

Applications for New Water Right Permits in the Yakima Basin: The Mitigation Option

The Yakima River Basin is affected by a variety of water problems that impact agriculture, fish, and municipal and domestic water supplies. Since at least the 1970s, the basin's federal, state and local agencies, and Yakama Nation natural resource managers have participated in federal and state planning efforts to identify solutions to water shortages and other problems.

The Yakima River Basin Surface Water Adjudication¹ (Adjudication) and other applicable state and federal court decisions have clearly determined that the Yakima River Basin is over-appropriated. In other words, more surface water rights have been confirmed in the Adjudication than there is actual water flowing in the river.

Consumptive water use: A use of water that lessens the amount or quality of the water source.

In September 2011, the United States Geological Survey (USGS) released its final report on the 12-year Yakima Basin Groundwater Study.² The USGS study confirms that groundwater and surface water are directly connected. It also demonstrates that withdrawing groundwater in the basin reduces streamflows. Any new consumptive water uses add to the existing water deficit in the basin.

Given these conditions, state water laws have prohibited the Department of Ecology (Ecology) from issuing new water rights for many years. Ecology is in the process of contacting people and entities who hold pending water right applications. Ecology needs to determine how to proceed with these applications, given the basin's water shortage problems. Currently, the best option for securing a new water right is to offset or compensate for impacts on streams, called "mitigating" the impacts. Mitigation is an effective water management tool that allows for both new uses and stream flow protection. This publication provides an introduction to how mitigation and mitigation plans work.

What is mitigation?

Mitigation is a way to prevent impacts to other existing water rights or harm to existing interests and stream flows. "Mitigation" often refers to replacing the amount of water being used with an equal or greater amount of water, "bucket for bucket."

WHY IT MATTERS

Given current water conditions in the Yakima River Basin, there is no water available for new water right permit applications to be approved for year-round consumptive uses unless the impact of the use can be offset, or "mitigated." Ecology is currently contacting water right applicants to determine the status of the water right applications. Although still not a guarantee, it is likely that only new consumptive uses that can be mitigated will be approved. This publication provides an introduction to mitigation and mitigation plans.

Contact information:

CRO WR Customer Contact hotline (509-575-2597)

Yakima Basin web page:

<http://www.ecy.wa.gov/programs/wr/cro/yakimabasin.html>

Special accommodations:

If you need this publication in an alternate format, call the Water Resources Program at (360) 407-6872. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call (877) 833-6341.

¹ State of Washington, Department of Ecology v. James J. Acquavella, et al., Yakima Superior Court Cause No. 77 2 01484-5. <http://www.ecy.wa.gov/programs/wr/rights/adjhome.html>

² To view the Yakima Basin Groundwater Study visit <http://pubs.usgs.gov/sir/2011/5155/>.

Mitigation may allow Ecology to approve an application where it would be denied. Under Washington water law, mitigation must address environmental benefits and costs and must address water availability or otherwise offset adverse impacts. Ecology considers mitigation on a case-by-case basis: the suitability and success of an approach depends on the unique characteristics of the site.

Generally, Ecology favors mitigation that offsets impacts in-kind (e.g. water-for-water as opposed to water for riparian enhancements), in-time, and in-place. In many cases, mitigation types are mixed and matched.

Examples of in-kind mitigation include:

- Placing existing water rights into the State's Trust Water Right Program.³
- Storing and releasing/recovering surface or groundwater.
- Water banking (see below).

What is water banking?

Water banks are a mechanism to hold, market, and transfer surface water and groundwater, and water storage entitlements. The goal of water banking is to move water from a lesser value use to where it is needed for a higher value use. Examples of water banks within the Yakima Basin can be found in Kittitas County.⁴

What is a mitigation plan?

A "mitigation plan" is a document, developed through joint discussions between a water right applicant (or their representative) and Ecology staff, that describes:

- The effects of a proposed water use.
- The proposed mitigation for those effects.
- How the effectiveness of the mitigation will be ensured.

Mitigation plans may be proposed by project applicants or any other person or entity that has interest and expertise in water resource management for protection of aquatic habitat. Typically a qualified hydrogeologist or engineer will be necessary.

A mitigation plan may address impacts to a stream basin reach or other area for either an individual withdrawal or for multiple withdrawals in a subbasin. The plan must show that the proposed withdrawal with mitigation in place will not:

- Negatively impact existing surface water, groundwater, or instream flow water rights.
- Be harmful to the public interest.

What happens after a mitigation plan is submitted?

Ecology evaluates mitigation proposals on a case-by-case basis, relying on the information and analysis provided by the applicant and best professional judgment. A decision on the adequacy of proposed mitigation plans will not be issued until all required consultations with external stakeholders have been completed.

³ To learn more about Trust Water Rights visit <http://www.ecy.wa.gov/programs/wr/market/trust.html>; also refer to Ecology publication #09-11-035 on Trust Water and Water Banking: <http://www.ecy.wa.gov/pubs/0911035.pdf>

⁴ To learn more about water banking visit <http://www.ecy.wa.gov/programs/wr/cro/wtrchng.html>; also refer to Ecology publication #09-11-035 on Trust Water and Water Banking: <http://www.ecy.wa.gov/pubs/0911035.pdf>