

# Mason builders affected by Supreme Court water ruling

By Arla Shephard Bull, Mason County Life 12:50 p.m. PT Feb. 15, 2017

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Mason County has taken steps to warn builders that their permits may be impacted by an October state Supreme Court ruling or pending legislative action, as a series of bills concerning water rights make their way through both houses of the Legislature.

State lawmakers have put forth two bills in the Senate and two bills in the House that address the Hirst decision, a Supreme Court ruling that now requires counties to determine if they have enough groundwater available before issuing building permits.

The high court ruled in “Whatcom County vs. Hirst, Futurewise, et al.” that Whatcom County failed to protect water resources by issuing building permits that allowed new wells to reduce flow in streams for fish and other uses.

Counties must now make sure that there is enough water physically and legally available before allowing development in certain areas.

Starting the week of Feb. 13, Mason County has begun issuing disclaimers to building permit applicants that their projects may be affected by the court ruling or any new state law that may come into effect in response to the ruling.

“This will help us continue to process, review and grant permits, but also inform the public that there are additional concerns that may need to be addressed,” said Mason County Commission Chair Kevin Shuttly. “Mason County is proactively seeking solutions to last year’s Hirst ruling.”

In Washington, water users such as water districts and municipalities must obtain water-right permits from the Department of Ecology before withdrawing groundwater, but the state does little to regulate wells built to draw “small quantities” of groundwater, according to Ecology.

Those wells are “permit-exempt” and can be used to provide water for a single home or group of homes limited to 5,000 gallons per day, a non-commercial lawn or garden that is a half-acre in size or less, livestock or industrial purposes, which is also limited to 5,000 gallons per day.

Many counties, including Mason, do not track permit-exempt wells, so environmental groups and tribes, such as the Squaxin Island Tribe in Mason County, have argued that unchecked development poses a threat to fish habitat and the availability of water for future generations.

“This isn’t about rural development per se, it’s really about utilization of scarce resources,” said Jeff Dickison, assistant natural resources director for the Squaxin Island Tribe. “Despite the perception, there is, in fact, a limit of water in the region.”

The Squaxin Island Tribe, which holds a senior water right in Mason County through the 1854 Treaty of Medicine Creek, submitted an amicus brief to the court in the Hirst decision that supported the court’s eventual position that counties should do more to protect water resources.

“Overuse of groundwater over time is going to diminish instream flow,” Dickison said. “That is one of the things we see and have been documenting already occurring. There are a number of watersheds in Mason County that are closed to further appropriation.”

Since the Hirst ruling, the tribe and the county have been in talks to figure out how to move forward.

“We’ve been working with the Squaxin Island Tribe and their concerns with water to see how we can work those into how we move forward with Hirst,” said Dave Windom, director of Mason County’s Department of Community Development, which oversees building permits. “We need to look at the wells plus the areas that are affected by in-stream flows. We’d like to do that on a countywide level and not a homeowner process that some of the other counties have been doing, but we’re still in the talking stages.”

The Board of County Commissioners wants to ensure it has the appropriate policies in place to allow for development while protecting natural resources, Shutty added.

“We believe in following the science,” Dickison said. “We see the solution as being more efficient use of water resources, so employing conservation is a critical component of how we proceed in the 21st century.”

Lawmakers have scrambled to help counties and clarify the Hirst decision since entering session in January.

Proponents of Senate Bill 5239 support rural development and argue that counties, especially in rural areas, don’t have the resources for hydrological studies to determine how much groundwater is available.

The bill, sponsored by Sen. Judy Warnick, R-Moses Lake, allows counties to rely on the state’s water rules, as they did before the Hirst decision and allows the use of permit-exempt wells for development.

Senate Bill 5024 sets up a program to offset water drawn from a well, allowing for the creation of a “water bank” where people who need water can obtain it from those with water rights.

The bill, sponsored by Sen. John McCoy, D-Tulalip, would give counties five years to come up with alternative ways to get water and in the meantime, people could get a certificate allowing them to build.

In the House, HB 1918, sponsored by Rep. Derek Stanford, D-Bothell, is similar to SB 5024 and would create a water banking program and a new Water Mitigation Assistance Account.

Stanford's bill would also require Ecology to provide information on surface and groundwater to counties and assist in the water bank and mitigation account programs.

House Bill 1885, from Rep. Larry Springer, D-Kirkland, allows counties to rely on Ecology's data when determining water availability and charges a fee up to \$250 for building permit applications to fund Ecology's research.

Springer's bill also grants Ecology the authority to establish a program to alleviate impacts of permit-exempt wells in areas with a minimum instream flow rule.

Mason County has been monitoring the progress of all the bills, all of which are currently still in committee, but it does not have an official position in regards to any of them, Shutty said.

However, Commissioner Terri Jeffreys is quoted in the Seattle Times as saying that SB 5239 is "a fix."

"Ultimately, we will know more in the coming weeks as the Legislature continues to work toward a solution," Shutty said. "In the meantime, Mason County is open for business and we will continue to work with those seeking permits."