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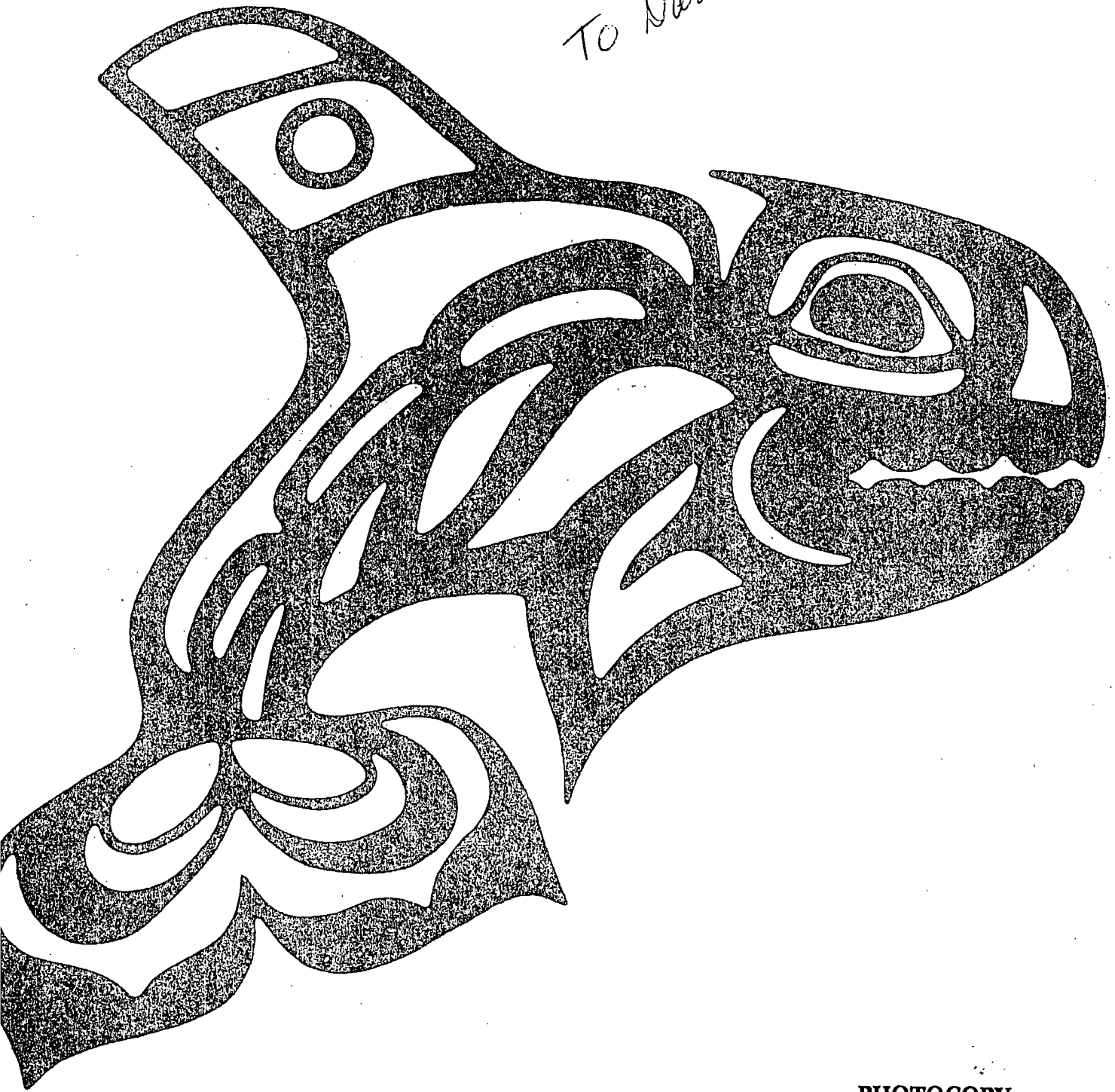
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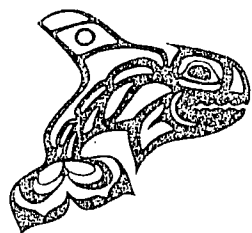
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Northwest Indian Fisheries Commission

ANNUAL REPORT FISCAL YEAR 1992



Submitted in Compliance with PL 93-638 Contract No. POC

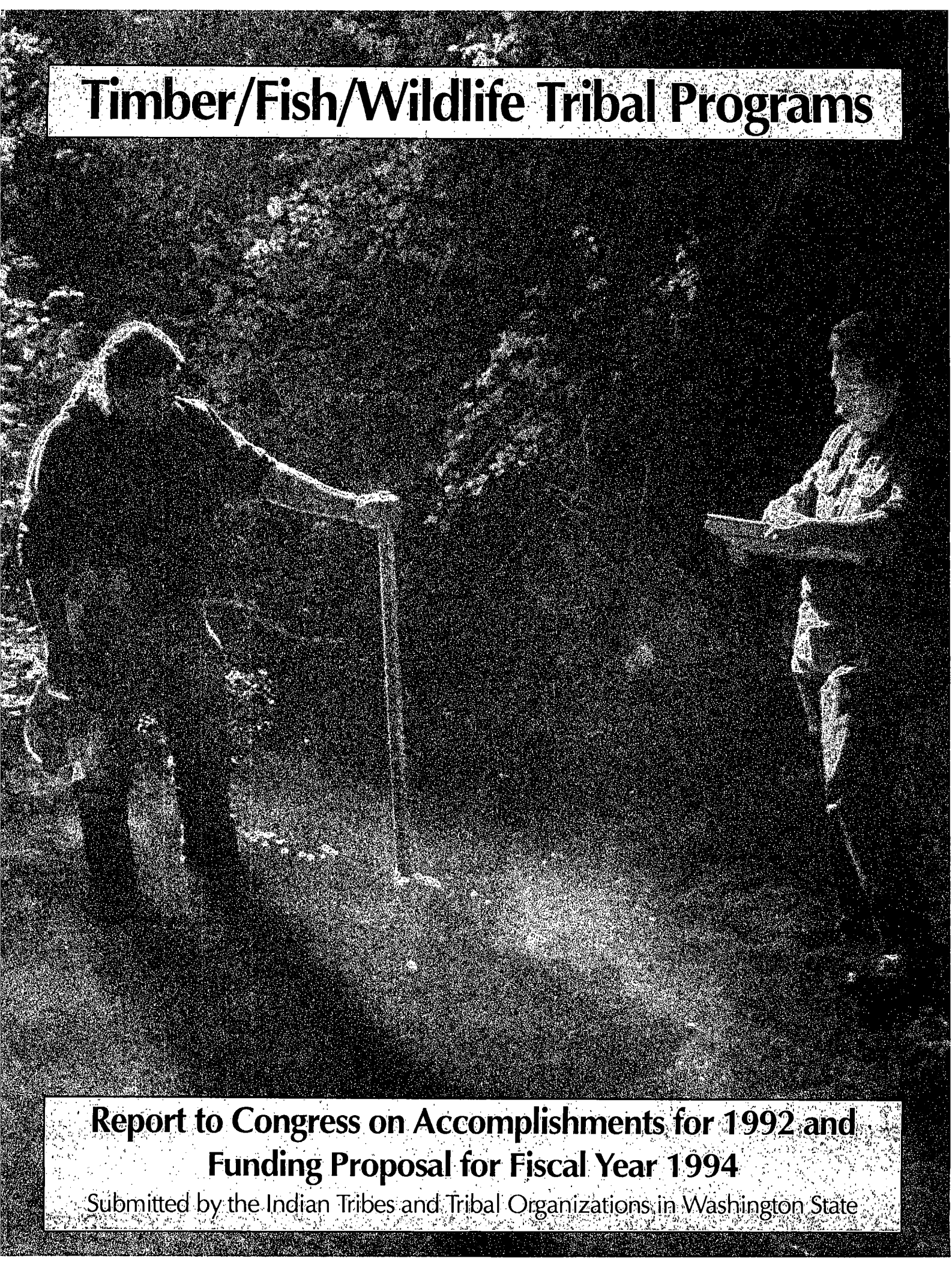
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Timber/Fish/Wildlife Tribal Programs



**Report to Congress on Accomplishments for 1992 and
Funding Proposal for Fiscal Year 1994**

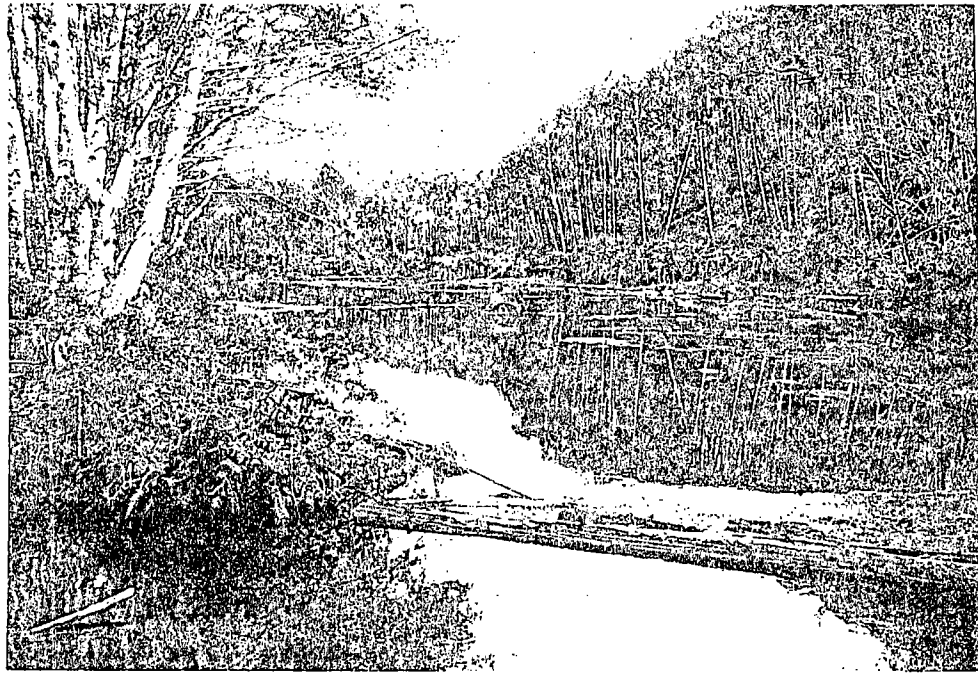
Submitted by the Indian Tribes and Tribal Organizations in Washington State

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TIMBER / FISH / WILDLIFE STATUS REPORT



February 1993

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Coordinated Tribal Water Quality Program



Funding Proposal and Program Accomplishments Submitted to Congress and the
U.S. Environmental Protection Agency by the Federally Recognized Indian Tribes in Washington State



Northwest Indian Fisheries Commission

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SUMMARY OF WASHINGTON STATE TRIBAL PRINCIPLES FOR SUCCESSFUL OPTIONS FOR THE FOREST CONFERENCE FOLLOW-UP

The scope of the Clinton Forest Conference must be broadened to include salmon, its habitat, aquatic ecosystems, and land use management that affects this invaluable resource. In taking an ecosystem approach to natural resource management, we must recognize fish, water, or wildlife are not defined by land ownership patterns, jurisdictional boundaries, or politics. Natural resource management is extremely complex requiring integration and coordination between governmental authorities, landowners, and the general public. Both eastern and western Washington issues must be addressed.

The treaty tribes are legally recognized as the "co-managers" of the fish and wildlife resources with the State of Washington. Natural resource management cannot be addressed in Washington state without the full participation of the tribes. In addition, the United States must protect, restore, and enhance the treaty protected resources of the tribes. To accommodate non-treaty needs at the expense of treaty protected resources is unacceptable and is paramount to an illegal taking of tribal property. The federal government must include the tribes on a government-to-government basis in the development of strategies and solutions to the problems we are facing.

As a matter of law, the treaty reserved rights of the tribes guarantee that the United States must use all reasonable and necessary conservation measures imposed on non-Indians before seeking restrictions on Indian activities. We must first address those activities that have caused the demise of the fishery resources; forestry and agricultural practices, hydroelectric development and operation, water withdrawals, and general urbanization.

In the past, political and economic solutions were the norm. As a result, we have the potential for economic dead-lock and natural resource catastrophe. All potential solutions and strategies must be biologically sound and based on the best available science.

INTERIM STRATEGIES

Until a comprehensive ecosystem approach is developed and implemented that will address fish and wildlife protection on a

landscape basis across all land ownership and land uses, the following interim strategies must be implemented:

- A. Provide substantial and significant buffers to protect riparian ecosystems on all permanent "waters of the state" (Type 1-4 waters). Not limited to federal lands. Recently, a federal team of biologists recommended the following buffers necessary to protect the fish resource and habitat:
 - 1. Minimum interim buffer 300 feet on each side of lakes and fish bearing streams;
 - 2. Minimum interim buffer 150 feet on each side of permanent non-fish bearing streams;
 - 3. Minimum interim buffer 150 feet on ponds and reservoirs and of wetlands less than one acre in size; and
 - 4. Minimum interim buffer 150 feet in landslide and landslide-prone areas.
- B. Retain all remaining unmanaged forests in these buffers and riparian ecosystems
- C. No entry or removal of vegetation by road construction
- D. Demolition of orphaned/abandoned roads
- E. Lengthen timber rotations with appropriate reduction of logging levels, and implement lower impact logging systems. Eliminate logging and road construction in sensitive, unstable terrain
- F. No logging in roadless areas
- G. Establish enforceable habitat standards
- H. Eliminate grazing in riparian ecosystems
- I. Initiate watershed restoration and generate revenues to fund these activities
- J. Monitor the effects of watershed stabilization and restoration efforts
- K. Develop alternative non-judicial dispute resolution system for natural resource management
- L. Require regulation of agricultural practices

LONG-TERM STRATEGIES

- A. Watershed/Landscape/Ecosystem Approach vs. Jurisdictional Approach to Natural Resource Management
- B. Implement Watershed Analysis for Fish and Water Quality (SEE WAC 222-22) and Landscape Approach for Wildlife Protection (SEE Tribal Proposal and HEP)
- C. Implement instream flow protection program (SEE Chelan Instream Flow and Hydraulic Continuity Policies)
- D. Implement basin approach to water quality management and regulation (SEE DOE TMDL Watershed Strategy)
- E. Federal Government Support for Intergovernmental Watershed Approaches
 - 1. Coordinated Tribal Water Quality Program: A Political Philosophy of Watershed Management (SEE Tribal Implementation)
 - 2. Chelan Agreement: Implementation of Intergovernmental Watershed Management (SEE Chelan Agreement and Tribal Implementation)
 - 3. TFW: Implementation of Cooperative Forest Practices Management on State and Private Lands (SEE TFW Agreement and Tribal Implementation)
 - 4. Wild Stock Initiative: Salmon and Steelhead Stock Inventory (SEE Tribal-State SASSI)

TIMBER/FISH/WILDLIFE PROGRAM

SYNOPSIS:

Support base tribal participation in the Timber-Fish-Wildlife Program. This includes base-level funding of \$2.0 million plus an additional \$100,000 for Chehalis and Shoalwater Bay Tribes, for a total program of \$2.1 million.

ISSUE:

For the past four years the 24 tribes and tribal organizations in Washington State have participated in the Timber/Fish/Wildlife (TFW) Agreement, a cooperative resource management process to address forest practices on state and private lands. Unfortunately, funding has not increased since program inception. To adequately continue to participate in this cooperative process, the tribes are requesting \$2.1 million for FY-1994. This amount of funding will allow the inclusion of the Chehalis and Shoalwater Tribes into the process. Additional resources will be necessary to assure that the tribes' increased role will be able to implement new regulations for cumulative effects and wetlands. The tribes are also seeking recognition of their role in the TFW process by incorporating these funds into their base programs.

