

CHEHALIS BASIN PARTNERSHIP
Chehalis Tribe “Lucky Eagle” Casino
Rochester, Washington
March 25, 2011
9:30 a.m.
Meeting Summary

MEMBERS, ALTERNATES & GUESTS PRESENT

Bonnie Canaday, Chair, City of Centralia
Glen Connelly, Confederated Tribes of the Chehalis
Reservation
Lee Napier, Grays Harbor County
Miranda Plumb, US Fish & Wildlife Service (USFWS)
Julie Balmelli-Powe, Lewis County Farm Bureau
Janel Spaulding, Chehalis Basin Partnership
Chanele Holbrook-Shaw, Citizen, Thurston County
Bob Burkle, Washington Department of Fish & Wildlife
(WDFW)
Loren Hiner, City of Montesano
Art Lehman, Port of Centralia
Terry Willis, Grays Harbor County
Bob Thomas, U.S. Army Corps of Engineers
Teri Liomin, Chehalis Basin Fisheries Task Force
Kahle Jennings, City of Centralia
Jim Hill, Citizen, Lewis County
Karen Valenzuela, Thurston County
John Lucus, Lewis County Farm Bureau

Terry Harris, City of Chehalis
Christine Hempleman, Department of Ecology (DOE)
Bill Schulte, Lewis County
Patrick Wiltzius, City of Chehalis
Chuck Caldwell, Port of Grays Harbor
Gary Waltenburg, Citizen, Grays Harbor County
Bruce Treichler, Northwest Steelhead & Salmon
Conservation Society
Chris Stearns, Thurston Public Utilities District
LaJane Schopfer, Mason County
Tom Gow, Puget Sound Meeting Services
Janet Strong, Chehalis River Basin Land Trust
Paul McMillan, City of Hoquiam
Chuck Turley, Washington State Department of
Natural Resources (DNR)
Nelson Majano, Student, The Evergreen State College
Teri Franklin, Citizen, Grays Harbor County
Don Loft, Student, The Evergreen State College
Erik Borgen, Washington Water Trust

SUMMARY OF ACTION ITEMS:

Approval of Meeting Summary

Approved January 21, 2011 meeting summary as amended.

CBP Organizational Structure Discussion

Members agreed to continue the organizational discussion at its April meeting. Members directed Ms. Spaulding to follow up on several questions:

1. Can a WPM receive funds from a foundation?
2. Why is WIRA 59 WMP interested in forming a non-profit?
3. Are organizations more willing to contribute to a WPM versus the CBP?

Washington Water Trust/Water Banking

Ms. Spaulding was asked to develop a three column chart of pros and cons associated with each type of organization.

If interested, the topic can be scheduled for a more in-depth discussion on a future agenda.

GENERAL PARTNERSHIP BUSINESS

Welcome, Introductions, and Roundtable Comments

Bonnie Canaday called the March 25, 2011, meeting of the Chehalis Basin Partnership (CBP) to order at 9:38 a.m. A meeting quorum was attained. Everyone present provided self-introductions.

Discuss January 21, 2011 Meeting Summary

The following corrections were requested to the minutes of January 21, 2011:

- On page 2 under *Announcements*, change “\$50,000” within the paragraph to reflect “\$15,000.”
- On page 8, change the first sentence in the last paragraph to state, “Don Loft shared that several students at the Evergreen State College are forming a non-profit habitat restoration group.”

The minutes of January 21, 2011, were approved as amended.

Miranda Plumb arrived at the meeting.

SPECIAL PROJECTS AND PRESENTATIONS

CBP Budget Update

Janel Spaulding provided an update on the status of the budget. The grant award of \$62,499.95 was received on July 1, 2010. Expenditures to date total \$21,000.11 with a balance remaining of \$41,499.84. Funding from the Phase 4 Grant for the Partnership ends June 30, 2011.

Chris Hempleman added that at this point, the proposed Senate version of the budget includes watershed planning funds.

Ms. Spaulding said with the Tribe’s recent contribution, there is sufficient funding for her position through December 2011.

