

**Public “Omnibus” Hearing - Okanogan County
Permit Exempt Wells
2.16.2017**

Note: This meeting went rapidly, with speakers quoting statutes with lengthy titles and numeric data. Notes may not be complete due to note taker’s ability to rapidly record such numeric data.

Handouts were:

*Methow River (WRIA 4 8) Instream Flow Rule Reserve Accounting February ?, 2017, presentation by Bill Sullivan, Senior Project Hydrogeologist, Aspect Consulting.

*Untitled handout dated February 16, 2017 by Okanogan County Office of Planning and Development, containing summary sheets and charts using data from USGS gage stations including high and low flows in cfs, days below base flow, precipitation data gathered from NOAA, and well log data. Instream flow data beginning date was 1976 (date of established minimum base flows for WRIA 48 and 49.)

*Brief agenda for meeting.

Intro10:04 - Dan Beardslee (Hearing Examiner)

This is way outside my experience and probably of any other Hearings Examiner. Info gathering exercise in respect to *Hirst* groundwater decision. I will manage meeting and develop a record. We will start off with mr. Huston.

Perry Huston - OKANOGAN COUNTY DEPT OF PLANNING AND DEVELOPMENT

Oaths not necessary to testify at this hearing.

Purpose - in response to a series of events, beginning with First , that has changed the responsibilities of counties in terms of permits/decisions in re permit exempt wells. Decisions we are asked to make are the same decisions we have always made. Planning & health - total water supply for residences, platting a consideration.

What is different is the info we are now allowed to rely upon. Interim control has been remanded and replaced by Title 20, which records processes related to applications that come across our desks. We are talking about total water supplies from permit exempt wells. We must address new water from any permit exempt well.

This is technical info gathering. We have invited reps from different groups....Aspect has done much analysis in county. Well drillers are in front line as to how aquifers work, Colvilles have done a great deal of analysis in terms of instream flow. Watershed planning groups were included. It is not an exhaustive list of people with expertise, these are the ones we invited. Hearings are continued to the 22nd, 6PM to take testimony from the public. Those who are monitoring this discussion will have a week to reflect and offer their observations next week.

22nd - WRIA 48, Methow 6PM
23rd - WRIA 49, Okanogan, 6PM

This is a start, not the only info gathering. As we work through the process, we will undoubtedly have more questions and will do the outreach necessary to make the informed decisions with a different background of info informing us.

I have prepared an agenda. The times are approximate.

Beardslee - reads agenda.

OKANOGAN COUNTY STAFF REPORT

Perry Huston (PH) - End result is to develop a body of information. The body of info we already have are documents and reports that have existed for some time. In gathering those, we have not assigned any weight to any of it. This info will inform on specific permit applications. At the conclusion of hearings, we will not say what is good or bad, etc. That will be on site specific review. We will have a body of info from which to make decision. Wanted to prevent the applicant from having to gather all the relevant documents, etc. We are creating a background against which the applicant can present their information. It will relieve them from coming in with a huge volume of reports - we will already have them.

We have been in what I characterize as a comment period. When notice went out, it invited anyone to submit written comments. We have gathered those, also gathered documents we thought would be relevant. We have put much on disks and I will submit to the record at this time.

Here is another document. Beardslee - documents received.

PH: Mr. Lin - anything on proceedings?

Albert Lin: We are creating a data base for future proceedings. Please identify what the document is, the source, your familiarity, etc. That will be the basis of the process.

PH - Describes what county is submitting.

I just gave Beardslee a staff report. Explains Documentation I am about to hand you.

Flow readings, precip data:

We have taken flow readings of the USGS readings, locations, put all together in a table and a chart. No analysis. Charges shown (from 1976), nothing previous. Trying to create a visual aide in terms of the river. You will see high flow, low flow, days below in stream flow. Where info was available, we put in precip data. no analysis. Just laid against river flow. Idea - as we move ahead, that info will be in the record to analyze. Contained in the packet, copies at the front.

