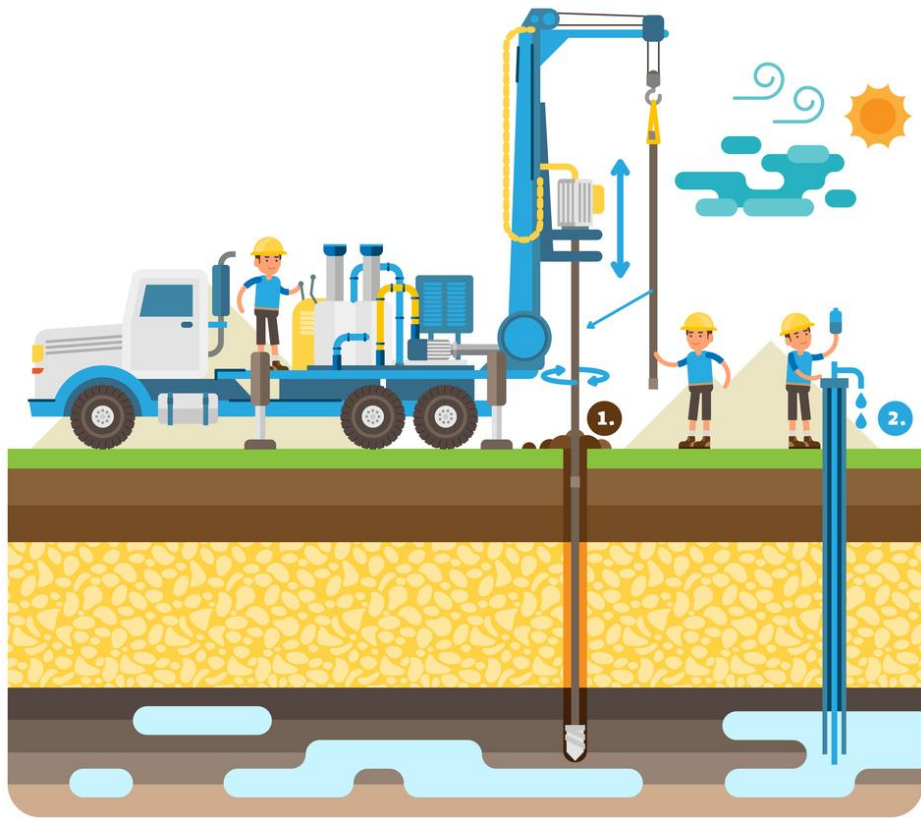


# Yakima County Water Resource System (YCWRS) Domestic Well Permit Frequently Asked Questions



YCWRS New FAQs:

## 1. **Why is YCWRS necessary?**

The Yakima County Water Resource System (YCWRS) was created in response to the history of water law and a series of rulings from Washington court cases.

### *Early History*

The Department of Ecology provides a brief history of water law in Washington state [on its website](#), which includes these statements:

“In 1917, the state passed its first water law, establishing that those who first put water to a good use retain the right to continue using it in the future. In the hundred years since, new laws and court rulings have influenced how we manage water resources for Washington communities, farms, fish, and businesses.”

“The prior appropriation doctrine awards water rights to the parties who first take water and put it to beneficial use. This is known as first-in-time, first-in-right.”

“Water is a resource held in common by state residents. The right to *use* the water is subject to regulation to ensure that water is used beneficially and to protect the environment. Without controls, conflicts would flare, as they did in the years before the Legislature enacted the 1917 water code.”

“As early as 1937, it was recognized that many parts of eastern Washington could see dwindling groundwater supplies and ownership disputes if the rate of groundwater resource development continued at its current pace.”

### *Passing Regulation of Public Groundwater*

The legislature passed RCW 90.44 Regulation of Public Groundwater in 1945. Within this is [RCW 90.44.050](#) which covers Washington’s Groundwater Permit statute which includes exemption for “Permit-Exempt” uses of groundwater. Exempt from the requirement to obtain a permit before drilling a well or withdrawing water. Establishment of water right does not require permit. These exempt uses included: withdrawal for stock-watering, watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding 5,000 gallons a day.

