

Wetland Bank Advisors Group Meeting Minutes

November 13, 2006

Department of Ecology Headquarters Building
300 Desmond Drive, Lacey

Attending

Doug Peters
Gail Terzi
Kim Harper
Gary Cooper
Mike Rundlett
Wendy Bolander
Bill Leonard
Carol Smith
Peggy Bill
Jennifer Thomas
Amy Kurtenbach
Lauren Driscoll
Gretchen Lux
Kate Thompson
Christina Merten
Sarah Cooke

At the start of the meeting introductions were made around the table. Some members had to leave early and asked if the agenda could be altered to make sure the main topics could be covered first. It was agreed that we would briefly talk about the Legislative Report, discuss and identify the key issues the group should address in the coming months, and to schedule the next few meetings.

A quick update on the Legislature Report on the Status of the wetland banking pilot program: The report is in final editing stage and cannot be release to the group until the report is final.

The report will be sent to the following:

- Senate Natural Resources, Oceans & Recreation Committee
- Senate Water, Energy, & Environment Committee
- House Economic development, agriculture, & trade Committee
- House Natural Resource, Ecology, and Parks Committee
- The Democrat & Republican caucus staff
- The Governor's office (will review report before going to the committees)

The report is pretty general, no big surprises

Mike R. - Is this just a status report or will it include recommendation and changes? What is the use of the report for this legislative session? How does the report relate to the programs intent to move forward with the pilot and the rule?

The report includes only general recommendations on ways to improve the program. We told the legislature that we would provide them with an update on the program. In our report we specify that it is Ecology's intent to move toward rule adoption. Which is consistent with what the Legislature expects Ecology to do. The legislature directed Ecology to draft and finalize a rule. We are looking to submit our draft rule early next summer. In addition, wetland banking is on of the Director's Initiatives.

Mike - Is this part of the budget packet?

It is what we proposed to OFM, we don't know if our full request will be part of the budget packet that is sent to the Legislature.

Gretchen asked Gary Cooper to say a few words about the director's Initiatives (Mitigation that Works). Currently Gary is working on finding alternative to traditional mitigation, although the focus has been on banking at this point. We are working to get the capacity and resources to move the program forward. In our budget request we asked for more staff, to both process banks and administer banks that have been approved. The other area we need more resources to write and implement the wetland banking rule. The objective is to move forward and finalize the rule in the next year.

Gary - Have any of the committees shown a significant level of interest that they would want a presentation about the Program? Not sure, we would presume that the House Economic development, Agriculture, & Trade Committee would be interested.

Mike told the group that this program has drawn the interest of legislatures that have an independent opinion of the program. He wanted to know our communication strategy.

There are many different views about the direction of the program. Jennifer stated that the bankers do not support going forward with finalizing the rule. Ecology should continue processing and certifying the banks in the pilot.

Ecology is starting with the assumption that we are going forward with the rule, as directed to us by the Legislature. One of the questions that came up in our last meeting is whether we should move out of the pilot and how our rule relates to the finalizing of the Federal Proposed Rule. Gretchen asked Gail to give the group an update on the status of the Federal Rule.

Gail believes that there are over 20,000 comments on the proposed rule and many of them have to do with mitigation banking. The Corps is currently addressing those comments, which has to happen before finalizing the rule. Currently the Corps priority is reissuing of the nationwide permits system. The NWP are due to be reissued in March of 2007. Need to address the comments being received before March. Gail believe that

after March (once the NWP's are resolved) we will see movement on the Federal Rule. It might not be final until late 2007.

Bill stated that he wanted to see what the federal rule said before we go forward with the state rule. There maybe some aspects of the federal rule that is lacking in the state rule. He advocates slowing down the process.

Ecology can approach the draft rule in two ways. First is to wait until the federal rule is final (like Bill stated). The other way is to determine what items we don't want in our draft and change it. We are proposing significant changes in our rule based on the pilot. Our group can have that discussion. Maybe the state can move fwd and finalize the rule prior to the federal rule. We can always make amendments after the federal rule is finalized. Gretchen has concerns with just waiting. Our program need more guidelines to move effectively forward.

