Joint Legislative Task Force on Mitigation Implementing RCW 90.94.090

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We manage water resources to meet the needs of people and the natural environment, in partnership with Washington communities.

Overview

- Review statutory directive
- Summary of analysis in report to committee submitted on November 15
- Anticipated next steps
- Questions and Discussion

Statutory directive

RCW 90.94.090(8) The department shall issue **permit decisions** for up to five water resource mitigation pilot projects. It is the intent of the legislature to use the pilot projects to inform the legislative task force process while also enabling the processing of water right applications that address water supply needs.

Mitigation Sequencing

RCW 90.94.090(8) outlines a mitigation sequence that the pilot participants must follow when creating a mitigation plan to offset impacts from the proposed projects.

RCW 90.94.090(8)(a): Avoidance

- Complying with prescribed mitigation set forth within an instream flow rule; or
- Through conditions on water right approvals in which the water use would be interrupted when flows in affected water bodies fall below instream flow levels.

RCW 90.94.090(8)(b): Minimize

- Providing permanent new or existing trust water rights or through other types of replacement water supply
- No net annual increase in the quantity of water diverted or withdrawn
- No **net detrimental impacts** to fish and related aquatic resources

RCW 90.94.090(8)(c): Compensate

- Use in-kind or out-of-kind mitigation (or a combination of both), provided that the mitigation improves the function and productivity of affected fish populations and related aquatic habitat
- May include instream or out-of-stream measures
- Provide **net ecological benefits** to fish and related aquatic resources in the water resource inventory area

Participants in pilot projects

- City of Yelm
- City of Sumner
- City of Port Orchard
- Spanaway Water Company
- Ag Water Board of Whatcom County

City of Yelm

Demand

- In 2017 the City pumped 708 acre-feet from its wells

- By 2028, the City estimates that it will need approximately 1,816 acre-feet in water rights to serve future demand

Avoidance

- Two instream flow rules:
  - Chapter 173-511 WAC (Nisqually River Basin)
  - Chapter 173-513 WAC (Deschutes River Basin)
- Rules do not have any prescribed mitigation for new water rights
- Interruptible rights are not applicable to serving new municipal water supply needs

Minimization

- Purchased irrigation water rights (jointly with Lacey and Olympia)
  - Totaling 270 acre-feet and 1.17 cfs diversionary flow
  - In-kind mitigation in the Deschutes watershed
  - Placed into Ecology's Trust Water Right Program
  - Rights do not fully address time period of impact
- City is still pursuing additional water rights that fully mitigate the closure period

Compensation

- Former Smith Ranch site which provides benefits to aquatic resources in the upper Deschutes River

City of Sumner

Demand

- Current water usage estimated to be 1.75 million gallons per day (MGD) (1,960 acre-feet annually)
- Estimate a need for 2.88 MGD (3,226 acre-feet per year) by the year 2068
- Water right deficit would be 343 acre-feet per year by 2068

Avoidance

- One instream flow rule, chapter 173-510 (Puyallup River basin)
- Rule does not have any prescribed mitigation for new water rights
- Interruptible rights are not applicable to serving new municipal water supply needs

Minimization

- Use water obtained from the Cascade Water Alliance (CWA) from the White River
- Acquire local irrigation rights to offset impacts from pumping their central well.
- Use water from the CWA tailrace

Compensation

- Lower White River Habitat Project (LWRHP)
  - Reduce flood risk
  - Restore and improve floodplain habitat
  - Better utilize CWA's tailrace water
- Numerical model will be used to quantify the amount of water that cannot be offset
- Evaluation includes:
  - Monitoring and contingency plans
  - Assurances (financial) for full implementation

Spanaway Water Co

Demand

- Current demand is 3,377 acre-feet of water
- Surplus of 690.5 acre-feet of water rights available
- Expected to deplete its water right surplus by the year 2023
- Conservative (high growth) estimate is a total water use of 5,908 acre-feet per year

Avoidance

- One instream flow rule, chapter 173-512 (Chambers-Clover basin)
- Rule does not have any prescribed mitigation for new water rights
- Interruptible rights are not applicable to serving new municipal water supply needs

Minimization

- Pursuing a 160 acre-foot water right with a place of use that abuts Clover Creek
- This water right would be put into Ecology's Trust Water Right Program as water-for-water mitigation
- Due to the urban nature of the watershed, additional water rights may not be available

Compensation

- Awaiting completion of a numerical model to quantify the impacts of its proposed groundwater right
- At that point, can evaluate if minimization mitigation steps will fully mitigate the impacts from the proposed appropriation

City of Port Orchard

Demand

- Current maximum day demand is 1,450 gpm
- Port Orchard existing rights total 3,300 gpm and 3,528 acre-feet per year
- Projected to not meet maximum day demands within 20 years

Avoidance

- One instream flow rule, chapter 173-515 (Kitsap basin)
- Rule does not have any prescribed mitigation for new water rights
- Interruptible rights are not applicable to serving new municipal water supply needs

Minimization

- Most of the proposed changes request replacing shallow wells with deeper wells.
- Intend to offset the impacts of new wells using their water system portfolio and distribution pipes
- The new wells will be in the deep aquifer
  - Approach has more diffuse effects impacting many surrounding streams vs existing shallow wells that have more intense localized impacts

Minimization (continued)

- Each surface water body that is impacted will be augmented, if feasible, by the quantity of water estimated through the model plus a quantity representative of the level of model uncertainty
- Infiltration galleries will be placed as far upstream as feasible to ensure the best possible distribution of augmentation

Compensation

- Widely distributed impacts
- Not all impacts can be mitigated by minimization
- Use steady-state numerical model, which does not address timing
- Small streams within small subbasins draining independently to Puget Sound are more challenging to mitigate impacts

Ag Water Board of Whatcom County

Demand

- The applications involve either changes from surface water to groundwater, or approval of flow augmentation that will not involve any increase in consumptive use
- Ecology approval is needed for the new points of withdrawal (well locations), and for new non-consumptive water rights for flow augmentation

Avoidance

- One instream flow rule, chapter 173-501 (Nooksack River basin)
- Rule does not have any prescribed mitigation for new water rights
- The applications involve water rights in the Dakota, Bertrand, and Fishtrap Creek sub-basins
  - Year-round closures for any new uses
  - WAC 173-501-070 allows for new non-consumptive water uses

Minimization

- The proposal will not result in an increase in consumptive quantity used under current rights.
- Must meet the “no net detriment” standard established in RCW 90.94.090(8)(b).

Considerations

- Proposed water right transfers and surface water augmentation projects will result in **increase** in flow in the tributary streams during the critical low flow period.
- Potential negative impacts in the tributary streams from pumping the wells would be delayed and attenuated
- Most of the impacts would occur in the late fall and winter.

Next Steps

Next Steps

- Ecology will coordinate check-in meetings with all five pilots by the end of March 2019
- Applicants' technical consultants will prepare draft Report of Examination under Cost-Reimbursement process (some potentially as early as mid-2019)
- Ecology must monitor the implementation of the pilot projects, including all mitigation associated with each pilot project, at least annually through December 31, 2028

Questions and Discussion