

# Reclaimed Water Use Rule Advisory Committee

## Department of Ecology Lacey, WA

### Meeting Notes for March 17, 2010 DRAFT

9:15-3:15 P.M.

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#### Attendees

##### **RAC Members and Alternates**

Don Perry, Lakehaven Utility District  
Bill Peacock, City of Spokane  
Bruce Rawls, Spokane County  
Karla Fowler, LOTT Alliance  
John Kounts, WPUA (phone)  
Kristina Westbrook, King County  
Susan Kaufman-Una King County  
Doug Raines, Department of Corrections  
Frank Needham, City of Sequim  
Donna Buxton, City of Olympia  
Walt Canter, WA Water and Sewer District Association  
Tim Wilson, City of Tumwater  
Dave Monthie, King County  
Ann Wick, Washington State Department of Agriculture  
Heather Trim, People for Puget Sound  
Clint Perry, Evergreen Valley Utilities  
Allen deSteiguer, PNCWA

##### **DOH**

Craig Riley, DOH / OSWP  
Denise Lahmann DOH

##### **Ecology**

Kathleen Emmett  
Tim Gaffney  
Jim McCauley  
Katharine Cupps (Phone)  
Lynn Coleman  
Bill Moore (Guest presenter)

## Public

Peter Schwartzman, Pacific Groundwater Group  
Pony Ellingson Pacific Groundwater Group

## Introductions and Agenda

- Introductions
- Going forward – Bill Moore
- Presentation of Comments format and time lines
- Overview of updates to the combined rule
- Selection of RAC issues by vote
- Discuss top priority issues
- Comments on the pre-draft rule
- Review new comment forms, take comments from audience, adjourn

## **Meeting Purpose**

After introductions, Kathleen and Tim presented the agenda for the day and described the handouts.

## **Section Manager Update**

Bill Moore gave a brief history of the legislation that lead to the rule. He also presented an updated time line for the rule. He thanked the committee for their efforts to date. In a brief Q & A session, Bill stated Ecology expects to adopt the rule the end of December, 2010. Nonpermanent staff are budgeted only through December 2010.

Concerns were expressed regarding data, committee representation, and getting the “rule right.” One committee member expressed the position that extending the rulemaking process was ok with him if it meant getting the “rule right”. A committee member stated her belief that the membership of the RAC is unbalanced and that environmental groups and environmental issues have not been adequately addressed, and that the committee is not necessarily a cross-section representation of the people of Washington State. Committee members also expressed concerns on Ecology’s policy decision to use groundwater standards in lieu of drinking water standards in parts of the rule. Committee members would appreciate hearing a rationale—for instance, if there is data that shows that existing groundwater standards are not sufficiently protective of groundwater, or generally declining trends in groundwater quality around the state—rather than being told that Ecology management groups have made a different decision than the RAC recommendation.

Bill thanked the Committee for its comments, and said that he would pursue discussions regarding the current schedule for the rulemaking.

Lynn Coleman announced that she is leaving the Water Resources Program (WRP) to work for Hazardous Waste and Toxics Reduction Program in Ecology. She leaves on May 1, 2010. However, she will be available for the reclaimed water workshops later in May. Don Davidson and Sarah Ferguson will be the WRP program contacts after Lynn leaves.

### **Revisions to rule pre-draft 3/5/2010**

Kathleen outlined the major revisions to the rule in the 3/5/2010 draft. Definitions, water right impairment, wetlands, and ground water were sections that had extensive rewrites. The agency has received over 650 comments on the December 2009 versions of the pre-draft rule. Agency responses to these RAC comments were incorporated on a spreadsheet and sent to the RAC March 12, 2010.

Ecology plans to hold three workshops regarding the rule. A workshop on the rule will be held in Everett on Tuesday, May 25, 2010, from 12:30 to approximately 4:30. A second workshop is scheduled for the Ecology building in Lacey for Wednesday, May 26, 2010 beginning at 12:30. A third workshop will be held in Spokane at a date to be determined.

