

**KITTITAS COUNTY  
BOARD OF COMMISSIONERS  
COMMISSIONERS AUDITORIUM  
SPECIAL MEETING**

**THURSDAY**

**3:00 P.M.**

**MAY 29, 2014**

Board members present: Chairman Paul Jewell, Vice-Chairman Gary Berndt and Commissioner Obie O'Brien.

Others: Kirk Holmes, Kittitas County Public Works Director/Interim Building Official; Lindsey Ozbolt, Staff Planner; Jeff Watson, Staff Planner; Judy Pless, Budget & Finance Manager; Jerry Petit, Auditor; Neil Caulkins, Deputy Prosecuting Attorney; Holly Myers, Environmental Health Supervisor; Erin Moore, Public Health Permit Technician; Bill Clarke, Special Deputy Prosecuting Attorney; Peter Dykstra, Special Deputy Prosecuting Attorney; Tom Tebb, Department of Ecology Regional Director; Debbie Myers, Clerk and approximately 15 members of the public.

**PUBLIC HEARING**

**WATER PURCHASE**

**COMMISSIONERS**

At 3:12 p.m. **Chairman Jewell** opened the Public Hearing to consider approving agreements to assign four trust water rights between Kittitas County and Thomas and Kathleen Roth; Kittitas County and Barton and Sheila Clennon; and Kittitas County and Aqua Mitigation, LLC for \$2,497,000.00 (two million, four hundred ninety-seven thousand dollars). **Chairman Jewell** outlined the procedure for the public hearing said those testifying will have a 3 minute speaking limit, and he introduced County and State employees.

**Chairman Jewell** requested Mr. Peter Dykstra, Special Deputy Prosecuting Attorney, to review each transaction. **Mr. Dykstra** reviewed the water transaction between Kittitas County and Aqua Mitigation LLC, an assignment of the Williams Trust Water Right, 14.1375 acre feet of consumptive use water, in the amount of \$735,000.00 to close on June 1, 2014 if the County were to approve it. He said the contingency is the BOCC's decision and Resolution, the Notice of Assignment and Consent of Assignment by Department of Ecology (DOE) has already been fulfilled at this time, so everything else is done.

The second transaction between Aqua Mitigation LLC and Kittitas County, for the assignment of the Amerivest Trust Water Right is for instream flow and mitigation of domestic use. The water trust right has already been used for water mitigation, so not all would be assigned to Kittitas County. If approved, the 67.203 acre feet of consumptive use would be assigned to Kittitas County, for the purchase price of \$1,440,000.00, with a closing date of January 16,

**APPROVED**  
8-5-14

2015. The contingencies are the Department of Ecology's Notice of Assignment and Consent of Assignment, which have been fulfilled at this time. Other contingencies are to develop an over the counter program for how the County will distribute water rights and for the County to provide written notice of program to DOE by June 1 or extending to September 1. If the deadline is not met, Aqua Mitigation has retained the right to market water after September 1. The County can retain all of the bank, or receive a discount of water sold to others. He said the County can choose by September 1, to exit the agreement.

**Mr. Dykstra** said the next two transactions are for the acquisition of two water banks, the Clennon and Roth water rights. He said they are separate agreements, but are tied with an Option Agreement. The first transaction is between Barton and Shelia Clennon and Kittitas County for the assignment of the Clennon Trust Water Right, which is an existing trust water right for instream flow and mitigation for domestic use and is similar to the Amerivest water right because there have been mitigation certificates issued; the owners are not retaining mitigation certificates; however, there are pending transactions in front of the DOE. There are 14.49 unallocated acre feet available for consumptive use in the amount of \$200,000.00. There are pending applications for .548 acre feet, if they are approved by DOE by Nov 1, and if not, the .548 acre feet will be assigned to Kittitas County for an additional cost of \$8,000.00. The contingencies have not been assigned and there are no signatures yet from either DOE or the owners.

Tied to the agreement is the Option Agreement, which is for both the Roth and Clennon water banks for portions of the Swauk drainage. The Roth and Clennon water bank Option Agreement gives them the opportunity to purchase up to 26 water rights until December 1, 2035, for a one time purchase of up to 26 mitigation water rights at the then going price for water rights. They would have to exercise this one time option within 9 months of the County acquiring a water bank in that area.

**Mr. Dykstra** said the Roth Trust Water Right is separate, but also tied with the Option Agreement. The assignment of the Roth Trust water right, between Kittitas County and Thomas and Kathleen Roth is similar to the Clennon water bank, in that mitigation certificates and pending transactions are before the DOE. What remains is 9.482 acre feet of consumptive use in the amount of \$122,000.00 with an August 1, 2014 closing deadline. There is a remaining .548 acre feet in pending applications before the DOE, which if not signed by DOE by November 1, 2014, will then be available to the County for an additional cost of \$8,000.00. The Notice and Consent of Assignment have not been signed yet, but they have been discussed01.

**Chairman Jewell** said the County is purchasing consumptive use vs. acre use; buying deeded use from the State and compared it to raw product vs. completed project. **Peter Dykstra** said there is a great deal of costs associated with processing water rights and referred to the Aquavella suit. He said the County is buying built in infrastructure and said in his view there is less risk going that way rather than the risk of not knowing what you are getting into with a raw product.

