Water Rights

Water rights are property rights held by individual citizens, irrigation entities, municipalities, public and private utilities and governments. Water rights are recognized by state law RCW 90.03.010 Surface Waters and RCW 90.44.035 Ground Waters. Surface waters within Kittitas County are being adjudicated in Yakima Superior Court in the action commonly known as Acquavella.

Kittitas County affirms existing water rights and uses and shall have no power of eminent domain or authority to impair by any county action, ordinance, or policy, including that of watershed planning agencies, (a) any lawful water right or use; (b) the capability of water suppliers or users to store, divert, convey, deliver, and apply the water to beneficial use in the exercise of those rights; (c) the continuation of existing land uses dependent on, or benefited by, those water rights and uses.

In defining water rights for purposes of these agricultural land uses, no water rights under State law, including the Acquavella litigation, are available for fish or wildlife habitat without voluntary agreement of the water and/or land owner affected. Water rights and waters covered by the stipulation entered in the Acquavella adjudication as to all parties in Kittitas County dealing with water rights as confirmed for Non-Diversionary Stock and Wildlife watering are incorporated by reference and set forth as follows for clarity:

GPO 2.26A Waters in natural watercourses in the sub-basin shall be retained when naturally available, in an amount not to exceed 0.25 cubic foot per second (cfs), for stock water uses in such watercourses as they flow across or are adjacent to lands, which are now used as pasture or range for livestock. Retention of such water shall be deemed senior (or first) in priority, regardless of other rights confirmed in this cause. Regulation of these watercourses by the plaintiff shall be consistent with such retention requirements.

GPO 2.26B Water in natural watercourses in the sub-basin shall be retained when naturally available, in an amount not to exceed 0.25 cubic foot per second (cfs), for wildlife watering uses in such watercourses as they flow across or are adjacent to lands, which are now used as pasture or range for wildlife. Retention of such water shall be deemed senior (or first) in priority.

GPO 2.26C Waters in naturally occurring ponds and springs (with no surface connection to a stream) in the sub-basin shall be retained for stock water uses, when such ponds and springs are located on or adjacent to lands which are now used as pasture or range for livestock. Said uses embody entitlement to a level in the water bodies sufficient to provide water for animals drinking directly from there while ranging on riparian lands, and with the same priority as provided in paragraph 1. Regulation of the ponds and springs by the plaintiff shall be consistent with such retention requirements.

GPO 2.26D Waters in naturally occurring ponds and springs (with no surface connection to a stream) in the sub-basin shall be retained for wildlife watering uses, when such ponds and springs are located on or adjacent to lands which are now used as pasture or range for wildlife. Said uses embody entitlement to a level in the water bodies sufficient to provide water for wildlife drinking directly from there while ranging on riparian lands, and with the same priority as provided in paragraph 1. Regulation of the ponds and springs by the plaintiff shall be consistent with such retention requirements.

GPO 2.26E Nothing in this stipulation mandates that any lands, associated with water rights or water retention as provided herein shall be reserved for wildlife purposes.
Draft Comprehensive Plan Language Regarding Water Rights-Chapter 2.2.2 of Comp Plan

Water rights are property rights held by individual citizens, irrigation entities, municipalities, public and private utilities and governments. Water rights are recognized by state law. Surface water rights within Kittitas County are being adjudicated in an action commonly known as Acquavella. While Kittitas County recognizes existing water rights and that it has no power or authority to impair by any county action, ordinance, or policy, any lawful water right, Kittitas County does, under its authority from the Growth Management Act, have a duty and the authority to protect ground and surface water. Kittitas County may place limitations on the establishment of new uses of water based on the county’s authority to protect ground and surface water. Restrictions on the establishment of new uses of water do not interfere with existing rights because a water right does not become a vested property right until after the water is put to beneficial use. Such restrictive provisions set forth in Kittitas County Code are therefore not restrictions on water rights.

The Growth Management Act requires Counties to protect the quantity and quality of ground and surface water. The Washington Supreme Court has recently held that this protection of ground and surface water by municipalities planning under the Growth management Act will take the form of, among other things, determining whether an applicant has violated the exempt well statute or determining, at preliminary plat-stage and/or at building permit submittal, whether an applicant has legal access to the proposed provision of water. Kittitas County recently eliminated its administrative segregation provisions partially because that process failed to protect ground and surface water.

The protection of rural character and water quality and quantity are mutually inclusive by nature. Kittitas County, by respecting its GMA compliant zoning and density requirements which generally mandate larger lot sizes and lower densities in the rural areas, will reduce the number of new water withdrawals, and by extension the volume of water withdrawn. The elimination of zoning classifications and land use designations of an urban nature in the rural areas significantly reduces exposure to concentrations of potential contaminants as well as the amount of impervious surfaces constructed. The regulation upon exempt wells drilled, and the monitoring of the volume of water withdrawn from them, will discourage inappropriate types and levels of development in the rural area, further protecting and defining elements of the rural character such as resource based recreation, and the agrarian and range lands way of life.