



DEPARTMENT OF
ECOLOGY
State of Washington

Small Business Economic Impact Statement

**Chapter 173-539A WAC
Water Resources Program for the Upper
Kittitas Groundwater Area**

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Small Business Economic Impact Statement

Chapter 173-539A WAC Water Resources program for the Upper Kittitas County Groundwater Area

Water Resources Program
Washington State Department of Ecology
Olympia, Washington

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Introduction

The Washington State Department of Ecology (Ecology) is proposing this rule for the Upper Kittitas County Groundwater Area to prevent additional adverse effects on flows and senior water rights in the Yakima River and its tributaries. The proposed rule withdraws all unappropriated groundwater in accordance with RCW 90.54.050(2) due to insufficient information. A groundwater study the Legislature funded in 2009 will be performed.

The Groundwater Code, Chapter 90.44 RCW, is supplemental to Chapter 90.03 RCW, which regulates the surface waters of the state. The Legislature enacted the Groundwater Code to extend the application of such surface water statutes to the appropriation and beneficial use of groundwater within the state.

Ecology is developing and issuing this Small Business Economic Impact Statement (SBEIS) as part of its rule adoption process and to meet Chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rule is consistent with legislative policy.

The key elements of the proposed rule include:

- Mitigating all new groundwater withdrawals.
- Measuring and reporting new groundwater withdrawals.

Analysis of Compliance Costs for Washington Businesses

We have assessed the impacts of the proposed rule by analyzing and comparing water right management under the proposed rule, in contrast to current practices. The current framework or “baseline” includes the use of water by permit-exempt wells (RCW 90.44.050) and any administrative procedures for considering applications for both new water rights and changes to existing water rights. Chapter 90.44 RCW is also part of this legal baseline.

We provide a brief description of compliance requirements below.

Water Rights Administration under the Rule

The proposed rule sets the requirement for new uses of groundwater, whether they require a permit or are permit-exempt, to be mitigated by an equal amount of consumptive use associated with a senior surface water right. To facilitate the process of obtaining mitigation, Ecology has established the Upper Kittitas Water Exchange.¹

¹ <http://www.ecy.wa.gov/programs/wr/cwp/wtrxchng.html>

For more detail on changes to water right administration, see the Cost Benefit Analysis.

Surface water

There are no changes under this rule to surface water right permit processing. In some cases, there may be expedited processing to place surface water rights into the trust water program. Ecology may also issue new surface water permits where trust water rights are held for mitigation purposes in the Yakima pilot water bank.

Groundwater permits

Ecology may also issue new groundwater permits when trust water rights are held for mitigation purposes in the Yakima pilot water bank. This cannot occur, absent case-by-case review, until Ecology reaches a new agreement with the Yakima Nation and the U.S. Bureau of Reclamation that replaces or amends the 1999 settlement agreement. Developers and new water users are required to provide mitigation prior to obtaining permission to use water, whether the proposed use requires a water right permit or is exempt from permitting. All new withdrawals within the Upper Kittitas Groundwater Area must meter.

Permit-exempt groundwater

The proposed rule withdraws groundwater from further appropriation. An exception is made for new withdrawals which are offset or mitigate their impact to the total water supply available through acquisition of a senior water right. Developers and new water users are required to provide mitigation prior to obtaining permission to use water, whether the proposed use requires a water right permit or is exempt from permitting. All new withdrawals within the Upper Kittitas Groundwater Area must meter.

Changes and transfers of water rights

Ecology will continue to process changes and transfers of existing water rights as allowed by Chapters 90.03 and 90.44 RCW.

Impacts to Businesses in the Upper Kittitas Groundwater Area

Small businesses are not required to comply with the proposed rule. Businesses that locate in areas with established water rights are not required to comply with the rule. Businesses that are currently located in areas with established water rights are not required to comply with the rule. The proposed rule will not directly affect any existing water right holders or future businesses using an established water right.

Businesses that choose to locate a new operation outside a water service area may be affected by the proposed rule for the Upper Kittitas Groundwater Area. Those that are required to comply with the rule are only those seeking new water rights.

