



# **Small Business Economic Impact Statement**

## **Chapter 173-539A WAC: Water Resources Program for the Upper Kittitas Groundwater Area**

January 2009  
09-11-002

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Refer to Publication Number: 09-11-002

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**Note:** Due to size limitations relating to the filing of documents with the Code Reviser, the SBEIS does not contain the appendices that further explain Ecology’s analysis. Additionally, it does not contain the raw data used in this analysis, or all of Ecology’s analysis of this data. However, this information is being placed in the rule-making file, and is available upon request.

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## **Executive Summary**

### **1. BACKGROUND**

The Washington State Department of Ecology (Ecology) is proposing a new rule, Chapter 173-539A WAC, for the upper Kittitas County groundwater area. The rule is designed to minimize future adverse effects on flows in the Yakima River and its tributaries, while minimizing adverse effects on the local economy. This chapter puts in place permit-exempt well management measures identified in the Memorandum of Agreement (MOA) between Kittitas County and Department of Ecology. It creates a partial withdrawal of groundwater within upper Kittitas County by limiting the use of the groundwater exemption (RCW 90.44.050) for residential purposes.

Chapter 90.44 RCW regulates the use of groundwater of the state of Washington, and is supplemental to chapter 90.03 RCW, which regulates the use of surface waters of the state. The Legislature enacted Chapter 90.44.RCW to extend application of surface water statutes to the appropriation and beneficial use of groundwater within the state.

Ecology is developing and issuing this Small Business Economic Impact Statement (SBEIS) as part of its rule adoption process and to meet Chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rule is consistent with legislative policy.

#### ***Rule Proposals***

The key elements of the proposed rule include:

- Restricting permit-exempt groundwater withdrawals.
- Allowing Kittitas County to require hydraulic assessments.
- Measuring and reporting new groundwater withdrawals.

### **2. ANALYSIS OF COMPLIANCE COSTS FOR WASHINGTON BUSINESSES**

We have assessed the impacts of the proposed rule by analyzing and comparing water right management under the proposed rule, in contrast to current practices. The current framework or “baseline” includes the use of water by permit-exempt wells (RCW 90.44.050) and any administrative procedures for considering applications for both new water rights and changes to existing water rights. Chapter 90.44 RCW is also part of this legal baseline.

We provide a brief description of compliance requirements below.

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## ***Water Rights Administration Under the Rule***

Under the proposed rule, Kittitas County and Ecology will co-manage groundwater supplies until more is known about the aquifers and water supplies in northern Kittitas County. The proposed rule limits groundwater withdrawals in northern Kittitas County and addresses water supply issues for newly created residential developments and existing parcels.

It limits new residential developments served by wells to a withdrawal of 5,000 gallons per day (gpd) for each 40-acres of land.

It limits parcels less than ten acres created after March 28, 2002 to 1,250 gpd. It limits parcels greater than ten acres created after March 28, 2002, and those that create public water systems to an average of 125 gpd per acre, up to a maximum of 5000 gpd.

For more detail on changes to water right administration, see the Cost Benefit Analysis.

## **Surface Water**

There are no changes under this rule to surface water permit processing. In some cases, there may be expedited processing to place surface water rights into the trust water program. Ecology may also issue new surface water permits where trust water rights are held for mitigation purposes in the Yakima pilot water bank.

## **Groundwater Permits**

Under the proposed rule, expedited processing of applications for groundwater hydraulically associated with the Yakima River may occur if the proposed use is for:

- Domestic.
- Group domestic.
- Watering lawn or noncommercial garden.
- Municipal water supply purposes.

Ecology may also issue new ground water permits when trust water rights are held for mitigation purposes in the Yakima pilot water bank. This cannot occur until Ecology reaches a new agreement with the Yakima Nation and the U.S. Bureau of Reclamation that replaces or amends the 1999 settlement agreement.

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## **Permit-Exempt Ground Water**

Under the proposed rule, permit-exempt well users may use to 5000 gpd for a new residential development<sup>1</sup>.

When outdoor watering may occur, Ecology assumes each parcel will use 1,250 gpd for residential purposes, unless a condition is recorded as a covenant to use a lesser amount. If a covenant placed on the parcels restricts all use of permit- exempt ground water for watering lawn or garden, Ecology and the county will assume each parcel will use a maximum of 350 gpd.

## **Changes and Transfers of Water Rights**

Ecology will continue to process changes and transfers of existing water rights as allowed by Chapters 90.03 and 90.44 RCW.

