

**From:** [Michelle Cooke](#)  
**To:** [Kossik, Christopher \(ECY\)](#)  
**Cc:** [Peter McEndorfer](#)  
**Subject:** FW: Proposed Amendments to Benton County's Rural Water Supply Program  
**Date:** Friday, September 2, 2022 3:08:27 PM  
**Attachments:** [image002.png](#)  
[image001.png](#)  
[image005.png](#)  
[BCC 15.18 8-23-2022.docx](#)  
[Rural Water Ord 2020-061.pdf](#)

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Hi Chris,

Please see the two documents attached and summary email below which you can provide to the WTWG for the changes to our program. Peter will sending you a copy of the PowerPoint presentation next week (it will not have any slides on the proposed changes).

Please let us know if you need any other information from us.

Regards,

**Michelle Cooke** • *Planning Manager*

**Benton County Community Development Department - Planning Division**

Benton County Courthouse, 620 Market Street, Prosser, WA 99350

Benton County Public Services Office, 102206 E Wiser Parkway, Kennewick, WA 99338

[Michelle.Cooke@co.benton.wa.us](mailto:Michelle.Cooke@co.benton.wa.us)

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**From:** Michelle Cooke

**Sent:** Tuesday, August 23, 2022 5:32 PM

**To:** Simmons, Heather (ECY) <[hsim461@ECY.WA.GOV](mailto:hsim461@ECY.WA.GOV)>; [STUR461@ECY.WA.GOV](mailto:STUR461@ECY.WA.GOV);  
[esanche@yakama.com](mailto:esanche@yakama.com); John Marvin <[jmarvin@yakama.com](mailto:jmarvin@yakama.com)>; [enviroreview@yakama.com](mailto:enviroreview@yakama.com)

**Subject:** Proposed Amendments to Benton County's Rural Water Supply Program

Dear all,

Benton County is proposing an ordinance amendment pertaining to our Rural Water Supply Program for domestic wells in the Lower Yakima Basin.

As an overview, Benton County has three water mitigation packages available, two of which (package B and C) are solely available for properties which do not receive irrigation water. At the time of permit, the property owner or developer has the opportunity to choose either package (B has a limit of 300 gallons a day and C has a limit of 400 gallons a day). Recently we have become aware that property owners may have initially chose the cheaper package for cost purposes, however after a few months of metering they have realized that the other package would have been a better fit for their use and would keep their

consumption within compliance.

The attached amendments are intended to formally authorize such landowners to purchase a supplemental certificate so that, when aggregated with their initial Package B certificate, they would be authorized to use the same amount of water as if they had initially selected the Package C certificate.

The second issue being addressed in the proposed amendment is a question which was recently raised regarding the feasibility of drilling to the deeper aquifers if it could be documented that the well would not be hydrologically connected to the Yakima River and therefore they would not need to participate in the metering program as per Section 1 – Applicability. We believe the correct reading of this section and the intent was that the program applies to all wells, regardless of depth, that are within the Mitigation Area reflected by Exhibit A, and the language about draining to the Yakima River is a factual statement and not a qualifier as to what wells the chapter applies. We were not intending to create a program where the hydrology of each individual well would be analyzed for connectivity based on the aquifer utilized. In order to eliminate any ambiguity whatsoever, we are simply removing the reference to drainage to the Yakima River.

If you could take a few minutes to review the proposed changes and let me know if they raise any concerns to your agency, it would be greatly appreciated before we proceed with bringing this matter before the Board of County Commissioners for their review/approval.

I would be happy to follow up or answer any questions you may have and can be reached directly at 509-783-1310, ext. 5689.

Regards,

**Michelle Cooke** • *Planning Manager*

**Benton County Community Development Department - Planning  
Division**

Benton County Courthouse, 620 Market Street, Prosser, WA 99350

Benton County Public Services Office, 102206 E Wiser Parkway, Kennewick, WA  
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**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE relating to the rural water supply program; amending the section relating to applicability; amending the section relating to creation and use of County Water Bank; amending the section relating to mitigation certificates from the County; amending the section relating to consumptive use of water; amending Ordinance 619, Section 3 and BCC 15.18.030; amending Ordinance 619, Section 5 and BCC 15.18.050; amending Ordinance 619, Section 8 and BCC 15.18.080; and amending Ordinance 619, Section 9 and BCC 15.18.090.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 619, Section 3 and BCC 15.18.030 are hereby amended to read as follows:

APPLICABILITY. This chapter shall only apply to development of parcels for residential uses which are located wholly or partially within that portion of unincorporated Benton County (~~((that drain to the Yakima River basin))~~) as set forth in the two Mitigation Area maps attached hereto as Exhibit A, which in general terms is that portion of water resource inventory area 37 delineated by the Benton County line to the west, the northern and southern boundaries of water resource inventory area 37, and on the east as set forth in the Mitigation Area maps.

SECTION 2. Ordinance 619, Section 5 and BCC 15.18.050 are hereby amended to read as follows:

CREATION AND USE OF COUNTY WATER BANK. Benton County has acquired certain water rights that will be placed into the State of Washington trust water rights program pursuant to chapters 90.38 and 90.42, RCW, and future acquired water rights may also be placed into the trust water rights program by Benton County. Mitigation certificates and supplemental mitigation certificates may be issued under BCC 15.18.080 only to the extent the aggregate amount of water considered to be consumptively used pursuant BCC 15.18.090 does not exceed the amount of water placed into the trust water rights program by Benton County for this purpose.

