

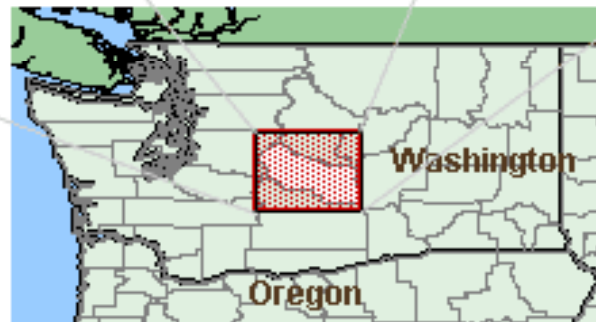
Exempt Groundwater Withdrawals and Local Government Land Use Authority: The Kittitas County Example

Memorandum of Agreement between Ecology and Kittitas County

Presented by

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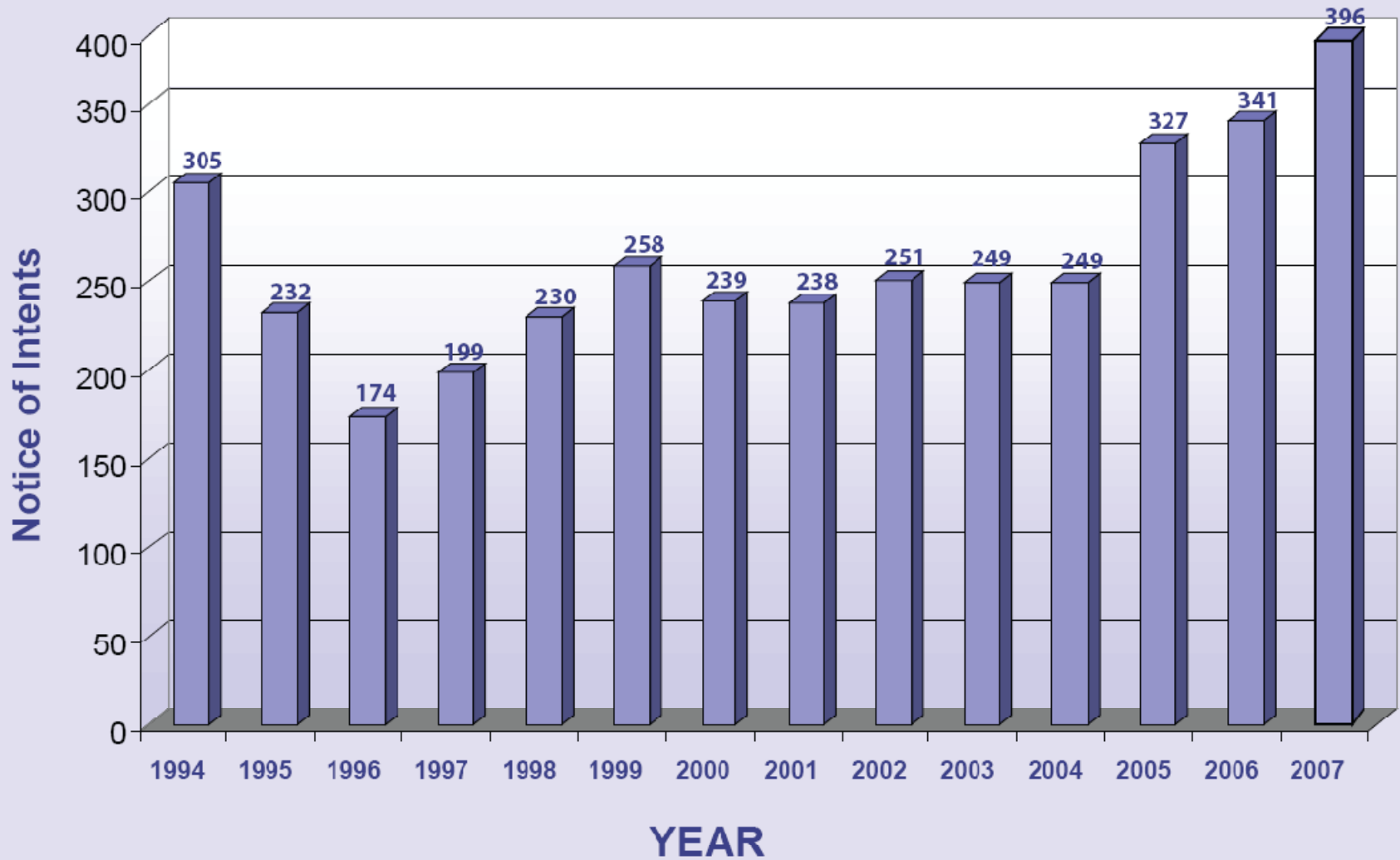
Kittitas County

- **2000 Census Population 33,362, about 40 percent in unincorporated county**
- **OFM 2030 projections 39,398 to 60,322**
- **Opted into Growth Management Act (Chapter 36.70A RCW)**
- **Many existing platted, undeveloped one, two, and three acre lots**
- **Active development in west and central county**
- **Most new growth outside of cities is reliant on ground water exemption (RCW 90.44.050)**

