

## **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), Charlie McKinney (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: November 18, 2015 5:00pm – 7:30pm

Call Number: 509-574-2353 PIN #2353

### **Participants**

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Present: Jim Davenport (Substitute Chair), Laurie Crowe, Sue Wedam, Patricia Newhouse, David Newhouse, Jason Sheehan, Larry Fendell, Jim Dyjak, Stuart Crane, Charlie McKinney, Steve George, Vern Redifer, Tommy Carroll, Lynn Deitrick, Bobbie Brady, Chris Saunders, and Erica Naasz (Yakima County Support)

\*via phone

### **Key Discussion Points**

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Jean Mendoza was unable to attend the meeting due to illness. Jim Davenport agreed to chair the meeting.

### **Yakima County Regulatory Authority and Processes Concerning Groundwater and Agricultural Activities – Yakima County Staff – Lynn Deitrick and Tommy Carroll**

- 1) How does Yakima County determine when an Environmental Impact Statement (EIS) is needed?

Vern Redifer began with an explanation of the State Environmental Policy Act (SEPA), which contains thresholds relating to the size and nature of the proposed development. The first step is to fill out an Environmental Checklist. The County consults with agencies with environmental expertise to help identify potential environmental impacts. They will wind up issuing a

determination of significance (DS), a determination of non-significance (DNS), or a mitigated determination of non-significance (MDNS). A DS can lead to an EIS. It's rare for this process to end up requiring an EIS, since most of the time there is a way to mitigate environmental impacts associated with proposed projects. In those cases where an EIS is determined to be appropriate, the lead agency takes charge of it.

Jim Davenport added that SEPA does not apply to ongoing activities or operations, but only to some type of proposed expansion of activities that would require a permit.

A member of the group inquired about the recent State Supreme Court ruling in *Foster v. Ecology*, concerning a determination of non-significance by the Department of Ecology (DOE) on a water project. The case in question concerned a dispute over whether a determination of "overriding and compelling public interest" was sufficient to trump senior water rights. The Court ruled that it was not, and senior water rights hold precedence, except in cases of immediate emergency. The ruling is not germane to the GWMA's work.

- 2) Does Yakima County address potential groundwater and groundwater flow to surface water when evaluating an EIS?

Yes, sometimes, when applicable. Yakima County relies on comments from agencies with environmental expertise to identify potential issues with groundwater flow, among others.

- 3) Since over application of manures and fertilizers is now considered solid waste how will this impact Yakima County's mandate to protect the environment?

Yakima County relies on the Department of Agriculture (WSDA) and the local Conservation Districts to monitor compliance with nutrient management plans.

The premises of the question – that manures and fertilizers are now considered solid waste, and that Yakima County has a mandate to protect the environment – were disputed. The ruling in this year's dairy case affected only those dairies named in the suit. Changes in state and/or federal law regarding the classification of manure/fertilizer would require legislative action. Vern and Lynn agreed they were not aware of a "mandate" to protect the environment.

A member of the group asked whether the County looks at the nutrient management plans directly. The County relies on the Conservation Districts to do so.

- 4) Please elaborate on ways that Yakima County addresses mitigation (WAC 197-11-350 Mitigated DNS)

The County issues an MDNS when best management practices are available to reduce significant adverse environmental impacts to non-significant levels. During the SEPA comment period, neighboring property owners will often express concerns. Applicants will then be required to hire a consultant to determine the appropriate mitigation measures.

- 5) The WA Department of Ecology maintains an online SEPA register that describes approval of applications in the state. Projects and results for Yakima County are available at <https://fortress.wa.gov/ecy/separ/Register>ShowRegisterTable.aspx> Please tell us why

some projects applied for SEPA approval and others did not, especially with respect to confined animal feeding operations.

A new confined animal feeding operation (CAFO) would be required to go through the SEPA process. If it's an existing CAFO, most do not, but it depends on the size and scope of what the CAFO wants to do, and whether their proposed activity was covered under a prior SEPA review.