## ***Impacts to Businesses in the Kittitas Groundwater Area***

Most businesses are not directly affected by the proposed rule for the Kittitas Groundwater Area. Those that are required to comply with the rule are residential users of permit-exempt groundwater. Although not directly required to comply with the rule, residential land development businesses can be affected by the rule indirectly. The indirect effects may include adding well-use limit provisions to covenants that would then be passed on to the residential purchasers with their deed.

The proposed rule will also not directly affect existing water right holders.

## **Impacts to Businesses Dependant on Residential Permit Exempt Wells**

As stated above, the proposed rule does not directly affect businesses but there is one possible cost for land development businesses.

## ***Costs to Firms and Required Professional Services***

As mentioned above, generally no business entities are required to comply with the proposed rule. The exception is if they would be required to place limits on permit-exempt well use in covenants for their residential developments.

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<sup>1</sup> Any division of land involving an application that vested after July 8, 2008

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## **Reporting and Recordkeeping: Permit Exempt Well Users**

The proposed rule adds no reporting or recordkeeping requirements for small businesses using permit-exempt wells. This rule restricts only residential uses.

### **Additional Professional Services**

Ecology expects no added professional services for businesses, other than developers. The rule affects only new residential uses of permit-exempt wells. Developers may need to hire persons to install and calibrate source meters.

### **Costs of Equipment, Supplies, Labor, and Increased Administrative Costs**

We expect no additional equipment, supplies, labor, or administrative costs from the proposed rules.

### **Other Compliance Requirements**

As mentioned above, business entities that do residential land development may be required to comply with the proposed rule by adding well withdrawal limits to the covenants of the developed land.

## **3. QUANTIFICATION OF COSTS AND RATIOS**

It is the purpose of this section to evaluate whether:

The proposed rules could cause businesses to lose sales or revenue.

The proposed rules would have a disproportionate impact on small businesses.

### ***Revenue Impacts***

As noted previously, only residential land development businesses may be required to comply with the proposed rule.

Existing water right holders might see some loss in the value of existing water rights. This in theory could lower revenues. Ecology recognizes this effect is likely to be very small and so we do not consider it further.

### **Distribution of Compliance Costs**

No business is required to curtail water withdrawals as required by the rule for residential permit exempt water uses.

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It is possible that small businesses could have costs under the proposed rules if they provide service to residential development. However these businesses are not required to comply with the rule therefore are exempt from evaluating associated costs. This rule, for the most part, only places conditions of use on residential water uses, not the industries that serve them.

### **Known Costs**

Businesses complying with the rule will incur very small, if any, costs. Businesses entities that do residential land development may be indirectly required to comply with the proposed rule by adding well withdrawal limits to the covenants of the development. Ecology is unable to determine the very small costs of adding further wording to a development covenant. We are also unsure if the rule will affect future permit-exempt water rights.

Ecology has determined that this is a minor cost as defined in RCW 19.85.020(2) and RCW 19.85.030 exempts Ecology from needing to prepare a Small Business Economic Impact Analysis.

The small costs to those required to comply with the proposed rule, may impose disproportionate costs to small businesses.

### **Conclusions**

Only residential land development businesses may be indirectly required to comply with the proposed rule. Because the costs associated with adding some extra wording to development covenants is so small, Ecology was unable to determine any costs to small businesses from this proposed rule.

Ecology has determined that this is a minor cost as defined in RCW 19.85.020(2) and RCW 19.85.030 exempts Ecology from needing to prepare a Small Business Economic Impact Analysis. Ecology prepares this analysis for informational purposes only.

## **4. ACTIONS TAKEN TO REDUCE THE IMPACT OF THE RULE ON SMALL BUSINESS**

As noted above, it is unlikely that there will be significant adverse impacts on businesses (small or large) as part of this rulemaking versus the baseline. Therefore, Ecology took no specific measures to reduce or mitigate these rule impacts. In general, only residential land development businesses may be affected.

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## 5. THE INVOLVEMENT OF SMALL BUSINESS IN THE DEVELOPMENT OF THE PROPOSED RULE AMENDMENTS

Ecology and Kittitas County entered into a Memorandum of Agreement calling for a study to better define the hydrogeology of upper Kittitas County. The study will provide information about water availability and the relationship between surface waters and groundwater. Ecology will use the information from the study to develop long-term water management strategies.

The proposed rule limits groundwater withdrawals in northern Kittitas County and addresses water supply issues for newly created residential developments and existing undeveloped parcels. It limits new residential developments served by wells to a withdrawal of 5,000 gallons per day for each 40-acres of land.

