

**AGREEMENT IN PRINCIPLE FOR DEVELOPMENT OF A FORMAL
MEMORANDUM OF AGREEMENT**

**BETWEEN THE KITTITAS COUNTY AND THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**

**REGARDING MANAGEMENT OF EXEMPT GROUND WATER WELLS IN
KITTITAS COUNTY**

This Agreement in Principle (Agreement) is intended to establish the framework for short-term and long-term strategies for management of exempt ground water well use in Kittitas County. It reflects the mutual commitment of the parties to this agreement, Kittitas County and the Department of Ecology (Parties), to evaluate issues related to exempt ground water well use in the county and seek effective solutions as warranted. Upon further discussions and subject to the provisions of this Agreement and public process, the Parties will execute a Memorandum of Agreement (MOA) consistent with the provisions set forth in section 2.E. of this agreement. The MOA will formalize obligations assumed by the Parties under this Agreement and will establish an implementation schedule for those obligations.

1. BACKGROUND

The parties recognize the following facts, interests and issues that underlie this Agreement:

Much of Kittitas County is located within the Yakima River Basin. Courts have ruled surface waters of the Yakima River Basin are overappropriated and have been undergoing court adjudication since 1977. Ecology and a number of senior surface water right holders in the Basin assert that there is sufficient reason to believe that ground water in the Yakima River Basin is in hydraulic continuity with surface water, and that increased use of wells relying on the ground water exemption (RCW 90.44.050) may impair those senior rights.

Three times in the past seven years, surface water rights with priority dates as old as 1905 have been shut off during droughts by order of the adjudication court. The priority date of an exempt ground water use is determined by the date the well water is first put to beneficial use, thus, priority dates for exempt wells in Kittitas County are much more recent than 1905.

Recognizing Kittitas County's responsibility and authority to make land use decisions within its jurisdiction, the Department of Ecology has expressed its concerns to Kittitas County over the number of wells being drilled in the county and the residential subdivisions that have been created reliant on the ground water exemption for their water supply. Kittitas County has begun to put in place measures to reduce the risk of

impairment of senior water rights from exempt wells; however, those measures are still at an early stage of development.

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

The Department of Ecology is required to act on this petition by November 9, 2007, and views its options as:

- 1) Initiate rule making to temporarily close the Yakima basin aquifers within Kittitas County to the use of exempt wells by withdrawing all unappropriated water from further appropriation.
- 2) Reject the petition without proposing alternative action.
- 3) Propose a reasonable alternative to the moratorium proposed in the petition.

The Department of Ecology received verbal comments regarding the petition at two open houses as well as written comments received by the November 2, 2007, comment deadline. The Department of Ecology and Kittitas County believe, based on those comments, that an alternative approach that implements interim measures to better understand water resource availability and generates data to support long-term decision making is preferable to withdrawal of all unappropriated ground water or rejection of the petition. The Parties are entering into this Agreement to document the framework of that alternative approach.

Wherefore, Kittitas County and the Department of Ecology agree as follows:

2. PROVISIONS

A. Interim Management Measures – The parties agree to enact a number of interim measures while ground water studies are conducted that will provide the basis for development of long-term strategies for use of ground water and exempt well use in Kittitas County. Unless specifically stated otherwise, the interim measures described below will apply only to what will be referred to as upper Kittitas County which is depicted graphically in Attachment 1. The extent to which exempt well management measures will apply to the remainder of the county (lower Kittitas County) will be determined by the Parties upon completion of the current USGS ground water study in 2008. The interim management measures are as follows:

i) Data Collection and Management – Through the MOA, the Parties agree to develop mechanisms that provide for reporting of water use data from Group A and Group B public water systems that rely on exempt wells as a water source to help determine the impacts of such systems on water resources. The MOA will identify implementation steps for agreed

upon mechanisms. Kittitas County will consider applying agreed upon mechanisms to public water systems in lower Kittitas County that are served by exempt wells on a voluntarily basis. Metering data obtained through agreed upon mechanisms will be considered part of the public record.

ii) Technical Assistance – The Department of Ecology agrees to provide technical assistance to Kittitas County, prospective water users and other stakeholders in assessing potential impacts of exempt well use on ground and surface water resources. The Department of Ecology will explore whether resources are available for the department to retain a watermaster to provide additional technical support to Kittitas County.

