



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# **Preliminary Cost Benefit and Least Burdensome Analyses**

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**Chapter 173-539A WAC  
Upper Kittitas Groundwater Rule**

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# **Preliminary Cost Benefit and Least Burdensome Analyses**

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## **Chapter 173-539A WAC Upper Kittitas Groundwater rule**

Water Resources Program  
Washington State Department of Ecology  
Olympia, Washington

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# 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 withdrawals all unappropriated groundwater during the pendency of a groundwater study, and provides exceptions for water budget neutral projects and certain vested building permit applications. The rule does not affect appropriations initiated prior to July 16, 2009.

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

## Quantified Values

The estimated quantified benefit is \$153 million over a 20-year period.

The estimated quantified cost of the proposed rule is \$16.2 million over a 20-year period.

## Unquantified Values:

The following values were not quantified in the analysis:

- Habitat benefits from withdrawing further appropriations of groundwater.
- 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 Groundwater 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 economic impacts of the proposed rule.

Ecology will use the information developed in these analyses to ensure that the rule is 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**

Ecology is proposing this rule for the Upper Kittitas County Groundwater Area to prevent additional adverse effects on flows and senior water rights in the Yakima River and its tributaries. The proposed rule withdraws all unappropriated groundwater in accordance with RCW 90.54.050(2) due to insufficient information. A groundwater study the Legislature funded in 2009 will be performed.

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

## **Reason for this Rule Proposal**

In September 2007, a group of concerned citizens called Aqua Permanente petitioned the Ecology under RCW 34.05.330, of the Administrative Procedures Act, to begin rule making. They requested Ecology to adopt the provisions of RCW 90.54.050(2) withdrawing unappropriated groundwater resources of Kittitas County to new uses until enough is known to support sound decisions on future withdrawals. Specifically, they requested that Ecology withdraw groundwater resources of Kittitas County to new permit-exempt uses 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 water code. Therefore, they are subject to the priority system that protects senior water rights from later-established junior water rights.

## **Reasons for taking action**

Citizens were concerned that serial short plats and subdivisions accessing water through the groundwater permit-exemption would negatively affect their existing water uses. Permit-exempt groundwater 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.

Ecology consulted with standing committees of the Washington State Legislature on the petition and proposed withdrawal. Ecology rejected the proposed unconditional withdrawal, and instead, on November 9, 2007, signed a memorandum of agreement (MOA) with Kittitas County.

In January 2009, Ecology proposed a rule and Kittitas County questioned Ecology's authority for the proposed rule. The parties later terminated the MOA.

## **Scope of Analysis**

This document contains the preliminary Cost Benefit Analysis (CBA), and a Least Burdensome Alternative Analysis for the proposed Upper Kittitas Groundwater Rule, Chapter 173-539A WAC.

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

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

## **Comparison of the Current Conditions to the Proposed Rule**

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 the requirement to mitigate all new permit-exempt well use is the most significant change from existing conditions. The analysis in this report will focus on the restriction (or allowance) of new groundwater withdrawals and quantify the costs and benefits associated with the proposed rule.

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 filed, the Court of Appeals deemed 27 to have been 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 creating a groundwater model to assist with developing effective water management and mitigation

strategies. U.S. Geological Services also provided \$1.6 million, and Ecology's contributions now total \$2.7 million. To date, the total cost of the study and model is about \$6.3 million.

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

In 2001 and 2005, Ecology, the Yakama Nation, and Reclamation entered into supplemental MOAs. The MOAs allowed Ecology to use its drought emergency authority to issue groundwater permits provided a mitigation hierarchy was followed. In each case, Ecology acquired as much water as possible to improve stream flows, but did not fully achieve in-kind, in-place, in-time mitigation. These agreements require Ecology, the Yakama 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 has 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.

## **Coordination between Ecology and Kittitas County**

### **Proposed rule**

The proposed rule sets the requirement for the consumptive portion of new groundwater uses, whether they require a permit or are permit-exempt, to be mitigated by an equal amount of consumptive use associated with a senior surface water right. To facilitate the process of obtaining mitigation, Ecology has established the Upper Kittitas Water Exchange.

### **Baseline**

Until July 16, 2009, the county issued building permits and land division approvals without requiring mitigation. Ecology believes that continuation of this baseline would result in litigation between surface water users and groundwater users within the 20-year horizon for this cost benefit analysis.

### **Primary change**

Developers and new water users are required to provide mitigation prior to gaining permission to use water, whether the proposed use requires a water right permit or is exempt from a groundwater permit.

# Managing Groundwater Withdrawals

## Proposed rule

The proposed rule sets the requirement for new uses of groundwater, both under permit or permit-exempt, to be mitigated by an equal amount of consumptive use under a senior surface water right. To facilitate the process of obtaining mitigation, Ecology has established the Upper Kittitas Water Exchange.<sup>1</sup>

## Baseline

Water use of any sort is subject to the "first in time, first in right" doctrine, originally established in historical Western Water Law and now part of Washington State Law. This means that a senior right cannot lawfully 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. A senior right holder can seek curtailment of junior right holders' water use to remedy the injury or impairment caused by exercising the junior right. Ecology would not permit a new unmitigated groundwater right within the Upper Kittitas Groundwater Area.

## Primary change

Groundwater is withdrawn from appropriation. The rule makes an exception for new withdrawals that offset or mitigate their impacts to TWSA (Total Water Supply Available) by acquiring a senior water right. The proposed rule would treat permit-exempt uses the same way Ecology would treat new uses that would require a permit.

