



DEPARTMENT OF
ECOLOGY
State of Washington

Small Business Economic Impact Statement

Chapter 173-557 WAC

*Water Resources Program for the Spokane River
and Spokane Valley Rathdrum Prairie Aquifer
and amendment to WAC 173-555-010*

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Small Business Economic Impact Statement

Chapter 173-557 WAC Water Resources Program for the Spokane River and Rathdrum Prairie Aquifer And amendment to WAC 173-555-010

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Table of Contents

	<u>Page</u>
Executive Summary	ii
Background	1
History of the Spokane River and Spokane Valley Rathdrum Prairie Aquifer	1
Rule Proposals	2
Analysis of Compliance Costs for Washington Businesses	2
Current Water Rights Administration	2
Water Rights Administration under the Rule.....	2
Surface and Groundwater Permits	3
Permit-Exempt Ground Water	3
Changes and Transfers of Water Rights	3
Impacts to Businesses in the Rule Area.....	3
Impacts to Businesses Dependent on Permit-Exempt Wells	3
Costs to Firms and Required Professional Services	4
Reporting and Recordkeeping.....	4
Additional Professional Services	4
Costs of Equipment, Supplies, Labor, and Increased Administrative Costs	4
Other Compliance Requirements	4
Quantification of Costs and Ratios	4
Revenue Impacts	5
Distribution of Compliance Costs.....	5
Will the rule have a disproportionate impact on small businesses?	5
Known Costs.....	6
Conclusions.....	6
Actions Taken to Reduce the Impact of the Rule on Small Business.....	7
The Involvement of Small Business in the Development of the Proposed Rule	7
The SIC Codes of Impacted Industries	7
Impacts on Jobs.....	8
Appendixes	Error! Bookmark not defined.
Appendix A – Effects of Proposed Rule (Chapter 173-557 WAC).....	Error! Bookmark not defined.
Appendix B –Applicable Statutes:.....	Error! Bookmark not defined.

Executive Summary

The proposed rule requires new consumptive uses of water to be fully mitigated through a senior water right or be interruptible. New changes or transfers of water in the future would be conditioned by the rule.

All currently established businesses using an established water right are not required to comply with the proposed rule. Essentially this proposed rule has little or no impact on small or any other business. All current businesses already operating under an established water right are not affected.

Only businesses seeking new appropriations of water or choosing to change or transfer an existing water right are required to comply with the rule. For those businesses affected by the rule, small businesses would experience a disproportionate impact based on a per-employee assessment.

Future businesses are likely to either be served by an established water right or will need to be covered under mitigation water if using a permit-exempt withdrawal.

