



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# **Revised Small Business Economic Impact Statement**

---

**Chapter 173-539A WAC  
Water Resources Program for the Upper  
Kittitas Ground Water Area**

December 2010  
Publication no. 10-11-034

## Publication and Contact Information

This report is available on the Department of Ecology's website at [www.ecy.wa.gov/biblio/1011034.html](http://www.ecy.wa.gov/biblio/1011034.html)

For more information contact:

Water Resources Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Phone: 360-407-6872

Washington State Department of Ecology - [www.ecy.wa.gov](http://www.ecy.wa.gov)

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Yakima 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

*To ask about the availability of this document in a format for the visually impaired, call the Water Resources Program at 360-407-6872. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

# **Revised Small Business Economic Impact Statement**

---

## **Chapter 173-539A WAC Water Resources program for the Upper Kittitas County Ground Water Area**

Water Resources Program  
Washington State Department of Ecology  
Olympia, Washington

*This page is purposely left blank*

# Table of Contents

Introduction.....	1
Analysis of Compliance Costs for Washington Businesses .....	1
Water Rights Administration under the Rule.....	2
Surface water .....	2
Groundwater permits .....	2
New groundwater appropriations .....	2
Changes and transfers of water rights .....	2
Impacts to Businesses in the Upper Kittitas Groundwater Area.....	3
Impacts to businesses dependent on groundwater.....	3
Costs to Firms and Required Professional Services .....	3
Reporting and recordkeeping .....	4
Additional professional services.....	4
Equipment, supplies, labor, and increased administrative costs .....	4
Other compliance requirements.....	4
The SIC Codes of possible Impacted Industries .....	5
Framework for Analyses under RCW 19.85.....	5
Quantification of Costs and Ratios .....	6
Revenue Impacts.....	6
Distribution of compliance costs .....	6
Known costs .....	6
Will the rule impose more than minor costs (Step 1)?.....	6
Will the rule cause businesses to lose sales or revenue (Step 2, part 1)? .....	7
Will the rule have a disproportionate impact on small businesses (Step 2, part 2)?.....	7
Conclusions on Steps 1 and 2.....	8
Actions Taken to Reduce the Impact of the Rule on Small Business (Step 3).....	9
The Involvement of Small Business in the Development of the Proposed Rule Amendments .....	10
Impacts on Jobs.....	11
Appendix: Proposed Rule (Chapter 173-539A WAC) .....	12



# Introduction

The Washington State Department of Ecology (Ecology) is adopting Chapter 173-539A WAC - Water Resources Program for the Upper Kittitas County Groundwater Area to prevent additional adverse effects on flows and senior water rights in the Yakima River and its tributaries. The rule withdraws all unappropriated ground water in accordance with RCW 90.54.050(2) due to insufficient information. A ground water study the Legislature funded in 2009 will be performed. Ecology signed an agreement with USGS on November 29, 2010.

The Groundwater Code, Chapter 90.44 RCW, is supplemental to Chapter 90.03 RCW, which regulates the surface waters of the state. The Legislature enacted the Groundwater Code to extend the application of such surface water statutes to the appropriation and beneficial use of groundwater within the state.

Ecology is developing and issuing this updated Small Business Economic Impact Statement (SBEIS) as part of its rule adoption process and to meet Chapter 19.85 RCW. Ecology has decided to revise its June 2010 SBEIS and reissue this December 2010 Revised SBEIS in light of input received during the public comment during the rule and in order to consider additional information obtained by Ecology as it has implemented a nearly identical Emergency Rule between July 2009 and the present. Ecology uses the information in the SBEIS to inform the agency's rulemaking decision.

The key elements of the rule include:

- Withdrawal of all unappropriated groundwater
- An exception from the withdrawal for new ground water uses that mitigate the consumptive use.
- Measuring and reporting new groundwater withdrawals.

## Analysis of Compliance Costs for Washington Businesses

We have assessed the impacts of the rule by analyzing and comparing the development of new groundwater appropriations under the rule, in contrast to practices occurring prior to July 16, 2009 (effective date of first emergency rule with nearly identical provisions as current rule). The current framework or "baseline" includes the establishment of new groundwater uses under the authority of the exemption from permitting (RCW 90.44.050) and without any mitigation and any administrative procedures for considering applications for both new water rights and changes to existing water rights. Chapter 90.44 RCW is also part of this legal baseline. Further discussion of the baseline can be found in the final Cost Benefit Analysis.

We provide a brief description of compliance requirements below.

## **Water Rights Administration under the Rule**

This rule withdraws all public groundwater from further appropriation. In addition, it provides an exception for new uses of groundwater, whether they require a permit or are permit-exempt, if the consumptive use under the new appropriation is mitigated by an equal amount of consumptive use associated with a senior surface water right placed into the Trust water right Program. To facilitate the process of obtaining mitigation, Ecology has established the Upper Kittitas Water Exchange and devoted administrative resources to processing requests for water budget neutral (WBN) determinations under WAC 173-539A-050.<sup>1</sup>

For more detail on changes to water right administration, see the Cost Benefit Analysis.

### **Surface water**

There are no changes under this rule to surface water right permit processing. In some cases, there may be expedited processing to place surface water rights into the trust water program. Ecology may also issue new surface water permits where trust water rights are held for mitigation purposes in the Yakima pilot water bank.

### **Groundwater permits**

Ecology may also issue new groundwater permits when trust water rights are held for mitigation purposes in the Yakima pilot water bank. This cannot occur, absent case-by-case review, until Ecology reaches a new agreement with the Yakima Nation and the U.S. Bureau of Reclamation that replaces or amends the 1999 settlement agreement. Developers and new water users are required to provide mitigation prior to obtaining permission to use water, whether the proposed use requires a water right permit or is exempt from permitting. All new withdrawals within the Upper Kittitas Groundwater Area must meter.

