

Meeting Summary Planning Unit

Little Spokane River – Middle Spokane River Local Watershed Plan July 19, 2006

Committee members recorded on the sign in sheet were:

Lloyd Brewer and Mary Verner, <i>City of Spokane</i>	Patrice Clemons, <i>City of Spokane Valley</i>	Megan Nicodemus, <i>DOH</i>
Ty Wick, <i>SAJB</i>	Susan McGeorge, <i>Whitworth Water</i>	Walt Edelen and Rick Noll, <i>SCCD</i>
Mike Lithgow and Jim Marthaller, <i>Pend Oreille County</i>	Todd Henry and Steve Skipworth, <i>Vera Water & Power</i>	Bruce Howard, <i>Avista</i>
Merrill Ott, <i>Stevens County</i>	Dick Price and Charisse Willis, <i>Stevens County PUD</i>	Amber Waldref, <i>Lands Council</i>
Cleve McCoul, <i>Millwood</i>	Keith Holliday, <i>State Caucus, Department of Ecology</i>	Reanette Boese and Rob Lindsay, <i>Spokane County</i>
Dave Jones, <i>Water Quality Advisory Committee</i>		

Guests that attended the meeting were: Tom Wimpy, Diamond Lake, Greg Sweeney, Eloika Lake Assn., Jeff Storms, Sacheen Lake, and many others from other WRIAs, water districts, and governments. A total of 81 people signed the Sign In sheets.

Introductions and Meeting Summary: Rob called the meeting to order at 9:05 a.m. He introduced the speakers from the Department of Ecology and the Attorney General's office.

Grant Pfeifer: All the issues dealing with water are connected – TMDL; fish and sediment toxics; the amount of water in the river; non-point pollution; and drinking water. This meeting has 3 purposes: (1) follow up on earlier meetings on adjudication; (2) share new information about adjudication, and (3) get a sense of the community about adjudication or another process.

Ken Slattery, Ecology Water Resources Manager: Washington is one of the least adjudicated states in the west. Adjudication is a lawsuit where all water rights and claims holders are the defendants. Federal and tribal rights, which can be very large, can be part of the adjudication. The outcome is a list of confirmed rights with clear priority dates, point of withdrawal, place of use, etc. This means less uncertainty for buyers. Ideally, the Ecology wants to maximize agreements between parties before the courts rule.

Yakima is not a typical adjudication. The Federal jurisdictional issues held up the adjudication for a long time. Those issues are mostly cleared up and should not slow down future adjudications in other areas.

Because of the budget process, Ecology will probably need to make a decision about adjudicating this area soon. They probably won't adjudicate here if there isn't interest for the locals. Jay Manning and the Idaho Water Resources director, Karl Dreher, met to discuss continued cooperation on the SVRP study and look at cooperation on other water issues. Mr. Dreher made it clear that (1) Idaho will adjudicate the northern Idaho water rights and (2) they are willing to discuss interstate agreements but not a compact. The Department of Ecology will monitor the Idaho adjudication. Washington could sue Idaho over water sharing but we can't force a compact.

Budget items for adjudication would include 6 or 7 new staff for Ecology. In Yakima Ecology provided assistance to the court so that would be another expense. Claimants are responsible for their legal costs. Washington has never started measuring water use before adjudication but it might have some merit.

Guy Gregory: Guy spoke about the interaction between the Spokane River and the SVRP Aquifer. The average annual aquifer levels and river flows haven't changed much in the period of record. The average of the lowest flows on 7 consecutive days in the Spokane River has been trending down. The exact cause of this downward trend is unclear. Land and water use as well as population have changed over these years. The current average of total water use per person in our area is 89,000 gallons per year.

Sharonne O'Shea of Washington Attorney General's office: Sharonne provided information on a handout available on the WRIA website. Washington allocates water on a "first in time, first in right" basis.

