

FILE UNDER AB 2019 - 510  
DATE RECEIVED: 10/8/2019  
SUBMITTED BY: Skip Richards  
 COUNCIL MEETING  
 Public Works COMMITTEE  
EXHIBIT:

# Why Process Matters: A Procedural History of WRIA 1 Watershed Management Plan – Phase 1

- Who fears truth ensures failure
- Life is non-linear

# Overview

- Why content matters: the coming DOE GSA
- Basis/Origin of the 2005 WMP
- Tour through procedural history document
- Procedural History doc [page references]
- Why process matters:
  - Legal
  - Managerial
  - Transparency
  - Accountability
  - Effectivity (Effectiveness + Efficiency)
- Specifics: What's broken; How to fix it

# CV

- 25 years providing professional services to various water resources interests
- State Health Water Supply Advisory Committee
  - legislature assembled broad group of stakeholders to address water system issues in collaborative process
  - chair (2 yrs), vice-chair (2 yrs), exec cmte (5 years)
  - 1996 2001
- 1998 WRIA 1 Watershed Management Project

## CV cont'd: 2005 WMP & 2007 DIP

- Initiated March 2000 Scope of Work
- Lead author, Adaptive Management
- Initiated Planning/Solutions Tech Team
- Member, Water Quantity Tech Team
- Member, Water Quality Tech Team
- Member, PIE Team
- Reviewed and edited 2005 WMP & 2007 DIP
- Lead author, re-write of PU rules 2013-2014
- Lead author, PU committee structure
- Lead author, PU work plan adopted 2013-2014
- Wrote summary of WMP, DIP, other docs

Why Content Matters:

Water in Whatcom County  
Tribal Water Rights Adjudication

**Thinking  
About  
The  
Unthinkable**

**Public Works Committee July 2012**

## General Stream Adjudication

- Court proceeding
- Validates all claims & rights in given basin
- Determines quantity of each right
- Confirms place diversion/withdrawal & use
- Establishes priority date
- Which in turn sets place in line of seniority
- Aquavella/Yakima Basin/Kititas County
- Aquavella took decades, cost millions
- Certainty of eventual outcome
- NO certainty of *content* of outcome

## **Economic and Community Consequences:**

- Water Right only assures your place in line:
- Junior water right holders' use interruptible, via state statute: curtailment.
- Who gets cut off? Un-permitted users: all
  - Farmers
  - water purveyors, other water users
- Must get water from some other source
- Such as: tanker trucks @ \$0.10 to \$0.25 gal
- Household water bill: \$300/\$500 month

## 1998 Watershed Planning Act RCW 90.82

- Planning by Water Resource Inventory Area
- Voluntary
- Initiating Governments:
- Initiate the planning process
- Form “planning unit” to do the planning
- IGS had wide latitude
- to determine who sat at the PU table ...
- Could have been just the IGS



