

MARYSVILLE CITY COUNCIL SPECIAL MEETING MINUTES

00056

February 16, 1999

7:00 p.m.

Council Chambers

Present: Dave Weiser, Mayor

Councilmembers:

Donna Wright, Mayor Pro Tem

Shirley Bartholomew

NormaJean Dierck

Brett Roark

Donna Pedersen

Mike Leighan

Otto Herman

Administrative Staff:

Dave Zabell, City Administrator

Gloria Hirashima, City Planner

Ken Winckler, Director of Public Works

Wanda Iverson, Recording Secretary

Roll Call: Mayor Weiser asked the Recording Secretary to note those present.

Imminent Adding of Chinook Salmon to Endangered Species List:

Mayor Weiser introduced Bob Drewel, Snohomish County Executive to give a brief presentation.

Mr. Drewel outlined committee makeup regarding this issue, including Snohomish County Tomorrow and the Tri-County Assembly (made up of elected officials from Snohomish, King and Pierce Counties). He noted the three county executives have been working together on runway and sound issues and they thought it was a good way to do business. He also noted that "water has no boundaries."

He reported that the National Marine Fisheries Service (NMFS) is likely to list the Puget Sound chinook as threatened under the federal Endangered Species Act (ESA) March 9 or 10, 1999. To develop an effective response to this listing that works at a local level, Snohomish County has joined together with over 400 public and private entities in the Central Puget Sound region. This response effort, which covers Snohomish, King and Pierce counties, is called the Tri-County ESA response effort.

Soon after the March 1999 listing, NMFS will develop a federal rule (called a 4(d) rule) that defines which actions harm chinook and which actions do not. The Tri-County group is developing an early action salmon conservation package that could be acknowledged in the federal rule. If the Tri-County effort is successful, local government operations could continue without being in violation of the act as long as the action package is diligently implemented.

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With regard to the early response and recognizing the short time before the listing, he said he doesn't expect jurisdictions to produce large written documents with early actions. However, a brief description of salmon conservation actions that are funded and are underway could help strengthen the regional early action package. The types of actions that are most frequently identified by others in the Tri-County effort include capital projects for salmon restoration, land acquisition for habitat protection and specific commitments to participate in multi-jurisdictional watershed-based salmon conservation planning. Some jurisdictions may propose improvements to regulations, enforcement or other programs. If Marysville is interested in providing information for the initial package, he asked for a brief description of the action, identify the sponsoring jurisdiction, and list of the benefits for chinook. Costs may also be identified. Submittals should be received by Snohomish County by close of business on February 26.

This initial early action package represents the beginning of a discussion with NMFS about appropriate salmon conservation measures and even if Marysville cannot identify early actions at this time, there would be opportunities with longer term efforts to develop watershed-based salmon plans and more comprehensive salmon conservation measures, he said.

He spoke about the "Governor's Bill" and said he will be meeting with the Governor 3/1/99 to discuss this. He encouraged cities within the Tri-County area to work with the major funding sources as well as Washington, D.C. He noted money has already been received for the region from Washington, D.C. He also spoke about other resources such as 14 FTEs the county has hired, as well as contractors and scientists who would be available.

He gave the contacts at the Snohomish County level as Joni Earl or Meg Moorehead, noting he is looking forward to Marysville's participation in presenting an early action response to NMFS. He also noted this is a new experience for everyone, it's a tough situation and the County needs to get down to brass tacks, so to speak and give early response actions that we can assure NMFS can be done. He gave some examples: Capital projects, land acquisition, specific commitments which have been made, eg. the Poortinga property in conjunction with the Tulalip Tribes, proposal for future conservation, long term efforts.

He handed out a list of upcoming meetings regarding this topic:

- Stillaguamish Water Recovery Meeting - 2/25/99 at Stanwood Grange Hall
- Salmon Forum in Monroe 2/26/99

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- Snohomish Watershed Salmon Recovery Stakeholders Meeting
3/4/99 at the Monroe High School.

He said he would like Marysville's response by 2/26/99 and then they will forward a combined letter to respond to NMFS.

Mayor Weiser asked if there will be recognition for past efforts, eg. with the Tulalip Tribes cleaning up Cougar Creek which empties into the Stilly.

County Executive Drewel said yes, there will be recognition for past efforts, for example, Senator Murray and Congressman Metcalf got involved in the Straits Project and that can be listed for Snohomish County.

Councilmember Bartholomew noted the Oregon program got shot down in federal court and County Executive Drewel said it's still being litigated. They negotiated on a plan that was all volunteer based and NMFS backed them up but a federal judge overruled the agreement, NMFS and the State of Oregon appealed. He went on to say this is not a people vs fish battle and he feels confident this can work.

He noted this is an opportunity for us to work together as a region; this same strategy was used in working on airports and Puget Sound so there is hope here, but it is a huge project.

Councilmember Roark asked about punitive action and County Executive Drewel said there would be but only if there is no response; you would not get any funding until something is worked out.

Councilmember Roark asked if there was any protection for local authorities and County Executive Drewel said yes, as long as there is meaningful participation by the local jurisdiction, but that's a call by NMFS.

Councilmember Roark asked about individual groups "throwing a wrench" into the plan and County Executive Drewel said they have to have standing and the Endangered Species Act spells out about what questions would come up in court. As far as a direct effort, he said he does not know but the likelihood of having to go to the federal government for a building permit is low and probably there are going to be buffers set by the scientists, eg.

