April 27, 2022

WATER RESOURCES LAWS REGARDING IMPAIRMENT AND MITIGATION OF REGULATORY INSTREAM FLOWS IN OTHER STATES COMPARED TO WASHINGTON STATE

One identified interest of the *Foster* Task Force is to understand how other similar states address impairment and mitigation of regulatory stream flows. Through the Washington Water Utilities Council, water utility associations commissioned a review of how other western prior appropriation state water laws compare to Washington's laws on impairment and mitigation of regulatory stream flows for new water rights, water right change applications, mitigation packages, or water banking. A summary of these findings is set out in the attached chart (Attachment A) and is intended to be shared with the *Foster* Task Force and other interested parties.

The request for this study was prompted by Department of Ecology Publication 20-11-083 (July 2020) (Attachment B), which provides information on the Washington Supreme Court's *Foster* decision.[1] The Ecology publication describes *Foster*'s "perfect" mitigation requirement for any, even *de minimus*, depletions of regulatory minimum instream flows. Under *Foster*, a water right applicant must supply mitigation that is: (1) in kind (wet water mitigation—and not other types of mitigation, like habitat improvements); (2) in time (at the same time as the modeled or actual impairment); and (3) in place (in the same location within the water body).

Providing additional insight into how other states handle these important questions concerning regulatory stream flows and mitigation could assist the *Foster* Task Force. Because it was not practical and beyond the scope of the study to review all states, a first task is to identify western prior appropriation states that have some form of a regulatory flow program, where instream flows can be set by regulation or statute, in a manner similar or comparable to Washington's minimum instream flows. We identified the following states with active regulatory flow programs and included each of these states in our comparison: (1) California, (2) Colorado, (3) Idaho, (4) Kansas, (5) Montana, (6) Nevada, and (7) Oregon.

Then, the review focused on the seven identified states to provide an understanding of how their laws and policies compared to those of Washington State. First, the review focused on the standard for impairment or injury of instream flows for new water rights or changes to existing water rights. Second, the review considered whether impairment or injury of instream flows could be mitigated, including the standard for mitigation (and in particular whether that standard required mitigation in kind, in time, and in place). This summary information is compiled in the attached chart, with select endnotes for key references.

The review captured in the chart demonstrates that Washington is the only western prior appropriation state with regulatory flows that has affirmative law requiring that mitigation to offset impairment be in kind, in time, and in place. In some of the other studied states, including Colorado, the state water regulatory agency has discretion in determining whether to accept mitigation, even where that mitigation is not in kind, in time, and in place.

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[1] *Foster v. Washington State Dep't of Ecology, the City of Yelm, and the Washington Pollution Control Hearings Board*, 184 Wn.2d 465, 362 P.3d 959 (2015).

Attachment A—*Water Resources Laws Regarding Impairment and Mitigation of Regulatory Instream Flows in Other States Compared to Washington State Chart*

WATER RESOURCES LAWS REGARDING IMPAIRMENT AND MITIGATION OF REGULATORY INSTREAM FLOWS IN OTHER STATES COMPARED TO WASHINGTON STATE

