

**Columbia River Policy Advisory Group  
February 11, 2016  
Washington State Farm Bureau Office  
Lacey, Washington**

The meeting began at 9:30 a.m. Facilitator Neil Aaland reviewed the agenda. Introductions were made around the room. Neil noted that Ben Floyd, in the audience, is now working with him to provide facilitation support to the Office of Columbia River.

**Remarks from Ecology: Where We've Been and Where We're Going**

Tom Tebb, OCR Director, covered this item in place of Ecology Director Maia Bellon, who was called to a meeting with legislators. He said a lot has been accomplished during the ten year life of the program, and listed a number of significant projects. OCR is also working on water for towns, restoring stream flows, positioning the state for climate change, and drought response/planning. The initial \$200 million in bonding authority is nearly spent. In considering the future of the CR Program, the Washington Waters task force is considering three primary proposals:

1. Re-authorize the bonding authority
2. Pay as you go (seek appropriations for specific projects each session)
3. Include the program in a larger water bill

Tom said he is meeting with the state of Oregon to discuss how the two states might work together on water supply issues. He also noted that the ongoing work on re-negotiating the Columbia River Treaty with Canada may affect OCR.

CR-PAG members and alternates had these questions and observations:

- Lisa Pelly said we should talk about the many positive things that have come out of the program, be sure people are aware of them
- John Stuhlmiller commented on the great performance of the program and reminded people how contentious these water issues were prior to the adoption of the bill creating the program

**Drought Impacts on Agriculture/Water Outlook 2016**

Melissa Downes, OCR, opened by presenting information on the water outlook for 2016. The drought declaration for 2015 expired on December 31, and was not extended since things are looking so much better. The current snowpack is above normal, and the forecast for water in the Columbia River is good. The Yakima basin is at 116% or normal. [Please refer to Melissa's PowerPoint presentation for details; it can be found on the OCR website.]

Kelly McLain, WSDA, then reviewed the INTERIM report on drought impacts on agriculture from the 2015 drought. This report was prepared by WSDA at the request of Ecology. Ecology was interested in understanding the drought impacts on agriculture. Some of these impacts included 22% less wheat production (both dryland and irrigated land); 7 million boxes of apples lost (out of 125 million boxes in a typical year). Kelly noted that data from the Kittitas Reclamation District showed that 33,000 acres were impacted by the drought and their production lost. Some costs from the drought are difficult to quantify and are carryover effects that will come later, for example re-seeding some crops will be necessary down the road. Yield for some crops was down significantly, and impacts from the drought are not necessarily just a one year impact. She also noted some WDFW data that showed spawner numbers from Canada were down; less than 20,000 instead of over 400,000 in one instance. These were lost due to temperature issues. At the onset of the 2015 drought Department of Agriculture predicted up to a 50% loss impact to

agriculture across the state, everyone is please the numbers are much lower than predicted. Kelly concluded by saying the Survey Monkey site will remain open for another 6 months to obtain input.[See Kelly's PowerPoint presentation for details; it can be found on the OCR website.]

CR-PAG members and alternates had these questions and observations:

- David Close noted that cultural impacts are missing from the report, and we need to pay attention to those as well
- Is the study addressing regionally specific stressors (e.g. in Okanogan Rangeland)? [Yes, they'll try and tease out that information]
- Any plans in the future for shifting from water intensive crops in some of these basins? [Farmers are adaptable to a point, and droughts and market drive changes; WSDA is seeing a lot of changes in response to the drought]
- Commissioner Wes McCart from Stevens County applauded the comments on pest pressure on the western side of the state, and noted pressure on the eastern side as well – he lost 80% of his crops (alfalfa and hay)
- How much of the loss was due to heat, and to lack of water? [They couldn't parse that out]
- The impacts to fisheries will not be known for several years
- What about livestock impacts?

### **State Supreme Court Decisions and Potential Implications on the Columbia River Rule and Water Supply Development**

Alan Reichman, Assistant Attorney General for Water Resources, discussed two recent cases and discussed their influence on the Columbia River Program. As background, he reminded the PAG of a 2013 Swinomish case out of the Supreme Court. This decision held that the use of Overriding Consideration of the Public Interest (OCPI) was only to be narrowly used. This decision ended up invalidating a 2006 amendment to the Skagit River instream flow rule. As a result, over 400 homes built relying on that rule amendment lost access to legal water supply.

Alan then reviewed another Supreme Court case, Foster vs. Ecology, a case where the City of Yelm was developing an extensive mitigation plan for the use of new water using OCPI. The 2013 Swinomish decision invalidated a Pollution Control Hearings Board (PCHB) case upholding the Yelm mitigation plan. The result is that Ecology is finding it difficult to “think creatively” in addressing applications for new water. As a side note, both Ecology and the city of Yelm have requested the Supreme Court to reconsider its decision; nothing has yet been heard from the court.

The second case he discussed is the Kennewick General Hospital (KGH) case. KGH received a donation of land as a gift in 1980 and was seeking to make use of the land. A permit was issued to KGH for water rights after consultation under the Columbia River rule based on mitigation projects; Ecology committed \$6 million toward the projects, and the permit holders would have to pay \$35 per acre-foot per year of water used over a 43 year period. Based on the mitigation package, Ecology issued the permit. This permit was appealed to the PCHB by the Okanogan Wilderness League (OWL) and Center for Environmental Law and Policy (CELP) joined in. PCHB held that Ecology had the authority to require this type of mitigation, but did not rule on the merits and held it over for trial. KGH asked Ecology to issue a new permit that had instream flow conditions, believing it would be better to take that risk than assume the old permit would remain. Ecology met that request and requested dismissal of the case. OWL did not contest dismissal, but contested the existence of a summary judgement order that gives Ecology out of kind mitigation authority. This is pending in court.

