

*Progress Report to the Legislature*

# Small Public Drinking Water Systems

December 2008



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## **Background**

The 2008 Legislature, under Section 2009 of the Enrolled Substitute House Bill 2765 Capital Budget Bill, directed the Department of Health (the department) to “*...complete a statewide review of small public drinking water systems (less than 1,000 connections) that have, or may in the future, require significant state resources to resolve urgent threats to public health and safety.*”

The Legislature directed the department to evaluate case studies, assess the two regulatory frameworks currently in place, and identify communities that would benefit from consolidation, regionalization, or other measures that will lead to:

- Improved small water system regulatory compliance
- Long-term public health protection
- Sustained economic vitality in communities served by small water systems

A progress report to the appropriate legislative committees and the Office of Financial Management is due December 1, 2008. The final report and recommendations are due June 30, 2009.

This progress report includes background information and data on the status of small water systems in Washington. It also includes a discussion of the policy challenges and the department’s approach to completing the study.

### **Where people get their water in Washington**

Washington law (RCW 70.119A.020) defines a public water system as **any water system, except** a single-family residence and a water system with four or fewer connections, all of which serve residences on the same farm.

There are two regulatory frameworks governing water systems in Washington. The Washington Administrative Code (WAC) classifies public water systems as Group A (chapter 246-290 WAC) or Group B (chapter 246-291 WAC) water systems.

Group A public water systems generally serve 15 or more households or equivalent, businesses with 25 or more customers per day, or facilities such as schools that serve 25 or more people per day. State rules governing these water systems must be as stringent as federal rules adopted under the authority of the federal Safe Drinking Water Act. Most of the department’s drinking water program resources are dedicated to oversight of Group A water systems under an agreement with the U.S. Environmental Protection Agency (EPA).

Group B public water systems generally serve between two and 14 households or equivalent, or very small businesses with fewer than 25 customers per day. These water systems are not subject to the requirements of the Safe Drinking Water Act. They are subject to the state Board of Health’s rule (chapter 246-291 WAC). Some local health agencies have additional local requirements in place.

More than 75 percent of households in Washington get their water from 223 large Group A water systems that have 1,000 or more customers (see Figures 1 and 2).

In contrast, there are almost 4,000 small Group A water systems serving eight percent of the population; and roughly 13,000 Group B water systems providing water service to two percent of Washington households.

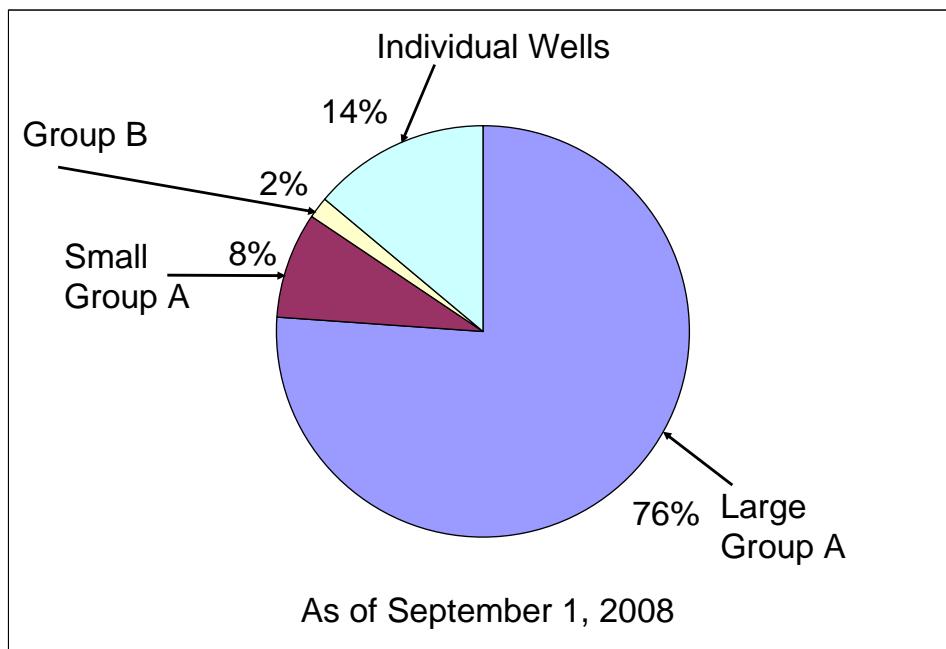


Figure 1. How households in Washington get their water. Data from the department's database and Office of Financial Management