State	Statutory method for establishing instream/regulatory flow	Statutory and/or regulatory impairment standard	Mitigation standard: In time, in kind, in place?	Notes
Washington	The Water Resources Act[1] provided legal recognition of instream water uses to preserve fish, wildlife, and other environmental values. The Washington State Department of Ecology (Ecology) sets instream flows through regulation.	All depletions, including *de minimus* depletions, of regulatory minimum instream flows constitute impairment.	Mitigation must be: (1) in kind (wet water—and not other types of mitigation, like habitat improvements); (2) in time (at the same time as the modeled or actual impairment); and (3) in place (in the same location within the water body).	*This explanation of Washington's law on impairment and mitigation is from* Ecology Publication 20-11-083. Washington is included in this chart for ease of comparison with the states analyzed below.
California	1. An existing water rights holder can petition the State Water Resources Control Board (SWRCB) for a change of use for the preservation or enhancement of wetlands, habitat, fish, and wildlife resources, provided the change does not increase the amount of water being used by the applicant and will not unreasonably affect a legal water user.[2] 2. The SWRCB may impose conditions on new water right permits, licenses, and changes of use to preserve minimum instream flows established by the Department of Fish & Wildlife.[3] 3. The SWRCB may impair existing water rights to preserve minimum instream flows pursuant to the public trust doctrine, a water user has depleted a water body to the extent that the public interest is harmed and the water use is no longer reasonable.[4]	1. New water rights and changes of use of existing water rights cannot unreasonably affect or substantially injure any senior legal user of water (referred to as the "no injury rule").[5] 2. There is no clearly identifiable statutory or regulatory language, or case law, on whether conditions placed on water right permits, licenses, or changes of use to preserve instream flows may be specifically impaired, modified, or removed. 3. There is no clearly identifiable statutory or regulatory language, or case law, on whether the public trust doctrine may be invoked to impair existing instream flows for other public benefits.	No clearly identifiable statute, regulation, or case law provides a standard for mitigating impacts to minimum instream flows.	The SWRCB can impair or condition existing water rights for the preservation or enhancement of instream flows; however, no clearly identifiable statute, regulation, or case law explains whether once recognized, those flows may be impaired or impaired with mitigation.

State	Statutory method for establishing instream/regulatory flow	Statutory and/or regulatory impairment standard	Mitigation standard: In time, in kind, in place?	Notes
Colorado	Appropriative water rights for instream flows are given a fixed priority date and a specified flow rate or volumetric quantity at a time and place of use. Adjudicated instream flow rights are held by the Colorado Water Conservation Board (CWCB) and the CWCB may oppose water rights that injure or impair instream flow rights.[6]	The CWCB may accept impairment to an instream flow right if either: (1) through mitigation, it can continue to preserve or improve the natural environment to a reasonable degree notwithstanding the injury;[7] or (2) it is a *de minimis* impact to an instream flow right (i.e., the impairment has a 1% or less depletive effect).[8]	Mitigation does not need to be in time, kind, or place. Off-site mitigation may be accepted even if no reasonable alternatives exist for mitigation on the affected stream.[9]	Whether to accept impairment, either through *de minimis* impact or mitigation is within the discretion of the CWCB and clarified through regulation at 2 CCR 408-2.
Idaho	The minimum stream flow statute allows the Idaho Water Resource Board (IWRB) to file for unappropriated water to be used for instream flows and allows any person to petition the IWRB to file for a minimum flow right.[10] Minimum instream flows must be approved by the legislature.	No clearly identifiable statute, regulation, or case law provides a specific standard for impairment of instream flows. New water rights[11] and changes of use of existing water rights[12] cannot reduce the quantity of water under existing rights and must be in the public interest.	Mitigation is allowed, including mitigation to offset injury to instream flows.[13] No obligation for mitigation to "enhance" environmental conditions—must only mitigate injury.[14]	If a mitigation plan proposed by the party causing the injury is sufficient to avoid material injury,[15] that plan may be approved by the IWRB over the objection of the injured parties.[16]
Kansas	The minimum desirable streamflow law allows the state legislature to set minimum flows for specific waterbodies.[17]	No clearly identifiable statute, regulation, or case law provides a specific impairment standard for instream flows. New water rights[18] or changes in use[19] to existing water rights cannot impair an existing right or adversely affect the public interest.	No clearly identifiable statute, regulation, or case law provides a specific mitigation standard for instream flows.[20]	

