

Informational Meeting

10/19/2016



Impact from WA Supreme Court Decision (Whatcom County v. Hirst)

Agenda

- Background
 - Historical Permitting Requirements
 - Whatcom County v. Hirst
- New requirements for Counties
- Legal Water Availability in Spokane County
 - Basins with out instream flow
 - Basins with instream flow
- Building permits in the future



Definitions

- Physical Availability – The actual presence of water in a quantity that meets the needs of the proposed use
- Legal Availability – a new water use will not impair an established water use.
- Permit Exempt Well – A well that is not required to go through the formal Ecology permitting process but establishes a formal water right.
- Instream Flow – a minimum flow established in Washington Administrative Code (WAC) that is a water right equal to any other water right.



Historical Requirements for Counties

- In 1992 as a result of GMA Counties began requiring building permit applicants to demonstrate they had water for their proposed use.
- The requirement was interpreted to mean physical availability. So a pump test, bacteria test and nitrate test was required.
- It was assumed that the Department of Ecology determined legal availability



New Requirements for Counties

- As a result of Supreme Court Decision in 2011 the duty to establish if a building permit would be served by a legal water source was put on Counties. (Kittitas County v. Eastern WA Growth Management Hearings Board)
- Counties relied on the Department of Ecology to tell them if water was not legally available.
- If Ecology did not provide information to Counties, water was considered legally available.



New Requirement for Counties

The Hirst Decision:

1. Affirmed that Counties have the duty to evaluate legal availability of water before issuing a building permit;
2. Held that Counties, not Ecology, must make the determination; and
3. Counties cannot rely on Ecology's opinion of the legal availability of water for building permits.



