Recommendations from Task Force Members and Tribes

DRAFT

Washington Water Utilities Council

September 27, 2022

State Representative Steve Tharinger, Co-Chair
Joint Task Force on Water Resource Mitigation
314 John L. O'Brien Building
Olympia, WA 98504

State Senator Judy Warnick, Co-Chair
Joint Task Force on Water Resource Mitigation
316 Legislative Building
Olympia, WA 98504

RE: Comments & Recommendations to Joint Task Force on Water Resource Mitigation

Dear Senator Warnick and Representative Tharinger:

The Washington Water Utilities Council (WWUC) is the state association of 190 Washington water utilities including cities and towns, water districts, public utility districts, mutual and cooperative water utilities, and investor-owned water utilities. The water systems owned and operated by WWUC members provide drinking water to over 80 percent of the state's population. Our members have committed extensive resources to ensuring viable and sustainable water use conservation programs are in place to conserve scarce water resources. Where possible and practical, our members have developed water reuse and recharge programs.

The WWUC is dedicated to ensuring an adequate quantity of high-quality potable water at the lowest responsible economic cost and smallest environmental impact. The WWUC has received frequent updates from our representative on the Joint Legislative Task Force on Water Resource Mitigation (Task Force) since it began in 2018. We have some comments and recommendations outlined below that relate to the mission of the Task Force.

<u>Foster Task Force Recommendations from the WWUC</u>

1. The Legislature should adopt objective standards in the water code, not subjective tests like the OCPI exception that has proven too unwieldy to have any reliable function for either Ecology or water right applicants.

2. The Legislature should clarify and codify two key holdings of Postema, as follows:

    a. Hydraulic continuity between groundwater and a surface water source that is either closed or is not meeting instream flows, is not, in and of itself impairment;

    b. For Ecology to deny an application for groundwater where there is connection between groundwater and a surface water source that is either closed or not meeting flows, there must be an adverse effect on instream resources.

3. The Net Ecological Benefit (NEB) process was successfully demonstrated in the Yelm Pilot Project that was approved but should be considered for simplification by the Legislature so that mitigation sequencing is more practically achievable.

4. The Legislature should also recognize, as other Western states have done, that certain de minimus or insignificant effects of groundwater appropriations do not constitute an impairment of regulatory instream flow water rights or stream/lake closures. The percentage of insignificance (or percentage of natural variation) should be established for each stream segment and lake based on existing levels rather than for each application, to prevent multiple cumulative impacts from exceeding the level of insignificance.

5. Establish a collaborative state-local program so that impacts that are either *de minimus*, not adverse, or that in combination with existing conditions or other applications could have cumulative adverse impacts, can be mitigated at the watershed or sub-watershed level. The Legislature supported use of public funds (Hirst decision fix in Sec. 304 in ESSB 6091) to enable rural growth, and support for water resource mitigation is essential for GMA's primary purpose of enabling urban growth.

6. Create objective standards for the creation and application of computer groundwater models, including limiting groundwater modeled impacts to areas within the watershed or Water Resource Inventory Area, and not basing permit decisions on impacts that are outside a model's margin of error.

7. The Legislature should consider directing Ecology to utilize simplified mathematical models rather than regional models for determining impairment where the applicant elects to use the Legislature's mitigation sequencing method and NEB determination. NEB determinations at the end of the sequencing process can provide the basin-wide protection that eliminates the need for rigorous computer modelling.

8. Allow water right applicants to use mitigation sequencing, which is used in numerous other environmental permitting areas, that follows the accepted sequence of (a) avoiding impacts; (b) minimizing impacts; and then (c) compensating for impacts with both in-kind and out-of-kind mitigation.

9. The legislature should consider replacing the word "withdrawal" with "appropriation" in the final sentence of RCW 90.54.020(3)(a)). Per Foster v. Yelm, this would remove the Court's determination that OCPI only can be used for "temporary" withdrawals.

10. Create a transparent technical review board of qualified members that can be used to review complicated water right applications and mitigation plans.

Current water resource policies have resulted in extreme difficulty, and in many cases the impossibility of getting new water rights by many of our members in areas where there are regulatory stream flows. This poses serious challenges when the population of Washington State is estimated to grow between 855,292 (12.11 percent) and 2,571,579 (30.57 percent) between 2020 and 2040 and the Growth

Management Act requires local jurisdictions to plan for that growth. In 2020, survey results among cities showed that 115 cities need new water rights. The results are outlined below. Water districts, PUDs, and non-profit public water systems have similar future permitting needs.

No. of Years When New Water Rights are Needed	Number of Cities Responding
Within 5 Years	18
5-10 Years	14
10-20 Years	24
More than 20 Years	59
Total	**115**

It is essential that municipal water suppliers support the citizens of the State with access to clean, reliable and affordable drinking water. Thank you for spending your valuable time, for several years, on these issues of critical importance for the people, fish and farms of Washington State in a time of climate change. We appreciate the opportunity to provide comments and recommendations to the Task Force.

Respectfully,

Judi Gladstone

Judi Gladstone
Chair, Washington Water Utilities Council

cc: Members, Joint Legislative Task Force on Water Resource Mitigation
Carrie Sessions, Executive Policy Office, Governor Jay Inslee
Mary Verner, Water Resource Program Manager, Department of Ecology
Holly Myers, Director, Office of Drinking Water, Department of Health
WWUC Members

Recommendations from Carl Schroeder:

Conservation

- The Legislature should consider potential new conservation standards for water systems served by water rights accessed utilizing mitigation such as requiring WDOH certification that a municipal purveyor is in compliance with the WDOH water conservation statute and rule as a precondition to using the sequenced mitigation standard.

Source Switches

Impacts and impairment

- The Legislature should clarify and codify two key holdings of Postema, as follows:
    - hydraulic continuity between groundwater and a surface water source that is either closed or is not meeting instream flows, is not, in and of itself impairment;
    - for Ecology to deny an application for groundwater where there is connection between groundwater and a surface water source that is either closed or not meeting flows, there must be a projected adverse effect on instream resources.

De minimis use

- The Legislature should also recognize, as other Western states have done, that certain de minimis or insignificant effects of groundwater appropriations do not constitute an impairment of regulatory instream flow water rights or stream/lake closures. The percentage of insignificance (or percentage of natural variation) should be established for each stream segment and lake based on existing levels rather than for each application, to prevent multiple cumulative impacts from exceeding the level of insignificance.

Mitigation and net ecological benefit

- Recommend Legislature provide authority to Ecology to issue water rights decisions based on mitigation for expected impacts which should include out of time, out of place, and out of kind flexibility.
- Recommend Legislature provide authority to Ecology to issue water rights decisions based on mitigation for expected impacts which should include out of time and out of place flexibility.

Overriding Consideration of the Public Interest

- The Legislature should replace the word “withdrawal” with “appropriation” in the final sentence of RCW 90.54.020(3)(a)). Per Foster v. Yelm, this would remove the Court’s determination that OCPI only can be used for “temporary” withdrawals. However, this should not be the only action the state takes to provide tools for approvable water rights applications.

Modeling

- The Legislature should direct the Department of Ecology to undertake rulemaking to establish a process on how to determine the margin of error for hydrological models. Clarify and codify that modeled impacts within the error margin of models shall not be considered impairment.

Other

State Senator Judy Warnick, Co-Chair
Joint Task Force on Water Resource Mitigation
316 Legislative Building
Olympia, WA. 98504

State Representative Steve Tharinger, Co-Chair
Joint Task Force on Water Resource Mitigation
314 John L. O'Brien Building
Olympia, WA 98504

RE: Comments and Suggestions to Joint Task Force on Water Resources Mitigation

This letter is in response to the request emailed by Karen Epps on Thursday, October 13, 2022, to submit any recommendations to be considered by the Joint Task Force for its final meeting on October 27, 2022. Thank you for the opportunity to provide these comments.

One of the key outcomes of participating in the Joint Task Force is the disturbing reminder that we as Washingtonians are struggling to deal with water challenges in the future to protect our fisheries, economies and growing state and have few easy answers. We remain ill-equipped to seek meaningful responses without a holistic strategy that addresses changes in climate, tribal treaty rights, and growing communities as they pertain to vexing water issues and to help provide clarity to those who work around water. I have appreciated the conversations at the Joint Task Force on the specific issues we have talked about but remain concerned that there is not enough information to make decisions on many of the issues before us.

Trout Unlimited has six recommendations to submit for consideration:

1. State Water Plan- While the conversations at the Joint Task Force have been very informative, we believe that taking a play out of the playbook model from California and other states that have built state-wide water plans would help to provide the clarity needed in Washington State. We believe that funding from the WA State legislature to support the creation of a state-wide water plan that includes the status and trends of Washington's water-dependent natural resources, water supplies, and agricultural, municipal and other domestic, and environmental water

demands and considers a range of plausible future climate change scenarios.

2. Trout Unlimited would urge the Joint Task Force to support additional conversations led by the Department of Ecology (Ecology) on "source switches" to determine if there is a pathway to allow for broader use of these types of transfers. While we have heard from some cities that this option provides little relief, we believe this approach has the potential to offer an additional option for public water systems and others for approving transfers from surface water to ground water and potentially other sources like aquifer recharge. We are currently working with a city in Central WA who is looking to move their tributary diversions to wells downstream in an effort to enhance instream flows in the tributary and remove a diversion from the stream while allowing for ongoing use and growth for its water supply.

3. There was significant discussion at several of the Joint Task Force meetings on the lack of clarity, error thresholds and uncertainty of groundwater modeling and other mechanisms used to help with appropriate mitigation. Trout Unlimited would recommend that Ecology and the Department of Fish and Wildlife (WDFW) convene a group of technical experts to review existing information, objective standards and other techniques that could be used to help define what models are the best options. Once there are agreed upon standards for various WRIA's, we would encourage Ecology to pursue rulemaking to provide clarity to project proponents.

4. Many issues related to water supply, mitigation, instream flows, and water rights require local planning. Trout Unlimited would encourage local review boards set up to review mitigation plans including Tribes, WDFW, senior water right holders, and others to help facilitate development and implementation of these plans.

5. Trout Unlimited supports engaging in a thoughtful, collaborative effort to clarify and expanding the use of OCPI to allow for the implementation of permanent projects that can show enhancement of instream flows at critical times for fish while allowing for out-of-stream uses that might otherwise be prohibited.

6. Trout Unlimited agrees with WPUDA's recommendation for establishing a state program to help with funding to support achievement of mitigation requirements for projects where public entities are mitigating or supplying water through public systems. Projects could include drought relief pumping storage and aquifer storage, as appropriate. The funding supported by the Streamflow Restoration Program has allowed for creativity and flexibility in developing projects that enhance flows and

habitat in many basins in our state, and we need to expand the range of project approaches that would achieve those important outcomes.

