

Board of Okanogan County Commissioners
Wednesday, February 10, 2021 PM

Present:

Jim DeTro (JD) - BOCC Chair, District 3
Chris Branch (CB) - BOCC Vice-Chair, District 1
Andy Hover (AH) - BOCC, District 2
Lanie Johns (LJ) - Clerk of the Board
Dave Gecas (DJ) - Chief Civil Deputy Prosecutor
Pete Palmer (PP) - Director of Planning
Angie Hubbard (AH) - Senior Planner

These notes were taken by an Okanogan County Watch volunteer via AV Capture. Every attempt is made to be accurate, although audio on AVC is very difficult to hear at times. Unintelligible portions are signified by "(???)". Notes are verbatim when possible, and otherwise summarized or paraphrased. Note taker comments or clarifications are in italics. These notes are published at <https://countywatch.org> and are not the official county record of the meeting. For officially approved minutes, which are normally published at a later time, see <https://okanogancounty.org/Commissioners/Minutes%2020/2020%Minutespage.html>.

Time stamps below coincide with AV Capture video of 2/10/2021.

Summary of Significant Discussions or Actions: Discussion regarding **letter of Deputy Attorney General (Ecology) on Methow Instream Flow rule. BOCC directs the Prosecutor's office to seek judicial review and decision** on the issues surrounding legality of building permits issued by the county since March 28, 2002 for construction of homes on lots dependent upon permit-exempt wells subject to the Instream rule. **Cost of litigation is weighed and discussed. The "Kumbaya" approach** is also discussed, with all stakeholders within WRIA 48 coming together to seek agreement upon mitigations or handling of the issues, concurrent with seeking a judicial decision. **Ordinance 2021-3 is approved unanimously, imposing a 6-month moratorium on certain building permits in WRIA 48** until a judicial decision is obtained, the legislature acts, or circumstances /agreements change in other ways. **Public hearing on Ord #2021-3 set for April 5, 2021, 1:30 PM; Similkameen Trail, use of LTAC \$\$, other applicants discussed.**

1:30 PM - Executive Session

00:29: Dave Gecas enters for Executive Session (*Assuming litigation is discussed.*)

Response to Deputy Attorney General (Ecology) letter regarding Methow Valley Basin Instream Flow; BOCC intent to Pursue Court Ruling

14:37 - BOCC, Planning Dept., Gecas re-enter.

AH - So, we have a letter from Dept of Ecology, which gave their Interpretation of instream flow rule, WRIA 48. In that, made assumptions and statements that the reserve couldn't be used for any building permits for lands subdivided post-March 28th, 2002. I disagree with that.

JD - Disagrees also.

CB - I have some disagreement, yes - but it's something that we've somewhat already known. It's not an AG Opinion. It's an opinion that was responsive to a question by our attorneys that are dealing with the issue of the Methow rule and Campbell-Gwinn issues. Stated at the request of Okanogan County.

14.41 - AH - The issue has not been adjudicated by a court of law. That is something that we should (*Unintelligible.*) Should direct the prosecutor's office to do, to take the judicial determination of this on. (?) Along with that, we have parcels that we know were created through subdivision post-March 28, 2020. If we allow building permits to go on while we are doing this, they will be caught up in this legal action that we are going to do. So we should put a moratorium on these building permits.

CB - And your suggestion was to include building permits that rely on a single family exempt well.

AH - On a permit- exempt well.

CB - So that moratorium is not to address remodels, or maybe dry cabins, that don't need a domestic water exempt well.

AH - And any sort of mitigation where a person could show they are not using water from a permit exempt well.

CB - Primarily, we want to be sure the focus is upon domestic exemption for plats. For years, plats were approved that relied upon single family exemption.

AH - And that Ecology actually wrote an Amicus brief in 2013 stating that the county was doing it correctly.

CB - So that indicates the state of affairs in terms of water law, because it changes. So if you look at what Ecology was doing 5-10 years ago, those things change a lot and are based upon cases that "turn water law on its head," as they typically say in news articles.

