

## **Meeting Minutes – Nisqually Watershed Planning Unit**

*February 20, 2019 – 9:00 a.m. – 12:00 p.m.*

*Thurston PUD*

Present:

George Walter, Nisqually Indian Tribe  
Lisa Dally Wilson, Dally Environmental  
Grant Beck, City of Yelm  
Mike Noone, Dept. of Ecology  
Mike Gallagher, Dept. of Ecology  
Justin Hall, Nisqually River Foundation  
Dan Cardwell, Pierce County  
Abby Gribi, City of Eatonville  
Lois Ward, NRC CAC  
Matt Curtis, WDFW  
Lee Napier, Lewis County

Jeff Dickison, Squaxin Island Tribe  
David Troutt, Nisqually Indian Tribe  
Joe Kane, Nisqually Land Trust  
Tom Kantz, Pierce County  
Allison Osterberg, Thurston County  
Kaitlynn Nelson, Thurston County  
John Weidenfeller, Thurston PUD  
Julie Rector, City of Lacey  
Dave Nazy, EA Engineering  
Emily McCartan, Nisqually River Fdn

### **1. Welcome, Introductions, and Administrative – Lisa Dally Wilson**

The agenda and December 19 meeting minutes were approved. The main goal for today's meeting is to discuss how the PU wants to operate going forward to meet the conditions set by Ecology in their approval of the Addendum.

*Washington Water Trust Rapid Water Rights Assessment:* The WWT's rapid assessment identified 22 water rights in the Prairie Tributaries sub-basin using National Agriculture Imagery Program imaging, Pierce County parcel data, and Ecology's water rights database. Six of the 22 water rights were ranked Tier 1, with the highest confidence of having been put to beneficial use (see section 5.1.2 of the Addendum). This assessment provides a "first filter," and would require more documentation, mapping, and on-the-ground corroboration. The Prairie Tributaries basin is unadjudicated, and entities may want to consider a contract to protect water rights in a drainage. Ecology ranked water rights acquisition as a high priority strategy in their analysis of the Addendum.

PU members are interested in having WWT present in more detail at the next Planning Unit meeting.

*PU Working Agreement:* The current working agreement has an end date of October 2023. PU members agreed to continue with the agreement at this time.

*County Adoption Process Updates:* Ecology adopted the Addendum on February 1 by order, which triggers a 30-day appeal period (ending March 4, due to weekends). County staff indicated they are waiting until the appeal period closes before bringing the Addendum before county leadership for adoption. The counties are open to sharing language for resolutions and would like to have a consistent approach on questions likely to come up during adoption.

- County status:

- Thurston County Commissioners were briefed on the Addendum and gave conditional approval prior to the PU vote. They will need to review and reflect on the Ecology conditions.
  - Pierce County has not had time to get feedback and approval from County Council. Anticipating questions about what would happen if the county does not adopt.
  - Lewis County plans to brief the Commissioners when the resolution is brought forward and also anticipates questions about the process if a county does not approve.
- What happens if a county doesn't approve?
  - Ecology has discussed some options (again, Nisqually is establishing the precedent). One option would be that Ecology adopts an emergency rule to close the basin in that county.
  - There was consensus among PU members that if a county decides not to adopt, the issue should come back to the Planning Unit first for discussion and potential resolution prior to Ecology rulemaking.
- A working group will develop talking points for County legislative bodies to answer these questions. They will emphasize that adopting the plan is the best opportunity for county governments to stay in control of the process – if counties do not adopt, Ecology or the courts will end up determining what happens regarding future permit-exempt well use, which may include rulemaking and/or basin closures. **David Troutt will draft and circulate talking points for review with county staff by next week.**

## **2. Planning Unit Budget Update – George Walter**

George distributed a handout summarizing the three tasks authorized for Ecology grant funds. \$47,000 is still unallocated, extending through June 30. These funds could be used to support an implementation task/feasibility studies/PU facilitation, etc. Funding was designed to lead to the development of a plan and adoption – Mike Gallagher lobbied internally to get Nisqually this extension. Remaining funds have to be spent prior to June 30, 2019. Ecology recognizes there will be a continued need for financial assistance and expect to have some response to address financial assistance needs in the Nisqually Watershed by June (note – this assistance is in addition to potential project grant funding). The PU could also ask the Legislature for implementation and adaptive management funds for the next biennium.