Sincerely,

Lisa Pelly,
Trout Unlimited
Director, Washington Water Project

SIERRA CLUB
WASHINGTON STATE

State Senator Judy Warnick, Co-Chair Joint Task Force on Water Resource Mitigation 316 Legislative Building Olympia, WA. 98504

State Representative Steve Tharinger, Co-Chair Joint Task Force on Water Resource Mitigation 314 John L. O'Brien Building Olympia, WA 98504

RE: Recommendations to Joint Task Force on Water Resources Mitigation

Dear Senator Warnick and Representative Theringer:

Sierra Club proposes the following recommendations for consideration by the Joint Task Force on Water Resource Mitigation:

1. Source Switch

The Department of Ecology should help facilitate continued discussion among stakeholders on the subject of "source switch" to see if agreement can be reached on a streamlined approach for approving transfers from surface water to ground water.

2. Allowing Permanent Projects to Qualify for OCPI Exemption

The Foster court ruled that only temporary projects can qualify for OCPI. We support expanding the exemption to allow for permanent projects, such as siting of a hospital, to be considered. Having said that, we do not support expanding the OCPI exemption beyond that change.

3. Establishment of an Ecology Technical Advisory Committee to Review the Use of Hydrologic Models and other Mechanisms for Determining Appropriate Mitigation

Questions have been raised regarding the appropriate use of models to determine water mitigation. Ecology should convene a group of technical experts to review models currently in use for this purpose as well as to review other techniques that might be used to determine water mitigation. The group should then make recommendations to Ecology. Ecology should then develop guidance on this topic.

Thank you for reviewing our recommendations.

Bruce Wishart
Washington State Chapter Sierra Club

Epps, Karen

From: Kernan, Megan (DFW) <Megan.Kernan@dfw.wa.gov>
Sent: Friday, October 21, 2022 3:45 PM
To: Epps, Karen
Subject: RE: Water Resource Mitigation Task Force - request for recommendations by Friday, October 21

CAUTION:External email.

Hi Karen,

I've got two recommendations for the consideration of the task force.

Under the "conservation" category, WDFW suggests:

1. Washington state should seek ways to incentivize the reuse of wastewater where it is being discharged into the marine environment.

Under "other" or "modeling", WDFW suggests:

2. Resource managers should incorporate scientific insights about climate change impacts into decisions that have the potential to affect fish, wildlife, and the habitat they need to thrive.

Please let me know if you need me to refine or clarify either recommendation.

Best wishes,

Megan

From: Epps, Karen <Karen.Epps@leg.wa.gov>
Sent: Thursday, October 13, 2022 4:57 PM
To: Carla.Carlson@muckleshoot.nsn.us; Schroeder, Carl <carls@awcnet.org>; Christensen, Dave (ECY) <davc461@ECY.WA.GOV>; Sheffels, Evan (AGR) <ESheffels@agr.wa.gov>; Fitzgibbon, Joe <joe.fitzgibbon@leg.wa.gov>; Honeyford, Jim <jim.honeyford@leg.wa.gov>; John Weidenfeller <jweidenfeller@thurstonpud.org>; jslothower@lwhsd.com; Lisa.Pelly@tu.org; Maycumber, Jacquelin <jacquelin.maycumber@leg.wa.gov>; Kernan, Megan (DFW) <Megan.Kernan@dfw.wa.gov>; PeterG@awb.org; Salomon, Jesse <Jesse.salomon@leg.wa.gov>; Tharinger, Steve <Steve.Tharinger@leg.wa.gov>; Van De Wege, Kevin <kevin.vandewege@leg.wa.gov>; Walsh, Jim <jim.walsh@leg.wa.gov>; Warnick, Sen. Judy <Judith.Warnick@leg.wa.gov>; Wishart.bruce@comcast.net
Cc: Banuelos, Cynthia <Cynthia.Banuelos@leg.wa.gov>; Bentzel, Joshua <Joshua.Bentzel@leg.wa.gov>; Bronkema, Tucker <Tucker.Bronkema@leg.wa.gov>; Dodson, Kari <Kari.Dodson@leg.wa.gov>; Elder, John <John.Elder@leg.wa.gov>; Epps, Karen <Karen.Epps@leg.wa.gov>; Fujisawa, Yukimi <Yukimi.Fujisawa@leg.wa.gov>; Hatfield, Robert <Robert.Hatfield@leg.wa.gov>; Hines, Holly <Holly.Hines@leg.wa.gov>; Kumara, Yoshi <Yoshi.Kumara@leg.wa.gov>; Lewis, Rebecca <Rebecca.Lewis@leg.wa.gov>; McWain, Penelope <penny.mcwain@leg.wa.gov>; Richartz, Saundra <saundra.richartz@leg.wa.gov>; Steelquist, Peter <Peter.Steelquist@leg.wa.gov>; Thomas, Dawn <Dawn.Thomas@leg.wa.gov>; Wilburn, Gary <Gary.Wilburn@leg.wa.gov>
Subject: Water Resource Mitigation Task Force - request for recommendations by Friday, October 21

External Email

Members of the Water Resource Mitigation Task Force,

The co-chairs are requesting that you send any recommendations that you would like the Task Force to consider at the October 27 meeting to the Task Force by the end of the day on Friday, October 21.
Recommendations should be submitted under the following topics:

- Conservation
- Source Switches
- Impacts and impairment
- De minimis use
- Mitigation and net ecological benefit
- Overriding Consideration of the Public Interest
- Modeling
- Other

Staff will put all recommendations submitted by Friday, October 21 into one document and send it to task force members on Tuesday, October 25 in preparation for the meeting on Thursday, October 27. Voting on recommendations will occur at the meeting on Thursday, October 27. Recommendations of the Task Force must be made by a sixty percent majority of the appointed members of the Task Force. The representatives of the Departments of Fish and Wildlife, Ecology, and Agriculture are not eligible to vote on the recommendations. Minority recommendations that achieve the support of at least five of the appointed voting members of the Task Force will also be included in the report. The report will also include any recommendation that does not achieve support to be considered a minority recommendations so that the report reflects everything the Task Force considered.

Attached are recommendations that were previously submitted by John Weidenfeller for consideration by the Task Force. Please let us know if there is anything we can do. Thank you!

All the best,
Karen

Karen Epps
Coordinator, Senate Committee Services
Direct line: 360-524-9193

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Teri Gobin – Chair
Misty Napeahi – Vice Chair
Debra Posey – Secretary
Pat Contraro – Treasurer
Mel Sheldon Jr. – Council Member
Marie Zackuse – Council Member
Hazen Shopbell - Council Member

6406 Marine Dr
Tulalip, WA 98271-9694
360-716-4500
Fax 360-716-0628

The Tulalip Tribes are federally recognized successors in interest to the Snohomish, Snoqualmie, Skykomish, and other allied tribes and bands signatory to the Treaty of Point Elliott.

October 19, 2022

Senator Judy Warnick, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
P.O. Box 40413
Olympia, WA 98501
VIA EMAIL: Judith.Warnick@leg.wa.gov

Representative Steve Tharinger, Co-Chair
P.O. Box 40600
Olympia, WA 98504-0600
VIA EMAIL: Steve.Tharinger@leg.wa.gov

Re: Task Force Recommendations

Dear Senator Warnick and Representative Tharinger,

The Tulalip Tribes submit these comments to the members of the Joint Water Resource Mitigation Task Force Committee as they consider recommendations for changes in water resources policy. Tulalip urges the Committee to consult with all treaty Tribes to gain meaningful input on impacts to treaty reserved rights and resources prior to finalizing policy recommendations.

The Tulalip Tribes reserved the right to take fish in their usual and accustomed fishing places pursuant to the Treaty of Point Elliot of January 22, 1855 (12 Stat. 927). These usual and accustomed treaty fishing areas include the freshwater areas of the Snohomish-Snoqualmie-Skykomish river basins and certain marine waters of the Puget Sound through which fish propagated in such basins pass. *U.S. v. Washington,* 459 F. Supp. 1020, 1038 (W.D. Wash. 1978); *U.S. v. Washington,* 626 F. Supp. 1405, 1527 (W.D. Wash. 1985), *Aff'd*, 841 F.2d 317 (9th Cir. 1988). The Tulalip Tribes are co-managers of fisheries and fish habitat with the federal government and Washington State. Water rights of appropriate quality and quantity to support habitat for continuation and enhancement of fish runs is essential to the Tribes' treaty fishing rights.

For over a century, the State of Washington has permitted and certified water rights to waters reserved to Tribes for agricultural, industrial, municipal, domestic, and other uses. Water appropriation, land use, culverts and development have ultimately impacted the amount of water in rivers throughout the state; reducing the quality and quantity of salmon habitat and reducing the number of salmon returning to their natal rivers. Minimum instream flows were established to protect remaining intact aquatic environments, reverse the degradation of natural systems, and provide a priority date and thus legal standing against appropriation by junior water users.

Washington State has provided many strong protections for natural systems in law, policy and code. This system has been tested in court and have time and again been confirmed by the judiciary to be as strict and unyielding as necessary to provide for a healthy, functioning natural environment that supports the people

of the State. We should all be proud and thankful for these protections are in place; Washington is a beautiful home which supports our lives and businesses, and will continue to do so as its leaders do their part in protecting the environment. These laws, policies and codes must remain intact and should not be undone.

Recommendations

Impacts and impairment: Tulalip recommends leaving the definitions of impairment as they currently stand. Current laws, policies and rules encode protection of stream from further impairment by ground water withdrawals.

Streams with and without minimum instream flow rules are already impacted and impaired by land use, development, and ground and surface water withdrawals. These impairments are now exacerbated by region-wide variations in precipitation timing wrought by climactic shifts. Withdrawals from groundwater wells that are in hydraulic continuity with surface water impair surface water flow, this fact is established scientifically as well as in case law (Postema v. PCHB et al.). The time scale for ground water losses to a stream can be immediate or take months to years. Ground water influences stream volume, regulates temperature, and influences egg to smolt survival. Any removal of groundwater bound for a stream is an impairment of senior instream flows and therefore an adverse effect.

De minimis: The Tribes find that stream flow and aquatic ecology are already impacted by over century of land use, water resources appropriation and alteration of the landscape. Water resource laws and policies are protecting the current and much altered status of stream flows and ecosystem health for the people of the State. Alteration of the regulatory system that governs protection and allocation of water resources acknowledges neither the impacts already enacted on the waters of the State nor the treaty reserved rights of Tribes.

