

Lake Whatcom Stormwater Utility Advisory Committee email discussion

Dates: June 20-22, 2018

Subject: Questions for purpose of discussion - prompted by issue papers "Rate Structure" and "Fiscal Policies"

From: L.W. Brown [<mailto:lwb@mac.com>]

Sent: Friday, June 22, 2018 12:48 PM

To: Skip; todd@zoodle.com; Nathaniel Washington; Thomas (Ryan) Dales

Cc: Robin Klein; Cathy Craver; Gary Stoyka; Ingrid Enschede; Jason Porter; John Ghilarducci; Joshua Leinbach; Kraig Olason; Tage Aker; Todd Donovan

Subject: Re: Citron: Questions for purpose of discussion - prompted by issue papers "Rate Structure" and "Fiscal Policies"

I'd like to add a clarification to Skip's analysis:

>"We are being asked how to pay for solutions that the County has already decided upon."

Actually, as I understand it, the County has **not** yet decided on the specific projects, despite the Herrera report. This is part of what makes decisions difficult for us, and makes the process hard for citizens to understand: there simply cannot be any more than a very rough estimate of expected funding size.

To help, it is possible (tho I'm not taking any position in email) that we can put a "stake in the sand" on needed revenue just to create a fee-allocation mechanism, allowing us to at least conceptualize & discuss the potential impacts of the burden among any differing classes of payers that we might consider. If we take that route, we would need to explicitly, publicly express our understanding that the Council is quite likely to change the **actual** "final" amount to be collected by that mechanism.

The one thing we can count on is, with regard to TMDL implementation, is the requirement to:

>"remove 87% of the phosphorus that is being generated in excess of what forested lands would generate."

That is something that **can be measured**, and is part of the reason the University has been establishing specific measurement data for decades. So, regarding the issues of fairness and "fee credits" (recognition of work or success), I personally will always refer to that independent data as it now exists, and as it is very likely to continue being created in order to help demonstrate **actual** compliance (as opposed to *estimated* or *modeled* compliance).

Another item I personally believe is critical to emphasize for public understanding, *in plain language*, of the history & process is: Whatcom County residents risk losing the legal right to drink from the Lake if the State and Federal governments are not satisfied that the County can meet the TMDL implementation plan—the County **must** make an effort to show adequate funding of whatever actions they undertake. (Unless of course a court stops the whole process—but that is a potential result of litigation no one seems willing to fund, and which is also very likely to be a **total** waste of money & time.)

-Larry Brown

On Jun 22, 2018, at 9:43 AM, Skip <harryjohnsen@comcast.net> wrote:

Good point. Names are important. They can create unjustified expectations or misunderstandings. The resolution appointing us refers to the need for a “special funding district” but then notes the Council has established the Stormwater Utility Service Area to serve that purpose. From now on, it shall be “Stormwater USA”!

On the topic my earlier little essay on the Committee’s role or task, here is one modification. Resolution 2018-008 authorizes the Committee to provide “stakeholder input and recommendations . . . of alternative funding solutions and the development of a recommended rate structure” needed to collect “revenue to fulfill the Total Maximum Daily Load (TMDL) implementation plan including the Lake Whatcom Comprehensive Stormwater Plan.” That is a bit broader than my conclusion about addressing only the costs of retrofits within the “developed areas”. Still, we are not being asked how to fix the problems. We are being asked how to pay for solutions that the County has already decided upon. Despite the name the Council gave to our committee, we are not a general “stormwater utility advisory committee”. We are designated as a stormwater utility funding and rate structure advisory committee. Everything else, interesting as it may be, is beyond our scope.

Sent from [Mail](#) for Windows 10

From: [Todd Citron](#)
Sent: Thursday, June 21, 2018 10:37 PM
To: 'Skip'
Cc: 'Robin Klein'; 'Cathy Craver'; 'Gary Stoyka'; 'Ingrid Enschede'; 'Jason Porter'; 'John Ghilarducci'; 'Joshua Leinbach'; 'Kraig Olason'; 'Laurence Brown'; 'Nathaniel Washington'; 'Tage Aker'; 'Thomas (Ryan) Dales'; 'Todd Donovan'
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Thanks Skip.

