



## PRESIDENT'S NOTES

By Allison MacEwan, P.E., CFM, AWRA-WA President

As 2016 draws to a close, I can't help but share my pride and enthusiasm for the many accomplishments of AWRA-WA over the course of the year. None of this would have been possible without the dedication and commitment of our all-volunteer Board of Directors, our many volunteers, our sponsors, and our membership. It has truly been an honor to collaborate with you all. Some highlights of our year include:

- **Annual State Conference** – This year's AWRA-WA conference on Rural Domestic and Municipal Water supply had over 175 attendees. Thank you to all who attended the conference, to our sponsors, and to our speakers and moderators. A recap of the conference sessions is provided in this newsletter. Thanks goes out to the Washington Department of Ecology, who filmed our conference this year. I encourage you to check back on our website for links to videos that highlight the day's discussions. I want to extend special recognition and appreciation to our Conference Committee, chaired by Rabia Ahmed and Jason McCormick, and to our day of event volunteers, for your collective efforts that made this event such a success!
- **Dinner Meetings:** We hosted nine dinner meeting events, including 3 student mixer or networking events, throughout the state with over 300 total attendees. A sincere thank you goes out to our speakers and to our Dinner Committee, chaired by Tyson Carlson and Terry Smith, for making all these events a success.
- **Newsletter:** We published 4 AWRA-WA newsletters in 2016 as a means of sharing information on Washington water management issues and accomplishments and to keep our membership informed about AWRA-WA events and opportunities. Thanks to the many authors who contributed the articles that made for such an interesting read in 2016 and to Eric Buer, Erin Thatcher and Terry Smith, for leading the effort to publish the newsletter.



- **Awards:** Congratulations to Buck Smith, the recipient of AWRA-WA's annual Outstanding Service Award. We commend Buck for his many contributions to the water resources community throughout his career; see our article highlighting Buck and his achievements in this newsletter.

- **Student Chapters:** We appreciate the many students who attended our events throughout the year and shared their perspectives on

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and enthusiasm for water with us. Because of the generous support of our sponsors, we were able to provide free admission to students at our dinner meetings. A special thanks goes to University of Washington and Central Washington University AWRA student chapter leaders for collaborating with us this year in support of AWRA-WA.

- **Student Fellowships:** AWRA-WA will award two \$2,000 Student Fellowships at the end of 2016. Applications are now being accepted through December 7th. Please see our website for more information on this opportunity.

Looking ahead to 2017, the transition to a new AWRA-WA Board will soon be upon us. AWRA-WA members should be receiving an email containing a secure link to cast a vote for the new Board. Biographies for those who have been nominated for the 2017 Board slate are in this newsletter and also on our website. Additional information on Board elections is provided in this newsletter.

It has been my honor to serve as AWRA-WA President in 2016. I look forward to working with you all as AWRA-WA's Past President in 2017 as we continue to support the mission of this organization: promoting the advancement of water resources management in Washington and the Pacific Northwest.

*WASHINGTON SUPREME COURT DECISION  
PROTECTS INSTREAM FLOWS,  
MAY SLOW RURAL DEVELOPMENT*

By Dan Von Seggern, J.D., Center for Environmental Law and Policy (CELP)

In an important new groundwater use decision, the Washington Supreme Court held that a county must ensure water is legally available before permitting development. This means that county land use planning must take water availability into account, and that a county may not simply rely on Washington Department of Ecology (Ecology) instream flow rule to approve development.

*Whatcom County v. Western Washington Growth Management Hearings Board*<sup>1</sup> ("Hirst") involved a challenge to Whatcom County's Comprehensive Plan Ordinance. Under the Growth Management Act (GMA), counties develop comprehensive plans that designate certain areas for particular types of uses. A county's GMA plan must "protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water."<sup>2</sup> Among other types of use, the GMA requires that counties set aside land for "rural" development. This rural element must include measures regulating development to protect water resources.

Like other parts of Washington, Whatcom County faces increasing pressure on its water supplies, and most of the available water has already been spoken for. Ecology's Nooksack River instream flow rule establishes instream flows for the Nooksack River and other streams in the basin. The Nooksack Rule closes most of the county to further appropriations of water, but says nothing about permit-exempt wells. The County's rural land planning ordinance merely incorporated Ecology's instream flow rule – like the rule, it did not address permit-exempt wells.

*Hirst* challenged the County's rural land planning ordinance, on the grounds that it failed to protect rural water resources, because it did not address rural permit-exempt well use. The Board agreed, finding that the Whatcom County's Comprehensive Plan's Rural Element did not adequately protect water resources. The Court of Appeals reversed the Western Washington Growth Management Hearings Board (Board), holding that because the County's planning ordinances were consistent with Ecology's instream flow rule, the County need not further regulate groundwater use. This ruling left Whatcom County's groundwater essentially unprotected, as there were no limitations on the use of permit-exempt wells in much of the county. *Hirst* then petitioned for review by the Washington Supreme Court.

The Supreme Court reversed the Court of Appeals, holding that a county must protect groundwater supplies when developing its Comprehensive Plan, and simply deferring to Ecology's instream flow rule is not adequate. Justice Wiggins' decision explains that the GMA places a duty on a County to make determinations of water availability. Because Whatcom County's ordinance did not require a determination of water availability, it did not comply with the GMA. The decision reaffirms and extends the earlier *Kittitas County v. Eastern Washington Growth Management Hearings Board*<sup>3</sup> case, in which the Supreme Court held that counties were responsible for land use decisions that affect groundwater resources.

*Hirst* is the latest in a series of Supreme Court deci-

sions that extend protection for groundwater and instream flows against over-appropriation. It will have far-reaching effects on protection of groundwater and the associated streamflows and in reducing sprawl caused by unrestricted rural development.

<sup>1</sup>*Whatcom County v. Western Washington Growth Management Hearings Board*, No. 91475-3 (October 6, 2016).

<sup>2</sup>RCW 36.70A.020(10).

<sup>3</sup>*Kittitas County v. Eastern Washington Growth Management Hearings Board*, 172 Wn2d 144, 256 P.3d 1193 (2011).

Dan Von Seggern, J.D., is a staff attorney for the Center for Environmental Law and Policy (CELP) as well as a former academic scientist. He is a graduate of the University of Washington Law School (J.D., 2007) and of the University of California-Berkeley (Ph.D., 1994). He joined CELP in 2015 after working in civil litigation and public defense. Prior to his legal career, Dan spent 20 years working in chemistry, molecular biology and gene therapy.

**AWRA-WA STATE CONFERENCE  
SUMMARY OF KEYNOTE ADDRESS BY ECOLOGY  
DIRECTOR MAIA BELLON  
"THREADING THE NEEDLE WITHOUT THE THREAD"**

By J. Scott Kindred, Kindred Hydro, Inc.

Maia Bellon, Director for the Washington State Department of Ecology (Ecology), gave the keynote address at the 2016 AWRA-WA State Conference. Her address focused on the challenges created by three Washington Supreme Court decisions and provided a hopeful vision for continuing to address the state's water issues in light of these challenges. The summary provided below includes some background information that was not included in Director Bellon's address.

