



Preliminary Cost Benefit and Least Burdensome Analyses

**Chapter 173-539A WAC
Water Resources Program for the Upper Kittitas
Ground Water Rule**

January 2009
09-11-003

For a printed copy of this report, contact:

Name: Water Resources Program Publications

Address: PO Box 47600, Olympia WA 98504-7600

E-mail: WRPublications@ecy.wa.gov

Phone: (360) 407-6600

Refer to Publication Number: 09-11-003

You can also view this report on the Department of Ecology's Web Site at

<http://www.ecy.wa.gov/biblio/0911003.html>

TABLE OF CONTENTS

CONCLUSIONS	3
CONCLUSION SUMMARY:	3
QUANTIFIED VALUES:	3
UNQUANTIFIED VALUES:	3
PURPOSE OF THIS ANALYSIS	3
BACKGROUND	4
REASON FOR THIS RULE PROPOSAL	4
SCOPE OF ANALYSIS	5
COMPARISON OF THE CURRENT CONDITIONS TO THE PROPOSED RULE	5
BASELINE FOR ANALYSIS	5
A. PROCEDURAL COORDINATION BETWEEN ECOLOGY AND KITTITAS COUNTY.	6
<i>Proposed rule</i>	6
<i>Baseline</i>	6
<i>Primary change</i>	6
B. RESTRICTING PERMIT-EXEMPT GROUNDWATER WITHDRAWALS	6
<i>Proposed rule</i>	7
<i>Baseline</i>	7
<i>Primary change</i>	7
C. MEASURING GROUNDWATER WITHDRAWALS	7
<i>Proposed rule</i>	7
<i>Baseline</i>	7
<i>Primary change</i>	7
ANALYSIS OF COSTS & BENEFITS	7
A. TIME HORIZON	8
<i>Discounting future values</i>	8
B. THE PROBABLE COSTS	9
<i>Implementing the Memorandum of Agreement (MOA)</i>	9
<i>Hydrogeologic investigations</i>	10
<i>Metering and reporting costs</i>	10
<i>Combining the exemptions</i>	10
<i>Recording covenants</i>	11
<i>Cost summary</i>	11
C. THE PROBABLE BENEFITS	11
<i>Basis for restricting the permit exempt groundwater exemption</i>	12
<i>Water without permit-exempt uses</i>	13
<i>Value of the permit-exempt allocation and land development</i>	14
<i>Unquantified benefits</i>	15
<i>Total probable benefits</i>	15
D. SUMMARY OF THE COST BENEFIT ANALYSIS	15
LEAST BURDENSOME ANALYSIS	16
REFERENCES	18
APPENDIX	19
<i>Table 1. Chapter 173-539A WAC—Upper Kittitas Ground Water Rule</i>	19
RCW 90.03.360	29

**CONTROLLING WORKS AND MEASURING DEVICES – METERING OF DIVERSIONS
– IMPACT ON FISH STOCK. 29**

**WAC 173-52-050 -CRITERIA FOR PRIORITY PROCESSING OF COMPETING
APPLICATIONS. 31**

RCW 90.03.605 33

**COMPLIANCE — SEQUENCE OF ENFORCEMENT MEASURES — LOCATION OF
COMPLIANCE PERSONNEL. 33**

RCW 43.27A.190 35

WATER RESOURCE ORDERS. 35

NOTES: 36

RCW 43.21B.310 36

APPEAL OF ORDERS, PERMITS, AND LICENSES. 36

NOTES: 38

Conclusions

Ecology determines that the benefits of the proposed rule are greater than the costs and that we are proposing the least burdensome alternative of the rule.

Conclusion Summary:

The proposed rule will provide water for the 20-year projected population growth through permit-exempt uses for land development opportunities.

The proposed rule is the least burdensome option for those who are required to comply.

Quantified Values:

The quantified benefit estimate is \$18.6 million over a 20-year period.

The quantified cost of the proposed rule is estimated to be \$3.2 million over a 20-year period.

Unquantified Values:

Reduced litigation costs associated with managing groundwater users effectively.

Impacts of climate change that may affect expected benefits.

Impacts of changes to the local economy due to the effects of the global economy that may reduce or increase benefits.

Ecology has determined that the benefits associated with the proposed rule exceed probable costs associated with the rule. Ecology does not believe that any of the unquantified values will offset the net benefits of the rule.

