

**Reclaimed Water Rule Advisory Committee Meeting
July 22, 2009**

- **Meeting purpose and agenda**
- **Rule Part II submittals**
- **Water Quantity Issues**
- **Trace Organics Subcommittee**
- **Wrap-up**

Action Item Summary:

Meeting purpose and agenda

Meeting Attendees Committee Members and Alternates	Ecology Staff
Ann Wick, WA Dept. of Agriculture	Katharine Cupps (Phone)
Frank Needham, City of Sequim	Tim Gaffney
Lars Hendron, City of Spokane	Lynn Coleman
Walt Canter, WASWD	Kathleen Emmett
Doug Raines, WA Dept. of Corrections	Jim McCauley
Don Perry, Lakehaven Utility District	
Clint Perry, Evergreen Valley Utilities	
Karla Fowler, LOTT Alliance	Department of Health Staff
John Kounts WA PUD	Craig Riley
	Denise Lahmann
Gwenn Maxfield Covington WD.(video)	
Kristina Westbrook King County (video)	Guests
Heather Trim, People for Puget Sound (Video)	
Dave Monthie, King County (Phone)	
Rick Eichstaedt, Center for Justice (Phone)	

Tim Gaffney welcomed the committee members and made introductions.

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Web updates will be batched twice a month.

Rule Part II submittals

Tim went over the handout spreadsheet of documents required for submittal. He also presented two submittal flow chart models for consideration.

“Reclaimed water plan” most closely resembles a comprehensive plan, with some specific items included like a capacity assessment.

Then an engineering report needs to be complete enough to derive plans and specs.

173-219-120 reviewed briefly.

RAC member suggestions:

- Section 120 is difficult to understand.
- Discuss submittals in sections 140-190 then revisit sections 120 and 130.
- Clarify purpose and revise as needed.

Ecology Action Items:

Clarify purpose and revise section 120 accordingly.

173-219-140 – Reclaimed water plan

RAC suggestions :

- Encourage early submission & flexibility in documents.
- Title section “reclaimed water plan”
- Add a requirement to discuss treatment and options for applications (SEPA alternatives?)
- Add a third sub-section titled “other optional items that may be included in a reclaimed water plan.”
- In 1 (d) add specific impact on existing (public) potable water supply system. (For example, how blending might affect the need for storage.)
- Heather – In 1 have environment impacts assessed more than in (i).
- Don – on 1 (h) need to include SEPA review for all future facilities planned. Needed for state funding?
- What does “groundwater and surface water management mean in 1 (h)?
- Financial viability is in 1 (a) does not need to be in (h).
- 1 (g) we already have an analysis on impairment – is this necessary? This was placeholder language. May more suitable for listing under (3) section “other”. If this is a marine discharge no impairment analysis needed.
- 1. (h) “need for future facilities” may need to be deleted, may be considered ‘phasing’.

RAC Agreements

- Encourage early submission & flexibility in documents.
- Title section “reclaimed water plan”

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Action items:

- Ecology take a critical look at list of requirements and especially try to understand the intent of item (h). Clarify.
- Language suggestions welcome. Send to Tim by July 29th.

173-219-150 Water right impairment - not ready for presentation.

173-219-160 Engineer report,

RAC member suggestions:

- Does not seem appropriate to use word “entire” in 1, put in “applicable”.
- Rephrase 1. “for the facility including any applicable collection systems.”
- Add to 1. “May incorporate multiple facilities if operating under one master generator report.”
- Consider reasons for addressing collection systems in this rule.
 - Avoid duplication with requirements reviewed for wastewater facilities.
 - Collection systems should only be those not included in sewerage plans. , Reference applicable plans. Comprehensive plan must cover all “new” components.
 - Who should retain authority for collection systems discharging into the reclaimed water facility? What permits should they be addressed under?
 - Collection system issue should be addressed in the plan rather than the engineering report because collection systems are generally addressed under general sewer plans.
- What does “flexibility of design” under 4.e.i. mean? It’s part of the reliability assessment.
- (h) Cross connection control plan – add “potable” water purveyor and add a reference to WAC 246-290-490. What purveyor is being referenced? Please clarify which plan is needed for review. Reclaimed water permit cannot address cross connection issue for potable water supply. Need to protect reclaimed water from contamination. And protect employees within the plant from contamination from the reclaimed water. Please clarify. There are already cross connection control requirements. Are new controls needed? Language may be needed to prevent cross connections within the plant. For backflow or accidental cross connected. DOH agreed to draft language for (h).
- Pretreatment - Is discussion on pretreatment needed to address potential impacts of industries on the treatment process, i.e. pharmaceuticals? No facilities upstream that will interfere with treatment of reclaimed plant. Maybe put in plan, before engineering report. We want better pretreatment for reclaimed water facilities (trace organics). FOG taken care of in pretreatment, but may not have control over this. Should we put in a threshold? Is pretreatment part of the WWTP system? Part 4 of

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the rule addresses pretreatment. Some uses may require more stringent pretreatment requirements than those currently required under waste water regulations.