Regarding cumulative effects, these regulations are a milestone in forest management in Washington State. For the past decade, the Forest Practices Board has struggled with this issue to no avail. Early last year, the tribes, state agency directors, offices of the Governor and Public Lands Commissioner, and timber industry developed a consensus rule proposal to address the cumulative impacts to fish and water quality as a result of forest practices. These new rules adopted by the Board in August, and proposed systems finally provide a mechanism to address one of the most contentious issues in natural resources management in the Pacific Northwest. If successful, the issue will be moved out of the court room and back into the hands of the resource managers.

However, successful implementation of the cumulative effects assessment process will require cooperative participation on the part of the state landowners and the tribes. The rule recognizes the need and the right for tribal participation in this process.

The success of the Agreement is built on a foundation of open participation by tribal governments, state agencies, the timber industry and the general public. For the tribes, one of the primary components of the success of TFW has been the cooperative decision-making process that is based on consensus rather than a majority rule. The consensus decision-making process ensures the tribes have a meaningful role in the management of forest practices.

Consensus built decisions has lead to better communications, increased research knowledge, and improvements to the forest practice rules and regulations. With this, tribal responsibility has grown to include implementation of newly adopted forest practices rules and process monitoring guidelines.

The tribes have struggled for many years for recognition by the federal government of their sovereignty and treaty rights enabling them to address forest practices. The Bureau of Indian Affairs deny that it has responsibility to support the tribes in this issue. The tribes have shown that they can establish a cooperative process that addresses the management of the state forestry resources while at the same time includes consideration of the tribes' concerns.

The tribes continue to address individual issues at the policy and technical levels. By proposing recommended additions and changes to current forest practice management, the role of the tribes has continued to increase. Adequate funding is necessary to continue tribal participation and meet the role.

BACKGROUND:

In the early 1970s, forest management in Washington was a battlefield. Logging activities on state and private lands placed Indian tribes and conservationists at odds with the timber industry. State regulators had failed to assume a leadership role in resolving the impasse and the legal skirmishes were seriously escalating.

Tribes were faced with losses of habitat and natural fish production in Washington. These losses were part of a mix of problems encountered with the increasing uses of the natural resources in the state, including the extensive logging of watersheds where salmon spawn. These losses threatened not only the livelihood of tribal communities but the very basis of their culture and spirituality. Tribes were being pushed closer and closer to retaliation through demonstration and litigation. Fortunately, at the same time, tribes were experiencing many successes through cooperative fishery management processes being developed between the Washington Department of Fisheries and the treaty fishing tribes. Tribal leaders and state officials thought this cooperative approach could also be applied in the forest practices arena.

Over the period of time that the tribes have been involved in the TFW process, improvements have been made in communications, research knowledge, and revisions to the forest practices rules and regulations. Tribal policy and technical staffs have been able to communicate their concerns and recommendations associated with forest practices through the TFW process. The ability to have open discussions has led to the application of the best available information for management considerations of all natural resources.

Ongoing research and monitoring information, produced in over 40 research papers, has been utilized to improve field methods and develop recommendations for regulation. The tribes participate on the committees that translate these research and monitoring projects to develop recommendations to the TFW Policy Committee. The tribes also carry out some of the research and monitoring projects as a TFW Cooperator.

The most recent efforts by the tribes has led to the incorporation of policy and technical mechanisms into the state regulations to address the cumulative effects of forest practices, and wetland protection regulations. These additional regulations will evaluate the impacts of forest practices within a whole watershed instead of site-by-site review. The tribes played a major role in developing these regulations. As such, they also have the responsibility of cooperatively collecting the information and monitoring the implementation of these regulations.

PAST APPROPRIATIONS/FUNDING:

The tribes have received annual funding of \$2 million since the inception of the TFW Agreement in 1987. The original tribal funding proposal had built in an increase each year to a level of \$4 million by FY-1992. However, Congress has only appropriated \$2 million each year until FY-1992, when the tribes recieved a reduction in funding to \$1,815,000. In FY-1993, tribes received only \$1.675 million. We are requesting that the original \$2 million level be reinstated, with an additional \$100,000 to provide funding for the participation of the Chehalis and Shoalwater Bay Tribes.

BUDGET:

Attached.

TRIBAL WATERSHED ANALYSIS PROGRAM

SYNOPSIS:

Support tribal implementation of Watershed Analysis to adequately characterize the effects on water quality and fish habitat of forest practices, agriculture, urbanization and hydropower development. **This will require approximately \$3.6 million to fund personnel and support for the program.**

ISSUE:

To date, the State of Washington has failed in its duty to adequately protect fisheries habitat as required under the Clean Water, Forest Practices, State Environmental Policy Acts and federally protected treaties entered into between the United States and federally recognized tribes in Washington State. Under state and federal law, the State of Washington must address not only the direct impacts to the environment (fish habitat), but must also evaluate the cumulative impacts. Until the development of "watershed analysis" the state has failed to adequately review and protect the fish resource from the cumulative effects caused by forestry, agriculture, hydropower development and other land use practices.

Watershed analysis is the most scientifically credible mechanism available to address cumulative effects ... The prescriptions developed by this process are in effect a site-specific set of rules for the watershed. The result is the most appropriate level of protection for public resources.

Department of Natural Resources, Program for the 90's

As one means of protecting their treaty rights, Washington State tribes are requesting funds for implementation of the statewide Watershed Analysis process. This process was developed by the tribes in cooperation with state resource agency directors and timber industry to address the cumulative impacts to fish and water quality as a result of land use practices. Watershed Analysis will finally provide a mechanism to address and propose solutions for one of the most contentious issues that has been fought in the courts and move it back into the hands of the resource managers.

Q: How does Watershed Analysis relate to hydropower development siting, design and mitigation?

A: Watershed Analysis is a tool to provide invaluable information on the hazards and risks to fisheries and water quality. When combined with instream flow data, Watershed Analysis identifies areas of sensitivity to hydropower development and other land use practices. In the Public Works analysis module, Watershed Analysis also identifies hazards and risks to improvements such as hydroelectric generation and transmission facilities.

Successful implementation of Watershed Analysis will require cooperative participation on the part of the tribal, federal, state, and local governments, and landowners. State regulations, passed by the Washington Forest Practices Board in response to the cooperatively-developed process, specifically recognize the need and right for tribal participation in this process. However, the state is again in a position of failing to meet its obligations through lack of adequate funding to implement their regulations.

BACKGROUND:

See attached "Overview of Watershed Analysis"

BUDGET:**WATERSHED ANALYSIS FUNDING PROPOSAL - ANNUAL COSTS**

	AMOUNT NEEDED			"IN-KIND" TRIBES & NWIFC		
	No.	Amount	Total	No.	Amount	Total
Regional Resource Analysts*	36	\$73,975	\$2,663,100	6	\$ 73,975	\$443,850
Regional Leaders	6	\$60,525	\$ 363,150			
Statewide Coord.	1	\$80,700	\$ 80,700			
Statewide Data Tech	1	\$60,525	\$ 60,525			
Salary & Benefit Subtotal			\$3,167,475			
Vehicles	30	\$ 8,070	\$ 242,100	1	\$ 8,070	\$ 8,070
Equip	42	\$ 672.50	\$ 28,245			
Map/ Photo	n/a	n/a	\$ 134,500			
TOTAL			\$3,572,320			\$451,920

* Personnel and equipment are allocated to form six regional teams of seven analysts and one administrator (except two statewide positions). See budget detail on following page.

BUDGET DETAIL

The goal of implementation of watershed analysis for the tribes is to fund six (6) regional teams throughout the state. Each Watershed Analysis team must perform a variety of functions to successfully and efficiently accomplish its task. Qualification as a team member requires that an individual have appropriate skills, experience and education and has completed the State of Washington Department of Natural Resources (DNR) training in watershed analysis. These functions include administrative, scientific, management decision-making, and support. Team members are encouraged to assume more than one role where possible.

Regional Resource Assessment Analysts, Specialists and Managers ***(salary including benefits and indirect costs \$73,795)***

- Implement the resource inventory modules, produce land management prescriptions for areas of resource sensitivity:
 - Mass Wasting
 - Surface Erosion
 - Hydrology
 - Riparian Function
 - Fish Habitat
 - Water Quality
 - Public Capital Improvement
 - Forester
 - Forest Engineering
 - Fisheries

Regional Team Leader/Administrator (\$60,525)

- Appoints qualified members of the team
- Schedules team meetings
- Notifies landowners and requests necessary maps and materials
- Notifies DNR that a watershed analysis is to be performed
- Oversees team performance and ensures quality of completed product
- Completes State Environmental Policy Act requirements
- Obtains land ownership list and sends letter of notification
- Sets up contacts with local expertise and requests other additional information

Statewide Data Technician (\$60,525)

- Compiles official base map and other maps and aerial photographs
- Helps produce watershed analysis reports

Statewide Program Coordinator (\$80,700)

- Administers composition and conduct of regional teams
- Coordinates linkage between tribal program and State of Washington

OVERVIEW OF WATERSHED ANALYSIS WAC 222-22

Background

Cumulative Effects in the Forest Landscape

Cumulative effects have been defined as "the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more land use practices." These changes may be taken to include effects on water quality, wildlife, fish habitat, and other public resources. Streams and associated resources such as fish habitat may be affected by changes in peak flows and timing of discharge. Higher sediment loading, arising from erosion and mass wasting, may cause pool filling, gravel siltation which may reduce the productive potential of a stream or stream segment. Reductions in large organic debris (LOD) recruited to channels may result in fewer pools and unstable stream beds. Other cumulative watershed effects include changes in stream temperature, nutrient levels and turbidity.

Recent History of Cumulative Effects Leading to Watershed Analysis

The 1974 Forest Practices Act provides authority for state regulation of forest practices on Washington's twelve million acres of state and private lands. Over the last fifteen years, significant changes have been made in the regulations; however, the Forest Practices Board has not been able to address the cumulative effects of forest practices on public resources since its inception in 1974.

Until 1987, forest practices regulations only addressed direct impacts to the fish and wildlife resources. However, in 1987, the tribes, state of Washington, timber and environmental interests concluded the Timber-Fish-Wildlife (TFW) Agreement. One component of the TFW Agreement proposed several strategies to address cumulative effects of forest practices on public resources. The TFW Agreement contained the following summary of a recommended approach to cumulative effects.

1. State, regional, and basin goal-setting. Goals and objectives should be developed that reflect local conditions and resource sensitivities. Participants should include TFW cooperators, including tribes, landowners, and environmental groups.
2. Monitoring and evaluation to determine if goals are being met. Monitoring programs should be developed that are tailored to regional and local landscape variability.
3. Use of risk assessment techniques for problem identification. Methods and techniques should support the setting of goals and objectives. They should anticipate or predict future problems as well as define existing ones.
4. Implementation of an adaptive management process. Assessment tools, management and regulation are revised based upon experience and the feedback from monitoring.
5. Re-evaluation of goals as new information becomes available.

In 1989, the TFW policy group approved a cumulative effects issue paper that recommended development of a system which would focus on individual basins. Problem assessment would address spatial and temporal issues, with efforts to define impact thresholds and recovery rates for affected resources.

However, little work was done to implement the various strategies discussed above to address cumulative effects. In 1990, the Sustainable Forestry Roundtable (SFR) convened to address several issues related to conversion of forest lands and providing for community stability. Also, the parties attempted to resolve several outstanding issues that were not fully addressed in TFW. In particular, cumulative effects to the public resources.

Though a final consensus agreement was never concluded in the SFR process, the parties did advance definition of a risk assessment approach and identification of indices of resource condition (thresholds). These indices would provide quantitative performance standards and goals for future desired conditions of the fish habitat.

Rather than pursue this issue in the courts, the timber industry, tribes, and state of Washington concluded a proposed rule package in 1992 for Watershed Analysis to evaluate the cumulative effects to fish and water quality, WAC 222-22. (Wildlife is not addressed by the current Watershed Analysis rules.)

The Policy Framework

In response to the new forest practices regulations on Watershed Analysis, the Cooperative, Monitoring, Evaluation, and Research committee (CMER), the research arm of TFW, began working on implementation of a methodology and workbook that would provide a science-based approach for assessing watershed problems and sensitivities. Watershed Analysis, a structured approach to a biological and physical inventory of a 10,000-50,000 acre basin, would be used in advance of proposed practices and in conjunction with management plans to improve forest resource management. This would be achieved by fitting prescriptions--a set of specialized yet localized management practices for areas of resource sensitivity--to actual site conditions and resource sensitivities. The potential for either under or over-protection would be minimized.

The system would also be adaptive, in the sense that prescriptions, regulations, the assessments on which they were based would be subject to monitoring and re-evaluation. Monitoring would be designed to provide feedback on where resources were actually protected or improving as a result of prescriptions.

By encoding into regulations a science-based assessment process, rather than simply "Best Management Practices" (BMPs) -- the proposed changes represent a departure from conventional approaches to land use regulations. The new system not only relies upon local basin assessments but requires diligent revision as monitoring provides feedback on whether resources are improving or degrading. It also depends heavily on local landowners, tribes, environmental groups, and other interested parties to bring local knowledge to bear on basin problems and to identify appropriate prescriptions.

Watershed Analysis Process - Overview

Watershed Analysis has three major components (Figure 1).

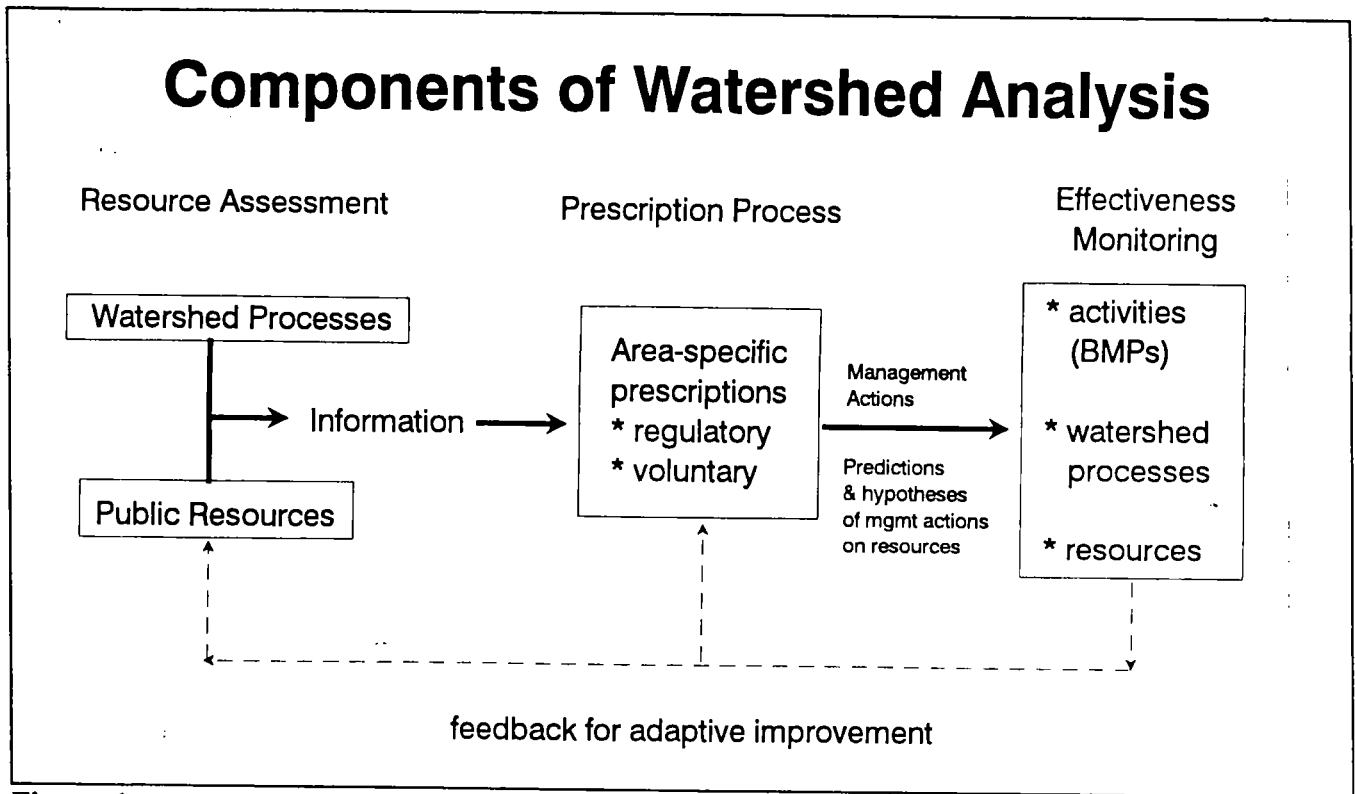


Figure 1. The major components of watershed analysis

The Resource Assessment Method

The resource assessment method lies at the heart of the Watershed Analysis process. In resource assessment, analysts or specialists gather information and interpret watershed processes and resource conditions. This information is used to identify resource sensitivities that require additional and specific management standards to address potential or existing problems in a manner other than the standard rules.

