

NO WATER=NO DEVELOPMENT

FINDING A SOLUTION

LAWMAKERS CONTINUE TO NEGOTIATE IN GOOD FAITH ON A PERMANENT HIRST FIX

The 2017 legislative sessions produced great results for our state. Unfortunately, finding a Hirst solution and passing a capital budget were left undone.

The state Supreme Court ruled counties have an independent responsibility to ensure water availability for land-use decisions – instead of relying on the Department of Ecology (DOE). Having this new legal responsibility caused concern for counties, as many do not have the resources to hire legal and hydrogeological analysts for every proposed building permit.

Of great concern to the building industry, the court's decision curtailed use of permit-exempt wells – a staple of rural development. In some basins, the decision made it more difficult – if not impossible – for landowners to dig wells on their private property. Without water, there is no development.

The Hirst decision also threatens the dreams of Washingtonians, negative-ly affects property values and hurts various industries. It will also result in a property tax shift as rural land values decline dramatically.

Our state has enough water, and families should be allowed to access it on their private property. With this in mind, the Senate passed Senate Bill 5239 four separate times. This bipartisan measure would take our state back to the point prior to the Hirst decision and put the onus back on the DOE to determine legal water availability.

House Democrats would not allow this bill to come up for a vote. In an effort to break the impasse, a bipartisan striking amendment to Senate Bill 5239 was introduced in the House on June 30. Once again, House Democrats refused to bring this solution up for consideration.

We believe this legislation had the votes to pass the House and Senate.

House Democrats proposed a temporary, 24-month option that may have allowed some wells to be drilled. However, it was poorly written and did not provide certainty for legal water – something critical to the building industry.

In the end, House Democrats never allowed a vote on a solution that helps families impacted by the Hirst decision.

Finding a solution for the Hirst problem is important to us. We will continue to negotiate in good faith and appreciate your continued involvement.



// OPEN LETTER FROM:

SEN. JUDY WARNICK, R, Moses Lake
REP. DAVID TAYLOR, R, Moxee

“While I am disappointed that the House leadership chose to leave families without a solution to their water needs, I am committed to continuing the dialogue to find a permanent solution for water availability. Access to water is a basic human right, and finding a solution to Hirst that allows families to build on their property with a reliable source of water is not only a necessity—it is a moral obligation for elected officials in this state.

“For weeks, I have been meeting with House Democrats to address their concerns. Our Senate Majority Coalition has put forth compromise solutions over the past several months that respect senior water rights, acknowledge the role tribes play in natural resource management and provide a realistic permanent fix.

“The House offered a proposal to temporarily delay implementation of the Hirst decision, but not only is this legally questionable, it fails to address the real issue—no bank will be willing to lend money on property where no guaranteed source of water is available.

“It is now up to Governor Jay Insee and House Democrats to show some leadership, begin negotiating in good faith and vote for a solution. The Senate unanimously approved a capital budget in March and sent a Hirst fix to the House four times. So far, House Democrats have refused to approve our bill or advance any legislation of their own. They have also failed to negotiate in good faith, moving the goal posts at every opportunity. To say the least, negotiations have been challenging, if not frustrating. However, I remain optimistic and ready to work toward a solution.”

—Senator Judy Warnick, lead negotiator and sponsor of Senate Bill 5239 which would have overturned the Supreme Court's Hirst decision, commenting on the Houses' refusal to act on the Hirst issue during the 2017 legislative session

HIRST FIX IN THE SPOTLIGHT

IN OUR CORNER

NEWSPAPER EDITORIAL BOARDS BACK A HIRST FIX

In July, a number of newspaper editorial boards weighed in on the Hirst court decision and the need for the Legislature to pass a fix so rural communities can once again have reliable access to household wells for water, provide housing to their residents and support economic development.

Last month, in its third special session, the Legislature was expected to agree to a capital budget, and the Senate Majority Coalition Caucus held firm that they would not pass one without a fix.

At an impasse on Hirst negotiations, the Legislature adjourned without either one. Below are excerpts from editorials from around the state on their support for passing a Hirst solution to Hirst.

Lawmakers must strike deal on 'Hirst' water-rights ruling
Lawmakers have proposed a “Hirst fix” [Senate Bill 5239] enabling counties to continue relying on the Ecology Department, but the deal [was] bogged down in negotiations.

Relying on the Ecology Department makes sense. Managing water resources is complicated and costly, involving studies of watersheds that cross county lines, layers of water rights established over the last century and analysis of how tapping aquifers affects nearby surface waters.

—The Seattle Times, July 17, 2017

Senate right to withhold capital approval
What good is it for the state to approve of new roads, schools, parks and other quality of life expenses if most rural residents are denied access to [water] life's most important necessity?

No good whatsoever.

We applaud the state Senate for using its capital budget leverage as a means to force the hands of Westside lawmakers who refuse to acknowledge our water need and the development, jobs and economic growth that comes with it.

—Daily Sun News [Yakima], July 19, 2017

Rural residents are caught in a tug of war. We need a permanent fix that allows our economy to grow.

—The Daily News [Longview], July 26, 2017

Property owners need access to water again
Democrats need to work with Republicans to find an agreement that both sides can live with.

Supreme Court Justice Deborah Stephens of Spokane, the court's lone member from east of the Cascades, penned a dissent [in Hirst] that focused on the relatively minuscule amounts of water involved. She wrote that the court majority's interpretation of the applicable law “is unsupported by the plain language of the statute, precedent, or common sense.”

A return to common sense would be much appreciated by the property owners who are enduring an undue burden—and would unlock the logjam on the capital budget.

—Yakima Herald-Republic, July 12, 2017

But that's precisely what will happen if lawmakers fail to act.

—The Spokesman-Review, July 26, 2017

Lawmakers need firm water-well deal

The Legislature needs to solve this problem now, because it will be too easy for urban-centric lawmakers to ignore it in the future.

Legislators can't say they weren't warned. Though [Supreme Court] Justice Barbara Madsen joined the majority opinion in Hirst, she pointed out the possible unintended consequences for rural landowners. “This is not a burden to be shifted onto individual permit applicants,” she wrote in a concurrence.

But that's precisely what will happen if lawmakers fail to act.

—The Spokesman-Review, July 26, 2017