



**Monthly Meeting Minutes**

April 16, 2020

5 -7 p.m. – Virtual Meeting Via WebEx and Teleconference

**Council Members Present:** Greg Knott, Dick Ewing, Travis Thornton, Bill Tackman, Ashley Thrasher, Soo Ing-Moody, Andy Hover

**Others in Attendance:** Lee Bernheisel (OWL), Chris Branch (OCBOC), Barbara Brooks (ECY), Sarah Brooks (MC), Curtis Koger, Natalie Kuehler, Mary McCrea, Craig McDonald (MWF), Jasmine Minbashian (MVCC), Sage Park (ECY), Jason Paulsen (MC), Melanie Rowland (MVCC), Annie Sawabini (ECY), Vic Stokes, Lorah Super (MVCC), Jaquelyn Wallace (TU)

Minutes recorded by: Sarah Lane, Administrative Assistant

**Non-Procedural Motions**

Motion #	Short Title	Yeas	Nays	Abstain
4.20-01	Motion to Table until May: the Motion to Open the Methow Rule	7	0	0
4.20-02	Motion for the Watershed Council to participate in a CRM funded by Ecology and initiated by the Watershed Council	6	0	0

**PART I**

**1. Call to order**

The meeting was called to order by Ashley Thrasher at 5:05 P.M.

**2. Meeting Format Information**

Ashley presented information about the format of the meeting.

**3. Introductions – Council and Ecology**

Council members and Ecology presenters: Sage Park, Annie Sawabini, and Barbara Brooks introduced themselves.

**4. Agenda – Review and Approval**

Agenda items 4.16-05 and 4.16-06 were struck. Item 4.16-09: Discussion on Covid procedures for Ecology projects, Greg presenting, was added. Andy moved to approve. Greg seconded. Agenda was approved.

**5. Ecology Presentation**

**Recording at:**

<https://watech.webex.com/watech/lsr.php?RCID=517a98ca1fa0b28baea390287cf2f469>

Annie Sawabini, Water Resource Program Rulemaking Lead, began the presentation by noting she is unable to give any legal opinions, or consider what if scenarios.



Rule making is a process. The legislature passes laws and gives authority to make rules. Court cases effect rules. Administrative procedure sets up rule making process. The process is the same for new, amended and deleted rules.

Process for rule change. 1) Something triggers a rule change: a new law, petition, or etc. Rulemaking uses a lot of resources.

The first stage of rulemaking, should a rule be set for change, is the CR 101, which sets the scope of the process. Ecology wants to hear from as many people as possible early in the process. Developing the rule has no strict timeline in order to allow for this. Scientific modeling, data gathering and analysis all are considered.

Phase 2 is the CR 102, the proposed rule. It contains draft economic analysis, and SEPA documents. Comments on the rule are received online, by mail and at public hearings. Government to government consulting is offered to Tribes. Analysis of comments and new data is done. All comments receive a response, even those out of scope.

CR 103 is the issuing of a final rule. It is due 180 days after CR 102 is issued. The new rule is implemented 31 days after being signed.

Considerations for the process: Legislature may request rulemaking, or emergency rules may speed up the process. If Ecology doesn't think the scope was adequate, it can reissue the CR 101 or 102. A general estimate of the time it takes is 3-5 years, little as 1 yr, and as long as 8-15. Comments are taken from all geographic areas. Rulemaking uses a lot of resources, raises the possibility of lawsuits, and often has "equally unhappy" as an outcome.

Soo asked if there is any area considered a priority for rulemaking. Nooksack, WRIA 1, is the only priority area.

Travis asked if Ecology has the discretion to accept or reject requests for rulemaking, and the answer was yes, within the first 60-day response window. Travis asked, if multiple requests to open a rule come from the same basin, will Ecology "multitask" in their response, or handle them separately. That also would be at Ecology's discretion.

Greg asked how information from Water 2066 would contribute to the CR 101. Ecology would use the project during data gathering from the local community and reminded the Council that the process would bring statewide data, not just local community.

Ashley asked if it matters who proposes the rule change, e.g. County or Council. Annie said she did not know the preference of Ecology's director. Sage said they would be mostly looking at timing and the ability to work on the rule. Ecology has recently denied another County's request to work on a rule due to timing.

Sage noted that there are 15 priority basins, and if a request came now from the Methow, it would be unlikely to be handled now. For a request, Ecology's Director wants to know: Is everyone on board? Who wants change? Who all is at the table?



2066 provides a good foundation. Sage noted the Council has worked on issues for a long time. She presented the option of Coordinated Resource Management (CRM). Sage uses CRM for exploring many possibilities with as many stakeholders participating as possible. See <https://scc.wa.gov/crm/>

A CRM could possibly add support for opening the rule at the end of its process, or could bring other ideas all could agree on. Teanaway process is a good example.

Travis asked if there was funding available for CRM. Ecology does have dedicated funding and would hire an outside facilitator. Sage noted her assistant could help with administrative details. A next step would be to see if stakeholders are willing to participate. Travis asked about an ideal Chairperson. Sage said that a well-respected community member who can bring people together, is ideal.

Greg said that he likes this process, and asked if it would be moved along quickly, and if a CR 101 would be an outcome. Sage said that is not known, but that a consensus process with good participation would provide good direction for next steps.

Soo asked about the relationship between a CRM and 2066. Ashley noted she's been thinking of the CRM as 2066 Phase II. Soo asked if a CRM would interpret the rule in a way that would provide legal authority, and it would not. Consensus about interpretation of the rule could help with a possible rule change, however. Soo also asked if Ecology has influence to help get the Tribes to participate. Sage said Ecology would identify barriers to participation and do what it can to remove them.

