

**MEMORANDUM OF AGREEMENT  
BETWEEN  
KITTITAS COUNTY AND  
THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY  
REGARDING: (1) INTERIM MANAGEMENT OF THE USE OF GROUND WATER IN  
UPPER KITTITAS COUNTY AND (2) A GROUND WATER STUDY ADDRESSING  
UPPER KITTITAS COUNTY**

This Memorandum of Agreement (MOA) is intended to establish the basic principles Kittitas County (County) and the Department of Ecology (Ecology) will employ in order to exercise their respective authorities to regulate the use of ground water in Upper Kittitas County while the parties sponsor a ground water study in the area commonly known as “upper” Kittitas County as shown on attachment 1.

**I. BACKGROUND**

A private organization in Kittitas County, Aqua Permanente, submitted a petition to Ecology requesting a moratorium be imposed on the use of new permit-exempt ground water wells in Kittitas County until sufficient information is known about potential effects from such wells on senior water rights and stream flows.

Ecology was required to act on the petition by November 9, 2007. On that date, the Parties entered into an Agreement in Principle for the development of a MOA, which was developed and signed on April 7, 2008. This new MOA replaces the parties’ April 7, 2008, MOA.

This new MOA is entered to accomplish two purposes: (1) to identify certain interim ground water management strategies in Upper Kittitas County that the two parties commit to employ to manage the use of ground water during the pendency of a ground water study of the area; and (2) to jointly study portions of Kittitas County that are the subject of this agreement which are not being fully addressed in the current USGS ground water study of the Yakima River Basin. The scope of the study having already been developed by the Upper County Ground Water Advisory Committee (“Committee”) will form the basis of the study and the Committee shall continue to manage and oversee the study.

Kittitas County and Ecology agree, subject to available funding, as follows:

**II. PROVISIONS**

**A. Interim Ground Water Management Measures** – The Parties agree to exercise their respective authorities to implement certain interim ground water management strategies in Upper Kittitas County to manage the use of ground water during the pendency of a ground water study discussed in Section II B below as follows:

- 1) On November 25, 2009, Ecology adopted WAC 173-539A, which withdrew from appropriation all unappropriated ground water within Upper Kittitas County, except for those new appropriations determined to be “water budget neutral” as defined by the rule.

- 2) By no later than March 25, 2010, Ecology intends to take action that will have the effect of creating a window of time during 2010 that will extend for no less than 150 days during which time a withdrawal of water like the one currently included in WAC 173-539A, described in paragraph II.A.1 above will no longer be in effect. During this 150 day window of time, any person who seeks to develop a new water use on his/her property in any portion of Upper Kittitas County will not be subject to a withdrawal rule.

However, any withdrawals that commence during this window and that are not secured by mitigation from senior water rights will be developed at the property owner's own risk of future curtailment due to conflicts with senior water rights.

It is Ecology's intent to propose a new rule that would go into effect at the conclusion of the 150 day window, but not earlier than September 1<sup>st</sup> 2010, described herein and that would include the following components:

- (a) Withdraw ground water from new appropriations, except for those new uses that are "water budget neutral" within Upper Kittitas County for the area described on the attached map (attachment 1).
  - (b) The withdrawal and its associated limitations described in (a) would apply to all new uses of water that begin after the effective date of a new Ecology rule.
  - (c) A definition of "group use" as follows (or substantially similar to what follows): "Group use means use of the exemption from permitting for two or more parcels that are part of the same proposed development. It further includes use of the permit exemption for all parcels that are proximate and held in common ownership with a proposed new development. If a parcel that is part of a group use is later divided into multiple parcels more than 5 years following the first use of ground water, the new uses of the exemption on the newly created parcels will be considered a separate group use distinct from the original group."
  - (d) The withdrawal and its associated limitations described in (a) would apply to those new group uses that began after the effective date of the new rule. Water to serve a parcel that is part of an existing group use and that begins using water more than five years after the first use by the existing group or more than 5 years after the effective date of the new rule would be considered a new use subject to the withdrawal and its associated limitations.
- 3) As of the effective date of this MOA, Kittitas County will immediately act consistent with the definition of group use described in II.A.2(c) above when it makes land use decisions that require determinations regarding the availability of potable water supplies, provided the "group use" definition is not otherwise modified by state law or court decision.
  - 4) If, following the 150 day window described in II.A.2 above, Ecology enacts a rule that includes the components set forth in II.A.2 (a) – (d), Kittitas County agrees that it will not pursue a legal challenge to those components of a final rule that are consistent with the description in II.A.2 (a) – (d). The County is free to advance a

legal challenge to any aspect of a new Ecology rule that is inconsistent with, or substantially different from, the description in II.A.2 (a) – (d).