The various TFW cooperators have expressed interest in a method that meets the following needs:

- accountability--all assessments and determinations should be supported by a written record that provides a basis for decisions and interpretations;
- repeatability--methods should be specified that assure that the same conclusions and results could be reached by independent reviewers;

- scientific grounding--valuations should be based on the best science available;
- explicit treatment of uncertainty--key assumptions should be displayed; potential for error should be clearly defined;
- area-specific focus of analysis--methods should confront problems of scale, resolution, and natural variability of landscapes. The method should be designed for more detailed and intensive focus (at higher resolution) when necessary;
- comprehensiveness--framework appropriate for the assessment of a variety of potentially affected specified public resources, i.e. fish, water quality, water supply, and public capital improvement. The framework should be compatible with wildlife assessment needs, even though a wildlife component is initially excluded.

Basic Features

The designed method answers these needs with an interdisciplinary team approach that requires inventories of watershed processes and resources following a structured approach to problem definition. The method is guided by a series of key questions. Team members possessing skills in forestry, forest hydrology, fisheries, forest soils science or geology, and geomorphology use the questions to locate and map hazards, to evaluate potential impacts of delivery, and to assess the potential or existing impacts on resources. The inventories and subsequent interpretations provide a basis for area-specific problem statements, linking land use practices, watershed processes, and resource effects and vulnerabilities.

The assessments are conducted at two different levels of resolution and intensity.

- Level 1 requires about one week for the assessment of 10,000-- 50,000 acre basin by a team of five or six; emphasis on remote analysis with limited field work.
- Level 2 requires two to six weeks, with a greater emphasis on field work; the analysis is designed to resolve Level 1 indeterminate calls and offer greater resolution and certainty.

Cooperators have indicated that Level 1 should be within the capability of current TFW ID teams if augmented with additional training. A typical Level 1 team would possess college degree-level expertise. A Level 2 team would possess higher skill levels and greater experience in each of the individual disciplines.

Technical Framework and Assumptions

The method reflects the fact that stream resources are shaped and affected by hillslope and riparian processes and their respective inputs of wood, water, energy and sediment. As depicted in Figure 2, a resource effect may arise when a change in hillslope process (e.g., a road failure) generates material (e.g., coarse sediment) that can affect channels or otherwise impair resource function. The evaluation must include

an assessment of delivery to a specified public resource and the vulnerability of resources to the input. Various stream segments will respond differently to inputs. The method recognizes this by defining conditions under which responses are registered.

Each watershed possesses distinct environmental conditions, resource characteristics, and sensitivities. The method needs to define locally active processes and resource vulnerabilities. As depicted in Figure 3, watershed processes include erosion, hydrologic and riparian functions, each of which includes more specific processes. Erosion processes may be defined to include debris flows, debris torrents, earth flows, and surface erosion from roads and hillslopes. Each can be associated with flows of water, wood, energy and sediment that can affect the stream environment. Land use practices may influence flows singly or in combination, and possibly affect resources.

For determination of impact potential or risk, a link must be made between the resource and a mechanism that can affect it. The method defines resource vulnerability in terms of a specific susceptibility to changes in flows of wood, water, energy, and sediment. The susceptibility is related to resource function. Figure 4.

A resource, e.g., fish habitat, can be divided into rearing habitat and reproduction habitat. Good spawning habitat demands high-quality spawning gravel. A risk to the resource is present when spawning gravel are degraded (or placed at risk) because of fine sediment loading associated from forest practices. A rearing sensitivity or risk arises when forest practices result in (or heighten the potential for) pool filling and reduction in summer rearing habitat.

To determine whether the activity will cause significant changes in the stream, a watershed assessment team must work define the likelihood of a change in an input and the effect of change on a resource.

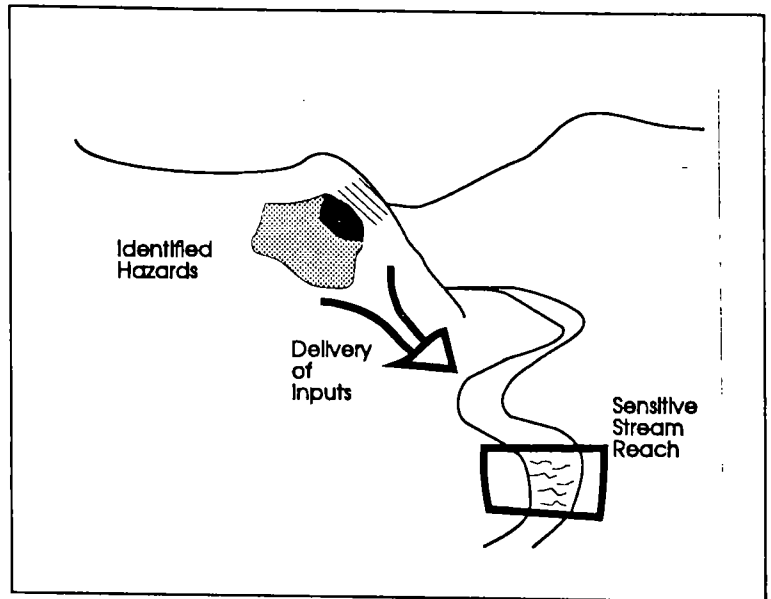


Figure 2. Watershed analysis perspective of spatial relationship between hillslope activities and stream effects.

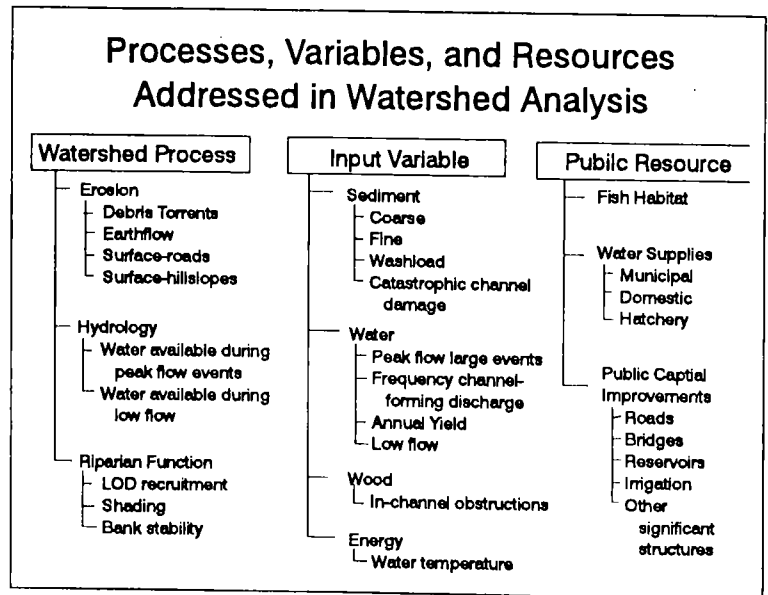


Figure 3. Processes, variables, and resources addressed in watershed analysis.

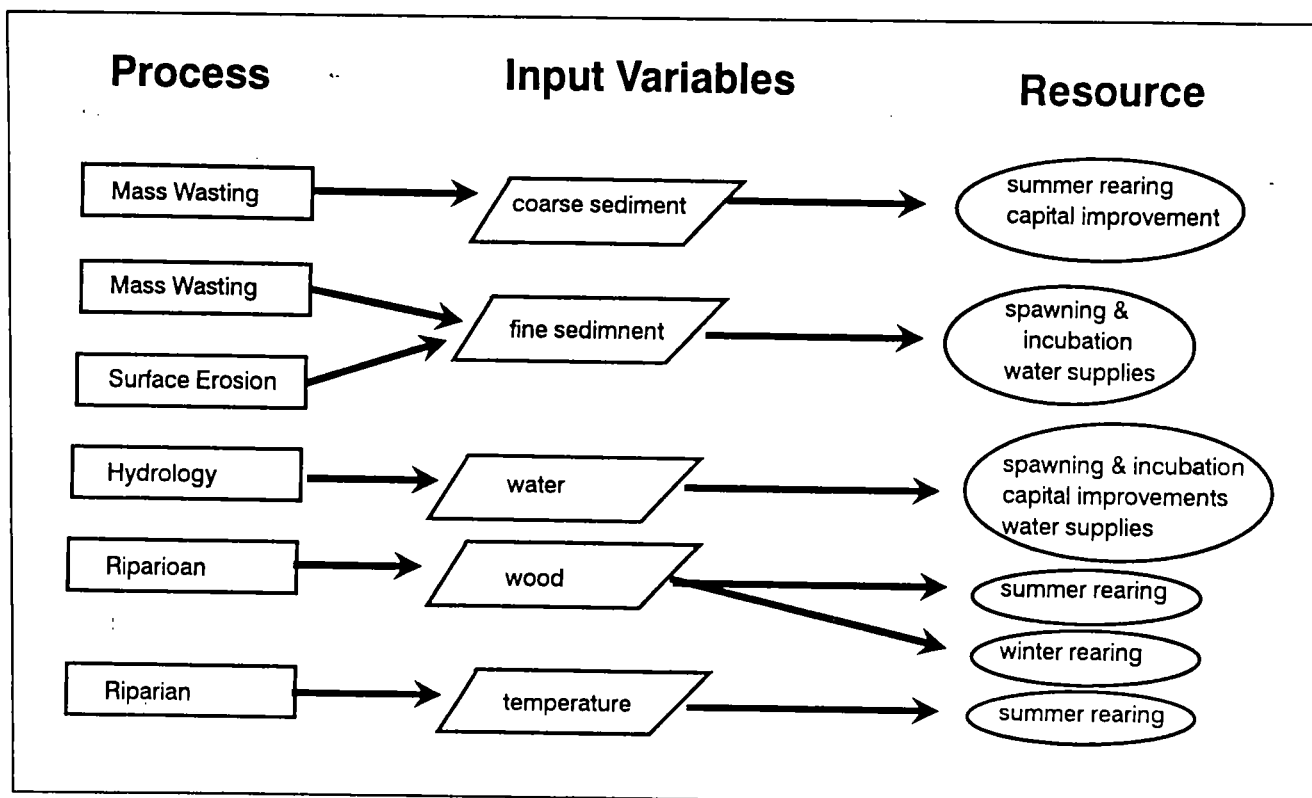


Figure 4. Relationship among watershed processes, input variables, and effects on public resources.

Question-Based Framework

While individual models exist for assessing specific processes, no "off-the-shelf" method is available that links hillslope processes to resource impacts. This reflects the inherent complexity of the many processes at work in the forest landscape as well as the immaturity of several of the scientific disciplines. The deficiencies require individual methods and models be linked in a less comprehensive, less quantitative fashion. The method answers this with a question-based framework, defining key questions that establish connections between effects and processes for each input. The questions establish important points of understanding to establish resource sensitivities. The methods provided in the manual reflect a CMER consensus on the best available techniques recommended for answering them given personnel and time allocations.

Questions are designed to capture the following:

1. Activities generating an input (e.g., coarse sediment).
2. Process triggered by activities (e.g., mass wasting associated with logging road failures)
3. Delivery to the stream.

4. Delivery of an effect--whether an input can be transported to a sensitive segment and whether a significant adverse effect can be registered).
5. Public resources impact--whether resources can be or will be degraded.

Treatment of Uncertainty and Potential Error

The assessment method is designed to provide reliable problem determinations with reasonable confidence; and there is explicit treatment of uncertainty. Reliability can be expressed in terms of the potential or likelihood for correct and incorrect calls. However, the method has been designed to permit policy definition of an appropriate likelihood. Two possibilities have been defined that would fit with current method design:

C1--somewhat greater than a 50 percent chance of a correct call. (A C1 standard equates to a confidence that over the long run a call or determination will be correct more than 50 percent of the time. For example, if a call is made of "medium" land- slide hazard, more than 50 percent of the time the slide hazard will be "medium" and not "low" or "high".)

C2--greater than C1 but less than 90 percent (e.g. 75-90 percent).

Two types of errors (or incorrect calls) are possible at both Levels 1 and 2:

1. False positive--concluding that a problem exists or condition is present, or a cause-effect linkage exists when it really doesn't.
2. False negatives--concluding that a problem doesn't exist, etc., when it does.

Although greater reliability is ordinarily attained through more intensive analysis providing greater resolution, the widespread application of such intense procedures is not practical given personnel and financial limitations. The proposed methodologies attempt to strike a balance between certainty requirements and the resources available to achieve them.

Watershed Analysis confronts this trade-off by allowing for two different levels of analysis. In developing and testing hypotheses, the Level 1 team will attempt to reduce the potential for either type of error; where significant residual potential exists, the team will conclude that a situation is "indeterminate", triggering a Level 2 analysis. The specific likelihood threshold for making a call that a situation is "indeterminate" has not been developed, although guidance is provided in the manual for when indeterminate calls may be appropriate.

Products of Watershed Analysis

The assessment method produces problem statements supporting data and required rule determinations. These are bundled in a Causal Mechanism Report which is forwarded to managers and regulators (Figure 1). Resource sensitivities are identified and problem statements are constructed in resource assessment. The team establishes linkages along each of the input-effect pathways through compilation of data and

information. The assessment method produces ratings of resource vulnerability, resource condition, delivered potential impact, and management response defined by the Watershed Analysis Rule (WAC 222-22).

Management responses are defined by the Delivered Hazard matrix (Figure 5). The top row refers to delivered hazard, potential impact from changes in watershed processes delivered to resources while hazard, the left column refers to resource vulnerability.

Vulnerability	DELIVERED HAZARD			
		LOW	MEDIUM	HIGH
	LOW	Standard Rules	Standard Rules	Response: Prevent or Avoid
	MEDIUM	Standard Rules	Response: Minimize	Response: Prevent or Avoid
	HIGH	Standard Rules	Response: Prevent or Avoid	Response: Prevent or Avoid

Figure 5. Delivered hazard matrix for management responses.

The rule matrix produces three possible management responses:

1. standard rules
2. minimize the likelihood of land use practices that have a potential for material, adverse impacts to resource characteristics
3. prevent the effects of the land use practices identified as potential problems and if they cannot be prevented; avoid or defer activities such as timber harvesting, road construction or use, salvage, and others that may contribute to the problems

The Prescription Process

Based on the resource assessment, a field managers team develops appropriate prescriptions for the areas of resource sensitivity, in locations where the management response is "minimize" or "prevent or avoid". If a resource sensitivity is identified and subsequent

problem statement is constructed, for an area outside the authority of the Department of Natural Resources, then notification to the appropriate federal, state, tribal or local authorities is required. Figure 6 shows the timeframes for the entire process, including prescriptions and subsequent agency review.

Effectiveness Monitoring

Monitoring programs are encouraged. They provide feedback on the effectiveness of the prescriptions.