Small business was involved in this public process.

## 6. THE SIC CODES OF IMPACTED INDUSTRIES

The industries listed below may be required to comply with the proposed rule. The following list shows Standard Industrial Codes<sup>2</sup> for small businesses that may be affected in complying with the rule. This serves as a representative sample of potential future businesses that may be affected.

Table 1. Industries potentially affected by proposed rules  
(North American Industry Classification System)

Land Subdivision and Development	Code 2331
Land Subdivision	Code 2372

## 7. IMPACTS ON JOBS

Ecology expects that small businesses will rely on land use planning professionals (planners, architects, hydrogeologists, and engineers) to help prepare materials to show how their proposals meet the requirements described in sections -050 and -055 of the proposed rule. These small businesses would also likely rely on attorneys to

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<sup>2</sup> Ecology has used NAICS codes rather than Standard Industrial Codes (SIC). It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

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develop the covenants that are required to develop lots with water supplies using less than 1250 gpd. These services would already be required for land development and would not be a result of this rule. Ecology expects little or no job impacts to come from the minor costs associated with this proposed rule.

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## Appendix A. References

Memorandum of Agreement between Kittitas County and Washington State  
Department of Ecology, April, 2008.  
[http://www.ecy.wa.gov/programs/wr/cro/images/pdfs/moa\\_kitt\\_eco482008.pdf](http://www.ecy.wa.gov/programs/wr/cro/images/pdfs/moa_kitt_eco482008.pdf)

Huppert, Daniel, Gareth Green, William Beyers, Andrew Subkoviak, and Andrew  
Wenzl, Economics of Columbia River Initiative, 2004

R.S. Means, Building Construction Cost Data, 55<sup>th</sup> Annual Edition, 1997

## Appendix B – Proposed Rule (Chapter 173-539A WAC)

The complete rule language for the Kittitas County Groundwater Area can be found in proposed Chapter 173-539A WAC. The following provides a brief description of the rule and further discussion of those specific rule provisions.

### **Chapter 173-539A WAC Rule Matrix – Net Changes from New Rules to Ecology’s Existing Regulatory Practices**

**Table 1. Chapter 173-539A WAC—Upper Kittitas Ground Water Rule**

CURRENT STATUTE/REGULATION	PROPOSED RULE LANGUAGE	EFFECT OF CHANGE
<p>None specific to Upper Kittitas County however, RCW 90.44 addresses regulation of public groundwaters.</p> <p>Chapter 90.44 RCW Regulation of public groundwaters</p> <p>RCW 90.44.020 Purpose of chapter.</p> <p>This chapter regulating and controlling groundwaters of the state of Washington shall be supplemental to chapter <a href="#">90.03</a> RCW, which regulates the surface waters of the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of groundwaters within the state.</p> <p>RCW 90.44.030 Chapter not to affect surface water rights. The rights to appropriate the surface waters of the state and the rights acquired by the appropriation and use of surface waters shall not</p>	<p>Chapter 173-539A WAC - New rule</p> <p>WAC 173-539A-010 Purpose.</p> <p>(1) This Chapter implements exempt well management measures identified in the memorandum of agreement between Kittitas County and Department of Ecology by creating a partial withdrawal of groundwater within upper Kittitas County that limits the use of the groundwater exemption (RCW 90.44.050) for residential purposes.</p> <p>(2) Ecology designed the partial withdrawal and related requirements to minimize the adverse effects on flows in the Yakima River and its tributaries, while minimizing adverse effects on the local economy.</p>	<p>Rule will reduce the number of new source ground water wells serving suburban residential development in rural upper Kittitas County.</p>

<p>be affected or impaired by any of the provisions of this supplementary chapter and, to the extent that any underground water is part of or tributary to the source of any surface stream or lake, or that the withdrawal of groundwater may affect the flow of any spring, water course, lake, or other body of surface water, the right of an appropriator and owner of surface water <u>shall be superior to any subsequent right hereby authorized to be acquired in or to groundwater.</u></p> <p>Current exempt well regulatory framework under RCW 90.44.050</p> <p>After June 6, 1945, no withdrawal of public groundwaters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW <a href="#">90.44.052</a>, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to</p>		
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<p>the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: PROVIDED, HOWEVER, That the department from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: PROVIDED, FURTHER, That at the option of the party making withdrawals of groundwaters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW <a href="#">90.44.090</a> may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.</p>		
	<p>Based on technical research, Kittitas County may consider the potential for impairment of existing water rights, along with any other environmental impacts, during review of certain land use applications. The County may require mitigation or other ways to manage risks to reduce or eliminate impacts.</p> <p>(4) The requirements of this chapter do not apply to areas outside of Kittitas County.</p>	<p>Kittitas County may investigate surface and groundwater relationships as it pertain to new sources for residential development to ensure impairment of existing senior water rights does not occur.</p>
	<p>WAC 173-539A-020 Authority</p>	

