

WASHINGTON OCTOBER 8, 2015

High court reverses decision granting water rights to Yelm

The Associated Press

OLYMPIA, WASH. — The Washington Supreme Court has reversed a decision by the state to grant new water rights to the city of Yelm to serve its growing population, a ruling that has broad implications across the state.

The court on Thursday ruled 6-3 that the Department of Ecology exceeded its authority in approving Yelm's water rights because doing so could permanently reduce flows in the Nisqually River and other streams below the minimum needed for fish.

While such reductions can be allowed temporarily in certain cases of overriding public interest, they can't be allowed permanently, Justice Charles Johnson wrote for the majority.

Together with a ruling the court issued in 2013, the decision means "Ecology cannot continue to deplete river flows to meet future water demand," the Center for Environmental Law and Policy said in a written statement.

"We are taking today's ruling under advisement and we will assess what other water management tools we may use in the future to make decisions on complex water needs in water constrained basins," Ecology Director Maia Bellon said in a written statement.

Yelm's permit would have provided about 841,000 gallons of water per day, or enough water to serve 1,682 homes, Ecology spokesman Dan Partridge said.

Yelm, a Thurston County city of about 7,500 people, had sought the additional water rights to accommodate future population growth in accordance with the state's Growth Management Act, Mayor Ron Harding said on Thursday. He said the city is disappointed with the ruling, which undid Yelm's work with other cities and local tribes to come up with a plan for offsetting the extra water Yelm would have drawn.

"We draw water from the ground, and we have to mitigate drop for drop," Harding said. "If we're going to take an additional gallon of water out of our well and give to a resident, we have to go about putting that gallon back in the aquifer."

That can be accomplished many ways, such as by purchasing other water rights from local farmers, for example, and relinquishing them to the state.

But in Yelm's case, where officials said it wasn't possible to put an equal amount of water back into the watershed, Ecology allowed other measures as mitigation, such as restoring fish habitat or conserving land along stream banks.

"It's not about the amount of water in the city wells, it's the right to be able to use that water," Harding said. "Nobody's shutting off the spigots or showers in our city. It's about, how do we provide future water, and at what cost? We'll step back and look at what our options are and continue to figure out a way to get future water so we can continue to plan for future growth."

Harding argued that "the water-rights mitigation package we put together with our partners is considered the gold standard." But some environmental groups and residents were concerned that allowing Yelm to draw the extra water would reduce flows in the Nisqually and Deschutes rivers as well as other streams.

The legal challenge was brought by Sara Foster, who owns a small farm in Yelm.



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