



# ESSB 6091

## Ecology's Initial Policy Interpretations

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# Summary of the new law

- The law focuses on 15 watersheds that were impacted by the Hirst decision and also establishes standards for rural residential permit-exempt wells in the rest of the state.
  - The law divides the 15 basins into those that have a previously adopted watershed plan and those that did not.
- The law allows counties with those 15 watersheds to rely on our instream flow rules in preparing comprehensive plans and development regulations and for water availability determinations.
- It allows rural residents to have access to water from permit-exempt wells to build a home.
- It lays out these interim standards that will apply until local committees develop plans to be adopted into rule:
  - Allows a maximum of 950 or 3,000 gallons per day for domestic water use, depending on the watershed.
  - Establishes a one-time \$500 fee for landowners building a home using a permit-exempt well in the affected areas.
- It retains the current maximum of 5,000 gallons per day limit for permit-exempt domestic water use in watersheds that do not have existing instream flow rules.
- It invests \$300 million over the next 15 years in projects that will help fish and streamflows.

# Watersheds with previously adopted plans

- Watersheds with previously adopted watershed plans are the Nooksack (1), Nisqually (11), Lower Chehalis (22), Upper Chehalis (23), Okanogan (49), Little Spokane (55), and Colville (59).
  - For these seven basins, local watershed planning units are to update the watershed plan. We are obligated to assess if the plan results in a net ecological benefit.
- The law identifies the Nooksack and Nisqually basins as the first two to be completed.
  - They have until February 2019 to adopt a plan; if they fail to do so, we must adopt related rules no later than August 2020.
- Planning units in the Lower Chehalis, Upper Chehalis, Okanogan, Little Spokane, and Colville basins have until February 2021 to develop their plans.
- For these seven watersheds, the **maximum annual average withdrawal is 3,000 gallons per day per connection.**

# Watersheds without previously adopted plans

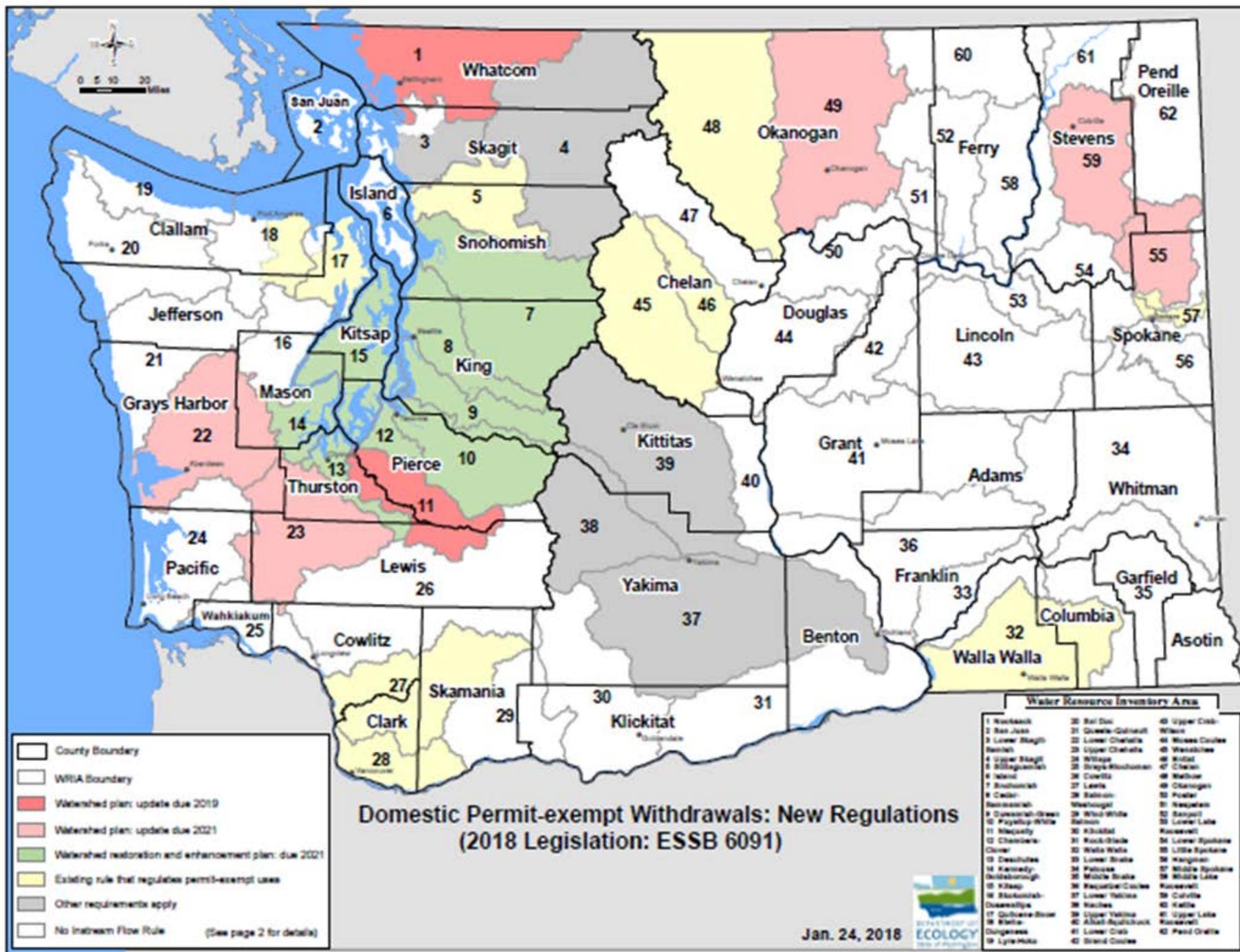
- Eight other watersheds do not have previously adopted watershed plans. They are Snohomish (7), Cedar-Sammamish (8), Duwamish-Green (9), Puyallup-White (10), Chambers-Clover (12), Deschutes (13), Kennedy-Goldsborough (14), and Kitsap (15).
  - For these eight basins: Ecology to establish and chair watershed committees and invite representatives from local governments, tribes, and interest groups.
- The plans for these watersheds are due June 30, 2021.
- The maximum annual average withdrawal is 950 gallons per day per connection. During drought, Ecology may curtail this to be 350 gallons per day per connection for indoor use only.
- Counties in these areas have to ensure that building permit applicants adequately manage stormwater onsite.

