

YAKIMA COUNTY WATER RESOURCE SYSTEM (YCWRS) BACKGROUND REPORT

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Foreword

This report summarizes the history of the Yakima County Water Resource System (YCWRS) and responds to common and recent questions received by the Yakima Association of Realtors, Central Washington Home Builders Association, the Yakima County Farm Bureau, and other interested public. This was also written as a means for anyone interested in the background history and formation of water mitigation, including the reasons behind setting up the system.

Executive Summary

Yakima County believes property owners should have the right to build a home on their private rural property and use a private well for domestic water use, without the constraint of proving that water is physically and legally available.

The YCWRS solves this problem by:

1. Guaranteeing senior water rights for most rural homes and developments. Purchasing a water right privately can take years and be cost prohibitive, the County has done this for land owners.
2. Ensuring the County can continue to issue residential building permits for rural homes that rely on a private well.
3. Guaranteeing no one can “pull the plug” on a parcels domestic water, even during droughts.
4. Ensuring rural homeowners and landowners—not Olympia, not the Courts, not special interest groups—control the future of their domestic water supply.

The main goals for YCWRS include:

1. Provide cost-effective means for new residential development to show legal and physical availability of water, as an alternative for all new development being required to purchase or provide evidence of an individual water right.
2. Maintain compliance with the Growth Management Act to avoid action by courts and/or Ecology that would shut down the exempt well program.
3. Maintain compliance with State Law, including avoidance of litigation from Futurewise, Ecology, and other interested parties for non-compliance. By doing so, the County continues to have the ability to issue permits without a moratorium.
4. Maintain local County control over permitting decision, as opposed to being forced into a settlement decision similar to what happened in Kittitas County and Benton County over the rural water issue.

The most cost-effective solution found to these four main goals was the creation of the YCWRS. The County remains open to any solutions that is more cost-effective than what was created for YCWRS. However, unless a more cost-effective solution can be found that fulfills these four goals, the YCWRS will be supported and maintained.

Brief History of Washington Water Law

Topics covered in this section: *Why is YCWRS necessary? Don't I own the water under my land?*

The YCWRS creation is directly tied to Washington State water law, so to understand the system there must be understanding of Washington State water law.

Individuals do not own the water under their 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 shows water is not an unlimited 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 use of groundwater does affect surface water flows outside of a defined legal boundary of land ownership.

Early History

The Department of Ecology provides a brief history of water law in Washington state [on its website¹](#), 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. This statute includes the exemption for “Permit-Exempt” uses of groundwater. Exempt uses include: 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 October 2000 the Washington State Supreme court made a decision (*Postema v. Pollution Control Hearings Board*) which included there are no de minimis 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.

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 Gwynn²](#) court case (*State of Washington Department of Ecology v. Campbell & Gwynn et al.*) challenged the developers actions. The final Campbell and Gwynn conclusion was that developers 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) stating there was a large number of exempt wells going in and there was not sufficient evidence of water rights. By rule, DOE had to make a determination to whether sufficient information existed to manage the stream and aquifer system or not. DOE determined 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 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 lengthy (over one year) process to acquire and approve mitigation on a given individual parcel.
3. A loss of irrigated 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 water was legally and physically available to serve a proposed development for which the County had permit authority. Kittitas County did not prevail in front of the Growth Management Hearings Board and appealed that decision to the Washington State Supreme Court - [Kittitas County vs. Eastern Washington Growth Management Hearings Board](#)³. Kittitas County lost the appeal.

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 Comprehensive 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. The end result was parts of Kittitas County did not process permits for 6 years, areas near Ellensburg for 4.5 years, and today there are still areas of Kittitas County where building permits are not available. Kittitas County lost control of its ability to issue building permits until it could come into compliance with GMA on these groundwater issues, and had to change parts of several development regulations (Stormwater, subdivision, health permits) and eventually, large parts of Kittitas County's General Fund and Bonding Limits had to be used to buy senior water rights to allow issuance of new building permits, and even larger amounts of water to mitigate for past, legal exempt well uses in the County.

Seeing the outcome of these cases, Yakima County began to work toward alternatives and not end up in a similar situation that Kittitas County was in. The Board of County Commissioners passed [Resolution 399-2013](#)⁴ (Formation of the YCWRS) two years after the Supreme Court decision, but before Kittitas County came into compliance with Growth Management Act by signing the settlement agreement, implementing the required ordinance changes, and beginning their water mitigation program. 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 Water Resources Program and the Central Washington Region Director 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](#)⁵ (*Whatcom County v. Hirst*).

Ecology has provided an overview of the [Hirst decision](#)⁶ 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 Counties make their own decisions 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 Comprehensive Plan update, which contained the policy elements for the YCWRS, as required by the Supreme Court in the *Hirst decision*. After the 30-day review period and 30-day appeal period for the Comprehensive 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” impacts of a single water diversion or a class of water rights. 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 affects the amount of water available for irrigation, and therefore, more senior surface water rights, such as those held by Reclamation, all the Irrigation Districts in the Yakima Basin, and the Yakama Nation.
- 3) The *Kittitas County* and *Hirst* cases confirmed that when the County issues a development permit, the County must 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.

Washington Counties, including Yakima County, are 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 Counties in the state as a result of the Kittitas and Hirst decisions, and particularly to Kittitas County which lost oversight 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, 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.

Brief History of YCWRS Creation

Topics covered in this section: *How does YCWRS comply with court rulings? Was YCWRS set up without public/private input? Why doesn't the Hirst Fix apply to Yakima County? Is the County ignoring the Hirst Fix? Isn't YCWRS just a "legal solution" to a non-problem?*

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 Comprehensive Plan if it did not contain provisions for meeting the requirements of the *Hirst Decision*.

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 residential construction, the development of unstable and expensive water markets and water transfer processes, and the unplanned and unmitigated 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.

Technical Basis of the YCWRS

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 used 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.

Vaccaro Groundwater Consulting's 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 concludes that: 1) groundwater mitigation strategies and estimated sources of water for rural development that avoid impacts to tributaries would include purchase of main stem rights; 2) purchase of tributary rights where they are available and identified; and 3) 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.

