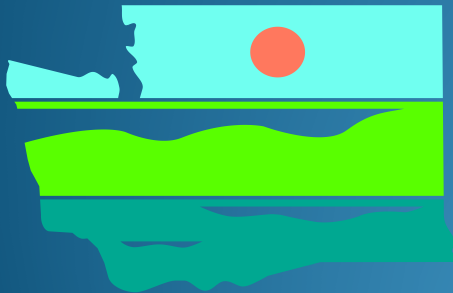


Foster v. Yelm
and the
Department of Ecology
The Story Behind the Story



WASHINGTON STATE
DEPARTMENT OF
ECOLOGY

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Olympia, Washington
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For the past year, you likely have heard...

- According to Foster...
- As a result of Foster v. Yelm...
- Due to Foster...
- Based on the recent Supreme Court decision Foster v. Yelm...

So, what is the story here???

Lacey-Olympia-Yelm Applications, Impacted Waterbodies and Mitigation Offsets

- New or change water
- Impacted Streams
- Mitigation

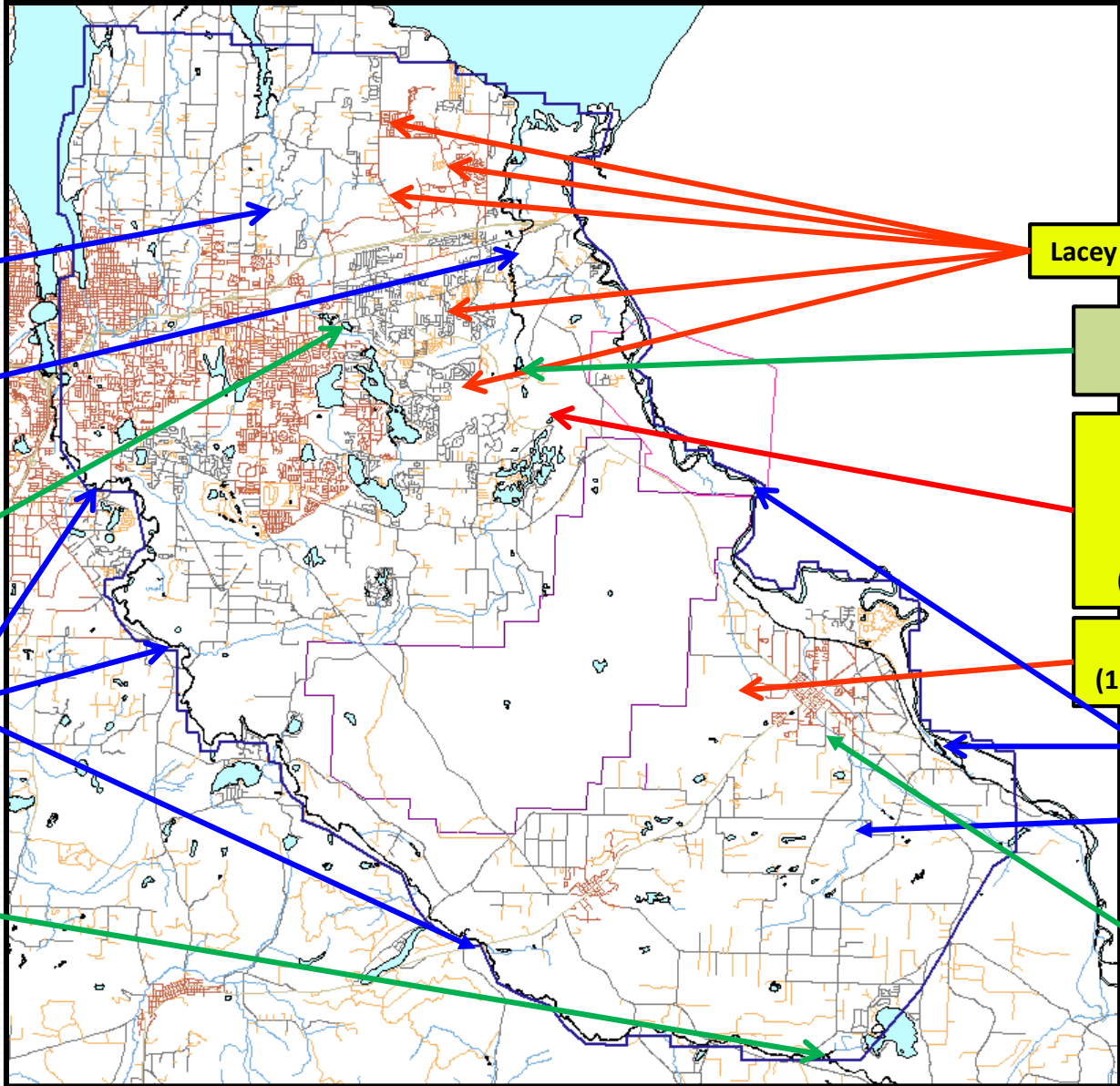
Woodland Creek

McAllister Creek

Woodland Creek Reclaimed Water Facility

Deschutes River

Smith Farm and retired irrigation water right and "out-of-kind" mitigation



Lacey Wells (6 New Apps)

McAllister Springs

New McAllister Wellfield for Olympia and Nisqually Tribe (3 Change Apps)

SW Yelm 1A Well (1 New Appl - Rejected)

Nisqually River

Yelm Creek

Cochrane Park Reclaimed Water Facility

Outcome of the 10 Original Water Right Applications



- **Olympia's** Water Right Change Applications:
All 3 Permits issued - 29,209 AFY transferred from SW to GW
 - **Lacey's** New Water Right Applications:
All 6 Permits issued - 7,392 AFY of new water permitted
 - **Yelm's** New Water Right Application:
Appealed to Pollution Control Hearings Board by Sara Foster and 8 nearby property owners who reside outside city limits and have exempt wells
 - Ecology and Yelm and their attorneys defended Report of Examination decision at Pollution Control Hearing Board (PCHB) appeal hearing in December 2012.
 - PCHB ruled in Ecology and Yelm's favor on March 2013.
 - Thurston County Superior Court ruled in Ecology and Yelm's favor in May 2014.
 - Case heard by the Washington State Supreme Court (known as Foster v. Yelm and Ecology and the PCHB) on May 21, 2015.
