



**PRELIMINARY
BENEFIT-COST & LEAST BURDENSOME ANALYSIS
FOR AMENDMENT TO
CHAPTER 173-505 WAC
INSTREAM RESOURCES PROTECTION PROGRAM
STILLAGUAMISH RIVER BASIN
WATER RESOURCES INVENTORY AREA
(WRIA 5)**

Department of Ecology

**February 2005
05-11-008**

PRELIMINARY

BENEFIT-COST & LEAST BURDENSOME ANALYSIS

FOR

CHAPTER 173-505 WAC

INSTREAM RESOURCES PROTECTION AND WATER

RESOURCES PROGRAM

STILLAGUAMISH RIVER BASIN

WATER RESOURCES INVENTORY AREA (WRIA) 5

Prepared by:

Washington State Department of Ecology

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February, 2005

Executive Summary

The Department of Ecology is proposing Chapter 173-505 WAC to set, achieve and protect in-stream flows and create a water management program. Objectives include setting instream flows that define levels needed for fish and all other instream values for areas including the Stillaguamish River and tributaries and all contributing land area as set forth in chapter 173-500 WAC. A draft rule has been developed that closes areas during certain periods, creates reservations for domestic and stockwater uses and clarifies the requirements for out of stream uses. Ecology has conducted this benefit-cost analysis as part of the rule adoption process.

The proposed rule language for WRIA 5 will have the impact of altering water allocations and subsequent applications and water withdrawals will be allowed to use water under very specific conditions. All streams are proposed for closure with some only closed during certain periods of the year. This will require all future permitted consumptive uses to fully mitigate or acquire water elsewhere during the closure periods. During periods when the streams are not closed, permitted uses will still be allowed subject to instream flows. A reservation will be created that will allow residential and commercial users and public water systems to acquire water that will be uninterrupted subject to certain limitations. Reservation requirements might require some additional connections to public water systems. Those requiring water for stockwatering will be able to obtain it via a new reservation created for that purpose. Proposed transfers may be affected since they will be evaluated considering the instream flow right. No direct impacts to existing water right holders are anticipated.

The costs associated with the proposed rule amendment include reduced availability of water for out of stream uses and implementation costs. Low flows occur quite frequently on the river and streams depending on the time of year. Use of water will be restricted from lakes and ponds. Out of stream uses are likely to be impacted in terms of a reduction in availability of water for permitted uses during closed periods. The exact cost will depend on location, frequency of proposed uses and alternatives and the value of existing interruptible rights. For exempt well users, some outdoor watering will be allowed on up to 1/12th of an acre. Estimation of the cost of this restriction yields a range of \$3-\$35 per household-summer. Totaling this over the number of expected exempt wells yields a range of value between \$135,000 and \$1.7million through 2025. Other costs associated with lake and pond use restrictions, stream closures, connection requirements and transfers would be in addition to these costs.

The benefits of the proposed rule include ecosystem and recreational benefits from increased water flow, improved availability and management of water for out of stream uses, and risk reduction, non-use and public health benefits. Ecology believes that the most significant probable benefits come from comprehensively determining allowable allocations, improved management during low flow events, the ability to consider instream flows in transfer decisions, improved availability of water for out of stream uses, and non-use values, risk reduction and increased flexibility. Ecology also believes that the probable benefits of the proposed rule are greater than the probable costs.

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1. INTRODUCTION

BACKGROUND

The Washington State Department of Ecology's (Ecology) Water Resources Program is proposing to develop an instream resources protection and water resources program for the Stillaguamish River basin to:

- Retain perennial rivers, streams, and lakes in the Stillaguamish River basin with instream flows and levels necessary to protect and preserve instream values, and instream flows. Closures are proposed at specific points in the basin.
- Provide for an adequate and safe supply of potable water to satisfy the domestic needs of households and businesses and for stockwatering via the establishment of two reservations of water.
- State Ecology's policies to guide the protection, utilization and management of Stillaguamish River basin surface water and interrelated groundwater resources for use in future water allocation decisions.

The Stillaguamish River basin is designated as Water Resource Inventory Area 5 (WRIA 5) in chapter 173-500 Washington Administrative Code (WAC). Ecology is developing and issuing this Benefit-Cost analysis (BCA) and least burdensome analysis as part of its rule adoption process and pursuant to chapter 34.05 RCW. Ecology intends to use the information developed to ensure that the proposed rule is consistent with legislative policy.

DESCRIPTION AND PURPOSE OF THE BENEFIT-COST ANALYSIS

The benefit-cost analysis is provided to consider the economic efficiency of proposed rules. This involves determining if the rule makes sound economic sense by determining that the probable benefits of undertaking the rulemaking are larger than the probable additional costs. RCW 34.05.328(d) further describes the requirements under the Administrative Procedures Act:

“Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented”

The benefit-cost analysis provided below includes quantitative information where available and qualitative information where the economic or physical science is not to the point of providing reliable values for benefits and costs. There is no consideration of the distribution of impacts to various populations in this analysis.

CONTENTS OF THE DOCUMENT

The economic impacts of the proposed rule will be considered in this analysis. Section 2 contains a description of the baseline and proposed rule language and identifies the proposed rule impacts. It also contains a qualitative description of the benefits and costs. Section 3 provides a quantitative description of costs and benefits where possible to obtain this information and provides a conclusion on the proposed rule amendment. It

also discusses the results provided herein with reference to the existing rule. The Appendices contain more information on the existing water management system, research on instream flows and values, impact estimates and a discussion of the benefits and costs assuming that the local government implementation agreements are not executed. Please see the Table of Contents for a complete description.

2. RULE REQUIREMENTS AND PROBABLE COSTS AND BENEFITS

INTRODUCTION

The evaluation of the impacts of the proposed rule is based on analysis and comparison of water right management without the rule and after the effective date of the rule if the rule is adopted. The current water right administration is based on an extensive and complex legal and administrative framework. The framework includes administrative procedures for applications for both new water rights and changes to existing water rights, and the use of water by permit-exempt wells (RCW 90.44.050). Implementation of Chapter 90.22 RCW and Chapter 90.54 RCW are also part of this legal baseline. In proposing reservations of water, and closing streams and rivers, the rule creates new conditions that must be considered when making future water right decisions. A brief description of compliance requirements is provided below. A detailed description of water management under the existing and proposed rules can be found in Appendix A.

WATER RIGHT ADMINISTRATION UNDER THE RULE

The proposed future water right management program will close rivers and streams and reserve specific quantities of groundwater in specific rivers and streams, for year-round future domestic uses of households and businesses. The rule also creates a reservation for future stockwatering and establishes eligibility conditions for use of the reservations. Expected impacts to water management include the following:

Surface Water: For streams with flows available at least part of the year, the decision process will be much the same as prior to the rule. Currently, Ecology will condition a water right in such a way that flows are protected and a permit can be approved granting an interruptible right. Under the proposed rule, all new surface water rights will be required to stop withdrawing during the closed periods or when minimum instream flows are not met in the surface water source. In general, this may represent a significant change for future proposed surface water withdrawals since currently they would only be required to stop withdrawing water during low flow periods. Those proposing withdrawals from lakes or ponds will only be allowed to withdraw up to 150 gallons per day for in-house use only which will likely be a reduction from what would be obtained absent the rule.

Applications for new consumptive surface water rights during the closure periods would be denied, unless the applicant proposes, and Ecology accepts, mitigation of the water use or an interruptible right is acceptable to the applicant. An uninterruptible right may be approved on a case-by-case basis. For areas currently included in Ecology's Surface Water Source Limitations (SWSL) list, about 30% of the basin, the proposed rule would represent little change from the current situation except for those obtaining water from the reservation. Proposed appropriations from a stream listed in the SWSL are currently either denied or conditioned on low flow requirements. However, for areas that are not currently included in SWSL, this may represent a change because potential water right holders would have to cease use of water every year instead of just during the low-flow closure periods as would be the case for a conditioned right. In accordance with the

requirements of RCW 90.22.040, Ecology is retaining a minimum flow not to exceed 1 CFS for future stockwatering from surface water sources.

Groundwater: The decision process is much the same as prior to the rule. Groundwater applications in hydraulic continuity with the rivers and streams in the Stillaguamish basin would still be subject to the instream flows unless they are eligible for the domestic reservation. Applications for new consumptive ground water rights from sources that are closed part of the time would be approved as interruptible rights or denied, unless the applicant proposes, and Ecology accepts, mitigation of the water use or the applicant shows that the withdrawals will not affect surface water. An uninterruptible right may be approved on a case-by-case basis. For areas currently listed under Ecology's SWSL list, this would represent no change from the current situation except for those obtaining water from the reservation. However, for those areas that are not currently listed on the SWSL this may represent a change because they would not be able to use water in areas with year-around closures and will likely be required to curtail use more frequently in those cases where closures are only part of the year.

Based on the hydrogeology of the basin, and the location and depth where groundwater withdrawals generally occur, future groundwater withdrawals have a high likelihood of capturing water that would result in impacts to surface water flows and levels in the Stillaguamish River Basin. Therefore groundwater sources are presumed to be connected with surface waters in the proposed rule. The rule does not create the need for, and does not change the standards for, the analysis regarding whether these impacts cause impairment.

Permit Exempt Groundwater: A reservation of ground water for future domestic uses provides a management framework for these types of withdrawals. One significant factor influencing the impacts of the rule is whether the local governments implement an administrative action or ordinance regarding the reservation. If an administrative action or an ordinance is not put in place, the reservation will not be available to new uses until such time as these actions are taken. The analysis below assumes the local governments act to make the reservations available within their jurisdictions. Appendix C discusses the case where action is not taken.

For those interested in using an exempt well, there would be several alternatives. Applicants could solicit a hydrogeologist to certify that a well would not cause impairment of a water right in areas where hydraulic continuity between the surface water and groundwater is not likely. Ecology would have to approve this certification. This would allow an applicant to develop a well as though the rule was not in place, but at the additional cost of the analysis. For some wells in basins that drain groundwater to saltwater bodies, this cost would likely be very small. For wells that would be drilled in areas where they are likely to be in hydraulic continuity with closed basins or streams with instream flows, and impairment would result, options include obtaining water from the reservation or accepting an interruptible water right in partially closed basins with corresponding curtailment or required storage, or agreeing to mitigate the impacts.

The reservation is available only to an applicant located more than 500 feet from an existing water system. If applicants are closer to the water system than this and within the service area, they will be required to connect to the system when connection can be made in a timely and reasonable manner. This may result in increased costs, including connection charges, construction charges and monthly water rates. Those that access the reservation via exempt wells near an expanding water system will be required to connect to the system if connection becomes timely and reasonable. For stockwater, Ecology is reserving 2 acre-feet of groundwater, limited to 5,000 GPD per user.

Changes or Transfers of Water Rights: Existing water rights can continue to be changed or transferred as permitted by Chapters 90.03 and 90.44 RCW and the process is the same as before the proposed rule. However, under the current system, changes for surface water rights cannot consider impairment of instream flows since there is no instream flow right. The proposed rule will change this and make it a consideration in a proposed transfer. Requirements related to changes in the point of diversion from a surface point to a ground water source or transfers that are restricted within the same source could also be impacted as above.

