

# ***Centralia Appeal of Water Right Transfer Decision***

**Thurston County Water Utility Purveyor Meeting  
April 8, 2016**

**Mike Gallagher, Water Resources Program  
Southwest Regional Office**

# Municipal Water Law

- Legislature significantly amended Washington water law in 2003 to:
  - provide clarity on the nature of water rights issued for municipal supply purposes, and
  - to provide flexibility to municipal water suppliers in exercising their water rights.

## The Municipal Water Law:

- defines the terms “municipal water supplier” and “municipal water supply purposes”,
- defines when the “place of use” could be the same as a municipal water suppliers service area,
- establishes that municipal water rights were not limited to the stated number of connections but to the number of connections approved in a water system plan, and required specific conservation practices and planning.

Under the law, utilities must use water efficiently.

# Definitions

- **"Municipal water supplier"** means an entity that supplies water for municipal water supply purposes.
- **"Municipal water supply purposes"** means a beneficial use of water:
  - **(a)** For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year;
  - **(b)** for governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or
  - **(c)** indirectly for the purposes in (a) or (b) of this subsection through the delivery of treated or raw water to a public water system for such use.

If water is **beneficially used under a water right for the purposes listed** in (a), (b), or (c) of this subsection, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

If a **governmental entity holds a water right that is for the purposes listed** in (a), (b), or (c) of this subsection, its use of water or its delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

## Municipal water suppliers can hold water rights for municipal water supply or for *other* purposes

### Governmental entities:

- cities,
- towns,
- PUDs,
- counties,
- sewer districts, or
- water districts

### Governmental Purposes:

- commercial,
- industrial,
- irrigation of parks & open spaces,
- institutional,
- landscaping,
- fire flow,
- water system maintenance & repair, or
- related purposes

# Policy 2030

- Ecology developed an Interpretive and Policy Statement (IPS) for carrying out the 2003 Municipal Water Law under the authority of the [Administrative Procedure Act - RCW 34.05.230](#).
- This policy statement clarifies the Department of Ecology's position and management approach for carrying out that law for the primary audience of those interested in, and affected by, management of water rights for municipal supply purposes. This policy statement also enables Department of Ecology staff to have a common understanding and consistency of application.

# What is the Issue?

November 20, 2015

Pollution Control Office  
P.O. Box 40903  
Olympia, Washington 98504-0903



RECEIVED

NOV 20 2015

DEPARTMENT OF ECOLOGY  
EXECUTIVE

ATG Desklet Clerk  
Miké Gallagher - SWRO Section Manager  
Initial: JEE 11/20/15

RE: Appeal of Department of Ecology's MODIFICATION of Water Right Application for Change No. CG2-00731 (LEWI-15- 01)

To Whom It May Concern;

Consistent with the provisions of RCW 43.21B and WAC 371-08, the City of Centralia hereby files formal appeal of Ecology's modification of a Record of Decision (Report of Examination) issued by the Lewis County Water Conservancy Board.

The application is No. CG2-00731 and was assigned Conservancy Board number LEWI-15-01.

The City received notice of the MODIFICATION on October 26, 2015, via certified mail (7014 0150 0000 9188 6770), and has hand-delivered this notice to you on November 20, 2015, which is within the 30 day appeal period. Ecology's determination is attached as Exhibit A.

**The specific action that the City appeals is the reduction of the annual quantity (Qa) authorized by this water right certificate from 7 acre-feet per year to 5.3 acre-feet.**



# Reason Centralia Appealed

## Reason for Appeal

LEWI-15-01 (Application for Change of Water Right CG2-00731) concerns the change in point of withdrawal filed on behalf of the City of Centralia. The *Application for Change* was filed by the City with the Lewis County Water Conservancy Board June 18, 2015. The City filed the *Application for Change of Water Rights* to change the point of withdrawal, place of use and purpose of use of ground water certificate G2-00731. This water right was originally issued for the community domestic supply of the County Park Mobile Home Park, and the City has extended service to the project. The intent of this request is to effectively transfer the water right from the former well to one of the City's production wells.