## **3. Status of Streamflow Restoration Grant Awards – Justin Hall and Joe Kane**

The Nisqually Land Trust was awarded two grants in the first round of Streamflow Restoration project funding. 15 projects were funded out of 46 applications, with \$5 million of the \$20 million total awards going to Nisqually.

*Upper Busy Wild Creek Protection (\$3.7 million):* Acquire 910 acres of commercial forestland for the Nisqually Community Forest to manage for streamflow benefit. The proposed area would be near existing NLT protected lands, across Busy Wild Creek from Elbe Hills State Forest. The Mashel-Busy Wild system is federal critical habitat for steelhead. This grant will provide matching funds for Salmon Recovery Funding Board

(SRFB) funding. Prices are increasing (the grant budgeted \$4,100/acre, and more recent purchases with more mature timber have been closer to \$4,500/acre). The Community Forest has worked with Hancock, the current landowner, for 10 years, and has purchased all prior property from them. However, small conservation purchases are not the norm in a fast-moving timber market, and it's a challenge to move at market speed with the typical slower pace of conservation funds. The goal is to complete purchase by 2020, which is ambitious.

*Riparian and Floodplain Habitat Protection (\$1.3 million):* Acquire properties identified in SRFB and Puget Sound Acquisition and Restoration (PSAR) project lists for Nisqually salmon recovery. It will permanently protect 400 acres at 8 sites (5 in the Wilcox reach of the Nisqually mainstem, one on the Nisqually near McKenna, and two on Ohop Creek). All are near or adjacent to current NLT conservation holdings and will remove a small number of existing permit-exempt wells and/or eliminate new wells for future development if the properties were not protected. In appropriate areas, acquisition and protection is the first step toward restoring channels and floodplains using the Ohop strategy discussed in the Addendum.

*Discussion:*

- How heavily did Ecology weight the ability to decommission/eliminate development of permit-exempt wells in evaluating grant applications? The Ecology representatives present at this PU meeting weren't part of the scoring team, but points included ESA protections, wet water, and other factors, especially those clearly identifying water-for-water offsets for streamflow improvements.
- These land acquisition projects were ranked low priority (Tier 3 strategies) in Ecology's technical review of the Addendum, but received high priority for funding. What makes a good land acquisition grant? The technical reviewers of the Addendum had concerns with the long timeframe (80 years for forestry flow benefits) leading to greater unpredictability in whether the results could be realized, in comparison with the strategies ranked higher priority which provided near-term and concrete water-for-water benefits. There may be questions from other WRIs and grant applicants about why Nisqually received grants for lower tier projects. Ecology noted that the final grant guidance is still in development and this will be an iterative process over the 14-year grant program. **The Planning Unit requested that Mike Noone and Rebecca Brown from Ecology provide an overview of how the grants were evaluated and awarded for the next PU meeting.**
- NLT noted that they hope to be able to clarify the funding timeline with Ecology soon, because of the time pressure for purchasing several of these properties. George asked if Ecology could use a waiver of retroactivity to allow faster action when needed on acquisition projects.
- In the salmon recovery/land acquisition process, it's often helpful to have flexibility to substitute projects (different properties, etc) as opportunities arise. NLT has currently identified a potential change in one of the Ohop projects under the Riparian and Floodplain Habitat Protection Grant. Ecology indicated openness to this, as long as the goal of the grant award is being met. The Planning Unit's input would be important to Ecology in approving those changes. If the Ohop change moves forward,

it should be on the next PU meeting agenda (or a conference call if the timeline is tight.)

#### **4. Summary of Ecology's Technical Review – Mike Gallagher**

Ecology's review of the Nisqually Addendum started with the Interim Guidance for Net Ecological Benefit. The review recognized that the Planning Unit was working under an unreasonably short deadline, and therefore Ecology allowed more latitude for mitigation strategies that would require additional development after adoption of the Addendum. The review was conducted by Tom Culhane, John Covert, and Jim Pacheco.

Two important factors for the reviewers:

- The Addendum identifies NEB through both specific local mitigation strategies and macro habitat strategies
- The Addendum discusses the nexus between streamflow restoration planning, previous planning efforts, and ESA recovery plans in the watershed.