Impacts to businesses dependent on residential permit-exempt wells

As stated above, the proposed rule does not directly affect current or future businesses that have or use established water rights.

Costs to Firms and Required Professional Services

As mentioned above, generally no business entities are required to comply with the proposed rule unless they seek a new water right. For those who require mitigation outside a current water right, they will likely need to employ or retain engineers, hydrogeologists, and possibly legal advice. The Upper-Kittitas Water Exchange provides these services at a fixed mitigation cost.²

Reporting and recordkeeping

The proposed rule adds metering, reporting, and recordkeeping requirements for small businesses using new groundwater withdrawals.

Additional professional services

All additional professional services are included in the water exchange mitigation costs.

Equipment, supplies, labor, and increased administrative costs

We expect small equipment, supplies, labor, and administrative costs in conjunction with the required meter installation and reporting.

Other compliance requirements

Ecology does not anticipate additional compliance requirements.

Quantification of Costs and Ratios

It is the purpose of this section to evaluate whether:

- The proposed rules could cause businesses to lose sales or revenue.
- The proposed rules would have a disproportionate impact on small businesses.

Revenue Impacts

As noted previously, the rule only affects new appropriators of groundwater.

Distribution of compliance costs

Small businesses would have costs equal to the cost of acquiring mitigation. These businesses are required to comply with the rule if they would rely on a new appropriation of groundwater. They could avoid these costs if they were to locate in an area with an existing water service, such as a municipal or public water supply system or an existing permit-exempt well.

² Water exchange

Known costs

Ecology has determined that this is a minor cost as defined in RCW 19.85.020(2). RCW 19.85.030 exempts Ecology from needing to prepare a Small Business Economic Impact Analysis.

The small costs to those required to comply with the proposed rule, may impose disproportionate costs to small businesses.

Conclusions

The proposed rule requires only new consumptive uses of groundwater to be mitigated by an equal amount of a senior surface water right. The rule affects only businesses that are seeking new appropriations of groundwater. All currently established businesses using an established water right are not required to comply with the proposed rule. All new withdrawals within the Upper Kittitas Groundwater Area must meter.

Because no small businesses are required to comply with rule, Ecology has determined that this is a minor cost as defined in RCW 19.85.020(2). RCW 19.85.030 exempts Ecology from needing to prepare a Small Business Economic Impact Analysis. Ecology prepares this analysis for informational purposes only.

Actions Taken to Reduce the Impact of the Rule on Small Business

Ecology proposed alternative forms of the rule now proposed. Cooperation with Kittitas County provided opportunities for the least impact on small businesses associated with land and real estate development. However, the Attorney General in a formal opinion determined that Ecology lacked authority for a rule in the form proposed in 2009. Consequently, this proposed rule follows the procedure specified in RCW 90.54.020 by withdrawing all unappropriated water while a groundwater study is performed.

As noted above, it is unlikely that there will be significant adverse impacts on businesses (small or large) as part of this rulemaking versus the baseline. The additional costs incurred by new water users who are small businesses are matched with an equal value gained in the water right obtained for mitigation. Therefore, Ecology took no specific measures to reduce or mitigate these rule impacts.

The Involvement of Small Business in the Development of the Proposed Rule Amendments

Ecology and Kittitas County entered into a Memorandum of Agreement calling for a study to better define the hydrogeology of upper Kittitas County. The study will provide information about water availability and the relationship between surface waters and groundwater. Ecology will use the information from the study to develop long-term water management strategies.

The proposed rule withdraws all unappropriated groundwater in upper Kittitas County. All new appropriations of water are required to provide mitigation in the form of a pre-May 10, 1905 water right in order to achieve “water budget neutrality,” as defined in the proposed rule. Small business representatives, particularly those associated with land development and water well drilling, were involved in this public process.

The SIC Codes of Impacted Industries

The industries listed below may be required to comply with the proposed rule. The following list shows Standard Industrial Codes³ for small businesses that may be affected in complying with the rule. This serves as a representative sample of potential future businesses that may be affected.

