TO ALL COUNCILMEMBERS:

Additional Information
Letter to Legislative Representatives and Amended Proposal (see date at bottom) **Clean and Strike**

For

**December 6, 2016**

SCOTW Special Presentation and Discussion #1 and Public Hearing #1

**AB2016-309A**

1. Ordinance adopting interim amendments to the Whatcom County Comprehensive Plan and Whatcom County Code Title 15 (Buildings and Construction), Title 20 (Zoning), Title 21 (Land Division Regulations), and Title 24 (Health Code) relating to water resources (**related legislation: see ordinance below**) (AB2016-309A)

**Pages 618 - 649**

**DISTRIBUTED: December 5, 2016**
**TIME: 9:56 AM**
**SUBMITTED BY: Rud Browne**
December 6, 2016

Senator Kevin Ranker
P.O. Box 40440
Olympia, WA 98504

Rep. Kristine Lytton
P.O. Box 40600
Olympia, WA 98504

Rep. Jeff Morris
P.O. Box 40600
Olympia, WA 98504

Senator Doug Ericksen
P.O. Box 40442
Olympia, WA 98504

Rep. Vincent Buys
P.O. Box 40600
Olympia, WA 98504

Rep. Luanne VanWerven
P.O. Box 40600
Olympia, WA 98504

Re: Pilot program to use seasonal storage of surplus water to mitigate the net consumptive impact of permit-exempt domestic wells

Dear Members of the 40th and 42nd Districts Legislative Delegations:

As you are no doubt aware in the Whatcom County vs. Hirst, Futurewise, et al. decision, the Supreme Court said the county must ensure that new permit-exempt uses do not impair instream flows and senior water rights when making water availability determinations prior to granting new building permits. As a result Whatcom County has been forced to stop the issuance of most new building permits. Both Spokane and Pierce counties have also felt the need to introduce new restrictions on building permits. Depending on how broadly the recent ruling is applied most other counties may ultimately be forced to restrict or curtail issuing most building permits as well.

The new rules have affected a large number of rural parcels which is creating significant financial hardship for many county residents who had purchased property to live on or for other purposes such as funding their kids’ college tuition or their retirement. Contrary to some opinions few if any, of those affected are experienced land speculators that could have been expected to anticipate the risk of loss caused by this situation.

We recognize that water availability is complex issue that will likely take considerable time and resources to navigate however we are contacting you to ask you to immediately sponsor legislation and approve funding as outline on page 6 of the attached pilot proposal.

We believe that this solution should immediate relief for those impacted while meeting the requirement that all new withdrawals from permit-exempt wells are mitigated fully.

Sincerely,

Barry Buchanan, Chair
Whatcom County Council

Cc: Whatcom County Councilmembers
Jack Lowes, Whatcom County Executive

Attached: Proposal for Seasonal storage of surplus water to mitigate fully the net consumptive impact of permit-exempt domestic wells
Seasonal storage of surplus water to mitigate fully the net consumptive impact of permit-exempt domestic wells

Rud Browne
Whatcom County Councilmember – At-Large
RBrowne@co.whatcom.wa.us

DRAFT 2016-12-02

Background

A recent Washington State Supreme Court ruling has changed how counties review permit-exempt domestic wells for building permits under the Growth Management Act (GMA).

In the Whatcom County vs. Hirst, Futurewise, et al. decision, the Supreme Court ruled that the county failed to comply with the GMA’s requirements to protect water resources. The ruling requires the county to make an independent decision about legal water availability. The Court also said the county must ensure that new permit-exempt uses do not impair instream flows and senior water rights when making water availability determinations prior to granting new building permits. (for more detail see www.ecy.wa.gov/programs/wr/nwro/hirst.html)

Under the new rules a large number of rural parcels have been affected which is creating significant financial hardship for many county residents who had purchased property to live on or for other purposes such as funding their kids’ college tuition or their retirement. Contrary to some opinions few if any, of those affected are experienced land speculators that could have been expected to anticipate the risk of loss caused by this situation.
In response to the Supreme Court decision Whatcom County has been forced to enact an emergency moratorium prohibiting the filing, acceptance and processing of new applications for uses that rely on permit-exempt groundwater withdrawals for water supply in most of the county. The exception is applications that provide documentation that there is an adequate and legal water supply to serve the proposed use in the form of:

1. A water right from Ecology, or
2. A letter stating the ability to provide water from a municipal or public water purveyor not dependent on a permit-exempt well, with adequate water rights issued by Ecology, or
3. A rainwater catchment system approved by the Whatcom County Health Department.