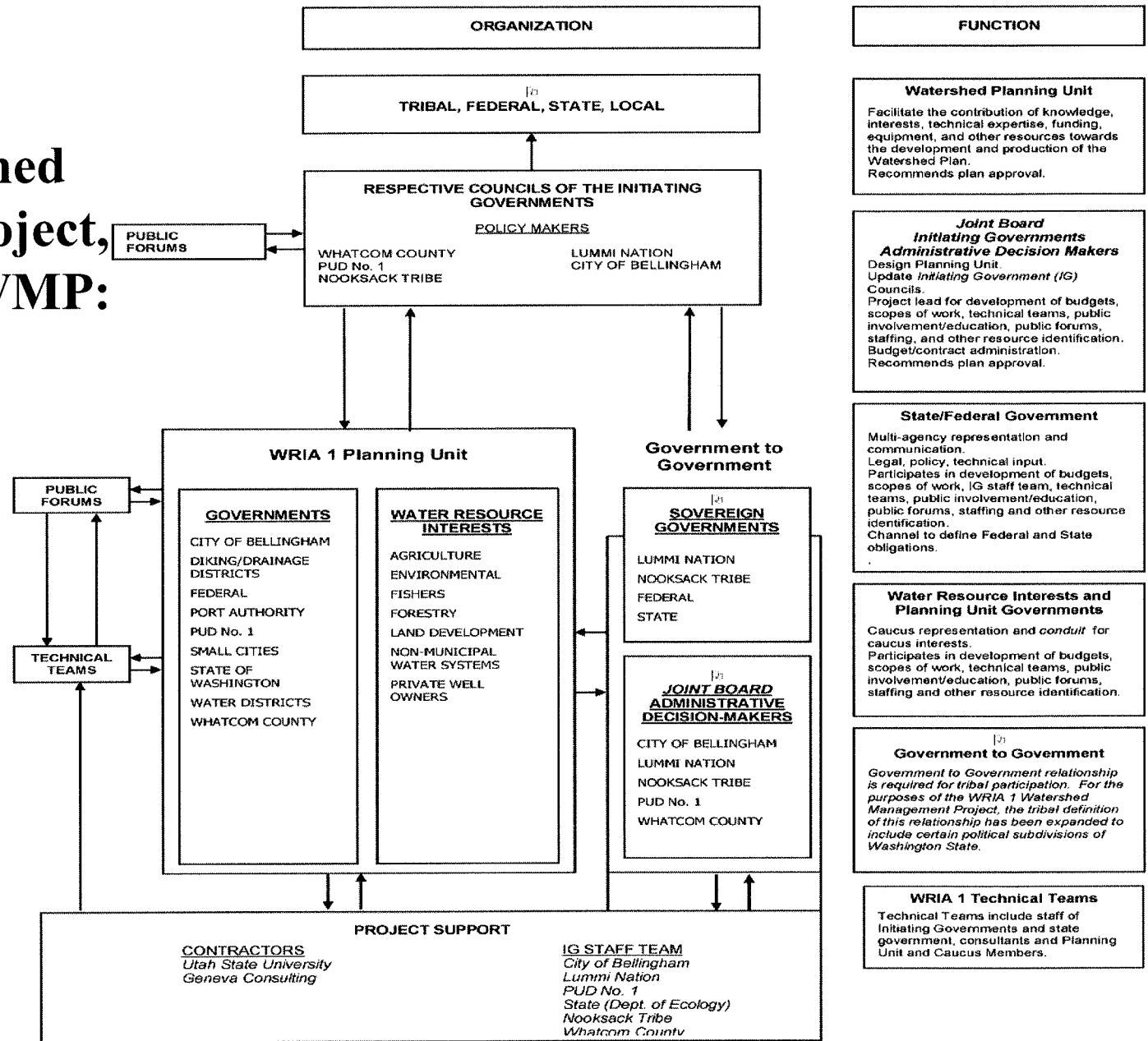
# The 1999 Structure and Function Memo

- [Begins page 4 of Proc Hist submittal]
- Initiating Governments formed Planning Unit with a caucus structure:
  - Only one voice at the table for each interest
- Caucuses:
  - Fishers, foresters, farmers, all water purveyors, land development, environment, private well owners, local governments (gen & spec purp)
- All IGs started out as members of PU

## The 1999 Structure and Function Memo:

- These [Initiating] governments have assembled a capable Staff Team that is action oriented and has learned the lessons of past water resource planning efforts. The Watershed Management [Planning] Act may provide the last opportunity for local decision-makers to plan and implement necessary water resource solutions. Now is the time to trust, cooperate, and work together.

# Structure and Function of the WRIA 1 Watershed Management Project, Appendix A of WMP:



Initiating Governments

Lummi Nation

Public Utility District No. 1

Whatcom County

City of Bellingham

Nooksack Tribe

## 1999 Structure & Function Memo Page 3:

- “The attached diagram ... defines and describes the components and functions of the planning project. The arrows between the components in the diagram *mostly* represent the flow of information, communication, and feedback, and should not be confused with organizational charts that depict lines of authority and reporting responsibility.” [emphasis added]

# The Joint Administrative Board

- [Begins page 8]
- Joint administrative Board set up in 2000:
  - Formed by IGs to receive and disburse funds, contract for services via ILA
  - No change in role of Planning Unit
- Verbal: Established as G 2 G for tribes
- Consists of executives of IGs
- Authorities administrative only
- Joint Board Interlocal reviewed by PU

- Accomplishments ... against all odds
- March 2000 Scope of Work:
  - Provided mechanism for transparency, accountability, and fact-based, results-driven management
- 2005 Watershed Management Plan Phase 1
  - Public Involvement and Education Program
  - Natural Resource Policy Integration Program
  - Quantity and Quality long-term monitoring
  - Instream Flow Action Plan: water rights neg.
  - Preliminary plan; iteration between plan & action
  - Continuing oversight by Planning Unit
- 2007 Detailed Implementation Plan
  - Approved by unanimous consent of those present
- [Details begin page 6]