³ Ecology has used NAICS codes rather than Standard Industrial Codes (SIC). It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

**TABLE 1. INDUSTRIES POTENTIALLY AFFECTED BY PROPOSED RULES
(NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM)**

Deciduous Tree fruits	Code 0175
Fruit Farming	Code 111339
Horticulture nurseries	Code 1114
Storage/packing agricultural produce	Code 1151
Animal Production	Code 115210
Commercial greenhouses	Code 1114
Hatcheries	Code 1129
Mining, Mineral extraction	Code 21
Construction	Code 23
Land Subdivision and Development	Code 2331
Residential building construction	Code 2361
Nonresidential building construction	Code 2362
Land Subdivision	Code 2372
Manufacturing	Code 33
Produce Market	Code 445230
Fresh fruits and Vegetables	Code 5148
Accommodation & Food Services	Code 722310
Golf facility	Code 713910
Stables	Code 713990

Impacts on Jobs

Current small businesses or those that are using a water right established before July 16, 2009 are not affected by this rule. Small businesses that decide they want a new water right may be affected. Ecology expects that these small businesses may rely on land use planning professionals (planners, architects, hydrogeologists, and engineers) to help prepare materials to show how their proposals meet the mitigation requirements described in the proposed rule. Small businesses may also rely on attorneys to develop the covenants that are required. Ecology expects little or no net job impacts to come from this proposed rule.

References

Huppert, Daniel, Gareth Green, William Beyers, Andrew Subkoviak, and Andrew Wenzl, Economics of Columbia River Initiative, 2004

R.S. Means, Building Construction Cost Data, 55th Annual Edition, 1997

Appendix: Proposed Rule (Chapter 173-539A WAC)

The complete rule language for the Kittitas County Groundwater Area can be found in proposed Chapter 173-539A WAC. The following provides a brief description of the rule and further discussion of those specific rule provisions.

TABLE 2. CHAPTER 173-539A WAC RULE MATRIX – NET CHANGES FROM NEW RULES TO ECOLOGY’S EXISTING REGULATORY PRACTICES

CURRENT STATUTE/REGULATION	PROPOSED RULE LANGUAGE	EFFECT OF CHANGE
<p>None specific to Upper Kittitas County however, RCW 90.44 addresses regulation of public groundwaters.</p> <p>Chapter 90.44 RCW Regulation of public groundwaters</p> <p>RCW 90.44.020 Purpose of chapter.</p> <p>This chapter regulating and controlling groundwaters of the state of Washington shall be supplemental to chapter 90.03 RCW, which regulates the surface waters of the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of groundwaters within the state.</p> <p>RCW 90.44.030 Chapter not to affect surface water rights.</p> <p>The rights to appropriate the surface waters of the state and the rights acquired by the appropriation and use of surface waters shall not be affected or impaired by any of the provisions of this supplementary chapter and, to the extent that any undergroundwater is part of or tributary to the source of any surface stream or lake, or that the withdrawal of groundwater may affect the flow of any spring, water course, lake, or other body</p>	<p>Chapter 173-539A WAC-New rule</p> <p>WAC 173-539A-010 Purpose.</p> <p>The purpose of this rule is to withdraw from appropriation all unappropriated groundwater within upper Kittitas County pending completion of a groundwater study. New groundwater withdrawals will be limited to those that are water budget neutral, as defined in this rule.</p> <p>WAC 173-539A-020 Authority.</p> <p>RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing</p>	<p>The proposed rule allows new uses of groundwater where mitigation of consumptive quantity is offset by acquisition of a pre-1905 water right held in the trust water right reduce the number of new source groundwater wells serving suburban residential development in rural upper Kittitas County.</p> <p>The rule withdraws from appropriation any groundwater that that may exist above and beyond current appropriations. The effect compared to the pre-July 2009 baseline is to make new appropriation</p>

