

Board of Okanogan County Commissioners  
Monday, Feb.15, 2021 PM

JD—Jim DeTro, BOCC chair, District 3  
AH—Andy Hover, BOCC vice-chair, District 1  
CB—Chris Branch, BOCC, District 2  
LJ—Lalena Johns-clerk to the Commissioners  
PP—Pete Palmer, Planning Director

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The time stamps refer to the times audiotape of the meeting on this date at <https://www.countywatch.org/> .

**Summary of significant discussions:**

***PP updates the commissioners on several topics, including software that would allow people to track the progress of a submitted building permit. Discussion includes whether the work should be done in-house or purchased from Dude Solutions. PP also discusses comments she's received about the Comprehensive Plan and how much of the concern expressed in the comments could be addressed by subarea plans.***

***Commissioners hold a public hearing regarding WRIA 48 Interim Control Ordinance 2021-1. They hear testimony from four people and then discuss the issue among themselves. They pass a motion to keep the moratorium in place.***

**00:15—PP—**Not much on the agenda this week.

- Craig's contract is amended but Dave Gecas wanted a correction. We hope to have it for next week's agenda.
- We got the Senior Planner supplemental budget completed with Cari's help. Sent to you. LJ—It's been scheduled for Tuesday, March 30 at 3:30. Three departments will be heard at that time: Planning, Elections and Veterans.
- I didn't schedule the Comp Plan with LJ yet for the BOCC public hearing because don't want to do that before the Planning Commission meets next Monday, March 22, to see if they'll require additional drafting or changes or if they're ready to move it forward to the BOCC.
- Last week the Project Review Committee met. Dave(Shelton?) didn't attend and we wanted to get into water adequacy issues with him. Between Public Works and the Building Department, we had a productive meeting. Talked about water adequacy with Group B system vs Group A. But without Dave there, we talked about projects that wouldn't require water adequacy from the Building Department and what triggers the need for water adequacy—a kitchen. CB—Question that you'd probably need Dave to answer: On the Group A or B, if there's a subdivision, a man down by Brewster asked me: When do water quality and testing requirements kick in in a subdivision? He's only the 2<sup>nd</sup> buyer. Wanted to know when required testing is done that serves the subdivision. He

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was concerned about a Consumer Confidence Report if they've got a Type A.PP—OK. I'll send the question over to him.

- I talked about when insurance controls went in on the building permit. I had funneled all those questions to one staff person, so people would be receiving consistent answers to their questions. Angie is doing it. She's keeping a running list of anyone she's talking to and seeing a pattern of one property getting four or five inquiries. So she's come up with text book responses so she's answering everyone the same. Went a step further and had Dan (Higbee) in the Building Department review the answers. So far this seems to be working pretty well. Angie also is going to answer emails one hour in the morning and one hour in the afternoon. So she'll have time in between when she'll be unavailable to staff so she can get her own projects done.

AH—Before you go on, I'm going to make a comment. I'm usually here on Fridays and last Friday we had an impromptu meeting about permitting software. Streaming lining permitting and the Assessor's Office doesn't have a module to allow for building. Doesn't allow good integration of permit tracking. So Dan looked into a couple of different programs that do permit tracking.

PP—I sat in on those.

AH—They're pretty expensive. But Gene thought he could do exactly what they needed to do. Cameron was there, too. So we'd have in-house group to modify the system to do what everybody needs to do. I thought it'd be good to talk about that.

PP—I was impressed with the entity that had the higher bid. Their stuff interacted with our new credit card system. They were able to use our zoning map as an interactive map. Tie in all the permits so they could do everything on line. See where their permit was in the queue.

AH—Can Gene do that stuff, too?

PP—I don't know. I keep asking them. My worry with Gene is that it's taken eight weeks to get the credit card stuff perfected. Now we're getting into fire season that will take him away. So I don't worry about his ability but that he doesn't have the time.

AH—We need to have a presentation like you had and then discuss this with Gene. Dan said it was pretty expensive.

PP—The other thing is it works offline. So if people are out in the field with no signal on our phone, you can put info into and when we get into a service area, it inputs the info. It updates every two weeks where the other one was quarterly, I think, so we'd always have current information.

