

## 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: September 14, 5:00-7:30 PM

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

### **Participants**

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Present: Jean Mendoza (Chair), David Bowen, Larry Fendell, Steve George, Jim Dyjak, Sue Wedam, Jason Sheehan, Laurie Crowe, Patricia Newhouse, Vern Redifer, Bobbie Brady (Yakima County Public Services). No one was on the phone.

### **Key Discussion Points**

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Welcome and Meeting Overview: Jean welcomed the group at 5:09 PM. Everyone introduced themselves. Jean asked the group to withhold any responses until others are through talking. Jean asked Vern if someone would be able to offer the group legal expertise in Jim Davenport's absence as she felt this was important in light of the group's charge to understand regulatory framework. Vern agreed that Jim's departure left a void on several levels as he not only provided legal expertise, but also acted as a facilitator, attended the various monthly working group meetings which kept the groups up to speed with each other and he accomplished a great deal of writing in advance of the end work product.

Vern and David both agreed that a limited number of structured written questions could be submitted to either Yakima County Corporate Counsel or the Department of Ecology Assistant AG's on behalf of the Regulatory Working Group if necessary. In both cases Vern and David would need to be the liaison to these attorneys and the volume would need to be minimal. In light of this it was agreed that if the group needed legal direction it would be considered on a case by case basis. Vern said that he had already spoken with David and another member about

people who might help facilitate and guide the group and he also had an idea about someone who could help draft the required end work product. Vern added that there was not much funding remaining for this since the work which began in June, 2012) took much longer than anyone thought. It was his intention to talk with the GWAC about the budget in October as there was still a great deal of writing and organizational work that needed to be done.

Jean also inquired of those in the room representing the dairy industry asking them to provide to the group all of the documentation they had to complete in order operate as a dairy. She felt this would give the group a better understanding of the regulatory requirements dairies were already required to meet. A number of members spoke up in opposition since the request had nothing to do with the charge of the GWMA to reduce nitrates in the groundwater in addition to a variety of other reasons. After a great deal of discussion failed to produce a consensus, a member requested the group return to the items on the agenda.

**Presentations to RCIM and Irrigated Ag Working Groups:** Jean read through the results of last month's survey on the presentation to the Livestock/CAFO Working Group. She believed that members who had attended the meeting felt the presentation went well. Jean said the group was scheduled to present at the September 27 meeting of the Irrigated Ag Working Group (IAWG). She noted that the presentation would include information on application of manures and fertilizers to land that is controlled by dairies and land that is not controlled by dairies. Dairy controlled land is monitored under RCW 90.64 but other lands are not addressed in the law. Jean felt this clearly indicated a gap in the law. Another member disagreed and said that there was a clear directive that no one can contaminate groundwater. Jean desired to see the law be more specific. David added that while the Department of Ecology was required to establish someone in fact polluted, they can only investigate when a report has been made. Vern noted that while perhaps 28,000 acres of agricultural fields in the lower valley were highly regulated under the Dairy Nutrient Management program, the remainder of the agriculture is only subject to this "you shall not pollute" regulation.

Jean directed the group's attention to Attachment A which was on the screen – (Nos. 1 and 2) "EPA under the Safe Drinking Water Act (groundwater)" and "EPA under the Clean Water Act (surface water)" specifically Effectiveness under No. 2. Jean said that the group had learned that a good job (80%) had been done addressing point source pollution but non-point source pollution had improved very little (20%). Several members disagreed with the utilization of this national report as it mixed apples and oranges and was not reflective of what was going on in the GWMA but pertained mostly to other parts of the country (i.e., the Midwest). Specifically they felt reference to the report "US General Accounting Office says 'Changes Needed if Key EPA Program is to Help Fulfill the Nation's Water Quality Goals'" should be removed from the presentation in each of the locations where it appeared (Nos. 2 and 4) since the Lower Yakima Valley GWMA did not have the non-point issues prevalent in other parts of the county. Another member argued that all reports from other States should then be thrown out, but a member pointed out that reports from areas where there are similar weather patterns, climates and soils could be useful and far more relevant. The group felt it would be better simply stated that it has been determined that there are nitrates in the groundwater which must be resolved. Jean believed from her reading of the law that the EPA could withhold funding if an area wasn't doing its part to mitigate the issues. David noted that at a recent meeting he attended in Bellevue the EPA looked to the State of Washington as a leader in clean water and referred to the State as the

head of the pack. Jean passed out an additional handout – “Clean Water Rule: Definition of “Waters of the United States” – 40 CFR 230.3. A member pointed out that this was not conclusive which Jean acknowledged – she will not hand this document out at the IAWG presentation.