<p>of surface water, the right of an appropriator and owner of surface water <u>shall be superior to any subsequent right hereby authorized to be acquired in or to groundwater.</u></p> <p>Current exempt well regulatory framework under RCW 90.44.050</p> <p>After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the party making withdrawals of groundwaters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.</p>	<p>committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for permit-exempt wells where needed.</p>	
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	<p>WAC 173-539A-025 Applicability. This rule applies to new uses of groundwater relying on the authority of the exemption from permitting found at RCW 90.44.050, as defined in WAC 173-539A-030, and to any new permit authorizing the withdrawal of public groundwater within the upper Kittitas area boundaries issued on or after July 16, 2009.</p> <p>WAC 173-539A-030 Definitions. The definitions provided below apply only to this chapter.</p> <p>"Applicant" includes the owner(s) of parcels that are the subject of a land use application, a person making a request for water budget neutral determination, or a person requesting a permit to appropriate public groundwater.</p> <p>"Common ownership" means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between an applicant and any owner of a proximate parcel. A joint development arrangement is defined as involving significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat</p>	<p>This rule affects all new appropriations of groundwater in the Upper Kittitas area, whether they are based on the groundwater permit exemption or a permit to appropriate groundwater. Prior to the July 2009 emergency rule, no limitations other than the statutory limits were placed on users relying the groundwater permit exemption.</p> <p>Clarifies new residential development requestor's or applicant's relationship with adjacent or proximate residential development(s) to determine whether the applicant's proposal is part of a group or project.</p>
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	<p>or legal documents, financing, marketing, environmental review, clearing or preparing land, or construction (including road construction); covenants; agreements for common use of building materials, equipment, structures, facilities, lands, water, sewer, or other infrastructure.</p> <p>"Consumptive use" of a proposed withdrawal is the total depletion that the withdrawal has on any affected surface water bodies.</p> <p>"Ecology" means the department of ecology.</p> <p>"Exemption" or "groundwater exemption" means the exemption from the permit requirement for a withdrawal of groundwater provided under RCW 90.44.050.</p> <p>"Existing use of the groundwater exemption" means a use of groundwater under the authority of the exemption from permitting where water was:</p> <p>(a) First regularly and beneficially used prior to July 16, 2009; and</p> <p>(b) The water right is perfected within the five years following the first regular beneficial use for that purpose. Water to serve a parcel that is part of a group use begun within five years of the date water was first regularly and beneficially used on one or more parcels in the group is an existing use if the group use remains within the limit of the permit exemption.</p> <p>"Group use" means use of the groundwater exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development. It further includes use of the exemption for all parcels that are proximate and held in common ownership with a proposed new development. If a parcel that is part of a group use is later divided into multiple parcels more than five</p>	<p>Clarifies Ecology's interpretation of the applicability of the proposed rule and how existing uses of the groundwater permit exemption relate to applicability of the rule.</p>