Also, shows wells by year.

As you go through this handout, specific locations of the river flow locations - shows what was gathered. Precip information is course. Does not separate rain from snow, temps, etc. Only shows annual precip from that location.

Well logs - only show by year what well logs are in DOE data base. Have not tied back to building permits (will try to do later) etc.

As people look and respond, the hope is that those with familiarity with this subject will begin to see the other information we are trying to use to come up with these decisions. The opportunity to respond and try to lend the local historical perspective as to what the raw data might mean. We could hire hydrological firms...but we are now utilizing the public process that will lead us to defensible decisions.

We will begin to put our info on the Planning website. will have a spot where all that information is. Not a verbatim transcript of the tape, although I believe ..can we put recordings on website? She has no idea. If someone wants the recording, no reason we cannot make a copy with a disc.

AL - Repeats. Identify the info you are giving and that you know about it.

Perry Huston (PH) - Title 20 has 2 processes.

1) **Building permits** - reviewed administratively. Building dept communicates with public health. Now the planning dept does that as well. There will be a form to complete.

2) **Land division process** - comes before Hearing Examiner. Long plats have always gone this way, but now short plats will also come before HE. Will be discussing whether water physically available and legally useable.

Beardslee (D.B) - for instance, the admin approvals are not going to be quasi-judicial. I am just deciding on water, no other merits of the short plat. Final decision still relies upon planning. Perry will reply upon my decision for short plats. And building permits never come before me.

PH - may be important - in Title 20, no new appeal process is created. All building permits, long and short plats, can be appealed now. Not different. All we are doing is creating a different body of information upon which we are basing our decision. We are not just using a letter from DOE saying yes or no. Those processes, the final decision, the appeal process, are not different. The path is different.

Beardslee - depends also upon the state legislature and what happens with them.

COLVILLE CONFEDERATED TRIBES

Lois Trevino - water admin for Colville. Admis - water resource person re 4-10 under the tribe's admin code.

4-10-102: Code states that under B, the water administrator grants, denies ,resolves on water use permits.

103 (d) investigates water uses and other activities to determine whether in compliance with this chapter, etc...and 4-10-160 under description of use, application for permits - any new uses or changed existing uses of water previously permitted by tribes or other actions must file description of use and application/permit. Unlawful to make us or other action substantially affecting Colville Res. Tribe must be included in any decisions that affect the water of the reservation.

DB - It includes trust lands off the reservation (clarified.) Trevino not sure -what the tribe requires. You can look it up yourself. Beardslee - rules that have been on the books? Yes.

Trevino submits the info in admin code of Colvilles into the record.

Bruce Wakefield - Water Resources Specialist, Colvilles

Within the reservation boundaries, all water use requires tribal permit regardless of the purpose.

1. Contact planning office to be sure zoning and land use requirements are met
2. Enviro Trust processes paperwork to public comment period. If no objection, permit issued. For great majority, are for single domestic. That probably differs from the state. Do not have the 5,000 gal limit. Just all water use requires a permit. In SW part of res, there are permits - usually smaller number than domestic and household use.

Important that we communicate with our planning office No sense in approving water permit if Land use items not complied with.

Wakefield - water permitting process.

PH - We do have intergovernmental agreement with the Tribes. In view of Hirst non-tribal members on fee simple land have a choice to do permit through county planning or tribal planning That said, if they apply with Planning, need to comply with Whatcom-Hirst. If apply through the tribe, their processes are their own. In this case, the lead agency can have a fairly striking influence on how this process unfolds.

DB - presumably, on deeded land on res, if they apply to tribe for water withdrawal permit...that satisfies the legal requirement?

PH - Correct, as far as I know. They would consult with us, though. So consistent with intergov't al agreement.

ASPECT CONSULTING

Bill Sullivan

Senior Project Hydrogeologist

Study for Method Watershed council - Worked with watershed since 2009 - planning, implementation, objectives. approved by Ok County Commissioners in 2005. Aspect provided technical support on water.

