

CHEHALIS BASIN PARTNERSHIP
Chehalis Tribe “Lucky Eagle” Casino
Rochester, Washington
September 24, 2010
9:30 a.m.
Meeting Summary

MEMBERS, ALTERNATES, & GUESTS

PRESENT

Bonnie Canaday, Chair, City of Centralia
Lee Napier, Grays Harbor County
Bob Burkle, Washington Department of Fish & Wildlife (WDFW)
Julie Balmelli-Powe, Lewis County Farm Bureau
Janel Spaulding, Chehalis Basin Partnership
Mark Swartout, Thurston County
Karen Valenzuela, Thurston County
Terry Harris, City of Chehalis
Terry Willis, Grays Harbor County
Bill Schulte, Lewis County
Lisa Dilley, Citizen, Grays Harbor County

Lyle Hojem, Citizen, Lewis County
Christine Hempleman, Department of Ecology (DOE)
Art Lehman, Port of Centralia
Chanele Holbrook-Shaw, Citizen, Thurston County
Chuck Caldwell, Port of Grays Harbor
Valerie Gow, Puget Sound Meeting Services
Gary Waltenburg, Citizen, Grays Harbor County
Patrick Wiltzius, City of Chehalis
Chris Stearns, Thurston PUD
Kim Ashmore, City of Centralia
Ron Maul, Lewis County Farm Bureau
Spencer Easton, ESA Adolfsen
Don Davidson, DOE

SUMMARY OF ACTION ITEMS:

Approval of Meeting Summary

Approved CBP amended minutes of August 27, 2010, and amended minutes of June 11, 2010 HWG.

Watershed Coordinator Work Plan

STC members will review and prioritize the work plan for submittal to CBP at its October meeting. Chair Canaday, Lee Napier, and Janel Spaulding to contact local attorneys (Hugh Spitzer, Foster Pepper LLC was mentioned) for review of bylaws and articles of incorporation and to resolve legal questions surrounding the establishment of a non-profit corporation for fundraising purposes.

Organizational Restructuring

GENERAL PARTNERSHIP BUSINESS

Welcome, Introductions and Roundtable Comments

Bonnie Canaday called the September 24, 2010 meeting of the Chehalis Basin Partnership (CBP) to order at 9:32 a.m. Everyone present provided self-introductions.

Discuss and Adopt Draft Meeting Summary of August 27, 2010

The following correction was requested to the minutes of August 27, 2010:

On page 9, revise the third sentence within the third paragraph to state, “DOE is planning further reductions.”

Bill Schulte arrived at the meeting.

The following correction was requested to the June 11, 2010 minutes of the Habitat Work Group (HWG) meeting:

On page 2, within revise the first sentence in the third paragraph to read, “Bob Burkle commented on some technical reports that might be available through the U.S. Army Corps of Engineers in the early 1990s as part of beach seining and salmon assessment work...”

The amended minutes of the August 27, 2010 CBP meeting and the June 11, 2010 HWG meeting were approved by consensus.

Lyle Hojem arrived at the meeting.

SPECIAL PROJECTS AND PRESENTATIONS

Chehalis Basin Partnership Staff Transitioning – Review Watershed Coordinator Work Plan

Terry Willis reported Lee Napier was promoted as Interim Director of Planning for Grays Harbor County. Ms. Napier’s position assumes more responsibilities and requires transitioning from Partnership duties and responsibilities over the next several months. Ms. Napier prepared a list of potential impacts and areas requiring transition. Impacts to the Partnership and Grays Harbor County’s relationship should be minimal, as Grays Harbor County will continue as the fiscal agent and administrator watershed contracts. Ms. Napier will continue to provide oversight to ensure contract compliance and will be available to answer questions. The partnership will not lose Ms. Napier’s knowledge. Ms. Napier will continue to serve as the alternate member for Grays Harbor County.

When the CBP hired the Watershed Facilitator, the intention was to hire an individual to assume the project lead. When Ms. Spaulding was hired, she was anticipated to be an assistant to Ms. Napier as well as assuming more of Ms. Napier’s responsibilities. At that time, the county indicated that Ms. Napier’s time would transition back to her county position. While the transition is occurring much sooner than anticipated, the county is confident that Ms. Spaulding is ready to make the change. Contracts in place to fund staff support are still available and expire on June 30, 2011. The Partnership is essentially asked to consider the issue sooner and determine how to reallocate some of Ms. Spaulding’s workload to cover the work described in Phase 4 under the contract with the Department of Ecology.

Grays County Harbor will continue as the Lead Entity for salmon recovery and select a coordinator to replace Ms. Napier. At this time, the selection may be of a current county employee. The county will continue to work with the HWG to develop a list of projects. Earlier this month, Ms. Napier discussed with the HWG the changing circumstances with her employment and asked for feedback. One of the suggestions included incorporating the CBP’s role as a citizen group into the annual project review. HWG members believe that by including more representatives from the CBP, the outcome could result in a thorough review and a better understanding of the habitat restoration program by more citizens.

Ms. Willis invited questions.

Members asked about Ms. Spaulding’s employment status and whether the transition involves an increase in responsibilities and pay. Ms. Napier reported Ms. Spaulding works for Grays Harbor Community College through an agreement between the college and Grays Harbor County. She receives benefits through the college. Chair Canaday added that the transition into the job with increased responsibilities will be discussed between the county and the college.

Members reviewed and discussed Ms. Spaulding's work plan. Currently, work hours equal 170 hours a month consisting of:

Task	Hours
Coordinating stream teams	25
Coordinating Chehalis Watershed Festival	10-40 (mainly during summer)
Updating CBP website	8
Creating/updating outreach materials	10
Planning/attending CBP and subcommittee meetings	25
Grant tracking/reporting	12
Grant researching/writing	8
Attending misc. workshops/events/meetings	8
CBP organizational restructuring	12
GH College responsibilities/meetings/presentations	12
Publishing Drops of Water articles/proofreading editions	10

Ms. Spaulding advised that the Chehalis River Council is undertaking a survey and considering other ways to produce the *Drops of Water* publication. Margaret Rader, the editor, is seeking more support in the production of the publication.

Ms. Spaulding reviewed hours associated with new projects/tasks currently completed by Ms. Napier totaling another 30 hours a month:

Task	Hours
Planning/coordinating STC/CBP meetings	10
Outreach to identify project partners and resources to implement and update DIP	10
Working with USGS to further water storage scope of work	5
Sustainable funding ideas for CBP non-profit Foundation	5

Ms. Willis asked about the probability of transferring stream team responsibilities to others in the local communities, such as Centralia and Grays Harbor. Ms. Spaulding reported she's discussed transitioning her role with Kim Ashmore from the City of Centralia. Mr. Ashmore reported Centralia's stream team was organized through a DOE grant several years ago through his and Ms. Spaulding's joint efforts. Transitioning the team is not problematic at this time.

Ms. Spaulding clarified that the second set of tasks are hours that were required of Ms. Napier and are separate tasks from her current hours.

Mark Swartout commented on the importance of someone continuing to initiate and promote the development of local stream teams.

Terry Harris suggested the CBP may have to consider adding another ½ FTE to help support the workload. Bill Schulte indicated the Watershed Coordinator was added to assist Ms. Napier, who was already assigned

full-time to the county. In the near term as Ms. Spaulding is shifted to a full-time position and duties clarified, it's likely only 1 FTE might be required.

Mr. Swartout commented on the potential of the work completed up to this point transitioning to Ms. Spaulding with the expectation that the work is completed. That would put Ms. Spaulding in a precarious situation. He asked about the likelihood of the person assuming the Lead Entity role to assume some of the other responsibilities, such as the stream team role. Ms. Napier said because the organization is transitioning and the long-term funding situation is unknown at this time, it might be possible to reduce Ms. Spaulding's time with the stream team work and contract some of the work with a facilitator to assist in working on sustainable funding ideas for the non-profit. The Detailed Implementation Plan (DIP) is scheduled for an update prior to the end of the contract period. The last update only focused on one of the interim milestones for developing education outreach and a work plan to help further refine the Watershed Coordinator's work plan. Another contract deliverable in the Phase 4 contract is sustainability and building partnerships to leverage financial resources. That might be a direction the CBP may want to pursue in having Ms. Spaulding develop a better work plan to leverage more resources. More outreach may be necessary to other natural resource groups to determine ways for working together and focusing on those efforts to determine the long-term future of the Partnership. It might be a way to accomplish some of the workload while also exploring CBP's sustainability goals.