AH—Is that forward facing?

PP—I don't know.

AH—I didn't have that information last Friday, and now I think we should look at what you're talking about.

PP—I can show you my notes to give a better update on what the programs can do.

CB—Where are you in the process? Still meeting? Ready to decide?

PP—We've pretty much agreed that Dude Solutions, even though their bid was a little higher. They had the capability to bring us into the new century as far as zoning maps and interaction with the public goes. Eliminate a lot of staff time. People can learn what they want to know without talking to us.

LJ—We already subscribe to Dude Solutions, for maintenance. Maybe we can get a deal.

AH—We've got to circle back around then.

PP—I'll put it on my agenda for next week.

CB—Great.

- Project Review Committee—We'll redo "Developing Your Dream" maps. It would be easier with a checklist instead of a map where you follow arrows that are all over the place. So I'll work on that. Everybody agrees that before anything else, they should come to the Planning Department and get the site analysis done. Before they go to the Health Department or Building Department.

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- Clearing and Grading Ordinance I've been trying to get done. But it got on the back burner with the Comp Plan, etc. So that will be one of the first thing I do. Public Works is interested and has good ideas to share. Want to make sure some of their maintenance projects are exempt so they don't have to get a permit when they do road maintenance. That's all I've got.

AH—I'm glad you printed out the Water Resources Management Program. I quote it often, and now I can say page whatever....

**20:20**—AH—Here are the comments for the Comp Plan.

CB—She could put them out here in the front.

PP—I spent the weekend reading the comments. Boils down to about five things in the Methow.

AH—Just in the Methow?

PP—Yes. Water. Night skies, Ridgetop development. Fish and Wildlife. Habitation.

AH—Those are the same five things that always come up.

PP—This got me thinking about understanding the Comp Plan process. One of the big things is that the subarea plans up in the Methow and this basically doesn't change them. And out of their subarea plan process, what should happen is reform the group, and have them update the plan. Part of that update could include lower (unintelligible) and that would take care of almost every one of these comments. Need to find a way to explain it to people so they can wrap their heads around it. When you look at differences between the Methow and the Okanogan, between the people, the opportunities, the environment, there are a lot of differences. It's hard to capture the area in one plan. So it's a good idea to pull out these subarea plans and start looking at them again.

AH—Look at WRIA 48 and it's bigger than most counties in the US. To take a county 5,300 square miles and try to put a cookie-cutter stamp on it re: development and planning isn't a good thought process. CB says it takes a lot of county resources to provide services all the way up in the hinterlands. Reading the DOE comment about water—trying to quantify amount. Valid point. To say there's adequate water...adequate for what? For now? For maximum buildout we have now? 30 years from now?

PP—We'll have a lot more answers Monday with the Planning Commission.

AH—I'll say this because we're talking about it. Just because people write comments, it's not a vote and those are the only people who get to vote. We're representing ~46,000 people whether they say something or not.

**26:30 to 30:45** No conversation. Waiting for 2:00 PM to begin public hearing regarding WRIA 48 Interim Control Ordinance 2021-1.

CB—Meeting scheduled to take public testimony re Ordinance 2021-1. First we'll hear from staff.

PP—Staff report gives history of the ordinance. Adopted in January, 2021. Reads a list of people who submitted comments.

AH—And this hearing is not on the building permit moratorium. It's on the subdivision moratorium.

**36:05**—Isabelle Spohn testimony via Zoom. Supports interim control in the face of decline of physically and legally available water.

**37:35**—Melanie Rowland. Member of the board for Methow Valley Citizens Council (MVCC) and also lawyer for them. Submitted a written comment. Supports moratorium. Hopes it can be resolved in a year. Agree with AH when he says we need a lot more water availability before we start handing it out.

**44:45**—James Weger(spelling?) Property bought in Methow and recently denied a building permit. Had a legal well drilled in about 2007 and now he's ready to build but he can't. How does this back-dating happen? He's hoping the issue can somehow be resolved for people like him who bought property with an established well but can't get a building permit.