CBP Organizational Structure – Discussion/Update

Ms. Spaulding distributed questions and answers raised by members and the Steering Technical Committee on establishing a stand-alone organization and information on the Water Resource Inventory Area (WRIA) 59 Watershed Management Partnership (WMP) and WRIA 59 Water Resource Management Board. She recently spoke to Dick Stevens from Stevens PUD. Mr. Stevens is a member of the WRIA 59 WMP. Ms. Spaulding was able to obtain more information on the organizational structures as well as a copy of the interlocal agreement which formed the WMP. WRIA 59 WMP is the first fully functional watershed management partnership in the state.

Terry Willis arrived at the meeting.

Ms. Spaulding asked members for feedback on three issues:

1. Determine if a WMP is the right structure for the CBP.
2. Determine if the CBP wants to maintain its current structure to enable citizen and private sector input or whether another committee similar to the Citizen Advisory Committee should become re-engaged. *One option is maintaining the CBP in its current form and then transitioning into a board-type group with both public and private interests after exhausting all state funding from DOE.*
3. Approval to begin working on a draft Interlocal Agreement with Jon Leptich or a county attorney, and determine membership of WMP and within the Interlocal Agreement. Discuss potential sources of funding/resources to continue operations.

Ms. Spaulding reported WRIA 59 utilizes the WMP as its mechanism to obtain funding. The Management Board is comprised of counties, cities, PUDs, citizens, and other private interests. If the CBP is interested in forming a WMP, only governmental entities can sign the interlocal agreement.

Teri Liomin arrived at the meeting.

Feedback and comments from members included:

- Several members expressed an interest in ensuring citizen interests are represented in any new structure.
- It appears the WMP could serve as the adjunct to the CBP enabling the WMP to pursue funding opportunities not allowed under the current organizational structure.
- To enable citizens and private interest representation, it may be necessary to maintain the current Partnership organization with the WMP formed as the mechanism to raise funds.
- Pros and cons of a non-profit versus a WMP were questioned. One of the reasons for considering other alternatives was the concern over loss of control to a non-profit board, which according to research is a valid concern. The WMP is a group of governments formed under an interlocal agreement that theoretically would be the same governments represented on the CBP. There would be a direct link of those governmental entities' interests in the Partnership as well as in the WMP.
- Another concern involving a non-profit is that it could become its own entity, which is possible under a WMP. The issue is the advantages of forming one or the other.
- The Department of Ecology (DOE) cannot fund a non-profit but can provide funding to a WMP, which could be a consideration. If basic watershed funding ends in June, the Partnership is still eligible to apply for project grant funding.
- Governmental entities under a WMP could be members of the Partnership. Citizens do have control of governmental entities as they are comprised of elected or appointed officials.
- Non-profits are expensive to operate and are often dependent upon volunteer resources.
- There is always the option of forming a non-profit in the future if the WMP proves to be ineffective.
- The crux of the concern is that anyone can form a non-profit to raise funds to implement the Watershed Management Plan with no control by the Partnership.
- Initial impression was that the Partnership was to form as a non-profit to access certain funding sources. With limited resources within municipalities, it may be difficult to form two entities. It was noted that although there would be two separate organizations, the two could meet jointly during a Partnership meeting. Members on the WMP would likely be current Partnership members.
- The WMP could essentially be a shadow organization comprised of the same membership with the ability to seek different sources of funding.
- RCW 39.32.200 authorizes WMPs, which requires at least two jurisdictions to form. Citizens cannot be a member. The interlocal agreement can be as broad or as specific as desired by the membership. Funding to the WMP must be administered by the financial division of one of the jurisdictions. It is likely Grays Harbor County could continue to serve as the fiscal agent for both organizations if it so desired. The statute stipulates that, "The public agencies forming the partnership shall designate a treasurer for the deposit, the accounting, and handling of the funds for the partnership. The treasurer shall either be a county treasurer or a city treasurer of a county or city participating in the agreement to form the partnership."
- WRIA 59 has been discussing the potential of establishing a 501(c) 3 organization. Governments can accept funds from non-profits or foundations; however, the Partnership is limited in its ability to solicit or receive funds whereas a WMP can solicit or receive funds directly.

