

Wetland Bank Advisory Group Meeting

Meeting Minutes

October 10, 2006

9:00 am to 12:00 pm

ATTENDING

Christina Merten
Gretchen Lux
Kate Thompson
Lauren Driscoll
Amy Kurtenbach
Jennifer Thomas
Peggy Bill
Dee Arntz
Kim Harper
Jodi Slavik
Wendy Bolander
Bill Leonard
Carol Smith

The meeting started with introductions around the table.

The format of the meeting was outlined for the group: Lauren will discuss the history of the pilot program and where we are today. Then there will be a broader discussion about the comments received and what challenges face the program.

Lauren outlined the history of the wetland banking in WA and where we are today

In 1998 the mitigation banking rule RCW 90.84 was passed that directed Ecology to develop rules for certification for wetland mitigation banks. Lauren came to Ecology from WSDOT to lead the effort and to develop the rule for certification.

Determined Ecology would go through a negotiated rule making process, because the rule would affect many different stakeholders and would have a significant effect on how mitigation is done in the future.

Ecology convened a 22 member advisory team that worked through the majority of issues that touched mitigation banking. It was an 18 month process, we compromised on many issues. In general the group didn't draft specific rule language but came to a general consensus on where the rule needed to go. Ecology drafted the rule language and went out for public comment in June 2001. As we got ready to finalize the rule in 2001 Ecology's funding was cut and the SEA program lost 15 positions. One of these positions was the wetland banking position.

[The decision to cut funding for the banking program was an internal Ecology decision. If the rule was adopted additional staff and

resources would be required that Ecology would not be able to fund based on the budget cuts]

The rule adoption process was halted and banking activity was suspended until Ecology was funded to run a pilot program in 2004. In 2004, Ecology was funded in a supplemental budget (\$120,000) to set up a pilot program to test the rule. The purpose of the pilot program is to identify potential changes to the rule that would be incorporated prior to going through rule adoption. Ecology worked with the pilot advisors group to select the projects that would be processed using the draft rule. A set of criteria was used to select and rank projects. One goal was to select a variety of banking projects.

Twelve banks were selected and split into two tiers: 6 banks were placed into Tier 1 and 6 banks were placed into Tier 2. Tier 1 banks were projects that would be reviewed first, Tier 2 banks would be reviewed as time allowed. Eventually the list was narrowed down to 6 banks due to a variety of circumstances. For example, the Lummi's decided to only pursue federal approval, WSDOT banks went through a separate review process, some projects were put on hold, and others decided to pursue alternative mitigation options.

The projects were partially funded by Ecology, so cost reimbursement agreements (CRA) were started with the bankers to help fund the program.

Ecology was granted an extension on the pilot for 03-05 biennium (\$400,000). At this point we had not completed certification on any of the banks. Currently 3 banks have been certified under the pilot program.

Since then, there have been a variety of changes that have been implemented over the life of the pilot based on the lessons learned processing the pilot banks.

Q: How much were the CRA's?

Estimate \$32,400 per bank. This figure was determined by breaking out the dollars/hours of what the various tasks were anticipated to take in reviewing projects. The applicant has an option to pay upfront, but most can pay as they go along. Those costs are estimated and as we do the work, they are billed the actual hours worked. Private Banks have opted to pay a \$10,000 security payment. Once the bank is certificated the security payment would be reimbursed.

The Legislature will want to know the cost spent so far on the program. Trying to get a handle on the amount spent and how the rules have been used.

ACTION ITEM: Ecology will prepare a summary of banks costs for next meeting.

Q: Were there banks that were offered a tier one status but declined the offer?

The Lummi tribe chose to work with the federal government and not the state government.

Gretchen started the PowerPoint Presentation - A summary of what the pilot program has achieved thus far:

Meadowcroft Bank: An 11 acre bank over in Stevens County. It was certified by the Department of Ecology in July 2005. The federal agencies opted not to participate in certifying the bank due to its small size but reserved the right to use it on a case by case basis. This was the first bank approved.

Snohomish Bank: The first bank approved by all agencies in August 2005 in Snohomish County. MBI signed in August and MOA was signed in December 2005. The construction for phase 1 is finished and the planting was just completed. This bank went through detailed technical and legal review.

Q: Is there is an administrative manual available to read about how banking is done?

Ecology is working on crafting guidance documents to help people understand the process.

Q: How does the MOA work?

The process has evolved – originally there have been separate MOA and MBI. We are working toward one merged document – aka the template that is now available on the banking website. The template is the legal agreement that doesn't get changed. It has standardized language. There is the appendix which is the supplemental document that can be changed. There are areas identified where technical results of our review get dropped in. Right now it's only for a single entrepreneurial site bank but can be modified for public banks. We are working on ways to use this template to effectively look at multi-site banks.

The template will help streamline the banking process and help the review process go faster.

