LDOC Meeting Notes
April 11, 2006
Ellensburg

DOC members:
Senator Morton, Representative Pettigrew
Jerry Buendel, Steve Bloomfield, Lynn Bahrych, Karl Amidon, Dave Secrist, Melodie Selby, John Larson, Dan DeGroot, Substitutes: Deb Davidson (WSU), Suzanne Skadowski (EPA), Mike Kayser (WA Fryer Com.)
Stakeholders:
Bob Lee, Meg Van Schoorl, John Charba, John Stuhlmiller, Ed Field, Ron Reyer, Dave Stiner, Jay Gordon, Stu Trefry.
WSDA staff:
Lee Faulconer, Nora Mena, Laurie Crose, Ginny Prest, Linda Condon
EPA: Gary McRae

Decisions:
By vote - recommend funding request from penalty account funds for $25,000 to WSU as part of match for NRCS grant proposal for phosphorus recovery and recycling to crop fields project.

By general agreement
1. Pursue legislation in 2007 to establish authority for WSDA to be able to apply for the NPDES CAFO program. Develop as agency request legislation to be in final form in the fall so legislators have it in hand before session starts. (Agency request legislation needs to be to OFM by September 29, 2006)
2. Limit agency request legislation to what is needed for delegation of the program to WSDA.
3. Continue to be pursue other livestock/WQ issues related to non-permitted, non-dairy operations but outside of the delegation legislation. Intention to address these issues with a target date may be included in the delegation legislation.
4. Balance incorporating appropriate federal rule details in statute and others in rule for flexibility.
5. Next meeting: May 24th in Mt. Vernon
    a. WSDA to draft portion of legislation addressing delegation, work with sub-committee of Lynn Bahrych, Jay Gordon, Jack Field, Ed Field, John Larson.
    b. Review with AAG and Gary McRae prior to sending to rest of Committee for further review. Include legislative staff in review of draft. Draft for committee discussion should be sent out well before the May 24th meeting.
    c. Next meeting will address items in the work plan including more details and agency roles.

Other Action Items:
1. Melodie will provide David Secrist with water resources contact regarding the question: When does water used under a water right become state waters again?
2. WSU will provide information on the phosphorus grant project for the per cow/per day cost basis by the end of the week.
3. Melodie will get information on the agricultural exemption for run-off related to the permit.
4. People with questions on the federal CAFO rule, status and implementation, can call Gary McRae at EPA: 208-378-5765, mcrae.gary@epa.gov.

General notes:
The remainder of these notes includes the array of Objectives stated by participants at the beginning of the meeting, and summaries of discussions and notes taken on the flip charts. Due to the wide ranging discussion, comments are grouped by general topic and may not be in the actual order of discussion.

At the end of these notes are the two posters on the wall with some explanatory notes with each. The two power-point presentations made are attached to the notes as well.

Objectives: (All specific comments included, not summarized, additional comments from other participants expressed general support for these objectives)

1. Legislation done and move the permitting authority to WSDA – move on to solutions
2. Need to get delegation to WSDA ASAP and complete the transition to one agency. Then agencies can spend their resources on water quality protection activities
3. Legislation that all can support is completed. Get a workable program
4. Understandable legislation that leads to delegation
5. Legislation approved.
6. Legislation is important that meets the goals of WQ protection and sustainable agriculture.
7. Accomplish legislation that is useful for livestock industry & other stakeholders
8. Keep a clear target, what all need to shoot for.
9. Water quality and public health protected and find a balance without economic damage to producers and not over-regulated. Sustainable.
10. Get legislation moving as it is an issue for dairy and feedlots. Cow'/calf producers more uncertain. Move the process toward protecting water quality
11. Get legislation done & then move onto education to producers. Continue research to help preserve industries and water quality.
12. Monitor progress of legislation and program
13. Share information with poultry producers
14. Back on road to handle livestock in Washington state effectively
15. Cause as few road bumps throughout the process. Try to identify those road bumps early such as possible lawsuits, interpretations.
16. Support Program & the committee. Education to field after legislation.
17. Legislation complete so that LNMP can be managed more effectively

Livestock Nutrient Management Program update: Power point presentation included with these notes.

Discussion on LNMP penalty account grant program and funding request for WSU phosphorus proposal:
Grant program needs criteria and process and keep focus on research and education projects that will aid producers in complying with water quality protection. Issuing grant funds without a formal, public process is of some concern but not serious at this time. Draft program exists but without final details or plans to staff management of a formal process for now.