**Agenda Development and Focus:** Kathleen proposed that the agenda for the day's discussion of the March 5 rule be developed by weighting the sections of the draft rule that RAC members felt were most important to discuss. Each RAC member was given five dots to mark the most important sections of the rule for additional work. These sections would be the main focus of the rest of the meeting. A total of 25 sections received at least one dot. They are listed below with total number of dots in parentheses:

- 173-219-810 Groundwater recharge-percolation to groundwater. (8)
- 173-219-150 Evaluation of potential impairment of existing water rights. (5)
- 173-219-040 Definitions – Alphabetized List. (5)
- 173-219-420 Distribution system requirements. (4)
- 173-219-460 Labeling of reclaimed water. (4)
- 173-219-540 Land application - agricultural irrigation. (4)
- 173-219-740 Use of reclaimed water for mitigation of new surface water rights. (3)
- 173-219-820 Groundwater recharge-direct recharge to groundwater. (3)
- 173-219-440 Minimum setback distances. (2)
- 173-219-500 Commercial and industrial uses. (2)
- 173-219-620 Natural wetlands. (2)
- 173-219-630 Mitigation wetlands. (2)
- 173-219-640 Constructed wetlands. (2)
- 173-219-700 Use to augment stream flows and surface waters. (2)
- 173-219-010 Purpose. (1)
- 173-219-050 Regulatory agency responsibilities. (1)

- 173-219-120 Submittal documents. (1)
- 173-219-140 Reclaimed water planning. (1)
- 173-219-145 Private utility capacity assessment. (1)
- 173-219-210 Individual permit application. (1)
- 173-219-250 Notifications, comments and procedures. (1)
- 173-219-320 Class A reclaimed water – adequate treatment. (1)
- 173-219-430 Distribution by tanker truck. (1)
- 173-219-450 General use area requirements. (1)

## **Rule input**

The rest of the meeting solicited RAC member input on the priority issues identified by sections in the March 5 pre-draft rule.

### Section 010 Purpose

**RAC Member Comment:** We haven't created a rule that encourages reclaimed water. We need to make reclaimed water use cost effective and streamline the permitting process. The draft rule provides a path to reclaimed water, by telling you how to do it.

Another member suggested that the original language from earlier versions, and the December drafts—that the purpose of the rule is to encourage reclaimed water use while protecting public health and the environment—be retained, along with the current language that says that the rule is to provide clear guidance, efficiency, and certainty for reclaimed water use.

### Section 040 Definitions:

#### **RAC Member Comments:**

- Add definitions:
  - Water right mitigation
  - Net environmental benefit
  - Wastewater effluent
  - PPCP (pharmaceuticals and personal care products)
  - Reclaimed water system
- Modify the definition for “agronomic rate” to remove reference to water quality impairment. Conditions related to water quality impairment belong elsewhere and should not be part of the definition for agronomic rate.

- Groundwater definitions (potable, nonpotable and underground source of drinking water) all need some work.
- There two definitions for wastewater facility plan. Delete the first one.
- Remove the term “his” from definition of “Master generator” and replace it with “one”.
- Define “water right impairment” in guidance rather than rule.
- The definition of water right impairment includes consideration of water quality degradation. Address water quality concerns through compliance with water quality standards rather than through water right impairment.

**Agency Response:** We will consider these. Net environmental benefit is currently used only in the wetland section and is defined within the wetland section. The terms pharmaceuticals and personal care products are not used in the rule. The proposed new definition of nonpotable uses the terminology “underground source of drinking water”. Ecology recognizes the need to clarify the use of potable and nonpotable waters.

**RAC Member Comments:** Where is “underground source of drinking water” used in the rule? Why is a TDS of 10,000 used to define potable? Define “beginning of construction”. **RAC Overall Comments:** The draft has 12 references to important issues put in guidance manual. Will the committee review the guidance manual?