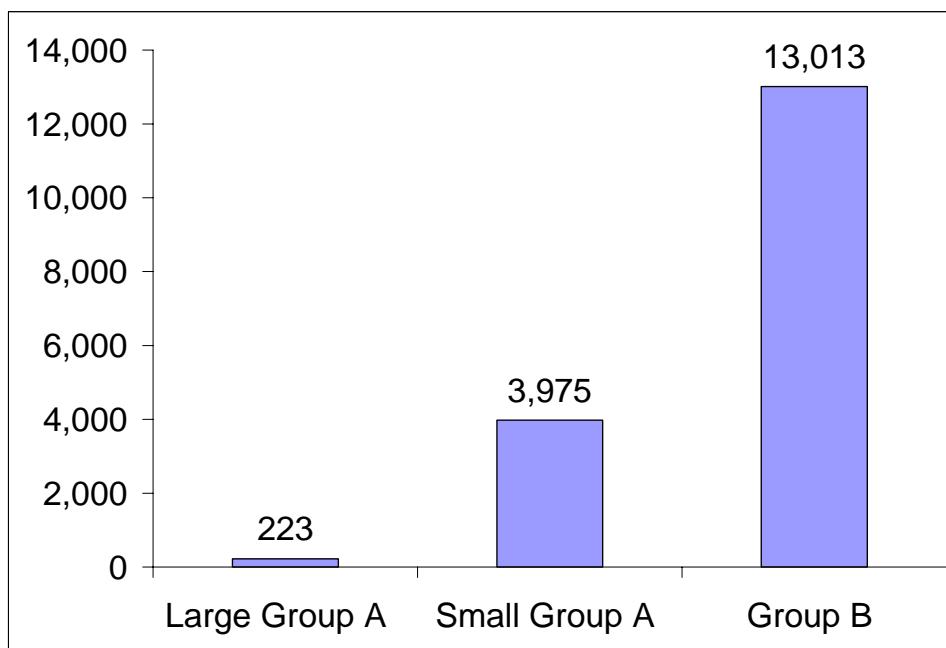


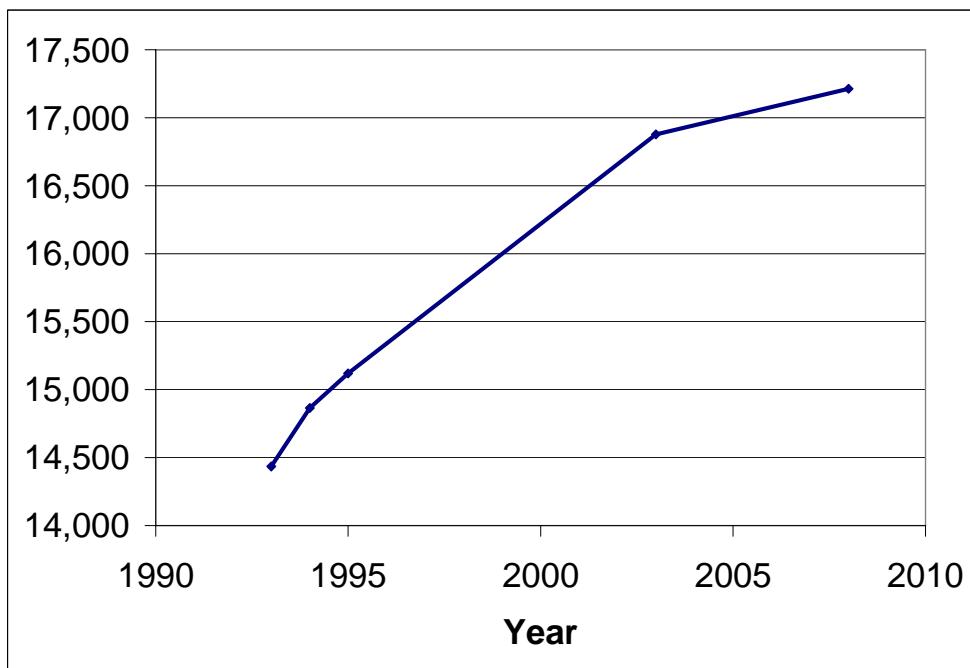
Figure 2. Number of water systems in Washington. Data from the department's database

### **Proliferation of small water systems**

The number of small water systems keeps increasing. On average, about one new small water system is created each day. From January 2004 through June 2008, more than 150 new Group A and 1,200 new Group B water systems were created.

During the same period, the department removed more than 1,000 water systems from its database. A water system is most commonly removed because it converts to an individual well or consolidates with a larger water system, or because of a closure of a business that the water system supplied.

Although recently there has been only a small increase in the number of new water systems in Washington, the longer-term trend shows a large increase in the number of small water systems (see Figure 3). Yet the proportion of the state's population served by these water systems keeps dropping. In 1991, small water systems served about 20 percent of the state's population compared to only about 10 percent today.



*Figure 3. Number of active public water systems between 1993 and 2008*

### **Regulatory compliance**

Many small water systems are not meeting basic water quality requirements. Group A water systems must meet rigorous standards to protect their source water and ensure water is safe to drink (see Table 1). The rules require Group A water systems to sample frequently for bacteria and chemicals. The department tracks compliance for Group A water systems and reports violations to EPA.