***Swinomish Indian Tribal Community v. Department of Ecology***

The first case is the *Swinomish Indian Tribal Community v. the Department of Ecology*, 2013. The origins of the case stemmed from the Skagit Basin instream flow rule in 2001, which into effect after an open, public process. Skagit County sued the State of Washington because the rule did not include a provision for future use. As a result, the rule was amended in 2006 to allow for "reservations" of water for future use. The Swinomish Tribe sued Ecology on the basis that the reservations compromised adequate protection for fish and the Supreme Court agreed. The rule reverted to the original 2001 conditions, leaving 400 landowners with permit exempt wells out of compliance with the rule.

After the ruling, Ms. Bellon contacted the Swinomish Tribal Chairman and requested permission to allow the landowners to continuing using their wells while a mitigation solution was identified. Skagit County has not been approving building or subdivision permits that would use permit-exempt wells since the court decision in 2013. New users must use rainwater collection or provide mitigation. Ecology continues to work with the tribe and other stakeholders to find mitigation strategies that comply with the instream flow rule.

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**Page 2: Keynote**

KEYNOTE SPEAKER MAIA BELLON

**Foster v. Ecology**

The second case is the *Foster v. Ecology*, 2015. This case revolves around a permitted water right that Ecology issued to the City of Yelm that included an extensive mitigation plan and relied on the concept of Overriding Consideration of the Public Interest (OCPI). OCPI was used to offset small impacts to the instream flows, mainly during the winter months based on significant benefit to a community in need. In this case, the Yelm water right would provide service for about 2,800 homes. In October 2015, the Supreme Court canceled the permit based on the determination that it would impair minimum stream flows in the Deschutes and Nisqually basins. The major challenge with this case is that it created a less flexible impairment standard that requires in-kind mitigation, even if the out-of-kind mitigation provides environmental benefit. It also has implications for other water rights issued by Ecology that relied on OCPI.

**Whatcom County v. Hirst**

The third case is *Whatcom County v. Hirst*, 2016. This case illustrates what happens when the Growth Management Act (GMA) collides with the world of prior appropriations. In this case, the Supreme Court ruled that the county failed to comply with the GMA's requirement to protect water resources and ensure that new permit-exempt uses do not impair instream flows and closures when making water availability determinations.

Whatcom County interpreted the GMA language to indicate that they just needed to demonstrate physical availability of water and that any permitted water right considerations would be addressed by Ecology. In this case, Ecology had issued an instream-flow rule for the Nooksack in 1985 that did not include any limitations on permit-exempt wells.

The Court ruled that the County's land-use decisions needed to take a more modern view of potential impacts to water resources. In particular, the county needed to address the impact of permit-exempt wells on instream flows. This case brings up big questions for communities regarding growth management. Will the counties need to evaluate the impacts on water resources associated with planning decisions and permitting new development? Most counties don't have the staff or resources to conduct these evaluations.

Kittitas County is an example of a community working through the implications of growth management and water resources. But they don't have an instream flow rule -- instead they have adjudicated water rights. Right now, because of how the courts have interpreted the law in watersheds with instream flow rules, Ecology believes they lack the flexibility to create a

Kittitas system, unless the system provided for full mitigation in time and place.

**Threading the Needle**

In the Director's opinion, these three cases mean that the State has fewer tools and less flexibility to create water management solutions that meet the needs of stakeholders. It's harder to sew the fabric of water resources together. It's like threading the needle without thread.

**The Big Picture**

Statewide, total consumptive water use by all domestic wells is about 50 cubic feet per second (cfs), which is less than one percent of total state water use. In the Skagit Basin, the 20-year demand for new exempt wells is 0.4 cfs, a fraction of the total water in the basin. The state has budgeted \$3.2 million to mitigate for less than one percent of the future cumulative water impacts in the basin.

Director Bellon asked: Are we spending our limited state resources wisely? Is this the best way to manage water for our state? Do we have the system to create long-term beneficial outcomes? She went on to suggest that rather than focusing on drops of water, we could provide more significant benefits for stream habitat and fish with projects that could provide shading, or fish passage improvement, or placement of large woody debris.

**Climate Change**

Director Bellon moved on to suggest that climate change is an even bigger challenge that will be difficult to address in the future. Climate change may result in more frequent droughts, reduced snow pack, more wildfires, increased flooding, and sediment runoff. A 2015 University of Washington report about climate change indicated that we could see a 50 percent loss of glaciers in the Skagit Basin by the end of the century, potentially leading to a 50 percent reduction in late summer flows in some tributaries.

**Keep up the Good Work**

Director Bellon finished on a positive note, thanking water managers across the state that are working hard to manage water for communities, farms, and fish. She pointed to the following projects:

- Development of 400,000 acre feet of water and habitat restoration on 80 miles of river in Eastern Washington,
- The Lind Coulee Siphon project will bring water to hundreds of irrigators that currently rely on a declining aquifer in the Odessa Subarea,
- We have sockeye returning to Lake Cle Elum for the first time since the 1930's due to the partnership fueling the Yakima Integrated Strategy,
- Ecology recently approved an aquifer storage and recovery permit for the City of Walla Walla, solving groundwater depletions and restoring summer flows in Mill Creek,
- Based on what we learned in the 2015 drought, the Bureau of Reclamation has given Ecology a grant to update the state's drought response plan, which will help us be better prepared in the future.

These successes show that we can address our state's water issues with willing partners and the flexibility to create creative solutions that focus on addressing the larger issues. The Director is encouraged and energized by the engagement of attendees at the conference.



## AWRA-WA STATE CONFERENCE SESSION 1: RURAL DOMESTIC AND MUNICIPAL WATER SUPPLY LAW AND POLICY

By Tyler Jantzen, CH2M

Session 1 of the conference was moderated by **Adam Gravelly** of Van Ness Feldman, LLP and included presentations by **Alan Reichman** of the Washington State Attorney General's Office and **Chuck Mosher** of the Eastern Washington Growth Management Hearings Board. Session 1 opened the conference by providing a foundation for discussion in the subsequent three sessions: a general background of the law, case history, policies and cooperative problem resolution surrounding rural domestic and municipal water supply.



CHUCK MOSHER (L) AND ALAN REICHMAN (R)

**Mr. Reichman's** presentation was titled "The Dichotomy of Increased Certainty for Municipal Water Rights in Urban Areas while Uncertainty is Growing for Water Supply from Permit-Except Wells in Rural Areas." This presentation focused on the contrast between the relative certainty and stability associated with water rights for municipal purposes held by public water systems versus the relative uncertainty and instability associated with permit-exempt wells as rural water sources.

On the side of more certain municipal supply, the talk summarized key laws and policy, including: limits placed by *Ecology v. Theodoratus* (1998); the Municipal Water Law (2003), upheld in *Lummi Nation v. State* (2010), and again in *Cornelius v. Ecology & WSU* (2015); limits on use of overriding considerations of the public interest (OCPI) in *Foster v. Ecology and Yelm* (2015) and an affirmation that de minimis impacts cause impairment in *Postema v. Pollution Control Hearings Board* (2000). So, while there are limits on new municipal permits, especially in areas with instream flow rules, there is a clear and stable structure for municipal water suppliers.