In most cases “reclaimed water system(s)” will be changed to “reclaimed water facilities”. Add after plant “or plants”.

**Agency Response:** We have not yet decided on the process for adopting the Reclaimed Water guidance manual.

#### Section 120 Submittal documents

Ecology staff reviewed proposed water impairment “milestones” in sections 120 and 140. The first proposed milestone (Section 140) requires a proponent to include a preliminary list of existing water rights that may be impaired or an evaluation of the potential for impairment of existing water rights in the proposed reclaimed water plan. The second milestone in Section 120 requires a complete impairment evaluation be approved by ecology before a proponent may start construction.

Ecology explained this proposal as resulting from Ecology’s concern about investing state money into construction of facilities where the project could be stopped because of an adverse water rights impairment decision by the agency.

**RAC Requests and Comments:** Last year, the RW-WRAC recommended a single milestone at the time of issuing the permit. Several RAC members supported this approach and recommended removing any other milestones related to impairment.

If Ecology has concerns about the need for milestones in state-funded projects, those requirements should be in the funding criteria, not in the reclaimed water rule.

Requirements in these sections need to all work consistently together and be cross referenced to improve clarity of the rule. See also Section 140 comments.

The “start of construction” needs to be clearly defined for private and public operations.

Agency Response: Ecology will consider these requests. Craig Riley will suggest wording for “start of construction”. Section 130 agency review standards

**RAC Requests:** Clarify whether the 90 day review requirements apply to a water right impairment evaluation. One RAC member strongly requested more certainty than the existing language provides on the Ecology review and determination time for an impairment evaluation. They wouldn’t object to a somewhat longer timeframe than 90 days, however, the need for certainty requires a timeframe that they can count on to include in the critical path for projects.

**Agency Response:** We are working on this.

Section 140 Reclaimed water planning- title changed from plan to planning.

**RAC Requests:**

There was concern about the meaning of “preliminary list” of water rights in Section 140 (2) h. Ecology staff explained that the concept was having a “first cut”list of water rights that might be impaired. Ecology would generate the list from the agency’s water right database and the proponent must include the list in the reclaimed water plan. Members prefer that this requirement be deleted, but if Ecology keeps it, “preliminary list” needs to be better defined.

Clarify whether Ecology’s approval of a plan or document that includes an impairment evaluation constitutes a determination on water right impairment.

Planning section seems out of sync in the rule. It may be better to reformat Part II in a sequence following the submittal flowchart, i.e. planning, design, plans/specs, O&M.

Other RAC comments included continuing ambiguity on some issues (e.g., consistency with groundwater and surface water planning; potable water utility service areas and agreements), and uncertainty how this would work with other planning documents (e.g., facility plans).

**Agency Response:** Ecology will consider these requests.

## Section 150 Water right impairment.

It was noted that the RW-WRAC will meet tomorrow 3/18/2010, and would hold detailed discussions of these provisions.

**RAC input:** RAC members again expressed concerns that the definition of impairment includes consideration of water quality degradation. Any water quality problems should be addressed through the water quality standards, not through a determination of water right impairment.

Another concern was whether or not an evaluation of water quality would even be possible during the planning and design process. It wasn't clear to members how detailed evaluation would be or what it would involve.

There needs to be guidance describing how the agency will address situations where there are both water quality and water quantity constraints. It was suggested that an evaluation of "net environmental benefit" is one way to approach these situations.

One member reiterated the position that the definition of "impairment" should be in guidance rather than in rule.

One member recommended that guidance on water right impairment be very clear about potential risk due to impairment of water rights upstream of a wastewater discharge point. While RCW 90.46 limits impairment to those rights downstream of a wastewater discharge point, a court may decide that impairment of upstream water rights does exist and the liability would be with the utility.