State	Statutory method for establishing instream/regulatory flow	Statutory and/or regulatory impairment standard	Mitigation standard: In time, in kind, in place?	Notes
Montana	1. Federal, state, and local governments may apply to the Department of Natural Resources and Conservation (DNRC) to acquire a state water reservation to maintain minimum instream flows throughout the year or at certain periods.[21] 2. DNRC may approve temporary changes in existing appropriated water rights to maintain or enhance instream flow rates to benefit fishery resources.[22] 3. With approval from DNRC, the Department of Fish, Wildlife, and Parks (FWP) may change an appropriation right, which it holds either in fee simple or lease, to an instream flow right to protect, maintain, or enhance instream flows to benefit fishery resources.[23] 4. FWP may lease water from other water right holders to protect, maintain, or enhance instream flow rates for up to 10 years, with an indefinite number of lease renewals.[24]	1. DNRC may modify an appropriated water reservation for instream flows if all or part of the reservation is not required for its purpose and the need for reallocation outweighs the need shown by the original reservation.[25] Reallocations cannot occur on any stream or river more than once every five years.[26] 2. "Priority of appropriation does not include the right to prevent changes by later appropriators if the prior appropriator can reasonably exercise the water right under the changed conditions."[27] This suggests that existing water rights, including those temporarily changed to protect instream flows, may be impaired by junior appropriators where the senior water right can be reasonably exercised despite the impairment. 3 & 4. DNRC may modify or revoke a change in use to protect instream flows, either held in fee simple or leased by FWP, for up to 10 years after approving the change, if a senior water rights holder submits new evidence not available at the time the change was approved that proves that the senior rights holder's water right is adversely affected.[28]	No clearly identifiable statute, regulation, or case law provides a specific mitigation standard for either appropriated or leased instream flow rights.	

State	Statutory method for establishing instream/regulatory flow	Statutory and/or regulatory impairment standard	Mitigation standard: In time, in kind, in place?	Notes
Nevada	The State Engineer is authorized to grant a water right application to protect instream flow rates, provided the appropriation does not interfere with senior water rights. There is no clear distinction between water rights for instream flows versus those for other beneficial uses requiring a diversion.[29]	No clearly identifiable statute, regulation, or case law provides a specific standard for impairment of instream flows.	The State Engineer is not authorized to impose mitigation conditions on new water right permits or changes of use.[30]	The Nevada Supreme Court held there is no statutory basis for the State Engineer to impose mitigation conditions. However, dicta indicates that if mitigation were judicially recognized, it would have to be full mitigation in kind, place, and time.[31]
Oregon	1. The Instream Water Right Act converted prior Minimum Perennial Flows that had been established under the 1955 act to instream rights after an administrative process,[32] and also allows for a request to the Oregon Water Resources Department (OWRD) by the Oregon Department of Environmental Quality, Oregon Parks and Recreation Department, or the Oregon Department of Fish and Wildlife for instream water rights in the amount needed to support recommended public uses.[33] 2. As with any new water rights application, the applicable basin program must "classify" the source water for instream uses for a new instream water right application to be considered.[34] 3. Oregon also sets some basin-specific minimum flows by administrative rule.	1 & 2. Permits for a new right[35] or changes to an existing use[36] cannot injure other water rights. The OWRD can approve a transfer that would injure an instream flow created through a request from a state agency or the conversion of minimum perennial flows into instream water rights when the applicant follows the regulatory requirements for obtaining consent for the injury.[37] 3. New rights or changes in use cannot reduce surface water flows within a scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less.[38]	By regulation, if there would be an injury to an instream water right, OWRD would have to consent to that injury, after obtaining the consent of the state agency that initially requested that instream flow water right.[39] In issuing the consent to impair an instream flow, OWRD can include "any conditions necessary to ensure that the change will . . . result in a continued net benefit to the resources consistent with the purposes of the instream water right."[40]	Oregon's statute on scenic waterways also provides some minimum flow protections, stating that the "free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish, and wildlife uses."[41]