Purpose of this Analysis

The Washington State Department of Ecology (Ecology) is proposing to adopt Chapter 173-539A WAC - Water Resources Program for the Upper Kittitas Ground Water Rule. The Administrative Procedures Act (RCW 34.05.328(d)(e)) requires two types of analyses before adopting a significant legislative rule – a cost-benefit analysis, and a least burdensome alternative analysis. This report provides the results of these analyses and shows the potential impacts associated with the proposed rule.

Ecology will use the information developed in these analyses to ensure that the rules are consistent with legislative policy. Ecology has also developed and issued a Small Business Economic Impact Statement (SBEIS) as part of the rule-making process.

Background

The Washington State Department of Ecology (Ecology) is proposing this rule for the upper Kittitas County groundwater area to minimize the adverse effects on flows in the Yakima River and its tributaries, while minimizing adverse effects on the local economy. This Chapter implements permit-exempt well management measures identified in the Memorandum of Agreement between Ecology and Kittitas County. 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.

The ground water code, Chapter 90.44 RCW, is supplemental to Chapter 90.03 RCW, which regulates the surface waters of the state. The groundwater code was enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of groundwaters within the state.

Reason for this Rule Proposal

On September 13, 2007 a group of concerned citizens called Aqua Permanente petitioned the Department of Ecology under RCW 34.05.330, of the Administrative Procedures Act, to begin rule making. They requested Ecology adopt the provisions of RCW 90.54.050(2) withdrawing groundwater resources of the Kittitas County to new uses until enough is known to support sound decisions on future withdrawals. Specifically, they requested that Ecology withdraw ground water resources of Kittitas County to new permit-exempt well uses provision (RCW 90.44.050), until further studies can ensure that senior water rights, stream flows, and the public interest are not impaired.

Permit-exempt wells are only exempt from the procedural requirements to obtain a water right permit. They are not exempt from other substantive provisions in the groundwater code. They are subject to the priority system that protects senior water rights from later-established junior water rights.

Reasons for taking action included:

Citizens were concerned that serial short plats and subdivisions provided water through permit-exempt wells would negatively affect their existing water uses.

Permit-exempt ground water withdrawals may interfere with the Yakima River Basin target stream flows and reduce the water available for junior water users who are “pro-rated” when flows are low.

Permit-exempt well uses are not measured, and therefore the impacts are unknown.

On November 9, 2007, Kittitas County and Ecology entered into an Agreement in Principle which became the basis of the Memorandum of Agreement. Ecology and Kittitas County entered into a Memorandum of Agreement (MOA) on April 7, 2008 that provided the framework and elements of the interim management measures and the proposed rule.

Scope of Analysis

This document contains the preliminary Cost Benefit Analysis (CBA), and a Least Burdensome Alternative Analysis.

The CBA measures the probable costs and benefits of the rules against current operating conditions. This takes the existing legal structure and its impacts into account.

The Least Burdensome Alternative Analysis must show that the rules are the least burdensome option for those required to comply with the rules.

Comparison of the Current Conditions to the Proposed Rule

They include:

Establish a process for coordination between Ecology and Kittitas County.

Restricting new permit-exempt groundwater withdrawals.

Measuring and reporting new groundwater withdrawals.

This section describes how the proposed rule would affect citizens in the Upper Kittitas Groundwater Area compared to the existing conditions (baseline) described below. The following analysis shows that this restriction is the most significant change from existing conditions. The analysis in this report will focus on the restriction (or allowance) of permit exempt groundwater uses and quantify the costs and benefits associated with the allowance of further permit exempt groundwater withdrawals.

Baseline for Analysis

The baseline is the current legal framework governing the administration and management of water resources in the basin. Baseline conditions include current water management practices in the basin, and other applicable water resource laws and court cases.

Surface water rights are managed by priority of right as determined valid in the Yakima River Basin adjudication. Groundwater in the Yakima River Basin is connected to surface water.

In 1999, Ecology settled an appeal by the Yakama Nation and the U.S. Bureau of Reclamation (Reclamation), of 43 Ecology decisions to issue new groundwater permits in the Yakima River Basin. Of the 43 appeals, the Court of Appeals deemed 27 to have been filed timely. The 27 parties and Ecology agreed to settle conditioned upon each applicant providing the Bureau with funds to mitigate for their permit's impacts on the Yakima River. Funding from the settlements totaled nearly \$900,000.

Ecology and Reclamation also agreed to contribute \$2 million each toward developing a groundwater model to assist create effective water management strategies. U.S. Geological Services also provided \$1.6 million, and Ecology's contributions now total \$2.7 million. To date, the total cost is about \$6.3 million.

