Exempt Wells in the West

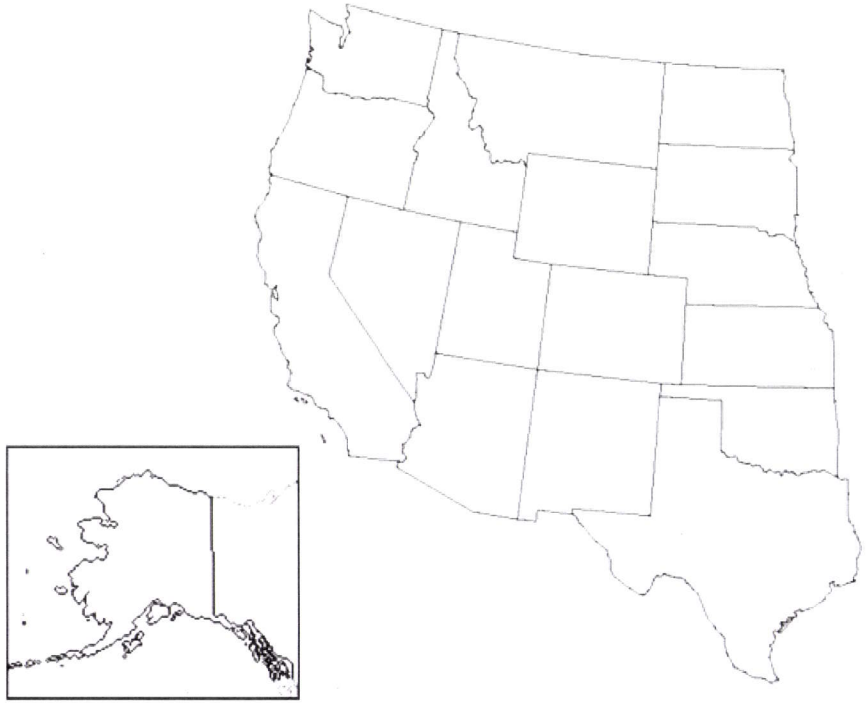
62nd Montana Legislature Water Policy Interim Committee

September 13, 2011

Nathan S. Bracken

WPIC
September 13, 2011
Exhibit 10

Western States Water Council (WSWC)



- Advisor to western Governors on water policy issues
- 18 Western States
- Provides collective voice
- Fosters collaboration
- Formal affiliate of the Western Governors' Association (WGA)