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	<p>years following the first use, the new uses of the exemption on the resulting multiple parcels will be considered a separate group use distinct from the original group.</p> <p>"Land use application" means an application to Kittitas County requesting a:</p> <ul style="list-style-type: none"> Subdivision; Short subdivision; Large lot subdivision; Administrative or exempt segregation; Binding site plan; or Performance based cluster plat. <p>"New use of the groundwater exemption" means a valid permit-exempt use of groundwater begun on or after July 16, 2009. When an existing group use is expanded to serve a parcel in the future, the expanded use is a new use if it begins more than five years after the date water was first regularly and beneficially used for that purpose on any parcel in the group.</p> <p>"Parcel" means any parcel, land, lot, tract or other unit of land.</p> <p>"Proximate" means all parcels that have at least one of the following attributes:</p> <ul style="list-style-type: none"> Share any common boundary; or Are separated only by roads, easements, or parcels in common ownership; or Are within five hundred feet of each other at the nearest point. <p>"Proximate shortplat" means a shortplat that would be considered a group use with another subdivision or shortplat.</p> <p>"Regular beneficial use" means a use of water under the groundwater permit exemption that is recurring or functioning at fixed, uniform, or normal intervals and is done in conformity with established usages, rules, or discipline.</p> <p>"Total water supply"</p>	
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	<p>available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.</p> <p>"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.</p> <p>"Water budget neutral project" means an appropriation or project where withdrawals of public groundwater are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use.</p> <p>WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County. (1) Beginning on the effective date of this rule, all public groundwaters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of groundwater may occur, including those exempt from permitting, except:</p> <p>(a) Uses of groundwater for a structure for which a building permit is granted and the building permit application vested prior to July 16, 2009; and</p> <p>(b) Uses determined to be water budget neutral under WAC 173-539A-050.</p> <p>(2) The exception for water used at structures provided in subsection (1)(a) of this section shall not apply or shall cease to apply if the structure is not completed and a water system that uses the new appropriation is not operable within the time allowed under the building</p>	<p>New appropriations of groundwater are not allowed unless they fall under one of the exceptions to the rule in subsection (1)(a), (2), or (3).</p>
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	<p>permit. This shall not in any case exceed three years from the date the permit application vested. The exception is to avoid potential hardship and does not reflect ecology's view on when the priority date for a permit-exempt water right is established.</p> <p>(3) Water to serve a parcel that is part of an existing group use is not a new appropriation or withdrawal if the water use to serve such parcel began within five years of the date water was first beneficially used on any parcel in the group, if the first use was prior to July 16, 2009, and the group use remains within the limit of the permit exemption.</p>	
	<p>WAC 173-539A-050 Water budget neutral projects. (1) Persons proposing a new use of groundwater shall apply to ecology for a permit to appropriate public groundwater or, if seeking to rely on the groundwater permit-exemption, shall submit to ecology a request for determination that the proposed permit-exempt use would be water budget neutral.</p> <p>(2) As part of a permit application to appropriate public groundwater or a request for a determination of water budget neutrality, applicants or requestors shall include the following information:</p> <p>(a) Identification of one or more water rights that would be placed into the trust water right program to offset the consumptive use (as calculated pursuant to subsection (3) of this section) associated with the proposed new use of groundwater;</p> <p>(b) A site map;</p> <p>(c) The area to be irrigated (in acres);</p> <p>(d) A soil report, if proposed discharge is to a septic system and the applicant or requestor proposes to deviate from the values in subsection (3) of this section;</p> <p>(e) A property covenant that</p>	<p>New appropriations of water are allowed only if they demonstrate water budget neutrality. Mitigation for consumptive losses by acquisition of a pre-1905 water right is required.</p>