Washington State is unique in recognizing the interconnection between ground water and surface water; California does not recognize the connection, and farmers have mined hundreds of feet of ground water in the Sacramento River valley, creating large reaches of river that lose surface flow to the aquifer, effectively draining the river. Tribes do not want to see Washington take the path of 'death by 1,000 straws' wherein wells are allowed to intercept water destined for rivers, no matter how small the amount. Cumulative impacts between are not considered by Ecology and are not addressed in any mitigation scheme.

Mitigation and Net Ecological Benefit: Mitigation for a water right should be in place and in time as confirmed in the Foster Decision. Tribes can be inconvenienced by the rigorous requirement to mitigate; however, it is in the best interest of the environment and protection of the waters of the State to determine and mitigate water losses by reach. A net ecological benefit approach fails to address the concentration of an impact in one stream reach or geographic area and often does not produce water as mitigation.

Overriding Consideration of Public Interest: Tulalip sees no room for adjustment for the OCPI. The intention of the policy, which has been confirmed by the judiciary in multiple cases, is to provide a 'short term' and 'emergency' supply of water. Changing words in the policy from 'withdrawal' to 'appropriation' is not an appropriate approach to securing a water supply for any purpose of use.

Model Error: This is a technical issue that likely cannot be solved through legislation, as each water resources model is tailored to a specific water appropriation. Models error is fairly well managed within the modeling process. Typically, models are set to estimate water resources impairments using first principles and if available, data taken from the location where a water right has been requested. Model error allows for a model user and other participants, governmental agencies, Tribes and stakeholders, to find a band of tolerance for 'unknowns'. Typically, these bands of unknowns are agreed to in advance and

don't necessarily benefit the applicant over other stakeholders. The best way for Ecology to manage model error is to have their experts consult with applicants and other governments to ensure agreement. Simplified mathematical models will not address the specificity needed to make water resources management decisions.

The Tulalip Tribes appreciate your consideration of our comments and recommendations. Please contact Ryan Miller ryanmiller@tulaliptribes-nsn.gov with any questions.

Sincerely,

Teri Gobin
Chair, Tulalip Board of Directors

Cc: Tulalip BOD
Task Force Staff Karen Epps Karne.Epps@leg.wa.gov
Ryan Williams rwilliams@tulaliptribes-nsn.gov
Carla Carlson Carla.Carlson@muckleshoot.nsn.us
Greg Haller ghaller@nwifc.org

MUCKLESHOOT INDIAN TRIBE
Fisheries Division
39015 - 172nd Avenue SE • Auburn, Washington 98092-9763
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Comments and Recommendations to the Joint Legislative Task Force on Water Resource Mitigation

October 21, 2022

Carla Carlson
Water Resources Analyst

1. CONSERVATION

Conservation is the best tool for water users to use supplies more efficiently. In the water utility arena decades ago, it had been a debated issue as whether conservation can be considered as a method to offset or delay new water supplies. This view has significantly lagged behind that of the energy sector; but is now known to be a key factor in extending supply to meet growing demand, at least by modern water providers. Water for growth is often exaggerated and attempts to take more water away from fish and tribes are ongoing. I do not need to expand further on the dismal state of salmon and Orca populations. Many water suppliers can do more conservation. State funding and grants should be provided to help smaller cities and utilities do so.

Cities and other municipal water providers are required to develop comprehensive water system plans every 10 years (Chapter WAC 246-290-100). These plans evaluate historical and future water use and forecast future demands and population growth and determine if supplies are adequate. Older planning and forecast projections tended to result in over estimation, sometimes in the extreme (see Figure 1 as an example). These over-projections often were the result of future uncertainty, lack of sufficient data, lack of clarity in law for planning criteria, assuming that high per capita water use would continue or increase, assuming higher population growth than occurred, etc. With the development of improved forecasting methods and data collection, forecasting has become more accurate. Also, with the implementation of stricter plumbing codes, heightened public education on water conservation, and more emphasis on increasing water efficiency by utilities, the per capita water use has decreased with population growth in Washington over time (see Figure 2).

Declining trends among the public sector of is real. Both the city of Tacoma (Figure 1) and the city of Seattle (Figure 3) are good examples. Cities that do not show similar trends should institute stricter conservation and demand reduction measures over all sectors of water users. They can look to these cities or others for ideas, such as SPU's Saving Water Partnership, which is a group of 19 local water utilities who collaborate to provide water conservation programs to their customers in Seattle and King County.

The Saving Water Partnership reports that customer water consumption is as low as it was in the late 1950's, even though the population served has grown by more than 80%.
https://www.savingwater.org/about/

Likewise, Cascade Water Alliance has achieved significant water savings through its conservation programs with an estimated savings of 37,092 gallons per day among its customers in 2021.
https://cascadewater.org/wp-content/uploads/2022/02/Cascade-2021-Annual-Report.pdf

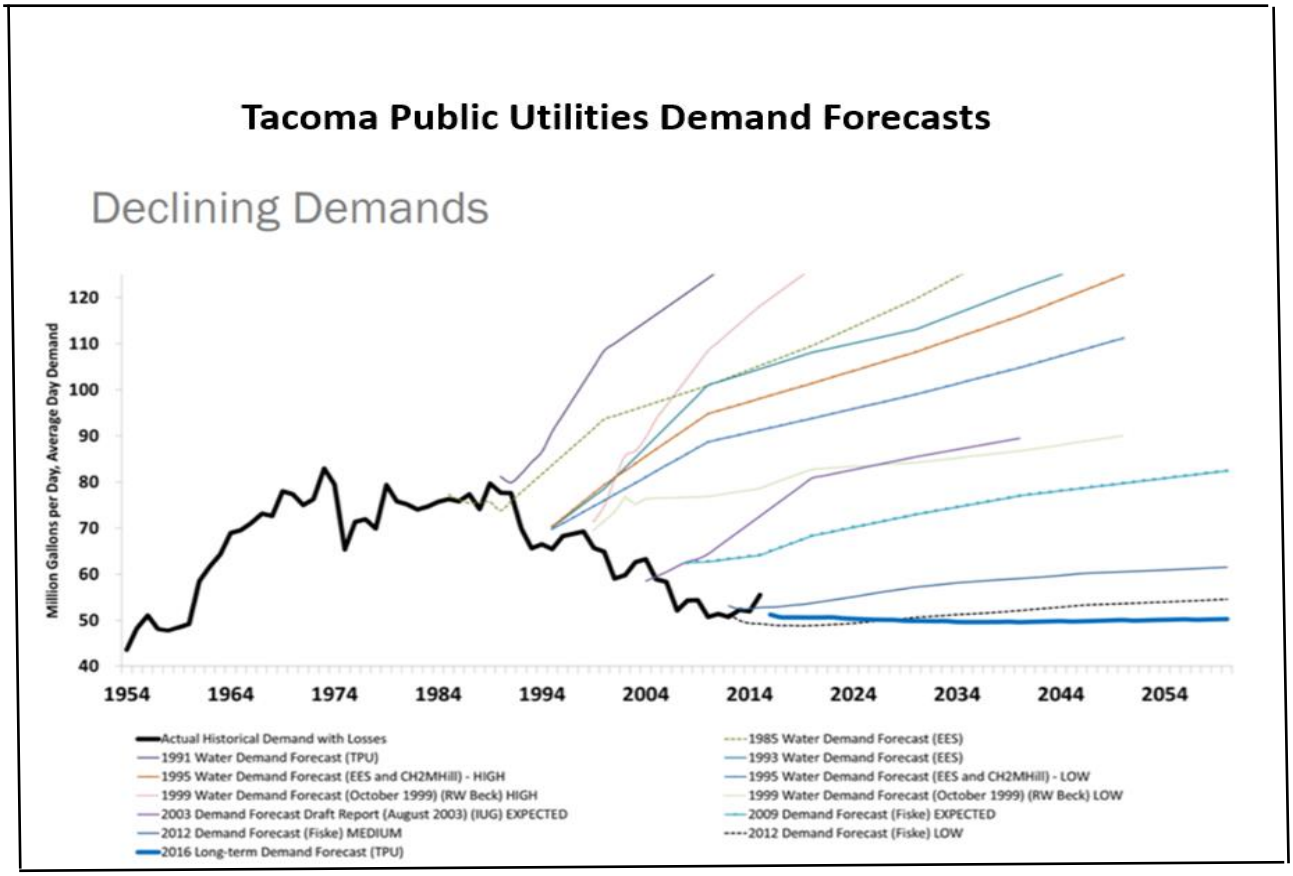

FIGURE 1. TPU demand forecasts over time. Early projections were overestimated and have become more in-line with actual declining demand. Tacoma Public Utilities, 2018 Water System Plan
https://www.mytpu.org/tacomawater/water-source/water-system-plan.htm

Therefore, the Legislative Report should recommend that legislation be developed to strengthen conservation targets and goals among all customer sectors, especially high consumption users, require water providers to reduce leakage to below 5% (real water leakage reductions, not accounting errors), and make some or all of these measures mandatory. The 2023 session is likely too soon to develop this legislation but any future planning process must involve federally recognized Indian Tribes.

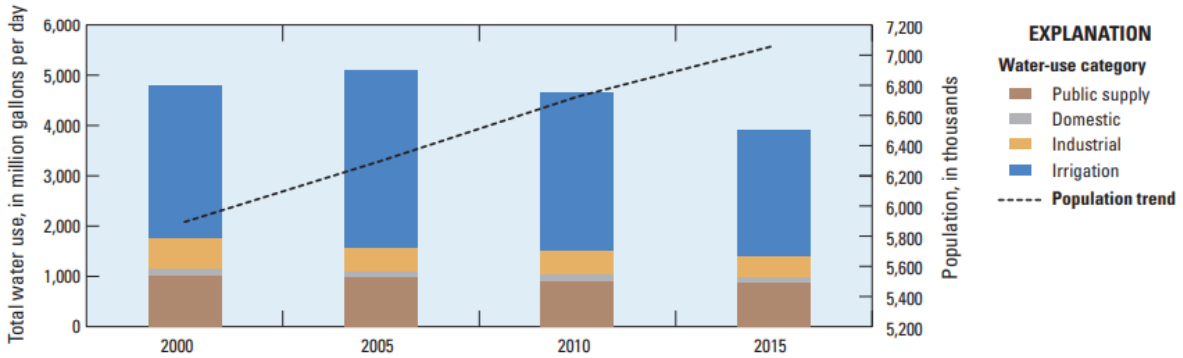

Figure 3. Water use and population trend in the state of Washington, 2000–2015. Population has steadily increased whereas the total water use has decreased. The largest decrease in water use has been in irrigation and industrial areas.