This document is presented as exploration of a fourth possible option, the seasonal storage of surplus water that is later used to fully mitigate the potential impact of domestic well use in a way that does not affect more senior water rights or instream flows. This water would come from one or more sources including: (a) winter withdrawal of ground water from an aquifer that is expected to be fully recharged before springtime, (b) stormwater runoff from driveways and other impervious surfaces, and (c) rainwater collection from roofs.

**Concept**

Whatcom County has an abundance of water, unfortunately while we have more than we need in winter we don’t have enough in summer. The average gross daily domestic ground water consumption for residents is estimated to be 65 gallons per day or less. The best available science suggests that between 80% and 90% of rural ground water consumed for indoor domestic use is actually returned to the soil through the homes septic system. The recent ruling requires that any and all consumptive uses must be completely mitigated (drop for drop) and that the mitigation must occur at the time of use.

Exhibit A provides an estimated average Gross consumption for a family of four of 260 gallons per day, Net consumption at 208 gallons per day which calculates that a Deficit of 52 gallons per day needs to be mitigated.

This proposal demonstrates how homeowners could store surplus water during the winter and use it to fully mitigate their net consumptive use at other times of the year in a way that would comply with both the new court ruling and the physical constraints imposed by a physically finite water supply.

**The components of the solution (see Exhibit B):**

**Permit-exempt well**

In areas where a public water supply is unavailable a permit-exempt well (A) would continue to be used to provide the primary potable water source for the home. Well water can normally be used as potable water source provided it meets bacteria and other containment standards. Whereas State health laws require that rainwater must be treated for bacteria in order to be a potable water source and trucked water may not be used at all as a primary potable water source.

The first difference between this proposal and current practice is that unlike existing unmetered permit-exempt wells previously used to provide water in support of building permits new wells would have meters that measure consumption on a daily basis throughout the year. The second difference is that while normal net daily indoor domestic water consumption is quite small due to the majority of the water being returned to the ground through the septic system, this proposal acknowledges recognizes it is not zero and provide for full mitigation as required by recent court rulings by reducing the net consumptive use to zero.
Distribution from well

Water from the well would travel through two distribution lines:

- The first line would provide potable water to the residence. This line would have a meter (B) that would collect data on the Gross amount of water being used for domestic use.
- The second line would provide metered (C) water to the mitigation tank (D) and the optional outdoor garden tank (E). However water would only be allowed to pass to the storage tanks when the computer (F) determines that seasonally surplus water is available and it opens valve #1 (G)

Re-infiltration of used water

After water is used in the house most of it would pass into the septic tank as normal and ultimately the septic drain field (S). A third meter (H) would be placed on the pipe from the septic tank to the drain field to determine the Net amount of water being returned to the ground. The water "Deficit" amount (Gross – Net) that needs to be mitigated would then be calculated by the computer every 24 hours. (As water from the septic tank may have a small amount of residual solids the meter may need to be different than the other three, alternatively it may be possible to use a positive displacement pump to provide metering data.)

Mitigation

Once the computer (F) has calculated the daily water Deficit that needs to be mitigated it will open valve #2 (I) on the Mitigation tank (D) and will allow mitigation water to enter the septic drain field until the fourth meter (J) confirms that the Deficit amount has been sent to infiltrate back into the aquifer as mitigation. Alternatively if is determined that it would be preferable not to allow the mitigation water to mix with the normal septic drain field water supply a separate, smaller mitigation water infiltration field could be used somewhere else on the property. This preserves instream flows and avoids conflict with other senior water rights.

The end result will be a net indoor domestic groundwater consumption of ZERO

Mitigation water supply

Each home would have one or more Mitigation water tanks (D) with a collective capacity great enough to store enough water to mitigate their entire years estimated water Deficit (current estimates suggests this would be about 20% of their average daily Deficit for a nine month period however actual usage data from the pilot program may prove this to average 10% or less).

