

**CHEHALIS BASIN PARTNERSHIP
STEERING TECHNICAL COMMITTEE
Thurston Conservation District
2918 Ferguson Street SW, Bldg 1, Suite A
Tumwater, WA
May 5, 2011
9:30 AM**

Meeting Summary

MEMBERS, ALTERNATES, AND GUESTS PRESENT

Mark Swartout, Thurston County	Chris Hempleman, Department of Ecology (DOE)
Janel Spaulding, CBP/Grays Harbor College	Tom Gow, Puget Sound Meeting Services
Bob Burkle, WA State Department of Fish & Wildlife (WDFW)	Glen Connelly, Confederated Tribes of the Chehalis Reservation
Kahle Jennings, City of Centralia	Chanele Holbrook-Shaw, Citizen, Thurston County
Julie Balmelli-Powe, Lewis County Farm Bureau	

Welcome & Introductions

Glen Connelly called the meeting to order at 9:42 a.m.

Changes to Agenda

Ms. Spaulding added an update on Phase 4 funding. Lara Fowler will also provide information on water rights later in the meeting.

CBP Supplemental Organization Discussion

Outcome from CBP Meeting

Ms. Spaulding reported on the results of the last CBP meeting. Terry Harris offered to ask his Council for some funding assistance to the Partnership. Chair Canaday asked members for feedback on the desire to continue meeting and pursuing the goals of the watershed management plan. There were no comments from any of the members about disbanding the Partnership.

Kahle Jennings distributed a memo from the Lewis County Prosecutor's office pertaining to the formation of the Cooperative Watershed. Ms. Spaulding said she reviewed both the memo and the CBP's interlocal agreement to confirm that the new group would not supersede the Partnership or cause dissolution of the Partnership. Mr. Jennings pointed out that the prosecutor is contending that the parties of the agreement are revoking their involvement in the Partnership because the language of the new agreement stipulates that it will be the only mechanism to address flood control and basin planning issues. Mr. Jennings clarified that the interpretation is not his personal position but he was concerned that it may be an issue at the next Partnership meeting. The memo does not indicate that it has any effect on the Partnership's agreement but that those parties signing the agreement have effectively renounced the Partnership's process. It's a legal issue between the parties and he is not taking a position. Bill Schulte announced at the last Partnership meeting that he would not support any additional subgroup, such as a non-profit or a watershed management partnership.

Ms. Spaulding commented that after speaking with several Partnership members, she is not concerned because the new watershed cooperative is not assuming any of the responsibilities of the Partnership. Mr. Jennings advised that he has had some conversations with Mark White, current Vice Chair of the Partnership, who is designated to chair the next Partnership meeting because of the Chair's absence. He is concerned as Lewis County is conveying through that the memo that the tribe has revoked its involvement in the Partnership. Since Mark White is one of the signatories to the new watershed cooperative agreement, it's likely that someone from

Lewis County will raise it as an issue during the meeting. He wants to avoid that situation because it will be too disruptive. Mr. White has also shared that he doesn't believe there will be any problems.

Bob Burkle pointed out that everyone should be aware that the memo is a legal opinion by a lawyer hired by Lewis County, which is why it favors Lewis County. Legal opinions are just that – legal opinions. Mr. Jennings noted that the opinion was authored by the Lewis County Prosecutor, who is an elected official.

Chris Hempleman said Mr. Jennings' concern is to ensure a neutral and productive meeting rather than disagreeing over the merits of any legal opinion. She asked if another neutral member could potentially chair the meeting. Mark Swartout said Terry Harris has previously chaired the meeting. Mr. Jennings noted that Mr. White intends to chair the meeting. Mr. Connelly added that he spoke with Mr. White as well and Mr. White conveyed that it's someone's opinion who is not a member of the cooperative.

Ms. Hempleman asked if the issue is scheduled on the Partnership's agenda. Ms. Spaulding responded that it is not included as a topic on the meeting agenda. Mr. Jennings said he wanted the STC to be aware of the issue because his concern is someone attending and disrupting the meeting.

Mr. Connelly said another option is inviting the cooperative to share its intentions and plans. The agreement between the three parties includes language ensuring a link between flood damage reduction and ecosystem restoration because there is a connection between the two. He said he believes that was the connection rather than the group stepping in and taking over other groups. Mr. Jennings recommended against including the cooperative on the agenda and prefers not having the parties involved debating the issues during the Partnership meeting.

Julie Balmelli-Powe shared her opinion and said she would rather clear the air. If the cooperative attended and provided an explanation to clarify the provision in the cooperative agreement that states, "All prior or contemporaneous verbal or written agreements, understandings, representations, or practices relative to the foregoing are superseded, revoked, and rendered ineffective for any purpose." That's an inclusive statement and it would be beneficial for cooperative members to provide an explanation and interpretation of the agreement. Otherwise, the issue may never be resolved if not addressed directly.

Mr. Burkle commented that as he understands the Partnership's role, the Partnership is not involved in flood issues, although the Partnership is the lead on the General Investigation Ecosystem Restoration Study that was pursued under the understanding that it would be combined with ecosystem restoration and flood control. The cooperative is another way to address issues outside the Partnership's focus. The Partnership's focus is implementing its watershed plan. It's a debate for the Flood Authority and for the cooperative and not for the Partnership.

Mr. Jennings added that having been exposed to many discussions and working for the City of Centralia, there are many people and jurisdictions in Lewis County that are upset about the action by the cooperative. The City of Chehalis is not happy as well as the City of Centralia. Everyone needs to be aware that it's an issue.

Ms. Balmelli-Powe said it doesn't necessarily have to be a huge debate but rather a summary of what the cooperative intends. The prosecutor didn't know the intent of the statement. Affording an opportunity to clarify the statement need not constitute a big debate.

Ms. Hempleman recommended that members should be prepared to respond if there is a disruption in the meeting.

Mr. Swartout commented on the Flood Authority's work on an agreement that has been revised several times. The provision in the cooperative agreement as cited by Ms. Balmelli-Powe is also included in the last draft of the Flood Authority interlocal agreement. There was no intent by the Flood Authority to take over the Partnership's function. Mr. Jennings said he believes that's not the argument. The argument is that the Partnership exists but that the parties to the cooperative agreement have indicated all the work will be through the cooperative. The agreement has no impact on the existence of the Partnership or the Flood Authority, but that the cooperative members are taking a different approach.

Mr. Swartout pointed out that everyone is upset and the best thing is to let things work out. There are choices the Flood Authority must make. Direction was given to provide another draft of an interlocal agreement. Ron Averill also sent out another interlocal agreement resulting in the Flood Authority having to review three interlocal agreements. In the end there may be one interlocal agreement, which could entail the dissolution of the cooperative. It might be best to let the process automatically come to some conclusion. Opening the door might worsen the issue.

Ms. Hempleman suggested reviewing the summarization by Mr. Swartout at the next Partnership meeting to inform members other venues are working on the issue. Mr. Jennings added that individual members can always withdraw their membership from the Partnership. The interlocal agreement will continue to remain in effect as long as two or more parties remain as signatories to the agreement. The Partnership is a separate entity focused on specific issues.

Members discussed whether to include the issue on the Partnership meeting agenda and how to frame it so that the Partnership doesn't become the forum for resolving the issues. Members discussed potential outcomes if the item is scheduled on the agenda. Mr. Jennings said his intent for discussing the issue was not to include it on the agenda. Ms. Balmelli-Powe said cooperative members need to address whether they are still members of the Partnership. They need to clarify their intent. Several members pointed out that several members have already clarified the issue. Several members supported a short 15-minute review by the cooperative about its intent and role.

Members discussed the status of discussions for forming a separate fundraising arm of the Partnership. Mr. Swartout recommended including an action item for a decision by the Partnership on whether they want the STC to continue working on forming a fiscal arm of the Partnership.

Ms. Spaulding reported there are some foundations that provide grants to governmental entities. Ms. Holbrook-Shaw commented on the competitiveness of foundation grants. Mr. Swartout suggested contacting Idaho State University Environmental Finance Center for a list of possible foundations.

Members shared concerns about ongoing funding. Ms. Hempleman said with the downturn in the economy it may mean several years of lean funding with only limited funds to maintain the organization and ongoing relationships. Mr. Burkle said there are a number of projects in the watershed plan that can be implemented requiring minimal funds, such as addressing stormwater issues and energizing people to seek out information on rain gardens, etc. Ms. Spaulding said there has been progress on implementing the watershed plan. She developed a progress report and recommends updating the Partnership quarterly in conjunction with the progress report she submits to DOE. She shared a copy of accomplishments she's included that align with the Detailed Implementation Plan (DIP). The report includes accomplishments since December 2010.

Ms. Holbrook-Shaw suggested including the quarterly report on the Partnership's website. Mr. Jennings suggested including the accomplishments of the Centralia Stream Team within the report. One of the motivators for establishing the team was demonstrating that parts of the plan can be implemented through existing

programs in municipalities. Mr. Burkle commented that having a record of accomplishments is valuable especially when seeking funding support. It demonstrates how much the organization has accomplished and shows the Partnership has a track record.

Ms. Spaulding suggested including the DIP when she sends the email to members.

Mr. Swartout commented that for several years, the STC developed a work plan for the Partnership in the fall for the next year. The DIP was crucial in tracking projects and accomplishments. It also assists the STC in scheduling the Partnership's agenda during the coming year.

