

## Regulatory Framework Working Group

### Charge from Groundwater Management Area Advisory Committee

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[Insert Charge]

### Working Group Members

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Jean Mendoza, Chair (Friends of Toppenish Creek), Andres Cervantes (Department of Health), David Bowen (Department of Ecology), Chelsea Durfey (Turner and Co.), Dan DeGroot (Yakima Dairy Federation), David Newhouse (interested party), Ginny Prest (WSDA), Jason Sheehan (Yakima Dairy Federation), Jim Dyjak (Concerned Citizen of Yakama Reservation), Larry Fendell (interested party), Laurie Crowe (South Yakima Conservation District), Nick Peak (EPA), Patricia Newhouse (Lower Valley Community Representative), Steve George (Yakima County Farm Bureau), Stuart Crane (Yakama Nation), Sue Wedam (Lower Valley Community Representative), Vern Redifer (Yakima County Public Services), Jim Davenport (Yakima County Public Services)

### Meetings/Calls Dates

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Meeting: June 8, 2016, 5:00-7:30 PM

Call Number: 360 407-3780 PIN Code: 306589#

### Participants

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Present: Jean Mendoza (Chair), Jim Davenport, David Bowen, Larry Fendell, Ginny Prest\*, Dan and Carolyn DeGroot, Stuart Crane, Jim Dyjak, Steve George, Sue Wedam, Patricia Newhouse, Vern Redifer and Bobbie Brady (Yakima County Public Services Support Staff). \*via phone

### Key Discussion Points

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Chair, Jean Mendoza, opened the meeting at 5:07 PM and everyone introduced themselves.

#### Finish Review Key Questions from Group Members

The group discussed Question Nos. 1-10 on page 2 of "Priority Questions for the Group to Ask and Answer" handout from the May meeting.

#1 - What are the regulatory gaps that would benefit groundwater quality? Members voiced that they couldn't define "regulatory gaps" before receiving the assessments identifying the biggest potential sources. Vern referred the members to No. 1H of Jim Davenport's handout "Questions for the Group to recommend to other Work Groups considering regulatory approaches." Jim defined a regulatory gap as "absence of legally enforceable provision of statute, regulation or governmental policy, or governmentally-recommended voluntary action (e.g., "best management practice") that, if established, would promote realization of the target objective."

Jim Davenport suggested that the group look at the problems that had been identified, determine non-mandatory cost effective strategies to solve the problem and if this was not possible look at regulatory solutions. The group developed the following suggested protocol: 1) Identify a particular problem; 2) Identify voluntary solutions; 3) Prioritize voluntary solutions by effectiveness, cost, and practicality; and, 4) Look at effective enforcement if nothing else works. A member voiced that he believed that the other groups (Livestock/CAFO, RCIM, and Irrigated Ag) should be working through these items. The group also discussed the differences between “may, shall, and will” strategies and the difference in these terms and the behaviors they produce.

#2 How to assist with education related to lowering nitrogen loading in aquifers. AND #3 What new policy or regulations are needed? Members felt these questions should also be answered down the road.

#4 How can we encourage BMP's that have the greatest impact on nitrate levels without new regulations? A member voiced a concern that voluntary solutions don't require people to do the right thing and that enforcement actions were necessary. Jean brought up a concern she had about BMP's that had been employed since the 1970's and noted that she had sent the group a three page letter outlining her concerns. A discussion ensued. One member suggested BMP's should be static and be able to change as more is learned. Another member felt that they are not static because what was effective in one field may not be effective in another or can be dependent upon application. A member also felt that there needed to be an educational component to go along with this that should include “negative components” – educating people about what doesn't work, reiterating the problems that need to be solved, and solutions with a given time frame to make the changes.

A member asked if NRCS standards are BMP's – Ginny said yes, they are called practice standards and are governmentally recommended voluntary actions. Jean noted that there had been an ongoing dispute about BMP's between the Department of Ecology who believe BMP's should be measurable and objective and the Conservation District who felt they were not clear enough.