I think we might all want to get in the habit of not using the term “district” to describe the utility, as I think that this implies some kind of entity was created; rather it is a service area, so it is “Lake Whatcom Stormwater Utility Service Area” as stated in the original ordinance. I was using the term “Stormwater District” for years up until now, so it is a challenge for me, too, to make the change...

Cheers,

Todd

From: Skip <harryjohnsen@comcast.net>

Sent: Thursday, June 21, 2018 10:39 AM

To: todd@zoodle.com

Cc: Robin Klein <RKlein@co.whatcom.wa.us>; Cathy Craver <CCraver@co.whatcom.wa.us>; Gary Stoyka <GStoyka@co.whatcom.wa.us>; Ingrid Enschede <IEnsched@co.whatcom.wa.us>; Jason Porter <jporter@cob.org>; John Ghilarducci <johng@fcsgroup.com>; Joshua Leinbach <JLeinbac@co.whatcom.wa.us>; Kraig Olason <KOlason@co.whatcom.wa.us>; Laurence Brown <BODbrown@SuddenValley.com>; Nathaniel Washington <natwash46@gmail.com>; Tage Aker <tagea@fcsgroup.com>; Thomas (Ryan) Dales <ryan.dales@wwu.edu>; Todd Donovan <TDonovan@co.whatcom.wa.us>

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Fellow Committee members, staff and consultants:

At the public comment sections of each of the Committee meetings held so far there have been questions or comments along the lines of: "Has the County Council directed the committee to consider only a fee on developed properties?" "Can the Committee recommend other options?" "Is this all a done deal and you are only going through the motions?" "Why are you only looking at developed property when the TMDL report itself identifies the Nooksack diversion as the largest source of phosphorus inputs into the Lake?"

When we (Committee members, county staff, consultants) answer these questions with good faith, well-meaning assurances that "nothing has been decided" or that "all options are on the table" I think we are unintentionally misstating or overstating the role of the Committee and the task we have been assigned. It is my understanding that much has been decided and that our role is limited.

Based on what I have learned about the process and background so far, here is what I understand our task to be (**Please** correct me if I misunderstand any of this):

Under the state implementation of the federal Clean Water Act if a body of water is listed as failing to meet particular water quality standards (the 303d listing), the state and affected local governments must come up with a plan to address both point sources (like a discharge pipe from a chemical plant) and non-point sources (like the diffuse runoff from all our homes, roads and other development). Rather than requiring a specific allowable "discharge" from each of our "non-point" properties, the regulators set an aggregate load for all the properties as a group. This aggregate is the Total Maximum Daily Load (TMDL) and it describes a result or goal, not a method of achieving the goal. But it may contain recommendations for ways to reach the goal. The TMDL is then included in a permit that tells the County that it must achieve the goal by a certain date. This is the National Pollutant Discharge Elimination System (NPDES) permit (or maybe it is a "stormwater permit"; it doesn't seem to matter). In addition to setting the TMDL, the Permit requires the County to adopt and implement a plan to reach the TMDL goal. At that point the "recommendations" of the TMDL document effectively become requirements of the Permit.

The conditions for the Lake Whatcom Permit have been negotiated between the County (and Bellingham as well) and the state Department of Ecology. One of the conditions (currently a "recommendation" but soon to become a Permit requirement) is: "The city of Bellingham and Whatcom

County need to develop plans to retrofit existing development to remove 87% of the phosphorus that is being generated in excess of what forested lands would generate.”

Lake Whatcom Watershed Total Phosphorus and Bacteria TMDLs, p.16

This is where the Committee comes in. We are asked to develop and recommend a rate structure that will fund the currently unfunded portion of the cost of implementing an existing plan to retrofit *existing development* to remove 87% of the phosphorous that is being generated by those developed lands.

