

**PETITION TO DEPARTMENT OF ECOLOGY TO ADOPT RCW 90.54.050
SETTING ASIDE OR WITHDRAWING GROUND WATERS OF KITTITAS
COUNTY – 10 SEPTEMBER, 2007**

Pursuant to RCW 34.05.330, under the Administrative Procedure Act, we, the undersigned, petition the Department of Ecology for rulemaking to adopt the provisions of RCW 90.54.050(2) requiring the withdrawal of water resources of the state for beneficial utilization until such time that sufficient information and data are available to allow for sound decisions on future withdrawal of groundwaters of the state. Specifically, we request that the groundwater resources of Kittitas County be withdrawn to prevent additional appropriations through the permit-exempt well provision, until sufficient information and data are available to ensure that senior water rights, stream flows, and the public interest are not impaired. Given the dramatic increase of groundwater appropriations through the exempt well allowance in Kittitas County and the Acquavella adjudication proceedings establishing rights in hydraulically connected surface waters, we believe that senior water rights may be in jeopardy of impairment, and that intervention is urgent and appropriate.

Kittitas County, lying immediately west of King County, has experienced extraordinary rates of rural residential growth over the last several years. This growth rate, third highest in the state for 2006 and continuing into 2007, is characterized by small lot development using permit-exempt wells. The majority of these wells are approved in areas where little or no knowledge of water resources origins and sustainability exists. Spurred by lower real estate costs and second home buyers from the west side of the Cascades, the uncertainty associated with continued depletion of groundwater has become critical and warrants decisive action.

Currently, the most common method of obtaining water in Kittitas County, without a water right permit, is through the exempt well allowance set forth in RCW 90.44.050. This loophole has been utilized in such a manner that Kittitas County has authorized in excess of 1200 wells since 2002 alone, with many thousands more expected based on approved and pending land-use applications. The County has been complicit in the use of permit-exempt wells for large projects by refusing to acknowledge adjacent parcels in a cumulative review. In Dec. 2006, DOE issued a strongly-worded statement to Kittitas County pursuant to adjacent projects requiring a cumulative review (as established in *DOE v. Campbell-Gwinn* (2002)).

The county has been ruled non-compliant with the Growth Management Act by the Eastern Washington Growth Management Hearings Board in two orders issued this year on numerous issues related to uncontrolled growth in rural lands not served by municipal water systems. The county was urged to develop a

water management plan as authorized in the Ground Water Code, RCW Ch. 90.44, but rejected that decision in 2006.

There has been no change in county procedures to date and building permits continue to be issued based on the use of permit-exempt wells, circumventing the need for a water right. In fact, the Eastern Washington Growth Management Hearings Board (EWGMHB) issued an order (07-1-004C) on 20 August, 2007 against Kittitas County for their "*continued practice of ignoring adjacent subdivisions*". Kittitas County has announced that it will appeal the EWGMHB ruling on 3 acre minimum lot sizes in rural lands stating the lot size is not rural and therefore is non-compliant with the GMA. The appeal is intended to be filed in Kittitas County Superior Court as stated in the Daily Record, county newspaper of record, on Tuesday, September 18th, 2007. The density issue is inexorably related to the high rate of exempt wells being approved in all rural lands of Kittitas County.

As of April 2007, more than 6,000 unimproved lots had been created in rural Kittitas County. The vast majority of these lots will use exempt wells as their source of water supply. Effectively, these lots create urban densities in rural areas, even though the County has not conducted sufficient studies to assure a proper water supply, nor to assure that impairment of existing wells and water rights will not occur. Through the use of Limited Liability Corporations (LLC's), developers are avoiding being identified when applying for adjacent and nearby developments and thus avoiding review under the provisions of *DOE v. Campbell-Gwinn* (2002)).

Concerned citizens have offered substantial and frequent testimony to county officials, but with no effect on approval of development with exempt wells. The county instead mapped existing well log information from the DOE website by parcel number for the entire county, stating that the information "*may be used*" in review of land use proposals. Contrary to the County's position, we maintain that information is insufficient to approve exempt wells in areas where aquifer information is not available. It is clear that Kittitas County is unable or unwilling to make sound decisions regarding water supply for new growth. Pursuant to RCW 90.44.040, .020, .060; exempt wells are only exempt from the procedural requirements to obtain a water right permit. However, "*they are not exempt from other substantive provisions in the ground water code. ...and are subject to the priority system.*" As such, new developments relying on exempt wells for water supply are junior to existing rights. Yet there is no effective mechanism by which senior rights can be protected, particularly in the face of inadequate knowledge about water resources and the rampant use of exempt wells to serve new growth.

