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Legislature Must Permanently Fix Hirst to Prevent Economic Devastation in Rural Areas from Hirst Court Decision, Says State’s Largest Trade Association

The Building Industry Association of Washington, which represents nearly 8,000 members in the home building industry, is dismayed by the state Legislature’s failure to pass a permanent fix to the Washington State Supreme Court ruling known as the *Hirst* decision.

A permanent fix would have given small builders, local governments, and property owners long-term certainty to proceed with building new homes on rural land by relying on household wells for water.

Now that the Legislature adjourned with no stable or long-lasting solution in place, those impacted by the *Hirst* decision face an unpredictable financial future and no answers about when, where and how they can build in rural areas in the future without reliable access to household wells.

The current crisis stems from the 2016 decision by the Washington State Supreme Court in *Whatcom County v. Western Washington Growth Management Hearings Board*. The decision changed state law for anyone who wants to put a new home on property and plans to use a household well. “The majority’s decision,” said Justice Debra Stephens in her dissent, “**hinges on an interpretation of [state law] that is unsupported by the plain language of the statute, precedent, or common sense.**”

Under this ruling, small builders, families and rural property owners must prove water use won't extract one molecule of water from bodies of water within the area, such as streams and rivers. To meet legal requirements, the only option is to conduct costly, complicated, and legally challengeable surveys to find the answer and no or limited mitigation solutions are currently allowed to offset water use.

Senate bill 5239, which the state Senate passed *four times* in the 2017 regular and special sessions, provided a long-term fix by “resetting” the law to what it was prior to the *Hirst* decision. A last minute proposal by House democrats offered only a 24-month temporary fix that was unworkable because of lending, permitting and liability concerns.

BIAW strongly opposes a temporary fix. Under any such short-term proposal, a small builder or property owner might buy or build on land during that time but could be left in limbo on whether they could legally rely on a household well for water after an established date. The property they purchased at full value could be nearly worthless following the cut-off. This would leave even a greater number of small builders and families – who squarely relied on the availability of household wells during the temporary period – in the lurch once again. Short term temporary fixes continue to widen the gap between the haves and the have-nots.

A real, permanent fix for all of Washington is needed. Not solving this problem harms at-risk communities in need of economic growth and development. In the year of construction, each new home constructed accounts for nearly 3 full time jobs and 1.4 annually reoccurring full time jobs. “It’s really sad the house Democrats and Governor haven’t accounted for these private sector job losses for the communities in our state that need it the most,” said BIAW Executive Vice President Art Castle.

The Senate added a \$300 fee on well construction to be used for overall instream flow restoration and sought to invest \$10 million dollars in state money for instream flow restoration projects. That would have been the largest investment in water restoration in the state’s history. However, House Democrats and Governor Inslee insisted on giving away local authority over local land use decisions by granting tribes a veto over restoration projects, which when vetoed, must lead to area-wide development shut downs. Senate and House Republicans were unwilling to give away land use decisions to an entity that’s unelected and unaccountable to the citizens affected by its veto power.

“It’s extremely disturbing to see the State Executive and members of the Legislature so eager to abdicate land use control off reservation to another sovereign government,” said Castle. BIAW’s position is that land use decisions are the responsibility of state and local government. “All we’ve ever asked for in this is the ability to rely on the state’s water resource manager, the Department of Ecology and local governments’ land use controls,” said Castle.

“Uncertainty is not a solution,” said BIAW President Ted Clifton. “A temporary fix would have led to a rush on building permits but doesn’t guarantee anyone can build on their property or rely on domestic wells after a certain time period. And handing off reservation land use authority to tribes is unacceptable. The state needs a realistic and actionable approach to help small business builders, families, and rural towns and counties plan effectively so they can invest time and resources wisely and responsibly. Homebuilders need lawmakers to pass a reliable, permanent fix to the *Hirst* court decision.”

“This decision is hurting real people, and it needs to be solved for all people,” said Clifton. “I am amazed many of our legislators don’t understand water is essential to life,” he added.

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Known as the “Champions of Affordable Housing,” the Building Industry Association of Washington is the largest trade association in Washington State, representing nearly 8,000 member companies involved in the home building industry.