	<p>(1) RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for exempt wells where needed.</p> <p>(2) In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology then rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County, which this chapter implements by establishing a partial withdrawal and other requirements.</p>	
	<p>WAC 173-539A-30 Definitions.</p>	

	<p>The definitions provided below are intended to be used only for this chapter.</p> <p><b>"Adjacent"</b> means all parcels that either:</p> <ul style="list-style-type: none"> <li>. Have any common boundary;</li> <li>. Are separated only by roads, easements, or parcels in common ownership; or</li> <li>. Are within five hundred feet at the nearest point.</li> </ul> <p><b>"Application"</b> as used in WAC 173-539A-050 and 173-539A-055 means a land use application to Kittitas County requesting:</p> <ul style="list-style-type: none"> <li>A subdivision;</li> <li>Short subdivision;</li> <li>Large lot subdivision;</li> <li>Administrative or exempt segregation;</li> <li>Binding site plan; or</li> <li>Performance based cluster plat.</li> </ul> <p><b>"Common ownership"</b> means any type of ownership interest held by an applicant including an oral or written contract for joint development between the applicant and any owner of adjacent lands. A contract for joint development includes, but is not limited to, contracts providing for shared use of services for permitting, engineering, architecture, environmental review, clearing or preparing land, or building roads, structures, or common water or sewer infrastructure.</p> <p><b>"Ecology"</b> means the department of ecology.</p>	<p>Clarifies new residential development applicants relationship with adjacent residential development(s).</p>
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	<p><b>"Exemption" or "ground water exemption"</b> means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.</p> <p><b>"Group use"</b> means use of the ground water exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development and all parcels that are adjacent and held in common ownership with the proposed new residential development where use of the exemption commenced or will commence within five years of the date the current application was filed.</p> <p><b>"Hydrogeologic assessment"</b> means the report prepared by a licensed hydrogeologist addressing the elements identified in WAC 173-539A-060.</p> <p><b>"Lands"</b> refers to both singular "land" and plural "lands."</p> <p><b>"MOA" or "Memorandum of Agreement"</b> means the "Memorandum of Agreement between Kittitas County and the State of Washington, Department of Ecology Regarding Management of Exempt Ground Water Wells in Kittitas County" of April 7, 2008.</p> <p><b>"New residential development"</b> means any division of land involving an application that vested after July 8, 2008.</p>	
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	<p><b>"New use of the ground water exemption"</b> means a use begun on or after July 8, 2008.</p> <p><b>"New use for residential purposes"</b> means any new use of the ground water exemption for a new or additional residential purpose associated with an existing or new structure.</p> <p><b>"Parcel"</b> means any parcel, land, tract or other unit of land.</p> <p><b>"Residential purposes"</b> means all domestic use and/or lawn and noncommercial garden use of water on the parcel(s) in question under the ground water exemption. A dwelling unit is not required for a residential purpose to be present. Domestic use is a separate and distinct purpose of use from lawn and noncommercial garden use. Each use may have a different commencement date under the exemption. For purposes of this chapter all use limits refer to combined domestic and lawn and noncommercial garden use. All use of the lawn and noncommercial garden use may not exceed a one-half acre as required in RCW 90.44.050 for either a group domestic use or a single domestic use.</p> <p><b>"Total water supply available"</b> means the amount of water available in any year from natural flow of the Yakima River, and its</p>	
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	<p>tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.</p> <p><b>"Upper Kittitas County"</b> is the area of Kittitas County delineated in WAC 173-539A-990.</p> <p><b>"Vested"</b> means that under the applicable land use laws an application is considered complete such that the application shall generally be reviewed under laws existing at the time of vesting, unless a special exception may apply. All applications for plat approvals including preliminary plat approvals which were approved by Kittitas County prior to July 8, 2008, are considered to be vested.</p>	
	<p>WAC 173-539A-050 New use of the exemption for new residential developments in upper Kittitas County</p> <p>(1) This section applies only to applications for residential developments that vest or vested on or after July 8, 2008.</p> <p>(2) Any new residential development within upper</p>	<p>For use of the 5000 gpd exemption for a new residential development Ecology assumes each parcel will use 1,250 gpd for residential purposes, unless a condition is recorded as a covenant to use a lesser amount.</p>