> **The WSU grant proposal: (committee recommended granting funds)**
> Crystallizing technology to remove 50% of the phosphorus from manure so that it is easily concentrated and transported. Working to increase removal towards 90%. Working with dairy farms and two alfalfa fields to recycle the phosphorus back into the alfalfa crop production fields

and thus remove the phosphorus from the dairy basin. It is easier to transport when phosphorus is concentrated. Can pump manure underground half-mile to digester. Need to work at scale appropriate for individual operations. Need to develop cost effective process. Education and research is an important issue for dairy producers. The project will benefit farms and the environment. Project is supported by dairy producers. This will be a 4:1 match with NRCS funds.

Water Quality 101:

Melodie Selby provided a presentation on the Clean Water Act, the state Water Pollution Control Act and the NPDES/state permit program at Ecology. Her power point presentation is included with these notes and has a lot of useful information in it. Areas of particular interest or discussion are noted below:

1. Water Pollution Control Act, Chapter 90.48 RCW, applies to all people and activities all the time.
   - Concern expressed that 90.48 provides a permit to pollute. The permit allows inputs into the water with certain conditions so that pollutants will not impact water quality. Permits are only for point source. Non-point sources must comply with no discharge requirements but no permit is needed.
2. Ecology is delegated by EPA to implement the Clean Water Act rules in Washington. Under those requirements: Ecology sets water quality standards, assess the condition of waters and lists them under CWA section 303(d), develops TMDLs and water clean up plans for listed waters, administers the NPDES permits, and other related activities.
3. Salt water vs. fresh water. EPA is reviewing Ecology's standards for salt water / fresh water. Some changes have been approved and others are under revision.
4. Tribal waters: water of the state, water of the US. Two or three tribes are working on water quality standards that would apply within their reservations. Discussions are underway to determine how this will affect upstream neighbors if the standards are more stringent that upstream state standards. Discussion also includes just where the standards would be applied.
5. State and federal program implementation uses discretion in the use of available resources to address priority issues and activities. This includes looking at the scale of impact and the level of abuse as well as cumulative impacts.
   - Questions were raised on how non-CAFO sources are addressed: agriculture pesticides & other inputs, water fowl, recreational users (outboard motors), swimming with sunscreen ointments, gold mining. Ecology works with Fish & Wildlife for protecting natural conditions in reference to waterfowl & geese. Ecology doesn't have any authority over fish and wildlife. EPA is currently looking for suggestions on recreational uses that contribute to water pollution.
6. State permit requirements must meet All Known Available and Reasonable Technology (AKART). If that results in water body not meeting water quality standards, then requirements changed so that water quality standards will be met (no additional degradation). Federal CAFO permit requirement is for no discharge (except under very specific conditions).
7. Other CAFO permit related items:
   - How can we wait for EPA CAFO regulation revisions? Final rules may still be along way off. One advantage to a 5 year permitting process is that permits can be updated at least every 5 years New permits would be issued with revisions to meet federal changes as appropriate.
   - Agriculture exemption for run-off: the federal clean water act includes an Ag exemption for run-off. The state law doesn't distinguish this but follows EPA's definition and by using the point and non-point distinctions for surface water.
   - Ag storm water – if applying at agronomic rates a discharge is a violation. This is still under discussion as part of the federal CAFO rule revision.

- Wintering operations – feed & watering away from streams. EPA hasn't defined when a situation contributes to water quality as it depends on the individual circumstances.
- Small operations will first have technical assistance to determine whether they need a permit. If a permit is appropriate and operation doesn't comply with requirements, it would then face enforcement, enforcement could lead to the requirement to apply for the permit.
- Operation with a permit can discharge under certain weather or operational conditions. EPA and state determine whether the discharge is significant. Situation where rain, snow, water-soaked ground created conditions leading to potential discharge by dairies. EPA determined that it was a chronic problem but tribe didn't agree – case by case is difficult and hard to approach.
- Permits will hit producers before the legislation. Substantial change to the permit. Ecology not able to negotiate outside the public comment period. Ground water issue would be a 'substantial' change for producers. If ground water is at issue, that will lead to a community issue not a producer issue. Ecology will have permit language in June 2006.

8. CWA requires that public notice and review be made when a draft general or individual permit is developed. State permits require public notice be made when an application for a permit is received. Since federal permits are issued jointly with state permits, public notice is given both when the application is received and when the draft is available.
9. Clarification was asked about how standards apply to waters used under an individual water right – when is the water private vs. state waters? (an action item)
10. What about interaction of air pollution affecting water quality? EPA is working on mercury. Idaho has done some work on this issue as well.

Water Quality Continued with EPA Perspective:

Gary McRae is the CAFO contact for EPA's Region 10 and administers the CAFO program in Idaho. Idaho is not a delegated state, so EPA is responsible for the NPDES and CAFO programs. EPA and Idaho have an MOU so that Idaho implements the dairy CAFO fieldwork with some EPA oversight. They also do the beef program but there is currently more oversight and involvement by EPA in that program.