The YCWRS Connection to “Hirst Fix”

Yakima County began designing the Yakima County Water Resource System in 2014. Two years before the Hirst decision was decided Yakima County started working on a plan. Before the Hirst decision, but after the upper Yakima River Basin in Kittitas County had been closed to exempt well groundwater withdrawal due to the *Aqua Permanente* petition to Ecology. This was also during the time of the related development moratorium in Kittitas County. In order to resolve the issues raised in the Supreme Court, Kittitas County was forced (along with numerous partners) to develop a program for exempt well mitigation for new uses, and to retroactively back mitigate for all prior exempt well residential development in the County. The need for rapid implementation of this program under the duress of the Supreme Court Decision and pent up development pressure resulted in the development of a water market in Kittitas County with un-forecasted increases in building costs, timelines and certainty of the permit process; areas of the County where building was not and is still not permitted due to the lack of available water rights; and large private and public expenditures on water rights and legal processes to transfer those rights to residential uses.

Takeaways from Kittitas County. The short term (3 - 6 year) building moratorium, the ongoing/current moratorium on building in parts of Kittitas County where water is not available, the loss of regulatory oversight of the permitting functions of the County, and the fiscal impact on local government and private party expenses that resulted from the Kittitas experience was something that Yakima County hoped to avoid. The Yakima County Board of Commissioners recognized that the Yakima Basin was known to be over-appropriated and eventually Yakima County would have to address these water rights issues as it would only take a petition similar to the *Aqua Permanente* petition to close portions of the basin in Yakima County to exempt well withdrawal, or an appeal of the Yakima County Comprehensive Plan or implementing ordinances to prevent issuance of building permits as in Kittitas County. The Yakima County Water Resource System was developed to address those concerns.

Yakima County’s Comprehensive Plan and the Hirst decision. The Supreme Court’s *Hirst* decision only really set a date for the Yakima County Water Resource System to be implemented, as Yakima County’s Comprehensive Plan was scheduled to be completed in June of 2017, and the Hirst decision mandated that the County address those same water quantity issues that appeared in *Kittitas County v. Eastern Washington Growth Management Hearings Board*. The County included the YCWRS program in the Comprehensive Plan, waited for the review period to elapse, and proposed the ordinance that implemented the YCWRS in October of 2017. The Board of County Commissioners approved the amendments to Yakima County Code 12.08 in November, and it became effective in January of 2018, before the legislature passed the “Hirst Fix” bill. At this time RCW 19.27.097(5) did not exist.

The Hirst decision did effect the definition of “exemption” as that decision reiterated past Supreme Court decisions and the Water Code with language such as “There is no question that a permit-exempt well may not infringe on an earlier-established right to water under the doctrine of prior appropriation.” Given that RCW 90.44.050 states that a water right from an exempt well is established “to the extent that it is regularly used beneficially”, and other language in the Hirst decision such as “When read as a whole, the GMA places the burden on counties to protect groundwater resources, and requires counties to assure that water is both factually and legally available before issuing building permits” and “Were we to read the GMA to require counties to assure merely that ‘water is physically underground,’ it would allow the County to condone the evasion of existing water rights, contrary to law.”, it was clear at the time that Yakima County drafted the language in the code that drilling an exempt well did not establish a water right or mean that water was “legally available” under the water code. To be

consistent with state water law, a new withdrawal of water from an exempt well not associated with any established right, and the recognition that water in the basin is already over appropriated, would require the County to determine that water was not legally available for the new use, even if it was physically available through an existing well. This is also consistent with the language for the other program in the Yakima Basin which provides mitigation for new uses, Kittitas County Code at 13.37.025 which also does not provide an exemption for pre-existing wells, and requires mitigation for all new uses of water in Kittitas County.

The YCWRS is designed to be consistent with state water law and, specifically, the way water in the Yakima Basin is managed – water rights based on seniority, consumptive use, return flow, the interactions between surface and groundwater as depicted in the USGS model, the common understanding of water flow and rights as defined in the Yakima Basin Adjudication, up to and including the common efforts at problem solving reflected in the Yakima Basin Integrated Plan. Any action regarding water rights in the Yakima Basin that is inconsistent with this overall management plan is likely to fail. The “Hirst Fix” bill did make changes to the state water code relative to instream flows – water rights held by the state by instream flow rule – but since there are no instream flow rules in the Yakima Basin, it did not alter water management in the basin or the relationship of the YCWRS to that overall management scheme. The citation RCW 19.27.097(5) does not lie within state water law, but rather in the State Building Code, leaving the relationship between YCWRS, private, federal and tribal water rights in the Yakima Basin unaffected. To adopt the language in RCW 19.27.097(5) would put the YCWRS outside of the Yakima Basin water rights framework.

The Hirst decision was fundamentally about County Comprehensive Plans and implementing regulations. It specifically discussed subdivisions and building permits. But Comprehensive Plans and implementing regulations involve a broad set of permits – conditional uses, rezones, critical areas permits, SEPA decisions, etc. – all of which may require a determination that water is legally and physically available. The “Hirst Fix” bill addressed subdivisions and building permits separately. The language to “fix” subdivisions is specific to what Ecology calls the “Hirst affected Counties” and instream flow rules, and has no bearing on subdivisions or any other land use permits in the Yakima Basin, therefore Yakima County must still comply with the language in the *Hirst decision* cited above for the Comprehensive Plan and implementing regulations. Since building, planning and health permits eventually intertwine on all projects, in implementation of the YCWRS and the duties imposed by the Hirst decision for determination of the legal and physical availability of water, it would be desirable and most defensible for Building and Planning to have a single definition of exemptions/requirements across all the permits which ultimately are derived from the Comprehensive Plan. Multiple definitions across those functions would only increase uncertainty and liability associated with Yakima County’s permit issuance processes.

