

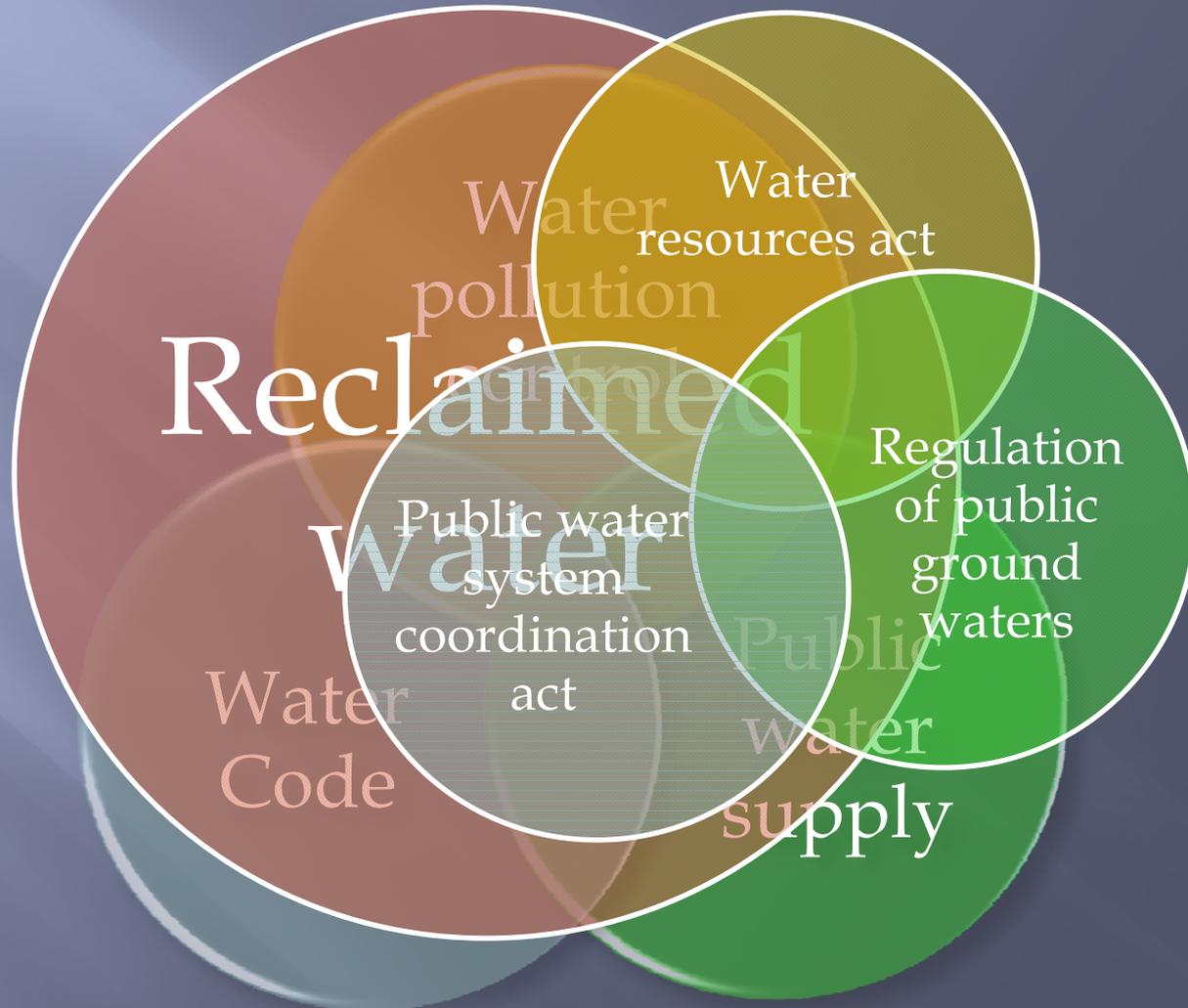


RECLAIMED WATER AND OVERRIDING PUBLIC INTEREST

WAC 173-219-045 **Overriding consideration of the public interest.**
The reviewing agency(ies) may consider a request for exceptions to the requirements of this chapter consistent with WAC 173-200-050 (3)(b)(iv) for applications of reclaimed water to ground, with WAC 173-201A-320 for applications of reclaimed water to surface waters, and with RCW 90.54.020(3) for withdrawals of water from waters of the state.



The Reclaimed Water Rule





Antidegradation Policy required by the Clean Water Act

- ▣ 40 CFR 131.12 ... the State shall develop and adopt an antidegradation policy... consistent with existing instream water uses and the level of water quality necessary to protect existing uses...
- ▣ Unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development...
- ▣ The State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources...



Basis of Washington's antidegradation policy

RCW 90.48 WATER POLLUTION CONTROL ACT

- ▣ Declares a broad statutory mandate to protect and maintain the water quality of the waters of the state for beneficial uses and requires the use of all known available and reasonable methods (AKART) to prevent and control pollution of the waters of the state.

RCW 90.54 WATER RESOURCES ACT

- ▣ Requires protection of the natural quality of the environment as well as AKART and allows degradation only where it's clear that overriding considerations of the public interest will be served.