*Table 1. Two Regulatory Frameworks*

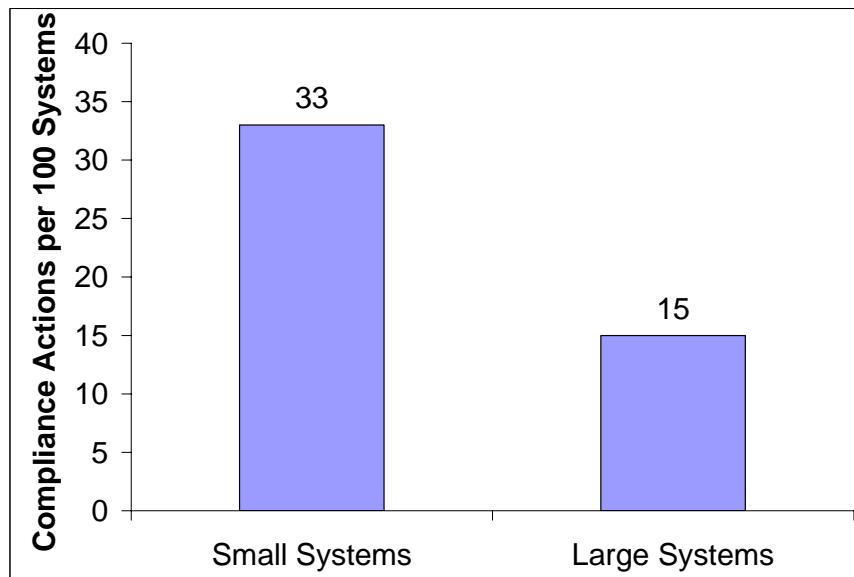
Group A (Safe Drinking Water Act)	Group B (RCW 70.119A)
<ul style="list-style-type: none"> <li>• Monthly water quality sampling</li> <li>• Monitoring of 100 + contaminants</li> <li>• Certified operator</li> <li>• Inspections every 3-5 years</li> </ul>	<ul style="list-style-type: none"> <li>• Annual coliform bacteria sample</li> <li>• Nitrate sample every 3 years</li> </ul>

Between 2003 and 2007, some Group A water systems were considered to be out of compliance with serious violations that required departmental action. These violations occurred in small water systems at a rate more than double that of the larger water systems (Figure 4). These water systems violated drinking water rules that may have created an imminent public health risk for water system consumers.

Small Group A water systems failed water quality and monitoring requirements more frequently than larger water systems. Of all Group A water systems we tracked in 2007, the small Group A water systems had:

- 99.5 percent of all coliform monitoring violations and 95 percent of all nitrate monitoring violations.
- 98 percent of all violations for exceeding the maximum contaminant level for coliform and 100 percent of all nitrate maximum contaminant level violations.

The department does not track compliance with water quality monitoring requirements for Group B water systems. Attempting to track compliance for 13,000 Group B water systems has not been possible because of the lack of adequate resources to oversee the program.



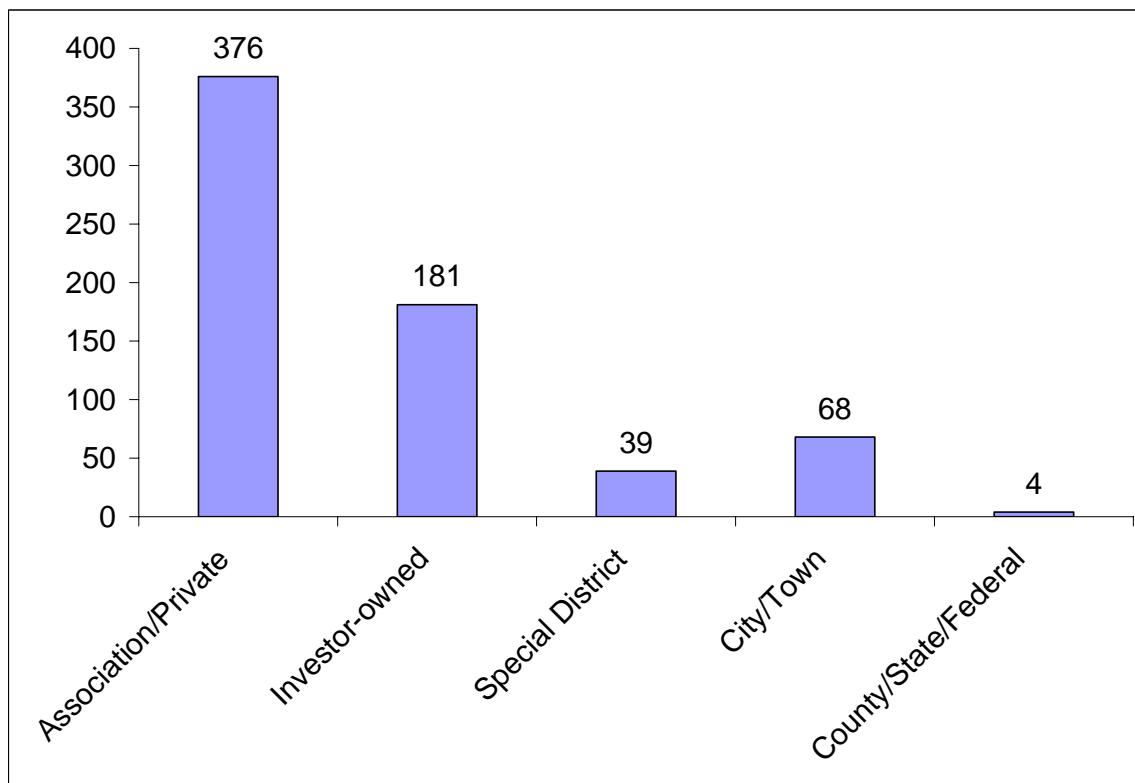
*Figure 4 Rates of non-compliance incurred by Group A community water systems, 2003 through 2007*

### **Non-compliance higher with privately-owned water systems**

Ownership seems to influence a small water system's ability to provide safe and reliable drinking water. Private systems are commonly owned by homeowners associations, private businesses, and investor-owned utilities. Small publicly-owned systems include special districts, cities, towns, and other governmentally-owned water systems.

The rate of non-compliance with drinking water rules was 30 percent higher for small privately-owned community water systems than small publicly-owned community water systems.