In the 1999 settlement agreement, Ecology agreed that it would not issue any new groundwater permits until the groundwater study and model was completed.

In 2001 and 2005, Ecology, the Yakima Nation, and Reclamation entered into supplemental MOAs. The MOAs allowed Ecology to use its drought emergency authority to issue groundwater permits provided that a mitigation hierarchy was followed. In each case, Ecology acquired as much water as possible to improve stream flows, but in-kind, in-place, in-time mitigation was not fully achieved. These agreements require Ecology, the Yakima Nation, and Reclamation to use mitigation funds to acquire water rights to provide perpetual mitigation based on the value of the drought year benefits. Ecology obligated about \$500,000-600,000 in each drought year.

Since 1999, Ecology has not considered groundwater in the Yakima Basin unrelated to surface water and surface water management. Neither has Ecology considered new groundwater allocations--permitted or permit-exempt--to be free of impacts to senior surface water rights. Yet, water users have been able to legally develop new groundwater uses since the 1999 settlement, for the purposes and amounts allowed in the groundwater exemption in RCW 90.44.050.

A. Procedural Coordination between Ecology and Kittitas County.

Proposed rule

The proposed rule sets the scope and required elements of hydrogeologic assessments that identify sources of water and water rights that may be adversely affected by proposed residential uses of the groundwater exemption. They are intended to aid new land use decisions by the county using available scientific information.

Baseline

Currently the county can require hydrogeologic assessments. However, the county has seldom required such studies as a normal part of the land use review process.

Primary change

Ecology establishes required elements of a hydrologic assessment.

B. Restricting Permit-exempt Groundwater Withdrawals

Proposed rule

Under the proposed rule, new residential developments would have use of the 5000 gallons per day (gpd) groundwater exemption. 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 no permit-exempt lawn or 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.

Baseline

Watering a noncommercial lawn or garden, one-half acre in size or less (no gallon per day limit).

Providing domestic supplies to a single home or groups of homes (limited to 5,000 gpd). Water use of any sort is subject to the "first in time, first in right" clause, originally established in historical Western Water Law and now part of Washington State Law. This means that a senior right cannot be impaired by use under a junior right. Seniority is established by priority date (the date an application was filed for a permitted or certificated water right) or the date that water was first put to beneficial use for claims (discussed below) and permit-exempt groundwater withdrawals.

Primary change

This rule combines exemptions for domestic uses and watering noncommercial lawn and garden, within the 5000 gpd limit of the groundwater exemption.

C. Measuring Groundwater Withdrawals**Proposed rule**

The proposed rule requires measurement and reporting of all new permit-exempt withdrawals in the Upper Kittitas County Groundwater Area after July 8, 2008. New permit-exempt withdrawals in the remainder of the county must meter after the effective date of the rule.

Baseline

Measuring permit-exempt groundwater withdrawals is not currently required.

Primary change

All new permit-exempt withdrawals must meter throughout the county.

Analysis of Costs & Benefits

This preliminary cost-benefit analysis is provided as required under RCW 34.05.328(d).

The analysis concludes that the probable benefits of the rules are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs, and the specific directives of the statutes being implemented.

This analysis includes quantitative information where available. We provide qualitative information where reliable values for estimating the costs and benefits are not available.

A. Time Horizon

The costs and benefits associated with these rules depend on the time horizon used in the analysis. For these rules, the cost-benefit analysis uses a 20-year horizon in order to analyze the costs and benefits. The reasons are:

The reliability of the probable benefits and costs estimations are determined by the accuracy of our forecast into the future. Forecasts that use a shorter period are more reliable. Longer periods would significantly increase the uncertainty, and may result in misleading conclusions.

The basis of the analysis is to examine permit-exempt groundwater withdrawals to meet the water needs of the 20-year predicted subdivision demand.

Changes in water management policy are inevitable. Science advances, population shifts, and technology changes all influence water management policy. This proposed rule is the direct result of such changes. Historical evidence shows that changes in how we manage water can be significant. It is expected that this rule will receive further amendments in the future.

Discounting future values

We must discount the value of benefits and costs accruing in the future. Future costs and benefits are not as valuable as current costs and benefits even when adjusted for inflation.

Ecology is using a real discount rate of 3.1 percent for water resource related projects to discount future dollars.¹ For the selected 20-year span, this means that 20 annual inflation-adjusted payments of \$1 are currently worth \$14.74. This is equivalent to multiplying the sum of the 20 annual increments by 0.74.

