



# ***Response to Hirst Decision on Private Wells***

by Peter Rimbos, GMVUAC Corresponding Secretary

On Monday, September 10, the Area Council held a *Special Event* at its monthly meeting with ~50 people in attendance. State and County responses to the State Supreme Court’s *Hirst* decision (ensure water is both legally and factually available for any proposed use) and their plans to implement the State Legislature’s solution (ESSB 6091) were presented and discussed with the Council members and public attendees. Guest speakers were: Stacy J. Vynne McKinstry—Streamflow Restoration Program Unit Supervisor, State Department of Ecology (DOE); Randy Sandin—Interim Assistant Director of Permitting, King County Department of Permitting and Environmental Review (DPER); and Josh Baldi—Director of the Water and Land Resources Division of the King County Department of Natural Resources and Parks (DNRP).

## **Questions**

Prior to the meeting our guest speakers were provided the following set of questions (the underlined answers are those which were discussed during the meeting):

1. Will a property owner be able to drill and use a private groundwater well? YES
2. Will a property owner have to prepare a Study to prove water is factually available? NO
3. Will limits be placed on the total number of building permits issued? NOT DISCUSSED
4. Will small public water systems (i.e., Group/Class B) still be allowed? YES
5. Could a single-user well be converted to a small public water system? NOT DISCUSSED
6. Will existing private groundwater wells be exempt from new requirements if the owner wishes to obtain a building permit to construct a non-water using addition (e.g., deck)? YES
7. Will minimum lot sizes be established affecting legal rights to use groundwater wells? NO, other than those already imposed by the King County Board of health

## **Protecting and Restoring Streamflows**

Ms. McKinstry discussed various aspects of DOE’s Water Resources program, whose mission is to “*manage water resources to meet the needs of people and the natural environment, in partnership with Washington communities.*”

In its *Hirst* decision the State Supreme Court ruled that Counties have an independent responsibility to ensure that new permit-exempt groundwater wells do not impair senior uses, including instream flows. The State Legislature subsequently passed ESSB 6091 in January 2018 which allows permit-exempt wells, adds county requirements to set fees and withdrawal limits, and establishes new watershed planning. This is now codified in RCW 90.94.

King County will develop Watershed Restoration and Enhancement Plans by Water Resource Inventory Area (WRIA). The greater Maple Valley area is in WRIA-8 (Cedar-Sammamish) where ESSB 6091 for each new permit-exempt well calls for a \$500 fee and an average annual 950 gal-

lons/day (gpd) withdrawal limit per connection (up to 5,000 gpd withdrawal limit per well), as well as the creation of a Watershed Restoration Enhancement Committee.

The Watershed Restoration Enhancement Committee must develop a plan by June 30, 2021, that identifies actions necessary to offset the consumptive impact from new permit-exempt wells, prioritizes offsets that are “*in-time and in-place*,” and meets a “*net ecological benefit*” standard (DOE will provide guidance, as needed). The Committee may recommend changes to both the withdrawal amounts and fees. DOE then will initiate rule-making where required and agreed upon and the plan will be implemented and mitigation project work initiated. The entire process will be open to the Public.

The State is providing \$300M for 15 years for a variety of water-restoration projects for the entire state to help in meeting instream flow needs.

Ms. McKinstry can be reached at: 425-649-7114; Stacy.vynnemckinstry@ecy.wa.gov; <https://ecology.wa.gov/Water-Shorelines/Water-supply/Streamflow-restoration>

## Questions and Open Discussion

Q. What will be the makeup of the Watershed Restoration Enhancement Committee?

A. Ms. McKinstry stated that in addition to County, Tribes, and Environmental interests, cities within each WRIA can be part of the Committee with each getting a seat (in WRIA-8 there are 28 cities of a 40 possible seats on the Committee).

Q. Wouldn't such a ratio on the WRIA-8 Committee give cities virtual veto power, even though they have “*no skin in the game*”?

A. Ms. McKinstry stated those kinds of issues must be addressed by DOE. Mr. Baldi mentioned the State has recognized there were “*drafting errors*” in the Legislation, as the Legislature's intent was to help rural communities by resolving the uncertainty after the *Hirst* Decision. Ms. McKinstry mentioned DOE might seek clarification from the Attorney General. Other possible legislative corrections are in the works.

Q. Who will evaluate water-restoration project proposals?

A. Ms. McKinstry stated DOE will decide how to allot those monies.

Q. What is “*instream flow*”?

Mr. Baldi stated “in-stream flow” is basically a “*water right for fish*.”

Q. Are you looking at the entire watershed?

A. Ms. McKinstry stated yes, DOE will be looking at the sub-basin level within each watershed, so tributaries will be looked at (e.g., Issaquah, Seven Mile, Holder, Carey, and Rock creeks).