Between 2003 and 2007, 83 percent of the 668 compliance actions the department issued were against privately-owned water systems (Figure 5).



*Figure 5. Number of compliance actions taken by the department against Group A water systems between 2003 and 2007, sorted by ownership type*

## **Group B water systems**

In 2001, the Washington Legislature appropriated funds for the department to assess the condition and status of Group B water systems. Local health agencies used this funding to conduct 3,230 site inspections. Important findings from the site inspections included:

- 45 percent of the water systems lacked a properly built and screened vent, allowing potential contaminants into the well.
- 45 percent of the water systems did not sample for coliform and nitrate as required.
- 31 percent of the water systems had biological or chemical contaminants located within 100 feet of the source, including wellheads and surface water intakes. A 100-foot set back is essential for public health protection.

## **Satellite system management agencies**

In 1995, the legislature adopted RCW 70.116.134 (Satellite System Management Agencies) to improve management and compliance for small water systems. The department uses this authority to approve and regulate satellite management agencies. The state Board of Health's rules for Group A (WAC 246-290) and Group B (WAC 246-291) water systems require applicants for a new water system to seek an agreement with an approved satellite management agency to (1) own, manage, and operate the new water system; or, (2) manage and operate the new water system. The applicant must request either of these services from each satellite management agency approved to operate in the area of the proposed water system. However, there is ***no obligation*** on the part of a satellite management agency to agree to either option. Group B water systems commonly eliminate satellite management agency contracts after initial approval. Currently, approved SMAs only manage 18 percent of the systems created since the law passed.

## **The cost of providing safe and reliable water**

When the Safe Drinking Water Act was passed in 1974, Congress knew that small water systems would face significant challenges in meeting the requirements. The following is taken from the Congressional Record<sup>1</sup>:

- “It is evident that what is a reasonable cost for large metropolitan (regional) water systems may not be reasonable for a small water system.”
- “The quality of the nation’s drinking water can only be upgraded if the water systems that provide water to the public are organized to be most cost-effective.”
- “Larger water systems are to be encouraged and smaller water systems discouraged.”
- “The EPA Administrator’s determination of what methods are generally available is to be based on what may reasonably be afforded by large metropolitan or regional water systems.”
- “Some small water systems will be unable to promptly comply with all primary regulations.”

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<sup>1</sup> House Report No. 93-1185, The Committee on Interstate and Foreign Commerce, Section 1412 - National Drinking Water Regulations, Legislative History, Public Law 93-523, Safe Drinking Water Act

There is ongoing debate and research on the subject of affordability. Fifteen years ago, the department adopted a standard that considered an affordable rate for water service to be 1.5 percent of a household's income. In Washington, affordability based on the median household income equates to about \$70 per month.

Water systems submit information about their rates to the department as a part of their water system planning requirements. If the average water rate exceeds the affordability threshold, the department suggests the purveyor restructure or defer expenditures to reduce the revenue needs of the water system.

The Association of Washington Cities found in 2006 that public utilities surveyed<sup>2</sup> charged an average rate of \$24 per month for a basic level of water service—much lower than the statewide affordability benchmark of \$70.

### **Reliable, sustainable infrastructure**

Every four years, EPA, with the help of each state, prepares an updated assessment of drinking water infrastructure needs for Group A community water systems. The needs assessment identifies pipeline, storage, treatment, and source of supply needs for the next 20 years, and translates these needs into costs. Infrastructure costs related to growth are excluded. EPA uses the amount of financial need identified by states to decide how Drinking Water State Revolving Fund (DWSRF) dollars are divided between the states.

EPA published the most recent needs assessment for small community water systems in 2005, using data collected in 2003. Nationally, small water systems have a \$43 billion infrastructure need for the next 20 years (converted to 2008 dollars). Assuming our state's water systems infrastructure needs are equal to the national per-water system average, Washington's small water systems will need about \$2.1 billion over the next 20 years.

### **Looming costs to maintain infrastructure**

Washington's small water systems will need an estimated \$2.1 billion over the next 20 years. **Expressed another way, each of Washington's small community water systems needs an average of about \$1 million over the next 20 years. These infrastructure costs equal nearly \$500 per year per connection, or about \$40 per month for every household served by a small community Group A water system.**

**The estimated cost to repair and replace aging infrastructure based on national averages suggests that small water systems may have to triple rates just to maintain their infrastructure.**

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<sup>2</sup> Data from the Association of Washington Cities Tax and User Fee Survey (2006), a voluntary survey conducted every two years that collects local tax rate and fee data from Washington's cities and towns. For more information, visit the association's Web site at: <http://www.awcnet.org>

Over the past 15 years, many small water systems funded their infrastructure upgrades by obtaining Drinking Water State Revolving Fund loans. The low interest loans provided by the state using EPA funds covered on average 84 percent of the project costs for small water systems. Large water systems rely on the fund to a lesser extent; large water systems obtained loans from the fund for an average of only 39 percent of their total project costs.

Because small water systems must finance more of the total project cost, these water systems face a high cost of servicing Drinking Water State Revolving Fund debts. Of the small water systems that obtained loans from the fund in the past 15 years, customers currently pay about \$10 per month on average to pay the loans back. Customers on large water systems only had about 50 cents debt per household.