SECTION 3. Ordinance 619, Section 8 and BCC 15.18.080 are hereby amended to read as follows:

MITIGATION CERTIFICATES FROM THE COUNTY.

(a) An applicant for a building permit on a parcel within the boundaries of an irrigation district at the time of application approval and that must (~~((to))~~) acquire a mitigation certificate pursuant to BCC 15.18.060, may purchase one Package A Mitigation Certificate per dwelling unit from the County. A Package A Mitigation Certificate shall authorize an annual average of two hundred (200) gallons per day of private well water for indoor use only on the parcel, provided, so long as the daily annual average is not exceeded in any twelve (12) month period, the maximum withdrawal on any given day for parcels with a Package A Mitigation Certificate shall be six hundred seventy five (675) gallons. The price of a Package A Mitigation Certificate shall be set by resolution of the Board of County Commissioners.

(b) An applicant for a building permit that must acquire a mitigation certificate pursuant to BCC 15.18.060 with respect to a parcel that will not be within the boundaries of an irrigation district or that will be within the boundaries of an irrigation

district but provides written confirmation from the district that the parcel will not be subject to assessments by the irrigation district at the time of application approval, may purchase either one Package B Mitigation Certificate or one Package C Mitigation Certificate per dwelling unit from the County. The prices of Package B and Package C Mitigation Certificates shall be set by resolution of the Board of County Commissioners.

(i) Package B Mitigation Certificates shall authorize the use of an annual average of three hundred (300) gallons per day, in the aggregate, of private well water for indoor use and outdoor irrigation of an area up to 1500 square feet. So long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package B Mitigation Certificate shall be one thousand (1000) gallons.

(ii) Package C Mitigation Certificates shall authorize the use of an annual average of four hundred (400) gallons per day, in the aggregate, of private well water for indoor use and outdoor irrigation of an area up to 3000 square feet. So long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package C Mitigation Certificate shall be one thousand three hundred (1300) gallons.

(c) An applicant for a short subdivision or subdivision that needs to acquire one or more mitigation certificates pursuant to BCC 15.18.070 may purchase after preliminary approval of the short subdivision or subdivision one mitigation certificate per dwelling unit to be built on each buildable parcel proposed to be created.

(i) Package A Mitigation Certificates as described in BCC 15.18.080(a) above may be purchased for proposed parcels that will at the time of final plat approval be within the boundaries of an irrigation district.

(ii) Package B or Package C Mitigation Certificates as described in BCC 15.18.080(b)(i) and (ii) above may be purchased for proposed parcels that will at the time of final plat approval be outside the boundaries of an irrigation district or within the boundaries of an irrigation district if a written statement is provided by the irrigation district stating that the proposed parcels will not be subject to assessment by the district.

(d) Use of water pursuant to a mitigation certificate acquired from the County may be curtailed in extreme low water supply conditions notwithstanding the amounts of water otherwise set forth above. Any valid priority calls against the County's Trust Water Right based on local limitations of water availability and/or impairment of senior water rights shall result in temporary curtailment of the use of water under a mitigation certificate until the priority call for water ends.

(e) A mitigation certificate issued under ((~~this chapter~~)) subsections (a), (b), or (c) above satisfies the adequate water supply requirement for one dwelling unit. A building permit applicant for a parcel with multiple dwelling units and short subdivision and subdivision applicants proposing to have multiple dwelling units on proposed parcels must obtain mitigation certificates for each dwelling unit if they are relying on mitigation certificates to satisfy the requirement for an adequate water supply.

(f) Owners of a parcel for which only a Package B Mitigation Certificate has been issued and recorded may apply for a Supplemental Mitigation Certificate that shall authorize the use of an annual average of an additional one hundred (100) gallons per day, in the aggregate, of private well water for indoor use and outdoor irrigation of an additional fifteen hundred (1500) square feet. So long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package B Mitigation Certificate and a Supplemental Mitigation Certificate shall be one thousand three hundred (1300) gallons. The price of a Supplemental Mitigation Certificate shall be set by resolution of the Board of County Commissioners.

~~((f))~~ (g) Each mitigation certificate and Supplemental Mitigation Certificate must be recorded with the Benton County Auditor and indicate: (1) the parcel on which the water will be used; (2) the amount of use authorized; (3) the maximum number of square feet, if any, that may be irrigated thereunder; (4) the parcel on which the well is located; and (5) the maximum amount of water authorized for use daily and in any consecutive twelve (12) month period.

SECTION 4. Ordinance 619, Section 9 and BCC 15.18.090 are hereby amended to read as follows:

CONSUMPTIVE USE OF WATER. (a) For each Package A Mitigation Certificate issued under this chapter, the annual consumptive use of water under that mitigation certificate shall be deemed to be .045 acre-feet per year.

(b) For each Package B Mitigation Certificate issued under this chapter, the annual consumptive use of water under that mitigation certificate shall be deemed to be .146 acre-feet per year.