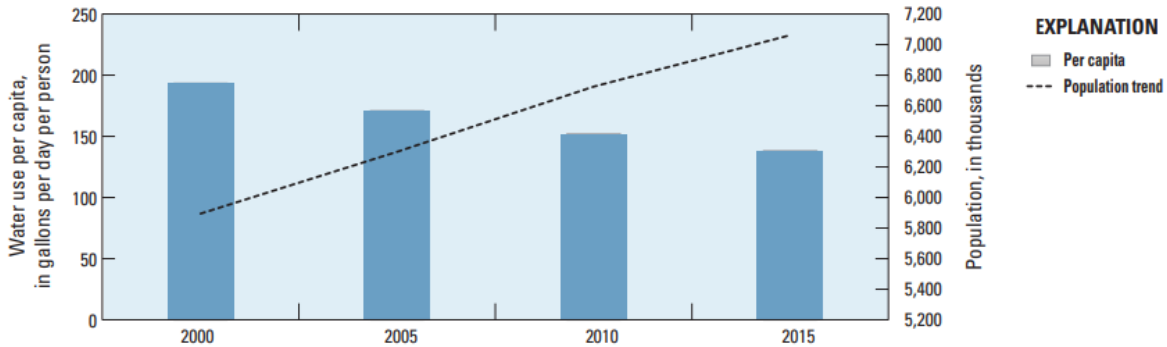

Figure 4. Water use per capita trend in the State of Washington, 2000–2015. Population has increased since 2000, the total amount of water used per capita has decreased during the same time.

Water Use Trends

The State of Washington population has increased steadily since 2000, whereas the total water use has generally decreased (figs. 3 and 4). The most noticeable decrease in water use has been in irrigation, likely because of several factors, including more efficient irrigation methods and less water available in dry years. Despite the increasing population, total water use for public and domestic supply has also decreased steadily over the past 15 years. The steady decrease in the amount of water an average person uses a day (per capita water use) is primarily due to an increase in water conservation practices and education, as well as water-efficient facilities and appliances.

FIGURE 2. Water use per capita has declined with increasing population in the State per the USGS Water Use in Washington, 2015, report: (https://pubs.usgs.gov/fs/2018/3058/fs20183058.pdf):

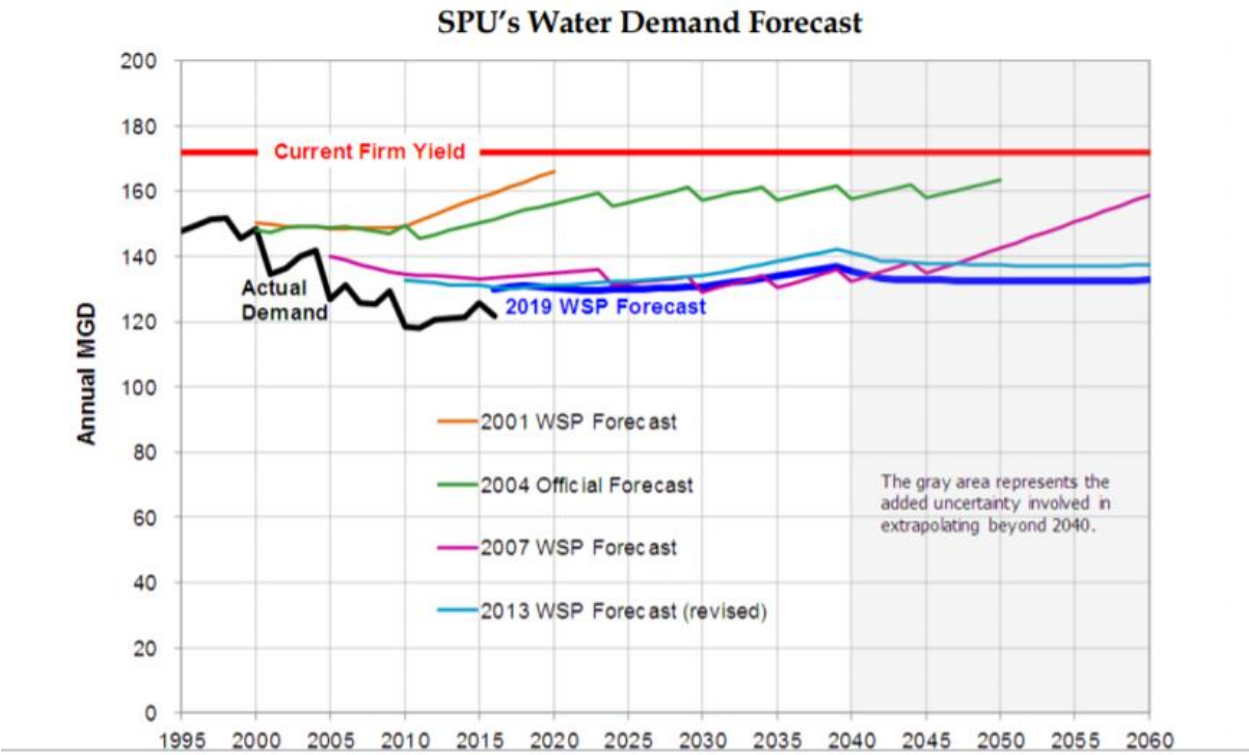

FIGURE 3. Since 1990, total water use has decreased by 28% while the population served has increased also by 28%. Source: https://www.seattle.gov/utilities/about/plans/water/water-system-plan

2. SOURCE SWITCH

The definition of this term is needed. The comments here are related to changing a source from a surface water to groundwater. More discussion on this topic could be fruitful as long as instream flows rights are not impaired and WDFW, WDOE, and federally recognized Indian Tribes agree with the outcome.

3. & 4. IMPACTS, IMPAIRMENT AND DE MINIMIS USE

Any legislation to change the results and findings of the *Postema* Decision are opposed by the Tribe. The Legislature should not engage in furthering weakening of case law that protects minimum instream flows for salmon and threatens tribal treaty rights. The Supreme Court properly ruled that impairment was a factual question and disagreed that hydraulic continuity equates to impairment as the PCHB Court did and some Task Force members, and Ecology, have stated or implied. Also, the Court properly found that Ecology can use the best science available to determine impairment. Perhaps the Court should also have found that best professional judgement and common sense be used when evaluating model results – then discussions about "very small impacts shown on far away streams", which are known to qualified professional MODFLOW modelers as "noise" or "not real" could have been averted.

Any weakening of the de minimis standard of impairment is also opposed; which should be of concern to any senior water right holder. Remember, the Foster Decision stated, "our State's long-established

‘prior appropriation’ and ‘first in time, first in right’ approach to water law, … does not permit any impairment, even a *de minimis* impairment, of a senior water right.”

5. MITIGATION AND NET ECOLOGICAL BENEFIT

These are complex and factual issues that should not addressed at the Legislative level, but discussed among state resources agencies and federally-recognized tribes.

6. OVERRIDING CONSIDERATION OF THE PUBLIC INTEREST

The Tribe believes that the Foster Court made the correct finding that OCPI is not an alternative to the traditional permitting process and that short term, temporary uses only should fall under that umbrella.

7. MODELING

Perhaps a technical group or committee could discuss and clarify the use and uncertainties of models used in water right evaluations; however, in our experience with such processes, participants are heavily weighted toward the potential applicant with their consultants outnumbering neutral members, or resource protection members. Also, consideration should be given to other methods of technical assessments for less complex situations. Of course, strong coordination with federally-recognized tribes must occur.

The arguments that modeling is seriously flawed are misleading and sometimes untrue. For example, Spanaway’s consultant provided an update on the project at one of the Task Force meetings where he stated, the USGS pending model found “small impacts that can’t be mitigated because they are too far away from the service area”. According to modelers involved in the USGS study I have spoken to, those type of findings are “not real” and part of the “noise” of a complex model. Professional knowledge and judgement should not be ruled out in model interpretations.

Likewise, statements about the USGS not knowing about an aquifer in the Kitsap groundwater model for the Port Orchard pilot project, has often been used as justification for why models are not valid. The city’s consultant drilled new deep wells some years after the USGS work. There were no such deep wells present in the earlier USGS work. Modeling is only as good as the data that goes into it - misstatements that have been made about modeling are really just a distraction. They are misleading and damaging to sound scientific analysis. I hope that the final Report does not use this type of rhetoric. I can provide more clarification on the Port Orchard modeling issue if necessary, to provide a more balanced explanation for the Report.

Stakeholder Recommendations

DRAFT

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CITY OF PORT ORCHARD
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September 19, 2022

Sen. Judy Warnick, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
316 Legislative Building
Olympia, WA 98504

Rep. Steve Tharinger, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
314 John L. O'Brien Building
Olympia, WA 98504

RE: Task Force Recommendations from City of Port Orchard

Dear Senator Warnick & Representative Tharinger:

Thank you for the opportunity to present you with comments and recommendations from the City of Port Orchard (Port Orchard) for your Task Force report to the Legislature. We appreciate the extensive commitment of time and effort that you and others have given to the Foster Task Force over the last five years. As one of the Foster Pilot Projects, we are sharing with you our perspective and experience with flexible mitigation standards and recommending changes to make this a less complicated and more predictable pathway for other water right applications.

Port Orchard has a rapidly growing retail service area in Kitsap County. Our aging water system infrastructure and the integration of the McCormick Woods water system into the city system requires new high-capacity wells situated in deep aquifers where impacts to instream flows and fish resources can best be minimized. Through the Pilot Project applications and associated water system and mitigation planning, we are doing our best to conserve water, to decrease impacts from existing water rights by switching to deeper aquifers, and to mitigate impacts to several creeks in a meaningful manner that is also consistent with the purpose and intent of the Foster Pilot Project authorizations.

We are requesting that your final Task Force Report recommend legislation to broaden the types of mitigation options that cities like Port Orchard can utilize, and to require science-based standards for the use of groundwater models to determine impairment of surface waters. The Legislature could also address regionwide mitigation of cumulative small or *de minimus* impacts from municipal water systems that cannot reasonably be addressed by individual water right applicants.

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The Port Orchard Pilot Project and Kitsap Regional Groundwater Model

Port Orchard is one of five designated pilot projects and has provided several presentations about its applications and mitigation plan to the Task Force. The most significant problems encountered by Port Orchard in this process have been with use of the USGS ground water model for the Kitsap basin. Our hydrogeologists have identified numerous errors in the USGS model, including the complete absence of the deep aquifer that was discovered when drilling our new Well No. 13. We have attempted to resolve those errors scientifically by eliminating modeled impacts that our scientists have determined are within the model error limits of the Kitsap model. The Department of Ecology, however, does not agree with this approach and appears to consider erroneous model results as impairments requiring mitigation.

