

**CHEHALIS BASIN PARTNERSHIP  
STEERING TECHNICAL COMMITTEE MEETING MINUTES  
Lewis County Public Health Building  
360 NW North Street  
Chehalis, WA  
December 7, 2006  
9:30 AM**

**Meeting Summary**

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**PEOPLE PRESENT**

Kahle Jennings, City of Centralia (11:05 a.m.) Cheri Lindgren, Puget Sound Meeting Services  
Glen Connolly, Confederated Tribes of the Chehalis  
Bob Amrine, WA State Conservation District  
Bruce Jones, Quinault Indian Nation  
Taylor Pittman, US Fish & Wildlife Service  
Steve Craig, WA State Dept of Ecology  
Chad Stussy, WA State Dept of Fish & Wildlife  
Mark Swartout, Thurston County  
Lee Napier, Grays Harbor County  
Jim Hill, Citizen  
Kemen Lien, Lewis County

**Announcements and Introductions**

Mark Swartout called the Steering Technical Committee (STC) meeting to order at 10:04 a.m. Everyone present provided self-introductions.

**Teleconference: Water Rights and Water Quality: Interrelationships and Implications**

The “Water Rights and Water Quality: Interrelationships and Implications” teleconference offered through Lorman Education Services was presented by Janice Schneider and Paul Singarella with Latham & Watkins, LLP.

Ms. Schneider explained the teleconference will cover the fundamentals of water right doctrines across the country and regulations of water quality in the U.S. Mr. Singarella explained the seminar format. Both presenters reviewed their education and professional backgrounds.

Ms. Schneider reviewed the water use doctrines from across the country. For water use issues, each state has its own unique rules. The “riparian rights” system applies to Eastern states while Western states rely on the “prior appropriation” doctrine. The federal reserved water rights doctrine applies to Indian tribes and other federal lands. General rules about riparian rights include:

- Apply to landowners whose land is adjacent to a stream or other watercourse
- All riparians have a right to fair share of the stream
- Right is not dependent on use; may be exercised at any time
- No right to divert for use beyond riparian land (no out of basin diversions)
- Rights run with the land

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Ms. Schneider reviewed natural flow and reasonable use theories. The natural flow theory is seldom used. The reasonable use theory was adopted in the mid-1800s. She provided information about the “Nestle Water Case” in Michigan and reviewed the unique attributes in the East about the riparian rights doctrine, such as, pro rata sharing of water in times of shortage, rights are inherently vague, and both common law theories protect riparian owners from pollution. Often common law remedies are used to fill in gaps in the regulatory structure. Early cases found no preemption of common law and that compliance with applicable standards is not necessarily a defense. Many Eastern states have administrative permit systems. The trend is toward increased statutory regulations and decreased reliance and relevance of the common law theory in all East Coast states.

Ms. Schneider reviewed the prior appropriation doctrine that generally applies in the 17 Western states. She provided background information about the system. Some general rules about prior appropriation include:

- “First in time, first in right” – the person’s water right is based on the seniority of the rights (who got there first to get the water first and is not dependent on need, utility, or reasonableness).
- The senior rights holder takes all in times of drought; there is no pro-rata sharing.
- Elements include notice, actual diversion, and application of water to beneficial use (fisheries).

Unique attributes about prior appropriation include a limited water supply, rigid rules about who can use the water and when, all states but Colorado have adopted administrative permit systems, out of basin transfers are allowed, continued beneficial use is required to maintain the right, and abandonment for non-use.

“Federal Reserved Water Rights” were discussed next. The water rights are based in federal law rather than state law. The doctrine stems from a 1908 U.S. Supreme Court decision involving *Winters vs. U.S.* Ms. Schneider provided background information about the court case involving the Fort Belknap Indian Reservation in Montana. The Supreme Court made a very simple finding. When the federal government reserves land for a particular purpose, it implicitly reserves water sufficient to accomplish the purposes of the federal reservation. Rights are vested as of the date of creation of the reservation or time immemorial. The rights cannot be lost by non-use.

Initially, court cases focused on water for irrigation, which was the U.S. policy in the 1800s with the idea to turn tribes into farmers. Some courts are beginning to recognize the function of the reservation is for homeland purposes. The doctrine has been expanded to non-Indian federal uses such as national forests and refuges.