County Executive Drewel noted the Governor's position is that 60% of our efforts should be towards preservation and 40% towards rehab.

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Mike Papa asked about minimizing regulations and County Executive Drewel said no, NMFS wants to see enforcement in place or they are not going to recognize the rules.

Bruce Tipton asked for comment on the Quilceda/Allen Creek Watershed and Transfer of Development Rights and whether these things would improve Marysville's chances of having a plan recognized by NMFS.

County Executive Drewel said if it's something that can be defined then it can't harm the fish. The main message is to have a general approach in this so it's easier to administer by the feds when they see a broader approach.

County Executive Drewel then left at 7:40 p.m.

Mayor Weiser then spoke about school projects, such as cleaning up streams, noting that up until now, we have been talking in generalities but we can start getting specific now. He spoke about the 4 Hs: Habitat preservation, Hatcheries, Harvest and Hydro Power. Habitat preservation vs Rehab would be a good first step. He also noted that "best available science" has a different meaning to different people. He pointed out that if a stream runs east and west, does it need shade trees on the north such as might be required in a buffer? And he said there are other things that can be done to save habitat.

He spoke about River Basin Planning Areas and the need for surety of planning, funding and compliance in submitting proposals. He said Washington State has a planning group that will recognize buffers, etc., habitat for each area for chinook and said NMFS wants projects based on science, reasonable assurance that they will work, and monitoring. He gave as examples the Hood Canal and Olympic Peninsula.

He also noted that we have the ability to sue who is responsible for the treaties if they are not meeting their commitment. He said with the spotted owl there was easier control, it was not migratory and the species as improved and the spotted owl can live in places other than old growth forest. But with the chinook, we don't have a lot of control over the waterways they might go to. He said a Senate Committee received a report on community based projects, eg. "Long Live the Kings" which seemed to have support in the House. So there may not be a salmon bill coming out of Olympia this year, he said, as there doesn't seem to be a lot of agreement between the feds and the State.

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Marysville has been doing some things that will help this process such as developing a stormwater ordinance, a Sensitive Areas Ordinance, Shoreline Management Act. We will have to look at the enforcement issue to make sure once rules are in place, they are carried out, he said. He added that a lot of times we rely on citizen input.

Councilmember Leighan asked about the Tulalip Tribes treaty and fishing rights and whether they are willing to give some of those up.

Mayor Weiser said they share responsibility on the harvest and hatchery issues. There has been some talk about fishing declining in places such as the mouth of the river, for example.

Councilmember Herman noted the probability of self regulation is high because it is in their best interests.

Mayor Weiser noted that some chinook runs have increased it has been reported. They had a tremendous run on the Green River and the Muckleshoots agreed not to fish it this year, he said. Marysville's first priority is to develop the list and he said he doesn't think there can be litigation until the 4(d) rule has been negotiated with NMFS and put in place; that's a year away.

Councilmember Herman added that any litigation would have to be based on negligence of filing the 4(d) rule.

Councilmember Roark noted we still have to come up with technical data over the next year.

Mayor Weiser said there are a lot of unknowns about this but we do have a Sensitive Areas Ordinance in place; there are a lot of cities and areas who don't have a Sensitive Areas Ordinance or a stormwater ordinance.

→ Councilmember Herman spoke about giving staff direction regarding discretionary aspects in quality of SAO vs quantity which is in place, such as buffer measurements.

CORRECTED: SEE 3/1/99
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Mike Papa said at a Snohomish County Tomorrow meeting he remembers it was said there is no such thing as "vesting" and also, Terry Williams said the Tulalip Tribes can mark hatchery fish so they will only catch hatchery fish.

Bruce Tipton said he thinks it's a lot simpler if we just worry about what we can do and we have the Quilceda/Allen Creek Watershed Plan sitting there ready to go--it's got a lot of companion documents.

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Councilmember Roark asked what if it doesn't work?

Mr. Tipton said all we can do is worry about what we can do. Implement what we can do best and hopefully all other cities will do the same and hopefully the fish will be saved. Our watershed plan is developed but it's still in the prosecutor's office, he pointed out.

Councilmember Dierck noted there is a state science panel coming up, several other ideas that people want to go along with to try and do something but we have a plan developed.

Mayor Weiser said he sees this issue as how do we mesh the Quilceda/Allen Creek Watershed Plan and the Snohomish River Estuary Plan in with having the chinook placed on the Endangered Species List and responding to NMFS with a definitive plan.

Mr. Tipton suggested a lead agency and bring Arlington, Snohomish County, Marysville and Everett all into this together.

Mayor Weiser noted the Quilceda/Allen Creek was supposedly a chinook stream, so that's rehabilitation.

Mr. Tipton said once they remove the tide gate on the Poortinga farm that will improve the run because the chinook like deeper water.

Mayor Weiser said he is not sure that's been decided but that property is jointly owned by the Tulalip Tribes and the City/Diking District.

Mr. Tipton said he thinks that would be a very good place to start and also, with the Allen Creek headwaters, the history there was over a square mile of wetlands and if transfers of development rights could be moved to high rise developments in another area, restore the wetlands and you will have fish--they are persistent.

Mayor Weiser said he knows since the bridge has gone in on 528 the water flow has slowed and he thinks the stream corridor needs to be improved, eg. take out the canary grass, improve the tide gates, get additional flow of water.

ADJOURNMENT: 8:17 p.m.

Accepted this 1st day of March, 1999.

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David W. Warr

Mayor

Mary A. Swenson

City Clerk

Wanda A. Swenson

Recording Secretary