



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

November 26, 2007

Derek Sandison
Regional Director
Central Regional Office
15 W. Yakima Ave., Suite 200
Yakima, WA 98902

Re: Ecology-Kittitas County Agreement in Principle

Dear Mr. Sandison,

I am writing on behalf of Aqua Permanente and the Center for Environmental Law & Policy, the petitioners who asked Ecology to adopt a rule to withdraw groundwaters of Kittitas County from new appropriations. Ecology denied our petition and instead entered into an "agreement in principle" with Kittitas County that contemplates future adoption of a memorandum of agreement and other actions.

The AIP contains several provisions that do not comport with our understanding of existing law and practices. In addition, we wish to participate in the process by which Ecology plans to protect the water rights of our members and public water resources. We respectfully request clarification on the following issues.

Agreement in Principle

The AIP (pp. 1-2) indicates that Kittitas County is currently taking measures to "reduce risk" to senior water right holders from exempt wells. We are unfamiliar with any such existing measures.

- Could you clarify what actions are being taken by the County?
- On what legal basis may the county take action to prevent water rights impairment?

The AIP (p.3) indicates that it is acceptable for the County to authorize use of up to 5,000 gallons per day of water on 40 acres, quantify usage at 400 gallons per day per household, and utilize multiple wells that take some fraction of the 5,000 gpd limit.

- How is this arrangement consistent with protection of senior water rights?
- For example, where water is over-allocated, even one well per 40 acres could potentially impair existing water rights (e.g., post-1905 water rights in tributaries of the Yakima basin that are now subject to regulation). What is the authority for determining that such impairment is acceptable?

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- From where does the 400 gallon per day figure derive? We would appreciate receiving any documents that indicate that this is an accepted per-household quantity for water system purposes in the Kittitas area.
- How are these provisions consistent with the *Campbell-Gwinn* decision?
- How does Ecology intend to enforce water usage limits to ensure they are not overlooked by homeowners who wish, for example, to irrigate lawns or gardens?
- Why has Ecology determined that no action is necessary at this time for the lower County area?

The AIP (pp. 3-4) states that Kittitas County "continues" to place language on plats to disclose water supply risks to land owners. We are unfamiliar with the language the County is now using.

- Could you provide us with examples of the "water supply risk" language the County is now placing into plats and indicate on which plats it has been utilized?
- What language does Ecology propose to substitute?

Petitioner and public participation in MOA development

Having undertaken substantial effort to file and prosecute the petition for rulemaking, Aqua Permanente and CELP are concerned that the AIP effectively denies us, the public, and senior water right holders the opportunity to participate in a solution-oriented process (that is, a process that is acceptable to all parties, not just Ecology and Kittitas County).

Aqua Permanente and CELP request the opportunity to participate in development of the proposed memorandum of agreement and other activities, including development of a groundwater study and mitigation effort.

We also request that you identify opportunities for public participation and public notice about MOA development between now and January 9, when the MOA is to be completed. Does Ecology intend to hold open negotiation sessions with the County? Who is negotiating the MOA on behalf of the state of Washington? Given the precedent-setting nature of this approach, how will Ecology ensure that statewide public interests are taken into account?

Thank you for consideration of these important questions. I look forward to talking with you in the near future.

Yours very truly,



Rachael Paschal Osborn

cc: Aqua Permanente