



Kittitas County, Washington

BOARD OF COUNTY COMMISSIONERS

District One
Paul Jewell

District Two
Alan Crankovich

District Three
Mark McClain

August 7, 2009

The Honorable Christine O. Gregoire, Governor
P.O. Box 40002
Olympia, WA 98504-0002

Dear Governor Gregoire:

I am writing to you this afternoon regarding the continuing discussion between the Kittitas County Board of County Commissioners (BOCC) and the Department of Ecology (Ecology) surrounding the groundwater moratorium Ecology Director Jay Manning enacted in Upper Kittitas County July 16.

Since that time, Kittitas County has continued actively engaging Ecology in talks related to an Amended Memorandum of Agreement (MOA) and related Partnership Rule. It remains the County's assertion that it was in fact Ecology, and not the County who broke off the discussions that led to Director Manning's action. Regardless, you stated in your letter to the BOCC dated July 29, 2009, "Ecology Director Jay Manning has assured me that the agency will work with the County to find an acceptable long-term solution. I urge each of you to join this effort." The County has complied with this request to the point of receiving the final documents from Ecology and moving quickly to schedule a public hearing for Thursday, August 13. The County has made it our priority to bring this potential agreement forward for public review and possible adoption.

Unfortunately, in conversation with Ecology Director Jay Manning this morning, he personally indicated to me that Ecology has no intention of rescinding the moratorium currently in place even if the BOCC agrees to the terms of the MOA up for hearing on August 13th. Director Manning stated quite clearly that it is his decision that the moratorium will remain in place until the AGO is published. He did offer, on at least three separate instances during the conversation, a willingness to move forward with the proposed Partnership Rule if the County agreed to rescind our AGO request. The conversation to which I am referring included two Ecology representatives, Director Manning, two County representatives, and me.

Also in your letter you stated "The emergency rule ... was necessary to close a water resources management gap that was created when the County and Ecology did not reach agreement on a path forward." In contrast, the County has held that agreement to move forward with the public process was nearly at hand. In fact, the MOA currently scheduled for public review and input is the same document received by the County without dissent from Ecology prior to the imposition

of the moratorium. Additionally, it is our belief that Ecology's motivation for the moratorium was to compel Kittitas County to rescind our request for an Attorney General Opinion (AGO) regarding the authority of Ecology and the County as it relates to some provisions in the proposed MOA and rule. Tom Tebb, Regional Director for Ecology stated publicly that if the County did not rescind the AGO request, it would be in Ecology's best interest to enact a moratorium rather than subject their rule to scrutiny by the Attorney General's Office. It is Ecology's fear that an official opinion could negatively impact their agreements in four other Eastern Washington Counties.

Kittitas County Prosecutor Greg Zempel has made clear to Ecology that he is unwilling to rescind his AGO request. The BOCC supports him fully in this decision. It is our view that following the law and intent of our citizen-elected legislature is a paramount responsibility for agencies of the state. The County and Ecology disagree as to this particular point, so we have appealed to the Attorney General for clarification. Ecology and the County have agreed to include language in the MOA for dealing with any results of the requested AGO.

Moving forward, it has been our belief that Ecology would lift the moratorium and put in place the negotiated Partnership Rule if the County were to agree to the Amended MOA. In fact, this intent was personally conveyed to me from Director Manning through Tom Tebb late last week. Further evidence of the County's belief that Ecology would lift the moratorium is contained in Director Manning's guest column titled "Moratorium Protects Resource" in the Friday, July 24, 2009 edition of the Daily Record. In that article, Director Manning writes "We remain willing to finalize an agreement with Kittitas County, if there is a willingness to work in good faith on a solution." During Commissioner Crankovich's meeting in Olympia with Director Manning and staff from your office, it was conveyed to him that Ecology was willing to reach a reasonable agreement and lift the moratorium. Indeed, we believe we have displayed good faith throughout this process and that point is further evidenced by our willingness to move forward at this time.

Frankly, I am concerned that throughout this process Ecology has been publicly stating a position that they are concerned for the water availability resources in Upper Kittitas County, and specifically what has been characterized as a "proliferation of so-called exempt wells". At the same time, Ecology has accused the BOCC of "missing deadlines", being "unable to agree to basic requirements" and not displaying a "willingness to work in good faith." In your letter to the BOCC rejecting our request to repeal the moratorium, you support Ecology's stated concerns regarding water availability and that the emergency moratorium is necessary.

Now, at virtually the final hour, with a public hearing scheduled, and a vote by the BOCC imminent, the truth is apparent. The action by Director Manning to enact the moratorium in Upper Kittitas County was not to protect water resources, but a strong-arm tactic for persuading the County to rescind the AGO request as it threatens their agreements across the state. Perhaps Director Manning guest's column should have been titled "Moratorium Protects Ecology" rather than "Moratorium Protects Resource".

Ecology has demanded that Kittitas County agree to further curtail the use of exempt wells. Ecology has demanded the County comply with new metering requirements. Ecology has demanded the County agree to mitigation for wells drilled in certain areas. You have requested

we work with Ecology to reach an acceptable “long-term solution”. You publicly commended both agencies for renewed talks. The County has complied and will bring all these demands to a public vote by the BOCC on August 13th.

Still, Ecology has no intention of lifting a moratorium that is having devastating impacts on the economy of Kittitas County, the investments of local landowners, and is placing more workers in the unemployment line. Will you continue to support Ecology in their attempts to make the citizens of Kittitas County pay the price for their political agenda?

I request that you personally meet with the Kittitas County Board of County Commissioners and Ecology Director Jay Manning and require Ecology to comply with the terms of the MOA and Partnership Rule negotiated between Ecology and Kittitas County. If the County approves of the MOA that has been submitted to the public process on August 13th, Ecology should honor that document and immediately repeal the moratorium and replace it with their proposed Partnership Rule.

Thank you for your attention to this matter. I look forward to your reply.

Sincerely,



Paul Jewell

Kittitas County Commissioner, District 1

Cc Jay Manning, Director of Ecology

Cc Representative Bill Hinkle

Cc Representative Judy Warnick

Cc Senator Janea Holmquist