

An October 2016 Washington State Supreme Court case impacts permit-exempt well use, which may affect some of the information provided in this publication.

## The Groundwater Permit Exemption (RCW 90.44.050)

In Washington State, most prospective water users must first obtain a water right permit or certificate from the Department of Ecology (Ecology) before using surface water or groundwater. However, not all new water uses require a permit.

The Groundwater Permit Exemption (Exemption), Revised Code of Washington 90.44.050, allows for some uses of groundwater without obtaining a permit if water is legally available (see sidebar, page 2) in the area. There is no permit exemption for surface water diversions.

This focus sheet is for property owners, developers, and real estate agents. It discusses the Exemption and offers help in determining whether your project might be exempt from the water right permitting requirement.

### Permit-exempt groundwater uses

There are four types of groundwater uses that do not require a state water right permit:

- Water for single or group domestic uses (limited to 5,000 gallons per day (gpd)).
- Water for industrial purposes, including commercial irrigation (limited to 5,000 gpd).
- Water for livestock (no gpd limit).
- Water for irrigating a non-commercial lawn or garden up to one-half acre in size (no gpd limit).

Any water user that would exceed the Exemption limits must apply for and obtain a water right permit before the water use is allowed.

### Definitions

**Groundwater** is water located under the ground's surface.

**Surface water** is water located above the ground, such as a river, stream, spring, pond, or lake.

### Key Points

Exemption limits apply to the entire **project**, not just to individual wells, lots, or subdivisions. Page 2 of this document describes how a "project" can be defined.

**Single Domestic Use:** In many areas of the state, a groundwater well can legally serve the domestic needs of a single home under the Exemption.

**Group Domestic Use:** In many areas of the state, under the Exemption, a project that includes multiple homes, such as a subdivision, can legally serve the domestic water needs as long as the homes *collectively* will use no more than 5,000 gpd for domestic purposes. Additionally, the group of homes may only *collectively* irrigate up to ½ acre of lawn and garden. This limit applies even if multiple wells serve the project.

## Determining the scope of your project

In areas where water is legally available, the first step in determining if your project is exempt is to define the scope of your project. It is also important to recognize the limits apply even if multiple wells will serve the project.

For example, under the Exemption, a project that includes multiple homes, such as a small subdivision, can legally use the Exemption as long as the homes *collectively* will use no more than 5,000 gpd for their domestic water needs. Still, in some cases, a small proposed development – or even a single home – can be considered part of a larger project requiring a water right permit. If so, the project cannot rely on using the Exemption.

Ecology considers many factors on a case-by-case basis when determining the extent of a project. Some key considerations Ecology uses to assess whether a group project is part of a larger project include:

- **Common ownership**

Who owns the lots or subdivisions and nearby parcels? Is there an underlying common ownership or relationship between any controlling interests, owners, corporations, or limited liability companies? For instance, are the parcels currently or previously owned by a related group of individuals? Did one developer subdivide the lots?

- **Common effort**

Do the properties have any common infrastructure (e.g. wells, water systems, road networks, entry gates, homeowner's associations, community buildings, or facilities)? Are any services shared among the properties (e.g., engineering, architecture, legal, environmental review, land preparation or clearing, marketing, etc.)? Are there any joint agreements among the homes or subdivisions?

- **Common timing**

What was the timing of land purchase(s) and development efforts for the subject lots and nearby parcels held in common ownership?

## Water Availability

In some areas of the state, water is not physically available, not legally available, requires mitigation to protect existing water uses, or there are water quality issues or other concerns.

Water use of any sort is subject to the "first in time, first in right" doctrine of Washington State law. This means that a senior (older) right cannot be impaired by a junior right. Seniority is established by priority date.

For a permitted or certificated water right, the priority date is the date that the application was accepted by Ecology. For claims and permit-exempt groundwater withdrawals, the priority date is the date that water was first put to beneficial use. In some instances, Ecology has had to regulate—stop or reduce—groundwater withdrawals when they interfere with senior water rights, including any instream flow levels established by rule.


Mitigation or water banks may be a source of legal water where "new" water is no longer legally available. Other issues include seawater intrusion, high nitrates or other contaminants.

To be sure water is available in your area, check with your nearest Ecology regional office (page 4) or visit: [http://www.ecy.wa.gov/program/s/wr/rights/wrpenapp\\_avail.html](http://www.ecy.wa.gov/program/s/wr/rights/wrpenapp_avail.html)


**So is my project exempt?**

Once the scope of your project is certain and you have confirmed the legal availability of water, you can determine if it qualifies under the Exemption. Below are a few common examples of projects proposing to use the Exemption for their water needs.


**My project involves irrigating more than 1/2 acre of noncommercial lawn and/or garden.**

 Needs a permit. The 1/2 acre limitation applies to a single home or a project with multiple homes. Any project proposing to *collectively* irrigate more than 1/2 acre will require a water right permit.


**My project involves irrigating 1 acre of noncommercial lawn, but I plan to install two wells, each to serve 1/2 acre.**

 Needs a permit. Both wells are intended to serve one project, so the combined withdrawals from all of the project's wells must remain within the 1/2 acre Exemption limit.

**My project is a group of homes served by one or multiple wells with both indoor uses and outdoor irrigation needs.**

 May need a permit. You may use the Exemption to serve a group of homes if the project *collectively* will use no more than 5,000 gpd for indoor domestic use. Additionally, the group of homes may only irrigate up to a total of 1/2 acre or less of noncommercial lawns and gardens. Even if multiple wells are used to serve the domestic needs of a group of homes, the combined domestic water use from all wells is limited to 5,000 gpd. If the group of homes exceeds 5,000 gpd for domestic needs or irrigation exceeds 1/2 acre, then it will require a permit.

**My project is a single home that is not within a subdivision and is served by a private well.**

 Probably permit exempt. In many areas of the state you may install a well to serve a single home for domestic water use. In this case, you would not need a water right permit from Ecology to drill your well or withdraw groundwater – unless it is part of a larger project that would exceed the exemption.

**Other information on the use of groundwater**

Water users withdrawing groundwater under the Exemption **establish a water right** that is subject to the same privileges and restrictions as a water right permit issued by Ecology. Although Exempt groundwater withdrawals do not require a water right permit, they are **still subject to state water law**.

More information regarding the groundwater exemption:

[http://www.ecy.wa.gov/programs/wr/comp\\_enforce/gwpe.html](http://www.ecy.wa.gov/programs/wr/comp_enforce/gwpe.html)

Information on water availability around the state:

[http://www.ecy.wa.gov/programs/wr/rights/wrpenapp\\_avail.html](http://www.ecy.wa.gov/programs/wr/rights/wrpenapp_avail.html)

This publication, and others about water rights, is available on Ecology’s Water Resources homepage at: <http://www.ecy.wa.gov/programs/wr/wrhome.html>

**Further assistance**

If you have additional questions, contact the Ecology regional office serving your county.

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(360) 407-6300

**Northwest Regional Office**

3190-160th Ave SE  
Bellevue, WA 988008-5452  
(425) 649-7000

**Central Regional Office**

1250 West Alder Street  
Union Gap, WA 98903-0009  
(509) 575-2490

**Eastern Regional Office**

4601 N Monroe St  
Spokane, WA 99205-1295  
(509) 329-3400



**Special accommodations**

If you need this document in a format for the visually impaired, call the Water Resources Program at 360-407-6872. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.