



Compliance and Enforcement of Water Rights in Designated Basins

Introduction

The Department of Ecology (Ecology) has prepared this report to the Legislature on our water resource enforcement and compliance work as required by 2018 ESSB 6032, Sec 302(15). The proviso states:

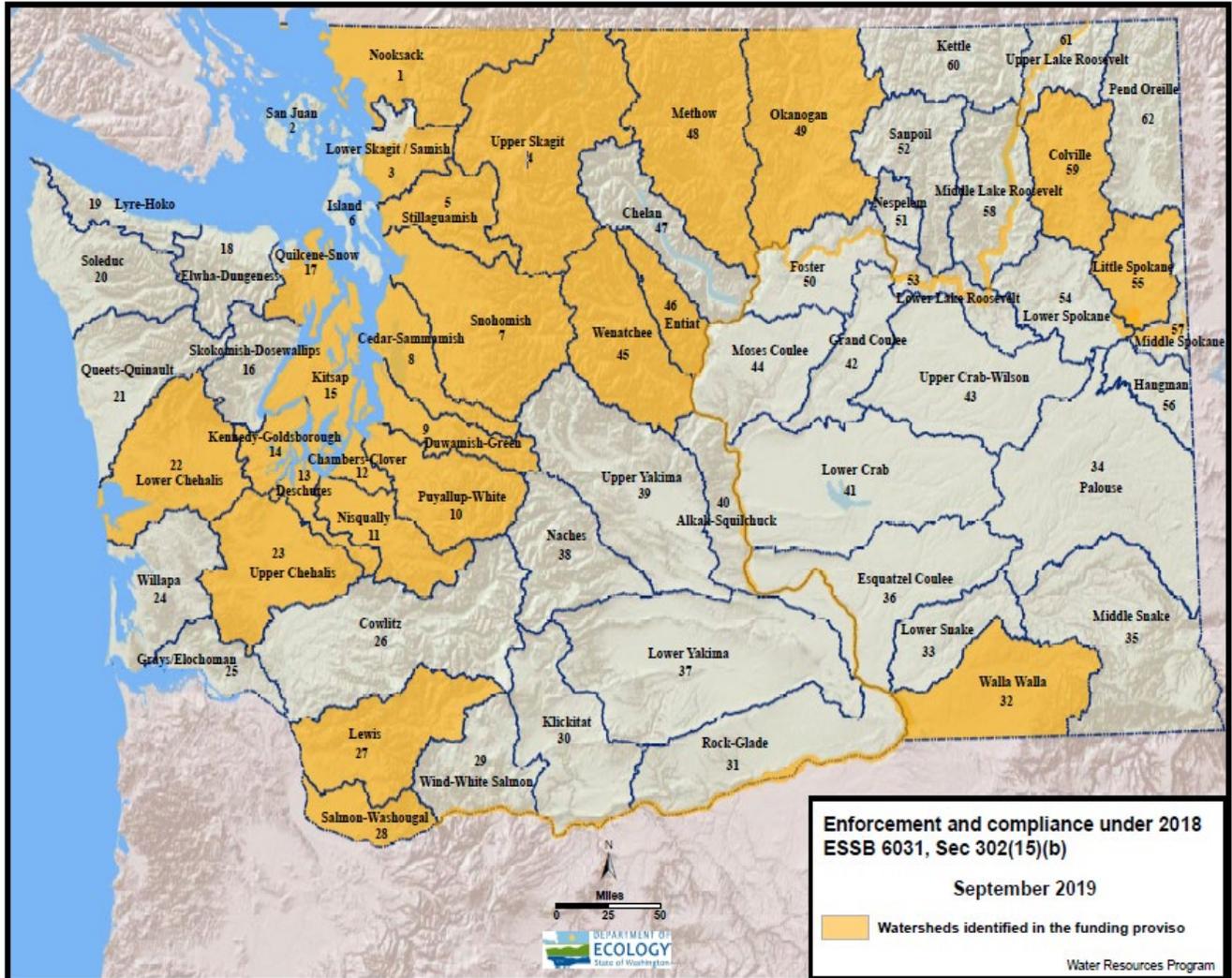
- (a) \$625,000 of the general fund—state appropriation for fiscal year 2019 is provided solely to address water use in violation of chapter 90.03 or 90.44 RCW in priority watersheds. The legislature recognizes that water use in violation of chapter 90.03 or 90.44 RCW in priority watersheds can impair existing instream flows and senior water rights and supports actions taken by the department to reduce water use in violation of chapter 90.03 or 90.44 RCW. The department shall engage in compliance and enforcement work to ensure compliance with requirements under chapters 90.03 and 90.44 RCW. Funding is authorized to be used for technical assistance, informal enforcement, and formal enforcement actions.
- (b) The department shall use funds appropriated under this section to work in water resource inventory areas where: (a) Rules have been adopted under chapters 90.22 or 90.54 RCW; (b) those rules do not specify mitigation requirements for groundwater withdrawals exempt from permitting under RCW 90.44.050; and (c) the department believes water use in violation of chapter 90.03 or 90.44 RCW is negatively impacting streamflows.
- (c) The department shall submit a report to the legislature by December 1, 2019, that summarizes the compliance and enforcement work completed in each basin, including the estimated benefit to streamflows occurring from actions taken.
- (d) Appropriations under this section should not replace or otherwise impact funds appropriated to the department to carry out duties under RCW 90.03.605 and chapter 90.08 RCW.

