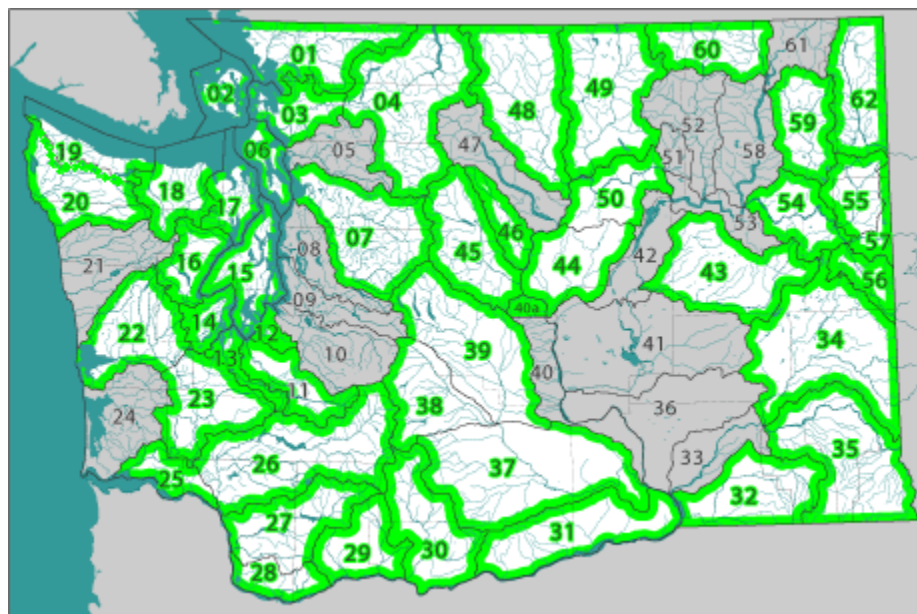




CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

SURVEY OF EXEMPT WELL TREATMENT IN WASHINGTON'S WRIA RULES May 2008



I. WRIA Rule Language

1. General Comments

For watersheds that have established water management rules, exempt wells are managed in two general schemes, almost no regulation and some regulation.

Group 1 describes those rules that do not specifically regulate exempt wells and essentially maintain the regulatory status quo. The following WRIs fall into this group: Nooksack (1)¹, Snohomish (7), Cedar/Sammamish (8), Green/Duwamish (9), Puyallup/White (10), Nisqually (11), Chambers/Clover (12), Deschutes (13), Kennedy/Goldsborough (14), Kitsap (15), Okanogan (49), and Little Spokane (55). However, some of these rules contain a qualifier for bringing exempt wells into the rule. These rules state "provided that, if the cumulative effects of numerous single domestic diversions and/or withdrawals would

¹ With the exception of Whatcom Creek basin, which is closed to exempt wells.

seriously affect the quantity of water available for instream uses, then only domestic in-house use shall be exempt if no alternative source is available." Also, most of these rules do not consider stockwater used for feed lots to be exempt from the rule.

Group 2 WRIA rules do consider the impact of exempt wells, but carve out a reservation of water against which future withdrawals are to be debited. Any water withdrawn from the reservation is not considered junior to the instream flow. These plans contain significantly more detailed regulations, monitoring and (sometimes) mitigation requirements. The WRIsAs comprising this second group are: Upper and Lower Skagit (3/4), Stillaguamish (5), Walla Walla (32), Wenatchee (45), Entiat (46), and Methow (48). Most of these rules acknowledge the impacts that exempt well use can have on water resources in the basin, but allow for continued future development notwithstanding.

