OVERVIEW OF THE FIRST YEAR OF IMPLEMENTING THE STREAMFLOW RESTORATION ACT – RCW 90.94

WA HYDROGEOLOGY SYMPOSIUM
STREAMFLOW RESTORATION PANEL
APRIL 10, 2019

Mike Gallagher
Southwest Region Section Manager
Water Resources Program
Washington State Department of Ecology
Recent State Supreme Court Decisions

• *Postema v. Pollution Control Hearings Board* (2000)

**Result**

• No impairment to instream flows
• “Perfect mitigation” required for new water rights
  • In-kind, in-time, in-place
**Hirst, Futurewise, et al v. Whatcom County (2016)**

- Appeal of Whatcom County’s Comprehensive Plan,
- Which “failed” to sufficiently protect water resources under the Growth Management Act.
- Court ruled that:
  - Counties have an independent responsibility to ensure that new permit-exempt uses do not impair senior uses, including instream flows.

Counties cannot allow even *de minimus* impairment to instream flows.
Outcome and Legislative Response

- Building permit issuance in several affected Counties virtually stopped between October 2016 to January 2018. Emotional appeals for a legislative fix...

- **2017 session**: No agreement, even after longest session in state’s history. Approval of $4 billion Capital Budget held up.

- **2017/2018 interim**: Significant discussion continued; progress towards agreement.

- **2018 session**: Agreement reached very early in session – **Senate Bill 6091**
Key Elements of RCW 90.94 (fka SB 6091) “Streamflow Restoration Act”

- Rural landowners relying on a permit exempt well can resume homebuilding
- Interim standards of either 950 GPD or 3000 GPD for new domestic use, depending on the watershed
- $500 one-time fee for new BPs associated with new exempt wells
- $300 million in bond funding over the next 15 years for projects that will help streamflows and fish
RCW 90.94 also directs

- Pilot program for metering domestic uses in two basins (Dungeness and Kittitas)
- Legislative task force to study the WA Supreme Court’s Foster decision; 5 Foster pilot projects authorized
- Reporting to the Legislature (in 2021 and 2027)
- RCW 90.94 only placed new requirements on new domestic wells in certain basins. Did not affect:
  - Instream flow rules with specific requirements for permit-exempt uses
  - Wells drilled before the bill passed
  - Commercial building and construction
Planning groups:
- Existing Watershed Planning Units (Section 202) \textcolor{red}{PINK}
- New Watershed Restoration and Enhancement Committees (Section 203) \textcolor{green}{GREEN}

Planning elements:
- Actions to offset the consumptive use from new permit-exempt wells.
  - Prioritize “in-time and in-place”.
  - “Net ecological benefit” standard.

Planning requirements:
- Timeframes for completion – 1 or 3 years.
Net Ecological Benefit

1. QUANTIFY EXPECTED CONSUMPTIVE WATER USE OVER 20 YEARS

2. IDENTIFY WHERE IT IS POSSIBLE TO OFFSET

3. ECOLOGY MUST EVALUATE: DOES THIS PLAN HAVE A NET ECOLOGICAL BENEFIT?

[Diagram showing steps and icons related to water use and ecological considerations]
90.94 Project Grants Pilot Round

- $300 Million (2018-2033)
- $20 Million Available 2019
- \( \approx \$74 \) Million in Project Applications
- 46 Projects
  - 10 Water Rights Acquisition
  - 9 Land Acquisition
  - 9 Habitat Improvement
  - 7 Habitat Restoration
  - 4 Water Conservation
  - 4 Water Recharge
  - 1 Water Transfer
  - 1 Water Storage
  - 1 Study
Summary – Year One

- One Watershed Plan Addendum (Nisqually) adopted
- One Watershed Plan Addendum (Nooksack) – not adopted so rulemaking underway
- Four watershed planning units doing planning in WRIAs: 22/23 49 55 59
- 8 Watershed Restoration and Enhancement Committees in operation in WRIAs:
  7 8 9 10 12 13 14 15
- Developing the process for funding criteria and net ecological benefit standards
- Foster Fix Legislative Task Force meeting
- Five Foster Pilots - Bertrand WID, Port Orchard, Spanaway WD, Sumner, and Yelm underway
- Metering Pilots in Kittitas County and Clallam County (Dungeness)
- 15 separate Streamflow Restoration Grants awarded for ~$20 million in streamflow restoration projects
Streamflow restoration web page

- Overview of the law
- Guidance documents
- Historical watershed planning documents
- Regional contact information

https://ecology.wa.gov/Water-Shorelines/Water-supply/Streamflow-restoration
Thank you

Mike Gallagher
Department of Ecology
Water Resources Program

(360) 407-6058
Mike.Gallagher@ecy.wa.gov