 - **On October 8, 2015, the Court rendered its opinion and voted 6-3 in favor of Foster and vacated Yelm's water right permit of:**
 - Qa – 942 AFY**
 - Qi – 2,100 GPM**
- Supreme Court Ruled:**
- Minimum flows are established by rule and have a priority date of the rule's adoption. These flows are not a limited water right – they function in most respects as any other water appropriation.
 - As such – they are subject to the State's long established "prior appropriation" and "first in time-first in right" approach to water law, which does not permit any impairment, even a de minimus impairment, of a senior water right.
 - The water code, including OCPI – is concerned with legal injury caused by impairment of senior water rights – water law does not turn on notions of "ecological " injury.

Foster v. Yelm and Ecology



Sara Foster is a long-time Yelm resident, opposed to Yelm growing larger in population.

She appealed the Yelm Water Rights Permit for 942 AFY of new water – which would have given Yelm about 20 years of new water to grow into.

Ecology and Yelm prevailed at the PCHB and Thurston County Superior Court

All three parties agreed to bypass the WA State Court of Appeals and go straight to the State Supreme Court

Ecology and Yelm lost at the WA State Supreme Court

Ms. Foster prevailed w/o hiring a single expert witness or consultant to refute or challenge Ecology's permit decision based on technical grounds.

She prevailed in arguing that OCPI was for extraordinary circumstances (drought or public health emergency)...

Meanwhile, Lacey's and Olympia's permits and both in-kind and out-of-kind mitigation moving forward – involving 36,601 AFY of water...

**22 water right decisions utilized OCPI
out of 4,615 total water right decisions (0.47%) made between
January 2008 - October 2015 by the Ecology.**