Maximum Projected Time by Activity

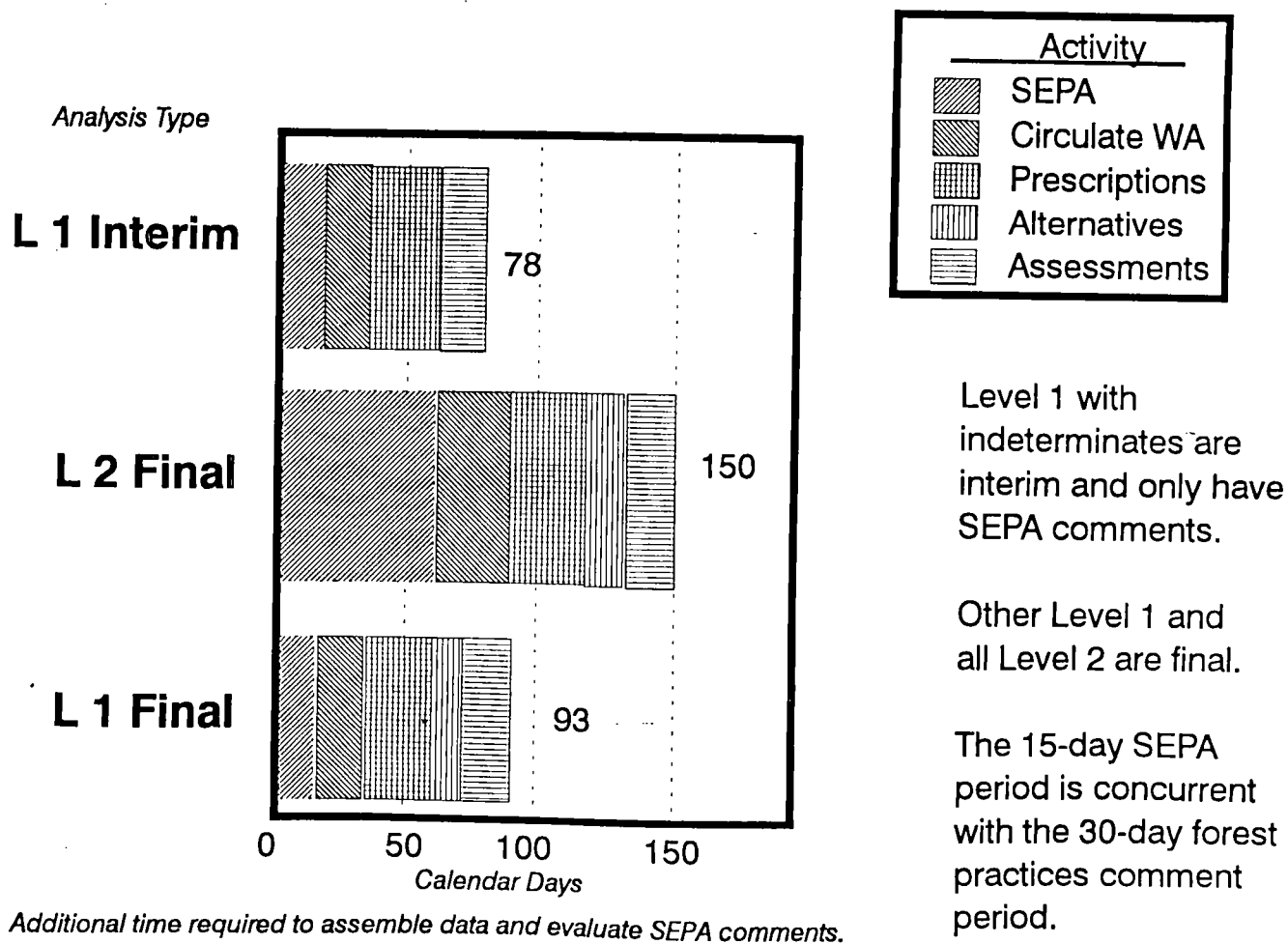


Figure 6. Maximum projected times for activities in watershed analysis.

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DRAFT

LANDSCAPE ECOLOGY AND WILDLIFE PROTECTION

Policy--Wildlife Habitat Protection. The purpose of this chapter is to provide the policies and processes to manage change in the type and condition of habitat in the context of the managed forest. These policies provide a framework for refining and adapting the forest management system to reflect current and future understandings of wildlife and forest ecology interactions. The intent is to address concerns of biological diversity and protection of wildlife through a landscape ecology approach to forest land management. This strategy to protect wildlife and their habitats will rely on regulatory, cooperative, and voluntary efforts to meet the goals and objectives herein. The following sections are structured to provide clear direction for forest land managers and regulators.

Section 1 identifies goals; Section 2 describes the objectives and introduces the regulatory process, including identification of required elements; Section 3 establishes specific guidelines and criteria for wildlife management plans; Section 4 provides the basic framework for forest practice application processing as well as defining baseline rules; and Section 5 ensures implementation effectiveness.

(1) Consistent with the purposes and policies of this chapter, the intent of these rules are to protect wildlife and their habitats in a manner consistent with the principles of wildlife habitat management, forest management, and landscape ecology. The department, in cooperation with the departments of wildlife, fisheries, ecology, federally recognized Indian tribes, local governments, forest landowners, and interested public, shall establish a process and priorities for developing wildlife habitat management plans, and provisions for their implementation and enforcement. The plans shall seek to accomplish the following goals:

- (a) Provide suitable habitat for wildlife species closely associated with interior forest and/or late successional forest characteristics;
- (b) Provide for protection of public resources that are sensitive to habitat alterations;
- (c) Provide for landowner flexibility in developing management plans; and

- 49 (d) Provide for adapting wildlife habitat management plans
50 to accommodate emerging scientific knowledge and
51 changing circumstances, including findings and
52 recommendations derived through watershed analysis.
53
- 54 (2) A process is needed to accomplish the goals in section
55 (1). At a minimum, this process shall include:
56
- 57 (a) Identification of wildlife habitat management
58 objectives for interior-forest and late successional
59 habitat for appropriate landscape units;
60
- 61 (b) The departments of natural resources and wildlife
62 shall, in cooperation with the departments of
63 fisheries, ecology, trade and economic development,
64 federally recognized Indian tribes, local governments,
65 forest landowners, and interested public, develop an
66 education strategy and program to inform the public and
67 forest landowners of the purposes of these wildlife
68 protection strategies and programs and to seek
69 voluntary efforts from forest landowners to meet the
70 objectives of this section;
71
- 72 (c) Forest landowners may, with the assistance of the
73 affected tribes, and state departments of wildlife and
74 natural resources, develop plans consistent with the
75 objectives established pursuant to section (3) below.
76 If a landowner chooses not to develop a plan, the
77 departments of wildlife and natural resources shall
78 develop the plan pursuant to the goals and objectives
79 established herein. These agencies shall utilize the
80 guidance provided by affected tribes and the department
81 of wildlife's Priority Habitat and Species program
82 management recommendations;
83
- 84 (d) Use of expertise and data of the department of wildlife
85 and federally recognized tribes in establishing area
86 specific wildlife habitat goals and objectives in the
87 development of wildlife habitat management plans;
88
- 89 (e) Opportunity to use additional information and expertise
90 from forest landowners, federal and local government
91 agencies, and other interested public in the
92 development of wildlife habitat management plans;
93
- 94 (f) A process for amending the wildlife habitat management
95 plans to meet resource protection goals; and
96
- 97 (g) Baseline rules that apply during the interim period
98 between rule adoption and wildlife habitat management

99 plan implementation.

100
101 (3) That portion of a forest landowner's forested land base
102 within a WRIA necessary to accomplish the goals and objectives of
103 this section shall be managed consistent with a wildlife habitat
104 management plan for the purpose of maintaining or developing
105 specific successional habitat characteristics, including but not
106 limited to late seral stages. These plans shall include:
107

108 (a) Areas that are required to be left unharvested or
109 managed pursuant to other state and federal statutory
110 and regulatory requirements: PROVIDED, That nothing in
111 this section shall affect these statutory or regulatory
112 requirements. Such areas shall include, where
113 appropriate to meet the objectives of this section, but
114 are not limited to, forested riparian management zones,
115 forested upland management areas, forested areas around
116 wetlands, and forested shorelines.
117

118 (b) Late successional and interior-forest habitat patches
119 shall be connected by a system of forested corridors
120 concentrated primarily on drainage systems. In order
121 to maintain viable populations of associated species
122 and stable communities, a minimum of forty percent
123 (40%) of the forested landscape within appropriate
124 ecological landscape management units shall be managed
125 to retain or restore the suitable habitat structure
126 necessary for species typically associated with
127 interior and/or late successional habitat. The
128 targeted quantity for this structure within each
129 defined planning area is seventy percent (70%).
130 Distribution for this habitat is not fixed spatially
131 and can be expected to change over time.
132

133 (c) Forest practices shall be permitted within the late
134 successional habitat areas subject to a wildlife
135 habitat management plan to:
136

137 (i) Protect against fire and disease outside the
138 wildlife habitat management areas; and
139

140 (ii) Provide or create important habitat
141 characteristics consistent with this section.
142

143 (4) In approving, conditioning, or denying any forest
144 practices applications:
145

146 (a) The department shall condition applications according
147 to applicable wildlife habitat management plans
148 developed pursuant to this regulation.

- 149 (b) In those watersheds where there has been $\geq 30\%$ cut-
150 over, and if wildlife habitat management plans have not
151 been adopted, the department shall;
152
153 (i) in cooperation with the department of wildlife and
154 affected Indian tribes, delineate important
155 habitat patches providing interior-forest and/or
156 thermal cover and connecting corridors within 7
157 kilometers of the proposed forest practices, with
158 priority given to late seral stage habitat, and
159
160 (ii) condition forest practices consistent with
161 protecting and restoring habitat structure in
162 areas delineated through (4)(b)(i) and with the
163 department of wildlife's Priority Habitat and
164 Species program management recommendations, unless
165 the department has substantial scientific basis
166 for rejecting those recommendations,
167
168 (c) Where two or more Priority Habitats or Species are
169 identified in the same area with conflicting management
170 recommendations, the department will coordinate and
171 consult with the department of wildlife and affected
172 Indian tribe(s) to resolve the differences in
173 management recommendations.
174
175 (d) Where conservation measures are being implemented by
176 state or tribal wildlife managers to protect
177 populations of game species, the department shall
178 condition forest practices applications to provide
179 recovery of habitat effectiveness. Conditions shall
180 include restrictions governing; clearing sizes and
181 configurations, forage:cover ratios, and open road
182 densities pursuant to recommendations provide by
183 affected tribes and the department of wildlife.
184
185 (e) In those watersheds where there has been $\geq 50\%$ cut-
186 over, and if wildlife habitat management plans have not
187 been adopted, the department shall deny forest
188 practices applications until a wildlife habitat
189 management plan has been adopted and implemented
190 consistent with the goals and objectives of this
191 regulation.
192
193 (5) The department shall:
194
195 (a) Provide for monitoring activities to assess the
196 implementation and effectiveness of wildlife protection
197 measures;
198

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- (b) Develop a process, in cooperation with the departments of ecology, fisheries, wildlife, federally recognized tribes, to encourage informal conflict resolution to foster the cooperative development of wildlife habitat management plans.

207
208 DEFINITIONS:
209

210 () "Cut-over" shall mean those timber harvest practices
211 that have been approved on the site within the past 30
212 years and have altered the habitat to a stand that no
213 longer exhibits the typical characteristics of a
214 similar natural stand based on growth potential,
215 species and vertical stratification, or existing stands
216 that have developed under similar physical conditions.
217

218 () "Interior-forest" is found in patches of sufficient
219 size and appropriate configuration to provide habitat
220 structure that is not significantly influenced by edge
221 habitat. Use the following steps to determine if a
222 forested patch has interior forest (Laurance and
223 Yensen. Predicting the Impacts of Edge Effects in
224 Fragmented Habitats. Biol. Conserv., 55, 1991. pp. 77-
225 92).
226

- 227 1. Determine the metric Shape Index (SI) [Patton
228 1975]:
229

230
231
$$SI = \frac{P}{200[(TA * \pi)^{0.5}]}$$

232
233

234
235 P = Perimeter of patch, and
236 TA = Total area of patch
237

- 238
239 2. Determine affected area (AA) (area influenced by
240 edge):
241

242
$$AA = \{(3.55) (d) (SI) [(TA/10,000)^{0.5}]\}$$

243
244

245 AA = Affected area
246 d = 200 meters (edge habitat)
247

248 * If $SI \leq 1.5$ then adjust by:
249

250
$$AA_{adj} = AA * [1 - (0.265 (AA/TA) / (SI)^{1.5})]$$

251
252

- 253 3. Subtract either AA_{adj} or AA from TA to determine
254 whether or not interior forest exists.
255
256

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427
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Northwest Indian Fisheries Commission

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April 1, 1993

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

On behalf of the Northwest Indian Fisheries Commission, I would like to provide the attached comments and recommendations to your Administration regarding the April 2, 1993 Forest Conference. After enduring decades of discriminatory fishery harvest restrictions imposed by state governments, and violent opposition from non-Indians, the tribes vindicated these rights in a series of federal court cases. The Northwest Indian Fisheries Commission is comprised of 19 member tribes who are party to these federal court cases, including United States v. Washington.

The tribes recognize the tremendous complexity of the debates surrounding the spotted-owl, ancient forests, and related economies and cultures. However, the legal, political, natural resources, and social issues are not limited to the spotted owl. The spotted-owl and status of salmon in the Northwest are indicators of the overall health of our aquatic and terrestrial ecosystems. We cannot continue to take a species-by-species approach to natural resource management. We need to address terrestrial and aquatic ecosystems as a whole.

In taking an ecosystem approach to natural resource management, we must recognize they are not defined by land ownership patterns, jurisdictional boundaries, or politics. Natural resource management is extremely complex requiring integration and coordination between governmental authorities, landowners, and the general public.

The problems and impacts associated to salmon and riparian ecosystems are comparable to the debates surrounding the spotted owl and terrestrial ecosystems. **We must broaden the scope of this process to include salmon, its habitat, aquatic ecosystems, and land use management that affects this invaluable resource.** Pursuant to the United States Constitution, the United States

must protect, restore, and enhance the treaty protected resources of the tribes, these include salmon and other fish, plants, and wildlife species. To accommodate non-treaty needs at the expense of treaty protected resources is unacceptable and is paramount to an illegal taking of tribal property. We need to address these issues in a proactive manner or the debates will continue in the court rooms.

We have the scientific information and data to make decisions. The issue is whether we have the political will to make the decisions. We must act--and act now.

Thank you for the opportunity to participate in the Forest Conference. The Conference offers a historic effort to provide policy and technical direction and guidance to the federal government in the fulfillment of its trust responsibilities and treaty commitments. **The treaty tribes are legally recognized as the "co-managers" of the fish and wildlife resources with the State of Washington. Natural resource management cannot be addressed in Washington state without the full participation of the tribes.** Tribes are the leaders in cooperative resource management approaches and are committed to participate in a coordinated effort in partnership with tribal, state, and federal governments. A cooperative coordinated inter-governmental strategy will truly provide significant progress in protecting our natural resources consistent with tribal treaty rights.

