

Chapter 173-539A WAC

UPPER KITTITAS GROUND WATER RULE

NEW SECTION

WAC 173-539A-010 Purpose. (1) This chapter implements the exempt well management measures identified in the memorandum of agreement between Kittitas County and the department of ecology (ecology) by creating a partial withdrawal of ground water within upper Kittitas County that limits the use of the ground water exemption (RCW 90.44.050) for residential purposes. This chapter also requires measuring of new uses for residential purposes of ground water under the exemption within all of Kittitas County.

(2) Ecology designed the partial withdrawal and related requirements to minimize the adverse effects on flows in the Yakima River and its tributaries, while minimizing adverse effects on the local economy.

(3) Based on technical research, Kittitas County may consider the potential for impairment of existing water rights, along with any other environmental impacts, during review of certain land use applications. The county may require mitigation or other ways to manage risks to reduce or eliminate impacts.

(4) The requirements in this chapter do not apply to areas outside of Kittitas County. Other than the metering requirement of WAC 173-539A-070, the requirements of this chapter apply only in Upper Kittitas County.

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 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 then rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County, which this chapter implements by establishing a partial withdrawal and other requirements.

NEW SECTION

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

"Applicant" as used herein includes the owner(s) of the parcels that are the subject of the application.

"Application" as used in WAC 173-539A-050 and 173-539A-055 means a land use application to Kittitas County requesting:

- A subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

"Common ownership" means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between the applicant and any owner of a proximate parcel. A joint development arrangement must involve significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of the parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat or legal documents, financing, marketing, environmental review, clearing or preparing land, and construction (include road construction), and agreements for common use of structures, facilities, lands, water, sewer and other infrastructure, covenants, building materials, or equipment.

"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.

"Group use" means use of the ground water exemption for two or more parcels. A group use includes use of the exemption for all

parcels of a proposed development and all parcels that are proximate and held in common ownership with the proposed new residential development where use of the exemption commenced or will commence within five years of the date the current application was filed.

"Hydrogeologic assessment" means the report prepared by a licensed hydrogeologist and/or others approved by Kittitas County in consultation with ecology addressing the elements identified in WAC 173-539A-060.

"Lands" refers to both singular "land" and plural "lands."

"MOA" or **"Memorandum of Agreement"** means the "Memorandum of Agreement between Kittitas County and the State of Washington, Department of Ecology Regarding Management of Exempt Ground Water Wells in Kittitas County" of April 7, 2008.

"New residential development" means any division of land involving an application that vested after July 8, 2008.

"New use of the ground water exemption" means a use begun on or after July 8, 2008.

"New use for residential purposes" means any new use of the ground water exemption for a new or additional residential purpose associated with an existing or new structure.

"Parcel" means any parcel, land, tract or other unit of land.

"Proximate" means all parcels that either:

- Have any common boundary;
- Are separated only by roads, easements, or parcels in common ownership; or
- Are within five hundred feet at the nearest point.

"Residential purposes" means all domestic use and/or lawn and noncommercial garden use of water on the parcel(s) in question under the ground water exemption. A dwelling unit is not required for a residential purpose to be present. Domestic use is a separate and distinct purpose of use from lawn and noncommercial garden use. Each use may have a different commencement date under the exemption. For purposes of this chapter all use limits refer to combined domestic and lawn and noncommercial garden use. All use of the lawn and noncommercial garden use may not exceed a one-half acre as required in RCW 90.44.050 whether such use is in connection with a group domestic use or a single domestic use.

"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.

"Vested" means that under the applicable land use laws an application is considered complete such that the application shall generally be reviewed under laws existing at the time of vesting, unless a special exception may apply. All applications for plat approvals including preliminary plat approvals which were approved

by Kittitas County prior to July 8, 2008, are considered to be vested.

NEW SECTION

WAC 173-539A-050 New use of the exemption for new residential developments in upper Kittitas County. (1) This section applies only to applications for residential developments that vest or vested on or after July 8, 2008.

(2) Any new residential development within upper Kittitas County must not use more than 5,000 gallons per day (gpd) from the ground water exemption for residential purposes. When filing an application for a new residential development, the applicant must file a sworn statement with ecology and Kittitas County that:

(a) Identifies all parcels that are part of the residential development;

(b) Identifies all joint development arrangements with respect to proximate parcels; and

(c) States that to the best of the applicant's knowledge and belief all such parcels and arrangements have been identified. If the application is approved, such statement shall be recorded against all such parcels in which the applicant holds a legal or equitable property interest. The residential development includes all parcels that are the subject of the application or a larger group use.

(3) For use of the 5,000 gpd exemption limit for a new residential development, ecology and the county will assume each parcel will use 1,250 gpd for residential purposes, unless a condition is recorded as a covenant to use a lesser amount of the group withdrawal. If no exempt lawn or noncommercial garden watering will occur, and a covenant so restricting such use is placed on the parcel, ecology and the county will assume each parcel will use a maximum of 350 gpd unless a condition is recorded as a covenant to use a lesser amount of the group withdrawal.