# Key Features of 2005 WMP Phase 1:

- Provides ongoing role for PU [page 7]
  - WMP updates
  - Review results of Instream Flow Action Plan
- WMP is interim plan [page 11]
  - a roadmap, a plan to keep planning
  - explicitly acknowledged by IGs
- Iteration between plan and implement
  - [page 12]
  - based on results of implementation
  - Adaptive management

## Who/what governs ...?

- A WA State Assistant AG recommendation was that absent detail in the statute authorizing Phase 4 actions, the rules established in Phase 1 regarding initiation, structure, function, and decision-making still apply as default. She also suggested that existing agreements already developed by the planning unit, and any guidance provided in the approved watershed plan, are commonly used by other planning units as guidance ...
- ... from opinion issued 2007
- Assistant AG? Maia Bellon, director DOE



## Surprises begin in 2009 [page 9]

- “confidential” water rights talks drag on ...
- PU members call for WMP update
- Staff team decided PU should go away
- PU refused to accept a deprecated role
- JAB decided to consider role of PU, with PU
- Staff team stopped scheduling PU meetings
- Joint Admin Board morphs into “Policy” Board
- ST/JB takes over planning as well as implementing
- Oct 2010 Lower Nooksack Strategy **RWSP**
- 2011 Water Rights negotiations fail
- 2016: councils approve new version of JAB: WMB

The turning point [page 10]

- June 30 2009: PU rejected deprecation

- JAB meeting July 8 2009: Actions/Agreements:

- The Joint Board and Salmon Recovery Board

agreed by consensus to implement the WRIA 1

Management Team element of the proposed

implementation structure. The watershed panel

and process for selecting representatives will

continue to be discussed and resolved within a

reasonable timeframe. The Planning Unit [to]

remain in place until there is further discussion

by both the Planning Unit and the two Boards

[emphasis added; from Page 4 of 5 pages]

# Suspension of PU: How?

- PU had trusted Staff Team to live up to its obligations under the 2005 WMP and 2007 DIP, including scheduling PU mtgs
- Thus, PU established no independent means to schedule its meetings or run its affairs
- ST simply stopped scheduling PU meetings
- The Staff Team (and JB) failed to honor their obligations under the Plan(s).
- PU disappears in JB/ST mtg summaries ...

*Byrd*

①

## Public Reaction Ensues ...

- Began with a few PU members ...
- Sporadic activity through 2009 – 2011
- Gathered intensity 2012 – 2013
- Richards/Roger Brown present to council 2012
- PU members threaten lawsuit early 2013
- Exec asked County Attorney office
- ... for an opinion on legal status of PU
- Dan Gibson Issued Feb 06 2013 [Page 18]
- JAB/IGs: why not ask for it in 2009?

## Gibson memo Feb 06 2013

- “... the planning unit was not less and could not legally be less than that for which the statute provided. Thus the planning unit did not owe its continued existence, after formation, to the Joint Board nor could the Joint Board unilaterally declare that the Planning Unit was terminated.”
- “While the statutes carve out no clear role for the planning unit following plan adoption, they do provide for its continuing existence until the formation of a water management board pursuant to RCW 90.92.030.”
- FYI: Wtr Mgmt Board statute sunsetted June 31.

②  
✓  
RCW

## So what? Why process matters:

- Potential Legal Liability:

- Civil rights violations:

– 42 USC § 1981 - Equal rights under the law

– 42 USC § 1983 - Civil action for deprivation of rights

– 42 USC § 1985 - Conspiracy to interfere with civil rights

# Why process matters: Legal Liability

- **Role of PU is what the law says it is:**
- Planning units to “... develop a process to assure that water resource user interests and directly involved interest groups at the local level have the opportunity, in a fair and equitable manner, to give input and direction to the process.” 90.82.030(1)
- 2009: PU members left out of decisions
- Which violates their civil rights?
- JAB/WMB acting without sufficient authority?
- Could invalidate JAB/WMB actions?
- Submit for local/state atty opinion?