The reviewers ranked projects based on the certainty of a project occurring and certainty of projected benefits (i.e., water right acquisition ranked high because it is a straightforward implementation with benefits realized immediately, versus lower ranking for forestry projects with a lifetime project span for full implementation, creating less certainty/more risk to realizing flow benefits). This meant projects with small amounts of mitigation scored higher because they are predictable. Less predictable projects, while ranked lower priority, could still achieve a much greater offset.

Of 22 projects listed in Table 7-2, eight met Tier 1 reliability level, totaling 2.1 cfs in offsets (including some factoring of what could be reasonably accomplished). This was over two times the 1.03 cfs total impact using Ecology's calculation method, so the offsets were sufficient to determine that we could achieve NEB. (A high percentage of Tier 1 habitat projects are located higher in the basin, contributing significantly to benefits throughout the basin.) While 1-2 cfs is a small amount compared to the flow of the river, in total it represents the equivalent of a small town's water right. The Order to Adopt directed implementation to focus on Tier 1 projects or efforts that would yield similar offsets with a high degree of certainty.

Some concepts, particularly deepening or consolidating wells, were not fully developed or quantified in the Addendum and are not included in the total offset quantities. These projects ranked in the middle tiers because of the lack of specificity and quantification. Managed Aquifer Recharge (MAR) was also not completely developed in the Addendum, but was included as a strategy late in the process because Ecology was strongly supportive (see Appendix M of the Addendum for the high level current analysis).

The NEB from habitat projects, not counting streamflow, was also ranked based on confidence of achieving the benefit. The Tribe noted that this analysis is heavily weighted toward surface water rather than other NEB effects – buying forestland will deliver ecological benefit with a high degree of certainty, although there may be uncertainty in the streamflow benefits. Ecology had internal conversations about this: there is a tension

between NEB guidance (which looks at long-term environmental benefit) and the legal framework, based on court decisions, which looks at water as property (requiring equivalent water-for-water restitution). That tension is likely to play out over other WRIA planning processes. There is some concern that favoring a drop-for-drop mitigation approach, while consistent with Ecology's understanding of Supreme Court rulings, does not represent the intent of the Streamflow Restoration legislation to broadly support long-term ecological improvements. Some of Nisqually's projects may also have been ranked lower because they weren't fully developed within the short timeframe to complete the Addendum. The Tier 1 projects appear to be those more familiar to the Ecology reviewers, but they were not fully discussed at the Planning Unit level. Tiering is a helpful strategy, but implementing governments want to avoid the appearance that those projects are more important and should supersede our priority projects, particularly in terms of influencing the next grant round. Hopefully the funding of the two Tier 3 projects counterbalances that perception that Ecology's criteria is overly weighted towards surface water. Ecology is open to potentially treating these rankings as adjustable through adaptive management process. However, Ecology is also constrained by the four recent Supreme Court decisions defining water as property, which has changed the way they address water resources in Washington State and has limited some flexibility. That doesn't mean that these innovative ideas won't result in real benefits.

Ecology's conditions for annual reporting and 5-year self-assessment expect the PU to meet at least once a year to provide updates on success of current projects. The PU should submit to Ecology a brief narrative of what was accomplished the previous year – doesn't need to be an extensive report. Reports should specifically address the Tier 1 actions, but could be adaptively managed if other strategies emerge that can achieve a concrete equal/greater offset. Again, Nisqually will be the first watershed to do this.

Technical Review is an internal professional review that led to the recommendation memo, which led to the Ecology Director's decision to adopt the plan via formal order. The Order is an appealable document. Entities could provide comments on the technical review directly to the authors without appealing the Order to Adopt.

**A working group (David Troutt, George Walter, Allison Osterberg, and Tom Kantz) will discuss the tiering approach and potential response to Ecology's technical review.** The hearing for the final grant guidance is scheduled for March 5, and it would be good to respond within the comment period.

## 5. Discussion – Use of Remaining Budget

- Additional contract time for Lisa (currently budgeted only to facilitate two more PU meetings, with no additional work)
- Technical support for comments on the proposed grant guidance
- Hydrogeologic analysis to study areas for potential deeper well drilling (approximately \$12,000 per John Weidenfeller), or literature review
- More detailed assessment of water rights from WWT (may be difficult to complete by June 30)
- Additional VELMA modeling to refine forestry analysis for specific areas

- Site feasibility assessments for managed aquifer recharge projects (Dave Nazy will write up a proposal for review)
- Scope sites for floodplain restoration projects (possibly through Salmon Enhancement Group – although difficult to complete by June 30 with the timing and focus of salmon recovery funding rounds)
- Eatonville stormwater project feasibility/next steps (difficult to complete by June 30)

Participants are encouraged to continue thinking of helpful uses for these funds that can be accomplished by the June 30 deadline. Staffing support from Lisa, quantification studies for restoration projects, additional analysis from WWT, and MAR feasibility are all strong possibilities. Justin offered that the Nisqually River Foundation is an approved contractor with the Tribe and can facilitate subcontracts if that allows more flexibility with the short timeframe.