Practically, the actual language of RCW 19.27.097(5) is problematic as well. It states, “Any permit-exempt groundwater withdrawal authorized under RCW [90.44.050](#) associated with a water well constructed in accordance with the provisions of chapter [18.104](#) RCW before January 19, 2018, is deemed to be evidence of adequate water supply under this section.” Under Plumbing and Health codes there are tables which determine the minimum flow/water supply for a given use and occupancy of a building. If read plainly, the language above, which again is in in the State Building Code, is in conflict with those requirements. Under Yakima County Code 12.08 along with determining whether the proposed water supply for a development is potable, the Yakima Health District also determines whether the flow rate from the water source is sufficient to support the proposed use. Adoption of the

above language would require modification of that language and probably the support of the Yakima Health District, which is not strictly responsible to the Board of County Commissioners.

Finally, the YCWRS accommodates the Yakama Nation's Water Code into the permit process for those county-issued building and land use permits which occur within the boundary of the Reservation. Adoption of RCW 19.27.097(5) would, of course, have no effect on the Reservation and again would have to be crafted to avoid inconsistency between the various permits issued by different County Departments.

Differences between Counties in the Yakima Basin and other Counties in the state relative to the Hirst decision. The issues in the Yakima Basin are related to the water rights in the Yakima Basin being over-appropriated (more water rights than water), by and large these water rights are owned by private parties or the federal government, and no instream flows (water rights held by the state) are set in the basin. So basically it is about private property rights on both sides – existing agricultural use versus new residential use. We have come up with a program that works within the legal water rights structure of the basin, grants the property owner senior rights, and still allows development and is defensible on Growth Management and Water Resource Code grounds. Outside the Yakima Basin, in areas which are affected by the Hirst decision, the issues are instream flows (water rights held by the state) versus private development, which is made more difficult to deal with as there usually are no water rights to buy to mitigate for the effect of new development, so new development stopped in some of those Hirst Counties until the legislature passed Senate Bill 6091, also known as the Hirst fix. Until the Hirst fix was passed, those counties had no idea if they could even legally or physically develop a program that would mitigate for new uses, and the bill requires payment of a fee for mitigation by the well owner (but still no senior rights), contributes a bunch of state funding, and hopes that a solution will eventually be developed over the next 10 years, with a high likelihood of ongoing legal interruptions as these proposed solutions are proposed, developed and implemented. In these other areas of the state, the potential solutions are somewhat mitigated by the state held instream flow water rights, which the state does have the authority to modify as a matter of policy. In the Yakima Basin, the state cannot alter these private, adjudicated water rights without a complete rework of the state water rights laws. While there are some funds that do come from the Hirst Fix bill to a pilot project in Kittitas County, no residents in the Yakima Basin are required to pay the state \$500 fee for exempt well mitigation, nor is the Yakima Basin an emphasis area for streamflow restoration funding – specific to the effects of exempt wells – as the “Hirst affected Counties” are in other parts of the state.

Yakima County is far ahead of the rest of the state in addressing this problem. The form of the Hirst fix bill, and the applicable changes to state law and funding programs, have very little affect in the Yakima Basin. Without Yakima County's creation of the YCWRS, the County would default into the Hirst Fix bill. This bill would likely be a step backward for the County, especially since none of the advisory Committees set up by the bill contain representation by Counties - who are the most affected by these issues – much less Counties in the Yakima Basin and their specific issues such as the adjudication and the presence of the Yakama Reservation and the independent water management code on the Reservation.

The Hirst Fix generally exempted the Yakima Basin from the provisions of the bill, and allows Ecology to come to agreement with Counties to protect senior water rights. For instance, there has been no mention of undoing the groundwater mitigation program in Kittitas County which is subject to the Supreme Court Decision and an MOU between the County, Ecology and other parties which created that program. Similarly, Benton County was also required to conform to the Hirst Decision in 2017, but did not develop a program for compliance with Hirst as a component of their Comprehensive Plan. Benton

County was sued by Futurewise, and both the County and Ecology recognize that the Hirst Fix did not remove that requirement for Benton County given the recognition of conditions in the Yakima Basin in the bill itself. Benton County did develop a groundwater mitigation program of their own for implementation in 2019. Yakima County's program was developed over a couple years of close coordination with Ecology, and has approval from Ecology as required under the Hirst Fix.

Public Input Timeline of the YCWRS Creation

There is a long-standing history of having open and frank discussion related to the YCWRS. In the context of the decade-long discussion that occurred around protecting our rural development rights, and the conversations about Futurewise, rural water has been an important discussion topic for a very long time.

As Vern Redifer stated during the Public Hearing related to code updates for YCWRS, "Yes, anytime we adopt the Comp Plan it first goes the Planning Commission. They have study sessions open to the public, hold public hearings, make recommendation to the County commissioners, who then hold their study sessions and public hearings where they accept public testimony much like we are doing today, prior to adoption. As you consider all of that, you adopted Horizon 2040. During that time period, we didn't really do this in a vacuum, there was much discussion from staff to the Commissioners. We have been meeting basically every two weeks for the last three years or so, I know we have had from 75-100 study sessions with the Commissioners. All your study sessions are posted on the public calendar, they are open to the public. We've had multiple meetings with the Department of Ecology, senior water rights holders. We have gone to the public transfer working group to explain what we are trying to do. I have personally been involved in many public discussions or presentations, with agencies such as the Central Washington Homebuilders Association, Farm Bureau, Realtors, Well Drillers and Irrigation Districts to name a few. There have been multiple newspaper articles including an editorial by the editorial board, multiple coverages on the TV. Personally I have had many one-on-one conversations with customers, probably 50 or so the last two weeks."

This section is not to be an exhaustive list of the public solicitation that occurred during the YCWRS. However, a brief summary of a portion of the public process during the YCWRS formation is as follows:

2009 - Kittitas County Comprehensive Plan found not in compliance with GMA. Ecology closes the upper basin to new wells after local group petitions.

2011 - Supreme Court of WA decides Kittitas County vs EW Growth Hearings Board, which recognizes over appropriation and connection of ground and surface water in Yakima Basin and requires Counties to make findings of water availability.

12/10/2013 - [Agenda Minutes](#) – Regular Agenda - Reso 399-2013 Formation of the YCWRS. Whereas statements include reasoning behind formation.

2014 - Kittitas County reaches [settlement agreement with Futurewise](#), Ecology, and others. No vesting provisions for existing exempt wells.