### **New groundwater appropriations**

This rule formally withdraws groundwater from further appropriation. An exception is made for new withdrawals which offset or mitigate their impact to the total water supply available through acquisition of a senior water right. Developers and new water users are required to provide mitigation prior to obtaining permission to use water, whether the proposed use requires a water right permit or is exempt from permitting. All new withdrawals within the Upper Kittitas Groundwater Area must meter.

### **Changes and transfers of water rights**

Ecology will continue to process changes and transfers of existing water rights as allowed by Chapters 90.03 and 90.44 RCW. The new rule does not affect these actions.

---

<sup>1</sup> <http://www.ecy.wa.gov/programs/wr/cwp/wtrxchng.html>

## **Impacts to Businesses in the Upper Kittitas Groundwater Area**

Businesses that do not require a new groundwater appropriation to function are not required to comply with the rule. New businesses that locate in the Upper Kittitas Groundwater Area and obtain the right to use established water rights are not required to comply with the rule. Businesses that are currently located in areas and that own established water rights are not required to comply with the rule. The proposed rule will not directly affect any existing businesses that own established water rights, nor will it directly affect future businesses that use an established water right.

Existing businesses located in the Upper Kittitas Groundwater Area or new businesses that relocate to the Upper Kittitas area that require new groundwater appropriations to function will be affected by the proposed rule. They will be affected by the rule because they will not be able to develop a new groundwater appropriation without first securing mitigation and they will be required to meter, report and record new covenants as provided in the rule.

### **Impacts to businesses dependent on groundwater**

As stated above, the proposed rule does not directly affect current or future businesses that will use existing water rights, whether they were established by permit or under the authority of the exemption from permitting. The rule does directly affect businesses who intend to develop a new groundwater supply after July 16, 2009, including both those intending to rely on the authority of the exemption from permitting to develop the new supply and those intending to rely on a permit to develop a new supply.

## **Costs to Firms and Required Professional Services**

As mentioned above, the business entities required to comply with the proposed rule are those that need to secure a new groundwater right in order to function. For those who require mitigation outside a current water right, they will likely need to employ or retain engineers, hydrogeologists, and possibly, legal counsel. Obtaining a new uninterrupted water use can be accomplished in a variety of ways:

- Purchasing and transferring pre-1905 water rights
- Taking part in the Yakima Pilot Water Bank
- Taking part in the Upper Kittitas Water Exchange
- Purchasing water from a seller with a water right, transporting it, and storing the water

These options are more fully described in the Cost Benefit Analysis.

For this analysis we will assume entities seeking new water will likely use the Upper-Kittitas Water Exchange as it provides the mitigation credit and a standard package of services at a fixed mitigation cost.<sup>2</sup> These services include setting up an escrow account, completing a water budget neutral request form, participation in the Water Transfer Working Group, collection of

---

<sup>2</sup> Water exchange

fees for the USBR-Ecology storage contract, and preparing and recording of covenants and the mitigation certificate. This exchange will likely offer both small and large entities equivalent costs by incorporating the costs of mitigation and the other services just listed into a single transaction.

In this analysis, Ecology considered costs to obtain mitigation borne by businesses needing to develop a new groundwater use as “costs of compliance.” It is not clear that these types of costs are the types of costs required to be considered by RCW 19.85.040(1). This is because they are not like the more traditional regulatory costs typically considered under RCW 19.85.040(1). In addition, when a business pays the costs of mitigation, they receive in return an obvious value – they receive mitigation backing from a senior right. The result is that the new water right established under the provisions of the new rule is much more valuable than a groundwater right established prior to the rule and not backed by mitigation. Rights established prior to the rule and not backed by mitigation are at risk of litigation and curtailment during water short years, whereas rights backed by mitigation as required by the rule are not. See Ecology’s Cost Benefit Analysis for additional discussion of this topic.

Although it is not clear that mitigation costs are “costs of compliance” under RCW 19.85.040(1), unless expressly specified below, Ecology considered them to be “costs of compliance” for purposes of its analyses.

### **Reporting and recordkeeping**

The proposed rule adds metering, reporting, and recordkeeping requirements for businesses using new groundwater withdrawals.

### **Additional professional services**

All additional professional services are included in the water exchange mitigation costs.

### **Equipment, supplies, labor, and increased administrative costs**

We expect small equipment, supplies, labor, and administrative costs in conjunction with the required meter installation and reporting.

### **Other compliance requirements**

Ecology does not anticipate additional compliance requirements.

# The SIC Codes of possible Impacted Industries

The industries listed below may be required to comply with the proposed rule. The following list shows Standard Industrial Codes<sup>3</sup> for businesses that may be affected in complying with the rule. This serves as a representative sample of potential future businesses that may be affected.

**TABLE 1. INDUSTRIES POTENTIALLY AFFECTED BY PROPOSED RULES  
(NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM)**

Deciduous Tree fruits	Code 0175
Fruit Farming	Code 111339
Horticulture nurseries	Code 1114
Storage/packing agricultural produce	Code 1151
Animal Production	Code 115210
Commercial greenhouses	Code 1114
Hatcheries	Code 1129
Mining, Mineral extraction	Code 21
Construction	Code 23
Land Subdivision and Development	Code 2331
Residential building construction	Code 2361
Nonresidential building construction	Code 2362
Land Subdivision	Code 2372
Manufacturing	Code 33
Produce Market	Code 445230
Fresh fruits and Vegetables	Code 5148
Accommodation & Food Services	Code 722310
Golf facility	Code 713910
Stables	Code 713990

## Framework for Analyses under RCW 19.85

Step 1. Under RCW 19.85.030(1), an agency is required to prepare a Small Business Economic Impact Statement (SBEIS) if the proposed rule will impose more than minor costs on businesses within an industry.

