

Reclaimed Water and Water Rights Advisory Committee

AmeriTel Inn, Lacey

Tuesday, June 10, 2008

9:30 to 3:30 PM

In attendance:

Carla Carlson, Clint Perry, Angie Thomson, Lynn Coleman, Barbara Markham, Gene Radcliffe, Mike Schwisow, Jim McCauley, Karen Epps, Tom Mortimer, Ginny Stern, Dave Monthie, Carl Samuelson, Bob Barwin, Jaclyn Ford, Barb Anderson, Gary Wilburn

Via phone (morning only):

Tom Ring, Craig Riley, Adam Schemp

Report from other reclaimed water committees

Removing barriers committee (information from Jim and Lynn)

At the May 28th Removing Barriers meeting; the issue of staffing for Department of Health, Ecology's Water Quality Program (WQP), and Water Resources Program (WRP) was summarized.

Existing staff and funding. WQP currently has 2 permanent positions, 4 temporary positions to work on the rule development process, and regional staff to review projects that are funded by permit fees. Department of Health currently has one permanent position participating in program development and reviewing projects. They also have one temporary position and contracted staff to do project review. WRP uses existing staff for program development and review of individual projects.

To fund individual project review; WQP uses a permit fee approach to recover costs, Health recovers costs through a fee-for-service, and WRP currently does not recover costs.

Projected needs. WQP developed an estimate of the number of facilities that would need permitting for reclaimed water. Since 1992 when the original statute was passed, Jim McCauley stated there have been 1 or 2 projects per year (21 facilities now). There are currently 5 projects under construction, 4 in final design phase, and more [37] in the feasibility or planning stage for a total of 46. Based on this project workload estimate and direction from the legislature to develop a reclaimed water rule, the agencies also estimated staff needs.

It was estimated that 7 positions (just Water Quality program) are needed to provide minimum staffing. The Rule Advisory Committee (RAC) recognizes the need to appropriately staff the programs to address the workload and approved this minimum staffing recommendation. That information has been forwarded to Ecology's program managers for consideration with other agency workloads.

WQP also has a request for \$10 million for the biennium to fund reclaimed water project feasibility, design, and construction.

It was noted that the General Fund will be tight next year due to state revenue levels.

Also, the WQP currently has a budget shortfall for all wastewater permitting and has initiated a Fee Workgroup to review permit fees including those for reclaimed water.

A discussion followed.

It was mentioned that drivers for reclaimed water include: the need to address water quality issues such as TMDLs, desire for additional water use, and the “right thing to do.”

A question was asked about the kind of permits and whether NPDES permits are issued jointly with reclaimed water permits. Jim McCauley answered there are 3 categories of permits for reclaimed water facilities: reclaimed water permits, NPDES permits, State Waste Discharge Permits. Facilities may have a reclaimed water permit or both an NPDES and reclaimed water permit depending on the timing of permit renewal.

Reclaimed water projects come into the agencies in a variety of ways: “informal” requests for information and very preliminary conceptual discussion, water system plans, wastewater facility plans, Comp plans, or grant proposals. It has been difficult in some situations for agency staff to respond given the lack of detail presented. There still needs to be some way for facilities considering reclaimed water to get basic information and a clearer path on how to proceed.

Lynn is pulling together a list of watersheds with TMDLs, watershed planning elements, and instream flows.

Action item:

Bring the watershed list to next meeting
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Rule Advisory Committee suggestions:

At the May 28th meeting, the Rule Advisory Committee (RAC) made several recommendations relative to water rights issues.

1. Make sure there is early discussion among entities to ensure that the proponent knows what the potential water quantity impairment issues as well as other issues are. The comp plan stage was suggested as the place to do this. What really frustrates utilities is when money and resources have really been committed and then an issue is raised.
2. There is a need for improved WRP guidance and training for staff.

3. It would be useful for Ecology to develop maps showing watersheds with instream flows and wastewater treatment plants (WWTPs) upstream.
4. Ecology needs a water balance and appropriate information to understand a project and make decisions.