Regarding less certain rural water supply and permit exempt wells, the talk built up to the decision du jour recently released in *Whatcom County v. Hirst, Futurewise et al.* (2016). This abridged history started with *Postema v. Pollution Control Hearings Board* (2000), which led to the dramatic increase in permit exempt wells and associated impacts – wells and impacts that were limited in *Ecology v. Campbell and Gwinn* (2002). Exempt wells were also limited by Ecology's basin rules (Skagit [2001], Kittitas [2010]), with the Skagit Rule being amended to create reservations (2006), a provision eventually struck down in *Swinomish Tribe v. Ecology* (2013).

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## AWRA-WA STATE CONFERENCE SESSION 2: INTERSECTION OF GMA AND THE WATER CODE

By Stephen D. Thomas, Shannon and Wilson, Inc.

For Session 2, moderated by **Steve Hirschey** of King County, we invited four esteemed speakers to present their perspectives on how the Grpwth Management Act (GMA) and Washington's Water Code interact, with a focus on not only the historic, present and future challenges but also some of the successes in what is an ever increasingly competitive world for water.

Firstly, **Tadas Kisielius**, attorney with Van Ness Feldman, LLP, gave his views on how we might reconcile the GMA and Water Code. Tadas provided the audience a background on some of the key statutes and cases, including the *Whatcom County v. GMA* ("Hirst") decision that the state Supreme Court delivered in October 2016. In doing so, he stressed the key connection between water resources and land use and development, and the (now universally accepted) interconnection between surface and groundwater, which is all important in view of the instream flow rules in place in many basins. At the center of the Court's decision was its opinion that the GMA requires counties to conduct a pre-approval impairment analysis of permit-exempt withdrawals even though the Water Code exempts those from the permitting process. Furthermore, the Court holds that the GMA requires such a task of the local governments. Tadas concluded that there are certainly some challenges ahead for municipalities to comply with the fallout from the *Hirst* decision, and sees further litigation and appeals. He suggested that the cost of securing water will almost certainly increase in response to the *Hirst* case, and that this may prove to be overly burdensome for small-scale developers, and that counties may have to increase staff to manage this process.



JEAN MELIOUS PRESENTATION

**Jean Melious**, of Nossman LLP and Western Washington University, followed with her view of the *Hirst* case. She reiterated the decision that the GMA defined an instream flow as a water right and, as such should be protected by Ecology, counties and others. She stressed that the extraction of water within the Nooksack watershed has historically been laissez faire, characterized by the rapid increase in the number of exempt wells related to rural population growth and development, more than 50% of agricultural water use is in violation of some aspect of the water code, and 60% of irrigation is non-permitted. Studies show that as many

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## AWRA-WA STATE CONFERENCE SESSION 3: CURRENT RURAL DOMESTIC AND MUNICIPAL WATER SUPPLY TOOLS AND PROGRAMS

By Dallin Jensen, M.S., Geological Sciences at Central Washington University

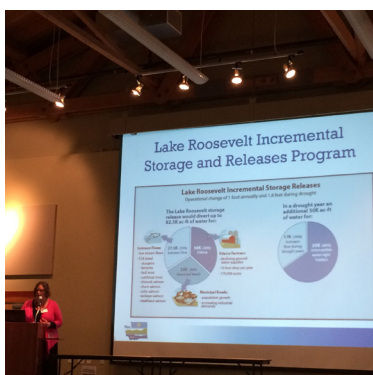
Session 3, moderated by **Jay Chennault**, of Associated Earth Sciences, Inc., provided a panoramic sweep of tools used to meet rising domestic and municipal water demand. These five speakers all provided unique perspectives on how Washington State is coping with the current landscape of limited water availability.

**Amanda Cronin** with Washington Water Trust discussed the formation and mechanics of the Dungeness Water Exchange. After an initial purchase of 175 acre feet, the Dungeness Water exchange was formed after a new water management rule in 2013 to restore stream flow in the Dungeness River and provide groundwater mitigation for new water uses in the watershed. Amanda further discussed the development of an exchange in the more water limited Skagit watershed, also in western Washington.

Next, **Melissa Downes**, of the Office of Columbia River (OCR), shared how the OCR has worked to meet water availability in Eastern Washington while meeting its legal demands on new resources. The Lake Roosevelt incremental storage release was highlighted, along with irrigation efficiency improvements in the Methow Valley Irrigation District, and Aquifer Storage and Recovery.

**Joel Freundenthal**, of Yakima County, then shared insight into the development of a countywide utility to provide an alternative to the exempt well statute for rural domestic water supply. This has required a comprehensive understanding of Yakima County's hydrogeology, and moving past mitigation suitability maps towards a more sophisticated approach taking into consideration appropriate well screening intervals and depths.

Shifting focus towards the upper Yakima watershed, William Meyer, with the Yakama Nation, described how their work with reintroducing beavers and woody debris has helped restore ecological service benefits to degraded watersheds. We learned how assisting the Cle Elum River utilize a larger fraction of its floodplain, and moving beavers to upwatershed regions can help raise groundwater levels, lower water temperatures, reduce flood risk, and shift the hydrograph to partially mitigate climate change impacts.



MELISSA DOWNES PRESENTATION

## AWRA-WA STATE CONFERENCE SESSION 4: PROGRESSIVE RURAL DOMESTIC AND MUNICIPAL WATER SUPPLY STRATEGIES

By Tyson Carlson, Aspect Consulting

The AWRA-WA 2016 State Conference concluded with a panel presentation reflecting on the day's discussion of County and Washington State Department of Ecology (Ecology) responsibilities under the GMA and Water Code, respectively. Session 4 was moderated by **Dave Christensen**, Ecology's Program Development Section Manager, and began with a presentation from each of the four panelists describing their organization's perspective on rural water supply.



MIKE HERMANSON(LEFT), LARRY WASSERMAN (CENTER) AND PHIL RIGDON (RIGHT)

### Phil Rigdon – Yakama Nation

**Phil Rigdon**, Superintendent of the Yakama Nation Department of Natural Resources, spoke about Yakama Nation staff's work in east slope watersheds, what projects have been working and why, and remaining challenges that lie ahead. Members of the Yakama Nation have lived in the Columbia Basin since time immemorial, and rights on the landscape are reserved in perpetuity by Treaty. And although the Yakama Nation can litigate to protect this Treaty right, fish populations are still in decline, and until the Yakama Nation is actively part of the solution, the fish will not return. Mr. Rigdon summed up the concept by indicating, "What is a treaty right without the treaty resource?"

The Yakama Nation will work to protect and enhance natural and cultural resources in all watersheds. Where the Yakama Nation has had success is when several key principles were recognized. These key principles include:

- Recognizing the capture of streamflow by wells through hydraulic continuity,
- Small impairment is still impairment, and
- No balancing of Treaty rights with new demands.

Additional key principals include in kind, in place, in time mitigation should be considered first, each basin and tributary presents a unique set of challenges and opportunities, respect the science, and use all the tools available to mitigate for impacts. Perhaps most important is the principle of cooperative tribal involvement from the onset of the project.