(c) For each Package C Mitigation Certificate issued under this chapter, the annual consumptive use of water under that mitigation certificate shall be deemed to be .314 acre-feet per year.

(d) For each Supplemental Mitigation Certificate issued under this chapter, the annual consumptive use of water under that supplemental mitigation certificate shall be deemed to be .168 acre-feet per year.

~~((d))~~ (e) For each building permit issued between February 14, 2018, and the last business day prior to the effective date of this chapter authorizing the construction of a new building on a parcel within the Mitigation Area that will contain one or more dwelling units for which the domestic water source is a private well with no water right, the consumptive use of water shall be deemed as follows:

(i) .045 acre-feet per year for each dwelling unit located on parcels within an irrigation district; and

(ii) .146 acre-feet per year for each dwelling unit located on parcels outside of an irrigation district.

SECTION 5. Severability. If any provision of this ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 6. Effective Date. This ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Chairman of the Board.

\_\_\_\_\_  
Chairman Pro-Tem.

\_\_\_\_\_  
Member.

Approved as to Form:

Constituting the Board of  
County Commissioners of  
Benton County, Washington

\_\_\_\_\_  
Deputy Prosecuting Attorney

Attest: \_\_\_\_\_  
Clerk of the Board

## **RESOLUTION      2020 061**

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON  
IN THE MATTER OF COUNTY PLANNING RELATING TO THE RURAL WATER SUPPLY PROGRAM;  
ADDING A NEW CHAPTER TO TITLE 15 OF THE BENTON COUNTY CODE TO COMPLY WITH THE  
FUTUREWISE SETTLEMENT AGREEMENT AND COUNTY RESOLUTION 2019-276**

WHEREAS, the Yakima Basin has been involved in a water rights adjudication process for more than 40 years. The Adjudication and other state and federal Court decisions have determined that water supply in the Yakima River Basin is over appropriated; and,

WHEREAS, Washington State Department of Ecology (Ecology) settled with the US Bureau of Reclamation (Reclamation) and the Yakama Nation in the late 1990's over proposed groundwater permits in the Blackrock area and Rattlesnake Ridge. In September 2011, the United State Geological Survey released the final report of a 12-year, multi-million-dollar study confirming that groundwater and surface water are directly connected, which means groundwater withdrawals can impair senior surface water rights; and,

WHEREAS, Ecology, in cooperation with Reclamation and the Yakama Nation has determined that groundwater management will need to protect senior water rights, flows for fish and economic development. Ecology has stated they will seek solutions that address uncertainty and exposure faced by existing post 1905 groundwater users (which includes most everyone). In seeking water management solutions, Ecology shall build upon the broad-based support for the Yakima Basin Integrated Water Management Plan; and,

WHEREAS, Ecology sent Benton County a letter in early 2017 giving the County notice that rural water supply is at risk of impairment to senior water right holders and encouraging the County to take steps to develop a rural water supply program similar to the ones developed by Kittitas County and Yakima County; and,

WHEREAS, on April 19, 2018, Futurewise challenged the compliance of the Benton County Comprehensive Plan (Ordinance 600/Resolution 2018-0137) and associated development regulations with the Growth Management Act. Futurewise filed a Petitioned for Review by Futurewise to the Eastern Washington Region Growth Management Hearings Board (Case Number 18-1-0004) ; and,

WHEREAS, on April 2, 2019, Futurewise and Benton County, after negotiation, developed a settlement to which Futurewise agreed to dismiss the above referenced Petition for Review if the Board of County Commissioners considers and ultimately adopts certain amendments to the Benton County Comprehensive Plan and additional development regulations. This agreement was adopted by Benton County in County Resolution 2019-276; and,

WHEREAS, for the protection of the quantity and quality of ground and surface water, an ordinance amendment regarding a Rural Water Supply Program is proposed that requires new housing units (associated plats and building permits), relying on permit exempt wells, located in a certain portion of WIRA 37 (Exhibit A), to fully mitigate the impacts such wells on the main stem of the Yakima River; and,

WHEREAS, Benton County has acquired certain water rights that will be placed into trust with the

State of Washington. If requirements are satisfied, an applicant may acquire a required mitigation certificate for each parcel from the Benton County Water Bank. Three (3) different mitigation packages are begin offered, depending on whether an applicant is located within the boundaries of an irrigation district. The applicant will be required to install metering equipment which will be required to be installed and approved before certificate of occupancy of the dwelling unit; and,

WHEREAS, the Board of County Commissioners did conduct an open record hearing on January 14, 2020, in the Commissioner's Meeting Room, Third Floor, Courthouse, Prosser WA 99350, to take testimony on the ordinance amendment adding a new Title to Chapter 15 of the Benton County Code regarding the Benton County Rural Water Supply Program. The legal notification was published on January 1, 2020; and,

WHEREAS, the Board did review the testimony and the proposed ordinance; and,

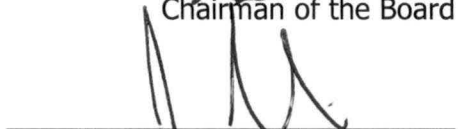
WHEREAS, the Board of County Commissioners are satisfied that it appears to be in the best interest of the public to adopt said ordinance amendment; and,

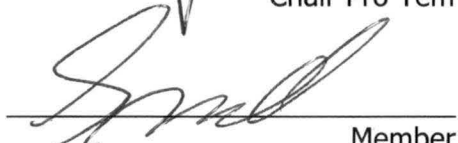
NOW THEREFORE BE IT RESOLVED that the Board of County Commissioners adopts the ordinance amendment (OA 2019-004) adding a new Title to Chapter 15 of the Benton County Code regarding the Rural Water Supply Program to comply with Benton County Resolution 2019-276, the Futurewise Settlement Agreement and the Department of Ecology; and,

BE IT FURTHER RESOLVED by the Board of Commissioners of Benton County, Washington that Ordinance No. 619 shall take effect and be in full force on February 1, 2020.


