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Washington Environmental Council, American Rivers, and Futurewise urge the Department of Ecology to seriously consider the petition submitted by Aqua Permanente requesting rulemaking that would withdraw unappropriated ground waters pursuant to RCW 90.54.050. It is clear that “sufficient information and data are lacking” to make sound water resource decisions in the basin and what information is known indicates that new wells are harming both senior users and the public interest. Ecology needs to take preventive measures to avoid additional impacts to the area’s rivers, streams, and aquifers.

Kittitas County Is Not the First to Confront the Need for Limitations on Exempt Wells

Although this is the first instance in which a withdrawal petition has been filed specifically targeting the proliferation and abuse of exempt wells, Ecology has confronted similar issues in basins across the state. In particular, Ecology has taken action to curb exempt wells through its instream flow rulemaking given the undeniable connection between surface and groundwater flows across the state.

Recently, Ecology has embraced the concept of “reserving” a finite amount of water that may be used in future years to support certain uses. In the Skagit and Stillaguamish basins, future exempt wells were folded into the reservations, and once the reservation is exhausted, all withdrawals and diversions cease. See WAC 173-505-090 (Stillaguamish); WAC 173-503-073 (Skagit). The Stillaguamish and Skagit rules also prohibit use of the domestic ground water reservation where there is available water from a municipal supplier.

In some earlier rules, Ecology noted that if domestic exempt well use “significantly” or “seriously” affects the “quantity of water available for instream uses,” then only domestic in-house use should be exempt. WAC 173-513-070 (Deschutes, 1980); WAC 173-511-070(3) (Nisqually, 1981); WAC 173-514-060(2) (Kennedy / Goldborough, 1984); WAC

173-501-070(2) (Nooksak, 1985). For the Methow River (WRIA 48), Ecology took more drastic action, finding that, for areas hydraulically connected to closed streams, no “wells shall be constructed for any purposes, including those exempt from permitting under RCW 90.44.050,” unless a user has a valid water right. See WAC 173-548-050 (1976); see also WAC 173-501-070(2) (fully closing a single stream in the Nooksack).

Consequently, while the circumstances that have elevated this issue in Kittitas County may be somewhat unique, many other counties in the state already have protections in place to address some of the concerns associated with exempt wells. While the solutions may be imperfect given the information we have today about exempt wells and future water availability, Kittitas County is far from alone in this effort.

The Petition Highlights a Number of Data Gaps Around Exempt Wells

There are many unknowns involving exempt wells in the State of Washington. In 2001, as part of a report on Washington’s metering requirements, the Department of Ecology estimated that there were anywhere from 500,000 to 750,000 exempt wells in the state. Based on well logs, we know that just in the last eight years alone over 1,500 wells have been drilled in Kittitas County, most of those permit-exempt. The total number and location of exempt wells in the county is, however, not fully documented.

Related to the uncertainties around the number of existing wells, the impacts from the ongoing groundwater pumping have not been calculated. Despite the applicability of RCW 90.03.360, exempt wells are generally not metered.¹ We know that users are permitted up to 5,000 gallons per day, but depending on the number of households per well and the amount of outdoor irrigation, it is unknown how much is actually withdrawn.

More importantly, a number of factors necessarily aggravate the effects of the pumping. Exempt wells are concentrated in those areas experiencing high growth rates, and an average rate of withdrawal – often used when discussing domestic wells – masks the fluctuations that occur seasonally. Outdoor use peaks during the summer and early fall, when streams are most vulnerable,² and outdoor use is inevitably more consumptive than indoor.³ Moreover, without adequate metering and enforcement, it is likely that some

¹ Responsiveness and Concise Explanatory Statement, Requirements for Metering and Reporting Water Use, Department of Ecology at 21 (December 2001). Ecology has a related obligation under RCW 90.44.105, requiring the development, along with the Department of Health, of a schedule of “average household and small-area landscaping water usages in various regions of the state to aid the department and applicants in identifying average amounts used for these purposes.”

² The groundwater contribution to stream flows has been found to increase in the drier months. According to an Ecology review, “[e]stimated groundwater contributions to streamflow for the typical low flow months of July, August, September, and October averaged 86%, 86%, 77%, and 69% respectively.” Estimated Baseflow Characteristics of Selected Washington Rivers and Streams, Water Supply Bulletin No. 60; Ecy 99-327 at 19 (1999).

³ For example, in the Skagit basin, consumptive use for outdoor water use “has been estimated to be approximately 90%.” J. Massman, An Evaluation of the Proposed Amendment to the Instream Resource Protection Program in the Skagit River Water Resource Inventory Areas at 2 (2006) (on file with WEC).

users are exceeding statutory limits.⁴ Finally, very little is known about sustainability of the current pumping because the state lacks comprehensive ambient groundwater monitoring.


The Information That Is Known Favors Addressing Exempt Wells

What we do know is that the Yakima River basin is fully appropriated, with junior water rights holders (those coming after 1905) that face severe restrictions when supplies are limited. Junior water rights holders, including the City of Roslyn's 1908 water rights, have been shut off twice in the last seven years. As the effects of climate change become more apparent, these restrictions will likely become even more common. See Impacts of Climate Change on Washington's Economy (Nov. 2006) (noting the anticipated timing changes in flows for snow-dominant basins); "IDWR sends more curtailment letters," Magic Valley Times-News (Oct. 17, 2007) (noting water restrictions in Idaho). It is also well established that groundwater and surface water connections are common throughout the state, and indeed, Ecology is required by statute to consider the "natural interrelationships" between the two. RCW 90.54.020(9).

Under the circumstances, it is important that the state take steps action to avoid a full-blown crisis from developing. Ecology should use this opportunity to review the issues around exempt wells in Kittitas County and formulate an appropriate response.

Thank you for your consideration, and we look forward to further discussions around this issue.

Sincerely,

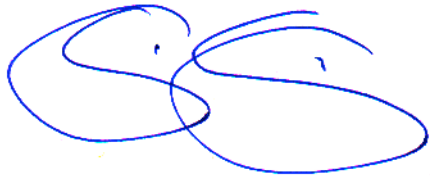


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⁴ In the Walla Walla, for example, the Watershed Planning Unit acknowledges that the statutory exempt well limits – such as 5,000 gpd and no more than one-half acre of lawn watering – “are not well-heeded due to lack of enforcement, and that water usage can often be 2-5 times higher than the limit throughout the irrigation season depending upon acreage irrigated, watering practices, and watering frequency[.]” Snake River Region Salmon Recovery and Walla Walla Watershed Detailed Implementation Plan, § 4.2 n.1 (June 2006). Kittitas County has faced allegations that it allows “side-by-side” subdivisions in violation of the Supreme Court’s decision in Department of Ecology v. Campbell & Gwinn, 146 Wn.2d 1 (2002). See Kittitas County Conservation v. Kittitas Co., EWGMHB, Case No. 07-1-0004c (FDO Aug. 20, 2007).



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