Sincerely,

Bill Frank, Jr.
Chairman

cc: All Tribes
Mike Espy, Secretary of Agriculture
Bruce Babbitt, Secretary of Interior
Mike Lowry, Governor
Jennifer Belcher, Commissioner of Public Lands
Washington State Delegation
Joe Tallakson, SENSE
James R. Lyons and E. Thomas Tuchmann, Forest Summit Office

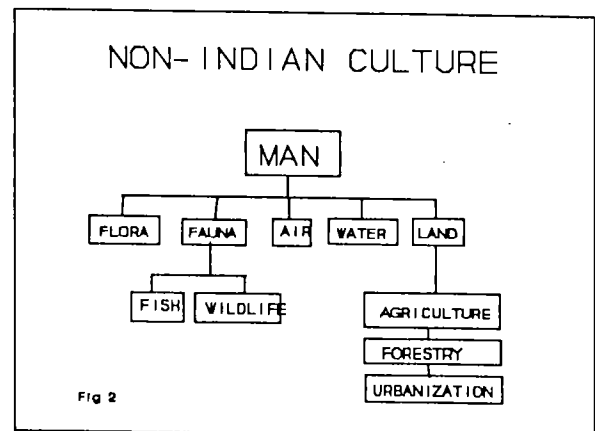
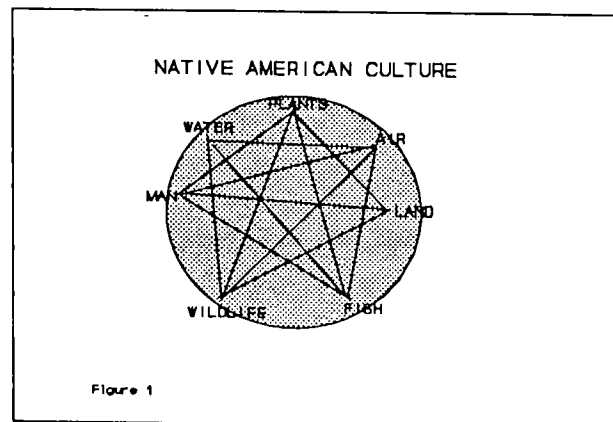
The shining water that moves in the streams and rivers is not just water but the blood of our ancestors. If we sell you our land, you must remember that it is sacred, and you must teach your children that it is sacred, and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father. The rivers are our brothers, they quench out thirst. The rivers carry our canoes, and feed our children. If we sell you our land, you must remember, and teach your children, that the rivers are our brothers, and yours, and you must henceforth give the rivers the kindness you would give any brother.

--Chief Sealth during treaty times

I. BACKGROUND

For thousands of years, the Native Americans of the Pacific Northwest have managed the environment to provide for a balanced ecosystem--an ecosystem of man, the earth, water, air, and natural resources. The culture of Native Americans is based on stewardship and respect for natural systems. It is an understanding that man-kind is part of the ecosystem--the web of life (Fig.1)--and not the dominator of all life (Fig.2). Native American culture, respect for the land, air, water, and natural resources has provided for thousands of years the balance we all seek today.

In less than 150 years, non-Indian culture has taken a once bountiful region that provided for community and natural resource stability to the point of social and ecological chaos. Non-Indian culture has over-exploited our land, water, and natural resources. Non-Indian culture has managed the land and natural resources to the detriment of our terrestrial and aquatic ecosystems. This is



clearly demonstrated in the status of the spotted-owl and salmon as indicators of our environment. Non-Indian culture has managed the land, water, and natural resources to the detriment of the treaty reserved rights and resources of the Native Americans of this region.

The legal, political, natural resources, and social issues are not limited to the spotted owl. The spotted-owl and status of salmon in the Northwest are indicators of the overall health of our aquatic and terrestrial ecosystems. We cannot continue to take a species-by-species approach to natural resource management. We need to address terrestrial and aquatic ecosystems as a whole.

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A. Salmon and Our Aquatic Ecosystems

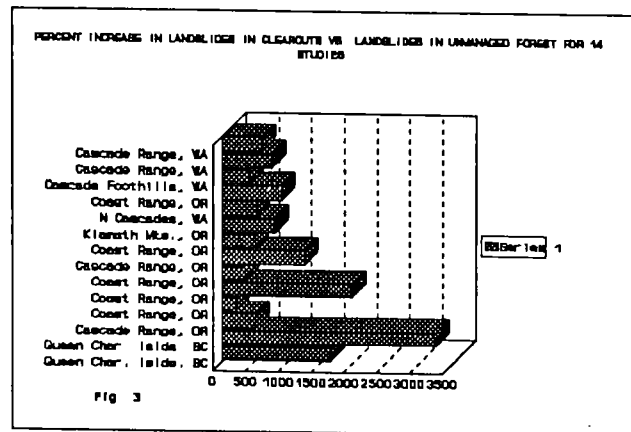
After centuries of sharing a common dependence to the salmon resource, the Indian tribes of the Pacific Northwest have witnessed a disastrous decline in the region's salmon runs. In this last century--development and operation of irrigation dams and diversions, inundation of spawning habitat, siltation and pollution from sewage, farming, logging, and mining--have brought many of the salmon runs to ruin. The listing of the Snake River sockeye, spring/summer and fall chinook under the Endangered Species Act is simply the most visible government acknowledgement of this decline.

Salmon and the forest ecosystem have evolved together. Research indicates that immediately following the retreat of the last glaciation, watersheds in the Pacific Northwest were highly unstable, with high sediment yields, and relic salmon populations. As climatic conditions changed to favor the establishment of coniferous forests, stream systems gradually stabilized, resulting in the large salmon populations the Pacific Northwest was known for. Evidence indicates that in only the last 100 years we are on the verge of creating watershed conditions that exceed those of the post-glaciation period.

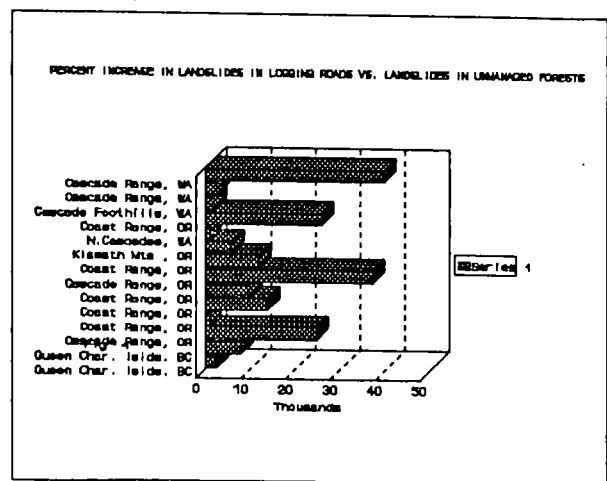
In a recent report to Congress, notwithstanding hydroelectric development, **logging and road-building were identified as being the most significant contributors to habitat degradation.** In many river basins in the Pacific Northwest, where the number of threatened and endangered salmon stocks is high, the most dramatic change in the landscape in recent decades has been the extension of roads and logging into steep, erodible headwater areas. The net affect of these practices is to increase the amount of sediment and the volume of peak flows in streams that drain these areas, creating conditions detrimental to fish.

The increased erosion and sedimentation that result from logging and road-building create fine sediment that clogs the spawning beds of fish and coarse sediment that fills in the deep pools of a river. This process not only destroys rearing habitat for small fish but also habitat needed by all fish for avoiding predators and extreme temperature variations. A decrease in water quality also occurs. Roads and road-building are the primary sources of management-caused erosion in our forests today.

In a recent Timber-Fish-Wildlife Cooperative Monitoring Evaluation and Research report, the authors evaluated the effectiveness in minimizing specific erosion processes in managed forested landscapes from 14 studies conducted in the Northwest. In summary, between **200 and 3,300 percent** more landslides occurred in clearcuts than in mature forest. On average, landslides were **900 percent** more frequent than in mature forests (Fig. 3).



Even higher incidence of landsliding from logging roads have been documented. Landslides associated with roads ranged from **1,000 to 38,000 percent** more than in unroaded and unlogged forests. On average, landslides were **11,100 percent** more frequent in roaded areas than in unroaded and unlogged forests (Fig. 4). These inventories indicated that logging roads are the major source of landslides in managed forest in Oregon and



Washington. The results of these inventories for Washington and Oregon are consistent with studies conducted in British Columbia, New Zealand, and Alaska.

The salmon resource is economically important to the tribes and non-Indian society. Only 10-15 years ago, coastal commercial and recreational salmon fisheries brought well over \$120 million per year to the region. Employment dependent on fish and wildlife generate over \$700 million in wages statewide. Even though the economics of fish and wildlife are significant, economic balancing does not address the cultural and religious dependence the tribes have to these resources. Nor does balancing of relative economics address the legal obligation to protect the fish resources--to protect the Constitutionally protected rights of the treaty tribes.

The federal government is obligated to address the protection, restoration, and enhancement of the salmon resource and aquatic ecosystems. Not only as a practical matter to proactively address the decline of potential future listings of salmon, but as trustee to protect the rights of Indian tribes in the Northwest.

B. The United States as Trustee

In 1855-56, the United States entered into treaties with Indian tribes of the Pacific Northwest. These treaties are recognized as the supreme law of the land in the United States Constitution. In these treaties, the United States received title to the ceded territories of the tribal nations (See attached map). In exchange, the United States promised to manage and protect the natural resources of this region consistent with the treaty reserved rights of the tribes. The United States also agreed to provide education, medical and other social services to the Indian tribes. The United States would be the trustee to the beneficiary tribes.

In return for ceding their traditional lands, the tribes received a permanent homeland. This homeland was intended for the exclusive benefit of the Indian nations, not for the general public. Tribal reservations were established in their usual and accustomed areas to allow tribes to determine their own destiny. Tribal nations are not transient--their only homeland is in the Pacific Northwest. To protect the sovereignty of tribal nations and their homelands, it is the policy of President Clinton and the United States to protect and promote tribal self-determination--tribal self-governance.

In addition, the tribes reserved in these treaties the right to hunt, fish, and gather plants and shellfish in perpetuity, not to be interfered or destroyed by the federal or state government or non-Indian society. As trustee, the federal government must

ensure the protection of tribal treaty resources and tribal sovereignty.

II. GENERAL PRINCIPLES AND RECOMMENDATIONS

A. Principles of Tribal Governance

In seeking solutions to the problems we are facing, the United States must develop and implement these strategies consistent with its government-to-government policy with tribal nations. The United States must respect the sovereignty of tribal decisions and jurisdiction over their land and natural resources.

The United States must continue to support its policy of tribal self-determination to manage and control their homelands for the benefit of their people and natural resources.

The United States must protect, restore, and enhance the treaty protected resources of the tribes. To accommodate non-treaty needs at the expense of treaty protected resources is unacceptable and is paramount to an illegal taking of tribal property. The federal government must include the tribes on a government-to-government basis in the development of strategies and solutions to the problems we are facing.

B. Equitable Allocation of Conservation

After centuries of wise-use and stewardship of the natural resources by Native Americans, the federal government and states of this region have caused or allowed the decline of these resources in less than 150 years. The federal government must ensure an equitable allocation of the conservation responsibility to our fish and wildlife resources.

In many cases, tribal fisheries have been eliminated or severely restricted to allow rebuilding of various salmon runs. Many tribal commercial fisheries have been substantially reduced or eliminated. If we translate that level of sacrifice to loggers and ranchers, there would be no more commercial timber sales of any kind, except for firewood and other personal use. Similarly, ranchers could only graze the number of cattle that they could personally consume with no commercial market. Those who cause dam-related mortality and habitat damage presently have no obligation to alter their actions if escapement goals are not met. Thus, it is no surprise that salmon numbers are declining or have gone extinct.

As a matter of policy, the tribes cannot reasonably be expected to bear the burden of conservation of a resource whose decline they did not cause. The tribes did not cause the demise of these resources, the tribes did not control activities that caused the

demise of these resources, and they do not have the land or other means to rebuild these resources. For the last 150 years, the tribes of the Northwest have subsidized forestry and other land use practices with the lack of natural resource protection-- In return, the tribes have unemployment of their members exceeding 70%. Any conservation measures that may affect tribal interests must be addressed on a government-to-government basis.

As a matter of law, the treaty reserved rights of the tribes guarantee that the United States must use all reasonable and necessary conservation measures imposed on non-Indians before seeking restrictions on Indian activities. We must first address those activities that have caused the demise of the fishery resources; forestry and agricultural practices, hydroelectric development and operation, water withdrawals, and general urbanization.

C. Primary Goal

Conflicting federal and state resource management goals and policies have afforded an opportunity for no accountability and have contributed to the inability to adequately protect the salmon resource. Many goals and policies of the state and federal government have short-term economic goals in priority over long-term protection of the fish and wildlife resources. State and federal governments have failed to recognize and prioritize environmental and natural resource protection as the foundation for sustainable economies and communities.

The federal government must clearly state their goals and objectives to ensure accountability between all agencies and with the various states. The federal governments goals and objectives must be consistent with the treaty protected rights of tribes.

A reasonable long-term goal may be stated as:

Protect, restore and enhance the aquatic and terrestrial ecosystems to provide for the greatest diversity and abundance of fish and wildlife resources for the treaty reserved rights of the tribal nations of this region.

D. Best Science Available

In the past, political and economic solutions were the norm. As a result, we have the potential for economic dead-lock and natural resource catastrophe. All potential solutions and strategies must be biologically sound and based on the best available science.

III. INTERIM STRATEGIES

Until a comprehensive ecosystem approach is developed and implemented that will address fish and wildlife protection on a landscape basis, the following interim strategies must be implemented:

- A. Provide substantial and significant buffers to protect riparian ecosystems on all permanent "waters of the state" (Type 1-4 waters). Recently, a federal team of biologists recommended the following buffers necessary to protect the fish resource and habitat:
 - 1. Minimum interim buffer 300 feet on each side of lakes and fish bearing streams;
 - 2. Minimum interim buffer 150 feet on each side of permanent non-fish bearing streams;
 - 3. Minimum interim buffer 150 feet on ponds and reservoirs and of wetlands less than one acre in size; and
 - 4. Minimum interim buffer 150 feet in landslide and landslide-prone areas.
- B. Retain all remaining unmanaged forests in these buffers and riparian ecosystems
- C. No entry or removal of vegetation by road construction
- D. Demolition of orphaned/abandoned roads
- E. Lengthen timber rotations with appropriate reduction of logging levels, and implement lower impact logging systems. Eliminate logging and road construction in sensitive, unstable terrain
- F. No logging in roadless areas
- G. Establish enforceable habitat standards
- H. Eliminate grazing in riparian ecosystems
- I. Initiate watershed restoration
- J. Monitor the effects of watershed stabilization and restoration efforts
- K. Develop alternative non-judicial dispute resolution system for natural resource management

Implementation of these recommendations would halt and begin to reverse the habitat degradation resulting from past and present management on federal, state, and private forest lands, while still permitting reasonable levels of logging and grazing.

IV. LONG-TERM STRATEGIES

A. Watershed/Landscape/Ecosystem Approach vs. Jurisdictional Approach to Natural Resource Management

Long-term protection of fish and wildlife resources will depend upon the ability to implement management regimes across a variety of ownership boundaries. Federal lands managed to maintain late-successional stage forest may not be sufficient to meet wildlife habitat needs. Federal lands will not be able to meet fish habitat needs. Fish habitat needs are throughout the watershed, regardless of landownership patterns. Species-by-species management is destined for failure, we must address resource protection through their aquatic and terrestrial ecosystems.

B. Watershed Analysis for Fish and Water Quality and Landscape Approach for Wildlife Protection

A landscape approach to evaluate protection and recovery for fish, water quality, and wildlife should be developed and implemented to provide local flexibility and replace relevant interim solutions.

Most recently, the tribes, State of Washington, forest products industry, and environmental leaders have developed a mechanism to address impacts of forest practices on a watershed scale, known as "Watershed Analysis." We are now implementing "Watershed Analysis" on two pilot drainage areas. The intent is eventually to conduct Watershed Analysis statewide; however, this will take many years to fully implement.

In contrast to Watershed Analysis that provides a mechanism for the protection and recovery of fish and water quality, there currently is no approved mechanism that will provide a landscape approach for wildlife protection.

C. Federal Government Support for Intergovernmental Watershed Approaches

1. Coordinated Tribal Water Quality Program: A Political Philosophy of Watershed Management

Currently, twenty-six federally recognized tribes in Washington State are implementing a Model Coordinated Tribal Water Quality

Program. The essence of the tribal water quality program is an inter-governmental strategy that addresses watersheds as units of management rather than the traditional jurisdictionally based approaches.