B. The Probable Costs

The costs and benefits of the proposed rule will focus on:
The restriction of permit-exempt residential groundwater uses (or allowances).
The allowance of further permit exempt groundwater withdrawals in the upper Kittitas area.

Implementing the Memorandum of Agreement (MOA)

OPERATING BUDGET (Kittitas County and Ecology)

07-09 Biennium: \$383,000 from the General State Fund was provided to Ecology in the 2008 Supplemental Budget for actions to manage permit-exempt wells in Kittitas County.

09-11 Biennium: Carry Forward Level funding proposed by the Legislature is \$316,000 for the biennium. Performance Level Funding requested by Ecology is \$291,280.

CAPITAL BUDGET (Groundwater Study)

07-09 Biennium: The 2008 Supplemental Capital Budget provided \$300,000 from the State and Local Improvements Revolving Account (Water Supply Facilities) capital project 1974-2-006. The funding was for a groundwater study in Kittitas County to determine the impacts of new wells on the aquifer and nearby surface waters.

¹ For each year 1998 - 2008, we calculated the real rate by subtracting annual inflation from the nominal rate for water. These real rates were then averaged to calculate the 3.1% real interest rate as an average expectation for the future. Inflation rates as paid out on I bonds came from today's values at [Hhttp://www.treasurydirect.gov/indiv/research/indepth/ibonds/res_ibonds_iratesandterms.htm](http://www.treasurydirect.gov/indiv/research/indepth/ibonds/res_ibonds_iratesandterms.htm)H. Nominal rates for water projects were obtained today at [Hhttp://www.economics.nrcs.usda.gov/cost/discountrates.html](http://www.economics.nrcs.usda.gov/cost/discountrates.html)H.

09-11 Biennium: Ecology is requesting another \$700,000 from the State and Local Improvements Revolving Account (Water Supply Facilities) in the 2009-2011 biennium to complete the groundwater study.

These costs are estimated to be **\$1,990,280**.

Hydrogeologic investigations

Although the rule does not require hydrogeologic investigations, it does reinforce Kittitas County's authority to require these for certain developments. Ecology has chosen to consider the costs associated with Kittitas County requiring these studies from people seeking permit-exempt wells in certain areas as costs of the rule.

Ecology estimates the county will require 150 hydrogeologic investigations over the next twenty years. Hydrogeologic investigations of this nature are estimated to cost between \$5,000 - \$10,000. Ecology estimates this to cost \$1,125,000 over the 20 year time period. This has a discounted cost of **\$832,000** for this period.

Metering and reporting costs

Residential users of exempt wells will be required to meter. Ecology estimates exempt wells could serve from 1 to 14 homes but expects the average to be 4 users per well under the 1250 gpd usage requirement. Ecology assumes 1000 wells will go in during the next 20 years throughout the county. The estimated cost of metering for small to medium water systems ranges from \$300 to \$750.² Ecology chose to use \$500 per meter including reporting costs. Total costs are estimated at \$500,000 or a present value of **\$370,000**.

Combining the exemptions

Combining the domestic and noncommercial lawn and garden exemptions is very unlikely to reduce the amount of water available to any homeowners relying on the permit exemption. Watering a noncommercial lawn or garden one-half acre in size or less is still limited by law to reasonable amounts of water for that purpose.

Assuming four houses are hooked to a permit-exempt well under the proposed rule, each house would receive 1250 gpd of water to use within each home and on 1/8 acre of lawn and garden. Using standard turf irrigation duties, and typical application techniques and

² Survey of well drillers, pump installers, and Ecology's metering coordinator.

a 4-day per week watering schedule, the actual water required for both domestic uses and watering is below 1250 gpd.

Ecology believes there is no cost resulting from combining the two permit-exempt purposes.

Recording covenants

Ecology foresees minimal recording costs to individuals or businesses doing residential land development. The county may require these entities to indirectly comply with the proposed rule by adding well withdrawal limits to the covenants of the development or subdivision. Ecology is unable to quantify the very small costs of adding further wording to a development covenant.

Cost summary

We estimate total costs at around \$3.2 million over the 20-year period.

Table 1. Cost Summary

Rules Impacts	Costs
MOA implementation	\$1,990,280
Hydro Assessments	\$832,000
Metering/Reporting	\$370,000
Total Estimated Costs	\$3,192,280

There may also be other minor losses including:
Unquantified sport fishing losses.
Losses to interruptible water-right permit holders.
Non-use costs.

