

**KITTITAS COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING
UPPER KITTITAS COUNTY DISTRICT COURT
700 E. 1ST STREET - CLE ELUM, WASHINGTON**

THURSDAY

6:30 P.M.

AUGUST 13, 2009

Board members present: Chairman Alan Crankovich; Vice-Chairman Paul Jewell; Commissioner Mark McClain.

Others: Julie Kjorsvik, Clerk of the Board; Kirk Holmes, Director of Public Works/Interim Director of Community Development Services; Jeff Watson, Department of Public Works; Judy Warnick, 13th District State Representative; Mary Lou Peterson; Scott Huztel Kevin Bouche, Yakima County Commissioner; Max Benitz, Benton County Commissioner; Keith Gainer, Chelan County Commissioner; Cindy Carter Carolyn Swartz Richard Stevens Grant County; Greg Zempel, Prosecutor; Brent Bottoms, Deputy Prosecutor Jay Manning, Director of the Department of Ecology; Tom Tebb, Department of Ecology; Brian Fallo, Attorney and approximately 105 members of the public.

PUBLIC HEARING

DEPARTMENT OF ECOLOGY-MOA

COMMISSIONERS

At approximately 6:30 p.m. **CHAIRMAN CRANKOVICH** opened a public hearing to consider amendments to the Department of Ecology's Memorandum of Agreement and a Proposed Partnership Rule. He made introductions and asked for everyone to maintain order at the public hearing, because he realizes that emotions are high on both sides of the issue. He indicated the public would be allowed three minutes each for testimony.

BRENT BOTTOMS, DEPUTY PROSECUTOR said he had presented a slightly different document than what was posted online which only corrected scriveners errors, etc. He felt the Partnership Rule should be attached to the Memorandum of Agreement and said it would be easier for applicants to use for return flows when they go to the Department of Ecology. **COMMISSIONER JEWELL** asked if the agreement had been changed to reference a newer document, how would it affect the decision? **MR. BOTTOMS** said there was no changes to the substance, but only gives extra guidance.

JAY MANNING, DIRECTOR OF DEPARTMENT OF ECOLOGY thanked the Board of County Commissioners for allowing them to participate in the public hearing process and said he understands there are high emotions from both sides. He said they are only trying to do

what that statutes says for them to do in order to protect senior water right holders in Benton, Yakima and Kittitas Counties. He said they are willing to go with Partnership Rule and although there are different perceptions, he did not think it would be useful to get into those right now. He wanted to make it simple and affordable for citizens and hoped the concerns were addressed in the amendment. He said the basic problem is with the scarcity of water which is a reality, and it must be addressed.

COMMISSIONER McCLAIN questioned that even if the County did agree to the Partnership Rule, would the moratorium still continue to be in effect until the AG's opinion has been reached; and if the results are not favorable for DOE, would the moratorium go away? **MR. MANNING** said he thought they had an agreement back in March, but unfortunately they did not, and the County Prosecutor has asked for an Attorney General's opinion regarding legality of MOA & Partnership Rule. He indicated he felt it is legal and he believes an answer will be forthcoming in September. He indicated that he does not want to sign something in August, when there is potential for the AG's opinion to come out within the next month saying something different, it would more than likely cause people confusion.

MR. MANNING felt with a decision only being a month out, it may be in the best interest for both parties to wait to sign the agreement and not have to come back and renegotiate later on.

COMMISSIONER JEWELL stated that even if County's position is found to be incorrect, both sides are taking a risk.

COMMISSIONER McCLAIN was concerned with the citizens having to wait another month and it may result in getting them into more of a financial problem. **CHAIRMAN CRANKOVICH** felt that the people who were following the rules before the moratorium was put in place, he did not believe it's acceptable to make them wait another month for a decision to come out from the AG's office.

MR. MANNING said if the provisions are found to be illegal the Department of Ecology would immediately come back to County and seek solutions.