In the Water Resources Act of 1971, the Legislature stated that the policy of the State was to establish a comprehensive planning process. Under the Water Resource Act, the Legislature directed Ecology to administer water allocation and

use programs in a manner that gave "[f]ull recognition...to the natural interrelationships of surface and ground waters." RCW 90.54.020 (9). The hydrogeologic principle of Darcy's Law governing the dynamic interaction between ground and surface waters has also been fully recognized by the Washington courts (*Postema v. PCHB* (2000); *Hubbard v. Ecology* (1997); *Rettkowski v. Department of Ecology* (1993)).

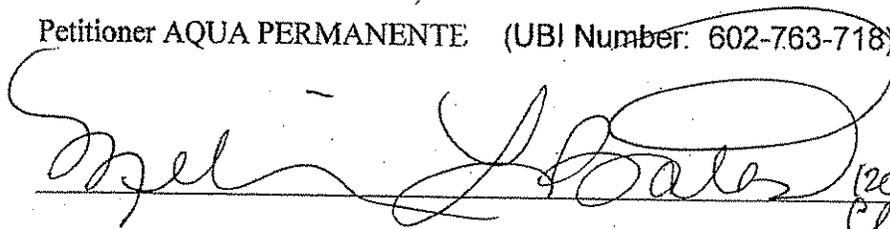
Studies have shown that ground-water withdrawals may take years before the effects of the withdrawal are fully reflected in stream-flows. The relationships show, however, that stream-flow often is reduced by an amount equal to the annual ground water appropriation. Studies also show that once ground water is appropriated, surface waters may be affected for years, even after the termination of ground water appropriation. (*An Introduction to Washington Water Law*, Office of the Attorney General (2000), V:2-V:3) It is important to note that ecology has invested considerable amounts of money for Instream Flow Restoration in the Yakima Basin. This project may be impacted by the number of proposed groundwater withdrawals as well.

The potential impairment to water quantity and degradation of water quality exists in all of unincorporated Kittitas County. The petitioners, along with hundreds of senior water right holders and thousands of junior water right holders, are potentially threatened by the continued drilling of permit-exempt wells without knowledge of water resources, many in complex geologic settings. Hydrogeology studies have shown many of these lands are underlain by complex formations where the acquisition of adequate potable water and sustainability of the water resource is doubtful. (*Public Presentation "Resources of the Yakima River Basin"* by Tom Ring (Hydrogeologist from Selah), June 2007 Ellensburg, WA; John Vaccaro, *Public update of USGS Yakima River Basin Project*, May, 2007, Cle Elum, WA). In addition, hydraulic connectivity between surface and groundwater has long been recognized in water law but is not taken into account by Kittitas County when approving rural residential developments.

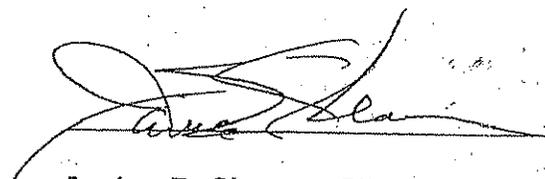
We request, pursuant to RCW 90.54.050(2), that the Washington Department of Ecology withdraw all unappropriated groundwater resources of Kittitas County until adequate information on quantities and sustainability of withdrawals is available.

SIGNATURES

Petitioner AQUA PERMANENTE (UBI Number: 602-763-718)



120 Elk Haven Rd.
Cle Elum, WA 98922
Melissa L. Bates; Citizen of Kittitas County, exempt well and junior water right holder, board member **Aqua Permanente**



390 Cattail Rd. Ellensburg WA 98926
Janice E. Sharar; Citizen Kittitas of County, exempt well and junior water right holder, board member **Aqua Permanente**

21 Sept 2007

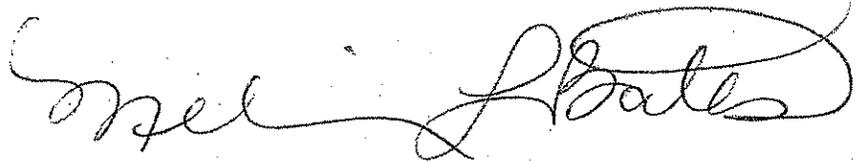
Ken Slattery
WA Department of Ecology
Program Director - Water Resources Program
PO Box 47600
Olympia, WA 98504-7600

21 September, 2007

Dear Mr. Slattery,

Enclosed is our petition for rulemaking we sent to Ecology on 10 September, 2007 with some additions. Please accept the changes we have made to the original. Please add the non-profit group AQUA PERMANENTE as the petitioner and remove Dennis Burchak as an individual petitioner. The contents of this petition requesting the adoption of RCW 90.54.050 remains fundamentally unchanged. Melissa L. Bates, 21 September, 2007.

Sincerely,

A handwritten signature in cursive script, appearing to read "Melissa L. Bates". The signature is written in black ink and is positioned above the typed name and address.

Melissa L. Bates for AQUA PERMANENTE
120 Elk Haven Rd.
Cle Elum, WA 98922