of the Public Interest (OCPI) cannot be used to justify allocating water (creating reservations) for domestic use or to justify water use that impairs existing instream flows.

3) Foster v. City of Yelm and Department of Ecology

October 8, 2015

Ecology cannot use “out-of-kind” mitigation to offset impairment of instream flows or use OCPI to justify permanent allocations of water.

4) Whatcom County v. Hirst and Futurewise

October 6, 2016

County has an independent obligation to ensure that new permit-exempt uses do not impair flows and closures when making water availability determinations nor can the county rely on the exclusion of permit-exempt groundwater from regulation in the instream flow rule area

These Court Decisions have to be looked at with the following added context

- **1855 Treaties between the United States and**
 - Ensuing Boldt Decision of 1974
- **Endangered Species Act of 1973**
 - Ensuing listing of Chinook, Chum, Sockeye Salmon, Bull Trout and Steelhead as threatened in 1999
- Increasing awareness of the degree of “*interconnectedness*” between surface water and groundwater
- **Demand for water is highest when supply is lowest**
 - About 70% of all water use in Washington is for IRRIGATION

How many Water Rights in WA?

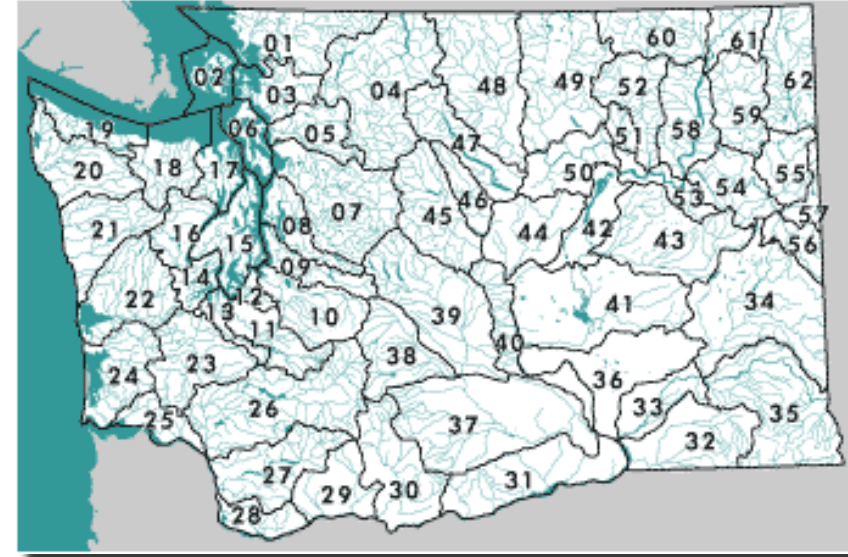
Water Rights: **53,000** statewide

- **50,000** “Certificates” issued
- **3,000** “Permits” in development

Claims - **170,000**

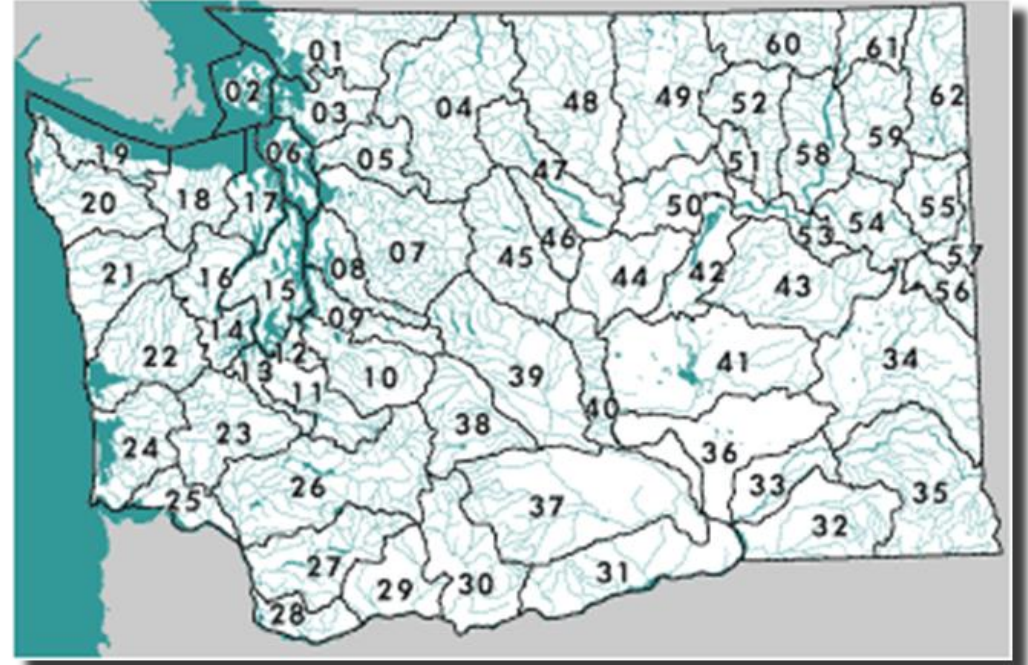
- “Claims” to use surface water and groundwater pre-date modern water law and are called claims – not water rights.

- Permit exempt individual wells: **500,000 +**



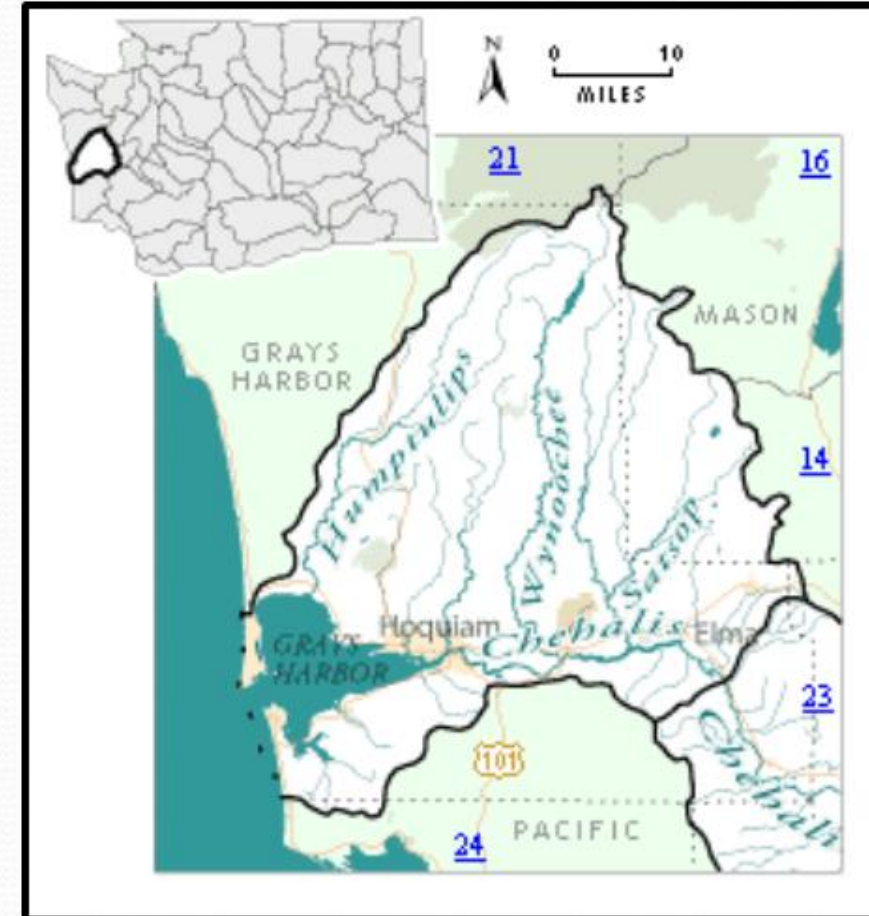
Other factors to consider as water right applications are processed

- Location
- Location
- Location
- Physical and legal water availability is different depending on various factors. What is available in the Elwha is not the same as what is available in the Dungeness