Reservations of water: The reservations of water, use of water under the reservations, and associated conditions for that use, are all part of the rule proposal. In large measure, the domestic reservation will allow residential and some business development to continue as before with the benefit of having a continuous, reliable source of water during low flow periods, with few restrictions. These restrictions include a limit on outside watering, a requirement to connect to public water systems under certain circumstances, and the finite quantity of the reservation. Domestic water use must also meet efficiency standards but this is not a change from existing requirements. The stockwatering reservation will provide uninterrupted water supplies for those types of businesses.

Closures of Water Sources in WRIA 5: The rule would include the current limitations for surface water sources, and add several other streams and rivers. For applicants who cannot access the reservations, applications for consumptive uses from sources closed during certain portions of the year will be denied unless the applicant can acceptably mitigate for the impacts during the closure periods or demonstrate to the satisfaction of the department that the proposed withdrawal will not affect instream flows set by rule. In partially open areas, interruptible water rights may be issued.

COSTS AND BENEFITS OF RULEMAKING

As described above, some of the impacts of the proposed rulemaking will likely be experienced by future water right applicants. Existing water right holders will not be directly affected. However, there will also be impacts to the environment associated with increasing or decreasing out of stream water uses and some recreational activities could also be affected. A general description of benefits and costs associated with instream and out of stream uses of water is provided below.

Costs

The economic cost associated with this rulemaking is the loss in the value of the water in its alternative use. This may be the lost value of the water in the streams and tributaries when additional water is allowed to be withdrawn or the value of the water for out of stream uses when it is required to remain in the streams. These can be described more specifically as follows:

Reduced Availability of Water for Out- of-Stream Uses

(a). Lake and pond consumptive withdrawal restrictions: Surface withdrawals from all lakes and ponds will be limited to single in-house domestic uses not to exceed 150 gallons per day per home under the proposed rule. Currently, applicants would likely get a right to a larger quantity of water but be required to reduce use to in-house domestic use during low flow events in the distributary. As such, it is likely that use will be restricted under the proposed rule. This may be a limitation on some applicants desiring to access these sources. Applicants might be able to get a slightly greater quantity of water from the proposed reservation. The exact impact of this will depend on the number of permit requests that would have been submitted absent the rule, and the required water needs.

(b). Stream closures: All rivers and streams and the groundwater in continuity with them that are currently open to new withdrawals (or currently closed) will be closed entirely or for certain periods of the year. For other than domestic uses (human needs of a household or business) and stockwatering authorized under the reservations, this requirement will generally eliminate new permitted water withdrawals entirely or during certain periods of the year although they may still be available when non-consumptive, fully mitigated during closure periods, or from groundwater shown to not affect surface water. In these areas, water uses not eligible for the reservation will be required to obtain water during closure periods from an existing water purveyor, through leases or transfers or through other methods. Domestic uses will be allowed in these closed areas through the proposed reservation but only for domestic water use.¹ For those that require water for irrigation or for agricultural/industrial processes, this might be an impact on future withdrawals since the closure will require some mitigation or storage. However, it is reasonable to conclude that these water uses would be conditioned on low flows absent the rule. As such, the impact would likely be a longer period of non-use that will occur every year instead of just low flow years and increased mitigation, leasing or purchasing for those locations that are permanently closed. This could require water leasing or transfers of existing water rights or could lead to a change in the proposed location of a commercial industry or agricultural use. The magnitude of the impact will be determined by the proposed location and use of future water permit applicants.

(c). Creation of the reservations: Currently, groundwater withdrawals via exempt wells in the Stillaguamish River or its tributaries are subject to the requirements in RCW 90.44.050. Under the proposed rule, water will still be available via the reservation, but comes with some restrictions. Under the reservation, only domestic uses will be allowed year around. For businesses that would typically use a relatively small amount of process

¹ Currently, permit-exempt well users can use up to 5,000 GPD assuming they meet the other requirements of RCW 90.44.050.

water (up to 5,000 GPD), an interruptible right would still be available during open periods in some areas, and domestic needs of the business could be met from the reservation. For individuals or businesses developing land for residential construction or requiring domestic water only, the reservation should meet that need although outdoor use will be restricted to application on 1/12th of an acre for irrigation.

(d). Connection requirements: Applicants within a public water system service area who desire water from the reservation or a permitted use will be required to connect to a public water system if connection is timely and reasonable. In general, this will impact those desiring to use water for domestic needs or process water. This may be an impact to some individuals and businesses in the watershed.² An exception might be a business that doesn't require water during low flow periods, but this is likely to be a small subset of future businesses in the watershed. The proposed rule also requires those that get water from the reservation to connect to a public water system if connection becomes timely and reasonable. This may impact some if they install a well and must connect later.

(e). Transfers: Water right transfers that would have occurred before the rule even though they had an impact on instream flows will no longer be allowed. This may be a cost for those that would have preferred to trade water. However, only two transfers for small quantities have been recorded previously. Transfers of water rights may become part of mitigation strategies used by businesses to offset the impacts of their new water needs.

Ecosystem Goods and Services

Canyon and Pilchuck Creeks will be opened up to new uses during some portions of the year. This could potentially impact these creeks in terms of reducing flows during some periods of the year relative to the case where no rule is in place and the creeks are still on the SWSL.

Implementation Costs

The proposed rule will involve some implementation costs. These include the costs associated with providing technical and educational information for rule compliance, the costs associated with counties completing implementation agreements, and the costs associated with Ecology managing and accounting for the reservation.

Benefits

The benefits associated with the proposed rule are associated with the value of water in its proposed use. This includes the following:

Ecosystem Goods and Services

There will be some ecosystem benefits associated with lake and pond consumptive withdrawal restrictions, stream closures, reservation use and connection requirements, improved management during low flow events, reduced likelihood of over-appropriation and the ability to restrict transfers based on instream flows. These requirements will likely result in more water in the rivers and streams than would have been the case without the rule. Connection requirements might reduce impacts to locally sensitive

² However, the Skagit County Critical Areas Ordinance requires connections under specific conditions.

streams. An avoided reduction of instream flow in tributaries could yield an avoided reduction in habitat for fish and other marine and avian life and avoid a reduction in the river's ability to assimilate waste. This could be a benefit for any entities relying on the river for waste assimilation, or for biological processes as well as benefit adjacent property owners.

Conditioned water rights are required to cease use of river water based on their priority date. This involves significant administrative costs in determining the order that water rights should eliminate use during low flow conditions, contacting the users, delay in determining if flows are attained after initial actions and then subsequent contacts. Moreover, water rights have sometimes been conditioned on different flow levels making administration even more difficult. An instream flow right created by the proposed rule will require that all junior rights eliminate use during periods when instream flows are not met, increasing the likelihood that instream flows and therefore ecosystem services are protected.

The rule also codifies the quantity of water available for allocations, maximum flows available for interruptible uses and open and closed periods. These were based on significant analysis of existing hydrology, biology, etc. Placing these values in rule will reduce piecemeal permit by permit management of water resources and help ensure that water is not over-appropriated in the future.

Recreation Benefits

There may be some recreational benefits associated with stream closures and from connectivity requirements. These requirements will likely retain more water in the rivers than would have been the case without the rule. Connection requirements might reduce impacts to locally sensitive streams. An avoided reduction of instream flow in tributaries could yield a beneficial impact to rafters, those who canoe, fishing quality, and riverside activities. Maximum allocation limits could theoretically benefit in-stream uses if they become binding.

Benefits to Out-of-Stream Water Use

(a.) Benefits to existing permits conditioned on instream flows: Existing holders of interruptible permits must curtail withdrawals when instream flows are not being met in the rivers and tributaries. To the extent that the rule decreases the rate of withdrawal of instream waters, this could reduce the frequency that existing rights would have to curtail use relative to the case with no rule in place.

(b.) Increasing potential availability of water: Ecology is proposing to allow withdrawals from Canyon and Pilchuck creeks during certain periods of the year that are currently on the SWSL and that would currently be denied. Pending water applications might also be impacted since they will not likely be denied based on flows under the proposed rule. These changes should result in a benefit to any proposed uses from these water bodies or groundwater in hydraulic continuity with these water bodies.

(c.) Stockwatering: The creation of the stockwatering reservation will provide year-around access to water for stockwatering. Currently, water accessed via permit is likely to be conditioned on instream flows. This could be a benefit to those households or businesses that are involved in managing stock and that require water in quantities that require a permit.

(d.) Increased Certainty and Clarity in the Water Allocation Process: Increased certainty in water rights acquisition should reduce the delay and uncertainty surrounding obtaining new water rights. This will allow developers and others to plan ahead in property development and better value investment opportunities. The rule may also improve rule clarity and provide a more certain and expedited permitting process.

(e.) Improved Water Management Structure

The proposed rule includes provisions that will encourage local governments to jointly implement water management in the basin. This should lead to a less contentious and more holistic approach to water management and land use that may lead future land development to better account for water and water related impacts.

Risk, Uncertainty and Water Rights

There is a significant amount of uncertainty associated with water use and instream flows. The future may determine that more or less water should be maintained in the river. However, a water right is a firm commitment to provide water in perpetuity. By restricting permit-exempt use, withdrawals from lakes and ponds and closing streams, the ability to maintain flows in the river is retained in case fish stocks are significantly affected by even small incremental withdrawals and/or subsequent information indicates this is the highest and best use.

Non-Use Values

Non-use values such as spiritual and existence values could be impacted as part of this rulemaking. These values do not derive either from direct or potential use of water resources in the basin, and represent a different category of value than the use values listed above.

Public Health Benefits

The Washington State Department of Health (WSDOH) has indicated that having many individual wells in any given area increases the risk of groundwater contamination. Requiring entities within public water system service areas to connect if connection is timely and reasonable will reduce this increased risk of contamination.

3. ESTIMATED COSTS AND BENEFITS

INTRODUCTION

The analysis provided below describes the estimated costs and benefits of the proposed rule. Though it is possible to get a quantitative estimate of some of the costs and benefits, in most cases it is difficult to develop quantitative estimates for each cost and benefit. In those cases, only qualitative conclusions are provided.

RECURRENCE FREQUENCY

Some of the impacts of the rule will occur during periods when low flows are not met in the river or its tributaries. For example, the impacts of closing streams during certain periods of the year are dependent on how often low flows would occur in those rivers without the rule and therefore, how often an interruptible right would have been required to limit use. As such, an important part of the analysis of impacts is in determining how often low flows are likely to occur in the future. This is a function of the future flows in the river and the minimum in-stream flow levels proposed in the rule.

To assess the frequency of low flows, historical data was obtained for two locations along the North and South Forks of the Stillaguamish River.³ These past flow values were compared with the proposed in-stream flow values and used to determine how frequently minimum flows would not have been obtained in the past if the proposed instream flows had been in effect. These historical flows provide a relatively long time series and therefore a reasonable approximation of the number of times in the future that minimum instream flows won't likely be met.⁴ Figure 3.1 indicates the results.

