

Regulatory Framework Working Group

Charge from Groundwater Management Area Advisory Committee

[Insert Charge]

Working Group Members

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

Meeting: May 11, 2016, 5:00-7:30 PM

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

Participants

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

Key Discussion Points

Chair, Jean Mendoza, opened the meeting at 5:06 PM and everyone introduced themselves.

Review Key Questions from Group Members

Jean passed around the list of “priority questions for the group to ask and answer” that had been compiled at the March 9, 2016, Regulatory meeting. Her goal was for the group to go through the questions one-by-one and discuss whether or not the question belonged.

The Regulatory group had already decided to make presentations to other working groups (Livestock/CAFO, Irrigated Ag, and RCIM). The goal was to inform each working group about the regulations pertaining to their industry so that the groups could begin to strategize voluntary measures, incentives, bmp's, educational tools, regulations, etc., that would help improve nitrates in the GWMA. As the group reviewed the questions on the list it was ultimately decided that many of the questions were good to pose during the presentations the Regulatory working group would be making. Further, it was decided that Jim Davenport would refine, reorganize and consolidate the list of questions. His goal would be to first compile a list of questions that would be asked to each group and second, put together list(s) specific to each group. He will email his

work to the group before the next meeting. Additionally, it was decided that the group would work on its presentation to the Livestock/CAFO group at the next Regulatory meeting. The goal was to make a presentation to Livestock/CAFO at their July 7 meeting.

A great deal of valuable discussion surrounded each question and led to other topics important to the group which is summarized as follows:

- A member desired to define “gap.” Another member believed that the term gap was meant to identify something that was missing that should be there. Another member believed that the missing items should be filled with non-regulatory strategies first, i.e., voluntary measures or incentives before looking at regulatory strategies. An alternate expression could be: “what regulatory gaps if filled would benefit groundwater quality?”
- Jean felt that a glossary of terms should be added to the GWMA page on the County website. “Gap” could be one of those items included in the glossary.
- A member pointed out that it would be difficult to determine the gaps before the nitrogen load assessments came out. Vern believed that the reports would reveal that some sources were de minimus contributors to nitrates in the groundwater supply which would allow some sources to be eliminated. Vern’s example was atmospheric deposition as it would be very difficult to regulate.
- A member thought it would be important for each group, as it considered regulatory and non-regulatory strategies, to also contemplate recommending what agency should implement the policy.
- The group felt some of the questions would be generic – not specific to certain venues and others would be specific.
- Jean mentioned a law she heard of from the 1990’s that required Ecology to come up with a list of BMP’s which was eventually rejected. Steve asked for a copy of the law noting that BMP’s by their very nature could not be regulated.
- A member pointed out that a proposal for a monitoring program (or anything else the group desired to carry forward) would need to be to Jim Honeyford by September or October so that funding could be requested from the legislature in the January, 2017, session. It was agreed Jim Davenport would put this item on the June GWAC agenda. The group would need a figure from PGG by that time in order to accomplish this task.
- The group realized that there was a concern about the over-application of commercial fertilizers (Mineral N). They discussed whether there was any way to get reasonable data on the application of chemicals or manure. They believed this was an issue that needed to be brought to the attention of the Irrigated Ag group so that they can work on a way for the data to be gathered in the future.
- A member felt it was important for the groups to remember that there can be unintended consequences for any regulations that might be proposed.
- Jim Davenport felt it was important to encourage the groups to implement regulations only when they must and to only regulate the factors that require regulation.
- A member suggested that data gathering would be important to precision agriculture. Another member pointed out that the data may be proprietary. This led to a discussion about stewardship programs and how these might be beneficial.
- A member believed that BMP’s should not be suggested unless a group knows that they will work.

