

## Rep. Luanne Van Werven

Dear Ms. Sawabini:

The Legislature prepared a fix to the legal conundrum created by the Washington Supreme Court's decision in *Whatcom County v. Western Washington Growth Management Hearings Board* via public law Chapter 1, Laws of 2018. This law included many trade-offs after months of negotiations where the Legislature did not authorize metering in every district, did not allow drought reductions in every district, and gave very specific reductions in particular areas for water usage. While many versions of proposed legislation related to those negotiations incorporated state-wide water metering, indoor and outdoor water restrictions, and other conservation measures, those concepts did not have sufficient support to be incorporated into the final law. The Department of Ecology operates outside of its delegated authority when it attempts to impose new obligations that are not authorized by statute.

The department's proposed rule 173-501-065 includes a "conservation standard" that would limit new permit-exempt domestic wells to no more than 500 gallons per day for indoor use and not to exceed a total of 1/12 of an acre for outdoor usage. The Legislature authorized a reduction of water usage from 5,000 gallons per day to a maximum annual average withdrawal of 3,000 gallons per day per connection after months of negotiations. While the law envisions an updated locally-created watershed plan allowing for further reduction in water amounts backed by scientific evidence, there is no agreed to updated watershed plan for Water Resource Inventory Area 1. Therefore, in accordance with RCW 90.94.020(7)(a), the department must adopt rules that meet the requirements of RCW 90.94.020 by August 1, 2020. Due to the wording in the statute, the Department of Ecology is directed to abide by the legislative negotiated levels of a maximum annual average withdrawal of 3,000 gallons per day per connection in its rulemaking.

I am further concerned by the proposed limitations on water usage because the department is lacking adequate evidence to justify the proposed actions. I was provided a copy of your response to Brian Smith where you stated:

"I checked with our local staff in Whatcom County and we do not have specific data on rural domestic water use in Whatcom County because we do not meter domestic wells in that area. We also do not have urban water use information since that information, if available, would be tracked by the municipal water suppliers."

When the law was passed, legislators were aware that counties and the Department of Ecology would never have sufficient funding and resources to do much more than model a basin for water usage and provide some compensatory offsets. The basic "fix" was to ensure that property owners had restored access to use of exempt wells by allowing the department to estimate potential future consumption and have communities adopt a project list to help off-set the water usage. Property owners are required to pay a fee to help with additional cost. It is a practical solution to a situation made complex by a legal interpretation based on facts related to growth management planning, not the scientific reality of small amounts of water consumption associated with exempt well usage. Further curtailment of water usage was not to be authorized unless it was adequately justified and adopted by the community itself through a watershed plan.

I urge the department to modify the proposed rule to conform with the governing statutes to

preserve the integrity of the legislative fix instead of attempting to impose new restrictions that treat rural communities differently than urban communities in an inequitable manner.

Sincerely,

Luanne Van Werven  
State Representative  
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