	<p>Kittitas County must not use more than 5,000 gpd from the ground water exemption for residential purposes. When filing an application for a new residential development, the applicant must file a sworn statement to this effect with ecology and Kittitas County, to be recorded against the parcels in question. The residential development includes all parcels that are part of the proposed development or a larger group use.</p> <p>(3) For use of the 5,000 gpd exemption limit for a new residential development, ecology and the county will assume each parcel will use 1,250 gpd for residential purposes, unless a condition is recorded as a covenant to use a lesser amount. If no exempt lawn or noncommercial garden watering will occur, and a covenant so restricting such use is placed on the parcel, ecology and the county will assume each parcel will use a maximum of 350 gpd.</p>	<p>If no permit-exempt lawn or noncommercial garden watering will occur, and a covenant is placed on the parcel restricting such use, Ecology and the county will assume each parcel will use a maximum 350 gpd.</p>
	<p>WAC 173-539A-055 New uses of the exemption for residential purposes in upper Kittitas County.</p> <p>(1) New uses for residential purposes on parcels created after March 28, 2002, in upper Kittitas County:</p> <p>(a) Parcels <b>less than ten acres</b> created after March 28, 2002,</p>	<p>Defines new uses of the exemption for residential purposes in upper Kittitas County for both parcels ten acres or less and ten acres or more not to exceed 5000 gpd per exemption.</p>

	<p>may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:</p> <p>(i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;</p> <p>(ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel;</p> <p>or</p> <p>(iii) 1,250 gpd.</p> <p>(b) Parcels <b>ten acres and greater</b> created after March 28, 2002, may use water under the ground water exemption for residential purposes in an amount that does not exceed the lowest amount below:</p> <p>(i) The amount stated in conditions or covenants on water use placed on the plat that created the parcel;</p> <p>(ii) The amount stated in conditions on water use specified in the permit/approval of the public water system that is intended to serve the parcel;</p> <p>or</p> <p>(iii) An average rate of use of 125 gpd per acre up to a maximum of 5,000 gpd.</p> <p>(c) This section does not restrict an owner from using more water through other legal permitted water rights.</p> <p>(2) New uses for residential purposes on parcels created</p>	
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	<p>on or before March 28, 2002, in upper Kittitas County:</p> <p>(a) Parcels created on or before March 28, 2002, must use no more than 5,000 gpd for all residential purposes.</p> <p>(b) Such use may be further restricted by covenants or conditions on water use placed on the plat or in a land use approval, conditions on a public water system approval, or if a legal restriction applies to such use.</p>	
	<p>WAC 173-539A-060 Hydrogeologic assessment.</p> <p>(1) If Kittitas County requires a hydrogeologic assessment, the hydrogeologic assessment must be:</p> <p style="padding-left: 40px;">(a) Submitted to Kittitas County and ecology in the form of a written report, signed by a licensed hydrogeologist; and</p> <p style="padding-left: 40px;">(b) Available as part of the project review under the State Environmental Policy Act.</p> <p>(2) The hydrogeologic assessment may be based on available existing information or other new information as required by Kittitas County.</p> <p>(3) The required elements of the report are as follows:</p> <p style="padding-left: 40px;">(a) Scope of the proposal including all of the following:</p> <ul style="list-style-type: none"> <li>. The location;</li> <li>. Proposed water source(s);</li> <li>. Water use amounts; and</li> </ul>	<p>Provides the framework for hydrogeologic investigations during land use decisions by the County,</p>

	<ul style="list-style-type: none"> <li>. The timing of the proposed use.</li> <li>(b) General description including all of the following: <ul style="list-style-type: none"> <li>. The local geologic, hydrogeologic, and hydrologic setting;</li> <li>. Identification of surface water and ground water features;</li> <li>. Water sources;</li> <li>. Recharge/discharge characteristics; and</li> <li>. Surface water and ground water interactions.</li> </ul> </li> <li>(c) Site-specific description.</li> <li>(d) Inventory and description of all of the following: <ul style="list-style-type: none"> <li>. All state issued surface water and ground water rights;</li> <li>. All state issued surface water and ground water claims; and</li> <li>. Exempt wells located within a one-year and five-year area of pumping influence.</li> </ul> </li> <li>(e) Identification and description of existing surface water or ground water rights that may be adversely affected by the proposed use of the ground water exemption.</li> <li>(f) The licensed hydrogeologist's written professional opinion on the potential of the proposal to cause impacts to the natural and built environment including surface water flows.</li> <li>(g) A statement of the report's limitations regarding its intended use, including scope, extent, and available data.</li> </ul>	
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**RCW 90.03.360**

**Controlling works and measuring devices — Metering of diversions — Impact on fish stock.**

(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require

Requires new exempt well source metering county-wide after adoption of the rule.

metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.