AL - (establishes that Bill is familiar with the studies.) Completed 6 studies supporting this effort. All 6 published in 2011.

1. The Reserve: Surface water reservation

2CFS in 7 reaches set aside for single domestic and stock watering developed after 1976. They are covered in RCW 90.44.050. Residents that self-supply under this are exempt well parcels.

3 Elements:

1. Estimate for full and consumptive use by exempt wells.
2. Accounting of the reserve re water at any given time
3. Data base to track reserve use.

ESTIMATE OF WATER ON EXEMPT WELLS.

No requirement to meter wells. Consumptive Use = Total used minus return flow.

How? Existing literature, historic analysis of irrigation, water system data

WHY - Instream flow rule - reserve debits by Consumptive use. Done because the reserve is debited in terms of consumptive uses.

EXEMPT WELL WATER USE (in Methow)

1. Indoor use: published design guidelines by public health and existing literature on indoor use (the smaller component of water use.)

2. Outdoor use and stock water use.

Outdoor use - Irrigated acres that use exempt wells but do not receive any from public irrigation or other... 210 parcels evaluated. Mostly total calculated using public irrigation Peak outdoor use 650 gal/day based on 1/1/0 of an acre.

Indoor use: State Dept of Health manual - states a conservative value of 200 gal/day for total use indoors. 15% of that was consumptive.

Total use: Looking at indoor, outdoor, stock = total was consistent with those water systems that are metered.

Public systems. Peak monthly consumptive use - 710 gal/day.

Beardslee question: - are 210 wells statistically ok? Aspect - says yes. A great number of parcels were eliminated because we couldn't tell the source. These were subject to the reserve and had high confidence they did not get water from any other sources.

AL - Is this developed from data and not from opinion? Yes. It is developed from number of parcels assessed.

RESERVE ACCOUNTING

What : Identify number of parcels developed subject to Rule . Delineated the watershed boundaries for the 7 reaches. Identified by text, not necessarily map. Took further delineation to decide which parcel was in one sub basin or others.

Qualified number of parcels 1976-2011. Looked at Planning Dept data based. When building permits finalized.

How - Define reaches, quantify current + future build-out.

WHY - Delineation of Stream Management Reaches - only broadly defined in the rules. One of the reports tells how they figured that out.

Peak consumptive use rate - 720 gal/day for exempt well parcel

of exempt wells - Shows chart (*handout., too long to produce in these notes. Presumably available from the county.*)

EVALUATION OF GAINING AND LOSING OF CERTAIN REACHES OF METHOW RIVER.

Reserve Tracking: Database to update Reserve status. Designed to use input from several existing data bases.

Table projected: (*not in handout. Shows database Data sources.*) From building dept, health dept, building permits, Codes, (?) & data. Zoning codes, Public Water systems, WA Dept of Health, county assessor.

6 Studies are now provided for the record, Electronic and hard copies.

BEARDSLEE - asking Bill - Example of lower Methow sub-basin papers - to be the least available amount of water It would be a relatively easy calculation for someone like you to see whether this project would go beyond the available water. For you. Right? Marijuana grow, single home, whatever. County has to demonstrate legally and physically available.

(Beardslee tries again with this question) Could you make that calculation as to what the impact is upon the reserve?

Bill - Yes, but the reserve is set aside for single domestic or stock. So you would not get an application for other projects.

The data base does the calculating.. When synched up with building/planning data bases, it would debit the amount accordingly. You could also do it hypothetically.

WELL DRILLERS' PRESENTATIONS

Chester La Fontaine

PH - The idea behind this portion of the hearing: Talking about totally and physically available water. Not all aquifers are created equal. Some in direct continuity, some not at all. The capacity

of any given well to impact another well - I assume there is some correlation between distance, etc....the idea was that those who drill these wells and prepare well logs, who advise clients on any particular parcel or region as to whether you can find wells or affect other wells, we asked the well drillers to talk about those things. Not necessarily looking for charts, etc. What I, as a person revising a specific application, should ask. According to what the applicant provided me. That is what we are looking for.