	<p>prohibits trees or shrubs over the septic drain field; and</p> <p>(f) A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.</p> <p>(3) Consumptive use will be calculated using the following assumptions: Thirty percent of domestic in-house use on a septic system is consumptively used; ninety percent of outdoor use is consumptively used; twenty percent of domestic in-house use treated through a wastewater treatment plant which discharges to surface water is consumptively used.</p> <p>(4) Applications for public groundwater or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:</p> <p>(a) A suitable trust water right is already held by the state in the trust water right program; and</p> <p>(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.</p> <p>(5) Applications to appropriate public groundwater or requests for determination of water budget neutrality that do not include the information listed in subsection (2) of this section will be rejected and returned to the applicant.</p> <p>(6) To the extent that ecology determines that the mitigation offered would not reliably mitigate to be water budget neutral, ecology may deny the request or limit its approval to a lesser amount.</p>	
<p>WAC 173-52-050 -Criteria for priority processing of competing applications.</p> <p>(1) An application may be processed prior to competing applications if the application resolves or alleviates a public</p>	<p>WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget</p>	

<p>health or safety emergency caused by a failing public water supply system currently providing potable water to existing users. Inadequate water rights for a public water system to serve existing hook-ups or to accommodate future population growth or other future uses do not constitute a public health or safety emergency. The application must be filed specifically to correct the actual or anticipated cause(s) of the public water system failure. To be considered a failing public water system, the system must meet one or more of the following conditions:</p> <p>(a) The department, upon notification by and in consultation with the department of health or local health authority, determines a public water system has failed, or is in danger of failing within one year, to meet state board of health standards for the delivery of potable water to existing users in adequate quantity or quality to meet basic human drinking, cooking and sanitation needs;</p> <p>(b) The current water source has failed or will fail so that the public water system is or will become incapable of exercising its existing water right to meet existing needs for drinking, cooking and sanitation purposes after all reasonable conservation efforts have been implemented; or</p> <p>(c) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is unacceptable for human use.</p> <p>(2) An application may be processed prior to competing applications if the department determines:</p> <p>(a) Immediate action is necessary for preservation of public health or safety; or</p> <p>(b) The proposed water use is nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment.</p> <p>(3) An application for change or transfer to an existing water right may be</p>	<p>neutrality associated with trust water rights. (1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.</p> <p>(2) Ecology may expedite the processing of an application for a new water right or a request for a determination of water budget neutrality under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:</p> <p>(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.</p> <p>(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.</p> <p>(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.</p> <p>(4) Upon determining that the</p>	<p>Ecology may expedite processing of new applications, water right transfers, and water budget neutral requests in conjunction with management of this rule. Provides for expedited processing of: trust water right applications, and water budget neutral determination requests and new water right applications associated with mitigation of the consumptive impacts of a new water appropriation. The proposed use must be consistent with any agreement governing the use of the trust water rights. Currently, prior to July 9, 2009 Ecology was unable to process applications associated with trust water rights for the purpose of mitigating new uses. This is due to the large backlog of existing water right applications. This new provision will allow Ecology to priority process these applications and allow new water rights to be processed based on trust water right mitigation.</p>
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<p>processed prior to competing applications provided one or more of the following criteria are satisfied:</p> <p>(a) The change or transfer if approved would substantially enhance the quality of the natural environment; or</p> <p>(b) The change or transfer if approved would result in providing public water supplies to meet general needs of the public for regional areas;</p> <p>(c) The change or transfer was filed by water right holders participating in an adjudication, and a decision is needed expeditiously to ensure that orders or decrees of the superior court will be representative of the current water use situation.</p> <p>(4) Within each regional office, the department shall process applications satisfying the criteria in subsections (1) through (3) of this section in the following priority:</p> <p>(a) Public health and safety emergencies under subsection (1) of this section;</p> <p>(b) Preservation of other public health and safety concerns under subsection (2)(a) of this section;</p> <p>(c) Transfers or changes under subsection (3)(a) of this section;</p> <p>(d) Transfers or changes under subsection (3)(b) of this section;</p> <p>(e) Transfers or changes under subsection (3)(c) of this section; and</p> <p>(f) Nonconsumptive uses under subsection (2)(b) of this section.</p> <p>[Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-050, filed 2/27/98, effective 3/30/98.]</p>	<p>application or request is eligible for expedited processing, ecology will do the following:</p> <p>(a) Review the application or request to withdraw groundwater to ensure that groundwater is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.</p> <p>(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.</p> <p>(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and to accurately reflect any limitations or constraints in the trust water right.</p> <p>(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."</p>	
<p>RCW 90.03.360 Controlling works and measuring devices — Metering of diversions — Impact on fish stock.</p> <p>(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and</p>	<p>WAC 173-539A-070 Measuring and reporting water use. (1) For residential uses (domestic use and irrigation of not more than 1/2 acre of noncommercial lawn and garden) of groundwater within upper Kittitas County that begin after July 8, 2008, a meter must be installed for each residential connection or each source</p>	<p>Requires new exempt well source metering county-wide after adoption of the rule. The new provision will require new permit-uses to meter and report.</p> <p>Current laws and rules exist</p>