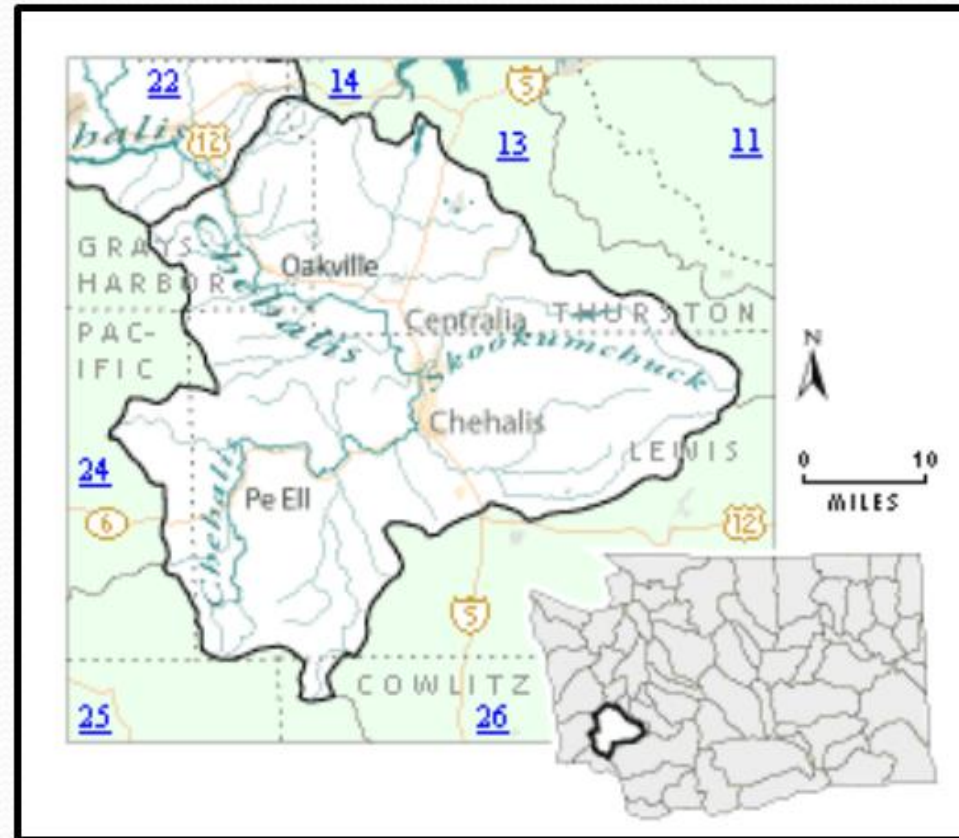
Existing Water Rights in WRIA 22 Lower Chehalis Watershed

	WRIA 22 – Lower Chehalis
New Applications	63
Change Applications	3
Existing Water Right Certificates	692
Existing Water Right Permits	15
Existing Water Right Claims	3,121



Existing Water Rights in WRIA 23 Upper Chehalis Watershed

	WRIA 23 – Upper Chehalis
New Applications	71
Change Applications	8
Existing Water Right Certificates	1,691
Existing Water Right Permits	49
Existing Water Right Claims	5,307



Existing Water Rights in WRIA 24 Willapa Watershed

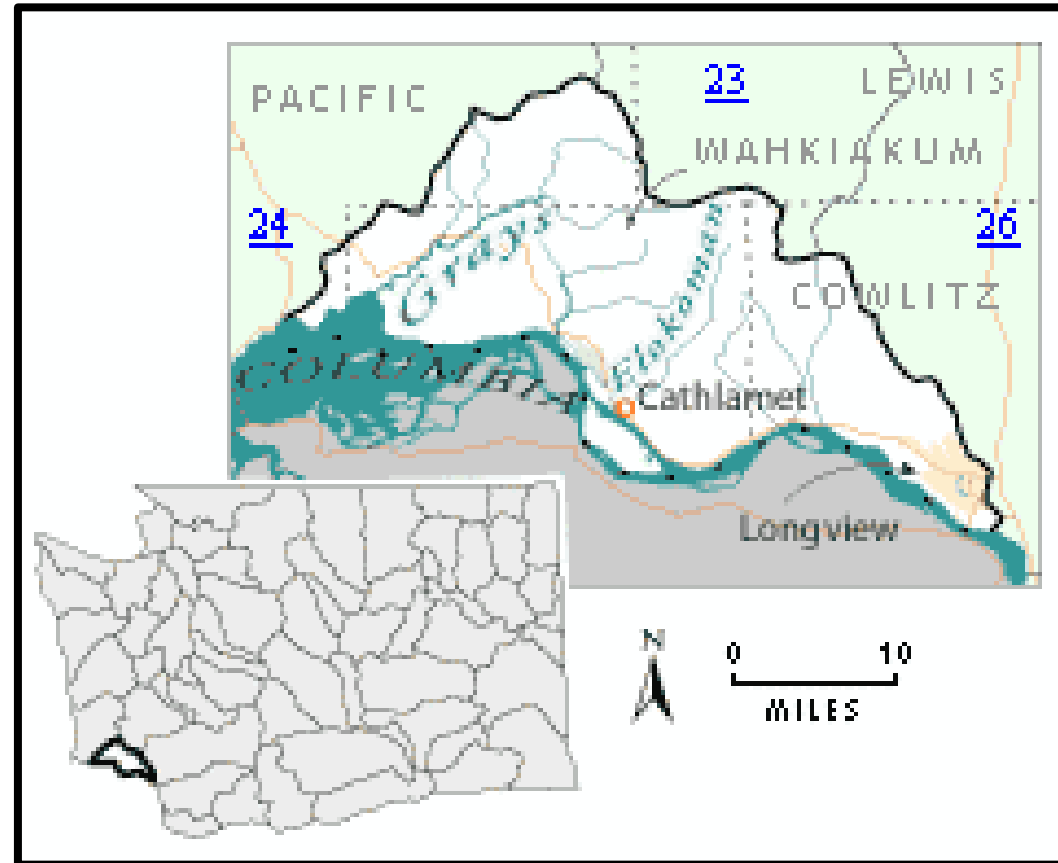
	WRIA 24 – Willapa
New Applications	58
Change Applications	1
Existing Water Right Certificates	608
Existing Water Right Permits	15
Existing Water Right Claims	2,955



The Willapa Watershed does not have any instream flow regulations

Existing Water Rights in WRIA 25 Grays-Elochoman Watershed

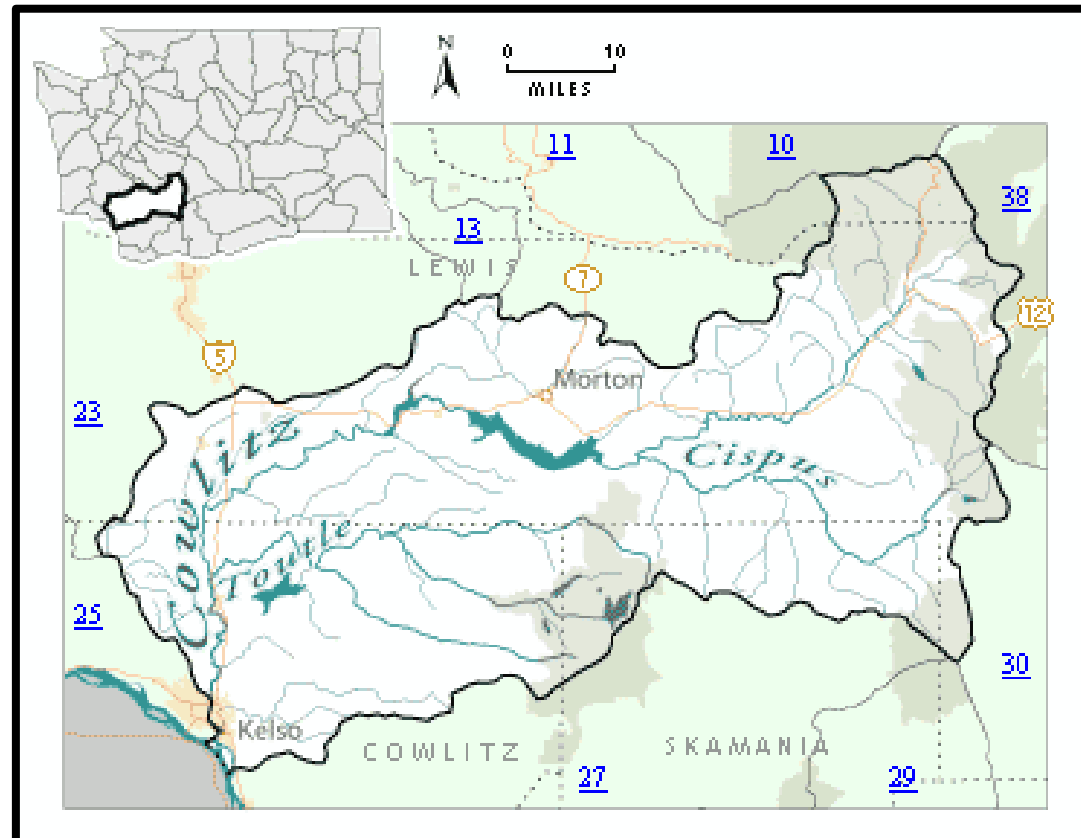
	WRIA 25 – Grays-Elochoman
New Applications	24
Change Applications	0
Existing Water Right Certificates	339 (Oldest Cert: 6/26/1922)
Existing Water Right Permits	0
Existing Water Right Claims	987



