



Kittitas County, Washington

## BOARD OF COUNTY COMMISSIONERS

District One  
Paul Jewell

District Two  
Alan Crankovich

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Mark McClain

### NEWS RELEASE

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### FOR IMMEDIATE RELEASE

#### ATTORNEY GENERAL OPINION SAYS COUNTY IS RIGHT

**Ellensburg, Wash.** – The Washington State Attorney General’s (AG) Office released their long anticipated opinion late Monday in response to Kittitas County’s request for clarification on exempt wells laws. The Department of Ecology, who also submitted questions to the AG’s Office, received responses to their request as both sets of questions were answered in one opinion.

At the heart of the questions were several concerns the County had posed regarding the authority of Ecology and the County to enter into an agreement concerning the regulation of groundwater in Upper Kittitas County. The County and Ecology had been in talks for several months in attempts to negotiate a workable solution for managing the use of exempt wells. The talks broke down when the County asked the Attorney General’s Office for assistance in determining the legality of the proposed pact. Specifically, the County believed that Ecology was attempting to change state law through the agreement by tying the irrigation exemption for up to ½ acre of non-commercial lawn or garden allowed for wells under RCW 90.44.050 together with the exemption for residential use of 5,000 gallons per day. County Commissioners and the Prosecuting Attorney’s Office held that they could not bind the County to any agreement that wasn’t legal.

Through the official opinion, the AG’s office stated the County is right in their view that Ecology’s attempt to combine the two exemptions under the 5,000 gallon per day limit was illegal. Further, the opinion states that neither agency can legally enter a binding agreement that is outside the scope of their authority. In explaining this point, the opinion states that “such agreements...are not a new source of authority, but merely provide a method of exercising authority that both contracting parties already have by operation of law.”

In July, Ecology imposed a moratorium on all new wells in Upper Kittitas County, citing an inability to come to an agreement with the County. In contrast, Commissioners have continuously maintained that they were actively engaging in talks with Ecology and were very close to an agreement. The County went as far as scheduling and conducting public hearings to consider a proposed agreement that both parties had

negotiated before Ecology backed out, refusing to enter into the agreement unless the County rescinded their legal concerns posed to the Attorney General. Ecology had previously stated they were worried how the answers may affect other agreements they have with other counties throughout the state.

“I am baffled that some of the coverage of this opinion to this point states that Ecology’s authority has been somehow upheld. We never questioned that authority and it wasn’t part of our concerns,” stated Commissioner Alan Crankovich. “We separately questioned the reasoning behind the moratorium - their description of an emergency doesn’t exist. After all, only 16 wells have been drilled this year in the Upper County. Ecology asked their questions not in an effort to find out if they had the authority for a moratorium, but to enable their belief they could also impose something else, like the rule they were proposing. The Attorney General clearly said no.”

Kittitas County Commissioners and legal staff met today to discuss the legal issues surrounding the opinion and what it means in moving forward with Ecology. “This opinion definitely upholds the positions we have stated all along,” said Commissioner Paul Jewell. “I am hopeful that these answers will help provide a clear path moving forward to hammer out an agreement with Ecology and get the moratorium lifted. We have already proposed solutions that are consistent with the terms of this opinion and it is my hope that Ecology will be willing to consider those options, lift the moratorium, and lessen the impact this action is having on our economy so our citizens can get back to work.”

“The opinion demonstrates that the county’s position was accurate; specifically that Ecology does not have the authority to tie separate exemptions together and cannot partially limit an exemption,” added Commissioner Mark McClain. “That is exactly what we believe made Ecology’s proposal illegal.”

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