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Sent Via E-Mail
And Via First Class Mail

Tom Tebb
Central Regional Director
Department of Ecology
15 West Yakima Ave -- Suite 200
Yakima, WA 98902-3452

RE: Proposed Kittitas County "Domestic Water Reserve Program"

Dear Tom:

Please accept this letter as the Kittitas Reclamation District's ("KRD") comment on Kittitas County's proposed Domestic Water Reserve Program. The KRD does not intend to comment on whether it is appropriate for a county government to be in the business of buying and leasing water. Instead, the KRD will comment on issues it believes exist with the proposed Domestic Water Reserve Program vis-à-vis the KRD.

The KRD is an irrigation district organized pursuant to Title 87, Revised Code of Washington ("RCW"). The KRD delivers water to 59,122.29 acres within Kittitas County. The water supplied by the KRD to landowners within the district is supplied by the U.S. Bureau of Reclamation ("USBR") pursuant to an amended contract between the KRD and the USBR, dated January 20, 1949 ("1949 Contract"). Individual landowners within the KRD do not have a water right, they have a contractual right to receive water under certain terms and conditions as established by the 1949 Contract. The KRD was a party to the 1945 Consent Decree entered in *Kittitas Reclamation District, et al. v. Sunnyside Valley Irrigation District*, Civil No. 21 (ED WA, 1945). The Consent Decree provides judicial recognition of the obligations of the United States with respect to the Yakima Project and, as of 1945, the historic entitlements of the parties to the judgment. The 1945 Consent Decree also established the concept of Total Water Supply Available ("TWSA").

The KRD, like all water users within the Yakima River drainage, has had the KRD water rights determined in *Ecology v. Acquavella*, Yakima County Superior Court Cause No. 77-2-01484-5 ("*Acquavella*"). The KRD's water rights are subject to a Conditional Final Order ("CFO") entered on June 1, 1994. The KRD is a proratable irrigation district, meaning that under its contract with the USBR, the United States may prorate the water available to the KRD. Under the proration system, in years when there is not enough water to satisfy all authorized diversions and other contractors with their water entitlement, the KRD receives a reduced quantity of water.

The KRD provides the following specific comments on Kittitas County's Domestic Water Reserve Program.

1. Stakeholder Group. The KRD supports the formation of a stakeholder group and asks that a designated KRD representative be allowed to participate in the stakeholder group. The explanation of the Domestic Water Reserve Program treats it as a foregone conclusion that using the sale or leasing of water by Kittitas County government is a proper allocation tool to "maximize the utility of existing Yakima River Basin supplies." The KRD submits that the stakeholder group should first determine whether the "Domestic Water Reserve Program," using sale and/or leases of water in drought years, is the appropriate tool to maximize the Yakima River Basin water supplies. The KRD does not necessarily believe this to be the case and submits that one of the functions of a stakeholder group should be to address the question of whether the "Domestic Water Reserve Program" is an appropriate and/or possible allocation tool.

2. Basin-Wide Water Management. In this section of the Domestic Water Reserve Program, Kittitas County indicates it "will purchase or lease water." The comment the KRD has is to state clearly that no KRD water can be leased and/or purchased under the Domestic Water Reserve Program as explained in the document. Individuals who own land within the KRD have no water right. They have a contractual right to receive water under terms and conditions dictated by the KRD and USBR. Further, the KRD's water right is an agricultural irrigation water right and does not have potable domestic water and/or mitigation of other water uses as an authorized use. The water delivered by the KRD can only be used for irrigation, power generation and incidental domestic supply, which is defined as water for irrigation or "those urbanized lands within the KRD boundaries, such as small tracts of lawns and gardens, as well as stock-water supply." The KRD water cannot be used as mitigation water, nor can it be used as potable water under either the 1949 Contract and/or the CFO entered in *Acquavella.*

Additionally, as recognized in *Acquavella,* approximately half of the acreage within the KRD also receives water from natural sources, including a variety of creeks that run through the KRD boundaries. It is the KRD's position that by and large these water rights are also not available to participate in the sale or lease as described in the Domestic Water Reserve Program. If an individual with a creek right were to sell and/or lease the creek right and then continue irrigating the same acreage with the water they receive by contract from the KRD, that would result in a negative impact on TWSA, which would be a detrimental and unacceptable consequence of the transfer. In a recent case, an individual natural flow water right holder within the KRD

boundaries, who had a contractual right to KRD water and a creek right, sought to sell its creek right to be used for irrigation purposes in Benton County and continue irrigating the same property using only KRD water. The consensus among water users in the basin was that this resulted in an increase in consumptive use, and thus was a detrimental impact on TWSA. Ecology denied the transfer on this basis, and that decision was appealed to the Pollution Control Hearings Board ("PCHB"). The appeal was ultimately withdrawn. It is KRD's belief that there are very few water rights within Kittitas County that are "senior water rights" that would actually be eligible to participate in the Domestic Water Reserve Program.

3. Local Concerns Regarding Impairment. This Section of the Domestic Water Reserve Program appears to allow for the mitigation to be provided via a water bank. The KRD supports the use of "water banks" to mitigate for new uses so long as there is (i) not a negative impact on TWSA; (ii) no storage releases which reduce the water available to proratable irrigation districts; and (iii) no negative impact on USBR's ability to operate the Yakima Project.

4. Metering and Data Collection. The KRD's position is that Kittitas County has no authority under existing law to regulate the use of water within Kittitas County. The regulation and use of water among competing water users is exclusively the province of Ecology. There are existing laws which require metering and reporting of water rights, including orders entered in *Acquavella*. Similarly, Kittitas County has no authority to set fees and/or impose charges on individuals within the County in order to fund the Domestic Water Reserve Program.

5. Well Tracking. The KRD has no comment this section.

Thank you for the opportunity to comment on the proposed Domestic Water Reserve Program. As indicated in the outset, the KRD desires to participate in any stakeholder group formed.

Very truly yours,

Paul Weaver
Chairman
Kittitas Reclamation District Board

cc: Jeff Slothower, Legal Counsel
Ken Hasbrouck, KRD Secretary / Manager
Kittitas County Board of County Commissioners