



MEMORANDUM

DATE: January 19, 2018

TO: Okanogan Board of County Commissioners

FROM: Perry D. Huston, Director

TOPIC: Effects of SSB 6091 on Okanogan County

Introduction

On January 18, 2018 both the House and Senate adopted SSB 6091 under the banner of “fixing” the Whatcom-Hirst decision. It was passed under an emergency provision so becomes effective upon signing by the Governor. It was expected the Governor will sign the bill on January 19, 2018.

WRIA characterization (relates to RCW 19.27.097 Building permits)

WRIA 48 is characterized as:

(b) In a water resource inventory area with rules adopted by the Department of Ecology pursuant to section 202 or 203 of this act and the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that explicitly regulate permit-exempt groundwater withdrawals evidence of an adequate water supply must be consistent with the specific applicable rule requirements. (WAC 173-548)

WRIA 49 is characterized as:

(c) In the following water resource inventory areas with instream flow rules adopted by the department of ecology under chapters 90.22 and 90.54 RCW that do not explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply must be consistent with section 202 of this act, unless the applicant provides other evidence of an adequate water supply that complies with chapters 90.03 and 90.44.

RCW 19.27.097 (3) (previously (2)) remains in place which allows non-GMA counties and the state to identify areas where the previous requirements need not be met.

ESSB 6091 also allows:

(5) Any permit-exempt groundwater withdrawal authorized under RCW 90.44.050 associated with a water well constructed in accordance with the provisions of chapter 18.104 RCW before the effective date of this section is deemed to be evidence of adequate water supply under this section.

As a result of this characterization of WRIA 48 by the legislature we can continue to follow the in-stream flow rule in the Methow. The only difference would be the application of (5) listed above which in effect vests any existing wells that were lawfully constructed. This is different from our current practice of vesting only those wells which were lawfully constructed AND put to beneficial use.

As a result of this characterization of WRIA 49 by the legislature we are required to follow section 202 of the act which will change the way we currently process what we term applications for water availability in the Okanogan. We will be required to: 1) work with DOE to review the existing watershed plan to identify the potential impacts of permit exempt wells, identify evidence based conservation measures, identify projects to improve watershed health; 2) invite a representative from each federally recognized Indian tribe that has a usual and accustomed harvest area within the WRIA to participate as part of the planning unit. The act contains a number of outcomes that I don't repeat in this memorandum. The revised watershed plan must be adopted by February 1, 2021.

(5) Until an updated watershed plan is approved and rules are adopted under this chapter or chapter 90.54 RCW, a city or county issuing a building permit under RCW 19.27.097(1)(c), or approving a subdivision under chapter 58.17 RCW in a watershed listed in subsection (2) of this section must:

- (a) Record relevant restrictions or limitations associated with water supply with the property title;
- (b) Collect applicable fees, as described under this section; (\$500.00)
- (c) Record the number of building permits issued under chapter 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW subject to the provisions of this section;
- (d) Annually transmit to the department three hundred fifty dollars of each fee collected under this subsection;
- (e) Annually transmit an accounting of building permits and subdivision approvals subject to the provisions of this section to the department;
- (f) Until rules have been adopted that specify otherwise, require the following measures for each new domestic use that relies on a withdrawal exempt from permitting under RCW 90.44.050;
- (i) An applicant shall pay a fee of five hundred dollars to the permitting authority;

(ii) An applicant may obtain approval for a withdrawal exempt from permitting under RCW 90.44.050 for domestic use only, with a maximum annual average withdrawal of three thousand gallons per day per connection.

(6) Rules adopted under this chapter or under chapter 90.54 RCW may:

(a) Rely on watershed plan recommendations and procedures established in this section to authorize new withdrawals exempt from permitting under RCW 90.44.050 that would potentially impact a closed waterbody or a minimum flow or level;

(b) Rely on projects identified in the watershed plan to offset consumptive water use; and

(c) Include updates to fees based on the planning unit's determination of the costs for offsetting consumptive water use.

Sub-section ii would seem to reduce the maximum amount of water for a permit exempt withdrawal for domestic use from the 5000 GPD allowed in statute (90.44.050) to 3000 gallons per day. Read in concert with section 8 it would seem the other water uses allowed in 90.44.050 are unchanged. (5,000 GPD for industrial; 1/2 acre of law/non-commercial garden; stock watering).

ESSB 6091 amends the planning enabling act and subdivision statutes as follows.

Planning Enabling Act RCW 36.70

For the purpose of complying with the requirements of this chapter, county development regulations must ensure that proposed water uses are consistent with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW when making decisions under 19.27.097 and 58.18.

RCW 58.17 Plats-Subdivisions-Dedications

RCW 58.17 is amended to read “If water supply is to be provided by a groundwater withdrawal exempt from permitting under RCW 90.44.050, the applicant's compliance with RCW 90.44.050 and with applicable rules adopted pursuant to chapters 90.22 and 90.54 RCW is sufficient in determining appropriate provisions for water supply for a subdivision, dedication, or short subdivision under this chapter.

Discussion

After of ESSB 6091 it seems clear that Okanogan County can follow WAC 173-548 in administering permit exempt wells in the Methow. The 2 CFS reserve remains in place as does the approach to withdrawals in the closed tributaries. We still have the outstanding discussions around commercial uses and what constitutes a “single use domestic”. Existing wells are vested only for purposes of building permits.

In WRIA 49 the characterization that the rule does not explicitly regulate permit exempt wells allows us to, at least in the interim of watershed plan revisions, impair instream flows. Read in total ESSB 2061 would imply we no longer have to follow

the restrictions found in WAC 173-549-070. ESSB 6091 requires the watershed plan in WRIA 49 be reviewed with an updated plan adopted by February 1, 2021.

OCC 20 was adopted in response to the Whatcom-Hirst decision. While ESSB 6091 would seem to provide new direction in terms of the relationship between permit exempt wells and in-stream flow our duty to examine permit exempt withdrawals for impairment to senior water rights would appear unchanged. How or if the process outlined in OCC 20 should be amended in response to ESSB 2061 will need additional review and discussion.