# Measuring Groundwater Withdrawals

## Proposed rule

The proposed rule requires measurement and reporting of all new groundwater withdrawals in the Upper Kittitas County Groundwater Area after July 8, 2008<sup>2</sup>.

## Baseline

Measuring permit-exempt groundwater withdrawals was not imposed on new permit-exempt users prior to July 8, 2008. To the extent that groundwater is hydraulically connected to the Yakima River and its tributaries, RCW 90.03.360 requires all existing and any new uses to be measured.

## Primary change

All new withdrawals within the upper Kittitas area must meter.

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<sup>1</sup> <http://www.ecy.wa.gov/programs/wr/cwp/wtrchng.html>

<sup>2</sup> Emergency rule #1

# Analysis of Costs & Benefits

Ecology provides this preliminary cost-benefit analysis as required under RCW 34.05.328(d). The analysis concludes that the probable benefits of the proposed rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs, and the specific directives of the statutes implemented.

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

## Time Horizon

The costs and benefits associated with this rule depend on the time horizon used in the analysis. For this rule, 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 and development 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. Although this rule considers a 20 year horizon, it is expected that once the Upper Kittitas Groundwater Study is complete, a new rule would be proposed and adopted to replace this rule.

## 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 uses a real discount rate of three percent for water resource related projects to discount future dollars.<sup>3</sup> For the selected 20-year span, this means the 20 annual inflation-adjusted payments of \$1 are currently worth \$14.88. This is equivalent to multiplying the sum of the 20 annual increments by 0.744 (14.88/20).

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<sup>3</sup> 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% real interest rate as an average expectation for the future. Inflation rates as paid out on I bonds came from today's values at [http://www.treasurydirect.gov/indiv/research/indepth/ibonds/res\\_ibonds\\_iratesandterms.htm](http://www.treasurydirect.gov/indiv/research/indepth/ibonds/res_ibonds_iratesandterms.htm).

## The Probable Costs

The costs and benefits of the proposed rule will focus on:

- Mitigation costs.
- Metering and reporting costs.
- Costs of recording covenants.
- Administrative costs.

### Mitigation costs

Ecology estimates 3000 new residences will be seeking water, many through permit-exempt withdrawals, in the Upper Kittitas Groundwater Area in the next 20 years<sup>4</sup>. Mitigation water credits are estimated to cost \$7,000<sup>5</sup> per residence over the next 20 years. Total costs are estimated at \$21,000,000 or a present value of **\$15,624,000**.

### Metering and reporting costs

Residential users of permit-exempt wells will be required to meter. Ecology estimates permit-exempt wells could serve from 1 to 14 homes but expects the average to be 3 users per well. Ecology assumes 1000 wells will go in during the next 20 years throughout the upper county. The estimated cost of metering for small to medium water systems ranges from \$300 to \$750.<sup>6</sup> Ecology chose to use \$500 per meter, including reporting costs. Total costs are estimated at \$500,000 or a present value of **\$372,000**.

### Recording covenants

Ecology foresees small recording costs to individuals or businesses doing residential land development. Ecology requires these entities to comply with the proposed rule by adding a recorded covenant related to bushes and trees on or adjacent to an on-site septic system.

### Administrative costs

The administrative costs to process water budget neutral requests include the costs of:

- Reviewing the request for completeness.
- Reviewing the request to determine whether the request is part of a group use and whether a permit is required.
- Verifying the suitability of the trust water right proposed for mitigation to serve as mitigation for the propose new use.
- Identifying the need for assignment of some of the trust water right to the USBR contract.
- Calculating costs for the USBR contract assignment.

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<sup>4</sup> 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.

<sup>5</sup> Using Suncadia's price for mitigation, a residential unit with service at 350 gpd and 500 ft<sup>2</sup> of outdoor watering (incidental or minimal), the total cost is about \$6500-\$7000. The breakdown is \$5700 for the mitigation credit. Ecology estimates total mitigation costs at \$7000 which includes all expected taxes and fees.

<sup>6</sup> Survey of well drillers, pump installers, and Ecology's metering coordinator.

- Preparing the WBN determination.
- Entering data into Ecology’s Water right Tracking System.
- Presenting the request to the Water Transfer Working group.
- Notifying interested parties of the status of the requests and the accounting of the trust water rights that serve as mitigation.

Ecology estimates that administrative costs are \$500 per request. Assuming each request addresses an average of 5 homes<sup>7</sup>, we estimate costs at \$100/home. With 3000 homes in the upper Kittitas area over the next 20 years, cost estimates are \$300,000 or a present value of **\$223,200**.

## Cost summary

We estimate total costs at around \$16.2 million over the 20-year period.

Table 1. Cost Summary

Rule Impacts	Costs
Mitigation	\$15,624,000
Metering/Reporting	\$372,000
Administrative costs	\$223,200
Total Estimated Costs	\$16,219,200

## Probable Benefits

The Yakima Basin is not officially closed to new water uses by Ecology. In 1999, Ecology agreed stop issuing new unmitigated groundwater permits within the Yakima Basin until we know more about the basin hydrology. Ecology, the Yakama 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 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 once water is put to beneficial use. 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. All new groundwater appropriations, whether permitted or permit-exempt, are required to mitigate their impact to TWSA.

