



NORTHEAST SAMMAMISH SEWER & WATER DISTRICT

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October 13, 2017

Ms. Jocelyn Jones
Washington State Department of Ecology
PO Box 47600
Olympia, WA 908504-7600

Via Email

Subject: Draft Reclaimed Water Rule

Dear Ms. Jones:

Thank you for the opportunity to submit comments on the draft rule. The Northeast Sammamish Sewer and Water District provided a comment earlier in this rulemaking that stressed the importance of protecting groundwater sources used for drinking water from the negative effects of reclaimed water. The District requested that the new rule require reclaimed water providers to obtain an agreement with the local purveyor before reclaimed water was released within the 5-year capture area of District wells, designated Wellhead Protection Areas under RCW Chapter 36.36. The Washington Association of Water and Sewer Districts made similar comments. These comments raise serious concerns regarding the health and safety of the public, however, Ecology did not respond to the substance of these concerns and instead stated the following legal position:

6.3.1 Prohibit use of reclaimed water in Wellhead Protection Areas and Critical Aquifer Recharge Areas

Considered in response to stakeholder concerns. This alternative does not meet the goals and objectives of the statute of encouraging the production and use of reclaimed water.

6.3.2 Require Service Area agreements for reclaimed water (RW) generators which may allow potable suppliers to restrict and reject use /sale of RW within their Coordination Act service areas

Considered in response to stakeholder concerns. This alternative is contrary to the purpose and intent of the statute. RCW 90.46.005 provides in part: “It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to *encourage* the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.” (Emphasis added.)

Our Supreme Court has similarly found that “the legislature has strongly urged beneficial use of [reclaimed water] . . . Nothing in chapter 90.46 RCW indicates the legislature intended to require sewage treatment plants to become water utilities before they can otherwise follow the statutory directive to make broad use of reclaimed water, including by sale for suitable uses.” *Cedar River Water and Sewer Dist. v. King County*, 178 Wn.2d 763, 793, 315 P.3d 1065 (2013).

The District’s water supply comes from groundwater wells and like many water supplies in Washington its water is not disinfected. Its water is very high quality in part because it does not contain chemicals such as chlorine. It has serious concerns that that its water will be contaminated or degraded by reclaimed water. The District respectfully requests that Ecology reconsider the response quoted above and recognize the legitimate concerns of the District and other water utilities that their groundwater supplies need to be protected from degradation – whether health related or aesthetic – by reclaimed water positions. The District offers the following for consideration:

- Drinking water is a core human need essential for the public health. People cannot live without drinking water, and hundreds of government and nongovernment entities have spent millions of dollars developing drinking water supplies to serve the public and protecting these supplies from contamination. Reclaimed water is important and has many uses and potential uses, but it cannot be given precedence over protecting groundwater supplies used to provide the public with drinking water and must not be permitted to pollute or contaminate these supplies or degrade *existing* drinking water quality.
- There are numerous Washington statutes protecting water. For example:

RCW 36.36.010

Purpose.

The protection of subterranean water from pollution or degradation is of great concern. The depletion of subterranean water is of great concern. The purpose of this chapter is to allow the creation of aquifer protection areas to finance the

protection, preservation, and rehabilitation of subterranean water, and to reduce special assessments imposed upon households to finance facilities for such purposes. Pollution and degradation of subterranean drinking water supplies, and the depletion of subterranean drinking water supplies, pose immediate threats to the safety and welfare of the citizens of this state.

RCW 90.48.010
Policy enunciated.

It is declared to be the public policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington.

90.48.020
Definitions.

.....
Whenever the word "pollution" is used in this chapter, it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters,

This definition is repeated in **Chapter 173-200 WAC WATER QUALITY STANDARDS FOR GROUNDWATERS OF THE STATE OF WASHINGTON** which also contains the following definitions:

(7) "Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in groundwater or that occurs at concentrations greater than those in the natural levels. WAC 173-200-020(7)

...
(17) "Natural groundwater quality" means groundwater quality that was present before any human-caused pollution. WAC 173-200-020(17)

- WAC 173-200 is an Ecology regulation which also contains the Antidegradation Policy of the state:

173-200-030
Antidegradation policy.

(1) The antidegradation policy of the state of Washington, is generally guided by chapter 90.48 RCW, the Water Pollution Control Act, and chapter 90.54 RCW, the Water Resources Act of 1971. The goal of this policy is to ensure the purity of the state's groundwaters and to protect the natural environment.

(2) The antidegradation policy is as follows:

(a) Existing and future beneficial uses shall be maintained and protected and degradation of groundwater quality that would interfere with or become injurious to beneficial uses shall not be allowed.

(b) Degradation shall not be allowed of high quality groundwaters constituting an outstanding national or state resource, such as waters of national and state parks and wildlife refuges, and waters of exceptional recreational or ecological significance.

(c) Whenever groundwaters are of a higher quality than the criteria assigned for said waters, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated to the department's satisfaction that:

(i) An overriding consideration of the public interest will be served; and

(ii) All contaminants proposed for entry into said groundwaters shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.

This policy must be read in its entirety and one part cannot be ignored in favor of another. This policy does not grant Ecology the unlimited discretion to disregard or ignore Wellhead Protections areas where reclaimed water is involved. The so called OCPI provisions in Section 2(c) applies only in the limited circumstances stated, and must be read in together with Section 2(a). The express intent of Section 2(a) is to protect existing uses such as drinking water from degradation or elements that would be “injurious to the beneficial use”.

- Ecology’s quotation copied above from RCW 90.46.005 to support the position that reclaimed water somehow takes precedence over wellhead protections statutes (RCW 36.36) is just one sentence found in the 8th paragraph of Section 005. Section 005 clearly intends that that RCW 90.46 be harmonized with other water protection statutes. The first sentence of that section states:

The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment ...

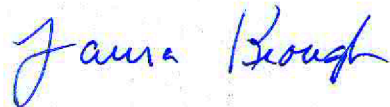
The word “while” means that reclaimed water does not override health and safety.

Protecting the existing quality of groundwater used for drinking by limiting the use of reclaimed water in Wellhead Protection Areas is not inconsistent with the goals and objectives of the statute (RCW 90.46.005) that encourages the production and use of reclaimed water. Rather, it carries out that statute's intent by protecting drinking water sources which are essential for the health and safety of citizens.

The District supports comments submitted by the Washington Association of Sewer and Water Districts, the East King County Regional Water Association and the Washington Water Utilities Council.

Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Laura Keough". The signature is written in a cursive, flowing style.

Laura Keough
General Manger