Joint Skagit PUD and Skagit County Commission Work Session  
Skagit County Commissioners’ Chambers  
1800 Continental Place, Suite 100, Mount Vernon

December 12, 2017  
2:30 - 4:30 PM  
Agenda

1. Call to Order - Skagit County Board of Commissioners

2. Call to Order - Skagit Public Utility District Commission

3. Introductions, Agenda Review, Purpose, and Goals

4. Background Presentation (Water Rights, Emerging Legal Issues, Permitting Options)

5. What Specific Issues Need to be Addressed?
   a. Inadequate legal water availability for existing homes?
   b. Inadequate legal water availability for new growth?
   c. Permitting timeliness and input?

6. What Specific Solutions Are on the Table (Examples from Other Jurisdictions)?
   a. Buying water rights?
   b. Creating regional water banks?
   c. Water system extensions?
   d. Trucking water/cistern program, bulk water fill stations?
   e. Rainwater catchment program?
   f. Reoperation of existing storage?
   g. New small storage options?
   h. Pump and dump solutions?

7. PUD and County coordination efforts (Joint Board Discussion)

8. Next Steps

9. Adjournment - Skagit County Board of Commissioners

10. Adjournment - Skagit County Public Utility District Commission

This work session is open to PUD Commissioners, Skagit County Commissioners, Management and other District and County staff, Consultants and the public. It is not the opportunity to give public testimony; however, if the Board members request input from individuals in the audience, those people may speak.

The principal purpose of the work session is to allow staff of the District and the County and their Boards to communicate with each other and/or the Consultants, answer Board questions, and get the Boards’ opinions and input regarding the subject topic(s).
Joint Skagit PUD & Skagit County Commission Work Session

December 12, 2017
Introductions, Purpose, and Goals

• Meeting facilitator: Dan Haller, Aspect Consulting

• Meeting convened to facilitate dialogue regarding:
  • Legal water availability issues in the Skagit Basin
  • Options (current & new) to address existing & new lots
  • How other jurisdictions are working similar issues
  • Cooperative solutions between the PUD and County
Background

• Key Issues of Water Rights
• Emerging Case Law Overview
• Summary of initiatives being evaluated (with some successes)
• Board Discussion on Next Steps
Water Rights 101

What is a Water Right?

Legal authorization to use:

- a reasonable amount of public water
- for specific beneficial purposes

A water right is a use-based (usufructory) vested, property right.

Water goes with the land but can be relinquished due to nonuse.
Water Rights 101

Perfected vs. Inchoate rights

Perfected rights have been put to beneficial use.

Inchoate water has not been put to beneficial use.

“The use of inchoate municipal water rights for mitigation purposes may require a formal water right change to change the purpose and place of use. Clear legislative authorization to allow use of municipal inchoate water rights for mitigation purposes in the Skagit Basin would help avoid litigation.” Skagit Mitigation Feasibility Study (2016)
Water rights establish **priority dates** which can be used to protect senior water right holders, and instream flows, in times of shortage.

- **1917 Surface Water Code**
- **1945 Groundwater Code**
- **Prior Appropriation Doctrine:** “First in time, first in right”

“I Was Here First!!!”
Permit-Exempt Well (still a water right!)

- Exempted by Groundwater Code. All additive.
- Domestic and industrial purpose (5,000 each).
- Irrigation (1/2 acre non-commercial).
- Stockwatering (unlimited).
Instream Flow Rule

- Water right with priority date of when Rule adopted.
- Sets Minimum Instream Flow Requirements.
- Junior rights issued after the Rule are interruptible.
Permitting Options

- Processing Methods
  - Ecology processing
  - County Water Conservancy Boards
  - Cost-Reimbursement
  - Coordinated Cost-Reimbursement

- Each water right transaction takes about a year to complete

- Processing costs on the order of $10-$15K per legislative study
Case Law Decision Primer


- **Campbell & Gwinn v. Ecology** (2002) – Single exemption per project, not per parcel.

- **Five Corners Family Farms v. Ecology** (2011) – All exemptions cumulative and no stockwater limit.

- **Kittitas County v. Eastern WA Growth Management Hearings Board** (2011) – Subdivision regs must consider multiple applications for commonly owned property.
Case Law Decision Primer


- Hirst (2016) – Counties have independent authority under GMA to ensure water is both physically and legally available.
## Case Law Impacts: Before and After

<table>
<thead>
<tr>
<th>Before</th>
<th>After</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Permit-Exempt Well Owner</strong></td>
<td>Driller files start card with Ecology to drill</td>
</tr>
<tr>
<td><strong>Ecology</strong></td>
<td>Tracks wells drilled in database</td>
</tr>
<tr>
<td><strong>Counties</strong></td>
<td>Relyed on Ecology to determine legal availability</td>
</tr>
<tr>
<td><strong>Closures</strong></td>
<td>From Ecology instream flow rules</td>
</tr>
</tbody>
</table>
Rapid Changes by Counties to Case Law

• Some counties issued moratoria and began to establish water banks.

• Some counties did not change practices.