**Judy Pless**, Budget and Finance Manager said the County is in the process of applying for a line of credit to pay for the water rights. Payment will be selling the water right. When asked, she said she has no concerns that the County will acquire enough money to meet the next bill.

**THOSE PRESENT & TESTIFYING:** **Roger Olson** from the Nelson Siding Road area thought the consumptive water was grossly overpriced. He referred to the Growth Management Act and asked what the rush is. He said bad land use in the past might lead to threatening agricultural lands. **Steve Verhey** of Ellensburg said this is the first he had heard that the money for these transactions will be borrowed. He said there was verbiage in the agreements that would make the County liable and he felt that risk was best left in the private sector. He also felt the price was too high and that the County should walk away. **Melissa Bates** asked why there would be less than 24 hours to sign the documents with no public review, and why there was no letter of intent signed? She said there were currently eight water banks with infrastructure already in place and that the public was unaware that Suncadia had offered a discount. **Dave Whitwill** with Central WA Homebuilders Association said they are in support, and that the County has made a lot of effort to come into compliance. **Roger Sparks** of Cove Road discussed how much water is needed for a hay farm in comparison. He said the costs sounds very high, and wonders how many homes we can expect to be able to build and mitigate water. **Mary Morgan** said she is in favor of the County water bank, but there were some unanswered questions, such as: how many houses is this going to cover, can one party buy an additional 250 gallon water right, and at 350 gallons per household, with 500 feet of lawn, can they buy 2 water rights and have 1,000 feet of lawn? She said she feels like it is rushed, and she is not comfortable with it. **Roger Weaver** confirmed the cost of 2 ½ million dollars and said it is a remedy people have been working on for years, and thanked everyone for their work. **Deidre Link** of Ellensburg stated she agrees with Melissa Bates comments. She said with the fiduciary responsibilities of the Commissioners they should step back and rethink the issue and that she believes the price is too high. **John Ufkes** said they need to make sure the uses are limited to domestic uses and not for other uses.

**THERE BEING NO ONE ELSE REQUESTING TO TESTIFY THE PUBLIC PORTION OF THE HEARING WAS CLOSED.**

**Chairman Jewell** referred to the question of how many houses the agreements would serve. He said the answer is dependent on other questions and decisions and hopefully they will know more, later in the fall. He also said a regression analysis has been done and what the County plans to offer is basic domestic use, not commercial use.

**Commissioner O'Brien** moved to authorize and move to closing the Agreement for Aqua Mitigation for the Williams Trust water rights as presented. **Vice-Chairman Berndt** seconded. Motion carried 3-0.

**Commissioner O'Brien** moved to fund the Agreement to assign the Williams Trust water right as presented. **Vice-Chairman Berndt** seconded. Motion carried 3-0. Please move it to closing.

**Vice-Chairman Berndt** moved to approve the letter as presented, to Amerititle authorizing the chair's signature on the closing documents on Williams Trust water right in the amount of \$735,626.40. **Commissioner O'Brien** seconded. Motion carried 3-0.

**Commissioner O'Brien** moved to authorize and move to closing, documents for the transfer of water rights for Amerivest Water Right as presented and to fund subject to contingencies including the Agreement as yet unfulfilled. **Vice-Chairman Berndt** seconded. Motion carried 3-0.

**Vice-Chairman Berndt** moved to authorize and move to closing the Agreement to assign trust water rights for the Roth Water Right and to fund as presented. **Commissioner O'Brien** seconded. Motion carried 3-0.

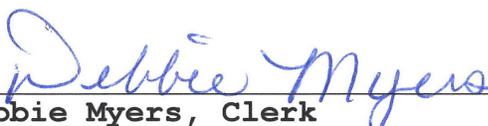
**Vice-Chairman Berndt** moved to authorize and move to closing the Agreement to assign trust water rights for the Clennon water right and to fund as presented. **Commissioner O'Brien** seconded. Motion carried 3-0.

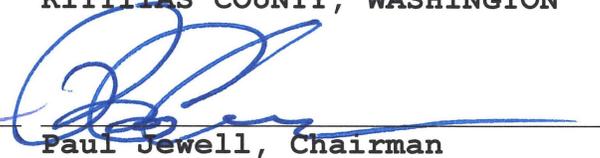
**Chairman Jewell** referred to the Option Agreement for Roth and Clennon for water banks future mitigation. **Commissioner O'Brien** moved to approve the Option Agreement for future mitigation certificates with Roth and Clennon as presented. **Vice-Chairman Berndt** seconded. **Chairman Jewell** said the laws of supply and demand are working against us right now, but they have secured a 10-20 year supply, and the County is moving toward cost accountability. He also said it is important for the County to act now to make sure we have water rights in the future and not to sell the rights downstream. He indicated most water banks are developers who

negotiate prices but the County will make prices consistent for individuals. Motion carried 3-0.

Meeting adjourned at 5:05 p.m.

**KITTITAS COUNTY COMMISSIONERS  
KITTITAS COUNTY, WASHINGTON**

  
Debbie Myers, Clerk

  
Paul Jewell, Chairman