Mr. Rigdon continued to describe the distinguishing characteristics of the Yakima River Basin, highlighting the unique management of the basin, tribu-

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## AWRA-WA OUTSTANDING SERVICE AWARD

By Jason McCormick, McCormick Water Strategies

Each year since 2001, AWRA-WA has recognized a member of the state's water resource community for their outstanding contribution to Washington's water resources. The state section developed this award program to recognize an individual who has shown significant and sustained commitment to the protection and wise management of the state or region's water resources. The Awards Committee accepts nominations for the award from any AWRA-WA member.

The first recipient was Jim Esget of the Bureau of Reclamation for his work in developing agreements among fisheries interests, hydropower producers and irrigators that provide water for all these uses in the Yakima River Basin. Since this first award, over a dozen water resources professionals and several organizations have been recognized. In addition to a commemorative plaque for the recipient, AWRA-WA provides a donation of \$500 to a non-profit group selected by the recipient to promote work on water resources locally, nationally, or around the world.



BUCK SMITH (LEFT) AND STAN MILLER (RIGHT)

This year's award recipient is **Buck Smith**, a senior hydrogeologist with a long history in water resources, including recently celebrating his 25th anniversary with Ecology's Northwest Regional Office section of the Water Resources Program. Buck's passion for water resources began early on. As a young man, Buck worked as a whitewater raft guide and saw how water resource decisions, such as the damming of the Stanislaus River in California, can have impacts on a wide variety of stakeholders.

At Ecology, Buck has piloted innovative, interdisciplinary water resources solutions in the most densely populated, and some of the most agriculturally valuable, regions of Washington. For example, when Buck started working in Whatcom County for Ecology in 1991, he found significant unpermitted water use. To address this, Buck spent years meeting with and educating landowners on water law, identifying innovative tools such as the annual consumptive quantity (ACQ) calculation to better align a farmer's historic and current water uses and needs. He championed legislation to address legal barriers that penalized farmers for water use efficiencies associated with the change from dairies to berry cultivation. Because of his work, Whatcom farmers are now more legally secure and better understand their impacts on fisheries. Many farmers have switched from

surface water to less impactful groundwater withdrawals. As the regional Ecology Trust Water Right Program lead, he also shepherded the first permanent trust water right acquisition in northwestern Washington. The agreement secured critical instream flows for Cascade Creek, which originates in Moran State Park on the flank of Mount Constitution.

The full breadth of Buck's impact on Washington's water resources is impossible to quantify. Beyond his professional accomplishments and contributions to State water resources science and policy, his legacy is visible among a generation of water resources professionals that have come up under his tutelage.

Buck is generous with his time and holds nothing back. Drawing on his encyclopedic institutional knowledge, Buck's mentorship spans the nuances of permit writing, compliance, mitigation evaluation, hydrogeology, policy, and case law. To date, three Ecology Water Resources Program section managers have emerged from beneath Buck's wings, and many more of his "students" continue to carry the water resources torch, both inside and outside the agency.

**We applaud Buck Smith for his accomplishments!**

## AWRA-WA STATE CONFERENCE LIGHTNING TALKS

By Eleanor Bartolomeo, Environmental Science Associates

Lightning Talks were a new feature at the AWRA State Conference this year, inspired by the success of lightning talk sessions at the AWRA National Conference. A lightning talk is a five-minute presentation with speakers solicited from among the conference attendees. The conference committee issued a call for lightning talk abstracts to the membership in September, and the best two talks were included in the 2016 conference program. The talks were moderated by **Tyson Carlson** of Aspect Consulting and **Steve Nelson** of RH2 Engineering,

In the first lightning talk, **Mike Gallagher** of the Washington Department of Ecology presented the background behind the *Foster* case (*Foster v. Ecology*) in which the court invalidated a water right issued to the City of Yelm. He focused on Ecology's role in helping the Cities of Yelm, Olympia and Lacey develop a shared mitigation package that offset flow impacts with habitat and other mitigation measures, as well as Ecology's use of the "overriding considerations of public interest" clause in approving the final water rights changes.

In the second lightning talk, **Andrew Austreng** of Aspect Consulting discussed the City of Othello's water supply shortages and the potential of reclaimed water to help the City meet its future water needs as compared to the more traditional route of importing surface water. He highlighted recent regulatory developments that may make it easier for municipalities to include reclaimed water in their water supply portfolio.



AWRA-WA STATE CONFERENCE ATTENDEES

## **AWRA-WA 2016 MEMBER MEETING & SOCIAL**

**PLUS, A SHOWING OF THE FILM**

**“TREATY TALKS: PADDLING UP THE COLUMBIA RIVER FOR PEOPLE AND SALMON”**

**JOIN US ON TUESDAY, DECEMBER 13, 2016**

**NAKED CITY BREWERY**

**8564 GREENWODD AVENUE N**

**SEATTLE, WA 98103**

Social and Networking – 6:00 PM to 6:30 PM

Dinner - 6:30 PM to 7:00 PM

Film - 7:00 PM to 7:45 PM

Join AWRA-WA for the Annual Member Meeting and social. This is a chance to network with members at an informal dinner, and to **meet the newly elected members of the 2017 Board of Directors**. A showing of the short film *“Treaty Talks: Paddling up the Columbia River for People and Salmon”* will conclude the evening with its tale of inspiration, dedication and a mission for the future.

**About the film:** *“Treaty Talks: Paddling up the Columbia River for People and Salmon”* is the story of a journey 1,243 miles from sea to source. The journey began with five logs. Five logs were carved by youth and students above Grand Coulee Dam into five Salmon Canoes, one for each of the Five Salmon. Their mission was to accomplish something that so far has not been done: return Salmon above the blockages on the Upper Columbia.

**Fees:** \$20 members; \$25 non-members; includes food plus beverage. Free for students.

RSVP and Registration for food and drink at AWRA website: <http://waawra.org/Events/Calendar>

**Cancellation Policy:** AWRA-WA will fully refund the registration fee if cancellation notice is received within 5 days of the event.

## AWRA-WA 2017 BOARD OF DIRECTORS ELECTIONS

Per our bylaws, the AWRA-WA Board of Directors consists of up to 15 directors, plus the Past President. Board members are expected to actively participate and support the following activities:

- Attending monthly board meetings
- Refining section policies
- Organizing dinner meetings
- Organizing the annual state conference
- Securing newsletter articles
- Managing communications with our membership
- Awards and Fellowship
- Supporting our student chapters

The 2016 AWRA-WA Board of Directors has nominated the following slate of 15 candidates for the 2017 Board:

Rabia Ahmed	Steve Nelson
Tyson Carlson	Tom Ring
John Chandler	Jennifer Saltonstall
Dave Christensen	Terry Smith
Thomas Fitzhugh	Erin Thatcher
Felix Kristanovich	Stephen Thomas
Jason McCormick	Patrick Vandenberg
Stan Miller	

This year, our elections process will be electronically administered. Each AWRA-WA member in good standing will be sent a link to a secure ballot and can vote for up to 15 individuals for the 2017 Board, with the option to add write-in candidate(s). Biographies of those nominated for the 2017 Board Candidate Slate are presented on the following pages for review. Election results will be announced at the Members Meeting on December 13, 2016 at the Naked City Brewery in Seattle, WA.

THANKS TO OUR BASIN SPONSORS!





