

Kittitas County Water Bank Over-the-Counter Water Budget Neutral Program Proposal

Statement of Need: On July 16, 2009, the Department of Ecology (“Ecology”) implemented Chapter 173-539A WAC (Upper County Rule) in Upper Kittitas County withdrawing all unappropriated groundwater. The rule was implemented to prevent unmitigated new uses of groundwater in the headwaters of the Yakima River Basin. Under the Upper County Rule, an exception is allowed for those appropriations of water that demonstrate water-budget neutrality through acquisition of a pre-1905 (or senior) water right.

To provide water for new uses, several private water banks have been created in Kittitas County. While transfers of water from these banks to new users have been successful, the process has proved costly and time-consuming. Each proposed new use is reviewed individually by the Water Transfer Working Group (WTWG) prior to approval by Ecology, even though many of the proposed uses are for similar new groundwater uses within defined areas where mitigation through water banks has already been established.

On May 15, 2014, Kittitas County adopted new regulations outside of the areas of the County subject to Chapter 173-539A WAC and within the Yakima River Basin. The County regulations require water budget neutral mitigation for proposed new uses of groundwater and are to be implemented over time.

The first stage, in place today, requires new groundwater uses to mitigate for Total Water Supply Available (TWSA) and may be accomplished through a County-run program that is approved internally and issued “over-the-counter” based on set criteria. The second stage is to be in place by December 1, 2015 and will require full water-budget neutrality for new groundwater uses (similar to the requirements in the Upper County Rule).

The County’s regulations requiring water budget neutral mitigation will result in a significant increase in the number of water budget neutral reviews for the WTWG and Ecology. Following the current model in place for obtaining water-budget neutrality approval, each of the individual transactions would be required to be reviewed one-by-one by the WTWG and Ecology prior to approval. This will significantly increase the workload for the WTWG and Ecology resulting in increased costs and/or additional delays for applicants.

The Yakima River Basin, the area in Kittitas County which these new regulations are imposed, is fully-appropriated and scientific evidence has shown impacts to stream flows and surface water resources from groundwater pumping. Withdrawals of groundwater have an impact on instream flows in the Yakima River and its tributaries and as such, may impact more senior users, especially during low-flow periods. Impacts to more senior users include the rights of the Yakama Nation for water to sustain anadromous and resident fish and other aquatic life.

The Yakima River Basin spans three counties – Kittitas, Yakima, and Benton. The impacts from groundwater use on stream flows and senior water rights holders occurs in all three counties

within the basin, not just Kittitas. It is possible that other counties will implement measures to prevent impacts to senior water rights and instream flows. If so, the workload impact on Ecology and other water resource interests will increase even further.

Summary of Proposal: Kittitas County has acquired the existing William’s water bank and portions of the existing Roth, Clennon, and Amerivest water banks. The County is seeking to have the County-owned water rights in these four water banks approved by Ecology as water budget neutral mitigation for building permit applications that will be submitted to the County in the future. The County is proposing that the County’s four water bank water rights be reviewed by Ecology in advance and pre-approved through an Ecology decision as meeting the water budget neutral requirements of Chapter 173-539A WAC and provisions of the Kittitas County Code relating to Adequate Water Supply Determinations (AWSD) in areas outside the Upper County Rule.

This streamlining proposal is a component of the Settlement Agreement between the County and Ecology reached in the case before the Eastern Washington Growth Management Hearings Board. It would allow the County to issue over-the-counter approvals for groundwater mitigation as part of an AWSD during its building permit process in determining water adequacy for other land development proposals. This proposal is specific to the County’s interests in the Roth, Clennon, Williams, and Amerivest water banks. If additional water rights and water banks are acquired by the County, they would require separate review and approval by Ecology to determine if the water rights or banks would be included in the over-the-counter mitigation program. Water rights held by non-County water banks should also be eligible for over-the-counter approval by Ecology if they so choose.

Proposed Program Details

- 1. Time Period:** The County is seeking pre-approval by Ecology of water budget neutral decisions for projected building permit applications for a 10-year period.
- 2. Geographic Scope:** The over-the-counter mitigation approval process will apply only in areas identified in mitigation suitability maps for the Roth, Clennon, Williams, and Amerivest water banks as green.
- 3. Applicant Eligibility:** Building permit applicants will be allowed to purchase an over-the-counter mitigation certificate from the County only for single domestic use. Mitigation may only be purchased in conjunction with the filing of an application for a building permit. Building permit applicants may use the over-the-counter program to obtain mitigation sufficient to meet the County’s AWSD requirements, and/or also obtain additional water rights or mitigation through other water banks.
- 4. Water Use Limitation and Consumptive Use Estimate:** New ground water uses allowed through the County’s over-the-counter program will be limited to two basic packages. The packages/limitations are as follows:

Package A: Indoor use only, limited to 275 gallons per day annual average withdrawal.