THOSE PRESENT & TESTIFYING: JIM MUHLBEYER said he is very frustrated with the situation and with lack of any successful negotiations, there is always a give and take and encouraged everyone to try and find the middle ground. He felt a month can be a lifetime in some people's minds and would like to see the Attorney General's opinion expedited. **DALE LOVELAND** explained that due to the uncertainty with situation, Cashmere Valley Bank has abstained from lending on land with or without wells. He

urged a resolution to be reached immediately and said he has many friends who are being hurt by the situation and the process has been very irresponsible. **MIKE STEVENSON** said the DOE's website indicates there have been over 3,000 wells put in place since 1998, and asked how many are in the upper and lower County. He felt DOE has put a scare into the people and there have only been 41 wells placed in the County this year. He asked why place a moratorium on the Upper County at this time, because the economy has already slowed it down enough. **GLEN SMITH, REPRESENTING THE WASHINGTON STATE GROUNDWATER ASSOCIATION** said they have been involved with issue since September 1997 and finds it sad when a State agency oversteps their boundary. On behalf of Association he expressed their appreciation to the Board of County Commissioners for taking a stand against Department of Ecology and for the public for taking the time to witness an important process. **FRED TALERICO** said the County should not sign an agreement with the Department of Ecology. He felt there could be solutions found and noted there are no groundwater problems, even with the 6-7 week drought that has been going on. He encouraged the State representatives to draft legislation, so the Department of Ecology cannot step on the citizens. **MARK SCHOBBER** asked how the Department of Ecology decided to pick just one part of Kittitas County. He questioned if it has started at one part of the County would it eventually move down to the lower county? **JEREMY BACH** felt DOE has not presented any evidence and something being "potential" does not justify a moratorium. **PHILLIP WIDNER** said their family has had property for over 20 years and although there may be isolated issues in the Upper County, blanketing the entire area with a moratorium does not have anything to do with groundwater. He explained he had been granted permission to drill 2 wells; their money was taken and now they are telling his driller without any notice to them personally, that they cannot drill. He suggested to the Board, that unless the moratorium is lifted immediately, there should not be a Memorandum of Agreement signed. **MAX BENITZ, CHAIRMAN OF THE BENTON COUNTY COMMISSIONERS** explained how the economic impacts are extremely large and they are afraid that if the Memorandum of Agreement is signed, it would set a precedent for land owners in their County as well. He felt the facts should be proven first in the Yakima River Basin before any type of Memorandum of Agreement is approved. He did not believe the RCW's are clear on exempt wells and recommended allowing the legislators to clarify those definitions. He indicated the Benton County Board of Commissioners are drafting a letter for consideration and they would have it completed on Monday. **JEFF DANTZLER** felt the negotiations had been forced to

the Board of County Commissioners. He referenced a letter he had previously submitted into the record and recommended rejecting any Memorandum of Agreement until after the results of scientific study has been completed and findings have been suggested. **STEVE MILLS, WATERMAN WELL DRILLING** asked that out of 3,000 wells, how many of those were for homes being built with permits issued. He indicated that although the County may have some areas with issues, there are many areas where there are no problems. **LISA GRAHAM** said she has both personal and business issues with what's been going on. She indicated they had purchased property and had a lot line adjustment compelled in order to sell off a portion, and now they cannot sell it because of the moratorium. She said the money they have spent on the property is worth nothing, and hoped the Assessor would take it into consideration when it comes time for property taxes. She questioned if, and what options they now have available with a moratorium in place. **SHANNON COGAN** felt the moratorium was an abuse of power by the Department of Ecology. She felt they have picked on a small portion of the County and the impacts will be felt for a lot longer than 120 days. **KITTY WALLACE, PRESIDENT OF THE KITTITAS COUNTY REALTORS ASSOCIATION** said there has been a lack of information on how they should be guiding their clients due to the moratorium. She said she understands the Department of Ecology & the Board of County Commissioners position, but they need a solution for their clients immediately. She said the impact has been so large it has now impacted businesses and contractors. **CORDY COOKE, REPRESENTING THE ROSLYN CITY COUNCIL**, said they supported the Memorandum of Agreement, but did have some questions for the Department of Ecology regarding grandfathering. **MARYLOU PETERSON, OKANOGAN COUNTY COMMISSIONER** was appreciative of the comments given at the public hearing by the citizens and hoped the Department of Ecology would listen to them. She said they have had water issues in their County for a long time, and Eastern Washington is now being hit by many different types of water issues and the Department of Ecology needs to address it as a whole, and not by just putting a moratorium on one certain area. She said DOE is suppose to be the water experts, and there's got to be a better way to deal with the situation other than a moratorium, and a solution could be found by thinking outside the box. She indicated the citizens are being hurt the most, and there should be a lot more meetings of this type, because the problems are not going to go away. **KIM WIDNER** said between the Department of Ecology and water rights, they have cost her a lot of money and questioned how they could be trusted with private wells. She said she has spent over \$12,000.00 defending her water rights and feels like it is

