

WASHINGTON STATE DEPARTMENT OF ECOLOGY

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Public Hearing Location:  
Fairhaven Middle School, Commons Area  
118 Parkridge Road  
Bellingham, Washington 98225

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PUBLIC HEARING

JANUARY 7, 2020

RE: PROPOSED RULE FOR CHAPTER 173-502 WAC,  
INSTREAM RESOURCES PROTECTION PROGRAM  
NOOKSACK WATER RESOURCE INVENTORY AREA 1

PAGES 1 THROUGH 13

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1 MS. BALLARD: I'm Laura Ballard, Hearing  
2 Officer for this hearing. This evening we're  
3 conducting a hearing on the proposed amendments for  
4 Chapter 173-501 WAC, Instream Resources Protection  
5 Program, Nooksack Water Resource Inventory Area 1.

6 Let the record show it's 6:35 on January 7th,  
7 2020, and this hearing is being held at Fairhaven  
8 Middle School, Commons Area, Bellingham, Washington.

9 Legal notices of this hearing were published  
10 in the Washington State Register December 4th, 2019,  
11 Washington State Register Number 19-23-084. In  
12 addition, notices of the hearing were emailed to  
13 approximately 1,600 interested people, and a news  
14 release was issued on November 19th, 2019, and notice  
15 was also published in the following papers on November  
16 22nd, 2018: Bellingham Herald and Skagit Valley  
17 Herald.

18 Ruth will be calling up people to provide  
19 testimony in random. Once everyone who has indicated  
20 that they would like to testify has had the  
21 opportunity, I'll open it up for others as time allows.

22 Remember, comments should be about three  
23 minutes. When you reach the 30 seconds, Barbara will  
24 display a yellow circle. When your time is up, she'll  
25 show a red circle, and the timer will sound. Please

1 summarize your comments so that the next person can  
2 come to testify.

3 When you step up to the front, please state  
4 your name, and if you haven't given us contact  
5 information, please do so. You can also provide this  
6 after the hearing.

7 Please speak clearly so we get a good  
8 recording of your testimony.

9 MS. BELL: Okay. I apologize in advance if I  
10 mispronounce your name, and I'm going to call you  
11 randomly. I'll just do it one at a time. Come on up  
12 and use the microphone. So let's start with Mary Kay  
13 Robinson.

14 MS. ROBINSON: This time I'll use glasses.  
15 Mary Kay Robinson. I live here in Bellingham. There  
16 was originally agreement amongst the various caucuses  
17 for the update to the watershed plan. It was not  
18 unanimous, you're correct. But when does a major piece  
19 of legislative action happen that we don't have -- do  
20 we always have unanimous approval for those kinds of  
21 actions? It's pretty rare.

22 So if you look at the majority-approved plan,  
23 but then there was a decision to drastically reduce  
24 both the daily use by an 83 percent limit and outside  
25 irrigation to limit it to 1/12th of 1 acre. That's

1 about 3,600 square feet, which is about the size of a  
2 city lot. It doesn't make a lot of sense.

3 The rationale certainly can't be based on the  
4 WRIA districts on the Peninsula. They have less than  
5 half of the precipitation of the Nooksack Watershed,  
6 but we're imposing the same limits here in Whatcom  
7 County. That WRIA has less than half the water. We  
8 have double. That makes no sense.

9 Then there's the arid Walla Walla Region.  
10 They have a withdrawal limit that's 2 1/2 times more  
11 than that which you're proposing for Nooksack. Again,  
12 this doesn't make sense.

13 There doesn't seem to be a rhyme or reason  
14 with the numbers you're assigning here, proposing those  
15 withdrawal limits and irrigation areas.

16 So another thought is to make the withdrawal  
17 limit for the Nooksack area similar to other WRIAs that  
18 have the same precipitation, the same physical  
19 characteristics, an apples-to-apples treatment of the  
20 issue. Now that makes sense.

21 An example can be the WRIA 5 Stillaguamish  
22 area. The County has stayed up to date with their  
23 rule-making, and their withdrawal limit is 5,000  
24 gallons a day. Given the similarities, shouldn't the  
25 Nooksack Watershed be given similar limits? What is

1 the rationale for not having the same limits here when  
2 in comparison -- we're looking again apples-to-apples.  
3 With similar circumstances and characteristics, the  
4 outcomes, shouldn't they be roughly the same? Isn't  
5 that what makes sense? Why propose that the Nooksack  
6 area have 1/10th of the allowed water withdrawal to a  
7 similar WRIA in the state. On top of that, proposing  
8 limitation of the outside irrigation to 1/12th of an  
9 acre, the logic just escapes me here.