So, what brings us to this discussion?

- ▣ In 2006, the Legislature added language to RCW 90.46.080 authorizing Ecology to supersede the law that said the drinking water standard was protective enough of the ground water for reclaimed water.
- ▣ **WAC 173-219-620 Ground water recharge.**
- ▣ (b) Enforceable limits are based on the following state standards:
 - ▣ (i) Drinking water standards adopted by the state of Washington under chapter 246-290 WAC; and
 - ▣ (ii) Water quality standards for ground waters adopted by the state of Washington under chapter 173-200 WAC.



Existing and relevant rules and guidance will be used

- ❑ The two regulations and one statute cited in the reclaimed water rule, as well as the guidance developed around those requirements, provide steps tailored to the application (surface or ground water or water withdrawals). Ecology will use the relevant provisions to consider overriding public interest for the various applications.
- ❑ Ecology does not intend to create a change in implementation practices or develop new practices through the reclaimed water rule.
- ❑ Rather, the change is that Ecology intends to apply current practices to reclaimed water.



WAC 173-200-030 and 050 Antidegradation policy for ground waters

- ▣ Goal – to ensure the purity of the state’s ground waters and to protect the natural environment.
- ▣ Degradation that is injurious to beneficial uses is not allowed.
- ▣ Degradation of exceptional waters is not allowed.
- ▣ Degradation of ground water that is of a quality better than standards (up to a numeric criterion) is allowed when:
 - an overriding consideration of the public interest will be served and
 - AKART is applied prior to entry into groundwater.



Nondegradation

- ▣ Antidegradation is **not** nondegradation
- ▣ Nondegradation prohibits any increase in contaminant concentrations in ground water.
- ▣ In most cases antidegradation prohibits an increase in contaminant concentrations above criteria.
- ▣ Nondegradation applies to protection of beneficial uses and exceptional waters.

Overriding Public Interest

- ▣ The goal is to maintain the highest quality of the state's ground waters and to protect existing and future beneficial uses.
- ▣ OPI is applied when existing high quality ground water cannot be maintained.
- ▣ Existing high quality ground water is defined as background water quality which does not exceed the criterion.



Applying OPI

IF CRITERION WILL NOT BE VIOLATED

- AKART must be applied prior to the discharge entering the groundwater.
- OPI must be demonstrated through a public notice process.
- The public process is used by Ecology to determine whether OPI is served by the proposal.

IF CRITERION WILL BE VIOLATED

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- OPI must be demonstrated through a public notice process.
- The public process must demonstrate a specific benefit.
- The public process is used by Ecology to determine whether OPI is served by the proposal.

The Public Notice Process

- ▣ If criterion will **NOT** be violated
 1. Public notice must invite public and affected party comments on the benefits of the activity and the reason to degrade the natural ground waters.
 2. Based on comments submitted and issues raised, Ecology determines if OPI is served.
 3. If yes – the permit is issued.
 4. If not – Ecology works with proponent to develop mitigation measures to address public concerns.
 5. If mitigation isn't possible, the discharge is not allowed.

Note: OPI determinations are very case – specific.



The Public Notice Process

- ▣ If criterion will be violated
 - Does it harm beneficial uses or exceptional waters?
 - Is AKART applied?
- ▣ OPI must be demonstrated – the proposal must
 - Alleviate a public health concern, or
 - Provide a net improvement to the environment, or
 - Provide socioeconomic benefits to the community.

The public notice process is essential to this demonstration. Ecology determines if OPI is served based on comments received, technical justification and social implications.

Case studies of OPI for permitted discharges

- ▣ Few cases...rarely applied
 - AKART is usually sufficient to prevent degradation
 - Need for OPI provision based on background data
- ▣ Because the determination is based on background conditions, the process is iterative
- ▣ 2004 - OPI applied to a cleanup project resulting from a Olympic Pipeline hydrocarbon spill in Bellingham.
- ▣ 2008 - Leavenworth National Fish Hatchery Tier II Water Quality Analysis - NPDES permit.



Demonstration of OPI

2004 OLYMPIC PIPELINE CLEANUP

- ▣ Discharge exceeded background and criteria
- ▣ Injections of **disodium sulfate** met the demonstration tests
- ▣ AKART applied
- ▣ The normal public notice process for permitting was used.
- ▣ A permit was issued.

2008 LEAVENWORTH USFWS FISH HATCHERY

- ▣ Background on the Authorization, Fish Production History, Physical Features, Fish Health Mgt in Icicle Creek and NPDES Permit History of Leavenworth NFH
- ▣ Current Effects of Leavenworth NFH on Icicle Creek Water Quality (**phosphorous**)
- ▣ An analysis of AKART
- ▣ Description of the Necessity for Leavenworth NFH
- ▣ Overriding Public Interest for the operation of Leavenworth NFH

Reclaimed water is the platypus of aquatic regulation





How well will reclaimed water fair in the determination of OPI?

RCW 90.46.005

-The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment, the state of Washington will continue to use water in the best interests of present and future generations....
- It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state...
- It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.