**Agency Response:** Water quality degradation is included in the definition of impairment in the state's ground water well rule, WAC 173-150, as well as case law. Ecology will consider how best to address water quality and quality/quantity conflicts.

## Section 420 Distribution system requirements.

**RAC Comments:** 420 (3) Pipe separation of 10' is often problematic where built infrastructure (roads, Streets, sidewalks etc. is already in place. Do DOH & ECY have a common ground for this? Can it be closer than 10'? Is there a possibility of a common sense approach for retrofits? Referencing guidance documents elevates them to standards which may be inappropriate for rulemaking under the APA.

**DOH Response:** In some cases 10' is an explicit requirement. Pipe Separation Guidance should be referenced directly not as part of the Criteria for Sewage Works Design. Guidance needs to clearly lay out exceptions.

**RAC Request:** Can the guidance be available by December 2010?

## Section 460 Labeling identification

**RAC Request:** Change title to Labeling Identification

**Agency Response:** Agreed.

**RAC Comments:** 460 (3) Our existing signs do not have the black or white lettering on a purple background. Allow for alternative methods for labeling rather than replacing purple pipe, and grandfather in colors already in signage.

**Agency Response:** Sub-section 1 language already allows for alternatives to purple pipe. Sub-section 2 refers to a plan for conversions that addresses reasonable methods of identification. We agree that signage language should be more flexible.

**RAC Request:** 460 (1) & (2) Pipes already in the ground would be very expensive to dig up and mark with purple. Request that new pipes have purple markings, and all above grade pipes have purple markings, but allow for those below grade to be converted as they are replaced over time.

**Agency Response:** We will review your request.

Section 540 Land application-agricultural irrigation.

**RAC Comments:** 540 (2) c change “is limited to” to “is consistent with”

**Agency Response:** Agreed.

RAC Request: Do we need 540 (2) c.?

**Agency Response:** Yes. The references have flexibility.

**RAC Request:** (2) (d) (ii) Start sentence with “apply” rather than “confine”.

**RAC Comments:** What is the “reclaimed water use plan” 540 (2) f. Recommend removing last sentence.

**Agency Response:** This is typically part of the permit application and a permit condition. We will review this request.

**RAC Request:** 540 (2) e Clarify the testing and monitoring provisions, can we have some flexibility here? Add when to the subsection. (Who needs to meet these requirements, users or producers or both?) Can you add a trigger for monitoring? Routine monitoring may be overly burdensome. Clarify who needs to meet these requirements.

**Agency Response:** We will review this request.

**RAC Comment:** Section 540 (3) a iii, What does “highly restricted mean? (3) iv clarify reasonable exceptions allowable. (3) a iv “restricted” irrigation? Is this more restrictive than requirements for

wastewater? Can exceptions be added? Others commented that this language is confusing – check grammar.

**Agency Response:** Ecology and DOH will work together on this subsection.

**RAC Request:** 540 (4) a This is a local level plan, you are imposing a lead agency decision on the local plan. Why restrictions on aquifers? Are “additional requirements” needed?

**Agency Response:** We will review this request.

**RAC Comment:** 540(4) (b) This statement is too open-ended. It should only include “reasonable” practices that encourage reclaimed water use.

Agency Response: We will review this request.

**RAC Input:** 540 (5) SKU from King County will submit “net environmental benefits” language.

**Agency Response:** We will review this when received.

Section 700 Use to augment stream flows and surface waters.

**RAC Request:** 700 (3) (b) (ii)

Add language allowing the generator to substitute another source of supply for mitigation and move the reclaimed water to another use.

**Agency Response:** We will research this topic.

Section 740 Use of reclaimed water for mitigation of new surface water rights.

**RAC Requests:**

Add language allowing use of reclaimed water for water right changes or transfers as well as new water rights.

Add language to explicitly allow a generator to sell reclaimed water to another party for mitigation for new water rights or changes/transfers. King County and another generator have already been approached about this type of use of reclaimed water.