### *Case Law*

In the early 1990s the Supreme court made a decision (*Postema v. Pollution Control Hearings Board*) which included that there are no de minimus impacts to a stream or river. You might not be able to detect a water diversion by measuring at stream or groundwater body, but the diversions can be measured/metered at the point the water is being taken out (meter).

Developers began to take larger pieces of land, such as 40 acre pieces and dividing them into smaller pieces, for example 15 acre pieces. With these smaller pieces they wanted to provide a permit-exempt well, as each of the smaller pieces would use less than the 5,000 gallons per day (gpd) (while the 40 acre piece would still continue to go beyond this limit).

The [Campbell and Gwynn](#) court case (*State of Washington Department of Ecology v. Campbell & Gwynn et al.*) challenged what the developers were doing. The final Campbell and Gwynn conclusion was that developer are only entitled to use 5,000 gpd without a permit, regardless of number of wells. In other words, a single subdivision is limited to 5,000 gpd without permit.

The State health code states that only 15 connections or less are permissible on a Group B water system, but in reality, the 5,000 gpd limit equates to about 6-8 connections. This put a crimp on development in Yakima County.

Kittitas County decided to fight against this decision by allowing a system of daisy chain developments near Ellensburg and Suncadia to first come in with a series of surveys to cut the land into different pieces and then simultaneously use exempt well rights on those pieces. This appeared to be inconsistent with the Campbell and Gwynn ruling.

In 2003, an environmental group wrote a two-paragraph letter to the Department of Ecology (DOE) saying that there was a large number of exempt wells going in and that there was not sufficient evidence of water rights. By rule, DOE had to make a determination as whether sufficient information existed to manage the stream and aquifer system. DOE determined that there was watershed specific information, and by rule, had to close the basin to new appropriations of water, including exempt wells, until this information was developed, effectively creating a building moratorium in upper Kittitas County. At that time the United States Geological Survey was completing a surface and groundwater model for the entire Yakima Basin, a portion of this model was refined to meet the study needs for DOE in Upper Kittitas County. Both studies determined that surface and groundwaters were interconnected and components of an overall water system in the basin.

In order to get domestic wells permitted by DOE in the rural areas of Kittitas County, DOE required that new uses of water be offset by retirement of senior water rights through donation to the Trust Water Rights program. This triggered a demand for senior water rights in the County, and a market for these rights rapidly developed. The demand for these rights were relatively high, and the supply low, and the conversion of what were large rights into much smaller portions sufficient for residential development resulted in 3 general outcomes:

1. Very high-priced water per acre foot basis.
2. A cumbersome and somewhat lengthy (over one year) process to acquire and approve mitigation on a given individual parcel.
3. A loss of agricultural lands in the County, with major losses in some tributary basins, as the underlying value of water that supported agriculture rose.

Related development and water/groundwater availability issues were raised in Kittitas County's normal Growth Management Act (GMA) Comprehensive Plan update. The County chose to

take the position that there was sufficient water available and its actions were in compliance with GMA, and that it had no role in ensuring that water was legally and physically available to serve a proposed development for which the County had permit authority. This ended up becoming [Kittitas County vs. Eastern Washington Growth Management Hearings Board](#).

Kittitas County decided to go all the way to Supreme Court and fight it. They ended up losing. End result was there were parts of Kittitas County that did not process permits for 6 years and near Ellensburg for 4.5 years, and areas of Kittitas County today where building permits are not available. Kittitas County lost control of its permit ability and eventually, large parts of Kittitas County's General Fund and Bonding Limits.

The Supreme Court ruled that Kittitas County failed to protect rural character and water resources in their comprehensive plan. After 1.5 years of negotiation, Kittitas County entered into a settlement agreement with the State of Washington and Futurewise (main appellant of the Comp Plan before the Supreme Court). This agreement includes provisions that require Kittitas County (in the Yakima Basin portion of Kittitas County) to ensure that all new uses of water related to any Kittitas County development permit were mitigated so as to not effect Total Water Supply Available (i.e. senior surface water irrigators), and to mitigate for the past effects of permit-exempt well development in Kittitas County since the passage of the groundwater code in 1945 through acquisition of senior water rights in Kittitas County.

Seeing the outcome of these cases, Yakima County began to work toward alternatives and not end up as Kittitas County. The board of county commissioners passed [Resolution 399-2013](#) (Formation of the YCWRS) two years after the Supreme Court decision, but before Kittitas County did anything. The resolution directed the Public Services Director to set up the YCWRS.

The process took over 2.5 years and many meetings with DOE's manager to put it together.

Then in 2016 the Washington State Supreme Court made another ruling that changed how Counties decide to approve or deny building permits that use wells for a water source. This case was known as the [Hirst decision \(Whatcom County v. Hirst\)](#).

Ecology has provided an overview of the [Hirst decision](#) on its website.

The court ruled that Whatcom County failed to comply with the Growth Management Act requirements to protect water resources. The ruling required that Counties make their own decisions about whether there is enough water, both physically and legally, to approve any building permit that would rely on a well. This decision would take effect as other Counties were required to complete GMA required Comprehensive Plan update on normal 7-year rotations.

In June of 2017, Yakima County completed its required Comp Plan update, which contained the policy elements for the YCWRS. After the 30-day review period and 30-day appeal period for the Comp Plan elapsed, Yakima County moved forward with the development of necessary ordinances to implement the YCWRS. The YCWRS was created to comply with those regulations established in the history of water law and the recent court cases, as explained above.

## Summary:

According to the Supreme Court of Washington:

- 1) There are no “minor” diversions of a single water right or a class of water rights. Any single diverter in the valley uses less water than the total exempt use by rural residences in the County. Any single diverter must meter and manage their use according to their right, and cannot simply withdraw as much water as they want based on the relatively small impact to the total amount of water diverted.
- 2) The Kittitas County GMA case decided, based on evidence presented in that case, that groundwater and surface water are connected. Groundwater withdrawal effect the amount of water available for irrigation, and therefore more senior surface water rights, such as those held by Reclamation, Roza Irrigation District, and the Yakama Nation.
- 3) The Kittitas County and Hirst cases require the County to make a determination of whether water is legally and physically available for the new use as a part of their responsibilities under the Washington State Growth Management Act. These decisions have resulted in two differing sets of water law and water standards in the state, on one hand the relatively recent GMA based requirements, and on the other hand the State Water Code which establishes the state Water Rights system.

Yakima County is bound by the Supreme Court decisions and the policy and factual findings contained in them. The examples of Kittitas and Benton Counties either challenging or failing to follow these policies and findings has ultimately led to impacts to all of the Counties in the state as a result of the Kittitas and Hirst decisions, and particularly to Kittitas County which lost control of its permit processes, and general fund. The citizens of Kittitas County also had a burden of a long period of time when building permits and land divisions could not be obtained; or took over a year to receive, and required great expense to purchase small amounts of water, and to navigate a cumbersome water rights transfer and mitigation process. These issues had a great impact on property values and the overall economy of the County, particularly on the realty, construction and construction-related sectors of the economy. The YCWRS complies with these Supreme Court decisions in regards to the Growth Management Act, and it also acts as a source of mitigation water to prevent the kind of economic and permit-related difficulties/inefficiencies which were seen in Kittitas County when it proved almost impossible for an average citizen to effectively secure a physically and legally available water supply on their own.

**2. How does Yakima County comply with the ruling requiring that Counties must make their own decisions about whether there is enough water, both physically and legally, to approve any building permit that would rely on a well?**

In order to make a decision that water is physically available there must be some sound basis on which to make the determination. Yakima County contracted with Vaccaro Groundwater Consulting LLC, to identify groundwater use strategies based on hydrogeologic availability that could be use in particularly-defined geographic “domains”. The strategies took into account specific measures that could be taken within specific domain, or “sector” thereof, that would mitigate the effect of water use on the aquifer system, senior ground and surface water rights, flow-related habitat conditions and habitat use. The basic background information for groundwater in the Yakima River Basin was derived from a series of publications of the U.S. Geologic Survey (USGS) completed as part of a multi-year study of the groundwater resources of the basin.

The final conclusion was published in the report “Assessment of the Availability of Groundwater of Residential Development in the Rural Parts of Yakima County, Washington”. The report leads to the conclusion that groundwater mitigation strategies and estimated sources of water for rural development that avoid impacts to tributaries would include purchase of main stem rights, purchase of tributary rights where they are available and identified and suggested well depth standards.