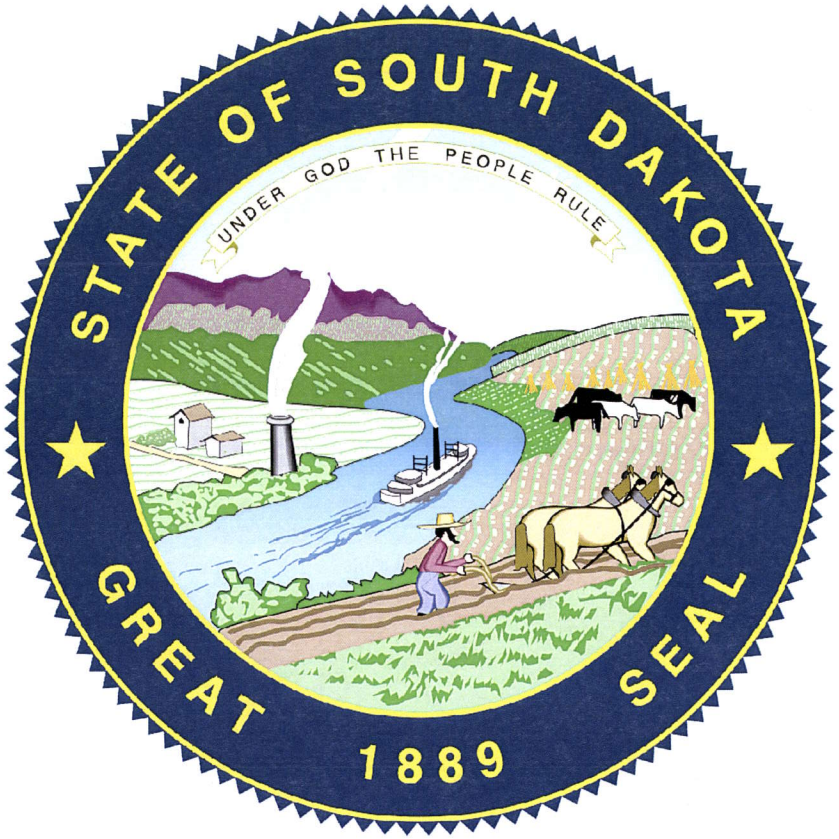
Exempt Well Regulation - Generally

Domestic Use Exemptions

State	Capacity Limit	Irrigation Limit (acres)	Water Right Permit Exemptions
AZ	35 gpm (10 AFY in certain AMAs)	2	Notice of intent to drill and completion report
CO	15 gpm – designated basins	1	Well construction permit required
ID	13,000 gpd	1/2	No permit required
KS	-	2	No permit required
NE	50 gpm	-	No registration required
NV	2 AFY	-	No permit required – but SEO may designate basins where wells must be registered
NM	1 AFY (post-2006)	1	Permit required but SEO must grant application
ND	12.5	5	No permit required - must file completion notice
OK	-	3	No permit required
OR	15,000 gpd	1/2	No permit required
SD	18 gpm	1	No permit required
TX	25,000 gpd in gw management districts	-	No permit for >10 acre tracts, excludes subdivisions
WA	5,000 gpd	1/2	No permit required
WY	25 gpm	1	Permit required – but application exempt from ordinary adjudication

Exempt Well Regulation – South Dakota

- No permit required for domestic use
- Registered wells not subject to prior appropriation procedures
- 18 gpm (about 29 af/year)
- Exempt wells of less concern than other states

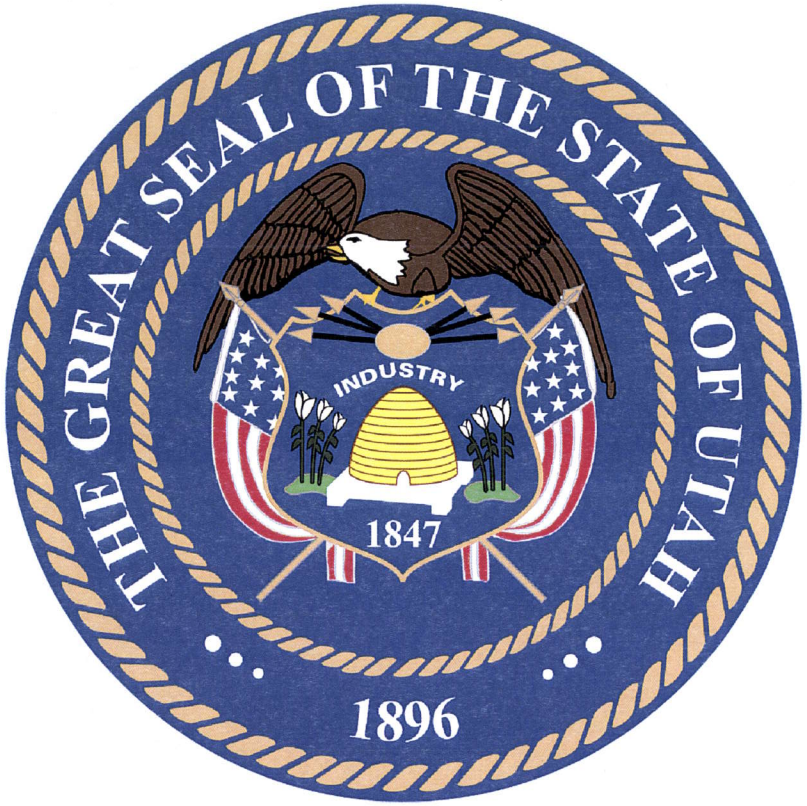


Exempt Well Regulation – Washington

- Exempt from permitting only – subject to all other provisions
- Various exempt limits:
  - 5,000 gpd –domestic use (single/group) & industrial
  - ½ acre for lawn or garden
  - Stockwatering - unlimited
- Larger issue compared to other states