<sup>7</sup> This assumption varies from the assumption used in the “Metering and reporting costs” analysis. This assumption is based on the average number of lots expected to be processed by the Upper Yakima Mitigation Exchange.

## **Basis for restricting use of the groundwater permit exemption**

Ecology is proposing this rule to reduce the risks:

- To future homebuyers unaware of potential curtailment of their water use.
- To senior rights when the county approves land divisions and building permits and subsequent permit-exempt uses begin.

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 rule 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.”*

## **Protecting flow and habitat restoration investments**

The State Salmon Recovery Funding Board has committed significant financial investment to salmon recovery projects in the watershed. These projects are intended to help sustain salmon productivity by providing wild spawner escapement, conserving genetic diversity, and meeting basic needs of salmon for spawning rearing and migration. These efforts have provided a wide range of benefits to salmon including:

- Restoring riparian habitat.
- Reestablishing fish passage.
- Enhancing stream channels.
- Restoring estuaries.
- Acquiring habitat.

The cost of these projects in WRIA 39 has been more than \$2,980,000 (see Appendix 2). This value does not account for projects funded through other sources or any future restoration projects throughout the basin. Ecology and other entities have spent over \$1,050,000 in grants directly to WRIA 39 projects and through the watershed planning process. This value also does not account for all projects funded through other sources or future restoration projects throughout this basin. Salmon restoration projects in just the upper Kittitas rule area exceed **\$4,030,000**. WRIA 39 activities also affect downstream investments. Flow restoration investments downstream in the Yakima basin exceed \$130 million.

This rule will ensure protection of the tremendous investments in salmon restoration made by the state, local agencies, tribes, and private entities. This is done by withdrawing all unappropriated groundwater in the subbasin from any new withdrawals that are not fully mitigated.

Future groundwater withdrawals under the permit exemption are subject to interruption from senior users. The proposed rule would retain access to the permit exemption, if mitigation is provided; support a process (the Upper Kittitas Water Exchange) that promotes timely and

effective mitigation; and eliminate further impacts to senior surface water and groundwater rights.

## **Future groundwater withdrawals**

New groundwater appropriations cannot occur unless mitigation is provided. Developers needing a new uninterrupted supply of water could choose among the following options:

**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.

**Taking part in the Yakima Pilot Water Bank:** Water users could purchase a water right held in the bank, if available, or they may acquire a water right and place it in the bank, as mitigation for a new groundwater permit.

**Taking part in the Upper Kittitas Water Exchange:** Water users could purchase a mitigation credit associated with a water right held in the Yakima basin Trust Water Right Program, to mitigate for a new groundwater permit or permit-exempt use.

**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 water storage can be costly.

To quantify the probable benefits, we assume any new groundwater withdrawals will provide a water supply for residential uses and land development. The baseline would be to continue the pre-2009 practices by Kittitas County, which can be expected to lead to litigation. Such litigation has the potential to stop all future development that requires a reliable and adequate water supply and impact junior users. Ecology estimates the proposed rule reduces the chances of such successful litigation that would preclude reliable domestic water use by 80 percent. Ecology assumes 80 percent of the quantified value of the projected land development can be ascribed to the proposed rule.

The proposed rule retains access to groundwater 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.<sup>8</sup> 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, Table 2, below shows estimates of the distribution of development right values at current market rates.

**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, many through permit-exempt withdrawals, in the Upper Kittitas Groundwater Area in the next 20 years<sup>9</sup>.

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 wish to develop. The present value of this benefit is \$186,996,960. Ecology believes this development is 80 percent more likely to occur under the rule than without the proposed rule. This estimated value is **\$149,597,568**.

## Unquantified benefits

The proposed rule improves coordination between Ecology and Kittitas County by clarifying the requirement for a reliable senior water right, rather than the groundwater permit exemption, as the basis for the County's water sufficiency determination when approving building permits and land subdivisions.

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 will occur. Without improved coordination, disclosure, and accountability, it is more likely that senior water right

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<sup>8</sup> 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](http://www.cascadeagenda.com/files/tdr/Kittitas%20County%20TDR%20Program%20-%20CLC%20Findings%20and%20Recommendations%20jul25_08.pdf)

<sup>9</sup> 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.

users will file suit, seeking to prevent new uses of water and curtail some current groundwater use.

Ecology can estimate benefits of avoiding 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 effectively plan for meeting their development needs.

Table 3. Benefit Summary

Rule Impacts	Benefits
Instream Values (fish)	Unquantified
Restoration Protection	\$4,032,953
Litigation Risk Reduction	\$149,597,568
Total Benefits	\$153,630,521

### **Total probable benefits**

The estimated benefit of the rule is \$153 million over a 20-year period plus reduced litigation through better management of the resource. The estimated value is based on the following assumptions:

- 3000 new households will seek new water.
- The benefit is discounted using 3 % to determine present value.

## **Summary of the Cost Benefit Analysis**

The quantified benefit estimate is \$153 million over a 20-year period.

The estimated quantified costs of the proposed rule are \$16.2 million for 20 years.

Ecology has determined the proposed rule 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 rule and the analysis required under (b), (c), and (d) of this subsection, that the rule 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 rule 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.”*

In September 2007, a group of concerned citizens called Aqua Permanente petitioned Ecology to begin rule making to withdraw groundwater resources of Kittitas County. They wished 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 three basic 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 that 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.

