

BOARD OF OKANOGAN COUNTY COMMISSIONERS
08/28/2017

In Attendance at Meeting:

Jim DeTro- JD (BOCC)

Andy Hover - AH (BOCC)

Chris Branch - CB (BOCC)

Lalena Johns - LJ (County Clerk)

Perry Huston - PH (Administrator & Planning Director)

David Gecas - DG (Deputy Assistant Prosecutor)

Sage Park - SP (Department of Ecology, Regional Director)

Trevor Hutton - TH (Department of Ecology, Section Manager)

John Kirk - JK (Department of Ecology, Hydrogeologist)

Natalie Kuehler - NK (Water Rights Attorney)

Brian DePlace - BD (MVCC)

These notes have been taken by one of several volunteer citizen note takers and published on the website of Represent Okanogan County (ROC.) The notes have been taken as close to verbatim as possible, with any writer's comments or explanations in italics. For officially approved minutes of Board of Commissioner meetings, normally published at a later date, see www.okanogancounty.org.

Summary of significant discussions

Update - Planning

Discussion - Department of Ecology (ECY)

The discussion with ECY addressing the aftermath of the Hirst decision lasted 1 ½ hours and covered many aspects regarding how the County is proceeding with issuing building permits on properties that will rely on exempt wells. ECY is offering technical assistance on geohydrology and water law issues to counties. AH had a list of detailed questions, most of which ECY responded to by saying they are consulting with the Attorney General's (AG's) office and will get back with the answers. PH outlined procedures the County has developed for issuing permits; ECY did not note specific problems with those procedures, but indicated for some of them that they are in discussions with the AG. The potential for water banking was discussed; TH advised 'walk, don't run' toward that. Audience members were invited to ask questions. NK asked about ECY recognizing water rights after County permitting; ECY is consulting with AG on those questions. BD asked questions about how exempt wells or other water systems are allowed following subdivision of parcels.

OCC 17A.270 Nightly Rentals

PH describes changes to the 1975 code governing nightly rentals, including 'removal of the amortization period' and changing the annual permit renewal to an annual license. The

Health Department will begin to get 'buy in' from the Planning Department prior to issuing annual permits.

Community Assistance Visit - FEMA

FEMA audited County files, evaluating the administration of the Flood Management Program and found the County to be in compliance. This is a requirement for the federal insurance program. The County will be receiving a written report from FEMA.

Update - Planning

Discussion - Department of Ecology (ECY)

1:35 Meeting begins; JD has not arrived^t.

SP - Regional Director for ECY, Central Region. Brought section manager Trevor Hutton and hydrogeologist John Kirk. Water availability, is a challenge. Offering technical assistance. May not be able to answer every question today, but will find out and get back to you.

Introductions all the way around. Dave Gecas, Prosecutor's Office; Brian DePlace, MVCC; Megan (?) OHA; Craig Nelson OCD; Lorah Super, MVCC and others. 1:40 JD arrives.

PH - Purpose of gathering. Commissioners asked for meeting. Adopted Title 20, Ok Co. 12 right after Hirst decision. Two tracks - water availability prior to building permit. The other tied to land division. That goes to Hearings Examiner. Walking straight down instream flow rules, WRIA's 48 (*Methow watershed*) & 49 (*Okanogan watershed*). Centerpiece is notification process. Notify water right holders, adjoining land owners, public notice. Provide opportunity to call for public hearing. Changes landscape for short plats, not for long plats - those already went for public hearing. Questions so far - in 48 there are a number of closed basins. Maps don't match. 2 cfs, interpreting it as only for single family dwellings. 49, the rule is there, just makes an exemption for domestic and stock water. Our interpretation to date is that once we have given approval for an exempt well, if somebody comes in and complains, then we direct them to you. You get the call. (*too rapid to record*)

CB - AH has a list of questions he has prepared.

AH - First thing, commissioners charged with health and safety. Predictability, trying to make sure we have adequate resources for people who want to move in. We have no heavy industry; some light industry. County and Ecology's role when a person wants to dig a well? In the Methow, if I buy a piece of property, want to put in a well. What is County's role and what is ECY's role?

SP - House on it, or just the well?

AH - Tied to a single use domestic well.

SP - Hirst decision makes it County's responsibility to determine water availability.

AH - Previously sent in to ECY for start card.

TH - Still is. Notice of intent/start card process goes on. Closed basin, different pathway. They can drill the hole. Then it goes back to the County for water availability.

AH - A lot people don't understand that you are saying that 'Yes, you can put the straw in the ground'. They spend the money. That's going to be a problem if they can't withdraw water. (*agreement*). It would be us, then you, then us again. That's what I see would be understandable.