Exempt Well Regulation - Utah

- No exemption – same permit process applies for domestic uses
- Discretion not to publish notice for "small amount of water" if no impairment
- Generally not hindered growth, but some issues exist in closed basins



Exempt Wells – The Debate

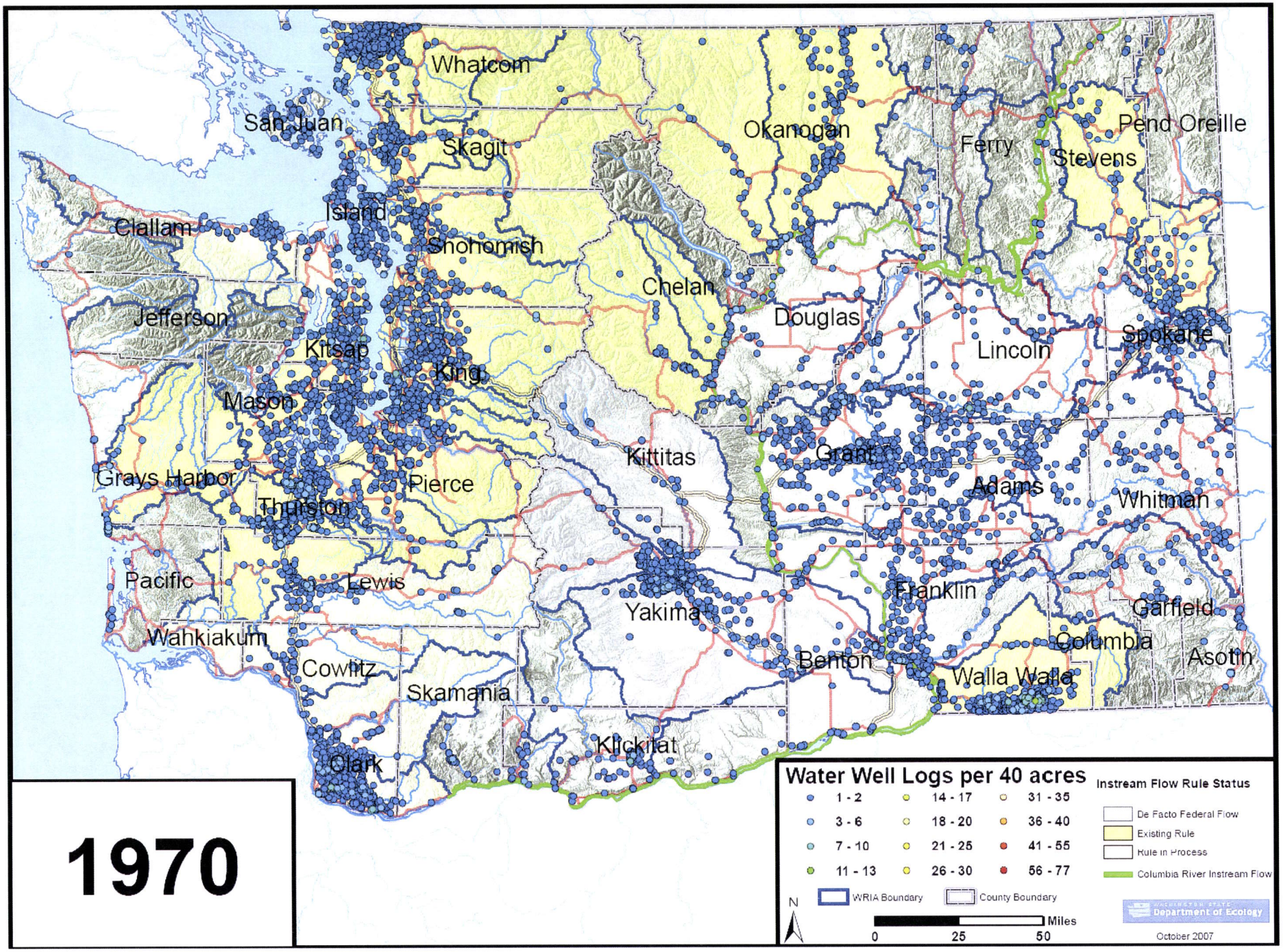
OR

Considerations

- Not inherently good or bad – do provide value and are appropriate in certain situations
- Negative impacts do not occur in every instance
- Benefits may outweigh impacts in some cases
- Many exempt wells are in compliance

Exempt Well Concerns - Growth

growth + limited water =
demand for exempt wells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WRIA Boundary
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Department of Ecology
October 2007

