



# Washington Water Utilities Council

September 27, 2022

State Representative Steve Tharinger, Co-Chair  
Joint Task Force on Water Resource Mitigation  
314 John L. O'Brien Building  
Olympia, WA 98504

State Senator Judy Warnick, Co-Chair  
Joint Task Force on Water Resource Mitigation  
316 Legislative Building  
Olympia, WA 98504

## **RE: Comments & Recommendations to Joint Task Force on Water Resource Mitigation**

Dear Senator Warnick and Representative Tharinger:

The Washington Water Utilities Council (WWUC) is the state association of 190 Washington water utilities including cities and towns, water districts, public utility districts, mutual and cooperative water utilities, and investor-owned water utilities. The water systems owned and operated by WWUC members provide drinking water to over 80 percent of the state's population. Our members have committed extensive resources to ensuring viable and sustainable water use conservation programs are in place to conserve scarce water resources. Where possible and practical, our members have developed water reuse and recharge programs.

The WWUC is dedicated to ensuring an adequate quantity of high-quality potable water at the lowest responsible economic cost and smallest environmental impact. The WWUC has received frequent updates from our representative on the Joint Legislative Task Force on Water Resource Mitigation (Task Force) since it began in 2018. We have some comments and recommendations outlined below that relate to the mission of the Task Force.

### Foster Task Force Recommendations from the WWUC

1. The Legislature should adopt objective standards in the water code, not subjective tests like the OCPI exception that has proven too unwieldy to have any reliable function for either Ecology or water right applicants.
2. The Legislature should clarify and codify two key holdings of Postema, as follows:
  - a. Hydraulic continuity between groundwater and a surface water source that is either closed or is not meeting instream flows, is not, in and of itself impairment;
  - b. For Ecology to deny an application for groundwater where there is connection between groundwater and a surface water source that is either closed or not meeting flows, there must be an adverse effect on instream resources.



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3. The Net Ecological Benefit (NEB) process was successfully demonstrated in the Yelm Pilot Project that was approved but should be considered for simplification by the Legislature so that mitigation sequencing is more practically achievable.
4. The Legislature should also recognize, as other Western states have done, that certain *de minimus* or insignificant effects of groundwater appropriations do not constitute an impairment of regulatory instream flow water rights or stream/lake closures. The percentage of insignificance (or percentage of natural variation) should be established for each stream segment and lake based on existing levels rather than for each application, to prevent multiple cumulative impacts from exceeding the level of insignificance.
5. Establish a collaborative state-local program so that impacts that are either *de minimus*, not adverse, or that in combination with existing conditions or other applications could have cumulative adverse impacts, can be mitigated at the watershed or sub-watershed level. The Legislature supported use of public funds (Hirst decision fix in Sec. 304 in ESSB 6091) to enable rural growth, and support for water resource mitigation is essential for GMA's primary purpose of enabling urban growth.
6. Create objective standards for the creation and application of computer groundwater models, including limiting groundwater modeled impacts to areas within the watershed or Water Resource Inventory Area, and not basing permit decisions on impacts that are outside a model's margin of error.
7. The Legislature should consider directing Ecology to utilize simplified mathematical models rather than regional models for determining impairment where the applicant elects to use the Legislature's mitigation sequencing method and NEB determination. NEB determinations at the end of the sequencing process can provide the basin-wide protection that eliminates the need for rigorous computer modelling.
8. Allow water right applicants to use mitigation sequencing, which is used in numerous other environmental permitting areas, that follows the accepted sequence of (a) avoiding impacts; (b) minimizing impacts; and then (c) compensating for impacts with both in-kind and out-of-kind mitigation.
9. The legislature should consider replacing the word "withdrawal" with "appropriation" in the final sentence of RCW 90.54.020(3)(a)). Per Foster v. Yelm, this would remove the Court's determination that OCPI only can be used for "temporary" withdrawals.
10. Create a transparent technical review board of qualified members that can be used to review complicated water right applications and mitigation plans.

Current water resource policies have resulted in extreme difficulty, and in many cases the impossibility of getting new water rights by many of our members in areas where there are regulatory stream flows. This poses serious challenges when the population of Washington State is estimated to grow between 855,292 (12.11 percent) and 2,571,579 (30.57 percent) between 2020 and 2040 and the Growth



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Management Act requires local jurisdictions to plan for that growth. In 2020, survey results among cities showed that 115 cities need new water rights. The results are outlined below. Water districts, PUDs, and non-profit public water systems have similar future permitting needs.

No. of Years When New Water Rights are Needed	Number of Cities Responding
Within 5 Years	18
5-10 Years	14
10-20 Years	24
More than 20 Years	59
<b>Total</b>	<b>115</b>

It is essential that municipal water suppliers support the citizens of the State with access to clean, reliable and affordable drinking water. Thank you for spending your valuable time, for several years, on these issues of critical importance for the people, fish and farms of Washington State in a time of climate change. We appreciate the opportunity to provide comments and recommendations to the Task Force.

Respectfully,

Judi Gladstone  
Chair, Washington Water Utilities Council

cc: Members, Joint Legislative Task Force on Water Resource Mitigation  
Carrie Sessions, Executive Policy Office, Governor Jay Inslee  
Mary Verner, Water Resource Program Manager, Department of Ecology  
Holly Myers, Director, Office of Drinking Water, Department of Health  
WWUC Members