This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted.

[1994 c 264 § 85; 1993 sp.s. c 4 § 12; 1989 c 348 § 6; 1987 c 109 § 92; 1917 c 117 § 37; RRS § 7389. Formerly RCW [90.28.070](#).]

WAC 173-173 Requirement for Measuring and Reporting Water Use

WAC 173-173-015 What are the goals of this rule?

(1) The department seeks to ensure the reliable, accurate measurement of state water that is diverted, withdrawn, stored and used so that sound decisions may be made in administering state water laws and regulations.

(2) The department has the following specific goals for enforcement of water measurement and the reporting of measurement data:

a.) Determine whether water is available for appropriation;

WAC 173-539A-070 Measuring and reporting water use.

(1) For all uses of the ground water exemption for residential purposes within upper Kittitas County that commence after July 8, 2008, or within the remainder of Kittitas County that commence after the effective date of this rule, a source meter must be installed at the point of withdrawal, in compliance with such requirements as prescribed by Kittitas County and WAC 173-173-100.

(2) Metering data must be collected daily and reported within thirty days of the end of the recording period to Kittitas County and ecology. The following table shows the recording periods and the due dates for each metering report:

Reporting Period	Due No Later Than
Oct 1-Mar 31	April 30
Apr 1-Jun 30	July 30
Jul 1- Jul 31	Aug 30
Aug 1 - Aug 31	Sept 30

The new provision will require new exempt source ground water wells to meter and report in all of

<p>b.) Assessing and enforcing water rights compliance;  c.) Understanding the hydrology of surface and ground waters;  d.) Protecting instream resources;  e.) Managing and planning the state’s watersheds;  f.) Informing water users about how much and when water is used.</p> <p>RCW 90.44.450  Metering or measuring groundwater withdrawals – Reports.  The department of ecology may require withdrawals of groundwater to be metered, or measured by other approved methods, as a condition for a new water right permit. The department may also require, as a condition for such permits, reports regarding such withdrawals as to the amount of water being withdrawn. These reports shall be in a form prescribed by the department.</p>	<table border="1"> <tr> <td data-bbox="654 191 906 275">Sept 1 - Sept 30</td> <td data-bbox="906 191 1131 275">Oct 30</td> </tr> </table>	Sept 1 - Sept 30	Oct 30	<p>Kittitas County.</p> <p>Current laws and rules exist for metering and reporting water use. However, these laws and regulations have rarely been applied to exempt ground water source wells.</p>
Sept 1 - Sept 30	Oct 30			
<p>WAC 173-52-050 -Criteria for priority processing of competing applications.  (1) An application may be processed prior to competing applications if the application resolves or alleviates a public health or safety emergency caused by a failing public water supply system currently providing potable water to existing users. Inadequate water rights for a public water system to serve existing hook-ups or to accommodate future population growth or other future uses do not constitute a public health or</p>	<p>WAC 173-539A-080  Expedited processing of trust water right applications and new water right applications associated with trust water rights  (1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.  (2) Ecology may expedite the processing of an application for a new surface water right or a ground water right hydraulically related to the Yakima River, under Water</p>	<p>Provides for expedited processing of: trust water right applications and new water right applications associated with trust water rights to mitigate the impact of: Domestic. Group domestic. Watering lawn or noncommercial garden. Municipal water supply purposes within the Yakima River Basin.</p>		