Step 2. If the analysis under Step 1 leads the agency to conclude that an SBEIS is required to be prepared, the purpose of the analysis under RCW 19.85.040, is to evaluate whether:

- The proposed rules could cause businesses to lose sales or revenue; and/or
- The proposed rules would have a disproportionate impact on small businesses.

---

<sup>3</sup> Ecology has used NAICS codes rather than Standard Industrial Codes (SIC). It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

Step 3. If the analysis under Step 2 leads to a conclusion by the agency that the proposed rule is projected to have a disproportionate impact on small businesses, then the law requires that the agency “where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses.” RCW 19.85.030(2).

## **Quantification of Costs and Ratios**

### **Revenue Impacts**

As noted previously, the rule affects businesses that intend to rely on new appropriations of groundwater.

### **Distribution of compliance costs**

Businesses would have costs equal to the cost of acquiring mitigation, metering and reporting. These businesses are required to comply with the rule if they would rely on a new appropriation of groundwater. They could avoid these costs if they were to locate in an area with an existing water service, such as a municipal or public water supply system or obtain an existing water right and have it transferred to their property for their use.

### **Known costs**

Businesses that seek a new water use outside an established water right will have costs. Although a variety of options exist to acquire uninterrupted water, Ecology will use the estimated costs provided for the Upper-Kittitas Water Exchange as we recognize these costs as the lowest and easiest way to fully mitigate a new groundwater use. These costs are assumed to be:

- \$7,000 per residence
- \$1,000 for metering and reporting

For this analysis Ecology will use the estimated mitigation costs, metering and reporting for the analysis. This estimated cost is \$8,000.

### **Will the rule impose more than minor costs (Step 1)?**

To determine whether the costs of the rule are “more than minor,” RCW 19.85.020(2) defines “minor” as less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater. Here, using the projected costs of \$ 8,000 per parcel developed, we have concluded that the costs of the rule are “more than minor” because they are greater than one hundred dollars. We note that even if mitigation costs were not considered a cost of compliance, the estimated costs of metering and record-keeping of \$1,000 per parcel developed would also represent costs to businesses that are “more than minor.”

Based on this analysis, we proceed to Step 2, which involves determining whether the rule could cause businesses to lose sales or revenues and whether the proposed rule is projected to have a disproportionate impact on small businesses.

## **Will the rule cause businesses to lose sales or revenue (Step 2, part 1)?**

Ecology does not believe compliance with this rule will cause businesses to lose sales or revenue. Although some businesses will have increased input costs to their product, like in industry 2372 (Land Subdivision), the end product will have superior value compared to properties developed prior to the rule without a mitigated water right.

Properties with a fully mitigated pre-1905 water right will be worth more in risk reduction (lower risk of litigation and lower risk of curtailment during water short years) to the owners of those properties, and to businesses involved in marketing those properties. As a result, businesses associated with such mitigated properties should have increases in revenue and possibly more sales. Businesses that do not seek a new water right will be unaffected by the rule.

## **Will the rule have a disproportionate impact on small businesses (Step 2, part 2)?**

For the purpose of evaluating whether the proposed rule is projected to have a disproportionate impact on small businesses, Ecology will create an example in industry 2372 (Land Subdivision) of two different companies. The first company has 2 employees (Business A), and the second company has 20 employees, making the second company (Business B) fall into the 10% of the largest businesses that must comply with the rule. We have selected this example based on our knowledge of actual businesses that operate in the Upper Kittitas area and that have used the services of the Kittitas Water Exchange. Using this example, both businesses would be defined as small businesses under RCW 19.85.020 (3) (which defines small business as one with fifty or fewer employees). Again, based on Ecology's knowledge of actual businesses that operate in the Upper Kittitas area and that have used the services of the Kittitas Water Exchange, it is our conclusion that most, if not all, businesses that will comply with the rule will be considered small under the "fifty or fewer employees" definition. As a result, in order to determine whether the proposed rule is projected to have a disproportionate impact on small businesses as contemplated by RCW 19.85.040, Ecology will compare the cost impacts to the smaller of the two example companies (Business A) with the costs impacts to the larger of the two example companies (Business B). RCW 19.85.040(1) identifies cost per employee, cost per hour of labor, and cost per one hundred dollars of sales as three possible bases that may be used to compare costs. Because Ecology lacks specific information about actual businesses, Ecology is unable to utilize either cost per hour of labor or cost per one hundred dollars of sales. Therefore, Ecology has used the "Cost per employee" to evaluate whether there are disproportionate cost impacts. For this example we will not contemplate how many residences each company may develop; we will assume each company will develop one property. If both companies each develop 1 property, the cost impacts per employee can be seen in Table 2.

**Table 2. Proportional Costs to Businesses**

	Estimated Costs per residence	# of Employees		Cost Per Employee	
		Small Business (A)	10% Largest Business (B)	Small Business (A)	10% Largest Business (B)
<b>Cost of mitigation, metering and reporting</b>	\$8,000	2	20	<b>\$4,000</b>	<b>\$400</b>

The estimated cost per employee for small business (Business A) is \$4,000, and for the top ten percent of largest businesses (Business B) is \$400.

In this example, the data suggests that the impacts of the proposed rule will impose disproportionate costs to small businesses under a large range of scenarios.

We note that even if mitigation costs were not considered a cost of compliance, the estimated costs of metering and record-keeping of \$1,000 per-parcel-developed applied on a “per employee” basis would also suggest a disproportionate impact to the smallest businesses, although the impact would, of course, be of a lesser magnitude. Thus, under this alternative scenario, the cost per employee for Business A is \$ 500 and for Business B is \$ 50.

Under either scenario, using the cost per employee tool, the costs to Business A are ten times greater than the costs to Business B.