Ms. Schneider reviewed the *U.S. v. Anderson* and Globe Equity cases and a recent settlement agreement on Nez Perce water rights. There is an increasing awareness of the interrelationship of water quality and water quantity.

Mr. Singarella explained the fundamental goal of the Federal Clean Water Act is the assurance that all waters within the U.S. are fishable and swimmable. For several decades, the Clean Water Act concerned itself primarily with water quality. In 1994, the U.S. Supreme Court was confronted with the question about whether water quantity is also important. He referred to the Great Falls on the Passaic River in Paterson, New Jersey, and water as an economic opportunity. Paterson’s Great Falls became the national manufactory that kick-started the nation’s industrial revolution.

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In 1972, the Environmental Protection Agency (EPA) listed the Passaic River as the second most polluted river in the nation. Many water bodies across the nation were viewed as waste receptacles. A key provision of the Clean Water Act is a series of statutes requiring major cities and sanitation districts to build publicly owned treatment works (POTWs) plants (secondary treatment). A 1969 photo of the number one polluted river on fire, the Cuyahoga River, was provided in the handout materials, as well as a picture of how the river looks today. Tremendous progress over many decades has taken place not only in terms of wastewater treatment but in technology standards as well.

Nonpoint source pollution includes anything that doesn't come out of a pipe from a factory, treatment plant, or an urban stormwater pipe. Environmental groups consider nonpoint source pollution and urban runoff as the top water quality problem. Including disposal warnings on storm drains is a Clean Water Act best management practice. Another significant major nonpoint source is farms and discharge of agricultural runoff. However, farm runoff is not subject to the Clean Water Act permit program.

Mr. Singarella provided a Clean Water Act pre-history and reviewed what changed in 1972. The statutory focus shifted from receiving water standards to effluent quality standards. Effluent quality standards rendered enforcement feasible. He reviewed major program elements:

- National technology-based effluent limits for various industrial categories
- National requirements for POTWs
- National Pollutant Discharge Elimination System (NPDES) for direct discharges of process wastewater, urban runoff, and industrial and construction site stormwater
- Total Maximum Daily Load (TMDL) Program
- Nonpoint source programs

Mr. Singarella illustrated the command and control aspects of the Clean Water Act, which includes technology and water quality-based components. The intersection occurs under the NPDES program. Mr. Singarella explained what is meant by "state water quality certification." Section 301 prohibits the discharge of any pollutant by any person and is unlawful absent a NPDES or other legal permit. He reviewed several point source discharge examples.

The Clean Water Act focuses on two possible sources of pollution - point sources (process wastewater discharge to river) and nonpoint sources (agricultural runoff). Congress dealt with point source pollution through the NPDES permit process. When the NPDES program is insufficient to clean up a water body, the Act requires use of a watershed-based approach.

*Mr. Jennings arrived at 11:05 a.m.*

Mr. Singarella reviewed the TMDL process, life cycle (how is a TMDL developed), and implementation plan. A draft TMDL report was provided for illustrative purposes. He explained where further progress concerning the Clean Water Act will come from, and that the Act allows for the regulation of water quantity as well as water quality. Specific to a Jefferson County Federal Energy Regulatory Commission (FERC) license renewal proceeding, the Supreme Court found that water quantity is closely related to water quality; a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses, be it for drinking water, recreation, navigation or, as a fishery. In 2004, the same court issued a decision that pumping water from one water body to another requires NPDES if pumped water contains pollutants.

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Mr. Singarella reviewed the *Catskill Mountains* precedent requiring a NPDES for an inter-basin transfer of water from reservoir through a rock tunnel to trout stream for supplying water to New York City. Some states require water quality standards to reflect the “quality of water available” to the region. Intersections between clean water and water supply include industry, agriculture, metropolitan areas, development, fish, and wildlife. It is a hugely complicated legal framework to try to ensure the continued supply of water.

A call-in question and answer session followed.

The presenters offered closing remarks. Ms. Schneider conveyed that it is critical to evaluate both common law rights and statutory and regulatory overlay on both a state and federal level when assessing water rights or water quality issues. Mr. Singarella noted water supply will never be evaluated separately from water quality.

Mr. Swartout recessed the meeting from 11:34 a.m. to 11:49 a.m.