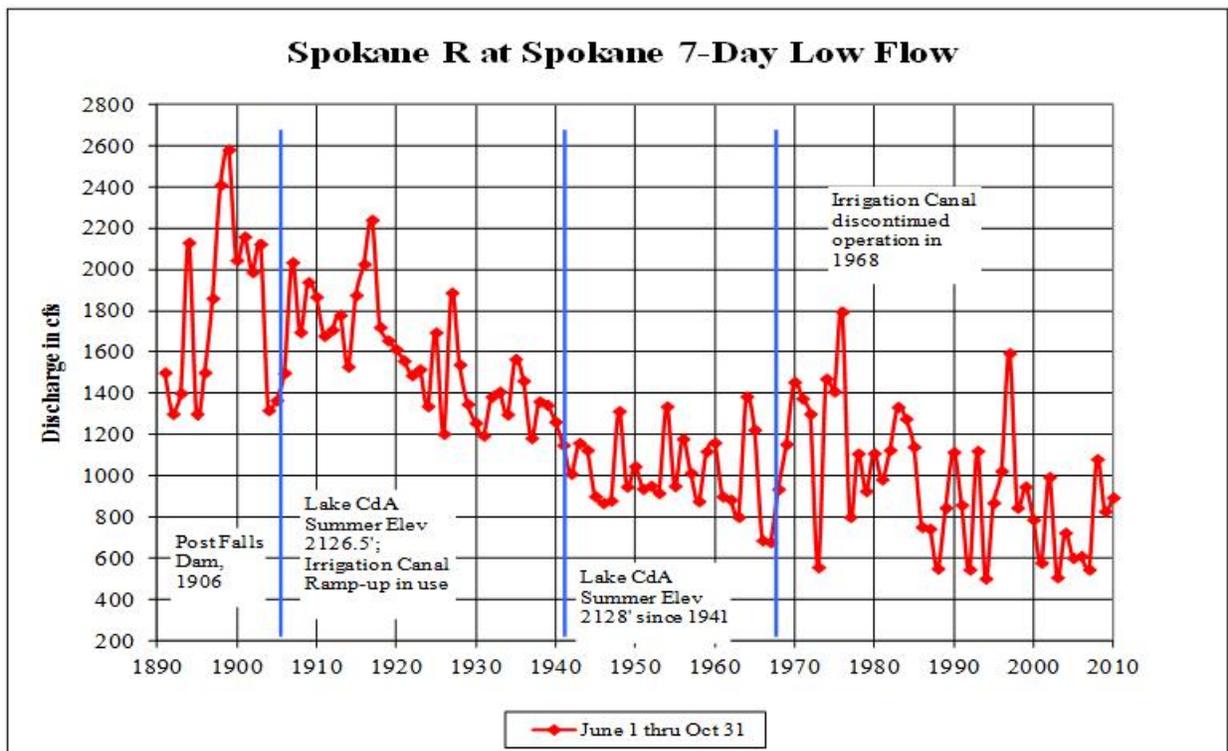
The purpose of the amendment to WAC 173-555-010 is to clarify the application of Chapter 173-555 WAC in the area where the new rule (WAC 173-557) will overlap with the existing rule (WAC 173-555).

This document is intended to be read in conjunction with the associated Cost-Benefit Analysis (publication no. 14-11-006).

Background

History of the Spokane River and Spokane Valley Rathdrum Prairie Aquifer

In the early 1990s, Ecology determined that the low flows in late summer low were further declining in the Spokane River. Because of this decline and what was known about the interaction between the aquifer and the river at that time, Ecology stopped issuing new groundwater rights in the Spokane Valley Rathdrum Prairie (SVRP) aquifer. Following budgetary and legislative decisions further reinforced this inaction.



Around 2004, spurred by local events, public interest in water availability resulted in the beginning of the so-called “Bi-state Aquifer study.” That study, conducted jointly by Idaho, Washington, and the United States Geologic Survey, supplemented watershed planning processes then underway in the area, and provided:

- Broad regional understanding about the mechanisms governing water supplies in the region; and,
- A peer reviewed technical tool to assess and evaluate effects of water management alternatives on the system.

The results clearly indicate seasonal surface water declines are partially the result of increased ground water withdrawals. Groundwater is only available at the expense of surface water supplies, and new withdrawals will increase seasonal declines in surface water flows and levels.

Processing applications for new water rights from the Spokane River and SVRP Aquifer must consider existing water rights, including the roughly 210 cubic feet per second (cfs) of existing inchoate municipal rights, prior to issuing new rights.

Rule Proposals

The key elements of the proposed rule include:

- Establishing instream flows protective of habitat for native fish and other resource-related beneficial uses (hydropower, water quality, recreation, aesthetic values, and so on).
- Providing a baseline for making water availability determinations necessary for guiding water right permit decisions.
- Protecting Washington State's interests in any interstate water rights conflict.

Analysis of Compliance Costs for Washington Businesses

We assess the impacts of the proposed rule by comparing water right management under the proposed rule in contrast to current practices.

Current Water Rights Administration

The current framework (or “baseline”) considers the use of water under existing rights, including permit-exempt wells (RCW 90.44.050), and current administrative procedures for considering applications both for new water rights and for changes to existing water rights. The legal baseline for this analysis consists of the regulation of water usage under Chapter 90.44 RCW, Regulation of Public Groundwater; Chapter 90.54 RCW, Water Resources Act of 1971; and Chapter 90.03 RCW, Water Code.