Ecology affirmed this transfer as requested however they erroneously reduced the annual quantity (Qa) from 7.0 to 5.3 acre-feet per year. While no explanation for the reduction was provided in Ecology determination letter dated October 22, 2015, the City asserts that this is a municipal water right and as such qualified as a right in good standing and should not have been reduced.

The County Mobile Water System (DOH 15516) was operated up until 2014 as a Group a municipal system serving 18 residential connections, thus this water right meets the definition of "municipal water supply purposes" at RCW 90.03.015(4).

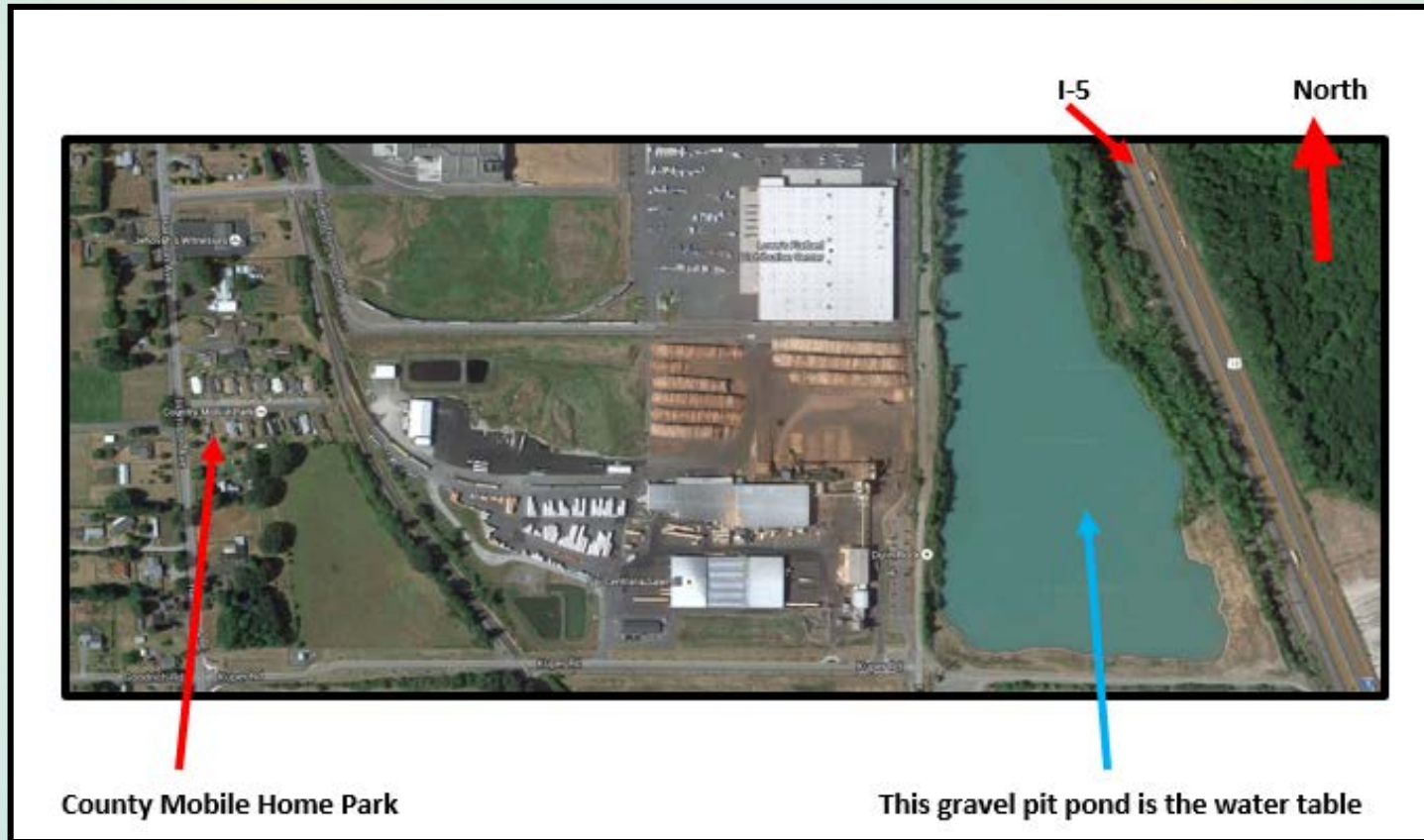
Ecology's guidance provides that inchoate portions of water rights for municipal supply purposes found to be in good standing are eligible for change or transfer. This approach allows for the inchoate portion to be transferred to another municipal water supplier or integrated into a regional water system, as is occurring. We contend that the City of Centralia is legally entitled to absorb this right in the full quantities, because the full quantities were issued for municipal purposes.