Q: How does the template work? Was there input from public and private banks?

No – it's a legal document for Ecology and Corps. It's basically the contract language that's been agreed to between Ecology and the Corps.

Another benefit that resulted from creating the template is that agencies without regulatory authority that are part of the MBRT and Bank review feel comfortable signing the MBI. By signing the new MBI template non-regulatory agencies can say they are comfortable with the process and biology behind the development of the bank but do not share the regulatory responsibility of Ecology and the Corps.

This is a strong component of the MBI and should not be overlooked

Q: Will the template conflict with the rule? Does the instrument conflict in any way with the rule that was drafted or is it compatible?

ACTION ITEM: Compare the MBI Template and the Draft Rule.

Back to the Presentation

Skykomish Bank: Just recently approved. Slightly different type of bank, than Snohomish because it includes riverine habitat plus wetlands.

Q: Will WDFW use some credits for their mitigation needs?

WDFW has not been part of the MBI development. They were generally aware of it because of HPA requirements.

Fish credits are outside MBRT review right now. However bankers are interested in pursuing this option. MBRT has actively asked WDFW to participate in the negotiations. Fish credits would likely require involvement of the Services (NOAA, USFWS).

A request from the Advisors group: Would Ecology put together a packet of information on the pilot banks, specially approved designs and requirements, MBI material, monitoring and performance standards, etc.

ACTION ITEM: The packet will be sent out a week before the next meeting on November 13, 2006.

Nookachamps: The project is still in the review process. There are still issues at the local permitting phase. They are preparing their draft MBI now that the template is finished.

Skagit Environmental: They submitted their JARPA in June and are looking to move into the technical review phase. Processing this bank has highlighted some key issues that we need to address in our new rule. There was strong opposition from the agricultural community and we learned that we need to coordinate with the agricultural community. Also highlighted the need to coordinate early with the local government.

Q: Will Nookachamps become involved in the current agricultural problems that Skagit Environmental is facing?

It may.

Q: What is Ecology's public outreach process?

There are 3 different opportunities for public participation: public notice for prospectus, 401/404 permits public notice, and shoreline permit public notice (this depends on the local requirements). Original legislation dictated that Ecology not develop a separate public notice process. However experience has shown that we need early opportunities for public involvement. Need to incorporate a public outreach effort.

From a local government perspective: many of the current regulations did not envision banking in their process. Takes time to realize if there is a consistency problem with land use. We can incorporate this process into the rule to encourage local government to look early at their codes.

Rule process envisioned by group: Local government would not want to create a new regulatory process to deal with banks. Would want to work with the processes already in place and not create another layer.

Local codes need to be able to address this kind of land use [wetland banking]. It's a new category for them. The problem they're having in implementing their authority is that current codes, comprehensive plans, and master programs were not written with the knowledge of wetland banks. We don't want another regulatory layer, but we do recognize that there are consistency problems that the local jurisdictions need to deal with.

Group wanted to hear more about specific experiences of Skagit Bank.

Carol S. – re: agricultural issues – Marginal Pasture Land that could be used for wetland restoration. The Conservation Commission is working on that program – steer restoration toward non-prime agricultural lands.

Will need to address how we protect and conserve prime agricultural lands in this state. There is a natural desire to protect natural prime agricultural soils and the fact that some of them were historically wetlands generates conflict. Farmers understand the importance of those soil types; we're going to have to address the issue of protecting agricultural lands where appropriate.

That's one of the reasons Ecology asked the Conservation Commission to participate in our advisory group. There are some real needs around these kinds of soils that are not replaceable. We can't develop prime agricultural soils in another place. One of the broad comments we received during our outreach efforts in Skagit County was the issue of creating a wetland bank in prime agricultural lands; impacting a critical resources (Ag land) while trying to mitigate for another critical resource (wetland). **That's a broad question for the Advisor's group to think about.**

Q: Is it within the groups preview? Should we decide how agricultural land is conserved?

That state has a responsibility to support GMA.

Carol S. - The Conservation Districts and Commission could help Ecology with locating potential wetland projects away from prime agricultural lands.

Q: Is anyone from CTED on this group. How is local government represented on the advisory group?

We are trying to coordinate with them on these issues. A concern of local government is what role the state plays and what role does local government play in regards to banking?

Q: How do we deal with farmers who don't want to farm anymore and want to sell their land?

It's an issue of private property rights. Salmon Recovery projects are also grappling with this issue. Banking is an easy target. It will be a continued subject for the Legislature.

Back to the Presentation – active processing banks

Clark County Public Works and Clark County Habitat Bank: They have merged to become Clark County Mitigation Partners (CCMP). The Port of Vancouver is also a member of the group. The proposal was submitted in August and is moving along. The proviso money Ecology received from the Legislature is being used to process the proposal.