2. Chelan Agreement: Implementation of Inter-governmental Watershed Management

In 1990, twenty-six federally recognized Indian tribes, Washington state, local governments and multiple other interests created the "Chelan Agreement: A Cooperative Water Resource Planning Process." Though the primary purpose of the Chelan Agreement is instream and out-of-stream water resource planning, other objectives are to create an integrated basin plan that addresses water quality and the variety of land use practices that affect fish and wildlife habitats. Currently, two regional water planning projects are being implemented. The goal is to have these regional water plans throughout the state. Attached is a report that summarizes the Chelan Agreement and a news article describing one of the pilot projects.

3. TFW: Implementation of Cooperative Forest Practices Management on State and Private Lands

In 1987, the tribes, State of Washington, leaders of the environmental and timber communities developed the Timber-Fish-Wildlife (TFW) Agreement to address forest practices and protection of fish and wildlife resources on state and private lands. Implementation of TFW has provided national acclaim for the program.

TFW is an integration of state, federal, tribal, and local government resource managers and citizens of the state working with common goals and objectives to implement forest practices management.

4. Wild Stock Initiative: Salmon and Steelhead Stock Inventory

In cooperation with the Washington State Departments of Fisheries and Wildlife, the tribes have embarked on an ambitious effort aimed at identifying, enhancing, and restoring wild salmon stocks. The first step which has just been completed of the "Wild Stock Initiative" is to identify wild stocks and evaluating their status. Subsequent steps will seek to identify specific measures that can be undertaken to protect, restore, and enhance these stocks. This initiative should serve as the foundation for salmon and steelhead protection, restoration, and enhancement and deserves federal support.

We did not inherit this Earth on its natural resources from our ancestors, we are only borrowing them from our childrens' children and their children. Therefore, we are duty-bound and obligated to protect them and use them wisely until such time that they get here, and then they will have the same obligation.

Anonymous

COMPREHENSIVE WATER RESOURCES PLANNING - THE CHELAN AGREEMENT

SYNOPSIS:

The tribes have become an integral part of the process established by the Chelan Agreement and participate with federal funding to ensure continued consideration of their sovereignty and treaty rights in discussions on water quantity and instream flow issues. The Northwest Indian Fisheries Commission, on behalf of the tribes, is requesting that \$500,000 funding be restored in the FY-1994 budget. With this money, the tribes will continue to participate in the planning efforts of the Water Resources Forum and the two regional pilots projects.

This is minimal funding, well below the original tribal request of \$4.4 million for their portion to implement the proposed water resource solutions formulated by Washington's citizens under the Chelan Agreement process. Additional tribal participation is necessary in the areas of statewide coordination, establishing mechanisms to address "critical situations", data base management, and tribal information and education. This funding would afford the tribes an adequate level of participation to ensure the success of water resource management.

ISSUE:

There is a water management problem in Washington State that affects everyone. With hundreds of thousands of additional people expected to move into Washington in the next ten years, the problem will intensify. Current water sources are not being adequately managed to determine if they have been over allocated or whether they are being protected from contamination. The once thought in-exhaustible resource is now being shown susceptible to draught and man caused pollution. Management of this limited resource is critical now and more so into the future. Continued conflict and uncertainty will only frustrate resolution of these growing problems.

The tribes must maintain a key leadership role in the effective management of the water resource in Washington State. By supporting the cooperative water resource management process, the tribes maximize the power of its investment in resource management by encouraging creative problem solving through local team effort. Tribes have become integrated in decision-making and are part of the Chelan Agreement to establish procedures for cooperative planning for the management of water resources in Washington State to best meet the goals and needs of all its citizens. The tribes participation is also critical to ensure that their sovereignty and treaty rights are considered though out the process.

The Chelan Agreement created a cooperative process to address water allocation issues with all participating parties expected to recognize the legitimacy of each other's goals and objectives. The process does not eliminate the possibility of litigation. Court action remains a viable and

proper dispute resolution and clarification tool, but it will be used only as a last resort. Every avenue of cooperation and negotiation will be pursued before litigation is considered an option by the participants. The incredible reduction in the number of resource-related court cases over the past seven years is substantial proof that the cooperative process works.

BACKGROUND:

Tribal governments have a legal right to participate in water management planning for many reasons, not the least of which is that they hold first-in-time status which they have never relinquished. The U.S. Constitution and the federal trust responsibility clearly protect Indian resource rights (including water rights), a position confirmed by numerous court decisions. Among these are the *Winan* (1905) and *Winters* (1908) cases, and more recently Phase I and II of *U.S. v. Washington*. These decisions relate to the protection of fish and wildlife habitat, which is critical and inherent to production and harvest. While these decisions have not always been accepted unanimously by non-Indians, the tribes and the state have elected to pursue solutions to common objectives rather than further litigation at this time.

These legal theories which protect tribal fishing and water rights are distinct. "Winters" rights to water is based on the federal government implicitly reserving necessary waters to fulfill the purposes of the land retained by the tribes when they ceded the balance of their territory to the United States. They also have a priority date related to the time of the signing of the treaties. "Winan" and *U.S. v. Washington* reaffirmed the tribes' right to harvest fish at their usual and accustomed fishing grounds as well as the protection of water quantity and quality.

Prior to the Chelan Agreement, the state made several attempts at developing laws to address water allocation issues under the "prior appropriation doctrine". This established the policy of first-in-time-first-in right for allocation of water. This did not consider the tribes priority rights. The laws the state established began with the appropriation of surface water, then ground water, and more recently included protection for instream fish and wildlife uses, which by some were considered competing uses. With the increasing demand for water, the lack of adequate management and consideration of tribes needs, the state was headed towards a major confrontation.

The Chelan Agreement is a far-reaching and comprehensive cooperative water resource management plan produced by the interested parties, including the tribes of the state. Everyone has agreed to seek solutions to complex water issues that can fulfill all their needs through a cooperative process.

PAST APPROPRIATION/FUNDING:

The tribes received their first funding for participation in this process in FY-1992. The \$500,000 was divided among the 25 tribes in the state to provide \$16,000 to each tribe through the Bureau funding process. This recommendation is to continue this funding for tribal participation, again appropriating \$500,000 to be divided among all of the tribes.

MODEL TRIBAL WATER QUALITY PROGRAM

Environmental Protection Agency Funding

SYNOPSIS:

To address water quality issues affecting their reservation and off-reservation resources, the federally recognized tribes in Washington state have developed the Coordinated Tribal Water Quality Program. The program will address water quality issues through a watershed approach. The tribes are requesting \$6,000,000 for the program to extend tribal water quality programs, implement regional and statewide coordination programs, and plan for tribal demonstration projects.

ISSUE:

The need for new approaches to water quality problems stems from a simple fact: Water pollution threatens survival of the fish, wildlife and other natural resources on which the tribes depend, endangering the economic and cultural core of tribal life. The tribes feel these issues must be resolved cooperatively and in partnership with federal, state and local governments rather than through litigation.

BACKGROUND:

The Coordinated Tribal Water Quality Program is built upon six flexible, interconnected stages that are driven by funding, not by time. The stages do not imply that each tribe would arrive simultaneously at the same point in program development. That would be impossible because of differences in tribal sizes, needs and water quality problems. The stages do, however, outline what the tribes think can be accomplished through planned effort, coordinated budgeting, inter-governmental goodwill, and appropriate funding.

Stage I consisted of program development that was conducted on the basis of interviews with tribal policy makers and technical staff at each federally recognized tribe in the state. These interviews:

- * Outlined water quality issues affecting reservation and off-reservation waters;
- * Identified tribal programs currently in place to address water quality issues;
- * Identified actions needed to combat water quality issues;
- * Determined change in relations with other governments that could lead to comprehensive, coordinated and cooperative efforts to address water quality issues.

The program currently is in Stage III, which has capitalized on earlier funding to provide infrastructures within tribal governments to allow the tribes to participate in the Coordinated Tribal Water Quality Program. This effort allowed each tribe to integrate its specific issues into the overall program guidelines. The tribes, through this initial infrastructure development, have also been able to refine and complete the program development by acquiring needed expertise and staff.

Stage III of the program allows each tribe to implement the base-level water quality program designed in stages I and II. These basic programs would include the staff, equipment, and support costs necessary for the tribes to begin addressing water quality issues affecting their reservations and treaty-protected resources, and accomplishing program goals.

Stages IV through VI would build on the programs developed in the previous stages to include enhanced programs with state and local governments.

The following figure shows the program's stages of developments and the funding associated with each:

PROGRAM DESIGN AND IMPLEMENTATION SCHEDULE

Stage I	September, 1990 to January, 1992	Program Development	Yearly Cost: \$194,000
Stage II	September, 1991 to October, 1992	Develop Water Quality Program Infrastructure For Each Tribe And Begin Statewide Coordination	\$1,500,000
Stage III	As Funded	Development Of Initial Tribal And Coordinated Statewide Programs	\$3,000,000
Stage IV	As Funded	Extend Tribal Water Quality Programs And Implement Regional Programs And Increase Statewide Programs	\$4,500,000
Stage V	As Funded	Maintain Tribal Programs And Extend Water Quality Education Efforts And Plan Tribal Demonstration Projects	\$6,000,000
Stage VI	As Funded	Full Implementation Of Tribal Model Water Quality Program	\$10,000,000

The Coordinated Tribal Water Quality Program rises from a comprehensive, cooperative natural resource management process that is becoming institutionalized in Washington state. The federally recognized tribes in Washington state have been a driving force behind this process, which is already being used to manage salmon and forest lands.

Participating tribes are sovereign governments with treaty and other legally protected rights to clean water both on and off-reservation. As such, they possess jurisdictional authority and legally protected property rights in most of the state's major watersheds. The comprehensive, coordinated approach to natural resource management now being employed in Washington State is based, however, on the firm knowledge that cooperation, not litigation, is the best way to resolve natural resource issues.

The tribes now want to apply this same successful approach to water quality issues through the Coordinated Tribal Water Quality Program. The benefits of this program's watershed approach to water quality issues have been evident for some time and have been consistently supported by the EPA. Water pollution does not respect jurisdictional boundaries. This natural watershed management approach replaces jurisdictional walls with partnerships that improve efficiency and increase effectiveness.

Full implementation, Stage VI of the Coordinated Tribal Water Quality Program, requires \$10 million. Operation at this optimum level includes:

- * Maintaining the general tribal water quality programs;
- * Implementing education programs;
- * Implementing watershed demonstration projects;
- * Supporting specific tribal projects, and;
- * Providing funding opportunities to non-tribal governments to assist them in working cooperatively with tribal governments on water quality issues.

PAST APPROPRIATIONS/FUNDING:

To date, Stage I program development and Stage II development of tribal infrastructure and Stage III initial tribal and statewide coordination programs, are being accomplished. The next step -- development, implementation and extension of these initial tribal, statewide and regional programs -- will require \$6 million dollars annually.

Participating tribes want the program's new coordinating mechanisms and technical efforts to build on, enhance and complement existing endeavors of individual tribes and other entities to improve water quality. The Coordinated Tribal Water Quality Program is not intended to replace those ongoing programs nor to compete with them for funding. The tribes want the program to build on, complement and strengthen cooperative water quality partnerships that they

have sought to develop with other governments and private entities.

The tribes participating in the Coordinated Tribal Water Quality Program believe that fully-funded, cooperative efforts to protect and cleanse the waters in Washington state are less expensive and more productive in the long run than litigation or legislative struggles to achieve the same end. Through this program the tribes hope to achieve for waters within the State of Washington, and particularly for waters of tribal concern, the same goal of the federal clean water act: To restore and maintain the chemical, physical and biological integrity of the nation's waters. Through this program the tribes also hope to protect and preserve their cultural and economic well-being.

PUTTING PROCESS INTO PRACTICE: TRIBAL LEADERSHIP IN REGIONAL WATER PLANNING¹

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ABSTRACT: Regional water planning and fisheries enhancement efforts in Washington State have been impacted by the uncertainty of legal claims associated with Indian treaties from the 19th century. While recent court decisions reaffirmed that tribes are entitled to 50 percent of the Washington salmon harvest, and implied a right to adequate habitat to support these resources, there remains no resolution of tribal claims to instream flows for fish and the impact to water right holders and competing uses. An agreement was reached at a water summit in 1990 at Lake Chelan, Washington between tribes, state and local government officials, environmentalists, agriculture and business representatives, recreationists and fishermen which established a process to develop regional water management plans as an alternative to lawsuits. The Dungeness and Quilcene watersheds on Washington's Olympic Peninsula were selected as a pilot project. An unusual aspect of the project is that the multiple counties, cities, utility districts and tribes involved have selected the Jamestown S'Klallam Tribe as the lead government for the process. This establishes the Dungeness-Quilcene project as not only a pilot process for regional water planning, but also offers the opportunity to demonstrate that an Indian government has the ability to lead a cooperative intergovernmental water planning initiative.

KEY TERMS: INDIANS, WATER RIGHTS, WATER MANAGEMENT PLANS, INTERGOVERNMENTAL COOPERATION

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INTRODUCTION

Indian water claims in the western United States create many uncertainties for development, much as Indian land claims did in the 19th century (Price & Weatherford, 1976). As demands for water rise, and new opportunities for increasing water supplies diminish, the need to settle ancient claims has become urgent. (DuMars & Ingram, 1980). From a tribal perspective, the move to quantify longstanding rights to water resources offers both protection and risk. By establishing a numerical water right with a definitive priority date, tribes are protected from encroaching development on tribal lands and marine resources. However, this certainty also acts as a limitation to future tribal needs to water, which may be difficult to foresee (Moore, 1989). In the past, litigation has been the primary route to resolve conflicts over water resources, but increasingly negotiations are being pursued as a strategy which can be cheaper, quicker, and more implementable for water management purposes (Clark, Bingham & Orenstein, 1991).

THE MOVE TO A "COOPERATIVE PROCESS" IN WASHINGTON STATE

Much has been written on the complexity of Indian claims to water, particularly those which are associated with the creation of reservations (Merrill, 1979) (Becker, 1991). In Washington State, the uncertainty of tribal claims to water is connected not only with tribal lands, but also with treaty-reserved rights to fisheries resources, and the instream flows necessary to support fisheries habitat. The 1974 "Boldt" decision held that the tribes who had signed treaties in 1855, in what is now Washington State, were entitled to the opportunity to harvest half of the harvestable salmon and steelhead returning to off-reservation fishing grounds (U.S. v Washington, 384 F. Supp. 312 (1974)). A subsequent decision held that the right to harvest fish implies a right to protection of fisheries habitat; otherwise, "the right to take fish would eventually be reduced to the right to dip one's net into the water and bring it out empty" (506 F. Supp 187, 203 (1980)). Although later decisions left this finding unclear, (Brown, 1992) (Cohen, 1986), it is generally recognized

that tribes in Washington State have a right to the protection of fish habitat. An independent fact finder hired by the Washington State Legislature in 1988 to review state water policies indicated that the legal entitlement of Indian tribes for both on-reservation use and regional fisheries will have a major impact on the direction of state water policy (Shupe and Sherk, 1988).

In the 1980's, Washington State policy makers and tribal leaders began an era of cooperation, in the recognition that protection of fisheries habitat was a mutual goal (Northwest Indian Fisheries Commission, n.d.). State and tribal government discussions over water policy were eventually widened to include a range of water users and interested parties, and culminated in an agreement in November, 1990 at a retreat at Lake Chelan (Ordon, 1991). The Chelan Agreement incorporated the goals of a number of caucuses including state, local and tribal governments; agriculture, business, environmental, fisheries and recreation interests. The Agreement established a state-wide forum to review water management policies, and created a framework for the development of regional water management plans. The local planning process was not intended to formally resolve legal disputes over water but provided an opportunity for regional water users to attempt to resolve management conflicts through negotiation and consensus. Legislation passed the same year supported the cooperative planning effort, and provided funding for two pilot areas to test the process, one in the Methow basin in eastern Washington, and the other on the northeast portion of the Olympic Peninsula in the Puget Sound region. The latter became known as the Dungeness-Quilcene (DQ) project for the two major rivers in the planning area.

