

CONTACT

Tim Trohimovich
Futurewise Director of Planning and Law
206-343-0681 Ext. 118 or tim@futurewise.org

FOR IMMEDIATE RELEASE:

Washington State Supreme Court decision holds comprehensive plans must take into account the effects of development on surface and ground water including instream flows

Whatcom (October 6, 2016) - The Washington State Supreme Court concluded that planning for future growth must take into account the effects of development on surface and ground water. According to the decision, Whatcom County's "comprehensive plan does not protect water availability because it allows permit-exempt appropriations to impede minimum flows." Building on Futurewise's 2011 win in the *Kittitas County* decision, the Washington Supreme Court wrote on page 19 of the majority opinion that:

The GMA requires counties to consider and address water resource issues in land use planning. Specifically, a county's comprehensive plan must "provide for protection of the quality and quantity of groundwater used for public water supplies." RCW 36.70A.070(1). The GMA also requires counties to plan for a rural element that "include[s] measures that ... protect ... surface water and groundwater resources." RCW 36.70A.070(5)(c)(iv). Read as a whole, it is clear that the GMA holds counties "responsible for land use decisions that affect groundwater resources." *Kittitas County*, 172 Wn.2d at 180.

By allowing new development supplied by permit-exempt wells in basins that do not meet instream flows, the Whatcom County comprehensive plan violates the GMA. The Washington State Supreme Court wrote, on page 7 of the court's opinion, that:

The Board also found that average minimum instream flows in portions of the Nooksack River "are not met an average of 100 days a year." ... Despite the limited water availability, 1,652 permit-exempt well applications have been drilled in otherwise closed basins since 1997 and an additional 637 applications were pending in March 2011.

"The supreme court's common sense opinion protects both fish and consumers" said Chris Wierzbicki, Futurewise's Interim Executive Director. "Fish and wildlife are protected by planning for growth in a way that protects the instream flows needed to maintain their habitats. Consumers are protected because new lots and new homes must have a legal supply of water the buyers can rely on long-term" he said. "County planning should not leave lot buyers holding the bag when lots are created without a source of water as has happened in some parts of our state" said Tim Trohimovich, Futurewise's Director of Planning & Law. "This decision calls on counties to plan for water supplies upfront and to match growth with available water resources" he added.

Thanks to Jean Melious who represented the Hirst parties in this case and wrote much of the briefing and argued the case before the Washington State Supreme Court.

You can read the Washington State Supreme Court decision here:

<http://www.courts.wa.gov/opinions/pdf/914753.pdf>

About Futurewise:

Futurewise is a non-profit organization that works throughout Washington State to create livable, equitable communities, protect our working farmlands, forests, and waterways, and ensure a better quality of life for present and future generations. We work with communities to implement effective land use planning and policies that prevent waste and stop sprawl, provide efficient transportation choices, create affordable housing and strong local businesses, and ensure healthy natural systems.