Aquavella all over again. She felt the County should stay firm and not give up. **STEVE SENGER** said he was a small builder and his clients enjoy taking part in recreation in the area. He spoke with a few of his clients and they paid approximately \$300,000.00 for what they are now calling "camping spots" since they cannot build due to the moratorium. He felt the County is being strong armed by the Department of Ecology and appreciated the Board of County Commissioners taking a stance going against them. **JIM SANDERS** spoke of the significant impacts due to the moratorium on new construction and land sales. He encouraged the Board to continue to stand up to the Department of Ecology. **DAVE WHITWILL, REPRESENTING CENTRAL WASHINGTON HOMEBUILDERS ASSOCIATION** said they had previously submitted specific concerns to the Board. He believed with a moratorium existing, there is no way to move forward and it needs to be resolved. They supported an expansion of Yakima River study. He said viable mitigation should wait for the study to be completed and the results should be based on facts and not presumptions. **RON CRIDLEBAUGH, REPRESENTING THE ECONOMIC DEVELOPMENT GROUP OF KITTITAS COUNTY**, urged the Department of Ecology to withdraw the moratorium on exempt wells and said they supported the County Commissioners on the request to seek the Attorney General's opinion. He said the impacts would be felt for a longtime and was concerned it would set a precedent for businesses to take their business elsewhere. **CATHERINE CLERF** said she was a 4th generation in Kittitas County. She felt infrastructure has not been addressed and senior surface water rights were not being represented. She said the Upper County is a completely different area that's why there is coal located in that area and not in the lower county. **JACK FIELD, REPRESENTING THE WASHINGTON CATTLEMAN'S ASSOCIATION** asked that the exempt well statute be addressed and that they should act prudently, with caution. He felt the issues needed to be resolved immediately and that consideration should be given to stock water and the economic impacts. **DOUG WEIS** opposed the moratorium and felt a fast solution would be to put one on the entire State. He felt if that happened, there would be an immediate solution. **BOB HORNBEIN** said he wanted to remind everyone that the County can only blame themselves because of the disregard they have had relating to the Growth Management Act. He said the Department of Ecology is only fulfilling their obligation to protect the senior water rights and it's time to think of the future generations. **BRIAN MURPHY** said he had assumed the Department of Ecology were the experts on water, but said there are no existing water mitigation programs or for the distribution from water bank. He said those should be done prior to signing any

agreement. **BEN DAVIDSON** said he owns acreage and had been 2 weeks away from building a home for his family before the moratorium was put in place. He felt it was irresponsible to put a stop to all building in the Upper County and the moratorium will continue to hurt a lot of land owners and business owners. He also noted he could not get a bank to lend him money because of the moratorium and encouraged the DOE to get their facts first, before issuing a moratorium. **JERRY PORTER, MAYOR OF ROSLYN** said they are in support of the Department of Ecology's position and encouraged them to look into the groundwater issues. She felt it made sense to find out how much water is available before it's appropriated. **KARLA SCHOON** said although she understood the necessity of the issues, she objected to the action that has been taken by the Department of Ecology. She felt it was similar to being accused before judgment, and questioned if a suit should be brought against the Department of Ecology. **JUDY WARNICK, 13TH DISTRICT STATE REPRESENTATIVE** explained that Representative Hinkle sent his apologies for not being available at the hearing, because he was in Chicago at a Healthcare conference. She explained she had tried coming to the hearing with an open mind, while thinking of the process that has happened over the last 2 years. She noted everyone has the same common goals including good, clean safe water supply. She recommended to the Board to not sign the agreement, especially if it's possible that it's not a legal document. She suggested waiting for the AG's opinion and urged to get back to the table with all the stakeholders and offered assistance to try and fix the problems before it affects the rest of the Eastern Washington counties, even more than they are now. She recommend that the DOE lift the moratorium, because 120 days is a long time due to current situation for citizens. **JANAE HOLMQUIST, STATE SENATOR FOR THE 13TH DISTRICT** appreciated everyone's work and recognized the Board has been working on protecting citizens rights. She indicated that based on principal, she felt the State has failed the citizens rights and cannot endorse nor find a reason why a Memorandum of Agreement should be signed if moratorium is not to be lifted. She felt sorry for the citizens for being put in the position they are in by the State, and thought it was clear that they wanted to get all the facts and data first, and that's why funding was set aside in the State budget. She said she could not understand why there was a good faith effort done by the County, and the Department of Ecology slaps moratorium in face of citizens, especially now that money is available. She indicated that back in 2004, she had asked for AG's opinion and she felt back then, the DOE wanted to get rid of all the exempt wells in the State. She felt this has