Members discussed agenda topics to include the legislative briefing, the upcoming Partnership workshop including implementation of the DIP, Community Forest Stewardship Program, provisional/interruptible water rights, and a follow-up discussion about implementation of Puget Sound Partnership issues. Ms. Napier suggested canceling the December Partnership meeting and rescheduling in January. She also mentioned researching seminar opportunities dealing with special purpose districts.

Mr. Swartout recessed the meeting from 11:56 a.m. to 12:55 p.m.

### **Lewis County Community Forest Stewardship Program**

Members were provided with a letter dated November 6, 2006 from Ms. Pittman about Lewis County’s Community Forest Stewardship Program (CFSP) and a document highlighting program information and objectives. Ms. Pittman introduced Danielle Warner, Program Specialist for CFSP.

Ms. Warner reported she initiated the CFSP in September. The program is funded with Title III funds associated with the Secure Rural Schools and Community Self-Determination Act of 2000. The program’s focus is public rather than private forests. A component of the grant is to concentrate on schools and after school programs, and engage with community members. She described two programs she is developing for the local high schools that include a stewardship seminar for new a natural resources class and a future native plant network. She said she is working with Mossyrock’s “Century After School Program” to establish 4-H clubs for environment stewardships. The effort will be replicated in five other school districts in the area. She said she’s interested in working with the STC to get the word out to the schools. If there are Partnership activities that need volunteers she offered that she has students and community members wanting to get involved.

Mr. Swartout said the committee is in the process of putting together a Detailed Implementation Plan (DIP). One of the interim milestones concerns sustainable forestry and agriculture to include a public outreach component. Ms. Warner’s work fits in with that part of the watershed plan.

Mr. Jones suggested developing a link between the CFSP and community outreach with the Partnership.

In response to an inquiry from Mr. Jennings, Ms. Warner replied her position is two-thirds part-time and funded through December 2007. The future of the program is unknown at this time. Discussion ensued

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about the committee identifying potential funding sources to help continue the program and the idea that the other third of Ms. Warner's position could be used to handle Partnership duties.

Discussion followed about how the program fits other DIP interim milestones. Ms. Napier noted the larger counties (Lewis and Grays Harbor) in the basin could partner to provide outreach for the entire Chehalis Basin. She asked Ms. Warner to fax a copy of CFSP's funding proposal.

Mr. Jennings said there are public lands that are scheduled for planting in the future, including several in Centralia. He asked if that type of work fits in with the context of the CFSP. Ms. Warner's answer affirmed it is from an education aspect and value added to the watershed. Mr. Jennings referred to a potential project off Galvin Road and plans to establish a recreation trail along a section of the Chehalis River. Ms. Warner conveyed that she has students waiting to work on projects.

### **Continue Discussion and Preparation for Legislative Briefings**

Ms. Napier briefed members on the current status of presenting to the Legislature. She distributed a draft brochure and a summary of talking points. She reviewed legislative briefing options that could include a meeting with coastal caucus representatives. Senators have been invited to a lunch hosted by Ms. Napier. If that doesn't work out, members may be contacting representatives individually. Mr. Jones offered to coordinate volunteers. Mr. Swartout added that Commissioner Macleod usually schedules a lunch with Senator Fraser, who chairs a budget subcommittee. It is important to talk with the legislators while they are developing the budget. Mr. Jones suggested mailing out a copy of the brochure with a cover letter expressing the committee's interest in meeting with legislators.

Ms. Napier reviewed the draft brochure. Discussion ensued about changing the opening paragraph to read in part, "... the Chehalis Basin is the largest self-contained river basin in the state." A summary of comments and/or suggested changes to the "Accomplishments" section of the brochure are listed as follows:

- List additional factual information in a bullet format and less "writing" (the number of habitat projects completed or restoring access to "x" miles of stream, etc.), and convert the paragraphs to bullet points
- Clarify that the Partnership has adopted and approved the Watershed Plan, completed the first three phases, and is now beginning phase 4
- Rather than highlight how much funding has been received and how it has been spent and/or appropriated, just list accomplishments
- The second paragraph should be the first paragraph
- Revise the third paragraph to read, "One of the first Watershed Planning Units in the state to approve a Detailed Implementation Plan (2006)."
- Strike "With grant assistance created a" from the fourth paragraph, and revise it to read, "Formed a partnership to develop a Geographic Information System (GIS) Clearinghouse"
- Revise the fifth paragraph to read, "Formed a partnership to implement basin-wide water quality monitoring program," followed by a list of the members
- Separate the sixth paragraph into two separate bullet points: "Received grant funding to complete the first Municipal Water System Inchoate Water Rights Analysis project as required by the Legislature;" and "Hosted the first annual Watershed Festival at Riverside Park in Centralia"
- Reword the seventh paragraph to read similar to, "Implemented 37 projects over 120 miles of riparian streams to restore, preserve, or assess salmonid habitat"
- Reword the eighth paragraph