Ecology is unable to determine these costs. The limits of current science, technology, and economic knowledge prevent us from making a more accurate estimate of the probable costs of this rule.

C. The Probable Benefits

The Yakima Basin is not officially closed by Ecology. In 1999, Ecology agreed to not issue more groundwater rights within the Yakima Basin until we know more about the basin hydrology. Ecology, the Yakima Nation, and the U.S. Bureau of Reclamation are working together to gain this information through a series of groundwater modeling studies. Ultimately a set of recommendations from these studies will provide a technical foundation to:

- Improve or replace the elements of the proposed rule.
- Address other areas within the Yakima basin not covered by the proposed rule.

Permit-exempt uses are water rights, similar to permitted and certificated water rights. Water rights based on the permit exemption are only exempt from the requirement to apply for and obtain a water right permit before starting water use. They are not exempt from other provisions in the groundwater code and are subject to the priority system. Each permit-exempt water right has a priority date of the date of first use. Permit-exempt uses, regardless of the necessity for reliable residential water, are subject to curtailment when senior right needs are not satisfied.

Basis for restricting the permit exempt groundwater exemption

Ecology is proposing in this rule to reduce the risks:

To future home buyers unaware of potential curtailment of their water use.

To senior rights when the county approves land divisions.³

RCW 90.54.050(2) provides:

“When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available. Before proposing the adoption of rules to withdraw waters of the state from additional appropriation, the department shall consult with the standing committees of the house of representatives and the senate having jurisdiction over water resource management issues.”

Developers and land owners object to limits on their reliance on the permit exemption. However, the proposed rule still allows development to occur provided it meets certain requirements.

Future groundwater withdrawals under the exemption are still subject to interruption from senior users. The proposed rule would retain access to the permit exemption, create a disclosure process needed to promote timely mitigation, and reduce further unmitigated impacts to senior surface water and groundwater rights.

³ In the MOA, Ecology and the Kittitas county agreed that the County will provide notice to prospective buyers and existing land owners by placing on the plat the following language “*The approval of this division of land includes no guarantee that there is a legal right to withdraw groundwater within the land division. The approval of this division of land provides no guarantee that use of water under the groundwater exemption (RCW 90.44.050) for this plat or any portion thereof will not be subject to curtailment by the Department of Ecology or a court of law.*”

Water without permit-exempt uses

New water users would be required to stop using water when impairment of senior surface or groundwater users' rights is shown. If development could not use the groundwater exemption, a permit would be needed. To issue a new water right permit, Ecology must make an affirmative finding that water is available. Developers needing a new uninterrupted supply could choose among the following options:

Storing water: If users can store enough excess flow during high flow periods, it would be available throughout the year. However, in order to ensure sufficient water is available to sustain their needs, most users would need to store tens of thousands of gallons of water. Large scale storage can be costly.

Abandoning building lots: In this scenario, the landowners cannot find an economic and technically feasible way to sustain their year-round water use. The potential building lots are unbuildable in the 20-year period because of the lack of water.

Purchasing and transferring pre-1905 water rights: In some areas, persons seeking new water rights can purchase agricultural farmland with uninterrupted water rights. They can then transfer the right for their water supply. Where viable, the loss is from degrading irrigated farmland into non-irrigated farmland. This scenario has not been commonly used in the past, but has been used more frequently recently.

Participating in the Yakima Pilot Water Bank: Water users could purchase a water right held in the bank, if available, as mitigation credit for a new groundwater permit.

To quantify the probable benefits, we assume any further allowances of permit-exempt water withdrawals will provide a water supply for residential uses and land development. The alternative would be to continue the pre-MOU practices by Kittitas County, which can be expected to lead to litigation. Such litigation has the potential to stop all future development relying on the groundwater exemption. If the proposed rule reduces the chances of such successful litigation by 10%, then 10% of the quantified value of the projected land development can be ascribed to the proposed rule.

The proposed rule retains access to groundwater through the permit exemption for those who may build residences in the Upper Kittitas County Groundwater Area in the next 20 years. This saves the undeveloped property from being unbuildable.

Value of the permit-exempt allocation and land development

The Cascade Land Conservancy estimates development right values from assessed land values average \$61,000 per parcel in the Kittitas area.⁴ To provide a better estimate of current market prices for land, they adjusted the data upward to reflect this undervaluation.

Using an adjustment factor provided by the Washington State Department of Revenue, the distribution of development right values at current market rates is estimated in Table 2 below.