Dave Monthie wanted to know what is happening with the RAC recommendations. He suggested it would be appropriate that these go to the agency Workgroup. Lynn said that #1 should be addressed by the Impairment Review for Instream Flow Water Rights flowchart and #2 by changes to the draft impairment guidance. An initial version of #3 was distributed to the Committee last fall. #4 is shown below.

Action items:

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| <ol style="list-style-type: none">1. Provide map of watersheds with instream flows and wastewater treatment plants to RAC (from previous Water Rights Committee meeting)2. # 4 (water balance and appropriate submittal information) needs to be assigned. |
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Instream flow impairment framework: updated flowchart (Workplan item 2f)

Dave Monthie described changes to the flowchart. Lynn acknowledged that the tribes had requested that they be consulted very early in the process and that is not reflected adequately in the current draft of the flowchart. Lynn will check with the Tribes on what they view as appropriate type of notice and involvement.

Carl suggested changing the title to more accurately reflect what the flowchart addresses. Others were also confused by the title and whether the flowchart addressed just state instream flows or something more.

Tom Mortimer recommends a streamlined process with state, tribal and federal issues addressed. Information from the water quality grant application could be a good template for appropriate information to submit. He recommended minimizing iterative meetings and addressing impairment early.

Tom Ring reiterated the need for early consultation with the Tribe and early impairment review.

Tom Mortimer mentioned that sophisticated proponents will want to present a more detailed proposal. This should allow proponents to move through permitting process faster. The environmental assessment (EA) model should be considered as model of more holistic assessment of environmental concerns. Members mentioned that other proponents may come in with a bare-bones proposal.

The use of a pre-plan type meeting was suggested and supported by several members.

The question was asked about how SEPA process relates?

Members would like more information on the number of potential projects. Jim McCauley has a document that shows pending/potential reclaimed water projects and will send it out to this group within the next week.

Action items:

1) Flowchart:

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| <ul style="list-style-type: none">a) Title flowchart to accurately reflect the process describedb) Talk with Tribe representatives on appropriate type of notice and involvementc) Add pre-plan meetingd) Show impairment analysis early in the processe) Show the connections between this flowchart and the overall permitting process. |
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2) Send out list of pending/potential reclaimed water projects.

Difference between reclaimed water and wastewater discharges (Workplan item 4)

Lynn briefly described the concern about a “double standard” for reclaimed water facilities. RCW 90.46 has an explicit prohibition against impairment. RCW 90.48 covers wastewater treatment and discharge and does not have this prohibition. The concern is why wastewater discharge changes are handled differently than reclaimed water facilities. Craig Riley stated that some wastewater facilities may not even consider reclaimed water because they are worried about the impairment analysis.

Some people believe that reclaimed water facilities should have this requirement because it is a way to get a water right without waiting in line and going through the appropriation process. Barbara Markham mentioned a basic tenet of western water law where appropriators are entitled to natural conditions in the stream at the time of appropriation. Others felt this was unfair, particularly for situations where the water right holder is the same entity as the wastewater treatment operator (utility is vertically integrated). A utility should be free to use the water right that it has.

There was a discussion about the differences between wastewater treatment plants (WWTPs) and reclaimed water facilities. If a WWTP is discharging to a river and wants to move it to a land application; it doesn't involve water right permitting and an impairment analysis for removing the discharge. Food processing facilities are a common example of situations where a wastewater discharge was moved upland due to passage of the Clean Water Act and water quality, not quantity, concerns. Bob pointed out that land application of wastewater was likely

on property that was previously using water from an irrigation right. It may not be new consumptive use. The change to land applicationFor wastewater treatment plants, the purpose of land application is treatment and disposal. Any crop that is produced is a secondary effect, not the goal. Reclaimed water facilities get the exclusive right to the water, typically treat it to a higher standard, and may use it for a beneficial use. Growth of a crop would be the goal.