There were no comments upon review of No. 3 – “Ecology under RCW 90.48 Water Pollution Control and WAC 173-200. WA Department of Health under RCW 43.20.”

A member voiced a concern again about the information under “Effectiveness” for No. 4 – Ecology discharge permitting under WAC 173-216” and desired the comments to be removed. David will look to see if he can find this statistic for the Lower Yakima Valley GWMA which could be added.

Under the second No. 4 (which should be renumbered to 5) - “Ecology Non-Point Source Pollution” it was requested that the words “(surface water)” be added directly after the title. Members also agreed that the word “difficult” should be removed after monitored and effectiveness and the words “very good in GWMA” inserted in both locations.

Jean asked Laurie to comment about No. 5 “Natural Resources Conservation Service (NRCS)” In the second sentence under Enforced, Laurie asked Jean to replace the word “investigate” with “monitor” so that the sentence reads: “Only monitor funded activities.” Also the next sentence should be changed to “NRCS guidelines are applied to dairies in 90.64.”

As for No. 6 “South Yakima Conservation District (SYCD)” the group asked that after monitoring it read “technical assistance provided (financial when able to farmers to provide BMP implementation to protect natural resources.” Also after Measured the sentence should be changed to “Review records, discuss and make changes to update DNMP’s.”

In Question No. 7 “Washington State Department of Agriculture Dairy Nutrient Management Program (WSDA DNMP)” the group asked Jean to speak with Ginny Prest prior to the presentation about the sentence under Enforced. Some members said the sentence reflected what Ginny said in her presentation and had been a part of a letter written several years ago, but others had heard Ginny recently say that enforcement options are not limited and address more than record keeping. They also desired the words “but not to abide by them” removed from the previous sentence.

No. 8 “Composting of Agricultural Wastes” – the group desired that the word “all” be added to this sentence and there be a category for non-dairy and dairy as they felt the section would be more clear. Under dairies it should be noted that they are regulated under 90.64 and are monitored as part of the dairy plan.

No. 9 “National Pollution Discharge Elimination System (NPDES) Permitting Under Ecology.” Under Potential Changes the word “policy” should be changed to “permit” and instead of “under review” it should read “pending.”

No. 10 “Biosolids under Ecology and Yakima Health District.” It was noted that these are well developed, enforced and measured.

No. 11 “Yakima County” under Effectiveness the sentence – “Yakima County is not aware of a mandate to protect the environment” should be deleted and the sentence after Potential Changes

should be changed to “Update to the County’s Comprehensive Plan in compliance with the Growth Management Plan. Implementation of the Voluntary Stewardship Program.”

No. 12 “Atmospheric Deposition” - Jean merely noted that the law is not well developed.

No. 13 “Irrigation Districts” – no changes.

No. 14 “Yakama Nation” It was noted that the document handed out to the group with the agenda was different than the one that appeared on the screen. The Yakama Nation is not accountable to the Department of Ecology as the document on the screen implied and was previously deleted.

No. 15 “WSDA – Chemigation and Fertigation” – no changes

Jean will update the presentation and send it out to the group soon.

**BMP’s and the Law:** Jean skipped this agenda item.

**Potential Regulatory Gaps:** Jean indicated that she had several items in mind. Members reminded Jean that the other working groups would discuss gaps and how to address them. David indicated that it was his goal to finish the BMP’s in the first 30 minutes at the next Livestock/CAFO meeting and he appreciated the information he had received from several members in the last few days. It was his plan to take the last half of the October meeting and all of the November meeting to focus on regulatory gaps. A member asked Steve George to talk more about a performance based standard in the next Livestock/CAFO discussion as he felt Steve’s idea had merit. Steve also mentioned that he thought the NRCS BMP’s should become the standard as they had already been accepted and were scientifically based. Another member stated that the Livestock/CAFO group had come up with good ideas at their last meeting with suggestions like nitrate samples and abandoned wells. A member wondered how a performance based standard might be measured and it was suggested that for a while the measurement might be “hey go out and look.” With that Jean asked for concluding comments and there were none. The meeting closed shortly after 7:30 PM. The next meeting will be held Wednesday, October 12, 2016, 5:00-7:30 PM.

**Resources Requested:** None.

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**Recommendations for GWAC:** None.

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**Deliverables/Products Status:** None.

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### **Proposed Next Steps**

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David will look to see if he can find the statistics for the Lower Yakima Valley GWMA regarding Ecology’s effectiveness in managing TMDL’s and non-point source pollution.