Julie Balmelli-Powe suggested delegating some of the work associated with the watershed festival in conjunction with stream team duties to reduce the workload.

Mr. Swartout expressed some skepticism that the second set of tasks equals only 30 hours a month, given the expertise and experience of Ms. Napier. He asked about the possibility of subcontracting some work to afford some tools to Ms. Spaulding to accomplish assigned work.

Discussion followed on contracting the watershed festival. Ms. Napier noted that Ms. Spaulding spent considerable time on fundraising efforts this year. Subcontracting the work would also increase the cost of the festival. Chris Hempleman asked whether some funds are available within the grant contract for contracting some work. Ms. Napier said there are two contracts involving the planning unit and Phase 4 contract, which end on June 30, 2011. It's unknown if funding will be available after that date. There are defined tasks and deadlines. The Watershed Council grant expires in September 11, 2011. It may be possible to shift some of the funds from the Council grant to accomplish some of the work.

Members discussed the *Drops of Water* and the cost of the publication. Ms. Napier advised that the publication also serves as a substantial match for the planning unit support grant. The *Drops of Water* is included within four major newspapers. The Centralia Chronicle prints the publication.

Members discussed the potential of publishing the newsletter online to reduce costs. Ms. Willis commented that recent changes in the economy and reduction in funds also includes the cost of staff time involved in tasks. Everyone seems to be doing more with less. The issue is how to complete the work in the number of hours available. It may be quicker and efficient to publicize the newsletter online than in the newspapers. She acknowledged that many members support local businesses and newspapers and don't want to see them lose business.

Ms. Julie Balmelli-Powe disagreed with the option of publishing only online versus in the newspaper, as it's possible a substantial amount of public outreach will be impacted. Ms. Napier encouraged members to fill out the survey for the newsletter because it's the Partnership's main tool for outreach. Ms. Spaulding

volunteered to send a survey link after the survey is released. Ms. Ashmore offered to provide results from a survey conducted in 2009 on the publication.

Mr. Harris offered that there appears to be a movement for publishing online to reduce costs. However, unless an individual is specifically looking for the newsletter, it likely wouldn't be read. The less conspicuous the Partnership becomes with outreach, the more difficult it will become. The Partnership is taking too much for granted by believing people will read it online.

Several members offered suggestions, such as publishing online, printing extra copies to distribute to businesses, emailing the newsletter, and reformatting the publication as a newsletter.

Mr. Swartout reviewed future work programs of potential focus. Chair Canaday suggested prioritizing the list to assist the Partnership. Mr. Swartout offered to have the Steering Technical Committee (SRC) review the work program and prioritize the list.

Ms. Spaulding reviewed work items associated with the college, which includes attending staff meetings, coordination of events on campus, and assistance to teachers on hatchery tours.

Ms. Willis assured members that Ms. Napier's knowledge and experience would not disappear. Her knowledge will be used in a supervisory capacity rather than a hands-on approach. The coordinator who is replacing Ms. Napier is a current employee at the county.

Julie Balmelli-Powe asked whether the Partnership is important to the point members are willing to contribute additional hours to ensure the work is completed. Several members commented on the number of volunteer hours they currently contribute to the Partnership. Ms. Balmelli-Powe offered that the Partnership could be another source to draw from to help cover some of the hours. Mr. Ashmore added that most members dedicate time to ensure the Partnership remains on track.

Ms. Valenzuela acknowledged the work and volunteer hours of Ms. Spaulding and expressed appreciation for her service.

Ms. Spaulding confirmed STC members will review and prioritize her work plan at its October meeting.

Status Report and Discussion Regarding Organizational Restructuring

Ms. Napier reported she met with Lewis County Attorney Glenn Carter to review concerns about forming a non-profit organization. His concerns primarily involved the assets of the planning unit and the importance of documenting those assets if the Partnership forms a non-profit. It's important for the Partnership to consider its accomplishments and acknowledge there is a need to keep things distinct and separate, as well as establishing the role of the non-profit as strictly a fundraising organization. The Partnership has assets that were purchased with grants that belong to the public. Mr. Carter's concern is giving away those assets.

