

Water Supply Advisory Committee

January 27, 2009

Washington State Department of Health
Point Plaza East, Conference Rooms 152 & 153
310 Israel Road SE
Tumwater, Washington

Meeting Notes

Welcome and Introductions – John Kounts (Chair)

1. Operating Permit Fee Structure (*John Kounts, Peggy Johnson, and Kristin Bettridge*)

Four options discussed:

1. No change to fee structure.
2. Increase by inflation since 1991 – Alternative A.
3. Increase by inflation since 1991 – Alternative B.
4. 25 percent of full program.

Current fee structure:

1. Set in statute in 1991; no change since then.
2. No fee for Group A systems with fewer than 15 connections.
3. \$25 for 15-49 connections.
4. Per-connection charges for 50-53,333 connections.
5. \$10,000 maximum.

If fee revenue remains the same, we lose:

1. Long-range planning (we will limit participation in local planning efforts).
2. Support for local drinking water programs (we will reduce training/technical assistance to local health).
3. Funding for failing systems (we will eliminate funding for restructuring/consolidation feasibility study projects).
4. Needed upgrade to data system (we will reduce or eliminate on-line access to data, *e.g.*, WQMR).
5. Water Use Efficiency (we will not provide guidance or technical assistance on how to comply with requirements).

No change to fee revenue impacts:

1. Long-range planning (less upfront DOH technical assistance may result in more costly submittals; our relationships with water systems and others may change as we shift from proactive to reactive).
2. Support for local drinking water programs (reduced on-the-ground capacity to respond to emergencies and public health issues; less support for small systems changes emphasis from assistance to enforcement; and small systems will need to pay for consultant help).
3. Funding for failing systems (fewer resources available to deal with troubled or failing systems results in increased number of these systems).

4. Needed upgrade to data system (reduced access to data results in decreased ability to make informed decisions and respond to public health issues).
5. Water Use Efficiency (can't implement existing law; potential long-term negative impact on water resources).

Increase by inflation – Alternative A:

1. Rationale (123.8 percent inflation since 1991).
2. Goal (increase total revenue by that amount).
3. Methodology (all Group A systems pay a base fee plus a flat rate per-connection charge).
4. Calculation (\$100 base fee; \$1.10 per connection)
Connections: residential connection = 1; NTNC connection = NTNC population served / 2.5; and TNC connection = TNC population served / 25.
5. Three-year phase-in of connection charge (35 percent, 35 percent, 30 percent).

Increase by inflation – Alternative A impacts:

1. Activities that could be funded with additional revenue (long-range planning; support local drinking water programs; and restructure failing systems).

Increase by inflation – Alternative B:

1. Rationale (123.8 percent inflation since 1991; reduces impact for largest systems).
2. Goal (increase total revenue to make up for inflation).
3. Methodology (all Group A systems pay):
 - \$100 base fee.
 - Plus a variable, declining per-connection charge:
 - 0-14 (\$1.45)
 - 15-99 (\$1.45)
 - 100-999 (\$1.35)
 - 1,000-9,999 (\$1.20)
 - 10,000-99,999 (\$1.10)
 - \$100,000 cap for systems with 100,000+ connections.
 - Three-year phase-in of per-connection charge (35 percent, 35 percent, 30 percent).

Increase by inflation – Alternative B impacts:

1. Will fund same activities as Alternative A.

25 percent of full program:

1. Rationale (federal, state, and water systems all pay percentage of drinking water program cost).
2. Goal (fund activities identified in business plan).
3. Methodology (all Group A systems pay):
 - \$100 base fee.
 - Plus \$2.25 per connection.
 - Three-year phase-in of per-connection charge (35 percent, 35 percent, 30 percent).

25 percent of program impacts:

1. Activities that could be funded with increased revenue include: long-range planning; support local drinking water programs; restructure failing systems; needed upgrade to data system; and Water Use Efficiency.

Other elements to consider:

- Include future inflation.
- Implementation schedule
- Option: incentive discounts (10 percent of per-connection charge; assume all get discount so increase fee chart by 10 percent to ensure funding; need to develop criteria).
- Why not disincentives?

Next steps and timeline:

- WSAC Executive Committee will continue to work with DOH on proposal.
- Timeline:
 - November 2008-January 2009: develop options and gather data.
 - January 2009 WSAC meeting: review proposals and select favored proposals to further refine.
 - February – April 2009: finalize proposal.
 - April 2009 WSAC meeting: final discussion and WSAC recommendations on proposal.