# What about the rest of the State's watersheds?

- Watersheds with instream flow regulations and a reservation for permit exempt wells – those rules apply for future permit exempt wells.
  - [WRIAs Quilcene-Snow (17), **Dungeness only (18)**, Lewis (27), Salmon-Washougal (28), Walla<sup>2</sup> (32), Wenatchee (45), Entiat (46) and Methow (48)]
- The Upper and Lower Skagit Watersheds (WRIAs 3 and 4) have “additional requirements” and the Lower Yakima (37), Naches (38) and Upper Yakima (39) may have additional requirements imposed to satisfy adjudicated water rights.
- All the rest of the WRIAs in the state have no instream flow regulations and the 4 exemptions under RCW 90.44.050 apply:
  1. Providing water for **livestock (no gallon per day limit or acre restriction)**
  2. Watering a **non-commercial lawn or garden one-half acre** in size or less **(no gallon per day limit)**
  3. Providing water for a **single home or groups of homes (limited to 5,000 gallons per day)**
  4. Providing water for **industrial purposes, [including commercial irrigation] (limited to 5,000 gallons per day but no acre limit).**
  - **For Clallam County this includes Elwha (west 18), Lyre-Hoko (19), and Soleduck-Hoh (20) AND the Johnson Creek – Miller Peninsula part of the Quilcene-Snow (WRIA 17)**

# Requirements affecting local land use decisions

- **The new law impacts only new domestic uses.**
- **Existing wells are exempt from the provisions of the new law.**
- New law does not place additional requirements per se at the subdivision stage of permitting. Counties must continue to follow 90.44.050 for water supply for subdivisions
- New law provides specific regulation for new permit-exempt domestic uses - new law to limit water use under the exemptions in RCW 90.44.050 for domestic water use and watering of a non-commercial lawn or garden. The other uses exempt from permitting (industrial use including irrigation and stockwatering) are not restricted beyond existing legal limitations under RCW 90.44.050.

