



CLEAN, FLOWING WATERS FOR THE WEST
The Center for
Environmental Law & Policy



*Aqua
Permanenté*
protecting the waters of the Yakima Basin

January 20, 2010

Tom Tebb, Regional Director
Department of Ecology
15 W. Yakima Ave., Suite 200
Yakima, WA 98902

Re: Draft MOA between Department of Ecology & Kittitas County

Dear Mr. Tebb:

Please accept these comments on the draft memorandum of agreement (MOA) between your offices and the Kittitas County Board of County Commissioners, regarding management of groundwater in the Kittitas Valley. These comments are submitted on behalf of the Center for Environmental Law & Policy and Aqua Permanenté. As you know, in 2007 Aqua Permanenté and CELP petitioned the Department of Ecology to close all groundwater in Kittitas County to new well construction (including permit-exempt wells). These petitions were based on the impacts that new wells are believed to be causing to existing water users and instream flows.

In July 2009, Ecology finally took appropriate steps to close groundwater in upper Kittitas County. Moreover, in September 2009, the U.S. Geological Survey issued a report confirming that groundwater in the Kittitas Valley emerges as surface water. This is not new information; Ecology has long understood local relationships between ground and surface waters, and that groundwater pumping intercepts water that is counted as part of the TWSA calculation for delivery and curtailments of water rights to Yakima basin water users.

The draft MOA now proposes to re-open upper Kittitas Valley to new wells. For the reasons set forth below, we are extremely disappointed with the draft MOA.

The "150-day window" approach is irrational. Ecology has already acknowledged that water is not available, that pumping from alluvial groundwater will take water away from existing Yakima basin users and that new wells would pump from an area where the USGS has shown that surface and ground water is hydraulically connected.

The proposal to provide notice to new development about water risk via standard plat language is insufficient, as a practical or legal matter, to protect existing water users and instream flows. As a point of fact, Ecology has never taken enforcement action to protect existing water rights from the impacts of proliferating exempt wells. Further, because groundwater is not adjudicated in the Yakima basin, court-ordered curtailment is improbable. A warning that such might occur is simply not adequate to protect existing uses.

The building slow-down in Kittitas is not a function of the water rights moratorium, but rather of the economy. Housing starts have slowed to a crawl around the state. Blaming a halt in housing

starts on local water issues is a red herring. Case in point – according to the Federal Deposit Insurance Corporation, three central Washington counties have experienced similar downturns in building permits for the reporting year 2008 3rd qtr. to 2009 3rd qtr., including while the moratorium was in effect in upper Kittitas County. To wit: building permits have dropped in Yakima County by 50%; in Chelan County by 44%, and in Kittitas County by 41%.*

Adding to the absurdity, the draft MOA proposes an allowance of up to 5 years to developers to access water resources through subdivision of parcels. We are at a loss to understand by what authority Ecology may allow long-term access to new water in an locality the agency acknowledges lacks legally available water.

One or more members of Aqua Permanenté attended every meeting of the 2009 Yakima River Basin Water Enhancement Project (YRBWEP) Working Group. As co-convenor of that group, Ecology is fully aware that conservation was an underlying principle that all stakeholders agreed upon in their efforts to solve the water problems in the Yakima Basin. Yet there is no discussion of conservation in the MOA. Right now, despite higher than normal precipitation in November, the Yakima Basin is currently at 79% of the snowpack required to fulfill water rights for all water rights holders in its 3 counties. That this is an El Nino year will only exacerbate the problem. The timing for the proposed MOA could not be worse.

Regrettably, Ecology continues to fail in its job to protect Kittitas County water resources for the present and the future, protecting senior users and instream flows per its statutory mandates.

CELP and Aqua Permanenté urge the Department of Ecology adopt a permanent rule for the entirety of Kittitas County closing all groundwater to new uses, unless would-be users can demonstrate adequate, effective and permanent mitigation, both in-kind and in place.

Sincerely,



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* <http://www2.fdic.gov/recon/index.asp>

cc: Kittitas County Board of County Commissioners
Phil Rigdon, Natural Resources Director, Yakama Nation
Bill Gray, U.S. Bureau of Reclamation Yakima Project
Tom Monroe & Ron Van Gundy, Roza Irrigation District