iii) Exempt well residential development standards – The Parties agree that, on an interim basis, standards for residential developments served by exempt wells will be guided by the principle of a total of one ground water exemption (5,000 gallons per day) for each 40 acres of land for the purposes of domestic water use and irrigation of non-commercial lawn and garden. This would not preclude development of more than one well under a single exemption as long as the 5,000 gallon per day limit is not exceeded. The exemption will be prorated for parcels smaller than 40 acres; for example, one-half of an exemption (2,500 gallons per day) would be available for 20 acres of land and one-quarter of an exemption (1,250 gallons per day) would be available for 10 acres of land. For the purposes of this Agreement, it is assumed that each residential unit will use approximately 400 gallons per day for all domestic purposes. The water required for non-commercial irrigation will be included in the per unit residential water demand. Specific interim standards for residential development served by exempt wells, including determination of per unit irrigation demand, as well as protocols for implementing those standards, will be addressed in the MOA. Provisions for parcels of greater than 40 acres for which more than a single exemption is proposed will also be addressed by the Parties in the MOA, and could include a cap on the total number of exemptions, mitigation for total water use, or other appropriate measures to prevent impairment of senior water rights. In addition, the Parties will collaborate on MOA provisions to identify circumstances under which an impairment analysis would be required. Ecology will propose a rule to clarify how the ground water exemption can be used to serve residential development within the study area during the interim period.

iv) Notice to prospective buyers and existing well owners – Kittitas County will continue to place language on the face of plats that discloses risks to current and future land owners associated with reliability of water supply. The Parties will jointly review that language to determine whether modifications would be appropriate. The Department of 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 exempt wells as well as junior ground and surface water rights for water supply.

B. Ground Water Study –

i) The Parties agree to initiate a ground water study intended to focus on portions of Kittitas County that are not being fully addressed in the current USGS ground water study of the Yakima River Basin. Subject to funding availability, the 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 determine the extent of potential impairment resulting from exempt well use. The Department of Ecology will commit to work with the Governor's Office and the Washington State Legislature to secure funding for the study.

ii) The initial phase of the study will involve development of a scope of work and establishment of an advisory committee and will commence upon the effective date of this Agreement. 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 will be mutually agreed upon by the parties and will represent a broad spectrum of the public.

C. Long-Term Management Program – Based upon the findings of the study described in Section 2B, the Parties in consultation with the advisory committee will develop a proposed long-term water management program that will, to the extent practicable, provide quantities of ground and surface water adequate for existing demand, including streamflows adequate to protect instream values and protection of existing water rights; provide a reliable supply of water for new uses; and allow for the efficient management of water resources in the County. The program may consider a variety of options, including but not limited to, provisions similar to the interim measures described above, an ongoing ground water monitoring program, and a formal exempt well mitigation program.

D. Mitigation – The Department of Ecology will continue to work with the Bureau of Reclamation (Reclamation), senior water right holders, Kittitas County, the Yakama Nation and others interested in water management to develop a program that would provide a mechanism by which developers and exempt well owners can purchase mitigation to offset water resource impacts associated with exempt well use. The parties agree to begin implementation of the mitigation

program once the Department of Ecology and Reclamation have formally established the program's operational structure.

E. MOA Schedule – The parties recognize that an MOA will be needed to formalize commitments made in this agreement and will work to achieve consensus on an MOA within 60 days. The 60 day period can be extended by mutual agreement of the Parties if it is agreed that substantive progress is being made. Should the parties be unable to achieve consensus regarding a MOA within the timeframe described above, the Department of Ecology will reconsider the request by Aqua Permanente to temporarily close Kittitas County to new exempt well use.

F. Term of Agreement and MOA – This Agreement will expire upon joint approval of the MOA by the Parties or upon conclusion of the 60-day period including any extensions. The MOA will expire three years from the effective date, unless extended in writing by the Parties. The MOA may be revised as new information becomes available, subject to written approval of the Parties.

