



Implementing RCW 90.94: Protecting and Restoring Streamflows in Central Puget Sound

Ria Berns, Water Resources Program
Department of Ecology
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Overview

- Who we are?
- How we got here?
- Summary of RCW 90.94/ESSB 6091
- Watershed scale implementation



Water Resources Program Mission

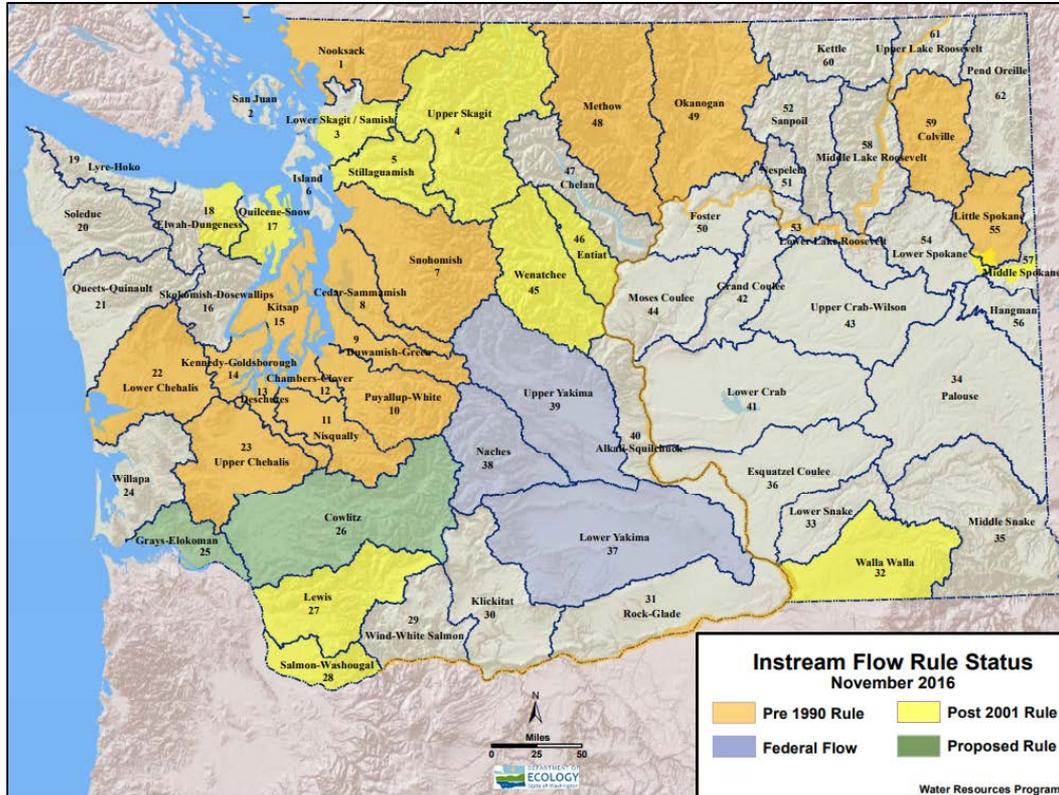
We manage water resources to meet the needs of people and the natural environment, in partnership with Washington communities



WATER for PEOPLE, FARMS & FISH



Background



- Ecology oversees a water right permitting program for surface water (1917) and groundwater (1945). Certain groundwater uses are exempt from permitting (RCW 90.44.050).
- Ecology adopts instream flow rules under authority of 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.





