House Bill 1793

Jennifer summarized a bill that may be of interest to the group. The proposed bill would encourage counties to develop alternative rural water supply options to allow future development where instream flow rules are in place: Extend service area (piping) of existing water suppliers with adequate water rights, or use of cisterns in conjunction with rainwater collection and/or trucked water.

Comment: This practice is in place in Kittitas County.

Review of December 11, 2014 Meeting Notes

Objection was made to a statement in the Dec 11 notes regarding counties determining legal availability of water. It is Ecology’s responsibility to inform the county where water is legally available or not. Ecology should provide this information so that counties can consider it in their land use decisions. Clarification was made that the counties are responsible for determining if there is adequate/appropriate water supplies to serve a proposed subdivision or building. Request to also revise Ecology webpage since it also makes this distinction.

Objection to putting Ecology’s interpretation of vintage instream flow rules in the parking lot. Group agreed that they would be discussed, just not at this time.

Revise third bullet of Roles and Responsibilities to remove “Help people get permits”. Rather, Ecology’s role is to help counties facilitate land use decisions, which may include denials or conditioning if water isn’t legally available.
Process transparency is a goal. Some members would like to see others comments before Ecology “filters” them. It was agreed that members submitting comments on meeting notes or other guidance products have the option to cc the entire group or just send their comments directly to Ecology.

Request that guidance address both where water availability determinations have been made through adjudication and when no adjudication has been conducted.

**Roles and Responsibilities**, continued from December meeting

It is Ecology’s responsibility to adopt and implement instream flows, and to close areas where water is not available. Enforcement is part of implementation. Counties feel it is not their role to enforce state regulations such as illegal water use. This includes where conditions set on the permit/approval relate to state regulations rather than county regulations, such as when actual use exceeds the groundwater permit exemption. It was pointed out that the county was more often on-site to see the problem. Counties agreed they may notify Ecology, but don’t think it is their duty to do so or to take action.

GMA counties are required to plan for the protection of water resources. Non-GMA counties do not. This relates to the review of subdivisions and large lot creation, but not to building permits. Building permit decisions on water availability is solely focused on potable water use inside the home or other structure (i.e. a barn is a structure but it wouldn’t need to address the question of water availability in the same way a home would).

Discussion on whether to include information that counties may need to plan for water resource protection, as outside the permitting realm. Suggested that Ecology provide guidance on what constitutes water resources protection.

Some members suggested that guidance include GMA planning issues and DOH water source approval requirements. Start with these concepts in mind, then pare down content later rather than omit relevant material. Working with DOH and Commerce may improve the guidance.

Guidance should list relevant statutes and court cases in a way that is easily understood, but not interpretive, due to the difference in opinion regarding the meaning of statute and case law.

Guidance should elaborate on the difference between subdivisions and building permits approval process. Perhaps structure the entire guidance around making decisions under the two land use statutory tracks (RCW 58.17 and 19.27).

**Guidance Outline Structure**

Suggested outline:

- Executive Summary
• Purpose
• Definition of Terms and Acronyms
• Roles and Responsibilities
• Regulations and Case Law
  o Postema,
  o Campbell and Gwinn,
  o JZ Knight,
  o Kittitas,
  o Permit exemption and direct reader to the “Groundwater Permit Exemption Focus Sheet” (soon to be updated)
  o Prior appropriation
  o All relevant statutory obligations for local government and Ecology
• General Criteria for Processing Building Permits and the Subdivision Process (duplicative as appropriate. Ecology would need assistance from Commerce.)
• General Criteria for DOH related water quality/source approval process (Ecology would assistance from DOH.)
• References to Other Information and Guidance

A suggestion to include within the guidance a Q&A section with the following type of considerations:

• What type of land use decisions need a legal water availability determination?
• What point in the process is the best timing for a local decision on water availability?
• When /where will water not be available? (Red flags)
• What information/documentation should the applicant provide?
• Where can they find the information?
• When should the county ask for help?
• What should be considered in reviewing a mitigation plan?

Concern was voiced that the guidance should be flexible and shouldn’t dictate the local decision making process.

Ecology noted concern about being overburdened with frequent requests for help from local government. The guidance should be written in a way that mitigates this.

The style/structure should be modeled around the 1993 Guidance document.

**Group Review Process**

• Ecology (or others) will draft material for next meeting and allow group two weeks for their review.
• Group members are responsible to review materials and be ready to discuss at the next meeting. They may choose to submit written comments earlier to Ecology, and may send their comments to the entire group.

**Agreed Actions**

☐ Ecology will produce meeting notes, an outline for the guidance from suggestions, and a draft of the Roles and Responsibilities chapter reflecting the group discussions; and they will be made available two weeks prior to our next meeting.

☐ Members will review the three documents and be prepared to discuss them at our next meeting.

☐ Next Meeting time is 1:00 to 4:00 PM, Wednesday March 4, 2015.