



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for  
**Environmental Law & Policy**

## **PERMIT-EXEMPT WELL INFORMATION & SOURCES** **May 2008**

Please see sources section at the end for citations and document URLs.

### **I. Background**

- “Permit-exempt wells” are wells that withdraw 5,000 gallons per day (gpd) or less to serve homes, small businesses, non-commercial lawns and gardens and livestock. RCW 90.44.050.
- Permit-exempt wells are unique in that they are exempt from water right permitting, including the usual assessment of impacts on the environment and other water users. Otherwise, they function as a normal water right (i.e., priority date, beneficial use)
- The permit exemption was created as part of the Ground Water Code, RCW Ch. 90.44, adopted in 1945. The original rationale for creating the exemption was the concern that rural homes need water supply, and 5,000 gpd would be a de minimus amount. As noted by the predecessor agency to the Department of Ecology:

“The Ground Water Code exempts from administrative control the withdrawal of public ground water for any purpose where the quantity is less than 5,000 gallons per day. This exemption was provided to relieve the small water user of the formalities and costs of obtaining water for his household and domestic needs. Five thousand gallons per day will supply ample water for household use for a family, their garden and lawn irrigation, and stock water. Such use of water may be treated as a vested right appurtenant to the land from which it is withdrawn.” Washington State Department of Conservation and Development’s Thirteenth Biennial Report of the Department of Conservation and Development, Oct. 1, 1944 – Sept. 30, 1946.

- Washington state does not know how many permit exempt wells exist, but estimates are at 500,000 wells or more.
- Ecology maintains a well log database and, since 1971, has required well drillers to file a notice of intent to drill or “start card.” Thanks to this database, we know that between 7,000 to 10,000 new wells are drilled each year, most of them permit-exempt.
- Because they are unregulated, when permit-exempt wells are drilled there is no assessment of impact of new water use on the environment.
- Similarly, permit exempt wells do not require an assessment of impacts on other water users.
- The Department of Ecology does not enforce against permit-exempt wells.
- Permit-exempt wells are not included in general stream adjudications.

## **II. Permit-Exempt Wells & Domestic Use**

- Developers use multiple permit-exempt wells to serve multiple homes, fueling rural sprawl.
- The number of houses that can legally use a single well is regulated by Department of Health standards. Previously DOH required that 800 gallons per day be available to each household, thus leading to creation of “six-pack” wells. In some watersheds, DOH is now allowing 14 (350 gpd) or even 28 (175 gpd) houses to utilize a single permit-exempt well. These numbers are design standards, not usage figures, and do not account for outdoor water use.
- In 2002, the Washington State Supreme Court held that the practice of using multiple exempt wells to serve a single parcel or project violates the state water code. Department of Ecology v. Campbell & Gwinn, LLC, 146 Wash.2d 1 (2002).

## **III. Permit-Exempt Wells & Counties**

- Counties are required by law to determine the adequacy of water supply before approving subdivisions and building permits. RCW 58.17.110 and 19.27.097. However, most counties do not assess whether new permit-exempt wells will harm other water users or the environment.

## **IV. Responses to Permit-Exempt Well Problems**

- Examples of citizen & tribal responses to exempt well concerns:
  - In September 2007 Aqua Permanente and CELP petitioned the Department of Ecology to close Kittitas County groundwater to new wells until more is known about ground-surface water connections. The petition was denied.
  - In April 2008, Squaxin Island Tribe filed a petition to amend the Kennedy-Goldsborough Instream Flow Rule (WAC Ch. 173-514) to close John’s Creek to new groundwater withdrawals. No resolution as of this date.
  - On March 14, 2008, the Snohomish County Hearing Examiner denied a preliminary plat approval for a 34-parcel/34-well subdivision proposal (Highbridge Estates).
- Examples of County responses to exempt well concerns:
  - In April 2008, the Department of Ecology and Kittitas County signed a Memorandum of Agreement that allows for continuing, unmitigated use of new permit-exempt wells for rural parcels.
  - In June 2007, San Juan County adopted Chapter 8.06 (regarding water wells and water systems) to impose investigation requirements on developers and standards for use of new wells.
  - For the last several years, Ecology convened the “Exempt Well Working Group” (county planners and health officials) which created proposals for state-county MOAs and other mechanisms. However, few counties appear to be interested in signing the agreement (Planning Director Survey, Draft MOA with DOE regarding Water Resource Issues (5-20-08)).

## V. Permit-Exempt Wells & Instream Flows

- Several recently adopted WRIA-based water management rules includes “reserves” for permit-exempt wells that subordinate instream flows to future out-of-stream water use, regardless of impact.
- See CELP publications “Permit-Exempt Wells and WRIA Rules” and “Case Studies in Permit-Exempt Wells.”
- The Walla Walla rule has established a mitigation requirement for new permit-exempt wells on parcels that have 1 or more houses per 10 acres. Ecology has issued guidance documents describing the mitigation program.