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- Highlight the committee's public outreach efforts, such as, preliminary storage evaluation, information sharing with the public via the website, supported student monitoring and watershed Congress.

Members discussed 2007-2008 budget requests. Input, changes, and general comments included:

- Change "land mass" within the third line of the first bullet point to "land area" and the paragraph should be the last bullet point.
- Strike the first sentence of the opening paragraph and reword the remainder to read similar to, "To continue building upon our success so far, we have identified the following needs for 2007 – 2008."
- The first bullet should be "\$60,000 for the GIS Clearinghouse" followed by "\$245,000 for our coordinated water quality monitoring program."
- Reword the sixth paragraph to read similar to, "\$50,000 to continue enhanced funding to support administrative operation of the planning unit," and move it to the third bullet point. It was noted that this request is above and beyond the \$121,000 earmark for project management time and Partnership administrative support.
- Create a matrix highlighting committee activities, funding sources, and milestones separate from the brochure, prior to meeting with legislators.
- Secure funding for administration of the group and note there are in sufficient funds for both administration and phase 4 tasks.
- The Corps watershed restoration work was put on hold because of the lack of funding. Perhaps the Partnership could revisit the issue and solicit support from U.S. Representative Norm Dick's office. Ms. Napier expressed reluctance in reenergizing the process.
- Revise the fourth bullet to read, "Conduct a ground and surface water study throughout the watershed." Mr. Jennings will provide a cost to develop a scope of work to Ms. Napier by December 15, 2006 so it can be included in the funding request.
- The group would like to invite Charles Pitz to a future meeting to further educate the committee and identify next steps and summarize comments articulated by the group for review.
- Invite US Geological Survey (USGS) representatives to attend a future meeting.
- Add an additional point to address funding needed for salmon habitat restoration and a funding amount.
- Add language in the introductory paragraph stating the Partnership is requesting \$500,000 in funding over the next biennium to fund the following needs.
- Move the first bullet point (that was moved to the last position in earlier discussions) and include it in the talking points.
- Include a color photo of salmon, and a more "active" photo to replace the "Watershed Festival" picture in the brochure.
- Relocate Ms. Napier's name and contact information and place it following Commissioner Bob Beerbower.
- Add Bob Amrine to the contact list.

Ms. Napier indicated she would send out another draft of the brochure next week.

### **Chehalis Basin Partnership – Meeting Agenda and Next Detailed Implementation Plan (DIP) Workshop**

The committee discussed hosting a workshop with the Partnership to discuss DIP priorities for implementation and milestones that need additional work. Ms. Napier stated she is uncomfortable with

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the STC making a decision as to which milestones needed further attention. At the Partnership's meeting last month, she said she suggested the group select which interim milestone needed further work, hold a workshop and review the entire DIP, evaluate feedback received to date, and decide how to move forward. The Partnership directed the committee to work with the Quinault Indian Nation (QIN) and amend the DIP. The committee selected a milestone to flush out further but a concern is whether the Partnership is invested in the process. In addition, the plan is to hire a facilitator for the workshop and work towards a decision by the week before Christmas. The Partnership is concerned that not all members will be able to attend a December meeting.

Feedback from the committee includes.

