

## Chapter 173-539A WAC

### UPPER KITTITAS EMERGENCY GROUND WATER RULE

#### NEW SECTION

**WAC 173-539A-010 Purpose.** The purpose of this rule is to withdraw from appropriation all unappropriated ground water within upper Kittitas County during the pendency of a ground water study. New ground water withdrawals will be limited to those that are water budget neutral, as defined in this rule.

#### NEW SECTION

**WAC 173-539A-020 Authority.** RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for exempt wells where needed.

In 1999, ecology imposed an administrative moratorium on issuing any ground water permits for new consumptive uses in the Yakima basin, which includes Kittitas County. That moratorium did not apply to exempt withdrawals. In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County. Ecology later invoked the dispute resolution process under the MOA. The MOA was terminated by ecology on July 1, 2009.

NEW SECTION

**WAC 173-539A-030 Definitions.** The definitions provided below are intended to be used only for this chapter.

"**Ecology**" means the department of ecology.

"**Exemption**" or "**ground water exemption**" means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

"**Total water supply available**" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"**Upper Kittitas County**" is the area of Kittitas County delineated in WAC 173-539A-990.

"**Water budget neutral project**" means an appropriation or project where withdrawals of ground water of the state are proposed in exchange for discharge of at least an equivalent amount of water from other water rights that are placed into the trust water right program.

NEW SECTION

**WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County.** Beginning on the effective date of this rule, all public ground waters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of ground water shall be allowed, including those exempt from permitting, except as provided in the following sections.

NEW SECTION

**WAC 173-539A-050 Water budget neutral projects.** (1) Persons proposing to use ground water shall apply to ecology for a permit to appropriate public ground water or, if seeking to use the ground water exemption, shall submit to ecology a request for determination that the proposed exempt use would be water budget neutral.

(2) As part of a permit application to appropriate public ground water or a request for a determination of water budget neutrality, applicants shall identify one or more water rights that would be placed into the trust water right program to offset the

consumptive use associated with the proposed new use of ground water.

(3) Applications for public ground water or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:

(a) A suitable trust water right is already held by the state in the trust water right program; and

(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.

(4) No new exempt withdrawal under RCW 90.44.050 may be commenced unless ecology has approved a request for determination that the proposed exempt use would be water budget neutral. Such a request must comply with subsections (2) and (3) of this section.

#### NEW SECTION

**WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights.** (1) RCW 90.38.040 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new surface water right, a request for a determination of water budget neutrality, or a ground water right hydraulically related to the Yakima River, under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.

(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more

water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application or request is eligible for expedited processing, ecology will do the following:

(a) Review the application or request to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.

(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

#### NEW SECTION

**WAC 173-539A-070 Educational information, technical assistance and enforcement.** (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

#### NEW SECTION

**WAC 173-539A-080 Appeals.** All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by

the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

**WAC 173-539A-090 Repeal.** If ecology intends to lift the administrative moratorium on issuing any ground water permits for new consumptive uses in the Yakima basin, it shall prior to doing so issue a notice repealing this chapter.

NEW SECTION

**WAC 173-539A-990 Appendix 1--Map of upper Kittitas County boundaries.**

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