## VI. Permit-Exempt Wells & Stockwater

- In 2001, the Pollution Control Hearings Board ruled (in agreement with the Department of Ecology’s arguments) that the use of water in a commercial dairy was an allowable use for permit-exempt wells, but that the use is limited to 5,000 gallons per day. Dennis & DeVries v. Department of Ecology, PHCB No. 01-073, Summary Judgment Order (9-27-01).
- In 2005, the Attorney General issued an opinion stating that the quantity of water available for stockwatering from permit-exempt wells is unlimited, i.e., a commercial dairy or concentrated animal feedlot may use any amount of water without regulation.
- Department of Ecology is now issuing “advisory” letters via the SEPA process regarding use of exempt wells for commercial stockwatering operations.
- For more information, contact CELP.

## Sources

### Washington State Statutes

- Revised Code of Washington & Washington Administrative Code:  
<http://apps.leg.wa.gov/rcw/>.
- Groundwater Code: RCW Chapter 90.44; Surface Water Code: RCW Chapter 90.03
- RCW 90.44.050 (permit requirements and exemption).
- RCW 58.17.110 (local land use agency to determine water adequacy as part of subdivision approval).
- RCW 19.27.097 (local land use agency to determine water adequacy as part of building permit approval).

### Washington Court Cases

- Department of Ecology posts court decisions involving water at <http://www.ecy.wa.gov/programs/wr/rules/rul-home.html#caselaw>.
- Department of Ecology v. Campbell & Gwinn, LLC, 146 Wash.2d 1 (2002).
- Kim v. Pollution Control Hearings Board, 115 Wn.App. 157 (2003).

### Pollution Control hearings Board Decisions

- [www.eho.wa.gov](http://www.eho.wa.gov)
- Dennis & DeVries v. Department of Ecology, PHCB No. 01-073, Summary Judgment Order (9-27-01) .

#### Attorney General Opinions

- o <http://www.atg.wa.gov/AGOOpinions/default.aspx>
- o AGO 1992 No. 17 (Requirement of adequate water supply before a building permit is issued).
- o AGO 1997 No. 6 (Status in water rights system of exempt ground water withdrawals).
- o AGO 2005 No. 17 (Permit-exempt wells & stockwater).

#### Law Review Articles

- o Robert Caldwell, Six Packs for Subdivisions: The Cumulative Effects of Washington's Domestic Well Exemption, Environmental Law (1988).  
<http://www.encyclopedia.com/doc/1G1-54836590.html>
- o Jeffrey Myers, Water Rights Responsibilities for Counties in the Wake of 1997 AGO No. 6, Municipal Research Services Center of Washington (n.d.).  
<http://www.mrsc.org/Subjects/Environment/water/WAPAMY.aspx>
- o Kara Dunn, Got Water? Limiting Washington's Stockwatering Exemption to Five Thousand Gallons Per Day, Washington Law Review (forthcoming 2008) (contact CELP).

#### Articles

- o Greg Kirsch, Exempt Wells – Who's Stealing Our Water?, Whatcom Watch (Jan. 2008) [www.whatcomwatch.net](http://www.whatcomwatch.net).
- o Paul Pickett, Developers and the Water Hunt, South Sound Green Pages (June 2008) <http://www.oly-wa.us/greenpages/>.
- o Jonathan Martin, Big Growth, Big Fight Over Water, Seattle Times (Nov. 21, 2007) [http://seattletimes.nwsourc.com/html/localnews/2004026753\\_water21m.html](http://seattletimes.nwsourc.com/html/localnews/2004026753_water21m.html).

#### Other Publications & Websites

- o Center for Environmental Law & Policy, Permit-Exempt Wells & WRIA Rules (May 2008) [www.celp.org](http://www.celp.org).
- o Center for Environmental Law & Policy, Case Studies in Permit-Exempt Wells (May 2008) [www.celp.org](http://www.celp.org).
- o Department of Ecology, Kittitas County Water Petition Website:  
[http://www.ecy.wa.gov/programs/wr/cro/kittitas\\_wp.html](http://www.ecy.wa.gov/programs/wr/cro/kittitas_wp.html).
- o Department of Ecology Water Resources Advisory Committee (WRAC). Scroll to March 24, 2008 for Exempt Well Working Group documents  
<http://www.ecy.wa.gov/programs/wr/wrac/wrachome.html>.
- o Center for Environmental Law & Policy, Kittitas Water Petition website:  
<http://www.ecy.wa.gov/programs/wr/wrac/wrachome.html>.
- o Department of Ecology, Mitigation for Outdoor Water Use in the Walla Walla Basin (Aug. 2007) <http://www.ecy.wa.gov/biblio/0711032.html>.

#### For More Information:

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