The Grays-Elochoman Watershed does not have any instream flow regulations

Existing Water Rights in WRIA 26 Cowlitz Watershed

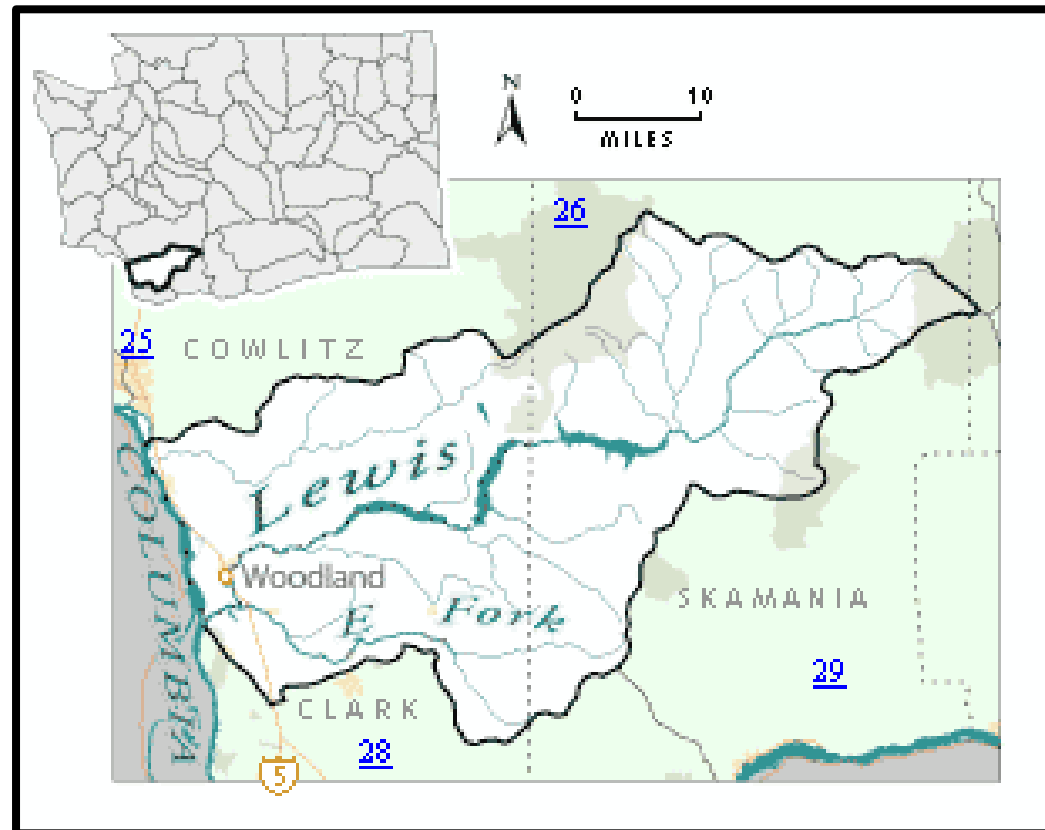
	WRIA 26 – Cowlitz
New Applications	81
Change Applications	0
Existing Water Right Certificates	1,203 (Oldest Cert: 10/11/1921)
Existing Water Right Permits	17
Existing Water Right Claims	5,103



The Cowlitz Watershed does not have any instream flow regulations.

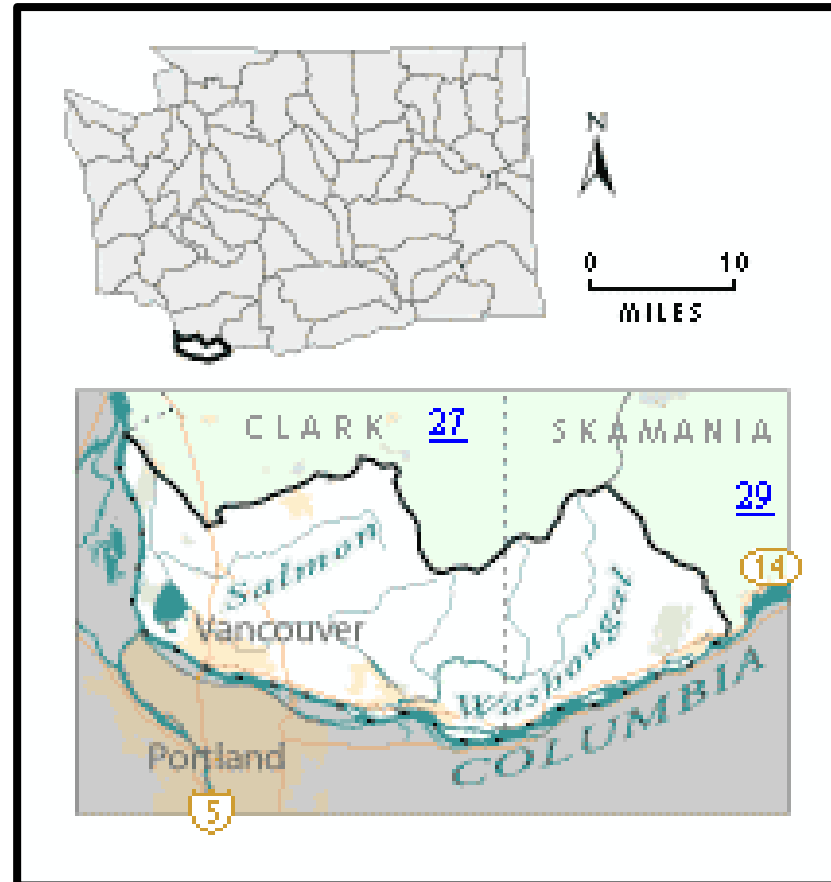
Existing Water Rights in WRIA 27 Lewis Watershed

	WRIA 27 – Lewis
New Applications	60
Change Applications	4
Existing Water Right Certificates	934 <i>(Oldest Cert: 8/10/1925)</i>
Existing Water Right Permits	21
Existing Water Right Claims	3,567



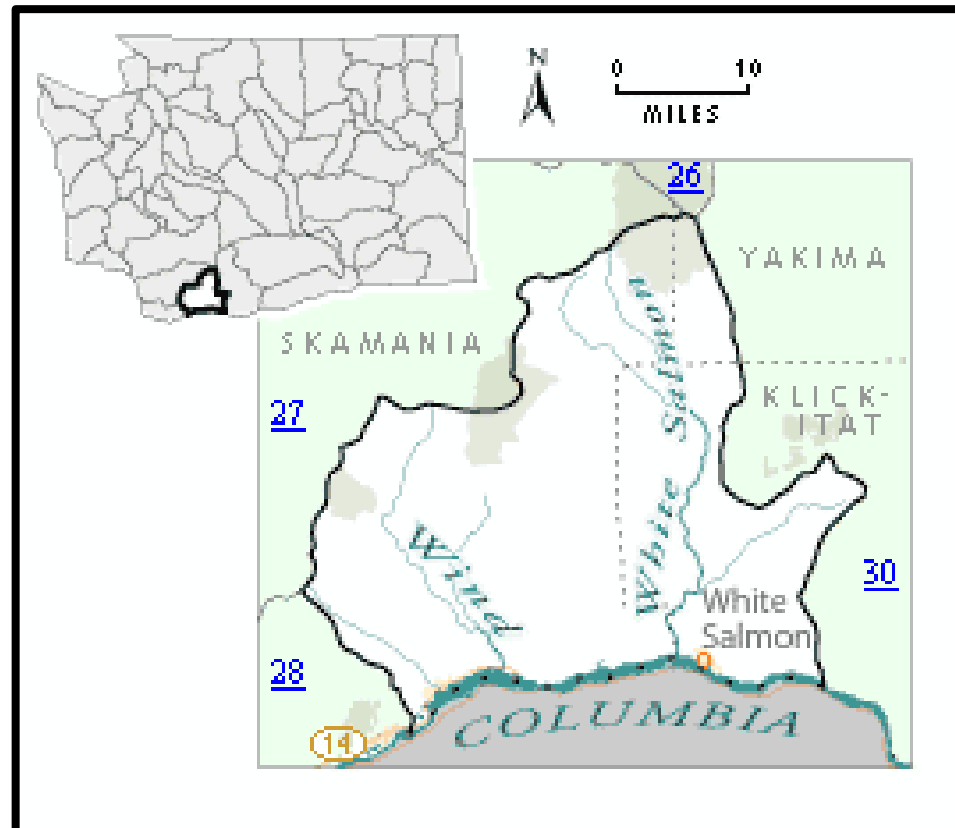
Existing Water Rights in WRIA 28 Salmon-Washougal Watershed

	WRIA 28 – Salmon-Washougal
New Applications	69
Change Applications	5
Existing Water Right Certificates	1,457 (Oldest Cert: 1/1/1937)
Existing Water Right Permits	28
Existing Water Right Claims	6,974



Existing Water Rights in WRIA 29 Wind-White Salmon Watershed (Skamania County only)

	WRIA 29 – Wind-White Salmon (Skamania County)
New Applications	34
Change Applications	0
Existing Water Right Certificates	323 (Oldest Cert: 4/17/1919)
Existing Water Right Permits	7
Existing Water Right Claims	432



The Wind-White Salmon Watershed does not have any instream flow regulations.



