

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), 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

Meeting: January 13, 2016 5:00pm – 7:30pm

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

Participants

Present: Jean Mendoza (Chair), Jim Davenport, Laurie Crowe*, Larry Fendell*, Jim Dyjak, Charlie McKinney, Steve George, Dan DeGroot, Ginny Prest*, Vern Redifer, and Bobbie Brady (Yakima County Support)

*via phone

Key Discussion Points

The meeting was opened by Chair, Jean Mendoza, at 5:05 PM. Jean noted that in accordance with the Agenda she had three goals for the meeting. The first was to have each member state what they would like to see happen as the committee moves forward. Her next goal was to review what the GWMA specifically said the committee should accomplish. And lastly, it was her desire to put together a plan and set goals based on the previous two discussion items. Jean took a moment to let the committee know that several members had sent emails in response to the agenda. In addition, Jim Davenport and Vern Redifer brought a chart (36" x 44") that had been prepared by Jim which was hanging on the meeting room wall. Each of the members would discuss these written responses when the group discussion began. (Please note: The chart brought in by Jim and Vern could not be replicated for the group in electronic form due to the size prior to the meeting. The words in each column could only be read on the screen by clicking on that particular column, but the impact of the chart was found not only in seeing what was written, but also in the columns left blank, as they indicated where particular laws/regulations applied to

particular nitrogen sources, or not.. The chart is available at present at Yakima County Public Services and can be viewed by any member upon request. An electronic copy will be provided to the members as well. Further discussion about the chart is contained below as part of the group's discussion). Vern also supplied the committee members with an 8-1/2" x 11" summary of the chart. However, this summary conveys the written blocks from the larger chart but none of the open blocks. The format was reworked as well to reduce the size and thus provide the content to the committee members. It will be scanned in by the County and available to all members in electronic format.

Discussion – Part I

Jean Mendoza read Section 3.1 Problem Definition – Define Existing Regulatory Framework Within the GWMA Boundary and Section 3.2 Evaluate Existing Regulatory Framework of the GWAC Work Plan Regarding Regulatory Framework. When she finished she noted that she felt the group was off to a good start on 3.1 but she did not see a plan for the evaluation required in 3.2 and was concerned that it had not been formulated to date.

The entire group was then invited to share their thoughts and observations. Those are summarized as follows. The plans and goals that were derived from this discussion are included in Part II of this summary.

1. At Jean's request Vern and Jim Davenport shared first about the charts and summaries they brought to the group that evening. Jim explained that the chart was a way of providing the group with a framework of the laws/regulation now in effect – a summary of the laws as they pertained to each source of nitrogen within the GWMA. The laws and regulations are noted on the "x" axis (on the top row from left to right). The sources of nitrates are listed on the "y" axis (in the left column from top to bottom). The laws and their language are in the corresponding cells where the x and y axes intersect. What Jim found of particular interest were the open cells between nitrate sources and corresponding regulations. This "gap analysis" makes clear the extent and absence of regulatory coverage.
2. Vern broke Jim's chart down and put it into an 8-1/2" x 11" format. This format lists each nitrogen source in sequence with the legal information beneath it. In the left hand column beneath it, applicable regulations and citations were included. All of the words in *italics* were Jim's descriptions of those regulations, taken from a longer, "treatise" type description of them. In the right hand column beneath the nitrogen source, Vern provided that information from Jim's chart that describes how the law/regulation operates. The content of this "smaller" version is identical to the charts provided by Jim, however, it was assembled in a different format so it fit better on smaller pieces of paper. The only other difference is that there are no blank spaces – again to allow the content to fit into a smaller format. This does not help with the "gap" analysis (since you can't see the gaps in this format) but it does allow each member to be able to read what was written.

The group held a discussion regarding the content of the chart and its summary. One member noted that there was nothing under atmospheric deposition and wondered if the

Clean Air Act addressed this. It was agreed by the group that this should be quantified and looked into some more.

A member voiced concern as to who would be responsible to enforce any new regulations.

3. As the member roundtable discussion continued, concern was voiced that it was imperative for the committee to understand each group's regulatory roles. This member felt it was necessary that the group re-visit the regulatory roles of each governing agency. If necessary, he felt that the group should bring back selected agencies for further clarification. In addition, he thought the group should look at how California bundled funding with regulatory guidelines for a greater impact.
4. Next, Charlie McKinney discussed the contents of his email to Jean. He explained that Section 173-100 of the WAC directed the group to come up with a set of recommended solutions that would be effective. He believed, however, that in addition to regulatory solutions it was imperative for the group to look at and be open to alternative solutions, i.e., incentives, education, or other alternatives and that the group had a responsibility to be open to alternative solutions when they were more effective than regulations. His thought was that the group should look at alternatives and how those alternatives could be narrowed down into actual recommendations. Any alternative recommendations would require solid rationale or be left on the table. He did believe that after seeing Jim's chart tonight that this method might be a good way to fill in the gaps. However, he also cautioned that he didn't think the group could do this until the source of the problems were clearly defined through the various reports and studies that were yet to be completed by the other GWAC committees.
5. Another member spoke up and added the following comments to Charlie's alternative method approach. He felt that the group should look at the regulations outlined in Jim's chart and then define their effectiveness and communicate this back to the GWAC. He believed the chart would include a list of pros and cons of the alternatives as well. This would provide the full GWAC with the building blocks to get it started on the final process and would be an informative tool to provide to the GWAC. Charlie McKinney added that a matrix of alternatives could be fashioned by this group. Then the group could solicit input from other groups like RCIM, Livestock/CAFO and Irrigated Ag for any alternatives those groups would recommend. At that point the alternatives could be refined. Charlie offered to fashion such a matrix.
6. Another member spoke up and pointed out that he saw the WAC as a checklist. The starting point was Section 3.1 and each source that might affect the ground water supply. He expressed that he felt the group had failed to study each source adequately. Examples of missing elements in his opinion were: irrigation water, large on-site septic systems, mining, and abandoned, poorly constructed wells. He did feel that Section 3.1 was mostly done but that the group hadn't finished Section 3.2 and that the group needed to proceed in an orderly fashion through the WAC until each item could be checked off.

