Meeting Notes

1:00 Welcome and Opening Statement by Ecology

Introduction – Dave Christensen (ECY)

- Background on updating guidance to local government from early 1990s; feedback on the 2013 document was generally negative and as such we should take a step back, review document, discussion with stakeholders and ensure all interests have a common understanding of the purpose of guidance regarding water availability.
- False starts because of personnel issues and internal issues; brief description of Ecology’s more broad Rural Water Solution (RWS) strategy work, Swinomish decision and need to meet our water resources program dual mission.
- Distinguish between the RWS and county guidance processes—Guidance effort intends to provide clear guidance for local government in making land use decisions in light of water availability, meet Growth Management Act (GMA) obligations…rules can be adopted to that end along with updating the 1993 and 2013 guidance to reflect current law; if things change as a result of Ecology’s RWS strategy then we have to update guidance regardless, shouldn’t slow us as we proceed because we’re always in an updating mode.
- Be adaptable to people’s ability to participate; an updated county guidance is long overdue but we’re aware of the other demands on stakeholder’s time.

Legal Context – Alan Reichman (AGO)

- We’re here because of the groundwater permit exemption and that creates a unique dynamic; local codes require proof of adequate water supply for building and subdivision permits whereas no such proof is needed to develop an exempt well in the water code; we need to address the gap in the law.
- Every other context (connecting to a water system, acquisition of a water right) has a paper trail and this version of accessing water (use of the permit exemption) doesn’t have this documentation.
- Uncertainty under the law pre Kittitas that a finding of adequate water only meant physical access to water, not whether it’s legally available; counties were split on this perspective; Ecology perspective at that time was both physical and legal.
- Post Kittitas …when county considers permit applications legal and physical availability of water are required; Counties responsibility under GMA to process building and subdivision permit applications but Ecology, as administrator of water, needs to provide assistance to counties (per the Supreme court). County responsibility to administer the
local permit but Ecology needs to provide assistance on legal availability …we’re not here to argue what was already decided by the Supreme Court.

- Decide how to proceed based on those parameters.

1:10 **Introductions of attendees**

Facilitator: David Norman

**Attendees in Lacey (Ecology HQ):**

Dept of Ecology: Dave Christensen, Mike Dexel, Jennifer Holderman, Al Josephy, Tryg Hoff

Dept of Health: Ginny Stern, Cynthia Nelson

Attorney General’s Office: Alan Reichman

Squaxin Island Tribe Legal Dept: Sharon Haensley

Tulalip Tribes: Kimberly Ordon, Daryl Williams

King Co: Steve Hirschey

Pend Oreille Co: Karen Skoog

Kittitas Co: Paul Jewell

Stevens Co: Wes McCart

Clallam Co: Jim McEntire

Thurston Co: Art Starry

Snohomish Co: Gary Idleburg, Alison Bridges

GSI Consultants: Doug McChesney

CELP: Patrick Williams

GEI Consultants: Ken Slattery

WA Groundwater Assoc: Glen Smith

SC Communications: Scott Cave

Legislative staff: Diane Smith

WA Realtors & PUD’s: Bill Clarke
Regional Water Coop Pierce Co: Larry Jones
Aspect Consulting: Carl Einberger
WA Water Trust: Susan Adams
WA Water Policy Alliance: Kathleen Collins
Sno-King: Steve Lindstrom

Attendees in Yakima (Ecology CRO):
Yakima Co: Donald Gatchalian
Kittitas Co: Holly Myers
Klickitat Co: David McClure
Yakama Nation: Stuart Crane

Attendees in Bellingham (Ecology BFO):
Island Co: Doug Kelly
Skagit Co: Gary Stoyka

Attendees in Spokane (Ecology ERO):
Spokane Co: Randy Vissia, Mike Hermanson
Dept of Commerce: Scott Kuhle

Attendees via telephone:
WA Assoc Counties: Laura Merrill
Benton Co: 2 participants via phone (names?)
1:20 **Administrative Housekeeping**

1:35 **Review and affirm goals of this effort**

a) Provide more clarity about Ecology and county roles and responsibilities;

b) Provide more clarity about definitions of terms;

c) Provide more uniform application of the Guidance by Ecology and certainty for counties; and

d) Have broad, mutual support from Counties, Ecology and other stakeholders

 o Question: Will critique from 2013 version be issued? They will be incorporated but not answered.

 o How will the guidance be developed? We’ve heard a variety of opinions about how guidance development should proceed and we need to discuss the strategy to proceed…it’s an open question.

1:40 **Review and affirm draft ground rules**

- Ground rules were accepted.