A brief description of compliance requirements follows.

Water Rights Administration under the Rule

Approval of applications for new water from the Spokane must consider potential impairment of existing water rights, including roughly 210 cfs of existing inchoate municipal rights. The proposed rule will also set specific requirements for new uses of surface and ground water, whether they require a permit or are permit-exempt, to prohibit impairment of the proposed instream flows. When instream flows are not met, the proposed rule requires uses junior to the rule to be interrupted unless fully mitigated through an existing water right.

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

Surface and Groundwater Permits

After adoption of the proposed rule Ecology may issue new conditioned surface and ground water permits allowing withdrawals when seasonal flows exceed the proposed instream flow levels.

Permit-Exempt Ground Water

In times of shortage, new water users are required to fully mitigate effects on adopted instream flows. Such mitigation must be obtained prior to the water use. Ecology has evaluated the possibilities of new domestic permit-exempt users in the proposed rule area and has concluded there will be very few people that cannot hook up to an existing public water supply system for their domestic supply.

Ecology is working on securing mitigation water to cover the limited number of anticipated future domestic permit-exempt well users. Although the future demand is an estimate, Ecology expects the mitigation water put into trust will cover domestic permit-exempt mitigation needs well beyond the time period within the scope of this analysis.

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. After rule adoption, a change or transfer proposal can be approved only if there is a finding that existing rights, including the instream flows established in this chapter, will not be impaired.

Impacts to Businesses in the Rule Area

The proposed rule will not directly affect any existing water right holders. Existing small businesses are not required to comply with the proposed rule to continue their current water use or if they wish to expand their use through a public water supplier. Businesses may be slightly affected by the rule if they choose to pursue a change or transfer of an existing water right. They would also be required to comply with the rule if seeking to establish a new water use outside public water supply service areas.

Almost every business would locate, or be required to locate by city and county ordinances within a public water supply service area with inchoate rights. Businesses that locate in areas with available water rights are unaffected by the rule.

Impacts to Businesses Dependent on Permit-Exempt Wells

As stated above, the proposed rule does not directly affect current or future businesses that have existing water rights or are served by a public water system. Future businesses choosing to

locate outside a service area and eligible to use a new permit-exempt withdrawal would have access to the pre-established mitigation. They will have no known impact.

Costs to Firms and Required Professional Services

As mentioned above, no business entities are required to comply with the proposed rule unless they seek new a new appropriation of water or seek a future change or transfer. In the case of changes or transfers, it is possible that additional hydrologic professional services may be needed above and beyond what they would be required currently. Ecology estimates this cost at 10 additional hours of consultation or hydrologic services at \$200 an hour¹ for a total cost of \$2,000. Ecology estimates that the number of changes/transfers that might require the additional analysis to be ten over the next 20 years.

Reporting and Recordkeeping

The proposed rule requires no additional reporting or recordkeeping.

Additional Professional Services

Small businesses seeking future changes or transfers may need additional hydrologic services beyond what they would be currently required to use. Ecology estimates this cost at 10 additional hours of Consultation or Hydrologic services at \$200 an hour for total costs of \$2000. Ecology estimates that the number of changes/transfers that might require the additional analysis to be 10 over the next 20 years.

Costs of Equipment, Supplies, Labor, and Increased Administrative Costs

Ecology does not expect any additional costs in these areas.

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.

¹ The hourly rate estimate is for future fees based on historic budget and contract costs at Ecology.

Revenue Impacts

As noted previously, only new appropriators of water or future changes and transfers are required to comply with the proposed rule. There would not be any impacts on small business revenue.

Distribution of Compliance Costs

Will the rule have a disproportionate impact on small businesses?