**A brief overview of
“permit –exempt” water wells
in Washington**



The Department of Ecology does NOT warrant the Data and/or the information on this Well Report

Please print, sign and return to the Department of Ecology



Water Well Report

Original - Ecology, 1st copy - owner, 2nd copy - driller

Construction/Decommission

Construction
 Decommission ORIGINAL INSTALLATION Notice of Intent Number _____

PROPOSED USE: Domestic Industrial Municipal
 DeWater Irrigation Test Well Other

TYPE OF WORK: Owner's number of well (if more than one)
 New well Reconditioned Method: Dug Bored Driven
 Deepened Cable Rotary Jetted

DIMENSIONS: Diameter of well 6 inches, drilled 168
 Depth of completed well 168 ft.

CONSTRUCTION DETAILS
 Casing: Welded 6 - Diam. from 0 ft. to 138 ft.
 Installed: Liner installed 4 - Diam. from 7 ft. to 168 ft.
 Threaded _____ - Diam. from _____ ft. to _____ ft.

Perforations: Yes No
 Type of perforator used _____
 SIZE of perfs _____ in. by _____ in. and no. of perfs _____ from _____ ft. to _____ ft.

Screens: Yes No K-Pac Location _____
 Manufacturer's Name Armark

Type _____ Model No. _____
 Diam. 4 Slot size 20 from 108 ft. to 118 ft.
 Diam. _____ Slot size _____ from _____ ft. to _____ ft.

Gravel/Filter packed: Yes No Size of gravel/sand _____
 Materials placed from 700 ft. to 168 ft.

Surface Seal: Yes No To what depth? 18 ft.
 Material used in seal Bentonite

Did any strata contain unusable water? Yes No
 Type of water? _____ Depth of strata _____
 Method of sealing strata off _____

PUMP: Manufacturer's Name _____
 Type: _____ H.P. _____

WATER LEVELS: Land-surface elevation above mean sea level _____
 Static level 122 ft. below top of well Date 6/28/16
 Artesian pressure _____ lbs. per square inch Date _____
 Artesian water is controlled by _____ (cap, valve, etc.)

WELL TESTS: Drawdown is amount water level is lowered below static level
 Was a pump test made? Yes No If yes, by whom? _____
 Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.
 Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.
 Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.

Recovery data (time taken at zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level

Date of test _____
 Bailor test _____ gal./min. with _____ ft. drawdown after _____ hrs.
Pump 1 gal./min. with 160 ft. for 3 hrs.
pump _____ g.p.m. Date _____
 Temperature of water _____ Was a chemical analysis made? Yes No

WELL CONSTRUCTION CERTIFICATION: I constructed and/or accept responsibility for construction of this well, and its compliance with all Washington well construction standards. Materials used and the information reported above are true to my best knowledge and belief.

Driller/Engineer/Trainee Name (Print) Allen Nesper
 Driller/Engineer/Trainee Signature Allen Nesper
 Driller or trainee License No. 2374

IF TRAINEE:
 Driller's Licensed No. _____
 Driller's Signature _____

Current Notice of Intent No. WE 24165

Unique Ecology Well ID Tag No. BIR 131

Water Right Permit No. _____

Property Owner Name RSH Grant, Inc.

Well Street Address off of Goa Way

City Port Angeles County OS - Clallam

Location SE 1/4-1/4 SE 1/4 Sec 26 Twn 30 S EWM or WWM

Lat/Long (s, t, r) Lat Deg _____ Lat Min/Sec _____

still REQUIRED) Long Deg _____ Long Min/Sec _____

Tax Parcel No. 053026449035

CONSTRUCTION OR DECOMMISSION PROCEDURE

Formation: Describe by color, character, size of material and structure, and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of information indicate all water encountered. (USE ADDITIONAL SHEETS IF NECESSARY.)

MATERIAL	FROM	TO
Topsoil	0	1
Brown clay some gravel	1	6
Grey clay	6	90
Grey clay, hardpan + gravel	90	135
Grey clay, gravel with w/B lenses	135	158
Grey shale	158	168

RECEIVED

JUL 20 2016

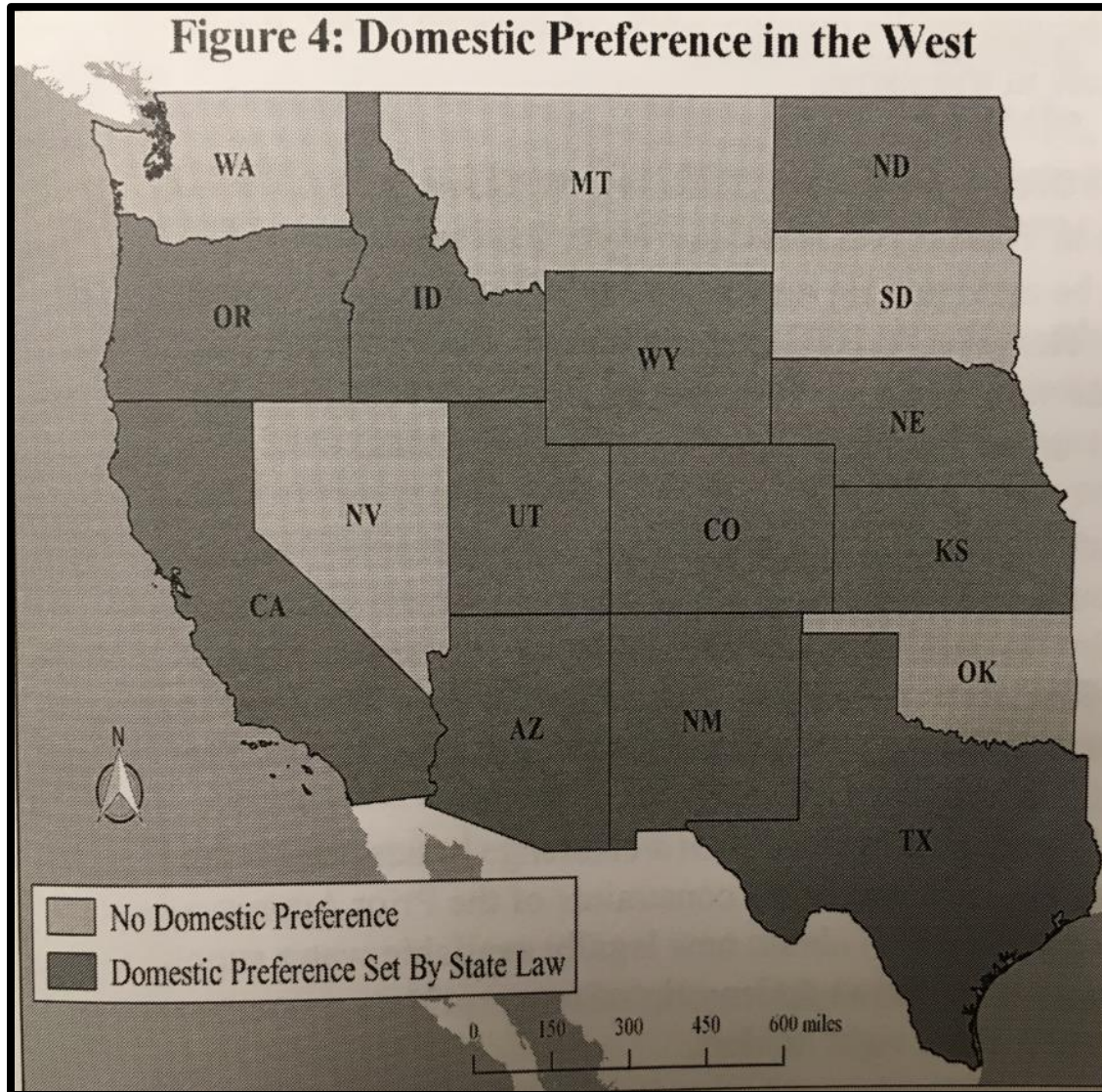
WA State Department of Ecology (SWRO)

Start Date 6/15/16 Completed Date 6/19/16

Drilling Company Tillig Well Drilling, Inc
 Address 267 St. Barr Rd
 City, State, Zip Port Angeles, WA 98362
 Contractor's Registration No. TILLWD 043KO Date 6/28/16
 Ecology is an Equal Opportunity Employer. ECY 050-1-20 (Rev 2/03)



Washington state DOES NOT have a “domestic preference” right to water



In other words, drilling a well on your property does not give you the “right” to use the water.