WSDOT banking process: Not under the pilot program but it works essentially the same way. Similar players on both oversight committees. Not working in isolation. Because WSDOT had an established banking process already in place it was decided to move forward under the existing MOA based on efficiency. Instead of using CRA's, WSDOT is paying FTE's within ECY, Corps, EPA, FWS (20 position) under their Liaison Program. Lesson learned have translated across both programs.

Q: How did WSDOT get banks through the process more readily?

Not really different than pilot banks, WSDOT banks have run the gamut of time length. Again reiterated that WSDOT bank process is not that different from the Pilot process.

Back to the Presentation - inactive bank discussion

Sno-King Bank: The bank was placed on hold; instead Habitat Bank substituted their Clark County proposal.

Q: Is there a minimum parcel size?

We don't have a minimum size right now but this subject will be an ongoing conversation. Urban banks will mostly be smaller parcels.

Q: What about the sizes of multi-site banks?

Bill L – from an investor's point of view; we wouldn't go into the process without at least a cumulative acreage of around 50 to 100 acres, due to the expense of the process.

More questions from the group about Tier 1 and Tier 2 banks. ECY started with 12 banks – but then selected 5-6 to actually go through.

Q: What happened to the Tier 2 banks?

We have in one form or another working with all the banks. The process is not as linear as one might think.

BREAK

Q: Who's on the MBRT?

Ecology and Corps are co-chairs and EPA always sits with us. DNR used to sit on it. We send invitations to local jurisdictions and tribal governments. But due to staffing issues, the MBRT has been smaller than initially planned.

Q: Are there problems with co-chairs?

No, not really. Ecology and the Corps work really well together. The members tend to compliment really well. We will compromise when we get to tough situations.

Amy K. - One thing about the MBRT from DNR's standpoint from participating in the group is that each member of the MBRT has some pretty specific background and expertise that they can contribute to the conversation. As a result the members have tended to complement each other really well. When we did get to a subject that was difficult to get through, we compromised.

Dee A. - Believes the MBRT should have public participation. Banks are public projects. Doesn't like the idea that 6 people (MBRT) can make decisions about banking in WA. Feels that banking is not working.

Jodi S. - Why are these public projects? The legislature directed Ecology to do this. The Private and Public bankers are paying for Ecology's review time.

Bill L. - From a private bankers' perspective, banks do work. If performance standards are not met, bank credits are not released. For this reason there is considerably less risk to the environment than traditional concurrent mitigation approaches.

Jennifer T. - Banks are held at a much higher standard. There are lots of risks that are accrued by the banker. Bankers do much more work than concurrent mitigation. Plus there is long-term monitoring and maintenance.

Dee A. - There should be more transparency with MBRT's review of projects.

Gretchen L. - The intention was to convene a larger MBRT, however limited resources at the local government level has precluded their participation. Need to work on a process to inform the local governments.

Gretchen L. - Ecology needs a public outreach plan for the program that addresses the broad needs for wetland banking and addresses the important decision points for our review processes.

Amy K. - A point of clarification. DNR did not get any money to pay for their involvement at the MBRT. This applies to the county and the Corps. So, Ecology has done really well representing Ecology on the MBRT because they're being paid for their time there. The other MBRT members are not.

There was general agreement among the group that the MBRT process should be more transparent.

Jodi S had some suggestions for Legislature report.

Introductory section – give minimal amount of information

Distill the status of banking (some of the concerns). What is really the status of banking in the state and nationally? What is the difference between banking and concurrent mitigation. Need to dispel these misconceptions out there about banking.

Back to the Presentation - summary of comments.

We are trying to identify what the broad issues are. Need to think about the solutions that can address these broader issues. What is our proposal to fixing these problems? If we say we need more public participation what does that really mean?

Bill L.- Ecology should not make the leap that all these issues need to be incorporated/addressed into/by the rule. We can have a general rule with specific, stand-alone guidance documents. I understand that these are comments you have received but should they all be solved by changing the rule?

Gretchen L. – that's the input we are looking for. Whether we move toward rule adoption or continue to process pilot banks we need to hear feedback to improve the program.

Lauren D. - Ecology needs to move under the presumption that we're going to adopt a rule. The legislature has given us the authority to continue the pilot. We reported to them that we will go through with rule adoption. That's their expectation. So, unless we hear otherwise, that's the direction we need to go.

Jennifer T. – the bankers do not support Ecology to move forward onto rule revision with only 2 banks certified. We would like to see Ecology to continue working on the pilot banks before finalizing the rule.

Gretchen L. – we really need to do both at the same time. In general we need to make changes to the program.

Peggy B. – Lets just go through the comments without saying what we are doing to do. We should be open ended and not assume we know what we will recommend.

Gretchen – Wasn't trying to lead the group down the path of rule revisions. Just suggesting that these are issues that the Ecology and the MBRT need to address.