To determine whether the proposed rule is likely to have a disproportionate impact on small businesses as contemplated by RCW 19.85.040, Ecology will compare the cost impacts on the small business with those on large business in the same industrial classification. For this purpose, Ecology will look at industry 221310 (Water Supply and Irrigation Systems) as this appears to be the only industry involving water purveyors. The sample of 18 small business shows they average 6.3 employees². The City of Spokane water department is the business that is in the top 10% with an estimated 175 employees. We have selected this example based on our knowledge of actual businesses that operate in the rule area.

Most if not all of the businesses we are looking at are considered small, having “fifty or fewer employees.” As a result, Ecology does not have specific information about cost per hour of labor or cost per one hundred dollars of sales of the businesses in the rule area. Therefore, Ecology has used the “Cost per employee” to evaluate whether there are disproportionate cost impacts. For this example we will not contemplate if, or how many changes or transfers companies may seek in the future, but describe disproportional impacts that may occur if they do in Table 1.

² Data provided by the Chelan County Assessor and by the Washington State Employment Security Department was the basis for this table.

Table 1. Proportional Costs to Businesses

	Estimated Costs per Change/ Transfer	# of Employees		Cost Per Employee	
		Small Business	10% Largest Business	Small Business	10% Largest Business
Cost of additional professional services	\$2,000	6.3	175	\$317	\$11

The estimated cost per employee for small business is \$317, and for the top ten percent of largest businesses is \$11.

Businesses that do seek changes or transfers in the future may bear some additional costs. Although some additional costs can exist, the decision to pursue a change or transfer in the future recognizes there is clearly a net benefit for doing so.

Known Costs

Small Businesses seeking future changes or transfers may need additional hydrologic services beyond what they would be currently required to use. Ecology estimates this cost at 10 additional hours of consultation or hydrologic services at \$200 an hour for a total cost of \$2,000.

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

Conclusions

- The proposed rule requires new consumptive uses of water to be fully mitigated through a senior water right.
- New changes or transfers of water in the future would be conditioned by the rule.
- Only businesses seeking new appropriations of water are required to comply with the rule.
- All currently established businesses using an established water right are not required to comply with the proposed rule. Essentially this proposed rule has little or no impact on small or any other business. All current businesses already operating under an established water right are not affected.
- All future businesses will either be served by an established water right or will be covered under the purchased mitigation water if using a permit-exempt withdrawal.

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

The proposed rule will establish instream flows for the Spokane River, protecting instream resources from new water appropriations. This will help protect existing small businesses such as fishing guides, rafting companies, tourism related businesses, and waterfront restaurants that rely on the presence of water in the Spokane River. Setting instream flows will help protect existing water rights, in particular those held by small businesses and by municipal water purveyors, which are the primary source of water for small businesses in this area.

Ecology is not proposing to close the Spokane River to all new appropriations. It will be possible for a small business that could benefit from an interruptible source of water to acquire a water right, or for a small business to obtain new water by providing mitigation.

An action Ecology is working on outside of the rule, but directly related to rule implementation, is the provision of mitigation for new uses of water relying on the groundwater permit exemption. This will reduce the rule's impact on small home-based businesses.

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

Small businesses, local governments, and others, were involved in watershed planning region wide. Small business (water purveyors and users) were also briefed by Ecology staff in numerous public forums during development of the rule language. Ecology participation in and support of events sponsored by The Spokane River Forum (<http://spokaneriver.net/>) and other local organizations has also provided a means for small businesses' involvement in activities to promote a healthy river system. Data supporting the underlying science of rule development was gathered and analysis conducted by environmental consulting firms (typically small businesses).

The SIC Codes of Impacted Industries

The industries listed below may be required to comply with the proposed rule. The following NAICS code for small business that may be affected in complying with the rule. This serves as the known potential future businesses that may be affected.

Ecology has determined that water purveyors are the only know businesses that would be affected by the rule and required to comply with the rule. The industrial classification for these entities is Water Supply and Irrigation Systems with NAICS code 221310.

Impacts on Jobs

Current small businesses or those that have or are using an existing water right are not affected by this rule. Small businesses that decide they want a new water right or which propose a change or transfer to an existing 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 current change or transfer requirements. Ecology expects no net job impacts to come from this proposed rule.

