

Center for Environmental Law & Policy (Chris Wilke)

January 18, 2026
Danielle Gallatin
Rulemaking Lead
Department of Ecology
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Re: Center for Environmental Law & Policy (CELP) comments on Department of Ecology's proposed amendments to WAC 173-507, WAC 173-508, WAC 173-513, WAC 173-514, WAC 173-515

Dear Ms. Gallatin,

The Center for Environmental Law & Policy (CELP) respectfully submits these comments on Department of Ecology (Ecology)'s rulemaking for proposed amendments to WAC 173-507 (WRIA-7, Snohomish Watershed), 173-508 (WRIA 8, Cedar-Sammamish Watershed), 173-513 (WRIA 13, Deschutes River Watershed), 173-513 (WRIA 13, Deschutes River Watershed), 173-514 (WRIA 14, Kennedy-Goldsborough Watershed), 173-515 (WRIA 15, Kitsap Peninsula), together: the "Five WRIsAs" in this concurrent rulemaking process. For the sake of convenience we are submitting the same comment letter for each of these processes to ensure our comments are appropriately in the record.

Though CELP was not able to fully participate in the processes for each of the five WRIsAs, based on what we have been able to ascertain, CELP believes that the proposed rules for the five WRIsAs do not fully reflect the work of the corresponding Watershed Restoration and Enhancement Committees (WRECs), and in some cases represent a step backwards from the work they did. CELP believes that these five draft rules do not fully implement the goals of the corresponding section of the Streamflow Restoration Act RCW 90.94.030(4) ("the statute"). CELP concurs with other commenters that this expedited approval process is problematic and should be reopened with a more thorough commitment to achieving the streamflow protection goals and net ecological gain as outlined in the statute as well as public participation standards.

The projected growth in new exempt wells which would be constructed within the five WRIsAs over 20 years will likely have a net-negative impact on streamflows and habitat without additional calibrated conditions for metering, monitoring and mitigation of those impacts. This will also be a moving target if metering of water withdrawal rates is not in place. Experience tells us that a response mechanism for verifying underperforming elements or non-compliance would also be necessary. Indeed, Ecology is keenly aware that statutory and regulatory goals for many aspects water protection work around the country are often missed when implementation and performance verification of required mitigation is allowed to slip. Goals and a to-do list are not enough.

Consistency with RCW 90.94.030 "Authorization for new domestic groundwater withdrawals exempt from permitting with a potential impact on a closed water body and potential impairment to an instream flow..."

In 2018, the Washington Legislature passed the Streamflow Restoration Act, RCW 90.94.030 (4) in response to Supreme Court decisions that held that state and local governments could not allow the proliferation of new wells that were exempt from water rights permits as the sources of water for

new development projects if those wells would impair existing water rights, including instream flows. In the statute, the Legislature authorized the conditional approval for these permit-exempt wells, provided that community and stakeholder-based watershed committees developed estimates on the impacts of these wells, and strategies to offset those impacts and an ultimate goal of net ecological gain.

Based on information available to us, CELP believes the final plans developed by Ecology are inconsistent with the goals of RCW 90.94.030 (4). Specifically, the statute states the following three points (our comments follow each sub section below):

Section (3) (a) "The watershed restoration and enhancement plan should include recommendations for projects and actions that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids".

CELP Comments:

CELP asserts that approval of new building permits that include permit-exempt wells will in sum constitute significant and actual withdrawals of groundwater resources over 20 years in the five WRIAs. However, the proposed final Watershed Plans dwell in the theoretical and do not fully articulate and ensure performance of a plan for implementing specific "recommendations that will measure, protect, and enhance instream resources and improve watershed functions that support the recovery of threatened and endangered salmonids", as called for in the statute. As such, we will have near certainty of significantly increased withdrawals, a limited idea as to their extent due to lack of well monitoring, and yet no certainty as to their design and implementation, and importantly, no verification of their performance toward mitigation targets necessary to offset the impacts. CELP believes that with worsening climate induced drought patterns, that this is a recipe for disaster. At a minimum Ecology should revise the rule to include specific performance measures, verification systems and/or enforcement here. Is Ecology prepared or able to halt development of new wells if targets are not being met?

The inclusion of green stormwater infrastructure in mitigation, while valuable as mitigation and useful for groundwater recharge overall, is highly variable, due to precipitation fluctuations, site selection, site-level performance and maintenance. Ongoing monitoring and adaptive management would be key to assuring their usefulness in meeting targets. Would designers of these sites have specific performance targets, or would they become part of a project mitigation checklist for developers or counties? What is the long term monitoring for these and other mitigation sites?

