

Regulatory Framework Working Group

Charge from Groundwater Management Area Advisory Committee

[Insert Charge]

Working Group Members

Jean Mendoza, Chair (Friends of Toppenish Creek), Andres Cervantes (Department of Health), David Bowen (Department of Ecology), Chelsea Durfey (Turner and Co.), Dan DeGroot (Yakima Dairy Federation), David Newhouse (interested party), Ginny Prest (WSDA), Jason Sheehan (Yakima Dairy Federation), Jim Dyjak (Concerned Citizen of Yakama Reservation), Larry Fendell (interested party), Laurie Crowe (South Yakima Conservation District), Nick Peak (EPA), Patricia Newhouse (Lower Valley Community Representative), Steve George (Yakima County Farm Bureau), Stuart Crane (Yakama Nation), Sue Wedam (Lower Valley Community Representative), Vern Redifer (Yakima County Public Services), Jim Davenport (Yakima County Public Services)

Meetings/Calls Dates

Meeting: June 14, 2017, 5:00-7:30 PM

Call Number: 360 407-3780 PIN Code: 306589#

Participants

Present: Jean Mendoza (Chair), David Bowen, Larry Fendell, Steve George, Sandy Braden, Jim Davenport, Stuart Crane, Ginny Prest, Vern Redifer, Dan DeGroot, Laurie Crowe and Bobbie Brady (Yakima County Public Services). No one was on the phone.

Key Discussion Points

Jean began the meeting at 5:02 PM and everyone introduced themselves. Jean stated that the purpose of the meeting was to discuss potential alternative regulatory strategies by looking at ways the County codes could be tweaked or improved. Jean prepared a power point presentation to provide background for the discussion and two redacted Conditional Use Permits for CAFO dairies so that the group could determine how well they allow for the process to protect groundwater from nitrates.

Analysis of Yakima County Ordinances that Address Nitrates in Groundwater from Agricultural Sources: Jean reviewed Yakima County local ordinances to address nitrates in groundwater from CAFO's. She noted that several local ordinances are based on the Growth Management Act (GMA) and summarized what the GMA requires. Vern said that the GMA required Yakima County to have a comprehensive plan since 2007 and that the plan was currently being updated (Horizon 2040) and should be finalized this month. Jean stated that the GMA also required counties to designate critical areas and that there are different classifications of critical areas – what they are and how they are to be regulated. The group also discussed Yakima County's

involvement in the Voluntary Stewardship Program (VSP) which is designed to treat watersheds holistically and addresses protecting critical areas (including addressing agriculture) through a collaborative effort. Jean drew specific attention to GOAL NS 9 and pointed out that some of the requirements overlap with the GWMA efforts and provide lofty goals for Yakima County including the policy that it would ensure abandoned wells are closed properly. Jean perceived that this was a heavy load that would require serious evaluation. Vern said that an alternative could be to require abandoned wells be dealt with properly as a condition before issuing any new building permits. Jim thought this was a section that pertained to surface water and not groundwater and another member wondered how this related to CAFO dairies because they couldn't be located in this area. Jean wanted to know how the VSP would handle this. Steve responded that it had to do with artificial wetlands and natural wetlands. The current law doesn't allow disturbance of natural wetlands. He went on to say that the critical issue was natural streams and river protection. Jean felt this was an example of how the County Code could be tweaked because there was no good definition for natural or artificial wetlands. Vern stated the County had adopted the State definition and David Bowen said that the County Code does indeed refer back to the Revised Code of Washington.

Jean also said that a goal in NS 9 states that the County will protect water quality standards and asked the group to start to think about whether there are adequate performance standards for CAFO's in Yakima County. Vern noted that as part of the County's quest to work through the recent issues concerning domestic wells they had in fact learned a lot more about the County's groundwater system and its vulnerability to contamination. The group discussed this endeavor at length before moving on. Jean wondered if it would be a requirement for the GWMA to include this information in the program. Vern said it really was more of a quantity issue not a quality issue. Jim thought that perhaps a paragraph or two could address the water quantity issue which he pointed out would also be addressed by the Yakima Basin Integrated Plan (YBIP). He would add a sentence or two on the Plan as well.