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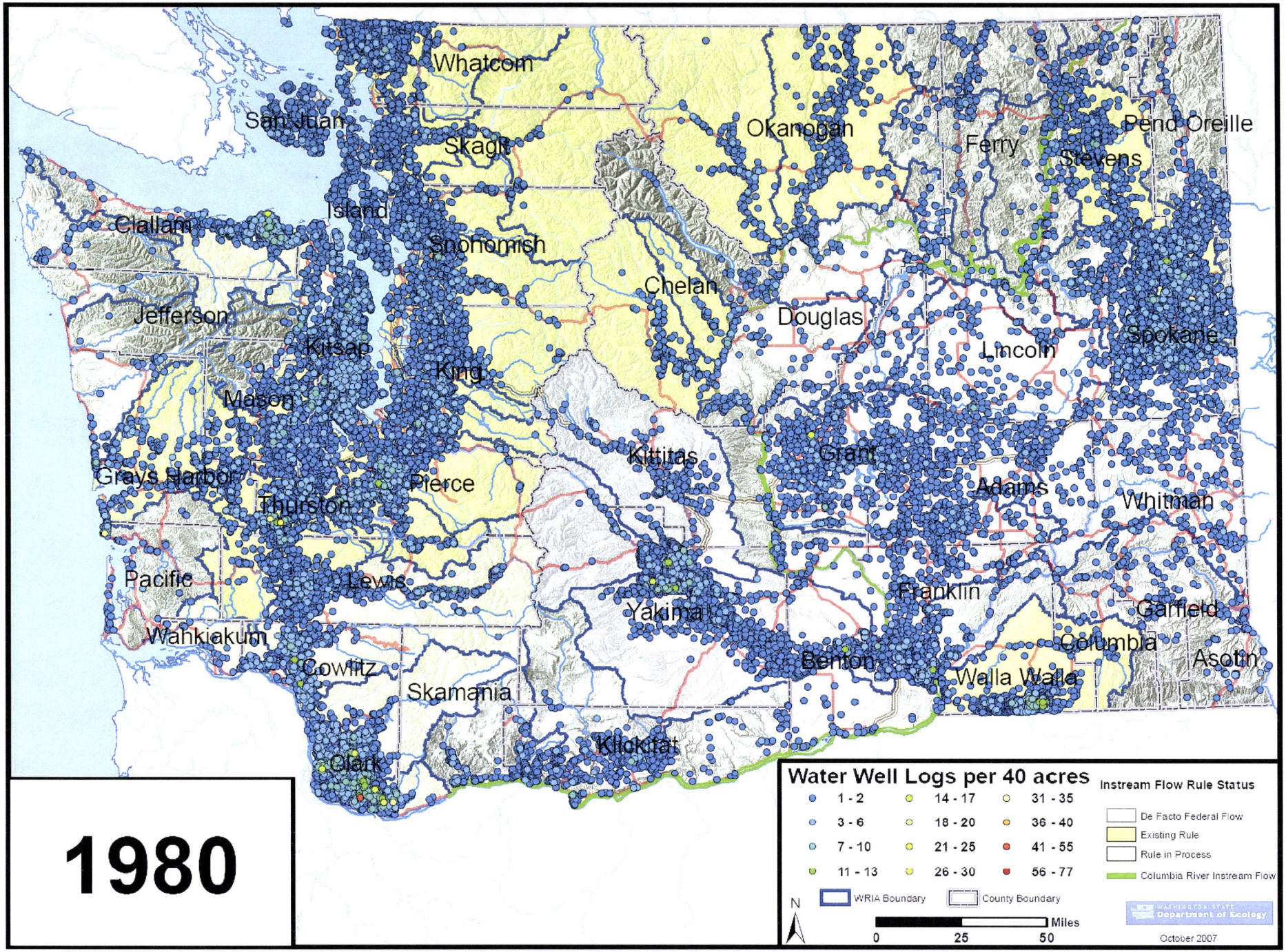
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