



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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March 23, 2009

Perry Huston  
Okanogan County Planning  
123 Fifth Ave N Ste 130  
Okanogan WA 98840

Re: Eagle Canyon Estates

Dear Mr. Huston:

I am writing this letter to clarify the Department of Ecology's position on the above referenced development proposal and to respond to comments attributed to Okanogan County Planning staff in the Okanogan Valley Gazette-Tribune. In a December 29, 2008, letter from the Department of Ecology (Ecology) to Okanogan County Planning commenting on the mitigated determination of nonsignificance for the Eagle Canyon Development, it was stated, in part:

This project requires water rights.

The Attorney General's Opinion, (AGO 1997 No. 6) regarding the status of exempt ground water withdrawals, states that a group of wells drilled by the same person or group of persons, at or about the same time, in the same area, for the same purpose or project should be considered a single withdrawal and would not be exempt from the permitting requirement contained in RCW 90.44.050, if the total amount withdrawn for domestic use exceeds 5,000 gallons per day or if a total of more than .5 acre of lawn and garden are irrigated.

The Attorney General's opinion suggests that caution should be used in finding developments to be exempt from needing a water right permit if the possibility exists that the development of the project will result in the ultimate withdrawal of water in excess of 5,000 gallons per day or the irrigation of more than .5 acre of lawn and garden.

**Ecology has not retracted those comments.**

In a February 26, 2009, article in the Okanogan Valley Gazette-Tribune one of your staff, Ben Rough, is quoted as making the following statement at a SEPA appeal hearing:

WSDOE very commonly addresses the need for a water right during the comment period. This is often followed up with a meeting with WSDOE and the proponent at which time the determination of needing a water right is overturned. The proponent for this project did have discussions with WSDOE and it was decided that eight exempt withdrawals is acceptable.



While I did have two telephone conversations with the project proponent's representative, at no time was the project's need for a water right "overturned". On the contrary, I stated that Ecology would not retract its SEPA comments as these comments were consistent with the law. I did state that, given the lack of staff resources, it was not likely that Ecology would appeal the County's SEPA threshold determination or land use decision. Ecology's exercise of discretion in its enforcement authority should not be construed to mean that "eight exempt withdrawals is acceptable".

As an administrator of a government agency with enforcement authority, I am confident you understand the need to weigh many factors before you decide to pursue enforcement. To date, correspondence between Okanogan County Planning and Department of Ecology regarding the Eagle Canyon development has been through SEPA comments. I urge Okanogan County Planning staff to first contact the Department of Ecology before presuming Ecology has taken a position contrary to our comments stated in our SEPA letter mentioned above.

The current budget climate has placed Ecology in the position where I must prioritize my existing resources. In the context of our SEPA review for developments proposing to rely on the domestic exemption, I plan to continue to comment on development proposals and advise counties and developers on whether the use of the exemption is appropriate. In cases where Ecology believes that an exemption is inappropriate and an immediate threat to public health and safety, impairment of senior water right holders, or environmental harm will result, then I will direct my staff to engage to prevent such an action. An example of where Ecology is implementing this approach is in the Kittitas basin. However, in the absence of the threat of immediate harm, I must rely on counties to appropriately condition developments based on water availability under current law. If a county chooses to approve a project in a manner other than recommended by Ecology through our SEPA comments, then both the county and the developer are at risk in proceeding with the development.

As indicated in Director Manning's February 17, 2009 letter to the Legislature on a similar controversy around exempt stock watering uses, we plan to continue to work with stakeholders and the Legislature on a global solution to confusion surrounding the exemption. I believe this approach, along with targeted intervention by Ecology on projects that create significant impairment risk, is appropriate in the current budget climate.

Please understand if the county approves 8 exempt wells for the project that risk still exists for the project. While Ecology doesn't currently have enough resources dedicated to enforcement of exempt well use, we cannot speak to future situations.

I recognize it can be difficult when dealing with the groundwater exemption. I appreciate your patience and cooperation. If you have any questions please call me at (509) 454-4258.

Sincerely,



Mark C. Schuppe, Acting Section Manager  
Water Resources Program

MCS:gg/090324

cc: Scott DeTro  
Robert Harris  
Patrick Williams, Center for Environmental Law and Policy