



CLEAN, FLOWING WATERS FOR THE WEST
The Center for
Environmental Law & Policy



*Aqua
Permanenté*
protecting the waters of the Yakima Basin

April 2, 2010

Honorable Christine Gregoire
Office of the Governor
P.O. Box 40002
Olympia, WA 98504-0002

Dear Governor Gregoire:

On behalf of Aqua Permanenté and the Center for Environmental Law & Policy, the two organizations that petitioned to close Kittitas County to new groundwater withdrawals, we write in response to the March 30, 2010 letter submitted to your offices by the Kittitas Board of County Commissioners.¹ We wish to provide a different perspective, as well as accurate information, regarding the March 23, 2010 emergency rule adopted by Ecology to maintain closure of the groundwaters of the upper Kittitas Valley.

Our organizations support the Department of Ecology's emergency closure rule for upper Kittitas County. Our 2007 petition was premised on the need for closure to ensure protection of existing water rights and instream flows necessary to support habitat for endangered salmon populations. These are well-recognized problems in the Yakima basin. Since 2007, the evidence supporting closure has only strengthened, including release of the Sept. 2009 U.S. Geological Survey hydrogeologic framework assessing groundwater-surface water interaction in the basin. In addition, the County's proposed new "agreement-in-principle" (AIP), submitted to your offices in January, has raised questions and opportunities for larger stakeholder participation in the rulemaking process.

We disagree with the County that Ecology may not utilize emergency rules while permanent rulemaking is pending. As noted above, conditions are changing, including factors generated by the County itself. Nonetheless, we urge you to direct Ecology to immediately commence adoption of a final rule that is fully protective of existing instream and out-of-stream water uses. Current water uses make possible a substantial local agricultural economy. This factor must be considered in the rulemaking process.

The BOCC claim, that the closure has had a "crippling effect" on Kittitas County, is grossly inaccurate. FDIC Regional Economic Conditions data reveal that the impact of the recession on the real estate market in Kittitas County is the same, or even a bit less,

¹ The County cites RCW Ch. 34.05 as a basis for filing a "petition" with your offices. RCW 34.05.330(3) does authorize appeal to the Governor's Office, but only after filing and denial of a petition for rulemaking by the relevant agency.

than in Yakima and Chelan Counties.² Moreover, water for new development is now available through Ecology's Upper Kittitas Water Exchange program, and is easing development pressures.

We also note that the "Domestic Water Reserve Program" referenced in the BOCC letter is not yet a reality. While our organizations agree with the concept of requiring mitigation for post-1905 groundwater uses in the Yakima basin, we disagree with the County's suggested approach, including proposals for a local-only stakeholder group and drought year-only mitigation. Further, the timing of the County's request to you is curious, given that the BOCC is aware that stakeholder comments on the Domestic Water Reserve Program are due next week. Our organizations will provide comments regarding the proposed AIP, and anticipate that this proposal is likely to change.

Finally, we note that the parties who are concerned about exempt well proliferation in Kittitas County number more than two. In addition to our membership, the largest water user in the basin, the Yakama Nation, has commented in support of a groundwater closure that protects the Nation's instream and out-of-stream water rights. Just as important, all eyes are on Kittitas County. What happens here may establish important precedent for water management elsewhere in the state of Washington. It is critical that the Department of Ecology "get it right" – and we are confident the agency will do so in the end.

Thank you for your consideration. Please do not hesitate to contact us if we can provide further information.

Sincerely,



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cc: Kittitas Board of County Commissioners
Phil Rigdon, Natural Resources Director, Yakama Nation
Bill Gray, U.S. Bureau of Reclamation Yakima Project
Tom Monroe & Ron Van Gundy, Roza Irrigation District

²Three central Washington counties have experienced similar downturns in building permits for the reporting year 2008 3rd quarter to 2009 3rd quarter, including while the groundwater closure has been in effect in upper Kittitas County. To wit: building permits have dropped in Yakima County by 50%; in Chelan County by 44%, and in Kittitas County by 41%. See <http://www2.fdic.gov/recon/index.asp>.