- During discussion of ground rules, a question of “Who should be at the table” was discussed at length regarding the size and representation of stakeholders involved in drafting the guidance. Suggestions included:

 o Tribes, counties, Ecology and other stakeholders, Agricultural interests, well drillers, realtors and Dept. Of Health (DOH).

 o Early parts of the process could include a large group with subcommittees that eventually produce document that goes back to the larger group for final review.

 o County perspective---municipal water is legal water, private groups with available connections, geography covered by a rule, and no adjudication/basin closure.

 o Ecology —we can make the call who will be at the table but we want it to be validated by each interest group.

 o Allow groups to self-select to achieve validation.

 o Purveyors want to participate when necessary and appropriate.

 o Discussion on dividing the group amongst the representation.

 o Divided between those around the table and an advisory committee.
- Strike Ecology and call it agency representation... Dept. of Commerce (DOC) makes the call about putting in exempt wells.
- GMA counties vs non-GMA counties need representation.
- Counties want assistance in a consistent manner...why do I need other people at the table? Document from 2013 said what counties should do...instead include what counties need, with Counties and ECY at table and everyone can comment at the end of each session; table vs advisory group...address what counties need and create a consistent forum.
- Comment on the Ground Rules: Need more guidance on how the meeting is run...when do comments come up from greater public?
- Who determines what is settled law? AG legal determination will make the call...to finish guidance we'll rely on AG's best advice.
- Alternate representation proposal: Ecology, DOC, DOH and Counties with continuous feedback from advisory group.
- Laura Merrill/WSAC...concerned about the amount of participation.
- It should be Ecology and County reps and others should observe. Yes, boundaries of participation are needed...how big is the table?
- Tribes want an equal say at the table and not the expectation of the tribe to have only counties and Ecology at the table; senior water holders and treaty right and water rights to protect fish...strong interest.
- Realtors—do counties want this direction or does Ecology feel obligated to assist?
- Environmental groups—water resources held in trust for the public and they have a big interests in this process; more likely to avoid litigation by including these interests.
- WA Groundwater Assoc—different perspective from different counties, some want to be involved and others do not...Sacramento Bee, give the locals tools to address and if they don’t then state does it.
- Comm. Jewell—how many people representing what groups? How are we going to get from these conversations to a real document? Heavy county representation from counties throughout the state with other stakeholders...need broad spectrum...public can comment at certain times.
  - Should we be more formal and defined representation and if so what does it look like?
  - Regardless of being an interpretative document or rule, when my county complies then I want to be on legally safe ground—performance spec.
- Mike Dexel/ECY—Look back at past Guidance from 1993...18 other stakeholders worked as advisory members with joint writing from Dept. of Ecology and Dept. of Health.
- Yakima Co—a guidance document once created and final and if it becomes rule or default rule.
- Water purveyors—do you see a need for us? Track overall use in a basin and exempt well use; What are we trying to fix?
- Proposed representation at the table: Ecology (4 reps), Counties (6 reps), Tribes (4 reps) and other possible stakeholder interest groups might include: (Dept of Agriculture, environmental interest groups, well drillers, realtors, DOH, Building Industry Assoc of WA, Developers and DOC).
- Decision—Ecology is responsible for determining a group of approx 20 stakeholders to serve as key advisors and represent interest groups for drafting the guidance…groups can self-appoint.

2:15 **Discussion – clarification of roles and responsibilities (between Ecology and County permitting authorities)**

- Description of County resources and county role; Ecology responsibility to assist them.
- What are the challenges that counties encounter when permit-counter staff must make a finding of adequate water supply?
- Will the court decide that the rule in WRIA 1 should include authority over exemption in *Hirst*? Ecology believes that under the rule Whatcom is compliant.
- Tribe and environmental communities—ISF recognized
  - Any exempt well impairment leads directly to guidance language.
- Practitioners—drilling wells and disclosures of water availability via a realtor.
  - If rule doesn’t address exemption then we interpret rule to not apply.
  - Counties are in a bad position due to *Postema*.
  - From realtor, home buyers should be able to rely on rules regardless of further litigation along the lines of *Postema*. We’re in a tough legal position now due to *Postema*.
- If a water system relies upon an exempt well as a water source does that constitute a valid source of water under RCW 19.27.097? Which water systems that do and don’t have water rights? Otherwise the reliance on an exempt well is the grey area.
- Table additional conversation about roles/responsibilities until the smaller group convenes.

2:40 Break

2:55 **What works and what doesn’t with the 1993/2013 guidelines**

- Laura – table this topic until WSAC members have time to discuss.
- CELP - 2013 guidelines were troubled…to follow water code and courts interpretation of water code needs to be included in the guidance….particularly how it addresses exemption.
• Comm. Jewell - instructions less than guidance; since the guidance becomes defacto rule then instructions lends to this; awareness of case law important but also counties understand the role regarding scope...who gets to rely on decision issued from the county? Does the county become a party to a dispute regarding water rights?
• What are the grey areas according to the law? AG presents these issues and tribe/county/environmentals weigh in...AG has said it already via Kittitas guidance.
• Legal water availability is the tough call...if Instream Flow (ISF) rule weighs in, we’re good to go but still interpreting this precedent; if adjudication has occurred.
• Approach in 2013 guidance: Broad parameters to be supplemented to the particular basin.
• Law is very clear regarding water purveyor role...certificate from a purveyor; it’s unclear about whether the exemption addresses the third option; may include small systems that rely on permit exemptions.
• Mike Dexel - ECY’s WRIA focus sheets relied on heavily in 2013 guidance effort and stakeholders aren’t pleased with that product...we heard that a lot and open the floor to suggest improvements to focus sheets.

3:45 **Recap of progress and agenda items for next meeting**

• Facilitator briefly reviewed meeting results

3:50 **Dates and times for future meetings**

• Remove October from the potential list because we need to spend time formulating who will be at the table for future meetings.
• Next meeting *tentatively scheduled* for November 6, 1-4 pm (date/time/place TBD).
• Potential for six workgroup meetings over a six month period.
• Need to give tribes and other stakeholders involved in drafting the guidance a “heads up” on time frames and work load.

3:45 **Adjourn**