

Kittitas County, Washington

## BOARD OF COUNTY COMMISSIONERS

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April 15, 2010

Washington State Department of Ecology  
Ted Sturdevant, Director  
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Director Sturdevant:

The Kittitas County Board of Commissioners has been reviewing, with substantial interest and reflection, the several comment letters recently received regarding the Domestic Water Reserve Program (DWRP) being proposed to Ecology by Kittitas County. We find many of the comments are productive and thoughtful and we would like to formally address several of them in an effort continue our cooperative effort toward development of the DWRP.

At the outset, we believe we must once again clarify that our intention in this process is to collaboratively achieve a program that will provide an additional alternative to the management of groundwater in Kittitas County. Our ultimate goal is to provide domestic water users protection from curtailment, protection of in-stream flows, allow managed development to occur, preservation of property rights and values, and to do so within the allowable limits of authority as established by the laws of the State of Washington. Finally, we also believe it necessary to clarify that our overarching motivation is to reach an agreement that will compel Ecology to rescind the moratorium on new groundwater withdrawals in Upper Kittitas County. It is the County's position that lifting the moratorium is critical to the economic present and future of our County and our citizens, and that anything less would require us to re-evaluate our position.

We have requested that Ecology clarify for us under what circumstances you would be willing to rescind the moratorium that was imposed July 16, 2009. To date you have not provided us with that information. In a recent email response to this question, you stated "You ask a good and fair question". In a later email, dated 4/8/2010, you changed your posture, stating "I don't think anyone can yet answer the question you pose...". Certainly you can agree that a good faith effort on the part of all participating organizations will require open communication and clear expectations as to the specific outcomes of a potential solution. If one party is unable or unwilling to meet those expectations, it is helpful to possess that knowledge upfront, rather than pursuing a goal that will inevitably prove unattainable. We continue to await an answer to this question.

In the absence of a moratorium, the County can see a role for itself in assisting Ecology with groundwater management. We believe that together we can find ways to meet the goals of Water Budget Neutrality, Total Water Supply Availability (TWSA), and the protection of existing users

from impairment without requiring lot-specific review. However, if the DWRP operates under the backdrop of a moratorium which prohibits all new ground water appropriations, then water will have to be transferred or specifically exercised. Since RCW 90.38.040(5)(a) requires Ecology to determine that no existing water rights will be impaired or injured in any manner, a review of each proposed withdrawal would have to occur. If specific allocation to parcels is required as opposed to a more general debiting of an account, we fail to see where our participation would be necessary or valuable.

As to the comments received from other stakeholders on the DWRP, we have the following remarks:

1. Is the DWRP an Appropriate Water Allocation Tool?: In your email to Commissioner Mark McClain date 4/8/2010, you mentioned the question raised by the Kittitas Reclamation District (KRD) as to whether or not the DWRP, as proposed, is an appropriate water allocation tool. We have been considering their comment as well, and have discussed it with representatives from their organization.

It is important to note that the DWRP proposed by Kittitas County is not an untested concept. Programs such as this are currently employed with success in other rural areas of the United States to address similar issues with which we are dealing here. Additionally, the County's proposal is within the scope of the direction of the Legislature as authorized during this session's Capital Budget appropriation. It has also been supported by Governor Gregoire in her April 6, 2010 letter to Kittitas County which stated "I am also pleased with the joint efforts of Ecology and the County to develop a domestic water reserve program".

The DWRP will, without doubt, take time to develop. However, we believe it is necessary as an option for future groundwater management as the trust water bank that has finally been developed but as of yet has not actually made water available for domestic use is not without challenges. The water within it can only be applied to certain areas, and it is finite. When the water is fully allocated, or if a landowner in an area where the water currently cannot be utilized is in need of water for domestic purposes, we will need an alternative solution. Simply maintaining a moratorium on new groundwater extraction as has been the case in Upper Kittitas County for nearly a year is not a solution that considers all interests.

2. Short Water Year Mitigation: A couple of comments were received that expressed concern with a program that only addresses supply during short water years. Specifically, it was stated that use which is not mitigated all the time may reduce carryover and therefore increase the occurrence and severity of short water years (Roza letter). While we understand this concern, we believe it can be and should be better addressed by providing additional storage and developing methods to access current reserves that currently are not utilized in existing reservoirs.