Continued with the PowerPoint Presentation.

The advisor's group was encouraged to read the comment letters provided to them on CD. Ecology would like to know their thoughts on the issues raised and would like to hear suggestions for addressing these issues.

Should questions be posed to Advisory Group to illicit responses? Ecology doesn't have the advisory group's perspective. Let us know if we are missing issues not listed in the summary.

Suggestion from group: Pull out the key questions and pose to the Advisory Group
We are really looking at process comments.

Ask yourselves the questions - What does the state need to better to improve the banking certification program.

Q: When you are asking for our feedback for the next meetings is the overarching questions – do we go fwd with rule making or not?

We would like to involve the advisor's group in our review of the comments received about the pilot program and to participate in a broader discussion of these issues. Are there issues that have not been addressed? Regardless of which direction Ecology goes in (continue pilot or go forward with rule making)

Q: What is Ecology going to recommend if the legislature asks if Ecology wants to finalize the rule or continue the pilot process?

Ecology has asked for additional staff to work on the rule. With extra staff, Ecology will be able to work on bank processing and rule making.

Can BIAW support the banking program and support a budget proposal for additional funding? Do we have enough information to move forward? Concern expressed over Ecology's division of resources (between process banks and going through with formal rule adoption)

ACTION ITEM: Lauren will outline the resources that we are looking to allocate for the next budget at the next meeting. Also provide the group the different legislative committees the report is being sent. We will need to get this to Jodi prior to the next meeting

Back to the Presentation - summary of comments.

MBRT have started to work internally on informing and including local agencies early in the process. We received comments that the public and local government need to know about a project at the pre-application stage. How early should this start?

From a banker's perspective – we've spent about a quarter of a million dollars by the time the prospectus is developed, so it's very important to get the public/local input very

early. What happens when a banker does talk to the local government early on but problems still arise? Does the group have any suggestions for this?

Q: Is there someone from local government that sits on the MBRT?

For specific banks we had local representatives come to some MBRT meetings, other banks no representatives attended. Local governments are always invited to participate.

Wendy B. - It was suggested that representatives from local government should sit on the advisor's group. We've identified both CTED and local government as being useful additions to the advisory group.

Amy K. - What about someone from the Office of Permit Assistance – DNR just went through this group and it worked out really well.

It was suggested that a representative from the WA Association of Cities/Counties could sit on the group. Do they really understand what's going on and the process? Need more guidance for the local governments (local reps can help us with what that should be). However, some locals don't know what they need to know. We need to coordinate outreach efforts for local government.

Bankers are the ones who go through the issues with the locals. Jennifer can reproduce the documents that they use.

Back to the Presentation - summary of comments

Q: Can tribes vote on the MBRT?

No, they don't have a regulatory role. But we are very interested in hearing what the tribes have to say, their concerns. Their participation is important to the MBRT.

ACTION ITEM: Ask the Corps or EPA on the status of finalizing the federal mitigation guidance. Do they have an estimate of when the new federal rule will be completed?

Q: Before banks are certified do they go through state's SEPA program?

SEPA is required for the local permits during construction. SEPA has not been done on the program itself.

Q: Could the MBRT move forward with decisions without the Corps participation if there were a lack of resources [from the Corps]?

We don't know. Usually in other states, the Corps takes the lead. We would have to ask Gail Terzi that question. [But it was previously pointed out that Ecology did this on the Meadowcroft bank.]

In regards to Watershed planning: Within Ecology we have many different water programs moving along independently – maybe there is a way to coordinate our efforts internally.

One of the comment received address the concern that the majority of demand for bank credits comes from urban lands within the watershed and then gets mitigated in rural areas. Our program needs to consider urban banks.

Cost effectiveness is one of the issues with urban banks.

In some of cases, we are forced to look outside of WIRA or higher in the watershed because there is so little land left available for mitigation purposes.

The local governments have a role is zoning urban lands. They have the ability to control land use. Could use zoning as a way to designate lands for natural resource protection.

There's got to be a balance between development pressures and natural resource protection. Really need to include CTED to help with this discussion.

We should be asking the locals to incorporate "alternative forms of mitigation – not just specifically banking.

Amy asked about marine banks. Those are also going to be small and hard to be cost effective. Very difficult to do. Land is to expensive, and state land does not have that much available.

Many smaller areas have been written off by local governments – difficult in urban banks.

Again – the importance of developing a public outreach plan was highlighted.

ACTION ITEM: Someone has to be working on public outreach efforts. Dee A. will submit specific comments about this for the next meeting

Group asked for an update on the Legislative Report Ecology is writing on the status of the wetland bank pilot program.

One of the suggestions made during the meeting was to have our Advisor Group meetings open to the public. Maybe post on the banking website.

ACTION ITEM: Next meeting – poll attitudes on this topic – what does the group think about this?