However, there is also clearly a very large net benefit to those who are required to comply with the proposed rule. As explained above, new water rights established under the provisions of the new rule are much more valuable than groundwater rights established prior to the rule and not backed by mitigation. The new rights are not likely to be subject to litigation and curtailment in water short years while the rights not backed by mitigation are likely to be subject to litigation and curtailment in water short years.

## **Conclusions on Steps 1 and 2**

This rule requires new uses of groundwater to be mitigated by an equal amount of consumptive use under a senior water right. The rule affects businesses that are seeking new appropriations of groundwater. All currently established businesses using an established water right are not required to comply with the proposed rule. All new groundwater appropriations within the Upper Kittitas Groundwater Area must fully mitigate for their water use and meter.

Ecology has identified the costs of compliance to include the costs of mitigation and the costs of metering and reporting. Ecology has used known costs obtained from experience of those new water users that have complied with the nearly identical emergency rule over the past 18 months. If mitigation is considered a cost of compliance the total typical compliance cost per-parcel-developed is assumed to be \$8,000. If mitigation costs are not included, the total typical compliance cost per-parcel-developed is assumed to be \$1,000. Using these costs, Ecology has determined that they represent “more than minor” costs to businesses that comply with the rule.

Ecology has concluded that the rule will not cause businesses to lose sales or revenue. Businesses affected by the rule that develop new mitigated water rights are expected to have increases in revenue and possibly more sales (compared to those businesses that rely on unmitigated groundwater rights established before the effective date of the rule).

While Ecology cannot identify with absolute certainty which businesses will seek out a new groundwater appropriation in the future, Ecology has provided a list of industries that may elect to seek a new water appropriation. In addition, based on Ecology's knowledge of actual businesses that operate in the Upper Kittitas area and that have used the services of the Kittitas Water Exchange, Ecology developed a hypothetical scenario of two different sized businesses to evaluate whether the smaller of the two businesses would experience disproportionate costs. Under the example that was examined, Ecology concludes that the rule could impose disproportionate impacts on the smallest of the businesses that will comply with the rule.

## **Actions Taken to Reduce the Impact of the Rule on Small Business (Step 3)**

Ecology considered four alternative regulatory approaches when deciding whether to enact the rule. A more detailed discussion of these approaches can be found in the Least Burdensome Alternatives Analysis.

For the reasons explained in more detail in the Cost Benefit Analysis and Least Burdensome Alternatives Analysis, Ecology ultimately chose to withdraw the Upper Kittitas groundwater from future groundwater appropriations subject to the exception for fully mitigated rights. The mitigation provision allows new ground water uses to be authorized under either the authority of a permit or under the authority of the ground water permit exemption, in order to be used to meet new water needs. This alternative relies on the 2003 water banking provisions in the State's Trust Water Right Program to hold and manage senior water rights that serve as the consumptive use offset (mitigation) for the new ground water withdrawals. This alternative allows mitigation to be acquired in large amounts that can then be assigned through a crediting system for individual water users to purchase.

Because the proposed rule is projected to have a disproportionate impact on small businesses, Ecology is required, "where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, [to] reduce the costs imposed by the rule on small businesses." RCW 19.85.030(2).

As explained in the Least Burdensome Alternative Analysis, the first of the four regulatory options considered (no action) would not address the fundamentals of RCW 90.54.020, nor would it address the concerns that precipitated Ecology action. Likewise, the "no action" alternative would not meet the stated objectives of RCW 90.54.020 and 90.54.050(2).

The remaining three alternatives (2-4) would meet the stated objectives of RCW 90.54.020 and 90.54.050(2). However, a 2009 Attorney General's Opinion determined that Ecology was without legal authority to implement the second alternative, making that alternative unavailable to the agency.

As between the remaining two alternatives, Ecology selected the least burdensome (withdrawal with a mitigation exception rather than a withdrawal that did not include a mitigation exception).

In addition to selecting the least burdensome of the regulatory alternatives available to accomplish the stated objectives of RCW 90.54.020 and 90.54.050(2), Ecology also administratively worked to facilitate the establishment of the Kittitas water exchange, which now provides a streamlined approach to securing mitigation for new groundwater uses than what was previously available. On top of that, Ecology also invested substantial administrative resources to processing administrative determinations on water budget neutrality. Each of these actions has reduced the impact of the rule on small businesses.

## **The Involvement of Small Business in the Development of the Proposed Rule Amendments**

Ecology has been actively working on several regulatory approaches to the Upper Kittitas groundwater since late 2007. During this timeframe, Ecology has participated in numerous meetings (listening sessions, workshops, public meetings, individual meetings) that have included individual businesses and business associations. Ecology has also received correspondence from businesses and business associations. Ecology has considered input heard at these meetings and read in this correspondence as it developed the proposed rule.

More recently, engagement with business associations has been more formal when the Central Washington Homebuilders, the Kittitas County Realtors, and the Washington Groundwater Association organized a Water Resources Coalition. Since August 2010, Ecology has periodically communicated with Roger Weaver, co-chair of the Coalition. Ecology met with the Coalition representatives in two in-person meetings, one September 8, 2010, in Ellensburg and a second one in Yakima on November 4, 2010. These meetings and communications have focused on working together to refine the water exchange process and to help ensure that the water banking program in the Upper Kittitas area can be successfully incorporated into the land development review and permitting process. Ecology has also met with developers, attorneys, and potential water right exchange participants to help encourage successful development of the Upper Kittitas Water Exchange.