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

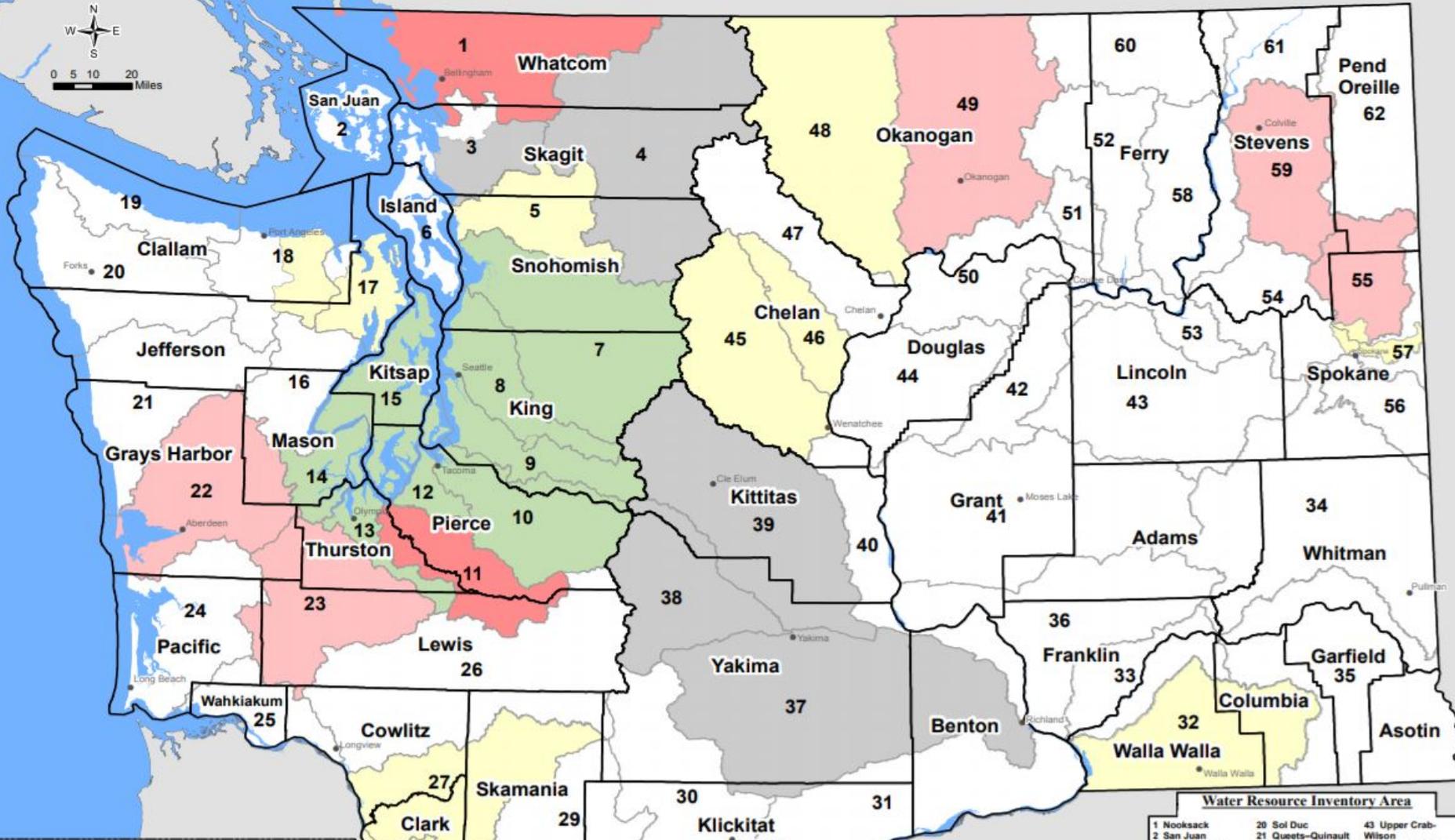
- Appeal of Whatcom County's Comprehensive Plan.
- The WA Supreme Court ruled that the plan failed to sufficiently protect water resources under the Growth Management Act.
 - Counties have an independent responsibility to ensure that new permit-exempt uses do not impair senior uses, including instream 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

- Signed into law on January 19, 2018
- Provides more certainty for rural landowners/well users (i.e., fixes “Hirst”)
 - Allows permit-exempt well development / authorizes potential impacts to regulated waterbodies
 - Adds county requirements under the Growth Management Act (sets well fees & withdrawal limits)
- Establishes \$300M over 15 years to fund projects that protect and enhance streamflows
- Sets up 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	Stillaquamish	47	Chelan
6	Island	48	Methow
7	Snohomish	49	Okanogan
8	Cedar-Sammamish	50	Foster
9	Duwamish-Green	51	Nespelem
10	Puyallup-White Salmon	52	Sanpoil
11	Nisqually	53	Lower Lake Roosevelt
12	Chambers-Clover	54	Lower Spokane
13	Deschutes	55	Little Spokane
14	Kennedy-Goldsborough	56	Hangman
15	Kitsap	57	Middle Spokane
16	Skokomish-Dosewallips	58	Middle Lake Roosevelt
17	Quilcene-Snow	59	Coville
18	Elwha-Dungeness	60	Kettle
19	Lyre-Hoko	61	Upper Lake Roosevelt
20	Sol Duc	62	Pend Oreille
21	Queets-Quinalt		
22	Lower Chehalis		
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 WRIAs in Snohomish County (WRIAs 5, 7, and 8)?

WRIA 5 (Stillaguamish)

- Mostly unaffected/no new planning process required
- Eligible for project funding

WRIAs 7 (Snohomish) and 8 (Cedar/Sammamish)

- Establishes new Watershed Restoration Enhancement Committees (Section 203 basins)
- Committees must develop plans by June 2021 that:
 - Identify actions necessary to offset the consumptive impact from new permit-exempt wells
 - Prioritize mitigation that is “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



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)



Other elements of RCW 90.94

- Metering: establishes a domestic metering pilot in two watersheds (Dungeness and Kittitas)
- Foster "Fix:" forms a new legislative taskforce to review the "Foster" Supreme Court decision
 - Allows for 5 "Foster" pilot projects
 - This is the only part of the law that affects the water right permitting process



Thank You!

Questions?

Ria Berns

Manager, Northwest Region Water Resources Program

Department of Ecology

(425) 649-7270

Ria.Berns@ecy.wa.gov