## **State policy goals and challenges**

Over the past 30 years, the policy intent of the legislature and the state Board of Health has been to:

- Steer water system applicants toward an existing purveyor and limit the creation of new water systems whenever possible.
- Direct new water system applicants to an experienced purveyor to own or manage the newly created water system.
- Provide effective tools to state agencies to permanently restructure water systems whose purveyors have failed to provide basic, safe and reliable water service.

The department supports each of these policy goals.

Three previous efforts to describe and address the problems of small water systems led to some legislative policy and/or drinking water program changes: *Small Water Systems: Problems and Proposed Solutions—Report to the Legislature* (1991); *Small Water System Advisory Committee—Prioritized Summary* (1998), *Recommendations Regarding Affordability and Sustainability of the State’s Drinking Water Systems* (2003).

Many of the problems facing small water systems identified in these reports are similar to the problems they face now. In our final report (due June 2009), the department will evaluate how legislation, rules, and programs are working. The report will include recommended changes to efforts that achieved the state’s policy goal of providing safe and reliable drinking water to communities served by small water systems. The department is exploring several options during this statewide review:

- Modify existing rules and programs: The department has focused resources on helping all Group A water systems meet the requirements of the federal Safe Drinking Water Act. If we reallocate resources to focus on assuring small water system viability, the department and other state agencies would have to change existing administrative rules, build financial expertise internally, and strengthen partnerships with other state agencies to assist us, or use our existing partnerships with technical assistance providers. The department must also evaluate the public health impacts of reallocating resources to make sure Washington residents benefit from this approach.

- Modify existing statutory authorities: The legislature has adopted several laws to help prevent the proliferation of small water systems and assure small water system success. Now, with more than 10 years of experience in implementing these laws, it appears that several improvements may be necessary so the department can meet the original intent of the laws. Specifically, changes to the Water System Coordination Act (chapter 70.116 RCW), Satellite Management Agencies (RCW 70.116.134), and Receivership (RCW 43.70.195) authorities could strengthen the department's ability to achieve the original intent of these statutes.
- Develop new authorities and programs: Other new statutory authorities and program initiatives could improve department efforts to consolidate existing water systems and develop regional water systems.

In this progress report, we will briefly discuss three areas of challenge: financial viability, proliferation of small water systems, and failing water systems. For each challenge, the potential solution will likely be a combination of approaches listed above—modify existing rules and programs, modify existing statutory authorities, and develop new authorities and programs.

### **Challenge 1: Improve financial viability for small water systems**

The Safe Drinking Water Act requires that each state develop and carry out a capacity development program to ensure water systems have the technical, managerial, and financial capacity to provide safe and reliable drinking water to consumers. In Washington, our program includes a requirement that new water systems demonstrate financial viability before initial approval. However, the department does not have a strong program in place to ensure ongoing oversight of a small water system's finances.

Small water systems face financial challenges (see Appendix A). Publicly-owned water systems have elected boards or commissions that often focus on keeping water rates low. Some privately-owned water systems fall under regulations by the Utilities and Transportation Commission (UTC). However, UTC does not regulate many small water systems because of statutory limitations; most water systems with fewer than 100 connections are exempt from UTC regulation. Improving financial viability will require a coordinated effort by the UTC and the Department of Health.

Satellite management is an existing tool to improve the financial oversight and management of small water systems. State rule requires new water systems to contract with a satellite management agency if one is available. The department has discovered that the goal of the satellite agency in managing the water system is often inconsistent with the goal of the new water system owner. The department has not tracked whether the owner continues to contract with an agency, and it is not clear whether the department has adequate authority to require small water systems to maintain their contracts.

Wastewater rules provide a contrast to the satellite management agency model for new small water systems. New wastewater systems serving 10 to 40 homes must be owned by a public entity, or engage a public entity to serve as a guarantor if it is to remain privately owned. All wastewater treatment systems serving more than 40 homes must be owned by a public entity. There is no other option.

Publicly-owned small water systems comply with drinking water rules at a much higher rate. Applying the wastewater model might improve public health protection afforded by small water systems.

### **Challenge 2: Stop proliferation of small water systems**

Most new water systems are created because of a development proposal or the desire to start a business (see Appendix B). Our first goal should be to discourage the development of a new water system by requiring connection to an existing water system whenever possible. The legislature enacted the Water System Coordination Act, chapter 70.116 RCW, in part to reduce the number of new water systems.

The Water System Coordination Act depends on counties to identify a critical water supply service area. The act also requires counties to exert their authority to determine whether an existing utility can provide water service prior to approving a development proposal. This statute's weaknesses are, 1) the existing purveyor is not obligated to provide water service; and, 2) participating local governments do not implement the Water System Coordination Act consistently.

The current water resource legal framework provides a significant incentive to create new water systems. The Groundwater Code allows a landowner using less than 5,000 gallons per day an exemption from applying for a water right permit. So, landowners develop Group B water systems using "exempt wells."

Each new Group B water system creates challenges for the department and increases public health risks to the water systems' consumers. Group B water systems have fewer water quality monitoring requirements than Group A water systems. Group B water systems do not require a certified operator and do not receive periodic sanitary surveys or other oversight by the department.

Recently, some local and state agencies have been discussing the idea of promoting approval of Group B water systems with up to 14 residences on an exempt well, assuming the water systems won't use more than 5,000 gallons of water per day. New Group B water systems created under these circumstances have additional public health risks to their consumers because of potential water shortages or outages.

