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Kenneth O. Slattery

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**WATERSHED BASED INITIATIVES FOR WATER RESOURCE
PLANNING AND MANAGEMENT IN WASHINGTON STATE**

**Kenneth O. Slattery
Senior Policy Analyst
Washington State Department of Ecology
Water Resources Program**

Water Organizations in a Changing West

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I. INTRODUCTION

A. Summary

Water resources planning and management is undergoing a transformation in the State of Washington. The traditional "top-down" approach wherein the state makes all the important decisions with the public playing only a passive or reactive role is being replaced by a more locally driven "bottoms-up" approach. Under the new planning model the public, primarily represented through interest groups and various governmental participants, plays a central role in identifying and scoping problems, collecting information, proposing and evaluating alternatives, and recommending solutions. Consensus recommendations are sought wherever possible and when consensus is not reached, minority reports are encouraged. The state is a participant in these activities and retains final decision-making authority, but is generally deferential to the recommendations of the group, especially if a consensus is reached on those recommendations. This model is being used now in three separate planning or problem-solving efforts. In one process, a state Water Resources Forum is providing recommendations on fundamental statewide water policies. The other two efforts involve water resource planning and allocation on a watershed basis. Two additional cooperative watershed planning processes are now be considered for future implementation.

B. References

Barwin, Robert F. and Kenneth O. Slattery, "Protecting Instream Resources in Washington State," Submitted for Publication to the University of Colorado Natural Resources Law Center, (1993).

Dungeness-Quilcene Water Resources Planning Group, "Dungeness-Quilcene Water Resource Pilot Planning Project Scoping Document," (1993).

Methow Valley Water Resources Planning Committee, "Methow River Basin Water Resource Management Pilot Project Scoping Document," (1992).

Washington Department of Ecology, "Chelan Agreement on Water Resources," (1991).

Washington State Water Resources Forum, "Recommendations for Hydraulic Continuity Between Surface and Ground Water," Washington Department of Ecology, (1993).

Washington State Water Resources Forum, "Recommendations for Instream Flow Policies," Washington Department of Ecology, (1993).

Washington State Water Resources Forum, "Statewide Planning Guidelines," Washington Department of Ecology, (1993).

II. AUTHORITY FOR STATE WATER RESOURCES PLANNING

- A. The state Water Resources Act of 1971 establishes the basic framework for carrying out water resources planning. It directs the state Department of Ecology to adopt rules "to insure that the waters of the state are utilized for the best interests of the people", and "to develop and implement a comprehensive state water resources program which will provide a process for making decisions on future water resource allocation and use." The Department of Ecology (Ecology) is authorized to develop the program in segments to address priority areas or issues. (RCW 90.54.040).
- B. Based on this authority, Ecology in 1976 adopted administrative rules providing further guidance for the conduct of water resources planning. The rules provide for the following elements which may be included in a water resources plan for an area:
1. Identify and foster development of water resource projects;
 2. Declare preferences or priorities for future use;
 3. Set forth streams closed to future appropriation;
 4. Establish instream flows to preserve instream uses and values;
 5. Allocate quantities to beneficial use;
 6. Reserve water for future beneficial use;
 7. Withdraw waters from additional appropriation pending the acquisition of information or data;
 8. Establish criteria for limits beyond which further appropriation will not be made; and
 9. Designate special management areas.

The rules also establish sixty-two water resource inventory areas (WRIAs) to serve as the basic geographic units for development of plans. The WRIAs represent the major hydrologic drainage units of the state.

III. BASIN PLANS AND INSTREAM RESOURCES PROTECTION PROGRAMS

- A. Between 1975 and 1979, Ecology developed and adopted basin plans for seven WRIAs. The process for development of these plans involved appointment of a basin advisory committee. The committee provided some assistance in scoping and identification of alternatives, but primarily served as a sounding board for the plan proposed by the department. The plan and a set of proposed rules were then taken out to a broader public review including public hearings. Following receipt of comments, the rules and plan were amended and finally adopted. The public was generally placed in a reactive mode.
- B. From 1979 through 1985, Ecology intentionally narrowed the scope of basin planning to only address the establishment of instream flows. At that time, the state was under tremendous pressure to rapidly establish such flows under threat of litigation from Indian Tribes. (United States v. Washington, Phase II in which tribes contend there exists an environmental servitude implied by the tribes' treaty reservation of fishing rights.) During this period, Ecology established instream flow rules on nine WRIAs. These instream flow programs were established without the use of advisory committees. In determining the flows and stream closures to be proposed, the department consulted primarily with the state Departments of Fisheries and Wildlife and affected Indian Tribes. The proposed rules were taken out to public hearings prior to be finalized and adopted. The department's intention was to return to these basins in the future to adopt more comprehensive basin plans.