AH - No, I agree with you. I'm just saying I don't believe Okanogan County was just out there doing things willy-nilly that didn't actually have some backing by the Dept of Ecology (Ec'y.) In Public health, I know that Ec'y sent a letter that said that (??) wells were preferred over multiple withdrawals. There's been a lot of things they've said to the county over the years to promote the idea that you are doing this correctly as far as (????) As you said, the state of affairs changes. Now we've come up with a question regarding an instream flow rule. And to get an instream flow rule changed will take a very (???) amount of funding. Which I think that we should try (???) , but currently I'd like to see the court rule on this to find out where we are with the state of affairs. ...(???) As I said , that we will issue (????)

20:33 CB - **And the only apprehension I have** at that point, after discussing all these other issues - because we agree on those - is to clarify what we are making the court decision on, because the biggest issue it then leaves us with is what does this cost (???)That's the unknown .

20:47 AH - I think that financially we're at risk in different ways between people that have put in plats already, and put in construction andthen not being able to realize the investment they have put into

these properties - vs what it costs us as the county to defend those people's outlay of money. I understand It's lawfully only one part of the county, but if we look at this county as a whole, we've done a lot of things financially in different places of this county. To say It not only affects the Methow with tax \$\$..... The same could be said about a lot of things that happened through out the years about using tax \$\$ in other areas to help all of us economically...

JD - We have to consider what the net benefit is to the whole county, even though the lawsuit is focused on WRIA 48.

AH -Yeah - It's not a levy that we apply and then our rate of taxation goes up and down like thatit's that we collect x amt of tax dollars. When all of a sudden property values go in the hole in another area of the county, everyone in the County has to make up for that....

JD - When the mine (*Buckhorn mine*) went down, it affected the Oroville school district.

AH - (*More examples, tax assessment processes....*) Things can be gradually caught up. It affects everybody, everything (*in the county.*)

CB - (?????) To me, the cost (*of the litigation*) is the biggest consideration, no matter how we frame that. It frustrates people.

Another proposed course of action

CB - We have another course of action proposed, do we not? That also would run parallel to that? Would you care to share?

AH - When I was running for election, I said I'd like to get these water issues straightened out. All the words you used were good - people who buy would have certainty. The county has certain decisions it's making. I think going through a watershed council in WRIA 48 would be a very good thing to bring all the stakeholders into a collaborative effort on how to figure out what is the landscape: zoning, water use, all the things we look at in the Methow Valley. Can we come together - tribes, enviro groups, ag groups, so we can go to Ecology?

This action, proposed with a judicial determination, would give a baseline - do you have to mitigate for these things, or is it more of a (?????) Or how do we do some of these things? In order to do affordable housing etc. - do we need to mitigate for that? Going through this process could give us some insight as to what are some (?????) What are some projects we can do to mitigate?

CB - I've always been supportive of the "Kumbaya" approach. I believe there is potential -it depends upon how much commitment people really have to doing it. It's a track I've always wanted to take instead of litigation, but we've never gotten around to it until we are faced with litigation. That's about all I really have in regards to any decisions to litigate. I'm not totally opposed to litigation., but we need to be careful about it.

26:54 - AH - I understand why my constituents might not want to pay for litigation somewhere else in the county

CB - That's not really the main point. It's the total cost of litigation, wherever it happens. Water law in WA has largely been determined by litigation, and we generally haven't been happy with it. That's why I support watershed planning in the Methow watershed, because everyone gets to listen too, instead of other groups claiming the others are wrong. Many people in the Methow are considerate about their community and economy & what it looks like. If the economy is only based on just the transfer of real

estate -some I talk to, not only people in MVCC or such - have a concern about that being a sustainable thing. A lot is based on tourism, which has its pitfalls.... and so forth.

28:14 - AH - I agree with you, and I've said this to people - in my opinion, to do this - it's not that I feel we should develop every single acre of land in the Methow. I live there, and the rural lifestyle is important. It's to find certainty, and what tools you can use to balance the need for development - whether it's kids coming back or tourism, vs open space & Ag land, etc. There are answers to questions that have been out there..... So *(mumbled)*

LJ - We do have an ordinance, the one that Pete sent, Ordinance # 2021-3.