Mr. Jennings suggested reaching out to members and prompting them to consider what they are doing to help implement the plan. One example is the City of Centralia's expenditure of \$100,000 in stormwater funds to model the hydrology of China Creek to determine the capacity and what is generated by storm events.

Mr. Swartout asked whether that project could be used for a match for the Partnership. Mr. Hempleman said it likely could be used as match as long as it's not state money or part of the NPDES permit requirements. The source of funding would need to be examined. There likely are projects jurisdictions are pursuing that could be considered for a match. Ms. Hempleman offered to review the question with DOE grant administrators.

Ms. Hempleman provided an update on Phase 4 funding. She referred to an internal DOE meeting about what can be anticipated from the Legislature, which is still tentative in terms of whether the basic program will receive funding or whether the four-year extension is still possible. Internal conversations within the department centered on "what if" scenarios. The department's main hydrogeologist who often evaluates grant proposals appeared to be disconnected from the concept of the decision support tool. A meeting was held with him and USGS to discuss the project. Ms. Hempleman said she met with him for 45 minutes and believes there was some progress in terms of his perception. Ms. Hempleman said her impression at the agency is that the emphasis is processing the backlog of water rights.

Mr. Swartout asked whether the funds that might be earmarked for extending Phase 4 could be used to reduce the backlog of water right applications. Ms. Hempleman qualified her response as not having a total understanding of the process. DOE has a capital budget that is used for projects, such as the storage project and then there is the operations budget that pays for base funding and other types of projects. Both budgets are referred from the Legislature with caveats to consider particular issues as well as other issues. The budgets are reviewed by upper management and through respective programs. As the budget works through those processes some of the funds are allocated for operations. There has been some discussion about allocating some funds to water resources from the watershed program. However, those decisions are not final because the final budget is unknown. The first step is allocating funds for basic operations. Whatever is remaining is passed to planning units apportioned to the four regional offices. Guidelines received from management are used to determine how the funds are allocated.

Mr. Swartout expressed concerns that once the allocation within the operating budget is passed to DOE, the Partnership loses its voice to help DOE make decisions that may affect those that are pursuing effective watershed planning. Ms. Hempleman said she believes that the extension of Phase 4 will come from the Legislature and not from DOE. It is doubtful that it will be a separate allocation but a set amount for the watershed program. Ms. Hempleman agreed with Mr. Swartout, and shared that internally, DOE officials have the same conversations and acknowledge that the locals need to be involved. She has some limited input on the funding amount, but only after it has passed through several management reviews.

Ms. Hempleman shared additional information on the meeting with USGS, herself, DOE Hydrogeologist Dave Nazy, Mr. Swartout, Ms. Spaulding, and others. That conversation with Mr. Nazy was helpful because he realized other ways the USGS decision support tool could be used and how it relates to water rights.

Mr. Swartout commented on the modeling efforts. The only way to determine whether a new water right is required to mitigate is through modeling. Modeling is expensive and decision support tool will assist farmers in applying for additional water rights because it reduces their modeling costs. By working with USGS, the model is a public domain that can be used by anyone. Ms. Hempleman said she believes the meeting was successful as well because of the information shared on the possibilities of the tool.

Mr. Swartout said the discussion also included the purpose of watershed planning, which is water quality, water quantity, habitat, and instream flows. Through the phases of funding there is a realization that it's unknown how much water is in the basin, how much is being used, and how much is available. Unless it's modeled it's not possible to effectively manage water resources within the basin. Those modeling efforts can lead to some results.

Ms. Hempleman said Mr. Nazy also asked that in future grant applications, it's important to include an introductory statement that summarizes how the project may be a piece of a much larger project.

CBP May Agenda, STC June Agenda

Ms. Spaulding reviewed the May CBP agenda:

- Continue discussion on CBP supplemental organization – decision point
- Progress report update
- Presentation by Kathy Jacobson and Students
- Presentation by Chanele Holbrook-Shaw, Heernett Foundation

June CBP meeting agenda includes:

- Dr. Alan Hamlet, University of Washington, Climate Impacts Group presentation on climate changes and changing hydrologic extremes.
- Lara Fowler presentation on Water Rights 101

July CBP meeting agenda includes:

- Andy Gendaszek presentation of work completed by USGS in the Chehalis Basin
- Presentation by Nadine Romero on Scatter Creek Model

Lara Fowler, Gordon Thomas Honeywell, Presentation on Water Rights

Ms. Fowler shared her professional background in water and water rights. Prior to attending law school she used to work for the Oregon Water Resources Department on water policy and water conservation with cities and irrigation districts and the state side of instream flow restoration and conservation water projects. She was based in Salem and worked in the eastern third of Oregon and in Oregon's Deschutes River basin on groundwater and surface water interaction. She attended law school with the intent of working on water law but also complex mediation and dispute resolutions. She has worked on many water related issues and water rights questions in California. She worked on water quality in the San Joaquin Valley and as a mediator with a colleague in the Los Angeles area concerning water rights and groundwater storage. California has no

groundwater code. Her day-to-day practice includes working with various cities and regions, such as the Dungeness basin and DOE on negotiations over water rights.