- 6) Please explain Exemptions 197-11-850 Department of Agriculture. How does this impact regulatory actions in Yakima County, especially with respect to lagoons and ponds?

WSDA actions regarding feedlots are not exempt from SEPA review. However, due to language in WAC 197-11-932, the county or city in which the project is located becomes the lead agency, not WSDA. When it comes to feedlots, most of the time Yakima County becomes the lead agency.

- 7) WAC 197-11-920 Agencies with Environmental Expertise says that the following agencies have expertise in the management of solid and hazardous waste – DOE, Dept. of Fish and Wildlife, and DOH. What are the implications in light of the recent court ruling that manure applied above agronomic rates is solid waste?

Yakima County relies on the WSDA and local Conservation Districts to monitor compliance with nutrient management plans. As the group discussed earlier, the ruling in this year's dairy case did not affect the legal definition of manure, so there would be no implications regarding these agencies' authority in regulating manure. The Resource Conservation and Recovery Act (RCRA) is the relevant federal law regarding management of hazardous and non-hazardous solid waste.

A member of the group asked whether being designated an "Agency with Environmental Expertise" conferred any extra powers on those agencies. In this case, DOE consults with the lead agency, Yakima County, on issues like groundwater and solid waste. Since the agencies with expertise know this is the only opportunity they'll have to offer input that could affect the final determination of the lead agency, they usually make the most of it.

- 8) WAC 197-11-960 Environmental checklist states

b. Ground:

1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well? Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

This would appear to apply to lagoons and ponds. Please tell us how you evaluate EIS's for these structures.

When Yakima County receives an Environmental Checklist on a proposed project, it would have to lead to a determination of significance before an EIS could be triggered. After an initial EIS scoping process, the County, presuming it's the lead agency, then takes comments from agencies with expertise and from neighboring property owners. Their comments are evaluated. If the applicant's mitigation measures are deemed inadequate, then alternative measures must be adopted, or the project could be denied.

Specifically in relation to manure lagoons or ponds, possible mitigation efforts would include lining the ponds and having a groundwater monitoring program put in place. If the monitoring program finds water quality parameters are being exceeded, the applicant would be required to remedy the problem according to DOE/EPA standards.

A member of the group asked which section of the cited WAC would apply to lagoons and ponds. In Jean's absence, Vern thought it would be Section 2. The SEPA review process was revisited. As a practical example, if an existing dairy operation wanted to reline their ponds, no review would be required. If a dairy operation wanted to add a new pond, a review could be triggered if the pond was big enough. A review of a pond or lagoon could also be triggered if evidence were brought forth that a lining was leaking, and such evidence was deemed to have merit upon examination. Oftentimes applicants will be informed of comments and asked for a response.

- 9) It is important for us to understand how Yakima County implements both 16A Critical Areas and 16C Critical Areas. Both codes are described as "*Critical Areas Ordinance of Yakima County, Washington.*" Can you clarify?

Title 16A is a Critical Areas Ordinance (CAO) drafted in 1995 that applies only to agricultural activities. After the legislature intervened with the Voluntary Stewardship Program, Title 16C was drafted in 2007, which applies to all non-agricultural activities.

*NOTE: In the course of the discussion, Questions 10 and 11 were inadvertently skipped over. The answers given below were not discussed at the meeting. They are quoted from County Planning Staff's written notes for the sake of having a complete record.*

- 10) When a rule does not apply to any structure that was in place prior to enactment of the Critical Areas Ordinance, which date applies, 1995 or 2007?

When a structure is first constructed it is regulated under the CAO in effect at that time. If the structure is modified then that modification is subject to the CAO in effect at that time.

- 11) Please describe the overlap between critical areas, critical aquifer recharge areas and shorelines.

The GMA requires Yakima County to protect critical areas, including CARAs. Our updated CAO (16C) regulates CARAs, but establishes a protection approach that uses existing laws and regulations to protect them, and minimizes the use of new regulations. The SMA doesn't require protection, per se, but since they are critical areas and the CAO and SMP were once combined, they are included in the SMP.