Table 2: Estimated Market Development Right Values (Adjusted)

Median Value		\$83,780
Minimum Value		\$1,629
Maximum Value		\$519,066
Percentiles	25	\$44,214
	50	\$83,780
	75	\$119,356

Ecology estimates 3000 new residences will be seeking water through permit-exempt withdrawals in the Upper Kittitas Groundwater Area in the next 20 years⁵.

Allowing this opportunity to develop could allow 3000 new lots at \$83,780 in increased land value. This sums to a \$251,340,000 benefit to current landholders that want the chance to develop. The present value of this benefit is \$185,991,600. If this

⁴ CLC Market Supplement September 08 to Final report
http://www.cascadeagenda.com/files/tdr/Kittitas%20County%20TDR%20Program%20-%20CLC%20Findings%20and%20Recommendations%20jul25_08.pdf

⁵ Ecology uses a more conservative estimate for new residences that may benefit from permit exempt well uses as some buildable lots may already be in existence prior to the effective date of the rule.

development was 10% more likely to occur than without the proposed rule, then the value would be **\$18,599,160**.

Unquantified benefits

The proposed rule improves coordination between Ecology and Kittitas County by clarifying the relationships between water supply, the ground water permit exemption, and subdivision of lands. The proposed rule requires disclosure of developers' choices that lead to restrictions upon end purchasers of lots or homes. Informed buyers' better understanding of these obligations is expected to lead to better compliance and a reduced total cost to enforce the restrictions. Also, disclosure makes it more likely that timely mitigation will be obtained where the hydrogeologic assessment identifies the risk of future curtailment to protect senior water rights.

By better managing the risk of curtailment to these junior residential water users, it is more likely that the 20-year growth projection and the associated economic benefits can be realized. Without improved coordination, disclosure, and accountability, it is more likely that senior water right users will file suit, seeking to prevent new water uses of water and curtail some current groundwater use.

Ecology can estimate benefits of groundwater litigation by examining the Yakima Basin surface water adjudication. We estimate that this adjudication costs \$1 million per year, plus private party legal costs. For a 20-year period, litigation costs alone could amount to over \$50 million.

Better management of the groundwater resource will allow developers and others to plan ahead and meet their development needs.

Total probable benefits

The estimated benefit of the rules is \$18.6 million over a 20-year period plus reduced litigation through better management of the resource. The estimated value is based on the following assumptions:

The permit exempt water use would allow continued development of land in upper Kittitas.

Future groundwater modeling will support further withdrawal from permit exempt uses. The benefit is discounted using 3.1% to determine present value

D. Summary of the Cost Benefit Analysis

The quantified benefit estimate is \$18.6 million over a 20-year period.

The quantified costs of the rules estimate are \$3.2 million for 20 years.

Ecology has determined the proposed rules benefits exceed the associated probable costs. Ecology believes the unquantified values will not offset the net benefits of this rule.

Least Burdensome Analysis

RCW 34.05.328 (1)(e) requires Ecology to perform a Least Burdensome Analysis to:

“Determine, after considering alternative versions of the rules and the analysis required under (b), (c), and (d) of this subsection, that the rules being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.”

RCW 90.54.050 (2) states:

When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available. Before proposing the adoption of rules to withdraw waters of the state from additional appropriation, the department shall consult with the standing committees of the house of representatives and the senate having jurisdiction over water resource management issues.

On September 13, 2007 a group of concerned citizens called Aqua Permanente petitioned Ecology to begin rule making to withdraw groundwater resources of Kittitas County to prevent future permit-exempt wells until enough information is available to ensure that senior water rights, stream flows, and the public interest are not impaired.

Permit-exempt wells are only exempt from the procedural requirements to obtain a water right permit. They are not exempt from other substantive provisions in the groundwater code and are subject to the priority system.

Reasons for taking action included:

Citizens had concerns that serial short plats and subdivisions using water through permit-exempt wells would negatively affect their--exempt or permitted--senior water rights.

Permit-exempt groundwater withdrawals may interfere with the Yakima River Basin target stream flows, and so reduce the availability of water for junior water users, often “pro-rated” during times of drought.

Permit-exempt well withdrawals are not measured, and therefore the impacts are unknown.

There is a high probability of the hydraulic continuity between surface waters and groundwater negatively affecting groundwater users in times of drought.

Ecology had basically three options.
Accept the petition and go to rule making.

Reject the petition and take no further action.

Reject the petition, but propose an alternative approach to full closure.

Ecology chose the third option as the best approach in this case.