10 There needs to be an equitable assessment of  
11 WRIA 1 and the rule-making that needs to have a logical  
12 and factual basis, again comparing with other things in  
13 the state. What has been proposed here seems arbitrary  
14 and does not make sense.

15 I look forward to the Department  
16 incorporating our input and amending the rules  
17 accordingly.

18 MS. BELL: Okay, Max Perry.

19 MR. PERRY: Max Perry. I'm from Whatcom  
20 County. I've been on the Planning Unit since it began  
21 here -- I've been working on it since '91. We just got  
22 word today at the meeting we had that there were 23  
23 houses built that required exempt wells all of 2019,  
24 all of last year. In 2018 there were eight.

25 So I would defy any that require metering

1 (indiscernible words) that -- to even measure -- even  
2 measure the amount of water that comes from those  
3 wells.

4 So we have a well. We have a septic system  
5 on our well. We've been there for 50 years, 51 years.  
6 And the water -- all the water that we use in the house  
7 and that we use outside -- we have quite a large garden  
8 and we water that in the summertime because to grow  
9 things, you have to keep water on it. And most of that  
10 water, except for the irrigation part of it, partly  
11 there's some evaporation in that, but the rest of the  
12 house water, I would estimate that 85 to 90 percent of  
13 that goes right back in my septic tank, goes back in  
14 the aquifer, goes back -- we're adjacent to Deer Creek,  
15 and it goes eventually back in Deer Creek through the  
16 ground and purified from that.

17 So all I'm saying is that with this number of  
18 wells that's been dug in two years -- and granted, you  
19 have to go for 20 years, and I don't see a large number  
20 -- a large increase happening on that -- because of the  
21 things they have -- between the County and the City and  
22 the growth of the -- how much are going to  
23 (indiscernible word) in the County, so I don't think  
24 (indiscernible words), and I would just recommend that  
25 the gallons go back to what we have for the existing

1           5,000 gallons per day. Thank you.

2                   MS. BELL: Okay, Oliver. Can I have your  
3 last name?

4                   MR. GRAH: Grah.

5                   MS. BELL: Grah, Oliver Grah.

6                   MR. GRAH: Yes, my name is Oliver Grah, and  
7 I'm here to provide comment as an individual. I am the  
8 Water Resource Program Manager for the Nooksack Indian  
9 Tribe, but I'm not here to represent policy on behalf  
10 of the Tribe.

11                   I would like to say that I'm generally  
12 supportive of the draft rule. It's movement in the  
13 right direction. Water resources are limited in the  
14 Nooksack basin, and when references are made to all of  
15 the precipitation that falls in the watershed, that  
16 precipitation, the excess precipitation, shows up as  
17 peak flow in the wintertime when there isn't a high  
18 demand for water use. And stream flows are quite low  
19 during the summertime when there is a high demand. So  
20 I wanted to make that point.

21                   Another point I'd like to make is that the  
22 WRIA 1 Watershed Management Board also provided quite a  
23 bit of technical input into this process, and I just  
24 want this audience to understand and recognize all of  
25 that work that the Management Board put into the

1 process as well.

2 When I say that I'm generally supportive of  
3 the draft rule, there are some exceptions. And a lot  
4 of our comments -- when I say our, the Nooksack Indian  
5 Tribe's comment letter on the preliminary draft rule --  
6 there's a lot of technical information in that letter  
7 that we don't see how it was taken into consideration  
8 going through the preliminary draft rule to the draft  
9 rule.

10 And we'd love an opportunity to talk with  
11 Ecology in the detail about the path from the  
12 preliminary draft rule to the draft rule in regard to  
13 all of our technical comments that we brought up.

14 And again, I appreciate our collaborative  
15 relationship with Ecology and the great work that the  
16 staff does. And again, in summary, I believe that this  
17 draft rule is a step in the right direction in terms of  
18 more effective management of water resources in the  
19 Nooksack Basin. Thank you.

20 MS. BELL: Okay, Brad Hanks.

21 MR. HANKS: Brad Hanks, Bellingham.  
22 Washington groundwater law divides permit exempt uses  
23 into four distinct categories: Single or group  
24 domestic use, non-commercial watering of 1/2 acre or  
25 less, stock watering and industrial uses.



1 Domestic use, single and group, as well as  
2 industrial uses, are limited to 5,000 gallons per day.  
3 The Washington Supreme Court has ruled that each of  
4 these uses are individual and are not aggregated uses  
5 on a single parcel. In other words, you can have both  
6 domestic water limited to 5,000 gallons per day and  
7 unlimited for your non-commercial agricultural  
8 pursuits.

9 The Stream Flow Restoration Act, the act the  
10 proposed rule is supposed to implement, pertains to  
11 domestic use only. The Department seems to recognize  
12 this fact, as they state that outdoor domestic use is  
13 in addition to indoor, but it is not regulated.