Chester (LaFontaine) - Owns Okanogan drilling: Been drilling since 1981. I don't know how many thousands of wells we have drilled - a lot. The driller/hydrogeologist before me referred to studies in Methow. We did some in the upper reaches of the Methow. Have participated in many hydrological studies, working with groundwater hydrologists, evaluating groundwater aquifers.

I'm a simple guy, a well-driller. In respect to.. is there a white board I can refer to? My vision of being here was if someone comes to county and says I need to drill a well here - to help out if the water is in there physically and quantitatively, in re consumptive use.

Perry gives him a chart.

AL - Are you familiar with the content? Yes, I am a well driller.

This comes from ... I am also one of the trainers from Wa State Groundwater Association. Also a speaker at Natl Goundwater Ass'n conventions.

Gives example: a guy called the other day. I need to drill a well. Not that far from the river. Told him he'd have to go to the county because we have new stuff. River flows. There is a lot of water that goes through the river. Let's pretend the river is there cause you will get seepage because the sites and clay have sealed it off. Say we are 200 ft from river. Goundwater travels underground. We need to evaluate what the impact is. We hit the aquifer - the water travels 1/10 of a foot per day. Maybe a foot per day. If 200 ft from river and water travels...it will take 200 days to impact....don't want to impact the fish. It will take 200 days to impact the water at a foot per day. You have a whole part of a season for this to happen. The water is also pumped up and feeds bak into the water though septic field and drain field. Puts back water at a higher level. So you have benefitted the stream.

Another example - I am about a mile, or 3000 ft away from river. My well went dry at home. and it was connected to aquifer. No water on a new well. I went through a clay layer to 260 feet deep. So now we are 3,000 feet away through river, though impervious layer of clay. What is impact of this new well going to be on the fish? 1 foot per day, 3000 feet, 3000 days = 8 years. In 8 years, I have pumped water back, taken from deeper level to the shallower level. So what is the impact of this well in evaluating ...what is the impact upon the fish. 8 years of hydro cycles, snows, rain storms, etc - we have no idea.

We found in drilling, in Pateros and in Okanogan all over county. The first thing a customer says, when I hit any level of water, would be - STOP! Don't go any deeper. so what happens, we really have no idea how much water is there. There is so much water in the Methow River and Okanogan River. **We have no idea how deep the aquifer goes. No one goes deeper to see.** if you go down to bedrock thousands of thousands of feet - no one is talking about the water that is deep down. In evaluating, is it there legally or consumptive....

Another example: Senior water rights: you drill 200 feet away. The guy with the irrigation well is concerned that you are impacting him...if you took it down deeper so you wouldn't pump him dry, you are taking it from a deeper formation and adding it to a shallower formation. A favor. We are talking months, years of impact on these wells. Need to rationally think it through. Is this homesite going to...it's about this little fishy here. The question I have where it showed up in the Methow 11 cubic ft per second in the reserve calculation - how many exempt wells does that represent? What is the calculation? In the calculations it was that all that water magically disappeared and was gone and there was no recharge of the formations taking place. This is something the DOE does - ..If you replug the discharge number, it's going to totally change the story.

If we drilled exempt wells, I think it's really a benefit to the guy with the senior well. It adds to the amount of water (*from down below in the aquifer toward the surface.*)

Marshall Miller - I have owned and operated MVN drilling in southern part of county. Been drilling for 38 years. Interested in my career - a great interest in geology at WSU. Strong urge to remain in this area - did not get degree. Looked at job opportunities. During the process of solo. classes, did summer trainings with Charles Campbell of WSU - a well accepted practice of summer studies. He was in the 2nd geodetic survey in state of WA. Ultimately, i had the opportunity and chose to pursue a career in drilling .Resident of county 67 years.

Hirst decision - thought it was a lethal hit to my business - but it is much more than that.

PH - Try to stay away from Hirst as bad or good. That is not the purpose. Stay on the nuts and bolts of the well-drilling .