<p>maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.</p> <p>Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.</p> <p>(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.</p> <p>This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the</p>	<p>well that serves multiple residential connections in compliance with the requirements of WAC 173-173-100. (2) For all other uses within upper Kittitas County that begin after November 25, 2009, including permit-exempt uses, a meter must be installed for each source well in compliance with such requirements as prescribed in WAC 173-173-100. (3) Water users must collect and report metering data to ecology within thirty days of the end of each recording period. The following table shows the recording periods and the due dates for each metering report:</p> <table border="1" data-bbox="678 741 1117 1234"> <thead> <tr> <th>Reporting Period</th> <th>Due No Later Than</th> </tr> </thead> <tbody> <tr> <td>Oct 1-Mar 31</td> <td>April 30</td> </tr> <tr> <td>Apr 1-Jun 30</td> <td>July 30</td> </tr> <tr> <td>Jul 1- Jul 31</td> <td>Aug 30</td> </tr> <tr> <td>Aug 1 – Aug 31</td> <td>Sept 30</td> </tr> <tr> <td>Sept 1 – Sept 30</td> <td>Oct 30</td> </tr> </tbody> </table>	Reporting Period	Due No Later Than	Oct 1-Mar 31	April 30	Apr 1-Jun 30	July 30	Jul 1- Jul 31	Aug 30	Aug 1 – Aug 31	Sept 30	Sept 1 – Sept 30	Oct 30	<p>for metering and reporting water use. However, these laws and regulations have rarely been applied to permit-exempt groundwater uses.</p>
Reporting Period	Due No Later Than													
Oct 1-Mar 31	April 30													
Apr 1-Jun 30	July 30													
Jul 1- Jul 31	Aug 30													
Aug 1 – Aug 31	Sept 30													
Sept 1 – Sept 30	Oct 30													

<p>waters from which it was diverted.</p> <p>RCW 90.44.450 Metering or measuring groundwater withdrawals — Reports.</p> <p>The department of ecology may require withdrawals of groundwater to be metered, or measured by other approved methods, as a condition for a new water right permit. The department may also require, as a condition for such permits, reports regarding such withdrawals as to the amount of water being withdrawn. These reports shall be in a form prescribed by the department.</p> <p>[1989 c 348 § 7.]</p>		
	<p>WAC 173-539A-080 Expedited processing of trust water right applications and new water right applications associated with trust water rights</p> <p>(1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.</p> <p>(2) Ecology may expedite the processing of an application for a new surface water right or a groundwater right hydraulically related to the Yakima River, under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:</p> <p>(a) The application must identify an existing trust water right or pending application to place a water right in trust, if that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.</p> <p>(b) The proposed use on the new application must be for domestic, group domestic, lawn or</p>	

	<p>noncommercial garden, and/or municipal water supply purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water rights.</p> <p>(3) If an application for a new water right is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.</p> <p>(4) Upon determining that the application is eligible for expedited processing ecology will do the following:</p> <p>(a) Review the application to withdraw groundwater to ensure that groundwater is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.</p> <p>(b) Condition the permit to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit.</p> <p>(c) Condition each permit to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.</p> <p>(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."</p>	
<p>RCW 90.03.605 Compliance — Sequence of enforcement measures — Location of compliance personnel.</p> <p>(1) The department shall, through a</p>	<p>WAC 173-539A-080 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information</p>	<p>Provides for Educational information, technical assistance, and enforcement.</p>

