

Engrossed Senate Substitute Bill 6091 & WRIA 7 In-stream Flows

Hirst Supreme Court Decision

In 2016, Hirst et al appealed the Whatcom County's Comprehensive Plan. They asserted that by allowing permit-exempt wells the County failed to adequately protect water resources and was therefore in violation of the Growth Management Act (GMA). Ultimately, the Supreme Court ruled that the County failed to comply with the GMA, *cannot* simply exclude permit-exempt uses from regulation under an in-stream flow rule, and did *not* fulfill their obligation to ensure new permit-exempt uses do not harm in-stream flows (Ecology 2016).

ESSB 6091

In response to the Hirst decision, Engrossed Substitute Senate Bill (ESSB) 6091 establishes standards for what will constitute as proof of "adequate water supply" for a new permit-exempt well. The Snohomish Basin falls under the ESSB 6091 Section 203 category. This means the existing in-stream flow rule does not address permit-exempt uses and the basin does not have an adopted watershed plan for regulating groundwater and in-stream flows.

Current Permitting Processes

WRIA 5 (Stillaguamish Basin) – Applicants must:

- i. Comply with the water usage limits established in the in-stream flow rule ([WAC 173-505-090](#)), generally limited to less than 5,000 gallons per day annual average. (*Note: Water meters are not required*); and
- ii. Submit a letter from an [approved water purveyor](#) stating that the purveyor *cannot* provide water to the applicant's site. If the purveyor can provide water to the site in a timely and reasonable manner (RCW 70.116.060), hook-up to the public system is required.

WRIA 7 or WRIA 8 (Snohomish, Cedar/Sammamish Basins) ([WAC 173-507](#), [WAC 173-508](#)):

- i. Water for domestic use is limited to 950 gallons per day (gpd) annual average, but may be curtailed to 350 gpd under declaration of a drought. (*Note: Water meters are not required*);
- ii. Record a document with the Auditor on the property title establishing water usage conditions as per (i) above. Recording fees will apply. (*Note 1: a pre-drafted form will be provided by PDS. Note 2: A recording number from the County Auditor will be required to be submitted to PDS prior to building permit issuance*);
- iii. Manage stormwater on-site to the maximum extent practicable, maximizing infiltration – provided the soils, slope, water table depth and other site conditions would safely allow for infiltration of stormwater. Low Impact Development techniques (LID) is required even for projects below the 2,000 sq.ft. hard surface threshold in the county's drainage code (SCC 30.63A). Stormwater infiltration and use of LID should be shown on the Storm Water Pollution Prevention Plan ([SWPPP](#)); and
- iv. Submit fee of \$500 in addition to other permit fees.

Watershed Planning

As a Section 203 basin, WRIA 7 will need to complete a WRE plan by 2021. These plans are to be developed and implemented by a WRE Committee (chaired by Ecology) which will invite participation from:

- each federally recognized Indian tribe within the WRIA
- Dept. of Fish and Wildlife
- each county within the WRIA
- each city within the WRIA
- the largest irrigation district within the WRIA
- the largest publicly owned water purveyor within the WRIA
- the residential construction industry within the WRIA
- environmental interests within the WRIA
- agricultural interests within the WRIA

The WRE Plan must include projects that will result a net ecological benefit¹. The Department of Ecology has issued interim guidance to define this.

Streamflow Restoration Grant

In establishing ESSB 6091, the Legislature has allocated \$300 million to be spent over the next 15 years. The funding will support actions that address in-stream flow impacts from permit-exempt uses in order to achieve net ecological benefit (Ecology 2018b). While projects like water acquisition, storage, and management or infrastructure all directly work to alleviate water quantity issues, riparian and fish habitat improvement projects can also contribute to mitigating low stream flow impacts. Projects that include features that have the potential to improve stream flow conditions include but are not limited to the following examples:

- channel habitat improvements,
- riparian restoration,
- strategic land acquisition,
- levee modification,
- floodplain modification,
- fish passage, and
- beaver introductions

The project examples listed above will also be eligible for the Streamflow Restoration Grant funding administered by Ecology. The deadline for the first round of project proposals is October 31st 2018. Grant awards will be decided by the end of December 2018 (Ecology 2018b).

2018 Grant Timeline –

- One-month solicitation of grant applications no later than September 2018
- Applications due October 31st
- Ecology's rating and tanking of applications in fall 2018
- Grant awards decided by the end of December 2018

Priority Projects –

¹ "A Net Ecological Benefit determination means anticipated benefits to instream resources from actions designed to restore streamflow will offset and exceed the projected impacts to instream resources from new water use. (Ecology 2018c)."

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- Highest priority projects will offset the impacts of new domestic permit-exempt consumptive water use during the same time and in the same place as the impact of that use.
- Lower priority projects are in the same WRIA and replace new domestic permit-exempt consumptive water use only during critical low flow periods.
- Lowest priority are projects that protect or improve instream resources without replacing the consumptive quantity of water, where such projects are in addition to those actions necessary to offset potential impacts to instream flows associated with new permit-exempt domestic consumptive water use.

Ecology will be working with Snohomish County, and other basin stakeholder groups, in late 2018 to create the WRE Committee and begin the WRE planning process for the Snohomish watershed. Snohomish County is currently working to identify potential preliminary projects to put forward for the initial round of grant funding which could aid in the development of the WRE plan.

Sources

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