- WRIA 59 may be considering forming a non-profit because sometimes, foundations view non-profits differently than government entities. The WMP is essentially a group of governments.
- The initial intent of forming another organization was to provide the ability to draw upon the private sector. If that somehow is affected because the organization is a government entity, then the Partnership hasn't achieved its intended goal.
- It may put another layer of bureaucracy between the Partnership and forming a 501(c)3. Ms. Spaulding offered to review the questions with Mr. Price as well as finding out whether the WMP has raised any funds since it was formed. Three founding members initially contributed \$5,000 each. The WMP was formed when the watershed planning group was still receiving DOE Phase 4 funding.
- A member questioned why the Partnership couldn't move forward and create a WMP and have the WMP form the non-profit with oversight by the Partnership of the WMP and the non-profit.
- Terry Willis said the CBP was formed on a consensus basis with members agreeing to move forward on particular decisions irrespective of any personal position to enable progress for the whole basin to move forward. Under a non-profit entity, that basic premise could be undermined if, for example, an environmental group contributed a substantial amount of funds to the non-profit to fight against agriculture practices within the Chehalis basin. As a member of a community with an agriculture base, she's had the opportunity as a member of the Partnership to work on environmental issues in cooperation with agriculture interests. Under the non-profit scenario, she asked whether that ability to have those conversations would be lost. Several members affirmed that the Partnership would not have control over the non-profit.
- It was noted that funds are required for maintaining the operation of the Partnership as well as implementing projects. The non-profit selects projects from the Watershed Management Plan to obtain funding to implement projects. That stipulation could be included in the agreement with the non-profit in that the non-profit's focus is to select recommendations from the plan and implement them whereas the WMP might receive funding for maintaining the organization's operations.
- It was pointed out that the Partnership at this time can pursue funding opportunities similar to a WMP. There's nothing preventing the Partnership from receiving contributions from its member organizations.
- A member suggested that the conversation appears to suggest that the entities may be detracting from the purpose. However, if properly managed, the entities jointly can complement and make the purpose stronger.

Discussion focused on the original concerns surrounding a non-profit:

- There is no control over the non-profit after it becomes operational.
- Language protecting the Partnership within the original by-laws can be changed.
- Non-profits are considered independent organizations and could sever ties with the Partnership.
- It's a matter of determining priority and control, as priority focuses on where funds are generated. The Partnership should consider the source of future funding sources when determining the management model.
- Members discussed whether it's possible for the Partnership to receive donations from any source. If it's possible to accept donations, members questioned the need to form another organization. Ms. Napier acknowledged that the Partnership has accepted donations for the Watershed Festival.
- The discussion was originated because many large foundations will not contribute to government entities. The Partnership considered forming a non-profit to access some of those private foundation funds. The issue is whether a WPM can qualify for those funds. That question needs to be evaluated.
- For the most part, funds received by most watershed groups in the state that are not associated with government funding are miniscule. If the Partnership is going to expend efforts on establishing

another organization, it needs to consider an organization that can effectively attract government funding sources first. Pierce County has three watershed councils that are managed by staff from Pierce County. The councils are funded strictly through stormwater fees collected within the county.

- Anyone can donate to the Partnership to implement the plan and members could assess a membership fee to support Partnership activities. The intent of addressing whether to form a non-profit was accessing funds that are not normally available to government entities.
- A WMP has no taxing authority but has the ability to accept donations of up to 10% of water related revenues from each member agency.
- Part of the initial conversation also recognized that the Partnership is not a legal entity, but rather a group of members formed under an interlocal agreement. A WMP is considered a legal entity. It doesn't appear to make any difference in terms of the organizational structure for accepting donations. If the Partnership converted to a WMP, it would lose member entities because of membership restrictions imposed by the statute. Although the Partnership is not a legal entity, it hasn't been proven through the discussion that it would be problematic in terms of raising funds. It was pointed out that the Partnership is limited as a government entity from accepting certain funding. The Partnership wanted to develop the ability to access that funding. The ongoing question is whether foundations and other funding sources would view a WMP as a government organization.
- Other elected officials not represented on the Partnership are conservation districts, which would qualify for membership under a WMP.