The County has acted as recommended in the report, including the purchase of main stem senior water rights and confirming that wells are installed to the suggested well depth standards within the report. Each well that relies upon the use of the County purchased senior water rights is metered. The water usage from the meters is checked against the amount of County water rights available to confirm that the amount is not above that which has been purchased.

**3. Is YCWRS meant to be a revenue generating source for the County?**

No. The revenue generated by YCWRS is only meant to cover the running of the water system and the purchase of future water rights. Currently YCWRS is losing revenue each year, however it is estimated with additional permitted wells that eventually the system will be self-sustaining. The YCWRS water system is meant to run in similar fashion to all other County water systems with the revenue generated being used to sustain the system, but not be used as a revenue generating source for the County general fund or other items outside the water system.

**4. Has the adoption of YCWRS discouraged single-family home applications in rural Yakima County? Has YCWRS resulted in fewer single family residences applications?**

No. Current trends of single-family residence applications have not slowed.

**5. Was YCWRS created as a result of senior water rights holders complaining about the over-allocation of water?**

Yes and No. There is a history of pro-ratable (junior) water rights holders asking DOE to close down junior rights such as recreational cabin owners and the City of Roslyn in Kittitas County. In the development of the 2017 Yakima County Comprehensive Plan Update, Futurewise (who was the appellant in the *Kittitas* cases above) did inform the Planning Department that they would appeal the Comp Plan if it did not contain provisions for meeting the requirements of the *Hirst Decision*.

#### **6. How does YCWRS benefit me?**

YCWRS allows for the legal ability for the County to continue to issue building permits. Without a legal building permit, you could not legally build. Without the infrastructure and background created for YCWRS it would be difficult for Yakima County to make a determination that water was both physically and legally available, as required by Washington Supreme Court case rulings. Without this ability to make this determination, building permits could not be legally approved by the County. Also, without YCWRS the County could potentially have the same moratorium on building permits put in place as Kittitas County for six years.

YCWRS also provides senior water rights. This provides reassurance that no one will ever “pull the plug” on your domestic water.

#### **7. Isn't YCWRS just a "legal solution" to a non-problem?**

The YCWRS was created to comply with those regulations established in the history of water law and the recent court cases, as explained above. This was established so that a moratorium on building, the development of unstable and expensive water markets and water transfer processes, and the impacts on the agricultural economy of the County does not occur, as it has and continues for Kittitas County who have almost completed purchasing their “back mitigation” at a cost of over \$3 million so far.

#### **8. Is YCWRS just a “paper utility”?**

YCWRS is unique among the County run water systems in that it does not have any water pipes, pumps, or reservoirs. The only “infrastructure” related to the YCWRS are the water meters. The main purpose of YCWRS is to provide senior water rights and the continued ability for there to be building permits issued within the County. Without YCWRS the County could not make a determination of the water being legally and physically available, which is required based on Washington Supreme Court rulings. In many cases, having very little physical infrastructure is also why YCWRS is much cheaper to the user than on other County run water systems.

#### **9. Does YCWRS apply to irrigation or stock water?**

YCWRS is established to provide “mitigated” water for family residences including residential irrigation use, the standard amount of water allocated in each residential permit includes sufficient water to irrigate a normal, city-sized residential lot. YCWRS does have the capability of supplying water for commercial or agricultural uses such as small convenience stores, farm

offices or farm restrooms. YCWRS does not supply water for any agricultural purpose including irrigation or stock watering.

#### **10. Don't I own the water under my land?**

In Washington State, as in most western states, water is owned by the states. The ability for individual citizens or governments to “appropriate water” for “beneficial uses” is through the granting of water rights in a first in time, first in right system.

History has shown that water is not an inexhaustible supply. Using groundwater in one area can impact instream flows in another. The water on your property is part of the water cycle that does not begin and end on your land. Scientific evidence, including those referenced in “Assessment of the Availability of Groundwater of Residential Development in the Rural Parts of Yakima County, Washington” as well as water law both establish that we cannot rely on everyone using as much groundwater as they want and suppose that there is no impact outside a defined legal boundary of land ownership.