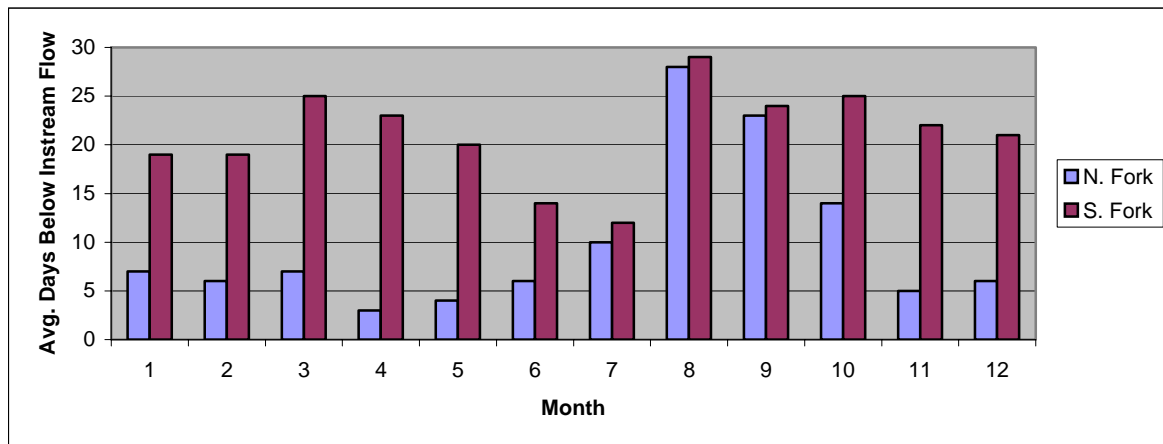


Figure 3.1. Average Number of Days Historical Flows Would Have Been Below Minimum In-Stream Flows Proposed in WAC 173-505⁵

³ Flow data was obtained for USGS #12167000, North Fork Stillaguamish @ RM 6.5 and USGS #12161000, South Fork Stillaguamish @ RM 34.9.

⁴ If climate change impacts lead to drier summers as some forecast, then it may be an underestimate of the impacts. However, it is difficult to say how quickly climate change impacts may occur.

⁵ Data for North Fork (RM 6.5) from 1928-2002 and for South Fork (RM 34.9) from 1928-1980. Analysis utilized 90% of the proposed instream flow to account for measurement error.

As can be seen, there appears to be a difference in the frequency minimum instream flows would not be attained in the two forks. In the north fork, flows are attained for most of the days in an average year except late summer and early fall. In the south fork, flows are not attained more than half the time during all months except for two and minimum flows also appear to not be attained most frequently in late summer and early fall. On average, instream flows are not met over 90% of the time in August for both forks. The data utilized to develop the graph above are average flows and it appears that for the winter months, the number of days where minimum flows is not attained is more likely to be associated with extended periods of low flows in specific years rather than with the same number of low flow days every year.

IMPACTS TO WATER RESOURCES

The proposed rule will result in some water that will not be used during certain periods via lake and pond restrictions, stream closures and restrictions on exempt well uses. In general, it is possible to estimate some of these impacts given expectations about exempt well use and permitted surface and groundwater uses.

Lake and pond withdrawals will be limited to 150 gallons per day per home. This is likely to leave little water for outdoor irrigation, but on average should meet most indoor needs.⁶ Given estimated outdoor use of between 31,200 and 51,700 gallons per year,⁷ the amount of water saved per connection would likely be 0.0001-0.0002 CFS. It is difficult to know how many connections to have expected in the future absent the rule. Since 1985, 32 surface water permits have been issued for all uses including streams, lakes and ponds and all have been issued to individuals. Given the values listed above, it would appear the impacts as measured in volume of water would be relatively small.

The impact of stream closures on streams that are currently open is that during all or some periods of the year no use will occur and this restriction on use will occur every year. Under the current management scenario, use would only be restricted during low flow periods which may not occur every year in some sources. Canyon Creek, Pilchuck Creek and several unnamed streams are currently recommended for permit denial on the SWSL and so opening these creeks during some periods of the year could result in reduced flows in the creeks.

In general, the closure periods extend over the periods when low flows are least often attained.⁸ Permit holders would still be required to eliminate withdrawals during the open periods if minimum instream flows are not met. The change could then be estimated by considering the average number of days that eliminating withdrawals will be required during an average closure period. Table 3.1 provides an analysis.

⁶ AWWA (1999) found an average indoor use value for Seattle households of 57.1 gallons per capita per day. Using 2.55 persons per household yields an indoor use of 145.6 gallons per household per day.

⁷ See Appendix C for an analysis

⁸ Most of the closures are from June to October or November. Squire Creek is only open November through February and May through June.

Table 3.1. Comparison of Average Number of Days Curtailment Would be Required under Existing Program and Under the Proposed Closure for N. & S. Forks of the Stillaguamish River.

	Average No. of Days Use is to be Curtailed due to Low Flows	Closure Period (Assumed to be July 1-Oct. 31)
North Fork	75	123
South Fork	90	123

As can be seen, the difference in the average number of days that closure will require users to curtail use is between 33 and 48 days. The exact quantity of additional water that will remain in the river due to this change will depend on the allowed use, quantity, climate, etc., and the impacts of those sources that will be newly opened for withdrawals. Since 1985, 84 permits have been issued for groundwater and surface water sources in the Stillaguamish basin for an average instantaneous withdrawal of 0.16 CFS. This represents a permit issuance rate of approximately four permits per year.

Exempt wells that access the reservation will be able to obtain water during low flow periods but will be restricted in the use of outdoor water. Determining the number of exempt wells likely to be developed in the next 20 years was performed by analyzing land use in the counties and projections for population growth. Population growth in the unincorporated areas is projected to grow at a pace relatively consistent with the past. The population growth in the unincorporated areas was allocated to the watershed based on the forecast of population growth by OFM and the Puget Sound Regional Council. Growth in water resource demand that occurs within the Urban Growth Areas (UGAs) was assumed to be provided by the local purveyors. Growth that occurred in the unincorporated areas that is currently served by a public water system was assumed to be served by an exempt well.⁹ Estimation of permit-exempt well use based on estimated population growth for the WRIA indicate that between 5,500 and 6,000 new exempt wells may be installed through 2025.¹⁰ Assuming an average reduction in outdoor use of between 9,400 and 30,000 gallons per year¹¹ yields an avoided use of between 0.2 and 0.76 CFS by 2025. It is important to note that the average August flowrate for the north fork of the Stillaguamish River is 462 CFS and for the south fork is 299 CFS. Therefore the estimated reduced amount of water extracted from the watershed from restrictions on exempt well use would be between 0.04% and 0.2%.

COST ESTIMATION

Reduced Availability of Water for Out-of-Stream Uses

(a). Lake and pond consumptive withdrawal restrictions: Restricting water use to 150 gallons per day is likely to significantly reduce outdoor uses. On average, the volume of

⁹ This was assumed to be conservative and reflect areas in the unincorporated counties that are located within the service areas of public water systems, but have no infrastructure in place that can be connected to in a timely and reasonable manner.

¹⁰ Existing population determined using U.S. census data in individual census blocks. Population estimates taken from Puget Sound Regional Council (PSRC) Growth Projections. Well logs indicate well drilling rates averaging approximately 230 wells per year have occurred in the past.

¹¹ See Appendix C for analysis.

water unavailable is likely to be between 31,200 and 51,700 gallons per year that will no longer be available for use. Ecology has developed a model to consider the impacts of reduced outdoor water use and it is described in Appendix C. It is estimated that on average, this reduction in desired outdoor water use would result in an impact to users of between \$58 and \$244 per year. Unfortunately it is difficult to determine how many surface water applications can be expected in the future. As mentioned previously, 32 surface water rights have been issued since 1985, but this includes all surface water uses. Based on this number it seems reasonable to conclude that the impacts will be relatively moderate.

(b.) Stream closures: Stream closures might affect permitted uses depending on the surface water source. The impact will likely be a requirement to fully mitigate or purchase water for completely closed basins or an increase in the number of days that water use must be curtailed or mitigated for in some sources. Offsetting this will be an increased amount of water available from some sources that would currently not be available. In most cases, future applicants for surface water or groundwater in continuity with surface water bodies would have to expect that they would get an interruptible right under the existing management structure. Therefore, most applicants would either accept an interruptible right because it meets their needs or were planning to purchase or lease other water or perhaps construct storage to provide for their needs during low flow periods. For areas completely closed under the rule, this requirement will eliminate new withdrawals unless non-consumptive, and new water uses will be required to obtain water from an existing water purveyor, through transfers or other methods.

Therefore, the impact of this rule provision in partially closed areas would be the value of the water that will not be available during closed periods that would have been available without the rule. This is likely to be very specific to a given applicant's water needs, the surface water body and climate. Of the 84 permits issued since 1985, 78 have been issued for single or group domestic uses and 2 for irrigation. If the rate and purposes were to continue in the future, domestic uses would be able to access water from the reservation or water can be obtained from lakes and ponds as described above. For those uses that are not eligible for the reservation, it may be more significant. Storage is likely to be too costly of an alternative to users of this quantity of water. As such, irrigators and others that need water during these low flow periods are likely to purchase or lease water and will likely increase their purchases as required to meet their needs. Given the flows above and the additional days listed in Table 3.1, we could expect that between 2.4 and 3.5 million gallons would be required. This equates to between 7.4 and 10.8 acre-ft. Water for agricultural purposes typically has values of between \$40 and \$120 per acre-ft¹² and so the total impact would likely be between \$300 and \$1,300 per year per user on average.

(c.) Reservation creation: The proposed rule restricts the outdoor use of water to 1/12th of an acre for an individual well from the reservation. Not being allowed to use unlimited amounts of water outdoors will mean that some consumers will not be able to wash cars, utilize outdoor pools, and water lawns or have extensive landscaping. To determine the

¹² Based on Columbia River Basin Project for Water from "Economics of the Columbia River Initiative."

cost impacts of the rule ultimately involved determining the value of the water that would no longer be available for outdoor use. Detailed data on end use consumption of water is difficult to obtain, but an analysis was performed and is included in Appendix C. The analysis revealed that assuming the best available estimates of water use, yields a cost impact from outdoor restrictions of between \$3.00 to \$35.00 per well per year.

As mentioned previously, the total number of exempt wells forecast to be installed through 2025 is between 5,500 and 6,000. This amounts to a rate of approximately 275-300 wells per year which is a higher than the rate of exempt well development in the recent past.¹³ Utilizing the cost impact values per well listed above leads to a range of cost impacts of between \$135,000 and \$1.7 million.¹⁴

(d.) Connection Requirements

Some entities that currently would be allowed to install a permit-exempt well will now be required to connect to a water system if it is within 500 feet or when it becomes available. Currently, well installation costs range from \$5,000 to \$10,000 depending on the depth, geology, etc. Connection to a water system is estimated to range between \$8,000 and \$35,000 depending on the connection requirements. However, there are often provisions to recover a significant portion (perhaps all) of the cost via latecomer agreements. As such, it is not unreasonable to believe, that connecting to an existing system is already a cost-effective alternative for those parties located within 500 feet of an existing system. Also, Skagit County's critical areas ordinance already requires connections under certain circumstances. Therefore, for some users this may not represent a significant change. It seems reasonable to conclude that this will not represent a significant cost associated with the rule.

(e.) Transfers

As mentioned previously, surface water transfers that involve relocating the point of origin could be restricted once an in-stream flow rule is in place. The in-stream flow would create a water right that would allow Ecology to deny a transfer if it adversely affects flows. To assess the impact of this requirement, historical surface water right transfers were evaluated for the watershed and it was found that only two water rights had been transferred in the past. One was a change in the purpose of the use (i.e. not the location) and one was for a small non-consumptive use (0.25 CFS) from an unnamed stream. Increasing water scarcity might lead to more proposed transfers, but they may not have been affected by instream flows even without the rule. It is anticipated that this will not be a significant impact.