IV. CONTROVERSY AND STALEMATE

- A. Instream flows became a high profile issue in the mid-1980s in Washington. Offstream water interests were unhappy because the establishment of instream flows was increasingly limiting options for future water development. Environmental groups were dissatisfied with Ecology's willingness to adopt flows lower than those considered optimum for instream values.

- B. In the meantime, *U.S. v. Washington* was bouncing around the court system creating great uncertainty regarding the state's obligations to protect the environment on which treaty fishing rights depend. Various standards were established and on appeal rejected or replaced. Ultimately the Ninth Circuit Court of Appeals, reversing itself, decided that the issue was not appropriate for summary judgment. The case is still alive, and provides an important backdrop to the instream flow issue in the Northwest, but none of the parties have elected to force a trial.
- C. A stalemate over instream flow policy in the state lasted over seven years. During that period, Ecology unsuccessfully attempted to resolve the issue by using a statewide advisory group and by publishing a draft programmatic EIS. The Legislature formed a special committee to address the controversy which also failed over a period of several years to find an accommodation. At one point the Legislature took the unprecedented step of placing a one-year moratorium on all new water rights and on the establishment of new instream flows. During the seven year stalemate, Ecology has been unable to develop any new plans or establish new instream flows or basin plans. Meanwhile, the state was experiencing unprecedented population growth with pressure growing rapidly for development of new water sources. (See Barwin and Slattery for a detailed description of the stalemate period.)

V. **THE CHELAN AGREEMENT ON WATER RESOURCES: A NEW MODEL FOR CONFLICT RESOLUTION**

- A. By early 1990, it was apparent that the legislature would be unable to unravel the conflicts among water interests that had stymied progress since 1986. The Governor's Natural Resources Subcabinet held discussions with the Joint Select Committee on Water Resource Policy and with Indian Tribe representatives who all agreed to try a new approach to the problem through environmental mediation.
- B. A large water resources retreat was held in May 1990 at Rosario in the San Juan Islands of Washington. Approximately 150 persons representing the full range of water interests in the state attended. Attendees organized themselves into caucuses representing tribal, state, and local government, and agriculture,

business, environment, fisheries, and recreation. Two days of meetings were facilitated and mediated by the Northwest Renewable Resources Center (NRRC), a non-profit environmental mediation organization based in Seattle. At the end of the two days, the caucuses agreed to pursue a mediated framework for finally resolving instream flow and water allocation issues. They established a 24 member "Interim Team" to draft an agreement for consideration by the larger group.

- C. The interim team (also facilitated by the NRRC) held numerous meetings and finally developed its recommendations in October 1991. A second retreat of the full group was held in November 1991 in Chelan, Washington. After two grueling days of negotiations, the caucuses came to oral agreement on the landmark Chelan Agreement on Water Resources.
- D. Among its provisions the Chelan Agreement provides for the following:
 - 1. Future planning and decisions on water will be guided by the objective to achieve an overall net gain of the productive capacity of fish and wildlife habitats while accommodating growth in a manner that protects the environment of the state.
 - 2. Conservation, enforcement, and public information shall be used to assure proper utilization of existing water supplies.
 - 3. The Water Resources Forum, with representation of the eight Chelan Agreement caucuses, is established to make policy and statutory recommendations, assist implementation of pilot regional water resource plans, and monitor and evaluate implementation of the agreement. Forum's decision-making is to be by consensus.
 - 4. Guidelines are provided for the cooperative development and implementation of pilot regional water resource plans which are to include establishment of instream flow protection measures. The regional plans are to be developed by local planning groups that mirror the make-up of the caucuses involved in the Chelan Agreement. The resulting plans are advisory, but if a plan is based on consensus, implementing agencies are to give it substantial weight.

5. For non-planning watersheds, a critical situations process is established to address disputes that may arise among state, tribal and local governments regarding water resources.
 6. Support is given for improved water data management.
- E. The planning model provided in the Chelan Agreement is a substantial departure from historical practice. Rather than the basically top-down framework used in the pre-1986 era of water planning, the new model provides for scoping and building water resources plans from the bottom-up with the affected parties assuming the responsibility for framing a mutually acceptable plan. Ecology will accept a consensus-based plan as long as it is not inconsistent with state law.