A state adjudication is not the way to resolve conflicts about water shared between two states. There are three methods to resolve rights to shared water: (1) Interstate compact that the 2 states agree on and congress confirms. (2) An equitable apportionment law suit to the Supreme Court which they can decide not to hear. The Supreme Court can appoint a referee to create a plan which the court can adopt, modify, or reject. The state must demonstrate harm. The rulings generally follow "first in time, first in right" but can take other factors into account. (3) Direct congressional action.

The advantages in adjudicating water rights are: (1) It can preserve evidence which gives a basis for negotiation with the other state. (2) Provides certainty of water rights which makes it easier to sell water rights or use them for mitigation. (3) Adjudication is part of the water rights system like regular maintenance.

Inchoate rights have been handled in different ways in past adjudications. In Walla Walla the judge did not quantify inchoate rights. In Yakima Ecology and Yakima negotiated a permit with a schedule to develop the inchoate rights. These methods may not be followed in future adjudications.

Ben Bonkowski and Fred Rajala: Adjudication was an original pillar of western water law. It was established as the method to resolve water disputes. There are approximately 170,000 unadjudicated water claims and 50,000 certificates for water issued since 1917 in Washington. Adjudication would provide certainty on three aspects. (1) The validity of the right. (2) The extent of the right – the purpose, the amount and when it can be used, the point of withdrawal, and location of use. (3) The priority date. Karl Dreher, the Idaho Water Resources director, stated that you can't protect what you can't define.

Adjudication is a legal procedure filed in Superior Court with the Department of Ecology as the plaintiff and all water rights and claims holders as defendants. The 1952 McKarin amendment allows Federal rights to be part of a state adjudication as defendants of Federal or Tribal water rights. The steps include:

- Petition (Or State Initiated Action)
- Case Development And Filing
- Notice And Summons
- Filing Of Claims
- Field Investigation And Mapping
- Evidentiary Hearings
- Report On Hearing (Report Of Referee)
- Chances for appeals and reports on appeals
- The final result is a court decree.

The drawbacks to Adjudication include: costs to the defendants and the state, the process will uncover problems, there will be some uncertainty during the process, and it requires implementation.

The adjudication options include: no adjudication; a general adjudication involving all parties, a limited adjudication excluding some right, such as. Federal/Tribal rights; adjudication lite which could involve

metering, mapping and preparing to adjudicate or regulate in defined areas; or individual regulation (pursue waste & illegal water use rather than adjudicate)

A new adjudication has some potential for streamlining based on studies and past experience. They could be: (1) Administrative such as a change in process or technology (2) Judicial such as a change in court rules or (3) Statutory such as using a water court.

Discussion: Jani Gilbert led a discussion period. Some answers to questions and comments follow. It would be possible to exclude the Little Spokane River watershed from an adjudication of the Middle Spokane watershed but it probably would not be wise. Ecology has a paper on Municipal Water Rights which is probably on their website. The downward trending 7-day low flow does show harm but it may not work in a lawsuit against Idaho because we're not sure of the cause – Washington or Idaho. Ecology's global interests/concerns during adjudication are (1) water quality in the river, (2) Avista could insist their complete water rights and claims flows be left in the river, (3) tribal interests which could go to the Federal courts. One comment was that adjudication would clarify senior and junior water rights for instream flow and identify rights that can be bought. Ecology's lawyers try to make sure individuals understand their rights during the adjudication process. Ecology staff members use 2 sources to determine public interest in watershed issues – the laws and statements from watershed planning groups. Several people made statements supporting adjudication. Bruce Howard of Avista wanted to clarify that Avista wants to continue to build good relationships with the community. Merrill Ott of Stevens County encouraged adjudication because there can be no discussion about new appropriations without clarity.

Action Item: Ecology looks for feedback from WRIA 55/57 - and other watershed planning groups –on the community interest in pursuing adjudication in watersheds near the Idaho border.

Wrap Up: The meeting adjourned about noon.