The department is providing recommendations to the state Board of Health to revise the Group B rule. The rule changes will only assure that Group B water systems are better positioned to provide safe and reliable water to their customers. The changes will not prevent new small water systems from being established using exempt wells under the Groundwater Code.

Through the rulemaking process, the department will explore with stakeholders some potential changes that would strengthen our ability to ensure that the state's policy goals of the Water System Coordination Act are met.

The Washington Legislature set policy direction in RCW 90.54, the Water Resources Act of 1971, about how Washington's water resources should be used. RCW 90.54.020(8) states, *"Development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encouraged."*

*Development of water supply systems for multiple domestic use which will not serve the public generally shall be discouraged where water supplies are available from water systems serving the public."*

The state's policy goal to promote regional water supplies is not being met when incentives exist to create only water systems using exempt wells. The department will continue to explore how to discourage new small water system development in favor of larger, regional water systems that can better ensure safe and more economically-sustainable drinking water systems.

### **Challenge 3: Obtain better tools to address failing water systems**

Small water systems that are on the path to failure demand much of our staff and in many cases also require significant state financial resources to mitigate or resolve. However, the current definition of a "failing water system" in statute does not provide a pathway for clear regulatory or program actions for the department to take for failing water systems. RCW 90.03.580, in the Water Code, states:

"To be considered a failing public water system for the purposes of RCW 90.03.570, the department of health, in consultation with the department and the local health authority, must make a determination that the system meets one or more of the following conditions:

(1) A public water system has failed, or is in danger of failing within two years, to meet State Board of Health standards for the delivery of potable water to existing users in adequate quantity or quality to meet basic human drinking, cooking, and sanitation needs or to provide adequate fire protection flows;

(2) The current water source has failed or will fail so that the public water system is or will become incapable of exercising its existing water rights to meet existing needs for drinking, cooking, and sanitation purposes after all reasonable conservation efforts have been implemented; or

(3) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is unacceptable for human use."

It would be useful to have a definition for both “failing” and “failed” water systems. Each classification would enable certain actions by the Department of Health, Department of Ecology, Community Trade and Economic Development, the Public Works Board, and other agencies. The definition of a “failing” water system might link to water system financial viability, which could allow intervention before water quality violations occur or system failure is imminent. Defining failing water systems will help facilitate solutions, such as:

- Expediting water right changes and transfers
- Triggering authority for agencies to require water system consolidation, changes in management, and rates
- Opening up funding sources

Identifying a failing water system as early as possible is important for public health protection. Currently, the department’s most effective tools to address a failing water system center on providing funding to assist acquisition, consolidation, or regionalization. Programs such as the Water System Acquisition and Rehabilitation Program can be an effective incentive that helps the department protect public health.

Recognizing the importance of the Water System Acquisition and Rehabilitation Program, the legislature passed Substitute Senate Bill 6340 in 2008. It established the Water System Acquisition and Rehabilitation Program as an ongoing program. The law directed the department to complete a report on the future structure of the program, and submit the report to the legislature by December 31, 2008. The report will include recommendations for:

- Eligibility guidelines
- Funding levels
- Quantifying the need for the Water System Acquisition and Rehabilitation Program project funds

In cases of water system failure, the Receivership statute, chapter 43.70.195 RCW, provides authority to remove control of the water system from the purveyor and either return the water system to the purveyor with conditions, or change ownership, typically to a large municipal entity. Counties are the receivers of last resort. However, as the case study highlights (see Appendix C), the existing Receivership statutory authority should be modified so that the department can better meet the state’s policy goal to assure safe and reliable drinking water for consumers.

## **Next steps**

The department will discuss this progress report with stakeholders to share information that has been collected and seek feedback on potential solutions.

The department is looking at how best to carry out the drinking water program, to:

- Determine shifts in priorities that would allow a better focus on small water systems
- Evaluate existing authorities that could be more effectively enforced
- See whether there is a need for new statutory or regulatory authority to strengthen our efforts

The department believes a combination of these approaches is most likely to succeed.

The schedule for completing the report is:

<b>Timeframe</b>	<b>Activity</b>
January – April 2009	Meetings with stakeholders and other regulatory agencies
May – June 2009	Prepare final report with recommendations

## **Appendices**

## **Appendix A Financial viability case study – Town of Rockford (9<sup>th</sup> Legislative District)**

### Background

- The Town of Rockford is in southern Spokane County about 25 miles from downtown Spokane supplies water to about 200 homes and 25 businesses. It has a population of about 500 people.
- Rockford's water system has about 40,000 feet of distribution mains. About 25 percent of the pipes are of unknown age and pipe material. Some pipelines are known to date to 1914. The last report of distribution system leaks (1995) indicated 35 percent of measured water production never made it to an end user.
- Rockford's average monthly cost of water service to a single family home is currently \$25.58, which is approximately 0.7 percent of the 2007 average Spokane County median household income.
- In 1998, Rockford completed a comprehensive water system plan that outlined a need to invest in infrastructure improvements between 1999 and 2001 at a cost of \$700,000.
- Rockford expects total water department revenue to be \$71,000 and total water department expenses to be \$116,000. The 2008 shortfall will be paid from Rockford's reserve fund. Continuing to spend at current rates, Rockford will exhaust its reserve fund before the end of 2009.
- Rockford's current budget projection includes \$12,000 per year (2008 dollars) for water system construction maintenance, capital outlays, and water fund reserves. Rockford's projected six-year budget indicates total regulatory costs average about \$5,000 per year, or about 4 percent of the annual budget.

