



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

Agency: Department of Ecology

AO# 05-05

Subject of possible rule making:

This rulemaking will create Chapter 173-527 WAC Lewis Instream Resources Protection and Water Management Program. Instream flows will be proposed for the Lewis (lower, middle, upper), East Fork Lewis, and Kalama rivers. Instream flows may also be proposed for a number of other tributaries within the watershed where habitat studies exist. The rule language will provide for mitigation of any new water rights or water right transfers, as well as optional ways to secure water via water banking, aquifer storage and recovery, and others. A maximum net quantity of water will be available for appropriation from streams within the watershed when flows in these streams exceed the instream flows set in rule. Finally, a reserve amount of ground water for each subbasin and county will be available for future use.

Statutes authorizing the agency to adopt rules on this subject:

Several statutes provide the current impetus for action to achieve and protect stream flows:

- The Watershed Planning act (RCW 90.82.080) directs the department to undertake rule making to adopt instream flows recommended by the Planning Unit.
- The 1917 Water Code act (Chapter 90.03 RCW) and The Minimum Water Flows and Levels (Chapter 90.22 RCW) give Ecology authority to establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife, or recreational or aesthetic values.
- The Water Resources Act of 1971, Chapter 90.54 RCW, especially RCW 90.54.020 and RCW 90.54.050(1), are the basis for protecting and preserving instream resources, providing uninterrupted supply of water, and sets the authority to set aside/reserve water for future uses.
- Regulation of Public Ground Waters (Chapter 90.44 RCW) sets forth the exemption from permit application, and requires protection of surface water from any ground water withdrawals in hydraulic continuity with those surface waters.
- Water Well Construction (Chapter 18.104 RCW) gives Ecology the authority to regulate the design and construction of wells.
- Water Resource Management (Chapter 90.42 RCW) creates a voluntary mechanism to acquire water rights that can be transferred to the trust water rights program for instream purposes.

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

Water Resources Inventory Area (WRIA) 27 is located in southwest Washington State and comprises portions of Clark, Skamania, Cowlitz and Yakima counties. A variety of needs must be met by surface and ground waters in this region of the state. Just as water supply for people is growing in demand, instream flows throughout the watershed are vital for fish and wildlife species. Local streams provide habitat for fish species that have recently been listed under the federal Endangered Species Act (ESA).

ESA Status of Listed Fish Species in WRIA 27

Spring and Fall Chinook	"Threatened"	March 24, 1999
Coho	"Candidate"	July 14, 1997
Summer and Winter Steelhead	"Threatened"	March 19, 1998
Chum	"Threatened"	March 25, 1999
Bull Trout	"Threatened"	June 10, 1998

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

Each watershed planning unit that elected to make instream flow recommendations is essentially an advisory group to Ecology for setting instream flows. Chapter 90.82 RCW allows local planning units, of which Ecology is an active partner, to develop and recommend instream flows, with Ecology having authority to convert those recommendations into rule.

Furthermore, per RCW 90.03.247, the department will consult with the affected tribes in the Lewis Watershed, other state departments, and appropriate federal agencies.

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

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe)

During rulemaking, draft language will be shared with the local Watershed Planning Unit; WA Departments of Fish and Wildlife, Community, Trade & Economic Development, and Agriculture; tribes; and other interested parties. Ecology will hold at least one open house prior to filing the CR-102 and proposed rule language. A focus sheet, web page, and public notice will be developed to explain the elements of the proposed rule and announce the date(s) of the open house(s). A press release, mailing and email will be used to distribute the information. At the open house(s), staff will be available to discuss the proposal and answer questions. Informational displays and handouts will also be available.

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.)

Kathleen Enseñat
Department of Ecology
Water Resources Program
PO Box 47600
Olympia, WA 98504-7600
(360) 407-6780
kspa461@ecy.wa.gov
Fax: (360) 407-6574

or

Scott McKinney
Department of Ecology - SWRO
Shorelands and Environmental Assistance Program
PO Box 47775
Olympia, WA 98504-7775
(360) 407-6389
smck461@ecy.wa.gov
Fax: (360) 407-6574

For the latest updates on Water Resources issues, including the Lewis watershed rulemaking process, sign up for the Department of Ecology Water Resources email list: <http://listserv.wa.gov/archives/water-resources.html> or check out the Water Resources website at: <http://www.ecy.wa.gov/programs/wr/wrhome.html>

DATE

March 1, 2005

NAME (TYPE OR PRINT)

Joe Stohr

SIGNATURE

JOE STOHR

TITLE

Program Manager

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

MAR 2 2005

WSR: 05-06-115
TIME: 11:26 AM