# County Mobile Home Park in Centralia



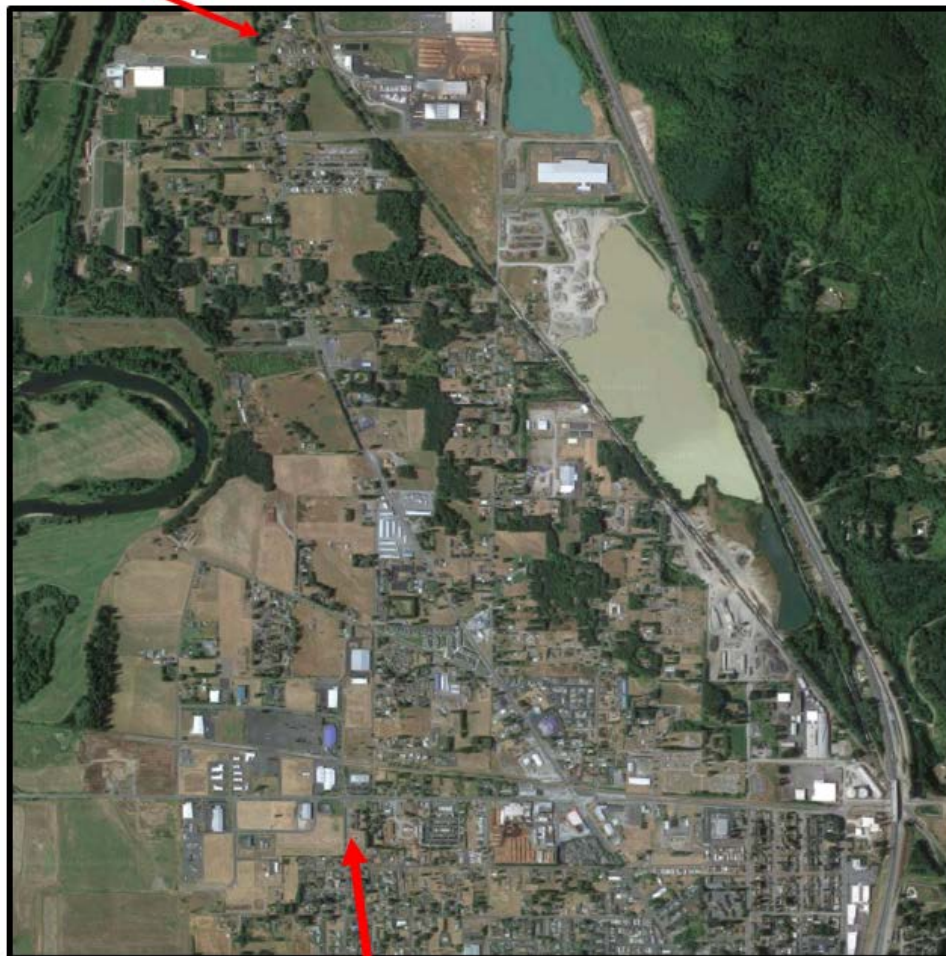


# County Mobile Home Park in relation to rest of Centralia



## A broader view of mobile home park location

County Mobile Home Park



New POW for this water right change (City of Centralia Eshom Road Well)

