

Brian Larson

Carrie - attached are my comments. Thanks again for working on this issue.

Department of Ecology

Water Trust Advisory Group

First, thanks to the Department of Ecology, the Washington State Legislature, and all of the participants that joined the Department of Ecology's advisory committee. The management of the public's water resource is a complicated issue by laws that were written over 100 years ago and competing interests that don't always align.

It is my opinion that the current legislation, laws, and the Department of Ecology policies are not sufficient or structured to effectively, and equitably manage the public's ownership of what is one of our most valuable resources, fresh water. Washington States water laws and legislation date back to 1917. These laws were not written or structured to meet the current and future challenges that our water resource is facing. Over these 103 years there have been a number of revisions but usually written in favor of special interests. Fortunately, our courts have mostly sided with the public's interests with the Foster, Hirst, and Postema decisions.

Much like the Homestead Act of 1862, Washington States water laws were written to promote migration and development to the western states. The Homestead Act was rescinded in 1976 as the country's priorities changed. It no longer was in the public's interest to give the public's land away for free. In this same vein, our State's Water Legislation must be revised and amended to meet the needs and address the challenges of 2020 and beyond.

The Department of Ecology lays out these main challenges in their report:

- Climate Change is creating increased demand on water as increased temperatures require more irrigation. On the supply side, the timing of rainfall and snowfall is estimated to decrease the amount of fresh water available in the highest demand months.
- Population Growth in the State will continue to grow demand for fresh water in household consumption, food, and industry.
- Most of the public's water has already been granted in the form of water rights.

These are the challenges that our current laws, interpretations, and management have in my opinion.

- Washington State Water Laws do not charge the "granted users" for this resource. farmers, households, and industry pay their utilities, but this payment is only for the infrastructure of

pumps, pipes, and power to move the water. The actual water is free. This creates a system similar to one studied in Economics around fisheries. To quote H. Scott Gordon Carleton College, Ottawa, Ontario. "It will appear, I hope, that most of the problems associated with the words ``conservation" or "depletion" or "overexploitation" in the fishery are, in reality, manifestations of the fact that the natural resources of the sea yield no economic rent." The economic models in a capitalistic society show that this system will over fish the resource. Given our current water laws and policies we will see the same results with over use, and inefficient use of water as opposed to maximization of the public's resource and economic incentive for conservation.

- Our current policy allows private citizens to apply for water rights (the right to use - not own). These applications are tied to specific properties but allow them to be sold and transferred without the land which they are appurtenant.
- This existing policy allows speculation to exist in the market. This trend is accelerating as water becomes scarcer. Water Markets have and are being formed by large outside corporate interests. In addition, we've seen people cornering the local water markets as a strategic business advantage as seen at the Suncadia development.

The question going forward is how we shape our laws and policies to:

1. Conserve and maximize the use of the public's water as a beneficial resource
2. Equitably manage the public's water market.
3. Include "beneficial use" that would include agriculture, industry, households, communities, and the environment as determining factors in the granting of use.

Given these challenges and goals I believe that we should make the following changes in our legislation governing water rights and its use.

1. **Set a specific timeline for the Department of Ecology to complete instream flow rules by month, established for all rivers and streams in the State.**

We need to prioritize and set timelines for the Department of Ecology's "instream flow rules" for all of our rivers and streams. The 2000 State Supreme Court Ruling *Postema v. Pollution Control Hearings Board*, 31 protects instream flow rights but until these minimum monthly flows are established, existing and new water rights will have established senior rights. It's my understanding that only 30 -50% of the rivers and streams in the State of Washington have established in stream flows from the Department of Ecology. It doesn't make sense to me, nor is it in the public's interest to approve water rights in a stream (at zero cost to the applicant), then go back and use public and/or nonprofit funds to mitigate low in-

stream flows. As the stewards for these watersheds, we should make this a priority with set timelines for completion.

2. Set a specific timeline to determine the recharge rates and sustainable use levels for the aquifers in the State.

No mention of groundwater was made in the advisory committee notes that I saw. These aquifers are important and serve as a critical source of side channels and instream flows. Groundwater is also critical in maintaining lower temperatures as these can be 10 degrees cooler than the surface water. We are currently digging deeper and deeper wells and lowering water tables across the state. This is not sustainable. California has grossly mismanaged their groundwater resources (back to the fisheries analogy) and we are following behind them. We need to determine what the recharge levels are for these aquifers and determine the sustainable levels of water rights that can be granted. We are literally digging a deeper hole.

3. Tie the water right to the physical property that was used in the application thereof.

Granted water rights were applied to a specific physical property. Those who are granted rights should exercise that right to access a public resource - limited to direct use of that property. Under Washington Law, water is currently considered a **public resource that can't be owned**. But the **right to use water is exclusive and treated like a property right**. Tying the water right to the physical property would be consistent with the law. This would also be fair to both the applicant and the public that owns the water. The applicant got what they applied for, mind you at no cost to themselves other than the time and effort and filling out the application. Water rights are, in most cases, worth more than the raw land. An example is a friend's farm in Walla Walla. His property is worth \$8,000 an acre. \$2,000 is for the land and \$6,000 is the water rights. He obviously made a huge profit by applying and being granted the right to use water on his property. This change in the law wouldn't affect this profit if and when this property was sold. What would change is the ability to sell the water right separate from the land that the water had been granted to.

4. Introduce Legislation that would give the Department of Ecology the right to operate and manage the State's Water Bank

The current policy allows a "secondary water market" similar to how Stubhub exists for concerts and events. The concerns that water banking and the TWRP are being used in ways not originally intended by the Legislature are valid. This allows speculators and investors to profit off the public's resources with no regard to the public's interest. For example, a speculator like the prior owners Goldman Sachs could apply for a water right up in, say Colville, pay nothing for it and then transfer it down to the Horse Heaven Hills at 98% profit. The guys at Goldman Sachs are no dummies. Additionally, the current capitalistic model has no incentive to either conserve or maximize the use of water since the cost of water is zero (other than transportation and infrastructure). One of the arguments for water banks is

that they assign value on the secondary market, and that the selling of the resource would provide an incentive to conserve.

The Department of Ecology should manage BOTH the primary and secondary water markets. They already manage the initial water market, why wouldn't we entrust this secondary market to this department that already manages the primary market? As part of this management of the secondary water market, the Department of Ecology would be granted the ability to pay fair market value to current owners of water rights based on the market value for the property in which it was granted. They could even establish an incentive by paying an additional 20% over fair market value to increase conservation. The Department of Ecology would sell this water to the highest bidder taking into account instream water flows, and the beneficial use of the public's resources. With the Department of Ecology managing this secondary water bank, the issues of out-of-basin transfers, TWRP, in-stream flows and adverse effects to communities would all be equitably considered as part of the process. Funds derived from these transactions would be used to manage the secondary water bank and to restore and manage water basins in the State of Washington. This decision will prevent speculation, increase conservation of our most valuable resource and preserve communities that will undoubtedly become our Owens Valley if we continue with current policies.

In conclusion, we need to look at water in a more holistic framework. Nibbling around the edges and making small changes to our current laws will not set up the State of Washington for success. The specific issues of downstream out-of-basin water transfers, TWRP, and conservation easements are important issues. But, most critical and essential, is an adaptive public model that prioritizes the public's interest and creates an economic model that gives people with current water rights the incentive to conserve this precious resource. Setting up privately owned and managed water banks is not the answer and is not in the public's best interest. I encourage the legislature to take a more futuristic view of this resource and keep the management of the public's water in both the primary and secondary market by establishing a Department of Ecology Water Bank.

Sincerely,

Brian Larson