Secondly, Mr. Carter recommended asking for legal assistance and suggested contacting Hugh Spitzer with Foster Pepper PLLC.

Mr. Swartout suggested organizing a volunteer group to develop the package and schedule some visits with attorneys. He recommended Chair Canaday, Lee Napier, and Janel Spaulding. Ms. Valenzuela agreed that contacting Mr. Spitzer is appropriate because he's assisting the Flood Authority in forming a Flood Control Zone District. Mr. Schulte agreed with contacting Mr. Spitzer because of his familiarity with the area and the issues. Any transition will be challenging and Mr. Spitzer is a subject matter expert in this area.

Watershed Festival Update

Ms. Spaulding distributed brochures on the Watershed Festival scheduled on Sunday, September 26, 2010 from 10 a.m. to 4 p.m. Volunteers are needed for the CBP table. She invited everyone to attend.

“Fin” the salmon is currently visiting elementary schools in the Chehalis basin.

Chair Canaday reported permission was obtained from the group owning “Fin” for the Partnership to construct another “Fin” for use in the basin. Mr. Ashmore advised that if the budget is approved by the City of Centralia, construction will be funded for the fiberglass salmon. Having the salmon is important for outreach and local schools.

Mr. Holbrook-Shaw commented on the importance of “Fin” visiting local schools, especially south Thurston County schools. Lyle Hojem offered a trailer for transporting “Fin.” Mr. Ashmore offered to pick up the trailer.

Chehalis Basin Ecosystem and Restoration and Flood Risk Management Project Update (Basin-wide GI)

Ms. Napier reminded members of the work group comprised of members from the Partnership and the Flood Authority working together to update the Project Management Plan (PMP) as the tool for the GI Study. Last spring, the group was scheduled to complete the work by April with a goal to complete the PMP by June. That didn't occur as planned because of questions surrounding the PMP and the feasibility study.

The PMP calls for a feasibility study that includes a project conditions report on either a *with or without project conditions*. The PMP includes a project conditions report including the levees. There were concerns that a conditions report describing something that's not built may alter the results. The request was to complete two project conditions reports of one without the levee and one with the levees. That was the main issue that halted progress on the PMP.

The US Army Corps of Engineers considered the request and agreed to complete two without project conditions reports. The Corps subsequently developed a revised feasibility study with an adjusted timeline and costs. Subsequently, a joint meeting between the Partnership and the Flood Authority was held in May. The proposal was not acceptable to the group with a request to the Corps to consider other ways to study flood storage and to expedite the process. The Corps suggested removing the two-purpose study by eliminating the flood storage and putting it against another project, which would logically be the Twin Cities project. The Corps spent time in June and July and returned to the Flood Authority and Grays Harbor County (Local Sponsor) and indicated it likely could be accomplished because the Twin Cities Process requires a reformulation process that could include some other storage component in the Twin Cities project. Unfortunately, that is not possible. If there is still a goal to include a storage component working with the Corps, it will entail the Basin-wide General Investigation Study. That information was shared with everyone in August.

Ms. Napier said the Partnership needs to decide whether to continue working on a GI Study. The flood Authority has recommended scheduling another joint meeting with policymakers to discuss the GI Study, which began as the Ecosystem and Restoration project with Flood Risk Reduction added as an option for the Flood Authority and those interested in a flood damage reduction project. That discussion needs to occur because it will determine the PMP. The issue of the feasibility study including two without projects conditions reports also needs to be discussed. That decision needs to occur at the PMP level to enable further

refinement of the PMP. The final question pertains to the local sponsor, which is currently Grays Harbor County. Ms. Napier said she is no longer available to manage the process.

Ms. Napier asked members for input on the attending the joint meeting on October 7 at 1:30 p.m. at the Veterans Museum in Chehalis. Everyone is invited to attend. Representatives from the Corps will also attend.