Use of Funds

The 2018 Supplemental Operating budget provided funding to support additional compliance and enforcement work in 26 designated Water Resource Inventory Areas (WRIAs) across the state (see Figure 1). This appropriation augments funding that Ecology regularly receives to conduct statewide enforcement and compliance work to carry out duties under RCW 90.03.605 and chapter 90.08 RCW. The proviso appropriation supported two additional Full Time Equivalent

(FTE) staff to conduct technical assistance, informal enforcement, and formal enforcement work in the designated basins. Ecology developed a tracking system to collect, retrieve, and report data on this compliance work using common statewide metrics and nomenclature.

Figure 1: Map of Watersheds Authorized for Compliance Funding



- | | | |
|---------------------------------|--------------------------------|--------------------------|
| WRIA 1 - Nooksack | WRIA 12 - Chambers-Clover | WRIA 32 - Walla Walla |
| WRIA 3 - Lower Skagit-Sammamish | WRIA 13 - Deschutes | WRIA 45 - Wenatchee |
| WRIA 4 - Upper Skagit | WRIA 14 - Kennedy-Goldsborough | WRIA 46 - Entiat |
| WRIA 5 - Stillaguamish | WRIA 15 - Kitsap | WRIA 48 - Methow |
| WRIA 7 - Snohomish | WRIA 17 - Quilcene-Snow | WRIA 49 - Okanogan |
| WRIA 8 - Cedar-Sammamish | WRIA 22 - Lower Chehalis | WRIA 55 - Little Spokane |
| WRIA 9 - Duwamish-Green | WRIA 23 - Upper Chehalis | WRIA 57 - Middle Spokane |
| WRIA 10 - Puyallup-White | WRIA 27 - Lewis | WRIA 59 - Colville |
| WRIA 11 - Nisqually | WRIA 28 - Salmon-Washougal | |

Compliance and Enforcement in Designated Basins

In our enforcement and compliance work, Ecology commonly responds to reports of illegal water use or improper water use reporting. We also commonly curtail water users (meaning that we notify them that their use must stop) in order to protect senior water rights, which includes protecting instream flows established in state rules.

Often, one compliance contact includes several potential violations under investigation. As a result, there is not a strict 1:1 ratio of compliance contacts and violations.

The Compliance Tracking Table (Figure 2) shows data collected on our compliance and enforcement work in the designated basins between August 2018 and August 2019.¹

Figure 2: Water Resources Compliance Tracking Table

WRIA	Tracked Events ²	Technical Assistance Efforts	Informal Enforcement Actions	Formal Enforcement Actions	Events still Ongoing
1 – Nooksack	14	23	2	5	6
3 – Lower Skagit	15	13	1	0	8
4 – Upper Skagit	2	14	0	0	2
5 – Stillaguamish	3	2	0	0	0
7 – Snohomish	11	46	0	1	5
8 – Cedar-Sammamish	10	6	2	0	3
9 – Duwamish-Green	3	2	0	0	1
15 – Kitsap	2	3	1	0	2
28 – Salmon Washougal	1	2	0	0	1
32 – Walla Walla	9	16	1	0	5
55 – Little Spokane	9	14	5	0	4
59 – Colville	15	29	1	0	8

¹ Note that Ecology did not work in every basin identified in the proviso, but rather prioritized where we could be most effective. This is consistent with 2018 ESSB 6032(302)(15)(b).