- It was suggested that Irrigated Ag might consider strategizing how to get farmers to perform field tests. One suggestion was to have the irrigation districts require proof of a completed field test (perhaps on an annual basis for fields larger than an acre) before they supply water. A concern was voiced that it may be necessary for the legislature to give the districts the ability to incorporate this requirement in their bylaws. This would be a non-regulatory matter.
- Another suggestion was to add to State water rights an assurance that water is applied in a way that doesn't cause a problem to be determined through a soil test.
- Vern pointed out that if you give people the opportunity/information to do the right thing they will do it. The deep soil sampling was proof of that already. "They have to know what they are doing" includes moisture/soil sampling. Another member added that he had encountered situations in his business where he had been required by a government entity to do something but had been able to recoup the cost of fulfilling the requirement in other ways. He felt this might be true in this instance as well and also suggested that a cost share program could be considered.
- The group desired Irrigated Ag to look at the feasibility of a nutrient management plan and irrigation management plan for farmers. There was a consensus that an annual soil test should be performed by farmers of a certain size and larger. This could be part of the plan. The group agreed to examine ways to facilitate this.
- Jim Davenport said that Vern would furnish copies of the large spreadsheets he had prepared. However, first Jim was trying to simplify the document.
- The group had a discussion again about writing up the full history of the GWMA as this could be helpful with community education. Others added they would be supportive if the purpose of the history was to tell everyone how the GWMA got from point A to point B, but if the purpose was to lay blame they were not interested. Jim Davenport encouraged the group to read the history Laurie Crowe had prepared and cautioned that it was important to be careful of history as it generally was written for a reason and writing one might be hard to satisfy everyone's expectations.
- Another person noted that laws have unintended consequences, i.e., dairy farmers were told the way to solve problem was to build lagoons and it seemingly facilitated the growth of dairy farms.
- A member felt that enforcement deserved discussion by the group and should also be added as a glossary term. Another member thought the discussion of enforcement should center on an agency's effectiveness of what they are doing with what they have to work with. They felt a discussion on enforcement was warranted as it pertains to implementation. Vern explained that it was the County Code Enforcement Department's desire/goal to bring people into voluntary compliance and that their last resort was to issue a citation or to take the case to court. He also noted that resource issues always cause them to prioritize the ability to enforce much like the Department of Agriculture and the Department of Ecology. Jim Davenport believed that a discussion on this matter needed to be specific, i.e., is an existing law in place - is it being enforced. Also, it was agreed that the work groups could discuss the practicality of enforcement of a regulation that is being suggested.
- A member suggested a format for presentation to the working groups be: 1) What they think is not in place or not strong enough (their preconceived notions); 2) what the

Regulatory group has learned from the presentations applicable to the working group; 3)
More discussion.

Jean then invited the group to comment on anything they might like to add and thanked everyone for their contributions. Group members thought it was a good meeting with respectful conversation.

County Webpage

Jean said that she had spoken with Vern about having a place on the County website with information for all the groups so they would be looking at the same thing. This would include, but is not limited to: 1) a glossary; 2) presentations from different entities made to the Regulatory group (Note: Ginny wants to edit and update her presentation with tracking to correct some minor things largely in the content. The group felt this was a good idea); 3) meeting summaries (Vern desired to make this more accessible); 4) Pertinent RCW, WAC and County regulations; 6) various papers like those Ecology places on its website. (The group did not agree to No. 6 as it desired to see first if the papers were relevant before placing them on the website – the issue needs to be revisited).

A member reminded everyone that December, 2017, is not that far away and that even if an extension could be granted it would be a shortened amount of time. David Bowen encouraged the group to finish its regulatory work by October or November.

The meeting was adjourned by Jean Mendoza at 7:40 PM

Resources Requested

Recommendations for GWAC

Jim Davenport will put a legislative funding request for the proposed monitoring program (or anything else the group desired to carry forward) on the June GWAC agenda.

Deliverables/Products Status

Proposed Next Steps

Jim Davenport will refine, reorganize and consolidate the lists of questions for each group. He will email his work to the Regulatory group before the next meeting.

Jean will add to next month's agenda "work on the presentation to the Livestock/CAFO group."

Jim Davenport will simplify the large spreadsheets so that they could be furnished to anyone in the group that wants them.

Jean will provide a copy of the law she heard of from the 1990's that required Ecology to come up with a list of BMP's which was eventually rejected.