## False/Misleading statements [page 26]

- 2015 Comp Plan update, Environment Chptr “Planning Unit subcommittee of the Joint Board”
- 2016 WMB interlocal decides “fate” of PU
- Directly contradict Gibson memo findings
- October 2015 PU mtg: IG member: “WPA prohibits PU being included in interlocal agreements.”
- PU stopped further action on interlocal



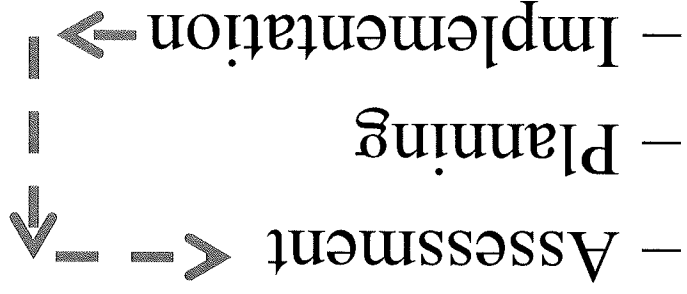
# Why process matters:

- **Legal issues:**
  - Serious, but complex, uncertain outcome
  - Counterproductive to goal of WMP
- **Managerial fails: serious and fatal**
  - **Best Available Science**
  - **Transparency**
  - **Accountability**
  - **Effectivity (Effectiveness + Efficiency)**
- **Can't manage what you don't measure**

## Process Matters: Best Available Science

- IGs/PU agreed to use BAS
- Includes Management Science/ Decision Science
- Provided by ISO 9000 series on TQM:
- “Principle 4 – A desired result is achieved more efficiently when activities and related resources are managed as a process.”

- Requires iteration between:



- Implementation is doing, not planning

# Transparency/Accountability

- For each drainage: Tenmile
- For each content area: Instream flow
- Objective: add X CFS to creek in July
- Budget: \$ allocated, % expended to date
- Relevant data sets: streamflow gauge data
- Lead agency: [whatever]
- Contact person: [whomever]
- Results to date: objective % completion

# Transparency/Accountability

- 2.7.4 Implementation Strategy/Status Files
- In order to provide a clear and easily accessible record of the progress of each planning activity within each section of this Scope of Work, project managers shall create and maintain files in a suitable and uniform electronic format that describe the current implementation status of each such activity.

## 2.7.4.1 Content

- The content of each such status file shall contain at least the following:
- § File title: general format: sub-basin xyz water quality planning status.
- § Project personnel: list manager, other staff, roles; provide hot links to data such as: by whom employed; contact data.
- § Sub-basin Name, Number (as/if applicable).
- § Component: (water quantity, water quality, instream flow, fish habitat).
- Etc. Adopted by PU/IGs March 2000 page 14

# PU input to WMB Work Plan

- To improve Accountability/ Transparency
- Most important PU input left out: PU role
- Will the PU's comments that were incorporated into the WMB Work Plan be implemented?

- The 2000 A/T process has been ignored
- Council Resolution 2014—061
- Performance Measures/Countywide Metrics
- Measuring activity and results?

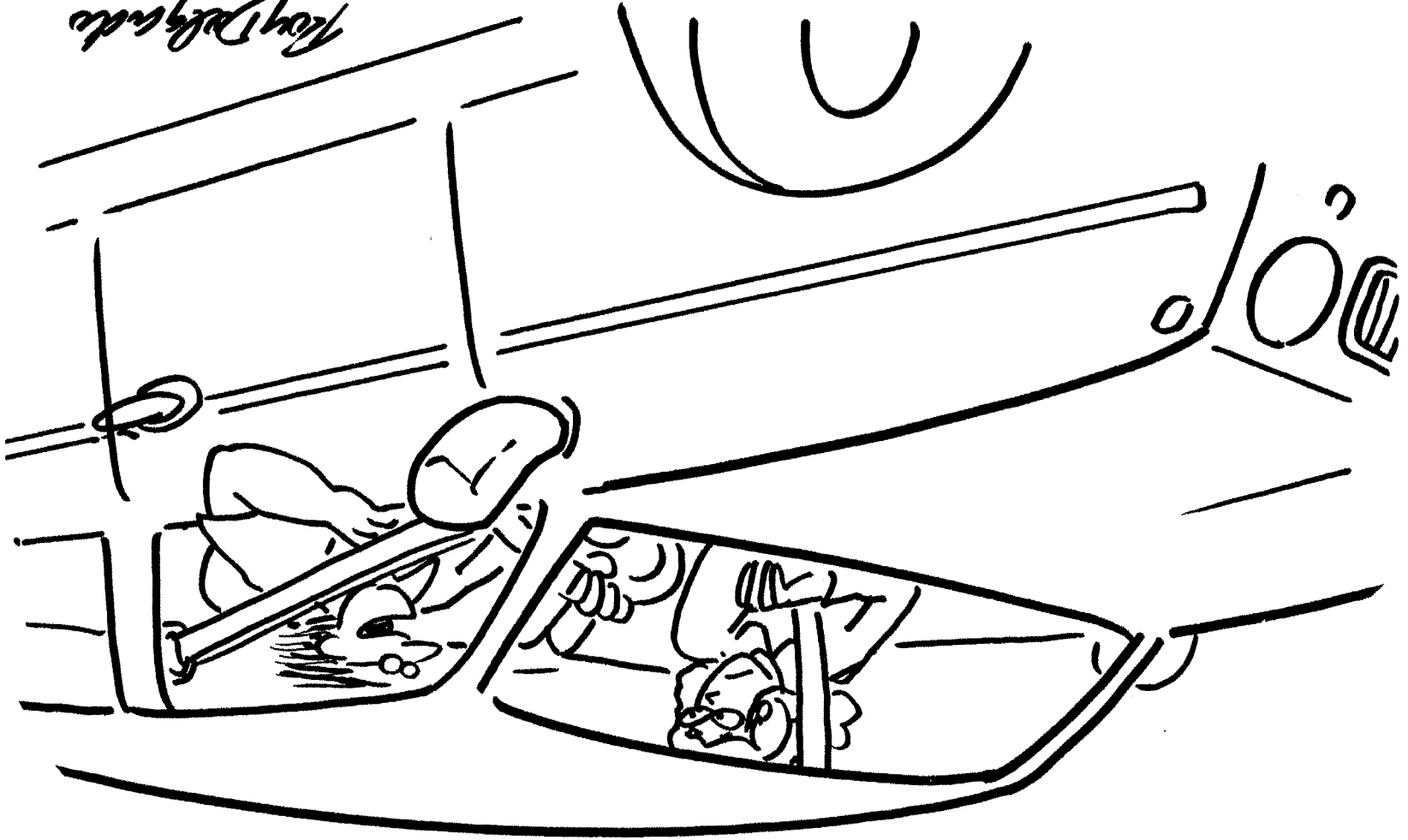
### CAPITAL PROJECTS FOR FCZD FLOOD PROJECTS