Jim Hill suggested deferring the discussion until the next meeting. Ms. Spaulding offered to follow up on why the WRIA 59 WMP is interested in forming a non-profit. The pro bono attorney is following up with the Deputy Prosecuting Attorney from Stevens County as he authored the interlocal agreement.

Ms. Holbrook-Shaw suggested the Partnership should make a decision soon on the next step. Mr. Jennings pointed out that any two governments at this point could form a WMP. It is only through the membership's commitment to the CBP and working through the consensus process that prevents that action from occurring.

Ms. Willis said another issue to address is whether there are other WMPs in addition to the WRIA 59 WMP and whether it has received funds from other non-profit organizations. Ms. Spaulding said another WMP is the Spokane Water District #3 that focuses on aquifer protection.

Mr. Connelly noted that members have raised the issue associated with the risk of a non-profit pursuing other interests. He asked if there are examples of that occurring. Mr. Jennings referred to an occurrence at the University of Washington.

Ms. Valenzuela said she's not concerned with that aspect, as it's possible to designate the make-up of the non-profit board to lessen the possibility. Secondly, anyone can form a non-profit at any time with or without the Partnership's blessing.

Ms. Napier clarified that WMP members can assess funds (up to 10%) through their respective water utilities. Ms. Willis cautioned against creating the perception that by creating an entity members will suddenly contribute funds. Members currently have that ability to contribute funds to the CBP.

Ms. Spaulding asked about the potential of determining a decision by the next meeting on whether a WMP is the right structure. Ms. Willis said one question that needs to be addressed is whether organizations are more willing to contribute to a WMP versus the CBP. Mr. Schulte said the other question is why WRIA 59 WMP is pursuing the formation of a non-profit.

Members discussed the pros and cons of different models of a stand-alone WMP replacing the Partnership or establishing a WMP in conjunction with the CBP. Members acknowledged there are different approaches that offer different benefits and negatives. The issue is determining what value the Partnership receives if the membership agrees to form a WMP.

Ms. Holbrook-Shaw commented on the difficulty associated with the process of establishing a non-profit and applying for funding from different organizations. To be successful, the non-profit must demonstrate a successful track record of projects, proven technical experience, and leadership. Should the Partnership determine formation of a non-profit is practical by June; the reality of obtaining funding from a foundation or other organization is unlikely to occur in the short-term. Chuck Turley added that he is involved in a group and has been advised by the group's attorney that it will take 18 to 24 months to obtain approval for 501(c)3 status from the federal government.

Ms. Holbrook-Shaw offered the suggestion of utilizing existing non-profits within the basin to sponsor projects until the new organization is established. Ms. Willis questioned the need to form a new organization if the Partnership can work cooperatively through other non-profits. The Partnership has already developed its Watershed Management Plan with a list of projects. She suggested expending some energy in that direction rather than spending time determining whether it's feasible to establish another organization. The Partnership has never pursued that process and it may be possible to secure funding opportunities.

Mr. Harris commented that it's been somewhat unfortunate the Partnership has spent the last several months on efforts to create another entity when it might not be necessary.

Ms. Spaulding suggested some of the unanswered questions should be addressed. Ms. Willis offered that the process has been necessary to help members answer a series of questions prior to making any decision.

Mr. Connelly asked Ms. Spaulding to develop a three column chart of pros and cons associated with each type of organization.

Members agreed to continue the discussion at its April meeting.

Presentation on Water Banking in the Chehalis Basin and the Washington Water Trust

Erik Borgen, Washington Water Trust (WWT), provided an overview of organization, water rights, and water banking.

WWT is a 501(c)3 entity established in 1998 with the goal of enhancing and restoring stream flow throughout the State of Washington by acquiring water rights, on a temporary or permanent basis, by way of donation, lease, or purchase. WWT works with a number of different partners ranging from state government, other non-profits, municipalities, and tribal entities. WWT has offices in eastern and western Washington. The organization is confidential and non-regulatory, which is important for landowners. WWT often serves as a buffer between landowners and DOE and other state regulatory agencies.