2. Group 1 WRIA Rules

- **WRIA 1 Nooksack:** The rule does not apply to single domestic wells, including up to 1/2 acre lawn and garden irrigation and associated noncommercial stockwatering, with the exception that Whatcom Creek is closed to any further appropriations including exempt wells. The rule does have a provision that states "when the *cumulative* impact of single domestic diversions begins to significantly affect the quantity of water available for instream uses, then any water rights issued *after* that time shall be issued for in-house use only, if no alternative source is available."
 - This rule allows for future restriction of exempt well water use once a determination is made that the cumulative effect is significantly affecting surface water quantity.
- **WRIA 7 Snohomish:** This rule does not apply to single domestic exempt wells, nor does it contain the qualifier regarding cumulative impacts. It does however exempt domestic "inhouse" use for a single residence. The rule also exempts stockwater except for "feed lots."
- **WRIA 8 Cedar/Sammamish:** Same as WRIA 7.
- **WRIA 9 Green/Duwamish:** Same as WRIA 7.
- **WRIA 10 Puyallup:** Same as WRIA 7.
- **WRIA 11 Nisqually:** The rule does not apply to domestic use for a single residence "provided that, if the *cumulative* effects of numerous single domestic diversions and/or withdrawals would seriously affect the quantity of water available for instream uses, then only domestic in-house use shall be exempt if no alternative source is available."
 - The wording in this rule seems to leave open the possibility that current exempt well use could be restricted to inhouse use if cumulative effects impact instream uses. However, this subsection states that the rule will not "affect existing rights."
 - This rule also does not apply to stockwater unless for a "feed lot."
- **WRIA 12 Chambers/Clover:** Same as WRIA 7.
- **WRIA 13 Deschutes:** Same as WRIA 11.
- **WRIA 14 Kennedy/Goldborough:** Same as WRIA 11.
- **WRIA 15 Kitsap:** Same as WRIA 11.
- **WRIA 22/23 Chehalis:** This rule closes certain streams to further appropriation, but wells for domestic and "normal" stockwatering are exempted.
- **WRIA 49 Okanogan:** This rule does not apply to "single domestic use and stockwatering use shall be exempt from the provisions established in this chapter except that, when the *cumulative* impacts of numerous domestic diversions begins to significantly affect the quantity of water available for instream uses or the

maintenance of lake levels, then any water rights issued after that time shall be issued only for in-house use if no alternative supply is available.”

- Does not carve out a feed lot exception.
- **WRIA 55 Little Spokane:** Does not refer to exempting domestic wells specifically. It creates a surface water reservation and creates a priority system as to uses within the reservation with domestic use as a higher priority.
 - It also contains stream closure section closing surface water appropriations, but exempts domestic wells used for a residence or stockwater, but excludes feedlots.

3. Group 2 WRIA Rules

- **WRIA 3/4 Upper and Lower Skagit:** This rule creates a reservation of water for future out of stream uses. The total reservation for the Upper Skagit is 1,938,816 gallons per day. However, all appropriations in each Upper Skagit subbasin must be from ground water only and are cumulatively limited to a maximum average consumptive daily use of 25,851 gallons per day in each tributary basin.
 - The reserve allows for uses from both surface and groundwater sources and includes exempt wells.
 - If a water user can show the use is non-consumptive, can be mitigated by a scientifically sound mitigation plan, or will not impair a senior user or withdraw water from a closed basin, then the use is allowed.
 - Domestic, municipal, and commercial/industrial water supply reservation. A reservation of a maximum average consumptive daily use of 9,370,208 gallons per day of water is available for domestic, municipal, or commercial/industrial water supply not subject to the instream flows.
 - The use of the reserved domestic, municipal, and commercial/industrial water reservation also includes permit exempt wells
 - However, exempt wells for a single domestic residence are not required to meter their water use
 - All other users must meter their use
 - Once the reservation is “used up” the basins will be closed to all new water use including exempt wells.
 - Future stockwater rights, including exempt wells for stockwatering purposes, have a reservation of 324,000gpd.
 - Stockwater exempt wells do not have to meter
- **WRIA 5 Stillaguamish:** This rule allocates 5cfs for a reserve and then separates the total into a North and South Fork of the Stillaguamish River.
 - The reserved water shall be for groundwater uses exempt from a water right permit application. This reservation is for either single or small group domestic uses.
 - Metering is not required for single domestic use, but Ecology reserves the right to require metering and reporting of water use “if more accurate water use data is needed for management of the reservation and water resources in the area of the reservation.”
 - Users of permit exempt wells that are not single domestic users “shall be required to install and maintain measuring devices, in accordance with specifications provided by the department, and report the data to the department.”
- **WRIA 32 Walla Walla:** The rule closes groundwater withdrawals from the “gravel aquifers” due to hydraulic connection between the aquifers and the over

appropriated surface water in the basin. However, the rule allows an exception from this closure to exempt wells.