<p>network of water masters appointed under this chapter, stream patrollers appointed under chapter 90.08 RCW, and other assigned compliance staff to the extent such a network is funded, achieve compliance with the water laws and rules of the state of Washington in the following sequence:</p> <p>(a) The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of their water rights and applicable water laws;</p> <p>(b) When the department determines that a violation has occurred or is about to occur, it shall first attempt to achieve voluntary compliance. As part of this first response, the department shall offer information and technical assistance to the person in writing identifying one or more means to accomplish the person's purposes within the framework of the law; and</p> <p>(c) If education and technical assistance do not achieve compliance the department shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 90.03.600 unless the noncompliance is corrected expeditiously or the department determines no impairment or harm.</p> <p>(2) Nothing in the section is intended to prevent the department of ecology from taking immediate action to cause a violation to be ceased immediately if in the opinion of the department the nature of the violation is causing harm to other water rights or to public resources.</p> <p>(3) The department of ecology shall to the extent practicable station its compliance personnel within the watershed communities they serve. To the extent practicable, compliance personnel shall be distributed evenly among the regions of the state.</p> <p>[2002 c 329 § 2.]</p> <p>RCW 43.27A.190 Water resource orders.</p>	<p>on the scope and requirements of this chapter.</p> <p>(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.</p> <p>(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.</p>	
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<p>Notwithstanding and in addition to any other powers granted to the department of ecology, whenever it appears to the department that a person is violating or is about to violate any of the provisions of the following:</p> <ul style="list-style-type: none"> (1) Chapter 90.03 RCW; or (2) Chapter 90.44 RCW; or (3) Chapter 86.16 RCW; or (4) Chapter 43.37 RCW; or (5) Chapter 43.27A RCW; or (6) Any other law relating to water resources administered by the department; or (7) A rule or regulation adopted, or a directive or order issued by the department relating to subsections (1) through (6) of this section; the department may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to addressee only with return receipt requested and acknowledged by him. The order shall specify the provision of the statute, rule, regulation, directive or order alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. The regulation of a headgate or controlling works as provided in RCW 90.03.070, by a watermaster, stream patrolman, or other person so authorized by the department shall constitute a regulatory order within the meaning of this section. A regulatory order issued hereunder shall become effective immediately upon receipt by the person to whom the order is directed, except for regulations under RCW 90.03.070 which shall become effective when a written notice is attached as provided therein. Any person aggrieved by such order may appeal the order pursuant to RCW 43.21B.310. <p>[1987 c 109 § 11; 1969 ex.s. c 284 § 7.]</p>		
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<p>Notes: Purpose -- Short title -- Construction - - Rules -- Severability -- Captions -- 1987 c 109: See notes following RCW 43.21B.001. Severability -- 1969 ex.s. c 284: See note following RCW 90.48.290.</p>		
<p>RCW 43.21B.310 Appeal of orders, permits, and licenses. (1) Except as provided in RCW 90.03.210(2), any order issued by the department or local air authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after the date of receipt of the order. Except as provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means of appeal of such an order. (2) The department or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal. (3) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to RCW 43.21B.320 to the hearings board for a stay of the order or for the removal thereof. (4) Any appeal must contain the following in accordance with the rules of the hearings board: (a) The appellant's name and address; (b) The date and docket number of the order, permit, or license appealed; (c) A description of the substance of the order, permit, or license that is the subject of the appeal; (d) A clear, separate, and concise statement of every error alleged to have been committed; (e) A clear and concise statement of facts upon which the requester relies to</p>	<p>WAC 173-539A-090 Appeals All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.</p>	<p>Opportunity and process for appeal of Ecology decisions.</p>

<p>sustain his or her statements of error; and</p> <p>(f) A statement setting forth the relief sought.</p> <p>(5) Upon failure to comply with any final order of the department, the attorney general, on request of the department, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to insure compliance with the order. The air authorities may bring similar actions to enforce their orders.</p> <p>(6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the department within thirty days of the date of receipt. [2004 c 204 § 5. Prior: 2001 c 220 § 4; 2001 c 36 § 3; 1992 c 73 § 3; 1989 c 2 § 14 (Initiative Measure No. 97, approved November 8, 1988); (1987 3rd ex.s. c 2 § 49 repealed by 1989 c 2 § 24, effective March 1, 1989); 1987 c 109 § 6.]</p> <p>Notes:</p> <p>Intent -- Construction -- Effective date -- 2001 c 220: See notes following RCW 43.21B.110.</p> <p>Effective dates -- Severability -- 1992 c 73: See RCW 82.23B.902 and 90.56.905.</p> <p>Short title -- Construction -- Existing agreements -- Effective date -- Severability -- 1989 c 2: See RCW 70.105D.900 and 70.105D.910 through 70.105D.921, respectively.</p> <p>Purpose -- Short title -- Construction - - Rules -- Severability -- Captions -- 1987 c 109: See notes following RCW 43.21B.001.</p>		
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