## Impacts on Jobs

Current businesses using a water right established before July 16, 2009, are not affected by this rule. Businesses that decide they want to establish a new groundwater water right will be affected. Ecology expects that these businesses may either utilize the services of the Kittitas Water Exchange (which, for a single fee, provides the necessary services into a single transaction) or may independently rely on land use planning professionals (planners, architects, hydrogeologists, and engineers) to help secure mitigation water and help prepare materials to show how their proposals meet the mitigation requirements described in the rule. Businesses may also rely on attorneys to develop the covenants that are required. Ecology has established a water exchange to assist businesses and individuals who want to establish new groundwater rights in obtaining mitigation credits.

Data gathered from Ecology's implementation of the near identical Emergency Rule indicates that to date, Ecology made fifty-one Water Budget Neutral determinations that were associated with plans to establish new groundwater rights under the authority of the exemption from permitting. Fifty of these fifty-one transactions utilized the Kittitas Water Exchange services. One of these transactions utilized independent services (which may have implicated the types of professional services described in the prior paragraph).

Portions of six job positions are associated with the work of the Kittitas Water Exchange and the agency's processing of Water Budget Neutral requests. This represents a minimal increase of jobs associated with the rule. Any increase in the use of professional services by developers who independently secure mitigation water and prepare materials to show how their proposals meet the rule's requirements is negligible given that the vast majority of developers are relying on the Kittitas Water Exchange.

Based on this analysis, Ecology projects that the rule will create a net increase in jobs, but that the increase is minimal.

# Appendix: Proposed Rule (Chapter 173-539A WAC)

The complete rule language for the Kittitas County Groundwater Area can be found in proposed Chapter 173-539A WAC. The following provides a brief description of the rule and further discussion of those specific rule provisions.

**TABLE 2. CHAPTER 173-539A WAC RULE MATRIX – NET CHANGES FROM NEW RULES TO ECOLOGY’S EXISTING REGULATORY PRACTICES**

<b>CURRENT STATUTE/REGULATION</b>	<b>PROPOSED RULE LANGUAGE</b>	<b>EFFECT OF CHANGE</b>
<p>None specific to Upper Kittitas County however, RCW 90.44 addresses regulation of public groundwaters.</p> <p><b>Chapter 90.44 RCW Regulation of public groundwaters</b></p> <p><b>RCW 90.44.020 Purpose of chapter.</b></p> <p>This chapter regulating and controlling groundwaters of the state of Washington shall be supplemental to chapter <a href="#">90.03</a> RCW, which regulates the surface waters of the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of groundwaters within the state.</p> <p><b>RCW 90.44.030 Chapter not to affect surface water rights.</b></p> <p>The rights to appropriate the surface waters of the state and the rights acquired by the appropriation and use of surface waters shall not be affected or impaired by any of the provisions of this supplementary chapter and, to the extent that any underground water is part of or tributary to the source of any surface stream or lake, or that the withdrawal of groundwater may affect the flow of any spring, water course, lake, or other body of surface water, the right of an appropriator and owner of surface water</p>	<p>Chapter 173-539A WAC-New rule</p> <p><b>WAC 173-539A-010 Purpose.</b></p> <p>The purpose of this rule is to withdraw from appropriation all unappropriated ground water within upper Kittitas County pending completion of a ground water study. New ground water withdrawals will be limited to those that are water budget neutral, as defined in this rule.</p> <p><b>WAC 173-539A-020 Authority.</b></p> <p>RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW</p>	<p>The proposed rule allows new uses of ground water where mitigation of consumptive quantity is offset by acquisition of a pre-1905 water right held in the trust water right reduce the number of new source ground water wells serving suburban residential development in rural upper Kittitas County.</p> <p>The rule withdraws from appropriation any ground water that that may exist above and beyond current appropriations. The effect compared to the pre-July 2009 baseline is to make new appropriation</p>

<p><u>shall be superior to any subsequent right hereby authorized to be acquired in or to groundwater.</u></p> <p>Current exempt well regulatory framework under RCW 90.44.050</p> <p>After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW <a href="#">90.44.052</a>, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the party making withdrawals of groundwaters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW <a href="#">90.44.090</a> may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.</p>	<p>90.44.050 authorizes ecology to establish metering requirements for permit-exempt wells where needed.</p>	
--	--	--

	<p><b>WAC 173-539A-025 Applicability.</b>  This rule applies to new uses of ground water relying on the authority of the exemption from permitting found at RCW 90.44.050, as defined in WAC 173-539A-030, and to any new permit authorizing the withdrawal of public ground water within the upper Kittitas area boundaries issued on or after July 16, 2009.</p> <p><b>WAC 173-539A-030 Definitions.</b>  The definitions provided below apply only to this chapter.</p> <p><b>"Applicant"</b> includes the owner(s) of parcels that are the subject of a land use application, a person making a request for water budget neutral determination, or a person requesting a permit to appropriate public ground water.</p> <p><b>"Common ownership"</b> means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between an applicant and any owner of a proximate parcel. A joint development arrangement is defined as involving significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting,</p>	<p>This rule affects all new appropriations of ground water in the Upper Kittitas area, whether they are based on the ground water permit exemption or a permit to appropriate ground water. Prior to the July 2009 emergency rule, no limitations other than the statutory limits were placed on users relying the ground water permit exemption.</p> <p>Clarifies new residential development requestor's or applicant's relationship with adjacent or proximate residential development(s) to determine whether the applicant's proposal is part of a group or project.</p>
--	---	--

