Meeting Notes

Why We Are Here

Mike Dexel provided an overview of Ecology’s (ECY) intent to develop a draft guidance document that will work for everyone. There is a unique interrelationship between land use and water management and both local government and ECY play a role in making water resource decisions.

Acknowledgement of Kittitas Supreme court’s direction that ECY “ought to assist counties in their land use planning to adequately protect water resources.” ECY believes this guidance is important to fulfill the court’s direction to provide assistance to counties.

Approach guidance with the anticipation that counties will ask ECY what factors they consider when making decisions regarding legal water availability.

Ecology declared the 1993 guidance as “obsolete” and out of date and understood that stakeholders asked to be included in developing guidance after 2013 version was rejected. Some portions of the 1993 guidance were useful and not outdated. This group will help ECY develop more useful guidance than previous versions.

- Question: Is it a good time to develop guidance? There are uncertainties with the active court cases in Whatcom County (Hirst) that may influence the direction that the guidance takes. Recognize that developing guidance is important now and waiting to develop guidance until after any possible changes to law or future court decisions is not advisable. Ecology’s goal is to get a draft guidance document out in the next 6-8 months.

Introductions

Give Name, Organization and what would everyone like to see with the guidance:

- Mike Dexel – ECY – staff lead in drafting guidance.
- Patrick Williams – CELP – Clarity how the Kittitas Rule will be implemented.
- Bruce Wishart – Sierra Club – Interested in helping to produce a document helpful to other governments.
- Sharon Haensly – Squaxin Island Tribe – Practical, workable guidance that complies with and implements statutes.
- Glen Smith – WSGA – Counties will have to take on more responsibility.
- Wes McCart – Stevens County Commissioner – Clarity and uniformity from Ecology.
- Dave McClure – Klickitat County - Helpful guidance document.
- Cynthia Nelson – Dept Health – Cover the range of what counties need; security of water supplies; clarity.
- Bill Clarke – WA Realtors – Guidance he feels comfortable to send to his realtors and clients
- Paul Jewell – Kittitas County Commissioner - Consistent interpretation, better definition about the roles, flexibility
Carla Carlson – Muckleshoot Tribe – More clarity to help guide decisions by the county. Protect instream flows.
Clay White – Snohomish County - What are the roles and responsibilities
Jan Himebaugh – BIAW - Guidance for what is and isn’t allowed. Ecology does their role.
Scott Kuhta – Dept Commerce - Help people get permits.
Darryl Williams – Tulalip Tribe – Help counties determine water availability.
Steve Hirshey – King County - Focus on roles and responsibilities, legal availability.
Jennifer Holderman – ECY - Interested in hearing everyone’s ideas.
Dave Christensen – ECY - Wants to get a document out there that is helpful and useful.
Laura Merrill – WSAC – observing.
Dave Monthie – CELP – observing.
Art Starry – Thurston County - Useable and certain in what it does. Protection of salmon.

Phone participants

- Jason McCormick – Aspect Consulting - Understand process and be a part of guidance.
- Dawn Vyvyan – Yakama Nation - Waiting on Council to see if they will be participating.

Before going onto the next topic, issues were raised about implications of pending Whatcom Co. Hirst case and ECY position on older IF rules:

- Sharon Haensly is unconvinced the WRIA rules should set different standards for different counties. Parts of older WRIA rules violate the RCWs, so therefore can’t control water adequacy decision making. Lay ground rules, would like decided earlier. Carla echoed Sharon’s concern; felt it needed to be talked about early.
- Bill Clarke was concerned with the Hirst case, if the decision changes then the guidance would need to be redrafted.
- Bruce Wishart wanted guidance to provide information on risk to the decision makers.
- Patrick Williams was frustrated with the lack of clarity, exposure to litigation. Hirst needs to be decided.
- Clay White would like to understand the roles of each of our agencies before a decision is made.
- Darryl Williams brought up the OCPI provisions Ecology is still defending.

1993 & 2013 Guidance Documents

Dave Christensen discussed Nov 2014 Rural Water document that was just drafted. There is a possibility that any one of the themes that came out of that process could be put forward by the Legislature and folded into guidance if any laws are changed.

- Analysis based on Swinomish decision.
- Broader strategy, protect instream flows without creating the same situation as in Skagit.
- Stakeholder meetings, feedback that relates if there was a change in statute it would affect guidance.

Mike Dexel summarized some of the following general comments received by stakeholders during the 2013 guidance effort:
• Legal availability is uncertain in unadjudicated basins.
• Permit-Exempt wells are junior to instream flow and senior water right holders, including tribal treaty rights.
• Who reviews and approves mitigation plans/proposals to offset water use?
• Direct counties to require prospective permit-exempt wells to first seek water from public water system and not allow drilling of exempt wells in service areas.
• ECY Water Availability Focus Sheets are over-simplified, contain incorrect statements, and not useful.
• ECY, in consultation with counties, develop a clear, step-by-step approach to making legal water availability determinations.
• Better guidance on the timing of when legal water determinations should be made (i.e. before/after subdivision or building permits are approved).
• Counties obligation is to protect water resources through land use decisions, ECY obligation is to make legal water availability determinations (presumably through guidance, possibly through rulemaking).

David Norman suggested we begin discussing the agenda item about what needs to be added/deleted from 1993 and 2013 guidance documents to make sure we have what we want in next guidance. Before that question was answered by the group, a collective decision was made to shift the agenda topic of likes/dislikes about previous guidance efforts and instead discuss roles and responsibilities of local government and ECY.

Roles and Responsibilities

• Roles and Responsibilities - Have it stated clearly in guidance document.
• Guidance & balance in roles.
• Help people get permits.
• ECY wants to help counties determine water availability when issuing permits.
• Concern that interpretation of existing instream flow rules be included or not.

Local Government’s role/responsibility

• Issue, deny or condition building permits, when warranted.
• Process subdivisions, other land use applications.
• Require information from applicants – e.g., how much water.
• Conditional approvals.
• Collect information.
• Campbell and Gwinn issues (multiple group domestic permit exemption developments).
• Consider water availability.
• Make land use decisions that affect water – non GMA.
• Can go beyond state minimums.
• Whenever possible, carry out vested powers in manner consistent with the 1971 Water Resources Act (RCW 90.54.090)

Ecology’s role/responsibility

• Issue water rights, control RCW permit exempt wells, adopt Instream Flow rules.
• Allocate state water.
• Provide information so counties can make legal water determinations.
• Clear interpretations of rules.
• Protect senior water right holders, including instream flows.

Parking Lot/Other issues raised

• Hirst case/unresolved issues about how existing instream flow rules should be interpreted and how guidance will address it. There was disagreement as to whether this is a “parking lot” issue. Many understand this to be a critical issue in whether the guidance should include Ecology’s interpretation of instream flow rule language. Anticipate the Hirst case will shed some light on this issue.
• Vintage instream flow rules and ECY interpretation.
• Enforcement roles of counties and ECY was stated as very important and needed in guidance.
• It was suggested to add another category in roles/responsibilities for “Things not happening” and/or areas where roles/responsibilities are less clear.
• Misplaced authority.
• Needs to be more communication between Ecology and counties.
• Look at other shared responsibilities other than just Ecology and counties.

Next Meeting

• Due to unavailability of many participants, the Jan 8th meeting was cancelled.
• Next meeting: Wednesday, Feb. 4 – 1:00-4:00pm.
• From March through August, meetings will be on the 1st Wednesday of the month from 1-4pm (ECY looked into starting these meetings at noon, but the room is not available for an earlier start time.)
• Note: Web site updated to identify all meeting dates through August.