

May 7, 2019

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

The Building Industry Association of Washington (BIAW) 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. BIAW represents 8,000 Washington businesses engaged in all aspects of home construction and is the champion of affordable housing in Washington State. BIAW is dedicated to ensuring and enhancing the vitality of the building industry so members can meet the housing needs of Washington citizens.

First and foremost, Ecology should follow the law known as the Hirst fix. The legislation is clear, rulemaking in the Nooksack needs to "meet the requirements" of RCW. 90.94.020. As proposed the rule does not meet the bare minimum standard. Ecology must restore the average gallons per day 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 Washington's rural families in the Nooksack basin. 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, etc. BIAW asks that Ecology measures water use on a maximum average basis per year, which would allow for a higher per day use and allow for flexibility.

Additionally, it is imperative Ecology stick to the ½ of an acre for outdoor use as provided in the statute as opposed to limiting outdoor use to 1/12th of an acre. The preliminary rule should also be clarified as to whether or not the 500 gallons a day includes outdoor use. The 1/12<sup>th</sup> of an acre limitation does not seem to base on any measurable methodology. RCW 90.94.020 give authority to Ecology to limit outdoor use.

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.

In regards to metering, the rule should not include metering requirements. 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.

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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 live on and use of their own property. Please follow the current law 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 eliminate the drought curtailment and metering language.

Sincerely,

Josie Cummings  
Regulatory and Government Affairs Manager  
Building Industry Association of Washington