Ground water models are not perfect science, but they are increasingly relied upon by the Department of Ecology to predict impairments to instream flows and closed streams that require mitigation. Models are not precise tools for predicting the effects of long-term ground water withdrawals on surface water flows and levels. Several kinds of errors in models lead to erroneous or imprecise results, including 1) input values that only approximate real world measurements, 2) lack of data, particularly for deeper aquifers, 3) limitations of the modeling algorithm that cannot fully represent natural, physical processes, and 4) errors in parameter estimations selected by the modeler during the calibration process. These types of errors are particularly an issue when Ecology mandates (in our case through preliminary permits) the use of regional models created by the USGS to define small, local impacts from individual applications, a task they were not designed for. More discussion concerning errors in ground water models will be provided in a separate letter to the Task Force by our hydrogeology consultants.

Port Orchard has met with Department of Ecology officials to discuss how model errors in the USGS Kitsap model can be scientifically estimated so that predicted streamflow impacts within "model error limits" can be disregarded in Port Orchard's mitigation plan for its Pilot Project applications. Ecology officials, however, have informed us that all model results must be considered as impairments requiring mitigation. In other words, even what scientists consider to be model errors will be considered as evidence of impairment by Ecology. This is an unscientific use of the science of ground water modeling because it fails to address errors inherent in the models themselves.

Science used in an unscientific manner is not science, it is policy masquerading as science. The impact of this is to require more and more mitigation without a demonstrable impact to streams.

Ecology's unscientific use of ground water models could jeopardize approval of Port Orchard's Pilot Project applications. This issue should be addressed by the Task Force and the Legislature as part of any workable set of reforms to ground water permitting. Specifically, we are requesting action items in your final Task Force report to insure that scientific methods like groundwater models are not used in an unscientific way to require mitigation without proof of impairment.

Using Municipal Water Rights to Augment Instream Flows

A major portion of Port Orchard's in-kind (Tier 2) mitigation plan is to directly augment the flow of several impacted creeks with water piped from municipal water systems. This mitigation method has been approved by Ecology for Port Orchard's water system in the recent past, but not since the Foster decision. Streamflow augmentation is the only reasonably available in-kind/in-place/in-time mitigation method for several local creeks that are projected to be impacted by Port Orchard's requested groundwater withdrawals. However, the Department of Ecology has questioned whether Port Orchard's already permitted water rights, or those of neighboring water systems, can be used for stream augmentation mitigation without changing their purpose to include mitigation, another set of water right change applications that could take years to process. We believe that Ecology's interpretation is overly technical, could delay decisions on Port Orchard's applications for years, or could force Port Orchard to fund more

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expensive and less beneficial out-of-kind or out-of-place mitigation in order to meet the Pilot Project mitigation standards.

SPECIFIC REQUESTS/RECOMMENDATIONS

Port Orchard requests that the Foster Task Force recommend that the 2023 Legislature pass legislation: (1) addressing the model error issue and requiring Ecology to use ground water models in a scientifically-sound manner that accounts for model errors and imprecision; and (2) broadening the allowed types of mitigation for pilot projects and other new applications and groundwater permit changes to include streamflow augmentation from municipal water systems without needing to change municipal water rights. Port Orchard also supports making the flexible mitigation standards for the Foster Pilot Projects a state-wide standard or broadening the availability of those standards to other ground water dependent municipal water systems. This would help water purveyors and municipalities throughout the state comply with GMA plans using mitigated water rights and achieve planned urban growth that protects rural areas and watersheds from overdevelopment.

All water right applicants should be allowed to utilize a flexible mitigation sequencing process like the mitigation sequencing currently allowed for the Foster Pilot Projects. This would result in mitigation that can improve stream flows and habitat to benefit instream resources, rather than being limited to the rigid and unworkable "in kind, in time, and in place" *Foster* standard that makes both water supply and beneficial mitigation nearly impossible to achieve.

Our state's overreliance on groundwater models to determine impairment, without accounting for model errors, is unscientific and dramatically increases the cost and complexity of mitigation. That said, there may small impacts to surface waters from additional groundwater development that do not rise to the level of impairment, and we appreciate the concern that multiple cumulative impacts of this sort across a watershed could impact instream resources over time. The Task Force could address this problem at a larger scale similar to the way it addressed permit-exempt well impacts in SB 6091. In Part 1 of this bill, the Legislature directed significant funding into planning and implementing mitigation to offset exempt well impacts caused by growth in rural areas. We believe that there is a stronger policy rationale for state legislative action to ensure the availability of mitigated water supply necessary for urban growth. This could be achieved through a collaborative process at the watershed or sub-watershed level, focused on mitigating cumulative impacts and working with municipal purveyors to improve stream flows and habitat in a meaningful way.

Please feel free to contact me if you have further questions.

Sincerely,

DocuSigned by:

Robert Putaansuu

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CITY OF PORT ORCHARD
Robert Putaansuu, Mayor

cc: Members, Joint Legislative Task Force on Water Resource Mitigation
26th Legislative District delegation
Alison O'Sullivan and Tom Ostrom, Suquamish Tribe
Erica Marbet, Squaxin Island Tribe
Carrie Sessions, Executive Policy Office
Laura Watson, Director, Department of Ecology

Regional Water Cooperative of Pierce County

932 S Sunset Drive
Tacoma, Washington 98465
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City of Bonney Lake
Camino Water Association
Covington Water District
City of Fife
Firgrove Mutual
Fox Island Mutual Water Association
Fruitland Mutual
Graham Hill Mutual
Lake Josephine Riviera
Lakewood Water District
City of Milton
Mt. View-Edgewood Water Co.
City of Pacific
Parkland Light and Water
Peninsula Light
Pierce County Public Works and Utilities
City of Puyallup
Town of Roy
Spanaway Water
Town of Steilacoom
Summit Water & Supply
City of Sumner
City of Tacoma Water
Public Utility District No. 1 of Thurston County
Washington Water Service Co.
Valley Water District

September 18, 2022

State Representative Steve Tharinger, Co-Chair
Joint Task Force on Water Resource Mitigation
314 John L. O'Brien Building
Olympia, WA 98504

State Senator Judy Warnick, Co-Chair
Task Force on Water Resource Mitigation
316 Legislative Building
Olympia, WA 98504

RE: Comments to Joint Legislative Committee on Water Resource Mitigation

The Regional Water Cooperative of Pierce County (RWCPC) represents 26 public water utilities in Pierce County that serve a population of over 750,000 in Pierce County and nearly 100,000 in eight additional counties. The RWCPC supported legislation in 2018 to address the State Supreme Court's *Foster vs. City of Yelm* decision. The legislation that created the Joint Legislative Task Force on Water Resource Mitigation ("Task Force") included two pilot projects by RWCPC members, the City of Sumner and Spanaway Water Company. This inclusion reflects the difficulty faced by municipal water suppliers in fast growing areas of the State. John Weidenfeller, Manager of Thurston PUD, a RWCPC member, also currently serves as a member of the Task Force representing the Washington Water Utilities Council and municipal water suppliers.

The issues being addressed by this task force have evolved over time and will require legislative action to resolve. Currently, under Foster, any new water right application must fully address any and all possible impacts on surface waters with "in kind, in time, in place" mitigation. The 2000 Supreme Court *Postema* decision effectively closed ground water appropriations in any water basin with an instream flow or closure based upon potential hydraulic continuity between ground and surface waters leading to any impairment thereof.

After *Postema*, water right applicants had to show that their requested ground water withdrawal would not impair surface water closures or instream flows, a near impossible standard. This led the Department of Ecology to require that all potential impacts are fully mitigated unless the Department determined that "overriding considerations of the public interests" (OCPI) justified approval of a ground water application that potentially could impact stream flows. The need for OCPI arose, in part, because most instream flows are set at levels that are supportive of multiple species of fish through their life cycles while also understanding that those regulatory flow levels are not anticipated to be met at all times. The Court's *Foster* decision, that

"withdrawals" under the OCPI statute, RCW 90.54.020(3)(a) are only considered available for limited temporary use, effectively renders the OCPI statute as written, moot.

What legislative direction should the task force provide? Foremost, as other states have done, allow the Department to make determinations that a stream impact is not, in and of itself, an impairment of a streamflow. In making this determination, identify that de minims or ground water model error impacts are not considered impairment unless it clearly demonstrates that adding to existing de minims and or model error cumulative impacts will result in impairment.

Legislation should also provide a means of determining that when the greater interests of the people of the State allow, a regulatory instream flow or closure may be impaired. In making this determination, consideration must be given not only to regulatory streamflow and respective aquatic habitat, but also recognition of existing flow condition and viable aquatic habitat, water needed to address grow management planning, expanding populations, increases in population density, population relocation, economic and industrial sustainability, as well as agricultural food production. This might include a review panel with input from state and local agencies, water utilities, tribes, environmental interests, and other stakeholders under a legislatively established structure.

When an impact is determined to be an adverse effect and therefore impairment under the water code, allow mitigation to best address that impairment in a manner that provides the greatest benefit to the aquatic environment. Ideally, impairment should be avoided. However, if unavoidable, allow mitigation that will improve the aquatic environment in the most effective manner. Requiring replacement flow augmentation in a stream that will continue to be dry downstream even when complete "water for water, in time, in place" mitigation is provided has at best, if any, very little environmental benefit. Like *Hirst* plans addressing exempt wells, mitigation should be allowed to provide aquatic habitat improvements that are effective in improving viable fisheries habitat rather than strict "in kind, in place, in time" mitigation that does not achieve an environmental benefit. Consideration might even be made for out of basin mitigation or aquatic improvements if the mitigation provides an even great aquatic environment benefit. Mitigation, to the degree required, should provide the greatest net benefit. Like a public interest determination, such a determination could be made by a panel of state, local, tribal, environmental, municipal and stakeholder interests.

The Regional Water cooperative of Pierce County appreciates the efforts of the Task Force members over several years. Finding solutions to the issues created by *Foster* and other earlier decisions is not easy and will take compromise by all as we seek to address the needs of the State's aquatic environments and ever growing population. We look forward to continuing to work with Task Force with respect to our two members' pilot projects and all our municipal suppliers as the Task Force completes its legislative report and possible legislation in the 2023 Session.

Sincerely,
Jeff Johnson, Executive Director
Larry Jones, President RWCPC
cc: Members, Joint Task Force on Water Resource Mitigation
Carrie Sessions, Executive Policy Office, Governor Jay Inslee
Mary Verner, Water Resource Program Manager, Department of Ecology

September 19, 2022

Sen. Judy Warnick, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
316 Legislative Building
Olympia, WA 98504

Rep. Steve Tharinger, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
314 John L. O'Brien Building
Olympia, WA 98504

RE: North Bend Water Supply and Task Force Recommendations

Dear Senator Warnick & Representative Tharinger:

The City of North Bend would like to express its appreciation for the time and effort that you and others have devoted to the Foster Task Force. As North Bend has experienced for over the past 20 years, water rights permitting and mitigation is an extremely complex subject from both the legal and technical perspectives. North Bend's current situation is unique and urgent, and we are providing these comments to request that the final Task Force Report recommends legislation to broaden the types of mitigation options that purveyors like North Bend can utilize. Further, we believe there is an important role for the State to play in mitigating cumulative or even *de minimus* impacts that cannot reasonably be addressed at the individual permit level.

