



PREPROPOSAL STATEMENT OF INQUIRY

(RCW 34.05.310)

CR-101 (November 2007)

Do NOT use for expedited rule making

Agency: Department of Ecology A.O. 07-17

Subject of possible rule making: This rule making will create Chapter 173-518 WAC: Dungeness Instream Resources Protection and Watershed Management Program. The proposed rule will: 1) create water rights for in-stream values (instream flows) in the Dungeness River mainstem, tributaries, and independent drainages; 2) develop a means for mitigating new ground water uses; and 3) set up a framework to implement water management strategies described in the Elwha-Dungeness (WRIA 18) watershed plan. The rule will address the Dungeness portion of the Elwha-Dungeness Watershed.

(a) Statutes authorizing the agency to adopt rules on this subject: RCW chapters 90.82 -- Watershed Planning; 90.54 -- Water Resources Act of 1971; 90.22 -- Minimum Water Flows and Levels; 90.03 -- Water Code; 90.44 -- Regulation of Public Ground Waters; 77.55 -- Construction Projects in State Waters (Hydraulic Code); 18.104 -- Water Well Construction; 43.21A - Department of Ecology; 43.21C -- State Environmental Policy; 90.42 -- Water Resources Management; 90.46 -- Reclaimed Water Use; and 90.08 -- Stream Patrolmen.

(b) Reasons why rules on this subject may be needed and what they might accomplish: The Elwha- Dungeness Water Inventory Resource Area (WIRA 18) is one of the few designated "water-critical" watersheds in Western Washington without an instream flow rule. The adoption of this rule is needed to: 1) fulfill the requirements of chapters 90.54 and 90.82 RCW; 2) protect in-stream resources and fish habitat; 3) establish a means for mitigating ground water use; 4) allow Ecology to proceed with water right decisions in the basin; 5) set up a framework to implement the watershed plan's water management strategies; and 6) meet obligations Ecology agreed to in the watershed plan that have to be addressed through regulations. Ecology intends to establish a memorandum of understanding with Clallam County to implement the rule and Watershed Plan.

(c) Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: No other agencies have the authority to regulate this subject. However, consultation will occur with the Washington Departments of Fish and Wildlife; Community, Trade & Economic Development; Health; and Agriculture; as well as representatives of the Jamestown S'Klallam tribe and other Klallam tribes, as part of our outreach process.

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

- Negotiated rule making
Pilot rule making
Agency study

Other (describe) During the rule-making process, Ecology will share draft language with the Dungeness River Management Team; Washington Departments of Fish and Wildlife; Community, Trade & Economic Development; Health; and Agriculture; as well as the Jamestown S'Klallam Tribe and other Klallam tribes; rule-making advisory committees; and other interested parties. Ecology will prepare press releases, focus sheets and other explanatory materials for distribution to mailing and email lists. In addition, Ecology has created a Web page for the rule proposal, and will offer workshops on the rule prior to and after filing the CR-102. Finally, Ecology will hold one or more public hearings to solicit comments on the formal rule proposal. For more information on this rulemaking, please see: http://www.ecy.wa.gov/programs/wr/instream-flows/dungeness.html

(e) 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, emails, fax numbers of persons to contact; describe meetings, other exchanges of information, etc.)

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