G. The MOA will address each agency's respective legal obligations.

3. SIGNATURES:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

KITTITAS COUNTY
BOARD OF COMMISSIONERS

Jay J. Manning, Director

Commissioner Alan A. Crankovich, Chairman

Date: _____

Date: 11/9/07

Commissioner David B. Bowen, Vice-chairman

Date: 11/9/07

OPPOSED

Commissioner Mark McClain

Date: 11/9/07



Julie A. Kjorsvik
Clerk of the Board

Approved as to form:

Gregory L. Zempel,
Prosecuting Attorney
WSBA #19125

Neil A. Gullins W4BA #31759

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Commissioner Mark McClain

Date: _____

ATTEST:

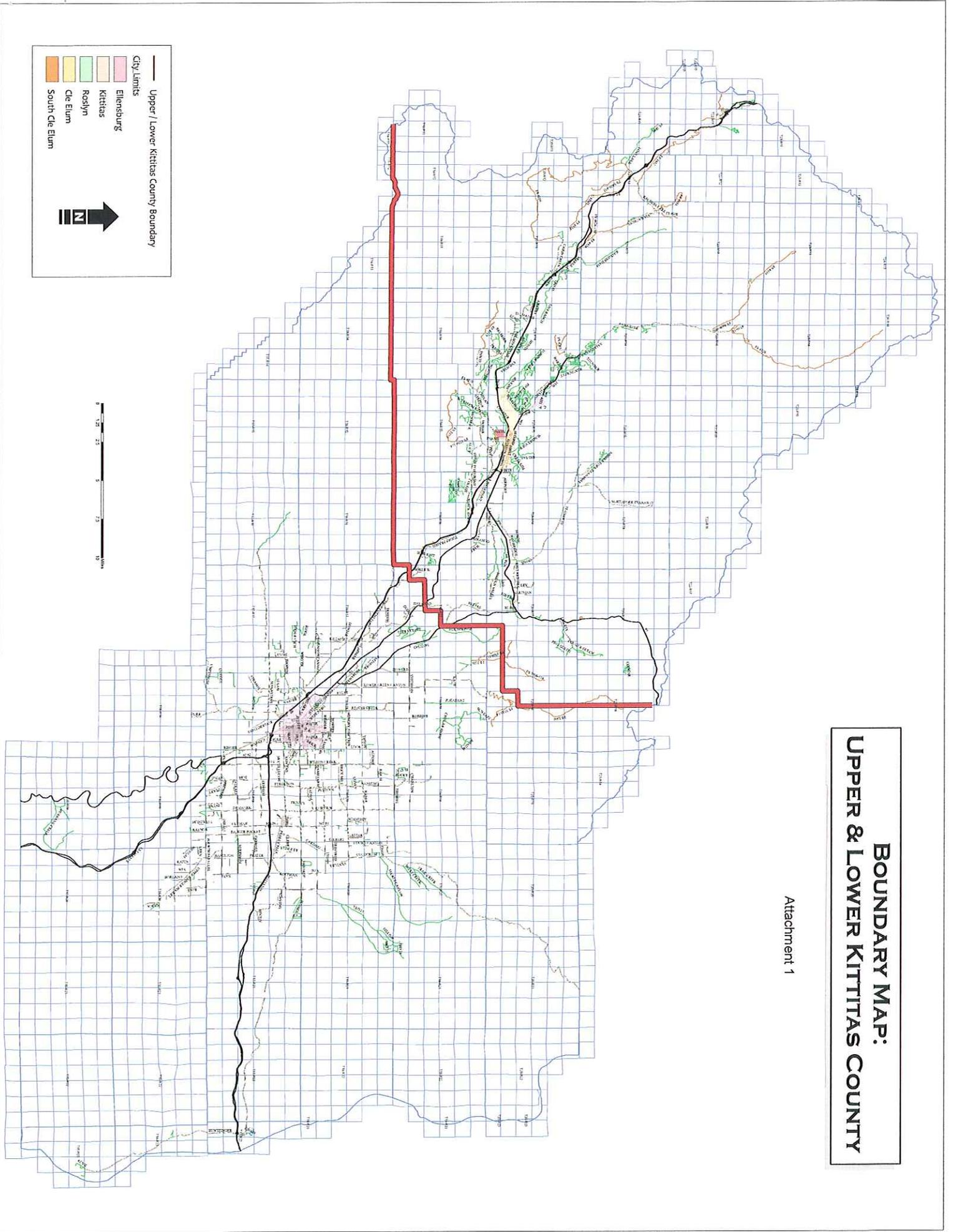
Julie A. Kjorsvik
Clerk of the Board

Approved as to form:

Gregory L. Zempel,
Prosecuting Attorney
WSBA #19125

BOUNDARY MAP: UPPER & LOWER KITTITAS COUNTY

Attachment 1



Upper / Lower Kittitas County Boundary

City Limits

- Ellensburg
- Kittitas
- Roslyn
- Cle Elum
- South Cle Elum