Vern knows that a long list of BMP's was compiled by HDR. Jean said that Irrigated Ag was working on shortening the HDR list and felt that Livestock/CAFO could do this too.

A member wanted to know what will happen at the end of 2017 and how and when a conversation on this should take place. Vern said the groups would need to determine solutions, the costs associated with each solution, a determination as to who should implement the solutions and the source of funding for each. As the momentum picks up this will then be an agenda item for the GWAC.

#5 What are the consequences beyond lowering nitrates? Levels of BMP's? A member didn't understand the question and believed it meant if the group is successful at reducing nitrates – what will be the side effects? Another member was concerned that with the decreasing levels of water in the aquifers less nitrates could still be too much. Another member disagreed and said that the aquifer does not store nitrates instead the water pushes nitrates down from where they are stored in the soil. Another member said more land is now being farmed but didn't know how much more. Jim Davenport was asked when the area characterization would be done – he said it

was still a work in progress. A member was concerned that a lot of it had been done on a County-wide basis when it should be specific to the GWMA.

#6 How can we best promote improved economics of our agriculture while lowering nitrate levels? A member felt this question was premature. Another member believed that the group would need to find a balance so that the outcome of the GWAC didn't have a negative impact on the main driver of the economics of the County. A member asked for a definition for "promote improved economics." Another member thought that once the main sources had been identified greater understanding would come through the acquisition of data and more information resulting in new technology that would have a positive impact. Efficiencies will also help offset costs, i.e., crops are better and it's easier to manage water as a result of technological improvements in irrigation. Another member mentioned that a participant in the Irrigated Ag group mentioned moisture sensors would be a great asset. She felt these technological advancements fell under the heading of precision ag and the group needed to develop good descriptions of technologies to get the word out, also determine who would be promoting it and what carrots or sticks needed to be applied.

#7 Would regulating well quality (not water quality) construction, depth, promote less nitrates to people? Vern said yes all of these things would promote less nitrates. A member was concerned that this was nice to say but not economically viable for many homeowners. If it were economically viable it would be a good solution.

#8 Who is the lead agency for any particular rule that can/will impact nitrate levels? We don't know yet.

#9 What possible mitigation measures can be developed or are they necessary with existing regulatory oversight? A member expressed the concern that if the problem hadn't been identified yet this would need to happen later down the road.

#10 What measurement can be used to track performance (reduction in nitrate levels)? Jean asked Jim to respond. Jim was not aware of a strategy to track performance. David sent out a paper describing the problem and the short answer is through monitoring and analyzing data. A member asked if there is a way to measure nitrates in the aquifer or a way to measure nitrates going into the aquifer – could deep soil sampling be utilized. Jim responded and said that the ambient monitoring system measures at the top of the water table which would be the first sign of a potential problem. A member asked if it would be helpful to measure at the root level – Jim thought that this could be an additional strategy but cautioned against being too simplistic as the route of travel varies. The first strategy was to measure the condition at the water table and then add other strategies from there. A member voiced a concern that there was a need to look at what is coming into the aquifer. Another member pointed out that some of the sample wells were at the boundaries in order to check on what's coming in.

### **Preparation for Discussion with Livestock/CAFO Working Group**

Jean explained that she wanted the group to go around the room and speak out one good idea. A member asked if there was a meeting set up with Livestock/CAFO. Jean explained no meeting had been scheduled as it was her goal to complete the list first and she wasn't sure how long this

would take. Another member pointed out that the majority of those on the Regulatory group were also on the Livestock/CAFO group. Another member thought that the purpose of the Regulatory group was to research regulatory information from the various agencies. Regulatory would then pass the information on to the applicable working groups and it would be then up to that group to say yes we have laws that cover or no we don't.