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**47:20**—Heidi Appel sees this is a complex issues. Owns property in Twisp that she’s been trying to develop. Hope BOCC promotes group uses and group domestic wells. People speak of promoting density in the towns, but she’s been trying to develop her property in Twisp for several years but it’s a limited reality. Costly to develop in town. Seems to be easier to say than do.

**52:00**—CB—No more comments, so I’ll open up discussion by the board.

AH—To clarify, data is important, to see if there is enough water available. Also important because they quote the Water Resources Management Program for the Methow Basin. Created the rule in WAC 173-548. When you look at the rule on page 9 of Management Program is says:

*DECLARATION OF BENEFICIAL USE AND USE PREFERENCES The State Water Resources Act of 1971 declares the following uses of water to be beneficial: domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state (RCW 90.54.020(I)).*

Doesn’t say anything about single use—domestic or group use—domestic. It just says “domestic”. Skip down a little and it says:

*Based on those conclusions, the management of the surface water resources of the Methow River will be in accordance with the following beneficial use preferences:*

*Priority I Existing rights.*

*Priority II Single Domestic and Stock Use*

*Priority III Base Flows*

*Priority IV Irrigation, Public Water Supply, and Other Uses*

So this document was written for surface water management, not ground water. Moving on 45 years later, we know a lot has to do with ground water as well as surface. When I see agricultural users that are junior users being shut down and we look to how many houses we’re putting in, 2 cfs (cubic feet of water per second) of the 14 total that were appropriated in 1976 for reserve predate junior users. Applications for water rights were in two separate years. Senior users in 1971, secondarily in the early 1980s—junior users. Those are the people who get shut off. In between there was the appropriation of 14 cfs for domestic use in the Methow Valley.

AH—Moving on to moratorium—Putting a hold on future subdivisions, I think we should maintain it until we have better data to say that this is what we can handle as far as population density in the Methow Valley.

JD—We’ve established that the 14 cfs in 7 reaches, in reserve, we’ve established that it comes off the bottom, not the top. Try to mitigate heavier densities by moving reserve water to lower reaches, but does that lead to litigation? Agree with AH. I’m one of those guys who look at hard data. If you cannot use facts and figures and data that’s provable, everything else goes out the window. Can’t depend on opinion or litigation still in court. I don’t know what the answer is right now.

CB—Reading the comments from Futurewise and others, there are a couple of points.

Moratorium to create additional lots almost works without a moratorium anyway. The challenge and opinion of DOE’s AG about (unintelligible) decision applying to subdivisions, we’ve taken that seriously. If someone applies for a subdivision, it would have to be denied anyway if it was based on single family exempt well. Face is that if we didn’t do moratorium, we’d still be denying subdivisions. So it’s better described to serve people going to start making investments before they make their applications.

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As far as exempt subdivision side of it, What you believe should or shouldn't happen is one thing, but the law's there staring us in the face. When the Hirst decision came down it wasn't clear if it applied to Okanogan County because we're not a Growth Management Act county. If we look at 5817, we are responsible because of Hirst to decide if there's adequate water available whether it be legal water or physically available. Looking at that, it's what drives our decision making about subdivisions. Going back to 2002 is troubling because of vesting. Vesting has been clear in the past—decision made by local government that hasn't been successfully challenged would apply. That's where we're on uncertain ground. When they had a subdivision approved, they said there was adequate water. Take that further, since that happened, we had to show water availability at the building permit level. So take that away on the exempt subdivisions themselves. When somebody makes a building permit application, they have to show there's adequate water, physically or legally.

AH—There's 14 cfs of water reserved for single domestic use.

CB—Call it a loop hole or whatever, there's something that we say applied to exempt subdivisions when we don't have good legal standing. Some disagree. But it comes from an angle. There's vesting. Not just for investors but for people like these here who just wanted to do their dream. And all of a sudden after spending a lot of money, they can't do it. These issues are not just cut and dried. We're working on it.

CB—Other angles, we haven't challenged the AG of Ecology. Courts have different understanding of water law, and decisions change. We don't want to be a Hirst decision.

CB—Issue of anecdotal information. People talk about their wells going dry, but we don't know if they actually went dry or why. So hard to use that information.