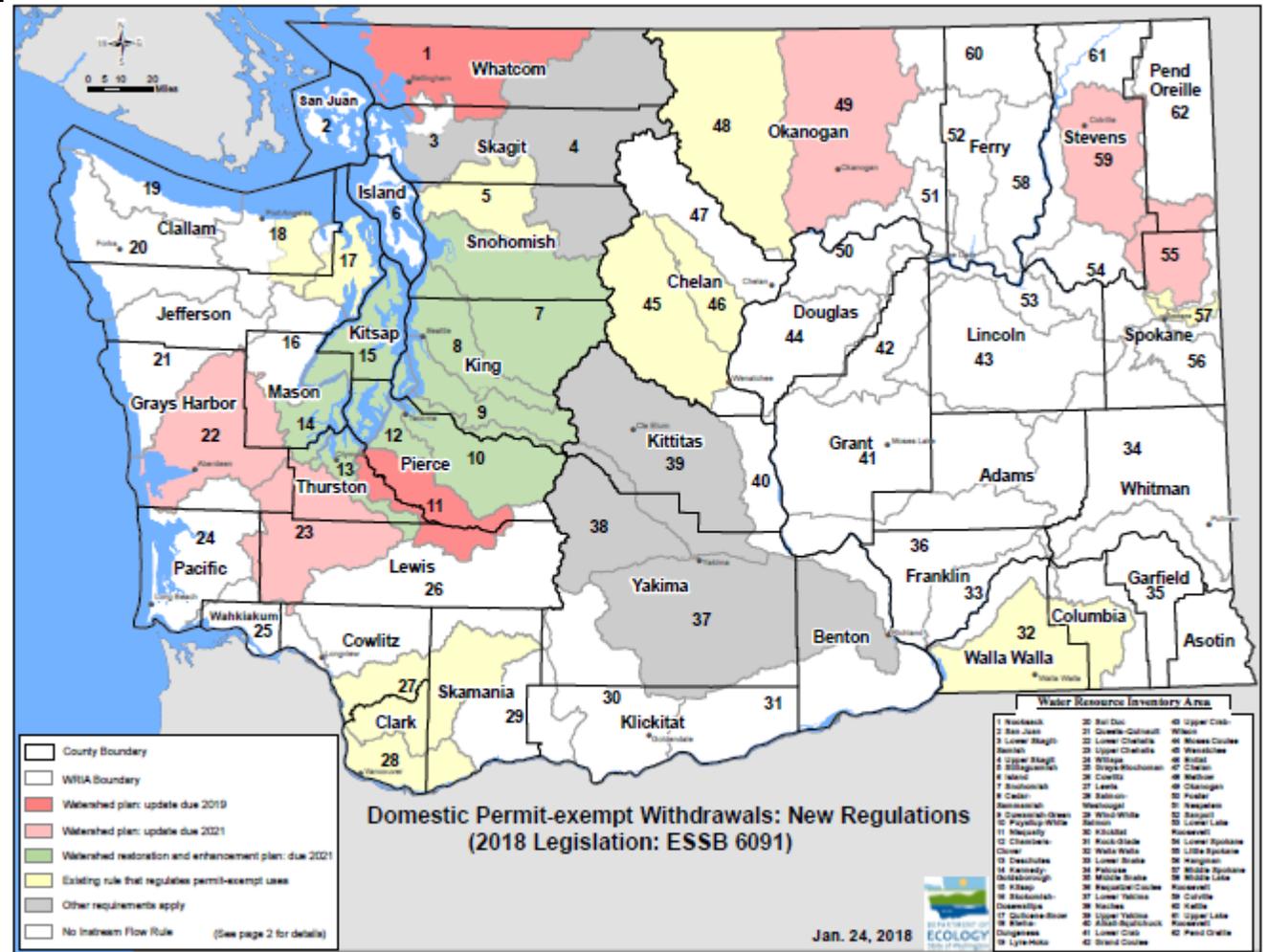


# What is domestic use?

- Legislature did not define “domestic use” in the new law.
- Legislature chose to specify that during a drought, only 350 gallons per day (GPD) may be used for “indoor domestic use” in selected basins.
- This distinction leads us to interpret that the larger quantities authorized in non-drought years (950 or 3,000 GPD, depending on which basin) include indoor and outdoor uses for a household (including watering of a lawn and noncommercial garden).

