

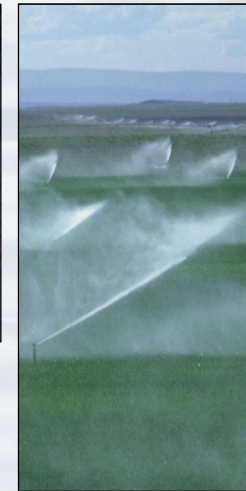
RCW 90.94 STREAMFLOW RESTORATION



Watershed Restoration and Enhancement Committee Kickoff Meeting
October 2018

Overview

- Background and the *Hirst* decision
- Key elements of RCW 90.94
 - Planning
 - Project Funding
 - Net Ecological Benefit
- Committee formation and role
- Timeline



Background



- 29 of our 62 basins have adopted instream flow rules.
- New water rights are largely unavailable.
- Changes to existing rights must result in no impairment to instream flows.

Key State Supreme Court Decisions

- *Postema v. Pollution Control Hearings Board* (2000)
- *Swinomish v. Ecology* (2013)
- *Foster v. Ecology* (2015)

Result

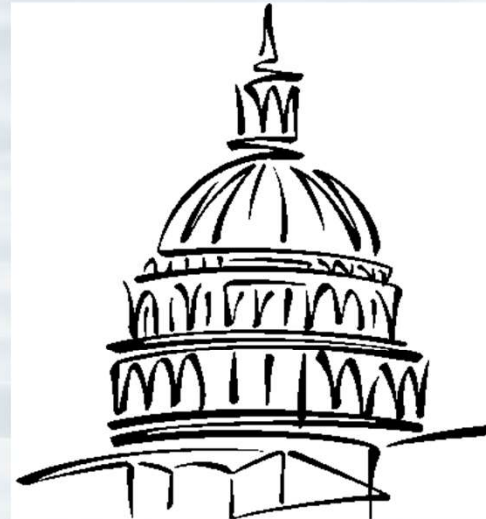
- No impairment to instream flows
- “Perfect mitigation” required for new water users
 - In-kind, in-time, in-place

Hirst, Futurewise, et al v. Whatcom County **(2016)**

- Appeal of Whatcom County's Comprehensive Plan.
- Failure to sufficiently protect water resources under the Growth Management Act.
- Counties have an independent responsibility to ensure that new permit-exempt uses do not impair senior uses, including instream flows.
- Counties cannot allow even *de minimus* impairment to instream flows.

Legislative Response

- **2017 session:** No agreement, even after longest session in state's history.
- **2017/2018 interim:** Significant discussion continued; progress towards agreement.
- **2018 session:** Agreement reached very early in session.



Negotiated Solution: ESSB 6091

ENGROSSED SUBSTITUTE SENATE BILL 6091

Passed Legislature - 2018 Regular Session

State of Washington 65th Legislature 2018 Regular Session

By Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Van De Wege, Rolfes, and Frockt)

READ FIRST TIME 01/12/18.

1 AN ACT Relating to ensuring that water is available to support
2 development; amending RCW 19.27.097, 58.17.110, 90.03.247, and
3 90.03.290; adding a new section to chapter 36.70A RCW; adding a new
4 section to chapter 36.70 RCW; adding a new chapter to Title 90 RCW;
5 creating a new section; providing an expiration date; and declaring
6 an emergency.

Key Elements of 6091: Homebuilding

In basins impacted by the bill:

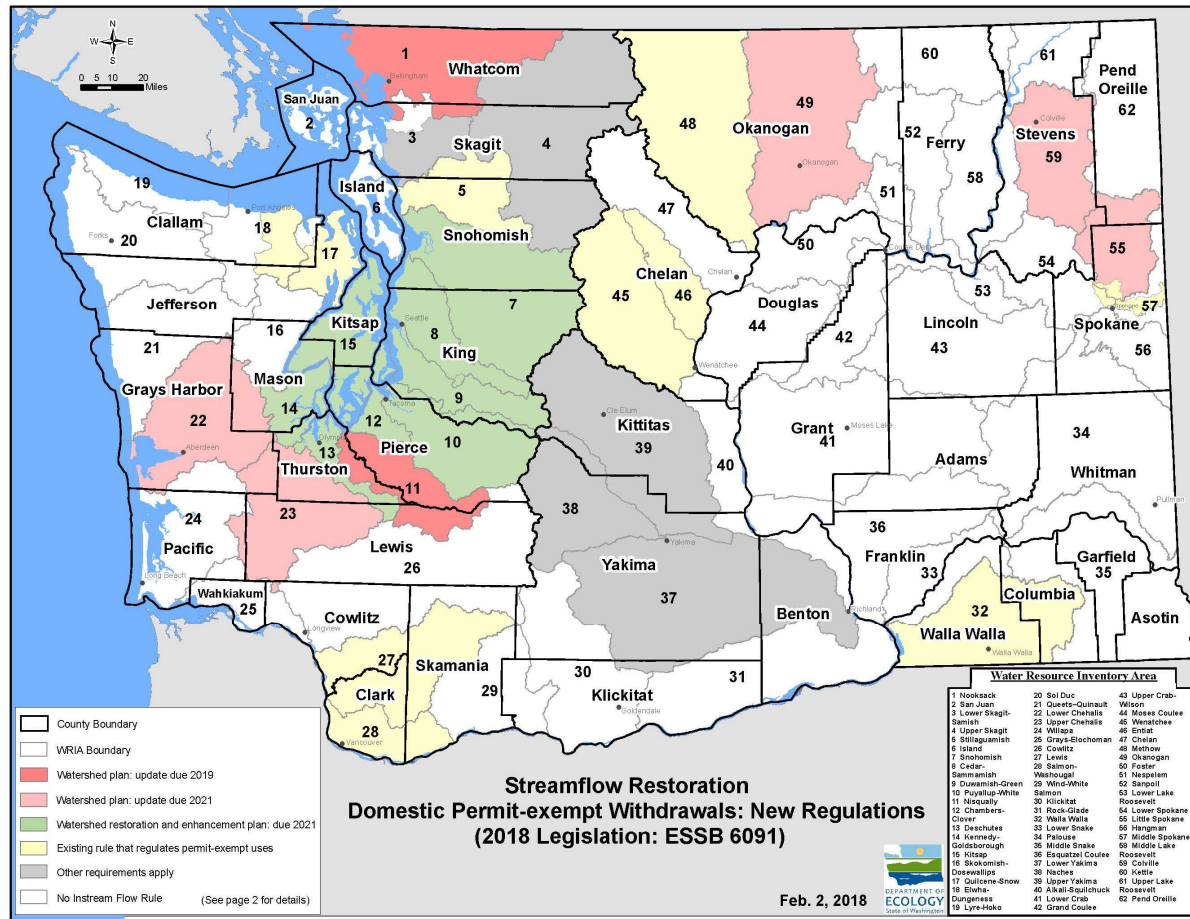
- Homebuilding allowed.
- \$500 fee.
- Water use restrictions.

Did not affect:

- Basins with instream flow rules with specific requirements for permit-exempt uses, the Skagit, and the Yakima.
- Wells drilled before the bill passed.
- Commercial, industrial buildings, or buildings not needing a building permit.



Key Elements of 6091: Basin Planning



Planning groups:

- Existing Watershed Planning Units (Section 202)
- New Watershed Restoration and Enhancement Committees (Section 203)

Planning elements:

- Actions to offset the consumptive use from new permit-exempt wells.
 - Prioritize "in-time and in-place".
- "Net ecological benefit" standard.

Planning requirements:

- Timeframes for completion – 1 or 3 years.

Key Elements of 6091: Funding

- **Projects and Funding:** \$300 million over 15 years for streamflow restoration projects statewide.
 - Priority watersheds: basins undergoing planning, basins with ESA listed species
 - Priority projects: water for water
- Current round closes Oct 31
- Rule Making – comments due 10/28



Photo from Kitsap Sun

Key Elements of 6091: Other Provisions

- **Growth Management Act:** Counties can rely on Ecology rules for GMA compliance related to groundwater protection.
- **Metering:** Pilot program for metering new domestic uses in the Dungeness and Kittitas.
- **Foster:** Legislative task force to study the WA Supreme Court's *Foster* decision. 5 *Foster* pilot projects authorized.
- **Reporting:** Reports to the Legislature in 2020 and 2027.

