

Ag Water Board

Regular Meeting | Minutes | March 20, 2024, 1:00 PM

204 Hawley St, Lynden WA

Attendees

“(t)” indicates attendance via teleconference, “a” indicates alternate representative

Board Members			
Bertrand	Greg Ebe	North Lynden	Brad Rader
Drayton	Rod Tjoelker (a)	South Lynden	Jeff De Jong
Laurel	Mike Boxx	Sumas	Andy Enfield

Alternates, Staff, and Consultants	
Name	Organization / Affiliation
Gavin Willis	Ag Water Board
Katie Faber (t)	AESI
Bill Clarke (t)	Clarke Law
Ramsey Kropf (t)	Somach Simmons & Dunn
Fred Likkel	Whatcom Family Farmers
Jay Chennault (t)	AESI
Rod VandeHoef	South Lynden WID

Other Guests	
Name	Organization / Affiliation
Mark Stremmer (t)	Whatcom County Council
Steve Jilk (t)	Whatcom PUD
Trevor Gearhart (t)	Whatcom Conservation District
Atul Deshmane (t)	Whatcom PUD
Corina Cheever	Whatcom Conservation District
Brandy Reed (t)	Whatcom Conservation District
Dakota Stranik (t)	Whatcom County Planning Department
Gary Stoyka (t)	Whatcom County Public Works
Chris Elder (t)	Whatcom County Planning Department
Dillon Honcoop	Whatcom Family Farmers

Proceedings

Brad called the meeting to order at 1:02pm

1. Mike moved to approve the proposed agenda. Andy seconded. Motion carried unanimously.
2. Andy moved to approve Dec 13 meeting minutes as presented. Greg seconded. Motion carried unanimously.

3. Financial / Administrative

- a. Nominations for elections for office were opened.
 - i. Andy nominated all previous officers to the same positions (Brad Rader as President, Marty Maberry as Vice-President, Rod VandeHoef as Secretary and Treasurer).
 - ii. Greg seconded Andy's nominations.
 - iii. Rod VandeHoef declined his nominations as secretary and treasurer.
 - iv. Andy nominated Jeff DeJong for the offices of secretary and treasurer.
 - v. Greg seconded Andy's nomination.
 - vi. No further nominations were made.
 - vii. Brad Rader was unanimously elected to President by voice.
 - viii. Marty Maberry was unanimously elected to Vice-President by voice.
 - ix. Jeff DeJong was unanimously elected to Secretary and Treasurer by voice.
- b. Gavin provided a review of financial reports for the period ending Feb 29, 2024. Greg moved to approve the financials. Andy seconded. Motion carried unanimously.
- c. Andy moved to approve Resolution 2024-01 appointing Gavin as the agent to receive claims for damages against AWB. Greg seconded. Motion carried unanimously.

4. Water Supply

- a. Bill provided legislative report. Since it was a short session the legislature didn't take on significant legislation. 2 bills were presented related to adjudication. AWB testified as "Other" for both bills.
 - i. Adding additional superior court judge in Whatcom County (will be elected position).
 - ii. Amending adjudication statute allowing court to hire commissioners to deal with procedural aspects of the adjudication. Decisions of the commissioner could then be appealed to the superior court judge. Colville tribe proposed amendments to this bill requiring education related to water law and Indian law.
- b. Adjudication
 - i. Ramsey provided settlement update. Has put out suggestions to tribes for topics on public outreach on settlement process, with the goal of beginning conversations with the tribes (including on potential claims forms). Included in that would be to have federal settlement team explain their role, and look at what YBIP did. Generally has been no response from tribes; silence may be in part due to concerns by tribes that ECY has been slow in filing the adjudication, and tribes would like to see that litigation filed before they move forwards.
 - ii. Draft claims form. There were 26 comment letters submitted in total, with multiple comments in each letter. Claims form will be finalized and presented by AG office moving forward, Matt Janz is lead attorney for state of WA on this issue. As we get closer to filing, more and more responsibility will shift to AG office. Noted that ECY has authority to propose claims form, but court has final say, so unclear how much it will be finalized before adjudication is filed. Also questions of procedural differences (including having different versions of form) and different standards of proof. Statute states ECY can propose different processes, but can't substantively change the adjudication standards. Additional concern is ECY's restrictive characterization of stockwater, and water use estimates that are much lower than industry guidance. Some attorneys have proposed to AG and ECY that we cooperatively create a claims form that is generally agreed upon, rather than reverting to motions practice in court to create it.