Gail mentioned that there is flexibility in the federal rule that allow states to work differently. In WA, the state has a significant role in wetland banking, which is different then other states. There were many comments submitted by regulators that timelines found in the federal rule from are unreasonable. In general Gail did not see it extremely divergent from the state rule. Did Bill and Jennifer see issues that were extremely different between to two rules? We need to remember that any kind of rule cannot be totally prescriptive, there needs to be flexibility.

Bill said that the greatest single difference between the two rules is the timeline issue. The long delays are not working for DOT. These delays will kill the program. The best advantage for us was the firm timelines found in the federal rule.

Gail agreed that predictability is good. But the Corps HQ comes up with these changes and recommendations and then does not provide more staff at the regional levels to deal with the increased work load. Good templates and less negotiation will help with the timeline. Springbrook is a good example of a quick bank. The lesson's learned from each bank will help with future bank. We specifically did not put timelines into the state rule because of the unreasonable constraints it would place on the MBRT.

From a business perspective, can you understand the concerns of long and unknown timelines?

This sounds like this is an issue that we need to address. Instead of halting progress of the state rule, we can address the timeline issue.

Gary pointed out that if you don't have the staff to meet the timelines it just creates an extra layer of administrative paperwork. How do we improve timelines and meet the staff requirements? The discussions needs to focus on how to make the program more efficient.

From a bankers perspective the goal is to have a responsive program. If the problem is staffing then lets address this issue. But we need more certainty that what we have experienced. We submit a monitoring report and we don't hear from the program. I agree with Gretchen, that we can find ways to change the process. Let's use the new staff to improve efficiency.

Gary sees the advisors group providing input on the rule, and if there are areas we don't know then we are more careful with the language. We can always draft other language at a later date.

Gretchen encouraged the group to move in the direction of finalizing the rule. As the lead she will be going in that direction unless otherwise directed.

We need to identify what does the group needs to accomplish, what is the relative timeframe to accomplish these tasks. If our goal is to move forward with revisions to our rule we need to start having that conversation among the group. We need to start looking at our key issues. We need to clarify the role of the advisors group. It's important to gather everyone's technical input. Regardless of when we finalize the rule we need to start working on the language.

Other admin details: Taping the meeting and providing transcripts will not work. Instead we have someone taking the minutes. The minutes from the October have been sent out so please review and let us know if we need to make changes. Kate will finalize.

Thinking about our work plan. Ecology is moving toward finalizing the rule regardless of the status of the federal rule. We need to schedule future meetings to discuss pre-determined topics. Later this morning members will split into group of 4 to discuss and highlight key issues they think the Advisors Group should discuss at future meetings. After these issues are identified, meeting for 2007 can be scheduled.

At 12:15 we will schedule dates for 2007. The intent is to schedule 4 meetings about 56 weeks apart. Bill pointed out that the advisors would need to have at least a week or more to review any material for these meetings.

Before breaking into groups Gretchen went through the budget explanation via PowerPoint. She was reminded to send a copy to Jodi Slavik.

PowerPoint Budget Explanation

- FY 2004 Supplemental Budget\$120,000 (1FTE)
Two Ecology staff positions hired with 2004 FY budget appropriation and Cost Reimbursement Contracts (one full time, one temporary)
- FY 2005-07\$400,000 (2 FTE)
One additional staff hired in May 2006 bringing staff level to 3 full-time staff paid for out of budget appropriation and Cost Reimbursement. (two full time, one temporary)

CRA explanation

- One cost reimbursement contract pays for .3 FTE - An estimated 818 hours per proposal (approx \$32,400)
- Time to complete certification depends on the individual project: complexity, length of negotiations, permit timelines and timeliness in submittals and responses to submittals.
- So far actual costs vary greatly between banks with at least one bank exceeding the original CR contract amount . (\$10,000 to over \$35,000)
- As required under RCW 43.42, the cost reimbursement contracts end at the point of permit and certification issuance.
- Activities associated with the ongoing management of the program and approved banks are covered by state general fund.
- As the number of approved banks increase, the amount of work needed to track and support the use of the banks will also increase. (The life of most banks extends at least 10 years.)

Sarah mentioned that it seemed there were various levels of information on the banks that was sent to the Advisors. Gretchen responded that only 3 of the 6 banks have MBI's, therefore not every bank has the same amount of information available.

