

October 4th Monday, Water Transfer Working Group

Attendees: Chad Bala, Dave Brown, Stuart Crane, Mark Crowley, Melissa Downes, Ingrid Ekstrom, Chuck Garner, Teresa Hauser, Stan Isley, Paul LaRiviere, Walt Larrick, Larry Martin, Joe Mentor, Mr. Mahoney, Scott Revell, Tom Ring, Mark Schuppe, Ron Van Gundy

Previous Meeting Minutes for August 30, 2010: All in attendance approved the minutes with no changes.

Previous Proposals:

2010-66 Cascade View Inc/SC Aggregate: Mark Schuppe reviewed this transfer, the issue on the table was how much of the consumptive use will be offset by the exchange contract. The use (0.392 acre-ft) will be offset for the entire year, not just for the season, and the consumptive portion will be debited against the trust water agreement. No other questions, passed with a thumbs-up.

New Proposals:

2010-67 Suncadia/Nelson: Joe Mentor explained that this is a request for water budget neutrality determination (RfWBND). Transfer 2010-67 has a minimum 500 sq ft area, property located on west shore of Lake Kachess on Lodge Creek, no well drilled yet and is a single family residence. At this time Joe presented numbers of RfWBND's, 22 have been filed with ecology and a substantially larger number will be filed next month. Joe expressed that volume of RfWBND's will continue to grow and requested that this process be sped up and/or streamlined. Number of connections 147 to ecology, 79 still pending, 67 approved, Apr. 21 sent in, May 41 sent in, leaving 31 pending, in July 59 pending, Aug left 69 pending, this month 79 pending. 347 contract connections sent out...181 sitting out there (people who have signed a letter of intent)...result large number of people sitting on the fence, ecology rulemaking is leaving people undecided, some people think that county will ignore rule and start issuing permits.

Stan Isley noted that the one variable for these (2010-67 through -70) appears to be fish impacts, perhaps there might some way to speed up this process with information provided from Paul and WDFW. Joe M. commented that this one has been sitting for two months with no action, the fish impact committee is reviewing this but the results are still pending. Joe M. is embarrassed for this group to have to review in this way however he has some thoughts about how to make this work better. Joe M. is disappointed that he has to travel to Yakima for this, even though the trust agreement says that Ecology can present this yet he still has to come over. Joe M. would like to spend some time discussing this process which would be better spent time for this group. Joe M. provided another example of slow progress: on June 28, 2010, he presented a transfer on Lodge Creek; it is now pending 94 days with no action, sitting in the fish impact review committee. Joe M. received a letter from Ecology, which indicated that they are actively processing the request, reviewing ESA consultation consideration, currently collecting low flow data, and the proposed location is within the yellow area. Joe M. said that the processing of transfers appears to be a gray area when ESA listing in stream is involved. Joe M. noted that we should be relying on maps of critical habitat for ESA listing. Joe M. continued that Ecology has to decide if ESA listing is present, can it be mitigated, and what is the total flow, then we can consult. Joe M. is most concerned with the bull trout habitat, certain streams and the shoreline for the reservoirs, as well as steelhead. If we looked at the critical habitat maps, and the location is in the yellow region, then the needs have been met for consultation under the contract. Ron Van Gundy asked "Where is what we developed falling down?" Mark S. responded that the green areas (on map) are going through and the yellow areas are not. In June, Joe M. thought that the process was at a point where we could distinguish streams for ESA-listed fish presence and not, yellow and pale yellow respectfully... where the water transfer working group (WTWG) fits into that process is not clear to Joe M. Mark S. said that there is an obligation under the exchange contract that all transfers are presented to the WTWG. Joe M. wants to tease out the pale