RCW 90.44.050

. . . withdrawal of public groundwaters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or as provided in RCW 90.44.052, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter

Kittitas County



Yakima Basin

- **Surface water managed by Bureau of Reclamation (5 major reservoirs)**
- **Basin undergone surface water adjudication since 1977**
- **Ground water not included in adjudication**
- **By court order (2001), surface water rights junior to May 10, 1905 cut off in dry years (including City of Roslyn)**
- **No new ground water rights issued since 1999 per settlement agreement with Yakama Nation/Bureau of Reclamation – did not address exempt wells**
- **USGS will complete comprehensive ground water study in 2008**

Petition for Closure

- **September 13, 2007 – Aqua Permanente petitions the Department of Ecology to establish a temporary moratorium on new 'exempt' wells in Kittitas County**
- **Petition challenged use of the exempt well provision to supply water to new residential developments in Kittitas County**



Chapter 90.54 RCW

Water Resources Act of 1971

. . . whenever it appears necessary to the director in carrying out the policy of this chapter, the department may by rule . . . [w]hen 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.

Options Considered by Ecology

- 1. Accept petition and go to rule making**
- 2. Reject the petition and take no further action**
- 3. Reject the petition, but propose an alternative approach to closure**

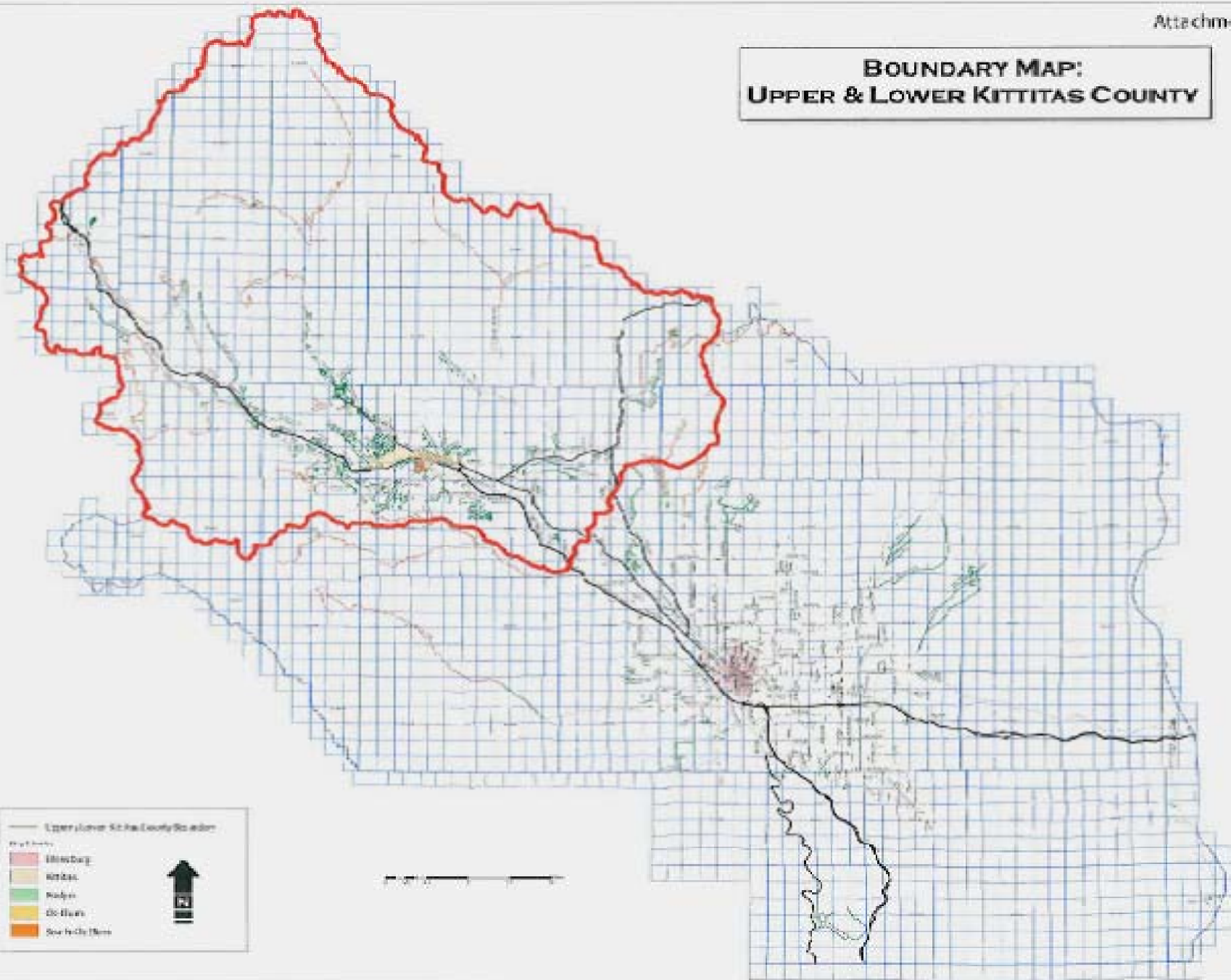
Case for Taking Action

- **Concerns over ground water exemption abuse – serial short plats and subdivisions**
- **Exempt withdrawals may interfere with Yakima Basin stream flows and may impair senior surface and ground water right holders**
- **Exempt withdrawals are not measured, impacts on aquifers are not known**
- **Ground water and surface water continuity probable – ground water users may face curtailments in dry years**

