

Emerging Issue: POL-2094 and Permit-Exempt Wells



Background

[POL-2094](#) was created in 2018 and last updated in December 2022 and guides implementation of the Streamflow Restoration Law passed in 2018. The policy includes the following statement of applicability:

“The requirements in RCW 90.94.020 and 90.94.030 only pertain to permit-exempt domestic withdrawals associated with a new building permit, and do not affect other uses exempt from permitting under RCW 90.44.050.”

In recent program training, staff raised the question about what the requirements are for non-domestic permit-exempt withdrawals. Although Ecology does not make permit decisions on permit-exempt uses, local governments may seek Ecology feedback on legal water availability through technical assistance requests, comments on SEPA documents, or in other situations.

Issue Analysis

The *Hirst* decision created immense conflict and upheaval in our state. The Legislature indicated their intent on how to address permit-exempt uses in passage of the Streamflow Restoration Law. Notably, the law does not explicitly address non-domestic permit-exempt uses.

Non-domestic permit-exempt uses are only a small portion of the permit-exempt well water use, which is itself a small portion of the overall water use in the state. The magnitude of impacts from non-domestic permit-exempt uses is extremely small in the water resource management landscape.

In general, the instream flow rules in “*Hirst Basins*” do not regulate any permit-exempt uses. In the absence of specific rule applicability, statutory limitations would apply under RCW 90.44.050¹. However, local governments should refer to each specific rule. It is thus incumbent upon counties/local permitting authorities to determine how to protect water resources when a party seeks a building permit to use a permit-exempt well for non-domestic purposes.

Next steps

We will amend POL-2094 to make a clear statement recommending that local permitting authorities follow instream flow rules and applicability for non-domestic permit-exempt uses. When rules do not specifically apply to those uses, then statutory limitations under RCW 90.44.050 should be followed.

Contact:

Water Resources Program at 360-407-6872.

To request an ADA accommodation, contact Ecology by phone at 360-407-6872 or email at WRpubs@ecy.wa.gov, or visit <https://ecology.wa.gov/accessibility>.

¹ For more information see [Focus On: The Groundwater Permit Exemption](#).