Water use in WA is subject to the prior appropriation doctrine, and recent Supreme Court decisions have ruled that even permit exempt wells can be subject to proof of no impairment to nearby surface waters and the legal availability of water.

Counties now has this responsibility to determine this (under the GMA).

Chapter 173-160 WAC

MINIMUM STANDARDS FOR CONSTRUCTION AND MAINTENANCE OF WELLS

Legal Rights to Water

State law says that, subject to existing rights, all waters within the state belong to the public and are managed by the state. No individual or group can own the water, but they can obtain rights to use them. The Department of Ecology (Ecology) issues individuals or groups the right to use water. Private wells may be exempt from the groundwater permit system if they meet the well exemption requirements.

Well Construction Standards

State laws establish minimum well construction standards. These laws require you to submit a Notice of Intent to Construct a Water Well form and the appropriate fee to Ecology at least 72-hours before construction begins.

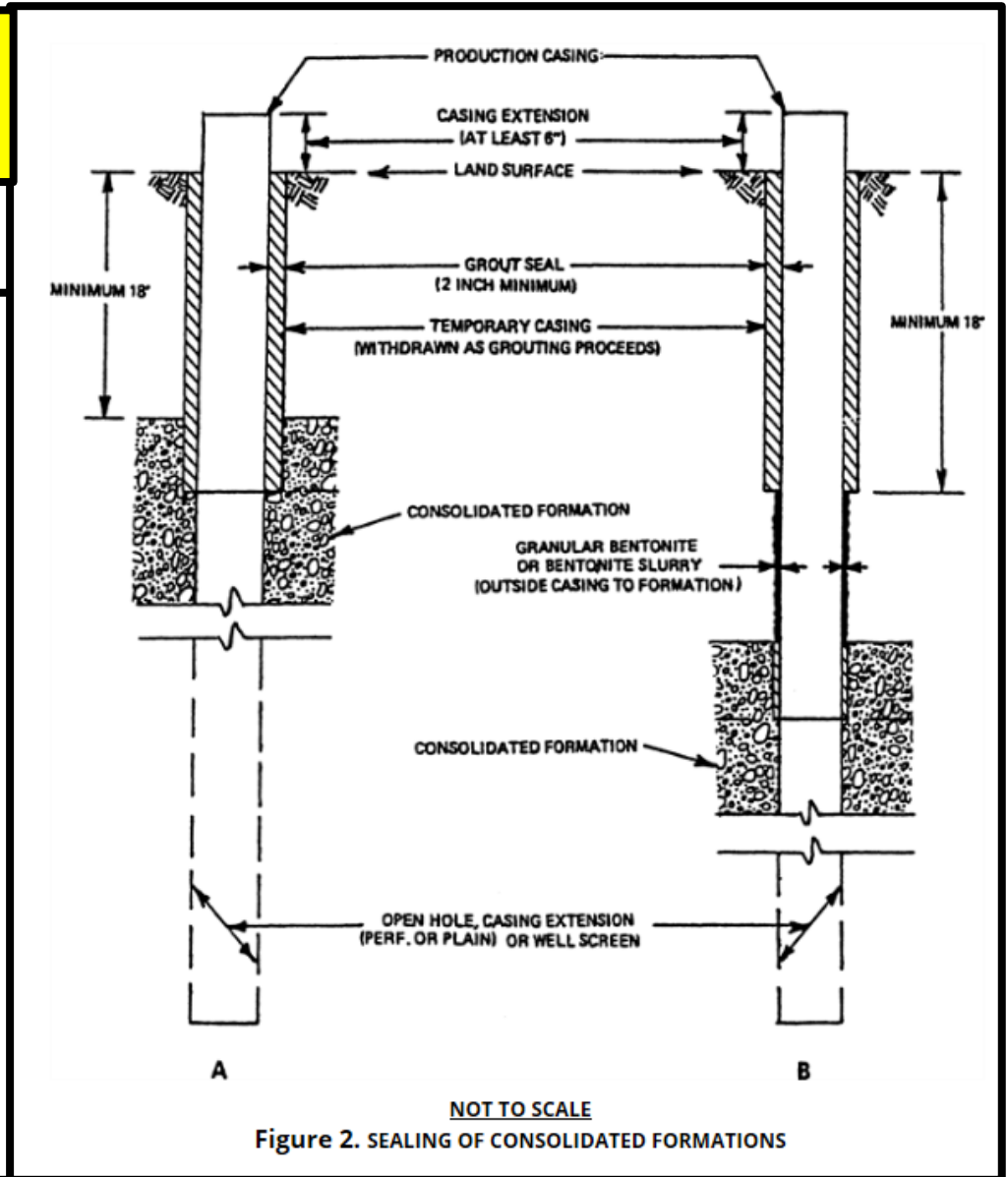
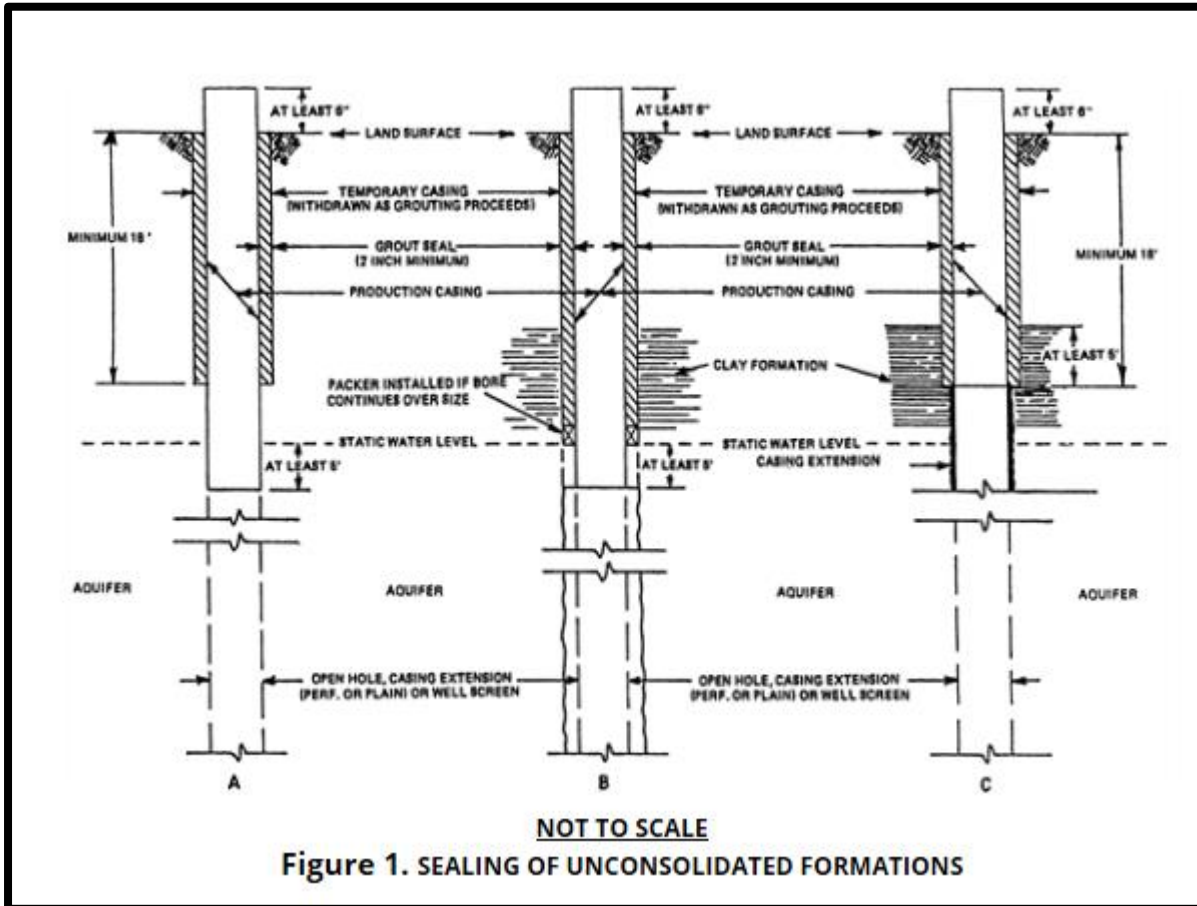
Water Right Exemptions for Private Wells

