

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

WA HYDROGEOLOGY SYMPOSIUM
STREAMFLOW RESTORATION PANEL
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Recent State Supreme Court Decisions

- *Postema v. Pollution Control Hearings Board* (2000)
- *Swinomish v. Ecology* (2013)
- *Foster v. Ecology* (2015)

Result

- No impairment to instream flows
- “Perfect mitigation” required for new water rights
 - In-kind, in-time, in-place

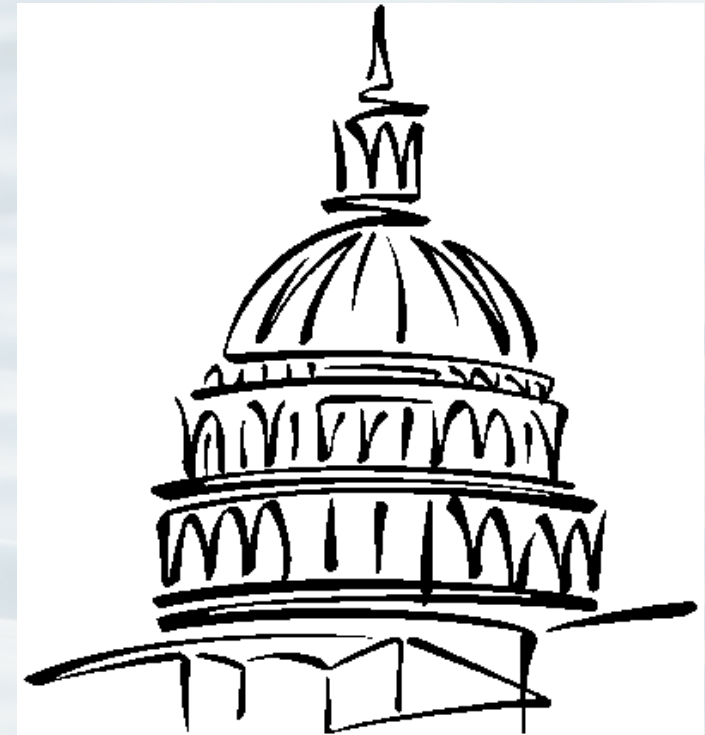
Hirst, Futurewise, et al v. Whatcom County (2016)

- 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"

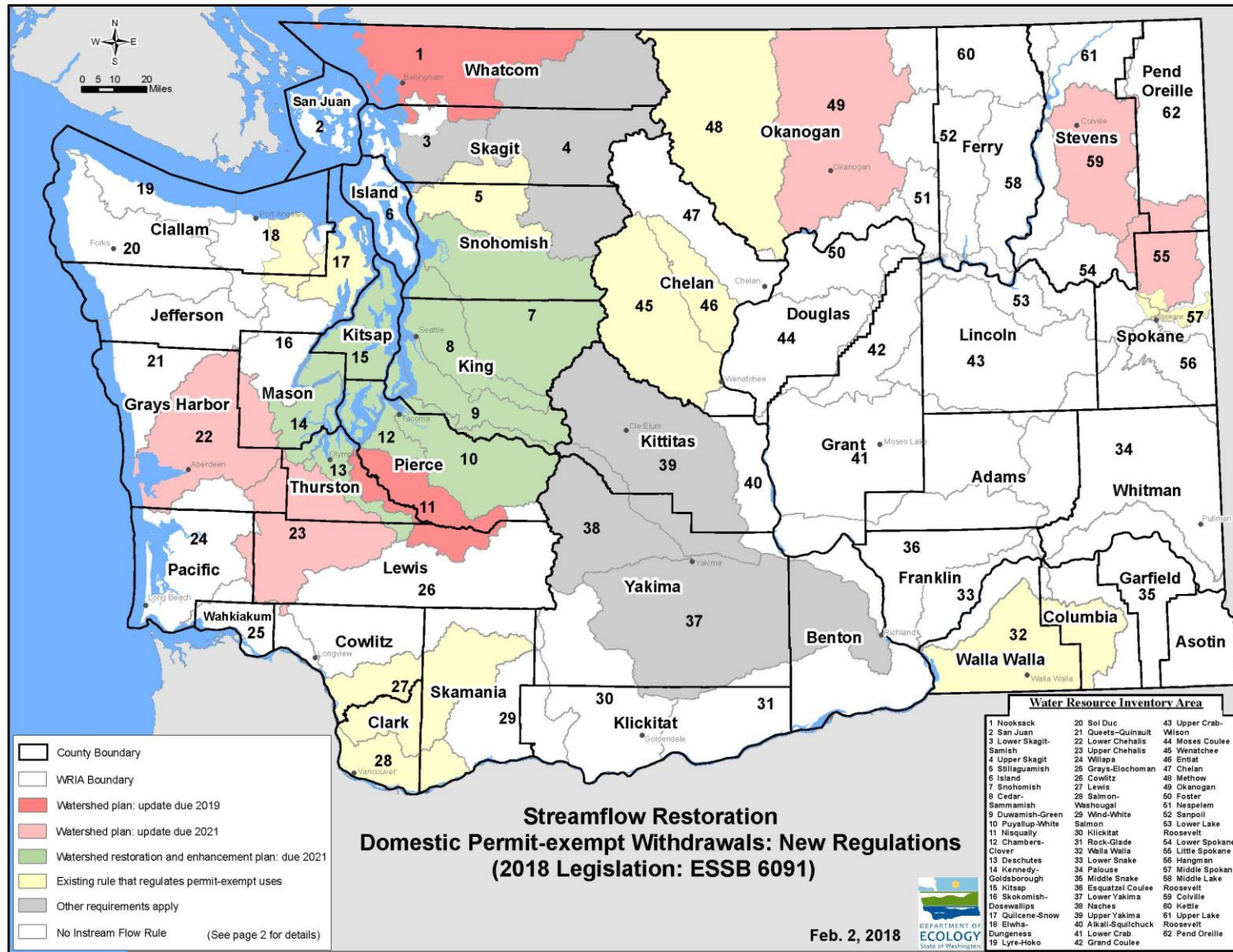
- Rural landowners relying on a permit exempt well can resume homebuilding
- Interim standards of either 950 GPD or 3000 GPD for new domestic use, depending on the watershed
- \$500 one-time fee for new BPs associated with new exempt wells
- \$300 million in bond funding over the next 15 years for projects 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*