Ecology could have chosen to close all groundwater in Kittitas County from further appropriation until enough information 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 industry 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 proposed a rule in January 2009. Kittitas County questioned Ecology's authority for the proposed rule. The County asked the Attorney General for an opinion, which when issued confirmed that Ecology's 2009 rule proposal exceeded Ecology's authority. Ecology later invoked the dispute resolution process under the MOA and the MOA was later terminated. As a result, Ecology adopted an emergency rule on July 16, 2009 that withdrew all unappropriated groundwater. This proposed rule would continue the withdrawal of unappropriated water that began on July 16, 2009 until the groundwater study funded by the Legislature is complete.

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

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Kittitas County Economic Update

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Kittitas County Labor Area Summary

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# Appendix 1

**Table 1. Chapter 173-539A WAC - Upper Kittitas Groundwater 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><b>Chapter 90.44 RCW Regulation of public groundwaters</b></p> <p><b>RCW 90.44.020 Purpose of chapter.</b></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><b>RCW 90.44.030 Chapter not to affect surface water rights.</b></p> <p>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 <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><b>Chapter 173-539A WAC-New rule</b></p> <p><b>WAC 173-539A-010 Purpose.</b></p> <p>The purpose of this rule is to withdraw from appropriation all unappropriated groundwater within upper Kittitas County pending completion of a groundwater study. New groundwater withdrawals will be limited to those that are water budget neutral, as defined in this rule.</p> <p><b>WAC 173-539A-020 Authority.</b></p> <p>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</p>	<p>The proposed rule allows new uses of groundwater where mitigation of consumptive quantity is offset by acquisition of a pre-1905 water right held in the trust water right reduce the number of new source groundwater wells serving suburban residential development in rural upper Kittitas County.</p> <p>The rule withdraws from appropriation any groundwater that that may exist above and beyond current appropriations. The effect compared to the pre-July 2009 baseline is to make new appropriation</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 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>requirements for permit-exempt wells where needed.</p> <p><b>WAC 173-539A-025 Applicability.</b> This rule applies to new uses of groundwater relying on the authority of the exemption from permitting found at RCW 90.44.050, as defined in WAC 173-539A-030, and to any new permit authorizing the withdrawal of public groundwater within the upper Kittitas area boundaries issued on or after July 16, 2009.</p> <p><b>WAC 173-539A-030 Definitions.</b> The definitions provided below apply only to this chapter.</p> <p><b>"Applicant"</b> includes the owner(s) of parcels that are the subject of a land use application, a person making a request for water budget neutral determination, or a person requesting a permit to appropriate public groundwater.</p> <p><b>"Common ownership"</b> means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between an applicant and any owner of a proximate parcel. A joint development arrangement is defined as involving significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more</p>	<p>This rule affects all new appropriations of groundwater in the Upper Kittitas area, whether they are based on the groundwater permit exemption or a permit to appropriate groundwater. Prior to the July 2009 emergency rule, no limitations other than the statutory limits were placed on users relying the groundwater permit exemption.</p> <p>Clarifies new residential development requestor's or applicant's relationship with adjacent or proximate residential development(s) to determine whether the applicant's proposal is part of a group or project.</p>
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	<p>proximate parcels with respect to the development of parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat or legal documents, financing, marketing, environmental review, clearing or preparing land, or construction (including road construction); covenants; agreements for common use of building materials, equipment, structures, facilities, lands, water, sewer, or other infrastructure.</p> <p><b>"Consumptive use"</b> of a proposed withdrawal is the total depletion that the withdrawal has on any affected surface water bodies.</p> <p><b>"Ecology"</b> means the department of ecology.</p> <p><b>"Exemption"</b> or <b>"groundwater exemption"</b> means the exemption from the permit requirement for a withdrawal of groundwater provided under RCW 90.44.050.</p> <p><b>"Existing use of the groundwater exemption"</b> means a use of groundwater under the authority of the exemption from permitting where water was:</p> <p>(a) First regularly and beneficially used prior to July 16, 2009; and</p> <p>(b) The water right is perfected within the five years following the first regular beneficial use for that purpose. Water to serve a parcel that is part of a group use begun within</p>	<p>Clarifies Ecology's interpretation of the applicability of the proposed rule and how existing uses of the groundwater permit exemption relate to applicability of the rule.</p>
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five years of the date water was first regularly and beneficially used on one or more parcels in the group is an existing use if the group use remains within the limit of the permit exemption.

**"Group use"** means use of the groundwater exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development. It further includes use of the exemption for all parcels that are proximate and held in common ownership with a proposed new development. If a parcel that is part of a group use is later divided into multiple parcels more than five years following the first use, the new uses of the exemption on the resulting multiple parcels will be considered a separate group use distinct from the original group.

**"Land use application"** means an application to Kittitas County requesting a:

- Subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

**"New use of the groundwater exemption"** means a valid permit-exempt use of groundwater begun on or after July 16, 2009. When an existing group use is expanded to serve a parcel in the future, the expanded use is a new use if it begins more than five years after the date water was first regularly and beneficially used for that purpose on any parcel in the group.