WATER RESOURCE PLANNING AT THE LOCAL LEVEL

Cultural/Historical Considerations

The Dungeness River was nominated by the Jamestown S'Klallam Tribe as a pilot planning project due to the scope of water resource and fisheries problems on the river, and the cultural and historical significance of the river to tribal members. One of the difficulties

for tribes entering a negotiation process for water resources is that the resource may hold cultural and spiritual qualities which may make it difficult for them to compromise (Folk-Williams, 1988). The Dungeness River has always been the primary river of this band of the S'Klallam people. Following the signing of the Treaty of Point No Point in 1855, white settlers pressured government agents to relocate the S'Klallams away from their traditional territory on the northeast Olympic Peninsula to a reservation approximately 75 miles away. To remain close to their river, the Dungeness band of S'Klallams pooled \$500 in gold coin and purchased 200 acres near the river mouth in 1874. They named their community "Jamestown" in honor of their leader (Lord James Balch), and tribal descendants live there to this day.

Unfortunately, the Dungeness River is not the abundant source of fisheries that it was in the 19th century. The run of spring chinook salmon has dwindled from a population estimated at 13,000 to 26,000 to a run as low as 70 returning adults. The pink salmon run, which numbered in the hundreds of thousands less than 20 years ago is now down to a few thousand (Lichatowich, 1992). Both stocks are listed by the American Fisheries Society as in jeopardy of extinction (Nehlsen, Williams, and Lichatowich, 1991). A number of factors have contributed to their decline including logging practices from decades past, shoreline development, diking, bridge construction, and water withdrawals. A total of 579 cubic feet per second of water rights were given out by Washington State around the turn of the century, primarily for irrigation, yet the average flow in September is only 170 cfs. No minimum instream flow has ever been established. Faced with this situation, the Jamestown S'Klallam Tribe had the choice of taking the issue to court, which has been less responsive to tribal claims in recent years (Burton, 1989), or attempting the new Chelan Agreement process to see if the needs of the fish, agriculture, and a rapidly growing populace could be met by negotiation.

Intergovernmental Cooperation

A significant element leading to the Tribe's decision to pursue negotiations, and the selection of the Dungeness as part of the Chelan pilot project, is the positive relationship between the Jamestown S'Klallam Tribe and Clallam County which has been developed over the past six years. Relationships between local governments and Indian tribes in Washington vary from bad to excellent to no relationship at all (Doering, 1992). Fortunately a series of discussions on the Dungeness River and its problems were initiated by Clallam County in 1986 along with a comprehensive water quality planning effort in the adjacent Sequim Bay watershed. These processes included riparian landowners, irrigators, business people, real estate agents, educators and several state and federal agencies with jurisdiction over river management, along with the Tribe (Pinkerton, 1991). Although the regional pilot project under the Chelan Agreement covered a wider geographic area, these earlier discussions helped lay the groundwork for a cooperative planning process and convinced many of the parties, particularly the agriculture community, that such approaches offer a constructive opportunity to resolve resource management conflicts. As in similar processes, the negotiations commenced after all parties saw that it was in their interest to participate, and that the issue could no longer be ignored (Folk-Williams, 1988) (MacDonnell, 1988) (McCool, 1989). One of the impediments to a negotiation process involving Indian water rights is a common belief in the non-Indian community that the claim will go away if it is put off long enough (Price & Weatherford, 1976). In this case, the incentives for several participants are negative, i.e. the threat of a lawsuit by the Tribe which could entirely reallocate the region's water supplies, or the fear that the State of Washington could remove matters from local control and develop an alternative water management scheme.

Formation of the Regional Planning Group

The Chelan Agreement sets out a clear decision-making structure for the participants in a regional water planning process. The eight caucuses mandated by the Agreement (state, local and tribal government, agriculture, business, environmental, fisheries, and recreation)

may add additional caucuses at their discretion. However, a new caucus must demonstrate that their interests cannot be addressed elsewhere, and to date, neither pilot project has accepted a petition from a caucus outside of those specified. Federal agencies are invited to participate at the discretion of the regional planning group. In the DQ project, the interested Federal agencies have opted to join caucuses which reflect their agency mandates (e.g. the U.S. Fish and Wildlife Service to the fisheries caucus), participate through the local government caucus, provide technical assistance in general, or a combination of all these avenues. In the recognition that governmental support is necessary to implement any water management plan (Dworsky, Allee, & North, 1991), the Chelan Agreement requires consensus from state, local, and tribal governments on planning decisions. The support of a majority of the other caucuses is also required (see figure 1.) This structure has caused the non-governmental caucuses in the Dungeness-Quilcene area considerable discomfort in the belief that they can be outvoted. To address this concern, the DQ group has agreed to proceed by full consensus, but may choose to revisit this decision if reasonable progress cannot be made.

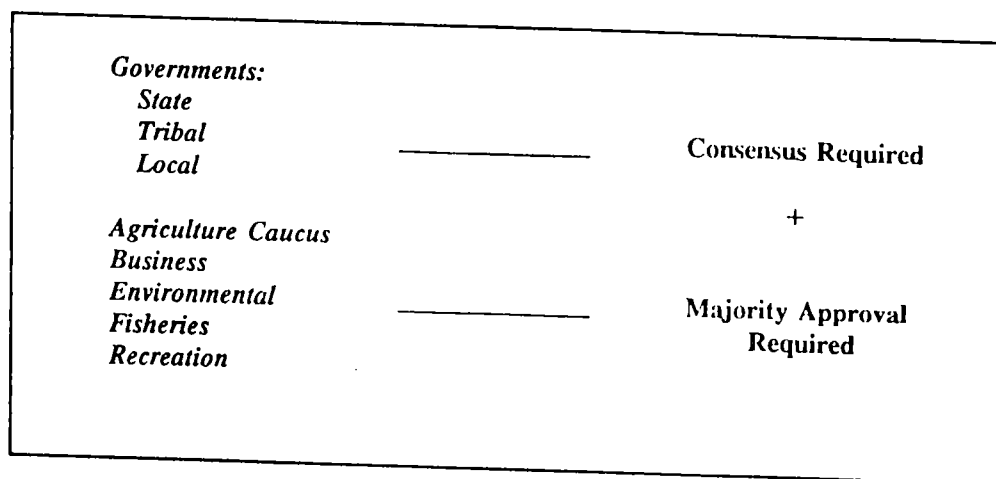


Figure 1. Decision Making Structure for Regional Water Planning Under the Chelan Agreement

Despite the presence of a suggested structure for a regional planning group which offers all parties an opportunity to participate in a meaningful way, considerable effort was necessary to bring the groups to the table in an organized fashion. Several of the caucuses lacked any internal mechanism to select their representatives, and required a great deal of education and acceptance of the Chelan process as well as acknowledgement and understanding of the region's water issues. The caucus structure has the disadvantage of immediately forcing participants to identify with a particular camp, and may lead to unnecessary polarization. A positive aspect to the structure is that each caucus chooses their own representatives, thus avoiding any opportunity or appearance that the planning group has been stacked by a lead agency or other entity. The final composition of the Dungeness-Quilcene Regional Planning Group, consisting of two representatives from each caucus, met the need to incorporate local knowledge and participation, a generally-recognized requisite for successful regional planning (Pinkerton, 1991). Even if consensus cannot be achieved on all aspects of a regional water management plan, the formation of a regional water planning group, representing these diverse interests, will be valuable in resolving ongoing water issues by creating an educated and structured forum.

THE TRIBE AS COORDINATING ENTITY

The Chelan Agreement suggests that any of the governmental caucus members may be selected as the coordinating entity to lead the project. One of the most unusual aspects of the Dungeness-Quilcene Water Resource Pilot Project is the selection of the Jamestown S'Klallam Tribe to fill this role. The DQ project was selected in part as a test of regional water planning in a multi-jurisdictional setting. The governments eligible to be coordinating entity include two counties, two cities, two tribes and the State of Washington. When the Jamestown S'Klallam Tribe expressed interest in taking on the role, several factors had to be addressed to convince the other governments that the Tribe was an appropriate choice; including 1) the Tribe's administrative capability; 2) the Tribe's ability to maintain a positive working relationship with local governments; 3) that the Tribe's goals are explicit; and 4) neutrality. These can be explained further as follows:

- **Administrative Capability:** The Tribe was able to demonstrate that it had the fiscal and professional capability to undertake the planning phase of the project. What is unclear is how the project will proceed after the plan is completed, since implementation will likely fall largely to counties, cities, public utility districts and irrigation districts via zone and ordinance amendments, building code changes, utility rate re-structuring, and construction of conveyance improvements. Pinkerton, (1991) indicates that the ability of a lead agency to implement the plan's actions is a major component of a project's success.
- **Working Relationships with Local Governments:** Many of the conflicts between tribes and local governments spring from jurisdictional uncertainties on land use issues (Commission on State-Tribal Relations). The fact that the Jamestown S'Klallam Reservation itself is only a tiny fraction of the planning area probably helps reduce the potential for jurisdictional conflict with local governments, and focuses the issue more properly on regional water management which affects all the jurisdictions. The positive working relationship between the Tribe and one of the counties must be extended to the other participating governments. A major goal of the Tribe as the lead entity for the project is to demonstrate a model for tribal and local governmental cooperation (Allen, 1992, pers. comm.)
- **Tribal Goals:** In addition to the Jamestown S'Klallams' goal of demonstrating positive government-to-government relationships, the overriding intent of the Tribe is for the restoration of fisheries habitat to its full productive capacity. Local governments initially questioned the Tribe's lead role as a potential legal maneuver. This concern was reduced by the principle in the Chelan Agreement that existing water rights retain their legal validity unless voluntarily relinquished through the process, and the awareness that the need for clear goals on the part of all parties is another requirement for successful negotiation (Folk-Williams, 1988).

● **Neutrality:** A few of the local governments and caucuses were skeptical that the Tribe could be an impartial administrator of project funding due to their explicit position on the desired outcome of the process. However, other caucuses pointed out that most of the local governments also had particular goals and interests at stake including water for municipal use and residential growth, and that neutrality was probably no more possible for them. To compensate, the regional planning group monitors the activities of the coordinating entity closely.

CONCLUSIONS

Tribes are important legal players among the varying constituencies involved in water resource management. As sovereign governments co-managing fisheries resources with the State of Washington, it can be argued that tribes should not have to negotiate with the full range of water users, since these groups fall under the state government umbrella. From a practical standpoint however, successful regional planning and implementation depends on the involvement of all affected parties throughout the decision-making process (Pinkerton, 1991). Tribal leadership of the regional water planning process appears to be working in the northeast Olympic Peninsula, but a tribe may lack the institutional structure for implementation. Under tribal leadership it may take longer to establish the necessary trust by all parties, but due to the significance of the tribal role, the negotiations may be more likely to produce a workable result, thus avoiding a final resolution in court.

Consensus processes require considerable time for discussion and conflict resolution, (Clark, et.al.), making them long, slow and frustrating. The approach is also contingent on the development of a collective belief among the group that positive results are achievable in solving complex problems. Negotiations may require just as much work as litigation for the governmental participants (Sly, 1989), and lack the procedural clarity of the legal route. It remains untested whether the consensus process for water allocation as visualized in the Chelan Agreement can achieve tangible results. While it appears to foster public education on the problems, and enhances relationships between tribal and local governments (Weldon,

1989), whether it can provide a greater instream flow for fish remains to be seen. Webster's New Collegiate Dictionary defines "process" as: 1) *progress*; 2) *something going on*; and 3) *a series of actions or operations conducing to an end*. It is hoped that the regional water planning process conceived at Chelan can conduce to an end instead of going on indefinitely. However, one final advantage of "process" over procedure (i.e. litigation) is that once the participants are committed, they are likely to understand that planning and implementation will be ongoing and can adjust to the dynamics of changing environmental, developmental and societal conditions.

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Chelan Agreement offers hope to resolve Olympic Peninsula water use conflicts

By Scott Wilson
Leader Staff Writer

While Jefferson County has been falling apart over the Growth Management Act (GMA), another land use process has been quietly pulling together the most combative of adversaries.

Once every three weeks, Roger Short, chair of the Jefferson County Property Rights Alliance, sits across the table from Paula Mackrow, member of the Olympic Environmental Council. Near Short sits Roger Schmidt, who operates the huge Sunny Farms near Sequim. Near Mackrow sits Steve Hayden and Joe Breskin, two longtime Port Townsend environmental activists.

Those unlikely partners, along with several other people with strong land use opinions, have been taking seats around a big table inside the administrative headquarters of the Jamestown S'Klallam Tribe on the shores of Sequim Bay for the past year and half. They don't have many tangible results to show for their efforts to date, except that all of them — especially the environmentalists and the farmers — have learned to talk to one another and to listen.

Slowly moving

That's achievement enough. Now the group, part of what is called the Chelan Agreement process concerning the Quilcene and Dungeness river watersheds, is moving into a more active phase. They'll be holding a public hearing in Jefferson County next month and will begin the work of drafting the framework for a long-term agreement on how the water of the two great rivers will be managed.

Also sitting around the big table, and also listening and talking, are representatives of several other groups: Bruce Marston of Wild Olympic Salmon; Stan Cupp of the Port Townsend Paper Corp.; tribal leaders, forestry leaders, local government leaders like Port Townsend City Councilmember Julie McCulloch and Jefferson County Commissioner Richard Wojt.

At least 16 people, and

sometimes 30, have diligently attended the meetings over the past year and half. None except staffers, including Coordinator Linda Newberry, are paid to be there.

All listening. All talking. All moving — very slowly — toward a consensus on what to do with a land use and natural resource issue that is more complicated and far-reaching than the GMA.

That issue is fresh water, the lifeblood of growth, of agriculture, of fish and wildlife throughout the eastern edge of the Olympic Peninsula.

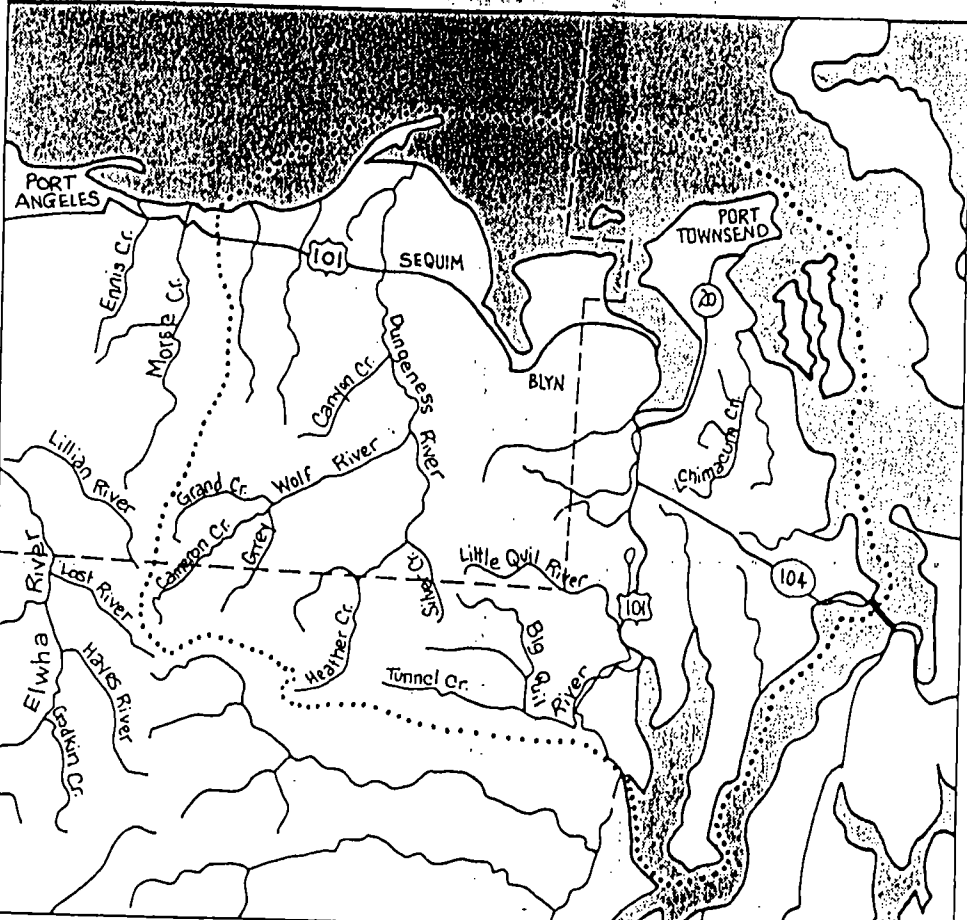
Skirted acrimony

The differences between the planning and political process that has mired Jefferson County's response to the GMA and the process that has led to glacial but steady progress with water allocation issues is stark. While the Chelan Agreement process has been marked by disagreements, it has been saved from the acrimony and suspicion that has torpedoed the GMA in Jefferson County.