[1] Chapter 225 RCW.
[2] California Water Code § 1707.
[3] California Public Resources Code § 10002; California Water Code § 1257.5.
[4] *National Audubon Society v. Superior Court*, 33 Cal.3d 419, 447, 658 P.2d 709 (1983).
[5] *See, State Water Resources Control Bd*. *Cases*, 136 Cal. App. 4th 674, 39 Cal. Rptr. 3d 189 (2006) (deriving the "no injury rule" from several provisions of the California Water Code, including sections 1702, 1706, 1707, and 1736).
[6] *Colorado Water Conservation Board v. City of Central*, 125 P.3d 424 (Colo. 2005).
[7] 2 Code of Colorado Regulations (CCR) § 408-2:8i.
[8] 2 CCR § 408-2:8e.
[9] 2 CCR § 408-2:8i(3).
[10] Idaho Code § 42-1501 *et seq*.
[11] Idaho Code § 42-203A(5).
[12] For a change to an existing water right: (1) no other water rights can be injured; (2) change cannot be an enlargement of the original right; (3) change must be in the local public interest and consistent with the conservation of water resources within Idaho; and (4) change must comply with the policy of beneficial use. Idaho Code § 42-222.
[13] J. Fereday, *et. al*, *Idaho Water Law Handbook: The Acquisition, Use, Transfer, Administration, and Management of Water Rights in Idaho* (Nov. 8, 2019) (hereinafter, "*Fereday Handbook"*) at 150-54.
[14] *Fereday Handbook* at 140, n.378.
[15] There is no objective standard for what constitutes "material injury," such decisions are based on assessing several factors. *In Matter of Distribution of Water to Various Water Rts. Held By or For Ben. of A & B Irrigation Dist.*, 155 Idaho 640, 652, 315 P.3d 828 (2013).
[16] *Fereday Handbook* at 141.
[17] Kansas Statutes Annotated (KSA) § 82a-703a-c.
[18] KSA § 82a-711; *see also Cochran v. Dep't of Agric.*, 291 Kan. 898, 249 P.3d 434 (Kan. 2011) (holding that the holder of an existing water right has the right to appeal the granting of a new permit where that prospective new permit might impair the existing right).
[19] KSA § 82a-708b; *see also Garetson Bros. v. Am. Warrior, Inc.*, 51 Kan. App. 2d 370, 389, 347 P.3d 687 (Kan. Ct. App. 2015), *cert. denied*, Jan. 25, 2016 (defining impairment for a change to an existing permit as "to cause to diminish, as in strength, value, or quality.").
[20] While an impaired water right holder and impairing water right holder(s) can work out mutually acceptable arrangements, such as rotating water use or other acceptable measures, to mitigate impairment, this does not appear to have ever been applied in the minimum instream flow context, and it is unlikely that the process would be applicable to a statutorily set flow level. *See* Kansas Department of Agriculture, *Impairment Complaints*, available at https://agriculture.ks.gov/divisions-programs/dwr/water-appropriation/impairment-complaints (last visited Dec. 8, 2021).
[21] Montana Code Annotated (MCA) § 85-2-316(1).
[22] MCA § 85-2-408(1).
[23] MCA § 85-2-436(1).
[24] MCA § 85-2-436(3).
[25] MCA § 85-2-316(11) (criteria for deciding a reallocation is in the Administrative Rules of Montana (ARM) § 36.16.107A).

[26] MCA § 85-2-316(11); ARM § 36.16.119.
[27] MCA § 85-2-401(1).
[28] MCA § 85-2-436(3)(f).
[29] Nevada Revised Statutes (NRS) § 533-430.
[30] *Eureka County v. State Engineer*, 131 Nev. 846, 850, 359 P.3d 1114 (2015).
[31] *Eureka County v. State Engineer*, 131 Nev. 846, 850, 359 P.3d 1114 (2015).
[32] Oregon Revised Statutes (ORS) §§ 537.332 - 537.360; *see also* Adell Amos, *Freshwater Conservation in the Context of Energy and Climate Policy: Assessing Progress and Identifying Challenges in Oregon and the Western United States*, 12 U. Denv. Water L. Rev. 1, 67 (2008) (explaining conversion of 1955 Minimum Perennial Flow Act flows under the Instream Water Right Act). Under the Instream Water Right Act, instream water rights may also be established by temporary lease, time-limited transfer, or permanent transfer of water rights established for other uses. ORS § 537.348.
[33] ORS § 537.348.
[34] Basin programs are established pursuant to ORS §§ 536.300 to .340 and governed by Oregon Administrative (Admin.) Rules (R.) sections 690-500-0010 to 690-522-0600.
[35] ORS § 537.621.
[36] ORS § 540.530; *see also* Oregon Admin. R. 690-380-0100 (defining injury).
[37] ORS § 540.530.
[38] ORS § 390.835(12).
[39] ORS § 540.530(1)(c).
[40] ORS § 540.530(1). While not phrased as a mitigation standard, this provision would seemingly allow OWRD to require mitigation for an injury to an instream right. Further, a recent 2022 OWRD memo may potentially limit opportunities to mitigate for a new water right application when there is no water available for the proposed use in some cases.
[41] ORS §§ 390.805-925.