Ecology is finding that there are lots to do after certification. Will need support from general funds to continue this program.

Gretchen went through the summary of CRA's for each bank.

The next subject was the Clark County Proviso. 340,000 of the general fund--state appropriation for fiscal year 2007 is provided solely to support development of a wetland mitigation program in Clark County

Gretchen asked if Lauren would like to talk about this.

Senator Wallace and House Representative _____ wanted to help establish a banking program in Clark County. There were 3 goals of this proviso: 1) to have an expedited bank approved, 2) help establish a general banking program in Clark County using the watershed characterization process to match with what the County has already worked. Help them identify mitigation opportunities and help local jurisdictions that already have

zoning. And 3) Development of a banking guidance document. We have asked for carryover funds in case we don't finish within the year.

Gail mentioned that the Corps is developing a new wetland mitigation tracking program, ORM which will include RIBITS. It should be out early next year. Ecology and EPA will have access and a password. The public also have access to the software. Nationally it has shown to speed up the banking process in every jurisdiction that it has been tested.

Very extensive in regards to the data input. It is up to the regions what type of data is input. It should cover every possible scenario.

Back to the Clark County Discussion. Carol asked if Clark County is supposed to be a model for a programmatic banking program? How will this affect the rule making?

It will be a parallel process. The Clark County program won't tie in directly to the rule. The rule language will have to be broader

Carol had concerns with the lack of involvement of various group in the Clark County Program if this is to be a model. We don't want to put something out there as a model that doesn't deal with all the land use issues that are out there.

Sarah said that one of WETNET's comments is the way the public is brought into the banking certification process. They have some pretty definite comments about that lack of public involvement in the rule.

Since it appeared the group has started to talk about key issues Gretchen thought it was a good time to break into groups to begin these discussions.

Bill asked for a clarification of what the group needed to do.

Gretchen explained to the group that they should discuss what key issues each person had and try to prioritize the importance of the issue. When we come back together, each group will present what issues they've identified.

The group separated into smaller groups for about 20 mins

Below is the list of what each group identified as key issues:

Group 1 (Christina)

Public involvement & outreach

Communication on the process and program

Integrating technical and permitting processes

Predictability (timelines)

Determining service areas

Determining bank locations

Greater input on interest groups on policy decisions
Dispute resolution process between applicant, regulators, and public
Minimal credit allowed for preservation, only certain percentage of total package can be preservation

Group 2 (Kate)

Communication/coordination on all levels
Predictability – procedures & technical
Public Outreach and Education on all levels
Accountability – on both sides
Using tools for site selection
MBRT Expertise

Group 3 (Gretchen)

Engaging locals & others in the bank location decision
Increase local regulators knowledge on banking
How do we use the scientific knowledge we have – standardized baseline information (watershed char., framework for permit agencies to use to find acceptable areas to site banks). When do we have enough?
Issue of site selection – what do we do with the info out there and what other information do we need
Service Areas – need consistency. Range is wide (WIRA to sub-basin).
Involvement of tribes and local government early
Transparency
Develop rule and guidance – get it done!!!!
Incorporation of marine and estuarine banks
Fish credits - involvement of fish and wildlife. Make it clear to the banking community that we can't talk about it.

Sarah asked about the fish credit issue. Gail explained that currently the banks are required to go through an ESA consultation on the development of the bank only. The consultation does not address the banks opportunity to address impacts to fish and streams. This would require the Services to become involved and currently they are not.

The group then looked at the issues listed and highlighted what they thought the priorities of the group should be.

1. Public Involvement/Outreach; Outreach on process and program; engage local & others in bank location decision; local/tribal early involvement; communication and coordination on all levels; public outreach & education
 - a. We are lumping in order to pick topic areas (outreach is different than public involvement)
 - b. Outreach to WDFW and the Services
2. Standardization of the process
 - a. These pieces should be broken out. Big issues to talk about.
 - b. Service Area/Site Selection = 1 day discussion

- i. What are the criteria that should be used to determine these issues.
 - ii. Marine and Estuary
 - iii. Outreach to WDFW and the Services
3. Process
 - a. Timelines, accountability

Each of the three priorities listed above would equate to 3 meetings. The group agreed to leave the 4th meeting blanking until we had a better idea of what we wanted to discuss. Gretchen told the group that we would be opening these meeting to the public.