Dated this 14<sup>th</sup> day of January 2020.

  
Chairman of the Board

  
Chair Pro Tem

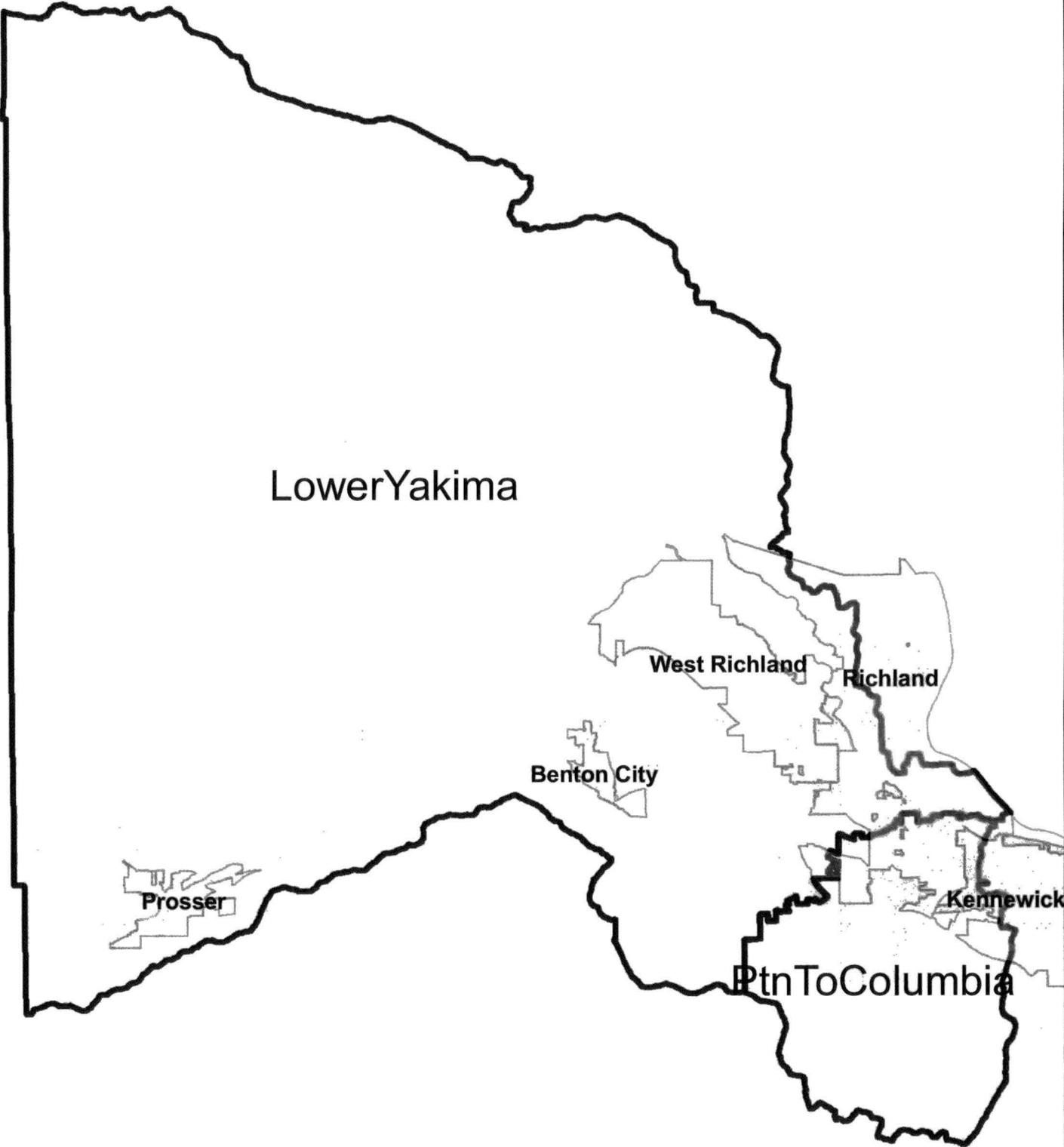
  
Member

Constituting the Board of County  
Commissioners of Benton County  
Washington.

Attest.....  
Clerk of the Board

GW/djh

**Exhbit A**



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A map of Benton County, Washington, showing the boundaries of Lower Yakima and Ptn To Columbia. The map features a grid of land parcels, with some areas shaded in grey to indicate urban or developed regions. The boundary of Lower Yakima is marked by a thick black line, and the boundary of Ptn To Columbia is marked by a thinner black line. The text 'LowerYakima' is positioned in the upper left, and 'PtnToColumbia' is positioned in the lower center.