The current language authorizes a proponent to apply for water rights using reclaimed water, but falls short of allowing its use. Broaden the language to allow use of reclaimed water as mitigation if approved by Ecology.

Decide whether the wording is “mitigation for water rights” or “mitigation of water rights”. Keep the wording consistent.

**Agency Response:** We will research and modify rule language as appropriate.

Section 810 Groundwater recharge-percolation to groundwater.

**RAC Comments:** Discharges to the environment should have a priority pollutant scan up front to provide basis for what needs to be monitored.

A priority pollutant scan is just a snapshot in time.

The drinking water approach allows for variations in sampling history.

There is no fundamental rationale for how or why you picked certain (contaminant) levels, what is the (scientific) basis for the proposal to use state groundwater standards as a reclaimed water requirement? Ecology needs to be clear on how it decides what constituents need to be monitored. There are risk factors for agencies and private entities with changing regulations and the boundaries at which it enters the groundwater perhaps decades later.

The EPA (office of drinking water) has a list that may be considerably different than the Washington State list.

You may be forcing facilities to discharge into the Sound due to the uncertainty and high costs of these standards.

810 (2) a i, ii, iii, aren't these redundant with section 320? Just have it in Class A standards. Add "adequately and reliably treated water to the Class A standard."

**Agency Response:** Class A criteria does not include nitrogen standards.

RAC comments: Secondary action levels (SALs) are not a treatment standard. This language may be converting what was intended as a "trigger" into a numeric limit.

**RAC Request:** (2) b grammatical "meet the following criteria". What is the basis for required monitoring wells? Clarify what existing systems have to meet over time. If my point of compliance is the end of pipe(s) would I still be required to do monitoring wells?

Make the point of compliance off site flexible for blending potable and nonpotable water with reclaimed water at the point of discharge.

**Agency Response:** We will review these.

**RAC Comments:** (2) b ii Clarification of "state advisory levels" is additional monitoring required?

**Agency Response:** DOH offered to clarify.

**RAC Request:** (2) (d) ii the “benefits” of the ground water - is this environmental benefits? Are the state advisory levels enforceable standards? Could the term “net environmental benefit” be used here?  
(2) (d) v How does the anti-degradation policy apply?

**Agency Response:** Comment noted. We are working on this issue.

Section 820: Groundwater recharge-direct recharge to groundwater.

There were no additional RAC comments on this section. Their issues had previously been addressed in the section 810 discussion.

Section 830 Groundwater recharge – aquifer storage and recovery.

**RAC Comments:** Use of the term “withdrawn” in Section 820(3) (b) may be too limiting if groundwater recharge waters migrate into surface waters.

Use parallel approach and language from Section 740 (use of reclaimed water for mitigation for surface water rights).

Add Section 840 to the TOC.

The authorized use of reclaimed water does not acknowledge that a reclaimed water generator does not need a right to use their reclaimed water.

What planning steps are needed to discharge to ground? Does this rule add requirements for studies?

**Agency Response:** We will review these issues. The Section 840 title will be added to the TOC.

**RAC Comments:** RAC members have these overall concerns about the rule.

1. How will Ecology (by what process) address the RAC’s concerns?
2. Will Ecology go forward without the RAC’s support?
3. As a committee member, I support delaying the rule in order to work through these issues.

**Agency Response:** We will address these issues, and the issues raised in the comments submitted to the agency, by revising the pre-draft and in discussions at a future RAC meeting. **Next Steps:** Comment forms will be sent to the committee in both 2007 and the 1997-2003 formats on Friday, March 19, 2010. A save changes version of the pre-draft rule will also be in the packet. All comments are due to Ecology no later than COB March 31, 2010. A revision of the draft will be completed by May 1, 2010, and used at the workshops later in May. A RAC meeting will be scheduled in June, 2010 to address ongoing issues and concerns.