CB - Somebody comes and applies for a start card, do you ever say no?

TH - Rarely.

SP - In a closed basin, though.

TH - Extra scrutiny there. Don't know if it will be in compliance until after it is drilled.

AH - How do you determine hydraulic continuity?

TH - I would have to ask my technical staff.

SP - Case-by-case.

AH - Understand that, but want to know factors. *(ECY staff discusses how long it would take to discuss that issue and suggest another meeting for that)*

AH - In 173.548, specifically *(reads text - too rapid to record)*. Until the 2cfs is used up, it has priority - that is how I read that.

TH - We have that question in front of the AG. Will have to get back to you.

PH - All we are doing is approving the use of that water that has already been allocated. Where we are going is for commercial purposes, which is not part of the 2cfs. Are we appropriating additional water, is it under our authority, or under ECY's?

SP - Don't know, will have to find out.

PH - No one is disputing is that it would be interruptible. Question is whether that is an additional appropriation.

SP - Building permit?

PH - No, Conditional Use Permit. Already has structure and well.

AH - I we are going to start giving out these appropriations, at what point do we stop?

JK - Exempt well?

PH - Yes. Can we permit an exempt well under the banner of Hirst?

SP - Very good question.

AH - WRIA 48, interesting things going on. Closed basin, maps don't match. Would be helpful to have science behind closed basin, where is the line. I understand that as you get closer to river, more hydraulic continuity with mainstem. Need to know where houses are in or out of that boundary.

S - Willing to work with you to figure out boundaries.

AH - County has taken on role of determining legally available water. How do we refine our process so that ECY is on board, so if things go south you will back us up on our determination?

SP - We are here to offer technical assistance to help make determinations. So far, have been successful in Kittitas County. Let's work together on ordinance so it works for all of us. Our staff will be doing a lot of work so that County approaches are defensible.

AH - It is difficult and expensive for people to know. Need a process, where outside of closed basin, people can still have wells, up to the 2 cfs limit.

TH - Lot of moving parts. Don't know what legislature is going to do.

AH - Reality is that we still have to look out for our water resources. This has been a slap in the face. (*exempt well numbers*)

SP - Total is a small amount of water, but Washington water law is that 1 molecule is still impairment.

AH - (*too rapid*)

SP - (*too rapid*)

CB - Level of review since Hirst has gone up. I don't think ECY had a lot of involvement (*after issuing start card*) of the actual use. Hirst has taken us right down to the actual construction project. Took us to a point of determining whether we are vested for the future. Almost easier for us to do it on the Planning level. Don't know if ECY has plan for adopting watershed plans. In the end, Watershed Plan is about water rights. Now we are discussing how much water a household would use. On the wildland fringe, people need all that water (*5,000 gallons per day allowed for exempt wells*) to protect themselves from fire.

AH - (*rapid discussion between AH & CB about the stage of the Comp Plan; whether water use is in there*)

JD - I thought WRIA 49 watershed plan was adopted.

PH - Commissioners did adopt it.

AH - If I divide a 100 acre parcel, and sell it as 2 50's?

SP - (*too rapid*)

AH - So, we need to work with ECY on this? (*correct*)

PH - Exempt segregation. How we are interpreting it (*describes Campbell-Gwinn review*)

AH - Prior to 2002?

SP - Will have to look at that. We did work with Kittitas County. Will work with you on ordinance. Kittitas did an extensive review throughout County. You can go look to see if you can get an exempt well, or if you need to come in and go through permit process through ECY.

TH - Clarify - haven't done whole county yet. So far, just (*too rapid*)

AH - I know the Capital budget has not been passed yet. If we want to do a review, is that something ECY would help fund? We can't afford it.

SP - Seems like a reasonable thing, if we have funding.

TH - Need to think on the program scale. Okanogan Is not the only county.

AH - (*humorously*) We are first to ask! That has to count for something. Some of these wells, fairly easy to determine if they have available water, based on WAC's. However, ECY has written letters in closed basins, describing if the well is constructed in this manner, then the well will be out of hydraulic continuity. Can we rely on that?

TH - Can provide technical assistance. Hope to get to where it is not on a case-by-case basis. Get to certainty, like you said.

PH - Statute opens door to (*too rapid*).

JD - Have gone to a bunch of workshops with some of the hierarchy of the state legal system. They say that you are a non-GMA county (*you are not responsible for determining water availability; too rapid to record*)

SP - Hirst does draw them in. Talks about non-GMA county having some responsibility for water availability. Do think we need to work on it.