The need for additional storage has been discussed and studied for many years and is not a new issue for the Yakima Basin. Storage is also a centerpiece of the ongoing Yakima River Basin Water Enhancement Project (YRBWEP) of which the County has been an active participant. This point was mentioned in several of the letters, including from Roza Irrigation District (Roza) and the Central Washington Home Builders Association (CWHBA). The creation of additional

storage infrastructure and other elements of the YRBWEP process are the long-term solutions for creating significant reserves necessary to offset the consumptive use associated with groundwater withdrawals for domestic purposes while providing ample irrigation supplies throughout the Yakima Basin.

Development of a portfolio of water rights that may be leased during short water years should not be abandoned as a solution for offsetting the consumptive use associated with groundwater extraction for domestic purposes and its potential impacts on surface water flows. The concerns of water users such as Roza, as we understand them, is that junior water users with later priority dates (i.e. domestic water users) are not being curtailed during water short years. If managed properly, the DWRP will provide enough water to offset the consumptive use of domestic water users in Kittitas County by temporarily fallowing crop land while fairly compensating water right holders and keeping water in streams for habitat and water users downstream. This mitigation measure will protect domestic users while enhancing the water supply when curtailment may be necessary.

3. Local Impairment Concerns: Another comment also expressed concern with short water year mitigation only stating that “Mitigation limited to ‘drought years’ (a term of art) is inadequate to protect impact to local streams and aquatic habitat” (CELP Letter). We understand the local impairment concerns of various stakeholders, including the Yakama Nation, regarding in-stream flows as it relates to aquatic habitat. Currently, two “red” zones exist within Upper Kittitas County where water from the newly created trust water bank cannot be applied. This has effectively created significant areas where property owners are without a solution if they wish to build a home and drill a well. The County has already been approached by water rights holders in one of the “red” zones about participating in the DWRP. Such an agreement would provide significant additional water for in-stream flows during short water years. We remain committed to finding ways by which property owners can realize the full value of their property without continuing the imposition of this moratorium.

The County has suggested that it agree to work closely with Ecology during the acquisition of water right leasing agreements in implementing the DWRP to target those areas most sensitive to reduction of in-stream flows that may create an impact on the quality and quantity of aquatic habitat. The County is also willing to consider additional components of the DWRP specific to particular areas of concern. Such additional components may include, for instance, creating set-asides with DWRP funds for water leases and purchases specific to those areas, or imposing greater fees as previously proposed during the building permit process for those specific areas to provide additional funding and incentives to water right holders within those areas to participate in the DWRP. Other requirements for the “red” zones may include minimum depth requirements for new groundwater wells and other known measures which delay and/or limit the effect of groundwater withdrawal on surface flows.

Another method for managing future development in “red” zones may be by way of the County’s recently adopted Transfer of Development Rights program. We believe this innovative new approach may provide an avenue by which property owners can realize the full value of their property while limiting the potential for increased density in sensitive areas.

We would also like to discuss the possibility of including language within the DWRP that allows the funding to be utilized for water quality projects within specific areas of concern related to aquatic habitat. While acknowledging some of the inherent difficulties in obtaining water rights to offset new groundwater withdrawals within certain basins, perhaps improvements which create/restore flood plains, improve water quality, and/or improve water temperature may be considered as appropriate offsets to full water-budget neutrality in certain basins and a credit program developed based on those improvements to allow new domestic groundwater use.

The approaches mentioned previously, the DWRP, well requirements, TDR's, and habitat improvement/restoration credits, when combined with whatever availability may be created in a trust water bank, may provide an approach that addresses the concerns of local impairment by various stakeholders within the basin while protecting property values and the rights of Kittitas County citizens.

4. Metering and Data Collection: We were pleased to see several comments in support of the valuable information that this program will provide. We remain committed to assisting with the implementation of a full-scale metering and data-collection program if we can reach a cooperative agreement that will include the lifting of the current moratorium.

We do not disagree with the KR D's statements that "Kittitas County has no authority under existing law to regulate the use of water...". We have been clear as to this point. We do not believe that creation and implementation of the DWRP places the County in the position of regulating water use. Rather, it provides a method by which the County may assist and protect domestic water users and property owners.

5. Dual Right Issues/Availability of Senior Water Rights: In their letter, KR D also presented concerns regarding dual rights for irrigation and how the use of an existing creek right by the DWRP may cause a detrimental impact to TWSA, thus making these instances not available to participate in the DWRP. We have had the opportunity to hear from KR D firsthand regarding their concerns. We understand the difficulties involved in such a transfer as they described in their letter and will seek to avoid such issues as development of the DWRP moves forward.

KR D further states they believe "that there are very few water rights within Kittitas County that are 'senior water rights' that would actually be eligible to participate...". It is clear that this program is not without challenges. However, if Ecology believes that senior water rights exist to be placed within a trust water bank, it is reasonable to believe that additional rights also exist which may fit well with the DWRP. Accordingly, the County has been approached by Suncadia regarding their currently under-utilized and substantial water rights which are set aside for further development of the Master Planned Resort property. Utilization of these rights at the outset of the implementation of the DWRP may provide a significant window of time, potential 10 to 20 years, for additional acquisition of rights through leasing agreements or otherwise to offset new groundwater withdrawals for domestic purposes. Further, if as mentioned prior, enhanced storage and the YRBWEP process are indeed the long-term solutions, we believe that the DWRP will very likely be able to provide adequate offsets during short-water years until such a time as additional storage is created.

In conclusion, we continue to be confused as to why the moratorium on all new groundwater extractions continues to affect only the residents of Kittitas County and specifically the area of Upper Kittitas County. If the reasons for the moratorium stated by your agency, and most recently by Governor Gregoire in the aforementioned letter dated April 6, 2010, as justification for this imposition on our citizens are true, then those same reasons certainly can and should be applied throughout the entire basin. The upper tributary watersheds within Kittitas County are not the only significant contributors to TWSA within the Yakima Basin, and as mentioned within the recently released USGS Report "Hydrogeologic Framework of the Yakima River Basin Aquifer System, Washington", the whole of Kittitas County only represents 3% of the entire cumulative groundwater pumpage in the Yakima Basin. If the crisis you describe truly exists, it would make sense to place similar conservation measures in the areas where the greatest extraction of groundwater and the greatest potential for new extractions are likely occurring. Simply focusing on a very small and relatively insignificant portion of what is being described as a real problem continues to raise questions as to the true nature and significance of the problem and the motivation for the action being taken.

When questioned as to this specific point, you were quoted in an April 15, 2010 article in the Daily Record saying "the issues in Kittitas County are different from those elsewhere. 'Benton and Yakima County are nothing like Kittitas. There are not the same growth pressures.'" Yet, when looking at the actual number of building permits for single family residences issued each year within the unincorporated areas from 2005 until today in the following table, it is clear that growth pressures, especially in Yakima and Kittitas Counties, are similar:

<u>County</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Kittitas	334	396	376	220	117	35
Yakima	384	382	354	317	145	32
Benton	187	187	137	110	102	15

The previous chart includes building permits for the entirety of each County. Accordingly, Kittitas County numbers are not limited solely to Upper Kittitas County. However, this data does not include other pertinent factors which should also be considered, including that roughly half of the property owners in Upper Kittitas County have permanent addresses outside Kittitas County and are not full-time residents. Therefore, the homes they are building are for recreational purposes only and likely do not withdraw groundwater at the same rate as a full-time residence. Further, Kittitas County's permit numbers do include all residences constructed within Suncadia's Master Planned Resort project. Since 2005, approximately 175 of the permits listed above are for residential units inside Suncadia. As you are well aware, all construction within Suncadia is already fully mitigated.

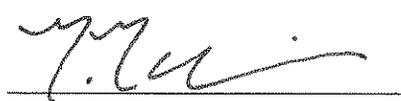
Finally, when taking into account the smaller population of Kittitas County relative to other Counties in the Yakima Basin, the negative effects of the moratorium have a dramatically increased impact per capita. Specifically in Upper Kittitas County, even the loss of a few family-wage jobs as a result of Ecology's action will have a significant impact on the economy as a whole. It is impossible to deny this fact. We are certain you will agree that one lost job and one family unable to provide for itself is never acceptable if it can be prevented. We encourage you to seriously consider, as we do, the impact that these regulatory actions are having on the

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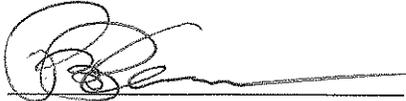
everyday lives of our citizenry, not just overarching policy aspirations that need a proving ground that is politically convenient.

We look forward to addressing each of these issues with you in further detail. We are open to and welcome the opportunity for inclusion of the various stakeholders throughout the Yakima Basin in those discussions as well.

Sincerely,



Mark McClain  
Chairman



Paul Jewell  
Vice-Chairman



Alan Crankovich  
Commissioner