LowerYakima

PtnToColumbia

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ORDINANCE NO. 619

AN ORDINANCE relating to the Rural Water Supply Program; adding a new chapter to Title 15 of the Benton County Code.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. TITLE. There is hereby added a new chapter to the Benton County Code, entitled "Rural Water Supply Program" and which shall include the sections that follow.

SECTION 2. PURPOSE. The purpose of this chapter is to: (1) protect the public health, safety and welfare of the citizens of Benton County; (2) comply with the requirements of the Growth Management Act set forth in chapter 36.70A RCW related to the protection of the quantity and quality of ground and surface water; and (3) protect the rural character of the County, while continuing to provide opportunities for citizens that desire rural residential lifestyle in areas not served by public water systems.

SECTION 3. APPLICABILITY. This chapter shall only apply to development of parcels for residential uses which are located wholly or partially within that portion of unincorporated Benton County that drain to the Yakima River basin as set forth in the two Mitigation Area maps attached hereto as Exhibit A, which in general terms is that portion of water resource inventory area 37 delineated by the Benton County line to the west, the northern and southern boundaries of water resource inventory area 37, and on the east as set forth in the Mitigation Area maps.

SECTION 4. DEFINITIONS. The following words and phrases used in this chapter shall be given the meaning attributed to them by this section. Except where specifically defined below, all words used in this chapter shall carry their customary meaning as set forth in a commonly accepted dictionary.

(a) "Dwelling Unit" shall mean a room or rooms located within a structure that is designed, arranged, occupied or intended to be occupied by not more than one (1) household. The existence of food preparation and bathroom areas within the room or rooms shall be evidence of the existence of a dwelling unit.

(b) "Irrigation District" shall mean a district organized pursuant to chapter 87.03 RCW.

(c) "Water Resource Inventory Area 37" shall mean that area so designated by chapter 173-500 WAC, as now in existence or hereafter amended.

SECTION 5. CREATION AND USE OF COUNTY WATER BANK. Benton County has acquired certain water rights that will be placed into the State of Washington trust water rights program pursuant to chapters 90.38 and 90.42, RCW, and future acquired water rights may also be placed into the trust water rights program by Benton County. Mitigation certificates may be issued under Section 8 of this Ordinance only to the extent the aggregate amount of water considered to be consumptively used pursuant Section 9 of this Ordinance does not exceed the amount of water placed into the trust water rights program by Benton County for this purpose.

SECTION 6. BUILDING PERMITS FOR DWELLING UNITS. An applicant for a building permit under Title 3 of the Benton County Code to construct a new building that will contain one or more dwelling units may rely on a private well for which no water right has been obtained for the necessary domestic water supply for such building only if the provisions of RCW 90.44.050 are satisfied and the applicant acquires a mitigation certificate from the Benton County Water Bank under the terms of this chapter or from a private water bank in a quantity of water equal to or greater than that required if the mitigation certificate were obtained from the Benton County Water Bank.

SECTION 7. APPLICATIONS FOR SHORT SUBDIVISIONS OR SUBDIVISIONS. An applicant for a short subdivision or subdivision under Title 9 of the Benton County Code may rely on one or more private wells for which no water right has been obtained for the necessary domestic water supply for the lots to be created only if the provisions of RCW 90.44.050 are satisfied and the applicant acquires the required mitigation certificates for each proposed parcel from the Benton County Water Bank under the terms of this chapter or from a private water bank in quantities of water equal to or greater than that required if the mitigation certificates were obtained from the Benton County Water Bank.

SECTION 8. MITIGATION CERTIFICATES FROM THE COUNTY.

(a) An applicant for a building permit on a parcel within the boundaries of an irrigation district at the time of application approval and that must to acquire a mitigation certificate pursuant to Section 6 of this Ordinance, may purchase one Package A Mitigation Certificate per dwelling unit from the County. A Package A Mitigation Certificate shall authorize an annual average of two hundred (200) gallons per day of private well water for indoor use only on the parcel, provided, so long as the daily annual average is not exceeded in any twelve (12) month period, the maximum withdrawal on any given day for parcels with a Package A Mitigation Certificate shall be six hundred seventy five (675) gallons. The price of a Package A Mitigation Certificate shall be set by resolution of the Board of County Commissioners.

(b) An applicant for a building permit that must acquire a mitigation certificate pursuant to Section 6 of this Ordinance with respect to a parcel that will not be within the boundaries of an irrigation district or that will be within the boundaries of an irrigation district but provides written confirmation from the district that the parcel will not be subject to assessments by the irrigation district at the time of application approval, may purchase either one Package B Mitigation Certificate or one Package C Mitigation Certificate per dwelling unit from the County.

(i) Package B Mitigation Certificates shall authorize the use of an annual average of three hundred (300) gallons per day, in the aggregate, of private well water for indoor use and outdoor irrigation of an area up to 1500 square feet. So long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package B Mitigation Certificate shall be one thousand (1000) gallons.

