



## Certificate of Water Availability Application and Instructions

### **The application for Water Availability is NOT needed if one of the following applies:**

- You have a water right for domestic ground water.
- You will be using a Group A water system and can obtain a letter from the water system manager.
- You can provide proof of established domestic water usage pre dating the Supreme Court decision of *Whatcom v. Hirst* on October 6<sup>th</sup>, 2016. The documentation must be sufficient for the Director to make a determination.

### **Instructions:**

Applicants applying for a building permit for new construction or any expansion or change of use for an existing structure; or any division of land, that proposes to use a permit exempt well as the source of water for domestic or commercial use must complete a Certificate of Water Availability application. The information this provides will be used to determine that both a physical and legal source of water exists.

### **Required information:**

1. For a permit-exempt well per RCW 90.44050,
  - a. Well log report (if well is already drilled)-**Please indicate which well log belongs to the well on your property, if applicable.**
  - b. Surrounding well log reports
  - c. Distance to closest neighboring well.
  - d. Site plan drawing showing location of an existing or proposed well.
  - e. Other source of irrigation water (Irrigation district, water right, etc.)
  - f. Report from well driller regarding aquifer location/capacity (if available)

### **Application materials; Please submit the Following:**

Proof of water availability as indicated above

Water Availability Questionnaire

Site Plan Drawing indicating the location of an existing well or proposed well on the property.

Also include the closest neighboring well and the distance from the existing/proposed well to the neighboring well.

Site Analysis Application (if applying for building permit)

### **Process for Review of the Water Availability Certification (OCC 20.10.050(4))**

#### **(4) Administrative Review process:**

(A) A complete application would be vested in accordance with OCC 20.08.040. The application would be reviewed in accordance with existing requirements and reviewed for water availability. .

(B) When the decision regarding water adequacy is made notice shall be published and mailed to water right holders in the respective WRIA, adjoining landowners, and commenting agencies.

(i) The notice will read as follows:

“The Planning Department has reviewed an application for (building permit/land division/other land use) at (location) and has determined that the proposed use of a permit exempt well in accordance with RCW 90.44.050 will provide an adequate supply of potable water. This decision will not be final until (deadline 20 days). Anyone with standing who desires a public hearing be held on this application to determine water adequacy must submit a request in writing by the deadline listed above. The request must state the basis upon which the request is made which must include a statement that the requesters lawful use of water from a senior source will be impaired if the decision stands.”

(C) This decision may be appealed in accordance with OCC 2.67 within 20 days.

(D) Upon the close of the decision deadline published in the notice in OCC 20.10.050(4)(B)(i), if no request for an appeal has been received, a notice of final decision shall be published and mailed in accordance with OCC 20.10.050(4)(B).

## **Definitions:**

### **Exempt Well**

State Water Use Laws: The Groundwater Permit Exemption RCW 90.44.050

In Washington State, prospective water users must obtain authorization in the form of a water right permit or certificate from the Department of Ecology (Ecology) before withdrawing groundwater. The groundwater permit exemption allows the users of small quantities of groundwater to construct wells and develop their water supplies without first obtaining a water right permit from Ecology.

The only exceptions to the permit requirement for withdrawals of groundwater are:

- Providing water for livestock (no gallon per day limit).
- Watering a non-commercial lawn or garden one-half acre in size or less (no gallon per day limit, however limited to reasonable use).
- Providing water for a single home or groups of homes (limited to 5,000 gallons per day).
- Providing water for industrial purposes, including irrigation (limited to 5,000 gallons per day but no acre limit).

### **RCW 90.44.050**

#### **Permit to withdraw.**

After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW [90.44.052](#), or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the party making withdrawals of groundwaters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW [90.44.090](#) may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.

**WAC 246-294-010 Group A Water System:**

(8) "Group A water systems" are defined as community and noncommunity water systems.

(a) Community water system means any Group A water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five year-round (i.e., more than one hundred eighty days per year) residents.

**WAC 246-291-005 Group B Water System Definition**

Applicability.

(1) Group B public water system that provide drinking water to fewer than fifteen service connections and:

(a) Fewer than twenty-five people per day; or

(b) Twenty-five or more people per day for fewer than sixty days per year, provided the system does not serve one thousand or more people for two or more consecutive days.

**Frequently Asked Questions****What is a permit exempt well?**

Permit-exempt wells are authorized through RCW 90.44.050. This state law allows use of groundwater for specific purposes without the need to obtain a water right permit. One of the purposes is for providing water for a single home or groups of homes (limited to 5,000 gallons per day).