- iii. Question of timing – when would initial objections occur? How can you raise issues until you know who the parties in the case are, which you won't know until claims forms are filed. There has never been an adjudication under the 2009 version of the statute, so there are lots of unknowns. There seems to be more expertise on the issue outside of the AG office than there is inside of it.
 - 1. Question raised on settlement process: ECY indicated in AAC meeting that they do not have authority to proceed with settlement. However, WA is participant in Western States Water Council resolution to make settlement a priority.
 - iv. Public records request – ECY seems generally supportive of the idea, but it seems like AWB staff will have to lead the charge on that issue. **Gavin will follow up with Robin and ECY staff on the request.**
 - v. Federal Lobbyist – when there is a settlement, it will need to be enacted and funded by Congress. Congressional champions of this legislation will be necessary, so AWB may want to consider starting those discussions with our congressional delegation sooner rather than later to ask for support bridging the gap and starting communications b/t tribes, state, stakeholders, Federal team, etc. Noted that Cantwell was the legislator behind the Yakima settlement. Ferguson Group was mentioned as a possibility of a lobbyist group who specializes in this type of work. Van Ness Feldman also has a Washington DC office that does this type of work. Foley & Lardner has dealt with agricultural issues as well. Noted that Ferguson Group was heavily involved in Yakima Basin Integrated Plan on both tribal and agricultural side. They also have a grant making support team that could be useful.
 - 1. Question from board about how soon we should start the process with RFP or initial interviews. Response was that once the adjudication has been filed it's a good time to talk to congressional delegation. May take some time to determine best fit for lobbyist, so would be good to start sooner than later.
 - 2. Question about anticipated federal funding that might be available prior to settlement. Response was that watershed planning funding can be \$250k to multiple millions.
 - 3. Board indicated desire to get moving on this. **Bill will work with Ramsey to generate list of potential lobbyists, and will get back to Gavin with a list and proposed process for board review.**
- c. Landowner adjudication assistance
 - i. Gavin had initial conversations with AESI staff about building out portal. AWB has gotten ArcGIS licenses. Much of work will depend on ECY response to public information request and what format that request will be fulfilled in. Portal could also include items like templates for affidavits, informational documents, and other helpful resources. Goal is to have the portal up and running by the end of the summer.
 - ii. Office hours – had settled on waiting to offer the office hours until the adjudication is filed, this fall will be the time frame to kick it off. Goal is to wait until the claims form is near its final format so that the assistance can help farmers fill out the claims form.
 - 1. Bill noted that Whatcom County Bar Association had question about to what extent non-attorneys can provide technical assistance in filling out claims forms (since those are documents). Assistance in completing standardized forms with basic factual information is not considered

practicing law (ie. Practice of law limitation). Ramsey noted that in other adjudications, once claims are filed and issues come up in front of judge or commissioner, representation must come from a lawyer; completing forms does not fall under that umbrella though.

2. Question about legislative funding for county for technical assistance and whether AWB can use some of those funds. Gavin noted those discussions are occurring with county staff. Gary noted that county work will be both general outreach about adjudication, and an email and phone hotline that can answer questions (including legal questions) from county residents. Follow up question about how efforts from AWB and Whatcom County might be able to coordinate those efforts. Gavin noted likely differences in the need from the WID members vs. most county residents. Gary noted that coordination between Whatcom County, ECY, and Whatcom Superior Court is ongoing.

d. County water supply work

- i. LGC hasn't met recently due to a lack of agenda items.
 - ii. Gavin shared email sent to Whatcom County Senior Planner Cliff Strong following his request for comments on the 2025 Comprehensive Plan Update. Email was a compilation of comments received during February WID meetings.
 1. Question about how comments have been received. Gavin noted that comments would have just been passed on to consultant team writing the first draft, so no response was received.
 - iii. Chris provided an update on the West Ferndale water supply / land use planning pilot project. RFP will go out soon. Project trying to build off of AAC rural study and other water supply resources to generate a plan for developing sufficient water supply resources for the area which was impacted by drought last summer.
- e. Jay provided an update on the Dakota Creek Streamflow Augmentation project. Has been a difficult process getting through ECY's review since this is all new. Jay sent impacts analysis to ECY looking at streamflow benefits. Tier 2 mitigation just requires no net detrimental impact to fish. ECY is suggesting a biological opinion to support the "no net detrimental impact" determination. Working on determining who can write that letter and the level of effort it would require.
- i. Also noted that although Foster pilot program legislation specifically identified AWB to do SW-GW conversions, ECY has stated that individual water rights holders are not eligible for SW-GW conversions, since they believe that AWB can only transfer rights that it holds itself.

5. Water Quality / Drainage

- a. Fred provided an update on the 5-year programmatic permits. Frank has been working on them, sounds like they are in a good place.
- b. Fred provided an update on FLIP participation. Had talked to the WIDs about concerns there, but there has been good news in the past few days and seem to be on a better trajectory. Still looking to get together with small cities' mayors to discuss next steps.
- c. No further update on riparian buffer programs beyond what had been discussed in WID meetings.
- d. Gavin provided an update on FEMA projects. Bertrand WID waiting on approval for new procurement policy. Sumas WID just signed A&E contract for first project on Lower Sumas.
- e. CLASS work continues between Bertrand WID and City of Lynden.

- i. Fred noted that Nooksack staff came to AWB with ideas for habitat projects in Reach 2 of the river. Bertrand confluence was noted as specific area of importance for Chinook – potential projects may provide benefits that coordinate with CLASS projects.
6. Outreach
 - a. Media report.
 - i. Losing the Farm video produced by WFF continues to do well, nearing 300,000 views.
 - b. Adjudication info event will be March 27th at 6:30pm at Northwest Washington Fairgrounds. RSVPs indicated likely strong attendance. Fred noted a need for some volunteer assistance day and evening of event.
 - i. Corina noted that number one question she is seeing is how to calculate historic water use.
7. Other Business
 - a. Gavin has completed the indirect cost rate calculation for AWB assistance work for drainage districts. He is working on reaching out to DD#7 with that information.
 - b. DD#3 has also requested consolidation with LWID.
8. Andy moved to adjourn the meeting. Greg seconded. Meeting was adjourned at 2:49 PM.

Meeting Chat

- Dakota Stranik, 1:37 PM
 - *The Zoom recording of the AAC meeting is available here*
<https://www.whatcomcounty.us/agendacenter>
- Atul Deshmane, 2:47 PM
 - *Enjoyed the meeting. Thanks for the conversations.*

Submitted by Gavin Willis

Approved by: _____