

Encouraging Reclaimed Water:  
*A Strategy for Restoring Puget Sound*

Puget Sound Action Team

*(soon to be Puget Sound Partnership)*

Environmental Law Institute

# 2006 Puget Sound Partnership

*“Promote and support the use of reclaimed water from sewage treatment plants ...”*

*“Expand both direct financial support and financial incentives for capital investments in reuse and reclaimed water projects.”*

- Generating and using reclaimed water is a key strategy to address water quality, fish habitat, and water supply issues for the Puget Sound region.

# Environmental Law Institute (ELI) Comparative Analysis

- ELI in partnership with PSAT is conducting comparative analyses of reclaimed water issues/barriers, including
  - liability and indemnity,
  - impairment of water rights, and
  - financial incentives and project funding.

# Comparative State-Law Analysis: Liability and Indemnification

- Regulatory Liability and Compliance (most states)
  - Water Quality Standards (federal/state)
  - Design and Construction Standards
  - End-Use and Application Standards
- Contract Liability and Indemnification (e.g., OR)
- Third-Party Liability (common law, e.g. CA)
  - Regulatory Compliance as Safe Harbor (e.g., FL)
  - Negligence and Misconduct
  - Strict Liability, Product Liability, and Warranty Theories
- Insurance Issues?

# Comparative State-Law Analysis: Water Rights and Impairment

- Consolidation of Reuse Rights in WTP (e.g., WA, CA)
- Reuser Rights vs. Downstream Users
  - Standard Appropriation and Permitting Process
  - Impairment Assessment (current WA law)
  - Streamlined Notice or Registration Procedures (e.g., UT)
  - Presumption of Right to Reuse (e.g., OR for municipal WTPs with discharge of < 50% of average stream flow)
  - Common-Law Right to Reuse (e.g., AZ)

# Funding, Financing and Incentives

- Grants and loans

- Existing

- State: SRF, Centennial Fund, Public Works Trust Fund, appropriations
    - Federal: rural development grants and loans; earmarks
    - Local: Municipal loans; taxes; special district charges
    - Private: Capital contributions

- Possible

- State bond issue (CA)
    - Environmental Protection Fund (NY)
    - State or regional water withdrawal/use fee

# Funding, Financing and Incentives

- Who pays debt service and O & M?
  - Users of wastewater and reused water services
  - Beneficiaries of improved ecosystems, amenities, etc.
  - General public
- How should payments be apportioned?
  - Needs to be fair and equitable
  - Based on economic as well as financial analysis
  - Need to consider and deal with affordability
  - Broad stakeholder involvement
  - May need high level convener, esp. where multiple jurisdictions

# Funding, Financing and Incentives

- Incentives
  - WA Public Utility Tax partial exemption for reclaimed water
  - Zoning and building codes
  - Subsidized connection and water rates for reclaimed water users
  - Transfer of development rights and other growth management tools
  - Legal preference for reclaimed water
  - Ecosystem Service Districts

# Funding, Financing and Incentives

- Questions:
  - What are barriers in using existing funding and financing mechanisms?
  - What new sources of funding for projects or SRF expansion are appropriate and achievable?
  - What are barriers in law, rule or policy that make it hard to achieve equity and fairness in paying for reclaimed water, both debt service and O & M?
  - What new types of incentives look most promising?

# Puget Sound Partnership and Reclaimed Water

- Collaborate with Departments of Ecology and Health, wastewater and water utilities, and other stakeholders to encourage more generation and use of reclaimed water. Key efforts include:
  - rulemaking by the departments of Ecology and Health
  - \$5.4M in 2007-09 state funding for Puget Sound region reclaimed water projects (Ecology administered program)
  - support innovations (e.g., as suggested from ELI's analyses) in how we generate and use reclaimed water as an alternative water supply

# For information/further discussion:

- Puget Sound Action Team
  - Scott Redman
    - 360 725 5448
    - [sredman@psat.wa.gov](mailto:sredman@psat.wa.gov)
- Environmental Law Institute
  - Jay Austin
    - 503 775 5705
    - [austin@eli.org](mailto:austin@eli.org)
  - Langdon Marsh
    - 206 328 5006
    - [jlmarsh@pdx.edu](mailto:jlmarsh@pdx.edu)