

Kathy Sabel

I have been attending the local WRIA1 meetings and Whatcom County Council meetings for the last several years, not long after moving here. I also attended a state hearing in 2018 on the proposed ESSB6091 language. I heard many citizens testify how regulations in the past had hurt their families, and regulations that continue to be implemented with their concerns not listened to. I am not a Washington state pioneer family with knowledge of the history of the county, but have seen through these meetings there are many who have been involved for many years with great wisdom. It was disappointing that the local stakeholders could not reach agreement to prevent this WRIA1 watershed planning effort going to the state level for rulemaking. If local stakeholders were not able to reach agreement on 1% of the water usage in WRIA1, how will local stakeholders be able to reach agreement on the remaining 99% water usage? Will Watershed Planning now move to the State Level? Are non-governmental water users being relegated to second class citizens? It remains to be seen, especially now with the State interviewing groups for an evaluation determining which watershed will have their water rights adjudicated as a priority with the report due September 2020.

Here are my comments which I appreciate Department of Ecology response to:

- 1) ESSB6091 did not alter the 1945 5,000 gallons/day allotment to permit-exempt wells; it established 3,000 gallons maximum annual average daily use. The new rule replaces the 5000 gallons with 500 gallons per day for domestic use. Rationale for this level of reduction is questionable. Some people may have owned land for some years and may have planned selling it for an investment now or for retirement. Does First in Time, First in Right apply to land ownership first in time, or does there have to be beneficial use?
- 2) Department of Ecology (DOE) needs to include language on providing compensation to landowners for lost value of the land due to reduced water withdrawals.
- 3) What is the impact of using the NEB Interim Guidance vs the Final NEB?
- 4) The rule is using water reduction numbers some of the Initiating Governments (IG) proposed during the WRIA1 process of reviewing ESSB6091 water limits and fees. Additionally, Department of Ecology had meetings with specific government groups during rulemaking. Please explain criteria used for evaluating government and non-government stakeholder input.
- 5) Per information provided by Vincent Buys, ESSB6091 author, livestock watering and outdoor 1/2 acre use for lawn and non-commercial garden should not be affected by the rule. Current language in the rule changes this. Please explain how Department of Ecology reconciles the law with this rule.
- 6) Early in the Planning Unit process for ESSB6091 one of the consultants explained how the 3000 gallons maximum annual average use was derived with data. Please include in the rule the methodology from the legislation that concluded 3000 gallons is the appropriate value for permit exempt wells.
- 7) Since no outreach was done to the specific landowners of WRIA1 affected by the rule, how does Department of Ecology justify not doing this? Targeted outreach to existing and forecasted new permit-exempt well owners is needed. Outreach is needed prior to the adopting the rule since the

trigger for the reduced allowed water withdrawal of the proposed 500 gallons is only memorialized when a building permit is issued.

8) In order for existing and future new permit-exempt well landowners to know of water withdrawal limitations, all land titles should have possible limitations noted in the title once the rule is effective July 2020, not later with an issued building permit. By having the rule documented in the title effective the adopted rule date, those with 5000, 3000 or 500 gallons should have a clear understanding of the land's water use allowed, and so will the county assessor along with owners and buyers. Please explain how Department of Ecology will mandate this or a similar requirement.

9) What form will enforcement of well withdrawals take? Will there be penalties? Will all wells, not just permit-exempt wells, have withdrawals enforced?

10) Outdoor domestic water use is a new interpretation of the current law which allows $\frac{1}{2}$ acre for non-commercial garden and lawn (livestock separate) outside the 5000/3000 gallon limits. What law is Department of Ecology using to be able to legally make this change?

11) During the WRIA1 ESSB6091 Planning Unit process experts explained any possible effects of groundwater withdrawals from permit-exempt wells cannot be differentiated from the allowed error margin of the water models. Please explain how Department of Ecology justified requiring offsets when the uncertainty percentage of the model is less than or equal to the water use of permit exempt wells.

12) Adding a .5 extra offset for uncertainty seems arbitrary. How was .5 determined as appropriate?

13) In RCW 90.94, (which points to RCW 19.27.97 water availability), permit-exempt wells drilled prior to January 19, 2018 (ESSB6091 effective date) which do not meet the requirements of Chapter 18.104 (Water Well Construction) are subject to the 3000 gallon reduction from 5000 gallons if for a new water use when getting a building permit in WRIA1. Cities and Counties have been given authority to implement this requirement for water availability as per RCW 90.94/ESSB6091, and Whatcom County has implemented it. RCW 90.94.020 states: "This section only applies to new domestic groundwater withdrawals exempt from permitting under RCW 90.44.050 in the following water resource inventory areas with instream flow rules adopted under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals: 1 (Nooksack);". The rule is missing supporting documentation on the number of existing permit exempt wells that will be reduced from 5000 to 500 gallons due to the existing water well's construction for "new domestic groundwater withdrawals". Only 31 wells were reported to Department of Ecology from 2018 to 2019, and of those new wells it is not known at this time if any of them had been existing permit exempt wells. The rule erroneously omits these law-defined existing permit exempt wells from the rule. The law included existing permit exempt wells in it and so must the rule to be in compliance with the law. The rule needs to research and provide estimates for how many existing permit exempt wells will be reduced from 5000 gallons to 500 gallons under the rule. Without that information, this rule has left out vital information on the impact of RCW 90.94 on allowed water usage by existing permit exempt wells and the effect on any needed offsets for forecasted new permit exempt wells water usage.

14) I've heard there is a WRIA1 pilot trying moving a surface water withdrawal to a groundwater withdrawal. If so, I would appreciate more information on this as it seems the rule is reducing groundwater use while other processes are looking at increasing groundwater use.

Thank you for the opportunity to comment.

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