On November 9, 2007, Kittitas County and Ecology entered into an Agreement in Principle which laid the foundation of the Memorandum of Agreement. Ecology and Kittitas County entered into a Memorandum of Agreement (MOA) on April 7, 2008 that provided the basic framework and elements reflected in the proposed rule. Ecology further developed this approach through a series of meetings with the Governor's office, area legislators, the Bureau of Reclamation, senior water right holders, and Kittitas County. Ecology also hosted a series of public meetings in Cle Elum and Ellensburg.

New land-use decisions by the county may require supporting hydrogeologic investigations where proposed developments are near surface water bodies. The new rule requires measuring and reporting of all new residential source wells in Kittitas County. To correct problems from future or existing developments that rely on permit-exempt well water, the proposed rule allows expedited permit processing to mitigate those uses. The expedited processing is available to provide mitigation for developments that acquire senior water rights to protect them from potential future curtailment.

Ecology could have chosen to close all groundwater in Kittitas County from further appropriation until enough information and data was available to make sound water management decisions. This would have had a significant and damaging effect on the local economy. The local building and construction economy is already suffering economic hardships due to the downturn in the economy. However, Ecology felt that the rule should immediately reduce the impact of permit-exempt well withdrawals on the aquifer.

Ecology and the county also agreed to require:
Measuring and reporting of new source well withdrawals.
Full mitigation of the impact where direct hydraulic continuity is determined.

Also, Ecology and Kittitas County have formed a Groundwater Advisory Committee to develop:
A scope of work for a groundwater study.
A set of recommendations that will improve or replace the elements of the rule, once the study is completed.

Ecology has determined the proposed rule is the least burdensome alternative for those required to comply after considering alternative versions of the rule.

References

Memorandum of Agreement between Kittitas County and State of Washington.
http://www.ecy.wa.gov/programs/wr/cro/images/pdfs/moa_kitt_eco482008.pdf

Kittitas County Economic Update
www.workforceexplorer.com/admin/uploadedPublications/9305_KittEconUpdate_908.pdf

Kittitas County Labor Area Summary
www.workforceexplorer.com/admin/uploadedPublications/8769_Kit1207.pdf

Huppert, Daniel; Gareth Green; William Beyers; Andrew Subkoviak; and Andrew Wenzl, (2004). “Economics of Columbia River Initiative”

National Research Council of the National Academies, (2004), “Valuing Ecosystem Services: Toward Better Environmental Decision-Making.” The National Academies Press.

Lane, R.C (2004). “Estimated Domestic, Irrigation, and Industrial Water Use In Washington, 2000”, *Scientific Investigation Report 2004-5015*, U.S. Geological Survey.

Hanson, Roger D, and Rangesan Narayanan (1981). “A Monthly Time Series Model of Municipal Water Demand”, *Water Resources Bulletin*, Vol 17, No.4, 578-585, 1981.

Olson, D., (2003). “Economic Analysis Methodology Illustration and Review: Estimating the Value of Water for Key Resource Sectors from the Mainstem Columbia River.”

Rushton, Doug, (2004). “Residential Water Use,” Washington State Department of Ecology.

Appendix

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 90.03 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 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 shall be</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><u>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 90.44.052, 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 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</p>		
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

<p>RCW 90.44.090 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. The definitions provided below are intended to be used only for this chapter.</p> <p>"Adjacent" means all parcels that either:</p> <ul style="list-style-type: none"> · Have any common boundary; · Are separated only by roads, easements, or parcels in common ownership; or · Are within five hundred feet at the nearest point. <p>"Application" 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"> · A subdivision; · Short subdivision; · Large lot subdivision; · Administrative or exempt segregation; · Binding site plan; or · Performance based cluster plat. <p>"Common ownership" means any type of ownership interest held by an applicant including an oral or</p>	<p>Clarifies new residential development applicants relationship with adjacent residential development(s).</p>

	<p>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>"Ecology" means the department of ecology.</p> <p>"Exemption" or "ground water exemption" means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.</p> <p>"Group use" 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>"Hydrogeologic assessment" means the report prepared by a licensed hydrogeologist addressing the elements identified in WAC 173-539A-060.</p> <p>"Lands" refers to both singular "land" and plural "lands."</p> <p>"MOA" or "Memorandum of Agreement" means the "Memorandum of Agreement between Kittitas County and the State of Washington, Department of Ecology Regarding Management of Exempt Ground Water Wells in</p>	
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