Gary talked about the current status and issues of the CAFO rules under revision and various issues related to implementation of the CAFO program.

- Revision of the federal CAFO rules is nearing completion. They anticipate it will be out for public review in June or July. It is not possible to anticipate how long the public review and response process will take before the final rule revisions will be issued. EPA will go ahead and issue their general CAFO rule for Idaho soon. It will be the first EPA CAFO permit issued.
- There are still gray areas in the CAFO permit and rules and these will remain even after the revised federal rules are put out for review.
- Some new issues have come up in the course of the rule revisions. Where a large CAFO does not need a CAFO permit, they may be required to get a stormwater permit to address the runoff from the production area. Since NM Plans now will be a part of the permit, changes to the Plan will require modification of the permit. How this will work to provide appropriate flexibility for the operators and still maintain the integrity of the permit is uncertain. The plans may need to be written to account for alternatives and clearly identify when/why different ones will be applied.
- EPA typically does not penalize an operator the first time there are discharges but will work through compliance actions. The exception would be where the discharge and impact was severe.

- CAFO Small and medium sized operations – EPA encourages that these operations not get into the permitting process but that they address needed water quality protection measures. If operations address issues and the pollution is not significant then no permit is needed.

Discussion About Possible 2007 Legislation

In the course of discussing the three main legislative questions for the meeting there was some discussion on the background of why the dairy/CAFO program shift from Ecology to WSDA happened in the first place.

- The original purpose of the legislation – what went wrong? Why did it come to WSDA?
  - Jay Gordon gave the dairy industry perspective: Some Ecology inspectors were doing more than the dairy nutrient inspections, they raised other issues such as to water rights or focussed too much on minor details such as hot water heaters and appeared to particularly target certain facilities.
  - There was a lack of program inspection focus in spring 2002. A dairy was told they could not apply manure to seasonal wetlands that had been farmed since 1882. The dairy producer had a heart attack. Two other dairymen in the area, also had heart attacks shortly after each was inspected by Ecology. Producers felt Ecology used scare tactics as enforcement.
  - At the same time agencies were told to look at ways to reduce budgets. Ecology proposed cutting the dairy program. However, the dairy producers wanted effective enforcement to check the neighboring farms to assure all dairy producers were following same regulations. They also wanted educated inspectors who understood farming as well as water quality. Ecology had so many inspectors pulled to other pollution sources and away from dairies. Wanted a focus solely on livestock producers.
  - Legislators supported a focused inspection program with $750 k to support 3 inspectors with 1 as lead, an assistant and 1 program manager.
- Ecology was beginning to address these issues before the legislation moved it to WSDA. But it was too little, too late.
- EPA commented that other states are moving the CAFO programs to their departments' of Agriculture. This could be a result of resource issues and need for consolidation.
- Is this battle over? There continue to be concerns by some for moving the CAFO NPDES program out of Ecology.

1. <u>Go for legislation in 2007 or wait?</u>

- General agreement that legislation should be prepared for the 2007 session
- Prior legislative intent (ESSB 5889) was to move the entire dairy/AFO/CAFO program to WSDA. Developed this committee to guide moving the pieces to Agriculture and oversee the LNM Program and the grant program.
- Agency request legislation will need to go to OFM by August and to the Governor by September
  - Need to get this into the hands of legislators by the first week of December so they can be well informed before session. Prepare information well in advance so that we can clearly explain our position then it will only need to be a reminder for legislators during session.
  - Needs support from Director Loveland, OFM and Governor.
  - Need broad stakeholder support
- Final CAFO rule language won't be available for some time but substantial areas will not change.

    - EPA definitions should remain constant and could be included in the legislation. The rule revisions address issues brought up in the 2nd district court.
    - Federal rules develop overtime. We will need to address those changes overtime as well.
    - It is easier to amend rules than laws.
- Streamline to one program at WSDA rather than split/overlapping program
    - Proper implementation of Clean Water Act currently requires redundancy & paperwork for the two agencies
- Next steps: craft draft language. What were problems with last language? A lot was hammered out during the 2005 legislation.
- The biggest hole in this process is that we need something in writing to discuss and then object or support the various parts of the proposed legislation.
- Non-agriculture legislators are easy to flip with 'current' mistrust issues – Ag / Ecology / EPA
    - Trust issue – hopefully beginning to be resolved with Lynn's representing the environmental community.
- Identify parts of the bill language brought in from existing Ecology law.
- Proposed language to stakeholders, attorneys & AAG before full committee review.
- Small workgroup or out to all committee members?
- Attorney general staff for assistance on language?
- Is it possible to have an AAG attend the next meeting?
- Need to keep contacting and working with tribes and environmental interests.

