

Reclaimed Water Rule Making Committee Meeting
November 19, 2008
9:30-2:30 p.m.

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Welcome and Introductions

Angie Thomson, EnviroIssues, welcomed everyone, led the Rule Advisory Committee (RAC) in a round of introductions, and reviewed the meeting agenda. Kathy Cupps, Washington State Department of Ecology (Ecology), Heather Trim and Ginger Desy joined the RAC via telephone.

Kathleen Emmett gave a staffing update about Ecology’s hiring freeze and notified the group that Kathy’s contract with Ecology will go through at least June 2009. Even with the staffing situation, the RAC is on schedule for all of its deliverables.

Tim Gaffney requested that the RAC members notify him if there are any changes to the September 2008 meeting summary. The notes will be posted to the Web site soon.

Task 1 Legislative Report

Tim Gaffney and Kathy Cupps led the RAC through the Draft Legislative Report. The report underwent three reviews and is considered “semifinal.” There is time to make changes, however it must go to the Office of Financial Management (OFM) prior to being delivered to the governor’s office. RAC members were asked to submit any final comments about the Draft Legislative Report to Tim no later than noon on Monday, November 24.

The Draft Legislative Report has an executive summary and four chapters. The executive summary is one page in length and defines the key recommendations or messages from each chapter. The chapters are:

- Chapter 1 - Rule Development
- Chapter 2 - Removing Implementation Barriers – Key Recommendations
- Chapter 3 - Project Implementation Status and Funding Needs
- Chapter 4 - Resolving Water Rights Issues – Recommendations 2008

Questions/Comments:

- *How is this program currently funded?* The program is funded through the general fund. Kathy commented that the Water Quality Division only has two funded permanent positions and everything related to rule-writing including FTEs is part of the funding for that project. The request legislation includes authorization for Ecology to create reclaimed water facility fees.
- Dave Monthie requested an explanation of the decision-making process for deleting the reference to the utilities element of the Growth Management Act (GMA) from Ch. 90.46.120 RCW. This recommendation from the Removing Barriers Subtask Force (RBSF) is detailed on pages 29 through 32 of the Draft Legislative Report. Dave said that it would be clearer and more accurate for the section to say that the RBSF's recommendation was to delete the utilities element language from Ch. 90.46.120, and that the RAC decided to remove all references to the GMA. The RBSF concurred with the the RAC decision.
- *Where did the estimate of \$294 million come from?* Jim McCauley said that the Long-term Funding Subtask Force met last year to develop this funding estimate, and that the estimate was included in the last legislative report. The estimate was developed by considering all wastewater treatment facilities in the planning stages, accounting for the capital costs of the reclaimed water portions of those projects and projecting the costs over a six-year period. In most cases, the group used a "rule of thumb" that 20 percent of a project's cost was attributed to reclaimed water development costs.
- *Does the \$294 million include the Puget Sound Initiative in progress?* No, the Puget Sound Initiative is separate although there may be some overlap in projects. Don Perry recommended including a note that the \$294 million estimate is from 2007 and does not include the latest Puget Sound Initiative.
- Dave Monthie said that King County's newest estimate for reclaimed water is \$25 to \$30 million, which is higher than the 20 percent cost estimate used in 2007.
- *Will the funding estimate be adjusted?* No. The estimate reference the report for the funding group submitted at the end of 2007, and no additional work has been done to refine the numbers.
- *As discussed on pages 29 and 30, when does a facility have the exclusive right to distribute and use reclaimed water? If I do not own a wastewater treatment facility, but instead apply to use water from a facility, does the reclaimed water become mine?* Kathy said that the owner of the facility receives the exclusive right and does not get that right to distribute and use the water until permitted. The language is taken from Ch. 90.46.120 Part 1. The RAC recommended the language to include "...the owner of the facility receives the right."
- Bill thought the language on page 21 about the distribution of reclaimed water and pipe separation may be overly restrictive for large municipalities, and he recommended clarifying this language. This topic was discussed at the Technical Advisory Panel (TAP), and all TAP recommendations will be brought to the RAC next year where it can be discussed further. Jim noted that the standard is 10 foot separation, but there are provisions in the guidance that allow flexibility and can be discussed further in guidance.
- *Which water rights will be considered valid during an impairment analysis – existing water rights or paper water rights?* The Water Rights Impairment Group recognizes that validity is an issue and just started discussing the topic "existing water rights".