That's it. We aren't being asked to recommend renegotiation of the TMDL and Permit to shift the focus to undeveloped lands or to the Nooksack diversion. We aren't being asked to come up with a different plan or better method to address phosphorous pollution. There is a plan (the 2017 Lake Whatcom Comprehensive Plan Stormwater Capital Improvement Update – also called the “Herrera Plan”). Even though the County uses a variety of taxes and resources contributed by all County property owners (thus greatly reducing the cost to watershed property owners), there isn't enough money to fund the plan. The Council has decided to form the Stormwater District as a means of funding the shortfall. They appointed us to recommend to them a fair and equitable way to do that. Presumably there are lots of ways to structure the rates to accomplish that. The rate structure itself is not a “done deal”. The Council hasn't instructed us to only charge the developed properties, but it has told us that the problem to be addressed is limited to the discharge from those properties. That is a “done deal”. It is a permit requirement, or soon will be. There undoubtedly are other problems in the watershed, including other sources of phosphorus, but we have been asked to address only a portion of the problem: the portion that the scientists tell us is generated by the way we have developed, occupy and use our properties. I think that is probably why the Council appointed a citizen group rather than a panel of scientists or professionals. We are unwittingly the source of a problem we neither intended to create nor even knew might exist when we bought our properties or built our homes. But it is now a recognized problem and the Council wants to know how we think the costs of addressing it should be allocated. There are plenty of other problems to solve but we have been asked only about this one.

Again, if my reading of this stuff is wrong or too narrow or just plain silly, please let me know.

Harry Johnsen

From: "Todd Citron" <todd@zoodle.com>

To: "Robin Klein" <RKlein@co.whatcom.wa.us>, "Cathy Craver" <CCraver@co.whatcom.wa.us>, "Gary Stoyka" <GStoyka@co.whatcom.wa.us>, "Harry (Skip) Johnsen" <harryjohnsen@comcast.net>, "Ingrid Enschede" <IEnsched@co.whatcom.wa.us>, "Jason Porter" <jporter@cob.org>, "John Ghilarducci" <johng@fcsgroup.com>, "Joshua Leinbach" <JLeinbac@co.whatcom.wa.us>, "Kraig Olason" <KOlason@co.whatcom.wa.us>, "Laurence Brown" <BODbrown@SuddenValley.com>, "Nathaniel Washington" <natwash46@gmail.com>, "Tage Aker" <tagea@fcsgroup.com>, "Thomas (Ryan) Dales" <ryan.dales@wwu.edu>, "Todd Donovan" <TDonovan@co.whatcom.wa.us>

Sent: Wednesday, June 20, 2018 10:52:23 AM

Subject: Citron: Questions for purpose of discussion - prompted by issue papers "Rate Structure" and "Fiscal Policies"

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1:

If the initial impetus for funds is to meet the budget shortfall and to fund "Anticipated New Program Costs" (as described in 2018-06-06 presentation and the "Lake Whatcom Stormwater Utility Funding Study Summary"), it puts the long-term planning of the utility out of context with the whole program. For example, how do we determine capital funding and reserves, and replacement reserves as just a slice of the total projects and assets related to the whole stormwater program?

2:

Is there is a calculation for the amount that is just related to the budget shortfall areas (Capital Maintenance, Reduced Grant Revenue, HIP, Enhanced Outreach)? If so, and we build our formula for rates on that domain, then rates are confined to that domain. That seems potentially limiting and administratively burdensome. Is that the best way to approach this task? Maybe that is just a good place to start. Or maybe I'm just misunderstanding the task...

3:

In lieu of this limited domain for rate structuring, how do we determine and incorporate administrative costs to be covered by the rate?

4:

Is there an expectation to do rate studies on a regular basis going forward?

5:

How will funds be tracked within the Public Works department in a way that assures rate payers that funds are being directed and used for LWSU service area projects?

Thanks,

Todd Citron
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