



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (September 2005)

(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

Agency: Department of Ecology AO # 05-15

Subject of possible rule making:

Amendment of WAC 173-503 Instream Resources Protection Program – Lower and Upper Skagit Water Resources Inventory Area (WRIA 3 and 4). The proposed rule amendment will set aside water for certain future uses and close impaired streams.

Statutes authorizing the agency to adopt rules on this subject:

Chapter 90.54 RCW (Water Resources Act of 1971); Chapter 90.22 RCW (Minimum water flows and levels); Chapter 43.27A.090 (Water Resources); Chapter 173-500 WAC (Water resources management program).

Reasons why rules on this subject may be needed and what they might accomplish:

Minimum instream flows established in WAC 173-503 create a water right with a priority date as of the date the rule was established (April 14, 2001). Those flows are senior to any new water rights, including exempt withdrawals, which were established after the rule. After adoption of the rule, the rule was appealed and the litigation parties are attempting a settlement agreement that will include a rule amendment. The proposed rule amendment will close impaired streams and create a new administrative framework to allow limited water uses to be used without interruption from the senior instream flow right. The settlement discussions may impact the terms of the draft rule amendment submitted to the public for review and comment in the future.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

Ecology has exclusive statutory authority under Chapter 90.22 RCW to establish minimum instream water flows. Consultation will occur with the Washington Department of Fish and Wildlife.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

√ Other (describe) During the rule development settlement discussions, consultations will be held with the litigation parties and other key stakeholders including tribes, counties, cities, and water utilities. A press release and focus sheet will be written and distributed to mailing lists and email lists. Public hearings will be held to solicit comments from other interested parties.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

(List names, addresses, telephone, fax numbers, and e-mail of persons to contact; describe meetings, other exchanges of information, etc.)

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