



# Implementing RCW 90.94: Protecting and Restoring Streamflows

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Department of Ecology  
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# Water Resources Program Mission

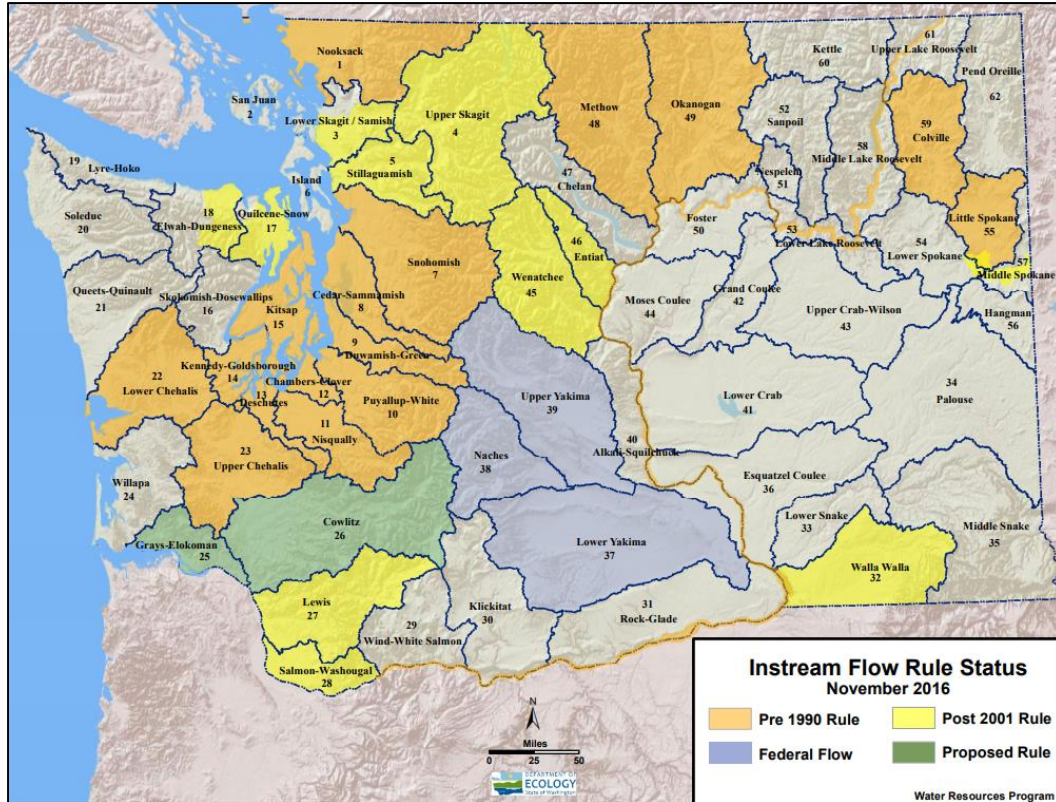
*We manage water resources to meet the needs of people and the natural environment, in partnership with Washington communities*



**WATER for PEOPLE, FARMS & FISH**



# Background



- Water right permitting program
- Certain groundwater uses are exempt from permitting (RCW\* 90.44.050).
- Instream flow rules RCW 90.22 and 90.54
- Pre-2001 instream flow rules only regulate water right permitting.
- *Postema* (2000): No impairment to instream flows is permitted, even if *de minimis*.
- *Kittitas Co. v. Eastern WA GMHB* (2011): counties must assess both physical and legal availability under GMA.

\*RCW= Revised Code of Washington



# Whatcom County v. Hirst, et al. (2016)

- Appeal of Whatcom County's Comprehensive Plan.
- The WA Supreme Court ruled that the plan failed to sufficiently protect water resources under the Growth Management Act.
  - Counties have an independent responsibility to ensure that new permit-exempt uses do not impair senior uses, including instream flows
  - Cannot allow even *de minimus* impairment
  - Must “go beyond” state rules if needed to meet GMA obligations
- Led to significant uncertainty for counties and landowners across the state.