Another member thought it would be good for Regulatory to also visit the EPO group since they will focus on a design for education. Jim Davenport added that to date EPO has focused on the health effects of nitrates because it was an educational strategy that could be accomplished immediately. EPO wants to know what other messages they could educate people about. Specifically EPO will need to know from each group who is suggesting an educational component who the audience is, what the message is, and the group's recommendation as to the best way to deliver it. From there EPO will design a plan and provide estimated costs.

Jim Davenport had five regulatory ideas that pertained to Livestock/CAFO that he shared. The group, during the course of the remainder of the meeting, added to the list.

1. Educational needs
2. Density limitations
3. Building codes for farm structures
4. More complete disclosure of DNMP's
5. Development standards
6. Technology incentives
7. CAFO Permit
8. Manage fertilizers and manures
9. Summary of agency's oversight
10. Codes and laws
11. Compliance level

Ginny added that a draft of the CAFO permit would be out in the next week and although it would not be finalized it would address a gap. She also pointed out that in the DNMP they want nitrates to be under 45 parts per million to be considered compliant. At 30 they will start having conversations and if the test exceeds 45 they will move toward enforcement. She added that the test is done at 0-12 inches and this is the only requirement.

Jean said that she would also like more information from producers on how manure is managed. In addition, she read a USDA article that said that corn crops are a large contributor to the nitrate problem. She believed that this was confirmed by the deep soil samples as the levels were high for corn and triticale. She wanted the group to discuss it and look for ways to address the problem. A member asked if the USDA research data was from Washington State or from the Midwest. He noted that most likely the study was done in the Midwest where they use synthetic fertilizers on non-irrigated land. Therefore these issues do not correlate with the issues in Yakima County.

Jean also believed there is a gap in the DNMP because livestock owners have no regulation on exporting manure. A member pointed out that if livestock owners aren't allowed to export manure, chemical or synthetic fertilizer will be used and this won't necessarily result in a better outcome. They believed that if manure is regulated synthetic fertilizer and the amount of water used must be regulated as well.

A member felt that the group needed to refer back to the GWAC work plan otherwise the group tended to drift off task leading to purposeless meetings. Other members agreed they didn't think it was the job of the Regulatory group to come up with solutions but just to inform the other groups of the gaps in the regulations and laws.

Vern spoke up and said that he had authored the plan and it was his intent that this group would research and educate the GWAC, but that the other work groups would develop solutions. In Vern's opinion the Regulatory group was close to being done with its homework assignment. David, as the Livestock/CAFO Working Group Chair, concurred – he believed it was his working group's responsibility to come up with solutions. The group agreed to proceed in this manner.

Another member pointed out that according to the work plan the Regulatory group was to provide the regulations and applicable agencies to each work group. Jim Davenport advised that he had read the HDR list and the statutes and regulations cited in that list and had written up a description. He believed that the group could go through the document he had prepared, strike out what was unnecessary and come up with a list of regulations for each working group. Then it would be easy to incorporate the comments of the presenters from previous Regulatory meetings. Jim was asked by the members to look at the report and subdivide it by group. Ginny will also review the parts she knows something about to make sure everything is accurate. A member asked Jim to share the document with the group in Word format marked draft so that they could review it as well. Jean will work on a list of agencies with contact information for people to use if they have problems.

A member stated that he felt it was also the group's job to report status/compliance levels and he wanted to know if Jim had incorporated this information into his document. Jim stated that he had not listed compliance levels. Further, he thought that the compliance information provided by the presenters was spotty and imprecise as it is difficult to get any agency to disclose compliance statistics. David noted that absent a permit that gives you benchmarks compliance can be very difficult to measure. Ginny said the same is true with OFM and soil test compliance information. There are penalties and notices of warning.

The group agreed that it was a good plan to leave the solutions to the other working groups and to proceed as outlined above. The meeting was adjourned by Jean Mendoza at 7:00 PM.

### **Resources Requested**

### **Recommendations for GWAC**

### **Deliverables/Products Status**

### **Proposed Next Steps**

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Jim Davenport will divide his document by working groups and provide it to the working group in Word format for their review. Jean will work on a list of agencies and contact information.