Package A is mandatory for any parcel which has access to irrigation water. This package does allow some incidental outdoor water use for washing windows, washing cars, etc.

Package B: Indoor use, limited to 275 gallons per day annual withdrawal, and up to 500 square feet of outdoor use, limited to 25 gallons per day annual withdrawal, for total maximum 300 gallons per day annual withdrawal.

Package B is mandatory for any parcel which does not have access to irrigation water.

Multiple packages may not be purchased and applied to the same parcel without a building permit requiring mitigation for a new use of ground water. Based on these withdrawals, the total consumptive use for each Equivalent Residential Unit (ERU) is estimated to be .100 AF/y for Package A and .128 AF/y for Package B.

5. Conditions of Approval: Ecology’s approval of the over-the-counter mitigation program will include the same nine (9) conditions included by Ecology in individually-reviewed water budget neutral decisions. The mitigation conditions will be a requirement of both Ecology’s approval of the over-the-counter mitigation program and by the County in all AWSD decisions. The conditions will state as follows:

1. Water use is to be made within Parcel No. [XXXXXX] located within the [XX ¼ XX ¼] of Section [XX], T. [XX] N., R. [XX] E.W.M.
2. In-home water use is [XX] connections, resulting in a consumptive use of 0.[XXX] ac-ft/yr.
3. Outdoor irrigation is 0.[XXX] acres, resulting in a consumptive use of 0.[XXX] ac-ft/yr.
4. The proposed well will be located in Parcel No. [XXXXXX], located within the [XX ¼ XX ¼] of Section [XX], T. [XX] N., R. [XX] E.W.M.
5. Water use shall be recorded and reported as required under WAC 173-539A-070 and as described in the Advisory Letter enclosure for those projects subject to the Upper Kittitas County Rule; and under KCC Chapter 13.35 for those properties subject to water budget neutral requirements based on the Kittitas County Code.
6. You will record with the Kittitas County Auditor a property covenant that restricts or prohibits trees or shrubs over a septic drainfield on Parcel No. [XXXXXX].

7. Kittitas County Public Health will record with the Kittitas County Auditor an appropriate conveyance instrument under which the applicant obtains an interest in Trust Water Right No. [XXXXXXXXXX] to offset consumptive use as described in this letter.

8. You will pay to Ecology the sum of [\$XXXX] which represents a proportionate amount of the payment due and owing to the United States for storage and delivery of water under Paragraph 15(a) of Water Storage and Exchange Contract No. 09XX101700, between the USBR and Ecology, Yakima Project, Washington, dated January 29, 2009, or as amended. The consumptive use of [XXXX acre-feet] from September 1 through March 31 is subject to the terms and conditions in the Water Storage and Exchange Contract No. 09XX101700.

9. Any valid priority calls against Trust Water Right identified in paragraph 7 above based on local limitations in water availability, will result in temporary curtailment of the use of water until the priority call for water ends.

In addition, to further protect senior water rights and decrease the potential influence on stream flows from new ground water withdrawals, the County will impose the following conditions on well construction and location for wells drilled after the approval of the over-the-counter mitigation program:

For wells 600 feet or closer to Type 1 and Type 2 stream and rivers, and natural wetlands, creeks, lakes, and ponds, the following criteria must be met:

A. When feasible, wells must be set back 100 feet or more from the surface water body and adhere to the following:

1. Wells must be cased a minimum depth of 5 feet into the first consolidated layer or formation, or until the casing is refused by the formation (casing refusal);
2. Wells shall have a minimum bentonite seal of 18 feet; and
3. Wells must be drilled past the first consolidated layer or formation and into a water-bearing zone. The consolidating layer acts as a barrier between the influence of ground water withdrawal on the surface water resource.

B. In instances where the 100 foot minimum set back requirement is infeasible, the following criteria must be met:

1. Wells must be cased a minimum depth of 5 feet into the first consolidated layer or formation, or until the casing is refused by the formation (casing refusal);
2. Wells must be drilled past the first consolidated layer or formation, into a water bearing zone; and
3. Wells shall have a bentonite seal down to the first consolidated layer for optimal protection from hydraulic continuity with surface water.