2016 - Hirst decision from WA Supreme Court. "This court decision changes that – counties now have to make their own decisions about whether there is enough water, physically and legally, to approve a building permit that would rely on a well. Means County must include provisions for these determinations in June 30, 2017 Yakima County Comprehensive Plan, and develop ordinance to implement soon after.

May, June, and July 2017 – County staff writes a 3-part article for CWHBA newsletter and receive positive feedback.

Spring & Summer 2017 - Yakima County Planning Commission has hearings and study sessions on Comp Plan updates. Two major issues are LAMIRDs and Water Determinations, Futurewise confirms they will sue if Comprehensive Plan does not meet Kittitas County and the Hirst decision standards.

6/6/2017 – [Agenda Minutes](#) – Public Hearing – Ordinance 4-207: 2017 Comprehensive Plan Update

In June 2017, the County Commissioners adopted Horizon 2040, the Comprehensive Plan.

Embedded in that plan, in order to meet the Growth Management Act, is the framework for the YCWRS. It doesn't include specific details, but lays out the framework. The plan was adopted, accepted by the Department of Commerce, was not appealed.

11/10/2017 – Presentation from Public Services Director to CWHBA and “a dozen builder, lenders, and real estate agents” (See Yakima Herald October 10, 2017 Article “Yakima County officials unveil rural water plan and related fees”) on the proposed YCWRS changes.

Article states: Joe Walsh, government affairs director for the Central Washington Home Builders Association, likes the plan.

“It sounds like it’s something that people can work with,” he said after the presentation.

“Property owners that want a rural lifestyle out in the country can still afford that. It’s not a tremendous burden cost-wise.”

The presentation and article outlines the proposed changes including: \$1,150 in connection permits and meter installation fees, \$35 quarterly service fee, and annual consumption fees.

11/28/2017 – [Agenda Minutes](#) - Consent Agenda – Reso 388-2017 Setting Public Hearing Date for YCWRS amendment to YCC 12.08. The proposed ordinance changes were offered for viewing with the notice.

12/12/2017 – [Public Hearing Minutes](#) – Public Hearing – Ordinance 13-2017 YCC 12.08 – County YCWRS

12/19/2017 – [Agenda Minutes](#) – Regular Agenda – Approve Updating YCC 12.08 with YCWRS Changes.

YCWRS Management

Topics covered in this section: *Is the YCWRS meant to be a revenue generating source for the County? Why should I have to pay to have water under my land metered? Are there plans to start putting a meter on existing exempt wells? How does the YCWRS compare with surrounding Counties, such as Kittitas and Benton? What does a meter cost? How many acre feet of water do we have?*

YCWRS Meters

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 property owners must show they have legally and physically available water, such as through an established water right. If they 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. The 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.

The 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.

The YCWRS Revenue

The revenue generated by the YCWRS is only meant to cover the running of the water system and the purchase of future water rights. Currently the 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.

A 1" meter and transmitter is \$308.76. A ¾" meter is \$289.69. These costs are base cost for the meters and do not include installation.

The average cost of meter and installation for customers from 2018 through early July 2021 was **\$368.37**.

The County fee structure is outlined in Yakima County Code Title 12.08 (sections 12.08.480 & 12.08.480). The yearly charge for customers includes:

1. A quarterly ready to serve charge of \$35 (this equates to \$140 per year).
2. A water consumption charge based on usage:

Water System	Rate Per 100 Cubic Feet (cf)
YCWRS Domestic Well	\$0.45/100 cf (first 17,000 cf)
	\$2.33/100 cf (from 17,000 cf to 50,000 cf)
	\$3.10/100 cf (from 50,000 cf to 100,000 cf)
	\$4.65/100 cf (from 100,000 cf to 200,000 cf)
	\$5.43/100 cf (over 200,000 cf)

The YCWRS Water Rights

The Washington Department of Health estimates that average residential use is 350 gallons per day (0.39 acre-foot per year). Also the consumptive use of the water right for residential connections is estimated to be 26% of total use. So the estimated consumptive use per residence is 91 gallons per day (0.10 acre-foot per year). Therefore one acre foot of water would support about **10 homes or wells**. The current trend of applicable permits requesting the YCWRS water is approximately 100 homes per year. The YCWRS currently has 141 Acre-Feet of water, which with current trends should last about 14 years (or until about 2032).

Staff Time Dedicated to the YCWRS

There is no single full-time employee dedicated to the YCWRS. Yakima County employs a team approach to manage its water and wastewater systems. Staff who work on the YCWRS do so on an as-needed,

part-time basis. This allows a cost savings to YCWRS as many of the jobs related to monitoring, billing, etc. is done while performing work for other systems and permits.

The Utilities Division has 27 water systems and 3 wastewater systems. The YCWRS is considered one of those systems. The Utilities Division oversees the following systems:

- Buena Water
- Gibson
- Buena Sewer
- Star Crest
- Terrace Heights
- Gala
- Wysacre
- MeadowBrook
- Wendt
- Kodiak
- Fairway Estates Water
- Mountain Shadow
- Huntzinger
- Heysman
- Crewport Water
- RaySymmond
- Stein Water
- North Bon Air
- Nagler Water
- Buchanan Water
- Beckonridge Water
- Speyers Water
- Bittner Water
- Norman Water
- Raptor Water
- Oliver Water
- Horizon Water
- Pleasant Water
- Ostler Water
- YCWRS

The Utilities division includes six staff, four of which are full time and in the field maintaining the water and wastewater systems. A small portion of field crew time includes installing meters and taking electronic meter readings for YCWRS.

Building and Planning Divisions includes multiple trained staff that intake the YCWRS permits and help to walk applicants through any permitting questions. Any day there are multiple trained staff prepared to take applications.

There is one accounting staff that helps with the billings each quarter. They work on all utility systems, including the YCWRS. The staff's quick estimate of their time is about 4 hours per quarter working on billings and financial reports.

Water Resources has one staff member that helps to answer any in-depth questions related to well depths, water rights, and other YCWRS questions. The staff's quick estimate of their time is less than 5% of their time.

The Public Services Director and Environmental Services Director also perform work or answer questions as needed.

