



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Ecology AO # 08-12

Preproposal Statement of Inquiry was filed as WSR 08-15-021 ; or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4).

Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information: Upper Kittitas Ground Water Rule, Chapter 173-539A WAC

Hearing location(s):

Walter Strom Middle School
 Multi-purpose room
 2694 State Route 903
 Cle Elum, WA

Date: July 28, 2010 Time: 5:00 pm

Date of intended adoption: October 15, 2010
 (Note: This is NOT the effective date)

Submit written comments to:

Name: Mark Schuppe
 Address: Department of Ecology
 Central Regional Office
 15 West Yakima Avenue, Ste. 200
 Yakima, WA 98902-3452
 e-mail msch461@ecy.wa.gov
 fax (509) 575-2809 by (date) August 11, 2010

Assistance for persons with disabilities: Contact
Judy Beitel by July 21, 2010

Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed Upper Kittitas Ground Water Rule (Chapter 173-539A WAC) is based on comments received in response to a rule proposed by Ecology in January 2009, and on-going communications regarding the emergency rules now in effect since July 2009. These communications have been with the general public, Kittitas County Board of Commissioners, United States Bureau of Reclamation, Yakama Nation, Roza Irrigation District, Kittitas Reclamation District, Town of Roslyn, Center for Environmental Law Policy/Aqua Permanente, and other water right holders in the basin. In addition, in a letter dated April 6, 2010 Governor Gregoire directed Ecology to immediately begin permanent rule making as required under the Administrative Procedures Act. The purpose of this rule is to withdraw from appropriation all unappropriated groundwater within upper Kittitas County pending the completion of a groundwater study with these exceptions:

- Uses determined to be water budget neutral pursuant to this rule under WAC 173-539A-050; and
- Uses of groundwater for a structure for which a building permit application vested prior to July 16, 2009.

This exception does not apply or ceases to apply if the structure is not completed and a water system that uses the new appropriation is not operable within the time allowed under the building permit, which may not in any case exceed three years from the date the permit application vested. The withdrawal of all unappropriated groundwater is designed to prevent new uses of water that would negatively affect flows and existing water rights in the Yakima River and its tributaries. This proposed rule, like the seventh emergency rule, requires that new developments relying on groundwater would have to demonstrate water budget neutrality in order to be approved.

The Upper Kittitas Water Exchange has been put in place. Suncadia has begun marketing one of its three available water rights for mitigation purposes. Transactions to supply water for 70 residential connections were presented to the Yakima Water Transfer Working Group on March 8, 2010. Suncadia submitted them, along with the associated permit applications, and water budget neutral request forms at the end of March 2010. The first water Budget Neutral Requests were issued by Ecology on April 30, 2010.

Reasons supporting proposal: The Yakima Basin is one of the state's most water-short areas. Water rights with priority dates as old as 1905 were shut off during the 2001 and 2005 droughts, and during 2004 when USBR prorated May 10, 1905 water rights. The town of Roslyn's municipal supply and another 133 single domestic, group domestic, and municipal water systems throughout the basin are subject to curtailment when USBR prorates the May 10, 1905 water rights. Water supply in the Yakima Basin is limited and over-appropriated. Western portions of Kittitas County are experiencing rapid growth and new development in this area without mitigation for its impacts on the water supply negatively affect the flow of the Yakima River or its tributaries.

Statutory authority for adoption: RCW 90.54.050, RCW 90.03.360, Chapter 43.27A RCW, Chapter 90.44 RCW

Statute being implemented: RCW 90.54.050, RCW 90.03.360, Chapter 43.27A RCW, Chapter 90.44 RCW

Is rule necessary because of a:

Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No
 If yes, CITATION:

DATE June 20, 2010

NAME
 Ted Sturdevant

SIGNATURE

TITLE Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: **June 22, 2010**

TIME: **10:38 AM**

WSR **10-13-122**

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

N/A

Name of proponent: (person or organization) Department of Ecology

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Mark Schuppe	Central Regional Office	(509) 454-4258
Implementation....Mark Schuppe	Central Regional Office	(509) 454-4258
Enforcement.....Mark Schuppe	Central Regional Office	(509) 454-4258

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Barbara Anderson
Address: Water Resources Program
PO Box 47600
Olympia, WA 98504-7600

phone (360) 407-6607
fax (360) 407-6574
e-mail bto461@ecy.wa.gov

No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Barbara Anderson
Address: Water Resources Program
PO Box 47600
Olympia, WA 98504-7600

phone (360) 407-6607
fax (360) 407-6574
e-mail bto461@ecy.wa.gov

No: Please explain: