



OPEN HOUSE

To Review Upper Kittitas Emergency Groundwater Rule Chapter 173-539A WAC

Presented by:

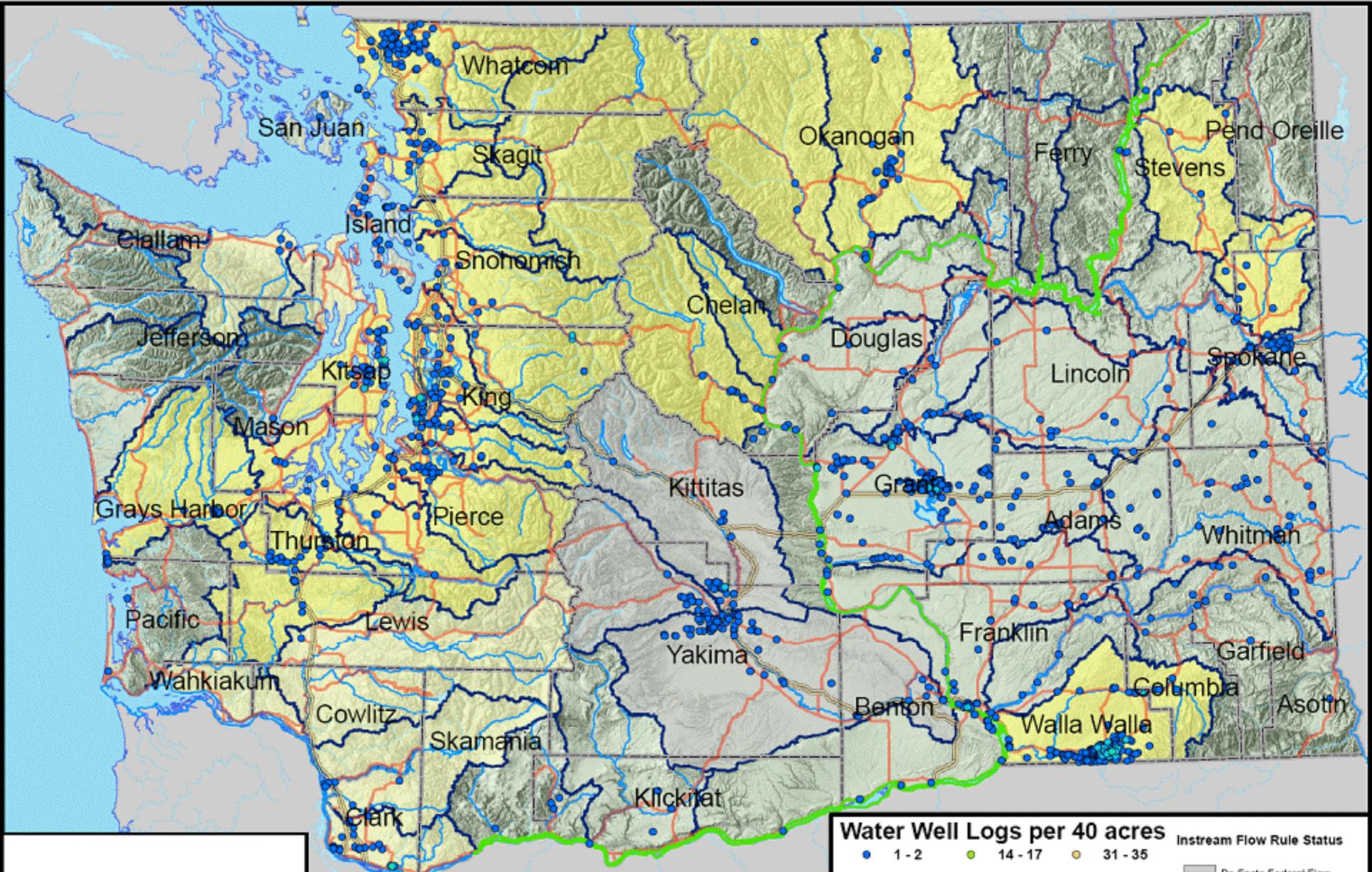
G. Thomas Tebb, L.E.G.

Section Manager, Central Region

Washington State Department of Ecology

Tonight's Presentation Outline

- Statewide groundwater well use information
- Kittitas County growth statistics
- Exempt well statute RCW 90.44.050
- Yakima Basin Water Resource information
- Petition for groundwater closure and Ecology decision
- Memorandum of Agreement (MOA) and adoption of Upper Kittitas Emergency Rule (Chapter 173-539A WAC)
- Components of the MOA and Emergency Rule
- Areas identified in the rule for correction, clarification, and addition
- Next steps in the final rule making schedule
- Contact information
- Q & A period



1950

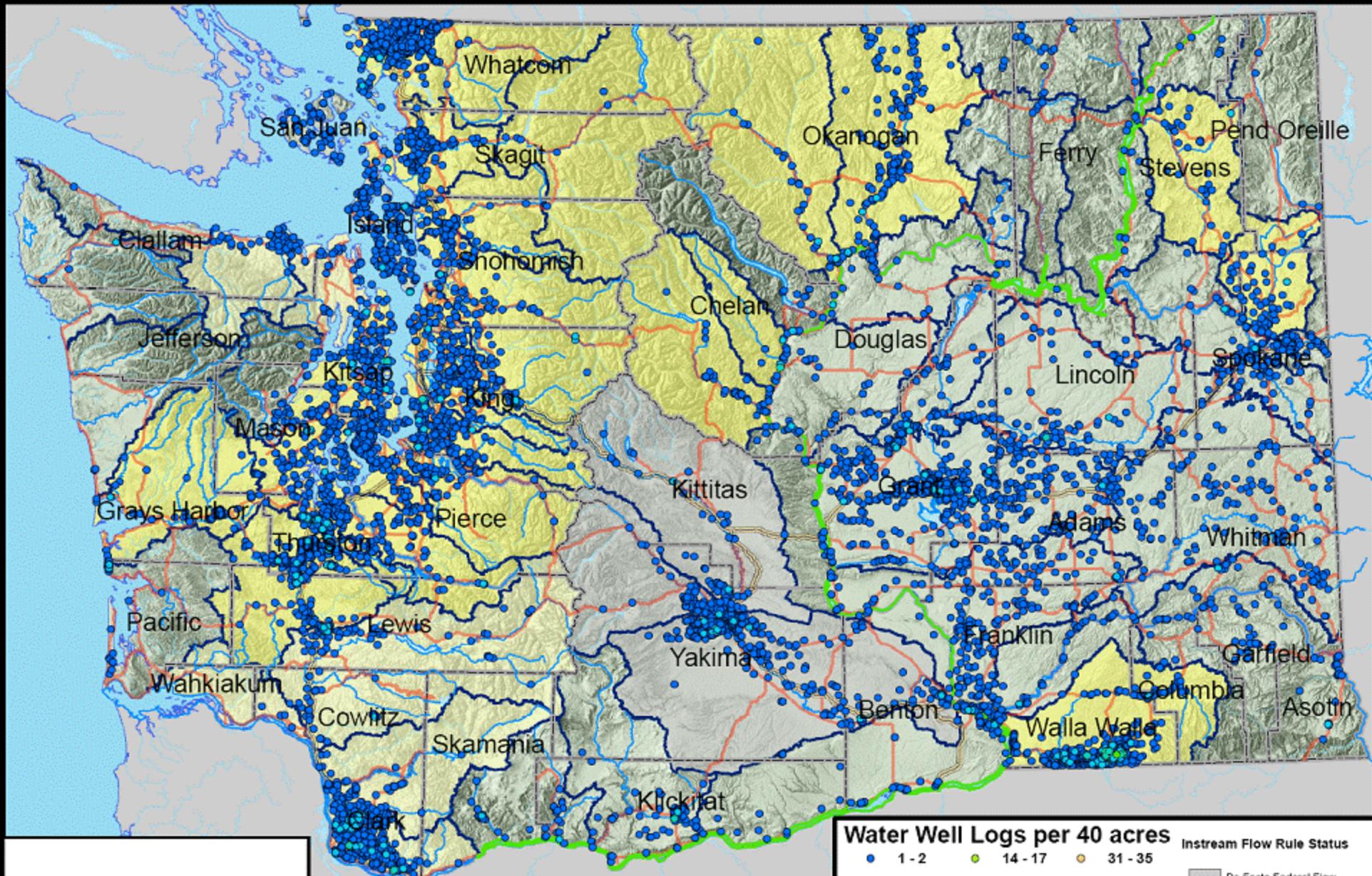
Water Well Logs per 40 acres

- 1 - 2
- 3 - 6
- 7 - 10
- 11 - 13
- 14 - 17
- 18 - 20
- 21 - 25
- 26 - 30
- 31 - 35
- 36 - 40
- 41 - 55
- 56 - 77

Instream Flow Rule Status

- De Facto Federal Flow
- Existing Rule
- Rule in Process
- Columbia River Instream Flow

N
 WRIA Boundary County Boundary
 0 25 50 Miles

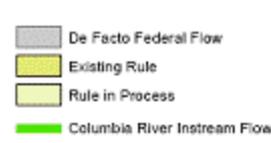


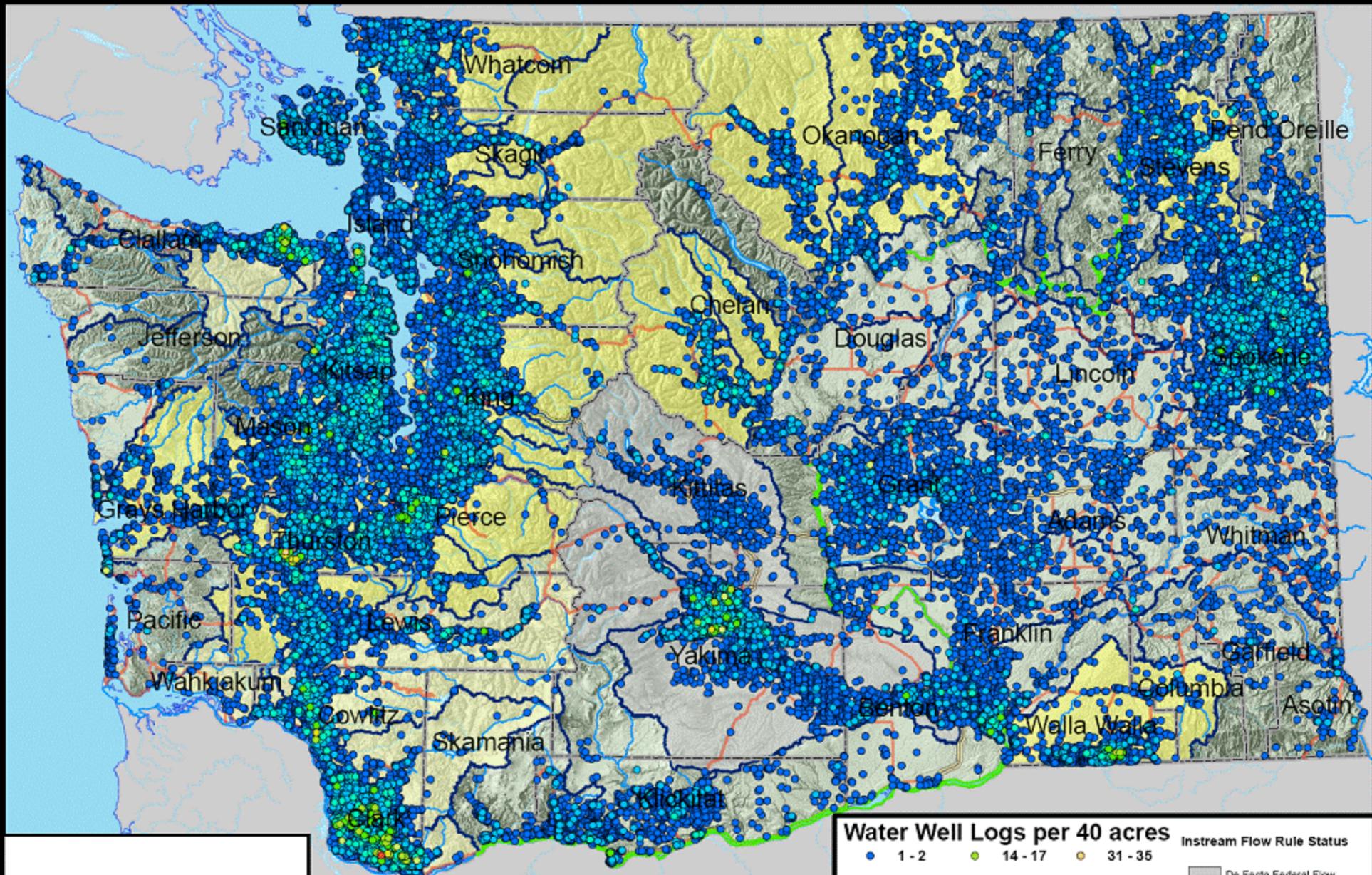
1970

Water Well Logs per 40 acres



Instream Flow Rule Status





Whatcom
 San Juan
 Skagit
 Island
 Spohnish
 Okanogan
 Ferry
 Bend Oreille
 Stevens
 Chelan
 Douglas
 Lincoln
 Spokane
 Jefferson
 Kitsap
 King
 Grant
 Adams
 Whitman
 Mason
 Pierce
 Kittitas
 Franklin
 Grays Harbor
 Thurston
 Lewis
 Yakima
 Benton
 Walla Walla
 Pacific
 Waukiakum
 Clark
 Skamania
 Klickitat
 Columbia
 Garfield
 Asotin

1990

Water Well Logs per 40 acres

● 1 - 2	● 14 - 17	● 31 - 35
● 3 - 6	● 18 - 20	● 36 - 40
● 7 - 10	● 21 - 25	● 41 - 55
● 11 - 13	● 26 - 30	● 56 - 77

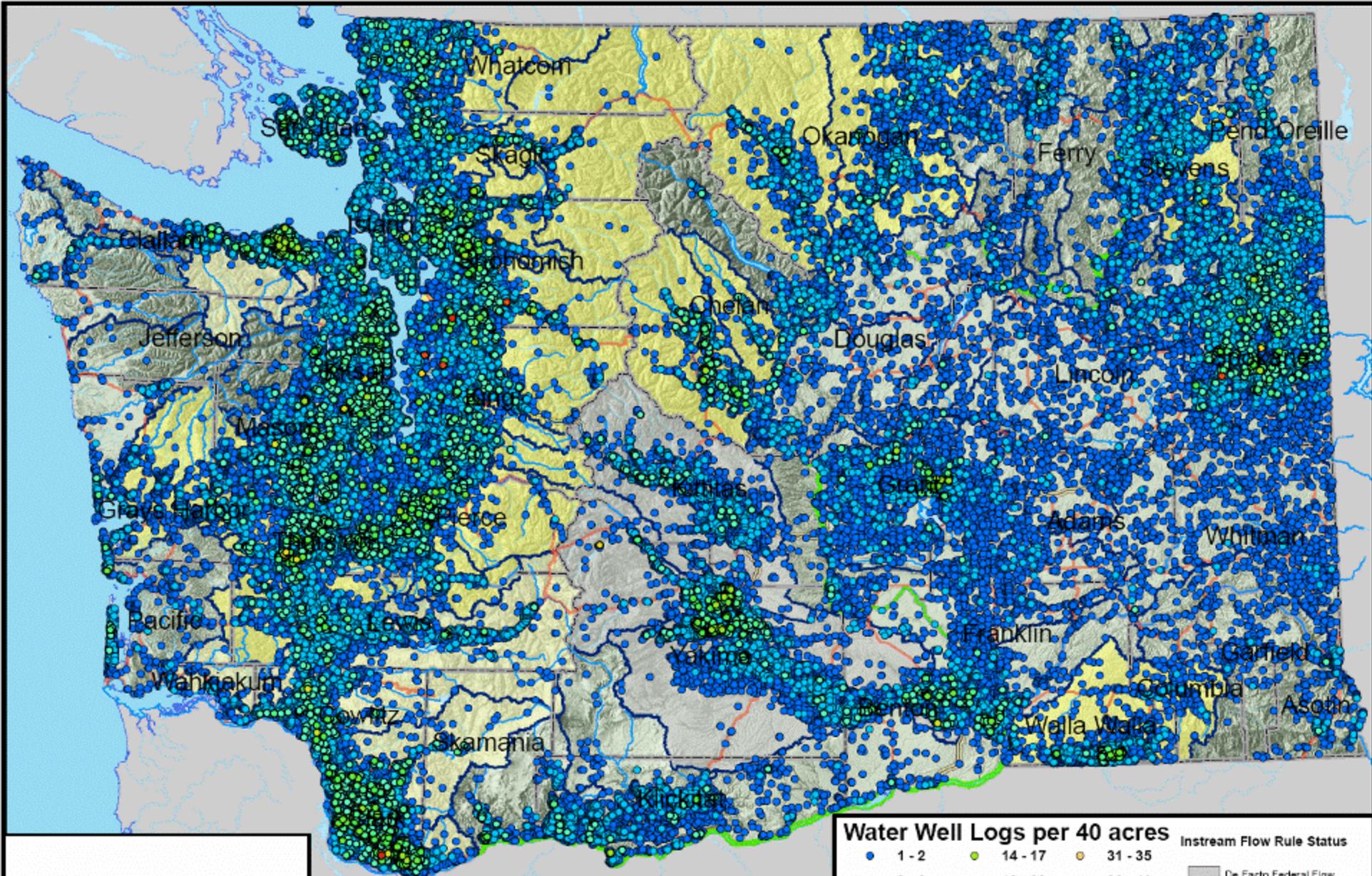
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■ WRIA Boundary ■ County Boundary

N
 0 25 50 Miles

Department of Ecology
 October 2007



2007

Water Well Logs per 40 acres

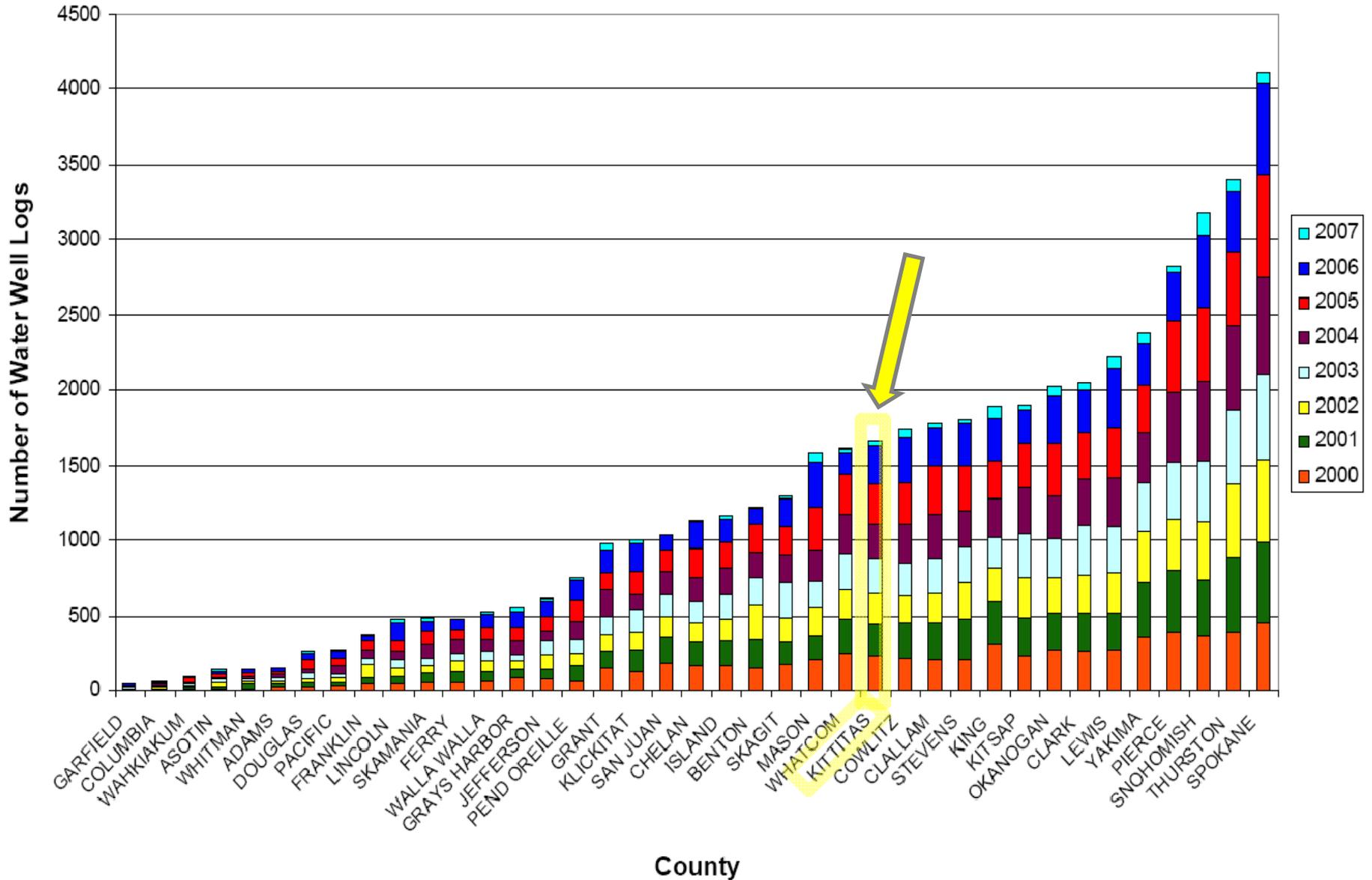
- | | | |
|-----------|-----------|-----------|
| ● 1 - 2 | ● 14 - 17 | ● 31 - 35 |
| ● 3 - 6 | ● 18 - 20 | ● 36 - 40 |
| ● 7 - 10 | ● 21 - 25 | ● 41 - 55 |
| ● 11 - 13 | ● 26 - 30 | ● 56 - 77 |

Instream Flow Rule Status

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N
 WRIA Boundary County Boundary
 0 25 50 Miles

Number of New Water Well Logs Per Year by County



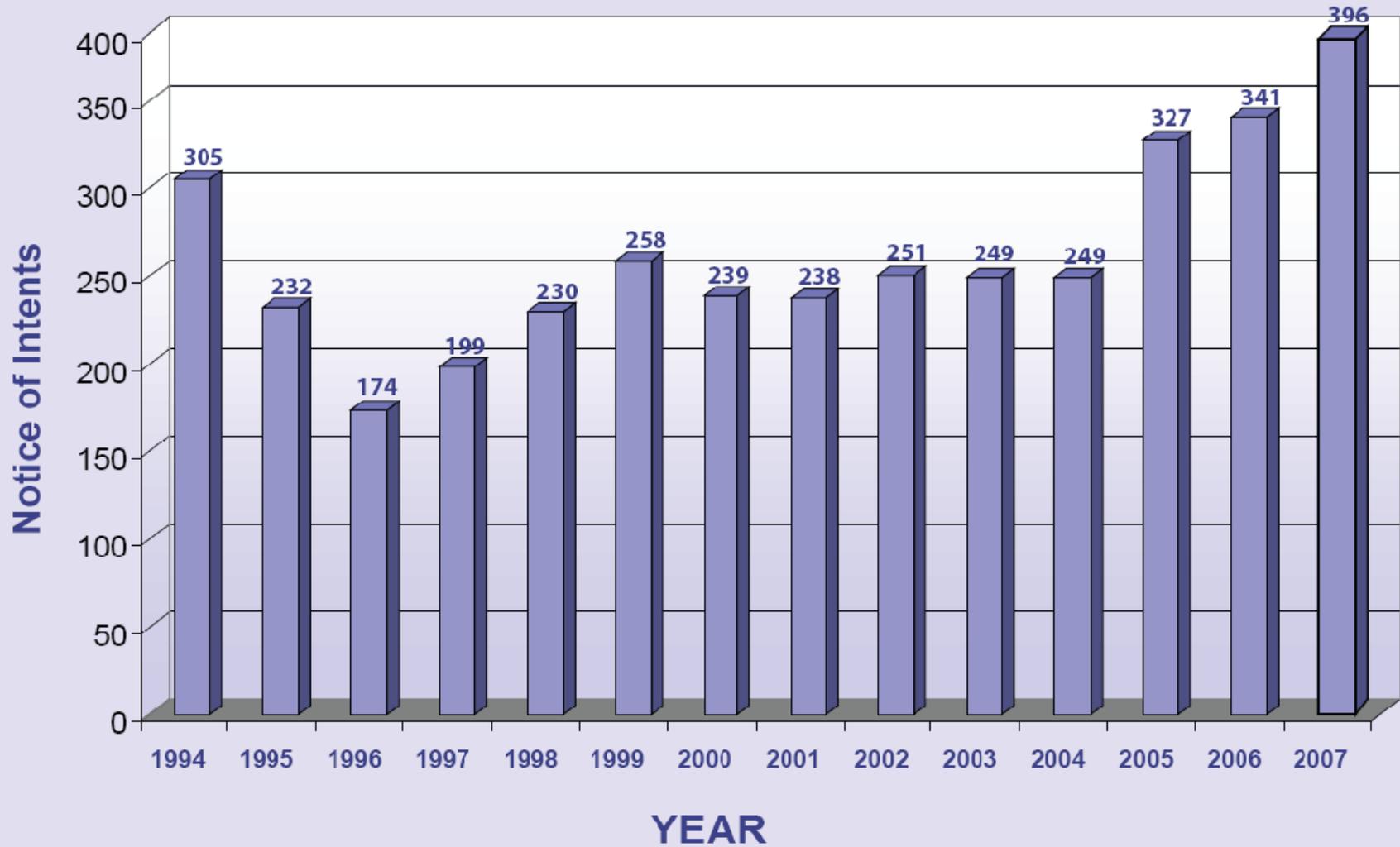
Kittitas County - Statistics

- 2000 Census Population 33,362, about 40 percent in unincorporated county
- OFM 2030 projections 39,398 to 60,322
- Opted into Growth Management Act (Chapter 36.70A RCW)
- Many existing platted, undeveloped one, two, and three acre lots
- Active development in west and central county
- Recently, most new growth outside of cities is reliant on ground water exemption (RCW 90.44.050)

RCW 90.44.050 - Ground Water Exemption

. . . withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter

Kittitas County



Yakima Basin

- Surface water managed by Bureau of Reclamation (5 major reservoirs)
- Basin undergone surface water adjudication since 1977
- Ground water not included in adjudication
- By court order (2001), surface water rights junior to May 10, 1905 cut off in dry years (including City of Roslyn)
- No new ground water rights issued since 1999 per settlement agreement with Yakama Nation/Bureau of Reclamation – did not address exempt wells
- USGS will complete comprehensive ground water study in 2009

Petition for Groundwater Closure

- **September 13, 2007 – Aqua Permanente petitions the Department of Ecology to establish a temporary moratorium on new 'exempt' wells in Kittitas County**
- **Petition challenged use of the exempt well provision to supply water to new residential developments in Kittitas County**

Chapter 90.54 RCW

Water Resources Act of 1971

. . . whenever it appears necessary to the director in carrying out the policy of this chapter, the department may by rule . . . [w]hen sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available.

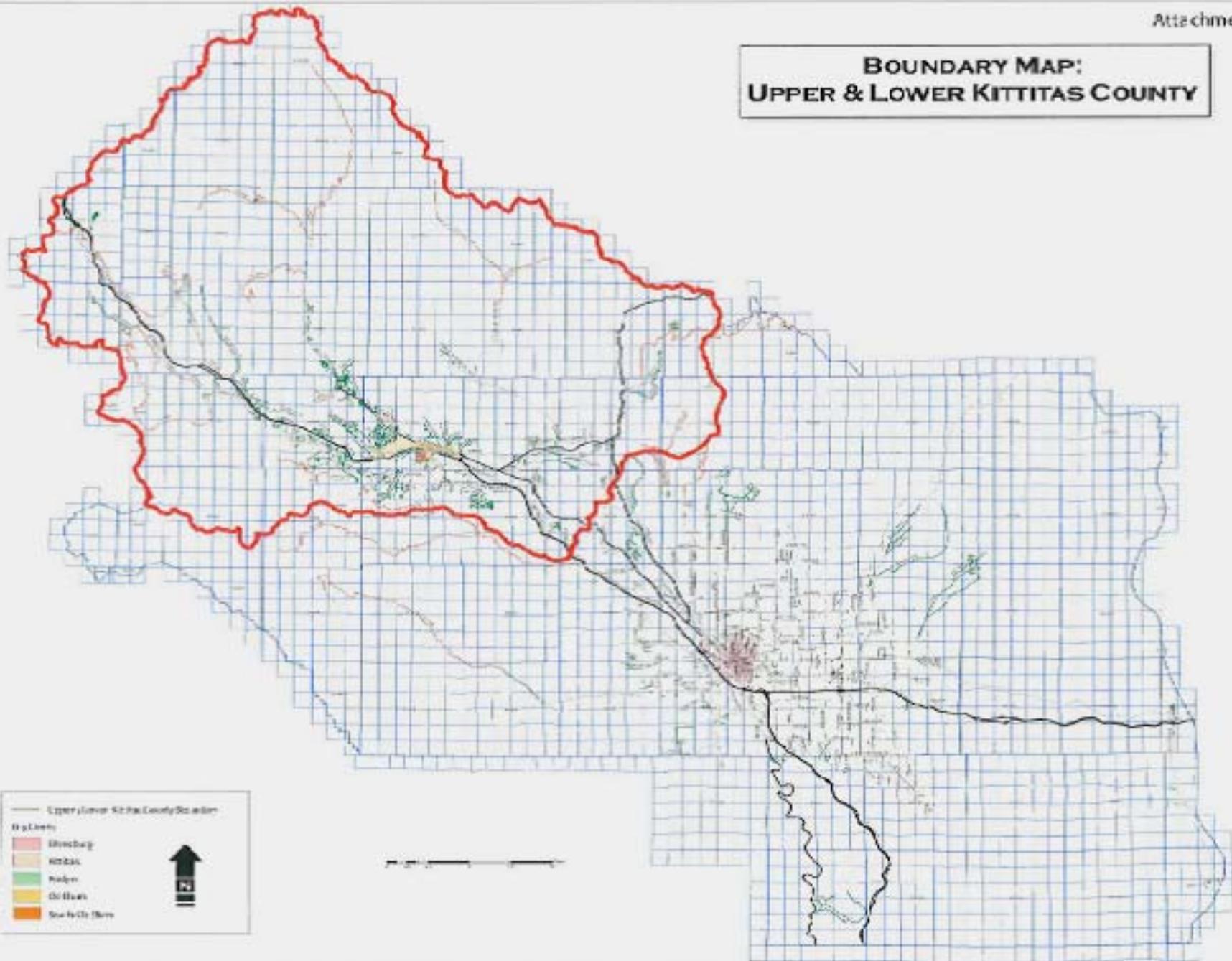
Options Considered by Ecology

1. **Accept petition and go to rule making**
2. **Reject the petition and take no further action**
3. **Reject the petition, but propose an alternative approach to closure**

Decision Regarding Petition

- Rejected petition, but proposed alternative approach to closure
- On November 9, 2007 Kittitas County and Ecology entered into an Agreement in Principle (AIP) which laid the foundation for the MOA (signed April 7, 2008)
- MOA reflects the joint commitment between Kittitas County and Ecology to:
 - Implement interim management strategies
 - Ecology to adopt emergency rule and longer term rule to implement MOA (Emergency rule adopted July 8, 2008)
 - Conduct a comprehensive ground water study
 - *Ecology may need to adopt another emergency rule during the pendency of the formal rule making process

**BOUNDARY MAP:
UPPER & LOWER KITTITAS COUNTY**



Upper/Lower Kittitas County Boundary

By County

- Blanchard
- Woods
- Diablo
- South-Central



Interim Components of the MOA and Emergency Rule

Exempt Well Residential Standards

- One ground water exemption (5,000 gallons per day) per development regardless of acreage – includes both indoor and outdoor water use
- Developer must define proposal in terms of anticipated per-unit and total water use
- Measures for achieving those amounts become conditions of plat
- Existing parcels below 10 acres created after Campbell and Gwinn decision limited to no more than 1,250 gpd
- All new residential connections require individual water use metering and reporting county wide

Interim Components of the MOA and Emergency Rule

All new subdivision applications in Upper County will be subject to the State Environmental Policy Act (SEPA) (Chapter 43.21C RCW) review

- Hydrogeologic Investigation may be required for divisions of land that involve the creation of buildable lots, addressing potential impacts to the natural and built environment.
- Consultation provisions for Ecology to assist in assessing potential impacts
- Hydrogeologic information to be circulated with SEPA documents

Mitigation Program

- Currently Ecology, Bureau of Reclamation, Kittitas County, senior water right holders, and the Yakama Nation are developing a Mitigation Program in the Yakima River Basin
- Idea is to establish a water bank - acquiring senior water rights which will offset exempt well impacts – providing a long-term reliable water supply
- Developer/land owner will likely pay a mitigation fee to participate in program

Ground Water Study

- A ground water study to determine the relationship between surface waters will be conducted focusing on Upper Kittitas County - an area not fully covered in the current USGS ground water study of the Yakima River Basin
- A long-term water management program will be proposed based upon the findings of the groundwater study
- Ecology and Kittitas County are in the final stages of appointing the Ground Water Study Technical Advisory Committee

Ground Water Study Technical Advisory Committee

- **Tom Mackie**, M.S. Washington State University, LHG, LEG, Water Resources Technical Unit Supervisor, WA Dept. of Ecology Yakima, WA
- **Holly Myers**, Director, Kittitas County Public Health Department, Environmental Health Division
- **Dr. Winston Norris**, CWU Professor (Ph.D., University of Cincinnati) Sedimentology, Petroleum Geology.
- **Dr. Carey Gazis**, CWU Professor (Ph.D., California Institute of Technology) Isotope and environmental geochemistry, hydrogeology, biogeochemical cycles.
- **Steve Ballew**, Well Driller with Tumwater Drilling & Pump
- **Anna Lael**, District Manager, Kittitas County Conservation District; B.S. Natural Resources Management Washington State University
- **Kayti Didricksen**, U.S. Bureau of Reclamation; Hydrogeologist
- **Urban Eberhart** - KRD, Farm Bureau, Community citizen involved in state-wide water issues
- **Yakima Nation Hydrogeologist** - seat is open
- **Kevin Lindsey**, Ph.D., Washington State University, LHG, Senior Hydrogeologist with Geographical Water Solutions, Inc., Kittitas County Hydrogeologist
- **David Gerth** - Executive Director, Kittitas Conservation Trust, community citizen and resident of Roslyn, Washington
- **Bonnie Snedeker**, Facilitator

Potential Areas of Correction or Clarification For Final Upper Kittitas Groundwater Rule

WAC 173-539A - 030 **Definitions** (clarification)

- New residential development - "means any division of land involving an application that *vested* after the effective date of this rule" (Emergency rule adopted July 8, 2008).
 - Consider new definition for vested - "All plat approvals including preliminary plat approvals by Kittitas County prior to our emergency rule effective date of July 8 2008 are not subject to the exempt well interim measures rule."

