Meeting Notes

Resolving Rural Water Conflicts

September 15, 2014

Dave Christensen, provides introduction and sets stage for breakout group discussions:

• This meeting was a continuation from a discussion that began at the July 27 meeting.
• Continuing discussion in more detail about three stakeholder ideas that had been identified which would require changes to statute:
  o Create statutory priority for domestic water use over other out-of-stream uses.
  o New or modified “OCPI.”
  o Broadening mitigation options.
• The group continued discussing all three options; several attendees expressed their desire to to ensure all options are fleshed out and all perspectives are represented in the final synthesis of these stakeholder meetings.

Discussion #1: Creating statutory priority for domestic use over other out-of-stream uses:

• Concerns: how does it fit with the prior appropriation doctrine and protection of senior water right interests?
• Resembles exempt well statute and expansion of its application will cause opposition from certain stakeholders. Yet a lot of administrative resources are spent upon the regulation of a relatively small use.
• Implementation: how does enforcement work considering potential wide scale distributive nature of this use? Encourages growth outside of water service areas.
• RCW 90.54 may support a domestic priority however not possible when instream flows are set too high and in the aftermath of Postema; would also require widespread recognition of its de minimis nature.
• A lot of work around a definition will be required: where should it exist? Why should this use be prioritized over others? How can it overlap with land use planning? What specific uses constitute domestic? Consider impacts to stream flows due to climate change.
• In times of water shortage it’s very applicable; can provide real solutions at the subbasin level when coupled with storage and other mitigation strategies.
• Political will to implement may not exist since the majority of the population lives in urban centers.
Discussion #2, New or modified “OCPI”:

- Recent case law (Swinomish and Postema) have limited applications of OCPI and created widespread sensitivity about the topic; many agreed that this precedent is correct.
- Identify sideboards to fulfill directives of court decisions and ensure it limited application. Suggests include no application solely for economic benefit or new development, only applies to emergency situations and for a limited duration, and only applies to out-of-stream uses with no impacts to instream uses. This list may be more appropriate in guidance instead of statute.
- Only applicable in limited situations and therefore most appropriate within a permitting context; avoid impacts to senior water rights; revisions to statute may bring separation of power concerns.
- Changing statute to allow for another type of OCPI tool does not address the fundamental issue, which is how the impairment standard established in Postema has led to a back log with permits. What is needed is a system that identifies and protects instream resources and values from harm caused by future appropriations. [Note: this is a new legislative concept that will be discussed separately the synthesis document.]

Discussion #3, Broadening mitigation options:

- Many questions about how could appropriate sideboards be developed: what are the goals to achieve via mitigation? Once the right parties have reached an agreement on the appropriateness of mitigation, how can project longevity be assured? Safe haven from legal attacks? Continued investments to ensure project sustainability? When is out-of-kind mitigation no longer suitable in a basin because of lack of water?
- Protect senior water rights, give credit for water quality benefits and conservation.
- In favor of in-kind, in-time and in-place; without water no functionality from out-of-kind mitigation.
- Require mitigation upfront prior to development and then projects can be disconnected from the home scale; proactive and need a plan to get out in front of future development; flexibility for time and place with local review process and statutory clarification.
- Allow additional flexibility for mitigation will fit within current authority and implement via rule making and pair it with an on the ground project with local oversight (values, how to tier it, achieve values of WRA); a carrot to amend ISF rules and implementation of those rules; all parties would need to agree; a threshold of impact to weed out the little users and alleviate administrative burden.

Final thoughts and Next Steps

- Ecology will develop a synthesis document of meeting notes along with in house analysis. This document will be made available to the public and will be shared with stakeholders and legislators during future meetings.
- No clear consensus about a potential solution was reached.