Attachment B—*Department of Ecology Publication 20-11-083*

Focus on: How the Foster decision affects our work

More information

Visit the Foster decision page.
https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights/Case-law/Foster-decision

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The Foster Decision: Summary

In 2015 the State Supreme Court issued a decision on Foster v. Ecology, City of Yelm, and Washington Pollution Control Hearings Board. The decision, frequently referred to as the "Foster decision," reaffirmed and reinforced that instream flows adopted in a rule must be protected from impairment. The decision affects Ecology's work on water right change applications, mitigation packages, and water banking. Instream flows have been adopted in nearly half of the state's watersheds and the Columbia River (see Figure 1).

Background

The city of Yelm applied to Ecology for a new municipal water right permit to meet its increasing water needs. Ecology conditioned the permit on an extensive mitigation plan that included several strategies using both *in-kind* and *out-of-kind* mitigation to account for the impairment to minimum flows that would result from the new water uses.

The mitigation plan included offsetting the total quantity of water through in-kind or "wet water" mitigation. However, the timing of the mitigation did not match perfectly—the in-kind mitigation occurred during the low-flow period only. It was acknowledged that minimum instream flows would be slightly affected during the fall and spring seasons, so the city proposed mitigating this with out-of-kind mitigation in the form of habitat improvements. Overall, the mitigation package improved habitat conditions for aquatic species and wildlife, as compared to the status quo.

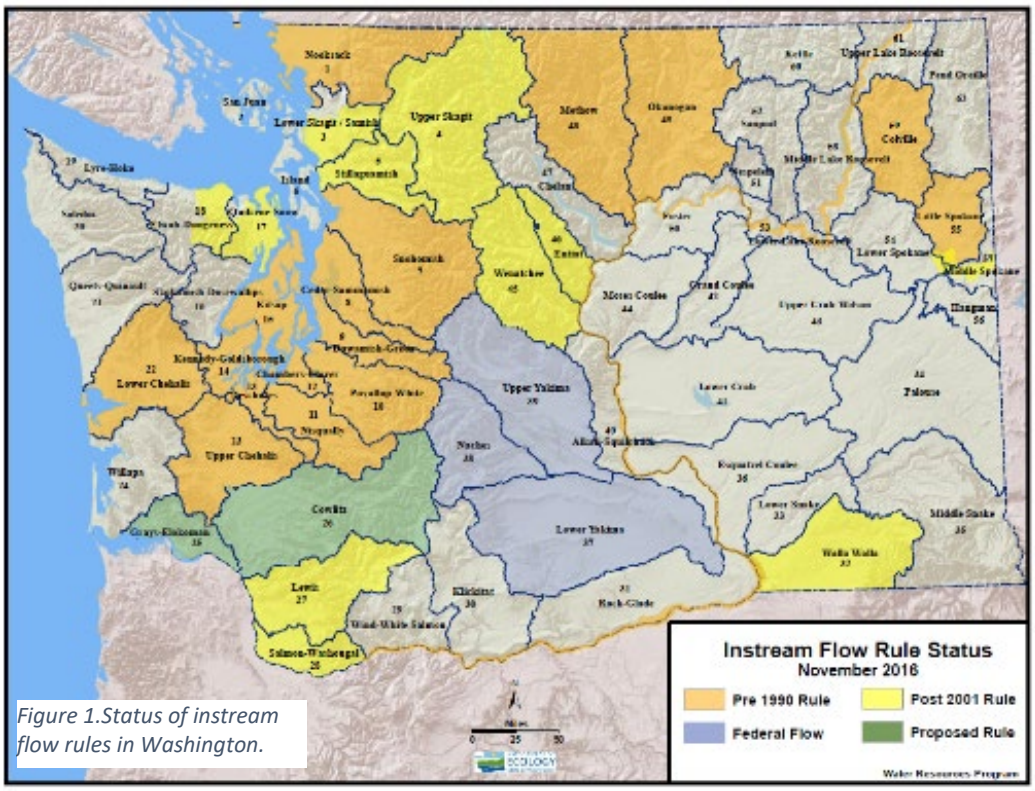


Figure 1.Status of instream flow rules in Washington.