**"Parcel"** means any parcel, land, lot, tract or other unit of land.

	<p><b>"Proximate"</b> means all parcels that have at least one of the following attributes:  Share any common boundary; or  Are separated only by roads, easements, or parcels in common ownership; or  Are within five hundred feet of each other at the nearest point.</p> <p><b>"Proximate shortplat"</b> means a shortplat that would be considered a group use with another subdivision or shortplat.</p> <p><b>"Regular beneficial use"</b> means a use of water under the groundwater permit exemption that is recurring or functioning at fixed, uniform, or normal intervals and is done in conformity with established usages, rules, or discipline.</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 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>"Water budget neutral project"</b> means an appropriation or project where withdrawals of public groundwater are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use.</p>	<p>New appropriations of groundwater are not allowed unless they fall under one of the exceptions to the rule in subsection (1)(a), (2), or (3).</p>
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**WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County.** (1)

Beginning on the effective date of this rule, all public groundwaters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of groundwater may occur, including those exempt from permitting, except:

(a) Uses of groundwater for a structure for which a building permit is granted and the building permit application vested prior to July 16, 2009; and

(b) Uses determined to be water budget neutral under WAC 173-539A-050.

(2) The exception for water used at structures provided in subsection (1)(a) of this section shall not apply or shall cease to apply if the structure is not completed and a water system that uses the new appropriation is not operable within the time allowed under the building permit. This shall not in any case exceed three years from the date the permit application vested. The exception is to avoid potential hardship and does not reflect ecology's view on when the priority date for a permit-exempt water right is established.

(3) Water to serve a parcel that is part of an existing group use is not a new appropriation or withdrawal if the water use to serve such parcel began within five years of the date water was first beneficially used on any parcel in the group, if the first use was prior to July 16, 2009, and the group use remains within the limit of the permit exemption.

	<p><b>WAC 173-539A-050 Water budget neutral projects.</b> (1) Persons proposing a new use of groundwater shall apply to ecology for a permit to appropriate public groundwater or, if seeking to rely on the groundwater permit-exemption, shall submit to ecology a request for determination that the proposed permit-exempt use would be water budget neutral.</p> <p>(2) As part of a permit application to appropriate public groundwater or a request for a determination of water budget neutrality, applicants or requestors shall include the following information:</p> <ul style="list-style-type: none"> <li>(a) Identification of one or more water rights that would be placed into the trust water right program to offset the consumptive use (as calculated pursuant to subsection (3) of this section) associated with the proposed new use of groundwater;</li> <li>(b) A site map;</li> <li>(c) The area to be irrigated (in acres);</li> <li>(d) A soil report, if proposed discharge is to a septic system and the applicant or requestor proposes to deviate from the values in subsection (3) of this section;</li> <li>(e) A property covenant that prohibits trees or shrubs over the septic drain field; and</li> <li>(f) A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.</li> </ul> <p>(3) Consumptive use will be calculated using the following assumptions: Thirty percent of domestic in-house use on a septic system is consumptively used; ninety percent of outdoor use is consumptively used; twenty percent of domestic in-house use</p>	<p>New appropriations of water are allowed only if they demonstrate water budget neutrality. Mitigation for consumptive losses by acquisition of a pre-1905 water right is required.</p>
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	<p>treated through a wastewater treatment plant which discharges to surface water is consumptively used.</p> <p>(4) Applications for public groundwater or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:</p> <p>(a) A suitable trust water right is already held by the state in the trust water right program; and</p> <p>(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.</p> <p>(5) Applications to appropriate public groundwater or requests for determination of water budget neutrality that do not include the information listed in subsection (2) of this section will be rejected and returned to the applicant.</p> <p>(6) To the extent that ecology determines that the mitigation offered would not reliably mitigate to be water budget neutral, ecology may deny the request or limit its approval to a lesser amount.</p>	
<p>WAC 173-52-050 -Criteria for priority processing of competing applications.</p> <p>(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</p>	<p>WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality 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.</p> <p>(2) Ecology may expedite the processing of an application for a new water right or a request for a determination</p>	<p>Ecology may expedite processing of new applications, water right transfers, and water budget neutral requests in conjunction with management of this rule. Provides for expedited processing of: trust water right applications, and water budget neutral determination requests and new water right applications associated with mitigation of the consumptive impacts of a new water appropriation.</p>

<p>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>(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>of water budget neutrality under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:</p> <p>(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and 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 or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.</p> <p>(3) If an application for a new water right or a request for a determination of water budget neutrality 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 or request is eligible for expedited processing, ecology will do the following:</p> <p>(a) Review the</p>	<p>The proposed use must be consistent with any agreement governing the use of the trust water rights.</p> <p>Currently, prior to July 9, 2009 Ecology was unable 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>
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<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>application or request to withdraw groundwater to ensure that groundwater is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.</p> <p>(b) Condition the permit or determination 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 or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.</p> <p>(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and to accurately reflect any limitations or constraints in the trust water right.</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><b>RCW 90.03.360 Controlling works and measuring devices — Metering of diversions — Impact on fish stock.</b></p> <p>(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.</p>	<p><b>WAC 173-539A-070 Measuring and reporting water use.</b> (1) For residential uses (domestic use and irrigation of not more than 1/2 acre of noncommercial lawn and garden) of groundwater within upper Kittitas County that begin after July 8, 2008, a meter must be installed for each residential connection or each source well that serves multiple residential connections in compliance with the requirements of WAC 173-173-100.</p> <p>(2) For all other uses within upper Kittitas County that begin after November 25, 2009,</p>	<p>Requires new exempt well source metering county-wide after adoption of the rule. The new provision will require new permit-uses to meter and report.</p> <p>Current laws and rules exist for metering and reporting water use. However, these laws and regulations have rarely been applied to permit-exempt groundwater uses.</p>

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 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.  
 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.

including permit-exempt uses, a meter must be installed for each source well in compliance with such requirements as prescribed in WAC 173-173-100.