	<p>design, engineering, architecture, plat or legal documents, financing, marketing, environmental review, clearing or preparing land, or construction (including road construction); covenants; agreements for common use of building materials, equipment, structures, facilities, lands, water, sewer, or other infrastructure.</p> <p><b>"Consumptive use"</b> of a proposed withdrawal is the total depletion that the withdrawal has on any affected surface water bodies.</p> <p><b>"Ecology"</b> means the department of ecology.</p> <p><b>"Exemption" or "ground water exemption"</b> means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.</p> <p><b>"Existing use of the ground water exemption"</b> means a use of ground water under the authority of the exemption from permitting where water was:</p> <ul style="list-style-type: none"><li>(a) First regularly and beneficially used prior to July 16, 2009; and</li><li>(b) The water right is perfected within the five years following the first regular beneficial use for that purpose. Water to serve a parcel that is part of a group use begun within five years of the date water was first regularly and beneficially used on one or more parcels in the group is an existing use if the group use remains within the limit of the permit exemption.</li></ul> <p><b>"Group use"</b> means use of the ground water exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development. It further includes use of the exemption for all parcels that are proximate and held in common ownership with a proposed new development. If a parcel that is part of a group use is</p>	<p>Clarifies Ecology's interpretation of the applicability of the proposed rule and how existing uses of the ground water permit exemption relate to applicability of the rule.</p>
--	--	---

	<p>later divided into multiple parcels more than five years following the first use, the new uses of the exemption on the resulting multiple parcels will be considered a separate group use distinct from the original group.</p> <p><b>"Land use application"</b> means an application to Kittitas County requesting a:</p> <ul style="list-style-type: none"> <li>Subdivision;</li> <li>Short subdivision;</li> <li>Large lot subdivision;</li> <li>Administrative or exempt segregation;</li> <li>Binding site plan; or</li> <li>Performance based cluster plat.</li> </ul> <p><b>"New use of the ground water exemption"</b> means a valid permit-exempt use of ground water begun on or after July 16, 2009. When an existing group use is expanded to serve a parcel in the future, the expanded use is a new use if it begins more than five years after the date water was first regularly and beneficially used for that purpose on any parcel in the group.</p> <p><b>"Parcel"</b> means any parcel, land, lot, tract or other unit of land.</p> <p><b>"Proximate"</b> means all parcels that have at least one of the following attributes:</p> <ul style="list-style-type: none"> <li>Share any common boundary; or</li> <li>Are separated only by roads, easements, or parcels in common ownership; or</li> <li>Are within five hundred feet of each other at the nearest point.</li> </ul> <p><b>"Proximate shortplat"</b> means a shortplat that would be considered a group use with another subdivision or shortplat.</p> <p><b>"Regular beneficial use"</b> means a use of water under the ground water permit exemption that is recurring or functioning at fixed, uniform, or normal intervals and is done in conformity with established</p>	
--	--	--

usages, rules, or discipline.

**"Total water supply available"** means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

**"Upper Kittitas County"** is the area of Kittitas County delineated in WAC 173-539A-990.

**"Water budget neutral project"** means an appropriation or project where withdrawals of public ground water are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use.

**WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County.** (1) Beginning on the effective date of this rule, all public ground waters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of ground water may occur, including those exempt from permitting, except:

(a) Uses of ground water for a structure for which a building permit is granted and the building permit application vested prior to July 16, 2009; and

(b) Uses determined to be water budget neutral under WAC 173-539A-050.

(2) The exception for water used at structures provided in subsection (1)(a) of this section shall not apply or shall cease to apply if the structure is not completed and a water system that uses the new

New appropriations of ground water are not allowed unless they fall under one of the exceptions to the rule in subsection (1)(a), (2), or (3).

	<p>appropriation is not operable within the time allowed under the building permit. This shall not in any case exceed three years from the date the permit application vested. The exception is to avoid potential hardship and does not reflect ecology's view on when the priority date for a permit-exempt water right is established.</p> <p>(3) Water to serve a parcel that is part of an existing group use is not a new appropriation or withdrawal if the water use to serve such parcel began within five years of the date water was first beneficially used on any parcel in the group, if the first use was prior to July 16, 2009, and the group use remains within the limit of the permit exemption.</p>	
	<p><b>WAC 173-539A-050 Water budget neutral projects.</b> (1) Persons proposing a new use of ground water shall apply to ecology for a permit to appropriate public ground water or, if seeking to rely on the ground water permit-exemption, shall submit to ecology a request for determination that the proposed permit-exempt use would be water budget neutral.</p> <p>(2) As part of a permit application to appropriate public ground water or a request for a determination of water budget neutrality, applicants or requestors shall include the following information:</p> <p>(a) Identification of one or more water rights that would be placed into the trust water right program to offset the consumptive use (as calculated pursuant to subsection (3) of this section) associated with the proposed new use of ground water;</p> <p>(b) A site map;</p> <p>(c) The area to be irrigated (in acres);</p> <p>(d) A soil report, if proposed discharge is to a septic system and the applicant or requestor proposes to deviate from the values in subsection</p>	<p>New appropriations of water are allowed only if they demonstrate water budget neutrality. Mitigation for consumptive losses by acquisition of a pre-1905 water right is required.</p>

	<p>(3) of this section;</p> <p>(e) A property covenant that prohibits trees or shrubs over the septic drain field; and</p> <p>(f) A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.</p> <p>(3) Consumptive use will be calculated using the following assumptions: Thirty percent of domestic in-house use on a septic system is consumptively used; ninety percent of outdoor use is consumptively used; twenty percent of domestic in-house use treated through a wastewater treatment plant which discharges to surface water is consumptively used.</p> <p>(4) Applications for public ground water or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:</p> <p>(a) A suitable trust water right is already held by the state in the trust water right program; and</p> <p>(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.</p> <p>(5) Applications to appropriate public ground water or requests for determination of water budget neutrality that do not include the information listed in subsection (2) of this section will be rejected and returned to the applicant.</p> <p>(6) To the extent that ecology determines that the mitigation offered would not reliably mitigate to be water budget neutral, ecology may deny the request or limit its approval to a lesser amount.</p>	
<p><b>WAC 173-52-050 -Criteria for priority processing of competing applications.</b></p> <p>(1) An application may be processed</p>	<p><b>WAC 173-539A-060 Expedited processing of trust water applications, and new water right</b></p>	

