

Aqua Permanente
120 Elk Haven Road
Cle Elum, WA 98922

August 12, 2009

The Honorable Christine Gregoire
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Dear Governor Gregoire,

Our Kittitas County non-profit group, Aqua Permanente, petitioned the Department of Ecology in September 2007 to close the Upper Yakima Basin to unappropriated groundwater withdrawals until enough is known about the potential effects from new exempt wells to ensure protection of our post-1905 surface water rights and stream flows. Ecology chose to deny the petition and instead has spent nearly two years wrangling with the Kittitas County Commissioners over an agreement on joint management of the water resource.

Ecology and the County are close to signing a Memorandum of Agreement that outlines this proposed management. While Ecology points out that the proliferation of exempt wells has caused alarm about the unknown impacts on senior water rights (more than 3,000 exempt wells in the past decade without mitigation) they fail to emphasize that the exceptions in the proposed "Partnership Rule", WAC 173-539A, will allow the "grandfathering" of thousands more potential wells. There are over 6,800 parcels in Kittitas County that could be eligible for a new, unmitigated water right.* Over 2,900 of these parcels are located in the Upper County area, as delineated in WAC 173-539A-990.

It is important to note that these parcels do not include lots with wells that are already drilled but not yet in use. The cumulative effect of all of these wells (and potential wells) on surface water won't be known for years to come. As you are well aware, the surface water in the Yakima Basin is completely allocated and in water short years the proratable (junior) water users, including Aqua Permanente members, are curtailed. Even though some curtailment orders involve tenths of an acre foot, exempt wells have the potential to withdraw 5.6 acre feet per year.

By law, new water rights cannot be issued unless they pass the four part test:

1. Is water available?
2. Will it be put to beneficial use?
3. Is it in the public interest?
4. Can it be done without impairing existing rights?

Ecology has not issued any new ground or surface water rights in the Yakima Basin since 1993, because they could not assure that impairment will not occur. Yet Ecology is gutting any protections afforded by the MOA and Partnership Rule by allowing thousands of exceptions under WAC 173-539A-055.

While the City of Roslyn remains under constant threat of curtailment, unmitigated wells surrounding the city continue to proliferate. A large number of parcels that will be allowed a new well under the MOA and Partnership Rule are adjacent to the City of Roslyn. Ecology is effectively issuing new water rights, violating the basic tenets of senior water right protections.

As Ecology states in the CR-103E (July 2009) Emergency Rule:

"The Yakima Basin is one the state's most water-short areas. Water rights with priority dates as old as 1905 were shut off during the 2001 and 2005 droughts, and during 2004 when the USBR prorated May 10, 1905 water rights. The town of Roslyn's municipal supply and another 133 single domestic, group domestic, and municipal water systems throughout the basin are subject to curtailment when the USBR prorates the May 10, 1905 water rights. Water supply in the Yakima Basin is limited and over appropriated. Western portions of Kittitas County are experiencing rapid growth and this growth is largely being served by exempt wells. Exempt wells in this area may negatively affect the flow of the Yakima river or its tributaries." Dated July 16, 2009 and signed by Jay Manning.

Relying solely on the priority system to protect senior water right holders has proven to be ineffective and unrealistic. With water short years and curtailments already a fact, unknown effects of climate change on the total water supply available, and growing demand for more water, there is a critical need for Ecology to truly protect the resource. The Precautionary Principle is always prudent when managing a resource. This is never truer than when dealing with water issues.

It is Aqua Permanente's position that Ecology must remove the grandfather clause (WAC 173-539A-055) in order to ensure meaningful protection of the water resource. It is also Aqua Permanente's position that the authorization of new wells, outlined in WAC 173-539A-055, is flatly illegal. The proposed Partnership Rule and MOA not only do not provide protections of our water resource, it contradicts Ecology's mandate to protect the resource and senior water rights. Until the groundwater study is complete and the extent and sustainability of the resource is known, all new water withdrawals must be mitigated.

Sincerely,
Melissa Bates, spokesman for Aqua Permanente.

*Statistics obtained from the Kittitas County Assessor's Office – Excel spreadsheets available on request.

Cc: Jay Manning, DOE Director
Tom Tebb, DOE Region 2 Director
Kittitas County Board of Commissioners
Brian Faller, Assistant Attorney General
Brent Bottoms, Deputy Prosecutor - Kittitas County