(ii) Package C Mitigation Certificates shall authorize the use of an annual average of four hundred (400) gallons per day, in the aggregate, of private well water for indoor use and outdoor irrigation of an area up to 3000 square feet. So

long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package C Mitigation Certificate shall be one thousand three hundred (1300) gallons.

(c) An applicant for a short subdivision or subdivision that needs to acquire one or more mitigation certificates pursuant to Section 7 of this Ordinance may purchase after preliminary approval of the short subdivision or subdivision one mitigation certificate per dwelling unit to be built on each buildable parcel proposed to be created.

(i) Package A Mitigation Certificates as described in Section 8(a) above may be purchased for proposed parcels that will at the time of final plat approval be within the boundaries of an irrigation district.

(ii) Package B or Package C Mitigation Certificates as described in Section 8(b)(i) and (ii) above may be purchased for proposed parcels that will at the time of final plat approval be outside the boundaries of an irrigation district or within the boundaries of an irrigation district if a written statement is provided by the irrigation district stating that the proposed parcels will not be subject to assessment by the district.

(d) Use of water pursuant to a mitigation certificate acquired from the County may be curtailed in extreme low water supply conditions notwithstanding the amounts of water otherwise set forth above. Any valid priority calls against the County's Trust Water Right based on local limitations of water availability and/or impairment of senior water rights shall result in temporary curtailment of the use of water under a mitigation certificate until the priority call for water ends.

(e) A mitigation certificate issued under this chapter satisfies the adequate water supply requirement for one dwelling unit. A building permit applicant for a parcel with multiple dwelling units and short subdivision and subdivision applicants proposing to have multiple dwelling units on proposed parcels must obtain mitigation certificates for each dwelling unit if they are relying on mitigation certificates to satisfy the requirement for an adequate water supply.

(f) Each mitigation certificate must be recorded with the Benton County Auditor and indicate: (1) the parcel on which the water will be used; (2) the amount of use authorized; (3) the maximum number of square feet, if any, that may be irrigated thereunder; (4) the parcel on which the well is located; and (5) the maximum amount of water authorized for use daily and in any consecutive twelve (12) month period.

SECTION 9. CONSUMPTIVE USE OF WATER. (a) For each Package A Mitigation Certificate issued under this chapter, the annual consumptive use of water under that mitigation certificate shall be deemed to be .045 acre-feet per year.

(b) For each Package B Mitigation Certificate issued under this chapter, the annual consumptive use of water under that mitigation certificate shall be deemed to be .146 acre-feet per year.

(c) For each Package C Mitigation Certificate issued under this chapter, the annual consumptive use of water under that mitigation certificate shall be deemed to be .314 acre-feet per year.

(d) For each building permit issued between February 14, 2018, and the last business day prior to the effective date of this ordinance authorizing the construction of a new building on a parcel within the Mitigation Area that will contain one or more dwelling units for which the domestic water source is a private well with no water right, the consumptive use of water shall be deemed as follows:

(i) .045 acre-feet per year for each dwelling unit located on parcels within an irrigation district; and

(ii) .146 acre-feet per year for each dwelling unit located on parcels outside of an irrigation district.

SECTION 10. METERING REQUIREMENTS. (a) All dwelling units relying on private wells pursuant to a mitigation certificate issued by Benton County or by a private water bank shall meter their water usage through a meter approved by the County and pay an annual fee, in the amounts set forth by resolution adopted by the Board of County Commissioners, for the administration of a metering and monitoring program.

(b) Participants are responsible for the installation of meters and metering equipment and any associated costs as determined by County specifications, with the equipment and inspection fees set by Board of Commissioner resolution. Meter installment must meet the following specifications and will be subject to inspection:

(i) The meter must be installed on the mainline prior to any residential lateral connections, spigots, or pressure tanks in a well house.

(ii) Meters must be accessible.

(iii) The meter must be installed according to the manufacturer specifications despite varying pipe-fitting, pipe size, well locations and landscape conditions.

(iv) Meter installation must have an accessible, weather resistant, meter structure, such as a meter box or equivalent, and be appropriate for location and geographic area.

(v) Meter installation must contain provisions for cellular endpoints for automatic reading. Below ground installations shall utilize a manufacturer's recommended meter box and lid specifications with accommodations for the end point. Installations inside a building shall properly mount the end point in accordance with the manufacturer's recommendations. End points shall be mounted on the building exterior if necessary to ensure adequate signal strength.

(c) Installation of metering equipment and functional water flow must be complete and approved prior to the inspection and issuance of a Certificate of Occupancy.

(d) If metering equipment requires maintenance, repair, and/or replacement, the property owner is responsible for ensuring proper equipment functionality. If the property owner does not comply

with any needed maintenance, repair, and/or replacement of the metering equipment at the cost of the property owner Benton County may undertake such work and recover the costs from the property owner through either an invoice for costs or a lien on the parcel.

SECTION 11. ADMINISTRATION. Both the Benton County Planning Administrator and the Benton County Building Official and their authorized representatives shall have the responsibility for the administration and enforcement of this chapter.

SECTION 12. VIOLATIONS--INFRACTION--MISDEMEANOR. The first violation of any provision of this chapter shall constitute an infraction. Upon final disposition of an infraction, a determination of a continuing violation of the same provision by an official authorized to enforce the provision at issue shall constitute a second or subsequent offense. The court's finding of a second or subsequent violation of the same provision of this chapter shall constitute a misdemeanor.