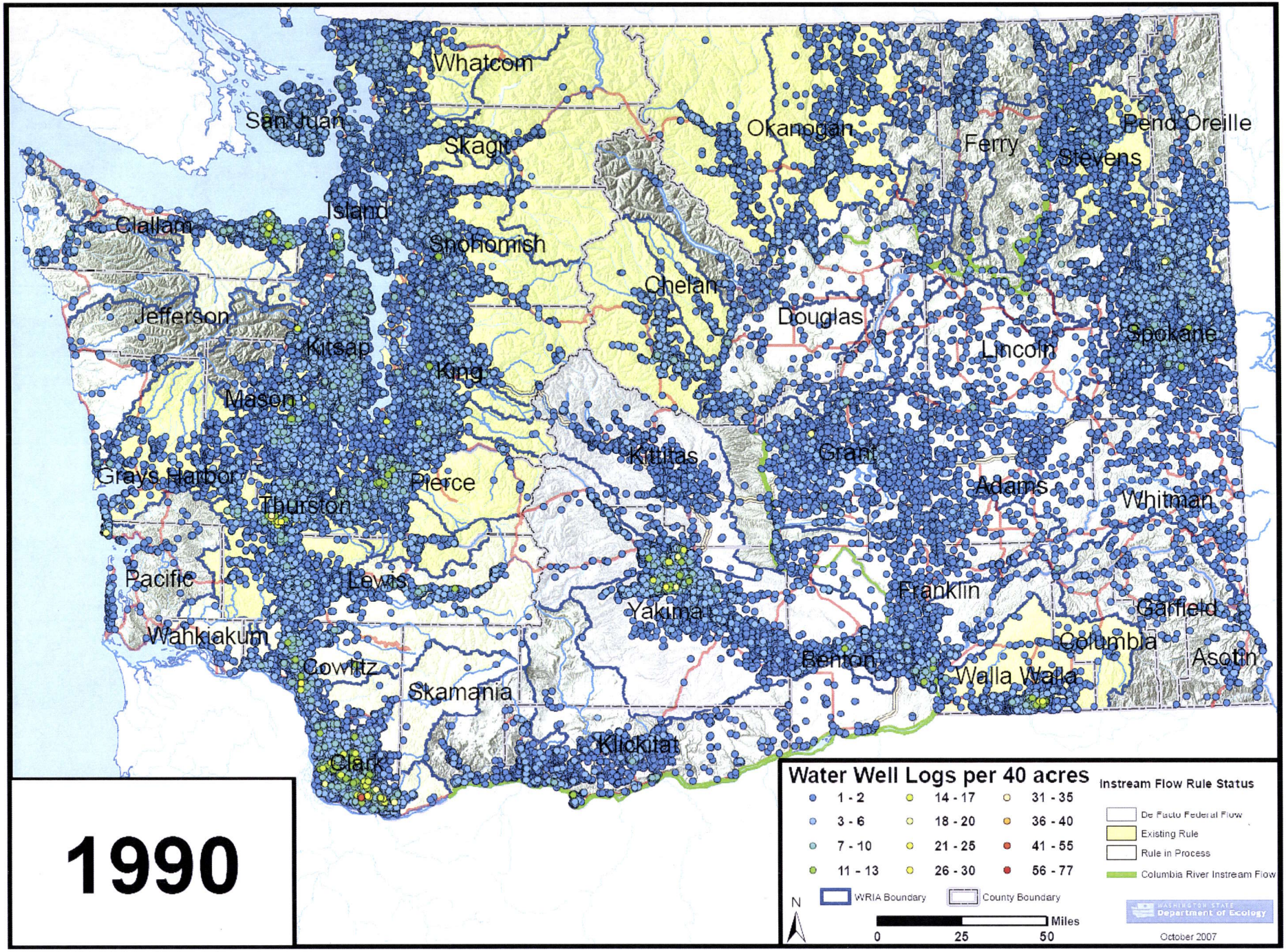
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