Hirst history and solution (Senate Bill 6091)

Background

On October 6, 2016, the Washington State Supreme Court issued a 5-1-3 decision in *Whatcom County et. al. v. Western Washington Growth Management Hearings Board* (GMHB), known as *Hirst*, that upholds the GMHB position that local governments have an independent responsibility to ensure water availability for land use decision in a county – not the Department of Ecology (DOE). Whatcom County could no longer authorize new building permits reliant on water from a well.

The on-paper water shortage was based on rivers not meeting in-stream flow requirements all year round. However, we know those instream flow limits were set at levels that were ideal for fish, ***not historic levels***, so the limits are not going to be met year round.

For over a year DOE, the governor's office and several legislators discussed proposals that would allow counties to rely on DOE's rules to manage water and authorize new wells to be built. A solution did not pass in the 2017 legislative session.

Senate Bill 6091 is a Democrat bill very different from what Republicans originally discussed as a fix. However, with strong input from House Republicans during negotiations, the bill ended up much better for some districts than it was in its original form. The legislation passed this legislative session and was signed into law on January 19, 2018.

House Republican thoughts on Hirst

"Why tie Hirst to the capital budget? If we hadn't, there would be no Hirst solution. There was no urgency or desire to fix Hirst from the majority party."

"Seattle and other urban areas get to grow and use as much water as they want while rural property owners can't drill a well? The inequity of this is staggering."

"The Hirst decision isn't about the environment; it's about your pocketbook."

"We need to prioritize families before fish; private property rights before more state government rules and regulations."

"Your right to build a home on your property is more important than government's efforts to control every drop of water underground."

What Senate Bill 6091 does

- It "grandfathers in" existing wells as a legally adequate water supply to obtain a building permit throughout the state.
- It allows the counties to rely on the DOE to manage the water *without the county doing an independent analysis of water availability* before issuing building permits.
- It implements two new planning processes in certain areas of the state that did not exist before, and includes restrictions on water usage for domestic purposes.
- It requires $300 million over 15 years in bonds for projects in those restricted areas to address stream flow issues.

Questions and answers

Are there any requirements to meter wells?

- There will be two pilot projects to meter wells in the Kittitas and the Dungeness where they already allow wells to be metered.

Does the bill include anything to deal with the *Foster* decision?

- Part 3 creates a joint legislative task force to prepare recommendations by November 15, 2019 to develop a mitigation sequencing process and scoring system to address impacts of the *Foster v. Department of Ecology* decision.
- There are five Foster-related pilot projects to be implemented and monitoring for 10 years.

Does the bill include funding for instream flow and watershed planning projects?

- **YES.** The bill includes **$300 million for projects** over 15 years financed with bonding through June 30, 2033 to be used in the impacted water resource inventory areas.

Is water used for fire control buffers included in per-gallon limits for droughts?

- **NO.** Even if there are per-gallon limits for droughts, water can be used to maintain fire control buffers.

Are there changes to the Skagit and Yakima in this bill?

- **Not really,** however there is clarification as to what standards any possible restrictions will be based upon, especially in the Yakima (Section 101(1)(c).