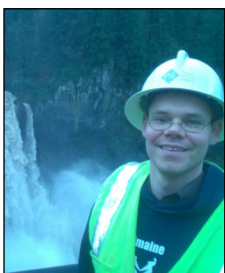
## AWRA-WA 2017 BOARD OF DIRECTORS - CANDIDATE BIOGRAPHIES



**Rabia Ahmed** - Rabia is an economist currently working with Ramboll Environ U.S. Corporation in Seattle. She is a current Board Member of the AWRA-Washington Section, and was Co-chair of the 2016 State Conference. She has over 14 years of experience in water and natural resource economics, policy and regulatory economics, litigation support, and international development. Rabia's primary expertise in the water sector includes studying water laws and water markets, assessing and valuing surface and groundwater rights in that context, conducting assessment of water rights, carrying out water supply security analyses, supporting the water rights applications process, and conducting cost-benefit analyses of water projects. She has carried out a number of water management projects in more than twenty-five US States and internationally. In addition, she has many years of experience in the international development sector, and has worked directly with communities in some of the remotest areas of Pakistan and Bangladesh. Rabia has an MS degree in Economics from Portland State University. She lives in Lynnwood, Washington, with her husband, two children, and a beautiful cockatoo. In her spare time, she likes hiking and sailing with her family.



**Tyson Carlson** - Tyson is an Associate Hydrogeologist with Aspect Consulting, with over 16 years of experience specializing in water resource development and water rights. Serving private and public sector clients, Tyson's water rights experience includes both new appropriations – municipal, agriculture, fish propagation, and commercial/industrial purposes – and transfer/change of existing rights, including use of the State's Trust Water Right Program for purposes of instream flow, habitat, and mitigation through water banking. Tyson's strong background in analytical and numerical groundwater modeling is often used in the development of site-specific conceptual models describing groundwater-surface water interaction, saline intrusion, well hydraulics, and aquifer sustainability. These skills are also used in Tyson's work in large-scale hydrogeologic characterization – such as regional tunnel alignments, contaminant fate and transport modeling, and construction dewatering design. Tyson has a BS in Soil, Water, and Environmental Science and a MS in Hydrology from The University of Arizona. Outside of the office, he can be found skiing the deepest of Cascade powder, on his bike, or fly fishing his favorite waters.



**John Chandler** - John is a licensed professional engineer who currently serves as the water resources technical lead at Puget Sound Energy. He is the water manager of the Baker Project, a two reservoir system with three powerhouses, and combined capacity of 200 MW. John also supports operational compliance, dam safety, FERC license implantation, and marketing. He received an M.S. focused in water resources and environmental engineering from the University of Maine at Orono in 2008. When he's not working John enjoys multiple types of partner dances, ultimate frisbee, and playing card games.



**Dave Christensen** - Dave Christensen has over 20 years of experience working in water resource management, environmental health and environmental protection. He has worked as a consultant, for local and state governmental agencies, and non-profit organizations. For the last three years, Dave has been the Program Development Section Manager for the Washington State Department of Ecology Water Resources Program. He leads a team that develops State rules and policies, evaluates legislative proposals, and collaborates with water resources interests to address current conflicts and challenges. Dave holds a B.S. degree from the University of Washington in Fisheries Biology and an M.S. in Limnology and Oceanography from the University of Wisconsin. When not working, he tries to spend most of his time outdoors, mostly chasing salmon and halibut out in the ocean or on the Salish Sea, but also enjoys wandering through the woods with his wife and two teenage girls.



**Tom Fitzhugh** - Tom Fitzhugh is a Supervising Water Resources Scientist with MWH Americas, in Bellevue, Washington. He specializes in hydrologic modeling of surface water systems, including reservoir and water supply system operations, riverine and reservoir temperatures, and rainfall-runoff processes. His current work is primarily in California, analyzing water supply operations for water agencies and other clients in the Central Valley. Prior to joining MWH in 2015, he worked for the Bureau of Reclamation in Sacramento, California for 5 years, where he conducted modeling for long-term planning studies such as the Shasta Dam raise study and analysis of new environmental flow standards in the San Joaquin River Basin. From 1999-2009 he worked for The Nature Conservancy in Chicago and Olympia, where his responsibilities were regional conservation planning, analysis of environmental flows, scientific software development and training, and GIS. He has an M.S. in GIS and Remote Sensing from the University of Wisconsin-Madison, and a B.A. in Political Science from Lawrence University. In his spare time he enjoys hiking, learning and practicing his Spanish, and following the Seattle professional soccer teams, the Sounders and the Reign.

**Continued Next Page**

## Page 9: Board Candidate Biographies



**Felix Kristanovich** - Felix is a senior water resources manager with Ramboll in Seattle, Washington. He has 25 years of professional experience in the United States and abroad where he has worked on numerous watershed analysis and streamflow restoration projects, water quality monitoring programs, environmental impact studies, hydrologic field investigations, floodplain analysis, and design and modeling of storm water systems. Felix has been actively involved in several professional societies, including AWRA, where he has served on the Board for the last five years as Secretary, Treasurer, and 2010 Board President. Felix organized technical field trips during the 2005 and 2009 AWRA National Conference in Seattle, and was the co-organizer of several National AWRA conferences. Felix volunteers his time on Whidbey Island where he spearheaded numerous watershed restoration projects. Felix and his wife June enjoy backpacking, hiking, and telemark skiing with their two fantastic dogs Storm and Bear here in the Washington Mountains, and sea kayaking around Puget Sound and in Alaska. Felix and June also enjoy landscape photography and are season ticket holders to the Seattle Opera.



**Jason McCormick** - Jason is the founder of McCormick Water Strategies (MWS) with ten years of water-resources experience. Jason is recognized regionally as a water rights and water transactional expert. In 2015, Jason formed MWS after working in the private, public, and non-profit water resources sectors. His experience includes six years at Washington Water Trust (WWT) in Central Washington, specializing in water transactions, trust water, mitigation banking, representing conservation buyers, geospatial water rights evaluation, permitting, and water rights instruction. Prior to WWT, Jason worked as a permit writer for the newly formed Washington State Department of Ecology, Office of Columbia River (OCR) where he worked in water rights permitting, project planning, geospatial water resource mapping, program outreach, and coordinated initial grant solicitations. From his experience in the private sector, WWT and OCR, he excels at water rights permitting, water transactions, water rights evaluations, water resources problem solving, and water rights instruction. In addition, he draws a strong appreciation for the communities and unique local values of Eastern Washington from his local roots.



**Stan Miller** - Stan is semi-retired, and currently doing water resources consulting as Inland Northwest Water Resources. Prior to venturing into retirement, Stan held the position of Program Manager for Spokane County's Water Resources Section in the County Utilities Division of the Public Works Department for over 20 years. The prime focus of Water Resources is the regional aquifer protection program. In that capacity he worked toward integrating the groundwater protection efforts of all municipalities and water purveyors using the Spokane Valley-Rathdrum Prairie Aquifer. In addition to working on this program at the administrative level, Stan has developed technical information and conducted local studies on the potential impacts of storm water infiltration on ground water quality and the interaction of the Spokane River and the Spokane Valley Aquifer. Stan is a long-time member of the AWRA Board and a past president of the Chapter. Away from work, Stan enjoys canoeing, backpacking, running, and working on the restoration of a turn-of-the-century home.



