

WASHINGTON SUPREME COURT CLOSES WATER PERMIT LOOPHOLE

In *Department of Ecology v. Campbell & Gwinn, LLC*, No. 70279-9, (March 28, 2002), the Washington Supreme Court ruled that developers may no longer bundle several exempt wells to serve a new development without obtaining a water right permit from the Department of Ecology (DOE). The ruling is a blow to developers who have lamented the difficulty in obtaining water right permits from the DOE.

Washington law requires developers to obtain a water right permit before appropriating water from a well, unless the well is for domestic uses of less than 5,000 gallons per day - enough to serve approximately 4-5 homes. Before a permit will be issued, the DOE must investigate and find (a) that water is available for a beneficial use; (b) that an appropriation will not impair existing rights; and (c) that the appropriation will not be detrimental to the public welfare. The process of obtaining a water right permit typically takes 5-6 years.

Campbell & Gwinn sought to construct a 20-lot residential subdivision in Yakima County. To serve the development, it proposed drilling multiple wells with each drawing less than 5,000 gallons per day. This method of water appropriation has become common in areas that are not served by a water utility because of the inevitable delay and uncertainty in the water right permit process. The DOE informed the developer it could not use the small well exemption in this manner. Campbell & Gwinn argued it should be excluded from the permit requirement because each of the wells met the exempt threshold. The Supreme Court disagreed.

The Supreme Court stated “[t]he legislature did not intend unlimited use of the exemption for domestic uses, and did not intend that water appropriation for such uses be wholly unregulated.” The Court acknowledged DOE’s limited resources and the difficulty of obtaining permits, but called upon the legislature to remedy the problem.

Under this decision, developers will now have to obtain water right permits for all new developments serviced by wells with a combined water use greater than 5,000 gallons per day.

Attorneys at Lane Powell Spears Lubersky LLP are available to answer your questions about the water right permitting process.

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