BACKGROUND - CITY OF NORTH BEND'S MITIGATED GROUNDWATER APPROVAL

In 2008, Ecology approved a mitigated groundwater permit for North Bend's Centennial Well location. This permit approval was a significant achievement as one of the first mitigated groundwater rights for a municipal purveyor in Washington State in a collaborative process with treaty Tribes that focused on matching mitigation timing and quantity with minimum instream flows set by rule. The mitigated permit included approval of two mitigation sources that North Bend could purchase from other water purveyors to offset impacts to the Snoqualmie River. The two approved mitigation sources were: (1) Hobo Springs, owned by Seattle Public Utilities in the Cedar River system, for

which North Bend has a long-term water supply agreement; and (2) wells near Rattlesnake Lake owned by the adjacent Sallal Water Association, which to date has refused to negotiate a water supply agreement in good faith with North Bend.

Ecology's 2008 permit decision also contemplated additional future mitigation sources, including two different options from Seattle Public Utilities' Tolt Reservoir. In addition, in 2018, with the support of Ecology, North Bend purchased a portion of the Cascade Golf Course, including its water rights in order to use the golf course water rights as an additional mitigation strategy.

FOSTER DECISION PREVENTS CERTAIN MITIGATION OPTIONS FOR NORTH BEND

The Hobo Springs mitigation option in Ecology's 2008 decision has been implemented, not because it complies with the *Foster v. City of Yelm* decision, but because Ecology specifically approved it as a mitigation strategy prior to the *Foster* decision. The Sallal wells mitigation option has not been implemented because of the refusal by Sallal Water Association to enter into a water supply agreement with North Bend (even though North Bend would agree to supply treated municipal water to Sallal above and beyond Sallal's suppy of mitigation water). Like the Hobo Springs mitigation source, the Sallal wells were approved by Ecology prior to the *Foster* decision and would not meet the current *Foster* standard of perfect mitigation, although Ecology considers this source to be grandfathered in by its 2008 permit decision.

The *Foster* decision in 2015 has eliminated other mitigation options identified by both Ecology and North Bend in the 2008 permit approval. Specifically, using water supply from the Tolt Reservoir system to replace water in the Snoqualmie River system would not result in the exact "in kind, in time, and in place" mitigation required by the *Foster* decision. Similarly, the Cascade Golf Course water right could partially offset certain instream flow impacts during the summer months, but it does not meet the "perfect" mitigation standard required by *Foster* because of the seasonal nature of irrigation water rights and its nearby but different location than the City's Centennial Well.

MITIGATION NEEDED FOR GROWTH INSIDE THE URBAN GROWTH AREA

North Bend has devoted nearly 20 years and millions of dollars in technical studies, reports, legal review, and capital costs to obtain sufficient mitigation for its Centennial Well permit. Additional water supply is needed simply to enable North Bend to meet its obligations under the Growth Management Act (GMA) to serve residential and commercial growth inside its Urban Growth Area (UGA). Municipal water purveyors like North Bend have a duty to serve within their designated water system service areas. Because of the lack of approvable mitigation options under *Foster* standard, North Bend is now restricting

new water supply only to its incorporated city limits rather than supplying water service within the entire UGA, contrary to the policy of the GMA.

The adjacent Sallal Water Association, whose service area includes areas inside North Bend municipal boundaries and its UGA, recently adopted a water connection moratorium, and has a history of drinking water quality violations including e. coli resulting in boil water advisories. Unfortunately, Sallal has been unwilling to work with North Bend on mutually beneficial water supply and mitigation agreements that would improve water supply for both purveyors.

For North Bend, this means that our GMA goals for affordable new housing, commercial development to provide services to residents, and industrial growth for job creation are going unrealized. For example, there is pending interest from landowners for new housing and mixed commercial development along North Bend Way that cannot currently proceed because of water supply issues. Further, the Washington National Guard has planned for the construction of a new Readiness Center in the area around I-90 Exit 34, the major exit West of Snoqualmie Pass. Water supply is needed for this significant project of statewide importance, and also to ensure water supply for new commercial facilities at this critical interstate exit that serves truck and passenger traffic over Snoqualmie Pass.

SPECIFIC REQUESTS/RECOMMENDATIONS FROM NORTH BEND

North Bend requests that the Foster Task Force recommend that the 2023 Legislature pass legislation broadening the allowed types of mitigation for new or changed groundwater permits that would otherwise impair minimum instream flows or closed streams. Ironically, North Bend requires that it be allowed to implement the types of mitigation that Ecology's 2008 mitigated groundwater permit envisioned 15 years ago, prior to the *Foster* decision.

Based on our experiences in groundwater mitigation, we believe that water right applicants should be allowed to go through a mitigation sequencing process, similar to the mitigation sequencing currently allowed for those water right applicants proceeding as Foster Pilot Projects. This would result in mitigation that can improve streamflows and habitat to actually benefit instream resources, rather than being limited to the rigid and unworkable "in kind, in time, and in place" *Foster* standard that makes both water supply and beneficial mitigation nearly impossible.

Further, we believe the Foster Task Force should identify the need to allow for, and then address at a larger scale, *de minimus* or computer-modeled impacts that may not actually impair instream resources. Our state's overreliance on groundwater models and their "mathematically possible impacts", rather than actual harm to fish or instream

resources, frustrates GMA planning and impedes mitigation efforts that could provide actual benefit.

In SB 6091, which addressed the *Hirst* GMA/exempt well decision and created the Foster Task Force and pilot projects, the Legislature acted to direct significant funding into planning and implementing mitigation to offset exempt well impacts caused by growth in rural areas (the type of growth that the GMA purportedly discourages). North Bend, and many other cities and municipal water purveyors require additional water supply simply to serve growth inside the UGA – as required by law. If the Legislature can support legislation and funding to provide mitigation of exempt well water supply for rural growth, there is surely a much stronger policy rationale for state legislative action to ensure the availability of mitigated water supply necessary for urban growth. This could be achieved through a collaborative process at the watershed or sub-watershed level, focused on mitigating cumulative impacts and working with municipal purveyors to improve streamflows and habitat in a meaningful way.

Please feel free to contact me if you have further questions.

Sincerely,

Rob McFarland, Mayor
City of North Bend

cc:

Members, Joint Legislative Task Force on Water Resource Mitigation
5th Legislative District delegation
12th Legislative District delegation
Matt Baerwalde, Snoqualmie Indian Tribe
Anne Savery and Kurt Nelson, Tulalip Tribes
Carrie Sessions, Executive Policy Office
Laura Watson, Director, Department of Ecology

LAKEWOOD WATER DISTRICT

COMMISSIONERS
J.S. Korsmo, Jr.
G. J. Rediske
G. J. Barton

GENERAL MANAGER
Randall M. Black

September 19, 2022

Sen. Judy Warnick, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
316 Legislative Building
Olympia, WA 98504

Rep. Steve Tharinger, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
314 John L. O'Brien Building
Olympia, WA 98504

RE: Task Force Recommendations

Dear Senator Warnick & Representative Tharinger:

Lakewood Water District (LWD) appreciates the extensive commitment of time and effort that you and others have given to the Foster Task Force over the last five years. These recommendations to the Task Force come from LWD's extensive experience with water rights permitting and mitigation. Throughout this period, we have witnessed evolving legal and technical problems that make groundwater permitting for growing communities frustrating, unduly expensive, and unpredictable.

LWD has both a growing retail service area south of Tacoma, and a wholesale service area encompassing most of Pierce County that is rapidly running short of water. We are also experiencing some of the worst problems with groundwater contamination from PFAs and PFOs due to our location adjacent to the Joint Base Lewis/McChord. Groundwater contamination from PFAs and PFOs and new state and federal drinking water regulations are resulting in the need to move water sources to deeper aquifers in our region in order to protect the health of our retail and wholesale customers, and security of our public water systems.

We are requesting that the final Task Force Report recommend legislation to broaden the types of mitigation options that retail and wholesale purveyors like LWD can utilize and for science-based standards when groundwater models are used to determine impairment of surface waters. We also believe there is an important role for the State to play in mitigating cumulative or even *de minimus* impacts that cannot reasonably be addressed at the individual permit level.

BACKGROUND

LWD has a portfolio of 33 water rights authorizing wells in four different aquifers to serve a population of over 60,000 persons in its retail service area alone. In 2002, to meet a growing demand for water supply in the rapidly growing suburban area southeast of Tacoma, LWD contracted to acquire and transfer 6 million gallons per day (GPD) of water rights from the old Tacoma Newsprint Plant to its deep aquifer wells. That change application took five years to process to a decision before the *Foster v. Yelm* decision, and was supported by a numerical groundwater model developed by hydrogeologists at Robinson & Noble, Inc. A mitigation algorithm and mitigation sources were included as conditions to the transfer, and now all 6 MGD and another 3 MGD of LWD's water rights are committed by contract to wholesale customers, including the Town of Steilacoom, Summit Water and Supply, Spanaway Water Company, Firgrove Mutual Water, and Washington Water Service Company (formerly Rainier View Water Company).

Projected growth in South-Central Pierce County is 2.1% per year from 2020 to 2040, which will increase demands for additional water supply from LWD. In 2011, LWD filed groundwater application G2-30571 for an additional 2,200 gallons per minute and 3,550 acre-feet per year to meet this increased demand. At the time, the Department of Ecology supported and encouraged this application because it would draw from the deepest aquifer closest to the Puget Sound and thus had the least potential for impacting instream flows and lake levels in the basin. However, the 2015 *Foster* decision changed the standards for mitigation of groundwater applications, which has delayed and complicated LWD's application to the point of near impossibility.

THE FOSTER DECISION AND ECOLOGY'S UNSCIENTIFIC USE OF GROUNDWATER MODELS IS PREVENTING APPROVAL OF LWD'S APPLICATION

LWD acquired several water rights to use as mitigation for application G2-30571 and can also manage its own extensive portfolio of groundwater rights to mitigate impacts on streams and lakes. These efforts have focused on nearby creeks and lakes within a reasonable distance of the proposed well sites near Steilacoom. However, the *Foster* decision and a much-delayed USGS regional groundwater model have made it nearly impossible to adequately mitigate what the regional model projects as theoretical impacts to surface water all across the basin, and even across watershed boundaries.