**Steve Nelson** - Steve is a licensed hydrogeologist and engineering geologist with 25 years of experience involving water resource assessment, development, management, remediation, and protection. Steve's project experience includes characterization of groundwater systems for groundwater supply; water reuse; water rights evaluation; aquifer testing and modeling of groundwater flow, contaminant fate and transport. Steve conducts geologic investigations to evaluate foundations for water infrastructure, geologic hazards and slope stability; and designs infiltration and construction dewatering systems. Depending on the season, find Steve trail running, skiing, climbing in the Cascades or Sierra, and/or fly fishing.



**Tom Ring** - Tom is a hydrogeologist with the Water Resources Program of the Yakama Nation. He has held this position since 1990 and, in that role, has worked on a variety of projects involving groundwater and surface water quantity and quality, water rights, irrigation and fisheries issues and planning for future water needs. Previously he worked for the Water Resources Program at the Washington Department of Ecology. Tom has Bachelors and Masters of Science degrees in geology from Central Washington University and Northern Arizona University respectively. He has taught geology and hydrogeology classes at Central Washington University and is a licensed geologist and hydrogeologist in Washington State. When not working, he enjoys hiking, climbing, and skiing in the mountains of the west.

**Continued Next Page**



**Page 11: Board Candidate Biographies**

**Jennifer Saltonstall** - Jenny is a licensed Hydrogeologist in Washington State, a Senior Associate at Associated Earth Sciences, Inc., and has consulted on Puget Sound area hydrogeology, geology, and geologic hazards assessments for both private and public sector clients since 1998. She is a leader in stormwater infiltration feasibility and practical stormwater infiltration site investigation and design, both for shallow conventional systems and deep stormwater recharge Class V UIC wells. Jenny is an expert in complex Puget Sound stratigraphy and has a fundamental understanding of subsurface "plumbing" system in our area from managing hundreds of infiltration projects from design through construction. Jenny provides senior review for geologic and hydrogeologic studies, and is a regular contributor at technical conferences and has been an invited speaker on infiltration components for "green" storm water management seminars. Outside of work, now that her kids are getting older, Jenny and family have begun backpacking again, spending time on the Olympic Coast and looking forward to the Cascades.



**Terry Smith** - Terry is a licensed and retired attorney with a background in environmental law. She has worked for King County's Wastewater Treatment Division for twelve years, where she was responsible for permit applications and negotiations with federal and state regulatory agencies. She is also well versed in water quality regulations and legislation. Prior to working with the County, Terry worked in private practice representing clients as both plaintiffs and defendants on environmental issues. Working in both the private and public sectors has given her insight into the needs and issues of regulators, businesses, and the public. She has served on the board of AWRA/WA since 2015.



**Erin Thatcher** - Erin is a water resources engineer with 8 years of experience working with CH2M HILL. She has a B.S. in Environmental Science from Seattle University and a M.S. in Environmental Engineering from the University of Washington. Erin started her career as a staff biologist and transitioned into civil engineering over the last few years at CH2M HILL while earning her M.S. as a part-time grad student. She works on a wide variety of projects, including stormwater planning, drainage design, water quality studies, NPDES and other permit compliance, wetland delineations, and habitat restoration. Her key skills include low-impact development feasibility assessments, ArcGIS spatial analysis, outfall dilution modeling, and wetland assessments. She also enjoys technical writing. In her spare time Erin enjoys hiking or snowshoeing with her husband and dog, attempting to garden, and playing the piano and guitar.



**Stephen Thomas** - Stephen is a hydrogeologist in the Seattle office of Shannon & Wilson, Inc. He has 22 years experience as a consultant in the areas of geologic and water resources. He manages and performs technical aspects of hydrogeological investigations for groundwater resources development, wellhead protection and groundwater management, groundwater contamination and waste disposal, dewatering, and environmental projects. A native of the United Kingdom, Stephen moved to Seattle in 2001, having previously lived in Los Angeles since 1992. He holds a BSc in Geology from the University of Cardiff (Wales) and a MSc in Hydrogeology from the University of Birmingham (England), and is a licensed hydrogeologist in the states of Washington and California. Stephen has been on the Board since 2009, and has held positions of vice president and treasurer, and has chaired the dinner and sponsorship committees. Stephen enjoys many outdoors activities, particularly rugby football, cycling and open-water swimming, and annoying his neighbors with his guitar playing.



**Patrick Vandenberg** - Patrick, a native of Southern California, has called Seattle home for about two years now. He received his Bachelors of Science from UCLA and his Masters of Science at UW, both in Civil Engineering. He was formerly the University of Washington Student Chapter Representative to the AWRA-WA Board. Patrick currently works for King County as a hydraulic modeling engineer in the Wastewater Treatment Division. Before moving to Seattle, he worked as an environmental engineer for AECOM in Long Beach, CA. He enjoys playing ultimate Frisbee and volleyball.



**Page 4: Session 1** The stringent limit on exempt wells in the Skagit basin was upheld in *Fox v. Skagit County* (2016). The relative uncertainty and instability of rural water accessed via permit exempt wells is increased by the *Hirst* decision, which is discussed in detail in Session 2.

**Mr. Mosher** provided an alternative to establishing water rights policy through case law, and instead advocated for the increased use of mediation and cooperative problem solving. His presentation focused on his experience with multiple local, state and federal entities, and described numerous examples of how cooperation has led to more effective and sustainable solutions. These examples include: the 1988 Government Accountability Office audit of the Environmental Protection Agency resulting in more effective and efficient environmental results; the interdisciplinary dialog at both the state and national level advanced by the American Water Resources Association; development of sustainable salmon recovery plans through cooperation between the City of Bellevue and stakeholder groups; cooperative water supply and delivery agreements developed by the Cascade Water Alliance; mediation led by the Growth Management Hearings Board; and complex solutions developed through the Yakima River Basin Integrated Water Resources Management Plan. The presentation concluded with a call for organizations like AWRA and the Ruckelshaus Center to provide a forum for cooperatively and sustainably finding rural water supply solutions.

These two presentations offered two distinct perspectives on the role of law, litigation, and increased cooperation in setting water policy and resolving water rights issues, and set the stage for a day's worth of engaging presentations and lively discussion of rural domestic and municipal water supply.



PAUL JEWELL PRESENTATION

water banking, and requiring that building permit applications have legal and physically-available water. He argued for better use of design and technologies such as artificial recharge of stormwater, rainwater harvesting, improved water piping and transferring, and limiting impervious areas with low impact development. He also suggested that we can do a better job of incorporating protections into comprehensive planning, and improving and better enforcing regulations such as critical areas to prevent pollution of our surface and groundwater.