SECTION 13. INJUNCTIVE RELIEF. Notwithstanding the existence or use of any other remedy or means of enforcement of the provisions hereof, Benton County may seek legal or equitable relief to enjoin any acts or practices which constitute a violation of any of the provisions hereof and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person violating the provisions of this chapter. The Planning Administrator may accept written assurance of discontinuance of any act in violation of this chapter from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this chapter.

SECTION 14. VIOLATIONS - INVESTIGATIONS - EVIDENCE. If the name of the person allegedly or apparently in violation of this chapter is not known, or if the name of the person does not appear on the latest list of permits compiled by the County, upon presentation of credentials, an authorized official may inspect parcels for which a mitigation certificate has been issued as is required under this chapter to determine compliance with this chapter. Upon request of the authorized representative of either authorized department, the person allegedly or apparently in violation of this chapter shall provide information identifying themselves.

SECTION 15. FAILURE TO PROVIDE INFORMATION IDENTIFYING PERSON. Willful refusal to provide information identifying a person as required by Section 14 is a misdemeanor.

SECTION 16. NOTICE OF INFRACTION--SERVICE. If an authorized official reasonably believes that a provision of this chapter that he or she is authorized to enforce has been violated, that authorized official or the Prosecuting Attorney may issue a notice of infraction for the first such violation. A notice of infraction issued under this chapter shall be personally served upon the person named in the notice or filed with the court for service.

SECTION 17. FORM--CONTENTS. The notice of infraction shall include the following:

(a) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice

and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued, the date and place the infraction occurred and the date the notice was issued;

(d) A statement that the civil penalty shall not exceed five hundred dollars (\$500) for said violation and that the person may be ordered to pay court costs, if applicable, and restitution for any damages caused by said violation;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options, including the name, address, and phone number of the court where the notice of infraction is to be filed and that the defendant must respond within fifteen (15) days;

(f) A statement that a mailed response must be mailed not later than midnight on the day the response is due; and

(g) A statement that at any hearing to contest the determination the county has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized official who issued and served the notice of infraction.

SECTION 18. FILING - HEARING IN DISTRICT COURT. A violation designated as an infraction under this chapter can be heard and determined by either a district or superior court.

SECTION 19. DETERMINATION INFRACTION COMMITTED. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction.

SECTION 20. RESPONSE - REQUESTING A HEARING - FAILURE TO RESPOND OR APPEAR - ORDER SET ASIDE.

(a) A person who receives a notice of infraction shall respond to the notice as provided in this section within fifteen (15) days of the date the notice was served.

(b) If the person named in the notice of infraction does not want to contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department.

(c) If the person named in the notice of infraction wants to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the

time, place, and date of the hearing. The date of the hearing shall not be sooner than fourteen (14) days from the date of the notice of hearing, except by agreement of the parties.

(d) If any person issued a notice of infraction (1) fails to respond to the notice of infraction as provided in subsection (b) of this section, or (2) fails to appear at a hearing requested pursuant to subsection (c) of this section, the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the authorized official of the failure of the person to respond to the notice of infraction or to appear at a requested hearing.

(e) An order entered by the court under subsection (d)(2) of this section may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions.

SECTION 21. REPRESENTATION BY ATTORNEY. A person subject to proceedings under this chapter may appear or be represented by counsel. Each party to an infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in an infraction case.

SECTION 22. INFRACTION - HEARING - PROCEDURE - BURDEN OF PROOF - ORDER - APPEAL.

(a) A hearing held to contest the determination that an infraction has been committed shall be without a jury.

(b) The court may consider the notice of infraction and any sworn statement submitted by the authorized official who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized official who issued and served the notice, and has the right to present evidence and examine witnesses present in court.

(c) The burden of proof is on the authorized official to establish the commission of the infraction by a preponderance of the evidence.

(d) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that the infraction was committed, an appropriate order shall be entered in the court's records.

SECTION 23. EXPLANATION OF MITIGATING CIRCUMSTANCES.

(a) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(b) After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records.

(c) The person may not appeal the court's determination or order.

SECTION 24. CIVIL PENALTY--INFRACTION. A civil penalty imposed by the court under this chapter is immediately payable. If the person or contractor is unable to pay at that time, the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court shall notify the Planning Administrator of the failure to pay the penalty and the County shall not issue the person or contractor any future permits for any work until the penalty has been paid.

SECTION 25. VIOLATION--PENALTIES.

(a) Upon a finding of a first violation of any provision of this chapter, any person or contractor shall be punished by a civil penalty not to exceed five hundred dollars (\$500) for said violation, shall be responsible for court costs, if applicable, and shall be ordered to pay restitution for any damages caused by said violation.

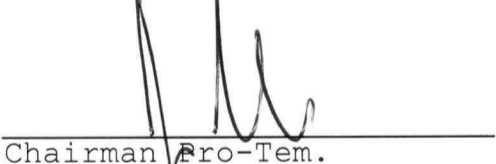
(b) Upon the court's finding of a second or subsequent violation of the same provision of this chapter, any person or contractor shall be found guilty of a misdemeanor.