- 5) Notice to prospective buyers and existing well owners – Kittitas County will continue to place the language stated below on the face of plats that discloses risks to current and future land owners associated with the reliability of water supply. The parties agree to the following standard plat language:

*The approval of this division of land includes no guarantee that there is a legal right to withdraw groundwater within the land division. The approval of this division of land provides no guarantee that use of water under the authority of the exemption from permitting found in the groundwater code (RCW 90.44.050) for this plat or any portion thereof will not be subject to curtailment by the Department of Ecology or a court of law.*

Ecology will collaborate with Kittitas County in the preparation of pamphlets, display ads, and other outreach tools that would serve to assist the public and the development industry in understanding the limitations of surface and ground water supplies in the Yakima Basin and the potential risks associated with reliance on permit-exempt wells as well as junior ground and surface water rights for water supplies. Kittitas County has completed and made available an initial set of outreach tools.

- 6) **Metering and data collection** -- Kittitas County will require metering consistent with the provisions of the rule Ecology adopted pursuant to section II.A.1 above. Such meters must be of a type and design acceptable to Kittitas County. Meters will be read and reported in a manner prescribed by Kittitas County, including, but not limited to, direct reading by county staff, electronic reading, voluntary reading and reporting by residents, or reading and reporting by an approved Satellite System Management Agency or other management entity approved by the County. Readings must be made based on the schedule described in Table 1, with reporting to Kittitas County and the Department of Ecology occurring no later than 30 days after the last day of the reporting period. Kittitas County may set a fee to recover costs it incurs in administering this program. If Kittitas County obtains information that a person or household may be using the ground water permit exemption in a manner that is inconsistent with the emergency rule or a permanent rule which replaces the emergency rule, it shall in good faith share that information with Ecology.

**TABLE 1**

<b>Reporting Periods</b>	<b>Last Day of Reporting Period</b>
October – March	March 31
April – June	June 30
July	July 31
August	August 31
September	September 30

The parties agree to collaborate prior to taking any enforcement action. When penalties are deemed necessary by the Department of Ecology, the Department of Ecology will seek if authorized by law to place any funds recovered through such penalties in the Mitigation Account it establishes for payment of mitigation fees. Funds deposited pursuant to this provision will be exclusively used to acquire water to offset water resource impacts associated with exempt well use in Kittitas County.

**7. Data collection and management of existing group exempt uses** - The Parties agree to develop mechanisms that provide for reporting of source meter data from existing Group A and Group B public water systems that rely on permit-exempt wells as a water source. Source meter data will help determine the impacts of group domestic systems on water resources. In developing such mechanisms, the Parties agree to stress voluntary reporting measures and collection of information by Satellite System Management Agencies (SSMA) or other management entities deemed acceptable to Kittitas County. Kittitas County will encourage public water systems that are served by permit-exempt wells in areas not subject to the provisions of this MOA to provide source meter data on a voluntarily basis. Metering data obtained through agreed upon mechanisms will be considered part of the public record. Kittitas County may set a fee to recover costs it incurs in administering this program.

**8. Technical assistance** – Ecology agrees to provide technical assistance to Kittitas County, prospective water users and other stakeholders as they work to implement the requirements of WAC 173-539A and any rule enacted by Ecology consistent with II.A.2 (a) – (d) above. Ecology will support a request to the state legislature for funding to retain a watermaster and/or other staff to provide additional technical support to Kittitas County, or for funding of a staff member for Kittitas County to implement any provision of this agreement.

**B. Ground Water Study** – The Parties agree to initiate a ground water study intended to focus on portions of Kittitas County that are the subject of this agreement which are not being fully addressed in the current USGS ground water study of the Yakima River Basin.