Attorney - Reading article yesterday. It did say that non-GMA counties still have responsibilities.

JD - It would be nice if the legislature would step up and draw a bright line.

DG - Still could happen during special session.

AH - We are out there, 'noticing' everybody on exempt wells. If somebody comes and challenges our determinations about exempt wells, will ECY come help us defend ourselves? If we get challenged, can we use your technical expertise to help shore up our decisions?

SP - Would like to work with you before you are challenged.

AH - Get to predictability. Like in Wolf Creek basin - find out that we have a little bit of water, enough for, say 40 houses. Is that where we are trying to go?

TH - Can't be sure where it is; can't see underground.

(*JD provides anecdote about hydrogeologists making recommendations for where to drill and getting dry holes*).

PH - We are getting better at getting what we need when folks come to us for a permit. We are encouraging people to get that information up front.

AH - If we wanted to go to water banking, it would be harder here than in Yakima. Is there a mechanism? Late 1800's, early 1900's water rights. People are scared of losing them. Is there a mechanism for checking a water right without opening an entire review?

SP - Nonprofits - Washington Water Trust & Trout Unlimited. They can check rights.

CB - Yes, that is a good process to use.

JD - What about Walla Walla water banking pilot project? Grant funded.

SP - Aquifer water storage/recharge. It is still going. We can get you an update.

CB - Toured there a few months ago. Injection sites.

AH - If we inject it, it will be in the Columbia in... not too long.

CB - We are not applying SEPA to this?

PH - Exempt wells, short plats, no. Long plats (*too rapid*)

CB - (*Describes legislative mechanism; too rapid*)

S - In your ordinance, include some clause that you would consult with us. Would like to work with you.

AH - Pre-existing well - beneficial use?

TH - Just a hole in the ground. Nice infrastructure.

AH - 5 lots, one well. Is that being put to beneficial use?

(rapid discussion. PH describes County approach. Honoring the use for one household; requiring permits for other households.)

SP - Plat note saying that each lot gets this much water, then they get their building permits? *(correct)*

(more minutiae; rapid discussion)

CB - A number of years, the City of Oroville had agreed to service a number of plats outside of the city limits. We backed away from denying anybody service. The plat was approved with some source of water.

AH - If we were to create a water bank, could we apportion it out to individuals? How hard is it to change from agricultural to domestic water rights?

TH - More difficult than it used to be *(Foster decision)*. Seasonality issues.

AH - Know it is not your fault. Court decision. But it is so hard to come up with viable solutions. I can quantify how much water I use on my fields in 5 months. Take that much water and divide it by 365 *(to determine daily availability)*.

CB - Who knows how much people are using. That is the rub. Nobody wants their wells metered. To me, 5,000 gallons was a conservative call. If we do set up a water bank, do you have to approve it?

TH - Anything that would require a change on the water right, that would come to ECY.

CB - Municipalities buy water rights.

(rapid discussion of water banking)

PH - Need a legislative fix. Without that, just waiting for the next court case. Need statewide water banking approach. Is anyone in Oly even talking about how to move water rights around?

SP - Having all kinds of conversations right now, trying to figure out (?) & Hirst.

PH - Kittitas County model. But not everyone has a Suncadia in the upper watershed. Suncadia moved water right 25 miles upstream.

SP - Each county is trying to find their own way forward in how to deal with this?

PH - Is there a pipeless solution?

TH - That is what they are doing in Yakima. Each county is different. Water banking is on the table. Walk, don't run to that solution. Effort put in by ECY to make things work in Yakima and Kittitas has been tremendous. We don't have the resources to do that in all counties.

SP - Very time consuming.

AH - A lot of Administrative Codes have reservations. In WRIA 48. Supposed to be looked at from time to time. Have you ever heard of a reservation being taken away?

TH - No, unless you count court decisions.

AH - Towns of Winthrop and Twisp having water problems. That could be enormous.

SP - Having conversations ahead of time. Good to have everyone there for the conversations.

AH - Like (?), the tribe? Need to continue to look at the science you have. Keep an open dialogue so we are not spending tons of county resources on case-by-case basis.

SP - Want us to type up your questions and send them?

AH - Yes. One thing is, we want the science behind the closed basin well construction and boundaries.

SP - You want (*ECY staff*) to continue to work with PH?

AH - Sure.

PH - (*rapid discussion of complications, permitting backlogs*)

SP - Seems like technical discussions need to happen as well. Assuming you need technical overview of hydraulic continuity.

