

To: Annie Sawabini
Department of Ecology
Water Resources Program
PO Box 47600
Olympia WA 98504-7600

May 10, 2019

RE: Chapter 173-501 WAC Preliminary Draft Rule & Supporting Document

Dear Ms. Sawabini,

Thank you for taking the time to consider our comment on the preliminary draft rule and supporting document for Chapter 173-501 WAC, also known as the Nooksack Rule.

RE Sources for Sustainable Communities is a local organization in northwest Washington, founded in 1982. RE Sources works to build sustainable communities and protect the health of northwest Washington's people and ecosystems through the application of science, education, advocacy, and action. Our North Sound Baykeeper program is dedicated to protecting and enhancing the marine and nearshore habitats of northern Puget Sound and the Georgia Strait. Our chief focus is on preventing pollution from entering the North Sound and Strait, while helping our local citizenry better understand the complex connections between prosperity, society, environmental health, and individual wellbeing. Our North Sound Baykeeper is the 43rd member of the Waterkeeper Alliance, with over 300 organizations in 34 countries around the world that promote fishable, swimmable, drinkable water. RE Sources has over 20,000 members in Whatcom, Skagit, and San Juan counties, and we submit these comments on their behalf.

We appreciate your work and understand the timing constraints you are under with this rulemaking. The 500 gallon per day limit and outdoor watering restriction are a step in the right direction. However, we have concerns with the Department of Ecology's (Ecology) ability to enforce these new rules without metering.

Additionally, we are concerned about including projects that provide agriculture water to subsidize rural development. The projected water use impacts of rural exempt wells can be offset – water for water – by water conservation and efficiency from existing water users, especially rural wells and businesses that are not served by public water systems. Water conservation and reducing water demand of existing users should be the first step before we move to large mitigation projects.

Our specific comments, questions, and suggested revisions are below:



1. **Withdrawal Limit:** We support the 500 gallon per day limit as it is close to the average household water use of 350 gallons per day.
2. **Outdoor Water Limit:** 1/12 acre outdoor watering limit good
3. **Accountability:** How will compliance with the withdrawal limit and outdoor water limit be verified? Please include more specifics in both the rule and supporting document. Without compliance from metering, these limits are meaningless and Ecology should be prepared to assume the 5000 gallon per day withdrawal for all wells in the Safety Factor.
4. **Interruptible Outdoor Water Use:** We appreciate the inclusion of WAC 173-501-065(5)(c), but request that this also apply to when minimum streamflows are not being met according to the nearest watercourse gage and/or the Nooksack River gage at Ferndale.
5. **Critical Flow Period:** There is no reference or definition of a Critical Flow Period in the preliminary rule or supporting document despite its mention in statute (RCW 90.94.024b). We suggest April 1 - November 15 be the Critical Flow Period to incorporate the irrigation season and the typical low-flow period.
6. **Basin Closure Exemption:** Agricultural water use should not be allowed to offset the impacts of rural wells and essentially subsidize rural development. We ask for the following revision that keeps the intent of being able to divert high flows.

Revise 173-501-074 as follows: New interruptible uses may be approved from streams regulated under WAC 173-501-040 if the department determines through a water right permit application process under Chapter 90.03 RCW that the proposed use is consistent with the intent of Chapter 90.94 RCW to restore and enhance streamflows, ~~and would offset potential impacts to instream flows associated with permit-exempt domestic water use.~~

7. Offset Projects:

- a. Many of the projects on this list were conceived and/or proposed prior to the passage of the Streamflow Restoration Act. It is inappropriate and not meeting the intent of the Act to include them to offset the anticipated consumptive use impacts of new rural wells. Many of these are pet projects of various governments and stakeholders.
- b. Agricultural water offset projects should not be included to offset the impacts of new rural development. It is subsidizing sprawl and the conversion of finite, prime agricultural lands and giving away water from farmers that may be using water without sufficient or legal water rights. Please remove projects 1, 2, and 26 from consideration.
- c. Please include more information on water conservation. Significant quantities of water could be saved from non-agricultural users. Existing permit exempt well users could make large strides in reducing their water use given that there's no water

conservation or water use efficiency requirement unlike for public water systems. Some additional strides could be made to improve water conservation for public water systems through rebate and incentive programs. Below are some rudimentary examples of water savings.

Public Education

200,000 existing population, 1 gal/person/day = 224 acre-ft

Toilet rebates

Pre-1990 toilets: 50,000 homes at 2 toilets each = 100,000 pre-1990 toilets

Change 500 additional toilets per year, 10,000 over 20 yrs, 25 gals/toilet/day = 280 acre ft

Current exempt well over usage – Public Education

5,000 wells – 10% watering more than ½ acre

100gals/day, 60 days, 50 = 1 acre-ft

Volunteered individual metering assistance program

40,000 existing units not individually metered

1,000 meters/yr = 20,000 meters 10 gals/day/meter = 224 acre-ft

Landscape change out assistance

1,000/yr = 20,000 total, 50 gals/day for 60 days = 1,377 acre-ft

Estimated total savings = **1882 acre-ft**

- d. Monitoring of surface, ground, and instream resources should be included as a project. Resources for water quantity and instream resources is poor in WRIA 1 and should be prioritized, otherwise, it will be difficult to assess whether projects are providing stream benefit.
 - e. Given the potential of water savings through water conservation, it is unnecessary to pursue expensive projects that require many permits and could cause unintended environmental consequences like water quality impairments or disruptions in to salmon homing. Please remove projects 8, 24, 28, and 45.
 - f. Please include the estimated cost per acre-foot per year offset for each project.
8. **Safety Factor:** Please use the 647 acre-feet per year offset target that the Planning Unit included in their draft plan.
9. **Adaptive Management:**
- a. Will number of wells drilled be included as a metric for reporting along with building permits for the yearly report to Ecology? What about for the five year assessment?

- b. For the five year self assessment, why is Whatcom County responsible for the making substitutions of new projects? We believe the Planning Unit and the four other Initiating Governments must be consulted.

10. **Climate Change:** Please include information on how climate change will impact the safety factor, adaptive management, and other elements of the rule. There is no mention of climate change in either the rule or supporting document other than for Project 23.

We hope Ecology will take heed in following the traditional mitigation sequence of avoid, minimize or reduce, and mitigate when it comes to the Streamflow Restoration Act. Net Ecological Benefit may be a new concept with the passage of the Streamflow Restoration Act, but the mitigation sequence should be the guiding principle for prioritizing projects. Water conservation follows the second step of the mitigation sequence and makes it unnecessary to pursue large, expensive project or offer up agriculture water offsets in favor of rural development.

Thank you for considering our comment.

Sincerely,

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