Overall comments from WSAC:

1. Look at ability to pay; income levels.
2. Show how many public water systems in each category.
3. If 25 percent of cost today, what happens in the future? Philosophy is 25 percent of the program. What assurance that percentage will stay at 25 if program grows and/or revenue from other funding sources decline?
4. Alternatives A & B could also be considered as percent of program/philosophy.
5. Do more analysis with the 25 percent approach.
6. For 25 percent option, show which activities are existing vs. new to answer questions about growing programs.
7. What are you buying for the revenue DOH is getting?
8. Look at how much we don't collect in Op Permit fees now.
9. Consider proper timing to proceed; may need to go forward quickly on the process to not lose momentum and interest.

10. Explain better why per-connection charge goes down for larger systems in Alternative B.
11. Office of Drinking Water needs to communicate/discuss it with large utilities.
12. Office of Drinking Water needs to develop a communication plan or strategy to tell the story in a different way.
13. Show the value received by water system size.
14. Enforce financial viability.
15. Be clear what is in the proposal that would benefit large utilities. Explain what small or large systems would lose and see if this is of value to them.
16. Consider sustainable services for the next 10 years. ODW needs to think about long-term approach. Currently, there is no stability. What is the greater vision the program ought to be funded to achieve?
17. Develop Option “B” into a proposal and further study it, and explain or show the value public water systems will get for the cost.

Tentative proposal timeline discussed:

- April – May 2009—preliminary proposal to be discussed at the Environmental Health Division level.
- Summer 2009—final proposal.

2. **Security Update** (*Jim Harksen*)

Jim discussed Chemical Facility Anti-Terrorism Standards (CFATS).

The Department of Homeland Security (DHS) Appropriations Act of 2007 established the CFATS program; DHS began rulemaking at the end of 2006. Any facility that manufactures, uses, stores, or distributes certain chemicals at or above a specified quantity is to be considered a high-risk chemical facility and subject to the CFATS regulations. The DHS Appropriations Act of 2007 provides the Department of Homeland Security the authority to regulate the security of high-risk chemical facilities.

For CFATS, 6 CFR Part 27, refer to:

www.dhs.gov/xprevprot/laws/gc_1166796969417.shtm

Why is chemical security important to water systems?

- The Obama Administration favors adding water systems to the chemical facility regulations.
- There is also growing support in Congress to add the water sector.

A water system is considered as a high-risk facility if it has a minimum amount of the listed hazardous chemicals. These chemicals are identified in the regulation as the “chemicals of interest” (COI) list. Of the 300 chemicals listed as hazardous, there are three that will have particular interest to water systems: *chlorine gas, sulfur dioxide, and anhydrous ammonia.*

What are the minimum amounts of each chemical?

- Chlorine gas:
 - Theft Hazard = 500 pounds
 - Release Hazard = 2,500 pounds
- Sulfur dioxide:
 - Theft Hazard = 500 pounds
 - Release Hazard = 5,000 pounds
- Anhydrous ammonia:
 - Release Hazard = 10,000 pounds

Water systems that have at least the minimum amounts of these hazardous chemicals will be required to complete an online survey to assess their overall risk. This online survey is called the “Top Screen” questionnaire. The Top Screen program is part of the Chemical Security Assessment Tool (CSAT). *Once a facility is determined to be high-risk, it will be required to prepare and submit a Security Vulnerability Assessment (SVA); and the facility must prepare, submit, and implement a Site Security Plan (SSP).* The CFATS regulation makes it illegal to operate without an approved SVA and SSP for those systems considered high-risk chemical facilities.

Other references include:

www.barackobama.com/issues/homeland_security/index.php

www.awwa.org/files/Oct18WashingtonReport.pdf

For more information, contact:

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3. Working Lunch/Updates (*Denise Clifford, David Christensen, and Jim Hudson*)

EPA updates were not discussed; Marie Jennings from EPA was not able to attend the meeting due to the inclement weather conditions.

*Small Public Water Systems / WSARP Studies & Infrastructure Study – Denise Clifford,
David Christensen*

David reported that the Progress Report to the Legislature regarding Small Public Drinking Water Systems, dated December 2008, has been completed (Department of Health Publication No. 331-417). He will send this report to WSAC.