Mr. Stearns inquired about the status of the storage issue. Ms. Napier said that currently, the assumption is that the project would be for two purposes and that storage will be a component of flood risk reduction. The storage benefits that cannot be achieved through the Ecosystem Restoration project will be covered under flood risk reduction. That will be a policy question for discussion. The purpose of the meeting is not to discuss new projects, but if information is available that can inform a two-purpose project it could be shared.

Bob Burkle clarified that the modifications for the Skookumchuck Dam are part of the existing GI Study for the levee project. Mr. Stearns commented that there are other options. The last dam constructed in Lewis County replaced a previous dam.

Spencer Easton pointed out that the Corps will look at options but cannot pursue anything until some policy decisions occur and the project is initiated. The purpose of the meeting is to discuss those policy decisions and review specifics of projects at this point.

Ms. Holbrook-Shaw commented that since the two project options are on the table, it might be possible to expand options. Ms. Napier acknowledged that having two purposes provides the opportunity to leverage more resources. However, the Flood Authority and the Partnership working together can bring more resources. At the same time, each organization's focus is different with one focusing on high flows and one focusing on low flows. Everyone acknowledges there is a connection. However, it isn't acknowledged within laws and policies.

Ms. Willis said that as Chair of the Flood Authority she discussed the issues with Commissioner Averill. Currently, the GI includes water retention and ecosystem restoration with a PMP, which is the basic overall plan that has a broad umbrella attached to both projects. The Corps is waiting for an agreement to finalize the PMP. The request to the Partnership and the Flood Authority is to consider the document and provide direction to the Grays Harbor County Commission to assist in determining whether to adopt the PMP. There is a point of necessity to complete action soon because the Corps of Engineers is funded through Congress and becoming less tolerant of policymakers stalling and disagreeing over the details. They want completion of the PMP. The Corps expressed concerns that if that doesn't occur or if delays continue, it could entail losing the funding. It isn't a threat, but it's a major concern. She encouraged members to read the plan, attend the meeting, and provide feedback so that County Commissioners can take action.

Mr. Schulte reported that as Chairman of the Lewis County Chehalis Subbasin Flood Zone District, he has read the PMP and finds it to have serious flaws. The Corps levee project has serious flaws. He's been blunt with the Corps of Engineers that neither one of the proposals are acceptable in their current form and he will not be bullied, threatened, or intimidated into accepting a plan that is unacceptable and does not protect either the basin or the people of Lewis County. Neither track is acceptable. The Corps must meet the basin's needs and not its needs and timeline. They have serious flaws with time and cost. As an example, the Corps reviewed the proposal for the Transalta dam in Thurston County and determined the cost estimate was incorrect by 500%. The original estimate of \$10 million to fix the dam is now \$50 million. When asked about the cost of the rest of the levee project, the Corps refused to comment other than to say that 30% of the levee is substandard according to the current plans. There is some problem with both plans and the Corps

threats is a tool that stakeholders can use to their advantage. It may be possible that a third track will be needed.

Ms. Willis clarified that the message was from Senator Murray's office and not from the Corps. The intent wasn't to threaten or bully but to highlight the issues and ensure those opinions are expressed and then determine how the PMP should be drafted to bring something to the Corps.

Mr. Hojem expressed frustration with the entire process. He shared that he asked the Corps about stopping the entire process and was informed that it's a very complicated process to halt the process.

Ms. Willis stressed that if any project is halted it's important that the Partnership and the Flood Authority stop the process to avoid losing the ability to make decisions for the basin. Washington, D.C. shouldn't be determining decisions for the basin.

Mr. Hojem said the Corps program is very complicated and difficult to understand.

Ms. Willis reported that as Chair of the Flood Authority working with Bruce Mackie, ESA Adolphson, they visited the Governor's Office and asked the state to become the other sponsor to remove Grays Harbor County as the sponsor similar to the Twin Cities project. The Governor's Office has not rendered a decision but is favoring the suggestion.

Mr. Harris said it will be interesting when FEMA releases the flood maps whether the Corps will apply the 51% replacement rule to levees washed away during a flood. Several members commented that the Corps will replace levees 100% if maintained to Corps standards.

Mr. Hojem conveyed appreciation to Lewis and Grays Harbor County Commissioners for their work and attention to the program to try and resolve the issues.

