



Kittitas County, Washington

## BOARD OF COUNTY COMMISSIONERS

District One  
Paul Jewell

District Two  
Alan Crankovich

District Three  
Mark McClain

March 30, 2010

Honorable Christine Gregoire  
PO Box 40002  
Olympia, WA 98504

Dear Governor,

As you are well aware, the Kittitas County Board of Commissioners has been engaged with the Department of Ecology (Ecology) for the past three years to resolve issues raised by a two-party group calling themselves Aqua Permanente. Ecology rejected the petition and entered into an agreement with Kittitas County for the long-term management of water within Kittitas County. Certain terms of the agreement became problematic for both Ecology and the County and we entered into the dispute resolution portion of the agreement. However, and despite being in the process, on July 16, 2009 Ecology imposed a moratorium in the area referred to as Upper Kittitas County. Kittitas County promptly appealed the administrative decision and in a press release you issued that same day, you spoke of our collective duties "to protect both current and future water users as well as stream flows in the basin." We agree that there is a duty to protect both current and future water users as well as stream flows, but there is obligation as government officials to fulfill our duties within the constraints of the law. It is with this in mind that we again respectfully request you reconsider the rule in Upper Kittitas County and instead direct Ecology to continue their efforts to address this issue with the locally elected officials without the crippling effect of a moratorium. I believe the Domestic Water Reserve Program, temporary use of existing water which Ecology owns, the County's purchase of water rights, and a metering program will best serve our constituents and is much more constructive than another moratorium.

We raise two principle issues for your consideration. No emergency exists that warrants the imposition of such a burdensome rule and that certain procedural deficiencies remain. In 2009 only 16 wells were drilled in Upper Kittitas County. With the crash of the housing market, nearly all large-scale development has stopped. Further, Kittitas County has adopted significant modifications to land use and water policies. With these sweeping changes to policy and market conditions, and the number of actual wells drilled, it seems that no emergency exists. With regard to procedural issues, on March 23, 2010, the Department of Ecology adopted an emergency rule that is identical to the rules adopted on November 25, 2009 and July 31, 2009 and substantially similar to the rule adopted July 16, 2009. This was done pursuant to RCW 34.05.350; RCW 34.05.350(2) limits the emergency adoption of identical or substantially similar emergency rules in sequence. Ecology has failed to file notice of its intent to adopt the rule as a permanent rule with any of the July 16, 2009, July 31, 2009, November 25, 2009, or March 23, 2010 rule making notices. Ecology has not actively undertaken the necessary procedures to adopt the rule permanently. With hindsight we can look to the periods from July 31<sup>st</sup> to November 25<sup>th</sup> and November 25<sup>th</sup> to March 23<sup>rd</sup> and observe that none of the rule making

requirements were satisfied.<sup>1</sup> Additionally, this rule withdraws waters of the state from additional appropriations and lists as authority RCW 90.54.050. State law requires a noticed public hearing within Kittitas County.<sup>1</sup> This requirement is in addition to the general requirements of Chapter 34.05 RCW and has not been satisfied.

Last July, you denied our petition and by so doing confirmed Ecology's assertion that "That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest."<sup>2</sup> By the time this rule expires it will have been an entire year.

Based on the foregoing, the Kittitas County Board of Commissioners petition under RCW 34.05 for the repeal of this rule.

Respectfully,



Mark McClain  
Chairman



Paul Jewell  
Vice-Chairman



Alan Crankovich  
Commissioner

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<sup>1</sup> RCW 90.54.050 (2) "...Prior to the adoption of a rule under this section, the department shall conduct a public hearing in each county in which waters relating to the rule are located. The public hearing shall be preceded by a notice placed in a newspaper of general circulation published within each of said counties..."

<sup>2</sup> RCW 34.05.350(1)(a) as well as CR-103E (July 2009) by Department of Ecology AO#09-07