

CALL FOR ACTION

Hirst Update

County Council Emergency Action

As you all know, the legislature last week passed a legislative fix to the exempt well decision handed down by the Washington Supreme Court in

Hirst vs. Whatcom County. Those of us familiar with this matter celebrated the passage knowing what it meant for our members and our clients.

WELL . . . the Whatcom County Council has another idea. This development is particularly disturbing given the debates during the election cycle last year and several incumbents lamenting the fact that the *Hirst* decision happened at all.

Executive Louws has directed staff to bring forth an ordinance, with emergency effect, that will implement the law as passed by the legislature last week. It will have an immediate effective date and, theoretically, permits could be issued on Wednesday. Executive Louws has directed staff to follow the current statute!

However, Council members Rud Brown and Todd Donovan have asked the County Attorney to perform research on several items:

- 1) The ability of the County Council to enact an ordinance that would further limit the amount of water available from a well to something below 3,000 gal./day - the suggestion was 2,000 gallons or less;
- 2) The ability of the County Council to place meters on new wells; and
- 3) The ability of the County Council to conduct discussions on these matters outside the view of the public - waiver of the open meetings act.

Talking with other council members and members of the public present at the meeting, there are four votes on the Council to pursue this action.

The Council meeting will be next Tuesday, January 30, 2018 beginning at 7:00p.m. in the County Council chambers at 311 Grand Ave., Bellingham. If you disagree with this proposed action, I would suggest you be present.

I also urge you to contact the County Council via e-mail to express your thoughts:
council@co.whatcom.wa.us

If you are so inclined, Rud Browne's Facebook page is [HERE!](#); Todd Donovan's Facebook page is [HERE!](#)

Some suggested talking points:

- The *Hirst* case involved exempt wells that, according to Washington Dept. of Ecology, account for less than one-half of one percent of all water use in the State of Washington
- Nearly everyone outside Futurewise, the various tribes, and the Supreme Court agree that the *Hirst* decision was erroneous, both in the result and the application of otherwise clearly expressed statute and regulatory law.
- The legislature, by an overwhelming majority, passed a law written by Democrat legislatures with the assistance of Republican party members (truly a bi-partisan effort) passed the new law with emergency

effect to resolve the issues created by the Supreme Court in *Hirst*.

-The new law provides specifically that rural residents in Whatcom County are entitled to withdraw 3,000 gal./day on average on a yearly basis after paying a \$500 permit fee; metering is limited to a pilot project in counties other than Whatcom.

-The Council's suggestion of reducing the allotted water for Whatcom County residents and metering those wells is not only contrary to the express terms of the statute, but is a 180-degree departure from the expressed wishes of rural Whatcom County residents and other land use professionals who not only have suffered under the *Hirst* ruling these past 18 months, but did so while this County Council did nothing to address the situation but pass continuing moratoria on construction. Whatcom County was the ONLY county that did nothing to address the situation created by *Hirst*.

-This legislation resulted from many rural landowners, including many from Whatcom County testifying before the Council and the legislature about the hardships created by the *Hirst* ruling. The legislature, hearing those concerns, responded and made a decision *at the state level, with the full concurrence of the Governor's office and Dept. of Ecology*, what levels of water withdrawal were appropriate in Whatcom County. On what basis and on what evidence does the Council now believe that something more drastic is justified?

To say that this action is a slap in the face to the many Whatcom Citizens who worked so hard for a resolution, including many in our Association, is an understatement. To attempt to conduct further discussions about this topic in private outside the view of the very public impacted by the Council's proposed action is an insult and very likely illegal. Please contact the Council and let them know your thoughts on the matter.

If you have questions or need any assistance, please do not hesitate to contact me. I am also in contact with State REALTORS® about this matter and they are standing by to assist us in any way necessary.