Department of Ecology Exempt Well Presentation

Ms. Napier introduced Don Davidson, Policy and Planning, DOE. The presentation covered exempt wells.

Mr. Davidson reported the groundwater code was enacted in 1945 and is supplemental to the surface water code, RCW 90.03. A groundwater right must be applied through an application process. Existing users in 1945 made declarations for water rights. Today, some small water uses are exempt from the permitting process. The groundwater code is similar to the surface water code with some differences. A recent change to the groundwater code makes it possible to replace or add a new well without undergoing the permitting process. However, that doesn't apply to surface water rights. There is no exemption for small water withdrawals in the surface water code.

The four types of groundwater uses exempt from the state water-right permitting requirements are:

- Providing water for livestock (no gallon per day limit or acre restriction).
- Watering a non-commercial lawn or garden one-half acre in size or less (no gallon per day limit).
- Providing water for a single home or group of homes (limited to 5,000 gallons per day).

- Providing water for industrial purposes, including commercial irrigation (limited to 5,000 gallons per day but no acre limit).

The limits are individual quantity limits meaning that the uses can be stacked by enabling a user to drill wells for livestock and wells for irrigating up to a half acre. Typically, domestic users in a single-family home use 315 gallons a day in western Washington with more in eastern Washington. In house use averages 150 gallons or less per day. The code doesn't differentiate between consumptive and non-consumptive uses.

Currently, there are approximately 500,000 exempt wells in the state. Between 2002 and 2007, 30,000 new permit-exempt wells were added in the state. The average exempt permitted use is 500 gallons a day.

Ms. Willis asked what concern prompted DOE's interest in permit-exempt wells. Mr. Davidson said the concern centers on the inappropriate use of permit-exempt wells, such as a developer drilling three permit-exempt wells on a 40,000 acre parcel, which was subsequently subdivided to serve homes. That may be an inappropriate use by a developer who uses permit-exempt wells to avoid obtaining a water right. There are other examples where developers avoid the water right process.

Mr. Stearns said concerns raised by PUDs include drilling wells near existing water systems creating backflow issues. There are also concerns about water quality. Mr. Davidson said DOE is more concerned about the amount of development and permit-exempt wells because the use is unregulated and it may impact senior water rights. A good example is what occurred in the City of Roslyn, which has had water rights since 1908, which are now considered junior and limit new withdrawals.

Mr. Davidson displayed maps reflecting permit-exempt wells in 1950, 1970, 1990, and 2007. Data are derived from well logs. Data doesn't include wells drilled and abandoned or every well that has been drilled.

Mr. Harris asked whether assumptions are factored in the data where a home may be located in the rural area with no history of a well in the same area. Mr. Davidson said the data is only reflective of data maintained by the department for permit-exempt wells through well logs and could include some assumptions of actual and undocumented wells that were classified as permit-exempt wells.

Mr. Davidson said the map hasn't been updated since early 2007. Lewis County has the fifth highest number of permit-exempt wells in the state.

Mr. Davidson reviewed some Attorney General Opinions (AGOs) beginning in 1997 that determined a group of wells drilled by the same person at approximately the same time is considered a single withdrawal. In 2002, in the case of *Campbell & Gwinn vs. Ecology*, the court determined the definition of "project" and "group. The court ruled that a group of lots in a common ownership where the developer is proposing to drill individual wells is one use and it's limited to 5,000 gallons a day.

The department's concerns center on developers skirting the law and impacting existing rights or impairing senior rights. Mr. Swartout asked whether senior and junior rights are recognized within permit-exempt wells. Mr. Davidson reported drilling an exempt well allows for the use equal to the right through the permitted process. Additionally, the same obligations apply including priority basis. Unfortunately, there is no case law, rules, or policy to guide issues pertaining to exempt permitted wells.

Ms. Willis commented that is of concern because it's perceived that DOE is stepping outside water law that was written with no case law to support a decision issued by DOE. That is the concern in that DOE is making up policy. She asked how DOE is addressing those assertions. Mr. Davidson replied it's addressed

through rule-making, which hasn't been done for permit-exempt wells. If the department considered rule-making it likely would center on several factors:

- Priority date
- Resolve questions regarding Campbell & Gwinn in defining a "project."
- Address metering

Mr. Stearns commented that PUDs are required to meter and that the issue of metering is of concern by owners of permit-exempt wells. What really is needed is better management of water resources.

