

## **Permit-Exempt Wells: Policies and Predictions for Future Management**

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Washington State's 1945 groundwater code requires water permits for all proposed new uses of groundwater with one important exception: domestic wells using 5,000 gallons per day. Historically, the exemption was intended to supply water for rural homesteads where public water service was not available. In the 1990's, Washington severely limited issuance of new water use permits due to over-appropriation of rivers and aquifers. As a result, the domestic well exemption became the water supply option of choice for new development. The exemption has evolved into a significant loophole in water resources management. The state's well construction database has, for the past decade, registered an average of 7,000 new permit-exempt wells each year.

While exempt wells are generally considered a de minimus use, cumulatively they can create adverse water resource impacts, affecting senior water users and instream flows. One potential check is the Growth Management Act, which requires local planning agencies to determine that water supply is adequate before approving subdivisions and building permits. For various reasons, most counties have declined to exercise this authority. The ensuing regulatory void is now leading to litigation. Alternative resolutions have involved creation of a model state-county management agreement and adoption of watershed rules that reserve water for future growth based on complex accounting and mitigation provisions. For the most part, these efforts have not been successful.

In 2007, a Kittitas County-based citizens group petitioned the Washington Department of Ecology to close the upper Yakima River basin to new wells pending investigation of water availability. The petition was motivated by the proliferation of exempt wells in a region where water is over-appropriated, as evidenced by frequent court orders curtailing water users and low instream flows that harm endangered salmon. Despite indicia of water scarcity, Kittitas County has continued to authorize new development using permit-exempt wells for water supply.

The Kittitas petition triggered several reactions, including a state-county memorandum of agreement, emergency rules, a proposed regulation to limit but not eliminate exempt wells for new homes, and "panic drilling." The proposed regulation has been criticized on various grounds, including that existing water users continue to be impaired by new wells and that the state lacks jurisdiction to address permit-exempt wells in this manner.

The Washington State Legislature has expressed interest in the problem of exempt wells but has yet to take action to limit new groundwater development in water-short areas. One option would prohibit wells in basins that are fully appropriated or that exhibit environmental problems such as water quality impairment or endangered species. Where new wells cannot be used, mitigation and water markets will be necessary to provide water supply for new development and ensure environmental protection.

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