# How much water is legally allowed for domestic use in First-affected basins?

- Under the law, applicants relying on a permit-exempt well for a new home may use a maximum annual average of 950 GPD or 3,000 GPD for their indoor and outdoor use, depending on which water resource inventory area (WRIA) they are located in (see [map](#)).
- All new permit-exempt uses, including group domestic, are still restricted by the 5,000 GPD limit under RCW 90.44.050.
  - *For example, a new homeowner in an affected basin could withdraw 4,000 gallons on a summer day, so long as they did not do so often enough that their annual average exceeded the 950 or 3,000 gallon limit.*



# Also...

- **New fees.** The law imposes a \$500 fee, which is paid to the local government at the time of applying for a building permit. The new fee is not required to be paid at the time a well is drilled. The new \$500 fee is separate and in addition to existing well drilling fees required under chapter 18.104 RCW.
- **Does the new law expand areas covered under a rule?** No. The new law identifies which WRIAs have new regulations. In some watersheds, however, instream flow rules only cover portions of the WRIA. When that is the case, the new regulations apply to the geographical areas directly covered by a rule. The remainder of the WRIA is only subject to limits under Section 101(1)(g) and RCW 90.44.050.
- **County obligations for recording.** Under Sections 202(5)(a) and 203(4)(a)(i), counties must record relevant water use restrictions, which would be either limits to 950 GPD or 3,000 GPD, depending on the specific watershed. In addition, under Section 203(4)(b), counties would need to record the potential for curtailment to 350 GPD during a declared drought, where applicable.
- **Low-impact development.** In basins identified in Section 203, building permit recipients are required to employ low-impact development techniques. For counties or cities that do not have local low-impact development standards, [guidance is available on our website](#).

# Impacts on Ecology water right permitting

- Our approach to water right permit decisions will not change. The law does did not modify sections of statute affecting our permitting decisions, authority, and approach **EXCEPT** as it relates to processing permits under the “Foster Pilot” in Sections 301 and 302. We are evaluating how best to provide procedural guidance for the five identified projects.

# Two Metering Pilots

- The law directs Ecology to initiate a metering pilot program in the **Dungeness Basin** and in Kittitas County (Section 204).
- We will work with the entities that are implementing existing programs (the Washington Water Trust in the Dungeness Basin and with Kittitas County) to implement this section.
- We are developing a process to purchase and provide meters.
- We anticipate paying for new meters once we have this process in place; we do not intend to reimburse homeowners who bought meters before we launch the new process. Landowners wanting to build immediately using a permit-exempt well in these basins may purchase their own meter through the existing program, or wait until we have our new process in place to obtain a meter free of charge.

# Basin planning



# Streamflow enhancement projects

- Legislature authorized \$300 million for 15 years to be used for restoring and enhancing streamflows statewide.
- Although funding is to be prioritized within the basins in which planning is being conducted, the language does not limit projects to those basins. We have not yet developed criteria for approving funding.

# Watershed Planning Units

- **Section 202** provides some procedural guidance for how we and initiating governments are to update existing Watershed Plans in selected WRIAs.
- In these basins, plans were developed under the Watershed Planning Act (RCW 90.82). Where the law does not provide specific direction as to the process for plan development and approval, we and local governments should look to the Watershed Planning Act for direction.

# Watershed Restoration and Enhancement Committees.

- **Section 203** - Ecology convenes a group of local governments, Tribes, and stakeholders to develop a Watershed Restoration and Enhancement Plan. If all members of the committee agree to approval of a plan, then we will proceed to adopt a plan. Then, if necessary, we will amend instream flow rules to incorporate provisions of the plan. We have not yet established procedures or guidelines for finalization of plans or for subsequent evaluation and adoption.
- If a committee fails to adopt a plan by their prescribed timeline, they are to send the draft plan to the Salmon Recovery Funding Board (SRFB) for its review. The SRFB makes recommendations and sends them to us. We then we amend the draft plan and adopt it into rule.

# Plan requirements

Sections 202 and 203 establish the requirements for an adopted plan.

Specifically, under subsections 202(4)(b) and (c) and 203(3)(b) and (c), **plans must identify projects necessary to offset the impact of permit-exempt domestic water use.**

(b) At a minimum, the watershed plan **must include** those actions that the planning units determine 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.

**Lower priority** projects include projects not in the same basin or tributary and projects that replace consumptive water supply impacts only during critical flow periods.

The watershed plan **may include** projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to those actions that the planning unit determines to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use.

(c) Prior to adoption of the updated watershed plan, the department **must determine that actions identified in the watershed 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.**

# When is Ecology required to amend instream flow rules?

- Two circumstances under which we must adopt rules to incorporate plan provisions. In addition, we may adopt rules if we believe it to be necessary for another reason.