(3) Water users must collect and report metering data to ecology within thirty days of the end of each recording period. 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

<p>These reports shall be in a form prescribed by the department. [1989 c 348 § 7.]</p>		
	<p>WAC 173-539A-080 Expedited processing of trust water right applications and new water right applications associated with trust water rights</p> <p>(1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.</p> <p>(2) Ecology may expedite the processing of an application for a new surface water right or a groundwater 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:</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</p>	

	<p>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 groundwater to ensure that groundwater 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>	
<p><b>RCW 90.03.605</b>  <b>Compliance — Sequence of enforcement measures — Location of compliance personnel.</b>  (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</p>	<p><b>WAC 173-539A-080 Educational information, technical assistance and enforcement.</b> (1) To help the public comply with this chapter, ecology 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</p>	<p>Provides for Educational information, technical assistance, and enforcement.</p>

the following sequence:

(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;

(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

(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.

(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.

(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.

[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:

- (1) Chapter 90.03 RCW; or
- (2) Chapter 90.44 RCW; or
- (3) Chapter 86.16 RCW; or

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.

(3) 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>(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, 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.]  Notes:  Purpose -- Short title -- Construction -- Rules -- Severability -- Captions --  1987 c 109: See notes following RCW 43.21B.001.  <b>Severability -- 1969 ex.s. c 284:</b>  See note following RCW 90.48.290.</p>		
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<p><b>RCW 43.21B.310</b></p> <p><b>Appeal of orders, permits, and licenses.</b></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 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"> <li>(a) The appellant's name and address;</li> <li>(b) The date and docket number of the order, permit, or license appealed;</li> <li>(c) A description of the substance of the order, permit, or license that is the subject of the appeal;</li> <li>(d) A clear, separate, and concise statement of every error alleged to have been committed;</li> <li>(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and</li> <li>(f) A statement setting forth the relief sought.</li> </ul> <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</p>	<p>WAC 173-539A-090 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 and process for appeal of Ecology decisions.</p>
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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 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.

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# Appendix 2

Sponsor	Project Name	Program	Program Amount	Sponsor Amount	Total
<b>UPPER KITTITAS AREA WRIA 39</b>					
Kittitas Co Conservation Dist	Dry/Cabin Crk Fish Passage & Screening	SALMON FED PROJ	126,873	62,631	189,504
Kittitas Conservation Trust	Cle Elum River Instream Habitat	SALMON FED PROJ	320,120	178,600	498,720
Kittitas Conservation Trust	Upper Yakima Protection-Hundley	SALMON FED PROJ	300,000	100,000	400,000
Kittitas Co Conservation Dist	Indian & Jack Creeks Culvert Replacements	SALMON ST PROJ	494,040	250,000	744,040
Yakima Basin FWRB	Yakima Regional Plan - 2007-2009	SALMON FED ACT	147,343		147,343
Cascade Land Conservancy	Big Creek Habitat Protection	SALMON ST PROJ	355,000	65,000	420,000
Mid-Columbia RFEG	Jack Creek Restoration Design	SALMON FED PROJ	58,320	10,450	68,770
Mid-Columbia RFEG	Swauk and Iron Creek Restoration Design	SALMON FED PROJ	71,862	12,700	84,562
Kittitas Co Conservation Dist	Teanaway- 3M Ditch Project	SALMON FED PROJ	328,500	57,970	386,470
Kittitas Conservation Trust	Nelson Creek Fish Passage Project R5	FFFP-Grants	39,871	1,999	41,870
<b>TOTAL WRIA 39</b>					<b>\$2,981,278</b>

## Lead Entity Org: Yakima Basin FWRB LE

Yakima County Corrections	Riparian Enhancement Team - Phase 2	SALMON FED PROJ	159,141	329,351	488,492
Yakima County Corrections	Riparian Enhancement Team - Phase 2	SALMON FED PROJ	159,141	329,351	488,492
Kittitas Co Conservation Dist	YTAHP Lower Reecer Creek Fish Passage	SALMON FED PROJ	216,220	75,944	292,164
Kittitas Co Conservation Dist	YTAHP Wilson Creek Riparian Restoration	SALMON FED PROJ	18,378	7,652	26,030
Kittitas Conservation Trust	Currier Creek Passage & Riparian	SALMON FED PROJ	371,688	141,000	512,688
Kittitas Co Conservation Dist	Cherry Ck Barrier Removal and Screening	SALMON FED PROJ	316,900	145,000	461,900
Kittitas Co Conservation Dist	Currier Creek-EWC Siphon & Screen	SALMON FED PROJ	255,050	444,174	699,224
Yakima County of	Naches River Floodplain Acquisition	SALMON FED PROJ	141,175	25,000	166,175
North Yakima Conserv Dist	Schneider Habitat Project Cowiche Creek	SALMON FED PROJ	112,701	60,299	173,000
South Central WA RC&D	Reecer Creek Floodplain Restoration	SALMON FED PROJ	403,730	488,506	892,236
Kittitas Conservation Trust	Taneum Creek Fish Passage	SALMON FED PROJ	281,429	440,000	721,429
Benton Co Conservation Dist	Lower Yakima River Assessment	SALMON FED PROJ	36,427	28,623	65,050
North Yakima Conserv Dist	NF Ahtanum Gauging Station Fish Passage	SALMON FED PROJ	152,471	28,083	180,554
North Yakima Conserv Dist	North Yakima County Fish Screening	SALMON FED PROJ	88,294	50,000	138,294
Cowiche Canyon Conservancy	Cowiche Creek Protection & Restoration	SALMON FED PROJ	277,140	200,060	477,200
Benton Co Conservation Dist	Lower Yakima River Restoration	SALMON FED PROJ	54,676	13,124	67,800
Cascade Land Conservancy	Wade Road Farm	SALMON FED PROJ	100,000	19,000	119,000
Yakima County Public Services	Upper Wapato Reach Restoration	SALMON FED PROJ	123,000	100,000	223,000
Kittitas Co Conservation Dist	Coleman Creek Irrigation Redesign	SALMON FED PROJ	110,755	19,545	130,300
Kittitas Co Conservation Dist	Manastash Creek Diversion Consolidation	SALMON FED PROJ	599,408	1,622,392	2,221,800
Fish & Wildlife Dept of	Wapato Reach Assessment	SALMON FED PROJ	142,630	25,175	167,805
Mid-Columbia RFEG	Large Wood Replenishment	SALMON FED PROJ	86,025	21,700	131,725
Benton Co Conservation Dist	Lower Yakima River Fish Screening	SALMON FED PROJ	115,362	32,368	147,730
North Yakima Conserv Dist	CCWUA Barrier Removal & Trust Water Project	SALMON FED PROJ	413,133	73,260	486,393