Q. How does this apply to homeowners?

A. Mr. Sandin stated this only applies to new wells installed after January 18, 2018.

Q. What has King County done in the past?

A. Mr. Baldi stated King County in the past developed salmon-recovery plans, but not water-restoration plans. DNRP is hoping to receive credit for such past efforts as offsets for future water rights.

Q. It appears this entire issue needs a “*holistic*” look (i.e., Is there enough water for everybody and everything?), is that being done?

A. There seemed to be recognition of this, but no real response.

Q. Will there be a limit imposed on the number of new wells that can be drilled dependent on how much groundwater may be withdrawn in an area without impacting instream flows?  
A. This is an issue that the Committee will have to address and resolve.

There were many questions/comments regarding homeowners who may need to re-drill a well due to it running dry or other complications. The answers appeared mixed on this. Mr. Sandin stated that the legislation applies only to new groundwater wells constructed after January 18, 2018, so, new building permits associated with properties with *pre*-January 19, 2018, groundwater wells are exempt from compliance with the provisions of streamflow restoration plans. However, it was not clear if such an exemption applies to re-drilling a well in a different location.

There were many questions/comments regarding people who might be forced to hook up to a public water utility once such service reaches their neighborhood, especially those who could not afford it. Mr. Sandin mentioned that households should be able to use the existing appeals process if those mandatory hookups are not timely or would pose a substantial financial burden. All the speakers certainly recognized the problem.

It was clear the Area Council and the Public questions/comments provided many real-world aspects and considerations for both the State and the County to evaluate and resolve.

For an in-depth discussion of the *Hirst* Decision and its ramifications please see the Area Council's Environment Committee web page at: <http://gmvuac.org/environment/>

The Area Council proceeded to its regular business:

### **Growth Management Act**

The State Legislature has tasked the William D. Ruckelshaus Center to conduct a two-year project to create a "*Road Map to Washington's Future*." The purpose of which is to articulate a vision of Washington's desired future and identify additions, revisions, or clarifications to the state's growth management framework of laws, institutions, and policies needed to reach that future. Workshops will be conducted to understand how the framework aligns with, creates barriers to, and/or supports the desired future of the communities it is meant to serve: Thursday, September 20, Tukwila Community Center and Wednesday, September 26, Sallal Grange in North Bend—all from 12:30 - 4:30 PM. (see: <https://ruckelshauscenter.wsu.edu/a-roadmap-to-washingtons-future/>)

### **Committee Reports**

King County Comprehensive Plan (KCCP): Major updates proposed to be on an 8-yr rather than 4-yr cycle. Six Unincorporated Area Councils (UACs) and Associations submitted comments to the King County (KC) Council to generally support the KC Executive's proposed changes.

Growth Management: Proposed Adult Beverage Ordinance might need a multi-UAC response.

Transportation: Issaquah-Hobart-Ravensdale-Black Diamond Rd corridor study planning.

Environment: KC Solid Waste Management Plan (Executive Proposed) sent to KC Council.

Economic Development: Local Business Survey continues.

**Upcoming Monthly Meetings** (All monthly meetings are from 7 - 9:30 PM and held at the Fire Station located at the SE corner of SE 231st St & SR-169 intersection across from the Police Precinct. All members of the Public are welcome. Each meeting begins with an open Public Comment period.)

**October 1 — King County 2019/20 Biennial Budget** — Dwight Dively (Director, King County Office of Management and Budget) will discuss the King County 2019/20 Biennial Budget. (see:

<https://www.kingcounty.gov/depts/executive/performance-strategy-budget/budget/2019-2020.aspx>)

**November 5 — WSDOT I-90/Front Street Interchange Justification Report/Study — A “Special Event”** with Adam Emerson (Project Manager) from the Washington State Department of Transportation (WSDOT), King County Department of Transportation (KCDOT), and the City of Issaquah will discuss the interchange and impacts on traffic volumes on the Issaquah-Hobart Rd corridor. (see: <http://www.wsdot.wa.gov/planning/studies/i-90-front-street-interchange-justification-study>)

**December 3 — Tahoma School District (TSD) & Fire District (FD) 43 —** Tony Giurado (New TSD Superintendent) and Aaron Tyerman (Chief, FD 43).

### **Upcoming Event**

**October 20 - 21 — Area Council Annual Operating Model Train Show —** Saturday 10:00 AM – 5:00 PM; Sunday 10:00 AM – 4:00 PM at Gracie Hansen Community Center, 27132 SE Ravensdale Way in Ravensdale. Suggested Donation: Adults – \$5.00; Children (ages 3-11) – \$2.00. Operating Model Trains, Trains, and more Trains featuring creative operating layouts in most gauges. Bring your own trains (Lionel/HO/other) to run on our tracks. Participate in the LEGO contest and win your own LEGO prize. (see: <http://gmvuac.org/train-show/>)

Your Area Council serves as an all-volunteer, locally elected advisory body to King County on behalf of all rural unincorporated area residents living in the Tahoma School District. For more information, please visit: [www.gmvuac.org](http://www.gmvuac.org).