A water trust is similar to land trust, which leases or purchases property for environmental or conservation purposes.

Mr. Borgen displayed a map of 16 critical basins in the state and areas of the organization's focus. Chehalis basin is not listed as a critical impaired basin and has some of the best salmon habitat in the state. WWT would like to work with the Partnership to determine if there are ways to protect and enhance habitat.

Mr. Borgen said a water right is essentially the right to use a public resource. It's typically attached to a piece of property. Washington State is a "prior appropriations state" where water use of any sort is subject to the "first in time, first in right" clause, originally established in historical western water law and now part of Washington State law. This means that a senior right cannot be impaired by a junior right. In Washington, water rights are considered a beneficial use for irrigation, domestic, commercial, municipal, and other purposes. Washington has the "use it or lose it" water right relinquishment law to support water conservation efforts. The law has recently created some opposition. There are a number of bills attempting to change the statute. Currently, a water right must be used at least once every five years to remain valid. Additionally, a one-time use must be of the full water right, such as 100 acre feet or the owner could face relinquishment of the portion not used in a five-year period.

The groundwater permit exemption allows the users of small quantities of groundwater to construct wells and develop their water supplies without first obtaining a water right permit from Ecology, which is a topic of debate throughout the state, particularly between municipalities that must seek water rights and rural developers who can drill for water. In the Walla Walla and Dungeness areas, there have been some rule changes that have created the need to mitigate even for permit exempt wells.

The Washington State Trust Water Rights program provides a way to legally hold water rights for future uses without the water right relinquishing. Water is held in trust to benefit groundwater and instream flows, and other beneficial uses. While water is held in trust, it retains its original priority date. The program is managed and protected by the Department of Ecology. One of the benefits is expedited processing of trust water applications. Water held can be on a temporary, short-term, or long-term basis. The Trust Water Rights Program is used to implement the Water Acquisition Program and for holding water for water banking activities.

Ms. Willis asked about the steps to deposit water into the trust. Mr. Borgen said if money is exchanged and the landowner is compensated for depositing water into the Trust Water Program, DOE undertakes an extended validity review to determine the extent and validity of the water right. Water donated to the program does not require an extended validity review.

Mr. Borgen said for acquiring water to restore stream flows, WWT pursues leases, purchases, and donations. To date, WWT has processed 27 transactions. A permanent donation is considered a charitable gift for federal tax purposes. In transactions involving leases, water right owners retain ownership and WWT compensates the owner for the use of the water for a specific period up to 10 years.

Bruce Treichler asked about the organization's source of funding for leasing water. Mr. Borgen said the organization completes much work in the Columbia basin with approximately 75% of its funds received from the Bonneville Power Administration. WWT also receives 25% from the Department of Ecology. Other sources of funding include the Salmon Recovery Funding Board and other entities. One group WWT is working with is the Bonneville Environmental Foundation that is creating a market-based credit approach by contacting businesses that want to conduct salmon-safe business and want to offset water use through the purchase of water restoration credits. Proceeds from the credits are funneled to WWT to pursue water acquisitions.

Julie Balmelli-Powe asked how the rate of compensation for water is determined. Mr. Borgen said that the rate varies by location.

Chris Stearns asked whether WWT is working with water banks. Mr. Borgen said WWT is working with DOE to create the Walla Walla Exchange as well as in the Dungeness Water Exchange that WWT will likely

manage. WWT also worked in the Kittitas on local water banks. Those entities were established in anticipation of a large volume of transactions. Water banks are beneficial because there typically have been extensive studies on the hydrology and connectiveness between groundwater and surface water in those areas. By working with DOE, some rules have been developed so that if a landowner or developer wants to develop they will know the true cost of providing water to the development. In other areas, such as the Nisqually, the volume of transactions may not warrant a bank.

Mr. Borgen reviewed a list of specific instances of how WWT's work can provide flexibility and balance to a watershed. Split-season leasing is good example of flexibility and balance. Split leasing for example, allows hay farmers to irrigate and obtain several cuttings of hay with WWT paying the farmer to forego the last cutting and diverting water to streams. It usually occurs during critical times of low flow periods.