<p>safety emergency. The application must be filed specifically to correct the actual or anticipated cause(s) of the public water system failure. To be considered a failing public water system, the system must meet one or more of the following conditions:</p> <p>(a) The department, upon notification by and in consultation with the department of health or local health authority, determines a public water system has failed, or is in danger of failing within one year, to meet state board of health standards for the delivery of potable water to existing users in adequate quantity or quality to meet basic human drinking, cooking and sanitation needs;</p> <p>(b) The current water source has failed or will fail so that the public water system is or will become incapable of exercising its existing water right to meet existing needs for drinking, cooking and sanitation purposes after all reasonable conservation efforts have been implemented; or</p> <p>(c) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is unacceptable for human use.</p> <p>(2) An application may be processed prior to competing applications if the department determines:</p>	<p>Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:</p> <p>(a) The application must identify an existing trust water right or pending application to place a water right in trust, if that such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.</p> <p>(b) The proposed use on the new application must be for domestic, group domestic, lawn or noncommercial garden, and/or municipal water supply purposes of use within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water rights.</p> <p>(3) If an application for a new water right is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be</p>	<p>The proposed use must be consistent with any agreement governing the use of the trust water rights. Currently, Ecology is not able to process applications associated with trust water rights for the purpose of mitigating new uses. This is due to the large backlog of existing water right applications. This new provision will allow Ecology to priority process these applications and allow new water rights to be processed based on trust water right mitigation.</p>
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<p>(a) Immediate action is necessary for preservation of public health or safety; or</p> <p>(b) The proposed water use is nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment.</p> <p>(3) An application for change or transfer to an existing water right may be processed prior to competing applications provided one or more of the following criteria are satisfied:</p> <p>(a) The change or transfer if approved would substantially enhance the quality of the natural environment; or</p> <p>(b) The change or transfer if approved would result in providing public water supplies to meet general needs of the public for regional areas;</p> <p>(c) The change or transfer was filed by water right holders participating in an adjudication, and a decision is needed expeditiously to ensure that orders or decrees of the superior court will be representative of the current water use situation.</p> <p>(4) Within each regional office, the department shall process applications satisfying the criteria in subsections (1) through (3) of this section in the following priority:</p> <p>(a) Public health and safety emergencies under subsection (1) of this section;</p> <p>(b) Preservation of other public health and safety concerns under subsection (2)(a) of this section;</p> <p>(c) Transfers or changes</p>	<p>expedited.</p> <p>(4) Upon determining that the application is eligible for expedited processing ecology will do the following:</p> <p>(a) Review the application to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.</p> <p>(b) Condition the permit to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit.</p> <p>(c) Condition each permit to ensure that the tie to the trust water right is clear, and that any constraints in the trust water right are accurately reflected.</p> <p>(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."</p>	
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<p>under subsection (3)(a) of this section;</p> <p>(d) Transfers or changes under subsection (3)(b) of this section;</p> <p>(e) Transfers or changes under subsection (3)(c) of this section; and</p> <p>(f) Nonconsumptive uses under subsection (2)(b) of this section.</p> <p>[Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-050, filed 2/27/98, effective 3/30/98.]</p>		
<p>RCW 90.03.605 Compliance – Sequence of enforcement measures – Location of compliance personnel.</p> <p>(1) The department shall, through a network of water masters appointed under this chapter, stream patrollers appointed under chapter 90.08 RCW, and other assigned compliance staff to the extent such a network is funded, achieve compliance with the water laws and rules of the state of Washington in the following sequence:</p> <p>(a) The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of their water rights and applicable water laws;</p>	<p>WAC 173-539A-090 Educational information , technical assistance and enforcement</p> <p>(1) To help the public comply with this chapter, ecology and Kittitas County may prepare and distribute technical and educational information on the scope and requirements of this chapter.</p> <p>(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.</p> <p>(3) To mitigate for potential impact of an exempt use to the Total Water Supply Available and to avoid</p>	<p>Provides for Educational information, technical assistance, and enforcement.</p>

