

Water Resources Stakeholder Discussion – Identifying Rural Water Supply Strategies

**Department of Ecology, Water Resources Program
Dave Christensen**

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Background

For more than a decade Ecology's instream flow protection program has struggled to develop a water management framework that establishes future water supply for new consumptive uses and protects instream flows. The Supreme Court ruling in *Swinomish v. Ecology* in late 2013 increased that challenge.

Ecology has been evaluating how it can meet its competing water resource management mandates and comply with the restrictions identified by the court. A key piece of the decision includes a finding that Ecology erred in using the Overriding Consideration of Public Interest (OCPI) to justify creating reserves of water for use by people with private domestic wells.

Ecology now faces a greater challenge protecting instream flows and senior water rights holders while not precluding all rural development.

Ecology is engaging with stakeholders and Tribal governments and evaluating options they have identified, including those available under current statutory authorities and those that would require statutory change. As options are more fully detailed, Ecology staff will evaluate legal, political, and economic issues, as well as, the key challenges in implementing these options.

Stakeholders have provided input to Ecology about potential approaches to instream flow rule making. Options would apply only to water rights administered by the state.

Ecology's Goals

Develop a water management framework that protects instream resources and allows reliable water supplies to be allocated for new rural domestic uses. The approach must be implementable to be effective. As such, it should employ management strategies that are proportionate to the scale of potential impacts.

Rural water supply – Stakeholder ideas for options under current authorities:

- A. Continue to establish reserves in new and amended instream flow rules
 - Use OCPI to justify reserves in different manner than Skagit rule.
 - Could allocate water for future need and instream values simultaneously according to a maximum net benefits analysis without using OCPI.
 - Could rely on cisterns to be used during times of low flows.

- B. Use existing authorities to broaden mitigation options (RCW 90.44.055)
 - Could use conservation to make more water available.
 - No clear authority for out-of-kind mitigation options.
 - Rely on mitigation banking authorities; currently mitigation banks under scrutiny.

- C. Rely on local governments through better integration of land use planning
 - Working through Associations of Counties to update guidance.
 - Clear challenges ahead resolving unclear roles and responsibilities in the wake of the Kittitas decision.

Stakeholder ideas for options that would require changing statutory authorities:

- A. Broaden mitigation options
 - Provide additional flexibility for out-of-kind mitigation.
 - “Pay upfront” - all new users pay into a fund that could be used to offset their impacts to either stream flow or to senior users.
 - Disconnect mitigation from individual home scale.
 - Could consider full range of hydrologic impacts of development (stormwater, land cover changes, etc).

- B. New or modified “OCPI”
 - Provide Ecology with clear authority for allowing de minimis uses when stream flows are not being met.
 - Ecology could modify established instream flows or allow exceptions for continued new appropriation for permit exempt.
 - Could also address potential small impacts associated with permitting decisions.
 - Public interest could be established by watershed planning groups, consultation with Tribes/Fish Managers, or some other mechanism.
 - Exceptions could be broad (such as legislative clarification that domestic permit-exempt wells are not subject to instream flow rules) to narrow (such as exceptions are allowed only where in-kind mitigation is not available).

- C. Create statutory priority for domestic water use over other out-of-stream uses
 - Twelve of 17 western states have a domestic priority in statute or constitution.
 - Would have to be evaluated carefully because of separation of power issues.
 - Could apply to in-house use only, or also include outdoor lawn/garden use.
 - Could be limited to single domestic only (not group domestic like the current statutory exemption).