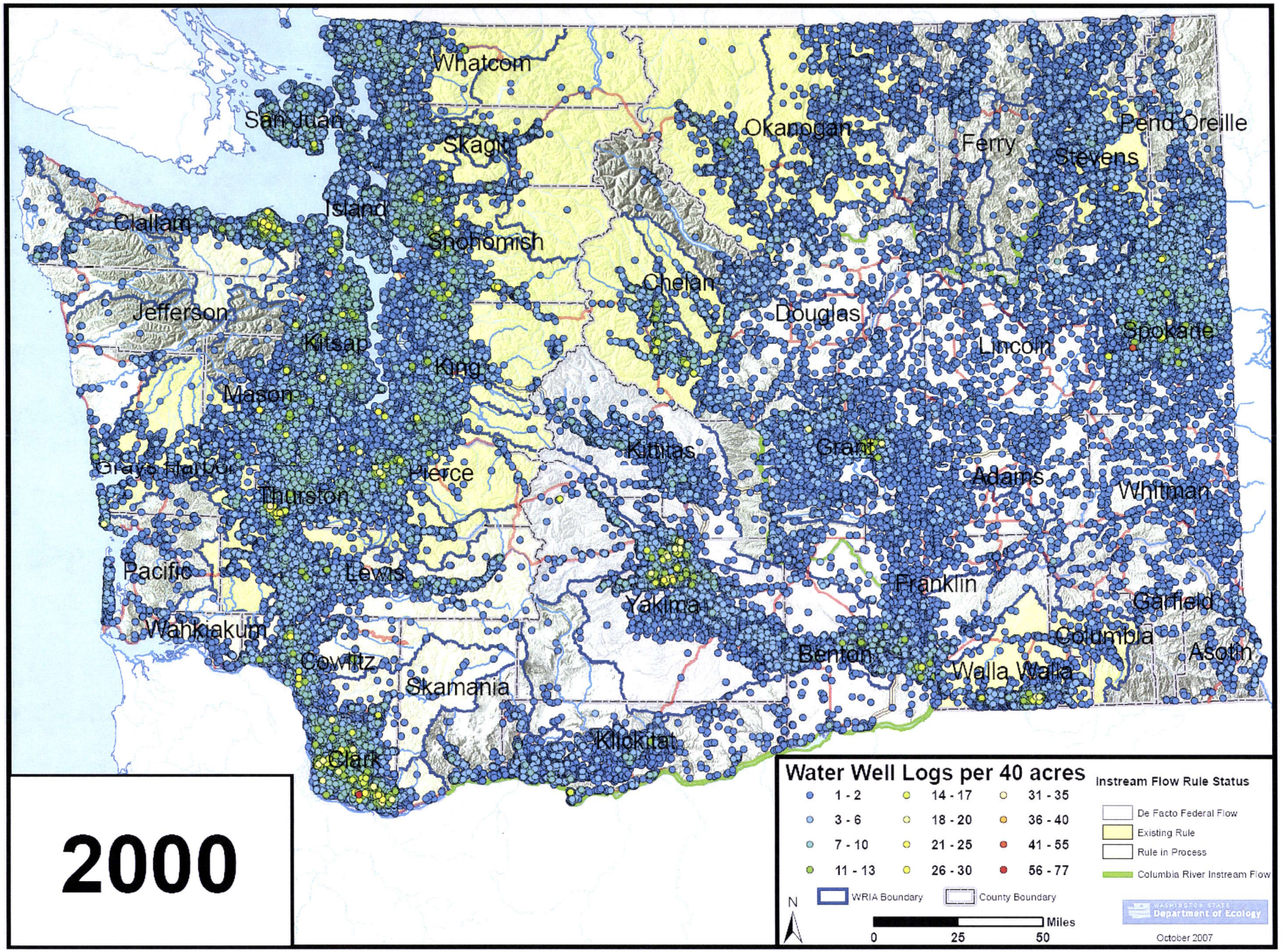
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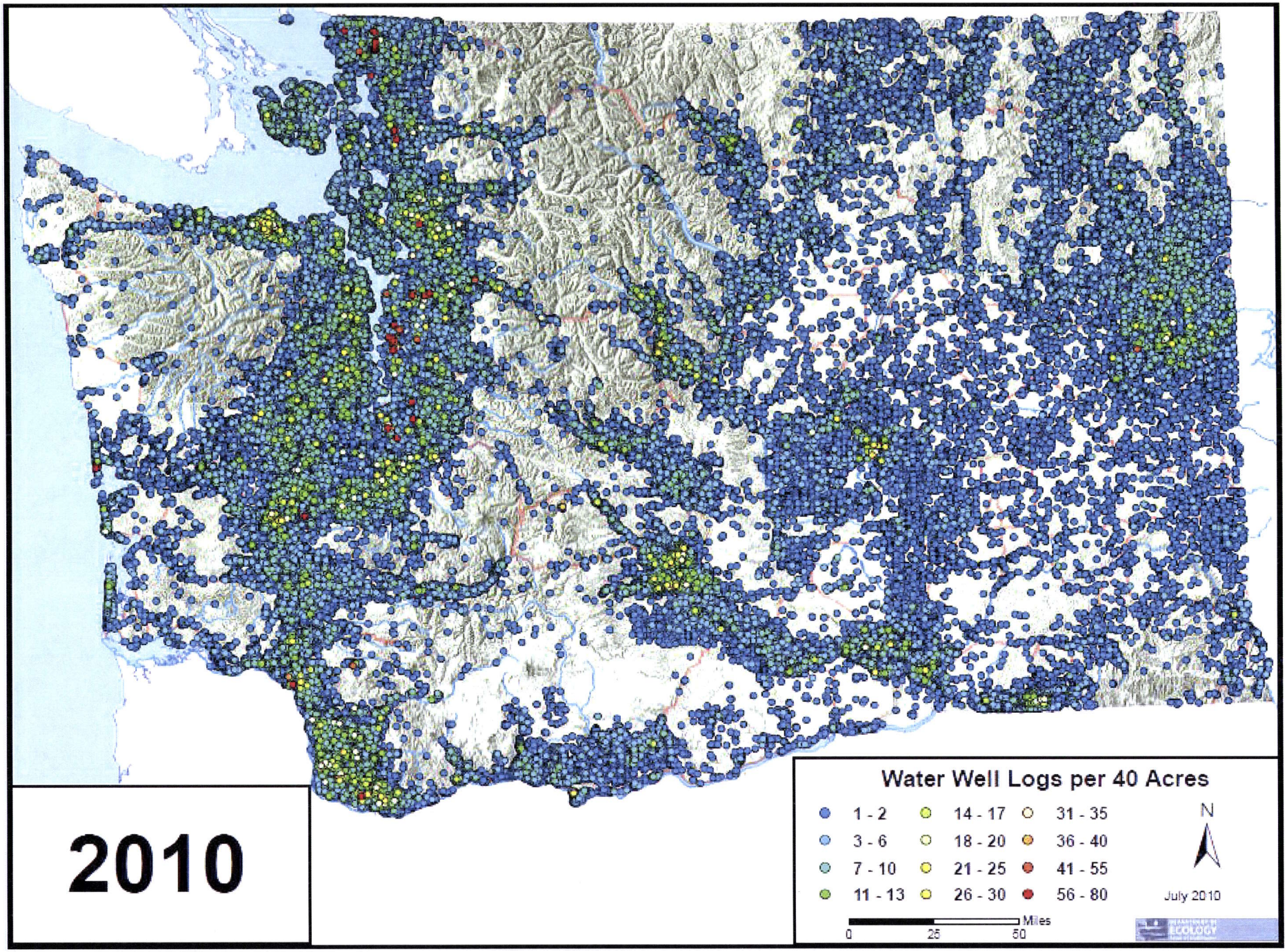
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July 2010
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2010