- Bruce Rawls recommended adding defining existing water rights to the Water Rights Impairment Group's remaining tasks.
- Lynn Coleman pointed out to the RAC that the Water Rights Impairment Group has several members who may not be able to continue attending the meetings due to staffing issues. The Puyallup Indian Tribe is one such member and they submitted a letter stating their position on water rights impairment which is Appendix F of the report.

Task 2 Proposed Ch. 90.46 RCW Legislative Changes

Kathy Cupps reviewed the draft Ch. 90.46 RCW agency request legislation with the RAC. She explained that the request is still at the governor's office and Ecology has not received any indication whether the legislation will make it to the legislature. If the governor's office approves it, then Ecology will make a focus sheet explaining the intent of the legislation.

Questions/Comments:

- *How will the legislative changes impact existing facilities?* The legislative changes will not impact existing facilities because Ecology was careful when writing the bill to avoid unintended consequences to existing facilities.
- *Why is there a recommendation to delete all of the GMA language?* During the September 2008 RAC meeting this language was discussed and determined that it is not an Ecology issue. RAC members from local governments, public utility districts and cities expressed concerns over the inclusion of the GMA language because they felt it would increase review times and costs, is not necessary to the administration of the reclaimed water program, is overreaching and gives too much authority to county land use planning, creates a conflict for cities and utility districts that might overlap multiple growth management areas and could hold up reclaimed water projects. The RAC voted to remove the language during the September meeting and there were RBSF members at that meeting who voted for it. When brought up at the next RBSF meeting, the RBSF agreed with the RAC's decision to remove the GMA language.
- *Was the decision to remove references to the GMA and its effects to county comprehensive plans discussed with the Department of Community, Trade and Economic Development (CTED)?* Kathy said Ecology asked CTED and did not receive any comments about the change.
- Dave Monthie is concerned that goals in King County's comprehensive plan related to reclaimed water will be affected because of the deletion of the GMA language in Ch. 90.46.120. Kathleen will follow up with King County.
- *Are there any reasons why the bill won't advance?* Kathleen said that OFM seems satisfied with the bill, so she is hopeful that it will advance. Kathy noted that there is a competitive process for bills, so it depends on whether the bill is a priority in the governor's office. Dave Lenning said the only problem he foresees is that the bill has fiscal notes attached to it, so with the current economic situation the bill might not advance.

- *Can you separate the fiscal notes from the authority/implementation sections, or are they tied together?* If it is held up because of the fiscal notes, then Ecology and the Department of Health (DOH) will have to decide what to do at that point.

Task 3 Sub-group updates

A. Water Rights Impairment Group update

Lynn Coleman updated the RAC about the activities of the Water Rights Impairment Group and reviewed the group's flowchart for reviewing water projects and identifying the need for an impairment analysis.

Currently the group is working on the impairment issue and has determined that there are different water rights that could be impacted by reclaimed water facilities, different processes needed to determine impairment and the role for the state is unclear. The water rights that could be impaired include: diversionary water rights, state instream flows set by rule and both quantified and unquantified tribal treaty rights. The group drafted a water right impairment process flowchart and a process for notifying interested parties, identifying their role in the process and points when Ecology should be involved.

The flowchart illustrates the generic reclaimed water permitting process. The group decided to leave it up to the facility to determine when to start the impairment review analysis, but they decided that the analysis should be completed before the draft permit is issued.

The next Water Rights Impairment Group meeting is on January 8, 2009.

Questions/Comments:

- Don recommended adding to the flowchart an Impairment Review box feeding into the Draft Permit Issued box.
- *Where does Ecology get the authority to require impairment review?* There is no explicit authority for review, but the authority is that reclaimed water facilities cannot impair water right holders. Lynn said that some Water Rights Impairment Group members feel that Ecology does not have a role in this. However, Ecology will have to make decision about the risk of giving a permit to a reclaimed water facility when the statute says the facility shall not impair water rights. If Ecology issues a permit that allows water rights impairment without an impairment analysis then it becomes Ecology's risk.
- Dave Monthie recommended having a process where people who want to claim impairment must do so, so as to not place the burden on Ecology to decide on whether there is impairment.
- There were varying differences of opinion within the RAC about impairment.
- Lynn said that Ecology does not make a decision about diversionary water rights or tribal water rights.
- Don said that Ecology will likely be brought into the decision process for impairment review, and recommended that impairment review be completed early in the process.