The Mitigation water does not need to meet potable water standards therefore the Mitigation tank can be filled from one or more sources:

1. Stormwater collected from driveways and other impervious surfaces (M). An added benefit is that this water and the contaminates would be directed into the septic drainfield during the drier months rather than enter streams during the wetter months as it currently does (this may need to be limited to perhaps 1,000 sq. ft. per occupant to avoid creating a perverse incentive to increase impervious surface areas).
2. Rainwater from roofs (K)
3. Surplus winter ground water from the permit-exempt well (G)
4. Finally trucked water (in the unlikely event that the other three sources are inadequate)

Garden water tank

At the homeowners option each home could also have one or more Garden water tanks (L). The capacity would be determined by the homeowner. This water would normally be used to provide water for garden use. While the Garden tank could be connected via a one way valve to the Mitigation tank to allow the Garden water
to be used as a backup Mitigation water supply the Mitigation water would not be allowed to flow into the Garden tank to prevent the Mitigation tank being drained accidently.

**Homeowners Computer**

The Computer (F) would likely be a modified smart phone running a mobile application. The reasons for this are as follows:

- Smartphones are robust low cost self-contained hardware platforms with inbuilt displays, keyboards, battery backup power and radios (Cellular, Wi-Fi and GPS). Even obsolete models could be used effectively.
- Provides easy connectivity to a central computer via the homeowners Wi-Fi or the Cell carriers data network (low use cellular data connections typically cost $10 a month or less)
- Intuitive, familiar user interface (everyone knows how to use a phone)
- Application software can be updated easily by downloading it from the phone’s “App Store”
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- Serial interface can be used to connect to the data bus/ports to read the meters and control the valves

Computer software would be written to:

- Receive information from the central computer as to what dates each season Storage water may be pumped to the Mitigation and Garden tanks
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- Provide the above information on the phones display for the phone owner to see
- Email reports to the user as to consumption levels to help them in their personal conservation efforts.

**Central computer**

A central computer that is managed by either the Department of Ecology or the County would:

- Tell the homeowners computer when water can be pumped for storage
- Collect daily information from each device
- Verify that the consumption and mitigation numbers make sense
- Initiate alerts for improper events such as:
  o Homeowners system has gone offline
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- Provide researchers with actual water use data such as:
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**System summary**

The total system as outlined above would require:

- 1 Cell phone and charger
- Interface box between Cell Phone, meters and valves
- 3 “clean” water meters (B, C & J)
- 1 “dirty” water meter (H)
- 2 valves
- 1 or more water tanks
- Piping

**Costs**

Initial rough estimates place the costs, in quantity as follows (these are still a work in progress):

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**Control system Subtotal** 1,380

5,000 Gallon Water tanks (installed) 2 7,500 15,000

Possible expansion/enhancement of drainfield if required (not costed but would be moderate)

**Preliminary estimate for a 4 person household** $16,380

It needs to be acknowledged that this proposal would add extra expense above and beyond the cost of installing just a well, however the cost of the well and mitigation system would likely still be less than the combined cost (water share, extension of service line to property and connection charges) for a homeowner to hook up to an existing private water system if available.
Legislative requirements

The development and piloting of this proposal will likely take three or more seasons of active data collection in order to prove the concept and refine the computer models necessary to calculate exactly the annual start and end dates that surplus water is available. The best way to generate the data needed to build the models is through the active participation of landowners who are affected by the new rules.

Therefore it is suggested that the Washington State Legislature amend the current statues to accept that landowners who agree to cooperate and participate in this pilot project will be deemed to have fully mitigated their net consumptive water use and may rely on a permit-exempt well as their primary domestic water source. If the pilot program results in effective solutions being developed the landowner would be expected to adopt them. If for some reason the solutions prove to be ineffective participating landowners would be grandfathered in under the rules in place prior to the moratorium.

Initial Funding

The impact created by the recent Supreme Court rulings is not limited to Whatcom County; it affects most undeveloped rural property across the state. Therefore logically the cost to develop and pilot this concept should be funded from state rather than county funds.

As the residents of Whatcom County are the ones most immediately impacted it would seem reasonable that they should be the ones to be offered the first opportunity to participate in the pilot as a means to achieve compliance with the recent rulings.

While further determination needs to be made as to the ideal size and length of the pilot program, given the urgent need to find a solution we should start by offering anyone building a house in Whatcom county over the next three years the opportunity to participate. The state would reimburse reasonably incurred costs for the necessary infrastructure to be incorporated within their building plans in exchange for the landowner agreeing to: (a) providing the data necessary to properly evaluate and refine the concept, and (b) to continue to use the final working system in perpetuity unless the state later determines the solution is unnecessary or ineffective.