That distinction was nowhere clearer than in early December. On Monday, Dec. 7, Property Rights Alliance (PRA) members and their supporters packed a hearing on Jefferson County's GMA to the point where the meeting had to be canceled. Environmentalists like Mackrow were left outraged and bitter over the tactics.

On Tuesday, Dec. 8, Short and Mackrow faced each other across the Chelan Agreement table. Mackrow charged that the PRA's Monday night tactics had derailed two years of work on the GMA, and she worried that the trouble might spill over into the Chelan Agreement process. Another Chelan member, Rita Kepner of Marrowstone Island, said she'd considered boycotting the Chelan meeting altogether, but changed her mind.

Mackrow's question was, and remains, at the heart of the Chelan Agreement's prospects: Can opposing sides build enough trust in each other to see the legitimacy of each others' positions? Can they then work in good faith to find a solution that em-



Despite high stakes, the Chelan Agreement process has enabled sometimes antagonists to make slow but steady progress toward future management of the Quilcene and Dungeness river waters. The study area shown by the dotted line encompasses the watersheds of both great river systems, crossing county lines.

braces those diverse needs?

Answer: Yes

Roger Short responded to Mackrow that despite what happened with the GMA process, the Chelan Agreement answer was yes.

He told the group that he had put his early skepticism about the Chelan process aside and was beginning to believe it could work where GMA failed.

"It will work its way through so long as we don't get mad at each other," concluded Short. Several of the interests represented at the table said they were committed to ensuring this process did not go the way of Jefferson County's experience with the

GMA.

No one expects it to be easy, however. Mackrow acknowledges she was angry and distrustful of the credibility of the PRA.

Since the GMA meeting, however, Mackrow has acted in the spirit of the Chelan process and had private conversations with Short and others identified with the property rights movement.

"I'm not angry anymore," she said this week.

She said she would still go to the meetings and still listen.

Noted Councilmember McCulloch: "We in the Chelan process are learning from the lessons of the GMA. Through our observation of what's happening, we're treading carefully and pre-

serving communications among members. There's a sincere commitment among members at the table to keep the lines of communications open, to prevent any disastrous breakdowns from occurring."

Jamestown S'Klallam Tribal Chair Ron Allen, who prompted the state Department of Ecology to use the Dungeness-Quilcene watersheds as part of its pilot project, is also optimistic. But he knows it will take time.

"It's quite difficult to get everyone on the same track, but you can only go as slow as the slowest denominator," he said. "It takes a lot of time to achieve that. But we've got a special blessing in the right mix of people."

What is it? Who is it?

Your turn

On Wednesday Feb. 3 at the Chimacum Grange building near Chimacum schools, members of the Chelan Agreement process will hold a public meeting from 7 to 9 p.m.

A similar public meeting is slated for Wednesday, Jan. 20 at the Carrie Blake Park Center in Sequim, 7-9 p.m.

The members will describe what is called the Dungeness-Quilcene Pilot Water Resource Planning Project and ask for public comment.

A regular meeting of the Chelan Agreement group is slated Jan. 12 at the Jamestown S'Klallam Tribal Headquarters in Blyn, from 7-10 p.m.

For information, call Cindy Young at (206) 683-1033.

Origins

The Chelan Agreement was forged in November 1990 by over 200 representatives of state, tribal and local governments, agriculture, business, commercial and sport fishing, recreational groups and environmentalists.

They met near Lake Chelan to hammer out an agreement towards negotiated solutions to water allocation issues.

The statewide group agreed to experiment with two pilot projects before targeting more massive water allocation issues through the Chelan Agreement process. They selected the Methow River in Eastern Washington and jointly the Dungeness and Quilcene rivers on the Olympic Peninsula.

Timing

The two pilot projects were supposed to be done with their planning work in June 1993. Both are behind schedule, however, and are expecting strong support from Governor-elect Mike Lowry to continue funding until the work is completed.

The Dungeness-Quilcene group has received about \$650,000 in state funds, of which just under half is left. It is earmarked for technical studies and education.

Rivers

Almost 600 cubic feet per second in water rights have been legally allocated from the Dungeness River. But the average flow in August and September is only 170 cubic feet per second.

The City of Port Townsend owns the bulk of the water rights of the Quilcene River watershed, of which most is contracted to the Port Townsend Paper Corp. pulp mill.

Port Townsend city officials and pulp mill managers were slow to join the Chelan process, believing it could only cost the city water. But worried decisions would be made without city representation, Councilmember Julie McCulloch and pulp mill Plant Engineer Stan Cupp joined last year.

Caucuses

- Agriculture: Roger Short, Chimacum; Roger Schmidt, Sequim.
- Business: Bart Phillips, Port Townsend; Kirk Gnes, Sequim; (alternate: Stan Cupp, Port Townsend).

- Environmentalist: Paula Mackrow, Port Townsend; M. Pat Wennkens, Sequim; (alternate: Steve Hayden, Port Townsend).
- Fisheries: Bruce Marston, Port Townsend; Dick Goin, Port Angeles; (alternate: Barbara Donovan, Port Townsend).

- Local government: Julie McCulloch, Port Townsend; Dave Cameron, Port Angeles; (alternate: Richard Wojt, Port Townsend).
- Recreation: Carol Volk, Port Orchard; Virginia Clark, Sequim; (alternate: Don Lee, Quilcene; Palmer Osborn, Port Townsend).

- Tribal government: Ron Allen, Jamestown S'Klallam; Steve Moddemeyer, Port Gamble S'Klallam.
- State government: David McCraney, state Department of Trade and Economic Development; Steve Kellor, state Department of Fisheries; (alternate: Tim Rymer, state Department of Wildlife).

- Groundwater (not formally admitted as a caucus): Rita Kepner, Nordland; (alternate: Eloise Kailin, Sequim).

Chelan may work where GMA failed

There are several reasons why the Chelan Agreement process may work where the GMA process in Jefferson County has not. Participants listed several differences.

Neutral staff

Chief among them, according to Stan Cupp, plant engineer of the Port Townsend Paper Corp. — the largest single user of Quilcene River water — is the quality of professional staff and facilitators.

"Unless you have someone to create order to the system, I don't believe you can proceed," said Cupp. The Chelan process came with detailed rules on how the interest groups would work together and with what kind of guidance from professional staff.

"We're starting with a road map, and then you have a traffic director," said Cupp. "That's the whole difference."

Chimacum farmer Roger Short agrees.

"Our coordinators, the staff, are doing something that represents the interests of the people that the staff is supposed to represent," Short said. "That's totally contrary to the work groups of the GMA."

Short maintained that the Jefferson County Planning and Building Department staff, under the guidance of the Jefferson County Board of Commissioners, manipulated GMA hearings to justify pre-ordained ends. There is no such suspicion clouding the work of Linda Newberry, Chelan Agreement coordinator.

"I feel Linda is doing a very good job of representing everyone's interest and is trying to take a middle of the road approach to putting something together," he said.

No hidden agendas

While GMA participants suspected that others were not laying all their cards on the table, one condition of coming to the Chelan Agreement process was laying each card face up for all to see.

That's why organizing the interests into "caucuses" which could meet privately then bring clear



Linda Newberry of Port Townsend has received high marks for her staff work for the Chelan Agreement process. Professional and neutral staff was credited by several participants with keeping the process on track toward solutions to water use conflicts.

— Photo by Scott Wilson

agendas to the table, is central to the process. At one of the first Chelan meetings, related Newberry, all sides were asked to flatly state their biases, interests and goals related to use of river water.

The Agricultural position is flatly stated: Enough water for crops. The Fisheries, Tribal and Environmentalist interests are clear: Enough water for salmon spawning; controlling runoff from clear-cutting or development. The Business interest is straightforward: Enough water for the mill and other water-using industries.

"The interests are pretty well defined," said Cupp. "Each caucus issued, in writing, the goals and philosophy it expects to pursue."

Rules of discourse

The Chelan group works under specific rules of debate that function to limit the emotional bombshells or disruptions that can destroy a fragile agreement.

For example, while any farmer or environmentalist can come to the meetings, they cannot inject themselves into the discussion. Only the 17 people sitting at the table can talk. If a visitor wants to make a point, notes are passed and a recess may be called to allow the newcomer to discuss the issue with his or her representatives at the table.

Then it's up to the representatives to decide if the matter should be raised, rephrased or dropped entirely. Has it already been discussed? Can it be rephrased? Would it simply be disruptive?

The GMA process, on the other hand, was wrought with new parties entering the debate at late stages with insistent concerns.

"In the GMA, with every new person you had to listen to the whole thing over again," said Short.

The hammer

Powering the entire effort, not too far in the background, is a

threat.

While the GMA process faces shifting deadlines and vague hints of state enforcement, the consequence of failure in the Chelan Agreement is clear.

The Puget Sound-area treaty tribes, including the Jamestown S'Klallams and the Port Gamble S'Klallams, promise they will take the allocation of river waters to the U.S. District Court if the Chelan Agreement process breaks down.

Just as the Boldt decision of 1974 granted tribes half of the Puget Sound fishery, the federal courts have ruled through "Boldt II" that the tribes have a legitimate claim to protect the salmon habitat in streams and rivers. The Chelan Agreement participants are charged with the task of either reaching an agreement that satisfies the tribes' habitat concerns in a way the other parties can live with or of turning the issue over to the federal courts.

The only specific goal written into the Chelan Agreement itself is that "actions will be guided by the tribes' objective to achieve an overall net gain of the productive capacity of fish and wildlife habitats." Each party at the table, including the farmers and business interests, have accepted that as the bottom line of the process.

Ron Allen, chair of the Jamestown S'Klallams and the driving force behind bringing the Chelan process to the Olympic Peninsula, said he has high hopes the process will succeed. Still, he acknowledged if it fails a lawsuit may be the next step.

"That's a possibility, yes," he said.

Common understandings

Crucial to the cooperation of Chelan process members was achieving a common basis of understanding the water supply problem from the perspective of each interest group.

"The process itself is an educational process," said Port Townsend City Councilmember Julie McCulloch, representing local



Roger Short of Chimacum is one of the representatives for farmers in the Chelan Agreement process. Short said he was skeptical at first, but now thinks it can work.

government. "In order for any of us to have the information to make a decision, we agreed at the outset that we would educate each other."

There have been four field trips to different locations that illustrate the complexity of the situation and the needs of those who depend on the water. The group has gone through the Quilcene watershed and through the Port Townsend Paper Corp. mill, the largest user of Quilcene River water. The group has also toured the irrigated farmlands near Sequim that depend on the Dungeness River.



Northwest Indian Fisheries Commission

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April 27, 1993

Phone (206) 753-9010
FTS #434-9476

The Honorable Patty Murray
United States Senate
513 Hart Building
Washington, DC 20510

RE: Proposed amendments to the reauthorization of the Clean Water Act

Dear Senator Murray:

Attached is a final draft proposal for amendments to the upcoming reauthorization of the Clean Water Act. The proposed amendments would provide a mechanism to authorize grants for federally recognized tribes to develop intergovernmental strategies for the control and prevention of water quality pollution through a watershed/ecosystem approach.

This proposal was developed by the Washington State tribes and is supported by the Department of Ecology. We believe the best approach to water quality management is for the tribes, federal government, and the state to work together, respecting governmental authorities and interests, toward the common goal of a safe and healthy environment for our citizens and natural resources. The objective of the model program is to resolve complex and often contentious cross-boundary and shared resource issues through a cooperative and integrated intergovernmental approach to water quality management.

The tribes and the State of Washington are committed to working on a cooperative, government-to-government basis. The success of this effort is directly dependent on the ability of the tribes to meet the financial costs associated with participating as partners in environmental management rather than as legal adversaries.

For these reasons, we urge your support for the proposed amendments in the reauthorization of the Clean Water Act.

Sincerely,

Bill Frank, Jr.

Bill Frank, Jr.
Chairman
Northwest Indian Fisheries Commission

Mary Riveland

Mary Riveland
Director
Department of Ecology

cc: All Tribal Chairs
Mike Lowry, Governor
Carol Browner, EPA Administrator
Dana Rasmussen, EPA Regional X Administrator
Steven Roy, EPA Tribal Coordinator, Region X

DRAFT

NEW SECTION ____ **Model Inter-governmental Tribal
Demonstration Projects**

Sec. ____] (a) The Administrator is authorized to enter into grants and agreements with federally recognized tribes and tribally directed organizations to carry out demonstration projects to provide for comprehensive inter-governmental coordination efforts for the elimination or control of water pollution. Such model projects shall include inter-governmental coordination between federally recognized tribes and tribally directed organizations and between tribes and the Agency. Such demonstration projects shall investigate strategies to prevent and control water pollution on a watershed approach and to encourage regulatory, management, and technical consistency through cooperative inter-governmental agreements. Such projects should include, where tribal-state government-to-government relations have been established, inter-governmental coordination between federally recognized tribes, State water pollution control agencies, local agencies and other public or nonprofit agencies. Such demonstration projects should provide a model that can be transferred to other tribes and states interested in cooperative approaches to water quality pollution control and prevention.

(b) The inter-governmental strategies shall provide for cooperative efforts and mutual assistance for the prevention and control of pollution and the enforcement of their respective laws relating thereto. Nothing in this section and the participation of federally recognized tribes in the processes contemplated by the demonstration projects shall: (1) constitute or imply any abrogation, diminishment, or waiver of the tribes existing or reserved rights or sovereign powers whether arising under treaty, statute, or common law; or (2) authorize or require the termination of any existing trust responsibility of the United States with respect to Indian people. Furthermore, the Administrator shall acknowledge the cooperative inter-governmental management strategies utilized by the federally recognized Indian tribes in the State of Washington to be consistent with this section.

(c) In carrying out this section the Administrator shall cooperate with the federally recognized tribes and tribal organizations for the purpose of providing such personnel and facilities of the Agency as may be appropriate. The Administrator shall provide technical, financial, and management assistance for operation and maintenance of the demonstration projects developed under this section.

(d) The Administrator shall report to appropriate committees of Congress no later than September 30, 2004, the results of the demonstration projects authorized by this section together with recommendations, including any necessary legislation, relating to the establishment of a statewide or national program.

(e) There is authorized to be appropriated those funds as necessary to carry out this section.

(f) The Administrator is authorized to coordinate with the Secretary of the Department of Human Health Services, the Secretary of the Department of Housing and Urban Development, Secretary of the Department of Interior, the Secretary of the Department of Agriculture, the Secretary of the Department of Defense, and the heads of any other departments or agencies deemed appropriate to assist in the support of the model inter-governmental tribal demonstration projects.

Note: These proposed amendments should not be associated with the section 518 treatment as a state process under the current CWA requirements. It is a stand-alone section not associated with the current jurisdictional approach under section 518 the tribes utilize.