VI. RECOMMENDATIONS OF THE WATER RESOURCES FORUM

- A. Soon after the Chelan Agreement was reached, the Water Resources Forum began meeting on a monthly basis. Its first task was to assist Ecology in selecting two pilot regional planning areas. These areas are discussed in detail later in the outline.
- B. Forum then assisted Ecology in developing guidelines for regional plan development and guidelines and rules for resolving critical water resource situations. The planning guidelines were used by the two pilot planning groups in developing scopes of work for the regional plans.
- C. By far the most significant work of the Forum has been in developing recommendations for two key statewide policy issues: instream flows and hydraulic continuity between surface and ground water. It completed work in these areas in early 1993. (Forum's specific policy recommendations are beyond the scope of this outline and presentation, but the interested reader may refer to Barwin and Slattery, 1993 for a detailed description.) Three different processes and objectives would apply in establishing instream flows based on the situation a stream is in:
 1. For streams not in a probable regional planning area, instream flows would be set by administrative rule that are optimum to protect, restore and enhance biological integrity of fish and wildlife.

2. For streams in a probable regional planning area (regional planning expected within four years) determine conservative interim flows primarily using existing information and professional judgement. Such flows would not be set by rule, but would be used to condition new water rights.
3. For streams in a designated regional planning area, instream flows would be set by rule as part of a comprehensive water allocation plan that considers instream and offstream needs and values.

Ecology has begun to undertake the development of administrative rules and procedures for implementing the instream flow and hydraulic continuity policies. These policies provide critically important guidance for the development of watershed based allocation plans.

- D. Shortly after Forum delivered its instream flow policy recommendations to Ecology, the Washington State Supreme Court ruled on a long-standing legal dispute relating to instream flows. In this decision, the Court upheld Ecology's authority to establish instream flows as high as the "optimum" level for fish. The decision is consistent with Forum's recommendations. (The Department of Ecology, et al. v. Public Utility District No. 1 of Jefferson County, et al., No. 58272-6, Washington Supreme Court, 1993)

VII. PILOT REGIONAL PLANNING PROJECTS

- A. Legislation passed in 1990 authorized the selection of two areas of the state (one in the Puget Sound area and one east of the Cascade Mountains) for the testing of regional water resources planning. In passing this legislation, the Legislature was responding to a substantial consensus among most water interests that regional plans, not necessarily constrained by WRIA boundaries, might allow greater flexibility for addressing water allocation issues.
- B. Ecology solicited area nominations for regional planning through an extensive notification process. Many areas were suggested for possible development of regional plans by various interests. However only two areas emerged with the requisite agreement of tribal, local and state governments to undertake such planning. These are the Methow River Basin in eastern Washington and the Dungeness and Quilcene basins on the Olympic Peninsula in western

Washington. Instream flow protection and restoration are issues in each of these planning areas. Each area has been experiencing rapid land use and water use changes due to population growth. Meeting new water demands while attempting to restore instream flows is a challenge in both pilot areas. Plans are due to be completed for these areas at the end of 1993.

- C. In 1991, the Legislature appropriated about \$1.6 million for a two year period to carry out these two regional plans. This amount was later reduced due to state budget problems to about 1.3 million. The funds support planning activities and studies, participation grants to local governments and tribes, and hiring a facilitator/mediator for each area.

VIII. METHOW REGIONAL PLANNING AREA

- A. The Methow River originates in North Cascades National Park and the Pasayton Wilderness area in North Central Washington and runs generally south to its confluence with the Columbia River. The Methow Valley is primarily in agricultural use, though a number of parcels have been subdivided for potential recreational and retirement home development. Forested lands managed by the U.S. Forest Service and National Park Service predominate in upland areas.
- B. The Methow River demonstrates a classical snowmelt hydrograph with a dramatic peak in runoff occurring in May and June. Lowest flows generally occur during the winter freeze-up. The river and numerous tributaries are diverted to supply irrigation water. No significant water storage facilities exist at this time. Commercial agriculture is marginal in the valley due to a short growing season, distance from markets, and land use conversion. Irrigation systems are for the most part very old and in some cases poorly maintained and are known to lose a lot of water. A large valley floor aquifer that is in direct hydraulic continuity with the Methow River and its tributaries is tapped for municipal and domestic water and some irrigation.
- C. Salmon and Steelhead Trout return to the Methow basin to spawn annually. Fish runs have been in a long term decline due to flow conditions in the basin and due to passage problems downstream at mainstem dams on the Columbia River.