Implementation Costs

The rulemaking will involve additional costs including Ecology staff time in preparing technical and educational documents associated with compliance, notifying local governments and accounting for the reservation. The cost for staff, materials and processing is likely to be approximately \$3,000 for the educational materials. Accounting

¹³ The average annual number of well logs from 1986 to 2003 is approximately 246 per year.

¹⁴ Calculations assume a real interest rate of 2.7%. This estimate may over-state the cost, since it assumes that preferences for outdoor watering don't change over time.

for the reservation will also involve increased costs for Ecology employees. There will also be a cost associated with the counties processing an implementation agreement.

BENEFIT ESTIMATION

Ecosystem Goods and Services

The environment provides several services required by fish and wildlife and directly or indirectly beneficial to humans. A significant service in the Stillaguamish basin is habitat for salmon, although the waters also provide habitat for other fish, birds that prey on aquatic life, and other aquatic creatures. In addition, the river also provides dilution benefits for discharges of wastewater and stormwater. The proposed rule will likely enhance the services provided by the river and its tributaries by retaining more water in the streams, lakes and rivers than would have been the case without the rule. This occurs by retaining flows within surface water bodies in the watershed that would have otherwise been used by permitted and permit-exempt uses. The exact quantity that will remain in the river during low flow periods will depend on the number, use and quantity of uses that would have occurred without the rule and the degree of continuity between the surface waters and groundwater wells. As indicated previously, the estimated quantity of water that would remain in the river due to exempt well restrictions (assuming continuity) relative to a case with no rule increases over time reaching between 0.2 and 0.8 CFS by 2025. This is an underestimate of the total contribution since it does not include the other savings for lakes and ponds, and permitted uses.

Fish stocks were considered in the development of the 2004 Stillaguamish Lead Entity Strategy (SLES). The fish stocks present in the river basin include Chinook, Coho, Chum, Pink and Sockeye salmon, steelhead, bull and Sea-run Cutthroat Trout. The SLES prioritizes Chinook salmon for conservation since it is listed as threatened under the Endangered Species Act (ESA). Chinook salmon spawn from mid-August to October in the mainstem, North Fork and South Fork of the river. Pink and Sockeye also spawn in the summer and chum, steelhead and trout species often spend some portion of their life-cycle in the river during the summer months.

Depending on the species, avoiding a reduction in flow will likely improve the habitat for both spawning and rearing. Avoided flow reductions will reduce the effect of temperature, provide greater estuarine and floodplain habitat, help reduce the amount of fine sediment, and improve fish passage. The SLES notes that “adequate minimum flows are also essential for spawning migration” and that “Flow, substrate condition and redd depth appear to be important factors in incubation and emergence success.”¹⁵

In general, it is very difficult given current modeling techniques to quantify the impacts of a small change in habitat on fish populations. There are many factors that affect fish populations of which streamflows are only one. Fish survival depends on flows, temperature, water quality, location of snags, ocean predation, climatic cycles, commercial fishing, etc. Most of these factors are difficult to predict with a sufficient degree of confidence. Therefore, Ecology has not attempted to quantify the benefits of a

¹⁵ 2004 Stillaguamish Lead Entity Strategy

reduced rate of flow reduction on fish populations in WRIA 5. In general, Ecology believes that the small increase in flows associated with decreased out of stream uses may result in a small increase in fish habitat during infrequent low flow events, but is unlikely to have significant impacts on fish populations. The effect of avoiding a habitat reduction on other species may be beneficial both directly and indirectly through predator-prey relationships. However, no quantifiable data is known to be available.

A potentially significant impact of this rule is the ability to restrict transfers that impair flows. Currently, proposed transfers that might impact fish stocks cannot be denied based on instream flow concerns since there is no water right associated with those flows. A proposed transfer that will not impair any senior rights and meets the other requirements but might significantly reduce the instream flows could not be denied. Though, only two transfers have occurred in the basin in the recent past, the incentive for transfers increases with increasing water scarcity. It is possible that some of the larger water right holders in the area would be willing to transfer their rights to other parties requiring a change in place of use. These larger transfers could have significant effects. Consumptive surface water rights on the north and south forks amount to 26.43 CFS and 7.64 CFS respectively. In addition, 56.4 CFS in consumptive groundwater withdrawals are permitted in the basin.¹⁶ If a large consumptive user (or users) transfer(s) a right, it might have significant impacts. Perhaps more important would be transfers along the smaller streams and creeks of the basin where consumptive rights might make up a larger proportion of instream flows. Transfers in these areas may have proportionally larger effects on fish habitat and therefore potential economic costs associated with reduced fish stocks, the risk of an “endangered” listing, etc. and will likely benefit from the creation of a water right for instream flows.

Conditioned water rights are required to cease use of river water based on their priority date. This involves significant administrative costs in determining the order that water rights should eliminate use during low flow conditions, contacting the users, delay in determining if flows are attained after initial actions and then subsequent contacts. Moreover, water rights have sometimes been conditioned on different flow levels making administration even more difficult. An instream flow right created by the proposed rule will require that all junior rights eliminate use during periods when instream flows are not met, increasing the likelihood that instream flows and therefore ecosystem services are protected.

The rule also codifies the quantity of water available for allocations, maximum flows available for interruptible uses and open and closed periods. These were based on significant analysis of existing hydrology, biology, etc. Placing these values in rule will eliminate piecemeal management of water resources and help ensure that water is not over-appropriated in the future.

Waste assimilation services are also provided by the Stillaguamish River. Ecology regulates this service in rivers via National Pollutant Discharge Elimination System

¹⁶ Consumptive water right data from “Draft Stillaguamish River Watershed Temperature Total Maximum Daily Load,” 2003.

(NPDES) discharge permits. These allow discharge in designated mixing zones if certain water quality requirements are met. Ecology uses the 7-day, 10 year (7Q10) low flow as the design flow to consider when determining the requirements of these permits. They also consider other parameters such as temperature, oxygen levels, etc. In general, Ecology expects that reducing the quantity of water that would have been withdrawn will result in slight beneficial impacts to the 7Q10 flows and therefore pollution assimilation capacity, but that this will be unlikely to affect permit parameters.

Recreation Benefits

Avoiding a reduction in flow caused by surface and groundwater uses in the rivers and streams of the Stillaguamish watershed could have several beneficial recreational effects. In general, more water in the river will favorably impact rafting, kayaking, canoeing, fishing, swimming, picnicking, camping and hiking. The exact magnitude is difficult to determine since the quality of the experience and the impact of additional flows are a function of many factors including existing flows, availability of other recreational opportunities, etc.

The Stillaguamish River is not extensively used for commercial rafting. Contact with rafting companies and the U.S. Forest Service indicates that outside of occasional special event rafting, little commercial rafting occurs. The Forest Service has not permitted any use on the north fork and only one kayak event during the 1980s on the south fork.¹⁷ Anecdotal evidence indicates that informal rafting, tubing, kayaking and canoeing are more frequent river uses. These uses may benefit from increased in-stream flows if it increases the quality of the outdoor experience. However, offsetting this is a potential reduction in safety associated with lower flows. Unfortunately, no data exists as to the quantity and location of recreational trips on the river and so a quantitative result is not provided.¹⁸

Streamside and shoreline uses such as camping, picnicking, hiking or swimming could theoretically benefit from avoiding a decrease in flow in surface water bodies. Reduced flows can impact the visual experience of users and reduce the quality of the visit. However, the avoided reduction is likely to be moderate and it is unlikely to be a significant benefit.

Some recreational fishing does occur along the river. Steelhead catch rates are provided in Table 3.2 below.¹⁹

Table 3.2. Stillaguamish River Catch Rates (5/01-4/02)

Fish Type	No. of Fish Caught
Summer Steelhead	568
Winter Steelhead	1427

¹⁷ Personal conversation with Phil Kincaire, USFS.

¹⁸ Most local governments were contacted for data on recreational uses of the Stillaguamish, but none was available.

¹⁹ Data from the Washington State Department of Fish and Wildlife Catch Report, 2002.

Unfortunately the data provides catch rates and does not discuss visitor-trip days making it difficult to analyze quantitatively.²⁰ However, such a small increase in flows in the river is unlikely to significantly alter the recreational fishing experience.

Availability of Water for Out-of-Stream Uses

(a.) Benefits to existing permits conditioned on instream flows

Existing holders of interruptible rights must curtail withdrawals when instream flows are not being met in the rivers and tributaries. To the extent that the rule decreases the rate of withdrawal of instream waters over time, this may reduce the frequency that existing rights will have to curtail use relative to the case with no rule. The exact benefit will depend on the location and quantity of avoided withdrawals and existing interruptible permits.

(b.) Increasing potential availability of water: Ecology is proposing to allow withdrawals during certain periods of the year from Canyon and Pilchuck creeks. These creeks are currently on the SWSL and recommended for permit denial. Opening these basins should result in a benefit to any proposed uses from these streams or groundwater in hydraulic continuity with the streams. However, the closures during certain periods of the year may limit the significance of this change.

Currently, there are 68 pending water right applications in WRIA 5. Thirty are groundwater applications and adoption of the rule may allow some of these to be approved. There are also 38 pending surface water right applications, of which at least 24 are for Lake Cavanaugh. These applications may now be allowed to move forward, with surface water withdrawals of 150 GPD from the lakes and ponds. The exact benefit attributable to the rule depends on what would happen to these permits without the rule. It is unclear in many cases if they would be approved or denied or simply held for future rulemaking activity. If these permits would be held for five or ten years absent the rule, then the benefit is the value of having the water available for use much sooner.

(c.) Stockwatering: The proposed rule will make water available to water users engaged in this activity via a reservation. This includes 1 CFS for uninterruptible surface rights and 2 acre-feet for uninterruptible groundwater rights. This should be a benefit to some users since current users would likely receive interruptible surface or groundwater rights for a given riparian area or be limited to exempt well use requirements.

(d.) Increased Certainty and Clarity in the Water Allocation Process: Increased certainty and clarity in water right acquisition should reduce the delay and uncertainty surrounding obtaining new water rights. This will allow developers and others to plan ahead in property development and better value investment opportunities. For example, it is likely that real estate valuations for raw land or those with pending applications around Lake Cavanaugh are affected by the uncertainty of whether water rights will be approved. The proposed rule will make it clear how much water is available and under what conditions. This will allow the real estate markets to better assess the true valuation of individual

²⁰ Moreover, it is important that these benefits are not double-counted since some of the benefits are provided by ecosystem services.

properties. It is likely that this is the case in many of the other pending applications also and perhaps more generally throughout the watershed.

(e.) Improved Water Management Structure

The proposed rule includes provisions that will encourage local governments to jointly implement water management in the basin. This should lead to a less contentious and more holistic approach to water management and land use that will likely lead to long term benefits.

Setting instream flows should also reduce the amount of time staff spends in determining who should curtail use and how much and could potentially reduce permitting decision effort.

Risk, Uncertainty and Water Rights

There is a significant amount of uncertainty associated with water and instream flows. Decisions regarding permit applications for consumptive water withdrawals often involve uncertain impacts to ecosystems. The acquisition of future information may indicate that more or less water should be maintained in the river. Threatened species like the Chinook can further complicate water management. A National Research Council (NRC, 2004) report discusses the risk of species extinction and how small populations may be especially vulnerable to incremental changes in the environment.²¹ The report notes;

“Not enough is known about cumulative effects and threshold points....When considering the probable effects of incremental human activities, it is reasonable to assume that additional activity means additional risk, but we rarely know whether the relationship...is linear or whether there might be critical levels of activity above which the risk of extinction increases dramatically.”

