



## Washington State Legislature

January 29<sup>th</sup>, 2018

Whatcom County Council  
311 Grand Avenue  
Suite 105  
Bellingham, WA 98225

Dear Whatcom County Councilmembers:

Since the passage of ESSB 6091, An Act Related to ensuring that water is available to support development we have serious concerns regarding comments from staff and councilmembers, which do not reflect the contents nor intent of the passed legislation. In response, we would like to address what specifically this legislation means for Whatcom County and WRIA 1 moving forward and clarify some of these concerns.

First, Section 101(5) specifically exempts all withdrawals from wells which have been constructed prior to the enactment of ESSB 6091 from the requirements of Section 202 which includes the new \$500 fee, reduction to 3000gal/day, title recording, and any changes that might come about as a result of the implementation of the plan adopted under RCW 90.82.

We believe that the County's most recent version of the emergency ordinance, which includes incorporating the language of Section 101(5), adequately addresses our legislative intent and appreciate county staff taking a second look at and amending the previous ordinance.

Secondly, we have heard various interpretations of what the planning process looks like under Section 202, including concerns that the county intends to re-write the existing RCW 90.82 plan which was adopted back in 2005. To be clear, ESSB 6091 does not allow the local planning units to re-write the existing plans.

Section 202(2) directs Department of Ecology to assist the initiating governments and the planning unit "...to review existing watershed plans..." (emphasis added) in order to identify three aspects:

- 1) potential impacts of exempt well use,
- 2) evidence-based conservation measures,
- 3) projects to improve watershed health.

Section 202(4)(e) allows for changes to the fees charged or for modifications to the water use quantities allowed. It is important to note that this subsection also allows for water use quantities to be *increased, not just decreased*, should the data and planning unity determine the 3000gal/day limit is too restrictive or does not

meet the nexus of actual impacts. Regardless, Section 202(4)(e) states that any changes to either the fee or the water use quantities outlined in Section 202(5) may only be implemented through the Ecology rule making process, which is regulated according to the Administrative Procedures Act as well as the Open Public Meeting Act. Any changes made must have an evidentiary basis to avoid potential “arbitrary and capricious” litigation.

Lastly and to reiterate, we agreed in negotiations to the expedited plan review process outlined in Section 202. It was well understood that the review process was not a rewriting, which would be met with resistance from various stakeholder groups, rather was simply a review to ensure certain outlined aspects were incorporated and included in the existing plans moving forward, and addressed the actual consumptive impacts from domestic uses of exempt wells projected over the next 20 years.

If you have any further questions or need more clarification on any aspects of this important issue, please feel free to reach out to our offices.

Regards



Rep. Vincent Buys  
42<sup>nd</sup> Legislative District



Sen. Doug Ericksen  
42<sup>nd</sup> Legislative District



Rep. Luanne Van Werven  
42<sup>nd</sup> Legislative District