

BUILDING PERMITS AND WELLS: Changes due to a recent court case



A driller works on the end cap of a well. Your building project may be impacted by a recent court decision if you plan to rely on a well.

More information

This court decision is commonly called the “Hirst decision,” but the full name of the case is *Whatcom County v. W Wash. Growth Mgmt. Hr’gs Bd.* No. 91475-3.

Special accommodations

To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call Ecology at 306-407-6872 or visit <http://www.ecy.wa.gov/accessibility.html>. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

A recent Washington State Supreme Court decision has changed how counties decide to approve or deny building permits that use wells for a water source.

Overview

A reliable, year-round supply of water is necessary for new homes or developments. Before the Oct. 6, 2016, court decision, many counties relied on what the Department of Ecology said about whether year-round water was available in their area.

This court decision changes that – counties now have to make their own decisions about whether there is enough water, physically and legally, to approve a building permit that would rely on a well.

Ecology protects rivers and streams across the state by creating instream flow rules (<http://www.ecy.wa.gov/programs/wr/instream-flows/isfhm.html>), which set the amount of water necessary for protecting fish, wildlife, and recreation. Science has shown that rivers and streams are generally connected to groundwater. The court has said that water is not legally available if a new well would impact a protected river or stream, or an existing senior water right. If your county determines that water is not legally available for your new use, the county would not be able to approve your building permit, even if you have already drilled a well.

This court decision is the result of many years of lawsuits, though it may feel like an overnight change. The court decision is legally binding, meaning that neither county councils nor state agencies, like the Department of Ecology, can overrule the decision. The State Legislature is the only government body that could change the law.



Withdrawals from a well take water from the underground aquifer. Because groundwater and surface water are generally connected, this can also draw down river levels.



Talk with your county if you have questions about possible impacts to building plans that rely on wells.

Online resources

Ecology's web page about the court decision:

<http://www.ecy.wa.gov/programs/WR/nwro/hirst.html>

Ecology's web page on water resources:

<http://www.ecy.wa.gov/programs/wr/wrhome.html>

I want to build using a well — what do I do now?

We recommend you start by talking with your county. Each county is interpreting and applying the court case differently.

- Some counties have issued temporary laws restricting building that relies on groundwater wells.
- Some areas of the state remain unaffected by the court decision. This may change over time as counties begin to enact new ordinances.

If you live in an area affected by the new requirements from the court's decision:

- You may be able to prove your well won't affect protected rivers and streams or senior water rights. This would require a hydrogeological analysis, which can be expensive. Talk with your county to find out if this is an option for you.
- You may be able to mitigate, or offset, the impact of your well on protected rivers and streams. However, mitigation options are limited in many parts of the state. Talk to your county about the potential for mitigation in your area.
- You may be able to use rainwater collection, trucked water, or cisterns as other potential sources of water. Again, talk to your county about local ordinances and available options.

How do I learn more?

Staff at your county and the Department of Ecology are available to help you.

What is my county doing?

Your county may now be responsible for making their own water availability decision when considering your building permit. Contact your county government to learn about:

- Possible impacts to your building plans
- Water availability in your area
- Mitigation options

What is the Department of Ecology doing?

We are providing assistance to counties to help them understand what areas might be affected by the court decision. Contact us to learn about:

- Protecting rivers and streams
- Water right permits
- Uses of water for which you don't need a water right

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