

Methow Valley Citizens Council



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March 31, 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

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 Vaughn Jolley Amended Short Plat, Okanogan County Short Subdivision Application 2019-9.

Subdivision is proposed for parcel 3322200076, located at 67 Alder Road, approximately ½ mile southwest of the Town of Twisp, 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 cschumacher@co.okanogan.wa.us. The comment period for this application closes April 23, 2020.

This subdivision application was amended from the original Vaughn Jolley SP 2019-9, submitted in December 2019. The previous application sought to subdivide the same parcel into 4 lots. A letter dated December 30, 2019, from Okanogan County to Mr. Jolley¹ advises Mr. Jolley that his application is affected by Okanogan County Commissioners' Ordinance 2019-11, which places a two-year moratorium on land divisions within Watershed Resource Inventory Area (WRIA) 48, the Methow watershed.

The amended application 2019-9 proposes to subdivide an existing parcel into two lots.

Proposed Lot 1 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.² 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.³ They may also be interrupted by senior water rights holders who are not receiving the water to which they are legally entitled.

¹ Angela Hubbard, Okanogan County Interim Planning Director, Letter to Vaughn Jolley, 30 Dec. 2019.TS.

² WAC 173-548-040(1).

³ 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.⁴ 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.”⁵

Since the Vaughn Jolley (Jolley) 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 Jolley Short Plat’s proposal to use 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.” We believe this exception, which allows the Jolley Short Plat to go ahead under county regulations, to be in violation of the Department of Ecology’s regulations in chapter 173-548 WAC.

Furthermore, this is the second application qualifying for this illegal exception that has been processed by Okanogan County in a short time period.⁶ County officials have been unable to tell us how many additional lots in WRIA 48 are eligible for the exception under current or anticipated zoning.

This is of particular concern in the “Lower Methow” reach of WRIA 48, because it is an area in which a 2011 Aspect Consulting memorandum⁷ 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 Methow Reach. Further, according to the memo there would be at least 24,000 residences in that reach without water at full buildout under current (2011) zoning. In 2011, zoning allowed for one-acre minimum lot sizes in a portion of the lower reach.

On June 10, 2019, Okanogan County Commissioners passed Interim Ordinance 2019-10, in which it was determined that “immediate adoption of interim amendments to the official zone map is necessary to avoid the creation of additional lots for which a determination that ‘adequate provisions for potable water’ cannot be made as required by RCW 58.17.110.”

⁴ *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.

⁵ 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.

⁶ Okanogan County Office of Planning and Development, Comment Sheet and Application Materials, Ludwig Short Plat 2020-2, February 13, 2020; Lorah Super, MVCC Program Director, Comment Letter to Char Schumacher, Okanogan County Office of Planning and Development, 19 March. 2020. TS.

⁷ 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

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Ordinance 2019-10 had the effect of temporarily changing the status of approximately 768 lots in the Lower Methow reach from 1-acre to 5-acre minimums. According to the language in the Ordinance, this change would still allow the creation of approximately 2,275 new lots. While Ordinance 2019-10 began to address the shortfalls identified in the 2011 Aspect memorandum, the exceptions provided in Ordinance 2019-11 appear to significantly undermine that effort. To date, the county has been unable to provide the public with reliable calculations to support the provision of adequate water for current or anticipated lots under ordinance 2019-10 or 2019-11. This is a separate question from the legal use of the single domestic priority of the reserves. As you are aware, however, the county is required to find both legally and physically available water to allow additional development⁸

We believe that the use of the reserves proposed by the Jolley Short Plat is not permissible by law, 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.

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 Jolley 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. 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 Okanogan County to seek long-term solutions that will address this problem while protecting water quality and availability.

Thank you for considering our comments.

Sincerely,



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

cc: David Gecas; Pete Palmer; Alan Reichman; Tim Trohimovich; Shona Voelckers

⁸ Whatcom County v. Hirst, 186 Wn.2d. 648 (2016)