Exempt Well Concerns - Subdivisions

Reported Concerns:

- Concentrated developments
- Located in closed basins
- Facilitate less desirable development practices
- Circumvent planning process
- Fairness to seniors

Concerns - Water Rights, Etc.

Reported Concerns:

- Pumping "out of turn"
- Lead to pumping rates that exceed aquifer safe yield
- Deplete surface flows
- Environmental concerns

Concerns - Water Quality

<u>Reported Concerns</u>:

- Naturally occurring inorganic contaminants
- Nitrates
- Pesticides
- Seawater intrusion
- Well maintenance and construction

Concerns - Administration

- General lack of information about exempt wells:
  - Number of exempt wells
  - Location of exempt wells
  - Amount of water withdrawn and consumed
- Limited state resources complicate efforts to:
  - Permit and adjudicate every type of groundwater use
  - Monitor exempt wells
  - Quantify and mitigate adverse impacts
  - Enforce pumping limits

Monitoring Methods

Metering:

- Accurate
- Incentive to comply
- Shows withdrawals, but not consumption
- Costs could be significant
- Well owners may resist
- Won't stop new wells

Other Methods:

- Aerial infrared photography
- Self-reporting
- Improve well record info

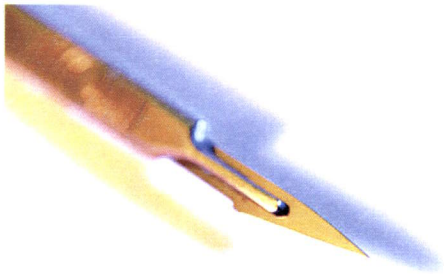
Options

"Hammer" Approaches:

- Repeal exemption
- Significant, statewide reductions in pumping limits
- Meter every well

"Scalpel" approaches:

- Refine exemptions
- Target efforts in specific watersheds
- Collaboration
- Regulatory options



Efforts to Reduce/Repeal Exemptions

- Oregon – H.R. 2859 (did not pass – 2009):
  - Reduce single or group exemption from 15,000 to 1,000 gpd
- Oregon – H.B. 2566 (did not pass – 2007)
  - Repeal exemption
- Wash. – H.B. 1091 (did not pass – 2009 & 2010)
  - Cap stockwatering use at 5,000 gpd
- New Mexico – S.B. 89 (did not pass -2004)
  - Give SEO authority to deny permit requests in certain areas
- New Mexico – R. 19.27.5.9(D) (issued in 2006)
  - Limited domestic use from 3 to 1 af/year

Other Recent Mitigation Efforts

- New Mexico (via regulation in 2006)
  - Domestic Well Management Areas (DWMA)
  - Municipal authority to limit exempt wells
- Oregon – S.B. 788 (passed 2009)
  - Requires filing of groundwater use and $300 fee
- Oregon – Measure 49 (passed 2007)
- Washington – Kittitas County/Walla Walla
  - Efforts focused on specific areas of concern

Scalpel Examples – New Wells

- Limit types of exempt development
- Modify subdivision approval process
- Restrict/regulate wells in areas of concern
- Refine exemptions – more specific applications
- Meter/monitor in areas of concern
- Water markets/banks
- Promote public water systems
- Public education
- Limits for consumption
- Proper well construction
- Improve well record info

Conclusion

- No “one-size-fits-all” approach
- Early and robust stakeholder collaboration is key
- “Scalpels” preferable to “hammers”
- Reasonable development should likely be allowed
- Public outreach and education is vital
- An ounce of prevention is worth a pound of cure

Questions?

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