A member asked what the definition of "traditional rural lifestyles" was. Jim stated that this language came from the GMA. Vern said these sorts of statements are up for definition by the County Commissioners and added that they were meant to preclude high density development in rural areas because a major goal of the GMA is to protect farmland. As a result it is very difficult to rezone from AG to anything else. Vern did acknowledge that a traditional rural lifestyle in Yakima County might not look like other counties.

Jean presented a GIS picture of three large CAFO's referred to as the "Dairy Cluster." She stated that these CAFOs represented 24,000 animals on 2,300 acres and wondered if that was reasonable and if the County permitting process could keep that from happening. Vern noted that there was a characterization entitled ELD - extremely limited development. Jean also drew attention to the regulation of CAFO's, particularly the "Dairy Cluster" and expressed concern with the risks associated at the site because of their proximity. Jean provided an explanation of the types of review that would be required and the permit forms for CAFO Conditional Use Permits.

Review of Two CAFO Conditional Use Permits: Jean had four questions for the group: 1) Does the permitting staff have the ability to deny a permit based on the concentration of animals? 2) Does the permitting staff have the ability to impose restrictions based on site conditions? 3) Does

the permitting staff have the ability to impose water monitoring? 4) Does the permitting staff have the ability to review nutrient management plans and history of compliance?

Jean had marked several statements on each conditional use permit to guide the group's discussion and had the following concerns.

Jean was concerned that the Yakima County planning department can't look at a Dairy Nutrient Management Plan to verify the number of cows on the dairy. Several members pointed out that 1) the definition of a CAFO has changed over time. The number of mature animals used to define a CAFO has been lowered and the distinction of medium or large was removed, so an dairy animal feeding operation that has 200 or more mature animals is considered a CAFO (in the past 200-699 mature animals would be considered a "medium" CAFO and above 700 mature animals was considered a "large" CAFO); and, 2) the dairies in the sample permits appeared to be older and would have been grandfathered into zoning regulations that had not existed at the dairies' inception. Vern referred to that as legally non-conforming uses which in essence means "this entity existed prior to the rules but they were okay to be there. He added that when landowners begin to add structures they are required to permit them. He thought both of the examples Jean had referred to most likely fell into this category and the groups were now adding structures which under the law they were required to seek a permit (new structures at an existing "grandfathered" entity do trigger the permitting process).

Jean was concerned about the proximity of larger dairies and felt they should be required to separate. David pointed out that they were accepted because of compatible neighbor land uses. A member stated that feed lots have a much greater density of cows. He said that cattle feed lots can have 50-100,000 animals in order to be economically feasible. Others didn't think feed lots this size existed in Yakima County. Another member stated that we would see an increase in sizes because the United States just opened up the export of beef to China.

Jean wanted to know if the South Yakima Conservation District had a process when reviewing a DNMP for determining the number of cows per acre and the manure produced. Laurie said yes there were forms that she completed during the process that would calculate this and at times owners were told they will either have to sell cows or export manure to non-dairy uses through a transfer agreement to ensure that the nutrient management plan balanced for land application to available crop land under the control of the dairy.

Jean wondered if it was reasonable for Yakima County to reference terms like "agronomic rates" and if that was a measurable number. Ginny stated that a dairy's use of agronomic rates was confirmed through soil testing and land application records. Ginny also noted that a goal to not exceed 30 ppm nitrate in post-harvest soil test was currently the standard and the dairy would be expected to "adaptively manage" to reduce residual soil nitrate if soil test levels consistently exceed 45 ppm or an enforcement action would be taken by the WSDA. She believed the conditional use permit referred back to the Dairy Nutrient Management Plan made by Laurie (South Yakima Conservation District) and the plan was based on agronomic rates. A member added that the County's job was to permit the structure, not the farming practices, for which the County has no jurisdiction.