<p>prior to competing applications if the application resolves or alleviates a public health or safety emergency caused by a failing public water supply system currently providing potable water to existing users. Inadequate water rights for a public water system to serve existing hook-ups or to accommodate future population growth or other future uses do not constitute a public health or safety emergency. The application must be filed specifically to correct the actual or anticipated cause(s) of the public water system failure. To be considered a failing public water system, the system must meet one or more of the following conditions:</p> <p>(a) The department, upon notification by and in consultation with the department of health or local health authority, determines a public water system has failed, or is in danger of failing within one year, to meet state board of health standards for the delivery of potable water to existing users in adequate quantity or quality to meet basic human drinking, cooking and sanitation needs;</p> <p>(b) The current water source has failed or will fail so that the public water system is or will become incapable of exercising its existing water right to meet existing needs for drinking, cooking and sanitation purposes after all reasonable conservation efforts have been implemented; or</p> <p>(c) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is unacceptable for human use.</p> <p>(2) An application may be processed prior to competing applications if the department determines:</p> <p>(a) Immediate action is necessary for preservation of public health or safety; or</p> <p>(b) The proposed water use is nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment.</p>	<p><b>applications or requests for a determination of water budget neutrality associated with trust water rights.</b> (1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.</p> <p>(2) Ecology may expedite the processing of an application for a new water right or a request for a determination of water budget neutrality under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:</p> <p>(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.</p> <p>(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.</p> <p>(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be</p>	<p>Ecology may expedite processing of new applications, water right transfers, and water budget neutral requests in conjunction with management of this rule. Provides for expedited processing of: trust water right applications, and water budget neutral determination requests and new water right applications associated with mitigation of the consumptive impacts of a new water appropriation. The proposed use must be consistent with any agreement governing the use of the trust water rights. Currently, prior to July 9, 2009 Ecology was unable to process applications associated with trust water rights for the purpose of mitigating new uses. This is due to the large backlog of existing water right applications. This new provision will allow Ecology to priority process these applications and allow new water rights to be processed based on trust water right mitigation.</p>
--	--	---

<p>(3) An application for change or transfer to an existing water right may be processed prior to competing applications provided one or more of the following criteria are satisfied:</p> <p>(a) The change or transfer if approved would substantially enhance the quality of the natural environment; or</p> <p>(b) The change or transfer if approved would result in providing public water supplies to meet general needs of the public for regional areas;</p> <p>(c) The change or transfer was filed by water right holders participating in an adjudication, and a decision is needed expeditiously to ensure that orders or decrees of the superior court will be representative of the current water use situation.</p> <p>(4) Within each regional office, the department shall process applications satisfying the criteria in subsections (1) through (3) of this section in the following priority:</p> <p>(a) Public health and safety emergencies under subsection (1) of this section;</p> <p>(b) Preservation of other public health and safety concerns under subsection (2)(a) of this section;</p> <p>(c) Transfers or changes under subsection (3)(a) of this section;</p> <p>(d) Transfers or changes under subsection (3)(b) of this section;</p> <p>(e) Transfers or changes under subsection (3)(c) of this section; and</p> <p>(f) Nonconsumptive uses under subsection (2)(b) of this section.</p> <p>[Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-050, filed 2/27/98, effective 3/30/98.]</p>	<p>expedited.</p> <p>(4) Upon determining that the application or request is eligible for expedited processing, ecology will do the following:</p> <p>(a) Review the application or request to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.</p> <p>(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.</p> <p>(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and to accurately reflect any limitations or constraints in the trust water right.</p> <p>(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."</p>	
--	---	--

**RCW 90.03.360 Controlling works and measuring devices — Metering of diversions — Impact on fish stock.**

(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of

**WAC 173-539A-070 Measuring and reporting water use.** (1) For residential uses (domestic use and irrigation of not more than 1/2 acre of noncommercial lawn and garden) of ground water within upper Kittitas County that begin after July 8, 2008, a meter must be installed for each residential connection or each source well that serves multiple residential connections in compliance with the requirements of WAC 173-173-100. (2) For all other uses within upper Kittitas County that begin after November 25, 2009, including permit-exempt uses, a meter must be installed for each source well in compliance with such requirements as prescribed in WAC 173-173-100. (3) Water users must collect and report metering data to ecology within thirty days of the end of each recording period. The following table shows the recording periods and the due dates for each metering report:

Reporting Period	Due No Later Than
Oct 1-Mar 31	April 30
Apr 1-Jun 30	July 30
Jul 1- Jul 31	Aug 30
Aug 1 – Aug 31	Sept 30
Sept 1 – Sept 30	Oct 30

Requires new exempt well source metering county-wide after adoption of the rule. The new provision will require new permit-uses to meter and report.

Current laws and rules exist for metering and reporting water use. However, these laws and regulations have rarely been applied to permit-exempt ground water uses.

<p>wild salmonids. The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.</p> <p>This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted.</p> <p><b>RCW 90.44.450 Metering or measuring groundwater withdrawals — Reports.</b></p> <p>The department of ecology may require withdrawals of groundwater to be metered, or measured by other approved methods, as a condition for a new water right permit. The department may also require, as a condition for such permits, reports regarding such withdrawals as to the amount of water being withdrawn. These reports shall be in a form prescribed by the department. [1989 c 348 § 7.]</p>		
	<p><b>WAC 173-539A-080 Expedited processing of trust water right applications and new water right applications associated with trust water rights</b></p> <p>(1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.</p> <p>(2) Ecology may expedite the processing of an application for a new surface water right or a ground water right hydraulically related to the Yakima River, under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:</p> <p>(a) The application must identify an existing trust water right or pending application to place a water right in trust, if that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would</p>	