Seen in this light, even small changes may have large impacts that won't be known until after the fact. However, a water right is a firm commitment to provide water to users in perpetuity. By creating a reservation but limiting water use during low flows, closing certain streams during certain periods of the year and other requirements, Ecology is avoiding a reduction in flows which may reduce the risk to juvenile fish survival along with reducing the risk that Chinook will be listed as endangered under the ESA. An endangered listing would require significant responses of the community and government. Increasing its flexibility to respond to subsequent information about potential water allocations can be considered a benefit of the rulemaking.

Non-Use Values

Healthy rivers and supporting salmon have been shown to have large and positive non-use value. Salmon are a cultural and spiritual source of inspiration and people have demonstrated their willingness to pay for salmon restoration without ever consuming the fish or even visiting a site. These values are very difficult to quantify, however, it is reasonable to conclude that they would depend on the ecosystem impacts. As described previously, the ecosystem impacts may be significant if denying a proposed transfer

²¹ Chinook salmon escapement is estimated to be between 1,000 and 1,500 (SLES, 2004).

avoids a significant reduction in fish habitat. Several of the papers listed in Appendix B include non-use values.

Public Health Benefits

Drilling holes in the ground associated with well construction has the potential to become a pathway for contaminants from the land surface to the aquifer below. Single family homes tend to be constructed in the most shallow aquifers further exposing them to contamination. In general, WSDOH has indicated that having many exempt wells increases the risk of contamination of groundwater supplies. Requiring connection of those proposed uses where service can be provided in a timely and reasonable manner can be considered a benefit of this rulemaking. However, as mentioned previously, the number of potential water users this may affect is likely to be relatively limited and this is likely to be a relatively small benefit.

CONCLUSIONS

As has been mentioned previously, many of the benefits and costs associated with the proposed rulemaking are not quantifiable. This is due to the fact that the data is not available and/or the future is too difficult to predict. Often the analysis comes down to a tradeoff as to whether some uncertain number enlightens the analysis more than simply stating the result qualitatively. In the description of benefits and costs, information was presented that was intended to not necessarily provide a numerical point estimate, but to give some sense of scale. Conclusions were drawn regarding the magnitude of the impact based on that information. The costs of the rulemaking to out of stream uses including lake and pond consumptive withdrawal restrictions, stream closures, exempt well use restrictions, connection requirements and transfers are difficult to determine since the future number of permits, quantity withdrawn and location is difficult to know. Exempt well costs are potentially estimable and they were estimated to be between \$135,000 and \$1.7 million. The other costs would be added to that to obtain a total cost.

The benefits to ecosystem services, recreation, availability of water for out of stream uses, non-use and option values and public health benefits would have to be larger than this for probable benefits to exceed probable costs. Unfortunately, none of these values have been quantified. It appears the ecosystem benefits may be large. This is mostly due to the ability to evaluate transfers based on instream flows, improved management during low flow events and comprehensive planning. Absent the rule, Ecology would have no ability to restrict a large transfer that might have significant impacts on a stream or tributary that may provide spawning or rearing areas for fish. The current system of water management during low flow events involves identifying individual users that must curtail use based on priority dates. It is slow and expensive and delays the protection of the river during an important time. The establishment of instream flows will likely significantly reduce this problem. The planning involved in the rule development allows for a comprehensive approach to water allocations and codifying it in rule will likely reduce the likelihood that water becomes over-allocated. Non-use values may be correspondingly important since they are likely dependent on the avoided impacts to the ecosystem. Recreation benefits appear to be relatively small and public health benefits are also likely to be relatively small, since they will likely apply to a limited number of

potential well users. The remaining benefits include benefits to out-of-stream uses including stockwatering, pending water right applications, opening of some streams that would currently result in permit denial and improved certainty and clarity. Lastly, risk reduction and increased flexibility to respond to uncertainty should be a benefit.

Based on the analysis provided herein, Ecology believes the probable benefits associated with the proposed rule exceed the probable costs.

The above analysis assumes the counties pass the required ordinance or administrative agreement to implement the reservation. If they do not, and the reservation does not go into effect, all water uses will be interruptible. This will increase the costs to stream closures since even permit-exempt wells would be interruptible, but would also reduce the costs for implementation. The benefits to ecosystems, recreation, out-of-stream uses and non-use values and uncertainty will likely increase, but the public health benefits may decrease. Appendix C contains a further description.

4. LEAST BURDENSOME ANALYSIS

RCW 34.05.328 (1)(e) requires Ecology to perform a Least Burdensome Analysis to:

“Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.”

The proposed rule establishes an instream resources protection and water resources program for the Stillaguamish River Basin. One alternative for Ecology would have been to not initiate rulemaking. This would have left the existing water management structure in place as has been described in this document. However, instream flows would not be afforded the protection of a water right and exempt well users would be able to continue to use water during low flow periods. Moreover, further consumptive withdrawals would continue to impact the lakes and ponds of the watershed. Pending applications would likely be either denied or perhaps delayed even longer.

One alternative to the proposed rule Ecology considered was completely eliminating water for outdoor uses from permit exempt well accessing water through the reservation. However, Ecology believes this may have significantly impacted households and businesses in the basin and did not meet the goals and objectives of the rulemaking. Ecology also considered a draft rule that would have limited outdoor uses to ornamental plants and small gardens. This would have allowed some outdoor watering, but would have eliminated the watering of lawns in the watershed. Again Ecology believes this would not meet the goals and objectives of the rulemaking. Therefore, Ecology elected to allow withdrawals for outdoor use from the reservation for outdoor watering on 1/12th of an acre. This will allow for individual consumers to determine how best to apply water to this land area.

The proposed rule achieves the goals and specific objectives as stated in the proposed rule at lowest cost given the above alternatives.

REFERENCES

1. AWWA Research Foundation, Residential End Uses of Water, American Water Works Association, 1999
2. Baumann, Duane, John Boland & W. Michael Hanemann, Urban Water Demand Management and Planning, 1998
3. Berrens, Robert, Philip Ganderton & Carol Silva, Valuing the Protection of Minimum Instream Flows in New Mexico, Journal of Agricultural and Resource Economics, Vol. 21(2), 1996
4. Duffield, John, Christopher Neher & Thomas Brown, Recreation Benefits of Instream Flow: Application to Montana's Big Hole and Bitterroot Rivers, Water Resources Research, Vol. 28, No. 9, September 1992
5. Economic and Engineering Services, Inc., North Snohomish County Coordinated Water System Plan, 1991
6. Johnson, Neal & Richard Adams, Benefits of Increased Streamflow: The Case of the John Day River Steelhead Fishery, Water Resources Research, Vol. 24, No. 11, 1988
7. Loomis, John, The Economic Value of Instream Flow: Methodology and Benefit Estimates for Optimum Flows, Journal of Environmental Management, Vol. 24, 1987
8. Loomis, John & Joseph Cooper, Economic Benefits of Instream Flow to Fisheries: A Case Study of California's Feather River, Rivers, Vol. 1, No. 1, 1990
9. National Research Council, Managing the Columbia River: Instream Flows, Water Withdrawals, and Salmon Survival, 2004
10. Stillaguamish Lead Entity, 2004 Stillaguamish Lead entity Strategy, 2004
11. United States Department of Interior Geologic Survey, Estimated Domestic, Irrigation, and Industrial Water Use in Washington, 2000.
12. Washington State Department of Ecology, Draft Stillaguamish River Watershed Temperature Total Maximum Daily Load, April 2003.

APPENDIX A: EXISTING WATER MANAGEMENT, RULE IMPACTS & RULE ANALYSIS

INTRODUCTION

Ecology anticipates that a significant portion of the proposed rule's implementation will be related to water rights and water management. Water rights and water management are governed by a series of statutes and court cases. Compliance with the rule will occur primarily within the context of complying with state water laws. Evaluating the impacts of the proposed rule involves describing the baseline from which the change caused by the rule is measured. The baseline includes water right administration for both new and changes of water right applications under chapters 90.03 and 90.44 RCW and case law. It also includes the use and development of water by permit exempt wells pursuant to RCW 90.44.050. For the consideration of instream values, chapter 77.55 RCW and current implementation of chapter 90.22 and 90.54 RCW as they relate to water rights and water management is also part of the baseline.

In proposing the creation of the reservations of water, and establishing instream flows, the rule creates a mechanism that allows for future uninterrupted domestic water uses and stockwatering. In the case of the stream closures, the proposed rule's effect will likely be on future determinations of water availability. Consideration of water availability is part of the water right application process. The four-part test for a water right from RCW 90.03.290 remains unchanged and includes examination of water availability. The proposed rule will quantify water availability for some uses through the reservation and establish new water rights for this watershed. Conditions may be imposed on a future water right to implement the rule. How the proposed rule changes consideration of requests for new water and or changes to water rights and in particular how environmental values are reflected in the decisions prior to and after the rule are described below.

BASELINE DEVELOPMENT

Under State water law, the waters of Washington collectively belong to the public and cannot be owned by any one individual or group. Proposed diversions of any amount of water for any use from all surface or groundwater sources require a water right be obtained. A water right is a legal authorization to use a certain amount of public water for a designated purpose. A water right is also necessary if you plan to withdraw more than 5000 gallons of ground water.

An application for a ground water right permit is not required if your daily ground water use from a well or wells will be 5,000 gallons a day or less for any of the following combinations of uses:²²

²² Publication #F-WR-92-104.

- Stock-watering.
- Single or group domestic purposes such as drinking, cooking and washing.
- Industrial purposes.
- Watering a lawn or noncommercial garden that is a half acre or less in size.

Although the law allows an exemption from the water right permit process in these cases, all other water laws and regulations still apply to these uses.

Washington water law requires users of public water to receive approval from the state prior to the actual use of water. Approval to put water to beneficial use is granted in the form of a water right permit. The proposed use must meet four primary requirements (known as the “four-part test”) in order for Ecology to issue a water right permit:

1. The water will be put to beneficial use;
2. There will be no impairment to existing rights;
3. Water is available; and
4. The water use will not be detrimental to public welfare.

Ecology conducts an investigation of the application to confirm the information on the application and applies the four-part test mentioned above. In applying this four-part test, some of the facts Ecology considers are based on the particular water source, existing water rights, and watershed. These include the instream flow recommendations made in the past, instream flow rules (if they exist) and whether and how groundwater is connected to surface water sources. The results of the investigation and four-part test review are summarized in a report of examination (ROE). The ROE contains Ecology's staff-level decision on a water right request. Ecology can recommend a denial, an approval, or an approval with conditions. Once approved by an Ecology decision-maker, Ecology issues a final ROE and orders approving the ROE. If approved, the permit will likely have specific conditions.

