

# State blocks new wells in upper Kittitas County

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Map depicts area of upper Kittitas County where there will be no new wells for the time being.

YAKIMA, Wash. -- In a move unprecedented in its scope, the state Department of Ecology imposed an emergency rule Thursday that halts all development relying on new water wells in rural upper Kittitas County.

It's the first time the state has banned the drilling of new wells for private homes, watering livestock and industrial development-- all of which have been unregulated for 64 years and not required a state permit.

Ecology Director Jay Manning said he decided to impose the ban after two years of negotiations with Kittitas County commissioners broke down over a compromise that would have limited the amount of water available for rural developments.

The ban covers land west and north of approximately Indian John Hill, the rest area along Interstate 90, northwest of Ellensburg.

Environmentalists praised Thursday's decision as necessary to protect a limited resource in the Yakima River Basin. But Republican lawmakers and developers labeled it a power grab by state officials that would only dampen an already weak economy.

Under the well-drilling ban, a property owner building a new home in the area won't be able to move in. And new wells can't be used unless water has already been drawn.

No new water rights in Kittitas County have been issued since 1993, but nearly 3,000 wells have been drilled during the last 11 years under the state's exempt well rule. Under a 1945 law, no permit is required for new water wells for a home or industrial use, so long as the user takes no more than 5,000 gallons a day. Watering livestock also falls under the exemption and has not been subject to limits on water use.

Senior water rights holders have worried that the proliferation of new wells is affecting the available water supply.

Manning said the Department of Ecology was hesitant to impose the rule because of the potential economic impact on Kittitas County. But he said the agency had to act with the prospect of no agreement while new wells were being put in use.

"I felt I would not be doing my job to protect senior surface water rights and streamflows by allowing the status quo to continue with no protections in place," Manning said.

County commission Chairman Alan Crankovich expressed disappointment with Ecology's decision.

He said commissioners believed they were working toward a solution that would benefit both sides.

"The idea that they went ahead with their decision is not completely surprising," he said. "We will learn to deal with it."

He said commissioners haven't had a chance to discuss whether to resume talks with Ecology.

The emergency rule, which can be challenged in Superior Court, will be in effect for 120 days. By then, state officials will propose a permanent order that will provide an opportunity for public comment.

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Talks with Kittitas County began in late 2007 after Ecology rejected a petition from a local environmental group for a ban on new wells until a study could determine the impact such wells are having on senior users and streamflows in rivers and creeks.

Manning said senior water right holders like the Roza Irrigation District in the Yakima Valley, the Yakama Nation and the town of Roslyn in upper Kittitas County have expressed concern about the growth in the use of exempt wells.

The Yakamas have the senior water right in the three-county basin -- Kittitas, Yakima and Benton counties -- by virtue of its 1855 treaty with the United States. The Roza district, which supplies water for 72,000 acres, most of which is being used for permanent crops, relies on a 1905 right to water that was obtained by the Bureau of Reclamation. Roslyn, with a 1908 water right, has seen its use curtailed during water shortages so that senior rights could be satisfied.

Manning said all three have questioned what the state was doing to protect their rights.

"The answer in my estimation is 'No, we weren't,' " he said in a conference call with reporters.

The action is the most far-reaching in the department's effort to rein in groundwater withdrawals because of its concern that the well exemption is being abused. Since last year, the primary focus has been on dairies and large cattle-feeding operations that use the stockwater exemption to withdraw large amounts of water without permits.

An effort to modify the exemption failed in the 2009 Legislature, though lawmakers did set aside money for a work group to look for a solution.

The Legislature also funded a hydrogeological study of the upper Kittitas County -- to assess whether groundwater withdrawal is affecting stream flows -- but that study has not yet begun.

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Melissa Bates, a sheep farmer in Cle Elum, said Ecology had no choice but to act to protect senior rights in the area.

She criticized how much time had been taken to negotiate with the county.

"We've always known that we had the science and the law on our side of this issue, but politics often prevails," said Bates, a member of Aqua Permanente, the environmental group that sought a well-drilling ban. "Ecology went through nearly two years of charades trying to 'water down' the solution to benefit a few interests in the county and the county still couldn't be placated."

But the development community and state lawmakers blasted the decision as an overreaction.

"They are throwing out the baby with the bath water," said Dave Whitwill, government affairs coordinator for the Central Washington Home Builders in Kittitas County. "It's really hard to quantify how much impact there will be. Some will be significantly hurt to the point of going out of business."

State Rep. Bill Hinkle, R-Cle Elum, called the move a power grab by Ecology that has no basis.

"Their motivation is to stop development. Bottom line. It's an anti-growth, stop-development move," Hinkle said of state officials.

He predicted a similar move may be in the offing in Yakima County, another part of the sprawling Yakima River Basin in which surface waters are overappropriated and where there are signs of a decline in available groundwater.

State Sen. Janéa Holmquist, R-Moses Lake, said Ecology's halt on wells will bankrupt the building industry in upper Kittitas County and further worsen a weak economy.

"Today's rule represents the Department of Ecology's failure to manage the county's water resources; and consequently, Ecology is denying families who want to live in upper Kittitas County the basic right to access drinking water," she said in a statement.

Roger Weaver, an Ellensburg-based Realtor, predicted the ban "would affect any landowner, any developer that wants to build their dream home or recreation home. It will put a stop to it."

Manning said those seeking water for homes could still use a new well if they are able to provide water from an existing right to offset their new use.

One potential source is Suncadia, the huge mountain resort development that obtained existing water rights to support its 6,000-acre project. Some of that water could be available for purchase.

"We will work hard on that," Manning said. "There will be a real need for a water bank. It will really mitigate the adverse economic impact of this decision."

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