- D. Ecology adopted a basin plan and regulation for the Methow basin in 1977. That regulation established instream flows on the mainstem and tributaries and allocated available water to future development. All future uses except single domestic and stock watering were made inferior to the instream flows.
- E. Local disenchantment with the existing basin plan and regulation and a need to update it in light of recent subdivision and resort development proposals made the Methow basin an interesting and challenging place to test the new planning model. Agreement was reached among Okanogan County, the Yakima Indian Nation, the Colville Indian Tribe, and the state to undertake cooperative development of a regional plan for the basin, under the guidance of the Chelan Agreement. A new plan would replace the existing basin plan. A straw vote as also taken at a large public meeting which indicated public support for proceeding. Okanogan County agreed to take on the job of initiating entity to get the effort organized.
- F. A regional planning group was formed following several public meetings. The planning group consists of representatives appointed by seven caucuses. The caucuses consist of individuals with common interests, perspectives and goals. The caucuses are local government (cities, towns, utilities, and the county); Indian tribal governments (Yakima and Colville); state government (various interested departments); business; agriculture; fisheries; recreation; and environmental. Each caucus is expected to meet between meetings to review proposals and alternatives and provide direction to their representatives. The general public is given an opportunity to express its views at regional planning group meetings.
- G. The planning group agreed that Okanogan County and the state Department of Community Development would cooperate as the "coordinating entity". A contract was negotiated with Ecology to provide funding for coordination, including hiring a facilitator/mediator, and logistical support to the planning group.
- H. The planning group then developed a scope of work and workplan agreed to by consensus. In accordance with the Chelan Agreement and planning guidelines developed by the Forum, these documents were reviewed and

approved by Ecology. The contract with Ecology was amended to provide planning and study funds. A total of about \$650,000 is available for the planning project.

I. An instream flow incremental method study was carried out as part of the planning effort. The study tends to indicate that the current instream flows are not adequate to provide full protection for several depressed fish runs. Initially, this information threatened to split the planning group, particularly when several caucuses suggested an immediate moratorium on all water development. Other studies completed or underway include a ground water study of the valley floor aquifer to determine the degree of continuity between the aquifer and the river.

J. Early on the committee agreed that water conservation will be critically important. Several urban conservation projects (metering and water audits) have already been undertaken with state financial assistance. Agriculture, the largest consumer of water, has been slower to embrace the conservation ethic. Irrigation is marginally economic in much of the basin at this time. Most basin farmers hold other jobs too. A major infusion of outside capital would be necessary to upgrade old delivery systems. The largest irrigation entity in the valley is considering complete or partial conversion of its old surface delivery system to wells, but this is highly controversial in the valley. The planning committee is expected to recommend policies regarding water conservation and efficiency improvements.

K. The prospects for a successful outcome are at least fair. There are many difficult issues to be resolved including primarily:

1. Instream flow protection levels.
2. Water for future domestic use.
3. Hydraulic continuity between ground and surface water.
4. Water conservation goals and means for implementation.

L. Under the Chelan Agreement consensus on a recommended plan is defined as approval of all three government caucuses and approval of a majority of the non-government caucuses. The ideal of course would be complete agreement. The statutory deadline for completion of the plan is December 31, 1993. If

good progress continues to be made, Ecology and the planning group can ask the Legislature for an extension. If the planning group is unable to come to consensus on a final plan, Ecology can step in and finalize the plan according to the Chelan Agreement.

- M. If a consensus is reached, the plan will be conveyed to Ecology for final review and approval. Under the Chelan Agreement, Ecology may disapprove the plan only if it is inconsistent with state law. Ecology may not alter the plan but may remand it to the planning group for further work.
- N. The plan will be implemented through the adoption of state administrative rules (amending the existing basin regulation) and local government ordinances as appropriate. Both would entail additional opportunities for public involvement.

IX. DUNGENESS/QUILCENE REGIONAL PLANNING AREA

- A. This area is located on the northeastern corner of the Olympic Peninsula. It is bordered by the Strait of Juan de Fuca to the North and Puget Sound to the east. The Dungeness and Quilcene Rivers are the two largest streams in the area. Both originate in the Olympic National Forest and Olympic National Park. Both support significant runs of salmon and steelhead. Numerous small independent streams in the area also support anadromous fish runs. Port Townsend and Sequim are the two major urban centers in the planning area. The area is located in parts of Clallam and Jefferson Counties. The Jamestown-S'Klallam Indian reservation exists in the planning area and the tribe has significant interests in fisheries supported by area streams.
- B. This regional planning area has many of the same issues as the Methow basin.
 - 1. Extensive use is made of the Dungeness River for irrigation of the Dungeness Valley. In fact in dry years, the river is almost completely diverted out of its banks in late summer. This is highly detrimental to salmon runs.
 - 2. Seepage from irrigation facilities is believed to support a shallow aquifer used extensively for domestic water supplies and which supports small creeks in the area.