Instream flow considerations within water right application administration has been the law since 1949 (See RCW 77.55.050). Generally, a flow of water sufficient to support game fish and food fish populations must be maintained at all times in the streams of this state. Under that statute, Ecology sends copies of water right applications to the Washington Department of Fish and Wildlife (WDFW) to see if approving the proposed withdrawal would compromise game and food fish populations. In 1969, by adoption of Chapter 90.22 RCW (Minimum Water Flows and Levels) and again in 1971, by adoption of the Water Resources Act, the Legislature added additional policies for instream flow considerations and the instream flow rule program. Instream flows once adopted by rule are water rights protected from impairment from those rights junior in priority date to the instream flows (RCW 90.03.345). Ecology is prohibited, by statute, from allowing withdrawals of water that conflict with an instream flow regulation, unless there is a clear showing of overriding consideration of public interest (RCW 90.54.020(3)(a)). Numerous water sources in WRIA 5, about 30% of the basin, are listed on Ecology's Surface Water Source Limitation List (SWSL) based on past comments of resource agencies pursuant to RCW 77.55.050.

The consideration of a proposed withdrawal's impact on fisheries resources and flow is performed by professional fisheries biologists based on professional judgment using the existing data and/or knowledge of the basin. If there is concern that approval of use might compromise instream values, an application can either be denied or approved with use conditioned on minimum flow levels. A junior water right must stop use, if a senior right is not satisfied. Consequently, rights conditioned upon minimum flow levels are interruptible water rights that must be discontinued during times when streamflows are below the established flow value. In the case of the Stillaguamish River, there is no existing in-stream flow rule in place and water is currently allocated according to existing water law. The current water management program can be broken down as follows:

Surface Water Allocations (water right permit)

New applications for surface water rights are forwarded to the WDFW for review and comment. The four-part test is applied. If there is a concern that water uses might adversely impact fish, WDFW will recommend that the right not be issued or that any use granted be conditioned on minimum flows. In most cases Ecology will accept WDFW's recommendation and condition the right in such a way that flows are protected. A permit is approved granting an interruptible right.

Groundwater Allocations (water right permit)

New applications for ground water rights are, generally, subject to the same requirements as for surface water rights. All applications are reviewed by WDFW. The four-part test is applied. If there is a concern that water uses might adversely impact fish, for example due to hydraulic continuity, WDFW will recommend that the right not be issued or that any use granted be conditioned on minimum flows. In most cases, Ecology will accept WDFW's recommendation and condition the right in such a way that flows are protected. The impact of a ground water withdrawal on a surface water body (stream or lake) through hydraulic continuity is generally estimated based on aquifer characteristics and accepted hydrogeologic study methods.

Historically few approved ground water uses were issued interruptible with a condition on instream flows. After the 1980's that practice changed. The science of ground water development and tools for assessing ground water flow became more advanced. Moreover, Ecology's understanding of the law on ground water hydraulic continuity was shaped, in part, by the Supreme Court's decision in *Postema v. Ecology (2000)*. Now a ground water development's impact to existing wells and surface water sources is evaluated within the impairment analysis.

Groundwater Allocations (permit exempt)

New ground water can be obtained from permit-exempt wells under specific conditions (RCW 90.44.050). The groundwater permit exemption is an exemption from a water right permit application; all other water laws and regulations still apply. Currently, the local health district and building permit officials determine when permit exempt wells can be used. In general, there are few restrictions on location except for sanitary setbacks.

As a water right, use of a permit exempt well can be regulated in favor of senior rights if it impairs an existing right, including instream flows. Historically, Ecology has rarely regulated these water rights to protect senior water rights.

Changes or Transfers of Water Rights (Water Right Permits)

Existing water rights can be changed or transferred pursuant to chapters 90.03 and 90.44 RCW.

Reservations of water

There is no existing reservation of water within WRIA 5.

Closures of water sources in WRIA 5

There are currently several streams listed on Ecology's SWSL list that would either be denied or conditioned on low flows in WRIA 5. Closures are based on a finding of no water availability, generally because the available supply has been fully allocated.

RULE IMPACTS TO WATER RIGHT ADMINISTRATION

The future water right management program under the proposed rule can be broken down as follows:

Surface Water Allocations (water right permit)

Before Ecology can approve a water right application for a new public water system, the applicant must provide sufficient documentation that no other public water system can provide water in a timely and reasonable manner. If domestic water can be provided in a reasonable and timely manner by some other public water system, Ecology shall reject the water right application.

New applications for surface water rights will still be forwarded to the WDFW for review and comment and the four-part test will be applied. In cases where the proposed withdrawals may impact instream needs, WDFW will recommend that the right not be issued or that any use granted be conditioned on the proposed rule's minimum flows. In most cases Ecology will accept WDFW's recommendation and condition the right in such a way that flows are protected.

Under the proposed rule, all new water rights will be "junior" to the published instream flow values and be required to stop withdrawals when minimum flows are not met in the surface water source. In general, this is not likely to represent a significant change for future proposed surface water withdrawals because prior to this rule, the water right applications were evaluated by WDFW for instream flow considerations and usually conditioned. Applications for new surface water rights from closed sources would be denied, unless the applicant proposed mitigation of the water use or the use was approved subject to over riding considerations of the public interest. For those areas currently closed (on the SWSL), this would represent no change from the current situation. For areas that are not currently closed, this may represent a change. The rule will ensure uniformity and consistency in flow determinations and resultant instream flow provisos.

The rule will close all lakes to consumptive water use, except for single domestic supply. For single domestic supply, in-house use only will be required.

Groundwater Allocations (water right permits)

Before Ecology can approve a water right application for a new public water system, the applicant must provide sufficient documentation that no other public water system can provide water in a timely and reasonable manner. If domestic water can be provided in a reasonable and timely manner by some other public water system, Ecology shall reject the water right application.

New applications for ground water rights are, generally, subject to the same requirements as for surface water rights. The four-part test is applied. All applications will still be reviewed by WDFW and if there is a concern that water uses might adversely impact fish, WDFW will recommend that the right be so conditioned as to provided for in the instream flow rule. In most cases, Ecology will accept WDFW's recommendation and condition the right in such a way that flows are protected. The impact of a ground water withdrawal on a surface water body (stream or lake) through hydraulic continuity will generally still be estimated based on aquifer characteristics and accepted hydrogeologic study methods. If the proposed appropriation were to capture water, that would otherwise contribute to instream flows, the permit approval would be conditioned as interruptible to protect against impairment of the instream flow right.

Applications for new ground water rights from closed sources would be denied, unless the applicant proposed mitigation of the water use or the use was approved subject to over riding considerations of the public interest. For those areas currently closed, this would represent no change from the current situation. However, for areas that are not currently closed, this may represent a change since new ground water rights would be denied, unless the applicant proposed mitigation of the water use or the use was approved subject to over riding considerations of the public interest.

As mentioned above, groundwater rights are subject to the same requirements as for surface water rights. However, in the past, groundwater rights have not been conditioned due to the difficulty in knowing impacts to surface sources based on the degree of continuity. The proposed amendment clarifies the applicant's responsibility in demonstrating that groundwater extraction will not impair other rights. However, the impact created on the surface water source via hydraulic continuity is not necessarily impairment. A separate statutory requirement exists to analyze the possibility of impairment from withdrawals of ground and surface waters in continuity. This proposed amendment and the existing rule do not affect this statutory requirement.

Groundwater Allocations (permit exempt)

Some portions of the Stillaguamish basin are closed to new ground water development during some periods of the year under the proposed rule, with exceptions provided for in the rule. The reservation of permit-exempt ground water for future domestic, small business, and public water supply uses will provide for a management framework for these types of withdrawals. Because access to the reservations requires local governments

to take certain steps, one of the most significant factors influencing impacts from the proposed rule is whether the local governments enact an ordinance or other administrative action to effectuate the reservation. If an agreement or ordinance is not put in place by local governments, then no reservation water is available. The analysis below assumes that local governments complete the required agreement or ordinance. The Appendix discusses the case where no ordinance is promulgated.

If there is no reservation in effect, and certain streams or basins are closed to new appropriation, then no new permit exempt wells would be drilled in those areas. If the reservation is in effect, and water is being used, there are still several water management conditions that may have an impact on water use including restrictions on outdoor use.

For individuals and business entities, there are several alternatives. Applicants may choose as a first order of business to solicit a hydrogeologist to certify that a well would not cause an impairment of a water right in those areas where hydraulic continuity is unlikely. This would allow an applicant to develop a well without the limitations imposed by the existing rule's instream flows and without the limitations imposed by the proposed amendment. However, the applicant would bear the additional cost of the analysis. For some wells in basins that drain groundwater to saltwater bodies, the cost for hydrogeologic consultation would likely be very small. For those applicants wishing to use water in areas with a likelihood of hydraulic continuity and consequently, impairment of instream flows, they could get water from the reservation or accept an interruptible water right.

Obtaining water from the reservation requires that an applicant be located more than 500 feet from an existing water system and within the service area of the public system. If an applicant is closer than this, then they will be required to connect to a public water system if the connection can be made available in a timely and reasonable manner. Those outside the 500 foot limit that choose to utilize a well and the reservation will be required to connect to the public water supply system if water service becomes timely and reasonable.

Changes or Transfers of Water Rights

Existing water rights can continue to be changed or transferred pursuant to chapters 90.03 and 90.44 RCW. Changes to surface water rights and transfers of point of diversion downstream or upstream on a source will now include consideration and potential restrictions due to the instream flow right proposed in the rule. Changes in point of diversions from a surface point to a ground water point from the same water source will probably not be impacted by the rule.

Reservations of water

The reservation of water, use of water under the reservation and associated conditions for that use are all new proposals. In large measure, the reservation will allow use of permit-exempt wells without them being subject to the instream flow right. These uses are subject to limitations on outdoor watering and other conditions. Use of water under the domestic use reservation is conditioned as follows:

- (a) The water reserved shall be for ground water uses exempt from a water right permit application pursuant to RCW 99.44.050.
- (b) The quantity of reserved ground water is limited to be 5 CFS spread across the basin.
- (c) Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any applicable local or state requirements for conservation standards.
- (d) This reservation shall only be available for use in areas governed by a county ordinance or other administrative action that sets forth the same requirements as subsections a, b, c, e, f and g of the proposed WAC 173-503-073(2) as conditions on a water availability determination based upon the reservation, issued pursuant to RCW 19.27.097 and RCW 58.17.110.
- (e) Water use under this reservation is not allowed in those areas where a public water system has been established pursuant to RCW 43.20.260, and where the connection can be provided in a timely and reasonable manner. A “timely and reasonable manner” means potable water service can be provided by a purveyor within 120 days of a written request for service, to a property located within the public water system and 500 feet of the purveyor’s water pipe line.
- (f) Use of water under the reservation shall not continue in those areas where a public water system has been established pursuant to RCW 43.20.260, and where the connection can be provided in a timely and reasonable manner for those entities who previously did not meet subsection (e) above. The department shall consult with the water purveyor to determine water availability. Any such person must take affirmative action to connect to the public water system no later than 120 days after receiving the department’s written order to cease and desist use of the well or surface water source.
- (f) Outdoor irrigation shall be limited to an area not to exceed a total of 1/12th of an acre and under all circumstances, total outdoor watering for six or more residences under the permit exemption (RCW 90.44.050) shall not exceed ½ acre.

If the proposed rule amendment goes into effect, then use of the permit-exempt well water will now be obtained from a reservation if year-around use is desired. Businesses that elect to install permit exempt wells for their own moderate needs or to develop saleable land will face more choices as to their best option. Under the proposed rule, the project proponent may choose other methods of water well development (for example drilling to deep aquifers) to meet their needs and avoid limitations imposed by the rule.