Ecology generally may not issue a water right permit for any use of water that results in withdrawals that impair minimum flows, unless "it is clear that overriding considerations of public interest [OCPI] will be served.[i]" In Yelm's water right permit decision, Ecology determined the OCPI exception was

appropriate for use in this water right decision since it resulted in a net ecological benefit, despite the net loss of water. This permitting decision was appealed by Foster.

Yelm's water right permit was first appealed to the Pollution Control Hearings Board (PCHB), then to Thurston County Superior Court. The Supreme Court then granted direct review of the Superior Court's decision. The Supreme Court ruled that the permit was issued in error, overturning lower court rulings. The State Supreme Court ruled that:

- Impairment of instream flows is not permissible, even for *de minimus* impairment or if there is overall ecological benefit associated with a mitigation proposal.

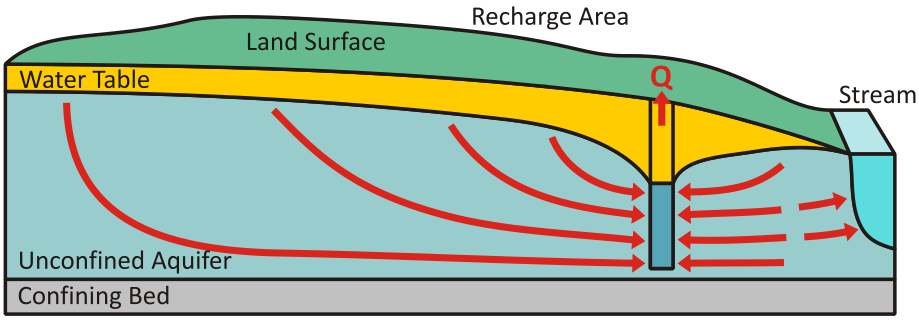


Figure 2. Effects of withdrawing groundwater from a well. 'Q' = withdrawal.

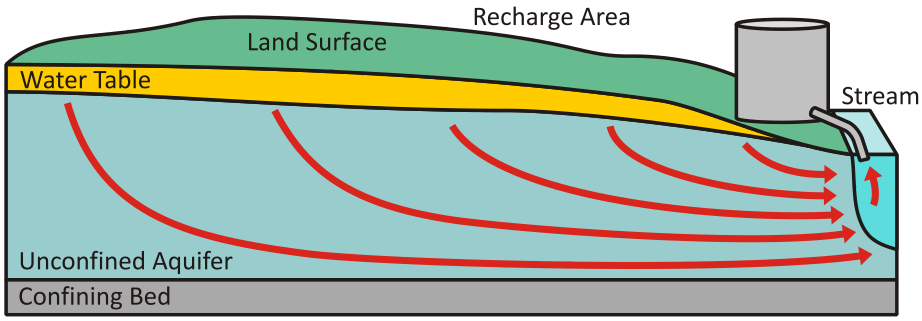


Figure 3. Effects of pumping water from a stream with a surface water diversion.

- Ecology cannot use out-of-kind mitigation, such as habitat improvements, to address impairment of instream flows.
- OCPI cannot be used to approve permanent water rights.

