



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for  
**Environmental Law & Policy**

October 8, 2007

Ken Slattery, Program Director  
Water Resources Program  
Washington Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600

Re: Aqua Permanente petition for groundwater withdrawal

Dear Mr. Slattery,

The Center for Environmental Law & Policy (CELP) is a public interest organization focused on protection of water resources in western Washington and the Columbia River watershed.

CELP supports and joins in the September 10, 2007 petition filed by Aqua Permanente requesting the Department of Ecology to adopt a rule to withdraw all unappropriated groundwater in Kittitas County pursuant to RCW 90.54.050. Such a withdrawal is appropriate until the Department gathers sufficient information and data to determine whether water is available for new groundwater withdrawals, including from exempt wells, and whether such withdrawals will harm senior water users and/or the public welfare.

Action by Ecology is particularly important given the lack of information concerning groundwater resources combined with physical and legal indicators that the Yakima Basin is fully appropriated. Withdrawal of waters under RCW 90.54.050 is a pro-active, preventative approach that makes sense precisely because of the lack of information upon which to make water availability and public interest determinations.

(1) Yakima waters are fully appropriated.

As the Department is well aware, the Yakima River basin is a fully appropriated basin. Water supply is limited, and junior water right holders are frequently regulated to protect senior water users. Strict adherence to the rule of priority of water use has resulted in curtailment of water even for municipalities such as the town of Roslyn. Under these circumstances, it appears that new water withdrawals can be obtained only at the expense of the water supply sources that serve the Bureau of Reclamation, irrigation districts, individual landowners, municipalities and developments in the basin. New appropriations of groundwater that impair or affect senior users is unacceptable. The Kittitas groundwater withdrawal petition should be granted until such time as the Department can ensure that existing water users are protected in their rights.

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(2) Groundwater withdrawals affect surface waters.

CELP is concerned about protection of habitat for fisheries and wildlife, and water quality in the Yakima River basin. Several salmon populations are listed as endangered species due, in part, to inadequate instream flows in the Yakima River and its tributaries. Substantial efforts and resources have been expended in order to solve this problem, including provisions contained in the federal Yakima River Basin Water Enhancement Project, local conservation projects, trust water rights and other efforts. In addition, certain reaches of the Yakima and tributaries suffer from water quality problems related to inadequate streamflow, including high temperatures and low dissolved oxygen. Again, substantial resources are being expended, both by the Department's water quality program and locally, to solve water quality problems.

Groundwater usually connects to surface water, and Washington law requires integrated management of the two resources. There is a very real concern that new groundwater withdrawals in the upper Yakima basin will adversely impact surface water flows to the detriment of salmon and water quality. This is of particular concern in tributary basins where flow targets are not established and mechanisms to protect flows are difficult to implement. Even in the mainstem Yakima, where the Bureau endeavors to meet instream flow targets, groundwater depletion will have the effect of depriving pro-ratable water users as discussed in Section 1 above. These are unacceptable impacts. The Kittitas groundwater withdrawal petition should be granted until such time as the Department can ensure that new withdrawals do not impact fisheries habitat and water quality.

(3) Inappropriate use of exempt wells is occurring in Kittitas County.

Substantial new development is occurring in Kittitas County, even though the Department is not issuing new water permits. The sources of water supply are domestic exempt wells. Although exempt from permitting, domestic wells are not exempt from any other aspect of the state water code, including priority date, beneficial use requirements, and enforcement to protect senior rights. As a practical matter, however, it is difficult to enforce against exempt wells when development has already occurred. Hence, a preventative approach is appropriate and necessary to protect existing rights and public interests.

The problem is compounded by apparent illegal use of exempt wells to serve development. Developers may not use exempt wells to serve more than six homes. The practice of connecting exempt wells in "daisy-chain" fashion to serve a larger number of homes is illegal per the Campbell & Gwinn decision of the Supreme Court. Unfortunately, it appears that such prohibited usage is occurring in Kittitas County, absent adequate oversight by local zoning agencies or the Department of Ecology. In view of this problem, it is appropriate and necessary to withdraw groundwater, including for exempt wells, from further appropriation, until it is determined that existing water rights and the public welfare can be protected.

(4) Exempt well abuse is a statewide problem.

While the problems in Kittitas County are particularly acute, the inappropriate use of exempt wells is a statewide issue. The Department of Ecology well log database indicates 7,000-plus wells are being drilled each year around the state, most of them without

permits, including in basins where the Department has determined that it can issue no more water permits. If a basin is considered over-appropriated for permitting purposes, then exempt wells should not be allowed in order to protect other water users and environmental values. Moreover, instances of developer use of multiple exempt wells are being reported in a number of counties. As you know, the Department has been working with counties to develop a system to control the use of exempt wells as a basis for finding "water availability" for building permits. A rulemaking to withdraw groundwater from appropriation by new users is an appropriate mechanism to prevent further harm and abuse of the exempt well provision pending policy resolution of the matter by the agency and/or the legislature.

(5) Rule-based conditions are appropriate.

a. Monitor ambient groundwater conditions in Kittitas County.

As a part of Ecology's withdrawal of Kittitas County groundwater, CELP requests that the rule include an ambient groundwater monitoring program. The systematic collection and management of data and the development of conceptual analytical/numerical models are necessary to effectively set policy and fairly regulate water use. The data provided by a monitoring program will garner greater public confidence in water resource policy decisions because they are based on a transparent, comprehensive dataset.

b. Including water metering requirements for all wells.

Consistent with metering requirements included as part of the Yakima basin general stream adjudication, CELP requests that the rule include groundwater metering and reporting requirements for existing wells. Systematic collection and management of water usage data is essential to understanding the impacts of wells on senior water users and instream flows.

Thank you for your consideration. CELP would be happy to provide additional information to the Department in support of the Aqua Permanente petition. Please provide CELP with copies of all documents and decisions issued by the Department in this matter. Mail should be directed to CELP at 25 West Main, Suite 234, Spokane, WA 99201.

Yours very truly,



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