Finally, Kittitas County Commissioner **Paul Jewell** gave some background into the history of water use and challenges in his part of the Yakima watershed, the various lawsuits (such as *Kittitas v. EWGMHB*), and his experience of life since the 2007 groundwater moratorium in the northwest part of the county. The Yakima basin is fully-appropriated and adjudicated, is subject to the Yakama Nation Treat rights, has pre-1905 water rights, and has been subject to droughts. So add in the battle over rural exempt wells, and the perfect storm conditions existed in the County. Paul described how the rescue came the concept of water banking, a tool for making more water available for new uses and increasing stream flows thereby moving water to where it is most needed. Initially, the early water banks were private enterprises that were considered monopolistic, had conflict of interest concerns, encouraged speculation, and lacked transparent pricing strategies. With the 2014 settlement agreement, the County was able to develop a publically-owned water bank system with Ecology's support. They developed a phased approach (an 18-month interim period followed by permanent measures to maintain water budget neutrality), and today own and operate four water banks with a collective capacity of 104 acre-feet. Paul indicated that to date, the County has issued more than 100 interim certificates, is expanding the capacity to over 600 acre-feet, and has developed an over-the-counter program to expedite the process. In general, unit prices appear to be decreasing and the program is widely regarded as a success.

**Page 4: Session 2** as 326 public water systems do not have water rights in the watershed. She suggested that this has resulted largely due to the perception that land ownership always provides water. Jean offered the recent *Steensma v. Ecology/Bayes* case as an example of how a senior water right holder (and Bertrand Creek) was seen to be impacted by new subdivision exempt wells but lost their complaint under summary judgment. She then provided an alternative approach to water management that harks back to concepts in Ian McHarg's 1960's classic book *Design with Nature*. Such an approach would involve using modern GIS tools to holistically consider water availability alongside sustainable ecological planning, wetland protection, and landslide management, for example. In conclusion, Jean suggested that there is plenty of water in Whatcom County on average and that all exempt well use accounts for a small percentage of overall water use in the county. However, the more pressing issues of when and where water is available and who may be harmed need to be better addressed in the future.

Next, **Tim Trohimovich** of Futurewise provided his views on land use planning's role in water management. In short, he suggested that planners and local/state governments have ignored the water availability issue for too long, with declining groundwater levels and increasing number of instream flows not being met in Puget Sound and in eastern Washington, made worse by the early effects of climate change. Tim offered a set of intriguing solutions which included better matching planned growth with the available water, aiming for higher population density centers to improve water conservation opportunities and minimize impacts, increasing the use of

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## AWRA-WA 2016 - 17 STUDENT FELLOWSHIP ANNOUNCEMENT

The Washington State Section of AWRA is seeking nominations for its 2016 – 17 Student Fellowship Awards. Two fellowships will be given For the 2016 – 17 academic year. One award will be to a member of a Washington Section affiliated Student Chapter. The other award will go to a student enrolled in a graduate program at a college or university in Washington State. Both fellowships are for a full-time graduate student completing an advanced degree in an interdisciplinary water resources subject. In addition to \$2,000 in cash, the award includes a one-year membership in both the State and National AWRA, a one-year subscription to the Journal of the American Water Resources Association, and admission to the Washington State Section Annual Conference.

Any academic department with students enrolled in water resources programs may submit nominations for the award. The application packet, limited to five pages, should include the following:

1. A brief letter of nomination from a faculty representative familiar with the students work;
2. Completed Application Form;
3. Statement of goals and objectives for graduate work;
  - 4a. Detailed description of research interest; or
  - 4b. For students pursuing a non-thesis degree, a one page essay on how the course of study being followed will allow the applicant to accomplish the goals and objectives outlined in item 3.

Qualified students need to fill out the application form and prepare the additional information requested above and mail it to the address below. The letter of nomination may be mailed under separate cover by the faculty representative or included with the applicant's package. Items two through four constitute the application package and must be prepared by the applicant. Nominations will be evaluated on:

1. The interdisciplinary nature of the course of study and research;
  2. The effectiveness of the response in communicating research objectives;
  3. The potential for application of the work to the current needs in water resources management; and
  4. The reviewers overall impression of the applicants qualifications and presentation.
  5. The reviewers will consider applications from prior winners of the award if the research is different from or an expansion on the work presented earlier.
- Applicants may receive no more than two awards during their academic career.

**Nominations have been extended through December 7, 2016.** The Fellowship Committee will evaluate all applications received and will recommend recipients for the Open and Student Section winners to the Washington Section Board of Directors. The winners will be notified as soon as the board approves the award. Special recognition will be given to the fellowship recipients at a State Section event.

The recipients will prepare an article describing their research or other relevant topic for the Section newsletter within one year of the award.

The application and additional information can be found on the AWRA-WA website at <http://www.waawra.org>. For additional information contact Stan Miller by email at: [samillerh2o@comcast.net](mailto:samillerh2o@comcast.net) or by phone at (509) 953-7887.

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**Page 5: Session 4** tary challenges, and infrastructure to provide mitigation and how these characteristics have been used in projects such as Kittitas Reclamation District (KRD) mitigation of low-flow in select tributaries, Kittitas and Yakima County mitigation programs, and the Yakima River Basin Integrated Plan. Outside the Yakima River Basin, Mr. Rigdon also presented Yakama Nation staff work in the Wenatchee, White Salmon, and Methow River basins.

In conclusion, Mr. Rigdon emphasized the Yakama Nation's willingness to work with anyone sincere about fixing the natural resource, and the Yakama Nation continues to work cooperatively to develop mutually beneficial solutions with water users throughout the Columbia River Basin.

#### **Larry Wasserman – Swinomish Indian Tribal Community**

Next to present was **Larry Wasserman**, Environmental Policy Director for the Swinomish Indian Tribal Community. Mr. Wasserman's agreed with much of what Mr. Rigdon presented, indicating its applicability to all Tribes. In addition, Mr. Wasserman wanted to clarify the Swinomish Tribe perspective on rural water supply, noting that much misrepresentation has recently occurred in light of recent litigation. The Swinomish Tribe's perspective is not about controlling growth, but to protect fishery and tribal resources.

Mr. Wasserman noted that over the past 100 years, streams have reduced during drought by over 80 percent and that future flexibility in water resources management should not come at the expense of what is remaining of the Swinomish Tribe's Treaty right. And until the Swinomish decision, for many years the Swinomish Tribes requested that Ecology and local government address exempt wells, but no action was taken. This includes the 1996 Memorandum of Understanding with Ecology, Washington Department of Fish and Wildlife, Skagit County, local Tribes and utilities that were ultimately challenged in court following signing of the instream flow rule.

Mr. Wasserman contends that instead of talking about how to further allocate water, the conversation should be how the Tribe's protected fishery and water rights get restored. The Swinomish Tribe is not prepared to allocate any additional water, which would result in reduced streamflow, impacts to fisheries, and reduction in water quality. The Swinomish Tribe has a long history of successfully negotiating several natural resource issues, but these negotiations require both parties to meet halfway and the negotiations needs to be completed in advance in litigation.

Mr. Wasserman concluded with some thoughts on solutions in the basin, including possible mitigation options to critical tributaries. Solutions are a function of cost, not water availability. These solutions include piping and/or trucking water, using other senior water rights, or rainwater collection. At the end of the day, the Swinomish Tribe supports mitigation that is in-place, in-kind, and doesn't affect fisheries, senior water rights, or water quality. Although habitat improvements are productive, they are not a suitable replacement for water-for-water mitigation, and adequate monitoring and enforcement is necessary to curb illegal water use.