The meetings are scheduled for Jan 8, Feb 20, and March 28. The meetings will be held at Ecology

The group decided the first meeting should cover communication, public involvement and outreach.

Gary announced to the group that Ecology will hold a banking workshop on Dec 5th from 9 to 1 at the Lacey Community Center

There will be a panel discussion with Mike Rundlett, Gail Terzi and Sky Miller (so far identified). The topic of the workshop is: What does success look like? After the panel, the group will then engage in a round table discussion. It was suggested that the announcement should be sent to the Clark County List. Gail offered to post the announcement on the Corps website.

Group broke for LUNCH!

Group decided to focus on topics for the next meeting which was determined to be on Communication, Public Involvement, and Outreach.

With respect to communication during project review, what/when does the conservation entity get worked into the review and approval process? This was thrown out to the group as a possible topic.

One item that the group felt related to communication and outreach was that there is not enough staff to implement a program of this size. The Advisors Group want to help communicate with the legislature on getting us staffed up. Can they write letters on our behalf?

With respect to maintaining the banking program, Gary pointed out that he did not know if the OFM and other legislative/budgeting groups realize the amount of staff that is needed to keep a program like this going from permit review to monitoring. He felt that Ecology may be able to use some of the pilot program projects as examples to highlight

this issue. The group thought it might be good to come up with post permitting budget task breakdown. It was also pointed out that the upcoming report to the legislature should not consist of just rosy pictures, may need to point out that the program needs ongoing assistance.

Communication/guidance on financial assurance requirements is needed. The guidance for private financial assurance may be different from public. Identifying who/what is appropriate for financial assurance providers. This may be an outreach item.

***Next meeting** – come up with background materials for review on national bank outlook on financial assurance. For problems that are identified, would be good to propose a few options for solutions for the Advisory Group to review and discuss.

Accountability on both sides can refer to financial assurance requirements.

From bankers perspective getting feedback on construction timeline is not possible from this group. How can the MBRT work with the communication process that comes out from construction design changes?

Local representation is important on the oversight side of project review as well.

Do we extend CRA or higher contracting through construction phase? Bankers probably wouldn't have a problem with this, but would like to see the solution first. i.e. guidance on how the response/communication would work during construction.

How/should we decide whether banks are being put into viable markets.

Ecological/financial failures may be difficult to work with moving the program forward.

Meeting Topic 1 – Outreach

If the advisor group could e-mail recommendations to address the outreach topic to Gretchen. She could then group them and send them out prior to next meeting.

Short-term strategy to get program through legislative program. Line out clear communication strategy. Use Ecology staff to help come up with these plans.

Long term strategy. Program communications versus project plan. Outline the communication process in guidance.

Outreach

Various needs on levels – local government, ag community, regulatory – COE and Ecology.

Training for Corps and Ecology has been discussed for banking and debit-end permitting. Train personnel so that they know when to make the call that off-site is feasible and has been justified.

Outreach needs to be both programmatic and project specific.

Figure out a way for ourselves and others to provide guidelines for permittees so that they can start considering when off-site is a viable option. Some of that will have to evolve as policy on the federal, state and local levels change, but giving general thoughts to start with would be good. Pulling in local jurisdiction so that they can incorporate into local ordinances. Ecology staff is working with CAO's as they come up to include banking language.

Parallel on TDR programs the need for protecting resource, but not sure on where the accepting resource.

There's a big gap on local level of what this means to them. City/county dynamic is difficult, urban vs. rural mitigation and impact issues.

WSDOT is looking at addressing urban issues by proposing an umbrella bank projects because of the pressures of the land availability and resources.

Outreach explanation of umbrella bank sites and appropriate use on debit-end is difficult. Will require being thoughtful on language.

Mitigation plan, justification of I-405 S Renton for going to Springbrook. Terry drochack/Kim Harper worked on that justification. This could be a good example to use.

Working with local government on how they justify going outside of their local area for mitigation at a bank. Landscape assessment will help inform that decision. Once that planning is done that will be easier; however, that planning hasn't been done in many areas or is so new that permittees aren't sure how to use the information. Trying to get multiple jurisdictions to the table and on the same page for a umbrella bank is very difficult.