What does this mean for water rights on the Columbia River? There are approximately 150 applications pending under the CR rule. Ecology is assessing what to do in the context of these legal cases, and the effect on the CR rule. The foster case has taken away significant flexibility from Ecology.

CR-PAG members and alternates had these questions and observations:

- Do these cases affect decisions from Conservancy Boards? [Yes]
- Does the legislature have the ability to fix this problem? [Yes]
- Is the Hirst case relevant to the PAG? [It's relevant to counties but not the Columbia River Program, particularly to rural counties]

### **Future and Financial Challenges of the Columbia River Program**

Tom Tebb opened this topic. He reviewed a PowerPoint presentation [see the OCR website for the presentation]. OCR is presently looking at the “pay as you go” option as the mechanism for seeking funding in 17-19 to implement projects. There is only \$7 million remaining from the original \$200 million in bonding authority authorized by the 2006 legislation. In a recent budget proviso, the Legislature added several requirements that OCR must address when seeking funding, including:

- Total project cost;
- Project benefits;
- Timeline; and
- Public vs. private costs.

The May CR-PAG meeting will be key for seeking budget development input.

CR-PAG members and alternates had these questions and observations:

- Jon Culp noted that the large initial funding amount gave us the ability to think long-term; he does not like pay as you go for that reason
- Jim Brown wonders if the program should operate like the Washington Wildlife and Recreation Program (WWRP), with project lists created and funded when a certain budget amount is provided
- Paul Jewell likes a more comprehensive solution, and appreciates being able to think big
- David Close wants more emphasis on instream flow objectives
- Lisa Pelly agrees with preferring to “think big”
- Michael Garrity also agrees with “think big” and noted that conversations outside the PAG are going in this direction; PAG should be involved
- John Stuhlmiller noted that the bonding authority is the path of least resistance; a comprehensive package is great but the issue is funding it
- Mike Schwisow noted that the short-term approach is pay as you go; he also noted that this program HAS somewhat mirrored WWRP
- Lisa recommended everyone review the existing statute RCW 90.90 and remind ourselves of its content

Tom Tebb asked Jim Skalski, budget/policy analyst for Ecology, to weigh in. Jim noted that a big challenge for the 2017-19 biennium will be funding the McCleary decision [education funding], and dealing with shortfalls in the MTCA budget, with the low price of oil. Pay as you go competes with other budget requests. Re-authorizing the \$200 million bonding capacity has challenges but provided some certainty.

This topic will come back to the PAG for the May meeting.

**Updates from OCR: Projects, Budget, and Legislative Session**

Tom Tebb reviewed some powerpoint slides on OCR’s evolution and what has been funded out of the CR Program. Melissa Downes then gave a high level view of funded projects, grouped by the legislative mandates that projects were intended to address.

Wendy Christensen noted that whenever they are at a meeting with other states, the Washington State Office of Columbia River is a huge topic. Idaho and Oregon are amazed at the program; Oregon has adopted its own version, much smaller in funding.

Craig Simpson agreed with Lisa Pelly and thinks we should work on selling the CR Program more effectively.

**Suggestions for future topics from CR-PAG members**

- Ongoing updates from the Attorney General’s office
- Ongoing updates regarding the Columbia River Treaty
- Water banking
- Another tour would be useful
- Have presentations from NGOs on their natural resources values

**The meeting adjourned at approximately 12:30 p.m.**

**The next meeting of the CRPAG will be on May 12 in Ellensburg, WA.**

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**Attendees:**

*CRPAG members and alternates:*

- Jim Brown, WDFW
- Wendy Christensen, BOR
- David Close, CTUIR
- Jon Culp, WSCC
- Michael Garrity, American Rivers
- Holly Harwood, BPA
- Paul Jewell, Kittitas County Commissioner
- Wes McCart, Stevens County Commissioner
- Lisa Pelly, Trout Unlimited
- Tom Ring, Yakama Nation
- Mike Schwisow, CBDL/Irrigation Districts
- Craig Simpson, ECBID
- Rich Stevens, Grant County Commissioner
- John Stuhlmiller, WSFB

*Others in attendance:*

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|------------------------------------|------------------------------|
| Neil Aaland, Facilitator           | Ben Floyd, Anchor QEA        |
| Noah Bates, WDNR                   | Cathy Hubbard, Ecology       |
| Jim Bethune, Brown & Caldwell      | Don Jenkins, Capitol Press   |
| Eleanor Bosman-Clark, WDFW         | Eric Johnson, WSAC           |
| Jim Browitt, Schroeder Law Offices | Al Josephy, Ecology          |
| Scott Cave, City of Quincy         | Sue Kahle, USGS              |
| Mike Dixel, WDOH                   | Mike Kaputa, Chelan County   |
| Melissa Downes, OCR/Ecology        | Agnes Ketchen, Yakama Nation |
| Tim Flynn, Aspect                  | Ted Knight, Spokane Tribe    |

Mike Krautkramer, Robinson Noble  
Ben Lee, Landau Associates  
Ilene Le Vee, landowner  
Kelly McLain, WSDA  
Dave Nazy, Ecology  
David Ortman, Sierra Club  
Nicky Pasi, AR  
Joel Purdy, GeoEngineers  
Alan Reichman, AAG/Ecology Division

Tom Ring, Yakama Nation  
Mark Schuppe, Department of Ecology  
Evan Sheffels, WSFB  
Deborah Singleton, Ecology  
Jim Skalski, Ecology  
Tom Tebb, Department of Ecology  
Brian Walsh, DOH