Implications

Water Right Change Applications

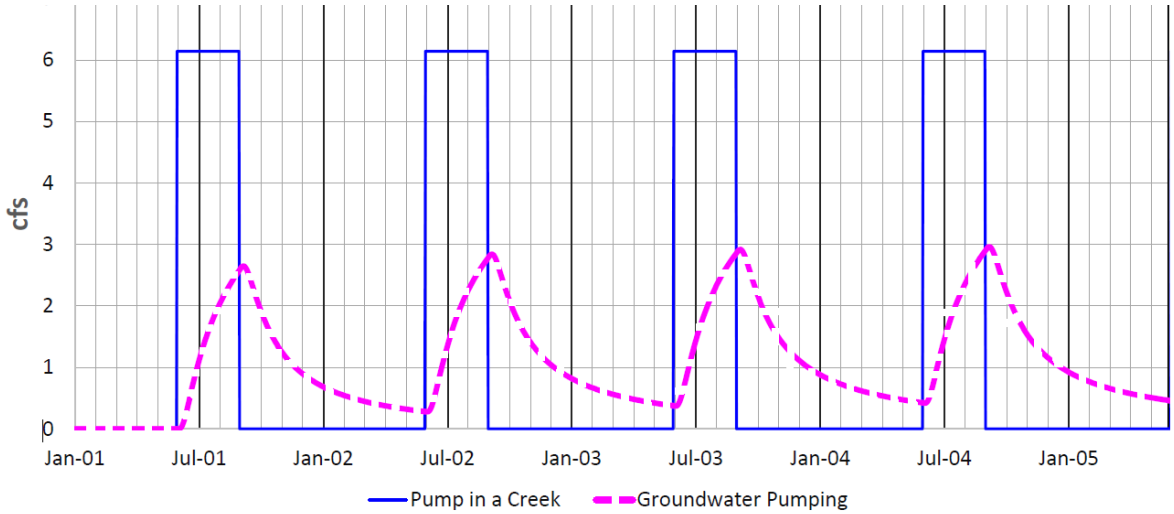
The Supreme Court's ruling significantly limits Ecology's ability to approve change applications that do not perfectly match the season, timing, and place-of-use between the existing water right and a proposed change. Due to the ruling, Ecology is also unable to approve many minor changes to water rights that the agency could previously approve, such as changing the point of diversion/withdrawal or place of use. Another significant effect of the ruling is that in watersheds where instream flows have been adopted, Ecology cannot approve water right changes that benefit the environment and endangered salmonids if there is any impairment on flow levels at any time of the year.

Let's take the example of changing a water right from a stream diversion to a well withdrawal and the implication of the Court's ruling. When a water right user diverts water directly from a stream (surface water), there is an effect on that stream. It directly reduces the quantity of water in the stream and the timing of the impact is immediate. When a water right user withdraws the exact same quantity of water from a well (groundwater), the effect on the nearby surface waters is generally less direct. Less water comes from the stream and the timing is delayed, see Figures 2 and 3. This is due to attenuation (spreading) of the impact through the aquifer.

Figure 4 shows patterns of streamflow depletion, based on modeled data from the USGS[ii], and helps demonstrate the direct effect of pumping from a stream (see the solid blue line), versus the effect on the stream when a nearby well is pumped (see the dashed pink line). When the well is pumped, the impacts on the stream are reduced at the time the pumping occurs, but continue through the winter months.

Historically, Ecology supported these source changes due to their environmental benefits, including increased streamflow during summer low flow conditions, and benefits to aquatic species like threatened and endangered salmon.

Figure 4. Example of streamflow depletion caused by a surface water diversion vs. pumping an equivalent volume of groundwater from nearby well. From Barlow, P.M., and Leake, S.A., 2012, Streamflow depletion by wells—Understanding and managing the effects of groundwater pumping on streamflow: U.S. Geological Survey Circular 1376, 84 p.



Under the Court's decision, in a watershed with adopted instream flows, Ecology can no longer approve these source changes because of these new impacts to the surface water body into the winter.

Mitigation Packages

The Court's ruling made it clear that water right mitigation must address flow impairment, even *de minimus* impairment, both in-time, and in-place. For new groundwater uses, mitigating all flow impairment from all affected waterbodies can literally be impossible. A new groundwater withdrawal may have predicted (modeled) impacts that extend out many miles from the proposed new well. Under the Foster decision, the applicant must mitigate flow impacts in multiple--potentially dozens of--smaller tributary streams. Often, applicants find that flow mitigation through acquisition and retiring of a senior water right is not available from these smaller streams.

