

# **NEW RESTRICTIONS ON EXEMPT WELLS AND LAND DEVELOPMENT IMPOSED IN KITTITAS COUNTY**

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On April 8, 2008, the Washington Department of Ecology announced a Memorandum of Agreement with Kittitas County placing significant restrictions on new residential development. In order to forestall a threatened groundwater moratorium, Kittitas County, located just east of the Cascade Mountains, has agreed to restrict rural residential developments relying on permit-exempt groundwater wells and to require water meters for individual residential connections in new developments.

## **Background**

Upper Kittitas County has seen increased rural development fueled by the popularity of telecommuting and the demand for vacation homes for residents of the Puget Sound area, a one-hour drive away. Predictably, some existing residents have opposed these land use changes, and some have expressed concerns about impairment of their water supplies.

In 2007, a private organization called Aqua Permanente submitted a petition to Ecology requesting a moratorium on use of new permit-exempt groundwater wells in Kittitas County. (Under Washington's groundwater code, small withdrawals of up to 5,000 gallons per day are exempt from permit requirements.) The petition asked Ecology to prohibit new exempt wells while it studies the potential effects from such exempt wells on senior water rights.

In response to the petition, Ecology and the Kittitas County government negotiated a groundwater management agreement as an alternative to the proposed moratorium. Negotiations took place over a seven-month period, with several public meetings held to discuss water supply issues in the upper county area.

“This agreement represents a compromise that allows continued responsible development and enhanced protection of water resources in the county,” said Tom Tebb, water resources section manager in Ecology's central regional office in Yakima. Ecology touts this unusual “compromise” – the first of its kind between Ecology and a local government – as a way to ensure a water supply for present and future users.

## **The Agreement**

A key component of the agreement is a groundwater study to define the hydrogeology of the upper county. The Legislature appropriated \$300,000 for the groundwater study, and also provided additional funding to Ecology and Kittitas County to implement the

agreement. Ecology will hire a water master for the region, and new county staff will be added to monitor and collect data on groundwater use in the western part of the County.

The most attention-grabbing feature of the agreement is its restriction on new exempt wells. New residential “developments” relying on permit-exempt wells for water supply will be allowed to take advantage of only one groundwater exemption per “development” – although that term is undefined. Each “development” application will be required to demonstrate that domestic use and outdoor watering will not consume more than 5,000 gallons per day. The County has agreed to subject all “applications for division of land” to environmental review under the State Environmental Policy Act (SEPA), a significant departure from current practice.

Parcel-specific water use restrictions will also be imposed. For existing parcels smaller than ten acres created after March 28, 2002, allowable residential water use will be limited to a maximum of 1,250 gallons per day.

Kittitas County will require developers of new plats to warn prospective purchasers of the risk that water supply may be curtailed. Both agencies will disseminate pamphlets, display ads, and other outreach tools “to assist the public and the development industry in understanding the limitations of surface and ground water supplies in the Yakima Basin and the potential risks associated with reliance on exempt wells as well as junior ground and surface water rights for water supply.”

Finally, all new residential connections must be metered. Ecology and the County will collect and analyze groundwater use data as part of the comprehensive groundwater study.

### **Conclusion and Implications**

The controversy over the decades-long pattern of increased rural development in Kittitas County provides an example of how land use conflicts can become intertwined with water supply disputes. Some provisions of this “compromise” solution may be vulnerable to legal challenge – particularly those which restrict an individual property owner’s use of the state-law-mandated groundwater permit exemption. If this agreement withstands legal challenge, it may be promoted as a template for similar water and land use management regimes in other counties. However, as the regional economy slows here in Washington as elsewhere in the United States, this effort by state and local government to influence and control the market for future land development may well prove to be moot.