Conclusion

While this proposal may be more complex than some others under consideration it respects and responds to the reality than we have finite water resources throughout the state which require that we mitigate seasonal overconsumption of water with actual water from other sources.
SEASONAL USE OF EXEMPT WELLS

Step 1  Number of users (minimum 2):
Gallons per day/person:  
(50g/person/day min, recommend 85)*  
Gallons per day used: (users x gpd)  

Step 2  Estimated net percentage of water consumed  
(range 10% to 20%)  

Step 3  Days per year Exempt wells impacted by Senior Rights or In-Stream Flow rules  
Start date  1-May  
End Date  1-Nov  

Step 4  Calculate Net impact in Gallons per season  
Gross water use during restricted period in Gallons (average gallons per day consumed x days impacted)  
Net water use during restricted period in Gallons (gallons used x net percentage consumed)  
Size of seasonal storage tank required  

Step 5  Use of Exempt well  
Allow metered domestic use of exempt well year round an average daily rate not to exceed the storage systems capacity to mitigate  
In this example as the average daily usage rate would 260 US Gallons therefore the seasonal storage required would be 10,000 US Gallons (Rounded up)  
The well, stormwater and rainwater can be used to fill the storage tank in mid winter when there is excess surface water  

Approximate price per US Gallon to store water in a tank(s), (includes installation)  
Cost of sufficient tank capacity to store water (total storage x cost per Gallon)  

Step 6  Metering proposal  
DEDUCT The gross amount of metered water pumped from the well per day to provide Potable water is:  
ADD back the amount of metered water leaving septic system for introduction to drain field each day is:  
ADD back the net water consumed is automatically calculated and released from storage into the drain field to mitigate:  

Total net impact on senior water rights such as seasonal irrigation rights (adjusted daily):  
Total negative impact on minimum instream flow levels (adjusted daily):
FLOW CHART OF SEASONAL USE OF EXEMPT WELLS CONCEPT

A. ALL Water from Exempt Well is METERED

B. COMPUTER controlled valve ONLY allows water into storage tanks during WINTER months after aquifers are full.

C. Domestic water is supplied YEAR ROUND and METERED to record GROSS INDOOR consumption.

D. Stormwater can be collected from driveways etc. and stored.

E. Rainwater can be collected from roofs.

F. The period that water can be pumped for storage is determined by real time weather and instream conditions and homeowners computer is notified when water storage can start and must stop.

G. "Mitigation" storage tank for garden use if they wish to pay for additional tanks.

H. Amount of water leaving septic into drain field is METERED and subtracted from GROSS domestic water supplied. Computer calculates NET INDOOR usage Deficit.

I. Optional: Homeowner may use water from a separate seasonal water storage tank for garden use if they wish to pay for additional tanks.

J. In non-winter months the daily water DEFICIT is made up from METERED mitigation storage to infiltrate back into the soil via the septic drain field.

K. The period that water can be pumped for storage is determined by real time weather and instream conditions and homeowners computer is notified when water storage can start and must stop.

L. All metering data is transmitted to a server where individual data is used to verify.

NET domestic water returned through drain field PLUS mitigation should result in ZERO impact on instream flows or other senior water rights.

Use of stored winter water for garden use should result in a small but net increase summer ground water levels.

As the mitigation water does not need to be potable it can be stormwater, rainwater or trucked water.
Seasonal storage of surplus water to fully mitigate fully the net consumptive impact of permit-exempt domestic wells

Rud Browne
Whatcom County Councilmember – At-Large
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DRAFT 2016-11-3012-02

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While further determination needs to be made as to the ideal size and length of the pilot program, given the urgent need to find a solution we should start by offering anyone building a house in Whatcom county over the next three years the opportunity to participate. The state would reimburse reasonably incurred costs for the necessary infrastructure to be incorporated within their building plans in exchange for the landowner agreeing to: (a) providing the data necessary to properly evaluate and refine the concept, and (b) to continue to use the final working system in perpetuity unless the state later determines the solution is unnecessary or ineffective.

Conclusion

While this proposal may be more complex than some others under consideration it respects and responds to the reality that we have finite water resources throughout the state which require that we mitigate seasonal overconsumption of water with actual water from other sources.