The rule amendment also proposes a future stock watering reservation for stock water as directed by RCW 90.22.040. Future stock watering in the proposed rule is accessed via either a diversion structure or wells and relates to normal grazing activities for the surface water use. In addition, RCW 90.44.050 provides an exception to the requirements for a ground water right permit for stockwater. The rule sets a volume limit on this use of water but otherwise does not change the existing situation.

Closures of Water Sources in WRIA 5

The proposed rule will include most of the current limitations on water withdrawals based upon the SWSL list but also adds to them. Ecology anticipates denying

applications from closed sources unless the applicant can mitigate for the impacts or they can accept an interruptible right. Denial or conditioning on low flows was true before the proposed rule, but after the rule becomes effective the areas subject to closure will enlarge.

Maximum Allocation

There is also a maximum allocation proposed for those periods of the year that the streams and rivers will be open.

PROPOSED RULE (CHAPTER 173-505 WAC)

The complete rule language for “Instream Resources Protection and Water Resources Program-Stillaguamish River Basin Water Resources Inventory (WRIA) 5” can be found in proposed Chapter 173-505 WAC. The following provides a brief description of the proposed rule and a further discussion of those specific rule provisions that may impact instream flows and/or out-of-stream uses of water.

Chapter 173-505-010 General Provisions-Authority and Applicability

This rule is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (Minimum Water Flows and Levels), and chapters 18.104, 90.42 and 90.44 RCW along with chapter 173-500 WAC (Water Resources Management Program). The rule applies to all future uses of surface water and groundwater hydraulically connected to those surface waters within the Stillaguamish River Basin, also known as Water Resources Inventory Area (WRIA) 5.

Conclusion: No significant economic impact.

Chapter 173-505-020 Purpose

The purpose of the proposed rule is to retain perennial rivers, streams and lakes within the Stillaguamish River basin to protect and preserve instream values, to create a reservation and to set forth the department’s policies.

Conclusion: No significant economic impact.

Chapter 173-505-030 Definitions

See the proposed rule.

Conclusion: No significant economic impact.

Chapter 173-505-040 Establishment of Stream Management Units

This section defines control points and the location of the stream management units for the mainstem and north and south forks of the Stillaguamish River and other tributaries.

Conclusion: No significant economic impact.

Chapter 173-505-050 Instream Flows

This section establishes the specific minimum instream flows required for WRIA 5. The flows will be water rights with a priority date of the rule and will be measured on a bi-weekly or monthly basis for specific control points. These flow standards will be the basis for determining when instream flow levels are not being attained and when junior water users (whose use influences flows) will be required to reduce or curtail use. All water rights granted after instream flows are established will be considered “junior” to the specified instream flows.

The proposed rule will apply to all waters within the Stillaguamish River basin (WRIA 5). Specific instream flow standards are set for the Stillaguamish River mainstem, the north and south forks of the Stillaguamish and many tributaries. Minimum flows are also set for several small streams.

Conclusion: Setting minimum instream flows might reduce the availability of water for future appropriations. This may have significant economic effects-See “Rule Impacts to Water Right Administration.”

Chapter 173-505-060 Lakes and Ponds

The proposed rule will limit use of water from all lakes and ponds to single in-house domestic uses not to exceed one hundred and fifty gallons per day per home.

Conclusion: Restrictions on use may limit the ability of some future water users to obtain water. This may have significant economic effects-See “Rule Impacts to Water Right Administration.”

Chapter 173-505-070 Stream Closures

The proposed rule will close all streams and tributaries in the basin to new consumptive uses except for some periods of the year. Watershed areas contributing groundwater to these areas are also closed to new consumptive water withdrawals. All unappropriated water is to be appropriated for protecting and preserving instream values. Some water is available for appropriations during some periods of the year.

Conclusion: Closing the streams and rivers could have impacts on future water users which may have significant economic effects, but exceptions may limit the impacts-See “Rule Impacts to Water Right Administration.”

Chapter 173-505-080 Future Stock Watering

Ecology will reserve 1 CFS of surface water and 2 acre-feet of groundwater for future stock watering in the proposed rule accessed via either diversion structures or wells and related to normal grazing activities.

Conclusion: Reservation size was set to meet all future riparian stockwatering areas and access will be allowed essentially the same as before the rule. Surface water users will be able to get an uninterrupted right. Groundwater users will likely not be substantially affected. Significant economic impact may occur- See “Rule Impacts to Water Right Administration.”

173-505-090 Reservation of Permit-Exempt Ground Water for Future Domestic Uses

The proposed rule provides for establishment of a reservation of water for domestic uses including the human health requirements of businesses on a year round basis. This would include a maximum allocation of 2 CFS in the north fork and 1.5 CFS in the south fork subject to several conditions. A total allocation of 5 CFS is available. This water shall be reserved for single or small group domestic uses exempt from a water right permit application.

Efficiency standards for the reservation will require that water use meet the Uniform Plumbing Code and local conservation standards, and that the local governments execute an ordinance or other administrative action that indicates they will make a good faith effort to comply with the rule and require connection to public water systems when timely and reasonable. Use of the reservation will not be allowed if water can be provided by a local purveyor in a timely and reasonable manner. Wells that acquire water under the reservation shall stop pumping and connect to an expanding system if water becomes available at some time in the future. Outdoor watering will be limited to an amount for 1/12th of an acre for each individual domestic use for all outdoor uses. Specific accounting criteria for use of reservation water are also proposed.

Conclusion: Requirements for connection and restrictions on use are likely to have an economic impact. The requirement that local governments adopt an ordinance prior to the reservation being established may delay or pre-empt reservation establishment. See "Rule Impacts to Water Right Administration."

Chapter 173-505-100 Maximum Allocation

A maximum allocation from certain rivers and streams is also proposed for those periods of the year that the streams and rivers will be open. This will apply to the mainstem, north and south forks and Pilchuck, Squire, Jim and Canyon Creek.

Conclusion: This is unlikely to be a limit on future development in the basin. No significant economic impact is anticipated.

Chapter 173-505-110 Future Permitting Actions

Applicants must demonstrate that any available public water systems cannot provide service in a timely and reasonable manner. If it is available, permits will be denied. Future water availability will be very limited and un-restricted use will only be allowed during closed periods if the proposed use is non-consumptive, the source not in continuity, the use mitigated or the applicant proposes storage. Some salmon recovery projects may be approved. Mitigation is encouraged and will be evaluated on a case by case basis. All future surface and groundwater permit holders will be required to provide measurement devices and report the use data.

Conclusion: Some potential impacts to future water right applicants. Metering requirements are not a change from current requirements. See "Rule Impacts to Water Right Administration."

173-505-120 Alternative Sources of Water

The department encourages the use of alternative sources of water. These may be important as potential mitigating projects when a water use is proposed.

Conclusion: No significant economic impact.

173-505-130 Establishment of Trust Water Rights Program

A trust water rights program will be established to facilitate the acquisition of water rights. No additional program set-up costs are anticipated.

Conclusion: No significant economic impact.

173-505-140 Future Changes and Transfers

Transfers will only be allowed if they don't conflict with this chapter

Conclusion: This may restrict transfers that would have occurred absent the rule. This may have a potentially significant economic impact. See "Rule Impacts to Water Right Administration."

173-505-150 Compliance and Enforcement

To obtain compliance, the department shall produce and distribute technical and educational material. The department will first attempt to get voluntary compliance.

Conclusion: Preparation of educational materials will involve costs.

173-505-160 Appeals

All decisions can be appealed to the pollution control hearings board

Conclusion: No significant impact

173-505-170 Regulation Review

This rule may be reviewed and revised.

Conclusion: No significant impact

173-505-180 Maps

Conclusion: No significant impact

APPENDIX B: PREVIOUS RESEARCH

Determining the value of in-stream flows has been considered in several previous academic papers. The results indicate a fairly wide range of estimates, but this is to be expected since the value of additional water in rivers is a function of the existing flow levels, river development, recreational opportunities, other recreational opportunities, fish availability, location on the river, etc. Moreover, the analysis is made difficult since instream flows have public goods characteristics and the value is not revealed in markets. The studies cited below are intended to provide a sense of valuations obtained in other areas. No studies specific to the Stillaguamish River were carried out as part of this analysis.

Loomis (1987) provides an overview of the economic theory and early analyses of instream flows. He discusses market and simulated methodologies for determining the value of instream flows. The values cited in the paper range from \$15.75 to \$74.00 acre-ft/day.

Johnson & Adams (1988) analyzed the John Day River in north central Oregon. They evaluated the benefits of flow on steelhead and the study is unique in that it quantified the relationship between streamflow and fishery productivity and used non-market valuation techniques to consider the economic benefits of changes in fishing quality. They found the value of summer flow to be \$2.36 per acre-ft over the three month summer period.

Loomis and Cooper (1990) considered the value of instream flows for recreational fishing along the Feather River in northern California. They use a flow-fish model and link it to a travel cost model to determine the value of increased flows. They find that a 20% increase in flow is worth about \$72.90 per cfs for this specific location.

Duffield, Neher and Brown (1992) estimated the recreation benefits of instream flow along Montana's Big-Hole and Bitterroot rivers. They found a marginal recreational value from instream flows of approximately \$50 per acre foot plus \$25 per acre foot for downstream hydroelectric generation.

Berrens, Ganderton and Silva (1996) estimated the benefits of instream flow used for protection of endangered species for households in New Mexico. They found that the estimates ranged from \$28.73 to \$89.68 for households in New Mexico.

A summary of the analyses is provided in table B.1.

Table B.1. Empirical Estimates of the Value of Instream Flow

Authors	Estimate	Estimate²³
Loomis (1987)	\$15.75-\$74.00 ac-ft/day	\$0.15-\$0.69 ac-ft/summer
Johnson & Adams (1988)	\$2.36 ac-ft/summer (1987\$)	\$2.36 ac-ft/summer
Loomis & Cooper (1990)	\$72.90/cfs/summer	\$3,926.9 ac-ft/summer

²³ This column reflects the paper's original estimate but re-calculates it assuming a 107 day summer season.

Duffield, Neher and Brown (1992)	\$50 ac-ft	
Berrens, Ganderton and Silva (1996)	\$28.73 to \$89.68 per household	N/A

As can be seen, the values vary a lot based on the type of analysis, specific river, etc. Several of the studies give values in acre-feet/year that are smaller than the costs calculated above in acre-ft/year.

APPENDIX C: ESTIMATED ECONOMIC IMPACTS OF WATER USE RESTRICTIONS

To quantify some of the economic impacts of the proposed rule, a model was built to evaluate some of the water use restrictions. It considers demand for water and models a quantitative limitation on water use by determining how much the price of water would have to increase to obtain the same water use as that imposed by the proposed rule's quantitative limitation. Surface and groundwater users are modeled as if they were connected to a public water system and required to pay for the quantity of water used. If the price of the water were raised, it would be expected that some reduction in water use would occur. The price that yields the maximum water use allowed in the rule can be calculated and the difference used as a measure of economic impact. For determining the cost impacts of water use, the Snohomish County PUD's prices were utilized. As for most water utilities, water rates are composed of two parts; a flat fee for a base charge and a unit price for use. For this analysis, the relevant price paid in the unit price since the base rate would have to be paid every month for indoor use. In Snohomish County, the unit cost of water is \$1.53 per hundred cubic feet (CCF).