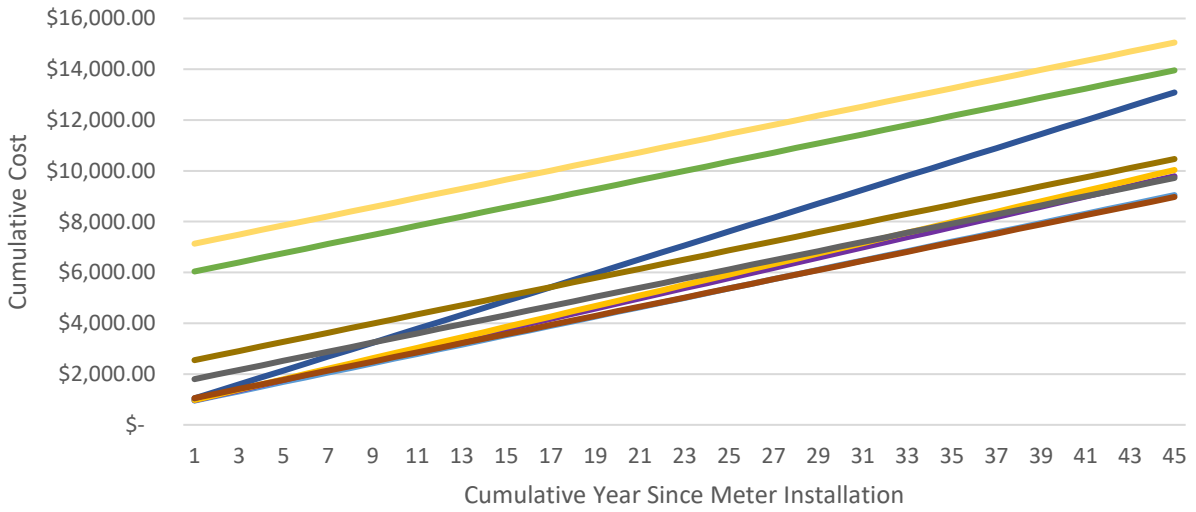
The YCWRS Compared to Surrounding Communities

The YCWRS is generally 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 County (\$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 and \$160 in Yakima County. This benefit is scheduled to end in 2021. Benton County's program rates are still not solidified, but it can be expected that the water right costs will be slightly more expensive than those in Yakima County. 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.

Each water system has its own charges and additional wrinkles to make a straight comparison difficult. For example, in Kittitas County any new residence drilling a well there is also a \$275 well review fee, and between \$275 (if connecting to Group A) and \$480 (everybody else) Adequate water supply determination Fee. Kittitas County also serves a much smaller area than Yakima County. If you go through a non-County water bank, then the charges are more expensive. A minimum \$12,000 and 6 months wait, all the way up to \$30,000 (plus additional \$5,000 habitat mitigation fee, depending on where you are), and at least a year of process time can be expected. New residential construction is still metered and meter reporting to Ecology is required, subject to enforcement by Ecology. Kittitas County still has relatively large areas (again larger than Yakima County) that are closed to development, with no known plan to open them.

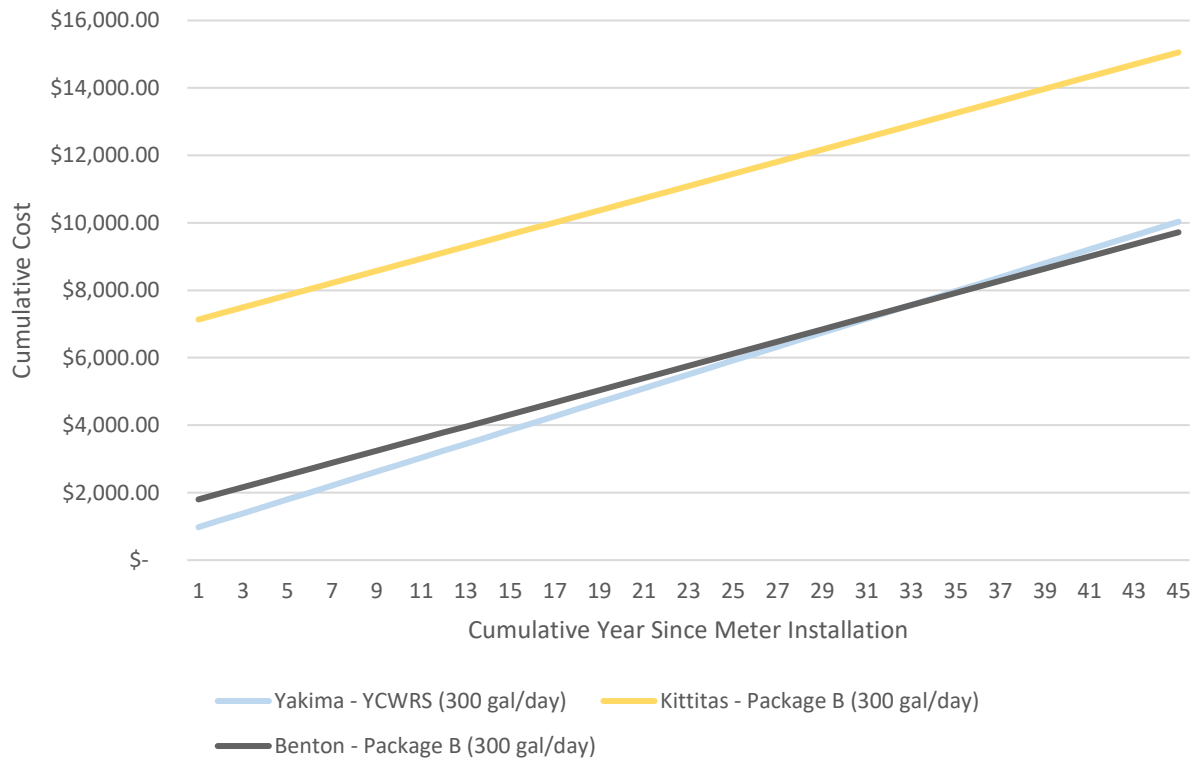
Although it is difficult to make a one to one comparison, the below graph attempts to make a straight forward comparison between the YCWRS and Kittitas County and Benton County in relation to Water Connection Fee, Ready to Serve Fee, and Water Consumption charges.