Water Banks

The Foster decision also affects water banking in areas of the state with instream flow rules[iii]. Prior to the ruling, Ecology could accept existing seasonal irrigation water rights in water bank proposals for mitigation of new year-round of domestic uses. As described above, we now cannot consider seasonal water rights for mitigating year-round uses in water banking proposals because the timing of the actual use and the water right doesn't match. This significantly limits the opportunity for developing water banks to mitigate for new year-round uses in watersheds with adopted instream flows.

Overriding Consideration of Public Interest (OCPI)

The Supreme Court decision also eliminates the use of OCPI as a balancing tool for any permanent appropriation of water. This means that OCPI can only be used when issuing *temporary* water rights. Since Ecology issues temporary water rights infrequently, this tool now has extremely limited applicability.

Streamflow Restoration Planning Projects

The 2018 Streamflow Restoration law (RCW 90.94) requires 15 watershed planning groups to prepare local watershed plans that include projects and actions (projects) to offset new consumptive water use from future domestic permit-exempt well use and achieve Net Ecological Benefit (NEB) in the watershed.

In Streamflow Restoration planning, since plans are prepared with implementation in mind, if a plan includes a project that violates the Foster decision, Ecology is unable to participate in the implementation of that project. For example, Ecology could not approve a permit or provide grant funding for a project that violates the Foster decision.

Ecology recognizes that local planning groups might support projects that benefit their watershed, but that don't meet the requirements of the Foster decision. This creates an inherent tension: on the one hand, a local planning group may want to include

projects the group supports. On the other hand, implementing or supporting the project would require Ecology to violate its own legal authorities—and Ecology cannot do that. To help avoid this tension, Ecology staff members working with these 15 planning groups are taking all reasonable steps to adhere to applicable laws, policy, and guidance, while advising the planning groups with which they work.

It is Ecology's intent to help planning groups prepare plans that include projects intended by the planning group to not only offset all new consumptive water use from future domestic permit-exempt well use, and achieve a NEB, but also be implementable. This includes not violating the Foster decision.

Next Steps

The Legislature established the Joint Legislative Task Force on Water Resource Mitigation (Task Force) in RCW 90.94.090 to understand impacts of the 2015 Foster decision. In that law, Ecology is authorized to issue permit decisions for up to five water mitigation pilot projects using a stepwise mitigation approach that can include out of kind mitigation. The Task Force issued an initial report on progress from the pilot projects, but work continues.

More information about the Task Force, including their 2019 report to the legislature, can be accessed on their webpage: http://leg.wa.gov/JointCommittees/WRM/Pages/default.aspx

Definitions

Instream flow: Many rivers in Washington are regulated under instream flow rules. The rules function as a water right for the river. Ecology establishes the rule minimum flows that help maintain healthy ecosystems to support fish, communities, and economies.

OCPI: An acronym for Overriding Considerations of Public Interest. RCW 90.54.020(3)(a) provides that withdrawals of water that conflict with minimum instream flows may be authorized "only in those situations where it is clear that overriding considerations of the public interest will be served."

Rule: State agencies adopt rules (WACs) to implement state or federal laws. Also known as a Washington Administrative Code (WAC), is an agency order, directive, or regulation issued by authority of statutes. Like legislation and the Constitution, regulations are a source of primary law in Washington.

Streamflow Restoration Planning: Per RCW 90.94.020 and 90.94.030, Ecology, planning groups, and technical consultants have been working on watershed plan development in 15 water resource inventory areas (WRIAs) since January 2018. The law provides for 1-3 years of planning, depending on the WRIA.

[i] RCW 90.54.020(a)

[ii] Data at a given location may be different based numerous factors, including hydrogeology, geology, distance from the well to the surface water, etc. Your specific situation may vary; data provided are relative. For additional information, see Barlow, P.M., and Leake, S.A., 2012, Streamflow depletion by wells—Understanding and managing the effects of groundwater pumping on streamflow: U.S. Geological Survey Circular 1376, 84 p., http://pubs.usgs.gov/circ/1376/.

[iii] Water banks in the Yakima Basin are not affected by the Foster decision because there are no state-adopted instream flow rules. The Yakima Basin is regulated by Federal Flow regulations not affected by Foster.