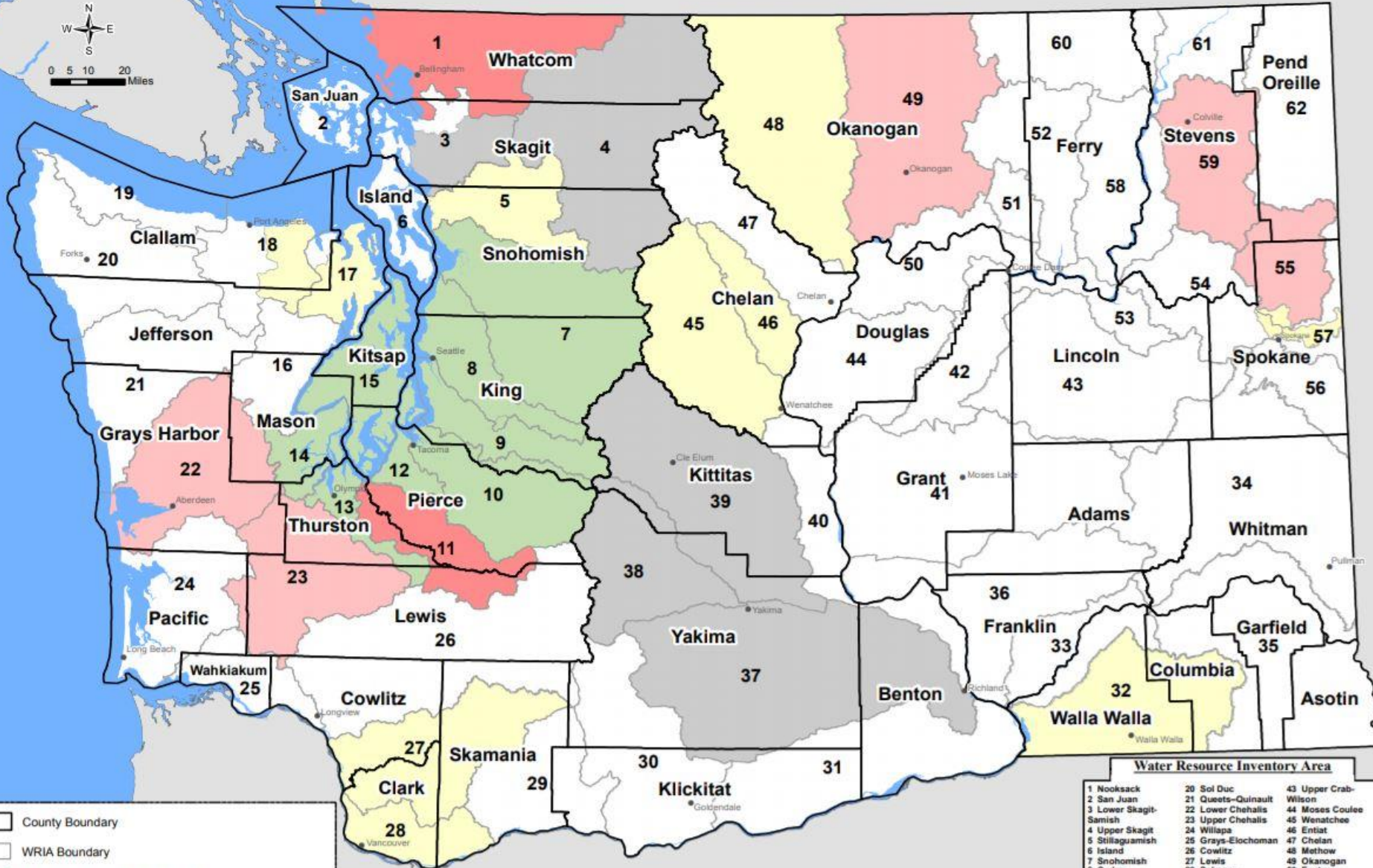


# Summary of new law

## ESSB 6091 / RCW 90.94

- Signed into law on January 19, 2018
- Provides more certainty for rural landowners/well users
- Allows permit-exempt well development / authorizes potential impacts to regulated waterbodies
  - Adds county requirements under the Growth Management Act (sets well fees & withdrawal limits)
- Project funding \$300M over 15 years
- New watershed-scale planning processes in 15 affected basins