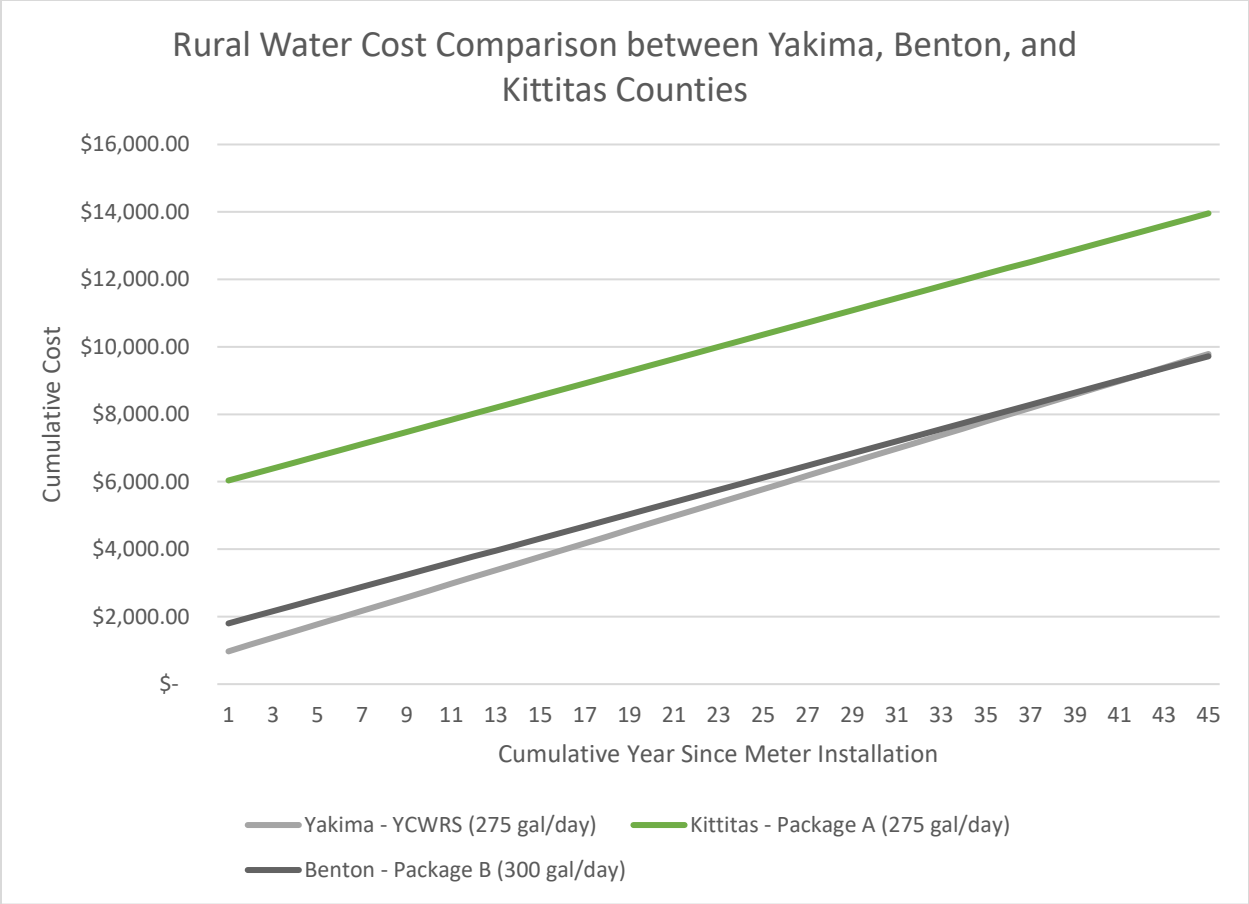
Rural Water Cost Comparison between Yakima, Benton, and Kittitas Counties



- Yakima - YCWRS (200 gal/day)
- Yakima - YCWRS (275 gal/day)
- Yakima - YCWRS (300 gal/day)
- Yakima - YCWRS (400 gal/day)
- Kittitas - Package A (275 gal/day)
- Kittitas - Package B (300 gal/day)
- Benton - Package A (200 gal/day)
- Benton - Package B (300 gal/day)
- Benton - Package C (400 gal/day)

Rural Water Cost Comparison between Yakima, Benton, and Kittitas Counties





The YCWRS Impacts

Topics covered in this section: *Has the adoption of YCWRS discouraged single-family home applications?*

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

The YCWRS Allows for Legal Availability of Water

The 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 the 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 a similar moratorium on building permits like that of Kittitas County.

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

The YCWRS System Growth

As with all county-run utilities this is an enterprise fund which does not receive any funding from other sources outside the YCWRS fees. The YCWRS currently has negative cash reserves (in debt), which has caused the County to purchase a loan for the system.

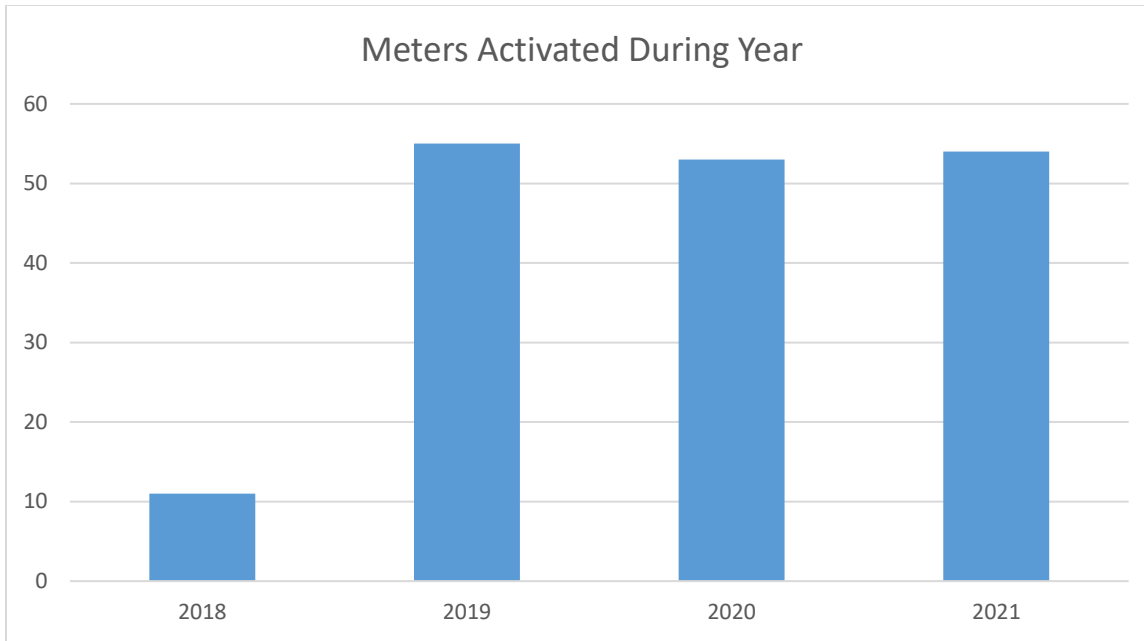
Current trends of single-family residence applications have not slowed.