• Some counties placed a greater burden on landowners to prove availability.
Various County Approaches

- **Whatcom**: Ordinance requires proof of no impairment to instream flows (hydrogeologic study) prior to granting new building permits relying on exempt wells.

- **King**: Continuing to approve building permits, but county makes no warranties regarding legal water availability.

- **Pierce**: Hydrogeologic study required. No impairment to senior rights, including instream flows, must be established.

- **Skagit**: Moratorium on building permits relying on unmitigated exempt wells in Skagit watershed, except in Bayview area. Water banking and streamflow augmentation projects in development.

- **Spokane**: Moratorium on building permits relying on exempt wells in Little Spokane watershed. Water bank being established. Local impairment standards established.
Various County Approaches

- **Chelan**: Evaluating potential changes to County approval processes. Reserves for exempt use already set up in some subbasins (e.g. Wenatchee, Entiat).

- **Okanogan**: New ordinance requiring landowner demonstration of availability and public hearing.

- **Douglas**: Evaluating potential changes to County approval processes.

- **Grant**: Evaluating potential changes to County approval processes.

- **Kittitas**: Established water banks and acquiring rights to mitigate for exempt wells as a condition of receiving a building permit.

- **Yakima**: Creating a water bank as a pipeless utility.
What Specific Issues Need to be Addressed In Skagit County?

- Inadequate legal availability for ≈ 480 existing homes?
- Inadequate legal availability for new growth?
- Permitting timeliness and input?
Specific Solutions being explored?

- Hydrogeologic Assessments / Well Construction Provisions?
- Creating regional water banks (buying rights)?
- Water system extensions?
- Cross-basin water transfers?
- Rainwater, Trucking water, Cistern, Bulk water fill stations?
- Reoperation of existing storage?
- New small storage options?
- Pump and dump solutions?
Big Lake Water Bank (Nookachamps)

• Bank developed from trust transfer of 3 perfected municipal water rights.

• PUD replaced water for the Big Lake community freeing up mitigation water from local water system’s rights.

• Trust Certificates issued for mitigation, groundwater preservation, and instream flow augmentation in 2014 in anticipation of being part of a broader water bank.

• A mitigation plan is in development, with a mitigation map showing where mitigation is available from the water bank.
Water System Extensions

- Case law tension around what is allowed
  - Centralia, Thurston PUD, and Spokane Industrial Park cases – “What is intent of the permit?”
- Ecology’s Skagit Solutions website lists this as the first option
- Incremental increases in services area more commonly allowed
- County-wide solutions more rare and subject to scrutiny
Cross Basin Transfers

- Well Construction and Return Flow Credits
- Sun Peak Estates (11 lots)
- Debits Stillaguamish Reserve even though lots are located in Fisher Creek subbasin
• Can serve areas high in tributary basins with no other options

• Ecology’s Skagit Solutions website lists this option subject to Skagit / Snohomish County Planning Regulations
  • Skagit County code conformance required (12.48.250)

• Bulk Fill Stations (Skagit PUD Conway, Bow Hill Stations)
Mainstem Skagit River Water Bank based on Seattle City Light reservoir releases.

- Would use timed releases from reservoirs to provide instream flows to the Skagit River when flows are not being met.
- Would provide mitigation water for new uses by offsetting impacts on instream flows of the new uses.
- Still in the development stage, with uncertainty about outcome.
- Could be used with well construction provisions to broaden suitability map
Carpenter Creek Instream Flow Augmentation project.

- The proposal would place PUD water into a pond in the upper reaches of the Carpenter Creek subbasin, along the margin with the Nookachamps subbasin. Eaglemont golf course (PUD water) would be the source for the mitigation water.

- The study concluded that there was no natural channel for the water to follow and ensure it would provide adequate mitigation. Future of this project is currently being discussed between Ecology and Skagit PUD.
Illustration of the effect of adding beaver dam analogs to a channel:

A. Before restoration, elevation of shallow groundwater controlled by the water surface elevation in incised channel

B. After restoration, water surface in the channel elevated along with the elevation of the local groundwater
Example of beaver dam analog using a post line and weaving (Photograph from Pollock et al. (2012)).
Streamflow Augmentation

• Similar approach to releases from reservoirs (i.e. timing of releases for when instream flows are not met)

• Evaluation of lag effects of groundwater pumping versus immediate benefits of augmentation.

• North Bend Example

• Analogous to Sun Peak Estates Mitigation Plan
Board Discussion – What’s Next?

- Hydrogeologic Assessments / Well Construction Provisions?
- Creating regional water banks (buying rights)?
- Water system extensions?
- Cross-basin water transfers?
- Rainwater, Trucking water, Cistern, Bulk water fill stations?
- Reoperation of existing storage?
- New small storage options?
- Pump and dump solutions?
Next Steps

- What Steps Should Staff Take to Further PUD / County Priorities?
- What Data Gaps Should Be Filled?
- Is a “solutions-crosswalk” by Parcel Needed?
- In what areas do the PUD / County want to lead?
  - Follow?
  - Collaborate?
- Other Stakeholder Coordination (e.g. Ecology, Swinomish)?