

**Washington REALTORS®**  
**Policy Statement on Ecology's Instream Flow Rules**

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**Background**

The Washington Department of Ecology adopted minimum instream flow rules for two watersheds in 2005, and is proposing to do so in other watersheds during 2006. Ecology's authority to adopt minimum instream flows is based on RCW Chapters 90.22 and 90.54. The minimum instream flow rules are adopted under the state Administrative Procedures Act, RCW Chapter 34.05. Some local Watershed Planning Units have recommended adoption of minimum instream flows, while others have not. A minimum instream flow adopted by rule has a priority date of the date of rule adoption.

Under Washington's prior appropriation system, uses of water initiated after the adoption of an instream flow rule are junior to the instream flow. Consequently, junior water uses (both permitted and exempt) could be interrupted if a senior minimum instream flow level is not being satisfied. An interruptible water supply does not satisfy the requirements for an adequate reliable supply of water under either the state building code or subdivision act.

Ecology's new instream flow rules apply to uses of water that are exempt from the water right permit requirements under RCW 90.44.050. Ecology's rules now create a limited reservation of water for future uses based on its authority to allow withdrawals of water that conflict with minimum instream flow levels based on "overriding considerations of the public interest." RCW 90.54.020(3)(a).

**REALTORS® Instream Flow Policies**

1. Merely setting an instream flow by rule does not determine actual streamflows or improve aquatic habitat. To do this, consideration should be given to water storage, conservation, and acquisition of water rights from willing sellers.
2. Under Washington water law, providing water supply for domestic use is required without exception: "Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs." RCW 90.54.020(5). While "overriding considerations of the public interest" may be used to allow domestic withdrawals to conflict with instream flows, there is no exception to the requirement that water for domestic use be available.
3. Local governments are required to comply with the instream flow rules "whenever possible" (RCW 90.54.090), and are empowered to make water availability determinations at the local level. AGO 1992 No. 017. Local governments are required to plan for and accommodate future growth. Thus, the instream flow rules must complement, not conflict with, local land use planning.

4. The quantity of water in a domestic reservation must provide domestic water sufficient for build out based on comprehensive plans. The population projections provided by the Office of Financial Management to counties should be used to determine future water demands in areas not served by existing public water systems.
5. Reservation water use accounting must reflect recharge and the importation of water into basins by deep wells or water system extension.
6. While instream flow rules around the state may vary based on specific local needs and conditions, water laws are statewide and must be consistently applied.
7. Ecology's legal authority is to set "minimum instream flows." This has been described as "a limited portion of a stream's natural flow" or "the smallest amount necessary" to protect actual instream uses. February 20, 1986 Memo from Charles B. Roe, Assistant Attorney General, to Ecology Water Resource Program Manager.
8. Allocation of water "shall be based generally on the securing of the maximum net benefits for the people of the state." RCW 90.54.020(2). Instream flow rules are subject to the state Administrative Procedures Act, which requires that the probable benefits of the rule are great than the probable costs." RCW 34.05.328(1)(d). Thus, the actual benefits of instream flow rules must be weighed against the costs to property owners and local governments.
9. When the state adopts instream flow rules, it is also obligated to provide funding. For example, funding is necessary on key technical issues, including recharge percent, and determining extent and timing of hydraulic continuity. In addition, state funding is needed for infrastructure to improve streamflows and for acquisition of water rights from willing sellers.

#### **Watersheds With Instream Flow Rulemaking 2005-2007**

Skagit (WRIA 4)	Samish (WRIA 3)
Stillaguamish (WRIA 5)	Wind-White Salmon (WRIA 29)
Entiat (WRIA 46)	Hangman (WRIA 56)
Quilcene-Snow (WRIA 17)	Middle Spokane (WRIA 57)
Dungeness-Elwha (WRIA 18)	Moses Coulee (WRIA 44)
Grays-Elochman (WRIA 25)	Foster (WRIA 50)
Cowlitz (WRIA 26)	Dosewalips (WRIA 16)
Lewis (WRIA 27)	Lyre Hoko (WRIA 19)
Salmon-Washougal (WRIA 28)	Sol Duc (WRIA 20)
Walla Walla (WRIA 32)	Wenatchee (WRIA 45)

