



## King County

### Department of Permitting and Environmental Review

35030 SE Douglas St. #210  
Snoqualmie, WA 98065-9266

**206-296-6600** TTY 711

[www.kingcounty.gov](http://www.kingcounty.gov)

## Special Notice Private “Exempt” Wells (Unincorporated Areas Only)

### Building and Land Use Permits with Private Wells:

Information provided by this Special Notice may impact the application and approval of any development permits, administered by King County Department of Permitting and Environmental Review (DPER), involving the use of private well water. Landowners should be aware that any permit approval by DPER is not a determination that water is legally available for property development and, their ability to develop property when relying on private (“exempt”) wells as the water source may be limited by a recent court decision.

### Court Decision:

On October 6, 2016, the Washington State Supreme Court issued a ruling in the case of Whatcom County v. Hirst, Futurewise, et al. As outlined in that decision, development permit applications that propose to use a private well water supply (in a basin that is closed or partially closed to surface water withdrawals by the Department of Ecology) must demonstrate that groundwater withdrawal will not impair a senior water right, including instream flows established in the DOE Water Resource Inventory Areas (WRIA). This is referred to as a showing of “legal water availability.”

### Private Exempt Wells and Existing Wells:

This ruling applies to “permit-exempt” wells as determined by RCW 90.44.050. Exempt-wells are typically used for single family residences using not more than 5,000 gallon of water per day. They may also be used for irrigation of small lawns and gardens, industry and stock watering. In light of the Hirst decision, proposals to make use of exempt wells may require a showing of legal water availability.

Approved residences currently served by existing wells are not impacted. Modifications to the existing residence and accessory buildings are allowed on condition a new well is not required.

### Applicant and Owner Considerations:

Landowners should be advised that the presence of a well on a property does not necessarily constitute a right to use groundwater for a specific purpose. King County DPER advises landowners to investigate their right to use water prior to drilling a well for use as a residential or commercial water source. Further information on groundwater rights, wells and drainage basin information (WRIA) is provided by the Washington State Department of Ecology. You may also consider consulting with a hydrogeologist to further study any particular site.

### King County’s Role:

King County government is assessing the ramifications of this case on issuance of building permits, subdivisions, and other development permits that utilize exempt wells. Because the Growth Management Hearings Board did not invalidate the County’s development regulations (and the Supreme Court declined to reverse the Board’s decision on that issue), King County DPER will continue to take in building permit applications, subdivision applications, and other development permit applications in the interim. Public Health will likewise continue to accept and review well applications only for setback, bacteria, arsenic, PH, and flow. However, King County does not make any warranties regarding water rights for proposed development. The property owner and/or applicant is responsible for establishing and maintaining a legal water source. A Notice of Intent (NOI) to Drill a Well is not a permit, certificate, or application for a water right. Your Notice of Intent does not represent approval or permission to use water from the well.



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### References and Resources:

#### King County Code and King County Board of Health Code:

- King County Code  
[http://www.kingcounty.gov/council/legislation/kc\\_code.aspx](http://www.kingcounty.gov/council/legislation/kc_code.aspx)
- Board of Health Code  
<http://www.kingcounty.gov/depts/health/board-of-health/code.aspx>

#### Drainage Basin Information:

- DOE Drainage Basins Locations - Watershed Management:  
<http://www.ecy.wa.gov/programs/eap/wrias/Planning/index.html>
- King County Detailed Map of Drainage Basins:  
<http://www.kingcounty.gov/services/environment/data-and-trends/natural-resource-maps/cartographic-maps.aspx>

#### Washington Department of Ecology:

- Wells – Licensing, Construction and Reporting  
<http://www.ecy.wa.gov/programs/wr/wells/wellhome.html>
- Landowner's Guide to Washington Water Rights  
[http://www.ecy.wa.gov/programs/wr/rights/Images/pdf/landownerguide\\_2009-2ndEd.pdf](http://www.ecy.wa.gov/programs/wr/rights/Images/pdf/landownerguide_2009-2ndEd.pdf)
- Hirst Court Decision Impacts  
<http://www.ecy.wa.gov/programs/wr/nwro/hirst.html>