As of early 2021 the YCWRS had **281 Wells** that have signed a metering agreement. **173** of the 281 wells were active and installed.

The latest quarterly number of accounts, consumption and billings are shown in the table below. The number of active accounts is a running total for the full system (NOT how many were added that quarter).

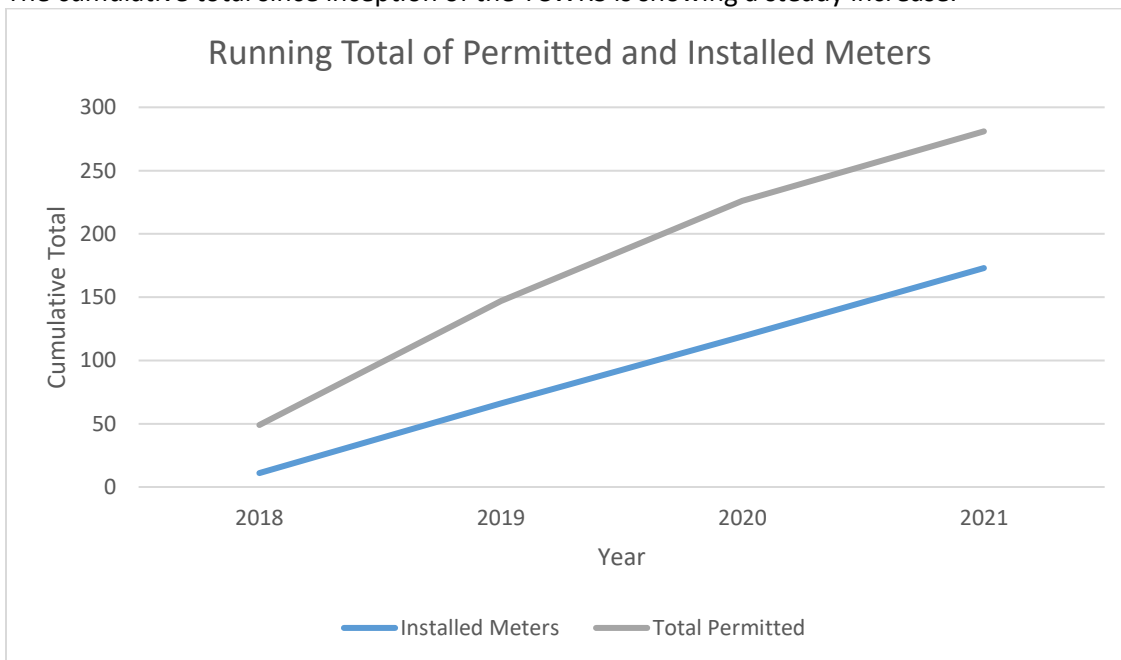
2021	Number of active accounts per quarter	total consumption ft³	total billing	average consumption ft³	Average Billing
1 Qt	151	237,203	\$6,335.75	1570.88	\$41.96
2 Qt	169	722,116	\$10,487.27	4272.88	\$62.05
3 Qt					
4 Qt					

Total meters activated during each year is currently averaging around 54 meter.



Note: Meters were installed beginning last half of 2018. 2021 numbers are only through the end of June

The cumulative total since inception of the YCWRS is showing a steady increase.



Note: 2021 numbers are only through the end of June

System Overview

Topics covered in this section: *Does the YCWRS apply to irrigation or stock water? How does the YCWRS benefit me? Is the YCWRS established for the watering of stock from a metered well?*

The YCWRS Water Purpose

The 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. The YCWRS does have the capability of supplying water for commercial or agricultural uses such a small convenience stores, farm offices or farm restrooms. The YCWRS does not supply water for any agricultural purpose – growing of plants or animals for profit - including irrigation or stock watering.

The 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 the 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 the 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.

Conclusion

The YCWRS is the current best solution

The YCWRS was established in direct response to water law. The connection between surface and groundwaters is firmly established in case law and statute. Planning units all over the state are working to solve exempt well issues because this has been established in case law and statute.

The YCWRS creation was also timely as Futurewise and Center for Environmental Law & Policy CELP successfully sued both Kittitas and Benton County, over their comprehensive plans, leveraging those suits into broader settlement agreements that further limited development and required large commitments from County budgets. Yakima County has been able to avoid those limitations.

There is no known plan in Washington State for anyone to subsidize new water uses without meters. For example, If the Yakima Basin Integrated Plan (YBIP) successfully established water rights for municipalities, there will be charges for the use of that water and there will be meters required to document that use.

Passing an ordinance to suspend or eliminate the YCWRS will result in a lawsuit which the County cannot defend against, turning over control of the Comprehensive Plan and other County functions to Futurewise or similar parties. This will also go against the main four goals that the County had while establishing the YCWRS. Those goals, as stated earlier, are:

1. Provide cost-effective means for new residential development to show legal and physical availability of water, as an alternative for all new development being required to purchase or provide evidence of an individual water right.
2. Stay compliant with the Growth Management Act.
3. Maintain compliance with State Law, including avoidance of litigation from Futurewise, Ecology, and other interested parties for non-compliance.
4. Maintain local County control over permitting decision, as opposed to being forced into a settlement decision similar to what happened in Kittitas County and Benton County over the rural water issue.