yellow areas with an ESA threshold whereby these requests wouldn't need to come back here, it would be an expedited review ... we are bogged down by ESA protocol where fishes are non-listed species. Reclamation is constrained by the ESA process. Joe M. thinks that there are enough out there that we should start this consultation process. Joe M. has had difficulty providing information to customers regarding the emerging reality of this process. One customer, Mr. Mahoney, has come to see this process to understand the delays. Joe M. had presented RfWBND's in March; of those 9 are still pending; that's been 162 days. Ron VG. would like to know what is the hold up? Joe M. responded that they are all in Tillman Creek, and that Ecology has determined that they are not water budget neutral and will need a permit. Tom Ring noted that they must be water supply neutral and there must be no adverse change in stream flow, the reason the green area is green is because Suncadia mitigation locations skate right through; for yellow areas and red areas the Suncadia water cannot mitigate for local stream flow impacts. So the reason why this process is so laborious is because a well drilling authorization is essentially a new water request to see if anyone cares about the local water impacts. Tom R. shares Joe's frustration because he has to check if these have an impact. All of those requests still have to come to the WTWG for thumbs-up. Tom R. would be interested to have these go through a check list for ESA species, then preview by Paul LaRiviere, Tom Ring, and Scott Nicolai, before they get to WTWG. Tom R. did note Tillman Creek is used by juvenile spring chinook, and we can't dry up the low flow pools.

Mark S. noted that Ecology has been sending out these requests to the fish group before the hydrology/geology analysis, 2010-67 is the only one of those presented today that has gone through the fish group. Joe M. would like to spend time brainstorming what that process looks like, getting through this process is not clear. Mark S. noted there's something in the permit processing for a time limit but it's not defined, the expectation is that if this is going to work then this should be a shorter timeframe. Tom R. noted that it would serve people well that folks know the Tillman Creek area is red now, and they should seek mitigated development elsewhere. Joe M. noted that the red area means that we cannot contract with anyone in red, by Ecology decision; Suncadia's water comes from Swauk, Teanaway and Big Creek, so we wouldn't be contracting for that area; in Tillman the tribe has concern for chinook salmon and we won't sell water we need for resort and Suncadia is not interested in a fight with Yakama Nation for a 3rd party water user. Joe feels that everyone in the Upper Kittitas should have the same mitigation costs and requirements that Suncadia had.

Joe described how existing county zoning laws allow owners of large properties to avoid the kind of review and mitigation requirements that Suncadia had to meet. One buyer bought timber land, and developed 640 acres into 32, 20-acre tracts. Then the landowner can use a boundary line process to compress those 20 acres into 5-acre tracts, exempt from environmental review, they end with 31 fives, and 1 larger remainder parcel, and you can only do this once every five years. Up until 2005 there was no time limit, so now they can keep doing boundary line adjustments, to get all of the property subdivided into 5-acre units, with just one remainder section over 20 acres. Remember 10,000 acres was sold all at once that has gone through SEPA review. These are what are sitting out there... We need to grind on this Campbell and Gwinn (case law) issue to come to some decision. You will have each individual applying for a permit, because we don't have a policy in place on Campbell/Gwinn development, and this slows down the process. Mark said we have to look at these on a one by one basis, as the lots are developed separately they each become less and less like Campbell/Gwinn. Department of Ecology, by Joe's standards, are the only ones who care about Campbell/Gwinn.

Joe M. handed out an Upper Kittitas groundwater mitigation program set of threshold questions and wants to make decisions as quickly as we can. Tillman Creek is an example that at some point those people will have to be told that they have to apply for a permit, and Joe's job gets harder because they have been sitting. Expediting this process is not unreasonable considering Ecology can make a Campbell & Gwinn decision within 2 weeks. Joe M. wants to use the Service's maps of critical habitat to make the decision for ESA listed fish presence and then start the consultation process if necessary.

Joe M. also thinks that the hydrogeologic review is unnecessary...for most applications for wells near a stream; each applicant will be using 350 gallons/day, and actual use is not accurately done. Roslyn formation represents the coal seams, where water runs counter to the surface topography, on the north side of the river, might trigger an additional hydrologic review; where for instance that led us to Crystal Creek, where Roslyn formation might be affecting it, by late August Crystal Creek was dry. Most of the water in the creek was the return flow from the wastewater treatment plant, but now that is moved and gone.

Mark S. noted that is why Ecology is drafting on DJ Cattle, and thanked Joe M. for the suggestions presented. Ecology doesn't want to be wasting everyone's time at WTWG meetings. Some are interested in the fish issues, last week tried to put a meeting together to get at some of the things you are talking about (with WDFW and Yakama Nation), we might get agreement that there are no fisheries concerns with different color areas, but could process them as if in a green area. Mark doesn't want to take up everyone's time and Ecology is looking for ideas and I share some of the same goals as Joe. However, we have wildly different ideas of length of process time. I want to show everyone the individual applications and will continue until ecology tells me otherwise. I don't want my time taken for granted and each application takes a lengthy amount of time when every bit of information has been given to you (Joe M.) that has been asked for. Mark: Joe, you are right, Campbell/Gwinn is only our issue.