Mr. Davidson said in some areas of the state where water is limited and there are impairment issues, such as in Kittitas County, it makes sense to try and manage the resource. One way is through documentation.

Mr. Davidson reported in *Kim v. Pollution Control Hearing Board*, the Washington Court of Appeals analyzed the industrial well exemption and issued an opinion that impacts all of the groundwater permit exemptions. The "industrial well" exemption in RCW 90.44.050 provides a groundwater permit exemption for any withdrawal of public groundwater for an industrial purpose in an amount not exceeding five thousand gallons a day. Thus, like the domestic well exemption, the industrial well exemption places a quantitative ceiling on withdrawals.

The Kims owned real property in Poulsbo that they used for both their home and their business, a commercial nursery. The nursery's components were a greenhouse, a display area of less than a half acre, and parking spaces for eight cars. The property was served by a well that was drilled in about 1965. The Kims took groundwater from the well for both their residence and the nursery. They used between 100 and 300 gallons per day "to directly water (via hand watering and watering wand) the plants that they raise and offer for sale to the general public." They did not have a permit to take water from the well. Ecology ordered the Kims to stop using well water for their commercial nursery unless they applied for and obtained a permit but did not order them to stop using well water for their residence.

A 2005 AGO determined that RCW 90.44.050 exempts withdrawals of groundwater for stock-watering purposes from the permitting requirement, without setting a numeric limit on the quantity of water withdrawn. The Department of Ecology does not have authority to impose a categorical limit on the quantity of groundwater that may be withdrawn for stock-watering without a permit. In certain circumstances, the Department of Ecology's statutory authority to regulate the use of water may affect or limit such withdrawals, just as it may affect or limit withdrawals for other purposes. An agency may not alter its interpretation of a statute in a manner that is inconsistent with statutory language and legislative intent to address changed societal conditions.

Attorney General Opinion No. 6 (2009) determined that watering a non-commercial lawn or garden is not included in the exemption for domestic use. DOE cannot impose limits different from those provided by statute by 'partially withdrawing' water. Authority to withdraw water from new appropriations applies to permitted and permit-exempt uses. The Interlocal Cooperation Act is not an independent source of agency authority.

Ms. Valenzuela asked whether the ruling on industrial uses applies to gravel mining. Mr. Davidson said it would apply if it's an industrial use. Ms. Valenzuela asked whether it's possible for the department to determine the amount of mining of gravel allowed based on the use of 5,000 gallons a day. Mr. Davidson said the department is only concerned with the amount of water used.

Ron Maul pointed out that gravel mining is considered a non-consumptive use. Mr. Davidson added that using water to wash gravel is limited to 5,000 gallons a day regardless of whether it's consumptive or non-consumptive use.

Mr. Davidson reported on the department's Water Smart Washington Online Forum. The goal is soliciting public opinions on the issue. During the week of October 4-10, the online question is, "Should state groundwater code be amended to allow reductions in the maximum amount allowed that can be withdrawn in those areas where there is not enough water to go around?"

Members offered comments on the question.

Ms. Hempleman invited members to participate in the online forum and provide comments.

Mr. Harris commented that it's been argued that more water rights are issued than current water availability. If the department considers those numbers, then the state should have capped use based on reality rather than formality.

Mr. Swartout asked whether the department will be promoting legislation on permit-exempt wells in the 2011 legislative session. Mr. Davidson said the forum questions were developed to assist the department in developing its legislative package on the issue based in part on the responses received.

Mr. Stearns commented on DOE's backlog of processing applications for water rights. Mr. Davidson shared information on the complexities of the process.

Agenda Items for October 22, 2010 Meeting

- Presentation by One Voice regarding storage facilities
- Presentation by Northwest Steelhead and Salmon Conservation Society
- Draft Letter to DOE regarding stream gage removal
- Draft Letter to Chehalis Basin Partnership Membership
- Update on Watershed Coordinator's Work Plan

ADJOURNMENT

With there being no further business, Chair Canaday adjourned the meeting at 11:58 a.m.