# Centralia Requesting PCHB affirm Lewis Co. WCB Decision of 7.0 AFY Water Right Transfer to City

The County Mobile Water System (DOH 15516) was operated up until 2014 as a Group a municipal system serving 18 residential connections, thus this water right meets the definition of “municipal water supply purposes” at RCW 90.03.015(4).

Ecology’s guidance provides that inchoate portions of water rights for municipal supply purposes found to be in good standing are eligible for change or transfer. This approach allows for the inchoate portion to be transferred to another municipal water supplier or integrated into a regional water system, as is occurring. We contend that the City of Centralia is legally entitled to absorb this right in the full quantities, because the full quantities were issued for municipal purposes.

A more thorough discussion of the standing of this right is included in the attached **Report of Examination** (Exhibit B) prepared and signed by the Lewis County Water Conservancy Board.

## Action Requested

The City requests that the decision of the Lewis County Water Conservancy Board be AFFIRMED as recommended, in the amount of 7.0 acre-feet per year for municipal supply.

Centralia’s existing water rights*:	9,141 AFY
Current use*:	2,543 AFY
Inchoate available*:	6,598 AFY

\*2013 Water System Plan

# Water Resources Program Policy 2030

POL-2030

## WATER RESOURCES PROGRAM POLICY

### 2003 Municipal Water Law Interpretive and Policy Statement

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Contact: Program Development and Operations Support Section Effective Date: February 5, 2007  
Revised Date: May 7, 2012

References: Chapter 90.03 Revised Code of Washington

Purpose: To describe and provide interpretation of parts of the Municipal Water Law, and describe generally applicable procedures that the Department of Ecology (Ecology) will use in identifying and managing municipal water rights.

Application: This interpretive and policy statement is a review of the applicable sections of the state Water Code (Ch. 90.03 RCW) that were amended or added by the 2003 Municipal Water Law. The document describes how Ecology intends to apply the various sections of the law to municipal water rights and management.

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The 2003 Municipal Water Law (SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1338; Chapter 5, Laws of 2003; 58th Legislature; 2003 1st Special Session; MUNICIPAL WATER SUPPLY--EFFICIENCY REQUIREMENTS) clarifies municipal water rights.  
[http://www.ecy.wa.gov/programs/wr/rights/Images/pdf/2E2SHB\\_1338.pdf](http://www.ecy.wa.gov/programs/wr/rights/Images/pdf/2E2SHB_1338.pdf)

Ecology has chosen to develop this Interpretive and Policy Statement (IPS) for carrying out the 2003 Municipal Water Law under the authority of the Administrative Procedure Act ([RCW 34.05.230](#)). This IPS clarifies the Department of Ecology's position and management approach for carrying out that law. This IPS supersedes earlier statements relating to the Municipal Water Law and has been issued subsequent to the Washington Supreme Court's decision in *Lummi Indian Nation v. State of Washington*, Washington Supreme Court No. 81809-6, which held that all sections of the Municipal Water Law are constitutional on their face, and thus valid and operative.

This document's primary audience is those interested in, and affected by, management of water rights for municipal supply purposes. It clarifies Ecology's approach in interpreting and implementing the law. It enables Ecology staff to have a common understanding and consistency of application.