A Water Right Permit Exemption allows certain users of small quantities of groundwater (most commonly, single home well owners) to construct wells without obtaining a water right permit from Ecology. In 2005, the Attorney General's Office issued a formal opinion to clarify the exemption from permitting requirements for four types of groundwater uses:

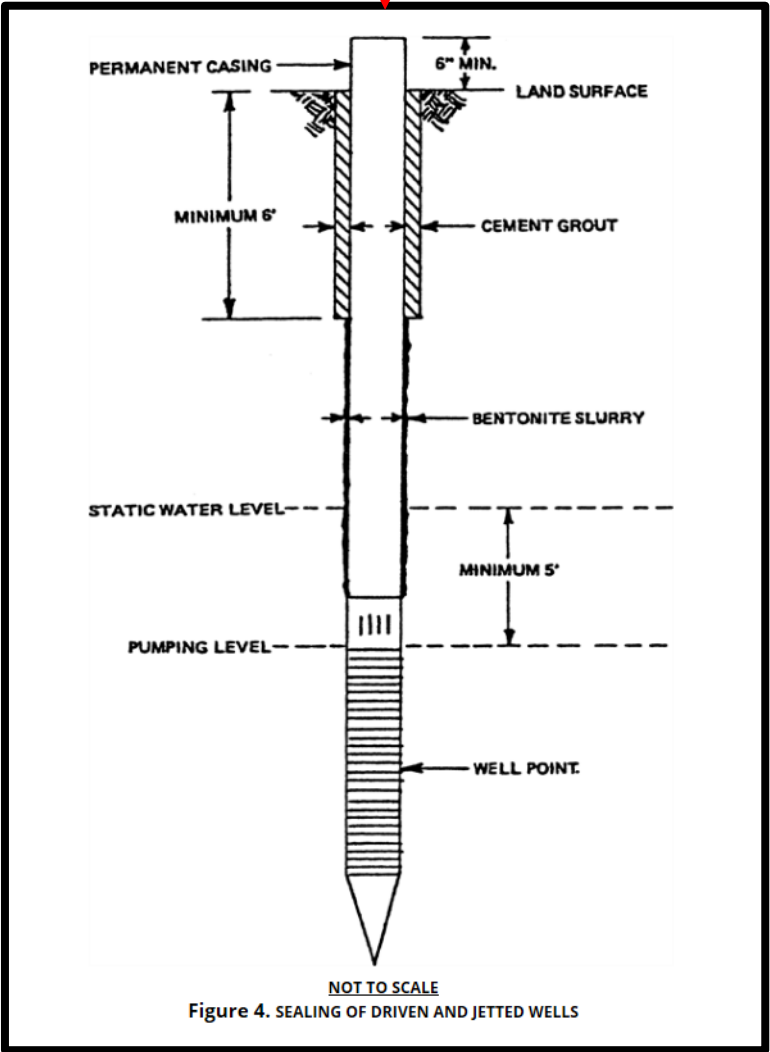
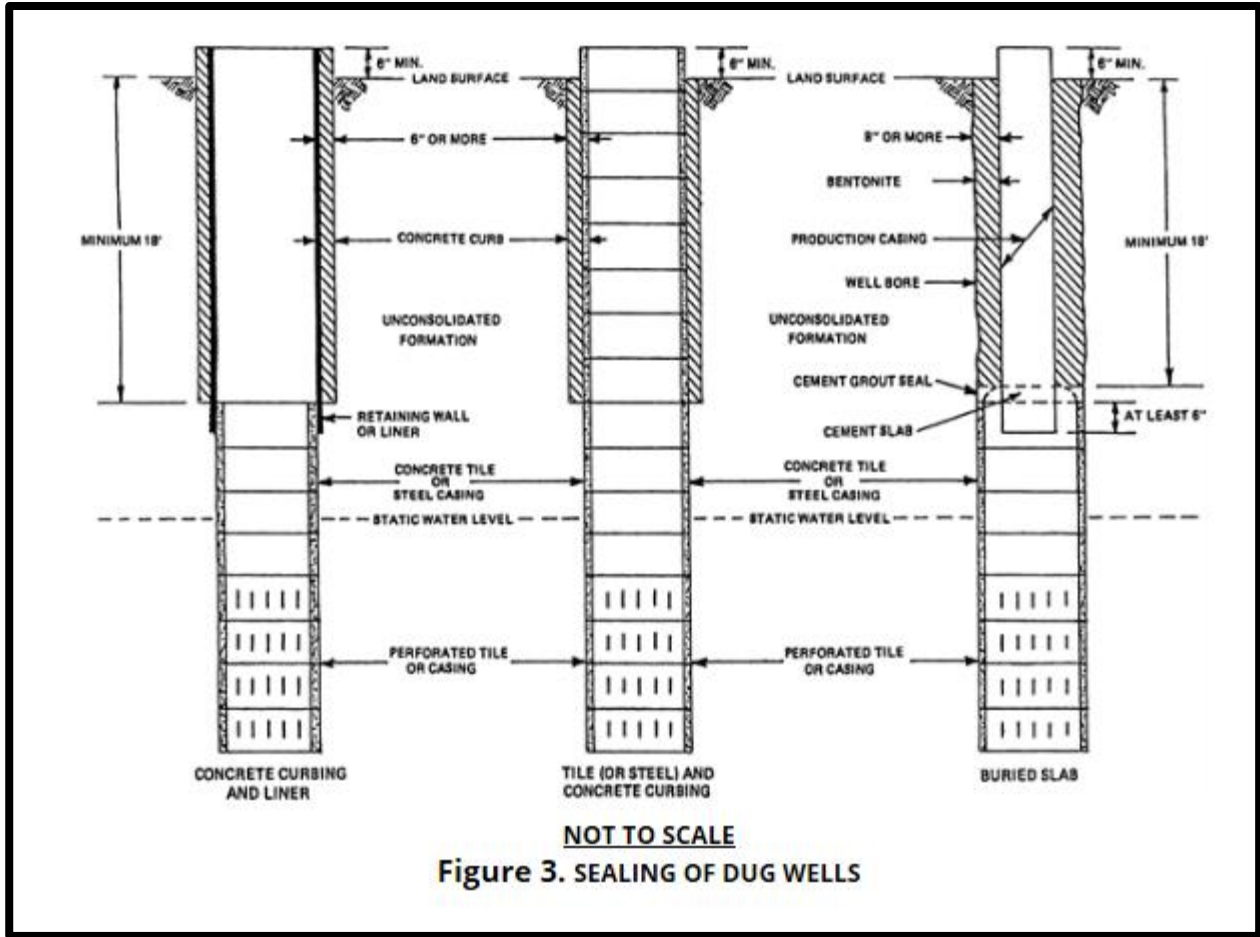
1. **Watering livestock** (No gallon-per-day limit or acre restriction)
2. **Watering a private lawn or garden less than ½ acre** (No gallon-per-day limit)
3. **Water for single homes or a small group of homes** (Limited to 5,000 gallons per day)
4. **Water for industrial uses, including irrigation** (Limited to 5,000 gallons per day, but no acre limit)

- The limits of the exemption apply to all wells for any given project. *For example, you cannot irrigate two acres by installing four wells (each serving ½ acre) and cannot develop land and supply the commercial or domestic development with water from several wells under the exemption or without first obtaining a groundwater permit. The combined withdrawal from all the wells cannot exceed the 5,000-gallon a day limit. If they exceed the limit you must obtain a water right permit from Ecology.*
- Even if water use falls under the permit exemption criteria, you may still apply for a water right permit from Ecology.
- Although exempt groundwater withdrawals do not require a water right, they are subject to state water law. Ecology may place conditions and restrictions on groundwater withdrawals when they interfere with prior, “senior” water rights.

Water Wells should be constructed by a Washington State Licensed Well Driller



Water wells commonly used on the Long Beach Peninsula



Well Water Testing

The Department of Health recommends private well owners test their drinking water every year for coliform bacteria and nitrate. These two contaminants can rapidly affect a person's health — possibly even with just one drink of water.

