



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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May 6, 2010

The Honorable Mark McClain  
The Honorable Paul Jewell  
The Honorable Alan A. Crankovich  
Kittitas County Board of Commissioners  
205 W. Fifth Ave., Suite 108  
Ellensburg, WA 98926

**RE: Upper Kittitas County – Moratorium & Water Management**

Dear Commissioners:

Thank you for your letter dated April 15, 2010. We have been reviewing your letter internally and with legal counsel. We also have reviewed letters sent by Roza Irrigation District (Roza), Kittitas Reclamation District (KRD), Center for Environmental Law and Policy (CELP)/Aqua Permanente and considered discussions that I had with Yakima Valley irrigators and the Yakama Nation during my recent visit to our Yakima Office during the week of April 12, 2010.

You asked under what circumstances the Washington State Department of Ecology (Ecology) “would be willing to rescind the moratorium” on unmitigated new groundwater withdrawals. In answer, I would restate that our basic interests and values remain the same, but have yet to be met by any proposal that Kittitas County (County) has provided. I have said repeatedly that I am open to alternatives that meet our key interests of protecting Total Water Supply Available (TWSA) and protecting flows in the upper tributaries, in both the short and long term. My understanding of your position is that new unmitigated groundwater withdrawals should be allowed immediately, while discussions proceed on possible alternatives. Based on the information available to me, I don’t believe that allowing groundwater pumping to recommence addresses our clearly stated, fundamental interests of protecting existing water users and stream flows in the interim.

The current emergency rule, that allows development with mitigation, will remain in place as we prepare to start the permanent rulemaking process.

We plan to file a CR-102 in June and begin the permanent rule process, which will include a public meeting and comment period. The proposed permanent rule will describe how groundwater will be managed until the groundwater study pertaining to the bedrock aquifers is finished and we better understand how water moves in that portion of the basin. The proposed permanent rule will look much like the current emergency rule, and require mitigation.



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If we reach broad agreement on a protective management approach in the upper reaches, the funds for the study may be redirected toward development of a Domestic Water Reserve Program (DWRP). However, some of the ideas you mention seem to require a much greater understanding of the hydrogeology of the upper basin, which argues for proceeding with the study. I would welcome further clarification on this point.

I share your interest and optimism in developing a DWRP, and agree that we should not yet take any specific options off the table. However, the scope of the program we contemplate would also address existing groundwater users – not just new users – that are at risk of curtailment in favor of senior surface water rights. I also share your belief that additional water storage in the basin is part of the overall solution to firm up the water supply for existing users, improve conditions for aquatic species, and provide reliable water supplies for new domestic and municipal users. Resolution of the many competing water demands is achievable and we remain positive about recent progress made by the Yakima River Basin Water Enhancement Project (YRBWEP)-3 Workgroup. I appreciate your participation on the workgroup to date and welcome your participation in development of the DWRP in cooperation with the other members of the workgroup.

My concern is that without either storage or a DWRP being viable in the near term, the County's proposal to immediately allow unmitigated new groundwater withdrawals does not provide protection to existing water rights, nor would it provide assurance that new users relying on the permit exemption as the legal authority to develop would not have their water supply interrupted by more senior users in the future.

You suggest that we allow unmitigated groundwater pumping to further threaten headwater streams where flows designed to protect endangered fish species aren't being met, and where the U.S. Bureau of Reclamation, the Bonneville Power Administration, Ecology, the Yakama Nation and others are funding water acquisitions to improve flows. Your letter acknowledges that it is difficult to obtain mitigation water there; given this fact, and the sensitivity of those upper reaches, I hope you can see why we need to see something that offers ongoing protection while long-term solutions are developed. Finding mitigation in these tributary streams isn't easy, but water market transactions provide us the best opportunities in the short term to protect water resources for both instream and out-of-stream benefits. I am encouraged by your conversations with water right holders who might offer mitigation water in the "red zone," and would welcome any specific proposals on how to use that water to offset new uses. I am also encouraged by the potential of the County's Transfer of Development Rights Program.

I also share your concern over the economic impact on the community resulting from the emergency withdrawal of unappropriated water. The Upper Kittitas Water Exchange can provide prospective homeowners with a source of water for meeting the mitigation requirement in the emergency rule. At this point, Suncadia has received letters of interest from owners of more than 600 lots or recently built homes. By next year, we expect that senior water right

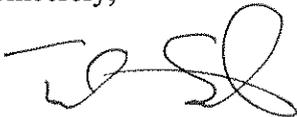
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holders will be prepared to make water available for mitigation to new and existing residential users in the Swauk and Teanaway Sub-basins. We believe that a water bank provides a clear way to protect current and future landowner and senior water right holders in both the short term and the long term.

In regards to the remainder of the Yakima Basin, I agree that Kittitas County does not represent the only place where groundwater pumping contributes to loss in stream flows and, therefore, probable impacts to TWSA. However, mitigation lower in the basin is not expected to be nearly as difficult because far more water rights are available to offset impacts felt there. In addition, because of the complexity of the groundwater aquifers in the basalts and intermixing of state and federal water in the unconsolidated alluvium, we are waiting for the final reports and modeling scenarios from the U.S. Geologic Survey. Once we have that information and in consultation with the settlement parties (USBR and Yakama Nation) to the 1999 lawsuit, we would then seek additional input from Yakima and Benton Counties and seek collaborative solutions that address our respective concerns.

In closing, I found your letter encouraging and thoughtful. You are obviously considering a variety of options that merit exploration and development. The key sticking point between us seems to be whether unmitigated new groundwater withdrawals should be allowed to proceed immediately. I believe I have been clear that we cannot walk away from our responsibility to protect existing water users and stream flows, even in the near term. If you think it productive, my offer to meet with the board personally to further clarify our position and intent, or discuss how we move forward, remains. You are welcome to contact my office directly at (360) 407-7009, or Tom Tebb, Central Region Office Director, at [tom.tebb@ecy.wa.gov](mailto:tom.tebb@ecy.wa.gov) / (509) 574-3989, to arrange a meeting as soon as our respective schedules allow.

Sincerely,



Ted Sturdevant,  
Director

cc: Mr. Tom Tebb, Director of Central Regional Office – Ecology