# Ecology applied this part of Policy 2030 – Part 1

*RCW 90.03.330(2)*

*Appropriation Procedure – Water Right Certificate: Exceptions to Prohibition of Revocation or Diminishment of a Municipal Water Supply Purpose Water Right.*

This section provides that Ecology may not revoke or diminish a water right for municipal water supply purposes documented by a certificate covered under RCW 90.03.330(3) except:

- when issuing certificates under RCW 90.03.240,
- issuing certificates following changes, transfers, or amendments under RCW 90.03.380 or 90.44.100, or
- if Ecology determines a certificate was issued with ministerial errors or obtained through misrepresentation.

1. Apart from the exceptions listed in this section, Ecology cannot rescind or diminish a certificate for municipal water supply purposes and/or revert a certificate to permit status.
2. A certificate for municipal water supply purposes may be revoked or diminished if the revocation or diminishment results from a general adjudication of water rights in superior court conducted pursuant to RCW 90.03.110 - 245.
3. When processing an application for change, transfer, or amendment of a water right documented by a certificate covered under RCW 90.03.330(3), Ecology may revoke the certificate, or issue a certificate for a quantity less than that on the original certificate. Revocation or diminishment may occur based on:
  - the tentative determination of validity and extent of the water right,
  - to prevent impairment of other existing water rights, or
  - to prevent detriment to the public welfare (for ground water changes under RCW 90.44.100).

[See RCW 90.03.330(3), below, for discussion relating to tentative determination of validity and extent.]



## Ecology applied this part of Policy 2030 – Part 2

**RCW 90.03.330(3)**

***Appropriation Procedure – Water Right Certificates.*** This subsection provides that water rights for municipal water supply purposes documented by certificates issued prior to September 9, 2003 with maximum quantities based on system capacity (known as “pumps and pipes” certificates) are “rights in good standing.”

1. “Pumps and pipes” certificates were issued based on the system capacity measure, rather than on the basis of actual beneficial use. These water rights include inchoate quantities that have not yet been exercised. *See Department of Ecology v. Theodoratus*, 135 Wn.2d 582, 957 P.2d 1241 (1998). Such rights may continue to be exercised to serve new growth. Ecology is not authorized to revoke or diminish water rights for municipal supply purposes documented by such “pumps and pipes” certificates, except under the circumstances set forth in RCW 90.03.330(2), discussed above.

***So in this particular case the mobile home park was fully built out and did not plan on adding new connections. They had no water system plan and weren't planning on extending their service area.***

# Determination of extent and validity of existing Country Mobile Water System water right

The County Mobile Water System (DOH 15516) was operated up until 2014 as a Group a municipal system serving 18 residential connections, thus this water right meets the definition of “municipal water supply purposes” at RCW 90.03.015(4). As a mobile home park water use was somewhat lower than traditional homes, but County Mobile does include yard and garden space. The subject water right certificate was issued with the intent of supplying approximately 60 persons as a per capita consumption rate of 100 gallons per person.

The City started supplying the system in 2014 so available data extends from 2013 to 2010 when metering first became required. A review of the information reported in the Water Use Efficiency documents the following use patterns:

2013	3.7 acre-feet
2012	2.9 acre-feet
2011	4.0 acre-feet
2010	5.3 acre-feet



It is unknown how much water was used prior to onset of metering and reporting, however we note that this system was originally developed in 1974 as a senior mobile home park in a semi-rural area with larger than average lots for mobile homes. Gardening was popular among the residents and used as a selling point. Based on conversation with City staff, the operators of the system took conservation very seriously after the passage of the Department of Health’s WUE standards and dramatically reduced their water use. In 2011, the first year of for the WUE program, 24 soaker hoses were handed out to the 18 units along with ongoing literature handouts and postings on the community bulletin Board. 2012 was the year with the lowest reported water use, and notes on the WUE report indicate that in 2012, in an effort to save water, the park initiated a water use saving strategy from 1974 of watering alternate days (based on location). In 2012, the park shut off two automatic lawn sprinkler systems, and it was reported that several units were vacant. It is our presumption that water use must have been higher prior to the onset of the park’s conservation efforts.