We also recommend testing for arsenic twice per year — once in the summer and again in winter because seasonal influences can occur affecting your drinking water. Though small amounts of arsenic do not cause rapid health effects, continued consumption over a relatively short time could lead to serious health concerns.

If you own a private well, you are responsible for testing your own water. In most counties when you sell a home supplied with a private well, the county health or planning department or the lending institution involved will require you to provide water sampling results to show the water is safe to drink. As a homebuyer, you may also want to be certain that this testing occurs. Contact your local county health or planning department for information on the requirements and the testing needed.

Many certified labs in Washington perform these tests. For a list of certified labs, visit the Department of Ecology's Laboratory Accreditation page: www.ecy.wa.gov/programs/eap/labs/.

ESSB 6091

Ecology's Initial Policy Interpretations



Mike Gallagher, Water Resources Program
Southwest Region
Spring, 2018

Focus on: New streamflow restoration law



Definitions

Household or domestic permit-exempt well: A groundwater well intended for household use. These wells are exempt from the state's water permitting system, but are still subject to water law.

ESSB 6091: Shorthand for the law's full legislative name—Engrossed Substitute Senate Bill 6091.

Washington state has a new law affecting water resource management. In January 2018, the Legislature passed Engrossed Substitute Senate Bill (ESSB) 6091 in response to the *Hirst* decision. *Hirst* was a 2016 Washington State Supreme Court decision that changed how some counties issued building permits. In general, the decision limited a landowner's ability to get a building permit for a new home when the proposed source of water was a permit-exempt well.

ESSB 6091 addresses the court's decision by allowing landowners to obtain a building permit for a new home relying on a permit-exempt well. The law also directs local planning groups to develop streamflow restoration plans that address the potentially negative impacts from new development.

What does the new law do?

- The law focuses on the 15 watersheds affected by the *Hirst* decision.
- It allows rural landowners in these watersheds to get a building permit to build a home that would rely on a permit-exempt well for their household water supply.

What does the new law do?

- The law focuses on the 15 watersheds affected by the *Hirst* decision.
- It allows rural landowners in these watersheds to get a building permit to build a home that would rely on a permit-exempt well for their household water supply.
- It creates interim standards for new users of household permit-exempt wells in these watersheds:
 - Allows a maximum annual average of 950 or 3,000 gallons per day for new domestic water use, depending on the watershed.
 - Establishes a one-time \$500 fee for new building permits associated with new household permit-exempt wells. Fees collected will be used in the local watershed to pay for projects that offset the effects of household wells on streams and fish.
- These interim standards will apply until Ecology updates existing instream flow rules based on locally developed recommendations.
- The law retains the current maximum limit of 5,000 gallons per day for all permit-exempt household water use.
- The law invests \$300 million over the next 15 years in projects that will help fish and streamflows.

Q&A

Q: Where does the new law apply?

The main impacts of the law are in 15 watersheds (see the purple areas on the map) that were directly affected by the *Hirst* decision.

Q: I already have a well. How does this affect me?

The law only applies to wells drilled after the law took effect on Jan. 19, 2018. Existing household permit-exempt wells are not affected, nor are permit-exempt wells used for other purposes.

Q: Can I get a building permit from my county now?

Counties are now issuing building permits. However, you'll want to check with your county government to learn about any specific restrictions that may apply in your area.

Q: What if I live outside one of the 15 watersheds?

The new law did not affect existing requirements outside the 15 watersheds.

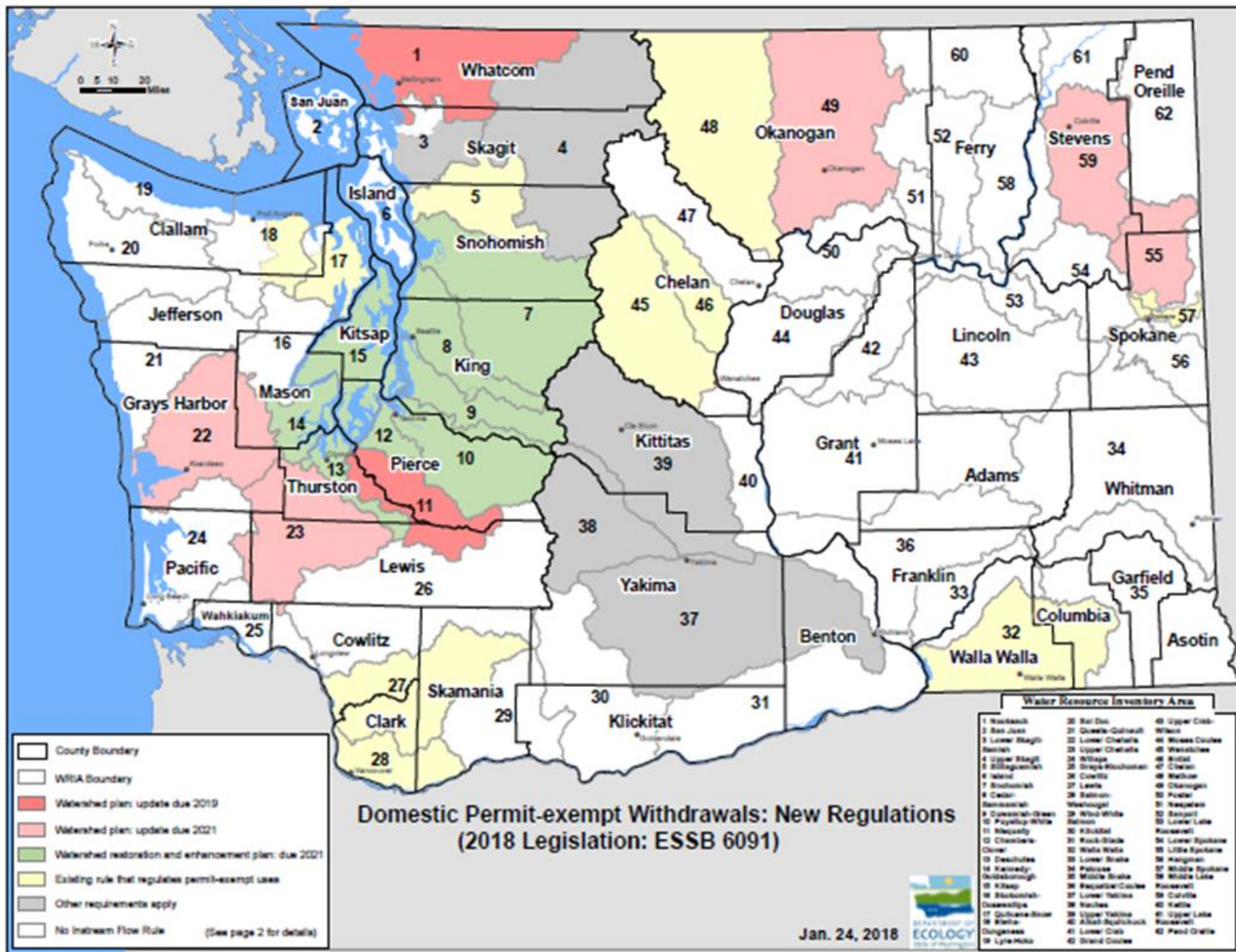
Q: I want to build in an affected watershed. When will I need to pay the new \$500 fee?

The fee is collected by the county when you apply for a building or subdivision permit.

Q: Could the water use limits and fee amount change?

Possibly in the future. As part of the law, local planning groups will be developing or updating plans to restore streamflows. After planning is completed, Ecology may update existing instream flow rules to change the water use limits and/or fee.





What is domestic use?

- Legislature did not define “domestic use” in the new law.
- Legislature chose to specify that during a drought, only 350 gallons per day (GPD) may be used for “indoor domestic use” in selected basins.
- This distinction leads us to interpret that the larger quantities authorized in non-drought years (950 or 3,000 GPD, depending on which basin) include indoor and outdoor uses for a household (including watering of a lawn and noncommercial garden).