AH—If there were lots of wells going dry in the Methow, they'd be filing a lot of impairment claims with Ecology.

JD—I agree that's not happened, so how are we to make a determination?

CB—Issue with impairment. Sometimes neighbors don't want to lean on their neighbors. And there are many reasons why a well might go dry.

AH—How many people have to leave their house because the well went dry? That's the real test.

CB—If you're my neighbor and my well is starting to dry up, and I decide you're impairing my water and take you to court. How do I prove it was you?

AH—Exactly. And another thing, the reserve was created under 9054, which means everyone who draws against that reserve has the same date of right, but for everyone that goes in, the first one in is the first one on that right. So you're correct. They're all tied back to 1976.

AH—We don't govern Ecology and how they determine impairment. But we do land use issues, and if we don't know, we don't know. Another problem coming around I can think of is Methow with subdivisions with a lot of lots. Is the creation of all these lots going to impair somebody within that development? Because once you do it, you can't go back on it. If you have 100 1 acre lots, are we going to wind up with an issue? Not legal issues, but issues with the physical extraction of water.

CB—Some in this area, and a lot of times it's substrates.

AH—Isn't water where you find it?

CB—So, those are some of issues related to what we're doing here. One of the biggest of mine is vesting. People wonder what does vesting have to do with if you do run out of water. I say, well, I didn't make decisions since 2002. It was assumed for many years that the DOE was the tracker. Hirst changed that. Not totally negative. Somebody needs to be paying attention to the water. AH is working hard to get a planning effort in place. I'm glad.

AH—Half million dollars to get the legislature to come up with the data we need to make these informed decisions.

CB—If we do that, we have to make sure we pull through.

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AH—And there are other entities. I don't like siloed information. One statement that gets thrown out a lot is that there's not enough water in the river for the fish. Hear it all the time. The two entities that study that are Yakama Nation and Colville Indians. Their way of life is dependent on their natural resources. They can gather a lot of resources to do studies. Why not tap into that information? One thing that came up is about areas of cold water introduction into main stem rivers. Those are important places in the future. Asking about trees. Should the county incentivize planting cottonwoods to shade the river? Learned just the other day that trees don't cool the water down, they just keep it cool. Ambient air temperature is doing a lot of the heating. So the cool water that comes in cools it down. Why not study where the cool water comes from and as a county try to protect those areas.

CB—Several years ago, AH volunteered to be on the Salmon Recovery Board. I encouraged that. Because then you'd have to hang around with all those fish (unintelligible) and get to know them. And you know what's going on in the river system.

AH—Anytime you talk about an Environmental Impact Statement, people are part of the environment. How do you protect fish but also adapt to an increasing population? I've changed my mind about linear growth in the Methow. Anymore, I see it as exponential. Changes, like Covid, caused the curve to change. People can work from home, so they move here.

CB—We've got the ability to make that curve the way we'd like it to work. Don't have responsibility to take on all that population. Methow and parts of Chelan County are attractive places to buy property. And affordability is an important problem.

AH—What we're doing right here flies in the face of affordable housing. People can't own those little pieces of property.

CB—We can't control who buys it.

CB—If I buy property for overnight rental, we have control over that. Those are the kind of things we pay close attention to it.

AH—I think it's the incentivizing or allowing for lot creation is you're going to do it for certain purposes—like affordable housing.

CB—That's where zoning comes in.

AH—You don't get to make 1 acre lots just to make 1 acre lots. If it's a planned development and your selling criteria meets the affordable housing standards.

CB—That's the future. We're dealing with the present. The moratorium is a warning sign. If there's anything we can do to make the vesting rules apply, we need to really focus on that. As a planner, vesting is always important. Even the state changed the subdivision laws so you could wait longer because you were vested. Economy turned down so they changed the law to deal with that.

AH—Another thing I heard. Production agriculture folks in orchards. Tree fruit has been hard and they want to sustain their farms to pass along to kids. Two pieces of land and wanted to sell the smaller one down lower to continue funding the larger one. We're coming to the point where we want to keep agriculture, but people doing agriculture can't subdivide anything, they'll give up farming and it'll just be a weed patch even if they have water.