North Yakima Conserv Dist	Matson Barrier Removal and Trust Water	SALMON FED PROJ	201,702	40,000	241,702
Yakima County Public Services	Eschbäch Park Levee Setback & Restoration	SALMON FED PROJ	122,608		122,608
					<b>\$9,842,791</b>

Sponsor	Project Name	Program	Program	Sponsor	Total
<b>Lead Entity Org: Yakima River Basin LE</b>					
Selah City of	Stormwater Management Plan	SALMON FED PROJ	95,000	3,000	98,000
Yakama Nation	Taylor Ditch Assessment & Restoration	SALMON FED PROJ	35,571	6,681	42,252
Kittitas Co Conservation Dist	Reestablish Access to Lower Wilson Creek	SALMON ST PROJ	108,266	179,355	287,622
Yakima County Parks & Rec	West Valley Community Park	SALMON ST PROJ	22,098	9,107	31,205
Tree Top Inc	Sprayfield Riparian Enhancement Project	SALMON FED PROJ	92,300	41,500	133,800
Fish & Wildlife Dept of	Yakima & Naches Tributaries Rootwad	SALMON ST PROJ	32,112	93,397	125,509
North Yakima Conserv Dist	Buchanan Ranch Restoration Project	SALMON FED PROJ	215,065	63,252	278,317
Yakima County of	Floodplain Mining Study	SALMON FED PROJ	40,020	243,165	283,185
Yakima Valley Restitution Ctr	Yakima Corrections Ripar. Enhance. Team	SALMON ST PROJ	139,509	304,421	443,930
North Yakima Conserv Dist	Ahtanum Creek Fish Screens	SALMON FED PROJ	142,179	100,000	242,179
Northwest Service Academy	Lmmuma Restoration	SALMON FED PROJ	31,903	27,220	59,124
North Yakima Conserv Dist	Cowiche Creek Barrier Removal	SALMON FED PROJ	51,867	21,045	72,912
Yakima City of	Naches River Water Treat. Plant Screen	SALMON FED PROJ	300,000	1,534,357	1,834,357
Kittitas Co Conservation Dist	Coleman Creek Fish Access	SALMON FED PROJ	101,774	31,564	133,338
North Yakima Conserv Dist	Diversion 14 Fish Screen - Ahtanum Cr.	SALMON FED PROJ	218,900	48,524	267,424
Cowiche Canyon Conservancy	Snow Mtn Ranch Acq & Barrier Removal	SALMON FED PROJ	670,000	120,000	790,000
Yakama Nation	Lower Naches Critical Habitat Protection	SALMON FED PROJ	114,593	514	115,107
Yakima County of	Mid-Columbia Recovery Planning 03-05	SALMON FED ACT	386,922		386,922
Yakama Nation	Holmes Floodplain Property Protection	SALMON ST PROJ	123,000	22,346	145,346
					<b>\$5,770,529</b>

