

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
YAKIMA COUNTY
FOR
GROUNDWATER MITIGATION OF RURAL DOMESTIC USES

PARTIES

This Memorandum of Understanding (MOU) is entered into between Yakima County (County) and the State of Washington (State), by and through the Department of Ecology (Ecology).

PURPOSE

This MOU outlines the understanding between the parties to better define the objectives, authorities, roles, and accountability measures of each party in the mutual development and implementation of solutions to mitigate for new rural domestic groundwater uses in Yakima County. This MOU is intended to provide documentation and Ecology's support of the County's efforts to mitigate the impacts of future rural domestic use on senior water rights, to meet Growth Management Act (GMA) obligations regarding water availability, and to conserve the Yakima Basin groundwater resource by developing and implementing a public utility to be known as the Yakima County Water Resource System (YCWRS).

RECITALS

WHEREAS, recent studies conducted by United States Geological Survey (USGS) in cooperation with Ecology, United States Bureau of Reclamation (USBR), and Yakama Nation (YN) have shown that groundwater and surface water are in continuity; and,

WHEREAS, the surface waters in the Yakima River Basin are fully appropriated such that the Federal Bureau of Reclamation annually determines Total Water Supply Available (TWSA) so that during water short years junior water rights holders have had their water uses curtailed; and,

WHEREAS, new groundwater withdrawals without surface water mitigation could increase the frequency and severity of curtailment and negatively affect other surface aquatic resources. As such, all new groundwater permits will require surface water mitigation; and,

WHEREAS, (insert here appropriate statement regarding Yakama Nation, instream flows, and Quackenbush decision)

WHEREAS, assurance of a reliable water supply is necessary to ensure public health and safety for current and future rural domestic water uses in the County; and,

WHEREAS, the Growth Management Hearings Board has identified a need for counties to evaluate water availability as part of their land use and planning decisions, and Ecology has an interest in providing technical and legal input and support to ensure the County's GMA obligations can be met within the legal and administrative structures of Ecology's Water Resource Program; and,

WHEREAS, both parties seek efficiency in administration of future rural domestic water allocations to reduce administrative expense, to minimize the duration of development permit processing, and to ensure the County's GMA compliance in the short and long term; and,

WHEREAS, orderly growth and development in the rural zones will require a means to provide potable water to serve both existing undeveloped lots of record and such future lots of record which may be developed consistent with the County's Comprehensive Plan and implementing ordinances; and,

WHEREAS, in recognition of importance of these issues, Yakima County has contracted with John Vaccaro, formerly of USGS and lead author of the Yakima Basin Groundwater studies, to perform technical analysis regarding potential impacts of future rural domestic groundwater withdrawals on the flow in the Naches River, Yakima Rivers, and those tributaries so that the evidence of water availability and mitigation measures can be established for private lands zoned for rural uses in the County's Comprehensive Plan; and,

WHEREAS, the County owns and operates existing water utilities and YCWRS will be operated as a municipal utility; and,

WHEREAS, the anticipated service area of the YCWRS is outside cities and their urban area, outside existing and future water system service areas, including the majority of the Rural and Resource Lands with the exception of privately held forestry parcels in the Forest Watershed Zone; and,

NOW THEREFORE, the parties agree to the following:

- 1) The County will endeavor to establish the Yakima County Water Resource System (Program) to provide mitigation of new groundwater uses, evidence of water availability, and conservation of groundwater resources in the rural zones and for new rural domestic uses in Yakima County. The County intends to acquire pre-1905 surface water rights with the intent of changing the purpose of use to Instream Flow for Municipal Supply Mitigation or pre-1905 groundwater rights for direct mitigation. Ecology will accept the retirement of existing water rights being placed into Instream Flow as evidence of mitigation for Total Water Supply Available (TWSA).
- 2) TWSA mitigation may allow the County to apply for new municipal groundwater rights to appropriate available groundwater in multiple domains/groundwater bodies throughout Yakima County as identified in groundwater studies by John Vaccaro (2016), in collaboration with Ecology technical staff. These applications may, at the request of the County, be processed through a cost-reimbursement process or through a front-loaded Report of Examination process produced by qualified consultants under contract with the County in collaboration with Ecology.
- 3) The elements and components of the County Program will be developed by Yakima County. The technical basis and the water resource administration elements/components will be developed in cooperation with Ecology to insure compatibility with existing Ecology Water Resource administrative and legal requirements. Groundwater studies and reports conducted by the County are incorporated in this MOU as the basis, in part, of demonstrating water availability and no impairment of existing rights as a result of any new water right or rights issued to the County pursuant to operation of the Program.

4) The County's land use, building permit, SEPA, and GMA decisions are appealable. If such appeals occur in the processes associated with:

- a. the development and implementation of the YCWRS;
- b. in GMA compliance proceeding related to YCWRS or legal availability of water; and/or,
- c. implementation of the County's Comprehensive Plan and/or implementing ordinances of that plan,

Ecology will represent and defend the County's program and technical assistance offered as the basis for the County's determination that adequate water is available, compliance with GMA.

5) County will develop a water use management and reporting strategy in cooperation with Ecology. (Note: this is a placeholder statement. The intent here is to list the general items contemplated such as administration of points of withdrawal, municipal rights, enforcement, etc.)

6) Ecology, working with County, will provide the County with information where groundwater bodies have adequate water (Note: This is a placeholder statement that needs to be refined by working with Ecology)

AMENDMENT AND TERMINATION

The Parties enter into and continue this MOU voluntarily and in good faith. This MOU shall be effective upon the signatures of the officials listed below. This MOU may be amended or supplemented at any time by mutual consent of the parties. This MOU is intended to have an indefinite term but shall terminate upon written notice by any party hereto.

SIGNATURES

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

BOARD OF YAKIMA COUNTY COMMISSIONERS