CB—Here's how I see it. Vested interests first. My priority. And you'll be lucky to meet those vested. But the data that you collect will tell you.

AH—I agree. What I was talking about wasn't a vested interest. I'm in full agreement with you that vested interests are my top priority.

CB—We've used up our hour. Do we want to make a decision?

AH—Moratorium is in place 1 year from its creation, about 40 days ago. We're doing that to try to figure out what level of development we want to be. So, I want us to be sure it's incumbent upon to push for data collection. We need answers to be able to know what to do instead of just putting it off for another year.

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CB—Like I said, if we don't renew the moratorium, wouldn't change a thing.

AH—That's where I'm curious about the moratorium.

CB—I think if you've got the moratorium, people won't start investing..

JD—We're not leading them down the path. The one thing I hate about Ecology, with enforcement, if they think they've got the upper hand, they'll hammer you as hard as they can. When you get into a gray area that might involve litigation, it's up to locals to make the decision.

CB—Especially after they lost a few cases.

JD—Well that just burns me.

PP—Right now, that's our reality. We try to ask questions about (unintelligible) and they just tell us—well, that's on you guys now.

PP—We'd gone through within the work plan to see how provides answers. A lot of this is going to fall on Ecology to give us these answers. And of course, Gecas, to weed through the legality of each law and tell us how it'll apply.

PP—The last thing is the well-tracking software. It'll help a lot with the 2 cfs and telling us the balance of those allocations.

AH—That's part of the data collection we're doing. Well-tracking software with good inputs. Where we've questioned the inputs to see how they're gathering the info. Along with our permit-tracking software.

CB—Key objectives is to figure out if you even have enough water to serve the vested interests that exist and beyond that.

AH—I think that's a big piece of information. I do, too. Our assumptions: DOE has come up with consumptive use. That's the best available science now. If we apply that to current number of lots within each reach and maximum number of lots in each reach. Multiply that by the consumptive use number. We'll find out if that 2 cfs is enough.

CB—But that doesn't mean that it's so.

AH—But that's what I want to know. I can put a meter on my pipe that pulls water from the river and I can show if I'm going over my right. If the 2cfs is a right (and it is), and if my consumptive use level is x and here's how many lots, and I never go over my appropriation, there's legally enough water. So then, I want to know is there's enough water for fish. The fact is the 2cfs was set before in-stream flow value.

JD—I've said several times to you guys about fishing in Alaska. You've got water and you've got fish. Next year you might not have water, and they don't come back until the next year. That's nature. You're not going to change Mother Nature.

CB—Doesn't help in the end because there's a whole lot of people managing fish who disagree with that.

CB—So, I'd entertain a motion...

AH—I want to talk about reserve real quick. In RCW 90-54. 1971 law. Reads from the law:

*RCW 90.54.050 Setting aside or withdrawing waters—Rules—Consultation with legislative committees—Public hearing, notice—Review.*

*In conjunction with the programs provided for in RCW 90.54.040(1), whenever it appears necessary to the director in carrying out the policy of this chapter, the department may by rule adopted pursuant to chapter 34.05 RCW:*

*(1) Reserve and set aside waters for beneficial utilization in the future, and*

*(2) When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters...*

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AH—Which is what they did in the Methow. There's another thing people don't talk about in the Methow. All of a sudden there are all these closed basins that aren't going to (unintelligible). Literally hundreds of parcels were taken out of the equation for water use.

AH—Motion would be to keep moratorium in place? This hearing is to decide whether to keep it, change it or repeal it. I move to keep it in place as is. Passes 3-0.

**1:40:40**—LJ—I've got something more, too

James Wegner (a commenter)—I know your responsibilities are to both sides. I'm worried that a special interest like Futurewise has such deep pockets. My opinion is that lots already created can be built on.

AH—But like CB said, you'd still need to get a permit.

CB—Also, we need to recognize other rights than older property owners. Tribal fishing rights are the major player in this whole thing.

AH—I don't doubt that.

LJ—Before you go, I've ordered a plaque for Dan McCarthy. Wanted you to look at it and sign the certificate. Then we can set the date to present it to him.

BOCC all feel the plaque looks very good.

BOCC adjourns.