Basin Planning



Planning groups:

- Existing Watershed Planning Units (Section 202) **PINK**
- New Watershed Restoration and Enhancement Committees (Section 203) **GREEN**

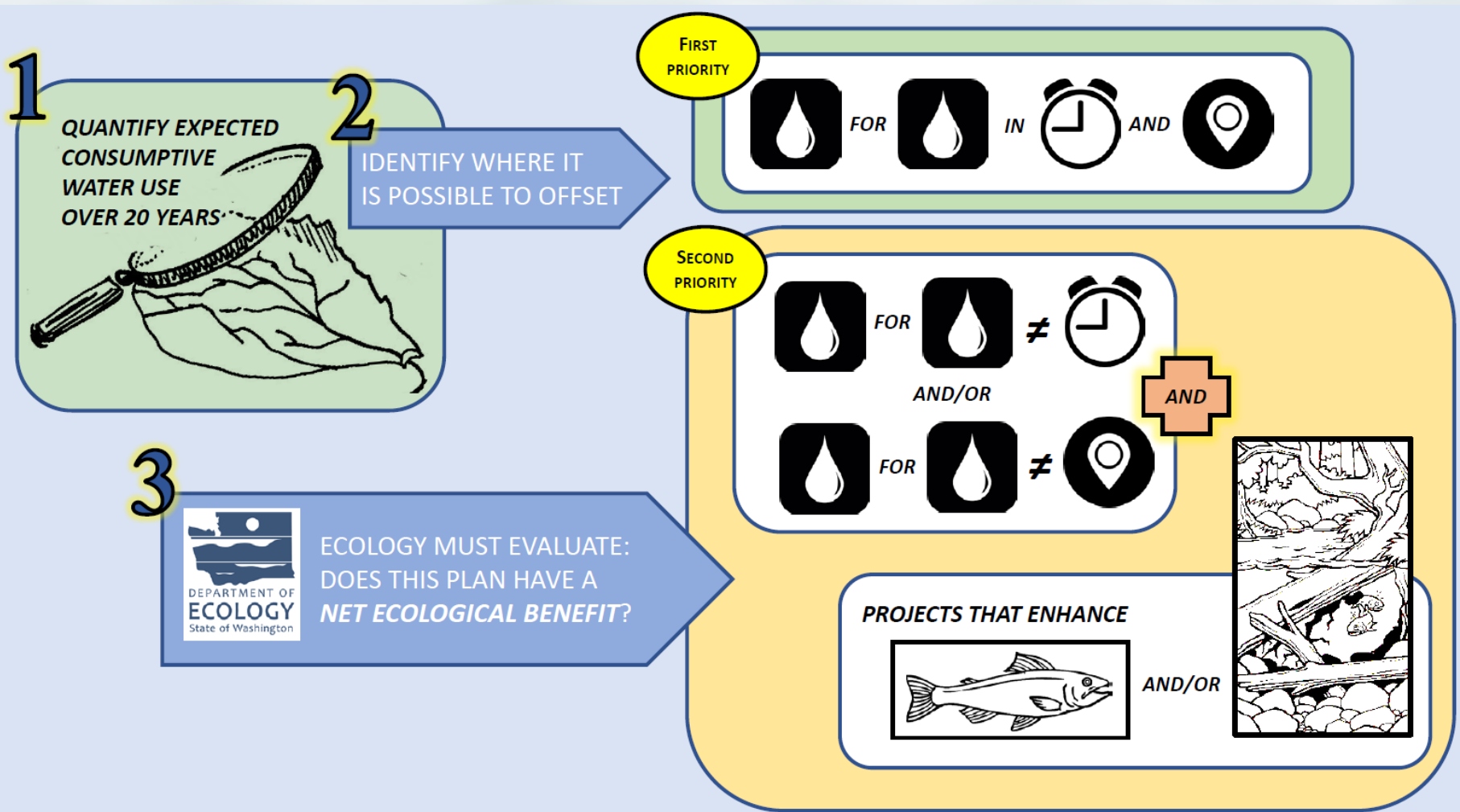
Planning elements:

- 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



90.94 Project Grants Pilot Round

- **\$300** Million (2018-2033)
- **\$20** Million Available 2019
- **≈\$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

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