² Each situation documented in the tracking system is named an ‘event’ and may include several individual sites where compliance work was conducted. Each event also may include multiple actions taken by staff, such as phone calls, technical assistance visits, compliance visits, warning letters, or enforcement actions.

The data show that in general, the vast majority of our compliance and enforcement work centers on providing education and technical assistance, which often results in achieving voluntary compliance. Based on the data collected, we estimate that:

- For 90 percent of potential violations, voluntary compliance was achieved through education and technical assistance;
- Ten percent of potential violations required informal enforcement measures, such as warning letters or notices; and
- One percent escalated to formal enforcement actions, such as penalties or orders.

Ecology tracked compliance and enforcement “events,” which are situations that required one hour or more of staff time to address. Overall, we conducted 94 events in the designated basins. Each event generally included multiple staff actions, such as phone calls, technical assistance visits, compliance visits, warning letters, or enforcement actions. Each event may have also covered several individual site locations.

In addition, each staff person conducted approximately 250 routine education and technical assistance contacts. These contacts were usually short in duration and were not entered into the tracking system. Most of these situations involved providing general information on water rights, legal and technical issues, measuring or metering, permitting, wells and groundwater, instream flows, curtailment, development, and illegal use.

Importantly, the Compliance Tracking Table represents a snapshot of compliance work conducted by Water Resources staff over the reporting period. Most of the enforcement actions that took place during the tracking period were preceded by numerous technical assistance efforts over the last few years. Nearly half (47 percent) of events tracked over the reporting period are ongoing, meaning that further efforts are required to achieve compliance or to ensure compliance is maintained.

Formal enforcement actions generally occur only after numerous attempts to gain voluntary compliance, consistent with agency policy, guidance, and chapter 43.05 RCW.

Compliance and enforcement is an important part of our work to protect streamflows and senior water rights. Compliance efforts often result in water savings, although the precise quantities are typically not calculated. When voluntary compliance is achieved, Ecology does not usually calculate and report the amount of water illegally used or, conversely, the amount saved. Water use estimates (and potential savings) are conducted on only approximately ten percent of the tracked events; these were typically events that escalated beyond technical assistance. For the events for which we calculated water savings, we estimate approximately 8.62 cubic feet per second (cfs) or 6,240 acre-feet (af) of water saved.³

³ Calculations: 1 acre/foot of water = 1 acre of land 1 foot deep (43,560 cubic feet, or ~326,000 gal).
1 cfs (cubic foot per second) = approx. 646,000 gpd (gallons per day) = approx. 1.98 acre/feet/day.
1 cfs for one year equals 724 acre/feet. Savings for agricultural use were calculated at 6 months.

Conclusion

Appropriations provided under 2018 ESSB 6032 funded two FTE of compliance staff to conduct compliance efforts related to RCW 90.03 and RCW 90.44 in certain designated watersheds. Ecology developed a tracking system to collect, retrieve, and report data on this compliance work using common statewide metrics and nomenclature.

Ecology tracked compliance efforts and summarized the results in the Compliance Tracking Table shown in Figure 2. Analysis of tracking results indicate that 90 percent of the compliance work involved providing education and technical assistance, and ten percent involved taking informal enforcement actions to gain voluntary compliance. Approximately one percent of compliance work resulted in Ecology having to move beyond technical assistance and information enforcement to take formal enforcement action to achieve compliance.

Estimated water savings for the sites where calculations were performed indicate a savings of approximately 8.62 cfs or 6,240 af of water.

Publication information

This report is available on the Department of Ecology's website at <https://fortress.wa.gov/ecy/publications/SummaryPages/1911087.html>

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