3. The Dungeness Valley, the Port Townsend area and much of the marine shoreline in the planning area has been undergoing steady development. This area is in the rain shadow of the Olympic Mountain range and receives only 17-20 inches of annual rainfall, about half the amount received in other lowland areas around Puget Sound. Water supply to meet growth is problematic.
 4. The City of Port Townsend diverts water from the Quilcene River and the Little Quilcene River for public water supply and industrial use. These diversions impact salmon and steelhead runs on these streams.
- C. The Dungeness-Quilcene regional planning effort got off to a slower start than the Methow basin. Several local governments were initially uncertain whether they wished to remain in the process, but they finally agreed to continue. Because of the late start, it is doubtful this planning effort will be completed by the statutory deadline of December 31, 1993. It will probably be necessary to request an extension.
- D. An unusual feature of this planning effort is the fact that initiation of the process was handled by the Jamestown Tribe, which also by consensus was named the coordinating entity. A contract for funding has been signed with Ecology, a facilitator has been hired, and a scoping document has been drafted. Meetings are held about every two weeks. The same caucuses that are represented in the Forum and the Methow basin are also represented in this regional planning project, and the same process as generally specified by the Chelan Agreement is used.

X. ADDITIONAL COOPERATIVE PROCESSES UNDER CONSIDERATION

- A. The 1993 state Legislature authorized and provided funding to Ecology for an effort to evaluate the feasibility of cooperatively developing a regional water resources plan for the Central Puget Sound Region. This is the most populous and rapidly growing area of the state, and is an area with numerous inherent conflicts between protection of instream values and development of new water supplies. The two year effort will identify whether local governments, tribes, and other interested parties are willing to enter a cooperative process to plan for the region's water future. If interest exists, the planning area, major

issues, and potential funding will be identified. This effort is likely to encompass several major watersheds.

- B. A cooperative watershed based environmental planning and management effort has been proposed for the Nooksack River basin in northwest Washington. A process similar to the regional planning projects is being considered, but the range of issues would probably be considerably broadened to include water quality problems to a much greater degree. Whether such a process will be initiated is uncertain due to the reluctance of one of the basin's two Indian Tribes which is also considering possible litigation.

XI. CONCLUSIONS

- A. The outcome of Washington's experiment with locally driven cooperative water resources planning is not yet known. Two pilot planning projects are well underway and appear to have a good chance of resulting in consensus recommendations. Two additional projects are being explored.
- B. The broadening of participation in statewide and local water resource issues became necessary as water was increasingly recognized as a fundamental environmental, economic and lifestyle determinant. More people, interest groups, and levels of government demand to be directly involved. The old unitary model of water management and planning, with a single agency issuing plans, rules and decisions appears to have outlived its usefulness, at least in Washington State. The transition to a new power sharing model has not been easy, nor is success expected in every case, but the expectation of those involved is that more good outcomes should result.
- C. Cooperative planning processes take a lot of money, effort and time. No system is as efficient as benevolent dictatorship and no system is as time-consuming as democracy. Margaret Thatcher is said to have advised Bill Clinton that consensus is the enemy of decisiveness, but it is also axiomatic that a government's legitimacy can only rise from the people. If the people are willing to allow government to hand down the decisions, government is happy to oblige. When the people demand a greater role, government needs to accommodate that involvement.

- D. It takes time for participants in cooperative processes to get comfortable with working with rather than against their traditional enemies. Only the group can work through this break-in period. A skilled facilitator can make the difference between success and a bitter failure. Time frames imposed by the Legislature or an agency always seem to be inadequate.
- E. For this kind of process to work, all participants need to have some incentive to pursue cooperation rather than trying to roll the opposition in court or the legislature. When everyone's footing is a little uncertain, cooperation starts looking like an attractive option.
- F. The Water Resources Forum has already demonstrated that disparate interests can accommodate one another to resolve difficult statewide policy issues. In fact, Forum has succeeded where seven years of administrative and legislative attempts failed. Whether those disparate interests can accommodate each other's needs and reach a consensus on what to do about specific localized water problems remains to be seen, but there are encouraging signs. Simply agreeing on what the problems are is an important step, and this has occurred in two areas of the state with some vexing water problems.
- G. Organizing a cooperative process by caucuses seems to be a useful approach. Caucuses need to be able to appoint their own representatives, but must be encouraged to communicate often internally. Some members of the public will always believe themselves to be unrepresented. Providing opportunities for public comments and questions at planning group meetings seems to defuse some potential resentment.
- H. Washington's experience with cooperative problem solving has been very positive so far. These types of water organizations can play an important role in western water and can lead to results that are more widely accepted by the public. The author is always willing to talk with others who may be thinking about using an approach like this. He can be reached at (206) 459-6114.