The progress report includes information on the status of small water systems in Washington. It also includes a discussion of policy challenges, and the department's approach to completing the study.

The department will discuss the progress report with stakeholders to share information that has been collected and seek feedback on potential solutions.

The department is looking at how best to carry out the drinking water program to: determine shifts in priorities that would allow a better focus on small water systems, evaluate existing authorities that could be more effectively enforced, and see whether there is a need for new statutory or regulatory authority to strengthen its efforts.

Schedule for completing the report:

January – April 2009	Meetings with stakeholders and other regulatory agencies.
May – June 2009	Prepare final report with recommendations.

David also mentioned that the Report to the Legislature regarding the Water System Acquisition and Rehabilitation Program (WSARP), dated January 2009 (Department of Health Publication No. 331-419), has been completed. He will also send this report to WSAC.

The 2008 Washington State Legislature passed Substitute Senate Bill 6340, establishing the WSARP as an ongoing program jointly administered by the Department of Health (department), the Public Works Board (PWB), and the Department of Community, Trade, and Economic Development (CTED). The bill also directed the department, in consultation with the PWB, to study and provide recommendations on strengthening the program and increase the amount of financial assistance provided.

The department formed a WSARP Workgroup in June 2008 that included staff from the Public Works Board, Washington Public Utility Districts Association, and the Washington Utilities and Transportation Commission. The workgroup met semi-monthly through August 2008 to assess WSARP project funding needs and developed a report that:

- Identifies state policies and objectives for water system management, operation, and regulation;
- Reviews WSARP projects initiated and completed to date;
- Summarizes other funding assistance for water system acquisition and rehabilitation; and
- Discusses funding levels, funding sources, eligibility, and prioritization.

Denise mentioned that the Restructuring State Public Infrastructure Programs report to the Legislature has been completed. The Governor's Executive Policy office is currently reviewing it.

Group B Rule – David Christensen

Because of budgetary uncertainties, the Group B rulemaking process is on hold until the Legislature approves a final budget.

Lab Reporting Rule – Jim Hudson

Jim provided information about compliance data reporting requirements for certified laboratories.

Reporting requirements have been added to the Washington Administrative Code, Chapter 246-390 (Drinking Water Laboratory Data Certification Rules) to assure consistent, reliable reporting data.

4. WSAC Membership Criteria & Bylaws (*Leslie Gates*)

Initial thoughts regarding membership criteria:

- All interests named in the RCW to be represented.
- Members to be named to formal two-year terms that expire.
- What do we do about legislative representation?
- Members to meet the following criteria:
 - Able to represent their interest.
 - Able to rise above their interest for the common good.
 - Productive, positive contributor to WSAC meetings and activities.
 - Knowledge of drinking water issues (public health, technical, managerial, or financial issues).
 - Knowledge of, and interest in, drinking water regulation and administration.
 - Willing to make a two-year commitment.

Initial thoughts regarding executive committee criteria:

- Represents key interest (small utilities, large utilities, local government, business, special purpose districts, state or federal agency, environmental groups, legislature).
- Knowledgeable and experienced with drinking water regulations and administration.

Comments from WSAC about membership, and bylaws vs. charter:

- We need to clean up or revisit the membership list—some members have not participated, while some interested parties have participated regularly. We need to identify those members who have not participated or have not been active and communicate with them to find out their interest with WSAC.

- AG's office recommends creating a charter rather than bylaws for WSAC.
- There is consensus among WSAC members to continue using the existing Charter (revise if necessary) instead of creating bylaws.
- Other comments pertain to WSAC's authority. What kind of power does the committee have? WSAC doesn't have the authority to approve or disapprove anything, because it's primary role is to advise and make recommendations to the Department of Health on the organization, functions, service delivery methods, and funding of the drinking water program.

5. Ecology Updates (*Doug Rushton*)

Municipal Water Law (MWL) lawsuit: the state filed a petition to extend the time for Ecology to respond to the Plaintiff's briefs. The Supreme Court granted the extension until February 23, 2009. The Supreme Court has not yet indicated whether they will take the case.

Interim Guidance (Interpretive and Policy Statement) for MWL:

1. Received comments on the draft until January 12. Some came in after the deadline.
2. Internal Ecology review discussion on January 22. Don Davidson is working on the comments.
3. Received a request from WA Water Utility Council to meet and discuss their comments (contradictions, concerns about how inchoate water is portrayed, understandability).