CELP does not see assurances at an individual site-level or watershed level that these projects will perform as they are intended for a 20-year period. What measures would be employed to come back to the drawing board if mitigation sites failed to perform to expectations? What will be the State's, tribes, and/or the community's recourse if these projects underperform or are not maintained beyond the construction and permitting phase?

Section (3) (b) "At a minimum, the plan must include those actions that the committee determines to be necessary to offset potential impacts to instream flows associated with permit-exempt domestic water use. The highest priority recommendations must include replacing the quantity of consumptive water use during the same time as the impact and in the same basin or tributary".

CELP Comments

Here we again revisit the reliance on stormwater infrastructure, which again CELP concedes is valuable for groundwater recharge. However, there is a major risk in the timing of precipitation for this purpose, as typical in the Pacific Northwest the driest and hottest period is July-September, which coincides with lowest stream flows, highest temperatures, and the freshwater arrival of some returning salmonids such as Chinook salmon, sockeye salmon, summer-run chum salmon, pink salmon, summer steelhead, and sea-run cutthroat trout, as well as year-round residency for certain juvenile or resident salmonids (rainbow trout/steelhead, resident cutthroat trout, kokanee, coho salmon, mountain whitefish, bull trout). And yet, the most significant opportunity for precipitation comes at least a month or two afterwards, in late October-December, well after the period of acute exposure to the lowest flows. Due to the fact that the need is greatest in summer, and the mitigation is generally in the latter part of fall and winter, CELP believes this strategy is wholly inconsistent with RCW 90.94.030.

Section (3) (c) "Prior to adoption of the watershed restoration and enhancement plan, the department must determine that actions identified in the plan, after accounting for new projected uses of water over the subsequent twenty years, will result in a net ecological benefit to instream resources within the water resource inventory area".

CELP Comments

While the goals of the statute are clear throughout, if there was any ambiguity elsewhere in its detail, here that statute is abundantly clear. To paraphrase for brevity: Ecology must determine that the actions identified in the plan will result in a net ecological benefit. This is a high bar. CELP reads this to apply to all sections of the rule and the watershed plans, and that Ecology must provide the necessary detail to ensure this goal is met. The only way to connect the dots here is to have an implementation, monitoring, performance, assessment and correction strategy, which is not clear in the proposed rules. Compliance standards and enforcement would be one way to do this, but if Ecology has another idea on how to ensure performance over time, it must make it clear for these plans to have a chance at achieving the goal of the statute.

The December 17, 2024 order adopting the final Five Watersheds Plans contains the statement:

"...these projects are well integrated with existing and current watershed protection and restoration efforts and include a robust implementation and adaptive management strategy that clearly indicates local intent to implement the plan". As we've indicated above we do not believe the plans contain a robust implementation and adaptive management strategy.

For the reasons stated above, we request that Ecology suspend the accelerated rulemaking aiming for adoption of the five rules by March, re-engage with tribes and stakeholders in the five WRIAs, and come forward with proposed rule revisions that ensures performance of the plans, reflects the wishes of people in the watersheds, the needs of salmonids including threatened and endangered species, and implements the goals of the Streamflow Restoration Act with an eye to net ecological gain and assurance of calculated mitigation performance, RCW RCW 90.94.030 (4).

Process Considerations:

CELP understands the proposed rule revisions do not include certain other recommendations of the WRECs, which enjoyed broad or unanimous support (at least for certain provisions in the case the Deschutes - WRIA 13). Were other recommendations discarded or replaced like in WRIA 13?

CELP also understands there was incomplete public notification prior to the publishing and

approval of the five plans in December 2024. These plans, once approved, seemed to be off the table for public and tribal input, despite an incomplete notification and abbreviated public comment process. Some stakeholders and tribes have indicated a lack of response to questions during the interim period which raises further concerns.

If Ecology unilaterally made changes to stakeholder-produced documents, without an open consultative process, did Ecology not overstep APA procedural requirements for prior consultation with stakeholders and tribes? And did Ecology not skip the opportunity and requirement for consideration of alternatives and/or economic analyses of the impacts? CELP believes this may be strong grounds to reopen both the five Watersheds plans and rulemaking, and requests Ecology to do so.

CELP looks forward to the opportunity for more community engagement and consideration before a hasty approval is completed.

Thank you for your consideration,

Chris Wilke,
Executive Director