NEW SECTION

WAC 173-539A-055 New uses of the exemption for residential purposes in upper Kittitas County. (1) **New uses for residential purposes on parcels created after March 28, 2002, in upper Kittitas County:**

(a) **Parcels less than ten acres** created after March 28, 2002, may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:

(i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;

(ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel; or

(iii) 1,250 gpd.

(b) Parcels **ten acres and greater** created after March 28, 2002, may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:

(i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;

(ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel; or

(iii) An average rate of use of 125 gpd per acre up to a maximum of 5,000 gpd.

(c) This section does not restrict an owner from using more water through other legal permitted water rights.

(2) **New uses for residential purposes on parcels created on or before March 28, 2002, in upper Kittitas County:**

(a) Parcels created on or before March 28, 2002, must use no more than 5,000 gpd for all residential purposes.

(b) Such use may be further restricted by covenants or conditions on water use set forth in the plat, a land use approval, or a public water system approval, or by any other legal restriction that applies to such use.

NEW SECTION

WAC 173-539A-060 Hydrogeologic assessment. (1) If Kittitas County requires a hydrogeologic assessment, the hydrogeologic assessment must be:

(a) Submitted to Kittitas County and ecology in the form of a written report, signed by a licensed hydrogeologist and/or others approved by Kittitas County in consultation with ecology; and

(b) Available as part of the project review under the State Environmental Policy Act.

(2) The hydrogeologic assessment may be based on available existing information or other new information as required by Kittitas County.

(3) The required elements of the report are as follows:

(a) Scope of the proposal including all of the following:

- The location;
- Proposed water source(s);
- Water use amounts; and
- The timing of the proposed use.

(b) General description including all of the following:

- The local geologic, hydrogeologic, and hydrologic setting;
- Identification of surface water and ground water features;
- Water sources;
- Recharge/discharge characteristics; and
- Surface water and ground water interactions.

(c) Site-specific description.

(d) Inventory and description of all of the following:

- All state issued surface water and ground water rights;
- All state issued surface water and ground water claims; and
- Wells located within a one-year and five-year area of pumping influence.

(e) Identification and description of existing surface water or ground water withdrawals that may be adversely affected by the proposed use of the ground water exemption.

(f) The preparer's written professional opinion on the potential of the proposal to cause impacts to the natural and built environment including surface water flows.

(g) A statement of the report's limitations regarding its intended use, including scope, extent, and available data.

NEW SECTION

WAC 173-539A-070 Measuring and reporting water use. (1) For all uses of the ground water exemption for residential purposes within upper Kittitas County that commence after July 8, 2008, or within the remainder of Kittitas County that commence after the effective date of this rule, a source meter must be installed at the point of withdrawal, in compliance with such requirements as prescribed by Kittitas County and WAC 173-173-100.

(2) Metering data must be collected and reported within thirty days of the end of the recording period to Kittitas County and ecology. The following table shows the recording periods and the due dates for each metering report:

Recording Period	Report Due No Later Than:
October 1 - March 31	April 30
April 1 - June 30	July 30
July 1 - July 31	August 30
August 1 - August 31	September 30
September 1 - September 30	October 30

NEW SECTION

WAC 173-539A-080 Expedited processing of trust water applications and new water right applications associated with trust water rights. (1) RCW 90.42.100 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 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 must identify an existing trust water right or pending application to place a water right in trust, if 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 must be for domestic, group domestic, lawn or noncommercial garden, and/or municipal water supply purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water rights.

(3) If an application for a new water right 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 is eligible for expedited processing ecology will do the following:

(a) Review the application 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 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 also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit.

(c) Condition each permit 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-090 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology and Kittitas County 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 mitigate for potential impact of an exempt use to the total water supply available and to avoid potential future regulation in favor of senior water rights, ecology encourages exempt users to participate in a mitigation program through the Yakima Basin Pilot Water Bank or to obtain a senior water right.

(4) 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-100 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-110 Regulation review. (1) The exempt well management requirements in this chapter will be reviewed after the upper county ground water study is complete or within five years of rule adoption whichever occurs first and may be revised as part of a long-term management program. Ecology and Kittitas County intend to develop the long-term management program after they have completed a ground water study that focuses on portions of Kittitas County not fully addressed by the current USGS ground water study of the Yakima River Basin.

- (2) Ecology may review this chapter whenever:
- (a) New information is available;
 - (b) A change of condition occurs;

(c) Statutory changes warrant the review; or
(d) Reviews described in WAC 173-539A-060 show changes are necessary.

(3) Kittitas County, or interested citizens may request that ecology exercise its discretion to review this chapter at any time.

(4) If ecology begins a review of this chapter, it will consult with Kittitas County.

NEW SECTION

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

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