- 1) The Parties agree to contract with the USGS to perform this study. The parties agree to enter this contract as soon as practicable but no later than March 31, 2010. Ecology and the County shall enter into a separate contract whereby the County will agree to oversee and pass-through state funding for this study.
- 2) The ground water study will define the hydrogeology of the study area, provide information regarding ground water occurrence and availability, document the extent of ground water and surface water continuity in the study area, and estimate the location, magnitude, and timing of impacts to stream flows due to ground water pumping.
- 3) The ground water study shall be undertaken in accordance with the Scope of Work and Recommendation for Proposals previously prepared by the Upper Kittitas Ground Water Study Advisory Committee. The advisory committee will provide input to the

Parties concerning the scope and implementation of the study as well as provide recommendations to the Parties concerning the development of a long-term management program. Membership of the advisory committee was mutually agreed upon by the Parties in 2008.

### **III. TERM OF MOA AND RIGHT TO WITHDRAW**

This MOA will expire on December 31, 2012, unless extended in writing by the Parties. A party may withdraw from the agreement by providing advance written notice; however, such termination shall not be effective until the completion of the dispute resolution process on the issues that form the basis for the termination, unless the parties agree in writing to waive the dispute resolution process.

### **IV. MODIFICATION OF AGREEMENT**

This agreement may be modified by written consent of both parties at any time during the term of the agreement as may be necessary to amend, change, or modify the agreement.

### **V. MUTUAL DEFENSE OF ACTIONS TO IMPLEMENT THIS MOA**

In the event that this MOA or Kittitas County implementing ordinances or actions are legally challenged on issues relating to this MOA, Ecology will give due consideration to a request by the County that Ecology seek to intervene in support of the MOA, the ordinances, or other actions, to the extent such ordinances and actions are consistent with this agreement. In the event that this MOA or Ecology regulation or actions are legally challenged on issues relating to this MOA, the County will give due consideration to a request by Ecology that the County seek to intervene in support of the MOA, the ordinances, or other actions, to the extent such ordinances and actions are consistent with this agreement.

**VI. DISPUTE RESOLUTION**

**A. Good Faith Commitment to Resolving Disputes** – The Parties agree to devote such time, resources, and attention as needed to attempt to resolve disagreements concerning this MOA at the earliest time possible. In the event that any disagreement arises among the Parties concerning this Agreement, including disagreements regarding the meaning of, or any Party’s compliance with, this MOA, the Parties shall first attempt to resolve such disagreements on an informal basis.

**B. Formal Dispute Resolution Process** – In the case of any disagreement arising from the implementation of the MOA, any party may initiate the formal dispute resolution process after the Parties have attempted in good faith to resolve the disagreement informally. To initiate the formal dispute resolution process, a requesting Party shall provide written notice to the other Party that describes the issues in dispute. Upon receiving a notice of formal dispute, the Parties’ signatories or their designated representatives shall convene a meeting within 30 days to consider the dispute and may resolve any or all issues or refer any or all issues in dispute back to the originating individuals with specific instructions and a deadline for reporting back to the designated executives, or institute any other alternative dispute resolution procedures it deems useful under the circumstances. If the Parties’ signatories or designated representatives fail to resolve the dispute within 30 days upon the meeting convened to resolve the dispute, or a dispute is not resolved within the timeframe established by the designated executives, the dispute resolution process shall then be deemed completed and any Party may withdraw from this MOA. Unless a party seeks to withdraw, upon completing the dispute resolution process, the designated executives shall prepare a joint statement of the remaining issues in dispute, which may also include a discussion of how to resolve such issues consistent with the MOA.

**VII. RESERVATION OF AUTHORITY**

Nothing in this MOA affects any authority Ecology may have to enforce the State of Washington’s water resources laws including but not limited to RCW chapters 90.03, 90.14, 90.44., 90.54, or other appropriate requirements of state law. Both parties reserve all authority to themselves and grant none to the other by virtue of entering into this agreement.

**VIII. SIGNATURES**

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

**KITTITAS COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Ted Sturdevant, Director

\_\_\_\_\_  
Commissioner Alan A. Crankovich, Chairman

Date:\_\_\_\_\_

Date:\_\_\_\_\_

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Commissioner Mark McClain,

Date: \_\_\_\_\_

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Commissioner Paul Jewell

Date: \_\_\_\_\_

**ATTEST:**

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Julie A. Kjorsvik  
Clerk of the Board

**Approved as to form:**

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Gregory L. Zempel  
Prosecuting Attorney  
WSBA #19125