- Craig Riley does not feel that Ecology has the authority to require impairment assessments.

B. Removing Barriers Subtask Force (RBSF) update

Kathleen Emmett notified the RAC that the RBSF has sunset, so it will not hold any future meetings. The RBSF fulfilled its legislative tasks, and the group's recommendations are in the Draft Legislative Report.

C. Technical Advisory Panel (TAP)

Jim McCauley gave a TAP update. The TAP has met every month since February 2008 and will meet at least two or three times in 2009.

In October, the TAP discussed microconstituents, reliability and pathogens, and in November they discussed disinfection and streamflow augmentation. The TAP decided not to make a standard or limit for microconstituents because at this time they did not have a sound scientific basis to create specific water quality standards for microconstituents. The TAP may need to address this issue in the future.

For pathogens, the TAP discussed issues with viruses and bacteria throughout the year. The group still must work through concerns with potable water reuse where reclaimed water is discharged to surface waters, and where pathogens must be reduced prior to groundwater recharge. The DOH Office of Drinking Water has concern with potable reuse projects, especially public perception.

The TAP is going to leave flexibility in the guidance for chlorine disinfection, and does not yet have final recommendations regarding UV disinfection. Additionally, the group would like to see an ozone demonstration project. They did not develop specific recommendations regarding disinfection using ozone, but it will be covered in guidance.

The TAP plans to continue discussing disinfection and streamflow augmentation at upcoming meetings. The next TAP meeting is on December 3, 2008.

Questions/Comments:

- *Regarding microconstituents, was the new USGS study or the University of Washington's Olympic Peninsula study included in the TAP's discussions?* No. There are new reports and data coming out all the time, which is why the group wants to revisit this topic. Craig commented that the USGS study is a final version of a draft report published in 2005.
- John Kounts commented that the Washington Public Utility District Association recently participated in an Environmental Protection Agency - Ecology monitoring event to determine if advanced secondary treatment is effective in removing endocrine disruptors and personal care products. John said they have not received the results yet. He thought the results might indicate the efficiency of removal, but he said it would be difficult to set limits or standards without a lot of research on the effects of microconstituents to humans and the environment. He thought that the

greatest impacts would be to the aquatic environment, and that the effects would be difficult to quantify. Kathy said that on the environmental side, the best method used today is effluent toxicity measurement.

- Members of the RAC said there are different areas that discharge reclaimed water and reuse it for potable water. Those areas include two districts in Virginia, Southern California, Singapore, and Cloudcroft, New Mexico.
- *Are the TAP's white papers available on the Web site?* No, because the white papers are incomplete drafts. Jim hopes to have them available for the RAC by January 2009.

Task 4 RAC in 2009

A. Budget updates

Kathleen Emmett updated the RAC that the budget has very little money remaining. The remaining money in the budget will cover facilitation and note-taking for one or two more meetings, but after that an Ecology employee will facilitate the remaining RAC meetings in 2009.

Kathleen said the TAP meetings will continue another six months, and that the rule development is still on schedule to complete by 2010; however, the budget and staff cutbacks may cause delays.

B. Duties and Expectations for RAC

Kathy Cupps explained that most of the rule-writing will take place in 2009, and that the RAC may not want to meet every month in 2009, since it will take Tim and her a while to write the rule sections between meetings. They will need time to develop the draft rule language, document the basis of decisions within existing policy, borrow practices from other states and gather scientific and technical information for the rule.

The RAC decided to continue to schedule meetings on the third Wednesday of each month through September 2009 knowing that the meetings may be cancelled depending on whether there is enough new rule-making material to cover at each meeting.

Questions/Comments:

- Walt Canter commented that scheduling meetings during the legislative session can be difficult and recommended having a fixed schedule through April 2009.
- *Are legislators as interested in reclaimed water this legislative session as much as they have been in the past two or three years?* Kathleen said she was unsure, but the legislative liaison might have a better sense of the legislature's interest.