## **6. Next steps for PU**

The PU will plan to continue meeting once a month through June 2019, with an additional meeting prior to the next round of grant applications (likely September/October). Counties noted that they are all committed to other WRIA meetings as well. Meeting dates will be sent out by next week so everyone can plan for them.

Counties' annual reports to Ecology on the fees collected to date are due at the end of January 2020. They still need more details about the process for spending those funds. **Counties will put together a report for the PU for the next meeting.**

David, Tom Kantz, and George will serve as liaisons between the Salmon Recovery Workgroup and the Planning Unit. The fall Ecology grant deadlines will line up with SRFB funding cycles and could align projects, including integrating larger projects into RCO technical review. (Final SRFB rankings are issued in December).

**David proposed circulating a draft for PU review about pushing for ongoing support from Ecology and/or the Legislature for our adaptive management and monitoring tasks.**

## **7. Public Comment/For the Good of the Order**

There was no public comment.

The Thurston County League of Women Voters is hosting a series of evening presentations on water. David Troutt and Kevin Hansen spoke at the first meeting last week. George Walter and Maia Bellon will speak on March 5. Schedule and videos will be available on the LWV website: [http://www.lwvthurston.org/water\\_study\\_update](http://www.lwvthurston.org/water_study_update)

## **8. Lessons Learned**

Ecology is setting up presentations for other WRIAs to hear from Nisqually and Nooksack participants on lessons learned. Lisa also presented to Ecology on lessons learned last week. Input from PU members is very welcome, especially

counties/implementing governments who have the biggest role in crafting and implementing this response.

*Discussion:*

- Watersheds are all very unique. Nisqually approach may not apply to others. Effort needs to be organic and adaptable.
- County leads don't all have water backgrounds and may be on a learning curve.
- Counties did not know at the beginning how much of an impact this process would have on their workplan – it has required significant reallocation of staff time and expertise (especially when in-house expertise isn't already there).
- This decision and legislation have created a major paradigm shift for Ecology as well – now focusing a large portion of their resources on 1-2% of consumptive water use in the state for PE wells.
- Watershed and salmon recovery (and other groups – flood planning, etc) need to work together. Water resource planners, engineers and salmon recovery people don't speak the same language: Ecology might consider providing some coordination strategies between lead entities and water resource people.
- Similarly, coordination internally within counties by looping in people from across departments can yield good ideas.
- Nisqually has a unique advantage of 32 years of experience working together across agencies and stakeholders, establishing trust and relationships that make it possible to dive into difficult problem-solving tasks like this. You can't just create that out of whole cloth where those relationships don't already exist. The Legislature and the State should see a lesson in this that they need to support watershed planning units working together over a long period of time with consistent funding so that we're equipped to handle these tasks. Other watersheds have already had trouble with getting operating procedures and organizations up and running because of distrust – it's important to have regular meetings when there isn't an urgent project. It was impressive to people involved in the last watershed planning effort to see this group pick up where it left off 15 years ago.
- Nisqually also had an advantage of having an RCW 90.82 watershed plan in place, which some watersheds don't have. Those may have even fewer resources to address the quantitative streamflow benefits lens.
- From Ecology's perspective, separating basin-specific (micro) and macro mitigation strategies was very effective in making the objectives clear.
- Let the counties have control of their growth forecasts. They are the experts.
- Look at it as an opportunity rather than a burden – how can we use this opportunity to accomplish goals for our watershed.
- The Nisqually Tribe provided important leadership in setting a big goal, looking beyond the narrow exempt well issue by emphasizing mitigation to the legal water threshold and targeting big-picture water use and recovery efforts.
- Spend as much time as possible on projects, rather than on forecasting (important, but projects are more so). The point is not to argue over how much consumptive use an individual well is, the point is to find benefits to the watershed. Better-quantified projects will be more competitive for funding support to accomplish that ultimate goal.