

# Finding Solutions to Rural Water Challenges

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## Mission

### Department of Ecology's Water Resources Program

Managing water resources to meet  
the current and future needs of  
the natural environment and  
Washington's communities



## Rural water challenge

- Due to water withdrawals and natural hydrology, water is typically not available for new year-round uses from most smaller rivers and streams
- This creates a challenge Ecology to meet its mission to both protect instream resources AND manage water to meet current and future community needs



## Higher summer flows = more fish

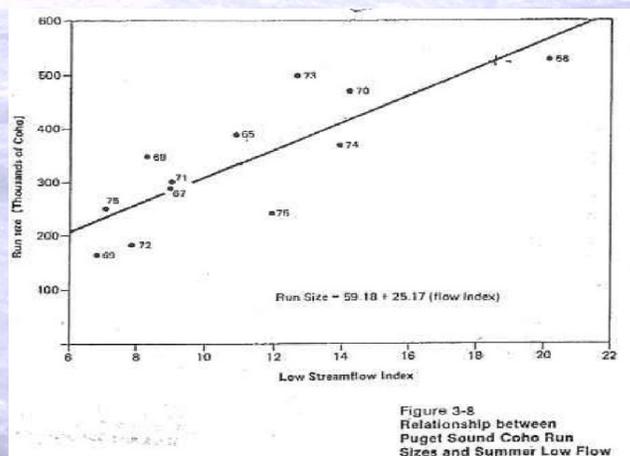


Figure 3-8  
Relationship between  
Puget Sound Coho Run  
Sizes and Summer Low Flow

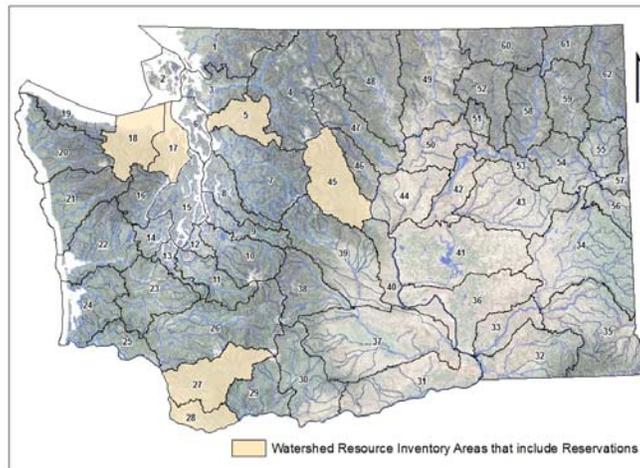


## Legal framework

- RCW 90.54.020(3)(a) Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values
- In 2001, the Washington Supreme Court ("*Postema*" decision) requires Ecology to deny groundwater approval where there is hydraulic continuity



## Use of Reservations and OCPI



## *Swinomish* decision

- In October 2013, the Supreme Court ruled in *Swinomish v. Ecology* that Ecology erred in its 2006 Skagit instream flow rule amendment:
  - The rule allowed impairment of “senior water right” - the Skagit River instream flow set in 2001
  - Key part of finding: OCPI is a “public interest test” not appropriate for multiple “private wells” for domestic use



## Finding rural water solutions

- Question: How can Ecology meet statutory obligations and case law?
- Began dialog, first with Water Resource Advisory Committee (WRAC), and then larger stakeholder meetings through September 2014
- Ecology solicited stakeholder ideas
- Released synthesis in late November, 2014



## What did we hear?

- Ideas for approaches using existing authorities:
  - Continue to establish reserves
  - Establish mitigation banks
  - Require use of cisterns during low flow periods
  - Use conservation to make water available
  - Broaden mitigation options
  - Rely on local governments for integration of land use planning and water resource protections



## What did we hear? (2)

- Ideas for approaches requiring statutory change:
  - Flexible mitigation
  - Legislative OCPI directive for permit-exempt reserves
  - Statutory priority for domestic water use
  - Define impairment around protecting instream values



## Ecology's analysis

- Options using existing authorities have limitations that would challenge successful adoption and implementation of a new or amended instream flow rule in most basins in Washington
- Of the legislative options discussed, "broadening mitigation" seemed to have the most possibility for eliciting support from a broad array of stakeholders
- Having a discussion about defining impairment in statute could lead to potential solutions.



## Nexus between water resources and land use

- *Hirst v. Whatcom*
  - Instream flow rule-what does it mean in light of more recent case law?
  - What's the county's obligation under the GMA vs. what's Ecology role?



## Hirst v. Whatcom: More

- Ecology's position (aligns with county):
  - WRIA 1 rule doesn't apply to permit exempt wells
  - Counties should be in GMA compliance if they are following instream flow rules
- Hirst (and Futurewise) disagree
- Center for Environmental Law and Policy filed amicus brief



## What about existing ISF rules?

- 15 ISF rules adopted before 2001
- Nooksack rule: applies only to our permitting
- Sent a letter to Chelan County, re: Wenatchee rule
- Will be communicating with counties about other rules- by early 2015
- Impact to local permitting decisions



## Updating water availability guidance

- Previously adopted in 1993
- Needs to address physical and legal water availability
  - Campbell and Gwinn
  - Instream flow rules
- Forming advisory group of about 20 (6 WSAC-identified reps)
- Hoping to draft in ~6 meetings

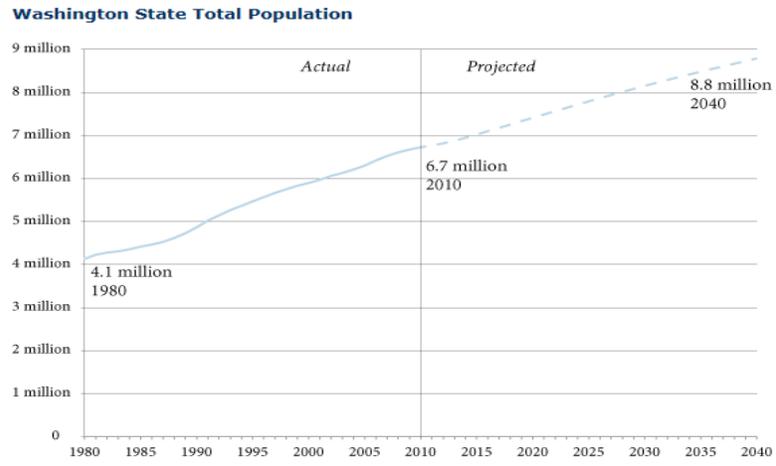


## 2015 Legislative preview

- Budget shortfall will dominate discussions
- Infrastructure funding: stormwater, flood control, and water supply
- Addressing the conflict in the Skagit Basin
- Rural water solutions: while Ecology is not planning on introducing legislation, we proposals may come out of our stakeholder work
- Water banking: who should run mitigation banks

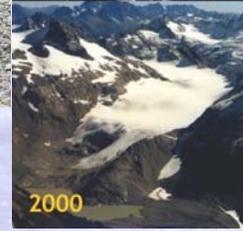


## Future: Water demand will increase



## Future: Climate change

- Reduced spring and late summer stream flows to fill reservoirs



## For More Information

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