Ground water models are not perfect science, but they are increasingly relied upon by the Department of Ecology to predict impairments to instream flows and closed streams that require mitigation. Models are rough estimates, not precise tools for predicting the results of long-term groundwater withdrawals on surface water flows and levels. Several kinds of errors in models lead to erroneous or imprecise results, including but not limited to: 1) input values that only approximate real world measurements, 2) limitations of the modeling algorithm that cannot fully represent natural, physical processes, and 3) errors in parameter estimations selected by the modeler during the calibration process. These imprecision or approximation errors can lead to strange and inconsistent results in successive runs of a model. Other types of errors in ground water

models will be described in a separate letter to the Task Force by our hydrogeology consultants.

LWD has met with Department of Ecology officials to discuss how model errors can be scientifically estimated so that predicted streamflow impacts within "model error limits" can be disregarded in LWD's mitigation plan for its ground water application. Ecology officials, however, have not acknowledged that model errors can be disregarded. In other recent cases, Ecology officials have informed applicants that all model results, including those within model error limits proposed by hydrogeologists, are considered evidence of impairment and require mitigation. This is an unscientific use of the science of groundwater modeling because it fails to address errors inherent in the models themselves.

Science used in an unscientific manner is not science, it is policy masquerading as science, and it is making groundwater permitting impossible. This issue needs to be addressed by the Task Force and the Legislature as part of any workable set of reforms to ground water permitting.

The *Foster* decision also severely constrains LWD's mitigation options for application G2-30571 by requiring precise "in kind, in time, and in place" mitigation for all modeled impairments of instream flows and closed streams and lakes. LWD has the capability of improving instream flows in Chambers and Clover Creeks when most needed by fish and wildlife, and to improve water temperature conditions using streamflow augmentation from groundwater sources. We are confident that these efforts would meet the Foster Pilot Project standard of "net ecological benefit" in the watershed, but our mitigation efforts do not meet the "perfect" mitigation standard required by *Foster*, especially if Ecology insists on mitigation of modeled impairments below the model error limit. Indeed, LWD can help support those reaches of the Chambers/Clover Creek stream network where habitat and fish passage are still possible. Higher in the basin Clover Creek can exhibit intermittent flows due to the physical nature of the stream course. Even if LWD could do so, adding water to these reaches in response to Ecology's policy requirements would make no sense as any water added would quickly be lost from the stream system resulting in no benefit.

SPECIFIC REQUESTS/RECOMMENDATIONS

LWD requests that the Foster Task Force report recommend that the 2023 Legislature pass legislation: 1) addressing the model error issue and requiring Ecology to use ground water models in a scientifically-sound manner that accounts for model errors and imprecision; and 2) broadening the allowed types of mitigation for new applications and groundwater permit changes that would otherwise impair minimum instream flows or closed surface waters. Making the flexible-mitigation standards for the Foster Pilot Projects a state-wide standard or broadening the availability of those standards to include LWD's application G1-30571, would help LWD meet the water demand requirements of our rapidly growing retail and wholesale service areas, and help us to change water sources required by PFAs and PFOs contamination.

Based on our experience with ground water mitigation, we believe that all water right applicants should be allowed to utilize a flexible mitigation sequencing process, similar to the mitigation sequencing currently allowed for the Foster Pilot Projects. This would result in mitigation that can improve stream flows and habitat to benefit instream resources, rather than being limited to the rigid and unworkable "in kind, in time, and in place" *Foster* standard that makes both water supply and beneficial mitigation nearly impossible to achieve.

Further, we believe the Foster Task Force should identify the need to allow for, and then address at a larger scale, *de minimus* or computer-modeled impacts that may not actually impair instream resources. Our state's over-emphasis on the specific results of ground water modeling as exact determinations of impairment, without accounting for model errors, is unscientific and dramatically increases the cost and complexity of mitigation. Further, it frustrates GMA planning and impedes mitigation efforts that could provide actual benefit to surface water.

SB 6091 included direct funding by the Legislature for mitigation to offset permit-exempt well impacts caused by growth in rural areas. LWD and many other municipal water suppliers need additional water supply to serve urban levels of growth inside planned urban growth areas, as required by the Growth Management Act. If the Legislature can support legislation and funding to provide authorization and mitigation of exempt wells in rural areas, we believe there is a much stronger policy rationale for state legislative action to ensure the availability of mitigated water supply necessary for urban growth. This could be achieved through a collaborative process at the watershed or sub-watershed level, focused on mitigating cumulative impacts and working with municipal purveyors to improve stream flows, water quality, and habitat in a meaningful way.

Please feel free to contact me if you have any questions. I would be happy to appear before the Task Force at your invitation.

Sincerely,

Randall M. Black, General Manager
Lakewood Water District

cc:

Members, Joint Legislative Task Force on Water Resource Mitigation
28th Legislative District delegation
29th Legislative District delegation
Carrie Sessions, Executive Policy Office
Laura Watson, Director, Department of Ecology

ROBINSON NOBLE

September 19, 2022

Sen. Judy Warnick, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
316 Legislative Building
Olympia, WA 98504

Rep. Steve Tharinger, Co-Chair
Joint Legislative Committee on Water Resource Mitigation
314 John L. O'Brien Building
Olympia, WA 98504

RE: Task Force Recommendations Concerning Groundwater Model Error

Dear Senator Warnick & Representative Tharinger:

Thank you for the opportunity to present you with comments and recommendations for your Task Force report to the Legislature. I appreciate the time and effort that you and others have given to the Foster Task Force over the past several years. I am a Washington State Licensed Hydrogeologist with over 37 years of experience in the State. I have been active with groundwater modeling over most of that time. I am currently providing hydrogeologic expertise and groundwater modeling services to the Cities of Port Orchard and Sumner for their Foster Pilot Projects and previously provided such services to the Spanaway Water Company for their Foster Pilot Project. In this regard, I'd like to share with you my perspective on groundwater modeling and its use in defining streamflow impairment for the Foster Pilot Projects as well as for other non-Foster water right projects.

I am requesting that your final Task Force Report recommend legislation to require the imprecision of groundwater modeling be considered when such models are used to determine impairment of surface waters and that *de minimus* impacts and other modeled impacts below reasonable model error limits not be addressed by individual water right applicants. Rather, such impacts, if they truly represent impairment, should be addressed in a more holistic manner by the State.

The Use of Groundwater Models for Water Rights

In most basins in the State, new water right applications for groundwater will not be approved without defining how the groundwater withdrawal will impair regulated or closed streams and providing mitigation for those impairments. The Department of Ecology (Ecology) is increasingly requiring the use of groundwater modeling to define streamflow impairment. In fact, where a regional groundwater model designed by the USGS exists, Ecology mandates the use of that model for impairment definition as part of Preliminary Permits issued for the water rights application. For example, the Preliminary Permit issued by Ecology for the City of Port Orchard's new water right applications that are part of the Foster Pilot program states "production from the proposed new point (or points) of withdrawal ***shall be*** integrated in the Kitsap Groundwater Model developed by the USGS" (emphasis added). Our other water rights clients in Kitsap County, including the City of Bremerton and Kitsap PUD, have received similar requirements in their Preliminary Permits.

Such USGS models are not ideal for defining streamflow impairment due to proposed water rights. These models are regional in nature and are most suitable to regional-scale groundwater issues, while individual groundwater withdrawals are a unique combination of factors that vary on local and semi-regional to regional scales. The imprecision of groundwater models must be factored into results; if a modeled impact is within the model error, the model is actually silent on whether the impact occurs or not. Large impacts are certainly real, but very small ones could be totally fictious. Yet, through my work on the Port Orchard Foster Project, Ecology seems to now be considering all modeled impacts, no matter how small and without any regard to model error, as impairment that must be mitigated.

Types of Model Error

All groundwater models, even small-scale models designed specifically for a water right application, produce model error. However, in general, the more regional the model, the larger the amount of imprecision. Groundwater models are not an exact science. They are built from (often thousands upon thousands of) estimates and, therefore, provided estimated results. There are several types of model errors, or imprecision. One is approximation errors, which are a consequence of a model not fully representing the real world. This type of error results from: 1) input values that only approximate real-world measurements; 2) a lack of data, particularly for deeper aquifers, resulting in the use of average values over large areas; and 3) errors in parameter estimations selected by the modeler during the calibration process.

Another source of error is sometimes called truncation error. Numerical models (such as MODFLOW models) are generally considered the most accurate of groundwater models. Numerical models use a complex algorithm, incorporating all the estimated property values discussed in the paragraph above, to estimate the solution. Please note I said estimate, not solve. Numerical models never reach an answer; rather, they repeatedly estimate an answer, theoretically getting closer and closer with each iteration until the modeled values fall within the criteria set by the modeler, but never actually reaching the answer. Because of this, if a model is stopped after a few iterations, it will give a different result than if the same model is run for many iterations. Similarly, if even one input (and such models have tens of thousands of estimated inputs) is slightly different between model runs (even in a portion of the model not near the subject water right), the model will produce a different result. So, even this "most accurate" of model only produces estimated answers, with very small changes producing differing results.

Other types of model error also exist, such as those caused by limitations of the modeling algorithm that cannot fully represent natural, physical processes. For example, wells are simulated as drawing water from the complete aquifer thickness, when in reality they typically do not. There are many other such examples.

The result is that models have several sources of error and only produce estimated, imprecise results. Because of this, small values should not be trusted as being accurate or correct.

Definition of Model Error

Because of the many sources of potential imprecision, it is impossible to fully define model error. However, it can be estimated. One method, for example, is to repeatedly run a numerical model that theoretically should produce the same result and compare the differences in the answers. Those differences represent the degree of model error. We used this method to estimate model error for the Port Orchard Foster Pilot Project, and in that case, found that changes in streamflow of less than 0.01 cubic feet per second or less than 0.5% of the baseflow could

not be relied upon. Therefore, we defined these very small modeled "impacts" as not rising to the level of impairment. Ecology, however, does not agree with this approach and has informed us that all modeled impacts must be considered as impairments requiring mitigation. (Note that Ecology appears willing to accept the omission of positive modeled impacts to stream flows, whether they are above the model error threshold or not, just not negative modeled impacts.) They acknowledge that model error exists but refuse to allow it to be used as a part of the definition of impairment.

Requests and Recommendations

Groundwater modeling may be the best available science to use in defining impairment, but it is not a perfect science, and its imprecision must be taken into account when defining impairment. Groundwater modeling cannot determine if very small impacts are real or not. If modeled impacts that fall beneath model error limits are actually real, they are *de minimus*. And while *de minimus* impacts from multiple water rights can over time add up to true impairment, such very small values should not be the responsibility of the individual water rights holders but rather by society as a whole.