2. <u>Should legislation address only the delegation elements or a broader livestock program?</u>

- If only establish CAFO program at WSDA, then would continue to split the livestock program between Ecology and Agriculture.
- Keep focus on fixing problems.
- AFO, pasture-based operations, animal feeding operations, CAFOs and dairy. Move first on the initial delegation and then add other pieces later?
    - CAFO is the bigger piece!
    - If broader in scope statewide it could all be handled under the Dept. of Agriculture, which is the intention of the delegation and 2003 legislation.
    - Non-commercial livestock operations (Utah uses a compliance checklist which is held by the Farm Bureau in Utah)
    - The experience with the dairy program is that it was an across the board effort with broad support. How to duplicate this for the broader scope? Keep all stakeholders on board.
    - Something in writing within the 2007 CAFO bill to note the other broader livestock program scope that would be phased in.
    - Start with what's needed for the EPA delegation
    - What are the water quality problems now with livestock?
        - The legislators gave the lead to WSDA, agencies need to take leadership and responsibility for what they can do and do it.
            - Example of Beaver Lake at headwaters for Spokane River. Thirty mile canyon with so many dams that the lake flooded. Locals, Ecology, Fish & Wildlife met. Who's got the lead on this? Flooding then affected onsite septic systems, which then involved the Dept.

of Health. No agency wanted the lead & responsibility. Conservation Districts agreed to lead if funding was provided.

- Policy calls on what is state program for non-commercial livestock – scope, extent, funding & timeline?
- A broader bill is more difficult. Support doing two bills but not at the same time.
  - How to support the 'beyond CAFO' scope? Would we use CAFO permit funds to subsidize other long-term scope activities?

- Need for clarity around delegation with specifics of what it will look like in scope and law.
  - WSDA needs delegation for CAFO to review and determine compliance on an AFO to determine if it is a CAFO
    - Inventory to address CAFOs and continually improve on the identified inventory needed ASAP according to EPA
    - Need to get idea of resources needed to develop and maintain the inventory. There should be a stronger sense of the resource needs later this year.
    - There would be a need for additional resources for the various phases, which will determine the speed we are able to address the broader scope of AFO/CAFO operations.
- Clear determinations needed for authority for pasture-based operations and animal feeding operations.
  - Small producers will involve local government officials.
  - The department of health is missing from this committee
- EPA delegation to WSDA (NPDES)
  - Staff resources and expertise demonstrated at time of application. First law, then rules and then application process with proof of resources
  - Need clarity on distinction between roles of Ecology and WSDA
    - Unable to move forward with permits until WSDA gets delegation?
  - Who at EPA will make the decision on delegation?
    - Mike Gearhart at Region 10 but will interact with Headquarters on decision

3. <u>Where to put CAFO program details? Which parts in law and which parts in rule?</u>

- Would need to change the statute to adopt federally revised law or give WSDA authority to adopt in rule the revised federal EPA laws and rules.
- Put definitions in law; other data in rule.
  - Reference to the federal law might limit the 'constant change' in legislation.
- Possible rule language should be provided to legislators so they can see as they are reviewing legislation
- NRCS standards, role of conservation districts in legislation so that these are not changed easily by rule making process.
- If left to WSDA rule making, state officials come and go and concern about doing too much through rules.
- State of WA is not an agriculture friendly state. It needs to be in statute.
- Could require a 2nd signature from governor after rules are adopted to assure the rules follow the intent of the legislation.

Poster #1 – List of the potential for different types or levels of Nutrient Management Plans.

WSDA, Ecology, Districts and NRCS are talking together in order to ensure that plan writers (Districts or Consultants) know what to include for each. Intent is to keep as simple as possible so the expectations are clear. Intent is to use the same basic elements for each, but address each relative to the size and type of operation. Some elements will be mandatory for a type of facility such as a CAFO, but optional for other types. Still under discussion with the technical agencies.

NRCS Comprehensive NMP
CAFO / State Permit NMP
State Dairy NMP
AFO NMP
Small Farm NMP

Poster #2 – Table of permit and regulatory programs applicable to livestock operations in Washington.

	Dairy	**Beef, Poultry, Horse, Swine & Others**
Federal CAFOand state permit program: ♦ Specific requirements ♦ Inspections Affects all Large sized AFO livestock facilities with discharge; all other AFOs with discharges that are not addressed Current state funding for technical assistance and cost share		
	State dairy program: ♦ Specific requirements ♦ Inspections All licensed dairies Past funding for technical assistance and cost share, some funding still available	No specific state program but items below apply as appropriate: ♦ <u>Prohibition to pollute applies to all</u> ♦ Shellfish Districts ♦ TMDL Focus ♦ Critical Area Ordinance All livestock operations, pasture or AFO Current state funding for technical assistance and cost share