Dick asked if there is an approach to get what we want outside of revision. Sage said that could be explored through CRM. Dick asked if the rule was opened, how secure the 2 cfs would be, and Sage said it was a possibility that we would lose water.

Andy asked if there has ever been a declaratory order under administrative procedures. Sage said no. Andy asked if reservations under current case law were problematic. Annie said reservations have been challenged elsewhere, but didn't believe that our rule had that problematic language.

Greg asked Annie how Ecology would feel if we petitioned to open the rule now, and Annie said she couldn't comment directly, it would have to go through process. Greg asked how soon we could start with CRM. Sage said we could start choosing facilitator and participants right away. Greg asked about the role of governments. Sage said they would be involved with finding a Chairperson and looking at the big picture. Soo asked, who gets a seat, and how many people? Sage said the facilitator and Chair would figure that out. People participating need to have decision-making authority.

Ashley asked about the Watershed Council's role, and Sage clarified that it would be as a participant. Ashley asked who would initiate a CRM process, and Sage said the Council could. Ashley said she thinks the Council needs to vote on moving forward with a CRM and invited public questions.

Dick asked if Ecology sees CRM as a better way to come to consensus and Sage said yes.

Vic Stokes said he had participated a CRM and if people come to it wanting to find a solution and with good attitude, give and take, resolutions can be found.



Lorah wondered about Ecology funding for facilitator, and what other costs there might be. Sage said they'd need to consider the elements and can help with costs.

Mary asked how long the Teanaway process took, and if there was a Tribe involved. Sage said it took about six months and the Yakama Nation was involved. Mary asked if rule change was an outcome, did going through CRM help that process, and the answer was yes.

Ecology's presentation concluded at 6:34 PM.

## **PART II**

### **6. Report from the Chair**

Ashley note that this meeting format will be the new normal. She confirmed the presence of a **quorum**.

### **7. Minutes – Review and Approval**

Travis moved to approve the March Minutes. Andy seconded. Minutes approved unanimously.

### **8. MWF Report**

Sarah reported that the Foundation currently has about \$6800 and it is doing trial runs with Webex.

### **9. Initiating Government Reports**

#### **Town of Twisp-**

No report

#### **Town of Winthrop-**

Not present

#### **Okanogan County-**

Andy reported that the County met with Yakama Nation, and it was a fairly positive meeting and that he hopes they will come to the table.

Commissioners looked over law regarding interim land use controls and they can only be valid for six months without a work plan. 2019-11 has been adopted and comment closed.

Andy gave a brief update on unrelated COVID 19 issues.

### **10. Sub-Committee Reports**

#### **Technical Review Committee, Chair – Tackman**

Bill had some questions about communication with Sarah and Sandra.

#### **Political Action Committee, Chair – TBD**

Greg reported on a legislative group working with Ecology and out of basin transfers. on water law, and that he thinks Andy should be on that group.



#### **Outreach and Education Committee, Chair – Knott**

Greg reported that we can use the newsletter to post power points and links to films in lieu of public events, if there is no opposition from the Council.

#### **Water 2066 Update - Thrasher**

Water 2066 is in process of getting a time extension. Final report was due 3/31/2020, and the new due date is 7/31/2020.

#### **Resilient Methow – Lane**

Sarah reported that meetings had been delayed and some work has been happening remotely with subgroups on solutions spreadsheets.

#### **11. Agenda Item 4.16-01: *Pending Motion Re: Rule Revision***

Ashley prefers this item be tabled until Mike is present. Sarah read the content of the motion. Andy moved to table the motion until the next meeting. Bill seconded. Motion passed unanimously.

#### **12. Agenda Item 4.16-02: *Advisory Opinion to the County Re: Metering on New Construction***

Bill will draft a letter to circulate prior to the next meeting.

#### **13. Discussion on CRM – Thrasher**

Ashley asked if the Council would like to discuss CRM now or at the next meeting.

Greg made a motion that the Watershed Council shall participate in a CRM funded by Ecology and initiated by the Watershed Council. Dick seconded the motion.

Dick said that because there are funds for CRM, and rule change would not be happening now, he'd prefer this process now. Greg said he thinks Ecology told us that we will have to participate in CRM before they will entertain rule change. Bill and Dick agree with that impression. Travis thinks that a CRM could move the issue forward and may bring forward alternatives that have less risk. Ashley said she sees this as a win-win.

Greg said most such processes he's participated in took longer than six months. Andy said he had a discussion with Sage a while ago about CRM. He knows it will take a while but if everyone will lay their cards on the table, regarding growth and water resources, and find places for consensus, it's worth a shot.

Greg asked about the role of the Watershed Council while this takes place. Does the Council still have job to do after the process? Andy asked, what is the Council's ultimate goal? If we get to a certain point, what is the Council's advisory role?

Ashley said that if we move forward, Sage can have a facilitator answer more questions, possibly at the next meeting.

Ashley asked if there was further discussion and called the question. Motion passed unanimously (Note, Soo left meeting before this vote.)

#### **14. Agenda items for next meeting**



*Pending motion*

*Metering on new construction*

*CRM*

*Liability in General:* This provoked further discussion, with Travis noting the MWF has some protections under law as an incorporated nonprofit, but MWC is unincorporated and individuals are personally liable. We need to look at risk and liability. In regard to MWF projects, we may need to have some plan per Ecology request.

**15. Public Comment**

Melanie asked regarding 2019-11, that is it good for six months, and what do the commissioners intend to do to keep it from expiring? Andy said with a work plan the moratorium can go for a year, and it can continue to roll forward if the work plan continues. Andy and Melanie will discuss further.

**16. Adjournment**

The meeting adjourned at 7:34 P.M.

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Ashley Thrasher, Council Chair

Approved at the June 18, 2020 Council meeting.