

State reverses position on use of exempt wells

Decision affects many small farms

By **COOKSON BEECHER**
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In a welcome about-face, a key official with Washington state's Ecology Department has publicly stated that small-scale farmers may use existing exempt wells to irrigate.

Exempt wells, which are generally household wells, don't need water-right permits. They may be used for such things as household use, watering lawns and gardens up to one-half acre in size and industrial use – as long as the amount of water used doesn't exceed 5,000 gallons per day.

In earlier meetings about the Ecology Department's proposed in-stream-flow rule for the Quilcene-Snow Basin on the northern Olympic Peninsula, department officials had originally said that using an exempt well to water crops that will be sold – no matter how small the area or how small the amount of water – was illegal because that would be a commercial use of the water.

The department's recent 180-degree turn on this issue is thanks to the dogged efforts of citizens in tiny Jefferson County, population 27,000, to put the department on a track that considers not only fish but also people when it crafts its in-stream flow rules.

Ecology's previous position on exempt wells outraged the agricultural community, which is made up of many small-scale farmers who sell at farmers' markets, through CSAs and to some retail stores and restaurants.

"That was the issue that 'broke the bank' because it brought farmers – established large farmers and small-scale farmers – to the table,"

Kim case set well precedent

In 2003, a Washington state appeals court decision affirmed the right of the Kim family, owner of a small nursery in Poulsbo, Wash., to use an exempt household well to water plants without getting a permit from the state.

The Kims, immigrants from Korea who spoke little English, had been using 100 to 300 gallons a day to water the plants.

The Ecology Department had told them they couldn't do that and that they needed to apply for a water right.

After a 7 1/2-year battle with the department, and several legal decisions against them, the Kims finally prevailed.

In that last court decision, agricultural use was described as an industrial use, not a commercial use, which meant the Kims could continue to use their well to water their plants.

The Ecology Department had argued that agricultural uses don't fall under an industrial use.

But the court rejected that assertion, saying that it wouldn't be logical to allow a business in the construction, aluminum or automobile industries to take 5,000 gallons per day without a permit while denying the same right to a commercial nursery in the horticulture industry.

Although the Ecology Department asked the court to reconsider its decision, the court denied the request. Ecology did not seek a review of the decision by the state Supreme Court, which meant the Appeals Court decision was final.

After the legal victory, James Tracy, attorney for the Kims, accompanied them to Olympia, where several legislators personally apologized for how they had been treated in the case.

–COOKSON BEECHER

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said Norm MacLeod of the newly formed Olympic Waters Association. From there, he said, the department's proposed instream-flow rule got the attention of a lot of people and spurred a wide variety of people into action.

At a recent meeting in Port Townsend, Wash., attended by the three legislators from the district and Ecology Department officials, more than 300 people showed up, just about all of them opposed to the department's proposed rule.

Joe Stohr, special assistant to Ecology Department Director Jay Manning, apologized for problems the department may have caused.

He also read a statement that included farmer-friendly language.

"We support local small-scale farming and are committed to developing workable solutions for farmers and salmon," he said.

As part of his public statement, he also said the department "recognizes that the 'Kim Case' is settled law that allows for the use of 5,000 gallons per day in support of agricultural purposes."

In addition, Stohr told the group the department would like to provide access to technical expertise and funding sources for improved water-resource management – including modern irrigation techniques to make the most efficient use of water.

State House Majority Leader Lynn Kessler, D-Hoquiam, who organized the meeting, said that Stohr "got an earful" during the meeting.

"I'm very pleased that the property owners were listened to," she said. "I'm really glad we were all there. It's powerful to have that many people in a room. I think the Ecology Department will look at this experience here in Jefferson

County and realize that it just can't go into communities and plop something like this down on them without local participation."

During the meeting, Dennis Schultz, a small-scale farmer who grows hardy kiwi that he sells locally and at Pike Place Market, pointed to the value of small-scale agriculture to local economies.

He said he spends at least \$20,000 a year on such things as equipment, labor and services.

Using statistics from the U.S. Department of Commerce showing that money gets turned over six to eight times in the local economy, he estimated his farm's value to the local economy at \$120,000 to \$160,000.

Going a step further, he said that an average of 15 farmers like himself selling at each of the

61 farmers' markets in the Puget Sound area help pump \$100 million through the area's economy.

In a telephone interview after the meeting, Schultz said he had become "unglued" when he learned about the department's stand on exempt wells and agriculture. He made it a point to go to the local fruit growers group and tell the members about it. And as a member of the county planning commission, he was able to spread the message to county officials and staff members.

"Ecology has got to rebuild its

credibility," he said. "We want a locally driven solution that actually protects salmon and that also protects people."

During the meeting, Norm MacLeod expressed similar sentiments.

"We have an opportunity to work toward a future that includes water for people and water for fish," he said.

He also told the crowd that the night does not represent a "we won."

"This night represents we can work together," he said. "We saw something was wrong, we complained about it ... and now we have to work to make it right."

Kessler referred to the outcome of the meeting as "a great result."

"Thank God for people believing that their voices count," she

said. "This time they did."

Bill Brookreson, deputy director of the state's Agriculture Department, referred to the Ecology Department's decision on the issue of exempt wells and agriculture as "a good one."

"I'm really pleased about what the Ecology Department has done," he said. "We need to look at water availability for small-scale agriculture, and this is one step toward that."

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*Washington State House
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