The YCWRS is the current best practice that has been developed to fulfill these goals. No other solution that fulfills these four goals has been put forward, so the YCWRS will be maintained and supported.

Further References and Sources

USGS Studies Related to Water Connectivity

USGS Studies include:

- [Numerical Simulation of Groundwater Flow for the Yakima River Basin Aquifer System, Washington](#)
- [Hydrogeologic Framework of the Yakima River Basin Aquifer System, Washington](#)
- [River-Aquifer Exchanges in the Yakima River Basin, Washington](#)
- [Estimates of Ground-Water Recharge to the Yakima River Basin Aquifer System, Washington, for Predevelopment and Current Land-Use and Land-Cover Conditions](#)
- [Hydrogeologic Framework and Groundwater/Surface-Water Interactions of the Upper Yakima River Basin, Kittitas County, Central Washington](#)

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 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](#)”.

Frequently Asked Questions

The County has continued to be responsive and update the Frequently Asked Questions related to YCWRS. Two main FAQs sheets can be found here:

<https://www.yakimacounty.us/faq.aspx?TID=60>

<https://www.yakimacounty.us/DocumentCenter/View/24642/YCWRS-New-FAQsV2FINAL>

Newspaper Articles

The YCWRS was a popular source of news throughout its creation. Below is a list of dates that included articles related to YCWRS between 2016 and 2017:

- January 20, 2016 – Yakima Herald article, “Yakima County to use state grant to buy senior water rights”
- October 19, 2016 – Yakima Herald article, “Yakima County eyes fees on new wells”
- October 23, 2016 – Yakima Herald article “Water Plan has commissioners excited”
- October 10, 2017 – Yakima Herald article “Yakima County officials unveil rural water plan and related fees”

Article included expected cost breakdown for a domestic well.

- October 28, 2017 – Yakima Herald article “Planned water utility for Yakima County met with some pushback in rural areas”.
- Article included cost breakdown for a domestic well of “\$1,150 one-time fee for permit, connection and meter installation. \$35 quarterly fee. \$177 annual fee based on the typical household consumption of 460 gallons per day.”
- December 11, 2017 – Yakima Herald article “Public hearing on tap Tuesday over Yakima County’s new rural water utility”
- December 12, 2017 – Yakima Herald article “Controversial Yakima County water rules delayed after public speaks out”

Quote from article:

“This has been a very lengthy and difficult process for us,” [Commissioner Mike Leita] said.

After the meeting Leita dismissed complaints that the commission is rushing to approve the proposal without giving the public enough time to review it. There’s been much news coverage of the proposal as well as previous public forums, he said.

“This should come as no surprise,” he said. “We’re not trying to keep this quiet.”

- December 16, 2017 – Yakima Herald article “Yakima County Commission to vote on well ordinance Tuesday”
- December 19, 2017 – Yakima Herald article “Yakima County to charge for new wells”
- December 20, 2017 – Yakima Herald editorial board article “Water utility may head off big problems down the road”

Quote from article:

This relative ease of water access over the years enabled the growth of single homes, small developments, irrigation of small lawns and gardens, industry and livestock. The Building Industry Association of Washington argues most wells draw far below the 5,000-gallon threshold, many as low as 10 to 50 gallons a day, and most of the critics may fall into that usage category. They may reasonably ask why change is necessary. The answer: New realities have intruded. Any serious look at the Yakima River Basin has determined that its water is overappropriated in our arid area. The U.S. Geological Survey has found that groundwater and surface streams are intertwined, and water wells are diverting the flow from those rivers and streams.

Other Sources

HIRST Decision: <https://fortress.wa.gov/ecy/wrdocs/WaterRights/wrwebpdf/91475-3opinion.pdf>

<https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights/Metering-water-use>

<https://www.yakimacounty.us/2095/YCWRS---Water-Availability---Well-Permit>

<https://www.usgs.gov/centers/wa-water/science-topics/groundwater-availability>
https://www.usgs.gov/centers/wa-water/science/upper-kittitas-county?qt-science_center_objects=3#qt-science_center_objects

<https://fortress.wa.gov/ecy/wrdocs/WaterRights/wrwebpdf/91475-3opinion.pdf>
<https://fortress.wa.gov/ecy/wrdocs/WaterRights/wrwebpdf/order772014845.pdf>

<https://pubs.er.usgs.gov/publication/fs20183058>
<https://pubs.usgs.gov/sir/2015/5037/pdf/sir2015-5037.pdf>
<https://pubs.er.usgs.gov/publication/sir20145119>

Futurewise, Benton County reach settlement agreement:
<https://www.tricitiesbusinessnews.com/2019/05/business-briefs-march-2019-3/>

Central Washington Home Builders Association Articles

2017 Quarter 2 Digest, Page 15, NEW – Yakima County Water Resource System
<https://www.yakimacounty.us/DocumentCenter/View/28569/Q2-2017---CWHBA-The-Home-Builder-Quarterly>

2017 Quarter 3 Digest, Page 16, Yakima River Basin – A timeline
<https://www.yakimacounty.us/DocumentCenter/View/28570/Q3-2017---CWHBA-The-Home-Builder-Quarterly>

2017 Quarter 4 Digest, Page 15, County Reveals Details of Water Resource System
https://www.yakimacounty.us/DocumentCenter/View/28568/Q4_2017-CWHB-Bulletin_New-YCWRS

- 1) <https://ecology.wa.gov/About-us/Get-to-know-us/Our-Programs/Water-Resources/Learn-the-history-of-water-law>
- 2) <https://apps.wa.gov/ecy/docs/WaterRights/wrwebpdf/CampbellGwinn.pdf>
- 3) <https://apps.wa.gov/ecy/docs/WaterRights/wrwebpdf/07272011-kittitas-gmhb.pdf>
- 4) <https://www.yakimacounty.us/DocumentCenter/View/28491/Formation-of-the-YCWRS><https://apps.wa.gov/ecy/docs/WaterRights/wrwebpdf/91475-3opinion.pdf>
- 5) <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-rights/Case-law/Hirst-decision>