Mr. Borgen reviewed several WWT projects:

Taneum Creek - Washington Water Trust helped a voluntary partnership with diverse interests negotiate a solution that sustains agriculture production while creating a healthier ecosystem for many species of fish. The partnership serves as a successful model for many more future solutions.

Teanaway River – The project involved working with 20 landowners over years to restore flows on the Teanaway. The goal is restoring 15 cubic feet per second (cfs). WWT is nearing a goal of adding 10 cfs.

Salmon Creek – The project is actively restoring flows to the most culturally and ecologically important salmon tributary in the Okanogan Basin. Since 2000, WWT has worked in partnership with the Confederated Colville Tribes, Okanogan Irrigation District, and DOE to secure agreements restoring nearly 6,000 acre feet of flow to Salmon Creek that support the migration, spawning, and rearing needs of ESA listed steelhead and Spring Chinook.

Touchet River – WWT worked with a number of landowners to convert from irrigated wheat to dry land wheat farming. Although the yields are not as great, WWT compensates the farmer for the difference. The project restored 7 cfs in the Touchet River.

Mr. Stearns commented on the derogatory impacts of push-up dams to fish.

Walla Walla Exchange – An instream flow rule was implemented that cut off river from new withdrawals. All new water from the shallow aquifer requires mitigation. Even permitted exempt wells require mitigation. Generally, 5,000 gallons a day are allowed for permitted exempt wells. In Walla Walla, it is now limited to 1,250 gallons a day, of which 1,000 gallons must be for household use. The Walla Walla Exchange purchases permanent surface water to place in trust with homebuilders paying \$2,000 for each exempt well. Homebuilders receive a mitigation certificate that can be submitted to the county to permit the project. The Trust deducts a half-acre foot from the water in trust.

Mr. Borgen said the source supply of potential water banking activities in the Chehalis include 2,500 water rights and certificates, approximately 8,400 water right claims with many having no associated quantity, as well as non-quantified federally reserved rights (tribal). On the demand side there are many municipalities that need to increase supply with many having exempt wells. If a rule were adopted requiring exempt well mitigation, there would be a huge demand that might necessitate a formal ban. Additionally, there are developers, agriculture interests, and environmental organizations.

In six tributaries of the Chehalis, average August flows are at or below regulatory minimum flows prescribed which may present some restoration opportunities in the Chehalis basin.

Don Loft commented that when resources are turned into a market-based commodity it might expose some abuses in the marketplace. He asked how WWT ensures or controls abuses that might occur in the free market. Mr. Borgen said that within any market there is always the potential for problems. The system is set up to allow transactions. There is no good answer to the question.

Mr. Loft said there are also other ways of recharging groundwater through management of stormwater systems and low impact development. There are other means of recharging groundwater. Mr. Borgen agreed and cited many infiltration and recharge projects underway in Walla Walla.

Mr. Waltenburg asked about those instances where the landowner has sold the water right essentially eliminating any future development of the property. Mr. Borgen said he's unsure if WWT has stripped water rights from land that could be developed as it's not normally the process. Many permanent acquisitions are from conservation projects, such as leaky ditch that loses water where that water is put in trust on a permanent basis after the ditch has been piped to prevent water loss.

Ms. Hempleman suggested that the topic is complex and if members are interested, a future presentation could be scheduled to discuss specific questions and issues in more detail.

Agenda Items for April 22, 2011

Ms. Spaulding reported the April 22 meeting is scheduled on a state employee furlough day. If rescheduled, the meeting room is not available. Ms. Hempleman advised that the furlough day for DOE was cancelled. Mr. Burkle advised that WDFW employees are scheduled for a furlough day on April 22. Members agreed to retain the April 22 meeting date.

Ms. Spaulding reported Ms. Holbrook-Shaw is providing a presentation on the Heernet Environmental Foundation at the April meeting.

ADJOURNMENT

With there being no further business, Chair Canaday adjourned the meeting at 11:59 a.m.