When another member voiced a concern that the group would proceed in this manner GWAC would get to October 2017 and not have had sufficient time to properly analyze and set forth solutions and therefore, not get the entire job done, he responded that he found the most efficient way to proceed was a methodical accomplishment of goals as outlined in the order in which they were set forth. He also felt the method brought about unity. Once this methodical approach was done the information could be disseminated to the various work groups so that they could look at alternatives which would enable this group to fill in the gaps on Jim's chart as suggested earlier.

7. Again, a member pointed out that it would be good to see the results of the nitrogen loading assessment because it should illuminate areas that were in the greatest need to be addressed and allow the group to direct its focus.
8. Ginny Prest from the Department of Agriculture informed the group that the report to the legislature regarding the nutrient education project would be available soon. She will send Yakima County support personnel a copy so that it could be made available to the group. The nutrient education report (also called the provisio project report) includes an effort to identify gaps in regulation regarding land application of manure and the GWMA Regulatory Framework Workgroup may help contribute to that effort.
<http://agr.wa.gov/FoodAnimal/Livestock-Nutrient/>
9. Another member brought up the topic of technology upgrades. It was his opinion that past issues were being addressed/solved by new technology and new methodology. An example was drip and sprinkler irrigation as opposed to flood irrigation. Another example was the application of fertilizer at agronomic rates. The committee voiced a desire to hear a presentation on the improvements made in technology – those currently on the market and those concepts due out in the near future. This would allow the group to gain a better understanding as to how technology could help everyone make the changes that need to be made and might possibly have a position in the alternative matrix being proposed.
10. Lastly, a member voiced concern that the group might need to consider regulating the number of cows in Yakima County. She reasoned that it was the most cost-effective solution to the problem. It was her desire for the committee to approve the hiring of some law students to look at communities who had taken this action and do a cost/benefit analysis of the potential lawsuits that ensued vs. the cost of public health. Vern pointed out that a self-limiting system (dairy nutrient management plan) was already in place and while it did not set a limit on the number of cows it did preclude an entity from having more cows than they had the ability to process waste in a proper manner. Therefore, to the extent cows are a part of the problem – a regulatory solution already existed. He also wondered about the practicality of limiting the number of cows in the County and just how that could be done. A few of the members discussed that while the dairy nutrient management plan did in fact exist, the governing of this regulation was still evolving. Vern pointed out that he still felt this was a better management plan as it does give the governing authority the ability to say nutrients must be applied agronomically. He saw limitations in a plan that would govern the number of cows as it still might fail to solve

the issue if someone didn't manage how the nutrients were applied or if the nutrients were applied correctly, but the land was overwatered. Jim Davenport agreed but suggested both solutions would be difficult to monitor. Another member added that technology for manure handling and feed continues to improve and will also help with this issue.

At this point the group's roundtable discussion was complete and they took a small break before continuing the discussion by assembling a plan and goals.

Plan and Goals – Part 2

The group agreed that they needed to assemble a list of items for further review which is as follows. Prior to the meeting with the groups they desired to write out a list of questions for the agencies:

- Irrigation, chemigation, fertigation (BJOC, ROZA, Sunnyside Irrigation District)
(Please Note: WSDA has a fertilizer and chemigation program per Ginny Prest)
- Mining
- Atmospheric Deposition
- Large On-site Septic Systems (who can do this?)
- Energy Tax Credits – how they influence policy and how they relate to climate change
- Technology – how it solves the problem and how regulations may inhibit technology (regulations should be technology drivers)

It was agreed to dedicate the next meeting to going through the checklist, seeing if there are other groups the committee would like to hear from and estimating how long it will take to get through the items. It was agreed that Jean Mendoza will get a presenter or two for the next meeting as well.

The committee discussed the meeting date and time for the next year. All agreed that the meeting date (second Wednesday of the month) and location (Department of Ecology) worked well. However, it was the consensus of the group to change the time to 3:00 PM to 5:30 PM. The chair desired to do another doodle poll to see if this new time was acceptable, but the group's opinion was that the people at this meeting were those that consistently attended and their desires should come first.

Meeting adjourned at 7:40 PM.

Resources Requested

- Ginny to send link to Nutrient Education Project report
<http://agr.wa.gov/FoodAnimal/Livestock-Nutrient/> and EPA Region 3 Chesapeake Study from Maryland for distribution to the group. (Attached)

- Jim Davenport/Vern to provide the group with an electronic copy of the chart and summary they developed. (Attached)
- Charlie McKinney volunteered to fashion a matrix of alternative solutions that would allow for the input of other groups like RCIM, CAFO and Irrigated Ag as to the alternatives they would recommend as well.

Recommendations for GWAC

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Deliverables/Products Status

-

Proposed Next Steps

- Next meeting: The group agreed to continue to meet on the second Wednesday of each month at the Department of Ecology but the group recommended that the time be changed to 3:00 PM – 5:30 PM. Jean Mendoza desired to send another Doodle Poll but was open to the change.