Stan Isley noted that we are not wasting our time, this is a new process and we are working through the bugs.

Tom R. noted that he is not objecting to looking at a well for hydrogeologic interpretation within a basin for agreement, but we have looked at wells that on the surface look like they come from one basin, that otherwise show up affecting another basin. For sure, all that outside the box stuff could be done at a look outside of this group (WTWG). We have found that the sequence is all wrong; most of this time we don't know the answer when it comes to the group. And these threshold questions are a good start and could save time for WTWG. Joe M. noted that the reason why he put it in front of this group is b/c of the schedule; my understanding is that this group would consider an application no matter what stage it is in. He brought them in the shape the development process was in, and at the beginning it seemed like a month is a long time. Joe would like to encourage more transparency in the fish group, like WTWG. Tom R. thinks that Joe is beyond the feedback problem, for everybody's benefit this should be streamlined. Joe suggests that the yellow zone process should be no more than 90 days and a full accounting of how much water has been charged against the Reclamation Exchange Contract. Joe suggests a simple worksheet/checklist to be more efficient.

Stan I. noted that as long as we are all comfortable that all our interests were addressed in this programmatic process then it might work. Dave Brown suggests rural water districts, the tracking of water usage is huge in the way it is set up at this time; water districts could be the long term answer. Joe M. said that we need some way to develop a more accountable system for a small number of water users instead of on an individual basin. Perhaps the worksheet would address concerns for fish...are they ESA listed, what are the species, what's the critical values (connectivity, stock to lake, are they isolated waters). Paul L. commented that he liked this fish checklist, and will continue with this issue with the fish group to communicate the biological values to WTWG and to the applicant. Joe M. would also like to see questions like what is the period of concern, so that Joe can go back to the applicant to address their problems. Paul L.: for instance, a "mitigation options" section at the bottom of the checklist. Mark S. noted that perhaps we have to clearly define what the questions are that we are looking at for the contract and that are separate from the WTWG.

The group got back to 2010-67 directly; Mark S. said that it has been sent out to the fish group. Tom R. noted that Lodge Creek is problematic, and Paul L. said that it is not in the box for WTWG. The WTWG group made no recommendation for 2010-67 today.

2010-68 Suncadia/Davis, 2010-69 Suncadia/Fletcher: On the east shore of Lake Cle Elum, during the late season the streams are not connected to the lake, so if you take the bull trout critical habitat map, then they don't drive into an ESA consultation. Paul L. noted that 68 and 69 are in the Morgan Creek basin, WDFW doesn't object to these two applications from a biological perspective and there isn't a concern for withdrawals in the wintertime. Tom R. will have to check with Yakama Nation on these two, 68 and 69. No decision by WTWG at this time, but these two transfers are provisional thumbs-ups, pending approval from Yakama Nation via Tom Ring.

2010-70 Suncadia/Emery: This transfer is in the upper Thornton Creek drainage and Ecology has already done a couple of water budget neutrals in that area. Paul L. noted that given the location of this well, WFDW doesn't have a concern for impairment to the fish species in the Thornton Creek area. This transfer is a provisional thumbs-up pending approval from Yakama Nation via Tom Ring.

Mr. Mahoney spoke to the group to express his wishes to have his water issues resolved as quickly as possible, because at this time his land is without water and is worthless. He also thanked the group for letting him attend and listen to our discussion.

2020-71 Jacobs/KCCD: Mark Crowley presented this proposal. The Kittitas County Conservation District is removing the lower barrier dam on the properties, and moving Jacobs POD upstream to the upper diversion, jumping over the Nesbit diversion, however flow is not a problem, low flow is 30 cfs, average flow is 71 cfs. Priority water right dates were discussed, but are not a problem. Two current fish passage barriers will be removed on lower Cherry Creek, opening two miles of stream. Lower diversion will be 8 rock weirs; Nesbit will have a head gate to a fish screen to pump. This received a provisional thumbs-up approval from the WTWG, pending the approval from Yakama Nation via Tom Ring.

No other issues presented.

Future Meetings: Monday, November 1, 2010 and Monday, December 6, 2010, both at 1:00pm.

Meeting adjourned.