12) Is there still a hold on applying critical areas regulations to agricultural activities? SSB 5248 expired on Dec. 1, 2011.

Title 16C defers to 16A for all agricultural activities. See 16C.01.05(3). SSB 5248 remains in effect.

13) Is there any effort to extend the voluntary stewardship program to the lower valley? If there is no voluntary remediation and no regulation what does this mean for that area?

The Voluntary Stewardship Program applies countywide, including the Lower Valley. Chelan and Thurston were pilot counties, but it will take a couple of years to complete the plan. The VSP is not geared towards the improvement of groundwater quality, but to prevent further harm.

14) Who regulates subsurface drains?

This used to be regulated by elected Drainage Improvement Districts, most of which have disbanded over the years as people stopped filing for election. Discussion ensued on whether Roza and SVID have jurisdiction in this area. Given some uncertainty among members of the group, it was thought a good idea to take the question to the IAWG Work Group.

15) Who decides if it is acceptable to place a lagoon adjacent to an irrigation canal?

Irrigation canals are not like streams, so the CAO doesn't apply. As long as the lagoon is out of the Right of Way, and affected property owners aren't opposed, there are no regulations to prohibit such placement of a lagoon. A member of the group stated that nobody is proposing to locate a manure lagoon next to an irrigation canal, nor is there any intention to.

16) Why are there lagoons in critical areas? How did this happen?

Probably because they were placed prior to the applicable CAO review process and grandfathered in. New lagoons are not permitted in critical areas under Title 16C. The relevant sections of the County Code in this regard are 16C.06.10(2), and 16D.06.10(2).

17) Does Yakima County have any way to prevent over-application of manures and fertilizers to cropland?

No. Regulation of manures and fertilizers is covered under the nutrient management plans, which are overseen by WSDA and the local Conservation Districts.

Jim Davenport stated that this was really the ultimate question here. If the County doesn't have a way to prevent over-application, should or shouldn't it? It's a question that implicates all agricultural operations, not just dairies. It also leads into the final question on the list:

18) What would it take to pass an ordinance in Yakima County similar to Franklin County Ordinance 17.10.020 that prohibits more than two dairies with > 1,300 cows in a two mile buffer?

[https://www.municode.com/library/wa/franklin\\_county/codes/code\\_of\\_ordinances?nodeId=TIT17ZO\\_CH17.10APAGPRZO](https://www.municode.com/library/wa/franklin_county/codes/code_of_ordinances?nodeId=TIT17ZO_CH17.10APAGPRZO)

County Planning Staff walked through the process of drafting an ordinance. The Board of County Commissioners (BOCC) would have to vote to initiate such a change. Then a work program would need to be developed. Then a draft text would be issued for public comment. Then the County would conduct a SEPA review on the draft text. The resulting proposed ordinance would be presented to County Planning Commission in public hearing. The Planning Commission would make a recommendation yea or nay and pass the proposed ordinance on to the BOCC. The BOCC would hold a public hearing, take public testimony, debate the issue, and hold a vote. If a majority of commissioners vote in favor, the ordinance would take effect.

The group discussed whether the GWMA should issue a recommendation on whether an ordinance concerning over-application of manure should be added to the County Code. County staff cautioned that any ordinance would need to contain very specific language, since the application of manure and fertilizer is common in all agricultural activities, not just dairies; and it would also require money to effectively enforce it. Vern suggested that a public education campaign might be the better approach.

A member believed it was important to know where we are at with manure/fertilizer application rates because they have changed over time. Jim Davenport asked if there was a way to document this. A member replied yes, hopefully we will see it documented in the loading assessment, some through the work of others, and some through dairy soil testing. He also was assured that as we moved forward with GWMA the soil testing would be a bigger component. He was encouraged that changes were taking place – changes for the better.

Meeting adjourned at 6:45pm.

### **Resources Requested**

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### **Recommendations for GWAC**

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### **Deliverables/Products Status**

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### **Proposed Next Steps**

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- Next meeting: Time and place to be determined.
- Contact IAWG Work Group about regulation of subsurface drains.