Miller - in my 38 years of drilling, we have drilled about 60% of wells in Ok County Basically 2 types of aquifers we draw our water from.

- 1) sedimentary aquifers.
- 2) bedrock aquifers.

We keep strong records. The water tables I have experienced have not declined. Very few wells have ever needed to be deepened. What I have seen as a person who tries to obtain water for people is that the water tables have been stable. When water is withdrawn from the ground, it slows its transmission to the Pacific Ocean. The slowing of that transmissions in almost all instances it creates both human and wildlife habitat. If it flows rapidly downstream and there is water in continuity, when you pump it to the surface...various speeds in aquifers - it travels slowly and enters surface aquifers, the ones that are regulated and protected for fish - it enters the aquifer at a more critical time for in stream flow. The use of domestic exemption does nothing more than increase the instream flow (by going slowly.)

WATERSHED PLANNING UNIT WRIA 48 - Greg Knott, Chair of Methow Watershed Council

The old "2514" Watershed Planning group morphed into Watershed council.

Greg Knott: Chair of Methow Watershed Council - which provides info to citizens, groups etc. Says to Beardslee - I don't envy the position you are being put into.

Submits:

- 1) A complete copy of written testimony of Mary McCrae, and at her request a portion of the written testimony he will read aloud. She is chair of the Methow Watershed Foundation, which obtains funding for work of Council. I am familiar with all this material.
- 2) Legally and physical availability of water. My intent that this will be incorporated into the record. I have no paper copies - we are all volunteer. Huge stack of documents.

Breardslee - It can be submitted electronically. Knott thanks him.

Knott - I have interviewed the authors of this information over the years.

Mary McCrae - This is written testimony of Mary McCrae: Worked in area of water rights. Familiar with in stream flow rules, etc. This Omnibus hearing and process established by the county are in response to Hirst. In Hirst, the court found that before county could issue a permit, it must show legally and physically available water. (Cites) In response, the county has developed an ordinance in which the Planning Dept will make decisions. (Cites) And will also be made by Hearing Ex. The question will be whether user can be supplied legally and physically without impacting senior rights.

The rules are important. Whatcom County ran afoul by basing this solely upon instream flow rule. Ecology and Whatcom agreed it (instream flow?) did not cover exempt wells. The Court found that implementation would impair instream flows. The instream flow for Methow (cites.) Like the Nooksack, it sets base flows to protect fish and wildlife in watershed.

There are differences between Nooksack and Methow Rivers. The Methow Rule acknowledges continuity, and the rule established 2 bfs reservation per 7 reaches in the Methow. (Appropriated from this reservation are single domestic and stock.

First in time and first in right is central to State water laws. Instream flows are NOT senior to domestic rights because they were established at same time.

Knott: There is a large amount of data available. If you have to make a decision, we may be able to steer you through the vast amt of info. I am entering into the record the full text of the Methow rule. Also, water sources for WRIA 48 by Ecology. Intended for use - provides background of regulations. They did studies. We are providing them for you. Shows intent re creation of reserves.

Also, water assessment of the Methow River basin. it is the most complete encyclopedia for WRIA 48. Also including the reports. When Chester talked about drilling in Methow, those studies are included. 4-5" thick. Ranges from climate, to land use, to geology, to hydrogeology.

Another doc: (Reads long title.) USGS study done in cooperation in 2002 with Ok county - Unconsolidated deposits in Methow River Basin. Documents seasonal exchanges. Critical for establishing surface and ground water.

Another doc - using modular modeling system. USGS. Precipitation..used to simulate 6 alternatives. Long list. Uses model to predict river flow , including #4, increase in groundwater withdrawals. Date 2002.

Finally ass't of groundwater ..Aquifer reaches in 6 sites from top of Method to Elbow Coulee and a parched aquifer south of Twisp. Especially for aquifers not in continuity with surface water, provides good background info.

In future, we can supply more info if we can dig out of our archives with persistent search.