### What happened?

Rural Community Assistance Corporation provided free technical assistance to Rockford. The corporation prepared various funding alternatives for Rockford to consider. The Department of Health expects Rockford to adopt a new rate structure in which the average monthly cost of water service to a single family home is projected to be \$38.91. Rockford's rate increase should restore balance in the water system operating budget, but does not strengthen Rockford's ability to pay for needed capital improvements.

In 2007 the Department of Ecology and the Department of Community, Trade and Economic Development awarded Rockford \$865,000 in grants to complete most of the improvements identified in 1998. Rockford borrowed \$30,000 for planning and design of the improvements. Rockford's budget anticipates no other financial contribution or payment toward the cost of these improvements.

Rockford's engineering consultant estimated the replacement value of the water system at \$4 million. Even after completing the current capital projects, substantial expenses will be incurred for infrastructure replacement over the next 20 years, although they are budgeting only \$12,000 annually. Despite the significant rate increase, the budget allocation won't be enough to address the asset management needs for Rockford over the long term.

## **Appendix B Small water system proliferation case study – Upper Kittitas County**

### Background

- Local health agencies have the option of implementing various levels of the state's Group B program. Since the early 1990's, Kittitas County Public Health Department has been authorized under the terms of an agreement with Department of Health to review and approve Group B public water systems in Kittitas County.
- The Upper Yakima River Basin (Water Resource Inventory Area [WRIA] 39) makes up a significant portion of Kittitas County. In the past few years, this region of the county has seen two forces collide:
  - Property in Kittitas County became prized for its development value. However, this same area has seen court action between "senior" and "junior" water right holders over access to an insufficient supply of water.
  - Between January 2005 and June 2008, the portion of Kittitas County lying within WRIA 39 saw the development of 42 Group B water systems, totaling more than 300 home sites. Additional projects have been proposed, but not yet approved. See Figure 1 for a map showing the location of each new Group B water system.

### What happened?

The groundwater supply for each of the 42 developments operates under the exemption clause in RCW 90.44.050, in which each withdrawal of up to 5,000 gallon per day is exempt from the requirement to apply for a water right permit. It is common knowledge that this basin is closed to new water appropriations, so anyone applying for a new water right would be denied a permit. So, the current law did not prevent the use of water; the development still occurred. The law, instead, just created incentive to form 42 Group B water systems instead of a larger, more economical and efficient Group A water system.

In response to development pressure and the corresponding pressure on the region's inadequate water supply, the Department of Ecology developed an emergency rule (Chapter 173-539A WAC Management of Exempt Ground Water Wells in Kittitas County) designed to minimize the potential for new use of water that negatively affects flows in the Yakima River and its tributaries. This rule and the Memorandum of Agreement between Department of Ecology and Kittitas County provide a detailed assessment of the impacts of "exempt" withdrawals on surface stream flows, and obligate county government to oversee Group B water system withdrawals.

The Kittitas County example is not unique. The Water Code provides a powerful incentive to create new small water systems. Use of an exempt well, and therefore creating a small water system, is a developer's chief means of securing the water supply needed for land development in many areas of the state.

However, the existing agreement in Kittitas County will not necessarily reduce the number of new homes served by Group B water systems; Department of Ecology and Kittitas County may begin approving Group B water systems with up to nine residential connections on exempt wells. Other counties already approve up to 14 residential connections on exempt wells.

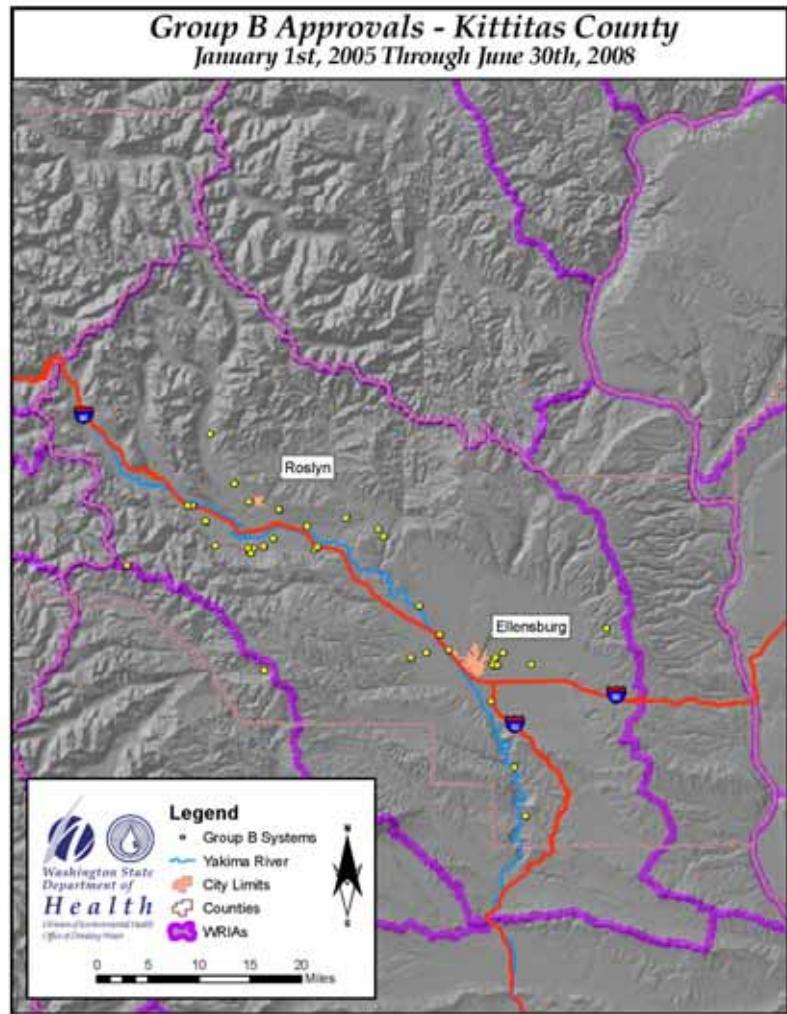


Figure 1. Map of upper Kittitas County showing recent Group B water system development