Rules:

- A. Well Construction and Maintenance Standards:
 1. Adopted 12/19/08.
 2. Technical and editing corrections.
 3. New provision requiring certification of certain drilling materials to protect groundwater.
- B. Upper Kittitas Groundwater Rule:
 1. Rule proposal filed 1/6/09.
 2. Partial withdrawal of groundwater in upper Kittitas Valley to implement MOU.
 3. Purpose is to minimize impacts of new uses on the Yakima and minimize negative economic impacts.
- C. Lewis River and Salmon-Washougal:
 1. Both adopted 12/19/08.
 2. Sets: flows, some closures.
 3. Sets reservation and conditions to access the reservation. Amounts of reservation vary by stream. Ecology tracks reservation.
 4. Repeals 173-592 Clark County reservation.
 5. Sets up regional water supply areas.
 6. Sets conditions for permit exempt wells.
 7. No metering requirements specified.

Exempt wells and stockwatering:

- A. Review Easterday history:
 - 1. They are seeking to put in a 30,000-head feedlot operation in Franklin County on a permit-exempt well. They believe they have unlimited water from an exempt well based on the 2005 Attorney General Opinion (AGO) #17.
 - 2. Ecology responded that the AGO covered drinking water, not what Ecology thinks are ancillary uses (such as misting for cooling, water for cleaning, etc.). Ecology is willing to work with Easterday to come up with a solution.
 - 3. Easterday is exploring options for acquiring water and has applied for a reservoir permit.
 - 4. The Center for Environmental Law & Policy and others asked Ecology to issue a Declaratory Order, based on the Administrative Procedure Act (APA), declaring the feedlot cannot draw unlimited water. Ecology believes they do not have an unlimited exemption to state water use law, but denied the petition on procedural grounds. The APA says the other party has to consent to the determination of the matter by a Declaratory Order—Easterday did not.
- B. Ecology’s director has said they will engage the legislature to “encourage them to review and consider amending the groundwater exemption generally and the stockwatering exemption in particular.”
- C. Legislation on exempt wells – proposals continuously evolve and new ones come forward.
 - 1. HB 1091 – after July 31, 2009, permit-exempt well owners may use up to 5,000 gallons a day for stock watering purposes.
 - 2. HB 1179 – eliminate lawn watering from the permit exemption; you would have to get a permit for lawn watering.
 - 3. HB 1489 – Ecology to require certain information on withdrawals of more than 15,000 gallons a day of groundwater for stock watering purposes (e.g., metering plan, report of examination, development schedule, impairment analysis).
 - 4. HB 1509 – clarifying stockwatering (includes broad definition).

Other legislation:

Relinquishment:

- 1. HB 1266 – revises the definition of “sufficient cause” relevant to non-use of water (they would be exempt while Ecology processes final determination for change application).
- 2. HB 1267 – clarifies that the legislature intends RCW 90.14.140 to be liberally construed (this is the relinquishment statute).
- 3. HB 1268 – would eliminate partial relinquishment. Basically, if you use a portion of your water right, you protect the entire water right.
- 4. HB 1269 – clarifies the definition of “crop rotation” under RCW 90.14.140(1)(k). Crop rotation would mean a short-term or long-term change in the type of crop.

Other:

- 1. HB 1534 – modifies provisions regarding a local utility district’s response to well notification. Need to hook up to public water systems if they have capacity and service is available in a “timely and reasonable” manner.

2. HB 1334 – Columbia River water conservation – trying to eliminate some of the ambiguities around conserved water. Directs Ecology to aggressively pursue storage, conservation, and other actions to provide water supplies to benefit both instream and out-of-stream uses.
3. HB 1482 – reclaimed water permitting. Modifies permitting provisions, clarifies definitions, eliminates old (2) RCW 90.46.040 eliminating permit requirement for land application of reclaimed water; includes reclaimed water in water supply planning; includes section on operating permits, along with sections on process, penalties, and violations.
4. HB 1494 – water bank. Extends water banks statewide as they are now limited to Yakima.
5. SB 5114 – encourages efficient use of water by eliminating the partial relinquishment of water rights. See HB 1268 above.

Next WSAC meeting is April 29, 2009.

Suggested agenda topic(s):

1. Water outlook
2. Economic recovery package
3. Operating permit fee structure