## In WRIAs identified in Section 202:

- If the updated plan recommends a change to the fee or water use limit prescribed in the law; or
- If the planning unit fails to adopt an updated watershed plan by their prescribed timeline.

## In WRIAs identified in Section 203:

- If the adopted plan recommends a change to the fee or water use limit prescribed in the law; or
- If the basin committee fails to adopt a plan by their prescribed timeline. In this case, the draft plan goes to the Salmon Recovery Funding Board; they make recommendations, then Ecology amends and adopts the plan. We must then adopt the plan into rule.

# Available Funding

ESSB 6091 relies on the planning units created under chapter 90.82 RCW for specific water resource inventory areas (WRIAs) to update existing WRIA plans, with the goal to support actions that restore and enhance stream flows.

Under Section 202 of ESSB 6091, local planning efforts are led by **initiating governments** working in collaboration with stakeholders.

The “lead agency” is the public entity which coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan.

Ecology will be providing assistance to local and tribal governments, including specific funding for entities which are designated by the initiating governments as lead agencies.

See Ecology’s web page at: <https://ecology.wa.gov/Water-Shorelines/Water-supply/Streamflow-restoration>

# Funding for Local Capacity Grants and for Initial Planning Efforts

Funding will be provided in two phases for completing watershed plans.

- 1) “Local capacity grants” of up to \$50,000 will support lead agencies’ staff time to implement the new law.
- 2) In addition, for the first phase of planning, up to \$150,000 (\$50k/year for 3 years) will be available to the lead agency to complete the following activities:

- Supporting planning unit meetings, including facilitation and public outreach;
- Estimating 20 year consumptive impacts from future permit exempt domestic wells;
- Reviewing previous plans and studies for relevant elements to be included in the update watershed plan; and
- Identifying additional technical information needed to complete the plan so that it meets the requirements of ESSB 6091.

Lead agencies may be awarded additional funding for phase 2 to collect technical information identified in the first phase of planning and to complete a watershed plan that meets the requirements of ESSB 6091.

Funding amounts will be determined after completion of the phase 1, and must include agreement from all initiating government to seek the additional funding.

Funding availability after June 30, 2019 will depend on the level of legislative appropriations in the Fiscal Year 2019-2021 budget adopted next year.

# Section 301 – the “Foster” Fix

Joint Legislative task force created to develop and recommend a mitigation sequencing process and scoring system to address such appropriations and to review the Foster v. Department of Ecology Supreme Court Decision.

## **Task Force to include:**

- 2 members of House
- 2 members of Senate
- Ecology
- Dept. of Fish and Wildlife
- Dept. of Agriculture

ONE representative from each of the following groups, appointed by consensus of the co-chairs of the task force:

- Organization representing the farming industry
- Organization representing Washington cities
- Organization representing municipal water purveyors
- Organization representing business interests

AND

- Two representatives from an environmental advocacy organization(s)
- Representatives of two federally recognized Indian Tribes, one invited by recommendation of NW Indian Fisheries Commission and one invited by recommendation of the Columbia River Intertribal Fish Commission
- First task force meeting is by June 30, 2018
- Recommendations to Legislature from Task Force by November 15, 2019

# Foster Pilot Projects

Five Foster Pilots Projects identified in the new law:

1. City of Sumner – WRIA 10
  2. City of Yelm – WRIA 11
  3. Spanaway Water District – WRIA 12
  4. City of Port Orchard – WRIA 15
  5. Bertrand Creek Watershed Improvement District – WRIA 1
- Entities to notify Ecology by July 1, 2018 of their interest (and willing to do under the Cost Reimbursement Agreement approach.
  - Ecology to furnish task force by November 15, 2018 information on conceptual mitigation plans for each pilot project
  - Joint legislative task force expires on December 31, 2019

# Conclusions

- New law allows rural growth to continue ahead of the water for water solutions
- New law primarily impacts future permit exempt wells and building permits in the 15 “pre-2000 rule” watersheds:
  - WRIAs 1, 7, 8, 9, 10, 12, 11, 13, 14, 15 and 22/23
- It lays out these interim standards that will apply until local committees develop plans to be adopted into rule:
  - Allows a maximum of 950 or 3,000 gallons per day for domestic water use, depending on the watershed.
  - Establishes a one-time \$500 fee for landowners building a home using a permit-exempt well in the affected areas.
- It retains the current maximum of 5,000 gallons per day limit for permit-exempt domestic water use in watersheds that do not have existing instream flow rules.
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