AH - First , I would move to direct the Prosecuting Atty's office to seek a judicial determination in regards to issues raised in Ecology's letter dated Jan 13, 2021. Seconded, no further discussion, agreed unanimously.

AH - Anything else?

LJ - just writing the motion.

Pete hands paperwork to AH, who is looking at it.

CB - For conversation's sake, the moratorium on the building permits themselves, as we refined that intent by our conversation..... there's other options available, but this one really does put folks in the Methow that have expectations re getting building permits, it puts that in perspective and makes a statement that this is where we are today. Answers one question about the decision-making process in regards to building permits, which is water availability - and it's saying that we are not really certain there is water available to process your building permit, so we are not going to process it, not put you or ourselves in jeopardy until

AH - Until we get a legal determination of the courts as far as the question....

CB - Or maybe until the legislature acts on something, or until the process in the Methow Valley works that out.

AH - Or that something else comes along to mitigate

Lanie hands AH the document.

AH- Moves to adopt Ord # 2021-3, establishing a temporary moratorium on the issuance of building permits within WRIA 48, on parcels of land that are subdivided post - March 28,2002, With the exception of those within the Columbia River influence.

CB - Calls for vote on "Moratorium on building permits that the determination of their approval is affected by a determination of water adequacy." No further discussion, passes unanimously.

AH - This moratorium will expire in 6 months after its adoption unless otherwise extended or repealed...to resolve the dispute on water adequacy.....

CB - I just hope we can resolve something in 6 months.

AH - BOCC directs Planning Department to review the water adequacy codes we have for Okanogan County and to go through an update process based on changing legal opinions.
(Passes unanimously)

AH - Public hearing must be within 60 days of its adoption.

Date of public hearing on Ord. 2021-3 is set for Monday, April 5 at 1:30

Similkameen Trail, use of LTAC \$\$.

39:16 - CB . Phone call from up north, today a group that has contacted us before about the Similkameen trail,. Ask before to make improvements - need application. They fully intend to do this.

AH - LTAC dollars from Dave. Can a separate entity... (*hard to follow*) so we contract...Methow Trails and Association with county, vs someone else?

LJ - We have contract with Methow Trails also contract re use of LTAC funds.

CB - It's a piece of county infrastructure. I think these guys operate....could apply under city or Chamber of commerce. Think they have a nonprofit status, but if not...city or chamber could be the entity.

AH - Theoretically, if they came up with a scope of work, we might be able to interact (???)*can't hear.* There are some ways we can....

CB - On project in the past for a scenic byway program, county nearly came through. City (*Oroville*) was willing to put in the water, but it didn't happen, so they want to pursue it again.

AH - I'm fully committed to outdoor opportunities. Lots in the Methow. People come, they use hotels.

CB - We don't see a lot of development in that area, so that's the conversation that's gone on for 27 years.

LJ - A lot of nightly rentals up there through Veranda Beach, and also the code states any change in revenue shall submit to LTAC at least 45 days before passage by municipalities. This would be a change in use.

AH - No, talking about next year.

LJ - They would apply in 2021, but meeting on the 26th re the date. Usually first Friday in Sept is the deadline.

AH - Pretty lengthy process.

JD - Asked about Stampede. . Due to Covid, office shut down and they missed a deadline. Normally they never miss.

LJ - Pacific NW trail Ass;n wants to apply. I recently e-mailed him some of the info about applying.

CHit-chat about increasing opportunities and utilizing the \$\$ for this.

LJ _ - It's \$25,000.

CB - If they have a proposal, what's going to be a viable proposal.... talks about Lee Chapman in the Lake District.

AH - I will definitely push these things.

CB - Discusses North End water users ass'n. , possible sewer on west Lake in the future - proposal to see what it takes to dissolve that district, they want to go there. Discussion of history.

51.08 - Adjourned (at 2:30.)