resulted from a couple of citizens who filed a petition, and it should not have been allowed to have been taken this far without first obtaining science or facts. She said the citizens have already been significantly impacted and urged the DOE to work together. She offered assistance and urged Director Manning to lift the moratorium. **KEITH GOEHNER, CHELAN COUNTY COMMISSIONER** said he had been following the process because of their water issues and through the process, they were able to come up with a reserve and allocate through exempt wells. He said banks are not loaning on new construction, even though they've been assured that Chelan has agreement with DOE, they are still saying they can't trust the agreement. He said by imposing a moratorium on Kittitas County, the other counties are being impacted the same. He thought more studies had been done and without first obtaining that information, the DOE's decision for moratorium has gone beyond Kittitas County. He encouraged DOE to lift moratorium, and to work through a plan which would be beneficial to everyone. **NATHAN WISE** said he did not support the moratorium and felt DOE was taking the rights and livelihood of the citizens and the State has to have some hidden agenda. He agreed there should be studies done, but they knew that a long time ago, but questioned why place a moratorium on the Upper County now. **ROGER OLSON** said he did not feel it was DOE or Aquapermante's fault for where we are now, but it was the County's fault. The decision to seek the AG's opinion is one more bad decision by the County, and the citizens are now having to pay for that too. The County should have put together a plan years ago and the senior water rights need to be protected and DOE is just doing their job.

MR. MANNING said it had been an educational evening for him and understands more of the impacts. He said he had heard from a few who understand their position, along with those who strongly disagree. He indicated there was a real risk if someone who has senior water rights and are cut off, they will be looking to the Department of Ecology and ask why they did not protect them. He said the moratorium does not prohibit building, only to those without a water right. He acknowledged the Department of Ecology has not done an adequate job creating a mitigation bank and they want to be able to make it simple for the citizens where money does not go to State, where a private transaction takes place, with little cost. He said there is evidence of a shortage and there are those who are being shut off now. He said he cannot control Cashmere Bank and their feelings of being at risk. He indicated he is a messenger and appreciated the State Representatives comments, and will take it under consideration.

He said the legislature hasw given them the rights and the legislature can take them away. He said he would be happy to help connect citizens with those who have senior water rights, but could not move forward with an Agreement, pending the Attorney General's opinion, if it's not legal. **COMMISSIONER McCLAIN** asked if the DOE can tie lawn & garden to 5,000 gallon and aside from the issue, that's the only legality question. **MR. MANNING** said if there are questions pending, they will leave it and wait until the AG's opinion has been received. **COMMISSIONER JEWELL** stated the language in the Agreement was negotiated prior to the moratorium being placed. **MR. MANNING** said he was willing to fulfill the agreement if it's legal, and that he has made his position clear.

COMMISSIONER McCLAIN asked if there should be additional time for comments to be received from the other counties.

COMMISSIONER JEWELL said his only concern is that the County has been continually portrayed to not be working in good faith, and would like to eliminate that. **COMMISSIONER McCLAIN** said it needs to be addressed in legislature and would welcome comments from other counties.

COMMISSIONER McCLAIN moved to continue the Public Hearing to August 18, 2009 at 6:30 p.m. in the Upper County District Court, leaving the written record open until 5:00 p.m. Tuesday August 18, 2009, and additional public testimony will be taken at the hearing. **COMMISSIONER JEWELL** seconded. Motion carried 3-0.

CLERK OF THE BOARD

**KITTITAS COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON**

Julie A. Kjorsvik

Alan Crankovich, Chairman