How do we capture the small impacts that are under the NWP requirements? Working on capturing those impacts on a national level through banks is important.

UW Bothell mitigation is a good example for fish habitat restoration in urban areas.

It will be very difficult to get the locals involve, so maybe all we can do is work on framing the questions and answers that they can use as governments change. Those that are currently active need to feed into how to we involve the other jurisdictions.

What's the best way to do outreach with locals? That's a big universe. Assoc of Cities and Counties, Planning associations, rural counties associations.

Changing the rule to allow the local agencies to opt out of signing? That would generate conflict if it isn't consistent with local planning. It's not a risk we were ready to allow in the rule. Banking and how to handle it in regulation is a learning curve item for the local planners to work into their regulations. What is the crux of the problems, the changing of resource lands. Competing land use activities for limited land use is the issue. Locals are still looking at on-site/in-kind mitigation, so they don't really know how to evaluate things. They'll continue to be uncomfortable with it until we provide them with some guidelines on how to evaluate banking credits.

Habitat recovery planning is also an issue and may be in conflict with making future impact decisions which is what banks represent.

Public outreach to the general public is that sequencing still needs to be done. Media thus far has been glossing over this issue. We need to get in front of this. Skagit County is a good example of what could be done in other jurisdiction. Covering two counties could be good. As soon as an application is in, do an informal presentation in the community of the proposal. The MBRT needs to do the outreach as well as the banker.

Not all ag lands are created equal and that needs to be kept in mind. Ag of commercial significance vs other ag lands, forest lands, etc. is important distinction.

When should SEPA happen, that could have helped the process. This is a vital decision tool.

By meeting three would be good to have some decision trees and how the process is going to go forward.

Cumulative impact is in the eye of the beholder. When we are talking about changing land use, there is concern of conversion of any type. For Skagit there are many battling land uses that are being looked at as needing to be preserved. Estuarine is one of those along with ag. Doesn't help to solve Chinook problem if that drops ag land below critical mass.

May be an opportunity to have some of these projects to go forward with proposals to address these conflicting land use decisions. If a wetland restoration could be paired with ag preservation, that could help get to a solution.

When proposals are opened to local input, how does the MBRT make decisions between conflicting land use issues? SEPA is a vital tool to help with that process. When does the SEPA process start and who leads? Should Ecology be lead? Does each project require EIS? Would there be enough technical information to conduct an EIS? How far does the analysis go? Doing an EIS for construction is one thing, it's the use and operations of the bank and doing an EIS on that could be to wide open. Limit it to the construction and the certification. NEPA is another problem with alternatives analysis. If you wait to do SEPA until construction is known, this eliminates the early on

notification process. If SEPA is to be a useful tool, it needs to be used to make critical decisions along the whole review process. Will help to pull along the other permitting decision makers along the process. Locals having the budget to do the upfront coordination may not be available.

The pre-application process that is being used for CCMP may be a good example.

Now the public outreach isn't happening until a proposal is formally put together. SEPA has a public involvement requirement. Does the applicant have enough information in the early process to inform SEPA? It's known that it's early in the process and is used as a way to flush out what the issues could be.

At this point banking review follows a traditional concurrent mitigation processing.

Banking needs to work out something more similar to mega-project review. Bankers could be concerned with this process becoming longer and more involved. Early message is one thing, going through an formal EIS is another. What would an EIS really get us?

The way that the process is going now is that we are doing the PN earlier in the process and maybe one of the things we need to work on is the outreach that when a notice comes up, this is the public's opportunity to comment. This process did engage the public, it just needed to happen earlier in the process.

The difference in the public versus private processes when it comes to SEPA is important to acknowledge.

How do we use the tools that are already in place and what new tools do we need.

Toolbox language should be included in the rule. A decision tree would be helpful for this type of thing.

SEPA's dispute resolution process is one of those tools that is already in place that we could utilize.

For next meeting, what's been used so far for PN processes. What was used, what was response, what worked, etc.

Early coordination and streamlining may be in conflict. SEPA may assist resolving this conflict. If SEPA is done correctly, with reg reform it only needs to be done once.

Meeting adjourned at 3pm.

