Meeting Notes
Resolving Rural Water Conflicts
June 16, 2014

Tom Loranger provided background:

- Current law requires Ecology to balance needs for instream flows and availability for out-of-stream uses.
- Difficult job of making the balance was made even more challenging by the Swinomish decision and ruling that Ecology used OCPI too broadly to establish reserves.
- In Kittitas, making budget neutral determinations are time consuming and resource intensive.
- Ecology expects heightened budget constraints because of projected general fund shortfalls.
- Management approaches need to match to the scale of the problem.

Dave Christensen continued:

- Overall process will be three-hour monthly meetings through September at Ecology.
- The focus of the discussion will be primarily the rural domestic water conflicts, but we will be aware that any changes to instream flow protections will affect other water users.
- Start by talking about stakeholder goals and values to weigh policy options against.
- Solutions need to be implementable, sustainable, durable and broad. May not work for every specific watershed, but must be applicable in many settings across the state.

Goals and Values- stakeholder discussion

- Protect Tribal Development + Instream Flows
- Manage with Precautionary approach
- Improve relationships with State & Tribes
- Need to work together
- More consistent rules, look at what is there clarify differences/similarities
- Repair what is broken in the regulatory process
- Predictability
- Clear standards/statutes
- Protect public health
- Use water efficiency
- Secure water to restore fisheries
Problem statement - from stakeholders

• Built houses or already purchased land have access to water (Skagit)
• Too complex process for establishing Instream Flows
• Clarity for Out-of-Kind Mitigation (not water for water mitigation, stream restoration, wetland restoration)
• Find more durable solutions for mitigation
• More clarity for counties (more manageable system for them to work with)
• Water is a limited resource
• Habitat already degraded, so fish need instream flow protection
• Need more money
• Lack of certainty about mitigation efficiencies
• Better understanding of small water uses
• More surface and groundwater models, better technical data
• Better understanding of intent: instream flows vs. base flows; Maximum net benefits; technical methods for instream flows
• Impact of Swinomish decision; court directed legislature to act
• Disconnect between older rules and the legislative intent
• Are we protecting instream values vs. instream flow numbers?
• Can't manage what you don’t measure, need more data (water measurement)
• Conflicts between Ecology/Health rules
• Notion that water law creates mutually exclusive uses create rigidity
• Need common terminology, ie: What is surface withdrawal, groundwater withdrawal, etc.?

Evaluate ideas from stakeholders available under current authority (not requiring statutory changes) and weigh values, goals and objectives discussed today

Use Maximum Net Benefit (MNB)

• Legal uncertainty about the intent and approach in use of MNB
• Not clear if stream flows can be amended using this approach.
• Ecology’s policy states that agency will not use MNB to balance reserve with instream uses (although this was done in Skagit)
• Difficult to value instream vs. out of stream uses of water this way

Cisterns

• If cisterns were used during seasonal stream closures, this could have a cumulative impact; what is that impact?
• Concerned about too much impact on winter flows because they serve an important function
• Public health concerns
• Costly management—could Ecology effectively regulate under this approach?
• Concerned about use of cisterns that continually collect water in dry seasons, may impact streams during the lowest flow periods
• Can be costly to install and treat water to make it drinkable
• Cumulative effects concerns
Conservation

- Water re-use allows existing systems to stretch their existing supplies; does it address rural water needs? Probably not throughout a watershed
- Conservation, such as fixing leaking system pipes, could key strategy for rural water availability
- If water is conserved then add it to the trust program...as a lease? To spread it? For instream resources? To park it? To sell it?...this redistribution can be contentious
- Irrigation efficiencies- regulatory enforcement against waste could create more water availability
- Could fund conservation, and water saved used somewhere else? Conservation could be an incentive, instead of enforcement issue
- Legal issue and fairness issue we need to address...public water suppliers have this concern, how do we create fairness in the conservation realm?
- Gift of public funds concerns if funding makes water available to specific individuals.

Mitigation Banking – strengthening Water banking under existing authority

- Out of kind- existing authority – no clear authority for out-of-kind mitigation options
- Can we improve instream resources more effectively by looking at the goals of mitigation more broadly...not possible under existing authorities? Subject to litigation under our current authority
- Mitigation needs to be in-kind and once no more mitigation is available, then there needs to be a development moratorium
- In-kind and on site mitigation doesn’t protect instream resources
- Adopt rules like the Columbia River rule – model for future rules?
- Includes a process to make a determination for appropriate mitigation (involving state, Tribal, local biologists)
- Could mitigation banking solutions rely on watershed planning?

Rely on Local Government

- Just saying no to all new development in an area is another tool in the toolbox; local jurisdictions need solid justification to say no
- Ecology needs to support local governments with
  - Technical expertise
  - Hydrogeologic data
- Do local jurisdictions have the capacity to handle this responsibility at this time?
- Needs flexibility