#### **11. Why should I have to pay to have water under my land metered?**

Washington Supreme Court cases have ruled that in order to be approved to build, there must be a determination that water is legally and physically available. In order to comply you must show you have legally and physically available water, such as through an established water right. If you do not have a water right the County created the YCWRS system that can provide senior water right for use, however the water must be metered in order for the County to continue to be able provide sufficient evidence that the water is legally available. YCWRS fees are used to continue to run the system (for example: install and replace meters, etc.) and to purchase future water rights so that future building can continue to occur within the County.

#### **12. Are there plans to start putting a meter on existing exempt wells?**

No. YCWRS was established in response to water right law. Current Supreme Court case decisions do not apply to those existing exempt wells established prior to 2018.

#### **13. How does the YCWRS compare with surrounding Counties, such as Kittitas and Benton?**

YCWRS is in general less expensive than similar programs in Kittitas County and the proposed program in Benton County. While the actual cost of the water right or ability to use the water is similar in Kittitas is either \$3,800 or \$4,800, and in Yakima Counties it is \$650. There are 3 other permits and certifications that must be obtained in Kittitas County, which total over \$1,800. Currently, Kittitas County has a grant from DOE to study actual water use, as a component of that grant DOE is paying for the water meters associated with the Kittitas County program, which saves \$500, which is the charge in Yakima County. The yearly metering charge in the two



Counties is similar, \$180 in Kittitas, \$160 in Yakima County. This benefit is scheduled to end in 2021. The final details of the Benton County program are still not solidified, but it can be expected that the water right costs will be slightly more expensive than those in Yakima County as the water rights Benton County purchased were more expensive than those purchased by Yakima County, and the actual “water duty” (amount of water used in drier and warmer Benton County) is higher. This is somewhat offset by a projected less consumptive use calculation in Benton County.

**14. I am planning on subdividing my property, which is served by an existing Group B water system. How do the new requirements apply?**

The subdividing of land requires an applicant to provide evidence that the lots created by the subdivision will be served by an adequate water supply when they submit their application to the county for approval.

Applications for a subdivision relying on a Group B water system are required to show the lot will not exceed the approved amount. Each new lot created by the subdivision of land will be required to provide evidence of an adequate water supply. If YCWRS permit is needed, then a water meter is required at the time of submittal of an application for a building permit.

**15. I am planning to build a home on a lot that was previously approved as part of a Group A or Group B water system. How does the new requirements apply?**

An application for a building permit that was permitted as a lot on a Group A or Group B water system prior to January 1, 2018 that is served by an existing permit-exempt well Group A or Group B water system is required to provide evidence of an adequate water supply. Evidence can be in the form of a letter from the purveyor stating the ability to provide water. If the Group A or B water system has the ability to provide a letter stating the ability to provide water then a YCWRS meter is not required.

**16. I am planning to create a new lot and join a nearby Group A or Group B water system. How do the requirements apply?**

Applications for a new lot, not previously approved as part of a Group A or B water system, relying on an existing shared well with an approved Group A or B water system are required to provide evidence of an adequate water supply. For a Group A system this could be a letter from the water purveyor stating the ability to provide water. If the Group A does not have adequate water rights then a YCWRS well permit is an option. If it is a Group B supplied by an exempt well and the new lot will not cause the exempt well to exceed its exemption, then a YCWRS well permit and meter can be used as evidence of the legal availability of water.

**17. What happens if I have a change of use on a structure on my property with an exempt well? For example switching from a temporary use for the care of an aged/infirm and converting it to a permanent use for an ADU.**

When submitting an application for a change of use on an existing structure you will be required to provide evidence that the new home or ADU will be served by adequate water supply (The pre-existing house is exempt from this requirement).

**18. What happens if my existing single-family residence served by a permit exempt well is demolished or destroyed due to a fire or other disaster?**

The County's Uniform Development Code (YCC 19.33.050(2)) requires that a permit be applied for within 18 months of destruction or demolition of an existing structure to qualify as a continuing use. If a permit is applied for within 18 months then the building permit will not be subject to the new regulations. If a permit is not applied for within 18 months then you will be required to provide evidence that the new home or ADU will be served by adequate water supply.

**19. I am planning on building a new Accessory Dwelling Unit (ADU) on a lot that is currently served by an existing Group A or B water system. How do the new requirements apply?**

When you submit the building permit application for the new house (or an accessory dwelling unit), you will be required to provide evidence that the new home or ADU will be served by adequate water supply (The pre-existing house is exempt from this requirement).