As an experienced groundwater scientist and modeler, I request the Foster Pilot task force recommend to the Legislature to pass legislation that addresses this model error issue and requires Ecology to account for model errors and imprecision. Additionally, to account for the additive effect of *de minimus* impacts that cannot be reliably determined by groundwater models, and therefore cannot be assigned to a single water right holder, legislation should develop basin-wide stream improvement projects to offset small, cumulative impairments, similar to the way the Legislature addressed permit-exempt well impacts in SB 6091. Requiring water right applicants to mitigate very small impacts that cannot be affirmed through groundwater modeling will not only affect municipalities but also irrigators, industry, small purveyors, and anyone else who needs a water right. The result will be to stifle economic activity in the State with only extremely small ecological benefits.

Thank you for considering my comments. Please feel free to contact me if you have further questions.

Sincerely,
Robinson Noble, Inc.

Joseph E. Becker, LHG, PG
Principal Hydrogeologist

WASHINGTON PUBLIC UTILITY DISTRICTS ASSOCIATION
WPUDA
YOUR connection

September 15, 2022

State Representative Steve Tharinger, Co-Chair
Joint Task Force on Water Resource Mitigation
314 John L. O'Brien Building
Olympia, WA 98504

State Senator Judy Warnick, Co-Chair
Joint Task Force on Water Resource Mitigation
316 Legislative Building
Olympia, WA 98504

RE: Comments & Suggestions to Joint Task Force on Water Resource Mitigation

The Washington Public Utility Districts Association (WPUDA) represents 28 public utility districts in Washington State, 17 of which provide water supply. WPUDA supported legislation in 2018 to address the harmful and unworkable impacts of the State Supreme Court's *Foster vs. City of Yelm* decision, and while legislation did not pass, supported the creation of the Joint Legislative Task Force on Water Resource Mitigation ("Task Force"). Two PUD water system managers (Bob Hunter, Kitsap PUD and now John Weidenfeller, Thurston PUD) have served as members of the Task Force.

Background – Where Are We?

WPUDA believes that state legislative action is necessary to modify the *Foster* decision, and also to clarify and codify workable standards from the earlier *Postema vs. Pollution Control Hearings Board* case. While the unworkable *Foster* decision was the primary motivation for the creation of the Task Force, the relationship and importance of *Postema* can be explained by the following analogy: if the walls of a house are cracking, the actual solution involves more than just cosmetic drywall repairs if the cause of the cracking is the foundation of the house. So it goes with *Postema* and *Foster* – Foster legislation that does not consider how *Postema* should be implemented would be putting spackle and paint on cracking walls while averting attention from the crooked foundation.

The foundational flaws with Ecology's instream flow rules and regulatory closures include that they: (1) were originally adopted to apply only to all surface water, but not to all groundwater applications; and (2) adopted at levels that by design, will not be met by actual flows; and (3) include minimum flows and blanket closures during high flow periods (late fall, winter and spring) where "not achieving the adopted instream flow" has no negative impact on

fish or aquatic life – yet is the basis to deny groundwater applications. The *Foster* decision did not cause these foundational problems - it revealed them. The *Postema* decision, and its application to instream flow rules and closures are a foundational issue that must be included to achieve meaningful legislative solutions.

How Did We Get Here?

Postema and Instream Flow Rules

As to the City of Yelm's original permit application and mitigation plan, Ecology incorrectly applied *Postema* to conclude that even with the significant in-kind and out-of-kind mitigation, that "impairment" of instream flows would occur. This was an ill-fated conclusion by Ecology that was unnecessary under the *Postema* decision – because there was no adverse impact to instream resources. Ecology's misapplication of *Postema* resulted in the need for Ecology to resort to a statutory exception, the "Overriding Consideration of Public Interest" exception ("OCPI") to impairment. And continuing the earlier analogy, the OCPI exception itself was already on a shaky foundation, given the Supreme Court's rejection of how Ecology applied the OCPI exception to create limited reservations of water for exempt domestic withdrawals in the Skagit Basin Instream Flow Rule. [1]

In the City of Yelm permit decision, Ecology could and should have applied *Postema* to support a finding of no impairment. This is because *Postema* stands for the proposition that absent a showing of an adverse impact, the fact that groundwater and surface water are connected is not impairment:

> "Additionally, we reject the premise that the fact that a stream has unmet flows necessarily establishes impairment if there is an effect on the stream from groundwater withdrawals.
>
> . . .
>
> We hold that hydraulic continuity of an aquifer with a stream having unmet minimum flows is not, in and of itself, a basis for denial of a groundwater application."

Postema v. PCHB, 142 Wn.2d 68, 93 (2000).

Despite these clear statements in *Postema* that an "effect" on a surface water does not necessarily result in legal "impairment," Ecology nonetheless saddled the City of Yelm with a

[1] Ironically, the use of OCPI in the amended Skagit Rule, like in the City of Yelm application, was also strange given that the amended Skagit Rule achieved what Ecology said was the effect of the original Skagit Rule when first adopted: "Ecology has not proposed to limit the statutory right to develop an exempt well." (Ecology 2001 Skagit Rule, Explanatory Statement p. 24)

finding of impairment, necessitating the use of the already tenuous OCPI exception, ultimately resulting in the *Foster* litigation and Supreme Court decision that has caused a de facto moratorium on groundwater permitting in Washington State.

Postema and Closed Surface Water Bodies

Despite the Supreme Court's recognition in *Postema* that groundwater pumping affecting a stream does not necessarily cause adverse impacts on instream resources, the Court drew a categorical distinction between minimum instream flows and surface water closures:

> ". . . a stream closure is not an appropriation, but is rather a recognition that the water in the stream is insufficient to meet existing rights and provide adequate base flows. Thus, where a proposed withdrawal would reduce the flow in surface waters closed to further appropriations, denial is required because water is unavailable and withdrawal would be detrimental to the public welfare. . . .
>
> Stream closures by rule embody Ecology's determination that water is not available for further appropriations. Since this is a basis on which a water permit application must be denied under RCW 90.03.290 independent of the question whether a withdrawal would impair an existing right, we hold that a proposed withdrawal of groundwater from a closed stream or lake in hydraulic continuity must be denied if it is established factually that the withdrawal will have **any effect** on the flow or level of the surface water."

Postema v. PCHB, 142 Wn.2d 68, 94-95 (2000) (emphasis added).

The *Postema* court's language with respect to surface water closures was overbroad (to say the least) and heedless of the circumstances and intent underlying many stream closures. Ecology has routinely closed surface waters in basin regulations that were explicitly intended *not* to foreclose groundwater withdrawals.

For example, the Deschutes Basin rule explicitly does not apply to groundwater permit applications "unless it is verified that such withdrawal would clearly have an adverse impact upon the surface water system contrary to the intent and objectives of this chapter." (WAC 173-513-050.) The Pollution Control Hearings Board has reconciled this rule language with the *Postema* "any effect" standard by holding that a stream closure applies to groundwater applications only where groundwater withdrawals "produce any effects which adversely impact the values identified in [the Deschutes Basin Rule]." *Squaxin Island Tribe v. Ecology, et al.*, PCHB No. 05-137 (Modified Findings of Fact, Conclusions of Law, and Order, November 20, 2006) at ¶¶97-103. The PCHB explained:

> "A reduction in stream flow does not necessarily equate to harm in the quality of the natural environment. If a reduction in stream flow occurs only during the winter months when there is ample flow in a particular stream, for example, it is difficult to see how the water is not 'available' for appropriation . . . ."

Id., ¶100.

Again, rather than determining whether there would be any adverse impacts on fish, wildlife, recreation, water quality, or other instream resources in closed surface water bodies, in *Foster* Ecology simply resorted to an unnecessary and questionable OCPI exemption which was struck down by the Supreme Court.

Key Findings from Van Ness Feldman Presentation

In combination, the application of Ecology's instream flow rules to groundwater applications; the adoption of flow levels that cannot be met; the agency's year-round closure of many streams; Ecology's incorrect application of *Postema* to find "impairment" whenever there is an "effect," and the mitigation limitations of the *Foster* decision create impossible groundwater permitting requirements.

The key conclusions from the presentation by law firm Van Ness Feldman to the Task Force, which surveyed numerous other Western prior appropriation states with similar regulatory instream flow programs, should be no surprise to Task Force members:

> "Washington is the only state that specifically characterizes impairment of regulatory flows to include de minimus impairment.
>
> 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, like Colorado, the state water regulatory agency has discretion in determining whether to accept mitigation (even when that mitigation is not in kind, in time, and in place)."

Presentation to Foster Task Force 6/22/22, Slide No. 15.

Foster Task Force - Recommendations from WPUDA

1. The Legislature should adopt objective standards in the water code, not subjective tests like the OCPI exception that has proven too unwieldy to have any reliable function for either Ecology or water right applicants.

2. The Legislature should clarify and codify two key holdings of *Postema*, as follows:

    a. hydraulic continuity between groundwater and a surface water source that is either closed or is not meeting instream flows, is not, in and of itself impairment;

    b. for Ecology to deny an application for groundwater where there is connection between groundwater and a surface water source that is either closed or not meeting flows, there must be an adverse effect on instream resources.

3. Create objective standards for the creation and application of computer groundwater models, including limiting groundwater modeled impacts to areas within the watershed or Water Resource Inventory Area, and not basing permit decisions on impacts that are outside a model's margin of error.

4. Create a transparent technical review board of qualified members that can be used to review complicated water right applications and mitigation plans.

5. Establish a collaborative state-local program so that impacts that are either *de minimus*, not adverse, or that in combination with existing conditions or other applications could have cumulative adverse impacts, can be mitigated at the watershed or sub-watershed level. If the Legislature can allow and then mitigate for exempt well impacts (The *Hirst* Fix), it should do the same for water rights necessary to implement the requirements of the Growth Management Act and the clear statutory preferences for water supply though public water systems, not private wells. It is inconceivable that the Legislature would support use of public funds to enable rural growth – but not support water resource mitigation necessary for GMA's primary purpose of enabling urban growth.

6. Allow water right applicants to use mitigation sequencing, which is used in numerous other environmental permitting areas, that follows the accepted sequence of (a) avoiding impacts; (b) minimizing impacts; and then (c) compensating for impacts with both in-kind and out-of-kind mitigation.

WPUDA greatly appreciates the level of interest and commitment that all Task Force members have shown over the past three years. We look forward to continuing to work with the Task Force as it prepares its final report to the Legislature, and on legislation in the 2023 Session.

Sincerely,

George M. Caan

George Caan, P.E.
Executive Director

cc: Members, Joint Task Force on Water Resource Mitigation
Carrie Sessions, Executive Policy Office, Governor Jay Inslee
Mary Verner, Water Resource Program Manager, Department of Ecology
Members, House Rural Development Ag & Natural Resources
Members, Senate Agriculture, Water, and & Natura Resources