

NCW counties still studying Hirst water ruling

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WENATCHEE — A recent state Supreme Court ruling that appears to increase counties' responsibilities to ensure adequate water supplies for residential development hasn't yet changed the way the region's counties are doing business.

But county planning and natural-resource directors, county legal teams and the state Department of Ecology are all studying it.

The Supreme Court's Oct. 6 "Whatcom County vs. Hirst, Futurewise" decision ruled that Whatcom County failed to comply with state Growth Management Act requirements to protect water resources.

The Growth Management Act was adopted by state lawmakers in 1990 to manage the state's growth, protect critical areas and natural resources and designate areas in which urban growth can happen.

The Hirst ruling appears to require Whatcom County to go beyond state Department of Ecology water-supply rules when determining a "legal availability" of water for rural development.

By some interpretations, the ruling would require counties to perform their own water-supply studies on a case-by-case basis every time someone needs to drill a water well to supply a house or residential subdivision. That extra work could end up adding thousands of dollars to the applicant's permitting process.

NCW's planning directors aren't so sure that's necessarily so. None interviewed for this report have yet made changes to the way their counties issue building permits that require drilling of residential wells.

"We're still working through the Hirst decision here in Douglas County," Mark Kulaas, the county's director of land services, said Friday. "We're not making any immediate changes until we have a better clarification of what it means for us."

Mike Kaputa, director of Natural Resources for Chelan County, said the county already has water banked for residential development and may not be affected by the ruling. But he and other county officials are also waiting to learn more.

"We set up a watershed plan. In the Wenatchee watershed we have a reserve of water set aside. On an annual basis we debit each well that goes in," Kaputa said. "There's a lot of uncertainty and confusion around the Hirst case. We're still digesting this."

Perry Huston, Okanogan County's director of planning and community development, says he and other county officials are also studying the ruling, especially for counties with smaller populations, like Okanogan, that aren't subject to most state Growth Management Act requirements.

"We're looking at it. Trying to decide what, if anything we need to do differently," Huston said. "This certainly firms up more responsibility for the county on water issues. If it signals new rules, we'll implement new rules. If it doesn't, we'll stay the course."

He added, "We already assess water availability at the building permit stage, so that's nothing new. Whether we need to do more or not is the question. We're not looking at moratoriums or sweeping amendment changes."

Another uncertainty, Huston said, is whether state lawmakers will react to the ruling with new rules.

Grant County's planning director was unavailable to comment.

The Association of Washington Counties, a voluntary non-profit that provides member counties with advocacy and training services, is studying the ruling.

Chelan County's Kaputa says workshops will be planned for county commissioners in the coming months, as the ruling's local implications become clearer.

The state's traditional "water manager" — the Department of Ecology — is directed by state law to monitor and regulate water use based on measurable levels of stream flow.

This regulation is intended to ensure that enough water is available for fish, wildlife and human use. These rules, called "in-stream flow rules," vary from place to place, Ecology spokeswoman Kristin Johnson-Waggoner said Friday.

Counties generally defer to these Ecology rules when determining if enough water is available for use, she said. Ground water used for lower levels of consumption, such as use by a residential home, for livestock or for yard irrigation, doesn't require a special permit and isn't subject to as much Ecology oversight.

"The ruling says the counties can't rely on Ecology's in-stream flow rule," Johnson-Waggoner said. "So, counties need to pay attention to that and go and make their own determination about water available. The question is, what does that responsibility mean for a county?"

For now, Ecology, like the counties, is still trying to figure that out, she said.

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