



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for  
**Environmental Law & Policy**

**Proposed Water Management Strategies  
To Protect Instream Flows and Provide Water for Rural Development  
June 2014**

Water scarcity in Washington is not a new story. As population and economy expand, the problems of declining instream flows, depleted aquifers, and increased use of unregulated wells have become more urgent. To a large extent, the state has either ignored these problems, or refused to address them in a sustainable manner. As a result, recent court decisions have placed limitations on state and local land use and water resource management decisions, and required governments to directly address resource issues. (See CELP Paper, “No Quick Fixes to Competing Demands for Water Resources” (June 2014)).

The following suggestions set forth a framework for sustainable water management, and are proposed for the Department of Ecology’s “Rural Water Supply Strategies” process.

**A. Instream Flow Strategies.**

**1. Adopt Instream Flows for All Basins.**

Washington’s rivers and streams must be protected to preserve public values and ecological needs. Ecology should move to adopt instream flow regulations for all watersheds in the state, a goal first established in 1969.

**2. Provide for Interim Instream Flow and Aquifer Protection Through Closures**

In basins where instream flow rules have not yet been adopted, and where threatened species that rely on water resources are located, water quality is impaired, groundwater systems are in decline, the basin is fully appropriated, tribal water rights are unfulfilled, or other management issues exist, Ecology should issue blanket closures to all new water withdrawals until an instream flow rule can be adopted.

**3. Amend Invalid Rules.**

The Supreme Court’s Swinomish decision establishes that several recently adopted rules are inconsistent with that and other court precedents. Ecology should take action to amend these rules to conform to the court’s rulings.

**B. Permit Exempt Well Revisions.**

**1. Require Water Budget Neutrality.**

In any basin where water is inadequate to satisfy all demands, new exempt wells must be fully mitigated to ensure no impacts to surface and ground waters or other water users.

**2. Require Notice to Neighbors and Stakeholders.**

Require public notice of new permit exempt wells, as well as direct notice to individual senior right holders and to nearby tribes. New permit exempt wells effectively jump ahead of senior users,

including individuals, nearby tribes, and the public's interest in water quality and ecologically balanced flows. Property rights and fundamental interests are at stake and require due process protection.

### **3. Regulate permit exempt wells.**

Permit exempt wells are "off the grid," and thus subject to abuse through overpumping or unauthorized uses. Amend RCW 90.44.050 to allow Ecology greater regulatory authority over new and existing permit exempt wells to protect senior water rights, including tribal water rights, and environmental flows in rivers and streams. Regulatory options include reduced pumping limits (for example, limiting exempt withdrawals to less than 5000 gpd ("dimmer switch")), metering requirements, and targeted limits on approved uses (for example, prohibit use of stockwater for industrial uses or dust control; prohibit outdoor irrigation of lawns/gardens).

### **4. Prohibit exempt wells in public water system service areas.**

New permit exempt wells should not be allowed in the service area of a public water system as established by its approved water system plan. Exempt wells that meet water budget neutral standards may be permitted as an interim source of supply, provided that they are required to connect to the public water system once service becomes available.

## **C. Demand Management Strategies.**

### **1. Require Efficient Use of Water.**

State law prohibits the waste of water, but there is no mechanism to implement this policy. Ecology should, as part of its county guidance development, include specific conservation-oriented requirements for use of permit-exempt wells.

### **2. Promote Reclaimed Water and Greywater.**

Where reclaimed water is currently or potentially available to a public water system, require that its use for all authorized non-potable water purposes (e.g., landscape watering, irrigation) be included within the water system plan of a public water system, with a schedule and timeline for development and use. Require subdivision approvals to consider of reclaimed water and greywater as alternative water supplies, and incorporate those alternatives when available. Prioritize state funding for water supply projects that incorporate the use of reclaimed water and greywater.

### **3. Promote Water Reallocation.**

Adopt policies and rules to promote the transfer of existing, valid water rights to new uses. Promote water markets. Ensure that neither basic domestic needs, nor the natural environment, are priced out of water. Proactively evaluate operating water banks in Walla Walla, Kittitas and the Dungeness watersheds and apply lessons learned. To handle demand, prevent fraud, and ensure balanced use of our water resources, establish standards for public and private entities that operate banks.

## **D. Manage Water Resources**

### **1. Require In-Kind Water Mitigation.**

Amend Ecology's policy governing appropriate mitigation for water rights. POL-2035 establishes a preference for the "state's water resources [to] be mitigated in-kind, in-time, and in-place." In practice, that stated preference is insufficient. Ecology has relied on "out of kind mitigation" in several

circumstances, for example, funding habitat restoration projects to compensate for environmental flow depletion caused by new water uses. This type of mitigation lacks a basis in science, making it prone to abuse, and fails to protect the unique values of instream flows.

#### **4. Encourage Public Water Systems.**

The GMA classifies domestic water systems as both urban and rural governmental services. So as long as the domestic water is "delivered at an intensity usually found in rural areas" then piped water can be extended into rural area and resource lands. Expansion of public domestic water systems should be explored to make water use more efficient, while remaining mindful of comprehensive planning goals, preventing sprawl, and preserving rural character.

#### **5. Map and Monitor Groundwater.**

Ecology lacks full understanding of physical water availability around the state. A program should be dedicated to complete assessment and monitoring of the status of groundwater resources. Climate change impacts make this assessment imperative.

#### **6. Connect Local Planning and Water Resources.**

Natural water storage systems, glaciers and snowpack, are diminishing. Engineered solutions (e.g., new dams) are infeasible. We must improve local planning to protect water resources. Counties must revise comprehensive plans and development regulations so that projected growth matches available water supplies—and is planned where that water is located.

#### **7. Require Metering and Reporting.**

Demand management strategies, including conservation and markets, cannot work without water usage data. Nor can enforcement against overuse be implemented without usage data. New technologies have made household-level metering affordable and efficient. All water users in Washington should be required to meter their use and report it. State and local governments should require state of the art automated metering.

#### **8. Fund Water Resources Management.**

Washington lacks the financial ability to manage water resources out of the general fund. Water users should foot a substantial portion of the cost of water resource management. Impose fees on the development of new wells, and license fees for existing rights, and apply those funds to pay for appropriate water management.

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