14 They go on, however, and limit the amount of  
15 area that can be irrigated for lawn or garden to only  
16 1/12th of an acre.

17 The conclusion is that the rule goes so far  
18 as to recognize the outdoor watering for non-commercial  
19 uses is appropriate, but also it attempts to limit the  
20 amount of acreage a household can use when the  
21 legislature has granted 1/2 acre in another statute.  
22 This is not appropriate. Thank you.

23 MS. BELL: Okay, would anyone else like to  
24 provide testimony tonight. Yes?

25 MS. SABEL: Kathy Sabel, Bellingham. I

1           wasn't sure if this was really a Q&A or a comment  
2           because this rule is only for new permit-exempt wells.  
3           The ESSB 6091 said if you didn't meet the criteria for  
4           water well construction -- and there's a code for that  
5           -- then that would also be subject, those existing  
6           wells, to change on the water withdrawal and the fees  
7           whenever a building permit was applied for.

8                         And Whatcom County has put that requirement  
9           in their code. So the question is I'm not clear how  
10          this rule, which only applies to new permit-exempt  
11          wells, interacts with what the County has in their  
12          code. Will the County have to change their code to  
13          only be applying to new permit-exempt wells? Do we no  
14          longer have existing wells in the mix, the  
15          permit-exempt existing wells?

16                        I would love to have that clarified. Thank  
17          you.

18                        MS. BELL: Anyone else? Does anyone else  
19          want to provide testimony?

20                                 (No audible response.)

21                        MS. BALLARD: If you'd like to send Ecology  
22          written comments, please remember they're due by  
23          January 17th, 2020. We accept written comments in the  
24          following ways: Here at the hearing, by mail or online  
25          using our online comment form. To get instructions on

1           how to comment by mail or online, please pick up one of  
2           the Ecology handouts on the back table. This  
3           information is also available on our website, or you  
4           can contact Annie Sawabini.

5                       All testimony received at this hearing, as  
6           well as other hearings to be held in Lynnwood and Mount  
7           Vernon, and along with all written comments online and  
8           mail postmarked no later than January 17th, 2020, will  
9           be part of the official hearing record for this  
10          proposal.

11                      Ecology will send notice about the Concise  
12          Explanatory Statement, or CES publication, to everyone  
13          that provided written comments or oral testimony on  
14          this rule proposal and submitted contact information,  
15          everyone that signed in for today's hearing that  
16          provided an email address and other interested parties  
17          on the Agency's mailing list for this rule.

18                      The CES will, among other things, contain the  
19          Agency's response to questions and issues of concern  
20          submitted during the public comment period.

21                      If you'd like to receive a copy but did not  
22          give us your contact information, please let one of the  
23          staff know at this hearing or contact Annie Sawabini at  
24          the contact information provided for submitting  
25          comments.

1                   The next step is to review the comments and  
2                   make a determination whether to adopt the rule. The  
3                   Ecology Director will consider the rule documentation  
4                   and staff recommendations and will make a decision  
5                   about adopting the proposal.

6                   Adoption is currently scheduled for May of  
7                   2020. If the proposed rule should be adopted at that  
8                   time and filed with the Code Reviser, it will go into  
9                   effect 31 days later.

10                  If we can be of any further help, please do  
11                  not hesitate to ask, or you can contact Annie or Kasey  
12                  if you have other questions.

13                  On behalf of the Department of Ecology, thank  
14                  you for coming. I appreciate your cooperation and  
15                  courtesy.

16                  Let the record show that the hearing is  
17                  adjourned at 6:59.

18                                 (END OF RECORDING.)

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C E R T I F I C A T E

I, MARY JEAN BERKSTRESSER, a Certified Court Reporter in and for the State of Washington, residing at Olympia, Washington, do hereby certify:

That the foregoing proceedings were electronically recorded; that I was not present at the proceedings; that I was requested to transcribe the electronically-recorded proceedings; that a transcript was prepared by me by listening to the recorded proceedings;

That the foregoing transcript, consisting of pages 1 through 13, is a full, true and complete transcript of all discernible and audible remarks;

That as a CCR in this state, I am bound by the Rules of Conduct as codified in WAC 308-14-130. All transcription arrangements and fees in this case are offered to all parties on equal terms;

That I am not a relative, employee, attorney or counsel of any party to this action, or a relative or employee of any such attorney or counsel, and I am not financially interested in the outcome thereof;

DATED AND SIGNED this 20th day of January, 20

*Mary Jean Berkstresser*

Mary Jean Berkstresser  
Washington State Certified Court Reporter  
CCR No. 2671

