



May 7, 2019

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Attention: Preliminary Draft Rulemaking on the amendment to WAC Ch. 173-501

The Building Industry Association of Whatcom County (BIAWC) appreciates the opportunity to comment on the Department of Ecology's (Ecology), preliminary draft rulemaking on the amendment to Chapter 173-501 WAC, or the Nooksack rule. BIAWC represents 400 Whatcom County businesses with upwards of 7,000 employees engaged in all aspects of home construction and is the champion of housing affordability in Washington State. BIAWC is dedicated to ensuring and enhancing the vitality of the building industry so members can meet the housing needs of Whatcom County citizens.

Hirst Fix: ESSB 6061-RCW90.94: Our first recommendation is Ecology should follow the law known as the Hirst Fix, or ESSD 6061-90.94 RCW. The legislation is clear, rulemaking in the Nooksack should "meet the requirements" of RCW. 90.94.020. BIAWC recommends that the gallons per day be restored to 3,000 gallons a day as written in statute. Ecology's preliminary language for the proposed rule drastically limits water use to 500 gallons a day and this limitation will have a huge impact on new residential construction and the way of life for landowners who want to build family homes. These limits do not take into consideration that the average person uses between 80-100 gallons of water per day. Imagine a family of five building a home and being restricted to limited shower use, laundry duties, cooking etc. BIAWC asks that Ecology measure water use on a maximum average basis per year, which would allow for a higher per day use and allow for more flexibility.

The amount of water being regulated in Whatcom County under this rule is one-half of 1% of the water resources in the Nooksack watershed. It is curious why the few citizens installing wells are now being asked to mitigate for the other 99.5% of the watershed.

Acreage Restrictions: BIAWC asks that Ecology sticks to the ½ of an acre for outdoor use as provided in the statute as opposed to the rule which limits outdoor use to 1/12th of an acre. BIAWC also recommends that the preliminary rule be clarified as to whether or not the 500 gallons a day includes outdoor use. There doesn't seem to be methodology documented as to why Ecology chose 1/12th of an acre. RCW 90.94.020 does not mention or give authority to Ecology to limit outdoor use.

Outdoor Use: Noncommercial Lawn/Garden: Why does Ecology combine domestic use with a reduction in lawn and garden use when the groundwater code specifically distinguishes between the two and explicitly exempts up to 1/2 acre of noncommercial lawn and garden irrigation? Once again, RCW 90.94.020 does not mention or give authority to Ecology to limit outdoor use.

Group B Systems: Additionally, we are concerned about the new restrictions on "Group B" water systems. This rule will not allow new Group B systems to provide more than 6 services, unless home buyers agree to less consumption per day. This is an imposition because it limits the group size from 14 houses down to 6. The State Health Department allows 14 households per Group B at 5,000 gallons/day standard. This is a very low-cost way for 14 rural families to have water and should not be restricted.

Drought: It is outside the scope of the statute for Ecology to limit use for drought curtailment. There is no reference to drought in RCW 90.94.020. In other parts of the statute, the legislature listed basins that could limit water use in a drought, but the Nooksack was not listed as one of those basins. Thus, BIAWC members are concerned about Ecology over stepping with drought language, definitions, and usage during the dry season when it is not within the scope of work.

Metering:

Previously, Ecology went to great lengths to demonstrate that metering was ineffective to measure water consumption in rural Whatcom County households, even requiring the Planning Unit to utilize a different method to calculate consumption. Why then is Ecology now saying metering may be required in the future?

BIAWC contends that metering should be a decision made by the Whatcom County Council, not Ecology. Furthermore, BIAWC asks that Ecology does not include metering language in the proposed rule. Only two basins were allowed to meter on a pilot basis for gathering specific information. The Nooksack was not one of the basins expressly stated in statute to allow for metering.

To summarize, rural landowners and communities are amongst the strongest proponents of protecting water and habitat. There should be a balance between protecting water resources and allowing for landowners to make the best use of their own private property. The amount of water being regulated in Whatcom County under this rule is one-half of 1% of the water resources in the Nooksack watershed. Please follow the current law ESSB 6091—RCW 90.94 and allow for 3,000 gallons per day of consumptive use measured by an annual average, larger areas of outdoor residential use consistent with RCW 90.94.020, and consider eliminating the drought and metering language.

Sincerely,

A handwritten signature in black ink that reads "Jacquelyn Styrna". The signature is written in a cursive, flowing style.

Jacquelyn Styrna

Government Affairs Director

Building Industry Association of Whatcom County