A hydrogeological report shall be submitted from a professional hydrogeologist indicating reasoning for less stringent requirements within the 100 foot setback. Kittitas County's Public Health Officer will consider this information and determine well placement options.

The County's approval of AWSO decisions and building permits will include all conditions agreed to by the County in the Settlement Agreement and adopted in County code, and the County's building permit decision will incorporate the conditions imposed by Ecology in its decision approving the over-the-counter mitigation program.

6. In Lieu Fee Mitigation Requirement: In addition to requiring water budget neutrality to satisfy the County's AWSO requirement, the County will impose an in-lieu fee mitigation requirement as part of its water banking program. A separate fee in the amount of \$500 will be collected by the County from all building permit applicants and land development applicants utilizing the county's water banking program to obtain mitigation. The proceeds will be dedicated to two in-lieu fee programs: (A) Watershed Management and (B) Water Supply Improvements.

(A) Watershed Management. The Watershed Management program will utilize the funds to (1) assist the County, Ecology, and other Yakima Basin stakeholders in data collection and other work necessary to make management determinations in yellow zone sub-basins for all existing water banks throughout the County; and (2) to invest in tributary headwaters riparian corridor projects where such projects would provide functional in-kind restoration of stream flow conditions. With regard to the data collection element of the Watershed Management Program, many areas impacted by the County's regulations and the Upper County Rule lack good information to make appropriate management decisions. In those cases, the lack of information may result in over-cautious management decisions or no decisions at all.

The sub-basins will be prioritized based on current levels for rural users and historic demand trends for new users. The funds will be utilized to determine whether senior water rights associated with streams in the yellow zones for all existing water banks may or may not be detrimentally affected by a reduction in stream flow resulting from new ground water extractions. The overall goal of this program will be to re-classify yellow zones for all existing water banks as red or green with regard the County's portfolio of trust water rights available for mitigation. There may be additional restrictions for any use that is subject to the "Exchange Agreement" between Reclamation and Ecology (see "Long-Term Water Storage and Exchange Agreement between the United States and the State of Washington Department of Ecology" Contract No. 09xx101700).

With regard to the riparian corridor projects element of the Watershed Management program, the County will disburse funds to the Kittitas Conservation Trust, Forterra, or other recipients agreed to by Ecology and the County, for the exclusive purpose of

funding flood plain function and riparian condition improvements in the Yakima River tributaries in Kittitas County.

(B) Water Supply Improvements. The Water Supply Improvements program will allocate funding to provide water supply through mitigation programs or other strategies in areas where no mitigation currently exists. Addressing red zones within the County for existing water banks may be prioritized in phases based on current numbers of rural users and projected demand trends for new users. Priority will be given to projects in these areas that will improve or create a water budget for new withdrawals.

7. Allocation Among Water Banks: Water bank water rights held by the County in the Roth, Clennon, Williams and Amerivest water banks will be allocated to specific green zone areas in Kittitas County based on the expected location of building permit applications within the County, and the locations in which water bank water rights are already eligible to provide mitigation. The County’s building permit location projections are based on the County’s review of the location of building permit applications from 2008 to the present day, and the number of existing parcels eligible for rural residential development. The County is seeking allocation of the County’s Roth, Clennon, Williams and Amerivest water bank water rights for the total number of ERUs within each water bank’s green zones, as indicated below:

Water Bank	Number of Building Permits/ERUs Expected 2016 to 2025	Total Quantity of Mitigation (CU AF/y)	Total Quantity of County Water Currently Available (CU AF/y)
Roth & Clennon	203 (67 pkg A/ 136 pkg B)	23.776	23.778
Williams	121 (40 pkg A/ 81 pkg B)	14.138	14.1735
Amerivest	78 (26 pkg A/ 52 pkg B)	9.263	67.203

See Attachment A for map with a representative distribution of these ERUs across the existing green zones of these banks.

8. Reporting by County: The County’s annual report to Ecology will include information as to whether the rate and location of building permit applications are below, at, or above the projections relied upon in Ecology’s approval. In addition, the County will report to the WTWG in April and October of each year and will include the following information: number of permits issued, maps of the general locations of the permits, comparisons of projections vs. actual data, and a list of the certificate numbers authorized by the County’s program and the corresponding parcel to which each is attached.

9. Over-the-Counter Approval of Other Water Bank Water Rights: The over-the-counter water mitigation program will not be limited to water rights held by the County. Any other water right holder may seek Ecology approval of water rights for water budget neutral decisions that can be integrated into the County’s over-the-counter process.