**What are senior water rights and instream flow rules?****Senior Water Rights:**

A water right is the authorization to divert or withdraw some portion of waters of the state for a beneficial purpose, subject to the specific terms and conditions of a water right permit, certificate, or claim. The date of a water right establishes its seniority relative to other water rights. If a water right was established prior to the instream flow rule, the priority date is the date the water was first put to use. If a water right was acquired through the permitting process, the priority date is the date the application for a water right was filed with Ecology. Between two water rights from a single source, a senior water right is a right that has the earlier priority date.

**Instream Flow Rules:**

An instream flow rule is a regulation adopted in the Washington Administrative Code to protect rivers, streams and other water bodies. The legislature directed the Department of Ecology through state law to protect and preserve instream resources. One of the ways they fulfill this mandate is to set instream flows in rule.

- Instream flows are the stream flow levels that will protect and preserve instream resources and values. Once established in a rule, an instream flow is a water right for the stream and the resources that depend on it. It has a priority date like any other water right. Currently, there are 26 instream flow rules in our state.

- Instream flow rules also establish closures, meaning we determined that water is not available from certain waterbodies. Closures can be year-round or seasonal.
- Instream flow rules do not affect existing (senior) water rights, rather, they protect the river from future withdrawals. Setting instream flows does not put water in streams.

**Can I expand a single party well to a shared well or Group B system?**

A building permit cannot be granted to additional withdrawals on an existing permit-exempt well. Pursuant to OCC 20.10.050(C) building permits are reviewed administratively through the process outlined in OCC 20.10.050(D).

**Can I expand a single family residence served by a permit-exempt well?**

Yes. Remodeling a single family residence does not require the water availability process.

**Can I replace/rebuild my home?**

If there is an existing single family residence or mobile home on a parcel before the date of the HIRST decision (October 6, 2016) it can be replaced in accordance with all other applicable state and county codes.

**Can I build an agricultural structure or residential accessory structure that is not using any water?**

Yes, if the Ag structure or residential accessory structure is not using water it can be permitted.

**What happens if I drill a well (or have already drilled a well) but have not built a single family residence?**

A building permit cannot be granted for any use relying on groundwater that will impact instream flows or impair senior water rights. Pursuant to OCC 20.10.050(C) building permits are reviewed administratively through the process outlined in OCC 20.10.050(D).

**Can I provide proof that I have been using the water prior to the HIRST decision for residential potable water?**

If you can provide proof that the water has been used prior to October 6, 2016 for residential potable water the Planning Director will review the information. The documentation must be sufficient enough for the Director to make a determination as to vest the water or not.

**How long does it take to go through the Water Availability process outlined in OCC 20.10.050(D)?**

It varies on a case by case basis. Once the application is reviewed by a planner for sufficient information and research, it is then placed in line to be reviewed by the Director for a preliminary decision which will be noticed in the newspaper. There is a 20 day period where senior water right holders and agencies can request a public hearing to appeal the preliminary determination. If there are no requests for public hearing the Director's decision is final after the 20 days. This process has been taking anywhere from three to four months.

**What if my Water Availability application is denied by the Director?**

The Director's decision is an Administrative decision which can be appealed to the Hearing Examiner in accordance with OCC 2.67. There is an appeal fee of \$300.

**What if a senior water right holder or other party requests a public hearing to appeal the Director's decision?**

If a senior water right holder or other party request an appeal as outlined in OCC 20.10.050(D)(3) the decision will be scheduled to be heard in front of the Hearing Examiner. The Hearing Examiner will issue his written decision within 10 business days after the hearing.

Fee \$250  
Receipt # \_\_\_\_\_  
Initial \_\_\_\_\_

Date Received

Water Availability Certification Questionnaire:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

10 Digit Parcel Number \_\_\_\_\_

What is the exact location of the property? (Physical address, location on road from last intersection)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please provide a summary of your plan for the use of the water. (Such as seeking water availability for a pending sale of the property, Plan to build a home in the near future, subdividing land, I502, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are there any wells located on the proposed property?

Yes       No

What date was the well drilled on the proposed property?

\_\_\_\_\_

Are you using the existing well?

Yes       No

How long have you been using the existing well?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What purpose have you been using the existing well for? (irrigation, domestic)

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Will you be sharing a well?

Yes       No

How many connections will the shared well service? \_\_\_\_\_

Are you in an irrigation district or do you have an irrigation water right?

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Are you applying for a Site Analysis? (If so, please attach)

Yes       No