Post Meeting Note: At OFM's recommendations, the new feel language will be removed prior to the bill's submission to the legislature.(12/11/2008)

C. Rule Development

Tim Gaffney distributed the Baseline (Default) Rule Overview and a timeline. He explained that in order to have the rule completed by December 31, 2010, he and Kathy want to have the draft rule written by September 2009. At that time the draft rule will be submitted for the small business and economic impact statement (SBEIS) review. In spring 2010 the Code Revisory 102 (CR102) request must be submitted, which will be followed by public hearings.

The RAC can give input on the rule until the CR102 is filed; however any substantial changes to the draft rule after the first SBEIS review must undergo another SBEIS review, so the RAC should give comments earlier rather than later in the process.

Questions/Comments:

- Doug Raines proposed sending out the rule in chunks for the RAC to review and using online discussions for reviews. Jim said that they have tried to do so using SharePoint without a lot of success. Participation is not as high as it is during an actual meeting.
- *Are we starting from scratch developing the rules?* No. Ecology has a baseline rule, but it is not ready for review yet.
- *How many pages will the rule be?* Tim said that Florida's rule is 150 pages long and Oregon's is 50 pages, so this rule will likely be somewhere in between. The Baseline Draft Rule is currently about 30 pages.

D. Draft Schedule for Rule Components

The RAC decided it will plan to meet the third Thursday of each month. During the January 21, 2009 meeting the RAC will discuss the Baseline Draft Rule and try to make decisions on the less controversial topics. The Baseline Draft Rule will be sent to the RAC by January 1, 2009. The baseline rule is based on existing practices and standards and reflects earlier RAC comments.

During the January meeting the schedule will be reassessed. Ecology will determine which topics will be discussed at subsequent meetings.

Questions/Comments:

- Kathleen will try to secure funding to ensure that the RAC has food during the meetings. **Post Meeting Note:** We will have to take orders and collect \$\$ to cover lunches.
- *Is the SBEIS deadline flexible?* Tim was not sure, but will follow up about whether the deadline can be pushed back. He commented that September 2009 was set by the SBEIS staff.
- Dave Lenning explained to the group that the SBEIS review includes a cost-benefit analysis which takes time. He said that the staff assumes that changes to the rule will occur, so they have to plan for additional review time.

- Kathy asked the group to start thinking about the topics that the rule will cover and whether there is someone else in each member's organization that may be a better representative on particular topics. Ecology and DOH want the best representatives at the table when writing the rule.

Wrap-Up and Action Items

Prior to the next meeting:

- Ecology will send King County the CTED comments regarding the deletion of GMA in Ch. 90.46.120.** See Post Meeting Note below.
- Final comments about the draft legislative report must be sent to Tim by no later than noon on Monday, November 24, 2008.
- Tim will ask SBEIS staff about the flexibility of draft rule submittal deadline.
- The Baseline Draft Rule will be sent to the RAC by January 1, 2009.

Post Meeting Note: ** Comment from Tim Gates, CTED, was by phone to Jim McCauley. He related that CTED was neutral on the deletion of the GMA reference in the statute. (Documented on 10/13/2008).

During the January 21 meeting, the RAC will:

- Discuss the Baseline Draft Rule
- Reassess the RAC meeting schedule

Meeting Attendees

Department of Ecology

Katharine Cupps, Agency Lead
Tim Gaffney, Rule Writer

Department of Health

Dave Lenning, Environmental Health
and Safety

Angie Thomson, Facilitator
Diann Strom, Note Taker

Committee Members and Alternates	Guests
Frank Needum, City of Sequim	Jerry Hauth, Skilling Connolly
Bill Peacock, City of Spokane	
Tom Wilson, City of Lacey	
Ann Wick, Department of Agriculture	
Doug Raines, Department of Corrections	
Craig Riley, Department of Health	
Clint Perry, Evergreen Valley Utilities	
Susan Kaufman-Una, King County	
Dave Monthie, King County	
Sharman Herrin, King County	
Don Perry, Lakehaven Utility District	
Ken Butti, LOTT Alliance	

Heather Trim, People for Puget Sound	
Ginger Desy, Sno-King Coalition	
Bruce Rawls, Spokane County	
Walt Canter, WASWD	
John Kounts, WPUDA	
Ecology Staff	
Jim McCauley, Department of Ecology	
Kathleen Emmett, Department of Ecology	
Lynn Coleman, Department of Ecology	