- Provisions allowing for exempt wells are as follows:
 - Permit exempt withdrawals for purposes other than stockwatering may occur in the area that drains to the Snake and Columbia rivers (Burbank area)
 - Permit exempt withdrawals may occur in areas with a zoned density equal to or more dense than one residence per ten acres (high density areas). However, future withdrawals from the gravel aquifer in the high density areas shall be limited to only domestic uses and outdoor uses, such as irrigation of lawn and noncommercial garden, outdoor washing, etc. Outdoor uses for the purposes of this subsection do not include stockwatering. The total amount of water that may be withdrawn shall not exceed one thousand two hundred fifty gallons a day (1,250 gpd) for any one residence or for multiple residences that are part of a group use in addition to the limitations of 1,250gpd of this subsection, the combined maximum water withdrawal for the development shall not exceed five thousand gallons per day (5,000 gpd).
 - Permit exempt withdrawals for purposes other than stockwatering may occur in areas where the zoned density is less than one residence per ten acres
 - Permit exempt withdrawals for stockwatering may occur as long as the water use from an exempt well in the gravel aquifer does not exceed: Seven hundred gallons per day (700 gpd) on a legal lot of record size of ten acres or less; two thousand five hundred gallons per day (2,500 gpd) on a legal lot of record size between ten and twenty acres; or five thousand gallons per day (5,000 gpd) on a legal lot of record size twenty acres and greater. Feedlots or other activities not related to normal grazing land uses are not considered stockwatering for the purpose of this chapter.
 - All withdrawals from the gravel aquifer in an area zoned for high density must install a meter, including for stockwatering.
 - All new permit exempt wells in the gravel aquifer in an area zoned for high density must provide water-for-water mitigation for outdoor water use from May 1 to November 30. This mitigation plan goes into effect May 1, 2008. Any outdoor water use occurring prior to mitigation being in place is illegal.
 - If Ecology, in consultation with the Umatilla's and Walla Walla and Columbia counties, determines the impacts of outdoor water use in the high density areas cannot be fully mitigated it shall issue a cease and desist order.
- **WRIA 45 Wenatchee:** The rule establishes a 4cfs reservation of water for future use. Permit exempt wells are included in the uses available under the reserve.
 - The reservation is limited to the following areas;
 - Chiwawa River near Plain up to 0.5 cfs
 - Nason Creek near mouth up to 0.16 cfs
 - Wenatchee River at Plain up to 1.0 cfs inclusive of actual water use associated with the subbasin reservations for Chiwawa and Nason Crekk
 - Icicle Creek near Leavenworth up to 0.1 cfs
 - Peshastin Creek at Green Bridge up to 0.1 cfs

- The reservation is both surface and groundwater
- The rule also states that if a “future development of groundwater measurably affects” surface water that is closed by the rule then these groundwater rights will also be subject to the conditions placed on surface water.

Conclusion

The attempt to control exempt wells in watersheds that have gone through plan approval and rulemaking is far from satisfactory. The Group 1 WRIA rules barely considered the impact of exempt wells, although several did recognize the potential future cumulative impact of these wells. This recognition of future harm, however, does little to protect instream flows and senior rights today. Further, most of the rules do not require metering of exempt wells, making a determination of cumulative impact difficult to ascertain.

The Group 2 WRIA rules acknowledge that water resources are limited and that exempt wells likely negatively impact the quantity of water available. However, these rules also put off effective regulation of exempt wells for the future. Most do not require metering for exempt wells, which makes determining how much of the reserve is left pure guesswork. To allow for exempt wells to withdraw water from a finite amount of water in the reservation but not require a proper accounting is a poor management technique.

For information about the Skagit and Methow watersheds, see CELP case studies on the Skagit

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