



Court Delivers Victory to Whatcom County on GMA Case Regarding Rural Water Supply

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On Monday, Feb. 23, the Washington State Court of Appeals ruled in Whatcom County's favor in [Whatcom County v. Eric Hirst, et al., Case No. 70796-5-1](#), a Growth Management Act case challenging the adequacy of the County's rural measures protecting water resources. The Court reversed the Growth Management Hearings Board, which had previously concluded that the County's measures did not comply with the GMA. The Court's decision provides helpful guidance to counties regarding the adoption of rural measures and re-affirms the need for a cooperative approach between counties and the Department of Ecology when addressing water availability issues. Van Ness Feldman represents the County in this appeal.

The case addresses the County's efforts to implement GMA requirements to adopt a rural element as part of a local comprehensive plan that includes "measures that apply to rural development and protect the rural character of the area" by "[p]rotecting... surface water and groundwater resources..." [RCW 36.70A.070\(5\)\(c\)\(iv\)](#). In 2012, a group of petitioners challenged the County's efforts to comply with those GMA requirements and claimed that the County's measures did not adequately protect the availability of water supply or water quality. The Board agreed with the Petitioners, but the Court of appeals reversed on both counts.

The primary issue in the case involved the County's water availability measures and their effect on the use of so-called "exempt" wells for groundwater withdrawals associated with new development. This issue garnered statewide interest, as reflected by the various parties that participated on the issue as *amicus curiae*. The County's measures prohibit development that relies on a proposed well in an area where the Department of Ecology has "determined by rule that water for development does not exist." In its decision below, the Board indicated that the County's approach was not sufficient to comply with GMA requirements. As noted by the Court, the Board appeared to "conclude that the County must make its own, separate determination of the availability of water in order to fulfil the requirements of the GMA." The Court expressed concern that the Board's decision "allows for inconsistent conclusions between the County and Ecology about the availability of water," noting that "the Board's conclusions about the availability of water in WRIA 1 is contrary to Ecology's own interpretation about the availability of water in that area."

In reversing the Board's conclusions regarding water availability, the Court held that the GMA requires "consistent local regulation by counties in land use planning to protect water resources," which "necessarily contemplates proper cooperation between Ecology and counties regarding the protection of such resources." The Court concluded that the County implemented that cooperative approach and held that "it is proper for the County to fulfill its requirements under the GMA by adopting regulations that are consistent with Ecology's Nooksack Rule."

In addition to its decision on the County's rules governing water availability, the Court also reversed the Board's holding that the County's measures protecting water quality did not comply with the GMA. The Court ruled that the Board violated its own procedures by considering evidence that had not been presented by any party to support its conclusion. Accordingly, the Court reversed that portion of the Board's order and remanded for reconsideration by the Board. In its decision, the Court expressed concerns about the Board's substantive decision on that issue that it urged the Board to consider on remand. First, the Court reminded the Board that the applicable GMA requirement to "protect" water resources does not impose an obligation to restore or enhance water quality. Additionally, the Court directed the Board to address the concern that the Board's ruling on water quality was based only on general evidence of existing water quality problems. Finally, the Court instructed the Board to ensure that it gives proper deference to the County's planning actions.

For more information

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