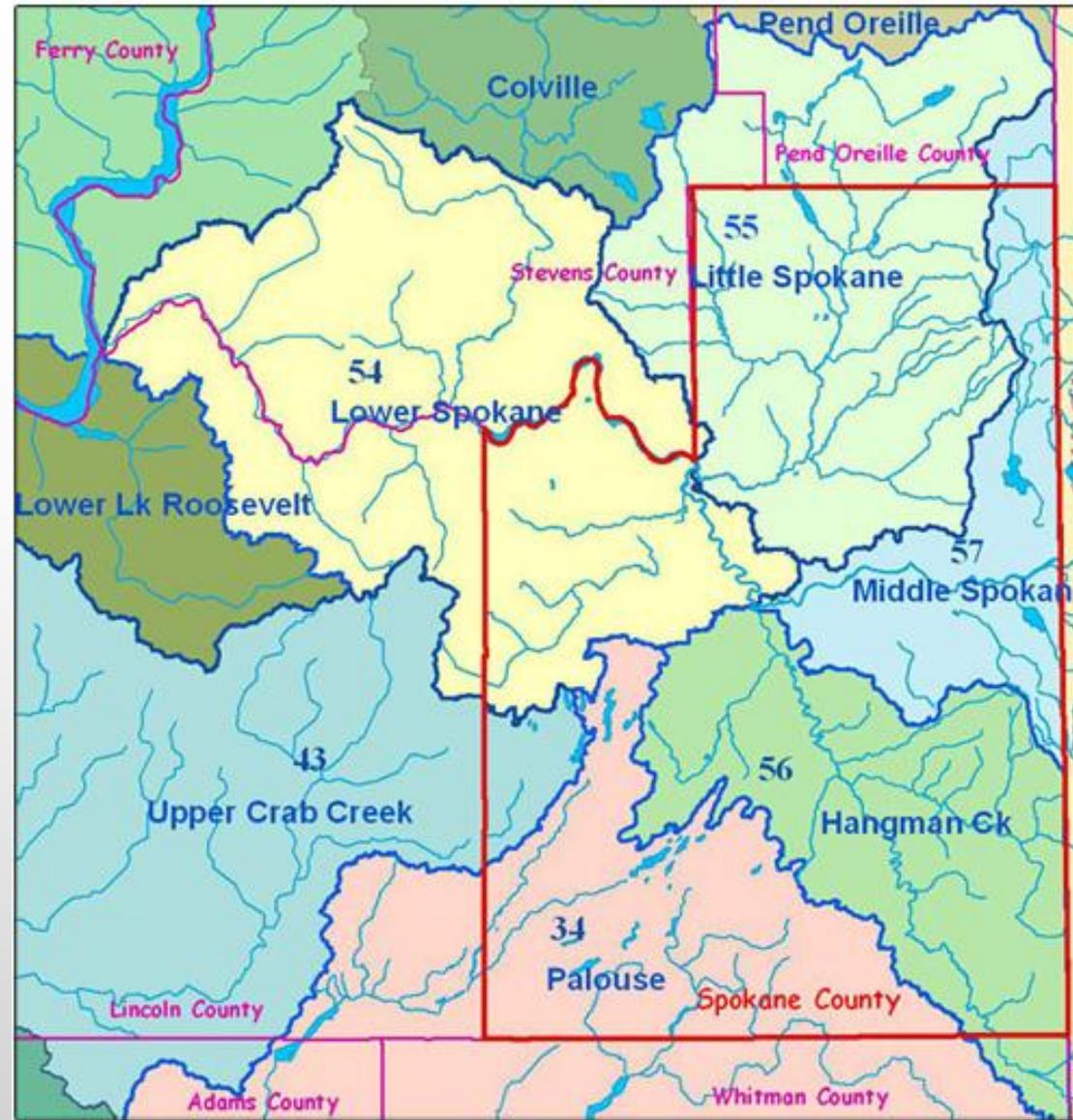
New Requirements for Counties

- At the time of new building permit applications Counties must determine if a new building permit will establish water use that will impair a senior water right.
- Presence of a well on a property does not necessarily constitute a right to use groundwater for a specific purpose.



Legal Water Availability in Spokane County

- Basins without instream flow rules
 - Hangman Creek
 - Palouse
 - Lower Spokane
 - Upper Crab Creek
- Basins with instream flow rules
 - Little Spokane
 - Middle Spokane



Basins without instream flow rules

- The applicant must provide an independent evaluation to County that demonstrates the new use will not impair any senior water rights.
- The County is currently determining the requirements for the evaluation.



Basins with Instream Flow Rules



WRIA 55 - Little Spokane River Watershed



Basins with Instream Flow Rules

- An instream flow rule is a water right with a priority date.
- An instream flow is considered impaired when river flows are below the minimum flow.
- The Supreme Court determined in 2000 that water rights junior to an instream flow rule could not impair the instream flow.
- Also in 2000 the Supreme Court determined that groundwater withdrawals impairs surface water flows.
- The Hirst decision expanded these holdings to permit-exempt wells.



Basins with Instream Flow Rules

- The Little Spokane River has an instream flow rule (WAC 173-555) established on January 6, 1976.
- As of 2009 in 27 out of 41 years the Little Spokane fell below the minimum flow
- A new water use established in the Little Spokane River Basin will most likely impair the senior instream flow water right.



Building Permits for the Future

- *RCW 19.27.097. Building permit application—Evidence of adequate water supply—Applicability—Exemption.*
 - (1) *Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building*
- *“The Growth Management Act (GMA– RCW 36.70A) requires counties to ensure an adequate water supply before granting a building permit or subdivision application... and requires counties to assure that water is both factually and legally available before issuing building permits”*



Building Permits for the Future

- Acceptance of counter complete applications through October 26th
- Possible options being explored
 - Water Bank
 - Cisterns



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State Government Officials Representing Spokane County



Jay Inslee
Washington State
Governor (D)



Andy Billig
3rd District Senator (D)



Mike Padden
4th District Senator (R)



Michael Baumgartner
6th District Senator (R)



Brian Dassel
7th District Senator (R)



Mark Schoesler
9th District Senator (R)



Timm Ormsby
3rd District
Representative (D)



Bob McCaslin
4th District
Representative (R)



Jeff Holy
6th District
Representative (R)



Joel Kretz
7th District
Representative (R)



Mary Dye
9th District
Representative (R)



Marcus Riccelli
3rd District
Representative (D)



Matt Shea
4th District
Representative (R)



Kevin Parker
6th District
Representative (R)



Shelly Short
7th District
Representative (R)



Joe Schmick
9th District
Representative (R)



Questions?