#### **Mike Hermanson – Spokane County**

Third to present was Mike Hermanson, Project Manager with the Water Resource Section of Spokane County Environmental Services. Mr. Hermanson began his talk by giving some background on the regulatory landscape in Spokane County, which includes the first instream flow rule issued by Ecology,

and the last. The more recent instream flow rule included provisions for exempt wells in the Middle Spokane watershed, which is served by either municipal water purveyors, or an Ecology-established water bank. However, the 1976 Little Spokane (WRIA 55) instream flow rule did not address exempt wells or groundwater in continuity. Instream flows in the Little Spokane watershed have not been met 27 of the last 41 years, but exempt wells have continued to be installed.

Similar to other counties, Spokane County has historically examined physical availability under GMA until the Kittitas decision in 2011. This decision prompted Spokane County to examine legal availability based on information provided by Ecology, including the draft water availability guidance. Following technical guidance from Ecology, the County was unsure if water was legally available in the Little Spokane until clarification came with the *Hirst* decision.

The Spokane County Commissioners needed a solution and decided that, as of October 27th, all new building permits will be subject to the *Hirst* decision. Mr. Hermanson then detailed the work underway (since 2014) to evaluate the feasibility of developing and implementing a water bank across the three Counties in the Little Spokane watershed. With feasibility complete, the County is now looking to implement, hydrate, and manage the water bank. To better inform the water bank operation, the County is now in the process of developing a groundwater – surface water numerical model. Results of the model will include local and seasonal suitability maps, including small-scale retiming and/or aquifer recharge projects in select tributaries.



STEVE MALLOCH (LEFT) AND BILL CLARKE (RIGHT)

#### **Bill Clarke – Washington REALTORS**

**Bill Clarke**, attorney and lobbyist in Olympia presented on behalf of the Washington REALTORS. Mr. Clarke began his presentation by asking the rhetorical question: "Have previous speakers spoken on how poor the *Hirst* decision is?". Based on review of the legislative history of GMA, the legislative intent was not reflected in the outcome of *Hirst*. Mr. Clarke states that the fundamental issue is not a water issue, but the proper relationship between state and local governments. Counties currently lack the support, funding, and expertise needed to fulfill the requirements of *Hirst*.

Realtors' view of this issue is fairly localized based on whether there is an instream flow, adjudication, exemption well mitigation provisions. In areas where counties are actively engaged with basin stakeholders, then there is an opportunity to develop mitigation. In counties

***Continued Next Page***



**Page 14: Session 4** where basin stakeholders are not engaged, the challenge is greater, and Mr. Clarke expresses a pessimistic view of developing effective mitigation solutions in the short-term.

Mr. Clarke describes that the challenge with the current water banking model is to make the applicant a part of the mitigation process and impairment review. This is burdensome on many homebuyers. The ideal program would be to complete the environmental and impairment review upfront, and provide an applicant experience similar to that of applying for a building permit or paying for a connection fee to a water utility. This is the premise of Kittitas County's Over-The-Counter Mitigation Program.

Mr. Clarke points out that water resource is a public resource and should be made available to the public on a non-profit basis. Mitigation at the consumer level should not be a for-profit venue and needs to be simplified for the average homeowner.

Looking down the road, Mr. Clarke envisions a system that could work in the post-Hirst world is using a school impact fee type model. The impact fee would be charged to the home builder, and the money would be used to study and provide mitigation to water resource and habitat impacts. This approach removes the average home builder from the complexities of water law.

In closing, Mr. Clarke describes how the need for outside water right expertise consumes limited resources away from other programs, such as violent crime or homelessness. These local issues are appropriate county-lead issues, but the requirements of Hirst put additional workload and risk on 39 individual counties, and that responsibility needs to be shifted back to Ecology. Ecology is the State's water resource agency, and Ecology needs to be responsible for exempt well issues.

#### **Steve Malloch -- Western Washington Futures**

The final panelist to speak was **Steve Malloch** of Western Washington Futures who is speaking on behalf of different environmental groups and their interests. As the concluding speaker, Mr. Malloch summarized high-level themes and directions of the environmental groups with respect to rural water supply. These themes include:

1. Magical thinking of groundwater – Exempt wells and not dealing with real issues associated with cumulative impacts.
2. Land use – Exempt wells are similar to sprawl development with impacts to habitat, rural economies, and impact to scarce resources.
3. Rivers and fisheries – Need to protect and restore fish in the Pacific Northwest, and establishment and protection instream flows for the benefit of fish is not enough.
4. Regulation of priority rights – Difficult to manage permit and permit-exempt uses together without enforcing prior appropriation.
5. Anti-property right – Water is a human right, and the exempt well statute in western water law provides domestic water.
6. Climate adaptation – Major changes in the hydrologic cycle are approaching and the legal system needs help to prepare for the changes.

Mr. Malloch went on to describe the recognition of cumulative impacts of exempt wells and the lever it provides environmen-

tal groups to address the bigger problems with the imperfect water right system including few surface water adjudications, no groundwater adjudication surrogate, poorly integrated instream flow rights, and Treaty rights, which are of increasing importance as salmon populations decline.

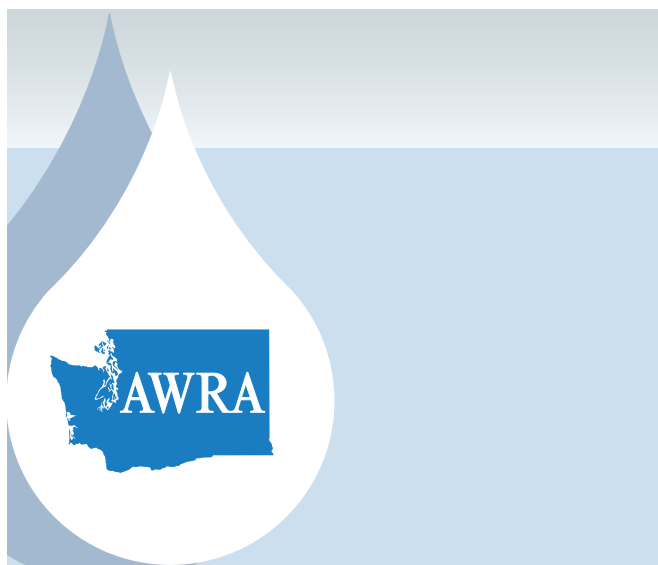
Based on these observations, Mr. Malloch summarized a couple of basic strategies moving forward. These strategies include the following:

1. Ignore the problem and let the next generation of water professionals deal with it.
2. Whittle down the problem by reducing the exemption from 5,000 gallons per day to something less, or for indoor use only.
3. Require mitigation.
4. Take a more comprehensive look at what water is available and what water is needed.
5. Need to administer and measure legal rights to water on a comprehensive basis.

Based on these observations, Mr. Malloch reflects on what is trying to be accomplished, by sorting out the legal structure and then address basin-specific problems. Solutions applied today should be crafted to meet end goals, but not make the problem worse.

Following each of the presentations, several questions were asked for panel consideration. These questions included what impact the Foster decision has had on water banking, opportunities for collaborative solutions, responsibility of realtors to disclose domestic water rights are subject to curtailment, Hirst applicability in non-GMA counties, and advice on County-led availability determinations.

Each of the presentations and panelist response to the questions can be viewed by visiting [www.waawra.org](http://www.waawra.org).



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