In closing, these reports represent the most info available. if planning or HE needs clarification, watershed council stands ready. Many of the authors are still active in these fields.

As an aside, we have identified areas where there are gaps in the knowledge that you will need to make your decisions. We look forward to working with county personnel in finding sources to fill these gaps.

WATERSHED PLANNING UNIT WRIA 49 - Craig Nelson, Conservation District

Different from the Methow - this planning unit completed their work but did not remain active.

Craig Nelson:

Conservation Dist was the primary entity to develop Ok Watershed 2005-2009. The group did not discuss groundwater wells to any great extent, nor their connection to surface flow.

Level 2 watershed technical assets: June 2006. Entrix. Did a detailed analysis study of all wells in watershed and water rights associated to them. Nothing in Ec'y data that says exempt or not. Found that there 2,705 that were 6 " in diameter, which were assumed exempt wells. Single family or small community clusters. Did not look at any connection et. with surface water, etc.

As they deliberated on water rights, chose not to have WDOE establish an instream flow. In 1977, one was established and reviewed, Info was basically that the unit approved their plan in June, 2009. Included things from Entrix and their own work. Of 3,300 exempt wells in WRIA 49 in 80s and 90s, they continued to double . Increase was in more remote areas because they couldn't attach to municipal system.

Jerry Barnes, Loomis:

My primary interest at the time was stock water and agriculture. We were not that concerned about housing wells. That was more in the Methow. We were wanting to protect our water for agriculture. What we have done since has been to protest moving water downstream, which Ecology and others continue to do.

Nelson - In deliberations, required to come up with a water budget. 2/3 of our watershed is north of Canadian border. There were areas the planning unit thought were errors that didn't match up with what they was on the ground. First Study - Entrix. Didn't match up.

2nd study - Hydrologist from UW. We would have to look up. A forest hydrologist that did analysis. Left holes here and there. The lack of data is going to have profound impacts upon the consistency of any hydrological studies. Very little data available for WRIA 49. So it was very difficult for them to put together any cohesive information.

Perry - We have 2 hearings scheduled. WRIA 48, then 49. Public should share information. Members can share anything.

County is looking for: Info the public can provide. While the technicians and experts can submit bodies of info, the person living with the well can give as much info as they can. Does well go dry? etc. We aren't looking for opinions. They may supply this, but that will not do me much good.

Beardslee - that kind of testimony (*opinion*) is not relevant. The purpose of these meetings is to gather information that can help you or I to make a determination as to the adequacy of the water. not much good to comment about what you like or do not like.

Record is open. Public and others may submit written comment later. Way to do that is listed there. Roxanna King - chief, along with Angie. Once we conclude hearings on 22d and 23rd, all will begin to look at what we have. Many of these studies have already been looked at.

Will now begin to look at it as far as how to utilize. Submit anything. After that, there are other opportunities to provide info. Once- specific vehicles: in the applications we receive. When we begin making building decisions, that will begin. Land division will go to Beardslee. (Show plat to you - you rule only on water.) Others will be administratively decided.

Beardslee Question: - Nature of the Hirst decision, subsequent adoption of Title 20 . If an application is submitted prior to Hirst, any vesting that occurs vs. any submitted afterwards? Last week, I heard a marijuana case and I wondered whether or not they were vested since it was submitted long before Hirst.

AL - That has been asked by the prosecutors' association as to any date of cut-off. Opinion of prosecutor's office, the date of vesting would have been sometime around the date of the mandate.

PH - What we are doing at this point in regards to vesting? Wa State law is well supported that upon receipt of complete application, you are vested in the rules at the time. We do not see these directions here....we are using the date at which the water was put to beneficial use. We are considering this a vested use of the water. For purposes of making sense of water source. ie: Camp trailer - I have a well, I have been using it. That is not NEW water. You are vested in the use. Just the well in the ground does not serve as a vested right unless you have been putting to beneficial use.

We have not seen any litigation in the state. That's our best interpretation at this point.

END