## Yakima Capital Investment

Recipient	Project Name	Funding	Ecology Funds	Recipient Funds	Total funds
<b>UPPER KITTITAS WRIA 39 Capital investment</b>					
Irrigation Efficiencies	Big Creek WUA	Irrigation Efficiencies	\$ 312,500.00	\$ 55,147.06	\$ 367,647.06
City of Roslyn	Water Acqisition	Watershed Planning	\$ 400,000.00	\$ -	\$ 400,000.00
Kittitas Co CD	Upper Yakima Efficiencies	Watershed Planning	\$ 284,028.00	\$ -	\$ 284,028.00
<b>TOTAL</b>					<b>\$ 1,051,675.06</b>
<b>Upper Yakima</b>					
Irrigation Efficiencies	Level Best Land	Irrigation Efficiencies	\$ 312,500.00	\$ 73,504.00	\$ 386,004.00
Irrigation Efficiencies	Vern Myer	Irrigation Efficiencies	\$ 150,000.00	\$ 26,471.00	\$ 176,471.00
Irrigation Efficiencies	Level Best Land	Irrigation Efficiencies	\$ 209,200.00	\$ 37,411.00	\$ 246,611.00
Irrigation Efficiencies	Jeff Brunson	Irrigation Efficiencies	\$ 312,000.00	\$ 71,722.00	\$ 383,722.00
Irrigation Efficiencies	Jack Eaton	Irrigation Efficiencies	\$ 125,000.00	\$ 22,059.00	\$ 147,059.00
Irrigation Efficiencies	John Wheatly	Irrigation Efficiencies	\$ 157,800.00	\$ 28,200.00	\$ 186,000.00
Irrigation Efficiencies	Burris Farms	Irrigation Efficiencies	\$ 114,900.00	\$ 20,300.00	\$ 135,200.00
Irrigation Efficiencies	Burris Farms	Irrigation Efficiencies	\$ 215,000.00	\$ 38,000.00	\$ 253,000.00
Irrigation Efficiencies	Steve Rosbach	Irrigation Efficiencies	\$ 413,125.00	\$ 96,768.00	\$ 509,893.00
Irrigation Efficiencies	Bull Canal	Irrigation Efficiencies	\$ 302,917.78	\$ 53,456.08	\$ 356,373.86
Irrigation Efficiencies	John Eaton	Irrigation Efficiencies	\$ 142,300.00	\$ 94,865.00	\$ 237,165.00
Irrigation Efficiencies	Jeff Brunson	Irrigation Efficiencies	\$ 218,365.00	\$ 38,535.00	\$ 256,900.00
USBR	Heart K Ranch	Water Acqisition	\$ 100,000.00	\$ 822,000.00	\$ 922,000.00
USBR	Buchanan	Water Acqisition	\$ 100,000.00	\$ 1,524,000.00	\$ 1,624,000.00
Kittitas Co CD	Manatash piping	Watershed Planning	\$ 1,980,000.00	\$ 850,000.00	\$ 2,830,000.00
Kittitas Co Consvr Trust	Tanenum fish passage	Watershed Planning	\$ 400,000.00	\$ -	\$ 400,000.00
Kittitas Co CD	Coleman Creek Efficiencies	Watershed Planning	\$ 290,000.00	\$ -	\$ 290,000.00
Kittitas Co CD	Lmuma Creek Efficiencies	Watershed Planning	\$ 210,000.00	\$ -	\$ 210,000.00
Yakama Nation	Simcoe Creek Efficiencies	Watershed Planning	\$ 119,912.00	\$ -	\$ 119,912.00
Kittitas Co CD	Manatash Intake replacement	Watershed Planning	\$ 2,240,000.00	\$ -	\$ 2,240,000.00
Kittitas Co Consvr Trust	Currierfish passage	Watershed Planning	\$ 147,000.00	\$ -	\$ 147,000.00
Kittitas Co CD	Currier Siphon	Watershed Planning	\$ 250,000.00	\$ 374,226.67	\$ 624,226.67
Wash Rivers Consevr	English Manatash WA	Drought Mitigation	\$ 11,130.00	\$ 9,375.00	\$ 20,505.00
Wash Rivers Consevr	Miller Manatash WA	Drought Mitigation	\$ 21,984.00	\$ 13,532.00	\$ 35,516.00
Wash Rivers Consevr	Graf Manatash WA	Drought Mitigation	\$ 16,923.00	\$ 10,417.00	\$ 27,340.00
Wash Rivers Consevr	Allen Manatash WA	Drought Mitigation	\$ 27,078.00	\$ 13,532.00	\$ 40,610.00
Wash Rivers Consevr	High Valley Ranch Manastash	Drought Mitigation	\$ 522,578.00	\$ 321,652.00	\$ 844,230.00
Kittitas Co CD	Little Naeum Siphon	Watershed Planning	\$ 64,693.87	\$ -	\$ 64,693.87
Kittitas Co Public Works	Naneum Siphon	Watershed Planning	\$ 213,331.00	\$ -	\$ 213,331.00
<b>Subtotal Upper Yakima</b>			<b>\$ 9,387,737.65</b>	<b>\$ 4,540,025.75</b>	<b>\$ 13,927,763.40</b>
<b>Lower Yakima</b>					
Irrigation Efficiencies	Selah-Moxee ID	Irrigation Efficiencies	\$ 413,125.00	\$ 181,468.00	\$ 594,593.00
USBR	Benton ID	YRBWEP	\$ 2,410,222.00	\$ 22,120,210.00	\$ 24,530,432.00
USBR	SVID Phase 2	YRBWEP	\$ 5,761,538.00	\$ 27,161,538.00	\$ 32,923,076.00
USBR	SVID Phase 2	YRBWEP	\$ 6,932,653.00	\$ 32,682,654.00	\$ 39,615,307.00
<b>Subtotal Lower Yakima</b>			<b>\$ 15,517,538.00</b>	<b>\$ 82,145,870.00</b>	<b>\$ 97,663,408.00</b>
<b>Naches</b>					
USBR	Wapatox Water Acqisition	Water Acqisition	\$ 1,000,000.00	\$ 6,000,000.00	\$ 7,000,000.00
<b>Subtotal Naches</b>			<b>\$ 1,000,000.00</b>	<b>\$ 6,000,000.00</b>	<b>\$ 7,000,000.00</b>
<b>Total Yakima</b>			<b>\$ 25,905,275.65</b>	<b>\$ 92,685,895.75</b>	<b>\$ 119,642,846.46</b>