Potential Areas of Correction or Clarification For Final Upper Kittitas Groundwater Rule

WAC 173-539A - 050 Interim management Measures Options that address lots greater than 10 acres created after March 28, 2002. (clarification)

(1) 5,000 gpd per 40 acres (125 gpd/acre) option

- (3) New residential structures on parcels 10 acres or greater that were created after March 28, 2002 within upper Kittitas County and that will rely on a new use of the ground water exemption shall not exceed an average rate of use of 125 gpd per acre, up to a maximum of 5,000 gpd, for all exempt domestic and irrigation uses. However, if the parcel is part of a lawful 5,000 gpd group use and has been lawfully allocated a smaller or greater quantity of use in a recorded legal instrument or in an approval of a new residential development, that daily use quantity shall govern.

MOA on the top of page 2 states "...In no case shall a development, regardless of acreage, be allowed more than a single exemption"...

Potential Areas of Correction or Clarification For Final Upper Kittitas Groundwater Rule

Cont'd

(2.) 15 year new exemption option

- (3) New residential structures on parcels 10 acres or greater that were created after March 28, 2002 within upper Kittitas County and that will rely on a new use of the ground water exemption shall be limited to 1,250 gpd of water for all exempt domestic and irrigation uses, unless (1) the parcel is part of a lawful 5,000 gpd group use and that parcel has been lawfully allocated a smaller or greater portion of the 5,000 gpd in a recorded covenant or plat restriction or an approval of a new residential development, in which case, such allocation shall govern, or (2) the proposed use of the exemption would not commence within fifteen years from the date the parcel was created and within five years of the date an exempt use was commenced on another parcel that was created in the same plat which created the parcel in question, in which case, 5,000 gpd may be used on such parcel for all exempt domestic and irrigation purposes.

Potential Areas of Correction or Clarification For Final Upper Kittitas Groundwater Rule

WAC 173-539A - 070 Measurement and reporting of water use (correction)

- “(1) Each source of water within **upper** Kittitas County for a new use of the ground water exemption...”
 - Delete the word “upper.” MOA on the bottom of page 2 states *“Kittitas County will require all new development county wide to include meters for each individual residential connection.”*

Potential Topics of Newly Proposed Additional Sections For Final Upper Kittitas Groundwater Rule

WAC 173-539A - 100 Appeals (proposed new section)

- All final written decisions of the department pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter can be subject to review by the pollution control hearings board in accordance with Chapter 43.21B RCW

Potential Topics of Newly Proposed Additional Sections For Final Upper Kittitas Groundwater Rule

WAC 173-539A - 110 Regulation review (proposed new section)

- Review of this chapter may be initiated by the department whenever significant new information is available, a significant change of conditions occurs, statutory changes are enacted that are determined by the department to require review of the chapter, or if modifications are necessary based on reviews described in WAC 173-539A-060. Kittitas County, or other interested citizens with standing may request that the department initiate a review at any time. If the department initiates a review, it will consult with Kittitas County. If necessary, the department will modify the appropriate provisions of this chapter by rule.

Proposed Rule Making Schedule

- **CR- 101 filed July 8, 2008**
 - The purpose of the CR-101 is to notify the public about Ecology's intent to adopt a new rule or amend or repeal an existing rule.
- **CR-102 target filing December 2008**
 - A brief description of the rule.
 - The associated WAC number.
 - A copy of the proposed rule text.
 - The date, time, and location of the public hearing(s).
 - The public comment deadline and the process for how to submit comments.
 - If required, a Small Business Economic Impact Statement (SBEIS)
- **CR -103 target filing February 2009**
 - The CR-103 can not be filed until on or after the intended adoption date written on the CR-102 (expedited and emergency rules are exceptions). The purpose of the CR-103 is to officially adopt the rule with the signature of the Agency Director. Unless specified otherwise, a rule will become effective 31 days after the CR-103 is filed.

"There was no protections for senior water rights holders, I mean our water resources are an unknown entity here, and the whole Yakima basin is a fully allocated system," says Melissa Bates of Aqua Permanente.

"A moratorium would have stopped completely any and all building which would have been a really dramatic significant impact on our membership anyway, and ultimately on the economy of the whole county," says David Whitwall of the Central Washington Home Builders Association office in Ellensburg.

“There is an old rule of thumb about government regulation that if people are complaining that it is too strict and others are insisting that it is too lax, then it might be about right.”

-Ellensburg Daily Record editorial regarding proposed MOA, April 4, 2008

What You Can Do

- **Share your thoughts tonight on the forms provided, or**
- **Submit your comments in writing by October 31, 2008**
c/o Tom Tebb, Dept. of Ecology
15 W. Yakima Ave., Suite 200
Yakima, WA 98902
Fax: (509) 575-2809
- **or by email to kcwp@ecy.wa.gov**