- Some members did not have a problem with canceling the December meeting.
- Rather than asking the Partnership for guidance, the committee should develop a proposal for its consideration.
- Some members would like to engage with the Partnership and hold a workshop early next year to inform future decision-making.
- Combine both ideas, such as developing a proposal with talking points, talking with the Partnership about the next two-year work plan (DIP and other business), and an implementation organization discussion. Implementation will require an ongoing base level of funding to be successful. The Partnership could assist with identifying funding resources.
- When the Partnership approved the DIP by motion, it directed the STC to address the QIN letter over the next six months and come back with a report by the end of March 2007. The City of Chehalis' representative made a motion at the last Partnership meeting to proceed with planning, but to address priorities one at a time.
- The group talked how special taxing districts work and the advantages with that approach for implementation.
- The committee has previously identified that the DIP is its annual plan of work. It was suggested to incorporate dates and times in the DIP. Prior to adopting the DIP, a suggestion was made to "flush out" who, what, when and where. At the last meeting, the group thought a way to address the QIN issues was to merge one of the interim milestones. Ms. Napier distributed a document with proposed changes to Interim Milestone 3.1: "Clarifying water rights and uses." There is an existing biannual plan of work. Members discussed updating the plan, prioritizing tasks for 2007, and developing a budget. There was discussion about addressing the five tasks outlined on the handout and to update the tasks every two years. Two immediate issues identified include addressing the QIN letter and developing a DIP work plan. Implementation and finishing the planning aspect are on parallel paths.
- Conversation about bringing the annual work plan forward followed, but it is unclear how that fits in with this process. It was suggested to schedule a day to talk about the issues. A draft meeting agenda is as follows:

### Annual Plan of Work:

1. Partnership – general (includes elections)
  2. Implementation of revised DIP and QIN letter, DIP strategies 17 and 18
    - Prioritize tasks for 2007 and 2008
  3. Planning = Interim Milestone 3.1, and tasks 2.1 and 2.2
  4. Salmon Recovery/Habitat
- A workshop is necessary to talk about the details of item #2.
  - The QIN talked to the Department of Ecology (DOE) several months ago about implementing interruptible water rights. However, not all "junior" water rights are considered interruptible water

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rights. Interruptible water rights refer to provisional water rights. The QIN has conducted an inventory and determined 110 water rights are interruptible and that the majority are irrigation rights. It was suggested that a tool to address water quantity is interruptible water rights. DOE proposes to refine the list of who has interruptible water rights and send the owners a letter reminding them that the rights are interruptible. It was proposed that Mr. Craig would introduce the topic to the Partnership at its January meeting. A DOE representative would attend the next meeting and talk specifically about the matter. The Partnership should have an opportunity to read the letter and provide comments prior to mailing.

- DOE is interested in feedback about a joint meeting with the Partnership and local legislators prior to a letter going out to the property owners about the water rights matter. Developing an educational process seems reasonable. The agriculture community should be involved. Conversation followed about including the issue as an element of item #3 above with input from the Partnership before adopting the DIP and prior to DOE coming to a meeting to talk about implementation. The next step is to identify a funding source to agriculture producers to drill wells to replace the groundwater withdrawal that would not affect instream flows.
- Discussion ensued about how to engage local legislators. One suggestion is to invite legislators to the Partnership's February meeting advising them that an agenda topic includes discussion of interruptible water rights. The Partnership Chair should sign the letter. Mr. Swartout suggested the Partnership host a workshop to explore interruptible water rights and talk about public outreach and education approaches that could include talking to legislators, engage with those that have water rights, and talk about the next steps.
- DOE could brief STC members about the program so members can talk to their constituents about it. The agriculture community should be notified as soon as possible prior to the planting season.
- DOE is a member of the Partnership. Members can raise issues that are related to water management. The DOE could come to the Partnership and convey it has to execute a program in 2007 to implement the law for interruptible water rights. The DOE could explain the law and demonstrate how it's consistent with the plan and solicit Partnership support and adoption of the approach. Members discussed the two different approaches. Several members agreed massaging "Plan B" might be the best approach (inform and educate first).
- Advise DOE to not move forward before considering feedback from the planning unit. It was suggested to conduct a "mini summit" to bring key players on board with a briefing, followed by a question and answer session, and discussion. A briefing/workshop outside of the Partnership should include the Partnership.

Ms. Napier noted the January 4, 2007 STC meeting is the same day as the Coastal Caucus. She will follow up with the facilitator. The committee agreed to hold the workshop at the January 26, 2007, Partnership meeting to talk about Interim Milestone 3.1, and to introduce interruptible water rights.

Ms. Napier said the next STC meeting will be held in Montesano. Discussion followed about having Mr. Pitz and a USGS representative attend the STC meeting.

### Adjournment

There being no further business, Mr. Swartout adjourned the meeting at 3:12 p.m.

Prepared by Cheri Lindgren, Recording Secretary  
Puget Sound Meeting Services