	<p>Kittitas County" of April 7, 2008.</p> <p>"New residential development" means any division of land involving an application that vested after July 8, 2008.</p> <p>"New use of the ground water exemption" means a use begun on or after July 8, 2008.</p> <p>"New use for residential purposes" 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>"Parcel" means any parcel, land, tract or other unit of land.</p> <p>"Residential purposes" 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>"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract</p>	
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

	<p>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>"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.</p> <p>"Vested" 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 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</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>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>development or a larger group use. (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>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 less than ten acres 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; or</p> <p>(iii) 1,250 gpd.</p> <p>(b) Parcels ten acres and greater 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</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>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; 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 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>(a) Submitted to Kittitas County and ecology in the form of a written report, signed by a licensed hydrogeologist; and</p> <p>(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</p>	<p>Provides the framework for hydrogeologic investigations during land use decisions by the County,</p>

	<p>information as required by Kittitas County.</p> <p>(3) The required elements of the report are as follows:</p> <p>(a) Scope of the proposal including all of the following:</p> <ul style="list-style-type: none"> The location; Proposed water source(s); Water use amounts; and The timing of the proposed use. <p>(b) General description including all of the following:</p> <ul style="list-style-type: none"> The local geologic, hydrogeologic, and hydrologic setting; Identification of surface water and ground water features; Water sources; Recharge/discharge characteristics; and Surface water and ground water interactions. <p>(c) Site-specific description.</p> <p>(d) Inventory and description of all of the following:</p> <ul style="list-style-type: none"> All state issued surface water and ground water rights; All state issued surface water and ground water claims; and Exempt wells located within a one-year and five-year area of pumping influence. <p>(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.</p> <p>(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.</p> <p>(g) A statement of the report's limitations regarding its intended use, including scope, extent, and available data.</p>	
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

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

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

shall require 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
Sept 1 – Sept 30	Oct 30

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

Current laws and rules

<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>		<p>exist for metering and reporting water use. However, these laws and regulations have rarely been applied to exempt ground water source wells.</p>
<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 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</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 Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met: (a) The application must identify an</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. The proposed use must be consistent with any agreement governing the use of the trust water rights. Currently, Ecology is not</p>

<p>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>(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</p>	<p>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 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</p>	<p>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.</p> <p>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>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>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 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>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>	
<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</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</p>	<p>Provides for Educational information, technical assistance, and enforcement.</p>

<p>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>(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</p>	<p>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 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>	
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

<p>the extent practicable, compliance personnel shall be distributed evenly among the regions of the state. [2002 c 329 § 2.] 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">(1) Chapter 90.03 RCW; or(2) Chapter 90.44 RCW; or(3) Chapter 86.16 RCW; or(4) Chapter 43.37 RCW; or(5) Chapter 43.27A RCW; or(6) Any other law relating to water resources administered by the department; or(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 time. The regulation of a headgate or controlling works as provided in RCW 90.03.070,		
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

<p>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.</p> <p>[1987 c 109 § 11; 1969 ex.s. c 284 § 7.]</p> <p>Notes:</p> <p>Purpose -- Short title -- Construction -- Rules -- Severability -- Captions -- 1987 c 109: See notes following RCW 43.21B.001.</p> <p>Severability -- 1969 ex.s. c 284: 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 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</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>

<p>90.03.210(2), this is the exclusive means of appeal of such an order.</p> <p>(2) The department or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal.</p> <p>(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.</p> <p>(4) Any appeal must contain the following in accordance with the rules of the hearings board:</p> <ul style="list-style-type: none">(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. <p>(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.</p> <p>(6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the</p>		
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

<p>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.</p> <p>[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.]</p> <p>Notes:</p> <p>Intent -- Construction -- Effective date -- 2001 c 220: See notes following RCW 43.21B.110.</p> <p>Effective dates -- Severability -- 1992 c 73: See RCW 82.23B.902 and 90.56.905.</p> <p>Short title -- Construction -- Existing agreements -- Effective date -- Severability -- 1989 c 2: See RCW 70.105D.900 and 70.105D.910 through 70.105D.921, respectively.</p> <p>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</p>	<p>Opportunity of rule review and modification based on new information.</p>

	<p>ground water study of the Yakima River Basin.</p> <p>(2) Ecology may review this chapter whenever:</p> <ul style="list-style-type: none">(a) New information is available;(b) A change of condition occurs;(c) Statutory changes warrant the review; or(d) Reviews described in WAC 173-539A-060 show changes are necessary. <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 of this chapter, it will consult with Kittitas County.</p>	
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--