Impacts on Ecology water right permitting

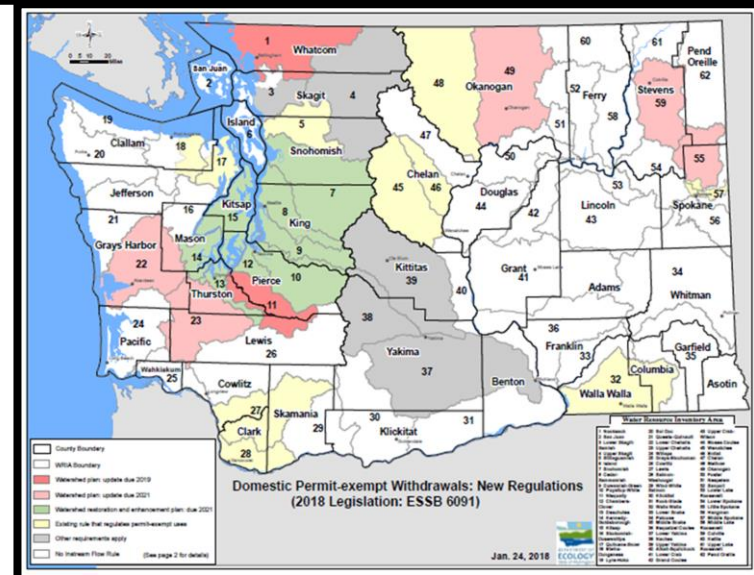
- Our approach to water right permit decisions will not change. The law does did not modify sections of statute affecting our permitting decisions, authority, and approach **EXCEPT** as it relates to processing permits under the “Foster Pilot” in Sections 301 and 302. We are evaluating how best to provide procedural guidance for the five identified projects.

Streamflow enhancement projects

- Legislature authorized \$300 million for 15 years to be used for restoring and enhancing streamflows statewide.
- Although funding is to be prioritized within the basins in which planning is being conducted, the language does not limit projects to those basins. We have not yet developed criteria for approving funding.

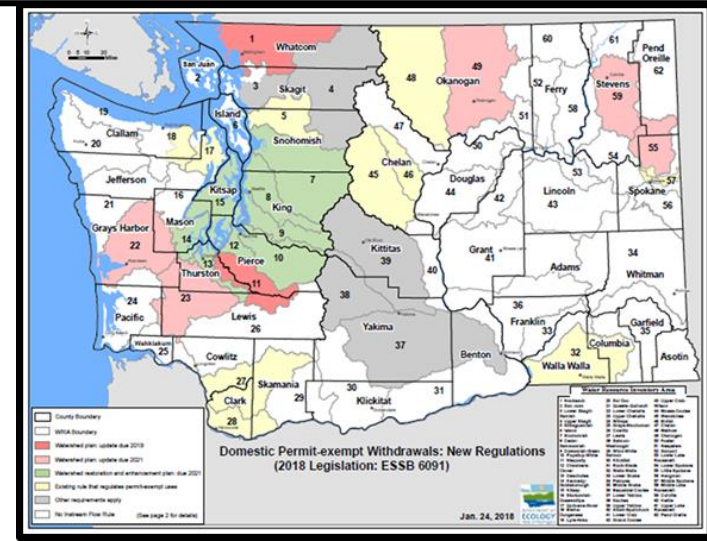
Watershed Planning Units

- **Section 202** provides some procedural guidance for how we and initiating governments are to update existing Watershed Plans in selected WRIAs (**the pink and dark pink watersheds on the map**).
- In these basins, plans were developed under the Watershed Planning Act (RCW 90.82). Where the law does not provide specific direction as to the process for plan development and approval, we and local governments should look to the Watershed Planning Act for direction.



Watershed Restoration and Enhancement Committees

- **Section 203** - Ecology convenes a group of local governments, Tribes, and stakeholders to develop a Watershed Restoration and Enhancement Plan (**the green watersheds on the map**). If all members of the committee agree to approval of a plan, then we will proceed to adopt a plan. Then, if necessary, we will amend instream flow rules to incorporate provisions of the plan. We have not yet established procedures or guidelines for finalization of plans or for subsequent evaluation and adoption.
- If a committee fails to adopt a plan by their prescribed timeline, they are to send the draft plan to the Salmon Recovery Funding Board (SRFB) for its review. The SFRB makes recommendations and sends them to us. We then we amend the draft plan and adopt it into rule.



Plan requirements

Sections 202 and 203 establish the requirements for an adopted plan.

Specifically, under subsections 202(4)(b) and (c) and 203(3)(b) and (c), **plans must identify projects necessary to offset the impact of permit-exempt domestic water use.**

(b) At a minimum, the watershed plan **must include** those actions that the planning units determine to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use.

The **highest priority** recommendations **must include** replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary.

Lower priority projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods.

The watershed plan **may include** projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions that the planning unit determines to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

(c) Prior to adoption of the updated watershed plan, the department **must determine that actions identified in the watershed plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area.**

1

QUANTIFY EXPECTED
CONSUMPTIVE
WATER USE
OVER 20 YEARS



2

IDENTIFY WHERE IT
IS POSSIBLE TO OFFSET

3

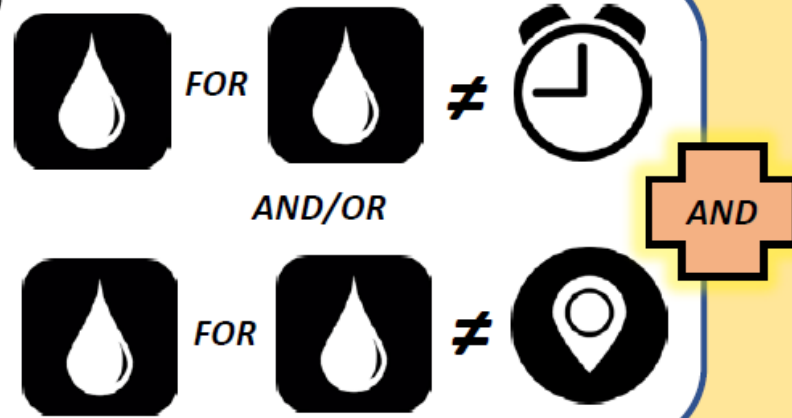


ECOLOGY MUST EVALUATE:
DOES THIS PLAN HAVE A
NET ECOLOGICAL BENEFIT?

FIRST
PRIORITY



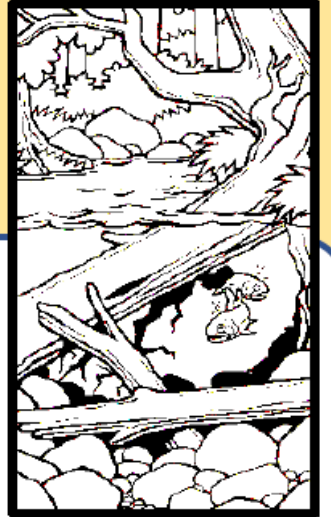
SECOND
PRIORITY



PROJECTS THAT ENHANCE



AND/OR



When is Ecology required to amend instream flow rules?

- Two circumstances under which we must adopt rules to incorporate plan provisions. In addition, we may adopt rules if we believe it to be necessary for another reason.

In WRIAs identified in Section 202:

- If the updated plan recommends a change to the fee or water use limit prescribed in the law; or
- If the planning unit fails to adopt an updated watershed plan by their prescribed timeline.

In WRIAs identified in Section 203:

- If the adopted plan recommends a change to the fee or water use limit prescribed in the law; or
- If the basin committee fails to adopt a plan by their prescribed timeline. In this case, the draft plan goes to the Salmon Recovery Funding Board; they make recommendations, then Ecology amends and adopts the plan. We must then adopt the plan into rule.

Available Funding

ESSB 6091 relies on the planning units created under chapter 90.82 RCW for specific water resource inventory areas (WRIAs) to update existing WRIA plans, with the goal to support actions that restore and enhance stream flows.

Under Section 202 of ESSB 6091, local planning efforts are led by **initiating governments** working in collaboration with stakeholders.

The “lead agency” is the public entity which coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan.

Ecology will be providing assistance to local and tribal governments, including specific funding for entities which are designated by the initiating governments as lead agencies.

See Ecology’s web page at: <https://ecology.wa.gov/Water-Shorelines/Water-supply/Streamflow-restoration>

Conclusions

- New law allows rural growth to continue ahead of the water for water solutions
- New law primarily impacts future permit exempt wells and building permits in the 15 “pre-2000 rule” watersheds:
 - WRIAs 1, 7, 8, 9, 10, 12, 11, 13, 14, 15 and 22/23
- It lays out these interim standards that will apply until local committees develop plans to be adopted into rule:
 - Allows a maximum of 950 or 3,000 gallons per day for domestic water use, depending on the watershed.
 - Establishes a one-time \$500 fee for landowners building a home using a permit-exempt well in the affected areas.
- It retains the current maximum of 5,000 gallons per day limit for permit-exempt domestic water use in watersheds that do not have existing instream flow rules.
- It invests \$300 million over the next 15 years in projects that will help streamflows and fish.