Kathleen Collins asked how big a problem the difference between facilities is and how often would it occur? The Committee asked for data to help assess this.

One way of providing parity between wastewater treatment plants and reclaimed water plants would be to have an impairment prohibition for WWTPs. No one expressed an interest in that approach.

Tom Mortimer pointed out that early discussions about impairment focused on diversionary water right holders. Now, discussion has turned to instream flows. On one hand, the Municipal Water Law and wastewater planning law require utilities to consider reclaimed water. On the other hand, if the state's approach is to prohibit reclaimed water facilities inland where there are instream flows, we need to delete requirements for consideration of reclaimed water. In some areas of the state, a detailed analysis of reclaimed water may not be appropriate. Kathleen Collins asked about wastewater law which requires an analysis.

One person stated that reclaimed water may not always be the right answer. Decisions must be made in context with each set of facts. Sometimes, other solutions may be more appropriate.

The group asked for information on:

- 1) How many facilities on Jim's list?
- 2) Non-marine discharges?
- 3) Discharges to land-treatment systems. Did any discharge to streams previously? Dates?
- 4) What systems are vertically integrated?
- 5) What facilities are thinking about reclaimed water but won't seriously pursue because of concerns about impairment? (Kathy Cupps may know of some cases)
- 6) Are dischargers considering land application anymore?

Action item:

Ecology will compile information and bring to the next meeting.

Planning for afternoon discussion

Angie suggested the group break into small groups to address more than one topic. If after trying it, the group felt it didn't work well, we wouldn't try it again. She polled the group about several topics that

could be discussed and most people were interested in either the flowchart or the issue of what “existing water rights” means.

Small group discussions:

People broke into small groups, discussed, and reported back to the whole committee. Main points for each group are summarized below.

Flowchart Discussion:

Carla Carlson, Dave Monthie, Ginny Stern, Jim McCauley, Karen Epps, Lynn Coleman

Add notification for Tribe when an entity comes in for pre-planning conference. Ecology notifies tribe at staff level (Carla Carlson)

Two pre-planning kinds of meetings may be useful: one for a proponent to get a basic introduction to reclaimed water and the process, one for presenting a conceptual design.

During pre-planning meetings: DOH and Ecology, together, should meet with applicant

Provide an information portal for applicants (electronic front door) to do one of the following depending on what the applicant wants.

- Get more information on reclaimed water permitting
- Initiate process, notify tribes, stakeholders, agencies (similar to well drilling start cards)
- Indicate they’re ready to do more

Combine the Instream Flow Water Rights flowchart with Jim McCauley flowchart showing the overall reclaimed water permitting process.

Does “existing water rights” mean at the time of permit application or at the time of permit issuance?

Tom Mortimer, Bob Barwin, Clint Perry, Barbara Markham, Mike Schwisow, Carl Samuelson

Concern is that entities desire some level of certainty in knowing what water rights should be considered.

- Predictable and high confidence
- No surprises between impairment review and final decision

- Provide more clarity in the impairment guidance to describe how return flow (discharge) relates to conditions that existed at the time existing rights were creative
- To prevent surprises, develop the impairment analysis with all existing permits, claims, certificates, and instream rights + pending applications and pending instream flow rules (with some assumptions). Review the assumptions for validity prior to issuance of the reclamation permit.

Action item: Take this back to the larger Water Rights Committee.

Angie asked for feedback on use of smaller groups and people generally felt it had been useful for these topics.

Wrap-up

Next meeting.

It's been requested that we reconsider July 8th as the next meeting date since it is the week after July 4th. An electronic survey will be sent with several possible dates.

Work on Issue #4

1. Ecology to provide information based on the group's request
2. Build on today's discussion
3. Try to refine the questions

Potential other agenda items

1. Review work plan and timeline
2. Flowchart revisions
3. Examples of "simple" impairment analysis
4. Statutory requirement for impairment analysis