Water use in Washington varies based on many factors including location, type of conservation, fixtures, etc. The United States Geological Survey (USGS) has done a significant amount of analysis on water use in Washington and found that for the two counties of interest, the results are as listed in Table C.1.

Table C.1. Average per Capita Water Use in Snohomish and Skagit Counties

	Self-Supplied		Total Domestic	
	Population (Thousands)	Per capita use (gal/d)	Population (thousands)	Per capita use (gal/d)
Snohomish County	103.0	102.9	606.0	100.0
Skagit County	33.9	124.8	103.0	124.0

These values are average values for existing uses. To the extent that new construction may contain more efficient fixtures, it may be an overestimate of use.

Given household size data, the above data can be used to determine average household use in rural areas. Since the new uses to be considered will be part of the self-supplied category, it is likely that these per capita use numbers are more appropriate to use. The results are described in Table C.2.

Table C.2. Estimated Average Self-Supplied Household Water Use in Snohomish and Skagit Counties

	Typical Household Size (No. persons)	Avg. Household Daily Use (gal/d)	Avg. Household Annual Use (gal/yr)
Snohomish County	2.54	261.4	95,411
Skagit County	2.55	318.2	116,143

The results in Table C.2 are within the range of published estimates of household use.²⁴

The next step is determining how much of the annual use is outdoor water use that would be expected if no rule is in effect. Little data exists on residential end-uses, but outdoor water use likely varies a lot within the State based on differences in precipitation, temperature, evapotranspiration and land use and topography. One study that did consider end-use is the American Water Works Association (AWWA, 1999) that performed an evaluation of end uses at several locations throughout the nation and determined average in-house and out-of-house uses.²⁵ They found that on average, nationwide per capita indoor water use is approximately 69.3 gallons per day with a range of 57.1 to 83.5 gallons per day for the twelve study sites considered. The average indoor water use for Seattle was 57.1 gallons per capita per day. Using the average indoor use rate yields the estimated indoor and outdoor uses listed in Table C.3.

Table C.3. Estimated Indoor and Outdoor Water Use

	Average Annual Household Use (gal/yr)	Average Annual Household Indoor Use (gal/yr)²⁶	Average Annual Household Outdoor Use (gal/yr)	Average Annual Household Outdoor Use (CCF/year)
Snohomish County	95,411	64,248	31,163	41.8
Skagit County	116,143	64,501	51,642	69.2

As can be determined, the estimated amount of water used outdoors ranges between 31,163 gallons/year (41.8 CCF/yr) and 51,642 gallons per year (69.2 CCF/yr). Annual household outdoor use in the AWWA study ranged from 7,800 gallons per year to 213,000 gallons per year with an average in Seattle of 21,700 gallons per year. As can be seen, the values listed are significantly larger than the average for Seattle. But outdoor uses in Seattle also involve smaller lot sizes than is typically the case in the rural areas of the counties.

There are two different requirements in the proposed rule that we can evaluate using the above analysis. The first is the proposal in the rule to limit withdrawals from lakes and ponds to 150 gallons per day per household. From Table C.3, average household indoor use in the counties can be estimated to be approximately 176 gallons per day. This is more than allowed in the proposed rule. However, the results from the AWWA study indicate that typical indoor use in the Seattle area is 57.1 gallons per day or 146 gallons per day. This is likely the result of high efficiency fixtures and education and could likely be achieved in new construction along lakes and ponds. Therefore, it appears that indoor water requirements can be met.

²⁴ (AWWA, 1999) found use values ranging from 69,900 gallons per year per household to 301,100 gallons per year per household.

²⁵ "Residential End Uses of Water", AWWA, 1999.

²⁶ Calculation uses household size for each county, and average indoor use value of 69.3 gallons per capita per day.

Outdoor uses will be restricted however. As noted in Table C.3, outdoor water needs are estimated to average between 31,200 and 51,700 gallons per year and for lots adjacent to lakes and ponds, there will not likely be any water available for outdoor uses. However, the volumes noted above might be overestimates for lots abutting lakes and ponds since lakeside lots tend to be smaller than an average rural county parcel. To determine the price change that would lead to the equivalent reduction in quantity consumed, a measure of the sensitivity of individuals to price changes is required. This is provided in the concept of “elasticity.” Elasticity is the percentage change in quantity demanded divided by the percentage change in price. For example, an elasticity of -1.0 indicates that quantity consumed falls by 1% for a 1% increase in price. To estimate this quantity, elasticity estimates for demand curves from previous research were used.²⁷ Elasticities for water tend to be quite low which is not surprising for a “necessity” like water ranging from -0.1 to -1.57 depending on the use, time period, etc. However, the elasticity of demand for water for outdoor use is likely to be higher reflecting the lower valued use. AWWA directly evaluated the elasticity of outdoor water use and found the value to be -0.82 which is consistent with the belief that outdoor uses are more discretionary than indoor uses and is the value utilized here. Given the initial price of water, the use estimates and elasticity measure, the cost impact to surface water users of lakes and ponds is estimated to be in the range of \$58 and \$244 dollars per year.

The second restriction on water use will impact those that access the reservation through use of exempt wells. The proposed rule will limit water use to an area of 3,630 square feet. Adding the square footage of a typical house footprint yields a lot size of approximately 5,000 square feet. This is the typical size of lots located in the City of Seattle and so the outdoor use numbers found in the AWWA study for the City of Seattle were used as an estimate of the outdoor water needs for the area allowed to be watered in the proposed rule. As was noted above, the AWWA study found that residents of Seattle and environs used approximately 21,700 gallons per year for outdoor uses. Using the data above, the average difference between average desired use and that allowed by rule can be calculated and ranges from 9,463 and 29,942 gallons per year. Given the above values for use, price and elasticity, the price that would be required for users to voluntarily restrict their water use to an area of 3,360 square feet was determined and the values calculated were between \$3 and \$45 per year.

²⁷ See AWWA (1999) and Baumann, Boland and Hanemann (1998).

APPENDIX D: DESCRIPTION OF BENEFITS AND COSTS WITHOUT LOCAL GOVERNMENT IMPLEMENTING AGREEMENTS

There is a possibility that even if the rule amendment goes into effect, that the local governments won't establish an implementing agreement for the rule. If this occurs, then the reservation will not go into effect and the cost and benefits of the rule might change significantly. Existing water right holders should still not be directly affected. A general description of benefits and costs associated with instream and out of stream uses of water if no implementing agreement is established is provided below.

Costs

The economic cost associated with this rulemaking is the loss in the value of the water in its alternative use. This may be the lost value of the water in the streams and tributaries when additional water is allowed to be withdrawn or the value of the water for out of stream uses when it is required to remain in the streams. These can be described more specifically as follows:

Reduced Availability of Water for Out- of-Stream Uses

(a). Lake and pond consumptive withdrawal restrictions: Surface withdrawals from all lakes and ponds will be limited to single in-house domestic uses not to exceed 210 gallons per day per home under the proposed rule. Currently, applicants would likely get a right to a larger quantity of water but be required to reduce use to in-house domestic during low flow events in the distributary. As such, it is likely that use will be restricted under the proposed rule during non-low flow periods and perhaps also during low flow events. This may be a limitation on some applicants desiring to access these sources. Applicants might be able to get a slightly greater quantity of water from the proposed reservations. The exact impact of this will depend on the number of permit requests that would have been submitted absent the rule, and the required water needs.

(b). Stream closures: All rivers and streams and the groundwater in continuity with them that are currently open to new withdrawals (or currently closed) will be closed during certain periods of the year. This will include permit-exempt wells for and stockwatering. This requirement will generally eliminate new water withdrawals during certain periods of the year. New withdrawals may still be available when non-consumptive, fully mitigated during closure periods, or from groundwater shown to not affect surface water. In these areas, water uses will be required to obtain water during closure periods from an existing water purveyor, through leases or transfers, storage or through other methods. For those that require permitted water for irrigation or for agricultural/industrial processes, this might be an impact on future withdrawals since the closure will require some mitigation or storage. However, it is reasonable to conclude that these water uses would be conditioned on low flows absent the rule except for permit-exempt uses. As such, the impact would likely be a longer period of non-use that will occur every year instead of just low flow years. This could require water leasing or transfers of existing water rights or could lead to a change in the proposed location of a commercial industry

or agricultural use. The magnitude of the impact will be determined by the proposed location and use of future water permit applicants.

Permit-exempt uses would be significantly affected since currently they are not required to eliminate withdrawals during periods of low flow.

(c). Transfers: Water right transfers that would have occurred before the rule even though they had an impact on instream flows will no longer be allowed. This may be a cost for those that would have preferred to trade water. However, only two transfers of any kind for small quantities have been recorded previously. Transfers of water rights may become part of mitigation strategies used by businesses to offset the impacts of their new water needs.

Implementation Costs

The proposed rule will involve some implementation costs. This includes the costs associated with providing technical and educational information for rule compliance.

Benefits

The benefits associated with the proposed rule are associated with the value of water in its proposed use. This includes the following:

Ecosystem Goods and Services

There will be some ecosystem benefits from stream closures. These requirements will likely result in more water in the rivers and streams than would have been the case without the rule. An avoided reduction of instream flow in tributaries could yield an avoided reduction in habitat for fish and other marine and avian life and avoid a reduction in the river's ability to better assimilate waste. This could be a benefit for any entities relying on the river for waste assimilation, or for biological processes as well as benefit adjacent property owners.

Recreation Benefits

There may be some recreational benefits associated with stream closures and from connectivity requirements. These requirements will likely retain more water in the rivers than would have been the case without the rule. An avoided reduction of instream flow in tributaries could yield a beneficial impact to rafters, those who canoe, fishing quality, and riverside activities.

Benefits to Out-of-Stream Water Use

(a.)Benefits to existing permits conditioned on instream flows

Existing holders of interruptible permits must curtail withdrawals when instream flows are not being met in the rivers and tributaries. To the extent that the rule decreases the rate of withdrawal of instream waters, this could reduce the frequency that existing rights would have to curtail use relative to the case with no rule. However, the relatively small quantity of water that will not be withdrawn may not make this impact very significant.

(b.) Opening of several streams: Ecology is proposing to allow withdrawals from Canyon and Pilchuck creeks that are currently on the SWSL and that would currently be denied. This should result in a benefit to any proposed uses from these streams or groundwater in hydraulic continuity. However, closures during significant periods may limit the usefulness of this change.

(c.) Increased Certainty and Clarity in the Water Allocation Process: Increased certainty in water rights acquisition should reduce the delay and uncertainty surrounding obtaining new water rights. This will allow developers and others to plan ahead in property development and better value investment opportunities. The rule amendment may also improve rule clarity and provide a more certain and expedited permitting process.

Non-Use & Option Value

Non-use values such as spiritual and existence values could be impacted as part of this rulemaking. These values do not derive either from direct or potential use of water resources in the basin, and represent a different category of value than the use values listed above.

Uncertainty and option values may also be important. There is a significant amount of uncertainty associated with water and instream flows. The future may determine that more or less water should be maintained in the river. However, a water right is a firm commitment to provide water in perpetuity. By allowing all permit-exempt water rights from this point on to be able to obtain water during low flow events, the option to restrict these flows in the future is eliminated.

Public Health Benefits

The Washington State Department of Health (WSDOH) has indicated that having many individual wells in any given area increases the risk of groundwater contamination. Requiring entities within public water system service areas to connect if connection is timely and reasonable will reduce this increased risk of contamination.