Ms. Fowler said that based on conversations with Ms. Spaulding some background on water rights 101 might be helpful to the Partnership.

Mr. Jennings said some members have been involved with the Partnership since 1998 and there have been many discussions about water, water rights, and water law. Others are newer to the organization, so there will be a wide range of interests. However, it never hurts to have a refresher on a different perspective on water law.

Mr. Swartout said Mr. Treichler generated a discussion after the water banking discussion because one of the issues is the 'use it or lose it' element of water law, particularly for agriculture. If the basin is going to obtain the benefits of conservation by all users, the 'use it or lose it' provision needs to be addressed for agriculture. At one time he was under the impression that one way was through water banking where the water right could be banked for water not used and then reclaimed when needed. That approach was used in the Nisqually and he was disappointed with the ability associated with water banking.

Mr. Jennings said it's also important to speak to the concept of beneficial use because wasting water is not a good practice. Mr. Swartout said he learned that in the Nisqually, a local farmer was actually dumping water to run up the meter. It all pertains to the issue of allowing farmers to continue contributing to a strong agricultural economy in the basin while also encouraging conservation of water without losing their water right.

Ms. Holbrook-Shaw added that during land conservation if there is a water right with the land it's important to find a way to conserve it or bank it with the land over the long term to keep water with the land so that it's not used.

Mr. Swartout shared information on Thurston County's policy to protect water rights within lands in long-term ag by prohibiting the transfer of those rights.

Members and Ms. Fowler commented on various issues associated with water, water rights, and water law as summarized below:

- Instream flows have a priority date and it's considered a water right.
- There are groundwater withdrawal implications to fish.
- Water law can be equated to a Model T going 90 mph and falling apart at the seams.
- Ms. Fowler shared information on the Deschutes River basin and instream flow protections enacted in the 1990s. A 10-year moratorium was implemented. Mitigation is required for all new water rights.
- Ms. Fowler suggested a 20-minute presentation covering the basics and instream flow, fisheries, exempt wells, interface between groundwater and surface water, and interruptible rights. She could also include information on what other areas are experiencing.
- Chehalis Basin is closed to non-exempt wells.
- Mr. Swartout suggested focusing the presentation on the main principles of water law – use it or lose it, priority, first in right first in time, and beneficial use, and frame other issues around the four principles.
- Ms. Fowler said Montana and Colorado have water courts because of the need for specialized knowledge.

- Department of Ecology has a comprehensive web page on water rights.
- Ms. Fowler's presentation should include information on exempt wells.
- Washington State Supreme Court upheld Municipal Water Provider protection against relinquishment but stipulated requirements for water conservation. Mr. Swartout reported the City of Yelm recently completed a leak study and found a substantial leak that could supply water to 500 homes. Discussion followed on how municipalities are using water rate structure to increase water conservation.
- The cities of Seattle and Olympia's conservation efforts have been very successful.

Ms. Fowler thanked members for the input. The presentation will cover the basics of water law and include some policy questions and current issues.

Mr. Swartout said he would like a clear answer on whether water banking can be used as a way to "park" ag rights because it's difficult to determine another incentive for conservation. Ms. Fowler said the presentation can also include information on water banking, instream rules, and the Trust Water Program. There are two statutes on water banking with one pertaining to the Yakima basin. She will review what opportunities are available through water banking.

Ms. Spaulding reviewed the June 22 CBP meeting agenda, which includes Dr. Alan Hamlet, University of Washington, Climate Impacts Group presentation on climate changes and changing hydrologic extremes and Lara Fowler presentation on Water Rights 101.

Ms. Holbrook-Shaw suggested a discussion needs to occur on future funding and developing a plan.

It was noted that Terry Harris may provide an update on his request to the City of Chehalis to contribute funding.

The draft of the quarterly progress report will be updated and presented as well.

Members discussed increased attendance to monthly CBP meetings.

STC June Agenda

Ms. Holbrook-Shaw suggested the STC could recommend some additional names for organizational presentations at the monthly CBP meeting. Ms. Hempleman recommended a presentation by Mr. Jennings on how the City is contributing to the implementation of the watershed plan.

Ms. Spaulding suggested adding a discussion on future fundraising and financing options.

Mr. Swartout commented on the success of identifying funding support for the watershed festival and potential ways for the committee to expand on those efforts.

Adjournment

With there being no further business, Mr. Connelly adjourned the meeting at 12:02 p.m.