

Snohomish County responds to new well-drilling rules

By [Noah Haglund](#)

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EVERETT — Snohomish County laid out its response last week to a state Supreme Court case that reinterpreted the rules for drilling new wells and upended prospects for rural development throughout Washington.

The [Hirst decision](#), stemming from a case in Whatcom County, said counties can no longer rely on the state Department of Ecology to determine whether there's enough water for a new well. Each county must come up with its own system for predicting the impact on water flowing to nearby streams or available to existing wells.

Environmentalists hail the decision as a victory for consumer protection. The building community calls it devastating for rural landowners. Washington's 39 counties are still finding their way.

"The Hirst decision was both unexpected and a radical change to how we have done business over the last few decades," Snohomish County's planning director Barb Mock said in a statement. "As part of the fastest-growing region of the state, Snohomish County must do all it can to protect our water and other natural resources, while also looking out for the interests of our residents."

The county Tuesday rolled out its approach. It will require a signed notice from anyone seeking building permits when they intend to rely on small wells for the water supply. The applicant would have to acknowledge that water access cannot be guaranteed, even if a building permit is issued. The county also [launched a webpage](#) explaining the situation.

The case applies to developments that would use a relatively limited amount of groundwater. Those properties use so-called [exempt wells](#), also sometimes called permit-exempt wells. The wells use less than 5,000 gallons of water per day. A typical household in Everett uses less than 175 gallons of water per day.

The Hirst case started as a legal challenge from the Seattle-based conservation group [Futurewise](#) and four people acting as individuals. Among other issues, the petition they filed in 2013 challenged whether Whatcom County had taken adequate steps to protect surface water and ground water from rural development.

The county's practice had been to assume there was available water for an exempt well unless the state Department of Ecology had declared the area off limits.

The hearings board mostly agreed with the petitioners, but it was later reversed by the state Court of Appeals. The case reached the state Supreme Court last year. On Oct. 6, justices ruled that Whatcom County's comprehensive plan did not comply with state Growth Management Act requirements for protecting supplies of potable water. They said counties must ensure an adequate water supply before granting a building permit or a subdivision application. Rather than just show that water was physically available, it also had to be legally available.

The decision was 6-3. Dissenting judges said the majority opinion would, "require individual building permit applicants to commission a hydrological study to show that their very small withdrawal does not impair senior water rights, and then have the local building department evaluate the adequacy of that scientific data. The practical result of this holding is to stop counties from granting building permits that rely on permit-exempt wells."

Mike Pattison, a lobbyist for [the Master Builders Association of King and Snohomish Counties](#), said the decision was devastating for rural property owners without secured water rights. By making it "extraordinarily difficult for rural property owners to use new wells," Pattison said the court has in effect imposed a development moratorium on those areas.

"The bottom line is if you are a rural property owner looking to build and have not yet put your well water to beneficial use, you're over a barrel," he said.

"We're already hearing about land sales falling through because of this decision," Pattison added. "So the effect is real."

The issue is highly technical and deals with rules called [instream flows](#), which affect water right for streams. The flow rules are intended to benefit fish, wildlife, recreation, water quality and navigation.

Tim Trohimovich, director of planning and law for Futurewise, called the Supreme Court decision "just basic consumer protection." Without the safeguards from the Hirst decision, senior water-right holders could be jeopardized.

"The local government should make sure the new lots and the new homes have legal water that's still there that meets clean water standards," Trohimovich said. "It's basic consumer protection. You can't live in a house without water."

Now, all sides are looking to Olympia for a solution. Officials in Snohomish County and other counties have asked state lawmakers for help clarifying the regulations.

Noah Haglund: 425-339-3465; nhaglund@heraldnet.com. Twitter: [@NWwhaglund](#).