Reach	Local Sponsor	Project Name	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
NF	Roads	Rutsatz Road Emergency Stabilization	X										
1	NA	Marietta Demolition	X			X							
Swift	SNE Subzone	Swift Creek bank/channel work	X		X	X	Taken on by Road program						
NF	Roads	Truck Road Emergency Stabilization			X								
High	NA	High Creek Sediment Traps			X								
1	WDFW	Marine Drive Levee Repair			X								
Jones	AVZ Subzone	Jones Creek Deflection Berm											
4	DD#2	Deming Levee Improvement		X									
1	Ferndale /DD#1	Ferndale Levee Improvement											
3	LE Subzone	Lynden Levee Improvement											
3	LE Subzone	Upper Hampton Levee Improvements											
1	DD#1	Rayhorst Levee Widen/Backslope				X							
2	DD#3	Appel Levee Culvert Replacement		X									
2	DD#4	Bertrand Creek RB Stabilization											
3	LE Subzone	Abbott Levee Upstream Tie-in											
4	SNE Subzone	Twin View Widen/Backslope											
2	DD#4	Bertrand Creek LB Stabilization											
1	DD#1	Red River Levee Stabilization				?	X						
4	DD#2	Sande-Williams Riprap Repair	X			X							
2	DD#3	Neevel Levee Bank Stabilization											
2	DD#3	Devries Levee Widen/Backslope											
2	DD#4	River Road Levee Repair											
S	Glacier	Glacier-Gallup Alluvial Fan Restoration											
3	LE Subzone	Hannegan Levee Rehabilitation				X							
4	SNE Subzone	Twin View Levee Rehabilitation				X							
1	Ferndale	Ferndale Levee Rehabilitation				X							

**Sept 17 SWWS Handout**

" I KNOW WE'RE LOST, BUT WE'RE MAKING GOOD TIME. "

*Key Dalgarno*





## It might be different if ...

- Process wrong, but good result
- At least ISF goal accomplished:
- A deal with the tribes
  - that everyone else could live with
- No instream flow deal with tribes
- 14 years of “implementation”
- Now facing the very thing the WMP
- Was intended to prevent: GSA

# Restore PU Proper Role

- “develop a process to assure that water resource user interests and directly involved interest groups at the local level have the opportunity, in a fair and equitable manner, to give input and direction to the process.”  
90.82.030(1)

- Planning is planning, not implementation
- Put the PU back into the decision loop

# Thank you!

- PW Committee Chair Brenner
- Council members
- Council staff
- There's LOTS more ...
  - Decision science apps
  - IGs/PU current relationships
  - Water resource solutions

