



Washington Water Utilities Council

Washington Water Utilities Council Perspectives on Department of Ecology Municipal Water Policy

The Department of Ecology Water Resources Program announced its intention to update and revise Policy 2030, the Municipal Water Law (MWL) Policy and Interpretive Statement. Ecology requested WWUC input. The overall WWUC perspective on the agency's MWL policy includes the following messages.

1. Municipal water suppliers continue to invest in and innovate for Washington's water future.
 - a) Serving the public interest by providing safe and reliable drinking water.
 - b) Integrating values of affordability and equity, efficiency and conservation, and streamflow protection while continuing to increase drinking water reliability for the public.
 - c) Planning and managing to adapt to climate change.
 - d) Municipal water is not the problem but is part of the solution to our water challenges.
2. The legislative purposes of the 2003 Municipal Water Law retain currency today:
 - a) "Certainty and flexibility of municipal water rights" (HB 1338).
 - b) "Efficient use of water" (HB 1338).
3. Municipal water depends on stability of water rights over the long term – Certainty.
 - a) Must meet future population and economic growth, including GMA goals and requirements.
 - b) Stable, accessible, and flexible municipal water rights further beneficial growth management practices.
 - c) Access to reliable and affordable drinking water enables equitable service.
4. Municipal water depends on reasonable adaptation of water rights to new conditions – Flexibility.
 - a) Water suppliers do not control the pace or direction of growth.
 - b) Dynamic changes in location, timing, and water quality to meet society's water needs require adaptation.
 - c) Appropriate flexibility is needed to bring critical new and replacement public service facilities online.
 - d) Drinking water quality challenges, regulatory requirements, and related costs are constantly evolving.
 - e) Interconnection or transfer of inchoate municipal rights is an important tool.
5. Ecology should reconsider interpretations that undermine legislative intent in passing the MWL. Ecology's basic approach to implementing the MWL frustrates planning and securing safe and reliable drinking water.

"Active Compliance":

- a) "Active compliance" is not stated in the MWL and is an Ecology creation.
- b) "Active compliance" reduces transparency and increases arbitrary outcomes.
- c) "Active compliance" wastes water and energy by requiring use of water to meet Ecology's policy even when no public use is served and public costs increase when facilities must be activated solely to comply.
- d) Creates an unfair burden to utilities, which bear all risks of shifting interpretations and water rights losses.
- e) "Active compliance" places municipal water rights into constant uncertainty, and the "safe harbor" in policy is not reliable over the long term. (Without "active compliance", a safe harbor is not needed.)
- f) Appellate courts have considered Ecology's "active compliance" interpretation and have not adopted it.

Other problematic interpretations:

- a) Ecology should interpret and apply the MWL in cooperation and collaboration with the Department of Health, as the Legislature intended.
- b) Despite enactment of the MWL, Ecology undermines legislative intent by interpreting MWL provisions against municipal water and continuing to assert outdated or obsolete notions such as "original intent", and "speculation" and "ghost towns."
- c) Restriction of municipal water rights for mitigation, despite the legislature's provision in the MWL that municipal water may be used for environmental purposes.
- d) The contrast with exempt wells and implementation of ESSB 6091 (2018) is notable and inconsistent with stewardship of our water resources for people, farms, and fish.