	County Boundary
	WRIA Boundary
	Watershed plan: update due 2019
	Watershed plan: update due 2021
	Watershed restoration and enhancement plan: due 2021
	Existing rule that regulates permit-exempt uses
	Other requirements apply
	No Instream Flow Rule (See page 2 for details)

## Streamflow Restoration Domestic Permit-exempt Withdrawals: New Regulations (2018 Legislation: ESSB 6091)

Water Resource Inventory Area			
1	Nooksack	43	Upper Crab-Wilson
2	San Juan	44	Moses Coulee
3	Lower Skagit-Samish	45	Wenatchee
4	Upper Skagit	46	Entiat
5	Stikine	47	Chelan
6	Island	48	Methow
7	Snohomish	49	Okanogan
8	Cedar-Sammamish	50	Foster
9	Duwamish-Green	51	Nespelem
10	Puyallup-White	52	Sanpoil
11	Nisqually	53	Lower Lake
12	Chambers-Clover	54	Roosevelt
13	Deschutes	55	Lower Spokane
14	Kennedy-Goldsbrough	56	Little Spokane
15	Kitsap	57	Middle Spokane
16	Skokomish-Dosewallips	58	Upper Spokane
17	Quilcene-Snow	59	Roosevelt
18	Elwha-Dungeness	60	Colville
19	Lyre-Hoko	61	Kettle
20	Sol Duc	62	Upper Lake
21	Queets-Quinalt		Roosevelt
22	Lower Chehalis		Pend Oreille
23	Upper Chehalis		
24	Willapa		
25	Grays-Elochoman		
26	Cowlitz		
27	Lewis		
28	Salmon-Washougal		
29	Wind-White		
30	Klickitat		
31	Rock-Glade		
32	Walla Walla		
33	Lower Snake		
34	Palouse		
35	Middle Snake		
36	Esquatzel Coulee		
37	Lower Yakima		
38	Naches		
39	Upper Yakima		
40	Alkali-Squilchuck		
41	Lower Crab		
42	Grand Coulee		

Feb. 2, 2018



# How does this law affect your watershed (WRIA 8)?

- Establishes a \$500 fee
- Reduces daily withdrawal to 950gpd
- Establishes new Watershed Restoration Enhancement Committee
- Committee must develop plan by June 2021 that:
  - Identify actions necessary to offset the consumptive impact from new permit-exempt wells
  - Prioritize offsets that are “in-time and in-place”
  - Meet a “net ecological benefit” standard



# More on plan development...

- If the Committee approves a plan, by consensus...
  - Ecology will evaluate the plan based on the net ecological benefit standard
  - Ecology initiates rule-making where required/agreed-upon
- If the Committee cannot reach consensus...
  - The plan goes to the Salmon Recovery Funding Board to make recommendations to Ecology's Director, followed by rule-making.
- What happens after June 2021?
  - Rulemaking likely
  - Plan implementation and ongoing mitigation project work
  - grant program management





# Engagement Opportunities

- Committee meetings open to public
- Public meetings on funding program and net ecological benefit guidance
- Rule making – public process



# Ecology's near term priorities

1. Issue guidance to support early implementation watersheds (WRIAs 1 and 11)
2. Conduct outreach/education around first grant cycle (Fall 2018)
3. Build the Section 203 Watershed Program (hiring, program development, partner input) – the goal is to hold first meeting in Fall 2018
4. Formalize guidance around the “net ecological benefit” standard (Spring 2019)
5. Promulgate rule for new grant program (Spring/Summer 2019)



# Thank You!

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<https://ecology.wa.gov/Water-Shorelines/Water-supply/Streamflow-restoration>