Action items

- Ecology will consider comments.
- DOH will draft language for (h)

173-219-170 – Plans and Specifications

Ecology Action Items:

- 2 clarify lead agency is not bidding the project. “Before proponent bids or procures the project...”
- 3 can we require guidance? Is “shall” needed? Can we use “should”? (May need AAG input).

173-219-180 – Operations and Maintenance Manual

RAC recommendations:

- Most of details in 4 (d) should go to guidance.
- List the minimum requirements?
Change (4.d) to say, “The O&M shall be sufficient to meet regulatory requirements (4.a) Plant must operate to meet regulatory requirements in permit. Put requirements in guidance. Must be approved? Are these minimum requirements?

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- Much is learned during the start up process. Maybe a final O&M requirement is too much. Example, viii specifying number of operators may not be appropriate.
- On xii, don’t submit the whole safety manual just reference applicable parts.

Ecology Action items:

- Look at list in drinking water standards. Shorter list or combined list?
- Research what is needed in the rule as “enforceable components”.

173-2-19-190 – Completion of Construction Documentation

RAC recommendations:

- RAC didn’t want a construction quality assurance plan, it was taken out.
One completed set of record plans dated, sealed and signed by engineer. Electronic okay?

“Ecology action items:

- 3. Change title to include the word completion.
- Do not include the form in the rule. Rather state that the declaration must be on the form provided, and place the content in a form. Move 3(b) The declaration shall include i-v to a form provided by the lead agency.

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Water Quantity Issues

Lynn introduced three position papers from the Reclaimed Water and Water Rights Advisory Committee (RW-WRAC).

RAC Question: Which committee has responsibilities for which aspects of water right impairment? Is the RAC responsible for recommendations on rule content and the water right committee for the report to the legislature? How do they relate to each other?

A: The report to the legislature requires input from both groups. The RAC is not delegating their input on this to the RW-WRAC. Ecology needs to take input from both groups. For the rule, the RAC has broad authority to make recommendations to Ecology regarding rule content. The RW-WRAC is making recommendations for content in statute, rule and guidance specific to the water rights impairment issue. Both groups are advisory to Ecology and neither group has veto power over the other.

Definition of water rights impairment

- Ecology presented an issue paper on defining water right impairment – RAC Attachment #6.
 - The paper came out of meetings of the RW-WRAC.
 - Presented two options for a proposed definition for water right impairment as related to reclaimed water.
 - Presented three options to place definition a) guidance or rule b) rule or c) statute.
 - The RW-WRAC did not reach consensus, but favored definition labeled Option 2 and placement in rule.

- RAC members discussed the paper
 1. Definition Options:
 - Option 3 proposed- Define impairment broadly as having the same meaning as it does under the surface water and ground water water right codes.
 - Lengthy discussion regarding advantages and disadvantages of each definition.
 - The RAC took a vote on which option members favored. They did not reach consensus but strongly favored Option 2 (the definition based on existing language in the ground water rule, WAC 173-150) with one small modification to use the phrase “using reclaimed water” instead of the term “reusing water”.

Option 1	Option 2	Option 3	
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Based on a separate definition in the draft reclaimed water guidance	Based on language in existing ground water rule	Define it broadly with the same meaning as in water right statutes	
0 green 0 yellow 2 red	10 green 1 yellow 0 red	1 green 1 yellow 9 red	

- Proposed two modifications to Option 2
 - Use the term ‘using reclaimed water’ instead of the term “reusing water” for consistency with reclaimed water rule and definitions.
 - Support amendment proposed (by Barwin) in issue paper to say “below” rather than “at or below” instream flows.

2. Guidance, Rule or Statute:

- RAC members were interested in voting on guidance, rule, or statute separately as potential places to formalize a definition. This is slightly different than the RW-WRAC where some members indicated they would be comfortable with the definition in either rule or guidance and didn’t distinguish between the two.
- The RAC agreed to change the first category to “guidance” instead of “guidance or rule”.
- Discussion followed regarding advantages and disadvantages of each.
- The RAC took a vote on which option members favored. They did not reach consensus but slightly favored rule over guidance.

Guidance: 7 greens, 3 yellows, 3 reds
 Rule: 9 greens, 2 yellows, 2 reds
 Statute: 1 green, 1 yellow, 11 reds
 Abstained: 2

- Results were noted to be similar to the results from the RW-WRAC recommendation. It was also noted that several individuals voted at both committees (Perry, Perry, Raines, Canter).