Decision Regarding Petition

- **Consulted with Governor's Office, area legislators, Bureau of Reclamation, senior water holders, and Kittitas County – Held public meetings in Cle Elum and Ellensburg**
- **Rejected petition, but proposed alternative approach to closure**
- **On November 9, 2007 Kittitas County and Ecology entered into an Agreement in Principle (AIP) which laid the foundation for the MOA**
- **This MOA reflects the joint commitment between Kittitas County and Ecology to:**
 - **Conduct a comprehensive ground water study**
 - **Implement interim management strategies**

BOUNDARY MAP: UPPER & LOWER KITTITAS COUNTY



Development of Memorandum of Agreement

- **Negotiated with county for almost four months to develop draft MOA**
- **Extended AIP twice**
- **Put draft MOA out for 30-day public review**
- **Ecology held two public meetings, county commissioners held one public hearings**
- **Re-negotiated with County based on public comment**
- **County approved MOA on April 7, 2008**

Interim Components of the MOA

Exempt Well Residential Standards

- **One ground water exemption (5,000 gallons per day) per development regardless of acreage – includes both indoor and outdoor water use**
- **Developer must define proposal in terms of anticipated per-unit and total water use**
- **Measures for achieving those amounts become conditions of plat**
- **Existing parcels below 10 acres created after Campbell and Gwinn decision no more than 1,250 gpd**
- **All new residential connections require individual water use metering and reporting county wide**

Interim Components of the MOA

All new subdivision applications in Upper County will be subject to the State Environmental Policy Act (SEPA) (Chapter 43.21C RCW) review

- **Hydrogeologic Investigation may be required for divisions of land that involve the creation of buildable lots, addressing potential impacts to the natural and built environment.**
- **Consultation provisions for Ecology to assist in assessing potential impacts**
- **Hydrogeologic information to be circulated with SEPA documents**

Interim Components of the MOA

Relying on exception to exemption (WAC 197-11-305) of the SEPA Rules:

The proposal is a segment of a proposal that includes:

(i) A series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not; or

(ii) A series of exempt actions that are physically or functionally related to each other, and that together may have a probable significant adverse environmental impact in the judgment of an agency with jurisdiction

Interim Components of the MOA

- **Notice to prospective buyers – language will be placed on plat faces disclosing risks of reliability water supply**
- **Data Collection – voluntary measuring and reporting for existing group A & B public water system master meters**
- **Ecology will adopt an emergency rule by July 1, 2008 to implement interim measures in MOA. A permanent rule will follow and replace the emergency rule**

Interim Components of the MOA

- **Kittitas County will have SEPA enforceable conditions in effect to implement interim measures in MOA**
- **Mutual defense clause for challenges to the MOA**
- **Provisions for future modifications to the MOA**
- **Dispute resolution process**

Mitigation Program

- **Currently Ecology, Bureau of Reclamation, Kittitas County, senior water right holders, and the Yakama Nation are developing a Mitigation Program in the Yakima River Basin**
- **Idea is to establish a water bank - acquiring senior water rights which will offset exempt well impacts – providing a long-term reliable water supply**
- **Developer/land owner will likely pay a mitigation fee to participate in program**

Ground Water Study

- **A ground water study will be conducted focusing on Upper Kittitas County - an area not fully covered in the current USGS ground water study of the Yakima River Basin**
 - **Hydrogeology of the study area**
 - **Ground water occurrence and availability**
 - **Ground water and surface water continuity**
 - **Potential impairment resulting from exempt ground water use**
- **Due to local support of County Officials and Legislators, \$683,000 was approved by the Legislature for this ground water study**

Long Term Management Program

- **A long-term water management program will be proposed based upon the findings of the groundwater study**
- **This long-term water management program may include:**
 - **provisions similar to the interim components of the current MOA**
 - **ongoing ground water monitoring**
 - **a formal exempt well mitigation program**
 - **no further action is needed**

Critique

- **Not a perfect agreement – but it is just an interim measure until we have better information**
- **Development industry and well drillers strongly opposed, as were area legislators. Felt agreement is too restrictive and premature – several threats of lawsuits**
- **Petitioners and slow growth advocates are convinced it won't do enough to solve the problem**
- **Don't think you can address Kittitas County outside of the context of the whole Yakima Basin – substantial water development efforts in progress**

“There is an old rule of thumb about government regulation that if people are complaining that it is too strict and others are insisting that it is too lax, then it might be about right.”

-Ellensburg Daily Record editorial regarding proposed MOA, April 4, 2008