Planning Requirements

Section 202

- Updates to watershed plans prepared under RCW 90.82, the Watershed Planning Act

Section 203

- Watershed restoration and enhancement plans



Net Ecological Benefit (NEB)

- The legislation states: 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.
- Legislation did not define NEB
- Ecology released NEB interim guidance – comments due November 8



Considerations for Net Ecological Benefit

- Offset projected 20-year consumptive use from new permit-exempt domestic withdrawals
- Non-water projects are in addition to the required water offset



Water and Non-Water Project Examples

Water Offset Projects

- Water right acquisition
- Off-channel storage
- Shallow aquifer recharge (SAR)
- Floodplain restoration/levee removal
- Streambed elevation restoration/alluvium aggradation
- Streamflow augmentation

Non-Water Offset Projects

- Strategic land acquisition
- Streambank stabilization/riparian restoration
- Water quality improvements
- Channel habitat improvements



Picture of Indian Creek in the Teanaway Community Forest, near Cle Elum, WA. Headwaters to the Yakima River and spawning area for Steelhead and other salmonids in the Columbia River Basin. | Photo: Jonathon Loos

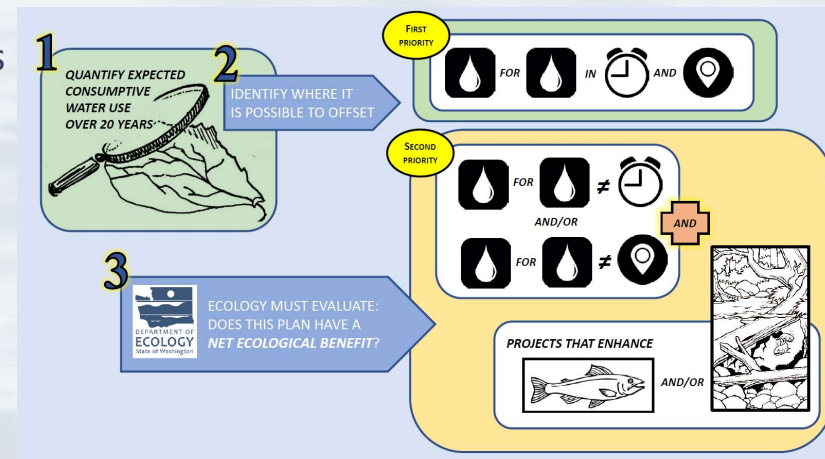
Watershed Restoration and Enhancement Committee Formation

- Ecology as chair
- Ecology invited entities identified in legislation
 - Tribes (reservation, U&A)
 - Counties
 - Cities
 - Largest Irrigation District
 - Largest Non-Municipal Water Purveyor
 - Department of Fish and Wildlife
- Nomination and survey process
 - Environmental interest
 - Agricultural interest
 - Residential Construction interest



Watershed Restoration and Enhancement Plans

1. Quantify consumptive water use associated with projected new permit exempt wells
 - a. Project rural growth over 20 years
 - b. Project new permit exempt wells based on the growth projection
 - c. Calculate consumptive water use from those new wells
2. Identify projects to offset consumptive use
3. Evaluated on NEB



Committee Plan Approval

- If the Committee **approves** a plan, by consensus
 - Ecology will evaluate the plan based on the net ecological benefit standard
 - Ecology initiates rule-making where required/agreed-upon
- If the Committee **cannot** reach consensus
 - The draft plan goes to the Salmon Recovery Funding Board to review and make recommendations for changes to Ecology's Director, followed by rule-making.
- Rule making triggers
 - Change the fee for building permit/new permit exempt wells (increase or decrease from \$500)
 - Change gallons per day limits (currently 950gpd average annual)
 - Recommended changes to instream flow
 - If the Committee cannot come to agreement on the plan

Anticipated timeline

- **2018-2019**
 - Operating Principles and Charter
 - Trainings
 - Growth Projections
 - Consumptive Use Estimates
- **2019-2020**
 - Project Identification
 - Draft Plan
- **2020-2021**
 - Local Plan Review and Approval
 - Net Ecological Benefit Determination
 - Final Approval June 2021
- **What happens after June 2021?**
 - Rulemaking Likely
 - Plan Implementation
 - Grant Program Management (ongoing)
 - Role for the committee post June 2021?

To get through these tasks, we anticipate meeting monthly to start but will adjust the schedule as needed to meet deliverables and deadlines.

Questions?