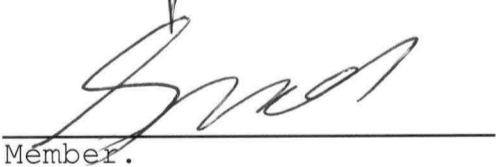
SECTION 26. SEVERABILITY. If any provision of this Ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 27. EFFECTIVE DATE. This Ordinance shall take effect and be in full force on February 1, 2020.

ADOPTED AND PASSED this 14 day of January 2020

  
Chairman of the Board.

  
Chairman Pro-Tem.

  
Member.

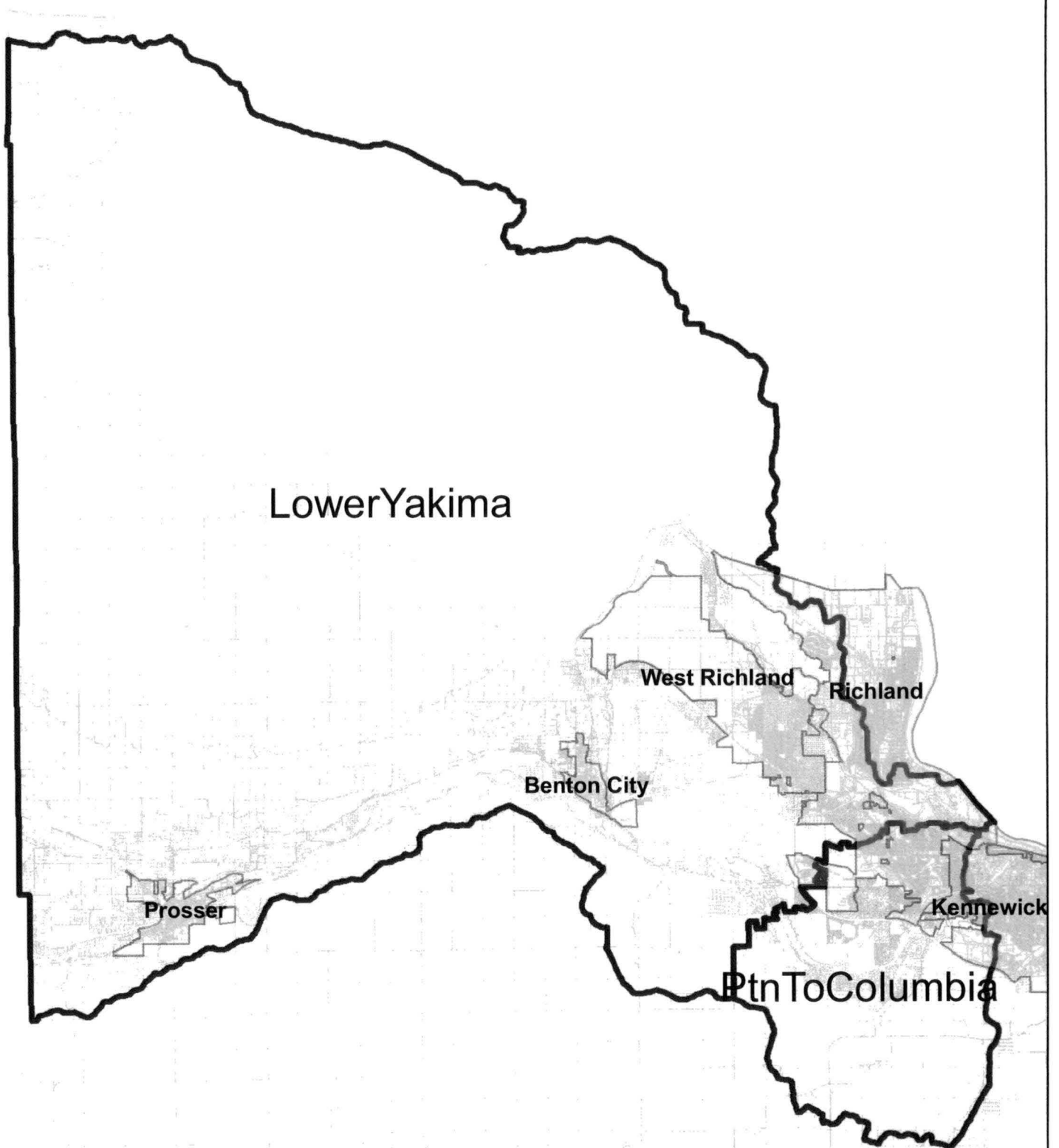
Approved as to Form:

  
Deputy Prosecuting Attorney

Constituting the Board of  
County Commissioners of  
Benton County, Washington

Attest:   
Clerk of the Board

# EXHIBIT A



Benton County does not warrant, guarantee, or accept liability for accuracy, precision or completeness of any information shown hereon or for any inferences made therefrom. Any use made of this information is solely at the risk of the user. Benton County makes no warranty, expressed or implied, and any oral or written statement by any employee of Benton County or agents thereof to the contrary is void and ultra vires. The information shown hereon is a product of the Benton County Geographic Information Systems, and is prepared for presentation purposes only.



LowerYakima

PtnToColumbia

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