## **Appendix C Addressing failed water systems case study – Bar Development (12<sup>th</sup> Legislative District)**

### **Background**

- Bar Development is a small Group A community water system with 22 connections near Bridgeport in Douglas County.
- The water supply is an unchlorinated, 18-foot deep hand-dug well. The “casing” is a corroded corrugated metal culvert. The age of the water system is unknown.
- Public health is threatened by the purveyor’s failure to comply with drinking water regulations. From mid-2001 to early 2007, Bar Development violated bacteria and chemical monitoring rules, and failed to have a certified operator.
- According to one of Bar Development’s customers, five Bar Development water customers became ill with gastrointestinal distress in August 2005. In November 2006, three coliform samples collected by a third party technical assistance provider all tested positive for the presence of *E. coli*. The contamination was likely due to surface runoff across an area adjacent to a chicken coop, located about 100 feet from the well. A customer reported gastrointestinal distress at the same time that the contaminated samples were collected.
- From 2001 through 2006, the Department of Health used all of its regulatory tools except receivership in an attempt to bring Bar Development back into regulatory compliance. The regulatory tools used by the department and the U.S. Environmental Protection Agency (EPA) included:
  - Taking seven compliance actions against Bar Development;
  - Issuing a continuous boil water advisory in 2002;
  - Holding many public meetings;
  - Referring to EPA for assistance with compliance, which is very uncommon;
  - Issuing an administrative order and eventually a \$15,000 penalty for violating the administrative order (EPA action);
  - Issuing a red operating permit, indicating an inadequate water system;
  - Spending \$12,000 to fund a water system consolidation study in 2004; and
  - Attempting to find a purveyor willing to own or operate the water system, which was unsuccessful.

### **What happened?**

In early 2007, the department decided that receivership was the only remaining regulatory tool to bring Bar Development back into regulatory compliance. The department filed a receivership petition with Douglas County Superior Court in early March, 2007.

A hearing to temporarily name Douglas County the receiver of Bar Development was held in Douglas County Superior Court. The law requires the department to demonstrate that an emergency exists for the court to name a temporary receiver. The department cited the ongoing contamination as justification for temporary receivership. The department also asked that the requirement for a follow-up formal receivership hearing be waived and that Douglas County be named as the permanent receiver.

Douglas County Superior Court disagreed that a public health emergency existed, declined to name Douglas County as the temporary receiver and ordered a formal receivership hearing. The formal receivership hearing took place in July 2007.

At the July 2007 hearing, the court named Douglas County as the receiver for only six months. The court required Douglas County to:

- Test for all contaminants required by state or federal law;
- Employ a certified operator;
- Continuously chlorinate the water supply; and
- Impose reasonable assessments on the Bar Development water customers to recover expenditures necessary for the public health and safety.

The court did not require Douglas County to install a meter and shut-off valve at each service line (none exist). However, the court encouraged Douglas County to do so, provided that the department paid for them.

Douglas County contracted with the City of Bridgeport to provide the certified operator. An interlocal agreement with the City of Bridgeport was not executed until September 2007. During receivership, Bar Development property owners were never billed by Douglas County. The County's decision not to collect user fees hampered its ability to fulfill its receivership responsibilities.

In December 2007, the department negotiated an extension of receivership and agreed to use state funds earmarked for shut-off valves and meters to pay for a chlorination system upgrade and to update the 2004 consolidation study. Both parties signed the contract for the chlorination system in March 2008. The new chlorination system was installed in August 2008. Termination of receivership occurred in September 2008.

During the receivership process the department solicited applications for future ownership and management of the Bar Development water system. By the court-appointed end of the receivership period, no parties with interest in owning this water system had stepped forward. Further, Douglas County did not present to the court a receiver's report. At that point, the department had two choices: (1) petition the court for an extension of the receivership period; or, (2) allow receivership to end. The department chose to allow receivership to end, because progress had not been made and there was no prospect for finding a suitable new owner.

Chelan-Douglas Health District and Douglas County have advocated for condemnation of the Bar Development water system. During the July 2007 receivership hearing, the court stated that it would consider condemnation of the water system at the completion of receivership. Given that receivership was unsuccessful at bringing the water system back into regulatory compliance, the most likely outcome is condemnation of the water system by the local health officer.

The customers of Bar Development remain on a boil water advisory.

So far, the total cost to local and state government in pursuit of this receivership action is more than \$200,000. Approximately \$150,000 of the cost was Office of Attorney General and department staff time. The remaining costs were for Chelan-Douglas Health District, Douglas County, and Douglas County PUD staff; disinfection system improvements; and funding a planning study.