Jean was concerned that the DNMP describes manure and wastewater in detail and that this wasn't sufficient for permitting. Vern stated that the County's job was to focus on the actual permitting request. The County does not permit the dairy to be a CAFO. Vern noted that the County relies on an approved DNMP and the County can ask the entity when it was approved or updated. The County can also contact various agencies to draw from their areas of expertise during the permitting process.

Jean was concerned that a permit referred to lagoons being lined and approved. Jean felt this was asking permit writers to be experts on this topic. Vern said the lining was approved by NRCS according to their specifications. Vern indicated that permit writers will contact the agency with expertise. David agreed. A member stated that if someone is following NRCS standards for ponds it will be signed off by an engineer. Jean asked if the group saw a way for those who wrote the DNMP plan and NRCS to interact with the County better. Vern didn't see a problem, but said it was some time since someone applied to put in a new CAFO. Ginny suggested that a strategy could be for the State, Districts and County agencies to work better together. Steve didn't think there was a lack of communication. Vern agreed, but said perhaps a good suggestion would be for there to be better documentation of the interaction. For instance, the County could note that it emailed Laurie to verify that something was up to the NRCS standards without including the actual plan. Laurie agreed.

Laurie suggested that the permit writers at Yakima County tour a dairy facility with her so they would see what they were approving and better understand the process. Vern asked Laurie to email him the invitation so that he could make it happen.

A member felt both applications by the dairies were very detailed. Another member thought it would have been important for the group to also review a non-dairy Conditional Use Permit application.

Ginny expressed a concern that Jean only seemed to be going down the path towards regulating dairy manure and reminded everyone that if manure is applied to land only 50 percent of the nutrients will be utilized this year while the rest will process itself over the next few years. In contrast, if a grower applies a synthetic fertilizer 100 percent of the nutrients are released into the ground immediately. She believed it was extremely short-sighted to focus on the dairy industry without applying that same scrutiny to the fertilizer industry. Ginny pointed out that the dairy industry had participated in the GWMA efforts to get the job done to improve nitrates in the groundwater, but in contrast the fertilizer industry was absent. It was her opinion that in response Jean was suggesting additional regulatory efforts applicable to the dairy industry while there were no regulations monitoring the use of synthetic fertilizers. Others agreed.

Jean asked how the group could address synthetic fertilizer. Jim noted that among the alternatives being suggested was a discussion in the Irrigated Ag Working Group about nutrient management plans for everyone – growers and dairies in order to look at both manure and synthetic fertilizer applications. Ginny stated that through WSDA the fertilizer industry does pay a registration fee and a fee for tonnage sold in the State but these figures are not broken down by County. Vern added that Jean had suggested a small tax in Yakima County on fertilizer sold in order to begin tracking efforts for its sale and use but agreed there were issues with this method

because it could be circumvented by purchasing fertilizer in other counties or states and still be applied within Yakima County.

Dan pointed out that if the group was going to make a statement he thought it would be important to say that there are volumes of dairy regulations and nothing on synthetic fertilizers. Ginny agreed and said that the playing field in terms of regulatory requirements wasn't even and said she thought it was very important for Regulatory Framework to say there are more regulations regarding dairies but very little regulations for others. Vern said that this could be added to the list of alternatives for the GWAC to discuss. David indicated that a paragraph in the Livestock/CAFO report references this. Ginny added that she thought there was a program in Maryland that includes commercial fertilizer oversight. Steve said that there were a couple of places in other states that require a prescription by a certified agronomist.

The meeting concluded at 7:38 PM. The group agreed that this would be the last meeting of the working group. Jim confirmed that he had captured the additions to the alternatives list to be included in the list presented to the GWAC.

Resources Requested: None.

Recommendations for GWAC: None.

Deliverables/Products Status: None.

Proposed Next Steps

Laurie suggested that the permit writers at Yakima County tour a dairy facility with her so they would see what they were approving and better understand the process. Vern asked Laurie to email him the invitation so that he could make it happen.

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