

# Methow Valley Citizens Council



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March 16, 2020

Ms. Sage Park, Director  
State of Washington Department of Ecology  
Central Regional Office Union Gap  
1250 West Alder Street  
Union Gap, Washington 98903-0009  
Email: [sage.park@ecy.wa.gov](mailto:sage.park@ecy.wa.gov)

**Subject:** Formal Complaint regarding a short subdivision proposing to use a new permit-exempt well using the 2cfs Reserve in the Methow Valley, WRIA 48

Dear Director Park:

Please consider this a formal complaint regarding the Ludwig Short Plat, Okanogan County Short Subdivision Application 2020-2.

Subdivision is proposed for parcel 5120160002, located at 238 Twisp Carlton Road, approximately 2 miles north of the Town of Carlton, Washington. The legal description of this property is Lot 16, Furey, East, Pfau and Mussons Plat No. 3, as per Plat Thereof, Recorded in Book "C" of Plats, Page 48, Records of the Auditor of Okanogan County, Washington. The county contact is: Char Schumacher Okanogan County Office of Planning And Development, 123 5th Avenue N, Suite 130, Okanogan, WA 98840 or Email [cshumacher@co.okanogan.wa.us](mailto:cshumacher@co.okanogan.wa.us).

This application proposes to subdivide the existing lot into two lots. One lot has an existing single family residence served by an existing well and the second lot is proposed to be served with a second permit-exempt well. The proposed lots are in the area identified as the "Lower Methow" by WAC 173-548-020(1).

WAC 173-548-030(2)(a) reserves 2.0 cubic feet for per second for "Single Domestic and Stock Use" in the "Lower Methow." Wells using these reserves are exempt from the water right permitting requirements and have priority over the instream flows.<sup>1</sup> They do not have to be curtailed if the instream flows are not being met in the Methow River or the regulated tributaries. This is important because the instream flows are not met in a typical year. New wells that do not qualify for the reserve are subject to the minimum instream flows and are to be interrupted when instream flows are not met.<sup>2</sup> They may also be interrupted by senior water rights holders who are not receiving the water to which they are legally entitled.

<sup>1</sup> WAC 173-548-040(1).

<sup>2</sup> WAC 173-548-020(4).

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The Washington State Supreme Court concluded in the *Campbell & Gwinn* decision in 2002 that single domestic use is use “by a single home,” and not use by several homes, a multiunit residence, or a subdivision.<sup>3</sup> This interpretation is consistent with Ecology’s report on the Methow Instream Flow Rule, which defines “single domestic use” as “[w]ater used by a single household including up to one-half an acre lawn or garden irrigation.”<sup>4</sup>

Since the Ludwig Short Plat proposes to use permit-exempt wells for two lots, two homes, and two households, it is not a single domestic use under WAC 173-548-030. Consequently, we object to the Ludwig Short Plat’s proposal to use the permit-exempt wells and the reserve on the basis that granting this application would be in violation of the Department of Ecology’s regulations in chapter 173-548 WAC.

We have sent letters to Okanogan County for several years, expressing the same concerns for virtually every short plat proposed in WRIA 48 since November 2016. The county continued approving short plat applications until MVCC and Futurewise proposed legal action in October 2019. At that time the county sought advice from outside legal counsel.

On December 18, 2019, Okanogan County adopted Interim Ordinance 2019-11. The Ordinance places a two year moratorium on subdivisions, but adds an exception “to allow areas within WRIA 48 ... where the land has an existing single family residence with an existing water supply to subdivide allowing one additional lot to be created containing a new legal single domestic water supply.”

The proposed Ludwig short plat meets the exception provided by Ordinance 2019-11. County officials have been unable to tell us how many additional lots in WRIA 48 are eligible for the exception, which we also believe to be in violation of Department of Ecology’s regulations in chapter 173-548 WAC.

This is of particular concern in the “Lower Methow” reach, where a 2011 Aspect Consulting memorandum<sup>5</sup> to the Methow Watershed Council indicates that even with no further subdivision there is inadequate water in the reserve to supply 1,092 existing undeveloped lots in the Lower

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<sup>3</sup> *State Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 12, 43 P.3d 4, 10 (2002). While this decision was interpreting RCW 90.44.050, the term “single domestic use” is the same as in the Methow Instream Flow Rule. This decision was issued on March 28, 2002.

<sup>4</sup> Kris G. Kauffman, P.E. James R. Bucknell, *River Basin Program Series, No. 4 Water Resources Management Program Methow River Basin (Water Resources Inventory Area No. 48)* p. 23 (State of Washington, Department of Ecology Policy Development Section Water Resources Management Division Reprinted Nov. 1977) last accessed on March 11, 2020 at: <https://fortress.wa.gov/ecy/publications/SummaryPages/7611005.html>. See also p. 10 of the report for the same definition.

<sup>5</sup> William H. Sullivan, LHG; Joseph Morrice, LHG; Timothy Flynn, LHG, CGW for Aspect Consulting, LLC, *Memorandum to Methow Watershed Council, Project No.080180 RE: Evaluation of Reservation Quantities Established by Chapter 173-548 WAC under Current and Potential Future Buildout Scenarios* June 16, 2011. Last accessed on March 16, 2020 at: [https://f03958c0-77b9-415b-a9cf-d34b7e1e9b3e.filesusr.com/ugd/6a5e18\\_1659c4769ea64ceca631c1278ea92a5b.pdf](https://f03958c0-77b9-415b-a9cf-d34b7e1e9b3e.filesusr.com/ugd/6a5e18_1659c4769ea64ceca631c1278ea92a5b.pdf)

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Methow Reach and there would be at least 24,000 residences in that reach without water at full buildout under current zoning.

We respectfully request that the Department of Ecology enforce its rules and inform the applicant and the Okanogan County Office of Planning and Development that this use of the reserves is illegal and that the short subdivision must be denied unless the applicant proposes a non-interruptible water source that complies with the water codes (including RCW 90.44.050) and does not violate chapter 173-548 WAC.

Further, if Okanogan County approves the Ludwig Short Plat in violation of chapter 173-548 WAC, we urge Ecology to take the necessary steps to enforce its regulations, as authorized by WAC 173-548-080.

I am happy to discuss or provide additional information at your convenience. As you know, MVCC is committed to achieving long term solutions that benefit the natural environment, rural character and communities of the Methow Valley. We recognize that the lack of clarity around this issue is problematic for unsuspecting landowners, who are incorrectly led to believe that they have legal access to water. In addition to enforcing the rules, we encourage the Department of Ecology to seek long-term solutions that will address this problem while protecting water quality and availability.

Thank you for considering this complaint. Please inform me of Ecology's actions on this issue.

Very Truly Yours,



Lorah Super  
MVCC Program Director  
(509)997-0888 ext. 2

cc: Char Schumacher; David Gecas; Alan Reichman; Shona Voelckers