	<p>serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.</p> <p>(b) The proposed use on the new application must be for domestic, group domestic, lawn or noncommercial garden, and/or municipal water supply purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water rights.</p> <p>(3) If an application for a new water right is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.</p> <p>(4) Upon determining that the application is eligible for expedited processing ecology will do the following:</p> <p>(a) Review the application to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.</p> <p>(b) Condition the permit to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit.</p> <p>(c) Condition each permit to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.</p> <p>(d) Condition or otherwise require</p>	
--	--	--

	<p>that the trust water right will serve as mitigation for impacts to "total water supply available."</p>	
<p><b>RCW 90.03.605</b>  <b>Compliance — Sequence of enforcement measures — Location of compliance personnel.</b>  (1) The department shall, through a network of water masters appointed under this chapter, stream patrollers appointed under chapter 90.08 RCW, and other assigned compliance staff to the extent such a network is funded, achieve compliance with the water laws and rules of the state of Washington in the following sequence:  (a) The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of their water rights and applicable water laws;  (b) When the department determines that a violation has occurred or is about to occur, it shall first attempt to achieve voluntary compliance. As part of this first response, the department shall offer information and technical assistance to the person in writing identifying one or more means to accomplish the person's purposes within the framework of the law; and  (c) If education and technical assistance do not achieve compliance the department shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 90.03.600 unless the noncompliance is corrected expeditiously or the department determines no impairment or harm.  (2) Nothing in the section is intended to prevent the department of ecology from taking immediate action to cause a violation to be ceased immediately if in the opinion of the department the nature of the violation is causing harm to other water rights or to public resources.  (3) The department of ecology shall to the extent practicable station its</p>	<p><b>WAC 173-539A-080 Educational information, technical assistance and enforcement.</b> (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information on the scope and requirements of this chapter.  (2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.  (3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.</p>	<p>Provides for Educational information, technical assistance, and enforcement.</p>

<p>compliance personnel within the watershed communities they serve. To the extent practicable, compliance personnel shall be distributed evenly among the regions of the state. [2002 c 329 § 2.] <b>RCW 43.27A.190</b> <b>Water resource orders.</b> Notwithstanding and in addition to any other powers granted to the department of ecology, whenever it appears to the department that a person is violating or is about to violate any of the provisions of the following:</p> <ul style="list-style-type: none"> <li>(1) Chapter 90.03 RCW; or</li> <li>(2) Chapter 90.44 RCW; or</li> <li>(3) Chapter 86.16 RCW; or</li> <li>(4) Chapter 43.37 RCW; or</li> <li>(5) Chapter 43.27A RCW; or</li> <li>(6) Any other law relating to water resources administered by the department; or</li> <li>(7) A rule or regulation adopted, or a directive or order issued by the department relating to subsections (1) through (6) of this section; the department may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to addressee only with return receipt requested and acknowledged by him. The order shall specify the provision of the statute, rule, regulation, directive or order alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. The regulation of a headgate or controlling works as provided in RCW 90.03.070, by a watermaster, stream patrolman, or other person so authorized by the department shall constitute a regulatory order within the meaning of this section. A regulatory order issued hereunder shall become effective immediately upon receipt by</li> </ul>		
--	--	--

<p>the person to whom the order is directed, except for regulations under RCW 90.03.070 which shall become effective when a written notice is attached as provided therein. Any person aggrieved by such order may appeal the order pursuant to RCW 43.21B.310. [1987 c 109 § 11; 1969 ex.s. c 284 § 7.] Notes:     Purpose -- Short title --     Construction -- Rules -- Severability -     - Captions -- 1987 c 109: See notes following RCW 43.21B.001.     <b>Severability -- 1969 ex.s. c 284:</b>     See note following RCW 90.48.290.</p>		
<p><b>RCW 43.21B.310</b> <b>Appeal of orders, permits, and licenses.</b> (1) Except as provided in RCW 90.03.210(2), any order issued by the department or local air authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after the date of receipt of the order. Except as provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means of appeal of such an order. (2) The department or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal. (3) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to RCW 43.21B.320 to the hearings board for a stay of the order or for the removal thereof. (4) Any appeal must contain the following in accordance with the rules of the hearings board:     (a) The appellant's name and address;     (b) The date and docket number of the order, permit, or license appealed;</p>	<p><b>WAC 173-539A-090 Appeals</b>  All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.</p>	<p>Opportunity and process for appeal of Ecology decisions.</p>

<p>(c) A description of the substance of the order, permit, or license that is the subject of the appeal;</p> <p>(d) A clear, separate, and concise statement of every error alleged to have been committed;</p> <p>(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and</p> <p>(f) A statement setting forth the relief sought.</p> <p>(5) Upon failure to comply with any final order of the department, the attorney general, on request of the department, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to insure compliance with the order. The air authorities may bring similar actions to enforce their orders.</p> <p>(6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the department within thirty days of the date of receipt.</p> <p>[2004 c 204 § 5. Prior: 2001 c 220 § 4; 2001 c 36 § 3; 1992 c 73 § 3; 1989 c 2 § 14 (Initiative Measure No. 97, approved November 8, 1988); (1987 3rd ex.s. c 2 § 49 repealed by 1989 c 2 § 24, effective March 1, 1989); 1987 c 109 § 6.]</p> <p>Notes:</p> <p>Intent -- Construction -- Effective date -- 2001 c 220: See notes following RCW 43.21B.110.</p> <p>Effective dates -- Severability -- 1992 c 73: See RCW 82.23B.902 and 90.56.905.</p> <p>Short title -- Construction -- Existing agreements -- Effective date - - Severability -- 1989 c 2: See RCW 70.105D.900 and 70.105D.910 through 70.105D.921, respectively.</p> <p>Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109: See notes following RCW 43.21B.001.</p>		
---	--	--