AH - Please take into account the timeline of someone putting in for a permit for a well. Don't want someone putting half their life savings into putting a hole in the ground. A well driller will ask where they want the well, but if there is no water, it is just a dry hole. If we tell them that there is water there...

PH - At what point do we cross the line, determining that there is water there?

CB - (*humorously*) Maybe we just tell them that there is no water there... Questions from the audience?

(*discussion of scheduling next meeting*)

NK - Water Rights Attorney - When County grants a permit, does ECY recognize that as a water right? What will they do?

PH - What we are doing is issuing a certificate of water availability. Has a 5-year shelf life to put it to beneficial use?

TH - 'Right' begins when they start using the water.

NK - What do you do about non-reserved water rights, like interruptible commercial water rights? What is county role?

SP - Going to ask attorney.

NK - Closed basin - does ECY agree that it has a responsibility to determine existence of continuity? Can applicant ask ECY for a determination? Under the Methow rule, a well can be drilled in a closed basin, so long as ECY is satisfied that no hydraulic continuity exists?

TH - We are looking into that. Rule doesn't necessarily discuss when or how. Taking that up with the Attorney General.

BD - Subdivisions as it applies to WRIA 48. Question is whether any subdivision qualifies for a single family domestic?

PH - *(Too rapid)*

BD - Any time you do a subdivision, it is no longer a single domestic?

PH - That is not how we are interpreting it. We are working with ECY.

BD - Assuming we reach consensus, go back to Title 20. It no longer is part of the 2 cfs?

AH - What creates that determination or that idea? *(Goes through math of 710 gallons per day vs. the 2 cfs)*. I have a finite reservation of water. If I don't have that many lots, why does it matter?

TH - Good question. Asking those questions of the AG.

AH - This is where the buildable landscape comes into play. I want to have responsible development, but it is part of our economy. Subdivision code, clustering. Things we are wrestling with every day. Need to come up with solution to get where we want to go.

JD - Anybody else? *(No one else wishes to speak. JD thanks ECY staff)*

(More discussion of capturing meeting outcome)

3:15 ECY staff leaves

Tonasket EMS

PH - Long term agreement moving ahead. 2018 budget will be driven entirely by terms.

(commissioners approve voucher certification)

PH - Ask for 10 minute Executive Session regarding potential litigation.

(commissioners go into executive session as the Tonasket EMS Board)

3:30 Commissioners return; adjourn Tonasket EMS, re-adjourn as BOCC

Marijuana Advisory Committee Appointments

PH - Advisory committee one short.

JD - Have Dave's number.

CB - Did you send the list?

PH - Yes, in memo. Four from industry; three from outside. JD has another name. Could set it up as a commissioner appointment. If you are comfortable with names, can set it up as a resolution.

OCC 17A.270 Nightly Rentals

PH - (?) 1975 (?) is the date we started administering new code. This amendment proposes to do two things. Closes annual permit renewal and roll it into annual license. Second, language cleanup, removal of amortization period; revert to Sep. 2005 amortization date. After that, everything has to be according to code.

AH - Everything compliant with Health?

PH - Included that in code. Now Health is required to get buy-off from us in Planning.

CB - Annual permit (*health*) based on what?

PH - Can't speak to that. When we do our review, we lay it against Zoning. Building is one time.

CB - Annual health permit, no metrics?

AH - There is...

CB - Presumably they do an annual inspection...

AH - (*too rapid*)

CB - The reason I ask, is it just a fee or...

PH - Driver behind our code is to make sure they have their UBI number, meet DOR requirements. If commissioners are comfortable, I can go ahead and issue a threshold (*too rapid*)

Community Assistance Visit - FEMA

PH - First visit since 2005. Pulled all the files. It is essentially an audit. Evaluate how you are administering your flood management program. Stay in the insurance program. Results can be drastic if you are out of compliance. Good visit. No challenges. One variance. When she reviewed she said we probably didn't need it. Will get a written report.

Title 20

PH - Sep. 8, travel to SeaTac. On a panel to discuss what we do to respond. ECY invitation. Don't know what they are doing in other counties. Quasi-judicial and non-quasi-judicial permits. Want to polish up some of those other sections.

Capital Facility Plan

PH - Call for projects (*too rapid; multiple conversations; inaudible*)

CB - Did have that conversation. Emerging opportunity grant. County is eligible. Should consider that for the Fairgrounds.

AH - Good idea.

CB - Stampede Grounds got grant.

AH - How do you do that?

CB - When it is announced that there is funding available, we apply.

LJ - (*inaudible*)

PH - No update on Church proposal. That is your agenda for the afternoon.

3:50 PH leaves. Note taker leaves.