What are “existing” water rights? Issue Paper (attachment 7)

The term ‘existing’ water rights is used in Chapter 90.46.130. The issue paper discusses when, i.e., what point in time an existing water right is recognized relative to permitting a reclaimed water facility. Issue paper offers three options:

- Option 1 - At beginning when a complete submittal for an impairment review is received.
- Option 2 - When Ecology makes a decision on the submittal.
- Option 3 - When the operating reclaimed water permit is signed.

Discussion:

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- It was noted that a permit could be issued before the facility is constructed.
- There are advantages to having a date as early as possible.
- There is a parallel in the potable water supply model to get as much certainty as possible as early as possible in the process, before major expenditure of funds.
- What is the relationship between the date established for existing water rights, the appealable action, and the date the permit is issued?
- Which date for existing water rights is most easily verified and least likely contested?
- Do applications for a reclaimed water facility go in front of a water right application? Reclaimed water projects do not wait in line. Should Ecology make a conservative evaluation based on what rights are in front of the reclaimed water applicant?
- There are many closed basins in the state. In those basins, no additional water rights can be appropriated. In these locations, there is no need to make a conservative assumption based on what water rights are in front of the reclaimed water applicant.

When the RW-WRAC committee looked at this, most members did not object to moving this decision before construction. Proponents would like to have a limitation on the amount of time this determination will take.

RAC action taken:

Does this group prefer Option 1 or 2 as stated in the issue paper?

- Votes on Option 1: 1
- Votes on Option 2: 11

Option 2) Existing as of the time of Ecology's decision on impairment (during the facility planning stage and before the significant expenditure of funds) was the preferred option.

Other opinions: submit to Tim by July 27.

Note: In a July 22, 2009 email to Ecology; King County's view on the issue of what "existing" means with regard to impairment of water rights by reclaimed water facilities is that it should be the effective date of the 1997 legislation that established the standard.

As between the only two options presented to the RAC today, King County would prefer Option 1, as it provides the earliest date for a determination within the reclaimed water project process.

Impairment of Downstream Water Rights Only? Issue Paper (attachment 8)

Lynn summarized the position paper. For reclaimed water, we only look at one part of the four part test (i.e. impairment) that applies to traditional appropriated water rights. Also, when Water Resources Program (WRP) evaluates the potential for impairment, they normally look "in that body of water" or both upstream and downstream of a discharge point. However, RCW 90.46 states ONLY water rights downstream of the wastewater discharge point may be considered to be impaired. Thus there is no consideration of a priority date of a water right that is upstream of the discharge point. This approach conflicts with the federal court decree for the Yakima Basin.

Paper lays out 3 options:

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- 1) keep law “as is”,
- 2) add exemptions to the downstream limitation on impairment for basins such as Yakima,
- 3) consider water rights both upstream and downstream of existing discharge point.

Discussion:

- Option 2 may need further changes down the road as additional basins are adjudicated or otherwise altered.
- Three members of RW-WRAC spoke in support of Option 3.
- Advantages are due diligence, thus avoiding legal issues. DOH asked “What does “statewide” mean in Option 3? Is there a limit to the extent of the area covered under the impairment evaluation?” Lynn answered that this language was not intended to mean that an impairment review would be statewide
- Statewide term should be reworded to clarify.
- Walt added that impairment should not conflict with other planning processes – 2514 and 2496 Watershed Planning and Salmon Recovery Planning.
- Clint summarized one more time before voting on options, that #3 does not reflect an agency intent to extend impairment review to an entire reach of river like Columbia River example.
- DOH thought extent of review issue may be just as important as what we are voting on – down and upstream of the discharge point. It was pointed out that a lot of money could be expended on finding an answer.

RAC action taken:

RAC instructed to vote once for either Option 1, 2 or 3:

- Opt. 1 = 0 votes
- Opt. 2 = 2 votes
- Opt. 3 = 8 votes

Option 3 Removing the downstream limitation on impairment for all parts of the state was the preferred option.

The following Parts were not discussed due to time constraints.

Rule Part III Permits Rule

Part VI Use Specific Requirements Rule

Part VI Use Specific-Groundwater

Trace Organics Subcommittee - to be posted on line

Tim thanked everyone and noted that we did not cover quite a bit of prepared material today. He requested written comments in the interim (Parts II, III, and VI) so we could consider and revise to extent practicable before next RAC mtg. Comments the sooner the better.

Wrap-up

Next RAC meeting is Aug. 26 and RW- WRC is Aug. 27