<p>(b) When the department determines that a violation has occurred or is about to occur, it shall first attempt to achieve voluntary compliance. As part of this first response, the department shall offer information and technical assistance to the person in writing identifying one or more means to accomplish the person's purposes within the framework of the law; and</p> <p>(c) If education and technical assistance do not achieve compliance the department shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 90.03.600 unless the noncompliance is corrected expeditiously or the department determines no impairment or harm.</p> <p>(2) Nothing in the section is intended to prevent the department of ecology from taking immediate action to cause a violation to be ceased immediately if in the opinion of the department the nature of the violation is causing harm to other water rights or to public resources.</p> <p>(3) The department of ecology shall to the extent practicable station its compliance personnel within the watershed communities they serve. To the extent practicable, compliance personnel shall be distributed evenly among the regions of the state.</p> <p>[2002 c 329 § 2.]</p>	<p>potential future regulation in favor of senior water rights, ecology encourages exempt users to participate in a mitigation program through the Yakima Basin Pilot Water Bank or to obtain a senior water right.</p> <p>(4) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.</p>	
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<p>RCW 43.27A.190 Water resource orders. Notwithstanding and in addition to any other powers granted to the department of ecology, whenever it appears to the department that a person is violating or is about to violate any of the provisions of the following:</p> <ul style="list-style-type: none"><li>(1) Chapter 90.03 RCW; or</li><li>(2) Chapter 90.44 RCW; or</li><li>(3) Chapter 86.16 RCW; or</li><li>(4) Chapter 43.37 RCW; or</li><li>(5) Chapter 43.27A RCW; or</li><li>(6) Any other law relating to water resources administered by the department; or</li><li>(7) A rule or regulation adopted, or a directive or order issued by the department relating to subsections (1) through (6) of this section; the department may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to addressee only with return receipt requested and acknowledged by him. The order shall specify the provision of the statute, rule, regulation, directive or order alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable</li></ul>		
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<p>time. The regulation of a headgate or controlling works as provided in RCW 90.03.070, by a watermaster, stream patrolman, or other person so authorized by the department shall constitute a regulatory order within the meaning of this section. A regulatory order issued hereunder shall become effective immediately upon receipt by the person to whom the order is directed, except for regulations under RCW 90.03.070 which shall become effective when a written notice is attached as provided therein. Any person aggrieved by such order may appeal the order pursuant to RCW 43.21B.310. [1987 c 109 § 11; 1969 ex.s. c 284 § 7.]</p> <p>Notes:</p> <p style="padding-left: 2em;">Purpose -- Short title --  Construction -- Rules --  Severability -- Captions --  1987 c 109: See notes following RCW 43.21B.001.</p> <p style="padding-left: 2em;"><b>Severability -- 1969 ex.s. c 284:</b> See note following RCW 90.48.290.</p>		
<p>RCW 43.21B.310  Appeal of orders, permits, and licenses.</p> <p>(1) Except as provided in RCW 90.03.210(2), any order issued by the department or local air authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may</p>	<p>WAC 173-539A-100 Appeals</p> <p>All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.</p>	<p>Opportunity for appeal of Ecology decisions.</p>

be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after the date of receipt of the order. Except as provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means of appeal of such an order.

(2) The department or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal.

(3) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to RCW 43.21B.320 to the hearings board for a stay of the order or for the removal thereof.

(4) Any appeal must contain the following in accordance with the rules of the hearings board:

(a) The appellant's name and address;

(b) The date and docket number of the order, permit, or license appealed;

(c) A description of the substance of the order, permit, or license that is the subject of the appeal;

(d) A clear, separate, and concise statement of every error alleged to have been committed;

(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and

(f) A statement setting forth the relief sought.

(5) Upon failure to comply with any final order of the department, the attorney general, on request of the department, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to insure compliance with the order. The air authorities may bring similar actions to enforce their orders.

(6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the department within thirty days of the date of receipt.

[2004 c 204 § 5. Prior: 2001 c 220 § 4; 2001 c 36 § 3; 1992 c 73 § 3; 1989 c 2 § 14 (Initiative Measure No. 97, approved November 8, 1988); (1987 3rd ex.s. c 2 § 49 repealed by 1989 c 2 § 24, effective March 1, 1989); 1987 c 109 § 6.]

Notes:

Intent -- Construction --  
Effective date -- 2001 c 220:  
See notes following RCW  
43.21B.110.

Effective dates --  
Severability -- 1992 c 73: See  
RCW 82.23B.902 and  
90.56.905.

Short title -- Construction --  
Existing agreements --  
Effective date -- Severability --  
1989 c 2: See RCW

<p>70.105D.900 and 70.105D.910 through 70.105D.921, respectively.          Purpose -- Short title --          Construction -- Rules --          Severability -- Captions --          1987 c 109: See notes following RCW 43.21B.001.</p>		
	<p>WAC 173-539A-110          Regulation review</p> <p>(1) The exempt well management requirements in this chapter will be reviewed and may be revised as part of a long-term management program. Ecology and Kittitas County intend to develop the long-term management program after they have completed a ground water study that focuses on portions of Kittitas County not fully addressed by the current USGS ground water study of the Yakima River Basin.</p> <p>(2) Ecology may review this chapter whenever:</p> <ul style="list-style-type: none"> <li>(a) New information is available;</li> <li>(b) A change of condition occurs;</li> <li>(c) Statutory changes warrant the review; or</li> <li>(d) Reviews described in WAC 173-539A-060 show changes are necessary.</li> </ul> <p>(3) Kittitas County, or interested citizens may request that ecology exercise its discretion to review this chapter at any time.</p> <p>(4) If ecology begins a review</p>	<p>Opportunity of rule review and modification based on new information.</p>

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	of this chapter, it will consult with Kittitas County.	
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